UNIVERSITY COUNTERPROPOSAL
6-25-13

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 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 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, 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.

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 6. 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 7. The arbitrator derives authority wholly and exclusively from this Agreement. The arbitrator shall not add to, subtract from, modify, or alter the terms or provisions of this Agreement.

Except as otherwise provided in this Agreement, the arbitrator shall have no authority to hear or decide any issue or grievance relating to any academic judgment, including issues or grievances alleging discrimination in the exercise of academic judgment. For the purposes of this Agreement, “academic judgment” means a judgment by the University and those acting on its behalf concerning academic standards, competence, or performance as those relate to appointment, reappointment, promotion, tenure discipline, termination, or merit salary increases; and concerning curricula and educational policy. In cases involving academic judgment, the arbitrator shall not substitute his or her judgment for that of the University, nor shall the arbitrator review such decision except for the purpose of determining whether the procedural steps provided in this Agreement have been followed. If the arbitrator determines that procedural steps have not been followed where an exercise of academic judgment is involved, the arbitrator shall direct that the matter be reconsidered by the appropriate decision maker in accordance with relevant procedural steps.

Under no circumstances may an arbitrator direct that a bargaining unit member be appointed, reappointed, reinstated, promoted or awarded tenure. If an arbitrator finds a violation of this Agreement in a matter involving the award or denial of promotion or
tenure, his or her sole authority is to direct that the matter be reconsidered by the appropriate decision maker in consideration of the arbitrator’s opinion.

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

Section 7. 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 8. All fees and expenses of the arbitrator shall be paid by the party not prevailing in the matter.

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 9. 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.