

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HERNANDO COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 11-0570
)
ROSEANN DELVALLE,)
)
 Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on June 8, 2011, in Brooksville, Florida, before W. David Watkins, the duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: J. Paul Carland, II, Esquire
School Board of Broward County
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301-3125

For Respondent: Mark Herdman, Esquire
Herdman and Sakellarides, P.A.
29605 U.S. Highway 19 North, Suite 110
Clearwater, Florida 33761

STATEMENT OF THE ISSUE

The issue is whether Petitioner has just cause to terminate Respondent's employment.

PRELIMINARY STATEMENT

A Petition for Termination of Employment was filed with the Division on February 4, 2011. An Initial Order was issued the same date requesting hearing dates from the parties. A Notice of Hearing was then issued on April 19, 2011, setting the case for final hearing on June 8, 2011, in Brooksville, Florida.

At the hearing, Petitioner presented the testimony of five witnesses: Elizabeth Rios, Kitchen Manager, Springstead High School; Lori Drenth, Director, Food and Nutrition Services; Stephanie Howland-Wood, Maintenance Inventory Specialist; Chris Harvey, Maintenance Department; and Heather Martin, Executive Director, Business Services and Human Resources. In addition, Petitioner's Exhibits 1-22 were received in evidence.

Respondent presented the testimony of one witness: Roseann Delvalle, and offered one composite exhibit into evidence (Respondent's performance evaluations). At the conclusion of the hearing, the parties agreed to file proposed recommended orders within ten days of the transcript being filed with the Division.

The Transcript was filed on June 15, 2011. Petitioner filed its Proposed Recommended Order on June 13, 2011, and Respondent filed its Proposed Recommended Order on June 27, 2011. Both Proposed Orders have been carefully considered in the preparation of this Recommended Order.

All citations are to Florida Statutes (2010) unless otherwise indicated.

FINDINGS OF FACT

A. Undisputed Findings of Facts

1. The Respondent is a Food and Nutrition Assistant I with the Hernando County School District (District).

2. Respondent worked at Springstead High School (SHS). She was responsible, among other things, for preparing the meals for the nearby charter school, Gulf Coast Academy, and for transporting those meals to the school once they were prepared.

3. Respondent used a District van to transport meals from SHS to Gulf Coast Academy.

4. On November 22, 2010, Respondent prepared the meals for Gulf Coast Academy and before leaving on her delivery run informed her supervisor, Elizabeth Rios, that the delivery van needed fueling.

5. Ms. Rios advised the Respondent she should fuel the van after her delivery and to ask the "lady" for help if needed.

6. Respondent made her delivery to the charter school and before returning to SHS, stopped at the maintenance complex to fuel the van as discussed with Ms. Rios.

7. Respondent attempted to fuel the van at a gas pump but discovered she could not do so without a "blue key" which was needed to run the pump.

8. Respondent left the pump to get assistance but did not remove the hose before pulling away. As a result, the hose broke away from the pump and was left hanging onto the side of the van.

9. Respondent returned to the pump and reattached the hose to the pump.

10. Respondent then called her supervisor, Ms. Rios. Respondent stated Ms. Rios told her to see Lori Drenth, Director of Food and Nutrition Services, about getting a blue key.

11. Ms. Rios stated that Respondent told her the "lady" who could help with the fueling was on lunch so she would have to wait for her to get back to get help. She furthermore stated that when asked if everything was "OK," Respondent advised that "someone" had broken the pump. She said nothing to Ms. Rios about her involvement in breaking the hose.

12. Respondent next went to Lori Drenth's office in the building adjacent to the maintenance building to see about getting help. Ms. Drenth phoned Christine Harvey in Maintenance for assistance. Ms. Harvey was not available, so Ms. Drenth left a phone message. She then called a secretary in Maintenance who advised that Ms. Harvey was likely at lunch with Stephanie Wood, Ms. Harvey's backup.

13. Ms. Drenth then advised Respondent she would simply have to go back to Maintenance and find Ms. Harvey or Ms. Wood.

Respondent said nothing to Ms. Drenth about the fact that she broke the pump by pulling the hose off with the van.

14. Respondent returned to the pump, entered the maintenance building, and eventually located Ms. Harvey and Ms. Wood who had by that time returned from lunch.

15. Respondent and Ms. Wood proceeded to attempt to fuel the van. Ms. Wood showed Respondent how to use the "blue" and "white" keys to turn the pump on, and then handed Respondent the hose so that she could fuel the van. When Respondent attempted to place the fuel hose in the van, the hose detached from the pump which caused gasoline to spill on the ground and on Ms. Wood's hands. Ms. Wood immediately shut the pump off and then called Ms. Harvey. Ms. Wood stepped away from the pump to make the call as she was concerned about causing a spark around the spilled fuel.

16. Respondent did not say anything to Ms. Wood or Ms. Harvey about the pump being broken or that she had pulled the hose off with the van. Rather, Respondent told Ms. Wood that the hose was like that when she got there.

17. When confronted the next morning by Ms. Rios about the broken hose at the maintenance fuel pump, Respondent finally admitted that she broke off the hose with the van.

18. The pump cost \$142.00 to repair.

19. A review of the matter was conducted by the Food Services Department and the Safe Driver Committee pursuant to the Board approved Safe Driver Plan. Respondent acknowledged receipt and/or review of the Safe Driver Plan on August 23, 2010, as part of the Annual Procedures Review required of all employees.

20. The Safe Driver Committee met on November 30, 2010, and December 14, 2010, and found Respondent in violation of Safe Driver Plan Section #35 - failure to obey any other driving law, regulation, or District procedure. The Committee also noted in its written report that Respondent "was not as truthful (about the incident) as she could have been."

21. On or about December 17, 2010, the matter was referred to the District office for further review.

22. Respondent was offered an opportunity for a pre-determination meeting to discuss the incident. The meeting was scheduled for January 6, 2011. Respondent received a copy of a letter dated January 4, 2011, from Heather Martin, Executive Director of Business, inviting her to the conference. She signed for receipt of same on January 4, 2011. The letter included copies of the documentation collected as part of the District's investigation.

23. The pre-determination meeting was held on January 6, 2011. Respondent was in attendance. Based upon the evidence

obtained during the investigation/review of the matter and Respondent's statements during the pre-determination meeting, the Superintendent determined that there was probable cause to discipline the Respondent and that he would recommend Respondent's termination to the School Board. The Superintendent advised Respondent of his determination and recommendation through his designee, Heather Martin, via her letter to the Respondent dated January 10, 2011.

B. Additional Findings of Fact

24. There is no question that Respondent made a series of mistakes on November 22, 2010. According to Respondent's testimony at hearing she failed to report the incident at the fuel pump because she was scared and she panicked. There is no evidence in this record to suggest that Respondent intentionally damaged District property or engaged in a premeditated plan of dishonesty.

25. The most serious aspect of Respondent's behavior on November 22, 2010, was the potential danger she exposed other District employees to at the fueling station by not disclosing the broken hose. Again, although this was a serious omission, by all appearances it was the product of Respondent's panic rather than of deliberate thought.

26. Other than Respondent's lapse of judgment on the day of the incident, all indications are that Respondent has been a

dependable, loyal, and competent employee. Dating from April 2005, Respondent's job evaluation forms reflect satisfactory performance of her duties, an "accident free" history, and a willingness and desire to help other employees.

27. There are food service positions at SHS that do not require employees to drive vehicles.

CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this cause. School Board Policies 6.37, 6.39 and the Hernando United School Workers ("HUSW") Collective Bargaining Agreement apply to this case, as do sections 120.569 and 120.57, Florida Statutes.

29. As Superintendent of Schools for Hernando County, Petitioner has the authority, pursuant to section 1012.27, Florida Statutes, to recommend to the School Board that any school employee be suspended and/or dismissed from employment.

30. The School Board has the authority to terminate and/or suspend support personnel without pay and benefits pursuant to sections 1012.22(1)(f) and 1012.40(2)(c).

31. As a Food and Nutrition Assistant I, Respondent is an "educational support employee" as defined by section 1012.40(1)(a) and is a member of the support personnel bargaining unit (the HUSW), and is subject to the terms and

conditions of employment set forth in the collective bargaining agreement between it and the School District.

32. The standard for discipline/suspension/termination of support personnel is "just cause" pursuant to section 1012.40; School Board Policy 6.37; and the HUSW Collective Bargaining Agreement.

33. Neither the HUSW contract nor School Board Policy 6.37 defines "just cause." Similarly, Florida Statutes also fail to provide an exhaustive definition of "just cause." In the absence of such specific definition, Petitioner has discretion (subject to review via a hearing) in setting standards which subject an employee to discipline and/or termination. See Dietz v. Lee Cnty. Sch. Bd., 647 So.2d 217 (Fla. 2nd DCA 1994).

34. The burden of proof applicable in this proceedings is a preponderance of the evidence. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990); see also § 120.57(1)(j), Fla. Stat.

35. Based upon the undisputed facts of this case, it is Petitioner's position that there is "just cause" to terminate Respondent. Specifically, Petitioner asserts Respondent committed the following School Board Policy 6.37 - Group III Offenses:

(4) Interfering with the work of other employees or refusal to perform assigned work - Respondent failed to disclose the broken pump to Maintenance employees thereby preventing them from taking proper precautions to ensure the safety of all employees and visitors as well as prevent any further damage to facilities or equipment.

(6) Carelessness or negligence in the handling or control of School Board property or the misappropriation of Board property - Respondent broke the fuel hose after stepping over it to get into the van to pull away from the pump and despite having been advised by her supervisor to seek assistance from Maintenance staff before fueling.

(10) On or off the job conduct which adversely affects the ability of the employee to perform his duties and/or the duties of other employees and/or adversely affects the efficient operation of the school system or any department, division or area of the School Board - Respondent's carelessness and damage to the fuel pump disrupted the District's operations, resulted in repairs that had to be performed for the District by an outside company at a cost of \$142.00 and her lack of candor and truthfulness at the time of the incident has discredited her with the District.

(11) Lying or falsification of any document or any other dishonesty connected with the employee's employment or in any way related to the operation of the school system or any department, division or area of [the] school system - Respondent failed to disclose her responsibility for breaking the hose until she was confronted by the fact that she was caught on surveillance video as the culpable party. In addition, she stated to the Maintenance staff when confronted about the broken hose that it was "like that when she got there."

(12) Violation of a posted or otherwise known Board or departmental rule, procedure, order, regulation of any State or county statute or ordinance which is related to the employee's employment - Respondent failed to report the damage to the fuel pump which was caused while driving a District vehicle as required by the District's Safe Driver Plan and the Staff Handbook both of which Respondent has signed for receipt of and having read and understood same.

(13) Any fraudulent, criminal or dishonest act(s) committed acting alone or in collusion with others, including but not limited to stealing, embezzlement, extortion, assault or vandalism, whether committed on or off the job - Respondent intentionally mislead other employees into believing someone else had broken the fuel pump and failed to disclose the fact that it was even broken thereby endangering the safety of other employees. (emphasis added).

36. Petitioner also asserts that Respondent is guilty of violating section 35 of the Safe Driver Plan, to wit, "[F]ailure to obey any other driving law, regulation, or District procedure."

37. School Board Policy 6.37(5)(a) provides as follows:

(5) Discipline and Discharge

(a) Forms of Discipline

The Superintendent and the Board retain the right to treat each incident of employee misconduct or performance deficiency on an individual basis without creating a precedent for other similar incident cases which may arise and to determine the appropriate discipline on a case-by-case basis.

The Board recognizes the following types of disciplinary action as progressive in nature:

- (1) Verbal warning
- (2) Written reprimand
- (3) Probation
- (4) Suspension with pay
- (5) Suspension without pay
- (6) Demotion
- (7) Combination of the above
- (8) Discharge

38. Section 6.37 of the School Board Policy recognizes three categories of offenses, with Group I comprising the least serious offenses, and Group III the most serious. Penalties for a first offense under Group 3 carry a penalty of "[U]p to discharge."

39. The facts in this case are largely undisputed and Petitioner is correct that the above-cited Group III offenses were committed by Respondent. The issue is whether Respondent's employment must be terminated as a result of her actions. The record establishes that Respondent has been a loyal, dependable, competent food service employee during her many years of service to the school system. There is no question her initial act in breaking the fuel pump was a mistake, and that she should have immediately alerted the appropriate maintenance personnel of the accident. However, her failure to take appropriate action and to immediately acknowledge her mistake was the product of her fear and panic. While that is not a defense to her actions, it

provides context, and is understandable given her frightened mental state.


40. As noted above, the School Board has reserved to itself the ability to impose a hierarchy of penalties, even for Group III violations, to be determined on a case-by-case basis. Given Respondent's unblemished record prior to the incident at issue, and lack of culpable intent to commit the violations, discharge is too extreme a penalty under the circumstances.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board enter a Final Order:

- 1) Reinstating Respondent to her position as a food service employee with the restriction she not be required or permitted to drive School Board vehicles at any time in the future;
- 2) Suspending Respondent without pay for a period of 60 days;
- 3) Requiring Respondent to reimburse the School Board the \$142.00 cost for the repair of the fuel pump.

DONE AND ENTERED this 26th day of August, 2011, in
Tallahassee, Leon County, Florida.



W. DAVID WATKINS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of August, 2011.

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.