

1 UNIVERSITY COUNTERPROPOSAL

2 1-22-13

3
4 ARTICLE 16
5 ARBITRATION
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7 **Section 1.** If the grievance brought under Article 15, Grievance Procedure is not resolved
8 at Step 3, the Union may submit the matter to arbitration.
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10 **Section 2.** Notice of intent to arbitrate must be filed with the Provost, with a copy to the
11 General Counsel, within 20 days of date of issuance of the Step 3 decision.
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13 **Section 3.** Within 15 days of receipt of the notice of intent to arbitrate, the parties shall
14 meet to attempt to agree upon an arbitrator. If the parties are unable to agree upon an
15 arbitrator within 10 days of the meeting, the party initiating arbitration shall request the
16 Oregon Employment Relations Board to submit a list of five arbitrators with experience
17 in university faculty employment cases, none of whom shall be an employee of the
18 University, another college or university, the Union, the AFL-CIO, the AFT, the AAUP
19 or any other labor organization unless both parties agree otherwise in writing. The
20 arbitrator shall be or shall have been a practicing attorney.
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22 Each party shall alternately strike one name from the list of five. The parties will flip a
23 coin to decide which party strikes first. The last remaining person on the list shall be
24 selected as the arbitrator.
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26 If the arbitrator selected cannot hold the hearing within 90 days and either party does not
27 agree to an extension, a new list of 5 names shall be requested from the Oregon
28 Employment Relations Board and the selection procedure shall be repeated.
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30 **Section 4.** At least 10 days in advance of the scheduled hearing, the parties shall meet to
31 draft a submission agreement. They shall attempt to agree on the precise issue to be
32 submitted to arbitration, a stipulation of facts, joint exhibits and any other matter
33 designed to expedite the arbitration process.
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35 If the parties are unable to agree on the precise issue to be submitted, each party shall
36 submit its own version of the issue and the arbitrator shall decide the precise issue to be
37 arbitrated, with the decision made prior to determining arbitrability.
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39 **Section 5.** The arbitrator shall hold the hearing in Eugene, Oregon unless otherwise
40 agreed in writing by the parties. The hearing shall be held without unreasonable delay
41 upon the arbitrator's acceptance of the case, but in no case less than 30 days or more than

1 90 days from the arbitrator's acceptance of the case, unless the parties agree in writing
2 otherwise.

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

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

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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 as defined in this
26 Agreement. In cases involving academic judgment, the arbitrator shall not substitute his
27 or her judgment for that of the University, nor shall the arbitrator review such decision
28 except for the purpose of determining whether the procedural steps provided in this
29 Agreement have been followed. If the arbitrator determines that procedural steps have
30 not been followed where an exercise of academic judgment is involved, the arbitrator
31 shall direct that the matter be reconsidered by the appropriate decision maker in
32 accordance with relevant procedural steps. With respect to matters of academic
33 judgment, the arbitrator may not direct that the status quo ante be maintained. Under no
34 circumstances may an arbitrator direct that a bargaining unit member be appointed,
35 reappointed, reinstated, promoted or awarded tenure. The arbitrator shall have no
36 authority to award monetary damages, fines or penalties. The arbitrator shall have no
37 authority to make a decision limiting or interfering in any way with the powers, duties, or
38 responsibilities of the University which have not been expressly limited by this
39 Agreement. The arbitrator shall have no authority to order the reinstatement of any
40 person who has been convicted of a crime or who has entered into any kind of plea,
41 deferred prosecution, or other agreement of like character regardless of the University's
42 past practices. The arbitrator shall not consider the discipline of members of another
43 bargaining unit or other University employees who are not members of the bargaining

1 unit represented by this Union, or of employees of any other employer, in rendering a
2 decision.

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4 **Section 7.** The arbitrator shall issue a decision within 30 days of the close of the hearing
5 unless the parties have agreed to additional time. The decision of the arbitrator shall be in
6 writing and shall set forth findings of fact, reasoning and conclusions on the issues
7 submitted. The decision of the arbitrator shall be final and binding upon the parties as to
8 the issues submitted, provided that either party may seek judicial review of the decision
9 as provided by law or based upon a reasonable, good faith allegation that the arbitrator
10 has misapplied a provision of this Agreement.

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12 **Section 8.** All fees and expenses of the arbitrator shall be paid by the party not prevailing
13 in the matter.

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15 Each party shall bear the cost of preparing and presenting its own case. Expenses of
16 witnesses, if any, shall be borne by the party calling the witness. The costs of any
17 transcripts of the hearing required by the arbitrator shall be divided equally between the
18 parties and each party will be furnished a copy. If either party wishes a transcript of the
19 hearing, it may have one made at its own expense and shall be under no obligation to
20 provide the arbitrator or the other party with a copy.