California Community Colleges
Classified Senate

Interpretation of SB 235
California Community Colleges Classified Senate

When considering the interpretation of any law, it is essential to evaluate who will be making the interpretation and what their interests or objectives are. In the case of SB 235, several groups will be interpreting the law to see how it negatively or positively affects them. These community college groups include, but are not limited to:

- classified senates
- classified unions
- classified employees
- administrators
- trustees
- state classified union organizations
- state classified senate organization

It is equally important to consider other provisions of law that may conflict with the law under interpretation.

The following interpretation is provided to focus on possible interpretation and outcomes of SB 235. The bill language, here is bold letters, is broken down for interpretation and discussion.

Section 70901.2 is added to the education code, to read: (Bold)

Notwithstanding any other provision of law, when a classified staff representative is to serve on a college or district task force, committee, or other governance group, the exclusive representative of classified employees of that college or district shall appoint the representative for the respective bargaining unit members.

Q: Is a classified senate a task force, committee, or other governance group?

A: A classified senates is an employee participation group, or "classified organization" developed to support the vision and mission of community colleges. Some senates were in existence prior to AB 1725, but many senates were developed as a result of AB 1725 and took on the primary role of coordinating classified participation in governance by increasing classified education, knowledge, and communication to allow classified to participate effectively in governance.

Q: Does the statement, ". . . . for the respective bargaining unit members" mean classified employees can only be represented by the union appointed representative in that capacity?

A: If this statement stood on its own, it would be interpreted in that way. However, the bill further states, "A local governing board may consult with other organizations of classified employees on shared governance issues that are outside the scope of bargaining." This allows other classified organizations representing classified staff in a capacity that is outside the scope of bargaining. Items within the scope of bargaining are outlined within the National Labor Relations Act (NLRB) and additionally defined similarly by the National Labor Relations Board (NLRB), California Code, and the Public Employee Relations Board (PERB) as:

(scope of bargaining items)

The exclusive representative of the classified employees and the local governing board may mutually agree to an alternative appointment process through a memorandum of understanding.

Interpretation: The majority of classified employees of a bargaining unit may request that their union officers develop a memorandum of understand, or side letter to the existing contract with the district, to outline that classified committee appointment responsibilities be a duty of the classified senate. It is, of course, a negotiated item and would have to be an issue of agreement by the administration. This document would become an item of negotiation between the District and classified exclusive representative.

Another scenario could be for the classified staff to decide that only union appointments be made to committees, whereas the administration would be required to offer committee seats to the exclusive representative for appointment.

The administration then has the option to provide an additional seat for a classified senate or "other organization" that asks to participate in the governance process. Without a memorandum of understanding in place, unless negotiated into the classified contract, an administration has the option to recognize or not to recognize other classified organizations requesting input into the governance process.

A local governing board may consult with other organizations of classified employees on shared governance issues that are outside the scope of bargaining.

Q: Does this statement imply that "other organizations of classified employees" could mean classified confidential and management that is not represented by the classified exclusive representative?

A: Again, standing alone, the statement, "A local governing board may consult with other organizations of classified employees on shared governance issues . . . " could be interpreted to that conclusion. However, the last segment of the statement, ". . . that are outside the scope of bargaining." would convey that other organizations are allowed to represent classified employees in non-bargaining professional matters. NLRA and NLRB case law supports that conclusion.

These organizations shall not receive release time, rights, or representation on shared governance task forces, committees, or other governance groups exceeding that offered to the exclusive representative of classified employees.

Q: Does this statement suggest that the union shall receive release time for union activities?

A: This statement could be very confusing. When reviewing the whole content of the law, it is important to note that the bill is relative to governance participation. Classified senates, an organization existing only for institutional purposes, may receive release from their work and rights for governance purposes only. This bill, therefore, requests that exclusive representative receive release from their work and rights for their participation in governance activities. Though there are campuses that provide release time to union officers to conduct union business, this bill does not provide direction for districts to provide release time for unions to conduct union activities.

A local governing board shall determine a process for the selection of a classified staff representative to serve on those task forces, committees, or other governance groups in a situation where no exclusive representative exists.

Interpretation: As a result of AB 1725 passed by the legislature in 1988, districts were directed not to interfere with classified staff's choice of how they participated in governance. This law overrides AB 1725 and gives that right to district governing boards. Though this section of the bill does not affect the majority of campuses, there are campuses without classified unions who are represented by classified senates who will now be directed by campus administrations on the structure for classified participation in governance. Due to the fact that AB 1725 cannot conflict with California Code, this is a step backwards for classified staff.

Questions?

Q: Can a CEO or district eliminate a classified senate?

A: Classified senates are employee organizations and can only be disbanded by a majority of those who developed them. If a majority of the classified staff of a community college voted to develop a classified senate, only a majority of that group can remove them. A CEO or district may, however, refuse to recognize and allow employee participation organizations to participate in the process.

Q: Can a CEO or district refuse to grant release time for participation on governance committees?

A: The elimination of release time to participate on college committees could be considered a restriction from opportunity for input by classified staff in the governance process. Refer to the California Code of Regulations regarding such opportunity.

§51023.5. Staff.
(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and non-management positions or groups of positions shall be separately defined or categorized.

(2) Participation structures and procedures for the staff positions defined or categorized.

(3) In performing the requirements of Subsections (a) (1) and (2), 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.

(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.

(5) Except in unforeseeable, emergency situations, the governing board shall not take action on matters significantly affecting staff until it has provided staff an opportunity to participate in the formulation and development of those matters through appropriate structures and procedures as determined by the governing board in accordance with the provisions of this Section.

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

(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 polices 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.

(b) In developing and carrying out policies and procedures pursuant to Subsection (a), the district governing board 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 way encourage employees to join any organization in preference to another. In addition, in order to comply with Government Code Sections 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. It is the intent of the Board of Governors to respect lawful agreements between staff and exclusive representatives as to how they will consult, collaborate, share, or delegate among themselves the responsibilities that are or may be delegated to staff pursuant to these regulations.

Q: Section (7) (b) states, ". . . the district governing board 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 way encourage employees to join any organization in preference to another." Does this statement mean that district cannot provide financial support to a classified senate.*

A: The NLRA defines word for word the language included in this section as that pertaining to competing Labor Organizations. (Bold and underlining added for emphasis.)

> Section (7)
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> 4. Section 8 (a) (2) – Employer Support of Unions
> Section 8 (a) (2) prohibits an employer from dominating, interfering with, or contributing financial or other support **to a labor organization**. A "labor organization" is broadly defined to include any employee group that "deals with" the employer **concerning the terms and conditions of employment or labor grievances or disputes.** Prohibited domination exists when the organization is controlled or directed by the employer, rather than the employees. Unlawful interference includes an employer's recognition of a **minority union** (even if the result of a good faith but mistaken believe of majority status) or affirmative "assistance" to or supervisory participation in the organizing campaign of a preferred union over another **rival union**. A distinction has developed between unlawful employer support and lawful employer cooperation which does not infringe upon employees' Section 7 rights.

The NLRB defines criteria to establish a labor organization which must be established in whole, not in part.