

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 05-2367
)
 RONNIE R. BELL,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice a formal hearing was held in this case on April 25, 2006, by video teleconference with the parties noticed to appear from Miami, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings in Tallahassee, Florida.

APPEARANCES

For Petitioner: Jean Marie Middleton, Esquire
School Board of Miami-Dade County
Suite 400
1450 Northeast Second Avenue
Miami, Florida 33132

For Respondent: No Appearance

STATEMENT OF THE ISSUE

Whether there is just cause to terminate the Respondent, Ronnie Bell (Respondent), from his employment with the Petitioner, Miami-Dade County School Board (Petitioner or School Board).

PRELIMINARY STATEMENT

On June 15, 2005, the School Board of Miami-Dade County, Florida, took action to initiate dismissal proceedings against the Respondent. The Petitioner alleged that it had just cause to terminate the Respondent for his non-performance and deficient performance of job responsibilities, gross insubordination, and violation of School Board rules. Thereafter, the Respondent timely requested an administrative hearing to contest the dismissal and the matter was forwarded to the Division of Administrative Hearings for formal proceedings on July 5, 2005.

The Notice of Specific Chargers, filed on July 27, 2005, alleged that the Respondent had a long history of deficient work performance and failures to follow directives regarding work protocols. Based upon the allegations, the School Board maintained that the Respondent had failed to perform appropriately, was guilty of gross insubordination, had violated School Board rules, and had disregarded directives that were reasonable by continuing to take leave without notice or approval. As a result of the foregoing, the Petitioner maintains that the Respondent should be terminated from his employment.

At the hearing, the Petitioner presented testimony from Nick JacAngelo, the principal of Miami Coral Park Senior High

School; Robert Kalinsky, personnel director for the Petitioner's Regional Center 3; Julio Carrera, principal at South Hialeah Elementary School; and David Cadaval, assistant principal at South Dade Senior High School. The Petitioner's Exhibits 1-26 were admitted into evidence. The Respondent did not appear. No evidence was presented on behalf of the Respondent.

The transcript of the proceeding was filed with the Division of Administrative Hearings on May 4, 2006. The Petitioner timely filed a Proposed Recommended Order that has been considered in the preparation of this order. The Respondent did not file a post-hearing proposal.

FINDINGS OF FACT

1. The Petitioner is the authorized entity charged with the responsibility to operate, control and supervise the public schools within the Miami-Dade County school district. Such authority includes the discipline of employees of the School Board.

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

3. As an employee of the School Board, the Respondent was subject to the laws, rules, and terms of the union contract pertinent to employment with the Petitioner.

4. Nick JacAngelo is the principal of Miami Coral Park

Senior High School. Mr. JacAngelo was directly responsible for the employees at the school and personally knows the Respondent.

5. The Respondent began work at Miami Coral Park Senior High School on October 11, 2004. Employed as a custodian at the school, the Respondent was responsible for cleaning the areas assigned to him.

6. According to Mr. JacAngelo, it came to his attention that the Respondent's work area was not being properly cleaned and maintained. On November 19, 2004, Mr. JacAngelo informed the Respondent that his work was substandard and unacceptable.

7. Mr. JacAngelo informed the Respondent that his work would need to improve. Additionally, the Respondent was advised as to the standard of work that would be required and expected of him in fulfilling his custodial responsibilities including job attendance.

8. A second conference was conducted with the Respondent on December 7, 2004, to again reiterate the duties and expectations for him. The Respondent did not improve his job performance.

9. In addition to his failure to maintain his assigned area, the Respondent was excessively absent from the work site. On January 13, 2005, the Respondent was again informed of a need to improve his job attendance and work performance.

10. Moreover, the Respondent was advised that he could not leave the work site without authorization prior to the termination of his workday. It was expected that the Respondent perform his duties and attend to his assigned area for the entire workday.

11. The Respondent's work performance and attendance did not improve. On January 28, 2005, the Respondent was cited for poor job performance and insubordination in his continued refusal to improve his effort.

12. On February 14, 2005, Mr. JacAngelo met with the Respondent to address his insubordination, defiance of authority, failure to complete assigned areas of custodial responsibility, and his unauthorized departure from the work site. Because the Respondent wanted to have his union representative present during the discussion the meeting was rescheduled.

13. The parties met on February 15, 2005, to review the items noted above. At that time, the Respondent was reminded that his workday departure time was 11:30 p.m. He was to present for work at 2:00 p.m., take no more than half an hour break for his meal, and remain onsite the entire time.

14. The Respondent's work performance did not improve over time. On May 12, 2005, he was observed to be in his vehicle the majority of the work shift. He did not perform

his work assignment and made no explanation for his failure to clean his area. This incident was memorialized in a memorandum dated May 18, 2005. As to this and other previous incidents, the Respondent did not deny the conduct complained.

15. Based upon the Respondent's failure to improve, his continued poor work performance, his numerous opportunities to correct the deficiencies, and his insubordination, Mr. JacAngelo recommended that the Respondent be terminated from his employment with the school district.

16. Mr. JacAngelo had attempted verbal counseling, written memorandums, and official conferences with the Respondent. None of the efforts to remediate Respondent's work performance proved successful.

17. Mr. Carrera is the principal at South Hialeah Elementary School. Mr. Carrera was the Respondent's supervisor at a work assignment prior to his reassignment to Miami Coral Park Senior High School.

18. According to Mr. Carrera, the Respondent constantly left his work site early, failed to clean his assigned area, and admitted to stealing a police surveillance camera (there had been 70 cases of theft in the area the Respondent was responsible for so the police set up a camera). In short, the Respondent's work performance at South Hialeah Elementary School was unacceptable.

19. The Respondent was warned during his tenure at South Hialeah Elementary School that continued failure to perform his work appropriately would lead to disciplinary action.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. § 120.57(1), Fla. Stat. (2005).

21. The Petitioner bears the burden of proof in this matter to establish by a preponderance of the evidence that the Respondent committed the violations alleged in the Notice of Specific Charges. See McNeill v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2nd DCA 1996). It has met that burden.

22. Section 1012.22, Florida Statutes (2005), authorizes the School Board to take disciplinary action against its employees. Remedies available to the Petitioner include dismissal of its employees.

23. The union contract between the Petitioner and its employees (Petitioner's Exhibit 35) authorizes disciplinary action, including dismissal, for "just cause."

24. The term "just cause" as used in the union contract contemplates that an employee may be dismissed for the nonperformance of job responsibilities (See Art. XI, Section 4C of the contract—Petitioner's Exhibit 35). Additionally,

insubordination is defined as a "constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority" (See Florida Administrative Code Rule 6B-4.009) and may also support "just cause" for termination or dismissal of a School Board employee.

25. In this case, the Respondent was afforded numerous opportunities to improve his work performance. He was reassigned to new work sites to provide him with additional chances to improve. Throughout his work history, the Respondent failed or refused to appropriately perform his duties as a custodian. The Respondent failed to follow directives given to him by persons with proper authority. The Respondent violated the attendance policies of the schools by either failing to report for work, failing to work his entire shift, or failing to call in when he would not be working. Finally, the Respondent provided no credible explanation for why he could not or did not perform his duties appropriately. Despite numerous opportunities to improve, the Respondent did not.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Miami-Dade County School

Board enter a Final Order dismissing the Respondent from his employment with the school district.

DONE AND ENTERED this 5th day of June, 2006, in Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of June, 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.