COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

JOHN MIROTTA,
Appellant

v.

D1-10-115

MILTON PUBLIC SCHOOLS,
Respondent

Appellant's Representative:

Pro Se
John Mirotta

Respondent's Representative:

Joseph A. Emerson, Jr., Esq.
Emerson & Emerson
33 Whitney Avenue
Westwood, MA 02090

Commissioner:

Christopher C. Bowman

DECISION

Pursuant to G.L. c. 31, §§ 42 and 43, the Appellant, John Mirotta, (hereinafter "Mirotta" or "Appellant"), filed an appeal with the Civil Service Commission, (hereinafter "Commission") on May 28, 2010, claiming that the Milton Public Schools, (hereinafter "Respondent", "Appointing Authority" or "School Department") did not have just cause to terminate him for insubordination (Section 43 appeal) and failed to provide him with a proper hearing regarding his termination (Section 42 appeal).

The Appellant's appeal was timely filed. The first day of hearing was held on September 17, 2010 at the offices of the Commission. Two additional days of hearing

were held on October 22, 1010 and October 29, 2010 at Milton High School. The hearing was declared private. All witnesses were sequestered. The hearings were digitally recorded and both parties submitted post-hearing briefs.

FINDINGS OF FACT:

Thirty-nine (39) exhibits were entered into evidence. Based upon the documents and the testimony of:

Called by the Appointing Authority:

- Mary Gormley, Superintendent, Milton Public Schools;
- James Jette, Principal; Pierce Middle School;
- Matthew Gillis, School Business Administrator;

Called by the Appellant:

- John Mirrotta, Appellant;
- Thomas Yahoub, former School Custodian, Milton Public Schools;
- L. Scott Williams, Senior Custodian, Milton Public Schools;
- Stephen Scherer, Senior Custodian, Milton Public Schools;
- Jason Scherer, Senior Custodian, Milton Public Schools;
- Nelson Taylor, Junior Custodian, Milton Public Schools;
- John Rowley, Junior Custodian, Milton Public Schools;
- Peter Shibley, Junior Custodian, Milton Public Schools;
- Richard Walker, Junior Custodian, Milton Public Schools;
- John Mirotta, Jr., Son of Appellant;
- Michelle Mirotta, Wife of Appellant

I make the following findings of fact:

1. The Appellant is a fifty-three (53) year old male who lives in Wareham, MA. He is married and has a teenage son. He graduated from Milton High School. (Testimony of Appellant)
2. The Appellant held the position of permanent junior building custodian and served in this position since 1999. (Stipulated Facts)
3. At all times relevant to this appeal, the Appellant was assigned to the Pierce Middle School at 391 Brook Road in Milton. The school houses 6th, 7th and 8th graders. He was generally responsible for cleaning ten (10) bathrooms in the 6th grade wing along with four (4) other bathrooms, two (2) corridors, some offices and the nurse's lobby. His normal work hours were from 2:30 P.M. to 10:30 P.M. (Testimony of Appellant)
4. The Appellant's direct supervisor was Scott Williams, the senior building custodian. Williams reported to William Ritchie, Director of Facilities. (Testimony of Appellant)
5. The Appellant served as local union president for one (1) year from May 2006 to May 2007. (Testimony of Appellant)
6. Sometime in 2001, the Appellant and the School Department entered into a settlement agreement in which the Appellant agreed to withdraw various grievances and appeals filed with the Civil Service Commission and the Massachusetts Commission Against Discrimination (MCAD) in exchange for the School Department removing all disciplinary letters from his personnel file, granting him a requested shift along with five (5) retroactive sick days and one (1) personal day. (Exhibit 6)

7. On November 19, 2003, the Appellant was suspended for three (3) days for an angry confrontation he had with his then-supervisor Jason Scherer. [1] According to the suspension letter, the Appellant was yelling and cursing and kicked and spilled several trash barrels. (Exhibit 7)
8. On December 29, 2005, the Appellant was suspended for three (3) days for again making verbal threats against Jason Scherer. (Exhibit 10)
9. On March 2, 2007, the Appellant was suspended for three (3) days for failure to abide by time and overtime policies, insubordination, inappropriate behavior, misappropriation of school resources; and failure to obey safety protocol. (Exhibit 11)
10. Mary Gormley is the Superintendent of the Milton Public Schools and has held that position for the past three (3) years. She has served as a teacher, building principal and Assistant Superintendent of Schools for the Milton Public Schools. (Testimony of Gormley)
11. Gormley was a good witness. She provided an honest, candid recollection of various events that involved the Appellant. While visibly frustrated by the time and energy expended in regard to the Appellant, I did not detect any personal animus or bias toward the Appellant that would influence her testimony. Throughout the three days of hearing, she and the Appellant appeared to have a cordial, if not friendly relationship at one point talking about how they attended the Milton Public Schools together. (Testimony, demeanor of Gormley)
12. As the Superintendent of Schools, Gormley is the Appointing Authority. (Testimony of Gormley)

[1] Jason Scherer, a senior building custodian, serves as the local union president. His brother, Stephen Scherer, is also a senior building custodian. Both of them have served as the Appellant's supervisor at some point.

13. James Jette is the principal of the Pierce Middle School. (Testimony of Jette)
14. On September 18, 2009, the Appellant was tested for drugs and alcohol in accordance with the provisions of the collective bargaining agreement between the Union and the School Committee of the Milton Public Schools. He was tested after saying in front of an Administrative Assistant and Jette that the school administration is wasting its time disciplining him for coming to work late when he was coming to work "lit up brighter than a Christmas Tree" and "higher than a kite". (Testimony of Jette)
15. While the Appellant offered a different, somewhat nuanced version of what he said in front of Jette and the Administrative Assistant, I credit the testimony of Jette. Jette was a good witness and was careful to only testify regarding matters for which he had a firm recollection. Like Gormley, he had no personal animus or bias toward the Appellant and he never overreached in describing the Appellant's behavior during various incidents. (Testimony, demeanor of Jette)
16. The results of the September 18, 2009 drug test showed that the Appellant tested positive for marijuana. (Exhibit No. 35)
17. The Appellant does not dispute the results of the above-referenced drug test and acknowledges that he smokes marijuana. (Testimony of Appellant)
18. The Appellant was informed of the results of the test and informed of the treatment services available to him under the Employee Assistance Program (EAP) and in accordance with his collective bargaining agreement. (Testimony of Gormley and Gillis)

19. According to the Appellant's collective bargaining agreement, he could be subject to random drug tests at the request of the employer as a result of his previous positive test. (Testimony of Jette)
20. Pursuant to this policy, the Appellant was directed to submit additional samples for drug testing on November 20, 2009 and November 24, 2009. He refused on both occasions. (Testimony of Gormley)
21. On December 11, 2009, the Appellant was suspended for five (5) days for insubordination related to his refusal to submit to testing in November 2009. (Exhibit 38)
22. On December 22, 2009, the Appellant returned to work after serving his five (5) day suspension and was directed to submit another sample for drug testing. The Appellant was uncooperative and argumentative. (Testimony of Gillis)
23. The sample submitted by the Appellant on December 22, 2009 tested positive for marijuana. (Exhibit No. 36)
24. The Appointing Authority had difficulty obtaining the results of the December 22, 2009 test because of the Appellant's failure to contact the testing facility and provide the necessary authorizations in a timely manner. (Testimony of Gillis)
25. On January 19, 2010, the Respondent notified the Appellant of its intention to suspend him for twenty (20) days and scheduled a meeting prior to imposing the discipline in accordance with Massachusetts General Laws Chapter 71, §42D. (Exhibit No. 17)
26. The January 19, 2010 letter to the Appellant stated that the contemplated suspension related to: 1) testing positive for marijuana a second time; 2) repeated

insubordination by failing to comply with requests from the drug testing company; 3) failure to substantiate claims that the Appellant did respond to inquiries from the drug testing company; and 4) the Appellant's failure to produce documentation that he was attending counseling. (Exhibit 17)

27. The Appointing Authority met with the Appellant and his union representatives on January 25, 2010 and Appellant provided information that convinced the Appointing Authority to pursue a ten (10) day suspension rather than a more severe sanction. Pursuant to Massachusetts General Laws Chapter 31 §41 a hearing to consider possible discipline against the Appellant was scheduled for February 1, 2010. (Exhibit 19)
28. At the February 1, 2010 Appointing Authority hearing, the Appellant presented additional information and documentation regarding his attempts to attend counseling. Based on this additional disclosure, the Appointing Authority reduced the Appellant's suspension to five (5) days. (Testimony of Gormley, Exhibit 18)
29. The February 2, 2010 suspension letter to the Appellant stated in part that, "you will return to work on February 10, 2010 and please be advised that you will be tested upon your return to work." (Exhibit 18)
30. On February 10, 2010, the Appellant returned to work, arriving early for his shift and was directed to submit a sample for testing. (Testimony of Jette)
31. When instructed to provide a sample, the Appellant refused to submit a sample arguing that he was not "on the clock" and he could not be compelled to submit a sample; and that he was "fucking sick of this." (Testimony of Jette)

32. The Appellant's union representative arrived at the school and informed the Appellant that the contract required him to submit to the test. (Testimony of Jette)
33. The Appellant continued to be uncooperative and began pacing up and down the hallway. (Testimony of Jette)
34. As a result of the Appellant's uncooperative behavior, Gormley was required to come to the school and handle the matter personally. The Appellant continued to pace back and forth and went into the stairwell at one point, requiring Jette to tell him to come back. (Testimony of Jette)
35. He waited almost three (3) hours after his regular shift was scheduled to begin before providing a sample. (Testimony of Jette)
36. Per the testing guidelines, the Appellant needed to be observed providing the urine sample. Thus, Jette went into the restroom with the Appellant. When the Appellant starting to provide a sample, he told Jette, "I'm not doing this" and urinated on the floor, missing the specimen cup. (Testimony of Jette)
37. The Appellant eventually provided a sample that did not have sufficient volume. When informed that he would need to provide additional urine to meet testing guidelines, the Appellant initially refused. Sometime between 4:30 and 4:45 P.M, the Appellant finally provided a sample size of sufficient volume. (Testimony of Jette) The results of that test showed that the Appellant tested positive for marijuana. (Exhibit 37)
38. At the end of February, the Appellant requested vacation time. His request was approved and he was to begin his vacation on March 9, 2010. (Testimony of Gormley and Appellant)

39. The Appellant was late to work on March 8, 2010, the day before his scheduled vacation. He did not show up for work until 5:00 P.M., more than 2 ½ hours after his scheduled start time. (Testimony of Jette)

40. The Appellant returned to work on March 23rd – late. Jette sought out the Appellant to ask him why he was 2 ½ hours late on March 8th. When Jette approached the Appellant, the Appellant said to him, "don't tell me you're here to test me; I'll piss all over the floor." (Testimony of Jette)

41. When asked why he was late for work on March 8th, the Appellant initially told Jette that his car had broken down, but then got repaired by a AAA technician whom he purportedly called using a police officer's phone. The Appellant then acknowledged that none of this was true and that the reason for arriving late was to avoid another drug test. (Testimony of Jette)

42. On March 30, 2010, the Appellant was required to meet with Jette and Gillis, the School's Business Manager, regarding his tardiness on March 8th and the conflicting reasons he had provided. Gillis testified that he had intended on providing the Appellant with a written warning for his tardiness at that meeting. (Testimony of Gillis)

43. As part of that meeting, the Appellant slid a piece of paper across the table which stated that he had injured his back while on duty the day before (March 29th); and that he was leaving work to seek medical treatment. (Testimony of Gillis)

44. On April 9, 2010, the Appointing Authority's insurance carrier denied the Appellant's claim for workers compensation benefits. (Exhibit 14)

45. Gormley testified that after learning of the Appellant's tardiness the day before and after his vacation, she decided to get personally involved in handling this personnel matter because of the time and resources it was consuming. (Testimony of Gormley)
46. On April 19, 2010, Gormley penned a letter to the Appellant telling him that: 1) his request for workers compensation had been denied; 2) all of his sick time had been exhausted; 3) FMLA leave began on March 31, 2010; and 4) he must return medical documents related to the FMLA request to the Respondent by April 28, 2010. (Exhibit 14)
47. The April 19, 2010 also states, "This letter is to serve as a written directive for you to appear at a meeting with me on either April 22, 23 or 26th at 2:00 P.M. in the central administration office. John Phelan and Matthew Gillis will also be present. You are also directed to call and speak directly to me to confirm which of these dates is accepted by you." (Exhibit 14)
48. The April 19th letter to the Appellant concludes by stating, "Your failure to confirm your attendance, then appear at a meeting, or follow other directives communicated to you by me, Principal James Jette, Assistant Superintendent John Phelan and Business Administrator Matthew Gillis will no longer be tolerated and will result in disciplinary action, up to and including termination." (Exhibit 14)
49. Gormley said one purpose of the meeting was to discuss the Appellant's ongoing insubordination. (Testimony of Gormley)
50. The Appellant, apparently by agreement, personally picked up the letter dated April 19th from Gormley's office. Although Gormley testified that the Appellant picked it

up on April 20th, the Appellant appears to have signed a document acknowledging receipt of the letter on April 21st. (Exhibit 15)

51. On April 20, 2010, the Appellant forwarded a hand-written letter to Gormley asking, in part, for emergency vacation time in lieu of sick time and a request to enter into the School Department's sick bank. (Exhibit 16)
52. Gormley responded to the letter on April 21st by granting the Appellant's request for emergency vacation time on April 27th, April 28th, April 29th, April 30th, May 3rd and May 4th. Gormley's letter to the Appellant stated that the request to enter the School Department's sick bank would only be considered after he returned the required FMLA forms previously requested. (Exhibit 16)
53. Gormley testified that she granted the Appellant the emergency vacation time to ensure that he could continue to be paid. (Testimony of Gormley)
54. Apparently on the day he picked up the Gormley letter dated April 19th, the Appellant informed someone in the Superintendent's office that his attorney, Richard Fitzpatrick, was to be contacted about any meeting and that the April 22nd date was unacceptable. (Testimony of Gormley and Exhibit 5)
55. Gormley called Attorney Fitzpatrick who told her he was unaware of any meeting. (Testimony of Gormley)
56. Gormley then had the School Department's attorney call Attorney Fitzpatrick. Based on that conversation, Gormley was informed that Fitzpatrick was not representing the Appellant regarding any discipline-related matters. (Testimony of Gormley)

57. Gormley testified before the Commission that the Appellant never contacted her to confirm his attendance and he never appeared to meet with her on April 23rd or April 26th. (Testimony of Gormley and Exhibit 5)

58. The Appellant testified that he did contact Gormley on April 23rd and spoke directly to her. According to the Appellant, he told Gormley that he was not going to meet with her that day (the 23rd) but did not offer any reason. In response, Gormley stated, "then I'll be seeing you on the 26th." According to the Appellant, he then told Gormley that he would have his attorney meet with her on April 26th at 2:00 P.M. because her letter referenced, at least in part, the denial of his workers compensation claim. Again according to the Appellant, Gormley became quite upset at this and ordered him to appear personally on April 26th at 2:00 P.M. and told him that he would be drug tested at that time. (Testimony of Appellant)

59. Although Gormley did not reference the above-referenced conversation in her testimony, the School Department appears to acknowledge that it did occur, referencing it in their post-hearing brief to the Commission.

60. The Appellant stated that he then called and left a voice mail message for Gillis, the School's Business Administrator, telling him that he just spoke with Gormley and, if Gillis so desired, his attorney would appear on April 26th at 2:00 P.M. to address the workers compensation denial only. According to the Appellant, he did not receive a return phone call from Gillis. (Testimony of Appellant)

61. I find that the Appellant, by refusing to meet with the Superintendent, willfully disobeyed his employer's lawful order.

62. By letter dated April 27, 2010, Gormley informed the Appellant that a dismissal hearing was scheduled for May 3, 2010 pursuant to Massachusetts General Laws Chapter 31, §41. The reason for this action was his insubordination for not complying with her directive dated April 19, 2010 and not appearing on April 26, 2010 as directed. (Exhibit 1)

63. At the Appellant's request, the May 3rd hearing was rescheduled for May 11th. That hearing needed to be rescheduled to May 14th, but the Appellant's union representative was unavailable that day. Thus, a final date was scheduled for May 17th. (Testimony of Gormley and Appellant and Exhibits 2, 3 and 4)

64. By letter dated May 12, 2010, the Appellant was informed that the hearing was scheduled for May 17, 2010 and Appellant was directed to communicate directly with Gormley regarding this hearing. Appellant was also informed that the hearing would proceed whether he was present or not. (Exhibit 4)

65. The Appellant received all of the correspondence regarding the scheduling and rescheduling of his dismissal hearing. (Testimony of Appellant)

66. The local Appointing Authority hearing commenced on May 17, 2010 and the Appellant failed to appear. At the beginning of the hearing, the Appellant called the cell phone of Jason Scherer, the Union Chapter Chair, and left a message that his back was "screaming," that he would not be coming to the hearing and "they are going to do whatever they want anyway." (Testimony of Gormley, Gillis, Scherer and Appellant)

67. The Appellant's 13-year old son testified that he didn't go to school on May 17, 2010 because the Appellant was unable to drive him due to severe back pain.

68. The Appellant's wife also testified that the Appellant was suffering from severe back pain on May 17th and that he was taking Flexiral to treat the pain.

69. I do not credit the Appellant's testimony that he was unable to attend the disciplinary hearing. It rings hollow to me. A more plausible explanation is that the Appellant, believing his termination was imminent, simply chose not to attend.

70. By letter dated May 20, 2010, Appellant was informed that there was sufficient justification to dismiss him for insubordination for failing to meet with Gormley and an employment history "full of disciplinary actions, primarily for failing to comply with directives from supervisors." (Exhibit 5)

71. The Appellant testified that the School Department's decision to terminate him was based in part on retaliation for a complaint he filed with the Civil Service Commission on around 2005 or 2006 contesting certain hiring decisions.[2] (Testimony of Appellant)

72. The Appellant testified that, as a result of filing an appeal with the Commission, he was threatened with physical harm by senior building custodian Jason Sherer and was physically assaulted by Bill Ritchie. (Testimony of Appellant)

73. The Appellant testified that he has been subject to verbal harassment for several years. (Testimony of Appellant)

74. The Appellant called several witnesses in an attempt to corroborate what he argues is a pattern of retaliation against him and others by the School Department. Thomas Yahoub testified that he was treated differently by supervisors after filing a complaint

[2] Commission records indicate that the Appellant filed an appeal with the Commission in 2003 under Docket No. D-03-282. That appeal was dismissed on August 3, 2006 for lack of prosecution after the Appellant failed to appear for a hearing on July 20, 2006.

with the Civil Service Commission.[3] Most of the other Appellant witness offered testimony that also did not corroborate the Appellant's argument and/or their testimony was not remotely relevant to the instant appeal. Although not related to this appeal, one Appellant witness did offer disturbing testimony regarding racially-tinged jokes allegedly made against him by his supervisor. (Witness Testimony)[4]

CONCLUSION

Section 42 Appeal

Prior to terminating a tenured civil service employee, G.L. c. 31, § 41 requires that the employee be given " written notice by the appointing authority, which shall include the action contemplated, the specific reason or reasons for such action and a copy of sections forty-one through forty-five, and shall be given a full hearing concerning such reason or reasons before the appointing authority or a hearing officer designated by the appointing authority."

If the Commission finds that the Appointing Authority failed to follow the above-referenced Section 41 procedural requirements and that the rights of said person have been prejudiced, the Commission "shall order the Appointing Authority to restore said person to his employment immediately without loss of compensation or other rights." G.L. c. 31, §42.

[3] In a decision issued February 8, 2007, the Commission upheld the School Department's decision to terminate Mr. Yahoub for physically attacking Mr. Ritchie. (See Yahoub v. Milton School Department, 20 MCSR 114 (2007). The Commission subsequently dismissed a complaint file by Mr. Yahoub in which he alleged that the School Department was violating civil service law and rules by not giving priority to veterans when making provisional appointments. His appeal was deemed moot based on his termination. (See Yahoub v. Milton School Department, 20 MCSR 533 (2007).

[4] While the allegation related to the racially-tinged joke directed at an African American employee is not relevant to this appeal, I would expect the School Department to investigate this troubling allegation.

In this case, the Appellant argues that, implicit in the above standard is the right of the employee to attend his own dismissal hearing. He argues that he was unfairly denied the opportunity to attend the dismissal hearing on May 17, 2010 and was thereby prejudiced by failing to be able to present his defense to the charges made against him. For the following reasons, I find that this argument fails.

The Appointing Authority made every effort to accommodate the Appellant and allow him to attend his termination hearing. The Appointing Authority rescheduled the hearing on two separate occasions, on May 3, 2010 and May 14, 2010 to accommodate the Appellant and his union. I do not credit his testimony that he was unable to attend because of back pain.

For all of the above reasons, the Section 42 appeal is denied.

Section 43 Appeal

The role of the Civil Service 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." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300,304 (1997). *See* Town of Watertown *v.* Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is "justified" when 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." Id. at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); Commissioners of Civil Service v.

Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). 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." Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983); School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 488 (1997). The Appointing Authority's burden of proof is one of a preponderance of the evidence which is established "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). Reviewing an appeal under G.L. c. 31, §43, if the Commission finds by a preponderance of the evidence that there was just cause for an action taken against an appellant, the Commission shall affirm the action of the appointing authority. Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004).

The issue for the commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, 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." Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). *See* Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

By a preponderance of the evidence, the School Department has shown just cause for terminating the Appellant for insubordination. The Appellant has a long history of

insubordination that culminated in his refusal to meet with the Superintendent as ordered. In 2007, he was suspended in part for insubordination. In December 2009, the Appellant was suspended for refusing to participate in two (2) random drug tests permitted by the collective bargaining agreement as a result of a recent drug test in which he tested positive for marijuana. On December 22, 2009, when he finally agreed to submit to the random drug test, he was argumentative and uncooperative. On February 10, 2010, the Appellant was particularly obstinate when asked to submit to another random drug test telling the school principal he was "fucking sick of this". He then engaged in antics over a period of hours which required the Superintendent to intervene. He paced up and down the hallway; repeatedly said he wasn't going to provide a urine sample and, when he finally did, he urinated on the bathroom floor. Anticipating that he would be subject to another test prior to an upcoming vacation, he admittedly showed up 2 ½ hours late hoping to avoid the school principal. Upon his return from vacation, he again arrived late and provided untruthful statement regarding why he was late on the day prior to his vacation. Finally, he refused to meet with the Superintendent as ordered to discuss his tardiness and insubordination.

School administrators in Massachusetts are under enormous pressure to meet stringent state and federal benchmarks that measure whether students are being provided with a quality education. They should <u>not</u> be required to spend large chunks of their day responding to the antics of an insubordinate custodian. That is exactly what happened here. Mr. Mirotta brazenly mocked administrators for focusing on this tardiness while ignoring the fact that he was showing up for work "lit up brighter than a Christmas tree." Administrators promptly scheduled a drug test and the Appellant tested positive for

marijuana. Consistent with the collective bargaining contract, the School Department required the Appellant to submit to follow-up random drug tests. On each of these occasions, the Appellant either refused or was uncooperative. Finally, he refused a direct order to meet with the Superintendent. Enough is enough. The Appellant's termination is justified.

For all of the above reasons, the Appellant's appeal under Docket No. D1-10-115 is hereby ***dismissed***.

Civil Service Commission

_____
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, McDowell and Stein, Commissioners) on June 30, 2011.

A true record. Attest:

_____
Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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

Notice:
John Mirotta (Appellant)
Joseph Emerson, Esq. (for Appointing Authority)