

PM 82-11
3/31/82
President Donald R. Gerth

Responsibilities of Academic Senates within a Collective Bargaining Context

You will find attached a memorandum dated March 12, 1982 from Vice Chancellor Sherriffs together with a statement entitled "Responsibilities of Academic Senates within a Collective Bargaining Context," and an exchange of correspondence between the Chancellor and the Chair of the Statewide Academic Senate. The principles contained in these documents now become a part of the principles of governance for California State University Dominguez Hills and should be regarded by all in this context.

[Letter dated 3/12/82, from Alex C. Sherriffs, then Vice Chancellor for Academic Affairs, to CSU Presidents]

Subject: Academic Senate Document entitled
"Responsibilities of
Academic Senates within a Collective
Bargaining Context"

The last formal discussion at Executive Council of the draft document "Responsibilities of Academic Senates within a Collective Bargaining Context" led to a letter from Chancellor Dumke to the Senate expressing those concerns as yet unmet. Since then a reply has come from the Senate Chair, Robert Kully, which answers the points raised to the Chancellor's satisfaction.

The Chancellor will remark on the understanding reached and the process involved during his remarks at the March meeting of the Board. Attached are the relevant documents.

ACADEMIC SENATE
of
THE CALIFORNIA STATE UNIVERSITY AND COLLEGES

-1217-81EX

12-13, 1981

AS
March

ENDORSEMENT OF THE DOCUMENT ENTITLED "RESPONSIBILITIES
OF

ACADEMIC SENATES WITHIN A COLLECTIVE BARGAINING
CONTEXT"

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WHEREAS, AS 1091, The California Higher Education Employer-
Employee Relations Act (HEERA) was enacted on September 13,
1978; and

WHEREAS, The enactment of the collective bargaining legislation
necessitates a clarification of the role of academic senates and
councils within a collective bargaining context; therefore be it

RESOLVED: That the Academic Senate of The California State
University and Colleges endorse the attached document on
"Responsibilities of Academic Senates within a Collective Bargaining
Context."

APPROVED
UNANIMOUSLY
8, 1981

May

ATTACHMENT TO: AS-1217-81/EX

**RESPONSIBILITIES OF ACADEMIC SENATES WITHIN
A COLLECTIVE BARGAINING CONTEXT**

I. Collegiality and Collective Bargaining

On September 13, 1978, Governor Edmund G. Brown, Jr., signed
into law AB 1091, The California Higher Education Employer-
Employee Relations Act (HEERA). (Education Code Section
3560, et. seq.) This legislation provides faculty members of the
CSUC an opportunity to determine whether they wish to be
represented by an exclusive agent in negotiations on "wages, hours
of employment, and other terms and conditions of employment"
(HEERA, Section 3561, r.). This section of the Education Code also
specifies the intent of the Legislature to preserve, under collective
bargaining, traditional shared governance mechanisms, including
consultation, and the principle of peer review in faculty personnel
decisions. These intentions are expressed in Section 3561 b. of the
HEERA, which reads as follows:

The Legislature recognizes that joint decision-making and
consultation between administration and faculty or academic
employees is the long-accepted manner of governing institutions of
higher learning and is essential to the performance of the
educational missions of such institutions, and declares that it is the
purpose of this act to both preserve and encourage that
process. Nothing contained in this chapter shall be construed to
restrict, limit or prohibit the full exercise of the functions of the

faculty in any shared governance mechanisms or practices including the Academic Senate of the University of California and the divisions thereof, the Academic Senates of The California State University and Colleges, and other faculty councils, with respect to policies on academic and professional matters affecting The California State University and Colleges, the University of California, or Hastings College of the Law. The principle of peer review of appointment, promotion, and retention, and tenure for academic employees shall be preserved.

This document has been prepared to describe the respective responsibilities of the Academic Senate of the CSUC and of local senates or councils in this collective bargaining context. The relationships, functions, and responsibilities proposed in this document reflect consideration of HEERA, the Constitution of the Academic Senate of The California State University and Colleges and tradition and practice in the CSUC.

II. The Traditional Role of the Academic Senate in the CSUC

The Trustees of the California State Colleges approved the Constitution of the Academic Senate on March 8, 1963. Prior to this a majority of the voting faculty at each of a majority of the college campuses had approved the document. Encouragement for the establishment of the systemwide Academic Senate, as well for the creation of an Academic Senate on each campus, came from the Chancellor, members of the Board of Trustees and the California Legislature. The 1961 Legislature adopted Senate Resolution No. 98 and Assembly Concurrent Resolution No. 78 requesting the Trustees to establish an Academic Senate at each college "wherein the faculty members shall be freely elected by their colleagues for the purpose of representing them in the formulation of policy on academic and professional matters." Senate Resolution No. 20, which resolved that the Trustees consider establishing an Academic Senate for the CSUC system, was under discussion in the Senate Rules Committee when the Senate was created in 1963.

An examination of the Constitution of the Academic Senate CSUC, as approved by the Board of Trustees, reveals the official purposes of the Senate:

It shall be the purpose of the Academic Senate of The California State University and Colleges to serve as the official voice of the faculties of The California State University and Colleges in matters of systemwide concern; to consider matters concerning systemwide policies and to make recommendations thereon; to endeavor to strengthen the Senates and Councils of the several colleges; and to assume such responsibilities and perform such functions as may be delegated to it by the Chancellor or the Trustees of The California State University and Colleges.

Senate participation in academic, professional, and administrative matters during the 18 years of its existence evidences a tradition of shared governance in the CSUC and suggests appropriate responsibilities for the Senate under HEERA. The collective bargaining act makes explicit provision for the preservation of this tradition and mandates continuing senate involvement in academic and professional matters. (See HEERA, Section 3561 b., cited above.)

III. Academic Senate Participation in Systemwide Governance

The Academic Senate shall continue to serve as the official voice of the faculties in systemwide academic and professional matters (the Constitution of the Academic Senate CSUC, Article 1, Section 1 a.).

The Academic Senate shall be the formal policy-recommending body on such matters and shall also be the primary consultative body on the academic implications of systemwide fiscal decisions. Normally, recommendations of the Academic Senate shall be addressed to or through the Chancellor.

In respect to systemwide governance, the Academic Senate endorses the following principles:

A. Criteria and standards to be used for the appointment, promotion, evaluation, and tenure of academic employees shall be the joint responsibility of the Academic Senate and the Board of Trustees of The California State University and Colleges (HEERA, Section 3562 r.). Criteria and standards determined jointly by the Academic Senate CSUC and the Board of Trustees shall be considered minimal; campus senates/councils may recommend additional criteria and standards.

B. The Academic Senate of The California State University and Colleges shall be consulted on the creation of systemwide and intersegmental committees, conferences, or task forces designed to deal with educational, professional, or academically-related fiscal matters, including the charge and composition of such bodies. The Academic Senate shall be responsible for the selection of faculty representatives to serve on or participate in such bodies.

C. The Academic Senate of The California State University and Colleges shall be the formal policy-recommending body on general, systemwide policy decisions related to the following matters:

- 1) minimum admission requirements for students;
- 2) minimum conditions for the award of certificates and degrees to students;
- 3) curricula and research programs;
- 4) minimum criteria and standards to be used for programs designed to enhance and

maintain professional competence, including the awarding of academic leaves;

5) systemwide aspects of academic planning.

D. The Academic Senate of The California State University and Colleges

shall be consulted on the following:

1) systemwide aspects of program review;

2) systemwide aspects of the basic direction of academic support programs;

3) systemwide policies governing the appointment and review of presidents

and academic administration;

4) policies governing the appointment and review of systemwide executive

officers and academic administrators.

The Academic Senate of The California State University and Colleges shall not participate in the process of collective bargaining. Normally, matters affecting wages, hours of employment, and other terms and conditions of employment shall not be considered by the Academic Senate. The Academic Senate shall endeavor to ensure that educational and professional matters do not become subjects of bargaining.

IV. Campus Senate/Council Participation in Governance

The Academic Senate of The California State University and Colleges shall have no authority over those matters delegated to the individual campuses by the Chancellor or by the Board of Trustees of The California State University and Colleges. Furthermore, nothing in this document shall be construed to impair the right of academic senates and councils of the several campuses to communicate through appropriate channels with the Chancellor and the Board of Trustees, nor to diminish the authority of the campuses and their senates in campus matters of academic/professional criteria and standards.

Because joint decision-making and consultation between administrators and faculty is essential to the performance of the educational missions of The California State University and Colleges, the academic senates/councils of the campuses shall be the primary consultative bodies regarding educational and professional matters delegated to the individual campuses by the Chancellor or by the Board of Trustees of The California State University and Colleges and shall be consulted on fiscal matters which affect the instructional program.

In respect to campus governance, the CSUC Academic Senate endorses the following principles:

A. Responsibility shall be vested in the faculty or its elected senate/council

representatives for:

- 1) approval of degree candidates;
- 2) development of policies governing the awarding of grades.

B. Through the campus academic senates/councils responsibility shall be vested in the faculty or its elected senate/council representatives for developing policies and making recommendations to the campus presidents on the following matters:

- 1) criteria and standards for the appointment, retention, awarding of tenure, promotion and evaluation of academic employees including preservation of the principle of peer evaluation and provision for the direct involvement of appropriate faculty in these decisions;
- 2) determination of membership in the General Faculty;
- 3) curricular policies, such as admission and degree requirements, approval of new courses and programs, discontinuance of academic programs, and academic standards;
- 4) faculty appointments to institutional task forces, advisory committees, and auxiliary organizations;
- 5) academic standards and academic policies governing athletics.

C. The academic senate/councils shall be the primary source of policy recommendations to the campus president on decisions related to the following matters:

- 1) establishment of campus-wide committees on academic or professional matters;
- 2) the academic role of the library;
- 3) academic awards, prizes, and scholarships;
- 4) the academic conduct of students and means for handling infractions;
- 5) development of institutional missions and goals.

D. The academic senates/councils shall be consulted by the campus presidents concerning:

- 1) the academic calendar and policies governing the scheduling of classes;
- 2) policies governing the appointment and review of academic administrators.

E. This outline of functions and responsibilities is intended to provide the essentials for a satisfactory system of shared governance but should not necessarily be viewed as a comprehensive enumeration of such functions and responsibilities.

[Letter from Chancellor Glenn S. Dumke to Dr. Robert D. Kully, Chair, Statewide Academic Senate, dated 9/29/81]

Dear Bob:

I have carefully studied the Senate's resolution AS-1217-81/EX and its companion document "Responsibilities of Academic Senates within a Collective Bargaining Context" which you forwarded to me on May 15. I compliment you, the Executive Committee and the Academic Senate on your efforts, so critical at this time in our history, to identify those matters of true academic concern as opposed to those affecting "wages, hours of employment and other terms and conditions of employment." Beyond this, the document reflects important efforts to clarify the differences in roles and responsibilities of the Statewide Academic Senate and those of campus senates and councils.

Having said that I wish to make clear that my positive feelings toward the document depend on understandings that we have reached with you during its development.

First, as used throughout the document, "consultation" as we understand it refers to providing a means for the faculty (as a whole or through representatives) to present its judgment in the form of recommendation or analysis to systemwide or campus administration. The opportunity for the faculty to formulate and present such judgment makes clear the need for timely communication. Clearly, as we know, circumstances can arise when none of us is allowed sufficient time. However, these circumstances should not be of our (administration or Senate) own doing. Obviously there is no implication of "mutual veto" which would preclude an administrative or Board action or decision following consideration of the Senate's recommendation.

Second, I understand that you and Vice Chancellor Sherriffs discussed our concern with that part of Section III-B which deals with selection of faculty representatives to committees or task forces. Vice Chancellor Sherriffs has informed me that your intent is that if the presence of faculty on a committee or task force is a representative presence – i.e., the members will be representing the Senate or the faculty as a whole – then the Academic Senate shall be responsible for their selection. If, however, the

administration desires particular faculty members for any of a variety of reasons such as their experience, expertise, or acknowledged interest in a subject, the administration on its own volition clearly may appoint such persons as individuals. Regardless of which situation pertains, continuing good communication is anticipated. If my understanding is correct, then I have no problem with Section III-B as written. I assume this interpretation holds also for campuses, as under Section IV-B4

Third, in the introductory paragraphs to Section III, the document states, "Normally, recommendations of the Academic Senate shall be addressed to or through the Chancellor." The Senate's constitution, as you know, does not include the word "normally." This was intentional because orderly processes require that the chief executive officer of a large organization be aware of potentially significant issues and activities, and have a chance to discuss the pros and cons with those who initiate them. I recognize that the Senate, like the students, has been going directly to the Legislature for a number of years. Also, members of the Senate have gone around the administration to the governing board. These exceptions do not contribute to the orderly administration of the institution. I am not pleased with your use of the word "normally." To enable this agreement to go forward, I will accept its presence only with the stated reservation added to the document, that it is understood that exceptions to the provision of the main clause in that sentence are improper procedure and will not take place except under emergency or crisis conditions.

One final observation. The last paragraph of Section III-D states:

"The Academic Senate of The California State University and Colleges shall not participate in the process of collective bargaining. Normally, matters affecting wages, hours of employment, and other terms and conditions of employment shall not be considered by the Academic Senate. The Academic Senate shall endeavor to ensure that educational and professional matters do not become subjects of bargaining."

In my opinion, and in the opinion of those who advise me, the inclusion of the word "normally" in the second sentence raises a question about the intent of the first sentence, since to get into matters of wages, hours, and other terms and conditions of employment can be to get into collective bargaining issues. Further, to the extent that the Senate confuses the line between the scope of bargaining and academic governance, then union-free academic governance is placed that much more in jeopardy. If, on the other hand, you are saying that you will be vigilant in protecting academic matters from union encroachment and would be active in keeping academic matters from the bargaining table, than I withdraw my objection.

If I am correct regarding the first two points, and having put myself on record on the third and fourth, then I am willing within this context to indicate to the Board of Trustees that I find the statement, "Responsibilities of Academic Senates within a Collective Bargaining Context" together with this letter, a helpful step forward. The statement, with this letter, will provide guidance as we work together to deal with uncertainties of the years immediately ahead.

[Letter from Robert D. Kully, Chair, Academic Senate, CSU, to Chancellor Glenn S. Dumke, The California State University, dated January 15, 1982]

Dear Chancellor Dumke:

The Executive Committee has asked me to respond to your September 29th letter in which you observed that your positive feelings toward the document "Responsibilities of Academic Senates within a Collective Bargaining Context" depend upon understandings reached during the document's development. The Executive Committee also asked me to convey to you its satisfaction that we are so close to reaching closure on this matter.

With respect to your first point, we concur with your understanding of the term "consultation" as "providing a means for the faculty (as a whole or through representatives) to present its judgment in the form of recommendation or analysis to systemwide or campus administration." We also agree that "the opportunity for the faculty to formulate and present such judgment makes clear the need for timely communication," which we interpret to mean time for full faculty review. However, we recognize that circumstances may arise where there is not sufficient time for consultation. It is our understanding that even in the event of such regrettable circumstances, every attempt will be made by systemwide or campus administrators to confer with and seek advice from faculty representatives. We agree with you that these circumstances must not be of the administration's or Senate's own doing, and we trust that only rarely will it prove impossible to complete the normal consultative process.

We note your concern about ruling out the possibility of a mutual veto. Our concept of consultation does not imply a mutual veto. Nevertheless, we understand the process of consultation to mean that Senate recommendations are to be afforded serious and thorough consideration.

Regarding your second point, we are in concurrence with Dr. Sherriffs' interpretation of Section III B. We agree that if the presence of faculty on a committee or task force is a representative presence – i.e., the members represent the Senate or the Faculty

as a whole – then the Academic Senate shall select such nominees. It also should be understood that faculty nominations made by the Academic Senate are based on many factors, including concern for appropriate expertise and experience. If Chancellor's staff desires to appoint faculty members for any reason, it should be clearly understood that such appointments do not constitute either Senate or faculty representation.

Third, we understand your concern about the use of the word "normally" in the introductory paragraphs to Section III. We do not think it advisable to reopen the process by bringing the document back to the Senate which would be necessary if any changes were to be made. Consequently, we trust that you will accept this letter as the expression of our intention that Academic Senate recommendations will be addressed to the Chancellor "except under emergency or crisis conditions," as stated in your letter.

Finally, regarding the second sentence of the last paragraph of Section III D, the intent of the Senate is to endeavor actively to keep academic and professional matters out of the process of collective bargaining. In other words, the interpretation you propose as unobjectionable in the last sentence of your penultimate paragraph that the Academic Senate "will be vigilant in protecting academic matters from union encroachment and would be active in keeping academic matters from the bargaining table..." is correct.

The section of the document to which you refer serves as a reminder that it is possible for the Chancellor to consult with the Academic Senate on any issue. Just as matters outside of scope may be discussed with the exclusive representative, it is our understanding that it also is possible within the law for the Chancellor to engage in consultation with the Senate on matters that may be within scope. Of course, it is not the Senate's intention to encroach upon items that are clearly within scope. However, if a matter on the bargaining table has implications for the educational program or for other academic or professional matters, then the Academic Senate would expect to be consulted.

Now that these points have been clarified, we urge that, as you propose to do in your letter of September 29, you indicate to the Board of Trustees that you find the statement a helpful step forward and a basis for working together in the years ahead. We would see such action on your part as an acknowledgment of commitment by the Chancellor's Office to the preservation of collegiality and shared governance within a collective bargaining context.