

REVISED SEPTEMBER 1996
The Constitution of the Academic Senate
of the
California State University

Preamble

The faculty of the California State University adopts this constitution in order to exercise its rights and fulfill its responsibilities in the shared governance of the University. As the official voice of the faculty in matters of systemwide concern, the Academic Senate of the California State University provides the means for the faculty to participate in the collegial form of governance which is based on historic academic traditions as recognized by California law.

Article I

Section 1. Purposes

- (a) It shall be the purpose of the Academic Senate of The California State University to promote academic excellence in The California State University; to serve as the official voice of the faculties of The California State University in matters of systemwide concern; to be the formal policy-recommending body on systemwide academic, professional and academic personnel matters; to ensure the joint responsibility of the Academic Senate and the Trustees in criteria and standards to be used for the appointment, promotion, evaluation, and tenure of academic employees; to be the primary consultative body on the academic implications of systemwide fiscal decisions; and to assume such other authority and other responsibilities and to perform such functions as may be delegated to it by the Chancellor or the Trustees of The California State University.
- (b) The Academic Senate 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 representatives of the faculty to serve on or participate in such bodies.

Section 2. Relation to Campus Senates

- (a) The term campus senate shall mean the elected representative body established at each campus by its faculty.
- (b) The Academic Senate of the California State University shall have no authority over those matters delegated to the individual campuses by the Chancellor or the Trustees; and nothing in this Constitution shall be construed to impair the right of campus senates to communicate with the Chancellor and the Trustees.
- (c) The campus senates may suggest items for consideration by the Academic Senate and may make recommendations on matters before the Academic Senate, either through the campus representatives or directly to the Academic Senate.
- (d) To provide adequate communications with the faculties of the several campuses, the Academic Senate shall circulate to the senate and the president of each campus such materials as agendas for and minutes of its meetings, committee reports, and information on pending matters.

Article II

Section 1. Membership

The Academic Senate shall consist of 51 elected campus representatives as follows:

- (a) one senator from each campus with an FTEF of 100 or less
two from each campus with an FTEF of over 100
one extra senator for as many campuses as possible apportioned on the basis of the highest FTEF;
- (b) the immediate past chair of the Academic Senate if not an elected member;
- (c) the Chancellor or representative as an ex-officio non-voting member.

The immediate past chair of the Academic Senate if not an elected member shall not be counted as a campus representative.

Higher Education Employer-Employee Relations Act (HEERA): A Memorandum to Senate Members and Others

Because there has been so much discussion recently about the Academic Senate CSU's responsibilities as they relate to the Higher Education Employer-Employee Relations Act (HEERA), we thought it would be worthwhile to provide to the Senate some background and explanatory material regarding HEERA.

What Is HEERA?

HEERA was signed into law in the fall of 1978. It exempted the CSU, the UC, and the Hastings College of Law from the state labor laws then existing to govern relations between the State of California and its employees. At the same time, it enacted provisions to govern employer-employee relations of the CSU through meeting and conferring (i.e., collective bargaining) on matters within the scope of representation. As some provisions differ among the institutions covered, we will discuss the law as it applies to the CSU.

HEERA grants employees many of the normal rights associated with provisions of the federal labor laws, such as the rights to form, join, and participate in unions and to refuse to join or participate in unions. It also prohibits unfair labor practices, often defined similarly to the federal labor laws. The law is administered by the Public Employment Relations Board (PERB) which has to date, among other things, determined appropriate bargaining units, conducted representation elections, and determined charges of unfair labor practices in the CSU.

Purposes of HEERA

In HEERA, the Legislature declared that the people of California (1) "...have a fundamental interest in the development of harmonious and cooperative labor relations between the public institutions of higher education and their employees" [Section 3560(a)] and (2) "...have established a system of higher education under the Constitution of the State of California with the intention of providing an academic community with full freedom of inquiry and insulation from political influence in the administration thereof." [Section 3560(c)]

The stated purpose of HEERA is "...to provide the means by which relations between each higher education employer and its employees may assure that the responsibilities and authorities granted to the separate institutions under the Constitution and by statute are carried out in an atmosphere which permits the fullest participation by employees in the determination of conditions of employment which affect them." [Section 3560(e)] "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 law 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 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 principle of peer review of appointment, promotion, retention, and tenure for academic employees shall be preserved." [Section 3561(b)] Finally, the Legislature stated: "It is the policy of the State of California to encourage the pursuit of excellence in teaching, research, and learning through the free exchange of ideas among the faculty, students, and staff of ... the California State University and Colleges. All parties subject to this [law] shall respect and endeavor to preserve academic freedom in ... the California State University and Colleges." [Section 3561(c)]

Scope of Representation Under HEERA

The scope of representation allowed to an exclusive representative (i.e., union) determines the matters about which it may collectively bargain or otherwise represent employees, e.g., grievances. The scope provision for the CSU reads:

- (r) For purposes of the California State University and Colleges only, "scope of representation" means, and is limited to, wages, hours of employment, and other terms and conditions of employment. The scope of representation shall not include:
 - (1) Consideration of the merits, necessity, or organization of any service, activity, or program established by statute or regulations adopted by the trustees, except for the terms and conditions of employment of employees who may be affected thereby.
 - (2) The amount of any student fees which are not a term or condition of employment.
 - (3) Admission requirements for students, conditions for the award of certificates and degrees to students, and the content and conduct of courses, curricula, and research programs

- (4) Criteria and standards to be used for the appointment, promotion, evaluation, and tenure of academic employees, which shall be joint responsibility of the academic Senate and the trustees. The exclusive representative shall have the right to consult and be consulted on matters excluded from the scope of representation pursuant to this paragraph. If the trustees withdraw any matter in this paragraph from the responsibility of the academic senate, the matter shall be within the scope of representation.

All matters not within the scope of representation are reserved to the employer and may not be subject to meeting and conferring, provided that nothing herein may be construed to limit the right of the employer to consult with any employees or employee organization on any matter outside the scope of representation. [Section 3562(r)]

Additionally, an often overlooked provision of the law defining unfair labor practices states: "It shall be unlawful for the higher education employer to: ... (f) Consult with any academic, professional, or staff advisory group on any matter within the scope of representation for employees who are represented by an exclusive representative.... For the purposes of this, the term *academic* shall not be deemed to include the academic senates." [Section 3571]

Our View of HEERA

A reading of these provisions of HEERA indicates that the Legislature went to considerable lengths to preserve not only joint decision-making and consultation between faculty and administration for institutional governance but also the principle of peer review for academic employee personnel decisions. Further, the Legislature did not attempt to impede or limit discussion and consultation on any matters by anyone. It did limit "meeting and conferring" (i.e., collective bargaining negotiation) between the employer and the exclusive representative to matters within "scope of representation" (hereafter referred to as scope), while prohibiting "meeting and conferring" on matters outside scope.

To more fully understand HEERA, assume that there are three parties one must be concerned with: the Senate (including all academic senates of the system), the CFA (or other elected representative), and the CSU Trustees (often acting through the administration). Here is how HEERA carefully preserves the rights of these three parties to talk to one another. First, as to matters within the scope of representation:

- (a) The CSU, as employer, must meet and confer with CFA as to matters within the scope of representation.
- (b) It may not consult with any other academic, professional, or staff advisory group on any matter within scope, except academic senates.
- (c) While the CSU may consult with academic senates on matters within scope without fear of committing an unfair labor practice, it is not required to do so. Communications from academic senates to the CSU, or to CSU and CIA, expressing opinions or seeking consultation on matters within scope are not prohibited. To the contrary, they are clearly permitted.

Second, as to matters outside the scope of representation:

- (a) The CSU, as an institution of higher learning, is encouraged by HEERA in its practices of joint decision-making, consultation, and shared governance with the faculty and academic senates, practices which would encompass most issues outside the scope of bargaining.
- (b) The academic senates and the trustees have joint responsibility specifically for criteria and standards for appointment, promotion, evaluation, and tenure, but, although these matters are excluded from scope, CIA has "...the right to consult and be consulted on matters excluded from the scope of representation pursuant to this paragraph." [Section 3562(r)(4)] It appears that CIA has the right to consult with both the Senate and the CSU on these matters and on "criteria and standards" issues, but it is not required to do so.
- (c) The CSU, as employer, may consult with any employees (including members of academic senates) or employee organization (including CFA) on any matter outside the scope of representation, but the CSU may not meet and confer (in the sense of collective bargaining) with CIA on these matters.

Thus, our view of HEERA suggests a conclusion that common sense might have dictated: the CFA and the CSU have responsibility for matters within scope; the CSU and the Senate, including campus academic senates, have responsibility for matters outside scope; and all parties are permitted to consult with one another on all topics. Because there are areas where the conditions of employment are not easily distinguished or separated from academic or professional matters- where there are gray areas-this approach seems eminently sensible, even though it may be difficult to implement.

Our view of HEERA does not solve all problems. For example, while a close reading of HEERA tells us much, it does not define the meaning of "criteria and standards" or "joint responsibility." Definitions of these terms will have to be agreed upon very soon.

Policy Implications of This View for the Senate

The Senate may communicate or consult on matters within scope provided it clearly enunciates an academic, educational, or professional concern which it believes falls within Senate responsibility.

The Senate should be willing to talk formally with CFA, in addition to the CSU, about criteria and standards for which it has joint responsibility with the Trustees because HEERA gives CIA the right to consult and be consulted on these matters. Within this framework agreements may be reached on which topics are or are not criteria and standards.

The Senate should attempt to educate all parties as to its view of HEERA and what HEERA permits and should also attempt to achieve concurrence so all parties are operating under the same interpretation of HEERA.

(This memorandum was endorsed by the Academic Senate CSU in March 1986.)

Responsibilities of Academic Senates Within a Collective Bargaining Context

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 CSU 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." [Section 3561(r)] This section of the Government 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 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. [Section 3561(b)]

This document has been prepared to describe the respective responsibilities of the Academic Senate of the CSU and of the 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 the tradition and practice in the CSU.

The Traditional Role of the Academic Senate in the CSU

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 as 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 CSC system, was under discussion in the Senate Rules Committee when the Senate was created in 1963.

An examination of the initial Constitution of the Academic Senate CSC, 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 Colleges to serve as the official voice of the faculties of The California State 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 Colleges.

Senate participation in academic, professional, and administrative matters during the 18 years of its existence evidences a tradition of shared governance in the CSU 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.

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 as specified in the Constitution of the Academic Senate CSU, Article 1, Section 1a.

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 and the Board of Trustees shall be considered minimal; campus senates/councils may recommend additional criteria and standards.
- B. The Academic Senate 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 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; and .
 - 5) systemwide aspects of academic planning.
- D. The Academic Senate 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 administrators; and
 - (4) policies governing the appointment and review of systemwide executive officers and academic administrators.

The Academic Senate 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.

Campus Senate/Council Participation in Campus Governance

The Academic Senate shall have no authority over those matters delegated to the individual campuses by the Chancellor or by the Board of Trustees of the CSU. Furthermore, nothing in this document shall be construed to impair the right of academic senates/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/councils in campus matters of academic or 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, 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 and shall be consulted on fiscal matters which affect the instructional program. In respect to campus governance, the 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; and
 - (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; and
- (5) academic standards and academic policies governing athletics.
- C. The academic senates/councils shall be the primary source of policy recommendations to the campus president on decisions related to the following matters:
 - (1) establishment of campuswide 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; and
 - (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; and
 - (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.

(This document was approved by the Academic Senate CSU in May 1981.)