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**IN ARBITRATION PROCEEDINGS PURSUANT TO THE COLLECTIVE
BARGAINING AGREEMENT BETWEEN THE PARTIES**

* * * * *
In the Matter of Arbitration between:
California Faculty Association,
Union
and
California State University (System-wide),*
Employer
* * * * *

**CSU Case No. 3-02-076
SUPPLEMENTAL
OPINION AND AWARD**

INTRODUCTION

In the original Opinion and Award in this case, the Arbitrator directed the parties to meet and confer regarding certain remedial issues, in order to give them an opportunity to reach mutual agreement. They were unable to reach agreement on all outstanding remedial issues, however, and the parties met in joint session with the Arbitrator on January 16, 2004, to discuss interpretation of various portions of the Award. This Supplemental Opinion and Award is being issued to answer the questions submitted by the parties at that session.

APPEARANCES

For the Association:

Edward R. Purcell, CFA Business Manager

For the University:

Bill Candella, Employee Relations Manager
Samuel Strafaci, Assistant Vice Chancellor, Human Resources

Neutral Arbitrator:

Andria S. Knapp, Esq.

DISCUSSION

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3 Following issuance of the original Opinion and Award in this case, the parties
4 submitted to the Arbitrator a list of questions regarding its interpretation. While their
5 formulation of the questions varied somewhat, the differences were more semantic than
6 substantive, and this Supplemental Award tracks the parties' submission. At the joint
7 session, the parties reached agreement on a number of the outstanding issues, which are
8 included here for purposes of memorializing those agreements.
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11 In addition, during the joint session, the Arbitrator directed the parties to research
12 the extent to which individual unit members were actually affected by certain issues
13 addressed in the original Award (e.g., whether anyone was actually denied a requested
14 leave of absence under Article 23), in order to determine the parameters of any possible
15 remedies. The parties were also directed to meet and confer regarding direct and indirect
16 instructional activity.
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19 Finally, the complexity and scope of the case made it almost inevitable that there
20 would be questions regarding implementation of the original Award. The parties and the
21 Arbitrator were aware at the time of the original hearing that, depending on the outcome,
22 additional proceedings might be required. In any adjudication, the advocates have to
23 make judgments about the scope and quantity of the evidence they submit, and there is a
24 trade-off to make between completeness and efficiency in the hearing process. The
25 following Supplemental Award is designed to answer as many of the parties' questions as
26 possible with a minimum of additional proceedings.
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1 **I. Applicability Issues: Which Campuses Are Affected by the Arbitration**
2 **Award?**

3 **A. Does the Award apply to campuses with separate campus Side**
4 **Agreements (Humboldt and Sacramento State)?**

5 The Award applies to the two campuses that had separate Side Agreements on
6 YRO, Humboldt and Sacramento State. At both campuses, the Side Agreements provided
7 that, in the absence of specific provisions in the Side Agreement, the Master Contract
8 would prevail. As an interpretation of the Master Contract, therefore, the Award applies
9 to those campuses, except where the parties at each campus adopted different specific
10 undertakings in their Side Agreement. The parties are in agreement on this interpretation.
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13 **B. Does the Award Apply to the Stanislaus Campus?**

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15 Faculty YRO workload and salary were the subject of an earlier, individual
16 campus grievance at CSU Stanislaus, in which an arbitration award was issued prior to
17 the award in this case. The Stanislaus Award addressed YRO operations at that campus in
18 2000, 2001 and 2002. It held that faculty members who taught YRO were not entitled to
19 automatic credit for indirect instructional activity. CFA contends that the System-wide
20 Award, which adopted a different approach to credit for instructional activity, should
21 apply to Stanislaus as well and that YRO faculty there should have the opportunity to
22 establish their entitlement to credit for indirect instructional activity and receive
23 compensation since YRO was implemented at that campus.
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1 Arbitration is intended to be a final and binding process, and an arbitrator's
2 jurisdiction terminates at the end of a case. Thus, it would be inappropriate for this
3 Arbitrator to reconsider the award in the Stanislaus case. However, that case dealt only
4 with YRO implementation at Stanislaus in 2000, 2001 and 2002. For Summer 2003, and
5 thereafter, Stanislaus is subject to the terms of the original system-wide award on the
6 same basis as any other semester campus.¹
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9 **C. Does the Award Apply to QSYRO Campuses?**

10 In response to argument from the Association,² the original Award addressed
11 working conditions relative to YRO operations in a number of Articles of the Master
12 Contract. At the joint session, the Association voiced its concern that, if the Award were
13 applied solely to the semester campuses and not to QSYRO campuses as well, the result
14 could be inconsistent application of the Master Contract; the entire bargaining unit should
15 be covered in a consistent manner by the single collective bargaining agreement
16 negotiated by the parties.³
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19 To reiterate the explication made by the Arbitrator at the joint session,⁴ the
20 original Award does not apply to QSYRO campuses. The grievance as presented at the
21 arbitration hearing addressed the implementation of YRO *at semester campuses*. The
22 Award was accordingly directed at conditions at semester campuses, and its application is
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26 ¹ The Arbitrator misspoke initially at the joint session, when she indicated that the Stanislaus award was limited to YRO 2000 and 2001 [Tr. 77]; the award addressed YRO 2002 as well. [Tr. 104; Stanislaus award at 32.]

27 ² See especially pp. 24-26 of the CFA Brief, on various service credit issues.

28 ³ The specific example cited by CFA was accrual of sick leave credit. Sick leave accrual is addressed separately, *infra*, and the discussion should take care of the problem. It is unclear the extent to which other potential conflicts arise from the original Award.

1 limited strictly to implementation of YRO at those campuses. There was no intent to
2 affect QSYRO campuses. As the original Award noted, the parties have, over many years,
3 evolved ways of handling working conditions at the QSYRO campuses pursuant to a
4 collective bargaining agreement that focuses on the more traditional two-semester
5 academic year. CSU has not changed any of its practices at the QSYRO campuses as a
6 result of implementing YRO at the semester campuses. Nor is there any reason for
7 existing practices at QSYRO campuses to change as a result of the YRO Award.
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10 The only potential area of conflict that was cited by CFA at the joint session was
11 treatment of sick leave accrual. That specific issue is addressed separately, *infra*.
12

13 **D. Does the Award Apply to Campuses That Used the "Fee Buy-Down"**
14 **Approach to YRO?**

15 Throughout the original proceedings, the parties and the Arbitrator referenced
16 "state-funded" or "state-supported YRO," in contrast to the "self-funded" programs that
17 were traditionally offered through campus Extension Services. In reality, the distinction is
18 not as black and white as that. The original intent of the YRO initiative was to transition
19 all semester campuses as quickly as possible to year-round operations that would be fully
20 funded by the State in the same way as the regular academic year. However, as events
21 turned out, the initial vision ran into obstacles that affected its implementation: the State's
22 financial reverses translated into severe budget cuts for the University and reduced the
23 monies available for YRO. In addition, the pace at which individual campuses could
24 transition to full year-round operations varied. Thus, not all campuses have made the full
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⁴ See, Tr. 19 ff.
Supplemental Opinion and Award—CFA and CSU (System-wide)
CSU Case No. 3-02-076 (Year Round Operations)

1 transition to state-funded YRO as it was initially envisioned. This has led the University
2 to query whether the Award applies to campuses that have not fully implemented YRO.

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4 What might be termed "modified YRO" has taken several forms. At some
5 campuses, YRO sessions have remained relatively small in the number of courses offered
6 and students served. Initially, the University suggested that these campuses were still "in
7 pilot program mode," at least for the first year of their YRO implementation, in 2001.
8 Following the Arbitrator's clarification at the joint session of what she meant by "pilot
9 program," however, the University withdrew its assertion.

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12 The remaining issue is the applicability of the Award to "fee buy-down"
13 campuses. In response to the cuts in State funding, certain campuses⁵ have elected not to
14 make a full transition to YRO. Instead, they have continued to operate their summer
15 programs through Extension Services, using the State funds available to reduce the fees
16 charged to students to the same level as those charged during the regular academic year.
17 The parties refer to this as "fee buy-down." While these campuses have not implemented
18 YRO as initially envisioned, YRO's purpose—for students to pay the same fees for
19 summer session as they do during fall and winter sessions—has nonetheless been
20 accomplished. The "fee buy-down" approach is a hybrid: it is neither fully funded by the
21 State, as YRO was originally intended to be, nor is it fully self-supporting, as has been
22 traditionally required of summer courses operated through Extension Services. CSU has
23 questioned the applicability of the Award to fee buy-down campuses. From the
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28 ⁵ Fresno, Monterey Bay, Northridge, and Sonoma, on the University's "Statement of Issues."

1 University's perspective, fee buy-down is a way station en route to full YRO
2 implementation—a sort of on-going pilot program—and is quite distinct from a budgetary
3 standpoint from fully funded YRO. CFA contends that the exact mechanism by which
4 State funds are used to subsidize students is immaterial and the Award should apply to
5 fee buy-down campuses the same as any other.
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8 The record in the original hearing focused on YRO as fully funded by the State, as
9 distinct from the fully self-supporting courses offered through Extension Services; there
10 is very little in the original hearing record that addresses fee buy-down. The CSU YRO
11 Plan, "California State University Year Round Operations (YRO) Five-Year Plan," taken
12 from the University's website (CFA Ex. 16), was introduced into the record without
13 testimony. The four fee buy-down campuses are footnoted in Table 1 of that document
14 with the notation: "These campuses have not received funds to convert ... self-supported
15 summer instruction to state-support. The current levels of state-supported instruction at
16 these campuses are partial conversions, pilot programs or targeted programs to address
17 specific needs such as teacher preparation." Fee buy-down appears on page 4 of the Plan;
18 the paragraph simply notes that CSU received and disbursed "fee buy down funds" to
19 campuses that were not funded for a full transition to YRO.
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23 The University has suggested that this is an issue that might benefit from further
24 evidentiary proceedings, specifically testimony from someone in the Budget Office who
25 can further explain the difference between full state funding and fee buy-down. It is not
26 clear to the Arbitrator, however, that the marginal benefits of additional proceedings
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1 would outweigh their costs. The fact is, and will remain, that fee buy-down falls
2 somewhere in the gray area between the ends of the funding spectrum that ranges from
3 full state funding to full self-support. The difficulties that the parties have already had in
4 reaching agreement over how to implement the Award suggest that the best approach is to
5 minimize the possibility of further conflict by adopting a clear and simple rule that will
6 be easy to apply.
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9 The original purpose of YRO was to reduce student fees for summer session to the
10 same level as during the regular academic year; student fee levels are the touchstone
11 difference between fully state-funded operations during the regular academic year and
12 self-supporting courses offered through Extension Services. If state funds are used to
13 reduce student fees to regular semester levels, the end result is the same whether it is
14 accomplished through "full" state support or "fee buy-down." Even though fee buy-down
15 courses are not "fully funded" by the State, they are certainly no longer self-funded,
16 which is the distinguishing feature of Extension Service courses. If fee buy-down is a
17 way station en route to full YRO implementation, it is closer to YRO than to self-
18 funding.
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22 It is also useful to consider how faculty are paid for teaching in Extension
23 Services. Traditionally, summer session was offered through Extension Service. Under
24 Article 21 of the Agreement, the University pays summer teaching faculty according to a
25 different classification, 2357, which is less than their regular academic year rate. The
26 rationale for the difference has been that Extension Service courses are fully self-
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1 supporting. Once the University uses additional State funds to underwrite student fees
2 during summer sessions at "fee buy-down" campuses, summer session is no longer self-
3 supporting, and the rationale for different pay rates in the summer disappears.
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5 Under the circumstances, where "fee buy-down" reduces students' fees to the
6 same level as YRO, it makes sense to treat "fee buy-down" the same as YRO for
7 purposes of faculty rights under the Agreement. To the extent, then, that student fees at
8 fee buy-down campuses are reduced to the same levels as at fully transitioned YRO
9 campuses, those buy-down campuses are subject to the terms of the original Award as if
10 they had fully implemented YRO.
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13 **II. Remedial Issues**

14 The parties raised questions regarding implementation of remedies pursuant to
15 various portions of the Award.
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17 **A. Does the Award Require Those Campuses that Paid at a Rate Less** 18 **Than 1/30th to Recalculate Faculty Salaries for the Prior Summer** 19 **Sessions?**

20 Contrary to the representations made at the original hearing,⁶ it appears that some
21 campuses did not pay YRO faculty at the 1/30th rate. Any faculty members who taught
22 YRO and who were not paid at that rate are entitled to reimbursement of the difference.
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24 **B. What Constitutes Indirect Instructional Activity for Which Faculty** 25 **Should Receive Additional Compensation?**

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28 ⁶ See footnote 19 in the original Award, at page 51.

1 The original Award indicated that YRO faculty members were entitled to
2 compensation for indirect instructional activities when such duties were actually
3 performed during YRO sessions.⁷ The parties met regarding the extent to which such
4 indirect instructional activity did occur. They returned to the joint session with further
5 questions. At the session, the Arbitrator clarified her interpretation that regular (i.e.,
6 “direct”) instructional activities include the office hours that every faculty member
7 teaching a course is required to hold, regardless of the funding source, the faculty’s
8 status, and so on.⁸ The parties were again directed to meet to determine where they were
9 in dispute on the remaining indirect instructional activity issues. By letters dated February
10 10 and 11, 2004, the parties sought further clarification from the Arbitrator. Specifically,
11 they asked whether indirect instructional activities had to have been specifically assigned
12 to YRO faculty before they could be compensated (CSU), or whether they could be
13 compensated simply if a faculty member performed them (CFA).
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18 As is typical with disputed workplace issues, the answer lies somewhere between
19 the parties’ divergent positions. In general, Article 20 addresses faculty workload, and
20 Sections 20.1 through 20.3 focus on professional responsibilities of instructional faculty.
21 Section 20.1 describes various types of professional responsibilities: “primary”;
22 “additional”; “instructional responsibilities beyond duties in the classroom”; “research,
23 scholarship and creative activity.” Section 20.2 focuses on how “professional duties and
24 responsibilities” will be assigned to individual faculty members, and Section 20.3 protects
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27 ⁷ See, page 54.

28 ⁸ See, Tr. 59 ff., 65-69.

1 faculty against "excessive" or "unreasonable" workloads. While "professional
2 responsibilities" clearly include all forms of faculty work activity, nowhere does Section
3 20 actually use the language of "direct" and "indirect" instructional activities as the
4 parties do in their everyday discourse. That language is found in EP & R 76-36, CSU
5 Faculty Workload Policy and Procedures, to which there is a coded reference in the
6 Master Contract in Section 20.2.d, in which the parties "agree to continue the current
7 practice regarding the calculation of Weighted Teaching Units...."
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10 The specific allocation and assignment of professional responsibilities for
11 individual faculty members is addressed in Section 20.2. Section 20.2.a states:

The composition of professional duties and responsibilities of individual faculty cannot be
restricted to fixed amount [sic] of time, and *will be determined by the appropriate
administrator after consultation* with the department and/or the individual faculty
member. [Emphasis added.]

15 Under Section 20.2.a, then, management determines what professional duties and
16 responsibilities—that is, direct and indirect instructional activity—will be assigned to
17 individual faculty members, after consulting with the department and the individual, in
18 some ways like any business management schedules and assigns work. Academics
19 traditionally have considerable freedom and input in arranging their schedules,
20 determining course content, pursuing research agendas, and so on. But ultimately,
21 indirect instructional activities such as committee assignments and departmental
22 responsibilities are not self-determined by the faculty; they are assigned by management.
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26 At first glance, Section 20.2.a suggests that faculty should only be compensated
27 for indirect instructional activities to which they have been specifically assigned during
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1 any given term. Such an interpretation would be inappropriate, however, absent any
2 consideration of the parties' past practices. It may be that faculty are expected
3 automatically to perform some indirect instructional activities without specific
4 assignment. Certain activities, such as committee assignments, may be made for a term of
5 years and not "assigned" again at the beginning of each term. Furthermore, past practices
6 may vary from one campus to another. In the absence of evidence regarding the parties'
7 past practices on how indirect instructional activities are assigned,⁹ it is simply not
8 possible to state categorically that indirect instructional activities are only those
9 specifically assigned by management. But neither are they determined by solely by
10 individual faculty members. The parties must meet and confer again in an effort to
11 determine where they agree and where they disagree on what constitute indirect
12 instructional activities and how they are assigned.
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16 **C. Do Full-Time Faculty Who Teach YRO As an Extra Term for Extra**
17 **Pay That Is Not Part of Their Regular Academic Year Appointment**
18 **Accrue Sick Leave on That Appointment?**

19 In Section 9 of its brief,¹⁰ CFA addressed Article 24, Sick Leave, arguing that CSU
20 had unilaterally—and improperly—adopted limitations on both "earning and using sick
21 leave during YRO" without bargaining. The Arbitrator interpreted Article 24, which
22 contains no limits on accruing sick leave, to permit YRO faculty to accrue additional sick
23 leave beyond what they would earn during the regular academic year.¹¹
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26 ⁹ The records in the YRO and Stanislaus cases contain evidence on direct and indirect instructional
27 activities, but that evidence focused on the distinction between the two, not on how assignments were made.

¹⁰ See, page 25.

¹¹ Award, at pp. 64-65.

1 Based on discussions at the joint session, however, it became clear that this
2 interpretation was based on incomplete information. Specifically, the University has
3 separate regulations (referenced during the joint session as "Title 5") addressing sick
4 leave accrual that were not part of the record at the YRO hearing.¹² Those regulations
5 explicitly limit the accrual of sick leave. First, QSYRO faculty working an extra term for
6 extra pay do not earn extra sick leave as a result of working the extra term. QSYRO
7 faculty who work an extra term for extra pay are the closest parallel to semester faculty
8 who work YRO after having completed their regular academic year appointment; this
9 suggests that the two should be treated alike in terms of sick leave accrual. Second,
10 faculty who are on twelve-month contracts do not earn additional sick leave by virtue of
11 the fact that their annual contract is longer than the nine-month academic year contract.
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15 Furthermore, under Article 24, sick leave accrues according to pay periods.
16 Cordelia Ontiveras, CSU's Senior Director of Human Resources, indicated at the joint
17 session that regular faculty are paid on a twelve-month basis, even if they are on a nine-
18 month contract. Thus, faculty accrue sick leave throughout the entire year, even when
19 they are not working. The original interpretation of Article 24, permitting additional
20 accrual of sick leave for teaching during YRO sessions, assumed that regular academic
21 year faculty were *not* on payroll during the summer and were, therefore, not earning sick
22 leave.
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26 ¹² CFA has protested the "reopening" of the record in this regard. During the original hearing, the parties
27 and the Arbitrator discussed the amount of evidence to be submitted into the record. It was clear to the Arbitrator
28 that, depending on the outcome of the case, additional evidence might be required. Specifically, if the grievance
had been denied, there would have been no need for further proceedings or evidence. The grievance having been

1 The University's regulations are not new, and the parties had to have been aware
2 of them when they negotiated the provisions of Article 24. The regulations provide the
3 backdrop, or context, for the parties' negotiations, and Article 24 should be interpreted in
4 a way that harmonizes the Agreement and the regulations. Title 5 imposes an inherent
5 limitation on Article 24 that is not apparent on its face, and any interpretation of Article
6 24 must take that limitation into account. Although there is no express limitation in
7 Article 24 on the amount of sick leave that may be earned during a year, there is an
8 inherent limit that arises out of Title 5: unit members may not earn more than a full year's
9 sick leave credit by working an extra term for extra pay. And for regular, full-time
10 faculty, YRO is an extra term for extra pay.
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14 Accordingly, Section II.C.2.c. of the original Award, which interpreted Article 24
15 to permit full-time faculty teaching YRO to earn sick leave beyond the normal annual
16 accrual, must be revised. The following language should be substituted in the original
17 Award for that found at page 63, line 22, through page 64, line 2:¹³
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19 Although the Agreement does not expressly limit the accrual of sick leave, there are
20 separate University regulations that also address sick leave accrual, and Article 24 must be
21 interpreted to harmonize with the Title 5 regulations. Full-time faculty on a nine-month
22 contract are paid on a twelve-month basis. They accrue sick leave each pay period
23 throughout the year. Pursuant to the regulations, full-time QSYRO employees working an
24 extra term for extra pay do not earn additional sick leave for working an extra term.
25 Furthermore, full-time employees on a twelve-month contract do not earn more annual
26 sick leave than those on a nine-month contract. Thus, while there is no express limit in
27 Article 24 on the amount of sick leave that may be accrued on an annual basis, there is an
28 inherent limit. Accordingly, full-time faculty who work YRO do not thereby earn
additional sick leave over and above their normal annual accrual. However, under Article

upheld in part and a remedy having been ordered, the complexity of the case required further proceedings in the
form of the joint session. It is appropriate to entertain further evidence as necessary to implement the Award.

¹³ This resolution of the sick leave accrual issue should resolve the Association's concern about there being
different interpretations of the collective bargaining agreement at semester/YRO and QSYRO campuses.

1 24.2, part-time faculty may increase their pro rata accrual up to a full-time level by
2 teaching additional courses during YRO.

3 *Note:* This modified interpretation of Article 24 does not alter that portion of the
4 original Award that permitted YRO faculty to use their accrued sick leave credits during
5 YRO sessions in accordance with the other provisions of Article 24.¹⁴

6
7 **D. What Is the Required Remedy for the Denial of Paid Leaves of
8 Absence?**

9 At the joint session, neither side knew how widespread this problem was, or even
10 if anyone had been affected.¹⁵ CFA and the University agreed jointly to determine the
11 scope of the problem, with an eye to working out a resolution of how to handle such
12 cases. The Arbitrator has not heard from them on that issue since the joint session.

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15 **E. Lecturers**

16 There are a variety of issues related to treatment of lecturers during YRO sessions.

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18 **1. Does the Award Require That the University Pay Retroactive SSIs to
19 Lecturers?**

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21 The original Award held that YRO credit hours should count for lecturers' SSI
22 eligibility. Following clarifying discussion at the joint session, the parties were not in
23 disagreement that lecturers were entitled to retroactive SSIs based on YRO service.¹⁶
24 There was some question that campuses might have different practices on banking the
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27 ¹⁴ I.e., the last paragraph of Section II.C.2.c., at page 64, ll. 4-8.

28 ¹⁵ CFA indicated its belief that some faculty has requested but been denied sick leave. [Tr. 80]

¹⁶ See, Tr. 84 ff., especially page 90.

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credit hours required for an SSI, but the University indicated that it would survey the campuses to determine if there was a real problem. CFA's request for interest was denied.

2. Does Summer YRO Teaching Count as a Semester in Determining Whether a Lecturer Taught Two Semesters of Consecutive Employment Within an Academic Year under Article 12.3? If Summer YRO Credits Count Toward One-Year Entitlements Under Article 12.3 Must the Second Year Entitlement Include a Summer Term?

Summer YRO teaching by lecturers can count as a semester for purposes of determining whether a lecturer taught two consecutive semesters within an academic year under Article 12.3 (i.e., spring and summer). The lecturer's one-year entitlement, however, is limited to credit hours taught during the first two consecutive semesters, which might not include YRO. Two examples will clarify. First, assume a lecturer teaches zero credit hours in the fall term, six credit hours during spring term and six credit hours during YRO summer session. The YRO session counts as the lecturer's second consecutive semester of teaching during that academic year. For purposes of determining how many hours the lecturer is entitled to teach the following year, she is entitled to a twelve-credit assignment. Now assume that the lecturer teaches six hours in the fall term, six in the spring and six in the summer (YRO). Under Section 12.3 of the Agreement, the lecturer's entitlement is established at the end of spring term, when she has completed teaching two consecutive semesters, and she is entitled to a twelve-credit assignment the following academic year, based on the credit hours taught during the two consecutive semesters. Any additional hours she teaches during YRO after her

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entitlement has been established do not increase that entitlement. Nor is the lecturer entitled as a matter of contractual right to a YRO assignment the following year.

This addresses all of the issues raised by the parties at the joint session. The Arbitrator will continue to retain jurisdiction pending final implementation of the original Award, as clarified and amended by this Supplemental Award.

Andria S. Knapp
Andria S. Knapp, Arbitrator

Date: 25 March 2004