

CSN's Draft Response on 3/12/18 to ARBITRATION (NFA proposal 1-26-18 as part of package 1)

Section 1. If a grievance is not resolved at Step 3, NFA may submit the matter to arbitration. Notice of intent to arbitrate must be filed with the Vice President of Academic Affairs within 30 days of issuance of the Step 3 decision.

Section 2. Within 10 days of receipt of the notice of intent to arbitrate, the parties shall meet to attempt to agree upon an arbitrator. The Arbitrator shall be selected and the hearing conducted in accordance with the rules of the American Arbitration Association. The Arbitrator shall not have the authority to vary the terms of the Agreement nor to determine that any provision is unconstitutional nor contrary to any federal or state statute or regulation, it being expressly agreed that any such determination shall be made by a court of law.

If the parties are unable to agree upon an arbitrator within five days of the meeting, NFA shall request the American Arbitration Association to submit a list of five arbitrators with experience in higher education faculty employment cases, none of whom shall be an employee of CSN, NSHE, NFA, or the AAUP, unless both parties agree otherwise in writing.

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 American Arbitration Association and the selection procedure shall be repeated.

Section 3. 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 4. The arbitrator shall hold the hearing in the Las Vegas metro area 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 5.** 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 each party retaining the right to seek judicial review of the arbitrator's decision as to jurisdiction. Upon concluding that the arbitrator has no jurisdiction, the arbitrator shall not hear the matter or make any decision or recommendation regarding the merits of the case.~~

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

Section 6. The arbitrator shall issue a decision within 30 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 issues submitted. The decision of the arbitrator shall be final and binding upon the parties as to the issues submitted, provided that either party may seek judicial review of the decision as provided by law.

Section 7. All fees and expenses of the arbitrator shall be paid by the party not prevailing in the matter before the arbitrator. 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 8. The compensation of any bargaining unit faculty member called as a witness ~~and/or serving as the NFA 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 NFA representative, to represent the NFA at the hearing.~~ ReasonableEvery effort shall be made to avoid unduly disrupting the work of any bargaining unit faculty member called to serve as a witness.