

Decision regarding interpretation of Article VIII
(Released April 15, 2011)

Charge

As requested by Faculty Assembly President James Morley on March 22, 2011, the Parliamentarian has been asked to provide interpretation of Article VIII of the Faculty Assembly by-laws, in regard

April 2, noon: Faculty opinions

April 4 to 11, Additional comments

April 22, Decision made public

Criteria for Decision

The crux of the issue at hand is how to interpre

Section 7. Whenever these Bylaws refer to a “majority vote,” this shall refer to a majority of those members present and elig

considered a binding (or even an appropriate) precedent in this case because it concerned a vote under the auspices of another article.

Decision

Based upon the three different standards to interpret Article VIII, the conclusions among the different approaches are consistent. As such, the FAEC, and by extension the FA, is hereby directed to implement Article VIII of the Faculty Assembly By-laws under the following conditions:

1. Votes must be submitted by mail ballot. This can be done through campus or U.S. mail.
2. Only eligible voting members of the FA may vote, as defined in Article II
3. In order to pass, $2/3$ of all eligible voters must approve (abstentions count as no votes, consistent with Robert's Rules). Specifically, if there are 100 eligible voters, 67 yes votes are required to amend the by-laws.

APPENDIX

FA Executive Council Discussion of The Question Submitted to the FA Parliamentarian Regarding Voting Procedure For Amendment of the Bylaws.

April 1, 2011

Summary:

Amendments to the bylaws requires that two thirds of the full faculty membership eligible to vote must agree to the amendment, and the vote must occur by mail in ballot.

Discussion:

Interpretation of the Current Bylaws: the Amendment Process

Article VIII of the current Bylaws now in effect require that amendments of the Bylaws be made by a "two thirds vote of the full membership submitted by mail in ballot."

The members of the Faculty Assembly are defined by Article II , Section I of the current Bylaws. "Voting members" include the full time Faculty in residence (i.e., not on leave), Library Faculty , and Professional Staff who have teaching responsibilities as part of their contractual load. There are also "non voting ex officio members," which includes part time faculty, the Provost, academic deans, and administrators who hold p

The argument has been made that the Faculty Assembly previously interpreted a “two –thirds vote of the full membership” differently in the case of the recent vote on whether to adopt permanently the “Pilot” Bylaws of 2008. The contention is that the Faculty Assembly interpreted “two thirds vote of the full membership” to mean only two thirds of those who actually voted, rather than two thirds of all those eligible to vote. This is factually incorrect.

Under the “Pilot” Bylaws of 2008, the text of Article VIII contained two paragraphs (in contrast to the current version), which stipulated two different procedures, one for general amendment of the bylaws, and the second specifically relating to the approval of the “Pilot” Bylaws of 2008. The portion relating to approval of the “Pilot” Bylaws read, in pertinent part:

“...a vote will be taken in March 2010 on whether to make this version of the Faculty Assembly bylaws permanent. The vote must pass by a two thirds majority.”

As noted above, Robert’s Rules defines a simple “**two thirds majority**” as two thirds of all those voting. Thus, it was proper to measure the vote by measuring whether two thirds of all those voting approved of the permanent adoption of the “Pilot” Bylaws of 2008. In such a case, as noted by Robert’s Rules, *ibid.*, abstentions and failures to vote are not counted as part of the vote.

The Faculty Assembly Received Notice of the Parliamentary Procedures To Be Used Without Objection

Adding force to the plain language of the Bylaws, it is important to note that, in a joint meeting of the FA Executive Council and the FGR Committee, it was agreed that the language of the second paragraph of article 8 for approving the “Pilot” Bylaws of 2008 did not specifically use the term “full membership.” Therefore this allowed for a motion to pass with a 2/3 majority of votes cast, rather than of all those eligible to vote. All parties understood that this interpretation only applied to the second paragraph – not the first paragraph. Minutes show no discussion of any intention to make this particular procedure apply to the amending of bylaws in the first paragraph. Indeed, it would not be possible for the FA Executive Council to bypass the plain language of the Bylaws.

The approved bylaws must be honored as written.

Conclusion

Article VIII of the current Bylaws requires that amendments pass by a “two thirds vote of the full membership submitted by mail in ballot.” This is defined by Robert’s Rules to mean that two thirds of all those eligible to vote as part of the full faculty membership are in favor of the resolution. Previous votes did nothing to diminish this interpretation and are not contrary to the position taken by the FA Executive Council. We ask that the Parliamentarian hold that

amendments to the current Bylaws now in force require a two thirds vote of all those eligible to vote as part of the full faculty membership, rather than simply two thirds of those voting.

FGRC position on Bylaws Article VIII:

Article VIII Amendment of Bylaws

These bylaws can be amended by a two-thirds vote of the full membership submitted by mail-in ballot, provided that the amendment has been submitted in writing at the previous meeting. Note: The bylaws can be temporarily amended for the length of a particular faculty assembly meeting by a motion on the floor passed by a 2/3 majority.

1. The original bylaws use the term "majority" in regards to voting 3 times and use the term "plurality" in

The drafters of the bylaws made an error in drafting an unclear Article VIII. We can see from the bylaws as a whole that they had the ability to draft clear articles.

3. Unenforceable

What makes a contract unenforceable?

Vague – historically, the law has always found vague contracts unenforceable

Impossibility of performance – have we ever had 2/3 yes vote of 222?

Unconscionable – the bylaws, as is, are so unfair to the

demonstrates the rigidity of the faculty and more importantly, prevents change in faculty governance in perpetuity.

Therefore we are calling for the current Article VIII to be INTERPRETED as follows and that said article be REWRITTEN as follows:

These bylaws may be amended by satisfying the following requirements:

a 2/3 majority vote of the votes cast and 2/3 of all voting members of the Faculty Assembly as defined in Article II (a yes vote from 2/3 of all votes cast and at least 2/3 of the full voting membership participate/vote) and, provided the amendment has been submitted in writing at the previous Faculty Assembly meeting.

The vote delivery shall be electronic (i.e., Qualtrics) or mail-in ballot.

These bylaws may be temporarily amended for the length of a particular Faculty Assembly meeting by a motion on the floor passed by 2/3 of the voting faculty present.

Respectfully submitted,

Faculty Governance Review Committee

Stephen Klein (Chair) – ASB

Lisa Cassidy – AIS

Meredith Davis – CA

Susan Kurzmann – Library

Aaron Lorenz – SSHS

Ash Stuart – TAS

I think we are all concerned with the ease at which we could potentially change the bylaws. I am curious, have the bylaws ever been changed? In other words, when they were amended in the past, did the votes have 2/3 of all faculty? I think there is a general concern that this is not possible. So, I am asking, is it? This would change my view of the article and history is a significant indication of the possibilities.

Additionally, I am concerned that if the article is interpreted as 2/3 of all faculty, then we will not be able to adequately interpret the results of the vote. It discourages dissenting votes to be cast. A vote not cast is the same as a vote cast no, so how do we determine the difference between people that don't care and people that don't agree? In terms of validity of a change, it is important to adequately represent the dissenting vote. People that abstain from voting do so for a number of reasons, but not because they want to vote no.

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I am a second year faculty member in SSHS, so I cannot speak to the intent of the article as

Alex

Thanks for taking this on. I realize I've missed the deadline, but hopefully it's not too late.
one quick thought: FA is not like the congress where the members, while not required, are under heavy pressure to attend and vote, and are held to account by their constituents if they do not. We should look back over the history of FA mail ballots and see if we have ever had a vote where 2/3rd of the faculty voted yes, or even if 2/3rd actually voted. If not, the 2/3 of voting members is bcc: [redacted] 240TD.3(bcc:/TT121Tf36.85791.224TD.0002Tc(voting)66GGMby)T(ssedually)Tj/TT11142.31