ARTICLE 19 - Arbitration

Section 1. Arbitration of Grievances. If a grievance brought under Article 18 (Grievances) is not resolved at Step Three of that procedure, the Associated Academic Professionals may submit the matter to arbitration. Notice of intent to arbitrate (Appendix C) must be filed according to Article 20 - Notices and Communications within twenty (20) days of the date of the decision at Step Three. If no notice of intent to arbitrate is filed within the time limit, the right to arbitrate is thereby waived.

Section 2. Within twenty (20) days of receipt of notice of intent to arbitrate, the parties shall attempt to agree upon an arbitrator. If the parties are unable to agree upon an arbitrator within twenty (20) days, the party initiating arbitration shall request the American Arbitration Association to submit a list of five (5) arbitrators.

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 party with the burden of proof shall strike the first name.

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, a new list of five (5) names shall be requested from the American Arbitration Association and the selection procedure as provided herein shall be repeated.

Section 3. Submission Agreement. Prior to the date of arbitration, the parties shall attempt to draft a submission agreement. They 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 the precise issue to be submitted, each party shall submit its own version of the issue to be decided. The arbitrator shall then 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 La Grande, Oregon, Eastern Oregon University, unless otherwise agreed to by the parties.

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, the first matter to be decided 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 decide the question of arbitrability first, hear the parties on the question before deciding.
the matter of arbitrability, which shall be announced. 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 brought to the arbitrator's attention before the hearing, 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 within a reasonable time limit; otherwise the other party may request the arbitrator to proceed with the hearing.

Section 6. Authority of the Arbitrator. The arbitrator shall neither add to, subtract from, modify, nor alter the terms or provisions of this Agreement.

Except as otherwise provided in this section, the arbitrator shall have no authority to hear or decide any issue or grievance contesting an "academic judgment" as defined in Section 3, Article 18 (Grievances). In cases involving "academic judgment" or other administrative judgment involving the exercise of discretion, the arbitrator shall not substitute his/her judgment for that of the faculty or the administrator. Nor shall the arbitrator review such decision except for the purpose of determining whether the provisions of this Agreement have been followed. If the arbitrator determines that procedural steps have not been followed where an exercise of "academic judgment" or administrative discretion is involved, the arbitrator shall remand the matter to the appropriate official to be reconsidered in accordance with relevant procedural steps. In such case, the arbitrator may not direct that a member be reappointed, promoted, or awarded indefinite tenure. The arbitrator, however, may direct that the status quo ante be maintained until a judgment is made having properly followed appropriate procedural steps. If such as arbitration award results in continuing a member in employment beyond the time of the effective date of timely notice of nonrenewal of an appointment, the award shall also waive further timely-notice appointments; and with respect to a member whose timely notice is related to the last year before indefinite tenure must be granted (OAR 580-021-0120 and 580-021-0125), any extension of an appointment will be deemed to be in accordance with OAR 580-021-0130.

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.

The arbitrator's award may or may not be retroactive as the equalities of each case may demand, but in no case shall an award be retroactive to a date earlier than thirty (30) days before the date the grievance was initially filed, or the date on which the act or omission occurred, whichever is later.

Section 7. Arbitrator's Decision. The arbitrator derives his authority wholly and exclusively from the express terms of this Agreement. The decision of the arbitrator shall be final and binding upon the parties as to the issue submitted, provided that either party may seek to vacate the decision in accord with applicable law on the basis of repugnance to law, jurisdiction, or that the arbitrator exceeded authority granted by this Agreement.

*EOU reserves the right to add to, modify, delete, or withdraw this proposal during the course of negotiations.
The decision of the arbitrator shall be issued within thirty (30) calendar days of the close of the hearing unless the parties have agreed to additional time.

The decision of the arbitrator shall be in writing and shall set forth findings of fact, reasoning, and conclusions on the issue submitted.

**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.

**Section 9. Miscellaneous Provisions.** Except as modified by the provisions of this Agreement, arbitration proceedings shall be conducted in accordance with the then prevailing Voluntary Labor Arbitration Rules of the American Arbitration Association or, if the parties agree, in accordance with the AAA’s Expedited Arbitration Rules.

**Section 10. Precedent.** No complaint informally resolved at any stage shall constitute a precedent for any purpose.

**Tentative Agreement**

Date: \(4/16/14\)

Brian A. Caufield, EOU

Donald Wolff, AAP

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