

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**

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

ROBERT COAKLEY,  
Appellant

v.

D-12-352

WORCESTER PUBLIC SCHOOLS,  
Respondent

Appearance for Appellant:

Sal 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. Ittleman

**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 December 21, 2012, contesting the decision of the Worcester Public Schools (District) to suspend him from his position as a Senior Building Custodian for fifteen (15) days. A pre-hearing conference was held at the offices of the Commission on January 15, 2013. A full hearing was held at the Durkin Administration Building, 20 Irving Street, Worcester, MA on March 20, 2013.<sup>1</sup> Neither party requested a public hearing, so the hearing was deemed private. The hearing was digitally recorded and the parties

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<sup>1</sup> 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.

were provided with a CD of the hearing<sup>2</sup>. The parties submitted post-hearing briefs on June 5, 2013 (District) and June 28, 2013 (Appellant).

## **FINDINGS OF FACT**

Based on Exhibits 1 through 13 as well as the curriculum vitae of Mark Brophy, which was submitted after the hearing at my request and marked as Exhibit 14, the stipulations of the parties, the testimony of:

*Called by the District:*

- Mark Brophy, Director, Instructional Support Personnel, Worcester Public Schools;
- Patricia Padilla, Principal, Woodland Academy, Worcester Public Schools;
- Martha Dewar, Asst. Principal, Woodland Academy, Worcester Public Schools;
- James Sinatra, Junior Building Custodian, Worcester Public Schools;
- Michael Santangelo, Custodial Supervisor, Worcester Public Schools;

*Called by Mr. Coakley:*

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

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

1. Mr. Coakley has been employed by the District since 1986. He has served as a permanent senior building custodian since 1987. (Stipulated Facts)
2. Among the job duties and responsibilities of a senior custodian are: supervising and participating in all activities necessary in maintaining clean and safe public schools and

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<sup>2</sup> 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.

grounds; and supervising, training and evaluating custodial staff to accomplish maximum job performance. (Exhibit 13)

3. In 2012, Mr. Coakley was reassigned to Woodland Academy from another school in the District. (Testimony of Mr. Santangelo)
4. Mr. Coakley, the senior custodian, and a junior custodian (referred to as a “fireman”) typically work the 7:00 A.M. to 3:00 P.M. shift and two (2) junior custodians work the 2:00 P.M. to 10:00 P.M. shift (Testimony of Mr. Santangelo and Principal Padilla)
5. Custodians assigned to Woodland Academy also provide services to the Claremont Academy, which is co-located with Woodland. (Testimony of Mr. Santangelo and Principal Padilla)
6. Upon Mr. Coakley’s reassignment to Woodland Academy, two initial meetings were held to review Mr. Coakley’s duties and responsibilities and the expectations that each principal had regarding the cleaning standards for their respective academies. In attendance were: Mr. Coakley; Patricia Padilla, Principal of Woodland Academy; Paula Severin, then-Principal of Claremont Academy; Michael Santangelo, Custodial Supervisor; and Jack Navin, Facilities Director. (Testimony of Principal Padilla, Mr. Santangelo and Mr. Coakley)
7. As part of those initial meetings, Principal Padilla asked Mr. Coakley to provide a schedule outlining the various tasks that would be performed by each custodian throughout the day, including the approximate time that each duty would be performed (i.e. – 7:00 – 7:30 A.M.). (Testimony of Principal Padilla)
8. Mr. Coakley produced a schedule that Principal Padilla did not consider responsive to her request as it lacked any type of detail regarding the specific cleaning duties that would be performed. For example, Mr. Coakley wrote “auditorium” for one time period, but did not

list who would be responsible for cleaning the auditorium and/or what cleaning duties would be performed in the auditorium. (Testimony of Principal Padilla)

9. On multiple occasions, Principal Padilla asked Mr. Coakley to provide a more detailed schedule. Principal Padilla was concerned that, without a detailed schedule, the junior custodians would be unaware of their responsibilities, particularly when Mr. Coakley was absent. (Testimony of Principal Padilla)

10. On April 19, 2012, Principal Padilla, following up on an in-person meeting with Mr.

Coakley, penned an email to Mr. Coakley, writing in part:

“ ... As you know, you were out sick this Tuesday and Wednesday during April vacation. What is concerning is that the three junior custodians did not have a schedule or a plan put in place by you (their immediate supervisor) in order to maximize their time at work for this vacation week. Even after we walked around the Woodland floors, it was apparent that there were areas that were not reported that still needed to be repaired and/or concerns you were not aware of. When asked what the guys had worked on these past two days, you told me you were not sure and had not checked their work.” (Exhibit 12)

11. Principal Padilla concluded the April 19<sup>th</sup> email by reiterating her expectations, including the production of a more detailed schedule. (Exhibit 12)

12. As of the date of the hearing before the Commission (March 20, 2013), Mr. Coakley had still not produced a more detailed schedule as requested.<sup>3</sup> Instead, he told Custodial Supervisor Michael Santangelo, “if this isn’t good enough, I suggest you do them.” (Testimony of Mr. Coakley)

13. In addition to her concerns regarding the schedule, Principal Padilla was concerned that basic cleaning duties were not being completed as she noticed that areas of the building were not being vacuumed and trash was being left in the cafeteria area. (Testimony of Principal

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<sup>3</sup> I gave no weight to the testimony of Principal Padilla that she provided Mr. Coakley with an example of the type of detailed schedule she expected as this took place after the local disciplinary hearing on November 14, 2012.

Padilla) Assistant Principal Martha Dewar also noticed that the building had become dirty (i.e. – stairs not swept; trash not picked up) since Mr. Coakley became the senior building custodian. (Testimony of Assistant Principal Dewar)<sup>4</sup>

14. Deep cleaning activities such as stripping classroom floors, cleaning area rugs, and cleaning of classroom windowsills are completed during the summer vacation months. During one of her many meetings with Mr. Coakley, Principal Padilla specifically told Mr. Coakley that the area rugs needed to be cleaned and the windowsills needed to be cleaned. (Testimony of Principal Padilla)
15. While walking the building one day during the summer, Principal Padilla saw two (2) junior custodians placing desks back into a classroom on top of an area rug that had not been cleaned. When she asked the junior custodians why the area rug had not been cleaned, they indicated that Mr. Coakley told them not to clean it. When Principal Padilla went to an adjoining classroom and asked Mr. Coakley why the carpet had not been cleaned, he shrugged his shoulders and gave no verbal response. (Testimony of Principal Padilla)
16. Mr. Santangelo was also concerned about the condition of the building, including dirty stairwells. At one point, Mr. Santangelo had to instruct the new principal of the adjoining Claremont Academy to “stand-down” when that principal informed him of plans to bring in a power washer from home and clean the stairwells himself. (Testimony of Mr. Santangelo)
17. Principal Padilla also began observing several maintenance issues that were going unreported which she needed to report herself and ensure that appropriate personnel (i.e. – plumbers) would come to the school and complete repairs. Further, she began observing that the lawn

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<sup>4</sup> While I credited the credible testimony of Assistant Principal Dewar regarding her personal observations that occurred over several months, I gave no weight to pictures Ms. Dewar took of the exterior of building, as those pictures were taken after the local appointing authority hearing on November 14, 2012.

would go uncut until she instructed Mr. Coakley to have it cut. (Testimony of Principal Padilla)

18. After the 2012 summer vacation, Principal Padilla formally notified Mr. Coakley's supervisor of her ongoing concerns. (Testimony of Principal Padilla)

19. On September 14, 2012, Mr. Coakley was issued a written reprimand, which stated in part:

“... numerous summer and regular cleaning items were either started and not completed, not started at all, or some that were not being performed properly by your junior custodial staff; and they were not given any direction by you as to correct and improve. Some examples of this are the cleaning of windows, furniture and stairwells.” (Exhibit 3)

20. As part of the September 14<sup>th</sup> written reprimand, Mr. Coakley was informed that further performance issues could result in additional discipline. (Exhibit 3)

21. By November 2012, Principal Padilla had not noticed any improvement in Mr. Coakley's performance or the cleanliness of the school. Further, she was troubled by Mr. Coakley's behavior whenever she spoke to him about his performance. On at least two (2) occasions, Mr. Coakley made a “bowing gesture” with hands clasped together when Principal Padilla spoke to him. Principal Padilla thought his show of “mock respect” was disrespectful. (Testimony of Principal Padilla)

22. Mr. Coakley made the same “bowing gesture” to Assistant Principal Dewar on one (1) occasion when she was speaking to him. (Testimony of Assistant Principal Dewar)

23. In October 2012, a new junior custodian, James Sinatra, was appointed and assigned to Claremont Academy to the 2:00 P.M. to 10:00 P.M. shift. Mr. Sinatra has a diverse professional background ranging from performing custodial services at Fenway Park in the 1970s to owning a half-way house. He has always considered himself a strong “union guy” and has served as part of the union leadership team at past jobs. (Testimony of Mr. Sinatra)

24. Almost immediately upon working under the supervision of Mr. Coakley, Mr. Sinatra

became concerned about the words and actions of Mr. Coakley. Among his concerns:

- During one of their first conversations regarding overtime opportunities, Mr. Coakley told Mr. Sinatra that supervisors had “fucking lied to him (Sinatra)” regarding when overtime was available.
- When Mr. Sinatra asked Mr. Coakley for a “wet vac” to address a plugged up dishwasher, Mr. Coakley replied: “I’ll give you a straw.”
- Mr. Coakley derisively told Mr. Sinatra that he (Sinatra) was “buddies” with management.
- Mr. Coakley began referring to Mr. Sinatra as “boss.”
- After handing Mr. Sinatra the radio and saying good-bye for the day, Mr. Coakley then came back into the room and approached Mr. Sinatra from behind. This startled Mr. Sinatra who considered the incident “creepy.” (Testimony of Mr. Sinatra)

25. Mr. Sinatra penned two letters to the Custodial Supervisor and the Facilities Manager expressing his concerns about Mr. Coakley. As a result, Mr. Sinatra was immediately reassigned to another school. (Exhibits 1 and 2)

26. The District convened a local appointing authority hearing. Citing Mr. Coakley’s lack of leadership, carelessness of his job responsibilities; and the concerns articulated by Principal Padilla and Mr. Sinatra, along with most recent written reprimand, the hearing officer recommended that the Superintendent suspend Mr. Coakley for fifteen (15) days and require him to attend sensitivity training through the Employee Assistance Program (EAP). (Exhibit 8)<sup>5</sup>

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<sup>5</sup> Mr. Coakley’s representative, both as part of the hearing before the Commission and his post-hearing submission focused on whether Mr. Coakley’s due process rights were violated at the local level, alleging, in part, that the local hearing officer was biased. Despite having an opportunity to do so as part of his appeal, Mr. Coakley never filed a

27. The Superintendent accepted the recommendations of the hearing officer and imposed the recommended discipline. (Exhibit 9) This appeal followed. (Stipulated Fact)

### *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.”

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)

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

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“Section 42” procedural appeal raising these issues. Further, his representative, when given the opportunity during the Commission hearing, opted not to amend the appeal. Finally, established case law states that the local hearing officer is not required to be impartial. (See McIsaac v. Civil Serv. Comm’n and Pembroke, 38 Mass. App. Ct. 473 (1995)) For these reasons, this decision addresses only whether there was just cause for the discipline imposed.



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).

### *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 providing junior custodians under his supervision with appropriate guidance and oversight to assist in carrying out these duties. A preponderance of the evidence establishes that Mr. Coakley failed to maintain a clean and safe school and failed to provide his junior custodians with the needed guidance and oversight.

I base this conclusion largely on the credible testimony of Principal Padilla and Assistant Principal Dewar. Both of these individuals were good witnesses. They were genuinely concerned about the deteriorating condition of the building after Mr. Coakley was reassigned to their building and they offered concrete examples to support their concerns. Further, Principal Padilla met with and spoke with Mr. Coakley on numerous occasions to express her concerns about the overall cleanliness of the school, failure to complete specific assignments as directed, and failing to produce a detailed work schedule that would help the entire custodial team in carrying out their duties.

Mr. Coakley failed to respond to the repeated concerns of Principal Padilla or the Custodial Supervisor. When asked why he didn't ensure that a classroom's area carpet was cleaned, he shrugged his shoulders and stood in silence. When asked to produce a more detailed work schedule, he told his supervisor to do it himself. When concerns were brought to his attention by Principal Padilla or Assistant Principal Dewar, Mr. Coakley, in an openly disrespectful show of disrespect, clasped his hands together and performed a "bowing gesture" in their direction.

Mr. Coakley's poor performance and disrespectful behavior continued even after he was issued a written reprimand in September 2012. Even after being put on notice that he may be subject to

further discipline, Mr. Coakley, weeks after receiving the written reprimand, displayed highly inappropriate behavior as a supervisor, telling a new junior custodian that his supervisors had “fucking lied to him”; telling that same custodian that he’d get him a straw when he asked for wet vac; and derisively referring to the junior custodian as “boss” and being “buddies” with management. That junior custodian was understandably offended – and surprised – by Mr. Coakley’s behavior.

All of these actions represent substantial misconduct that adversely affects the public interest and impaired the efficiency of public service as they interfered with the ability of school administrators to provide students, staff and visitors with a clean and safe school building.

Having determined that it was appropriate to discipline Mr. Coakley for this incident, I must determine if the Superintendent was justified in the level of discipline imposed, which, in this case, was a fifteen (15)-day suspension.

The Commission is guided by “the principle of uniformity and the equitable treatment of similarly situated individuals” [both within and across different appointing authorities]” as well as the “underlying purpose of the civil service system ... to guard against political considerations, favoritism and bias in governmental employment decisions.” Falmouth v. Civil Service Commission, 447 Mass. 814, 823 (2006) and cases cited. Even if there are past instances where other employees received more lenient sanctions for similar misconduct, however, the Commission is not charged with a duty to fine-tune an employee’s discipline to ensure perfect uniformity. See Boston Police Dep’t v. Collins, 48 Mass. App. Ct. 408, 412 (2000).

“The ... power accorded the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded the appointing authority.” Falmouth v. Civ. Serv. Comm’n, 61 Mass. App. Ct. 796, 800 (2004) quoting Police Comm’r v. Civ. Serv. Comm’n, 39 Mass. App. Ct. 594, 600 (1996). Unless the Commission’s findings of fact differ significantly from those reported by the appointing authority or interpret the relevant law in a substantially different

way, the commission is not free to “substitute its judgment” for that of the appointing authority, and “cannot modify a penalty on the basis of essentially similar fact finding without an adequate explanation.” E.g., Falmouth v. Civil Service Commn, 447 Mass. 814, 823 (2006).

Here, after a de novo hearing at which I reviewed all of the documentary evidence and listened to the testimony of the witnesses, I have concluded, similar to the Superintendent, that Mr. Coakley failed to lead his junior custodians; was careless in his custodial responsibilities and acted inappropriately in his interactions with Principal Padilla and his junior custodian. While I considered Mr. Coakley’s argument that a fifteen (15)-day suspension is too severe following a written warning, I have concluded that Mr. Coakley’s continued poor performance, his ongoing failure to properly oversee his employees and his brazen behavior toward the principal and toward his junior custodian warrant the relatively stiff penalty of a fifteen (15)-day suspension.

#### *Conclusion*

For all of the above reasons, Mr. Coakley’s appeal under Docket No. D-12-352 is hereby *denied* and the decision by the Superintendent of the Worcester Public Schools to suspend Mr. Coakley for fifteen (15) days is upheld.

Civil Service Commission

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Cynthia A. Ittleman  
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein) on February 6, 2014.

A True Record. Attest:

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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 to:

Sal Romano (for Appellant)

Sean Sweeney, Esq. (for Respondent)