

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 14-1080

CHRISTEL FREEMAN,

Respondent.

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RECOMMENDED ORDER

On May 15, 2014, a final administrative hearing in this case was held in Fort Myers, Florida, before J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Robert Dodig, Jr., Esquire
School District of Lee County
2855 Colonial Boulevard
Fort Myers, Florida 33966-1012

For Respondent: Christel Freeman, pro se
2119 French Street
Fort Myers, Florida 33916-4434

STATEMENT OF THE ISSUE

The issue in this case is whether the School Board of Lee County (School Board) should terminate the Respondent, Christel Freeman, for fighting with another school bus employee on School Board property.

PRELIMINARY STATEMENT

After an incident on December 4, 2013, an investigation was conducted, and the School Board decided to terminate the Respondent's employment. The Respondent requested a hearing, and the matter was referred to the Division of Administrative Hearings.

At the hearing on May 15, the Petitioner called eight witnesses, and Exhibits 1 and 3 through 10 were received in evidence. The Respondent called two witnesses and testified in her own behalf. A Transcript of the final hearing was filed on June 4, and the Petitioner filed a Proposed Recommended Order, which has been considered. The Respondent did not file a proposed recommended order.

FINDINGS OF FACT

1. The Respondent, Christel Freeman, has been a school bus driver employed by the School Board since 2002. There was no evidence that she was anything other than an exemplary employee until an incident that occurred at the School Board's Leonard Street bus compound at the end of the work day. She and her boyfriend, Mike Ortes, were driving their personal vehicle from the back of the compound to the front, where the employees clock out and usually visit for a while before going home, when she spotted another employee, Ashley Thomas, who had just recently been transferred to Leonard Street.

2. The Respondent approached Thomas, who was visiting with co-workers at a picnic table, because she suspected that Thomas was having sexual relations with her boyfriend and wanted to tell Thomas to stay away from her boyfriend, stop interfering with the Respondent's family unit, and stop "talking trash about her."

3. When she got within earshot, the Respondent asked Thomas if they could talk in private. Thomas said, yes, and the two walked away from the co-workers at the picnic table. The Respondent began to tell Thomas what she wanted to talk about, and the conversation soon became heated.

4. After they left the view of the co-workers at the picnic table, they passed another co-worker who was sitting in a vehicle and who said something to Thomas. As Thomas turned to respond to the speaker, the Respondent struck Thomas with her hand or fist on the side of the face, near the eye. Thomas was carrying her car keys, cell phone, and purse and was surprised by the blow. When the Respondent followed up with another blow, Thomas began to defend herself by hitting back. The nearby co-workers very quickly ran to the combatants to separate them. In the process, the combatants fell down, with the Respondent landing on top. The scuffling continued for a brief time until the combatants were separated. By this time, Thomas's shirt had been torn open at the front buttons, her face was bruised and swelling, and her

eye was hurt. The Respondent also had an eye injury from being hit with Thomas's car keys.

5. The police were called, but the Respondent left the scene with her boyfriend by the time the police arrived. After some leading questions by the Respondent, Ortes supported her testimony that they went to the hospital for emergency treatment for her eye and, once there, called the police, who responded to the hospital.

6. After discussing the incident with the police, neither woman pressed charges.

7. The Respondent's primary defense is that after she called Thomas a "nasty bitch," Thomas struck her first with the car keys, and the Respondent defended herself. However, the other witnesses to the incident saw it the other way around, with the Respondent hitting first without provocation. The Respondent attempted to undermine that testimony by saying those witnesses were family and friends of Thomas. To the contrary, the evidence was that the family and friends of Thomas were not the eyewitnesses who testified; rather, Thomas's family and friends either did not testify or testified that they were not eyewitnesses to the incident.

8. While the Respondent attempted to downplay the state of her emotions at the time of the incident, it is clear from the evidence that she was angry at Thomas and initiated the

conversation in that state of mind. It is possible that what triggered the Respondent's violence was Thomas saying the Respondent should ask her boyfriend for the answers to her questions, which the Respondent took as flaunting an admission that they were having sexual relations.

9. According to the Respondent's testimony, her job with the School Board is very important to her and her family. Notwithstanding that she has not admitted instigating the fight with Thomas and throwing the first blow, she understands that the consequences of engaging in similar conduct again would certainly be the permanent loss of her job. For that reason, it is unlikely that she would put herself in that position in the future.

10. There is a collective bargaining agreement between the School Board and the Support Personnel Association of Lee County (SPALC) that governs the Respondent's employment. The procedure followed in the Respondent's case is set out in sections 7.10 and 7.103 of the SPALC agreement.

11. Section 7.10 of the SPALC agreement provides:

The parties agree that dismissal is the extreme disciplinary penalty, since the employee's job seniority, other contractual benefits, and reputation are at stake. In recognition of this principle, it is agreed that disciplinary actions(s) taken against SPALC bargaining unit members shall be consistent with the concept and practice of the collective bargaining agreement and that

in all instances the degree of discipline shall be reasonably related to the seriousness of the offense and the employee's record. Any discipline during the contract year, that constitutes a verbal warning, letter of warning, letter of reprimand, suspension, demotion or termination shall be for just cause.

12. Section 7.10 also states that employee misconduct is a ground for suspension without pay or termination of employment. The SPALC agreement does not define misconduct.

13. The School Board has policies that govern employee conduct. Policy 4.09 adopts a "zero tolerance" policy for threats of violence. It prohibits "any verbal, written or electronically communicated threat, suggestion or prediction of violence against any person." Id. "Any serious threat of violence shall result in immediate disciplinary action and referral to the appropriate law enforcement agency." Id.

14. School Board Policy 5.29(1) states: "All employees are expected to exemplify conduct that is lawful and professional"

15. School Board Policy 2.02(2) describes and prohibits "unacceptable/disruptive behavior." This includes "[u]sing unreasonable loud and/or offensive language, swearing, cursing, using profane language, or display of temper." Id. at ¶ (b). It also includes "[t]hreatening to do bodily or physical harm to a . . . school employee . . . regardless of whether or not the

behavior constitutes a criminal violation.” Id. at ¶ (c). It also includes “[a]ny other behavior which disrupts the orderly operation of a school, school classroom, or any other School District facility.” Id. at ¶ (e).

16. Section 7.103 of the SPALC agreement allows an employee being terminated to either file a grievance under Article 5 or request a hearing before the School Board, but not both.

17. Section 7.13 of the SPALC agreement provides that employees “shall not engage in speech, conduct, behavior (verbal or nonverbal), or commit any act of any type which is reasonably interpreted as abusive, profane, intolerant, menacing, intimidating, threatening, or harassing against any person in the workplace.”

CONCLUSIONS OF LAW

18. This proceeding is governed by section 1012.40(2), Florida Statutes (2013). That statute provides that termination must be for reasons stated in the collective bargaining (in this case, the SPALC) agreement and that the appeals process is determined by the appropriate collective bargaining (in this case, SPALC) agreement.

19. Under section 7.10 of the SPALC agreement, discipline against the Respondent must be for “just cause,” and employee misconduct is a ground for suspension without pay or termination of employment.

20. The SPALC agreement does not define employee misconduct, but School Board policies 2.02, 4.09, and 5.29 describe prohibited and unacceptable employee behavior that reasonably should be interpreted as employee misconduct.

21. The School Board also has construed "just cause" for purposes of discipline pursuant to the SPALC agreement in the same manner as in section 1012.33, Florida Statutes (2013), relating to instructional staff. Under that statute, just cause includes "misconduct in office," which Florida Administrative Code Rule 6A-5.056(2)(c) defines to include a violation of "adopted school board rules." The School Board's adopted policies are its adopted rules. Sch. Bd. Pol. 1.08.

22. "Just cause" and "employee misconduct" must be proven by a preponderance of the evidence. See McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996). In this case, the School Board proved employee misconduct that violated section 7.13 of the SPALC agreement, as well as School Board policies 2.02, 4.09, and 5.29, and is just cause for suspension without pay and termination of employment.

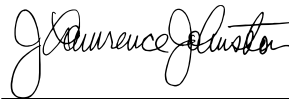
23. The SPALC agreement provides that "the degree of discipline shall be reasonably related to the seriousness of the offense and the employee's record." In this case, the offense is serious, and the employee's record exemplary. Balancing the two, and taking into account the Respondent's strong desire to keep

her job and recognition that another similar incident would certainly result in termination, suspension without pay clearly is an appropriate discipline. Termination of employment is not unreasonable, if that is the School Board's choice, but the School Board may wish to consider reinstating the Respondent.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board enter a final order finding the Respondent guilty of employee misconduct and either terminating her employment, or suspending her without pay and reinstating her upon entry of the final order.

DONE AND ENTERED this 27th day of June, 2014, in Tallahassee, Leon County, Florida.



J. LAWRENCE JOHNSTON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of June, 2014.

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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.