

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 01-4248  
 )  
 ELZA DELICE, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on February 19, 2002, by video teleconference, with the parties appearing in Miami, Florida, before Patricia Hart Malono, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: John A. Greco, Esquire  
Miami-Dade County School Board  
1450 Northeast Second Avenue, Suite 400  
Miami, Florida 33132

For Respondent: Manny Anon, Jr., Esquire  
AFSCME Council 79  
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STATEMENT OF THE ISSUE

Whether the Respondent committed the violations alleged in the Notice of Specific Charges filed January 10, 2002, and whether the Respondent should be dismissed from her employment.

PRELIMINARY STATEMENT

In a letter dated October 25, 2001, the Miami-Dade County School Board ("School Board") notified Elza Delice of the School Board's decision, taken at its October 24, 2001, meeting, to suspend her from her employment and initiate dismissal proceedings against her. Ms. Delice timely requested an administrative hearing, and the School Board forwarded the matter to the Division of Administrative Hearings for assignment of an administrative law judge. The final hearing was scheduled for January 8, 2002, but was continued and held on February 19, 2002.

In a Notice of Specific Charges served on Ms. Delice on December 7, 2001, and filed with the Division of Administrative Hearings on January 10, 2002, the School Board charged Ms. Delice in Count I with excessive absenteeism and abandonment of position, in violation of Articles II and XI of the AFSCME contract and Sections 230.03(2), 230.23(5)(f), 231.3605, and 447.209, Florida Statutes; in Count II with deficient or non-performance of job responsibilities, in violation of Articles II and IV of the AFSCME contract, School Board Rules 6Gx13-4E-1.01 and 6Gx13-3E-1.10, and Sections 230.03(2), 230.23(5)(f), 231.3605, and 447.209, Florida Statutes; and in Count III with conducting herself in a manner that failed to reflect credit on the school system, in violation of Articles II

and IV of the AFSCME contract, School Board Rule 6Gx13-4A-1.12, and Sections 230.03(2), 230.23(5)(f), 231.3605, and 447.209, Florida Statutes.

At the hearing, the School Board presented the testimony of Susan Lilly, Mary Murphy, Aned Candales, née Lamboglia, and Barbara Moss. Petitioner's Exhibits 5 through 11, 13 through 20, and 22 were offered and received into evidence. Ms. Delice testified in her own behalf and presented the testimony of Barbara Moss. Respondent's Exhibits 1 through 4 were offered and received into evidence.

On March 4, 2002, the School Board filed a motion to strike Respondent's Exhibit 1, which is the deposition testimony of Dr. Schettino. Ms. Delice filed her response on March 12, 2002, and an order was entered denying the motion on April 1, 2002.

The one-volume transcript of the record was filed with the Division of Administrative Hearings on April 10, 2002, and the parties timely submitted proposed findings of fact and conclusions of law, which have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The School Board is responsible for operating, controlling, and supervising the free public schools in the Miami-Dade County school district and has the power to suspend and dismiss employees. Article IX, Section 4(b), Florida Constitution; Sections 230.03(2) and 230.23(5)(f), Florida Statutes.

#### Background

2. Ms. Delice was employed by the School Board as a school bus driver trainee in May 1997. She successfully completed her training and was duly placed on permanent status as a bus driver for the Miami-Dade County school system.

3. Ms. Delice is a member of the American Federation of State, County, and Municipal Employees, Local 1184, and she is subject to the Contract Between the Miami-Dade County Public School and the American Federation of State, County, and Municipal Employees, Local 1184, effective from July 1, 2000, through June 30, 2003 ("Union Contract").

4. In 1998, when Ms. Delice was working at the School Board's Southern Regional Transportation Center, she came to know Rhonda Ferguson, another bus driver working at this facility. Ms. Ferguson began making overtures to Ms. Delice, asking for her phone number and generally acting, in Ms. Delice's estimation, like a co-worker who wanted to become friends.

5. A co-worker who had overheard a conversation between Ms. Delice and Ms. Ferguson told Ms. Delice that Ms. Ferguson was a lesbian. Ms. Delice became very upset, and, even though Ms. Ferguson had never made any physical or overt verbal advances, Ms. Delice concluded that Ms. Ferguson was harassing her and that she was being subjected to working in a "hostile environment." Ms. Delice told Ms. Ferguson to leave her alone, but she did not complain to her supervisors that, in her estimation, Ms. Ferguson was bothering her.

6. Ms. Delice was subsequently transferred to the Southwest Regional Transportation Center ("the Southwest facility"), and, about eight months later, Ms. Ferguson was transferred to the Southwest facility as well.

7. A co-worker told Ms. Delice that Ms. Ferguson was spreading stories about Ms. Delice to the effect that the two women were having an affair. On January 20, 1999, Ms. Delice confronted Ms. Ferguson in the workplace, and the two women became involved in a verbal and physical altercation.

8. After the altercation, Ms. Delice was temporarily transferred to the Central West Regional Transportation Center ("the Central West facility"). An investigation was conducted, and the charges against Ms. Delice and Ms. Ferguson were substantiated. Although a 30-day suspension without pay was the recommended discipline, it was finally decided that Ms. Delice

and Ms. Ferguson would be permanently assigned to the location of their alternate assignments. Accordingly, Ms. Delice was permanently transferred to the Central West facility in February 1999.

9. Although Ms. Delice knew she was "somewhat" emotionally affected by the advances of Ms. Ferguson, it was the transfer to the Central West facility that "turned her whole life upside down."<sup>1</sup> Ms. Delice was distressed at the condition of the physical plant at the Central West facility, and she described it as a "boot camp." Ms. Delice complained that the road leading into the facility was narrow and very dark, with rocks on one side and a lake on the other; that the location was unsafe; that there were potholes in the gravel lots where the buses were kept; that the gravel lots turned to mud when it rained and were very dusty when it was dry; that the lighting was non-existent; that she was required to park in the employee parking lot and walk a half-block to the office to pick up her bus assignment and another half-block to her bus, often in the mud; that there were mosquitoes and frogs on the buses, and she had to be careful not to sit on a frog; and that something, maybe asbestos, was coming out of the walls of the employee break room.

10. Ms. Delice blames Ms. Ferguson for her transfer to the Central West facility, and she thinks that she should have been

disciplined for the altercation in January 1999 rather than transferred to the Central West facility.

11. Finally, Ms. Delice called Barbara Moss, a District Director of the School Board's Office of Professional Standards, and asked if she could be transferred back to the Southwest facility. Ms. Delice told Ms. Moss that she had transportation problems because she drove an old car that was always breaking down because of the bad roads at the Central West facility and that the Southwest facility was closer to Ms. Delice's home than the Central West facility. Ms. Moss secured a transfer for Ms. Delice back to the Southwest facility, effective in March 2000. Ms. Delice did not mention any emotional problems, stress, or poor working conditions to Ms. Moss.

12. Ms. Delice worked at the Southwest facility until she was suspended by the School Board on October 24, 2001, pending initiation of dismissal proceedings.

#### Absences

13. Each year, school bus drivers receive a copy of the Handbook for School Bus Drivers, Aides and Operations Staff ("Handbook"), and Ms. Delice's supervisor at both the Central West facility and the Southwest facility went over the Handbook with employees at the beginning of each school year. Section 9 of the Handbook describes in detail the attendance policy for transportation employees.

14. A bus driver working for the School Board accrues a total of ten days combined paid sick and personal leave each school year.

15. Between December 1, 1999, and June 1, 2000, Ms. Delice took 64 days of unauthorized leave without pay, 11.5 days of authorized leave without pay, and six days of paid sick/personal leave.

16. Between August 28, 2000, and June 13, 2001, Ms. Delice took 26.5 days of unauthorized leave without pay, 21 days of authorized leave without pay, and ten days of paid sick/personal leave. Ms. Delice was absent without authorization on three consecutive workdays on January 17, 18, and 19, 2001; February 1, 2, 5 and 6, 2001; and May 30 and 31 and June 1, 2001.

17. Between August 28, 2001, and October 24, 2001, the date of her suspension, Ms. Delice had three days of unauthorized leave without pay, one day of authorized leave without pay, and seven days of paid sick/personal leave. Between August 28, 2001, and October 10, 2001, the date Ms. Delice was advised that the superintendent was recommending her termination, Ms. Delice took six days of paid sick/personal leave, but no days of either authorized or unauthorized leave without pay.



Reminders and Conferences for the Record

18. On October 25, 1999, Michael Exelbert, a coordinator at the Central West facility, issued to Ms. Delice a Notice of Performance Expectation Requirement, Attendance (Follow-Up Verbal), in which Ms. Delice was issued a verbal reminder of her responsibilities with respect to attendance. She was referred to Article XI, Section 4, page 32, and Article V, Section 27, page 8, of the Union Contract.

19. On December 8, 1999, Mary Murphy, the Director of the Central West facility, issued to Ms. Delice a Notice of Performance Expectation/Requirement, in which Ms. Delice was again reminded of the expectation regarding attendance, specifically with respect to her being absent without leave after not calling or showing up for work on November 15, 17, and 23, 1999. Ms. Delice was again referred to Article XI, Section 4, page 32, and Article V, Section 27, page 8, of the Union Contract.

20. On February 7, 2000, Mr. Exelbert conducted a Conference for the Record with respect to Ms. Delice's "no call/no show" absences without leave on September 13, 15, 19, and 21, 1999; November 15, 17, and 23, 1999; December 16, 1999; and January 3, 2000. As set forth in the summary of the conference, Ms. Delice explained her absences as follows: "You indicated that you had had car problems, had a problem with the

staff in Dispatch, and that every once in a while you needed a day off." As a result of documentation provided by Ms. Delice, September 19 and November 23, 1999, were removed as absences without leave. Ms. Delice was referred to Section 9 of the transportation employee's Handbook for the applicable attendance policy.

21. On June 1, 2000, after her March 2000 transfer to the Southwest facility, a Conference for the Record was conducted by Aned Lamboglia, a coordinator at the Southwest facility, with respect to Ms. Delice's unauthorized absences subsequent to September 1, 1999. Ms. Lamboglia reviewed Ms. Delice's attendance record and identified 53.5 days of unauthorized leave without pay, 11 days of authorized leave without pay, and six days of paid sick/personal leave between September 1, 1999, and June 1, 2000; Ms. Lamboglia also noted that Ms. Delice had missed "at least" 10.5 days of work since she was transferred to the Southwest facility in March 2000.

22. As set forth in the summary of the June 1, 2000, conference, Ms. Delice explained her absences as follows:

You stated that some of your unauthorized absences were due to the fact that you had serious transportation problems. You were administratively transferred to Central West Transportation and this had caused a serious hardship for you since the vehicle you drove kept breaking down. You also stated that you were not aware that you could provide documentation for authorization of leave

time when you did not have sick or personal time.

Ms. Lamboglia advised Ms. Delice during the conference that her attendance record was unsatisfactory, and she reviewed with Ms. Delice Article XI, Section 4, and Article V, Section 27, of the Union Contract. She also advised Ms. Delice that failure to improve her attendance could lead to further disciplinary action.

23. On June 1, 2000, Ms. Lamboglia also referred Ms. Delice to the School Board's Employee Assistance Program ("EAP"). Ms. Lamboglia received notification from the clinical coordinator of the EAP, dated July 21, 2000, that Ms. Delice's case had been closed after Ms. Delice failed to attend a scheduled conference and denied that she had any job performance problems.

24. On October 25, 2000, Ms. Lamboglia, then Mrs. Candales, conducted a Conference for the Record with respect to Ms. Delice's unauthorized absences subsequent to June 1, 2000. Ms. Lamboglia reviewed Ms. Delice's attendance record and identified four and one-half days of unauthorized leave without pay, with two and one-half days of the total occurring during the new school year. According to the summary of the conference, Ms. Delice had nothing to say regarding these absences. Ms. Candales reviewed with Ms. Delice Article XI,

Section 4, and Article V, Section 27, of the Union Contract, and she advised Ms. Delice that failure to improve her attendance could lead to further disciplinary action. In light of her June 1, 2000, referral of Ms. Delice to the EAP, Ms. Candales did not make a referral after the October 25, 2000, conference.

25. On April 23, 2001, Mrs. Candales conducted a Conference for the Record with respect to Ms. Delice's unauthorized absences subsequent to October 25, 2001. Ms. Lamboglia reviewed Ms. Delice's attendance record and identified approximately 18 days of unauthorized leave without pay. According to the summary of the conference, Ms. Delice explained her unauthorized absences by stating that she continued to experience car problems. Ms. Delice provided Mrs. Candales with documentation, and Mrs. Candales agreed to authorize four days of the 18 days of leave without pay. Ms. Candales reviewed with Ms. Delice Article XI, Section 4, and Article V, Section 27, of the Union Contract, and she advised Ms. Delice that her absences were excessive under Article XI, Section 4, of the Union Contract and could lead to disciplinary action such as termination or non-reappointment. In addition, Ms. Candales referred Ms. Delice to the EAP on April 23, 2001.

26. On June 8, 2001, Ms. Murphy, who had transferred from the Central West facility and was Director of the Southwest facility, conducted a Conference for the Record with respect to

Ms. Delice's job performance in the area of attendance.

Ms. Murphy noted that Ms. Delice had accumulated 25.5 days of unauthorized leave without pay since the beginning of the school year. According to the summary of the conference, Ms. Delice gave the following explanation:

You mentioned during the conference that sometimes your car breaks down and you cannot make it to work. Also, if you are not feeling well you do not come to work. You are currently participating with the District Support Agency, and you are waiting for Mr. Portier to send you to a psychiatrist. You stated that you requested to see a psychiatrist because of the conditions at Central West Transportation. According to you, you began to have attendance problems when you were transferred to "Boot Camp": A.K.A., Central West Transportation. Being at this location caused you to have emotional stress. Prior to going to Central West Transportation, you did not have an attendance problem. You explained that during 1997 through 1999, you did not have an attendance problem. . . . You also mentioned that Mr. Portier's services did not meet your problem because your problems were financial.

27. Ms. Murphy reviewed with Ms. Delice Article XI, Section 4(B) of the Union Contract, which provides that unauthorized absences for three consecutive workdays or for ten days during the previous 12-month period were grounds for termination. Ms. Delice was advised that a copy of the summary of the conference would be sent to the Administrative Director,

Jerry Klein, and to the Office of Professional Standards for review and possible disciplinary action.

28. In a memorandum dated June 20, 2001, Mr. Klein recommended to Ms. Moss at the Office of Professional Standards that Ms. Delice be dismissed from her employment with the School Board because she had "accumulated 25.5 days of unauthorized leave without pay."

29. On July 23, 2001, Ms. Moss conducted a Conference for the Record with respect to Ms. Delice's "excessive absenteeism; non-performance and deficient performance of job responsibilities; violation of School Board Rules 6Gx13-4A-1.21, Responsibilities and Duties, and 6Gx13-4E-1.01, Absences and Leaves." Ms. Delice's record was reviewed, and her future employment status with the School Board was discussed. Ms. Moss identified total absences between September 1, 2000, and June 8, 2001, of 54.5 days, consisting of 23 days of unauthorized leave without pay, 21.5 days of authorized leave without pay, six personal, and four sick days.

30. According to the summary of the conference, Ms. Delice explained her unauthorized absences as follows: "'My problem with attendance started when I was sent to the 'boot camp' at Central West Transportation. That center is very depressing and dusty.'" In response to the observation that the purpose of the conference was to discuss Ms. Delice's attendance problem at the

Southwest facility, Ms. Delice replied: "'I'm just getting over the conditions I was subjected to at Central West Transportation. I feel that I am not being given a chance to improve.'" "

31. Ms. Delice was advised that, once a review of the relevant materials was completed, she would be notified of the recommended disciplinary action. Ms. Moss further advised Ms. Delice that "[a]ll disciplinary action(s) shall be consistent with the concepts and practice of progressive or corrective discipline. The degree of discipline shall be reasonably related to the seriousness of the offense and the employee's record."

32. Ms. Delice was referred through the EAP to Dr. Lynne Schettino, a psychologist. Dr. Schettino initially assessed Ms. Delice on August 17, 2001, and Dr. Schettino saw her in individual sessions on August 28, 2001, and September 11, 2001; Ms. Delice cancelled two additional scheduled appointments with Dr. Schettino and did not reschedule. Ms. Delice identified absenteeism as a major problem, attributing it to "a transfer to another location [that] had been very stressful for her and that this resulted in significant anxiety, depression and avoidant behavior."<sup>2</sup> Dr. Schettino determined that Ms. Delice's treatment should focus on coping with work stressors and developing interpersonal skills "to allow appropriate adjustment to the

work place,"<sup>3</sup> but Dr. Schettino did not have time to reach a diagnosis or develop a treatment plan for Ms. Delice.

Ms. Delice entered into a "contract" with Dr. Schettino regarding her attendance, and, although she took six days of sick/personal leave between August 28, 2001, and October 10, 2001, Ms. Delice had no days of authorized or unauthorized leave without pay.

33. In a letter dated October 10, 2001, Ms. Delice was notified by the Superintendent that he was recommending to the School Board that she be suspended from her employment and dismissal proceedings initiated against her for

just cause, including but not limited to:  
excessive absenteeism; abandonment of  
position; non-performance and deficient  
performance of job responsibilities;  
violation of School Board Rules 6Gx13-3E-1.10,  
Transportation-Specific Procedures  
(Attendance Policy); 6Gx13-4A-1.12,  
Responsibilities and Duties; 6Gx13-4E-1.01,  
Absences and Leaves."

The Superintendent also noted that the dismissal recommendation was taken in accordance with, among other things, Article XI, Section 4(B) and (C), of the Union Contract.

#### CONCLUSIONS OF LAW

34. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2001).



35. The School Board has the authority to suspend or dismiss school employees pursuant to Section 230.23(5)(f), Florida Statutes, and it is granted the express power to adopt rules to govern personnel matters, including the "duties and responsibilities of all district employees." Section 231.001, Florida Statutes. Furthermore, public employers such as the School Board have the authority to "direct employees, take disciplinary action for proper cause, and relieve its employees from duty because of lack of work or other legitimate reasons." Section 447.209, Florida Statutes.

36. Ms. Delice is a permanent "educational support employee" as that term is defined in Section 231.3605(1)(a), Florida Statutes. Section 231.3605(2), Florida Statutes, provides as follows:

(b) Upon successful completion of the probationary period by the employee, the employee's status shall continue from year to year unless the superintendent terminates the employee for reasons stated in the collective bargaining agreement, or in district school board rule in cases where a collective bargaining agreement does not exist . . . .

(c) In the event a superintendent seeks termination of an employee, the district school board may suspend the employee with or without pay. The employee shall receive written notice and shall have the opportunity to formally appeal the termination. The appeal process shall be determined by the appropriate collective bargaining process or by district school

board rule in the event there is no collective bargaining agreement.

37. School Board Rule 6Gx13-4E-1.01 governs absences and leaves and provides in pertinent part: "Except for sudden illness or emergency situations, any employee who is absent without prior approval shall be deemed to have been willfully absent without leave."

38. The Handbook for School Bus Drivers, Aides and Operations Staff, adopted as School Board Rule 6Gx13-3E-1.10, governs attendance policy for transportation employees and provides in pertinent part as follows:

#### 9.1 AUTHORIZED ABSENCES

For absences to be authorized, they must be reported to the driver's or aide's Transportation Center Dispatch Office in advance. This notice must be made at the earliest possible time, but no later than before the next scheduled report time. Even in an emergency, every possible effort must be made to inform the Dispatch Office. The supervisory staff evaluates the driver's adherence to this rule. Intent to return should be treated in the same manner. Leave forms must be completed promptly for payroll purposes.

#### 9.2 UNAUTHORIZED ABSENCES

Unauthorized absences are subject to disciplinary action as prescribed under existing labor contracts. If a driver or aide does not report to work within 15 minutes after the scheduled report time, or does not call in absent before the report time, the absence will be considered unauthorized. If time off is taken during a

regular working school day without a supervisor's approval, this absence also may be considered unauthorized.

\* \* \*

#### 9.4 CHECK-IN POLICY

\* \* \*

- Drivers and aides who report to work 16 or more minutes after the scheduled report time will be considered "absent without leave" (AWOL). These persons will not be permitted to work. They will be placed on "unauthorized leave-without-pay" (ULWOP) and will be subject to disciplinary action in accordance with the American Federal of State, County, and Municipal Employees (AFSCME) Collective Bargaining Agreement.

- Extenuating circumstances will be evaluated by the Center Director and, upon proper documentation, may not be held against the employee. Repeated occurrences, such as "car broke down for the third time this week," will not be considered extenuating.

39. Article V, Section 27, of the Union Contract defines "unauthorized absence" as follows:

Any absence without pay which has not been requested by the employee and approved by the supervisor, in writing, at least five days in advance.

Employees are required to notify the work location, prior to the beginning of the workday, when they are unable to report to work or intend to be absent.

Absences of the employee, where notice of absence is made prior to the start of the workday, but are not covered by the employee having accrued sick or personal leave, shall

be charged as unauthorized absence and may result in disciplinary action in accordance with Article XI. Upon the employee reporting back to work, the employee shall be apprised of the unauthorized leave status; however, if the employee can demonstrate that there were extenuating circumstances (e.g., hospitalization or other unanticipated emergency), then consideration will be given to changing the status of leave. The work location supervisor has the authority to change an unauthorized leave; however, nothing herein precludes requested leave being determined to be unauthorized where the employee does not have available sick or sufficient personal leave.

40. Article XI, Section 4, of the Union Contract, provides in pertinent part:

Dissolution of the employment relationship between a permanent unit member and the Board may occur by any of four distinct types of separation.

\* \* \*

B. Excessive Absenteeism/Abandonment of Position -- An unauthorized absence for three consecutive workdays shall be evidence of abandonment of position. Unauthorized absences totaling 10 or more workdays during the previous 12-month period shall be evidence of excessive absenteeism. Either of the foregoing shall constitute grounds for termination. . . .

C. Disciplinary -- The employee is separated by the employer for disciplinary cause arising from the employee's performance or non-performance of job responsibilities. Such action occurs at any necessary point in time.

\* \* \*

The factors most important in determining what type of separation occurred for a given employee are: which party initiated the action; what time of the work year the action occurred; and the employer's expressed intent.

(Emphasis added.)

41. Because this case is a proceeding to terminate Ms. Delice's employment with the School Board and does not involve the loss of a license or certification, the School Board has the burden of proving the allegations in the Notice of Specific Charges by a preponderance of the evidence. McNeill v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996); Allen v. School Board of Dade County, 571 So. 2d 568, 569 (Fla. 3d DCA 1990); Dileo v. School Board of Lake County, 569 So. 2d 883 (Fla. 3d DCA 1990).

42. It is clear from the evidence presented by the School Board that the primary basis for the School Board's decision to initiate proceedings to dismiss Ms. Delice from her employment with the School Board was excessive absenteeism and abandonment of position, as defined in Article XI, Section 4(B), of the Union Contract.

43. The School Board has satisfied its burden of proving by a preponderance of the evidence that Ms. Delice was, on several occasions, absent without authorization for three consecutive workdays on three separate occasions in 2001 and

that she was absent without authorization for substantially more than ten workdays during the 12-month period extending from June 1, 2000, to June 1, 2001.<sup>4</sup> Consequently, the School Board may terminate Ms. Delice in accordance with the provisions of Article XI, Section 4(B), of the Union Contract.<sup>5</sup>

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Miami-Dade County School Board enter a final order finding Elza Delice guilty of abandonment of position and excessive absenteeism, sustaining her suspension effective October 24, 2001, and terminating her employment.

DONE AND ENTERED this 30th day of May, 2002, in Tallahassee, Leon County, Florida.

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PATRICIA HART MALONO  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of May, 2002.

ENDNOTES

<sup>1</sup>/ Transcript at 133.

<sup>2</sup>/ Respondent's Exhibit 4.

<sup>3</sup>/ Id.

<sup>4</sup>/ Even if the reasons given by Ms. Delice for her absences were relevant to the School Board's decision to terminate her for abandonment of position and excessive absenteeism, the reasons given by Ms. Delice are, at best, unpersuasive and are certainly insufficient to justify her many unauthorized absences.

<sup>5</sup>/ By both its terms and its context, Article XI, Section 4(B), of the Union Contract provides a basis for termination of employment that is distinct from termination as a form of disciplinary action. It is, therefore, unnecessary to address the issue of whether the School Board has a disciplinary basis under Article XI, Section 4(C), of the Union Contract for terminating Ms. Delice from her employment as alleged in Counts II and III of the Notice of Specific Charge.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.