171 So.3d 745

Joyce QUILLER, Appellant
v.
DUVAL COUNTY SCHOOL BOARD, Appellee.

No. 1D14–4635.

District Court of Appeal of Florida, First District.

July 15, 2015.
Rehearing Denied Aug. 17, 2015.

[171 So.3d 745]

Reginald Luster of Reginald Luster, P.A., Jacksonville, for Appellant.

Brian K. McDuffie, Executive Director, and Wendy E. Byndloss, Assistant General Counsel, Jacksonville, for Appellee.

Opinion

ROBERTS, C.J.

The Appellant, Joyce Quiller, appeals a final order of dismissal entered against her by the Appellee, the Duval County School Board. The Appellant argues that the Board erred in rejecting the Administrative Law Judge's recommendation that the Board follow the disciplinary process agreed to in the collective bargaining agreement signed by the Board and the Duval County Teachers' Union. We agree.

The collective bargaining agreement agreed to by the Union and the Board provided for the following progressive discipline structure:

> Progressive Discipline Policy
>
> 1. The following progressive steps must be followed in administering discipline, it being understood, however, that *some more severe acts of misconduct may warrant circumventing the established procedure.*
>
> a. Verbal Reprimand
>
> b. Written Reprimand
>
> c. Suspension without Pay
>
> d. Termination

Here, after receiving complaints from students and parents that the Appellant was using profanity in front of the students, the Board began its discipline of the Appellant with a step one verbal reprimand that was then followed by a step two written reprimand. However, rather than moving to step three of the policy after receiving an additional complaint, the Board moved to step four and terminated the Appellant's employment. The Appellant appealed her termination, and after a hearing, the Administrative Law Judge (ALJ) found that because there was no evidence of "severe acts of misconduct" as contemplated in the agreement, the Board should not have skipped step three of the policy. The ALJ recommended that the

[171 So.3d 746]

Board rescind its termination of the Appellant and enter a final order suspending the Appellant for a period of time without pay. The Board adopted the ALJ's findings of fact and conclusions of law. However, it rejected the ALJ's recommendation and entered a final order terminating the Appellant.

Under section 120.57(1)(*l*), the School Board could reject the ALJ's recommendation, but in doing so, it had to review the complete record and cite with particularity its reasons for doing so. § 120.57(1)(*l*), Fla. Stat. (2014); *Prysi v. Dep't of Health,* 823 So.2d 823, 826 (Fla. 1st DCA 2002) (finding that reversal is required when an agency increases a recommended penalty without stating its reasons with particularity) (citing to *Shah v. Dep't of Health,* 804 So.2d 615 (Fla. 1st DCA 2002)). Here, the Board's reasons for rejecting

the ALJ's recommendation appear to be that the use of profanity was not understandable, the Appellant was unprofessional, and the Appellant's actions hurt the students because they decreased her effectiveness. While these may be sufficiently particular reasons for rejecting the ALJ's recommendation, the progressive disciplinary policy mandated that the Board was required to follow progressive steps in administering discipline unless a severe act of misconduct warranted circumventing the steps. The ALJ found that using profanity in front of students was not a severe act of misconduct. The Board adopted this conclusion of law. As such, the Board's rejection of the ALJ's recommendation was not in compliance with the collective bargaining agreement. We reverse with instructions for the Board to adopt the ALJ's recommended penalty.

REVERSED and REMANDED.

WETHERELL, J., concurs; OSTERHAUS, J., concurs in part with opinion.

OSTERHAUS, J., concurring in part.

I concur with the decision to reverse and remand this matter to the School Board. But I would leave it to the School Board to decide whether to adopt the Administrative Law Judge's recommended penalty, or to clarify the Final Order's conflicting treatment of the ALJ's findings and conclusions.

The basic problem with the Final Order is that it both disputes the findings and conclusions of the ALJ and wholesale adopts them. Which is it? On the one hand, there is evidence supporting the School Board's views on page 6 of the Final Order that the ALJ made an "unfounded determination that Respondent's use of profanity and derogatory language was 'understandable' or 'fairly innocuous and restrained.' " The ALJ's order itself concluded that "there is never a valid reason to curse at students." And the School Board makes the point that "rather than an isolated or occasional incidents, Respondent repeatedly used profanity and other inappropriate language toward and around different students on multiple occasions, even after she had been recently disciplined for it."

By highlighting Ms. Quiller's rhetorical and disciplinary history, the Final Order disputes the Recommended Order's conclusion that "[t]here is no proof that the behavior at issue constitutes 'severe acts of misconduct.' " Though the definition of "more severe acts" in the collective bargaining agreement (CBA) was left undefined, the School Board's human resource officer testified at the hearing that the School Board determines appropriate discipline based on how many times an incident has occurred, who the witnesses are, the severity of the incident, the amount of time that has occurred between incidents, and the employee's willingness to modify his or her behavior. Her testimony continued

[171 So.3d 747]

that "some of the most severe conduct" includes instances when an employee has failed to modify his or her more serious behavior after having been warned. In turn, the School Board's conclusion in this case was that Ms. Quiller's repeated use of profanity and derogatory language, her discipline history, and her failure to modify her conduct warranted skipping step three of the progressive discipline policy. So there wasn't "no proof" that Ms. Quiller's behavior constituted "more severe acts of misconduct" for purposes of the CBA, even if the ALJ thought that her acts weren't particularly severe.

Deference is due to the School Board's decision with respect to its personnel decisions. Courts have little room to define what constitutes "more severe acts of misconduct" as against those responsible for running the county's schools. *See, e.g., Dep't of Prof. Regulation v. Bernal,* 531 So.2d 967, 968 (Fla.1988) (giving great discretion to boards to determine discipline). Courts will not substitute their judgment "if valid reasons for the board's order exist in the record and reference is made thereto." *Id.* at 968. To that end, the School Board's identification of Ms. Quiller's bad language, discipline, and failure to modify her

behavior probably supports the departure it took from the ALJ's recommended penalty.

But on the other hand, after disputing the ALJ's findings and conclusions, the School Board's Final Order proceeded to adopt them wholesale. If this is what the School Board intended—disregarding the particular problems it identified with the ALJ's recommended order—then the majority is right that the recommended penalty should have been adopted.