

THE SCHOOL BOARD OF LEE COUNTY, FLORIDA

JOSEPH BURKE, Ed.D.,)
SUPERINTENDENT)
)
 Petitioner,)
)
v.) Case No. 12-0008
) DOAH Case No. 12-2579
CHARLES STAUB,)
)
 Respondent.)

FINAL ORDER

THIS CAUSE came to be heard on this the 22ND day of January, 2013, before the School Board of Lee County, Florida, and said School Board finds as follows:

1. Charles Staub, (Respondent) is employed by the School Board of Lee County as a plumber. Respondent is an "educational support employee," as defined by Section 1012.40(1)(a), Florida Statutes, and is governed by the collective bargaining agreement between the Support Personnel Association of Lee County (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 March 22, 2010, subsequent to replacing a leaking water heater at Lehigh Acres Senior High School, Respondent placed the water heater on blocks as opposed to mounting the water heater on the wall as requested by the Building Supervisor at the school. Respondent also set the relief line to run on

the floor instead of running it into the drain next to the water heater and failed to install a water heater pan. As a result of this incident the Respondent was given a letter of unsatisfactory work.

3. On January 25, 2011, the Food Service Manager at Sunshine Elementary School submitted a maintenance work order regarding a leaky sink. Respondent made inappropriate comments of a rude and insulting nature to the Food Service Manager regarding the submission of the work order. As a result, Respondent received a written warning of unacceptable performance regarding the incident.

4. On February 8, 2011, Respondent spoke to the Food Service Manager and the staff at Gateway Elementary School in a rude manner about the food service staff using iodine without wearing protective gloves. The Food Service Manager had previously explained to Respondent that the use of iodine in a diluted state was safe to use without protective gloves.

5. On July 12, 2011, Respondent engaged in an argument with a carpenter in the Maintenance Department. During the argument, Respondent called the carpenter a "big pussy". Respondent then followed the carpenter out of the parking lot and along the route that the carpenter normally travels home.

6. On September 23, 2011, Respondent made an unauthorized stop at Gulf Middle School and in doing so, violated the guidelines for the use of district vehicles. Respondent falsified his daily labor sheet with inaccurate information, work order numbers and time. Respondent also misrepresented himself and posed as an employee of Gulf Middle School to a photographer taking photographs of students and staff, and obtained a picture identification badge identifying himself as a faculty member at the school. On October 26, 2011, Respondent received a written warning for failure to follow instructions and falsifying daily labor sheets.

7. On November 9, 2011, Respondent failed to follow a directive from the Plumbing Supervisor, to go to the plumbing portable and clean van M365 with his co-workers. Instead of cleaning the van, Respondent went to his vehicle to retrieve his tools and was at his vehicle for approximately 20 minutes. Respondent received a written warning for failure to follow instructions and accepted it without filing a grievance.

8. On March 28, 2012, Respondent ignored a directive from the Supervisor of the Maintenance Department to repair a toilet at Orangewood Elementary School on a same-day work order completion. Instead, Respondent worked the entire day at Cypress Lake High School. Respondent's failure to follow a

directive and failure to communicate with his superiors resulted in Orangewood Elementary School not receiving appropriate service from the Maintenance Department.

9. In accordance with provision 7.10 of the SPALC Agreement, a predetermination conference for Respondent was scheduled for April 26, 2012. Respondent attended the predetermination conference with his attorney.

10. Following the Pre-Determination Conference it was determined that a recommendation would be made to the Superintendent for Respondent's termination. A letter dated May 10, 2012, was forwarded to the Respondent and his attorney advising them of this recommendation.

11. Subsequently, Respondent requested a hearing before the Division of Administrative Hearings (DOAH) challenging his termination.

12. On July 31, 2012, the School Board voted to suspend Respondent without pay pending the hearing

13. The final hearing took place on October 25, 2012, before DOAH Administrative Law Judge (ALJ) R. Bruce McKibben.

14. The ALJ issued his Recommended Order on December 11, 2012.

15. The Board has substantive jurisdiction over the definition of "just cause" under §1012.33, Florida Statutes.

16. The Superintendent, through his counsel, filed exceptions to seven findings of fact, one exception to a legal conclusion made by the ALJ and ultimately to his recommended penalty.

17. The ALJ improperly concluded in paragraph 5 of the Recommended Order that the Respondent exhibited good work habits and did well, this finding was not based upon competent substantial evidence. Respondent received at least four performance assessments in a five year period that include areas inconsistently practiced or unsatisfactory.

18. The ALJ improperly concluded in paragraph 9 of the Recommended Order that Respondent was given a "verbal warning" for improperly installing a water heater, this finding was not based upon competent substantial evidence. The parties stipulated to the fact that Respondent was issued a letter of unsatisfactory work for his work on the water heater, not a verbal warning.

19. The ALJ evaluated the facts of previous discipline provided to Respondent in paragraph 16 of the Recommended Order in error. The finding of fact in paragraph 16 was not based upon competent substantial evidence. The parties stipulated that the Food Service Manager at Gateway Elementary alleged that Respondent spoke to her in a rude manner. Respondent was

disciplined for the conduct. Evidence of what occurred at Gateway Elementary was not necessary. Respondent failed to challenge the discipline at the time it was rendered through the contractual grievance process.

20. The ALJ evaluated the facts of previous discipline provided to Respondent in paragraph 17 of the Recommended Order in error. The finding of fact in paragraph 17 was not based upon competent substantial evidence. Evidence of what occurred at Gateway Elementary was not necessary. Respondent failed to challenge the discipline at the time it was rendered through the contractual grievance process.

21. The ALJ evaluated the facts of previous discipline provided to Respondent in paragraph 18 of the Recommended Order in error. The finding of fact in paragraph 18 was not based upon competent substantial evidence. The parties stipulated to the fact that the Food Service Manager at Sunshine Elementary School alleged that Respondent made inappropriate comments of a rude and insulting nature regarding a work order. Evidence of what occurred at Sunshine Elementary was not necessary. Respondent failed to challenge the discipline at the time it was rendered through the contractual grievance process.

22. The ALJ evaluated the facts of previous discipline provided to Respondent in paragraph 25 of the Recommended Order

in error. The finding of fact in paragraph 25 was not based upon competent substantial evidence. The parties stipulated that Respondent received discipline for acquiring an identification badge at Gulf Middle School without authorization to do so. Evidence of what occurred at Gulf Elementary was not necessary. Respondent failed to challenge the discipline at the time it was rendered through the contractual grievance process. The ALJ also erroneously ignored the fact that Respondent had falsified his Daily Labor Sheet.

23. The ALJ improperly concluded in paragraph 30 of the Recommended Order that Respondent received a verbal warning on April 13, 2010. The finding of fact in paragraph 30 was not based upon competent substantial evidence. The discipline received by Respondent on April 13, 2010, was written, not verbal.

24. The ALJ's conclusion of law at Paragraph 40 of the Recommended Order is rejected as it is more reasonable for the Board to conclude, based on the entire record, that the preponderance of the evidence substantiates just cause to terminate Respondent's employment and

It is accordingly ORDERED as follows:

25. Following a complete review of the record the ALJ's Recommended Order is hereby adopted as the Board's Final Order

except for his findings of fact at paragraph's 5, 9, 16, 17, 18, 25 and 30, the conclusion of law at paragraph 40 and the recommended penalty. The Board instead rejects the conclusion at paragraph 40 and the ALJ's Recommendation and finds that Respondent committed the acts of insubordination, willful neglect of duties and misconduct and in doing so violated School Board policies 5.02, Professional Standards and 5.29, Complaints Relating to Employees and the foregoing is just cause for termination of Respondent's employment.

26. 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, 2855 Colonial Boulevard, Fort Myers, Florida 33966, telephone number (239) 335-1447.

ENTERED on this the 22nd day of January, 2013.



Mary Fischer, Chairman

Copies to:

Robert Dodig, Jr., Staff Attorney
Richard Ricciardi, Esq.
Division of Administrative Hearings
Personnel File