

**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.**

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**RESPONDENT’S ANSWER AND AFFIRMATIVE DEFENSES**

COMES NOW, Respondent, FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES, (hereinafter “Respondent”), by and through undersigned counsel and respectfully submits the following Answer and Affirmative Defenses to the Unfair Labor Practice Charge in the above-captioned matter:

**BACKGROUND**

The collective bargaining agreement between the Charging Party, United Faculty of Florida (“UFF”) and the Respondent, Florida Gulf Coast University Board of Trustees (“FGCU”) grants the authority to FGCU to create or to redefine a classification of employment. When that occurs, FGCU “shall designate such classification as being included or not included in the faculty bargaining unit.” (Charge, CBA, p. 92-93).

When FGCU takes this action, the UFF may “within ten (10) days” of receiving notice, request a “meeting” to discuss the designation. (Id., p. 93). If following this discussion, the UFF disagrees with the position being designated as included or not included in the unit, it has one option by contract, which is to seek to have the position included in the unit through a “unit clarification” proceeding before the Public Employees Relations Commission. (Id.).

The initiation of the meeting to discuss the designation is not the obligation of FGCU, but must be requested by the UFF and is a condition precedent to the UFF's ability to initiate the unit clarification proceedings.

Specifically, Article 27.6(A) of the collective bargaining agreement is as follows:

**27.6 Class Titles.**

**A. Whenever the University creates a new faculty classification, it shall designate such classification as being either within or outside the bargaining unit and shall notify the UFF-FGCU. Further, if the University revises the specifications of an existing class so that its bargaining unit designation is changed, it shall notify the UFF-FGCU of such new designation twenty (20) days prior to the effective date of said change. Within ten (10) days following such notification, the UFF-FGCU may request a meeting with the University for the purpose of discussing the designation. If, following such discussion, the UFF-FGCU disagrees with the designation, it may request the Florida Public Employees Relations Commission to resolve the dispute through unit clarification proceedings.**

(Id. at p. 92-93). (emphasis added). In the instant matter, FGCU implemented a reorganization and enhancement of services provided to its students. As a part of this initiative, FGCU created redefined classifications of employment pursuant to Article 27.6(A).<sup>1</sup> The UFF was notified and was provided with multiple meetings to discuss the new classification positions status as not in the bargaining unit.<sup>2</sup>

The UFF then followed the requirement of the collective bargaining agreement and initiated a unit clarification proceeding.

These proceedings do not and frankly cannot transpire prior to the designation of the new or revised classification, but are to be initiated subsequent to implementation.

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<sup>1</sup> Whether the UFF characterizes FGCU's action as creating a new position or revising an existing classification is a distinction without a difference.

<sup>2</sup> The new classification, A&P Advisor Classification System, includes five positions that are all in the Administrative & Professional workforce and will report to the Vice President for Student Success and Enrollment Management. A&P advisors are excluded from the bargaining unit.

In this Unfair Labor Practice Complaint, the Charging Party complains of direct dealing because FGCU identified a wage with the new classification. Since the new classification currently exists outside of the unit, there cannot be direct dealing. FGCU is free to set a wage/salary rate to a classification that is not designated as going within the bargaining unit. Alternatively, UFF complains that certain employees accepting employment in the new A&P Advisor Classification System, which are outside of the bargaining unit, had their dues deduction stopped by FGCU. As UFF is aware, that action was necessary because the dues authorization form executed by the employees contained a revocation in the event they entered employment outside of the unit.

Alternatively, UFF asserts that FGCU somehow violated the statute by requesting that the Parties ratify a negotiated collective bargaining agreement with a correct appendix identifying the positions in the unit. In fact, it is without dispute that the UFF submitted the correct appendix for ratification and the contract was ratified without including the positions created as part of the A&P Advisor Classification System.

**ANSWER**

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. The basis of charge is answered per numbered paragraph as follows:
  - 6(1). Admitted
  - 6(2). Admitted

- 6(3). Admitted
- 6(4). Admitted that Dr. Cordova authored the correspondence dated May 16, 2018.
- 6(5). Admitted
- 6(6). Denied
- 6(7). Admitted that the UFF and FGCU met on May 24, 2018 and discussed the designation of the new A&P Advisor Classification System. All else is denied.
- 6(8). Admitted that FGCU provided the UFF with a second meeting on June 4, 2018 to discuss the designation of the new A&P Advisor Classification System. Admitted that UFF and employees were provided information about non-unit employment positions in the A&P Advisor Classification System. All else is denied.
- 6(9). Admitted that President Martin authored a correspondence to UFF. Document is its own best evidence so the characterization of the correspondence is denied.
- 6(10). Denied.<sup>3</sup>
- 6(11). Admitted that Dr. Cordova corresponded with employees about the A&P Advisor Classification System, comprised of positions that are not in the bargaining unit. All else is denied.

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<sup>3</sup> At this point, FGCU already satisfied any obligation per the collective bargaining agreement to meet and discuss the designation of the new classification.

- 6(12). Admitted that a forum was conducted on July 26, 2018 during which information was provided regarding employment positions that are not in-unit. All else is denied.<sup>4</sup>
- 6(13). Admitted that President Martin authored a correspondence dated on August 1, 2018 regarding a five-year strategic plan. Included in the plan is the creation of new or revised employment classifications. The best evidence of the correspondence is the document itself so all else is denied.
- 6(14). Admitted that letters were provided to certain employees regarding their new or revised employment classification.
- 6(15). Admitted that UFF and FGCU reached a tentative agreement and that UFF communicated with FGCU regarding the ratification of the agreement.
- 6(16). Without knowledge, therefore denied.
- 6(17). Admitted that FGCU and UFF engaged in discussions about the correct description of the bargaining unit as defined at Appendix A.
- 6(18). Admitted that the Parties ratified a collective bargaining agreement that did not reflect the in-unit advisor position because it did not exist. The Appendix A to the ratified collective bargaining agreement does not include a reference to the non-unit A&P Advisor Classification System.
- 6(19). Admitted.
- 6(20). Denied.

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<sup>4</sup> Obviously, FGCU is free to provide information on employment opportunities associated with non-unit positions to members of its workforce.

6(21). Admitted.

6(22). Admitted that the language of the dues authorization provided by the UFF for the impacted employees expressly revoked continued dues deduction authorization by its own terms.

6(23). Denied.

6(24). Denied.

6(25). Denied.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

FGCU has the clear contractual right to create or revise an employment classification and to designate the position as not included in the faculty bargaining unit.

#### **SECOND AFFIRMATIVE DEFENSE**

In creating a new or revised employment classification, FGCU has the legal right to establish a salary rate, particularly when the position exists outside of a certified bargaining unit.

#### **THIRD AFFIRMATIVE DEFENSE**

In furtherance of the right defined in the Second Affirmative Defense, establishing the salary rate does not constitute direct dealing.

#### **FOURTH AFFIRMATIVE DEFENSE**

The dues deduction authorization form submitted by the UFF on behalf of employees at FGCU, by its express language, revokes authorization in the event the employee is employed in a position classification not in the bargaining unit.

**FIFTH AFFIRMATIVE DEFENSE**

The UFF ratified a collective bargaining agreement that contained information acknowledging that the new/revised employment classifications in the A&P Advisor Classification System is not included within the certified bargaining unit.

**SIXTH AFFIRMATIVE DEFENSE**

The instant Charge fails to establish that FGCU engaged in an unfair labor practice pursuant to sections 447.501(1)(a) and (c), Florida Statutes. Instead, FGCU has acted in good faith compliance with Chapter 447, Part II, Florida Statutes.

**SEVENTH AFFIRMATIVE DEFENSE**

Any actions taken by FGCU are within FGCU's management prerogatives and rights, and/or are permitted by contract.

**EIGHTH AFFIRMATIVE DEFENSE**

The instant Charge is frivolous, unreasonable and/or groundless. Accordingly, FGCU is entitled to an award of fees and costs against the UFF.

**NINTH AFFIRMATIVE DEFENSE**

At all times, FGCU has fully satisfied its legal obligations in good faith relative to collective bargaining with the UFF.

**TENTH AFFIRMATIVE DEFENSE**

The UFF has waived any and all rights asserted in the allegations in the instant Charge.

**ELEVENTH AFFIRMATIVE DEFENSE**

The instant Charge is untimely.

Respectfully submitted this 5th day of December 2018.

*/s/ Michael Mattimore*

**Michael Mattimore**

Florida Bar No. 0335071

mmattimore@anblaw.com

**Barron F. Dickinson**

Florida Bar No. 0124082

bdickinson@anblaw.com

ALLEN, NORTON & BLUE, P.A.

906 N. Monroe Street

Tallahassee, FL 32303

(850) 561-3503

*Counsel for Respondent*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that on this 5th day of December, 2018, 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