

IN THE MATTER OF ARBITRATION  
between

UNITED FACULTY OF FLORIDA,  
(Daniel B. Ward),

and

BOARD OF REGENTS, STATE  
UNIVERSITY SYSTEM OF FLORIDA,  
(The University of Florida),

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Re: Grievance -- BOR File No. 82-354

Before: B. R. Skelton, Arbitrator

The hearing in this case was held on September 19, 20 and 21, 1983, in Gainesville, Florida, at which time both parties were afforded the opportunity to present, examine, and cross-examine witnesses and present exhibits. The hearing was recorded by tape and notes of the arbitrator. Oral closing arguments were made by the parties.

#### APPEARANCES

For the Union: Marilyn Young, Arbitration Advocate

For the Board of Regents: James J. Parry, Arbitration Advocate

#### STATEMENT OF THE CASE

In October 1978, the Chairman of the Botany Department at the University of Florida informed Dr. Daniel B. Ward, the Grievant, that a committee (the Herbarium Committee) was to be established to consider the transfer of the Department's plant collection to the Florida State Museum. For the purpose of this grievance, the plant collection is the Herbarium.

The Herbarium Committee had two major goals: (1) to define the mission of the Herbarium in terms of present and future needs of the University, and (2) to determine the appropriate location for the Herbarium. In addition, as a collateral goal, the Committee was to make recommendations on the administrative leadership of the Herbarium.

In January 1979, the Herbarium Committee submitted its report and recommendations to the Vice President for Academic Affairs. He, in turn, submitted the report to the Vice Presidents of those budgetary units involved with the function of the Herbarium to determine what

actions, if any, should be taken by the University.

The Vice Presidents concurred with the recommendations of the Herbarium Committee, namely: (1) that the Herbarium should be considered a resource of University-wide importance to teaching and research; (2) that the Herbarium should be relocated administratively in the Florida State Museum; and (3) that the leadership of the Herbarium should be changed.

At that time, Dr Ward was the Curator of the Herbarium's vascular plant collection, and had been throughout his tenure at the University. Dr. Ward objected to the transfer of the Herbarium to the Florida State Museum and to the Committee's recommendation for a change in leadership.

On April 20, 1979, the Dean of the Institute of Food and Agricultural Sciences (IFAS) and the Dean of the College of Liberal Arts and Sciences wrote the Grievant a letter to advise him: (1) that he would no longer be the Curator or be involved with the management of the Herbarium, (2) that a director would be appointed to assume this responsibility, (3) that he would have to move his office out of the Herbarium by June 1, 1979, and (4) that he would have access to the Herbarium for research and teaching purposes just as other faculty members would have access.

In late Spring of 1979, the University began the process necessary to implement the establishment of the Herbarium as a University-wide resource in the Florida State Museum.

On May 18, 1979, the Grievant wrote a letter to the Dean of the College of Liberal Arts and Sciences to pursue several matters of dispute related to his assignment. In this letter Dr. Ward stated that the change in his responsibilities for the "higher plant herbarium" including the loss of control of, and full access to the specimens, equipment, and other research materials he had assembled during his 21 years of employment with the University would damage his future capabilities as a University employee.

The Dean responded to the Grievant's letter on June 4, 1979, and advised Dr. Ward that the decision to change the leadership in the management of the Herbarium came from a recognition by the University that there was need to bring fresh minds to work in that area. The Dean also stated that the collections belonged to the University because they were secured through expenditure of general revenue funds or funds from contracts and grants.

Concomitant with Dr. Ward's removal as Curator of vascular plants and his reassignment to an office and laboratory in McCarty Hall, the locks on the doors to the Herbarium were changed. Dr. Ward did not receive a key which would give him unlimited access to the Herbarium. Thus, he was required to conduct his research in taxonomy either during the hours the Herbarium was open to the public and other faculty and staff

or borrow specimens and take them to his current office-lab. A third alternative and the one chosen by Dr. Ward since June 1979, was to just not engage in research activities. His publications record reflects a large number of publications prior to his reassignment in 1979, but none since then.

The essence of this grievance is whether the University and/or the Florida State Museum administration has a right under the Agreement to limit the time period during which Dr. Ward has access to the Herbarium.

Between June 1979 and March 30, 1981, the forum in which Dr. Ward's grievance was to be heard became an issue. This issue was resolved on March 5, 1981. On that date, the President of the University wrote a letter to Dr. Ward in which he stated that Dr. Ward was a member of the bargaining unit and had available to him the grievance procedures set forth in the collective bargaining Agreement.

On March 30, 1981, this grievance was filed. It remained unresolved in the earlier steps of the grievance procedure and is now the subject of this arbitration. The parties stipulated at the hearing that the grievance was arbitrable and properly before the arbitrator.

#### ISSUE

Did the University of Florida, in limiting Dr. Ward's access to, and workspace in, the Herbarium as a result of the 1979 reassignment of his duties violate Articles 5, 9, 21, and 27 of the 1978-81 collective bargaining agreement between the Board of Regents and United Faculty of Florida? If so, what shall the remedy be?

#### RELEVANT CONTRACT LANGUAGE

##### Article 4 -- RESERVED RIGHTS

The Board retains and reserves to itself all rights, powers, and authority vested in it, whether exercised or not, including but not limited to the right to plan, manage and control the State University System and in all respects carry out the ordinary and customary functions of management.

All such rights, powers, and authority are retained by the Board subject only to those limitations expressly imposed by this Agreement. Only violations of such limitations shall be subject to Article 20, Grievance Procedure.

##### Article 5 -- ACADEMIC FREEDOM

It is the policy of the Board and UFF to maintain and encourage full academic freedom. In the exercise of this freedom, employees shall be



free to discuss fully their own subjects frankly and forthrightly and to engage freely in scholarly and creative activity and publish the results. Academic freedom is accompanied by the corresponding responsibility to provide objective and skillful exposition of one's subjects and to indicate when appropriate that one is not an institutional representative unless specifically authorized as such.

#### Article 9 - ASSIGNMENT OF RESPONSIBILITIES

9.1 The professional obligation is comprised of both scheduled and non-scheduled activities. The parties recognize that it is a part of the professional responsibility of employees to carry out their duties in an appropriate manner and place. For example, while instructional activities, office hours and other duties and responsibilities may be required to be performed at a specific time and place, other non-scheduled activities are more appropriately performed in a manner and place determined by the employee.

9.2 Employees shall be apprised in writing, at the beginning of their employment and at the beginning of each year of employment thereafter, of the duties and responsibilities in teaching, research and other creative activities, service, and of any other specific duties and responsibilities assigned for that year.

#### Article 21 -- OTHER EMPLOYEE RIGHTS

21.2 Office Space. Each employee shall be provided office space which may be on a shared basis. The parties recognize the desirability of providing each employee with enclosed office space with a door lock, office equipment commensurate with assigned responsibilities, and ready access to a telephone. Each employee shall, consistent with building security, have reasonable access to the employee's office space and laboratories, studios, music rooms and the like used in connection with assigned responsibilities; this provision may require that campus security provide access on an individual basis.

#### Article 27 -- MAINTENANCE OF BENEFITS

No employee may be required to waive the benefits provided by the terms of this Agreement. No employee shall, as a result of the establishment of a level of rights or benefits in this Agreement, suffer a loss or diminution of any such rights or benefits for which otherwise eligible.

#### POSITION OF THE UNITED FACULTY OF FLORIDA (UFF)

The Union contends that the limitation of access to the Herbarium at the University of Florida denies Dr. Daniel B. Ward rights guaranteed to him by the Agreement between the parties. In addition to violating

past and present practice, the UFF alleges specific violations of Articles 5, 9, 21, and 27.

To the Union the sole issue is whether Dr. Ward is to have the freedom to pursue scholarly, creative, research activities. To perform effectively, free access to work space, equipment, and specimens 24 hours per day is required. The current limitation to access during the hours the Herbarium is normally open to the public precludes the type research productivity expected of Dr. Ward, according to the UFF.

The UFF argues that all their witnesses testified that they had fully equipped laboratories adjacent to their offices with unlimited access. To deny Dr. Ward access to his laboratory, the Herbarium, the Union continues, results in differential treatment which violates Article 5 of the Agreement. The past and present practice to permit faculty members access to work space and research areas after hours is not extended to Dr. Ward, therefore violating this Article.

The UFF believes that Article 9.1 has no meaning without access when research must be done on campus as Ward does. Further, Article 21.2 and practice, support the right of access to work space. The language in this article states that faculty are to be provided access to offices, laboratory space, studios and the like. It is the UFF's contention that "the like" includes areas necessary for assigned responsibilities of teaching, research, and service, including access after hours, on weekends, and holidays.

Dr. Ward does have a research assignment as indicated by both UFF Exhibit 7 and BOR Exhibit 10. The UFF contends that because the equipment and materials are in the Herbarium, which closes at 5 PM, that he is being denied the opportunity to pursue research activities.

The UFF states that the Herbarium is Dr. Ward's laboratory and cannot be construed as being like a library. The Herbarium contains materials consisting of specimens, reprints, books and equipment used by Dr. Ward for his research. To him the Herbarium is more than just a resource used as an adjunct to his research; it is his stock in trade.

The University, according to the Union, effectively violated Dr. Ward's academic freedom when it locked him out of his research space in the Herbarium. Others have access who have no administrative duties in the Herbarium. Therefore, the only way Dr. Ward can pursue the scholarly research required is if he has free and unlimited access.

By way of remedy, the UFF requests the following:

1. that Dr. Ward receive, at all times, full access to the vascular plants of the Herbarium;
2. that the University and/or the Herbarium be charged with maintaining these specimens in a safe and professional manner.



3. that those specimens on which Dr. Ward is directly engaged in research shall not be loaned to others or otherwise removed from his use.

The UFF further requests:

4. Dr. Ward be assigned office and workspace in, or immediately adjacent to, the herbarium, with full access to that space, and equipment and materials which he purchased with contract and grant or research funds, as well as control over his correspondence file and reprint collection.

5. Alternatively, the UFF requests that Dr. Ward be assigned workspace in, or adjacent to, the herbarium, with full access to that space, and that he be assigned responsibility for the use and control of all equipment and materials which he purchased with contract and grant or research funds, as well as control over his correspondence file and reprint collection, and that Dr. Ward retain as his office the space he is currently assigned in McCarty Hall.

6. To facilitate the minor accommodations necessary for smooth implementation of the remedy, we request that the arbitrator retain jurisdiction over the matters related to this dispute until such time as he is satisfied that resolution has been achieved.

7. Should the arbitrator decide that the determination of ownership is relevant, yet not wish to make such a determination on these items (correspondence, reprints, books, and journals), or any part thereof, at this time, the UFF requests that the arbitrator retain jurisdiction over this issue and return to make the property determination at a later date.

#### POSITION OF THE UNIVERSITY OF FLORIDA -- BOARD OF REGENTS

The position of the Board of Regents (BOR) is as follows:

1. The University's reassignment of Dr. Ward's responsibilities in the Herbarium with attendant relocation of his office space and a limitation on access to the Herbarium does not constitute a violation of the Agreement between the parties.

2. The vascular plant Herbarium at the University existed long before Dr. Ward's arrival at the University in 1958 and was recognized as an extensive collection available for use by many parties, both within and outside the University. During the period prior to 1979, the Herbarium was operated under the auspices of the Institute of Food and Agricultural Sciences (IFAS). From his arrival at the University until 1979, Dr. Ward had curatorial responsibilities for the vascular plant

Herbarium. Dr. Ward's activities also included involvement with the IFAS plant identification service which was located in the Herbarium. In recognition of these responsibilities, he was provided an office space in the Herbarium, with a key and unlimited access to such space. The Board contends that the Herbarium was not in its essential nature, Dr. Ward's private laboratory. It was, rather, a collection of specimens and other resources (only a small percentage of which were provided by Dr. Ward) available for use by those within and without the University.

3. Beginning in the 1960's, the University began to consider changes in the mission and organizational structure of the Herbarium, as a result of its review of the organization of the biological science program at the University. This review process, not uncommon in university life, resulted in a 1979 decision to transfer the Herbarium from the administrative control of IFAS to the Florida State Museum, and in a decision to make certain staffing changes in the Herbarium which affected Dr. Ward, among others. Dr. Ward was removed from his curatorial and plant identification responsibilities in the Herbarium. Therefore, in accordance with Florida State Museum and Herbarium policy, Dr. Ward no longer was provided office space in the Herbarium, nor was he provided with unlimited access to these facilities. The Board asserts that these decisions were well within the authority reserved to the University in Article 4 of the Agreement, and are discretionary decisions involving the exercise of administrative judgment.

4. An office and laboratory, comparable to those provided to other Botany faculty members, were provided to Dr. Ward in a building near the Herbarium. Dr. Ward was also granted access to the Herbarium consistent with his position as a member of the Botany Department. The Board contends that the office and laboratory space provided to Dr. Ward upon his reassignment from his curatorial responsibilities in the Herbarium, and his access to the Herbarium and its contents, are reasonable and sufficient to enable Dr. Ward freely to pursue his research efforts in accordance with Article 5. Dr. Ward's access to, and space in, the Herbarium are consistent with the nature of an Herbarium and with the access and space provided other productive members of the Botany faculty. Such access and space is not in the nature of that provided to laboratories and studios as listed in Article 21.1.

5. The arbitrator's authority is limited by Article 20.12 to "the application and/or interpretation of this Agreement and the precise issue(s) submitted for arbitration. The arbitrator shall have no authority to determine any other issue." (The definition of "grievance," contained in Article 20.3(a), contains a similar limitation on the nature of those matters which can be addressed by an arbitrator.) Those powers, rights, and authorities vested in the Board of Regents and the University to plan, manage, and control the State University System, which are not expressly limited in the Agreement, are reserved to the Board and the University under Article 4 and are



outside the scope of the grievance procedure.

Section 20.12 further limits the arbitrator's authority as follows:

Where an administrator has made a judgment involving the exercise of discretion, such as decisions regarding tenure and promotion, the arbitrator shall not substitute the arbitrator's judgment for that of the administrator. Nor shall the arbitrator review such decision except for the purpose of determining whether the decision has violated this Agreement.

The Board of Regents asserts that numerous University personnel decisions involving the Grievant, including those that resulted in reassignment of his duties, contain administrative judgments involving the exercise of discretion. The arbitrator is, to that extent, prohibited from reviewing the judgments resulting in such decisions; he may only determine whether the decision per se violates a provision of the Agreement.

6. Finally, Article 20.12 provides that "in all grievances except disciplinary grievances in accordance with Article 16, Termination and Other Actions, the burden of proof shall be on the employee." Despite the Grievant's allegations to the contrary, there is no evidence that the University has undertaken disciplinary action against the Grievant as contemplated under Article 16. The fact that the Grievant is dissatisfied with administrative judgments which affected his working conditions is not sufficient to properly characterize such actions as discipline. To accept such an argument would potentially transform virtually every personnel decision into a disciplinary act, a result clearly not anticipated by the parties in their agreement to Article 16.

Based on these allegations and contentions, the BOR requests the arbitrator to deny this grievance.

#### DISCUSSION

Article 4, RESERVED-RIGHTS, reserves to the Board of Regents all rights, powers, and authority subject only to express limitations imposed by the Agreement. Article 20, at 20.12, paragraph 5, states that "in all grievances except disciplinary grievances in accordance with Article 16, TERMINATION AND OTHER ACTIONS, the burden of proof shall be on the employee."

I do not find testimony or documentary evidence in the hearing record to indicate that the denial of unlimited access to the Herbarium is a form of disciplinary action as contemplated by the parties in Article 16. Therefore, based on the contract language of Article 20.12, the burden of proof in this case is on the Union and the Grievant.

The Union has alleged that



Herbarium to Dr. Ward violates Articles 5, 9, 21, and 27 of the Agreement. The Union must establish by the preponderance of the evidence that the University of Florida has violated one or more of these provisions if the Union is to prevail in this case.

The evidence submitted by the Union in arbitration does not support the conclusion that Dr. Ward's academic freedom is being violated by the Florida State Museum's refusal to provide him with a key to the Herbarium. Article 5 does state that "employees shall be free to discuss fully their own subject frankly and forthrightly and to engage freely in scholarly and creative activity and publish the results."

Dr. Ward currently can engage in research in the field of plant taxonomy at the University of Florida. I find no evidence to support the Union's contention that he can "engage freely in scholarly and creative activity" only if he has 24 hour access to the Herbarium.

The record evidence establishes beyond any doubt (1) that Dr. Ward has access to the Herbarium during the hours it is open to the public, (2) that work space in the Herbarium, within the limited space available, was retained for him for two years after he was relieved of his responsibilities as Curator of Vascular Plants, (3) that workspace can be made available on an as available ad hoc basis now if he is involved in a research project that requires workspace, (4) that he can borrow specimens and take them to his office and adjacent laboratory, and (5) that for a period in excess of four years he has not chosen to utilize the Herbarium for research.

The concept of academic freedom is concerned more with the type of research one does than where or when it is done. The record evidence does not even suggest that Dr. Ward has been limited in any way in the type research in which he can engage. I cannot conclude, therefore, as the Union would have me to, that restrictions on the time of access to University facilities violate the academic freedom of employees. Article 5 does not prevent the University from establishing time periods during which University facilities will be available for use. Many University facilities have limited access besides the Herbarium. When access to a facility is to be limited, policy must be established with respect to (1) hours of operation, (2) who has access during the hours of operation and (3) who has access during the hours the facility is closed.

The record evidence does not indicate that the hours of operation for the Herbarium are any different since June 1979 than they were before June 1979. Neither does the record evidence suggest that the categories of individuals who had access prior to June 1979 is any different at the present time.

The curator affiliate appointments, graduate students who have carrels and who either work with the Curator or adjunct faculty or who are assigned to work as graduate assistants in the Herbarium, laboratory technicians, and others who have access to the Herbarium, are not

that provide them with unlimited access to the Herbarium.

Prior to June 1979, Dr. Ward was Curator of Vascular Plants and had a key. He is no longer Curator and is not involved in plant identification work. Neither has he been elected to an affiliate appointment. Currently, Dr. Ward is not in any of the categories of persons entitled to have keys to the Herbarium. Were he in one of these categories, the evidence reflects, he would be provided with a key.

The Union also has alleged violations of Article 9, ASSIGNMENT OF RESPONSIBILITIES. Article 9.1 is concerned with the obligation to perform both scheduled and non-scheduled activities. This article states that some scheduled responsibilities may be required to be performed at a specific time and place. Other non-scheduled activities are more appropriately performed in a manner and place determined by the employee.

The Union reads the language of Article 9.1 to include, in addition to manner and place, the time during which these unscheduled activities are to be performed. The Employer argues, however, that the intent of Article 9.1 is not to grant faculty members the unlimited right to perform work where and when they please. The intent is to prevent the administration from requiring a person to be in a particular location at any particular time. I agree with the Employer's interpretation of Article 9.1, and find the denying unlimited access to the Herbarium to Dr. Ward does not violate this article.

The Union has alleged a violation of Article 21.2, OFFICE SPACE. The relevant part of Article 21.2 states "(e)ach employee shall, consistent with building security, have reasonable access to the employee's office space and laboratories, studios, music rooms and the like used in connection with assigned responsibilities; this provision may require that campus security provide access on an individual basis."

It is an established fact that Dr. Ward has a research assignment as a part of his assigned responsibilities. Prior to the reassignment of his duties in June 1979, his research responsibilities were performed in his office and work area which were both located in the Herbarium. He now has an office and contiguous laboratory in McCarty Hall which he acknowledges is satisfactory for his teaching responsibilities. He contends, however, that it is unsatisfactory for research activities.

At the crux of the office space issue, and the major question that remains to be resolved in this case is whether the Herbarium is, in fact, Dr. Ward's laboratory. Evidence was introduced by the Union to substantiate the conclusion that they are one and the same. The Board introduced evidence to the contrary.

The Herbarium specimens, library, office and work area may have been used by Dr. Ward for research purposes, but they were not, in fact, his laboratory any more than the library is the political scientist's



Herbarium has the same relationship to Dr. Ward that laboratories do to experimental scientists in the Botany Department. This conclusion is not warranted by the record evidence.

Experimental research differs from descriptive, taxonomic research in several ways, the most important of which for purposes of this case is concerned with the definition of reasonable access. Botanists performing experimental research must constantly monitor their experiments. Reasonable access to them is unlimited access, 24 hours a day.

Botanists performing descriptive research do not require unlimited access. Their research materials are not constantly undergoing changes that require continuous monitoring. The specimens can be observed, microscopically or otherwise, put away, and taken out on another day. Reasonable access for this type research requires only that the specimens be available for study at reasonable times and/or be available for loan during those times when the facility is closed.

This type access to specimens, equipment, and library materials is available to Dr. Ward currently. As noted earlier, space was set aside for him in the Herbarium and remained unused for about two years. He can borrow specimens from the Herbarium for study in his office and laboratory and has space there for storage. He has not chosen to borrow specimens. He has extensive unscheduled time during which he could utilize the herbarium. He has not chosen to do so.

He claims that he cannot do research work without Herbarium materials, yet it is he who has limited his access to them. The unavoidable conclusion that must be reached is that he has been unwilling to do research under the revised administration of the herbarium, despite encouragement from the administration.

Dr. Ward, for reasons cited above, is provided reasonable access to facilities and materials used in connection with his assigned responsibilities in accordance with the language of Article 21.2. The University has not violated this Article in the manner in which it limited Dr. Ward's access to the Herbarium and materials located there by denying to him a key to the facility.

There is no evidence that Dr. Ward has been required to waive benefits provided by the Agreement, nor is there evidence that he suffered a loss or diminution of rights or benefits for which he is otherwise eligible. Thus, the UFF has not established by credible evidence that the University violated Article 27, MAINTENANCE OF BENEFITS.

Having decided that the United Faculty of Florida has not established with sufficient evidence that the BOR-University of Florida violated Articles 5, 9, 21, or 27, the grievance must be, and is, hereby denied.

There remains, however, the question of property rights.

*books, journals, correspondence, reprints, and equipment.*

testimony and argument sufficient to resolve the property rights question were not presented during the arbitration hearing. Therefore, the parties are hereby instructed to negotiate in good faith in an effort to resolve the property rights issue by January 13, 1984. Any property rights questions remaining after that date will be resolved by this arbitrator with the mutual consent of the parties.

AWARD

The grievance is denied. The continuing property rights issue is to be resolved by the parties by negotiation, and, if not, by arbitration. With the mutual consent of the parties, I shall retain jurisdiction until the property rights issue is resolved.



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B. R. Skelton, Arbitrator  
Clemson, South Carolina  
2 December 1983