

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 05-1913
	)	
JUAN J. PEREZ,	)	
	)	
Respondent.	)	
	)	
<hr style="width: 40%; margin-left: 0;"/> MIAMI-DADE COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 05-1914
	)	
ISMAEL PEREZ,	)	
	)	
Respondent.	)	
<hr style="width: 40%; margin-left: 0;"/>	)	

RECOMMENDED ORDER

Pursuant to notice a formal hearing was held in these cases by video teleconference on September 12 and 13, 2005, 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:	Melinda L. McNichols, Esquire Miami-Dade County School Board 1450 Northeast Second Avenue, Suite 400 Miami, Florida 33132
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For Respondents: Robert A. Sugarman, Esquire  
D. Marcus Braswell, Jr., Esquire  
2801 Ponce de Leon Boulevard, Suite 750  
Coral Gables, Florida 33134

STATEMENT OF THE ISSUE

Whether the Respondents committed the acts complained of in the Notices of Specific Charges filed by the Petitioner on June 30, 2005; and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

These cases were filed with the Division of Administrative Hearings on May 25, 2005. Essentially, the Petitioner, School Board of Miami-Dade County, Florida (Petitioner or School Board) seeks to take disciplinary action against two non-instructional personnel. The Respondents, Juan and Ismael Perez, are brothers who are employed by the Petitioner as electricians. DOAH Case No. 05-1913 is the case related to Juan Perez, and DOAH Case No. 05-1914 relates to Ismael Perez. The cases were consolidated for hearing as many of the witnesses and events complained of relate to both Respondents.

On May 18, 2005, the School Board took action to suspend and initiate dismissal proceedings against the Respondents. The Petitioner alleged that the Respondents had performed their work in a deficient manner and had committed misconduct during the performance of their duties. According to the School Board, there is "just cause" to terminate these employees.

The Respondents timely challenged the proposed action. The referral from the School Board to the Division of Administrative Hearings for formal proceedings followed on May 25, 2005.

The hearing was initially scheduled for August 8 and 9, 2005, but was continued at the unopposed request of the Petitioner. Thereafter, the matter was rescheduled and the hearing was conducted by video teleconference on September 12 and 13, 2005.

At the hearing, the Petitioner presented testimony from Sharon Shearey, a payroll clerk employed by the Petitioner's Maintenance Department; Michael Kanamine, Coordinator I for the Maintenance Department; Martin Mikulas, Director of Maintenance Operations for the Coral Reef Facility; Francisco Alvarez, Maintenance Supervisor; Julio Horstmann, Coordinator I, Maintenance Department; Lourdes Hodges, Detective with the School Police; Arthur Lee James, Zone Mechanic, Coral Reef Senior High School; David Brooks, assistant principal, Coral Reef Senior High School; Hilda Jimenez, a teacher at Southwood Middle School; Alfred Sciabarassi, assistant principal, Southwood Middle School; Lebenia Velasquez, secretary at Colonial Drive Elementary School; Barbara Moss, Director with the Office of Professional Standards; and Paul Greenfield, Director with the Office of Professional Standards. The

Petitioner's Exhibits 1-6, 8-14, 16, 17, and 19-28 were admitted into evidence.

The Respondents presented testimony from Samuel Shames, a retired electrician II formerly employed by the School Board, along with current School Board employees: Richard Hammon, an electrician II; Roger Ball, foreperson for electricians; Keith Love, a sheet metal worker II; Donald Waugh, II, a zone mechanic; Antonio Rial, a grounds foreperson; Frank Semberger, an electrician II, Marvin Chapman, a coordinator III; and Joseph Cortese, Jr., a bargaining agent for the Dade County School Maintenance Employee Committee (DCSMEC). Respondents' Exhibits 1-3 were also admitted into evidence. A joint exhibit, the relevant DCSMEC agreement, was stipulated into evidence by the parties. Such agreement has been identified as Joint Exhibit 1.

The transcript of the proceedings was filed with the Division of Administrative Hearings on November 14, 2005. The parties requested, and were granted, two extensions of the time to file proposed recommended orders. Both parties timely filed proposed orders on December 9, 2005.

#### FINDINGS OF FACT

1. At all times material to the allegations of these cases, the Petitioner was a duly constituted School Board charged with the responsibility to operate, control and to supervise the public schools within the Miami-Dade County,

Florida public school district. Such authority includes the personnel decisions for non-instructional persons employed by the School Board.

2. At all times material to the allegations of these cases, the Respondents were employed by the School Board as electricians assigned to work from the Coral Reef Satellite Maintenance Operations Department (Coral Reef). The Respondents received their daily assignment at the Coral Reef site and then went to the assigned job location to perform their assigned work.

3. As part of their duties, the Respondents were required to clock in and out at the Coral Reef site. There are two time machines at the Coral Reef site and each employee is responsible for personally swiping his identification badge through the clock. The machine generates a computer record for the time of arrival and departure for each employee. Thus the daily time record can be produced for payroll purposes.

4. Each time clock is under surveillance by a video camera system that records all activity at the time clocks. The video records each employee as he or she clocks in or out.

5. At all times material to the allegations of these cases, the School Board's policy required that each Coral Reef employee personally swipe his identification badge when clocking in or out.

6. In 1982, the Respondents were arrested for vehicular theft and possession of burglary tools. The Respondents were placed on probation for one year and six months for larceny, burglary and having burglary tools in their possession. Adjudication was withheld.

7. In 1987, the Respondents completed applications for employment with the School Board. Such applications were falsified in that they failed to disclose the arrest and criminal disposition described above.

8. The Petitioner did not discover the falsified applications until 1997, when the fingerprinting of school personnel was required by law. Once discovered, both of the Respondents were issued a letter that directed them to "refrain from any further falsification regarding information requested of you by this employer. Failure to comply with this directive will lead to disciplinary action."

9. The Respondents did not dispute the prior criminal history, do not dispute that they were warned to refrain from further behavior regarding the falsification of information, and do not dispute that they are subject to the School Board rules regarding non-instructional personnel.

10. On March 5, 2004, Frank Semberger clocked out for himself and the Respondents at 3:30 p.m. Since Mr. Semberger possessed the Respondents' badges in order to swipe them through

the time machine, it is reasonable to find that the Respondents provided the badges to Mr. Semberger. The Respondents have not suggested that their badges were either stolen or missing at the relevant time.

11. By allowing Mr. Semberger to clock out for them, the Respondents violated the Petitioner's time clock policy.

12. On March 19, 2004, Ismael Perez clocked out for himself on one time clock then proceeded to the second time clock and was video recorded swiping a second time there. The time records established that Juan Perez' badge was swiped at or near the time Ismael Perez was video-taped swiping a time clock. Moreover, the time records did not disclose a second swiping of Ismael Perez' badge. That is to say there is no record that Ismael Perez "double swiped" his own badge. It is reasonable to find that Juan Perez provided his badge to Ismael Perez so that it could be swiped at the pertinent time.

13. By allowing Ismael Perez to swipe his badge for him, the Respondent, Juan Perez, violated the time clock policy.

14. By swiping his brother's badge, Ismael Perez violated the time clock policy.

15. The Coral Reef center uses a form described as a daily status form (DSF) to track the assignments for all tradespersons who are sent from Coral Reef to a job site. The form documents

the travel time to and from the job site, the hours at the site performing the work, and the status of the work.

16. All tradespersons are to present the DSF at the job site and have the principal or the principal's designee sign the form. The DSF is dated (including the time of day) and signed both on arrival and at departure from the job site.

17. Although it is difficult to locate a principal or the principal's designee on busy days or during early morning hours (when many workers arrive at the job), the School Board's maintenance employee handbook (which is provided to or is available and known to all trades people employed by the Petitioner) specifically requires that all daily status forms be dated and then signed by all tradespersons reporting time on the DSF.

18. Ismael Perez knew the policy required the signature of the principal or the principal's designee. In practice, many tradespersons do not take time to locate an appropriate signatory. Such behavior is in conflict with the policy.

19. On March 19, 2004, the Respondents submitted a DSF that indicated they had each worked eight hours at Coral Reef Senior High School installing a new outlet to eliminate an extension cord being used to operate a fish tank. The DSF was purportedly signed by Arthur James, a zone mechanic at the school.



20. Mr. James did not sign the DCF. Someone forged Mr. James' signature on the form.

21. On March 19, 2004, the Respondents did not spend eight hours at Coral Reef Senior High School installing a new outlet for the fish tank.

22. On March 19, 2004, Julio Horstman and Martin Mikulas went to the Coral Reef Senior High School site several times attempting to locate the Respondents. No one at the site verified that the Respondents had been there on that date. Mr. James who had purportedly signed their DSF could not verify the Respondents were on the job on the date in question.

23. On March 5, 9, 10, 11, and 29, 2004, the Respondents turned in DSFs that were not signed by authorized personnel at Coral Reef Senior High School. The name purportedly signed on the forms was a person not employed at the school. These DSFs were not completed correctly and cannot support the hours represented by them.

24. The DSFs claimed the Respondents had spent 78 hours working on the Coral Reef Senior High School marquee. No one at the school can verify the Respondents were there for that time on the dates in question. Had the Respondents complied with the policy, gotten appropriate signatures on the DSF, the uncertainty would not exist. The time spent at the site would be easily verifiable. As it is, persons who went to the job

site looking for the Respondents on the pertinent dates could not find them.

25. The Respondents were assigned a large project at the dance studio for the Southwood Middle School (Southwood). They never completed the job. According to the DSFs submitted by the Respondents they worked 120 hours at the site over the following dates: January 26, 27, 28, and 29; March 15, 17, and 28; and April 29 and 30, 2004. Despite the number of days and the number of hours allegedly expended at the site by the Respondents, the dance instructor at the site saw them for only "a couple of hours." Given the description of her duties and her constant presence in and near the studio during the pertinent time, it would have been reasonable for the instructor to observe the Respondents more than "a couple of hours" for a 120-hour job.

26. Additionally, the Respondents submitted DSFs that were not signed by the Southwood principal or the principal's designee. In fact, the DSFs submitted for the Southwood job contained the names of persons not employed at Southwood. As the names cannot be verified, the times of arrival and departure from the Southwood site cannot be verified. It is reasonable to find the Respondents again violated the DSF policy.

27. Similar incidents occurred on March 22, 24, 25, and 28, 2004. On each of these dates the Respondents submitted DSFs

that cannot be verified. In each instance the person whose name is on the form is not an employee at the school site to which the Respondents were to work. Mr. Horstmann, who went to the job sites looking for the Respondents, could not locate them.

28. The inclusion of a false name or the forgery of a name on a DSF is contrary to School Board policy. The Respondents knew or should have known that the submission of the DSFs without proper signatories was against policy.

29. Article IV of the DCSMEC contract requires that employees such as the Respondents be disciplined for "just and good cause."

30. The DCSMEC contract does not require "progressive discipline."

31. At all times material to the allegations of these cases the Respondents were advised of their rights to have a Union representative present during any conference for the record (CFR) regarding the issues of these cases. Additionally, the Respondents were advised that the School Police were conducting an investigation of the matter and waived their right to representation (legal or Union) during the course of an interview with Detective Hodges.

32. The Petitioner conducted a CFR on November 8, 2004. At that time the Respondents appeared with a Union representative. After receiving information regarding the

improper time clock and DSFs, the Respondents were afforded an opportunity to explain or provide additional information that would respond to the allegations.

33. Martin Mikulas recommended to the School Superintendent that the Respondents be terminated from their employment with the school district. That recommendation went to the School Board on May 18, 2005, and the action to suspend and initiate dismissal proceedings against the Respondents for non-performance, deficient performance, and misconduct was approved.

#### CONCLUSIONS OF LAW

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

35. The Petitioner bears the burden of proof in this cause to establish by a preponderance of the evidence the allegations against the Respondents. See McNeill v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996). It has met that burden.

36. As to the allegations related to the time clock, it is concluded that the Respondents violated the time clock policy by allowing another person to clock them out and by allowing Ismael Perez to clock out for both Respondents. Further, Ismael Perez violated the policy by clocking out for his brother.

37. As to the allegations related to the DSFs, it is concluded the Respondents did not complete the DSFs correctly. The failure to assure that the DSFs were accurately completed constitutes non-performance of their duties and/or deficient performance. The DSFs are the cornerstone of the record-keeping procedures used by the tradespersons. The accuracy of the forms assures that the work has been performed, that the time expended performing the work can be tracked and appropriately assigned to a job site and task, and that the persons performing the work can be held accountable for their time on the job. In this case, the Respondents circumvented that process.

38. These employees knew that the School Board does not tolerate the falsification of information. In 1997 they were fully warned that any future falsification could result in disciplinary measures.

39. This School Board holds its employees to a high level of conduct. Employees are expected to conduct themselves in a manner that will reflect credit upon themselves and the school system. See School Board Rule 6Gx13-4A-1.21. In this case it is concluded that not only did the Respondents not conduct themselves in that manner, they caused or presented false records which the School Board cannot through any independent means correct.

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 approving the suspensions and dismissals of the Respondents.

DONE AND ENTERED this 1st day of February, 2006, in Tallahassee, Leon County, Florida.



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J. D. PARRISH  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 1st day of February, 2006.

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.