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Workshop: Negotiations 103 CLE Credit - AGREEMENT BETWEEN RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY and RUTGERS COUNCIL OF AAUP CHAPTERS, AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORSAMERICAN FEDERATION OF TEACHERS, AFL-CIO

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AGREEMENT
BETWEEN
RUTGERS, THE STATE UNIVERSITY
OF NEW JERSEY

and

RUTGERS COUNCIL OF AAUP CHAPTERS,
AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS-
AMERICAN FEDERATION OF TEACHERS, AFL-CIO

July 1, 2007 - June 30, 2011

X - FACULTY PERSONNEL GRIEVANCE PROCEDURE

The purpose of this Article is to help ensure the integrity of the reappointment, promotion, and tenure procedures; to provide a process for determining whether evaluations resulting in negative personnel actions were flawed (as defined in A.1.) and to provide remedies in cases where defects are found. A defect does not encompass disagreement with the academic judgment of any evaluator or evaluative body. For purposes of this Article X grievance procedure, writers of external confidential letters are not "evaluators."

A. Definitions of a Grievance and Grievant

A. 1. A grievance under Article X is an allegation that, in the course of an evaluation which resulted in failure to award reappointment, promotion, and/or tenure:

A. 1. a. there occurred a material procedural violation of (i) the Academic Reappointment/Promotion Instructions and/or their appendices applicable in the year in which the grievant was evaluated, and/or (ii) Article XIV of this Agreement, and/or (iii) a University regulation or an established practice of the University related to reappointment or promotion. An established practice within the meaning of this Article is one which is not inconsistent with either a University Regulation or a provision of this Agreement. A violation is material if it has an important influence or effect upon the evaluation.

or

A. 1. b. the evaluation was based on (i) discrimination [see Article IV – "Non Discrimination"] by an evaluator against the grievant or, (ii) enmity by an evaluator against the grievant.

or

A. 1. c. the narrative of an evaluator or evaluative body contains a material factual inconsistency with the record as presented in the candidate's reappointment/promotion packet.

or

A. 1. d. the evaluation was not in accord with the criteria as set forth in the University Policy with Respect to Academic Appointments and Promotions.

A. 2. A grievant within the meaning of this Article is a faculty member in the bargaining unit who files a grievance under this Article. A grievant shall retain the right to process a grievance to completion regardless of his/her employment status.

A. 3. The statement of grievance shall be presented on a form mutually acceptable to the AAUP-AFT and the University and must:

- A. 3. a. identify the person(s) and/or bodies who allegedly committed the alleged violations;
- A. 3. b. explain what alleged actions were committed or omitted and by whom;
- A. 3. c. identify the level(s) of evaluation affected by the alleged violations;
- A. 3. d. identify and fully explain the alleged violations in the evaluation of the grievant as specified in A.1. above;
- A. 3. e. to the extent possible, set forth the evidence in support of the allegations and identify and attach, if possible, any documents pertinent to the allegations;
- A. 3. f. identify, to the extent possible at the time of filing, potential witnesses and explain the nature and the relevance of their testimony to the allegations; and
- A. 3. g. request any documents and/or other information needed to complete the presentation of the grievance, explaining the relevance of the requested material to the alleged violations. Additional requests for information may be made after the grievance statement has been filed.
- A. 4. A grievance may be resolved informally by the grievant and the University at any time. The parties recognize the value of exploring an informal resolution prior to the filing of the grievance statement. Such informal resolution shall be pursued through the Office of Academic Labor Relations. The informal resolution of a grievance shall not constitute precedent for the formal or informal resolution of any grievance or for any other purpose.
- A. 5. Grievances concerning original evaluations shall be brought before Grievance Committees as specified in B. below. Grievances concerning remanded evaluations shall be brought before the Faculty Appeals Board as specified in E. below.

B. Grievances Concerning Original Evaluations

B. 1. Pre-Hearing Procedures

- B. 1. a. An individual who intends to file a grievance under this procedure must so notify the Office of Academic Labor Relations in writing within 30 working days of the date on which the AAUP-AFT receives from the University written notice of the negative personnel action, as set forth in Article XIV.7.
- B. 1. b. Within 60 working days, for candidates for reappointment or tenure, and 90 working days for candidates for promotion to Professor or Professor II, of the date of receipt of the letter of intent to file, as specified in a. above, the grievance statement, as defined in A.3. above, shall be filed with the Office of Academic Labor Relations according to the rules specified below. Such grievances shall be logged in as to date of receipt and a copy forwarded within one working day to the AAUP-AFT and to the Reviewing Officer.

- B. 1. c. Such grievances shall be reviewed by the Reviewing Officer who shall determine if the grievance filing complies with Section A.1. above and Section H. below. The Reviewing Officer shall not address the substance of the grievance. He/she shall confine his/her review to two questions:
- B. 1. c. [1] Do the allegations contained in the grievance statement conform to the definitions of an Article X grievance as set forth in A. 1. above?
- B. 1. c. [2] Are the letter of intent to file and/or the grievance statement timely filed in accord with B.1.a. and B.1.b. above?
- B. 1. d. The Reviewing Officer shall forward to the designated University Representative each grievance statement that meets the filing requirements within 15 working days of the Reviewing Officer's receipt of the grievance. At the same time, a copy of the grievance statement with confirmation of acceptance shall be sent to the grievant and to the AAUP-AFT.
- B. 1. e. If the Reviewing Officer finds that a grievance statement does not meet the filing requirements, he/she shall return it to the grievant within 15 working days with a written statement specifying the defects leading to its rejection. A copy of such statement shall at the same time be sent to the AAUP-AFT. If the Reviewing Officer is unable to meet the deadlines specified herein, he/she shall so notify the AAUP-AFT in writing.
- B. 1. f. Unless the Reviewing Officer has held the grievance to be untimely, the grievant may resubmit revised allegations with a signature page signed by the grievant within 15 working days of receipt of the letter rejecting the allegations. Such resubmission to the Reviewing Officer shall be handled according to the above procedure. Allegation(s) not revised and resubmitted by the grievant or appealed in accordance with B.1.h. below shall constitute withdrawal of the allegation(s).
- B. 1. g. Within 15 working days of the conclusion of the Reviewing Officer and/or Permanent Referee Procedures, the grievant shall file a final signed grievance statement with the Office of Academic Labor Relations.
- B. 1. h. If the Reviewing Officer finds the grievance to be untimely, the AAUP-AFT may appeal this finding to the Permanent Referee, as provided below.
- B. 1. i. In the event the action taken by the Reviewing Officer is unacceptable to the grievant, the grievant may request that the AAUP-AFT pursue an appeal on his/her behalf. Such request must be made in writing and received by the AAUP-AFT within five working days of the grievant's receipt of the Reviewing Officer's letter of rejection. The AAUP-AFT may:
 - B. 1. i. [1] Submit the issue in writing to the Permanent Referee. Such submission must be accompanied by the Reviewing Officer's finding and be made within 15 working days of grievant's receipt of the

Reviewing Officer's action. A copy of the submission shall be at the same time sent to the Reviewing Officer.

If the AAUP-AFT determines that it needs more time to arrive at a decision on whether to file an appeal as requested by a grievant, it will notify the Reviewing Officer prior to the expiration of the period for filing an appeal to the Permanent Referee and such notice will automatically extend the deadline for submitting an appeal to the Permanent Referee by an additional 20 working days.

Within 15 working days of the University's receipt of the submission to the Permanent Referee, the University may submit a response to the Permanent Referee. If the AAUP-AFT has provided notice to extend the time to file its appeal by an additional 20 working days in accordance with the previous paragraph, the time for the University to submit its response to the Permanent Referee will also be extended by an additional 20 working days. A copy of the response shall, at the same time, be forwarded to the grievant and to the AAUP-AFT.

- B. 1. i. [2] The Permanent Referee shall not address the substance of the grievance. He or she shall confine his or her review to two questions:
- B. 1. i. [2] [a] Do the allegations contained in the grievance statement conform to the definitions of an Article X grievance as set forth in A. 1. above?
- B. 1. i. [2] [b] Are the letter of intent to file and/or the grievance statement timely filed in accord with B.1.a. and B.1.b. above?
- B. 1. i. [3] The Permanent Referee shall review the submissions and render a decision in writing within ten working days of receipt of the submission. No hearings will be conducted before the Permanent Referee unless the Permanent Referee requests a hearing after receipt of written submissions by the parties. If a hearing is conducted, neither party may be represented by an attorney. The Permanent Referee shall make a judgment on the question(s) presented and the decision shall be final and binding on the grievant, the AAUP-AFT and the University.
- B. 1. i. [4] If the Permanent Referee sustains the claim that the grievance filing meets the filing requirements, or should be accepted as timely filed, he or she shall forward notice of acceptance to the grievant, the AAUP-AFT, and the Reviewing Officer.
- B. 1. i. [5] If the Permanent Referee rejects the claim that the grievance statement meets the filing requirements, he or she shall notify the grievant, the AAUP-AFT and the Reviewing Officer of his/her decision in writing. If the grievance has been rejected for reasons other than timeliness, the grievance may be revised and resubmitted according to the provisions of B.1.f. above. The decision of the Permanent Referee

shall explain the reasons for rejecting the grievant's claim. Copies of the decision shall be sent to the AAUP-AFT and the Reviewing Officer.

- B. 1. i. [6] The decision of the Permanent Referee shall be binding on the grievant, the University, and the AAUP-AFT.
- B. 1. j. Within 25 working days of receipt of the final grievance statement (after all allegations submitted have been vetted by the Reviewing Officer and, if applicable, Permanent Referee), the University shall forward a written response to the particulars of the grievance to the grievant and to the AAUP-AFT. The University's response shall address each allegation, identify and attach, if possible, any documents pertinent to the grievance, and identify, to the extent possible, potential witnesses and explain the nature and the relevance of their testimony to the allegations. At the same time, the University shall forward the grievance statement, the University's response to the grievance, the neutral reader's report, if available, and the grievant's reappointment/promotion packet, excluding the supplementary materials and the external confidential letters of evaluation to the Grievance Committee, if a full grievance committee has been constituted (named and briefed).
- B. 1. k. Within 20 working days of a request for documents and/or information (See A.3.g. above.), the University shall, insofar as it is possible for it to do so, make available to the grievant all relevant requested documents and information, other than outside confidential letters and the promotion packets of other faculty.
- B. 1. l. Outside confidential letters of evaluation are those letters received in response to solicitation pursuant to the Academic Reappointment/Promotion Instructions. Outside confidential letters of evaluation shall not be made available to the grievant or to his/her advisors, or to the University Representative for the purpose of the grievance.

In those cases in which the outside confidential letters of evaluation are a factor in a grievance, evidence respecting the contents of the letters may be introduced only by the grievant or the University Representative through a written report by two neutral readers of the letters through the following procedure:

- B. 1. l. [1] If the grievant asserts that the outside confidential letters are a factor in a grievance, he/she shall inform the University when the grievance statement is filed by completing the appropriate form to indicate the name of the neutral reader selected and questions the grievant wishes the neutral readers to answer in regard to the outside confidential letters.
- B. 1. l. [2] Upon receipt of notice concerning the letters, the University shall name a second neutral reader.
- B. 1. l. [3] The grievant and the University may select as a neutral reader any current member of the faculty at the rank of professor or above who

has served within the past 7 years as a member of the Promotion Review Committee, an Advisory Committee on Appointments and Promotion, or as a dean, and who has not participated in the evaluation.

- B. 1. I. [4] The grievant may request that one or both of the following questions be addressed by the neutral readers: (1) In the opinion of the neutral readers, is the content of the letters inaccurately characterized or distorted in the narratives of the evaluators? If so, explain. (2) In the opinion of the neutral readers, have the evaluators relied in their assessments on letters that are not in accord with the criteria as set forth in the University Policy with Respect to Academic Appointments and Promotions, or that exhibit discrimination and/or enmity, as defined in Section A.1.b. above? If so, explain.

In addition to answering the questions specified above, the neutral readers will also be permitted to provide additional comments if the readers wish to do so.

- B. 1. I. [5] The letters and the questions shall be provided to the neutral readers in the office of the chancellor or the Executive Vice President for Academic Affairs or the appropriate dean. The neutral readers shall meet to review the letters and prepare their report at a time mutually convenient to them within 20 working days of their selection. During their review session, the neutral readers shall review the letters and the promotion packet and shall jointly draft a written response to the questions. If the neutral readers have a significant difference of view, they may express that difference in their written report. The neutral readers shall not take the letters into their own possession, shall not copy the letters, and shall take every precaution to protect at all times the confidentiality of the contents of the letters and the identity of the writers.

Neither the grievant, the AAUP-AFT, nor the University shall take any action that compromises the neutrality of the readers.

- B. 1. I. [6] The signed and dated report of the neutral readers shall be forwarded to the AAUP-AFT by the University within two working days of its receipt by the University.

- B. 1. I. [7] After receipt of the report of the neutral readers, either the grievant or the University Representative may request that the Grievance Committee review the external confidential letters. Once the Grievance Committee receives the letters, the Committee shall not make them available to the University Representative, the grievant, his/her advisors, or to the AAUP-AFT and shall take every precaution to protect the confidentiality of the contents of the letters and the identity of the writers. The Grievance Committee members shall return all copies of the promotion packet and the external confidential letters

to the University Representative once the Committee has rendered its decision.

B. 2. Hearing Procedures

- B. 2. a. The Grievance Committee shall make a good faith effort to meet to hear the grievance within 10 working days of receipt of the material specified in B.1.j. above, and may request at the time of scheduling that the grievant and/or the University be prepared at that meeting to present the testimony of witnesses on specific issues raised in the grievance statement, to further explain specific issues raised in the grievance statement, to present additional documentation, and/or generally to present their case.
- B. 2. b. The chair of the Grievance Committee is responsible for the conduct of the hearing although all three members have equal authority and, if consensus cannot be reached, any two of the three suffice for a Committee decision. The total time allotted to the hearing of a grievance ordinarily shall not exceed two working days, generally equally apportioned to the grievant's presentation and the University's response, unless the Committee approves a request by either side for additional time. The Grievance Committee may pose any questions it deems appropriate to the grievant, the grievant's representative, the University Representative, or to any individual whose testimony is presented by the University or the grievant.
- B. 2. c. The University Representative shall be the person designated by the University to present its case. The University Representative shall be identified in the University's response. If the University changes its Representative, it will notify the AAUP-AFT. The University Representative may be assisted by two advisors who shall also be identified in the University's response.
- B. 2. d. The grievant may be represented and assisted by two advisors approved by the AAUP-AFT. The grievant's advisors shall be named in the grievance statement if known at the time of filing or promptly when selected afterward. The University has the right to assume that any advisor who appears with the grievant is approved by the AAUP-AFT. If the grievant changes his/her advisors, the grievant will notify the University Representative.
- B. 2. e. The University Representative, the University Representative's advisors, and the grievant's advisors shall be employees of the University or of the AAUP-AFT, unless the parties agree to waive this requirement in individual instances.
- B. 2. f. If the grievant, the grievant's adviser(s), the University Representative or the University Representative's advisors offer(s) testimony, he/she may be questioned by the other party or by the Grievance Committee.
- B. 2. g. All of the grievant's allegations shall have been specified in the grievance statement. However, where information relevant to an alleged violation becomes known subsequent to the filing of the Grievance Statement, the

grievant may file an amendment to the Grievance Statement. In such instance, the proposed amendment should be in writing in the form of a memorandum addressed to the grievance committee, with a copy to the University Representative, which provides full information about the new allegation in accordance with Section A.3 of this procedure, and which explains the reasons why the grievance statement is being amended at that time. The University shall have 5 working days within which to respond to the amendment. If the University Representative agrees that the new allegation is properly within the definition of a grievance in accordance with Section A.1. above, the amendment shall be accepted.

If the University Representative does not accept the new allegation as appropriate to this procedure, the grievant may forward his/her proposed amendment to the Reviewing Officer immediately, and it will be processed in accordance with Section B.1.c. above.

- B. 2. h. Within five working days of the final hearing session, the Committee shall make a good faith effort to render a decision in writing. The decision shall address all allegations raised in the grievance. For each allegation, the Grievance Committee shall determine if the alleged violation has been proven. For each allegation sustained by the Grievance Committee, the Committee shall identify who committed the specific violation and which level of evaluation was affected by the violation. The Committee shall not make judgments as to whether the grievant should receive reappointment, promotion, and/or tenure. Further, the Committee will address and make findings about only those allegations set forth either in the grievance statement or an amendment to it and pursued by the grievant. The Committee's decision, recorded on a form agreed to by the AAUP-AFT and the Executive Vice President for Academic Affairs or his/her designee, shall be binding on the University, the grievant, and the AAUP-AFT. The Grievance Committee shall send its decision to the grievant, the AAUP-AFT, the University Representative, the appropriate chancellor, the Executive Vice President for Academic Affairs, the Office of Academic Labor Relations, and to each evaluator or evaluating body concerned in a violation sustained by the Grievance Committee. It is University practice to exclude from remanded evaluations, evaluators against whom charges of discrimination or enmity have been sustained.
- B. 2. i. The grievant has the burden of proof. The burden of proof shall be met when the preponderance of evidence about an alleged fact and/or alleged violation is sufficient to sustain the allegation.
- B. 2. j. If the Grievance Committee sustains the grievance, it shall order a remand, which is the sole and exclusive remedy under this procedure.
- B. 2. k. Within 20 working days of receipt of the Grievance Committee's decision by the AAUP-AFT and the University, the University Representative or other appropriate office of the University will prepare draft remand instructions and forward them to the grievant and AAUP-AFT for review.

- B. 2. l. If the University and the grievant reach agreement concerning the remand, it will be reduced to writing and signed by the University Representative and the grievant. Such remedy shall be implemented promptly.
- B. 2. m. If no agreement is reached within 10 working days of issuance of the draft remand instructions referred to in B.2.k. above, the University Representative shall issue instructions for the remanded evaluation with copies to the grievant and the AAUP-AFT. Such remand shall be implemented promptly and shall be fashioned to remedy identified defects. The instructions shall constitute the 30-day notice, pursuant to Article XIV of this Agreement.
- B. 2. n. If the grievant alleges that the University Representative's instructions for the remand procedure do not correct the defects found by the Grievance Committee, the grievant may request in writing, within five working days of receipt of the instructions, that the Executive Vice President for Academic Affairs or his/her designee meet with the grievant and his/her grievance advisors, the University Representative and his/her advisors, and the grievance committee to discuss the remand instructions, after which he/she will provide a binding decision to the University as to whether or not the instructions eliminate the defects found by the Grievance Committee. The remand shall then be implemented promptly. The remand procedure may not be challenged in any other way until it has been implemented by the University and a decision on the re-evaluation has been made.
- B. 2. o. In a remanded evaluation, items listed on the original Form 1 may be updated by an addendum to Form 1 to reflect changes in status in those items. No changes may be made in the original Form 1.
- B. 2. p. Any individual or any representative of a body against whom allegations are brought may be present at the hearing, unless the grievant objects. If, however, the grievant is represented or assisted by a member of his/her own department, he/she may not object to the presence of a department member or any other member of the bargaining unit against whom an allegation has been made. In addition, other observers of the hearing are permitted with the consent of the grievant and the University representative.
- B. 2. q. Either party may tape record the proceedings of the hearings, but the tape shall not constitute an official record. The tape may be used only in the grievance hearing or for the purpose of preparing the case and may not be used for any other purpose or in any other forum.
- B. 2. r. Each grievance shall be considered de novo, and no decision or finding from one grievance may be introduced or referred to as precedent in any other grievance. However, a grievant shall be permitted to introduce as evidence in a grievance proceeding the decision in a prior grievance filed by him/herself.

C. Confidentiality

The University and the AAUP-AFT have a vital interest in confidentiality in order to preserve the impartiality of the process, the reputation of the institution, and the peace of the academic environment. Therefore, all participants in a grievance proceeding have an obligation to maintain strictly the confidentiality of that proceeding.

- C. 1. The grievance statement, University response, associated documents, identities of witnesses, and evidence presented at the hearing shall be kept confidential by all concerned, except that the grievant or the University may make disclosure only to the extent necessary and only to potential witnesses and/or persons against whom allegations have been made and/or persons the party has reason to believe may be able to assist in the preparation and/or presentation of that party's case. Such disclosure shall be limited in scope to those aspects of the case the party has reason to believe are relevant to disclosée's potential testimony or other assistance. The form and content of such disclosure shall be sensitive to the concerns outlined above, and shall in no case include providing tape recordings or transcripts of the proceedings to persons other than the Grievance Committee members, grievant, counselor, co-counselor, university representative, and his/her designated assistant.

Each witness to whom disclosure is made shall be identified to the other party before that witness's testimony is given.

Each person to whom disclosure is made shall be provided, prior to disclosure, a copy of this confidentiality provision and the no reprisals provision (G.2.), and shall not use the information about the grievance for any other purpose.

- C. 2. The grievance proceeding shall be conducted in confidence, including only those agreed to by the participants in the process specified in the procedures set forth in this Article and such observers as may be mutually agreed to by the grievant and the University Representative.
- C. 3. During the course of the grievance (from the filing of the letter of intent through the Appeals Board decision) there shall not be exerted or caused to be exerted, pressure on any individuals involved in the grievance.

An allegation of a violation of confidentiality shall be made to the Grievance Committee which shall render a binding decision concerning the propriety of the breach and continuing participation of any participant, except the grievant, who, in the judgment of the committee, has violated confidentiality.

D. Settlement of Procedural Questions Arising During a Grievance Committee Hearing

- D. 1. A question arising during the processing of a grievance under this procedure concerning the interpretation and/or application of this procedure may be raised by the grievant or the University Representative as a matter for determination by the Grievance Committee.

- D. 1. a. In the event the Grievance Committee declines to determine the matter or the grievant or the University Representative is not satisfied with the soundness of its interpretation and/or application, that procedural issue shall be referred to the Permanent Referee, in accordance with Section D.3. below.
- D. 1. b. If such issue is referred to the Permanent Referee, the grievant and/or the University Representative may request that the hearing be suspended pending his/her review.
- D. 1. c. If suspension is not requested, the hearing may proceed to consider matters on which no issue of interpretation or application of this procedure has been raised.
- D. 1. d. A ruling made by the Grievance Committee on the interpretation or application of this procedure that is not referred by the grievant or the University Representative to the Permanent Referee at the time of such ruling shall be binding for this and only this case.
- D. 2. A question concerning a matter of procedure not specifically addressed by this procedure shall be referred within five working days of the date the issue arose to the parties to this Agreement (AAUP-AFT and the University) for a joint determination that shall amend the procedure on this question.

Should the AAUP-AFT and the University fail to reach such agreement within five working days of submission to them, the question may be submitted to the Grievance Committee by either party for an ad hoc procedure to be implemented in the instant case as a reasonable solution to the issue at hand. Any such ad hoc procedure shall not be a precedent in any other case. The Grievance Committee shall render a decision within seven working days of the date the matter was submitted to it.
- D. 3. The Permanent Referee shall have the authority to make binding decisions on the interpretation and/or the application of provisions of this procedure where such issues are referred to it under the provision of D.1. Matters so referred shall be handled as follows:
 - D. 3. a. The grievant and/or University Representative shall submit their respective claims in writing to the parties to the Agreement (AAUP-AFT and the University) within two working days of the date the issue arose. The parties shall each prepare a written position on the issue to be forwarded to the Permanent Referee, with each party copying the other, within five working days of receipt of the statement of claim.
 - D. 3. b. Either the AAUP-AFT or the University may request a hearing on the matter before the Permanent Referee. Such request shall be made at the time of the party's submission of its position to the Permanent Referee.
 - D. 3. c. If no hearing is requested, the Permanent Referee may request a meeting with the parties to this Agreement to discuss the matter. Any hearing or

meeting shall take place within five working days of the Permanent Referee's receipt of the parties' submissions.

- D. 3. d. The Permanent Referee shall render his/her decision on the matter within seven working days of the receipt of the parties' submissions. A ruling by the Permanent Referee on the interpretation and/or application of this Agreement shall be binding on the grievant, the University and the AAUP-AFT.
- D. 3. e. The decision of the Permanent Referee shall be rendered in accordance with law and shall be within the scope of his or her authority as provided in this procedure.

E. Appeals of Remanded Evaluations

- E. 1. Letters of intent to grieve and grievance statements, as defined in B. above, shall be filed with the Office of Academic Labor Relations in accordance with the schedule and provisions therein.
- E. 2. Within 25 working days of receipt of the final grievance statement (after all allegations submitted have been vetted by the Reviewing Officer and, if applicable, Permanent Referee) the Office of Academic Labor Relations shall forward a written response to the particulars of the grievance to the grievant and to the AAUP-AFT. At the same time, the University shall forward the grievance statement and the University's response to the grievance to the Faculty Appeals Board, if constituted. The University's response shall address each allegation and shall identify and attach, if possible, any documents pertinent to the grievance. The University shall also forward, at the same time, the grievant's reappointment/promotion packet, and make available to the Appeals Board, the external confidential letters of evaluation, and, if the Faculty Appeals Board so requests, shall also make available the supplementary materials to the reappointment/promotion packet.
- E. 3. If the grievant intends to request documents and/or other information from the University, he/she shall do so in writing at the earliest possible time, preferably prior to filing the grievance statement. All such requests shall explain the relevance of the requested information or documents to the alleged violations.
- E. 4. External confidential letters of evaluation shall not be made available to the grievant or to his/her advisors, or to the University Representative for the purpose of this proceeding. The Faculty Appeals Board shall exercise all due diligence in protecting the confidentiality of the external letters and shall return all copies of the promotion packet and the external confidential letters to the University Representative once the Board has rendered its decision.
- E. 5. The Faculty Appeals Board shall make a good faith effort to meet to hear the appeal no later than within one month of receipt of the material specified in E.2. above. If there is more than one grievance before the Appeals Board, priority shall be given to hearing and deciding grievances in which the grievant's employment is due to terminate. If the Faculty Appeals Board deems the caseload to warrant it, the Board may constitute, from among its members, two or more three-member

panels. Generally, the Faculty Appeals Board will review only the written record, except that the grievant, at his/her request, shall have the right to appear before the Board for up to one hour for the purpose of presenting his/her case and answering any questions the Board might have. The grievant may be accompanied by his/her AAUP-AFT representative. The University Representative shall be present and shall have the opportunity to respond. At its sole discretion, the Board may request from the grievant or the University Representative additional materials or oral or written explanations.

- E. 6. The Faculty Appeals Board shall render a decision in writing on a form appropriate to its finding. Such form shall be agreed upon by the AAUP-AFT and the University.
- E. 6. a. The Board may deny the grievance. A denial of the grievance is final and binding on the grievant, the AAUP-AFT, and the University, and no further grievance or appeal may be made by the faculty member. This finding shall be forwarded immediately to the AAUP-AFT by the University.
- E. 6. b. The Board may order a remanded evaluation. An order for a remanded evaluation is binding on the grievant, the AAUP-AFT, and the University, and, if a remand is ordered, the Faculty Appeals Board shall provide advice to the University in structuring the remand. This finding shall be forwarded immediately to the AAUP-AFT by the University.
- E. 6. c. The Board may recommend to the Promotion Review Committee that the faculty member receive reappointment, promotion, and/or tenure. This recommendation must be considered by the President along with all other recommendations of the Promotion Review Committee. Such recommendation, made on the appropriate form, shall evaluate the candidate's performance in each of the applicable criteria and shall include the Faculty Appeals Board's rationale for the recommendation. Notification that such recommendation has been made shall be forwarded immediately to the AAUP-AFT by the University. The recommendation of the PRC, subject only to recommendation by the President and action by the Board of Governors, shall be final and binding on the grievant and the AAUP-AFT, and no further grievance or appeal may be made by the faculty member.

F. Composition and Selection of Permanent Referee, Grievance Committees and Faculty Appeals Board

F. 1. Permanent Referee

The University and the AAUP-AFT shall jointly select a professional arbitrator who shall serve as the Permanent Referee for a period of 12 months, beginning in the month of April of each year. The Permanent Referee shall be jointly briefed by the University and the AAUP-AFT at the beginning of his/her appointment.

The fees of the Permanent Referee shall be borne equally by the University and the AAUP-AFT.

F. 2. Grievance Committees

- F. 2. a. Grievance Committees shall be composed of 3 tenured faculty bargaining unit members at the rank of Associate Professor or above, who are 100% in bargaining unit titles, selected at random from the pool that includes the unit in which the grievance arose, except that no person shall serve on a Grievance Committee for a case in which he/she has participated in the evaluation process, nor shall any person be obligated to serve on a grievance committee more than once every three years. A faculty member who holds a 100% bargaining unit title while performing the duties of an assistant or associate dean shall be removed from a grievance committee at any time before the grievance committee has rendered a written decision unless the grievant chooses to go forward. The AAUP-AFT shall notify the grievant of the committee's membership.

The University and the AAUP-AFT shall jointly agree to the units comprising each of the grievance pools.

- F. 2. b. Each Grievance Committee shall be constituted no later than October 15. Within ten working days of constitution of the Committee, the grievant may challenge, in writing and stating the reason, the participation of any Grievance Committee member for cause. Such a challenge shall be directed to the University Representative by the AAUP-AFT. If the University and the AAUP-AFT cannot resolve the matter, it shall be referred to a faculty member selected jointly each year by the AAUP and the University. This individual shall receive only the grievant's written challenge and the University's written response, a copy of which shall be provided to the AAUP-AFT. The grievant may, within ten working days, provide a written rebuttal limited to points raised in the University response. The jointly selected faculty member shall render a final and binding decision within eight working days and shall notify the faculty member in case of removal.
- F. 2. c. The members of each Grievance Committee shall designate one of their members as chairperson of the Committee.
- F. 2. d. Faculty members selected to serve on a Grievance Committee shall participate in a joint University-AAUP-AFT briefing before being empaneled. The purpose of the briefing is to ensure that the Committee members understand the procedure and their role in the grievance process. Only persons who have participated in a briefing may serve on a Grievance Committee.

F. 3. Faculty Appeals Board

The Faculty Appeals Board shall consist of nine members from among the tenured faculty of the University, appointed by the President in the spring of each year for the following academic year. The AAUP-AFT may provide advice to the President on membership of the Faculty Appeals Board prior to March 1. The members of the Faculty Appeals Board shall select their own chair and a vice-chair. Decisions

of the Faculty Appeals Board shall be by majority vote of the members participating in the particular proceeding. At least three of its members must participate in any proceeding. No person shall serve on the Faculty Appeals Board for a case in which he/she has participated in the evaluation process.

The AAUP-AFT shall notify the grievant of the Board's members. If a grievant wishes to challenge for cause the participation of any member of the Faculty Appeals Board, he/she shall do so in writing within ten working days of the constitution of his/her Board, explaining the reason at the time of filing the grievance statement. The parties shall attempt to resolve the challenge informally. If the matter cannot be resolved informally, the chair of the Faculty Appeals Board shall make a final and binding determination as to whether or not to accept the challenge. If the challenge is directed against the chair, the vice-chair shall make a determination about the challenge and shall act as chair for that particular proceeding.

- F. 4. There shall be no ex parte communication with the members of the Faculty Appeals Board under any circumstances.

Scheduling of the Faculty Appeals Board hearings shall be done by the Office of Academic Labor Relations. The Office of Academic Labor Relations shall also perform word processing and related tasks for the Faculty Appeals Board with respect to the production and distribution of their written decision. If any panel of the Faculty Appeals Board needs support services beyond those specified above, the request shall be presented at the same time to the Office of Academic Labor Relations and the AAUP-AFT's Grievance Administrator, and the parties shall forthwith jointly address the request.

G. Miscellaneous

- G. 1. Grievance Committees do not have the authority to substitute their judgment for the academic judgment of persons charged with the responsibility for making such judgment. Further, neither the Grievance Committees nor the Faculty Appeals Board shall have the authority to amend, alter, or in any way change a provision of this Agreement, a University Regulation, or an established practice of the University.
- G. 2. No reprisals shall be taken against any grievant, advisor, witness, or member of a Grievance Committee or the Faculty Appeals Board for participation in the grievance process. Claims of any such reprisals shall be grievable under Article IX, Category One.
- G. 3. If a Grievance Committee finds for the grievant, the grievant shall receive a twelve-month extension of employment beginning July 1 following the decision.

If the Faculty Appeals Board either orders a remand for the grievant or recommends to the Promotion Review Committee that the faculty member receive reappointment, promotion and/or tenure, the grievant shall receive a twelve-month extension of employment beginning July 1 following the decision.

- G. 4. A grievant shall not be evaluated while an Article X grievance is pending.
- G. 5. It is the understanding of the AAUP-AFT and the University that all parties to the grievance procedure, including the Grievance Committee, the grievant, the grievant's representatives, the University's Representatives, and witnesses presented by the grievant and the University, are charged with the responsibility for cooperating in the scheduling and hearing of the grievance in an expeditious manner.
- G. 6. There shall be no ex parte communication regarding the substance of the grievance with the Grievance Committee or with the Faculty Appeals Board by the grievant, the University Representative, or their advisors, the AAUP-AFT, or the University administration.
- G. 7. This Article X grievance procedure, whether or not pursued, shall constitute the sole and exclusive right and remedy of bargaining-unit members for all claims cognizable under this procedure. Decisions by a Grievance Committee or the Faculty Appeals Board as provided for in this Article X grievance procedure shall be considered a binding and final settlement of the grievance. The exclusivity of remedies and exhaustion of procedures provided for above are not intended nor shall they apply to rights of individual bargaining-unit members that arise from sources independent of this Agreement, University policies, agreements, administrative decisions, or regulations. Nothing in this provision shall be construed or implied as a waiver by the University of the defenses of exhaustion of remedies or exclusivity of the grievance procedure.

H. Time Limits

- H. 1. For the purpose of this procedure, "working days" are all days on which the administrative offices of the University are officially open for business as specified in the administrative calendar.
- H. 2. Grievances submitted from New Brunswick shall be delivered to the Office of Academic Labor Relations, in which case the delivery date will establish the timeliness of the filing. Grievances submitted from the Camden and Newark campuses as well as other locations outside New Brunswick shall be sent by United States mail to the Office of Academic Labor Relations, in which case the postmark date will establish the timeliness of filing.
- H. 3. Requests for extensions of any of the time limits specified in this grievance procedure may be granted only by mutual agreement of the University and the AAUP-AFT.
- H. 4. If a member of the bargaining unit intends to file an appeal to the Faculty Appeals Board and it is likely that his/her employment with the University would terminate prior to the date of a decision by the Faculty Appeals Board if the normal time schedule set forth in these procedures were followed, the grievant shall have the opportunity to utilize an accelerated schedule, as set forth below:

- H. 4. a. The grievant must notify the Office of Academic Labor Relations in writing of his/her intent to file a grievance within ten working days of the date on which the AAUP-AFT receives notification of the negative personnel action and must indicate that he/she is utilizing the accelerated schedule.
- H. 4. b. Within 20 working days of the date of the letter of intent to file, as specified in H.4.a. above, but no later than ten working days prior to June 21, the grievance statement, as defined in A. 3. above, shall be filed with the Office of Academic Labor Relations.
- H. 4. c. Within ten working days of receipt of the grievance statement, but no later than June 21, the University shall forward the materials specified in section E.2. above.
- H. 4. d. The Faculty Appeals Board shall meet to hear the appeal within five working days of receipt of the material specified in E.2. above. If possible, the Faculty Appeals Board will render its written decision within five working days of its meeting. If that is not possible, the Faculty Appeals Board will render an oral decision within five working days and will render its written decision within ten working days, but no later than June 30.
- H. 4. e. If the grievant fails to meet any deadline set forth in this accelerated procedure, he/she shall lose all right to utilize it, and the grievance shall be heard in accordance with the regular time schedule set forth in this Article X grievance procedure.