

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

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

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

14
15 Except as otherwise provided in this Agreement, the arbitrator shall have no authority to decide
16 any issue relating to the merits of any academic judgment. For the purposes of this Agreement,
17 "academic judgment" means a judgment by the University and those acting on its behalf
18 concerning competence, performance, or academic standards. In cases involving academic
19 judgment, the arbitrator shall not substitute his or her judgment for that of the University, nor
20 shall the arbitrator review such decision except for the purpose of determining whether the
21 procedural steps provided in this Agreement have been followed. If the arbitrator determines
22 that procedural steps have not been followed where an exercise of academic judgment is
23 involved, the arbitrator shall direct that the matter be reconsidered by the appropriate decision
24 maker in accordance with relevant procedural steps.

25
26 Under no circumstances may an arbitrator override an academic judgment to direct that a
27 bargaining unit faculty member be reinstated, appointed, reappointed, promoted or awarded
28 tenure.

29
30 The arbitrator shall have no authority: (a) to award monetary damages, fines or penalties,
31 except for back pay or benefits; (b) to make a decision limiting or interfering in any way with
32 the powers, duties, or responsibilities of the University which have not been expressly limited
33 by this Agreement; or (c) to consider the discipline of members of another bargaining unit or
34 other University employees who are not members of the bargaining unit represented by this
35 Union in rendering a decision.

36
37 **Section 8.** The arbitrator shall issue a decision within 30 days of the close of the hearing unless
38 the parties have agreed to additional time. The decision of the arbitrator shall be in writing and
39 shall set forth findings of fact, reasoning and conclusions on the issues submitted. The
40 decision of the arbitrator shall be final and binding upon the parties as to the issues submitted,
41 provided that either party may seek judicial review of the decision
42 as provided by law.

43
44 **Section 9.** All fees and expenses of the arbitrator shall be paid by the party not prevailing in the
45 matter.

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

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.