

VI. Article 12 Appointment

San Francisco Issue:

Article 12 is the main contractual repository for the all-important employment or "appointment" rights of CSU temporary faculty (lecturers). In part because lecturers comprise approximately one half of CFA's bargaining unit -- and in part because temporary employees (even those with long periods of CSU employment) have traditionally been considered by administrators as the underclass of faculty employment -- this article has generated significant controversy and animosity between the Parties since the inception of bargaining in 1983. Article 12 bargaining has been fiercely difficult, and Article 12 enforcement has generated far more grievance activity than any other contract article.

A Different Approach

Understanding that Article 12 would once again become a battlefield, the Parties used a "facilitated discussion" mode to examine Article 12 with the assistance of the same mediator used in San Francisco. Those discussions became productive when a basic understanding was reached: CSU would work from the existing contract language, removing "take backs" and other draconian proposals from the table; and CFA would agree to help CSU "fix" a number of legitimate operational issues that had arisen in Article 12 and had become the topic of various grievances.

San Francisco

Ultimately, the facilitated discussions led to the construction of what the Parties termed a "Common Understanding" draft that embodied agreement on virtually every issue that had separated them, leaving only a few items for continued examination. [Attachment VI-1] Those matters were subsequently addressed in the San Francisco sessions and a "meeting of the minds" was reached on all Article 12 issues - an agreement then reflected in contract language. [Attachment VI-2] As with other contract articles agreed upon in San Francisco, when CFA refused CSU's inadequate salary offer, CSU left the talks and refused to sign the agreement reached on Article 12.

Subsequently, a high CSU official assured CFA on multiple occasions that the San Francisco agreement on Article 12 would stand - a message also conveyed both privately and publicly in front of the CFA Bargaining Team at the beginning of the mediation phase of impasse. Those assurances, however, were dashed on November 20 when CSU brought to the table in its mediation "proposal" with modifications of the San Francisco agreement. [Attachment VI-3] This proposal "cherry picked" Union compromises previously made, and added new language previously rejected by the Union. [Attachment VI-4]

Where the Parties had previously agreed to retain the phrase "teaching associates" in Section 30's order of hiring for temporary employees (while also agreeing to limit the total number of such student employees in Section 12.32), now CSU added the phrase "and other

student employees" as also exempted from the hiring order for temporary employees -- a group not previously referenced in prior contracts' order of hiring and one not limited in the newly agreed-upon language. [Attachment VI - 5] Thus, CSU again swung open the door to the unlimited employment of under-qualified, "cheap labor" students to displace lecturers from the work they had historically performed.

"Best Qualified"

Also in the November 20 proposal, CSU changed existing contract language requiring that a lecturer be "qualified" for any work sought under the contract's order of hiring language to a requirement that in order to claim and be hired for such work the incumbent lecturer must be "best qualified." [Attachment VI-6] Under the expired contract, a lecturer is considered "qualified" for assignment to available temporary work based on simple tests: having previously taught the course in question satisfactorily based on evaluations, or being otherwise qualified based on such things as experience, academic training, etc. No comparative judgment among candidates was required and qualified incumbent employees had first opportunity to teach available classes in preference over new hires.⁶

Under the new CSU scheme, however, incumbent lecturers could be displaced based on nothing more than the subjective claim that a new employee (one who may never have taught previously in the CSU or anywhere else for that matter) seems "better on paper." In that regard, where CSU starts from the premise that it wishes to reduce the number of operational problems and grievance filings attendant to them (in Article 12, for instance), it ends up with a proposal that (under the expanded definition of grievance required by the Education Code) will inexorably lead the Parties to an endless number of grievances and arbitrations solely over subjective judgments as to whether Candidate A is better or "more better" than Candidate B.

CFA Position:

CFA stands by the agreement reached in San Francisco on Article 12. There will be no agreement on this contract if the CSU succeeds in renegeing on any portion of that agreement through addition or subtraction.

⁶ In instances where multiple incumbent lecturers with the same rank in the order of hiring are found to be "qualified," selection of the lecturer to actually perform the work in question is left to the department chair.