

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, only~~ 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) business~~ 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 ~~the written~~ Notice of Intent to Arbitrate ~~form~~ within ~~this the~~ time limit shall be deemed a waiver of the right to arbitrate ~~and a withdrawal of the underlying Grievance without the ability to refile. 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 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.~~

~~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.~~

~~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.~~

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

38
39 **Section 4.3. Selection of an Arbitrator**

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

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

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

66 **Section 4. Arbitrability.**

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

70 ~~If the motion is filed before the date of the arbitration, the moving party must file the motion with~~
71 ~~the arbitrator and opposing party no less than forty-five (45) calendar days before the date of the~~
72 ~~arbitration. Any reply must be filed with the arbitrator and moving party within seven (7) calendar~~
73 ~~days of receipt of the motion to dismiss. Sur replies are permitted only at the discretion of the~~

74 ~~arbitrator. The arbitrator shall render a decision on the arbitrability only within seven (7) calendar~~
75 ~~days from receipt of the last filing (reply or sur-reply).~~

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

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

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

85 Section 5. Submission Agreement

86 At least ~~fourteen ten (1410)~~ calendar business days in advance of the date of arbitration, the parties
87 shall meet to draft a submission agreement to include the precise issue to be submitted to
88 arbitration, which party has the burden of proof, what burden of proof will apply, a stipulation of
89 facts, joint exhibits, and any other matter designed to expedite the arbitration process. ~~At least ten~~
90 ~~(10) days in advance of the scheduled hearing, the parties shall meet to~~
91 ~~draft a submission agreement. They shall attempt to agree on the precise issue to be submitted to~~
92 ~~arbitration, a stipulation of facts, joint exhibits, and any other matter designed to expedite the~~
93 ~~arbitration process.~~

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

100 101 Section 6. Arbitrability:

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

107
108 ~~If the arbitrator has no jurisdiction to act on the issue, the arbitrator shall not hear the matter or~~
109 ~~make any decision or recommendation regarding the merits of the issue, and the parties shall split~~
110 ~~the costs of arbitration equally.~~

111
112

113 Section 6. Conduct of the Hearing

114 The arbitrator shall hold the hearing in Klamath Falls, Oregon; Salem, Oregon; Wilsonville, Oregon;
115 or, Everett, Washington, depending on the grievant(s) assigned work location during employment

116 by Oregon Tech. The parties are also free to mutually agree to any one of these locations or another
117 location.

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

119 If the arbitrator or either party requests that post-hearing briefs be submitted, the arbitrator shall
120 establish a date for the submission of such briefs and the hearing will be deemed to have been
121 closed by such date. ~~The arbitrator shall hold the hearing in Klamath Falls, Oregon, or in Wilsonville,
122 Oregon, Salem, Oregon, or Everett, Washington (depending on the location of the faculty on behalf
123 of whom the arbitration is undertaken), unless otherwise agreed to in writing by both parties. The
124 hearing shall commence at the earliest date convenient to the parties, but in no case more than forty-
125 five (45) days from the arbitrator's acceptance of the case notification of the arbitrator, unless an
126 extension of time is mutually agreed to by both partiesable otherwise.~~

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

130 Section 7. Arbitrability.

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

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

140 Section 87. Authority of the Arbitrator

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

152
153
154 In cases involving the exercise of "academic judgment," the arbitrator shall not substitute personal
155 judgment for that of the official making such judgment, but shall confine the determination to
156 whether procedural steps have been followed. If the arbitrator determines that procedural steps have
157 not been followed where an exercise of "academic judgment" is involved, the arbitrator shall direct
158 that the appropriate official in accordance with relevant procedural steps reconsider the matter. ~~The~~

159 ~~arbitrator may direct that the status quo ante be maintained until a judgment is made having properly~~
160 ~~followed appropriate procedural steps. In cases involving the exercise of “academic judgment,” the~~
161 ~~arbitrator shall not substitute personal judgment for that of the official making such judgment, but~~
162 ~~shall confine the determination to whether procedural steps have been followed. If the arbitrator~~
163 ~~determines that procedural steps have not been followed where an exercise of “academic judgment”~~
164 ~~is involved, the arbitrator shall direct that the appropriate official in accordance with relevant~~
165 ~~procedural steps reconsider the matter. The arbitrator may direct that the status quo ante be~~
166 ~~maintained until a judgment is made having properly followed appropriate procedural steps. In such~~
167 ~~case, the arbitrator may not direct that a member be reappointed, promoted, or awarded indefinite~~
168 ~~tenure. In such case, the arbitrator may not direct that a member be reappointed, promoted, or~~
169 ~~awarded indefinite tenure. The arbitrator derives authority wholly and exclusively from this~~
170 ~~Agreement. The arbitrator shall not add to, subtract from, modify, or alter the terms or provisions~~
171 ~~of this Agreement. The arbitrator shall refrain from issuing any statement, opinion, or conclusions~~
172 ~~not essential to determination of issue submitted for arbitration.~~

173
174 ~~The arbitrator’s decision-making authority shall be limited to determining whether procedures set in~~
175 ~~this Agreement have been violated, misinterpreted or misapplied, and if so, the arbitrator shall~~
176 ~~provide a remedy that makes the grievant whole.~~

177
178 ~~If an arbitrator determines that processes set in this Agreement have not been followed in cases~~
179 ~~where academic judgment is involved, the arbitrator shall direct that the matter be reconsidered by~~
180 ~~the appropriate decision maker, in accordance with the relevant process. In these cases, the~~
181 ~~arbitrator may direct that the status quo ante be maintained until a judgment is made having properly~~
182 ~~followed appropriate procedural steps.~~

183
184 ~~In cases where the exercise of “academic judgment” is being appealed, refer to Article [x] on~~
185 ~~Appeals.~~

186
187 ~~An arbitrator’s Award may be retroactive as the equities of each case may demand.~~

188
189 ~~The arbitrator shall have no authority: (i) to award monetary damages, fines or penalties, except for~~
190 ~~back pay or benefits; (ii) to make a decision limiting or interfering in any way with the powers,~~
191 ~~duties, or responsibilities of the university which have not been expressly limited by this Agreement;~~
192 ~~or (iii) to consider the discipline of members of another bargaining unit or other university~~
193 ~~employees who are not members of the bargaining unit represented by this Association in rendering~~
194 ~~a decision.~~

195
196 ~~Nothing in this Agreement precludes bargaining unit faculty members from filing or pursuing, at any~~
197 ~~time, claims alleging violations of state or federal non-discrimination or labor laws with outside~~
198 ~~agencies (like the Oregon Bureau of Labor and Industries or the Equal Employment Opportunities~~
199 ~~Commission) or courts, provided they do so within the statutory time lines.~~

200 201 Section 98. Arbitrator’s Decision Opinion and Award.

202
203 ~~The Opinion and Award of the arbitrator shall be final and binding upon the parties as to the issue~~
204 ~~submitted, provided that either party may seek to vacate such in accord with applicable law. The~~
205 ~~Opinion and Award of the arbitrator shall be issued within thirty (30) calendar days of the close of~~

206 the hearing, unless the parties have agreed to additional time, and shall be in writing setting forth
207 findings of fact, reasoning, and conclusions on the issue submitted.

208
209 An arbitrator's Award may or may not be retroactive as the equities of each case may demand, ~~but in~~
210 ~~no case shall an Award be retroactive to a date earlier than thirty (30) calendar days before the date~~
211 ~~the grievance was initially filed in accordance with Article ____: Grievance Procedures, or the date on~~
212 ~~which the act or omission occurred, whichever is later. Nor shall an arbitrator's Award~~ but shall not
213 include monetary damages, fines, or penalties, except for back wages or benefits consistent with this
214 paragraph. The arbitrator shall issue a decision within thirty (30) days of the close of the hearing
215 ~~unless the parties have formally agreed to additional time. The decision of the arbitrator shall be in~~
216 ~~writing and shall set forth findings of fact, reasoning and conclusions on the issues submitted for~~
217 ~~arbitration.~~

218
219 ~~The decision of the arbitrator shall be final and binding upon the Employer, the Association and all~~
220 ~~bargaining unit members affected, provided that any party may seek judicial review of the decision as~~
221 ~~provided by law.~~

222 223 Section 109. Costs

224
225 All fees and expenses of the arbitrator shall be borne by the party not prevailing in the arbitration
226 paid by the Employer.

227
228 Each party shall bear the cost of preparing and presenting its own case. Expenses of witnesses, if
229 any, shall be borne by the party calling the witness. The costs of any transcripts of the hearing
230 required by the arbitrator shall be divided equally between the parties and each party shall be
231 furnished a copy thereof. If either party wishes a transcript of the hearing, it may have one made at
232 its own expense and shall provide the arbitrator ~~or~~ and the other party with a copy at no charge.

233
234 ~~The compensation of any bargaining unit faculty member called as a witness and/or serving as the~~
235 ~~Association representative in an arbitration hearing shall not be reduced for a reasonable period of~~
236 ~~time to prepare for and to give testimony at the hearing, or in the case of the Association~~
237 ~~representative, to represent the Association at the hearing~~ be in accordance with ORS 243.798.
238 ~~Every effort shall be made to avoid unduly disrupting the work of any bargaining unit faculty~~
239 ~~member called to serve as a witness.~~

240
241 Oregon Tech shall comply with ORS 243.798 regarding a designated representative who participates
242 in or prepares for an arbitration proceeding.

243
244 Should a grievance be withdrawn after selection of an arbitrator, all charges by the arbitrator shall be
245 paid by the withdrawing party unless the grievance is withdrawn pursuant to a settlement of the
246 grievance. Should a grievance be withdrawn after the selection of an arbitrator, all charges by the
247 arbitrator shall be divided equally between the parties, including when the grievance is withdrawn
248 pursuant to a settlement of the grievance.

252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280

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 5183) of the decisions rendered at prior steps of the grievance procedure.~~

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

OT-AAUP Arbitration Proposal* - 02/27/2020, 06/08/2020, 7/14/2020, 09/18/2020,
10/08/2020, 10/22/2020

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

282

283 Grievant's name: _____

284 Grievant's signature: _____

285 Date: _____

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