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ARTICLE [x]. ARBITRATION

Section 1. Conditions

If the grievance brought under Article [x] on Grievances is not resolved at Step 3, the Association may submit the matter to arbitration.

Section 2. Time Frame

A formal written Notice of Intent to Arbitrate must be filed by OT-AAUP with the President of the OIT and the General Counsel of OIT within twenty-one (21) days of date of issuance of Step 3 decision. Failure to file a written Notice of Intent to Arbitrate within this time limit shall be deemed a waiver of the right to arbitrate.

Section 3. Mediation

Upon filing the Notice of Intent to Arbitrate, the Parties shall submit the issue for mediation to the Oregon Employment Relations Board (ERB), unless one party is unwilling to mediate. The Association shall request a list of mediators from ERB. Both Parties shall make a good faith effort to reach an agreement in the mediation process.

However, if either Party decides that mediation has failed, they must declare so in writing to the other Party. Within ten (10) days of such a declaration, OT-AAUP shall request a list of arbitrators from ERB to pursue the issue through arbitration.

Section 4. Selection of an Arbitrator

If the Parties do not agree to pursue mediation, or if mediation fails, then within ten (10) days of either receipt of the Notice of Intent to Arbitrate, or receipt of the declaration of failed mediation, the parties shall meet to attempt to agree upon an arbitrator. If the parties are unable to agree upon an arbitrator within five (5) days of this meeting, the party initiating arbitration shall request the Oregon Employment Relations Board (ERB) to submit a list of seven (7) arbitrators with experience in higher education faculty employment cases, none of whom shall be an employee or consultant, or previous employee or previous consultant, of the university (OIT), another Oregon public university, the Association (OT-AAUP), the AFL-CIO, the AFT, the AAUP, or any other labor organizations, unless both parties agree otherwise in writing. The arbitrator shall be a practicing attorney.

Each party shall alternately strike one name from the list of seven (7); the remaining person shall be the arbitrator. The party initiating the arbitration shall strike the first name.

If the arbitrator selected cannot hold a hearing within ninety (90) days and either party does not agree to an extension, a new list of seven (7) names shall be requested from the ERB and the selection described in this section shall be repeated.

Section 5. Submission Agreement

*OT-AAUP reserves the right to add to, modify, or amend proposals during the course of negotiations.

36 At least ten (10) days in advance of the scheduled hearing, the parties shall meet to
37 draft a submission agreement. They shall attempt to agree on the precise issue to be submitted to
38 arbitration, a stipulation of facts, joint exhibits, and any other matter designed to expedite the
39 arbitration process.

40
41 If the parties are unable to agree on the precise issue to be submitted, each party shall submit its
42 own version of the issue and the arbitrator shall decide the precise issue to be arbitrated. Such
43 decision shall be made prior to determining arbitrability.

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45 **Section 6. Conduct of the Hearing**

46 The arbitrator shall hold the hearing in Klamath Falls, Oregon or in Wilsonville, Oregon (depending
47 on the location of the faculty on behalf of whom the arbitration is undertaken), unless otherwise
48 agreed to in writing by both parties. The hearing shall commence at the earliest date convenient to
49 the parties, but in no case more than forty-five (45) days from notification of the arbitrator, unless
50 mutually agreeable otherwise.

51 If the arbitrator or either party requests that post-hearing briefs be submitted, the arbitrator shall,
52 within fourteen (14) days, establish a date for the submission of such briefs and the hearing will be
53 deemed to have been closed by such date.

54 **Section 7. Arbitrability.**

55 Once the issue to be arbitrated is decided by the arbitrator, the jurisdiction of the arbitrator shall be
56 established. If the arbitrator's jurisdiction is under dispute by the two parties, the arbitrator shall hear
57 the parties on the question of arbitrability, together with any evidence they may find relevant to
58 determine arbitrability of the issue submitted. Upon concluding the issue is arbitrable, the arbitrator
59 shall proceed with the hearing at that time.

60

61 If the arbitrator has no jurisdiction to act on the issue, the arbitrator shall not hear the matter or
62 make any decision or recommendation regarding the merits of the issue.

63

64 **Section 8. Authority of the Arbitrator**

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66 The arbitrator derives authority wholly and exclusively from this Agreement. The arbitrator shall
67 not add to, subtract from, modify, or alter the terms or provisions of this Agreement. The arbitrator
68 shall refrain from issuing any statement, opinion, or conclusions not essential to determination of
69 issue submitted for arbitration.

70

71 The arbitrator's decision-making authority shall be limited to determining whether procedures set in
72 this Agreement have been violated, misinterpreted or misapplied, and if so, the arbitrator shall
73 provide a remedy that makes the grievant whole.

74

75 If an arbitrator determines that processes set in this Agreement have not been followed in cases
76 where academic judgment is involved, the arbitrator shall direct that the matter be reconsidered by
77 the appropriate decision maker, in accordance with the relevant process. In these cases, the
78 arbitrator may direct that the status quo ante be maintained until a judgment is made having properly
79 followed appropriate procedural steps.

80
81 The arbitrator shall have no authority: (i) to award monetary damages, fines or penalties, except for
82 back pay or benefits; (ii) to make a decision limiting or interfering in any way with the powers,
83 duties, or responsibilities of the university which have not been expressly limited by this Agreement;
84 or (iii) to consider the discipline of members of another bargaining unit or other university
85 employees who are not members of the bargaining unit represented by this Association in rendering
86 a decision.

87
88 Nothing in this Agreement precludes bargaining unit faculty members from filing or pursuing, at any
89 time, claims alleging violations of state or federal non-discrimination or labor laws with outside
90 agencies (like the Oregon Bureau of Labor and Industries or the Equal Employment Opportunities
91 Commission) or courts.

92 93 **Section 9. Arbitrator's Decision**

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95 The arbitrator shall issue a decision within thirty (30) days of the close of the hearing unless the
96 parties have formally agreed to additional time. The decision of the arbitrator shall be in writing and
97 shall set forth findings of fact, reasoning and conclusions on the issues submitted for arbitration.

98
99 The decision of the arbitrator shall be final and binding upon the Employer, the Association and all
100 bargaining unit members affected, provided that any party may seek judicial review of the decision as
101 provided by law.

102 103 **Section 10. Costs**

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105 All fees and expenses of the arbitrator shall be paid by the Employer.

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107 Each party shall bear the cost of preparing and presenting its own case. Expenses of witnesses, if
108 any, shall be borne by the party calling the witness. The costs of any transcripts of the hearing
109 required by the arbitrator shall be divided equally between the parties and each party shall be
110 furnished a copy. If either party wishes a transcript of the hearing, it may have one made at its own
111 expense and shall provide the arbitrator or the other party with a copy at no charge.

112
113 The compensation of any bargaining unit faculty member called as a witness and/or serving as the
114 Association representative in an arbitration hearing shall not be reduced for a reasonable period of
115 time to prepare for and to give testimony at the hearing, or in the case of the Association
116 representative, to represent the Association at the hearing. Every effort shall be made to avoid
117 unduly disrupting the work of any bargaining unit faculty member called to serve as a witness.