**Shared Governance in the California Community Colleges**

Education Code Section 70901(b)(1)(E) (enacted as a part of AB 1725) requires that the board of governors establish *"Minimum standards governing procedures established by governing boards of community college districts to ensure* ***faculty, staff*** *and* ***students*** *the right to participate effectively in* ***district and college governance,*** *and the opportunity to express their opinions* ***at the campus level*** *and to ensure that these opinions are given* ***every reasonable consideration,*** *and the right of the* ***academic senates*** *to assume primary responsibility for making recommendations in the areas of curriculum and academic standards."*

Education Code Section 70902(b) also requires action by local governing boards: "the governing board of **each community college district shall do all** of the following:"

"(b)(7) *Establish procedures not inconsistent with minimum standards established by the board of governors to ensure* ***faculty, staff,*** *and* ***students*** *the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the* ***right to participate effectively in district and college governance ,*** *and the right of the* ***academic senate*** *to assume* ***primary responsibility*** *for making recommendations in the areas of curriculum and academic standards."*

**The Board of Governors has acted to establish Title 5 minimum requirements for senate (July 12, 1990), student (September 13, 1991) and staff (January 10, 1991) participation in local governance.**

**Each of the set of regulations call for local community college districts to adopt policies and procedures that provide for the opportunity to participate in district and college governance.**

**Limitation of Scope of Shared Governance**

All three sets of shared governance regulations clearly state that the regulations may not be used to impinge on due process rights nor detract from collective bargaining (53204, 51025 (d), and 51023.5 (b)). The Board of Governors regulations could not and did not change the scope of bargaining as defined in collective bargaining law.

In particular, in the regulations regarding staff (where there is no counterpart under EERA of the Academic Senate), the regulations state that *"In developing and carrying out policies and procedures pursuant to subsection (a), the district governing boards shall ensure that its actions do not* ***dominate or interfere*** *with the formation or administration of any employee organization, or contribute financial* ***or*** *other support to it, or in any other way encourage employees to join any organization in preference to another. In order to comply with Section 3540 et. seq. , such procedures for staff participation* ***shall not intrude on matters within the scope of representation*** *under Section 3543.2* ***of*** *the Government Code. In addition, governing boards shall not interfere with the exercise of employee rights to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation* ***on all matters of employer-employee relations.*** *Nothing in this section shall be construed to impinge upon or detract from any* ***negotiations or negotiated agreements*** *between exclusive representatives and district governing boards."* (51023.5(b)).

Government code Section 3543.5(d) states that it is unlawful for a district to ***"dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any employee organization in preference to another."*** Section 3540.1 defines an **"employee organization"** as "any organization which includes employees of a public school employer and which has as one of its primary purposes representing those employees in their relations with that public school employer." "Employee organization" also includes "any person such an organization authorizes to act on its behalf." Section 3540.1 defines "recognized organization" or "recognized employee organization" ***as*** "an employee organization which has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

In *Oak Grove School District* (1986), the Public Employee Relations Board (PERB) held that it was unlawful for an employer to sponsor a "teachers forum" to discuss matter within scope. In *Redwoods Community College District* (1987) it was held that an employee council that was formed to improve communications among employees was an employee organization. PERB further ruled that it was **unlawful for the employer to deal with the council even on matters outside scope because it undermined exclusive representation. In** *Antelope Valley* (1979), PERB found it unlawful for an employer to set up an organization to represent employees. In *SEIU Local 535 v Ventura County Community College District (1994)* a PERB Administrative Law Judge ruled that the Ventura County Community College District violated the Educational Employment Relations Act (EERA)by unlawfully supporting classified senates and dealing with the senates on negotiable topics. The All ruled that the classified senate was an "employee organization" under EERA and could not be a participant in a shared governance structure which made recommendations to management. The exclusive representative of the classified employees was their bargaining agent.

Employee committees, such as classified councils or classified senates, which are not sanctioned by the collective bargaining agent and have district support such as released time or use of copying machines violate Section 3543.5 of the EERA if they undermine the collective bargaining agents status. "Undermining" includes activities that erode support among unit members.

The bottom line is that a classified council or classified senate may not operate as an employee organization under EERA. Section 3543.1 of EERA states that *"Employee organizations shall have the right to represent their members in their employment relations with public school employers, except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit pursuant to Section 3544.1 or 3544.7, respectively,* ***only that employee organization may represent that unit in their employment relations with the public school employer."***

**Academic Senate**

Academic senates are given a role in EERA, classified councils and classified senates are not.

Academic Senates are specifically noted in Education Code Section 70901 as having a role in shared governance and Title 5 regulations recognize this role. However, Title 5, Section 53203(f) also recognizes the role of the collective bargaining agent. In particular, Section 53203(f) states that "Notwithstanding this subsection, the collective bargaining representative may seek to appoint faculty members to committees, task forces, or other groups." Some colleges and districts do this formally, others make more informal decisions concerning the role of the union in shared governance.

Title 5 lists 11 items that are considered "academic and professional matters" for the academic senate to consult collegially on. These 11 areas are listed later in this paper. It must be noted that several of the 11 items listed **may relate to matters within the scope of representation** of the Educational Employee Relations Act, Government Code Section 3540 et seq.

In consulting over these matters, governing boards and academic senates **must be careful to recognize the following principles:**

1. It is the intent of the Legislature that the academic senates assume primary responsibility for making recommendations in the areas of curriculum and academic standards.
2. **Consultations between governing boards and academic senates cannot legally interfere in the collective bargaining process.**
3. Consultation between the governing board and the academic senate **cannot legally** cover those subjects which are within the scope of representation between the exclusive bargaining representative and the district, unless explicitly approved by the exclusive representative.

More specifically, the following must be kept in mind when implementing Sections 53200-53204 of Title 5:

1. Collective bargaining for community colleges is governed by the Education Employment Relations Act (EERA).
2. In AB 1725, the Legislature sought to strengthen the participation in college governance of faculty, students, and staff, **but not at the expense of collective bargaining.** Faculty, staff, and student participation **may not intrude** on matters which are subject to collective bargaining, where there is a bargaining agent recognized as the exclusive representative.
3. The EERA does not specifically enumerate **all** matters which are subject to bargaining.

As a result, the Public Employees Relations Board (PERB) has adopted a "test" to determine what is negotiable. The **"Anaheim Test"** for determining the scope of bargaining is that a subject not specifically listed as a mandatory subject of bargaining is negotiable if **it logically and reasonably relates to a listed subject, is of sufficient concern to the board and the bargaining agent that conflict is likely and the mediatory influence of bargaining is appropriate to resolve the likely conflict, and if negotiations will not significantly abridge managerial prerogatives.**

The following subjects are some of the items found by the PERB to be **within the scope of bargaining**

1. affirmative action plans
2. benefits
3. discrimination
4. hours of work, instructional day
5. promotions
6. in-service training related to wages, hours, safety, promotional opportunities or job performance
7. transfer of bargaining unit work outside the unit
8. transfer and reassignment
school calendar
9. compensation
10. grievance procedure

(1) job or duty assignments

1. layoff effects (notice, layoff order, reinstatement rights, etc.)
2. preparation time
3. released time
4. early retirement
5. safety
6. student grievance policy
7. tools and equipment
8. union right to information related to representation
9. class size
10. contracting out bargaining unit work
11. holidays
12. job or duty assignments
13. personnel files
14. assignment of overtime work

4. The **"test" of negotiability** is applied to particular fact situations on a case by case basis. As a result, the "scope" of negotiations is subject to periodic modifications and interpretation. Since **the scope of negotiations is not always precisely fixed, there** is a danger that district or college governance committees and procedures could result in inappropriate and unlawful intrusions on the scope of bargaining. The following items should be noted:

1. A college governance body and a governing board should make certain that **the local exclusive organizations are fully informed regarding matters which are proposed for adoption or discussion within the governance framework.**
2. It is appropriate for the college and/or any governance participant or party to seek legal advice regarding whether a subject under consideration is subject to collective bargaining.
3. Simply because a topic under discussion has not been included in a collective bargaining agreement, or is not then under discussion or negotiations for inclusion in a contract does not mean that the topic can be discussed within the governance framework or that the topic is not subject to collective bargaining. The PERB has held that **the unilateral adoption of policies which are not in a contract, but are within the scope of representation, is illegal.**

**5. The** list of permissible subjects for consultation in Section 53200 is limited by the EERA:

1. Section 53200(c)(6) includes "district and college governance structures, as related to faculty roles" in the definition of academic and professional matters. Collegial consultation on this subject pursuant to 53200(d) cannot legally lead to the creation of any organization or the participation in any activity which would **undermine the ability of the exclusive representative to negotiate with the district.**
2. Section 53200(c)(10) (processes for institutional planning and budget development), cannot legally be used to make decisions about allocation of district money which would **interfere with the ability of the exclusive representative to negotiate** wages or any other matters that have economic consequences, including faculty promotion or upgrading.
3. Section 53200(c)(11) allows the governing board and the academic senate to mutually agree upon "other academic and professional matters." Subsection **11** must be interpreted very narrowly in dealing with matters which may touch upon collective bargaining. It would be clearly illegal for the governing board and the academic senate to mutually agree to define any of the subjects which are part of collective bargaining as academic and professional matters. For example, although the school calendar overlaps into the areas of academic and professional matters, the school calendar must be negotiated between the exclusive representative and the district, without any interference from the academic senate or any other organization.

d. Section 53200 *(01(4)* ( Educational Program Development) for example, cannot legally be used to make decisions about the academic calendar, in-service training or the flex calendar program (which are all negotiable).

1. Section 53203(a) allows the Academic Senate to assume responsibilities and perform functions that may be delegated to it by the governing board of the district. However, the governing board may not legally delegate any responsibilities or functions which belong to the exclusive representative, such as collective bargaining or grievance handling.
2. Section 53204 specifically warns that the rights given to the academic senate cannot **"detract from any negotiated agreement between collective bargaining representatives and district governing boards."** Section 53204 must be kept in mind in all dealings with the academic senate.

**Title 5 Scope**

The scope of the **academic senate** is in the area of *academic and professional matters.* These are **the same words as appear in the Educational Employment Relations Act** (EERA). Students have rights with regard to matters *that have or will have a significant effect on students.* Staff have rights in areas that *have or will have a significant effect on staff.* In particular, staff have governance rights in regard to the *definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its colleges* and the *participation structures and procedures for the staff positions defined and categorized.*

**Title 5 Method of Consultation Required Students**

51025 (a) (1) " ***Students*** *shall be provided an opportunity to participate in formulation and development of district and college policies and procedures that have or will have a significant effect on students. This right includes the opportunity to participate in processes for jointly developing recommendations to the governing board regarding such policies and procedures."*

(3) *"Governing board procedures shall ensure that at the district and college levels,*

*recommendations and positions developed by students are given every reasonable*

*consideration. "*

50125 (c) "*The governing hoard shall give reasonable consideration to recommendations and positions developed by students regarding district and college policies and procedures pertaining to the hiring and evaluation of faculty, administration, and staff. "*

51025.(b) Students "For the purpose of this section, district and college policies and procedures that have or will have a *significant effect on students* includes the following:

1. Grading policies.
2. Codes of student conduct.
3. Academic disciplinary policies.
4. Curriculum development.
5. Courses or programs which should be initiated or discontinued.
6. Processes for institutional planning and budget development.
7. Standards and policies regarding student preparation and success.
8. Student services planning and development .
9. Student fees within the authority of the district to adopt.
10. Any other district and college policy, procedure or related matter that the district governing board determines will have a significant effect on students."

**Staff**

Matters having a *significant effect on staff* are not defined in the regulations except that there is a requirement that a district governing board "reasonably determines, in consultation with staff" that the matter has *a significant effect on staff* (51023.5 (a)(4)).

51023.5 (a)(4) *"Staff shall be provided with opportunities to participate in the formulation and development of district and college policies and procedures, and in those processes for jointly developing recommendations for action by the governing board, that the governing board reasonably determines, in consultation with staff have or will have a significant effect on staff"*

(6) *"The policies and procedures of the governing board shall ensure that the recommendations and opinions of staff are given every reasonable consideration."*

**Academic Senate**

In California the Academic Senate is recognized under the Educational Employment Relations Act (EERA). In particular, Section 3540 of EERA states that *"It is further the intention of the Legislature that this chapter shall not restrict, limit, or prohibit the full exercise of the functions of any academic senate or faculty council established by a school district in a community college to represent the faculty in making recommendations to the administration and governing board of the school district with respect to district policies on* ***academic and professional matters, so long as the exercise of the function does not conflict with lawful collective*** *agreements."*

Title 5, Section 53203 of the California Administrative Code (CAC) requires a local governing board to **consult collegially** with representatives of the academic senate when adopting policies and procedures on academic and professional matters.

Title 5, Section 53200 defines **academic and professional matters** as including 11 specified "policy development and implementation matters."

The 11 specified items are:

1. Curriculum, including establishing prerequisites and placing courses within disciplines
2. Degree and certificate requirements
3. Grading policies
4. Educational program development
5. Standards or policies regarding student preparation and success
6. District and college governance *structures, as related to faculty roles*
7. Faculty **roles and involvement** in accreditation processes, including self study and annual reports
8. *Policies* for faculty professional development activities
9. *Process* for program review
10. *Processes* for institutional planning and budget development
11. Any other district and college policy, procedure or related matter that the district governing board determines will have a significant effect on students

**Attention should be paid to the difference between consulting collegially on an item (such as curriculum) and consulting collegially on the *process* (such as institutional planning and budget development).**

**CCLC and Academic Senate Guidelines**

The Community College League of California (representing CEOs and Trustees) and the Academic Senate have agreed to guidelines for implementation of Section 53200-53204 of Title 5 of the Administrative Code of California regarding the role of Academic Senates in shared governance. Several items of their agreement involved the role of the union:

Question 10: Can the local board choose the academic senate to be the organization that represents faculty in matters that have previously been collectively bargained or are with the legal scope of bargaining? Can the local board accept recommendations from the academic senate or reach agreements with the academic senate **which contradict a collective bargaining agreement?**

Answer: **The answer to both questions is no.** The governing board may not legally delegate to the senate any responsibilities or functions which belong to the exclusive representative. **AB 1725 did not change collective bargaining law** (i.e. EERA, Government Code Section 3540 et sec.) nor the legal scope of bargaining. The regulations specifically point out that nothing in the Board of Governors' regulations may be Construed to "detract from any negotiated agreements between collective bargaining and district governing boards."

Question 11: Can a board and union through a collective bargaining agreement **change a policy previously adopted by a board based upon recommendation of the academic senate or mutually agreed to with the academic senate?**

Answer: Yes. Matters appropriately **within the scope of** collective bargaining may **be negotiated** between collective bargaining representatives and district governing boards regardless of previous policies.

Question 12: May the collective bargaining agent delegate matters with the scope of bargaining to the local senate and may the senate delegate matters within the scope of the ten defined areas . of "academic and professional matters" to the collective bargaining agent?

Answer: Yes, to the extent permitted by collective bargaining laws. The regulations state that the intent is to **"respect agreements between academic senates, and collective bargaining representatives ..."**

**Title 5 Selection of Representatives
Students**

51025(a)(4) *"For purpose of this section, the governing board shall recognize each associated student organization or its equivalent within the district as provided by Education Code Section 76060, as the representative body of the students to offer opinions and to make recommendations to the administration of a college and to the governing board of a district with regard to district and college policies and procedures that have or will have a significant effect on students. The selection of student representatives to serve on college or district committees, task forces, or other governance groups shall be made, after consultation with designated parties, by the appropriate officially recognized associated student organization(s) within the district."*

**Staff**

51023.5(a)(3)" *In performing the requirements of subsections (1) and (2) of this section, the governing board or its designees shall consult with the representatives of existing staff councils, committees,* ***employee organizations*** *and other such bodies. Where no groups or structures for participation exist that provide representation for the purposes of this section for particular groups of staff, the governing board or its designees, shall broadly inform all staff of the policies and procedures being developed, invite the participation of staff, and provide opportunities for staff* *to express their views."*

(a)(7) " *The selection of staff representatives to serve on college and district task forces, committees, or other governance groups shall, when required by law, be made by those councils, committees, employee organizations or other staff groups that the governing board has officially recognized in its policies and procedures for staff participation. In all other instances, the selection shall either be made by, or in consultation with, such staff groups. In all cases, representatives shall be selected from the category that they represent."*

The "required by law" reference above is directed at the situation where there is a collective bargaining agent (the "employee organization"). The district must behave in a manner that does not create an unfair labor practice as outlined earlier in this paper. A district must be very careful not to recognize an organization of classified employees other than the collective bargaining agent if such recognition undermines the union or violates the rulings of PERB.

**Shared Governance in Contracts**

Many collective bargaining agents have addressed aspects of shared governance in their contracts. Some examples from AFT locals are:

Los Angeles **Faculty:** By contract, the union and the senate have an equal number of representatives on campus and district budget committees. At least one representative is guaranteed to the union on the campus affirmative action committee and curriculum committee. The contract also spells out the composition of a number of committees including the work environment, summer session, campus Academic Senate committee for distribution of convention attendance funds, and a benefits advisory committee.

**Ventura District:** The contract requires that the federation have the right to appoint a member to a list of committees on the various campuses. These include Staff Development, Curriculum, Institutional Research, Flex Day, Campus-wide Shared Governance, Academic Affairs, Student Affairs, Campus Use and Development, Planning, President's Cabinet, and Sabbatical Leave. Each campus has a different list.

**Compton:** The contract requires that the union have the right to appoint one representative as part of the faculty component to a number of standing advisory committees. These include Affirmative Action, Budget, Curriculum, Student Disciplinary Review, General Education, Occupational Safety and Health, Petition, Institutional Advisory, and Institutional Planning.

**Glendale:** The contract guarantees that both the union and the senate have the right to appoint a representative to serve on college committees in the areas of student personnel services, curriculum and instruction, campus development, planning and facilities.

**Los Angeles Classified:** Union has right to appoint at least one member to campus/worksite and/or District-wide advisory committees in the areas of accreditation, budget, planning/development, sexual harassment, AIDS education, staff development, and affirmative action.