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3 UNIVERSITY COUNTERPROPOSAL
4 7-10-13
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6 ARTICLE 16
7 ARBITRATION
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9 **Section 1.** If the grievance brought under Article 15, Grievance Procedure is not resolved
10 at Step 3, the Union may submit the matter to arbitration.
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12 **Section 2.** Notice of intent to arbitrate must be filed with the Provost within 21 days of
13 date of issuance of the Step 3 decision.
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15 **Section 3.** Within 10 days of receipt of the notice of intent to arbitrate, the parties shall
16 meet to attempt to agree upon an arbitrator. If the parties are unable to agree upon an
17 arbitrator within 5 days of the meeting, the party initiating arbitration shall request the
18 Oregon Employment Relations Board to submit a list of five arbitrators with experience
19 in higher education faculty employment cases, none of whom shall be an employee of the
20 University, the Union, the AFL-CIO, the AFT, the AAUP or any other labor organization
21 unless both parties agree otherwise in writing. The arbitrator shall be or shall have been a
22 practicing attorney.
23

24 Each party shall alternately strike one name from the list of five. The parties will flip a
25 coin to decide which party strikes first. The last remaining person on the list shall be
26 selected as the arbitrator.
27

28 If the arbitrator selected cannot hold the hearing within 90 days and either party does not
29 agree to an extension, a new list of 5 names shall be requested from the Oregon
30 Employment Relations Board and the selection procedure shall be repeated.
31

32 **Section 4.** At least 10 days in advance of the scheduled hearing, the parties shall meet to
33 draft a submission agreement. They shall attempt to agree on the precise issue to be
34 submitted to arbitration, a stipulation of facts, joint exhibits and any other matter
35 designed to expedite the arbitration process.
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37 If the parties are unable to agree on the precise issue to be submitted, each party shall
38 submit its own version of the issue and the arbitrator shall decide the precise issue to be
39 arbitrated.
40

41 **Section 5.** The arbitrator shall hold the hearing in Eugene, Oregon unless otherwise
42 agreed in writing by the parties. The hearing shall be held without unreasonable delay
43 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. If arbitrability is in
10 dispute, the arbitrator shall hear the parties on the question and may take whatever
11 evidence he or she finds relevant and necessary before determining arbitrability. Upon
12 concluding that the issue is arbitrable, the arbitrator shall proceed with the case, with each
13 party retaining the right to seek judicial review of the arbitrator's decision as to
14 jurisdiction. Upon concluding that the arbitrator has no jurisdiction, the arbitrator shall
15 not hear the matter or make any decision or recommendation regarding the merits of the
16 case.

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

20
21 **Section 7.** The arbitrator derives authority wholly and exclusively from this Agreement.
22 The arbitrator shall not add to, subtract from, modify, or alter the terms or provisions of
23 this Agreement. Decisions relating to promotion or tenure may be challenged exclusively
24 through the appeal process in Article 14, Appeal from Tenure or Promotion Denials.

25
26 Except as otherwise provided in this Agreement, the arbitrator shall have no authority to
27 ~~hear or decide any issue or grievance relating to the merits of any academic judgment;~~
28 ~~including issues or grievances alleging discrimination in the exercise of academic~~
29 ~~judgment.~~ For the purposes of this Agreement, "academic judgment" means an
30 employment decision affecting a bargaining unit faculty member based upon a judgment
31 by the University and those acting on its behalf concerning academic standards,
32 competence, performance, academic standards, as those relate to appointment,
33 reappointment, promotion, tenure discipline, termination, or merit salary increases; and
34 concerning curricula and/or educational policy. In cases involving academic judgment,
35 the arbitrator shall not substitute his or her judgment for that of the University, nor shall
36 the arbitrator review such decision except for the purpose of determining whether the
37 procedural steps provided in this Agreement have been followed. If the arbitrator
38 determines that procedural steps have not been followed where an exercise of academic
39 judgment is involved, the arbitrator shall direct that the matter be reconsidered by the
40 appropriate decision maker in accordance with relevant procedural steps.

1 | If an arbitrator determines that an academic judgment violated a provision of this
2 | Agreement, Under no circumstances may anthe arbitrator may not direct that a bargaining
3 | unit member be appointed, reappointed, or otherwise determine the outcome of any
4 | academic judgment, promoted or awarded tenure. If an arbitrator finds a violation of this
5 | Agreement in a matter involving the award or denial of promotion or tenure, In such
6 | cases, the arbitrator's his or her sole authority is to requiredirect that the matter be
7 | reconsidered by the appropriate decision maker in consideration of the arbitrator's
8 | opinion.
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10 | The arbitrator shall have no authority: (a) to award monetary damages, fines or penalties,
11 | except for back pay or benefits; (b) to make a decision limiting or interfering in any way
12 | with the powers, duties, or responsibilities of the University which have not been
13 | expressly limited by this Agreement; or (c) to consider the discipline of members of
14 | another bargaining unit or other University employees who are not members of the
15 | bargaining unit represented by this Union in rendering a decision.
16 |

17 | **Section 7.** The arbitrator shall issue a decision within 30 days of the close of the hearing
18 | unless the parties have agreed to additional time. The decision of the arbitrator shall be in
19 | writing and shall set forth findings of fact, reasoning and conclusions on the issues
20 | submitted. The decision of the arbitrator shall be final and binding upon the parties as to
21 | the issues submitted, provided that either party may seek judicial review of the decision
22 | as provided by law.
23 |

24 | **Section 8.** All fees and expenses of the arbitrator shall be paid by the party not prevailing
25 | in the matter.
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27 | Each party shall bear the cost of preparing and presenting its own case. Expenses of
28 | witnesses, if any, shall be borne by the party calling the witness. The costs of any
29 | transcripts of the hearing required by the arbitrator shall be divided equally between the
30 | parties and each party will be furnished a copy. If either party wishes a transcript of the
31 | hearing, it may have one made at its own expense and shall be under no obligation to
32 | provide the arbitrator or the other party with a copy.
33 |

34 | **Section 9.** The compensation of any bargaining unit faculty member called as a witness
35 | and/or serving as the Union representative in an arbitration hearing shall not be reduced
36 | for a reasonable period of time to prepare for and to give testimony at the hearing, or in
37 | the case of the Union representative, to represent the Union at the hearing. Every effort
38 | shall be made to avoid unduly disrupting the work of any bargaining unit faculty member
39 | called to serve as a witness.
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