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

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In the Matter of Arbitration between:
California Faculty Association,
Union
and
California State University,
Employer
* * * * *

CSU Case No. 3-02-076
ARBITRATOR'S
OPINION AND AWARD

INTRODUCTION

An arbitration hearing between the parties was held November 6, 7, and 8, and December 13, 2002, at California State University, Long Beach, California. At the hearing, both sides had an opportunity to present evidence and to examine and cross-examine witnesses. A transcript of the proceedings was made. The parties elected to file written closing statements, and the record was declared closed upon their receipt.

APPEARANCES

For the Association:

Edward R. Purcell, CFA Business Manager

For the University:

Bill Candella, Employee Relations Manager
CSU Chancellor's Office

Neutral Arbitrator:

Andria S. Knapp, Esq.

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BACKGROUND

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3 This case comes to arbitration pursuant to a deferral by the California Public Em-
4 ployment Relations Board (PERB) of an unfair labor practice charge filed by the Cali-
5 fornia Faculty Association against the California State University, objecting to the way in
6 which CSU introduced year-round operations (YRO) at a number of different campuses,
7 beginning in Summer 2000. CFA filed the unfair labor practice charge with PERB on
8 March 7, 2001; the matter was deferred to arbitration by PERB August 24, 2001. (Jt. Ex.
9 3)¹ Subsequent to the deferral and further discussions between the parties, including ne-
10 gotiations for a successor master contract that did not resolve the problem, CFA filed a
11 system-wide grievance (Grievance # 3-02-076) on September 18, 2002. (Jt. Ex. 2) In ad-
12 dition, individual grievances had been filed at several different campuses, and the parties
13 have consolidated a number of them in this proceeding.²
14
15
16

17 Historically, the various campuses of California State University (CSU) scheduled
18 their academic years in one of two different ways: with two traditional semesters or on
19 the quarters system. The sixteen traditional semester campuses have two semesters, one
20 starting in the fall and another in the spring.³ Quarter system campuses operate all year
21 long, with four quarters of equal length. The parties' collective bargaining agreement is
22

23
24 ¹ The terms of the deferral require that the University waive all procedural objections to arbitration; accord-
25 ingly, the matter is properly before the Arbitrator.

26 ² Specifically, Grievances #3-01-091 (Kramer; CSU Ex. 6) and #3-02-048 (Dominguez Hills; CSU Ex. 7),
27 both challenging faculty pay rates and workload assignments during summer term. The Dominguez Hills grievance
28 also addresses FERP faculty participation in YRO. Grievance #3-01-069 (Humboldt State; CSU Ex. 5) challenges
the University's continuing the terms of the parties' original campus-specific YRO agreement after CFA represen-
tatives indicated a desire to renegotiate the terms. Finally, Grievance #3-02-072 (Hayward; CSU Ex. 8) was filed
after the University denied release time to a chapter representative during summer term.

1 based primarily on the traditional two-semester model, with some special provisions for
2 the quarter system campuses, known in the Agreement as QSYRO (for quarter-system
3 year-round operations).

4
5 One of the historical differences between the semester and QSYRO campuses has
6 been in their summer course offerings, specifically how the summer term has been funded
7 and the terms and conditions of employment for faculty teaching during summer sessions.
8 Traditionally, the semester campuses have offered only a limited number of summer
9 courses, both for-credit and non-credit, through each campus' Extension Service. Unlike
10 courses offered during the fall and spring semesters, which receive financial support from
11 the state to partially underwrite their cost, summer courses offered through Extension
12 Services did not receive state funding. As a result, they had to be entirely supported by
13 student fees. Paradoxically, this lack of state funding meant that students had to pay
14 higher fees to take summer courses,⁴ while faculty were paid less per credit hour taught
15 (weighted teaching unit, or WTU) than during the regular academic year. In the parties'
16 collective bargaining agreement, "summer session" has for many years been covered in
17 Article 21, which sets forth terms and conditions of summer employment different from
18 those that pertain during the regular academic year. (*See, e.g.,* Article 20, Workload.)
19 Under Article 21, there is a separate payroll classification, "2357 — Instructional Faculty,
20 Summer Session," for faculty employees who teach during the summer session. Faculty
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26 ³ Some campuses offer slightly shorter fall and spring terms, with a mini-semester in the winter, but that is
not relevant to this case.

27 ⁴ The Feasibility Study cited an example: "If a student took 30 hours of lecture units via continuing educa-
28 tion, the average fees would total \$3,840 versus an average of \$1,831 under state-supported instruction." (Jt. Ex. 4,
page 9)

1 compensation for summer Extension courses is based on the number of students enrolled
2 in a class and is almost always less than what the faculty member earns for teaching the
3 same course or number of credit hours during the normal academic year. Faculty em-
4 ployment during the summer session has historically been handled as "extra work for ex-
5 tra pay." Typically, only a limited number of regular for-credit courses are taught. The
6 Extension Service also offers courses during the regular academic year.
7

8
9 In contrast, courses offered during the summer quarter at the QSYRO campuses
10 are treated by the University and subsidized by the State of California the same as during
11 any other quarter. Student fees and faculty compensation are the same for all four quar-
12 ters. QSYRO faculty may teach any three out of four quarters, and neither their compen-
13 sation nor their academic responsibilities are reduced if they teach during the summer as
14 part of their regular academic year. While summer term nominally has equal status with
15 the other three quarters, it appears that at most, if not all, of the QSYRO campuses, there
16 are significantly fewer course offerings during summer quarter than during the other three
17 quarters. Self-funded courses are offered through the Extension Service at QSYRO cam-
18 puses as well as at the semester campuses.
19
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22 In 1999, the California State Legislature requested that CSU investigate the possi-
23 bility of expanding its summer curriculum in order better to serve students and to make
24 better use of University facilities. The University invited individual campuses to submit
25 proposed YRO pilot programs for implementation in Summer 2000, and the University's
26 1999-2000 budget included \$20,000,000 for YRO study and initial implementation. A
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28

1 number of campuses responded, among them Stanislaus and Humboldt State. In preparing
2 for YRO at Humboldt State, in February 2000, CSU and CFA entered into a campus-
3 specific Memorandum of Understanding regarding year-round operations. (Jt. Ex. 1) The
4 Humboldt Agreement included specific agreement on such topics as academic work year,
5 staffing during summer term, salary during summer term, and lecturer issues.
6

7
8 In April 2000, the University submitted to the Legislature a "Feasibility Study on
9 Year-Round Operations." (Jt. Ex. 4) The Study concluded that expanding to year-round
10 operations was possible, under certain circumstances. With respect to the impact of YRO
11 on faculty, the University noted:

12 Teaching year-round can offer faculty the opportunity to increase their annual earnings (an
13 additional term for pay), or the flexibility of redistributing their teaching commitment
14 throughout the calendar year.

15 Some concerns have been expressed regarding the willingness of permanent faculty to
16 teach during the summer. . . .

17 Compensation and working conditions for CSU's faculty are determined through collec-
18 tive bargaining. Discussions are currently underway with union leaders to design collective
19 bargaining agreements that enable the establishment of summer terms at the sixteen semes-
20 ter campuses and encourage regular faculty to teach. This is a complex and lengthy proc-
21 ess given that salary and workload issues are just two of the many issues that must be ad-
22 dressed in addition to how the summer assignment process will occur. (Similar discussions
23 must eventually be held with the remainder of the nine CSU bargaining units that are im-
24 pacted by YRO.) (Jt. Ex. 4, at page 14)

25 The Study concluded:

26 Is expansion of year-round operations feasible at the CSU? The answer is yes . . .

27 The CSU has experience with YRO and can capably expand upon what is being done al-
28 ready. Humboldt State is prepared to start up a summer term for several programs in
summer 2000 following two years of extensive planning. Several other pilot programs will
be expanded this next summer—primarily focusing on a critical workforce need—teacher
preparation. Other campuses have begun their planning efforts and will implement YRO as
needed to serve the student demand. (Jt. Ex. 4, page 20)

1 Throughout the Study, the University emphasized the need to transition into YRO
2 slowly and carefully, characterizing YRO as “a cultural and operational challenge of tre-
3 mendous magnitude.” The University made very clear its intent to phase in YRO “on a
4 program-by-program and campus-by-campus basis with careful and thoughtful planning
5 and communications...” The Study also acknowledged realistic limitations on YRO, par-
6 ticularly that its enrollment levels would probably never equal the traditional fall and
7 spring terms:
8

9 While some campuses within the CSU and in other locations in the U.S. have been able to
10 attract summer enrollments greater than 40 percent of fall term enrollments, this success is
11 not widespread. Given that many CSU campuses are small, rural, and/or residential in na-
12 ture, a 25 percent summer FTES near-term enrollment target has been determined to be
13 more reasonable for these types of environments. With such a range, CSU estimates sys-
14 temwide summer FTES enrollments eight years from now averaging 37 percent of fall
term. As YRO is phased in throughout the system and is embraced by all stakeholders, a
40 percent long-term target is possible. (Jt. Ex. 4, page 2)

15 By mid-April 2000, CSU and CFA were conducting negotiations regarding YRO
16 implementation. On April 13, 2000, CSU proposed to amend Article 20.4 on the aca-
17 demic work year (set in the MOU at a maximum of 180 workdays) to incorporate YRO
18 operations. (CFA Ex. 1) The proposal was accompanied by a chart setting forth “Faculty
19 Salary Options for Summer Term Under Current CSU/CFA MOU.” CFA responded with
20 a counter-proposal dated May 12, 2000, which would have required that faculty teaching
21 in YRO be compensated on the same basis as during the rest of the academic year. Nei-
22 ther of the proposals was adopted.
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26 The first YRO operations were implemented during Summer 2000 at a number of
27 campuses: Bakersfield, Fresno, Fullerton, Humboldt, Northridge, Sacramento, San Diego,
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San Francisco, San Jose, and Stanislaus. (CFA Ex. 10; CFA Ex. 16, page 2, which also includes 4 QSYRO campuses)

In December 2000, Edward Purcell wrote for CFA to Sam Strafaci, head of the University's negotiating team, requesting immediate bargaining on YRO and setting forth a list of "initial CFA views of various YRO topics." (CFA Ex. 3) The list included eliminating impediments to expanded YRO operations in the existing MOU (specifically Articles 20.4 and 36.5), clarifying salaries and workload for summer YRO, clarifying accrual of service credit for both full-time and part-time employees, lecturer issues under Article 12, and how YRO assignments would be made. Purcell wrote to Strafaci again on January 24, 2001, reiterating the Association's willingness to reopen portions of the existing MOU to address YRO. (CFA Ex. 4) By letter dated January 26, 2001, Strafaci replied that the University had not yet decided to bargain YRO separately from the master contract negotiations, which were scheduled to begin in late February. (CFA Ex. 5) Further correspondence between Purcell and Strafaci ensued. The University made clear its preference to include YRO in the upcoming master negotiations for a successor MOU, rather than reopening the existing contract only to negotiate YRO for summer 2001. (CFA Exs. 6, 7) CFA filed an unfair labor practice charge with the PERB on March 7, 2001. (Charge No. LA-CE-610-H) In the charge, CFA set forth the history of its efforts to initiate negotiations for YRO Summer 2001, and further alleged that the University was "unilaterally determining a variety of terms and conditions of employment for faculty which it has em-

1 employed or will employ in Summer YRO prior to July 1, 2001.”⁵ (Jt. Ex. 2) CSU re-
2 sponded to PERB by letter dated April 12, 2001, in which it put forth its position that
3 YRO 2001 would comply with the terms of the parties’ Agreement. (CFA Ex. 25) PERB
4 deferred CFA’s unfair practice charge to arbitration in a Notice of Abeyance and Deferral
5 to Arbitration issued by letter dated August 24, 2001. (Jt. Ex. 3)
6

7
8 In the interim, the parties began their negotiations for a successor agreement. CFA
9 made a proposal, “YRO Statement of Principles,” dated May 31, 2001. (CFA Ex. 2) CSU
10 responded with its YRO proposal June 7, 2001. (CSU Ex. 2) PERB determined the par-
11 ties to be at impasse in their negotiations on July 17, 2001 (Case No. LA-IM-3041); one
12 of the open issues was YRO. (Jt. Ex. 3, Hurwitz letter dated August 15, 2001)
13

14 The parties continued efforts to reach agreement on a successor contract, including
15 use of a mediator. On November 5, 2001, CFA made a written counter-proposal to the
16 University’s June 7 YRO proposal. (CSU Ex. 2) In the documented bargaining history,
17 references to “Article 40 — Year-Round Operations” first surfaced in CFA and CSU
18 proposals dated March 2002. The successor agreement became effective May 14, 2002,
19 (until June 30, 2004). Article 40, as ultimately adopted, reads:
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22 40.1 Effective beginning with the summer 2004 term, faculty teaching regular credit
23 courses shall be compensated on the same basis as in other academic terms. This
24 provision shall apply to those campuses with state-funded summer sessions.

25 40.2 The parties shall continue to meet to develop the final language on this subject, in-
26 cluding the protection of temporary faculty rights and benefits. (CSU Ex. 3)
27

28 ⁵ The 1998-2001 Agreement expired on June 30, 2001.

1 There are no other references in the successor agreement to year-round operations, nor
2 does it appear that any of the pre-existing contract clauses were specifically modified in
3 response to year-round operations.
4

5 Following adoption of the successor agreement, the parties turned their attention
6 once again to year-round operations. CFA filed a system-wide grievance, dated Septem-
7 ber 18, 2002. (Jt. Ex. 2) The parties met on October 21, 2002, at a Level II hearing; the
8 University filed its Level II Response by letter dated October 29, 2002. (CSU Ex. 4) The
9 matter was eventually scheduled for arbitration. At the arbitration hearing, numerous wit-
10 nesses testified to the University's past policies and practices regarding summer teaching,
11 and, from the Union's side, how year-round operations would affect faculty rights under
12 the existing collective bargaining agreement.
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15 ISSUES PRESENTED

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17 The issues for decision, as framed by the arbitrator, are:

18 Did the University violate Article 3 or any other provisions of the
19 parties' Agreement in its implementation of state-funded year round
20 operations (YRO) at previous semester campuses?

21 If so, what is the remedy?

22 In addition, several individual campus grievances have been consolidated with the
23 system-wide grievance. Specifically:

24 **(1) Grievances 3-01-091 (Kramer) and 3-02-048 (CFA Dominguez Hills):**

25 (These are individual grievances that challenge the same salary and work-
26 load issues that are part of the system-wide grievance. They will be dis-
27 posed of in accordance with the system-wide ruling.)

28 **(2) Grievance 3-02-048 (CFA Dominguez Hills):**

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Did the University violate Article 29 of the Agreement when it banned FERP faculty participation in YRO at Dominguez Hills?

(3) Grievance 3-01-069 (CFA Humboldt State):

Did the University violate the Agreement when it refused to amend the original campus YRO agreement at Humboldt State after the Union requested renegotiation of the original terms?

(4) Grievance 3-02-072 (CFA Hayward):

Did the University violate Article 6.13 when it refused release time to Professor Geron at CSU Hayward for Summer 2002?

RELEVANT CONTRACT PROVISIONS

The consolidated grievances implicate a number of sections of the collective bargaining agreement between the parties (CSU Ex. 9), effective July 1, 1998, to June 30, 2001. Only the most relevant are quoted in this section. Furthermore, certain of the University's practices complained of by the Association occurred subsequent to June 30, 2001, and were therefore governed by the successor Agreement between the parties (CSU Ex. 3), tentatively agreed in March, 2002, and effective May 14, 2002, to June 30, 2004. Where relevant, pertinent sections of that Agreement are referred to as well.

The 1998-2001 Agreement provided:

* * * * *

ARTICLE 3 – EFFECT OF AGREEMENT

3.1 This Agreement constitutes the entire Agreement of the Trustees and the CFA, arrived at as a result of meeting and conferring. The terms and conditions may be altered, changed, added to, deleted from, or modified only through the voluntary and mutual consent of the parties in an expressed written amendment to the Agreement. This Agreement supersedes all previous agreements, understandings, policies, and prior practices directly related to matters included within this Agreement. In the absence of any specific provisions in this Agreement, all CSU practices and procedures are at the discretion of the Employer. The Employer shall provide notification to CFA at least thirty (30) days prior to the implementation of systemwide changes affecting the working conditions of faculty unit employees. Upon request of CFA, the CSU shall meet and confer with CFA on the demonstrable impact of such changes.

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3.2 The parties acknowledge that, during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Except as provided elsewhere in this Agreement, the CSU and the CFA, except for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered in this Agreement, or with respect to any subject matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge of the parties at the time that they negotiated or signed this Agreement.⁶

* * * * *

ARTICLE 5 — MANAGEMENT RIGHTS

5.1 The CSU retains and reserves to itself, whether exercised or not, all powers, rights, authorities, duties, and responsibilities which have not been specifically abridged, delegated, or modified by this Agreement.

* * * * *

ARTICLE 21 — SUMMER SESSION

21.1 Provisions of this Article shall apply to faculty unit employees in classification 2357, Instructional Faculty—Summer Session. Accepting a summer session appointment shall not in any way diminish a faculty unit employee's rights under this Agreement.

21.2 The terms and provisions of this Agreement shall not apply to employees who become faculty unit employees solely by appointment to classification 2357 except as provided for in this Article and as specifically referenced by provision number in this Article.

21.3 Appointment of a faculty unit employee to classification 2357 shall be made by the President. The faculty unit employee shall maintain the academic or librarian rank prevailing during the immediate past academic year. Acceptance of an appointment and course assignment includes an agreement by the employee to meet the class on the first day regardless of enrollment.

21.4 A summer session appointment is a temporary appointment for a specific period of time.

21.5 The official notification to a faculty unit employee of a summer session appointment shall include the beginning and ending dates of appointment, time base, salary, the requirement to meet the first class, and other conditions of appointment. The faculty unit employee's appointment may provide for participation in the student evaluation process.

Assignment of Responsibility

21.6 The responsibilities of a faculty unit employee assigned to classification 2357 may include teaching, office hours, and other responsibilities accepted.

Salary

⁶ Article 3 is the same in both the 1998-2001 and 2002-2004 Agreements.

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40.1 The salary of a faculty unit employee appointed for summer and special sessions shall be determined by the President at a rate equal to or above that shown in Appendix C. Such rate shall be adjusted annually by any increase adjustments in the general faculty salary scale in the preceding academic year. If the course to which a faculty unit employee has been assigned does not meet minimum enrollment as indicated in the salary schedule, the faculty unit employee may receive a reduced salary in accordance with Appendix C.

40.2 A faculty unit employee shall accept the reduced salary or withdraw from the appointment. The faculty unit employee shall receive no compensation for an under-enrolled class from which he/she withdraws.

40.3 The class may be canceled by the President. If the class is not cancelled prior to the second class meeting, the faculty unit employee shall be compensated at the full or reduced salary pursuant to 21.7 of this Article for the entire appointment. If the class is canceled prior to the second meeting, the faculty unit employee shall not be compensated.

* * * * *

ARTICLE 36—ADDITIONAL EMPLOYMENT

40.1 Additional employment shall refer to any employment compensated by CSU, funded by the general fund or non-general funds including CSU auxiliaries, that is in addition to the primary or normal employment of a faculty unit employee.

.....

36.4 The "25% overage" as used in this Article shall be calculated as a percentage of full-time workload or, when appropriate, full-time time base. The total additional employment of a faculty unit employee shall not exceed a total of twenty-five percent (25%) overage.

Limitation on Additional Employment

40.1 A faculty unit employee shall be limited in CSU employment to the equivalent of one (1) full-time position in his/her primary or normal employment. An "overage" of 25% of a full-time position shall be allowed if the overage employment: (a) consists of employment of a substantially different nature from his/her primary or normal employment; (b) is funded from non-general fund sources; or (c) is the result of the accrual of part-time employment on more than one campus.

Applicable Time Periods for Limitations on Additional Employment

40.1 The applicable time period for twelve (12) month faculty unit employees shall be the calendar year, exclusive of the faculty unit employee's earned vacation periods.

40.2 The applicable time period for ten (10) month or academic year faculty unit employees shall be the academic year at semester/quarter campuses and the individual's academic year at QSYRO campuses, exclusive of time periods between academic years, time periods between academic terms, and the vacation periods of a faculty unit employee.

* * * * *

1 In the May 12, 2002, to June 30, 2004, Agreement (CSU Ex. 3), the parties added
2 a new section on Year Round Operations:

3 **ARTICLE 40—YEAR-ROUND OPERATIONS**

4 40.1 Effective beginning with the summer 2004 term, faculty teaching regular credit courses shall be
5 compensated on the same basis as in other academic terms. This provision shall apply to those
6 campuses with state-funded summer sessions.

7 40.2 The parties shall continue to meet to develop the final language on this subject, including the pro-
8 tection of temporary faculty rights and benefits.

9 * * * * *

10 **POSITIONS OF THE PARTIES**

11 **The Association.**

12 This is a unilateral change unfair labor practice case, deferred to arbitration by the
13 PERB under Article 3 of the parties' collective bargaining agreement. Accordingly, the
14 Arbitrator is obligated not only to consider Article 3, but also to apply the traditional
15 HEERA standards to determine if HEERA and Article 3 have been violated in CSU's ac-
16 tions to unilaterally establish terms and conditions of faculty employment for faculty em-
17 ployed in state-funded YRO programs. CFA does not contest the University's right to
18 make a determination that more courses will be taught in the summer; it contests only the
19 unilateral adoption of faculty terms and conditions of employment for Summer YRO
20 without bargaining with CFA and/or before the completion of the University's HEERA
21 bargaining obligations (fact-finding and mediation, at a minimum).
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25 The record establishes that each of the four tests used by the PERB to establish a
26 prohibited unilateral change has been met. There is no real factual dispute for three of the
27 four tests. First, there is no dispute that with the advent of state-funded YRO programs
28

1 beginning in Summer 2000, there has been a change in policy. Nor is there any claim that
2 the unilateral changes in question were an isolated incident. While YRO operations may
3 vary from campus to campus, YRO has been in place since Summer 2000 and now has all
4 the appearance of a permanent program. Third, the University has not claimed that YRO
5 terms and conditions of employment are outside the scope of collective bargaining. In-
6 stead, the University claims that all YRO terms and conditions of employment are sub-
7 sumed in the existing MOU.
8
9

10 The final test is whether the University gave CFA notice and an opportunity to
11 bargain over the change in policy. While there was no official notice, the Association
12 knew of the YRO plans by April 2000. The problem is that CSU decided to establish fac-
13 ulty working conditions unilaterally without obtaining CFA's agreement or discharging
14 its statutory bargaining obligations prior to final impasse. Some YRO bargaining took
15 place, and CSU was aware from the outset of its obligation to bargain. In April 2000,
16 CSU informed the State Legislature that it was then engaged in collective bargaining with
17 union leaders. The University negotiated special YRO agreements at Humboldt State and
18 Sacramento State. In Spring 2000, CSU sought to modify Article 20.4 of the MOU to
19 change the contractual limits on the work year of academic employees. The proposals did
20 not lead to an agreement, and CSU implemented its wage and workload scheme for
21 Summer 2000 without following the legal requirements for declaring impasse or pursuing
22 mediation and fact-finding. YRO discussions resumed again in December 2000. The Uni-
23 versity led CFA to believe that it was prepared to bargain further, but ultimately adopted
24 the position that it would discuss YRO only in the context of a successor contract, which
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1 would not become effective until 2002. Thus, the University unilaterally set summer 2001
2 YRO terms and conditions of employment prior to final impasse and without resorting to
3 the required legal process to do so.
4

5 CSU can only escape a finding of unilateral change if it can establish that the
6 terms and conditions implemented during Summer YRO are consistent with provisions of
7 the existing collective bargaining agreement. But in its YRO operations, CSU ignored,
8 modified, or misapplied dozens of contract provisions in order to implement the program
9 in a manner it thought best, rather than based on the rules it had previously agreed with
10 the Union were appropriate for other academic terms. Moreover, the existing contract was
11 negotiated well before the development of YRO, and without the slightest thought of
12 State-supported summer operations that would function outside the parameters of the tra-
13 ditional Extension summer school. It could not have been intended to cover YRO opera-
14 tions. In addition to the consolidated system-wide YRO bad faith bargaining/unilateral
15 change grievance, separate YRO implementation grievances were filed at Humboldt
16 State, Sonoma State, CSU Dominguez Hills, and CSU Hayward.
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20 CSU has violated a number of specific contract articles in its implementation of
21 YRO.
22

23 **Article 20.4, Work Year.** Under Section 20.4, the work year of “academic em-
24 ployees” cannot exceed 180 days, the normal time period for two semesters or three quar-
25 ters. Modification of Article 20.4 was one of the first CSU YRO bargaining proposals.
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1 When the Union's immediate agreement was not obtained, CSU simply went ahead and
2 employed certain faculty for more than 180 days.

3
4 **Article 20 and 10/16/95 Side Letter, Indirect Instructional Credits.** Regular
5 faculty at two-semester campuses automatically receive three indirect instructional credits
6 for each twelve direct instructional credits that they are assigned, and are paid at the rate
7 of 1/24th their annual salary for each direct instructional credit. In implementing YRO,
8 CSU violated the Agreement when it paid YRO faculty at the rate of 1/30th their annual
9 salary. Furthermore, CSU knew that it had to negotiate before changing the past practice.
10 The Humboldt and Sacramento YRO Agreements contain alternate credit assignment
11 schemes. This is the subject of the individual Sonoma State/Kramer (3-01-091) and
12 Dominguez Hills (3-02-048) grievances. Dominguez Hills also alleges a violation of Arti-
13 cle 29, regarding the right of FERP employees to teach during YRO.
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16
17 **Assignment of Appropriate Job Classification for Summer YRO and Article**
18 **21, Summer Session.** CSU improperly categorized the job classifications of faculty who
19 taught in YRO sessions. Classification 2357 was historically used only for self-funded
20 Summer Extension programs and should not have been used for YRO summer sessions.
21 Moreover, Article 21, Summer Session, was negotiated to apply to self-funded summer
22 Extension programs and does not apply to YRO. Even if it does, Section 21.1 requires
23 that the appointment of regular faculty to the Summer Session classification 2357 "shall
24 not in any way diminish a faculty unit employee's rights under this Agreement," which
25 CSU has done in a multiplicity of ways in its handling of YRO employment.
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1 **Article 12, Lecturer Rights.** Approximately half of Bargaining Unit 3 are tempo-
2 rary employees, commonly referred to as lecturers. There are references to lecturers and
3 their rights throughout the Agreement, but many of the most important appear in Article
4 12, which establishes various appointment and salary criteria for lecturers, all of which
5 CSU has ignored in its implementation of YRO. Special provisions for lecturers in the
6 Humboldt and Sacramento State YRO agreements demonstrate that CSU knew it had to
7 bargain over these standards. However, at campuses where there were no separate YRO
8 agreements, the University simply ignored Article 12.
9

10
11 **Article 6, Union Rights.** CSU has refused to give CFA information to which it is
12 entitled regarding YRO appointments. Furthermore, it has refused to provide release time
13 for a local Union president during summer session at a QSYRO campus, where there is
14 no question of entitlement under Article 6.13 of the Agreement. (This is the substance of
15 CFA Hayward, 3-02-072.)
16

17
18 **Article 13, Probation and Tenure, and Article 14, Promotion.** The major aca-
19 demic personnel decisions of the University—promotion, tenure and reappointment—all
20 contain temporal requirements that are affected by YRO employment, and which CSU
21 has refused to recognize or accommodate. As unilaterally determined by CSU, some work
22 performed by tenured and tenure track faculty (the YRO work) does not count toward
23 those temporal requirements.
24

25
26 **Article 24, Sick Leave.** Section 24.1 establishes the sick leave accrual rate for all
27 Unit employees, at eight hours of sick leave for every “qualifying” pay period. At CSU,
28

1 and in all State service, a qualifying pay period is any pay period in which the employee
2 is in compensable status for 11 days. CSU unilaterally determined that employees would
3 neither earn nor be entitled to use sick leave benefits during YRO appointments. There
4 are no relevant sick leave restrictions in the existing Agreement. CSU may not unilaterally
5 implement them without bargaining with the Union. CSU has treated other service
6 credit issues, such as entitlement to family leave under Article 22, fee waiver (Article 26),
7 and sabbatical leave (Article 27), similar to sick leave, neither accruing additional bene-
8 fits or permitting their use.
9

10
11 **Other Unilateral Actions.** CSU has engaged in other unilateral actions on specific
12 individual campuses. For instance, at Cal. Poly Pomona, the College of Business Admini-
13 stration established without bargaining a new set of rules governing eligibility for as-
14 signment to summer quarter work. These “special provisions” fall squarely within the
15 scope of representation and were neither the subject of notice to CFA nor the product of
16 bargaining with the Union.
17

18
19 This is not a case where the Union is attempting to gain through arbitration what
20 it failed to achieve at the bargaining table. This heart of this case is a unilateral change
21 unfair practice. There is no dispute that the parties engaged in limited bargaining over
22 limited YRO issues in both 2000 and 2001. When the parties failed to reach agreement,
23 rather than implement impasse procedures, CSU unilaterally established faculty terms and
24 conditions of employment in YRO. Nor is this a case where CSU merely expanded its
25 current state-supported summer sessions. YRO is different from QSYRO, and there were
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1 no state-supported summer sessions at non-QSYRO campuses prior to YRO. As the law
2 makes clear, CSU must honor its statutory obligation to engage in collective bargaining
3 and, if the parties are unable to reach agreement, proceed to mandated impasse proce-
4 dures before it takes unilateral action on terms and conditions of employment in YRO.
5

6 The complexity of the case requires a complex remedy. CFA is entitled to a full
7 statutory remedy, including a return to the status quo ante, a make whole remedy, an or-
8 der to bargain terms and conditions, and notice to each bargaining unit member of the
9 commission of the unfair practice/contract violation. The only terms and conditions of
10 employment that could have been applicable to YRO faculty in Summer 2000 and since
11 then are those that existed in the master contract in effect between the parties. Even if the
12 Arbitrator determines that YRO was covered by the terms of the Agreement in place at
13 the time, there have been numerous violations that must be corrected. CFA believes that
14 the best course of action is for the Arbitrator to remand the matter to the parties for fur-
15 ther bargaining and to retain jurisdiction in order to allow the parties further time to dis-
16 cuss specific remedies.
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20 **The University.**
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22 Article 3 of the Agreement has not been violated. First, CFA has not demonstrated
23 an adverse impact or a system-wide change in faculty working conditions that would trig-
24 ger an obligation to bargain pursuant to Provision 3.1. The language of 3.1 is clear that
25 “in the absence of any specific provisions” CSU practices and procedures are at the dis-
26 cretion of the Employer. Prior to the March 2002 tentative agreement on Article 40, there
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1 were no specific provisions in the collective bargaining agreement relation to year-round
2 operations. Provision 5.1 also reserves to CSU "all powers, rights, authorities, duties and
3 responsibilities which have not been specifically abridged, delegated or modified by this
4 Agreement." The rights to schedule academic courses and to determine the campus aca-
5 demic calendar are both historically determined by the shared governance process without
6 bargaining with the Association.
7

8
9 The University's application of various articles in the Agreement to summer ses-
10 sion employment has not changed as a result of the implementation of YRO pilot pro-
11 grams. The only contractual limitation, under provision 20.4, is that the University cannot
12 require as part of their primary appointment more than 180 days of work in the individ-
13 ual's academic work year. The academic year is separate and apart from the fiscal year,
14 which runs July 1 through June 30, or the college year, which is the 12-month period
15 used for reporting student enrollments. Thus, YRO operations, which allow faculty mem-
16 bers the opportunity to work the summer term, do not trigger an obligation to bargain pur-
17 suant to Article 3, nor do they violate the workload provisions of the Agreement if an in-
18 dividual faculty member's academic year does not exceed 180 days. The general practice
19 is that quarter system faculty work any three of four quarters, usually fall, winter, and
20 spring, while semester faculty work fall and spring. At the semester campuses, the sum-
21 mer term is too short to equate to a regular semester, so summer work is only part-time.
22 Faculty are not required to teach during the summer. When a faculty member volunteers
23 to teach during a term outside his or her normal 180-day academic year (not "spreading"
24 the work over all three semesters), it is an "extra term for extra pay," over and above the
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1 compensation given for academic year teaching. Similarly, when faculty already have a
2 full-time academic year appointment, the faculty member already receives a full benefit
3 package from that primary employment and does not accrue any additional benefits such
4 as sick leave. The exception would be a faculty member who taught less than full-time
5 during the academic year. Thus the expanded summer opportunities did not have a de-
6 monstrable impact on the application of faculty benefits provisions.
7

8
9 The record is also clear that the implementation of YRO pilot programs was done
10 on a campus-by-campus basis and thus was not a "system-wide" change that would re-
11 quire notice and impact bargaining with CFA. Three campuses did not even operate YRO
12 pilot programs. It is undisputed that campuses implemented the YRO pilot programs dif-
13 ferently and that, as noted in the feasibility study, "a one-size-fits-all approach will not
14 work." YRO programs are being implemented gradually and are still being introduced;
15 thus, there has not been a "system-wide" change. In addition, even if the individual cam-
16 pus YRO pilot programs were considered system-wide, the Association has not met its
17 burden to prove that there was a demonstrable impact of such programs on the negotiated
18 terms of the Agreement. The undisputed evidence is that there has been no change in the
19 University's application of various provisions of the collective bargaining agreement. The
20 summer YRO programs implemented by the University were pilot or test programs that
21 served on average only 5.5% of the normal academic year population. No faculty were
22 forced to teach, and those who did teach received a substantial increase in their salaries
23 compared to prior Extended summer sessions.
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1 Even if the University had an obligation to bargain, the record is un rebutted that
2 the University negotiated with the Association over campus implementations of YRO
3 programs. Individual agreements were reached at Humboldt and Sacramento. Contrary to
4 the Association's claims, the Humboldt MOU is still in effect and did not expire after the
5 Summer 2000 term. The University discontinued efforts to secure individual campus
6 agreements because CFA wanted to stop bargaining for individual campus agreements,
7 and the parties focused their efforts on a system-wide agreement. CSU offered to expedite
8 bargaining on the YRO issues in the full successor contract bargaining that was scheduled
9 to begin February 26, 2001; instead, CFA filed the unfair labor practice charge that was
10 deferred to this arbitration. If bargaining has been abbreviated in any way, it was the re-
11 sult of CFA's refusal to continue bargaining with CSU.
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15 Furthermore, the record demonstrates that the parties freely engaged in collective
16 bargaining to reach mutual agreement on a new YRO article. Beginning with CFA's first
17 substantive YRO proposal on May 31, 2001, until the parties reached tentative agreement
18 in March 2002, the parties exchanged proposals on every single topic alleged to have
19 been violated in the instant grievance. On June 7, 2001, CSU made a comprehensive
20 counter-proposal to CFA's May 31, 2001, proposal, covering the full range of YRO top-
21 ics. CFA did not make a counteroffer until November 5, 2001. Although the parties did
22 use a state mediator in reaching their final agreement, YRO was not one of the many is-
23 sues submitted to the mediator. When regular bargaining resumed, the parties reached
24 agreement on a new Article 40, entitled Year-Round Operations. Proposals were ex-
25 changed on all topics relating to YRO and agreements were freely reached, not unilater-
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1 ally imposed. Since all of the interpretation changes the Association seeks as a remedy in
2 this grievance were addressed at the bargaining table, the University has fulfilled any ob-
3 ligation to bargain with the Union. Article 40 only requires that faculty be compensated
4 on the same basis as in other academic terms beginning in 2004 and that the parties con-
5 tinue to meet and confer over other changes.
6

7 YRO operations are permitted under existing contract language. There have been
8 clear, long-standing, consistent and unchallenged past practices of year round operations
9 in the CSU during the terms of all collective bargaining agreements with the Association.
10 There is no separate QSYRO agreement, and the QSYRO campuses operate year round
11 under the same MOU that applies to the traditional semester campuses. The existing
12 Agreement accommodates QSYRO operations; it also accommodates YRO operations.
13 The only QSYRO-specific language in the contract appears in Articles 13.6 (Probation
14 and Tenure) and 36.7 (Additional Employment), and in the classification title 2368 (In-
15 structional Faculty, Extra Quarter Assignment, QSYRO – Casual Employment Em-
16 ployee).
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20 Looking at the specific contract violations alleged by the Association, first, the
21 salaries paid to summer session faculty have not violated any term of the collective bar-
22 gaining agreement. The Association's request that faculty be paid for instructionally-
23 related duties for extra term summer work is without merit since Article 40 of the Agree-
24 ment does not require such compensation prior to Summer 2004. Faculty are always paid
25 on the basis of a normal full-time workload of 15 WTUs per semester, or 30 WTUs per
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1 year, although they may be assigned a mix of both direct and indirect instructional duties.
2 As part of the successor contract negotiations that resulted in Article 40, the Association
3 initially proposed that faculty teaching in YRO sessions be compensated at the same rate
4 as during the regular academic year. The Association also specifically proposed that ef-
5 fective June 30, 2001, faculty teaching in a state-supported summer session be credited
6 and compensated as having performed one (1) WTU of indirect instruction for each three
7 (3) WTUs of direct instruction performed. . . .” But the bargaining history shows that
8 CSU rejected those proposals and agreed only that faculty would be compensated on the
9 same basis as other academic terms beginning Summer 2004, and then only if state funds
10 are provided. Furthermore, the instructionally-related activities for which the Association
11 seeks compensation (such as faculty governance committees) only occur during the regu-
12 lar academic year, not during the summer. The Association sought this remedy in
13 bargaining, but it did not secure its goal. To ignore the clear-cut language of the
14 Agreement would fly in the face of the basic rules of contract interpretation. Nor did the
15 University violate the Agreement when summer faculty were not given additional
16 compensation for performing direct instructional duties like holding office hours, because
17 Article 21 specifically requires faculty to perform these duties as part of their compen-
18 sated summer teaching responsibilities.
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24 The Association’s position is inconsistent: it claims that CSU cannot use Article
25 21 and class code 2357 to raise faculty salaries for summer teaching, while it also claims
26 that there can be no change in the status quo without bargaining. Simultaneously it also
27 claims that CSU has an obligation to increase faculty salaries for work during the summer
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1 term to an amount equivalent to their salary during the normal academic year. CSU can-
2 not both preserve the status quo and increase faculty salaries. Accordingly, the Arbitrator
3 should reject the Association's proposed remedies in favor of the University's position
4 that Article 21 is the appropriate vehicle for summer employment, regardless of funding
5 source. Article 21 permits payment above the negotiated minimum as part of the status
6 quo, so no additional bargaining is necessary to pay elevated salaries for summer YRO
7 work. The fact that state funds were used to subsidize part of the cost of summer instruc-
8 tion does not change the status quo that all summer session appointments were "extra
9 terms for extra pay" pursuant to Article 21. Regular term classes have always been of-
10 fered during summer and have been taught by 2357 faculty. There is no reference in Arti-
11 cle 21 to the funding source, nor any evidence that there was any bargaining to exclude
12 general fund supported summer programs. And when the parties intended to specify fund-
13 ing source, they knew how to bargain language to reflect that intent, as evidenced in Arti-
14 cles 36 and 40. Finally, Article 21.7 specifically permits the University to pay salaries
15 above the minimum enrollment rate. In many YRO programs the University chose to pay
16 above the minimum rates in order to attract more regular faculty to teach. The Associa-
17 tion's request to return to the 2000 "status quo ante" would result in salaries being low-
18 ered for YRO faculty.
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24 Next, the Association contends that FERP faculty were not allowed to teach during
25 the CSU Dominguez Hills 2002 YRO pilot program. Article 29 has not been violated,
26 however, because the period of employment and other conditions of FERP employment
27 must be consistent with the initial appointment letter of all incumbent FERP faculty.
28

1 Thus, the specific terms a FERP participant is scheduled to teach are set in the initial ap-
2 pointment before FERP employment begins. If current FERP participants were not
3 scheduled to teach during the summer as part of the initial FERP appointment, CSU has
4 no obligation to change the period of employment. Nor does it appear that any individual
5 faculty member at Dominguez Hills requested a change of appointment terms to include
6 the summer session.
7

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9 Finally, CSU did not violate Article 6.13 when it refused union release time at
10 CSU Hayward for local chapter president Kim Geron. There is a clear, consistent and
11 long-standing practice of not providing release time for union activity during the summer
12 term at Hayward, which has always been a YRO campus. In over 22 years, since the
13 Agreement has been in place, CSU Hayward has never processed a request for union re-
14 lease time for the summer quarter. Thus, there has been no past practice to support the
15 interpretation that 6.13 releases are properly used for summer terms. Union release time
16 is intended for "reductions in workload, without loss of compensation, for CFA represen-
17 tatives." Professor Geron volunteered to teach a political science course as an "extra
18 quarter for extra pay" and had already started to teach the course when the release time
19 was requested. If it were granted, Geron would receive four units of pay for not teaching
20 at all during the summer, while his students would suffer an interruption in their aca-
21 demic program. The Association's case for expanding the interpretation of Article 6.13 to
22 allow for such a release is not persuasive.
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1 The Association has not met its burden to show that the University was required to
2 bargain, much less failed to bargain, the demonstrable impact of the implementation of
3 the various individual campus Summer 2001 YRO pilot programs. Year round operations
4 have been conducted under the existing Agreement without challenge at the quarter sys-
5 tem campuses under the terms of all the prior collective bargaining agreements. Thus, the
6 Agreement could not have been violated in this case. Nor has the Association established
7 any of the alleged individual contract violations consolidated in this case. The grievance
8 should be denied; no remedy is appropriate.
9

11 DISCUSSION

12
13 This case as submitted comprises both a system-wide grievance and several indi-
14 vidual campus grievances that were consolidated with the system-wide case. The follow-
15 ing discussion addresses first the system-wide complaint, then the individual campus
16 grievances.
17

18 **I. Did the University violate Article 3 of the parties' Agreement in its implemen-**
19 **tation of state-funded year round operations (YRO) at previous semester cam-**
20 **puses?**

21 The Association has clearly acknowledged the University's authority to adopt
22 year-round operations and to determine the content and structure of YRO programs. Its
23 complaint is with *how* the University implemented YRO, specifically in that it unilater-
24 ally imposed terms and conditions on faculty unit employees without either bargaining to
25 impasse or following appropriate statutory impasse procedures, and that the terms and
26

1 conditions of YRO employment that it implemented violate the collective bargaining
2 agreement.

3
4 Article 3.1 of the Agreement is a typical “entire agreement” or “zipper” clause, not
5 unlike that found in many collective bargaining agreements, in which the parties limit the
6 use of external evidence to interpret the written agreement and also require that any
7 changes in the terms set forth in the agreement be expressed in written amendments mu-
8 tually agreed between the parties. Article 3.1 also reserves to the University, “in the ab-
9 sence of any specific provisions of this Agreement,” discretion to implement practices
10 and procedures. However, Article 3.1 also requires the University to provide notice to the
11 Association and an opportunity (upon request of CFA) to meet and confer “prior to the
12 implementation of systemwide changes affecting the working conditions of faculty unit
13 employees. . . on the demonstrable impact of such changes.” Thus, Article 3.1 establishes
14 four prerequisites to an obligation to meet and confer: (1) the change must be system-
15 wide; (2) the change must affect working conditions of unit employees; (3) the change
16 must have a demonstrable impact on those working conditions; and (4) the Association
17 must have requested bargaining. As for the last of these requirements, the evidence estab-
18 lishes that the parties did engage in bargaining in Spring 2000 and that CFA made a spe-
19 cific request to resume bargaining in December 2000.
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24 **A. Did the University’s implementation of state-funded year-round opera-**
25 **tions constitute a “system-wide change”?**

26 The University contends that, because it has not implemented YRO at all individ-
27 ual CSU campuses, the new YRO policy is not yet a “system-wide change.” Despite the
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1 fact that the University elected to implement state-funded year-round operations on a
2 campus-by-campus basis, however, there really can be no dispute that YRO represents a
3 significant system-wide change in how CSU operates.
4

5 Just how significant is demonstrated in the Feasibility Study on Year-Round Op-
6 erations that the University prepared in April, 2002, in response to a request from the
7 California Joint Legislative Budget Committee. (Jt. Ex. 4) Most of CSU's campuses fol-
8 low the traditional two-semester academic calendar, with very limited summer operations.
9 Previously, there were no state-funded summer programs at any of the University's six-
10 teen semester campuses. Summer courses, either for credit or non-credit, were offered
11 through the auspices of Extension Services. Because there was no state funding, courses
12 had to be self-funded, which meant, in practice, that they were more expensive for stu-
13 dents, a fact that operated to limit demand for such courses. The demographics of student
14 demand for education, coupled with limitations on the physical plant at various CSU
15 campuses, led the State Legislature to request that the University examine expanded
16 summer operations as a way to increase its ability to provide education services to its stu-
17 dent population.
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22 As the Executive Summary to the Feasibility Study stated: "The change to full
23 YRO is a major cultural shift for most CSU stakeholders." (Jt. Ex. 4, page 2)⁷ The Study
24 makes clear both the significance of the shift to YRO, as well as the University's com-
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26 ⁷ The Executive Summary continued: "The public K-12 and many community college districts — the pri-
27 mary source of CSU students — do not generally operate on year-round calendars and so the concept is not in-
28 grained in student behavior. It will require time, flexibility, and some incentives. Since the 23 campuses of the

1 mitment to YRO. The Study candidly acknowledged the difficulty of the task. It also rec-
2 ognized the role of collective bargaining negotiations in successfully implementing year-
3 round operations:

4 To reach this level [of YRO operations], the CSU has many hurdles to overcome. *Flexi-*
5 *bility and incentives for students and faculty* is the key to facilitating the growth in YRO.
6 Opportunities for alternative fee structures, desirable course scheduling, and adequate in-
7 formation for planning will assist in gaining enrollments. *Successful collective bargaining*
8 *negotiations*, staffing arrangements, maintenance planning and other issues need to be ad-
9 dressed from the university's perspective. None of these are short-term in nature or quick
10 to resolve. It will take exceptional planning, patience and time for all of the factors to
11 come together in a cost-effective and high quality manner. (Jt. Ex. 4, page 11; emphasis
12 added.)

13 Following the Feasibility Study, the University adopted in August 2001 "Imple-
14 mentation Guidelines for the *Systemwide* Expansion of State-Supported Summer Terms"
15 (emphasis added), which were published on the University's Web site. (CFA Ex. 15) The
16 first bullet point in the section "Implementation Guidelines — General" states: "The CSU
17 will implement state-supported YRO *on a systemwide basis* as rapidly as the state budget
18 will allow." (Emphasis added.) In February 2002, CSU published a "Year-Round Opera-
19 tions (YRO) Five-Year Plan." (CFA Ex. 16) The Five-Year Plan acknowledges the cam-
20 pus-by-campus nature of YRO implementation, but also makes clear the University's in-
21 tent to implement YRO system-wide.⁸ In light of the fact that its own documents refer to
22 the YRO policy as system-wide, it is difficult to see how the University can claim that
23 YRO is not a system-wide change.

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26 CSU differ widely in terms of size, location, curricular focus, physical capacity constraints, student demographics,
27 and culture, a 'one-size-fits-all' approach to implementation and growth targets will not work." (*Ibid.*)

28 ⁸ "Consequently, *the ultimate goal of implementing YRO on a systemwide basis* will be achieved in a variety
of ways in response to a variety of issues at the campus, college, discipline, program and even course level." (From
the Overview, CFA Ex. 16, page 1; emphasis added.)

1 That the University itself considered the new YRO policy to be a system-wide
2 program is further demonstrated in CSU's response to the unfair practice charge filed in
3 this case by the Association. In her letter to PERB dated April 12, 2001 (CFA Ex. 25),
4 University Counsel Janet Redd Williams stated:

5
6 . . . [W]hile state-funded YRO is new to the CSU this year, the concept certainly is not.
7 Since the 1960's, YRO has been viewed as a viable response to the need to serve increas-
8 ing numbers of students, and several CSU campuses have operated year-round. Over the
9 years, the CSU has conducted studies and pilot projects with a view toward expanding this
10 type of access for students and enhancing the CSU's capacity to serve their educational
11 needs. (CFA Ex. 25, page 1)

12 Williams went on to claim that the parties had in fact contemplated YRO operations in
13 their negotiations for the 1998-2001 collective bargaining agreement, and that the terms
14 and conditions of employment for Summer 2001 were in compliance with that agreement.
15 CSU's position tacitly acknowledged the system-wide nature of YRO operations.

16 Additionally, in deferring the Association's unfair practice charge to arbitration,
17 PERB Regional Attorney Mark Hurwitz found that the YRO policy was system-wide.
18 Before PERB can defer an unfair practice charge to arbitration, it must find that the dis-
19 pute is "subject to final and binding arbitration pursuant to a collective bargaining agree-
20 ment." (PERB Regulation 32620(b)(6).) In order for PERB find that deferral was appro-
21 priate, Hurwitz had to make a determination that the dispute was governed by the collec-
22 tive bargaining agreement. Hurwitz examined Article 3.1 and concluded that the "new
23 YRO policy" was a system-wide one:

24
25 CSU indicates that it is moving to year round operations at all campuses. Some have year
26 round operations on the quarter system. Others already have the new YRO or it is being
27 phased in during the next few years. I conclude that based on the above, year round opera-
28 tions will be at all CSU campuses. *I also conclude that the new YRO policy is a system-
wide policy and will impact current YRO campuses and others who are phasing in YRO*

1 *over the next few years.* By in or about 2002, CSU plans on having year round operations
2 at all its campuses with State funding for all campuses, whether on the semester or quarter
3 system. (Jt. Ex. 3, Hurwitz letter to Edward R. Purcell, August 15, 2001, page 2; empha-
4 sis added.)

5 The evidence of the system-wide nature of the YRO policy is overwhelming. The
6 record evidence, both documentary and testamentary, was undisputed that the University
7 was committed to implementing year-round operations throughout the CSU system. It
8 was only the size and complexity of the undertaking that prevented YRO from being im-
9 plemented simultaneously at every campus in the system. The state budget crisis has fur-
10 ther delayed full implementation of YRO at all campuses. Those facts, however, do not
11 change the character of the new YRO policy as one that is both system-wide and signifi-
12 cant. In this case, the whole is greater than the sum of its parts to date.

13
14 It is also important to understand that the “YRO” in this case is not the same as
15 “QSYRO.” The University has attempted to characterize the new YRO policy as simply
16 another iteration of the year-round operations that have existed for decades at the quarter-
17 system campuses. That is not true. At the QSYRO campuses, the academic year is broken
18 into four quarters of roughly equal length, and regular full-time faculty are required to
19 teach three out of the four quarters. Their compensation, benefits, and other terms and
20 working conditions are the same no matter which three quarters they teach, including the
21 summer quarter. YRO summer session, as it has been implemented at the semester cam-
22 puses, is decidedly *not* another term co-equal to the traditional fall and spring semesters.⁹

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27 ⁹ University Counsel Williams glossed over this distinction in her April 12, 2002, letter to Hurwitz at the
28 PERB, in which she indicated that faculty could work “during all three terms — fall, spring and summer —” or
“alternatively” could work the summer term “as one of their regular terms in place of the fall or spring semester.”

1 Furthermore, all of the YRO planning documents indicate that the University has no in-
2 tent of making it such. For one thing, summer YRO is much shorter in duration than the
3 regular semesters. The University does not expect to have as many course offerings as it
4 does during fall and spring terms, nor, apparently, does it expect that University govern-
5 ance activities, many of which have traditionally been suspended during the summer, will
6 continue during the Summer YRO terms.¹⁰
7

8
9 **B. Did the implementation of YRO have a “demonstrable impact” on the**
10 **“working conditions of faculty unit employees”?**

11 First, it should be noted that to date, no faculty have been required to teach in
12 Summer YRO; only those who wanted to teach, and could be accommodated, did. From
13 this, the University suggests that faculty who did teach YRO courses voluntarily accepted
14 whatever terms and conditions of employment the University offered for teaching “an ex-
15 tra term for extra pay.” The parties’ Agreement still applies, however, to “extra terms for
16 extra pay”—although the parties have a dispute about which provisions of the Agreement
17 apply to such work when it is state-funded.
18
19

20 One need not go through the extensive catalogue of violations of the Agreement
21 alleged by CFA to conclude that CSU’s implementation of YRO has a demonstrable im-
22 pact¹¹ on faculty working conditions; frankly, it is self-evident. With its ambitious sys-
23

24
25 There is no evidence in the record to support the latter contention, or to suggest that that option was offered to any
26 faculty who have taught in YRO Summer terms.

26 ¹⁰ This is the basis of the University’s contention, *infra*, that faculty need not be paid during Summer YRO
27 for indirect instructional activities for which they are automatically compensated during fall and spring terms.

27 ¹¹ The University contended that Article 3.1 was not violated because CFA had not shown any “adverse im-
28 pact” from YRO implementation. The language of Article 3.1 requires a “demonstrable impact,” not an adverse
29 impact. The right to bargain is not limited to negative actions undertaken by the University.

1 tem-wide YRO plan, the University is initiating what is essentially a new academic se-
2 mester (albeit shorter in duration than fall and spring) at its traditional two-semester cam-
3 puses, a semester that is designed ultimately to go well beyond the limited number of
4 courses previously offered through the summer session operated by Extension Services.
5 Furthermore, YRO is state-funded, like the rest of the academic year, and unlike Exten-
6 sion courses, which must be self-funding. The increased course offerings that are the aim
7 of YRO represent significant new work opportunities for faculty. The fundamental terms
8 and conditions under which faculty work are clearly within the scope of bargaining dur-
9 ing YRO as much as any other time of year.

12 Compensation and workload, benefits accrual, and timing for tenure, promotion
13 and salary increases are only a few of the working conditions affected by YRO.¹² Not all
14 faculty work or will work during YRO summer term, but implementation of YRO clearly
15 has a demonstrable impact on those who do. Furthermore, as YRO expands, that impact
16 will grow as well.

19 **C. Did the University bargain with the Association “prior to the implemen-
20 tation” of YRO, as required by Article 3.1?**

21 Initially, there was no dispute that the University and the Association would bar-
22 gain over YRO. In the section on “Impact on Faculty,” the April 2000 Feasibility Study
23 specifically referenced the need for collective bargaining on YRO:
24

25 *Compensation and working conditions for CSU’s faculty are determined through collec-
26 tive bargaining. Discussions are currently underway with union leaders to design collec-*

27 ¹² It is instructive here to review the Humboldt State and Sacramento State YRO agreements, to see what
28 changes in the master agreement the parties made at those campuses to accommodate YRO.

1 *tive bargaining agreements that enable the establishment of summer terms at the sixteen*
2 *semester campuses and encourage faculty to teach. This is a complex and lengthy process*
3 *given that salary and workload are just two of the many issues that must be addressed in*
4 *addition to how the summer assignment process will occur. (Jt. Ex. 4, page 14; emphasis*
5 *added.)*

6 Indeed, by April 2000, when the Feasibility Study was released, CSU and CFA
7 had already entered into a campus-specific YRO agreement at Humboldt State, and pilot
8 programs were planned at a number of other campuses for YRO Summer 2000. That
9 same month, CSU proposed amending Article 20.4 of the Agreement, which limits the
10 number of workdays an individual may work during an academic year, in order to make
11 the provision more YRO-friendly. CFA countered with a proposal that would require
12 YRO compensation to be the same as during the regular academic year. The parties were
13 unable to resolve their differences in the spring of 2000. YRO Summer 2000's pilot pro-
14 grams operated nonetheless, on terms set by the University, except at Humboldt State.

15
16 From the record, it appears that while YRO bargaining did occur, neither side was
17 diligent in pushing negotiations to a conclusion, at least after the first flush of activity. It
18 may be that both sides were waiting to evaluate the results of the Summer 2000 pilot pro-
19 grams before making any final decisions. Furthermore, YRO was being implemented on a
20 campus-by-campus basis, which meant that the need for immediate YRO bargaining var-
21 ied at individual campuses. Although the parties may have informally discussed YRO,
22 there is no documented evidence of any further system-wide efforts to negotiate terms
23 and conditions of YRO employment until December 2000, when CFA Consultant Ed
24 Purcell wrote to Sam Strafaci, CSU's chief negotiator, to initiate YRO bargaining for
25 Summer 2001.
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1 It was the ensuing series of communications between CFA and the University that
2 led CFA to file the unfair practice charge with PERB. Purcell requested YRO bargaining
3 under the existing Agreement, which was set to expire June 30, 2001, in the middle of
4 YRO Summer 2001. CSU responded that it preferred to tackle YRO in the context of the
5 successor negotiations that would be occurring later in the spring, and it indicated its will-
6 ingness to expedite YRO bargaining in order to have an agreement, if one could be
7 reached, in time for the Summer 2001 session. The system-wide negotiations broke down
8 at this point, and CFA filed its unfair practice charge with PERB March 7, 2001. The
9 University first expressed its position that it did not need to engage in bargaining because
10 its implementation of YRO would comply with the existing collective bargaining agree-
11 ment in its response to the unfair practice charge, dated April 12, 2001.
12
13

14
15 Apparently, YRO negotiations at individual campuses had been proceeding simul-
16 taneously, because a campus-specific YRO agreement was entered into at Sacramento
17 State on March 12, 2001, despite the fact that CFA had filed the system-wide unfair prac-
18 tice charge March 7. Following the Sacramento State agreement, CFA called a morato-
19 rium on further individual campus agreements in order to concentrate on a system-wide
20 solution to YRO. The CFA chapter at Humboldt State had requested renegotiation of that
21 campus' YRO agreement after Summer 2000, but those negotiations were halted by CFA
22 as part of the moratorium.
23
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25 Evaluating the evidence in the record, one cannot fairly conclude that CSU refused
26 to bargain over YRO for Summer 2001 before CFA filed the unfair practice charge.
27
28

1 Beginning in early 2000, whenever the Association raised the subject of YRO ne-
2 negotiations, CSU responded indicating its willingness to bargain on both campus-specific
3 and system-wide bases. The parties traded written proposals and entered into several
4 campus-specific agreements. By the beginning of 2001, the University was not willing to
5 engage in system-wide bargaining in the manner preferred by CFA (i.e., reopening the
6 Agreement that would expire at the end of June 2001, only a month into YRO 2001), but
7 it was willing to engage in YRO negotiations as part of the successor negotiations that
8 were scheduled to occur almost simultaneously. CSU offered to expedite the YRO com-
9 ponent of the negotiations to accommodate the Association's concerns about YRO 2001.
10 The University's desire to conduct integrated YRO negotiations in lieu of piecemeal bar-
11 gaining was not unreasonable. Presumably, any agreement reached between the parties
12 could have been made retroactive for the last month of the 1998-2001 Agreement.
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15

16 Further efforts between the parties to work out a system-wide YRO resolution in
17 the spring of 2001 ceased once CFA filed the unfair practice charge; this is a predictable
18 response. PERB did not defer the charge to arbitration until late August, too late to affect
19 YRO Summer 2001. Furthermore, almost immediately after the charge was filed, the par-
20 ties turned their attention to the successor master contract negotiations. The parties
21 reached impasse in those negotiations, which included YRO, in mid-July. Even using
22 statutorily mandated impasse procedures, they did not reach tentative agreement on the
23 successor Agreement until March 2002. The Agreement included a new provision on
24 YRO, Article 40. The bargaining history includes a variety of proposals on YRO that
25 were traded by CSU and CFA—most of them much more elaborate than the language that
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1 was finally adopted—which indicates that the parties were eventually able to resume their
2 YRO bargaining and even agree, finally, on at least one aspect of YRO implementation.¹³
3

4 In the overall context of events, one cannot conclude that CSU refused to bargain
5 with the Association. But bargaining is only one-half the issue. The second half is
6 whether the University unilaterally implemented terms and conditions of employment af-
7 fecting faculty unit employees in violation of either law or the parties' agreement. The
8 parties had not reached agreement on YRO implementation by Summer 2001, and the
9 University had to implement terms of YRO employment in order to offer contracts to
10 faculty who would be teaching during summer term, which it did unilaterally. A unilateral
11 action is not a breach of either law or contract if it is consistent with the negotiated
12 agreement that already exists between the parties. There is no dispute that CSU acted uni-
13 laterally in setting terms and conditions of employment for YRO 2001. The only remain-
14 ing issue is whether it did so in violation of the parties' existing agreement, which is the
15 focus of the rest of the discussion.
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19 **II. Did the University violate other provisions of the Agreement when it set the**
20 **terms and conditions of employment for faculty unit employees for YRO ses-**
21 **sions beginning in Summer 2001?**

22 According to CSU, it was appropriate for it to impose terms for YRO Summer
23 2001 because the terms it set were consistent with the parties' collective bargaining
24 agreement. CFA contends that the terms set by CSU for YRO Summer 2001, and subse-
25 quently, violate numerous provisions of the parties' Agreement.
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27

28 ¹³ Article 40.1 on salary.

1 At the outset, it is important to keep in mind that the 1998-2001 Agreement ex-
2 pired on June 30, 2001, in the middle of YRO Summer 2001. The parties did not reach
3 agreement on a new contract until the following spring, and the current Agreement did
4 not become effective until May 14, 2002. The distinction is important because the parties
5 negotiated a new provision in the current Agreement, Article 40, that dealt (at least par-
6 tially) with YRO. Accordingly, the time period at issue in the dispute straddles two col-
7 lective bargaining agreements with different terms. This discussion assumes that the
8 terms of employment set under the 1998-2001 Agreement at the beginning of YRO 2001
9 pertained throughout the duration of that session, and that the terms of the current (2002-
10 2004) Agreement were effective beginning with YRO 2002. Because contracts with dif-
11 ferent terms are involved, one must look at the violations alleged by the Association sepa-
12 rately in each instance where the contract language changed between Summer 2001 and
13 Summer 2002.

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17 It is also useful, before addressing individual alleged violations of the contract(s),
18 to consider the fundamental differences in perspective that have led the parties to this
19 dispute. Neither side is necessarily "wrong" in its perceptions. Rather, the parties occupy
20 such opposing terrain in the landscape of their relationship that the same situation looks
21 very different to each of them, much as half-way up a 12,000' mountain appears quite dif-
22 ferent if you are looking at it from sea level up or from the top of the peak down. Prior to
23 the advent of state-funded YRO, regular full-time faculty at the semester campuses typi-
24 cally worked two semesters, fall and spring, and not more than 180 workdays per aca-
25 demic year per Article 20.4. During that time, they earned a full year's benefits (such as
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1 sick leave) and credit toward salary step increases and promotions. Some benefits were
2 tied to service during the academic year, while others accrued according to credit hours
3 taught. Summer employment, which was not state-funded, was fundamentally different
4 from employment during the regular academic year, and this difference was reflected in
5 its treatment under the collective bargaining agreement, in Article 21: the pay was con-
6 siderably less, but so were the University's expectations about indirect instructional activ-
7 ity; no additional benefits accrued as a result of the additional employment, and so on.¹⁴
8
9

10 Enter YRO, a program designed to maximize CSU's use of its physical plant and
11 resources in order better to serve its student population. Cutting through the hype and the
12 marketing, the reality of YRO from an employment perspective is that it is a hybrid beast:
13 it is certainly more than the old Extension Service summer sessions, but it is not yet (nor
14 is it intended to become) a full semester on co-equal terms with the traditional fall and
15 spring semesters. Therein lies the source of the dispute between the parties.
16
17

18 From the perspective of the individual faculty member, teaching for-credit courses
19 funded by the state in the summertime looks very much the same as teaching for-credit
20 courses funded by the state at any other time of the year and should be treated the same
21 for all purposes, including compensation. To the extent that certain benefits and perqui-
22 sites of employment are tied in to service, faculty teaching in the new "year-round opera-
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27 ¹⁴ The parties got around the 180-day limit imposed in Article 20.4 by limiting the Article itself to the tradi-
28 tional academic year. In many ways, regular faculty who taught during summer session were treated as if they were
not University employees the rest of the year—a fiction that, until the advent of YRO, served both parties' inter-
ests, but a fiction nonetheless.

1 tions” program should continue to accrue those benefits and perks just as they do when
2 teaching during the fall or spring.

3
4 The University, on the other hand, has based its benefits accrual formulae on par-
5 ticipation in the traditional two-semester academic year. According to this line of reason-
6 ing, regular faculty who elect to teach in the newly state-funded summer term have al-
7 ready earned their full year’s quota of benefits during the preceding academic year. They
8 are not entitled to earn *more* than a full year’s worth of benefits as a result of working
9 through what used to be the summer break. This perspective was memorialized in Article
10 21 of the prior Agreement, Summer Session, which made clear the “second-class” status
11 of summer teaching through the self-funded Extension Service: lower pay, no benefits,
12 lowered expectations for indirection instructional activity—even when regular faculty
13 were teaching the same for-credit courses that they taught during the regular academic
14 year.
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18 The parties are at odds because the faculty expects that state-funded YRO will live
19 up to its billing as true “year-round operations” and University employment during sum-
20 mer term will be treated the same as University employment during the fall and spring
21 terms. But from the University’s perspective, summer teaching, whether through YRO or
22 through Extension Service, is, in both cases, “extra work for extra pay.” The only differ-
23 ence between them is the funding source—which should not affect the terms and condi-
24 tions of employment. Alternatively, the University points out that it has operated “year-
25 round operations” for decades, at its quarter-system campuses, and the Agreement con-
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1 tains only limited special provisions for the QSYRO campuses. Accordingly, the Univer-
2 sity could implement terms and conditions for YRO summer sessions without any new
3 bargaining.

4
5 The two perspectives are mutually incompatible, which highlights the need for
6 bargaining over the impact of YRO implementation. Failing that, however, the parties
7 have to live with the terms of their existing Agreement(s), applied to year-round opera-
8 tions. The 1998-2001 Agreement reflected a long history of bargaining that neither con-
9 sidered nor was intended to cover the new YRO policy. The 2002-2004 Agreement
10 nominally addresses year-round operations in the new Article 40, but with the exception
11 of Section 40.1 on compensation, the provision merely left YRO open to further bargain-
12 ing. The most pressing YRO implementation issues can be gleaned from the content of
13 the Humboldt State and Sacramento State YRO agreements (Jt. Ex. 1, CSU Ex. 10): aca-
14 demic work year, staffing during the summer term, salary during the summer term (in-
15 cluding both compensation and workload), lecturer issues, and service credit accrual.¹⁵

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19 As the University has acknowledged in the Feasibility Study and various YRO
20 planning documents (*see, e.g.*, the "Expansion of State-Supported Summer Terms Q &
21 A," January 2001, CFA Ex. 12), the new YRO policy represents a major change in its op-
22 erations. The introduction of state funding for year-round operations casts summer teach-
23 ing in a different light. If the University now operates throughout the year on the same
24 basis as it historically has during the fall and spring terms (including funding sources for
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28 ¹⁵ Staffing during summer term is not part of this grievance, presumably because no one was *required* to
teach involuntarily as part of his or her regular University employment.

1 all three terms), there is no longer any reason to treat summer term differently from fall
2 and spring terms for purposes of employment. YRO is not merely Extension Service Ex-
3 tended, nor is it QSYRO in a different guise: the new YRO policy is not intended to
4 transform all campuses into quarter-system operations. The goal of the YRO program is
5 “fully converting to state-supported summer terms on all campuses” within a few years.
6 (*Ibid.*, page 2) And while the University does not anticipate that the new YRO summer
7 term will become the equal of fall and spring terms, it does hope to make summer term as
8 much like the rest of the academic year as possible for matriculated students, both in cost
9 and in quality of education. This is why one of the administration’s goals is to entice
10 regular faculty to teach in the YRO sessions. And that implies that faculty conditions for
11 employment will be much like the rest of the year—at least, more like the regular aca-
12 demic year than like Extension Services.
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16 How does the existing collective bargaining agreement apply to YRO? The Uni-
17 versity contends that it reserved the right in Article 3.1 to implement practices and proce-
18 dures “in the absence of any specific provisions of the Agreement.” The 1998-2001
19 agreement was neither negotiated to encompass nor intended to cover year-round opera-
20 tions, except at QSYRO campuses, where the parties have evolved practices over many
21 years about how to handle quarter-system operations in a largely two-semester academic
22 environment. That does not mean that the ’98-’01 Agreement does not apply at all to
23 YRO, however; “specific provisions” of that Agreement may apply to YRO regardless of
24 whether YRO was mentioned. The current (2002-2004) Agreement left all YRO issues
25 except salary open to further negotiation. This means that, with the sole exception of sal-
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1 ary, any constraints on YRO implementation that existed in the '98-'01 Agreement were
2 carried forward to the '02-'04 Agreement.

3
4 Against this background, the discussion now turns to the individual alleged viola-
5 tions of the Agreement.

6
7 **A. Academic Work Year (Articles 20 and 36).**

8
9 The University has treated YRO employment as an “extra term for extra pay” out-
10 side the regular academic year. The Association contends that this violates Section 20.4
11 of the Agreement. Under Section 20.4, the work year of “academic employees” cannot
12 exceed 180 days, the normal time period for two semesters at traditional campuses or
13 three quarters at QSYRO campuses. In addition, Article 36 limits employment compen-
14 sated by CSU to one full-time position, with an allowance for an “overage” of up to 25%
15 of a full-time position if (a) the overage employment is “substantially different in nature”
16 from the individual’s primary or normal employment, (b) if it is funded from “non-
17 general fund sources,” or (c) if it results from accruing part-time employment on more
18 than one campus. (Article 36.5) The limitation on additional employment is itself time-
19 limited, however, by Article 36.7, “Applicable Time Periods for Limitations on Addi-
20 tional Employment”:
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24 The applicable time period for . . . academic year faculty unit employees shall be the aca-
25 demic year at semester/quarter campuses and the individual’s academic year at QSYRO
26 campuses, exclusive of time periods between academic years, time periods between aca-
27 demic terms, and the vacation periods of a faculty unit employee.
28

1 Article 36.5(b) excluded summer teaching through Extension Services from the
2 limitation on additional employment because it was funded from non-general fund
3 sources.
4

5 The transition to year-round operations raises questions about the definition of the
6 academic year. Interestingly, Article 2, Definitions, includes definitions of “calendar
7 year” (Section 2.4) and “fiscal year” (Section 2.14), but not “academic year.” If the Uni-
8 versity truly intends to operate year-round with three semesters—fall, spring, and summer
9 (as suggested by University Counsel Williams’ letter to PERB), the academic year at
10 “semester” campuses would have to be extended beyond its traditional nine or ten months
11 to include the entire twelve months of the calendar (fall, spring and summer terms). Arti-
12 cle 20.4 would still limit the work years of individual academic employees to 180 work-
13 days.
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17 Article 20.4 presents its own YRO problems, however. If the academic year en-
18 compasses twelve months, summer employment would take fall-spring semester faculty
19 over the 180-day limit. The 180-day limit also prohibits employees from spreading a re-
20 duced workload over the entire year, unless “days in lieu thereof” is interpreted to allow
21 daily workloads to be prorated. The University recognized this problem when it proposed
22 an amendment to Article 20.4 in April 2000 that would have clarified “180 workdays” to
23 mean “180 full-time workdays” and would have permitted employees to work the equiva-
24 lent of 180 full-time workdays “spread over all academic terms including the summer
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1 term.” (CFA Ex. 1) Both the Humboldt State and Sacramento State YRO agreements
2 adopted this formulation. (Jt. Ex. 1, ¶ B; CSU Ex. 10, ¶ B)

3
4 However, employment during YRO is not a violation of either Article 36 or Article
5 20 as they currently exist. It is not a violation of Article 36, even though YRO is state-
6 funded, because of Article 36.7, which specifies the time periods for limitations on addi-
7 tional employment: the applicable time period for faculty employees at semester cam-
8 puses is “the academic year. . . *exclusive of* time periods between academic years, time
9 periods between academic terms, and the vacation periods of a faculty unit employee.”
10 For faculty whose normal work year is fall and spring terms, summer term is their “vaca-
11 tion period,” to which Article 36’s strictures on additional employment by the University
12 do not apply.
13
14

15 Nor does YRO employment violate Article 20.4. If the “academic year” were
16 comprised of three semesters: fall, spring, and summer, it would. However, the meaning
17 of “academic year” in the ’98-’01 Agreement—which was not changed by the parties’
18 ’02-’04 bargaining—was the traditional academic year, that is, fall and spring terms at
19 two-semester campuses, and fall, winter, and spring at QSYRO campuses.¹⁶ In the ab-
20 sence of a specific contract provision changing the long-term meaning of “academic
21 year,” that meaning still pertains, and YRO employment is not subject to the 180-day
22 limit of Article 20.4.
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27 ¹⁶ Actually, it is difficult to see what the remedy would be if the University had violated Article 20.4 when it
28 employed faculty during YRO Summer 2001 and later. Article 20.4 was adopted in order to limit the amount of
work the University could require of faculty employees during their normal work year. Everyone who taught YRO
volunteered to do so, and it had no impact on their normal work year schedules.

1 **B. Summer Term Salary (Compensation and Workload) (Article 21).**

2 According to the Association, both the pay rate and workload assigned to YRO
3 faculty violated the parties' Agreement. The University contends that the pay rates were
4 permissible under Article 21, Summer Session, which establishes a different pay scale for
5 summer teaching than during the regular academic year. There are, actually, two separate
6 but related components of this alleged contract violation. The first is whether faculty
7 teaching in the summer term are entitled to be paid at the same rate as during the rest of
8 the academic year, instead of the rate established for "summer session" in Article 21. The
9 second issue is how instructional credits are to be allocated during summer term. During
10 the traditional two-semester academic year, regular faculty are normally assigned twelve
11 direct instructional credits (for credit hours they teach) and three indirect instructional
12 credits, for a total of fifteen instructional credits per semester.¹⁷ Thus, a professor who
13 teaches 12 WTUs is actually credited with and paid for 15 WTUs. The Association con-
14 tends that, on this basis, regular faculty who teach in the YRO summer programs are enti-
15 tled to be paid at the rate of 1/24th their annual salary for each credit hour they teach. The
16 University contends, first, that it may pay faculty according to the "Summer Session"
17 rates set forth for Classification 2357, but that in any case, it need not pay more than
18 1/30th the annual salary for each credit hour taught, since faculty are not expected to and
19 do not perform indirect instructional activities during the summer.
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27 ¹⁷ As pointed out by Arbitrator Carleton Snow in the California Maritime Academy Award (CFA No. 3-99-
28 173 2002), the 12/3 split is a target, not an absolute number. In the absence of contract language regarding the
allocation of direct versus indirect instructional credits, Arbitrator Snow held that there was a binding "clear past
practice" as to how direct and indirect WTUs were assigned.

1 With Article 40 of the 2002-2004 Agreement, the parties added language that spe-
2 cifically addressed compensation during the summer term. Accordingly, the disposition of
3 this issue will depend on separate analysis of the 1998-2001 Agreement and the 2002-
4 2004 Agreement.

5
6 **1. YRO Summer 2001.**
7

8 Permanent state funding for year-round operations eliminates any distinction be-
9 tween regular semester teaching and summer term teaching, and therewith, any legitimate
10 basis for different pay rates.¹⁸ Article 21, Summer Session (and with it, Class Code 2357,
11 Instructional Faculty – Summer Session – Casual Employment Employee), was negoti-
12 ated and designed for summer teaching in the self-funded Extension Services program.
13 The fact that the express language of Article 21 is not limited to Extension Services does
14 not mean that the parties intended to cover possible state-funded operations as well. It
15 does not. There was no state-funded YRO “summer term” when Article 21 was negoti-
16 ated, and there is no reason to extend a pay classification developed for self-funded
17 courses to those that are state-funded. Class Code 2357 was developed to apply to self-
18 funded summer teaching, not state-funded teaching otherwise identical to the rest of the
19 academic year. Accordingly, Article 21 does not apply to faculty who teach during the
20 state-funded YRO term.
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26 ¹⁸ Prior to implementing permanent year-round operations, a number of CSU campuses operated pilot pro-
27 grams designed to test the feasibility of YRO, and in fact, the Legislature included special funding in the CSU
28 budget for operating such pilot programs in Summer 2000. The experimental nature of the pilot programs required
that the University have a certain amount of flexibility in operating the programs; one of the variables to test was
faculty salary. But it is important to distinguish that kind of temporary, one-time pilot program from YRO as a
permanent program fully subject to the parties’ Agreement. *See*, this Arbitrator’s award in the *Stanislaus* case.

1 Instead, they should be paid using the same classification code that applies during
2 other state-funded terms. This conclusion is supported by the negotiated pay scales for
3 QSYRO faculty who teach an extra quarter; YRO summer term is the functional equiva-
4 lent of an extra quarter at the traditional semester campuses. The University refers to
5 YRO term as “extra work for extra pay,” but then stands on its right to pay faculty pursu-
6 ant to Class Code 2357, which is substantially lower than the faculty’s usual compensa-
7 tion. However, the parties negotiated that QSYRO faculty who perform “extra work for
8 extra pay” during a state-funded quarter would be paid *on the same basis as during their*
9 *regular academic year.* Class Code 2368 is designated “Instructional Faculty, Extra
10 Quarter Assignment, QSYRO.” The introductory note to the salary schedule states, in
11 part: “The monthly payment is 1/3 of quarterly salary. The quarterly payment is 1/3 of
12 academic year salaries.” In other words, QSYRO faculty who elect to teach a fourth quar-
13 ter as “extra work for extra pay” are paid the same rate as any other quarter. Class Code
14 2368 is the most appropriate comparison to YRO summer session, and faculty who teach
15 in YRO summer term as “extra work for extra pay” should be paid at the same rate as
16 during their regular academic year.¹⁹

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21 This brings us to the question of what is the “same rate”? The Association main-
22 tains that summer YRO faculty should be paid at 1/24th their annual salary for each
23 weighted teaching unit they are assigned, but the University maintains that 1/30th per
24 WTU is proper. How much faculty are paid per WTU is not specifically addressed in the
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26
27 ¹⁹ The University did pay YRO faculty per the appropriate classification code. This discussion is not moot,
28 however, because the University contends that it was not required by the Agreement to pay at that level, and that it
remained free to pay YRO faculty at any pay rate equal to classification code 2357, or above.

1 parties' Agreement. Article 20, Workload, sets forth principles and general guidance
2 without going so far as to set a specific ratio of direct to indirect instructional activities.
3 Indeed, Section 20.2.a. expressly recognizes that "The composition of professional duties
4 and responsibilities of individual faculty cannot be restricted to a fixed amount of
5 time...." The Section goes on to conclude: "...and will be determined by the appropriate
6 administrator after consultation with the department and/or individual faculty member."
7
8 In Section 20.2.d., the parties agreed "to continue the current practice regarding the
9 calculation of Weighted Teaching Units. . ." Past practice resurfaces in Section 20.3.,
10 which protects faculty from "an unreasonable workload or schedule." Section 20.3.c.
11 states: "prior practices of the University shall include the calculation of Weighted
12 Teaching Units in prior years." Both the 1998-2001 and 2002-2004 Agreements also
13 include a Memorandum of Understanding between the parties regarding "Article 20
14 changes," dated October 16, 1995, which references past practice and EP&R 76-36,
15 "CSU Faculty Workload Policy and Procedures," on the calculation of Weighted
16 Teaching Units. Differences between the parties on how to calculate WTUs eventually
17 went to arbitration, and in the *California Maritime Academy* award (2002), Arbitrator
18 Carleton Snow held that the parties had a past practice of assigning 3 indirect
19 instructional units for every 12 direct instructional units assigned at regular semester
20 campuses.
21

22 In the *Maritime Academy* award, Arbitrator Snow discussed past practice and its
23 limits—particularly the effect of a change in circumstances on "past practice." He con-
24 cluded, for instance, that past practices of the original California Maritime Academy did
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1 not survive the Academy's absorption into the CSU system.²⁰ Extending "past practice"
2 to a new situation requires careful analysis.

3
4 In this case, we must examine the "past practice" at issue as it applies to YRO.
5 The fact is, there *is* no past practice regarding assignment of credit for indirect instruc-
6 tional activities during state-funded summer term, since there has previously been no such
7 term. The past practice acknowledged in *California Maritime Academy* was limited to
8 regular academic semester assignments, where the parties had a long history from which a
9 past practice could be inferred. The distinction between the new YRO summer term and
10 fall and spring terms is important because some of the activities for which faculty receive
11 indirect instructional activity credit during the regular academic year, such as faculty
12 governance, do not occur during the summer.²¹ Furthermore, they may never, because
13 YRO is only expected to operate at 40% of the capacity of the traditional semesters.
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17 But other indirect instructional activities may continue during YRO: for instance,
18 thesis or fieldwork supervision (Section 20.3.b.). During the regular academic year, the
19 parties' past practice is automatically to credit faculty with three units of indirect instruc-
20 tional activity for every twelve direct instructional units they are assigned. Thus, faculty
21 are actually paid at 1/30th their annual salary per WTU, but their total WTU includes that
22 automatic credit.²² In the absence of either an established past practice or a negotiated al-
23 location between direct and indirect instructional activities such as one finds in the Hum-
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25

26 ²⁰ See, *California Maritime Academy* (Snow, 2002), page 24.

27 ²¹ At least at this time. As YRO summer term becomes more firmly established, some University-wide ac-
28 tivities that are currently suspended during the summer break may also become "year-round operations."

1 boldt State and Sacramento State YRO agreements,²³ it is simply not possible to find that
2 either the Association's 1/24th rate or the University's 1/30th rate is the appropriate one to
3 use, because each faculty member's mix of direct and indirect instructional activities dur-
4 ing summer term may be different. More individualized calculations, specifically of indi-
5 rect instructional activities, will have to be made. For the appropriate allocation of direct
6 and indirect instructional credits during YRO summer term, one must look to the Agree-
7 ment itself, specifically Article 20, Sections 20.1, 20.2, and 20.3, as well as to EP&R 76-
8 36. Under Section 20.3.a., the "composition of professional duties and responsibilities . . .
9 will be determined by the appropriate administrator after consultation with the depart-
10 ment and/or the individual faculty member." Appendix B of EP&R 76-36 sets out a num-
11 ber of activities for which Weighted Teaching Units may be assigned; there may be oth-
12 ers that the parties have recognized as well. For each faculty member who taught YRO
13 Summer 2001, the appropriate pay rate is his or her total WTUs (both direct and indirect)
14 times 1/30th his or her annual salary.²⁴

19 2. YRO Summer 2002 and 2003.

20 As noted previously, the parties' new Agreement became effective May 14, 2002,
21 prior to YRO Summer 2002 and governs YRO employment since then. The only substan-
22 tive component of the new YRO provision, Article 40.1, addresses compensation; Article
23

24
25 ²² It may look like faculty are being paid at the rate of 1/24th of their annual salary per WTU, but that per-
26 spective ignores the automatic assignment of indirect instructional activity credits.

27 ²³ In the Humboldt State agreement, see ¶ D.1 (Jt. Ex. 1); in the Sacramento State agreement, see ¶¶ D.1 and
28 D.3 (CSU Ex. 10).

²⁴ Thirty is the appropriate denominator, because 30 WTUs per year is the standard target whether it is com-
puted 12/3 (per semester) or 15. It is the numerator that will vary, according to each faculty member's actual ac-
tivities during the summer term.

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40.2 reserves all other YRO matters to further bargaining between the parties. Article 40.1 of the 2002-2004 Agreement states:

Effective beginning with the summer 2004 term, faculty teaching regular credit courses shall be compensated on the same basis as in other academic terms. This provision shall apply to those campuses with state-funded summer sessions.

The bargaining history of Article 40 really begins with the December 12, 2000, letter from CFA Consultant Ed Purcell to Sam Strafaci at CSU. (CFA Ex. 3) The letter contains a list of "CFA Proposals for State-wide Bargaining of YRO Issues," that sets forth CFA's position on a number of terms and conditions of employment that it believed would be affected by implementing YRO. Regarding salary and workload, CFA proposed:

.....
2. Clarify that existing contractual class codes (e.g. 2357) and attendant salary schedules apply only to student fee-supported, Extension summer instruction and not Summer YRO which receives State General Fund support. . . .

.....
5. Clarify the application of instructionally-related WTU's during Summer YRO. The basic principles here should be: 1) all unit members are treated equally in regard to instructionally-related WTU's; 2) each 4 units of direct instruction will be accompanied by 1 WTU of instructionally-related credit...whenever the following are required, "suggested," necessary or performed in the amount of 4-9 hours per week: office hours, preparations, campus or department governance activities including all meetings. If such activities are not applicable to a Summer YRO, the appointment for such period will specifically state so. . . .

.....

The parties started negotiations for a successor contract in Spring 2001. CSU made a YRO proposal on June 7, 2001. CFA responded in November, then the parties traded substantial proposals, the last of which was dated in March 2002. (CSU Ex. 2) What was ultimately adopted as Article 40, leaving most of the YRO issues unresolved, is quite different from what the parties had discussed in their drafts: the last CSU proposal had thir-

1 teen sections. The one thing that *is* clear from this history is that the parties did *not* agree
2 to make the existing salary and workload provisions of the Agreement immediately appli-
3 cable to YRO Summer term teaching. Instead, they agreed in Article 40.1 that faculty
4 teaching regular credit terms in state-funded summer sessions would “be compensated on
5 the same basis as in other academic terms” beginning in Summer 2004. Summer 2002 and
6 Summer 2003 were not addressed. This leads to the conclusion that they remain subject
7 to the compensation terms of the prior Agreement. In other words, faculty compensation
8 for Summer 2002 and 2003 should be treated the same as prior years, e.g., Summer 2001.
9

10
11 The bottom line is that the compensation for each faculty member who taught
12 YRO summer terms in 2001, 2002, or 2003 will need to be recalculated to reflect credit
13 for indirect instructional activities that were actually engaged in.
14

15 **C. Service Credit and Benefits Accrual and Usage**

16
17 Under the Agreement, certain faculty benefits and perquisites are time-related.
18 That is, they are determined by years of service or credit hours taught. Part of the system-
19 wide grievance challenges the University’s failure to include YRO employment in calcu-
20 lating such benefits. A related issue is the University’s failure to permit employees teach-
21 ing during YRO to make use of benefits already accrued during their regular academic
22 year employment, such as sick leave or bereavement leave. The University has two justi-
23 fications for its position. First, individuals employed under Article 21, Summer Session,
24 do not earn benefits or accrue service credits; because they do not earn benefits, they are
25 not entitled to use them during summer session. Second, regular faculty employees earn
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1 their full annual complement of benefits and service credits during the regular academic
2 year. Any teaching that is an "extra term for extra pay," such as YRO, does not increase
3 benefit or service levels.
4

5 This issue implicates a number of different provisions of the Agreement: Article
6 13, Probation and Tenure; Article 14, Promotion; Article 22, Leaves of Absence without
7 Pay; Article 23, Leaves of Absence with Pay; Article 24, Sick Leave; Article 26, Fee
8 Waiver; Article 27, Sabbatical Leaves; Article 28, Difference in Pay Leaves; Article 31,
9 Salary; Article 32, Benefits; and Article 38, Layoff. A review of the specific language of
10 these provisions shows that the extent to which the University must accommodate or
11 credit YRO teaching varies.
12

13
14 **1. Probation, Tenure, and Promotion (Articles 13 and 14).**
15

16 Article 13, Probation and Tenure, sets standards both for the probationary period
17 prior that precedes a tenure decision (Sections 13.1 through 13.12) and for granting ten-
18 ure (Sections 13.13 through 13.19). Under Section 13.3, "[t]he normal period of proba-
19 tion shall be a total of six (6) years of full-time probationary service and credited service,
20 if any." Section 13.6 defines a "year of service for a faculty unit employee in an aca-
21 demic year position" as "two (2) consecutive semesters or three (3) consecutive quarters
22 of employment within an academic year." There are special rules for QSYRO campuses
23 and individuals with 12-month and 10-month appointments. The Section closes: "For the
24 purpose of calculating the probationary period, a year of service commences with the first
25 fall term of appointment." Article 14 establishes standards for promotion. Pursuant to
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1 Section 14.3, promotions of tenured faculty “shall normally be effective the beginning of
2 the sixth (6th) year after appointment to his/her current academic rank/classification.”
3

4 There are no express provisions in Article 13 or Article 14 on how to count YRO
5 service. Under the current language of Article 13, a semester-campus faculty member
6 who wanted to teach fall and summer terms would not meet the “two consecutive semes-
7 ter” requirement for calculating a year of service, since the calculation is made beginning
8 with the fall semester. This is a matter the parties may want to address in bargaining. But
9 the issue presented in this grievance is different: does the Agreement require that YRO
10 teaching be counted in determining service years for purposes of probation, tenure and
11 promotion?²⁵
12
13

14 A review of the language of Articles 13 and 14 indicates that it does not. Article
15 14 does not address “years of service” specifically, as does Article 13. However, it is rea-
16 sonable to conclude, given the proximity of the two articles and the relatedness of their
17 subjects, that the “sixth year after appointment” in Article 14.3 refers to six “years of ser-
18 vice” as that term is defined and meant in Article 13. There is certainly nothing in Article
19 14 to indicate that “years” there has a meaning different from Article 13, so the remainder
20 of this discussion will focus on Article 13.
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25 ²⁵ The effect of counting YRO teaching toward “years of service” credit can be either positive or negative,
26 depending on one’s perspective. The person who is eager to move forward in the tenure process as quickly as possi-
27 ble would want YRO credits to increase years of service, in order to shorten the normal six-year period before
28 tenure review. But other faculty members may want as much time as possible to solidify their research and publica-
tion records and to improve their teaching before being considered for tenure. For those individuals, the enticing
prospect of earning additional income by teaching in a YRO summer term may be outweighed by concerns that
they would be *required* to be considered for tenure before a full calendar six years. This concern may be less pro-
nounced with respect to promotions under Article 14 once tenure has been granted.

1 Section 13.3 defines the normal period of probation as “a total of six (6) years of
2 *full-time* probationary service and credited service, if any.” (Emphasis added.) “Credited
3 service” in Article 13.4 is limited to “previous service at a post-secondary education insti-
4 tution, previous *full-time* CSU employment, or comparable experience.” (Emphasis
5 added.) A “year of service” is defined in Section 13.6 as two semesters (or three quarters)
6 of employment in an academic year. Between them, the three sections indicate that “years
7 of service” are credited for full-time work, on an annual basis.²⁶
8
9

10 Nor is there any provision to earn *more* than a full year’s credit by taking on an
11 additional teaching load, or otherwise to shorten the probationary period. Accordingly,
12 for faculty who are assigned a full-time course load during the fall and spring semesters,
13 “years of service” for purposes of Articles 13 and 14 need not include YRO service. On
14 the other hand, for faculty who teach part-time during fall and spring semesters, YRO
15 service should be counted toward bringing them up to full-time equivalent service.
16
17

18 There is a related “promotion” issue that should be addressed here. Article 31, Sal-
19 ary, includes provisions for various salary increases for faculty: general salary increases,
20 merit increases, service salary increases (SSI), market or equity increases, and increases
21 pursuant to promotion. Subject to the conditions set forth in Article 31, it appears that
22 salary step increases, when available, are granted automatically after a certain amount of
23 time. SSIs are subject to annual negotiations between CFA and CSU under Section 31.36.
24 There is nothing in Article 31 to suggest that faculty unit employees may shorten the eli-
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27
28 ²⁶ This interpretation is limited to the express language of the Agreement. The parties may have evolved practices or alternate interpretations over time, of which the Arbitrator is unaware.

1 gibility period for a salary step increase by accruing additional service credits teaching
2 YRO.

3
4 **2. Leaves of Absence (Articles 22, 23, 27, and 28)**

5 The Agreement sets standards for a variety of different leaves of absence: Article
6 22, Leaves of Absence without Pay; Article 23, Leaves of Absence with Pay; Article 27,
7 Sabbatical Leaves; and Article 28, Difference in Pay Leaves. In some cases, entitlement
8 to a leave is based on service.
9

10
11 **a. Leaves Without Pay (Article 22)**

12
13 Generally speaking, the availability of leaves without pay (Article 22) is not based
14 on years of service or employment with the University,²⁷ although such leaves are limited
15 by Section 22.1 to full-time faculty or part-time tenured faculty.²⁸ The one exception is
16 family care or medical leaves (Section 22.13ff.), which are available to employees who
17 have “at least twelve (12) months or two (2) semesters or three (3) quarters of service.”
18 (Section 22.13.) This service threshold approximates one year’s full employment. It is
19 fairly minimal and, once an employee has crossed it, there is no further service require-
20 ment. Similar to years of service for probation, tenure and promotion, there is no provi-
21 sion in Article 22 to “speed up” entitlement through extra teaching, so the University is
22 not required by the Agreement to credit YRO teaching for purposes of a family care or
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26 ²⁷ Unpaid maternity/paternity leave up to twelve months is available only to tenured faculty, but there is no
27 additional time-based requirement beyond tenure.

28 ²⁸ Part-time temporary faculty may also be granted leaves “of a short duration, not to exceed one semester or
one quarter.”

1 medical leave if it would enable a faculty member to obtain a leave before he or she has
2 completed the minimum service requirement set forth in Section 22.13.²⁹

3
4 **b. Leaves With Pay (Excluding Sick Leave) (Articles 23, 27 and 28)**

5 In addition to leave without pay, the Agreement also sets forth rights to a variety
6 of leaves with full or partial pay.³⁰

7
8 **i. Sabbatical and Difference in Pay Leaves (Articles 27 and 28)**

9
10 Article 27 defines the terms under which sabbatical leaves are granted. The service
11 requirement is defined in Section 27.2:

12
13 A full-time faculty unit employee shall be eligible for a sabbatical leave if he/she has served
14 full-time for six (6) years at that campus in the preceding seven (7) year period prior to the
15 leave and at least six (6) years after any previous sabbatical leave or difference in pay
16 leave. . . .

17 Eligibility for sabbatical leave is based on full-time years of service with the University.

18 There is no provision in the Agreement to shorten the normal six-year period by perform-
19 ing extra work. Accordingly, faculty unit employees may not use YRO teaching as vehi-
20 cle to shorten the time period between sabbatical leaves.³¹ Article 28 describes "Differ-
21 ence in Pay Leaves," a variant on sabbatical leave. The eligibility requirement in Section
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26 ²⁹ But see the next section about an employee's ability to apply for and use family care or medical leave dur-
ing YRO.

27 ³⁰ Sick leave, Article 24, is discussed separately in the next section.

28 ³¹ In other words, faculty members do not receive credit beyond "full-time" even if they work more than the
normal course load by teaching during YRO.

1 28.4 is similar to that for sabbatical leave—that is, it is also based on full-time years of
2 service with the University³²—and it should be treated similarly.

3
4 **ii. Shorter Leaves with Pay (Article 23)**

5 Article 23, Leaves of Absence with Pay, presents a somewhat different YRO issue
6 than other leave provisions. The article discusses a variety of specific situations for which
7 unit employees are entitled to take mostly short-term leaves with pay: bereavement leave,
8 paid maternity/paternity leave, jury duty leave, and so on. Article 23 does not impose any
9 minimum service requirement as a prerequisite to these leaves, so credit for YRO teach-
10 ing is not an issue. The University has taken the position, however, that regular unit em-
11 ployees who are teaching YRO are not entitled to the benefit of taking such leaves: as an
12 “extra term for extra pay,” employees working YRO do not earn service credits, nor are
13 they entitled to the use of any previously accrued benefits. But there is no language in Ar-
14 ticle 23 that would limit employees’ entitlement to its leaves to the “regular” academic
15 year (that is, fall and spring terms). Faculty unit employees who teach YRO are still Uni-
16 versity employees and are still entitled to the benefits of the collective bargaining agree-
17 ment when they teach during summer term. The fact that they are working outside their
18 normal academic year changes neither their status as unit employees nor their rights under
19 the Agreement.
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27 ³² “A full-time faculty unit employee shall be eligible for a difference in pay leave if he/she has served full-
28 time for six (6) years at that campus in the preceding seven (7) year period prior to the leave.”

1 Faculty unit employees who teach state-funded YRO are entitled to apply for and
2 be awarded leaves under Article 23 on the same basis as during fall and spring terms.
3 This is also true for unpaid family care or medical leave under Article 22.13 ff. The eligi-
4 bility requirements for Articles 22 and 23 may differ, but in either case, the circumstances
5 that give rise to the need for such leaves do not respect the traditional two-semester aca-
6 demic calendar. To cite one example, a death in the family can occur at any time, without
7 warning. Even during YRO summer term, faculty are entitled to bereavement leave under
8 the Agreement.
9

10
11 **c. Sick Leave (Article 24)**
12

13 Pursuant to Article 24, full-time faculty unit employees accrue eight hours' credit
14 for sick leave with pay for each "qualifying pay period" (Section 24.1), and part-time
15 faculty earn credit "on a pro rata basis." (Section 24.2.) Furthermore, the Agreement ex-
16 pressly states that there is no limit on the amount of sick leave that one can accrue. (Sec-
17 tion 24.3) The only limits on when sick leave may be used are set out in Section 24.8:³³
18

19 Under no circumstances may a faculty unit employee be granted sick leave for days during
20 layoff periods, during a leave of absence without pay or during an officially scheduled
21 campus closure, unless the faculty unit employee is officially scheduled to work during
22 such a closure.

23 The Agreement does not limit accrual of sick leave to the regular academic year.
24 Faculty who teach during YRO are paid for their work during "qualifying pay periods,"
25

26
27 ³³ There appears to be a typographical error in the Arbitrator's printed copy of the collective bargaining
28 agreement. The section numbering in Article 24 goes: 24.7, 31.0, 24.9. . . . The section numbered 31.0 appears to
be in the correct place (that is, it is not misplaced material from Article 31), so the Arbitrator assumes that it
should, in fact, have been numbered 24.8 and refers to it as such in this discussion.

1 and they are entitled to accrue sick leave according to whether they are teaching the
2 equivalent of a full-time or part-time course load.

3
4 Furthermore, YRO is not one of the enumerated exclusions to when sick leave can
5 be granted under Section 24.8,³⁴ so faculty teaching YRO are also entitled to use their ac-
6 crued credits for sick leave in accordance with the rest of Article 24, until the parties bar-
7 gain otherwise.
8

9 **3. Other Benefits (Article 32)**

10
11 No specific YRO issues have been identified under Article 32, Benefits, which ad-
12 dresses health, dental, and vision insurance and miscellaneous other, smaller benefits
13 such as access to campus recreational facilities. Eligibility appears to be defined by
14 PERS, not by the Agreement itself.³⁵ Until such time as a specific grievance is filed, it
15 would be inappropriate for the Arbitrator to issue a ruling.
16

17
18 **4. Other Service Credit Issues**

19 **a. Layoff (Article 38)**

20
21 Article 38 defines the criteria for implementing any layoffs. The order of layoff is
22 set out in Section 38.11; for certain layoff categories, the President has the right to estab-
23 lish the order of layoffs within the group, considering certain non-ordered factors. How-
24 ever, pursuant to Section 38.15, the order of layoff for tenured faculty members must oc-
25

26 ³⁴ YRO is not a "layoff period," a "leave of absence without pay," or "during an officially scheduled campus
27 closure."

28 ³⁵ See, Section 32.1: "Eligible employees and eligible family members *as defined by PERS . . .*" (Emphasis
added.)

1 cur in reverse order of seniority. Seniority points are computed according to formulae set
2 forth in Section 38.23. YRO enters the picture under Section 38.23.a., which excludes
3 from the calculation of seniority points “[s]ervice in appointments to extension, summer
4 session, special session or as a casual employment employee. . .” As discussed *supra*, the
5 Agreement’s reference to “summer session” means the self-funded summer session oper-
6 ated by Extension Services, not the state-funded YRO summer term. This would suggest
7 that YRO service should be counted toward seniority points. At the same time, however,
8 Section 38.23.a. states that seniority points will be earned for “time spent in service dur-
9 ing consecutive academic or fiscal years on the campus from the time of initial academic
10 appointment.” This could be interpreted to mean that time worked beyond one’s regular
11 work scheduled would not count. Also, service “as a casual employment employee” does
12 not count toward seniority points. A “casual employment employee” is a bargaining unit
13 member whose is so classified in Appendix A. (Article 2, Section 2.6) As noted previ-
14 ously, the closest Class Code to the YRO term for regular faculty working YRO as an ex-
15 tra term beyond their regular course load appears to be 2368, “Instructional Faculty, Extra
16 Quarter Assignment, QSYRO,” which is classified a casual employment position. Until
17 such time as the parties bargain a different result, the Agreement does not require that
18 YRO teaching count toward seniority points under Section 38.23.
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24 **b. Fee Waiver (Article 26).**

25 Article 26 provides a fee waiver program for faculty (or their spouses and depend-
26 ent children) to take courses at the University. Section 26.1 states:
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1 The appropriate administrator shall approve requests from all tenured and probationary
2 faculty unit employees and temporary faculty unit employees *with at least 6 years of full-*
3 *time equivalent service* in the department for enrollment in the CSU fee waiver program
4 subject to the provisions of this Article. (Emphasis added.)

5 CSU has not counted YRO teaching toward “full-time equivalent service.” Unlike Article
6 27, which limits eligibility for sabbatical leave to those who have “served full-time for six
7 (6) years” out of the preceding seven years, Article 26 is available to *all* tenured, proba-
8 tionary, and temporary faculty unit employees who have six years’ full-time *equivalent*
9 service. This difference in language clearly intends to create different eligibility, in that
10 part-time employees can, over time, accrue sufficient “full-time equivalent service” to
11 qualify for the fee waiver benefit. Teaching YRO summer session should count toward
12 that full-time equivalent service for unit employees who are not working full-time. For
13 those who do work a full-time workload in other academic terms, YRO service cannot be
14 used to accelerate one’s entitlement to benefits based on full-time service. This is consis-
15 tent with the holding in prior sections of this Opinion and Award.

16
17
18 **5. Lecturers and Part-Time Employees.**

19 A number of the preceding sections have addressed part-time employees as such.
20 An important category of employees who are not regular, full-time employees are the
21 Lecturers who comprise a significant portion of the bargaining unit. Lecturers are ap-
22 pointed as temporary employees, part-time employees, or both. Article 12, Appointment,
23 is especially pertinent to their employment rights. Regarding YRO, both the Humboldt
24 State and Sacramento State YRO agreements made special provisions for Lecturers. Un-
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1 der the master Agreement, the University has ignored YRO service in determining the
2 rights of temporary employees under Article 12.

3 Section 12.3 provides:

4 . . . Following two (2) semesters or three (3) quarters of consecutive employment within
5 an academic year, a part-time temporary employee offered appointment to a similar as-
6 signment in the same department or equivalent unit at the same campus shall receive a one
7 (1) year appointment. . . .

8 As noted previously, state-funded YRO is different from the traditional fall and spring
9 semesters only in its duration and the number of course offerings. The difference may be
10 even less distinct for part-time employees, who may be able to teach the same number of
11 courses in summer term as they do the rest of the academic year. Nothing in Section 12.3
12 limits the countable semesters or quarters in the academic year to fall, winter and spring.
13 YRO counts toward part-time, temporary employees' eligibility for appointment "to a
14 similar assignment in the same department or equivalent unit at the same campus."
15

16 Article 12.9 grants temporary employees a salary step increase "upon completion
17 of twenty-four (24) units on a semester campus, or the equivalent on a quarter campus. . .
18 only during years when the parties have agreed to provide Service Salary Step Increases. .
19 . ." Again, there is nothing in the Agreement that limits the term when those units are
20 taught. Accordingly, units taught during YRO should be counted toward the 24 units es-
21 tablishing eligibility for an SSI increase under Article 12.9.
22

23
24 **E. Miscellaneous.**

25 **1. Union Rights (Article 6).**
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28

1 According to CFA, CSU has refused to give it information to which it is entitled
2 under Article 6 regarding YRO appointments. The Association's rights to information
3 under Article 6 apply to YRO the same as to other terms or quarters.
4

5 **2. Other Unilateral Actions.**
6

7 CSU has allegedly engaged in other unilateral actions on specific individual cam-
8 puses. For instance, at Cal. Poly Pomona, the College of Business Administration estab-
9 lished without bargaining a new set of rules governing eligibility for assignment to sum-
10 mer quarter work. (CFA Ex. 13) To the extent that eligibility for assignments in other
11 terms has been the subject of bargaining in the past, it remains so for YRO term.
12

13 **III. Did the University violate the parties' Agreement in any of the individ-**
14 **ual campus grievances?**
15

16 **A. Did the University violate the Agreement in how it paid faculty to teach**
17 **during YRO Summer 2001 at Sonoma State (Grievance 3-01-091**
18 **(Kramer)) and CSU Dominguez Hills (Grievance 3-02-048)?**

19 Both the Kramer and Dominguez Hills grievances contend that the University
20 should have paid YRO faculty at the rate of 1/24th their annual salary per WTU. Pursuant
21 to the ruling on system-wide YRO salaries and workloads, faculty who taught during
22 YRO terms at the Sonoma State and Dominguez Hills campuses should have been paid
23 according to the actual direct and indirect instructional activities in which they engaged.
24

25
26 **B. Did the University violate Article 29 of the Agreement when it banned**
27 **FERP faculty participation in YRO at CFA Dominguez Hills? (Griev-**
28 **ance 3-02-048)**

1 Article 29 delineates the Faculty Early Retirement Program, or FERP, which al-
2 lows eligible tenured faculty to take early retirement. Part of the FERP program requires
3 faculty to teach a reduced course load for a specified period of time before entering full
4 retirement. (See, Article 29.3, 29.8.) FERP participation in YRO was a subject of discus-
5 sion between the parties early in the YRO process. One of the Q & A's in the "Expansion
6 of State-Supported Summer Terms Q & A," issued by the University January 4, 2001
7 (CFA Ex. 12), addressed the possibility of FERP faculty teaching in the summer:

8
9 **Q4: Can FERP faculty and other retired faculty teach in the summer?**

10
11 A4: FERP faculty must stay within the employment limits established by both the CBA
12 and PERS. In some cases, the CBA language is more restrictive than the PERS
regulations. . . .³⁶

13 In the spring of 2001, the Office of the Associate Vice President for Faculty Af-
14 fairs at CSU Dominguez Hills issued an "FAQ for Salary, Personnel and Payroll Informa-
15 tion for Summer 2001 Teaching Faculty" (CSU Ex. 14), which addressed FERP partici-
16 pation in YRO Summer 2001 at that campus:

17
18 **Q1: Can FERP faculty teach in the summer?**

19 A1. If you have submitted a FERP application for this coming year (effective Fall
20 2001), you are not yet a current FERP participant and you may be appointed to a teaching
assignment in the Summer 2001.

21 Current Faculty Early Retirement Participants (FERP) may not be appointed in the
22 2001 YRO Summer term. FERP participation in future YRO summers will be dependent
upon the outcome of contract negotiations at the state level. (CSU Ex. 14)

23 According to the Level II response, this position was developed by the YRO
24 Summer '01 Task Force Committee, which included the Academic Senate Chair, Presi-
25 dent of CFA, a department chair and administrators. CFA did not object to the limitation
26

1 in Summer 2001. The campus proposed using the identical terms and conditions for
2 Summer 2002. But on June 5, 2002, the CFA chapter at CSU Dominguez Hills filed a
3 grievance protesting the campus' refusal to let FERP faculty participate in YRO Summer
4 2002.³⁷ (Grievance 3-02-048, CSU Ex. 7) The record does not establish whether any in-
5 dividual FERP participants were actually affected as a result of the policy in either Sum-
6 mer 2001 or Summer 2002.

7
8
9 There is nothing inherent in CSU's implementation of YRO that would prohibit
10 FERP faculty from participating. But together, the collective bargaining agreement and
11 PERS regulations both impose a number of requirements on FERP employment that may
12 in fact prevent individual FERP faculty from teaching during any specific summer. That
13 is a function of the complexity of the FERP program, however, and is not a violation of
14 the collective bargaining agreement.

15
16
17 First, under Article 29.3, the period of FERP employment is set *before* someone
18 actually becomes a FERP employee, and changes are at the discretion of the University:

19 The potential participant shall be provided with a FERP appointment letter from the Presi-
20 dent. The FERP appointment letter shall indicate the required period of employment as de-
21 termined by the President. The employee shall provide to the President a written statement
22 of acceptance of such a FERP appointment. If the President determines it is necessary, due
23 to program needs, to alter the period of employment, the President and the participant
24 shall attempt to reach mutual agreement on an alternative. If mutual agreement is not
25 reached, the President may alter the period of employment, provided that the participant
26 receives a one hundred and twenty (120) day notice.

27 ³⁶ This language did not change markedly in the updated "Implementation Guidelines for the Systemwide
Expansion of State-Supported Summer Terms" that was issued by CSU August 1, 2001. (CFA Ex. 15, at page 9)

28 ³⁷ The grievance also protested the proposed pay rate of 1/30th annual base salary per WTU.

1 Accordingly, a potential FERP participant would have to make arrangements before en-
2 tering the FERP program to teach in a YRO summer term. Failing that, the period of em-
3 ployment is set and is not subject to change unless the University agrees.
4

5 In addition, FERP participation begins with the beginning of any campus' aca-
6 demic year, which is usually in the Fall. (Article 29.5) Under Article 29.8, the permissi-
7 ble "period of employment" is one academic term "not to exceed a total of ninety work-
8 days or fifty (50) percent of the employee's regular time base in the year preceding re-
9 tirement." Unless they do not teach at all during the regular academic year, FERP em-
10 ployees may have reached the maximum permissible period of employment before sum-
11 mer term begins.
12

13
14 Finally, Article 29.13 provides that FERP participants "shall not be eligible for
15 other CSU appointments while in the FERP." This forecloses FERP participants from the
16 "extra work for extra pay" option that is available to non-FERP faculty.
17

18
19 The campus statement of policy to which the Association objects did not violate
20 the parties' Agreement. The first sentence merely pointed out that individuals who had
21 applied for FERP beginning with the fall term were not yet FERP participants and there-
22 fore remained eligible as regular faculty members to be appointed to summer teaching as-
23 signments. The second sentence addressed current FERP participants, who had already
24 received and accepted letters of appointment specifying their FERP period of employ-
25 ment, which apparently did not include YRO Summer 2001 for any of them. Faculty
26 members knew before accepting their FERP appointments whether they would include
27
28

1 summer teaching. Finally, the last sentence merely acknowledges the unobjectionable fact
2 that future FERP participation in YRO is subject to change based upon the parties' con-
3 tract negotiations.

4
5 Restrictions in Article 29 may limit FERP employees in their ability to teach in
6 YRO summer terms. But the restrictions are part of the FERP program itself. In the ab-
7 sence of evidence that any individual FERP faculty member was improperly denied an
8 opportunity to teach a YRO term, the University has not violated the Agreement.

9
10 **C. Did the University violate the Agreement when it refused to amend the**
11 **original campus YRO agreement at Humboldt State after the Associa-**
12 **tion requested renegotiation of its terms? (Grievance 3-01-069)**

13
14 CSU and CFA entered into a campus-specific YRO agreement at Humboldt State
15 University on February 8, 2000, after several years of planning and negotiation. (Jt. Ex.
16 1) The Humboldt Memorandum of Understanding addressed various terms and conditions
17 specific to YRO employment, such as the definition of the academic work year, salaries,
18 staffing requirements, and so on. The MOU's preamble addressed the duration of the
19 agreement:
20

21 The California State University ("CSU") and the California Faculty Association ("CFA")
22 hereby enter into the following agreement regarding the implementation of a year-round
23 academic calendar at Humboldt State University commencing with the summer 2000 term.
24 *This agreement shall remain in effect until the CSU and the CFA renegotiate it, after re-*
25 *view pursuant to F3 of this MOU. (Jt. Ex. 1; emphasis added.)*

26 Section F.3 stated:

27 Conditions of summer term 2000 employment not covered by this MOU, and any recom-
28 mended changes to this MOU, will be reviewed by the joint labor management committee
pursuant to Article 8 of the CBA.

1 Simultaneously, the parties adopted a Supplemental Agreement on how to imple-
2 ment Section F.3, which was also dated February 8, 2000, and appended to the MOU:

3 The parties hereby agree upon the following to implement F3 of the MOU for Year-
4 Round Operations at Humboldt State University. Those issues relating to local (Humboldt
5 State University) issues [sic], the HSU joint labor management committee shall initiate ne-
6 gotiations at the local level when either the administration or CFA believes that there is a
7 need for change. Following agreement at the local level, changes will be forwarded to the
8 system level for review and approval.

9 The Humboldt agreement was implemented in summer 2000. On the basis of that
10 experience, the Association requested negotiations to modify the MOU, particularly re-
11 garding assignment of workload. Per the Supplemental Agreement, the HSU joint labor
12 management committee met, and it appears that, together, the parties tentatively agreed
13 on some changes. (CSU Ex. 1) At a meeting of the joint committee on January 22, 2001,
14 however, CFA representatives informed the University representatives that the state-wide
15 CFA had decided against having separate campus agreements (CSU Ex. 2), and the par-
16 ties terminated their negotiations shortly thereafter. [Tr. 29] The parties did not use any
17 statutory impasse procedures to resolve their differences. When the University applied the
18 provisions of the original Humboldt agreement to Summer 2001, the Association filed a
19 grievance, alleging various violations of the master collective bargaining agreement, in-
20 cluding Article 8. (CSU Ex. 5) According to Professor John Travis, president of the CFA
21 Executive Committee at Humboldt State, CSU applied the original MOU again during
22 Summer 2002, without any negotiations. However, the Association made no request to
23 resume negotiations.
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1 The facts established in the record are insufficient to conclude that the University
2 bargained in bad faith, as alleged by the Association. After Summer 2000, the Association
3 requested that the parties meet to renegotiate the terms of the MOU, and the evidence is
4 that they were in the process of good faith negotiations when the Association called a halt
5 to the bargaining. An employer is not bargaining in bad faith when the parties terminate
6 negotiations on the union's initiative. The Association never renewed its request for nego-
7 tiations.
8

9
10 As for the charge of a unilateral change in working conditions, the parties had en-
11 tered into an agreement that by its terms superseded the master collective bargaining
12 agreement and would continue in effect until renegotiated. CFA was the moving party in
13 terminating negotiations. If it wanted to reopen negotiations to terminate the Humboldt
14 agreement, the burden was on it, not the University, to do so. Under the circumstances,
15 the University did not violate the Humboldt agreement or the master contract, nor did it
16 commit an unfair labor practice, when it continued to implement the terms of the Hum-
17 boldt agreement after Summer 2000.
18
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21 **D. Did the University violate Article 6.13 when it refused release time to**
22 **Professor Geron at CSU Hayward for Summer 2002? (Grievance 3-02-**
23 **072)**

24 Article 6.13 provides release time for CFA representatives at individual campuses:

25 The following WTU pools shall be provided for the purpose of granting reductions in
26 workload, without loss of compensation, for CFA representatives. There shall be a pool of
27 six (6) WTUs on a semester campus, or eight (8) WTUs on a quarter campus, per aca-
28 demic term, for distribution among campus CFA chapter representatives. . . .

1 CSU Hayward is a QSYRO campus. Professor Kim Geron, the CFA representative
2 there, requested four WTUs of release time for Summer, 2002, which the University de-
3 nied. Geron's normal academic year is fall, winter, and spring quarters; he was scheduled
4 to teach an extra course for extra pay during Summer 2002, at a .2666 time base. Profes-
5 sor Geron filed a grievance July 15, 2002, which the University denied on two grounds:
6 first, that there was no practice of granting release time in the summer quarter and sec-
7 ond, Article 6.13 was never intended to grant release time when a union representative is
8 working an extra quarter for extra pay. According to the Level II response, although CSU
9 Hayward is nominally a QSYRO campus, summer teaching there has always been volun-
10 tary and Summer is not considered part of the regular academic year. During the 2001-
11 2002 academic year, fall, winter, and spring quarters, CSU made release time workload
12 reductions totaling 24 WTUs pursuant to Article 6.13. (CSU Ex. 8)

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16 Looking first at the Agreement, the language of Article 6.13 does not limit release
17 time in any quarter at a QSYRO campus. The provision states, clearly and simply, that
18 "There shall be a pool of . . . eight (8) WTUs on a quarter campus, per academic term, for
19 distribution among campus CFA chapter representatives." Nothing restricts release time
20 to any three of four quarters, and it would be inappropriate to construe such plain and di-
21 rect language that way. Nor has the University established that there is a past practice of
22 refusing release time during the Summer term at Hayward. No one has ever requested it
23 before. In order to be binding, a past practice must be the established way of doing things,
24 recognized by both parties. A past practice cannot develop in the absence of activity; a
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1 binding past practice could only develop if CFA regularly requested release time in the
2 summer term at Hayward and the University routinely denied the request.

3
4 The above conclusions do not mean that the University violated the Agreement
5 when it refused Professor Geron's request for release time, however. Release time to
6 conduct union business is a common feature of collective bargaining agreements. In gen-
7 eral, the purpose of release time is to enable union representatives to conduct their union-
8 related duties without suffering adverse consequences in their employment. Release time
9 permits representatives to reduce their normal workloads, without suffering a loss of pay
10 in their normal salary. Inherent in the concept of release time, however, is an opposite
11 corollary: the union representative should not suffer negative consequences as a result of
12 engaging in union activity, but neither should he profit therefrom. In other words, one's
13 status as a union representative should have a neutral impact—neither positive nor nega-
14 tive—on one's employment status. An employer is not required to grant an employee re-
15 lease time *beyond* his or her normal hours of work and compensation, nor is an employee
16 entitled to release time for time that he or she is not scheduled to work.
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20
21 There is nothing in Article 6.13 to suggest that the purpose of release time in the
22 CSU/CFA Agreement is any different. Indeed, the first sentence of Article 6.13 clearly
23 adopts the normal purpose of release time: "The following WTU pools shall be provided
24 *for the purpose of granting reductions in workload, without loss of compensation, for*
25 *CFA representatives. . .*" (Emphasis added.) The language requires nothing more than that
26 release time be granted for the purpose of reducing *normal* workloads without loss of
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1 normal compensation. Permitting a union representative to sign up for extra work for ex-
2 tra pay, then demand release time from that assignment would require the University to
3 pay *more* than normal compensation, without itself receiving any additional benefit. Arti-
4 cle 6.13 does not require the University to subsidize union activity beyond normal work-
5 load and compensation levels.
6

7
8 As of Summer 2002, Professor Geron had already worked a full three-quarter aca-
9 demic year and had presumably received a normal year's compensation for his work.³⁸
10 Accordingly, he was not entitled to additional release time in Summer 2002, and the Uni-
11 versity did not violate the collective bargaining agreement when it denied his request. If
12 summer term is part of a union representative's normal work year, requests for release
13 time pursuant to Article 6.13 must be considered. However, when the representative is
14 working a term as extra work for extra pay beyond his or her normal level of compensa-
15 tion, there is no contractual entitlement to additional release time.
16
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18 AWARD

19
20 To summarize the findings and awards in each of the preceding sections:

- 21 1. The University did not violate Article 3 of the parties' Agreement when it imple-
22 mented YRO at various campuses. That is, the University did not refuse to bargain
23 with CFA over the implementation.
- 24 2. However, the University did violate other provisions of the Agreement when it im-
25 plemented terms and conditions of employment for YRO terms beginning in
26 Summer 2001. Specifically:

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28 ³⁸ The record does not indicate whether Professor Geron was the recipient of any of the 24 hours of release
time granted by CSU Hayward during the fall, winter and spring semesters 2001-2002.

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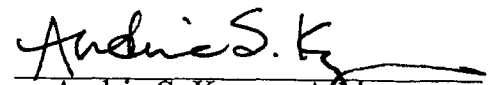
- a. The University violated the Agreement when it paid faculty pursuant to Article 21. Faculty should have been paid according to their regular classification code(s).
 - b. The University did not violate the Agreement when it refused to give YRO faculty automatic credit for indirect instructional activity. However, it violated the Agreement when it refused to give them credit for indirect instructional activity in which they actually engaged during YRO terms.
 - c. With the exception of the special case of sick leave, the University did not violate the Agreement when it refused faculty service credits beyond the normal annual full-time complement for teaching during YRO. Part-time faculty are entitled to use YRO teaching to increase their service credits to full-time levels.
 - d. The University violated Article 24 of the Agreement when it refused to credit YRO service toward accrual of sick leave credits and benefits.
 - e. The University violated of the Agreement when it refused to permit YRO faculty to apply for and be granted leaves under Article 23 on the same basis as other terms.
 - f. The University violated Articles 12.2 and 12.9 of the Agreement when it refused to credit YRO service for lecturers and other part-time employees.
- 3. The University did not violate Article 29 of the Agreement in denying FERP faculty at Dominguez Hills the opportunity to participate in YRO in Summer 2001 and 2002.
 - 4. The University did not violate the Humboldt State YRO Agreement or the master contract when it implemented the terms of that Agreement in Summer 2001 and thereafter.
 - 5. The University did not violate Article 6 of the Agreement when it denied release time to Professor Geron at CSU Hayward for Summer Quarter 2002.

The Arbitrator will retain jurisdiction over the case until such time as the award has been fully implemented. It is the Arbitrator's opinion that the full "statutory remedy" sought by the Association is not appropriate, in that the University acted in good faith reliance on Article 21 of the Agreement, and the matter is one of contract interpretation rather than breach of statute. Prior to the Arbitrator's ordering a specific remedy, how-

1 ever, the parties shall have 90 days in which to meet and confer over the remedy, pursu-
2 ant to the following guidelines:

- 3
- 4 1. YRO faculty should receive credit for actual indirect instructional activities per-
5 formed.
 - 6 2. Part-time faculty teaching YRO are entitled to additional service credits toward
7 full-time equivalent status.
 - 8 3. Faculty are entitled to accrue sick leave for YRO service pursuant to Article 24.
 - 9 4. YRO faculty who applied for and were denied leaves under Article 23 are entitled
10 to be made whole (as in monetary compensation, equivalent time off, or other
11 resolution).
 - 12 5. Lecturers and other part-time faculty employees who taught during YRO are enti-
13 tled to service credit under Article 12.9 toward the 24 units required for a step in-
14 crease. Regarding Article 12.2, there is no evidence that anyone was adversely af-
15 fected, on which the Arbitrator can suggest an appropriate remedy, if any. The par-
16 ties should address this themselves.

17 The parties should feel free to discuss any other remedial issues that need to be
18 addressed. If the parties are unable to reach agreement on the appropriate remedy, they
19 should so notify the Arbitrator, who will schedule a conference call to discuss the matter.
20 If necessary, additional hearing time can be scheduled.

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23 
24 Andria S. Knapp, Arbitrator

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26 Date: 29 September 2003