

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA  
CIVIL ACTION**

UNITED FACULTY OF FLORIDA—  
NEW COLLEGE OF FLORIDA,

UNITED FACULTY OF FLORIDA,

and

HUGO VIERA-VARGAS,

*Plaintiffs,*

v.

THE FLORIDA BOARD OF GOVER-  
NORS,

BRIAN LAMB, in his official capacity as  
chair of the Florida Board of Gover-  
nors,

ERIC SILAGY, in his official capacity as  
vice chair of the Florida Board of Gov-  
ernors,

MANNY DIAZ, JR., in his official capac-  
ity as Florida Commissioner of Educa-  
tion,

TIMOTHY M. CERIO, in his official ca-  
pacity as a member of the Florida  
Board of Governors,

AUBREY EDGE, in his official capacity  
as a member of the Florida Board of  
Governors,

PATRICIA FROST, in her official capac-  
ity as a member of the Florida Board of  
Governors,

Case No. \_\_\_\_\_

Division \_\_\_\_\_

JACK HITCHCOCK, in his official capacity as a member of the Florida Board of Governors,

EDWARD HADDOCK, in his official capacity as a member of the Florida Board of Governors,

KEN JONES, in his official capacity as a member of the Florida Board of Governors,

DARLENE LUCCIO JORDAN, in her official capacity as a member of the Florida Board of Governors,

ALAN LEVINE, in his official capacity as a member of the Florida Board of Governors,

CHARLES H. LYDECKER, in his official capacity as a member of the Florida Board of Governors,

CRAIG MATEER, in his official capacity as a member of the Florida Board of Governors,

JOSE OLIVA, in his official capacity as member of education of the Florida Board of Governors,

STEVEN M. SCOTT, in his official capacity as member of the Florida Board of Governors,

THE NEW COLLEGE OF FLORIDA  
BOARD OF TRUSTEES,

DEBRA A. JENKS, in her official capacity as a member of the New College of Florida Board of Trustees,

RON CRISTALDI, in his official capacity as a member of the New College of Florida Board of Trustees,

MARK BAUERLEIN, in his official capacity as a member of the New College of Florida Board of Trustees,

RYAN T. ANDERSON, in his official capacity as a member of the New College of Florida Board of Trustees,

LANCE KARP, in his official capacity as a member of the New College of Florida Board of Trustees,

CHARLES R. KESLER, in his official capacity as a member of the New College of Florida Board of Trustees,

JOE JACQUOT, in his official capacity as a member of the New College of Florida Board of Trustees,

SARAH MACKIE, in her official capacity as a member of the New College of Florida Board of Trustees,

MARY RUIZ, in her official capacity as a member of the New College of Florida Board of Trustees,

CHRISTOPHER RUFO, in his official capacity as a member of the New College of Florida Board of Trustees,

AMY REID, in her official capacity as a member of the New College of Florida Board of Trustees,

MATTHEW SPALDING, in his official capacity as a member of the New College of Florida Board of Trustees, and

GRACE KEENAN, in her official capacity as a member of the New College of Florida Board of Trustees,

*Defendants.*

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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Plaintiffs UNITED FACULTY OF FLORIDA-NEW COLLEGE OF FLORIDA, UNITED FACULTY OF FLORIDA, and HUGO VIERA-VARGAS bring this action for declaratory and injunctive relief, pursuant to Fla. Stat. ch. 26 and 86, against Defendants THE FLORIDA BOARD OF GOVERNORS, BRIAN LAMB, in his official capacity as chair of the Florida Board of Governors, ERIC SILAGY, in his official capacity as vice chair of the Florida Board of Governors, MANNY DIAZ, JR., in his official capacity as Commissioner of Education, TIMOTHY M. CERIO, in his official capacity as a member of the Florida Board of Governors, AUBREY EDGE, in his official capacity as a member of the Florida Board of Governors, PATRICIA FROST, in her official capacity as a member of the Florida Board of Governors, JACK HITCHCOCK, in his official capacity as a member of the

Florida Board of Governors, EDWARD HADDOCK, in his official capacity as a member of the Florida Board of Governors, KEN JONES, in his official capacity as a member of the Florida Board of Governors, DARLENE LUCCIO JORDAN, in her official capacity as a member of the Florida Board of Governors, ALAN LEVINE, in his official capacity as a member of the Florida Board of Governors, CHARLES H. LYDECKER, in his official capacity as a member of the Florida Board of Governors, CRAIG MATEER, in his official capacity as a member of the Florida Board of Governors, JOSE OLIVA, in his official capacity as a member of the Florida Board of Governors, STEVEN M. SCOTT, in his official capacity as a member of the Florida Board of Governors, THE NEW COLLEGE OF FLORIDA BOARD OF TRUSTEES, DEBRA A. JENKS, in her official capacity as a member of the New College of Florida Board of Trustees, RON CRISTALDI, in his official capacity as a member of the New College of Florida Board of Trustees, MARK BAUERLEIN, in his official capacity as a member of the New College of Florida Board of Trustees, RYAN T. ANDERSON, in his official capacity as a member of the New College of Florida Board of Trustees, LANCE KARP, in his official capacity as a member of the New College of Florida Board of Trustees, CHARLES R. KESLER, in his official capacity as a member of the New College of Florida Board of Trustees, JOE JACQUOT, in his official capacity as a member of the New College of Florida Board of Trustees, SARAH MACKIE, in her official capacity as a

member of the New College of Florida Board of Trustees, MARY RUIZ, in her official capacity as a member of the New College of Florida Board of Trustees, CHRISTOPHER RUFO, in his official capacity as a member of the New College of Florida Board of Trustees, AMY REID, in her official capacity as a member of the New College of Florida Board of Trustees, MATTHEW SPALDING, in his official capacity as a member of the New College of Florida Board of Trustees, and GRACE KEENAN, in her official capacity as a member of the New College of Florida Board of Trustees.

Plaintiffs, a public employee union, a local chapter, and a union member, ask this Court to declare unconstitutional and enjoin implementation of a provision of Section 3 of 2023 Senate Bill 266, codified at Fla. Stat. § 1001.741(2), which eliminates the right of public university faculty to arbitrate adverse personnel decisions. In the alternative, Plaintiffs respectfully ask this Court to declare that the challenged provision does not apply to unions and their members for the duration of existing collective bargaining agreements.

Plaintiffs allege as follows:

### **NATURE OF THE ACTION**

1. This case challenges a provision of Section 3 of Senate Bill 266 (“SB 266” or the “Act”), codified at Fla. Stat. § 1001.741(2) (the “Arbitration Ban”). That provision eliminates public university faculty’s ability to appeal adverse

personnel decisions to a neutral arbiter, even though a right to arbitration before a neutral arbiter has been protected for decades under Florida’s Public Employee Relations Act (“PERA”) and is guaranteed as part of those employees’ existing collective bargaining agreements (“CBAs”).

2. The Arbitration Ban unlawfully abridges the fundamental right of public university faculty to collectively bargain with their employer as guaranteed by Article I, Section 6 of the Florida Constitution and separately interferes with rights and obligations under existing contracts—the CBAs—in violation of Article I, Section 10 of the Florida Constitution.

3. In the alternative, under longstanding principles of statutory interpretation, the Arbitration Ban applies only prospectively, and not during the term of existing CBAs that guarantee the right to arbitration. “Florida legislation is presumed to operate prospectively unless there exists a showing on the face of the law that retroactive application is intended.” *Yamaha Parts Distribs. Inc. v. Ehrman*, 316 So. 2d 557, 559 (Fla. 1975). Nothing on the face of the Arbitration Ban demonstrates that the Legislature intended retroactive application.

4. For more than half a century, Florida has been home to robust higher education unions dedicated to protecting the interests of a vital public workforce: Florida state university personnel. Recognizing the crucial role unions serve as advocates for their members, Florida enshrined the right to collective bargaining in

Article I, Section 6 of its Constitution, stating, in relevant part: “The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.”

5. The Florida Constitution also bars any law from interfering with existing contractual rights, stating that “[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.” Fla. Const. art. I, § 10. That provision prohibits the Legislature from disturbing existing CBAs.

6. Plaintiffs United Faculty of Florida (“UFF”), a public employee union, and the New College United Faculty of Florida (“NC-UFF”), a local chapter of UFF which represents the faculty of the New College of Florida, have a valid, binding, existing CBA with Defendant New College of Florida Board of Trustees that creates a right to arbitration of grievances regarding adverse personnel decisions. The CBA is in effect through June 30, 2024.

7. The CBA covers a wide array of rights and obligations of Plaintiffs UFF and NC-UFF, their union members, and Defendants. As a member of UFF and NC-UFF, Plaintiff Hugo Viera-Vargas has rights substantially affected by the CBA and a substantial interest in the continued effectiveness of the CBA.

8. Plaintiffs UFF and NC-UFF’s CBA with Defendant New College of Florida Board of Trustees establishes a three-step grievance process for faculty members to challenge adverse personnel actions, including decisions related to



tenure. Under the CBA, the initial decision on tenure is made by Defendant New College of Florida Board of Trustees on the recommendation of the President of the New College of Florida. Ex. A, arts. 15.2(b), 15.5(6). In the event of an adverse decision (on tenure or another employment matter), the CBA guarantees faculty members the right to seek review (at Step 1) from a university representative, then (at Step 2) from the university President, and finally (at Step 3) to proceed to final and binding arbitration before a neutral third party. *Id.* arts. 20.8(d)-(f). The CBA expressly provides that “[i]f [a] grievance has not been satisfactorily resolved [by a university representative or the President], the UFF may, upon the request of the grievant, proceed to arbitration.” *Id.* art. 20.8(f)(1). The CBA also contains detailed procedures regarding the timing, venue, scope, procedure, and costs of arbitration, including the requirement of a neutral arbitrator. *See id.* art. 20.8. “The decision or award of the arbitrator shall be final and binding upon the University, the UFF, and the grievant.” *Id.* art. 20.8(f)(6).

9. Despite the CBA’s express three-step grievance process, the Interim President of the New College of Florida, Richard Corcoran, on behalf of Defendant New College of Florida Board of Trustees, declared on July 14, 2023 that the President’s determination at Step 2 of the grievance procedure is now the “terminal step, which is not subject to arbitration.” Ex. B, at 12. President Corcoran’s decision

quotes Section 3 of SB 266 as justification for breaching the existing CBA and refusing to arbitrate. *Id.* at 12 n.5.

10. Plaintiffs challenge the provision of Section 3 of SB 266 that prohibits neutral arbitration of adverse personnel decisions. The Arbitration Ban provides:

Notwithstanding s. 447.401 or any other law related to faculty grievance procedures, personnel actions or decisions regarding faculty, including in the areas of evaluations, promotions, tenure, discipline, or termination, may not be appealed beyond the level of a university president or designee. Such actions or decisions must have as their terminal step a final agency disposition, ... and are not subject to arbitration.

11. This provision infringes Plaintiffs' and Plaintiffs UFF and NC-UFF's members' right to collective bargaining and impairs existing contracts. It prevents Plaintiffs UFF and NC-UFF, and their members, such as Plaintiff Viera-Vargas, from appealing decisions about their employment and tenure to neutral third-party arbitrators, as bargained for and required by their existing CBA.

12. Grievance procedures, including arbitration, are a mandatory subject of collective bargaining for public employees under Florida law. The Florida statute implementing the constitutional right to collective bargaining under Article I, Section 6 requires employers and unions to "negotiate a grievance procedure to be used for the settlement of disputes between employer and employee, or group of employees, involving the interpretation or application of a collective bargaining agreement." Fla. Stat. § 447.401. The Florida Constitution further requires that public employees share the same collective bargaining rights as private employees, aside from the right

to strike, and grievance procedures are a mandatory subject of collective bargaining in the private sector.

13. The Arbitration Ban cannot survive any level of constitutional scrutiny. There is no remotely sufficient governmental interest in this prohibition. Nor do the State's means bear an adequate connection to any purported interest. Instead, the prohibition serves only to undermine Plaintiffs' constitutionally protected collective bargaining and contractual rights.

14. Plaintiff Hugo Viera-Vargas has been denied his right to arbitration under the CBA, impairing his constitutional and contractual rights. Plaintiff Viera-Vargas applied for tenure, and Defendant New College of Florida Board of Trustees denied him tenure following an adverse recommendation by President Corcoran. During that process, President Corcoran violated the CBA by adding material to Viera-Vargas's file without adequate notice in advance of the tenure decision. President Corcoran added the material to the file only hours before the decision, and Viera-Vargas did not have the opportunity to respond. Viera-Vargas then filed a grievance.

15. President Corcoran denied Viera-Vargas's grievance and foreclosed any possibility of further review by a neutral arbitrator, in violation of the CBA, citing the Arbitration Ban as support. *See Ex. B, at 12 n.5.*

16. The Arbitration Ban has caused and continues to cause Plaintiff NC-UFF to lose members, injuring its financial position and bargaining power. Many of NC-UFF's members are seeking employment elsewhere because the Arbitration Ban eviscerates the CBA and those members' bargained-for rights under the CBA. The Arbitration Ban has also caused and continued to cause members to leave Plaintiff UFF, which injures UFF's financial position and bargaining power.

17. The Arbitration Ban has impaired the right of Plaintiffs UFF and NC-UFF and their members to bargain over a mandatory subject of collective bargaining with Defendant New College Board of Trustees. Plaintiff UFF has also lost that ability for the other 12 public universities for which it is the certified bargaining agent.

18. SB 266 is also part of a package of statutes that have cemented political control over public higher education in Florida. For example, in March of 2022, the State enacted SB 520, which severely curtailed the transparency of search processes for public university presidents. Now, under SB 266, university presidents hired in this secretive process have unprecedented control over decisions impacting university faculty, without any neutral review.

19. Plaintiffs seek a declaration that the Arbitration Ban is unconstitutional in that it violates the right to collective bargaining, in violation of Article I, Section 6 of the Florida Constitution (Count I) and impairs existing contracts, in violation of Article I, Section 10 of the Florida Constitution (Count II).

20. In the alternative, Plaintiffs respectfully request that this Court declare that the Arbitration Ban does not apply during the duration of existing CBAs (Count III). *See Yamaha*, 316 So. 2d at 559.

### **JURISDICTION AND VENUE**

21. This Court has jurisdiction pursuant to Article V, Sections 5(b) and 20(c)(3) of the Florida Constitution, and Fla. Stat. §§ 26.012(2)(c), (3), and 86.011.

22. Venue is proper in this Court under Fla. Stat. § 47.021, as at least one Defendant maintains its principal place of business in Leon County.

### **PARTIES**

23. Plaintiff UFF is a statewide union and local affiliate of the Florida Education Association (“FEA”) representing more than 25,000 faculty, graduate employees, and academic professionals at all 12 Florida public universities, 16 state and community colleges, and four K-12 lab schools. UFF is certified by the Public Employee Relations Commission (“PERC”) as the collective bargaining representative of faculty, graduate employees, and academic professionals employed by the New College of Florida, in addition to other public employers. UFF sues on its own behalf and on behalf of its members.

24. Plaintiff NC-UFF is a nonprofit advocacy organization with members employed as faculty by the New College of Florida. NC-UFF is a local chapter of UFF and is affiliated with FEA, the National Education Association, the American

Federation of Teachers, and the American Federation of Labor and Congress of Industrial Organizations. NC-UFF sues on its own behalf and on behalf of its members.

25. Plaintiff NC-UFF, as a local chapter of Plaintiff UFF, and with the support of UFF's staff and bargaining resources, negotiates collective bargaining agreements with Defendant New College of Florida Board of Trustees, represents faculty members in grievance proceedings under those CBAs, and engages in other advocacy in support of higher education faculty and public education.

26. The current CBA between UFF, NC-UFF, and Defendant New College of Florida Board of Trustees, dated March 3, 2022, and lasting through June 30, 2024, a copy of which is attached to this Complaint as Exhibit A, governs numerous matters relating to New College of Florida's faculty members' employment, including provisions relating to academic freedom, faculty appointments, non-renewal of faculty contracts, performance evaluations, grievance procedures, and tenure. The CBA provides that UFF, and its local chapter NC-UFF, shall have the right to represent any faculty member in a grievance filed under the CBA, Ex. A, art. 20.5, including through arbitration, *id.*, art. 20.8(f).

27. Plaintiff Hugo Viera-Vargas has been a UFF and NC-UFF member since 2018, when he joined the New College of Florida faculty. He is a cultural historian who teaches about race, gender, colonialism, and musical expressions in Puerto Rican and Caribbean societies. As a union member, he had an expectation

that his CBA would govern his tenure process and any appeal therefrom, including a right to final, binding, neutral arbitration. *See* Ex. A, art. 20.8(f). Plaintiff Viera-Vargas applied for tenure and was denied on President Corcoran's recommendation to Defendant New College of Florida Board of Trustees. Plaintiff Viera-Vargas appealed but, on July 14, 2023, President Corcoran denied the grievance and refused arbitration because of the Arbitration Ban. Ex. B, at 12 & n.5.

28. Plaintiff Viera-Vargas brings this action on his own behalf. On information and belief, Viera-Vargas was denied tenure, in material part, due to President Corcoran's disagreement with certain of the subjects Viera-Vargas teaches. Plaintiff Viera-Vargas now believes he must conform to the President's views to keep his job at New College. The Arbitration Ban curtails Viera-Vargas's academic freedom and forces him to engage in self-censorship. The Arbitration Ban removes his constitutional right to bargain over grievance procedures, including arbitration, as well as his contractual right to arbitration under his CBA.

29. Defendant the Florida Board of Governors is a public agency established pursuant to Article IX, Section 7(d) of the Florida Constitution and located in Tallahassee, Florida. It oversees the operation and management of Florida's 12 public universities. The Board of Governors is composed of 17 members, 14 of whom are appointed by the Florida Governor and confirmed by the Florida Senate for a term of seven years. The remaining members include the Chair of the Advisory

Council of Faculty Senates, the Commissioner of Education, and the Chair of the Florida Student Association. The Board of Governors is responsible for public universities' implementation of Florida statutes, including SB 266. *See Fla. Stat. § 1001.706.*

30. Defendant Brian Lamb serves as the chair of the Florida Board of Governors. He is sued in his official capacity.

31. Defendant Eric Silagy serves as the vice chair of the Florida Board of Governors. He is sued in his official capacity.

32. Defendant Manny Diaz, Jr. serves as the Florida Commissioner of Education and is a member of the Board of Governors. He is sued in his official capacity.

33. Defendant Timothy M. Cerio serves as a member of the Florida Board of Governors. He is sued in his official capacity.

34. Defendant Aubrey Edge serves as a member of the Florida Board of Governors. He is sued in his official capacity.

35. Defendant Patricia Frost serves as a member of the Florida Board of Governors. She is sued in her official capacity.

36. Defendant Jack Hitchcock serves as a member of the Florida Board of Governors. He is sued in his official capacity.



37. Defendant Edward Haddock serves as a member of the Florida Board of Governors. He is sued in his official capacity.

38. Defendant Ken Jones serves as a member of the Florida Board of Governors. He is sued in his official capacity.

39. Defendant Darlene Luccio Jordan serves as a member of the Florida Board of Governors. She is sued in her official capacity.

40. Defendant Alan Levine serves as a member of the Florida Board of Governors. He is sued in his official capacity.

41. Defendant Charles H. Lydecker serves as a member of the Florida Board of Governors. He is sued in his official capacity.

42. Defendant Craig Mateer serves as a member of the Florida Board of Governors. He is sued in his official capacity.

43. Defendant Jose Oliva serves as a member of the Florida Board of Governors. He is sued in his official capacity.

44. Defendant Steven M. Scott serves as a member of the Florida Board of Governors. He is sued in his official capacity.

45. Defendant the New College of Florida Board of Trustees is a public body corporate that governs and manages the New College of Florida. The Board of Trustees is established pursuant to Article IX, Section 7(c) of the Florida Constitution. The Board of Trustees is composed of 13 members, 6 of whom are appointed

by Florida's Governor and 5 of whom are appointed by the Florida Board of Governors. The other two members are the chair of the faculty and the president of the student body. The Board of Trustees is responsible for the administration of New College of Florida. *See Fla. Stat. § 1001.71(1)*.

46. Defendant Debra A. Jenks serves as the chair of the New College of Florida Board of Trustees. She is sued in her official capacity.

47. Defendant Ron Christaldi serves as the vice chair of the New College of Florida Board of Trustees. He is sued in his official capacity.

48. Defendant Mark Bauerlein serves as a member of the New College of Florida Board of Trustees. He is sued in his official capacity.

49. Defendant Ryan T. Anderson serves as a member of the New College of Florida Board of Trustees. He is sued in his official capacity.

50. Defendant Lance Karp serves as a member of the New College of Florida Board of Trustees. He is sued in his official capacity.

51. Defendant Charles R. Kesler serves as a member of the New College of Florida Board of Trustees. He is sued in his official capacity.

52. Defendant Joe Jacquot serves as a member of the New College of Florida Board of Trustees. He is sued in his official capacity.

53. Defendant Sarah Mackie serves as a member of the New College of Florida Board of Trustees. She is sued in her official capacity.

54. Defendant Mary Ruiz serves as a member of the New College of Florida Board of Trustees. She is sued in her official capacity.

55. Defendant Christopher Rufo serves as a member of the New College of Florida Board of Trustees. He is sued in his official capacity.

56. Defendant Amy Reid serves as a member of the New College of Florida Board of Trustees. She is sued in her official capacity.

57. Defendant Matthew Spalding serves as a member of the New College of Florida Board of Trustees. He is sued in his official capacity.

58. Defendant Grace Keenan serves as a member of the New College of Florida Board of Trustees. She is sued in her official capacity.

## **SUMMARY OF APPLICABLE LAW**

### **A. The Florida Constitution Enshrines, and Florida Law Implements, the Right to Collective Bargaining**

59. The right to collective bargaining under Article I, Section 6 of the Florida Constitution took its modern form in 1968 when Florida voters adopted the current Florida Constitution. Of relevance here, the voters ratified the following text:

The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

60. Article I, Section 6 guarantees public employees the same rights to collective bargaining as private employees in Florida with the sole exception of the

right to strike. *Dade Cnty. Classroom Teachers' Ass'n v. Ryan*, 225 So. 2d 903, 905 (Fla. 1969).

61. The constitutional right to collective bargaining is a fundamental right, and thus any “statute abridging the right of state employees to bargain collectively is consonant with the constitution only if it vindicates a compelling state interest by minimally invasive means.” *Coastal Fla. Police Benev. Ass'n, Inc. v. Williams*, 838 So. 2d 543, 549 (Fla. 2003).

62. Critically, that fundamental right includes the right to “*effective* collective bargaining,” meaning “any restriction on the right to bargain collectively must necessarily violate” it. *Hillsborough Cnty. Governmental Emps. Ass'n v. Hillsborough Cnty. Aviation Auth.*, 522 So. 2d 358, 362 (Fla. 1988).

63. Statutes impermissibly abridge that right when they deny access to the core features of the collective bargaining process, such as a mandatory subject of collective bargaining.

64. Mandatory subjects of collective bargaining are those subjects over which a party is entitled to make a proposal to which the other party must respond and negotiate in good faith. A statute that removes a mandatory subject of collective bargaining from the scope of public employee collective bargaining negotiations violates the constitutional right to collective bargaining. *City of Miami v. F.O.P. Miami*

*Lodge 20*, 571 So. 2d 1309, 1312-13 (Fla. Dist. Ct. App. 1989), *approved sub nom. F.O.P., Miami Lodge 20 v. City of Miami*, 609 So. 2d 31 (Fla. 1992).

65. Shortly after the 1968 constitutional amendment protecting the right of public employees to bargain collectively, in 1974, the Florida legislature enacted PERA “to provide statutory implementation of s. 6, Art. I of the State Constitution” by “[g]ranting to public employees the right of organization and representation.” Fla. Stat. § 447.201.

66. The legislation recognized that collective bargaining “protect[s] the public” and “promote[s] harmonious and cooperative relationships between government and its employees.” *Id.* PERA grants public employees the right to form, join, participate in, and be represented by an employee organization of their own choosing, or to refrain from doing so, and establishes a wide variety of protections for union organizing. *Id.* §§ 447.301, 447.209, 447.305, 447.307, 447.309.

### **B. The Florida Constitution Protects Labor Union Contracts**

67. Article I, Section 10 of the Florida Constitution states that “[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.” A law that infringes on the agreed-upon obligations of parties to an active contract is unconstitutional.

68. The right to contract under Article I, Section 10 of the Florida Constitution is “equally enforceable in labor contracts,” in part based on the protections

guaranteed by Article I, Section 6 of the right to collective bargaining. *Headley v. City of Miami*, 215 So. 3d 1, 5 (Fla. 2017).

69. The right to contract is a fundamental right. *Id.* at 6. When a law “impairs the exercise of a fundamental right,” the State must demonstrate a “compelling governmental interest” and that the law is “narrowly tailored to advance that interest,” meaning that the State used “the least intrusive means.” *State v. J.P.*, 907 So. 2d 1101, 1109-10 (Fla. 2004).

## FACTS

### A. The Arbitration Ban Infringes Public University Faculty’s Right to Collective Bargaining Under the Florida Constitution

70. Grievance procedures, including arbitration, are a mandatory subject of collective bargaining. For decades, Florida’s public employees have negotiated grievance resolution procedures as part of their CBAs. With the adoption of PERA in 1974, public sector employers were explicitly *required* to negotiate over grievance resolution procedures.

71. Specifically, under Fla. Stat. § 447.401, public employers in Florida are required to “negotiate a grievance procedure to be used for the settlement of disputes between employer and employee, or group of employees, involving the interpretation or application of a collective bargaining agreement.” That grievance procedure must have as its “terminal step a final and binding disposition by an impartial neutral, mutually selected by the parties.” *Id.*

72. The CBA at issue here provides a three-step grievance procedure for adverse employment decisions, including appeal to arbitration. Ex. A, art. 20.8(f). Should the arbitrator determine that the CBA “has been violated, the arbitrator shall direct the University to take appropriate remedial action.” *Id.*, art. 20.8(f)(3)(b).

73. Breaking with a half century of precedent, the Arbitration Ban specifically *prevents* university unions, like Plaintiffs UFF and NC-UFF, and public university faculty, like Plaintiff Viera-Vargas, from making use of the grievance procedures established in Fla. Stat. § 447.401 and detailed in the unions’ CBAs—or from seeking any appellate review—when challenging a university’s “personnel action[] or decision[] regarding faculty, including in the areas of evaluations, promotions, tenure, discipline, or termination.” The Arbitration Ban directs that such decisions “may not be appealed beyond the level of a university president or designee” and “are not subject to arbitration.”

74. President Corcoran relied upon the Arbitration Ban to refuse to arbitrate Plaintiff Viera-Vargas’s grievance, which was ripe for arbitration. Ex. B, at 12 & n.5.

75. By denying public university faculty members recourse to arbitration, the Arbitration Ban impermissibly abridges Plaintiffs’ right to collective bargaining under the Florida Constitution.

76. No compelling state interest justifies the Arbitration Ban. Even if the State has an interest in taking “personnel actions” as to certain employees, it has no interest in doing so absent neutral review. Neutral review guarantees the integrity of such actions and helps to ensure they are fair to faculty while respecting the interests of employers. The State has already agreed to a dispute resolution procedure in the collective bargaining process and has bound itself by statute to allow such review. No circumstances have changed such that Florida could justify upending the longstanding bargained-for process for meaningful, neutral review of personnel actions for public university faculty.

77. The State asserts, as its sole justification for the Arbitration Ban, that it makes it easier for university presidents to replace existing professors with other professors of different ideological views. But Florida has no compelling interest in firing faculty members based on their political views—such actions are constitutionally forbidden under the First Amendment to the United States Constitution.

78. Nor is the Arbitration Ban narrowly tailored to any such purported interest. Nothing in the legislative record suggests that Florida needed to bar *all* possibility of arbitrating or appealing grievances beyond the level of a university president in *any* circumstances. Stripping public university faculty of any right to arbitrate or appeal is flatly overbroad.



## **B. The Arbitration Ban Unconstitutionally Impairs Existing Contracts of Higher Education Unions and Their Members**

79. Before the Arbitration Ban, many state universities—through their boards of trustees, including Defendant the Board of Trustees of the New College of Florida—and faculty unions, including Plaintiffs UFF and NC-UFF, negotiated and entered contracts detailing faculty members’ right to appeal grievances, personnel actions, and other adverse employment decisions to an impartial arbitrator.

80. Plaintiffs UFF and NC-UFF’s current CBA with Defendant New College of Florida Board of Trustees, which governs the contracting parties’ relationships for the period 2021 to 2024, creates a detailed scheme for arbitration of adverse personnel decisions, among other things, including requiring a neutral arbitrator whom the CBA empowers to issue a binding decision. Ex. A, art. 20.8(f). Plaintiffs carefully structured their grievance process around this arbitration guarantee with the understanding that it mirrored comparable contract provisions in top academic institutions in other states, allowing Florida public universities to compete for top-notch professors and educators.

81. By prohibiting arbitration or other means for neutral review of adverse employment decisions regarding faculty, the Arbitration Ban impermissibly impairs rights and obligations of universities, unions, and union members under their CBAs, in violation of Article I, Section 10 of the Florida Constitution.

82. No compelling state interest justifies the Arbitration Ban nor is it narrowly tailored to any purported state interest. The Arbitration Ban prohibits arbitration outright, but the State has no interest in eliminating neutral appellate review and certainly no interest in doing so for every personnel decision concerning faculty at public universities.

83. In the alternative, the Arbitration Ban does not apply during the term of existing CBAs because it contains no statement of retroactive application. *See Yamaha*, 316 So. 2d at 559.

**C. The Arbitration Ban Causes Severe Ongoing Injury to Plaintiffs**

84. Unless enjoined by this Court, the Arbitration Ban will continue to cause severe irreparable harm to Plaintiffs.

85. The Arbitration Ban's removal of proper grievance procedures caused Plaintiffs immediate harm. Plaintiff NC-UFF negotiated a CBA, with the support of Plaintiff UFF, that provided NC-UFF's members the option to obtain arbitral review of adverse personnel decisions implicating the CBA. The Arbitration Ban has destroyed that right in violation of the Florida Constitution. The entire CBA is abrogated because there is no neutral decisionmaker to arbitrate whether the President and Defendant New College of Florida Board of Trustees have complied with the CBA.

86. Because of the Arbitration Ban, Plaintiffs UFF and NC-UFF have lost, and will continue to lose, members who move to states that do not impair state university CBAs or violate their own state constitutions, and that enforce fair grievance procedures. From May to July 2023, Plaintiff NC-UFF experienced an almost 25% decrease in its membership. Recent reports indicate that as many as one-third of New College of Florida faculty will not return this fall. At least one NC-UFF member who is searching for a job at universities outside of Florida has cited the Arbitration Ban as their primary reason for doing so. Fewer members means fewer dues, injuring NC-UFF's finances and bargaining abilities.

87. The Arbitration Ban also infringes Plaintiffs UFF and NC-UFF members' academic freedom. Plaintiffs UFF and NC-UFF's members have expressed fear about teaching certain subjects or writing certain scholarship. If the President disagrees with their scholarship, the President could deprive these union members of tenure or fire them without recourse.

88. The removal of proper grievance procedures has also caused Plaintiff Viera-Vargas, a current New College professor, immediate harm. He is one of five New College professors denied tenure by Defendant New College of Florida Board of Trustees, on the recommendation of President Corcoran, despite positive recommendations for tenure from the professors' respective departments and then-interim-President Brad Thiessen. Plaintiff Viera-Vargas, along with the four other New

College professors denied tenure, sought review pursuant to the CBA's three-step grievance procedure. President Corcoran ignored the CBA, denied the grievance, and stated his decision "is not subject to arbitration." Ex. B, at 12.

89. As a result of the Arbitration Ban, Plaintiff Viera-Vargas has been denied the benefit of the collective bargaining process. He has been denied his rights under the CBA, including the right to neutral third-party review of adverse employment decisions. Instead, President Corcoran both made the initial decision to deny tenure (by recommendation to Defendant New College of Florida Board of Trustees), and then breached the CBA by denying Plaintiff Viera-Vargas his contractual right to arbitration to review that decision.

90. No adequate remedy at law exists for the loss of grievance procedures because, among other reasons, Defendants are expected to rely on the Arbitration Ban as a defense if Plaintiffs brought damages claims for breach of contract.

**COUNT ONE:  
DENIAL OF THE CONSTITUTIONAL RIGHT  
TO COLLECTIVE BARGAINING**

91. Plaintiffs incorporate paragraphs 1-67, 71-79, and 85-91 as if fully set forth herein.

92. Article I, Section 6 of the Florida Constitution states that "[t]he right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged."

93. The procedure for the resolution of grievances, including arbitration, is a mandatory subject of collective bargaining.

94. The Arbitration Ban denies public university unions the ability to negotiate, effectuate and enforce grievance procedures ending in arbitration before a neutral decisionmaker, thereby prohibiting collective bargaining over a mandatory subject.

95. The Arbitration Ban deprives all Plaintiffs and members of Plaintiffs UFF and NC-UFF of their right to collective bargaining under the Florida Constitution.

96. The State of Florida has no compelling interest in enacting the Arbitration Ban, nor is that provision the least restrictive means of achieving any interest it may have.

97. The Arbitration Ban thus violates Article I, Section 6 of the Florida Constitution.

98. Plaintiffs will suffer continuing, irreparable harm as a result of this violation of the Florida Constitution.

**COUNT TWO:  
UNCONSTITUTIONAL IMPAIRMENT OF CONTRACTS**

99. Plaintiffs incorporate paragraphs 1-59, 68-70, and 80-91 as if fully set forth herein.

100. Article I, Section 10 of the Florida Constitution states that “[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.”

101. Plaintiffs UFF and NC-UFF have a valid, binding, active contract with Defendant New College of Florida Board of Trustees that governs the rights of university faculty, and under which Defendant New College Board of Trustees explicitly agreed that Plaintiffs UFF and NC-UFF and their members, including Plaintiff Viera-Vargas, have the right to arbitrate adverse employment decisions.

102. Plaintiffs UFF and NC-UFF’s CBA with Defendant New College of Florida Board of Trustees provides that “[i]f [a] grievance has not been satisfactorily resolved [by a university representative or the university president], the UFF may, upon the request of the grievant, proceed to arbitration.” Ex. A, art. 20.8(f)(1). The CBA contains detailed procedures regarding the timing, venue, scope, procedure, and costs of arbitration, including providing for a neutral decisionmaker. *See id.*, art. 20.8.

103. Plaintiff Viera-Vargas has the right to arbitrate grievances against the New College of Florida under these provisions of the CBA.

104. The Arbitration Ban substantially impairs this contract, as well as Plaintiffs’ rights thereunder, in violation of Article I, Section 10 of the Florida Constitution, by prohibiting faculty members from arbitrating adverse employment

decisions. The Arbitration Ban eliminates and destroys rights and obligations of all members of Plaintiffs UFF and NC-UFF, including Plaintiff Viera-Vargas, for which Plaintiffs UFF and NC-UFF have collectively bargained, and on which Plaintiffs, as well as Plaintiffs UFF and NC-UFF's members, rely.

105. The State of Florida has no compelling interest in impairing these existing contracts between universities and faculty, and has not demonstrated that the Arbitration Ban is the least restrictive means of achieving any interest it may have.

106. The Arbitration Ban thus violates Article I, Section 10 of the Florida Constitution.

107. Plaintiffs will suffer continuing, irreparable harm as a result of this violation of the Florida Constitution.

**COUNT THREE:  
DECLARATORY JUDGMENT**

108. Plaintiffs incorporate paragraphs 1-91 as if fully set forth herein.

109. Plaintiffs bring this claim in the alternative to Counts One and Two.

110. Plaintiffs UFF and NC-UFF have a valid, binding, existing contract with the Board of Trustees of the New College of Florida that creates a right to arbitration of grievances regarding adverse personnel actions and decisions. The term of the contract extends through 2024. Plaintiff Viera-Vargas has rights substantially affected by this contract and a substantial interest in the continued effectiveness of this contract.

111. “Florida legislation is presumed to operate prospectively unless there exists a showing on the face of the law that retroactive application is intended.” *Yamaha*, 316 So. 2d at 559.

112. Neither the Arbitration Ban nor any other provision of SB 266 contains any indication that the Legislature intended the Arbitration Ban to apply during the term of existing collective bargaining agreements that provide for arbitration of adverse personnel decisions.

113. The Arbitration Ban therefore does not apply to Plaintiffs UFF and NC-UFF’s existing CBA with the Defendant Board of Trustees of the New College of Florida and does not prohibit arbitration of grievances under the existing CBA during its current term, which ends on June 30, 2024.

### **PRAYER FOR RELIEF**

Wherefore, the Plaintiffs respectfully request that this Court:

(a) Enter a judgment as follows:

- i. A declaratory judgment that
  1. The Arbitration Ban impairs the right to collective bargaining in violation of Article I, Section 6 of the Florida Constitution;
  2. The Arbitration Ban impairs existing contractual rights in violation of Article I, Section 10 of the Florida Constitution;



3. Public university faculty retain their right to arbitrate adverse personnel decisions under Fla. Stat. § 447.401 because the Arbitration Ban is unconstitutional; and
4. Public university faculty retain their right to arbitrate adverse personnel decisions under their CBA because the Arbitration Ban is unconstitutional.

ii. Permanently enjoining Defendants from:

1. Enforcing the Arbitration Ban in any manner or otherwise taking any action revoking the grievance procedures found in Fla. Stat. § 447.401 or any other law related to faculty grievance procedures; and
2. Enforcing the Arbitration Ban in any manner or otherwise taking any personnel action or decision adverse to any public university faculty without permitting such personnel to arbitrate the adverse decision before a neutral arbitrator who has final authority as required by their CBA.

(b) In the alternative, enter a judgment as follows:

- i. A declaratory judgment that the Arbitration Ban does not prohibit public university faculty from arbitrating grievances during the terms of existing CBAs.

ii. Permanently enjoining Defendants from:

1. Enforcing the Arbitration Ban with respect to public university faculty or otherwise taking any action revoking the grievance procedures found in Fla. Stat. § 447.401 or any other law related to faculty grievance procedures during the term of existing CBAs; and
2. Enforcing the Arbitration Ban in any manner or otherwise taking any personnel action or decision adverse to any public university faculty without permitting such personnel to arbitrate the adverse decision before a neutral arbitrator who has final authority as required by existing CBAs during the term of those CBAs.

(c) Awarding Plaintiffs their costs under Fla. Stat. § 57.041.

(d) Ordering such other and further relief as the Court may find just and proper.

### **JURY DEMAND**

Plaintiffs demand a trial by jury for all matters so triable as of right.

Respectfully submitted,

/s/ Faith E. Gay

FAITH E. GAY

On Behalf Of:

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# **Exhibit A**

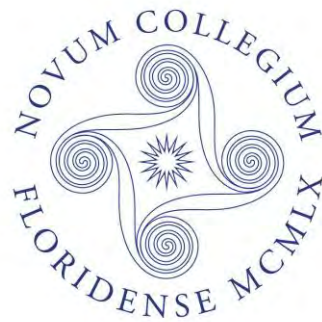
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**New College of Florida  
Board of Trustees**

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**Collective Bargaining  
AGREEMENT  
2021-2024**

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**New College**

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**United Faculty of Florida**

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## PREAMBLE

In order to continue the tradition of high quality and effective education at New College of Florida, and to maintain fair and just working conditions enabling the faculty to continue its high standards of excellence in all phases of instruction, research and service, the parties have executed this Agreement with the following intentions:

The New College United Faculty of Florida (UFF) is recognized as the exclusive bargaining representative, solely for the purpose of collective bargaining with respect to compensation, hours and other terms and conditions of employment as specifically set forth in this Agreement for all employees in the bargaining unit described herein.

The UFF has the right to engage in collective bargaining with New College Board of Trustees (Board), or their designee. The Board, as a duly constituted public body corporate of the State of Florida, has a fiduciary duty, and as such, is the sole organization legally mandated to manage, operate and direct New College of Florida. With this understanding of their legal rights and obligations, both parties have negotiated and will negotiate in good faith.

The parties further acknowledge the desirability and importance of a collegial governance system for, and by, the faculty in areas of academic concern, through faculty meetings and faculty committees. The New College Faculty regularly holds formal meetings each month during the academic year, and it is understood that these faculty meetings are the legislative assembly of the New College Faculty. The College has the ability, through its Provost, to bring appropriate matters of concern of its President and its administration to such faculty meetings. The parties accept the distinct responsibilities of the New College Faculty as a legislative assembly, and understand that its role concerning academic matters and affairs exists separately and apart from the UFF as the bargaining representative for matters of compensation, hours of work and working conditions.

Among matters which may be of concern to the legislative assembly of the New College Faculty include but are not limited to: (a) curriculum policy and curricular structure, (b) requirements and granting of degrees, (c) policies concerning student recruitment, admission, and retention, (d) faculty rights and obligations (e) development, curtailment, discontinuance, or reorganization of academic programs; (f) appointment, retention, promotion, and tenure of faculty; (g) academic governance and the procedures therefore; (h) student evaluation policies, and (j) other matters of traditional concern. It is recognized that such matters are the concern of the legislative assembly of the New College Faculty, subject to State Legislation, the fiduciary responsibilities of the Board, and the terms of this Agreement.

This Preamble is a statement of intent and policy and is, therefore, not subject to the Grievance procedure.

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**DEFINITIONS**

As used in this Agreement, the following terms shall have the indicated definition.

1. "Academic year" means a period consisting of a fall and spring semester and an independent study period, if any.
2. "Bargaining Unit" means those employees, collectively, represented for collective bargaining purposes by the United Faculty of Florida pursuant to Florida Public Employees Relations Commission Order number 03E-154, dated July 1, 2003, wherein the Commission ordered that Certificate number 1406 be issued to the United Faculty of Florida for the bargaining unit agreed to by the New College of Florida Board of Trustees and the United Faculty of Florida. Employee job classifications included within the bargaining unit are set out in Appendix A.
3. "Board" means the Board of Trustees of New College of Florida established in accordance with Article IX, Section 7 (c), *Constitution of the State of Florida*; the Board of Governor's Resolution of January 7, 2003; and Section 1001.72 of the *Florida Statutes*.
4. "Break in service" means those absences following which the employee is treated as a new employee for purposes of computing seniority and years of service.
5. "Clerk of the College" means the person identified by the Board to serve as the agency clerk for New College of Florida. The Clerk of New College of Florida is:

Cook Hall Room 203  
New College of Florida  
5800 Bay Shore Road  
Sarasota, FL 34243-2109  
Phone: 941.487.4100

6. "College" means New College of Florida.
7. "College service" means service to the College during any of its three phases; private New College; USF service while New College was a college within the University of South Florida; and New College of Florida, the eleventh (11<sup>th</sup>) State university.
8. "Continuous service" means employment uninterrupted by a break in service. For academic year employees (9 or 10 month employees), one year of continuous service is equivalent to the nine (9) or ten (10) month employment period.
9. "Credited State service" means years of service in a regular position minus any leave of absence periods.
10. "Days" means calendar days.

11. "Division/unit" means an administrative unit generally equivalent in size and character to a department, discipline, or division.
12. "Domestic partners" means two individuals who live together in a long-term relationship of indefinite duration. There must be an exclusive mutual commitment similar to that of marriage, in which the partners agree to be financially responsible for each other's welfare and share financial obligations.
13. "Double envelope system" means a paper ballot that indicates a vote, but is not signed, placed in a small sealed envelope, and this envelope is placed in a larger sealed envelope with the voter's signature on the outside.
14. "Employee" means a member of the bargaining unit.
15. "Equitable" means fair and reasonable under the circumstances.
16. "*Faculty Handbook*" means the August 2017 edition of the *New College of Florida Faculty Handbook*.
17. "FMLA" means the Family Medical Leave Act of 1993 (29 U.S.C. Sections 2601-2654).
18. "Months" mean calendar months.
19. The singular of the term "number" includes the plural.
20. "OPS" means "other personnel services," a designation of an employment class within the Florida State employment system and within the State University System.
21. "NCUFF" means the New College Chapter of the United Faculty of Florida.
22. "Parties" means the Board and the United Faculty of Florida.
23. "President" means the President of New College of Florida or the President's authorized representative.
24. "PAC" means Provost's Advisory Committee. The PAC is elected by the entire voting faculty. The PAC oversees the process for retention, promotion, and tenure of the teaching and research faculty.
25. "Semester" means one of the two academic periods which, together with a four-week independent study period, constitute the academic year.
26. "Supervisor" means an individual identified by the President or representative as having immediate administrative authority over employees.

27. "SUS" or "State University System" means the system of institutions and agencies within the jurisdiction of the Florida Board of Governors.
28. "UFF" means United Faculty of Florida.
29. "Year" means a period of twelve (12) consecutive months.

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**ARTICLE 1**  
**RECOGNITION**

**1.1 Bargaining Unit.**

Pursuant to Florida Public Employees Relations Commission Order number 03E-154, dated July 1, 2003, wherein the Commission ordered that Certificate number 1406 be issued to the UFF for all employees in the bargaining unit as described in the certification. Attached as Appendix A is a listing of classifications included in UFF's bargaining unit.

The Board has recognized the UFF as the exclusive representative, solely for the purpose of collective bargaining with respect to wages, hours, and other terms and conditions of employment as specifically set forth in this Agreement, for all employees in the bargaining unit.

**1.2 Board and College Regulations and Policies.**

- (a) If there is an inconsistency between an existing College regulation or policy and an express provision of this Agreement, the provision of this Agreement shall control, and the Board agrees to promptly remedy the inconsistency, following consultation with UFF.
- (b) No new or amended College regulation, policy, or resolution shall apply to employees if it conflicts with an express term of this Agreement.
- (c) The College shall provide to the NCUFF an advance copy of any proposed regulation, or policy changing a term or condition of employment contained in this Agreement. The College shall provide the advance copy of a proposed regulation no later than the date of publication. The advance copy of a policy shall be provided to the NCUFF at least two (2) weeks in advance of its effective date so as to permit the NCUFF to seek consultation with respect to it. With respect to a regulation adopted on an emergency basis, an advance copy shall be provided as far in advance of its effective date as is feasible under the circumstances.
- (d) If the Board or a committee of the Board has scheduled public hearings on any Board action that would conflict with an express term of this Agreement, the UFF shall not be denied the opportunity to address the matter.
- (e) If any proposed regulation, policy, or resolution would modify an express term of this Agreement, the Board or its designee shall engage in collective bargaining with respect to it.

**1.3 Board – Agenda.**

The NCUFF shall be granted a place on the agenda at each public Board meeting for the purpose of addressing any item on the Board's agenda that affects the wages, hours, or other terms and conditions of employment of employees.

**1.4 Right to Hear Views.**

Nothing contained in this Agreement shall be construed to prevent the Board or the College from meeting with any individual or organization to hear views on any matter, provided however, that as to any such matter which is a proper subject of collective bargaining and covered by a term of this Agreement, any changes or modification shall be made only through negotiation and agreement with the NCUFF/UFF

## **ARTICLE 2 CONSULTATION**

### **2.1 Consultation with the Chairman of the Board.**

Meetings between the Chairman of the Board and the Chairman's representatives and up to three (3) representatives of the UFF, or such other number as the parties may agree, shall be held, upon the advance request of either party, to discuss matters pertinent to the implementation or administration of this Agreement or any other mutually agreeable matters. Actions by the Board or its representatives affecting any other terms and conditions of employment of employees may also be raised in consultation. The meetings shall be held on a mutually convenient date on the Campus of the College unless the parties agree to another location and shall be scheduled once each ninety (90) days. The party requesting consultation shall submit a written list of agenda items no less than one (1) week in advance of the meeting. The other party shall also submit a written list of agenda items in advance of the meeting if it wishes to discuss specific issues. The parties understand and agree that such meetings shall not constitute or be used for the purpose of collective bargaining.

### **2.2 Consultation with the President.**

Upon the request of either party, the President shall meet with the NCUFF representatives to discuss matters pertinent to the implementation or administration of this Agreement, College actions affecting terms and conditions of employment, or any other mutually agreeable matters. Such meetings shall occur once (1) per semester in the academic year and once (1) during the summer term unless the parties agree to meet more frequently. The party requesting consultation shall submit a written list of agenda items no less than one (1) week in advance of the meeting. The other party shall also submit a written list of agenda items in advance of the meeting if it wishes to discuss specific issues. The parties understand and agree that such meetings may be used to resolve problems regarding the implementation and administration of this Agreement, however, such meetings shall not constitute or be used for the purpose of collective bargaining.

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**ARTICLE 3**  
**UFF PRIVILEGES**

**3.1 Use of Facilities and Services.**

Subject to the rules of the College, the UFF shall have the right to use College facilities for meetings and all other services on the same basis as they are generally available to other College-related organizations which are defined as follows: College-Related Groups and Organizations. These groups and organizations may or may not receive budgetary support. Examples of such groups include student organizations, alumni associations, faculty committees, College Support Personnel System staff council, direct support organizations, the UFF, etc.

**3.2 Communications.**

- (a) UFF may post bulletins and notices relevant to its position as the collective bargaining agent on a reasonable number of existing bulletin boards but on at least one bulletin board per building where a substantial number of employees have offices. Specific locations shall be mutually selected by the College and the NCUFF. All materials placed on the designated bulletin boards shall bear the date of posting and may be removed by the College after having been posted for a period of thirty (30) days. In addition, such bulletin boards may not be used for election campaigns for public office or exclusive collective bargaining representation.
- (b) The College will place a link in an appropriate place on the College web site to the web site of the NCUFF.
- (c) Accessing existing College e-mail listservs or establishing a new listserv allowing the UFF electronic communications with employees, shall be permitted free of charge to the UFF. However, such listservs and server space may not be used for election campaigns for public office. Employees who are e-mail recipients of the listserv shall have the right to have themselves removed from the listserv upon their written request.
- (d) Human Resources shall forward a list of new eligible employees to NCUFF at the beginning of each semester.

**3.3 Released Time**

- (a) The College agrees to provide one unit of released time per year to one full-time employee designated by the UFF for the purpose of carrying out the UFF's obligations in representing employees and administering this Agreement. The UFF shall provide the College with its requested designees for the academic year no later than April 15 of the preceding academic year. A substitution of the designated employee for the spring semester may be made upon written notification submitted by the UFF to the College no later than October 1.
- (b) A "unit" of released time shall consist of a reduction in teaching load of one (1) course per Fall or Spring semester for instructional employees or, for nonteaching employees, a reduction in workload of ten (10) hours per week for one semester, or five (5) hours per week for two semesters.



- (c) Released time shall be used for conducting UFF business, at the College or State level, and shall not be used for lobbying or other political representation or for personal purposes.
- (d) Employees who are on leave of any kind shall not be eligible to receive released time.
- (e) Upon the failure of the UFF to provide a list of designees by the specified deadlines, the College may refuse to honor any of the released time requests which were submitted late. Substitutions submitted after the October 1 deadline shall be allowed at the discretion of the College.
- (f) (1) An employee who has been granted released time in accordance with this Section during three (3) consecutive academic years shall not again be eligible for released time until two (2) academic years have elapsed following the end of the third academic year in which such released time was granted. No employee shall be granted more than one unit of released time in accordance with this Section a single academic year.  
(2) These restrictions may be waived at the discretion of the College.
- (g) Employees on released time shall be eligible for salary increases on the same basis as other employees, but their released time activities shall not be evaluated nor taken into consideration by the College in making personnel decisions.
- (h) Employees on released time shall retain all rights and responsibilities as employees but shall not be considered representatives of the College for any activities undertaken on behalf of the UFF. The UFF agrees to hold the College harmless for any claims arising from such activities, including the cost of defending against such claims.

### 3.4 Credit Toward Research Assignments

- (a) The College agrees to allow one year of credit toward research assignment, in addition to normal credit, (for shared positions a prorated portion of one year based on their FTE) toward research assignment, in addition to normal credit, for six semesters of service in any eight consecutive semester period as a UFF officer or representative on the bargaining team by an employee who is a teaching member of the faculty for the purpose of providing an incentive to serving as a UFF officer or representative on the bargaining team.
- (b) The one year credit may be applied to requirements for research assignment as set out in Article 22 of this Agreement and at Section 4.7 of the *Faculty Handbook*.
- (c) The credit can be applied to no more than three teaching members of the faculty during one academic year.
- (d) The UFF shall provide the College with its designees of employees who will receive the credit toward research assignment no later than April 15 of the academic year in which the employee has completed three years of consecutive service as a UFF officer or representative of the bargaining team.
- (e) Upon failure of the UFF to provide a list of designees by the specified deadline, the College may refuse to honor any request for credit toward research assignment that were submitted late.

**3.5 Allowing Attendance at Bargaining Related Activities**

- (a) For the purpose of providing an incentive to serving as a representative on the bargaining team, the College agrees to allow non-teaching faculty employees who are members of the bargaining team to attend bargaining sessions and caucuses without being required to take leave in order to do so.
- (b) No more than three (3) non-teaching faculty employees who are members of the UFF bargaining team shall be permitted to attend bargaining sessions and caucuses in accordance with this Section without being required to take leave in order to do so, and the total number of employees who receive credit in accordance with Section 3.4 and leave in accordance with this Section shall not exceed four (4).
- (c) The UFF shall provide the College with its designees of members of the bargaining team who may attend bargaining sessions and caucuses without being required to take leave in order to do so by April 15. A substitution of the designated employees may be made upon written notification submitted by the UFF to the College no later than October 1.
- (d) Upon failure of the UFF to provide a list of designees by the specified deadlines, the College may refuse to honor any request that employees be permitted to attend bargaining sessions and caucuses without being required to take leave in order to do so.

**3.6 Negotiations to be Conducted Only During Academic Year**

In order to ensure that employees who are teaching members of the faculty not have summer research interrupted, the College agrees that collective bargaining negotiating sessions shall be confined to the Academic Year unless UFF requests that sessions be conducted outside of the Academic Year.

**ARTICLE 4  
RESERVED RIGHTS**

**4.1** The Board retains and reserves to itself the rights, powers, and authority vested in it, including the right to plan, manage, and control the College and in all respects carry out the ordinary and customary functions of management, including delegating academic decisions to the faculty through the *Faculty Handbook*.

**4.2 Limitations.**

All such rights, powers, and authority are retained by the Board, subject to those limitations imposed by this Agreement. Only violations of such limitations shall be subject to Article 20, Grievance Procedure.

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**ARTICLE 5**  
**ACADEMIC FREEDOM AND SHARED RESPONSIBILITY**

**5.1 Policy concerning academic freedom.**

It is the policy of the Board and the UFF to maintain and encourage full academic freedom. Academic freedom and responsibility are essential to the full development of a true institution of higher learning and apply to teaching, research/creative activities, assigned service, and the activities set forth in Sections 10.4(d) and 10.4(e). An employee engaged in such activities shall be free to cultivate a spirit of inquiry and scholarly criticism and to examine ideas in an atmosphere of freedom and confidence.

**5.2 Teaching and Research.**

Consistent with the exercise of academic responsibility, employees shall have freedom to present and discuss their own academic subjects, frankly and forthrightly, without fear of censorship, and to select instructional materials and evaluate student work in accordance with College policies. Objective and skillful exposition of such subject matter is the duty of every such employee. Employees shall also be free to engage in scholarly and creative activity and publish the results in a manner consistent with their professional obligations.

**5.3 Academic Responsibility.**

Academic freedom is accompanied by the corresponding responsibility to:

- (a) Be forthright and honest in the pursuit and communication of scientific and scholarly knowledge;
- (b) Respect students, staff, and colleagues as individuals and avoid any exploitation of such persons for private advantage;
- (c) Respect the integrity of the evaluation process with regard to students, staff, and colleagues, so that it reflects their true merit;
- (d) Refrain from stating that one is an institutional representative unless specifically authorized as such. Employees are encouraged to be sensitive to the potential for personal statements to be misunderstood as the policy of the College, and should state explicitly that they are not representing the College when the possibility of such misunderstanding seems significant.
- (e) Contribute to the effective functioning of the College in fulfilling its educational mission.

**5.4** In addition to their assigned duties, employees have responsibilities arising from the nature of the educational process. Such responsibilities include, but are not limited to, observing and upholding the ethical standards of their discipline; participating, as appropriate, in the shared system of collegial governance; respecting the confidential nature of the relationship between professor and student; and adhering to one's proper role as teacher, researcher, intellectual mentor,

and counselor.

**5.5 Shared Responsibility for Academic Program.**

Changes to the College academic program, including those matters as specified in Chapter 6, Sections 6.1-6.9, and 6.14-6.20 of the *Faculty Handbook* shall be made only in consultation with the teaching-and-research faculty of the College, which shall be given the opportunity to discuss any proposed change in a Faculty Meeting (as specified in Section 3.2 of the *Faculty Handbook*) and respond to the proposal with a yes-or-no vote prior to its adoption. Before any revisions to the current version are adopted, full consideration shall be given to the vote of the faculty

**ARTICLE 6**  
**NONDISCRIMINATION**

**6.1 Nondiscrimination.**

New College of Florida recognizes its obligation to work towards a community in which diversity is valued, and affirms its commitment to ensure that every - faculty, staff member and student of the College works in an environment free from discrimination or harassment based on race, color, religion, age, disability, sex, sexual orientation, gender expression, gender identity, national origin, marital status, and veteran status. Such discrimination and harassment is prohibited by a variety of federal, state and local laws, including Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, 110.1221 Florida Statutes, the Older Workers Benefits Protection Act (OWBPA), the Pregnancy act of 1978 or any other federal or local law concerning discrimination.

In relation to Nondiscrimination, the College shall implement such Nondiscrimination policies in accordance with the procedures contained in College regulations.

**ARTICLE 7**  
**MINUTES, REGULATIONS, AND BUDGETS: BOARD AND COLLEGE**  
**DOCUMENTS**

- 7.1** The Board shall provide the UFF (without cost) with a copy of the following:
- (a) The minutes of the meetings of the Board at the time they are made available to the general public;
  - (b) College regulations published in accordance with the Florida Board of Governors Regulation Development Process for University Boards of Trustees. Copies of this Agreement and all supplements to this Agreement consistent with the provisions of Section 28.5. The Director of Human Resources shall provide data on annual salaries and salary increases provided to employees, in both print and digital form, in response to a written request from NCUFF, which may take the form of a standing request for data to be provided each semester. The Board will provide NCUFF contact information for obtaining SUS employee salary data.
  - (c) Copies of the agenda and copies of all handouts and supporting material provided to Board members for each Board meeting or Board committee meeting at the time those agendas or material are made available to members of the Board
  - (d) Copies of the College's Equal Opportunity Plan or Update.
- 7.2** The College shall ensure that copies of the following documents are made available in an easily accessible location in its main library or by links on the College web site:
- (a) The minutes of the meetings of the Board;
  - (b) College Regulations and the College's operating budget, including the previous year's expenditure analysis

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## ARTICLE 8 APPOINTMENT

### 8.1 Policy.

The Board shall decide, with the advice of the faculty, the standards, qualifications, and criteria for filling appointment vacancies in the bargaining unit with the best possible candidates. The College shall (a) advertise such appointment vacancies, receive applications and screen candidates for such positions, and make such appointments as it deems appropriate under such standards, qualifications, and criteria, and (b) commit to an effort to identify and recruit qualified women and minority candidates for vacancies and new positions.

### 8.2 Advertisement of Vacancies.

At a minimum, bargaining unit vacancies shall be advertised by the College in the position vacancy announcement system. Employees of lower or equivalent ranks, employees who are spouses of employees, and employees who are local residents shall not, in the hiring process, be disadvantaged for that reason. All employees who are candidates for new and vacant positions shall be advised of the salaries of employees in the division/unit, or of salaries College employees in the same job classification, as appropriate, prior to the negotiation of the candidate's initial salary. Prior to making the decision to hire a candidate to fill a bargaining unit vacancy, the appropriate administrator(s) shall consider recommendations which have resulted from the review of candidates by employees in the Division/unit.

### 8.3 Employment Contract.

All appointments shall be made on the College employment contract and signed by the President and the employee. The College may enclose informational addenda, except that such addenda may not abridge the employee's rights or benefits provided in this Agreement. All academic year appointments for employees at the College begin the Monday of student orientation week and end on the due date for narrative evaluations of spring semester. The College employment contract shall contain the following elements:

- (a) date;
- (b) Professional Classification System title, class code, rank, and appointment status;
- (c) employment unit (e.g., department, college, institute, area, center, etc.);
- (d) the length of the appointment;
- (e) special conditions of employment;
- (f) a statement that the position is (1) tenured, (2) non-tenure earning, or (3) tenure-earning (specifying prior service in another institution to be credited toward tenure);
- (g) a statement that the employee's signature on the standard employment contract shall not be deemed a waiver of the right to process a grievance with respect thereto in compliance with Article 20;
- (h) the following statement, if the appointment is not subject to the notice provisions of Section 12.2: "Your employment under this contract will cease on the date indicated.



- No further notice of cessation of employment is required;"
- (i) a statement that the appointment is subject to the Constitution and laws of the State of Florida and the United States, the regulations of the College, and this Agreement;
  - (j) percent of full-time effort (FTE) assigned;
  - (k) salary rate;
  - (l) the minimum salary, if any, for the rank or job classification;
  - (m) the statement: "This Agreement (Article 6) prohibits discrimination against any employee based upon race, color, sex, religious creed, national origin, age, veteran status, disability, political affiliation, marital status, sexual orientation, gender identity, or gender expression or employee rights related to union activity as granted under Chapter 447, Florida Statutes. Claims of such discrimination by the Board or the College may be presented as grievances pursuant to Article 20, Grievance Procedure."
  - (n) a statement informing the employee of the obligation to report outside activity and conflict of interest under the provisions of Article 19 of this Agreement.

#### **8.4 Appointments.**

- (a) Change in Appointments.
  - (1) An employee serving on a calendar year appointment may request an academic year appointment, or an annual leave accruing appointment of less than twelve (12) months but more than nine (9) months. Similarly, an employee serving on an academic year appointment may request a calendar year appointment or an annual leave accruing appointment of less than twelve (12) months but more than nine (9) months. The President shall carefully consider such requests, although staffing considerations and other relevant College needs may prevent their being granted.
  - (2) Upon approval of a change from a calendar year appointment to an annual leave accruing appointment of less than twelve (12) months, or from an academic year appointment to a calendar year appointment or an annual leave accruing appointment of less than twelve (12) months but more than nine (9) months, the employee's salary shall be adjusted to a percent of the calendar year base salary which is mathematically proportionate.
- (b) Summer Appointments. Available supplemental summer appointments shall be offered equitably and as appropriate to qualified employees, in accordance with written criteria. The criteria shall be made available in each division/unit.
  - (1) Employees who are appointed to serve on search committees during the summer when they are not being duly compensated will receive a monetary stipend not to exceed the equivalent of forty (40) hours worked. Such compensation will be considered an administrative stipend and the amount will be determined by the Administration based upon the current average hourly rate of nine (9) month NCF instructional employees.

- (2) Division Chairs and the Faculty Chairperson are not eligible for summer search committee stipends.
- (c) Extra College Compensation Appointments. Extra College compensation is defined as College compensation for any duties in excess of a full appointment (1.0 FTE). Available extra College compensation appointments shall be offered equitably and as appropriate to qualified employees in sufficient time to allow voluntary acceptance or rejection.
- (1) Administrative Appointments for Librarians. Librarians whose appointments include administrative duties beyond standard librarian appointments (i.e. assistant librarian; associate librarian; librarian) may be granted administrative appointments in addition to their appointments as librarians. These administrative appointments are made via a second letter of appointment/contract with terms determined by the Dean of the Library, and the administrative responsibilities are evaluated separately from regular librarian responsibilities and the administrative evaluation is applicable only to the administrative appointment. Administrative appointments include titles of director, associate/assistant director, department head, coordinator, etc., and generally include supervision of librarians.
- (d) Visiting Appointments. A "visiting" appointment is one made to a person having appropriate professional qualifications but not expected to be available for more than a limited period, or to a person in a position which the College does not expect to be available for more than a limited period. A visiting appointment may be offered in single or multi-year contracts not to exceed a total of four (4) consecutive years.
- (e) Adjunct Appointments. The use of adjuncts shall, upon the request of the NCUFF representatives, be a subject of consultation under the provisions of Sections 2.1 and 2.2.
- (f) Fixed Multi-Year Appointments.  
Two- to five-year fixed multi-year appointments may be offered for the following:
- (1) instructors and lecturers;
  - (2) non-tenured or non-tenure earning Assistant Librarians, Associate Librarians, Librarians, Curators and Counselors/Advisors, Assistant Program Directors, Associate Program Directors, Program Directors;
  - (3) scholars/scientists, Research Associates, and Associate/Assistants;
  - (4) tenured employees who decide to give up their tenured status to take advantage of whatever incentives might be offered by a fixed multi-year appointment.
- (g) Recurring-Non-tenure Earning Appointments

The College on rare occasions may make recurring non-tenure earning appointments as instructor or "associate in" in accordance with section 4.1.4 of the Faculty Handbook. Such faculty will work under full-time contract. Annual evaluation of such faculty is made by the Division Chair in consultation with the tenured and tenure-earning faculty in the discipline. Appointments are made for one

year on the initiative of the discipline and with the approval of the Division, and are renewable for up to two additional years. Thereafter, the faculty member occupying the position may be reappointed for three year terms, upon the recommendation of the Division Chair, the tenured and tenure-earning faculty in the discipline, and a positive vote from his or her Division.

(h) Shared Appointments.

A shared appointment refers to two persons appointed to share a single regular faculty tenure-earning or tenured line in one discipline. Each contract will cover an agreed-upon proportion of one full-time tenure line, normally .5-.5 FTE such that the percentages add up to one (1.0) FTE. In annual evaluations, merit salary reviews, and tenure and promotion reviews, the work of each is assessed separately. Annual evaluations and pre-tenure reviews of each individual occur on the same schedule as for other faculty.

**8.5 Reclassification of an Employee to a Non-Unit Classification.**

An employee who is currently a member of the bargaining unit shall be provided written notice thirty (30) days in advance, with a copy to NCUFF, when the College proposes to reclassify the employee to a classification which is not contained in the bargaining unit. The employee may waive the thirty (30) day notice. The employee may request a review of such action consistent with the provisions of Section 28.6 and UFF may discuss such action pursuant to Article 2, Consultation

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**ARTICLE 9**  
**ASSIGNMENT OF RESPONSIBILITIES**

**9.1 Policy.**

An Employee's professional obligation comprises both scheduled and nonscheduled activities. The parties recognize that it is a part of the professional responsibility of employees to carry out their duties in an appropriate manner and place. For example, while instructional activities, office hours, and other duties and responsibilities may be required to be performed at a specific time and place, other non-scheduled activities are more appropriately performed in a manner and place determined by the employee in consultation with his/her supervisor.

**9.2 Annual Assignment.**

- (a) Teaching and research faculty shall be apprised in writing at the beginning of their employment and at the beginning of each semester of employment thereafter, of the duties assigned in teaching, research and other creative activities, public service, and of any other specific duties assigned for that semester. Other employees shall be apprised in writing at the beginning of their employment and at the beginning of each year of employment thereafter, of the duties assigned for that year.  
Except for an assignment made at the beginning of an employee's employment, the person responsible for making an assignment shall notify the employee prior to making the final written assignment. The assignment shall be communicated to employees no later than four 4 weeks in advance of its starting date, if practicable.
- (b) Instructional Assignment. Specific instructional assignments are finalized in consultation with individual faculty members. In cases in which a faculty member disagrees with the assignment, their supervisor will produce a written rationale for the assignment. The period of an instructional assignment during an academic year shall not exceed an average of seventy-five (75) days per semester and the period for testing, advisement, and other scheduled assignments shall not exceed an average of ten (10) days per semester. In addition, the faculty will receive a four-week Independent Study Period supervision assignment for the New College January Interterm. Within each semester, activities referred to above shall be scheduled during contiguous weeks with the exception of fall break and spring break.
- (c) Research Assignment. To assure scholarly growth, upon completion of a specified length of full-time service, teaching faculty members are eligible for research assignment, also referred to as research sabbatical, described in Article 22.3.
- (d) Change in Assignment. Should it become necessary to make changes in an employee's assignment, the College shall notify the employee prior to making such change and shall specify such change in writing.
- (e) Equitable Opportunity. Each employee shall be given assignments which provide equitable opportunities, in relation to other employees in the same division/unit, to meet the required criteria for promotion, tenure, and merit salary increases.

- (1) For the purpose of applying this principle to promotion, assignments shall be considered over the entire period since the original appointment or since the last promotion, not solely over the period of a single annual assignment. The period under consideration at the College shall not be less than four years. The employee's annual assignment shall be included in the promotion file.
- (2) For the purpose of applying this principle to tenure, assignments shall be considered over the entire probationary period and not solely over the period of a single annual assignment. The employee's annual assignment shall be included in the tenure file.
- (3) If an arbitrator determines that the employee was not provided an "equitable opportunity" as described in this section, the arbitrator may award additional employment requiring the College to provide the "equitable opportunity" as described herein. The arbitrator also may retain jurisdiction for purposes of determining whether the ensuing assignment provides such "equitable opportunity."

### **9.3 Considerations in Assignment.**

- (a) In drafting the assignment of duties, employee and supervisor are charged to consider:
  - (1) the needs of the program;
  - (2) the employee's qualifications and experiences, including professional growth and development and preferences;
  - (3) the character of the assignment, including but not limited to the number of hours of instruction, the preparation required, whether the employee has taught the course in the past, the average number of students enrolled in the course in past semesters and the time required by the course, whether travel to another location is required, the number of preparations required, the employee's assignments in other semesters, the terms and conditions of a contract or grant from which the employee is compensated, the use of instructional technology, the availability and adequacy of materials and equipment, secretarial services, student assistants, and other support services needed to perform the assignments, and any changes which have been made in the assignment, including those which may have resulted from previous evaluations of the employee; and
  - (4) the opportunity to fulfill applicable criteria for tenure, promotion, and merit salary increases.
- (b) If an employee has concerns with regard to section 9.2 or 9.3(a), the employee shall be granted, upon written request, an opportunity to discuss those concerns with an administrator at the next higher level.
- (c) The Board and the UFF recognize that, while the Legislature has described the minimum full academic assignment in terms of twelve (12) contact hours of instruction or equivalent research and service, the professional obligation undertaken by a faculty member will ordinarily be broader than that minimum. In like manner, the professional obligation of other professional employees is not easily susceptible of quantification. The Board, acting through the College, has the right, in making

assignments, to determine the types of duties and responsibilities which comprise the professional obligation and to determine the mix or relative proportion of effort an employee may be required to expend on the various components of the obligation. In the case of the shared position, contact hours will be prorated based on percentage of FTE.

- (d) No employee's assignment shall be imposed arbitrarily or unreasonably. If an employee believes that the assignment has been so imposed arbitrarily or unreasonably, the employee may proceed to address the matter through the procedures in Section 9 of this Agreement, which shall be the exclusive method for resolving such disputes. Other claims of alleged violations of this Agreement with respect to employee assignments are subject to the provisions of Article 20, Grievance Procedure and Arbitration.

#### **9.4 Teaching Schedule.**

Teaching schedules should be established, if practicable, so that the time between the beginning of the first assignment and the end of the last for any one day does not exceed eight (8) hours.

#### **9.5 Equipment.**

When equipment is required for classes, it is desirable that there be sufficient equipment to accommodate the students assigned thereto. The College and the UFF are committed to seek funding to provide for the replacement of obsolete equipment, recognizing the necessity for maintaining an adequate inventory of technologically current equipment.

#### **9.6 Workweek.**

Scheduled hours for all employees shall not normally exceed forty (40) hours per week. Time shall be allowed within the normal working day for research, teaching, or other activities required of the employee, when a part of the assigned duties. Supervisors are encouraged to make appropriate reductions or adjustments in the number of hours scheduled in recognition of evening, night, and weekend assignments, and for periods when an employee is on call. Evenings, nights, and weekends when an employee is on call shall be considered in making other assignments. See Section 17.5 regarding schedule adjustment for holiday assignment.

#### **9.7 Exclusive Procedure for Resolution of Assignment Disputes.**

##### **(a) Exclusive Method.**

- (1) The following procedure is the exclusive method of resolving disputes under Section 9.3 of this Agreement when it is alleged an employee that his/her assignment has been imposed arbitrarily or unreasonably.
- (2) An employee who alleges that the assignment has been imposed arbitrarily or unreasonably may file a grievance under Article 20 of this Agreement only to enforce the exclusive Assignment Dispute Resolution (ADR) procedure

delineated below, not to seek a determination as to whether an assignment has been arbitrarily or unreasonably imposed.

**(b) Time Limits**

- (1) The dispute shall not be processed unless it is filed within thirty (30) days after the receipt of an assignment of duties letter by the employee. If the employee's assignment begins prior to final resolution of the dispute, the employee shall perform the assignment until the matter is finally resolved under these procedures.
- (2) All time limits contained herein may be extended by mutual agreement of the College and the UFF representative. Upon failure of the employee's UFF representative, absent agreement between the College and the UFF representative, to comply with the time limits herein, the dispute shall be deemed to have been finally determined at the prior step.
- (3) All references to "days" herein refer to "calendar days." The "end of the day" shall refer to the end of the business day, i.e., 5:00 p.m.

**(c) Assignment Dispute Resolution Procedures**

- (1) An employee who believes that an assignment has been imposed arbitrarily or unreasonably shall, within thirty (30) days after receipt of the assignment, file Part 1 of the ADR Form with the employee's Division Chair or direct supervisor. The ADR Form is Appendix H to the Agreement. The filing of the ADR Form shall be accompanied by a brief and concise statement of the employee's arguments, and any relevant documentation supporting the employee's position. This documentation shall be placed in a file entitled "Employee's Assignment Dispute Resolution File," which shall be kept separate from the employee's personnel evaluation file.
- (2) Within four (4) days of receipt of the ADR Form, the Division Chair or supervisor shall meet with the employee and discuss the dispute. Within twenty-four (24) hours after this conference, the Division Chair or supervisor shall complete Part 1 of the ADR Form and deliver it to the employee.
- (3) If the employee continues to be aggrieved following the initial conference, the employee shall file the ADR Form, with Part 1 completed, with the Provost no later than four (4) days after the initial conference.
- (4) The UFF representative shall schedule a meeting with the Provost to be held no later than four (4) days after filing the ADR Form with the Provost. At this meeting, the employee, the UFF representative, and the Provost shall discuss the dispute and attempt to resolve it. Within twenty-four (24) hours after the conclusion of this meeting, the Provost shall complete Part 2 of the ADR Form and deliver it to the UFF representative.
- (5) If consultation with the Provost does not resolve the matter, the UFF representative may file, within four (4) days of that meeting, Part 3 of the ADR Form (with supporting documentation) with the General Counsel indicating an intention to submit the dispute to a Neutral Umpire.

- (6) Within seven (7) days of receipt of the completed ADR Form and other documentation, the General Counsel may place a written explanation, brief statement of the College's position, a list of expected witnesses, and other relevant documentation in the employee's ADR File. As soon as practicable thereafter, a copy of all documents placed in the employee's ADR File shall be presented to the UFF representative, who shall place a list of the employee's expected witnesses and other relevant documentation in the file.
- (7) At the time that the completed ADR Form is submitted to the General Counsel, the UFF representative shall schedule a meeting with the General Counsel for the purpose of selecting a Neutral Umpire from the Neutral Umpire Panel. This meeting shall be scheduled for no later than seven (7) days after filing of the completed ADR Form. Selection of the Neutral Umpire shall be by mutual agreement or by alternatively striking names from the Neutral Umpire Panel list until one name remains. The right of first choice to strike from the list shall be determined by the toss of a coin. The right to strike first shall alternate in any subsequent Neutral Umpire selection.
- (8) The General Counsel shall contact the selected Umpire no later than three (3) days following the selection. Should the Umpire selected be unable to serve, the General Counsel shall contact the UFF representative as soon as practicable and schedule another selection meeting.
- (9) Upon the agreement of the Neutral Umpire to participate, the General Counsel shall provide the Umpire with the employee's ADR File.
- (10) The ADR Meeting shall be scheduled as soon as practicable after the Neutral Umpire has received the employee's ADR File. The General Counsel shall notify the UFF representative of the time and place of the ADR Meeting no later than forty-eight (48) hours prior to it being convened.
- (11) No person concerned with or involved in the assignment dispute shall attempt to lobby or otherwise influence the decision of the Umpire.
- (12) The ADR Meeting shall be conducted as follows:
  - a. The employee, or a UFF representative, and a representative of the President shall be the sole representatives of the parties. Each representative may present documentary evidence from the employee's ADR File, interrogate witnesses, offer arguments, cross-examine witnesses, and have present at the meeting one individual to assist in the presentation of the representative's case.
  - b. The Neutral Umpire will conduct and have total authority at the ADR Meeting. The Neutral Umpire may conduct the ADR Meeting in whatever fashion, consistent with this Agreement, that will aid in arriving at a just decision.
  - c. The Umpire shall submit to all parties on Part 4 of the ADR Form within forty-eight (48) hours after the close of the ADR Meeting a written, binding decision as to whether the assignment was imposed arbitrarily or unreasonably. The decision shall include the reasons for the Umpire's determination.
  - d. If the Umpire decides that the employee's assignment was imposed



arbitrarily or unreasonably, the Umpire may also suggest an appropriate remedy. This suggestion is not binding on the College but shall be used by the President or Representative in fashioning an appropriate remedy.

**(d) Neutral Umpire Panel**

- (1) The President or Representative and the UFF representative shall meet within two weeks of the ratification of this Agreement for the purpose of selecting an odd-numbered Neutral Umpire Panel. The Panel shall consist of no less than one (1) and no more than three (3) individuals, not employed by the SUS, who meet the following qualifications:
  - a. familiarity with academic assignments;
  - b. an ability to serve as Neutral Umpire on short notice;
  - c. a willingness to serve on the Panel for one academic year; and
  - d. acceptability to both the College and the UFF.
- (2) The President or Representative and the UFF representative are encouraged to select educators from other non-SUS institutions in the area, fully retired faculty and administrators, and professional mediators and arbitrators, to be on the Neutral Umpire Panel. In the event the parties cannot reach agreement on Panel membership, a representative of the Board and a UFF member holding a statewide office or position shall select the Panel.
- (3) Panel membership may be reviewed, at the initiation of the College or the UFF, through written notice provided before the end of the preceding fiscal year.

**(e) Expenses.**

All fees and costs of the Neutral Umpire shall be borne equally by the College and the UFF.

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**ARTICLE 10**  
**EMPLOYEE PERFORMANCE EVALUATIONS AND REVIEWS**

**10.1 Policy.** Evaluations and reviews should be structured to provide information and guidance that promote improvement in overall job performance.

- (a) Annual Evaluations. The purpose of the annual evaluation is to assess and communicate the nature and extent of an employee's performance of assigned duties consistent with the criteria specified in Section 10.4. The performance of employees shall be evaluated at least once annually, and they shall be advised of the annual or academic period on which the evaluation is based. Personnel decisions shall take such annual evaluations into account, provided that such decisions need not be based solely on written employee performance evaluations.
- (b) Seven Year Reviews of Tenured Faculty: Tenured faculty members shall be reviewed by the PAC every seven years following the award of tenure or their most recent promotion. The purpose of the seven year review is to provide a thoughtful peer assessment of the performance of a tenured faculty member. The review does not result in a positive or negative conclusion, but a listing of strengths and weaknesses of the faculty member.

**10.2 Sources and Methods of Evaluation.**

In preparing the annual evaluation, the person(s) responsible for evaluating the employee may consider, where appropriate, information from the following sources: immediate supervisor, peers, students and student evaluation forms, employee/self (including End-of-Year Reports, where applicable), other College officials who have responsibility for supervision of the employee, and individuals to whom the employee may be responsible in the course of a service assignment.

**10.3 Procedures.**

- (a) Annual Evaluation.
  - (1) The proposed written annual evaluation shall be provided to the employee within sixty (60) days after the end of the academic term during which such evaluation will be made. The employee shall be offered the opportunity to discuss the evaluation with the evaluator prior to its being finalized and placed in the employee's evaluation file. The evaluation shall be signed and dated by the person performing the evaluation, and by the person being evaluated who may attach a concise comment to the evaluation. A copy of the evaluation shall be provided to the employee. The employee may request, in writing, a meeting with an administrator at the next higher level to discuss concerns regarding the evaluation which were not resolved in previous discussions with the evaluator.
  - (2) The College shall develop and maintain procedures by which to evaluate each employee according to criteria specified in Section 10.4. These procedures will

include the method for the distribution of any salary increase funds specified in Article 23 based on said annual evaluation. The employees of the College subject to such evaluation shall participate in the development of these procedures and shall recommend implementation by vote of a majority of at least a quorum of those employees.

- a. The proposed procedures, or revisions thereof, shall be reviewed by the President to ensure that they are consistent with the mission and goals of the College and that they comply with this Agreement.
- b. If the President determines that the recommended procedures do not meet the conditions in Section 10.3 (2) (a) above, the proposal shall be referred back to the employees for revision with a written statement of reasons for non-approval. Implementation shall follow approval by the President.
- c. Approved procedures, and revisions thereof, shall be kept on file in the division/department office. Employees shall be provided a copy of the current procedures for annual evaluation.

(3) Upon written request from the employee, the persons responsible for supervising and evaluating an employee shall endeavor to assist the employee in correcting any major performance deficiencies reflected in the employee's annual evaluation.

(b) Seven Year Reviews. Each year, the PAC shall conduct a divisional ballot on each tenured faculty member who is subject to PAC review, as specified in 10.1(b), during that academic year. The ballot will consist of the three categories of teaching, scholarship, and community service, as well as a composite category:

FACULTY MEMBER	TEACHING		SCHOLARSHIP		SERVICE		COMPOSITE	
	YES	NO	YES	NO	YES	NO	YES	NO

The purpose of the ballot is to indicate to the faculty member and to the PAC whether his or her colleagues believe he or she is fulfilling the conditions of tenure. The tenured faculty member will be asked to provide to the division, and the division members will be asked to review, a file with the same types of contents as the PAC uses for its review. All these provisions shall also apply to faculty members holding the rank of Distinguished Lecturer. An abstention by a faculty member not on leave or not in his or her first year at the College shall be counted as a negative vote. The PAC will inform the faculty member of the divisional vote. After the divisional vote, the PAC will review the file of the faculty member, unless that faculty member is a full professor. Full professors are reviewed by a committee consisting of the Chairs

of the three Divisions. The PAC will write a review of the candidate based upon their file, discussing strengths and weaknesses of the candidate, and interpreting the results of the divisional ballot.

#### **10.4 Criteria.**

The annual performance evaluation shall be based upon assigned duties as stipulated in Article 9.2, and shall carefully consider the nature of the assignments and quality of the performance, in terms, where applicable, of:

- (a) Teaching effectiveness, including effectiveness in presenting knowledge, information, and ideas by means or methods such as lecture, discussion, assignment and recitation, demonstration, laboratory exercise, practical experience, and direct consultation with students. The evaluation shall include consideration of effectiveness in imparting knowledge and skills, and effectiveness in stimulating students' critical thinking and/or creative abilities, the development or revision of curriculum and course structure, and adherence to accepted standards of professional behavior in meeting responsibilities to students. The evaluator may take into account class notes, syllabi, student exams and assignments, and any other materials relevant to the employee's teaching assignment.

The teaching evaluation must take into account any relevant materials submitted by the employee, including the results of peer evaluations of teaching, and may not be based solely on student evaluations when this additional information has been made available to the evaluator.

- (b) Contribution to the discovery of new knowledge, development of new educational techniques, and other forms of creative activity. Evidence of research and other creative activity shall include, but not be limited to, published books; articles and papers in professional journals; musical compositions, paintings, sculpture; works of performing art; papers presented at meetings of professional societies; and research and creative activity that has not yet resulted in publication, display, or performance. The evaluation shall include consideration of the employee's productivity, including the quality and quantity of what has been done during the year, and of the employee's research and other creative programs and contributions; and recognition by the academic or professional community of what is done.
- (c) Public service that extends professional or discipline-related contributions to the community; the State, including public schools; and the national and international community. This public service includes contributions to scholarly and professional organizations and governmental boards, agencies, and commissions that are beneficial to such groups and individuals.
- (d) Participation in the governance processes of the institution through significant service on committees, beyond that associated with the expected responsibility to participate in the governance of the institution through participation in regular divisional or College meetings.

- (e) Other assigned College duties, such as advising, counseling, supervision of interns, and academic administration, or as described in the Position Description.

### **10.5 Employee Assistance Programs.**

Neither the fact of an employee's participation in an employee assistance program nor information generated by participation in the program, shall be used as evidence of a performance deficiency within the evaluation process described in this Article, except for information relating to an employee's failure to participate in an employee assistance program consistent with the terms to which the employee and the College have agreed

## **ARTICLE 11 EVALUATION FILE**

### **11.1 Policy.**

There shall be one (1) evaluation file containing a dated copy of all documents used in the evaluation process, other than evaluation for tenure and promotion. When evaluations and other personnel decisions are made, other than for tenure or promotion, the only documents which may be used are those contained in that file. Such documents shall be placed in the evaluation file within a reasonable time after receipt by the custodian of the file. Employees shall be notified, upon written request, of the location of the evaluation file and the identity of the custodian.

### **11.2 Access.**

An employee may examine the evaluation file, upon reasonable advance notice, during the regular business hours of the office in which the file is kept, normally within the same business day as the employee requests to see it, and under such conditions as are necessary to insure its integrity and safekeeping. Upon request, an employee may paginate with successive whole numbers the materials in the file, and may attach a concise statement in response to any item therein. Upon request, an employee is entitled to one (1) free copy of any material in the evaluation file. Additional copies may be obtained by the employee upon the payment of a reasonable fee for photocopying. A person designated by the employee may examine that employee's evaluation file with the written authorization of the employee concerned, and subject to the same limitations on access that are applicable to the employee.

### **11.3 Use of Evaluative Materials.**

In the event a grievance is filed, the College, and UFF grievance representatives, the arbitrator, and the grievant shall have the right to use, in the grievance proceedings, copies of materials from the grievant's evaluation file.

### **11.4 Anonymous Material.**

There shall be no anonymous material in the evaluation file except for numerical summaries of student evaluations that are part of a regular evaluation procedure of classroom instruction and/or written comments from students obtained as part of that regular evaluation procedure. If written comments from students in a course are included in the evaluation file, all of the comments obtained in the same course must be included.

**11.5 Peer Committee Evaluations.**

Evaluative materials, or summaries thereof, prepared by peer committees as part of a regular evaluation system, may be placed in an evaluation file when signed by a representative of the committee.

**11.6 Removal of Contents.**

Materials which the employee and the College agree are to be contrary to fact shall be removed or redacted from the file. If an employee believes that an item in the file is contrary to fact and the College disagrees, the employee may add to the file material to explain and document the claim of inaccuracy. This section shall not authorize the removal of materials from the evaluation file when there is a dispute concerning a matter of judgment, opinion, or fact. Materials may also be removed pursuant to the resolution of a grievance.

**11.7 Limited Access Information.**

Information reflecting evaluation of employee performance shall be available for inspection only by the employee, the employee's representative, College officials who use the information in carrying out their responsibilities, peer committees responsible for evaluating employee performance, and arbitrators or others engaged by the parties to resolve disputes, or by others by court order. Employees who have filed a formal grievance that requires access to information in other employees' evaluation files shall have access to such information only to the extent permitted by law and regulation. The scope and timing of such access is limited by its relevance to the grievance procedure. Other employees shall be notified if access to their file is needed, and they shall be allowed to monitor the access to their file or to provide copies of the relevant information themselves.

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**ARTICLE 12**  
**RETENTION AND NON-REAPPOINTMENT**

**12.1 No Property Right.**

No appointment shall create any right, interest, or expectancy in any other appointment beyond its specific terms, except as provided for by the terms of this Article, and Articles 13 & 15.

**12.2 Notice.**

- (a) All employees, except those described in (b)(1) and (c) below are entitled to the following written notice that they will not be offered further appointment:
  - (1) For employees in their first two (2) years of continuous college service, one semester (or its equivalent, 19.5 weeks, for employees appointed for more than an academic year);
  - (2) For employees with two (2) or more years of continuous college service one year; or
  - (3) The provision of notice under this section does not provide rights to a summer appointment beyond those provided in Section 8.4(b).
  
- (b) Employees who are funded through non-recurring funds, e.g., contracts and grants, sponsored research funds, and grants and donations trust funds, except those described in Section 12.2(a)(3), above, are entitled to the following written notice that they will not be offered further appointment:
  - (1) For employees in their first five (5) years of continuous college service, no notice need be provided and the statement in (d), below, shall be included in their employment contracts; or
  - (2) for employees with five (5) or more years of continuous college service, ninety (90) days-notice shall be provided contingent upon funds being available in the contract or grant.
  
- (c) Employees who are appointed for less than one (1) academic year, who are appointed to a visiting appointment, who are appointed to a fixed multi-year appointment, pursuant to Section 8.4(f) and employees employed in an auxiliary entity, are not entitled to notice that they will not be offered further appointment, and the statement in (d), below, shall be included in their employment contracts.
  
- (d) Employees described in (b) (1) and (c), above, shall have the following statement included in their employment contracts: “Your employment under this contract will cease on the date indicated contingent upon funds being available in the contract or grant through this date. No further notice of cessation of employment is required.”
  
- (e) An employee who is entitled to written notice of non-reappointment in accordance with the provisions of Section 12.2 who receives written notice that the employee will not be offered further appointment shall be entitled, upon written request within



twenty (20) days following receipt of such notice, to a written statement of the basis for the decision not to reappoint. Thereafter, the President shall provide such statement within twenty (20) days following receipt of such request. All such notices and statements are to be sent by certified mail, return receipt requested, or delivered in person to the employee with written documentation of receipt obtained.

- (f) Employees entitled to notice under 12.2 are expected to work during the notice period and may be assigned to a similar position with equivalent duties as necessary. Misconduct or incompetence during the notice period will be addressed according to Article 16. Failure to work during the notice period may be considered job abandonment, as outlined in 16.8.

### **12.3 Grievability.**

An employee who receives written notice of non-reappointment may, according to Article 20, contest the decision because of an alleged violation of a specific term of this Agreement or because of an alleged violation of the employee's constitutional rights. Such grievances must be filed within thirty (30) days of receipt of the statement of the basis for the decision not to reappoint pursuant to Section 12.2(e) or receipt of the notice of non-reappointment if no statement is requested.

### **12.4 Non-Reappointment Considerations.**

If the decision not to reappoint was based solely upon adverse financial circumstances, reallocation of resources, reorganization of degree or curriculum offerings or requirements, reorganization of academic or administrative structures, programs, or functions, and/or curtailment or abolition of one or more programs or functions, the College shall take the following actions:

- (a) Make a reasonable effort to locate appropriate alternative or equivalent employment within the College; and
- (b) Offer such employee, who is not otherwise employed in an equivalent full-time position, re-employment in the same or similar position at the College for a period of two years following the initial notice of non-reappointment, should an opportunity for such re-employment arise. All persons on the recall list shall regularly be sent College position vacancy announcements. For this purpose, it shall be the employee's responsibility to keep the College advised of the employee's current address. Any offer of re-employment pursuant to this section must be accepted within fifteen (15) days after receipt of the offer, such acceptance to take effect not later than the beginning of the semester immediately following the date the offer was made. In the event such offer of re-employment is not accepted, the employee shall receive no further consideration pursuant to this Article.

### **12.5 Resignation.**

An employee who wishes to resign has the professional obligation, when possible, to provide the College with at least one semester's notice. Upon resignation, all consideration for tenure and reappointment shall cease.

**12.6 Notice Document.**

Notice of appointment and non-reappointment shall not be contained in the same document.

**12.7 Retention of non-tenured regular faculty after the third tenure-earning year.**

- (a) **Division Vote.** A regular faculty member's retention shall be voted upon by his or her Division in February of the third tenure-earning year of service, or in the fourth continuous year in a regular appointment, whichever comes first. Regular, full-time faculty members and shared position faculty other than those in their first year of service are eligible to vote. Shared position faculty share one ballot. Faculty members on assigned research or any sort of leave of absence in the semester in which the vote is conducted may abstain from voting if they so choose. An abstention by any other eligible voter is counted as a negative vote. Regular part-time faculty members vote only on their own retention. Ballots shall be composed to require an assessment of quality, in the form of a yes/no vote, in the areas of teaching, scholarship and service, as well as a composite assessment of the three areas. Positive votes in the composite assessment on at least three-quarters of the ballots (counting as negative votes abstentions by division members who are neither on assigned research nor leave of absence) shall constitute a positive Divisional vote in favor of retention. The outcome of the vote, including the numerical tally in each category, shall be communicated to the faculty member within three working days of the counting of the vote.
- (b) A faculty member receiving a positive Divisional vote shall be reappointed.
- (c) The case of a faculty member who does not receive a positive (three-quarters majority) vote from the Division shall be reviewed by the PAC.
  - (1) The PAC shall recommend either retention or non-retention to the Provost. In such cases, at least five votes in favor of retention are required in the PAC in order to override the Divisional vote and recommend retention. Otherwise, the PAC will recommend non-retention to the Provost.
  - (2) If the PAC recommends retention in spite of the negative Division vote, the Provost may affirm the recommendation, in which case the faculty member shall be reappointed. In this case, the Provost shall at the time of the decision provide the Chair of the faculty member's division with a written statement of the reasons for the decision, and the Chair shall inform the division of those reasons.
  - (3) If the PAC recommends non-retention to the Provost or the PAC recommends retention but the Provost does not affirm the recommendation, the Provost shall recommend either retention or non-retention to the President. The Provost's recommendation shall be accompanied by a written statement of the reasons for the recommendation. Copies of the statement shall be provided to the faculty member, the PAC, and the Chair of the faculty member's division. If the Provost's recommendation is contrary to that of the PAC, the statement must identify extraordinary circumstances justifying such a recommendation.
  - (4) In cases covered by Paragraph (3) above, if the President's decision is contrary to the Provost's recommendation, a written statement of the reasons for the

decision shall at the time of the decision be provided to the Provost, with copies provided to the faculty member, the PAC, and the Chair of the faculty member's division.

- (d) Except in cases of voluntary resignation, retirement, removal for just cause in accordance with the provisions of Article 16, Disciplinary Action and Job Abandonment, or layoff in accordance with the provisions of Article 13, Layoff and Recall, faculty members who have been reappointed for the fourth tenure-earning year in accordance with the procedures specified in this Section and who receive a satisfactory or better annual evaluation for the fourth or fifth tenure-earning year shall be offered reappointment for the following year.

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**ARTICLE 13**  
**LAYOFF AND RECALL**

**13.1 Layoff & Layoff Unit**

- (a) When a layoff is to occur as a result of adverse financial circumstances; reallocation of resources; reorganization of degree or curriculum offerings or requirements; reorganization of academic or administrative structures, programs, or functions; or curtailment or abolition of one or more programs or functions; the College shall notify the NCUFF and the UFF State Office no less than thirty (30) days prior to taking such action. UFF may request a consultation with the President pursuant to Sections 2.1 or 2.2 during this period to discuss the layoff.
- (b) The layoff unit shall be at an organizational level of the College, such as a division, discipline, area, program, or other formal level of organization as the College deems appropriate.

**13.2 Layoff Considerations.**

The selection of employees in the layoff unit to be laid off will be determined as follows:

- (a) No tenured/ fixed multi-year/permanent status employee shall be laid off if there are non-tenured/ non-permanent status employees in the layoff unit.
- (b) No employee in a non-tenured/non-permanent status position in the layoff unit with more than five (5) years of continuous college service shall be laid off if there are any such employees with five (5) years or less service.
- (c) The sole instance in which only one (1) employee will constitute a layoff unit is when the functions that the employee performs constitute an area, program, or other level of organization at the College.
- (d) Where employees are equally qualified under (a) or (b) above, those employees will be retained who, in the judgment of the College, will best contribute to the mission and purpose of the institution. In making such judgment, the College shall consider employees' length of continuous college service, and shall take into account other appropriate factors, including but not limited to performance evaluation by students, peers, and supervisors, and the employee's academic training, professional reputation, teaching effectiveness, research record or quality of the creative activity in which the employee may be engaged, and service to the profession, community, and public.
- (e) No tenured/fixed multi-year/permanent status employee shall be laid off for the purpose of creating a vacancy to be filled by an administrator entering the bargaining unit.

- (f) The College shall notify the NCUFF in writing regarding the use of adjunct and other non-unit faculty in those departments/units where employees have been laid off. The use of adjunct and other non-unit faculty in departments/units where employees have been laid off may be the subject of consultation meetings pursuant to Section 2.2.

### **13.3 Alternative/Equivalent Employment.**

The College shall make a reasonable effort to locate appropriate alternate or equivalent employment for laid-off employees within the College, and to make known the results of the effort to the person affected.

### **13.4 Notice.**

Employees should be informed of layoff as soon as practicable and, where circumstances permit, employees with one or more years of continuous college service should be provided at least one (1) year's notice. Employees who have received notice of layoff shall be afforded the recall rights granted under Sections 13.3 and 13.5. Formal written notice of layoff is to be sent by certified mail, return receipt requested, or delivered in person to the employee with written documentation of receipt obtained. The notice shall include effective date of layoff; reason for layoff; reason for shortened period of notification, if applicable; a statement of recall rights; a statement of appeal/grievance rights and applicable deadlines for filing; a statement that the employee will receive the College Vacancy Listing until the recall period ends or re-employment offer is refused; and a statement that the employee is eligible for consideration for retraining under the provision of Section 22.4 for a period of two years following layoff.

### **13.5 Re-employment/Recall.**

- (a) For a period of two years following layoff or for employees appointed to a fixed multi-year appointment, not to exceed the length of their last employment contract, not to exceed two (2) years, an employee who has been laid off and who is not otherwise employed in an equivalent full-time position shall be offered re-employment in the same or similar position at the College at which previously employed at the time of layoff, should an opportunity for such re-employment arise. All persons on the recall list shall regularly be sent the College position vacancy announcements. For this purpose, it shall be the employee's responsibility to keep the College advised of the employee's current address. Any offer of re-employment pursuant to this section must be accepted within fifteen (15) days after receipt of the offer, such acceptance to take effect not later than the beginning of the semester immediately following the date the offer was made. In the event such offer of re-employment is not accepted, the employee shall receive no further consideration pursuant to this Article. Employees appointed to a fixed multi-year appointment, who are recalled, shall be offered re-employment not to exceed the length of their last employment contract. The College shall notify the NCUFF when an offer of re-employment is issued. An employee who held a tenured/ fixed\_multi-year/permanent status appointment on the date of termination by reason of layoff shall resume the

tenured/ fixed multi-year/permanent status appointment upon recall.

- (b) The employee shall receive the same credit for years of service for purposes of layoff as held on the date of layoff.
- (c) Employee Assistance Programs. Consistent with the College's Employee Assistance Program, employees participating in an employee assistance program who receive a notice of layoff may continue to participate in that program for a period of ninety (90) days following the layoff.

### **13.6 Limitations.**

The provisions of Sections 13.2 through 13.5 of this Agreement shall not apply to those employees described in Sections 12.2(a)(3), (b), and (c).

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**ARTICLE 14**  
**PROMOTION PROCEDURE**

**14.1 Policy.**

- (a) Promotion decisions are not merely a totaling of an employee's annual performance evaluations, though, like such evaluations, they are to be based upon the employee's performance of assigned duties, employing where applicable the criteria listed in Article 10.4, above. The College, through its faculty, professional employees, and administrators, assesses the employee's potential for growth and scholarly contribution as well as past meritorious performance.
- (b) Upon annual written request beginning with the second year of employment, employees eligible for consideration for promotion shall be apprised of their progress toward promotion. The appraisal shall be included as a separate component of the annual evaluation and is intended to provide assistance and counseling to candidates to help them to qualify themselves for promotion. The employee may request, in writing, a meeting with an administrator at the next higher level to discuss concerns regarding the promotion appraisal which were not resolved in previous discussions with the evaluator. The appraisals are not binding upon the College.

**14.2 Criteria.**

- (a) Promotion decisions shall be a result of meritorious performance of assigned duties. For teaching faculty, decisions shall be based upon established written criteria specified in Sections 4.4 ("Promotion") and 4.12 ("Summary of the Retention, Promotion, Tenure Process") of the *Faculty Handbook*; and "Guidelines for Tenure and Promotion, New College of Florida" June 2003. For librarians, decisions shall be based on Guidelines for Promotion of New College of Florida Librarians, which is appended to the Bylaws of the Library Faculty Committee of New College of Florida. All affected employees shall be given a copy of the criteria. Any modification of these criteria shall be subject to collective bargaining.
- (b) Promotion criteria shall be available in the division/unit office and/or at the College/unit level.

**14.3 Procedures.**

- (a) Recommendations for promotion shall begin with the employee's supervisor and shall be submitted to the appropriate officials for review. Prior to the consideration of the employee's promotion, the employee shall have the right to review the contents of the promotion file and may attach a brief response to any material therein. It shall be the responsibility of the employee to see that the file is complete. The provisions of Sections 11.2 through 11.7 of this Agreement shall apply to the contents of the promotion file.
- (b) Recommendations for promotion shall include a copy of applicable promotion

criteria, the employee's annual assignments and annual evaluations, and, if the employee chooses, the employee's promotion appraisal(s). The reviewers at any stage in the review may request to view the appraisal(s).

- (c) If any material is added to the file after the commencement of consideration, a copy shall be sent to the employee within five (5) days (by personal delivery or by mail, return receipt requested). The employee may attach a brief response within five (5) days of his/her receipt of the added material. The file shall not be forwarded until either the employee submits a response or until the second five (5) day period expires, whichever occurs first. The only documents which may be considered in making a tenure recommendation are those contained or referenced in the tenure file.
- (d) Additional procedures for promotion of teaching-and-research faculty:
  - (1) By April 1 each year, the Provost shall notify all regular faculty members holding the rank of Assistant or Associate Professor that they are eligible to be considered for promotion, and that if they wish to be considered for promotion, they should inform the Provost and the Division chair, in writing, by August 15, submitting names and addresses of possible references at that time. The Provost shall notify the PAC by August 25 which faculty members will be candidates for promotion. Letters soliciting outside references will be sent out by the Division chair no later than the end of the first week of classes.
  - (2) The compilation and updating of records of service and achievement is the responsibility of the individual faculty member. The record should contain:
    - a. A current vita.
    - b. Copies of year-end activity reports written annually (to contain: an updated list of courses and tutorials taught, Independent Study Projects supervised, senior theses supervised, contract advisees, baccalaureate committees served on [with student and AOC], faculty committees served on, and scholarly activities).
    - c. Copy of initial appointment letter.
    - d. Assignment of duties letter for each semester.
    - e. Student teaching evaluations.
    - f. Annual letters of evaluation from the Division Chair.
    - g. Copies of PAC reviews.
    - h. Copies of letters sent to the PAC.
    - i. Copies of papers and publications clearly identified as in draft, in press, or published including printouts of any web-based publications.
    - j. Information about community service not otherwise reported.
    - k. Syllabi and course descriptions.
    - l. Contracts, contract certifications, and course evaluations (to be provided in a convenient form by the Registrar's Office).
    - m. Any other materials relevant to teaching, scholarship and service that the faculty member may deem appropriate, such as letters from students, colleagues or administrators.



- n. Any written response or comments the faculty member wishes to provide with regard to any item in the file.
- (3) A divisional vote on promotion, using paper ballots employing the double envelope system, shall be conducted in November, but at least one month after the end of the first module. Regular, full-time faculty members other than those in their first year of service are eligible to vote. Faculty members on assigned research or any sort of leave of absence in the semester in which the vote is conducted may abstain from voting if they so choose. An abstention by any other eligible voter is counted as a negative vote. Positive votes on at least two-thirds of the ballots (counting as negative votes abstentions by division members who are neither on assigned research nor leave of absence) shall constitute a positive Divisional recommendation to promote.

<b>Table 14.1</b>			
<b>WEIGHTING PROCEDURE FOR MAKING COMPOSITE RECOMMENDATIONS FOR PROMOTION</b>			
<b>Divisional Recommendation</b>	<b>PAC Vote</b>		<b>Composite Recommendation</b>
	<b>Yes</b>	<b>No</b>	
No +	0	6	= No
	1	5	
	2	4	
	3	3	
	4	2	
No +	5	1	= Yes
	6	0	
Yes +	0	6	= No
	1	5	
	2	4	
Yes +	3	3	= Yes
	4	2	
Yes +	5	1	= Yes
	6	0	

- (4) The Chair of the PAC shall communicate the outcome of the divisional vote in writing to the candidate within three working days of its tally. If the candidate fails to receive the necessary two-thirds majority of the divisional vote, he or she shall be given the option of withdrawing the request for promotion. If the division vote is positive or the candidate does not withdraw the request for promotion, the outcome of the division vote shall be communicated to the PAC. The PAC shall vote on whether to recommend promotion to the Provost. The PAC shall

communicate in writing to the Provost and the candidate a composite recommendation determined by the outcomes of the divisional and PAC votes according to table 14.1, below. The recommendation shall be accompanied by the totals of the divisional and PAC votes.

- (5) The Provost shall make a recommendation to the President, accompanied by a written statement of the reasons for the recommendation. The recommendation and all supporting material from the PAC and Provost shall be provided to the candidate, who shall have the opportunity to provide a written response to the President.
- (6) If the President's decision does not conform to the Provost's promotion recommendation, a written statement detailing extraordinary circumstances warranting such a decision shall be provided to the Provost, with copies supplied to the candidate and the PAC.
- (7) Tiered Associate Professor: Three tiers are designated within the rank of Associate Professor. Promotions from Assistant Professor are to Tier 1 Associate Professor. Promotions to Tier 2 and Tier 3 Associate Professor will be considered at the 7 year review of tenured Associate Professors. Candidates for tier promotion must broadly demonstrate strength at the level of Full Professor in one area (teaching, service, or scholarship/creative work) while sustaining Associate –level performance in the other two areas.

(e) Additional procedures for promotion of Assistant and Associate Program Directors in Counseling and Wellness, Assistant and Associate Program Directors in Writing Instruction, and (working title) Assistant and Associate Professional Specialists. The College shall develop criteria and procedural guidelines for promotion to the ranks of Associate Program Director and Program Director in Counseling and Wellness in consultation with employees in the Counseling and Wellness Center. The College shall develop criteria and procedural guidelines for promotion to the ranks of Associate Program Director and Program Director in Writing Instruction in consultation with employees in the Writing Resource Center. The College shall develop criteria and procedural guidelines for promotion to the ranks of (working title) Associate Professional Specialist and (working title) Professional Specialist in consultation with potentially affected employees. Any subsequent modification of these procedural guidelines shall be subject to collective bargaining. The guidelines for promotion presented by UFF in Fiscal Year 2021-2022, will be accepted by management contingent upon the success of a 2-year pilot program implemented effective July 1, 2022, through June 30, 2024.

#### **14.4 Notice of Denial.**

If any employee is denied promotion, the employee shall be notified in writing by the appropriate administrative official, within ten (10) days or as soon as possible thereafter, of that decision. Upon written request by an employee within twenty (20) days of the employee's receipt of such decision, the College shall provide the employee with a written statement of the reasons why the promotion was denied.

## ARTICLE 15 TENURE

### 15.1 Eligibility.

Employees with the rank of Assistant Professor, Associate Professor, Professor, and other employees the College may designate, shall be eligible for tenure. The College may designate other positions as tenure-earning and shall notify the employee of such status at the time of initial appointment.

### 15.2 Tenure Decision.

An employee shall normally be considered for tenure during the sixth year of continuous service in a tenure-earning position including any prior service credit granted at the time of initial employment. An employee's written request for early tenure consideration is subject to the College's written agreement.

- (a) By the end of six (6) years of service at the College, an employee eligible for tenure shall either be awarded tenure by the Board or given notice that further employment will not be offered. Upon written request by an employee within twenty (20) days of the employee's receipt of such notice, the College shall provide the employee with a written statement of reasons by the President why tenure was not granted.
- (b) Decision by the Board. The Board shall award tenure. This decision shall normally be made at the February Board Meeting but no later than the following meeting. The employee shall be notified in writing by the President within five (5) days of the decision of the Board.
- (c) An employee being considered for tenure prior to the sixth (6) year may withdraw from consideration on or before March 15 without prejudice.

### 15.3 Criteria for Tenure.

- (a) The decision to award tenure to an employee shall be a result of meritorious performance and shall be based upon established written criteria specified in Sections 4.5 ("Tenure Procedure"), 4.6 ("Criteria for Retention, Promotion, and Tenure,") and 4.12 ("Summary of the Retention, Promotion, Tenure Process") of the *Faculty Handbook*, and Guidelines for Tenure and Promotion, New College of Florida June 2003. The decision shall take into account the following:
  - (1) annual performance evaluations;
  - (2) the needs of the division/unit and college;
  - (3) the contributions of the employee to the employee's academic unit (program, division/unit); and
  - (4) the contributions the employee is expected to make to the College
- (b) The College shall give a copy of the criteria for tenure to employees eligible for

tenure, and each such employee shall be appraised in writing once each year of the employee's progress toward tenure. The appraisal shall be included as a separate component of the annual evaluation and is intended to provide assistance and counseling to candidates to help them to qualify themselves for tenure. The employee may request, in writing, a meeting with an administrator at the next higher level to discuss concerns regarding the tenure appraisal which were not resolved in previous discussions with the evaluator. The appraisals are not binding upon the College.

- (c) Tenure criteria shall be available in the division/unit office.

#### **15.4 Modification of Criteria.**

- (a) **Modifying Criteria.** Any modification of tenure criteria shall be subject to collective bargaining. Any proposal to develop or modify tenure criteria shall be available for discussion by members of the affected divisions/units before adoption.
- (b) **Effect on Employees.** The provisions of Section 9.3(d) are applicable to the modified criteria. Further, if an employee has at least three (3) years of tenure-earning credit as of the date on which the tenure criteria are adopted under Section 15.4(a), above, the employee shall be evaluated for tenure under the criteria as they existed prior to modification unless the employee notifies the College at least thirty (30) days prior to commencement of the tenure consideration that he/she chooses to be evaluated under the newly-adopted criteria.

#### **15.5 Recommendations and Procedures.**

- (a) Prior to the consideration of the employee's candidacy, the employee shall have the right to review the contents of the tenure file and may attach a brief and concise response to any materials therein. It shall be the responsibility of the employee to see that the file is complete. The provisions of Sections 11.2 through 11.7 of this Agreement shall apply to the contents of the tenure file.
- (b) Faculty tenure procedures.
  - (1) By April 1 each year, the Provost shall notify all non-tenured faculty members, including shared position faculty members, who will be in their sixth full year of eligibility toward tenure the following September that they are required to be considered for tenure, and that they will be considered unless they notify the Provost in writing by August 15 of their intention not to be considered for tenure. By May 1, candidates for tenure shall submit to their division Chairs names and addresses of possible references. The Provost shall notify the PAC by August 25 which faculty members will be candidates for tenure. Letters soliciting outside references will be sent out no later than the end of the first week of classes.
  - (2) The compilation and updating of records of service and achievement is the responsibility of the individual faculty member. The record should contain:

- a. Copies of year-end activity reports written annually (to contain: an updated list of courses and tutorials taught, Independent Study Projects supervised, senior theses supervised, contract advisees, baccalaureate committees served on [with student and AOC], faculty committees served on, and scholarly activities).
  - b. Current vita.
  - c. Copy of initial appointment letter.
  - d. Assignment of duties letter for each semester.
  - e. Student teaching evaluations.
  - f. Annual letters of evaluation from the Division Chair.
  - g. Copies of PAC reviews.
  - h. Copies of letters sent to the PAC.
  - i. Copies of papers and publications clearly identified as in draft, in press, or published including printouts of any web-based publications.
  - j. Information about community service not otherwise reported.
  - k. Syllabi and course descriptions.
  - l. Contracts, contract certifications, and course evaluations (to be provided in a convenient form by the Registrar's Office).
  - m. Any other materials relevant to teaching, scholarship and service that the faculty member may deem appropriate, such as letters from students, colleagues or administrators.
  - n. Any written response or comments the faculty member wishes to provide with regard to any item in the file.
- (3) A divisional vote on tenure, using paper ballots employing the double envelope system, shall be conducted in November. Regular, full-time faculty and shared position faculty members other than those in their first year of service are eligible to vote. Shared faculty share one ballot. Faculty members on assigned research or any sort of leave of absence in the semester in which the vote is conducted may abstain from voting if they so choose. An abstention by any other eligible voter is counted as a negative vote. Positive votes on at least three-fourths of the ballots (counting as negative votes abstentions by division members who are neither on assigned research nor leave of absence) shall constitute a positive Divisional recommendation to award tenure.
- (4) The Chair of the PAC shall within three working days of the tally, communicate the outcome of the divisional vote in writing to the candidate and to the PAC. The PAC shall vote on whether to recommend tenure to the Provost. The PAC shall communicate to the Provost a composite recommendation determined by the outcomes of the divisional and PAC votes according to table 15.1, below. The recommendation shall be accompanied by the totals of the divisional and PAC votes.
- (5) The Provost shall make a recommendation to the President, accompanied by a written statement of the reasons for the recommendation. The recommendation and all supporting material from the PAC and Provost shall be provided to the

candidate, who shall have the opportunity to provide a written response to the President.

- (6) The President shall make a recommendation to the Board. If the President’s recommendation is contrary to the Provost’s, recommendation, a written statement detailing extraordinary circumstances warranting such a decision shall be provided to the Provost, with copies supplied to the candidate and the PAC.
- (c) If any material is added to the file after the commencement of consideration, a copy shall be sent to the employee within five (5) days (by personal delivery or by mail, return receipt requested). The employee may attach a brief response within five (5) days of his/her receipt of the added material. The file shall not be forwarded until either the employee submits a response or until the second five (5) day period expires, whichever occurs first. The only documents which may be considered in making a tenure recommendation are those contained or referenced in the tenure file.

<b>Table 15.1</b>			
<b>WEIGHTING PROCEDURE FOR MAKING COMPOSITE RECOMMENDATIONS FOR PROMOTION AND TENURE</b>			
<b>Divisional Recommendation</b>	<b>PAC Vote</b>		<b>Composite Recommendation</b>
	<b>Yes</b>	<b>No</b>	
No +	0	6	= No
	1	5	
	2	4	
	3	3	
	4	2	
No +	5	1	= Yes
	6	0	
Yes +	0	6	= No
	1	5	
	2	4	
Yes +	3	3	= No
Yes +	4	2	= Yes
	5	1	
	6	0	

**15.6 Other Considerations.**

- (a) During the period of tenure-earning service, the employee's employment shall be governed by the provisions of Article 12.

- (b) Part-time service of an employee employed at least one semester in any twelve (12) month period shall be accumulated. For example, two (2) semesters of half-time service shall be considered one-half year of service toward the period of tenure-earning service.
- (c) Where employees are credited with tenure-earning service at the time of initial appointment, all or a portion of such credit may be withdrawn once by the employee prior to formal application for tenure.
- (d) For shared position, the work of each faculty is assessed separately with reference to the individual's portion of the position and following the tenure guidelines in the current faculty Handbook (2010).

### **15.7 Tenure upon Appointment.**

Tenure may be granted to an employee by the Board at the time of initial appointment, upon recommendation of the Provost or the President. The Provost or the President shall consider the recommendation of the relevant academic division prior to making his/her final tenure recommendation.

### **15.8 Leave.**

Authorized leaves of absence may, under the provisions of Article 17, Leaves, be credited toward the period of tenure-earning service.

### **15.9 Termination/Layoff.**

Tenure/permanent status guarantees annual reappointment for the academic year until voluntary resignation, retirement, removal for just cause in accordance with the provisions of Article 16, Disciplinary Action and Job Abandonment, or layoff in accordance with the provisions of Article 13, Layoff and Recall, but does not extend to administrative appointments.

**ARTICLE 16**  
**DISCIPLINARY ACTION AND JOB ABANDONMENT**

**16.1 Just Cause.**

The purpose of this article is to provide a prompt and equitable procedure for disciplinary action taken with just cause. Just cause shall be defined as:

- (a) incompetence, or
- (b) misconduct.

**16.2 Right to representation.**

An employee has the right to union representation during investigatory questioning that may reasonably be expected to result in disciplinary action.

**16.3 Progressive Discipline.**

Both parties endorse the principle of progressive discipline as applied to professionals. Progressive discipline begins with the First Written Oral Reprimand.

**16.4 Termination.**

A tenured or regular status appointment or any appointment of definite duration may be terminated for just cause. An employee shall be given written notice of termination at least six (6) months in advance of the effective date of such termination or suspension, except that in cases where the President determines that an employee's actions adversely affect the functioning of the College or represents a threat to the safety or well-being of College personnel, students or guests, the President may give less than six (6) months notice.

**16.5 Notice of Intent.**

When the President or representative has reason to believe that a suspension or termination should be imposed, the President or representative shall provide the employee with a written notice of the proposed action, the reasons therefore, and the opportunity for a Predetermination Conference to be held within ten (10) working days of the Notice of Intent. Such notice shall be sent certified mail, return receipt requested, or delivered in person with written documentation of receipt obtained. The employee shall be given ten (10) days in which to respond in writing to the President or representative before the proposed action is taken. The President or representative then may issue a notice of disciplinary action under Section 16.7. If the President or representative does not issue a notice of disciplinary action, the notice of proposed disciplinary action shall be removed from the employee's evaluation file.

**16.6 Notice of Discipline.**



All notices of disciplinary action shall include a statement of the reasons therefore and a statement advising the employee that the action is subject to Article 20, Grievance Procedure. All such notices shall be sent certified mail, return receipt requested, or delivered in person to the employee with written documentation of receipt obtained.

#### **16.7 Disciplinary Action Other than Termination.**

The College retains its right to impose disciplinary action other than termination for just cause, including, but not limited to, suspension with or without pay. The period of suspension without pay for just cause cannot be more than 10 days. Counseling, including recommendations for participation in an Employee Assistance Program, shall not be considered disciplinary action.

#### **16.8 Job Abandonment**

- (a) An employee shall be considered to have abandoned the position and voluntarily resigned from the College when for a period of twelve (12) or more consecutive days the employee is not performing the assigned duties for that position and is not available at the place of employment.
- (b) Notwithstanding paragraph (a), above, if the employee's absence is for reasons beyond the control of the employee and the employee notifies the College as soon as practicable, the employee will not be considered to have abandoned the position.

#### **16.9 Employee Assistance Program.**

Neither the fact of an employee's participation in an employee assistance program, nor information generated by participation in the program, shall be used as a reason for discipline under this Article, except for information relating to an employee's failure to participate in an employee assistance program consistent with the terms to which the employee and the College have agreed.

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**ARTICLE 17**  
**LEAVES**

**17.1 Requests for a Leave or Extension of Leave of One (1) Semester or More.**

- (a) For a leave of one (1) semester or more, an employee shall make a written request not less than 120 days prior to the beginning of the proposed leave, if practicable.
- (b) For an extension of a leave of one (1) semester or more, an employee shall make a written request not less than sixty (60) days before the end of the leave, if practicable.
- (c) the College shall approve or deny such request in writing not later than thirty (30) days after receipt of the request.
- (d) An absence without approved leave or extension of leave shall subject the employee to the provisions of Section 16.7.
- (e) An employee's request for use of leave for an event covered by the provisions of the FMLA shall be submitted and responded to in accordance with the provisions of Section 17.6.

**17.2 Return from Leave.**

An employee who returns from an approved leave of absence with or without pay shall be returned to the same classification, unless the College and the employee agree in writing to other terms and conditions. The return from FMLA leave shall be in accordance with Section 17.6.

**17.3 Accrual during Leave with Pay.**

An employee shall accrue normal leave credits while on compensated leave in full-pay status, or while participating in paid sabbatical or professional development programs. If an employee is on compensated leave in less than full-pay status for other than sabbaticals or professional development programs, the employee shall accrue leave in proportion to the pay status.

**17.4 Tenure Credit during Periods of Leave.**

Semester(s) during which an employee is on compensated or uncompensated leave shall not be creditable for the purpose of determining eligibility for tenure, except by mutual agreement of the employee and the College. In deciding whether to credit such leave toward tenure eligibility or permanent status, the President shall consider the duration of the leave, the relevance of the employee's activities while on such leave to the employee's professional development and to the employee's field of employment, the benefits, if any, which accrue to the College by virtue of placing the employee on such leave, and other appropriate factors.

**17.5 Holidays.**

An employee shall be entitled to observe all official holidays designated in accordance with

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Section 110.117, Florida Statutes and Board Regulations. Classes not held because of a holiday shall not be rescheduled.

- (a) Supervisors are encouraged not to require an employee to perform duties on holidays; however, an employee required to perform duties on holidays shall have the employee's schedule adjusted to provide equivalent time off, up to a maximum of eight (8) hours for each holiday worked.
- (b) If an employee who has performed duties on a holiday terminates employment prior to being given time off, the employee shall be paid, upon termination, for the holiday hours worked within the previous twelve (12) month period.

### **17.6 Family and Medical Leave Act (FMLA) Leave**

- (a) The FMLA, *The Family and Medical Leave Act of 1993 (FMLA) (Pub.L. 103-3; 29 U.S.C. sec. 2601; 29 CFR 825)*, is the common name for the Federal law providing eligible employees a benefit of up to four hundred and eighty (480) hours of leave without pay for qualified family or medical reasons during a one-year period. This Act entitles the employee to take leave without pay; where the College policies permit, employees may use accrued leave with pay during any qualifying family or medical leave. The failure to list, define, or specify any particular provision or portion of the FMLA in this Agreement shall in no way constitute a waiver of any of the rights or benefits conferred to the employer or the employee through the FMLA.

In relation to the Family Medical leave Act, the College shall implement the Act in accordance with the procedures contained in The New College of Florida Employee Handbook.

### **17.7 Parental Leave.**

- (a) Unpaid Parental Leave
  - (1) An employee shall be granted unpaid parental leave not to exceed six (6) months when the employee becomes a biological parent or a child is placed in the employee's home pending adoption or permanent legal guardianship. For instructional employees, if the leave period begins fewer than six months before the end of an academic year contract, the six-month leave may be taken in two parts. The first part would be taken in the current academic year and the second part would be taken in the following academic year. Non-instructional employees must negotiate an appropriate six-month leave period with the Dean of their unit. Foster care is not covered under parental leave but is provided through the FMLA provisions in accordance with Section 17.6.
  - (2) If an employee plans to use a combination of accrued leave and leave without pay, such request shall include the specific periods for each type of leave requested. Use of accrued leave during an approved period of leave without pay shall be in accordance with Section 17.11.
  - (3) The period of parental leave shall begin no more than two (2) weeks

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before the qualifying event (birth, adoption, or permanent legal guardianship).

- (4) The President shall acknowledge to the employee in writing the period of leave to be granted, that such leave counts against the employee's unused FMLA entitlements in accordance with Section 17.6 of this Agreement, and the date of return to employment.
- (5) At the end of the approved parental leave and at the employee's request, the President shall grant leave without pay for a period not to exceed one (1) year, unless the President determines that granting such leave would be inconsistent with the best interests of the College.
- (6) Any illness caused or contributed to by pregnancy shall be treated as a temporary disability and the employee shall be allowed to use accrued sick leave credits when such temporary disability is certified by a health care provider.
- (7) Upon agreement between the employee and the College, intermittent FMLA leave or a reduced work schedule may be approved for the birth of the employee's child or placement of a child with the employee for adoption or permanent legal guardianship in accordance with Section 17.6.

(b) Paid Parental Leave

- (1) Upon request, an employee may be granted paid parental leave when the employee becomes a biological parent or a child is placed in the employee's home pending adoption or permanent legal guardianship. The period of such leave shall not exceed fifteen (15) weeks, and shall be negotiated to minimize its impact on the academic calendar.
- (2) If both parents are employees of the College covered by this CBA, one fifteen (15) week period will be available to each parent-employees under this program for each qualifying event (birth, adoption, or permanent legal guardianship of a child) subject to approval of a modified work plan as set forth in 17.7.b (6).
- (3) Upon request, employees may receive paid parental leave under this program once every three (3) years. Paid parental leave may not be granted more than twice during the employee's term of employment.
- (4) Eligibility and Conditions
  - a To be eligible for participation in the program, an employee must have been employed for a minimum of one (1) academic year. This program does not apply to individuals on a temporary, term limited, or visiting

appointment.

- b. The period of paid parental leave will be prorated and adjusted based on the FTE classification of the employee.
- c. Employees on soft money shall be eligible for participation in the program to the extent that such benefits are permitted by the terms of the contract or grant, and by the rules of the funding agency. Furthermore, paid parental leave will only be permitted where adequate funds are available.
- d. As a condition of receiving paid parental leave, the employee must sign a written agreement to return to their position at the end of the leave period for one (1) semester, or for a period equivalent to the leave period that was granted. This time does not include time awarded for a sabbatical or other type of leave.
- e. Employees on paid parental leave shall not engage in outside employment unless such employment is approved in advance and outlined in the modified work plan required in Section (6) below.

(2) Notice of Request for Paid Parental Leave

- a. The employee must provide notice of their intent to take paid parental leave no later than four (4) months prior to the beginning of the leave period, when possible. For instructional employees, notice shall be provided to the Provost and to the Dean or Division Chair of the employee's unit. For non-instructional employees, notice shall be provided to the Dean of the employee's unit.
- b. In emergency situations, it may not be possible for the employee to give the four (4) month notice required in this section. A shorter notice period may be permitted for good cause and/or special circumstances at the discretion of the Provost, Dean, or Division chair of the unit. In the event of an emergency, the employee must provide notice of their intent to take paid parental leave as soon as is reasonably practicable.
- c. The employee's notice of intent to take leave shall indicate the length of the leave period being requested. The notice of intent shall also specify whether the employee will be on full-time paid parental leave, or if the employee plans to use a combination of accrued sick and annual leave time.
- d. The period of parental leave shall begin no more than two (2) weeks

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before the qualifying event. This provision may be adjusted in the discretion of the Provost, Dean, or Division Chair of the unit for good cause and/or special circumstances.

- e. Paid parental leave is separate from, but may run concurrent with, medical or FMLA leave.

(3) Modified Work Duties

- a. Upon submission of the request for paid parental leave, the employee shall collaborate with the Dean or Division Chair of their unit to develop a modified work plan for the leave period. The details of the modified work plan shall describe the employee's modified work duties.
- b. The modified work plan shall be reviewed by the Dean or Division Chair of the employee's unit. Upon approval, the work plan shall be signed by the employee, the Dean or Division Chair of the unit, and the Provost.
- c. The modified work plan shall be submitted three (3) months before the start of the leave period, when possible. For good cause, this period may be adjusted in the discretion of the Dean or Division Chair. In the event of an emergency, the employee must submit the modified work plan as soon as is reasonably practicable.
- d. Participation in the paid parental leave program is contingent upon the execution of the signed work plan. Repayment of salary, retirement, benefits, and expenses received during paid parental leave shall be required within 60 days when the employee fails to comply with the terms of the signed work plan.
- e. Ordinarily, a faculty member in a tenure earning position will either be awarded tenure at the end of the probationary period or be given notice that further employment will not be offered. However, exceptions to the tenure clock may be considered in some circumstances, pursuant to the Guidelines for Tenure and Promotion adopted by the Board of Trustees. A faculty member in a tenure earning position may request in writing to be appointed to a non-tenure earning position without loss of salary rate. Such request must be included in the request for paid parental leave, and become part of the modified work plan required in this Section. Following the appointment to a non-tenure earning position for the paid parental leave period, and upon return to the College and resuming full work duties, the faculty member will return to the tenure earning position without qualification and the tenure clock will resume.

- f Modified work duty may include the option of not working during parental leave.
- g If modified work duty includes working during parental leave, paid parental leave and FMLA (if applicable) will be tracked and charged on an intermittent basis.

(4) Repayment

- a An employee who uses paid parental leave shall determine how quickly to repay the leave, but the term of repayment shall not exceed ten (10) years. If the employee remains in university employment according to the terms of the program, the total number of paid parental leave hours that were used will be deducted from the employee's remaining accrued sick and/or annual leave balance.
- b If the employee separates from the College before the expiration of the ten (10) year repayment term, the balance of paid parental leave time shall be deducted from the employee's remaining accrued sick and/or annual leave at the time of separation from the College. Sick leave shall be deducted first.
- c In the event that the employee's accrued annual and sick leave balance is insufficient to repay the hours taken under paid parental leave, the College may recover the balance according to the set-off provisions outlined in NCF Regulation 3-4024.

**17.8 Leaves Due to Illness/Injury.**

Illness/Injury is defined as any physical or mental impairment of health, including such an impairment proximately resulting from pregnancy, which does not allow an employee to fully and properly perform the duties of the employee's position. When an employee's illness/injury may be covered by the Americans with Disabilities Act, the provisions of Public Law 101-336 shall apply.

(a) Sick Leave

(1) Accrual of Sick Leave

- a A full-time employee shall accrue four (4) hours of sick leave for each biweekly pay period, or the number of hours that are directly proportionate

to the number of days worked during less than a full-pay period, without limitation as to the total number of hours that may be accrued.

- b. A part-time or shared position employee shall accrue sick leave at a rate directly proportionate to the percent of time employed.
- c. An employee appointed under OPS shall not accrue sick leave.

(2) Uses of Sick Leave.

- a. Sick leave shall be accrued before being taken, provided that an employee who participates in a sick leave pool shall not be prohibited from using sick leave otherwise available to the employee through the sick leave pool.
- b. In the following sections 2, 3, and 4, "immediate family" includes the spouse or domestic partner and the grandparents, parents, brothers, sisters, children, and grandchildren of both the employee and the spouse or domestic partner, dependents living in the household, and others deemed appropriate by the supervisor. Sick leave shall be authorized for the following:
  - 1. The employee's personal illness, injury, or, exposure to a contagious disease which would endanger others.
  - 2. The employee's personal appointments or an immediate family member's appointment with a health care provider.
  - 3. The illness or injury of a member of the employee's immediate family, at the discretion of the supervisor. Approval of requests for use of reasonable amounts of sick leave for caring for a member of the employee's immediate family shall not be unreasonably withheld.
  - 4. The death of a member of the employee's immediate family, at the discretion of the supervisor. Approval of requests for use of reasonable amounts of sick leave for the death of a member of the employee's immediate family shall not be unreasonably withheld.
- c. A continuous period of sick leave commences with the first day of absence and includes all subsequent days until the employee returns to work. For this purpose, Saturdays, Sundays, and official holidays observed by the State shall not be counted unless the employee is scheduled to perform services on such days. During any seven (7) day period, the maximum number of days of sick leave charged against any employee shall be five (5).
- d. An employee who requires the use of sick leave should notify the supervisor on the first day of absence or as soon as practicable.
- e. An employee who becomes eligible for the use of sick leave while on approved annual leave shall, upon notifying the supervisor, substitute the use of accrued sick leave to cover such circumstances.

- (3) Certification. If an employee's request for absence or absence exceeds three (3) consecutive days, or if a pattern of absence is documented, the College may require an employee to furnish certification issued by an attending health care



provider of the medical reasons necessitating the absence and/or the employee's ability to return to work. If the medical certification furnished by the employee is not acceptable, the employee may be required to submit to a medical examination by a health care provider who is not a College staff member which shall be paid for by the College. If the medical certification indicates that the employee is unable to perform assigned duties, the President may place the employee on compulsory leave under the conditions set forth in Section 17.8(c).

(4) Transfer of Credits.

- a. The College shall accept the transfer of a maximum of eighty (80) hours of accrued sick leave, accrued in another Florida State University for which payment has not been received, provided no more than 100 days have elapsed between employments. Documentation must be received from the previous employer that accrued sick leave has not been paid out. This is only allowed if it was negotiated as part of the respective hiring package.
- b. The transfer of greater than 80 hours of unused sick leave from a ~~local~~ State government to an SUS position is not permitted unless a reciprocal agreement in writing between the College and the previous employing entity is in effect.

(5) Payment for Unused Sick Leave

- a. An employee with less than ten (10) years of State service who separates from State government shall not be paid for any unused sick leave.
- b. An employee who has completed ten (10) or more years of credited State service, has not been found guilty or has not admitted to being guilty of committing, aiding, or abetting any embezzlement, theft, or bribery in connection with State government, or has not been found guilty by a court of competent jurisdiction of having violated any State law against or prohibiting strikes by public employees, and separates from State government because of retirement for other than disability reasons, termination, or death, shall be compensated at the employee's current regular hourly rate of pay for one-eighth of all unused sick leave accrued prior to October 1, 1973, plus one-fourth of all unused sick leave accrued on or after October 1, 1973, to a maximum of compensation for 480 hours for sick leave accumulated after October 1, 1973.
- c. Upon layoff, an employee with ten (10) or more years of State service shall be paid for unused sick leave as described in paragraph b., above, unless the employee requests in writing that unused sick leave be retained pending re-employment. For an employee who is re-employed by the College within twelve (12) calendar months following layoff, all unused sick leave shall be restored to the employee, provided the employee requests such action in writing and repays the full amount of any lump sum leave payments received

at the time of layoff.). An employee who is not re-employed within twelve (12) calendar months following layoff shall be paid for sick leave in accordance with Section 110.122, Florida Statutes. In the event of the death of an employee within twelve (12) calendar months following layoff, payment as defined in (5) (b) above for unused sick leave at the time of death shall be made to the employee's beneficiary, estate, or as provided by law.

- d. All payments for unused sick leave authorized by Section 110.122, Florida Statutes, shall be made in lump sum and shall not be used in determining the average final compensation of an employee in any State administered retirement system. An employee shall not be carried on the payroll beyond the last official day of employment, except that an employee who is unable to perform duties because of a disability may be continued on the payroll until all sick leave is exhausted.
- e. If an employee has received a lump sum payment for accrued sick leave, the employee may elect in writing, upon re-employment within 100 days, to restore the employee's accrued sick leave. Restoration will be effective upon the repayment of the full lump sum leave payment.
- f. In the event of the death of an employee, payment as defined in (5) (b) above for unused sick leave at the time of death shall be made to the employee's beneficiary, estate, or as provided by law.

## (b) Sick Leave Donation

### 1. Eligibility

Both active and terminating employees may donate accrued sick leave to other New College employees on a medical leave of absence who have exhausted all sick, annual, compensatory leaves and their personal holiday. The medical leave of absence must be due to either the employees' personal medical condition, to the medical condition of an immediate family member (Spouse, established Domestic Partner, Children, Step Children, Adopted Children, Parents, Step Parents or Mother/Father In-Law and Step Parents or the care of a newborn or adopted child).

The employee donating hours is referred to as the donor and the employee receiving the hours is the recipient. Part-time regular employees are eligible to be donors and/or recipients on a prorated basis, based upon FTE status.

### 2. Donor Criteria

To be a donor, an active regular employee must have completed at least one year of employment in an established position with New College and with the exception of a terminating employee, have a sick leave balance of at least 64 hours (or a prorated number of hours if part-time) after donating the leave. For a terminating employee to be a donor, (s)he must have completed at least one year of regular

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service with New College prior to making a sick leave donation, make the donation prior to the calculation for the pay out (for employees that have at least 10 years of service), if any, of sick leave hours. The terminating employee may donate up to a cap of 80 hours regardless of the number of recipients they may designate.

### 3. Recipient Criteria

To be a recipient of donated hours, the employee must meet the following criteria:

- a. Have at least one year of New College service in a regular position.
- b. Have received approval from the supervisor for the medical leave of absence.
- c. Have exhausted all other leave.
- d. Must first use hours from the sick leave pool, if a member, prior to accepting the donation of sick leave hours from other New College employees.
- e. May use donated hours intermittently, if necessary.

### 4. Requesting a Donation of Hours

An employee, or someone on behalf of the employee, may request sick leave donations. Such requests must be informal and without pressure. Unacceptable behavior includes repeated contacts that exert pressure, play on people's emotions or leave a feeling of guilt or lack of compassion for not donating. E-mail notes and/or other personal contact to selected individuals are appropriate. Communication cannot contain the specifics regarding the medical condition of the employee.

Procedure:

- a. Human Resources confirms that the donor and recipient are eligible (meets above criteria).
- b. If one of these employees are not eligible the process stops here.
- c. The requester (employee or representative) requests sick leave donations for an employee.
- d. The donor advises Human Resources in writing (HR Form 020, Employee Sick Leave Donor Form) of the number of hours being donated (cap of 40 hours cumulatively by a current employee or a cap of 80 hours from a terminating employee).
- e. For departmental records, Human Resources advises the supervisor of both the recipient and donor of the leave transfer. HR, then, adjusts the balances accordingly.
- f. Donated hours will be utilized when needed, (hours will be taken from the Donor and given to the Recipient). The Donor employee and supervisor will receive a copy of the Donor Form listing the Payroll number and amount of hours used. The Recipients supervisor will also be notified of the amount being donated and names, unless the Donor requests to be anonymous.

#### 5. Maximum Number of Hours That Can Be Donated

An employee may donate cumulatively up to 40 hours in a calendar year. Those hours may be donated to one recipient or multiple recipients as long as the total number of hours donated do not exceed 40 hours. Donated hours must be for the current medical leave of absence. Current employees of NCF are entitled to donate accrued sick leave to each other up to a maximum of 40 hours per calendar year. Terminating employees may only donate up to a maximum of 80 hours upon terminating their employment with the College.

#### 6. Maximum Number Of Hours That Can Be Received by the Recipient

The recipient employee may only use 120 hours of donated Sick Leave in any 12 month period.

#### 7. Accepting/Rejecting Donated Hours

An employee may not donate sick leave hours to another employee when the absence is due to a Worker's Compensation injury or illness

#### 8. Return of Unused Donated Leave

If the recipient is able to return to full-time work and does not need to use all of the donated sick leave hours, the remaining hours must be returned to the donor, if still employed, or forfeited by both the donor and the recipient if the donor has terminated. Only hours actually needed and used will be processed. A memorandum explaining the transaction must be attached to the leave records for both the donor and the recipient.

#### 9. Responsibilities of Human Resources

Although the donation and receipt process is relatively easy, the records of both the recipient and the donor must be updated to reflect the transfer of leave hours and ensure that donations are deducted from donor's sick leave balances and added to the recipient's sick leave balance.

- a. Ensure that donated hours do not exceed the number of hours for which the recipient has been medically certified.
- b. Add no more than 40 donated hours to the recipient's sick leave balance from one donor and deduct no more than 40 hours from an individual donor's balance for the purpose of sick leave donations.
- c. Add no more than 80 hours to the recipient's sick leave balance from one terminating donor. Deduct the donated hours (up to 80 hours) before a terminating donor's cash out of the unused sick leave balance is calculated when the donor is eligible (has more than 10 years of State service) for a sick leave cash out.

- d. Do not include donated hours in the donor's restored sick leave balance if a donor is re-employed within 100 days.

A supervisor or other appropriate official may not refuse hours being donated to an employee who is on an approved medical leave of absence.

#### 10. Record Keeping

The Employee must secure a Sick Leave Donation Form from Human Resources or from the NCF website, accurately execute it and submit it to the employee's supervisor and then Human Resources for approval within the assigned deadline. It is imperative that the donor's sick leave balance be adjusted to reflect the donation of sick leave hours, and the recipient's sick leave balance be adjusted to reflect the receipt of sick leave hours. While in a pay status, the recipient continues to accrue leave proportionate to the hours paid. Human Resources will make the necessary changes and will notify the supervisor and the employee of the donation.

#### c. Workers' Compensation

- (1) An employee who sustains a job-related illness/injury that is compensable under the Workers' Compensation Law shall be carried in full-pay status for a period of medically certified illness/injury not to exceed seven (7) days immediately following the illness/injury, or for a maximum of forty (40) work hours if taken intermittently, without being required to use accrued sick or annual leave.
- (2) If, as a result of the job-related illness/injury, the employee is unable to resume work at the end of the period provided in paragraph (1), above:
  - a. The employee may elect to use accrued leave in an amount necessary to receive salary payment that will increase the Workers' Compensation payments to the total salary being received prior to the occurrence of the illness/injury. In no case shall the employee's salary and Workers' Compensation benefits exceed the amount of the employee's regular salary payments; or
  - b. The employee shall be placed on leave without pay and shall receive normal Workers' Compensation benefits if the employee has exhausted all accrued leave in accordance with paragraph (a.), above, or the employee elects not to use accrued leave.
- (3) This period of leave with or without pay shall be in accordance with Chapter 440 (Worker's Compensation), Florida Statutes.
- (4) If, at the end of the leave period, the employee is unable to return to work and perform assigned duties, the President or representative should advise the employee, as appropriate, of the Florida Retirement System's disability

provisions and application process, and may, based upon a current medical certification by a health care provider prescribed in accordance with Chapter 440 (Worker's Compensation), Florida Statutes, and taking the College's needs into account.

- a. offer the employee part-time employment;
- b. place the employee in leave without pay status or extend such status;
- c. request the employee's resignation; or
- d. release the employee from employment, notwithstanding any other provisions of this Agreement.

(d) Compulsory Leave

(1) Placing Employee on Compulsory Leave

- a. If an employee is unable to perform assigned duties due to illness/injury the President or representative may require the employee to submit to a medical examination, the results of which shall be released to the College, by a health care provider chosen and paid by the College, or by a health care provider chosen and paid by the employee, who is acceptable to the President or representative. Such health care provider shall submit the appropriate medical certification(s) to the College.
- b. If the College agrees to accept the employee's choice of a health care provider the College may not then require another College-paid examination.
- c. If the medical examination confirms that the employee is unable to perform assigned duties, the President or representative shall place the employee on compulsory leave.

(2) Conditions of Compulsory Leave

- a. Written notification to the employee placing the employee on compulsory leave shall include the duration of the compulsory leave period and the conditions under which the employee may return to work. These conditions may include the requirement of the successful completion of, or participation in, a program of rehabilitation or treatment, and follow-up medical certification(s) by the health care provider, as appropriate.
- b. The compulsory leave period may be leave with pay or leave without pay. If the compulsory leave combines the use of accrued leave with leave without pay, the use of such leave shall be in accordance with Section 17.12.
- c. If the employee fulfills the terms and conditions of the compulsory leave and receives a current medical certification that the employee is able to perform assigned duties, the President or representative shall return the employee to the employee's previous duties, if possible, or to equivalent duties.

- (3) Duration. Compulsory leave, with or without pay, shall be for a period not to exceed the duration of the illness/injury or one year, whichever is less.

- (4) Failure to Complete Conditions of Compulsory Leave or Inability to Return to Work. If the employee fails to fulfill the terms and conditions of a compulsory leave and/or is unable to return to work and perform assigned duties at the end of a leave period, the President or representative should advise the employee, as appropriate, of the Florida Retirement System's disability provisions and application process, and may, based upon the College's needs:
  - a. offer the employee part-time employment;
  - b. place the employee on leave without pay status in accordance with Section 17.12 or extend such status;
  - c. request the employee's resignation; or
  - d. release the employee from employment, notwithstanding any other provisions of this Agreement.

## **17.9 Annual Leave**

### **(a) Accrual of Annual Leave**

- (1) Full-time employees appointed for more than nine (9) months, except employees on academic year appointments, shall accrue annual leave at the rate of 6.769 hours biweekly or 14.667 hours per month (or a number of hours that is directly proportionate to the number of days worked during less than a full-pay period for full-time employees), and the hours accrued shall be credited at the conclusion of each pay period or, upon termination, at the effective date of termination. Employees may accrue annual leave in excess of the year end maximum (352 hours) during a calendar year. Employees with accrued annual leave in excess of the year end maximum as of December 31, shall have any excess converted to post October 1, 1973 sick leave on an hour-for-hour basis on January 1 of each year.
- (2) Part-time employees appointed for more than nine (9) months, except employees on academic year appointments, shall accrue annual leave at a rate directly proportionate to the percent of time employed.
- (3) Academic year employees, employees appointed for less than nine (9) months, and OPS employees shall not accrue annual leave.

### **(b) Use and Transfer of Annual Leave**

- (1) Annual leave shall be accrued before being taken, except in those instances where the President may authorize the advancing of annual leave. When leave has been advanced and employment is terminated prior to the employee accruing sufficient annual leave to credit against the leave that was advanced, the College shall deduct from the employee's paycheck the cost of any annual leave advanced under this provision. All requests for annual leave shall be submitted by the employee to the supervisor as far in advance as possible and appropriate. Approval of the dates on which an employee wishes to take annual leave shall be at the discretion of the supervisor and shall be subject to the consideration of

departmental/unit and organizational scheduling.

- (2) Upon re-employment within the College within 100 days, except for re-employment after layoff (see 17.9(C)(3) below), the employee may choose to reinstate their annual leave balance by repaying the full lump-sum annual leave payment received.
- (3) The transfer of unused annual leave from a local-State government to a New College position is not permitted unless a reciprocal agreement in writing between the College and the previous employing entity is in effect.

(c) Payment for Unused Annual Leave

- (1) Upon termination from an annual leave accruing position, or transfer from an annual leave accruing position to an academic year, and unless the employee requests the option in (2) below, the College shall pay the employee for up to 352 hours of unused annual leave at the calendar year rate the employee was accruing as of the employee's last day of work, provided that a determination has been made by the President that the employee was unable to reduce the unused annual leave balance prior to termination or reassignment to an academic year. All unused annual leave in excess of 352 hours shall be forfeited by the employee.
- (2) Upon transfer from an annual leave accruing position to an academic year within the SUS, the employee may elect to retain all unused annual leave until such time, not to exceed two (2) years, as the employee transfers back to an annual leave accruing position or terminates employment with the SUS. Upon such termination or at the end of two (2) years, whichever comes first, the unused leave balance shall be paid in lump sum for up to forty-four days (352 hours) at the annual rate the employee was accruing as of the employee's last day of work on an annual leave accruing position.
- (3) Upon layoff, an employee shall be paid for up to forty-four days (352 hours) of unused annual leave in lump sum, unless the employee requests in writing that annual leave credits be retained pending re-employment. For employees who are re-employed by the College within twelve (12) calendar months following layoff, all unused annual leave shall be restored to the employee, provided the employee requests such action in writing and repays the full amount of any lump sum leave payment received at the time of layoff. Employees who are not re-employed within twelve (12) calendar months following layoff and who elected to retain their annual leave pending re-employment shall be paid for up to forty-four days (352 hours) of unused annual leave at the calendar rate the employee was accruing as of the employee's last day of work.
- (4) If an employee has received a lump sum payment for accrued annual leave, the employee may elect in writing, upon re-employment within 100 days, to restore the employee's accrued annual leave. Restoration will be effective upon the repayment of the full lump sum leave payment.
- (5) In the event of the death of an employee, payment for all unused annual leave at the time of death, up to 352 hours, shall be made to the employee's beneficiary, estate, or as provided by law.



**17.10 Administrative Leaves.****(a) Jury Duty and Court Appearances**

- (1) An employee who is summoned as a member of a jury panel or subpoenaed as a witness in a matter not involving the employee's personal interests, shall be granted leave with pay and any jury or witness fees shall be retained by the employee; leave granted hereunder shall not affect an employee's annual or sick leave balance.
- (2) An appearance as an expert witness for which an employee receives professional compensation falls under Article 19 and the College's policies and regulations relative to outside employment/conflict of interest. Such an appearance may necessitate the employee requesting annual leave or, if a non-annual leave accruing employee, may necessitate the employee seeking an adjustment of the work schedule.
- (3) If an employee is required, as a direct result of the employee's employment, to appear as an official witness to testify in the course of any action as defined in Section 92.142(2), Florida Statutes, such duty shall be considered a part of the employee's job assignment, and the employee shall be paid per diem and travel expenses and shall turn over to the College any fees received.
- (4) An employee involved in personal litigation during work hours must request annual leave or, if a non-annual leave accruing employee, must seek an adjustment to the work schedule.

**(b) Military Leave**

The College and the UFF will abide by and follow the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) Florida Statutes 115.07, 115.09 and 115.14 in all leaves pertaining to involvement in the Military Services

- (c) **Leave Pending Investigation.** When the President has reason to believe that the employee's presence on the job will adversely affect the operation of the College, the President may immediately place the employee on leave pending investigation of the event(s) leading to that belief. The leave pending investigation shall commence immediately upon the President providing the employee with a written notice of the reasons therefore. The leave shall be with pay, with no reduction of accrued leave.
- (d) **Other Leaves Provided Not Affecting Accrued Leave Balances.** An employee may be granted other leaves not affecting accrued leave balances which are provided as follows:
  - (1) Florida Disaster Volunteer Leave is provided by Section 110.120, Florida Statutes, for an employee who is a certified disaster service volunteer of the American Red Cross. Leave of absence with pay for not more than fifteen (15) working days in the fiscal year may be provided upon request of the American

Red Cross and the employee's supervisor's approval. Leave granted under this act shall be only for services related to a disaster occurring within the boundaries of the State of Florida.

- (2) Civil disorder or disaster leave is provided for an employee who is member of a volunteer fire department, police auxiliary or reserve, civil defense unit, or other law enforcement type organization to perform duties in time of civil disturbances, riots, and natural disasters, including an employee who is a member of the Civil Air Patrol or Coast Guard Auxiliary, and called upon to assist in emergency search and rescue missions. Such paid leave not affecting leave balances may be granted upon approval by the President and shall not exceed two days on any one occasion.
- (3) Athletic competition leave is provided by Section 110.118, Florida Statutes, for an employee who is a group leader, coach, official, or athlete who is a member of the official delegation of the United States team for athletic competition. Such paid leave not affecting leave balances shall be granted for the purpose of preparing for and engaging in the competition for the period of the official training camp and competition, not to exceed 30 days in a calendar year.
- (4) Leave for re-examination or treatment with respect to service connected disability is provided by Section 110.119, Florida Statutes, for an employee who has such rating by the United State Department of Veterans Affairs and has been scheduled to be reexamined or treated for the disability. Upon presentation of written confirmation of having been so scheduled, such leave not affecting the employee's leave balances shall be approved and shall not exceed six (6) calendar days in any calendar year.
- (5) Official Emergency Closings. The President may close the College, or portions of the College, in the event an Executive Order declaring an emergency has been issued. When natural disasters or other sudden and unplanned emergency conditions occur which are not covered by an Executive Order, the President shall determine whether the College, or any portion thereof, is affected by the emergency and is to be closed. Such closings will be only for the period it takes to restore normal working conditions. A closing beyond two (2) consecutive days shall require the approval of the President. Leave resulting from such an emergency closing shall not reduce employees' leave balances.

(e) Domestic Violence Leave:

1. If an employee or an employee's family or household member is a victim of domestic violence, the employee may use up to three (3) days of Domestic Violence Leave for the following activities:
  - a. seeking an injunction for protection against domestic violence or repeat violence, dating violence, or sexual violence;
  - b. obtaining medical care or mental health counseling or both for the employee or a family or household member to address injuries resulting from domestic violence;

- c. obtaining services from victims services organizations such as a domestic violence shelter or rape crisis center;
- d. making the employee's home secure from the perpetrator of domestic violence or finding a new home to escape the perpetrator;
- e. seeking legal assistance to address issues arising from domestic violence or attending or preparing for court related proceedings arising from the act of domestic violence.

2. An employee must have worked at least ninety (90) days for New College and during the ninety (90) days worked a minimum of five hundred-twenty two (522) hours to be eligible for the Domestic Violence Leave. The Domestic Violence Leave will be concurrent with the FMLA if applicable. Accrued Annual Leave or Sick Leave must be used for in conjunction with the Domestic Violence Leave days. If an employee has exhausted his/her respective Annual or Sick Leave, the Domestic Leave will be compensated by the College.

3. The employee must provide New College with at least seven (7) days advanced notice unless there is an emergency in which case notification is required as soon as is practical. New College will require documentation from a court, the police, an attorney or other agency that the employee is working with before any compensation will be paid.

#### **17.11 Leave Without Pay.**

- (a) Granting. Upon request of an employee, the President shall grant a leave without pay for a period not to exceed one year unless the President determines that granting such leave would be inconsistent with the best interests of the College. Such leave may be extended upon mutual agreement. The President can also approve leave without pay in combination with a research assignment as described in Article 22.3 (e) (1).
- (b) Salary Adjustment. The salary of an employee returning from uncompensated leave shall be adjusted to reflect all non-discretionary increases distributed during the period of leave. While on such leave, an employee shall be eligible to participate in any special salary incentive programs such as the Teaching Incentive Program.
- (c) Retirement Credit. Retirement credit for such periods of leave without pay shall be governed by the rules and regulations of the Division of Retirement and the provisions of Chapter 121, Florida Statutes.
- (d) Accrual of Leave/Holiday Pay. While on leave without pay, the employee shall retain accumulated sick leave and annual leave, but shall not accrue sick leave or annual leave nor be entitled to holiday pay.
- (e) Use of Accrued Leave during an Approved Period of Leave without Pay.
  - (1) Use of accrued leave with pay is authorized during a leave of absence without pay for parental, foster care, medical, or military reasons. Such use of leave with pay is provided under the following conditions:
    - a. Notwithstanding the provisions of Section 17.8(a) (2) regarding the use of

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sick leave, an employee may use any type of accrued leave in an amount necessary to cover the employee's contribution to the State insurance program and other expenses incurred by the employee during an approved period of leave without pay for parental, foster care, medical, or military reasons.

- b. Normally the use of accrued leave during a period of leave without pay for medical reasons shall be approved for up to six (6) months, but may be approved for up to one year for the serious health condition of the employee or a member of the employee's immediate family.
  - c. The employer contribution to the State insurance program will continue for the corresponding payroll periods.
- (2) An employee's request for the use of accrued leave during a period of leave without pay shall be made at the time of the employee's request for the leave without pay. Such request shall include the amount of accrued leave the employee wishes to use during the approved period of leave without pay. If circumstances arise during the approved leave which causes the employee to reconsider the combination of leave with and without pay, the employee may request approval of revisions to the original approval.
- (f) If an employee is seeking to be placed on leave without pay status in order to pursue academic or community service activities that contribute significantly to the mission of the College by furthering the academic and community service missions of the College, enhancing the College's academic standing, or enhancing the academic standing of the employee, the College shall pay the employer's contribution to the employee's health care insurance during the period of the leave.

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**ARTICLE 18**  
**INVENTIONS AND WORKS**

**18.1** The objective of this Article is to recognize and promote the creativity of Faculty and to reflect the actual contributions of the creators and the College in determining the rights of ownership and use and the distribution of equity interests related to applicable intellectual property.

**18.2 Definitions**

- (a) The term “work” includes any copyrightable material including printed materials, computer software or databases, audio and visual material, musical or dramatic compositions, choreographic works pictorial or graphic works, and sculpture works.
- (b) The term “invention” includes any discovery, invention, process, composition of matter, article of manufacture, design, model, technological development, strain, variety, culture of any organism, or portion, modification, translation, or extension of these items, and any mark used in connection with these items.
- (c) The term “creator(s)” is defined as faculty, staff, and other persons employed by the College, whether full-time or part-time, visiting faculty or researchers, or any other person(s) covered by this Agreement who creates or discovers applicable intellectual property.
- (d) Independent Efforts. A work made in the course of independent efforts is the property of the employee, who has the right to determine the disposition of such work and the revenue derived from such work. As used in this Section, the term "independent efforts" means that:
  - (1) the ideas came from the employee;
  - (2) the work or invention was not made with the use of College support; and
  - (3) the College is not held responsible for any opinions expressed in the work.
- (e) All inventions made outside the field or discipline in which the employee is employed by the College and for which no College support has been used are the property of the employee, who has the right to determine the disposition of such invention and revenue derived from such invention.
- (f) College Support. Works or Inventions created with the use of College funds, or with more than incidental use of College personnel, facilities, equipment, materials, or technological information, and includes such support provided by other public or private organizations when it is arranged, administered, or controlled by the College. College support shall not be considered for:
  - (1) Works for which the intended purpose is to disseminate the results of academic research or scholarly study, such as books, articles and electronic media.
  - (2) Also excluded from the definition of “applicable intellectual property” are textbooks and ancillary materials, where textbooks are defined as books that present educational subject matter intended for use in academic instruction, and

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ancillary materials are defined as materials that normally accompany academic texts including software or online information, exercises, demonstrations, or illustrations that are used by students or instructors to supplement the text, as well as sample test questions or test banks, sample syllabi, lesson plans, and class activities. Sample test questions or test banks, a sample syllabus, lesson plans, and class activities, assigned reading materials will be available to other faculty and instructors as a resource bank for future teaching at the College; and

- (3) Works developed without use of appreciable college support and used solely to assist or enhance the employee's instructional assignment.

**18.3** The College shall not exercise any rights in anything other than that which meets the definition of applicable intellectual property or that in which it has written contractual rights to do so.

**18.4** Where development of applicable intellectual property has been accomplished through the use of College support, the work or invention is the property of the College and the employee shall share in the proceeds therefrom pursuant to 18.5. This provision, however, may be superseded by prior written agreement between the creator(s) and the College created for the purpose of developing said work or invention.

**18.5** (a) A written contract between the College and the creator(s) shall be developed in accordance with the standards and guidelines set forth in this Article, prior to the disposition of any of the net revenue from any applicable intellectual property or the division of any equity interests therein.

- (1) The contract shall cover the entire time period for which the rights to the use of the applicable intellectual property may be legally protected, as well as the proportionate division of equity interests in the applicable intellectual property or the proportionate distribution of the net revenue from the applicable intellectual property in lieu of division of the equity interests.
- (2) "Net revenue" is defined as that remaining after deducting all direct College expenses incurred in developing, obtaining protection for, and licensing, applicable intellectual property.
- (3) In the absence of a written agreement to the contrary, multiple creators shall receive equal portions of the creator(s)' share of net revenue under contract.
- (4) If the contract provides that the College retains the entire equity interest in the applicable intellectual property, any proceeds from the sale of such equity interest shall be shared in the same proportion as the disposition of net revenue provided by the contract.
- (5) The provisions of the contract shall be the only provisions subject to interest arbitration under the grievance and arbitration procedures set forth in this Agreement.

**18.6** Contract Guidelines

- (b) Upon the creation of work or invention, and prior to any publication or application for patent and /or trademark rights, the employee shall disclose the work or

invention fully and in writing to the College President, along with an outline of the project and the conditions under which it was done. Within 60 days after such disclosure, the President will inform the creator(s) whether the College seeks an interest in the work.

- (c) The College and the creator(s) will develop an agreement for the shared development and protection of the work and the allocation of any net income.
  - a. Creator(s) as used in these guidelines shall include creator(s)' heirs, successors, and assigns.
  - b. The agreement may apportion equity interests between creator(s) and the College, or may distribute net revenues in accordance with an agreed formula, with the College retaining ownership of the entire equity interest, in which case the College shall have no fiduciary duties, and shall not act as a fiduciary with regard to the creator(s) interests.
- (d) If no agreement is reached within 60 days of the President's notification to the creator(s) that the College seeks an equity interest in a work, and if the College and the creator(s) do not agree in writing to extend the negotiating period, equity interests and revenue will be apportioned with 50% assigned to the creator(s), and the remaining 50% assigned to the College.
- (e) Until such an agreement is reached or interests are divided, creator(s) shall not have the right to enter into any licensing agreement or assignment of the applicable intellectual property without the written consent of the College.
- (f) The proceeds received by the College shall be used to support Faculty research and development activities, and technology transfer activities.

**18.7** The College shall not make a condition of employment the signing of any agreement that limits an employee's rights in the employee's works beyond the limitations imposed by this Article.

**18.8** Nothing in this Article shall interfere or change an employee's obligations under Article 19, Conflict of Interest/Outside Activities

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**ARTICLE 19**  
**CONFLICT OF INTEREST/OUTSIDE ACTIVITY**

**19.1 Policy.**

- (a) An employee is bound to observe, in all official acts, the highest standards of ethics consistent with the Code of Ethics of the State of Florida (Chapter 112, Part III, Florida Statutes), administrative advisory opinions and administrative and judicial decisions rendered with respect thereto, and College Regulations. Other provisions of State law govern obligations and responsibilities of employees who receive State compensation in addition to their annual salary (see Section 240.283, Florida Statutes).
- (b) Nothing in this Article is intended to discourage an employee from engaging in outside activity in order to increase the employee's professional reputation, service to the community, or income, subject to the conditions stated herein.

**19.2 Definitions.**

- (a) "Outside Activity" shall mean any uncompensated or compensated activity which is not part of the employee's assigned duties and for which the College has provided no compensation.
- (b) "Conflict of Interest" shall mean a conflict of interest as specified under Florida Law (Chapter 112, Part III, Florida Statutes).
- (c) "Interference with Performance" shall mean any outside activity not constituting a conflict of interest that interferes with an employee's professional and institutional responsibilities.

**19.3 Conflicts of Interest and Interference with Performance.**

- (a) Conflicts of Interest Prohibited. Conflicts of interest, including those arising from College or outside activities, are prohibited. Employees are responsible for resolving such conflicts of interest, working in conjunction with their supervisors and other College officials.
- (b) Interference with performance. When an outside activity interferes with the satisfactory performance of assigned duties, employees are responsible for resolving the interference working in conjunction with their superiors and other College officials. Failure to satisfactorily perform assigned duties may be reflected in employee performance evaluations described in Article 10 of this Agreement. Repeated failure to perform assigned duties in a manner that meets minimally accepted standards for a professional employee may be subject to disciplinary action as described in Article 16 of this Agreement.



**19.4 Report of Outside Activity.**

- (a) An employee who proposes to engage in any outside activity which the employee should reasonably conclude may create a conflict of interest, or in any outside compensated professional activity, shall report to the employee's supervisor, in writing, the details of such proposed activity prior to engaging therein.
- (b) The report, as described in paragraph 19.4(a) shall include where applicable, the name of the employer or other recipient of services; the funding source; the location where such activity shall be performed; the nature and extent of the activity; and any intended use of College facilities, equipment, or services.
- (c) A new report shall be submitted for outside activity previously reported at:
  - (d) the beginning of each academic year for outside activity of a continuing nature; and,
  - (e) such time as there is a significant change in an activity (nature, extent, funding, etc.)
- (f) The reporting provisions of this section shall not apply to activities performed wholly during a period in which the employee has no appointment with the College.
- (g) Any outside activity which falls under the provisions of this Article and in which the employee is currently engaged but has not previously reported, shall be reported within sixty (60) days of the execution of this Agreement and shall conform to the provisions of this Article.

**19.5 Expedited Grievance Procedure.**

- (a) In the event the proposed outside activity is determined to constitute a conflict of interest, and the employee disagrees with that determination, the employee may file a grievance under the expedited grievance procedure contained in Article 20, Section 20.15.
- (b) The employee may engage in such outside activity pending a resolution of the matter pursuant to Section 19.5(a).
- (c) If the resolution of the matter is that there is a conflict of interest, the employee shall cease such activity immediately.

**19.6 Use of College Resources.**

An employee engaging in any outside activity shall not use the facilities, equipment, or services of the College in connection with such outside activity without prior approval of the President. Approval for the use of College facilities, equipment, or services may be conditioned upon reimbursement for the use thereof.

**19.7 No College Affiliation.**

An employee engaging in outside activity shall take reasonable precautions to ensure that the outside employer or other recipient of services understands that the employee is engaging in such outside activity as a private citizen and not as an employee, agent, or spokesperson of the College

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**ARTICLE 20**  
**GRIEVANCE PROCEDURE AND ARBITRATION**

**20.1 Policy/Informal Resolution.**

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 employees so that resort 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. 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 employees as defined herein.

**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, an employee requests, in writing, resolution of the matter in any other forum, whether administrative or judicial, the College 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 appropriate administrative or judicial actions when such filing becomes necessary to meet federal filing deadlines. Further, since the parties do not intend that this grievance procedure be a device for appellate review, the President's response to an order issued by a judicial or administrative tribunal 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 an employee or group of employees who has/have filed a grievance in a dispute over a provision of this Agreement which confers rights upon the employee(s). The UFF may file a grievance in a dispute over a provision of this Agreement which confers rights upon the UFF. A grievance filed by NCUFF which alleges a violation of its rights by the College shall be initiated at Step 1. The parties may agree to consolidate grievances of a similar nature to expedite the review process. In a consolidated grievance, one Appendix "C," "D," or "E" may be attached, bearing the signatures of the grievants.
- (c) Grievance Forms. Each grievance, request for review, and notice of arbitration must be submitted in writing on the appropriate form attached to this Agreement as

Appendix “C”, “D”, or “E”, respectively, and shall be signed by the grievant. All grievance forms shall be dated when the grievance is received. If there is difficulty in meeting any time limit, the UFF representative may sign such documents for the grievant; however, grievant’s signature shall be provided prior to the Step 1 meeting or Step 2 review if filed directly at Step 2. The aforementioned grievance forms, as well as Appendix “H,” may be filed by means of fax, United States mail, or any other recognized means of delivery.

#### **20.4 Burden of Proof.**

In all grievances except disciplinary grievances in accordance with Article 16, Disciplinary Action and Job Abandonment, the burden of proof shall be on the employee and/or UFF. In disciplinary grievances, the burden of proof shall be on the College.

#### **20.5 Representation.**

The UFF shall have the exclusive right to represent any employee in a grievance filed hereunder, unless an employee elects self-representation or to be represented by legal counsel. If an employee elects not to be represented by the UFF, the College shall promptly inform the UFF in writing of the grievance. No resolution of any individually processed grievance shall be inconsistent with the terms of this Agreement and for this purpose the UFF shall have the right to have an observer present at all meetings called for the purpose of discussing such grievance and shall be sent copies of all decisions at the same time as they are sent to the other parties.

#### **20.6 Grievance Representatives.**

The UFF shall annually furnish to the College a list of all persons authorized to act as grievance representatives and shall update the list as needed. The UFF grievance representative shall have the responsibility to meet all classes, office hours, and other duties and responsibilities incidental to the assigned workload. Some of these activities are scheduled to be performed at particular times. Such representative shall have the right during times outside of those hours scheduled for these activities to investigate, consult, and prepare grievance presentations and attend grievance hearings and meetings. Should any hearings or meetings with the President or Board necessitate rescheduling of assigned duties, the representative may, with the approval of the appropriate administrator, arrange for the rescheduling of such duties or their coverage by colleagues. Such approval shall not be unreasonably withheld.

#### **20.7 Appearances.**

- (a) When an employee participates during working hours in an arbitration proceeding or in a grievance meeting between the grievant or representative and the College or Board, that employee's compensation shall neither be reduced nor increased for time spent in those activities.
- (b) Prior to participation in any such proceedings, conferences, or meetings, the employee shall make arrangements acceptable to the appropriate supervisor for the performance of the employee's duties. Approval of such arrangements shall not be unreasonably

withheld. Time spent in such activities outside regular working hours shall not be counted as time worked.

## **20.8 Formal Grievance Procedure.**

### **(a) Filing.**

- (1) A grievance shall be filed with the Clerk of the College at Step 1 within thirty (30) days following the act or omission giving rise thereto, or the date on which the employee knew or reasonably should have known of such act or omission if that date is later. The thirty-day period shall be determined by the date the grievance is received by the Clerk of the College, if hand-delivered, or by the postmark date, if mailed. Immediately upon receipt of the grievance, the Clerk of the College shall issue the grievant a written acknowledgement that it received the grievance and the date of actual receipt or postmark as appropriate. The grievant may amend the Appendix "C" form one time, either prior to the Step 1 meeting for all grievances filed at Step 1, or prior to the Step 2 review for all grievances filed directly at Step 2.
- (2) An employee may seek redress of alleged salary discrimination by filing a grievance under the provisions of Article 20. An act or omission giving rise to such a grievance may be the employee's receipt of the employee's salary warrant for the first full-pay period in which the annual salary increases referenced in Article 23 are reflected
- (3) The filing of a grievance constitutes a waiver of any rights to judicial or administrative review of action by the College pursuant to Chapter 120, Florida Statutes or to the review of such actions under College procedures which may otherwise be available to address such matters. This grievance procedure shall be the sole review mechanism for resolving disputes regarding rights or benefits which are provided exclusively by this Agreement. Only those acts or omissions and sections of this Agreement identified at the initial filing may be considered at subsequent steps.

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

### **(c) Postponement.**

- (1) The grievant may, in the written grievance at Step 1, request the postponement of any action in processing the grievance formally for a period of up to thirty (30) days, during which period efforts to resolve the grievance informally shall

be made. The initial such request shall be granted. Upon the grievant's written request, additional extensions should be granted unless to do so would impede resolution of the grievance. Upon request, the Step 1 reviewer shall, during the postponement period(s), arrange an informal meeting between the appropriate administrator and the grievant. The grievant shall have the right to representation by the UFF during attempts at informal resolution of the grievance. The grievant may, at any time, terminate the postponement period by giving written notice to the President that the grievant wishes to proceed with the Step 1 meeting. If the postponement period, or any extension thereof, expires without such written notice, the grievance shall be deemed informally resolved to the grievant's satisfaction and need not be processed further.

- (2) In the case of a grievance filed pursuant to the Expedited Grievance Procedure referenced in Section 20.15, the postponement period shall be no more than seven (7) days unless the employee and the College agree otherwise.

(d) Step 1.

- (1) Meeting. The Step 1 reviewer or representative and the grievant and the grievant's representative shall meet no sooner than seven (7) and no later than fifteen (15) days following (a) receipt of the grievance if no postponement is requested, or (b) receipt of written notice that the grievant wishes to proceed with the Step 1 meeting. At the Step 1 meeting, the grievant shall have the right to present any evidence in support of the grievance, and the grievant and/or the UFF representative or the grievant's legal counsel (if selected pursuant to Section 20.5), and the Step 1 reviewer or representative, shall discuss the grievance.
- (2) Decision. The Step 1 reviewer or representative shall issue a written decision, stating the reasons therefore, and shall serve a copy of same together with a certification of the date of service upon grievant and grievant's Step 1 representative within thirty (30) days following the conclusion of the meeting. In the absence of an agreement to extend the period for issuing the Step 1 decision, the grievant may proceed to Step 2 if the grievant's Step 1 representative has not received the written decision by the end of the 30th day following the conclusion of the Step 1 meeting. A copy of the decision shall be sent to the grievant and to the NCUFF if grievant elected self-representation or representation by legal counsel.
- (3) Documents. Where practicable, the Step 1 reviewer shall make available to the grievant, or grievance representative, documentation referenced in the Step 1 decision prior to its issuance. All documents referred to in the decision and any additional documents presented by the grievant shall be attached to the decision, together with a list of these documents. In advance of the Step 1 meeting, the grievant shall have the right, upon written request, to a copy of any identifiable documents relevant to the grievance.

(e) Step 2.

- (1) Review. If the grievance is not satisfactorily resolved at Step 1, the grievant may file a written request for review with the Clerk of the College within thirty (30) days following receipt of the Step 1 decision by the grievant or grievant's Step 1 representative. The thirty-day period shall be determined by the date the request for review is received by Clerk of the College, if hand-delivered, or by the postmark date, if mailed. Immediately upon receipt of the request for review, the Clerk of the College shall issue the grievant and the grievant's representative a written acknowledgement that it received the request for review and the date of actual receipt or postmark as appropriate. The President, and the grievant and/or representative of the grievant shall meet for the purpose of reviewing the matter no later than thirty (30) days following receipt of the request for review.
- (2) Decision. The President shall issue a written decision stating the reasons therefore, and shall serve a copy of same together with a certification of the date of service upon grievant and grievant's Step 2 representative (if grievant is represented by UFF, the decision will be sent to the UFF State Office and NCUFF within thirty (30) days following the conclusion of the review meeting. In the absence of an agreement to extend the period for issuing the Step 2 decision, the UFF may proceed to Step 3 if the grievant's Step 2 representative has not received the written decision by the end of the 30th day following the conclusion of the Step 2 meeting. A copy of the decision shall be sent to the grievant and to the UFF State Office and NCUFF if the grievant elected self-representation or representation by legal counsel.

(f) Step 3 Arbitration.

- (1) Filing. If the grievance has not been satisfactorily resolved at Step 2, the UFF may, upon the request of the grievant, proceed to arbitration by filing a written notice of the intent to do so. Notice of intent to proceed to arbitration must be filed with the office of the President or representative within thirty (30) days after receipt of the Step 2 decision by grievant or grievant Step 2 representative (or the UFF State Office, if the grievant is represented by UFF) and shall be signed by the grievant and the UFF President or UFF Director of Arbitrations. The thirty-day period shall be determined by the date the notice of intent to arbitrate is received by the office receiving the notice of intent, if hand-delivered, or by the postmark date, if mailed. Immediately upon receipt of the notice of intent, the office receiving the notice of intent shall issue the grievant and the grievant Step 2 representative a written acknowledgement that it received the notice of intent and the date of actual receipt or postmark as appropriate. The grievance may be withdrawn at any time by the grievant or by the UFF President or Director of Arbitrations at any point during Step 3. The parties shall stipulate to the issue(s) prior to the arbitration. In the event a stipulation is not reached, the parties shall proceed to a hearing on arbitrability pursuant to Section 20.8(f) (4).
- (2) Selection of Arbitrator. Representatives of the College and the UFF shall meet within ninety (90) days after the execution of this Agreement for the purpose of

selecting an Arbitration Panel of three (3) or more members. Within fourteen (14) days after receipt of a notice of intent to arbitrate, representatives of the College and the UFF shall meet for the purpose of selecting an arbitrator from the Panel. Selection shall be by mutual agreement or by alternately striking names from the Arbitration Panel list until one name remains. The right of the first choice to strike from the list shall be determined by the flip of a coin. If the parties are unable to agree to a panel of arbitrators, they shall follow the normal American Arbitration Association procedure for the selection of an arbitrator. The parties may mutually select as the arbitrator an individual who is not a member of the Arbitration Panel. The arbitration shall be held within sixty (60) days following the selection of the arbitrator.

(3) Authority of the Arbitrator:

- a. The arbitrator shall neither add to, subtract from, modify, or alter the terms or provisions of this Agreement. Arbitration shall be confined solely to the application and/or interpretation of this Agreement and the precise issue(s) submitted for arbitration. The arbitrator shall refrain from issuing any statements of opinion or conclusions not essential to the determination of the issues submitted.
- b. Where an administrator has made a judgment involving the exercise of discretion, such as decisions regarding tenure or promotion, the arbitrator shall not substitute the arbitrator's judgment for that of the administrator. Nor shall the arbitrator review such decision except for the purpose of determining whether the decision has violated this Agreement. If the arbitrator determines that this Agreement has been violated, the arbitrator shall direct the College to take appropriate action. An arbitrator may award back salary where the arbitrator determines that the employee is not receiving the appropriate salary from the College, but the arbitrator may not award other monetary damages or penalties. If notice that further employment will not be offered is not given on time, the arbitrator may direct the College to renew the appointment only upon a finding that no other remedy is adequate, and that the notice was given so late that (a) the employee was deprived of reasonable opportunity to seek other employment, or (b) the employee actually rejected an offer of comparable employment which the employee otherwise would have accepted.
- c. An arbitrator's decision awarding employment beyond the sixth year shall not entitle the employee to tenure. In such cases the employee shall serve during the seventh year without further right to notice that the employee will not be offered employment thereafter. If an employee is reappointed at the direction of an arbitrator, the President may reassign the employee during such reappointment.

(4) Arbitrability. Issues of arbitrability shall be bifurcated from the substantive

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

- (5) **Conduct of Hearing.** The arbitrator shall hold the hearing within the City of Sarasota, unless otherwise agreed by the parties. The hearing shall commence within twenty-five (25) days of the arbitrator's acceptance of selection, or as soon thereafter as is practicable, and the arbitrator shall issue the decision within forty-five (45) days of the close of the hearing or the submission of briefs, whichever is later, unless additional time is agreed to by the parties. The decision shall be in writing and shall set forth findings of fact, reasoning, and conclusions on the issues submitted. Except as expressly specified in this Article, the provisions of the Florida Arbitration Code, Chapter 682, Florida Statutes, shall not apply. Except as modified by the provisions of this Agreement, arbitration proceedings shall be conducted in accordance with the rules and procedures of the American Arbitration Association.
- (6) **Effect of Decision.** The decision or award of the arbitrator shall be final and binding upon the College, the UFF, and the grievant, provided that either party may appeal to an appropriate court of law a decision that was rendered by the arbitrator acting outside of or beyond the arbitrator's jurisdiction, pursuant to this Agreement and Section 682.13, Florida Statutes.
- (7) **Venue.** For purposes of venue in any judicial review of an arbitrator's decision issued under this Agreement, the parties agree that such an appeal shall be filed in the courts in Sarasota County, Florida, unless both parties specifically agree otherwise in a particular instance.
- (8) **Fees and Expenses.** All fees and expenses of the arbitrator shall be divided equally between the parties. Each party shall bear the cost of preparing and presenting its own case. The party desiring a transcript of the arbitration proceedings shall provide written notice to the other party of its intention to have a transcript of the arbitration made at least one week prior to the date of the arbitration. The party desiring such transcript shall be responsible for scheduling a stenotype reporter to record the proceedings. The parties shall share equally the appearance fee of the stenotype reporter and the cost of obtaining an original transcript and one copy for the party originally requesting a transcript of the proceedings. The requesting party shall, at its expense, photocopy the copy of the transcript received from the reporter and deliver the photocopy to the other party within five days after receiving the copy of the transcript from the reporter.
- (9) **Retroactivity.** An arbitrator's award may or may not be retroactive as the equities of each case may demand, but in no case shall an award be retroactive to a date earlier than thirty (30) days prior to the date the grievance was initially filed in accordance with this Article.

## **20.9 Filings and Notification.**



With the exception of Step 1 and Step 2 decisions, all documents required or permitted to be issued or filed pursuant to this Article may be transmitted by fax, United States mail, or any other recognized delivery service (note: email is not an acceptable form of delivery). Step 1 and Step 2 decisions shall be served upon the grievant and grievant's representative(s) by hand, receipt of which shall be acknowledged at the time of delivery in writing by grievant and grievant's Step 1 or Step 2 representative, or by certified mail, return receipt requested. In the event that any action falls due on a Saturday, Sunday, or holiday (as referred to in Section 17.5), the action will be considered timely if it is accomplished by 5:00 P.M. on the following business day.

#### **20.10 Precedent.**

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

#### **20.11 Processing.**

- (a) The filing or pendency of any grievance or arbitration proceedings under this Article shall not operate to impede, preclude, or delay the College from taking the action complained of. Reasonable efforts, including the shortening of time limits when practical, shall be made to conclude the processing of a grievance prior to the expiration of the grievant's employment, whether by termination or failure to reappoint. An employee with a pending grievance will not continue to be compensated beyond the last date of employment.
- (b) The recipient administrator may refuse consideration of a grievance not filed or processed in accordance with this Article.

#### **20.12 Reprisal.**

No reprisal of any kind will be made by the Board, the College, or the UFF against any grievant, any witness, any UFF representative, or any other participant in the grievance procedure by reason of such participation.

#### **20.13 Records.**

All written materials pertinent to a grievance shall be filed separately from the evaluation file of the grievant or witnesses, except decisions resulting from arbitration or settlement.

#### **20.14 Inactive Grievances.**

A grievance which has been filed at Step 2 or Step 3 and on which no action has been taken by the grievant or the UFF for ninety (90) days shall be deemed withdrawn and resolved in accordance with the decision issued at the prior Step.

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

- (a) A grievance alleging a violation of Article 19 shall be heard at Step 1 by its reviewer no more than seven (7) days after it has been filed. The Step 1 reviewer shall issue a Step 1 decision no more than 7 days after the Step 1 meeting.
- (b) A request for review of the Step 1 decision shall be filed using Appendix "D", no more than seven (7) days following the receipt of the Step 1 decision. The Step 2 meeting shall be held no more than 7 days after the receipt of Appendix "D", and the Step 2 decision shall be issued no more than 7 days after the meeting.
- (c) A request for arbitration using Appendix "E" shall be filed within fourteen (14) days after receipt of the Step 2 decision. An arbitrator shall be selected by the parties no more than fourteen (14) days following the receipt of the Appendix "E". The arbitrator shall issue a memorandum of decision within 7 days following the conclusion of the arbitration, to be followed by a written opinion and award in accordance with Section 20.8(f)(5).
- (d) The parties shall establish a panel of three (3) experienced arbitrators to hear a grievance filed in accordance with this Section.
- (e) All other provisions of Article 20 shall apply to these grievances, except as noted above.

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## ARTICLE 21 OTHER EMPLOYEE RIGHTS

### 21.1 Professional Meetings.

Employees should be encouraged to and may, with the approval of the supervisor, attend professional meetings, conferences, and activities. Subject to the availability of funds, the employee's expenses in connection with such meetings, conferences, or activities shall be reimbursed in accordance with the applicable provisions of State law and rules and regulations.

### 21.2 Office Space.

Each employee shall be provided with office space which may be on a shared basis. The parties recognize the desirability of providing each employee with enclosed office space with a door lock, office equipment commensurate with assigned responsibilities, and ready access to a telephone. Each employee shall, consistent with building security, have reasonable access to the employee's office space and laboratories, studios, music rooms, and the like used in connection with assigned responsibilities; this provision may require that campus security provide access on an individual basis. Before an employee's office location is changed, or before there is a substantial alteration to an employee's office to a degree that impedes the employee's work effectiveness, the affected employee shall be notified, if practicable, at least one (1) month prior to such change.

### 21.3 Safe Conditions.

Whenever an employee reports a condition which the employee feels represents a violation of safety or health rules and regulations or which is an unreasonable hazard to persons or property, such conditions shall be promptly investigated. The appropriate administrator shall reply to the concern, in writing, if the employee's concern is communicated in writing.

### 21.4 Limitation on Personal Liability.

- (a) In the event an employee is sued for an act, event, or omission which may fall within the scope of Section 768.28, Florida Statutes, the employee should notify the President's office as soon as possible after receipt of the summons commencing the action in order that the College may fulfill its obligation. Failure to notify the employer promptly may affect the rights of the parties.
- (b) For information purposes, the following pertinent language of Section 768.28(9), Florida Statutes, is reproduced herein.

*No officer, employee, or agent of the State or its sub-divisions shall be held personally liable in tort for any injuries or damages suffered as a result of any act, event or omission of action in the scope of his employment or function unless such officer, employee or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton or willful disregard of human rights, safety or property.*

### 21.5 Travel Advances.

The College will, to the extent permitted by State law and rule, and subject to the availability of funds, provide travel advances, upon request, of up to eighty (80) percent of budgeted expenses for authorized travel of longer than five (5) consecutive days.

**21.6 Working Papers Rights.**

Consistent with law, the provisions of Article 18, and the legitimate interests of the College, employees shall have the right to control of their personal correspondence, notes, raw data, and other working papers.

**21.7 Protection for Whistleblowers.**

Employees are notified that Section 112.3187, Florida Statutes, provides protection to whistleblowers and delineates their rights and responsibilities.

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**ARTICLE 22**  
**PROFESSIONAL DEVELOPMENT PROGRAM AND RESEARCH ASSIGNMENTS**

**22.1 Professional Development Leave.**

- (a) Policy. Professional development leave shall be made available to employees who meet the requirements set forth below. Such leaves are granted to increase an employee's value to the College through enhanced opportunities for educational travel, study, formal education, research, writing, or other professional experience not as a reward for service.
- (b) Types of Professional Development Leave. Over the three-year life of this Agreement, the College or its representatives will make available professional development leaves at full pay for one (1) eight week period each, or its equivalent (for example, leave at half-pay for 16 weeks), to the pool of eligible employees, subject to the conditions set forth below.
- (c) Eligibility for Professional Development Leave. Full-time employees with three (3) or more years of service shall be eligible for professional development leaves, except those employees who are serving in tenure-earning or tenured positions. Employees with supervisory assignments are eligible only when the unit head can make alternative arrangements for supervision, and, supplemental supervisor pay for the employee will be suspended during the leave. An employee who is compensated through a contract or grant may receive a professional development leave only if the contract or grant allows for such leaves and the employee meets all other eligibility requirements. Employees cannot bank years toward longer periods of professional development leave. The unit heads must notify eligible employees by May 1 regarding eligibility requirements and application deadlines.
- (d) Application and Selection.
  - (1) The employee must submit a letter of application for professional development leave to the unit head. Such application letter must contain an appropriate outline of the project or work to be accomplished during the leave, well-defined outcomes, and demonstrate how the professional development leave will benefit their unit and the college.
  - (2) The College or its representative shall select applicants when the College believes that completion of the project or work would improve the productivity of the department or function of which the employee is a part. Criteria for selection of professional development leave applicants shall be specified by the College and made available to eligible employees.
  - (3) No more than one (1) employee in each unit need be granted leave at the same time.
- (e) Terms of Professional Development Leave.

- (1) An employee is accountable for the project, work, and outcomes accomplished as stated in the application. If the employee is unable to account for said project, work, and outcomes, they shall reimburse the College for the salary received during such leave.
- (2) Employees shall not normally be eligible for a second professional development leave until three (3) years of continuous service are completed following the previous leave.
- (3) The employee must provide a brief written report describing how the project or work described in the outline provided by the employee in accordance with subparagraph (d) (1) above was performed and accomplished to the unit head upon return to the College.
- (4) Contributions normally made by the College to retirement and Social Security programs shall be continued on a basis proportional to the salary received. College contributions normally made to employee insurance programs and any other employee benefit programs shall be continued during the professional development leave.
- (5) Eligible employees shall continue to accrue annual and sick leave during the professional development leave at a rate proportional to their salary during the professional leave.
- (6) While on leave, an employee shall be permitted to receive funds for travel and living expenses, and other professional development leave-related expenses, from sources other than the College such as fellowships, grants-in-aid, and contracts and grants, to assist in accomplishing the purposes of the professional development leave. Receipt of funds for such purposes shall not result in reduction of the employee's College salary. Grants for such financial assistance from other sources may, but need not, be administered through the College. If financial assistance is received in the form of salary, the College salary shall be reduced by the amount necessary to bring the total salary of the professional development leave period to a level comparable to the employee's current year salary rate, unless a smaller deduction is determined by the College. Employment unrelated to the purpose of the professional development leave is governed by the provisions of Article 19, Conflict of Interest and Outside Activity.

## **22.2 Other Study Leave.**

- (a) Job-Required. An employee required to take academic course work as part of assigned duties shall not be required to charge time spent attending classes during the work day to accrued leave.
- (b) Job-Related. An employee may, at the discretion of the supervisor, be permitted to attend up to six (6) credits of course work per semester during work, provided that:
  - (1) The course work is directly related to the employee's professional responsibilities;
  - (2) The supervisor determines that the absence will not interfere with the proper operation of the work unit;

- (3) The supervisor believes that completion of the course work would improve the productivity of the department or function of which the employee is a part; and
- (4) The employee's work schedule can be adjusted to accommodate such job-related study without reduction in the total number of work hours required per pay period.
- (5) Employees may, in accordance with this Article, use accrued annual leave for job-related study.

### 22.3 Research Assignments.

- (a) Policy. Sabbatical/research assignments for professional development are to be made available to employees who meet the requirements set forth below. Such sabbatical/research assignments are granted to increase an employee's value to the College through enhanced opportunities for professional renewal, planned travel, study, formal education, research, writing, or other experience of professional value, not as a reward for service.
- (b) Research Assignments. Eligibility, application, and selection shall follow the procedures specified in Section 4.7 ("Policies on Assigned Research") in the *Faculty Handbook*.
- (c) Terms of Sabbatical/ Research Assignment Program.
  - (1) While on sabbatical/research assignment, the employee's salary shall be full-pay, pro-rated by FTE<sub>2</sub> for the module-length or semester length depending on the type of sabbatical/research assignment. Shared position employee's salary shall be based on the employee's proportional share of the salary. If the sabbatical/research assignments are approved in conjunction with an adjacent equal time period of leave without pay, the employee may opt to have their salary dispersed at half-pay over the full period, allowing continuous benefits coverage.
  - (2) Contributions normally made by the College to retirement and Social Security programs shall be continued on a basis proportional to the salary received. College contributions normally made to employee insurance programs and any other employee benefit programs shall be continued during the sabbatical/research assignment.
  - (3) Eligible employees shall continue to accrue sick leave during the sabbatical/research assignment proportional to their salary rate during the research assignment.

While on leave, an employee shall be permitted to receive funds for travel and living expenses, and other sabbatical/research assignment -related expenses, from sources other than the College such as fellowships, grants-in-aid, and contracts and grants, to assist in accomplishing the purposes of the sabbatical/research assignment. Receipt of funds for such purposes shall not result in reduction of the employee's College salary. Grants for such financial assistance from other sources may, but need not, be administered through the College. If financial assistance is received in the form of salary, the College salary shall be reduced by the amount necessary to bring the total salary of the sabbatical/research assignment period to a level comparable to the

employee's current year salary rate, unless a smaller reduction is determined by the College. Employment unrelated to the purpose of the sabbatical/research assignment leave is governed by the provisions of Article 19, Conflict of Interest and Outside Activity.

#### **22.4 Retraining.**

The College may, at its discretion, provide opportunities for retraining of employees when it is in the College's best interests. Such opportunities may be provided to employees who are laid off, to those who are reassigned, or in other appropriate circumstances. These retraining opportunities may include Research Assignments or Professional Development Leaves under this Article.



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**ARTICLE 23**  
**SALARIES****23.1 Employee Pay Plans.****(a) Academic Year 2018-19**

1. Eligible employees must have been a regular employee on or before July 1, 2018 and must have been continuously employed by the College through the date of signing this Tentative Agreement in FY 2018-19.
2. Eligible employees must have received a satisfactory or better annual evaluation for Fiscal Year 2017-18. A satisfactory evaluation is when a majority of the employee's assigned duties are evaluated as satisfactory or better.
3. Each eligible employee shall receive the following recurring base salary increase retroactive to September 9, 2018.

(a) All eligible employees appointed to calendar year contracts (26 pay periods) shall receive a 3.0% recurring salary increase to base.

(b) All eligible employees appointed to academic year contracts (20 pay periods) shall receive 4.5% recurring increase to their annual base salary. The academic year contracts are deemed to be fully aligned with the academic calendar adopted annually by the Board of Trustees of New College of Florida. The 4.5% increase only represents an increase for alignment.

**(b) Academic Year 2019-20**

1. Eligible employees must have been a regular employee on or before July 1, 2019, and must have been continuously employed by the College through the date of signing the Tentative Agreement in FY 2019-20.

a) 2. Eligible employees must have received a satisfactory or better annual evaluation for Academic Year 2018-19. A satisfactory evaluation is when a majority of the employee's assigned duties are evaluated as satisfactory or better.

b) 3. Each eligible employee shall receive a \$2,500 non-recurring one-time lump sum bonus, prorated based on appointed FTE.

4. Employees who began employment after July 1, 2019 and have been continuously employed by the College through the date of the signing for the Tentative Agreement in 2019-20 shall receive a \$1000 non-recurring one-time lump sum bonus, prorated based on appointed FTE.

(d) Academic Year 2021-2022

### **Base Salary Increase**

1. Effective August 8, 2021, each eligible employee shall receive a 2% increase to base salary as detailed below. Increases and retroactive pay will be reflected in the April 8, 2022, paycheck.
2. To receive the base salary increase authorized by this section, the employee must have been a regular employee on or before December 31, 2020, and must be continuously employed by the College through March 19, 2022. If an employee submits a notice of resignation from the College or receives a notice of adverse action to terminate prior to April 2, 2022, but continues working up to and including April 2, 2022, he/she will not receive the base salary increase.
3. Eligible employees must have received a satisfactory or better annual evaluation for Academic Year 2020-21. A satisfactory evaluation is when a majority of the employee's assigned duties are evaluated as satisfactory or better.

### **One-Time Lump Sum Bonus**

- A. Each eligible employee shall receive a non-recurring, one-time lump sum bonus payment as described below less any applicable taxes and withholding. Each eligible part time employee shall receive this bonus payment prorated based on the full-time equivalency of their position. This bonus shall not be used to calculate base rate of pay.

Employees hired on or before December 31, 2020, will receive \$2,000.00.

- B. The bonus payments will be distributed on April 8, 2022,
- C. Eligible employee refers to all regular employees who:
  1. Have been continuously employed through March 19, 2022,
  2. Do not have a current performance evaluation on file with a marginal or unsatisfactory rating,
  3. Have not resigned their position with or without notice or have not received a notice of adverse action to terminate employment for cause prior April 2, 2022.

### **23.2 Promotion Increases.**

- (a) In addition to the increases specified in section 23.1 above, promotion increases shall be granted to employees pursuant to Article 14.
  1. For promotions in the professor ranks, whichever is greater: 9.0% of the employee's previous year's base salary rate or a minimum annual base salary of \$70,000 for promotion from Assistant to Associate Professor; 9.0% or a minimum annual base salary of \$80,000 for promotion from Associate to Full Professor;
  2. 9.0% in recognition of promotion to one of the ranks described below:

- i. Associate Program Director for Counseling and Wellness from Assistant, Associate Librarian from Assistant, Associate Program Director in Writing Instruction from Assistant, (working title) Associate Professional Specialist from Assistant; and
- ii. Tier 1 Associate Professor to Professor, Associate Program Director for Counseling and Wellness to Program Director for Counseling and Wellness, and Associate Librarian to Librarian, Associate Program Director in Writing Instruction to Program Director in Writing Instruction, and Associate Professional Specialist to (working title) Professional Specialist.

(b) Tier promotions within the Associate Professor Rank will grant salary increases of the following percentage of the previous year's base salary rate as described below:

1. Promotion from Tier I Associate to Tier II Associate – 3%
2. Promotion from Tier II Associate to Tier III Associate – 3%

(c) Promotions from Tier II and Tier III Associate to Professor rank will grant salary increases of the following percentage of the previous year's base salary rate as described below:

1. Promotion from Tier II Associate to Full Professor – 5.74%
2. Promotion from Tier III Associate to Full Professor – 2.74%

### **23.3 Report to Employees.**

All employees shall receive notice of their salary increase not later than two weeks prior to implementation of the salary increases described in this article. Such notice will include current salary, and the amount of increase from the following categories: promotion, merit, discretionary, guaranteed minimum, legislatively appropriated, equity, and other. Upon request, an employee shall have the opportunity to consult with the person or committee which makes the initial recommendation for salary increases.

### **23.4 Contract and Grant Funded Increases.**

- (a) Employees on contracts or grants shall receive salary increases equivalent to similar employees on regular funding, provided that such salary increases are permitted by the terms of the contract or grant and adequate funds are available for this purpose in the contract or grant. In the event such salary increases are not permitted by the terms of the contract or grant, or in the event adequate funds are not provided, the President shall seek to have the contract or grant modified to permit such increases.
- (b) Nothing contained herein shall prevent employees whose salaries are funded by grant agencies from being allotted raises higher than those provided in this Agreement.

**23.5** Nothing contained herein shall prevent the College from providing salary increases for verified counteroffers beyond the increases specified above. Any other proposed increases shall be subject to collective bargaining.

**23.6** All increases provided under this Article shall be reported accurately by category in the College Employee File.

**23.7 Type of Payment for Assigned Duties.**

- (a) Duties and responsibilities assigned by the College to an employee which do not exceed the available established FTE for the position shall be compensated through the payment of Salary, not OPS.
- (b) Duties and responsibilities assigned by the College to an employee which are in addition to the available established FTE for the position shall be compensated through OPS, not Salary.

**ARTICLE 24**  
**ADMINISTRATION AND BENEFITS**

**24.1 Benefits Improvements.**

The College and UFF support legislation to provide adequate and affordable health insurance to all employees.

**24.2 Part-Time Employees and Shared Position**

Part-time and shared position employees, except those in positions funded from OPS funds, are entitled to employer-funded benefits under the provisions of State law and the rules of the Department of Management Services and the Division of Retirement. Part-time and shared position employees should contact the personnel Human Resource office to determine the nature and extent of the benefits for which they are eligible.

**24.3 Retirement Credit.**

Retirement credit for employees who are authorized to take uncompensated or partially compensated leaves of absence shall be granted in accordance with State law and the rules of the Division of Retirement as they may exist at the time leave is granted. The current Florida Retirement System rules also require that to receive full retirement credit, the employee on uncompensated or partially compensated leave must make payment of the retirement contribution that would otherwise be made by the College, plus interest, if applicable. Employees who are to take such a leave of absence should contact the personnel office for complete information prior to taking the leave.

**24.4 Benefits for Retired Employees.**

- (a) Employees retired from the College shall be eligible, upon request, and on the same basis as other employees, subject to College policies, to receive the following benefits:
- (1) Retired employee identification card;
  - (2) Use of the College library (i.e., public rooms, lending and research service);
  - (3) Listing in the College directory;
  - (4) Placement on designated College mailing lists;
  - (5) A College parking decal;
  - (6) Use of College recreational facilities (retired employees may be charged fees different from those charged to other employees for the use of such facilities);
  - (7) The right to audit courses on a space available basis with permission of the instructor.
  - (8) A mailbox in the division/unit from which the employee retired, subject to space availability.
  - (9) College e-mail account.
  - (10) Use of College stationary.

- (b) In accordance with College policy, and on a space available basis, the College is encouraged to grant a retired employee's request for office or laboratory space.
- (c) With the exception of retirees who participated in the SUS Optional Retirement Program and for whom provisions have been made, as stipulated in Section 24.5(a)(5) of this Agreement, retired employees of any State-administered retirement system are entitled to health insurance subsidy payments in accordance with Section 112.363, Florida Statutes.

#### **24.5 Optional Retirement Program.**

- (a) An Optional Retirement Program is provided for employees who are employed for no less than one academic year including the following provisions:
  - (1) Faculty and A&P employees who are in the collective bargaining unit and otherwise eligible for membership in the Florida Retirement System.
  - (2) Any employee whose Optional Retirement Program eligibility results from initial employment will be enrolled as a member of the Optional Retirement Program. If the employee does not execute an annuity contract with an Optional Retirement Program approved provider and notify the Division of Retirement in writing within 90 days, the employee will be enrolled as a member of the Florida Retirement System.
  - (3) No accrued service credit or vested retirement benefits will be lost if an employee participates in the Optional Retirement Program;
  - (4) Benefits under the Optional Retirement Program shall be fully and immediately vested in the participating employees;
  - (5) The employer shall contribute to the Optional Retirement Program, on behalf of each employee participating in the program, an amount equal to the normal cost portion of the employer's contribution to the Florida Retirement System, as well as an amount equal to the employer's contribution to the Retiree Health Insurance Subsidy program on behalf of non-Optional Retirement participants (see Section 112.363(8), Florida Statutes), less a reasonable and necessary amount, as determined by the Legislature, which shall be provided to the Division of Retirement for administering the program; and
  - (6) A participating employee may contribute to the Optional Retirement Program, by salary reduction or deduction, a percentage amount of the employee's gross compensation not to exceed the percentage amount contributed by the employer to the Optional Retirement Program, but in no case may such contribution exceed federal limitations.
- (b) The parties agree to inform eligible employees regarding the existence and impact of the Optional Retirement Program upon their retirement benefits.
- (c) If the UFF is concerned with the performance of any aspect of the Optional Retirement Program, whether administered by the Board or another State agency, the UFF has a right to consult with the Florida Board of Governors regarding such concern. As a result of such consultation, the parties may agree to an approach to address the concern if it lies outside the Board's statutory authority.

**24.6 Phased Retirement Program.****(a) Eligibility.**

- (1) Employees who have accrued at least six (6) years of creditable service in the Florida or Teachers Retirement System (FRS, TRS) or Optional Retirement Program (ORP), except those employees referenced in 24.6(a) (2), are eligible to participate in the Phased Retirement Program.

(a) Instructional Employees who choose to participate must provide a written request for phased retirement to their supervisor at the beginning of the academic year, no later than September 30th. The written request shall include a plan for percentage FTE, work schedule, and work assignments during the requested phased retirement period. In addition, a report of Outside Activity (per Article 19) should be included, if applicable. The plan will be developed in collaboration with appropriate disciplinary colleagues. The supervisor can either approve, ask for modification, or disapprove the request. If the supervisor approves, the faculty member's personnel file and proposed work plan will be made available to the voting members of the division or unit in the first week of October, who will vote on the request prior to fall break. If a simple majority of the voting members of the division or unit approve the request, it is forwarded to the Provost for final approval. Normal policies related to accountability for quality and quantity of assigned duties will apply during the period of phased retirement.

(b) Faculty librarians. Faculty librarians who choose to participate must provide a written request for phased retirement to their supervisor at the beginning of the academic year, no later than September 30<sup>th</sup>. The written request shall include a plan for percentage of FTE, work schedule, and work assignments during the requested phased retirement period. In addition, a Report of Outside Activity (per Article 19) should be included, if applicable. This plan will be developed in collaboration with the Library Faculty Committee. The supervisor can either approve (with or without modifications) or disapprove the request. If the supervisor approves, the faculty librarian's annual evaluations and final proposed work plan will be made available to the Library Faculty Committee in the fifth week of the term. If a simple majority of the Library Faculty Committee approve the request, it is forwarded to the Provost for final approval. Normal policies related to accountability for quality and quantity of assigned duties will apply during the phased retirement.

(c) Bargaining Unit Employees in the Counseling Center. At the beginning of the semester, no later than four (4) weeks after the start of the semester, a written request for phased retirement is provided to the supervisor. The written request shall include a plan for the percentage FTE and work assignments during the requested phased retirement period. In addition, a Report of Outside Activity (per Article 19) should be included, if applicable. The plan should be developed in collaboration with other counselors. The

supervisor can approve (with or without modifications) or disapprove the request. If the supervisor approves, the counselor's evaluations and proposed work plan will be made available to the voting members of the unit in the fifth (5<sup>th</sup>) week of the term, who will vote on the request. If a simple majority of the voting members of the unit approve the request, it is forwarded to the Dean of Students for final approval. Normal policies related to accountability for quality and quantity of assigned duties will apply during the phased retirement.

(2) Employees not eligible to participate in the Phased Retirement Program include those who have received notice of non-reappointment, layoff, or termination, and those who participate in the State's Deferred Retirement Option Program (DROP).

(b) Program Provisions.

(1) All participants must resign from their tenure/permanent status as described in Article 15, if applicable, except as stated otherwise in this Article. Upon the completion of the approval process, and no later than the end of the fall semester, the employee seeking part-time status should submit a written resignation of tenure (if applicable) to the Provost, effective at the end of the following spring semester.

(a) Compensation during the phased transition period of re-employment shall be at a salary proportional to the participant's salary prior to retirement, based on the part time FTE. The employer contribution for health and life insurance will remain at the 1.0 FTE amount. The assignment shall be scheduled either full time for a percentage of the year or a percentage FTE over the whole year, beginning with the academic year next following the date of phased retirement and subject to the condition outlined in (3)a. Employees may seek adjustment to their phased retirement plan by coordinating with their Division Chair and the Provost to develop a revised work plan. Academic year employees are encouraged to elect to be paid over 20 pay periods in order to pay for their insurance elections.

(2) Leave for Illness/Injury.

a. Each participant shall continue to earn sick leave and/or annual leave (if eligible) on a pro-rata basis with the assigned FTE.

(3) Phased Retirement Period.

a. The period of phased retirement will be limited to no more than 3 years. At the end of the 3-year period, the employee shall fully retire. No further notice of cessation of employment is required.

(4) Salary Increases. Participants shall receive all increases guaranteed to employees in established positions, in an amount proportional to their part-time appointment, and shall be eligible for non-guaranteed salary increases on the same basis as other employees.



- (5) Preservation of Rights. Participants shall retain all rights, privileges, and benefits of employment, as provided in laws, rules, this Agreement, and College Regulations and policies, subject to the conditions contained in this Article.
- (6) Payroll Deductions. The UFF payroll deductions, as specified in Article 26, if applicable, shall be continued for a program participant during the phased retirement period.
- (7) Contracts and Grants. Nothing shall prevent the employer or the participant, consistent with law and rule, from supplementing the participant's employment with contracts or grants.
- (8) The decision to participate in the Phased Retirement Program is irrevocable after the required approval document has been executed by all parties.
  - (a) Phased Retirement Program Information Document. The parties agree to jointly develop written information, and periodically revise written materials, describing the current provisions of the Phased Retirement Program in this Agreement. The College shall distribute this written information to the College Human Resources department and the NCUFF

#### **24.7 Employee Assistance Programs.**

The College is encouraged to expand its existing Employee Assistance Program (EAP) to include assessment, referral, follow-up consultation, short-term counseling, and other services for employees with personal, family, job stress, or substance abuse problems. Any policies created or revised by the College in the development or operation of its EAP shall be discussed in consultation with the NCUFF.

#### **24.8 Pre-tax Benefits Program.**

The College shall continue to provide a pre-tax benefits program for its salaried employees which includes the opportunity to: (1) pay for their State insurance premiums on a pre-tax basis and, (2) utilize flexible spending accounts for medical and dependent care expenses.

#### **24.9 Domestic Partner Benefits.**

The College has implemented a Domestic Partner Health Benefits Stipend program for members of the bargaining unit effective at the beginning of the 2007-2008 academic year. The Domestic Partner Health Benefits Stipend Program shall be designed to provide a stipend to offset the cost of individual health care coverage for the domestic partner of an employee of the College. The program shall incorporate the following features:

- (a) The Domestic Partner Health Benefits Stipend Program shall be administered by the Human Resource Department of the College and funded by the New College of Florida Foundation.

- (b) The criteria and requirements for eligibility for the program can be found in the Domestic Health Insurance Stipend Policy on the Human Resource website (HR form 061C – 3/18/2010).
- (c) All forms needed for application for the Domestic Partner Health Benefits Stipend Program can be found on the Human Resource website (Forms, Policies and Procedures, Domestic Partner Health Insurance Benefit Policy and Forms) as follows:
  - 1. HR Form 060-Domestic Partner Insurance Stipend Certification Checklist
  - 2. HR Form 061-Affidavit of Domestic Partner
  - 3. HR Form 061a-Domestic Partner Termination

#### **24.10 Child Care Support.**

Acting in concert with the New College Child Center, Inc., a corporation not for profit, the College shall support the operation of a child care center on the campus of the College for the benefit of employees and members of the community. Support from New College and the New College Foundation, Inc. includes providing a facility on the campus of New College and providing maintenance and other services as fully outlined in a Memorandum of Understanding between New College and the New College Child Center, Inc.

#### **24.11 Family Tuition Support.**

The College will establish a program in the nature of savings funds that will be available to all employees of the College for the purpose of providing tuition support to families of employees. The program will be established in a manner that takes advantage of existing tax regulations. The College will not provide direct contributions to the funds. While the funds could serve as a vehicle for an employer support program based upon future collective bargaining negotiations there has been no commitment for any employer contribution to the funds.

(a) The College will join The Tuition Exchange, Inc. in 2014, a reciprocal scholarship exchange program.

Dependent children of full-time, permanent status employees who have completed two years of continuous service by September 1 of the current academic year are eligible to be sponsored by New College for undergraduate tuition scholarships at other Tuition Exchange member colleges and universities. "Dependent children" include natural and legally adopted children, provided that financial dependence on parents can be demonstrated; dependents meeting the requirements set forth by the Internal Revenue Service will qualify.

Policies related to the implementation of the Tuition Exchange that are created or revised by the College shall be developed in consultation with the NCUFF.

(b) New College and NCUFF agree to provide tuition remission to dependent children of New College of Florida employees.

- 1) Dependent children of full-time, permanent status employees (including shared position employees) who have completed two years of continuous service by September 1 of the current academic year are eligible.
- 2) "Dependent children" include natural and legally adopted children, provided that financial dependence on parents can be demonstrated; dependents meeting the requirements set forth by the Internal Revenue Service will qualify.
- 3) Only in-state tuition will be remitted. Fees, housing, and other costs of attendance will not be remitted.
- 4) Dependents must meet the admission standards of New College of Florida, and must be admitted to qualify for tuition remission.
- 5) Continuation of tuition remission is contingent upon remaining in good academic standing.
- 6) Dependent children lose their eligibility if a Student Code of Conduct violation results in their expulsion, suspension, expulsion from residence halls, or involuntary withdrawal.
- 7) Continuation of participation in the following circumstances will be reviewed on a case by case basis by the Assistant Vice President of Human Resources, with an appeal to the Vice President for Finance and Administration:
  - a) Employee is no longer employed at NCF in a full (or shared position) regular status position, excluding retirement and death.
  - b) Employee is on long term-disability or medial leave.
  - c) Student is unable to continue due to illness

Dependent children of employees who are continuously enrolled will continue to receive tuition remission up through the point that they complete 8 semesters.

#### **24.12 Graduate Education Assistance**

- a. Purpose: New College strongly encourages its Faculty members to pursue educational opportunities for professional growth and development. The Education Assistance Program (Program) is designed to provide eligible employees tools to enhance their jobs skills and further their education by providing assistance in meeting the expenses of continuing education.

Employees, working full time, who have been employed in an established position for at least six (6) months and who meet academic requirements are eligible for such assistance.

- b. Monetary Assistance: Graduate course work is eligible for tuition reimbursement. For graduate coursework, the College will reimburse tuition costs at the actual semester credit hour rate charged up to the cost of resident graduate rate semester credit hour charged by the University of South Florida. Total semester credit hours eligible for reimbursement will not exceed a maximum of six (6) semester credit hours per semester. Five Thousand Dollars (\$5000) will be set aside for this program to

reimburse the difference between Undergraduate and Graduate level tuition costs on a first-come first-served basis. The Five Thousand Dollars (\$5,000) is available each year for the entire bargaining unit's educational assistance.

c. Eligibility Requirements:

1. An employee must be admitted as degree seeking or non-degree seeking student at an accredited vocation/technical institute, community college, four year college or university prior to applying to participate in the Program. The Program does not permit enrollment in thesis, dissertation, internships, directed individual study, individual performance courses, non-credit courses, sponsored credit Programs, or off-book Programs.
2. An employee must be a regular employee (1.0 FTE) on the day before classes begin for the semester through the end of that semester.
3. An employee must have completed six (6) months full-time, continuous, satisfactory and regular service with New College prior to applying to participate in the Program.
4. Enrollment in the Program is contingent upon supervisory approval, VP/Provost approval, and verification of eligibility status by Human Resources.
5. Participation in the Program is to be conducted on the employee's own time. Employees are encouraged to take classes during off-duty hours. However, if that is not possible, supervisors may approve leave (Annual Leave, accrued Comp Leave, or leave without pay) or adjust the employee's work schedule, as long as this does not conflict with departmental operations. This policy does not pertain to job required academic coursework.
6. Employee must receive a grade of C or better to receive reimbursement if a grading scale is utilized at the institute/college/university that is attended.
7. Employee will not receive reimbursement for any classes they withdraw from or drop after the official Drop/Add period.
8. If the Employee has not been able to utilize some or all of the Graduate level tuition cost available to them, he/she may continue at the Undergraduate tuition rate as outlined on page 41 and 42 of the NCF Employee Handbook 6-5.

c. Enrollment Procedures:

Refer to the New College of Florida Employee Handbook, page 41 and 42 for enrollment procedures.

After Human Resources validate the proof, a form will be submitted to the Business Office for the issuance of the reimbursement.

*\* Only actual costs will be reimbursed. If the employee received financial aid for his/her respective class, he/she will not be reimbursed by this benefit or the employee may receive a reduced benefit.*

## 24.13 Shared Position Insurance Stipend

The College shall pay a bi-weekly stipend to employees in a shared position. The purpose of the stipend is to create parity for the shared position employee health insurance contribution in relation to a 1.0 FTE employee's contribution amount. The stipend will be equal to the difference between the required health insurance employee contribution for a 1.0 FTE employee and the required health insurance contribution for the shared position employee. If the shared position employee chooses spouse coverage, the stipend will be equal to the difference between the required health insurance employee contribution for a 1.0 FTE employee and the required health insurance contribution for the shared position employee. If the shared position employee chooses family coverage, the stipend cannot exceed the amount that is equal to the difference between the required 1.0 FTE employee contribution for family coverage and the required employee contribution for shared position employees in the same family. The employee is responsible for any taxes on such a stipend.

**ARTICLE 25**  
**UFF INSURANCE DEDUCTION**

The College agrees to provide one payroll deduction per employee per pay period for the UFF voluntary economic services programs. It is understood that all such programs and deductions will meet requirements of applicable rules and regulations. The UFF shall provide the College with a written report by July 31 of each year regarding any program requiring payroll deduction. This report shall include the name of the common remitter company, a list of the provider companies that are to receive remittances, the appropriate contact people for the common remitter and associated provider companies, and addresses and phone numbers.

## **ARTICLE 26 PAYROLL DEDUCTION**

Pursuant to the provisions of Section 447.303, Florida Statutes, the College and the UFF hereby agree to the following procedure for the deduction and remittance of the UFF membership dues and other UFF deductions.

### **26.1 Deductions.**

- (a) During the term of this Agreement, the College agrees to deduct the UFF membership dues in an amount established by the UFF and certified in writing by the UFF State President to the College, and to make other UFF deductions in an amount authorized by an employee, from the pay of those employees in the bargaining unit who individually and voluntarily make such request on a written authorization form as contained in Appendix "B" to this Agreement.
- (b) Deductions will be made biweekly beginning with the first full-pay period commencing at least seven (7) days following receipt of authorization by the College. The UFF shall give written notice to the College of any changes in its dues at least forty-five (45) days prior to the effective date of any such changes.

### **26.2 Remittance.**

The dues and other authorized deductions shall be remitted by the College to the UFF State Office on a biweekly basis within thirty (30) days following the end of the pay period. Accompanying each remittance shall be a list of the employees from whose salaries such deductions were made and the amounts deducted. This list shall be provided in machine-readable form.

### **26.3 Termination of Deduction.**

The College's responsibility for deducting dues and other authorized deductions from an employee's salary shall terminate automatically upon either (a) thirty (30) days written notice from the employee to the College personnel office and the UFF revoking that employee's prior deduction authorization, or (b) the transfer of the authorizing employee out of the bargaining unit. Consistent with the provisions of Section 8.5, the College shall notify the NCUFF when it proposes to reclassify an employee to a classification which is not contained in the General Faculty bargaining unit.

### **26.4 Reinstatement of Deduction.**

The College shall reinstate dues deductions for employees who have previously filed authorization for dues deduction and are subsequently placed in leave without pay status, or who participate in the Phased Retirement Program, upon commencement of full- or part-time employment at the College.

**26.5 Indemnification.**

The UFF assumes responsibility for (1) all claims against the College including the cost of defending such actions, arising from their compliance with this Article, and for (2) all monies deducted under this Article and remitted to the UFF. The UFF shall promptly refund to the College excess monies received under this Article.

**26.6 Exceptions.**

The College will not deduct any UFF fines, penalties, or special assessments from the pay of any employee, nor is the College obligated to provide more than one payroll deduction field for the purpose of making the deductions described in this Article.

**26.7 Termination of Agreement.**

The College's responsibilities under this Article shall terminate automatically upon (1) decertification of the UFF or the suspension or revocation of its certification by the Florida Public Employees Relations Commission, or (2) revocation of the UFF's deduction privilege by the Florida Public Employees Relations Commission.



**ARTICLE 27**  
**MAINTENANCE OF BENEFITS**

No employee may be required to waive the benefits provided by the terms of this Agreement. No employee shall, as a result of the establishment of a level of rights or benefits in this Agreement, suffer a loss or diminution of any such rights or benefits for which otherwise eligible.

**ARTICLE 28**  
**MISCELLANEOUS PROVISIONS**

**28.1 No Strike or Lockout.**

The College agrees that there will be no lockout during the term of this Agreement. The UFF agrees that there will be no strike by it or by any employees during the term of this Agreement.

**28.2 Effect of Passage of Law.**

Any provision of this Agreement which is contrary to law, but becomes legal during the term of this Agreement, shall be reinstated consistent with such legislation.

**28.3 Venue.**

For purposes of venue in any judicial review of an arbitrator's decision, the parties elect to submit themselves to the jurisdiction of the courts in Sarasota County, Florida. In an action commenced in Sarasota County, neither the College nor the UFF will move for a change of venue based upon the defendant's residence in fact if other than Sarasota County.

**28.4 Copies of this Agreement.**

The College agrees to provide a number of copies of the ratified Agreement at the beginning of the contract period, equal to number of members of the bargaining unit plus ten, to the UFF for distribution to employees, and to provide a copy to each new employee upon hiring. The cost for printing additional copies shall be borne equally by the parties. The UFF agrees to distribute copies of the Agreement to employees when the Agreement is ratified. In addition, the College post the current Agreement and any ratified amendments on the College website.

**28.5 Class Titles.**

- (a) Whenever the College creates a new class, it shall designate such class as being either within or outside the bargaining unit and shall notify the UFF. Further, if the College revises the specifications of an existing class so that its bargaining unit designation is changed, it shall notify the UFF of such new designation. Within ten (10) days following such notification, the UFF may request a meeting with the College for the purpose of discussing the designation. If, following such discussion, the UFF disagrees with the designation, it may request the Florida Public Employees Relations Commission to resolve the dispute through unit clarification proceedings.
- (b) An employee may request a review of the appropriateness of the employee's classification by the appropriate College office. In case of disagreement with the results of the review, the matter shall be subject to Article 20, Grievance Procedure.

**28.6 Salary Rate Calculation and Payment.**

The biweekly salary rate of employees serving on twelve (12) month (calendar year) appointments shall be calculated by dividing the calendar year salary rate by 26.1 pay periods. Employees serving academic year appointments may at their request also receive their academic year salaries over 26.1 biweekly pay periods.

**28.7 Titles and Headings.**

The titles of articles and headings which precede text are inserted solely for convenience of reference and shall not be deemed to limit or affect the meaning, construction, or effect of any provision of this Agreement.

**ARTICLE 29**  
**SEVERABILITY**

In the event that any provision of this Agreement (a) is found to be invalid or unenforceable by final decision of a tribunal of competent jurisdiction, or (b) is rendered invalid by reason of subsequently enacted legislation, or (c) shall have the effect of a loss to the College of funds, property, or services made available through federal law, or (d) pursuant to Section 447.309(3), Florida Statutes, can take effect only upon the amendment of a law, rule, or regulation and the governmental body having such amendatory powers fails to take appropriate legislative action, then that provision shall be of no force or effect, but the remainder of this Agreement shall continue in full force and effect. If a provision of this Agreement fails for reason (a), (b), or (c) above, the parties shall enter into immediate negotiations for the purpose of arriving at a mutually satisfactory replacement for such provision.

**ARTICLE 30**  
**AMENDMENT AND DURATION**

**30.1 Effective Date.**

This Agreement shall become effective on the date it is ratified by both parties and remain in effect through June 30, 2021.

- a. Renegotiations for this Agreement term July 1, 2018 (2019, 2020 respectively) through June 30, 2019 (2020, 2021 respectively), shall begin no later than October 1, 2018 (2019, 2020) respectively, and shall include Articles 23 and 24 and up to three additional articles to be chosen by each party.
- b. The parties may agree to include other subjects in their renegotiations.

**30.2 Amendments.**

In the event the College and the UFF negotiate a mutually acceptable amendment to this Agreement, such amendment shall be put in writing and become part of this Agreement upon ratification by both parties.

**ARTICLE 31**  
**TOTALITY OF AGREEMENT**

**31.1 Limitation.**

The parties acknowledge that during the negotiations which resulted in this Agreement, the College and the UFF had the unlimited right and opportunity to present demands and proposals with respect to any and all matters lawfully subject to collective bargaining, and that all of the understandings and agreements arrived at thereby are set forth in this Agreement, and that it shall constitute the entire and sole agreement between the parties for its duration.

**31.2 No Obligation to Bargain.**

Except as otherwise provided in section 1.2(e) of this Agreement, the College and the UFF, during the term of this Agreement, voluntarily and unqualifiedly waive the right, and agree that the other shall not be obligated, to bargain collectively with respect to any subject or matter, whether or not referred to or covered by this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of the parties at the time they negotiated or signed this Agreement.

**31.3 Modifications.**

Nothing herein shall, however, preclude the parties from mutually agreeing to alter, amend, supplement, delete, enlarge, or modify any of the provisions of this Agreement in writing.

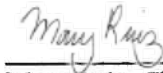
*NCBOT-NCUFF Collective Bargaining Agreement*

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**SIGNATURE PAGE**

IN WITNESS THEREOF, the parties have set their signatures this 3<sup>rd</sup> day of March 2022.

FOR THE BOARD OF TRUSTEES



Mary Ruiz, Chair

FOR THE NEW COLLEGE UFF



Dr. Steven Shipman, President

*Kristie L. Harris*

Kristie Harris, Chief Negotiator



Dr. David Rohrbacher, Chief Negotiator

**APPENDIX A**

**POSITION CLASSIFICATIONS  
IN THE BARGAINING UNIT**

All employees in the following position classifications holding regular and visiting appointments:

- 9001 Professor
- 9002 Associate Professor
- 9003 Assistant Professor
- 9004 Instructor
- 9005 Lecturer
- 9009 Eminent Scholar
- 9053 University Librarian
- 9054 Associate University Librarian
- 9055 Assistant University Librarian
- 9056 Instructor Librarian
- 9115 Coordinator
- 9120 Associate in \_\_\_\_\_
- 9121 Assistant in \_\_\_\_\_
- 9126 Program Director
- 9127 Associate Program Director
- 9128 Assistant Program Director
- 9173 Counselor/Adviser
- 9178 Instructional Specialist
- 9180 Postdoctoral Fellow
- 9189 Postdoctoral Associate
- 9434 Psychologist

And employees in the above classifications with the administrative titles: Division Chair and Program Director.

Excluded from the Bargaining Unit: President, Vice-President, Provost, Director, Dean, employees serving as members of the board of trustees, all other employees on administrative contracts not specifically included above, managerial, confidential, and all other employees of New College of Florida.



APPENDIX B

UNITED FACULTY OF FLORIDA
UFF- FEA-NEA
UFF-PAC PAYROLL DEDUCTION AUTHORIZATION FORM

Please be aware that you are NOT automatically a member of UFF. You must complete and sign a membership form and submit it to UFF in order to become a member.

UFF membership entitles you to:

- Free representation in any grievance and arbitration proceedings...
Strengthen the voice of faculty in negotiations...
Support our lobbying efforts for better higher education funding...
Receive professional protection by way of a free \$1 million professional liability policy...
Obtain the right to vote in UFF elections...
Gain access to a variety of "members only" workshops, events and services...
\$10,000 in life insurance
\$50,000 in accidental death insurance
Two free half-hour non-employment-related legal consultations...
Receive free professional publications and literature about national higher education issues.
Discounts on home & auto insurance

Join the NCF-UFF Chapter

UFF dues are 1% of regular salary. Please fill out the form below and return it to:
Susan Marks (ACE 116)

Membership Form, United Faculty of Florida, NCF Chapter
Please Print Complete Information

Form fields for: Last Name, First Name, MI, Campus Mail Code, Home Street Address, Home Phone, City, State, Zip Code, Office Phone, E-mail address (Personal/Home), E-mail address (Office)

Please enroll me immediately as a member of the United Faculty of Florida (FEA, NEA-AFT, AFL-CIO). I hereby authorize my employer to begin bi-weekly payroll deduction of United Faculty of Florida dues (1% of bi-weekly salary). This deduction authorization shall continue until revoked by me at any time upon 30 days written notice to the payroll office and to the United Faculty of Florida.

Signature (for payroll deduction authorization) Today's Date

**UFF-Political Action Committee Form**

Please PRINT complete information where necessary.

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_

New College Identification Number: \_\_\_\_\_

Home Address: \_\_\_\_\_

Registered Yes \_\_\_ No \_\_\_ Precinct: \_\_\_\_\_ Party: \_\_\_\_\_

State Senate District: \_\_\_\_\_ State House District: \_\_\_\_\_

Congressional District: \_\_\_\_\_ Birth date: \_\_\_\_\_

Please enroll me as a member of the United Faculty of Florida Political Action Committee. UFF-PAC contributions are in the amount of \$1.00 per pay period.

Contributions or gifts to UFF-Political Action Committee\_GF are not tax deductible as charitable contributions for Federal income tax purposes. However, they may be tax deductible under other provisions of the Internal Revenue Code.

\_\_\_\_\_  
Signature of Member

\_\_\_\_\_  
Date

NEW COLLEGE OF FLORIDA /UNITED FACULTY OF FLORIDA

APPENDIX C
GRIEVANCE

I. DATE (Received by the College) \_\_\_\_\_

GRIEVANT

STEP 1 GRIEVANCE REPRESENTATIVE

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

OFFICE PHONE: \_\_\_\_\_

OFFICE PHONE: \_\_\_\_\_

If grievant is represented by the UFF or legal counsel, all College communications should go to the grievant's representative.

Other address to which College mailings pertaining to grievance shall be sent:

Four horizontal lines for providing an alternative mailing address.

II. GRIEVANCE

Article(s) and Sections(s) of Agreement allegedly violated:

Two horizontal lines for describing the violated agreement articles and sections.

Statement of grievance (must include date of acts or omissions complained of):

Remedy Sought:

(See page 2 for additional requirements)

III. AUTHORIZATION

I will be represented in this grievance by: (check one - representative must sign on appropriate line):

_____ UFF	_____
_____ Myself	_____

I (do)\_\_\_\_\_(do not)\_\_\_\_\_ want a postponement for up to 30 days to seek informal resolution of this grievance.

I UNDERSTAND AND AGREE THAT BY FILING THIS GRIEVANCE, I WAIVE WHATEVER RIGHTS I MAY HAVE UNDER CHAPTER 120 OF THE FLORIDA STATUTES WITH REGARD TO THE MATTERS I HAVE RAISED HEREIN AND UNDER ALL OTHER COLLEGE PROCEDURES WHICH MAY BE AVAILABLE TO ADDRESS THESE MATTERS.

This grievance was filed with the Clerk of the College on \_\_\_\_\_ by (check one):

- mail (certified or registered, restricted delivery, return receipt requested);
- personal delivery;
- other (specify).

\_\_\_\_\_  
Signature of Grievant

(Grievant must sign if grievance is to be processed.)

The Step 1 decision shall be transmitted to Grievant's Step 1 Representative by personal delivery with written documentation of receipt or by certified mail, return receipt requested. A copy of this decision shall be sent to Grievant, and the NCUFF Chapter if grievant elected self-representation or representation by legal counsel.

NEW COLLEGE OF FLORIDA /UNITED FACULTY OF FLORIDA

APPENDIX D
REQUEST FOR REVIEW OF STEP 1 DECISION

GRIEVANT

STEP 1 GRIEVANCE REPRESENTATIVE

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

OFFICE PHONE: \_\_\_\_\_

OFFICE PHONE: \_\_\_\_\_

DATE OF STEP 1 DECISION: \_\_\_\_\_

Article(s) and Sections(s) of Agreement allegedly violated (as specified at Step 1):

I hereby request that the President review the attached decision made in connection with the attached grievance because:

Remedy sought (if initial filing is at Step 2):

Grievant's representative received the decision on \_\_\_\_\_.

This grievance was filed with the Clerk of the College on \_\_\_\_\_ by (check one):

- mail (certified or registered, restricted delivery, return receipt requested);
personal delivery;
other (specify).

Signature of Grievant

I am represented in this grievance by (check one - representative should sign on appropriate line):

UFF
Legal Counsel
Myself

A copy of the following documents must be attached to this Request at the time of its filing with the Clerk of the College:

1. Appendix C - Original grievance form filed with the College.
2. Step 1 Decision, if issued by College.
3. All attachments to Step 1 Decision, as required in Section 20.3, Grievance Procedure.

This request should be sent to:

The Clerk of the College  
New College of Florida

The Step 2 decision shall be transmitted to Grievant's Step 2 Representative (if Grievant is represented by UFF, the decision will be sent to the UFF State Office and NCUFF) by personal delivery with written documentation of receipt or by certified mail, return receipt requested. Copies of this decision shall be sent to Grievant and the College's Representative for Contract Administration, and to the UFF if grievant elected self representation or representation by legal counsel.

NEW COLLEGE OF FLORIDA/UNITED FACULTY OF FLORIDA

APPENDIX E
NOTICE OF ARBITRATION

The United Faculty of Florida hereby gives notice of its intent to proceed to arbitration in connection with the decision of the President's Office dated \_\_\_\_\_ and received by the UFF State Office on \_\_\_\_\_ in this grievance of:

Name: \_\_\_\_\_

New College of Florida File Number: \_\_\_\_\_

The following statement of issue(s) before the Arbitrator is proposed:

This grievance was filed with the Clerk of the College on \_\_\_\_\_ by (check one):

- mail (certified or registered, restricted delivery, return receipt requested);
personal delivery;
other (specify).

Date of receipt by the Clerk of the College: \_\_\_\_\_

Signature of UFF President or Director of Arbitrations

I hereby authorize UFF to proceed to arbitration with my grievance. I also authorize UFF and the College or its representatives to use, during the arbitration proceedings, copies of any materials in my evaluation file pertinent to this grievance and to furnish copies of the same to the arbitrator.

Signature of Grievant

This notice should be sent to:

Clerk of the College
New College of Florida

**APPENDIX F**

**(Reserved)**



APPENDIX G

NEW COLLEGE OF FLORIDA

SALARY INCREASE NOTIFICATION

FY \_\_\_\_\_ Pay Increase and One Time Lump Sum Bonus for Eligible New College of Florida Employees Represented by the New College United Faculty of Florida (NCUFF)

The College is pleased to announce that eligible NCUFF unit instructional and non-instructional Faculty will receive a retroactive pay increase and a one-time lump sum bonus based upon the Collective Bargaining Agreement ratified by New College of Florida and NCUFF:

- ✓ Each eligible member in the bargaining unit employed as of will receive an increase of percent to his/her contract base salary for FY .
✓ To receive the retroactive pay increase, each eligible bargaining unit member must have been employed by the College as of , and must have been continuously employed through the latest date of labor and management ratification of this article in the collective bargaining agreement.
✓ In addition, each current member (those that have been continuously employed through the latest date of labor and management ratification of this article in the collective bargaining agreement) in the bargaining unit will receive a non-recurring one-time lump-sum bonus payment of , less any applicable taxes and withholding. Each eligible part time member (if applicable) will receive a bonus payment prorated based on the full-time equivalency of his or her position. This bonus shall not be used to calculate base rate of pay.
✓ Eligible bargaining unit members must have received an annual evaluation of at least "satisfactory." An annual evaluation is considered to be "satisfactory" when a majority of the employee's assigned duties are evaluated as satisfactory.

Salary notifications for promotions, change of positions, etc. will come directly form the respective divisional office.

Salary FY \_\_\_\_\_ \$ \_\_\_\_\_

Increase FY \_\_\_\_\_ \$ \_\_\_\_\_

New Salary FY \_\_\_\_\_ \$ \_\_\_\_\_

**APPENDIX H  
ASSIGNMENT DISPUTE RESOLUTION FORM**

Part 1: Statement of Dispute

Employees Name \_\_\_\_\_

Department \_\_\_\_\_

Employee's Address \_\_\_\_\_

Person Making Assignment \_\_\_\_\_

Date Assignment Made \_\_\_\_\_

Beginning Date of Assignment \_\_\_\_\_

I believe the assignment was arbitrarily and unreasonably imposed because:

THIS FORM MUST BE FILED WITH THE EMPLOYEE'S DIVISION CHAIR OR SUPERVISOR WITHIN THIRTY (30) DAYS AFTER NOTIFICATION OF THE ASSIGNMENT AND MUST BE ACCOMPANIED BY ALL DOCUMENTATION THE EMPLOYEE WANTS TO HAVE REVIEWED, EXCEPT FOR DOCUMENTATION THE EMPLOYEE HAS REQUESTED BUT NOT RECEIVED.

I understand and agree that by pursuing this exclusive remedy for resolution of my assignment dispute, waive whatever rights I may have under any other College procedures or provisions of Florida law.

Employee's Signature\_\_\_\_\_ NCUFF Representative's Signature \_\_\_\_\_

**Part 1: Decision**

Check one (1)

- The assignment was not arbitrarily or unreasonably imposed Date of Decision \_\_\_\_\_
- The assignment has been resolved

Division Chair or Supervisor \_\_\_\_\_

**Part 2: Decision of Provost**

Date Filed With Provost \_\_\_\_\_ Date of Conference \_\_\_\_\_

Check one (1)

- The assignment was not arbitrarily or unreasonably imposed
- The assignment has been resolved Date of Conference \_\_\_\_\_

Provost \_\_\_\_\_

**Part 3: UFF Notice of Intent to Refer Assignment to Neutral Umpire**

Employee's Name \_\_\_\_\_ Date of Receipt by General Counsel \_\_\_\_\_

UFF Representative \_\_\_\_\_ Receipt Acknowledged by General Counsel \_\_\_\_\_

**Part 4: Neutral Umpire's Decision**

- The disputed assignment was arbitrarily or unreasonably imposed
- The disputed assignment was not arbitrarily or unreasonably imposed

**Reasons for determination that the assignment was arbitrarily or unreasonably imposed are:**

**Suggested Remedy (Optional):**

Neutral Umpire's Name (Print) \_\_\_\_\_ Employee's Name \_\_\_\_\_

Neutral Umpire's Signature \_\_\_\_\_ Date Decision Issued \_\_\_\_\_

# **Exhibit B**



*Office of the President*

TO: New College United Faculty of Florida (“NCUFF”)  
United Faculty of Florida (“UFF State Office”)

FROM: Richard Corcoran, President

DATE: July 14, 2023

RE: Step 2 Decision

In accordance with the New College of Florida Board of Trustees (the “College”) and NCUFF Collective Bargaining Agreement (“CBA”) and a Memorandum of Understanding signed on April 18, 2023, by NCUFF and the College, on Monday, June 14, 2023, a Step 2 Review Meeting was conducted in the Keating Center Conference Room regarding the Request for Review of Step 1 Decision dated May 24, 2023 filed by NCUFF (the “Request for Review”) about the grievance filed on April 17, 2023 (“Grievance”).

In addition to myself, present at the Review Meeting were the following individuals:

David Brickhouse, Esquire, VP of Legal Affairs  
Dr. Amy Clore, Professor of Biology  
Dr. Kristopher Fennie, Associate Professor of Epidemiology & Grievant’s Representative  
Dr. Sarah Hernandez, Associate Professor of Sociology  
Dr. Steven Shipman, Professor of Physical Chemistry & as Grievant  
Ms. Lara Sladick, Director, Human Resources  
Ms. Corina Velasquez, Assistant Vice President, Human Resources  
Dr. Katie Walstrom, Professor of Biochemistry  
Ms. Erika Worthy, Chief Human Resources Officer  
Members of the Public

The Request for Review was filed in a timely manner and alleges that the College violated the following Articles and Sections of the CBA:

**Article 1 Recognition, Section 1.1 Bargaining Unit**  
**Article 1 Recognition, Section 1.2 Board and College Regulations and Policies**  
**Article 5 Academic Freedom and Shared Responsibility, Section 5.5 Shared Responsibility for Academic Program**  
**Article 15 Tenure, Section 15.3 Criteria for Tenure**  
**Article 15 Tenure, Section 15.4 Modification of Criteria**  
**Article 15 Tenure, Section 15.5 Recommendations and Procedures**  
**as well as others that might apply.**

**I. NCUFF Request**

*The step 1 resolution does not resolve the violation of the collective bargaining agreement. NCUFF, therefore, requests that Interim President Corcoran reconsider the decision in step 1 and remove his recommendation memo from the file of each of the tenure candidates. See attached NCFUFF (sic) Grievance Step 2 Statement for a more detailed explanation.*

**II. NCUFF Requested Remedy**

**A. The remedy or relief sought at Step 1 were:**

- *Remove the memo that Interim President Corcoran inappropriately added to each candidate's file. Inform the members of the Board of Trustees that the content in the memo should not be considered in, nor should it impact, their decision regarding the faculty's candidacy for tenure.*
- *Grant full consideration of each candidate's tenure application in accordance with the process and timeline described in Article 15 of the NCBOT-NCUFF collective bargaining agreement (2021-2024).*
- *Interim Provost Thiessen should present the cases using the recommendations offered as part of the usual process, wherein Provost Sherman approved (Feb. 17-20, 2023) and Interim President Thiessen approved tenure (Feb. 24, 2023) for all the candidates.*
- *Cease and desist from imposing unilateral changes to the collective bargaining agreement and, instead, bargain with the union pursuant to the collective bargaining agreement and Florida Statutes.*

**B. The remedy added and sought at Step 2 is:**

- *Because the New College of Florida Board of Trustees (NCF BOT) held a vote on April 26, 2023 at a time when the file of each of the candidates for tenure continue to contain Interim president Corcoran's review memo, the members of the NCF BOT should take another vote, no later than the next BOT meeting, without prejudice and in accordance with the criteria for tenure stipulated in the CBA and Faculty Handbook which have guided the professional development of the faculty.*

### III. NCUFF Step 2 Statement / Additional Information (*italicized*) and the College's Determinations

The College has considered the NCUFF Step 2 Statement / Additional Information, including all discussion at the Step 2 Review Meeting and makes the following determinations:

A. *In the Step 1 Decision, received on May 24, 2023, Chief Human Resources Officer, Erika Worthy, determined that no violation to the CBA was committed. We disagree.*

1. **College's Determinations:** The Step 1 Decision was based on the facts applied to the CBA and Faculty Handbook, as applicable, and should be affirmed.

B. *[CHRO determined] "The CBA requires the president to give a recommendation to the Board of Trustees. No prior recommendation was provided to the Board of Trustees."*

1. **NCUFF Step 2:** *The fact is that the affected faculty did receive a recommendation from Interim President Thiessen notifying them of his support for tenure. The Board of Trustees canceled their March 2023 meeting, denying Interim President Thiessen the possibility of presenting his recommendation. This recommendation was issued to the faculty and is in their files (see attachments). The fact that it was not presented to the Board of Trustees is a violation of the process, as is the fact that another recommendation was added after the first one was placed in the files. It is in fact a second recommendation as a previous recommendation already existed.*

2. **College's Determinations:** Tenure procedure calls for a recommendation by the President to the Board of Trustees. There is no procedure for a recommendation by the President to the faculty. Interim President Thiessen's letter to the faculty was not a required part of the tenure process nor a recommendation to the Board of Trustees. His views regarding what would be recommended to the Board in the future were superseded by subsequent Interim President Corcoran's recommendation regarding each candidate, which were properly presented to the Board of Trustees along with required statements/memoranda prior to the Board of Trustees' April 26 meeting at which early tenure decisions would be made. See *CBA Section 15.5(b)(6)*<sup>1</sup>; *Faculty Handbook Section 4.5*<sup>2</sup>. Note, although the letters

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<sup>1</sup> Section 15.5(b)(6) of CBA states, "The President shall make a recommendation to the Board. If the President's recommendation is contrary to the Provost's, recommendation, a written statement detailing extraordinary circumstances warranting such a decision shall be provided to the Provost, with copies supplied to the candidate and the PAC."

<sup>2</sup> Relevant excerpt of Faculty Handbook Section 4.5: "The Provost makes a recommendation to the President, who subsequently makes a recommendation to the Board of Trustees. A detailed memorandum accompanies the Provost's



were not a required procedural tenure step, out of an abundance of caution, the College included the former Interim President's letters to the faculty candidates in their respective April 26 tenure packets delivered to the Board so the Board had them prior to making their decisions.

***C. [CHRO determined] there "was no 'second Presidential review' and Presidential review is not a term included in the CBA's tenure procedures."***

***1. NCUFF Step 2: We consider the President's recommendation to be the result of a review of the tenure candidates' files. Therefore, there was a second Presidential recommendation, which should have been based on a review of the tenure files.***

***2. College's Determinations: "Presidential review" is not a term included in the CBA's tenure procedures. See CBA Section 15.5(b)(6). There was no "second Presidential recommendation". See III.B.2. above.***

***D. [CHRO determined] "The College followed the CBA's tenure procedures...."***

***1. NCUFF Step 2: The CBA's tenure procedures were modified, as faculty received a recommendation from one Interim President which was included in their file, followed by the addition of a second recommendation from a second Interim President. This is not acknowledged as a permissible step in the CBA.***

***2. College's Determinations: The College followed the CBA's tenure procedures. The memo added to the files by Interim President Corcoran and submitted to the Board of Trustees was required by and in accordance with Section 15.5(b)(6) of the CBA. The CBA requires the President to give a recommendation to the Board of Trustees – not the faculty. No prior recommendation was provided to the Board of Trustees. The letter from prior Interim President Theissen to faculty was not a required part of the tenure process and was not a recommendation to the Board. See III.B.2. above. To the extent it was included in the packet to the Board, along with the required recommendation and memo from the subsequent and current Interim President Corcoran, it was included as it had been shared with the faculty and reflected a prior Interim President's view at the time of the letter, which had been superseded by the later official's action based on the extraordinary circumstances outlined in his memo.***

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recommendation to the President. The Provost shares this memorandum with the candidate and the PAC. The President may overturn the Provost's tenure recommendation only under extraordinary circumstances; those circumstances must be detailed in a written memorandum to the Provost, who shares it with the candidate and the PAC. The final decision rests with the Board of Trustees."

**E. [CHRO determined] “The Provost Advisory Committee acknowledged receipt of the memos at issue by the date of the Grievance filing, April 17, 2023.”**

**1. NCUFF Step 2: The two Provost Advisory Committees did not receive the memos at the time of the filing, which was after the step 1 grievance was submitted and after they should have received them.**

**2. College’s Determinations:** The Provost Advisory Committee acknowledged receipt of the memos at issue by email on the date of the Grievance filing, April 17, 2023. In an April 17, 2023, email to Erika Worthy and others from Katie Walstrom, Ms. Walstrom stated “PACs just received the memos. Katie.” The CBA requires that the President’s statement in support of his recommendation contrary to the Provost “shall be provided to the Provost, with copies supplied to the candidate and the PAC.” See *CBA Section 15.5(b)(6)*. The Faculty Handbook states “The President may overturn the Provost’s tenure recommendation only under extraordinary circumstances; those circumstances must be detailed in a written memorandum to the Provost, who shares it with the candidate and the PAC.” See *relevant excerpt of Faculty Handbook Section 4.5 in footnote above*. Neither the CBA nor Faculty Handbook designate a specific time by which the copies of the statement/memo must be supplied to the PAC. Contrary to the Grievance and NCUFF Step 2 Statement, the statement/memo was transmitted to the PAC by the date of the Grievance filing.

**F. [CHRO determined] “The tenure candidates were personally served ... at least five days prior to the April 26, 2023 Board of Trustees meeting ...”**

**1. NCUFF Step 2: The tenure candidates were scheduled to be reviewed by the Academic, Student and External Affairs committee of the Board of Trustees, which is responsible for making recommendations for tenure cases to the Board of Trustees, on Monday, April 17. The faculty received notification of interim President Corcoran's negative recommendation on Friday, April 14, barely three days prior to the committee's consideration. Since this was the meeting in which their cases were to be discussed, the inclusion of the letter only three days prior to the committee's consideration is a violation; they were certainly not given the required five days to respond before the second recommendation was forwarded to BOT members. The April 26 meeting cited in the Step 1 Decision occurred subsequent to the initial violation.**

**2. College’s Determinations:** The CBA requires the President to provide a recommendation to the Board of Trustees and at times a memo/statement is required to be provided to the Provost to be shared with the candidates and the PAC. The CBA does not require information to be provided to any Committee nor that any Committee make any recommendations to the Board. The Academic, Student

and External Affairs Committee did not review nor discuss any recommendations regarding tenure, but instead deferred that topic to the entire Board, which it handled at its April 26 meeting. Also, Section 15.5(c) of the CBA states,

If any material is added to the file after the commencement of consideration, a copy shall be sent to the employee within five (5) days (by personal delivery or by mail, return receipt requested). The employee may attach a brief response within five (5) days of his/her receipt of the added material. The file shall not be forwarded until either the employee submits a response or until the second five (5) day period expires, whichever occurs first.”

If Section 15.5(c) is applicable and in accordance therewith, after the President issued his recommendations and memos/statements, copies were sent to the respective employees by one or more of the required methods on or before April 20, 2023. The recommendations and supporting memos/statements were not delivered to the entire Board until after the second 5-day period expired and no employees submitted a response. To the extent the employees received earlier notification of the President’s recommendations and memos/ statements by a method other than required by Section 15.5(c) on or about April 14, 2023 (e-mail), that early notice provided the employees even more time to formulate and submit a response to the Board than the required notices. Additionally, to the extent some Board members sit on the Academic, Student and External Affairs Committee and received the recommendations and memos/statements early, such early receipt had no effect as the Committee did not review or discuss any recommendations regarding tenure and deferred that action to the entire Board.

**G. [CHRO determined] “The recommendations in the memos at issue were based on tenure criteria... “**

**1. NCUFF Step 2: The recommendations in the memo at issue were not based on tenure criteria. The decision must be made on the basis of current program needs, not undefined future program needs.**

**2. College’s Determinations: To the extent the recommendations in the memos at issue needed to be based on tenure criteria described in the CBA, they were, such as in Section 15.3(a).<sup>3</sup> See also Notes in paragraph IV.A.12. below regarding “extraordinary circumstances” factors.**

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<sup>3</sup> Section 15.3(a) states: The decision to award tenure to an employee shall be a result of meritorious performance and shall be based upon established written criteria specified in Sections 4.5 (“Tenure Procedure”), 4.6 (“Criteria for Retention, Promotion, and Tenure,”) and 4.12 (“Summary of the Retention, Promotion, Tenure Process”) of the Faculty Handbook, and Guidelines for Tenure and Promotion, New College of Florida June 2003. The decision shall take into account the following:

#### IV. Specific Articles Allegedly Violated in NCUFF Step 2 (*italicized*) and the College's Determinations.

The College has considered the Specific Articles Allegedly Violated in NCUFF Step 2, including all discussion at the Step 2 Review Meeting and makes the following determinations:

*A. "The second presidential recommendation is a violation of the tenure procedure stipulated in the CSA. The CSA only acknowledges one recommendation by a President, not two. The addition of a second recommendation is a modification of the tenure procedure, which was done unilaterally, without consultation or bargaining with NCUFF. This therefore falls afoul of multiple portions of the CSA:"*

1. *NCUFF Step 2: 15.5 - Recommendations and Procedures*

*Violation of Article 15.5(b)(6):*

*"The President shall make a recommendation to the Board. If the President's recommendation is contrary to the Provost's recommendation, a written statement detailing extraordinary circumstances warranting such a decision shall be provided to the Provost, with copies supplied to the candidate and the PAC."*

*By common convention, it is clear that this only refers to a single recommendation by a President, not multiple recommendations.*

*While we maintain that the second presidential recommendation was improper, it was also not provided to the relevant Provost Advisory Committees prior to our filing of the step 1 grievance, contrary to what is stated in the step 1 decision. Additionally, the specific detailing of "extraordinary circumstances" in the second presidential recommendation further falls afoul of this article. Article 15.5(b)(6)'s reference to extraordinary circumstances warranting a decision that is contrary to that of the Provost is generally understood to refer to knowledge the President may have that demonstrates the candidate did not in fact meet the tenure criteria. As an example of such circumstances, one could imagine scenarios in which it came to light, at the last minute, that a candidate had misrepresented their achievements, or had a*

- 
- (1) annual performance evaluations;
  - (2) the needs of the division/unit and college;
  - (3) the contributions of the employee to the employee's academic unit (program, division/unit); and
  - (4) the contributions the employee is expected to make to the College.

And the President's memos/statements specifically cited "the related current uncertainty of the needs of the divisions/units and College" as one of the four extraordinary circumstances that factored into his consideration when making his recommendation decision.



*complaint regarding misconduct. This article is not in reference to changes in ideological positioning or sudden shifts in planning by management.*

2. **College's Determinations:** See above for discussion that only one President's recommendation was presented to the Board and provision of the memos/statements to the PAC. Additionally, "extraordinary circumstances" are not defined in the CBA nor does NCUFF cite to any basis for its alleged "general understanding." Merriam Webster Dictionary defines "extraordinary" as "going beyond what is usual, regular, or customary." The memos/statements listed the circumstances that factored into Interim President Corcoran's decision, all of which went beyond what is usual, regular, or customary.<sup>4</sup>

3. **NCUFF Step 2: 15.4 Modification of Criteria**

**Violation of Article 15.4(a):**

*"Modifying Criteria. Any modification of tenure criteria shall be subject to collective bargaining. Any proposal to develop or modify tenure criteria shall be available for discussion by members of the affected divisions/units before adoption."*

*A proposal to subject candidates to a process resulting in a second presidential recommendation has never been formally made or presented to the faculty for discussion. No such proposal has ever been brought forward to a collective bargaining session. Similarly, no proposals were made to modify the criteria for tenure to include consideration of sudden changes in administrative prerogatives or political preferences.*

4. **College's Determinations:** See above discussion that no modification of tenure criteria was made. Only one presidential recommendation was presented to the full Board of Trustees that made tenure decisions after reviewing information provided. The memos/statements referred to extraordinary circumstances as required.

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<sup>4</sup> The CBA uses the term "extraordinary circumstances" three times, in Sections 12.7, 14.3, and 15.5(b)(6) without any definition or examples. Similarly, the Faculty Handbook uses that term about 6 times without any definition including one time using the term "extraordinary or unusual circumstances".

5. **NCUFF Step 2: 1.1 – Bargaining Unit**

**Violation of Article 1.1:**

*"The Board has recognized the UFF as the exclusive representative, solely for the purpose of collective bargaining with respect to wages, hours, and other terms and conditions of employment as specifically set forth in this Agreement, for all employees in the bargaining unit."*

*No collective bargaining was performed with the union with regard to this modification of the tenure procedure.*

6. **College's Determinations:** There was no modification of the tenure procedure, so no need to bargain.

7. **NCUFF Step 2: 1.2 - Board and College Regulations and Policies**

**Violation of 1.2(c):**

*"The College shall provide to the NCUFF an advance copy of any proposed regulation, or policy changing a term or condition of employment contained in this Agreement. The College shall provide the advance copy of a proposed regulation no later than the date of publication. The advance copy of a policy shall be provided to the NCUFF at least two (2) weeks in advance of its effective date so as to permit the NCUFF to seek consultation with respect to it. With respect to a regulation adopted on an emergency basis, an advance copy shall be provided as far in advance of its effective date as is feasible under the circumstances."*

*Although it was possible, the college did not provide NCUFF two weeks advance notice of a proposed modification, therefore the space for consultation was not created.*

*Further, advance copy of a policy modification by which tenure candidates would be subjected to a process resulting in two presidential recommendations was not offered even in short notice.*

8. **College's Determinations:** No modification of policy was made, so no advance notification was required.

9. **NCUFF Step 2: Violation of Article 1.2(e):**

*"If any proposed regulation, policy, or resolution would modify an express term of this Agreement, the Board or its designee shall engage in collective bargaining with respect to it."*

*Neither the Board nor its designee engaged in collective bargaining with the union with respect to a policy that tenure candidates would be subjected to a process resulting in two presidential recommendations.*

10. **College's Determinations:** No modification of policy modified an express term of the CBA (nor were there two presidential recommendations to the Board), so no collective bargaining was required.

11. **NCUFF Step 2: Criteria for Tenure**

**Violation of Article 15.3(a):**

*"The decision to award tenure to an employee shall be a result of meritorious performance and shall be based upon established written criteria specified in Sections 4.5 ("Tenure Procedure"), 4.6 ("Criteria for Retention, Promotion, and Tenure,") and 4.12 ("Summary of the Retention, Promotion, Tenure Process") of the Faculty Handbook, and Guidelines for Tenure and Promotion, New College of Florida June 2003. The decision shall take into account the following:*

- (1) annual performance evaluations;*
- (2) the needs of the division/unit and college;*
- (3) the contributions of the employee to the employee's academic unit (program, division/unit); and*
- (4) the contributions the employee is expected to make to the College"*

*The stated reasons for tenure deferral or denial in Interim President Corcoran's memos are identical for each candidate and are (see exhibits included in Step 1 Decision):*

*"(1) changes in administration including new President and new Provost-whereby many of these positions are currently held in Interim status; (2) turnover of a majority of the Board of Trustees; (3) a renewed focus on ensuring the College is moving towards a more traditional liberal arts institution; and (4) the related current uncertainty of the needs of the divisions/units and College."*

*Interim President Corcoran's stated reasons are not connected to any of the tenure criteria. Management turnover is independent of a tenure candidate's annual performance evaluations or their contributions to their academic units or*

*to the college. To the extent that the Interim President argues that the needs of the division/unit and college are uncertain, we point out that uncertainty is a part of life and this mitigates in favor of tenure candidates who have shown a substantial amount of flexibility and adaptability, as all candidates who stood for tenure this year have.*

*As for reason (3), this is a possible violation of Article 5.5.*

**12. College's Determinations:** In accordance with CBA Section 15.5(b)(6), Interim President Corcoran described the extraordinary circumstances that factored into his decision to recommend the Board defer or deny early tenure on April 26. As discussed more fully above, "exceptional circumstances" is not defined in the CBA nor are there examples. Additionally, there are no requirements that the "exceptional circumstances" relate specifically to any tenure criteria. Notwithstanding, the fourth factor in each memo/statement directly relates to a factor that should be taken into account in tenure decisions per Section 15.3(a), the needs of the division/unit and college. The alleged violation of Article 5.5 is addressed below.

**13. NCUFF Step 2: 5.5 - Shared Responsibility for the Academic Program**

**Violation of Article 5.5:**

*"Changes to the College academic program, including those matters as specified in Chapter 6, Sections 6.1-6.9, and 6.14-6.20 of the Faculty Handbook shall be made only in consultation with the teaching-and-research faculty of the College, which shall be given the opportunity to discuss any proposed change in a Faculty Meeting (as specified in Section 3.2 of the Faculty Handbook) and respond to the proposal with a yes-or-no vote prior to its adoption. Before any revisions to the current version are adopted, full consideration shall be given to the vote of the faculty."*

*CHRO Worthy notes that "To the extent the memos at issue address possible change, they merely referred to 'the related current uncertainty of the needs of the division/units and College.'"*

*By April 17 and April 26, when decisions on tenure were being made, no concrete policies for change to the divisions and other academic units had yet been proposed or discussed at a Faculty Meeting. The decision to not support tenure based on unknown future programs, rather than the current ones, implied an imposition of modifications to the academic program prior to consultation with the faculty, so much so that it impacted the tenure recommendations. It is a clear violation of Article 5.5.*



**14. College's Determinations:** First, no decisions on tenure were made on April 17. Next, based in part on the other extraordinary circumstances described by Interim President Corcoran in his memos/statements, there was uncertainty of the needs of the divisions/units and College. The fact of uncertainty does not imply that the College would make unilateral changes to the College academic program, which is defined only as including those "matters as specified in Chapter 6, Sections 6.1-6.9, and 6.14-6.20 of the *Faculty Handbook*", without consultation with the faculty as may be required. Notably, contrary to the alleged implication, the President has been consulting with the faculty about changes to the College academic program.

## V. Decision

Based on the College's Determinations above, the Step 1 Decision is affirmed and this is the College's final agency disposition and terminal step, which is not subject to arbitration. *See Florida Statute Section 1001.741(2)*.<sup>5</sup> As the faculty members affected by the Grievance and Request for Review are represented by NCUFF, this decision is addressed to and served on NCUFF on their behalf and in accordance with Section 1001.741(2), Florida Statutes.

cc: Bill Galvano, Esquire General Counsel  
David Brickhouse, VP of Legal Affairs  
Bradley Thiessen, Interim Provost  
Erika Worthy, Chief Human Resources Officer  
Human Resources Confidential File

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<sup>5</sup> Florida Statute Section 1001.741(2) states: "Notwithstanding [Section] 447.401 or any other law related to faculty grievance procedures, personnel actions or decisions regarding faculty, including in the areas of evaluations, promotions, tenure, discipline, or termination, may not be appealed beyond the level of a university president or designee. Such actions or decisions must have as their terminal step a final agency disposition, which must be issued in writing to the faculty member, and are not subject to arbitration. The filing of a grievance does not toll the action or decision of a university, including the termination of pay and benefits of a suspended or terminated faculty member.

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on July 14, 2023, on the Grievant, the Grievant's Step 2 Representative, and the UFF State Office by hand, receipt of which shall be acknowledged at the time of delivery by the Grievant and Grievant's Step 2 representative, or by certified mail, return receipt requested, to the following mailing addresses listed on the Request for Review of Step 1 Decision or the UFF website at <https://myuff.org/>:

*Grievant - NCUFF:*

Steven Shipman  
Heiser Natural Sciences Room 211  
5800 Bayshore Road  
Sarasota, FL 34324

*Grievant's Step 2 Representative:*

Kristopher Fennie  
Heiser National Sciences Room 123B  
5800 Bayshore Road  
Sarasota, FL 34324

*UFF State Office:*

United Faculty of Florida  
115 N Calhoun Street Suite 6  
Tallahassee, FL 32301



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Richard Corcoran, President