

**OREGON TECH
PACKAGE PROPOSAL #2**

Article ___ : Disciplinary Procedures

-As Oregon Tech proposed September 17, 2020

Article ___ : Grievances

-As Oregon Tech proposed September 17, 2020

Article ___ : Arbitration

-As Oregon Tech proposed September 17, 2020

***This package proposal is presented by Oregon Tech
and must either be accepted or rejected in whole.***

***If rejected, Oregon Tech will revert to its previously
presented proposal or stated position with respect to
each of the above-mentioned proposals.***

Article ___: Disciplinary Procedures

Section 1. Disciplinary actions identified below shall be based on a finding of cause. Oregon Tech and the Association agree that, in accordance with former OAR 580-021-0325 that transferred to Oregon Tech as an institutional policy by operation of law on July 1, 2015, cause is defined as:

- A. Conviction of a felony or of a crime involving moral turpitude during the period of employment by the University (or prior thereto if the conviction was willfully concealed in applying to the University for employment);
- B. Conduct proscribed by former OAR 580-022-0045, which is identified as:
 1. Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other Oregon Tech activities, including Oregon Tech's public service functions or other authorized activities on Oregon Tech owned or controlled property or at Oregon Tech related activities and events;
 2. Obstruction or disruption that interferes with the freedom of movement, either pedestrian or vehicular, on Oregon Tech owned or controlled property or at Oregon Tech related activities and events;
 3. Possession or use of explosives, dangerous chemicals, or other dangerous weapons or instrumentalities on Oregon Tech owned or controlled property, unless authorized by law, Board, or Oregon Tech rules or policies;
 4. Detention~~or~~, physical or verbal abuse of any person or conduct intended to threaten imminent bodily harm or endanger the health of any person on any Oregon Tech owned or controlled property or at Oregon Tech related activities and events;
 5. Malicious damage, misuse or theft of Oregon Tech property, or the property of any other person where such property is located on Oregon Tech owned or controlled property, or, regardless of location, is in the care, custody or control of Oregon Tech;
 6. Refusal by any person while on Oregon Tech property to comply with an order of the President or appropriate authorized official to leave such premises because of conduct proscribed by this rule when such conduct constitutes a danger to personal safety, property, educational, or other appropriate Oregon Tech activities on such premises;

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7. Unauthorized entry to or use of Oregon Tech facilities, including buildings and grounds;
 8. Illegal use, possession, or distribution of drugs on Oregon Tech owned or controlled property or at Oregon Tech related activities and events;
 9. Inciting others to engage in any of the conduct or to perform any of the acts prohibited herein. Inciting means that advocacy of proscribed conduct that calls on the person or persons addressed for imminent action, and is coupled with a reasonable apprehension of imminent danger to the functions and purposes of Oregon Tech, including the safety of persons, and the protection of its property;
 10. Violating the Board's Policy for Intercollegiate Athletics as described in Section 8 of the Internal Management Directives, specifically including the subsection thereof entitled Code of Ethics.
- c. Failure to perform the responsibilities of an academic staff member, arising out of a particular assignment, toward students, toward the faculty member's academic discipline, toward colleagues or toward Oregon Tech in its primary educational and scholarly functions and secondary administrative functions of maintaining property, disbursing funds, keeping records, providing living accommodations and other services, sponsoring activities and protecting the health and safety of persons in the Oregon Tech community.
 - d. Insubordination, including but not limited to, refusal to teach an assigned course or directive of an appropriate administrative supervisor.
 - e. Academic misconduct, including but not limited to, plagiarism, falsifying records, misuse of funds, scientific and scholarly misconduct, or academic integrity.
 - f. Unauthorized consumption or possession of alcohol or controlled substances on Oregon Tech owned or controlled property or at Oregon Tech related activities and events.
- e.g. Violation of Oregon Tech policies, procedures, rules or regulations.

Section 2. Exceptions. Some allegations against bargaining members must be investigated in accordance with applicable laws and associated guidelines (e.g. Title VII, Title IX and Mandatory Reporting of Abuse of Minors), and in those cases, the

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procedures and standards relating to the investigation and disciplinary action, if any, of this Article shall be preempted by those laws and associated guidelines. These include discrimination and harassment as proscribed by Title VII of the Civil Rights Act of 1964, sexual assault, sexual discrimination or harassment as proscribed in Title IX of Education Amendments of 1972, and mandatory reporting of abuse of minors (ORS 419 B.010). This Article shall apply to all other situations which may require disciplinary action of a bargaining unit member.

Section 3. Progressive Discipline. When it is appropriate to do so, Oregon Tech shall adhere to the principles of progressive discipline in issuing a disciplinary action identified below to a bargaining unit member.

Progressive discipline need not be followed, and a bargaining unit member may be summarily discharged on a first offense, when the alleged conduct involves a violation of Article []: Non-Discrimination and related Oregon Tech policies, actual or potential harm to others or property, dishonesty, or a criminal conviction.

A bargaining unit member's history of discipline, whether identical in nature or not, may have a cumulative effect that results in a more severe sanction. Thus, it is expressly agreed that progressive discipline need not be sequential and that disciplinary action may be issued at any of level in Section 4, below, at Oregon Tech's discretion depending on the conduct and bargaining unit member's disciplinary record.

Section 4. Disciplinary Actions. In order to be considered disciplinary in nature and grievable under Article []: Grievances, Oregon Tech must expressly identify the action as disciplinary. Disciplinary actions may include, but are not limited to: oral reprimand with notation to file, written reprimand, and actions more severe than written reprimand. In determining whether or not to impose discipline and the severity of such discipline, Oregon Tech shall consider the faculty member's prior conduct and disciplinary record.

Within sixty (60) calendar days of the appropriate administrative supervisor's knowledge of a condition upon which a disciplinary action may issue, the appropriate administrative supervisor shall identify in writing: 1) the conduct that failed to adhere to the expected standards; 2) expectations for future behavior or performance; 3) any suggested or required remedial activities that the bargaining unit member must undertake; 4) a notation that a failure by the bargaining unit member to address concerns raised by the disciplinary action may form the basis of a subsequent disciplinary action; and, 5) inform the bargaining unit member of the right to file a grievance under Article []: Grievances.

~~**A. Oral Reprimand with Notation to File.** The disciplinary action of oral reprimand with notation to file may be imposed by an appropriate administrative supervisor if that~~

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~~individual believes there is just cause to support the action, and shall be imposed within sixty (60) calendar days of the appropriate administrative supervisor's knowledge of the condition on which the action is based. Failure by the bargaining unit member to address concerns raised by the oral reprimand with notation to file may form the basis of a subsequent disciplinary action.~~

~~**B. Written Reprimand.** The disciplinary action of written reprimand may be imposed by an administrative supervisor if that individual believes there is just cause to support the action. This action, when possible, shall be imposed within sixty (60) calendar days of the administrative supervisor's knowledge of condition on which the action is based. The written reprimand will outline the conduct that failed to adhere to the expected standards, expectations for future behavior or performance, any suggested or required remedial activities that the bargaining unit member must undertake, and a notation that a failure by the bargaining unit member to address concerns raised by the written reprimand may form the basis of a subsequent disciplinary action.~~

~~**C. Actions More Severe Than Written Reprimand.** A disciplinary action beyond written reprimand may constitute any of the following: suspension with or without pay, temporary suspension (with or without pay) or removal from the assignment for which the bargaining unit member is failing to meet professional obligations, or discharge.~~

~~If an appropriate administrative supervisor believes there is just cause to support an action more severe than a written reprimand, and the President concurs, a notice of intent to impose severe disciplinary action shall be served in person or by certified mail (with return receipt requested) to the bargaining unit member's address of record, with a corresponding email to the bargaining unit member, within sixty (60) calendar days of the administrative supervisor's knowledge of the conduct that failed to adhere to the expected standards upon which the notice is based. The notice will outline the conduct that failed to adhere to the expected standards and the disciplinary action.~~

~~Disciplinary actions more severe than a written reprimand (i.e., suspension with or without pay, removal from the assignment for which the bargaining unit member is failing to meet professional obligations, or termination) shall, in addition to including the information in the preceding paragraph, The notice shall set a date, time, and place for a meeting to occur between the appropriate administrative supervisor and bargaining unit member in which the bargaining unit member may present evidence that rebuts or mitigates the conduct upon which the notice is based. If a meeting occurs, This meeting shall be within fourteen (14) calendar days from the date of the notice and the appropriate administrative supervisor shall issue a written response to the meeting within fourteen fifteen (154) calendar business days of the meeting that either withdraws, modifies, or adheres to the disciplinary action proposed in the notice. If modified or adhered to, the~~

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disciplinary action shall include the effective date of the disciplinary action, proposed expectations for future behavior or performance, any suggested or required remedial activities that the bargaining unit member must undertake, and a notation that a failure by the bargaining unit member to address concerns raised by the notice may form the basis of a subsequent disciplinary action.

The decision to impose a disciplinary action is not stayed pending the outcome of a grievance or arbitration.

Section 5. Investigatory Suspensions. Suspension of a bargaining unit member, with pay or without pay, during the investigation of a potential disciplinary action is based on the severity of the allegation. Notice of this action shall be provided by the appropriate administrative supervisor to the bargaining unit member in writing prior to the start of the suspension outlining the reasons for the suspension, the proposed type (with or without pay) and length of suspension, and a date by which the bargaining unit member may present evidence that rebuts or mitigates the proposed type and length of suspension. A decision on any evidence presented shall issue within ~~one~~ ten (10) business days.

No notice is required when, in the judgment of the President, or designee, the presence of a bargaining unit member on Oregon Tech property presents a threat to the health, safety, or welfare of the Oregon Tech community, or represents a threat of substantial disruption or substantial interference with the normal and lawful activities of any member of the Oregon Tech community. In such circumstances, the suspension shall be with pay and the bargaining unit member will be removed and barred from Oregon Tech property pending further direction from Oregon Tech.

Section 6. If a bargaining unit member is absent for ten (10) consecutive business days without leave authorized under this Agreement during any academic or fiscal year, the bargaining unit member may be considered to have abandoned their position and voluntarily resigned from employment with Oregon Tech. Before terminating the bargaining unit member's employment, Oregon Tech shall notify the bargaining unit member by U.S. first class mail to their last known address on file with the Office of Human Resources, and by email to their work email address, and provide the bargaining unit member with at least five (5) business days to respond. If the bargaining unit member fails to respond, Oregon Tech will deem them to have resigned and that action is not subject to Article []: Grievances. If the bargaining unit member timely responds, Oregon Tech shall consider that response in determining what, if any, employment action to issue.

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Article ___: Grievance Procedures

Section 1. Purpose. The purpose of this Article is to provide a procedure that promotes the prompt and efficient resolution of grievances. The parties encourage informal resolution of grievances, whenever possible, and encourage open communication between bargaining unit members and administrators to avoid resorting to formal grievance procedures, except when unavoidable. ~~so that resort to formal procedures may not be necessary.~~

Oregon Tech is not obligated to observe any other procedure for the resolution of grievances, as that term is defined herein ~~defined~~, other than ~~that which is those~~ procedures outlined in this Article.

Section 2. Definitions.

- A. “Grievance” is an allegation that there has been a violation, misinterpretation, or improper application of the provisions of this Agreement that had a caused a direct impact/harm on to the Grievant. ~~that had a caused a direct impact/harm on to the Grievant.~~ The term “grievance” shall not include complaints related to matters of academic judgment.
- B. “Grievant” means the Association or bargaining unit members bringing forth a grievance as defined above.
- C. “Academic judgment” shall mean the judgment by ~~faculty~~ and administrators concerning: (a1) academic standards, competence, and performance as these relate to appointment, reappointment, promotion, tenure, or merit salary increases; ~~and~~ or ~~(b2)~~ curricula and educational policy.
- C.D. “Day” means ~~calendar~~ business day.

Section 3. General Provisions.

- A. A Grievant has the right of self-representation at any step in the grievance procedure and/or may choose to be accompanied by the Association’s designated official.
- B. If requested by Grievant, the Association has the right to be present at, and to participate in, any formal Step in the grievance procedure outlined below, but shall not interfere with the right of self-representation.

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- C. A bargaining unit member who is serving as the Association's grievance officer and files a grievance on their own behalf shall relinquish the role of grievance officer for the bargaining unit until their dispute is resolved.
- D. Time is of the essence in the presentation of grievances. The time limits provided below for the initial presentation of a grievance are measured from the date of the act, omission, or commencement of condition upon which the grievance is based; or from such later date that the member knew or reasonably should have known of the act, omission, or commencement of the condition upon which a grievance is based.
1. In the event the time limit expires on a Saturday, Sunday, or holiday recognized by Oregon Tech, the time limit is automatically extended to the next business day.
 2. ~~When mutually agreed upon by the parties, may agree to modify~~ the time limits in any step of the grievance procedure may be modified. Any agreement to modify the time limits must be in writing.
 3. If the grievant or Association fails to meet the specified time limits, including any written modifications thereof, at any step of the grievance procedure, the grievance shall be considered withdrawn and it cannot be resubmitted or refiled. If Oregon Tech fails to issue a response within the specified time limits, including any written modifications thereof, at any step of the grievance procedure, the grievance may be advanced to the next step of the grievance procedure.
- E. No Grievant may advance a grievance to arbitration unless it is with the approval and participation of the Association.
- F. Grievances and Notices of Intent to Arbitrate shall only be submitted on the forms attached in Appendix ___ of this Agreement (i.e., Grievance Form, Grievance Review Form, and Notice of Intent to Arbitrate). All sections of the appropriate form being submitted must be completed and signed by the Grievant.
- G. Once a grievance is filed, neither the Grievant nor the Association shall expand upon the original elements and substance of the written Grievance Form.

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H. If the matter being grieved relates to an act or omission by the Provost or the President, the grievance may be presented at Step Two or Step Three, utilizing the Grievance Form.

I. For all meetings under this Article, the parties shall inform each other at least one (1) day in advance of the meeting as to who will participate in the meeting. A failure to comply with this provision shall not act to cancel the meeting, but will act to bar attendance by those not disclosed.

I.J. A grievance may not be presented under this Article which occurred prior to the effective date of this Agreement.

I.K. Oregon Tech may deny a grievance that is not filed in accordance with this Article.

Section 4. Presentation of Grievances.

Informal Procedure. Within fifteen (15) business days, the Grievant, or the Association on behalf of the Grievant, shall file the grievance on the Grievance Form, consistent with the requirements of this Article, with the administrator most directly concerned in an attempt to resolve the grievance informally. Upon request of either party, the parties shall meet within ten (10) business days of receipt of the Grievance Form. The administrator shall provide a written response to the party filing the grievance within ten (10) business days of receiving the Grievance Form or conclusion of the meeting if one occurs.

Formal Procedure. If the grievant chooses not to initiate the informal procedure, above, or the matter is not satisfactorily resolved by the informal procedure, the following formal grievance procedure may be invoked. In no event, however, will a grievance be presented more than forty (40) business days after the act, omission, or commencement of the condition on which the grievance is based.

Step One: Dean's Level. Within ~~thirty-fourty~~ (34) ~~calendar-business~~ days, the Grievant, or the Association on behalf of the Grievant, shall file the grievance on the Grievance Form consistent with the requirements of this Article with the Dean or Dean's designee.

Upon request of either party, the parties shall meet within ~~fourteen-ten~~ (10) ~~calendar-business~~ days of receipt of the Grievance Form. The Dean or Dean's designee shall send a decision in writing to the party filing the Grievance Form within ~~fourteen-ten~~ (10) ~~calendar-business~~ days of receiving the Grievance Form

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~~or conclusion of the meeting if one occurs. of this meeting, or within fourteen (14) calendar days of receiving the Grievance Form if no meeting is held.~~

Step Two: Provost's Level. If the Grievant is not satisfied with the decision at Step One, a request for review may be filed on the Grievance Review Form with the Provost or Provost's designee within ~~fourteen-ten (104)~~ calendar-business days of the date of the decision at Step One.

Upon request of either party, the parties shall meet within ~~fourteen-ten (104)~~ calendar-business days of receipt of the Grievance Review Form. The Provost or Provost's designee shall send a decision in writing to the party filing the Grievance Review Form within ~~fourteen-ten (104)~~ calendar-business days of receiving the Grievance Review Form or conclusion of the meeting if one occurs. such meeting or within fourteen (14) calendar days of receiving the Grievance Review Form if no meeting is held.

Step Three: President's Level. If the Grievant is not satisfied with the decision at Step Two, a request for review may be filed on the Grievance Review Form with the President or President's designee within ~~fourteen-ten (104)~~ calendar-business days of the date of the decision at Step Two.

Upon request of either party, the parties shall meet with within ~~fourteen-ten (104)~~ calendar-business days of receipt of the Grievance Review Form. The President or President's designee shall send a decision in writing to the party filing the Grievance Review Form within ~~fourteen-ten (104)~~ calendar-business days of receiving the Grievance Review Form or conclusion of the meeting if one occurs. such meeting or within fourteen (14) calendar days of receiving the Grievance Review Form if no meeting is held.

Notice of Intent to Arbitrate. If the Grievant is not satisfied with the decision at Step Three, the Association may file a Notice of Intent to Arbitrate form with the President or the President's designee and General Counsel within ~~twenty-one (201)~~ calendar-business days of date of the decision at Step Three.

GRIEVANCE FORM

Informal Procedure

Formal Procedure

Name of Grievant(s): _____

Filed With: _____

Date Grievance Occurred or Discovered: _____

Article(s) Violated: _____

Statement of Grievance (identify the violation, misinterpretation, or improper application of the provisions of this Agreement): _____

Continued on separate page(s).

Remedy Requested: _____

Grievant(s) Signature: _____

Grievant(s) Phone: _____ ; Grievant(s) Email: _____

Self Represented

Represented by the following Association representative

Representative's Signature: _____

Name: _____

Phone: _____ ; Email: _____

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GRIEVANCE REVIEW FORM

STEP TWO

(Attach the original Grievance Form and decision of Dean or Dean's designee)

- I am not satisfied with the decision at Step One, or Oregon Tech failed to respond in a timely manner at Step One, and I hereby move the grievance to Step Two for review by the Provost or Provost's designee.
- I do not request a meeting. Please issue a written response to this matter within fourteen (14) calendar days from today's date, _____
[Print date].
- I request a meeting. Please schedule a meeting to discuss resolution within fourteen (14) calendar days from today's date, _____ [Print date].

Grievant(s) Signature: _____

- Self Represented
- Represented by the following Association representative

Representative's Signature: _____

Name: _____

STEP THREE

(Attach the original Grievance Form, and the decision(s) of the Dean or Dean's designee and/or Provost or Provost's Designee)

- I am not satisfied with the decision at Step Two, or Oregon Tech failed to respond in a timely manner at Step Two, and I hereby move the grievance to Step Three for review by the President or President's designee.

- I do not request a meeting. Please issue a written response to this matter within fourteen (14) calendar days from today's date, _____
[Print date].

- I request a meeting. Please schedule a meeting to discuss resolution within fourteen (14) calendar days from today's date, _____ [Print date].

Grievant(s) Signature: _____

- Self Represented
- Represented by the following Association representative

Representative's Signature: _____

Name: _____

NOTICE OF INTENT TO ARBITRATE

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

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

OT-AAUP requests _____ / does not request _____ mediation be pursued in this matter.

Name: _____
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.

Grievant's name: _____

Grievant's signature: _____

Date: _____

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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 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 with prejudice.

Section 2. Mediation. Within ~~five-ten~~ (510) ~~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~~ (510) ~~calendar business~~ days (i.e., ~~ten-twenty~~ (240) 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 ~~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 (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. 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(s) assigned work location during employment by Oregon Tech. The parties are also free to mutually agree to 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 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.

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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