

1 *Article 20*

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

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

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

31 20.3 Definitions and Forms. As used herein:

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

35 (b) The term "grievant" shall mean:

- 36 (1) a faculty member or group of faculty members who has/have filed a grievance in a
37 dispute over a provision of this Agreement which confers rights upon the faculty member(s);
38 (2) the UFF where it has filed a grievance without the aggrieved faculty member(s) in a

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39 dispute over a provision of this agreement which confers rights upon such faculty members(s); or
40 (3) the UFF where it has filed a grievance in a dispute over a provision of this Agreement.
41 A grievance filed by the FSU Chapter of the UFF which alleges a violation of its rights by the
42 University may be initiated at Step 2. A grievance of a decision made by the President or the
43 Provost is to be initiated at Step 2. The parties may agree to consolidate grievances of a similar
44 nature to expedite the review process.

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

54 20.4 Burden of Proof. In all grievances except disciplinary grievances in accordance with Article
55 16, Disciplinary Action and Job Abandonment and any other exceptions stated elsewhere in this
56 Agreement, the burden of proof shall be on the faculty member. In disciplinary grievances, the
57 burden of proof shall be on the Board.

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

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

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79 20.7 Appearances.

80 (a) When a faculty member participates in an arbitration hearing or in a~~an arbitration hearing~~
81 ~~or in a~~ grievance or post-grievance meeting between the grievant or representative and the Board
82 or representative, that faculty member's compensation shall neither be reduced nor increased for
83 time spent in those activities.

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

89 20.8 Formal Grievance Procedure.

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

106 (b) Filing.

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

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

116 (3) ~~The Where arbitration is allowed.~~ The filing of a grievance constitutes a waiver of
117 any rights to judicial review of final agency action or to the review of such actions under University
118 procedures that may otherwise be available to address such matters. This grievance procedure shall
119 be the sole review mechanism for resolving disputes regarding rights or benefits that are provided

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120 exclusively by this Agreement. Except as otherwise provided herein, only those acts or omissions
121 and sections of the Agreement identified at the initial filing may be considered at ~~a~~ subsequent
122 steps.

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

130 (d) Step 1.

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

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

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

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

154 (e) Step 2.

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

160 (2) Meeting. The Provost or representative and the grievant and the grievant’s

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161 representative shall meet at a mutually convenient date and time not later than fifteen (15) days
162 following receipt of written notice of request for a Step 2 review. At the Step 2 meeting, the
163 grievant shall have the right to present any evidence in support of the grievance, and the grievant
164 and/or the UFF representative or the grievant’s legal counsel (if selected pursuant to Section 20.5),
165 and the Provost or representative, shall discuss the grievance.

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

175 (a) As long as Section 1001.741, Florida Statutes is in effect, personnel actions or decisions
176 regarding faculty, including in the areas of evaluations, promotions, tenure, discipline, or
177 termination, may not escalate to Step 3. If Section 1001.741 limiting the use of arbitrations is
178 struck or enjoined by a court of competent jurisdiction or amended by the legislature to permit the
179 arbitration of these decisions, such decisions may escalate to Step 3.

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

186 (f) Step 3 Arbitration.

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

198 (2) Selection of Arbitrator. For the first filing of a notice of intent to arbitrate during the
199 term of this contract, representatives of the University and the UFF shall meet within fifteen (15)
200 days after receipt of a notice of intent to arbitrate, for the purpose of selecting an Arbitration Panel,
201 which will be used for any further arbitrations during the term of this contract. The parties will
202 meet to select an arbitrator from an Arbitration Panel consisting of no fewer than six (6) members.

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203 Selection of an individual arbitrator shall be by mutual agreement or by alternately striking names
204 from the Arbitration Panel until one name remains. The right of the first choice to strike from the
205 list shall be determined by the flip of a coin. If the parties are unable to agree on a panel of
206 arbitrators, they shall follow the normal American Arbitration Association procedure for the
207 selection of an arbitrator. The parties may mutually select as the arbitrator an individual who is not
208 a member of the Arbitration Panel. The arbitration shall be held within sixty (60) days following
209 the selection of the arbitrator.

210 (3) Authority of the Arbitrator.

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

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

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

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

241 (5) Conduct of Hearing. The arbitrator shall hold the hearing in Tallahassee, unless
242 otherwise agreed by the parties. The hearing shall commence within sixty (60) days of the
243 arbitrator's acceptance of selection and the arbitrator shall issue the decision within forty-five (45)
244 days of the close of the hearing or the submission of briefs, whichever is later, unless additional
245 time is agreed to by the parties. The decision shall be in writing and shall set forth findings of fact,

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246 reasoning, and conclusions on the issues submitted. Except as modified by the provisions of this
247 Agreement, arbitration proceedings shall be conducted in accordance with the rules and procedures
248 of the American Arbitration Association.

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

253 (7) Venue. For purposes of venue in any judicial review of an arbitrator's decision issued
254 under this agreement, the parties agree that such an appeal shall be filed in the courts in Leon
255 County, Florida, unless both parties specifically agree otherwise in a particular instance. In an
256 action commenced in Leon County, neither the Board nor the UFF will move for a change of venue
257 based upon the defendant's residence in fact if other than Leon County.

258 (8) Fees and Expenses. All fees and expenses of the arbitrator shall be divided equally
259 between the parties. Each party shall bear the cost of preparing and presenting its own case. The
260 party desiring a transcript of the arbitration proceedings shall provide written notice to the other
261 party of its intention to have a transcript of the arbitration made at least one week prior to the date
262 of the arbitration. The party desiring such transcript shall be responsible for scheduling a stenotype
263 reporter to record the proceedings. The parties shall share equally the appearance fee of the
264 stenotype reporter and the cost of obtaining an original transcript and one copy for the party
265 originally requesting a transcript of the proceedings. The requesting party shall, at its expense,
266 photocopy the copy of the transcript received from the reporter and deliver the photocopy to the
267 other party within five days after receiving the copy of the transcript from the reporter.

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

271 20.9 Filings and Notification. With the exception of Step 1 and Step 2 decisions, all documents
272 required or permitted to be issued or filed pursuant to this Article may be transmitted by fax, United
273 States mail, or any other recognized delivery service (note: e-mail is not an acceptable form of
274 delivery). Step 1 and Step 2 decisions shall be transmitted to the grievant's representative(s) by
275 personal delivery with written documentation of receipt or by certified mail, return receipt
276 requested. In the event that any action falls due on a Saturday, Sunday, or holiday (as referred to
277 in Section 17.5), the action will be considered timely if it is accomplished by 5:00 P.M. on the
278 following business day.

279 20.10 Precedent. No complaint informally resolved, or grievance resolved at either Step 1 or 2,
280 shall constitute a precedent for any purpose unless agreed to in writing by the Board of Trustees
281 or representative and the UFF acting through its President or representative.

282 20.11 Processing.

283 (a) The filing or pendency of any grievance or arbitration ~~arbitration~~ ~~post-grievance~~
284 proceedings under this Article shall not operate to impede, preclude, or delay the University from
285 taking the action complained of. Reasonable efforts, including the shortening of time limits when
286 practical, shall be made to conclude the processing of a grievance prior to the expiration of the

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287 grievant’s employment, whether by termination or failure to reappoint. A faculty member with a
288 pending grievance will not continue to be compensated beyond the last date of employment.

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

292 20.12 Reprisal. No reprisal of any kind will be made by the University or the UFF against any
293 grievant, any witness, any UFF representative, or any other participant in the grievance procedure
294 by reason of such participation. In a grievance ~~or post-grievance procedure~~ where the arbitrator ~~or~~
295 ~~panel~~ has established that the grievant has made a prima facie case of reprisal, the burden of proof
296 shall be on the Board to demonstrate that there was no reprisal.

297 20.13 Records. All written materials pertinent to a grievance shall be filed separately from the
298 evaluation file of the grievant or witnesses, except decisions resulting from arbitration, ~~post-~~
299 ~~grievance procedure~~ or settlement.

300 20.14 Inactive Grievances. A grievance which has been filed at Step 2 or Step 3 and on which no
301 action has been taken by the grievant or the UFF for sixty (60) days shall be deemed withdrawn
302 and resolved in accordance with the decision issued at the prior Step.

303 20.15 Expedited Grievance Procedure for Conflict of Interest (Section 19.5).

304 (a) A grievance alleging a violation of Article 19 shall be heard at Step 1 by the ~~President or~~
305 ~~representative~~ Chief Compliance and Ethics Officer no more than seven (7) days after it has been
306 filed. The ~~President or representative~~ Chief Compliance and Ethics Officer shall issue a Step 1
307 decision no more than 7 days after the Step 1 meeting.

308 (b) A request for review of the Step 1 decision shall be filed with the President or
309 representative using Appendix “D”, no more than seven (7) days following the receipt of the Step
310 1 decision. The Step 2 meeting shall be held no more than 7 days after the receipt of Appendix
311 “D”, and the Step 2 decision shall be issued no more than 7 days after the meeting.

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

318 (d) Section 1001.741, Florida Statutes applies to this section as it pertains to arbitration
319 pursuant to Section 20.8(e)(3)(a).

320 (d) ~~For arbitrations, the parties shall establish a panel of three (3) experienced arbitrators~~
321 ~~to hear a grievance filed in accordance with this Section.~~

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

324 ~~20.16 — Neutral Internal Resolution of Disputes Procedure (NIRD). Florida Statute Sec.~~
325 ~~1001.741(2) prohibits arbitration on decisions relating to personnel actions or decisions~~
326 ~~regarding faculty, including in the areas of evaluations, promotions, tenure, discipline, or~~
327 ~~termination. Should this legal prohibition become invalidated, arbitration regarding such issues~~
328 ~~will be governed pursuant to 20.8(f). If the legal prohibition remains, the NIRD procedure~~
329 ~~replaces arbitration (20.8(f)) on decisions relating to personnel actions or decisions regarding~~
330 ~~faculty in the areas of evaluations, promotions, tenure, discipline, or termination.~~

331 ~~(a) — Filing:~~

332 ~~—— (1) If the grievance has not been satisfactorily resolved at Step 2, the UFF may, upon the~~
333 ~~request of the grievant, proceed to the NIRD by a Panel by filing a written notice of the intent~~
334 ~~to do so. Notice of intent to proceed to NIRD by a Panel must be filed with the Office of the~~
335 ~~President within fifteen (15) days after receipt of the Step 2 decision by the grievant’s Step 2~~
336 ~~representative and shall be signed by the grievant and the UFF FSU President or~~
337 ~~representative. Fifteen (15) days shall be determined by a receipt executed by the office~~
338 ~~receiving the grievance, or by the date of mailing as determined by the postmark. The NIRD~~
339 ~~may be withdrawn at any time by the grievant or by the UFF during Step 3.~~

340 ~~—— (2) The parties shall stipulate to the issue(s) prior to the hearing before the Panel. If the~~
341 ~~parties are unable to stipulate to the issue(s) prior to such hearing, the parties shall proceed to~~
342 ~~a hearing on applicability of this procedure based on either procedural or substantive concerns~~
343 ~~(“applicability”). Issues of applicability shall be bifurcated from the substantive issues and,~~
344 ~~whenever possible, determined by means of a hearing conducted by conference call. The Panel~~
345 ~~shall have ten (10) days from the hearing to render a decision on applicability. If the process~~
346 ~~is judged to be applicable to the complaint, the Panel shall then proceed to hear the substantive~~
347 ~~issue(s) in accordance with the provisions of this Procedure.~~

348 ~~(b) — Creation of Pools for Selecting Panel Members:~~

349 ~~—— (1) Representatives of the University and the UFF shall meet within ninety (90) days~~
350 ~~after the start date of the BOT-UFF-FSU Collective Bargaining Agreement for the purpose of~~
351 ~~creating two pools:~~

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

356 ~~—— (3) A second pool shall consist of FSU community members, defined as former~~
357 ~~employees or alumni (“Neutral Pool”). The Neutral Pool shall consist of six (6) members appointed~~
358 ~~by mutual agreement of the FSU President or designee and the UFF-FSU President. If the~~

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359 ~~University and the UFF are unable to reach mutual agreement on six (6) Neutral Pool members,~~
360 ~~selection shall be made from striking names from lists of six (6) names each submitted by the~~
361 ~~University and the UFF until six (6) panel members are selected. The order of striking shall be~~
362 ~~determined by the flip of a coin.~~

363 ~~—— (4) The University and the UFF are encouraged to seek eligible Neutral Pool members~~
364 ~~who are educators at other educational institutions, fully retired FSU faculty or administrators, or~~
365 ~~professional mediators or arbitrators. Any member of the Neutral Pool who is not a professional~~
366 ~~labor arbitrator shall be encouraged to complete training to qualify as a professional labor~~
367 ~~arbitrator. The costs of such training will be shared equally by the University and the UFF. No~~
368 ~~person involved in any business, employment or other relationship with the University that could~~
369 ~~reasonably be presumed to create a conflict of interest with that person's obligations as a neutral~~
370 ~~arbiter of disputes involving the University shall be eligible for inclusion in the Neutral Pool.~~

371 ~~—— (5) Members of the pools shall be able to serve on short notice and willing to serve for at~~
372 ~~least one calendar year. In addition, the University and the UFF shall jointly provide all pool~~
373 ~~members with orientation and training in the BOT UFF Collective Bargaining Agreement~~
374 ~~including this NIRD by a Panel procedure. The costs of such training will be shared equally by the~~
375 ~~University and the UFF.~~

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

380 ~~—— (7) If at any time the number of members of the Employee Pool drops below ten (10),~~
381 ~~the departing member's vacancy shall be filled by the FSU President (or designee) or the UFF-~~
382 ~~FSU President, depending upon who appointed the departing member.~~

383 ~~(c) — Selection of a Panel.~~

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

386 ~~—— (2) The FSU President or designee shall appoint one (1) member of the Employee Pool~~
387 ~~to serve on the Panel.~~

388 ~~—— (3) The UFF-FSU President shall appoint one (1) member of the Employee Pool to serve~~
389 ~~on the Panel.~~

390 ~~—— (4) The appointees to the Panel pursuant to sections (2) and (3) above, shall select the~~
391 ~~third member of the Panel from the Neutral Pool. Selection from among Neutral Pool members~~
392 ~~shall be by mutual agreement or by alternately striking names from the eligible members of the~~
393 ~~Neutral Pool list. Each side shall have two strikes. The right of the first choice to strike from the~~
394 ~~list shall be determined by the flip of a coin. Unless the parties mutually agree to one of the~~

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395 ~~remaining two panelists, a flip of the coin will determine which of the remaining two Neutral Pool~~
396 ~~members shall hear the complaint. The parties may mutually select as the third panel member an~~
397 ~~individual who is not a member of the Neutral Pool.~~

398 ~~—— (5) The third panel member, selected according to Article 20.16(e)(4), shall serve as the~~
399 ~~Chair of the Panel and shall strive to follow the Code of Professional Responsibility for Arbitrators~~
400 ~~of Labor Management Disputes of the National Academy of Arbitrators, the American Arbitration~~
401 ~~Association, and the Federal Mediation and Conciliation Service.~~

402 ~~—— (6) The hearing by the Panel shall be held within sixty (60) days following the selection~~
403 ~~of the Panel.~~

404 ~~(d) — Authority of the Panel.~~

405 ~~—— (1) The Panel shall not add to, subtract from, modify, ignore, or alter the terms or~~
406 ~~provisions of the BOT UFF FSU Collective Bargaining Agreement. NIRD by a Panel shall be~~
407 ~~confined solely to the application and/or interpretation of the BOT UFF FSU Collective~~
408 ~~Bargaining Agreement and the precise issue(s) submitted for NIRD. In rendering its decision, the~~
409 ~~Panel shall refrain from issuing any statements of opinion or conclusions not essential to the~~
410 ~~determination of whether the act or event giving rise to the complaint violated any applicable~~
411 ~~Collective Bargaining Agreement provisions, University regulations or policies.~~

412 ~~—— (2) Where an administrator has made a judgment involving the exercise of discretion,~~
413 ~~such as decisions regarding promotion, the Panel shall not substitute its judgment for that of the~~
414 ~~administrator. Nor shall the Panel review such decision except for the purpose of determining~~
415 ~~whether the decision has violated the BOT UFF FSU Collective Bargaining Agreement.~~

416 ~~—— (3) The Panel shall not have the power to award promotion or tenure.~~

417 ~~—— (4) If the Panel determines that the BOT UFF FSU Collective Bargaining Agreement has~~
418 ~~been violated, the Panel shall direct the University to take appropriate action. The Panel may award~~
419 ~~back salary where the Panel determines that the employee is not receiving the appropriate salary~~
420 ~~from the University, but the Panel may not award other monetary damages or penalties. If notice~~
421 ~~that further employment will not be offered is not given on time, the Panel may direct the~~
422 ~~University to renew the appointment.~~

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

428 ~~(e) Conduct of Hearing. The Panel shall hold the hearing in Tallahassee, unless otherwise~~
429 ~~agreed by the parties. The hearing shall commence within twenty five (25) days of all Panel~~
430 ~~members' acceptance of selection, or as soon thereafter as is practicable, and the Panel shall issue~~

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431 ~~the decision within thirty (30) days of the close of the hearing or the submission of briefs,~~
432 ~~whichever is later, unless additional time is agreed to by the parties. The decision shall be in writing~~
433 ~~and shall set forth findings of fact, reasoning, and conclusions on the issues submitted. Except as~~
434 ~~expressly specified in this Procedure, the provisions of the Florida Arbitration Code, Chapter 682,~~
435 ~~Florida Statutes, shall not apply. Except as modified by the provisions of this Procedure, NIRD by~~
436 ~~a Panel proceedings shall be conducted in accordance with the Labor Arbitration Rules and~~
437 ~~Procedures of the American Arbitration Association.~~

438 ~~(f) Effect of Decision. The decision or award of the Panel shall be final and binding upon the~~
439 ~~University, the UFF, and the complainant, provided that either party may appeal to an appropriate~~
440 ~~court of law a decision that was rendered by a Panel acting outside of or beyond the Panel's~~
441 ~~jurisdiction pursuant to Florida law concerning the right of appeal of a similar decision rendered~~
442 ~~in an arbitration.~~

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

448 ~~(h) Fees and Expenses. All fees and expenses of the NIRD by a Panel shall be divided equally~~
449 ~~between the parties, unless mutually agreed otherwise. Each party shall bear the cost of preparing~~
450 ~~and presenting its own case. The party desiring a transcript of the Panel hearing shall provide~~
451 ~~written notice to the other party of its intention to have a transcript of the Panel hearing made at~~
452 ~~least one week prior to the date of the hearing. The party desiring such transcript shall be~~
453 ~~responsible for recording or scheduling a court reporter to record the proceedings. The parties shall~~
454 ~~share equally the appearance fee of the court reporter and the cost of obtaining an original transcript~~
455 ~~and one copy for the party originally requesting a transcript or recording of the proceedings. The~~
456 ~~requesting party shall, at its expense, duplicate the recording or transcript received from the~~
457 ~~reporter and deliver the copy to the other party within five days after receiving the recording or~~
458 ~~transcript from the reporter.~~

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

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