STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SILVIA M. URRECHAGA,)
)
Petitioner,)
)
vs.) Case No. 06-3265
)
DEPARTMENT OF MANAGEMENT)
SERVICES, DIVISION OF)
RETIREMENT,)
)
Respondent.)
)

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing by video teleconference on November 3, 2006, at sites in Tallahassee and Miami, Florida.

APPEARANCES

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For Respondent: Larry D. Scott, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner held a "regularly established position" during the period from January 1979 through June 1979, when she worked as a teacher's assistant for a district school board; if so, then she would be entitled

to receive retirement service credit for the period, which Respondent so far has declined to grant.

PRELIMINARY STATEMENT

By letter dated May 26, 2006, Respondent Department of Management Services, Division of Retirement, notified Petitioner Silvia M. Urrechaga that it intended to deny her request for retirement service credit respecting the period from January 1979 through June 1979, when she had worked as a teacher's assistant for the Miami-Dade County School Board. Respondent based its determination on the conclusion that Urrechaga's position at that time had been a temporary one, rather than a regularly established position.

Ms. Urrechaga timely requested a formal hearing, and on August 29, 2006, Respondent referred the matter to the Division of Administrative Hearings, where an Administrative Law Judge was assigned to conduct a formal hearing.

The hearing took place on November 3, 2006, as scheduled, with both parties present, each represented by counsel. Petitioner offered Petitioner's Exhibit 1, which was received in evidence. She called no witnesses. Respondent presented one witnesses: Joyce Morgan, an Administrator in the Enrollment Section of the Division of Retirement. Respondent also moved three exhibits, numbered 1 through 3, into evidence. The parties jointly offered——and the undersigned admitted into

evidence——the deposition testimony of Maria Perez, together with all of the exhibits included with the transcript.

The final hearing was recorded but not transcribed. Proposed Recommended Orders were due on November 13, 2006, and each party timely filed one. The parties' submissions were considered.

FINDINGS OF FACT

Historical Facts

1. Petitioner Silvia Urrechaga ("Urrechaga") worked for nearly 30 years, in various positions, as an employee of the Miami-Dade County School Board ("MDCSB"). As an employee of a district school board, she became a member of the Florida Retirement System ("FRS"), which is administered by Respondent Department of Management Services, Division of Retirement ("Division").

2. It is undisputed that, before July 1, 1979 (and thus at all times material to this case), local employers (such as district school boards) that participated in the FRS had the authority to determine, in the exercise of discretion, which of their employees would be covered under the FRS. At that time, the Division did not have the authority to review and overrule local employers' decisions in this regard.

3. From January 1979 through June 1979, Urrechaga was employed as a teacher's assistant. A "Request for Personnel

Action" memorandum dated January 8, 1979, memorializes MDCSB's hiring of Urrechaga to fill this part-time hourly position. The memorandum specified that Urrechaga would be "paid from discretionary funds until [the] end of [the] 78/79 school year."

4. On or around January 19, 1979, a "Personnel Transaction Form" was completed, wherein it was recorded that, effective January 8, 1979, Urrechaga would participate in Retirement Plan "F." It is undisputed that Plan "F" meant the FRS. It is further recorded on the personnel form that MDCSB would contribute 9.1 percent of Urrechaga's salary into the FRS trust to fund her retirement benefit.

5. An Annual Earnings Report for the 1978-79 school year shows that for the payroll period ending February 6, 1979——her first as a teacher's assistant——Urrechaga was paid a gross salary of $208.89, and that MDCSB deposited 9.1 percent thereof, or $19.01, into the FRS trust for the benefit of Urrechaga, a Plan "F" participant. Beginning with the very next pay period, however, and continuing through the end of June 1979, Urrechaga's retirement plan designation on the Annual Earnings Report is "J" rather than "F." It is undisputed that "J" meant no retirement benefit. Consistent with that designation, MDCSB (apparently) did not contribute to the FRS on Urrechaga's behalf for the pay periods ending February 9, 1979 through June 22, 1979, at least according to the Annual Earnings Report.

6. MDCSB does not presently have any records documenting the grounds, if there were any, for removing Urrechaga from the FRS. There are likewise no existing records reflecting that Urrechaga was notified contemporaneously that, wittingly or unwittingly, she had been taken out of the retirement plan. It is reasonable to infer, and the undersigned does so, that MDCSB neither informed Urrechaga that she was being excluded from participation in the FRS nor notified her about any administrative remedies that she might have had in consequence of such action.

7. Years later, after an issue had arisen regarding whether Urrechaga is entitled to retirement service credit for the months from January 1979 through June 1979, MDCSB investigated the situation and concluded that Urrechaga had been removed from the retirement plan by mistake. This determination was reported to the Division by MDCSB's Retirement Coordinator, Maria Y. Perez, in a letter dated July 23, 2003, which provided in pertinent part as follows:

> In reviewing the payroll/personnel records of Ms. Urrechaga, it's [sic] been determined that from January, 1979 through June, 1980, she was excluded from the retirement plan in error.
>
> Ms. Urrechaga was hired January 8, 1979, as a part-time hourly teacher assistant, job code 4259, a position eligible for retirement coverage[,] and [she] worked though June, 1979 [in that position.]

8. The Division refused to accept MDCSB's determination, however, on the ground that it was not supported by sufficient proof that Urrechaga had been paid out of a "regular salary account." Consequently, by letter to the Division dated February 28, 2006, Ms. Perez reiterated MDCSB's conclusion, stating in relevant part as follows:

> Although I cannot provide you with a specific account serial number listing indicating [sic] that specifically Ms. Urrechaga was in a regularly established position; all our hourly teachers assistants were hired in a regularly established position, particularly as late as 1979, and not in a [sic] Other Personnel Services accounts.

As support for this statement, Ms. Perez furnished the Division with the records of several other teacher's assistants who, the records unambiguously show, had been treated by MDCSB as FRS participants at the time that Urrechaga, who held the same employment position, had been excluded from the retirement plan.

9. As of the final hearing, Ms. Perez continued to be MDCSB's Retirement Coordinator, a position she had held since 1982. In that capacity, Ms. Perez was MDCSB's senior management person in charge of retirement matters. Ms. Perez's communications to the Division regarding Urrechaga, which were written in her official capacity as MDCSB's agent, did not give

voice to mere personal opinions, but rather——as statements clearly falling within the scope of her agency and authority——constituted MDCSB's official statements on the subject of Urrechaga's retirement benefit.[1]

10. In other words, Ms. Perez's letters to the Division concerning Urrechaga's retirement benefit expressed an agency determination of Urrechaga's substantial interests, namely the conclusion that Urrechaga had worked for MDCSB in a regularly established position and, accordingly, was supposed to have been a participant in the FRS during the period from January 1979 through June 1979, notwithstanding that conflicting statements in contemporaneously prepared documents give rise to some confusion concerning her participation therein.[2]

Determinations of Ultimate Fact

11. From January 1979 through June 1979, Urrechaga worked in a "regularly established position" as a teacher's assistant with MDCSB. As an employee in such a position, Urrechaga was entitled to participate in the FRS, and she earned retirement service credit for her work during the period at issue.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to Sections 120.569, and 120.57(1), Florida Statutes.

13. The Division contends that Urrechaga did not earn retirement service credit for the period at issue because she did not hold a "regularly established position" as a teacher's assistant and hence was ineligible to participate in the FRS. This contention rests on the premise that whether a position was "regularly established" depended on the budgetary account from which the employee was paid. According to the Division, if an employee were paid out of a "regular salary account" (meaning an account containing funds that had been appropriated specifically to pay salaries), then that employee held a "regularly established position." If, on the other hand, an employee's compensation were drawn from some type of account other than a "regular salary account," then, the Division argues, she was not holding a "regularly established position."

14. From the premise that the account on which an employee's salary was drawn dictated the status of that employee's position as regularly established or, alternatively, temporary in nature, the Division asserts, based on the January 8, 1979, personnel action memorandum, that Urrechaga was paid from "discretionary funds," which source the Division assumes did not include salary appropriations. Thus, having been paid (the Division infers) from a source other than a regular salary account, Urrechaga was not (the Division reasons) in a regularly established position, and hence she is not (the

Division concludes) entitled to retirement service credit for the months she worked as a teacher's assistant.

15. As for the conflicting statements regarding Urrechaga's retirement status that appear in the contemporaneously prepared records, the Division argues that Urrechaga has failed to prove that MDCSB made a mistake in removing her from the FRS. In fact, argues the Division, MDCSB's mistake was not this subsequent removal, but rather, most likely, the initial inclusion of Urrechaga in the FRS at the outset of her employment as a teacher's assistant.

16. One shortcoming of the Division's position is that it gives short shrift to the fact that MDCSB as an agency (and not simply Ms. Perez individually) has found that Urrechaga did hold a regularly established position and that she was entitled to participate in the FRS and that her exclusion from the retirement plan was, in fact, a mistake. (Needless to say, Urrechaga agrees with MDCSB and urges that her former employer's findings be accepted as determinative.) Collectively, these conclusions amount to an agency determination of Urrechaga's substantial interests. Urrechaga obviously had no reason to challenge this agency determination, which is consistent with her interest in maximizing her retirement benefit. Arguably, she is entitled to rely on such determination as an

authoritative resolution of the matter by the relevant agency decision-maker.

17. The question arises, however, whether MDCSB's recent determination of Urrechaga's interests in this regard constitutes effective agency action, given that local employers are no longer empowered to decide which employees will participate in the FRS and which will not. Although the parties have stipulated that MDCSB had the authority, <u>during</u> the period at issue, to decide Urrechaga's FRS participation status <u>for</u> the period at issue, neither has addressed the separate question of whether MDCSB possesses such authority <u>presently</u>. This question is complicated by the fact that MDCSB's actions in 1979 vis-à-vis Urrechaga's retirement benefit were inconsistent (first she was in the FRS, then she was out, despite the lack of any intervening change in circumstances), creating confusion as to what MDCSB's intended decision at the time really was.

18. Adding yet another wrinkle is that MDCSB did not contemporaneously notify Urrechaga of its February 1979 action removing her from the FRS. Clearly, however, MDCSB's action, whether accidental or otherwise, affected Urrechaga's substantial interests.

19. The absence of contemporaneous, timely notice to Urrechaga concerning MDCSB's long-ago action is critical, for it is a fundamental tenet of administrative law that when an agency

determines a party's substantial interests, the agency must grant the affected party a clear point of entry into formal or informal proceedings under Chapter 120, which point of entry cannot be "so remote from the agency action as to be ineffectual as a vehicle for affording [the affected party] a prompt opportunity to challenge" the decision. See, e.g., General Development Utilities, Inc. v. Florida Dep't of Environmental Regulation, 417 So. 2d 1068, 1070 (Fla. 1st DCA 1982). Moreover, unless and until a clear point of entry is offered, "there can be no agency action affecting the substantial interests of a person." Florida League of Cities, Inc. v. State of Florida, Administration Com., 586 So. 2d 397, 413 (Fla. 1st DCA 1991). Indeed, absent a clear point of entry, "the agency is without power to act." Id. at 415.

20. Because MDCSB failed timely to inform Urrechaga of her right to request a hearing and the time limits for doing so, the decision to remove Urrechaga from the FRS did not take effect as final agency action in 1979. As a result, when in recent years MDCSB determined that the removal of Urrechaga from the FRS had been accidental, it renounced a decision that had not been, as a matter of law, final agency action and which, therefore, remained open to administrative challenge pursuant to Chapter 120. Not only that, the removal of Urrechaga from the FRS in

1979, as MDCSB has now made clear, was not even the intended agency action in the first place.

21. Under these peculiar circumstances, where a local employer's action taken before July 1, 1979, purported adversely to affect an employee's participation in the FRS but never became final for want of a clear point of entry, the undersigned concludes that the local employer retains continuing authority to take final agency action, nunc pro tunc, with regard to the matter of the employee's FRS participation for periods prior to July 1, 1979. To conclude otherwise effectively would deprive the local employer, retroactively, of the authority to determine (in the first instance at least) the nature of its employee's pre-July 1, 1979, retirement benefit, which authority, the parties agree, was vested in the local employer at all times relevant hereto.

22. Accordingly, it is concluded that MDCSB's determination that Urrechaga should have been included in the state retirement plan during the relevant period——and would have been, but for MDCSB's mistake——is effective agency action that constitutes the operative determination of Urrechaga's status as a participant in the FRS.

23. The question next arises whether it is permissible in this case for the Division to challenge the correctness of (and potentially reverse) MDCSB's determination. It is by no means

self-evident that the Division should have the authority to undo a local employer's determination regarding whether one of its employees participated in the FRS during a pre-July 1, 1979, period, and the Division has not cited any legal authority under which it might possess such power. Exercise of such oversight, moreover, is arguably inconsistent with the stipulated fact that, at all times relevant to this case, local employers such as MDCSB had the exclusive authority to determine, in the exercise of discretion, which of their employees would participate in the FRS.

24. If, however, the Division were authorized to reverse a local employer's decision regarding an employee's pre-July 1, 1979, retirement status, then the Division should be required to bear the burden, as the party seeking to set aside another agency's determination, of proving that the local employer erred. Therefore, assuming for argument's sake (without deciding or opining) that the Division has the power to do today that which it admittedly could not do during the relevant period in 1979, namely overrule MDCSB's decision that Urrechaga shall participate in the FRS, it is the Division which must show that MDCSB committed reversible error.[3]

25. The Division has not offered any persuasive evidence that MDCSB's determination was erroneous. Consequently, the undersigned concludes that, for the purposes of this proceeding,

MDCSB's determination should be given effect. Based thereon, it has been determined, as a matter of ultimate fact, that from January 1979 through June 1979, Urrechaga worked in a regularly established position as a teacher's assistant with MDCSB. As an employee in such a position, Urrechaga was entitled to participate in the FRS, and she earned retirement service credit for her work during the period at issue.

26. Notwithstanding the foregoing, as an independent and alternative means of reaching the recommended disposition, the undersigned will proceed to analyze the instant dispute from the Division's standpoint, in accordance with which MDCSB shall be viewed, not as an authoritative decision-maker, but as an ordinary fact witness.

27. It is the Division's position, recall, that Urrechaga is not entitled to retirement service credit for the period at issue because, having been paid out of "discretionary funds" (as opposed to a regular salary account), her position necessarily was not a "regularly established position" within coverage of the FRS.

28. To understand and evaluate this argument, it is necessary to review carefully the pertinent administrative rules that were in effect during the relevant period.[4] The definition of the term "member" is a useful starting point. Florida Administrative Code Rule 22B-6(27) provided as follows:

> MEMBER —— Means any officer or employee who is covered by the provisions of the Florida Retirement System, including any officer or employee who is on a leave of absence that is creditable under the Florida Retirement System.

(Emphasis added to highlight another defined term.) This tells that all members (i.e. participants in the FRS) necessarily were officers or employees.[5] Thus, to receive retirement service credit for the period at issue, Urrechaga needed to have been an "officer or employee."

29. Rule 22B-6(29) defined the term "officer or employee" as follows:

> OFFICER OR EMPLOYEE —— Means any person receiving salary payments for work performed in a regularly established position with any [state] agency . . . or any . . . district school board[.] (See definition of "regularly established position" and "salary payments".)

(Emphasis added to highlight other defined terms). Without dispute, Urrechaga met some aspects of this definition, while her satisfaction of others is the subject of controversy, as shown in the following list:

√ person
? receiving "salary payments"
√ for work performed
? in a "regularly established position"
√ with a district school board

It is undisputed that Urrechaga is a person who worked for a district school board. Thus, whether she was an "officer or

employee" turns on whether she (a) received "salary payments" and (b) held a "regularly established position."

30. Rule 22B-6(38) defined the term "salary payments" as follows:

> SALARY PAYMENTS —— Means the compensation paid out of salary appropriations to an officer or employee of a state agency . . . and the compensation paid to an officer or employee of a local employer for work performed in a regularly established position, *regardless of the source of the funds from which paid*. Payments by a state agency from any fund other than a salary appropriations fund shall not be considered salary payments.

(Underlining added to highlight other defined terms; italics added also). This definition of "salary payments" uses (and hence depends on prior knowledge of the meaning of) the term "officer or employee," whose definition not only uses (and hence requires prior knowledge of the meaning of) the term "salary payments," but also directs us to the definition of "salary payments" in a parenthetical cross-reference. The respective definitions of the terms "officer or employee" and "salary payments" thus, unfortunately, are somewhat circular and, to that extent, unhelpful.

31. Putting aside for the moment this logical conundrum, the "salary payments" definition drew an important distinction between state employees, on the one hand, and employees of local employers on the other. The compensation paid to a state

employee would have constituted "salary payments" only if paid out of salary appropriations. (To underscore this point, the Rule's drafters restated it in the negative for emphasis: "Payments by a state agency from any fund other than a salary appropriations fund shall not be considered salary payments.") With regard to the employees of local employers, however, the Rule's approach was different. For such employees, all compensation, *regardless of the source of the funds*, constituted "salary payments," provided the compensation was paid for "work performed in a regularly established position." The upshot is that, under Rule 2B-6(38), an "officer or employee" of a local employer could be paid "salary payments" from a fund other than a salary appropriations fund for work performed in a "regularly established position."

32. Because Urrechaga worked for a local employer rather than a state agency, her compensation, unlike that of a state employee, could have constituted "salary payments" even if her paychecks were drawn on a discretionary account. Based on the "salary payments" definition, therefore, it can be concluded conditionally that Urrechaga received "salary payments" if (a) she were an "officer or employee" who (b) was paid for working in a "regularly established position."

33. Rule 22B-6(36) defined the term "regularly established position" as follows:

> REGULARLY ESTABLISHED POSITION —— Means any position authorized in an employer's approved budget or amendments thereto for which salary funds are specifically appropriated to pay the salary of that position.

The Division argues that, under this definition, Urrechaga's position was not regularly established because she was paid from discretionary funds. But this argument overlooks the possibility, which the "salary payments" definition explicitly acknowledges, that a non-state employee might be paid from a fund other than a salary appropriations fund *for work performed in a regularly established position*. (If it were impossible, as a matter of law, for a non-state employee to be compensated for work performed in a regularly established position out of any funds except salary appropriations——which is the Division's position——then the "regardless of the [funding] source" proviso in the definition of "salary payments" would be nonsensical.)

34. Once that possibility is brought to mind, it becomes clear that, contrary to the Division's contention, the source of funds from which a person was compensated is immaterial to the question whether that person's position was regularly established or not.[6] Indeed, read closely, the definition of "regularly established position" requires only that, for a position to be considered regularly established, funds must have been specifically appropriated to pay that position's salary[7];

the definition does not further require that the funds specifically appropriated to pay the salary of a position must, as a condition of the position's being considered regularly established, actually be drawn upon to pay a person holding the position.[8]

35. In this case, there is no direct evidence, one way or the other, concerning the appropriation of funds to pay the salaries of persons hired by MDCSB to work as teacher's assistants in the 1978-79 school year. The document tending to show that Urrechaga was paid from discretionary funds is consistent, to be sure, with the inference that a specific appropriation had not been made to pay her position's salary; such circumstantial evidence is not, however, dispositive of the question whether her position was regularly established. The more persuasive circumstantial evidence, in the undersigned's estimation, is Ms. Perez's testimony that, at the relevant time, all of MDCSB's teacher's assistants worked in regularly established positions. Ms. Perez's credible testimony in this regard, which the undersigned has credited as truthful, was sufficient to make a prima facie showing that Urrechaga's position was regularly established. The Division did not offer enough persuasive evidence successfully to rebut this testimony, and, as a result, the undersigned has determined that, more

likely than not, Urrechaga held a regularly established position as a teacher's assistant with MDCSB.

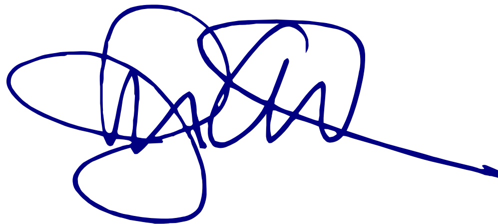
36. It can be concluded conditionally, therefore, that if Urrechaga were an "officer or employee," then her compensation consisted of "salary payments" because she was paid for work performed in a regularly established position out of funds whose source is irrelevant for purposes of deciding whether she received "salary payments." It can be further concluded, conditionally, that if Urrechaga received "salary payments," then she was an "officer or employee" for purposes of FRS participation because she is otherwise a person who worked in a regularly established position with a district school board. It is logically impossible, under the relevant definitions, to remove the foregoing conditions from these conclusions because, as mentioned above, the definitions themselves are circular.

37. Abstract logic aside, it is certainly true as a practical matter that, under any common understanding of the term "employee," Urrechaga was an employee of MDCSB. Further, the Division has not urged that Urrechaga be denied service credit on the ground that she was not an employee, focusing instead on whether she held a "regularly established position." Having resolved that disputed issue in Urrechaga's favor, it is concluded that she is entitled to retirement service credit for the period at issue.[9]

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Division enter a final order awarding Urrechaga the retirement service credit that she earned for working in a regularly established position as a teacher's assistant with MDCSB during the period from January 1979 through June 1979.

DONE AND ENTERED this 11th day of December, 2006, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of December, 2006.

ENDNOTES

[1]/ For this reason, it is immaterial that Ms. Perez did not have personal knowledge regarding the personnel decisions taken with respect to Urrechaga in 1979. In connection with issues relating to Urrechaga's retirement service credit, Ms. Perez spoke not as herself, but as MDCSB, which latter, being an

impersonal entity, necessarily must communicate its institutional knowledge through authorized agents such as Ms. Perez.

2/ The undersigned cannot think of any reason why, had MDCSB reached the opposite conclusion (i.e. that Urrechaga was properly excluded from participation in the FRS), Urrechaga would not have been entitled to a Section 120.57 hearing to challenge such determination. Of course, in the event, Urrechaga had no reason to request a hearing on MDCSB's determination, because it was favorable to her interests.

3/ As an alternative administrative remedy, the Division possibly could seek a Section 120.57 hearing before MDCSB, assuming (without deciding) that the decision in question affects the Division's substantial interests. See, e.g., § 120.569, Fla. Stat. (governing a party's right to hearing when its substantial interests are determined by an agency); § 120.52(12)(defining "party" to include any "person" whose substantial interests will be affected by proposed agency action); § 120.52(13)(defining "person" to include any state agency). Presumably, were such a case maintainable, MDCSB would have the burden of "proving up" its determination in a de novo hearing. Of course, MDCSB, not the Division, would have final order authority in such a proceeding.

4/ The parties stipulated at hearing that Florida Administrative Code Chapter 22B-6, as issued in May 1977, is applicable. All references in the text to administrative rules refer to this version of the relevant Chapter.

5/ The definition of "member" did not require, conversely, that all officers and employees be FRS participants. Being an "officer or employee" was a necessary, but not necessarily sufficient, condition of being a member of the FRS.

6/ If, however, a state employee held a "regularly established position" but was paid out of a fund other than a salary appropriations fund, then his compensation could not, by definition, have consisted of "salary payments," and, for that reason, he could not have been deemed an "officer or employee" (which by definition required receipt of "salary payments"); being something besides an "officer or employee," such a person could not have been a "member" of the FRS.

[7]/ The undersigned assumes that in most instances where salary funds have been appropriated specifically to pay a position's salary, the position will be authorized in the employer's budget.

[8]/ If the definition of "regularly established position" were construed to require that the funds specifically appropriated to pay the salary of a position must, as a condition of the position's being considered regularly established, be drawn upon to pay a person holding such position, then there would exist an inconsistency between the definitions of "regularly established position" and "salary payments" as these terms relate to non-state employees. As a means of avoiding the ambiguity that would arise from such an interpretation, it would be necessary to note that while the definition of "regularly established position" applies generally without making a distinction between state and non-state employees, the definition of "salary payments" specifically contemplates that non-state employees——in explicit contrast to state employees——might receive, for work performed in a "regularly established position," "salary payments" from a source other than a salary appropriations fund. Under a common rule of construction, the specifically applicable provisions in the definition of "salary payments" properly would be given precedence, in reference to non-state employees, over the general language contained in the definition of "regularly established position". See Gretz v. Florida Unemployment Appeals Com'n, 572 So. 2d 1384, 1386 (Fla. 1991)(specific statute controls over general statue covering the same subject matter); accord Cone v. State Dept. of Health, 886 So. 2d 1007, 1012 (Fla. 1st DCA 2004). Resolving the putative definitional conflict in this fashion would lead to the conclusion that, as long as a position were authorized in a local employer's approved budget, then that position would constitute a "regularly established position" if the local employer designated it as such. From this conclusion it would follow——as stated in the text above, though for a different reason——that the source of funds for paying the salary of a non-state employee is irrelevant to whether such employee filled a "regularly established position."

[9]/ The subject of MDCSB's potential liability to the FRS trust for contributions that should have been made in 1979 toward Urrechaga's retirement benefit, but which might not have been made due to mistake or oversight, raises issues that are beyond the scope of this proceeding. The undersigned need not and does not express an opinion on that subject.

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.