Lee v. Diner  
Cite As: 1996 ASM SJ 3

Dan Teitelbaum and Mark Howard for the ASM Student Judiciary Committee:

This hearing was called by the Student Judiciary without a complaint having been filed. At the 4/10/96 meeting of the Student Judiciary both Ms. Lee and Ms. Diner agreed it would be best to settle this dispute as quickly as possible and most certainly before May 1, 1996, the day that SSFC terms end and begin.

In the ASM 1996 spring elections Shira Diner received the most votes for the one-year SSFC seat on the ballot. SSFC terms are two years and this seat had been placed on the ballot to fill the seat of Ms. Lee. It has now come to the attention of both parties involved, the Student Election Commission (SEC), and the Student Judiciary Committee (SJC) that this seat had not been officially vacated at the time of the elections nor since. The SEC put this seat on the ballot after hearing from various sources that Ms. Lee would be resigning her seat after she graduated and it was assumed that Ms. Lee would be graduating in May, 1996. Her term would otherwise end on May 1, 1997. The problem centers around the fact that Ms. Lee never officially resigned her seat nor gave anyone a definite date of her graduation or resignation. This puts the SJC in an unfortunate position.

The Judiciary must decide between the following two arguments. Ms. Lee asserts that since she was properly elected and has not filed a resignation of her SSFC seat there is no cause for her to step down from the committee. Ms. Diner asserts that since she won the most recent election for the SSFC seat she is therefore the proper owner of the seat. Both arguments, to varying degrees, are correct.

Ms. Diner claims that she never heard about the fact that the seat she was running for had not been officially vacated yet or that her term may not begin on May 1, the normal date for a SSFC seat to begin. Ms. Lee claims she brought this specific fact to the attention of Bob Hamilton, a Student Election Commission member, during the three day polling period. Mr. Hamilton took the lead role in running these elections and therefore had the responsibility of forming the ballots and confirming the legitimacy of those ballots. The other two SEC members had no part in creating the ballots and therefore had no knowledge of any of these events until well after the elections. Mr. Hamilton acknowledges the fact that he heard of the open SSFC seat through word of mouth and never received official notification of Ms. Lee’s resignation, nor spoke directly to Ms. Lee about the situation until the elections were already under way. Mr. Hamilton also claims that he never saw the resignations for the other temporary seats on the ballot and that it was through discussion with various ASM officers and staff that he learned of there need to be filled.

It is the obvious finding of the Judiciary that the one-year SSFC seat should never have been put on the ballot. To put a seat up for election that has not been vacated due to term expiration, resignation, or other legitimate vacancy is an obvious mistake. It necessarily leads to the current conflict: two people who claim to have the right to assume one seat on a committee.
The Judiciary’s decision hinges on the following facts. Ms. Lee never turned in a resignation, her term expired, and no evidence was produced to show that Ms. Lee specifically said she would be resigning in May. While it is known that Ms. Lee said she would be leaving when she graduated this panel does not find, as Ms. Diner asserts, that it is reasonable to assume that when someone says they will be graduating, they will be graduating the following May.

Ms. Diner is the unfortunate victim of miscommunication and a lack of proper procedure. It is the decision of the Student Judiciary that Ms. Lee shall retain her seat on SSFC until her term expires, she resigns, or until some other situation precludes her from properly sitting on the committee. Should Ms. Lee leave SSFC at any time before the end of her term Ms. Diner shall immediately assume the seat granted she meets ASM Constitution and bylaw requirements at that time.

This hearing and the surrounding issues have given the SJC a good opportunity to examine the process surrounding resignations, determining which seats are vacant, and which seats should be put up for election. The following excerpts from the ASM bylaws Part One outline resignation process:

**Article Three: Removal, Impeachment and Resignation of Officers and Appointees**

**Section One: Definitions.**

(a) “Officer of the ASM” shall refer to anyone holding office by election of the members of the Associated Students of Madison, to the four ASM members appointed to the SSFC under Article VIII, Section 1(c) of the Constitution, and to the Student Justices.

**Section Five: Resignations of Officers and Appointees.** Officers and appointees shall submit written notice of resignation to the Chair of the SC. If the notice does not specify an effective date, the resignation shall take effect immediately.

As Section One clearly defines Ms. Lee as an “officer of the ASM,” her resignation must be filed with the Chair of the SC. The problem in relation to the issues of this case is that there are no procedures outlined to ensure that the Student Judiciary and the Student Election Commission are aware of resignations and other vacancies. To resolve this problem the Judiciary hereby establishes the following procedures.

1) All resignations of an “officer of the ASM” (as defined in ASM bylaw Part One, Article Three, Section One) must be submitted to the Chair of the ASM Student Judiciary Committee by the Chair of the Student Council within one week of receiving the resignation.

2) All impeachments of an “officer of the ASM” or any other action or situation which removes an “officer of the ASM” from their position must be reported to the Chair of the Student Judiciary within one week of said action.

3) A copy of the resignation or notification of removal shall be forwarded to the SEC by the Chair of the Student Judiciary immediately or, if there is no SEC at the time, as soon as the next SEC is formed.

4) These procedures are in addition to any procedures outlined in the ASM Constitution, bylaws, or policies.

After Craig Newby spoke during the open forum and suggested that procedures similar to these be established, a suggestion seconded by ASM Chair Michelle Diggles, Ms. Diner suggested it would be poor precedent for the Student Judiciary to create procedures without going through the formal bylaw change process. The Judiciary strongly disagrees with this claim. An earlier case filed against the ASM Student Council led the Judiciary to create new agenda and meeting minutes requirements. These procedures were created in the hope that the type of problem being dealt with in that
hearing would not be repeated and that if it did, sufficient records would be on hand to enable an investigation. The above orders by the Student Judiciary aim at the exact same resolution.

Mr. Hamilton has accepted responsibility for the unfortunate situation surrounding Ms. Diner and Ms. Lee and understands that the seat should not have been placed on the ballot. The Judiciary agrees that it was an error to have the seat on the ballot but also finds that if proper procedure had been in place this situation never would have occurred. We sincerely hope the above procedures takes care of this problem.

Apologies are extended to Ms. Diner from the Student Judiciary Committee (of which the SEC is a sub-committee) for her troubles, but no evidence or cause was shown which could have justified removing Ms. Lee from office.

The Student Judiciary recommends (but does not order) that the ASM Nominations Board recommend Ms. Diner as one of the SSFC appointees as soon as possible.

This decision is appealable through 3/30/96.