10/24/84

Copies to
Dr. Williams
Dr. King
Dean Silman
Dr. Stern
Dean Wood
Dean Wrestle
Jim Pastry
Grievance File

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)

Re: Grievance BOR File No. 82-354

Before: B. R. Skelton, Arbitrator

The hearing in this matter was held on June 25 and 26, 1984, 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 to the arbitrator. Oral closing arguments were made by the parties.

APPEARANCES

For The Union: Marilyn Young

For The Board Of Regents: Catherine Longstreth

STATEMENT OF THE CASE

On April 20, 1979, Dr. Daniel B. Ward was removed from the position of Curator of Herbarium at the University of Florida in Gainesville, Florida. A director was appointed to assume the responsibility as curator and Dr. Ward was instructed to remove his office from the herbarium by June 1, 1979. He was also informed that he would have access to the herbarium for research and teaching purposes just as other faculty members did.

A grievance was filed by Dr. Ward challenging the right of the University of Florida to limit his access to and work space in the herbarium as a result of his 1979 reassignment. This grievance was heard in arbitration on September 19, 20, and 21, 1983.

The decision in that case was issued on December 2, 1983. In that decision it was concluded that the University of Florida did not violate the collective bargaining agreement between the Board of Regents of the United Faculty of Florida when it limited Dr. Ward's access to and work space in the herbarium as a result of

the 1979 reassignment of his duties.

Unresolved in that case was a property rights issue. The parties stipulated in the earlier hearing that in the event my decision required a resolution of the property rights to specimens, books, journals, correspondence, reprints and equipment that I would retain jurisdiction in the case and later hear the arguments on ownership.

A portion of that decision called for the parties to negotiate in good faith in an effort to resolve the property rights issue. Any property rights questions that remained after efforts to negotiate in good faith to resolve the property rights were to be resolved by this arbitrator.

On June 25 and 26, 1984 the property rights issue was heard in arbitration.

ISSUE

The issue to be resolved in this case involves the ownership of 177 items that were still in dispute after the parties concluded their negotiations in accordance with the December 2, 1983, decision issued in the earlier case. Stated in its simplest terms, the issue is as follows:

Who owns the 177 items in dispute between Dr. Daniel B. Ward and the University of Florida ?

DISCUSSION

Prior to the arbitration hearing in June, 1984, the parties were asked to categorize the items in dispute and to present arguments for categories of items rather than each specific item. The University of Florida grouped the items into a number of categories, including specimens, correspondence, reprints, equipment, books, and miscellaneous. The evidence presented by the University of Florida coincided with these groups.

The United Faculty of Florida, on behalf of Dr. Ward, categorized the items in dispute in a different manner. Their categorization was based on how the items were acquired, from whom they were acquired, and the purpose for which the items were acquired. Obviously, the United Faculty of Florida categorization is not consistent with that of the University of Florida.

For purposes of discussion and resolution of the property rights issue I am grouping the items in approximately the same categories as the University of Florida. It is possible to consider the United Faculty of Florida's groups of items based on how the items were acquired, and, at the same time, not be inconsistent with the proposed groups of items proposed by the Board of Regents. Thus,

the categories are not mutually exclusive, and, in fact, appear to be mutually consistent.

Some general comments are in order regarding the ownership of the 177 items that remained in dispute after negotiations were concluded. There were 408 items in dispute on February 12, 1984. By the date of the arbitration hearing, there were only 177 items whose ownership was disputed. These ranged from equipment to correspondence to specimens to reprints to manuscripts. Thus, the ownership of 238 items was resolved between February 12, 1984, and the arbitration hearing in June.

Every item for which Dr. Ward could provide any documentation of ownership was given to him as his personal property. Other items, for which neither side could document ownership, were transferred to Dr. Ward's custody, but remained the property of the University of Florida.

The burden to prove ownership is on the Union. Dr. Ward, apparently believing the burden of proof was on the University of Florida, claimed every item in the herbarium for which he did not believe the University could document ownership. Thus, many of the items in dispute are items for which there is no documentation either by Dr. Ward or by the University.

Items that were the subject of considerable hearing evidence and argument are discussed in the most detail in the analysis that follows. Typically, for those items, the arguments of both sides are presented and discussed. For some items on which very little evidence was presented, an allocation of ownership may be made with no discussion at all.

1-2. Specimens UF's

The first item for consideration is listed as two items on the computer printout dated February 12, 1984. These two items are considered as one item for discussion purposes. These two items are: (1) Specimens of flowering plants, 1958-1979, and refer to specimens numbered 73,412-135,298. (2) Specimens of ferns, 1958-1979, and refer to specimens numbered 5,101-8,350.

The numbers referrred to are the accession numbers for the Florida State Herbarium. Dr. Ward claims ownership of all specimens that were accessioned into the Florida State Herbarium during the period of time he was Curator of the Herbarium, 1958-1979. Thus, he claims a total of 61,886 specimens of seed plants and a total of 3,249 specimens of ferns.

Dr. Ward bases his claim that these specimens are his personal property on the premise that he either collected them or received them by exchange or by gift or assembled them himself as a research tool for use in his research efforts at the University of

Florida. According to him, these specimens were gathered on collection trips throughout the State of Florida, many areas of the United States, and Mexico.

He argues that in very large part these trips were made at his personal expense without reimbursement from the University. To support this arguement, evidence was entered in the hearing record showing that between 1958 and 1979 he listed on his internal revenue tax returns claims totaling $13,917.68 as expenses on such trips. Additionally, according to him, the total number of trips that he made between 1958 and 1979 was 247. Except for a very few, these trips were at his personal expense and were unreimbursed by the University.

A specimen was made of each of the collections made on these trips and was mounted and placed in the Herbarium. For about three-fourths of these collections one or more duplicate specimens was also prepared. These duplicates were sent by him to persons outside the University of Florida whom he believed would reciprocate by sending to him collections of their making.

During the period 1958 to 1959 the collections that he made and for which he assigned numbers amounted to slightly less than 10,000. Of these approximately 10,000 collections, about one-fourth to one-third have not been identified, and occupy cases and boxes in McCarty Hall. Approximately two-thirds to three-fourths have been identified, a specimen has been placed in the Herbarium, and duplicates where present have been distributed to other people.

Thus, approximately 6500-7500 specimens that he personally collected were placed in the Herbarium. He concludes that an additional 13,000-22,000 specimens have been distributed as duplicates and contends that the numbers sent back as a result of his having sent duplicates out to other persons should number between 20,000 and 30,000 specimens in the Herbarium. These were generated by the efforts of his collections and exchanges.

If deductions from the 65,135 specimens that appeared in the Herbarium between mid 1958 and mid 1979 are made the result is approximately 35,000 to 45,000 from other sources. Dr. Ward contends that these specimens were collected by other persons and were deposited in the Herbarium primarily as a result of his efforts. He contends further that the reason for the growth in specimens in the Herbarium was primarily because he took it upon himself to stimulate growth in the collections held.

He further contends he was not hired to maintain or develop an Herbarium, and that he was not even assigned that task at a later date. Additionally, he claims that he was never given any instruction as to how he should proceed in actions connected with the maintanence or expansion of the Herbarium. Thus, he believes

the actions he took were in the nature and means of developing a research facility necessary to the area of scholarly work that he chose to pursue, and that it was of his volation.

It is Dr. Ward's contention that most collector wamted him to have their specimens, although he does admit that they probably did not think of any distinction between him as a person and him as a representative of the University when the specimens were sent to him as Curator of the Flroida State Herbarium. He further believes that in nearly all cases, if those persons who sent specimens had to choose between sending the specimens to him as an individual and sending their specimens to him as a University representative, the would have chosen the former.

He discounts as being unimportant the contention that most specimens sent by others were sent by institutions whose employees established and followed a policy of not exchanging specimens with other than institutions. Additionally, he discounts the contention that most specimens not collected by him personally were made by people outside the University who, for whatever their reasons, made massive collections which they intended to give to the University and in fact did give to the University. To this contention he argues that it was he who developed the gift program which was intended by him to stimulate the growth of the specimens that he had for his research and study.

As to the contention that most specimens were generated in the execution of contracts with outside organizations and that the contract was with the University and that he as the principal investigator was no more than an employee whose worked devolved to the University, he disagrees. He does admit that he originated and directed projects with organizations which provided funds in turn to him to spend as he saw fit in the execution of the research called for.

Dr. Ward contends these contracts and outside projects were originated by him, that he was never paid anything by the project in the form of an increase over the salary that he would otherwise receive and that he did much more work in the field, in the laboratory and in writing of the called-for reports. Therefore, these specimens belong to him as well.

Thus, Dr. Ward discounts any rationale for the increase in the number of specimens other than a direct relationship to his research, collection, exchange, and gift efforts.

The University of Florida takes a different position with respect to ownership of these specimens than does Dr. Ward. The University's position is that all specimens that have been accessioned into the Florida State Herbarium and have a specific number belong to the University of Florida. The source from which the specimen came and how the specimens were acquired bear no

relationship on the ownership question. Once a specimen is accessioned into the Florida State Herbarium it belongs to the Florida State Herbarium.

The University acknowledges Dr. Ward personally acquired some specimens. The number is not readily ascertainable. However, it is the University's position that the acquisition of specimens by Dr. Ward occurred as a direct result of his capacity as a Curator of the Herbarium and as a result of exchanges with other Herbaria, and for these reasons those specimens belong to the University as well.

Discussion of specimen ownership

Several points must be discussed on the ownership of specimens. First, almost all specimens collected personally by Dr. Ward were collected during a period of time in which he was on the University payroll. His own list of dates verifies that he was on the payroll when the acquisition of these specimens was made. And there is no evidence that he was on annual leave during these specimen collecting trips.

Second, if in fact, these specimens were owned by Dr. Ward, they were identified, mounted, and accessioned into the Herbarium at University expense. They continue to be maintained at University expense with the University bearing the entire expense. The implication of Dr. Ward's claim of ownership to the specimens accessioned and placed in the Herbarium is that he was acquiring and maintaining his own personal herbarium at University expense. Certainly he was on official time when he was Curator of the Herbarium and cannot claim ownership of items acquired while on official time. To claim ownership implies that he was not working for the University but solely for himself, even though he was being paid by the University.

Thrid, to co-mingle personal specimens with those belonging to the University and to maintain them at public expense is unconscionable, unethical, and possibly illegal.

The only legitimate claim that Dr. Ward might have to ownership of specimens would occur if the specimens were collected, identified, and mounted on Dr. Ward's time and at his expense and if he bore the entire expense of maintenance. Which is to say if they were kept in his own cabinets off campus. Any other arrangement for collection, mounting, and maintenance introduces conflicting ownership claims.

Fourth, weekend trips during which specimens were collected at Dr. Ward's own expense would provide the basis for a property right in the specimens. But when those specimens collected on one's own time at one's own expense are accessioned and placed in the Herbarium at University expense on University time, they cease to

be the property of the collector, in this case Dr. Ward. In other words, once specimens are integrated in the general collections, regardless of the source, the clear indication is that they belong to the University.

In none of the evidence introduced into the hearing record has Dr. Ward claimed that he bore the expense of pest control, fire prevention, storage space, shipping and receiving, or the salaries of the individuals who mounted and maintained the specimens. Furthermore, the evidence clearly establishes that on numerous occasions Dr. Ward was reimbursed for expenses incurred in connection with collection trips.

There is no evidence to support his claim that specimens received from other institutions and individuals were intended as gifts to him, other than mere speculation. Here again, the cost to ship specimens to others and the cost of processing incoming specimens were borne by the University, not by Dr. Ward. Further, when they were accessioned and placed in the Herbarium with other specimens, any claim that Dr. Ward may have had ceased to exist. It appears that Dr. Ward's claim to ownership is based on the false premise that any accessions of specimens that occurred during his tenure as Curator are his personally.

This simply is not the case. The evidence of record established clearly that the only specimens for which the Herbarium would take custody without ownership were those received on loan for study or identification. The responsibility for accepting new accessions into the Herbarium rests with the Curator. Dr. Ward served as Curator until 1979 when he was transferred to other duties.

Dr. Ward now claims that he, in his capacity as Curator, accepted all the specimens accessioned into the Herbarium between 1958 and 1979 into his private Herbarium and not into the then existing University Herbarium. If this is true, and I do not believe it is, then he certainly acted in an irresponsible manner in performing his duties as Curator of the Herbarium.

The record clearly establishes that exchanges between institutions are institution to institution and not institution to individual as Dr. Ward claims. It is true that most correspondance concerned with the exchanges of specimens is addressed, by courtesy, to the individual in charge, but this in no way implies that the specimens become the private property of the individual of whom they are addressed. It is usually standard protocol to follow this procedure so the Curator will know what is coming into the institutional Herbarium that he/she curates.

Specimens shipped from the University of Florida to other institutions have labels with the University of Florida printed on them. They do not have any markings to indicate that they were sent from the personal private herbarium of Dr. Ward.

Further, the record evidence establishes that most Universities exchange only institutionally because there is no assurance that private collections would be available to the scientific community. Private collections are difficult and expensive to manage and few individuals have the necessary resources to do the job adequately. Dr. Ward appears to be the only individual, according to the record evidence, who has ever heard of a situation in which exchanges were considered to belong to the Curator or any other individual rather than the institution.

If exchanges were believed by Dr. Ward to have been made to him as an individual, it is evident that the exchange was without the knowledge of the other institutions and would be contrary to their policies and contrary to ethical herbarium practices.

The Curator is merely the agent who expedites exchanges, loans, or gifts among institutions. It is standard practice in the botanical world that specimens received, accessioned, and otherwise processed by a curator during his tenure belong to the institution employing him. Reports from curators of other institutions in the United States verify that this is standard operating procedure. Further, this same evidence establishes that specimens collected by curators in line of duty likewise belong to his institution.

Evidence from other curators establishes that there may be some occassions in which a curator might make collections on his own time and at his own expense so that the specimens would belong to him. One would assume, in that case, that he would store such specimens at home, and not in a university herbarium.

Although Dr. Ward claims that exchange of specimens was institution to individual and in some cases individual to individual, the record evidence establishes the very opposite. Dr. Ward knew that exchanges were interinstitutional rather than personal when he wrote in a letter to Dr. Ira L. Wiggins at the Dudley Herbarium at Stanford University on 15 May, 1964: "We hope you will accept this collection (354 specimens of vascular plants collected in Alaska) to supplement your present interest in Arctic botany and consider it as the initiation of an exchange program with the Herbarium of the University of Florida."

Finally, with respect to specimens collected on contract research, the research contracts call for specimens to be placed as a part of the permanent record in the holdings of the Herbarium of the Agricultural Experiment Station, University of Florida. This requirement of the contract research establishes clearly that specimens accessioned into the University Herbarium from contract research belong to the University of Florida.

The record evidence simply does not support Dr. Ward's contention that he owned all the specimens that were accessioned into the

Florida State Herbarium during his tenure from 1958 to 1979. His arguments may be sound in some respects, but the overwhelming evidence suggests that there was never any intent for him to retain a private herbarium and utilize University staff and facilities to acquire and maintain a private herbarium. In fact, if he is so contending, according to accepted herbarium practice, what he has done is unethical.

In summmary, the University owns all specimens accessioned into the Florida State Herbarium, including those collected solely by Dr. Ward, and regardless of the source. This conclusion is based on the discussion above and outlined below.

(1). The Herbarium existed at the beginning of Dr. Ward's tenure in 1958, and continues to exist at the present time. Dr. Ward was the Curator of the Herbaarium, and it was incumbent on him to maintain his private collections separate from the University Herbarium if he wanted them to remain private.

(2). The specimens were accessioned into the Herbarium, continuing the numbers begun before his arrival. The numbers continue subsequent to his departure. Once accessioned into the already existing herbarium collection, and co-mingled with those already there, the University became the sole owner of accessioned specimens.

(3). State funds were used to acquire specimens. While some may have been collected solely by Dr. Ward on his own time and at his own expense, University monies were used for his payroll and travel, and University employees and materials were used to identify, mount, and protect the specimens accessioned into the Herbarium. Furthermore, State monies were used for shipping and other expenses associated with the exchange program.

(4). It is unethical if not unlawful for an employee of the University to maintain a private herbarium at University expense. Dr. Ward's claim to ownership of all specimens accessioned during his tenure as Curator are just that, a claim he was developing a private herbarium and co-mingling his with the University Herbarium.

(5). The contract research that involved collections of specimens included as one of its provisions the stipulation that specimens of collections would be placed in the Florida State Herbarium. Dr. Ward was the one who wrote these proposals and secured the contract research funds. If he were going to claim ownership of these specimens, he should not have included such a stipulation in his research proposal. Further, it is acknowledgement on his part that a University Herbarium existed.

ITEM FIVE, NATIONAL GEOGRAPHIC MAPS UF's

These National Geographic Maps belong to the University of Florida.

8. ITEM EIGHT, MAP CABINET, WOODEN, FOUR DRAWER WITH LEGS UF's

This map cabinet belongs to the University of Florida.

17. ITEM SEVENTEEN, BRONICA CAMERAS, TWO UF's

The two Bronica Cameras belong to the University of Florida.

29. ITEM TWENTY-NINE, FILING CABINET, UF GREEN, FOUR DRAWER, AND ENCLOSED DANIEL B. WARD MANUSCRIPT AND NOTES – if not accessioned in – Ward's may request copies – UF expense

The file cabinet belongs to the University of Florida. The manuscripts in that cabinet belong to Dr. Ward. Any accessioned reprints and any correspondence that deals in any way with the Herbarium belongs to the University of Florida. Unaccessioned reprints and correspondence that is strictly personal to Dr. Ward belong to Dr. Ward.

On or before Nov. 5 (10 calendar days) 5 pm.

Dr. Ward is to review the material in this file cabinet within ten days of the date of receipt of this award and remove those items from the file cabinet that belong solely to him. The removal will be subject to the approval of Dr. Norris Williams or his designee. In the event Dr. Ward desires copies of the accessioned reprints, these copies will be made for him at University expense. The University will retain the originals of accessioned reprints.

In the file cabinet

In the event Dr. Ward desires copies of non-personal correspondence, these copies will be made for him at University expense. "Strictly personal" correspondence means that there is no reference to any University Herbarium business, such as, but not limited to, loans, exchanges, identification, purchases, receipts, etc.

34. ITEM THIRTY-FOUR, REPRINT COLLECTION AND CARD FILES, INCLUDING REPRINTS NUMBERED ONE THROUGH FOUR THOUSAND THIRTY-ONE. Personal - Ward Others - may copy - not excessive at UF's expense.

Dr. Ward contends that all reprints in the reprint collection belong to him personally, either as a result of gifts from Erdman West and Lillian Arnold or as a result of his placing them in the reprint file through exchange of reprints with other individuals and institutions.

Dr. Ward has no claim to reprints that were already in the reprint collection prior to 1958. Neither does he have any claim to reprints placed in the reprint collection subsequent to 1979. The only reprints to which he has any property rights are those that were accessioned into the reprint collection during his tenure as Curator of the Herbarium, 1958-1979.

These pre-1958 reprints are similar to specimens, in that they were accessioned into the Herbarium library following the procedures established by Erdman West and Lillian Arnold before Dr. Ward came to the University of Florida in 1958. But despite similarities between specimens and reprints, there are also some dissimilarities. Reprints are in a somewhat different category than specimens, in that they can be duplicated.

Evidence presented during the hearing establishes that it was common for Dr. Ward to exchange reprints with colleagues with whom he corresponded, and for whom he, as Curator, provided loans and exchanges. Obviously reprints sent to him personally belong to him. Unfortunately the only evidence of his ownership is those inscribed "To Dan" or something similar. The absence of any inscription does not necessarily imply that the reprints were not sent to him personally.

Evidence also exists that many reprints were sent to Dr. Ward, Curator, Director of the Herbarium, or some other title. No credible evidence exists as to the intention of the sender of these reprints. Were they intended to be Dr. Ward's personally, or were they intended for the Herbarium reprint collection?

With respect to the reprint collection, the following ownership provisions are to be observed:

(1). Dr. Ward is to review the reprint collection and will be permitted to remove from the reprint collection any original reprint that has any inscription identifying that reprint as his personally. The University may copy any reprint found to be in this category.

(2). Dr. Ward is to review the remainder of the reprint collection and identify any reprint he wishes to retain. He is to receive copies of these at University expense, provided he does not request a wholesale copying of reprints. If, in the sole opinion of Dr. Williams, the number of copies requested is excessive, I will prorate the copying costs between Dr. Ward and the University without benefit of further submission of evidence. This latter provision is included to prevent a request for all or most of the reprints. The University will retain the originals of these reprints.

(3). The review and removal of reprints will be done in conjunction with Dr. Williams or his designee.

36. ITEM THIRTY-SIX, CABINET, LARGE, GRAY METAL, TWO DOOR, SIX SHELF.

This cabinet belongs to the University of Florida.

46. ITEM FORTY-SIX, FILE OF CORRESPONDENCE AND FOUR DRAWER CABINET.

These four drawers contain official University business concerning gifts, loans, exchanges of specimens with other institutions, and correspondence relating to this business. Dr. Ward claims this file of correspondence as his own personal correspondence either through acquisition from others who held it previously, or as a result of the letters and correspondence being addressed either to him personally or to him as Curator of Herbarium.

The University contends that this correspondence is official University correspondence, that it is not personal correspondence, and requests that it retain ownership of this correspondence.

Discussion of correspondence

Dr. Ward delineates several correspondence categories. These include: (1) Correspondence from persons other than Ward to persons other than Ward. Dr. Ward contends that this correspondence was given to him and he does not agree to any duplication of it at all.

(2) Formal Loans. This correspondence includes records of loans made by Ward or others to people outside the University as well as records of items borrowed by Ward or others from institutions and individuals outside the University. Dr. Ward agrees that copies of this correspondence can be made by the University.

(3) Personal correspondence that has research included. Here, Dr. Ward argues there is no clear cut personal correspondence. He argues that all correspondence includes both personal and research aspects.

(4) Research correspondence. This refers to plants, letters of recommendation, trips, identification, and items that are essential to his own research. Dr. Ward does not agree to the duplication of this category.

(5) Correspondence that never got into the correspondence file. Dr. Ward contends that this beolngs to him as well.

(6) Occasional manuscripts. These occasional manuscripts the Board of Regents, University of Florida, has no objection to Ward having and they are to be given to him.

(7) Reprints of offical records. Official records include purchase orders, receipts, interlibrary loans, financial matters. Dr. Ward contends that these are merely copies of items that have been submitted to Deans and that the Deans maintain these copies in their files. Dr. Ward has no objection to the copying of these official records.

Dr. Ward prefers that a decision be made on all correspondence as a group, with permission to copy. The University of Florida

prefers that the correspondence be categorized, and that the decision to copy be made by category.

The same arguments apply to official Herbarium correspondence that apply to specimens and reprints. This is the official correspondence file of the Florida State Herbarium, not the personal property of Dr. Ward. Thus, all correspondence in the correspondence file is the property of the University of Florida.

Those items that Dr. Ward considers personal correspondence and which do not have any notation that the correspondence was addressed to the Herbarium, the Curator, the Director, or whatever title used may be removed from the official correspondence file, provided further that there is no reference to plant identification, gifts, loans, exchanges, requests for information, purchase orders, etc.

In other words, strictly personal correspondence can be removed from the correspondence file by Dr. Ward. Any other correspondence in the official correspondence file that Dr. Ward wishes to have copies of he may have copied. To expedite this process and at the same time to impose some limit on Dr. Ward's discretion over which correspondence he wishes copies of, he must review the correspondence file within thirty days of receipt of this award and decide which items are his personally, and which he wishes copied.

Those items that are strictly personal, based on the mutual agreement of Dr. Norris Williams, or his designee, and Dr. Ward, he may remove from the file. Any correspondence that is not strictly personal is the property of the Florida State Herbarium and is to remain in the Herbarium correspondence files. Dr. Ward may have copies of the official correspondence, but not solely at University expense. Any copies requested by Dr. Ward that deal with his past research efforts will be provided at University expense. The cost for copies of other correspondence will be shared equally.

ITEM FORTY-SEVEN, CASTANEA-JOURNAL.

There are various of these through the year 1979. The vast majority include either Herbarium or Institute of Food and Agricultural Sciences stamped on them. The volumes of this journal are the property of the University of Florida.

ITEM FORTY-EIGHT, BULLETIN OF TORREY BOTANTICAL CLUB - JOURNAL.

Through volumes 100. The evidence of record establishes that many of these volumes were purchased by the University of Florida. Volumes 7 through 54 are missing, but the remaining volumes are marked either Botany or Herbarium; one has a marking" Discarded from the Hume Library" on the cover. Because the majority of these

volumes were purchased by the University and there is no evidence that Dr. Ward purchased any volumes, all volumes are the property of the University of Florida.

49. ITEM FORTY-NINE, BRITONNIA - JOURNAL. UFs - except Vol. 28

Volumes 1 through 26 of Britonnia belong to the University of Florida. The remainder are unbound numbers, four per year, volume 27, 28, and 31. Indications are D. B. Ward paid for volume 28 by personal check. No evidence was introduced to indicate whether he was reimbursed from University funds or not. Volume 31 indicates that it was purchased by purchase order. Dr. Ward is to receive volume 28 of Britonnia; the remaining volumes are the property of the University of Florida.

52. ITEM FIFTY-TWO, PHYTOLOGIA - JOURNAL. UF's

The evidence of record establishes that this journal belongs to the University of Florida.

54. ITEM FIFTY-FOUR, TAXON - JOURNAL. UF's

There is no evidence that Dr. Ward purchased any volumes of this journal with personal funds. There is considerable evidence that many of these volumes were purchased with University funds. As with other bound volumes of journals, the binding fee was paid with University funds. The Taxon Journal belongs to the University of Florida.

55. ITEM FIFTY-FIVE, TORREYA - JOURNAL. UF's

Torreya belongs to the University of Florida.

56. ITEM FIFTY-SIX, CONTRIBUTIONS FROM THE GRAY HERBARIUM. UF's

The record establishes that these were purchased from the campus shop and book store for $121.80. These contributions from the Gray Herbarium belong to the University of Florida.

57. ITEM FIFTY-SEVEN, FLORIDA ACADEMY OF SCIENCE JOURNAL. Ward

Through volume 59. Dr. Ward is an active member of the Florida Academy of Sciences and has been for some time. The Academy of Sciences Journal is a perquisite of membership in the Academy of Science. Dr. Ward owns the Florida Academy of Sciences Journal.

61. ITEM SIXTY-ONE, FLORA OF TROPICAL FLORIDA - LAWN. UF's

The evidence establishes that the Botany department paid for this volume on January 31, 1977. This volume belongs to the University of Florida.

63. ITEM SIXTY-THREE, FLORIDA GEOGRAPHY AND VEGITATION - HARPER. UF's

The evidence establishes that this was a part of 65 books from Mrs. Ruth West to the state of Florida accepted by the Board of Regents December 1970. Property of the state of Florida.

79. ITEM SEVENTY-NINE, FLORA OF MISSOURI-STEYEMARK. UF's

There is no evidence that this volume belongs to either the University of Florida or to Ward. It was on the Herbarium Library bookshelf. It is the property of the University of Florida.

81. ITEM EIGHTY-ONE, FLORA OF TEXAS-LUNDELL. UF's

This belongs to the University of Flordida.

ITEM EIGHTY-FIVE, BOTANY OF THE CANADIAN EASTERN ARCTIC-POLUNIN. UF's

This volume is stamped Florida State Museum and is the property of the University of Florida.

86-90. ITEMS 86,87,88,89, and 90. UF

Various reports and books. The evidence establishes that these belong to either Botany or the Florida State Museum, therefore they are the property of the University of Florida.

91. ITEM NINETY-ONE, FLORA OF THE PRAIRIE PROVINCES-BOIBIN. Part I - Ward

already picked up 21Feb84

Part one belongs to Dr. Daniel Ward. Part two belongs to the University of Florida. Parts two and Four: there are no markings in them indicating ownership, but they were later stamped with the Herbarium seal. Property of the University of Florida.

93-94. ITEMS 93 and 94. UF's

Two books, property of the University of Florida.

#'s ITEMS 97,98,100,102,105,106,107,109. UF's

Various books. Property of the U:niversity of Florida.

119. ITEM ONE HUNDRED NINETEEN, INDEX HERBORIUM. UF's

A part of a gift from Mrs. Ruth West to the State of Florida. Property of the University of Florida.

120-123 ITEMS 120-123. UF's

There are no markings indicating ownership of these volumes. They were on the Herbarium library bookshelves. Property of the University of Florida.

ITEMS 139-141,145-46,148,152-53,155. UF's

Various books bought by the Department of Botany for use in teaching. Most of the books were not used in the teaching process. Property of the University of Florida.

ITEMS 157-58,179. UF's

Various books. Property of the University of Florida.

I T E M S UF's
161-164,166,168-69,171-72,175,178,180-81,184,188-92,194,196,207-8, 212,220-222,224-26,228,230-237,239-40,242.

Various books. Property of the University of Florida.

245 ITEM TWO HUNDRED FORTY-FIVE, FLORA OF JAPAN - OHWI. — one (12/68) D. Wards

There are two copies in the Herbarium. One is stamped Botany, and has a Herbarium seal. This was purchased by the University. The other volume signed D. B. W. 4 December, 1968, is the property of Dr. Ward.

ITEMS 246-48,250-52,254-255. — 250 - 2/74 - DW gets one of the 2 copies

The second copy of item two hundred fifty that has D. B. W. 12 February, 1974, is the property of Dr. Ward. Other volumes itemized in this group are the property of the University of Florida.

ITEM 256-260,262-66. UF's

Various books. Property University of Florida.

ITEMS 268-69,274-76,278-280,284-287,289-90,292,294-96,299,305,308, 310-312,314-15,317,322,324-26. UF's

Xerox copies of theses and dissertations. The record evidence establishes that these were purchased by the University of Florida. Property of the University of Florida.

ITEMS 329,331-32,338-40. UF's

Various books. Property University of Florida.

ITEMS 342,344-45,352-53,356,362,365,367,372,374,376,378-79,381-82,385,387-89,391-94. UF's

Various books. Property of the University of Florida.

395 ITEM THREE HUNDRED NINETY-FIVE, SPECIMENS FOR TEACHING IN MYLAR

ENVELOPES. - 2 Wards - Remainder UF's

The two specimens collected solely by Dr. Ward are his property. The remaining specimens are the property of the University of Florida.

Discussion of the above allocation of ownership of books.

The rationale for the allocation of books is based on the following:

(1).The evidence establishes that there was a collection of books in the Herbarium Library when Dr. Ward reported to work in 1958. Some of the books claimed by Dr. Ward were in the library prior to 1958.

(2).Dr. Ward knew that there were books in the Herbarium Library and over a period of time ordered books and paid for books with Botany Department and University of Florida funds. In addition he kept his own books on shelves separate from books belonging to the Library, thus confirming the existence of the Library and his knowledge that it existed.

(3).Dr. Ward has already received all of the books on his personal shelf and every book in the Herbarium Library for which he could establish any kind of documentation at all, other than having his initials and a date signed in the book.

(4).Dr. Ward's review of books resulted in his claiming all books for which he did not believe the University had any documentation. The burden of proof is on Dr. Ward to establish ownership of books in the Herbarium library which he is claiming. Those items for which he was able to establish evidence of ownership either in the arbitration hearing or prior to then have been given to him.

(5).Dr. Ward indicates in the hearing record that he made substantial claims on his internal revenue service tax forms for purchases of books and periodicals. If he is to claim these deductions for tax purposes, it is obvious that he should have some kind of documentation verifying purchase if he is audited. Thus, the United Faculty of Florida contention that faculty seldom retain proof of purchase unless they believe they will be required to furnish proof is questionable, considering that Dr. Ward has been audited previously and is claiming deductions annually for the purchase of books and periodicals.

(6).As to the contention that Dr. Ward's initials and a date appear in many of the books in question and therefore he owns these books, I must again disagree. There is no evidence in the record that establishes the reason for Dr. Ward initialing and dating all the books that were received in the Herbarium Library. The only logical conclusion I can reach, and this is based purely

on speculation, is that in the event Dr. Ward were audited by the Internal Revenue Service on his claims for books and periodicals purchased, he could then supply these books and periodicals from the Herbarium Library with his initials and dates indicating that these were purchases he had made.

AWARD

The parties have stipulated that the property rights issue is the sole remaining issue in dispute between Dr. Ward, the United Faculty of Florida, and the Board of Regents, University of Florida. Dr. Ward's claims to ownership of these 177 items are resolved as outlined above.

B. R. Skelton, Arbitrator
Clemson, South Carolina
October 19, 1984