

Office of the Attorney General

Educational Affairs Division

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MEMORANDUM

TO: William E. Kirwan, Chancellor
University System of Maryland

FROM: JoAnn Goedert

RE: *Role of the Council of University System Staff*

Based on a review of the relevant statutes and University System of Maryland (“USM”), bylaws and policies, this memorandum sets out the requirements for and functions of the Council of University System Staff (“CUSS”) and its institution counterparts. State law requires that the Board of Regents (“the Board”) establish CUSS to advise the Chancellor and report periodically to the Board. The process by which CUSS advises and reports to the USM is determined largely by the Board and set forth in various Board bylaw and policy provisions. The role of CUSS, as the representative of USM non-faculty employees, however, is limited by the State’s collective bargaining law.

This memorandum examines the requirements for including staff in shared governance at the USM and institution levels. It then addresses the implications of collective bargaining on shared governance.

I. THE LEGAL AUTHORITY FOR CUSS AND ITS OPERATIONS

Under Md. Code Ann. Educ. Art. §12-201(a), the Board of Regents (“the Board”) must establish four advisory councils, including CUSS and councils representing the institution presidents, and USM staff and students (“the shared governance councils”). The General Assembly further directed that these councils “serve in an advisory capacity to the Chancellor and may, from time to time, make reports and recommendations to the Board.” §12-201(b).

To implement §12-201, the Board established the shared governance councils,

including CUSS, in its Bylaws, *Bylaws of the Board of Regents of the University System of Maryland*, Art. VI. The Bylaws re-affirm the statutory, advisory purpose of CUSS Art. VI, §1, and set forth procedures for CUSS participation before the Board. §5. The role of CUSS is further amplified in Board policies *I - 6.00 Policy on Shared Governance in the University System of Maryland* (“Shared Governance Policy”) and *I-3.50 - Constitution of the Council of University System Staff* (“CUSS Constitution”).

II. THE ROLE AND PURPOSE OF CUSS

A. Shared Governance Policy

Under the Board’s Shared Governance Policy, faculty, staff and students generally are to be afforded “opportunities to participate, appropriate to their special knowledge and expertise” in a wide range of USM functions. Those areas are: 1) USM and institution mission and budget priorities; 2) curriculum, course content, instruction and other issues affecting students’ ability students to complete their education; 3) research; 4) policies related to faculty appointment, tenure and welfare; 5) human resources policies for exempt and non-exempt staff ; 6) selection and appointment of administrators; and 7) other issues that affect the overall welfare of the USM and its institutions. *Shared Governance Policy* at II(D).

B. CUSS Constitution

Shared governance principles and procedures related specifically to staff, are outlined in detail in the CUSS Constitution and incorporated into USM policies. The Constitution first establishes the principle that “[s]taff employees shall have a voice in basic decisions that affect the welfare of the System, its institutions, and its employees, including an informed advisory role in administrative areas and in the functional support aspects of academic matters”. Preamble, *CUSS Constitution*. Consistent with the statutory charge of §12-201 and the relevant Bylaws provisions, the CUSS Constitution re-affirms that the council’s purpose is to “consider and make recommendations on Systemwide issues affecting Staff employees . . . communicate such Staff employee concerns to the Chancellor and the Board, and inform such Staff employees at each constituent institution of the Council’s activities and the System’s related actions.” *CUSS Constitution*, Art. I, §1.

III. CUSS PARTICIPATION IN USM ACTIVITIES

A. Participation at the USM

At the USM level, CUSS exercises its shared governance role through consultation with the Chancellor, annual reports to the Board, and a CUSS presence at all Board meetings. *Id.* at III (E) and (F). The Bylaws, at Art. VI, §5, require CUSS to designate a Staff Advisor to the Board. The Staff Advisor serves a one-year term and may participate in all public meetings of the Board and its committees. The Staff Advisor may also participate in any executive session meetings of the Board and its committees to which institution Presidents are invited, unless the Board specifically votes to exclude the Staff Advisor. The Staff Advisor does not vote on any matter before the Board.

B. Participation at the Institution Level

Each institution must have cooperatively developed “written procedures and formal structures” to provide for shared governance. *Shared Governance Policy* at III(A). In particular, each institution must have either “a single shared governance body for the institution as a whole, or separate bodies for faculty, staff, and students. . .” *Id.* at III(B). The institution’s shared governance body must be a formal entity, with written bylaws and regular meetings. In selecting the membership of a shared governance body, the institution will determine the qualifications of the representatives and the election process. *CUSS Constitution* at Art. II, §1. However, 75% of the voting members must be “elected by their constituencies.” *Shared Governance Policy* at III(B).

In addition, the President and administrators of each institution must consult regularly with the institution’s shared governance bodies, in accordance with accountability plans developed collaboratively by the participants, approved by the Board and reported on annually to the Chancellor. *Id.* at III(E). The effective implementation of shared governance “shall be a component” in the evaluation of USM and institution administrators. *Id.* at III(H).

The Board’s Shared Governance Policy acknowledges that occasions will arise when institution leaders “must act in the best interest of the institution” on matters relevant to CUSS. In such situations, administrators must inform CUSS of the action and provide CUSS with an opportunity to comment. §III(J). Similarly, should administrators disregard CUSS recommendations, they must provide their reasons and give CUSS the opportunity to present a written statement, including any objections to the decision. That statement must be maintained as part of the institution’s formal record on the matter. *Id.*

IV. IMPLICATIONS OF COLLECTIVE BARGAINING

Questions have arisen regarding the implications of collective bargaining on the roles of CUSS and institution staff shared governance organizations. There is no question that those roles have changed with respect to institution staff who have elected exclusive bargaining representatives. The exclusive representative is the only body with which institutions may negotiate on the terms of employment identified in the State's Collective Bargaining Act.

To address this reality, and at the advice of the Office of the Attorney General, the CUSS Constitution was amended in 2003. First, the role of CUSS was restricted to advising the USM on issues affecting staff "who are not in a collective bargaining unit having an exclusive representative or who are in such a unit but are excluded by law from participating in collective bargaining." *CUSS Constitution* at Art. I, §1. Second, CUSS membership was limited to representatives of staff employees who are either not in a collective bargaining unit or, if in a unit, are excluded from participating in bargaining. Likewise, only such unrepresented employees may vote in CUSS elections. *Id.* at Art. II, §1.

Thus, while collective bargaining reduces the scope of CUSS influence, it does not eclipse CUSS or institution shared governance bodies. In all USM institutions, many staff employees are not part of a collective bargaining unit. Only 5 institutions, for example, have any exempt employee bargaining units. For all other institutions, a large majority of staff employees are not represented by unions; at UMBC, for example, approximately two-thirds of staff employees are not part of a bargaining unit. Even at institutions where exempt employees have collective bargaining agreements, substantial numbers of employees are not represented; e.g., at Frostburg, where non-exempt, exempt and law enforcement staff are all subject to MOUs, more than one-third of staff employees nonetheless are not represented. CUSS estimates that only 5,700 of approximately 14,000 total USM employees are represented by unions; while some institutions unilaterally have agreed to extend the terms of their collective bargaining agreements to some unrepresented staff, that fact does not alter CUSS's authority to serve as the shared governance body for those employees.

Under these circumstances, each institution is still obligated to meet USM policy requirements for a formal staff organization at each institution.¹ At a minimum, each

¹Moreover, the issues subject to shared governance under Board policies go beyond those that are subject to collective bargaining (e.g., institution mission and budget priorities, academic and student welfare issues and research). Thus, even if all of an institution's staff were represented by a union, CUSS could argue reasonably that staff

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institution must have written shared governance procedures and a formal shared governance organization for staff with bylaws, regular meetings and elected representatives. *CUSS Constitution* at Art. II, §1 and *Shared Governance Policy* at III. Regular consultation with the staff organization and an annual report to the Chancellor are also required. *Id.*

Meeting these requirements in a collective bargaining environment may well be challenging. However, under current Board policies, formal shared governance structures and processes must extend to staff at each institution.

I hope that this information is helpful. Please let me know if you have any questions.

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shared governance organizations must be maintained on each campus to advise on issues not subject to bargaining.