

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 02-0835
)
 BENITA A. ROBERTS,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice a formal hearing was held in this case on June 9, 2003, by video teleconference with the parties appearing from Miami, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Luis M. Garcia, Esquire
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite 400
Miami, Florida 33132

For Respondent: Evan Jay Byer, Esquire
Evan Jay Byer, P.A.
1999 Northeast 150th Street, Suite 102
North Miami, Florida 33181

STATEMENT OF THE ISSUE

Whether the Respondent, Benita A. Roberts (Respondent), committed the violations alleged in the Notice of Specific Charges and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

This case began on February 13, 2002, when the Petitioner, School Board of Miami-Dade County, Florida, took action to suspend and initiate dismissal proceedings against the Respondent. More specifically, as alleged in the Notice of Specific Charges, the Petitioner maintains that the Respondent violated four provisions of law by authorizing payroll for an employee under her supervision while the employee was incarcerated. The Respondent denied the allegations and requested a formal administrative hearing to contest her dismissal from employment.

The case was referred to the Division of Administrative Hearings for formal proceedings on February 25, 2002. The case was first scheduled for hearing for May 20-21, 2002. Thereafter the matter was continued on several occasions until it was ultimately heard on June 9, 2003.

At the hearing, the Petitioner presented testimony from Barbara Sozie, the secretary/treasurer, at Natural Bridge Elementary School (Natural Bridge); Jorge L. Garcia, the former principal at Natural Bridge; Julio Miranda, district director in charge of compliance audits and investigative audits; and Barbara Moss, district director for the office of professional standards. The Petitioner's Exhibits numbered 1-15 were admitted into evidence. Official recognition was sought and

taken for those items identified as Petitioner's Exhibits 1 through 4. The Respondent testified in her own behalf.

The transcript was filed with the Division of Administrative Hearings on August 27, 2003. The parties had initially requested 20 days to file their proposed recommended orders. On September 16, 2003, the Petitioner filed an Unopposed Motion for Enlargement of Time to File Proposed Recommended Orders. Such motion was granted and the parties were granted leave until September 26, 2003, to file their proposed orders. Both parties filed Proposed Recommended Orders that have been fully considered in the preparation of this order.

FINDINGS OF FACT

1. The Petitioner is the entity charged with the responsibility under Florida law to operate, control, and supervise the administration of all public schools within the Miami-Dade County school district. As such, disciplinary actions against its employees fall within its authority.

2. At all times material to the allegations of this case, the Respondent was employed by the Petitioner and served as the school cafeteria manager at Natural Bridge.

3. The Respondent has been continuously employed within the school district since 1979. She began employment at the age of 20 and was assigned duties as a pot washer. Later the

Respondent rose through the ranks to the position of baker. Eventually, after completing training, the Respondent became a food service manager. Throughout her career she served in various capacities without prior disciplinary action being taken against her.

4. In fact, the Respondent received commendations for her hard work, and her kitchen served as a training place for others. Prior to the incidents complained of herein, the Respondent had served the school district with distinction. The Respondent was assigned to Natural Bridge in September of 1992.

5. For many months prior to December 1999, Adrian Ebanks was employed at Natural Bridge as a part-time cafeteria worker. Mr. Ebanks was limited to 30 hours per week or 60 hours per pay period for compensatory purposes. That is, as his manager, the Respondent was supposed to pay Mr. Ebanks for no more than 60 hours per pay period.

6. To arrive at the 60 hours, Mr. Ebanks was scheduled to work no more than 6 hours per day for the 10 days constituting the pay period. According to the Respondent, Mr. Ebanks exceeded the 60 hours numerous weeks but could only be paid for the 60 hours he was approved to work. According to the Respondent, Mr. Ebanks was a dedicated and hard-working cafeteria helper.

7. Between December 23, 1999 and June 16, 2000, Mr. Ebanks was incarcerated and did not report to Natural Bridge to perform his duties. Nevertheless, because the Respondent believed he was owed time for work performed prior to that time, the Respondent continued to complete the payroll record for Mr. Ebanks as if he had worked on the dates indicated. It is undisputed he did not work during the period December 23 through June 16, 2000.

8. The Respondent was not authorized to complete the payroll record for Mr. Ebanks as she did. If, in fact, Mr. Ebanks was owed for additional time worked but not compensated, she should have contacted a supervisor to approve either additional pay for the hours as they accrued or overtime. In truth, Mr. Ebanks was not eligible for overtime pay.

9. The Respondent sought to reward dedicated cafeteria workers who were, in her judgment, underpaid and hardworking. The system did not allow her to give additional pay beyond the time allocated to part-time workers. Regardless, the Respondent attempted to compensate such employees but did not keep a formal log that would demonstrate the actual hours worked that exceeded the 60 hours that could be compensated. In fact, despite her assessment that Mr. Ebanks was owed for the hours he was paid for while incarcerated, there is no documentation to establish that such hours fairly related to unpaid overtime logged prior

to his incarceration. Additionally, no cafeteria worker who might have corroborated the Respondent's conclusions testified with regard to the matter.

10. Moreover, the Respondent did not bring the problem of how to fairly compensate her employees to the attention of anyone until after the allegations of the instant case came to light. And, unfortunately, that was not until a year after the incidents complained of in this case. Not until June of 2001 did the principal become aware of the payroll issues. At that time an individual complained to the principal that the Respondent had paid Mr. Ebanks while he was incarcerated. The investigation of that complaint led to the instant action, a criminal investigation of the matter, an audit, and disciplinary action against Mr. Ebanks and the Respondent.

11. As a result of the payroll records submitted by the Respondent, the Petitioner improperly paid Mr. Ebanks \$3,255.48.

12. A conference for the record was conducted with the Respondent on November 7, 2001. At that time, the Respondent admitted she had submitted the payroll records for Mr. Ebanks while he was incarcerated.

13. On February 13, 2002, the Petitioner took action to suspend the Respondent and to initiate dismissal proceedings against her for just cause. The "just cause" was alleged to be deficient and/or non-performance of job responsibilities,

misconduct in office, lack of good moral character, and violation of School Board rules dealing with employee conduct.

14. On March 5, 2002, the Respondent pled guilty to official misconduct, petit theft, and grand theft. All of the charges arose from the findings set forth above regarding the completion of the payroll records for Mr. Ebanks.

15. As a result of the plea entered by the Respondent, the court imposed 18 months of probation and required the Respondent to remit fees and costs associated with the prosecution of the case. It is unknown as to whether either Mr. Ebanks or the Respondent made restitution for the \$3,255.48 paid to Mr. Ebanks during his incarceration. It is certain the Respondent did not acknowledge that her completion of the time records was contrary to school board guidelines.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. Fla. Stat. §§ 120.569, 120.57(1).

17. The Petitioner bears the burden of proof in this case to establish the factual claims against this Respondent. It has met that burden.

18. Florida law authorizes the Petitioner to take disciplinary actions against its employees when the situation merits such action. See Fla. Stat. § 447.209.

19. Additionally, the labor contract between this employer and its workers provided for disciplinary action arising from the employee's "performance or non-performance of job responsibilities." See Article XI, Section 4 of the AFSCME Labor Contract (Petitioner's Exhibit 4).

20. Thus, the Petitioner may discipline employees who fail to perform their job responsibilities as required by their job descriptions. In this case, the Respondent was not authorized to compensate Mr. Ebanks as she did, even if the hours had been worked. At best, in her effort to do right by a hardworking, dedicated employee, the Respondent violated the Petitioner's protocols for completing payroll records and compensating part-time employees. At worst, the Respondent conspired to divert payroll monies to an individual who was incarcerated and who did not work the hours depicted by the payroll record. In either instance, the Respondent failed or refused to follow payroll protocols that she knew were applicable to the logs she submitted. As such, the Respondent failed to perform her duties as required by her employer.

21. The Respondent also failed to conduct herself in a manner that reflected credit upon herself and the school system. Clearly the Respondent knew that Mr. Ebanks did not work during the period of his incarceration. Non-instructional personnel of a school district must conform their behaviors to avoid bringing

the school district into public disrepute. In this case, the Respondent was charged and plead guilty to crimes directly related to the false payroll records. Such conduct cannot be said to result in a public perception that she is of the highest ethical character. To the contrary, it suggests she has admitted to being a thief. The misconduct underlying such admission constitutes just cause for termination of her employment.

22. As to the Respondent's assertion that termination is "wholly disproportionate to the alleged offense," it must be recognized that the Respondent did not recognize that she was violating policy by falsely completing the payroll records. The Respondent did not seek guidance or approval for any of the acts complained of in this case. She unilaterally chose to complete the time records as she did. That level of indifference to the protocols for time keeping establishes the Respondent lacks the judgment to perform supervisory duties.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board of Miami-Dade County, Florida, enter a final order affirming the decision to suspend and dismiss the Respondent from her position as a cafeteria manager with the school district.

DONE AND ENTERED this 31st day of October, 2003, in
Tallahassee, Leon County, Florida.

S

J. D. PARRISH
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of October, 2003.

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.