

Article ___: Arbitration Procedures

Section 1. Arbitration of Grievances. If the Grievance is not resolved at the President's level, only the Association may, within twenty ~~one~~ (20) ~~calendar business~~ days of the date of the written response from the President or President's designee, file a Notice of Intent to Arbitrate form, found in Appendix [], with the President and General Counsel of the University. Failure to file the Notice of Intent to Arbitrate form within the time limit shall be deemed a waiver of the right to arbitrate and a withdrawal of the underlying Grievance without prejudice the ability to refile.

Section 2. Mediation. Within ~~five-ten~~ (5) ~~calendar 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 not mutually agreed upon within ~~five (5) calendar days the timeframe above~~, the Association shall have ~~five-ten~~ (5) ~~calendar business~~ days (i.e., ~~ten-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-seven~~ (10) arbitrators from Oregon, Washington, and California.

If mediation is chosen and fails to resolve the issue, the Association will then have five (5) ~~calendar 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 ~~for to~~ the ERB for the list of ~~ten-seven~~ (10) arbitrators. The cost of the mediator shall be split equally between the parties.

Section 3. Selection of an Arbitrator. Within ten (10) ~~calendar business~~ days of receipt of the ERB's list of arbitrators, the parties shall attempt to mutually agree upon an arbitrator from that list or any other mutually agreeable arbitrator whom may not appear on the list. If the parties are unable to mutually agree upon an arbitrator, the parties shall strike names from the ERB list. Each party shall alternately strike one (1) name from the list. The non-initiating party shall strike first and the last remaining arbitrator shall be selected as the arbitrator.

Section 4. Arbitrability. If arbitrability is in dispute between the parties, the arbitrator must decide the question of arbitrability first. The issue of arbitrability may be raised with the arbitrator through a motion to dismiss either before the date of the arbitration or at the beginning of the arbitration.

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

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

Upon concluding that the issue is arbitrable, the arbitrator shall normally proceed with the hearing at that time, or the scheduled date if the issue of arbitrability was raised with the arbitrator prior to the scheduled date; provided that either party may seek judicial review of the arbitrator's decision as to jurisdiction and have the hearing on the merits delayed until such review is completed. Filing for such review shall occur at any time.

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

Section 5. Submission Agreement. At least fourteen (14) calendar days in advance of the date of arbitration, the parties shall meet to draft a submission agreement to include the precise issue to be submitted to arbitration, which party has the burden of proof, what burden of proof will apply, a stipulation of facts, joint exhibits, and any other matter designed to expedite the arbitration process.

If the parties are unable to agree on the precise issue to be submitted, which party has the burden of proof, or what burden of proof will apply, each party shall submit its own version as to any of these upon which the parties cannot agree.

Section 56. Conduct of the Hearing. The arbitrator shall hold the hearing in Klamath Falls, Oregon; Salem, Oregon; Wilsonville, Oregon; or, ~~Renton~~ Everett, Washington, depending on the ~~grievant~~Grievant's/Grievants' (-s) assigned work location during employment by Oregon Tech. The parties are also free to mutually agree to any one of these locations or another location.

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~~Except as modified by the provisions of this Agreement, arbitration proceedings shall be conducted in accordance with the prevailing Labor Arbitration Rules of the American Arbitration Association (AAA) or, if the parties agree, in accordance with AAA's Expedited Arbitration Rules.~~

~~The arbitrator shall apply a preponderance of the evidence burden of proof standard in all cases.~~

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

Section 6. 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. In such case, the arbitrator may not direct that a member be reappointed, promoted, or awarded indefinite tenure. If such as arbitration award results in continuing a bargaining unit member in employment beyond the time of the effective date of timely notice of nonrenewable of an appointment, the award shall also waive further timely-notice appointments; and with respect to a bargaining unit member whose timely notice is related to the last year before indefinite tenure must be granted (former OAR 580-021-0120 and 580-021-0125, now Oregon Tech policy), any extension of an appointment will be deemed to be in accordance with former OAR 580-021-0130, now Oregon Tech policy.

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Section 7. Arbitrator's 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 issue 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~~ but shall not include monetary damages, fines, or penalties, except for back wages or benefits consistent with this paragraph.

Section 8. Costs. All fees and expenses of the arbitrator shall be borne by the party not prevailing in the arbitration. 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 cost of any transcripts required by the arbitrator shall be divided equally between the parties and each party shall be furnished a copy thereof. If either party wishes a transcript of the hearing, it may have one made at its own expense, but shall provide the arbitrator and the other party a copy at no charge.

Oregon Tech will comply with ORS 243.798 regarding a designated representative who participates in or prepares for an arbitration proceeding.

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.

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