

Rights of the Academic Senate under CA Law: an Opinion

Below in bold is Vice Chancellor's Blanchard's defense of the Chancellor's Office's prerogative to impose a general education framework. Presumably, it has been vetted by legal counsel and represents the view of the Chancellor. This defense is, I think, mistaken.

The Vice Chancellor begins.

Decisions regarding curricula and required general education courses are specifically excluded from the scope of representation under HEERA, so implementing a change to general education requirements does not give CFA standing to claim a violation of the collective bargaining agreement.

The Vice Chancellor is right about the exclusion, initially. "The content and conduct of courses [and] curricula" are normally not within "the scope of representation" of the union. But HEERA adds: "If the trustees withdraw any matter in this subparagraph [i.e., "courses and curricula"] from the responsibility of the Academic Senate, that matter shall be within the scope of representation" of the union.

In other words, HEERA makes a threat in order to protect "joint decision-making and consultation between the administration and faculty" on "academic and professional policies" (Article 1). Consultation with the faculty's representative body must be full; and there must be joint decisions. If the CSU administration backs off either requirement, it invites the authorization of "meet and confer" with the union, the faculty's representative on working conditions.

The Board of Trustees maintains the power to establish curricula, and may authorize a campus to establish curricula (Ed. Code 40100).

This claim elides a subtle distinction in the Education Code. 40100 actually says, "A campus may be authorized by the Board of Trustees to establish and maintain curricula." 40102 adds that the curricula must follow "procedures adopted by the BoT." The BoT writes the "procedures." However, it authorizes campuses "to establish and maintain" curricula, if the curricula follow its procedures. The BoT itself does not create curricula; it lacks the capacity to do so. This is a crucial distinction.

The Board has delegated to the Chancellor the authority to establish and oversee all academic programs and issue degrees (BOT Standing Orders).

This claim takes words out of context. At first, it sounds as if the BoT has passed a unilateral power to the Chancellor. Actually, the "Standing Orders of the BoT" state that this "authority" must be exercised in a manner that is "consistent with Trustee policy and applicable law, for the appropriate functioning of the institution."

As I have indicated, HEERA is "applicable law." It requires joint "decision-making and consultation." Additionally, so does Trustee policy in the "Standing Orders." The Vice Chancellor does not mention this fact. The "Standing Orders" say clearly "The constitution of the

Academic Senate of the California State University has been ratified by the faculties and approved by the Board of Trustees.” In turn, the constitution says that the Academic Senate is “to be the formal policy-recommending body on system-wide academic, professional and academic personnel matters.” The role for the Senate, as “a policy-recommending body,” therefore, is a Standing Order of the BoT that the Chancellor is legally bound to observe.

Although we frequently consult with the Academic Senate CSU and the campuses on curriculum issues, there is no requirement to obtain the approval of the Senate prior to implementing changes to general education requirements.

This statement is cavalier and dismissive. It implies that consultation is like a courtesy; it is not necessary. Certainly, it implies there is not must heft to what the Senate recommends. However, shared governance signals “joint” behavior. (See HEERA.) HEERA makes it clear that “courses and curricula” fall in the scope of the Senate. Historical deference to the Chancellor has tempered the Academic Senate’s insistence on its explicit consent. This deference, though, makes sense only if there is a reciprocal deference by the CO to the Academic Senate’s request for adequate consultation.

Nevertheless, in this case, ASCSU and Academic Affairs Division agreed to the consultation process that was carried out for EO 1100.

It is strange that, as yet, no document has emerged to confirm this claim. No such document can be found in the agendas, minutes, and actions of the pertinent committees for the last two years. Nor is there an executive order or coded memorandum that confirms agreement on a timetable and process.

So, what does all this amount to?

First, the faculty have, under HEERA, an absolute right to consult with the union about a faculty-administrative matter that normally is not within the scope of the union.

Second, if the Academic Senate determines that the CSU has violated either joint decision-making and/or consultation on the content and conduct of courses and curricula, then it can lodge a complaint with HEERA under Article 2. It can ask for an affirmative judgment that CSU consult and establish a time line of consultation with the Academic Senate.

Third, if CSU refuses to cooperate with the Academic Senate, the union could request HEERA to have these academic matters shifted to its scope. Of course, this would signal the end of shared governance on academic matters.