

**ARTICLE 23. ARBITRATION**

**Section 1.** If the grievance brought under Article 22, Grievance Procedure, is not resolved at Step 3, the Union may submit the matter to arbitration.

**Section 2.** Notice of intent to arbitrate must be filed with the Provost within 21 days of date of issuance of the Step 3 decision.

**Section 3.** Within 10 days of receipt of the notice of intent to arbitrate, the parties shall meet to attempt to agree upon an arbitrator. If the parties are unable to agree upon an arbitrator within five days of the meeting, the party initiating arbitration shall request the Oregon Employment Relations Board to submit a list of five arbitrators with experience in higher education faculty employment cases, none of whom shall be an employee of the University, the Union, the AFL-CIO, the AFT, the AAUP, or any other labor organization, unless both parties agree otherwise in writing. The arbitrator shall be or shall have been a practicing attorney.

Each party shall alternately strike one name from the list of five. The parties will flip a coin to decide which party strikes first. The last remaining person on the list shall be selected as the arbitrator.

If the arbitrator selected cannot hold the hearing within 90 days and either party does not agree to an extension, a new list of five names shall be requested from the Oregon Employment Relations Board and the selection procedure shall be repeated.

**Section 4.** At least 10 days in advance of the scheduled hearing, the parties shall meet to draft a submission agreement. They shall attempt to agree on the precise issue to be submitted to arbitration, 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, each party shall submit its own version of the issue and the arbitrator shall decide the precise issue to be arbitrated.

**Section 5.** The arbitrator shall hold the hearing in Eugene, Oregon unless otherwise agreed in writing by the parties. The hearing shall be held without unreasonable delay upon the arbitrator's acceptance of the case.

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 record will be deemed to have been closed as of such date.

**Section 6.** In a proceeding under this Article for which there is a submission agreement, the first matter to be decided is the arbitrator's jurisdiction to act. If arbitrability is in dispute, the arbitrator shall hear the parties on the question and may take whatever evidence he or she finds relevant and necessary before determining arbitrability. Upon concluding that the issue is arbitrable, the arbitrator shall proceed with the case, with

1 each party retaining the right to seek judicial review of the arbitrator’s decision as to  
2 jurisdiction. Upon concluding that the arbitrator has no jurisdiction, the arbitrator shall  
3 not hear the matter or make any decision or recommendation regarding the merits of the  
4 case.

5  
6 In the absence of a submission agreement, the arbitrator shall first decide the issue to  
7 be arbitrated, and then the question of the arbitrator’s jurisdiction.

8  
9 **Section 7.** The arbitrator derives authority wholly and exclusively from this Agreement.  
10 The arbitrator shall not add to, subtract from, modify, or alter the terms or provisions of  
11 this Agreement. ~~The standard of proof on all matters before the arbitrator shall be~~  
12 ~~preponderance of the evidence.~~ **In discipline cases, the standard of proof shall be**  
13 **beyond a reasonable doubt. In all other cases, the standard of proof shall be**  
14 **preponderance of the evidence.** Decisions relating to promotion or tenure may be  
15 challenged exclusively through the appeal process in Article 21, Appeal from the Denial  
16 of Tenure or Promotion.

17  
18 Except as otherwise provided in this Agreement, the arbitrator shall have no authority to  
19 decide any issue relating to the merits of any academic judgment. For the purposes of  
20 this Agreement, “academic judgment” means a judgment by the University and those  
21 acting on its behalf concerning competence, performance, or academic standards. In  
22 cases involving academic judgment, the arbitrator shall not substitute his or her  
23 judgment for that of the University, nor shall the arbitrator review such decision except  
24 for the purpose of determining whether the procedural steps provided in this Agreement  
25 have been followed. If the arbitrator determines that procedural steps have not been  
26 followed where an exercise of academic judgment is involved, the arbitrator shall direct  
27 that the matter be reconsidered by the appropriate decision maker in accordance with  
28 relevant procedural steps.

29  
30 Under no circumstances may an arbitrator override an academic judgment to direct that  
31 a bargaining unit faculty member be reinstated, appointed, reappointed, promoted or  
32 awarded tenure.

33  
34 The arbitrator shall have no authority: (a) to award monetary damages, fines or  
35 penalties, except for back pay or benefits; (b) to make a decision limiting or interfering  
36 in any way with the powers, duties, or responsibilities of the University which have  
37 not been expressly limited by this Agreement; or (c) to consider the discipline of  
38 members of another bargaining unit or other University employees who are not  
39 members of the bargaining unit represented by this Union in rendering a decision.

40  
41 **Section 8.** The arbitrator shall issue a decision within 30 days of the close of the  
42 hearing unless the parties have agreed to additional time. The decision of the arbitrator  
43 shall be in writing and shall set forth findings of fact, reasoning and conclusions on the  
44 issues submitted. The decision of the arbitrator shall be final and binding upon the  
45 parties as to the issues submitted, provided that either party may seek judicial review of  
46 the decision as provided by law.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

**Section 9.** All fees and expenses of the arbitrator shall be paid by the party not prevailing in the matter.

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 will be furnished a copy. If either party wishes a transcript of the hearing, it may have one made at its own expense and shall be under no obligation to provide the arbitrator or the other party with a copy.

**Section 10.** The compensation of any bargaining unit faculty member called as a witness and/or serving as the Union 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 Union representative, to represent the Union at the hearing. Every effort shall be made to avoid unduly disrupting the work of any bargaining unit faculty member called to serve as a witness.