

THE SCHOOL BOARD OF LEE COUNTY, FLORIDA

JAMES W. BROWDER, Ed.D.,)
SUPERINTENDENT OF SCHOOLS)
FOR LEE COUNTY,)
)
Petitioner,)
)
v.)
)
ROY B. DENSON,)
)
Respondent.)

Case No. 07-0004
DOAH Case No. 06-4995

DIVISION OF
ADMINISTRATIVE
HEARINGS

2007 MAY 16 A 11:46

FILED

FINAL ORDER

THIS CAUSE came to be heard on this the 8th day of May, 2007, before the School Board of Lee County, Florida, and said School Board finds as follows:

1. Roy B. Denson, ("Respondent") is employed by The School Board of Lee County as a school bus operator. Respondent is an "educational support employee," as defined by Section 1012.40(1)(a), Florida Statutes, and is a member of the support personnel bargaining unit ("SPALC") that is covered by a collective bargaining agreement between SPALC and the School District. The standard for the discipline of support personnel is "just cause" pursuant to Article 7 of the SPALC Agreement.

2. On or about July 31, 2006, at approximately 1:28 P.M., Respondent was driving school bus number 533 south on S.W. 8th Place in Cape Coral, Florida.

3. A black Ford F150 truck belonging to a lawn maintenance company was blocking the road. As a result, Respondent could not pass the truck with the school bus he was driving. The maintenance crew was working at a residence located at 3138 S.E. 8th Place in Cape Coral.

4. Respondent signaled with his hands for someone to move the truck. One of the workers, Eric Baker, informed Respondent that he was not the driver and held up his finger, indicating that Respondent should wait a minute, as the driver had nearly finished his work.

5. Mr. Baker returned to his task of spraying weeds. Respondent then exited the bus and approached Mr. Baker from behind.

6. Noticing Respondent rapidly approaching, Mr. Baker turned toward Respondent and raised his arms.

7. Respondent struck Mr. Baker in the head at least twice. At that point, the crew boss appeared and witnessed Mr. Baker struggling with the Respondent. The crew boss intervened and pulled Respondent away from Mr. Baker.

8. As Respondent returned to his bus, Mr. Baker used a cell phone to summon the police.

9. Respondent then contacted the Transportation West Zone office to report the incident.

10. In response to Mr. Baker's call, Officer B.W. Kearney of the Cape Coral Police Department was dispatched to the scene. Officer Kearney completed an Incident/Investigation Report. The Report indicated that Respondent committed battery on Mr. Baker; however, Respondent was not arrested.

11. In response to Respondent's call, Dale Maybin, Assistant Supervisor of Transportation West, reported to the scene of the incident where he spoke with Officer Kearney. Mr. Maybin later submitted an Investigation Request form along with a written statement to the Department of Professional Standards and Equity.

12. Respondent was informed via certified letter dated August 7, 2006, from the Superintendent that he was being suspended with pay pending the outcome of the District's investigation into the matter.

13. In accordance with section 7.09 of the SPALC Agreement, a predetermination conference was scheduled with Respondent for October 26, 2006, to review the allegations and to give Respondent an opportunity to respond. Respondent was advised of the conference via certified letter dated October 11, 2006, from Dr. Gregory K. Adkins, Executive Director of Human Resources and Employee Relations. The letter included a copy of the District's investigative file.

14. Respondent attended the predetermination conference accompanied by Suzan Rudd, Island Coast FEA Service Unit Director. Respondent was provided an opportunity to respond to the allegations.

15. Subsequent to the predetermination conference, a determination was made that probable cause existed to discipline Respondent for his conduct. A certified letter dated October 30, 2006, was sent to Respondent, advising him of the probable cause determination. The letter also advised that a recommendation would be made to the Superintendent that Respondent be terminated from his employment with the District.

16. In a letter dated November 8, 2006, Robert J. Coleman, Esq. advised Petitioner's attorney that he had been retained to represent Respondent.

17. The Petition for Termination of Employment was thereafter forwarded to Respondent's attorney on November 9, 2006.

18. On November 13, 2006, Respondent's attorney forwarded a letter to Petitioner's attorney requesting a formal administrative hearing on the matter of Respondent's termination.

19. On December 5, 2006, the School Board considered the Petition for Termination of Employment and took action to

suspend Respondent without pay pending the outcome of the administrative hearing.

20. The Petition was thereafter filed with the Division of Administrative Hearings ("DOAH") and a final hearing was scheduled.

21. The final hearing took place on February 14, 2007, before Susan B. Harrell, Administrative Law Judge ("ALJ").

22. The ALJ issued her Recommended Order on April 18, 2007.

23. The ALJ found in her Recommended Order that Petitioner established by a preponderance of the evidence that the commission of the battery by Respondent constituted just cause for his dismissal from employment with the School Board.

24. The ALJ recommended, based on the Findings of Fact and Conclusions of Law, that the School Board enter a Final Order finding that just cause exists for termination of Respondent's employment and dismissing Respondent from his employment as a school bus operator with the School District.

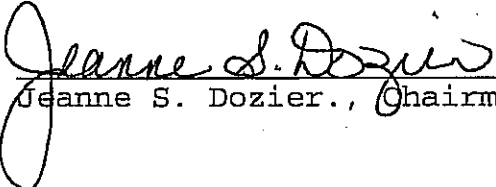
25. No exceptions to the Recommended Order have been filed by the parties; therefore the Recommended Order has been incorporated into this Final Order by reference.

IT IS ACCORDINGLY ORDERED AS FOLLOWS:

26. Respondent is terminated from his employment with the Lee County School District effective May 8, 2007.

27. This Order may be appealed to the District Court of Appeal of Florida, Second District, P.O. Box 327, 1005 E. Memorial Boulevard, Lakeland, Florida 33802, telephone number (863) 499-2290. The appeal must be filed within thirty (30) days of the date of this Order by filing a Notice of Appeal with the School Board and a second copy with the District Court of Appeals. For further information, contact Robert Dodig, Staff Attorney, 2055 Central Avenue, Fort Myers, Florida 33901-3916, telephone number (239) 335-1447.

ENTERED on this the 8th day of May, 2007.



Jeanne S. Dozier., Chairman

Copies to:

Robert Dodig, Jr., Staff Attorney
Robert J. Coleman, Esq.
Division of Administrative Hearings
Respondent's Personnel File