

This proposal has been prepared for purposes of collective bargaining only and does not represent the final form of the Article. The University reserves the right to amend or withdraw this proposal as bargaining requires.

Proposal: UNV0001
Date: February 6, 2020

ARTICLE 14: ARBITRATION

Section 1. Notice of intent to arbitrate an unresolved grievance (Appendix C) must be filed with the President of the University within twenty (20) days of the decision rendered under the provisions of Step Three.

Section 2. Within ten (10) days of receipt of 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 (5) days of the meeting, the party initiating arbitration shall request the Employment Relations Board to submit a list of five (5) arbitrators, none of whom shall be an employee of the (former) Oregon University System unless both parties have agreed to the contrary. Each party shall alternately strike a total of two (2) names from the list of five (5); the remaining person shall be selected as the arbitrator. The ~~parties~~ ~~party initiating arbitration~~ shall strike the first name on an alternating, case-to-case basis. If the arbitrator selected cannot hold the hearing or render a decision within the time limits provided herein and either party does not agree to an extension of time, the selection procedure as provided herein shall be repeated using the remaining names on the Arbitration Panel or a new list from the Employment Relations Board, as appropriate.

Section 3. Submission Agreement. As soon as practicable after the notice of intent to arbitrate has been filed, the parties shall meet to draft a joint submission agreement, which shall include a statement of the issue presented. The ~~parties~~ shall attempt to agree on the precise issue to be submitted to arbitration, stipulation of facts, joint exhibits, and any other matter designed to expedite the arbitration process.

~~If the parties are unable to agree on a joint submission agreement, the precise issue to be submitted, each party shall submit its own version of the issue to be decided by an agreed upon date. If the parties do not agree as to the issue presented, the arbitrator shall then first decide the precise issue to be arbitrated. Such decision shall be made prior to determining arbitrability.~~

Section 4. Conduct of the Hearing. The arbitrator shall hold the hearing in Monmouth, Oregon, unless otherwise agreed by the parties. When possible according to the selected arbitrator's schedule ~~the~~ hearing shall commence within fifteen days of the arbitrator's acceptance of the case, unless both parties agree to an extension of time.

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 5. Arbitrability. ~~In any proceeding under this Article for which there is a submission agreement, following the arbitrator's determination of the issue, the next first matter to be decided by the arbitrator is the arbitrator's jurisdiction to act. In the absence of a submission agreement, the arbitrator shall first decide the issue to be arbitrated as provided in Section 4 of this Article; then the arbitrator's jurisdiction shall be decided. If arbitrability is in dispute between the parties, the arbitrator shall hear argument the parties on the question before deciding the matter of arbitrability. Following argument by both parties, the arbitrator shall announce their decision as to the issue of arbitrability, which shall be announced.~~ Upon concluding that the issue is arbitrable, the arbitrator shall normally proceed with the hearing at that time, 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. Upon concluding that the arbitrator has no

Commented [CC1]: Changed to alternating for equity.

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Commented [CC3]: Edits for clarity. Consistent with Section 5.

Commented [CC4]: Added to note that the parties don't really control this.

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48 power to act, the arbitrator shall not hear the matter or make any decision or recommendation regarding the
49 merits of the issue.

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51 **Section 6. Authority of the Arbitrator.** The arbitrator shall neither add to, subtract from, modify nor alter
52 the terms or provisions of this Agreement. Except as otherwise provided in this section, the arbitrator shall
53 have no authority to hear or decide any issue or grievance related to matters involving "academic judgment"
54 as defined in Section 2, Article 13 (Grievances). In cases involving the exercise of discretion, the arbitrator
55 shall not substitute personal judgment for that of the faculty or the administrators. Nor shall the arbitrator
56 review such decision except for the purpose of determining whether the procedural steps provided in this
57 agreement have been followed. If the arbitrator determines that procedural steps have not been followed
58 where an exercise of "academic judgment" or administrative discretion is involved, the arbitrator shall direct
59 that the matter be reconsidered by the appropriate official in accordance with relevant procedural steps. In
60 no case may the arbitrator direct that a member be reappointed, promoted, or awarded indefinite tenure.
61 The arbitrator, however, may direct that the status quo ante be maintained until a judgment is made having
62 properly followed appropriate procedural steps.

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64 The arbitrator shall have no authority to award monetary damages or penalties, but may award back pay to
65 accompany an order of reinstatement.

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67 The arbitrator shall have no authority to make any decision limiting or interfering in any way with the
68 powers, duties, and responsibilities of the University and the Board which have not been expressly limited
69 by this Agreement.

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71 **Section 7. Arbitrator's Decision.** The arbitrator derives authority wholly and exclusively from the express
72 terms of this Agreement. The decision of the arbitrator shall be final and binding upon the parties as to the
73 issues submitted, provided that either party may appeal the decision on the basis of repugnance to law,
74 jurisdiction, or that the arbitrator exceeded authority granted by this Agreement.

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76 The decision of the arbitrator shall be issued within thirty (30) calendar days of the close of the hearing
77 unless the parties have agreed to additional time.

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79 The decision of the arbitrator shall be in writing and shall set forth findings of fact, reasoning, and
80 conclusions on the issue submitted and which shall include a clear statement as to the prevailing party.

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82 **Section 8. Costs.** All fees and expenses of the arbitrator shall be borne by the party not prevailing in the
83 arbitration. Where an award clearly finds each party culpable, costs will be shared equally. Each party shall
84 bear the cost of preparing and presenting its own case. Expenses of witnesses, if any, shall be borne by the
85 party calling the witness. The cost of any transcripts required by the arbitrator shall be divided equally
86 between the parties and each party shall be furnished a copy thereof. If either party wishes a transcript of
87 the hearing, it may have one made at its own expense, but shall provide the arbitrator and the other party a
88 copy at no charge.

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