

# Unions and Senates: Governance and Distance Education

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**T**wo long-term concerns of faculty members—governance and distance education—assume even greater significance at a time of drastic budget cuts and of intensified managerial efforts to deliver cheaper education. This chapter builds upon prior *Almanac* analyses of contracts that protect the role of faculty senates, and that regulate distance education.<sup>1</sup> The essay then cites two instances of

mutual support between unions and senates: a project involving the California Community Colleges, and intellectual property provisions at two campuses of the California State University system.

## **SHARED GOVERNANCE: SENATES**

Instances of disbanding, reorganizing, or ignoring faculty senates by presidents and provosts

dictate that contracts provide for a faculty role in governance. We therefore searched the 500 current contracts in NEA's Higher Education Contract Analysis System (HECAS) database to identify provisions protecting the respective decision-making roles of faculty senates and unions (Table 1).<sup>2</sup>

Some state and federal laws limit unions to negotiating mandatory subjects of collective bargaining—"terms and conditions of employment." But unions, which sometimes evolved out of senates, have negotiated for a faculty role in shared governance. Some state collective bargaining laws—the laws of California and Washington, for example—spell out the role of academic senates and assure their existence.

Most contractual references to faculty senates offer support for collegial or shared governance. The strongest statements detail and distinguish union and senate responsibilities:

Both parties to this Agreement recognize the Shawnee Education Association as the sole representative of the faculty in all matters affecting wages, hours, or terms and other conditions of employment, and the continuation, modification, or deletion of an existing provision to this collective bargaining Agreement. Both...recognize the University Faculty Senate or other organizations approved by the UFS, as long as they exist, as the representative for all matters that do not pertain to or affect wages, hours, or terms and other conditions of employment. (Shawnee State University, OH)

While the United Faculty of Florida (hereafter UFF), as the elected bargaining agent, retains the exclusive right to negotiate and reach agreement on terms and conditions of employment for the members of the bargaining unit, and the Board of Trustees (hereafter Board) retains its rights, under law, to govern the University of West Florida, the parties recognize the desirability of a collegial governance system for

faculty and professional employees in areas of academic concern. It is desirable that the collegial system of shared governance be maintained and strengthened so that faculty and professional employees will have a mechanism and procedure, independent of the collective bargaining process, for making recommendations to appropriate administrative officials. Collegiality in academic governance can best be accomplished through a Senate selected by representatives of appropriate campus constituencies...

Matters which may be of concern to the Senate include: curriculum policy and curricular structure, requirements for degrees and granting of degrees, policies for recruitment, admission, and retention of students, development, curtailment, discontinuance, or reorganization of academic programs, grading policies, and other matters of traditional concern. (University of West Florida, Faculty)

Listing specifics is more typical of contracts at four-year institutions, but the contract for Cuyahoga Community College, a two-year college, uses detailed language to define the "participative governance structure."<sup>3</sup>

Section 31.01. The principles and guidelines of the existing College-wide Governance System shall be updated to reflect the College-wide participative governance structure. The revised College Governance Structure shall be created in consultation with the AAUP. The updated governance structure shall be continued for the duration of this agreement.... No committee of the College-wide Governance System shall take action on any matter that affects wages, hours or terms and conditions of employment of the bargaining unit members.

Section 31.02. One-half...of the faculty representatives to each of the committees

of the college-wide Governance System shall be appointed by the CCC-AAUP and one-half...shall be appointed by the Joint Faculty Senate Council. The right to appoint such committee representatives shall include the right to reappoint representatives to consecutive terms. In the event that the number of faculty representatives on any given committee is an odd number, the CCC-AAUP shall appoint the majority (e.g., if the number of faculty is 7, the CCC-AAUP shall appoint 4 and the Joint Faculty Senate Council shall appoint 3).

Some contracts refer to the areas covered by department or college level bylaws. Virtually all contracts acknowledge the administration's ultimate authority in setting policy.

Some traditional faculty senate concerns are also relevant to "terms and conditions of employment." These concerns include sabbaticals, program or position elimination, and the evaluation of faculty, especially the wording of forms students use to evaluate instruction, promotion and tenure decisions. Most contracts provide for faculty input in these areas, usually through committees. The entire faculty, the senate, the faculty union, or a union-senate combination may select committee representatives.

## **GOVERNANCE AND DISTANCE EDUCATION**

The delivery of education by non-traditional means continues to expand, and the distinction between on-campus and distance education has blurred as a consequence. Distance technologies are often divided into synchronous and asynchronous delivery. Synchronous delivery involves simultaneous interaction of students and teachers, such as interactive telecourses, teleconferencing and web conferencing, and Internet chats. Asynchronous delivery involves material prepared by the teacher, with students participating on their own schedules, using e-mail, listservs, audiocassettes, videotapes, correspondence, and the web. But

on-campus courses may also involve these or other technologies, including blogs, podcasts, vodcasts (video on-demand), wikis, gaming or simulations, and chat rooms. Many courses and programs have therefore become "hybrids" that combine regular classroom instruction with material delivered online or through podcasts, or with on-line student-faculty interactions. The result is an increased urgency for asserting faculty control over the use of technology on and off the campus.

More collective bargaining agreements now specify the parameters of faculty involvement in decisions involving distance education and the use of technology. We scanned the HECAS database for provisions that preserve and enhance faculty roles in these key areas (Table 1). Many, though far from all, contracts provide some faculty control over the decision to use technology in teaching, the use of externally developed courses, and course and instructor approval.

The Lane Community College (Oregon) contract ensures voluntary participation in distance education; faculty members can refuse to teach on-line courses "without prejudice." The language in Lane's contract addresses on-campus courses with significant distance education elements as well as distance education courses, whether synchronous or asynchronous. Normal processes of academic governance of curriculum apply to distance education at Lane:

6.1 Course approval for classes with distance learning shall follow the usual processes adopted in the division, department and college curriculum approval process, including accepted pathways for short-term approval for innovative curriculum and courses.

The Yuba College (California) contract contains similar language: "Established curriculum development procedures for new courses will be used to insure full District-wide departmental faculty involvement in the development and quality of distributive education." Distance education courses at the University of Akron

**Table 1. Faculty Governance in Collective Bargaining Agreements, 2008<sup>1</sup>**

Institution	Faculty evaluation committees	Development of faculty evaluation instruments	Tenure/promotion committees	Sabbatical/professional growth committees	Layoff/program elimination committees or consultation	Other senate/faculty committees	Faculty nomination/election of department chairs	Release time for senate officers	Discussion of roles of senate/union	Distance learning-faculty control?
San Francisco Art Institute, Calif.			S		S-consultation	Search committees	Yes	Yes	Yes	
Delaware State University	S		S	S					Yes	
University of North Florida, Faculty	S	S	S	S		Search committees			Yes	
University of West Florida, Faculty		S	S	S					Yes	
University of Hawaii		S	S		U	Academic freedom				
Northeastern Illinois University	S	S	S		S	Excellence awards, Terminations panel				Yes
University of Detroit-Mercy, Mich.			S			Workload appeals			Yes	
University of Montana, Faculty	S	S	S	S		Workload appeals	Yes	Yes		
Kent State University, Non-Tenure Track Faculty, Ohio						Performance bonuses			Yes	
Wright State University, Ohio	S	S	S	S	U	Course oversight, removal of tenure hearing board	Yes	Yes	Yes	Yes
Youngstown State University, Ohio	S	U	S	U	U	Selection of research professors	Yes		Yes	Yes
Shawnee State University, Ohio		U	S	U			Yes		Yes	
University of Akron, Ohio	S		S			Search committees	Yes		Yes	Yes
Temple University, Pa.	S	S	S	S	U	Discipline				
Central Washington University		S	S	S	U				Yes	
Los Rios CC District, Calif.	S					Special reviews of faculty	Yes		Yes	Yes
Yuba College, Calif.	S		S	J				Yes		Yes
Los Angeles CC District, Calif.			S	J		Several listed	Yes		Yes	Yes
Chipola Junior College, Fl.						Several listed		Yes		
Guam CC	S	S	S	S	U	Several listed	Yes		Yes	
Rock Valley College, Il.	S	U		S		Search committees	Yes			Yes
McHenry County CC Faculty, Il.						Several listed		Yes		Yes
Oakton CC, Il.							Yes		Yes	Yes
Illinois Valley CC, Il.										Yes

Source: National Education Association, Higher Education Contract Analysis System, 2008.

\* S-Senate or elected faculty, U-Union, J-Joint Union-Senate, SU-Senate and Union synonymous.

**Table 1. Faculty Governance in Collective Bargaining Agreements, 2008<sup>1</sup> (continued)**

Institution	Faculty evaluation committees	Development of faculty evaluation instruments	Tenure/promotion committees	Sabbatical/professional growth committees	Layoff/program elimination committees or consultation	Other Senate/faculty committees	Faculty nomination/election of department chairs	Release time for senate officers	Discussion of roles of senate/union	Distance learning-faculty control?
Parkland CC, Il.		S			U					
South Suburban College, Il.	S			U	U	Several listed	Yes			Yes
John A. Logan CC, Il.									Yes	Yes
Triton College, Il.				S-sabbaticals, U-professional development	S				Yes	Yes
Moraine Valley CC, Faculty, Il.				S						Yes
Illinois CC, Faculty, Il.	SU	SU	SU	J		Calendar, curriculum				
Highland CC, Il.				SU	SU		Yes			
William Rainey Harper College, Il.				SU	SU	Intellectual property				
Spoon River College, Il.				S				Yes		
Heartland CC, Il.			U	S						
Flathead Valley CC, Mont.	U	U	U	S	U					
Tompkins Cortland CC, N.Y.				S						Yes
Schenectady County CC, N.Y.			S	S						
Broome CC, N.Y.	S		S		U	Search committee				Yes
Rockland CC, N.Y.			S							
Lakeland CC, Ohio						Termination review				Yes
Cincinnati State Tech. and CC, Ohio			S		J	Several listed			Yes	Yes
Terra CC, Ohio			S					Yes		
Mt. Hood CC, Ore.		S	S	U						
Southwestern Oregon CC				S	U				Yes	
Clatsop CC, Ore.				S						
Lane CC, Ore.				U					Yes	Yes
Blue Mountain CC, Ore.				U	U	Screening committee				Yes
Central Oregon CC					U					
CC of Spokane, Wa.			S		S	Dismissal review, screening committees				Yes
Lower Columbia CC, Wa.						Termination review				Yes

Source: National Education Association, Higher Education Contract Analysis System, 2008.

\* S-Senate or elected faculty, U-Union, J-Joint Union-Senate, SU-Senate and Union synonymous.

(Ohio) must: “1. Receive prior approval through the curriculum review process; and 2. Comply with all of the standard practices, procedures, and criteria that have been established for traditional in-the-classroom courses....”

More contracts thus go beyond protecting the rights of faculty members who do not wish to use technology. Proactive provisions ensure that faculty members collectively govern distance education and that the college will classify the use of instructional technology as a curricular matter.

The Southern Illinois University, Carbondale full-time faculty contract provides for collective faculty control over distance education and over technology in traditional classrooms. It provides for the right of course creators to control the use and revision of the materials they create. The agreement also assures the right of first refusal to teach the course.

D.3.B. The Faculty of an academic unit,... have the primary responsibility for selecting the content of courses. These specifications pertain to courses taught through Distance Learning as well as those offered in the traditional classroom setting and modalities.

D.3.C. The textbooks and learning materials for Distance-Learning courses shall be selected in the same manner as they are for traditional courses.

D.3.I. Distance-Learning initiatives that will result in a new or modified certificate or degree program shall be subject to the then-current University requirements.

The contract for Northeastern Illinois University provides a strong statement of faculty’s role in planning for the use of instructional technology.

The University supports the use of information technology and instructional technologies by employees where such use enhances

teaching and learning. The use of technology by employees in teaching is to be guided by instructional technology plans prepared by academic departments/programs and approved by the University, that are driven by curricular needs in the program.... When within the priorities of the approved departmental plan, Employees may apply for adjustments to work assignments to support curriculum redesign efforts to develop a more technology-intensive course or technology-delivered course. Some technology-intensive and/or technology-delivered courses may qualify for other ongoing adjustments to work assignments.

Community colleges are equally likely to contain these key protections. The Los Rios Community College District (California) contract provides:

26.3.1 Per LRCCD Policy 3412, the LRCCD Academic Senate has the primary responsibility for the recommendations to the Board regarding curriculum and matriculation issues. As such, only those courses and programs approved through the agreed upon curriculum and matriculation decision processes will be delivered by distance education.

26.3.2 The faculty of the Los Rios Community College District is primarily responsible for the decisions related to the use of instructional technology in the courses and programs offered in the District...

Pensacola Junior College (Florida) further details the faculty role:

*Committees.* Faculty members will be fully involved in the continuing study of distance learning including the Distance Learning Committee, the Technology Coordinating Council, and the statewide accreditation study by the Southern Association

of Colleges and Schools. As appropriate, committees will be created to study workload, intellectual property rights and compensation issues for teaching distance learning courses, with recommendations forming the basis for future negotiations regarding distance learning.

*Instructional Standards.* Pensacola Junior College faculty will assume responsibility for and exercise oversight over distance learning courses. Responsibility for the rigor of programs and quality of instruction shall rest with the faculty.

Some collective bargaining agreements address the effects of on-line learning and new technologies on intellectual property and on faculty workload, evaluation, and control of instructional quality. Western Michigan University's contract covers the university's "eLearning courses."

eLearning courses (or modifications thereof) shall comply with all of the standard procedures and criteria which have been established for traditional in-the-classroom courses—including but not limited to, faculty involvement at the level of course development and approval, selection of qualified faculty to teach the course, pedagogical determinations about appropriate class size, copyright clearance, and oversight of all final course offerings by the appropriate faculty committee to ensure conformity with previously established traditions of course quality and relevance to programs.

The University of Massachusetts, Dartmouth contract assures the integrity of the bargaining unit and limits the import of courses from other institutions:

The parties agree that the use of such technology shall NOT be used to reduce,

eliminate or consolidate faculty positions within UMass, Dartmouth.

Limitations: A live, interactive distance learning course transmitted by another institution may not be offered at a University of Massachusetts, Dartmouth site if the same course is being taught that same semester at any University of Massachusetts, Dartmouth site without the prior approval of the chair of the academic department in which that subject matter would be given credit.

The contract for the Pennsylvania State Colleges and Universities grants faculty members control over the distance education curriculum and offers some protection against retrenchment.

1. The parties further agree that distance education shall not include instruction at multiple locations on the same campus...
3. During the term of this Agreement, the STATE SYSTEM agrees not to retrench a FACULTY MEMBER teaching in a department where distance education is being used, when retrenchment is a direct result of distance education.
4. Distance education is a part of the approved curriculum and evaluated pursuant to Section F [detailing on-campus procedures].

Distance education requires additional work to develop, update, and teach quality courses. Most contracts provide compensation or credit toward workload for distance education, especially for initial course development and significant course revisions. New Jersey State College faculty members who teach an online course for the first time receive one additional credit, as a one-time payment. The Kent State (Ohio) contract allows full-time faculty members to

choose between workload credit and additional compensation for developing a course:

Faculty who initially develop a course for electronic delivery may elect to receive a workload equivalency appropriate to the scope and nature of the project, but of at least three (3) credit hours.

Alternatively, a Faculty member who initially develops a course for electronic delivery may elect to receive a one-time cash payment, payment to be made upon completion of the development of the course.

Some contracts recognize the impact of instructional technology on faculty workload. The contracts of the University of Florida and the California State University system allow for introducing instructional technologies when calculating reasonable and equitable faculty workloads and determining promotion opportunities. Few contracts specify the method for calculating the relative weight of distance learning and traditional courses in the assigned teaching load. The most common method ties workload credit to the number of students taught and (where appropriate) the number of sites where the course is offered.

Two-year campuses are more likely to spell out specific workload credit arrangements for distance education. But the unfavorable Cabrillo Community College District (CA) contract treats new and traditional modalities as comparable in workload, save for class size in online courses:

11.2.2.14.1 Telecourse: A course taught with licensed broadcast video and associated material that may be supplemented with additional assignments created by the instructor. Faculty assigned to teach telecourses will receive the same faculty load credit as the faculty would receive if this course were taught in a traditional method. The maximum enrollment is 150. Faculty

will be required to maintain regular effective contact with students.

11.2.2.14.2 Interactive Video Course: A course taught synchronously at different sites connected by electronic media through which students and instructor can communicate. The workload for interactive video courses will be the same as for courses taught in a regular classroom.

11.2.2.14.3 Online Course: A course primarily delivered online. The first time a unit member teaches a particular course online, the maximum class size for the online course will be 75% of the standard maximum class size established for the course. However, the maximum will not fall below 28 for any course unless the standard maximum is under 28, then the standard maximum will be used. This provision excludes courses involving on-site labs.

Some universities also specify workload credit. The University of Maine contract ties the compensation to the number of students: a course with between 30 and 40 students receives five credits. The University of Massachusetts, Dartmouth contract also specifies workload calculations for distance education. The key factors include student enrollment, number of sites, and whether the course is an initial or a continuing offering. The Nebraska State Colleges contract includes an incentive payment clause. It caps the number of sites faculty members are expected to serve.

These contracts are exceptional; most agreements impose relatively few limitations on administrations. The majority of contracts in the HECAS database still fail to recognize the impact of distance learning on individual faculty members and on the collective faculty workforce. Supporting the faculty's role in shaping the curriculum requires strong, specific language in distance education contract clauses and in traditional governance provisions.

## **DISTANCE EDUCATION AT CALIFORNIA'S COMMUNITY COLLEGES**

A joint academic senate, union, administration project that assessed the impact of distance education on NEA members in California illustrates the value of collaboration. The project resulted from an NEA initiative to assess the quality of distance education in the late 1990s—a time of rapid expansion of this modality.<sup>4</sup>

The project reviewed benchmarks for quality distance education in the California community colleges. Academic senates and faculty union leaders throughout the state, supported by an NEA grant, reviewed the existing benchmarks to see if and how they needed updating in light of new technologies, and examined standards for quality teaching and learning in distance education. Participants recommended changes in contract language that took into account the new technologies. Senate and the union representatives coauthored the final report, thereby assuring the inclusion of distance education among faculty governance activities, and the involvement of academics in its creation, development, and delivery.

## **INTELLECTUAL PROPERTY IN THE CALIFORNIA STATE UNIVERSITY SYSTEM**

Union and senate approaches to policy-making can be complementary and synergistic. Assuring faculty ownership of intellectual property at California State University (CSU) illustrates the possibilities. The California Faculty Association represents faculty members on CSU's 23 campuses. The intellectual property rights article of the collective bargaining agreement leaves key questions unanswered. The contract recognizes the principle of "works made for hire" and the "historical faculty use of certain works and materials." But the contract does not concede "a waiver of the right of either party to assert use rights to, or to assert ownership rights of, any materials created without extraordinary University support by faculty unit employees." Further, the contract "does not apply to

those materials created with extraordinary University support, which may be addressed by separate individual agreements at the campus." One therefore must look at institutional policies, developed through traditional governance procedures by campus senates, to understand how intellectual property arrangements work at CSU.

San Diego State University (SDSU), a unit in the CSU system, has separate policies for patents and for copyrights, trademarks, and trade secrets. The patent policy, which typifies the policies of most large public institutions, provides, "If institutional support in the form of either financial or physical resources is used in the research process from which the invention results, the institution shall have ownership rights in said invention." But the SDSU copyright policy is more generous than provisions typically found in non-unionized research universities.<sup>5</sup> The policy accords partial ownership rights to creators even when they have used "significant institutional resources." The resulting works, the policy adds, "must be disclosed to the university by the faculty member." But, an "author's use of office, library, or personal computer shall not be construed to be 'significant' use of institutional resources, and projects limited to such institutional support may not be disclosed to the university."

A San Francisco State University Senate policy for developing online instructional materials privileges "the missions of teaching and scholarship" over "transfer and commercialization of research results."<sup>6</sup> The policy presumes "that intellectual property associated with online instructional materials created without extraordinary University support is the sole and exclusive property of the creator." The policy defines "extraordinary University support" as resources "beyond 'normal and customary' and used directly for the development of the online material."

The SDSU and San Francisco State policies guarantee significant faculty rights beyond the provisions in the contract between the union

and the CSU system. To maximize protection—and to improve the institution’s functioning—faculty members must advance their rights through collective bargaining *and* traditional governance structures.

## CONCLUSION

Administrators have long trumpeted the need for more flexible responses to the marketplace, but the number and intensity of these claims are increasing in the current recession. Ensuring a faculty voice in shaping the future of the academy therefore requires greater collaboration between unions and senates. Interpersonal relations and statutory requirements can affect these collaborations. But the times require unions to remove impediments and to influence and support senate recommendations. We possess exemplary language for supportive action, though few contracts include such provisions.

Nor do most contracts regulate distance education and the use of instructional technologies—areas where mutual support is especially significant. Contractual provisions are especially important for regulating instructional technologies used on campus in the “regular” delivery of education. The choices that institutions make about technology affect the academic curriculum and faculty work. Shared governance mechanisms help to assure sound academic policies when they include strong faculty involvement in institutional, college, and department decision-making. The California cases show the potential gains when unions and senates work together. The resulting policies can strengthen the terms and conditions of faculty work and the best education for our students.

## NOTES

<sup>1</sup> Maitland and Rhoades, 1999; Rhoades and Maitland, 2001.

<sup>2</sup> We classify unspecified elected faculty representation as “senate” representation, because contracts may not

clarify the link between particular committees and a larger governance structure.

<sup>3</sup> The contract includes a detailed appendix.

<sup>4</sup> Phipps and Merisotis, 1999, examined face-to-face and on-line learning. Phipps, Merisotis, and Harvey, 2000, studied benchmarks for quality distance education. NEA then surveyed members who taught using distance education.

<sup>5</sup> Slaughter and Rhoades, 2004, chapter 5.

<sup>6</sup> San Francisco State University’s Academic Senate Policy #S01-215 addresses “Intellectual Property in the Development of Online Instructional Materials.”

## REFERENCES

- Maitland, C. and G. Rhoades, “Technology Issues in Bargaining: the New Unionism.” *The NEA 1999 Almanac of Higher Education*. Washington, D.C.: National Education Association, 1999.
- Phipps, R. and J. Merisotis, *What’s the Difference: A Review of Contemporary Research on the Effectiveness of Distance Learning in Higher Education*, Washington, D.C.: Institute for Higher Education Policy, 1999: <http://www2.nea.org/he/abouthe/images/diseddif.pdf>.
- Phipps, R., J. Merisotis, and M. Harvey. *Quality On the Line: Benchmarks for Success in Internet-based Distance Learning*. Washington, D.C.: Institute for Higher Education Policy, 2000: <http://www2.nea.org/he/abouthe/images/diseddif.pdf>.
- Rhoades, G., and C. Maitland, “Unions and Faculty Governance.” *The NEA 2001 Almanac of Higher Education*. Washington, D.C.: National Education Association, 2001.
- San Diego State University, “Senate Policy File,” 32: [http://senate.sdsu.edu/Intellectual\\_Property](http://senate.sdsu.edu/Intellectual_Property).
- San Francisco State University, *Intellectual Property Policy and Procedures for the Development of Online Instructional Materials*. Academic Senate Policy #S01-215; <http://www.sfsu.edu/~senate/documents/policies/S01-215.html>.
- Slaughter, S., and G. Rhoades, *Academic Capitalism and the New Economy: Markets, State, and Higher Education*. Baltimore: Johns Hopkins University Press, 2004.