

STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION
4708 Capital Circle N.W., Suite 300
Tallahassee, Florida 32303
(850) 488-8641

Do Not Write In This Box

CASE NUMBER CA-
DATE FILED

CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

Submit an original and one (1) copy of this charge to the Public Employees Relations Commission along with proof of simultaneous service upon the other parties. (NOTE: Pursuant to Florida Administrative Code Rule 60CC-5.001(5), the charge must be accompanied by sworn statements(s) setting forth facts of which the affiant has personal knowledge, and where applicable, documentary evidence sufficient to support a prima facie violation of the applicable unfair labor practice provision(s). Such supporting evidence is not to be attached to the charge and is to be furnished only to the Commission.)

The Charging Party alleges that the public employer or its agents named below have engaged in (an) unfair labor practice(s). Charging Party requests the Public Employees Relations Commission to process this charge under its proper authority.

1. NAME OF CHARGING PARTY: United Faculty of Florida
Phone No. (850) 224-8220 Facsimile(Fax) No. (850) 222-1767
Address: 115 North Calhoun Street Suite 6
Tallahassee, Florida 32301
Zip Code

2. CHARGING PARTY REPRESENTATIVE: Thomas W. Brooks
Title: Attorney
Phone No. 850-878-5212 Facsimile(Fax) No. 850-656-6750
Address: 131 North Gadsden Street
Tallahassee, Florida 32301
Zip Code

3. NAME OF EMPLOYER: Florida Gulf Coast University Board of Trustees
Address: 10501 FGCU Boulevard South
Fort Myers, Florida 33965
Zip Code

4. EMPLOYER REPRESENTATIVE: Michael Mattimore
Title: Attorney
Phone No. 850-561-3503 Facsimile(Fax) No. 850-561-0332
Address: 906 North Monroe Street
Tallahassee, Florida 32303
Zip Code

5. The above-named employer or its agents has (have) engaged in (an) unfair labor practice(s) within the meaning of Section 447.501(1)(a) and (c) _____, Florida Statutes.
(list sections)

BASIS OF CHARGE

1. The United Faculty of Florida (UFF) is the certified bargaining agent for all employees of Florida Gulf Coast University Board of Trustees (FGCU) in the unit established by PERC Certification Number 1394.

2. That unit was modified to include the positions of Academic Advisor I, II and III in 2007. See *Florida Gulf Coast University Board of Trustees v. United Faculty of Florida*, 33 FPER ¶ 29633 (2007).

3. UFF and FGCU were parties to a collective bargaining agreement (CBA) that expired August 7, 2018 that specifically included the positions of Academic Advisor I, II and III in Appendix A, which listed the positions covered by the agreement.

4. On May 16, 2018, without prior notice to the UFF, Dr. Mitchell Cordova, FGCU Vice President for Student Success and Enrollment Management, sent an email to all in-unit and out of unit advisors informing them that, as part of reorganization focused on building a long-term foundation for improving all elements of student success, all academic advisors were being consolidated into one division. He stated that all 35 in-unit advisors were being reclassified as Administrated & Professional staff, removing them from the bargaining unit. He said that each advisor would receive a pay increase and that the changes would be effective July 2, 2018.

5. On the same day, FGCU President Mike Martin sent a letter to UFF practically identical to that sent by Dr. Cordova to advisors stating the University's intent to "reclassify" effective July 2, 2018 all in-unit advisors as Administrative and Professional staff with new position numbers and job descriptions. He claimed this action would result in the removal of these positions from the bargaining unit.

6. This was the first notification UFF had that FGCU was in fact going to treat the advisors as no longer in the certified bargaining unit, although the UFF had asked FGCU to address rumors to that effect during ongoing negotiations as recently as May 10, 2018.

7. On May 24, 2018, the UFF, through its FGCU Chapter Executive Council, had a regular meeting with FGCU Provost Dr. Llorens. Several members of the Executive Council and the bargaining team were present. Also present was an in-unit advisor. At this meeting the UFF indicated that it did not believe it was necessary to remove advisors from the unit to accomplish the purposes stated by President Martin and requested further information that would assist in UFF-FGCU's taking a position on this issue.

8. Having received no positive response from Dr. Llorens, the UFF requested another meeting with the administration to discuss the situation, which was held on June 4, 2018. Present were some members of the Executive Council and the bargaining team for UFF and President Martin and Doctors Llorens, Cordova, Barringer and McDonald for FGCU. UFF asked again how taking advisors out of the unit fit into or helped the Student Success Initiative, but received no satisfactory answer. Another consultation was agreed on when, after much back and forth, President Martin stated that the details of the reorganization were not set in stone. At about the same time, FGCU conducted individual meetings between advisors and their

supervisors at which there were discussions about salary increases other details of the proposed new A&P professional staff Academic Advisor reclassification.

9. On June 15, 2018 President Martin sent an email to UFF-FGCU Co-President Dr. Edwin Everham stating that it seemed best to put the reclassification/compensation plans on hold until the unit status of advisors is resolved. He further stated that if the advisors are in the unit, the changes being considered would be matters that should be taken up at the bargaining table.

10. UFF continued to raise the advisor issue at negotiations, but FGCU refused to discuss it.

11. On July 23, 2018 Dr. Cordova sent an email to all advisors updating the status of the reclassification. It included a statement that since the early June individual meetings between advisors and their supervisors at which “they discussed your salary and classification under the proposed new A&P professional staff Academic Advisor reclassification, it was decided that a broader conversation with the UFF-FGCU Chapter should take place regarding moving faculty advisors out of unit. Due to this decision, no further announcements were made until such conversations occurred.” The advisors were also notified that there would be a forum on July 26, 2018 to provide advisors an opportunity to ask questions regarding the reclassification plan.

12. A forum was held with the advisors on July 26, 2018, which was conducted by Dr. Cordova. In addition to discussion of the reasons for the reclassification, there was also discussion of the advisors’ terms and conditions of employment, including, wage increases, promotion process and ability to teach as adjuncts.

13. Thereafter on August 1, 2018, Dr. Martin sent an email to all university staff stating that the reclassification of advisors would be effective immediately and all affected advisors would have a new compensation structure retroactive until July 2, 2018.

14. On August 20, 2018 all academic advisors received letters from FGCU Human Resources confirming their reclassification and new salary, effective July 2, 2018.

15. UFF and FG reached tentative agreement on a successor CBA on or about August 20, 2018. There was no proposal or agreement to exclude the positions of Academic Advisors I, II and III from Appendix A of that agreement. In an email from UFF-FGCU Co-President Win Everham on August 23, 2018, UFF informed Dr. Cordova and Dr. Llorens, among other things, that to comply with its ratification obligations, UFF would be sending ratification ballots to the in-unit advisors because it was their understanding that those positions remained in the unit until excluded by the Public Employees Relations Commission.

16. Ratification ballots were distributed on August 31, 2018 for the agreement reached in negotiations that retained advisors in Appendix A. Ballots were counted on September 7, 2018 and the agreement was ratified by a vote of 195 to 9.

17. Also on August 31, 2018 UFF-FGCU Scott Michael, UFF-FGCU Bargaining Chairperson, was called to Dr. Berringer’s office to address his concern that the reference to advisors had not been removed from the tentative CBA. Dr. Scott said that that matter was not discussed at the bargaining table so he was unable to remove the reference on his own.

18. On September 7, 2018, UFF learned that the tentative CBA posted on the Provost's website removed advisors. That version was to be submitted for ratification to the FGCU Board of Trustees on September 11, 2018.

19. On September 9, 2018 UFF co-presidents Win Everham and Morgan Paine met with President Martin and Provost Llorens to discuss the issue of possible ratification of different CBAs. President Martin stated that he would have to pull the ratification from the Board of Trustees meeting agenda if the issue could not be resolved. He also suggested that if the ratification vote had to be delayed until the next meeting, which was not until January, 2019, the pay raises agreed to in the tentative CBA may not be retroactive as agreed. He claimed that advisors were already out of the unit and their removal from the agreement was essentially a housekeeping item.

20. After internal discussion and even though it disagreed that the advisors were no longer in the unit, UFF determined that it could not risk delaying the bargained retroactive pay raises and had no real choice other than agree to ratification of the version of the tentative agreement submitted by President Martin. UFF so informed FGCU orally and in writing on September 10, 2018.

21. The FGCU Board of Trustees ratified the revised tentative CBA on September 11, 2018.

22. On or about September 5, 2018, advisors who were members of UFF were advised that their dues deduction had been terminated and were instructed to pick up a check refunding the dues deducted after July 1, 2018. UFF was not consulted or notified of this action.

23. There have been no material changes in the qualifications, job duties or other terms and conditions of employment of advisor positions Academic Advisor I, II or III that require their exclusion from the certified unit.

24. FGCU violated Sections 447.501(1) (a) and (c), Florida Statutes (2018) by announcing to bargaining unit advisors that they were no longer in the certified unit and that they would be receiving salary increases without prior notice to or negotiations with the UFF; by dealing directly with advisors still included in the certified bargaining unit regarding changes in their wages and other terms and conditions of employment; by treating advisor positions specifically included in the certified unit as excluded from that unit in the absence of a sufficient basis for and a determination by the Commission excluding them; and by conditioning ratification of a tentative CBA on UFF's agreement to exclude advisors from the certified unit in the absence of a determination by the Commission excluding them or a proposal in negotiations to do so.

25. FGCU knew or should have known that its conduct described above was unlawful, so the UFF is entitled to an award of attorney's fees and costs should it prevail in this case.