STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BRUCE TUCKMAN,)
)
Petitioner,)
)
vs.) CASE NOS. 86-2483
) 86-3305
THE FLORIDA STATE UNIVERSITY,)
)
Respondent.)
______________________________)

RECOMMENDED ORDER

This matter came on for hearing in Tallahassee, Florida, before Robert T. Benton, II, Hearing Officer of the Division of Administrative Hearings, on March 24, 1987, and finished the following day. The Division of Administrative Bearings received the transcript of proceedings on April 8, 1987, and the parties filed proposed recommended orders on April 20, 1987. The parties' proposed findings of fact are treated by number in the attached appendix.

The parties were represented by counsel:

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For Respondent: Gerald B. Jaski, Esquire, and
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By memorandum dated August 8, 1985, petitioner Tuckman "request[ed] a due process hearing before an impartial hearing officer pursuant to Florida Statute 120.57 ... to establish the [alleged] impropriety of [his] removal from the position of Dean of the College of Education."

Respondent Florida State University (FSU) denied petitioner's request for a formal administrative proceeding in accordance with Section 120.57(1), Florida Statutes (1987), but treated petitioner's request for hearing as a timely petition for an informal administrative proceeding under Section 120.57(2), Florida Statutes (1987). Taking the position that the parties had no dispute as to any material fact and that the whole "matter [was one] which is within the discretionary authority of the University Administration," FSU entered what purported to be a final order on August 23, 1985.

On appeal, the District Court of Appeal, First District, reversed and remanded for proceedings pursuant to Section 120.57(1), Florida Statutes, Tuckman v. Florida State University, 489 So.2d 133 (Fla. 1st DCA 1986), holding that "the University has acknowledged that substantial interests were affected

by its action and that question need not be further addressed." Tuckman v Florida State University, 489 So.2d 133, (Fla. 1st DCA 1986). What remained to be addressed at a formal administrative hearing, the court decided, were factual disputes pertaining to FSU's legal "determinations ... that the contract was not breached and that Tuckman was not 'professional staff.'" 489 So.2d at 135.

In compliance with the court's mandate, and in keeping with Section 120.57(1)(b)3., Florida Statutes, FSU forwarded the petition to the Division of Administrative Hearings, where the matter was docketed as Case No. 86-2483. Thereafter, Dr. Tuckman filed with FSU a second petition for formal administrative proceedings, this one seeking rescission of an alleged reduction in pay for the 1986-1987 academic year. FSU transmitted the second petition, too, to the Division of Administrative Hearings, where it became Case No. 86-3305. By order entered October 29, 1986, Cases Nos. 86-2483 and 86-3305 were consolidated for hearing.

In ensuing prehearing conferences, certain issues were isolated as appropriate for preliminary consideration and for resolution before litigating, if necessary, other issues in Cases Nos. 86-2483 and 86-3305. As a result, the hearing on March 24 and 25, 1987, was limited to the following issues.

ISSUES

Whether petitioner was "professional staff" within the meaning of Article VII of the University Constitution and therefore entitled to continue as Dean of the College of Education, in the absence of a showing of good cause why he should not continue? Whether FSU breached the 1984-1985 employment contract between the parties when it relieved petitioner of responsibilities as Dean of the College of Education on July 24, 1985? Whether FSU was under a legal obligation to give petitioner notice of good cause for not renewing the parties' 1984-1985 employment contract for the 1985-1986 or subsequent academic years?

FINDINGS OF FACT

1. After James L. Gant announced his intention to step down as Dean of FSU's College of Education, Augustus B. Turnbull, III, FSU's Vice President for Academic Affairs, appointed the College of Education Dean's Search Committee, also known as the Education Dean Search Committee (Search Committee) and named Robert Glidden, Dean of FSU's School of Music, chairman of the Search Committee. Petitioner's Exhibits Nos. 3 and 9. Dr. Turnbull asked that the Search Committee "try to have a new dean on board no later than the fall semester of 1983." Petitioner's Exhibit No. 3.

2. On December 6, 1982, Dean Glidden executed Part A of Form No. SUS/PFR-001/75 (R3/77), a formal position vacancy announcement prerequisite to any national search. (T.29-30) This form described the "Contract Period" as 12 months; gave July 1, 1983, as the anticipated starting date; stated the position title as "Dean, College of Education"; categorized the position as having regular professorial status; and indicated the "Discipline/Field" as "Administration." Petitioner's Exhibit No. 7.

3. As part of the national search, the Search Committee caused circulars like Petitioner's Exhibit No. 9, "invit[ing] applications and nominations for the position of DEAN COLLEGE OF EDUCATION" to be published in periodicals like the Chronicle of Higher Education, which is how the vacancy came to the attention of petitioner Bruce Wayne Tuckman, whose application for the position eventually proved successful.

Agreement Reached

4. On April 28, 1983, Dr. Turnbull wrote Dr. Tuckman "to offer [him] the position of Dean of the Florida State University College of Education which carries with it the rank of Full Professor of Education ... effective ... July 1, 1983." Petitioner's Exhibit No. 10. In the letter, Dr. Turner undertook to recommend Dr. Tuckman for tenure "at the first opportunity, which will be during the 1983-1984 Academic Year." Id. On May 3, 1983, Dr. Tuckman signed the bottom of the letter in the blank provided to indicate acceptance of the offer.

5. In May of 1983, Drs. Turnbull and Tuckman executed an employment contract covering the period July 1, 1983 to August 31, 1983, stating "CLASSIFICATION TITLE/RANK" as "Dean and Professor" and indicating 9040 as the class code. Respondent's Exhibit No. 15. "Dean and Professor" with a class code of 9040 is listed among the general faculty classification titles and codes. Respondent's Exhibit No. 2. "Professor" appears on the same list with a class code of 9001.

6. On the strength of the agreement evidenced by Dr. Turnbull's letter of April 28, 1983, and Respondent's Exhibit No. 15, Dr. Tuckman, a much-published scholar, left a tenured position at the City University of New York and moved to Tallahassee from New York in the summer of 1983. On September 1 and 2, 1983, respectively, Drs. Turnbull and Tuckman executed a second employment contract with terms identical to the first, except that it covered the period September 1, 1983 to August 31, 1984, and had a greater number of pay periods, accordingly. Petitioner's Exhibit No. 11.

1984-1985 Contract

7. Central to the present controversy is the contract executed by Dr. Turnbull on September 2, 1984, and by Dr. Tuckman on September 6, 1984, which provides, in pertinent part:

> STATE UNIVERSITY SYSTEM OF FLORIDA
> FLORIDA STATE UNIVERSITY
> 12 MONTH EMPLOYMENT CONTRACT
>
> This contract between Florida State University and the employee is subject to the Constitution and laws of the State of Florida, the rules and regulations of the Board of Regents...
>
> 1. Employee Name: Bruce W. Tuckman
>
> * * *
>
> 3. Department Name: Dean Education
>
> * * *
>
> 5. Dates of Appointment: 09-01-84 to 08-31-85
>
> * * *
>
> 8. Classification Title/Rank: Dean and Professor
> Class Code: 9040 Appointment Modifier: B
>
> * * *
>
> The following statement is only applicable to (1) employees holding visiting appointments; or (2) those appointed for less than one academic year; or (3) those with less than five years continuous service who are on soft money":

Your employment hereunder will cease on the date indicated. No further notice to you of cessation of employment is required. Petitioner's Exhibit No. 13.

"[A]ppointment modifier B ... is for courtesy faculty status." Erb Fontenot v. Florida State University, No. 85-3843 (F.S.U.; Jan. 5, 1987) at page 2. "Persons holding an administrative or services role normally hold a courtesy rank Rule 6C2-1.004(6)(a)7.a. On March 26, 1984, President Sliger had written Dr. Tuckman, advising him that he had been awarded "tenure to be effective Fall Semester, 1984." Respondent's Exhibit No. 1.

Auspicious Beginning

8. At first, all seemed to go well with the College of Education and its new dean. As chief executive officer, Dr. Tuckman was responsible for "all budgetary, fiscal and personnel matters in the College of Education," (T.58) and "had the executive responsibility for helping to set the directions and execute the policies and procedures of the college ... [,] sat as an ex officio member of the Policy Advisory Board ... [and] on a number of [other] committees." (T.50) He tended to "general day-to-day kinds of things ... responding to letters," (T.31), affirmative action and grievance matters.

9. As the University Director of Teacher Education, he chaired FSU's Committee on Teacher Education, "organized conferences and committees on behalf of the College of Education [,] provided interface between the College of Education and the public school districts and schools of the state and other officials of the state ... [and] represented the College of Education to outside constituencies, [including] alumni [and] legislators..." (T.58)

10. On May 31, 1984, Petitioner's Exhibit No. 12, and again on March 27, 1985, Petitioner's Exhibit No. 14, Dr. Turnbull rated Dr. Tuckman "satisfactory," the highest rating possible, on forms on which he characterized his primary duties as Administration." Dean Tuckman performed the duties of dean as described in the By-Laws of the College of Education. Petitioner's Exhibit No. 18. Although not required to do so, he also taught every year he served as dean.

Complaints Made

11. "[I]n the fall of 84, probably around October, November ... [after it became known that Stephen Edwards was] to assume the position of the Dean of Faculty in January of 1985, faculty members from the College of Education ... [approached him] concerned about the way the college was operating and the kinds of participation in its governance that the faculty were being able to have." (T.377) In due course, Dean Edwards, as he became, relayed these concerns to Dr. Turnbull.

12. Dr. Turnbull had also heard complaints himself from members of the faculty of the College of Education, complaints which he originally dismissed as a normal reaction to somebody who is making necessary changes." (T.229) By the spring of 1985, however, he asked Dr. Tuckman to give him a "list of some of the faculty that he considered to be the future leaders of the college ... not necessarily the old guard or people who for one reason or another would be troublemakers, but a group of faculty on whom he would rely to carry out his policy directions for the college." (T. 228-230)

13. Dr. Tuckman compiled such a list and furnished it to Dr. Turnbull. At a meeting he called in the summer of 1985, Dr. Turnbull discussed matters with "a significant number of" the people Dr. Tuckman had listed, and "asked them to work with [Dr. Turnbull] and the dean to turn the situation around." (T.230) The group struck Dr. Turnbull as noncommittal.

14. At Dr. Turnbull's request, Dr. Tuckman then called a meeting of the Administrative Council, comprised of department chairmen and others. In this meeting, held on a Tuesday, possibly July 16, 1985, it was decided that the Administrative Council would meet again with Dr. Tuckman, without Dr. Turnbull present, and that afterwards the department heads would meet with Dr. Turnbull to "decide where to go from there." (T.231)

15. After the Tuesday meeting, Dr. Turnbull drafted a memorandum addressed to the faculty of the College of Education. He attached this draft to a memorandum to Dr. Tuckman, dated July 17, 1985. In the memorandum to Dr. Tuckman, he referred to the draft as "a draft cover memorandum," solicited Dr. Tuckman's suggestions with regard to the draft, and stated that he "would also like to see a copy of the 'report' from our Tuesday meeting which we can send out with this cover memorandum." Respondent's Exhibit No. 5.

16. Dr. Tuckman wrote Dr. Turnbull a memorandum, dated July 19, 1985. Labelled "PERSONAL AND CONFIDENTIAL," it is now a matter of public record, and reads, in part:

> I appreciate the gravity of the situation and the difficulty of the position you are in. I struggled through one or two similar crises myself last year, albeit on the department level, where faculty members were opposed to a chairman, and know how hard that is to deal with. I appreciate the consideration you have shown both me and the faculty of the College.
>
> It may not need reiteration but I want you to know that I like my job and I want my job. I think you need to keep in mind:
>
> (1) the fact that I have only done what I was "brought here" to do and what I said I would do. I have always been honest and forthright with you and with the faculty. I have never been knowingly devious in any of my dealings.
>
> (2) the fact that I "inherited" a college suffering from long-term neglect and one which included a number of people who were taking advantage of that situation and of their colleagues.
>
> * * *
>
> (4) the fact that relatively unused and "rusty" faculty governance structures were not used by me not by choice but because they could not raise quorums and did not have members who wanted to see them used

constructively. They are now ready to be used. I was already putting them in readiness when this whole controversy started.

* * *

I have been less than perfect. I have made mistakes and I am now aware of many of them. But they were honest mistakes and well-intentioned mistakes. I am neither power-hungry nor malicious.

Organizations often need to survive conflict in order to coalesce and grow. The essence of the process is having the members accept some of the responsibility for growth and decision-making. I want this to happen. This crisis can be turned from a nightmare into a blessing by a combination of actions by me and you. My job is to "open up all the doors" and let all of the faculty input in. I pledge to you that I will (and have already begun to) use all informal and formal mechanisms to foster faculty participation and involvement. I believe that I am both willing and able to do this.
But it will only work if, as I open my doors, you close yours. You need to let it be known that you are satisfied with the plans and directions of the College, that you have helped make sure it is on course, but that its fate depends on it being able to solve its own problems. And, as you know, those problems are many and serious. And, with that decision to let me continue (after all, I have only had two years to deal with problems and habits formed over at least 10 years) , you must step back from the process and let it continue.
... If you step back, the faculty will realize that they must begin to take faculty governance processes seriously and use them constructively to help get us out of this fix. I want faculty involvement and I can get it. If they have nowhere else to go but to faculty committees, faculty meetings and to me, that's where they'll go. But if they can go to you, Steve or Bernie, they'll go there.
I ask you personally, professionally and humbly for your help, both for me and for the College. The biggest help you can provide now is to say to the world, let the College of Education solve its own problems if it wants to stay in business. The rest is up to us.

Dr. Turnbull felt this memorandum "was too little, too late," (T.236) and that it advocated "the course [he] followed very consistently up until a couple weeks before that." (T.236)

17. On July 22, 1985, the department chairmen, having earlier met with Dr. Tuckman, as agreed, met with Dr. Turnbull. They reported that Dr. Tuckman "still did not understand the seriousness of the situation, and that they were, therefore, not willing to proceed with him to try to change the faculty's mind about the course and direction of the college." (T.231)

Resignation Requested

18. Late that day Dr. Turnbull summoned Dr. Tuckman to his office and requested that he step down as dean. Dr. Tuckman asked if he could think it over overnight, and, on the morning of July 23, 1985, told Dr. Turnbull he "wanted to be able to complete this year and have another year; and that at the end of the next year, if [Dr. Turnbull] was ... dissatisfied with [Dr. Tuckman's] performance, then at that time [Dr. Tuckman] would be willing to resign." (T.62)

19. Dr. Turnbull told Dr. Tuckman he was wasting his breath, that he wanted him "out as dean right away." (T.62) When Dr. Tuckman "pleaded with him," id., Dr. Turnbull reportedly said, "A well-worded letter of resignation would resolve [sic] you of all embarrassment or pain." (T.62) But Dr. Tuckman refused to resign, saying, "[Y]ou will have to fire me." Id.

No Longer Dean

20. Believing Dr. Tuckman had been insubordinate, Dr. Turnbull wrote a letter to him the following day. The parties stipulated that Dr. Turnbull had full authority to act for FSU's president in these matters. The letter said:

> Dear Bruce:
> Effective immediately, you are relieved of your responsibilities as Dean of the College of Education. An alternative assignment for the 1985-86 academic year will be made as soon as possible.
> Petitioner's Exhibit No. 15.

By memorandum dated July 30, 1985, Dr. Turnbull advised Dean Edwards, "Normal procedures should be followed, except that you will substitute for Dr. Tuckman." Petitioner's Exhibit No. 5. On or after July 24, 1985, but no later than July 30, 1985, Dr. Turnbull had assigned Dean Edwards "responsibility for the administrative affairs of the College of Education during the transition following the reassignment of Dr. Tuckman." Petitioner's Exhibit No. 5.

21. By memoranda dated July 29 and 30, 1985, Respondent's Exhibits Nos. 9-10, and by letter to Dr. Turnbull dated July 29, 1985, Respondent's Exhibit No. 8, Dr. Tuckman made known his view that he had a right to continue as dean, writing Dr. Turnbull, "I cannot accede to your request that I surrender my position," Respondent's Exhibit No. 8, and signing a memorandum dated July 29, 1985, addressed to department heads and ohers, "Bruce W. Tuckman, Dean." Respondent's Exhibit No. 9.

22. On July 31, 1985, Dr. Turnbull sent a memorandum to Dr. Tuckman, with a "blind copy" to FSU's counsel, in form acquiescing to Dr. Tuckman's assertion that he was still dean. This memorandum stated:

> RE: Revised Assignment of Responsibilities
>
> Pursuant to my July 24, 1985 letter to you and our discussion of July 30, 1985, your complete assignment as dean for the period through the expiration of your current contract (August 31, 1985), is as follows:
> 1. to develop and prepare a written report on the major policy and program initiatives of the College of Education during your tenure as dean along with a summary of your perception of the goals and objectives encompassed in these policies.
> 2. to provide written recommendations on priorities among these goals, objectives, and plans to implement them, together with any suggestions for alteration as a result of the necessary reduction in College resources.
> 3. responding upon request to inquiries from Dean Edwards or other appropriate officials about College of Education matters. (Dean Edwards will be assisting during this transitional period in the administration of the College of Education.)
>
> This reassignment is not intended to affect your functions and responsibilities as a faculty member.
>
> In the best interests of the University and in furtherance of a smooth transition, I am instructing you to vacate the physical quarters of the Office of Dean no later than the close of business on Friday, August 2. An alternative office will be assigned in the Stone Building. Please contact Dean Edwards concerning alternative office space.

The practical reality was, however, that Dr. Tuckman did not serve as Dean of the College of Education after July 24, 1985. In September of 1985, Robert L. Lathrop was named interim dean, and he became "continuing dean in January 1987." (T.289)

23. Academic deans customarily serve at the pleasure of university presidents. By memorandum dated February 4, 1964, (but not shown to petitioner before he signed the employment contract), Gordon W. Blackwell, then FSU's president, "instituted" the policy that "Members of the faculty ... hold administrative positions (... dean ...) at the pleasure of the President." Respondent's Exhibit No. 16. This is the norm in the United States. Witnesses at hearing, including academic deans at FSU, testified that FSU's deans served at the pleasure of FSU's president during the time in question.

24. Dr. Turnbull's letter of July 24, 1985, reflected these views, and ended Dr. Tuckman's service as dean, although Dr. Tuckman stayed on as (and remained, at the time of the hearing) a tenured full professor in the College of

Education. He received the full salary he contracted for in September of 1984 during the year ending August 31, 1985. Petitioner's Exhibit No. 13.

Faculty vs. Professional Staff

25. The, Board of Regents, which heads the Division of Universities within the Department of Education, has allocated university employees among three distinct "pay plans." The position "dean and professor," like the position "professor," has been assigned to the faculty pay plan, rather than to the administrative and professional pay plan, or to the plan for "University Support Personnel," formerly career service employees. (T.131, 190, 197).

26. Article VII of the Constitution of the Florida State University, entitled "The Professional Staff," provides:

> Those persons holding academic appointments within The Florida State University, but not within a college or school, and those persons within a college or school holding academic appointments whose responsibilities do not include teaching, shall be considered members of the Professional Staff. Members of the Professional Staff having appropriate qualifications and responsibilities shall be assigned faculty rank by the President of the University on recommendation of their administrative officers for the purpose of membership in the General Faculty.
> Members of the Professional Staff shall enjoy the assurance of annual recommendation for reappointment in accordance with the provisions of the Florida Statutes and the regulations of the Board of Regents. Petitioner's Exhibit No. 17, page 11.

Dr. Tuckman first saw this provision in July or August of 1983. (T.86)

27. The text of Article VII, now promulgated as an administrative rule, Rule 6C2-1.004(7), Florida Administrative Code, effective September 30, 1975, has been included in the FSU Constitution since 1959. Similar language may have appeared even earlier as a bylaw, and was originally drafted to authorize conferring faculty rank on librarians. (T.411) As a provision of FSU's Constitution, Article VII is not among the "rules and regulations of the Board of Regents," strictly speaking.

28. By virtue of Article VII or its predecessor, Willis Caldwell, registrar and director of admissions, was given faculty rank, possibly as an associate professor. Catherine Warren, Dean of Women, was "designated as professor," (T.419) under Article VII or its predecessor. Ms. Warren had done graduate work in history at Columbia University, but, like Willis Caldwell, had no academic appointment within a college or school. Article VII was also applied to Robert Pierce, who, as FSU's vice-president for administration from 1972 to 1976 or 1977 (T.417), had no standing in an academic unit. (T.221) It has never been applied to persons who "had faculty status in an academic unit or with tenure." (T.224)

29. When administrators teach, "it's considered part of their responsibility." (T.415) A faculty member who forgoes teaching for research does not, on that account, lose his status as a member of the faculty and become a member of the professional staff. FSU's president, or his designee, has broad authority in assigning administrative responsibilities to FSU's deans, but they are not professional staff, if they have faculty appointments, even if they do not teach.

30. Article VI of the Constitution of Florida State University, Rule 6C2-1.004(6), Florida Administrative Code, deals at length with faculty members, employees who, like petitioner, have academic appointments. As dean and professor since his arrival at FSU, Dr. Tuckman has had faculty rank all that time. He has enjoyed membership in the General Faculty by virtue of his professorial rank, and has never been a member of the professional staff. Article VII has no application in his case, and was not incorporated by reference in the employment contracts Dr. Tuckman signed.

CONCLUSIONS OF LAW

31. Petitioner contends that Dr. Turnbull's letter of July 24, 1985, ended his deanship on that date, and breached the 1984-1985 employment contract between petitioner and FSU on that account. FSU first counters that Dr. Tuckman's deanship did not end then, characterizing the letter stripping Dr. Tuckman of his authority to act as dean as nothing more than a reassignment of administrative duties, within a range contemplated by the parties' contract.

Deanship Terminated

32. But, when Dr. Turnbull wrote Dr. Tuckman on July 24, 1985, he "relieved [him] of [his] responsibilities as Dean of the College of Education," Petitioner's Exhibit No. 15, and the parties stipulated that Dr. Turnbull had full authority to act for FSU's president in this regard. Despite Dr. Tuckman's contemporaneous claims otherwise, the record is clear that he was no longer "dean and professor" after July 24, 1985, but "professor" only.

33. The letter of July 24, 1985, did not affect Dr. Tuckman's status as a tenured professor, but the contract covers the dean ship as well as the professorship. Any ambiguity in the contract on this point is properly resolved against FSU, which drafted the form agreement. See Grappone v. City of Miami Beach, 496 So.2d 838 (Fla. 3rd DCA 1986); American Agronomics Corp. v. Ross, 309 So.2d 582 (3rd DCA) cert. den. 321 So.2d 558 (Fla. 1975).

34. In arguing that Dr. Tuckman continued as dean, notwithstanding a "reassignment of administrative duties," FSU invokes Rule 6C2-4.033, Florida Administrative Code, which provides:

> (1) Purpose, Scope and Sources of Evaluation.
> (a) Each faculty member, tenured and non-tenured, shall be evaluated at least once annually on the basis of his or her individual total performance in fulfilling responsibilities to the University. The basic purpose of the evaluation is faculty improvement in the functions of teaching, research, service, and any other duties that may be assigned, with the resulting enhancement of learning, cultural advancement

> and the production of new knowledge. This evaluation shall precede and be considered in recommendations and final decisions on tenure, promotions, salary increments, and retention or termination.
>
> (b) When first employed, each faculty member shall be apprised, through his or her contract, of what is expected of him or her, generally, in terms of teaching, research and other creative activities, and service, and specifically if there are specific requirements and/or duties involved. If and when these expectations change during the period of service of the faculty member, that faculty member shall be apprised of the change in written form...

Rule 6C2-4.033, Florida Administrative Code, implements Section 240.245, Florida Statutes (1985), entitled "Evaluations of faculty members; report. " This statute, which deals with the assignment of duties and responsibilities only "[f]or the purpose of evaluating faculty members," Section 240.255(1), Florida Statutes (1,985), requires:

> These assigned duties or' responsibilities shall be conveyed to each faculty member at the beginning of each academic term, in writing, by his departmental chairman or other appropriate university administrator ....
>
> Section 240.255(1), Florida Statutes (1985).

The statute, and therefore the rule, may be read to apply only to faculty members below the rank of dean, as a faculty member given assignments by a departmental chairman would ordinarily be. The statute (and presumptively, therefore, any rule purporting to implement it) contemplates, moreover, written assignments "at the beginning of each term." See Mohammed v. Department of Education, University of Florida, 444 So.2d 1007 (Fla. 1st DCA 1984); but see Erb Fontenot v. Florida State University, No. 85-3843 (FSU; Jan. 5, 1987).

35. While it is true that Dr. Tuckman was appointed professor, as well as dean, and was, therefore, a faculty member at all pertinent times, Dr. Turnbull's letter of July 24, 1985, said nothing whatsoever about reassigning his professorial responsibilities, "teaching, research and other creative activities and service." Because he was a dean, not because he was a professor, Dr. Tuckman was directly answerable to Dr. Turnbull, as President Sliger's designee. Dr. Turnbull ended Dr. Tuckman's service as a dean; he did not simply alter his duties as a professor.

Year Term Specified

36. Alternatively, FSU contends that a statute, incorporated by reference in the parties' employment contract, authorized FSU to terminate the deanship at will. But a fair construction of the whole instrument is that FSU contracted for Dr. Tuckman's services as dean through August 31, 1985, and that the parties were mutually bound by their agreement to this effect. The employment contract enforced against the employer in Grappone v. City of Miami Beach, 496 So.2d 836 (Fla. 3rd DCA 1986) "[b]y its terms ... commence[d] on a day certain and

terminate[d] upon a future contingent event." At 839. Here both commencement and termination dates are spelled out.

37. In arguing that the employment contract should be construed as making Dr. Tuckman dean only at the pleasure of the president, rather than for the duration of the term stated in the contract, FSU contends that the contract incorporates by reference a statute in effect at the time FSU and petitioner entered into the 1984-1985 employment contract, which provided:

> [E]ach university shall have the power and duty to:
>
> * * *
>
> (5) Appoint, remove, and reassign vice presidents, academic deans, and other policy level positions reporting directly to the president. The president shall appoint and be responsible for all other personnel.
> (6) Provide for the compensation and other conditions of employment for university personnel who are exempt from chapter 110.
> Section 240.277, Florida Statutes (1984 Supp.)

Effective July 1, 1985, Ch. 85-241 s. 13, Laws of Florida (1985), this statute was amended, Ch. 85-241 s. 6, Laws of Florida (1985), to read, in pertinent part:

> Each University president shall:
> (5) Appoint university personnel and provide for the compensation and other conditions of employment consistent with applicable collective bargaining agreements and Board of Regents rule for university personnel who are exempt from chapter 110.
> Section 240.227, Florida Statutes (1905).

The earlier version of the statute was no longer in effect as of July 24, 1985, but, to the extent it was incorporated in the parties' contract, its provisions, if applicable, would continue as part of their contract, notwithstanding the statutory amendment. Florida Beverage Corp. v. Division of Alcoholic Beverages and Tobacco, Department of Business Regulation, 503 So.2d 396 (Fla. 1st DCA 1987). For obvious reasons, FSU has made no claim that Dr. Blackwell's memorandum was incorporated in the parties' agreement.

38. FSU's authority to appoint, remove and reassign is clear. Indeed, the fact of the contract presupposes FSU's authority to appoint. Nor, in exercising this authority to appoint, was FSU under any obligation to enter into an employment contract for a definite term. But, having entered into such a contract, FSU has no legal authority unilaterally to throw off the contractual obligations it assumed. Here explicit provisions of the contract define with precision how FSU's authority to appoint and remove was exercised in this case. In large, capital letters, the contract declares its intention to bind the parties for "12 MONTHS," through August 31, 1985.

No Right to Renewal or Notice of Nonrenewal

39. Dr. Tuckman argues that Article VII of FSU's Constitution was incorporated in the employment contract by reference, and confers the right on incumbent deans to continue as deans, absent notice and proof of cause for their removal. As a factual proposition, this contention was rejected ante, paragraphs 29 and 30 of the findings of fact. Neither the practice at FSU nor the understanding of ,those who interpretated Article VII was consistent with incorporation.

40. Petitioner contends, however, that, as dean, he was a person "within a college or school holding [an] academic appointment [] whose responsibilities d[id] not include teaching," Rule 6C2-1.004(7), Florida Administrative Code, and that, as a matter of law, he was "professional staff" within the intendment of the rule, on that account. But the evidence demonstrated that petitioner did teach while he served as dean and that, although he had no contractual obligation to teach, his responsibilities did include teaching, once he took it on. (T.415) Because he both held an academic appointment within the College of Education and had teaching responsibilities, his situation does not fall within the ambit of Article VII of the FSU Constitution.

41. The long-standing practice at FSU, and perhaps the universal rule in this country, is that academic deans have no tenure in their deanships, in the sense that university professors have tenure as professors. Certainly nothing in the employment agreements the parties signed created any right in petitioner to remain as dean beyond August 31, 1985. Cf. Mohammed v. Department of Education, University of Florida, 444 So.2d 1007 (Fla. 1st DCA 1984); Erb Fontenot v. Florida State University, No. 85-3843 (FSU; Jan. 5, 1987). Nor does any provision of the 1984-1985 contract, Petitioner's Exhibit No. 13, spell out any right to notice of FSU's intent not to renew. Petitioner did not prove any practice, custom or usage with regard to affording deans notice, when FSU decides not to renew their contracts for the dean and professor" positions they hold, much less reliance, on his part, on any such custom or usage. A fortiori, no right to renewal absent cause has been demonstrated. On this record, FSU was under no legal obligation to afford Dr. Tuckman any more notice than it did furnish that his contract as "dean and professor" would not be renewed.

Declaratory Relief Only

42. Dr. Turnbull's letter of July 24, 1985, breached the contract between the parties, but any injuries Dr. Tuckman may have suffered were not monetary. He received the agreed salary for the whole term of the contract. In this respect, the present case resembles that of a public employee who has been suspended with pay pending a hearing on charges that would warrant termination, but which are not proven. Although exonerated at hearing, such an employee is entitled to no additional moneys or other "nondeclaratory" relief, with respect to the period of suspension.

43. The only injury petitioner has proven that he sustained by virtue of FSU's breach was the unwelcome change in status, on and after July 24, 1985, to and including August 31, 1985, from "dean and professor" to "professor" only. Every other claim he has advanced in each of these consolidated cases must be rejected, to the extent it rests on rights thought to arise under the parties' 1984-1985 contract. Since, however, the District Court's decision in Tuckman v. Florida State University, 489 So.2d 133 (Fla. 1st DCA 1986), establishing the law of the case, assumes that the breach affected petitioner's substantial interest, he is at least entitled to a declaration that the breach occurred.

Other Allegations

44. In Case No. 86-3305 petitioner seems to allege that FSU reduced his salary by 18.2 percent for 1986-1987 for "unlawful," "punitive and retaliatory" reasons. Under these broad headings, it may be petitioner's intention to plead violations of his rights as a tenured professor, see Rule 6C-5.225, Florida Administrative Code, or of his First Amendment rights as a citizen. See Connick v. Myers, 461 U.S. 138, 75 L.Ed.2d 708, 103 S.Ct. 1684 (1983); Pred v. Board of Public Instruction of Dade County, Florida, 415 F.2d 851 (5th Cir. 1969). Against this possibility, it is appropriate to grant leave to amend the petition in Case No. 86-3305, in order that petitioner have an opportunity to file a petition in conformity with Rule 22I-6.004, Florida Administrative Code. See All Risk Corp. of Florida v. State Department of Labor and Employment Security, Division of Workers' Compensation, 413 So.2d 1200 (Fla. 1st DCA 1982). By separate order of even date, such leave is granted, and Case No. 86-3305 remains open for that purpose.

RECOMMENDATION

That FSU enter a final order in Case No. 86-2483 declaring the parties' 1984-1985 employment contract, Petitioner's Exhibit No. 13, breached, effective July 24, 1985, but denying further relief in Case No. 86-2483.

DONE and ENTERED this 11th day of June, 1987, at Tallahassee, Florida.

____

ROBERT T. BENTON, II
Hearing Officer
Division of Administrative Hearings
The Oakland Building
2009 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of June, 1987.

APPENDIX TO RECOMMENDED ORDER, CASE NO. 86-2483

Petitioner's proposed findings of fact Nos. 1 through 17, 20, 22, and 24 have been adopted, in substance, insofar as material.

Petitioner's proposed finding of fact No. IS has only been adopted to the extent indicated by reference to petitioner's remaining proposed findings of fact.

With reference to petitioner's proposed finding of fact No. 19, the FSU Constitution has been adopted as an administrative rule, now numbered Rule 6C-1.004, Florida Administrative Code.

With reference to petitioner's proposed finding of fact No. 21, Dr. Tuckman saw Article VII in July or August of 1983. The evidence did not show that he relied in fact on Article VII.

Petitioner's proposed findings of fact Nos. 23 and 25 were not established by the weight of the evidence.

Respondent's proposed findings of fact Nos. 1, 2, 4, 5, 8, 9, 10, 12, 13, 14, 16, 18, 19, 21, 22, and 24 have been adopted, in substance, insofar as material.

With respect to respondent's proposed finding of fact No. 3, Rule 6C2-1.004(3)(a), Florida Administrative Code, makes clear that Article VII can confer membership in the general faculty.

With respect to respondent's proposed findings of fact Nos. 6 and 7, FSU contracted in September of 1984 for Dr. Tuckman's services as "dean and professor," not only for his services as a professor. Although deans ordinarily hold professorial rank, there is a difference between being dean and being simply a professor. In executing Petitioner's Exhibit No. 13, the parties agreed that Dr. Tuckman would serve as dean through August 31, 1985.

With respect to respondent's proposed finding of fact No. 11, the evidence supports every sentence but the antepenultimate, which is partially an erroneous conclusion of law. The evidence did not show that an FSU vice-president had ever before unilaterally removed a dean, although there was testimony that Robert Lawton had been asked for his resignation. (T. 220)

Respondent's proposed finding of fact No. 15 has been adopted, in substance, insofar as material, except that the evidence was that Dr. Tuckman had appointed three quarters of the Administrative Council, not three quarters of the department heads.

With respect to respondent's proposed finding of fact No. 17, the number was $6,056.

Only the first sentence in respondent's proposed finding of fact No. 20 has been adopted as established by the weight of the competent evidence.

The first two sentences in respondent's proposed finding of fact No. 23 were established by the evidence. On July 24, 1985, Dr. Tuckman was relieved of his responsibilities as dean. Thereafter, Dr. Edwards acted de facto as Dean of the College of Education.

With respect to respondent's proposed finding of fact No. 25, the evidence showed that Dr. Turnbull set out to do what he thought was best for the university without any ulterior motive, but the evidence did not show that Dr. Tuckman had breached the employment agreement or that anything else had relieved FSU of its legal obligations under the agreement.

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==
AGENCY FINAL ORDER
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STATE OF FLORIDA
DEPARTMENT OF EDUCATION
DIVISION OF UNIVERSITIES
STATE UNIVERSITY SYSTEM
THE FLORIDA STATE UNIVERSITY

BRUCE TUCKMAN,

Petitioner,

vs. CASE NO. 86-2483

THE FLORIDA STATE UNIVERSITY,

Respondent.
______________________________/

FINAL ORDER

This matter came before me as Presidents of The Florida State University, in my capacity as agency heed as defined in section 120.52(3), Florida Statutes, for consideration of the Recommended Order in the above-styled cause as rendered by the Hearing Officer of the Division of Administrative Hearings on June 11, 1987, pursuant to formal proceedings conducted in accordance with section 120.57(1), Florida Statutes. See Tuckman v. Florida State University, 489 So.2d 173 (Fla. 1st DCA 1986). Exceptions to the Recommended Order were filed by the Petitioner. Upon consideration of the Recommended Order and Petitioner's exceptions thereto, it is hereby ordered:

1. That the Hearing Officer's Findings of Fact, paragraphs 1-30, are adopted and incorporated herein by reference.

2. That the Hearing Officer's Appendix, ruling on the parties' proposed findings of fact, is adopted and incorporated herein by reference, with the exception of the first and last sentences in the eighth and last full paragraph on page 21, which state a conclusion of law of the Hearing Officer with which the University disagrees.

3. That the Hearing Officer's Conclusions of Law and their corollaries and legal reasoning leading thereto that Petitioner was not a member of the "professional staff" referenced in Article VII of the University Constitution, that there is no tenure in a deanship, that Petitioner had no right to continue as dean subsequent to August, 1985, nor any right to notice of nonrenewal beyond what he was given, that Petitioner suffered no monetary damages, are adopted and incorporated herein by reference, but the Conclusion of Law and legal reasoning leading thereto that there was a technical breach of contract by the University is rejected.

4. That the Hearing Officer's Conclusion of Law and the legal reasoning leading thereto that the University entered into a contract for Petitioner's

services as dean through August 31, 1985 [with no discretion reposed in the President or his designee, the Vice President, to remove or reassign the dean's policy-level duties if the need arose], and therefore by relieving him of his responsibilities as dean on July 24, 1985, breached a contract with Petitioner is rejected for the following reasons:

"Dean and Professor" is precisely an academic classification. It is a specific and singular classification within the faculty pay plan. (See Finding of Fact 25.) That title is covered under Article VI of the Florida State University Constitution (Rule 6C2-1.004(6), Florida Administrative Code, which defines faculty. (See Finding of Fact 30.) Thus, Rule 6C2-4.033, Florida Administrative Code, applies to Dean and Professor as a single job classification of a faculty member. Of particular note is subsection (b) of that Rule:

> (b) when first employed, each faculty member shall be apprised, through his or her contract, of what is expected of him or her, generally, in terms of teaching, research and other creative activities, and service, and specifically if there are specific requirements and/or duties involved. If and when these expectations change during the period of service of the faculty member, that faculty member shall be apprised of the change in written form...

Contrary to the recommended conclusion of law, p. 15 of the Recommended Order, the "assigned duties" include Petitioner's duties as professor and as dean. Indeed his administrative duties flow from and interact with his responsibilities of teaching, research and other creative activities and service, and specifically where he had "specific requirements and/or duties involved" as dean. Dr. Turnbull's letter of July 24, 1985, reassigned those duties in accord with this rule.

The appointment "contract" at issue herein, Petitioner's Exhibit 13, communicated to him that his annual salary for the period September 1, 1984 through August 31, 1985, would be $63,000. The document specified the salary, the Classification Title/Rank of Dean & Professor, with a Class Code of 9040 and Appointment Modifier B. None of these numbers or designations changed on July 24, 1985. The Hearing Officer found that as a practical reality Petitioner did not serve as dean after July 24, 1985, and the University has accepted that factual determination, but the University never promised Petitioner that he would have an administrative assignment throughout the anticipated period to do deanly duties. The Hearing Officer did not specifically address the University's proposed finding of fact, which is supported by the evidence, that appointment contracts and assignments of duties are not contained in the same document. University practice and Rule 6C2-4.033 noted above clearly demonstrate this fact.

The contract document that gave Petitioner deanly duties was his Exhibit 10, the letter of April 28, 1983, from Dr. Turnbull offering Petitioner the position of "Dean of the Florida State University College of Education which carries with it the rank of Full Professor of Education." The Hearing Officer

correctly found that there is no tenure in a deanship at this University and perhaps universally in this country and that the University's authority to appoint, remove, and reassign deans is clear. Thus, a dean's employment as dean is at the pleasure of the President, i.e., at will.

Petitioner's initial "contract" with the University, his offer and acceptance of employment with the University to begin on July 1, 1983 (Petitioner's Exhibit 10), is a contract of indefinite duration. It anticipates continuing beyond simply being temporary. Contracts for indefinite periods of time may be terminated by either party at will. Knudsen v. Green, 116 Fla. 47, 156 So.240 (1934); Muller v. Stromberg Carlson Corp., 427 So.2d 266 (Fla. 2d DCA 1983); Roy Jorgenson Assoc., Inc. v. Deschenes, 409 So.2d 1188 (Fla. 4th DCA 1982); Catania v. Eastern Airlines, Inc., 381 So.2d 265 (Fla. 3d DCA 1980; Russell & Axon v. Handshoe, 176 So.2d 909 (Fla. 1st DCA), cert. denied, 188 So.2d 317 (Fla. 1965). Petitioners initial contract includes a continuing appointment (as opposed to temporary) under Rule 6C-5.105(4)(a)1, Florida Administrative Code:

> (4) Types of Appointments - Appointments are classified with respect to duration of time and degree of effort.
>
> (a) Duration of time.
>
> 1. Continuing - Those appointments for periods of no more than twelve months but at least thirty-nine weeks of each, beginning with the Fall or Summer term.
>
> 2. Temporary - Those appointments for periods of time of less than thirty-nine weeks of an academic year. If an appointment is temporary, the contract or letter of appointment shall so state and notice of nonrenewal of such an appointment is not required.

(emphasis supplied). Continuing means at least 39 weeks; temporary means less than 39 weeks, or nine months, the standard faculty appointment. As appointments of indefinite duration, continuing contracts are terminable at will subject to any applicable notice provisions or tenure rights as found elsewhere in the rules or union agreement. There is no tenure in administrative positions, nor do notice provisions apply to tenured faculty members who are informed they will not continue in an administrative position. Mohammed v. Dept. of Education, Univ. of Fla., 444 So.2d 1007 (Fla. 1st DCA 1984). Unlike for all other classes of employees, there are no provisions of any kind in the statutes, rules or union agreement giving academic deans (or vice presidents or such policy level positions) any employment rights in their administrative duties. An analogous situation to the present case existed in Roy Jorgensen Associates, Inc. v. Deschenes, wherein Deschenes was offered and accepted an employment contract containing an express provision relating to its duration, stating that

> On or about October 31 you will be assigned to our Ecuador Highway Maintenance Technical Assistance

> Project in the capacity of Highway
> Maintenance Engineer for a period
> of 28 months.

409 So.2d at 1190. The letter also referred to Deschenes becoming a "permanent employee" and the accrual of three weeks per year of annual leave after five-years' service. The court viewed "the quoted language of the contract....as being merely language of expectation, not as a definite period of employment." Id. Likewise in Petitioner's case the intention when he was hired in 1983 was that he would serve as dean of the College of Education for an indefinite period--as long as the President or designee wanted him to, subject to his own right to resign at any time. (See Finding of Fact 23, 24.) Other Academic Deans testified that this was the Agency policy and practice and they also signed continuing "contracts" as Petitioner's Exhibit 13. Petitioner's annual appointment contracts specifying annual salary may be seen as evidencing expectations within the original indefinite term of employment.

The Hearing Officer seems to have focused only on Petitioner's Exhibit 13 in finding that it somehow limited the University's recognized authority to remove Petitioner as dean, without reading it in pari materia with Petitioner's initial appointment letter and without construing applicable law to be part of it. In addition to the above noted Rules, at the time of execution of the contract at issue, the following statute was in effect:

> [E]ach university shall have the
> power and duty to:
>
> (5) Appoint, remove, and reassign
> vice presidents, academic
> deans, and other policy-level
> positions reporting directly to the
> president. The president shall
> appoint and be responsible for all
> other personnel.
>
> (6) Provide for the compensation
> and other conditions of employment
> for university personnel who are exempt
> from Chapter 110.

240.277(5), Fla. Stat. (Supp. 1984) (emphasis supplied). This same explicit additional authority was provided in Rule 6C- 4.01(2). Applicable law in force at the time a contract is executed is deemed to be part of the contract as if expressly incorporated into it. Fla. Beverage Corp. v. Div. of Alcoholic Beverages & Tobacco, 503 So.2d 396 (Fla. 1st DCA 1978). The contract here at issue specifically provided that it is subject to the constitution and laws of this state, the United States, and the rules of the Board of Regents. Moreover, agency practice, including trade and local customs and usages (as found in Finding of Fact 23 and 24.), are relevant to consider in interpreting the contract. 11 Fla. Jur. 2d Contracts 125, 128, 129 (1979); Restatement (Second) of Contracts 222 (1979).

Section 240.277(5) gives the University (President or designee) the power to appoint and be responsible for all university personnel. The power to appoint would include the power to appoint for a specific, definite term as well as for an indefinite term. It would also include the power/discretion not to appoint or not to reappoint. The legislature did not deem the President's power

to appoint for a specific term or to choose not to do so sufficient in the case of academic deans and other policy-level positions. It went further regarding the President's power over these positions and explicitly and specifically gave the President the additional power to remove and reassign them. Removal and reassignment connote a change in status at the time an existing appointment is still operative. This interpretation is based on the plain meaning of the words, Brooks v. Anastasia Mosquito Control District, 148 So.2d 64 (Fla. 1st DCA 1963), Guarniere v. Henderson, 171 So.2d 617 (Fla. 1st DCA 1965), as well as the presumption that statutory language is there for a purpose. Alexander v. Booth, .56 So.2d 716 (Fla. 1952); Lee v. Gulf Oil Corp., 148 Fla. 612, 4 So. 868 (1941); Vocelle v. Knight Bros. Paper Co., 118 So.2d 664 (Fla. 1st DCA 1960).

Section (6) of the statute gives the President the authority to "provide for the compensation and other conditions of employment" for University personnel. That would include the term, duration and assignment of all such personnel, including academic deans. Further, Section (5) gives the President the right to appoint certain high level, policy positions, including academic deans. Clearly those two sets of powers would give the President the power to appoint for only a specific duration or for no duration, i.e., at will. Thus, Section (6) and the power to appoint alone would give the President the very authority which the Hearing Officer concluded the University utilized in creating the "contract" at issue, Petitioner's Exhibit 13. But the legislature gave the University two additional provisions for this certain category of policy level positions, i.e., "to reassign and to remove." These additional powers were intended notwithstanding the appointment, whether for a certain duration, certain period of time or certain assignment. This statutory power incorporates a long standing academic custom and far understanding, which was further expressed in a Chancellor's memorandum (Respondent's 16) and in the Board of Regents Rule, 6C-4.01(2). The "contract" at issue incorporates those statutory and agency rules and specifically makes it subject to them. All of the academic deans testified that they signed similar "contracts" and understood they served at the pleasure of the President or his designee, and could be unilaterally reassigned or removed at any time. Even Petitioner said his past experience was that deans serve at the pleasure of the University.

Agency practice and policy has long been that deans serve at the pleasure of the President or designee. The 1984-1985 "contract" at issue was not meant to, and did not, promise a specific assignment; it promised a specific salary, with the contemplation that Petitioner would serve as dean unless something happened to cause the President or designee to determine that Petitioner's service as dean was no longer in the best interests of the University. The University would never bind itself to enduring a 12-month period with a top policy-level administrator who becomes unacceptable, for whatever reason, to the President or designee and give up its clear authority not only to appoint, but also, in addition, to remove and reassign. Recommended Order at 17.

Likewise, it is clear that the parties did not intend that the designation of August 31, 1985 was to signify the legal duration of Petitioner's status as professor. Yet that would also be the logical conclusion of the Recommended Order.

The same rules and statutory provisions as well as standard practice in existence outside the four corners of Petitioner's Exhibit 13 reveal not one right, process or procedure relating only to deans or administrative duties. Deans are faculty whose assignment is predominantly administrative as determined by the Vice-President. Some deans do what others do not; colleges, schools, and departments differ. University administration requires a policy which makes

such service and duties to be at the discretion and unilateral direction of the appropriate administrator, whether it be Vice-President, President or other. That is precisely what history, practice, policy, rule and statute provide.

It is to these factors that logic dictates we go to determine what the contract, with a capital "C," between Petitioner and Respondent really is.

The Recommended Order erroneously disregards the history, policy, practice, Rules and Statutory provisions noted above. Instead it views simply "12 months" and August 31, 1985 as the controlling provisions without going beyond the document. Clearly none of the terse terms, phrases and code numbers is clearly self-evident or all-encompassing.

The Hearing Officer apparently concluded as a matter of law that the University forfeited even these additional powers given by the legislature in section 240.277(5) by entering into the subject contract, even though the University was under no obligation to do so. The University rejects this interpretation as contrary to its longtime policy, practice, rule and statute, that deans serve at the pleasure of the President and contrary to the document itself, which does not except section 240.277(5) from the "Laws of the State of Florida" to which it was explicitly subject. The University's interpretation of a statute governing its operation and based on long-established policy should be given great weight. See McDonald v. Dept. of Banking and Finance, 346 So.2d 569 (Fla. 1st DCA 1977). Moreover,

> Contracts are written, and are to be read, by reference to the norms of conduct and expectations founded upon them. This is especially true of contracts in and among a community of scholars, which is what a university is The readings of the market place are not invariably apt in this non-commercial context.

Greene v. Howard University, 412 F.2d 1128, 1135 (D.C. Cir. 1969) (emphasis supplied).

5. That Petitioner's exceptions are diposed of as follows:

> 1. and 2. Contrary to Petitioner's assertion, there was no breach of contract. But even if there had been, the law would not require restoration of his position, as his right to it would have expired on August 31, 1985. Denied.
>
> 3. Petitioner's assertion is contrary to the Hearing Officer's findings, which were supported by the law and evidence. Denied.
>
> 4. Same as 3. Denied.
>
> 5. As found by the Hearing Officer and according to law the alleged breach was without legal detriment to Petitioner inasmuch as he lost no salary. The alleged humilia-

tion suffered by Petitioner is not an element of recoverable damages and is contrary to the evidence. Hazen v. Cobb, 96 Fla. 151, 117 So. 853 (1928). Denied.

6. The undersigned is unable to determine which are the "discrete, penumbral findings or conclusions adjunctive to #1 - #6 [sic]" to which he excepts and further, there is ample evidence to sustain the findings. Denied.

6. That the Hearing Officer's recommendation that the University enter a final order declaring that the parties' 1984- 1985 employment contract was breached effective July 24, 1985, is rejected for the above-stated reasons, but his recommendation that other relief should be denied is accepted. All of the Hearing Officer's conclusions of law that support the denial of relief are incorporated herein.

IT IS THEREFORE ORDERED THAT:

The Petition herein is DISMISSED.

Pursuant to section 120.59, Florida Statutes, the parties are notified that any appeal of this Final Order may be made by filing one copy of a Notice of Appeal with the Clerk of the Agency, Ms. Janet V. Everheart, Office of General Counsel, 311 Hecht House, Florida State University, Tallahassee, Florida 32306, and one copy, accompanied by the filing fees prescribed by law, with the First District Court of Appeal within thirty (30) days of the date this Order is filed.

This Order shall become effective upon filing with the Clerk of the Florida State University.

DONE this 9th day of September, 1987.

____
BERNARD F. SLIGER
President
The Florida State University

Filed with the Clerk of the Agency this 9th day of September, 1987, at Tallahassee, Leon County, Florida

____
Janet V. Everheart
Clerk
The Florida State University

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