

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

UNIVERSITY OF FLORIDA,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 94-6414
)	
MARY CAPPELLARI,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Notice was provided and on March 2, 1995, a formal hearing was held in this case at the Alachua County Courthouse, 201 East University Avenue, Gainesville, Florida. Authority for conducting the hearing is set forth in Section 120.57(1), Florida Statutes. Charles C. Adams was the hearing officer.

APPEARANCES

For Petitioner: Barbara C. Wingo, Esquire
Office of the General Counsel
University of Florida
207 Tigert Hall
Gainesville, Florida 32611

For Respondent: Carla D. Franklin, Esquire
Franklin, Donnelly & Gross
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Gainesville, Florida 32601

STATEMENT OF THE ISSUES

Was Respondent guilty of misconduct which would warrant her suspension without pay for the period of September 30, 1994 through December 29, 1994? Is Respondent entitled to pay for the period of August 12-24, 1994?

PRELIMINARY STATEMENT

On September 30, 1994, Petitioner informed Respondent that her employment with the University of Florida was suspended without pay for the period of September 30, 1994 through December 29, 1994 due to alleged neglect of her duties and responsibilities. The charging document afforded the Respondent various alternatives for contesting the suspension. See Rule 6C1-7.041, Florida Administrative Code. Among those options was the right to a formal hearing in accordance with Section 120.57(1), Florida Statutes. Respondent elected that option.

Petitioner referred the case to the State of Florida, Division of Administrative Hearings to conduct the formal proceeding. The hearing took place on the aforementioned date.

Petitioner presented testimony from Robert McCarter, Richard H. Schneider, R. Wayne Drummond, Larry Bean, and Tina Gurucharri. In addition, Petitioner introduced sixteen (16) exhibits which were admitted as evidence. Respondent testified on her own behalf and produced three (3) exhibits which were admitted as evidence.

Official Recognition was made of Chapter 6C1-7, Florida Administrative Code, and the Collective Bargaining Agreement between the Board of Regents, State University System of Florida, and the United Faculty of Florida.

A hearing transcript was filed on March 17, 1995. The parties timely submitted proposed recommended orders. The proposed recommended orders have been considered. The proposed fact finding by the parties is discussed in an appendix to this recommended order.

FINDINGS OF FACT

1. Respondent began employment with Petitioner on August 7, 1992. The period of her employment was for a nine-month term ending on May 6, 1993. That employment was renewed for the nine-month school year 1993-94.

2. In both years, Respondent worked as a faculty member for the Department of Architecture in its architectural program located in the Vicenza Institute of Architecture, Vicenza, Italy.

3. In her teaching assignment, Respondent taught a course in Italian language and culture. In addition, Respondent performed administrative duties associated with the overseas program. The administrative duties which Respondent performed involved the booking of hotel rooms, buying supplies, buying equipment, arranging for the maintenance of the building in which the program was housed, and hiring cleaning persons. Some of the administrative duties were performed outside the nine-month contract term in exchange for flexibility in Respondent's schedule in the nine-month contract term. That is to say, that Respondent would have time off in the period of August through May in return for performing administrative duties in the later dates in May through early August when she was not engaged in her teaching assignments.

4. The teaching position which Respondent held for two years in the Vicenza Institute of Architecture was one which was a non-tenure-accruing assignment.

5. Among the benefits associated with Respondent's position for the two years in Italy, were full health benefits and retirement benefits at the rate of pay which she received and in accordance with the State of Florida/SUS Retirement System. As coordinated through the Florida State Retirement System, Respondent was also entitled to a cost-of-living differential based upon the overseas assignment.

6. The original contract, as extended for the second year, contemplated notice being given on or before June 30th to approximate a one-year prior notification if her position were terminated and the Respondent required to return to the United States.

7. The teaching which Respondent did in Italy was primarily for the benefit of architectural students from the University of Florida who were undergoing instruction in the Vicenza Institute of Architecture. In addition,

other faculty from the University of Florida were allowed to audit the course taught by the Respondent.

8. In anticipation that changes would be made in the Vicenza program, Franca Stocco was offered a somewhat similar assignment to that performed by Respondent. This offer was made on April 28, 1994 for the period of May 13, 1994 through the 1994-95 school year. Unlike the Respondent's contract, the Stocco contract was for 12 months, but it was a non-tenure earning position. In particular, Stocco was expected to teach an Italian language and culture course and to have overall administrative responsibilities for the Vicenza Institute program. That overall responsibility had been performed by Francesco Cappellari as Administrative Director in the two years Respondent taught in the program. Francesco Cappellari is Respondent's husband.

9. Ms. Stocco accepted the offer to administer the program and to teach the Italian language and culture course when she signed the letter of offer and addendum on September 15, 1994. However, on May 12, 1994, Franca Stocco began the duties contemplated by the April 28, 1994 contract offer, except the teaching assignment.

10. Following the April 28, 1994 offer of employment directed to Ms. Stocco, Respondent was informed that her position as professor was being terminated and that she was being reassigned from Italy to the University of Florida main campus in Gainesville, Florida. Correspondence detailing the termination and reassignment is dated May 17, 1994. It was received by the Respondent on May 19, 1994.

11. In pertinent part, the notice of termination and reassignment stated:

As you are fully aware, we all deeply regret the financial and communications strain on you and your family in the administration of the VI: A program for the past two years. Specifically, however, we were extremely disappointed with respect to your resistance to making arrangements for the Texas Tech program in Milan. This underlines our general conclusion that we are not receiving your full cooperation in supporting these critical programs.

Therefore, this letter constitutes an official change of assignment of your responsibilities and notification of your assignment back to the main campus at the University of Florida for the 1994-95 academic year. Your teaching assignment will include two courses of language and Italian culture per semester as elective preparation courses for students prior to their departure for the program in Vicenza. Your current administrative duties will be replaced by the second course and student advising responsibilities associated with these two courses each semester.

The reassignment requires that you remove your personal effects from the Vicenza facilities immediately upon your return as the new director will be required to occupy these office facilities.

This must be accomplished by May 25th and as you will no longer have official duties at the Center, no office will be provided.

In accordance with the terms and conditions of your contract and in accordance with the University Rule, the University has chosen to exercise its option to non-renew your appointment with appropriate notice. This letter serves as the one-year notice of termination of your contract as well as a change of assignment for reasons stated above. The cost of living adjustments will not be provided upon your return to the main campus. Your base salary will be increased according to the legislative guidelines and available funding. Please let us know if you have any questions regarding this one-year notice of termination and change of assignment for the 1994-95 academic year which begins August 12, 1994 and ends May 11, 1995.

Should you chose to appeal this decision or if you believe your rights pursuant to University rules have been violated, you may elect to proceed through the appeal or grievance procedures available to faculty members as described in 6C1-7.041 of the Florida Administrative Code. . .

12. The correspondence detailing the reassignment and termination attached a copy of Rule 6C1-7.041, Florida Administrative Code.

13. R. Wayne Drummond, AIA, Dean and Professor of the College of Architecture, University of Florida, signed the notice of reassignment and termination. The Dean is the Chief Financial, Academic and Administrative Officer of the College of Architecture.

14. Robert McCarter, Chairman of the Department of Architecture, University of Florida, also signed the notice reassigning and terminating the Respondent. His duties include the hiring of faculty, assessing faculty performance, and assigning teaching assignments, to include faculty associated with the Vicenza Institute of Architecture. Mr. McCarter had supervisory responsibility over Respondent in her employment with the University.

15. On May 20, 1994, a meeting was held in Gainesville, Florida, at the University, to discuss, among other topics, Respondent's reassignment from Italy to Gainesville, Florida. In attendance were the Respondent, Francesco Cappellari, Mr. McCarter, Dean Drummond, and vice provost Gene Hemp. At the meeting, the Cappellari's protested their respective reassignments, Francesco Cappellari having been notified that he, as well as his wife, would be reassigned to Gainesville, Florida.

16. In particular, the Cappellari's expressed concern that the reassignment would interfere with the educational needs of their eldest daughter, who was enrolled in the Italian school system and would need to stay in Italy into September, 1994 to maintain her academic standing.

17. In the May 20, 1994 meeting, the Respondent did not indicate a willingness to accept the reassignment to Gainesville, Florida.

18. In the meeting, Respondent expressed the opinion that she was entitled to a year's notice before reassignment and stated an objection to not being given that notice. Nonetheless, Respondent did not undertake formal steps to grieve or contest her reassignment or termination.

19. At the conclusion of the meeting on May 20, 1994, Respondent left the impression with the administration that she was not willing to accept the reassignment. At that time, Dean Drummond made it clear that the reassignment would stand; however, he left a standing offer that the University would work with the Cappellari's to address their concerns about a transition back to the campus in Gainesville, Florida.

20. As a further expression concerning flexibility related to the reassignment to Gainesville, Florida, Dean Drummond wrote to the Respondent on July 7, 1994 to this effect:

This letter is to reconfirm your assignment for the fall semester 1994. As outlined in the letter of reassignment, we will schedule the two courses of Italian Language and Culture. At this point, there is still some flexibility in establishing the time and days of the course offerings. As you are aware, most courses are taught on a regular three-day per week pattern, however, some classes such as my seminar have been taught one evening per week, and there are other patterns designed to accommodate special conditions in faculty schedules and availability. Please let Professor McCarter know of your preferred schedule and he will try to accommodate your request.

I have also had a preliminary discussion with Dr. Geraldine Nichols who is the new chairperson in Romance Languages. She is interested in the possibility of "joint-listing" your classes. The possibility also exists that the courses may even be listed through her department. Obviously, the details of such an arrangement need to be resolved very soon. I have enclosed a copy of the course descriptions from their department for your review. Please let me know of your interest in this area of potential collaboration as soon as possible so that the appropriate details can be resolved prior to the beginning of the fall semester.

21. Richard H. Schneider is the Associate Dean of the College of Architecture. In that position, he has responsibility for personnel matters. He also is involved with budgeting, research, review of research activities, outreach and related activities for the College of Architecture.

22. Mr. Schneider spoke to the Respondent concerning the July 7, 1994 correspondence. This communication was by telephone in July, 1994. The conversation between Mr. Schneider and the Respondent concerning the July 7, 1994 correspondence was brief. In the conversation, Respondent indicated that she understood the contents of the letter.

23. In one telephone conversation between the Respondent and Mr. Schneider, Respondent stated that she was still waiting for Dean Drummond to work out an arrangement that would accommodate her daughter. This is taken to mean the need for the daughter to remain in Italy to pursue her education into the month of September, 1994.

24. Mr. Schneider wrote Respondent on July 28, 1994 reminding the Respondent that no reply had been made to the July 7, 1994 correspondence concerning Respondent's assignment for the fall semester. The July 28, 1994 correspondence also referred to the need to hear from the Respondent to accommodate the details of trying to work out coordination of the Respondent's teaching assignment with the Department of Romance Languages at the University. The July 28, 1994 correspondence made reference to the collective bargaining agreement and attached the language from Article 16 having to do with job abandonment. This is seen as a reminder that Respondent might be considered to have abandoned her job at some juncture.

25. On August 5, 1994, Mr. McCarter, as Chairman of the Department of Architecture, completed an annual evaluation of Respondent's job performance for the school year 1993-94. While that evaluation spoke of the termination of Respondent's responsibilities in the Vicenza Institute of Architecture, the evaluation was positive concerning the Respondent's teaching performance.

26. Mr. Schneider had at least one other occasion to speak to Respondent by telephone concerning her reassignment. Again, the discussion was brief. On this occasion, Mr. Schneider indicated the concern about Respondent's position on reassignment and emphasized that there might be a problem with job abandonment on her part.

27. Further written communication was made from Mr. Schneider to Respondent on August 8, 1994, which stated:

As I told you several times on the phone last week, it is very important that we hear from you soon relative to your plans for the Fall Semester. At this point we are expecting you back on campus to assume teaching responsibilities during the semester. Wayne's letter to you of July 7, makes it very clear that we are trying to accommodate your daughter's examination schedule by providing the maximum flexibility possible as to the date of your return. However, we still need to plan the academic year so that it is imperative that you let us know when you will be back to teach. Of course, you may also request a leave without pay for the semester.

Whatever the case, it is very possible that the University will make a case for job abandonment -- as indicated in the Collective Bargaining Agreement section I sent you -- should we not reach some sort of understanding. Therefore I urge you to be in touch with us soon. Thanks.

28. In the correspondence of August 8, 1994, the University mentions for the first time that Respondent might request a leave without pay for a semester as an alternative to taking up her teaching duties in Gainesville, Florida, in the fall term.

29. On August 10, 1994, Respondent notified Dean Drummond concerning her position on reassignment. That correspondence stated:

Your reason for 'reassigning' me to teach in the United States and for summarily terminating me one year hence was that: '. . . we were extremely disappointed with respect to your resistance to making arrangements for the Texas Tech program in Milan. This underlines our general conclusion that we are not receiving your full cooperation in supporting these critical programs.'

I take strong exception to the above statement. The premise for the reassignment and subsequent termination is an absolute fabrication solely and purposely fashioned to discredit me, to relegate me to the same fate as my spouse, and to penalize me based on my marital status with the director.

As you are full [sic] aware, I sacrificed a coveted position with the School Board of Alachua County to join ranks with you in full trust, and now, on false charges, you dismiss me, damage my reputation with the University, and place this reassignment/termination letter in my personnel file.

You assigned me to work and live in a foreign country; yet, as chief administrator of an 'international' program, you have shown little, if any, cultural sensitivity and concern for this type of relocation as well as for the numerous problems you have created for me and my children by this unwarranted and reprehensible deed. Not only can I not leave Vicenza for their sake, but it is not fair that I should be told to do so in this untimely and unethical manner. I was promised by you a minimum of five years; at the very least a one year notice of termination before return to the U.S.

This letter, therefore, constitutes my official reply that I can not accept the reassignment as you have outlined in your communique' received July 21. I do intend to seek counsel on my rights inasmuch as you have hampered all attempts to do so thus far.

30. This correspondence made it clear that Respondent did not accept the reassignment to Gainesville, Florida, for the academic year 1994-95.

31. Following Respondent's decision to decline the reassignment to Gainesville, Florida, Dean Drummond modified the position of the College of Architecture concerning Respondent's assignment for the academic year 1994-95. This modification was through a notice on August 16, 1994 with an addendum. In the respective correspondence, it was stated:

Thank you for your Fax of August 10, 1994. We are attempting all reasonable courses of action to

accommodate you and your family in the context of the present situation. In that spirit, I offer you the following additional options:

1. Stay in Vicenza this semester and teach the Italian language/culture course to the 35 or so students we expect in the VI:A Program. This would also entail the normal advising functions associated with this course. You would have no other administrative/managerial duties. In return, you will receive your full salary in addition to the cost-of-living supplement. You may be assigned these or similar duties in Vicenza for the Spring, 1995 term or assigned to similar duties in Gainesville to complete the terms of your contract period. Please advise us as to your preference.

2. Request a leave of absence without pay for the Fall, 1994 semester. If that is the case, you must provide us with a written request immediately.

If you elect the first option, please be aware that our hope is to 'front-load' the course as much as possible, so that the bulk of the work is accomplished within the first eight-weeks period, starting August 22.

Whatever you decide, I ask you to let us know immediately since the contract period has already begun and time is of the essence.

* * *

This is an addendum to my earlier letter also dated August 16th to clarify the options available to you for the fall semester. I want to reiterate that you are presently assigned to teach in Gainesville this semester. We are willing, however as the Associate Dean has advised you, to accommodate your family's needs by considering a leave without pay for part of this semester, after which you would be back on campus for your current assignment or you could choose one of the other options mentioned in my letter. Nevertheless, we need to know your decision immediately so we can take appropriate action.

The contract period began on August 12th. If I do not hear from you relative to the options that have been presented on or before August 23rd, I will have no choice but to invoke Article 16, Section 8, of the Collective Bargaining Agreement, 'Job Abandonment.'

32. Mr. Schneider telephoned Respondent about the offers set forth in writing on August 16, 1994. Respondent was not willing to discuss the details of those offers or to have Mr. Schneider read them to her. Mr. Schneider reminded the Respondent in the conversation that the University deemed the deadline for responding to the subsequent offer of assignment to be August 23,

1994. Mr. Schneider told Respondent that the details of the August 16th offer would be faxed to Respondent, and the August 16, 1994 letters were, indeed, faxed to Respondent.

33. In accordance with Dean Drummond's instructions, Respondent replied to him, through a fax received in the normal business hours at the University of Florida in Gainesville, Florida, on August 23, 1994. In pertinent part, the August 23, 1994 response by the Respondent stated:

I will be staying in Vicenza for the Fall 1994 and Spring 1995 semesters and am therefore selecting the option to teach the Italian language/culture course here for that period.

I am delighted that you go along with my idea of "front loading" the courses as I have always found that to be the most effective option for the students. I also understand that I will not have any other administrative/managerial duties during this time.

34. Once the response was received in Gainesville, Florida, Mr. Schneider tried to confirm the details by contacting the Respondent by telephone. He was unable to make that contact.

35. Mr. McCarter and Franca Stocco were provided a copy of the Respondent's acceptance of the alternative assignment. That copy was received by McCarter and Stocco on August 24, 1994.

36. On August 24, 1994, Mr. McCarter spoke with Respondent concerning her assignment at the Vicenza Architecture Institute for the academic year 1994-95. At the time this conversation took place, classes had already commenced in the Vicenza program effective August 22, 1994.

37. In the conversation, Mr. McCarter told Respondent that the schedule had been created for teaching the Italian language course, Monday through Thursday, from 11:00 a.m. to 12:00 p.m. Mr. McCarter made the Respondent aware that the schedule was one that was acceptable to the faculty in the Vicenza program. Respondent commented that in the past, she had had more success in teaching two days a week for a longer period. Mr. McCarter asked Respondent what kind of schedule she had in mind, and the Respondent replied that she preferred something on Monday/Wednesday or Tuesday/Thursday. There was a discussion about the textbook utilized in the course. Mr. McCarter indicated that the first language class had been held on the previous evening at 5:30 p.m., August 23, and that Ms. Stocco had taught that class and in the brief meeting for that class period introduced a textbook. Ms. Stocco had made mention to Mr. McCarter that the textbook was relatively inexpensive and was available in some local bookstores, and that students had purchased five or six copies, but not all students had made a purchase. Ms. Stocco had told the students to purchase that text if they could. Respondent replied that she had not used the text that Ms. Stocco had in mind and did not prefer it. The Respondent had another text in mind that was published in the United States. Respondent thought that it would take two weeks to get the text that she preferred. Mr. McCarter thought that more time would be needed. Mr. McCarter had a concern about paying to have the text sent from the United States via courier and the cost that would be involved in such shipment. Mr. McCarter asked the Respondent to give him some information about the book she preferred

so that he could check the price and availability of that text if the decision was made to proceed with the text that Respondent preferred.

38. In the August 24, 1994 conversation between Mr. McCarter and Respondent, the question of having faculty members audit the language course was addressed. Respondent indicated her discomfort with having the faculty audit the class. At that time, Mr. McCarter did not accept the notion that the faculty should not audit the language class.

39. At the end of the August 24, 1994 conversation between Mr. McCarter and Respondent, he told Respondent that he would have to get back with her concerning the matters upon which they disagreed. There was no schedule established for the further discussion of those disagreements. Respondent was told that she needed to meet with her class at 11:00 a.m. on Monday, August 29, 1994.

40. Mr. McCarter instructed Respondent that she would not commence her teaching until August 29, 1994, in that tours had been scheduled for the students to be conducted on August 25 and 26, 1994 away from the Institute.

41. Customarily, as a faculty chair, Mr. McCarter would listen to the concerns of faculty members and he was following that practice in the conversation held with Respondent on August 24, 1994.

42. Following the conversation between Mr. McCarter and Respondent, Mr. McCarter sent a fax to Gainesville, Florida, to Dean Drummond, informing Mr. Drummond about the conversation. In the fax, Mr. McCarter listed the proposals which he had in mind and contrasted those with Respondent's proposals. Mr. McCarter noted his concern about what he considered to be a lack of cooperation by Respondent and the basic difficulties of running the off-campus program without confronting these specific difficulties in the third day of class. Through this communication Mr. McCarter sought the advice of Dean Drummond about Respondent's assignment in the Vicenza program. Later, Mr. McCarter spoke to Dean Drummond by telephone and told him that he felt that he needed to write a formal assignment letter for Respondent which addressed the differences of opinion between Mr. McCarter and Respondent about the assignment. Dean Drummond supported Mr. McCarter's decision concerning the nature of the teaching assignment.

43. Mr. McCarter composed an assignment letter which was dated August 25, 1994. He did not personally attempt to communicate the terms of that letter to Respondent. Rather, Mr. McCarter left instructions with Ms. Stocco to serve the Respondent with the August 25, 1994 assignment letter. That delivery by Ms. Stocco was to be made on the morning of August 26, 1994, if possible. The form of delivery was to be a personal delivery.

44. Mr. McCarter told Ms. Stocco that the letter was from him to the Respondent pertaining to Respondent's teaching assignment. The correspondence was sealed, because Mr. McCarter considered it to be a confidential letter. Ms. Stocco was not told the details of the assignment.

45. The assignment letter noted that the University did not intend to pay the Respondent for the period of August 12-24, 1994 in that Respondent had not worked in that period. The assignment letter noted that Mr. McCarter wanted to review Respondent's assignment through a meeting at 10:00 a.m. on August 29, 1994. The assignment letter noted that the course would be taught from 11:00 a.m. to 12:00 Noon, Monday through Thursday. The assignment letter noted that

the text which would be used was the one that Ms. Stocco had utilized in the initial class session. The assignment letter noted that the faculty would be auditing the language course taught by Respondent.

46. Ms. Stocco called the Respondent on the morning of August 26, 1994 to make arrangements to deliver the assignment letter. When Ms. Stocco called Respondent on August 26, 1994, she told Respondent that she had a letter that she needed to get to the Respondent and that it was quite urgent that Ms. Stocco do so. Further it was stated that Ms. Stocco would work with Respondent to get the letter to the Respondent and would meet with Respondent at Respondent's convenience to make the delivery. Ms. Stocco told Respondent that the letter was from the Institute. Ms. Stocco told Respondent that she would like to bring the letter to the Respondent. Respondent indicated that she was about to leave with her children and that they were waiting for Respondent. Respondent told Ms. Stocco that she would be at the Institute on Monday, August 29, 1994 and that Ms. Stocco should "hang on" to the letter.

47. On the afternoon of August 26, 1994, Ms. Stocco made Mr. McCarter aware that Ms. Stocco was unable to delivery the August 24, 1994 assignment letter to Respondent.

48. Having been unsuccessful in delivering the assignment letter, Mr. McCarter and Dean Drummond discussed the future course of Respondent's teaching assignment. This discussion took place on August 26, 1994. Both individuals were concerned about the delays in the instruction for the language course, notwithstanding that the offer which had been made to the Respondent contemplated a delay in her teaching duties until August 29, 1994. Mr. McCarter and Dean Drummond were particularly concerned about what they considered to be Respondent's unwillingness to physically accept the assignment letter. They considered Respondent to be unresponsive and irresponsible and expressed the belief that they needed to prohibit Respondent from disrupting the program beyond that point.

49. As a consequence, Mr. McCarter prepared a letter of termination on August 26, 1994. This correspondence was received by the Respondent on August 30, 1994.

50. On August 29, 1994, Respondent reported for work at the Vicenza Institute of Architecture.

51. On September 7, 1994, Respondent replied to the notice of intended termination. In view of that reply, Petitioner proposed to suspend the Respondent from September 30, 1994 through December 29, 1994. The basis for that proposed suspension is set forth in correspondence dated September 30, 1994. The proposed suspension was based upon alleged neglect of duties and responsibilities. In particular, the disciplinary letter stated:

You failed to assume your assigned duties and responsibilities at the beginning of the fall semester, August 12, 1994. Your assignment had been given to you via a letter dated May 17, 1994. On that date you refused to accept the assignment letter, but you did accept it on May 20, 1994. On May 20, 1994, in a meeting with Vice Provost Gene Hemp, Dean Drummond, and me, it was made clear to you that the assignment outlined in the May 17 letter would stand as your assignment for

the fall semester. Nonetheless, nearly three months later, on August 10, 1994, you informed the Dean of your refusal to accept the assignment as outlined in the May 17 letter. Rather than pursue disciplinary action at that time, the University offered you three alternatives via facsimile transmissions on August 16, 1994. You were also advised of the provisions of the Collective Bargaining Agreement regarding job abandonment. You responded to the assignment options on August 23, 1994, saying you would accept the alternative assignment in the V.I.A. program.

Subsequently, you refused to accept a letter from me on August 26, which addressed important substantive details of your V.I.A. assignment that would have normally begun on August 12. Given that we had not resolved details about your duties and responsibilities previously and that the Italian language class had already been underway one week by that date, you knew, or should have known, that communicating with me prior to your assuming the responsibilities for the class was very important. You failed to do so, even showing up at least 10 minutes late for the class which had been scheduled to start at 11:00 a.m. Monday, August 29.

The University made every reasonable effort to accommodate you and your family's needs. However, in my judgment your actions have adversely affected the functioning of the Department of Architecture's Vicenza Program and constitute misconduct warranting a suspension. The suspension without pay will begin September 30, 1994, and conclude at the end of the Fall term, December 29, 1994.

CONCLUSIONS OF LAW

52. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action pursuant to Section 120.57(1), Florida Statutes.

53. By correspondence dated May 17, 1994, Respondent was made aware that she had been reassigned from the Vicenza program to the Gainesville, Florida, campus and that she was subject to non-reappointment beyond the coming academic year. These decisions were made in accordance with Articles 9 and 12 to the Collective Bargaining Agreement between the Board of Regents, State University System of Florida, and the United Faculty of Florida (the Agreement). Respondent did not protest these decisions on reassignment and non-reappointment as she may have done consistent with Article 20 to the Agreement and Rule 6C1-7.041, Florida Administrative Code.

54. On August 10, 1994, Respondent officially declined the reassignment to the Gainesville, Florida, campus, in what was tantamount to a resignation, pursuant to Paragraph 12.4 to the Agreement.

55. On August 16, 1994, the University extended a further offer of employment. On August 23, 1994, Respondent accepted that offer.

56. On August 24, 1994, a discussion was held concerning the terms of employment under the August 16, 1994 offer, as accepted on August 23, 1994. The details related to the employment that was to commence on August 29, 1994 were not concluded through the August 24, 1994 meeting between Mr. McCarter and Respondent.

57. The details were concluded through the August 25, 1994 assignment letter. Before that assignment letter was prepared, Respondent was unaware that Mr. McCarter intended to prepare that correspondence. The Respondent was not obligated to inquire concerning its preparation. It has not been shown that the attempt to provide Respondent with that letter on August 26, 1994 was a circumstance in which Respondent was made aware that the letter was an assignment letter which must be received by the Respondent before assuming her duties on August 29, 1994.

58. Respondent's obligation was to report to her assignment on August 29, 1994. She met that obligation.

59. Given the history of these events, commencing with the May 17, 1994 letter of reassignment and termination, through the attempt to communicate the assignment terms set forth in the August 25, 1994 correspondence, Petitioner chose to impose discipline against Respondent. The proposed discipline is set forth in the September 30, 1994 letter suspending Respondent without pay for the period of September 30, 1994 through December 29, 1994.

60. Because Petitioner seeks to impose discipline against the Respondent, it bears the burden of proving the allegations in the complaint letter. This is as contemplated by Paragraph 20.4 to the Agreement.

61. The proposed discipline is in accordance with Article 16 to the Agreement.

62. Paragraph 16.1 to the Agreement creates the opportunity for discipline if there is just cause. Just cause is further defined as incompetence or misconduct.

63. Paragraph 16.3 to the Agreement allows the imposition of a suspension without pay.

64. Rule 6C1-7.048 further describes grounds for suspending a faculty member for "neglect of duty or responsibilities which impair teaching, research, or other normal and expected services to the University".

65. Respondent is accused of misconduct by neglecting her duties and responsibilities.

66. First, Respondent is accused of failing to assume her assigned duties and responsibilities at the beginning of the fall semester, August 12, 1994. Respondent is not guilty of misconduct for refusing to accept that assignment. She timely and properly declined to accept the Gainesville, Florida, assignment. Her actions in declining the assignment by notification on August 10, 1994 did not create grounds for disciplinary action for the refusal to accept the Gainesville, Florida, assignment. Nor did Respondent's actions in declining the

Gainesville, Florida, form the basis for taking action under the provision on job abandonment, in Paragraph 16.8 to the Agreement.

67. Respondent timely and appropriately responded to the optional assignment to remain with the Vicenza Institute of Architecture program by offering her acceptance of that assignment on August 23, 1994. The details of that new assignment were not included with the offer for reassignment set forth on August 16, 1994.

68. It is true that Respondent did not accept the August 25, 1994 assignment letter, when Ms. Stocco contacted Respondent on August 26, 1994. However, nothing that had transpired prior to that time, either factually or pursuant to requirements in law, would cause Respondent to be obligated to request or anticipate the provision of the assignment letter. The normal term would have begun on August 12, 1994; however, the arrangement offered to the Respondent was left open through August 23, 1994. Therefore the lack of involvement with her responsibilities as a teacher prior to the August 23, 1994 date was inconsequential.

69. The exact details of the assignment had not been resolved through the August 24, 1994 conference between Mr. McCarter and the Respondent or through the details set forth in the August 16, 1994 assignment offer. Likewise, the classes involving the Italian language course had begun on August 23, 1994; but Respondent bore no obligation for the Italian language class that was held on that date, given that she was permitted to make a choice to accept the option for employment in the Vicenza program by communicating her choice to Dean Drummond on August 23, 1994, at the Gainesville main campus. In this discussion the importance of resolving the differences between Mr. McCarter and Respondent about the frequency of conducting the classes, the class text and the opportunity for the faculty to audit the class was not explained to Respondent. The only obligation which Respondent had beyond that point was to meet with Mr. McCarter on August 29, 1994 before commencing her instruction to the class.

70. Respondent did not know, and had no reason to know, that there was a need for Respondent to initiate contact with Mr. McCarter prior to attending her first class at 11:00 a.m. on August 29, 1994. Her failure to initiate such contact to resolve the issues did not constitute a neglect of her duties or responsibilities.

71. Respondent should not have been suspended without pay for the period of September 30, 1994 through December 29, 1994. Respondent is entitled to her salary and benefits for that period.

72. Respondent is not entitled to salary and benefits for the period of August 12, 1994 through August 24, 1994, in that she was not obligated to, nor had she assumed, her duties under the option to remain in the Vicenza program during that period.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered which sets aside the suspension for the period of September 30, 1994 through December 29, 1994, reinstating the Respondent's pay and benefits for that period and which further denies Respondent any pay adjustments and benefits for August 12-24, 1994.

DONE AND ENTERED this 27th day of April, 1995, in Tallahassee, Florida.

CHARLES C. ADAMS, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of April, 1995.

APPENDIX TO RECOMMENDED ORDER

The following discussion is given concerning the proposed fact finding by the parties.

Petitioner:

- 1-16. Subordinate to facts found.
- 17. Not necessary to the resolution of the dispute.
- 18-25. Subordinate to facts found.
- 26. Contrary to facts found in its suggestion that Ms. Stocco told Respondent that she was acting on behalf of Mr. McCarter.
- 27-28. Subordinate to facts found.
- 29. Not necessary to resolution of the dispute.
- 30-31. Subordinate to facts found.

Respondent:

- 1-7. Subordinate to facts found.
- 8. Rejected in its suggestion that Respondent was performing duties as a professor prior to August 29, 1994 or required administrative duties prior to August 29, 1994.
- 9-14. Subordinate to facts found.
- 15. The first and third sentences are subordinate to facts found. The second sentence is rejected.
- 16. Subordinate to facts found.
- 17. Not necessary to resolution of the disputes.
- 18. Subordinate to facts found.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit to the agency written exceptions to this Recommended Order. All agencies allow each party at least ten days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the Final Order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.