



FLORIDA INTERNATIONAL UNIVERSITY
BOARD OF TRUSTEES
GOVERNANCE COMMITTEE

Thursday, March 26, 2015
12:00 p.m. *approximate start time*
Florida International University
Modesto A. Maidique Campus
Graham Center Ballrooms

Committee Membership:

Albert Maury, *Board Chair*; Sukrit Agrawal; Cesar L. Alvarez; Jose J. Armas; Jorge L. Arrizurieta;
Claudia Puig

AGENDA

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| 1. Call to Order and Chair's Remarks | Albert Maury |
| 2. Approval of Minutes | Albert Maury |
| 3. Follow-up Item from Previous Meeting | Kenneth G. Furton |
| 4. Action Item | |
| G1. Ratification of Memorandum of Understanding between
FIU and the United Faculty of Florida | Kenneth G. Furton |
| 5. New Business <i>(If Any)</i> | Albert Maury |
| 6. Concluding Remarks and Adjournment | Albert Maury |

Next Governance Committee Meeting is scheduled for Wednesday, June 3, 2015

Proposed Committee Action:

Approval of Minutes of the Governance Committee meeting held on Wednesday, January 14, 2015 at the FIU, Modesto A. Maidique Campus, Graham Center Ballrooms.

Background Information:

Committee members will review and approve the Minutes of the Governance Committee meeting held on Wednesday, January 14, 2015 at the FIU, Modesto A. Maidique Campus, Graham Center Ballrooms.



FLORIDA INTERNATIONAL UNIVERSITY
BOARD OF TRUSTEES
GOVERNANCE COMMITTEE
MINUTES
JANUARY 14, 2015

1. Call to Order and Chair's Remarks

The Florida International University Board of Trustees' Governance Committee meeting was called to order by Board Chair Albert Maury on Wednesday, January 14, 2015, at 12:38 p.m. at the Modesto A. Maidique Campus, Graham Center Ballrooms.

The following attendance was recorded:

Present:

Albert Maury, *Board Chair*
 Sukrit Agrawal
 Jose J. Armas
 Jorge L. Arrizurieta
 Claudia Puig

Excused:

Michael M. Adler, *Board Vice Chair*
 Cesar L. Alvarez

Trustees Alexis Calatayud and Kathleen L. Wilson and University President Mark B. Rosenberg were also in attendance.

2. Welcome and Introduction: Charge of the Governance Committee

Board Chair Albert Maury welcomed everyone in attendance to the first meeting of the Governance Committee, noting that in September, the Board adopted new Bylaws, which revised the Board's Committee structure to remove the Executive and Personnel Committees and in their place create a Governance Committee. At upcoming meetings, he stated, the Committee will focus on continuing to improve governance practices by engaging in strategic discussions on the practices and characteristics of high functioning boards in today's environment.

Board Chair Maury requested that Vice President of Human Resources Jaffus Hardrick provide a follow-up to the request to review the current Executive Performance Ratings scale used in the President's management review process to determine whether it could be improved upon. VP Hardrick stated that the Board adopted the current Executive Performance Ratings scale in November 2008, noting that the ratings system is the culmination of extensive research and benchmarking against data from other universities and corporations. He recommended that the Board maintain the current ratings system as the scale remains relevant and aligns with current industry standards and best practices.

3. Action Item

G1. President's Management Report, 2013-14

Board Chair Maury noted that as is required by the State University System (SUS) of Florida Board of Governors (BOG), he discussed the President's annual evaluation process with the Chair of the Board of Governors. He stated that the cooperation enabled the BOG to provide input in the President's evaluation process prior to Board of Trustees' review. Board Chair Maury added that the BOG Chair provided positive feedback regarding the process for evaluating the President's performance as it aligned with the BOG's performance funding metrics. Board Chair Maury further noted that in order to focus University President Mark B. Rosenberg's annual performance evaluation on measures by which the BOG assesses all state universities, the President will provide an update on the University's progress towards meeting the goals and targets delineated in the 2013-14 Work Plan.

President Rosenberg presented an overview of the key indicators and achievements contained within the University's 2013-14 Annual Accountability Report to the BOG. He noted that FIU was ranked a top 25 National University (24th out of 277 higher education institutions) in the annual ranking by *Washington Monthly* for the University's contributions to the public good and that the Council of Graduate Schools awarded FIU for Innovation in Promoting Success in Graduate Education for its Academy of Graduates for Integrative Learning Experiences (AGILE) model. He added that *Hispanic Business Magazine* ranked FIU Law the #1 College of Law for Hispanics in the country and that FIU's College of Law and the Herbert Wertheim College of Medicine were ranked 1st and 9th respectively for diversity practices by HispanicBusiness.com.

President Rosenberg reported that two FIU doctoral students were named National Science Foundation (NSF) fellows as part of the NSF Graduate Research Fellowship Program in recognition of their outstanding research. He noted that Dr. Pedro "Joe" Greer, associate dean for Community Engagement at FIU's Herbert Wertheim College of Medicine, was awarded the 2014 National Jefferson Award for Greatest Public Service Benefiting the Disadvantaged, adding that Denise Duhamel, professor of FIU's Creative Writing program, was named a 2014 Guggenheim Fellow. He stated that Dr. Angela Laird, associate professor of FIU's Department of Physics, was named one of the world's most highly cited researchers by Thomson Reuters in its report, "The world's most influential scientific minds of 2014." He noted that external funding for research has continued to grow at FIU despite reduced funding from the federal government.

President Rosenberg presented the University and President Performance Goals and Results for the 2013-14 academic year Self Evaluation Scorecard, detailing the outcomes of the ten BOG performance based funding model metrics. He noted that the University achieved and/or exceeded nine goals, adding that while the academic progress rate did not meet the 3% objective, full-time FTICs increased from 75% (2012 cohort) to 76% (2013 Cohort), representing a one point improvement. He detailed the outcomes of the Presidential Incentive Goals and focused on the goals that were not achieved. He also discussed the Work Plan goal pertaining to increasing annual gifts received from \$24.7M to \$43.6M, indicating that while the \$50M total fundraising goal was exceeded, cash gifts totaled \$21.3M. He explained that the variation can be attributed to the timing and nature of gifts.

Board Chair Maury requested that President Rosenberg discuss any significant non-recurring events or milestones of major impact to the University not previously mentioned in his report. President Rosenberg noted the positive strides made in the advancement of FIU's Strategic Land Acquisition Initiative, adding that this is an arduous process that has and continues to require substantial engagement in fundraising, outreach and/or lobbying efforts, within the confines of all applicable laws.

A discussion regarding metrics that focus on the University's financial position ensued among Trustees and the President. Sr. Vice President of Administration and Chief Financial Officer Kenneth A. Jessell noted that it is critical to remain focused on the 10 Performance Funding Model metrics as new funding has become an increasingly significant portion of the University's operating budget. Board Chair Maury requested that at the next regularly scheduled meeting of the Governance Committee, Trustees engage in further discussion regarding the inclusion of an additional goal that would measure performance results in terms of points towards receiving new performance funding allocations. Trustee Jorge L. Arrizurieta inquired as to the fundraising goal outcomes reporting in relation to the University and President's self-evaluation scorecard. Mr. Phillip Lloyd Hamilton of Human Resources clarified that the BOG defines the two fundraising measures in the university annual work plans and accountability reports in terms of endowment growth and annual gifts received. He noted that the President's annual fundraising goals include pledges and gifts-in-kind in addition to cash gifts.

Board Chair Maury led the discussion on the President's Management Review for the 2013-14 academic year, requesting that President Rosenberg excuse himself from this portion of the meeting. He noted that this action was strictly voluntary and that no one present was required to exit the meeting during the discussion. The Committee discussed the President's performance during the 2013-14 academic year based on his achievement of the mutually agreed upon goals. Board Chair Maury further noted that, on behalf of the Committee, he would present a written assessment and recommended performance rating for Board consideration.

Trustee Arrizurieta requested additional information relating to a report distributed by the United Faculty of Florida (UFF) pertaining to University faculty and administration growth. Provost and Executive Vice President Kenneth G. Furton noted that UFF commissioned the report from the FIU Center for Labor Research and Studies (CLRS), with the purpose of comparing FIU faculty and administration growth from 2004-05 to 2013-14. He noted that the University's student/faculty ratio in Fall 2009 was 26.6, which he added has remained constant through Fall of 2013. He indicated that variations in the report from University data may be seen in the classification of Administrative when Faculty more accurately reflects the nature of the appointment. He added that the University continues to study operational efficiencies, noting that this is an area of focus for the 2015-2020 Strategic Plan. Board Chair Maury requested that the University administration analyze the CLRS report and present to the Committee for the next regularly scheduled meeting a response that benchmarks FIU data across the SUS.

The Committee members commended President Rosenberg for his outstanding leadership and remarkable outreach efforts. Trustees recognized that a small number of goals were not fully achieved but commented that President Rosenberg successfully completed and/or exceeded most of

the goals set forth in the University’s Work Plan despite the challenging economic climate and declining state revenues.

A motion was made and passed that the FIU Board of Trustees Governance Committee recommend for Board of Trustees’ approval a “Superior” performance rating to President Mark B. Rosenberg for his leadership of Florida International University during the 2013-14 academic year.

Board Chair Maury noted that as per the third amendment to Dr. Rosenberg’s contract, the Board may, in its discretion, annually award Dr. Rosenberg incentive compensation of up to \$50,000 for the 2013-2014 academic year based on the sub-set of goals established as Dr. Rosenberg’s incentive goals. Board Chair Maury added that the Board has delegated the Governance Committee with the responsibility of carrying out the award of incentive compensation.

A motion was made and passed that the FIU Board of Trustees Governance Committee award President Rosenberg \$48,000 in incentive compensation for the 2013-14 academic year.

Trustee Sukrit Agrawal recommended that at a future meeting of the Committee, Trustees consider a reduction in the number of the President’s incentive goals.

The Committee thanked President Rosenberg for his exceptional leadership and looked forward to the achievements of the 2014-15 academic year.

4. New Business

No new business was raised.

5. Concluding Remarks and Adjournment

With no other business, Board Chair Albert Maury adjourned the meeting of the Florida International University Board of Trustees’ Governance Committee on Wednesday, January 14, 2015 at 1:36 p.m.

<i>Trustee Requests</i>	<i>Follow-up</i>	<i>Completion Date</i>
<i>1. Board Chair Maury requested that at the next regularly scheduled meeting of the Governance Committee, Trustees engage in further discussion regarding the inclusion of an additional goal that would measure performance results in terms of points towards receiving new performance funding allocations.</i>	<i>Provost and Executive Vice President, Kenneth G. Furton</i>	<i>June 2015</i>
<i>2. Board Chair Maury requested that the University administration analyze the CLRS report, pertaining to University faculty and administration growth, and present to the Committee for the next regularly scheduled meeting a response that benchmarks FIU data across the SUS.</i>	<i>Provost and Executive Vice President, Kenneth G. Furton</i>	<i>June 2015</i>

Proposed Committee Action:

Recommend that the Florida International University Board of Trustees (the BOT) ratify the MOU making changes to the following wage article:

- UFF: Article 11 Salaries in the FIU-UFF 2011-2014 CBA

Background information:

To recognize the contributions of the faculty, FIU entered into an MOU with UFF to provide all eligible employees with a 1.5% retention salary increase and a 1.5% merit salary increase effective on 1/3/15. The merit increase represents 8.9% of the performance funding for 2014-15. This change in the wage articles applies only to fiscal year 2014-2015. UFF ratified its MOU on March 5, 2015.

Florida Board of Governors Regulation 1.001(5)(b) provides that each board of trustees shall act as the sole public employer with regard to all public employees of its university for the purposes of collective bargaining, and shall serve as the legislative body for the resolution of impasses with regard to collective bargaining matters.

MEMORANDUM OF UNDERSTANDING

The Florida International University Board of Trustees (FIUBOT) and the Florida International University Chapter of the United Faculty of Florida (FIU-UFF) enter into this Memorandum of Understanding:

WHEREAS, the FIUBOT and FIU-UFF are currently engaged in ongoing collective bargaining encompassing several unresolved issues;


WHEREAS, the FIUBOT and FIU-UFF recognize the rights of the Parties to continue these ongoing negotiations;

WHEREAS, the FIUBOT and FIU-UFF have reached an agreement on certain issues and it is in the mutual interest of the Parties to memorialize these agreements and to allow for timely implementation, particularly with regard to salaries.

NOW THEREFORE, the Parties agree as follows:

1. The FIUBOT and FIU-UFF have reached an agreement on Article 11 "Salaries", as attached, for the 2014-2015 academic year.
2. Although the Parties will continue to engage in collective bargaining negotiations to obtain a resolution of all contract articles and policies, the FIUBOT and FIU-UFF agree to implement the attached Article 11.
3. The Parties agree to continue negotiations in good faith.
4. This memorandum is subject to the ratification requirements of Section 447.309, Florida Statutes.


Chief Negotiator of FIUBOT


Chief Negotiator of FIU-UFF

Date: 2-25-2015

Date: 2-24-2015

ARTICLE 11
SALARIES

11.1 2014 – 2015 Salary Increases.

- (a) **Eligibility.** Except as otherwise specified in this Article, an “eligible employee” for the purposes of this Article shall be defined as an employee who has received at least a satisfactory rating overall on his or her most recent annual evaluation. Where no evaluation was given for assigned responsibilities, performance shall be presumed to have been at least satisfactory overall. Employees on paid or unpaid leave who have not had assigned responsibilities during all or part of the previous Academic Year shall be presumed to have been at least satisfactory overall for purposes of qualifying as an “eligible employee” for purposes of this Article.
- (b) **2014 – 2015 Retention Increase.** Effective January 3, 2015, all eligible employees who were employed on or before January 6, 2014 and have been continuously employed through the effective date of the Agreement shall receive a one and one-half percent (1.5%) retention increase to their base salaries.
- (c) **2014 - 2015 Departmental Merit.** The University shall provide merit funds totaling one and one-half percent (1.5%) of the total bargaining unit payroll as of the last full day of the 2013-2014 Academic Year on a pro rata basis to the departments/units based on their payrolls as of the last full pay period of the 2013-2014 Academic Year. These funds shall be distributed as recurring base increases within each department as set forth in the BOT-UFF Policy concerning Employee Performance Evaluation. If merit criteria apply to the entire college/school, the college/school shall be the unit. Such increases will be effective January 3, 2015. To be eligible, the employee must have been employed on or prior to January 6, 2014 and must be continuously employed through the effective date.

11.2 Convocation Awards. At the annual Faculty Convocation the FIU Board of Trustees or designee may provide to employees one time awards totaling no more than 0.16% of the total employee payroll as of the end of the prior Academic Year for special achievements including awards for teaching, research, service, mentorship, librarianship and advising and Distinguished University Professor, according to the selection procedures established by the Faculty Senate. No later than July 30 of each year, the University shall provide the local UFF chapter a listing of such awards showing the name and department of each employee given an award during the previous academic year and the amount and nature of the award

11.3 2014-2015 Discretionary Awards and Increases. During the 2014-2015 academic year, the FIU Board of Trustees or designee may provide additional salary increases and/or one-time awards totaling no more than one percent (1.0%) of the total employee payroll for market equity considerations, including verified counteroffers and compression/inversion, increased duties and responsibilities, special achievements, Summer Faculty Research Awards; litigation/settlements, and similar special situations. No later than July 30, the University shall provide a listing of the distribution of these funds to the local chapter of UFF. This list will provide the

name and department of the employee and the date, amount and nature of the award or salary increase during the prior academic year.

11.4 Promotion Increases. Effective at the beginning of the academic year in which their promotions are effective, employees shall be awarded promotion increases as follows.

(a) To Assistant University Librarian or Assistant Professor, a nine percent (9%) increase;

(b) To Senior Lecturer, Senior Instructor, Research Associate, Associate Scholar/Scientist/Engineer, Associate University Librarian, or Associate Professor, a ten (10%) increase;

(c) To University Lecturer, University Instructor, Scholar/Scientist/Engineer, University Librarian, or Professor, a twelve percent (12%) increase;

11.5. Notification to Employees. All employees shall receive notice of their salary increases on the Salary Increase Notification Form attached as an Appendix to this Agreement not later than two weeks prior to implementation of the salary increases described in this article. Upon request, an employee shall have the opportunity to consult with the person or committee that makes the initial recommendation for salary increases.

11.6 Contract and Grant-Funded Employees.

(a) Employees on grants or contracts shall receive salary increases equivalent to similar employees on regular funding, provided that such salary increases are permitted by the terms of the contract or grant and adequate funds are available for this purpose in the grant or contract. In the event such salary increases are not permitted by the terms of the contract or grant, or in the event adequate funds are not provided, the President or representative shall seek to have the contract or grant modified to permit such increases.

(b) Nothing contained herein shall prevent employees whose salaries are funded by grant agencies from being allotted raises higher than those provided in this Agreement.

11.7 Report to UFF. Except as otherwise provided in this Article 11, no later than 30 days after any increases or bonuses are implemented, the University shall make available to the local chapter of the UFF, in machine-readable format, accurately by category, all increases provided pursuant to this Article, showing for each employee the employee's department, rank, gender, the base salary prior to the increase, the amount of the salary increase provided and the base salary after the salary increase.

11.8 Type of Payment.

- (a) For the academic year, duties and responsibilities assigned by the University to an employee that do not exceed the available established FTE for the position shall be compensated through the payment of Salary, not by OPS.
- (b) For the academic year, duties and responsibilities assigned by the University to an employee that are in addition to the available established FTE for the position shall be compensated through OPS and not Salary.

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

ARTICLE 11
SALARIES

11.1 ~~2011—2014 – 2015~~ Salary Increases.

~~(a) **2011—2012 One-time Departmental Merit Bonus.** The University shall provide merit funds totaling one percent (1%) of the total bargaining unit payroll as of the last full pay period of the 2010–2011 Academic Year on a pro-rata basis to departments/units based on their payrolls as of the last full pay period of the 2010–2011 Academic Year. These funds shall be distributed as one-time merit bonuses to employees within each department or academic unit consistent with the criteria and procedures set forth in the BOT-UFF Policy concerning Employee Performance Evaluation. If merit criteria apply to the entire college/school, the college/school is the unit. All employees are, or upon appointment will be, assigned to an existing department/unit. Such bonuses shall be paid on December 2, 2011. To be eligible for a one-time merit bonus, the employee must have been employed on or prior to January 4, 2011 and must be continuously employed through the date on which the merit bonus is paid.~~

~~(a) **Eligibility.** Except as otherwise specified in this Article, an “eligible employee” for the purposes of this Article shall be defined as an employee who has received at least a satisfactory rating overall on his or her most recent annual evaluation. Where no evaluation was given for assigned responsibilities, performance shall be presumed to have been at least satisfactory overall. Employees on paid or unpaid leave who have not had assigned responsibilities during all or part of the previous Academic Year shall be presumed to have been at least satisfactory overall for purposes of qualifying as an “eligible employee” for purposes of this Article.~~

~~(b) **2012—2013 2014 – 2015 Retention Increase.** Effective on the first day of Academic Year 2012–2013 January 3, 2015, all eligible employees who were employed on or before January 2, 2012 and have been continuously employed through the effective date of the increase shall receive a two percent (2%) retention increase to their base salaries.~~

~~(c) **2012 – 2013 One-time Departmental Merit Bonus.** The University shall provide merit funds totaling one percent (1%) of the total bargaining unit payroll as of the last full pay period of the 2011–2012 Academic Year on a pro-rata basis to departments/units based on their payrolls as of the last full pay period of the 2011–2012 Academic Year. These funds shall be distributed as one-time merit bonuses to employees within each department or academic unit consistent with the criteria and procedures set forth in the BOT-UFF Policy concerning Employee Performance~~

~~Evaluation. If merit criteria apply to the entire college/school, the college/school is the unit. All employees are, or upon appointment will be, assigned to an existing department/unit. Such bonuses shall~~

~~be paid on the first pay date in December 2012. To be eligible for a one-time merit bonus, the employee must have been employed on or prior to January 2, 2012 and must be continuously employed through the date on which the merit bonus is paid.~~

~~(e) 2013—2014 Retention Increase. Effective on the first day of Academic Year 2013—6 2014, all eligible employees who were employed on or before January 2, 2013 and have been continuously employed through the effective date of the increase Agreement shall receive a one and one-half percent (1.5%) retention increase to their base salaries.~~

~~(d) 2013—~~

~~(c) 2014 One-time- 2015 Departmental Merit Bonus. The University shall provide merit funds totaling one and one-half percent (1.5%) of the total bargaining unit payroll as of the last full pay period of the 2012—2013-2014 Academic Year on a pro rata basis to the departments/units based on their payrolls as of the last full pay period of the 2012—2013-2014 Academic Year. These funds shall be distributed as one-time merit bonuses to employees recurring base increases within each department ~~or academic unit consistent with the criteria and procedures~~ as set forth in the BOT-UFF Policy concerning Employee Performance Evaluation. If merit criteria apply to the entire college/school, the college/school ~~is~~ shall be the unit. ~~All employees are, or upon appointment~~ Such increases will be, ~~assigned to an existing department/unit. Such bonuses shall be paid on the first pay date in December 2013, effective January 3, 2015.~~ To be eligible ~~for a one-time merit bonus~~, the employee must have been employed on or prior to January ~~2, 2013~~, 2014 and must be continuously employed through the ~~date on which the merit bonus is paid.~~ effective date.~~

11.2 ~~2011—2014~~ Convocation Awards. At the annual Faculty Convocation the FIU Board of Trustees or designee may provide to employees one -time awards totaling no more than 0.16% of the total employee payroll as of the end of the prior Academic Year for special achievements, including awards for teaching, research, service, mentorship, librarianship and advising and Distinguished University Professor, according to the selection procedures established by the Faculty Senate. No later than July 30 of each year, the University shall provide the local UFF chapter a listing of such awards showing the name and department of each employee given an award during the previous academic year and the amount and nature of the award.

11.3 ~~2011—2014-2015~~ Discretionary Awards and Increases. During the ~~2011-2012~~2014-2015 academic year, ~~the 2012-2013 academic year, and the 2013-2014 academic year~~, the FIU Board of Trustees or designee may provide additional salary increases and/or one-time awards totaling no more than one percent (1.0%) of the total employee payroll ~~as of the last full pay period of the prior academic year. These increases may be provided~~ for market equity considerations, including verified counteroffers and compression/inversion; increased duties and responsibilities; special achievements; Summer Faculty Research Awards; litigation/settlements; and similar special situations. No later than July 30 ~~of each year~~, the University shall provide a listing of the distribution of these funds to the local chapter of UFF. This list will provide the name and department of the employee and the date, amount and nature of the award or salary increase during the prior academic year.

11.4 Promotion Increases. Effective at the beginning of the academic year in which their promotions are effective, employees shall be awarded promotion increases as follows:-;

~~(a)~~(b) ~~(a)~~ To Assistant University Librarian or Assistant Professor, a nine percent (9%) increase;

~~(b)~~(c) ~~(b)~~ To Senior Lecturer, Senior Instructor, Research Associate, Associate Scholar/Scientist/Engineer, Associate University Librarian, or Associate Professor, a ten ~~percent~~ (10%) increase;

~~(c)~~(d) ~~(c)~~ To University Lecturer, University Instructor, Scholar/Scientist/Engineer, University Librarian, or Professor, a twelve percent (12%) increase-;

11.5 Notification to Employees. All employees shall receive notice of their salary increases on the Salary Increase Notification Form attached as an Appendix to this Agreement not later than two weeks prior to implementation of the salary increases described in this article. Upon request, an employee shall have the opportunity to consult with the person or committee that makes the initial recommendation for salary increases.

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(b) Nothing contained herein shall prevent employees whose salaries are funded by grant agencies from being allotted raises higher than those provided in this Agreement.

11.7 Report to UFF. Except as otherwise provided in this Article 11, no later than 30 days after any increases or bonuses are implemented, the University shall make available to the local chapter of the UFF, in machine-readable format, accurately by category, all increases provided pursuant to this Article, showing for each employee the employee's department, rank, gender, the base salary prior to the increase, the amount of the salary increase ~~or merit bonus~~ provided and the base salary after the salary increase.

11.8 Type of Payment.

(a) ~~(a)~~ For the academic year, duties and responsibilities assigned by the University to an employee that do not exceed the available established FTE for the position shall be compensated through the payment of Salary, not by OPS.

(b) ~~(b)~~ For the academic year, duties and responsibilities assigned by the University to an employee that are in addition to the available established FTE for the position shall be compensated through OPS and not Salary.

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

~~**11.10 Eligibility.** Except as otherwise specified in this Article, an —eligible employee— for the purposes of this Article shall be defined as an employee who has received at least a satisfactory rating overall on his or her most recent annual evaluation. Where no evaluation was given for assigned responsibilities, performance shall be presumed to have been at least satisfactory overall. Employees on paid or unpaid leave who have not had assigned responsibilities during all or part of the previous Academic Year shall be presumed to have been at least satisfactory overall for purposes of qualifying as an —eligible employee— for purposes of this Article.~~