CSEA Guide

AFL-CIO

SB 235
& Participatory/Shared Governance in California's Community Colleges

A Position Paper of the
California School Employees Association
and its
Community College Committee

Approved by CSEA's Board of Directors, June 15, 2002

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CSEA GUIDE TO SB 235 AND PARTICIPATORY/SHARED GOVERNANCE IN CALIFORNIA'S COMMUNITY COLLEGES

A Position Paper of the California School Employees Association

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Introduction

This guide contains several distinct documents which, taken as a whole, provides a comprehensive review of the effects of SB235 and the expanded role of community college classified employee unions in participatory (shared) governance processes. It includes a discussion of the rationale leading to the positions taken, a discussion of issues raised by other organizations and agencies, a summary of the effects of SB235, strategies for implementation at the local level, answers to frequently asked questions, and a legal opinion/analysis by CSEA's Legal Department.

Position Rationale

Effective January 1, 2002, SB235 *(Education Code Section 70901.2)* provides unions of classified employees in California's community colleges the right to appoint representatives to district consultative bodies such as task forces, committees or other governance groups. This new law not only clarifies the role of classified professionals in participatory governance, but also gives new life to the traditional union role of addressing a wide range of issues affecting the lives of their members.

The California School Employees Association (CSEA), along with other unions representing community college classified professionals, has a long history of engaging in activities related to the governance policies of local educational agencies. These activities go far beyond the narrow view that union interests are limited to collective bargaining issues described in the Education Employment Relations Act (EERA), and reflect the interest classified union members have in public education — not only as employees, but also as community members, as parents and, often, as students in California's community colleges.

Long before AB1725 (1988) required classified staff participation in community college governance groups, unions of classified employees often appointed representatives to district committees and task forces dealing with governance issues not falling within the EERA's scope of bargaining. Other classified staff organizations sometimes had members on these governance groups, frequently representing the interests of specific job families, classified confidential and management personnel, and, at some colleges, classified employees as a whole.

AB1725 institutionalized the participation of classified staff in governance decisions *(Education Code Section 70901(b)((1)(E))*. The requirements of AB1725 did not specifically require any organization to represent classified employees in the consultation process, but subsequent regulations of the Board of

Governors of the California Community Colleges *(California Code of Regulations, Title 5, Section 51023.5)* did require or authorize local governing boards to recognize staff groups for the purposes of staff participation in governance matters. Some colleges formally recognized "classified senates" — organizations generally separate from the union — as having the sole authority to select classified staff to serve on district governance committees.

Not surprisingly, conflicts arose. The leading issue in conflict was the requirement that "procedures for staff participation shall not intrude on matters within the scope of representation under Section 3543.2" of the EERA *(California Code of Regulations, Title 5, Section 51023.5(b))*. The line between negotiable subjects and governance subjects is often thin — as well as blurred — and disagreements over what was rightfully within the sole purview of either the classified union or the governance groups became commonplace. Disputes over this issue made participatory governance less effective, created unnecessary tension among the various parties involved, and threatened the existence of the process itself.

In fact, this division of classified professionals' broad interests regarding issues affecting them, the college and students is artificial at best. The views of classified staff, whether a specific governance issue is a mandatory subject of bargaining or not, are inextricably tied together, and cannot be separated into easily definable areas. And the interests and opinions of classified staff are best served through the union they democratically elected to represent them.

AB1725 was designed, in part, to ensure that classified staff have meaningful input regarding college governance matters, but did not create clear rules to guide how the process was to work. The Board of Governors of the California Community Colleges did little to clarify the rules to be followed, and local community college governing boards adopted policies that often bypassed the local union(s) representing classified staff. SB235 clearly defines the role of unions in the process, and can dramatically change the rules established by local colleges.

The Effects of SB235

SB235 added Section 70901.2 to the California Education Code and, at first glance, the provisions of the new law appear to be quite clear:

> ***70901.2. (a)*** *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. 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. A local governing board may consult with other organizations of classified employees on shared governance issues that are outside the scope of bargaining. 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.*

As clear as the law may seem, its application at the local level may have some dramatic and unexpected effects, especially when viewed in conjunction with other rules, regulations and laws.

There are four major points in the legislation:

1. **If a local college or district has classified representation on a "task force, committee or other governance group," the exclusive representative (union) of the classified employees shall appoint the representative for its bargaining unit members.**

    a) Other organizations, such as classified senates or organizations of classified confidential or supervisory staff, may also be permitted to appoint representatives on the task force, committee or group, but the representatives of any other organization of classified employees cannot outnumber classified union representatives.

2. **The union and the employer may agree to an alternative appointment procedure through a Memorandum of Understanding (MOU).**

    a) The MOU may include provisions describing the procedure to be followed when there are more than one bargaining unit, each represented by a different union. This is likely to occur when there are governance issues affecting multiple bargaining units.

    b) Because the appointments are to groups addressing governance issues that are not subject to bargaining under the EERA, the process for reaching agreement on an MOU is not a mandatory subject of bargaining under the Act.

        1) The process is not generally subject to unfair practice charges for "refusal to bargain in good faith."

        2) Neither the employer nor the union may insist to the point of impasse on its proposal regarding alternatives to the union's right to appoint representatives to governance committees under the provisions of SB235. Absent an agreement, the provisions of the Education Code stand.

        3) If either the employer or the union attempts to tie agreement (to the point of impasse) to a mandatory subject of bargaining, it would be "unlawful conditional bargaining" under the EERA.

        4) If no agreement is reached regarding an alternative appointment procedure, the union retains its unbridled right under the Education Code to appoint a representative to the "task force, committee or other governance group," as described in 1, above.

    c) **Though clearly not in the best interests of the union and the members it represents,** the union could agree to a simple waiver of its right to appoint representatives, leaving this authority with, for example, the classified senate. In addition to this course of action being strongly discouraged, at least within CSEA, agreement on any such blanket waiver is subject to member ratification.

3. **The district or college may still consult with other classified employee organizations, such as "classified senates," or confidential/supervisory groups, regarding governance issues that are outside the scope of bargaining**.

    a) This provision *permits* the employer to consult with "other organizations of classified employees." It in no way limits the union's right to have at least equal representation on task forces, committees or other governance groups, or to have at least equal access to any consultative process.

4. **In addition to providing the union with at least equal representation on governance groups, other organizations of classified employees cannot receive release time or other rights that exceed the release time or rights offered the union.**

    a) For the union, release time related to addressing matters related to collective bargaining is a mandatory subject of bargaining under the EERA. If release time is granted to another classified employee organization for addressing governance issues, the time cannot exceed that offered to the union for the same purposes.

    b) Other rights (such as the opportunity to consult informally with the employer regarding governance matters outside the scope of bargaining, the right to have a portion of the district's budget allocated for organizational activities, the right to office space, or the right to use college facilities or equipment), must be no more than equal to the right of the union to engage in the same activities, and to have access to the same property or funds in pursuing participatory governance activities.

As directed by AB1725 *(Education Code Section 70901(b)(1)(E))*, the Board of Governors of the California Community Colleges set "minimum standards" for local governing boards to follow in establishing procedures for classified staff participation in governance *(California Code of Regulations, Title 5, Section 51023.5)*. Questions have arisen as to whether or not these regulations have to be modified to conform to the appointment provisions of SB235.

Addressing the issue of the ability of classified employee organizations to appoint representatives to governance groups, Section 51023.5(a)(7) of the regulations reads:

> *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.*

In light of SB235's requirement that unions holding the status of "exclusive representatives" have a specific right to appoint representatives to these governance groups, it would make sense to clarify this issue in the regulations by making direct reference to this "minimum standard." However, the current

regulation — while not a model of clarity — does not appear to be inconsistent with the requirements of the new law.

Perhaps a more important consideration is the content of the policies and procedures adopted by local college and district governing boards pursuant to this regulation. Many governing board policies recognize only classified organizations that are not the exclusive representative for making appointments to governance groups. These policies, to the extent they are not in compliance with SB235, are void. To comply with current law, the policies must be changed to allow exclusive representative unions of classified employees to appoint representatives to "serve on college and district task forces, committees, or other governance groups."

Opinions and Positions of Others

In February, 2002, the California Community Colleges Classified Senate (4CS), a statewide organization representing local classified senates, published a resource packet entitled "Professional Organizational Rights and SB 235."

This resource packet is a lengthy and sometimes passionate defense of classified senates that also presents a narrow — and quite inaccurate — portrayal of the missions, rights, and obligations of unions in American society.

The author of the packet suggests that unions are limited by law to engaging only in activities related to collective bargaining, and presents a long list of legal citations and regulatory decisions seemingly in support of this premise. By and large, the citations are either misinterpreted or irrelevant, and the conclusion is simply wrong.

Unions existed and functioned long before collective bargaining laws were enacted in both the private and public sectors, and long before there were formalized employee participation schemes such as "participatory governance," "labor-management cooperation committees," or "shared decision making." Their relationships with specific employers were often adversarial, but just as often, collegial, collaborative, or cooperative — workers and their unions recognized that their continued employment depended on the success of the employer, and in many cases workers identified with the goals, missions or products of the organizations employing them.

Collective bargaining laws (the Railway Labor Act, the National Labor Relations Act and, later in California's public sector, the Educational Employment Relations Act) gave employees and their unions the *additional* right to "negotiate" and "process grievances" regarding issues related to "wages, hours of employment and other terms and conditions of employment." The granting of these additional rights in no way limited the union's right to continue to represent them, either formally or informally, regarding other issues and concerns of importance to them, whether or not these issues fell within the so-called scope of bargaining.

All unions in general, and CSEA in particular, have a longstanding record of representing members in areas of their personal and professional life including, but not limited to, matters covered by collective bargaining laws. And that record continues to be written, with the union being heavily involved in local, state and federal activities addressing education reform, school finance, political action, legislative advocacy, student achievement, parental involvement, the management and delivery of education services, school-to-career transition, technological improvements in education, legal representation,

lead-free schools, and health/unemployment/workers compensation insurance programs — to name but a few. At the K-12 level, many local unions are involved in participatory governance arrangements with school districts, though these arrangements are not codified in state law.

The 4CS resource packet cites Section 3540.1 of the EERA in support of their argument that the rights of unions are limited in scope and jurisdiction. This section defines "Employee Organization" (for purposes of collective bargaining) as "…any organization which includes employees of a public school employer and which as one of its primary purposes representing those employees in their relations with that public school employer." It should be clearly understood that, for any union, this is just *one of its primary purposes*, and that continuance or expansion of other rights is neither unlawful nor improper.

SB235 simply gives unions the right under the Education Code — *not under the collective bargaining law* — to represent their bargaining unit members in participatory governance processes in California's community colleges, a right consistent with other "primary purposes" of any union.

We agree with the 4CS' claim that "Classified senates have the right to exist as classified participatory organizations," so long as their activities do not infringe on the collective bargaining rights of community college classified professionals, the rights of their union as the exclusive bargaining representative for collective bargaining purposes, and the right of their union to represent the interests of bargaining unit employees on governance groups. Whether or not a particular community college decides to *otherwise* consult with classified senates or other classified organizations on shared governance issues is a decision to be made by its governing board, so long as an equal right to consult is granted to the union(s) representing recognized bargaining units.

Strategies for the Implementation of SB235

Notification: The local union/chapter should immediately notify the administration and governing board of the requirements of SB235, insist that they comply with the law immediately, and request they change any district policies or procedures to be consistent with the provisions of Education Code Section 70901.2.

Scope of Bargaining Issues: Most disputes arising out of the operation of participatory governance processes under AB1725 have centered on issues where the governance committees discussed and/or made recommendations concerning subjects within the scope of bargaining, and which were properly subject to negotiations with the exclusive representative(s) of classified staff. Some of these prohibited activities were probably unintentional, growing out of governance committee members' unfamiliarity with the technicalities of collective bargaining, or the natural tendency of committee members to stray into areas beyond their purview while engaged in consensus-building conversation. All stakeholders should welcome the participation of union appointed representatives who will likely be more aware of scope of bargaining issues, and will be able to guide the other participants away from inappropriate areas of discussion.

The Board of Governors regulations implementing AB1725 apply certain "minimum standards" on local governing boards, and require that local participatory governance procedures ". . . shall not intrude on matters within the scope of representation under Section 3543.2 of the Government Code. . ." and shall

not "impinge upon or detract from any negotiations or negotiated agreements between exclusive representatives and district governing boards. . ." *(California Code of Regulations, Title 5, Section 51023.5(b))*

The presence on the governance group of a representative appointed by the exclusive representative does not alter the responsibility of the participants to avoid dealing with matters falling within the scope of bargaining and/or covered by provisions of an existing collective bargaining agreement.

The local chapter/union should make it clear to college/district representatives that their appointee to governance groups does not have the authority to make binding agreements regarding mandatory subjects of bargaining, does not have the authority to waive any collective bargaining rights or contractual provisions, and that all recommendations of governance groups may still be subject to a "demand to bargain" should it be determined later that the issues are negotiable. The local chapter/union should similarly make these boundaries clear to the representative it appoints, while assuring them they have the freedom to openly exchange opinions regarding governance issues.

As mentioned in the introduction to this paper, "the line between negotiable subjects and governance subjects is often thin — as well as blurred." Because of this, informal governance group discussions may inadvertently venture into areas within the scope of bargaining. Before agreeing to sign off on any recommendation of a governance group, the union's appointee should tell the other participants that "if any part of the recommendation is within the scope of bargaining, the union reserves the right to demand to bargain over either the decision or the effects of the recommendation."

Appointment of Union Representatives: Clearly, union appointees to governance groups are best suited to express the views and concerns of the classified bargaining unit members they represent. Accountability to members is an integral part of union democracy, and local union leaders must ensure that their appointees to governance groups are fully aware of their responsibilities to accurately reflect the collective opinion of the members. There is simply no place in this process for personal agendas.

There are certain procedures that every local union follows in making committee appointments. These may vary in the details, but there are also some general standards to be met:

1. The person appointed is a person who is familiar with the issues to be discussed by the committee.

    a) He/she need not be a union activist, but should be aware of the positions of the members and their union, and should be willing and able to set aside personal opinions not consistent with the feelings of the members.

2. Elected union leaders let the appointee know his/her responsibilities, as well as their understanding of the opinions of the members regarding the issues to be considered.

3. Appointees are required to make regular progress reports (preferably in writing) to the elected union officials and/or to internal union committees dealing with related issues.

    a) The union's executive board makes sure that these reports are shared with the members either at meetings, though the distribution or posting of bulletins, or in the union newsletter.

4. Appointees submit any final recommendations of district governance groups to the local union, and the appropriate union official(s) determine whether or not the final recommendations contain elements within the scope of bargaining. If so, a "demand to negotiate" is considered.

The governance of unions has always been a model of "shared governance" — shared with members at regular meetings, at contract ratification meetings, by the establishment of local union committees, and through the democratic election of officers. Elected leaders don't run the union alone, and identifying rank-and-file members to serve on a large number of district governance groups will be, in some cases, a new responsibility that may be difficult to accomplish.

One alternative to having elected officers continuously searching for union appointees to district governance groups is to establish an internal union committee to perform this function — a *"CSEA Chapter Shared Governance Committee,"* for example, composed of members from the various classified job families. (This also creates an opportunity to involve more people, of different interests, in the activities of the union and the college.) As a last resort, and if no member can be found to serve on a particular governance group, rather than having the small number of elected officers overextend themselves and detract from their other important responsibilities, it would be best to leave some appointments unfilled.

FREQUENTLY ASKED QUESTIONS ABOUT SB235

This document is designed to provide quick answers to some commonly asked questions about SB235. For an in depth investigation of particular issues refer to CSEA's position paper or the legal opinion issued by CSEA's Legal Department. Further information can also be obtained by contacting a CSEA labor representative or a member of CSEA's Community College Committee.

The term "senate" is used in this document to describe classified organizations, other than unions, formed for participatory/shared governance purposes, but the answers apply to any such organization, by whatever name, formed for these purposes.

Does SB 235 apply to faculty of community colleges?

A: No. It applies only to classified employees who are represented by a union recognized as the exclusive representative of classified employees.

Why did CSEA sponsor SB 235?

A: To make clear that the exclusive representative has the right to make bargaining unit appointments to district or college task forces, committees or other governance groups when a classified employee representative is to serve on any such group.

What is SB 235 intended to do?

A: SB235 is intended to reduce or eliminate the conflicts between classified unions, college districts and classified senates regarding who makes classified bargaining unit appointments to participatory/shared governance groups.

Exactly what does SB 235 say about appointments?

A: SB 235 adds section 70901.2 to the education code, which provides: "… 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."

SB 235 allows governing boards to "consult" with other organizations of classified employees on "governance issues that are outside the scope of bargaining."

What issues are outside the scope of bargaining?

A: Section 3543.2 of the Government Code (EERA) defines the scope of bargaining as "matters related to wages, hours of employment, and other terms and conditions of employment." Curriculum and academic issues, most aspects of services offered to students and the community are examples of the type of issues that would fall outside the scope of bargaining. Over the years, the Public Employment Relations Board has clarified union bargaining rights through the issuance of unfair practice decisions.

What is meant by "consult"?

A: To consult is to seek advice or information — to discuss. Governance groups are, by definition, consultative bodies, and they "shall not intrude on matters within the scope of representation under Section 3543.2 of the Government Code" (California Code of Regulations, Title 5, Section 51023.5(b)). The ability to "meet and confer" (negotiate) on issues related to matters within the scope of representation are reserved to collective bargaining between the exclusive representative and the employer. Further, classified senate representatives do not represent bargaining unit employees on governance groups, even for consultation purposes. They can only represent non-bargaining unit

employees. And the total number of senate representatives can never exceed the number of union appointed representatives on any given task force, committee or governance group.

What is AB 1725 and has it been changed with the passage of SB 235?
A: AB1725 was the landmark legislation passed in 1988 that established a master plan for community colleges. It also created participatory/shared governing rights for classified employees (California Education Code Section 70901 et. seq.)). The Board of Governors of the California Community Colleges then adopted regulations to implement these provisions. The regulations on appointments to task forces, committees and other governance groups was the catalyst for the creation of classified senates and their recognition by local districts and colleges of classified senates in governing board policies. This led to conflicts over appointment of classified representatives.

SB235, added Subsection 70901.2 to the Education Code. Whether the regulations (California Code of Regulations, Title 5, Section 51023.5) are amended or not, SB 235's requirement for classified unions to appoint representatives to governance groups is now the law. And any local governing board policies or procedures effectively denying SB235 rights to unions recognized as exclusive representatives are void.

Can a union relinquish its right as the exclusive representative to make appointments to a classified senate?
A: Yes, through a memorandum of understanding (MOU) with the college or district. SB235 permits the employer and the exclusive representative to "mutually agree to an alternative appointment process," but a blanket waiver of the union's right to appoint representatives is not in the best interest of the union or the members it represents — and it should not be done. The terms of this MOU are not a mandatory subject of bargaining — absent an agreement, the union's appointment rights under the Education Code are retained.

Do supervisors and confidential employees retain the right to participate in shared governance?
A: Yes.

Who makes the appointment of supervisory and confidential employees?
A: It depends upon the policies of the district or college.

Does SB 235 mandate the disbanding of classified senates?
A: No, but their power and influence may be drastically reduced.

What is the employer's obligation or role under SB 235?
A: The employer must seek appointment of a representative of the union(s) recognized as the exclusive representative(s) of classified staff to serve on shared governance committees. The employer cannot grant a senate release time for any reason, representation on governance groups, allocation of a portion of the district's budget for the organization's participation, or any other rights that exceed what is offered to the union. If a senate receives benefits, such as an office or release time, and the union does not, the union can demand, and must be granted, at least equal treatment.

If the senate has established award programs and scholarships and the senate is disbanded, what happens to the programs?
A: Neither the district nor the local union/chapter have any obligation to continue the programs.

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION
Legal Department

Date: June 19, 2002 **Memorandum**

To: Michael Clancy, Chief Counsel

From: Madalyn Frazzini, Deputy Chief Counsel

Subject: Analysis of SB 235

SB 235 gives the exclusive representative the right to select the classified bargaining unit representative to shared governance groups in community college districts. This memorandum interprets SB 235 in light of its legislative history and analyzes the effect of SB 235 on the existing statutory framework of shared governance. Finally, it discusses the effect of SB 235's provision allowing for a voluntary memorandum of understanding creating an alternative selection process.

The principle of shared governance arose from Education Code section 70900 et seq. enacted in 1988. Specifically, Education Code section 70902 (b)(7) requires every community college district governing board to "[e]stablish procedures not inconsistent with minimum standards established by the board of governors to ensure faculty, staff, and students the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right to participate effectively in district and college governance…."

Subsequently, the board of governors of California's community colleges adopted regulations implementing shared governance. The regulations mandate that community colleges "adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance." 5 Cal. Code Regs. § 51023.5(a). In doing so, community colleges "shall consult with the representatives of existing staff councils, committees, employee organizations, and other such bodies." 5 Cal. Code Regs. § 51023.5(a)(3). College staff must be able 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 Cal. Code Regs. § 51023.5(a)(4). The governing board may not act on any matter "significantly affecting staff" in the absence of staff input, except in "unforeseeable, emergency situations." 5 Cal. Code Regs. § 51023.5(a)(5).

The regulations address participation of staff on share governance committees at 5 Cal.Code Regs. § 51023.5(a)(7) as follows:

> 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 added Section 70901.2 to the Education Code effective January 1, 2002. It provides, in relevant part, as follows:

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

The union that is the exclusive representative of a bargaining unit of classified employees in a community college district gains two primary rights under this legislation. First, Section 70901.2, gives the exclusive representative the statutory right to choose those who will represent its bargaining unit on any shared governance group. Negotiations are not required before this right is triggered. The right exists by operation of law under the terms of the statute.

The enactment of SB 235 supersedes the regulations quoted above. To the extent the regulations could be interpreted to provide a selection process contrary to the statute the regulations are void. Alternatively, the regulations can properly be interpreted as incorporating the new statutory requirement by means of the phrase "when required by law" in 5 Cal. Code Regs. § 51023.5(a)(7).

Moreover, the union's right of appointment under SB 235 is not limited to matters within the scope of bargaining. Instead, the statute gives the exclusive representative the sole right to appoint the representative of its bargaining unit members whenever "a classified staff representative is to serve on a college or district task force, committee, or other governance group."

The legislative history highlights the expansive nature of the exclusive representative's right of appointment under the new law. The analysis of the bill provided to the Senate Rules Committee, dated August 20, 2001, states in relevant part: "Existing law provides for extensive procedures to be used in ensuring representation from certain interested parties during the consultative process, relative to all aspects of the operation of a campus of the California Community Colleges (CCC)…This bill provides that when local community colleges' consultative bodies, such as task forces, committees or other governance group [sic], include representation from the classified employees of the college, the exclusive representative of the classified employees shall appoint the representative for the respective bargaining unit members."

The second right afforded the exclusive representative of classified employees under SB 235 is the right of equal treatment with other organizations of classified employees. This entitlement is contained in the provision stating that no other organization of classified employees shall "receive time, rights, or representation on shared governance task forces, committees, or other governance groups exceeding that offered to the exclusive representative." Thus, the exclusive representative has the right of equal treatment with other classified groups in three distinct areas: 1.)"time;" 2.) "rights;" and, 3.)"representation on shared governance task forces, committees, or other governance groups."

Application of SB 235's right of equal treatment means that if the employer consults with other organizations of classified employees on matters outside the scope of bargaining, as the statute allows it to do, the employer must extend the same offer of consultation to the exclusive representative. Again, the new legislation's mandate of equal treatment of the union with other classified groups supercedes any regulation in conflict with it.

Finally, SB 235 allows the employer and union to voluntarily discuss an alternative appointment process and memorialize any agreement reached in a memorandum of understanding (MOU). The union has no obligation to agree. Therefore, the employer may not insist on its proposal if the union indicates that it will not accept the employer's offer. Where an MOU exists, the ability to alter it or no longer be bound by it will depend upon the particular facts and circumstances, including the terms of the agreement itself.