

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~~ ~~dispute~~ ~~resolution~~ process. ~~Except as noted below, if prior to seeking~~  
17 ~~resolution of a dispute by filing a grievance hereunder, or while the grievance proceeding is in~~  
18 ~~progress, a faculty member requests, in writing, resolution of the matter in any other forum,~~  
19 ~~whether administrative or judicial, the Board or the University shall have no obligation to entertain~~  
20 ~~or proceed further with the matter pursuant to this grievance procedure. Except as noted below, if~~  
21 ~~prior to seeking resolution of a dispute by filing a grievance hereunder, or while the grievance~~  
22 ~~proceeding is in progress, a faculty member requests, in writing, resolution of the matter in any~~  
23 ~~other forum, whether administrative or judicial, the Board or the University shall have no~~  
24 ~~obligation to entertain or proceed further with the matter pursuant to this grievance procedure.~~ As  
25 an exception to this provision, a grievant may file an EEOC charge while the grievance is in  
26 progress when such filing becomes necessary to meet federal filing deadlines pursuant to 42 U.S.C.  
27 § 2000e et seq. Further, since the parties do not intend that this grievance procedure be a device  
28 for appellate review, the President's response to a recommendation of a hearing officer or other  
29 individual or group having appropriate jurisdiction in any other procedure shall not be an act or  
30 omission giving rise to a grievance under this 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 or Neutral Internal Resolution of Disputes [NIRD] procedure, must be  
48 submitted in writing on the appropriate form attached to this Agreement as Appendix “C”, “D”, or  
49 “E”, respectively, and shall be signed by the grievant. All grievance forms shall be dated when the  
50 grievance is received. If there is difficulty in meeting any time limit, the UFF representative may  
51 sign such documents for the grievant; however, grievant’s signature shall be provided prior to the  
52 Step 1 meeting or Step 2 meeting if filed directly at Step 2. The aforementioned grievance forms,  
53 as well as Appendix “H”, may be filed by means of fax, United States mail, or any other recognized  
54 means of delivery.

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

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

69 20.6 Grievance Representatives. The UFF shall annually furnish to the Board a list of all persons  
70 authorized to act as grievance representatives and shall update the list as needed. The UFF  
71 grievance representative shall have the responsibility to meet all classes, office hours, and other  
72 duties and responsibilities incidental to the assigned workload. Some of these activities are  
73 scheduled to be performed at particular times. Such representative shall have the right during times  
74 outside of those hours scheduled for these activities to investigate, consult, and prepare grievance  
75 presentations and attend grievance hearings and meetings. Should any hearings or meetings with  
76 the dean or unit head, the provost, or their representatives necessitate rescheduling of assigned  
77 duties, the representative may, with the approval of the appropriate administrator, arrange for the

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78 rescheduling of such duties or their coverage by colleagues. Such approval shall not be  
79 unreasonably withheld.

80 20.7 Appearances.

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

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

90 20.8 Formal Grievance Procedure.

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

107 (b) Filing.

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

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

117 (3) ~~The Where arbitration is allowed.~~ The Where arbitration is allowed. filing of a

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118 grievance constitutes a waiver of any rights to judicial review of final agency action or to the  
119 review of such actions under University procedures that may otherwise be available to address  
120 such matters. This grievance and arbitration procedure shall be the sole review mechanism for  
121 resolving disputes regarding rights or benefits that are provided exclusively by this Agreement.  
122 Except as otherwise provided herein, only those acts or omissions and sections of the Agreement  
123 identified at the initial filing may be considered at ~~a~~ subsequent steps.

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

131 (d) Step 1.

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

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

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

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

155 (e) Step 2.

156 (1) Review. If the grievance is not satisfactorily resolved at Step 1, the grievant may file  
157 a written request for review with the Provost or ~~his/her~~their representative within fifteen (15) days  
158 following receipt of the Step 1 decision by the grievant’s Step 1 representative. Fifteen (15) days

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159 shall be determined by a receipt executed by the office receiving the grievance, or by the date of  
160 mailing as determined by the postmark.

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

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

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

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

188 (f) Step 3 Arbitration.

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

200 (2) Selection of Arbitrator. For the first filing of a notice of intent to arbitrate during the

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201 term of this contract, representatives of the University and the UFF shall meet within fifteen (15)  
202 days after receipt of a notice of intent to arbitrate, for the purpose of selecting an Arbitration Panel,  
203 which will be used for any further arbitrations during the term of this contract. The parties will  
204 meet to select an arbitrator from an Arbitration Panel consisting of no fewer than six (6) members.  
205 Selection of an individual arbitrator shall be by mutual agreement or by alternately striking names  
206 from the Arbitration Panel until one name remains. The right of the first choice to strike from the  
207 list shall be determined by the flip of a coin. If the parties are unable to agree on a panel of  
208 arbitrators, they shall follow the normal American Arbitration Association procedure for the  
209 selection of an arbitrator. The parties may mutually select as the arbitrator an individual who is not  
210 a member of the Arbitration Panel. The arbitration shall be held within sixty (60) days following  
211 the selection of the arbitrator.

212 (3) Authority of the Arbitrator.

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

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

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

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

243 (5) Conduct of Hearing. The arbitrator shall hold the hearing in Tallahassee, unless

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244 otherwise agreed by the parties. The hearing shall commence within sixty (60) days of the  
245 arbitrator’s acceptance of selection and the arbitrator shall issue the decision within forty-five (45)  
246 days of the close of the hearing or the submission of briefs, whichever is later, unless additional  
247 time is agreed to by the parties. The decision shall be in writing and shall set forth findings of fact,  
248 reasoning, and conclusions on the issues submitted. Except as modified by the provisions of this  
249 Agreement, arbitration proceedings shall be conducted in accordance with the rules and procedures  
250 of the American Arbitration Association.

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

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

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

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

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

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

284 20.11 Processing.

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

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

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

301 20.13 Records. All written materials pertinent to a grievance shall be filed separately from the  
302 evaluation file of the grievant or witnesses, except decisions resulting from arbitration, post-  
303 grievance procedure, ~~post-grievance procedure~~ or settlement.

304 20.14 Inactive Grievances. A grievance which has been filed at Step 2 or Step 3 and on which no  
305 action has been taken by the grievant or the UFF for sixty (60) days shall be deemed withdrawn  
306 and resolved in accordance with the decision issued at the prior Step.

307 20.15 Expedited Grievance Procedure for Conflict of Interest (Section 19.5).

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

312 (b) A request for review of the Step 1 decision shall be filed with the President or  
313 representative using Appendix "D", no more than seven (7) days following the receipt of the Step  
314 1 decision. The Step 2 meeting shall be held no more than 7 days after the receipt of Appendix  
315 "D", and the Step 2 decision shall be issued no more than 7 days after the meeting.

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

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322 (d) If Section 1001.741 limiting the use of arbitrations is struck or enjoined by a court of  
323 competent jurisdiction or amended by the legislature to permit the arbitration of these decisions,  
324 the parties shall establish a panel of three (3) experienced arbitrators to hear a grievance filed in  
325 accordance with this Section. ~~Section 1001.741, Florida Statutes applies to this section as it~~  
326 ~~pertains to arbitration pursuant to Section 20.8(e)(3)(a).~~

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

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

331 20.16 Neutral Internal Resolution of Disputes Procedure (NIRD). Florida Statute Sec.  
332 1001.741(2) prohibits arbitration on decisions relating to personnel actions or decisions  
333 regarding faculty, including in the areas of evaluations, promotions, tenure, discipline, or  
334 termination. Should this legal prohibition become invalidated, arbitration regarding such issues  
335 will be governed pursuant to 20.8(f). If the legal prohibition remains, the NIRD procedure  
336 replaces arbitration (20.8(f)) on decisions relating to personnel actions or decisions regarding  
337 faculty in the areas of evaluations, promotions, tenure, discipline, or termination.

338 (a) Filing.

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

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

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

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

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

363 \_\_\_\_\_ (3) A second pool shall consist of FSU community members, defined as former  
364 employees or alumni (“Neutral Pool”). The Neutral Pool shall consist of six (6) members appointed  
365 by mutual agreement of the FSU President or designee and the UFF-FSU President. If the  
366 University and the UFF are unable to reach mutual agreement on six (6) Neutral Pool members,  
367 selection shall be made from striking names from lists of six (6) names each submitted by the  
368 University and the UFF until six (6) panel members are selected. The order of striking shall be  
369 determined by the flip of a coin.

370 \_\_\_\_\_ (4) The University and the UFF are encouraged to seek eligible Neutral Pool members  
371 who are educators at other educational institutions, fully retired FSU faculty or administrators, or  
372 professional mediators or arbitrators. Any member of the Neutral Pool who is not a professional  
373 labor arbitrator shall be encouraged to complete training to qualify as a professional labor  
374 arbitrator. The costs of such training will be shared equally by the University and the UFF. No  
375 person involved in any business, employment or other relationship with the University that could  
376 reasonably be presumed to create a conflict of interest with that person’s obligations as a neutral  
377 arbiter of disputes involving the University shall be eligible for inclusion in the Neutral Pool.

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

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

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

390 (c) Selection of a Panel.

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

393 \_\_\_\_\_ (2) The FSU President or designee shall appoint one (1) member of the Employee Pool  
394 to serve on the Panel.

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

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

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

409 (6) The hearing by the Panel shall be held within sixty (60) days following the selection  
410 of the Panel.

411 (d) Authority of the Panel.

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

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

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

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

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

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

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

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

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

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

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