

1 UNITED ACADEMICS PROPOSAL

2
3 ARBITRATION

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5 **Section 1. Arbitration of Grievances.** If a grievance is not resolved at Step 3, United
6 Academics may submit a written Notice of Intent to Arbitrate with the Provost and the General
7 Counsel of Oregon State University. Notice must be filed within twenty-one days of the written
8 response from the Provost at Step 3. Failure to file the written Notice of Intent within the time
9 limit shall be deemed a waiver of the right to arbitrate.

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11 **Section 2. Mediation.** Upon the filing of the Notice of Intent, the Parties may mutually agree in
12 writing to submit the issue to mediation through the Oregon Employment Relations Board
13 (ERB). If mediation is mutually agreed upon, United Academics will submit a request for a list
14 of mediators to the ERB. Within ten days of either party declaring in writing to the other that
15 mediation has failed to resolve the issue, United Academics will submit a request for a list of five
16 arbitrators to the ERB.

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18 **Section 3. Selection of an Arbitrator.** If the Parties do not agree to attempt mediation as
19 outlined in Section 2 or if mediation fails to resolve the issue, the Parties shall attempt to agree
20 on an arbitrator. If the Parties are unable to agree upon an arbitrator, United Academics shall
21 request the ERB to submit a list of five arbitrators, none of whom shall be an employee of
22 Oregon State University or United Academics unless both Parties agree otherwise in writing. The
23 arbitrator shall be or shall have been a practicing attorney. Each Party shall alternately strike a
24 total of two names from the list of five; the remaining person shall be selected as the arbitrator.
25 The Party with the burden of proof shall strike the first name. If the arbitrator selected cannot
26 hold the hearing within ninety days and either Party does not agree to an extension, a new list of
27 five names shall be requested from the ERB and the selection procedure shall be repeated.

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29 **Section 4. Conduct of the Hearing.** The arbitrator shall hold the hearing at or near the work
30 location of the original grievant, unless otherwise agreed to by the Parties. At least ten days in
31 advance of the scheduled hearing, the Parties shall meet to attempt to draft a submission
32 agreement. They shall attempt to agree on the precise issue to be submitted to arbitration, a
33 stipulation of facts, joint exhibits, and any other matter designed to expedite the arbitration
34 process. If the Parties are unable to agree on the precise issue to be submitted, each Party shall
35 submit its own version of the issue and the arbitrator shall decide the precise issue to be
36 arbitrated.

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38 Except as modified by the provisions of this Agreement, arbitration provisions shall be
39 conducted in accordance with the prevailing Labor Arbitration Rules of the American
40 Arbitration Association. If the arbitrator or either Party requests that post-hearing briefs be
41 submitted, the arbitrator shall establish a date for the submission of such briefs and the hearing
42 will be deemed to have been closed by such date.

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44 **Section 5. Arbitrability.** In any proceeding under this Article, the first thing to be decided is the
45 arbitrator’s jurisdiction to act. ~~If procedural arbitrability is in dispute between the Parties, the~~
46 ~~arbitrator shall decide the question of arbitrability first.~~

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2 If the issue of procedural arbitrability is raised with the arbitrator at least thirty fifteen days
3 before the date of the arbitration hearing, the arbitrator shall decide the question of procedural
4 arbitrability before the scheduled date of the arbitration. Upon concluding that the issue is
5 arbitratable, the arbitrator shall normally proceed with the scheduled date of the arbitration
6 hearing. **If arbitrability is in dispute, the arbitrator shall hear the Parties on the question and may**
7 **take whatever evidence they find relevant and necessary before determining arbitrability. Upon**
8 **concluding that the issue is arbitratable, the arbitrator will proceed with the case. Filing for such**
9 ~~review shall occur before the scheduled date of the arbitration hearing.~~ Upon concluding that the
10 arbitrator has no power to act, the arbitrator shall not hear the matter or make any decision or
11 recommendation regarding the merits of the issue.

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13 Either Party may seek judicial review of the arbitrator’s decision as to jurisdiction ~~and have the~~
14 ~~hearing on the merits delayed until such review is completed.~~

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16 **Section 6. Authority of the Arbitrator.** The arbitrator derives authority wholly and exclusively
17 from the express terms of this Agreement. The arbitrator shall neither add to, subtract from, nor
18 modify the terms of this Agreement. The arbitrator shall confine the decision solely to the
19 application and/or interpretation of this Agreement. The arbitrator shall refrain from issuing any
20 statements of opinion or conclusions not necessary to the determination of the issue submitted.

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22 The arbitrator shall have no authority to hear or decide any issue or grievance contesting an
23 “academic judgment.” Under no circumstances may an arbitrator direct that a faculty member be
24 awarded tenure or promotion. If the arbitrator determines that procedural steps have not been
25 followed, where an exercise of “academic judgment” is ~~involved~~ **directly implicated**, the
26 arbitrator shall direct that the appropriate official reconsider the matter. In such case, the
27 arbitrator may not direct that a member be reappointed.

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29 The arbitrator shall have no authority to make any decision limiting or interfering in any way
30 with the powers, duties, and responsibilities of the Employer and the Board that have not been
31 expressly limited by this Agreement.

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33 ~~The arbitrator’s award may or may not be retroactive as each case may demand, but in no case~~
34 ~~shall an award be retroactive to a date earlier than thirty (30) days before the date the grievance~~
35 ~~was initially filed, or the date on which the act or omission occurred, whichever is later.~~

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37 The arbitrator shall have no authority to award monetary damages, fines, or penalties, except
38 for back pay and benefits, when applicable.

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40 **Section 7. Arbitrator’s Decision.** The decision of the arbitrator shall be final and binding upon
41 the Parties as to the issue submitted, provided that either Party may seek to vacate the decision in
42 accordance with applicable law. The decision of the arbitrator shall be issued within thirty days
43 of the close of the hearing unless the Parties have agreed to additional time. The decision of the
44 arbitrator shall be in writing and shall set forth findings of fact, reasoning, and conclusions on the
45 issue submitted.

1 **Section 8. Costs.** All fees and expenses of the arbitrator shall be borne by the Party not
2 prevailing in the arbitration. Where an award clearly finds each Party culpable, costs will be
3 shared equally. Should a grievance be withdrawn after selection of an arbitrator, all charges by
4 the arbitrator shall be paid by the withdrawing Party. If the grievance is withdrawn pursuant to a
5 settlement of the grievance, costs will be shared equally if not otherwise stipulated in the
6 settlement. Each Party shall bear the cost of preparing and presenting its own case. Expenses of
7 witnesses, if any, shall be borne by the Party calling the witness. The cost of any transcripts
8 required by the arbitrator shall be divided equally between the Parties and each party shall be
9 furnished a copy thereof. If either Party wishes a transcript of the hearing, it may have one made
10 at its own expense, but shall provide the arbitrator and the other Party a copy at no charge.

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12 **Section 9. Precedent.** No complaint informally resolved at any stage shall constitute a
13 precedent for any purpose.