

NOTICE OF PROPOSED REGULATION AMENDMENT

Date: May 26, 2009

REGULATION TITLE:

University Support Personnel System Predetermination
and Arbitration Appeal Procedures for Employees
with Regular Status

REGULATION NO.:

UCF-3.033

SUMMARY OF REGULATION AMENDMENT: This regulation is amended to reflect changes in the procedure for selecting an arbitrator for a USPS arbitration appeal. Additionally, changes have been made regarding the manner in which arbitration proceedings are conducted. Amendments also include technical changes, as well as renumbering the regulation.

AUTHORITY: BOG Resolution dated January 7, 2003

NAME OF PERSON WHO INITIATED PROPOSED REGULATION AMENDMENT:

Mark Roberts, Director, Human Resources

COMMENTS CONCERNING THE PROPOSED REGULATION AMENDMENT SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. The comments must identify the regulation you are commenting on.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED REGULATION AMENDMENT IS:

Regulations Administrator
4000 Central Florida Blvd.
Millican Hall, Suite 360
Orlando, FL 32816-0015
Phone: (407) 823-2482
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e-mail: regulations@mail.ucf.edu

FULL TEXT OF THE PROPOSED REGULATION AMENDMENT:

~~667~~UCF-3.033 University Support Personnel System Predetermination and Arbitration Appeal Procedures for Employees with Regular Status.

(1) This ~~rule~~-regulation sets forth the predetermination procedures for University of Central Florida University Support Personnel System (USPS) employees with regular status.

(a) Written Notice – Prior to discharge for disciplinary reasons, layoff, suspension without pay for disciplinary reasons, demotion for disciplinary reasons, or reduction in pay for disciplinary reasons of regular status employees, the university shall notify the employee as follows:

1. The employee shall be given written notice of the proposed action at least 14 calendar days prior to the date the action is to be taken.

2. If the employee is available, the notice shall be hand-delivered to the employee and the employee shall acknowledge receipt. Otherwise, the notice shall be mailed to the employee by certified mail, return receipt requested. The notice shall be considered received by the employee even if refused or ignored.

(b) Contents of Notice – The notice shall be signed by the Human Resources director or his or her designee and shall include the following:

1. The effective date of the university's proposed final action;
2. The specific charges or reasons for the action;
3. A list of documents on which the charges or other reasons are based;
4. A statement that the employee may, within 7 calendar days of receipt of the notice, submit a request in writing for a predetermination conference at which time the employee may make an oral or written statement, or both, to the university to refute or explain the charges or reasons for the action; and the name, address, and telephone number of the person to whom the request for a conference shall be directed;

5. A statement that the requested conference must be held prior to the proposed effective date of the action, at a time and place determined by the university, normally during regular business hours, and that the employee is permitted to bring a representative to advise and assist;

6. A statement that the University of Central Florida desires to reduce the risk of error in taking the action against the employee and to avoid damaging the employee's reputation by untrue or erroneous charges, and therefore, the university is interested in receiving and considering the employee response;

7. A copy or summary of the predetermination procedures; and

8. Notice that an employee may resign.

(c) Conference – If a conference is requested by the employee, it must be conducted by the Human Resources director or his or her designee to make the final decision as follows:

1. The person(s) conducting the conference shall convene the conference at the time and place set by the university, shall identify all participants, and shall explain the purpose of the conference. The purpose of the conference is to hear the employee's response to the charges in order to protect the employee from erroneous or arbitrary adverse action, to afford the university an opportunity to reevaluate its position after reviewing the information presented by the employee, and to thereafter affirm or alter the disciplinary action as determined as a result of the conference.

2. The conference shall be informal and shall not be in the nature of an evidentiary hearing. The employee is permitted to bring a representative to assist or advise him or her, but discovery, cross-examination, and similar legal procedures are not permissible.

3. The employee shall be permitted to submit relevant information, orally or in writing, or both, including through witnesses. The privilege is reserved to the University of Central Florida

to give such information the weight it deems proper. If the employee chooses to make no response, the University of Central Florida will proceed on the basis of the information it can obtain without such a response.

4. After the conference is conducted, the employee shall be notified, as soon as practicable, that the proposed final action will be effective on a specific date, that the proposed final action has been revised, or that no action will occur.

(d) Decision – After the conference, if the university determines that it will proceed with the discharge for disciplinary reasons, layoff, suspension without pay for disciplinary reasons, demotion for disciplinary reasons, or reduction in pay for disciplinary reasons, the employee shall be notified in writing by personal delivery or by certified mail, return receipt requested, of the employee’s right to appeal to an arbitrator under subsection (2) of this ~~rule~~regulation. If the employee occupies a position included in a certified bargaining unit, the employee must use the unit’s grievance procedures as provided in the applicable collective bargaining agreement. Furthermore, sworn law enforcement personnel must assure that the provisions of Part VI of Chapter 112, F.S., Law Enforcement Officers’ Bill of Rights, are followed.

(e) If no conference is requested, the University of Central Florida will proceed with the proposed action as stated in the predetermination notice. ~~The employee shall be notified in writing by personal delivery or certified mail, return receipt requested.~~

(f) During the period between the first notice and the effective date of the action, one of the following options shall be used by the university: retain the employee in his or her usual duties, temporarily assign the employee to other duties, place the employee on annual leave, or place the employee on administrative leave.

(g) Extraordinary Situations.

1. The Human Resources director or his or her designee shall immediately suspend an employee from performance of his or her duties when the Human Resources director or his or her designee has reason to believe that the employee's presence on the job would adversely affect the functioning of the university or would jeopardize the safety or welfare of other employees. The Human Resources director or his or her designee shall determine whether a suspension shall be with or without pay based on the severity of the alleged misconduct and the threat to safety.

2. If oral notice is given under this paragraph (g), written notice of such action, and the reasons therefore, must be furnished to the employee as soon as possible.

3. Written notice in an extraordinary situation shall include a statement of the reasons for such action and shall be sent by certified mail, return receipt requested, or hand delivered and the employee shall acknowledge receipt.

(h) Final notice of an action shall include a statement that the employee has a right to appeal to an arbitrator under the provisions of this ~~rule~~regulation.

(2) USPS Arbitration Appeal Procedures.

(a) An employee who has earned regular status in his or her current classification shall have the right to appeal to an arbitrator any discharge for disciplinary reasons, layoff, suspension without pay for disciplinary reasons, demotion for disciplinary reasons, or reduction in pay for disciplinary reasons.

1. If an employee requests an arbitration, the employee shall, within 14 working days after the receipt of notice of the employment action from the university, file with Human Resources a completed Arbitration Request Form. This form ~~UCF-1~~, entitled "Arbitration

Request Form,” ~~effective 9/04~~ is hereby incorporated by reference and can be obtained from Human Resources, 12565 Research Parkway, Suite 360, Orlando, Florida 32826-2912.

2. Failure to initiate an arbitration request within the time limits prescribed shall be deemed a waiver of right to arbitrate. In the event of a question regarding timeliness of any notice, the date of receipt if transmitted in person, or the postmark if transmitted by mail, shall be determinative.

3. After the Request for Arbitration has been received, the Human Resources director will determine whether the request has been filed in accordance with the provisions of this section and shall notify the employee or his or her representative, the dean or director, and the vice president responsible for the college, major budgetary unit, or administrative unit in which the grievant is employed of this determination. Additionally, the employee will be mailed a copy of this ~~rule~~regulation.

4. The Human Resources director shall select an arbitrator on a rotational basis from an odd-numbered panel of at least ~~seven (7)~~three (3) arbitrators maintained by the university and shall notify the university representative and the employee or his or her representative of the selection. ~~If the parties do not agree on the arbitrator, the selection shall be made by alternately striking names from the panel. The right of first strike shall be determined by a coin toss.~~ The employee will receive notice of the identity of the arbitrator and may request disqualification of the arbitrator based on cause within seven (7) calendar days of receipt of the notice. Cause is present when it appears the arbitrator was chosen through corruption, fraud, or other undue means.

5. When an action is both appealable under this ~~rule~~regulation and grievable under a collective bargaining agreement, the employee must use the process within the collective

bargaining agreement. The filing of the arbitration request form constitutes a waiver of any rights to review of the matter under ~~Chapter 120, F.S., or~~ other university review procedures or under any other administrative process. If the employee seeks a review of a matter in an alternative forum after requesting arbitration under this rule or fails to appear at the scheduled arbitration hearing, the university shall have no obligation to proceed further and the grievant loses rights to further appeal.

6. Inactive status. A grievance or arbitration request that is not acted upon by the grievant or his/her representative for more than thirty (30) calendar days shall be deemed resolved in accordance with the decision issued at the prior step.

(b) Fees and Expenses.

1. All reasonable fees and expenses for the arbitrator will be paid by the university unless an employee is represented by a labor organization, its agents, or employees, in which case the arbitrator's fees and expenses shall be paid by the party who fails to prevail in the arbitration.

2. The party desiring a transcript of the arbitration proceedings shall provide written notice to the other party of its intention to have a transcript of the arbitration made at least one week prior to the date of the arbitration and shall be responsible for scheduling a reporter to record the proceedings. The parties shall share equally the appearance fee of the reporter and the cost of obtaining an original transcript and one copy for the party originally requesting a transcript of the proceeding. The requesting party shall, at its expense, photocopy the copy of the transcript received from the reporter and deliver the photocopy to the other party within seven (7) calendar days after receiving the copy of the transcript from the reporter.

(c) The employee may self-represent or be represented. If the employee elects to be represented, the employee must deliver or send to the Human Resources director or his or her

designee within five working days after filing a Request for Arbitration, a written statement indicating the name, address, telephone number and qualifications of the representative and confirming that the employee as well as the representative will be present during the arbitration hearing, and that the employee agrees to representation.

(d) If the aggrieved employee participates during working hours in the arbitration, the employee's compensation will not be affected by the time spent at the arbitration hearing. The employee must notify the immediate supervisor seven (7) calendar days in advance of the anticipated absence. An employee will not be permitted to prepare the case during working hours.

(e) Hearing.

1. The arbitrator shall hold the hearing at the University of Central Florida, unless otherwise agreed by the parties. The hearing shall commence within six weeks of the arbitrator's acceptance of selection, or as soon thereafter as is practicable. Arbitration proceedings shall be conducted in accordance with this ~~rule~~regulation, supplemented by the Labor Arbitration Rules, published by the American Arbitration Association as Amended and Effective on December 1, 2002. Arbitration under this regulation is intended to be an expedited procedure. Accordingly, discovery shall not be permitted and no pre-hearing filings shall be required of the parties. During the hearing, hearsay may be introduced, but the arbitrator shall not make any determination solely on the basis of hearsay. The parties may be requested to submit post-arbitration memoranda to summarize key arguments or evidence from the hearing. The arbitrator shall not make ex-parte contact with any party or witness relating to the substantive issues of the arbitration.

2. Within six weeks of the hearing, the arbitrator shall issue to the university and the employee a written order which may affirm, reverse, or alter the decision of the university.

3. The employee and the university agree that the decision of the arbitrator shall be final and binding on both parties. No judicial review of the arbitration order is available except as provided by Chapter 682, F.S.

(f) Authority of the Arbitrator.

1. The arbitrator shall neither add to, subtract from, modify, or alter the provisions of university ~~rules~~regulations, policies, or procedures, or an applicable collective bargaining agreement. Arbitration shall be confined solely to the application and/or interpretation of those provisions and limited to the matters in the Request for Arbitration Form submitted for arbitration. No statements of opinion or conclusions not essential to the determination of the matters submitted shall be permitted. The arbitrator shall not review managerial decisions other than to ensure that such actions are in accordance with the applicable procedures under review. In the case of discharge for disciplinary reasons, suspension without pay for disciplinary reasons, layoff, demotion for disciplinary reasons, or reduction in pay for disciplinary reasons, the arbitrator shall determine if there is cause for such actions.

2. Where an administrator has made judgment involving the exercise of discretion, such as decisions regarding non-reappointment, assignment, or severity of disciplinary action, the arbitrator shall not substitute the arbitrator's judgment for that of the administrator. Nor shall the arbitrator review such decision except for the purpose of determining whether the decision has violated these rules.

3. The burden of proof shall be on the employer in discharge, suspension without pay, demotion and reduction in pay when taken for disciplinary reasons. The burden of proof shall be on the employee in all other arbitrations.

4. The arbitrator's order and award may reinstate an employee, with or without back pay. The back pay award shall not exceed the amount of pay the employee would otherwise have earned at the employee's regular rate of pay and shall not be retroactive to a date earlier than the date of the occurrence of the event giving rise to the action at issue. In no situation will the award exceed the actual loss to the employee or provide attorney fees to either party.

5. The arbitrator is not authorized to award other monetary damages or penalties.

(g) Arbitrability. The issue of arbitrability shall be bifurcated from the substantive issue(s) and, whenever possible, determined by means of a hearing conducted by a 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, a ~~second~~ arbitrator shall then proceed to hear the substantive issues, in accordance with the provisions ~~of paragraph (2)(e)~~ above. The same arbitrator shall not be used to determine the substantive issue(s) in the arbitration.

Authority: Florida Board of Governors~~BOG~~ Resolution dated January 7, 2003. History—New 9-13-04, Amended 10-18-05; Formerly 6C7-3.033, Amended _____-09.