

To: CFA Board, staff, chapter presidents,
faculty rights reps, representation committee
From: Edward R. Purcell, CFA Director of Representation

Re: YRO Arbitration Decision

Date: Oct. 16, 2003

I am pleased to transmit to you here a copy of Arbitrator Andrea Knapp's long-awaited decision concerning Year-Round Operations (YRO). Although long overdue for reasons referenced by the Arbitrator in her cover letter, in a very traditional sense the decision is certainly "worth the wait" both for its content and its well-reasoned approach to a variety of complicated legal and bargaining issues. As I will explain in some detail below, the decision — while not supporting the CFA position on all points — resolves critical YRO pay, workload, and service credit (primarily for lectures) in CFA's favor. The effect of the award will be to cause retroactive salary and service credit awards to hundreds, if not thousands, of Unit 3 faculty who taught YRO in 2001, 2002, or 2003!

Background

This statewide CFA grievance arose when CSU implemented terms and conditions of employment for 2001 YRO on most CSU campuses¹ without completing then-current YRO negotiations with CFA. Because of CSU delaying tactics, it was impossible to bring this case to hearing until late 2002 following completion of 2002 YRO, which again operated under CSU-dictated terms.

During four days of hearings, a voluminous record was taken in which CFA presented two fundamental cases theories structured as "either/or" propositions: 1) CSU had committed an unfair labor practice and violation of Article 3 when it unilaterally imposed YRO terms and conditions of employment without the full discharge of its statutory bargaining obligation; or 2) If CSU had not bargained in bad faith because it had done no more than apply existing terms and conditions of employment to YRO (as CSU argued), then it could not selectively pick and choose which portions of the MOU would be honored in YRO. In essence, CSU could not "have its cake and eat it too." If it wanted different working conditions in YRO, those needed to be bargained; if it did not want to bargain, it had to honor all existing contractual terms in YRO.

Of those two options, the Arbitrator selected the second approach, insisting that all provisions of the MOU reasonably applicable to YRO had to be honored. In this context she examined each contractual claim presented by CFA (including several related campus-based grievances) to determine the propriety of CSU's actions. The following are some of her more significant findings:

¹ Humboldt State and Sacramento State operated under separate, campus-negotiated YRO agreements.

Contract Issues

1. **SALARY** — Most CSU campuses sought to maximize their “profit” in YRO by assigning faculty to Extension job classifications, which pay substantially less than rates associated with regular academic ranks (for both tenure-track faculty and lecturers). The Arbitrator rejected this approach opining both that the YRO work (by the CSU’s own standards) was essentially the same as performed during regular terms, and that there was no reason to extend Extension classifications to a form of employment for which they had never been intended.

As a result of this ruling, large numbers of faculty will be entitled to the retroactive payment of the difference between their Extension classification earnings and what they would have received if compensated at their regular salaries.

2. **WORKLOAD** — One of the more hotly contested issues concerned whether faculty entitled to be paid on the basis of 1/24th of their salary for each WTU (CFA’s position) or 1/30th of salary for each WTU (the CSU position). This dispute, put another way, centered on whether YRO faculty would automatically receive indirect instructional credit in conjunction with their direct instructional work.

Despite an earlier, negative ruling at Stanislaus by this same Arbitrator which seemed to bode poorly for the Union’s chances on this point, this time out (despite some equivocation) she ruled that if indirect instructional work had actually been performed, WTUs must be awarded and paid. Although she reaffirmed that the link between direct and indirect instructional credit is an enforceable past practice during regular terms, she developed this unique approach for YRO because there was previously no YRO and therefore, no past practice.

To comply with this portion of the ruling, CSU will have to audit work actually performed or somehow determine if any indirect instructional activity occurred during ’01, ’02, or ’03. If it did, it must be compensated at this time.

3. **SERVICE CREDIT** — CSU argued that faculty did not earn various forms of service credit during YRO even if part-time and even if 100% of allowable credit had not been earned by virtue of work during the regular academic year. Here again, the Arbitrator rejected the CSU position as it applied to most contract articles. Of particular importance, service credit must now be awarded to lecturers in a variety of areas such as credit toward multiple-year contracts, salary-step advancement and fee waiver eligibility.

4. **LEAVE ACCRUAL** — According to the Arbitrator, sick leave accrual is a factor of “qualifying pay periods,” and she could find no contract language to exclude pay periods in YRO from that term. Hence, faculty accrue sick leave during time worked in YRO. She did, however, find a contractual basis to exclude YRO service from the calculation of Family Medical Leave and Sabbatical Leave eligibility.

5. **LEAVE USAGE** — Here, too, the Arbitrator could find no contractual basis for denying faculty employed in YRO from using sick leave or bereavement leave, for instance, during YRO employment periods. This ruling should apply prospectively and allow for those denied leave or improperly charged leave during the '01-'03 period to seek recoupment or reimbursement.

6. **ACADEMIC YEAR/ADDITIONAL WORK RESTRICTION** — Curiously, the Arbitrator ruled against the Union on what it believed to be two of its strongest issues, the 180 academic year limit and contractual additional work restrictions. In essence, she ruled that neither applied to YRO. In so doing, however, she also noted the unusual complications that would have accrued for all if she had sustained the Union's position. (Perhaps we can be happy she did not.)

Campus Grievances

CFA did not fare as well in the disposition of campus-based grievances, which had been consolidated with the statewide case for hearing. With the exception of a Sonoma grievance related to the award of indirect instructional credit (where the same ruling as described above was made), the Arbitrator rejected a FERP issue from Dominguez Hills, a bargaining issue from Humboldt, and a Union leave issue from Hayward. In regard to the union leave issue, however, the Arbitrator did make clear that if the CFA president was working YRO as part of her/his normal academic year (and not as "extra" work) the leave provision would apply.

Important Dicta

Many arbitration awards take on additional importance because of the way a ruling is crafted and stated, and not just the result of the award itself. Here, at least three important concepts have been reinforced:

- 1) As referenced above, the Arbitrator has reaffirmed the connection between direct and indirect instruction. This will become increasingly important in difficult budgetary times as CSU tries to force faculty to engage in more direct instruction as part of their overall loads while reducing credit (payment) for indirect instruction.
- 2) In establishing what current contract requirements exist and apply to YRO, the Arbitrator has put CSU on notice that if it wants to do differently in the future, those changes need to be bargained with CFA. Since it is reasonable to suppose that CSU will be unhappy with many of the Arbitrator's findings, at least the Union will have the advantage of bargaining from the status quo as it seeks to protect what it has already won.
- 3) Implicitly, the Arbitrator has rejected the use of Extension classifications as a way to undercut faculty pay rates. This finding is useful in current situations where "for credit" courses are being moved to Extension as the means to both charge

students more and pay faculty less. The union will need to build on this ruling and insist that normal faculty pay rates apply in these work transfer situation.

Editorial Comment

The Arbitrator's ruling in the YRO case is going to cost CSU a substantial amount of money and administrative time at a period when, arguably, it is least able to accommodate those demands. The best that can be said is "it didn't have to happen this way."

CFA repeatedly made CSU — particularly the Chancellor's Office and the CO Labor Relations Office — aware of the myriad of problems in its YRO plans, but to no avail. From almost the beginning, campuses were misled or "unled" by central administration as to what they could or could not do in YRO. Most if not all of these problems could have been solved at the bargaining table — as CFA tried — before substantial back pay and workload obligations accrued. Certainly, for instance, it would have been easier for CSU to pay proper salaries and afford proper contractual rights in '01 than it will be to provide them in '03 or '04.

Another factor here is that the CSU will need to pay for three years of accumulated misdeeds now rather than simply paying costs on a yearly basis as would normally be the case. This problem is purely a product of CSU's continuing campaign to delay the hearing of all CFA grievances. Originating in early 2001, the CFA grievance for that YRO year should have been heard and decided that year, leading to a timely remedy and the ability for both Parties to correct (or negotiate) problem areas before said recurred in 2002 and 2003. Instead, CSU will now have to pay and pay dearly.

At some point, responsible administration will need to reassess the usefulness of CSU's delay strategy in the larger context of its educational, financial, and labor relations obligations.