

**STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION**

UNITED FACULTY OF FLORIDA,

CASE NO. SM-2017-023

Special Magistrate M. Scott Milinski

Union,

v.

TALLAHASSEE COMMUNITY COLLEGE,

Employer.

PUBLIC EMPLOYER'S POST-HEARING BRIEF

The Public Employer, Tallahassee Community College ("TCC" or the "College"), by and through its undersigned attorneys, Bryant Miller Olive P.A., hereby files its Post-Hearing Brief.

**LEGAL STANDARDS APPLICABLE TO SPECIAL MAGISTRATE HEARINGS AND
PERTINENT TO THIS CASE**

In an impasse proceeding, the role of the Special Magistrate is to render a recommended decision with the objective of achieving a prompt, peaceful and just settlement of an impasse dispute. Fla. Stat. § 447.405. In rendering his recommended decision, the Special Magistrate shall give weight to, among others, the following factors:

- (1) Comparison of the annual income of employment of the public employees in question with the annual income of employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved.
- (2) Comparison of the annual income of employment of the public employees in question with the annual income of employment of public employees in similar public employee governmental bodies of comparable size within the state.
- (3) The interest and welfare of the public.

(4) Comparison of peculiarities of employment in regard to other trades or professions

(5) Availability of funds.

Id.; see also *Gadsden County Sch. v. Gadsden Educ. Staff Prof'l Ass'n*, Case No. SM-2008-037 (Nov. 10, 2008) (addressing statutory factors).

The function of the Special Magistrate is to recommend a resolution of the impasse between the parties. Recommendations may be and sometimes are wide-ranging and may suggest that the parties agree on items or matters beyond the immediate impasse, such as multi-year contracts. Strictly speaking, however, the only matters properly before the Special Magistrate for resolution pursuant to the statutory procedure are those items properly at impasse. See *Port Orange Prof. Fire Fighters Ass'n v. City of Port Orange*, 37 FPER ¶ 99 (2011).

The parties are required to provide a list of items at impasse to the Special Magistrate no later than ten (10) days after the Special Magistrate is designated. Fla. Admin. Code R. 60CC-3.005. Only items actually negotiated in bargaining and in dispute at the time of impasse may properly be items for impasse resolution. See *Port Orange, supra*; *Winter Springs, supra*. So-called “package bargaining” occurs when a party makes proposals on different topics of bargaining and proposes that all be accepted or rejected as a whole. Package bargaining by itself is not bad faith bargaining. See, e.g., *Manatee Cnty. Sch. Bd.*, 8 FPER ¶ 13408 (1982). Even if “preliminary agreements” have been reached on any portion of the proposals comprising the package, if, ultimately, the entire package is not agreed to, then there are no agreements on any proposals in the package. See, e.g., *City of Miramar*, 7 FPER ¶ 12357 (1981) (stating, “A party may offer ... a package of proposals in return for concessions with the understanding that, if any part of the package deal is rejected, the entire package will be withdrawn.”). TCC has negotiated and

presented its proposals as a package. TCC maintained this posture at impasse and throughout the Special Magistrate hearing. [Tr. Vol. 1 at p. 10¹]. As such, there are no tentatively agreed items.

BARGAINING AND PROCEDURAL HISTORY

The United Faculty of Florida (“UFF”) filed an RC Petition on May 6, 2016 (Case No. RC-2016-012) seeking to represent a bargaining unit of full-time Faculty, Counselors and Librarians. A secret ballot election was conducted between July 14, 2016, and August 4, 2016. On August 22, 2016, PERC issued a Verification of Election Results and Certification of Exclusive Collective Bargaining Representative (Case No. EL-2016-018). Certification number 1893 was issued to the UFF as the exclusive bargaining representative for employees in the following unit:

INCLUDED: Full-time Faculty, Counselors, and Librarian.²

EXCLUDED: All managerial, administrative, supervisory, and confidential employees including, but not limited to, Executive Positions, Administrative Positions, Managerial Professional Positions, Classified Staff Professional Positions, and Classified Staff Positions. Also excluded are all Adjunct and Part-time Faculty positions.

Bargaining began on September 29, 2016. Impasse was declared by TCC on September 17, 2017. The Parties held fifteen (15) bargaining sessions but were unable to reach agreement. The Special Magistrate Hearing was held on February 28 and March 1, 2018. The exhibits introduced at the Special Magistrate Hearing have been bates stamped and provided to the Special Magistrate. The exhibits will be cited as “[Jt./TCC/UFF] [Comp. Ex.] or [Ex.] [#], bates number [#####].” A table of the case law used herein and a copy of the cases are being submitted concurrently herewith.

¹ The transcript of the Special Magistrate Hearing will be cited as “Vol. [#] Tr. at p. [#].” The Special Magistrate has been provided with a copy of the transcript.

² While Counselors are listed as being included in the bargaining unit, TCC does not currently have any Counselors. [Vol 1 Tr. 14:21-23].

The Parties are negotiating their first collective bargaining agreement (“CBA”). As such, there are a large number of items at issue. Some of the topics are fairly simple and straight forward while others are extremely complicated. For the most part, the Parties’ proposals track each other’s proposals in terms of article number, but there are some topics that are covered in more than one of the articles of a Party. This brief will address each of TCC’s proposals in numerical order according to the numbered articles in the CBA proposed by TCC. The complete package of TCC’s proposals are TCC Ex. 1, bates 00055-000164. The brief will then address any of the UFF’s proposals that were not otherwise related to a TCC proposal. The complete package of the UFF’s proposals are UFF Ex. 1, bates 000496-000606. There are some articles that are part of TCC’s package which have essentially been agreed to by the UFF and require no discussion.³ However, because TCC has bargained its proposals as a package, these articles are still at issue and require a recommendation from the Special Magistrate.

TCC

TCC was established in 1966. It serves the citizens of Gadsden, Leon and Wakulla Counties. The membership of the Board of Trustees (“Board”) represents the three (3) counties. TCC’s mission is “to provide a learning environment that prepares students for success in a global economy by offering higher education pathways, workforce opportunities and civic engagement experiences.” [TCC Ex. 2, bates 000167]. Approximately 13,000 students are served each semester through programs leading to a degree or workforce certification. TCC works with the Florida Department of Economic Opportunity to offer training in the top ten (10) occupations with the highest demand in the region it services. The average age of a TCC student is twenty-one (21) and about half of the students are the first in their families to attend college. Sixty (60%) percent of the

³ A list of these articles is included at TCC Ex. 1, bates 000058.

first-time college students receive grants which demonstrates that the students come from lower socioeconomic backgrounds. Four (4) out of five (5) students juggle work and school. Over seventy (70%) percent of TCC's students transfer to a university after graduation.

TCC is recognized nationally for the return on investment for students. It is among the Nation's top fifteen (15) community colleges. This is due in part to the low cost of attending TCC, the quality of the education, job placement and earnings following completion of a degree or certification. TCC's tuition is less than half of the neighboring state universities, and it is one of the lowest in the State of Florida among community and state colleges. Roughly nine (9) out of (10) students who graduate from workforce programs are employed following completion of the program. TCC is committed to providing affordable, accessible and relevant higher education to the community it serves. [See Vol. 1 Tr. 17:14-20:7; TCC Ex. Comp. 2, bates 000165-000192].

TCC's PROPOSED ARTICLES

Article 1 Recognition: No Dispute

Article 2 Non-Discrimination: No Dispute

Article 3 Civility and Professional Behavior

At the Special Magistrate Hearing, the Parties were not in agreement with language for Article 3. The Parties have now, as part of each's package of proposals, agreed to language for Article 3. The new language is included with this brief as Attachment 1. A strikeout and underline version as well as a clean version of Article 3 is included.

Article 4 Management Rights

[Vol. 1 Tr. 33:12-37:3; TCC Comp. Ex. 4, bates 000211-000233⁴; UFF Ex. 1, bates 000503-000506].

TCC provided Section 447.209, Florida Statutes, which outlines the Public Employer's Rights [TCC Ex. 3, bates 000216], and examples of other management rights articles from colleges throughout the State that have similar language – Florida Southwestern State College, Hillsborough Community College, Broward College and Miami-Dade College [TCC Comp. Ex. 4, bates 000217-000233]. TCC's position is that its proposal lists specific unilateral rights enjoyed by management that stem from the broadly worded state statute.

The UFF's proposal is TCC Ex. 4, bates 000213-000215. The UFF's proposal makes no mention of particular items included in Section 447.209. Absent from the UFF's proposal is language referencing certain rights provided by state statutes. For example, the proposal omits any reference to the employer having the right to make unilateral determinations on certain subjects, being able to determine the standards of service, having control and discretion over services provided, having the ability to direct employees, having the ability to discipline for proper cause, and having the right to relieve employees from duty or relieve employees for lack of work or other legitimate reason. It is not enough that the UFF's proposal incorporates Section 447.209 by reference. The statute is subject to interpretation by the Public Employees Relations Commission ("PERC") and the courts. There have been numerous cases delineating what the statute means and further defining the unilateral rights of management. TCC's position is that its proposal is specific and accurately outlines the types of action that management can unilaterally direct.⁵

⁴ For the articles that are in dispute, TCC put into evidence its proposal as well as UFF's version for ease of reference.

⁵ Even if management has the right to make a unilateral change, it must still bargain an impact identified by a union.

Article 5 Union Rights: No dispute.

Article 6 This Article was intentionally left blank by TCC. [TCC Ex. 1, bates 000072].

The UFF proposed an Article 6 addressing a plethora of issues that do not seem to be entirely related. [UFF Ex. 1, bates 000510-000513]. Parts of the UFF’s proposal are directly related to other articles proposed by the College and will be addressed in that applicable section. The remainder of the UFF’s proposal on Article 6 will be addressed at the end of the brief.

Article 7 Strikes: No Dispute

Article 8 Grievance and Arbitration Procedure

[Vol. 1 Tr. 37:18–54:25; TCC Comp. Ex. 5, bates 000234-000241; UFF Ex. 1, bates 000515-000519].

The UFF has agreed with most of the grievance and arbitration procedure proposed by TCC. At issue is the ability to grieve a decision by TCC to not renew an annual contract or to not grant continuing contract.⁶ [See Section 2 and last sentence of Section 17 of TCC’s Article 8, TCC Comp. Ex. 5, bates 000234 and 000237. Compare the UFF’s proposal, TCC Comp. Ex. 5, bates 000238 and 000241]. Also at issue is Section 9 of TCC’s Article 8. [Compare TCC Comp. Ex. 5, bates 000236 (TCC’s) with bates 000240 (UFF’s)]. The ability to grieve contract renewal or denial will be addressed first, followed by arguments related to Section 9.

A. Lack of Ability to Grieve Nonrenewal of Annual Contract or Denial of Continuing Contract.

Section 1012.83, Florida Statutes, provides that college personnel shall have contracts “as provided by rules of the State Board of Education.” Section 1012.855, Florida Statutes, provides that employment of college personnel shall be upon recommendation of the president, subject to

⁶ Language regarding the lack of ability to grieve a decision to not renew an annual contract or to not grant a continuing contract is also included in Article 11. [See TCC Comp. Ex. 6, bates 000242-bates 000253, the last sentences of sections 3.A., 4.A., 4.C., 4.G., 4.H. and 4.I.].

the rules of the State Board of Education (“SBOE”) relative to tenure and the rules of the college “not inconsistent with law.”

Chapter 6A-14, Florida Administrative Code, sets forth the rules that apply to community colleges.⁷ Rule 6A-14.0411 sets forth provisions relating to employment contracts for full-time faculty. The rule allows each District Board of Trustees to develop and maintain policies governing the issuance of contracts for full-time faculty that are not inconsistent with the rule. [Fla. Admin. Code R. 6A-14.0411(1)]. The rule sets forth minimum requirements to be eligible for continuing contract and allows each board to establish full-time faculty positions that are not eligible for continuing contract. [Fla. Admin. Code R. 6A-14.0411(2), (3) and (4)]. For those not eligible for continuing contract, the rule allows each board to develop policies for multiple year contracts that do not exceed three (3) years, annual contracts or contracts of less than one (1) year. [Fla. Admin. Code R. 6A-14.0411(4)]. Rule 6A-14.041(3) states, “A contract **shall not** create the expectancy of employment beyond the term of the contract. Non-renewal of a contract **shall not** entitle a person to the reasons for non-renewal or to a hearing.” *Id.* (emphasis supplied). As such, a faculty member with an annual contract has no expectation of employment beyond the term of the annual contract and, if the contract is not renewed, the person shall not be not entitled to the reasons for non-renewal or to a hearing. Pursuant to the rules governing community colleges, faculty with an annual contract has no property interest in their position beyond the term of the contract.

A faculty member on annual contract can be granted a continuing contract between five (5) and seven (7) years of satisfactory service if they meet certain criteria and receive the recommendation of the president and approval by the board of trustees. [*See* Fla. Admin. Code R.

⁷ Chapter 6A-14, Florida Administrative Code, was provided as Joint Exhibit 1, bates 000001-000028. Applicable provisions of Florida Statutes relating to the K-20 Education Code were provided as Joint Exhibit 2, bates 000029-000054.

6A-14.0411(2) and (3)]. However, the faculty member being considered for continuing contract is on annual contract and has no expectation of employment beyond the term of their annual contract. As such, the faculty member has no property interest in the granting of a continuing contract and they are not entitled to any reason for the denial or to a hearing. If there is no right to employment beyond the term of the annual contract, there can be no right to a continuing contract.

The use of the words “shall not” in the rule makes it quite clear that a faculty contract, other than a continuing contract, cannot create an expectation of employment and cannot entitle a person to the reasons for non-renewal or to a hearing. These standards are set by the statutes and rules. TCC is not at liberty to enter into a CBA that is contrary. The legal responsibility to grant or deny an annual contract or to grant or deny a continuing contract is placed by statutes and rules in TCC’s President to make a recommendation and the Board to approve. Allowing these decisions to be made by an arbitrator transfers this ultimate legal responsibility.

In *Lake County Educ. Assoc. v. School Bd. of Lake County*, 360 So. 2d 1280 (Fla. 2nd DCA 1978), *cert. denied*, 366 So. 2d 882 (Fla. 1978), the collective bargaining agreement stated: “No teacher shall have his employment discontinued nor be demoted, dismissed suspended or reduced in rank except for proper cause.” *Id.* at 1281. The school board did not recommend a probationary, nontenured teacher for reappointment.⁸ A grievance was filed and submitted to arbitration. The arbitrator determined there was no just cause for nonrenewal and ordered that the grievant be reappointed. The school board filed an application in the circuit court to vacate or modify the arbitrator’s award. The award was vacated and appeal was filed with the District Court of Appeal

⁸ Rules applicable to the K-12 system are similar in that teachers do not have an expectation of employment if they are not tenured. Additionally, the decision to renew or not renew is placed in the hands of the district school board, just as the decision here is placed in the Board of Trustees. See *Gabriele v. School Bd. of Manatee County*, 114 So. 3d 477, 479 (Fla. 2nd DCA 2013); *MacPherson v. School Bd. of Monroe County*, 505 So.2d 682, note 1 (Fla. 3rd DCA 1987).

for the Second Circuit. The question posed by the Second Circuit was the following: “Can a school board enter into a collective bargaining agreement under which its decision not to reappoint a nontenured teacher must be based upon proper cause?” *Id.* at 1282. The court answered the question in the negative.

In reaching its decision, the court stated: “It is the public policy of Florida as expressed by statute that our elected school boards shall have the exclusive prerogative to decide whether to reappoint nontenured teachers. There is nothing in the public employee bargaining provisions of Chapter 447 which suggests anything to the contrary.” *Id.* at 1285. *See also School Bd. of Seminole County v. Cornelison*, 406 So. 2d 484, 486 (Fla. 5th DCA 1981), *rev. denied*, 421 So. 2d 67 (1982) (holding that arbitrator had no authority to order reinstatement of annual contract teacher to another term because of breach of teacher evaluation procedures contained in collective bargaining agreement). As the court stated in another case, “When given legislative authority, a school board cannot restrict its exercise of that authority [in a collective bargaining agreement].” *Public Employees Relations Comm’n v. Dist. School Bd. of De Soto County*, 374 So. 2d 1005, 1013 (Fla. 2nd DCA 1979), *cert. denied*, 383 So. 2d 1193 (1980). *See also School Bd. of Seminole County v. Morgan*, 582 So.2d 787 (Fla. 5th DCA 1991) (stating that *Cornelison* and *Lake County* hold that a decision to renew contracts for nontenured teachers is *exclusively* within the discretion of the school board by law and cannot be bargained away or limited by a collective bargaining agreement). TCC’s position is that it is legally obligated to make the decision to renew or not renew an annual contract and to grant or deny continuing contract, and that this legal obligation cannot (and should not) be transferred to a third party.

The UFF’s proposal is contrary to SBOE rules in that it allows Faculty members whose annual contracts have not been renewed or who have been denied continuing contract to grieve

and arbitrate those decisions. The UFF's position is based on Section 447.401, Florida Statutes, and *Orange County Classroom Teachers Assoc.*, 7 FPER ¶ 12179 (1981). Section 447.401, in pertinent part, states:

Each public employer and bargaining agent shall negotiate a grievance procedure to be used for the settlement of disputes between employer and employee, or group of employees, involving the interpretation or application of a collective bargaining agreement. Such grievance procedure shall have as its terminal step a final and binding disposition by an impartial neutral, mutually selected by the parties;

[See UFF Ex. 2, bates 000637]. *Orange County* “merely stands for the proposition that an employer cannot impose language which purports to exclude a provision of ... [a collective bargaining] agreement from the grievance procedure.” *Florida Public Employees Council 79, AFSCME, AFL-CIO v. Florida Int’l Univ. Bd. of Trustees*, 32 FPER ¶ 26 (2006). The Parties are not at the point in this process where any language is being imposed. TCC’s proposal is a request that the UFF recognize TCC’s management rights under state statutes and rules, that the decision to renew an annual contract or grant continuing contract is solely within the discretion of TCC. This concept was addressed in *Orange County* and supports the TCC’s position. PERC held that “an employer may certainly insist upon contractual language which, in its opinion does not subject certain ‘management decisions’ to review of an arbitrator through the grievance procedure, it may not insist that any dispute over the meaning of the contractual language itself be exempted from operation of the grievance procedure.” *Orange County*, 7 FPER ¶ 12179 (1981). TCC’s proposal is in line with this. The language only excludes the *decision* to renew or not renew annual contract and the decision to grant or not grant continuing contract – both decisions that are within the sole discretion of management – from the grievance procedure. The language does not purport to exclude the interpretation of any contractual language from the grievance and arbitration process.

B. Article 8, Section 9.

The Parties disagree with the proposed language for Article 8, section 9. [*See* TCC Comp. Ex. 5, *compare* bates 000236 (TCC) *with* bates 000240 (UFF)]. TCC's proposed language is to prevent against an arbitrator awarding a remedy that is not a traditional arbitration remedy thereby subjecting TCC to some type of monetary award that is beyond anything contemplated through its budget process or the CBA. The UFF did not seem to have an issue with this concept, but did not think the language clearly conveyed this idea.

The UFF's proposal for section 9 simply stated:

Consistent with the provisions of the Florida Public Employees Relations Act, Chapter 447, et seq., upon execution of the collective bargaining agreement, the chief executive shall, in his or her annual budget request or by other appropriate means, request the legislative body to appropriate such amounts as shall be sufficient to fund the provisions of the collective bargaining agreement.

[*Id.*]. This is nothing more than language quoted from Section 447.309(2)(a), Florida Statutes, which states:

Upon execution of the collective bargaining agreement, the chief executive shall, in his or her annual budget request or by other appropriate means, request the legislative body to appropriate such amounts as shall be sufficient to fund the provisions of the collective bargaining agreement.

[*Id.*]. Because it is required by Florida Statutes, there is no need to have the language in the CBA.

Article 9 Board Policies and Rules: No dispute.

Note: This is also Union's proposed Article 31. [*See* TCC Ex. 1, bates 000081; UFF Ex. 1, bates 000605].

Article 10 Academic Freedom: No dispute.

Article 11 Appointments, Contracts and Termination

[Vol. 1 Tr. 132:4-134:5; Vol. 3 Tr. 326:6-333:19; TCC Comp. Ex. 6, bates 000242-bates 000253; UFF Ex. 1, 000529-000535; UFF Ex. 9, bates 000669]

Most of Article 11 has been agreed-to by the Parties. There are two (2) issues outstanding. The first issue is the ability to grieve a decision by TCC to not renew an annual contract or to not grant continuing contract. Language regarding the lack of ability to grieve a decision to not renew an annual contract or to not grant a continuing contract is included in Article 11, the last sentences of sections 3.A., 4.A., 4.C., 4.G., 4.H. and 4.I. [See TCC Comp. Ex. 6, bates 000242-bates 000253]. This issue was previously discussed in connection with Article 8. [See *supra* discussion at pp. 7-12].

The second issue is whether Librarians and Counselors are to be eligible for continuing contract. [Compare TCC Comp. Ex. 6, bates 000242 (TCC) with bates 000248 (UFF). See also Vol. 1 Tr. 132:4-134:5; Vol. 3 Tr. 326:6-333:19]. TCC would like Librarians and Counselors to be on annual contracts while the UFF wants them to be eligible for continuing contracts. As explained by Dr. Feleccia Moore-Davis, Vice President for Academic Affairs/Provost, TCC does not have Counselors and has not had them for about two (2) years. Librarians are given 12-month contracts and their duties align more with professional staff. The primary duty of a Librarian is to serve students, not teach classes. In fact, there is only one (1) course taught each semester by Librarians. It consists of one (1) elective on-line class of approximately thirty-five (35) students per semester so the Librarians rotate teaching the course.⁹ [See TCC Ex. 19, bates 000389-000390]. Any single Librarian might teach the course only once every three (3) years, depending how many

⁹ At the time of the hearing, TCC had nine (9) budgeted Librarian positions, but only six (6) were filled. [See Vol. 1 Tr. 133:15-20].

Librarians are on staff. Librarians do not assess student learning, and they are not in the classroom except to collaborate with Faculty.

The UFF's position is that Librarians are part of the bargaining unit, there is nothing in SBOE rules that prohibit Librarians from receiving continuing contracts, they are currently eligible at TCC for continuing contracts and, pursuant to a UFF survey, they are considered as Faculty at a number of institutions throughout the state. [See Vol. 3 Tr. 326:6-333:19; UFF Ex. 9, bates 000669]. While traditionally Librarians and Counselors have been treated as Faculty, there have been a number of recent bargaining units that have excluded these positions from Faculty bargaining units based on the recognition that the positions are more closely aligned with administrative and professional employees. See *United Faculty of Florida v. St. Petersburg College Bd. of Trustees*, 43 FPER ¶ 208 (2017); *United Faculty of Florida v. State College Bd. of Trustees*, 43 FPER ¶ 48 (2016). In *St. Petersburg*, some Librarians and Counselors had continuing contracts while more recent hires who did not have continuing contracts were transitioned to the administrative and professional salary scales and were no longer eligible for continuing contracts. Recognizing this, PERC ordered a bargaining unit that included continuing contract Librarians and Counselors, but excluded those that were not eligible for continuing contract. *Id.* UFF's survey also supports the conclusion that it is not an oddity to exclude Librarians and Counselors from the ranks of Faculty.¹⁰ The UFF's survey stated that sixteen (16) colleges regarded the positions as Faculty while twelve (12) colleges did not. In reality, their survey did not capture the fact that St. Petersburg has not considered these positions as Faculty since 2012. With this new information,

¹⁰ In fact, Librarians are not considered Faculty at Valencia, which is one of the colleges in Florida that was an Aspen Award winner. The Aspen Award is a highly coveted award given to institutions for excellence in student success. It includes a million dollar grant. Santa Fe College and Valencia College are two recent recipients of the award in Florida.

the numbers would be that sixteen (16) colleges consider them as Faculty, thirteen (13) colleges do not currently consider them Faculty, and three (3) colleges whose practices are unknown. While TCC must bargain over wages, hours and terms and conditions of employment, it should be within TCC's purview to align its workforce as it sees fit, and it does not consider Librarians and Counselors to be Faculty.

Article 12 Professional Rank: No dispute.

Article 13 Work Responsibilities

[Vol. 1 Tr. 64:24-130:16; Vol. 2 Tr. 166:20-384:1; Vol. 3 Tr. 301:7-302:9, 305:22-308:24, 315:15-316:11; Vol. 4 Tr. 342:13-384:2, 385:16-386:14, 388:12-424:5; TCC Ex. 1, bates 000095-000105; TCC Ex. 8, bates 000307-317; TCC Ex. 9, bates 000318-000329 (UFF's Article 13); TCC Ex. 10, bates 000330-000336 (UFF's Article 9); TCC Ex. 11, bates 000337-000340 (UFF's Article 6); TCC Ex. 14, 000346-000371; TCC Ex. 16, bates 000377; TCC Ex. 17, bates 000384-000387; TCC Ex. 18, bates 000388; TCC Ex. 19, bates 000389-000390; UFF Ex. 1, bates 000538-000550]

Article 13 Work Responsibilities is the single most complex issue before the Special Magistrate. It is also what led to the unionization efforts at TCC. TCC's proposal is set forth in Article 13. [TCC Ex. 8, bates 000307-000317]. The UFF's counterproposals to the topics discussed in TCC's Article 13 are set forth in various articles – the UFF's Articles 6, 9 and 13. TCC also presented through Dr. Moore-Davis a PowerPoint addressing workload (or teaching load), reassignments, instruction and office hours, assignment of Faculty, professional development, College service, student advising, and the assignment of extra teaching assignments and/or summer teaching assignments.¹¹ [See TCC Ex. 14, bates 000346-000371]. The UFF also presented a PowerPoint. [See UFF Comp. Ex. 1, bates 000473-485].

¹¹ The PowerPoint also covered the issues of continuing contract for Librarians (Article 11), the right to observe classes (Articles 15 and 16), and reduction in force (Article 28). These topics are discussed in this memorandum under the appropriate article of TCC's proposed package.

Dr. Moore-Davis is responsible for all academic programming which includes the Associate of Sciences Degree programs, Associate of Arts Degree programs, and technical programs. Dr. Moore-Davis has been in higher education for over fourteen (14) years. She came to TCC approximately three (3) years ago after having worked in Texas. When she got to TCC, she looked at how Faculty workload was determined and came to the conclusion that it needed some modification. Dr. Moore-Davis believes that the formula being used works for some disciplines, but not all, and results in inequities among Faculty. The workload formula was being reviewed by a work group in 2016 when the Faculty unionized. As such, the formula remains the status quo. The UFF wants to maintain the status quo.¹² [TCC Ex. 10, bates 000331]. TCC's proposal is to adopt simpler, easier to use workload guidelines that provide the flexibility to meet the ever-changing needs of students and to determine classes and class size based on student success. [TCC Ex. 8, bates 000307-000317].

Pursuant to Section 1012.82, Florida Statutes:

Each full-time member of the teaching faculty ... shall teach a minimum of 15 classroom contact hours per week at such institution. However, the required classroom contact hours per week may be reduced upon approval of the president ... in direct proportion to specific duties and responsibilities assigned the faculty member by his or her department chair or other appropriate college administrator.

[J. Ex. 2, bates 000034]. The statutes also define "classroom contact hour" as consisting of regularly scheduled classroom activity of not less than fifty (50) minutes in an approved course of

¹² The current workload formula does not apply to Healthcare Faculty. As pointed out by the UFF, the current workload formula is found in Policy 05-09, which appears to have been first adopted in 1997, although Dr. Moore-Davis found evidence of its use going back to 1987. [UFF Ex. 4 and 5, bates 000649-000653]. Essentially, the UFF's position is that TCC has been successful so why fix something that is not broken. The UFF's arguments ignore the fact that classes are being driven by the formula as opposed to being driven by student needs.

instruction. [*Id.*]. Florida colleges have adopted different approaches to determine teaching load such as using point systems (i.e., different weights are given to different types of classes) or discipline-specific approaches (i.e., humanities classes versus science classes). TCC is the only college in Florida that uses this type of formula.¹³ [*See* TCC Ex. 14, bates 000348-349].

TCC’s formula uses three factors – class size, the number of preparations, and the total student contact hours. The teaching load must be done each term for each individual Faculty member. The teaching load is derived by taking the contact hours for each course taught by the Faculty member multiplied by the number of students enrolled in each class. The product of those numbers are then added together to come up with a total. The total is then compared to a scale based on the Faculty member’s number of course preparations. The fourth slide in the PowerPoint presentation delivered by Dr. Moore-Davis provides the following example:

UFF Teaching Load Formula

Number of Preps	Number of Student Contact Hours (SCH)
1	450 - 550
2	375 - 450
3	300 - 375
4	250 - 300

Example

Course	Contact Hours	Enrollment	SCH
MAT 1033	3	35	105
MAT 1033	3	37	111
MAC 1105	3	32	96
MAC 1105	3	38	114
Total	12	142	426

¹³ Dr. Martin Balinsky, the UFF Vice President and co-Chief Negotiator, took the position that every college uses a formula. Dr. Moore-Davis explained that there always something used to calculate load, but no other college in Florida uses TCC’s formula.

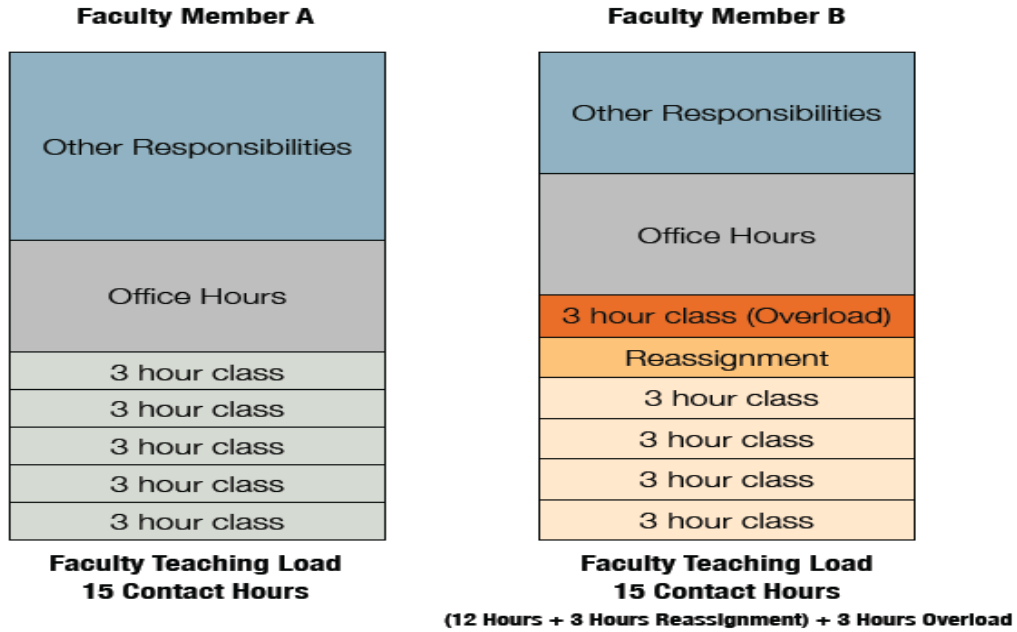
[See TCC Ex. 14, bates number 000351]. This Faculty member is teaching two (2) classes – MAT 1033 and MAC 1105 – and is teaching two (2) sections in each class. Each class is a three (3) contact hour class so the Faculty member is teaching twelve (12) total contact hours, which is below the fifteen (15) contact hour minimum required by state statutes. A total for each class is achieved by multiplying the contact hours by the enrollment which yields the results of 105, 111, 96 and 114. The totals for all of the classes are then added to reach a total of 426. This total is then matched to the scale set forth above the example.

The scale was developed years ago based on the number of course preparations a Faculty member has and the total student contact hours. A course preparation is simply each unique course a Faculty member is teaching. The student contact hours in the scale indicate the range of contact hours that equate to a “full teaching load”. There was no testimony about how the scale was developed, just that it had been used since about 1987.

In the example, the Faculty member has two (2) course preparations – one (1) for MAT 1033 and one (1) for MAC1105. The range of student contact hours for two (2) course preparations is 375-450. The total of 426 falls within this range and, therefore, this Faculty member is at full teaching load.¹⁴

Dr. Moore-Davis testified that this formula yields inequities among Faculty and presented the following example comparing the workload of two (2) Faculty members:

¹⁴ Using the example, if the Faculty member’s student contact hours were at 450, the Faculty member gets paid extra for teaching more students. Faculty receive fifteen (15%) percent of the extra course pay rate for each extra student (i.e., a body not contact hours) between 1 and 6. For example, for one (1) extra student or six (6) extra students, there is an extra fifteen (15%) percent overpay. Once the Faculty member hits seven (7) extra students, the Faculty member gets additional pay – that is, the Faculty member would get two (2) extra pays at fifteen (15%) percent of the extra course pay rate. While the current policy does not have a limit stated, TCC limits this administratively.



[See TCC Ex. 14, bates number 000352¹⁵]. Both Faculty members A and B have office hours and spend time during the week on other responsibilities like professional development, advising, sitting on College committees or providing other service to the College. Both Faculty are at “full teaching load” based on the scale used in the formula. Because of the classes being taught and their enrollment and the number of preparations, it works out that Faculty member A is actually teaching fifteen (15) contact hours (i.e., five (5), three (3) credit courses) while Faculty member B is only teaching twelve (12) contact hours (i.e., four (4), three (3) credit courses). The twelve (12) contact hours is below what is mandated by state statutes and, therefore, Faculty member B is given a reassignment. A reassignment is the freeing of a Faculty member from teaching responsibilities. For example, a Faculty member might be an adjunct mentor. With twelve (12) contact hours and one (1) reassignment, Faculty member B meets the fifteen (15) contact hours required by statutes.

¹⁵ The three (3) hour class identified as “overload” (a/k/a extra teaching assignment) in Faculty member B’s table is simply an extra class that a Faculty member can choose to teach for overload pay. A Faculty member who is only teaching four (4) classes would be more likely to pick up a fifth (5th) class as opposed to a Faculty member who is already teaching five (5) classes. Thus, an additional inequity caused by the formula.

Dr. Moore-Davis explained that the issues with the current formulaic system are multi-faceted having to do with reassignments, creating inequity among Faculty, driving class sizes up, favoring larger disciplines, not being student centric and creating a manual process. [See TCC Ex. 14, bates number 000353]. With respect to reassignments, the formula forces TCC to grant reassignments in order to align Faculty with state mandates. Eighty-one (81%) of the Faculty currently do some type of reassignment.¹⁶ If there was a different system for establishing teaching load, there would not be the need for as much reassigned time. Further, some reassignments are more legitimate than others,¹⁷ but a reassignment has to be given due to the formula. TCC does not want to get rid of reassignments. There is a need for them, but there must be accountability.

The formula also does not apply to all disciplines equitably. It favors larger disciplines. For smaller disciplines like Speech, Journalism or English, the formula does not work. [See TCC Ex. 14, bates number 000356]. These Faculty are all teaching five (5) classes – fifteen (15) contact hours. These disciplines all have smaller class sizes. The formula drives class sizes upwards because you have to have larger class sizes in order for the Faculty member to reach full teaching

¹⁶ Of the Faculty members that spoke for the UFF, Ms. Robinson, UFF-TCC President, taught nine (9) contact hours and had six (6) hours of reassigned time. Ms. Reid taught six (6) contact hours, had six (6) hours of reassigned time for Program Chair, and had three (3) hours of time in the Learning Commons. Mr. Lutz had three (3) hours of reassigned time. Mr. McDermott had three (3) hours of contact time and had eighty (80%) percent (twelve (12) hours) of reassigned time. Some of the reassigned time was caused by the workload formula, as with Ms. Robinson and Mr. Lutz. Some are reassigned time that is necessary, as with Program Chairs or working with Administration on mapping academic programs.

¹⁷ Dr. Moore-Davis provided some examples of less legitimate reassignments. [See TCC Ex. 14, bates number 000355]. An adjunct mentor where there is one adjunct in the Department. A course coordinator where there is no adjuncts. Faculty members whose committee membership is being counted as a reassignment when it should just be College service. A reassignment for oversight of German and French when the College does not even offer German and French. Ms. Robinson even testified that she has nine (9) contact hours and her reassignment is extra office hours in order to grade papers.

load. For example, if you have an English Faculty member teaching five (5) sections of the same class and there are twenty-eight (28) students in the class, that Faculty member would not reach full teaching load. The formula for this example results in 420 student contact hours (i.e., 5 x 3 (contact hours) x 28 (enrollment) = 420). There is only one (1) preparation for which the scale determines that the range for a full teaching load is 450-550 student contact hours. Thus, more students have to be added to the enrollment in order for the Faculty member to even reach full teaching load. This is as opposed to Ms. Robinson, who teaches in the Humanities area and has fairly large class sizes. The formula has her teaching three (3) classes for nine (9) contact hours and being at full teaching load. A workload system that does not work for all Faculty should not be one that is used.

One result of the current formula is that there are great variations in class sizes. For example, the class sizes for the same course ranging from thirty-five (35) students to fifty-five (55) students depicted in the presentation.¹⁸ [See TCC Ex. 14, bates number 000357]. Another result is that enrollment capacity is being based on Faculty teaching load as opposed to be being based on student interest or need.¹⁹ Dr. Moore-Davis explained that currently the administration first has to

¹⁸ UFF tried to blame the class variations on students wanting to take more afternoon classes because they want to “sleep-in.” This is a simplistic attempt to divert the Special Magistrate’s attention from the real issue. Dr. Moore-Davis is responsible for the Faculty teaching load formula and testified that she has to worry first about Faculty making load. Nevertheless, based on surveys conducted by TCC, students’ first preference is to have classes between 9:00 a.m. and 12:00 p.m. [See TCC Ex. 17, bates 000384-000387].

¹⁹ As part of its presentation, the UFF provided an exhibit from TCC’s Office of Institutional Effectiveness which showed the average number of students taught per full-time Faculty and the average class size for the colleges throughout the state for the Summer 2014, Fall 2014 and Spring 2015 terms. [See UFF Ex. 6, 000659-000661]. The report showed that TCC had the highest average class size throughout the state for these terms. The numbers were 25.3 students, 29.7 students and 28.6 students, respectively. This only supports TCC’s position that the workload formula is driving up the class size.

get Faculty within load. The Faculty choose their classes and then she works around their workload to determine the number of classes or the number of students that need to be added.

Dr. Moore-Davis testified that TCC's goal (as well as hers) was to strategically decrease class size without impacting student enrollment capacity. Class size is important to instructional delivery, quality and Faculty innovation. All of this is important to the students, the Faculty and the future of TCC. Adoption of TCC's proposal which eliminates the current workload formulas will allow the College to actually assess the current class sizes and compare them based on national and regional research, and to come up with best practices for student success. However, as Dr. Moore-Davis testified, she has been talking about dropping class size since she got to TCC, but has been unable to do it because the workload formula forces her to give Faculty a certain number of student contact hours. Additionally, she stated that an appropriate class size for history is not going to look the same as an appropriate class size for sciences. In some of the areas, like English, there are national standards (i.e., National Council of English Teachers). She emphasized that it needs to be looked at, researched, and determined how TCC will move forward.²⁰

Dr. Balinsky indicated that there was a lack of trust on the part of the Faculty and, therefore, they wanted a specific class size and money if a class size went above the agreed to number.²¹ In fact, the portions of the UFF's PowerPoint presentation that were delivered by various Faculty

²⁰ TCC presented its analysis of class size for the Fall 2017 and Spring 2018 terms. Only thirty-three (33) classes have more than fifty (50) students in the Fall and only twenty-eight (28) classes in the Spring. [See TCC Ex. 18, bates 000388]. Dr. Moore-Davis testified that it was her belief that acceptance of TCC's workload proposal would decrease these numbers.

²¹ It was apparent from the Faculty presentations that they are fearful of the unknown and fearful of any change, but had no proof that any of their concerns would come to fruition. They just wanted a class size of 30, but this fails to recognize there may be differences in disciplines and the fact that the current workload formula does not allow it. Further, class size is a management right that TCC will not relinquish. It is an inherent part of the quality of the services provided by the College.

members seemed to suggest, just give us a class size of thirty (30) students and we will do fifteen (15) contact hours. Their presentations also exhibited a fear of the unknown – they were not sure if the Learning Commons was going to be around or if they would have reassigned time, and they speculated about what might happen to their class size. Dr. Moore-Davis, however, was persuasive in explaining that the appropriate class size for student success might be different between disciplines and that this was a management decision to be made by TCC based on research and student success.

Another of the UFF's complaints with implementing the College's proposal is that Faculty will miss out on the pay for extra teaching assignments. If Faculty are required to actually teach five (5) classes as part of their regular teaching load, it means that they will not be teaching that fifth (5th) class as an extra teaching assignment (a/k/a overload). Dr. Balinsky even testified that he thought implementation of the College's proposal would "eliminate" a lot of overloads. Dr. Barbara Wills, Vice President of Administrative Services and Chief Business Officer, stated that TCC offers about 9,500 credit hours every year. Even if all 185 Faculty members taught fifteen (15) credit hours without any reassignments, it would only equal about 5,000 credit hours so there would still be the need for extra teaching assignments.

Finally, this process is a manual process that cannot be calculated by TCC's software system. It must be done each term for each Faculty member. This is time consuming, inefficient and unproductive.

Dr. Moore-Davis addressed the UFF's proposal to reduce the Healthcare Faculty's workload to 180 contact hours per semester which is only twelve (12) contact hours per week, less

than the state mandated fifteen (15) hours per week.²² [See TCC Ex. 10, bates 000333 (Section 9.02.B. of the UFF’s proposed Article 9)]. The state mandate of fifteen (15) contact hours per week equates to 225 contact hours per semester. Decreasing these hours does not, in Dr. Moore-Davis’ opinion, acknowledge the complexity or requirements of the programs. There are student-faculty ratios set by accreditation standards that apply to these courses so class sizes cannot be increased. The only option would be to extend the program by another semester which affects how quickly the student can become part of the workforce.

TCC’s proposal is based on three (3) fundamental premises – Faculty accountability, student success and fiscal responsibility. In Article 13, section 1 of TCC’s proposal, the College proposes a standard teaching load of fifteen (15) to eighteen (18) contact hours per week per semester, depending on discipline.²³ [See TCC Ex. 8, bates 000307]. The UFF does not agree with this portion of TCC’s proposal, as it wants the current workload formula. The UFF agrees with the remainder of TCC’s language as proposed in Section 1.²⁴ [See TCC Ex. 9, bates 000318-000319 (The UFF’s proposed changes to TCC’s Article 13)]. The language includes language about an extended contract with a length of two and one-half (2½) terms not to exceed 205 days. The UFF

²² The UFF’s proposal was to bring some “equality” to the Healthcare Faculty. This drives home TCC’s point. Most of the other Faculty have some type of reassigned time and are teaching only twelve (12) or in some cases nine (9) contact hours per week. The formula does not apply to Healthcare Faculty so they are teaching at least fifteen (15) contact hours per week. The UFF’s solution is to simply assign them four (4) classes and use their clinical time as reassigned time.

²³ Dr. Moore-Davis explained that there are a minority of disciplines where the standard teaching load is somewhere in between fifteen (15) and eighteen (18).

²⁴ Dr. Moore-Davis testified that both Valencia College and Santa Fe College, which lead Florida in student completion rates, use a baseload of fifteen (15) contact hours, the same system that TCC proposes. Even the prior Faculty Senate Chair, Dr. Frank Baglione, prior to unionization, recognized that the proposed system was more in line with colleges throughout Florida. [See TCC Ex. 16 at bates 000379].

agrees with this language, but also proposes language in its Article 9, section 9.04.E., that is contrary to what they agree to in Article 13, section 1. Section 9.04.E. addresses an extended summer assignment for Healthcare Faculty. [See TCC Ex. 10, bates 000335.] This is already addressed in TCC's Article 13, section 1, and was agreed to by the UFF. It is unnecessary to cover the same topic in two different areas of a CBA. As such, the UFF's section 9.04.E should not be recommended.

Article 13, section 2 of TCC's proposal provides language regarding work reassignments. It recognizes that reassignments are created and granted at the discretion of the College. The UFF primarily agrees with TCC's proposed language, but adds language *requiring* the granting of reassigned time for certain types of duties. [See TCC Ex. 8, bates 000308 *and compare* TCC Ex. 9, bates 000319 (UFF's)]. TCC does not think a listing of reassignments is necessary. Additionally, the UFF's language is unclear. On the one hand, they agree that the creating and granting of reassignments is within the College's discretion, but on the other, they propose that reassignments "shall be granted" for specific duties. The UFF's proposed language should not be recommended.

Article 13, section 3, sets forth the components of Faculty Work Hours and Responsibilities. There are four (4) components – Instruction and Office Hours, Professional Development, College Service and Faculty-Student Advising. The Parties disagree on one (1) paragraph in this section. TCC's proposal states:

The components of Faculty workload responsibilities include: (a) instructional and office hours – twenty-five (25) hours per week; (b) professional development – three (3) hours per week (on average); (c) College service – eight (8) hours per week (on average); and, (d) Faculty advising – four (4) hours/per week (on average). As professionals, Faculty are not required to "clock-in" for these duties and it is recognized that these are minimums and that many Faculty devote more time to College activities and responsibilities.

[See TCC Ex. 8, bates 000308-000312]. The UFF's proposal is similar, but combines subsections (b)-(d) as follows: "(b) fifteen (15) hours per week on average of other professional activities, which shall be divided as needed between professional development, College service, and Faculty advising." [TCC Ex. 9, bates 000320 (UFF's)]. The College prefers its proposed language as it gives a little more structure to how a Faculty member's workweek of at least forty (40) hours breaks down.

In TCC's proposal, the assignment of classes is left up to the College. Article 13, section 3.A., states:

Deans, Program Chairs and/or Program Lead Faculty will work with Faculty members to fill scheduling requirements and establish individual schedules which meet the needs of the students. It is the responsibility of the College to assign Faculty members to teach courses in their respective academic disciplines at times and locations and/or in instructional formats which meet the needs of students.

[See TCC Ex. 8, bates 000309]. Article 13, section 4, addresses the scheduling of summer teaching assignments and states, "Faculty Summer teaching assignments shall be awarded to the best qualified candidate based upon several factors including credentials, academic experience, work experience, student success, retention and completion rates." [See TCC Ex. 8, bates 000312]. This is the same language used for assignment of extra teaching assignments in section 8.²⁵ [See TCC Ex. 8, bates 000326]. It is TCC's intent that assignments go to the best qualified person, considering a number of factors including seniority. The UFF proposes that all assignments, regular, extra and summer assignments, be given based strictly on seniority. [See TCC Ex. 9, bates

²⁵ There are no disputes about TCC's proposed Article 13, sections 5, 6, and 7. TCC's proposed Article 13 at sections 8 and 10.A.iv, refers to the rate at which a Librarian will be paid if they teach a class. [See TCC Ex. 8, bates 000327-000328]. TCC proposes that a Librarian will be paid the adjunct rate and the UFF proposes that they be paid the overload rate. This issue will be addressed in connection with Article 23 Wages.

000319 (UFF's proposed Article 13); TCC Ex. 11, sections 6.07 and 6.02, bates 000337 and 000338 (UFF's proposed Article 6)]. The UFF also provides language on how seniority will be established. [See TCC Ex. 11, section 6.06, bates 000338 (UFF's proposed Article 6)]. There is no mention of seniority in TCC's proposals.

Dr. Moore-Davis explained that the current scheduling practice is left up to the different divisions. Some divisions follow seniority, some do not. In either case, TCC wants move away from using seniority as the sole criteria for anything. It wants to consider several factors including credentials, academic experience, work experience, student success, and retention and completion rates. Factors like student success, retention and completion rates are all data driven – what grade did students get, what were the number of student withdrawals and what were the number of students that completed the course with A, B or C. It is some quantifiable data that provides some insight beyond just looking at how long someone has been employed by TCC. Further, the UFF's proposal to use seniority as the sole factor completely ignores any newly hired Faculty – even those with many years of prior teaching experience – who might be better qualified for an assignment. The least senior Faculty member might be excellent, but if seniority is the sole determining factor in assignments, TCC would not be able to consider anything else.

The UFF's position on seniority seems to be mostly based on the idea that it is objective, and is not based on the individual preferences of the Deans or subject to lobbying or favoritism. While this thinking is common for unions, it still does not mean that it is best for students. Dr. Balinsky also mentioned that it protects against age discrimination because it is certainly cheaper to layoff more senior faculty than junior faculty. This, however, is a misnomer. Just because someone has more seniority, does not mean they are older. There very well could be a Faculty member who started teaching as a second career and is older than some of the more senior Faculty

who started teaching right out of college. Further, there are federal, state and local ordinances that protect against discrimination on the basis of a protected status. A provision in a CBA to attempt to guard against age discrimination is not needed.

The final item to be mentioned about Article 13 is that section 10 addresses Librarians and Counselors.²⁶ The UFF agrees with the language about the workweek and responsibilities of Librarians and Counselors, but it also proposed, in Article 9, sections 9.03 and 9.04, additional language about the responsibilities for these positions. [*See* TCC Ex. 10, bates 000333-000335 (UFF's proposed Article 9)]. It is unwise to have language about the same topic in two (2) separate areas of the CBA. Part of the additional language being proposed by the UFF, TCC believes was withdrawn at the table – the language about Librarians being able to use one and one-half (1½) hours per week to participate in the Wellness Program. This is a benefit that no one else in the College has, and is not something that TCC feels is necessary. Finally, the UFF adds language about required course work being paid for and being a part of their regular work hours. This topic is already covered in the Professional Development section of TCC's Article 13, section 3.B. [*See* TCC Ex. 8, bates 000310-000311]. Accordingly, TCC rejects the additional language proposed by the UFF and requests that it not be recommended.

Article 14 Master and Instructional Syllabi: No dispute.

Article 15 Additional Professional Obligations

[Vol. 1 Tr. 134:17-140:20; TCC Ex. 1, bates 000110-000111; TCC Ex. 12, bates 000341(UFF's proposed Article 15); UFF Ex. 1, bates 000553-000555].

The only difference between TCC's proposal and the UFF's proposal is the College's desire to observe any class at any time. The UFF insists on one week's notice before any

²⁶ There is no dispute about TCC's proposed Article 13, section 9, Final Exam Week.

observation for the purposes of evaluating or accessing a Faculty member's performance. The ability to enter a class at any time is also an issue in connection with Article 16 Distance Education.

TCC is responsible for the services it provides. TCC is committed to providing affordable, accessible and relevant higher education to the community it serves. The ability to observe any class at any time is an obligation of management in providing its services to the students and community. As Dr. Moore-Davis pointed out, there have been occasions where complaints have been received from students making it necessary to observe what is happening in a classroom. Fortunately, it is not a common occurrence, but it does happen. TCC's Faculty are professionals, but they are also employees. It is incumbent on TCC to ensure that its product – education – is being delivered in an efficient manner. The concept of having to give a Faculty member – or any employee – a week's notice so that they can “clean up their act” is nonsensical.

Article 16 Distance Education.

[Vol. 1 Tr. 134:17-140:20, TCC Ex. 1, bates 000113-115, TCC Ex. 13, bates 000343-345 (UFF's proposed Article 16); UFF Ex. 1, bates 000556-559].

This Article addresses online and hybrid (partially face-to-face and partially online instruction). There are two (2) issues in dispute with this Article – determining class size and TCC's ability to monitor or enter course shells.

A. Class Size.

Section 3 of Article 16 states that the determination of class size for online courses is at the discretion of the College. The UFF strikes this language and proposes that the same load formula that is used for face-to-face classes be used for hybrid and online classes. Issues with the load formula were discussed previously in connection with Article 13 Work Responsibilities. [*See supra* at pp. 15-29]. TCC's reasoning for not wanting the current workload formula for face-to-face classes is the same reasoning for not wanting it to apply to online or hybrid classes.

With respect to determining class size, the law is well established that determining class size is a prerogative of management and it is not a mandatory subject of bargaining. *See Hillsborough County School Board*, 8 FPER ¶ 13074 (1982).

B. Entering or Monitoring Course Shells.

As Dr. Moore-Davis explained, there is a “shell” built for any online section that a Faculty member teaches. The Faculty member may use the shell for discussion, instruction, communication, or to build an actual course in the future. Just as it is essential that TCC reserve the right to enter a face-to-face class at any time, it is equally essential to reserve the right to enter an online or hybrid class. The ability to observe any class at any time, regardless of modality (classroom or online), is a privilege that belongs to management in providing its services to the students and community. Issues may (and have) arisen which have necessitated entering a class immediately. Examples that may require entering an online class were provided, i.e., whether a student had entered the class in an incorrect manner, or whether something was done wrong on the professor’s side. In short, TCC must retain the right to make sure that a given Faculty member has set-up the class correctly (or at all), whether the class has been published, and, of course, whether the professor has been responsive to the students. A real-world example of this issue is Dr. Moore-Davis’ testimony that, in the past, students have attempted to enter online classes only to find that the professor had not put anything into the online system.

Another important issue is the ability of TCC to effectively evaluate online Faculty. TCC must retain the critical ability to enter an online course to assess instructional quality. The UFF wants at least forty-eight (48) hours’ notice. TCC’s Faculty are professionals – acknowledged by the College – but as Dr. Moore-Davis succinctly stated, they are also employees – and the concept that the Dean or any other appropriate administrative official cannot check on their employees is

a “foreign concept.” In short, the idea that a professor – or any employee – must be given advance notice prior to being observed and/or evaluated is ridiculous.

The essential function of Faculty is to engage students. TCC sets standards of excellence for all of its classes and it must ensure that Faculty is providing services at the level expected by TCC and demanded by the students.

Article 17 Textbook Selection: No dispute.

Article 18 Interdivision Transfers: No dispute.

Article 19 Teaching and Service Environment: No dispute.

Article 20 Conflict of Interest and Outside Employment: No dispute.

Article 21 Faculty Evaluations

[Vol. 1 Tr. 54:25-64:23; TCC Ex. 1, bates 000129-000132; TCC Comp. Ex. 7, bates 000254-000306; UFF Ex. 1, bates 000569-000572; UFF Comp. Ex. 3, bates 000638-000648].

The Parties have agreed to most of the language of Article 21 dealing with Faculty evaluations. The only difference is what can be grieved. TCC’s proposal allows for a grievance over the evaluations process and, if any false information is not removed by the Vice President for Academic Affairs/Provost, it may be grieved also. TCC’s proposal does not allow for grievance of the overall rating or other content of the evaluation. The UFF’s proposal allows for a grievance to be filed about any aspect of the evaluation or the evaluation process.

It seems incomprehensible that a third party could make the ultimate substantive decision as to a Faculty member’s performance. It is up to the College to determine the standard of services it provides to the public – it is a management right to place value on how well a Faculty member performs his or her job duties. [See Fla. Stat. § 447.209]. How can an arbitrator overturn a classroom observation when he or she was not there to observe the Faculty member’s performance

on that day? The evaluation process requires that the Dean or Director simply determine whether the Faculty member “meets requirements” or “needs improvement.” [See TCC Comp. Ex. 7, section 5.E., bates 000256]. There is no grading scale. There is no merit increase that is gained by meeting the requirements. TCC’s proposal offers protection to the Faculty if the evaluation process is not done correctly or if there is a false statement contained in the evaluation. Those items can be grieved. If grieved, the remedy would be for the TCC to redo the evaluation, not the arbitrator.

TCC provided a number of examples from other colleges where the ability to grieve an evaluation was limited. Miami Dade College provides that any false, misleading or omitted information can be reviewed by the Dean who has the authority to make changes. The agreement states that the “decision of the Dean is final” and that disputes over an interpretation of “‘false,’ ‘misleading,’ or ‘omitted information’” will not be subject to the grievance procedure. [TCC Comp. Ex. 7, bates 000268]. Broward College’s agreement provides an internal review process whose decision is not subject to challenge under the grievance procedure.” [Id., bates 000273]. Hillsborough Community College allows for grievance of the factual content or failure to follow the process and places a higher burden of proof on the grievant to demonstrate that the factual content is wrong. [Id., bates 000279]. Similar provisions are contained in the agreements of Florida Southwestern State College, Eastern Florida State College and Seminole State College. [Id., bates 000289, 000296, 000304-000305.]

The UFF’s position does not even address the substantive issues in evaluating Faculty. It has just taken the position that TCC’s proposal is a waiver of the right to use the grievance and arbitration process and they do not have to agree to exclude anything from the grievance and arbitration process. The UFF’s position ignores the fact that it is a management right of the College to establish the level of service it provides to the public. Evaluations are one way an employer

gauges the level of service being provided. Moreover, the evaluation process here does not result in any type of wage increase so it is arguable that the impact of the evaluation does not even affect a term or condition of employment.

Article 22 TCC Phased Retirement Program (PRP): No dispute.

Article 23 Wages

[Vol. 4 Tr. 421:20-461:12; Vol. 5 Tr. 465:6-513:24; TCC. Comp. Ex. 20, bates 000391-000397; TCC Comp. Ex. 21, bates 000406-000425; UFF Ex. 1, bates 000574-000582].

Dr. Barbara Wills presented a PowerPoint to illustrate the overall funding sources and trends for TCC. This matter does not include an issue of the inability to pay. In fact, most of the economic terms are agreed to by the Parties. The outstanding issues are the amount of money to be paid for extra teaching assignments, some “inversion” issue that was resurrected by the UFF at the hearing, and the amount of money to be paid to Librarians when they teach a class outside of their regular workweek. The purpose of the PowerPoint is to provide some background on funding and show the comparison of TCC to other colleges in Florida.

Dr. Wills is responsible for TCC’s fiscal operations and budget planning as well as Human Resources, Contracts and Grants, and other administrative functions of the College. Prior to coming to TCC, Dr. Wills performed essentially the same functions for the Leon County School District. Prior to that, she was Director of the Center for Education, Research and Policy Studies at Florida State University and taught there as well. Dr. Wills testified that as the College embarked on collective bargaining, it intentionally focused on three important factors: student success, fiscal responsibility and Faculty accountability.

Dr. Wills provided an outline of the state funding scheme for Florida colleges. Overall, state funding comes from four (4) sources – general appropriations from the legislature, lottery

money, a performance-based incentive program, and non-recurring funds²⁷. [See TCC Ex. 21, bates 000411]. The performance-based incentive program requires some explanation. It has been in place since the 2014-15 fiscal year. This incentive program is based on the measurement of student retention, student completion, job placement and continuing education, and wages within the region once students enter the workforce.²⁸ The data is evaluated annually.

The performance-based funding program has two (2) funding sources – institutional investment and state investment. Institutional investment comes from the annual state general appropriation to a college. Essentially, a percentage of the annual state general appropriation for each of the twenty-eight (28) colleges is withheld. The state investment is another amount that the state puts aside to fund the program. The performance-based incentive money that goes to a college is based depending on which of four (4) categories the college falls: purple, bronze, silver or gold. [See *Id.*, bates 000408]. For example, if a college falls in the gold category, the college will recover its institutional investment and a prorated share of the state investment. If a college is in the purple or bronze category, they lose their institutional investment and it is redistributed to the colleges in the gold category on a prorated basis. The colleges in the silver category recover their institutional investment, get a portion of the state investment, but do not receive a portion of the redistribution of the purple and bronze colleges' institutional investment. Bottom line, less successful colleges get less money.²⁹

²⁷ Non-recurring funds are one-time source of funds from the legislature for a special appropriation. The funding is restricted. The College, for example, received funds for its trucking program.

²⁸ Among Florida's twenty-eight (28) colleges, TCC ranks thirteenth (13th) in terms of student completion and retention.

²⁹ Exhibit 21, bates 000409, shows the category in which each of the twenty-eight (28) colleges fall. TCC is in the silver category. Santa Fe College and Valencia College fall in the gold category. The performance-based incentive money to TCC is about one million dollars annually.

Dr. Wills explained a few of the factors that TCC looks at in comparing itself to other Florida colleges. One factor is the cost of instruction as a percentage of total operating budget. [See *Id.*, bates 000410]. TCC ranked fourth (4th) among all Florida community and state colleges. It spent 48.2% of its operating budget on the cost of instruction.³⁰ The first (1st) ranked college, Indian River Community College, spent 50.3% of its operating budget on the cost of instruction.

Dr. Wills provided some information about the history of the state funding. [See *Id.*, bates 000410]. State funding was drastically reduced in 2008-2009, but it has slowly stabilized since that time. Over the last three (3) fiscal years, TCC's general appropriations from the state has been between \$24 million to \$24.8 million, performance funding has ranged from \$800,000 to \$950,000, and the Educational Enhancement Trust (i.e., Lottery money) has ranged from \$6.5 million to \$7.6 million. [See *Id.*, bates 000411]. The College is state-mandated to have a general reserve of five (5%) percent. Dr. Wills testified that this would keep TCC running for less than thirty (30) days. TCC, at the time of the hearing, had about a nine (9%) percent reserve.

Other revenue sources besides state funding is the money received from tuition and fees. Approximately fifty (50%) percent of TCC's funding comes from the state and the other fifty (50%) percent from enrollment. Over the last six (6) years, TCC's enrollment has declined from 319,145 credit hours enrolled to 265,430 credit hours enrolled. [See *Id.*, bates 000412]. There was a small increase from 2016-17 to 2017-18 where enrollment went from 263,280 to 265,430.

TCC's tuition per credit hour is close to the lowest in Florida. It is \$76.80 per credit hour and is the fourth lowest in the state. [See *Id.*, bates 000413]. The Administration has been proud of the fact that TCC provides affordable tuition. Florida's Governor has discouraged colleges from raising tuition.

³⁰ The data is for the 2015-2016 fiscal year is the latest data available.

TCC also has had some significant costs that it has absorbed – the rising costs of health insurance and the Florida Retirement System (“FRS”). Employees do not pay anything for employee-only health insurance.³¹ TCC has absorbed close to \$2 million in increased health insurance costs since 2012. The cost of FRS for the College has increased about \$1 million over the same period. [*See Id.*, bates 000414-000415].

Dr. Wills also presented some information on recruitment and retention rates. [*See Id.*, bates 000416]. Going back to 2011, TCC advertised ninety-four (94) Faculty positions for which it received 3,107 applications. Removing those who have retired in the same time period, TCC has a ninety-eight (98%) percent retention rate. These numbers suggest that individuals want to work at TCC and, once hired, they stay at TCC.

The Parties agreed on a two (2%) percent increase to base salary upon ratification of the agreement or July 1, 2018, whichever is latest. [TCC Ex. Comp. 20, 000392]. Considering this increase, TCC has the seventh (7th) highest paid Faculty of Florida’s twenty-eight (28) community and state colleges. It has, by far, the highest base salary in its region – \$58,000 – with \$50,700 being the next highest.³²

Dr. Wills also explained what the Parties have agreed to with respect to Article 13 Wages. [*Id.*, bates 000391-000405]. In Article 23, sections 1 and 2, the Parties agreed to a regular and extended contract. There is a salary for a 9-month contract (i.e., 169 duty days) which is the Fall

³¹ Employees do contribute towards the monthly premium for health insurance for plans other than employee-only, such as coverage for a family plan.

³² The UFF presented information allegedly from TCC’s annual financial reports (“AFRs”) that shows a decrease in the amount of money spent on payments to employees and payments for employee benefits between 2014 and 2016. [*See UFF 10*, bates 000670]. It is unclear what this is supposed to show. As Dr. Wills testified, the number would be for all employees, not just Faculty, and would include employees in the contracts and grant area (i.e., Fund 2).

and Spring semesters. The Parties also agree to an optional extended contract – the two (2) semesters plus a summer term – for a twenty (20%) percent increase over the 9-month salary. In section 3, the Parties agreed to a starting salary scale based on educational attainment and years of experience. The Parties also agreed on language pertaining to hard-to-fill positions. TCC can pay up to twenty (20%) more for such positions based on a market study and notice to the UFF.³³

Article 23, section 5, addresses salary supplements. The Parties agreed to the pay supplements for Program Chairs, Directed Independent Study and Honors Modules.³⁴ These were increased amounts over what TCC previously paid for such activities. The increases are based on research by Dr. Moore-Davis and her team in recognition of what is important to student success and what the College values. The Parties also agree to the supplement paid for non-teaching pay assignments and better defined these activities. In sections 6, 7, 8 and 9, the Parties also agreed on substitute pay, increases in pay for educational attainment, pay for certification and graduate course attainment, and pay dates.

Article 23, section 6, addressing pay for extra teaching assignments (a/k/a overloads), is the only section of the proposed articles for which the Parties disagree.³⁵ There is an amount of money paid to Faculty for teaching classes above their regular workload. (TCC’s proposal is for the regular workload to go to the fifteen (15) to eighteen (18) credit hours as opposed to the current

³³ Article 23, section 4, addresses the two (2%) percent wage adjustment discussed previously.

³⁴ Currently, pay for Program Chair is \$2,704 for a full year. The Parties agreed to increase this to \$2,000 per semester, almost doubling the stipend paid for the activity. Additionally, Program Chairs may be eligible for up to forty (40%) percent reassigned time.

³⁵ At the hearing, the UFF also brought up an issue that they referred to as “pay inversion.” This was discussed at the table, but TCC believed that the UFF had withdrawn the proposal because it was not part of the package it submitted prior to impasse. Nevertheless, the issue will be discussed later in this section of the brief.

formula. [*See* TCC Ex. 8, bates 000307-000317].) There is a set amount that is paid per credit hour, per clock hour and per clinical hour depending on the type of class. Currently, for credit hours, TCC has a rate for the Fall and Spring terms, and a separate rate for the Summer term. It does not have this for clock or clinical hours. TCC's proposal is to just have one rate that applies to credit hours. Because the Parties have agreed on a twenty (20%) increase for an extended contract, there is no need to have a different rate for the Summer term. Additionally, TCC's pay for extra teaching assignments is by far the highest in the state college system. TCC proposes a slight reduction in these amounts.³⁶ [*See Id.*, bates 000423]. Even with the proposed reduction, TCC will still have the highest rate among Florida colleges. [*See Id.*, bates 000424]. Overall, with TCC's proposal, the College will remain with the seventh (7th) highest paid Faculty in the state, they will remain the highest paid Faculty in the state for extra teaching assignments, and TCC increased a number of other pay supplements on assignments it felt was important.

As for the "pay inversion" issue, Dr. Wills explained TCC does not have an inversion issue. This would suggest that those coming into TCC are being paid more than those that are currently there. Instead, it is a salary compression issue, which is quite common in most industries. Dr. Balinsky believed that the UFF's current proposal contained a statement that individuals with the same degrees and the same years of service should make the same amount. The UFF's proposal that was submitted at the hearing does not contain such a statement. Dr. Balinsky eventually admitted this, but the UFF took the position that they wanted it fixed. The UFF believes the issue

³⁶ The UFF agrees with the clinical hour rates proposed by TCC, but disagrees with the credit and clock hour rates proposed by TCC. The UFF does not want to decrease the clock hour rates. For the credit hour rates, the UFF wants an increase going to the current higher rate for the Summer term. Further, the rates listed are per hour. For credit courses, most are three (3) credits. A Faculty member with a Doctorate degree will receive \$3,300 for each three (3) credit course taught as an extra teaching assignment.

costs about \$51,000 to fix. The Union had never presented any numbers at the table. Nevertheless, TCC is not in agreement with the UFF's proposal.

The final wage issue is the rate Librarians will receive for teaching outside of their forty (40) hour workweek.³⁷ The UFF proposes that they receive the rate of pay for an extra teaching assignment. TCC proposes that they receive the same rate of pay as any other forty (40) hour employee whose regular job duties do not include teaching – the adjunct rate of pay. As with any college, there are administrators and employees other than regular full-time Faculty that teach classes. These individuals receive the adjunct rate of pay. It is TCC's position that the regular job of a Librarian does not include teaching and, therefore, they should receive the adjunct rate of pay.

Article 24 Insurance Benefits and Leave

[Vol. 5 Tr. 513:25-527:23; TCC Ex. 1, bates 000145; TCC Comp. Ex. 22, bates 000426-428; UFF Ex. 1, bates 000583-000585]

At the hearing, TCC submitted two (2) versions of Article 24. One (1) version was submitted in TCC's exhibit 1 and another version in TCC's exhibit 22. The annual leave provision found in paragraph 10 in exhibit 22 (bates 000427) was a prior proposal of TCC's, but was changed just before the hearing. TCC's proposal at the hearing was what was presented in exhibit 1 (bates 000145). The substantive difference is that exhibit 22 provides that Faculty will receive annual leave as set forth in Board Policy 04-28, while exhibit 1 makes no reference to annual leave. Board Policy 04-28 states: "Annual leave is allocated for full and part-time employees in established positions, *excluding* teaching faculty, based on service in any Florida community college." [TCC Ex. 22, bates 000432]. In reality, teaching Faculty receive no annual leave and therefore reference

³⁷ The proposals for Article 23 Wages do not include language about the rate of pay for Librarians teaching a class outside of their normal workweek. The language is actually found in the UFF's proposed Article 13. [See TCC Ex. 9, bates 000327-000328]. It is TCC's position that if there were to be language about wages, the language should be in Article 23.

to annual leave was removed from Article 24 prior to the hearing and submitted as TCC's exhibit 1. At the hearing, the Parties had some discussion about TCC adding section 10 back into the proposal because Librarians, who have 12-month contracts, are entitled to annual leave. TCC has made this change and presents a new Article 24. A strikeout and underline version and a clean version is attached to this brief as Attachment 2. This is TCC's current position. TCC's proposal, as it relates to Article 24, section 10, states: "**10. Annual Leave**. Pursuant to Board Policy 04-28, teaching Faculty do not receive annual leave; Librarians do receive annual leave." UFF has agreed to this language.

There are two additional issues with Article 24 – who sits on any College-wide committee to review benefits and the wording for the amount that TCC is willing to contribute on a monthly basis towards premiums for health insurance chosen by employees.

The UFF wishes to place two individuals on any College-wide committee to review benefits. TCC wishes to select two (2) names from a list of fifteen (15) individuals submitted by the UFF. TCC wants the committee meetings to be as collegial as possible and to be comprised of individuals who, in its judgment, will take their responsibilities seriously and not intentionally derail the committee process. In addition, TCC considers its proposal to be a compromise because it does not have to allow any union representation on committees.

As for the amount of TCC's contribution towards insurance premiums, it is important to note that TCC initially proposed that it would provide the same health insurance benefits, and pay the same amount for Faculty premiums, as it paid for all other employees. This would have allowed TCC to make changes to the plan design to keep costs down and also change the amounts TCC contributed so it could be fiscally responsible. The College's proposal was flatly rejected by the UFF. Hence, the College's current position.

The College's current proposal is to pay \$606.50 per month towards the monthly premium for the health insurance plan selected by the Faculty member. The UFF's proposal is that TCC pay the premium for employee-only coverage on the HMO plan. TCC's issue with the UFF's proposal is that should the premium go up for the HMO plan, TCC is automatically on the hook for the premium regardless of the amount of the increase. The reality is that health insurance premiums frequently go up; they seldom go down.

Dr. Barbara Wills testified that the current monthly premium for TCC's HMO employee-only plan is \$606.50 per month. If the employee selects a different plan or a plan with some type of family coverage, TCC still contributes \$606.50 per month, and employees are responsible for any monthly premium for the plan that they selected that exceeds \$606.50 per month. TCC's proposal also provides that should the monthly premium for the single employee HMO plan decrease to an amount below \$606.50, TCC would only be responsible for contributing the lower amount and the employee would be responsible for any additional premiums above the lower amount that is associated with the plan selected by the employee. If the cost of the monthly premium goes above \$606.60, TCC would pay only the \$606.50 and the Faculty member would pay the remainder of the cost of the monthly premium for the plan selected until and unless the Parties negotiate something different.

Every year, carriers change the premium rates for insurance. For the employer, it is difficult to have to bargain every year to try to get an agreement before the plan year commences. At TCC, the plan year is not the same year as the collective bargaining agreement year. The fiscal year begins on July 1 and ends of June 30 while the benefits plan year is from January 1 to December 31. CBAs usually track the fiscal year. The differences in calendars leave little time to try to resolve the issue. Once TCC gets notice of rate increases, it would typically look at plan design changes

to reduce the cost. TCC will not be able to implement plan design changes to the plans available to the bargaining unit until it negotiates with the UFF. The insurance carrier may carry the same rates for a limited period of time, but certainly not for an extended period. The end result is that the College would be stuck with paying any increased rates. What if no agreement is reached? TCC could then be trapped into plans with very costly increases and be able to do nothing to protect itself fiscally. The UFF could easily hold the College hostage and use insurance as a bargaining chip to extract other concessions. With TCC's proposal, the College is still contributing towards the monthly premiums, but there is some incentive for the UFF to consider plan design changes and reach agreement on insurance as soon as possible. This is certainly more fiscally responsible and, by providing an incentive for the Parties to reach agreement, better for harmonious labor relations.

Article 25 Intellectual Property: No dispute.

Article 26 Study Abroad or Domestic Travel Courses: No dispute.

Article 27 Discipline

[Vol. 5 Tr. 527:24-538:22; TCC Ex. 1, bates 000154-000155; TCC Comp. Ex. 23, bates 000449-455; UFF Ex. 1, bates 000592-596]

TCC's discipline proposal is Article 27 and is a standard listing of items that may result in discipline. The College's proposal does not break new ground. In contrast, the UFF's proposal misconstrues the College's proposal and, in actuality, addresses totally different topics. The UFF's proposal does not provide any listing of offenses and simply addresses pre-disciplinary procedural steps and internal appellate procedures. As stated at the hearing, TCC is not attempting to deny Faculty members due process. The College recognizes the right to prior notice, an opportunity to be heard, and to have union representation, in the appropriate circumstances.

TCC has a discipline policy, Policy 05-16 Suspension, Dismissal or Non-Renewal of Contracts, which provides more than adequate procedural due process prior to disciplinary action being taken. This policy is the status quo and was recently utilized in Faculty disciplinary proceedings. Policy 05-16 is attached hereto at Attachment 3. It was not provided as an exhibit at the hearing, but it is a public record and may be found at <http://www.tcc.fl.edu>. The policy, at page 5-16.2, provides that, prior to a recommendation for dismissal or return to annual contract because of unsatisfactory performance, the Faculty member must be informed of the deficiencies by the immediate supervisor or Vice President for Academic Affairs/Provost and be provided with an opportunity to correct them.

Thereafter, should discipline be taken, Faculty members are provided with the choice of proceeding under TCC's proposed contractual grievance procedure or utilizing the administrative hearing procedure found in Chapter 120, Florida Statutes. TCC's proposed Articles 8 Grievance and Arbitration Procedure and Article 11 Appointment, Contracts and Termination recognize the need for due process when a property interest is involved. Article 11, section 5, recognizes that just cause is needed to terminate a Faculty member during the term of an annual contract, to terminate a Faculty member on continuing contract, or to return a continuing contract Faculty member to annual contract. [See TCC Ex. 1, bates 000089-000090.] In each of these circumstances, TCC proposes to provide the Faculty member with notice and the reasons for the decision and provides an avenue for appeal. The appeal is set forth in Article 8, sections 16 and 17. [See Ex. 1, bates 000079.] An annual contract employee can grieve and arbitrate the decision. A continuing contract employee can grieve and arbitrate the decision or request a Chapter 120 hearing.

Aside from the union's version of the discipline article being unnecessary, as its due process concerns are more than adequately addressed in TCC's proposed articles and the existing policy, the union's proposal contains a number of requirements designed to thwart effective discipline and the efficient operation of the College and should be rejected. For example, paragraph A. of the UFF's proposal requires that discipline be based only on "work-related" performance, conduct or duties. [TCC Ex. 23, bates 000452]. Under this theory, a Faculty member could commit a felony and remain employed. Section A also requires that the TCC look at "unrelated actions" as separate events and begin disciplinary action at the appropriate level. This fails to recognize that poor employees do not necessarily engage in the same type of bad conduct. They might be tardy one day, treat a student poorly another day and on another occasion use TCC property for their own personal use. Under the UFF's proposal, these would be "unrelated actions" and discipline for one could not be considered when disciplining for another. Section B refers to Appendix N, a document that was never presented. The remainder of the UFF's proposal deals with post-discipline processes which is confusing in light of the fact that these are already addressed in Articles 8 and 11 of what the Parties' proposed.

Article 28 Reduction in Force

[Vol. 2 Tr. 144:5-255:23; TCC Ex. 1, bates 000157-000158; TCC Comp. Ex. 15, bates 000372-376; UFF Ex. 1, bates 000597-000600]

The language at issue is concerns the order of layoffs. In Article 28, section 1, TCC proposes that the following criteria will be used if it is necessary to reduce personnel: the needs of the College community, employee performance as determined by existing evaluations, educational qualifications and/or expertise, and relevant work experience. [TCC Comp. Ex. 15, bates 000372-373]. The UFF's proposal requires the elimination of all annual contract Faculty first and then reverts to a very specific ranking system among continuing contract Faculty. [See TCC Ex. 15,

bates 000374-375 (UFF's proposed changes to TCC's Article 28)]. The UFF's position is that the more senior people have more invested, and it is objective, it can't be manipulated.

As mentioned previously in connection with Article 13 Work Responsibilities, TCC does not want seniority to ever be the sole criteria in its decision-making. Dr. Moore-Davis testified that the goal of every institution is to retain its best Faculty, regardless of status. There simply is no correlation that the person with the longest teaching experience at any institution is the best qualified. Using criteria to determine who is the best qualified is what is best for the students and TCC's future as an institution.

Moreover, TCC's proposal offers protection for Faculty members who might be laid off. First, the reduction in force policy states that a person whose position is eliminated may be offered placement into a vacancy for which they are equally qualified in another department or program. [See TCC Comp. Ex. 15, bates 000372]. Further, the College's proposals state that the reduction in force policy applies to any consolidation, reduction or elimination of a program and that application of that process can be grieved pursuant to the grievance and arbitration procedure. [See TCC Comp. Ex. 6, Article 11, section 6, bates 000247].

Both Parties' proposals recognize that the decision to layoff is a management right. When a management right is exercised, a union may request impact bargaining but it must identify the impact of the decision that it wishes to negotiate. *See Fraternal Order of Police Florida Lodge NO. 10 v. City of Clearwater*, 24 FPER ¶ 29006 (1997); *Florida Public Employees Council 79, AFSCME v. State of Florida and Governor Lawton Chiles*, 21 FPER ¶ 26215 (1995); *Marion Educ. Assoc. and Marion Essential Support Personnel v. School Dist. Of Marion County*, 18 FPER ¶ 23288 (1992); *Hillsborough County School Board*, 7 FPER ¶ 12411 (1981). The UFF's proposal seems to add requirements that go beyond impact bargaining. In its section 28.01, the UFF requires

that TCC request negotiations with the union over the impact of the decision. The section further states that the Parties will negotiate and “consider many factors, including, but not limited to, natural attrition, voluntary early retirement, retraining, transfers, order of faculty layoff, and recall rights.” [See TCC Comp. Ex. 15, bates 000374]. TCC has several problems with this language. First, it puts the impetus on the College to request impact bargaining. Second, it seems to suggest that the Parties will be negotiating alternatives to a layoff (i.e., natural attrition, voluntary early retirement) as opposed to just the impact of the decision to layoff. TCC rejects the UFF’s proposal.

Article 29 Academic Calendar

[Vol. 5 Tr. 539:3-541:14; TCC Comp. Ex. 24, bates 000456-000457; UFF Ex. 1, bates 000602].

Just like the insurance committee, the UFF wishes to place two individuals on the Academic Planning Committee. TCC wishes to select two (2) names from a list of fifteen (15) individuals submitted by the UFF. TCC wants the Committee meetings to be as collegial as possible and to be comprised of individuals who, in its judgment, will take their responsibilities seriously. In addition, TCC considers its proposal to be a compromise. Setting the Academic Calendar is a management right and, as such, TCC has no legal obligation to include Faculty members on the Academic Planning Committee.

Article 30 Severability and Prohibition Against Re-Opening of Negotiations: No dispute

Article 31 Duration

[Vol. 5 Tr. 539:23-541:14; TCC Comp. Ex. 25, bates 000458; UFF Ex. 1, bates 000606].

TCC proposes a one-year contract to be in effect from ratification until June 30, 2019. The UFF proposes a two-year contract, through June 30, 2020, with reopeners for salary, benefits and two (2) additional articles. The reopener negotiations would be for the CBA term of July 1, 2018, through June 30, 2019, and then again for the CBA term of July 1, 2019, through June 30, 2020.

TCC's position is that such reopener provisions, meant to restrict the scope of negotiations, more often than not morph into full-fledged negotiations, become just as complicated as so-called full negotiations, and accordingly take just as long. TCC is also opposed to tying any reopener clause to a set number of articles. Many, if not most, contract articles consist of numerous subsections. A case in point is the Wages Article in these proceedings. Further, a particular topic might be covered by more than one article. For example, language about work responsibilities for Faculty are included in Article 13 Work Responsibilities, Article 15 Additional Professional Obligations and, to some extent, in Article 16 Distance Education and Article 17 Textbook Selection.

Finally, it is reiterated that this is a new relationship. This initial round of negotiations will not even be finished until sometime in Fall 2018. The CBA term proposed by TCC expires June 30, 2019. This will only give the Parties a few months before they will need to start bargaining again for a successor agreement. It is TCC's position that this CBA should be put to bed and that the Parties should then start fresh on a successor agreement.

UFF'S PROPOSALS THAT ARE NOT ADDRESSED ELSEWHERE

There were some of the UFF's proposals that did not correlate to any of TCC's proposals. Those items are addressed in this section.

UFF Article 6 Faculty Rights

[Vol. 3 Tr. 261:6-289:20; TCC Ex. 11, bates 000337-000340 (UFF's proposal); UFF Ex. 1, 000510-000513; UFF Ex. 5, bates 000652-000653]

Article 6, section 6.01, is a continuation of existing rights, privileges and benefits provision. TCC's position is that this is the first CBA, and whatever the UFF wants within the four (4) corners of the agreement, they should negotiate it. TCC is not inclined to just say whatever you had in the past, you still have. Additionally, a problem with these clauses is that TCC does not know what it is agreeing to, and the UFF probably does not even know the specifics of what it

covers. The clause is a safety net for the UFF so if there is something they have not thought of to ask for in negotiations, they can simply claim it has been a past privilege. TCC has no way of knowing what the UFF will allege is a prior benefit at some point in the future. As such, TCC rejects the UFF's proposal.

In Article 6, sections 6.02 and 6.07, the UFF proposes that full-time Faculty have the right of first refusal on assignments (both regular, summer and extra teaching) before courses are assigned to employees outside the bargaining unit. Dr. Balinsky stated that this is the current practice and that they are only seeking to continue it. It is TCC's position that this is the same as the scheduling issue and that it should be based on stated criteria, which includes experience and work at the College, to determine who is the best qualified for an assignment.

Article 6, section 6.03, presents a right to privacy provision. The UFF's position is that Faculty deserve to be protected from unreasonable levels of intrusion into their private lives. TCC believes this is an unnecessary infusion of a variety of legal issues into a CBA. Some of the issues addressed in the language are covered by Title VII, the Florida Civil Rights Act, and Leon County Human Rights Ordinance. There are some First Amendment issues and even Florida Constitutional issues, as that document contains a right to privacy provision. Frankly, there is a plethora of federal, state and local laws that provide protection in this area. Such language is unnecessary for a CBA.

In Article 6, section 6.04, the UFF proposes that the College agree that security cameras and other surveillance equipment will not be used to monitor a Faculty member's performance of his or her duties without permission of the Faculty member. According to Dr. Balinsky, it would have a "chilling effect" on Faculty in the classroom and in engaging in concerted activity if they were being surveilled in everything they do. When TCC pointed out that there are no such surveillance systems in place now, Dr. Balinsky referred to some entries on the College's General

Counsel's bills about legal research being conducted on wiretapping about one (1) month after the UFF filed with PERC. Dr. Balinsky admitted that he read the legal research memorandum, which was about whether TCC could tape student calls to the help desk for quality control purposes, but he still seemed to be of the opinion that it was somehow "evil" that the College even looked into the wiretapping laws for a purpose wholly unrelated to the union. PERA covers spying on unions and what is considered to be protected, concerted activity. This proposal is unnecessary, based on paranoia, and should be squarely rejected.

Article 6, section 6.05, proposes language about TCC providing legal assistance to Faculty in connection with their official duties. TCC's position is that such language is not necessary because Section 1012.85, Florida Statutes, addresses the issue. [*See* Joint Ex. 2, bates 000037]. It also involves conflict issues and rules of the Florida Bar. It is something that TCC's General Counsel will have to advise the College on, in accordance with the various laws and rules, in each individual case. Language such as this should not be put in a CBA.

Article 6, section 6.08, proposes language about personnel files.³⁸ The UFF stated that Faculty need to have access to their files and know what is in them, and that its proposal was TCC's current practice. TCC's position is that such language is not necessary because the issue is covered by state statutes and rules governing community colleges. [*See* Fla. Stat. § 1012.81 at Joint Ex. 2, bates 000033-000034; Fla. Admin. Code R. 6A-14.047 at Joint Ex. 1, bates 000011]. TCC, as always, will adhere to those rules.

³⁸ Article 6, section 6.06 is addressed within the discussion about TCC's proposed Article 13 Work Responsibilities and the use of seniority. [*See supra* at pp. 25-27.]

UFF's Article 9 Faculty Working Conditions and Workloads

[Vol. 2 Tr. 155:24-166:17; Vol. 3 Tr. 289:23-325:22; Vol. 4 Tr. 384:2-388:8; TCC Ex. 10, bates 000330-000336 (UFF's Article 9 proposal); UFF Ex. 1, bates 000520-000527]

Article, 9, section 9.01.A.1., refers to contact hour. It defines a contact hours as fifty (50) minutes for lecture and laboratory instruction and sixty (60) minutes for clinical experience, practicum, preceptorship, internship, work experience or cooperative education. It also establishes that release time is sixty (60) minutes. TCC rejects the UFF's proposal. State statutes define a contact hour as fifty (50) minutes. [Fla. Stat. § 1012.82 at Joint Ex. 2, bates 000035].

Three (3) sections in Article 9 talk about duty days and non-instructional duty days. The second paragraph under section 9.01.A.3., the last paragraph in section 9.01.C., and section 9.05 entitled Non-Teaching Days all address non-instructional duty days. However, the UFF also agreed with TCC's language regarding duty days and non-instructional duty days that was in Article 13, section 1, the last paragraph on bates 000307. [TCC Ex. 8, bates 000307]. The UFF already agreed to TCC's language and it seems unnecessary, and unwise, to have the same subject matter with different language discussed several times throughout a CBA. Accordingly, TCC rejects the UFF's language.

The last paragraph under Article 9, section 9.01.A.3., states that Faculty members "shall not be required to schedule over forty (40) hours per week without being properly compensated." The language is very nonspecific. Faculty are exempt from minimum wage and overtime provisions of the Fair Labor Standards Act pursuant to the professional exemption. The UFF has never proposed that Faculty receive overtime. The proposals on wages talk about pay for extra teaching assignments, stipends, certain types of responsibilities, but they certainly do not talk about pay for working over forty (40) in a workweek. TCC rejects this proposal.

Article 9, section 9.01.B., refers to compensation for overload hours. However, this topic is covered in Article 23 Wages. Again, it is unwise to have language on the exact same topic in more than one area of a CBA.

Article 9, section 9.01.D., provides language about Faculty members serving as Program Chairs or Lead Faculty. The UFF represented that this was the current practice. Dr. Moore-Davis testified that it was not the current practice. She stated that she and the Deans developed the job descriptions for Program Chairs and Lead Faculty in 2016 and that these job descriptions are what is being used. TCC believes that the job description for these positions do not have to be set forth in the CBA. After all, it is a management right for an employer to establish what the duties are of any particular job. *See Bissonnette v. Indian River County Board of County Comm’r*, 37 FPER ¶ 78 (2011) *citing Kiper v. Dep’t of Env’tl. Prot.*, 30 FPER 110 (2004), *aff’d*, 898 So. 2d 941 (Fla. 1st DCA 2005).

Article 9, section 9.01.E., provides language about substitute teaching. This was addressed in connection with Article 23 Wages. Nothing more needs to be added to the CBA about this topic.

Article 9, sections 9.03 and 9.04, address Library Faculty and Counseling Faculty.³⁹ However, the UFF has agreed with TCC’s proposal in Article 13, section 10, that also addresses the work responsibilities of Librarians and Counselors. [TCC Ex. 8, bates 000316]. The provisions proposed by the UFF are unnecessary and are rejected.

Article 9, section 9.06, provides that the Administration will not require Faculty to perform office staff duties, but they may volunteer to perform those duties and, if they do, they will get paid at the Faculty member’s daily rate of pay. It is unclear what the UFF considers “office staff

³⁹ Section 9.02, about Healthcare Faculty, was addressed in connection with the discussion about Article 13 and standard teaching load for Healthcare Faculty. [*See supra* at pp. 24-25].

duties,” as it seems like some of a Faculty member’s duties would include office type duties – using computers, copy machines, typing their own lecture materials. Dr. Moore-Davis testified that last year, for four (4) days, the dental assisting program lost its receptionist. Faculty were asked to help greet the public and document the patients coming in for cleaning. It was something temporary and, frankly, supported the mission of the program. It turns out this one temporary incident was the impetus for the language. As such, TCC rejects the proposal. The language is unnecessary and is not the picture of clarity. Parties to a CBA should not get in the habit of drafting language that covers every, small aberration of the workday. This is not some on-going problem that needs to be rectified by CBA language.

Article 9, section 9.07, has to do with Faculty teaching in other disciplines. Again, the UFF agreed to language on this issue as part of Article 18 Interdivision Transfers, which is not disputed by the Parties. This issue should be covered twice in the CBA.

CONCLUSION

TCC respectfully requests that its entire package of proposals be recommended by the Special Magistrate.

Dated: July 2, 2018
Respectfully Submitted,

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Counsel for the Employer, Tallahassee Community College

Attachment 1

ARTICLE 3

CIVILITY AND MUTUAL RESPECT PROFESSIONAL RESPECT

All members of the College community should be able to work and learn in ~~an environment free of disrespectful, disruptive or threatening speech or actions~~ a safe and mutually respectful workplace and learning environment. Every person has a right to freedom of expression, but the College shall maintain, to the extent possible and reasonable, a ~~safe and~~ mutually respectful ~~workplace and learning~~ environment. Members of the Faculty will treat each other, staff, administrators, Trustees, students, guests and members of the public with respect and expect the same in return. ~~A Faculty member who displays disrespectful, retaliatory, disruptive, demeaning, intimidating, threatening, bullying or violent behaviors may constitute just cause and may be subject to disciplinary action up to and including separation from employment.~~

ARTICLE 3

CIVILITY AND PROFESSIONAL BEHAVIOR

All members of the College community should be able to work and learn in a safe and mutually respectful workplace and learning environment. Every person has a right to freedom of expression, but the College shall maintain, to the extent possible and reasonable, a mutually respectful environment. Members of the Faculty will treat each other, staff, administrators, Trustees, students, guests and members of the public with respect and expect the same in return.

Attachment 2

ARTICLE 24

INSURANCE BENEFITS AND LEAVE

1. **Participation on College-wide Committee.** The Union may submit the names of fifteen (15) individuals to the Vice President of Academic Affairs/Provost for inclusion on any College-wide committee to review benefits. The College will guarantee the selection of at least two (2) of the individuals submitted by the Union.
2. **Insurance Benefits.** Board policy sets forth insurance benefits for employees. Faculty members shall be entitled to receive the same types of insurance, including the same scope and level of benefits and coverage for Health and Major Medical Insurance and Life Insurance as that provided to full-time, Classified Staff of the College for the plan year beginning January 1, 2018. The College will contribute \$606.50 per month towards the monthly premium for the health insurance plan offered by the College and selected by the employee. The employee is responsible for any amounts for premiums associated with the plan selected by the employee that is more than \$606.50 per month. Should the monthly premium for the single employee HMO plan decrease to an amount below \$606.50, the College will only be responsible for contributing the lower amount and the employee will be responsible for any additional premiums above the lower amount that is associated with the plan selected by the employee.
3. **Life Insurance.** The College shall provide life insurance in the amount equal to two times the base salary for the annual contract of the Faculty member up to a maximum coverage amount of \$200,000. Faculty may purchase, at their expense, additional coverage as offered by the carrier; up to \$20,000 in life insurance on their spouse; and up to \$10,000 on their children from age 6 months to 25 and up to \$500.00 on their children from 14 days to 6 months. Payroll deductions shall be used for the payment of any insurance premiums not covered by the College's contribution.
4. **Supplemental Insurance Plans.** Faculty members shall be entitled to participate in any supplemental insurance plans authorized by the College.
5. **Tuition Reimbursement.**
 - A. **TCC Classes for Faculty.** Faculty may register at the College for up to six (6) credit hours (or its equivalent) per semester without payment of resident per credit hour fees. This does not include additional fees such as lab fees or other special fees. Faculty must meet the admission requirements of the course and must have the prior approval of their immediate supervisor before registering for any course. Faculty must have completed six (6) months of continuous service at the College to be eligible.
 - B. **TCC Classes for Spouses and Dependents of Faculty.** Spouses and dependents of Faculty (who are under the age of 24) may register at the College for up to six

(6) credit hours (or its equivalent) per semester without payment of resident per credit hour fees. This does not include additional fees such as lab fees or other special fees. Spouses and dependents must meet the admission requirements of the course. Faculty must have completed six (6) months of continuous service at the College for their Spouses or dependents to be eligible.

6. **Employee Assistance Program.** The College shall provide an Employee Assistance Program in which one or more consultations for a medical, mental, family, financial, or substance abuse problem shall be provided. Notice of availability of the program, including an explanation of services offered, will be provided by the Human Resources Department to all Faculty no less than once annually.
7. **Retirement Plans and Tax Sheltered Annuities.** Retirement plans include the Florida Retirement System (“FRS”) Pension Plan and the FRS Investment Plan. The College also offers the Community College Optional Retirement Plan. Faculty also have the option to contribute on a voluntary basis to a 457b and/or a ROTH 403b deferred compensation options.
8. **Faculty use of Facilities.** Faculty are eligible to use athletic facilities, the Library, Learning Resource Centers, and wellness programs. Faculty may rent certain facilities at a reduced rate.
9. **Parking.** Faculty are provided with parking at no cost.
10. **Annual Leave.** Pursuant to Board Policy 04-28, teaching faculty do not receive annual leave; librarians do receive annual leave.
110. **Sick Leave.** Faculty are provided with sick leave, as set forth in Board Policy 04-29. Payment for unused sick leave upon separation from employment is set forth in section C. of Board Policy 04-29. A sick leave pool is also available, as set forth in Board Policy 04-30.
121. **Personal Leave.** Personal leave for Faculty is set forth in Board Policy 04-31.
132. **Leave of Absence without Pay.** Leave of Absence without Pay for Faculty is set forth in Board Policy 04-32. This policy also covers the continuance of benefits while on leave without pay.
143. **Administrative Leave.** Administrative leave for Faculty is set forth in Board Policy 04-33.
154. **Military Leave.** Military leave for Faculty is set forth in Board Policy 04-36. The College will comply with all state and federal laws regarding military leave.
165. **Family Medical Leave.** Family Medical Leave for Faculty is set forth in Board Policy 04-40.
176. **Domestic Violence Leave.** Domestic Violence Leave for Faculty is set forth in Section 741.313, Florida Statutes.

187. **Referenced Leave Policies.** The College's leave policies that are cited in this Article are incorporated by reference. Any proposed modification to the College's leave policies outside of collective bargaining would not be applicable to Faculty. Any alleged violation of the policies referenced in this Article are subject to Article 8, Grievance and Arbitration.

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Attachment 3

**TALLAHASSEE COMMUNITY COLLEGE
DISTRICT BOARD OF TRUSTEES
POLICY**

TITLE: Suspension, Dismissal, or Non-Renewal of Contracts	NUMBER: 05-16
AUTHORITY: Florida Statute: 1001.64, 1001.65, 1012.855 Florida Administrative Code: 6A-14.0411	SEE ALSO: <u>Administrative Procedure</u> <u>05-16AP: Suspension,</u> <u>Dismissal, or Non-</u> <u>Renewal of Contracts</u>
DATE ADOPTED: 12/1/97; Revised 1/22/01, 11/22/10, 5/20/13	

Suspension or dismissal of faculty members on either annual or continuing contract shall be conducted subject to the provisions of Florida law.

A faculty member on annual contract shall have the right to a public hearing only if the contract is terminated before its expiration date.

A faculty member on continuing contract shall have the right to a public hearing if dismissed at any time or if returned to annual contract. As an alternative, the faculty member may request an administrative hearing in accordance with Chapter 120, Fla. Stat.

A. Suspension

A faculty member may be suspended for a serious offense or for investigation of an alleged serious offense upon recommendation by the President for up to ten (10) days. Faculty may use the grievance and appeal policy (05-17) to challenge a suspension.

B. Dismissal or Return to Annual Contract

In accordance with Florida Administrative Code (FAC) 6A-14.0411 a faculty member may be dismissed or returned to annual contract status for failure to meet post-award performance criteria or for cause upon a recommendation, in writing, from the President and approval by the Board of Trustees. The President shall include in his/her recommendation to the Board, the basis for the recommendation.

Before recommending that a faculty member be dismissed or returned to annual contract because of unsatisfactory performance of assigned duties and responsibilities, the President shall have evidence that the faculty member has been informed of the deficiencies by the immediate supervisor or the Provost and Vice President for Academic Affairs and has been given an opportunity to correct them.

Before recommending that a faculty member be dismissed or returned to annual contract for causes other than unsatisfactory performance of assigned duties and responsibilities, the President shall consider the gravity of the matter and, if not of a serious nature, shall inform the faculty member of the deficiencies and allow an opportunity to correct them.

If a faculty member is notified in writing of a decision to dismiss or return to annual contract for failure to meet post-award performance criteria or for cause, the employee has the right to formally challenge the action in accordance with the policies and procedures described below. As an alternative to the hearing rights provided by this policy, the employee may request an administrative hearing in accordance with Chapter 120, Florida Statutes, by filing a petition with the board within twenty-one (21) days of receipt of the recommendation of the President.

Consistent with the criteria in FAC 6A-14.0411(7(b)) and Policy 04-23, a faculty member may be dismissed or returned to annual contract status upon consolidation, reduction, or elimination of a community college program or restriction of the required duties of a position by the Board. The decision of the board shall not be controlled by any previous contractual relationship. In the evaluation of factors in FAC 6A-14.0411(7)(b) and Policy 04-23, the decision of the board shall be final.

C. Grounds for Termination At Any Time During The Year

If it has been determined that a faculty member has engaged in serious misconduct, habitual neglect of duty, incompetence or conduct incompatible with his/her duties, or prejudicial to TCC's mission, or if he/she has been found to be willfully disobedient to his/her supervisor's directions, or found guilty of a crime of moral turpitude, the law recognizes TCC's right to terminate the employee's relationship with TCC.

D. Notice of Dismissal, Suspension, or Return to Annual Contract

The President shall furnish written notice to the faculty member of the recommendation to the Board of the suspension or dismissal or return to annual contract of said faculty member.

The notice of suspension, dismissal, or return to annual contract shall specify the charges made against the faculty member in terms sufficiently specific both to inform and to enable the faculty member to make a determination whether to request a hearing on said charges. The notice shall

advise the faculty member of the opportunity to request a hearing on said charges and that said request must be made in writing to the President within ten (10) work days of the receipt of the notice. A copy of these procedures for dismissal shall accompany the notice.

If the faculty member requests a hearing, the President shall notify the Board in writing.

E. Request for Hearing

Within ten (10) work days of receipt of a request for hearing, the Board shall determine who shall hear the charges and shall schedule a public hearing to be held at least fifteen (15) work days after the employee's receipt of the hearing notice.

The Board may appoint one of its members as hearing examiner, or may appoint an outside hearing examiner. The hearing examiner shall be impartial and qualified by reason of training and experience to conduct the hearing. The Board member or hearing examiner shall be bound by the same procedures as the Board.

The Board shall send a notification to the faculty member and the hearing examiner stating who shall hear the charges advanced by the President.

The Board shall send to the faculty member a notice specifying the date, time, and place of the hearing to be conducted upon the charges advanced by the President. The notice shall contain the specific charges against the faculty member and shall inform the faculty member of the right to be heard in his/her own defense, to produce and cross-examine witnesses, to present other relevant evidence, and to be represented by legal counsel of his/her own choice at his/her own expense. Not later than ten (10) work days before the hearing, the President and the faculty member shall exchange in affidavit form a list of the names and addresses of witnesses to be called, together with a brief and accurate statement as to the proposed testimony of each witness, and a like statement as to any other proposed evidence, together with the evidence itself. Each party shall have the right to examine and copy the evidence of the other. The affidavit shall be signed under oath by the parties and their counsel. Any rebuttal witnesses need not be listed.

The hearing shall be conducted in the following manner.

1. The hearing shall be fully and accurately recorded by stenographic or mechanical device and all testimony exhibits shall be preserved.
2. Formal hearings shall in general use the rules of evidence recognized by law in this State, but said rules shall not be strictly applied and shall be adapted to College circumstances when justice may require. No oral or written communications shall be received from anyone other than through the real parties in interest or through their witnesses.
3. The hearing examiner, upon the hearing of the cause, shall inform the parties of the following rights and privileges and to afford same unto them to assure due process.
 - a. Each party shall have the opportunity to make an opening statement.

- b. Each party shall have the opportunity to present his case or defense by oral and documentary evidence.
 - c. Each party shall be afforded the opportunity to confront and cross-examine adverse witnesses.
 - d. Each party shall be afforded the opportunity to be accompanied, represented and advised by counsel or to represent himself/herself.
 - e. All witnesses shall be sworn or required to affirm to tell the truth prior to testifying.
 - f. Each party shall be afforded the opportunity to make a final argument and to present findings of fact within a prescribed time.
4. All rulings as to the admissibility of evidence shall be made by hearing examiner.
 5. No public statements to news gathering agencies or otherwise as to cases pending before or concluded by the Board or hearing examiner shall be made by any member thereof or by any party to the hearing.
 6. The hearing is to determine whether the charges have been sustained by the evidence. The President must bear the burden of proving his charges by the greater weight of the evidence.
 7. The attorney for the Board shall serve as legal advisor to the or hearing examiner assigned to hear the charge. The attorney's role is that of a procedural and technical advisor. The attorney shall not vote nor participate in the actual deliberations of the hearing body. Upon request, the attorney may assist in preparation of the written findings, conclusions, and recommendations or determination. The Board may appoint an attorney to assist the President in the preparation and presentation of the charges against the faculty member.

The hearing examiner shall effect a thorough and prompt hearing. The Board shall provide the hearing examiner with the time and resources necessary to conduct a fair and impartial hearing. At the conclusion of the hearing, the hearing examiner shall make proposed findings of fact, conclusions of law, and recommendations as to the disposition to be made of the matter involved. The hearing examiner shall make his determination solely upon the evidence adduced at the hearing.

Within ten (10) work days after receipt of such information, the parties shall have the right to submit written objections thereto, which objections shall be delivered to the Board chair for consideration by the hearing examiner. The opposing party may file a reply to the written objection within the time prescribed by the Board chair. After consideration by the hearing examiner of any objections to the proposed findings of fact, conclusion of law, and recommendations, the hearing examiner shall determine the final findings, conclusions, and recommendations. The findings, conclusions, and recommendations, together with all evidence received, and the transcript of the proceedings shall be delivered to the chair of the Board as soon

as possible after determination is made, and a copy of the findings, conclusions, and recommendations shall be delivered to each party.

The Board shall receive and review the findings, conclusions, and recommendations. The Board may affirm the findings of the hearing officer and shall accept the hearing officer's conclusions of fact as long as the conclusions are supported by competent substantial evidence. The Board may make its own determination upon the findings and conclusions of the hearing examiner if its findings and conclusions are supported by competent substantial evidence. The chair of the Board shall see that a final determination is rendered at the earliest possible date, but in no event should action be deferred more than thirty (30) work days from the time of receipt of the information from the hearing examiner. The Board shall make final findings, conclusions, and a determination.

Action by the Board shall be final and becomes effective immediately unless otherwise decided by the Board. In the event dismissal charges are sustained by a majority vote of the full membership of the Board, the faculty member shall be discharged, pay shall cease, and the contract of employment shall be canceled and shall be effective with the date of the dismissal. In the event of suspension, pay shall be withheld as of the effective date of suspension. If the faculty member is exonerated, salary payments shall be retroactive to the date of the suspension.

The Board decision is Final Agency Action and if the recommended action of suspension or dismissal or return to annual contract is sustained by the Board, the faculty member may appeal to the Florida First District Court of Appeal pursuant to Chapter 120.68, Fla. Stat.