



UNITED ACADEMICS PROPOSAL

ARTICLE 16 ARBITRATION

Section 1. If the grievance brought under Article 15, 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 ~~15~~ 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 ~~40~~ 5 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, ~~another college or 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 5 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, but in no case less than 30 days or more than 90 days from the arbitrator's acceptance of the case, unless the parties agree in writing otherwise.

1 If the arbitrator or either party requests that post-hearing briefs be submitted, the
2 arbitrator shall establish a date for the submission of such briefs and the record will be
3 deemed to have been closed as of such date.

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5 **Section 6.** In a proceeding under this Article for which there is a submission agreement,
6 the first matter to be decided is the arbitrator's jurisdiction to act. ~~In the absence of a~~
7 ~~submission agreement, the arbitrator shall first decide the issue to be arbitrated, and then~~
8 ~~the question of the arbitrator's jurisdiction.~~ If arbitrability is in dispute, the arbitrator
9 shall hear the parties on the question and may take whatever evidence he or she finds
10 relevant and necessary before determining arbitrability. Upon concluding that the issue is
11 arbitrable, the arbitrator shall proceed with the hearing case, with each party retaining the
12 right to seek judicial review of the arbitrator's decision as to jurisdiction. Upon
13 concluding that the arbitrator has no jurisdiction, the arbitrator shall not hear the matter or
14 make any decision or recommendation regarding the merits of the case.

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

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19 **Section 7.** The arbitrator derives authority wholly and exclusively from this Agreement.
20 The arbitrator shall not add to, subtract from, modify, or alter the terms or provisions of
21 this Agreement. ~~The arbitrator shall refrain from issuing any statement, opinion, or~~
22 ~~conclusion not essential to the determination of the issue submitted.~~

23
24 Except as otherwise provided in this Agreement, the arbitrator shall have no authority to
25 hear or decide any issue or grievance relating to any academic judgment. ~~For purposes of~~
26 ~~this Agreement, academic judgment means a judgment by the University and those acting~~
27 ~~on its behalf concerning academic standards, competence, and performance as those~~
28 ~~relate to appointment, reappointment, promotion, tenure, discipline, termination, or merit~~
29 ~~salary increases; and concerning curricula and educational policy.~~ In cases involving
30 academic judgment, the arbitrator shall not substitute his or her judgment for that of the
31 University Administration, nor shall the arbitrator review such decision except for the
32 purpose of determining whether the procedural steps provided in this Agreement have
33 been followed. If the arbitrator determines that procedural steps have not been followed
34 where an exercise of academic judgment is involved, the arbitrator shall direct that the
35 matter be reconsidered by the appropriate decision maker in accordance with relevant
36 procedural steps. ~~With respect to matters of academic judgment, the arbitrator may not~~
37 ~~direct that the status quo ante be maintained.~~ Under no circumstances may an arbitrator
38 direct that a bargaining unit member be appointed, reappointed, reinstated, promoted or
39 awarded tenure.

40
41 The arbitrator shall have no authority: (a) to award monetary damages ~~(except for back~~
42 ~~pay or benefits), fines or penalties, except for back pay or benefits;~~ (b) to make a decision
43 limiting or interfering in any way with the powers, duties, or responsibilities of the

1 University Administration which have not been expressly limited by this Agreement; or
2 (c) ~~to order the reinstatement of any person who has been convicted of a crime or who~~
3 ~~has entered into any kind of plea, deferred prosecution, or other agreement of like~~
4 ~~character regardless of the University's past practices; or (d) to consider the discipline of~~
5 members of another bargaining unit or other University employees who are not members
6 of the bargaining unit represented by this Union, ~~or of employees of any other employer,~~
7 in rendering a decision.
8

9 **Section 7.** The arbitrator shall issue a decision within 30 days of the close of the hearing
10 unless the parties have agreed to additional time. The decision of the arbitrator shall be in
11 writing and shall set forth findings of fact, reasoning and conclusions on the issues
12 submitted. The decision of the arbitrator shall be final and binding upon the parties as to
13 the issues submitted, provided that either party may seek judicial review of the decision
14 as provided by law.
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16 **Section 8.** All fees and expenses of the arbitrator shall be paid by the party not prevailing
17 in the matter.
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19 Each party shall bear the cost of preparing and presenting its own case. Expenses of
20 witnesses, if any, shall be borne by the party calling the witness. The costs of any
21 transcripts of the hearing required by the arbitrator shall be divided equally between the
22 parties and each party will be furnished a copy. If either party wishes a transcript of the
23 hearing, it may have one made at its own expense and shall be under no obligation to
24 provide the arbitrator or the other party with a copy.
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26 **Section 9.** The compensation of any bargaining unit faculty member called as a witness
27 and/or serving as the Union representative in an arbitration hearing shall not be reduced
28 for a reasonable period of time to prepare for and to give testimony at the hearing, or in
29 the case of the Union representative, to represent the Union at the hearing. Every effort
30 shall be made to avoid unduly disrupting the work of any bargaining unit faculty member
31 called to serve as a witness.