



3-02-075

ORDER CLARIFYING AWARD

CALIFORNIA STATE UNIVERSITY, *
Employer, *
 *
and *
 *
CALIFORNIA FACULTY ASSN. *
 *
Union *

**Re: New and Additional
Work Dispute**

**For the Employer: Joel L. Block
Manager, Employee Relations
California State University
Long Beach, California**

**For the Union: Edward R. Purcell
Labor Consultant
Venice, California
Peter Q. Nguyen, J.D.
Regional Service Coordinator
CFA
Los Angeles, California**

**Arbitrator: Thomas Angelo
Mill Valley, California**

April 26, 2004

BACKGROUND

This case arises out of a bargaining relationship between the California State University (hereinafter "Employer" or "University") and the California Faculty Association (hereinafter "Union") and concerns the parties' dispute over the meaning and application of the term "new or additional work" with respect to the assignment of such work to temporary faculty members. On December 22, 2003, I rendered a Decision and Award in this matter. I retained jurisdiction to resolve any disputes over the meaning or application of the opinion and award. Thereafter the parties met jointly and with the arbitrator and eventually reached an understanding with respect to the implementation and application of the decision in this matter. Set forth below is the stipulated resolution the parties have approved to fully resolve the issues raised and addressed in my prior Decision and Award.

I. Assignment of Work Within a Department

Effective April 20, 2004, departments shall assign work in the following order to qualified temporary faculty after the assignment needs of tenured and probationary faculty (including FERP and PRTB faculty), have been satisfied, and after any work to be taught by administrators, Teaching Associates or other students^{1/}, or volunteer faculty have been assigned.

II. When Making Fall or Academic Year Appointments to Temporary Faculty For the New Academic Year

1. First, offer work to 3-year full-time appointees pursuant to provisions 12.12 and 12.13 of the Agreement.
2. Next, offer work to other continuing multi-year (not 3-year under provisions 12.12 and 12.13) full-time appointees.

^{1/}

In accordance with the attached March 19, 1991 Memorandum of Understanding.

3. Next, offer work to 3-year part-time appointees pursuant to provisions 12.12 and 12.13 up to their time base entitlement.
4. Next, offer work to continuing multi-year (not 3-year under provisions 12.12. and 12.13) part-time appointees up to their time base entitlement.
5. Next, pursuant to provision 12.7 give careful consideration to all part-time and full-time temporary faculty with no multi-year appointments who were employed in the academic year prior to the year for which they are being considered. Temporary faculty in this group that are appointed may be appointed in any order, but must satisfy all provision 12.3 entitlements for any part-time temporary faculty appointed in the Fall term. Full-time and part-time temporary faculty with no provision 12.3 appointment rights can be appointed to any time base and for any academic term(s). If a decision is made not to re-appoint temporary faculty in this category, the work previously performed by these faculty (if it continues to exist) shall be considered "new or additional;" and assigned according to the order set forth in paragraph 6 below.
6. Next, assign any remaining work to temporary employees as "new or additional" work in the following order:
 - a) First, 3-year part-time appointees up to full-time,
 - b) Next, all other part-time temporary faculty offered Fall appointments pursuant to paragraphs 4 and 5 above up to full-time, and
 - c) Last, all other qualified candidates "may" be appointed.

III. When Making Class Assignments to Temporary Faculty During the Academic Year

1. First, offer work to 3-year full time appointees pursuant to provision 12.12 and 12.13,
2. Next, offer work to other continuing 1-year and multi-year (not 3-year under provisions 12.12 and 12.13) full time appointees,
3. Next, offer work to 3-year part-time appointees pursuant to provisions 12.12 and 12.13 up to their time base entitlement,
4. Next, offer work to continuing 1-year and multi-year (not 3-year under provisions 12.12 or 12.13) part-time appointees up to their time base entitlement,
5. Next, pursuant to provision 12.7 give careful consideration to all part-time and full-time temporary faculty with no 1-year or multi-year appointments who were employed during the current or immediate past academic year. Temporary faculty in this group may be appointed in any order. Full-time and part-time temporary faculty

with no provision 12.3 appointment rights can be appointed to any time base and for any academic term(s). If a decision is made not to re-appoint temporary faculty in this category, the work previously performed by these faculty (if it continues to exist) shall be considered “new or additional;” and assigned according to the order set forth in paragraph 6 below.

6. Next, assign any remaining work to temporary employees as “new or additional” work in the following order:
 - a) First, 3-year part-time appointees up to full time,
 - b) Next, all other part-time temporary faculty offered appointments pursuant to paragraphs 4 and 5 above up to full-time, and
 - c) Last, all other qualified candidates “may” be appointed.

IV. Definition of “New or Additional Work”

1. In my initial Award, I ruled that “the language in Section 12.29 regarding ‘new and additional work’ is defined to mean work a department determines is available to temporary employees.” On page 20 of the opinion I stated that “new or additional” work does include classes previously taught by employees on leaves of absence, those participating in FERP (Faculty Early Retirement Program) and PRT (Pre-Retirement in Time base Program), and those whose employment has terminated and also classes taught by tenured or probationary faculty, volunteers, administrators or graduate teaching associates when the person(s) are no longer available to teach the class and the Department determines the course will continue to be offered through a lecturer. New or additional works also includes classes funded by grants or other temporary funding sources, as well as any “new” class regardless of whether it creates a net increase in WTUs.
2. I also ruled that “this involves work left behind by faculty leaving CSU’s employ on a permanent or temporary basis, or work created by new courses or sections that will be taught by temporary employees.”

V. Impact of the Assignment of “New or Additional Work” on 12.3 Entitlements

On page 21 of my opinion I stated that “at the same time, any ‘new or additional work’ that is required to be returned to a returning faculty member, or for which funding expires, shall not be considered for purposes of augmenting the lecturer’s entitlements beyond the year in which the additional class is taught. Stated otherwise, because the creation of certain ‘work’ may be temporary in nature it cannot be used to promote an assignment into a permanent benefit in future years.”

I also ruled that “any (new or additional work) that is ‘temporary’ in nature shall not be used to enhance a lecturer’s entitlement in future years. This work includes assignments that may be reclaimed by a faculty member returning to the CSU.”

“Temporary” new or additional work includes work assigned to a Lecturer during an active or ongoing recruitment for a tenure track faculty member.

VI. The Continued Application of Provisions 12.4, 12.5, 12.7 and 12.13

My decision does not affect in any way provisions 12.4, 12.5, 12.7 and 12.13. Thus, the priority of assignment of “new or additional work” as defined in my opinion does not prevent a campus from (1) denying (per provision 12.4) a subsequent appointment to a lecturer who has been given careful consideration (per provision 12.7), from (2) reducing a part-time lecturer’s time base due to enrollment and budget considerations (per provision 12.5), or invoking the conditions of provision 12.13 regarding subsequent 3-year appointments.

April 26, 2004



Thomas Angelo