

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HILLSBOROUGH COMMUNITY COLLEGE,)
)
 Petitioner,)
)
 vs.) CASE NO. 91-4650
)
 JOSEPH P. BOYLE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A hearing was held in this case in Tampa, Florida on February 10, 1993, before Arnold H. Pollock, a Hearing Officer with the Division of Administrative Hearings.

APPEARANCES

For the Petitioner: John M. Breckenridge, Esquire
2502 Rocky Point Road, Suite 225
Tampa, Florida 33607

For the Respondent: Joseph P. Boyle, pro se
Post Office Box 327
Champlain, New York 12919

STATEMENT OF THE ISSUES

Should Respondent's tenure status be removed and he be terminated from employment with Hillsborough Community College because of the matters set out in the Amended Statement of Charges and Petition For Dismissal filed in this matter?

PRELIMINARY MATTERS

By Statement of Charges and Petition for Dismissal dated June 10, 1991, Dr. Andreas A. Paloumpis, President of Hillsborough Community College, (College), seeks to dismiss Respondent, Professor Joseph P. Boyle, from employment with the College for gross insubordination. The Statement of Charges and Petition was served on the Respondent by US mail, and by letter dated July 22, 1991, the matter was forwarded to the Division of Administrative Hearings for appointment of a Hearing Officer.

Shortly thereafter, by letter of August 9, 1991, Professor Boyle's attorney advised the Hearing Officer, Veronica Donnelly, of suggested hearing dates, as did counsel for the College, and in late August, 1991, the matter was set for hearing in Tampa on December 3, 1991. The scheduled hearing was subsequently continued several times until, by Order dated November 16, 1992, the undersigned, to whom the case had been reassigned in the interim, set the matter for hearing in Tampa on February 10 and 11, 1993, at which time it was heard as

scheduled. In the interim, however, on June 1, 1992, the College filed an Amended Statement of Charges and Petition for Dismissal adding additional grounds relating to alleged misconduct by the Respondent in the classroom.

Also in the interim, the College, as a part of its pre-hearing discovery, scheduled Respondent for deposition on August 7, 1992. Just prior to the deposition, on August 4, 1992, Respondent sought a Protective Order from the Hearing Officer on the basis that he was residing outside the state of Florida, was in poor health, and would not agree to the taking of the deposition by telephone conference call. Thereafter, on August 26, 1992, Respondent also moved for the entry of a Summary Final Order in his favor as to the original charge of insubordination on the basis that Respondent's deposition indicated the strong possibility he had not received notice of any of the missed meetings which formed the basis for that charge. Both the Motion for Protective Order and the Motion for Summary Final Order were denied by Hearing Officer Donnelly by Orders dated November 6, 1992.

Shortly thereafter, Professor Boyle's counsel, Merkle & Magri, P.A., filed a Motion seeking permission to withdraw citing irreconcilable differences between them and alleging that Respondent had failed to cooperate with the firm in the litigation of this case. On November 17, 1992, the undersigned, as Hearing Officer, issued an Order to Show Cause to the Respondent directing him to demonstrate why counsel should not be granted permission to withdraw. This Order was sent by US mail to Professor Boyle at the return address shown on the last previous communication from the Professor, but when no timely response was received, and the Order to Show Cause was returned undelivered with the notation "attempted - not known", the undersigned thereafter entered an Order granting Boyle's counsel permission to withdraw.

Shortly before the hearing, based on the College's counsel's Motion for Discovery Sanctions, relating to Professor Boyle's failure to be deposed in discovery, a hearing was held by telephone conference call to which counsel for the college and the undersigned were parties. Prior to this call, the undersigned had directed counsel for the college to attempt to get Professor Boyle's participation in the conference. At the hearing, counsel related that he had written to Professor Boyle in ample time for his participation, suggesting that if the Professor, who claimed to have no phone at his residence, would call the College's counsel, collect, he would be patched into the call and could participate. Though the conference call was delayed for some time to allow Boyle's participation, he failed to call and the hearing was commenced without his participation.

During the hearing, coincidentally, the undersigned received a telephone call from Professor Boyle. When advised that the undersigned would call him back at the termination of the hearing, Professor Boyle said he had no phone. As a result, the undersigned suggested Boyle make the call instead, which Boyle did. In that post-hearing conversation, Boyle claimed that he still considered himself to be represented by Mr. Merkle even though an Order releasing Merkle's firm had been entered. Boyle claimed to have an independent contract with Merkle and that under the law, he could not participate without his counsel. All efforts to convince Professor Boyle that his counsel had withdrawn were to no avail. After advising the professor that the hearing would be held as scheduled in Tampa, and that though he could not present any evidence which would have been discoverable during deposition, Boyle could, nonetheless, participate in the hearing by cross examination of opposing witnesses, by presentation of other material, and by argument, the conversation was terminated by the undersigned. Before termination, the undersigned agreed, at Professor

Boyle's request, to attempt to contact Boyle's counsel and advise him of the hearing and that Boyle still considered him to be his counsel.

Immediately thereafter, the undersigned telephonically attempted to contact Mr. Merkle but was unable to do so. A message was left with Merkle's associate, Ms. Weiger, that Professor Boyle still considered Mr. Merkle to be his counsel and that the hearing would commence, as scheduled, on February 10, 1993, in Tampa at the place cited in the last notice, a copy of which had been furnished Merkle's firm.

Professor Boyle, notwithstanding his adamant indications he would not be present, nonetheless appeared at the hearing. He was not represented by counsel, however. The undersigned repeated to Professor Boyle in person that Boyle was welcome to participate in the hearing with the only stricture being he would not be able to present any evidence which would have been discoverable but for his refusal to be deposed. Professor Boyle reiterated his claim that he was represented by Mr. Merkle and that he could not legally say anything or participate in any way without his counsel, and he thereupon left the room. He did not return at any time during the presentation of the College's material.

At the hearing, Petitioner presented the testimony of Joaquim M. Campo, former Chairman of the Board of Trustees of the College; Carl T. Watkins, Auditor for the College for 13 years; and Dr. Andreas A. Paloumpis, President of Hillsborough Community College at all times pertinent to the issues herein. Petitioner also introduced Petitioner's Exhibits 1 through 22. Respondent presented no evidence.

No transcript was provided and neither party submitted Proposed Findings of Fact.

FINDINGS OF FACT

1. At all times pertinent to the matters in issue herein, the Petitioner, Hillsborough Community College, was a public institution of higher education, with four campuses, two extension centers, three environmental centers, and several other operations located in Hillsborough County, Florida. Respondent, Professor Joseph P. Boyle, was a tenured faculty member on the instructional staff located at the Dale Mabry campus. He has been with the College for more than 20 years.

2. The College's Board of Trustees ordinarily meets once a month at the Administrative Center on Davis Island. The meetings are open to the public, are publicized at least a week in advance, and are based upon a written agenda. Frequently, members of the public attend the meetings as do some faculty members, administrative staff and the press. The College President and the College Attorney also attend. At these meeting, the Board generally treats policy matters, expenditures, approval of consultant contracts, and audit reports, and there is also a provision for public comment. It is not at all unusual or inappropriate for Board members to be contacted by students, faculty members or the public about school matters.

3. Joaquin M. Campo, the President and Chairman of a Tampa engineering firm, served as Board President from July, 1990 to July, 1991. He has been contacted by outsiders about matters and when that happens, he tries, as best he can, to follow up on the contact. It is his practice to respond to any personal contact and to any signed letter which, he immediately forwards to the College President for investigation. To the best of his recollection, Respondent had

previously called him about something into which he made inquiry and thereafter, Respondent began to communicate with him regularly on a variety of matters. This did not annoy him at all, and in each case, he tried to get the answer to the Respondent's problem.

4. On August 27, 1990, Mr. Campo received a letter from the Respondent complaining about comments purportedly made by President Paloumpis. If true, these allegations would be considered serious. Professor Boyle followed the first letter with phone calls and repeated additional letters, as a result of which, Mr. Campo asked him to come up with some hard evidence in support of his allegations. Campo made this request several times, and no such evidence was ever forthcoming. Finally, Campo asked the College's Auditor, Mr. Watkins, who reports directly to the Board of Trustees, to look into Boyle's allegations and report what he found. Mr. Campo chose the Auditor so there would be no chance of improper influence being asserted by anyone else.

5. At the same time, Mr. Campo also contacted the Respondent and asked him to cooperate with Mr. Watkins. By letter dated September 13, 1990, he reiterated that request in writing. At no time did Professor Boyle indicate he would not cooperate with the Auditor. At the time he brought the Auditor in, Mr. Campo had not formed any opinion as to Boyle's allegations.

6. Sometime later, in February, 1991, Mr. Campo received another letter from Respondent complaining about the mechanics of selection for appointment of the head of a department at the college. When he looked into these allegations, he found them to be untrue and, in fact, that that faculty member ostensibly appointed, Dr. Adams, had not been so appointed and had never applied for the position. Mr. Campo so responded to Mr. Boyle in writing and thereafter received another letter from the Respondent, dated February 22, 1991, which in a disrespectful and berating manner, scolded Mr. Campo for his reply and demanded an apology. Because this letter was incorrect and insulting, Mr. Campo advised Professor Boyle of his feelings. As it appears, however, this faculty member, Dr. Adams, was subsequently appointed Department head.

7. Thereafter, by letter dated March 13, 1991, Mr. Boyle requested Mr. Campo resign as Chairman of the Board of trustees, citing alleged dereliction of duty and referring to nonexistent secret letters. That same day, Mr. Campo wrote to Professor Boyle and again asked him to come forward with proof to support his allegations and set a deadline of March 22, 1991 for him to do so. In writing this letter, Mr. Campo was trying to do his duty as Chairman to either prove or disprove allegations of wrongdoing and put them to rest. He got no response to the letter or any of the proof requested.

8. All during this time, Mr. Watkins also was having his difficulties in dealing with Mr. Boyle regarding the investigation he had been requested to undertake. Immediately after being asked by Mr. Campo to look into Boyle's allegations, Watkins received a call from Mr. Boyle in which Boyle said Mr. Campo had asked him to meet with Watkins and provide the information. Boyle agreed to do so, but after several days, Watkins still had not again heard from Boyle. Though Watkins tried to contact Boyle, he found Boyle had no home phone and was only on campus at certain hours.

9. Mr. Watkins went to the Dale Mabry campus during Boyle's office hours. When he arrived at Boyle's office, he found the door closed but he could hear voices from within. He knocked twice and a voice called out, "Who are you and what do you want?" When Watkins identified himself, Boyle opened the door, finished the phone call he was engaged in, and spoke with him. Boyle said he

had not had time to collect the background information but that his letter to Mr. Campo stated the facts. When Mr. Watkins pointed out these were not facts but conclusions, Boyle agreed to get facts and said he would get back with Watkins in one week. Their agreement called for Professor Boyle to come to Watkins office with the information, but one day before the scheduled meeting, Boyle called to postpone it. Nonetheless, he showed up the next day without any independent proof, reasserted his position that his allegations spoke for themselves, and questioned Mr. Watkins' authority to conduct the inquiry. When Mr. Watkins explained his charter, Boyle dropped the subject.

10. Mr. Boyle never did come up with any supporting proof of his allegations even though Mr. Watkins gave him several extensions of time. In fact, Boyle failed to contact Mr. Watkins again and when Watkins tried to reach him and couldn't, he again went to Boyle's office to see him. After Watkins waited for a lengthy time during which Professor Boyle dealt with students, Boyle finally stated he didn't have any time to deal with him. He stated he had been told by an unnamed party not to talk with Watkins, and left.

11. Mr. Watkins reported to Mr. Campo both orally and in writing regarding the results of his efforts. Mr. Campo advised Mr. Watkins not to pressure Boyle too much because they really wanted the information. Finally, on November 6, 1990, Mr. Watkins again wrote to Professor Boyle asking for documentation supporting his allegations. Mr. Boyle neither responded with the documents nor requested more time, and Mr. Watkins has never received any documentation from Boyle in support of his charges.

12. While Boyle cooperated at first, his attitude deteriorated to the point he was arrogant and uncooperative, and considering Watkins was working at the direction of the Chairman, even insubordinate. Finally, on November 19, 1990, Watkins wrote to Mr. Campo outlining the results of his efforts and the problems he encountered dealing with Professor Boyle. Thereafter, he was released from this investigation and has not, to this day, received any supplemental information from Professor Boyle.

13. By letter dated March 27, 1991, Mr. Campo ordered Mr. Boyle to meet with him on April 9, 1991 at 2:00 PM in the College Administrative Office on Davis Island and to bring whatever support he had for the charges he had made. Mr. Campo made it clear this was not an optional meeting, and the Respondent's failure to appear would be considered to be insubordination. Nonetheless, Professor Boyle did not appear for the meeting nor did he either call in advance to seek a postponement or provide a subsequent explanation for his absence.

14. On April 11, 1991, Mr. Campo again wrote to Mr. Boyle, pointing out the failure to appear on April 9 was insubordination, asking for an explanation in writing, and directing him to appear in person at the Administrative Office on Davis Island on April 22, 1991 at 2:00 PM. This letter also advised Boyle that if he could not make it, he was to advise Campo by phone no later than noon on April 22. Boyle neither showed up nor explained. April 9, 19, and 22, 1991 were work days when Professor Boyle could be expected to perform his duties. As Chairman of the College's Board of Trustees, Mr. Campo had the authority to direct any college employee to meet with him. His directions to Boyle to meet with him on those days were, therefore, lawful orders.

15. Mr. Campo was present at the time and place scheduled for the meetings which he directed Professor Boyle to attend. To this day, Boyle has not explained his failure to appear as directed. Campo sought those meetings with Professor Boyle to get the facts surrounding the allegations Boyle had

made. They were not designed to create a situation for which disciplinary action to get rid of Professor Boyle could be initiated.

16. As a result of Professor Boyle's failure to appear as directed, Mr. Campo asked President Paloumpis to look into the matter to see if any action was appropriate. As a result, in June, 1991, Dr. Paloumpis recommended to the Board of Trustees that action to remove Boyle for insubordination be initiated. Mr. Campo agreed. At the open Board meeting where this matter was addressed, the Board, pursuant to discussion of the matter which had been published in advance on the regular publicized agenda, unanimously approved the recommendation to dismiss Professor Boyle. The Board meeting was publicized in advance along with the agenda, and Professor Boyle had the opportunity to appear before the Board to defend or explain his actions. He failed to do so. There is no evidence of any attempt to discharge Boyle because of his outspokenness.

17. When Dr. Paloumpis received the copy of Professor Boyle's letter of complaint which Mr. Campo sent to him, he, also, wanted the matter looked into. At no time did he attempt to impede Watkins' investigation or, in fact, to speak with Watkins about it. As an administrator, he has been accused by others before of making bad decisions and of being unfair. He never takes such accusations personally, nor did he act on this allegation.

18. His initiation of disciplinary action against Professor Boyle was taken at Mr. Campo's suggestion because of Boyle's insubordination. He reviewed the investigation and the succeeding failures by Boyle to meet with Mr. Campo and satisfied himself that grounds for discipline existed. Only then did he set the wheels in motion.

19. On April 30, 1991, Dr. Paloumpis wrote to professor Boyle directing him to come to Paloumpis' office at 8:30 AM on May 3, 1991, normal business hours, to provide a doctor's certificate because Professor Boyle had a habit of calling in sick or having someone do it for him. Under the terms of the contract between the College and the union, the College has the right to have the faculty member submit to an independent medical examination under certain conditions. He also directed Boyle to contact his department head, Dr. Adams, by May 3, 1991, to set up the appointment with the doctor. Professor Boyle did not show up at either place on May 3, nor did he contact Dr. Paloumpis or anyone on his staff about it.

20. Thereafter, on May 6, 1991, Dr. Paloumpis wrote to Professor Boyle asking for an explanation of his failure to appear as directed by him and by Mr. Campo. In this letter, he also gave Mr. Boyle an order to contact Ms. Bone, an executive assistant in Dr. Paloumpis' office to set up a time, at Professor Boyle's convenience, to meet with Paloumpis at Paloumpis' office. He also warned Professor Boyle that if he failed to appear, he, Paloumpis would recommend Dr. Boyle's suspension as a disciplinary action. Professor Boyle has never responded to this letter or complied with the directions therein.

21. Dr. Paloumpis thereafter prepared the Petition for Dismissal and Explanation of Rights form and tried to serve them on the professor by regular US mail, by certified mail, and by process server. That copy sent by regular US mail was not returned undelivered, but the copy sent by certified mail was not accepted. The process server was able to effect service of the Petition on Professor Boyle, at his home, at 1:20 PM on June 28, 1991.

22. It must also be noted that some of the letters to Professor Boyle which requested meeting with him were, in addition to being sent by mail,

included in the envelope with his individual pay checks. When these checks were cashed, it was clear indication that Professor Boyle had received the meeting notices. None of the letters, all of which were also sent by US mail, were ever returned undelivered except for the copy of the Petition sent by certified mail.

23. In addition to all the above, in the Fall of 1991, Dr. Paloumpis learned that several students had complained about Professor Boyle's behavior. Paloumpis received a call from the Dale Mabry campus that complaints had been received which had been put in writing and referred to the vice president in charge of that campus. When he asked what was going on, the complaints were referred to him.

24. As a result of these complaints, Professor Boyle's supervisors recommended to Dr. Paloumpis that Boyle be placed on administrative leave because the pattern and manner of his relationship with his students indicated it would be better were he out of the classroom. Dr. Paloumpis' primary concern was for the students, many of whom wanted to drop the course they were taking from Professor Boyle. To do so, however, would be, for many of them, a financial and academic hardship. Paloumpis wanted to avoid this, and as a result, Professor Boyle was relieved of his teaching duties and an adjunct professor brought in to teach the remainder of the course. This solved the students' problems and the complaints stopped.

25. As a result of this reported aberrant classroom behavior by Professor Boyle, Dr. Paloumpis prepared the additional charges which were incorporated in the Amended Petition to Dismiss which he also submitted to the Board of Trustees. By memo dated September 23, 1991, Dr. Paloumpis notified Professor Boyle he was being placed on administrative leave with pay and that the new charges were being added to the Petition. At the same time, he notified Professor Boyle of his right to attend the Board meeting at which the additional charges were to be discussed. The charges were made an agenda item which was published and distributed.

26. Professor Boyle did not appear at the Board meeting but was represented by counsel, Mr. Merkle. The Board heard the evidence relating to the additional charge and the presentation by Mr. Merkle on behalf of the professor. It nonetheless voted unanimously to add the new charge to the Petition for Dismissal.

27. At no time has Professor Boyle ever given Dr. Paloumpis or any representative of the College any explanation of his allegedly aberrant classroom behavior which prompted the additional charge, save the presentation by Mr. Merkle at the Board meeting.

CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in this case. Section 120.57(1), Florida Statutes.

29. In both its original and amended Petition for Dismissal, the Petitioner seeks the dismissal of a tenured professor, Respondent, from employment with the College for cause. In the original Petition, the cause is alleged gross insubordination, and in the amendment, the cause is the alleged failure by the Respondent to live up to the instructional performance requirements of the agreement between the College and the Union.

30. Hillsborough Community College is a public entity and a public employer. Under the provision of Section 440.209, Florida Statutes, a public employer has the right to direct its employees, to take disciplinary action for proper cause, and to relieve its employees from duty because of lack of work or other legitimate reasons. This is reiterated in paragraph 6.16 J of the Union/College agreement.

31. The state Department of Education, consistent with that authority, promulgated rules for the governance of faculty members teaching at the community colleges throughout this state. At Rule 6A-14.0411(6), F.A.C., the Department provided that an employee of a community college may be suspended or dismissed by the Board upon the recommendation of the President at any time during the school year, after opportunity to be heard at public hearing, provided the charges supporting the discipline are based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness or conviction of a crime involving moral turpitude.

32. This hearing was not for the purpose of determining the truth of Professor Boyle's accusations which initiated the procedure and no determination is made here of that issue. The purpose of this action is to determine whether, aliunde his allegations regarding Dr. Paloumpis and the appointment process, having made such allegations and having been requested to provide proof in support thereof, his continuing failure to do so, his abrasive and abusive communications with the Chairman, the President and the Auditor, and his adamant failure to appear at meeting to which his presence was directed by appropriate authority constitutes the gross insubordination called for in the Rule. Clearly it does.

33. Respondent made serious allegations against persons in authority in the administration of the college. These allegations were made to the Chairman of the Board of Trustees whose responsibility it was to investigate and take appropriate corrective action if necessary. Allegations alone, however, are not proof, and upon receipt of those allegations, the Chairman sought from the professor evidence to support those allegations. When that evidence was not forthcoming, he properly appointed the College's auditor to conduct his independent investigation into the allegations and solicited from Respondent his cooperation in the investigation of those allegations he had made. Again, the support was not forthcoming and in fact was rejected in such a manner, considering the source of the request, a fact which was communicated to Respondent, as clearly constituted contemptuous insubordination. Even when informed by the President that his continued failure to cooperate in the investigation by failing to appear at several meetings to be set up at Respondent's convenience would constitute insubordination, Respondent continued to ignore all efforts at a rational resolution of his complaints. This can be described as nothing other than gross insubordination. This gross insubordination is of a nature which is clearly detrimental to the effective accomplishment of the College's educational purpose and which cannot be condoned.

34. The misconduct described in the Amended Petition, serving as additional bases for dismissal, was established solely by hearsay evidence. Hearsay evidence cannot, by itself, support a finding of fact. Consequently, while there are numerous reports of misconduct, none of the reporters had first hand knowledge of the alleged misconduct. As such, this evidence cannot form the basis for discipline.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is, therefore, recommended that Professor Joseph P. Boyle be discharged from employment as a tenured faculty member at Hillsborough Community College for gross insubordination.

RECOMMENDED this 19th day of March, 1993, in Tallahassee, Florida.

ARNOLD H. POLLOCK
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of March, 1993.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should consult with the agency which will issue the Final Order in this case concerning its rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency which will issue the Final Order in this case.