



## CALIFORNIA STATE UNIVERSITY, STANISLAUS

OFFICE OF THE ASSOCIATE VICE PRESIDENT FOR FACULTY AFFAIRS

### MEMORANDUM

**DATE:** July 6, 2009

**TO:** Roger Pugh  
Ad Hoc Committee on Winter Term

**FROM:** Ted Wendt, AVP  
Faculty Affairs

**SUBJECT:** Winter Term

What follows is an admittedly complex and technical analysis of a fairly narrow set of issues related to the implementation and administration of the CSU Stanislaus Winter Term—namely, our policies and practices regarding faculty work assignments. It is not my intent to undermine the many valid academic and curricular impulses that led to the design of our unique academic calendar. Rather, I wish to demonstrate the number of ways the “4-1-4” model created many unintended—and undesirable—consequences. This demonstration will also illustrate some of the improvisations and “work-arounds” the Office of Faculty Affairs has been required to construct in order to find a practical compromise between the aspirations of Winter Term and the hard regulatory realities within which the University must operate. As I hope this analysis will show, some of these compromises are quaint (but workable) fictions; some are modest (but relatively harmless) violations of various state agency policies/regulations; some are potentially serious problems with their own negative, destructive consequences; and some are probably illegal. Like all risk management scenarios, the information provided here is intended to assist us as we attempt to assess the balance between the relative “values” Winter Term provides against the relative “costs” it creates.

Before looking directly at Winter Term, it will be useful to review some of the basic principles and formulae we employ in calculating and administering faculty employment within the CSU System.

The basic unit of measure for a faculty assignment is, of course, the Weighted Teaching Unit (WTU). For many years, both as common practice and as a regulatory metric, a full-time academic year faculty position has been defined as 30 WTU. On conventional two-semester campuses, that total is assigned and distributed as 15 WTU per academic term. (Quarter campuses use 45 WTU.) On all CSU semester campuses full-time AY faculty are paid full-time compensation for these 30 WTU in twelve monthly checks—although the work is completed entirely within the Academic Year. This compensation scheme has the pragmatic consequence of keeping faculty in “pay status” for an entire calendar year—a necessary precondition for receiving fringe benefits, being considered legally employed, and maintaining medical/vision/dental health insurance coverage. (Under such a system, employment in a separate Summer Term is considered “extra work for extra pay,” and is treated as such in the faculty Collective Bargaining Agreement). Within the 30 WTU total, the actual work faculty perform varies greatly, both in the kinds of activities and from campus to campus. Article

20 of the CFA Contract recognizes this reality, and thus refrains from imposing any particular formula for direct instruction/teaching, as opposed to the many other appropriate professional functions a faculty member might perform "outside" of the classroom. However, longstanding practice on most CSU campuses reflects an approximate ratio of 18-24 WTU devoted to direct instruction, with the 6-12 WTU balance devoted to "everything else." (Our own campus *Workload Agreement* acknowledges this practice: on average, direct instruction is expected to be 60-80%; indirect instructional activities are expected to be 20%; and RSCA is expected to be 0-20%.)

The other relevant factor in the calculation of faculty work assignments is the *timebase*. Required by the Federal government's Fair Labor Standards Act (FLSA) as well as by the California State Controller's Office (for compensation calculations), *timebase* is the metric we use to define distinctions among "full-time" and all of the potential fractional positions we might employ during a given term of employment (e.g., semester, academic year, etc.). Thus, on a conventional semester campus, an assignment of 15 WTU per semester (or 30 WTU per academic year) would be considered a 100% *timebase*. This also then establishes how you'd calculate fractional positions: for example, on the conventional semester campus, teaching 15 WTU over the course of an academic year would be considered a 50% *timebase*.

But note that I've been talking about *conventional semester campuses*. Because Winter Term is part of our academic/contractual year, we must distribute the annualized 30 WTU of a 100% *timebase* over all three terms which comprise our AY. This means a full-time position on our campus is defined (in terms of *timebase*) as 12.5 WTU for the Fall Semester, 5 WTU for Winter Term, and 12.5 WTU for the Spring Semester. This is a regulatory imperative, because we must demonstrate how labor is being assigned in return for fair/equitable compensation (see FLSA above). Similarly, we must show the State Controller's Office the rationale for paying full-time compensation over the course of our uniquely-defined academic year. Whether or not FT faculty feel that they are *actually employed* during Winter Term (say, for example in cases where they might not have a WT teaching assignment), from a legal and regulatory perspective they are employed, and Winter Term is not a "break in service."

If you've been paying attention during this tedious technical recitation, it has probably already occurred to you that 12.5 WTU is a curious number—particularly if you are a part-time Lecturer, and thus concerned with issues like benefits eligibility. Title V of the California Education Code stipulates that the threshold for faculty benefits eligibility is a 40% *timebase*. On a conventional semester campus, this means a Lecturer teaching two 3-WTU courses is benefits eligible (i.e.,  $6/15 = 40\%$ ). On our campus, a Lecturer becomes benefits eligible during a semester when he/she is given a 5-WTU assignment (40% of 12.5). This may *seem* more generous, but (since most of our courses are 3 units) the 5 WTU threshold is a mathematical anomaly. The 12.5 figure also makes defining "full-time" almost impossible when discussing Lecturer assignments/appointments. (Obviously, the issue is irrelevant for FT tenured and tenure-track faculty, since the assumption is that odd WTU fractions or some portion of the Winter Term WTU are being used for non-instructional duties.) But when does a Lecturer become "full-time"? 12.5 WTU seems on its very face unattainable, and 15 WTU would be a paid overload—something prohibited by the CFA Contract. Thus we come to our first work-around: two separate appointments adding up to the forbidden 15. To get there, we employ a very convoluted rationale: an annual assignment of 30 WTU equals "full-time," so two consecutive semester assignments at 15 WTU each are the rough equivalent (as long as you ignore the fact that you've reached that total number by way of four separate appointments—two of which exceed the 12.5 WTU *timebase* limit). And it is by way of this peculiar accounting that we construct the annual full-time Lecturer position, assigning 30 WTU for the AY (but ignoring the inconvenient fact that those 30 WTU occur during the Fall and Spring Semesters, and nothing occurs during Winter Term).

Unfortunately, this practice has been in place for a number of years—probably since the inception of Winter Term. Sooner or later, an audit finding will reveal this regulatory nose-thumbing, and here's why: for most Lecturers who teach Fall and Spring on a contingent basis, Winter Term is a break in service. This is as it should be: no work was performed, so no compensation is due. But this puts the benefits-eligible Lecturer at a serious disadvantage, as benefits coverage only occurs when you are in "pay status" (see above). On the other hand, a full-time Lecturer (e.g., a sabbatical replacement) receives twelve paychecks and remains benefits covered for the entire year—despite, frequently, not having any Winter Term assignment. Thus, one positive outcome of eliminating Winter Term (in favor of the conventional two semester academic year) would be *additional* benefits eligibility for PT Lecturers employed in consecutive semesters, since they would now have no break in service.

While our Office of Faculty Affairs has attempted to remain flexible and "creative" regarding all of these *timebase* anomalies, we have received frequent warnings from the State Controller's Office (which issues our payroll) that we are violating our own business practices and local implementation of the FLSA. Similarly, the CSU Chancellor's Office has warned us that practices like exceeding 12.5 WTU for a semester (or 5 WTU during Winter Term) could carry financial and legal liabilities. In particular, our standard practice of hiring "non-conditional" full-time Lecturers (e.g., as AY leave replacements) with a direct instructional assignment of 30 WTU—but no work expectation during Winter Term—would not survive close legal scrutiny. Unfortunately, hewing to the precise letter of the law would yield a number of unfavorable consequences. I will only list a few of the more obvious examples here:

- No Lecturer should be hired for more than 12.5 WTU of direct instruction during a semester, or more than 5 WTU during Winter Term. This would effectively eliminate the appointment of full-time Lecturers.
- No Lecturer should be benefits eligible for 12 months unless that person has a specific benefits-eligible appointment during Winter Term.
- All Lecturers without a specific Winter Term assignment would need to be treated as "conditional," contingent employees (since the CFA Contract recognizes only *full-time* temporary employees as "non-conditional"). Conditional faculty can have their appointments cancelled prior to the third class meeting in any term due to budgetary/enrollment "considerations."
- In the absence of a specific Winter Term assignment, all Lecturers would be hired one semester at a time, and there would be no such thing as an AY appointment letter/contract.
- No faculty member (Lecturer or T/TT) would be allowed to teach 6 WTU during Winter Term.

Thus far I have focused on the impact of Winter Term on Lecturer assignments. I'll now direct our attention to faculty in the Faculty Early Retirement Program (FERP). As most of us know, the FERP assignment is intended to be 50% of the *timebase* of the retiree during his/her last year prior to entering FERP. On conventional semester campuses, this almost always means that a FERP will be assigned 15 WTU—either in a single semester or distributed over the course of an academic year. A recent arbitration decision has also instructed us that the ratio of direct instruction to "everything else" should also be mirrored in the FERP assignment. This would mean, on the conventional semester campus, that someone with a 24 WTU teaching load pre-FERP would expect to teach 12 WTU during each FERP year (either 12 WTU during a single semester or 6 WTU during both semesters of an AY).

However, on our campus, the FERP's situation gets a bit more complex. If a 50% *timebase* equals 15 WTU, then it must be assigned in only one of two ways: 1) 12.5 WTU for one semester *plus* 2.5 WTU for a Winter Term; or 2) 6.25 WTU for each of two semester *plus* 2.5 WTU for a Winter Term. Note that, in either scenario, it would be mathematically impossible for the FERP to teach a 3 WTU course in Winter Term, even if he/she wanted to; and, compounding this problem, is the CalPERS requirement that the 50% *timebase* in Winter Term be defined as 50% of the actual workdays of the term—meaning that even teaching a 2 WTU course (under the 2.5 WTU limit) would require the person to submit a Volunteer Form for the days beyond 50%. Finally, because of the arbitration above, someone with a 12/3 ratio pre-FERP could only teach (in either scenario) during the two regular semesters—and argue that “everything else” could only be assigned during Winter Term. Note that the campus has no discretion in this matter; we are not allowed to ignore Winter Term, and assign 15 WTU to the FERP during a single semester. This would be a violation of the CFA Contract, the arbitration ruling above, and the FLSA. On the other hand, I think it is fairly obvious that most faculty (including most FERPs) would be surprised if the University actually communicated the expectation that FERP faculty had an employment obligation during Winter Term.

Similarly, faculty on sabbatical leaves are awarded either one semester at full salary or two semesters at half salary. Note that there is no provision in the CFA Contract to accommodate Winter Term. Thus, faculty on our campus are disadvantaged in comparison with faculty awarded sabbaticals on conventional semester campuses, as our one-semester leave is only thirteen weeks long (vs. the conventional sixteen-week semester). This also means that the funding provided by the Provost to “backfill” the replacement cost for the person on leave is less on our campus than on the conventional semester campus (since what is being replaced is a 12.5 WTU *timebase* vs. the conventional 15 WTU *timebase*). And, because Winter Term is not part of the one-semester sabbatical, theoretically the University could have an *expectation* that the faculty member would be back on duty during the adjacent Winter Term. I use the word “expectation” in a very provisional way, as I know from experience that faculty receiving a one-semester sabbatical incorrectly assume that what they are “really” being awarded is a two-term (i.e., five-month) leave of absence.

Which brings me, finally, to the impact of Winter Term on full-time tenured and tenure-track faculty assignments. As I have been at some pains to illustrate throughout this discussion, Winter Term is an official part of the CFA “contract year,” and T/TT faculty are being fully compensated for *all* of the terms of the academic year—not just the Fall and Spring Semesters. Despite the efforts of many people on campus to educate our colleagues about their employment obligations during Winter Term, there remains widespread misunderstanding. For example, many of our faculty view Winter Term as a parallel to the Summer Session: if they are not given a specific direct instructional assignment, they have no further duties or responsibilities. In essence, Winter Term is then viewed by them as a six-week vacation in the midst of the academic year. While I have frequently heard the argument that Winter Term can be used by faculty to accomplish all of their other responsibilities (e.g., RSCA), many of us have experienced situations where a naïve colleague has declined to participate in some sort of campus professional responsibility because “I’m not employed during Winter Term.” To those unaware of the complexity of faculty responsibilities, and “role differentiation” among the different academic disciplines, this might appear to be an inequitable attitude. If Winter Term enrollments and course offering were far more robust and thus involved greater numbers of T/TT faculty (spreading their teaching load over all three AY terms), it might obviate such concerns. The current high-minded defense of Winter Term solely on curricular grounds might sound just a little hypocritical to the casual observer walking around the campus in January. Unfortunately, this perception is reinforced by statistics: during Winter Term 2009, only 82 tenured and tenure-track faculty (out of a total of 257) taught a course. Is it any wonder that some of our newer faculty might become a bit skeptical about their colleagues’ claims regarding Winter Term’s centrality to our educational mission? If most of our faculty think Winter Term is this important, why aren’t they participating?