

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 06-3043
)
 ERIC COOPER,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Miami, Florida, on November 9, 2006.

APPEARANCES

For Petitioner: Ana I. Segura, Esquire
Miami-Dade County School Board.
1450 Northeast Second Avenue, Suite 400
Miami, Florida 33132

For Respondent: Robert W. Holland, Esquire
5955 Northeast Fourth Court
Miami, Florida 33137

STATEMENT OF THE ISSUE

The issue is whether Petitioner may terminate Respondent's employment for just cause.

PRELIMINARY STATEMENT

By Petitioner's Notice of Specific Charges filed September 20, 2006, Petitioner alleged that it originally

employed Respondent in August 1986 as a school monitor.

Petitioner allegedly employed Respondent, in May 1988, as a trades helper and, in January 1996, as a journeyman.

Petitioner alleged that, while employed as a journeyman, Respondent has engaged in rude and unseemly conduct, demonstrated a lack of respect for supervisory authority, and failed to comply with Petitioner's rules. The Notice of Specific Charges describes numerous incidents, for which Petitioner produced no admissible evidence.

However, Petitioner produced evidence of two incidents alleged in the Notice of Specific Charges. On May 12, 2005, Respondent, reporting for a work assignment at Dario Middle Community School, allegedly entered the school without displaying his employee identification badge. When asked who he was, Respondent allegedly replied in a loud voice that no one had asked him to identify himself in the past. Edward R. Smith, principal of the school, allegedly overheard the conversation and asked Respondent to identify himself. Respondent allegedly replied that his identification badge was in the "damn truck." While Mr. Smith allegedly escorted Respondent to his truck, Respondent continued a cellphone conversation during which he was yelling and uttering profanity. Following this incident, Mr. Smith allegedly requested that Petitioner not reassign Respondent to his school.

The second alleged incident as to which Petitioner produced evidence took place on September 7, 2005. Respondent, reporting for a work assignment at Everglades K-8 Center, allegedly became irate and refused to sign in as a "visitor" at the request of the school security monitor. Dr. Doyleene Tarver, principal of the school, allegedly told Respondent to sign in or leave the school grounds, and Respondent allegedly replied by asking if she had purchased her degree. Following the incident, Dr. Tarver allegedly requested that Petitioner not reassign Respondent to her school.

The Notice of Specific Charges alleges Petitioner has just cause to terminate Respondent's employment because he has is guilty of a lack of respect for an employee's supervisor, in violation of Article IV of the applicable labor contract; gross insubordination or willful neglect of duty, in violation of Florida Administrative Code Rule 6B-4.009; unseemly conduct and the use of abusive or profane language, in violation of School Board Rule 6Gx13-4A-1.21; and deficient performance or nonperformance of job duties, in violation of Article IV of the applicable labor contract.

At the hearing, Petitioner called six witnesses and offered into evidence 32 exhibits: Petitioner Exhibits 1-5 and 7-33. Respondent called three witnesses and offered into evidence one exhibit: Respondent Exhibit 1. All exhibits were admitted

except Petitioner Exhibits 1-2, 5, 7-10, 13, 15, and 19.

Petitioner Exhibits 3-4, 11-12, and 20 were admitted, but not for the truth of their contents.

The court reporter filed the transcript on January 22, 2007. With the permission of the Administrative Law Judge, Petitioner filed the transcripts of two depositions on January 29, 2007. Following two extensions for filing proposed recommended orders, the parties filed their Proposed Recommended Orders by February 19, 2007.

FINDINGS OF FACT

1. Respondent is a journeyman mason employed by Petitioner. The school district is divided into large regions, and Respondent is one of only two masons available to schools located within the region to which he has been assigned. As a mason, Respondent performs his work exclusively at school sites, rather than at a centralized shop.

2. In May 2005, Edward Smith, then the principal of the Dario Middle Community School, was in his office and overheard Respondent involved in a loud verbal exchange. School clerical staff had appropriately asked Respondent to present an employee identification badge prior to engaging in work within the school. Respondent was in the office area preparing to perform some masonry work, but, at the moment of the request, was shouting into his cellphone at a representative of a lender with whom he was

conducting personal business. Respondent became angry at school staff, when they persisted in asking that he present identification despite his attempt to wave them away. Claiming that he was concerned that he would lose reception and, thus, the call, Respondent did not want to interrupt his cellphone conversation to deal with the request to present identification. When staff continued to demand identification, Respondent's anger spilled over toward school staff.

3. Mr. Smith approached Respondent and demanded to see his identification. Instead of responding to Mr. Smith's demand, Respondent first uttered several profanities, including "shit" and "fuck," to the lender's representative. After uttering these profanities, Respondent turned his attention to Mr. Smith and told him that his identification was in his truck.

4. Mr. Smith then escorted Respondent to his truck so he could produce his badge. During this time, Respondent continued his cellphone conversation, loudly and crudely denouncing the person with whom he was speaking. Respondent produced his school identification in the truck.

5. Shocked at this unprecedented rudeness by a school district employee, Mr. Smith immediately contacted Respondent's supervisor and told him that he never wanted Respondent on his campus again, even if it meant that something broken remained broken.

6. Respondent's supervisor informed Respondent that this type of behavior was unacceptable. On May 26, 2005, Respondent received a reprimand for his behavior at Dario Middle Community School. The reprimand ordered Respondent, among other things, to "[f]ollow all procedures and conduct yourself in a professional manner at all facilities at all times" and "[w]ear your badge at all times, sign in and out at the main office at each school assigned as indicated in your employee handbook . . . , and not engage in any inappropriate contact with students and staff."

7. In September 2005, Dr. Doyleene Tarver, the principal of Everglades K-8 Center, overheard from her office Respondent yelling and screaming at her staff. Dr. Tarver left her office and found Respondent angrily confronting the security guard, who was insisting, in accordance with school rules, that Respondent sign in as a visitor. This disruption took place in the presence of after-care parents at the school to pick up their children.

8. Dr. Tarver approached Respondent, who demanded to know who she was. After she identified herself as "Dr. Tarver," Respondent asked if she had been one of the school personnel recently identified in the media as having purchased her degree. Dr. Tarver was understandably offended at this impertinence and demanded that Respondent sign in. He did so and proceeded to report to his work site at the school.

9. As had Mr. Smith four months earlier, Dr. Tarver contacted Respondent's supervisor and requested that he not assign Respondent to her school again. Like Mr. Smith, she had never encountered such behavior from a school district employee.

10. Following a conference for the record on February 13, 2006, Robert Brown, the Administrative Director of Maintenance Operations recommended that the School Board terminate Respondent's employment. On August 2, 2006, the School Board suspended Respondent and initiated proceedings to terminate his employment.

11. Respondent's behavior disrupted the business of the school in two respects. First, as the behavior transpired, school staff and parents were distracted from their business at the school, but, each time, the behavior was worse than a mere distraction. Each of these incidents--separated by only four months--combined a breach of security with a menacing display of aggressive behavior. After failing to conform to simple security procedures, Respondent did not immediately comply, but instead became confrontational, so as to suggest to school staff that the security breach was escalating.

12. Second, both principals found it necessary to ensure that Respondent never perpetrate another disruption at their schools, so they reasonably demanded that Respondent's supervisor never reassign Respondent to their schools. The supervisor agreed

to do so, but this left two schools in the region without a mason anytime that the other mason was unavailable due to another assignment, vacation, or illness. Masonry work sometimes constitutes emergency repairs and any delay in performing the work could perpetuate a dangerous condition. Also, some masonry work is a two-person job, and, for such jobs at the two affected schools, Petitioner would have to find a mason from another region and assign him or her out-of-region.

13. For these reasons, Respondent's actions constituted willful neglect of duty, unseemly and abusive conduct, and gross insubordination. Twice in four months, Respondent ignored simple security procedures at schools to which he had been assigned to work. Twice in four months, Respondent refused to comply with these procedures when asked to do so by school staff and instead angrily confronted these school employees. Instead of getting to work at the school sites to which he had been assigned, Respondent disrupted the schools and presented himself as a risk to the security of the students, staff, and parents at both sites. Respondent's confrontation with the two principals, who were trying to restore order and ensure compliance with school security rules, was gross insubordination, as was his failure to comply with the simple, sensible directives in the reprimand that followed the first incident. Additionally, the inability of Petitioner to assign Respondent to two schools within his region

impeded his effectiveness as an employee and meant that the performance of his duties would be deficient, at least in this regard.

14. The collective bargaining agreement between Petitioner and the Dade County School Maintenance Employee Committee in effect at the time of these events was the 2002-06 contract. This contract did not require progressive discipline, but Article IV of the contract authorized Petitioner to terminate employees for "just cause." Article XI, Section 1.a of the contract provides for discipline due to the violation of Respondent's rules.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569 and 120.57(1), Fla. Stat. (2006).

16. As an employee within the maintenance department, Respondent is an "educational support employee," pursuant to Section 1012.40(1)(a), Florida Statutes. As such, he may be terminated by the School Board for reasons stated in the collective bargaining agreement.

17. Respondent's Rule 6GX13-4A-1.21(I) provides:

All persons employed by The School Board of Miami-Dade County, Florida are representatives of the Miami-Dade County Public Schools. As such, they are expected to conduct themselves, both in their employment and in the community, in a manner

that will reflect credit upon themselves and the school system.

Unseemly conduct or the use of abusive and/or profane language in the workplace is expressly prohibited.

18. Respondent's Rule 6GX13-4A-1.213(III) requires that Respondent's employees demonstrate respect for all persons. More specifically, in Jacker v. School Board of Dade County, Florida, 426 So. 2d 1149 (Fla. 3d DCA 1983) (per curiam), the court held that Petitioner, which was authorized to discipline an employee for "proper cause," could discipline an employee for failing to respect his employer, even if this requirement were absent from the applicable contract or rule.

19. Petitioner must prove the material allegations by a preponderance of the evidence. Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990).

20. Petitioner has proved just cause for the termination of Respondent's employment.

RECOMMENDATION

It is

RECOMMENDED that The School Board of Miami-Dade County, Florida enter a final order terminating Respondent's employment.

DONE AND ENTERED this 2nd day of April, 2007, in Tallahassee,
Leon County, Florida.

S

ROBERT E. MEALE
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 2nd day of April, 2007.

COPIES FURNISHED:

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

Honorable Jeanine Blomberg
Interim Commissioner of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399-0400

Deborah K. Kearney, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

Ana I. Segura, Esquire
School Board of Miami-Dade County
1450 Northeast Second Avenue, Suite 400
Miami, Florida 33132

Robert Holland, Esquire
Law Offices of Robert W. Holland
5955 Northeast Fourth Court
Miami, Florida 33137

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.