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Arbitration

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6 **Section 1. Arbitration of Grievances.** If the grievance is not resolved at the third level, only the Union may
7 submit a written Notice of Intent to Arbitrate with the Provost and General Counsel of the University.
8 Notice must be filed within 21 days of the written response from the Provost level. Failure to file the
9 written Notice of Intent within the time limit shall be deemed a waiver of the right to arbitrate.

10 **Section 2. Mediation.** Upon the filing of the notice to arbitrate, the parties may mutually agree in writing
11 to submit the issue to mediation through the Oregon Employment Relations Board. Agreement to do this
12 must be made in writing by both parties within 5 days of the date of the Notice of Intent to Arbitrate. If
13 mediation is mutually agreed upon, the Union may submit its request for a list of mediators to the Oregon
14 Employment Relations Board (ERB). If mediation fails to resolve the issue, the Union may then submit its
15 request for a list of arbitrators to the ERB within 10 days of either party declaring in writing to the other
16 that mediation has failed to resolve the issue.

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

26 **Section 4. Conduct of the Hearing.** The arbitrator shall hold the hearing in Corvallis, Oregon, Oregon
27 State University, unless otherwise agreed to by the parties. At least ten days in advance of the scheduled
28 hearing, the Parties shall meet to attempt to draft a submission agreement. They shall attempt to agree
29 on the precise issue to be submitted to arbitration, a stipulation of facts, joint exhibits, and any other
30 matter designed to expedite the arbitration process. If the Parties are unable to agree on the precise
31 issue to be submitted, each Party shall submit its own version of the issue and the arbitrator shall decide
32 the precise issue to be arbitrated.

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34 Except as modified by the provisions of this Agreement, arbitration provisions shall be conducted in
35 accordance with the prevailing Labor Arbitration Rules of the American Arbitration Association. If the
36 arbitrator or either party requests that post-hearing briefs be submitted, the arbitrator shall establish a
37 date for the submission of such briefs and the hearing will be deemed to have been closed by such date.
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39 **Section 5. Arbitrability.** In any proceeding under this article, the first thing to be decided is the arbitrator's
40 jurisdiction to act. If arbitrability is in dispute between the parties, the arbitrator shall decide the question
41 of arbitrability first. The issue of arbitrability may be raised with the arbitrator before the date of the

1 arbitration or at the beginning of the arbitration. If arbitrability is in dispute between the parties, the
2 arbitrator shall decide the question of arbitrability first. Upon concluding that the issue is arbitrable, the
3 arbitrator shall normally proceed with the hearing at that time, or the scheduled date if the issue of
4 arbitrability was brought to the arbitrator’s attention before the hearing, provided that either party may
5 seek judicial review of the arbitrator’s decision as to jurisdiction and have the hearing on the merits
6 delayed until such review is completed. Filing for such review shall occur at any time. Upon concluding
7 that the arbitrator has no power to act, the arbitrator shall not hear the matter or make any decision or
8 recommendation regarding the merits of the issue.

9 **Section 6. Authority of the Arbitrator.** The arbitrator derives authority wholly and exclusively from the
10 express terms of this Agreement. The arbitrator shall neither add to, subtract from, nor modify the terms
11 of this Agreement. The arbitrator shall confine the decision solely to the application and/or interpretation
12 of this Agreement. The arbitrator shall refrain from issuing any statements of opinion or conclusions not
13 necessary to the determination of the issue submitted. The arbitrator shall have no authority to hear or
14 decide any issue or grievance contesting an “academic judgment.” Under no circumstances may an
15 arbitrator direct that a faculty member be awarded tenure or promotion.

16 In cases involving “academic judgment” or other administrative judgment involving the exercise of
17 discretion if the arbitrator determines that procedural steps have not been followed where an exercise of
18 “academic judgment” is involved, the arbitrator shall direct that the appropriate official in accordance
19 with relevant procedural steps reconsider the matter. In such case, the arbitrator may not direct that a
20 member be reappointed.

21 The arbitrator shall have no authority to make any decision limiting or interfering in any way with the
22 powers, duties, and responsibilities of the University and the Board which have not been expressly limited
23 by this Agreement.

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

27 The arbitrator shall have no authority to award monetary damages, fines, or penalties, except for back
28 pay.
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30 **Section 7. Arbitrator’s Decision.** The decision of the arbitrator shall be final and binding upon the parties
31 as to the issue submitted, provided that either party may seek to vacate the decision in accordance with
32 applicable law. The decision of the arbitrator shall be issued within thirty (30) calendar days of the close
33 of the hearing unless the parties have agreed to additional time. The decision of the arbitrator shall be in
34 writing and shall set forth findings of fact, reasoning, and conclusions on the issue submitted.

35 **Section 8. Costs.** All fees and expenses of the arbitrator shall be borne by the party not prevailing in the
36 arbitration. Where an award clearly finds each party culpable, costs will be shared equally. Should a
37 grievance be withdrawn after selection of an arbitrator, all charges by the arbitrator shall be paid by the
38 withdrawing party unless the grievance is withdrawn pursuant to a settlement of the grievance. Each party
39 shall bear the cost of preparing and presenting its own case. Expenses of witnesses, if any, shall be borne
40 by the party calling the witness. The cost of any transcripts required by the arbitrator shall be divided
41 equally between the parties and each party shall be furnished a copy thereof. If either party wishes a

- 1 transcript of the hearing, it may have one made at its own expense, but shall provide the arbitrator and
- 2 the other party a copy at no charge.
- 3 **Section 9. Precedent.** No complaint informally resolved at any stage shall constitute a precedent for any
- 4 purpose.