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## Fort Hays State University Faculty Senate Minutes, December 1, 1978

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MINUTES OF SPECIAL FACULTY SENATE MEETING

December 1, 1978

The meeting was called to order by Dr. Busch, Faculty Senate President, at 3:30 p.m. in the Smoky Hill Room of the Memorial Union.

ROLL CALL

The secretary called the roll and the following members were present:

Ms. Joanne Harwick, Ms. Virginia Bornholdt, Dr. Dennis Walsh, Dr. Sam Warfel, Mr. Dewayne Winterlin, Mr. Robert Brown, Dr. Lewis Miller, Mr. David Lefurgey, Mr. Thaine Clark, Mr. Elton Schroder, Dr. John Watson, Dr. Ed Shearer, Dr. Richard Zakrzewski, Dr. Charles Votaw, Ms. Ellen Veed, Dr. Louis Caplan, Ms. Sharon Barton, Dr. Robert Meier, Ms. Patricia Rhoades, Mr. Daniel Rupp, Dr. Ann Liston, Dr. Allan Busch, Mr. Richard Heil, Dr. Ron Smith, Dr. Gerry Cox, Dr. James Stansbury, Dr. Billy Daley, Ms. Donna Harsh, Ms. Sandria Lindsay, Mr. Glenn Ginther, Mr. Mac Reed.

The following members were absent:

Dr. Stephen Tramel, Dr. Lloyd Frerer, Mr. Elton Schroder, Ms. Orvene Johnson, Ms. Sandria Lindsay, Ms. Calvina Thomas.

The following alternates were present: Dr. Robert Nicholson for Mr. Elton Schroder, Ms. Betty Roberts for Ms. Calvina Thomas.

Also present were Mark Tallman of the University Leader and Jeff Seibel, Student Body President.

BUSINESS

President Busch asked that any member who leaves the meeting before adjournment announce to the chair that they are leaving so that their absence can be recorded.

President Busch reminded the Senate that the purpose of the special meeting as stated in the call for the meeting was to hear and approve the report of the University Affairs Committee on the membership of the Appeals Committee requested by Professor Myron Boor. He also said that no other business could be introduced at this meeting. He then called on Mr. Heil, chair of the University Affairs Committee to give his report.

Mr. Heil had a handout which he distributed to the Senate members. (See attached) He reported that the University Affairs Committee met on Wednesday, November 29, 1978 at 3:30 p.m. to nominate an Appeals Committee to hear the appeal of Dr. Myron Boor concerning the University's decision not to grant him tenure. The committee thus nominated must be approved by the Faculty Senate.

Mr. Heil read Paragraph 1 of Item 4 of Procedures for Hearings and Appeals as amended by the Faculty Senate on May 17, 1976.

The faculty member may notify the Chairperson of the College Affairs Committee that he or she has a formal appeal, formally state in written form the reasons for the appeal, and ask that an Appeals Committee be established by the College Affairs Committee. The College Affairs

Committee shall nominate a panel of at least five members of the faculty who have tenure. This nomination shall be subject to the approval of the Faculty Senate. Upon receipt of a grievance the College Affairs Committee must meet within five working days, and a special meeting of the Faculty Senate must be called where time is of the essence. The Appeals Committee shall select its own chairperson. The Appeals Committee shall, within one week, set up its own procedures and conduct its own meetings in accordance with the Faculty Senate by-laws and regular rules of review.

Because this is the first time the appeals process has been used, Mr. Heil outlined the procedures through which the University Affairs Committee nominated members for the Appeals Committee. The following steps were followed:

1. A list of the 180 tenured faculty members was obtained from the Office of the Director of Institutional Research.
2. The following categories of faculty were eliminated from the list:
  - a. Members of the Psychology Department (Dr. Boor's department).
  - b. Administrators above the Chairman level.
  - c. Members of the tenure committees of the last three years.
  - d. Faculty whose names were on the list but have since resigned, are no longer on campus, or are on leave this semester.
  - e. By a motion in the University Affairs Committee members of that committee and the President of the Faculty Senate.
3. The committee was asked if any individuals not in the above categories should be eliminated. Don Slechta was eliminated because of his position as University Legal Counsel.
4. The committee debated the size of the committee. The procedures specify that the committee must number at least 5 but may be larger. The decision was to have a five-member committee with four alternates.
5. The committee discussed the procedure for selecting nominees. The decision was to have each of the thirteen members of the committee rank order their top ten choices from the list generated through the elimination process mentioned above. These lists were collected and the choices were weighted with 10 points given to a first position, 9 points to a second position, etc. The points for each person named were added. For cases in which two persons had the same number of total points the preference was given to the one who had received votes from the most people. The result was a list of names in order of preference.
6. The following motion was passed by the committee:

Faculty members nominated by the University Affairs Committee who cannot render a fair and impartial judgment must reply in writing before the Senate meeting as to why they could not render a fair and impartial judgment and the Senate shall be informed

that they have been nominated and the reasons that their names are being removed from Senate consideration.

The reasons for this motion were to eliminate the possibility that the Chair of the University Affairs Committee could easily by-pass a person on the list and to insist that it is the duty of any faculty member nominated to serve.

7. Mr. Heil called the people on the rank ordered list in the order given and requested that they serve on the Appeals Committee. Of the first 10 people called 9 consented to serve. The one who declined sent a memo stating why he could not serve. (These nine people are listed on the attached handout.)

Dr. Busch asked for discussion or questions about the selection of the nominees for the Appeals Committee.

Dr. Watson asked if department chairmen were considered peers for the purpose of an appeal. Mr. Heil said that the committee had discussed excluding department chairmen but no motion was made to do so. It was the consensus of the committee that many chairmen were thought of more as professors than administrators.

Dr. Zakrzewski asked what the rationale was for excluding members of the University Affairs Committee from the list. Mr. Heil said that since the committee was doing the selecting that it was felt there could be a charge of bias if members of the committee were chosen.

Dr. Miller pointed out that if each side in the appeal struck the names of two Members of the committee and Alternates replaced them there would be no Alternate in case of illness. Mr. Heil agreed that such would be the case. Dr. Miller asked if the rank ordered list was still available if the Senate wanted to add to the printed list of alternates. Mr. Heil said that it was, but that he would not have that person's agreement to serve.

Dr. Warfel asked whether or not it would be necessary to get Senate approval for added Alternates if they were chosen from the list as the need arose. Mr. Heil said that it happened that the next two people on the list were in the room at the time.

Dr. Stansbury asked why the Senate could not approve another three or four names to be used if necessary. Dr. Busch said that it was possible.

Dr. Votaw suggested that the motion when made could be amended to add names. He added that it was nowhere stated that every member had to be present at every meeting. Dr. Busch said that the Appeals Committee could establish three members as a quorum in which case if one or two members were sick the committee could still meet.

Mr. Ginther suggested that it would be difficult for an Alternate who had come in on a meeting after having been absent at several to be able to make a valid judgment. Dr. Caplan said that usually Alternates attend all meetings but only vote if they become full Members.

Mr. Lefurgey asked what personal liability a Member assumed by being part of the committee. Mr. Heil stated that Dr. Slechta indicated that unless a person acted in a fraudulent manner or denied the plaintiff due process, he/she would not be liable. It is possible that anyone involved could be sued. Dr. Busch added that the Attorney General's office is going to furnish counsel and advice to the Appeals Committee.

Mr. Rupp asked if all three items on the handout were to be voted on as one motion. Dr. Busch said that the University Affairs Committee was making three motions as numbered on the handout.

On behalf of the University Affairs Committee Mr. Heil moved (Dr. Stansbury seconded) the following:

M1

The Appeals Committee for the appeal of Dr. Myron Boor be composed of these five tenured members of the faculty:

- Ms. Rose M. Arnhold, Assistant Professor of Sociology
- Dr. Ervin M. Eltze, Associate Professor of Mathematics
- Dr. Arris M. Johnson, Professor of Education
- Dr. Stephen Tramel, Associate Professor of Philosophy
- Dr. Charles Votaw, Associate Professor of Mathematics

The Alternates for the Appeals Committee will be these four tenured members of the faculty in the following ranked order:

1. Dr. Wilda M. Smith, Professor of History
2. Dr. Gary K. Hulett, Professor of Biology
3. Dr. Jerry Choate, Associate Professor of Zoology
4. Dr. John Klier, Associate Professor of History

Mr. Rupp moved (Dr. Walsh seconded) to amend the motion as follows:

Ala

In the event that the available pool of appeals committee members and alternates is exhausted, three additional Alternates as ranked in order by the University Affairs Committee shall be named.

Dr. Warfel asked whether it was the intent of the motion that the additional alternates be named at the present meeting or at such time as they are required. Dr. Busch said that they are already rank ordered and need only to be contacted. Mr. Rupp added that five people might have to be contacted to get three who would serve. Dr. Warfel responded that his question was related to one asked earlier, that is, whether members would be officially approved if the names of specific individuals were not nominated.

Dr. Caplan asked if the names could not be announced at the meeting so that approval could be given by the Senate for Mr. Heil to contact the people named if they were needed. Mr. Heil said that he felt that he should talk to them first to see if they were willing to serve. The next two on the list were present but the third was not.

Ala1

Mr. Rupp made a friendly amendment to his motion (Dr. Walsh concurred) that two additional Alternates rather than three be named.

Mr. Lefurgey suggested that being publicly asked to serve applied considerable pressure on the next two people named on the list. Dr. Caplan said

that the grounds for refusal are the inability to offer a fair and impartial judgment, not a lack of willingness to serve. Dr. Liston said that there was no real difference since the written reason for not being able to serve would still have to be read before the Senate.

For the record Mr. Heil read the response of the individual who had been selected but could not serve.

To: Mr. Richard Heil, Chairman of University Affairs Committee

Date: December 1, 1978

From: Dr. James Forsythe

Thank you for your call. I feel honored that the University Affairs Committee proposed my name for the Grievance Committee. However, since I have some knowledge of the situation, I believe that I should not serve on the committee. Please express my regrets to the University Affairs Committee.

Dr. Miller asked if the amendment meant that Mr. Heil should ask the next two people named on the list if they would serve during the present meeting and if they agree that their names be appended to the list. Mr. Rupp said that that was his intent. Dr. Votaw said that he saw little difference in publicly asking people to serve in this situation and the usual procedure for nominating people for an office from the floor. In both cases they may refuse and are expected to give reasons.

After Mr. Rupp reread the amendment before the vote, Dr. Miller said that it did not say what he thought the Senate intended. As read additional alternates would not be named until needed. Mr. Rupp agreed. Ms. Veed suggested that the motion be voted down and a new motion phrased.

Mr. Rupp withdrew his motion with the agreement of Dr. Walsh, the seconder.

Dr. Zakrzewski moved (Dr. Walsh seconded) that the main motion be amended as follows:

Alb The Senate add the next two ranked alternates from Mr. Heil's list to the alternates listed.

Alb1 Dr. Votaw suggested a friendly amendment that the word "attempt" be added before the word "add" since those named might refuse to serve. Drs. Zakrzewski and Walsh accepted the change.

The amended motion to amend carried.

Dr. Busch asked Mr. Heil to announce the next two names on the ordered list. They were Mr. David Lefurgey and Dr. Robert Nicholson.

Mr. Lefurgey asked what the grounds for refusal were. Dr. Caplan suggested that the motion passed in the University Affairs Committee should be reread. Mr. Heil reread the motion as given under number six above.

Both of the people named agreed to serve.

The amended motion carried.

M2 On behalf of the University Affairs Mr. Heil moved (Dr. Caplan seconded) the following:

The Faculty Senate recommends that counsel for each side in the appeal of Dr. Myron Boor may strike without cause at most two of the five members of the Appeals Committee with the stricken member being replaced by the highest ranked Alternate.

Dr. Zakrzewski asked if the implication of the motion was that once an Alternate had replaced one of the original members that he could not be stricken. Mr. Heil said that especially with the two additional Alternates it would be possible to strike an Alternate who had become a Member. Dr. Caplan said that once an Alternate had become a Member he could be struck if the choices of the counsels had not been used up.

Dr. Busch pointed out that the internal procedures of the Appeals Committee were not the business of the Senate. Therefore, the committee could decide how the striking of Members would be done.

A2a Dr. Zakrzewski moved to amend the motion to read "one of the five members" instead of "two of the five members." The motion died for lack of a second.

A2b Dr. Miller moved (Mr. Rupp seconded) to amend the motion to read "strike without cause a maximum of two of the five members" instead of "strike without cause at most two of the five members."

A2b1 Mr. Rupp raised the problem of grammatical number agreement in the phrase "the stricken member." Dr. Caplan offered a friendly amendment to change this phrase to "each stricken member." Dr. Miller and Mr. Rupp agreed.

The amended motion to amend carried.

Dr. Smith asked that the secretary note his presence. He also suggested that the process of striking the names of members and the moving up of Alternates could cause a lot of maneuvering between the parties involved.

Dr. Busch said that the exact process would be decided by the Appeals Committee. Dr. Smith said that perhaps the Senate could lessen the problems by allowing the parties to choose replacements from the list of Alternates for Members they wanted to strike. Mr. Heil said that the Alternates could be left unranked and the parties could choose replacements but that this could also lead to maneuvering.

Dr. Zakrzewski asked who would handle the process of striking names of Members. Dr. Busch said that the committee would decide how it was to be done. Dr. Warfel suggested that there would be no committee until all the replacement of Members with Alternates was done. Dr. Busch replied that the five Members just approved by the Senate were the Appeals Committee until any replacement was done.

Dr. Smith suggested that there seemed to be three procedures for establishing the committee: 1) to follow the proposal under discussion, 2) to leave the Alternates unranked and allow the parties to choose replacements, and 3) to dispense with the Alternates. Dr. Busch ruled the second two out of order because the motion already passed listed ranked Alternates. To establish either of the two would require that the previous motion be rescinded.

Dr. Liston asked whether the Appeals Committee was under obligation to follow the procedure under discussion since it states that the Senate "recommends" the procedure. Dr. Busch said that this proposal is being recommended to President Tomanek and once he accepts it then the Appeals Committee is bound by it.

Dr. Liston stated there appeared to be a contradiction between the statement that the Appeals Committee would set its own procedures and the motion under consideration. Dr. Busch replied that the Senate has already set other rules and this would be but one more restriction. In areas not covered the committee would be free to establish procedures.

Mr. Lefurgey asked if counsels could strike a number of other Members with cause since the motion only mentions the striking of Members without cause. Dr. Busch said that such was not implied. Mr. Lefurgey said that he felt that the wording allowed that interpretation. Dr. Zakrzewski agreed that replacement of a Member with cause was allowed by the wording. Dr. Miller said that the Senate was thinking that the committee would be conducting a legal hearing which it was not.

Dr. Warfel said that it would be impossible to make the motion legally airtight if the lawyers wanted to challenge it due to the fact that the Senators are not lawyers. He then called for the question.

Dr. Zakrzewski objected. A vote was taken and the call for the question was upheld.

Dr. Busch read the amended motion before the vote as follows:

- M2       The Faculty Senate recommends that counsel for each side in the appeal  
A2b       of Dr. Myron Boor may strike without cause a maximum of two of the five  
A2b1      members of the Appeals Committee with each stricken member being replaced  
          by the highest ranked Alternate.

The motion carried.

On behalf of the University Affairs Committee Mr. Heil moved (Mr. Reed seconded) the following:

- M3       The Faculty Senate recommends to the Appeals Committee that it act with  
          speed and strive to complete its work before the end of the fall semester.

The motion carried.

Dr. Smith requested that the record show that he had abstained from all votes.

Mr. Lefurgey returned to the problem discussed earlier concerning the interpretation of the second motion. Dr. Busch said that the point was moot unless there was a motion to rescind the earlier motion.

Dr. Zakrzewski moved (Mr. Lefurgey seconded) that the second motion be rescinded. Ms. Veed asked what changes Dr. Zakrzewski would propose if the motion were rescinded. He answered that he would include the prohibition of challenges with cause in the motion.



Dr. Warfel asked if perhaps the Senate wanted to allow challenges with cause. Dr. Zakrzewski said that the implication of the motion as passed was that some Members might be on the committee even if he/she were prejudiced if the challenges without cause had been exhausted. Dr. Miller stated that he had said something to that effect but that the Senate was not capable of guaranteeing that no prejudiced people were on the committee. If prejudice became an issue it would be up to the civil courts to decide. Dr. Zakrzewski said that the Senate should attempt to deal with the problem by changing the motion.

Ms. Veed said that a change in the wording could clarify the intent of the Senate. Dr. Votaw added that making the wording more explicit would not hurt and might help if there were a legal suit.

Dr. Miller said that if the Senate wanted to insure that there were no prejudices on the committee there would have to be unlimited challenges with cause. Dr. Caplan said that the hearing was not a court and that lawyers should not be allowed to cross-examine committee members.

Because of the closeness of the voice vote the President called for a show of hands. The motion to rescind carried by a vote of 18 to 8.

Mr. Lefurgey moved (Mr. Ginther seconded) the following:

- M4 The Faculty Senate recommends that counsel for each side in the appeal of Dr. Myron Boor may strike with or without cause a maximum of two of the five Members of the Appeals Committee with each stricken Member being replaced by the highest ranked Alternate.

The motion carried.

- M5 Mr. Ginther moved (Dr. Cox seconded) that the meeting be adjourned.

The motion carried.

The meeting was adjourned at 4:50 p.m.

Respectfully submitted,

Sam L. Warfel, Secretary