

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD)
)
 Petitioner,)
)
vs.) Case No. 04-0214
)
MEKISHIA M. ROLLE,)
)
 Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice a formal hearing was held in this case on September 28-29, 2004, in Miami, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Marci A.R. Rosenthal, Esquire
 Miami-Dade County School Board
 1450 Northeast Second Avenue
 Suite 400
 Miami, Florida 33132

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

STATEMENT OF THE ISSUE

Whether the Respondent, Mekishia M. Rolle (Respondent), committed the acts alleged, and should be disciplined as outlined in the Amended Notice of Specific Charges dated April

30, 2004.

PRELIMINARY STATEMENT

On January 14, 2004, the Petitioner, School Board of Miami-Dade County, Florida (Petitioner or School District), initiated action to suspend and terminate the Respondent's employment with the School District. At that time the Petitioner alleged the Respondent had violated School Board rules and that the Petitioner had just cause for the proposed action. On December 23, 2003, the Respondent was advised of the impending School Board action and requested a formal hearing to contest the allegations.

The Petitioner filed a Notice of Specific Charges on March 24, 2004, that outlined the violations and deficient performance information pertaining to the Respondent. A subsequent request to amend the charges was granted. On April 29, 2004, the Petitioner outlined with greater specificity the allegations against the Respondent. Such allegations included deficient job performance, insubordination, and violations of Food and Nutrition Service rules. More specifically, the Petitioner claimed that the Respondent had directed subordinates to sell snack items without ringing-up the sales, had directed such subordinates to keep the cash drawer open to complete snack sales, and had

handled money in violation of policy and a directive not to do so. The Respondent requested that provisions of the charges be struck. Although ruling on such motion was reserved at the time, it is now denied.

At the hearing, the Petitioner requested that official recognition be taken of the items identified as Petitioner's Exhibits 1-4. That request was granted. Petitioner's Exhibits 9-11, 18, 21-23 were admitted into evidence. The Respondent's Exhibits 1-4 were also received in evidence.

The transcript was filed on December 29, 2004. It correctly lists the persons called to testify in this matter and chronicles the testimony offered. Requests for extensions of the time to file proposed recommended orders were granted. Both sides timely filed Proposed Recommended Orders that have been fully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Petitioner is the state entity charged with the responsibility of operating and supervising the public schools within the Miami-Dade County School District. As such it is responsible for all personnel matters for those persons employed by the School District.

2. At all times material to the allegations of this case, the Respondent was an employee of the School District.

The Respondent was responsible for the supervision of the satellite cafeteria located at Martin Luther King Elementary School. The Respondent was designated a food service satellite assistant.

3. That designation meant the Respondent was to supervise the cafeteria workers assigned to the satellite facility. At all times material to this case, there were four food service workers to be supervised by the Respondent. Some of the cafeteria workers were required to serve on the cash register collecting monies from the students. Some of the workers did not handle money.

4. Martin Luther King Elementary School (MLK) was designated a "satellite cafeteria" because it received prepared foods from another school (Holmes Elementary) for service to the MLK students. The kitchen facility at MLK was for service of the foods, not preparation. Typically, the prepared foods were transported from the main kitchen where they were prepared (at Holmes Elementary) to the MLK cafeteria. Prepackaged snacks that were placed on the service line separate from the a la carte items were also transported to the MLK site from Holmes Elementary. Students were free to purchase any item from the food service line.

5. Snacks identified in this record as "Combos" were a popular item on the service line. Students wishing to

purchase Combos typically paid cash to the cafeteria worker at the cash register and received the item.

6. As to the prepared food, typically a driver would deliver the food from Holmes Elementary during the morning hours so that the cafeteria workers at MLK could ready the service line.

7. As to the prepackaged snack items, typically the satellite assistant, the Respondent, would pick up the snack items at Holmes Elementary and transport them to MLK. A sign-out sheet posted at the pantry closet at Holmes Elementary was to track the snack items Respondent removed. For the pertinent time at issue in this case, the sign-out sheet(s) is missing. According to Ms. Solomon, the food service manager at Holmes who was also the Respondent's supervisor, the last person with the snack sign-out sheet was the Respondent. Ms. Solomon stated the Respondent borrowed the sign-out sheet to make a copy of it. It has not been located since.

8. This case came to the Petitioner's attention because of an internal audit of the MLK satellite cafeteria. It arose because food service workers who worked the cash register were uncomfortable with the procedure the Respondent instituted.

9. While Ms. Inman was assigned to the cash register, the Respondent instructed her to stop ringing-up the snack sales. Under normal procedure, when a student seeks to

purchase a snack item, the cashier is supposed to enter the item on the register, put the money in the drawer when it opens, offer change if appropriate, push the "next" button, and close the register. Each transaction is then entered into the system. Instead of the foregoing system, the Respondent told Ms. Inman to just keep the drawer open between snack sales. Ms. Inman was to sell the snack, take the money, make change if necessary, but was to leave the drawer open.

10. Similarly, when Ms. Preston replaced Ms. Inman on the cash register, the Respondent directed Ms. Preston to do the same. That is, to make the snack sales but to keep the drawer open.

11. The credible evidence from all four MLK cafeteria workers supports the finding that the Respondent directed the cashier to not ring-up snack sales. Both cashiers were persuasive and credible that the Respondent had given them that directive. The other two workers (who were not cashiers) also heard Respondent direct the cashiers not to ring up the snack sales.

12. The situation was such that Ms. Preston became concerned about the "open drawer" directive. She confided in a teacher at the school who took the matter to an assistant principal. Thus launched the inquiry in to the satellite cafeteria.

13. The Petitioner's auditing department attempted to perform an audit of the snack sales. There was conflicting evidence regarding the number of snack products that were removed from the Holmes Elementary pantry. Ms. Solomon could not confirm the number and the sign out sheet was not available. It is certain that the Combos were not adequately tracked from the Holmes Elementary through sales at MLK.

14. When questioned during the audit of the Combo sales, Ms. Solomon stated that she believed the Respondent took 36 Combo packages per day to MLK. If so, after subtracting the Combos remaining on the serving line, the sales total could have been mathematically calculated. When the auditor asked the Respondent to explain why the number of Combos remaining on the serving line plus the ones sold did not total the number allegedly taken from Holmes Elementary, she could provide no information. During the audit the Respondent did not deny that 36 Combos per day were taken from Holmes Elementary to be sold at MLK.

15. A second inquiry into the MLK cafeteria questioned the procedure for counting cash receipts at the end of the day. According to School Board policy, the cafeteria assistant (in this case the Respondent) was not supposed to handle the cash taken into the register each day. Instead, two other cafeteria employees were to take the money, count

it, prepare a deposit slip, and have the assistant sign off on the deposit. The actual handling of the funds rests with the verifying employees.

16. In this case, the Respondent routinely took the cash from the register, counted it herself, prepared the deposit slip, and had other cafeteria workers sign off on it as if the correct procedure had been followed.

17. More critical to this issue, however, is the fact that the Respondent had been directed specifically not to handle monies. In light of a past matter, not at issue in this cause, the Respondent knew or should have known she was strictly prohibited from handling the cash coming into the MLK cafeteria.

She violated the terms of the directive given to her by taking the monies to the rear of the cafeteria and counting it.

18. At a conference-for-the-record, all of the issues described above were discussed with the Respondent. The Respondent was fully apprised of all of the factual allegations that support the instant action.

19. Moreover, the Respondent was provided with an opportunity to explain any of the factual matters.

20. The Respondent has argued that the subordinate cafeteria workers were somehow unhappy with Respondent

becoming their supervisor. The Respondent believes that the workers had, in effect, run their own cafeteria for so long that her supervision efforts would be rejected. Such argument is not supported by the weight of credible evidence in this cause.

21. Secondly, the Respondent argued that the subordinate cafeteria workers were unhappy because she stopped a covered dish program they had been running. The covered-dish program worked as follows: the cafeteria workers brought in food cooked at home that was then shared with MLK staff, who contributed to their cash kitty. The weight of the credible evidence discounts any dissatisfaction among the cafeteria workers when the covered dish program was halted. Again, the Respondent's effort to discredit the testimony of the workers based upon this claim was without merit.

22. The Respondent offered no credible explanation for what happened to the snack sign-out sheet, for why she instructed the cashiers to keep the drawer open, or for why she handled monies after she had been told not to do so. There were sufficient cafeteria workers available to assist the Respondent. Had she not had sufficient numbers, her supervisor, Ms. Solomon, could easily make someone available from Holmes Elementary to do the work.

CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings. §§ 120.569 and 120.57(1), Fla. Stat. (2004).

24. The Petitioner bears the burden of proof in this matter to establish by a preponderance of the evidence that the Respondent committed the acts complained of. The Respondent, however, disputes that burden. It is concluded, that even if the burden were by a clear and convincing standard (a conclusion not reached herein), the Petitioner has met that higher standard of proof.

25. The Respondent maintains that the nature of the allegations relate to the standard of proof that should be applied in this case. The Respondent has couched the allegations in terms of criminal wrongdoing. Accordingly, the Respondent asserts that the allegations are "penal" and should therefore be subject to a higher burden of proof. The case law, however, does not support that conclusion.

26. To the contrary, an accurate reading of case law provides that the gravity of the penalty that may be applied dictates the standard of proof to be used. For example, in Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987), the court found that the revocation of a professional license is such a serious consequence, with results of such magnitude, that the

higher standard of proof is warranted. In contrast, numerous decisions have found that when loss of employment is the consequence (as herein), the burden of proof need only be by a preponderance of the evidence. See, e.g., McNeil v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996); Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3rd DCA 1990).

27. Additionally, it must be noted that the allegations against the Respondent do not charge the employee with theft. The allegations stem from the directives to cafeteria staff to keep the cash register open and to not ring snacks sales. Further, the Respondent handled funds collected after a directive advised her not to do so. The Petitioner did not allege theft and, in fact, has not proven the Respondent stole any item or money. Due to the Respondent's conduct in this case, it would have been difficult to prove theft if alleged.

28. Section 1012.22, Florida Statutes (2004), provides, in pertinent part:

--Public school personnel; powers and duties of the district school board.--The district school board shall:

(1) Designate positions to be filled, prescribe qualifications for those positions, and provide for the appointment, compensation, promotion, suspension, and dismissal of employees as follows, subject to the requirements of this chapter:

* * *

(f) Suspension, dismissal, and return to annual contract status.--The district school board shall suspend, dismiss, or return to annual contract members of the instructional staff and other school employees; however, no administrative assistant, supervisor, principal, teacher, or other member of the instructional staff may be discharged, removed, or returned to annual contract except as provided in this chapter.

29. The Petitioner proved that the Respondent failed to obey a directive that was issued to her. Simply put, the Respondent handled money; she knew she was not supposed to do so. A directive she had previously received told her not to do so. She admitted to the auditor that she handled money. She failed to follow the policy for such matters and failed to abide by the directive. The Respondent has not articulated one credible reason for continuing to handle money. In fact, under the facts of this case there was no reason for the Respondent to handle cash.

30. As for the "open drawer" issue, the Petitioner has demonstrated that the directives to the cashiers to keep the drawer open during snack sales violated School District rules. See, e.g., School Board Rule 6Gx13-3E-1.22. Again, while the practice may have expedited the snack sales, there was no valid reason to deviate from the policy and procedure of closing the

drawer between sales and pressing the "next" feature so that the transaction would be logged.

31. The contract between the Petitioner and the School District union employees requires that suspension and dismissal be for "just cause." Although that term is not defined by contract, "just cause" for purposes of this case should be viewed consistent with the State rules and regulations governing the criteria for suspension and dismissal. Therefore, "just cause" must be considered based upon allegations of incompetency, immorality, misconduct in office, gross insubordination or willful neglect of duties, drunkenness, or moral turpitude. See Florida Administrative Code Rule 6B-4.009. In this case only misconduct and gross insubordination or willful neglect of duties apply.

32. The Petitioner has established that the Respondent failed to comply with the directive not to handle cash (gross insubordination) and failed to comply with School District rules by directing subordinates to keep the cash register open and not ring-up snack sales (willful neglect of duties and misconduct).

33. The Respondent's other arguments pertaining to the terms of the union contract have been discounted as legally insufficient. The Respondent's due process rights have been protected at each and every turn of this matter. The

Respondent was not compelled to discuss any information with the auditor, was kept fully apprised of the factual issues (which she timely disputed), and was afforded a full opportunity to explain or offer information to support her perception of the issues. The Respondent has not been "punished twice" for the same offense nor has a final decision been reached as to whether the instant conclusions should be made a permanent part of her employment record. In fact, the Respondent will continue to have a right to challenge, on appeal if necessary, the decision reached by her employer.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the decision to suspend and dismiss the Respondent from her employment with the School District be affirmed.

DONE AND ENTERED this 22nd day of April, 2005, in Tallahassee, Leon County, Florida.



J. D. PARRISH
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 22nd day of April, 2005.

COPIES FURNISHED:

Dr. Rudolph F. Crew, Superintendent
Miami-Dade County School Board
1450 Northeast Second Avenue, No. 912
Miami, Florida 33132-1394

Daniel J. Woodring, General Counsel
Department of Education
325 West Gaines Street, Room 1244
Tallahassee, Florida 32399-0400

Honorable John L. Winn
Commissioner of Education
1244 Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399-0400

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

Marci A. R. Rosenthal, Esquire
Miami-Dade County School Board
Suite 400
1450 Northeast Second Avenue
Miami, Florida 33132

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.