

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

OSCEOLA COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 18-4481TTS

GILBERTO COLON-VEGA,

Respondent.

_____ /

RECOMMENDED ORDER

Administrative Law Judge D. R. Alexander conducted a hearing in this case on October 1, 2018, in Kissimmee, Florida.

APPEARANCES

For Petitioner: Frank C. Kruppenbacher, Esquire
Frank Kruppenbacher, P.A.
9064 Great Heron Circle
Orlando, Florida 32836-5483

For Respondent: Gilberto Colon-Vega, pro se
409 Mallard Way
Poinciana, Florida 34759-4448

STATEMENT OF THE ISSUE

The issue is whether there exists good cause for the School Board of Osceola County (School Board) to terminate Respondent as an educational support employee pursuant to section 1012.40(2), Florida Statutes (2018).

PRELIMINARY STATEMENT

By letter dated June 11, 2018, the superintendent of the School Board informed Respondent, a part-time custodial employee, that he was suspended without pay and that the School Board would consider a recommendation to terminate him as an employee at its next meeting. The letter alleges that his actions in the spring of 2018 constitute misconduct in violation of School Board Rule 6.391, Zero Tolerance for Workplace Violence, and School Board Rule 6.392, Civility, and they violate the Principles of Professional Conduct for the Education Profession in Florida. Finally, the letter alleges Respondent's actions endanger the health, safety, and welfare of other employees, and, therefore, termination is appropriate under his union contract.^{1/} Respondent timely requested a hearing, and the matter was referred by the School Board to the Division of Administrative Hearings to resolve the dispute.

At the hearing, the School Board presented the testimony of four witnesses. School Board Exhibits 1 through 7 were accepted in evidence. Respondent did not present any testimony or offer any exhibits.

A one-volume Transcript of the hearing was prepared. Proposed findings of fact and conclusions of law were filed by the School Board, and they have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The School Board is charged with the responsibility and authority to operate, control, and supervise the public schools within Osceola County. It has the authority to discipline educational support employees. § 1012.40(2), Fla. Stat.

2. At all times relevant hereto, Respondent was a part-time custodian at Parkway Middle School. His supervisor was plant manager Don Williams.

3. In the spring of 2018, Mr. Williams reviewed surveillance footage depicting Respondent leaving the job early on numerous occasions. Each time he was confronted with departing work early, Respondent would attribute his departures to family problems. He even showed Mr. Williams a picture of a dead man in a vehicle that Respondent identified as his nephew.

4. Mr. Williams also witnessed Respondent initiate arguments with co-workers over work assignments numerous times and concluded that Respondent is "nasty and hotheaded towards his fellow employees."

5. Because Respondent's primary language is Spanish, he asked co-workers to translate his interactions with Mr. Williams. He often became hostile and upset with the co-workers while they translated for him, to the extent one co-worker asked Respondent to stop asking him to translate.

6. On April 4, 2018, a school administrative assistant approached Respondent in the teacher's lounge to ask him about his leaving work early, without permission. Respondent told the assistant that he left early because of a family incident and asked if he could make up the time. The assistant explained that Respondent could not make up the time and proceeded to enter his work time into the employee portal.

7. During lunch hour that same day, Respondent shouted in Spanish at the administrative assistant while flailing his arms at her for adjusting his time.

8. Based on this unprofessional interaction with the administrative assistant, Respondent was issued a "civility notice" by Assistant Principal Marc Hernandez.

9. On April 13, 2018, Mr. Hernandez met with Respondent again after Respondent threw a student chair across the courtyard during a disagreement with a co-worker, Alfredo Zavala. During that encounter, Respondent ordered Mr. Zavala not to mess with him and told him that "in Puerto Rico, people get killed and thrown into the garbage."

10. Respondent was issued a verbal warning by Mr. Hernandez for his actions in throwing the student chair, his unprofessional interactions with co-workers, and leaving work early, without permission.

11. On May 18, 2018, Mr. Williams asked Respondent to help set up for a dance event at the school which was planned for the following day. In response to that request, Respondent slammed his hand on the table, rose up to approximately two inches from Mr. Williams' face, yelled at him in Spanish, and walked out of work, leaving his job duties incomplete.

12. On May 22, 2018, Respondent, believing that a co-worker, John Kelvey, informed the school administration about the incident on May 18, showed Mr. Kelvey a video of a female being shot multiple times in the face and told Mr. Kelvey, "This is what happens to rats. Watch yourself." Respondent also threatened Mr. Kelvey saying "This could be you," in reference to the video.

13. That same day, Respondent was cleaning the classroom of JoAnn Feliciano, a classroom teacher. He told her he had a letter from Mr. Hernandez, requesting a meeting with Respondent.

14. Ms. Feliciano advised Respondent that he should have a union representative with him at the meeting so as to not be alone. Respondent replied that he would not be alone because he would have a gun with him.

15. Ms. Feliciano told Respondent that she would pray for him so that Respondent would not do anything he would regret. Respondent replied that the only thing he would regret was not being able to get the other two custodians that worked in the

hallway once the meeting was concluded. He explained that the two co-workers would be running for their lives.

16. After this interaction with Respondent, Ms. Feliciano experienced high blood pressure, which required medical treatment.

17. On May 23, 2018, Respondent was arrested in Polk County (where he resides) for a violation of section 790.163, a felony, which prohibits an individual from making a false report concerning the use of a weapon and firearm in a violent manner. On June 6, 2018, a Final Risk Protection Order was entered by the circuit court prohibiting Respondent from possessing a firearm and ammunition.

18. Progressive disciplinary measures were taken by the School Board for these actions, including the issuance of a civility notice for Respondent's interaction with the administrative assistant, a verbal warning for Respondent throwing the student chair, and a letter from Respondent's supervisor concerning his poor job performance. Despite these progressive measures, his behavior did not change.

19. Following these events, Sheila Williams, a School Board investigator, conducted an investigation and concluded in her report that Respondent "created a hostile work environment for his co-workers." Sch. Bd. Ex. 6. On June 11, 2018, the superintendent issued her letter informing Respondent that a

recommendation to terminate his employment would be made at a School Board meeting in July 2018. This appeal ensued.

CONCLUSIONS OF LAW

20. The superintendent of the School Board has the authority to recommend to the School Board that an educational support employee be terminated. § 1012.40(2)(c), Fla. Stat.

21. The School Board has the burden of proving the allegations in the superintendent's letter of June 11, 2018, by a preponderance of the evidence. Cropsey v. Sch. Bd. of Manatee Cnty., 19 So. 3d 351, 355 (Fla. 2d DCA 2009).

21. School Board Rule 6.391, Zero Tolerance for Workplace Violence, provides in part 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."

22. School Board Rule 6.392(III)(C), Civility, provides in part that "unacceptable behavior" includes, but is not limited to, "threatening to do bodily or physical harm to another employee regardless of whether or not the behavior constitutes or may constitute a criminal violation."

23. As previously found, by a preponderance of the evidence, the School Board has proven that Respondent's actions

in April and May 2018 violate the foregoing rules and are sufficient grounds for his termination.

24. His actions also violate Florida Administrative Code Rule 6A-10.081, the Principles of Professional Conduct for the Education Profession in Florida, which prohibit, among other things, an employee engaging in conduct which creates a hostile or intimidating environment in the workplace.

25. Collectively, the violations support the superintendent's decision to terminate Respondent's employment.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Osceola County School Board enter a final order terminating Respondent as an employee.

DONE AND ENTERED this 20th day of November, 2018, in Tallahassee, Leon County, Florida.

D. R. Alexander

D. R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of November, 2018.

ENDNOTE

^{1/} Based on the accepted evidence, Respondent's conduct constitutes sufficient grounds for termination of his employment under the union contract. See Contract Article 16, Section 2(E), which provides that where an employee's conduct endangers the safety of other employees, and progressive disciplinary steps have not resulted in a modification of his behavior, the employee may be terminated from employment.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.