

ATTACHMENT TO AS-2931-09/FA (AGENDA ITEM 15)

Bernhard Rohrbacher <brohrbacher@calfac.org>to Karen Davis <kdavis@csumb.edu>,

date Mon, Dec 21, 2009 at 12:36 PMsubject

You can either forward the following to the Senate, or provide me with an address to which I should send it directly, either by e-mail or by snail mail.

To Whom It May Concern:

Government Code 3561(a) provides: The Legislature recognizes that joint decisionmaking and consultation between administration and faculty or academic employees is the long-accepted manner of governing institutions of higher learning and is essential to the performance of the educational missions of these institutions, and declares that it is the purpose of this chapter to both preserve and encourage that process. **Nothing contained in this chapter shall be construed to restrict, limit, or prohibit the full exercise of the functions of the faculty in any shared governance mechanisms or practices, including** the Academic Senate of the University of California and the divisions thereof, **the Academic Senates of the California State University**, and other faculty councils, with respect to policies on academic and professional matters affecting the California State University, the University of California, or Hastings College of the Law. The principle of peer review of appointment, promotion, retention, and tenure for academic employees shall be preserved. [Emphasis supplied.]

Moreover, Government Code 3562(r)(1) provides: For purposes of the California State University only, "scope of representation" means, and is limited to, wages, hours of employment, and other terms and conditions of employment.

Finally, Government Code 3571(f) provides: It shall be unlawful for the higher education employer to do any of the following: (f) Consult with any academic, professional, or staff advisory group on any matter within the scope of representation for employees who are represented by an exclusive representative, or for whom an employee organization has filed a request for recognition or certification as an exclusive representative until such time as the request is withdrawn or an election has been held in which "no representative" received a majority of the votes cast. This subdivision is not intended to diminish the prohibition of unfair practices contained in subdivision (d). **For the purposes of this subdivision, the term "academic" shall not be deemed to include the academic senates.** [Emphasis supplied.]

Pursuant to the laws quoted above and other applicable law, the amount of release time or other compensation, if any, provided to faculty serving on the Academic Senates is not a term or condition of employment that would be within the scope of representation. This

issue is therefore not an issue over which CSU has to meet and confer in good faith with CFA, the exclusive representative of faculty on all issues within the scope of representation within the meaning of Government Code 3562(i). Moreover, pursuant to section 3571(f) and other applicable law, discussions between CSU and the Academic Senates about this issue would not constitute an unfair practice.

Sincerely,

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