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3 **ARTICLE 23. ARBITRATION**

4 **Section 1.** If the grievance brought under Article 22, Grievance Procedure, is not
5 resolved at Step 3, the Union may submit the matter to arbitration.

6 **Section 2.** Notice of intent to arbitrate must be filed with the Provost within 21 days of date
7 of issuance of the Step 3 decision.

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9 **Section 3.** Within 10 days of receipt of the notice of intent to arbitrate, the parties shall meet to
10 attempt to agree upon an arbitrator. If the parties are unable to agree upon an arbitrator within
11 five days of the meeting, the party initiating arbitration shall request the Oregon Employment
12 Relations Board to submit a list of five arbitrators with experience in higher education faculty
13 employment cases, none of whom shall be an employee of the University, the Union, the AFL-
14 CIO, the AFT, the AAUP, or any other labor organization, unless both parties agree otherwise
15 in writing. The arbitrator shall be or shall have been a practicing attorney.

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17 Each party shall alternately strike one name from the list of five. The parties will flip a coin
18 to decide which party strikes first. The last remaining person on the list shall be selected as
19 the arbitrator.
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21 If the arbitrator selected cannot hold the hearing within 90 days and either party does not agree
22 to an extension, a new list of five names shall be requested from the Oregon Employment
23 Relations Board and the selection procedure shall be repeated.
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25 **Section 4.** At least 10 days in advance of the scheduled hearing, the parties shall meet to draft
26 a submission agreement. They shall attempt to agree on the precise issue to be submitted to
27 arbitration, a stipulation of facts, joint exhibits, and any other matter designed to expedite the
28 arbitration process.

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30 If the parties are unable to agree on the precise issue to be submitted, each party shall submit
31 its own version of the issue and the arbitrator shall decide the precise issue to be arbitrated.
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33 **Section 5.** The arbitrator shall hold the hearing in Eugene, Oregon unless otherwise agreed in
34 writing by the parties. The hearing shall be held without unreasonable delay upon the
35 arbitrator’s acceptance of the case, ~~but in no case less than 30 days or more than 90 days from~~
36 ~~the arbitrator’s acceptance of the case, unless the parties agree in writing otherwise.~~

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38 If the arbitrator or either party requests that post-hearing briefs be submitted, the arbitrator
39 shall establish a date for the submission of such briefs and the record will be deemed to
40 have been closed as of such date.
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42 **Section 6.** In a proceeding under this Article for which there is a submission agreement, the
43 first matter to be decided is the arbitrator’s jurisdiction to act. If arbitrability is in dispute, the
44 arbitrator shall hear the parties on the question and may take whatever evidence he or she finds
45 relevant and necessary before determining arbitrability. Upon concluding that the issue is

1 arbitrable, the arbitrator shall proceed with the case, with each party retaining the right to seek
2 judicial review of the arbitrator's decision as to jurisdiction. Upon concluding that the
3 arbitrator has no jurisdiction, the arbitrator shall not hear the matter or make any decision or
4 recommendation regarding the merits of the case.

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

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9 **Section 7.** The arbitrator derives authority wholly and exclusively from this Agreement. The
10 arbitrator shall not add to, subtract from, modify, or alter the terms or provisions of this
11 Agreement. The standard of proof on all matters before the arbitrator shall be preponderance of
12 the evidence. Decisions relating to promotion or tenure may be challenged exclusively through
13 the appeal process in Article 21, Appeal from the Denial of Tenure or Promotion.

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15 Except as otherwise provided in this Agreement, the arbitrator shall have no authority to decide
16 any issue relating to the merits of any academic judgment. For the purposes of this Agreement,
17 "academic judgment" means a judgment by the University and those acting on its behalf
18 concerning competence, performance, or academic standards. In cases involving academic
19 judgment, the arbitrator shall not substitute his or her judgment for that of the University, nor
20 shall the arbitrator review such decision except for the purpose of determining whether the
21 procedural steps provided in this Agreement have been followed. If the arbitrator determines
22 that procedural steps have not been followed where an exercise of academic judgment is
23 involved, the arbitrator shall direct that the matter be reconsidered by the appropriate decision
24 maker in accordance with relevant procedural steps.

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26 Under no circumstances may an arbitrator override an academic judgment to direct that a
27 bargaining unit faculty member be reinstated, appointed, reappointed, promoted or awarded
28 tenure.

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30 The arbitrator shall have no authority: (a) to award monetary damages, fines or penalties,
31 except for back pay or benefits; (b) to make a decision limiting or interfering in any way with
32 the powers, duties, or responsibilities of the University which have not been expressly limited
33 by this Agreement; or (c) to consider the discipline of members of another bargaining unit or
34 other University employees who are not members of the bargaining unit represented by this
35 Union in rendering a decision.

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37 **Section 8.** The arbitrator shall issue a decision within 30 days of the close of the hearing unless
38 the parties have agreed to additional time. The decision of the arbitrator shall be in writing and
39 shall set forth findings of fact, reasoning and conclusions on the issues submitted. The
40 decision of the arbitrator shall be final and binding upon the parties as to the issues submitted,
41 provided that either party may seek judicial review of the decision
42 as provided by law.

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44 **Section 9.** All fees and expenses of the arbitrator shall be paid by the party not prevailing in the
45 matter.

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Each party shall bear the cost of preparing and presenting its own case. Expenses of witnesses, if any, shall be borne by the party calling the witness. The costs of any transcripts of the hearing required by the arbitrator shall be divided equally between the parties and each party will be furnished a copy. If either party wishes a transcript of the hearing, it may have one made at its own expense and shall be under no obligation to provide the arbitrator or the other party with a copy.

Section 10. The compensation of any bargaining unit faculty member called as a witness and/or serving as the Union representative in an arbitration hearing shall not be reduced for a reasonable period of time to prepare for and to give testimony at the hearing, or in the case of the Union representative, to represent the Union at the hearing. Every effort shall be made to avoid unduly disrupting the work of any bargaining unit faculty member called to serve as a witness.