

**STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION**

UNITED FACULTY OF FLORIDA,

Charging Party,

v.

Case No.: CA-2018-047

**FLORIDA GULF COAST UNIVERSITY
BOARD OF TRUSTEES,**

Respondent.

_____ /

**RESPONSE TO CHARGING PARTY’S FIRST SET
OF INTERROGATORIES TO RESPONDENT**

COMES NOW, Respondent, FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES, (hereinafter “Respondent”), by and through undersigned counsel, and hereby submits the following Response to Charging Party’s First Set of Interrogatories:

1. State in detail all reasons for the decision to designate the positions of Academic Advisor I, II and III as no longer in the bargaining unit established by PERC Certification 1394.

Respondent did not designate the positions of Academic Advisor I, II and III as no longer in the bargaining unit. In accordance with Article 27.6 of the Parties’ collective bargaining agreement, Respondent created new classifications of employment which it designated as outside of the bargaining unit. Respondent created these classifications as part of its FOCUS Strategic Plan which encompassed a reorganization and enhancement of service provided to its students.

FGCU’s strategic plan identifies Student Success as its number one priority. Following completion of the new strategic plan, the student success and enrollment management action task force was appointed by the president and charged with considering, assessing, and recommending innovative and bold initiatives for continued improvement in student success and graduation rates. The Student Success-Enrollment Management Action Task Force (“SS-EMATF”) was asked to consider organizational change, new approaches, means of monitoring, and all other change that would increase students’ completion rates as well as accelerating the pace to degree completion. Within the SS-EMATF Report, it is clearly identified within the Academic Engagement section, under objective #4 our intent to “Restructure campus-wide academic advising to provide enhanced services to students”. Within this objective, we make clear our desire under the short-term and long-term recommendations to develop a single comprehensive plan and philosophy for all advising on campus as well as reclassifying positions on campus to achieve this outcome. A student

success website was created that housed the SS-EMATF Report which remained public for over a two week. Additionally, there were 3 public forums held (1/25/18, 1/26/2018, 2/14/2018) to discuss the contents of the SS-EMATF report as well. In short, the contents of this report and the intent to reclassify all advisors into A&P professional staff was open and clear for anyone who wanted to see the document. The entire University community was made aware of the document and all FGCU employees were given an opportunity to provide comment and feedback about it. Finally, our desire to establish new comprehensive university-wide academic advising services to improve advising practices for students at FGCU was identified and made public in the Undergraduate Student 4-Year Graduation Rate Plan that was approved by the Board of Trustees on May 1, 2018. Due to the public noticing of the BOT documents (agenda, supporting materials, etc...), this document was available to anyone who cared to see it.

There are several reasons Respondent decided to reclassify faculty advisors to professional staff. First, the primary reason for the reclassification is due to the tremendous amount of inconsistencies in terms of how advising is structured and performed on campus, including (1) differences in the specific roles and responsibilities performed by advisors across colleges and division; (2) differences in philosophy and practice of advising across units; (3) differences in application of policies and procedures across units; (4) differences in advisor-to-student ratios across units; (5) differences in hiring, training, and supervision of advisors across units; (6) a lack of career ladder for all advisors across divisions; and (7) inconsistencies in advising due to coverage of two different divisions. Second, Respondent created and implemented a new advising model that employed best-practices in student advising, which reclassified all advisors under a common system in an effort to improve on Respondent's four-year graduation rate.

2. Identify the person or persons in the FGCU Administration (excluding members of the Board of Trustees) who recommended and/or made the decision referred to in Interrogatory 1.

The decision was made by Dr. Mitchell Cordova in his role as VP for Student Success & Enrollment Management and supported by the President's Cabinet.

3. For each person identified in Interrogatory 2, describe his or her role in this decision.

Dr. Cordova was the Chairman of the Student Success Enrollment Management Action Task Force. This task force was charged with considering, assessing, and recommending innovative and bold initiatives for continued improvement in student success and graduation rates. As part of this initiative, the task force recommended restructuring campus-wide academic advising to provide enhanced services to the students. Dr. Cordova ultimately spearheaded the implementation of this recommendation, which included the reclassification of academic advisors to non-unit administrative and professional positions when he was appointed as Vice President for Student Success & Enrollment Management.

4. State why FGCU's objectives or purposes leading to the decision to designate the positions of Academic Advisor I, II and III as no longer in the bargaining unit established

by PERC Certification 1394 cannot or could not be accomplished with the academic advisor positions remaining in the certified bargaining unit.

Respondent's objectives could not be accomplished with the academic advisors remaining in-unit because following their reclassification, the advisors are no longer members of the faculty. FGCU prior to the reclassification of academic advisors had a very disjointed, and fragmented advising scheme on campus. There were advisors who were already classified as A&P staff (Academic Counselors) and there were other advisors who are classified as faculty. There was no standardization or normalization of responsibilities, advising loads and expectations across the five academic colleges, the office of Undergraduate Studies, as well as the former Division of Student Affairs where the A&P staff advisors were housed (New Student Programs). In essence, we had seven different units trying to advise students at FGCU. Recognizing that advising is critical to student success moving forward, it was decided to reclassify all advisors under one common, coordinated organization so that we could provide optimal advising to our students given the resources we have.

5. Have all duties of the positions of Academic Advisor I, II and III included in the bargaining unit been removed from the unit? If not, which duties remain and which unit positions now perform those duties?

Yes, the duties formerly performed by Academic Advisor I, II and III are no longer performed by bargaining unit faculty members. Additionally, new job descriptions have been prepared for each of the academic advisor levels to ensure that specific duties, responsibilities, and expectations are being delivered by all advisors across campus. This did not exist prior to the reclassification.

6. State the date FGCU first informed the UFF that it was considering removal of the academic advisor positions from the certified unit and identify the method used and the UFF representative(s) notified.

There were numerous communications when the entire campus community (including the UFF) was informed of the University's desire to reclassify academic advisors on campus. First, an email went out (by Susan Evans on my behalf) to the FGCU Community on January 19, 2018 that two public forums were scheduled for the entire university to see the SS-EMATF presentation as well as provide and comments / feedback on the elements of the presentation. A second email was sent out on my behalf from Susan Evans on January 22, 2018 as a follow-up to one that was sent on the 19th where the new Student Success website address was provided. This email also emphasized that people who could not attend each of the public forums had the ability to provide feedback to the SS-EMATF through the website.

The Student Success website went live on January 22 which contained specific objectives under each of the three functional areas: Academic Engagement, Student Engagement, and Enrollment Management. Specifically, it is under the Academic Engagement unit where the objective to restructure advising on campus to enhance services to students was identified. This website remained open for public comment for approximately two weeks where the university community was offered the ability to provide public comment and feedback if they could not attend

one of the two public forums in person. The first public forum took place on January 25, 2018 from 10:30 AM to 12:00 PM in Sugden Hall 111. The second public forum took place on January 26, 2018 from 2:00 PM to 4:00 PM in Seidler Hall 114. The third public forum was established and took place on February 14, 2018 from 10:30 AM to 12:30 PM in Sugden Hall 114. This forum was led by Pres. Martin, Board of Trustees Chair Gable, and Vice President Cordova. These forums were attended by the leadership of the UFF.

Lastly, in addition to these forums a meeting took place between Senior University leadership (Martin, Llorens, Cordova, Barringer) and UFF Leadership (Dr. Win Everham – on the phone, Paine, Michael, Niner, Reynard, McDonald) to discuss reclassifying all academic advisors to professional staff. In addition to elements of the eventual report being placed on the website on January 22, 2018, the entire SS-EMATF Report (preliminary) was posted on the website on February 5, 2018 with the final version being posted on February 12, 2018. These documents were publicly accessible to the UFF.

Respondent also informed the UFF-FGCU of its intent to reclassify the academic advisor positions on January 26, 2018, during the SS-EMATF public forum which was hosted by Dr. Cordova. During this public forum, UFF-FGCU Co-President Morgan Paine asked Dr. Cordova numerous questions regarding the reorganization, which included the reclassification of academic advisors.

On March 30, 2018, Dr. Cordova issued an announcement to all University staff regarding the establishment of several design teams, including the Academic Advising design team, who participated in the development and implementation of the advisor reclassification plan.

On May 3, 2018, Dr. Monika Renard sent an e-mail correspondence to the UFF-FGCU bargaining team expressing concern regarding the reclassification of academic advisors. Later that day, UFF-FGCU Co-President Dr. Everham confirmed that the bargaining team had knowledge of Respondent's intent to reclassify the academic advisors.

On May 7, 2018, Dr. Everham authored an e-mail to President Martin indicating that he had knowledge of the reclassification and stating in part: "We are anticipating an official notification of a plan to change the contract status of faculty advisors from In-Unit to Out-of-Unit. As we have discussed, Article 8.6 appears to give administration that power..."

7. State in detail what UFF was told and identify all documents relating to or concerning that notification.

See Response #6.

8. State all facts and identify all documents concerning or related to FGCU's claim in its Eleventh Affirmative Defense the charge in this case is untimely.

FGCU-UFF knew or should have known of Respondent's intent to reclassify the academic advisor positions to the classification of administrative and professional in January 2018. There were numerous communications when the entire campus community (including the UFF) was

informed of the University's desire to reclassify academic advisors on campus. First, an email went out (by Susan Evans on my behalf) to the FGCU Community on January 19, 2018 that two public forums were scheduled for the entire university to see the SS-EMATF presentation as well as provide and comments / feedback on the elements of the presentation. A second email was sent out on my behalf from Susan Evans on January 22, 2018 as a follow-up to one that was sent on the 19th where the new Student Success website address was provided. This email also emphasized that people who could not attend each of the public forums had the ability to provide feedback to the SS-EMATF through the website.

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During a collective bargaining session held on May 10, 2018, the UFF-FGCU bargaining team requested clarification from Respondent regarding its preliminary plans for moving advisors out-of-unit, which evidences that the UFF-FGCU had knowledge of the reclassification prior to May 10, 2018.

The UFF-FGCU filed its Charge with the Public Employees Relations Commission on May 8, 2018. Therefore, based on the foregoing facts, established PERC precedent and section 447.503(6)(b), Florida Statutes, the UFF’s Charge is untimely.

9. State all facts and identify all documents concerning or related to FGCU’s claim in its Tenth Affirmative Defense that UFF has waived any and all rights asserted in this case.

The FGCU-UFF waived its rights asserted in this case in several ways. First, the UFF waived its rights to challenge the University’s right to create or redefine a position classification outside of the bargaining unit pursuant to Articles 1, 8, 27, and 31 of the 2015-2018 and 2018-2021 collective bargaining agreements, which were both ratified by the UFF.

The FGCU-UFF also waived its right to challenge the cessation of dues deductions of the authorizing bargaining unit member who is transferred out of unit pursuant to Article 25 of the previous mentioned collective bargaining agreements.

The UFF has previously admitted through authorized representatives on multiple occasions that the reclassification of advisors does not constitute an unfair labor practice and is permitted by the Parties’ collective bargaining agreement. In an e-mail dated May 3, 2018, Dr. Everham acknowledged that the reclassification of advisors was not “illegal” citing Article 8.6 of the collective bargaining agreement. On May 7, 2018, Dr. Everham authored an e-mail to President Martin indicating that he had knowledge of the reclassification and stating in part: “We are anticipating an official notification of a plan to change the contract status of faculty advisors from In-Unit to Out-of-Unit. As we have discussed, Article 8.6 appears to give administration that power...”

Additionally, during a bargaining session on August 3, 2018, the UFF bargaining team made the following statement with regard to the reclassification of academic advisors: “Regarding advising, President Martin has announced the decision. Clearly, UFF executive team disagrees, and according to Article 27 we have executed our right to counsel and PERC review. We don’t believe it is necessary to pursue the topic at the table...”

Further, during a UFF Executive Committee Meeting held on September 10, 2018, the UFF announced it would elect to proceed with the execution and ratification of the 2018-2021 collective bargaining agreement, Appendix A of which reflects that the position classifications of Academic

Advisor I, II and III no longer exist within the bargaining unit. The UFF elected to proceed despite having the opportunity to consult counsel as reflected in the Executive Committee meeting minutes.

The UFF also waived its rights asserted in this proceeding pursuant to Article 20 of the previously mentioned collective bargaining agreements.

Lastly, the UFF waived its rights asserted in this proceeding because it failed to file a timely unfair labor practice charge in accordance with PERC precedent and section 447.503, Florida Statutes.

10. Identify all changes in the wages, hours and terms and conditions of employment of the employees who occupied an academic advisor position that was designated as out of unit, the reason(s) therefor and the date of the change.

All reclassified academic advisors did not see a change in the number of hours that they are expected to work a week as they are salaried employees. Additionally, all reclassified advisors did receive a pay increase retroactive to July 2, 2018, based on the new compensation plan that was established. The minimum salary for an Academic Advisor I is \$45,000, the minimum salary for an Academic Advisor II is \$50,000, and the minimum salary for an Academic Advisor III is \$55,100.

11. Identify all changes in the job duties or responsibilities of the employees who FGCU claims have been reclassified from an academic advisor position included in the certified unit, the date of the change.

To the extent Respondent understands this Interrogatory as written, as reflected in the position descriptions produced in its Response #4 to the UFF's First Request for Production, reclassified academic advisors began performing the attached essential job duties on July 1, 2018.

12. State how, if at all, any changes identified in Interrogatory 11 result in the reclassified employees no longer having a community of interest with the employees in the certified bargaining unit.

The advisors no longer have a community of interest with the employees of the bargaining unit because they are no longer faculty members and now perform solely administrative and professional duties in their role as academic advisors within FGCU's Student Success & Enrollment Management division.

13. Did FGCU propose prior to reaching tentative agreement with UFF on or about August 20, 2018 that the positions of Academic Advisor I, II and III be excluded from Appendix A of the CBA? If so, identify such proposal and state when and to whom it was made.

No, FGCU did not propose that the positions be excluded from Appendix A. In accordance with Article 27 of the collective bargaining agreement, FGCU provided the UFF with

notice of its creation of new classifications of employment which it designated as outside of the bargaining unit.

14. Identify the person designated by Respondent Florida Gulf Coast University Board of Trustees (FGCU) to respond to these interrogatories stating his or her title or job position and the basis for his or her knowledge of the responses.

Dr. Mitchell Cordova, Vice President for Student Success & Enrollment Management, Chairman of the Student Success - Enrollment Management Action Task Force, Dean, Marieb College of Health & Human Services

Dr. Tony Barringer, Chief Negotiator for FGCU Bargaining Team, Associate Provost/Associate Vice President for Academic Affairs

15. For each request for admission denied in UFF's Request for Admissions filed simultaneously with these interrogatories state the reason and/or factual basis for such denial.

FGCU responds as follows:

1. Denied. Respondent negotiated its initial collective bargaining agreement subsequent to the collective bargaining agreement referenced in the UFF's Request.
2. Denied. Without knowledge.
4. Denied. The language of the collective bargaining agreement defines a process for the creation and/or reclassification of positions. It also requires the Charging Party to be the party contractually obligated to initiate the proceedings for any unit clarification with the Public Employees Relations Commission. The Charging Party submitted an initiation of proceedings but was discussed by the Commission. *See United Faculty of Florida v. Florida Gulf Coast Board of Trustees*, Case No. UC-2018-045 (PERC Jan. 7, 2019) (Ordering Dismissing Petition).
5. Denied. Article 27.6(A) does not address wages. When a position is not in the unit, it is not covered by the terms of a collective bargaining agreement.
6. Denied. Article 27 of the collective bargaining agreement speaks for itself.
7. Denied. Article 27 of the collective bargaining agreement speaks for itself.

Respectfully submitted this 13th day of February, 2019.

/s/ Michael Mattimore

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 13th day of February, 2019, a true and correct copy of the foregoing was electronically mailed to Thomas W. Brooks, Esq., 131 North Gadsden Street, Tallahassee, Florida 32301 (tbrooks@meyerbookslaw.com).

/s/ Michael Mattimore

Attorney