

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SEMINOLE COUNTY SCHOOL BOARD,)	
)	
Petitioner,)	
)	
vs.)	Case No. 07-2486
)	
DEREK E. ANDREWS,)	
)	
Respondent.)	
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RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on August 31, 2007, in Sanford, Florida, before Jeff B. Clark, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ned N. Julian, Jr., Esquire
Seminole County School Board
400 East Lake Mary Boulevard
Sanford, Florida 32773-7127

For Respondent: No Appearance

STATEMENT OF THE ISSUE

Whether Respondent, Derek E. Andrews, should be terminated for his absence without leave from April 12, 2007, until the end of the 2006-2007 school year.

PRELIMINARY STATEMENT

On or about April 27, 2007, Respondent received a letter from Dr. Bill Vogel, Superintendent of Seminole County Public Schools, advising him that he, as Superintendent of Seminole County Public Schools, would be recommending to the School Board that it terminate Respondent's employment based on Respondent's "repeated and continued absence from duty without approved leave from April 2, 2007, to date [April 27, 2007]." On May 22, 2007, Respondent requested an administrative hearing by directing an e-mail to Karen Ponder, clerk of the Seminole County School Board.

On June 4, 2007, Petitioner forwarded a Petition for Termination to the Division of Administrative Hearings and served same on Respondent. The Petition for Termination charges that Respondent's contractual responsibilities are controlled by the collective bargaining agreement between the Seminole Education Association, Inc., and the School Board of Seminole County, Florida ("the collective bargaining agreement") and that Respondent was absent without approved leave from April 2, 2007, through May 24, 2007. May 27, 2007, was the last duty day for teachers for the 2006-2007 school year. The collective bargaining agreement states that "any teacher who is willfully absent from duty without leave shall . . . be subject to termination"

On June 4, 2007, an Initial Order was sent to both parties. On June 13, 2007, the case was scheduled for final hearing on July 16, 2007, in Sanford, Florida. At Respondent's request, the case was continued and rescheduled for August 31, 2007. On August 28, 2007, Respondent requested another continuance, which was denied.

The final hearing was conducted on August 31, 2007. Petitioner presented two witnesses: Dr. Shaune Storch and John Reichert. Petitioner's Exhibits 1 through 8 were admitted in evidence and marked accordingly. Official notice was taken of Sections 1012.33 and 1012.667, Florida Statutes (2006).

Respondent did not appear at the final hearing.

Petitioner timely filed a Proposed Recommended Order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing in this matter the following Findings of Facts are made:

1. Respondent, Derek E. Andrews, is a school teacher employed by the School Board of Seminole County, Florida.

2. William Vogel is, and has been, Superintendent of Public Schools for the School District of Seminole County, Florida, for all times material to the occurrences relevant to this case.

3. Pursuant to Section 4, Article IX, Florida Constitution, and Sections 1001.30, 1001.31, 1001.32, 1001.33, 1001.41, and 1001.42, Florida Statutes (2006), the School Board of Seminole County, Florida, is the governing board of the School District of Seminole County, Florida.

4. The relationship of the parties is controlled by Florida Statutes, the collective bargaining agreement, and School Board policies.

5. Respondent's supervising principal for the 2006-2007 school year was Dr. Shaune Storch.

6. Respondent had been granted a leave of absence that expired on March 30, 2007.

7. Respondent's leave for the period March 16, 2007, through March 30, 2007, was an extension of a previous leave as requested by Respondent.

8. Subsequent to the expiration of Respondent's leave on March 30, 2007, Respondent's supervising principal attempted to contact Respondent regarding his intentions for the remainder of the 2006-2007 school year.

9. Respondent did not meet with his supervising principal or otherwise respond to her letter of April 5, 2007.

10. Article XVI, Section I.2. of the collective bargaining agreement, provides that any teacher who is willfully absent from duty without leave shall forfeit compensation for the time

of the absence and be subject to discharge and forfeiture of tenure and all other rights and privileges as provided by law.

11. Respondent was absent without leave from April 2, 2007, through the end of the school year.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction of the parties and subject matter. § 120.57(1), Fla. Stat. (2007).

13. The burden of proof is on Petitioner to establish by a preponderance of the evidence the allegations for termination for just cause that are alleged in the Petition for Termination dated June 4, 2007. McNeill v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996).

14. Because the statute and rules providing grounds for terminating Respondent's contract are penal in nature, they must be construed in favor of the employee. See Rosario v. Burke, 605 So. 2d 523 (Fla. 2d DCA 1992); Lester v. Department of Professional Regulations, 348 So. 2d 923 (Fla. 1st DCA 1977).

15. The referenced collective bargaining agreement states, in pertinent part, as follows:

ARTICLE XVI - LEAVES AND TEMPORARY DUTY

17. Caution

2. Any teacher who is willfully absent from duty without leave shall Forfeit compensation for the time of such absence

and be subject to discharge and forfeiture of tenure and all other privileges as provided by law.

16. Subsection 1012.33(1)(a), Florida Statutes (2006), states,

Each person employed as a member of the instructional staff in any district school system shall be properly certified pursuant to s. 1012.56 or s. 1012.57 or employed pursuant to s. 1012.39 and shall be entitled to and shall receive a written contract as specified in this section. All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude.

17. "Just cause" is some substantial shortcoming detrimental to the employer's interests, which the law and a sound public opinion recognize as a good cause for dismissal. A discharge for just cause will be upheld if it meets two criteria: (1) it is reasonable to discharge the employee because of misconduct; and (2) the employee had notice, express or fairly implied, that such conduct would be grounds for discharge. In Re: Grievance of Towel, 665 A.2d 55 (Vt. 1995).

The criteria for determining just cause for dismissal must be based on merit. The standards must be job-related and in some rational and logical manner touch upon competency and ability. All that just cause

requires is that the cause for dismissal not be religious or political, but concerned solely with the inefficiency, delinquency, or misconduct of the employee. Civil Service Commission v. Poles, 573 A.2d 1169 (Pa. Commw. Ct. 1990).

18. Respondent was on notice that his willful absence without leave could lead to his dismissal.

19. Respondent's absence from his teaching responsibilities was willful, without proper authorization, and is just cause for his termination.

RECOMMENDATION

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

RECOMMENDED that a final order be entered finding Respondent, Derek E. Andrews, guilty of the allegations stated in the Petition for Termination and that his employment be terminated.

DONE AND ENTERED this 20th day of September, 2007, in Tallahassee, Leon County, Florida.



JEFF B. CLARK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of September, 2007.

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.