

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**  
One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 727-2293

STEVEN CUGNO,  
*Appellant*  
v.

Docket No.: D-14-75

STONEHAM PUBLIC SCHOOLS,  
*Respondent*

Appearance for Appellant:

Salvatore Romano, Coordinator  
Massachusetts Laborers' District  
Council  
3 Laborers Way  
Hopkinton, MA 01748

Appearance for Respondent:

Rosann DiPietro, Esq.  
Long & DiPietro, LLP  
175 Derby St. Unit 17  
Hingham, MA 02043

Commissioner:

Cynthia Ittleman<sup>1</sup>

**DECISION**

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, Steven Cugno (hereinafter “Mr. Cugno”) filed an appeal on March 26, 2014 with the Civil Service Commission (“Commission”), regarding the decision of the Stoneham Public Schools (hereinafter “Respondent”), to suspend him without pay for two (2) days from the Robin Hood Elementary School (“School”). Mr. Cugno filed a timely appeal. A pre-hearing conference was held at the offices of the Commission on April 15, 2014 and a full hearing was held at the same location on June 16, 2014. The hearing was digitally recorded. The parties providing closing oral arguments

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<sup>1</sup> The Commission acknowledges the assistance of Law Clerk Julie Muller in the drafting of this decision.

at the hearing in lieu of recommended decisions. For the reasons stated herein, the appeal is denied.

**FINDINGS OF FACT:**

Nineteen (19) exhibits were entered into evidence at the hearing. Based on these exhibits, the testimony of the following witnesses:

*Called by the Appointing Authority*

- Les Olson, Superintendent, Stoneham Public Schools
- Alice Reilly, Principal, Robin Hood School
- Roger Windt, Director of Facilities, Stoneham Public Schools

*Called by the Appellant:*

- Steven Cugno, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence; a preponderance of the credible evidence establishes the following findings of fact:

1. Mr. Cugno is a tenured civil service employee and has been employed by Stoneham Public Schools since 1996 and has held the position of Custodian since 1998. (Stipulated Facts).
2. Mr. Cugno is assigned to the Robin Hood Elementary School (“school”) and holds the position of Head Custodian. (Testimony of Mr. Cugno, Ms. Reilly). Mr. Cugno works 6:30 AM to 3:00 PM and the Junior Custodian arrives at 2:30.<sup>2</sup> (Testimony of Mr. Cugno, Ms. Reilly).
3. Mr. Cugno has four prior letters of warning in his personnel file. In a letter dated September 26, 2001, Maureen Soley, the Principal at the Robin Hood School at the time,

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<sup>2</sup> It was not stated what time the Junior Custodian’s shift ends.

expressed her disappointment that Mr. Cugno did not attend a Crisis Management Plan meeting on the same date. In a letter dated March 6, 2008, Les Olson, Superintendent of Stoneham Public Schools, warned Mr. Cugno about being dishonest with his supervisors about having a part-time job on the weekend.<sup>3</sup> In a letter dated March 22, 2011, Mr. Olson warned Mr. Cugno for a misuse of a sick day and rescinded the half-day sick leave Mr. Cugno received. Lastly, in a letter dated June 13, 2011, Max French, the Administrator of School Facilities at the time, issued a warning because Mr. Cugno was not doing his regular weekend building checks as required. (Exhibits 10-13).

4. Mr. Cugno's office is located adjacent to a hallway that leads to the cafeteria approximately thirty (30) feet away. First and second graders, as well as staff, travel the hallway near Mr. Cugno's office. (Testimony of Mr. Olson and Ms. Reilly; Exhibit 5).
5. Mr. Cugno has two supervisors, Principal Reilly and Director of School Facilities, Roger Windt. Mr. Windt was in regular contact with Mr. Cugno and would assist Mr. Cugno when needed. (Testimony of Mr. Olson, Mr. Windt, and Ms. Reilly).
6. On February 28, 2014, Mr. Cugno brought the school's broken ice spreader into his office, intending to repair it. He repeatedly attempted to repair the spreader, continuously spreading ice melt onto the floor in the process. The ice melt on the floor caused cardboard to become stuck to the floor, eventually requiring the floor to be re-waxed. (Testimony of Mr. Cugno and Mr. Windt; Exhibit 2).
7. On the morning of March 4, 2014, Mr. Olson was walking through the school and noticed the ice melt on the floor of Mr. Cugno's office. Using his cell phone camera, Mr. Olson

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<sup>3</sup> The letter states that although having another job is not explicitly prohibited in the contract, there are times on the weekend where the Head Custodian may have additional responsibilities that would require Mr. Cugno's presence. The letter further states, "[i]f in the future you are unable to work when required and directed by your supervisors, we may need to re-evaluate your continued service as Head Custodian." (Exhibit 11).

took a photograph of the ice melt on the floor around 7:30 AM. (Testimony of Mr. Olson; Exhibit 7).

8. On the morning of March 4, 2014, a school staff person reported to Ms. Reilly that there was ice melt on the floor of Mr. Cugno's office and that it was tracking into the hall. At around 11 AM, Ms. Reilly went to the custodian's office and told Mr. Cugno to clean up the ice melt that was on the floor. At this time, Ms. Reilly had not spoken to Mr. Olson about the ice melt. (Testimony of Ms. Reilly; Testimony of Mr. Cugno).
9. On the morning of March 5, 2014, Mr. Olson returned to the school and checked to see if Mr. Cugno had cleaned up the ice melt. It was evident there was some effort to clean up the ice melt but a significant amount of ice melt remained on the floor. In addition to seeing the ice melt on the floor of Mr. Cugno's office, Mr. Olson also saw a scraper blade on the floor. The blade measured approximately two-and-a-half (2.5) inches and it was located about three (3) feet from the opened door of the office. Mr. Olson remained outside of Mr. Cugno's office for approximately twenty (20) minutes to see if Mr. Cugno would come to clean up his office. Mr. Cugno did return to his office briefly while Mr. Olson was there but he (Mr. Cugno) did not clean up the rest of the ice melt or the scraper blade. Mr. Olson did not say anything to Mr. Cugno about this. After Mr. Cugno left, Mr. Olson took a photograph of the scraper blade on the floor of the office, at which time it was approximately 7:15 AM. After taking the photograph, Mr. Olson picked up the scraper blade and took it with him. (Testimony of Mr. Olson and Ms. Reilly; Exhibits 2, 8).
10. Mr. Cugno does not know where the scraper blade came from. (Testimony of Mr. Cugno).

11. Thereafter, also on March 5, 2014, Mr. Olson asked Mr. Reilly to call Mr. Cugno to her office. Mr. Cugno was paged to Ms. Reilly's office, where he met with Mr. Olson and Ms. Reilly. Mr. Olson told Mr. Cugno that he was being placed on paid administrative leave pending a hearing at a later date and that he was to leave the school and to hand in his school keys. Mr. Cugno was told to report to Mr. Olson's office at the high school that afternoon to pick up a letter that would explain the issues to be addressed at the hearing and a scheduled date for a hearing. (Testimony of Mr. Olson, Ms. Reilly, and Mr. Cugno).
12. After Mr. Olson sent Mr. Cugno home, Ms. Reilly informed Mr. Olson that she had told Mr. Cugno to clean up the ice melt the day prior. She sent Mr. Olson an email message after the meeting memorializing her statement. She noticed that Mr. Cugno had removed some of the ice melt but the rest was still there. (Testimony of Mr. Olson; Exhibit 14).
13. On the afternoon of March 5, 2014, Mr. Cugno picked up the letter that explained he was placed on paid administrative pending a hearing on the following issues: creating a public health hazard in the school, being insubordinate in not following Ms. Reilly's directive, and creating and not reporting or resolving a public safety hazard. The letter was given to Mr. Cugno on March 5, 2014, but was inadvertently dated March 4, 2013 in error. (Testimony of Mr. Cugno, Mr. Olson; Exhibit 1).
14. On March 10, 2014, a local hearing was held and was attended by Mr. Cugno, John Tardif (Union President), Nelson Carneiro<sup>4</sup> (Massachusetts Laborers' District Council representative), Michelle Cresta (Director of Finance) and Mr. Olson. (Exhibit 2).

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<sup>4</sup> Mr. Carneiro also attended the Commission hearing on June 16, 2014 and assisted Mr. Romano but he neither questioned the witnesses nor testified.

15. In a letter dated March 14, 2014, Mr. Olson informed Mr. Cugno he was to be suspended for four (4) days without pay for leaving exposed chemical products in his office where it was accessible to the children, not following the directive of Ms. Reilly to clean up his office, and leaving an exposed scraper blade on the floor of his office in plain view. (Exhibit 2).
16. Mr. Cugno appealed the local decision and a local appeal hearing was held on March 21, 2014. Present at the local appeal hearing were Mr. Cugno, Mr. Romano, Mr. Tardiff, Ms. Cresta, and Mr. Olson. (Exhibit 3).
17. As a result of this local appeal hearing, Mr. Cugno's four (4) day suspension without pay was reduced to a two (2) day suspension without pay. It was agreed that the two (2) day suspension would be served on March 20-21, 2014. (Exhibit 3).
18. The Stoneham Public School Cleaning Procedures manual, under the heading "Chemical and Cleaning Solutions" states, "[a]lways read the label and follow instructions." The manual also states, "[a]lways read the instructions and the material safety data sheets for each product." (Exhibit 4, p.2).
19. Material safety data sheets are available in the custodian office. The sheets give safety information about the products the custodians use. (Testimony of Mr. Windt).
20. Mr. Cugno did not read the warning label of the Blizzard Wizard Ice Melt. (Testimony of Mr. Cugno).
21. In the Stoneham Public School Cleaning Procedures Manual, under the heading "SAFETY RECOMMENDATIONS [sic]," it states, "[n]ever leave a slick spot or any foreign material on the floor that may be hazardous to the occupants of the building." (Exhibit 4, p. 2).

22. The Blizzard Wizard Ice Melt bag states, “NOT FOR HUMAN OR ANIMAL CONSUMPTION. DO NOT EAT. KEEP OUT OF REACH OF CHILDREN.” The bag additionally warns, “[a]void contact with eyes, skin, clothes and vegetation. Product may cause moderate to severe injury to eyes. Exposure to skin may cause skin irritation or burn, particularly if skin is damp or abraded, or exposure is prolonged.” (Exhibits 9, 19)(emphasis in original).
23. Mr. Cugno’s office is located about thirty (30) feet from the cafeteria. (Testimony of Mr. Olson; Exhibits 5-6).
24. Mr. Cugno testified that he was going to clean up the rest of the ice melt and finish the job but he was sidetracked. (Testimony of Mr. Cugno).
25. Mr. Cugno filed an appeal with the Commission on March 26, 2014. (Administrative Notice).

## **DISCUSSION**

### *Applicable Civil Service Law*

G.L. c. 31, § 43, provides:

“If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority’s procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.”

Under Section 43, the Commission is required “to conduct a de novo hearing for the purpose of finding the facts anew.” Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. The role of the Commission is to determine "whether the appointing

authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, 682, 923, *rev. den.*, 426 Mass. 1102 (1997). *See also* City of Leominster v. Stratton, 58 Mass.App.Ct. 726, 728, *rev. den.*, 440 Mass. 1108 (2003); Police Dep't of Boston v. Collins, 48 Mass.App.Ct. 411, *rev. den.*, 726 N.E.2d 417 (2000); McIsaac v. Civil Service Comm'n, 38 Mass.App.Ct. 473, 477 (1995); Town of Watertown v. Arria, 16 Mass.App.Ct. 331, *rev. den.*, 390 Mass. 1102, 453 N.E.2d 1231 (1983).

An action is "justified" if it is "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214, 268 N.E.2d 346 (1971); Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, 682 N.E.2d 923, *rev. den.*, 426 Mass. 1102, (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482, (1928). The Commission determines justification for discipline by inquiring, "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." School Comm. v. Civil Service Comm'n, 43 Mass.App.Ct. 486, 488, *rev. den.*, 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514, (1983).

The Appointing Authority's burden of proof by a preponderance of the evidence is satisfied "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36, (1956).

"The commission's task ... is not to be accomplished on a wholly blank slate. After making its de novo findings of fact ... the commission does not act without regard to the previous decision



of the [appointing authority] but rather decides whether there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision ....” Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006). See Watertown v. Arria, 16 Mass.App.Ct. 331, 334, *rev. den.*, 390 Mass. 1102, (1983) and cases cited.

### *Analysis*

By a preponderance of the evidence, Stoneham Public Schools has shown just cause to suspend Mr. Cugno for two (2) days without pay for creating a public health hazard by leaving ice melt on the floor of his office, leaving a scraper blade on the floor in plain view, and for ignoring Ms. Reilly’s directive to clean up the ice melt. Mr. Cugno is the Head custodian in an elementary school that educates children in kindergarten through fifth grade. His office is located in an area where many young children and staff members travel daily and the door is consistently left open all day.<sup>5</sup> By not only leaving ice melt on the floor of his office for five days but also leaving a two-and-a-half inch (2.5) scraper blade three (3) feet from an opened door, Mr. Cugno created an unsafe environment for the young students. Mr. Cugno admits that he had not read the label for Blizzard Wizard Ice Melt despite the requirement that custodians read all labels on products used. Mr. Cugno also admitted that he planned on cleaning up the rest of the ice melt on his office floor but that he was sidetracked. The Appellant argued that the cleaning manual requirement to read labels applies only to cleaning materials. Even if that were accurate, basic common sense requires that anyone using the ice melt read the large, clear warning on the package and take whatever precautions are needed. Leaving ice melt on the floor was also in violation of the clearly applicable cleaning procedure, which specifically states, “ ... never leave a slick spot or any foreign material on the floor that may be hazardous to the

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<sup>5</sup> There is no written rule requiring Mr. Cugno’s office door to be closed.

occupants of the building[]”. After the local appeal hearing, Mr. Olson attached the Stoneham Public Schools Cleaning Procedures manual to the letter informing Mr. Cugno of the appeal hearing decision.

Not only was ice melt on the floor, there was also a two-and-a-half inch scraper blade three (3) feet from the doorway in plain view of students, staff, and anyone who walked by.<sup>6</sup> Mr. Cugno claims that he did not see the scraper blade on the floor. However, this seems unlikely as the scraper blade was two-and-a-half inches (2.5) long and it was in plain view, just a couple of feet from the doorway of his office. Mr. Olson saw Mr. Cugno go in and out of his office without picking up the scraper blade. Mr. Cugno created and failed to rectify a safety hazard in the school.

Mr. Cugno was also directed to clean up the ice melt by Principal Reilly on March 4, 2014, but he admitted he did not comply with her request as the ice melt remained on the floor the next day. Both Mr. Olson and Ms. Reilly observed on March 5, 2014 that some of the ice melt had been cleaned up but some still remained on Mr. Cugno’s office floor that day. Additionally, Mr. Cugno argued disparate treatment but did not offer any examples of such.

Given all the cited reasons as well as the four prior letters of warning in his personnel file, Stoneham Public Schools had just cause to suspend Mr. Cugno for two (2) days without pay.

### Conclusion

Based on the facts and the law and rules herein, the Appellant’s appeal under Docket No.

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<sup>6</sup> The scraper blade on the floor was particularly disconcerting since the school had recently found one or two knives in the school, which had been brought to the attention of police. That said, this does not mitigate Mr. Cugno’s responsibility for leaving the scraper blade on his office floor, near young children going to, or from the cafeteria nearby.

D-14-75 is hereby *denied*.

Civil Service Commission

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Cynthia A. Ittleman, Esq., Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman and Stein [McDowell – absent], Commissioners) on July 10, 2014.

A true record. Attest:

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Commissioner

Either party may file a motion for reconsideration within ten (10) days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty (30) day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice:

Salvatore Romano (for Appellant)

Rosann DiPietro, Esq. (for Respondent)