

1 **Article 20**

2 **GRIEVANCE PROCEDURE AND DISPUTE RESOLUTION/ARBITRATION**

3 20.1 Policy/Informal Resolution. The purpose of this article is to promote a prompt and efficient
4 procedure for the investigation and resolution of grievances. The procedures hereinafter set forth
5 shall be the sole and exclusive method for resolving the grievances of faculty members as defined
6 herein. The parties agree that all problems should be resolved, whenever possible, before the filing
7 of a grievance but within the time limits for filing grievances stated elsewhere in this article, and
8 encourage open communications between administrators and faculty members so that resorting to
9 the formal grievance procedure will not normally be necessary. The parties further encourage the
10 informal resolution of grievances whenever possible. At each step in the grievance process,
11 participants are encouraged to pursue appropriate modes of conflict resolution including the use
12 of mediation.

13 20.2 Resort to Other Procedures. It is the intent of the parties to first provide a reasonable
14 opportunity for resolution of a dispute through the grievance procedure and dispute
15 resolution/arbitration process. ~~Except as noted below, if prior to seeking resolution of a dispute by~~
16 ~~filing a grievance hereunder, or while the grievance proceeding is in progress, a faculty member~~
17 ~~requests, in writing, resolution of the matter in any other forum, whether administrative or judicial,~~
18 ~~the Board or the University shall have no obligation to entertain or proceed further with the matter~~
19 ~~pursuant to this grievance procedure.~~ As an exception to this provision, a grievant may file an
20 EEOC charge while the grievance is in progress when such filing becomes necessary to meet
21 federal filing deadlines pursuant to 42 U.S.C. § 2000e et seq. Further, since the parties do not
22 intend that this grievance procedure be a device for appellate review, the President’s response to a
23 recommendation of a hearing officer or other individual or group having appropriate jurisdiction
24 in any other procedure shall not be an act or omission giving rise to a grievance under this
25 procedure.

26 20.3 Definitions and Forms. As used herein:

27 (a) The term “grievance” shall mean a dispute filed on a form referenced in Section 20.3(c)
28 concerning the interpretation or application of a specific term or provision of this Agreement,
29 subject to those exclusions appearing in other Articles of this Agreement.

30 (b) The term “grievant” shall mean:

31 (1) a faculty member or group of faculty members who has/have filed a grievance in a
32 dispute over a provision of this Agreement which confers rights upon the faculty member(s);

33 (2) the UFF where it has filed a grievance without the aggrieved faculty member(s) in a
34 dispute over a provision of this agreement which confers rights upon such faculty members(s); or

35 (3) the UFF where it has filed a grievance in a dispute over a provision of this Agreement.

36 A grievance filed by the FSU Chapter of the UFF which alleges a violation of its rights by the
37 University may be initiated at Step 2. A grievance of a decision made by the President or the
38 Provost is to be initiated at Step 2. The parties may agree to consolidate grievances of a similar

Renisha Gibbs
Co-Chief Negotiator
FSU - BOT

Michael Mattimore
Co-Chief Negotiator
FSU - BOT

Jennifer Proffitt
Co-Chief Negotiator
UFF – FSU Chapter

Scott Hannahs
Co-Chief Negotiator
UFF – FSU Chapter

Date

Date

Date

Date

39 nature to expedite the review process.

40 (c) Grievance Forms. Each grievance, request for review, and notice of post-grievance
41 reviewarbitration (arbitration or Neutral Internal Resolution of Disputes [NIRD] procedure) must
42 be submitted in writing on the appropriate form attached to this Agreement as Appendix “C”, “D”,
43 or “E”, respectively, and shall be signed by the grievant. All grievance forms shall be dated when
44 the grievance is received. If there is difficulty in meeting any time limit, the UFF representative
45 may sign such documents for the grievant; however, grievant’s signature shall be provided prior
46 to the Step 1 meeting or Step 2 meeting if filed directly at Step 2. The aforementioned grievance
47 forms, as well as Appendix “H”, may be filed by means of fax, United States mail, or any other
48 recognized means of delivery.

49 20.4 Burden of Proof. In all grievances except disciplinary grievances in accordance with Article
50 16, Disciplinary Action and Job Abandonment and any other exceptions stated elsewhere in this
51 Agreement, the burden of proof shall be on the faculty member. In disciplinary grievances, the
52 burden of proof shall be on the Board.

53 20.5 Representation. The UFF shall have the exclusive right to represent any faculty member in
54 a grievance filed hereunder, unless a faculty member elects self-representation or to be represented
55 by legal counsel. If a faculty member elects not to be represented by the UFF, the University shall
56 promptly inform the UFF in writing of the grievance. No resolution of any individually processed
57 grievance shall be inconsistent with the terms of this Agreement and for this purpose the UFF shall
58 have the right to have an observer present at all meetings called for the purpose of discussing such
59 grievance. The UFF Grievance Chair or representative shall be informed of the dates and times of
60 any such meetings at the same time as the other parties. The UFF Grievance Chair shall be sent
61 copies of all correspondence related to such, including grievance decisions at the same time as
62 they are sent to the other parties.

63 20.6 Grievance Representatives. The UFF shall annually furnish to the Board a list of all persons
64 authorized to act as grievance representatives and shall update the list as needed. The UFF
65 grievance representative shall have the responsibility to meet all classes, office hours, and other
66 duties and responsibilities incidental to the assigned workload. Some of these activities are
67 scheduled to be performed at particular times. Such representative shall have the right during times
68 outside of those hours scheduled for these activities to investigate, consult, and prepare grievance
69 presentations and attend grievance hearings and meetings. Should any hearings or meetings with
70 the dean or unit head, the provost, or their representatives necessitate rescheduling of assigned
71 duties, the representative may, with the approval of the appropriate administrator, arrange for the
72 rescheduling of such duties or their coverage by colleagues. Such approval shall not be
73 unreasonably withheld.

74 20.7 Appearances.

75 (a) When a faculty member participates in an arbitration hearing or in a grievance or post-
76 grievance meeting between the grievant or representative and the Board or representative, that

Renisha Gibbs
Co-Chief Negotiator
FSU - BOT

Date

Michael Mattimore
Co-Chief Negotiator
FSU - BOT

Date

Jennifer Proffitt
Co-Chief Negotiator
UFF – FSU Chapter

Date

Scott Hannahs
Co-Chief Negotiator
UFF – FSU Chapter

Date

77 faculty member's compensation shall neither be reduced nor increased for time spent in those
78 activities.

79 (b) Prior to participation in any such proceedings, conferences, or meetings, the faculty
80 member shall make arrangements acceptable to the appropriate supervisor for the performance of
81 the faculty member's scheduled duties as defined in Article 9.1. Approval of such arrangements
82 shall not be unreasonably withheld. Time spent in such activities outside regular working hours
83 shall not be counted as time worked.

84 20.8 Formal Grievance Procedure.

85 (a) Facilitation. Consistent with the policy of informal resolution set forth in Section 20.1 of
86 this Article, no grievance shall be considered ripe for filing at Step 1 absent submission of a request
87 for facilitation. A request for facilitation shall be filed within forty-five (45) days of the date the
88 faculty member learned of the alleged act or omission giving rise to the dispute (or the most recent
89 in a series of alleged acts or omissions giving rise to the dispute). All requests for facilitation shall
90 be in writing by the affected faculty member(s) or the UFF, as appropriate, and submitted to the
91 Vice President for Faculty Development and Advancement or his/her designee. Such requests shall
92 contain a general description of the potential dispute, including dates, times, and locations, along
93 with copies of relevant documentation. Upon receipt of a request for facilitation, the Vice President
94 for Faculty Development and Advancement and the UFF shall engage in a process of facilitation
95 for a period of thirty (30) days, which may be modified by the parties' mutual agreement, in an
96 effort to produce an informal resolution of the potential dispute. In matters designated in the
97 request for facilitation as time-sensitive, the facilitation period shall be fifteen (15) days. Such
98 fifteen (15) day facilitation period may be modified by the parties' mutual agreement in writing.
99 All resolutions shall be reduced to writing, but shall be without precedent or prejudice to the
100 parties.

101 (b) Filing.

102 (1) Within fifteen (15) days from the conclusion of a facilitation period that failed to
103 produce an informal resolution, the grievant shall be entitled to file a Step 1 grievance with the
104 unit head, defined for the purpose of this Article as dean or comparable-level administrator, as
105 appropriate. The grievant may amend the Appendix "C" form up to and including Step 2 of the
106 grievance procedure so long as the factual basis of the complaint is not materially altered.

107 (2) A faculty member may seek redress of alleged salary discrimination by filing a
108 grievance under the provisions of Article 20. An act or omission giving rise to such a grievance
109 may be the faculty member's receipt of the salary warrant for the first full-pay period in which the
110 annual salary increases referenced in Article 23 are reflected

111 (3) Where arbitration is allowed, The filing of a grievance constitutes a waiver of any
112 rights to judicial review of final agency action or to the review of such actions under University
113 procedures that may otherwise be available to address such matters. This grievance procedure shall
114 be the sole review mechanism for resolving disputes regarding rights or benefits that are provided
115 exclusively by this Agreement. Except as otherwise provided herein, only those acts or omissions
116 and sections of the Agreement identified at the initial filing may be considered at a subsequent
117 ~~steps.~~

Renisha Gibbs
Co-Chief Negotiator
FSU - BOT

Date

Michael Mattimore
Co-Chief Negotiator
FSU - BOT

Date

Jennifer Proffitt
Co-Chief Negotiator
UFF – FSU Chapter

Date

Scott Hannahs
Co-Chief Negotiator
UFF – FSU Chapter

Date

118 (c) Time Limits. All time limits contained in this Article may be extended by mutual
119 agreement of the parties, except that the time limits for the initial filing of a grievance may be
120 extended only by agreement between the University and the UFF. Upon failure of the Board to
121 provide a decision within the time limits provided in this Article, the grievant or the UFF, where
122 appropriate, may appeal to the next step. Upon the failure of the grievant or the UFF, where
123 appropriate, to file an appeal within the time limits provided in this Article, the grievance shall be
124 deemed to have been resolved by the decision at the prior step.

125 (d) Step 1.

126 (1) Meeting. The Chair/Unit Head or his/her/their representative and the grievant and the
127 grievant’s representative shall meet at a mutually convenient time within fifteen (15) days
128 following receipt of the grievance. At the Step 1 meeting, the grievant shall have the right to
129 present any evidence in support of the grievance, and the grievant and/or the UFF representative
130 or the grievant’s legal counsel (if selected pursuant to Section 20.5), and the Unit Head or
131 representative, shall discuss the grievance.

132 (2) Decision. The Chair/Unit Head or representative shall issue a written decision, stating
133 the reasons therefore, to grievant’s Step 1 representative within fifteen (15) days following the
134 conclusion of the meeting. Fifteen (15) days shall be determined by a receipt executed by the office
135 receiving the grievance, or by the date of mailing as determined by the postmark. In the absence
136 of an agreement to extend the period for issuing the Step 1 decision, the grievant may proceed to
137 Step 2 if the grievant’s Step 1 representative has not received the written decision by the end of
138 the twentieth (20th) day following the conclusion of the Step 1 meeting. A copy of the decision
139 shall be sent to the grievant and to the local UFF grievance representative if the grievant elected
140 self-representation or representation by legal counsel.

141 (3) Documents. ~~Where practicable, t~~The Step 1 reviewer shall make available to the
142 grievant, or grievance representative, documentation referenced in the Step 1 decision prior to its
143 issuance. All documents referred to in the decision and any additional documents presented by the
144 grievant shall be attached to the decision, together with a list of these documents. In advance of
145 the Step 1 meeting, the grievant shall have the right, upon written request, to a copy of any
146 identifiable documents relevant to the grievance.

147 (4) Step 1 Meeting Waiver. The Step 1 meeting may be waived by mutual written
148 agreement between the Board and the UFF.

149 (e) Step 2.

150 (1) Review. If the grievance is not satisfactorily resolved at Step 1, the grievant may file
151 a written request for review with the Provost or his/her representative within fifteen (15) days
152 following receipt of the Step 1 decision by the grievant’s Step 1 representative. Fifteen (15) days
153 shall be determined by a receipt executed by the office receiving the grievance, or by the date of
154 mailing as determined by the postmark.

155 (2) Meeting. The Provost or representative and the grievant and the grievant’s
156 representative shall meet at a mutually convenient date and time not later than fifteen (15) days
157 following receipt of written notice of request for a Step 2 review. At the Step 2 meeting, the
158 grievant shall have the right to present any evidence in support of the grievance, and the grievant

Renisha Gibbs
Co-Chief Negotiator
FSU - BOT

Michael Mattimore
Co-Chief Negotiator
FSU - BOT

Jennifer Proffitt
Co-Chief Negotiator
UFF – FSU Chapter

Scott Hannahs
Co-Chief Negotiator
UFF – FSU Chapter

Date

Date

Date

Date

159 and/or the UFF representative or the grievant’s legal counsel (if selected pursuant to Section 20.5),
160 and the Provost or representative, shall discuss the grievance.

161 (3) Decision. The Provost or his/her representative shall issue a written decision, stating
162 the reasons therefore, to grievant’s Step 2 representative within fifteen (15) days following the
163 conclusion of the review meeting. Fifteen (15) days shall be determined by a receipt executed by
164 the office receiving the grievance, or by the date of mailing as determined by the postmark. In the
165 absence of an agreement to extend the period for issuing the Step 2 decision, the UFF may proceed
166 to Step 3 (arbitration) or to NIRD if the grievant’s Step 2 representative has not received the written
167 decision by the end of the twentieth (20th) day following the conclusion of the Step 2 meeting. A
168 copy of the decision shall be sent to the grievant and to the UFF if the grievant elected self-
169 representation or representation by legal counsel.

170 (4) Documents. The decision shall not refer to any documents other than those presented
171 by the grievant and the Provost or representative at or prior to the Step 2 meeting, except by mutual
172 written agreement of the grievant and the Provost or representative. Documents referred to in the
173 decision and any additional documents presented by the grievant at or prior to the Step 2 meeting
174 shall be attached to the decision unless such documents are public and readily available, together
175 with a list of these documents.

176 (f) Step 3 Arbitration.

177 (1) Filing. If the grievance has not been satisfactorily resolved at Step 2, the UFF may,
178 upon the request of the grievant, proceed to arbitration by filing a written notice of the intent to do
179 so. Notice of intent to proceed to arbitration must be filed with the Office of the President within
180 fifteen (15) days after receipt of the Step 2 decision by the grievant’s Step 2 representative and
181 shall be signed by the grievant and the state UFF President or representative, or state UFF Director
182 of Arbitrations Fifteen (15) days shall be determined by a receipt executed by the office receiving
183 the grievance, or by the date of mailing as determined by the postmark. The grievance may be
184 withdrawn at any time by the grievant or by the UFF President or Director of Arbitrations at any
185 point during Step 3. The parties shall stipulate to the issue(s) prior to the arbitration. In the event
186 a stipulation is not reached, the parties shall proceed to a hearing on arbitrability pursuant to
187 Section 20.8 (f)(4).

188 (2) Selection of Arbitrator. For the first filing of a notice of intent to arbitrate during the
189 term of this contract, representatives of the University and the UFF shall meet within fifteen (15)
190 days after receipt of a notice of intent to arbitrate, for the purpose of selecting an Arbitration Panel,
191 which will be used for any further arbitrations during the term of this contract. The parties will
192 meet to select an arbitrator from an Arbitration Panel consisting of no fewer than six (6) members.
193 Selection of an individual arbitrator shall be by mutual agreement or by alternately striking names
194 from the Arbitration Panel until one name remains. The right of the first choice to strike from the
195 list shall be determined by the flip of a coin. If the parties are unable to agree on a panel of
196 arbitrators, they shall follow the normal American Arbitration Association procedure for the
197 selection of an arbitrator. The parties may mutually select as the arbitrator an individual who is not
198 a member of the Arbitration Panel. The arbitration shall be held within sixty (60) days following
199 the selection of the arbitrator.

200 (3) Authority of the Arbitrator.

Renisha Gibbs
Co-Chief Negotiator
FSU - BOT

Michael Mattimore
Co-Chief Negotiator
FSU - BOT

Jennifer Proffitt
Co-Chief Negotiator
UFF – FSU Chapter

Scott Hannahs
Co-Chief Negotiator
UFF – FSU Chapter

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201 a. The arbitrator shall neither add to, subtract from, modify, nor alter the terms or
202 provisions of this Agreement. Arbitration shall be confined solely to the application and/or
203 interpretation of this Agreement and the precise issue(s) submitted for arbitration. The arbitrator
204 shall refrain from issuing any statements of opinion or conclusions not essential to the
205 determination of the issues submitted.

206 b. Where an administrator has made a judgment involving the exercise of discretion,
207 such as decisions regarding tenure or promotion, the arbitrator shall not substitute the arbitrator's
208 judgment for that of the administrator. Nor shall the arbitrator review such decision except for the
209 purpose of determining whether the decision has violated this Agreement. If the arbitrator
210 determines that the Agreement has been violated, the arbitrator shall direct the University to take
211 appropriate action that the arbitrator shall specify. An arbitrator may award back salary where the
212 arbitrator determines that the faculty member is not receiving the appropriate salary from the
213 University, and any other payments to which a faculty member is entitled by the provisions of this
214 Agreement, but the arbitrator may not award other monetary damages or penalties. If notice that
215 further employment will not be offered is not given on time, the arbitrator may direct the University
216 to renew the appointment only upon a finding that no other remedy is adequate, and that the notice
217 was given so late that (a) the faculty member was deprived of reasonable opportunity to seek other
218 employment, or (b) the faculty member actually rejected an offer of comparable employment
219 which the faculty member otherwise would have accepted.

220 c. An arbitrator's decision awarding employment beyond the sixth year shall not of
221 itself entitle the faculty member to tenure; however, the decision shall not curtail their right to re-
222 apply for tenure. In such cases the faculty member shall serve during the seventh year without
223 further right to notice that the faculty member will not be offered employment thereafter. If a
224 faculty member is reappointed at the direction of an arbitrator, the President or representative may
225 reassign the faculty member during such reappointment.

226 (4) Arbitrability. Issues of arbitrability shall be bifurcated from the substantive issue(s)
227 and, whenever possible, determined by means of a hearing conducted by conference call. The
228 arbitrator shall have ten (10) days from the hearing to render a decision on arbitrability. If the issue
229 is judged to be arbitrable, an arbitrator shall then be selected to hear the substantive issue(s) in
230 accordance with the provisions of Section 20.8(f)(2).

231 (5) Conduct of Hearing. The arbitrator shall hold the hearing in Tallahassee, unless
232 otherwise agreed by the parties. The hearing shall commence within sixty (60) days of the
233 arbitrator's acceptance of selection and the arbitrator shall issue the decision within forty-five (45)
234 days of the close of the hearing or the submission of briefs, whichever is later, unless additional
235 time is agreed to by the parties. The decision shall be in writing and shall set forth findings of fact,
236 reasoning, and conclusions on the issues submitted. Except as modified by the provisions of this
237 Agreement, arbitration proceedings shall be conducted in accordance with the rules and procedures
238 of the American Arbitration Association.

239 (6) Effect of Decision. The decision or award of the arbitrator shall be final and binding
240 upon the University, the UFF, and the grievant, provided that either party may appeal such award
241 to an appropriate court of law pursuant to the Florida Arbitration Code, Chapter 682, Florida
242 Statutes.

243 (7) Venue. For purposes of venue in any judicial review of an arbitrator's decision issued

Renisha Gibbs
Co-Chief Negotiator
FSU - BOT

Michael Mattimore
Co-Chief Negotiator
FSU - BOT

Jennifer Proffitt
Co-Chief Negotiator
UFF – FSU Chapter

Scott Hannahs
Co-Chief Negotiator
UFF – FSU Chapter

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244 under this agreement, the parties agree that such an appeal shall be filed in the courts in Leon
245 County, Florida, unless both parties specifically agree otherwise in a particular instance. In an
246 action commenced in Leon County, neither the Board nor the UFF will move for a change of venue
247 based upon the defendant’s residence in fact if other than Leon County.

248 (8) Fees and Expenses. All fees and expenses of the arbitrator shall be divided equally
249 between the parties. Each party shall bear the cost of preparing and presenting its own case. The
250 party desiring a transcript of the arbitration proceedings shall provide written notice to the other
251 party of its intention to have a transcript of the arbitration made at least one week prior to the date
252 of the arbitration. The party desiring such transcript shall be responsible for scheduling a stenotype
253 reporter to record the proceedings. The parties shall share equally the appearance fee of the
254 stenotype reporter and the cost of obtaining an original transcript and one copy for the party
255 originally requesting a transcript of the proceedings. The requesting party shall, at its expense,
256 photocopy the copy of the transcript received from the reporter and deliver the photocopy to the
257 other party within five days after receiving the copy of the transcript from the reporter.

258 (9) Retroactivity. An arbitrator’s award may or may not be retroactive as the equities of
259 each case may demand, but in no case shall an award be retroactive to a date earlier than sixty (60)
260 days prior to the date the grievance was initially filed in accordance with this Article.

261 20.9 Filings and Notification. With the exception of Step 1 and Step 2 decisions, all documents
262 required or permitted to be issued or filed pursuant to this Article may be transmitted by fax, United
263 States mail, or any other recognized delivery service (note: e-mail is not an acceptable form of
264 delivery). Step 1 and Step 2 decisions shall be transmitted to the grievant’s representative(s) by
265 personal delivery with written documentation of receipt or by certified mail, return receipt
266 requested. In the event that any action falls due on a Saturday, Sunday, or holiday (as referred to
267 in Section 17.5), the action will be considered timely if it is accomplished by 5:00 P.M. on the
268 following business day.

269 20.10 Precedent. No complaint informally resolved, or grievance resolved at either Step 1 or 2,
270 shall constitute a precedent for any purpose unless agreed to in writing by the Board of Trustees
271 or representative and the UFF acting through its President or representative.

272 20.11 Processing.

273 (a) The filing or pendency of any grievance or ~~arbitration-post-grievance~~ proceedings under
274 this Article shall not operate to impede, preclude, or delay the University from taking the action
275 complained of. Reasonable efforts, including the shortening of time limits when practical, shall be
276 made to conclude the processing of a grievance prior to the expiration of the grievant’s
277 employment, whether by termination or failure to reappoint. A faculty member with a pending
278 grievance will not continue to be compensated beyond the last date of employment.

279 (b) Nothing herein shall be construed to authorize the Chair/Unit Head, the Dean, the
280 President, the Provost, or their representatives to refuse to respond to a grievance filed under this
281 Article.

Renisha Gibbs
Co-Chief Negotiator
FSU - BOT

Michael Mattimore
Co-Chief Negotiator
FSU - BOT

Jennifer Proffitt
Co-Chief Negotiator
UFF – FSU Chapter

Scott Hannahs
Co-Chief Negotiator
UFF – FSU Chapter

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282 20.12 Reprisal. No reprisal of any kind will be made by the University or the UFF against any
283 grievant, any witness, any UFF representative, or any other participant in the grievance procedure
284 by reason of such participation. In a grievance or post-grievance procedure where the arbitrator or
285 panel has established that the grievant has made a prima facie case of reprisal, the burden of proof
286 shall be on the Board to demonstrate that there was no reprisal.

287 20.13 Records. All written materials pertinent to a grievance shall be filed separately from the
288 evaluation file of the grievant or witnesses, except decisions resulting from arbitration, post-
289 grievance procedure or settlement.

290 20.14 Inactive Grievances. A grievance which has been filed at Step 2 or Step 3 and on which no
291 action has been taken by the grievant or the UFF for sixty (60) days shall be deemed withdrawn
292 and resolved in accordance with the decision issued at the prior Step.

293 20.15 Expedited Grievance Procedure for Conflict of Interest (Section 19.5).

294 (a) A grievance alleging a violation of Article 19 shall be heard at Step 1 by the President or
295 representative no more than seven (7) days after it has been filed. The President or representative
296 shall issue a Step 1 decision no more than 7 days after the Step 1 meeting.

297 (b) A request for review of the Step 1 decision shall be filed using Appendix “D”, no more
298 than seven (7) days following the receipt of the Step 1 decision. The Step 2 meeting shall be held
299 no more than 7 days after the receipt of Appendix “D”, and the Step 2 decision shall be issued no
300 more than 7 days after the meeting.

301 (c) A request for arbitration or NIRD procedure using Appendix “E” shall be filed within
302 fourteen (14) days after receipt of the Step 2 decision. An arbitrator shall be selected by the parties
303 no more than fourteen (14) days following the receipt of the Appendix “E”. The arbitrator or NIRD
304 Panel shall issue a memorandum of decision within 7 days following the conclusion of the dispute
305 resolution arbitration, to be followed by a written opinion and award in accordance with Section
306 20.8(f)(5).

307 (d) For arbitrations, ~~t~~The parties shall establish a panel of three (3) experienced arbitrators
308 to hear a grievance filed in accordance with this Section.

309 (e) All other provisions of Article 20 shall apply to these grievances, except as noted
310 above.

311 20.16 Neutral Internal Resolution of Disputes Procedure (NIRD). Florida Statute Sec.
312 1001.741(2) prohibits arbitration on decisions relating to personnel actions or decisions
313 regarding faculty, including in the areas of evaluations, promotions, tenure, discipline, or
314 termination. Should this legal prohibition become invalidated, arbitration regarding such issues
315 will be governed pursuant to 20.8(f). If the legal prohibition remains, the NIRD procedure
316 replaces arbitration (20.8(f)) on decisions relating to personnel actions or decisions regarding
317 faculty in the areas of evaluations, promotions, tenure, discipline, or termination.

Renisha Gibbs
Co-Chief Negotiator
FSU - BOT

Michael Mattimore
Co-Chief Negotiator
FSU - BOT

Jennifer Proffitt
Co-Chief Negotiator
UFF – FSU Chapter

Scott Hannahs
Co-Chief Negotiator
UFF – FSU Chapter

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318 (a) Filing.

319 _____ (1) If the grievance has not been satisfactorily resolved at Step 2, the UFF may, upon the
320 request of the grievant, proceed to the NIRD by a Panel by filing a written notice of the intent
321 to do so. Notice of intent to proceed to NIRD by a Panel must be filed with the Office of the
322 President within fifteen (15) days after receipt of the Step 2 decision by the grievant’s Step 2
323 representative and shall be signed by the grievant and the UFF-FSU President or
324 representative. Fifteen (15) days shall be determined by a receipt executed by the office
325 receiving the grievance, or by the date of mailing as determined by the postmark. The NIRD
326 may be withdrawn at any time by the grievant or by the UFF during Step 3.

327 _____ (2) The parties shall stipulate to the issue(s) prior to the hearing before the Panel. If the
328 parties are unable to stipulate to the issue(s) prior to such hearing, the parties shall proceed to
329 a hearing on applicability of this procedure based on either procedural or substantive concerns
330 (“applicability”). Issues of applicability shall be bifurcated from the substantive issues and,
331 whenever possible, determined by means of a hearing conducted by conference call. The Panel
332 shall have ten (10) days from the hearing to render a decision on applicability. If the process
333 is judged to be applicable to the complaint, the Panel shall then proceed to hear the substantive
334 issue(s) in accordance with the provisions of this Procedure.

335 (b) Creation of Pools for Selecting Panel Members.

336 _____ (1) Representatives of the University and the UFF shall meet within ninety (90) days
337 after the start date of the BOT-UFF-FSU Collective Bargaining Agreement for the purpose of
338 creating two pools.

339 _____ (2) One pool shall consist of University employees, defined as any University employee,
340 whether in a bargaining unit or not (“Employee Pool”). The Employee Pool shall consist of ten
341 (10) members, five of whom shall be appointed by the FSU President or designee and the
342 remaining five shall be appointed by the UFF-FSU President.

343 _____ (3) A second pool shall consist of FSU community members, defined as former
344 employees or alumni (“Neutral Pool”). The Neutral Pool shall consist of six (6) members appointed
345 by mutual agreement of the FSU President or designee and the UFF-FSU President. If the
346 University and the UFF are unable to reach mutual agreement on six (6) Neutral Pool members,
347 selection shall be made from striking names from lists of six (6) names each submitted by the
348 University and the UFF until six (6) panel members are selected. The order of striking shall be
349 determined by the flip of a coin.

350 _____ (4) The University and the UFF are encouraged to seek eligible Neutral Pool members
351 who are educators at other educational institutions, fully retired FSU faculty or administrators, or
352 professional mediators or arbitrators. Any member of the Neutral Pool who is not a professional
353 labor arbitrator shall be encouraged to complete training to qualify as a professional labor
354 arbitrator. The costs of such training will be shared equally by the University and the UFF. No
355 person involved in any business, employment or other relationship with the University that could

Renisha Gibbs
Co-Chief Negotiator
FSU - BOT

Michael Mattimore
Co-Chief Negotiator
FSU - BOT

Jennifer Proffitt
Co-Chief Negotiator
UFF – FSU Chapter

Scott Hannahs
Co-Chief Negotiator
UFF – FSU Chapter

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356 reasonably be presumed to create a conflict of interest with that person’s obligations as a neutral
357 arbiter of disputes involving the University shall be eligible for inclusion in the Neutral Pool.

358 _____ (5) Members of the pools shall be able to serve on short notice and willing to serve for at
359 least one calendar year. In addition, the University and the UFF shall jointly provide all pool
360 members with orientation and training in the BOT-UFF Collective Bargaining Agreement
361 including this NIRD by a Panel procedure. The costs of such training will be shared equally by the
362 University and the UFF.

363 _____ (6) If at any time the number of members of the Neutral Pool drops below six (6), the
364 University and the UFF shall meet to select one or more additional Neutral Pool members through
365 the process outlined above. A new panel may be selected annually, at the initiation of the
366 University or the UFF, on written notice no later than November 30th.

367 _____ (7) If at any time the number of members of the Employee Pool drops below ten (10),
368 the departing member’s vacancy shall be filled by the FSU President (or designee) or the UFF-
369 FSU President, depending upon who appointed the departing member.

370 (c) Selection of a Panel.

371 _____ (1) Within fourteen (14) days after receipt of a notice of intent to proceed to NIRD,
372 representatives of the University and the UFF shall meet for the purpose of selecting a Panel.

373 _____ (2) The FSU President or designee shall appoint one (1) member of the Employee Pool
374 to serve on the Panel.

375 _____ (3) The UFF-FSU President shall appoint one (1) member of the Employee Pool to serve
376 on the Panel.

377 _____ (4) The appointees to the Panel pursuant to sections (2) and (3) above, shall select the
378 third member of the Panel from the Neutral Pool. Selection from among Neutral Pool members
379 shall be by mutual agreement or by alternately striking names from the eligible members of the
380 Neutral Pool list. Each side shall have two strikes. The right of the first choice to strike from the
381 list shall be determined by the flip of a coin. Unless the parties mutually agree to one of the
382 remaining two panelists, a flip of the coin will determine which of the remaining two Neutral Pool
383 members shall hear the complaint. The parties may mutually select as the third panel member an
384 individual who is not a member of the Neutral Pool.

385 _____ (5) The third panel member, selected according to Article 20.16(c)(4), shall serve as the
386 Chair of the Panel and shall strive to follow the Code of Professional Responsibility for Arbitrators
387 of Labor-Management Disputes of the National Academy of Arbitrators, the American Arbitration
388 Association, and the Federal Mediation and Conciliation Service.

389 _____ (6) The hearing by the Panel shall be held within sixty (60) days following the selection
390 of the Panel.

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Co-Chief Negotiator
FSU - BOT

Michael Mattimore
Co-Chief Negotiator
FSU - BOT

Jennifer Proffitt
Co-Chief Negotiator
UFF – FSU Chapter

Scott Hannahs
Co-Chief Negotiator
UFF – FSU Chapter

Date

Date

Date

Date

391 (d) Authority of the Panel.

392 _____ (1) The Panel shall not add to, subtract from, modify, ignore, or alter the terms or
393 provisions of the BOT-UFF-FSU Collective Bargaining Agreement. NIRD by a Panel shall be
394 confined solely to the application and/or interpretation of the BOT-UFF-FSU Collective
395 Bargaining Agreement and the precise issue(s) submitted for NIRD. In rendering its decision, the
396 Panel shall refrain from issuing any statements of opinion or conclusions not essential to the
397 determination of whether the act or event giving rise to the complaint violated any applicable
398 Collective Bargaining Agreement provisions, University regulations or policies.

399 _____ (2) Where an administrator has made a judgment involving the exercise of discretion,
400 such as decisions regarding promotion, the Panel shall not substitute its judgment for that of the
401 administrator. Nor shall the Panel review such decision except for the purpose of determining
402 whether the decision has violated the BOT-UFF-FSU Collective Bargaining Agreement.

403 _____ (3) The Panel shall not have the power to award promotion or tenure.

404 _____ (4) If the Panel determines that the BOT-UFF-FSU Collective Bargaining Agreement has
405 been violated, the Panel shall direct the University to take appropriate action. The Panel may award
406 back salary where the Panel determines that the employee is not receiving the appropriate salary
407 from the University, but the Panel may not award other monetary damages or penalties. If notice
408 that further employment will not be offered is not given on time, the Panel may direct the
409 University to renew the appointment.

410 _____ (5) A Panel's decision awarding an Assistant Professor's employment beyond the sixth
411 year shall not entitle the employee to tenure. In such cases the employee shall serve during the
412 seventh year without further right to notice that the employee will not be offered employment
413 thereafter. The Panel may decide to give the grievant another chance to go through the tenure
414 process and be considered for tenure if the Panel decides that the correct process was not followed.

415 (e) Conduct of Hearing. The Panel shall hold the hearing in Tallahassee, unless otherwise
416 agreed by the parties. The hearing shall commence within twenty-five (25) days of all Panel
417 members' acceptance of selection, or as soon thereafter as is practicable, and the Panel shall issue
418 the decision within thirty (30) days of the close of the hearing or the submission of briefs,
419 whichever is later, unless additional time is agreed to by the parties. The decision shall be in writing
420 and shall set forth findings of fact, reasoning, and conclusions on the issues submitted. Except as
421 expressly specified in this Procedure, the provisions of the Florida Arbitration Code, Chapter 682,
422 Florida Statutes, shall not apply. Except as modified by the provisions of this Procedure, NIRD by
423 a Panel proceedings shall be conducted in accordance with the Labor Arbitration Rules and
424 Procedures of the American Arbitration Association.

425 (f) Effect of Decision. The decision or award of the Panel shall be final and binding upon the
426 University, the UFF, and the complainant, provided that either party may appeal to an appropriate
427 court of law a decision that was rendered by a Panel acting outside of or beyond the Panel's

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428 jurisdiction pursuant to Florida law concerning the right of appeal of a similar decision rendered
429 in an arbitration.

430 (g) Venue. For purposes of venue in any judicial review of Panel’s decision issued under this
431 agreement, the parties agree that such an appeal shall be filed in the courts in Leon County, Florida,
432 unless both parties specifically agree otherwise in a particular instance. In an action commenced
433 in Leon County, neither the Board nor the UFF will move for a change of venue based upon the
434 defendant’s residence in fact if other than Leon County.

435 (h) Fees and Expenses. All fees and expenses of the NIRD by a Panel shall be divided equally
436 between the parties, unless mutually agreed otherwise. Each party shall bear the cost of preparing
437 and presenting its own case. The party desiring a transcript of the Panel hearing shall provide
438 written notice to the other party of its intention to have a transcript of the Panel hearing made at
439 least one week prior to the date of the hearing. The party desiring such transcript shall be
440 responsible for recording or scheduling a court reporter to record the proceedings. The parties shall
441 share equally the appearance fee of the court reporter and the cost of obtaining an original transcript
442 and one copy for the party originally requesting a transcript or recording of the proceedings. The
443 requesting party shall, at its expense, duplicate the recording or transcript received from the
444 reporter and deliver the copy to the other party within five days after receiving the recording or
445 transcript from the reporter.

446 (i) Retroactivity. A Panel’s award may or may not be retroactive as the equities of each case
447 may demand, but in no case shall an award be retroactive to a date earlier than sixty (60) days prior
448 to the date the grievance was initially filed in accordance with this Article.

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Date

Scott Hannahs
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Date