

BEFORE SPECIAL MAGISTRATE JOSEPH M. SCHNEIDER
POST OFFICE BOX 17281
WEST PALM BEACH, FLORIDA 33416

FLORIDA ATLANTIC UNIVERSITY,

Public Employer,

v.

Case No: SM-2008-058

**UNITED FACULTY OF FLORIDA,
FLORIDA ATLANTIC UNIVERSITY
CHAPTER,**

Certified Bargaining Agent.
_____ /

**POST HEARING BRIEF OF THE
UNITED FACULTY OF FLORIDA-FLORIDA ATLANTIC UNIVERSITY**

THOMAS W. BROOKS
Florida Bar No: 0191034

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ATTORNEY FOR UFF-FAU

ARGUMENT

ARTICLE 8.4, APPOINTMENT

I.

THE SPECIAL MAGISTRATE HAS NO JURISDICTION TO MAKE A RECOMMENDATION ON THIS ISSUE

The record is undisputed that neither party made any proposal nor have there been any negotiations over Article 8.4. UFF-FAU's witness, Sharmila Vishwasrao, testified unequivocally that the summer assignment issue was not reopened and no negotiations took place during the 2007-08 or 2008-09 negotiations. Diane Alperin, the FAU Administration's negotiator did not say otherwise, stating merely that the issue was discussed at the outset of negotiations. The Administration has presented no evidence that it presented a specific proposal or took any other action that would even arguably constitute actual negotiation. Such limited discussion, even if it occurred, is insufficient to authorize the raising of this issue in impasse resolution proceedings. Obviously, the proceedings authorized by Section 447.403, *Florida Statutes* (2007), may concern only those issues that are at impasse, not something that was mentioned but was never the subject of any formal proposal. Such a matter could be considered only if the parties mutually agreed to submit it to the Special Magistrate, which is clearly lacking in this case.

The Administration's position is refuted by its own actions. Testimony revealed that the the Administration repeatedly sought UFF-FAU's agreement to reopen Article 8.4 on the summer assignment issue, but that no agreement was reached. Ultimately, this lack of agreement led the Administration to assert a financial urgency as contemplated by Section 447.4095, *Florida Statutes* (2007), to provide a vehicle through which it could force the reopening of this article. Mr.

Mattimore's November 24, 2008, letter purporting to invoke Section 447.4095 (sent the same day the Administration declared impasse to PERC in the regular negotiations) confirms this fact:

In light of the University's inability to fund a summer program in accordance with your interpretation of the summer assignment obligation, *we asked that the United Faculty of Florida enter into good faith negotiations with regard to this misunderstanding or disputed interpretation.* However, to date you have refused to negotiate the summer assignment matter.

(Exhibit A to brief)(Emphasis supplied). There would be no need to ask the UFF-FAU to enter into negotiations if the subject was in fact reopened for the 2008-09 negotiations as the Administration alleges. Nor would there be any need to invoke Section 447.4095.

Mr. Brooks' December 5, 2008, letter in response reiterates the position of the UFF-FAU:

Your letter incorrectly asserts that the UFF is "unwilling" to negotiate over the issue of summer assignment. The UFF has specified on several occasions the basis upon which it would negotiate over this matter. It is the actions of FAU, not the UFF that have prevented such an agreement. The UFF is simply not obligated to reopen any provision of the agreement contrary to its express terms on the basis of an alleged financial exigency that does not satisfy the requirements of the *Chiles* case.

(Exhibit B to brief). Thus, contrary to the assertion of the Administration at hearing, the dispute on this issue was not whether the summer assignments issue was reopened under the terms of the collective bargaining agreement, but whether there was a financial urgency within the contemplation of the statute.

Moreover, this letter made an offer to meet and discuss this issue that the Administration never accepted. Consequently, there never were any negotiations on this issue, so there can be no impasse under Section 447.4095, even if it is assumed for purposes of argument that it was properly invoked. Nor was there any declaration of impasse by the Administration to PERC on this issue.

In the absence of both, there simply was no "subject at impasse" for the Special Magistrate to consider.

The Special Magistrate should leave the resolution of this dispute to the parties' grievance procedure. UFF-FAU has filed a grievance challenging the failure of the Administration to comply with Article 8.4(b) for summer assignments for 2007, which is pending. The Administration should not be allowed to bypass the grievance procedure by belated attempting to inject this issue into the current negotiations.

Therefore, there is no factual or legal basis for the Special Magistrate to conclude that he has jurisdiction to make a recommendation on this issue.

II.

ALTERNATIVELY, THE SPECIAL MAGISTRATE SHOULD RECOMMEND THAT THERE BE NO CHANGE IN ARTICLE 8.4(B)

The language and purpose of Article 8.4(b) are clear and straightforward: Summer assignment should be offered first to qualified, longer-term faculty who have demonstrated success in teaching the course offered. This not only benefits such faculty who desire to work year around, it more importantly assures that students taking classes in the summer have the opportunity as regular year students to learn from more experienced faculty. This has been the consistent practice at FAU until 2007 and should continue.

The Administration's assertion that a change is necessary for financial reasons is a classic straw-man argument based on unrealistic, worst-case factual assumptions that will never occur. All regular faculty given preference in this article never have and never will want to teach two summer courses as the Administration's position assumes. It never even offers that many summer courses

and it presented no evidence that this allegedly budget-busting scenario has come even close to arising. The truth is that the University makes a profit in the summer under the current language and simply wants the discretion to make even more.

This is not, therefore, a genuine economic issue. It is a management control issue disguised as an economic issue. Absent proof that there is a real problem with this language that cannot be resolved through the pending grievance, the Special Magistrate should recommend maintenance of the status quo, particularly if he does not accept UFF-FAU's position regarding salary increases. Adoption of the Administration's position would cause the loss of a meaningful benefit to faculty based on mere conjecture at a time when there are real economic restraints upon which the Administration is basing its refusal to provide greater salary increases.

ARTICLE 12, NON-REAPPOINTMENT

UFF-FAU seeks to clarify the language of this article to restore the long-established practice of providing faculty (as opposed to non-faculty bargaining unit members on 12 month appointments) timely notice of non-reappointment in the context of the hiring practices in higher education. The traditional purpose of the notice requirement in higher education is to provide the affected faculty member sufficient notice to obtain employment at another college or university. This practice recognizes that the normal hiring process contemplates application in the fall, interviews with department faculty in the spring and relocation in the summer for beginning the new position the next fall. This process is embodied in the notification deadlines sought by the UFF-FAU that are derived from long-established principles of the American Association of University Professors, which are the "best practices" in higher education non-reappointment.

These changes have been proposed due to the recent change in this traditional practice by the

Administration, in which it has chosen to apply the 39 week language of this article, not to 12 month faculty as it was intended, but also to academic year faculty. Preserving this important professional practice not only helps departing faculty, it helps the Administration attract the best faculty, who are most likely to have more employment choices. In these days of declining revenues and the consequent loss of qualified faculty, maintaining professionalism through “best practices” such as this one is even more important. It might make the difference in attracting or retaining good faculty.

The Administration has not articulated any compelling reason for rejecting UFF-FAU’s position. It merely asserts that the current language permits it to do so. That is simply not good enough for rejecting such a reasonable and sound practice that has no economic impact. Nor is the claim that other universities have similar language. First, we do not know whether these other schools apply this language to faculty. Second, we do not know what benefits or favorable consideration these other schools may have given the faculty in exchange for greater flexibility, even if the Administration’s interpretation is followed there. Thirdly, the Administration should be receptive to enhancement of professionalism regardless of any lesser approach taken by other schools. It cannot enhance its stature in the state and nation that way. Rather, it must find ways to set itself apart from the crowd, particularly if it is, as it claims, without the financial resources to do so through salary increases.

Therefore, the Special Magistrate should recommend that UFF-FAU’s changes to Article 12 be adopted.

ARTICLE 23, SALARIES

FAU HAS THE RESOURCES TO GRANT BARGAINING UNIT EMPLOYEES A 2.5 % INCREASE TO BASE SALARIES FOR BOTH THE 2007-08 AND 2008-09 FISCAL YEARS

Although the parties dispute whether the resources are available to provide the salary increases sought by the UFF-FAU, there is no dispute that the faculty at FAU are significantly underpaid relative to their peers at the local, state and national levels. There is also no dispute that the Administration has made a commitment to correcting that deficiency. What is in dispute is whether the Administration can make progress towards that goal in this case. The answer is unequivocally yes.

The UFF-FAU requests that the Special Magistrate review its power point presentation, which cogently sets forth the elements of its position. In summary, the Administration has the necessary funds to prioritize faculty salary increases. It has simply chosen, thus far, not to do so. The Special magistrate should recommend that the Administration do so by adopting the UFF-FAU's position on this issue.

It first should be made clear the relatively small amount of additional money UFF-FAU's proposal requires over that offered by the Administration. The total cost of the UFF-FAU's proposal is approximately \$3.7 million in recurring dollars and the Administration's offer costs approximately \$1.7 million, \$700,000 of which is recurring. The difference is \$2 million, which represents less than .5% of the University's operating budget. The Administration's opposition to UFF-FAU's proposal is ability to pay under the current circumstances, not whether its faculty is deserving. The evidence presented at hearing demonstrates that the Administration has the money for the requested salary increase if it truly prioritizes faculty pay.

UFF-FAU has shown how the University's revenues and net assets have steadily increased in recent years, even with the cutbacks in state revenue over the period in question. Yet, its allocation of a portion of those increased resources to faculty salaries has not changed to any significant degree, particularly as compared to those of administrators. As Dr. Leroy Dubeck's report shows on page 5 and in Table 1, the University's net assets have increased from \$400,795,247 on June 30, 2003, to \$709,653,731 on June 30, 2008. By the Administration's own admission on page 4 of the 2007-08 Financial Audit by the State of Florida Auditor General, "*[t]he changes in net assets that occur over time indicate improvement or deterioration in the University's financial condition.*" Clearly, the University was in excellent financial condition on June 30, 2008, and it unquestionably had the funds to pay the requested 2.5% for 2007-08.

Dr. Dubeck's report and his testimony explaining it establish several unassailable points that cannot be explained away by general assertions of prudent budgeting. The first was discussed above— the University's steadily improving financial condition as measured by net assets. The second also relates to a particular category of net assets: unrestricted net assets. Again, in the Administration's own words, "*unrestricted net assets ... are available to the University for any lawful purpose.*"

These assets increased steadily from June 30, 2003, to \$44,500,852 on June 30, 2007, then jumped to \$73,456,329 on June 30, 2008. Even allowing for the acquisition of the Harbor Branch Oceanographic Institute as accounting for much of this increase, the Administration still had over \$44,000,000 in unrestricted net assets on June 30, 2008, from which to allocate the additional \$2,000,000 needed to fund UFF-FAU's proposal.

It is true that not all unrestricted net assets are readily available for salary increases. But it

is also true that UFF-FAU is asking for the reallocation of less than 4.5% of those discretionary assets (less than 2.7% if the \$73 million total is used). That leaves plenty of money to address the matters referenced by the Administration's witnesses. It is also true that, in reality, the Administration has much more money available from this category than it appears.

Dr. Dubeck testified without contradiction that the University's actual unrestricted reserves were more than \$20,000,000 greater than indicated because, solely for accounting purposes, it is required to report its estimated future liability for payment of accumulated leave as a current liability when, in reality, the actual current liability is only \$1,260,358. The remaining \$20,929,972 is money available to fund current expenditures such as UFF-FAU's proposal.

Moreover, this money was available as of June 30, 2008, and there is no evidence that it is not still available. Also, significant funds in this category will continue to be available in subsequent years because of the accounting rules, yet it is a fact that any actual year-to-year liability will be funded by state appropriations. These funds alone provide the necessary money and give a substantial cushion for any unexpected increase in employee turnover (such as layoffs) due to the financial downturn that might require actual unappropriated funding in a single year. Of course, even in that situation, the actual expenditure would be funded the next year by the legislature.

As much as the Administration would like to deny it, this is *real* money available. Dr. Ken Jessell, who conceded that Dr. Dubeck's analysis was correct, did not contradict Dr. Dubeck on this point and provided no explanation of how this extra money had been encumbered. The obvious reason is that it has not been encumbered.

Nor did Dr. Jessell contradict Dr. Dubeck's testimony that the Administration had an additional \$19,000,000 per year, on average, available for current, recurring expenditure due again

to an accounting requirement relating to reporting depreciation. He testified that if, as reflected in Table 2, the true picture of the dollars available to the Administration as unrestricted assets must recognize that depreciation is not an actual expenditure. It is a way of accounting for the decrease in value of capital assets, so, although it is reflected as an expense in the budget and audit and therefore reduces the bottom line, that money is not really spent. It is therefore available as a source of unrestricted spending. For 2007-08, the specific amount available on June 30, 2008, was \$23,908,064 (Table 2, "Depreciation Expense").

Dr. Dubeck also pointed out that it is reasonable to expect that some portion of the potential budget reductions being discussed at the state level will be offset by revenue from the recently enacted stimulus bill by the United States Congress. That legislation provides significant appropriations for spending in education in general and higher education in particular (approximately \$35.9 billion for the latter). It is true that no one yet knows how much of this stimulus money will be allocated to Florida, let alone FAU, but it is not a stretch to assume that such funds will be available as insurance for any small recurring salary commitment the Administration makes in this case.

Dr. Dubeck and Ms Vishwasrao also established that the University will be receiving approximately \$5,000,000 per year for the next 30 years under the Clearwire lease. This is yet another source of recurring income that cannot be ignored. It is not enough to say that plans have already been made for this money and it might not be available anyway because the company's stock is low. In addition to the fact that all stock prices are substantially lower right now, this is real money that the Administration is collecting on a monthly basis that is available either to fund salary increases or at least to use as a back-up for recurring raises if a worst-case scenario occurs.

This brings us to the real issue presented: Would it be fiscally irresponsible for the Administration to make the financial commitment UFF-FAU seeks? UFF-FAU submits that the evidence it presented and the above explanation of it requires a negative response. There is plenty of real, recurring money to fund the modest increase requested. Even allowing for current and expected reductions, there is *at the very least* more than \$20,000,000 in real dollars from which the Administration can fund the current and future salary increases sought. Allocating a mere 1% of these funds for increases to the base salaries of bargaining unit employees is fiscally responsible. There is plenty of leeway to deal with even greater financial difficulties than the Administration currently anticipates. It is not a question of money; it is a question of priorities.

Finally, the question of recurring expenditures must be put into perspective in light of the complete control the University, like all public employers in the Florida, has over salary commitments made in collective bargaining agreements. Article 23 is automatically reopened every year by express agreement of the parties. **The University has total control over its salary obligations through that process!** It may use the very process we are currently engaged in to correct any over-commitment to salary increase that it makes in a previous year. Therefore, in the context of collective bargaining in the Florida public sector, there is no such thing as a recurring financial obligation beyond a single year. The process has built-in protection for public employers, and we have not even mentioned Section 447.4095 or the exigent circumstances exception to the unilateral change doctrine recognized by PERC. The Administration will not be financially imprudent or running any material financial risk by granting the requested salary increase, nor will the Special Magistrate in making that recommendation.

CONCLUSION

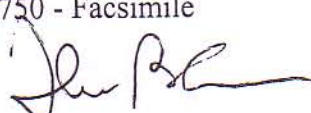
The Special Magistrate should hold the Administration to the commitment to improving faculty salaries, working conditions and professionalism that it made in its testimony and supporting documents. It has the resources to do so while remaining fiscally responsible in this uncertain environment. He should recommend that the FAU Board of Trustees accept the proposals made by UFF-FAU on Article 12 for 2007-08, for Article 23 for 2007-08 and 2008-09, and refrain from making any recommendation on Article 8.

At a minimum UFF-FAU requests that the Special Magistrate recommend a 2.5% increase to base salaries retroactive to August 11th, 2008. The cost differential then shrinks to only \$200,000 (\$1.9 million versus \$1.7 million). Formal proposals reflecting UFF-FAU's salary positions are included as Exhibits C and D to this brief.

Respectfully submitted,

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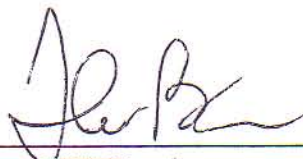
By: _____


THOMAS W. BROOKS
Florida Bar No: 0191034

ATTORNEY FOR UFF-FAU

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing has been furnished by U.S. Mail on this 9th day of March, 2009, to: Michael Mattimore, Esquire, Allen, Norton & Blue, P.A., 906 North Monroe Street, Tallahassee, Florida 32303.

A handwritten signature in black ink, appearing to read 'T. Brooks', written over a horizontal line.

Thomas W. Brooks

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REPLY TO: Tallahassee

November 24, 2008

VIA UNITED STATES MAIL

Sharmila Vishwasrao, Ph.D.
United Faculty of Florida
Florida Atlantic University
777 Glades Road
Boca Raton, Florida 33431

**Re: Article Eight, Collective Bargaining Agreement
Florida Atlantic University and United Faculty of Florida**

Dear Dr. Vishwasrao:

Please be advised that Florida Atlantic University invokes the process set forth at Section 447.4095, Florida Statutes with regard to Article Eight of the collective bargaining agreement between the Florida Atlantic University Board of Trustees and the United Faculty of Florida. As you have been earlier advised, your reading of Article 8.4, Section (b), which you allege establishes an obligation to assign at least two (2) summer courses to those tenured or tenured-earning employees whom desire such an assignment, cannot be funded.¹

In light of the University's inability to fund a summer program in accordance with your interpretation of the summer assignment obligation, we asked that the United Faculty of Florida enter into good faith negotiations with regard to this misunderstanding or disputed interpretation. However, to date you have refused to negotiate the summer assignment matter. I will assume that your position continues to be that the United Faculty of Florida is unwilling to negotiate over the issue of summer assignment.

The position of the United Faculty of Florida has been that it will only negotiate with the University on the summer assignment issue if the Board relinquishes several important legal rights, which the Board is unwilling to do.

¹ The University has a different reading of this provision. It was our intent in agreeing to this language that faculty would be entitled to a preference of one summer assignment, not two or three.
49144

EXHIBIT

A

November 24, 2008
Page 2

If you wish to engage in negotiations contemplated by Section 447.4095, Florida Statutes, please be advised that the University intends to begin the process today.

Sincerely,

Michael Mattimore
Michael Mattimore

Cc: Honorable Stephanie Williams, Chair, PERC

MEYER AND BROOKS, P.A.

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December 5, 2008

Michael Mattimore, Esquire,
Allen, Norton & Blue, P.A.
906 North Monroe Street
Tallahassee, Florida 32303

Re: Article 8, Collective Bargaining Agreement
Florida Atlantic University and United Faculty of Florida

Dear Mr. Mattimore:

Please be advised that this firm represents the United Faculty of Florida in this matter. I am responding to your letter of November 24, 2008, in which the Florida Atlantic University purports to invoke Section 447.4095, *Florida Statutes* (2007). It is the position of the UFF that there is no basis for the invocation of Section 447.4095 based upon its understanding of the facts relating to this matter, as set forth more fully below. However, the UFF is willing to meet with you to discuss this matter further in an effort to resolve the existing disagreements regarding both the applicability of Section 447.4095 and whether there is a basis for resolving this matter without actually reopening the collective bargaining agreement.

First, the fact that a disputed provision of the parties' collective bargaining agreement might result in an interpretation contrary to the position of FAU does not constitute a "financial urgency" within the contemplation of this statute. This statute simply cannot be interpreted consistent with the principles set forth in *Chiles v. United Faculty of Florida*, 615 So. 2d 71 (Fla. 1993), to permit a unilateral reopening of the collective bargaining agreement contrary to its specific provisions on the basis of a potential financial problem. Moreover, we are not aware of any circumstances that would establish that FAU has no other possible means of complying with the agreement, even if the UFF's interpretation prevails.

Your letter incorrectly asserts that the UFF is "unwilling" to negotiate over the issue of summer assignment. The UFF has specified on several occasions the basis upon which it would agree to reopen the contract and negotiate over this matter. It is the actions of FAU, not the UFF that have prevented such an agreement. The UFF is simply not obligated to reopen any provision of the agreement contrary to its express terms on the basis of an alleged financial exigency that does not satisfy the requirements of the *Chiles* case.

EXHIBIT

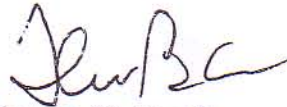
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Michael Mattimore, Esquire
December 5, 2008
Page Two

That being said, the UFF is nevertheless willing, as stated above, to try once again to discuss FAU's claim of financial urgency and attempt to reach a resolution provided that you agree that such discussions would not constitute a reopening of the agreement on Article 8 that would permit FAU to declare impasse after 14 days and pursue a resolution pursuant to Section 447.403, *Florida Statutes* (2007). In that regard, let me state that it is completely unreasonable for FAU to send the UFF a letter one day invoking Section 447.4095 and unilaterally determine that the 14 day time period under that statute begins the very same day without even receiving a response from the UFF. That is how I read your letter. If I have misread it, please let me know. In any case, the financial urgency you claim cannot even arise until May or June of next year, so there is clearly no basis whatsoever for commencing immediate negotiations.

Please contact me to discuss any questions you have about the matters set forth above or to schedule a time for the parties to meet. At any such meeting, the UFF expects FAU to be able to demonstrate how this situation is so dire and imminent as to warrant invocation of Section 447.4095.

Sincerely,



Thomas W. Brooks

TWB/er

cc: Sharmilla Vishwasrao, Ph.D.
Ed Mitchell, UFF
Stephen W. Meck, PERC General Counsel (in lieu of Chair Stephanie Williams)

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 October 10, 2007. 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, 2007. 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, 2007, 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 13, 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 2006-2007 academic year or the 2006 calendar year.

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

Approved: _____
For the Florida Atlantic University
Board of Trustees

Approved: _____
For the United Faculty of Florida

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, 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, 2007, and have continued employment through November 1, 2008, shall receive a two and one half percent (2.5%) base salary increase with an effective date of August 13, 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

Approved: _____
For the Florida Atlantic University
Board of Trustees

Approved: _____
For the United Faculty of Florida

Date: _____

Date: _____

(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, 2007.

(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, 2007 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 13, 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 2006-2007 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

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

Date: _____ Date: _____

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 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

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

Date: _____ Date: _____

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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For the Florida Atlantic University
Board of Trustees

Approved: _____
For the United Faculty of Florida

Date: _____

Date: _____

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.

Approved: _____
For the Florida Atlantic University
Board of Trustees

Approved: _____
For the United Faculty of Florida

Date: _____

Date: _____

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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

Approved: _____
For the Florida Atlantic University
Board of Trustees

Approved: _____
For the United Faculty of Florida

Date: _____

Date: _____

(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.

Approved: _____
For the Florida Atlantic University
Board of Trustees

Approved: _____
For the United Faculty of Florida

Date: _____

Date: _____

(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

Approved: _____ Approved: _____
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Board of Trustees

Date: _____ Date: _____

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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Date: _____