

## ARTICLE [x]. ARBITRATION

### Section 1. ~~Conditions~~Arbitration of Grievances.

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

### ~~Section 2. Time Frame~~

A ~~formal written~~ Notice of Intent to Arbitrate form, found in Appendix [x], must be filed by OT-AAUP with the President and General Counsel of ~~the Oregon Tech OIT~~ and the General Counsel of the institution OIT within ~~twenty-one (21)~~ twenty (20) business days of the date of the written response from the President or President's designee ~~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 and a withdrawal of the underlying Grievance. ~~with prejudice.~~

### Section ~~3~~2. Mediation

Within ten (10) business days of filing the Notice of Intent to Arbitrate, the parties may mutually agree in writing to submit the issue to mediation and request from the Oregon Employment Relations Board ("ERB") that a mediator be assigned.

If mediation is chosen and fails to resolve the issue, the Association will then have five (5) business days of either party declaring in writing to the other party that mediation has failed to resolve the issue to then submit its request to the ERB for a list of ten (10) arbitrators. The cost of the mediator shall be split equally between the parties.

If mediation is not mutually agreed upon within the timeframe above, the Association shall have ten (10) business days (i.e., twenty (20) total business days from the date of filing the Notice of Intent to Arbitrate) to then submit its request to the ERB for a list of ten (10) arbitrators.

~~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~~3. Selection of an Arbitrator

36 The ten (10) potential arbitrators shall be practicing attorneys with experience in higher education  
37 faculty employment cases (if possible), none of whom shall be an employee or consultant, or  
38 previous employee or previous consultant, of the university (OU), another Oregon public  
39 university, the Association (OT-AAUP), the AFL-CIO, the AFT, the AAUP, or any other labor  
40 organizations, unless both parties agree otherwise in writing. ~~If the Parties do not agree to pursue~~  
41 ~~mediation, or if mediation fails, then within ten (10) business days of either receipt of the Notice of~~  
42 ~~Intent to Arbitrate, or receipt of the declaration of failed mediation, the parties shall meet to attempt~~  
43 ~~to agree upon an arbitrator. If the parties are unable to agree upon an arbitrator within ten five (510)~~  
44 ~~business days of this meeting, the party initiating arbitration shall request the Oregon Employment~~  
45 ~~Relations Board (ERB) to submit a list of ten seven (107) arbitrators with experience in higher~~  
46 ~~education faculty employment cases, none of whom shall be an employee or consultant, or previous~~  
47 ~~employee or previous consultant, of the university (OU), another Oregon public university, the~~  
48 ~~Association (OT-AAUP), the AFL-CIO, the AFT, the AAUP, or any other labor organizations;~~  
49 ~~unless both parties agree otherwise in writing. The arbitrator shall be a practicing attorney.~~

50 Within ten (10) business days of receipt of the ERB's list of arbitrators, the parties shall attempt to  
51 mutually agree upon an arbitrator from that list or any other mutually agreeable arbitrator who may  
52 not appear on the list. If the parties are unable to mutually agree upon an arbitrator, the parties shall  
53 strike names from the ERB list. Each party shall alternately strike one name from the list of ten (10).  
54 The parties will flip a coin to decide which party strikes first. The last remaining person on the list  
55 shall be selected as the arbitrator. ~~The party initiating the arbitration shall strike first and the last~~  
56 ~~remaining arbitrator shall be selected as the arbitrator. Each party shall alternately strike one name~~  
57 ~~from the list of ten seven (710); the remaining person shall be the arbitrator. The party initiating the~~  
58 ~~arbitration shall strike the first name.~~

59 If the arbitrator selected cannot hold a hearing within ninety one hundred twenty (90120) calendar  
60 days and either party does not agree to an extension, a new list of ten seven (710) names shall be  
61 requested from the ERB and the selection described in this section shall be repeated.

#### 62 Section 4. Arbitrability.

63 If arbitrability is in dispute between the parties, the arbitrator must decide the question of  
64 arbitrability first. The issue of arbitrability may be raised with the arbitrator through a motion to  
65 dismiss either before the date of the arbitration or at the beginning of the arbitration.

66 If the motion is filed before the date of the arbitration, the moving party must file the motion with  
67 the arbitrator and opposing party no less than forty-five (45) calendar days before the date of the  
68 arbitration. Any reply must be filed with the arbitrator and moving party within seven (7) calendar  
69 days of receipt of the motion to dismiss. Sur replies are permitted only at the discretion of the  
70 arbitrator. The arbitrator shall render a decision on the arbitrability only within seven (7) calendar  
71 days from receipt of the last filing (reply or sur-reply).

72 If the motion is filed at the beginning of the arbitration, the parties will comply with the  
73 requirements of the arbitrator.

74 Upon concluding that the issue is arbitrable, the arbitrator shall normally proceed with the hearing at  
75 that time, or the scheduled date if the issue of arbitrability was raised with the arbitrator prior to the

76 scheduled date; provided that either party may seek judicial review of the arbitrator's decision as to  
77 jurisdiction and have the hearing on the merits delayed until such review is completed. Filing for  
78 such review shall occur at any time.

79 Upon concluding that the arbitrator has no power to act, the arbitrator shall not hear the matter or  
80 make any decision or recommendation regarding the merits of the issue.

## 81 Section 5. Submission Agreement

82 At least fourteen (14) calendar days in advance of the date of arbitration, the parties shall meet to  
83 draft a submission agreement to include the precise issue to be submitted to arbitration, which party  
84 has the burden of proof, what burden of proof will apply, a stipulation of facts, joint exhibits, and  
85 any other matter designed to expedite the arbitration process.~~At least ten (10) days in advance of the~~  
86 ~~scheduled hearing, the parties shall meet to~~  
87 ~~draft a submission agreement. They shall attempt to agree on the precise issue to be submitted to~~  
88 ~~arbitration, a stipulation of facts, joint exhibits, and any other matter designed to expedite the~~  
89 ~~arbitration process.~~

91 If the parties are unable to agree on the precise issue to be submitted, which party has the burden of  
92 proof, or what burden of proof will apply, each party shall submit its own version as to any of these  
93 upon which the parties cannot agree.~~If the parties are unable to agree on the precise issue to be~~  
94 ~~submitted, each party shall submit its own version of the issue and the arbitrator shall decide the~~  
95 ~~precise issue to be arbitrated. Such decision shall be made prior to determining arbitrability.~~

## 96 Section 6. Arbitrability.

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

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

## 109 Section 6. Conduct of the Hearing

110 The arbitrator shall hold the hearing in Klamath Falls, Oregon; Salem, Oregon; Wilsonville, Oregon;  
111 or, Everett, Washington, depending on the grievant(s) assigned work location during employment  
112 by Oregon Tech. The parties are also free to mutually agree to one of these locations or another  
113 location.

114 The hearing shall be held without unreasonable delay upon the arbitrator's acceptance of the case.

115 If the arbitrator or either party requests that post-hearing briefs be submitted, the arbitrator shall  
116 establish a date for the submission of such briefs and the hearing will be deemed to have been  
117 closed by such date.~~The arbitrator shall hold the hearing in Klamath Falls, Oregon, or in Wilsonville,~~

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

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

### ~~Section 7. Arbitrability.~~

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

~~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 87. Authority of the Arbitrator

The arbitrator derives their authority wholly and exclusively from the express terms of this Agreement. The arbitrator shall neither add to, subtract from, nor modify the terms of this Agreement. The arbitrator shall confine the decision solely to the application and/or interpretation of this Agreement and the information provided by the parties during the arbitration proceeding. The arbitrator shall refrain from issuing any statements of opinion or conclusions not necessary to the determination of the issue submitted. The arbitrator shall have no authority to make any decision limiting or interfering in any way with the powers, duties, and responsibilities of the University and the Board which have not been expressly limited by this Agreement. Nor shall the arbitrator consider the discipline of members of another bargaining unit or other university employees who are not members of the bargaining unit represented by the Association in rendering a decision.

In cases involving the exercise of "academic judgment," the arbitrator shall not substitute personal judgment for that of the official making such judgment, but shall confine the determination to whether procedural steps have been followed. If the arbitrator determines that procedural steps have not been followed where an exercise of "academic judgment" is involved, the arbitrator shall direct that the appropriate official in accordance with relevant procedural steps reconsider the matter. The arbitrator may direct that the status quo ante be maintained until a judgment is made having properly followed appropriate procedural steps. In such case, the arbitrator may not direct that a member be reappointed, promoted, or awarded indefinite tenure.~~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 ~~98~~. Arbitrator's ~~Decision~~ Opinion and Award.

The Opinion and Award of the arbitrator shall be final and binding upon the parties as to the issue submitted, provided that either party may seek to vacate such in accord with applicable law. The Opinion and Award of the arbitrator shall be issued within thirty (30) calendar days of the close of the hearing, unless the parties have agreed to additional time, and shall be in writing setting forth findings of fact, reasoning, and conclusions on the issue submitted.

~~An arbitrator's Award may or may not be retroactive as the equities of each case may demand, but in no case shall an Award be retroactive to a date earlier than thirty (30) calendar days before the date the grievance was initially filed in accordance with Article — : Grievance Procedures, or the date on which the act or omission occurred, whichever is later. Nor shall an arbitrator's Award include monetary damages, fines, or penalties, except for back wages or benefits consistent with this paragraph. 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.~~

Section ~~109~~. Costs

All fees and expenses of the arbitrator shall be borne by the party not prevailing in the arbitration paid by the Employer.

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

The compensation of any bargaining unit faculty member called as a witness and/or serving as the Association representative in an arbitration hearing shall ~~not be reduced for a reasonable period of time to prepare for and to give testimony at the hearing, or in the case of the Association representative, to represent the Association at the hearing~~ be in accordance with ORS 243.798. ~~Every effort shall be made to avoid unduly disrupting the work of any bargaining unit faculty member called to serve as a witness.~~

~~Should a grievance be withdrawn after selection of an arbitrator, all charges by the arbitrator shall be paid by the withdrawing party unless the grievance is withdrawn pursuant to a settlement of the grievance. Should a grievance be withdrawn after the selection of an arbitrator, all charges by the arbitrator shall be divided equally between the parties, including when the grievance is withdrawn pursuant to a settlement of the grievance.~~

246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265

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: \_\_\_\_\_

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