

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 04-2637  
 )  
 FREDERICK D. TUFF, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on January 21, 2005, via video teleconference at locations in Miami and Tallahassee, Florida, before Florence Snyder Rivas, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Denise Wallace, Esquire  
Miami-Dade County Public Schools  
1450 Northeast Second Avenue, Suite 400  
Miami, Florida 33132

For Respondent: Manny Anon, Jr., Esquire  
AFSCME Council 79  
99 Northwest 183rd Street, Suite 224  
North Miami, Florida 33169

STATEMENT OF THE ISSUE

Whether Respondent's employment should be terminated.

PRELIMINARY STATEMENT

On July 14, 2004, Petitioner, the School Board of Miami-Dade County, Florida (Petitioner or School Board), took action to initiate dismissal proceedings against Respondent, Frederick D. Tuff (Respondent or Tuff). Respondent timely asserted his statutory and contractual rights to an administrative hearing to contest the termination.

On August 13, 2004, Petitioner served its Notice of Specific Charges (Notice) alleging grounds for termination, all relating to unauthorized absence from work.

The transcript of the final hearing was filed with the Division of Administrative Hearings on March 10, 2005. Timely proposed recommended orders were filed and have been carefully considered.

References to sections are to the Florida Statutes (2004).

FINDINGS OF FACT

1. At all times pertinent to this case, Tuff was employed by the School Board as a custodian and assigned to one of the School Board's transportation centers.

2. At all relevant times, Tuff was an "educational support employee," who has successfully completed his probationary period within the meaning of Section 1012.40, Florida Statutes; a member of a collective bargaining unit represented by the American Federation of State, County, and Municipal Employees,

Local 1184 (AFSCME); and was covered by a collective bargaining agreement between the School Board and AFSCME (AFSCME Contract).

3. For at least two years prior to his termination, Tuff's attendance record and job performance were poor. Tuff repeatedly violated School Board rules regarding unauthorized absences and or procedures relating to medical leave. Under the AFSCME contract, the School Board could have taken disciplinary action, including termination, on numerous occasions during this period, but did not.

4. By way of defense, Tuff contended that at all relevant times, the School Board knew or should have known that Tuff's absences were related to a medical condition which has since been mitigated through proper treatment. Tuff's evidence concerning what, if any, medical condition he had was unpersuasive. It is therefore unnecessary to reach the question of whether Tuff's medical condition, if proved, would have afforded a legal defense to his absences from work under the facts and circumstances of this case.

5. Tuff's absences created a morale problem among co-workers, who were chronically imposed upon to perform tasks which properly belonged to Tuff. Tuff's co-workers complained to mutual supervisors. Supervisors, in turn, spoke frequently to one another and to Tuff about his attendance record, all of which was disruptive to the workplace.

6. Although it is a violation of School Board policy to discuss a personnel issue with a non-employee, on one occasion, a supervisor in Tuff's chain of command, who had known "Mr. Tuff and his entire family for over 20 years," discussed Tuff's absenteeism with Tuff's father.

7. By the spring of 2004 Petitioner decided it would no longer tolerate Tuff's inability to comply with its rules prohibiting unauthorized absence.

8. At least one supervisor concluded there was "no other alternative but to follow the procedures and recommend termination." Petitioner thereafter commenced to document Respondent's unauthorized absences from the workplace, and to provide Respondent with applicable statutory and contractual notice regarding his failure to comply with Petitioner's relevant policies.

9. More specifically, on April 8, 2003, and May 5, 2003, Tuff received verbal warnings for unauthorized absences.

10. On June 18, 2003, Tuff received a written warning regarding continued unauthorized absences.

11. The School Board documented and proved 11 unauthorized absences in the first and second quarters of 2003. Under the AFSCME contract, ten unauthorized absences in a 12-month period constitute grounds, standing alone, for termination.

### CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the subject matter. See §§ 120.569 and 120.57(1), Fla. Stat.

13. To prevail, Petitioner is required to prove the material allegations set forth in its Notice by a preponderance of the evidence. Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990).

14. Petitioner has fulfilled its burden by proving that Tuff had 11 unauthorized absences in less than a year's time. Ten or more unauthorized absences in less than a year violates School Board rules concerning excessive absenteeism and constitute grounds for dismissal, pursuant to the AFCSME labor contract. See, § 1012.40, Fla. Stat.

15. The School Board's failure to fully exercise its disciplinary rights against Tuff in the timeliest manner possible does not, as he contends, preclude the School Board from terminating him under the circumstances of this case.

### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered terminating Tuff's employment.

DONE AND ENTERED this 5th day of May, 2005, in Tallahassee,  
Leon County, Florida.

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FLORENCE SNYDER RIVAS  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 5th day of May, 2005.

COPIES FURNISHED:

Denise Wallace, Esquire  
Miami-Dade County Public Schools  
1450 Northeast Second Avenue, Suite 400  
Miami, Florida 33132

Manny Anon, Jr., Esquire  
AFSCME Council 79  
99 Northwest 183rd Street, Suite 224  
North Miami, Florida 33169

Dr. Rudolph F. Crew, Superintendent  
Miami-Dade County School Board  
1450 Northeast Second Avenue, Suite 912  
Miami, Florida 33132-1394

Honorable John L. Winn  
Commissioner of Education  
Department of Education  
325 West Gaines Street  
Tallahassee, Florida 32399-0400

Daniel J. Woodring, General Counsel  
Department of Education  
325 West Gaines Street  
Tallahassee, Florida 32399-0400

NOTICE OF RIGHT TO FILE 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.