

ARTICLE [x]. ARBITRATION

Section 1. Conditions

If the grievance brought under Article [x] on Grievances is not resolved at Step ~~43~~, 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 ~~Oregon Tech OIT~~ and the General Counsel of ~~the institution OIT~~ within twenty-one (21) days of date of issuance of Step ~~43~~ 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 have three (3) business days to mutually agree to mediation.

Upon mutual agreement to mediation, either Party 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 ten (10) mediators from ERB. Each party shall alternately strike one name from the list of ten (10); the remaining person shall be the mediator. The party initiating the arbitration shall strike the first name. 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) business days of such a declaration, OT-AAUP shall request a list of ten (10) 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) business 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 ~~tenfive (510)~~ business days of this meeting, the party initiating arbitration shall request the Oregon Employment Relations Board (ERB) to submit a list of ~~tenseven (107)~~ 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 ~~tenseven (710)~~; the remaining person shall be the arbitrator. The party initiating the arbitration shall strike the first name.

36 If the arbitrator selected cannot hold a hearing within ninety (90) days and either party does not
37 agree to an extension, a new list of ~~tenseven~~ (710) names shall be requested from the ERB and the
38 selection described in this section shall be repeated.

39 Section 5. Submission Agreement

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

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

48 Section 6. Arbitrability.

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

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56 If the arbitrator has no jurisdiction to act on the issue, the arbitrator shall not hear the matter or
57 make any decision or recommendation regarding the merits of the issue, and the parties shall split
58 the costs of arbitration equally.

59 60 61 Section ~~7~~6. Conduct of the Hearing

62 The arbitrator shall hold the hearing in Klamath Falls, Oregon, ~~or in~~ Wilsonville, Oregon, Salem,
63 Oregon, or Everett, Washington (depending on the location of the faculty on behalf of whom the
64 arbitration is undertaken), unless otherwise agreed to in writing by both parties. The hearing shall
65 commence at the earliest date convenient to the parties, but in no case more than forty-five (45)
66 days from the arbitrator's acceptance of the case ~~notification of the arbitrator~~, unless an extension
67 of time is mutually agreed to by both parties ~~able otherwise~~.

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

71 Section 7. Arbitrability.

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

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

Section 8. Authority of the Arbitrator

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

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

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

[In cases where the exercise of "academic judgment" is being appealed, refer to Article \[x\] on Appeals.](#)

[An arbitrator's Award may be retroactive as the equities of each case may demand.](#)

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

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

Section 9. Arbitrator's Decision

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

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

125 Section 10. Costs

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127 All fees and expenses of the arbitrator shall be [borne by the party not prevailing in the arbitration](#)
128 [paid by the Employer.](#)

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

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

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142 [Should a grievance be withdrawn after the selection of an arbitrator, all charges by the arbitrator](#)
143 [shall be divided equally between the parties, including when the grievance is withdrawn pursuant to a](#)
144 [settlement of the grievance.](#)

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NOTICE OF INTENT TO ARBITRATE

The Oregon Tech Chapter of the American Association of University Professors (OT-AAUP) hereby gives notice of its intent to proceed to arbitration concerning the grievance of:

_____, dated _____
which was not resolved satisfactorily at Step Four of the grievance procedure.

Name of Authorized Representative, OT-AAUP: _____

Signature: _____

Date: _____

I hereby authorize OT-AAUP to proceed to arbitration with my grievance. I understand and agree that by filing this notice I hereby waive any rights concerning review by Oregon Tech or judicial review as a contested case under the Administrative Procedures Act (ORS §183) of the decisions rendered at prior steps of the grievance procedure.

OT-AAUP Requests / Does Not Request Mediation as per Section 3 of this Article.

Grievant's name: _____

Grievant's signature: _____

Date: _____