



## Action Report #5

# Navigating Post-Tenure Review Through Shared Governance and Collective Bargaining: Lessons from Florida State University (FSU)

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Despite the fact that [only 24 percent of faculty members](#) are working on full-time tenured contracts, efforts to further weaken tenure continue unabated. One strategy for doing so has been implementing post-tenure review. In 2022, of [1,200 four-year academic institutions surveyed](#), about 58 percent had post-tenure review, an increase from 46 percent in 2000. Barrett Taylor and Kimberly Watts found that [state legislators introduced thirteen bills](#) to ban tenure outright between 2012 and 2022, and over the past two years at least [ten states have considered legislation](#) either banning tenure or weakening it through provisions such as post-tenure review that could lead to faculty termination. In 2021, for example, the Georgia Board of Regents approved a policy that would allow an institution to dismiss a tenured faculty member “[without having afforded that professor an adjudicative hearing before an elected faculty body](#).” And in 2022, Florida’s legislature passed—and Governor DeSantis signed—Senate Bill 7044, which instituted post-tenure review making it possible to dismiss faculty members without due process.

Post-tenure review policies can be designed in ways that support faculty members and their professional development. However, the AAUP [remains skeptical and cautions that post-tenure review policies](#) are often designed as punitive, lacking due process and



faculty oversight. Post-tenure review policies effectively end tenure when they place the burden of proof on tenured faculty to once again demonstrate the “professional competence” they already established through the tenure process.

This action report provides an overview of the growing prevalence of post-tenure reviews within higher education and how they weaken academic freedom by imposing a corporate labor model on academic institutions. The report also examines the specific example of how Florida State University (FSU)’s faculty used collective bargaining to mitigate some of the worst effects of the law. In doing so, the report offers some general lessons and strategies that others might use for pushing back against the most punitive post-tenure review policies.

## **Background**

The tenure system in the United States emerged during the mid-twentieth century. At the end of the AAUP’s first year, in the influential [1915 Declaration of Principles on Academic Freedom and Tenure](#), Committee A articulated the rationale for tenure as a protection of academic freedom and to attract candidates of “high ability and strong personality by ensuring the dignity, the independence, and the reasonable security of tenure, of the professorial office.” This position was formalized in the [1940 Statement of Principles on Academic Freedom and Tenure](#), a negotiated understanding between the AAUP and the Association of American Colleges (now the American Association of Colleges and Universities), representing university administrators. The 1940 *Statement* states that

tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

After World War II, the 1940 *Statement* was widely endorsed by academic associations and adopted by numerous colleges and universities, leading to the modern tenure system. However, by the late 1960s, tenure was already under attack. Amid the activism of the period, some—including a committee formed by the American Council on

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Education (ACE) and the President's Commission on Campus Unrest (commonly known as the Scranton Commission) investigating the killings of students at Jackson State University and Kent State University—began to ask if faculty were part of the problem and advocated for changes in the tenure system. More than [twenty states considered legislation](#) that would have altered or ended tenure. By the mid-1970s, Coe College, Earlham College, the California State University System, and Oregon University were among the small group of institutions or systems that instituted post-tenure review.

Faculty unionization emerged during the same period, with the first contract negotiated in 1948 by Howard University faculty members in the United Public Workers-CIO. Collective bargaining in higher education accelerated during the 1960s as faculty turned to organized labor to help improve the conditions of their work and grew substantially in the 1970s. Changes in state law facilitated public sector unionization, including in Florida, where faculty could bargain beginning in 1976. That led to the formation of the United Faculty of Florida (UFF) the following year.

By 1980, more than twenty percent of faculty members in the country were covered by collectively bargained contracts, but growth slowed dramatically both because of the Supreme Court's 1980 decision in [National Labor Relations Board v. Yeshiva](#), which limited the ability of tenure-line faculty at private colleges to bargain, and the lack of new state laws expanding bargaining rights for public sector workers. Unionization in higher education writ large entered a new era in the 1990s with the increased activism for graduate student workers and those working in visiting, temporary, and other non-tenure-line roles. The recent past has seen both a burgeoning higher education union movement—including undergraduates, graduate students, and faculty—as well as significant state-level efforts to undercut unions. [Roughly twenty-seven percent of faculty members are now covered by bargaining agreements](#), reflecting a significant increase in recent years.

In the wake of early faculty unionization efforts, post-tenure review serves as an effort to reintroduce a corporate labor model into higher education, with faculty members treated as individual employees serving at the will of their employers. This corporate labor model focuses on reducing cost, maximizing flexibility, cutting proverbial deadwood, and requiring that individual employees remain accountable to management rather than to each other as a community of scholars.

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In 1982, the ACE, in cooperation with other presidential-level education associations, established a [National Commission on Higher Education Issues](#) to make recommendations on how to address the challenges facing the industry; among its recommendations was “campus academic administrators, working closely with an appropriate faculty committee, should develop a system of post-tenure evaluation.” With an eye toward public perception, it claimed, “Nothing will undervalue the tenure system more completely than being regarded as a system to protect faculty members from evaluation.” The following year, ACE and AAUP jointly sponsored the Wingspread Conference on Evaluation of Tenured Faculty to consider the recommendation, and the group of more than forty educational leaders affirmed their commitment to tenure and rejected the need for a new system of post-tenure review. The [AAUP praised the result and, drawing language from a statement issued by the conference, formally adopted the position](#) that post-tenure review should not be used to “weaken or undermine the principles of academic freedom and tenure” or “be used as grounds for dismissal or other disciplinary sanctions.” Sixteen years later—amid increased attacks on tenure—the AAUP again cautioned that post-tenure review was unnecessary and dangerous and provided [clear guidelines](#) regarding how, if mandated, post-tenure review could be conducted in a nonpunitive manner.

Post-tenure review threatens academic freedom in several ways. It discourages well-established and proven faculty members from engaging in research that reviewers might determine too controversial or from experimenting with their teaching. Post-tenure review also chills extramural speech and makes participating in shared governance riskier, placing faculty members in potential conflict with administrators who might evaluate their review. Moreover, when created to include disciplinary (rather than just developmental) goals, post-tenure review can be weaponized against faculty members with whom administrators disagree or otherwise want to punish.

## *Post-Tenure Review in Florida*

Florida’s [Senate Bill 7044](#) (2022) included multiple measures designed to weaken academic freedom and erode the institutional autonomy of Florida’s public universities. This bill weakened accreditation and centralized surveillance of the faculty by mandating course textbooks be posted to a searchable database. SB 7044 also established a post-tenure review process, with language that read:

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The Board of Governors may adopt a regulation requiring each tenured state university faculty member to undergo a comprehensive post-tenure review every 5 years.

The following year, [Senate Bill 266](#) replaced “may” with “shall,” making post-tenure review mandatory rather than optional. SB 266 also took away the right to appeal beyond the university level for any adverse ruling in a tenure, promotion, disciplinary, or termination decision. Doing so effectively eliminated arbitration in these matters.

In March 2023, the Board of Governors (BoG), which oversees Florida’s public university system, responded to SB 7044 and SB 266 by issuing [Regulation 10.003](#), which lays out guidance for universities on how to develop campus post-tenure review policies. Although the legislation did not require that post-tenure review include punitive outcomes, including dismissal, the BoG guidelines included them. Despite receiving an unprecedented number of comments criticizing their highly problematic proposal, the board passed the regulation.

According to this regulation, campus post-tenure review policies should consider:

1. The level of accomplishment and productivity relative to the faculty member’s assigned duties in research, teaching, and service.
2. The faculty member’s history of professional conduct and performance of academic responsibilities to the university and its students.
3. The faculty member’s noncompliance with state law, BoG regulations, and university regulations and policies.
4. Unapproved absences from teaching assigned courses.
5. Substantiated student complaints.
6. Other relevant measures of faculty conduct as appropriate.

The regulation also spells out a process whereby the faculty member undergoes review. First, they submit a dossier, which is reviewed by their chair. The chair offers an assessment and then submits it to the college dean and eventually the chief academic officer. This top administrator, “with guidance and oversight from the university president,” then determines whether the faculty member’s performance exceeds, meets, or does not meet expectations or is deemed unsatisfactory. For those deemed not to



have met expectations, “the appropriate college dean, in consultation with the faculty member’s department chair” will create a “performance improvement plan” laying out performance goals that, if not met, result in termination. Faculty members whose performance is deemed “unsatisfactory” are terminated outright. The regulation includes an appeals process, but the final decision lies with the university president and is not subject to neutral external arbitration.

During its first year of implementation, [ten faculty members were dismissed](#) and sixty others were put on a remediation plan that could lead to dismissal next year. Other reports [from the University of Florida](#) indicate that out of 262 professors reviewed, twenty-seven percent faced some consequence: thirty-one retired or resigned rather than complete the process, thirty-four were deemed to have failed to meet expectations, and another five were ranked as “unsatisfactory.”

## **Guidance for Responding to Post-Tenure Review**

When strategizing how faculty might respond to post-tenure review, it is helpful to follow a few core principles.

First, the burden of proof rests with the administration to make the case for dismissal. As noted, the AAUP’s Committee A on Academic Freedom and Tenure released its 1999 report [Post-Tenure Review: An AAUP Response](#). This report emphasizes that post-tenure review “ought to be aimed not at accountability but at faculty development,” and the process “must be developed and carried out by faculty.” As such, post-tenure review “must not be a reevaluation of tenure.” According to the AAUP, the principle of tenure means that administrators must demonstrate cause for dismissal. Consequently, post-tenure review must not be used to “shift the burden of proof...to the individual faculty member (to show cause why he or she should be retained).” The report also clarifies that “post-tenure review should not be undertaken for the purpose of dismissal. Other formal disciplinary procedures exist for that purpose.”

When post-tenure review is imposed outside the process of shared governance, as in the case of Florida, faculty can seek to limit the damage on their campus by negotiating procedures that mitigate the damage of post-tenure review. Drawing upon [Post-Tenure Review: An AAUP Response](#), some general strategies faculty might draw upon include:

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1. **Incorporate already existing, faculty-led evaluation processes.** Emphasize that evaluation for raises, promotions, and grants already exist on campus. Incorporating these faculty-led processes into the post-tenure review framework can enhance faculty control. A post-tenure review policy can also require that the assessment of research be deferred to peer reviewers and not administrators without the relevant expertise.
2. **Develop nonpunitive post-tenure review models.** As much as possible, advocate for a post-tenure review process that focuses on faculty development rather than punitive measures. Corporate terms and frameworks like stack ranking and performance improvement plans should not be adopted into the academic workplace without appropriate adaptation. Ensure that any disciplinary action taken as a result of post-tenure review goes through the standard procedures for imposition of sanctions.
3. **Build in protections of academic review and due process.** Highlight the need for robust due process protections to limit unilateral administrative actions and ensure faculty involvement in decision-making. Make sure the process language is clear and that faculty, especially those with the disciplinary expertise to evaluate the faculty member under review, play a lead role. The process should include due process and a well-developed appeals process.
4. **Employers should have the burden of proof.** A post-tenure review policy will require that administrators demonstrate cause for dismissal or the imposition of a major sanction rather than require that faculty members demonstrate that they are worthy of being retained.

These general principles are very much evident in the United Faculty of Florida (UFF)'s efforts to negotiate post-tenure review at Florida State University (FSU). There are many lessons to be learned from this case.

## *The Case of Florida State University*

In May 2023, following the passage of Regulation 10.003, FSU's Board of Trustees (BoT) posted a campus-wide post-tenure review policy adapted from the Board of Governors' regulation. This policy conflicted with specific provisions laid out in the FSU faculty's collective bargaining agreement. The trustees ignored these violations, claiming that they were simply following the law. UFF sent a letter clarifying that the regulation should not apply to in-unit tenured faculty members because it wasn't





bargained. The vice president of faculty development and advancement said she understood that the implementation needed to be bargained. A month later, the BoT asked the union to engage in impact bargaining, negotiating the consequences of the policy imposed from outside the employee/employer relationship without negotiating the policy itself.

UFF responded with a letter stating that post-tenure review could not be implemented without bargaining several contract articles in the collective bargaining agreement (CBA). This would require bargaining a new process, not just the impact. Changes in procedure for tenure are changes to the contract and therefore must be bargained under existing articles. The union noted that it had no obligation to engage in impact bargaining, and the contract clearly states that neither party can be forced to bargain. Furthermore, there were already plans to begin negotiations on two articles in the contract in April, and the entire contract was to be negotiated in 2025. This would be the appropriate time to negotiate the post-tenure review policy. UFF also noted that changes in tenure must also go through departmental review and cannot be implemented for a year after being proposed. UFF also stated its unwillingness to take the first step in diminishing the excellence or reputation of the university by eliminating tenure.

The FSU administration interpreted this position as waiving UFF's right to bargain and implemented the policy unilaterally. UFF, however, had not refused to bargain but rather refused to impact bargain. Furthermore, UFF argued that the BoG regulation was not the law but rather a regulation based on an interpretation of the law and therefore open to being contested. The administration nonetheless started implementing post-tenure review without bargaining, effectively eliminating the union's ability to bargain over the post-tenure evaluation procedure, a mandatory subject of bargaining. UFF argued that the regulation was invalid as applied to in-unit faculty. In August 2023, UFF sent a cease-and-desist letter, which the administration ignored.

UFF also filed an unfair labor practice against the BoG and the BoT. The Board of Governors was eventually removed from the filing because they argued they were not an employer. In effect, a group that was *not* employing faculty was nonetheless dictating the terms and conditions of employment.





The hearing before the Public Employees Relations Commission (PERC) was held in December 2023, and by March 2024, the hearing officer (an administrative judge) agreed that the FSU Board of Trustees had committed an unfair labor practice by making unilateral changes to a mandatory subject of bargaining. The hearing officer recommended that the post-tenure review process be bargained and that the FSU trustees pay UFF's lawyers' fees. UFF also argued that the administration had circumvented the union as the representative of the faculty when it asked the faculty directly to begin the process of post-tenure review, but, the hearing officer dismissed this charge of direct dealing.

The hearing officer determined that evaluation systems such as post-tenure review are mandatory subjects of bargaining if they significantly and directly determine wages, hours, and terms and conditions of employment. The officer determined that the only time terms and conditions of employment, which include evaluation systems, can be changed without bargaining are "where there is a clear and unmistakable waiver of bargaining by the certified bargaining agent; exigent circumstances requiring immediate action; legislative action taken pursuant to the statutory impasse procedures; or where a financial urgency exists." The hearing officer ruled that none of these conditions applied in this case. He ultimately recommended that the FSU trustees cease and desist "a) Making unilateral changes to mandatory subjects of bargaining without first either engaging in collective bargaining or obtaining a clear waiver of bargaining from the certified bargaining agent; and (b) In any like or related manner interfering with, restraining, or coercing bargaining unit members in the exercise of any rights guaranteed under them under Chapter 447, Part II, Florida Statutes."

Unfortunately, in late June, the PERC rejected the hearing officer's recommendations. PERC claimed that "exigent circumstances mandated the FSU BoT to act immediately in order to comply with the law" because "the BoG is constitutionally imbued with the authority to regulate and manage the whole university system, including the FSU BoT." UFF rejected this interpretation and has filed an appeal with the Florida District Court of Appeal, which will likely take at least until the summer of 2026 to work its way through the courts.

Between September 2023 and March 2024, while the unfair labor practices hearings were taking place, UFF began bargaining a memorandum of agreement (MOA) with the



FSU Board of Trustees regarding post-tenure review. They decided to do so despite considerable misgivings but hoped that such negotiations could help mitigate the worst effects of a unilaterally imposed post-tenure review policy. Much of the union's focus concerned how to mitigate the unclear language and criteria and allow for faculty input in decision-making, including being able to address the chair and dean letters as well as tying termination to "just cause" as outlined in the CBA and protecting academic freedom. The major concerns included:

1. The Board of Governors stated that post-tenure review had to take into consideration "the faculty member's non-compliance with state law, Board of Governors' regulations, and university regulations and policies." UFF asked for clarity about whether faculty members could be fired for violating the now-enjoined "Stop WOKE" Act (HB 7), or running a red light?
2. UFF objected to the fact that post-tenure review would only be decided by two or three administrators and without faculty input.
3. The union also pointed out that the rating criteria were nonsensical. For example, to "[exceed expectations](#)" a faculty member needs to demonstrate "a clear and significant level of accomplishment beyond the average performance of faculty across the faculty member's discipline and unit." What does average performance even mean? How can it be compared across units and disciplines?
4. UFF also objected to the fact that faculty members deemed "unsatisfactory" would be terminated outright, meaning that there is no such thing as tenure in Florida.

In April 2024, while waiting for the PERC ruling, the union and FSU administration started annual contract negotiations with post-tenure review on the back burner. Hoping that the PERC case would be successful and knowing post-tenure review would be harder to remove once it had been included in the CBA, the union's goal was to keep post-tenure review out of the contract altogether. However, once the PERC ruled in the administration's favor, they immediately moved to include post-tenure review in the collective bargaining agreement. In fact, their proposal after the PERC decision simply said the regulation would be followed.

UFF went back to the MOA they bargained for seven months and added language stating that "if the Board of Governors Regulation 10.003 or Florida Statutes 400

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Section 1001.706(6)(b) is modified, overturned, or enjoined by a court of competent jurisdiction 401 Section 10.10 Post-Tenure Review will be nullified.”

UFF also successfully added a reference to the CBA’s academic freedom article. The post-tenure review language now reads: “In conducting Post-Tenure Review, the University shall not consider or otherwise discriminate based on a faculty member’s political, or ideological view, or properly disclosed and approved outside activities or fields of study.” The union also linked post-tenure review to annual evaluation criteria already present in existing bylaws that had been developed and adopted by faculty. This helps limit the likelihood that a faculty member receives a positive annual review but a negative post-tenure review.

For faculty members whose performance was deemed unsatisfactory, the CBA required “evidence of failure to follow previous formal written feedback on performance or conduct and evidence of performance that involves incompetence or misconduct, in accordance with Article 16, Disciplinary Action and Job Abandonment and applicable university regulations and policies.”

The CBA also clarified that review files must include annual evaluations and teaching evidence, including but not limited to student perceptions of courses and instruction. It also added that faculty shall be involved in the post-tenure review evaluation at the department level, that deans would be encouraged to include input from a faculty committee, and that faculty members under review could include responses to the chair and dean letters.

The Board of Governors regulation required that past disciplinary actions be considered in post-tenure review. UFF argued, however, that this constituted a form of double jeopardy, punishing faculty members again for an action that was already punished. The administration would not budge on this issue. In response, UFF added language to the collective bargaining agreement stating that responses to the chair and dean's letters could include “explanations of disciplinary actions or negative evaluations, including timelines and any steps that were taken to improve.”

In conclusion, the post-tenure review procedure at FSU is still largely problematic and empowers administrators to terminate tenured faculty appointments. The PERC



decision forced FSU's post-tenure review policy to include language from the Board of Governors designed by partisan politicians who had already exhibited hostility to higher education. However, despite these constraints imposed by the state government, UFF was able to negotiate in ways that made post-tenure review more palatable by reducing the ability of the administration to fire someone arbitrarily and giving the faculty more say in the process.

### **Acknowledgments**

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