

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 12-0064TTS
)
GILBERT WHEELEHAN,)
)
 Respondent.)

)

RECOMMENDED ORDER

An administrative hearing in this case was held on March 1 and 2, 2012, in Largo, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Laurie A. Dart, Esquire
Pinellas County Schools
301 Fourth Street, Southwest
Post Office Box 2942
Largo, Florida 33779-2942

For Respondent: Michael Ira Krohn, Esquire
Sun Coast Police Benevolent
Association, Inc.
Suite 1205
14141 46th Street, North
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STATEMENT OF THE ISSUE

The issue in this case is whether the Pinellas County School Board (Petitioner or School Board) has "just cause" to terminate the employment of Gilbert Wheelehan (Respondent).

PRELIMINARY STATEMENT

By letter dated November 15, 2011, the Petitioner notified the Respondent that, "based on the facts and violations contained in the Agenda item dated December 6, 2011," the Petitioner intended to terminate the Respondent's employment as an officer with the Petitioner's police department. The rationale for the proposed termination was set forth in an attached document prepared for consideration by School Board members at their December 6, 2011, meeting and was provided to the Respondent as an attachment to the November 15 letter. Essentially, the Petitioner has charged the Respondent with falsification of payroll records from April 1 through October 26, 2011, by reporting that he was at his assigned work location when he was not.

The Respondent challenged the proposed termination and requested an administrative hearing. On January 5, 2012, the Petitioner forwarded the request to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, the Petitioner presented the testimony of nine witnesses and had Exhibits 1 through 11 admitted into evidence. The Respondent testified on his own behalf, presented the testimony of three additional witnesses, and had Exhibits 1 through 5 admitted into evidence.

A Transcript of the hearing was filed on March 14, 2012. Pursuant to the schedule adopted at the conclusion of the hearing, the parties filed proposed recommended orders that have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Beginning in January 2006, and at all times material to this case, the Respondent has been employed as a police officer with the Pinellas County Schools Police Department (PCSPD).

2. In March 2011, the Respondent was assigned to be a "south county float" based at the Hamilton Disston School.

3. Although based from a specific location, a "float" officer can be directed to respond to police calls or to perform other duties away from his assigned post.

4. In an email to various PCSPD officers dated March 23, 2011, Police Sergeant Richard Roseberry notified officers of new work assignments. The email specifically advised the Respondent that he would be assigned the "afternoon and evening position" at the school board administration building beginning on April 4, 2011.

5. The Respondent was unhappy with the change in assignment and requested that the sergeant reconsider the change. When the sergeant denied the request, the Respondent escalated the request to PCSPD Chief Tom Gavin, who also denied the request. The

Respondent thereafter contacted Chief Gavin's supervisor to voice his dissatisfaction, but to no apparent avail.

6. Accordingly, as of April 4, 2011, the Respondent was to work at the administration building from 1:00 p.m. to 9:00 p.m. on Monday through Thursday and from 9:00 a.m. to 5:00 p.m. on Friday.

7. In summer 2011, the PCSPD went to a ten-hour workday to accommodate vacation schedules, and the Respondent's working hours changed, but he continued to be assigned to work at the administration building. The summer work schedules clearly identified employees who were designated as "floats," and the Respondent was not so designated.

8. When the 2011-2012 school year began, the Respondent remained assigned to the administration building with a work schedule from 1:00 p.m. to 9:00 p.m. on Monday through Thursday and from 2:00 p.m. to 5:00 p.m. on Friday.

9. In September 2011, Sergeant Roseberry was advised by another police officer that the Respondent was not reporting for work at the commencement of his shift, and Sergeant Roseberry began to review the Respondent's time records.

10. PCSPD officers record their time worked using a "duty roster" form. According to the directions on the form, the records should indicate actual time on and off duty "as defined in our general order."

11. General Order III-6, issued August 2, 2004, by the PCSPD, governs matters of attendance and leave relevant to this case. Section II provides in relevant part as follows:

II. ATTENDANCE

Employees are expected to report to work on time, prepared to work, and shall complete their entire assigned shift. Violations can result in discipline under Board policies and may include revocation of the use of an issued Board vehicle.

A. Checking on and off duty

1. An employees' work day does not begin until they have arrived at their assigned school, Area office or the WPSC [Walter Pownall Service Center], unless directed by a dispatcher or supervisor to respond to another location to handle a call.

2. Travel time to their work site from home is not considered part of their work day. Employees shall not leave their assigned work site until they have completed their shift.

3. Officers not assigned to a specific site (such as float units or K-9 units) shall respond to either an area office or to the WPSC in a timely manner to begin their day.

4. Officers while en route to their work site, or en route home from the work site, shall notify the Communications Center that they are "10-10 in route" Upon arrival at their assigned work site they will check "10-8 at XXXXXX School." Radio communications are considered an official report and intentionally providing false information is a violation of Board policy.

5. Each employee will complete a "duty roster" form indicating the hours they worked, and shall include explanations as necessary.

This duty roster form shall be completed and signed, and either faxed to the department's secretary, or hand delivered to the office by 0900 hrs each Monday.

12. PCSPD employees, including the Respondent, have been periodically reminded of the general order's attendance rules through formal in-service training as well as in informal communications.

13. Radio communications between PCSPD officers and the Communications Center are documented by the radio dispatchers. Sergeant Roseberry reviewed the Respondent's duty rosters and the records of the Respondent's communications with dispatchers and noticed that there was a discrepancy between the communication records and the times recorded on the Respondent's duty rosters.

14. Sergeant Roseberry observed that the duty rosters indicated that the Respondent was present for work at the administration building during times when the dispatch communication records indicated he would have been traveling in his police car from his residence (a commute that could take upwards of 45 minutes) to the administration building.

15. Sergeant Roseberry referred the matter to the Office of Professional Standards, where it was assigned to Investigator James Kappel.

16. Investigator Kappel reviewed the Respondent's duty rosters and dispatch communication records, as well as records from the administration building's Sonitrol security system.

17. During his review, Investigator Kappel also personally observed the Respondent arriving late at the administration building or departing from his residence too late to complete his commute before the start of his scheduled shift. During this same period, Sergeant Roseberry also observed the Respondent arriving late for work.

18. Investigator Kappel's review eventually documented 15 instances between August 29 and October 12, 2011, wherein the Respondent reported that he was present to work at his assigned post when he was not.

19. During August 29 and October 12, 2011, the Respondent submitted duty rosters seeking payment for 5.9 hours of work when he was not present at his assigned work location.

20. On at least those 15 occasions, the Respondent falsely claimed on his duty rosters that he was at his assigned post at the beginning of his shift when he was not. At the hearing, the Respondent asserted that he believed the general order policy referenced herein applied only to officers assigned to schools, that he assumed that he was to be paid for his travel time, and that the practice documented by Mr. Kappel occurred throughout

the time that the Respondent had been assigned to work at the administration building.

21. There was no credible evidence presented to suggest that the Respondent was exempt from the attendance requirements stated in the general order or that he was entitled to be paid for time spent commuting between his home and his assigned work location.

22. The Respondent also asserted that an email from Sergeant Roseberry dated May 11, 2011, created confusion about the Respondent's duty assignment and that he believed he was a "float" officer from 1:00 p.m. to 2:30 p.m. after being assigned to the administration building effective April 4, 2011.

23. There was no credible evidence presented that would support the Respondent's assertion that he was a "float" officer after April 4, 2011. Sergeant Roseberry's May 11 email was related to timely completion of background checks for new employees, and nothing therein suggested that the Respondent was a "float unit" for any portion of the workday.

CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 & 120.57, Fla. Stat. (2011).

25. The Respondent is an "educational support employee" as defined at section 1012.40(1)(a), Florida Statutes (2011).

Termination of the Respondent's employment is governed by the provisions of the agreement between the Petitioner and the Pinellas County Police Benevolent Association, Inc., which states that termination shall be for "just cause" as defined by School Board Policy 4140.

26. The Petitioner has the burden of proving by a preponderance of the evidence the allegations underlying the proposed termination of the Respondent's employment. 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). In this case, the burden has been met.

27. The evidence established that the Respondent falsely reported the time and hours worked on the payroll records he submitted to the Petitioner. The Respondent reported that he was present at his assigned work location when he was not. The Respondent's inclusion of travel time in the hours reported on his duty roster is clearly prohibited by the general order.

28. The Petitioner has charged that the Respondent violated the following provisions of School Board Policy 4140:

Policy 4140A(8)--Falsification or alteration of employment paperwork, district forms, documents or certification;

Policy 4140A(9a)--Failure to perform the duties of the position;

Policy 4140A(21)--Conduct unbecoming a Board employee that brings the District into

disrepute or that disrupts the orderly processes of the District;

Policy 4140A(22)--Misconduct or misconduct in office;

Policy 4140A(24)--Failure to comply with Board policy, State law, or appropriate contractual agreement.

29. By falsely reporting that he was on duty at his assigned work location when he was not, the Respondent violated School Board Policy 4140A(8).

30. The Petitioner alleged that the Respondent violated School Board Policy 4140A(9a), but the evidence failed to establish that the Respondent did not perform the specific duties of his position.

31. The Respondent disrupted the orderly processes of the school district and violated School Board Policy 4140A(21) by failing to report for work as required and by falsely reporting his time on his duty roster.

32. The Respondent's falsification of time records constituted misconduct in office and a violation of School Board Policy 4140A(22).

33. The Respondent's failure to comply with the requirements of General Order III-6 violated School Board Policy 4140A(24).

34. The Petitioner utilizes a system of progressive discipline. According to the guidelines set forth in School Board Policy 4140A, the penalty for each alleged violation ranges from a

letter of caution to dismissal from employment. Where there is a range of penalties, the policy requires consideration of aggravating or mitigating circumstances. School Board Policy 4140C provides as follows:

The following aggravating and mitigating factors or circumstances will be considered when determining the appropriate penalty within a penalty range:

1. the threat posed to the health, safety or welfare of students, co-workers, or members of the public;
2. the severity of the offense;
3. degree of student involvement;
4. the disciplinary history of the employee, including the number of offenses, the length of time between offenses as well as the similarity of offenses;
5. the actual damage, physical or otherwise, caused by the misconduct;
6. any effort of rehabilitation by the employee;
7. attempts by the employee to correct or stop the misconduct;
8. pecuniary benefit or self-gain to the employee realized by the misconduct;
9. impact of offense on students, co-workers, or members of the public;
10. length of employment;
11. whether the misconduct was motivated by unlawful discrimination;
12. employee's evaluations;

13. any other relevant mitigating or aggravating factors.

35. In this case, termination of the Respondent's employment is warranted. The Respondent's falsification of time records was intentional and resulted in the Respondent being paid for time not worked. Other employees have been terminated by the Petitioner for falsification of time records. In February 2011, the Respondent had been penalized with a one-day unpaid suspension on an unrelated matter and was advised at that time that additional policy violations could result in dismissal from employment.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Pinellas County School Board issue a final order terminating the employment of Gilbert Wheelehan.

DONE AND ENTERED this 18th day of May, 2012, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of May, 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.