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Article 20
GRIEVANCE PROCEDURE AND ARBITRATION

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

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

20.3 Definitions and Forms. As used herein:

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

(b) The term “grievant” shall mean:

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

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

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

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

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

47 20.4 Burden of Proof. In all grievances except disciplinary grievances in accordance with Article
48 16, Disciplinary Action and Job Abandonment and any other exceptions stated elsewhere in this
49 Agreement, the burden of proof shall be on the faculty member or the UFF. In disciplinary
50 grievances, the burden of proof shall be on the Board.

51 20.5 Representation. The UFF shall have the exclusive right to represent any faculty member in
52 a grievance filed hereunder, unless a faculty member elects self-representation or to be represented
53 by legal counsel. If a faculty member elects not to be represented by the UFF, the University shall
54 promptly inform the UFF in writing of the grievance. No resolution of any individually processed
55 grievance shall be inconsistent with the terms of this Agreement and for this purpose the UFF shall
56 have the right to have an observer present at all meetings called for the purpose of discussing such
57 grievance. The UFF Grievance Chair or representative shall be informed of the dates and times of
58 any such meetings at the same time as the other parties. The UFF Grievance Chair shall be sent
59 copies of all correspondence related to such, including grievance decisions at the same time as
60 they are sent to the other parties.

61 20.6 Grievance Representatives. The UFF shall annually furnish to the Board a list of all persons
62 authorized to act as grievance representatives and shall update the list as needed. The UFF
63 grievance representative shall have the responsibility to meet all classes, office hours, and other
64 duties and responsibilities incidental to the assigned workload. Some of these activities are
65 scheduled to be performed at particular times. Such representative shall have the right during times
66 outside of those hours scheduled for these activities to investigate, consult, and prepare grievance
67 presentations and attend grievance hearings and meetings. Should any hearings or meetings with
68 the dean or unit head, the provost, or their representatives necessitate rescheduling of assigned
69 duties, the representative may, with the approval of the appropriate administrator, arrange for the
70 rescheduling of such duties or their coverage by colleagues. Such approval shall not be
71 unreasonably withheld.

72 20.7 Appearances.

73 (a) When a faculty member participates in an arbitration, or in a grievance or meeting
74 between the grievant or representative and the Board or representative, that faculty member’s
75 compensation shall neither be reduced nor increased for time spent in those activities.

76 (b) Prior to participation in any such proceedings, conferences, or meetings, the faculty
77 member shall make arrangements acceptable to the appropriate supervisor for the performance of

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78 the faculty member’s scheduled duties as defined in Article 9.1. Approval of such arrangements
79 shall not be unreasonably withheld. Time spent in such activities outside regular working hours
80 shall not be counted as time worked.

81 20.8 Formal Grievance Procedure.

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

98 (b) Filing.

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

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

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

115 (c) Time Limits. All time limits contained in this Article may be extended by mutual
116 agreement of the parties, except that the time limits for the initial filing of a grievance may be
117 extended only by agreement between the University and the UFF. Upon failure of the Board to
118 provide a decision within the time limits provided in this Article, the grievant or the UFF, where

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119 appropriate, may appeal to the next step. Upon the failure of the grievant or the UFF, where
120 appropriate, to file an appeal within the time limits provided in this Article, the grievance shall be
121 deemed to have been resolved by the decision at the prior step.

122 (d) Step 1.

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

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

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

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

146 (e) Step 2.

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

153 (2) Meeting. The Provost or the Vice President for Faculty Development and
154 Advancement representative and the grievant and the grievant’s representative shall meet at a
155 mutually convenient date and time not later than fifteen (15) days following receipt of written
156 notice of request for a Step 2 review. At the Step 2 meeting, the grievant shall have the right to
157 present any evidence in support of the grievance, and the grievant and/or the UFF representative
158 or the grievant’s legal counsel (if selected pursuant to Section 20.5), and the Provost or
159 representative the Vice President for Faculty Development and Advancement, shall discuss the

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160 grievance.

161 (3) Personnel Actions or Decisions. In accordance with Section 1001.741, Florida Statutes,
162 personnel actions or decisions regarding faculty, including in the areas of evaluations, promotions,
163 tenure, discipline, or termination, may not be appealed beyond the level of a university president
164 or designee. Where binding arbitration of a personnel decision or action is statutorily prohibited,
165 such actions or decisions will be advisory to the university president, and will have as their terminal
166 step a written final agency disposition, which will provide a statement of the right to judicial
167 review. If section 1001.741 limiting the use of arbitration is struck or enjoined by a court of
168 competent jurisdiction or amended by the legislature to permit arbitrations of these decisions, such
169 decisions may proceed as outlined below in Section 20.8(e)(4) and Section 20.8(f).

170 (43) Decision. The Provost or ~~his/her~~ Vice President for Faculty Development ~~or~~ and
171 ~~Advancement~~ ~~their representative~~ shall issue a written decision, stating the reasons therefore, to the
172 grievant's Step 2 representative within fifteen (15) days following the conclusion of the review
173 meeting. Fifteen (15) days shall be determined by a receipt executed by the office receiving the
174 grievance, or by the date of mailing as determined by the postmark. In the absence of an agreement
175 to extend the period for issuing the Step 2 decision, the UFF may proceed to Step 3 (arbitration) if
176 the grievant's Step 2 representative has not received the written decision by the end of the twentieth
177 (20th) day following the conclusion of the Step 2 meeting. A copy of the decision shall be sent to
178 the grievant and to the UFF if the grievant elected self-representation or representation by legal
179 counsel.

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

187 (f) Step 3 Arbitration.

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

199 (2) Selection of Arbitrator. For the first filing of a notice of intent to arbitrate during the
200 term of this contract, representatives of the University and the UFF shall meet within fifteen (15)
201 days after receipt of a notice of intent to arbitrate, for the purpose of selecting an Arbitration Panel,

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

211 (3) Authority of the Arbitrator.

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

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

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

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

242 (5) Conduct of Hearing. The arbitrator shall hold the hearing in Tallahassee, unless
243 otherwise agreed by the parties. The hearing shall commence within sixty (60) days of the
244 arbitrator’s acceptance of selection and the arbitrator shall issue the decision within forty-five (45)

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245 days of the close of the hearing or the submission of briefs, whichever is later, unless additional
246 time is agreed to by the parties. The decision shall be in writing and shall set forth findings of fact,
247 reasoning, and conclusions on the issues submitted. Except as modified by the provisions of this
248 Agreement, arbitration proceedings shall be conducted in accordance with the rules and procedures
249 of the American Arbitration Association.

250 (6) Effect of Decision. The-When permitted by law, the decision or award of the
251 arbitrator shall be final and binding upon the University, the UFF, and the grievant, provided that
252 either party may appeal such award to an appropriate court of law pursuant to the Florida
253 Arbitration Code, Chapter 682, Florida Statutes. In cases where final and binding arbitration is
254 not permitted by law, the arbitrator’s decision or award shall be advisory to the Uuniversity
255 pPresident.

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

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

271 (9) Retroactivity. An arbitrator’s award may or may not be retroactive as the equities of
272 each case may demand, but in no case shall an award be retroactive to a date earlier than sixty (60)
273 days prior to the date the grievance was initially filed in accordance with this Article.
274

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

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

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286 20.11 Processing.

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

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

296 20.12 Reprisal. No reprisal of any kind will be made by the University or the UFF against any
297 grievant, any witness, any UFF representative, or any other participant in the grievance procedure
298 by reason of such participation. In a grievance where the arbitrator has established that the grievant
299 has made a prima facie case of reprisal, the burden of proof shall be on the Board to demonstrate
300 that there was no 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, final
303 disposition, 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 Provost 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 seven (7) days after the receipt of
315 Appendix "D," and the Step 2 decision shall be issued no more than seven (7) days after the
316 meeting.

317 (c) A request for arbitration using Appendix "E" shall be filed within fourteen (14) days after
318 receipt of the Step 2 decision. An arbitrator shall be selected by the parties no more than fourteen
319 (14) days following the receipt of the Appendix "E." The arbitrator shall issue a memorandum of
320 decision or a memorandum of advice, as applicable per F.S. 1001.741, within seven (7) days
321 following the conclusion of the arbitration, to be followed by a written opinion and award or
322 written opinion and advice, in accordance with Section 20.8(f)(~~5~~6).

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

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

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

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