

NOTICE OF PROPOSED REGULATION AMENDMENT

Date: February 14, 2017

REGULATION TITLE: University Support Personnel System (USPS) Predetermination and Arbitration Appeal Procedures for Employees with Permanent Status **REGULATION NO.:** 3.045

SUMMARY: Sworn Police Officers and Sergeants of the University of Florida Police Department have fallen under the University Support Personnel System (“USPS”) pay plan. These Officers and Sergeants are unlike other employees in USPS based on the types of duties and functions they perform for the University. They also belong to a different collective bargaining organization than other USPS employees – the Police Benevolent Association (“PBA”). For these reasons, the University created a new pay plan for Officers and Sergeants called the Law Enforcement Officer (“LEO”) pay plan. Regulation 3.045 relates to predetermination and arbitration procedures for USPS employees. The proposed amendment to Regulation 3.045 removes reference to law enforcement officers. Predetermination and arbitration procedures for LEO employees are contained in the PBA collective bargaining agreement.

AUTHORITY: BOG Regulation 1.001.

COMMENTS CONCERNING THE PROPOSED REGULATION 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: Sandra L. Mitchell, Legal Assistant II, 123 Tigert Hall, Post Office Box 113125, University of Florida, Gainesville, Florida 32611, 352-392-1358 office, 352-392-4387 facsimile, regulations@ufl.edu.

NAME OF PERSON WHO APPROVED THE PROPOSED REGULATION AMENDMENT: Jodi Gentry, Vice President for Human Resources

THE FULL TEXT OF THE PROPOSED REGULATION IS ATTACHED TO THIS NOTICE.

REGULATIONS OF THE
UNIVERSITY OF FLORIDA

3.045 University Support Personnel System (USPS) Predetermination and Arbitration Appeal Procedures for Employees with Permanent Status.

(1) Predetermination procedures for USPS employees with permanent status.

(a) Written Notice - Prior to the dismissal, suspension, or disciplinary reduction in pay of a permanent employee, the University shall give the employee written notice as follows:

1. The employee shall be given written notice of the proposed action at least five (5) 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 mailed notice shall be considered received by the employee even if refused or ignored.

(b) Contents of Notice - The notice shall be signed by the person authorized to make the final decision or his or her designated representative 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; and a statement that documents shall be available to the employee upon request;
4. A statement that the employee may, within two (2) workdays of receipt of the notice, submit a request in writing for a conference at which 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 may bring a representative to advise and assist;

6. A statement that the University of 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; and

7. A copy or summary of the predetermination procedures shall be enclosed with the notice.

(c) Conference - If a conference is requested by the employee, it must be conducted by the person(s) authorized to make the final decision or his or her designated representative(s) as follows:

1. The person(s) conducting the conference shall convene the conference at the time and place set by the University and shall identify all participants. He or she shall explain that 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 may be warranted.

2. The conference shall be informal and shall not be in the nature of an evidentiary hearing. The employee may 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, with the privilege being reserved to the University of Florida to give such information the weight it deems proper. The employee shall be informed that if he or she chooses to make no response, the University of Florida will proceed on the basis of the best information it can obtain without such 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 reduction in pay, suspension, or dismissal of the employee, the employee shall be notified in writing by personal delivery or by certified mail, return receipt requested, within five (5) workdays from the date the action is effective, of the employee’s right to appeal to an arbitrator under subsection (2) below. If the employee occupies a position included in a certified bargaining unit, the employee shall be further notified that he or she may, in the alternative, 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, Fla. Stat., Law Enforcement Officers’ Bill of Rights, are followed.~~

(e) During the period between the first notice and the effective date of the action, one (1) 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 vacation leave; or place the employee on administrative leave.

(f) Extraordinary Situations.

1. The President or President's designee shall immediately suspend an employee from performance of his or her duties when the President or 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 President or designee shall determine whether a suspension shall be with or without pay based on the severity of the misconduct and the threat to safety.

2. If oral notice is given, written notice of such action, and the reasons therefore, must be furnished to the employee within twenty-four (24) hours.

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.

4. Notice of a suspension or dismissal shall include a statement that the employee has a right to appeal to an arbitrator under subsection (2) below.

(2) USPS Arbitration Appeal Procedures.

(a) An employee who has earned permanent status in his or her current classification shall have the right to appeal to an arbitrator any suspension, dismissal, layoff, demotion with reduction in pay, job abandonment, or reduction in pay, provided that the employee has not signed a statement indicating the action was voluntary. An employee whose position is classified to a lower class shall have the right to appeal only the reduction in pay, if any, that has occurred as a result of the demotion appointment.

1. If an employee requests an arbitration, the employee shall, within ten (10) working days after the receipt of notice of the employment action from the University, file with Human Resource Services a completed Arbitration Request Form. This form is incorporated by

reference and is titled Arbitration Request Form, arb-req Rev. 2/04, and can be obtained from the Office of Employee Relations, Human Resource Services, 903 West University Avenue, Gainesville, Florida. A copy of the form must also be filed with the President or designee and the employee's immediate supervisor.

2. Failure to initiate an arbitration request within the time limits prescribed shall be deemed a waiver of the right to arbitration. 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 Vice President for Human Resource Services 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 regulation.

4. The Vice President responsible for the college, major budgetary unit or administrative unit in which the grievant is employed, or the Vice President's designee, shall serve as the University representative in the arbitration.

5. The Vice President for Human Resource Services shall select an arbitrator on a rotational basis from an odd-numbered panel of at least seven (7) arbitrators maintained by the University and shall notify the University representative and the employee or his or her representative of the arbitrator selected. If the parties do not agree on the arbitrator selected, 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 selected and may request disqualification of the arbitrator based on cause within five (5) days of receipt of the notice. Cause is present when it appears the arbitrator was chosen through corruption, fraud, or other undue means.

6. When an action is both appealable under this regulation and grievable under a collective bargaining agreement, the employee shall have the option of using either procedure. The filing of the arbitration request form constitutes a waiver of any rights to review of the matter under an applicable collective bargaining agreement, Chapter 120, Fla. Stat., or other University review procedures. If the employee seeks a review of a matter in an alternative forum after requesting arbitration under this regulation or fails to appear at the scheduled arbitration hearing, the University shall have no obligation to proceed further.

(b) Fees and Expenses.

1. All reasonable fees and expenses for the arbitrator will be paid by the University.
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 (1) 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 (1) 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 five (5) calendar days after receiving the copy of the transcript from the reporter.

(c) The employee may self-represent or be represented. However, if the employee seeks to be represented by an employee organization, then the employee must follow the grievance procedures of the applicable collective bargaining agreement. If the employee elects to

be represented, the employee must deliver or send to the Vice President for Human Resource Services within five (5) working days after filing an Arbitration Request form, 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 this 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) 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 in the City of Gainesville, unless otherwise agreed by the parties. The hearing shall commence within thirty (30) working days of the arbitrator's acceptance of selection, or as soon thereafter as is practicable. Arbitration proceedings shall be conducted in accordance with this regulation, supplemented by the Labor Arbitration Rules, published by the American Arbitration Association, as Amended and Effective on August 1, 2007.

2. Within thirty (30) working days, 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, Fla. Stat.

(f) Authority of the Arbitrator.

1. The arbitrator shall neither add to, subtract from, modify, or alter the provisions of

University 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 suspension, dismissal, and reduction in pay taken as a disciplinary action, the arbitrator shall determine whether there is just cause for such action.

2. Where an administrator has made a 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 regulations.

3. The burden of proof shall be on the employee in layoff, demotion, reduction in pay, and relocation actions when not taken as a disciplinary action and in job abandonment. The burden of proof shall be on the employer in suspension, dismissal, demotion, and reductions in pay when taken as disciplinary actions.

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 may not award other monetary damages or penalties.

6. The arbitrator may reduce a dismissal to a suspension for such time as the arbitrator may fix, or reduce the period of suspension, which order shall be binding on the University and employee concerned.

(g) 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 issues, in accordance with the provisions of paragraph (2)(e) above.

Authority: BOG Regulation 1.001.

History--New 5-1-96, Amended 3-2-03, 12-31-03, 5-30-04, Formerly 6C1-3.045, Amended 3-16-10 (technical changes only), [Amended _____](#).