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Meeting No. 48

August 8, 1974

STEPHEN F. AUSTIN STATE UNIVERSITY
FACULTY SENATE

Absent:

Dudley Stewart (Excused)
Bemat Mullen (Excused)
Patricia Russell (Excused)

Ex Officio Members present:
Vice-President John T. Lewis III

1. Chairman Arcscott called the meeting to order at 2:00 p.m.
2. Minutes of meeting #47 were approved.
3. President Arcscott explained the procedure for the conduct of the hearing for Professor S. I. Somberg, according to a notice previously disseminated to Faculty Senate members.
4. Dr. Somberg began his presentation by referring to Volume 13, Texas Jurisprudence 2nd, Section 267, pertaining to modification of agreements. Professor Somberg noted that one party alone cannot modify a contract after it is entered into. Both parties must assent to changes. Changes of policy by the administration should not be ex-post-facto, according to Dr. Somberg, either with regard to students or faculty. Faculty should be given some consideration with regard to contracts.
5. Dr. Somberg also referred to the Undergraduate Bulletin, page 38, and the Graduate School Bulletin, page 18, to expand on his point that a contract should not be unilaterally changed, without the voluntary consent of both parties.
6. Dr. Somberg presented correspondence between himself and Dean Walker, plus copies of his letter of employment with S.F.A.S.U.
7. In referring to Faculty Handbook, page 14, Dr. Somberg noted that the wording of the Handbook concerning tenure policy was identical to that of the A.A.U.P. Redbook.
8. At this point, Dr. Somberg called upon Dr. Arthur Benoy, A.A.U.P. representative at S.F.A., as a witness to direct his remarks toward the question whether or not S.F.A. had complied with its own policies in the case of Dr. Somberg.

Here, Dr. Lewis challenged the admissibility of all items entered by Dr. Somberg as exhibits, with one exception, because the dates on the exhibits post-dated Dr. Somberg's employment by S.F.A.

At the direction of President Arcscott, the Executive Committee retired to consider the challenge. After deliberation, President Arcscott ruled to accept all exhibits except two.

9. Dr. Benoy resumed his presentation by distributing copies of the A.A.U.P. Redbook to Faculty Senate members. Dr. Benoy read a proclamation concerning conditions of academic tenure and academic freedom as maintained by S.F.A.S.U.

Dr. Benoy asserted that A.A.U.P. recognizes two kinds of tenure: de facto and de jure. If a university fails to follow proper procedures for review of probationary appointments, de facto tenure obtains.

Dr. Benoy proceeded to determine whether or not S.F.A. had, in fact, followed established procedure in Dr. Somberg's case. The determination was made with respect to several criteria stated in the A.A.U.P. Redbook, pages 15-16. Dr. Benoy stated that S.F.A. had followed certain criteria, not followed others, and some had not been invoked by Dr. Somberg. Dr. Benoy said that the tenured faculty of the School of Forestry was the appropriate faculty body to make determinations of tenure for Forestry School faculty.

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10. Dr. Somberg then resumed his presentation by claiming that the Dean of the Forestry School had not complied fully with A.A.U.P. procedures in informing him of his status within the School. Dr. Somberg presented testimony that there was never any question in the School of Forestry of his competence as a teacher, researcher, or administrator.
11. Dr. Somberg alleged that the extension of his probationary period was not written into his "employment contract", and that this constituted the granting of de facto tenure to him. His permission was needed to extend his probationary period.
12. Dr. Somberg stated that he should have been notified in 1972 if he were not going to be retained. A satisfactory relationship existed between Dr. Somberg and the S.F.A. administration, and no other conditions or reservations had been stated in his letter of employment. Dr. Somberg cited his nomination by his Dean as an Outstanding Educator of America in 1972.
13. It was noted by Dr. Somberg that Dean Walker had informed him that it was a decision of the Dean's Council not to award Somberg tenure. Dr. Somberg claimed that the Dean's Council has no authority to determine tenure; the Dean's Council is a recommending body, not a policy-making body.
14. Referring again to the Faculty Handbook, pages 11 and 28, Dr. Somberg showed that the annual evaluation of his work during the probationary period had not actually been done.
15. In referring to a change in the Faculty Handbook in April, 1973, adopted by the Dean's Council, Dr. Somberg said that this change in tenure policy, presumably established tenure based on merit was not actually official policy. The reason for this was that the putative change had not been published in the Faculty Bulletin, and therefore was not policy. His probationary period was for three years, could not be extended, and therefore he possessed de facto tenure.
16. In sum, Dr. Somberg claimed that he had tenure because: he had signed his contract in good faith, his probationary period was only for three years, at the end of which time, if conditions were satisfactory, tenure is granted, he received his fourth year contract with no conditions, the Dean's Council acted illegally in declaring a moratorium on tenure, the Faculty Senate did not concur with the Dean's Council, and when the Faculty Senate disseminated policy, it is not official until published in the Faculty Bulletin.
17. Dr. Lewis then presented the administration's side of the case, beginning with a disclaimer that the administration was making no negative assertions concerning Dr. Somberg's competence. The problem was one of a misunderstanding of terminology and a misunderstanding of the way a university functions.
18. Referring to Somberg's letter of appointment, Dr. Lewis noted that the State of Texas had never authorized S.F.A. to draw up a contract. The letter of appointment is not operative until approved by the S.F.A. Board of Regents.
19. Dr. Lewis discussed the purposes of a letter of appointment. Most of the material in the letter is informational, not contractual; the letter of appointment is on a year by year basis. S.F.A. is not authorized to issue a multi-year contract. In the statement: "if a mutually satisfactory situation exists, tenure is granted," Dr. Lewis stressed the word if, while Dr. Somberg had stressed the word is.
20. Dr. Lewis averred that to say that S.F.A.'s tenure standards are based upon those of A.A.U.P. is not to say that they are identical. The Faculty Handbook specified what the S.F.A. standards actually are.
21. S.F.A. says that the contract is contained in the appointment letter, not in the Faculty Handbook. The Faculty Handbook is not part of the contract, nor is the General Bulletin.

22. Dr. Lewis referred to the letter of April 25, 1973, informing Dr. Somberg that he would not be given tenure at the end of his three year's probation period. The Faculty Handbook says that "normally" after the end of three years tenure would be granted. Dr. Lewis said that these were not normal times, with dropping enrollments, etc.
23. With regard to Dr. Somberg's assertion concerning the absence of a stated remuneration on his letter of appointment, Dr. Lewis noted that the Faculty Handbook says it is the appointment notice, not the contract that has a stated remuneration.
24. Dr. Lewis rejected Dr. Somberg's assertion that the Dean's Council and the Faculty Senate were not legal bodies with respect to any policy statements concerning tenure. The administration had acted in good faith and Dr. Somberg could have requested a hearing before the Dean's Council or the Forestry School Academic Council, which he did not do.
25. According to Dr. Lewis, tenure is a positive and affirmative act by the University; de facto tenure did not occur, and Dr. Somberg did not make his appeal until a year after he received notice that he would not be given tenure. The Dean and President never recommended or awarded tenure. Neither was there a mutually satisfactory situation between S.F.A. and Dr. Somberg. Dr. Somberg had been critical of several circumstances, indicating to the administration that he was not satisfied.
26. The rules and regulations in the University handbooks are statements of practice which can be changed, unilaterally. Technically, the University cannot offer a contract for more than one year. When Dr. Somberg accepted the fourth year appointment, he accepted all changes of policy to that date.
27. Dr. Lewis pointed out that the University was not arguing whether or not Dr. Somberg should have tenure, or about his capabilities. The only question is, was he actually awarded tenure? The pertinent rules changes said that it was no longer necessary to inform an employee about his acquisition of tenure in his fourth year contract. The Forestry School administrators were complying with existing official policy.
28. Only the University President can make policy for the University. When the President signs the minutes of the Faculty Senate, policy statements contained therein become official.
29. Dr. Somberg offered a rebuttal, restating his claim that policy statements become official only when published in the Faculty Bulletin. Dr. Somberg was not asking for a multi-year contract. In his view, the position of the University meant that nobody had tenure.
30. Dr. Somberg said that he did appeal to Dean Walker before the end of a year, in fact immediately after being told he was not going to get tenure. Dr. Somberg says he was led to believe that everything was all right and mutually satisfactory. Dr. Somberg claimed he could accept parts of his contract and reject others.
31. Dr. Somberg asserted that the administration confused his concern with certain factors with dissatisfaction, and that the pertinent documents did not uphold any taint of dissatisfaction on his part.
32. Dr. Somberg did not accept Dr. Lewis' claim that the Faculty Senate had eliminated the need to inform an employee of administration tenure plans.
33. Dr. Lewis, in rebuttal, referred to Faculty Senate Minutes #16, November 5, 1971, which he stated settled the question that policy becomes policy when (and only when) signed by Dr. Steen.

34. Dr. Lewis referred to certain documents which he claimed showed that Dr. Somberg was in fact not satisfied with his situation at S.F.A. and he could not work amicably with the Dean.
35. Dr. Lewis restated his previous observation that the contract with Dr. Somberg was never modified by S.F.A., that the Faculty Handbook was not part of the contract, that the Faculty Handbook could be changed without changing employee contracts, and that the fact that S.F.A. policies were based upon A.A.U.P. standards did not mean that the two were in all ways identical.
36. In cross-examination, Dr. Somberg cast some question upon the efficacy and veracity of the documents that administration had utilized to prove his discontent with his lot at S.F.A.
37. Members of the Faculty Senate then directed certain inquiries to the litigants to clarify certain points. Dr. Benoy recapitulated his summary of how S.F.A. had or had not complied with A.A.U.P. standards in its dealings with Dr. Somberg.
38. At 5:35 p.m., visitors and spokesmen for the combatants were asked to clear the hall.
39. The Faculty Senate proceeded to deliberate at length upon the evidence that had been presented.
40. After long and difficult discussion and consideration the Faculty Senate voted on the single question upon which it was asked to deliberate, to wit, does or does not Dr. Somberg have tenure at S.F.A.
41. It was the conclusion of a majority of the members present that Dr. S. I. Somberg, Professor of Forestry, did not have tenure.
42. The meeting was adjourned at 6:45 p.m.

Respectfully submitted,

James G. Dickson, Jr.
James G. Dickson, Jr.
Secretary of the Faculty Senate

REVIEWED: *John Lewis III*
VICE PRESIDENT FOR ACADEMIC AFFAIRS

Date 9-19-74

APPROVED: *R.H. Reed*
PRESIDENT

Date 9-19-74