

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

ROBERT COAKLEY,
Appellant

Docket No.: D-13-228

v.

WORCESTER PUBLIC SCHOOLS,
Respondent

Appearance for Appellant:

Salvatore Romano
Mass. Laborers' District Council
7 Laborers' Way
Hopkinton, MA 01748

Appearance for Respondent:

Sean P. Sweeney, Esq.
311 Village Green North: Suite A4
Plymouth, MA 02360

Commissioner:

Cynthia A. Ittleman¹

DECISION

Pursuant to G.L. c. 31, § 43, the Appellant, Robert Coakley (Mr. Coakley), filed a timely appeal with the Civil Service Commission (Commission) on October 22, 2013, contesting the decision of the Worcester Public Schools (District) to demote him from the position of Senior Custodian to Junior Custodian and suspend him from his position for ten (10) days. A pre-hearing conference was held at the offices of the Commission on November 12, 2013. A full hearing was held at the Durkin Administration Building, 20 Irving Street, Worcester, MA on January 15, 2014.² Neither party requested a public hearing, so the hearing was deemed private.

¹ The Commission acknowledges the assistance of Law Clerk David Roberson in the drafting of this decision.

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00 (formal rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence if there is a conflict between them. There is no such conflict here.

The witnesses were sequestered, except the Appellant. The hearing was digitally recorded and the parties were given copies of the digital recording of the hearing³. The parties submitted post-hearing briefs on (awaiting briefs). For the reasons stated below, the appeal is denied.

FINDING OF FACTS

Based on Exhibits 1 through 13, as well as the stipulations of the parties, the testimony of:

Called by the District:

- Mark Brophy, Director, Instructional Support Personnel, Worcester Public Schools;
- Cynthia Grasseschi-Roach, Site Administrator and Teacher, Claremont Academy, Worcester Public Schools;
- Frances LaMar Brzezicki, Teacher, Claremont Academy, Worcester Public Schools; and
- Ricci Hall, Principal of Claremont Academy, Worcester Public Schools;

Called by Mr. Coakley:

- Robert Coakley, Appellant, Junior Custodian, Worcester Public Schools;

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

1. Mr. Coakley has been employed by the District since 1985. He has served as a Senior Custodian since 1987. At all pertinent times, Mr. Coakley was the Senior Custodian at the Claremont Academy. (Stipulated Facts)
2. Among the duties of a Senior Custodian are participating in all activities necessary in maintaining a clean and safe public school building and grounds; and assisting the principal

³ If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

in maintaining a clean, safe building through enforcement of building rules and regulations.
(Exhibit 12)

3. Mrs. Cindy Roach is a Special Education and Inclusion teacher at Claremont Academy and was the Site Administrator during the event in question. A Site Administrator serves as the lead administrator when the principal is not present in the building, usually during after school activities. (Testimony of Mrs. Roach and Principal Hall)
4. Ms. Louise Brzezicki is a middle school teacher at Claremont Academy teaching American Sign Language as a foreign language. (Testimony of Mr. Brzezicki)
5. Principal Ricci Hall is the principal of the secondary school of Claremont Academy.
(Testimony of Principal Hall)
6. On September 13, 2013, Mr. Coakley was working an overtime shift after school as a Senior Custodian at the Claremont Academy during a volleyball game. (Testimony of Mr. Coakley, Mrs. Roach, Ms. Brzezicki, and Principal Hall)
7. During the volleyball game, ice cream was brought into the gym and subsequently spilled by a spectator in the vicinity of the fourth and fifth row of the bleachers. (Exhibit 2, 3, Testimony of Mrs. Roach and Ms. Brzezicki) Mrs. Roach was alerted to the incident when two (2) girls ran out of the gym with ice cream on them. Mrs. Roach entered the gym and saw ice cream on the floor and the bleachers. (Exhibit 2, 3, Testimony of Mrs. Roach)
8. Mrs. Roach saw the spilled ice cream in the gym and motioned to Mr. Coakley to come over and clean the spill. Mr. Coakley shook his head “no”, refusing the request. (Testimony of Mrs. Roach) The Appellant did not clean up the spill. (Testimony of Mrs. Roach and Ms. Brzezicki)

9. Mrs. Roach left the gym through a door nearest to her and reentered the gym through a door nearest to Mr. Coakley. Mrs. Roach asked Mr. Coakley to clean the spill and Mr. Coakley refused to clean the spill, stating that there were too many people around the area to clean the spill at that moment. (Testimony of Mrs. Roach and Mr. Coakley) Mrs. Roach offered to assist Mr. Coakley by removing people from the area where the spill occurred. (Testimony of Mrs. Roach) Mr. Coakley didn't investigate the spill before making his determination. (Testimony of Mr. Coakley)
10. The spectator who spilled the ice cream cleaned the ice cream spill with a shirt that the spectator had with his or her other personal items. One or more other spectators apparently tried to help clean the spill. Ms. Brzezicki asked the girl holding the dripping, soiled shirt if she wanted to throw shirt away. The girl stated instead that she wanted to rinse out the shirt and Ms. Brzezicki directed her to a bathroom. (Testimony of Ms. Brzezicki)
11. The bathroom to which Ms. Brzezicki directed the girl holding the dripping, soiled shirt is located on the side of the gym where Mr. Coakley was standing during his subsequent conversation with Mrs. Roach. (Exhibit 10, Testimony of Ms. Brzezicki) The student with the dripping shirt walked past the area where Mr. Coakley had been standing in order to rinse the shirt at the bathroom nearby. (Testimony of Ms. Brzezicki)
12. Mr. Coakley left the gym and crossed paths with Mrs. Roach in the hall; Mrs. Roach asked Mr. Coakley to clean the spill. Mr. Coakley ignored Mrs. Roach and walked away from her. (Testimony of Mrs. Roach)
13. Principal Hall was not in the building during the volleyball game on September 13, 2013. (Testimony of Principal Hall)

14. On September 20, 2013, Principal Hall was alerted to the events of September 13, 2013 via an email from Ms. Brzezicki explaining the spilled ice cream incident and her observation of Mr. Coakley. (Exhibit 2; Testimony of Principal Hall and Mr. Brzezicki)
15. Based on the email, Principal Hall asked Mrs. Roach to meet with him to discuss the events that occurred on September 13, 2013. Principal Hall also met with Mr. Coakley. During the meeting with Mr. Coakley, Mr. Coakley stated that he did not clean up the spill because there was a man with a cane in the stands and he feared that cleaning the bleachers at that time would be unsafe for him. (Exhibit 1; Testimony of Principal Hall and Mr. Coakley)
16. The man with the cane was seated in the first row of the bleachers next to Ms. Brzezicki, to the far right of the spill and several rows below it. (Exhibit 10; Testimony of Mrs. Roach and Ms. Brzezicki)
17. On September 21, 2013, Principal Hall emailed Mr. Brophy about the events on September 13 and Mr. Brophy determined that he would conduct a hearing in regard to the incident. (Exhibit 1, Testimony of Principal Hall and Mr. Brophy) Mr. Brophy asked Principal Hall to ask the Site Administrator (Mrs. Roach) to write a statement regarding what had occurred during the incident. Mr. Brophy informed Mr. Coakley that he would be conducting a disciplinary hearing on October 1, 2013 in this regard. (Exhibit 4, Testimony of Mr. Brophy)
18. During the October 1, 2013 local hearing, Mr. Brophy was accompanied by two union representatives about the events stated in Ms. Brzezicki's email to Principal Hall. Mr. Coakley told Mr. Brophy at the hearing that he thought it would be safer to wait to clean the spill because there were people in the surrounding area. Mr. Brophy also asked Mr. Coakley if he secured the area by cordoning it off or by placing hazard signs near the spill. Mr. Coakley responded that he was only asked to clean up the spill. (Testimony of Mr. Brophy)

19. Principal Hall also testified at the local hearing regarding the conversation he had with Mr. Coakley after the event. Mr. Coakley told Principal Hall that Mrs. Roach had only asked him to clean the spill once and that the man with the cane made cleaning the spill at that time more of a hazard. (Testimony of Mr. Brophy)
20. Mr. Brophy went to the Claremont Academy after the local hearing to see the layout of the gym and to find out where the events of the September 13 occurred. (Testimony of Mr. Brophy, Principal Hall, and Mrs. Roach) After examining the gym, Mr. Brophy met with Principal Hall and Mrs. Roach in order to get a sense of how the events on September 13 unfolded. Mrs. Roach explained where the events occurred. With the assistance of Principal Hall and Mrs. Roach, Mr. Brophy was able to note on a drawing where certain items were placed and events occurred. (Exhibit 10⁴, Testimony of Mr. Brophy, Principal Hall, and Mrs. Roach)
21. After the local hearing, Mr. Brophy reviewed the evidence, the job description of a Senior Custodian, and Mr. Coakley's personnel records to determine what course of action to take. (Exhibit 13, Testimony of Mr. Brophy) Mr. Brophy found the following disciplinary records in Mr. Coakley's file:
- letter of correction, dated July 23, 2013, for failing to follow a supervisor's request to provide schedules for junior custodians;
 - letter of reprimand⁵, dated June 6, 2013, for violating the Use of Tobacco Products on School Grounds policy by smoking on the school grounds;
 - fifteen (15) day suspension without pay, dated December 11, 2012⁶ for conduct unbecoming of a Senior Custodian and proper leadership for failing to provide

⁴While it was unclear who drew what aspects of Exhibit 10, the drawing was only used as a general guide. Witnesses described the gym and events therein in detail.

⁵ This appears to be similar to a written warning.

schedules for junior custodians and failing to follow the request of a supervisor;
and

- unsatisfactory 2012 Performance Evaluation as a senior custodian, dated April 18, 2013, evaluating Mr. Coakley's work performance during the 2012 employment year.

(Exhibit 13, Testimony of Mr. Brophy)

22. Mr. Coakley was made aware that further disciplinary actions and failure to correct his performance could lead to harsher disciplinary actions in the letter of correction he received, dated July 23, 2013. (Exhibit 8)

23. Mr. Brophy's review of Mr. Coakley's disciplinary records led him to the following determination, which he submitted to School Superintendent Melinda J. Boone:

- As Site Administrator, Mrs. Roach stood in the position of administrator-in-charge when the principal is not in the building, and
- Mr. Coakley did not act on the request to perform a basis task of a custodian and such action constitutes insubordination.

(Exhibit 13; Testimony of Mr. Brophy)

24. Mr. Brophy recommended that, based on the above facts, Mr. Coakley's actions constituted insubordination which, when coupled with the events in his personnel record, warranted a ten (10) day suspension and demotion to Junior Custodian. (Exhibit 13; Testimony of Mr. Brophy)

25. On October 15, 2013, Superintendent Boone accepted the findings of Mr. Brophy as her own and applied the aforementioned disciplinary action. (Exhibit 11)

26. On October 33, 2013, Mr. Coakley filed an appeal of the October 15, 2013 discipline.

⁶ The fifteen (15) day suspension was recently upheld by the Commission.

Legal Standard

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.”

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).

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. of Boston*, 359 Mass. 211, 214 (1971); *Cambridge v. Civil Service Comm’n*, 43 Mass. App. Ct. 300, 304, *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). For the Commission to uphold an appointing authority’s decision, it must find, based on the facts, that “there was reasonable justification for the actions taken by the appointing

authority in the circumstances found by the Commission to have existed when the appointing authority made its decision.” Watertown v. Arria, 16 Mass.App. Ct. 331, 334 (1984); *See* Commissioners of Civil Service v. Municipal Court of Boston, 369 Mass. 84, 86 (1975); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003); *See* McCarthy v. Brookline School Department, 21 MCSR 13, 16 (2008). 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).

Analysis

Mr. Coakley has been employed by the District as a junior or senior building custodian for over twenty-five (25) years. As such, he understands the fundamental duties and responsibilities of a school’s senior custodian: maintaining a clean and safe school and assisting the principal in this regard. A preponderance of the evidence establishes that Mr. Coakley failed to do so. I base this conclusion largely on the credible manner in which Mrs. Roach and Ms. Brzezicki testified, as supported by the testimony of Mr. Hall and Mr. Brophy. Both Mrs. Roach and Ms. Brzezicki were good witnesses, evincing no bias against Mr. Coakley. They attested to what they observed on September 13 and related events, admitting what they did not personally observe. They were genuinely concerned with having a potentially hazardous spill in a crowded gym cleaned up promptly. Mrs. Roach asked Mr. Coakley on several occasions to clean up the spilled ice cream. On the first occasion, he shook his head no and refused to inquire what Mrs. Roach wanted. In response to another request, he asked her what she wanted him to do about the spill. On yet another occasion, Mr. Coakley ignored Mrs. Roach and walked away.

I found Mr. Coakley's recollection of the events not credible in view of all the other evidence. He stated that he and Mrs. Roach arrived at an "agreement" to wait until later to clean the spill. He also testified that he doesn't recall being asked by Mrs. Roach, when she signaled to him, nor does he recall passing her in the hall when she asked him yet again to clean up the spill, despite other witnesses' testimony to the contrary. He claimed he never left the gym but does not remember seeing anyone attempting to clean the spill or a girl carrying a soiled shirt, dripping ice cream, even though the girl walked past the area where he was standing so that she could rinse the shirt in the bathroom nearby. His perception of the day differs dramatically from the other witnesses. For example, Ms. Brzezicki recalled very clearly that she was seated right beside the man with the cane in the first row of the bleachers. Mr. Coakley testified that the man with the cane sat in the four or fifth row of the bleachers. Further, he testified that he did not see Ms. Brzezicki sitting in the bleachers at all.

Mr. Brophy conducted an investigation of the events.⁷ He gathered statements from school personnel in attendance and allowed Mr. Coakley to explain why he didn't clean the spill when he was asked to do so repeatedly. While Mr. Coakley repeatedly stated that he felt it was unsafe to clean the floor while the man with the cane was in the bleachers, neither did he make attempt to cordon off the area of the spill by placing hazard signs around it, or by removing people from the potential hazard. In fact, Mrs. Roach offered to help move the people and he still refused to clean the spill when asked.

Instead of cleaning the spill when asked, Mr. Coakley chose to continue to watch the volleyball game and not perform the normal duties of his job. Such conduct is a clear case of insubordination and the appointing authority has just cause to conclude his actions were grounds

⁷ Mr. Brophy conducted some of the investigation before the local hearing and some of it afterward. An investigation should be conducted prior to the local hearing so the appellant has an opportunity to respond to it. That said, the Commission conducts a hearing de novo.

for suspension. In so doing, Mr. Coakley is guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.

Couple this situation with his recent performance evaluation, his letter of reprimand received in June of 2013, and a recently served fifteen (15) day suspension,⁸ it is clear that a mere suspension and other disciplinary actions have not worked to improve Mr. Coakley's work performance. Mr. Coakley's recent actions make demotion a reasonable action for the appointing authority to take. Furthermore, Mr. Coakley was specifically warned in advance, as a part of a letter of correction previously sent to him, that further insubordination could lead to harsher discipline up to termination. Notwithstanding the warning, Mr. Coakley repeatedly refused, when asked, to clean a spill, or take any other timely and appropriate action on September 13. There is no evidence of disparate treatment of Mr. Coakley by the Respondent in the issuance of the discipline here. Therefore, I find no reason for the Commission to modify the discipline issued pursuant to G.L. c. 31, § 43. See Falmouth v. Civil Service Commission, 447 Mass. 814 (2006).

Conclusion

For all of the above reasons, the Respondent had just cause to discipline Mr. Coakley and the discipline issued by the Respondent is not subject to modification. Therefore, Mr. Coakley's appeal under Docket No. D-13-228 is hereby ***denied***.

Civil Service Commission

Cynthia A. Ittleman
Commissioner

⁸ The Appellant argued that the fifteen day suspension should not be allowed to be a determining factor for the case in chief here because the Commission had not ruled on the suspension. The Commission has since upheld the prior suspension and dismissed the appeal.

By vote of the Civil Service Commission by a 4-0 vote (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on March 6, 2014.

A True Record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten 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-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)

Sean Sweeney, Esq. (for Respondent)