



Item: CB: A-1

Florida Atlantic University Board of Trustees

April 21, 2009

SUBJECT: RESOLUTION OF ISSUES AT IMPASSE REGARDING UNITED FACULTY OF FLORIDA

PROPOSED BOARD ACTION

Consideration and approval of the recommended resolution of impasse with United Faculty of Florida union as presented by the Chair of the Collective Bargaining Sub-Committee.

BACKGROUND INFORMATION

The University Administration and the United Faculty of Florida are currently at impasse regarding two (2) unresolved collective bargaining issues. The impasse process is a procedure defined by Section 447 of the Florida Statutes.

The University and the UFF negotiated in good faith their collective bargaining agreement for over a year without reaching an agreement. An impasse was declared in December 2008. A Special Magistrate appointed by the Florida Public Employee Relations Commission conducted a hearing on the matter and issued a recommended decision on all unresolved contract issues. Both the University and the UFF submitted objections to the Special Magistrate's recommended decision, as they are allowed to do by law.

The two (2) issues that remain unsettled and before the Board are (i) wages for the 2008-2009 fiscal year and (ii) summer course assignments. By law, all other issues in the Special Magistrate's report that were not objected to have been deemed accepted.

The Collective Bargaining Sub-Committee was designated by the Board Chair to conduct the statutorily required hearing between the parties. The Committee will present its recommended resolution of the issues to the full Board.

IMPLEMENTATION PLAN/DATE

The impasse resolution proposal will be implemented as adopted by the Board.

SPECIAL MAGISTRATE REPORT
CASE NO. SM-2008-058

**FLORIDA ATLANTIC UNIVERSITY AND
UNITED FACULTY OF FLORIDA**

SUBMITTED TO:

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Stephanie Williams Ray
Chair, Florida Public Employees Relations Commission
4050 Esplanade Way
Tallahassee, Florida 32399-0950

PREPARED BY:

Joseph M. Schneider
Special Magistrate
P.O. Box 17281
West Palm Beach, Florida 33416

March 21, 2009

SPECIAL MAGISTRATE REPORT

CASE NO. SM-2008-058

March 21, 2009

BETWEEN THE PARTIES AT IMPASSE

FLORIDA ATLANTIC UNIVERSITY AND

UNITED FACULTY OF FLORIDA

BACKGROUND INFORMATION

In a letter dated December 18, 2008 from Stephanie Williams Ray, Chair of the Florida Public Employees Relations Commission, Joseph M. Schneider was notified that he had been appointed to be Special Magistrate in a case involving an impasse between Florida Atlantic University and the United Faculty of Florida. Hereafter these parties will be referred to as “FAU-BOT” (Florida Atlantic University - Board of Trustees) and “UFF-FAU” (United Faculty of Florida - Florida Atlantic University).

Following this letter several written and verbal contacts were made with Michael Mattimore, the attorney representing FAU-BOT and Thomas W. Brooks, the attorney representing UFF-FAU, to identify the issues in dispute and to schedule a hearing in an effort to resolve the disputed issues. Mr. Mattimore stated in a letter dated January 14, 2009 that the unresolved issues related to 1) appointments (for summer classes); 2) non-reappointments and 3) salaries.

Mr. Brooks in a letter dated February 5, 2009 stated that appointments for summer classes had not been negotiated, and therefore should not be an issue before the Special Magistrate, and that the FAU-BOT had not properly invoked Section 447.4095 relative to the FAU-BOT declaring financial urgency. He agreed that non-reappointments and salaries were impasse issues.

Both parties agreed to schedule a hearing which was held on Tuesday, February 24, 2009 at 10:00 a.m. in the Grand Palm Room at the Student Union on the Florida Atlantic University Campus in Boca Raton, Florida. At the request of the attorneys the Hearing was conducted informally with a group of administrators of FAU-BOT along with the UFF-FAU’s Chief Negotiator and several other of its representatives. In addition a crowd of approximately 30 people were seated a short distance away from the hearing tables. They requested that a microphone be brought into the hearing area so they could hear the conversations. In addition they asked for an explanation of the process, and that each person at the table introduce himself or herself. These requests were accommodated. During the course of the day there was a substantial decrease in the

number of people in the audience, and only a few remained when the hearing adjourned at about 5:00 p.m.

At the end of the day both parties agreed to file briefs. They were received on March 11, 2009 when the Hearing officially closed.

During the Hearing each side provided a substantial amount of written and verbal communication regarding the three issues of appointments, non-reappointments, and salaries. Information was provided by Dorothy Russell, Associate Vice President of Financial Affairs; Associate Provosts: Diane Alperin, Norman Kaufman, and Michael Armstrong; Sharmila Vishwasrao, UFF-FAU Chief Negotiator; LeRoy W. Dubeck, Professor of Physics at Temple University (via telephone); and Ken Jessell, Vice President of Financial Affairs.

THE SUMMER APPOINTMENT ISSUE

The UFF-FAU did not concur that summer appointments had been negotiated, and indicated that it was therefore not a proper issue before the Special Magistrate. The position of FAU-BOT was they had attempted to negotiate the subject in a number of instances, but were unsuccessful during the current set of negotiations for the 2008-2009 year. They indicated issues relating to non-reappointments and salaries remain at impasse from the 2007-2008 negotiations.

The FAU-BOT position is that summer appointments are very important because of cost considerations. During the Hearing Michael Armstrong, an Associate Provost, stated that it normally costs about \$8400 for a regular faculty member to teach a 3-credit class outside of his or her contract during one of the approximately 6-week summer periods. It costs only about \$3000 for an adjunct professor or \$2000 for a graduate assistant to teach such a class.

The current language in the Collective Bargaining Contract gives preference to bargaining unit faculty for summer classes. Such language was negotiated after 2003 when the state constitution was changed to have individual Boards of Trustees at each public state university. The FAU-BOT argues that this language is designed to apply only to the first class being offered to bargaining unit faculty, and it is the only university that provides this contractual preference of the public universities in the State of Florida.

The UFF-FAU disagrees that the preference applies only to the first class, and indicated that this subject is being contested in the grievance and arbitration procedure.

The current language in Article 8.4 of the Collective Bargaining Contract is silent with regard to whether this preference applies to a single summer class, or if it is

applicable to any subsequent class or classes. Since each party has a different interpretation on how the language should be applied, it clearly is important to resolve the issue and clarify the intent of the language.

Based upon the information submitted at the Hearing it appears that the FAU-BOT did make an appropriate effort to negotiate the subject, and therefore a recommended decision is being provided. It should be noted that the issuance of a recommended decision is not intended to directly impact on any dispute currently being addressed in the grievance/arbitration procedure which presumably relates to an action or actions that occurred during the summer of 2008. This recommended decision is intended to relate to the modification of current language in the Collective Bargaining Contract which should be changed in order to clarify its intent *for summer employment in the future (i.e. beginning with summer employment in 2009.)*

Recommended Decision: Adopt language in Article 8 of the Collective Bargaining Contract for the 2008-2009 year which clarifies that the FAU-BOT is obligated to provide bargaining unit faculty preference relating to summer employment for a single class, rather than multiple classes for qualified bargaining unit faculty.

THE NON-REAPPOINTMENT ISSUE

Article 12 of the Collective Bargaining Contract relates to providing written notification to full time non-tenured faculty who are not going to be reappointed for the following year. Currently non-tenured faculty in their first two years of continuous university service are obligated to receive one semester or 19.5 weeks of notice so that they have a reasonable opportunity to seek other employment. Non-tenured faculty with two or more years of continuous university service are required to receive two semesters or 39 weeks of such notice. There is also provision for personnel employed with “soft money” who have more than 5 years of service to receive up to one year of notice if funding is available.

The proposal of UFF-FAU is to generally increase these notification periods to be consistent with standards adopted by AAUP (American Association of University Professors). That proposal requires notice by March 1 for first year teaching faculty; notice by December 15 for second year teaching faculty and at least one full year of notice for faculty with more than two years of service.

FAU-BOT has countered with a proposal which adds some detail that is not included in the current Collective Bargaining Contract . While it decreases the notice requirement for first year faculty, its language approximates the proposal of the UFF-FAU and the AAUP for such short-term faculty, and it would add language regarding how 12-month non-reappointments are handled. It would also maintain the notice requirement of 19.5 weeks for faculty with one to two years of university service.

Additionally it would maintain the 39-week or two semester notice requirement for faculty with more than two years of university service.

The UFF-FAU's proposal requires that a full year's notice be given for faculty with more than two years of service. While the argument was presented that FAU-BOT could pay the non-reappointed faculty member in lieu of having him or her teach or perform other duties, it would be costly since in many instances the University would have to pay two salaries for the services of a single position. This situation would be especially difficult to justify in today's economy.

Based upon these facts the revised proposal of FAU-BOT is recommended.

Recommended Decision: Amend Article 12 of the Collective Bargaining Contract to include the non-reappointment language submitted by FAU-BOT.

THE SALARY ISSUE

The position of FAU-BOT was that they had been subjected to major reductions in state funding which is their only source of recurring funds, and they were unable to grant an increase beyond one (1) percent for the 2008-2009 year for the bargaining unit faculty. They also were willing to pay a \$1000.00 non-recurring bonus or payment. Last year the State of Florida authorized a non-recurring bonus or payment of \$1000.00 for the 2007-2008 year to the bargaining unit faculty. Details of the University's financial condition were provided by several associate provosts along with an Associate Vice President and the Vice President of Financial Affairs, and were included in a manual of exhibits.

Most of the information provided indicated that the University's funding was under serious constraints, and the state allocation had been reduced several times including twice in the past year. However one of the Associate Provosts, Norman Kaufman, provided information regarding a new funding source which had become available during the past year as a result of a long term lease which the University had signed within the past year. It allowed a company called Clearwire Spectrum Holdings 11, LLC to use Federal Communications Commission (FCC) authorized band width which had become obsolete for the University. Florida Atlantic University now receives monthly checks from Clearwire which are expected to total approximately \$5 million per year. Dr. Kaufman provided an exhibit which outlined a 5-year "Proposed Allocation of Payments" Plan. Approximately 10 percent of that amount was to "Reward Faculty and Staff Contributions FAU's Mission" with the balance being used for student programs, information technology infrastructure, research, academic enhancement and academic enhancement endowment.

The UFF-FAU's position was that they should be receiving an additional increase for the 2007-2008 year of 2.5 percent plus another 2.5 percent increase for the 2008-2009 year. Their Chief Negotiator, Sharmila Vishwasrao, provided a presentation which summarized salary information, reviewed salary comparison studies, and submitted a number of years of budget comparison data which showed annual increases in the total budget and its individual classifications. In addition a telephone call was placed to Professor Dubeck of Temple University, who reviewed the financial statements of FAU-BOT, and concluded that the University was in strong financial condition, and was therefore capable of granting the increases proposed by the UFF-FAU.

The Vice President of Financial Affairs of FAU-BOT, Ken Jessell, did not concur with the University's ability to pay the increases proposed by the UFF-FAU. He indicated the lease agreement with Clearwire was not necessarily a stable source of funding, and they did not consider these funds to be recurring. He noted that the company's stock had declined rapidly since the relationship with FAU-BOT began.

The estimated cost to fund the FAU-BOT proposal of one (1) percent increase plus the \$1000 non-recurring bonus payment is projected to be about \$1.7 million dollars. The UFF-BOT estimated the cost to fund their proposal of 2.5 percent for the 2007-2008 year to be \$1.8 million and the estimated cost for a 2.5 percent increase for the 2008-2009 year to be an additional \$1.9 million for a total cost of \$3.7 million. (These amounts are exclusive of promotional or related salary adjustments amounts which were not disputed by the parties.)

A detailed analysis of contract salaries being paid at Florida Atlantic University does not provide any dramatic information. Its size in terms of Full Time Equivalent students (FTE) is sixth which is the exact middle among the eleven public institutions of higher education. Its salaries for Professors, Associate Professors, Assistant Professors, and Instructors vary somewhat, but they are not at the top or the bottom of the average salaries being paid within the State University System. One data page provided by Dr. Alperin indicated that Florida Atlantic University was in the seventh position of the eleven state public universities with an average 9-month faculty salary of \$67,703.

Due to education funding problems throughout Florida there were no high percentage increases being granted. Based upon other information provided from Dr. Alperin, the highest university proposed or actual increase in the university system apparently was at the University of South Florida (i.e. total of 6%); with the University of Florida and Florida State University at 3% and Florida International University at a 3.5 % total increase. FAU was one of three universities with a proposal of a 1% increase with a \$1000 bonus payment, and the data did not reveal a salary proposal for three other state universities.

In Palm Beach County the local school board gave a 2 % increase during the 2008-2009 year plus they granted an average increase of 3.5% for the 2007-2008 year. The faculty at Palm Beach Community College had built in across the board increases of 5 % for each of these two years.

A further review of the impact of a one-time \$1000 bonus payment may also be helpful, since this is the second consecutive year that such a payment could be made. If a faculty member was employed at the University at a contracted salary of \$50,000 for the 2006-2007 year, that person would have received a \$1000 bonus payment for the 2007-2008 year. While his or her total compensation would be \$51,000 for the 2006-2007 year, he or she would revert back to a \$50,000 contracted salary for the 2007-2008 year. For the 2008-2009 year he or she would again receive a \$1000 bonus plus 1%. That faculty member would now have a new contractual salary of \$50,500 for the 2009-2010 year which is three years after his or her employment date. Needless to say that faculty member has been unable to have his or her salary keep up with inflation.

The salary comparison data does reveal that Florida Atlantic University should, if at all possible, increase the salary levels of the faculty. Those levels are not increased with one-time bonus payments which are not included in the following year's contractual salaries. The obvious funding source for such salary increases when the State is reducing its funding allocation is the revenue which Clearwire is providing through its lease agreement with the University. While such a revenue source is not as stable as the State of Florida (which also obviously has its limitations relating to the revenues they receive), it is nonetheless on-going and therefore is expected to be recurring.

The fact that the University prepared a proposed five-year plan to expend the funds received from the lease agreement signed on April 29, 2008 with Clearwire indicates there is at least a reasonable expectation that these funds will continue for some time in the future even if the relationship does not last a 30-year period. During the Hearing it was indicated that the first year funding for the FAU-BOT proposal would be paid from Clearwire funds.

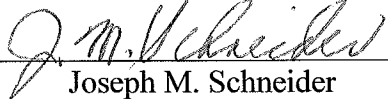
The projected cost for the FAU-BOT salary proposal is approximately \$1.7 million. The projected cost of a 2.5% increase for the 2008-2009 year is about \$1.9 million which should be considered the minimum salary increase needed to keep the faculty salaries competitive in the labor market. That difference apparently can be taken from Clearwire funds.

The UFF-FAU received only a \$1000 bonus payment from a specific authorization from the State for the 2007-2008 year. Unfortunately the State has reduced its funding to Florida Atlantic University several times since, and the FAU-BOT had major financial concerns. Those concerns have been reduced considerably as a result of

the recent funding received as a result of the lease agreement with Clearwire which has been in effect less than one year. Accordingly the recommended decision is being made for the 2008-2009 year only.

Recommended Decision: Grant an across the board increase of 2.5 percent consistent with past practices for all bargaining unit personnel who were employed for the 2008-2009 year along with the previously agreed upon promotional increases of 9 percent or 12 percent as appropriate to academic rank.

ISSUED this 21st day of March, 2009



Joseph M. Schneider
Special Magistrate

ADDENDUM TO SPECIAL MAGISTRATE REPORT

The following reference from Florida Statute 447.403(3) is applicable to the resolution of impasses after the hearing with a Special Magistrate:

“... Within 15 calendar days after the close of the final hearing, the special magistrate shall transmit his or her recommended decision to the commission and to the representatives of both parties by registered mail, return receipt requested. Such recommended decision shall be discussed by the parties, and each recommendation of the special magistrate shall be deemed approved by both parties unless specifically rejected by either party by written notice filed with the commission within 20 calendar after the date the party received the special magistrate’s recommended decision. The written notice shall include a statement of the cause for each rejection and shall be served upon the other party.”

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April 9, 2009

Stephanie Williams Ray, Chair
Florida Public Employees Relation Commission
4050 Esplanade Way
Tallahassee, FL 32399-0950

Re: Case No.: SM-2008-058

Dear Chair Ray:

Special Magistrate Joseph M. Schneider heard evidence and made a recommendation regarding the subject of Summer Appointments in the above case over the objection of the United Faculty of Florida (UFF). UFF's objection was that Florida Atlantic University (FAU) had illegally submitted this issue for impasse resolution because this subject was never reopened for negotiations in accordance with the reopening provisions of the parties' collective bargaining agreement. Because the Special Magistrate chose to make a recommendation on this issue, the UFF rejects this recommendation under protest, and without waiving its position that this subject was not properly included in the instant impasse resolution proceedings.

In addition to the fact that this subject was not properly a part of the impasse resolution proceedings, the UFF further submits that the Special Magistrate's recommendation is inconsistent with the long-standing past practice of the parties, reflected in the existing language in the current collective bargaining agreement, that eligible bargaining unit employees must be offered the opportunity to teach Summer courses before any such courses are offered to other employees.

Respectfully submitted,



Thomas W. Brooks

TWB/jlc

cc: Michael Mattimore, Esquire

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REPLY TO: Tallahassee

April 9, 2009

The Honorable Nancy Blosser
Chair
Board of Trustees
Florida Atlantic University
777 Glades Road
Boca Raton, FL 33431-6496

RE: Florida Atlantic University Board of Trustees and the United Faculty of
Florida, Florida Atlantic University Case No. SM-2008-058

Dear Chair Blosser:

Please accept this letter as the response of Florida Atlantic University pursuant to section 447.403, Florida Statutes, to the Special Magistrate's Report in the above referenced matter. There are three issues at impasse. We are pleased that the Report of Special Magistrate Joseph M. Schneider reflects and recommends the University's position on Article 8 regarding summer appointments, Article 12 regarding the notice of non-reappointment issue and any general wage increase for fiscal year 2007-2008. We accept those recommendations. By this letter we are rejecting the Magistrate's recommendation for a general wage increase for 2008-2009. It appears that the Magistrate misapprehended the fiscal data provided with regard to the availability of recurring funds available from a lease agreement for the recommended wage increase.

We are very pleased with the work, analysis and findings of the Magistrate. He fully appreciated the difficult challenges facing the University as a result of budget cuts and declining revenues. He was not misled by the Union's claims of unspent available monies or the expansion of administrative spending.

By copy of this letter I am providing notice to the Chair of the Public Employees Relations Commission of the rejection of the single issue of the general wage increase for 2008-2009 as reflected in the Special Magistrate's Report.

Sincerely,


Michael Mattimore

cc: Honorable Stephanie Williams Ray, Chair, Public Employees Relations Commission
Thomas W. Brooks, Representative for the United Faculty of Florida

ARTICLE 23
SALARIES

23.1 University Compensation Increases For Faculty. The Florida Atlantic University Board of Trustees has approved funds for performance based increases, to be distributed in the following categories:

(a) Promotion Increases. In accordance with the Memorandum of Understanding dated July 1, 2008, Promotion Increases shall be granted to employees pursuant to the status quo currently in Article 14 of the 2006-2009 FAU BOT/UFF Collective Bargaining Agreement, effective August 11, 2008. These increases shall be granted in an amount equal to 9.0% of the employee's previous year's base salary in recognition of promotion to Associate Professor, Associate in _____, Associate Scholar/Scientist, Associate Engineer, Associate Research Professor, and Associate University Librarian; and 12% of the employee's previous year's base salary in recognition of promotion to Professor, Scholar/Scientist, Engineer, Research Professor and University Librarian.

(b) Performance Based Increases. All permanent bargaining unit employees who were employed as of May 1, 2008, and have continued employment through November 1, 2008, will be eligible for a one percent (1%) base salary increase. This increase will be effective November 1, 2008.

(c) Bonus. All permanent bargaining unit employees who were employed as of May 1, 2008, and have continued employment through November 1, 2008, will be eligible for a \$1000 non-recurring, lump sum bonus payment. The lump-sum payment will be made upon ratification and will be subject to applicable taxes and withholding.

(d) Eligibility. Additional eligibility factors for (b) and (c) above include:

(1) Eligible employees refers to those who have at least a Satisfactory overall annual evaluation for the 2007-2008 academic year or the 2007 calendar year.

(2) Permanent faculty includes instructors, lecturers, multi-year appointees, tenured or tenure-earning faculty, and faculty and librarians enrolled in DROP.

Approved: _____ Approved: _____
For the Florida Atlantic University For the United Faculty of Florida
Board of Trustees

Date: _____ Date: _____

(3) Employees on contracts or grants shall receive the salary increase and the bonus 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.

(4) Each eligible part-time employee shall receive the increase and bonus payment pro-rated based on the full-time equivalency of the position.

(5) Eligibility will be based on in-unit/out-of-unit status as of May 1, 2008.

23.2 Administrative, Managerial and Professional Pay Plan Employees. The Florida Atlantic University Board of Trustees has approved funds for performance based increases, to be distributed in the following categories.

(a) Performance Based Increases. All eligible Administrative, Managerial and Professional (AMP) pay plan employees who were employed as of May 1, 2008, and have continued employment through November 1, 2008, shall receive a one percent (1%) base salary increase with an effective date of November 1, 2008.

(b) Bonus. All eligible AMP employees who were employed as of May 1, 2008, and have continued employment through November 1, 2008, shall receive a \$1000 non-recurring lump sum bonus payment. The lump sum payment will be made upon ratification and will be subject to applicable taxes and withholding.

(c) Eligibility. Additional eligibility factors include:

(1) Eligible employees refers to those who are, at a minimum, meeting the University's required standards as evidenced by continuous satisfactory performance with no disciplinary actions over the previous year.

(2) Employees funded through grants, contracts or auxiliary funds shall receive the salary increase and bonus, unless such salary increases are prohibited by the terms of the grant or contract governing the employment arrangement and provided that adequate funds are available for this purpose.

Approved: _____ Approved: _____
For the Florida Atlantic University For the United Faculty of Florida
Board of Trustees

Date: _____ Date: _____

(3) Each eligible part-time employee shall receive a payment pro-rated based on the full-time equivalent of the position held.

23.3 Florida Atlantic University School Employees

(a) FAUS Employee Permanent Status and Promotion Increases

(1) Promotion increases shall be granted to FAUS employees pursuant to procedures and criteria for achieving Permanent Status and/or promotion to each rank, effective August 1, 2008.

(2) These increases shall be granted to employees in an amount equal to a specified percentage of the employee's previous years' base salary at the time of promotion to one of the ranks described below:

- 3% For achieving Permanent Status;
- 7% To University School Assistant Professor;
- 8% To University School Associate Professor; and
- 9% To University School Professor

(b) University Compensation Increases for Faculty. The Florida Atlantic University Board of Trustees has approved funds for performance based increases, to be distributed in the following categories:

(1) Performance Based Increases. All permanent bargaining unit employees who were employed as of May 1, 2008 and have continued employment through November 1, 2008, will be eligible for a one percent (1%) base salary increase. This increase will be effective November 1, 2008.

(2) Bonus. All permanent bargaining unit employees who were employed as of May 1, 2008, and have continued employment through November 1, 2008, will be eligible for a \$1000 non-recurring, lump sum bonus payment. The lump-sum payment will be made upon ratification and will be subject to applicable taxes and withholding.

Approved: _____ Approved: _____
For the Florida Atlantic University For the United Faculty of Florida
Board of Trustees

Date: _____ Date: _____

BOT Impasse Proposal
February 20, 2009
2008-09 Contract Period

(c) Eligibility. Additional eligibility factors for (1) and (2) above include:

(1) Eligible employees refers to those who have at least a Satisfactory overall annual evaluation for the 2007-2008 academic year.

(2) Employees on contracts or grants shall receive the salary increase and the bonus 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.

(3) Each eligible part-time employee shall receive the increase and bonus payment pro-rated based on the full-time equivalency of the position.

(d) Joint Appointments. FAUS employees holding joint appointments with a department or unit in the University shall be eligible for any salary increases available to other part-time members of the bargaining unit in such department/unit of the University, with such increases appropriately pro-rated.

(e) FAUS Supplements. FAUS employees shall receive salary supplements for approved extracurricular activities assigned by the Director under the following conditions:

(1) The activity must involve duties which extend beyond the normal workday;

(2) Employees shall receive a separate salary supplement for each assigned activity;

(3) The amount of the salary supplement shall be determined after consultation with the FAUS UFF representative.

(4) Salary supplements are not to be included in the base salary rate upon which future salary increases are calculated.

23.4 Report to Employees. All employees shall receive notice of their salary increase. Upon request, an employee shall have the opportunity to consult with the person or committee which makes the initial recommendation for salary increases.

Approved: _____ Approved: _____
For the Florida Atlantic University For the United Faculty of Florida
Board of Trustees

Date: _____ Date: _____

23.5 Nothing contained herein shall prevent the University from providing salary increases beyond the increases specified above. These increases are provided for market equity considerations, including verified counteroffers; documented compression/inversion; increased duties and responsibilities; special achievements; litigation/settlements; and similar situations. In the event the University or college develops procedures for distributing increases under this section, a copy will be provided to the UFF. The UFF shall have the opportunity to discuss the procedures in consultation with the President or his/her representative prior to their implementation.

23.6 Grievability. The only issues to be addressed in a grievance filed pursuant to Article 20 alleging violation of this Article are whether there is unlawful discrimination under Article 6, or whether there is an arbitrary and capricious application of the provisions of one or more Sections of this Article.

23.7 Type of Payment for Assigned Duties

(a) Duties and responsibilities assigned by the University to an employee which do not exceed the available established FTE for the position shall be compensated through the payment of Salary, not Temporary Employment.

(b) Duties and responsibilities assigned by the University to an employee which are in addition to the available established FTE for the position shall be compensated through Temporary Employment, not Salary.

Approved: _____ Approved: _____
For the Florida Atlantic University For the United Faculty of Florida
Board of Trustees

Date: _____ Date: _____

ARTICLE 8
APPOINTMENT

8.1 Policy. The Board shall exercise its authority to determine standards, qualifications, and criteria in order to fill bargaining unit vacancies with the best possible candidates. The University shall advertise such appointment vacancies, receive applications and screen candidates, and make appointments as it deems appropriate under such standards, qualifications, and criteria. The University also shall try to identify and seek qualified women and minority candidates for vacancies and new positions as well as employees of lower or equivalent ranks, employees who are spouses of employees, and employees who are local residents who 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 department/unit, or of salaries of University employees in the same job classification, as appropriate, prior to the negotiations 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 department/unit.

8.2 Offer of Employment. A successful applicant will receive a letter offering employment and providing, among other information, name, starting date, employment unit, salary, tenure or non-tenure status, credit towards tenure, and principal place of employment.

8.3 Notice of Appointment. Prior to the beginning of employment and, subsequently, upon a significant change in status (i.e., items a, e, g, i, m below and any special salary increases), each employee will receive a Notice of Appointment signed by the President or his/her representative and the employee. The University may enclose informational addenda, except that such addenda may not abridge the employee's rights or benefits provided in this Agreement. The University Notice of Appointment shall contain the following elements:

- (a) Professional Classification System title, class code, rank and appointment type;
- (b) Employment unit (e.g., department, school, college, institute, center, etc.)
- (c) The dates of appointment;
- (d) Special conditions of employment;
- (e) A statement that the position is (1) tenured, (2) non-tenure earning, or (3) tenure-earning
- (f) A statement that the employee's signature on the Notice of Appointment shall not be deemed a waiver of the right to process a grievance with respect thereto in compliance with Article 20;

Approved: _____
For the FAU BOT

Approved: _____
For the FAU UFF

Date: _____

Date: _____

- (g) A statement about notice provisions.
- (h) 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 Board and the University, and this Agreement;
- (i) Percent of full-time effort (FTE) assigned;
- (j) Salary rate;
- (k) The statement: "The BOT/UFF Collective Bargaining 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, or employee rights related to union activity as granted under Chapter 447, Florida Statutes. Claims of discrimination by the Board or the University may be presented as grievances pursuant to Article 20, Grievance Procedure."
- (l) A statement informing the employee of the obligation to report outside activity and conflict of interest under the provisions of Article 19 and the Agreement; and
- (m) Principal place of employment.

8.4 Appointments.

(a) The academic year appointment for faculty shall be for 39 weeks. In cases where the mission of the unit warrant the conversion from an academic year appointment to a calendar year appointment, the salary conversion will be done proportionally.

(b) Summer Appointments.

(1) Policy.

a. Summer appointments shall be offered, either verbally or in writing, no later than five weeks prior to the beginning of the appointment, if practicable. The University shall offer available supplemental summer appointments equitably and as appropriate, provided budget and curriculum needs allow, ~~with first preference~~ as follows:

First Preference: to qualified full-time bargaining unit employees without an existing summer appointment in the following categories: tenured employees, tenure earning employees, employees with multi-year appointments, and instructors who have taught at the University for at least three consecutive years;

Second Preference: ~~The University shall then offer such appointments~~ to other bargaining unit employees without an existing summer appointment who are qualified; and

Third Preference: ~~Thereafter, the University may offer such appointments~~ to

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others who are qualified (e.g., adjuncts).

~~Summer appointments shall be offered no later than five weeks prior to the beginning of the appointment, if practicable, in accordance with written criteria. The criteria shall be made available in each college.~~

Additionally, the University may offer any bargaining unit employee with an existing summer appointment an additional summer appointment at any time, at its discretion.

b. Assignments for sSupplemental summer appointments shall be made in accordance with Florida Statutes (the "twelve hour law"). Assignments for those receiving a summer appointment will be provided according to Article 9, and the workload (i.e., number of credits or classes) assigned will be determined at the College's discretion.

(2) Compensation.

a. An employee on an instructional assignment shall receive a salary proportionate to the equivalent assignment during the academic year, based on the credit hour value of the course, normally three credit hours or one-eighth the academic year salary.

b. The instructional assignment does not include other credit-generating activities such as thesis/dissertation supervision, directed independent studies, supervised research teaching, and supervision of student interns. These activities, as well as Research or Service activities, may be assigned during the summer term for additional compensation.

(c) FAUS Appointments.

(1) Academic Year Appointments. The academic year appointment period for developmental research school employees consists of a fall and spring semester not exceeding 194 days within approximately 42 contiguous weeks. In scheduling these days, the FAUS shall consider the calendar of the local district and such scheduling shall be subject to consultation under Article 2.

(2) Review Period. The initial Notice of Appointment of a FAUS employee shall include a 97-day probationary period during which time the employee's appointment may be terminated without cause or the employee may resign without breach of contract.

(3) Summer Teaching Appointments. The following provisions apply only to those summer teaching appointments funded by the schools through the use of State funds (FEFP) allocated for that purpose.

a. Summer teaching appointments shall be offered equitably and

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as appropriate to qualified employees in a timely manner. Such appointments shall be made in accordance with written criteria developed with the UFF. The criteria shall be made available in a public place at FAUS.

b. Employees shall receive approximately the same hourly rate for teaching a course during a summer appointment as they received for teaching the same or similar course during the academic year, regardless of the length of the summer appointment.

(d) Additional Compensation Appointments. Additional compensation is defined as compensation for any duties in excess of a full appointment (1.0 FTE). All additional compensation shall be paid through OPS.

(e) Visiting Appointments. A "visiting" appointment is one made to a person having appropriate professional qualifications, for a limited period. A visiting appointment may not exceed a total of three (3) consecutive years. Persons on visiting appointments will be given a position classification that places them in the bargaining unit, as specified in Appendix "A," Position Classifications.

(f) Adjunct Appointments. The use of adjuncts shall, upon the request of the UFF Chapter representatives, be a subject of consultation under the provisions of Section 2.1.

(g) Fixed Multi-Year Appointments at Florida Atlantic University.

(1) Two- to five-year fixed multi-year appointments may be offered for the following:

- a. Instructors and Lecturers;
- b. Non-tenured or non-tenure earning Assistant Librarians, Associate Librarians, Librarians, and Counselors/Advisors;
- c. Scholars/Scientists, Research Associates, and Associate In/Assistant In _____;
- d. Clinical faculty;
- e. Individuals who have officially retired from universities or other organizations and who are at least 55 years of age;
- f. 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; and
- g. Individuals who have held the rank of full professor for at least seven (7) years at an institution of higher education.

(2) Successive fixed multi-year appointments may be offered to eligible employees hired pursuant to Section 8.4(h)(1) as follows:

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a. Criteria used to determine in which instances to offer successive appointments include consideration of the basis for the initial fixed multi-year appointment, evaluation of performance, professional growth, extent and currency of professional qualifications, contribution to the mission of the department or program, staffing needs, funding source alternatives, and continuing program considerations. Such criteria shall be put in writing by the department/unit and available to all eligible employees.

b. The employee will be advised in the penultimate year of the appointment that to be considered for a successive fixed multi-year appointment, the employee must submit a request and written documentation pursuant to written procedures established by the unit. The University shall notify the employee in writing of its decision to offer or not offer a successive appointment.

8.5 Reclassification of an Employee to a Non-Unit Classification. Employees shall be provided written notice thirty (30) days in advance, where practicable, with a copy to the local UFF Chapter, when the University proposes to reclassify the employee to a classification which is not contained in the General Faculty bargaining unit. 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. If the employee requests a review of such action, no reclassification will become effective until thirty (30) days following the review. No position classification shall be changed to a classification which is not contained in the General Faculty bargaining unit until the UFF has had an opportunity to review and respond.

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ARTICLE 23
SALARIES

23.1 University Compensation Increases For Faculty. The Florida Atlantic University Board of Trustees has approved funds for performance based increases, to be distributed in the following categories:

(a) Promotion Increases. In accordance with the Memorandum of Understanding dated June, 2008. Promotion Increases shall be granted to employees pursuant to the status quo currently in Article 14 of the 2006-2009 FAU BOT/UFF Collective Bargaining Agreement, effective August 11, 2008. These increases shall be granted in an amount equal to 9.0% of the employee's previous year's base salary in recognition of promotion to Associate Professor, Associate in _____, Associate Scholar/Scientist, Associate Engineer, Associate Research Professor, and Associate University Librarian; and 12% of the employee's previous year's base salary in recognition of promotion to Professor, Scholar/Scientist, Engineer, Research Professor and University Librarian.

(b) Performance Based Increases. All permanent bargaining unit employees who were employed as of May 1, 2008, and have continued employment through November 1, 2008, will be eligible for a two and one half percent (2.5%) base salary increase. This increase will be effective August 11, 2008.

(c) Eligibility. Additional eligibility factors for (b) and (c) above include:

(1) Eligible employees refers to those who have at least a Satisfactory overall annual evaluation for the 2007-2008 academic year or the 2007 calendar year.

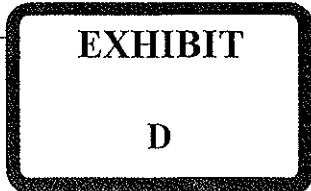
(2) Permanent faculty includes instructors, lecturers, multi-year appointees, tenured or tenure-earning faculty, and faculty and librarians enrolled in DROP.

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(3) Employees on contracts or grants shall receive the salary increase and the bonus 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.

(4) Each eligible part-time employee shall receive the increase and bonus payment pro-rated based on the full-time equivalency of the position.

(5) Eligibility will be based on in-unit/out-of-unit status as of May 1, 2007.

23.2 Administrative, Managerial and Professional Pay Plan Employees. The Florida Atlantic University Board of Trustees has approved funds for performance based increases, to be distributed in the following categories.

(a) Performance Based Increases. All eligible Bargaining Unit Administrative, Managerial and Professional (AMP) pay plan employees who were employed as of May 1, 2008, and have continued employment through August 11, 2008, shall receive a two and one half percent (2.5%) base salary increase with an effective date of August 11, 2008.

(b) Eligibility. Additional eligibility factors include:

(1) Eligible employees refers to those who are, at a minimum, meeting the University's required standards as evidenced by continuous satisfactory performance with no disciplinary actions over the previous year.

(2) Employees funded through grants, contracts or auxiliary funds shall receive the salary increase and bonus, unless such salary increases are prohibited by the terms of the grant or contract governing the employment arrangement and provided that adequate funds are available for this purpose.

(3) Each eligible part-time employee shall receive a payment pro-rated based on the full-time equivalent of the position held.

23.3 Florida Atlantic University School Employees

(a) FAUS Employee Permanent Status and Promotion Increases

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(1) Promotion increases shall be granted to FAUS employees pursuant to procedures and criteria for achieving Permanent Status and/or promotion to each rank, effective August 1, 2008.

(2) These increases shall be granted to employees in an amount equal to a specified percentage of the employee's previous years' base salary at the time of promotion to one of the ranks described below:

- 3% For achieving Permanent Status;
- 7% To University School Assistant Professor;
- 8% To University School Associate Professor; and
- 9% To University School Professor

(b) University Compensation Increases for Faculty. The Florida Atlantic University Board of Trustees has approved funds for performance based increases, to be distributed in the following categories:

(1) Performance Based Increases. All permanent bargaining unit employees who were employed as of May 1, 2008 and have continued employment through August 11, 2008, will be eligible for a two and one half percent (2.5%) base salary increase. This increase will be effective August 11, 2008.

(c) Eligibility. Additional eligibility factors for (1) and (2) above include:

(1) Eligible employees refers to those who have at least a Satisfactory overall annual evaluation for the 2007-2008 academic year.

(2) Employees on contracts or grants shall receive the salary increase and the bonus 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.

(3) Each eligible part-time employee shall receive the increase and bonus payment pro-rated based on the full-time equivalency of the position.

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(d) Joint Appointments. FAUS employees holding joint appointments with a department or unit in the University shall be eligible for any salary increases available to other part-time members of the bargaining unit in such department/unit of the University, with such increases appropriately pro-rated.

(e) FAUS Supplements. FAUS employees shall receive salary supplements for approved extracurricular activities assigned by the Director under the following conditions:

(1) The activity must involve duties which extend beyond the normal workday;

(2) Employees shall receive a separate salary supplement for each assigned activity;

(3) The amount of the salary supplement shall be determined after consultation with the FAUS UFF representative.

(4) Salary supplements are not to be included in the base salary rate upon which future salary increases are calculated.

23.4 Report to Employees. All employees shall receive notice of their salary increase. Upon request, an employee shall have the opportunity to consult with the person or committee which makes the initial recommendation for salary increases.

23.5 Report to UFF. Any salary increases awarded to in-unit and out-of-unit employees at FAU shall be reported to UFF within 30 days of said increase.

23.6 Nothing contained herein shall prevent the University from providing salary increases beyond the increases specified above. These increases are provided for market equity considerations, including verified counteroffers; documented compression/inversion; increased duties and responsibilities; special achievements; litigation/settlements; and similar situations. In the event the University or college develops procedures for distributing increases under this section, a copy will be provided to the UFF. The UFF shall have the opportunity to discuss the procedures in consultation with the President or his/her representative prior to their implementation. The authority of the University to make additional salary adjustments, including but not limited to salary adjustments, cash bonuses, base salary increases and lump sum increases, under Article 23.7 shall not continue during negotiations pursuant to Article 30

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Duration and shall terminate at midnight on June 30th, 2009 and shall not continue after the termination of this agreement at midnight on June 30th, 2009.

23.7 Grievability. The only issues to be addressed in a grievance filed pursuant to Article 20 alleging violation of this Article are whether there is unlawful discrimination under Article 6, or whether there is an arbitrary and capricious application of the provisions of one or more Sections of this Article.

23.8 Type of Payment for Assigned Duties

(a) Duties and responsibilities assigned by the University to an employee which do not exceed the available established FTE for the position shall be compensated through the payment of Salary, not Temporary Employment.

(b) Duties and responsibilities assigned by the University to an employee which are in addition to the available established FTE for the position shall be compensated through Temporary Employment, not Salary.

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