

California Federation of Teachers

*2550 N. Hollywood Way, Suite 400
Burbank, CA 91505*

December 12, 2008

Lurelean Gaines, Chair
Accreditation Commission for Community and Junior Colleges
10 Commercial Blvd, Suite 204
Novato, CA 94949

Dear Ms. Gaines

This letter responds to your letter of December 2, 2008. Your “attempt” to address our issues was not very well researched and contains a number of errors. I will try to address them as clearly as possible.

1. You state that “The ACCJC does not provide education. Its purpose is to assure that its accredited institutions adhere to its standards which are designed to assure that certain levels of quality are maintained. The ACCJC was not developed to help achieve any State objective. The ACCJC was not developed by the State, and it is not an agent of the State, and it has not been delegated any State function. The ACCJC is a private organization, and its standards are developed without any involvement or directions from the State of California. Its accreditation activities are not limited to the State of California. It also accredits institutions in Hawaii and in the Pacific regions accredited by WASC. “

This reply completely ignores “Each community college within a district shall be an accredited institution. The Accrediting Commission for California Junior Colleges shall determine accreditation.” (5 Cal. Code Regs. § 51016). The fact that the ACCJC has activities outside of California does not contradict the fact that its accreditation activities in California are empowered under Section 51016 above. It is also clear that the majority of ACCJC’s funding comes from California community colleges. In other words, it is funded heavily by the State of California and is, to a great extent, answerable to the laws of California.

2. You argue that the “the ACCJC is not a governmental or quasi-governmental entity. It is a private organization. Its functions are of course carried out in a manner that are consistent with all applicable laws, state and federal. “ In part, you are making our point. As I will address later, evaluation is a collective bargaining issue and when ACCJC attempts to dictate in this area, it is conflicting with California law. By the way, the statute involved is the Government Code, not the Labor Code as your letter indicated.

3. You are completely wrong in your analysis of collective bargaining law in California, particularly when you state that “terms and conditions” does not include “criteria and standards” to be used for evaluation. I believe that if you checked this assertion with any lawyer familiar with collective bargaining law as it has been adjudicated, you will find that you are in error.

The PERB has ruled repeatedly that the evaluation criteria are negotiable. I am not sure why your lawyer is unaware of this. For instance, PERB has ruled that evaluation criteria are negotiable in both Holtville Unified School District (1982) PERB Decision No. 250 (Holtville) and Walnut Valley Unified School District (1983) PERB Decision No. 289 (Walnut Valley). Both cases hold that criteria and standards to evaluate faculty are negotiable. See also State of California (Department of Motor Vehicles) (1998) PERB Decision No. 1291[performance standards within scope of negotiations under Dills Act governing State employees] .

In addition, when AB1725 was enacted, the Legislature confirmed that faculty evaluation procedures include negotiable criteria. The following is from AB 1725:

"(v) ...

(2) The evaluation process should be effective in yielding a genuinely useful and substantive assessment of performance. Among other things, this requires an articulation of clear, relevant criteria on which evaluations will be based.

(3) The evaluation process should be timely. This requires that evaluations be performed regularly at reasonable intervals.

(4) The specific purposes for which evaluations are conducted should be clear to everyone involved. This requires recognition that the principal purposes of the evaluation process are to recognize and acknowledge good performance, to enhance satisfactory performance and help employees who are performing satisfactorily further their own growth, to identify weak performance and assist employees in achieving needed improvement, and to document unsatisfactory performance.

(5) A faculty member's students, administrators, and peers should all contribute to his or her evaluation, but the faculty should, in the usual case, play a central role in the evaluation process and, together with appropriate administrators, assume principal responsibility for the effectiveness of the process.

(6) The procedures defined by negotiations should foster a joint and cooperative exercise of responsibility by the faculty, administration, and governing board of the community college and should reflect faculty and administrator expertise and authority in evaluating professional work as well as the governing board's legal and public responsibility for the process."

The Legislature then enacted these standards with Education Code section 87663. I am not sure why you cite section 87663, but it appears that you are ignorant of the meaning of the section, and the interpretation of PERB in the above, and other, cases.

As is apparent, the Legislature anticipated that evaluation process and procedures includes the criteria for evaluating faculty work. PERB held in the above cases, and in others, that only when the Legislature expressly excluded evaluation criteria, are they not negotiable. And the only place that this took place is with respect to academic employees of UC and CSU (owing to a lot of historical factors, including the then very weak academic unions).

So, your claim that evaluation criteria are not negotiable based on the law is simply wrong. Moreover, in every community college district, the criteria ARE negotiated. That is the contemporaneous understanding of those charged with complying with the EERA. When ACCJC attempts to force SLOs into evaluation, it is intruding on the collective bargaining process.

By the way, the Federal NLRB law is consistent with this.

You claim that "California law leaves the final decisions on all such matters squarely with the governing body of the institution. It does not leave the content of these matters to collective bargaining although it does permit consultation from the collective bargaining unit." Again you are just wrong. You need to consult someone who understand the collective bargaining law in California in order to perfect your understanding of the law.

In short, the ACCJC is legally obligated to respect the Rodda Act when it acts to accredit community colleges and districts in California. Among these obligations is to not involve itself in the collective bargaining process and the procedures and policies with respect to evaluation of faculty.

Finally, could you send me the minutes of the meeting at which you took up my letter and your response to it?

Yours Truly,

Martin Hittelman
President, California Federation of Teachers