

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SCHOOL BOARD OF PALM BEACH,)
COUNTY, FLORIDA,)
)
Petitioner,)
) Case No. 11-5459TTS
vs.)
)
AUGUSTUS CHAPPELLE,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On January 30, 2012, Robert E. Meale, Administrative Law Judge, conducted the final hearing by videoconference in Tallahassee and West Palm Beach, Florida.

APPEARANCES

Petitioner: A. Denise Sagerholm, Esquire
Palm Beach County School Board
Suite C-323
3300 Forest Hill Boulevard
West Palm Beach, Florida 33406

Respondent: Augustus Chappelle, pro se
3249 C. Gardens East Drive
Palm Beach Gardens, Florida 33410

STATEMENT OF THE ISSUE

The issue is whether Respondent may be dismissed from employment for excessive absences and gross insubordination, pursuant to School Board Policies 1.013(1), 3.02(4)(a), (f), and (j), 3.10(6), 3.27, 3.80(1), articles 17, sections 5 and 7, and

22 of the collective bargaining agreement, and sections 1012.22(1)(f), 1012.27(5), and 1012.76, Florida Statutes.

PRELIMINARY STATEMENT

By Notice of Suspension and Recommendation for Termination of Employment mailed August 30, 2011, Petitioner's superintendent advised Respondent that he was recommending to the School Board that it first, suspend Respondent for 15 days without pay and, second, terminate his employment for excessive absences, gross insubordination, unethical conduct, and failure to follow a policy, directive, or rule.

By letter dated September 20, 2011, Respondent requested a formal hearing.

At the hearing, Petitioner called 9 witnesses and offered into evidence 25 exhibits: Petitioner Exhibits 1-13, 15-17, 20, 22, 27-32, 34, and 39-40. Arriving at the hearing 90 minutes late, Respondent called no witnesses and offered into evidence no exhibits. All exhibits were admitted except Petitioner Exhibits 15 and 32, which were proffered.

The court reporter filed the Transcript on February 14, 2012. Petitioner filed a Proposed Recommended Order on March 8, 2012. Respondent did not file a proposed recommended order by the deadline of March 14, 2012.

FINDINGS OF FACT

1. Respondent has been employed with Petitioner for ten years. At all times, he has been employed as a noninstructional employee.

2. After he had been employed with Petitioner for one year, Respondent began to miss work. Eventually, because he had exhausted his sick leave, Respondent was required to produce a physician's letter whenever he missed work.

3. On December 17, 2007, Petitioner issued Respondent a written reprimand for falsification of a physician's letter. Nine months later, on September 29, 2008, Respondent submitted to Petitioner another falsified physician's letter to justify an absence on medical grounds. On August 10, 2010, Petitioner issued a Final Order suspending Respondent for 15 days for this second falsification of a physician's letter.

4. By the time of the August 10, 2010, Final Order, Respondent had already served his suspension and was reinstated effective August 5, 2010. However, he still failed to report to work as required. By September 27, 2010, he had missed 11 days of work--including every Monday and Friday in September. Respondent also used sick leave prior to earning it and took some days off without pay.

5. On September 27, 2010, Petitioner's Chief of Human Resources issued a Memorandum of Specific Incident, which

details the information set forth in the preceding paragraph. This memorandum notes that Respondent's absences negatively impact the work of the other employees by causing workload to be shifted to them. The memorandum requires Respondent to call a named contact person 15 minutes prior to the start of his duty day, if he is going to be late or absent from work, complete and submit a form for sick leave within two days of returning to work, and submit a physician's note for all future absences, if for medical reasons. The memorandum concludes that the failure to follow any of the directives will be considered insubordination and may result in termination. Confirming receipt, Respondent signed the memorandum on September 29, 2010.

6. In cross-examination, Respondent raised a novel defense to his employer's claim that his excessive absences shifted work to other employees: because Respondent, as an apprentice, performed no useful work, his nonappearance was harmless to his coworkers.

7. When reinstated in August 2010, Petitioner maintained Respondent's classification as a Technician Systems II, but reassigned him to the intercom shop as a trades helper. Although the pay for a trades helper is less than a Technician Systems II, Petitioner continued to pay Respondent the higher pay of a Technician Systems II. Because Respondent was a mere

helper, he argued, the actual intercom technician could perform the critical communications work without Respondent.

8. Respondent's claim that his work is nonessential is not supported by a closer examination of the responsibilities of the intercom shop. The responsibilities of the intercom shop include the maintenance of intercom communications systems at 187 schools comprising over 200 buildings. The intercom shop employs five journeymen technicians whose territorial responsibilities are coextensive with the 45 square miles of the school district.

9. Intercoms are the spine of the communications systems of Petitioner's schools. The announcement of critical life-safety issues, such as lockdowns or bomb threats at a school, depend on an intercom system that is in good working order. An inoperative intercom system may leave innocent bystanders wandering the halls in danger because they have not heard the lockdown announcement.

10. Although it is true that Petitioner always had to assign Respondent as part of a two-man team because Respondent did not know how to repair intercom systems, it does not follow that Respondent's absence from work was inconsequential. The critical work of a helper in the intercom shop is to assist the journeyman, who, after repairing the intercom system, must perform an all-call through the school and classrooms to ensure

that the intercom system has been restored to operational status. The journeyman assigns the helper to remote locations, such as hallways and classrooms, to confirm that the repaired intercom system is working throughout the building. When Respondent failed to report to work, no intercom-shop representative was available to perform these duties, and the intercom-shop supervisor sometimes had to reschedule critical repair work. This is the very definition of a negative impact on coworkers.

11. Respondent also failed to comply with other attendance policies and procedures. For instance, on November 1, 2010, Respondent called the named contact person to advise that he was taking a personal day, even though Respondent's policies and procedures require at least 24 hours' notice. Fluctuating in and out of paid status, Respondent continued to resist reporting to work on the duty days--Mondays and Fridays--that defined the start and end of the work week. When at work, Respondent took excessive breaks, such as at a "local business" located at the corner of Melaleuca and Military Trail between 8:00 a.m. and 9:00 a.m.

12. On November 4, 2010, Petitioner issued another memorandum confirming the directives contained in the

September 27, 2010, memorandum, detailed above. Confirming receipt, Respondent signed a copy of the memorandum on the same date.

13. But attendance problems continued. In general, since his reinstatement on August 5, 2010, through November 19, 2010, Respondent missed 23% of his duty days.

14. Ignoring the requirement to call at least one hour prior to the start of the duty day, Respondent called one-half hour or less on January 5, 6, 12, and 13. On March 1, 2011, ignoring the requirement of 24 hours' notice, Respondent called in about 75 minutes prior to the start of the duty day to say he was taking a personal day. And on January 6, 7, 12, and 13, Respondent used sick leave that had not yet been earned and credited. A memorandum dated March 15, 2011, concludes that Respondent's continued failure to follow previously issued directives constitutes gross insubordination and warns that any future failure to follow directives will result in disciplinary action, including termination. Respondent refused to sign this memorandum to evidence receipt.

15. And, one week later, Respondent again called in, 11 minutes short of the one hour in advance of the start of the duty day, to report that he would not be at work. This failure--innocuous, perhaps, in isolation, but grave, to be sure, in context--drove Petitioner to start the process that

resulted in the recommendation of the superintendent, by notices dated August 30 and September 20, 2011, first to suspend and then terminate Respondent, and the School Board to approve and adopt this recommendation at its special meeting of October 5, 2011.

16. In sum, for the 14-month period from August 5, 2010, through October 5, 2011, Respondent reported for duty on about 42% of his duty days. Of the 58% of the duty days that Respondent missed, 89% resulted in unpaid leave.

17. Article 17.1 of the collective bargaining agreement that applies to Respondent provides for disciplinary action based on clear and convincing evidence. Article 17.5 allows for consideration of prior discipline, if it is "reasonably related" to the subject charge. Article 17.6 provides for a range of discipline: in ascending order, verbal reprimand, suspension without pay, and dismissal. Article 17.7 requires progressive discipline, which suggests that a dismissal be preceded by a suspension without pay and a suspension without pay be preceded by a reprimand.

CONCLUSIONS OF LAW

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

19. Respondent is an "educational support employee."
§§ 1012.01(6) and 1012.40(1)(a), Fla. Stat. Petitioner may thus terminate Respondent's employment for any ground stated in the collective bargaining agreement. § 1012.40(2)(b), Fla. Stat.

20. Under the collective bargaining agreement, Petitioner has the burden of proving by clear and convincing evidence just cause for dismissing Respondent. Respondent's studied disregard of the need to work in order to maintain a job constitutes just cause for his dismissal. Petitioner has dutifully employed progressive discipline in accordance with the collective bargaining agreement--to no avail.

RECOMMENDATION

It is RECOMMENDED that the School Board enter a final order dismissing Respondent from employment.

DONE AND ENTERED this 15th day of March, 2012, in Tallahassee, Leon County, Florida.



ROBERT E. MEALE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of March, 2012.

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.