

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 04-4237
)
MINNIE L. MOODY,)
)
 Respondent.)

)

RECOMMENDED ORDER

On January 19, 2005, an administrative hearing in this case was held in Largo, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Thomas L. Wittmer, Esquire
Pinellas County School Board
301 Fourth Street, Southwest
Largo, Florida 33770

For Respondent: Frederick D. Winters, Union Representative
Service Employees International Union
Post Office Box 10157
St. Petersburg, Florida 33733-0157

STATEMENT OF THE ISSUE

The issue in the case is whether the Pinellas County School Board may terminate the employment of Minnie L. Moody as a school bus driver.

PRELIMINARY STATEMENT

By letter from Pinellas County School Superintendent Howard Hinesley dated September 3, 2004, the Pinellas County School Board (Petitioner) notified Minnie L. Moody (Respondent) that Petitioner intended to terminate Respondent's employment as a school bus driver. According to an attachment to the letter, the grounds for the termination were that Respondent did not meet the minimum education qualifications for employment as a school bus driver. Respondent filed a request for hearing that was forwarded to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

Respondent was represented in this proceeding by the president of her union, Frederick D. Winters. Mr. Winters is apparently knowledgeable about union grievance proceedings; however, he was less knowledgeable about the requirements of Florida Administrative Code Rule 28-106.016, governing persons who represent a party in an administrative hearing. Although Mr. Winters was not determined to be a "qualified representative" as contemplated by the Rule, Respondent was clear in her desire to have Mr. Winters represent her during the proceeding. Given the nature of the proceeding and the pattern of cooperation between the parties, Mr. Winters was allowed to represent Respondent in the hearing.

At the hearing Petitioner presented the testimony of six witnesses, including Respondent, and had Exhibits numbered 1 through 28 admitted into evidence. Respondent testified on her own behalf.

The one-volume Transcript of the hearing was filed on February 9, 2005. Both parties filed Proposed Recommended Orders.

FINDINGS OF FACT

1. Since 1996, Petitioner has employed Respondent, initially in the Food Services Department and then as a "Plant Operator."

2. Beginning on January 3, 2001, Respondent began working for Petitioner in the Transportation Department as a school bus driver.

3. Respondent is represented by a collective bargaining unit of the Service Employees International Union (SEIU) with whom Petitioner has entered into an agreement.

4. Petitioner has adopted minimum qualifications an applicant must meet to become employed as a school bus driver. Although the job description has changed over a period of years, at all times material to this case Petitioner's minimum qualifications for employment as a school bus driver required as follows: "graduation from high school, possession of GED, or must obtain a GED within one year of being hired."

5. A "GED" is a "general equivalency diploma" which can be earned by persons completing a prescribed course of study and passing a standard examination. The GED is generally regarded as the equivalent of a high school diploma.

6. At the time Respondent began her employment as a school bus driver, she did not meet the minimum qualifications because she had not graduated from high school, did not possess a GED, and was not within one year of obtaining a GED.

7. Pursuant to the collective bargaining agreement between Petitioner and SEIU, a person not meeting the minimum requirements for employment may work in a position as an "intern" for a period of one year with a salary reduction of ten percent below the applicable minimum. An employee seeking employment as an intern enters into an "internship agreement" with Petitioner. The purpose of the internship mechanism is apparently to permit the employee an opportunity to complete certain job-related requirements within the first year of the employment.

8. In January 2001, Respondent executed a one-year internship agreement with Petitioner. The agreement provided as follows:

Internships are limited to one (1) year, however; [sic] in some circumstances, the Director of Personnel Relations, or designee, may grant an extension on a case-by-case basis.

9. In June 2001, Respondent entered into an adult education course to prepare for enrollment in a GED program.

10. Towards the end of 2001, Respondent sought and received an internship extension of three months. Because Respondent was attending educational classes, the request was approved, and Respondent continued bus driving through the end of the 2001-02 school year.

11. In the summer of 2002, Respondent was enrolled in basic adult education classes. In August 2002, Respondent sought an additional internship extension. The request was approved, and Respondent drove a school bus for the 2002-03 school year.

12. In February 2004, Respondent was again enrolled in basic adult education classes, and sought an additional internship extension. The request was again approved, and Respondent drove a school bus for the remainder of the 2003-04 school year.

13. Respondent suffered a family tragedy in April 2004 when her son passed away after a long illness.

14. By letter dated July 30, 2004, Petitioner advised Respondent that her internship would expire on August 21, 2004, and that she needed to complete the GED requirement prior to that date. The letter also provided several options to pursue,

including other employment prospects with Petitioner, if the GED was not obtained by the expiration of the agreement.

15. The internship agreement between Petitioner and Respondent expired on August 21, 2004, without Respondent's obtaining the GED.

16. By letter dated September 3, 2004, Petitioner advised Respondent that her employment was suspended for failing to meet the minimum qualifications of the position for which she was employed.

17. Because Respondent's progress toward obtaining the GED has been minimal, Petitioner determined that the internship agreement would not again be extended. Petitioner has no written policy regarding how many times an internship agreement can be extended. The witness testifying at the hearing indicated that in determining whether to grant an internship extension to Respondent, Petitioner considered Respondent's progress towards completion of the academic goals as well as personal factors, including the family illness.

18. Since June 2001, Respondent has worked towards, but has not yet obtained, the GED. In order to obtain a GED a student must complete basic education classes prior to entering into the GED course of study. Respondent has worked to improve her reading ability so as to provide skills sufficient to support entry into the GED program, but her reading skill level

has shown no marked improvement, and Respondent has not yet begun the actual GED course of study.

19. There is no evidence that Respondent has not performed her duties as a school bus driver in an acceptable manner.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. § 120.569, Fla. Stat. (2004).¹

21. Petitioner has the burden of establishing the facts of the case by a preponderance of the evidence sufficient to warrant termination of Respondent's employment. McNeill 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. 3d DCA 1990). In this case, the burden has been met.

22. Petitioner has the authority to prescribe qualifications for various employment positions. § 1012.22(1), Fla. Stat. Petitioner has the authority to adopt rules governing personnel matters. § 1012.23(1), Fla. Stat. The school district superintendent has the responsibility to recommend to Petitioner the dismissal of employees under appropriate circumstances. § 1012.27(5), Fla. Stat. Petitioner has the responsibility to act upon the superintendent's recommendation for dismissal. § 1012.22(1)(f), Fla. Stat.

23. Respondent is an educational support employee as defined at Subsection 1012.40(1)(a), Florida Statutes, and is represented by a labor organization. Under the circumstances of this case, termination of Respondent's employment is governed by a collective bargaining agreement between Petitioner and the SEIU unit representing Respondent. § 1012.40(2)(b), Fla. Stat.

24. Article 11, Section 1, of the bargaining agreement provides that Petitioner may "take disciplinary action for just cause for non-probationary employees as defined at Article 24, Section 1." Article 24, Section 1, provides that termination of the employee may occur for "just cause" as defined by School Board Policy 8.25.

25. School Board Policy 8.25(1)(x) provides as follows:

8.25 DISCIPLINARY GUIDELINES FOR EMPLOYEES
(1) The school district generally follows a system of progressive discipline in dealing with deficiencies in employee work performance or conduct. Progressive discipline may include, but is not limited to, verbal or written counseling or caution, written reprimand, suspension without pay and dismissal. The severity of the problem or employee conduct will determine whether all steps will be followed or a recommendation will be made for suspension without pay or dismissal. When there is a range of penalties, aggravating or mitigating circumstances will be considered. Support Services probationary employees sign an "At Will" statement that says: During the probationary period the employee will not be eligible for certain benefits as defined by the applicable collective bargaining agreement and may be terminated

at the will and discretion of the Pinellas County School Board without advance notice or a right to a hearing. The following offenses, when constituting grounds for discipline under Section 231.36, Florida Statutes, shall have the following penalties:

OFFENSE	PENALTY
(x) Failure to Comply With School Board Policy, State Law, or Appropriate Contractual Agreement.	Caution-Dismissal

26. Petitioner has adopted job descriptions setting forth minimum qualifications for the various positions required to operate the local school system. In this case, the evidence establishes that Respondent does not meet the minimum qualifications for the position in which she has been employed.

27. At the hearing, Petitioner offered evidence related to the need for school bus drivers to have adequate reading and writing skills in order to read and complete various forms. Respondent asserted that there are currently employed school bus drivers who are unable to read or write. Petitioner noted that drivers hired before the relevant job description was amended to require a diploma or a GED were "grandfathered" and therefore were not required to meet the standard.

28. The issue in the case is not whether Respondent can read or write. Although one may hope that a person with a GED can read and write, the applicable job description does not

require that a prospective employee have such skills, but simply requires that an applicant produce an academic credential which Respondent does not have. The issue of whether the job description is appropriate to the requirements of the job is not properly raised in this forum.

29. Respondent has raised an issue related to the number of internship extensions an employee can receive. At the hearing, Respondent asserted that the quoted language permitted only one extension of the internship agreement. In its Proposed Recommended Order, Respondent appears to suggest that because Petitioner granted additional requests for extension beyond the first extension, Petitioner is now required to approve additional extension requests. The evidence fails to establish that there is any authorization in the collective bargaining to extend an internship agreement.

30. Article 13, Section 4(b), of the bargaining agreement provides as follows:

Intern procedures: An applicant who does not meet all minimum qualifications for a job may be hired as or promoted to an intern at a rate of pay ten percent (10%) below the applicable rate of pay for that position. Payment at the intern rate is not to exceed one (1) year.

31. Although nothing in the bargaining agreement indicates that an employee may be paid at the intern rate beyond the initial one-year period of employment, the internship agreements

between the parties provide that "in some circumstances, the Director of Personnel Relations, or designee, may grant an extension on a case by case basis."

32. The School District's Director of Personnel Relations, who approved Respondent's requests for internship extensions, testified at the hearing, and opined that he had the authority to extend an internship beyond a one-year period. There is no provision in the collective bargaining agreement that confers such authority on the witness or on any other School District employee.

RECOMMENDATION

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

RECOMMENDED that Petitioner enter a final order terminating Respondent's employment as a school bus driver.

DONE AND ENTERED this 11th day of March, 2005, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of March, 2005.

ENDNOTE

1/ All citations are to Florida Statutes (2004) unless
otherwise indicated.

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.