Division of Administrative Hearings
State of Florida
School Board of Monroe County, Florida, Petitioner
v.
David Gootee and Marissa Gootee, Respondents

DOAH CASE NO.: 13-1083TTS; 13-1084TTS (CONSOLIDATED)

July 23, 2014

FINAL ORDER

THIS CAUSE came before The School Board of Monroe County, Florida ("Petitioner" or "School Board"), as governing body of the School District of Monroe County, Florida ("District"), for final agency action in accordance with Section 120.57, Florida Statutes.

Appearances

For Petitioner:

Scott C. Black, Esq.
Vernis & Bowling of the Florida Keys, P.A.
Islamorada Professional Center
81990 Overseas Highway, 3rd Floor
Islamorada, Florida 33036

For Respondent:

Robert K. Michael, Esq.,
3030 N. Rocky Point Drive, West, Suite 150
Tampa, FL 33607

Introduction

On November 4, 2013, an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH") submitted his Recommended Order ("RO") to the School Board in the above-captioned proceeding. A copy of the RO is attached hereto as **Exhibit "A"**.

The RO indicates that copies were sent to counsel for the Petitioner, the School Board, and counsel for Respondents, David Gootee and Marissa Gootee. The School Board filed its Exceptions on November 18, 2013. A copy of Petitioner's Exceptions is attached hereto as **Exhibit "B"**. This matter is now before the School Board for final agency action.

Background

By correspondence dated January 15, 2010, the School Board notified Respondents that it intended to terminate Respondents' employment as cosmetology teachers at Key West High School and as adult education instructors for the Monroe County School District.

On January 27, 2010, Petitioner filed an Administrative Complaint ("Complaint") against Respondents, wherein Petitioner alleged Respondents were subject to discipline because Respondents: (1) prepared false time sheets for identical and overlapping work hours; (2) submitted false time sheets indicating additional work hours which were not actually worked; (3) received additional compensation for work which had already been paid for by the School Board; and (4) exposed the School Board to liability for "Perkins Funds" usage in manners either inappropriate, or false – as time sheets were submitted for time in which Respondents had already received compensation from the School Board.

The School Board alleged the above-referenced conduct constituted a violation of School Board Policy 3210 [Standards of Ethical Conduct] and Section 1012.795, Florida Statutes, which promulgates Rules of Professional Conduct to which every member of the education profession in Florida must adhere – including those provisions contained in Florida Administrative Code Section 6B-1.006 [now 6A-10.081].

Respondents timely requested a formal administrative hearing to contest Petitioner's action, and the matter was subsequently referred to the Division of Administrative Hearings ("DOAH") for further proceedings. Respondents' cases were then consolidated per Petitioner's motion, and a hearing was held on August 27, 2013, during which Petitioner introduced 15 exhibits and the testimony of Jeff Arnott and Debra Henriquez. The hearing transcript was filed on September 23, 2013.

Recommended Order

In the November 4, 2013 RO, the ALJ recommended that the School Board enter a final order dismissing the administrative complaints; immediately reinstating Respondents' employment and awarding Respondents any lost salary and benefits. The ALJ determined, as a matter of ultimate fact, that the Respondents are not guilty of failing to maintain honesty in their professional dealings and are not guilty of submitting fraudulent information on documents connected to their professional dealings. (RO P 11). The ALJ concluded as a matter of law that the School Board did not establish the Respondents failed to maintain honesty in their professional dealings. (RO P 16). The ALJ further concluded the charge that the Respondents submitted fraudulent information on a professional document failed for want of evidence that the Respondents' weekly timesheet entries were in any manner false or inaccurate. (RO P 17).

Standards of Review

The following rulings on the Exceptions to the RO are made in light of the standards governing the administrative review of DOAH recommended orders by agencies having the authority and duty to enter final orders. Section 120.57(1)(*l*), Florida Statutes, provides that an agency final

order "may reject or modify [an administrative law judge's] conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction." As required under Florida Statute 120.57(1)(*l*), "[w]hen rejecting . . . such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting . . . such conclusion of law or administrative rule and must make a finding that its substituted conclusion of law or administrative rule is as or more reasonable than that which was rejected or modified." Section 120.57(1)(*l*) also prescribes that an agency reviewing a DOAH recommended order may not reject or modify the findings of fact of an administrative law judge, "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law." § 120.57(1)(l), Fla. Stat. (2008); *Wills v. Florida Elections Commission*, 955 So.2d 61 (Fla. 1st DCA 2008); *Heifetz v. Dept. of Business Regulation*, 475 So.2d 1277 (Fla. 1st DCA 1985) (holding that agency may not reject an ALJ's findings of fact, which are supported by competent, substantial evidence, nor is it authorized to reweigh the evidence, resolve conflicts in testimony, draw inferences, judge credibility of witnesses, or otherwise interpret the evidence). However, if a finding of fact in a recommended order is improperly labeled by an administrative law judge, the label should be disregarded and the item treated as though it were properly labeled as a conclusion of law. *Battaglia Properties v. Fla. Land and Water Adjudicatory Commission*, 629 So.2d 161, 168 (Fla. 5th DCA 1994).

A reviewing agency has no authority to evaluate the quantity and quality of the evidence presented at a DOAH formal hearing, beyond making a determination that the evidence is competent and substantial. *Brogan v. Carter*, 671 So.2d 822, 823 (Fla. 1st DCA 1996). Therefore, if the DOAH record in this case discloses any competent substantial evidence supporting a challenged factual finding of the ALJ, this agency is bound by such finding in this Final Order. *Florida Dept. of Corrections v. Bradley*, 510 So.2d 1122, 1124 (Fla. 1st DCA 1987). Additionally, a reviewing agency has no authority to make independent or supplemental findings of fact in construing the recommended order on review. *See*, e.g., *North Port, Fla. v. Con. Minerals*, 645 So.2d 485, 487 (Fla. 2d DCA 1994).

RULINGS ON EXCEPTIONS

Preface

Under Florida law, parties to formal administrative proceedings must alert reviewing agencies to any perceived defects in DOAH hearing procedures or in the findings of fact of ALJ's by filing exceptions to DOAH recommended orders. *See Couch v. Commission on Ethics*, 617 So.2d 1119, 1124 (Fla. 5th DCA 1993); *Florida Dept. of Corrections v. Bradley*, 510 So.2d 1122, 1124 (Fla. 1st DCA 1987).

Petitioner's Exceptions to Findings of Fact

Exception I – The Petitioner takes exception to the ALJ's finding that Respondents' compensation arrangement was common place among similarly situated employees. (Pet. Exceptions P 2, ¶ 4).

While the ALJ cites to the Final Hearing transcript in support of the above-assertion, the ALJ makes an incomplete account of what the record actually states. The ALJ suggests that the compensation "arrangement" was an accepted practice, yet the record testimony of Jeff Arnott indicates the proper practice would have been for the Respondents to work adult education hours from 5:00 to 8:00, not overlap them with high school hours. (Pet. Exceptions P 2, ¶ 5). Further, the excerpt cited by the ALJ supports the position that hours worked for adult education were separate from those worked for regular high school, and that the payment came from a different source – not as additional pay. (Pet. Exceptions P 2, ¶ 5). Finally, the ALJ's finding conflicts with his own RO at page 20, footnote14. Foot note 14 states, "[t]his Recommended order should not be read as an affirmative endorsement of the "overlapping" compensation arrangement, *which, by all accounts, was in place for no other School Board employee other than the Gootees...*"

The School Board also finds that even if there were other teachers who received compensation in the same manner as the Respondents, it would not negate that Respondents violated School Board Policy 3210 by submitting false information on their timesheets. (Pet. Exceptions P 2, ¶ 6).

The Petitioner's Exception I is hereby accepted, as the findings of fact in the RO are not supported by competent substantial evidence.

Exception II – The Petitioner takes exception to the ALJ's finding that Respondents indicated on their timesheets the span of time in which they were on campus and in the presence of adult students. (Pet. Exceptions P 4, ¶ 8).

The ALJ's assertion is unsupported by the record, as indicated by the ALJ's failure to include a record citation. No testimony exists in the record supporting this assertion. (Pet. Exceptions P 4, ¶ 9).

Accordingly, the Petitioner's Exception II is accepted, as the findings of fact in the RO are not supported by competent substantial evidence.

Exception III – The Petitioner takes exception to the ALJ's finding that Mr. Arnott's lack of involvement in the education department until 2009 detracts from his value as a witness, as the ALJ fails to consider that Mr. Arnott was the first administrator not part of the initial "arrangement" to have access to the master schedule. (Pet. Exceptions P 4, ¶ 10).

Mr. Arnott was the first administrator to discover that Respondents' conduct was improper. (Pet. Exceptions P 5, ¶ 11). The amount of time that passed from the date the compensation "arrangement" was first agreed upon until Mr. Arnott's discovery indicates the extent of how compartmentalized the "arrangement" was – not that the School Board assented or acquiesced to such conduct. (Pet. Exceptions P 5, ¶ 12).

The Petitioner's Exception III is accepted, as the findings of fact in the RO are not supported by competent substantial evidence.

Exception IV – The Petitioner takes exception to the ALJ's finding that Respondents' conduct can be legitimately defended on the basis of supervisor approval is not supported by the record evidence or Florida law. (Pet. Exceptions P 5, ¶ 13).

Just as a supervisor's approval would not shield a teacher from disciplinary action for helping students cheat, inflating grades or stealing money from the lunchroom cash register, the submission of timesheets containing information the record has shown to be untrue is not cured by supervisor approval. (Pet. Exceptions P 5-6, ¶ 13,14).

Petitioner's Exception IV is accepted, as the ALJ's assertion that the Respondents' conduct does not rise to the level of an indefensible act of impropriety is not supported by competent substantial evidence.

Exception V – The Petitioner takes exception to the ALJ's failure to acknowledge the difference between additional pay and supplemental pay, and as a result, mischaracterizes the $10,000 per year in accrued wages. (Pet. Exceptions P 6, ¶ 16).

The record contains no evidence indicating any School Board employees received compensation classified as extra pay. (Pet. Exceptions P 7, ¶ 17). Marissa Gootee received a salary supplement for teaching an additional period during the day for an additional $3,518.00. The competent substantial evidence establishes the Respondents were approved for a separate job for which they would receive $27.75 per hour for additional hours worked beyond the 7.5 and 4.8 required of Marissa and David Gootees' full time teaching position. (Pet. Exceptions P 7, ¶ 17).

The total amount accrued by Respondents was $192,600.14. (Pet. Exceptions P 7, ¶ 18). Since no one in payroll was privy to the compensation "arrangement," the School Board finds that it was the intent of Respondents for payroll employees to believe that the three additional hours indicated on the timesheets were actually worked – and to distribute pay accordingly. (Pet. Exceptions P 7, ¶ 18).

Petitioner's Exception V is hereby accepted, as the ALJ's characterization of additional pay and supplemental pay is not supported by competent substantial evidence.

Exception VI – The Petitioner takes exception to the ALJ's finding that the time overlap indicated on the timesheets, by itself, supports Respondents' testimony that they believed in the legitimacy of the "arrangement." (Pet. Exceptions P 8, ¶ 21).

The timesheets contain no evidence suggesting Respondents believed in the legitimacy of the "arrangement." (Pet. Exceptions P 8, ¶ 22). The timesheets contain no information other than the hours Respondents represented they worked; which the record shows to be three additional hours Respondents did not work. (Pet. Exceptions P 8, ¶ 22). "Believing in the legitimacy of the arrangement" as a legal defense assumes that supervisor approval of Respondents' conduct cures the same – which it does not. (Pet. Exceptions P 8, ¶ 23).

Petitioner's Exception VI is accepted, as the ALJ's finding that the time overlap indicated on the timesheets, by itself, supports Respondents' testimony that they believed in the legitimacy of the "arrangement" is not supported by competent substantial information.

Petitioner's Exception to Determinations of Ultimate Fact

Exception VII – The Petitioner takes exception to the ALJ's failure to recognize that knowingly submitting timesheets which contain false information constitutes dishonesty in a professional dealing regardless of whether Respondents believed supervisor approval cured the violation. (Pet. Exceptions P 9, ¶ 25).

Monroe County School Board Policy 3210 prohibits the submission of fraudulent information – which includes information Respondents knew to be untrue at the time of submission. (Pet. Exceptions P 9, ¶ 26). Respondents knew they were submitting 10.5/7.5 hours on their respective timesheets for 7.5/4.5 hours actually worked. (Pet. Exceptions P 9, ¶ 27). Similarly, Respondents knew the pay they received reflected time in which Respondents were not even physically on school grounds. These facts alone are enough to constitute a violation of School Board Policy 3210.

Petitioner's Exception VII is accepted, as the ALJ's determination that submitting timesheets which contain false information does not constitute dishonestly in a professional dealing is not supported by the competent substantial evidence contained in the record.

Petitioner's Exceptions to Conclusions of Law

Exception VIII – The Petitioner takes exception to the ALJ's conclusion of law that Respondents' belief that the "arrangement" was legitimate cures any violation of School Board Policies, as it is based on a misunderstanding of the difference between additional pay and supplementary pay. (Pet. Exceptions P 10, ¶ 28).

Respondents' knowledge that their timesheets reflected overlapping hours – irrespective of their belief in in the legitimacy of the same – constitutes knowledge that their timesheets contained information which was not true. (Pet. Exceptions P 10, ¶ 29). Acquiescing to the fraudulent conduct of a supervisor does not cure a violation of School Board Policy. The "my boss told me to do it" defense is not supported by Florida law. (Pet. Exceptions P 10, ¶ 31).

The argument that Respondents accepted additional compensation in exchange for additional work is also not supported by the record. A clear distinction exists between supplements and additional pay. For this reason, the ALJ's opinion that Respondents merely received additional pay is an incorrect conclusion of law and is not supported by competent legal authority. The School Board finds that its substituted conclusion of law is more reasonable than that which was asserted by the ALJ. Petitioner's Exception VIII is hereby accepted.

Exception IX – The Petitioner takes exception to the ALJ's conclusion of law that no evidence exists that Respondents' entries to weekly timesheets were false or inaccurate or that the Respondents acted with the intent to deceive. (Pet. Exceptions P 11, ¶ 34).

The intent of Respondents was to receive 10.5/7.5 hours pay for 7.5/4.5 hours worked. Respondents similarly intended their timesheets to be processed by District employees and for the same employees to believe the information contained therein was true. (Pet. Exceptions P 12, ¶ 37). The ALJ makes two findings inconsistent with one another: (1) Respondents were legally justified in submitting the overlapping time because they were told to do so; and (2) the documents did not contain false or inaccurate information. (Pet. Exceptions P 12, ¶ 37).

The School Board relied on the veracity of the timesheets submitted by Respondents in providing compensation. Therefore, to the detriment of the School Board, compensation was provided to Respondents under the assumption Respondents actually worked three additional hours per day – which they did not. (Pet. Exceptions P 13, ¶ 40).

Petitioner's Exception IX is accepted, as the ALJ's conclusion of law that Respondents did not act with the intent to deceive is not supported by competent legal authority. Accordingly, the School Board finds that its substituted conclusion of law is more reasonable than that which was asserted by the ALJ.

Petitioner's Exception to Recommendation

Exception X – Petitioner takes exception to the ALJ's recommendation that the School Board enter a final order dismissing the administrative complaints; immediately reinstating Respondents' employment; and awarding Respondents any lost salary and benefits. (Pet. Exceptions P 12, ¶ 37).

Nothing found in the record refutes that the timesheets submitted by Respondents reflected hours not worked. Acquiescing to a supervisor's fraudulent conduct does not negate Respondents' intent to have the School Board rely on Respondents' misrepresentations. Respondents were required to follow School Board Policies and Procedures under the Collective Bargaining Agreement, and failed to do so. (Pet. Exceptions P 13, ¶ 42). Petitioner's Exception X is hereby accepted, as the ALJ's recommendation is not supported by the competent substantial evidence contained in the record.

CONCLUSION

After reviewing the record, we find that each of the School Board's exceptions should be accepted and, in turn, are therefore incorporated into this Final Order.

It is therefore ORDERED:

A. The Recommended Order (**Exhibit "A"**) is adopted as modified by the above, and incorporated by reference herein.

B. Petitioner, the Schhol Board of Monroe County, Florida's exceptions (**Exhibit "B"**) are accepted.

C. Respondents are hereby terminated from employment with the School Board of Monroe County, Florida.

Notice of Right to Appeal

Any party adversely affected by this Final Order may seek judicial review pursuant to Section 120.68, Florida Statutes, and Florida Rule of Appellate Procedure 9.030(b)(1)(C) and 9.110. To initiate an appeal, one copy of a Notice of Appeal must be filed, within the time period stated in Florida Rule of Appellate Procedure 9.110, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the School Board of Monroe County.

DONE AND ORDERED this 23 day of July, 2014, in Monroe County, Florida.

The School Board of Monroe County, Florida

Ron Martin
Chairman
241 Trumbo Road
Key West, Florida 33040

FILED ON THIS DATE PURSUANT TO § 120.52, FLORIDA STATUTES, WITH THE DISTRICT CLERK, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.

DISTRICT CLERK

Sally M Abrams