California Community Colleges Classified Senate (4CS)

California
Community Colleges

Classified Senate

RESOURCE PACKET

Professional Organizational Rights & SB 235

February 2002

Table of Contents

	Page No.
Introduction	3
The Interpretation of Laws	3
A Matter of Opinion vs. Interpretation	4
Classified Senate and Union Organizations: The Right to Exist	6
Legal Opinion of State Chancellor's Office Regarding Minimum1 Standards for Staff Participation in Governance	18
Positive Action and Direction by Visionary Leaders	20
SB 235 Interpretation	23
Conclusion	27
References	29

Introduction

California community college classified staff are an integral segment of the community college system. These forces are the first and last line of operations of a community college, the mechanism that keep our community colleges working smoothly for students, faculty, staff and the community. With years of combined experience and training, the experience of classified staff can only be utilized properly by active input in the participatory governance process. Without avenues for participation, education, and input in college governance, holes will appear in the fabric that holds our organizations together. Without the participation and input of those in the rank and file, experience and progress is lost.

For more than ten years as many as 80 California community college classified staff groups have experimented with classified senates -- professional participatory groups representing classified staff in organizational governance. Classified senates have supported the separation of governance and collective bargaining. Many classified unions have insisted that such participatory groups are not legal representative organizations and interfere with collective bargaining. This battle of philosophies has resulted in the passage of a bill introduced by a statewide classified union that set back the progress classified senates have made in participatory governance. Why was this bill introduced? The answers are numerous and riddled with disagreement and confusion. To protect classified staff? To protect classified unions? To damage classified senates? To expand the role of collective bargaining? To grant the decision-making role for classified staff to the few? Why? We will explore these answers and the difficulties of implementing a confusing bill.

This resource packet has been developed to provide information and materials pertinent to the discussion – do classified senates have the right to exist and represent classified employees in governance?

And now a new question has emerged: With the passage of SB 235, do unions have the right to force community college classified staff to expand the role of the exclusive representation to include organizational governance? These issue are addressed here.

The Interpretation of Laws

We, as Americans, are governed by laws and are expected to be aware of those laws and how they affect us. Ignorance is not a defense and we are bound to follow the laws set before us. Organizations that represent us are also bound by the same laws and expected to know the content of those laws and represent us accordingly.

The number of laws in the United States makes it almost impossible for each individual to maintain knowledge of all laws affecting us individually, much less those laws pertaining to our state

and country. We do, however, expect the organizations that represent us to be informed of laws that govern their scope of representation and responsibility.

Classified staff in California community colleges may have a number of organizations that represent them, personal, professional, institutional, and for labor representation. These organizations are not expected to understand the laws governing the actions of other organizations, but are expected to be knowledgeable of those laws governing *their* actions and affairs and those affecting the people *they* represent. Such organizations are not expected to use the laws that apply to the organization or members *against* the members that they represent, but apply the laws that represent the *best interest* of their members.

Conflict has arisen in the past decade regarding the rights of classified professional organizations to exist and participate in community college governance. It is essential to review California Code, the Employer-Employee Relations Act (EERA), the Public Employee Relations Board (PERB) documentation, case law, and summaries to establish the rights of classified staff on this issue. It is also of interest to note that National labor law and case law is consistent in its support of organizational employee participation organizations on issues outside of collective bargaining. California code and labor laws are also consistent in their definitions of exclusive representatives, collective bargaining, and the scope of bargaining. This consistency lends support to the conclusion outlined in this packet.

In this case it is not only important to research the law involved, but precedence-setting case law. The National Labor Relations Board, or NLRB, is responsible for setting labor law in the United States. In California, the Public Employees Relations Board, or PERB, is an administrative agency that administers collective bargaining statutes covering employees of California's schools, colleges, and universities as well as employees of the State of California. Case law is used to establish applicable interpretations of the law. Labor law and labor codes must be evaluated carefully and completely. A sentence within a paragraph of code cannot be successfully interpreted without reading the entire code chapter. Definitions within one chapter may be different in the next. A statement appearing to be clear within a chapter, becomes clearer, and not always along the original interpretation, when applied in case law. Therefore, it is essential to consider all laws, codes, and case law relative to the subject.

Though this information may be familiar to many community college administrative representatives, it is necessary to outline these processes in laymen terms for complete understanding.

A Matter of Opinion vs. Interpretation

In the case of community college classified senates, two opinions have been established. The first is that labor organizations are separate from institutional professional organizations, hence, the separation of governance and collective bargaining.

The second opinion of contention is that all activities of classified staff are within the scope of collective bargaining. Those two opinions will be addressed here.

It is important first to establish the rights of each individual organization to exist, then to establish the role of each, whether those duties are clear or vague, inclusive or non-inclusive.

And once the right of existence has been established, how can employee participation groups and classified unions co-exist within the law (SB 235).

*S*everal items have been included here for reference and research. A bibliography follows citing references.

This packet of material and information is provided to you as a community college leader, to assist you in formulating beneficial decisions regarding classified staff participation on your campus. We will strive to establish here that:

1. Classified senates have the right to exist as classified participatory organizations
2. The role of the "exclusive representative" is explicit to collective bargaining per labor and education code.
3. The scope of bargaining is clear and documented in labor law and Education code.
4. SB 235 does not eliminate classified senates or their important role in the governance process.
5. Inclusion of classified senates in college governance has had a positive impact at institutions.

The references included here are direct quotes and/or indented. Bolding and underlining text has been done to draw attention to pertinent areas. Much of the documentation provided may not seem relevant to the discussion, but it is essential for understanding the issues involved. All cited references and sections are included in the appendix.

Classified Senate and Union Organizations:
The Right to Exist

Since the growth of classified senate organizations in community colleges, questions have been raised that both unions and senates cannot legally represent classified staff within the system. Labor and case law and California Code does not support these conclusions. Labor law separates the rights of exclusive union representatives to exclusively **bargain** with the employer in the name of classified staff. Labor law also concludes that staff may communicate with the employer on non-bargaining issues through other employee participation groups. Though law on collective bargaining does state that union responsibilities MAY not be **limited** to items within the scope of bargaining, it does not state that items outside that scope **are** union responsibility. In other words, everything may be negotiated, but may or may **not** be accepted. Employers are required to negotiate with exclusive representatives on items within the scope of bargaining. This, of course, supports that there are issues outside the scope of bargaining.

It is the interpretation of this organization that labor code designates that employees may have a number of organizations represent them in their relations with the district on professional and/or bargaining matters. Once an exclusive representative is elected, however, only that organization can represent those employees on **matters within the scope of representation**, **or collective bargaining**. Labor and case law supports the rights of participatory organizations to exist for matters outside the scope of representation (See Attachment: complete California Code 3540-)

California Labor Code Section 3540:

> " . recognizing the right of public school employees to join organizations of their own choice, to be represented by the **organizations** in their **professional** and **employment relationships** with public school employers, to select one employee organization as the **exclusive representative** of the employees in an appropriate unit, . . ."

The same section (3540.1.(e)) further defines "employee organization" and "exclusive representative."

> 3540.1
> (d) "Employee organization" means 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" shall also include any person such an organization authorizes to act on its behalf.
> (e) "Exclusive representative" means the employee organization recognized or certified as the exclusive **negotiating** representative of certificated or classified employees in an appropriate unit of a public school employer."

The American Bar Association clarifies that "Representation is *exclusive* to one union. No other union can represent the same employee unit. This is termed "exclusivity" or "exclusive representation." (U.S. Labor and Employment Laws: Overview, American Bar Association, p. 26)

AB 1725 recognizes the existence of other organizations when directing local boards to recognize governance groups, as well as supports local board rights to include classified senate participation on committees.

California Code of Regulations
Section 51023.5, Chapter 1, Division 2, Part VI

(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 law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this section, management and nonmanagement positions or groups of positions shall be separately defined or categorized.

(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.

(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**.

SB 235 designates that the "exclusive representative" will make committee appointments for classified staff on governance committees, unless a memorandum of understanding is developed and agreed to by the exclusive representative and the local board outlining another structure. Section 51023.5(a)(7) above reinforces that local boards must follow the law in this case. SB 235 however, not only provides that with a memorandum of understanding the local classified union chapter members may introduce another structure for classified committee appointments, but provides the additional option that a local board may recognize another classified organization to represent classified in a professional, non-union category, in addition to the union committee appointee that represents classified staff in a union representative category.

Additionally, AB 1725 reminds local board to avoid violation of Government section 3540, et seq., not to influence labor organizations, ". . . 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." This direct reference, word for word, is outlined throughout labor code and case law as meeting the criteria of a labor organization. Once a local board is established to have consulted with a classified organization other than the exclusive representative on issues within the scope of collective bargaining, then the organization is a rival labor organization and opens the door to violation of interference and support. In relative cases (*Redwoods* and *Ventura*) in which a senate was eliminated or received a cease and desist order respectively, each case has met the first and primary criteria of negotiating with the administration.

California Code of Regulations
Section 51023.5, Chapter 1, Division 2, Part VI

(b) In developing and carrying out policies and procedures pursuant to sub- section (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 the 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.

The Public Employee Relations Board of California establishes whether a violation of the exclusive representative and labor rights have been made.

3541.1 Powers and Duties of the Board
(b) To determine in disputed cases whether a particular item is within or without the scope of representation.
(l) To decide contested matters involving recognition, certification, or decertification of employee organizations.

3541.5 Unfair practice; jurisdiction; procedures for investigation, hearing and decision
(3) The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as well effectuate the policies of this chapter.

In PERB Decision 25089, *Ventura County Community College District, 1994, Domination Or Support – College Classified Senates – Unlawful Assistance – 62.25, 72.26*, the case law judge refused to eliminate the classified senate.

> "Finally, union's request for order requiring disestablishment of senates was denied where union failed to prove that district took any role in formation of senates."
>
> "Where there is employer domination, disestablishment of the dominated organization is appropriate remedy. (*Redwoods.)* Since employer domination of the senates was not proven here, the remedy will be limited to a cease and desist order."

This decision further supports the rights of employee participation groups to exist and communicate with the employer on items outside of collective bargaining.

The *Ventura Decision* established that the district violated the Act by unlawfully supporting the classified senates and dealing with the senates on negotiable topics. By dealing with the senate on negotiable topics, the senate ventured into the area of meeting the criteria of a rival labor organization. This opened the door for a complaint of violation, resulting in a decision of unlawful support of a rival organization. This case is a lesson to all classified senates and community college administrations for what not to do.

California Code further clarifies the role of the exclusive representative and the rights of classified employees to be represented by other organizations **outside** the scope of bargaining:

> Section 3540.1
> (l) "Recognized organization" or "recognized employee organization" means an employee organization which has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).
>
> Section 3543
> (a) Public school employees shall have the right 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. Public school employees who are in a unit for which an exclusive representative has been selected, shall be required, as a condition of continued employment, to join the recognized employee organization or to pay the organization a fair share services fee, as required by Section 3546. If a majority of the members of a bargaining unit rescind that arrangement, . . .
>
> Section 3543.1
> (a) 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. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

(c) A reasonable number of representatives of an exclusive representative shall have the right to receive reasonable periods of released time without loss of compensation **when meeting and negotiating and for the processing of grievances and negotiating and for the processing of grievances**.

(d) All employee organizations shall have the right to have membership dues deducted pursuant to Sections 13532 and 13604.2 of the Education Code, until such time as an employee organization is recognized as the exclusive representative for any of the employees in an appropriate unit, and then such deduction as to any employee in the negotiating unit shall not be permissible **except** to the exclusive representative.

Section 3543.1(d) clarifies that other organizations may exist, but only the exclusive representative may receive dues as "exclusive representative."

Section **3544** Request for recognition; proof of majority support
(a) An employee organization may become the exclusive representative for the employees of an appropriate unit **for purposes of meeting and negotiating** by filing a request with a public school employer alleging that a majority of the employees in an appropriate unit wish to be represented by such organization and asking the public school employer to recognize it as the exclusive representative.

The scope of representation for the exclusive representative continues to be controversial, many union representatives claiming that everything is within the scope of representation. Section 3543.2 should put to rest, completely, the fact that matters within the scope of representation are defined, and that other "organizations" may represent employees on matters "outside the scope of representation.

Section 3543.2 provides in relevant part:
(a) The scope of representation shall be limited to matters relating to wages, hours of employment and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security pursuant to Section 3546, procedures for processing grievances pursuant to Section 3548.5, 3548.6, 3548.7. and 3548.8 the layoff of probationary certificated school district employees, pursuant to Section 44959.5 of the Education Code, and alternative compensation or benefits for employees adversely affected by pension limitations pursuant to Section 22515 of the Education Code to the extent deemed reasonable and without violating the intent and purposes of

Section 415 of the Internal Revenue Code. In addition, the exclusive representative of certificated personnel has the right to consult on the definition of educational objectes, the determination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are within the discretion of the public school employer under the law. All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, provided that nothing herein may be construed to limit the **right of the public school employer to consult with any employees or EMPLOYEE ORGANIZATION on any matter outside the scope of representation**.

Case law has supported the existence of employee groups to participate in institutional committees on issues outside of bargaining within California, and across the nation, in education and industry. Once an exclusive representative is elected, it is clear that only that organization can represent those employees on matters within the scope of representation, or collective bargaining.

The largest community college classified union in California, CSEA, lists within its *Shared Governance Manual* items that they interpret to be within the scope of bargaining. This, again, supports that even state union organizations acknowledge that **everything** is not within the scope of bargaining.

Finally, the last Section of Article 5 concludes;

Section **3544.9** Recognized or certified exclusive representative; duty
The employee organization recognized or certified as the exclusive representative for **the purpose of meeting and negotiating** shall **fairly represent** each and every employee in the appropriate unit.

Local union representatives, therefore, should respond to the wishes of their local constituents and support the decisions of those members and not the directive of a statewide organization that discourages the *rights* of employees to form other professional organizations to represent them on issues outside of collective bargaining. Such outside pressure should be considered unfair representation of the employees they serve and an attack on individual rights.

Legal Opinion M 90-24 from the Chancellor of the California Community Colleges provides an examination of the issue before us. Again, it is important to read the entire document to understand the issue and arrive at a logical conclusion.

"Collective bargaining for community college employees is governed by the Educational Employment Relations Act. Government Code Section 3540 et seq. (EERA). For purposes of this discussion, the threshold question is whether a group of employees with which the employer consults can be said to constitute an "employee organization" within the meaning of Section 3540.1 (d) which defines that term 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". Assuming this question is answered in the affirmative, it is then necessary **to determine whether the relationship between the employer and the employee organization is**

such that it would lead to a violation of Section 3543.5 (d). That section provides that it is unlawful for a public school employer 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 an organization in preference to another.

In interpreting these provisions, the Public Employment Relations Board (PERB) has looked to the decisions of the courts and the National Labor Relations Board (NLRB) construing the substantially similar provisions of the National Labor Relations Act (NLRA). Thus, before examining the California cases, it may be useful to review the federal law in this area. (Attachment 1: Evolving Community College Shared Governance to Better Serve the Public Interest, by Thomas J. Nussbaum, Vice Chancellor and General Counsel, California Community Colleges, January, 1995.)

Consistent with California labor and education code, the NLRA defines labor organizations and pertinent rights as follows:

NLRA, U.S. Code, Title 5
Section 7102. *Employees' rights*
Each employee shall have the right to form, join, or assist any labor organization, or to refrain from such activity, freely and without fear of penalty of reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such rights includes the right –
(1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to represent the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and
(2) **to engage in collective bargaining with respect to conditions of employees** under the chapter.

Section 7103. *Definitions; application*
(a)(4) "labor organization" means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which **has as a purpose the dealing with an agency concerning grievances and conditions of employment**, . . ."

(a)(12) "collective bargaining" means the performance of the **mutual obligation** of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency **to meet at reasonable times and to consult and bargain in a good-faith effort** to reach agreement **with respect to the conditions of employment** affecting such employees and to executive, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;

Section 7116. *Unfair labor practices*

(1)(3) to sponsor, control, or otherwise assist any **labor organization**, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other **labor** organizations having **equivalent status**;

National labor law also consistently references the definition of "exclusive representative" and the scope of representation of labor organizations.

National Labor Relations Act
Sec. 9 [Sec. 159.] (a) [Exclusive representatives; employees' adjustment of grievances directly with employer] **Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment**:

Sec. 2. [Sec. 152.]
(5) The term ``labor organization'' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

In "U.S. Labor and Employment Laws: Overview", International Labor and Employment Laws, Volume 1, the references conclude that "dominating, interfering with, or contributing financial or other support" is consistent with defining rival labor organizations..

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 a 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.

It is a foregone conclusion that the role of a classified senate is not to make recommendations to an administration on issues clearly within the scope of representation. However, discussion of such items is not a violation. Consistently making recommendations on such items clearly is a violation. Additionally, this reference discusses representation by organizations other than unions.

III. Representation by Entities Other than Unions

The United States does not have a statutorily established system of works councils as do European countries. The National Labor Relations Act (NLRA) imposes restrictions on the establishment of employee participation programs in the workplace.[1] In some situations the NLRA may be interpreted to protect nonunionized employees engaging in protected concerted activity.[2]

([1]See II.E. and II.F., [2]See II.D.)

International Labor and Employment Laws, Volume 1
International Labor Law Committee
American Bar Association Section of Labor and Employment Law
The Bureau of National Affairs, Inc., Publisher
Page 56

II.E. <>*Electromation* and Employee Participation Programs

The NLRA prohibits an employer from establishing committees of employees and soliciting proposals from those committees concerning terms and conditions of employment. In *Electromation, Inc*., the NLRB established standards for the legality of employee participation committees.

In *Electromation*, the employer established "action committees" comprised of six employees and one or two members of management to discuss and seek resolution of matters including attendance bonuses, pay scales, and a no-smoking policy, issues traditionally regarded as terms and conditions of employment. Because the employer structured the committees, provided the materials, participated in structuring proposals, and paid the employees for their time, the NLRB held that the company had unfairly dominated or interfered with the formation and administration of a labor organization and, therefore, violated the NLRA.

Section 2(5) of the NLRA defines a labor organization as "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. Thus, under the NLRA, labor organizations are not limited to unions, but comprise all forms of groups that deal with employers concerning the terms and conditions of employment, including employee committees organized to deal with such terms and conditions. Section 8(a)2) of the NLRA makes it an unfair labor practice for an employer "to dominate or interfere with the formation or administration of any **labor organization** or contribute financial or other support to it . . . " As such, employee participation committees organized by the employer to discuss and offer proposals on the terms and conditions of employment violate Section 8(a)(2). As such, employee participation committees organized by the employer to discuss and offer proposals on the terms and conditions of employment violate Section 8(a)(2).

The most important criteria in determining whether an employee committee is a labor organization, and thus protected by the NLRA, is whether the committee "deals with the employer over terms or conditions of employment. "Dealing with" includes more than traditional collective bargaining between a

union and an employer. In order to be considered dealing with an employer, an employee committee must engage in a pattern or practice of dealing with an employer concerning terms and conditions of employment. Isolated incidents of dealing with an employer are insufficient to establish an employee committee as a "labor organization."

International Labor and Employment Laws, Volume 1
International Labor Law Committee
American Bar Association Section of Labor and Employment Law
The Bureau of National Affairs, Inc., Publisher
Pages 35-36

II.F. NLRB Post<>*Electromation* Decisions

Four separate decisions revisiting the issues of employee participation committees were issued by the NLRB on December 18, 1995, and released in early February 1996. The decisions further detail the standards articulated in *Electromation, Inc.,* and *E.I. du Pont*. Two of the decisions held that employee participation committees violated the NLRA, while the other decisions found no violation of the Act. Each is discussed below.

In *Dillon Stores*, the NLRB held that a committee established by the employer to "communicate" with the employees violated Section 8(a)(2) of the NLRA. Dillon Stores initiated quarterly meetings where management would respond to questions and comments from the employees' "representatives" on the committee. The questions and answers covered topics such as scheduling, equipment, dress code, promotions, and benefits. Management implemented some suggestions and responded to all queries.

The Board noted that "communications and dealings are not mutually exclusive terms; some communications are dealings." In this case, the communications involved the receipt of proposals and grievances on almost every aspect of the employment relationship and "by word or by deed" the acceptance or rejection of those grievances or proposals. Because the employer initiated all meetings, determined which employees would serve as members, determined the committee's structure and functions, and paid members for the time spent at meetings and preparing for meetings, the Board found that Dillon Stores dominated and interfered with a labor organization. The Board ordered Dillon Stores to disband the committee.

In *Webcor Packaging*, a committee designed to offer recommendations to management about the Plant Council, was implemented to resolve management's perceived problems with another committee, the Employee Involvement Steering Committee. The Steering Committee previously was established to focus on issues of quality, waste reduction, housekeeping, safety, and productivity. However, employees were asking the Steering Committee to handle other issues such as changes in overtime distribution, pay for lunch breaks, and pay for employee-supplied safety equipment. Because resolving these issues would interfere with the function of the Steering Committee, Webcor management formed the Plant Council to handle issues involving work conditions.

The employee members of the Plant Council were elected by the work force, and the management members were chosen by Webcor. Management retained final authority to accept or reject proposals from the Plant Council and did so on several occasions. The Plant Council was disbanded during an organizational campaign by the Teamsters. When the employees voted against Teamster representation, the Plant Council was reestablished. The Teamsters filed charges against Webcor alleging that

the Plant Council violated Section 8(a)(2). The Steering Committee was not challenged.

The Board found that the Plant Council was not merely a means of communication, nor a committee to discuss production problems and plant efficiency. The Board held that the Plant Council was directed to engage in a pattern or practice of making recommendations on the terms and conditions of employment for management consideration, in violation of the NLRA. The Board set aside the results of the representation election, directed that second election be conducted, and ordered Webcor to disband the Plant Council.

In the case of *Stoody Co.,* the Board found that a Handbook Committee, which met only once for one hour, did not violate the Act, even though the employees raised concerns and made proposals about employment conditions. The Committee, made up of seven nonsupervisory employees and three supervisors, was formed to discuss inconsistencies between the handbook and current practice. During the first meeting, several employee members initiated discussions about working conditions. The supervisor in charge of the meeting participated in the discussion. At the next scheduled meeting the Committee was disbanded. The charge against Stoody was filed during the organizing campaign by the United Auto Workers.

The Board found that "a 1-hour meeting in itself shows no pattern or practice of any kind" and clarified *du Pont*:

> By requiring that "dealing" consist of a pattern or practice of making proposals to management on [terms and conditions of employment] du Pont allows for the isolated errors that may occur in any genuine attempt to change the interaction between employer and employees . . . . At the same time, du Pont makes it clear that recurring instances of an employee participation committee making proposals to management on mandatory subjects constitutes "dealing" and the committee will be found to be a labor organization.

In *Vons Grocery*, the unionized employer created a Quality Circle Group (QCG), and employee participation group devoted to considering specific operational concerns and problems. After three years of addressing and solving operational issues, the QCQ considered a dress code and an accident point system—subjects that had been discussed with the union. The union was informed of the proposals and participated in the QCG. The union pursued the proposals in negotiations and the QCG did not consider them further. When the union complained that the QCG was infringing on its right as exclusive bargaining representative, Vons Grocery immediately changed the format of the QCG to include a union steward at each meeting.

The Board held that one incident of making proposals on conditions of work does not constitute a pattern or practice of "dealing" within the meaning of Section 2(5) of the NLRA. Because Vons Grocery immediately responded to the union's concerns about the group by changing the format, the NLRB found that there was little likelihood that the one incident would develop into a pattern. **Thus, the one incident did not transform a <u>lawful employee participation</u> group into a statutory labor organization**.

This ABA resource continues to define unions and collective bargaining:

Section 7 ”prohibited certain unfair labor practices by unions.”

The Representation Process and Union Recognition

Section 9(a) of the NLRA provides that in order to become a collective bargaining representative a union must be “designated or selected” by a *majority* of the employees in an appropriate bargaining unit. The NLRA does not specify an exclusive procedure or method by which such designation or selection must be made. Under the NLRA, bargaining representative status—which, in the United States is exclusive to one union—can be obtained through (1) voluntary recognition by the employer, (2) an NLRB bargaining order, or (3) formal NLRB certification after a secret-ballot representation election. Each procedure is discussed below. (U.S. Labor and Employment Laws: Overview, American Bar Association, p. 26-27)

Voluntary Recognition

In a typical union organizing campaign, employees are requested by union organizers to sign a document (usually an “authorization” card) which expressly designates the union as their exclusive collective bargaining representative. If, without misrepresentation or coercion, the union obtains valid authorization cards from a majority of employees in an appropriate bargaining unit, it may demand that the employer recognize and bargain with it as the employees’ exclusive representative.

If an employer is satisfied that a union in fact has achieved “majority status,” it may voluntarily recognize and bargain with the union. Conversely, an employer cannot lawfully recognize a union that has not achieved majority status at the time of recognition. Even if both the employer and the union honestly believe the union has achieved majority status, employer recognition of a **minority union** is considered an unfair labor practice by both the employer and the union because it violates the “majority rule” principle of Section 9(a) of the NLRA and interferes with the affected employees’ Section 7 rights to select a representative of their own choosing or to refrain from engaging in Section 7 activities. The single exception under the NLRA is provided in Section 8(f), which allows “pre-hire” agreements between a construction industry employer and a minority union. (U.S. Labor and Employment Laws: Overview, American Bar Association, p. 27)

The following is outlined in AB 1725 to discourage boards from interfering with the development of classified organizations. However, this definition is outlined in NLRA for establishing **competing labor organizations**.

Section 7 . . .

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 Chancellor's Office included this description in AB 1725 to discourage competition for governance representation to rival classified groups that could be viewed as or evolve into rival labor organizations. Labor law outlines this criteria as the test to establish a **rival labor organization**. In the Chancellor's position paper on shared governance he outlined this criteria. Labor and case law establishes clearly that this criteria must be met in its **entirety** to establish violation and support of a rival labor organization. All sections must meet the test, not one or two.

LEGAL OPINION
Of State Chancellor's Office
Regarding Minimum Standards for Staff Participation in Governance

Staff should have the choice of how they want to organize and present their views on governance matters. They should have the flexibility to choose how they organize and provide views on governance matters.

They have the right to form, join and participate in the activities of an employee organization.

PERB uses a two-step approach in determining a violation of the exclusive bargaining agent's rights:

1. If the group constitutes an employee organization. That is, does the employee organization:

    a. Meet regularly?
    b. Consist of elected representatives?
    c. Make recommendations on bargaining issues?

2. If so, does the totality of circumstances include:

    a. Support by the governing board as shown by
        (1) Employer financing group?
        (2) Employer giving employees release time?

    b. Domination by governing board as shown by
        (1) Employer scheduling organization's meetings?
        (2) Employer determining the agenda?

c. Interference of governing board as shown by
   (1) Employer taking action to favor the group or undermine the credibility of the exclusive representative.

The development of classified senates and other employee participation groups in community colleges is only part of what we are finding to be a **much bigger** movement in the United States. Research has uncovered employee participation groups all across America in business and education.

Businesses have been experimenting with the TQM, or Total Quality Management Style of administration or governance for years. Since its introduction, businesses have found that productivity, efficiency, cooperation, and employee morale have increased with this sharing of the decision-making process. These employee participation groups, however, are viewed by some as the beginning of a move away unions. Though businesses are finding TQM to be a progressive form of management, unions **are** resisting, forcing management to evaluate the benefits of employee input in the management process verses the liability costs of employee union complaints.

It is clear that employee groups participating on committees that consistently discuss items normally used in the bargaining process **may be disbanded** by the Public Employees Relations Board (PERB) if the group meets the criteria of a **competing labor organization**. However, labor law does not prohibit participatory committees from discussing such issues without recommendation on those issues, or from making such recommendations on prohibited issues without proof of consistency of making such recommendations. The goal here is not to point out the participatory committees can or have discussed and made recommendations on issues within the scope of representation, but to provide information from the law. This organization (4CS) is forced to present that information as a result of classified union activities of the past year.

The difference between employee participation committees and exclusive labor representatives is the employee participation groups provide input and recommendation only that district and local boards are not required to follow, whereas exclusive labor representatives bargain for final policies and procedures that district and local boards are required to act upon and adhere to. In the case of classified staff, input in the participatory governance is not an issue of power, but of collegial discussion and recommendation. Not of negotiation, but of cooperation and education toward meeting the goals of the institutional vision and mission.

Classified senates across the state were developed because AB 1725 required districts to work with the classified representative **chosen** by classified staff for input into the governance process. (attachment: See AB 1725 language) Labor law does not support that the exclusive representative **must** represent classified in this professional role. Labor law discusses the role of the exclusive representative and continues to mention other organizations and the relationships between administration and those groups. The passage of SB 235 gives unions the right to have union representatives present on governance committees. It does not exclude other organizations from participating on such committees in a non-union capacity. An interpretation of SB 235 is included to evaluate the possible ways SB 235 may be implemented.

Positive Action and Direction
By Visionary Leaders

Senates have two concurrent objectives before them that need to be put addressed as soon as possible.

The first is to assure our unions, that classified senates will not replace the important roles **of** classified unions. Governance and collective bargaining are time consuming commitments that require focus. Senates need to develop and encourage new leaders to take turns in representing classified staff, whether it be a job steward or other union officer, or a senator. This will allow rotation and education of all employees that will eliminate employee burnout. Our organizations can work together to benefit this area – after all – these classified organizations are all the same employees, senate or union.

Second, classified **senates** must be educated as to the delineation of responsibilities that are agreeable between the two groups. Violation is not acceptable. There is labor and case law to support employee participation groups can exist and have positive results for the organization or institution. They must participate without crossing the lines. Individual union and senates leaders are not elected to **dictate** to the employees they represent. Visionary leadership does not mean a dictatorship position to create conflict within the employee unit.

Both classified senates and unions need to be provided the labor and case law supporting the rights of employee participation groups to exist. Those references are included here.

The classified senates felt uncertain when being challenged by unions, we hope that the conflict that was present on campuses existed because local unions did not have the knowledge of labor and case law to understand that classified staff have the right to develop employee participation groups.

Every member of a classified senate or union should have the best interest of classified staff in mind, or they wouldn't take the leadership challenge. Classified staff are on the same team and need to work together and see the value in each organization.

The values of classified senates and employee participation groups **have** become obvious in community colleges, and across the nation. So why has there been conflict between classified senates and unions? Fear of losing our unions seems to be a major factor – we need to eliminate this confusion.

Unions must always be available to protect the interests of employees – any individual who believes that the human race has evolved to the point of trust that there is no longer a need for unions is being unrealistic. Moving away from unions is not an option. We need our state unions to continue to introduce and protect the important laws that they have won for us.

We need leaders in two separate arenas – governance and collective bargaining. Perhaps in our efforts to be represented professionally in governance by other than our unions, we have failed to emphasize our continued support for them. This needs to be corrected.

The classified senate in many cases has been an incubator for future union leaders. Senates can be a vehicle for leadership growth in a nurturing environment for those who wish to go on in a union

capacity and may feel a need for some experience on the road to that possibility. Without a classified senate, many classified staff members **never** take up the leadership challenge.

Senates are leadership organizations that encourage classified staff members to participate and learn about the institution. With that knowledge and training, many people see that not only do they have some leadership qualities, but they have what it takes to be union leaders. Senates are a leadership building tool that benefits both the classified staff and the institution.

One of the challenges of officers in union positions in excessive periods of time is the resulting in burnout and, in some cases, the illusion of ownership of the organization or chapter. We do not want leaders to suffer from burnout or have leaders that represent us simply because no one else wants to do it. Senates can play an important role in cultivating new leaders who simply need encouragement and support and prefer to begin involvement by participating in an arena without conflict. Senates provide the experience and education in and of the institutional processes that promote a collaborative approach. This positive environment cannot help but impact the collegiality and respect on the campus. It is the sincere belief of this organization that the classified senates have been a positive move forward for classified staff and community college campuses.

Employee participation committees have found success in industry and community colleges, but they need good leadership of both unions and senates to be successful. There are many successful models of cooperative relationships across the state between classified unions and senates. Those structures can be guides for other campuses that are working out their problems. It is essential for all members of the campus community to recognize the positive impacts attributed to classified senates/councils.

All across the state senates have:

- Increased communication
- Developed new leaders
- Promoted a positive environment
- Increased the visibility of classified staff
- Achieved great steps in classified participation in the system
- Increased classified programs
- Increased classified recognition and awards
- Created a network for sharing great ideas and programs
- Improved morale
- And SENATES HAVE MADE OUR INSTITUTIONS A BETTER PLACE FOR OUR STUDENTS!

When positive open communication can be encouraged to take place on campuses between senate and union representatives, then conflict should subside and the true experiment begins. We

should all encourage our statewide organizations to support this effort, while stressing that we support **their** roles.

Finally, it is essential that community college campuses provide visionary leadership from the top of the organization. From local Boards, chancellor's, and superintendent/presidents. Without visionary leadership, senates cannot successfully represent a professional voice for classified staff. Without that leadership classified staff cannot take pride in and be a part of the success of their organization. Classified staff are an untapped resource that, with senates, have learned their potential and are excited about being an active part in the success of community colleges.

It is important to add that there are campuses without senates and all campuses have the right to participate in the governance and collective bargaining processes as they choose and 4CS supports those decisions. Unfortunately, on many campuses the union acting in the role of governance representation is not effective. It has become increasingly apparent that many individuals cannot "help" but view a union appointed member of a committee as a participant representing union views. Classified senates changed this paradigm. A professional organization represents the professional ideas of a group and individual expertise without this confusion. This philosophy is the foundation for the need for classified senates. Classified employees do not want to be represented in professional and governance matters by those "few" who have been chosen as union representatives. The purpose of unions is clear and important. Those organizations should be focusing on the areas for which their members agree – not working against those members and removing their rights.

The future for classified senates can be a positive one and we are **part** of a **bigger** professional movement toward a positive workplace and a better world. Classified Senates and Unions need to rise to the challenge and not be left behind.

SB 235 Interpretation

When considering the interpretation for 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 California Code, and the Public Employee Relations Board (PERB or EERA):

> Section 2(5) of the NLRA defines "labor organization" as "any organization of any kind or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning **grievances, labor disputes, wages, rates of p\ay, hours of employment, or conditions of work**".

"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 understanding, or side letter to the existing contract with the district, to outline that classified committee appointment responsibilities be a duty, in whole or part, 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, NLRB and PERB decisions support this 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 the 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. SB 235 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.

Below are some of the questions received by 4CS.

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)

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 that must be established in whole, not in part.

Conclusion

The future of classified staff to participate professionally and effectively is dependent upon the decisions of local classified senates and unions to support the decision of the majority of classified employees on the campus to decide what group will represent them in governance.

Local unions are made up of classified employees who direct their elected union officers to represent them. Local unions should support the decision of the classified staff they represent. If it is the decision of the classified staff for their union to make committee appointments and the classified senates are responsible for open communications between the administration and classified employees on non-bargaining governance issues, classified senates may still require classified committee members to report committee activities to the senates. These are local decisions and the 4CS supports **all** local decisions that do not conflict with the mission and objectives of senates within the governance process.

The 4CS strongly advises that senates work cooperatively with their unions to provide the most benefit to classified staff and the community college system.

It is imperative that each campus has the tools to work cooperatively and smoothly together. These tools include:

- Comprehensive Committee List
- Delineation of Duties
- Provide sections in Bylaws of each group establishing the relationship with the other
- Memorandum of Understanding with the district if necessary

The California Community Colleges Classified Senate is available to meet on any campus or place to discuss the issues discussed here and the importance of classified staff in the community college system. A 4CS Classified Senate manual outlining the suggested role of local classified senates and the role of the statewide classified senate (4CS) are available upon request.

Reference Materials

Evolving Community College Shared Governance To Better Serve The Public Interest
By Thomas J. Nussbaum
Vice Chancellor and General Counsel
California Community College

Legal Opinion M 90-24, October 17, 1990
Ralph Black, Legal Counsel
Chancellor's Office
California Community Colleges

U.S. Labor and Employment Laws: Overview
American Bar Association
http//www.bna.com/bnabooks/ababnaababna/monographs/US.doc

Get from Diane

NLRB v. Cabot Carbon, 360 U.S. 203, 1959
(Stands for the proposition that an employee group need not engage in actual bargaining in order to qualify as a labor organization under the NLRA)

Ferguson-Lander Box Co., 151 NLRB 1615, 1965
(Found as labor organization because management set up committee on ways to improve working condition.)

Fiber Materials Inc, 228 NLRB 933, 1977
(Labor organization did not exist where management met twice to answer questions about health benefits)

Sparks Nugget, 230 NLRB 275, 1977
(Not labor organization, only processed employee grievances.)

Mercy Memorial Hospital, 231 NRLB 1118, 1977
(Not a labor organization, recommendation on only one occasion a resolution of a particular grievance.)

Issue: Discusses or makes recommendation