

COMMITTEE ON RULES, JURISDICTION, AND ELECTIONS
Report on the October 19, 2009 Senate Resolutions

To the Academic Senate, Santa Cruz Division:

The Committee on Rules, Jurisdiction, and Elections (CRJE) met on October 27, 2009, to consider the three Resolutions passed at the October 19 Special Meeting of the Senate. The following report summarizes the substance of the Committee's response. We wish to draw particular attention to the conclusions regarding Resolution #3.

Resolution #1 reads as follows:

Be it resolved:

Whereas the excellence of the university has been well served by the core constitutional principles of shared governance; and whereas the core functions of research and teaching are properly the purview of faculty; and whereas the Academic Council voted unanimously for furlough days on days of instruction; and whereas the Provost Pitts memo of August 21st takes away from local campuses the authority to determine furlough days; and whereas that memo contravenes principles of shared governance, therefore be it resolved, that the Academic Senate of UCSC hereby informs UCOP that the UCSC Academic Senate shall determine when furlough days may be taken by UCSC faculty.

With respect to this Resolution, CRJE had the same feedback as was given to proponents of the draft Resolutions prior to the Special Meeting. It is not clear to whom this Resolution is addressed. The reference to UCOP suggests that it is either a Memorial to the UC President or a Memorandum (to Provost Pitts?). In Appendix A is the text of Santa Cruz Bylaw (SCB) 9.1, which explains that, unless during the meeting a vote was taken in favor of foregoing the required mail ballot, a mail ballot is necessary for Memorials and Memoranda. Thus, this Resolution cannot be acted upon because it is not clear to whom it is addressed. In addition there is confusion in the last sentence between the words "inform" and "shall determine". If the Senate wants to inform, this must be done as a Memorial or Memorandum. If the Senate wants to determine, it is conflict with Regents Standing Order 100.4(qq)2, which gives the UC President the authority to implement furloughs (see appendix B).

Resolution # 2 reads as follows:

Be it resolved:

That it is the sense of the UCSC Senate that the UCSC Administration should not require any faculty member to track, record, or otherwise surveil or police the behavior of their colleagues with respect to required furlough days or to allow said behavior with respect to furloughs to become part of any merit action or personnel review.

The second Resolution is written as the "sense of the Senate." We take this to mean that the initiators of the Resolution wanted to know whether the Senate supported the idea of writing to the UCSC Administration. A sense of the Senate is not an action item. Unfortunately, it was not written clearly enough to define the next action should the mail ballot pass. Who will write the request to the administration, and to whom will it be addressed? Will it be an informal letter, or

will it come back to the Senate to be sent forward in the form of a Memorandum? If it is proposed as a Memorandum and there is also a vote to forego the required mail ballot (see SCB 9.1), then the Memorandum becomes an action item. Nonetheless, according to SCB 9.1, Senators retain the right to call a mail ballot whether or not there was a vote in the meeting to forego the required mail ballot.

Resolution #3 reads as follows:

Be it resolved:

The UCSC Academic Senate, constituting itself as a committee of the whole and asserting its plenary authority over curricular matters resolves that the dates proposed by the SEC in its memo of July 17, 2009 be designated as instructional days on which classes do not meet.

CRJE found the third Resolution to be invalid. Although the wording says that the Senate was forming itself as a Committee of the Whole, the Senate did not in fact do so. The process for a Committee on the Whole is defined in The Standard Code of Parliamentary Procedure by Alice Sturgis (pages 232-233, Appendix C). Since this did not happen, the authority over matters of undergraduate curriculum still rests with the Committee on Educational Policy (CEP) and with the Graduate Council (GC) for graduate curriculum.

By the end of our discussion, CRJE found “instructional days” to be a topic of curriculum and not of the academic calendar. If “instructional days” in Resolution 3 are curricular days, this is Senate purview, through the plenary authority of CEP and GC. Since CEP approves the format of courses and since the format of courses would change if there were a week of instructional, non-classroom days, the topic of non-teaching instructional days appears to be CEP and GC purview as it affects courses. For example, for an existing lecture course to become an on-line course, the course goes through a reapproval process with CEP in light of that change of format.

If “instructional days” in Resolution 3 are thought of as a matter of the academic calendar, then the Senate does not have the authority to approve a change from classroom instructional days to non-classroom instructional days. See the reference to Regents Standing Order 100.4.h in Appendix D, which demonstrates that the UC Regents gave the authority over the academic calendar to the UC President.

Summary:

To summarize our report, CRJE found Resolution # 1 to be poorly worded since it does not specify to whom the Resolution is addressed and to whom it should be sent. CRJE found Resolution #2 to be a “sense of the Senate”--that is, a declaration of the Senate’s endorsement of a particular position. The Resolution is unclear about what action, if any, is to be taken as a result of this declaration. CRJE found Resolution #3 to be invalid on procedural grounds. The Senate did not constitute itself as a Committee of the Whole according to the procedures specified in The Standard Code of Parliamentary Procedure. Where there is a need to constitute the Senate as a Committee of the Whole, that action must be completed prior to introduction of an associated Resolution. Therefore, in our opinion, the results of a mail ballot on Resolution #3 are irrelevant and for this reason we are recommending to Senate Secretary Klahn to remove this Resolution from the forthcoming mail ballot.

Respectfully submitted,

COMMITTEE ON RULES, JURISDICTION, AND ELECTIONS

Jean E. Fox Tree

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John O. Jordan, Chair

November 3, 2009

Appendix A

Santa Cruz Bylaw (SCB) 9.1

Definition: A "Memorial to the Regents" is a declaration or petition addressed to the President of the University of California for transmission to The Regents. A "Memorial to the President" is a declaration or petition to the President not intended for transmission to The Regents. A "Memorandum" is a so-designated declaration or petition addressed to other than the President or The Regents, such as to the Chancellor of Santa Cruz or to the campus's representatives to the Assembly. [SB 90, SB 85] (CC 31 Aug 98, 31 Aug 99; EC 31 Aug 06)

The Division may submit Memorials to the President of the University of California and may initiate Memorials to The Regents on matters of Universitywide concern to be submitted to The Regents through the President. [SB 90B] (CC 31 Aug 98, 31 Aug 99)

Memorials to the Regents, Memorials to the President, and Memoranda may be sent forward only after approval in a mail ballot by a majority of members of the Division eligible to cast votes, unless the decision not to conduct a mail ballot is made by the Santa Cruz Division at a Regular or Special Meeting at which the language of the ballot proposal shall be presented. If the Division decides against holding a mail ballot, a mail ballot will nevertheless be held upon petition of 25 voting members of the Division. Such a petition must be submitted not later than 21 calendar days after the Minutes of the Divisional Senate meeting reporting such action have been placed in the mail. The mail ballot referendum will be conducted by the Committee on Rules, Jurisdiction, and Elections in accordance with Universitywide Senate procedures [SB 95]; approval of the referendum by a majority vote shall constitute direction to the Division to send the Memorial to the Regents, Memorial to the President, or Memorandum forward. [DLI 1996.10C and 1996.10E] (Am 6 Nov 91, 12 Feb 92, 31 May 95, 18 Feb 98 EI; CC 4 Aug 87, 31 Aug 98, 31 Aug 99, 31 Aug 06)

Appendix B

Regents Standing Order 100.4(qq)

2. The President of the University shall have authority, consistent with legal requirements, to implement furloughs and/or salary reductions, on terms that the President deems necessary, for some or all categories of University employees, upon Declaration of Extreme Financial Emergency, as specified below. The President further shall have the authority, during the pendency of the Declaration and consistent with applicable legal requirements, to suspend the operation of any existing Regental or University policies otherwise applicable to furloughs and/or salary reductions that are contrary to or inconsistent with the terms the President deems necessary to the proposed implementation. The authority provided herein may be exercised with regard to the University as a whole or with regard to a campus or multiple campuses. For purposes of this section, Furlough means temporary unpaid time off of work where use of accrued vacation leave, compensatory time off, or any other paid leave or compensation may not be used.

Appendix C

The Standard Code of Parliamentary Procedure, by Alice Sturgis, extracted from pp. 232-33

Committee of the Whole

The Committee of the Whole is a procedure under *Robert's Rules* in which the assembly pretends it is a large committee, in order to get around the limitations on debate that otherwise apply. (Ordinarily, under *Robert*, a member may speak only twice on a motion, with a time limit of ten minutes, unless a rule has been established to the contrary, or unless the assembly has granted special permission by a two-thirds vote or by general consent.)

When a motion is approved creating a Committee of the Whole, the presiding officer vacates the chair after appointing another member to preside over the "committee." All votes are only "committee votes," not binding on the assembly, and so they must be taken again after the committee has resolved itself back into an assembly with the original presiding officer again in the chair, and after the temporary chair has reported to the assembly what was done by the "committee."

Instead of this convoluted process, under the *Standard Code* the assembly simply votes to consider the matter informally (see page 128).

Appendix D

Regents Standing Order 100.4(h)

The President shall fix the calendar of the University, provided that no session of instruction shall be established or abolished except with the advice of the Academic Senate and the approval of the Board.