

1 UNITED ACADEMICS PROPOSAL

2  
3 ARBITRATION

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5 **Section 1. Arbitration of Grievances.** If the a grievance is not resolved at the third level Step 3,  
6 only the Union United Academics may submit a written Notice of Intent to Arbitrate with the  
7 Provost and General Counsel of the Oregon State University. Notice must be filed within 24  
8 twenty-one days of the written response from the Provost level. Failure to file the written Notice  
9 of Intent within the time 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 to arbitrate Notice of Intent, the pParties may  
12 mutually agree in writing to submit the issue to mediation through the Oregon Employment  
13 Relations Board (ERB). Agreement to do this must be made in writing by both parties within 5  
14 days of the date of the Notice of Intent to Arbitrate. If mediation is mutually agreed upon, the  
15 Union may United Academics will submit it's a request for a list of mediators to the Oregon  
16 Employment Relations Board (ERB). If mediation fails to resolve the issue, the Union may  
17 Within ten days of either Party declaring in writing to the other that mediation has failed to  
18 resolve the issue, the Employer will then submit its a request for a list of five arbitrators to the  
19 ERB within 10 days of either party declaring in writing to the other that mediation has failed to  
20 resolve the issue.

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22 **Section 3. Selection of an Arbitrator.** If the pParties do not agree to attempt mediation as  
23 outlined in Section 2 or if mediation fails to resolve the issue, the pParties shall attempt to agree  
24 on an arbitrator. If the pParties are unable to agree upon an arbitrator, the party initiating  
25 arbitration United Academics shall request the ERB to submit a list of 5 five arbitrators, none of  
26 whom shall be an employee of Oregon State University or United Academics unless both Parties  
27 agree otherwise in writing. The arbitrator shall be or shall have been a practicing attorney. Each  
28 pParty shall alternately strike a total of 2 two names from the list of 5 five; the remaining person  
29 shall be selected as the arbitrator. The pParty with the burden of proof shall strike the first name.  
30 If the arbitrator selected cannot hold the hearing within ninety days and either pParty does not  
31 agree to an extension, a new list of 5 five names shall be requested from the Oregon Employment  
32 Relations Board ERB and the selection procedure shall be repeated.

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

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43 Except as modified by the provisions of this Agreement, arbitration provisions shall be  
44 conducted in accordance with the prevailing Labor Arbitration Rules of the American  
45 Arbitration Association. If the arbitrator or either pParty requests that post-hearing briefs be  
46 submitted, the arbitrator shall establish a date for the submission of such briefs and the hearing

1 will be deemed to have been closed by such date.

2  
3 **Section 5. Arbitrability.** In any proceeding under this aArticle, the first thing to be decided is  
4 the arbitrator’s jurisdiction to act. If arbitrability is in dispute between the pParties, the arbitrator  
5 shall decide the question of arbitrability first.

6  
7 ~~If T~~the issue of arbitrability ~~may be~~ **is** raised with the arbitrator **at least thirty days** before the date  
8 of the arbitration **hearing** ~~or at the beginning of the arbitration. If arbitrability is in dispute~~  
9 ~~between the parties,~~ the arbitrator shall decide the question of arbitrability **first before the**  
10 **scheduled date of the arbitration.** Upon concluding that the issue is arbitrable, the arbitrator shall  
11 normally proceed with ~~the hearing at that time, or the scheduled date~~ **of the arbitration hearing.**

12  
13 **The issue of arbitrability may not be raised within thirty days of the scheduled date of the**  
14 **arbitration.**

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16 ~~if the issue of arbitrability was brought to the arbitrator’s attention before the hearing, provided~~  
17 ~~that e~~Either pParty may seek judicial review of the arbitrator’s decision as to jurisdiction and  
18 have the hearing on the merits delayed until such review is completed. Filing for such review  
19 shall occur ~~at any time~~ **before the scheduled date of the arbitration hearing.**

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21 Upon concluding that the arbitrator has no power to act, the arbitrator shall not hear the matter or  
22 make any decision or recommendation regarding the merits of the issue.

23  
24 **Section 6. Authority of the Arbitrator.** The arbitrator derives authority wholly and exclusively  
25 from the express terms of this Agreement. The arbitrator shall neither add to, subtract from, nor  
26 modify the terms of this Agreement. The arbitrator shall confine the decision solely to the  
27 application and/or interpretation of this Agreement. The arbitrator shall refrain from issuing any  
28 statements of opinion or conclusions not necessary to the determination of the issue submitted.

29  
30 The arbitrator shall have no authority to hear or decide any issue or grievance contesting an  
31 “academic judgment.” Under no circumstances may an arbitrator direct that a faculty member be  
32 awarded tenure or promotion. ~~In cases involving “academic judgment” or other administrative~~  
33 ~~judgment involving the exercise of discretion i~~f the arbitrator determines that procedural steps  
34 have not been followed where an exercise of “academic judgment” is involved, the arbitrator  
35 shall direct that the appropriate official ~~in accordance with relevant procedural steps~~ reconsider  
36 the matter. ~~In such case, the arbitrator may not direct that a member be reappointed.~~

37  
38 The arbitrator shall have no authority to make any decision limiting or interfering in any way  
39 with the powers, duties, and responsibilities of the **Employer** University and the Board ~~which~~  
40 **that** have not been expressly limited by this Agreement.

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

1 The arbitrator shall have no authority to award monetary damages, fines, or penalties, except  
2 for back pay and benefits.

3  
4 **Section 7. Arbitrator's Decision.** The decision of the arbitrator shall be final and binding upon  
5 the pParty as to the issue submitted, provided that either pParty may seek to vacate the decision  
6 in accordance with applicable law. The decision of the arbitrator shall be issued within thirty (30)  
7 calendar days of the close of the hearing unless the pParties have agreed to additional time. The  
8 decision of the arbitrator shall be in writing and shall set forth findings of fact, reasoning, and  
9 conclusions on the issue submitted.

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11 **Section 8. Costs.** All fees and expenses of the arbitrator shall be borne by the pParty not  
12 prevailing in the arbitration. Where an award clearly finds each pParty culpable, costs will be  
13 shared equally. Should a grievance be withdrawn after selection of an arbitrator, all charges by  
14 the arbitrator shall be paid by the withdrawing pParty. ~~unless~~ If the grievance is withdrawn  
15 pursuant to a settlement of the grievance, costs will be shared equally if not otherwise stipulated  
16 in the settlement. Each pParty shall bear the cost of preparing and presenting its own case.  
17 Expenses of witnesses, if any, shall be borne by the pParty calling the witness. The cost of any  
18 transcripts required by the arbitrator shall be divided equally between the pParties and each  
19 pParty shall be furnished a copy thereof. If either pParty wishes a transcript of the hearing, it  
20 may have one made at its own expense, but shall provide the arbitrator and the other pParty a  
21 copy at no charge.

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