

1 UNIVERSITY COUNTERPROPOSAL

2 2-19-13

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 within 21 days of
11 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 higher education 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.
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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 and may take whatever evidence he or she finds
13 relevant and necessary before determining arbitrability. Upon concluding that the issue is
14 arbitrable, the arbitrator shall proceed with the hearing, with each party retaining the right
15 to seek judicial review of the arbitrator's decision as to jurisdiction. Upon concluding
16 that the arbitrator has no jurisdiction, the arbitrator shall not hear the matter or make any
17 decision or recommendation regarding the merits of the 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.

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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, nor shall the arbitrator review such decision except for the purpose of
32 determining whether the procedural steps provided in this Agreement have been
33 followed. If the arbitrator determines that procedural steps have not been followed where
34 an exercise of academic judgment is involved, the arbitrator shall direct that the matter be
35 reconsidered by the appropriate decision maker in accordance with relevant procedural
36 steps. With respect to matters of academic judgment, the arbitrator may not direct that
37 the status quo ante be maintained. Under no circumstances may an arbitrator direct that a
38 bargaining unit member be appointed, reappointed, reinstated, promoted or awarded
39 tenure.

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41 The arbitrator shall have no authority: (a) to award monetary damages (except for back
42 pay or benefits), fines or penalties; (b) to make a decision limiting or interfering in any
43 way with the powers, duties, or responsibilities of the University which have not been

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

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8 **Section 7.** The arbitrator shall issue a decision within 30 days of the close of the hearing
9 unless the parties have agreed to additional time. The decision of the arbitrator shall be in
10 writing and shall set forth findings of fact, reasoning and conclusions on the issues
11 submitted. The decision of the arbitrator shall be final and binding upon the parties as to
12 the issues submitted, provided that either party may seek judicial review of the decision
13 as provided by law.

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

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