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Arbitration

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

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

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

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

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

4 If the issue of **procedural** arbitrability is raised with the arbitrator at least ~~thirty~~ **fifteen** days before the
5 date of the arbitration hearing, the arbitrator shall decide the question of **procedural** arbitrability before
6 the scheduled date of the arbitration. Upon concluding that the issue is arbitratable, the arbitrator shall
7 normally proceed with the scheduled date of the arbitration hearing.

8 ~~The issue of arbitrability may not be raised within thirty days of the scheduled date of the arbitration.~~

9 Either Party may seek judicial review of the arbitrator’s decision as to jurisdiction and have the hearing
10 on the merits delayed until such review is completed. Filing for such review shall occur before the
11 scheduled date of the arbitration hearing.

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

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

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

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

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

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

38 **Section 8. Costs.** All fees and expenses of the arbitrator shall be borne by the Party not prevailing in the
39 arbitration. Where an award clearly finds each Party culpable, costs will be shared equally. Should a

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

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