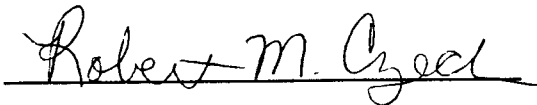


Re: Felicia Johnson

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
DECEMBER 16, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 02153-15

AGENCY DKT. NO. 2015-2197

**IN THE MATTER OF FELICIA JOHNSON-STILL,
NEWARK PUBLIC SCHOOL DISTRICT.**

Vipin Varghese, Esq., for Felicia Johnson-Still (Pitta & Giblin, attorneys)

Bernard Mercado, Esq., for Newark Public School District (Charlotte Hitchcock,
General Counsel)

Record Closed: November 2, 2015

Decided: November 18, 2015

BEFORE **JESSE H. STRAUSS, ALJ**:

STATEMENT OF THE CASE

The Newark Public School District (District) suspended Head Custodian Felicia Johnson-Still (appellant), for fifteen working days for violation of Civil Service Rules N.J.A.C. 4A:2-2.3(a)(2), (7), and (12) regarding insubordination, neglect of duty, and other sufficient cause. The District alleges that appellant was neglectful and insubordinate for acts including interactions with her vice principal, debris removal from outside her school building, maintenance of soap dispensers, and mopping wet floors.

At issue is whether Johnson-Still engaged in the alleged conduct and, if so, what should be the appropriate penalty.

PROCEDURAL HISTORY

On October 27, 2014, the District served upon appellant a Preliminary Notice of Disciplinary Action proposing her removal. Following a hearing conducted by the District on November 18 and December 15, 2014, it served a Final Notice of Disciplinary Action on December 29, 2014, suspending appellant for fifteen working days beginning on January 19, 2015, and ending February 6, 2015. On January 5, 2015, appellant requested a hearing. The Civil Service Commission transmitted the contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, to the Office of Administrative Law (OAL), where it was filed on February 11, 2015.

I heard the matter on November 2, 2015, and closed the record on November 5, 2015, upon the receipt of documentation related to prior discipline.

FACTUAL DISCUSSION

The facts are not in dispute. Accordingly, I **FIND** the following **FACTS** accompanied by appellant's explanation for how and why she acted.

Appellant has been employed by the District for thirty-five years as a custodian and head custodian. On September 16, 2014, she was assigned to the Saint James Church Annex (Annex) of the District's Lafayette Street School. Maria Merlo was the school's principal. Yolanda J. Severe was a vice principal as of May 1, 2014, whose duties were to supervise the teachers, assistants, food service workers, security guards and custodians, including appellant, at the Annex. Custodians are charged with maintaining a clean environment in the classrooms, lavatories, common areas, and outside the building. Custodians at the Annex are required to follow the directives of Severe. When Severe arrived at the school in May, she went over her expectations with each staff member.

Appellant had several instances of prior discipline relevant to this matter arising out of Severe's dissatisfaction with appellant's work. Severe issued a memorandum to appellant on May 13, 2014. (R-E.) It stressed appellant's responsibility of adhering to the written cleaning schedule; sweeping around the school and throughout the day; cleaning the glass doors daily; adhering to scheduled break times; the cell phone protocol, and appellant's need to provide documentation to support her claim that she has a right to use her personal cell phone. The memorandum memorialized that appellant repeatedly expressed dissatisfaction with the school and she stated that she was going to put in for a transfer. It also instructed that, "a tone of decency must be maintained at all times therefore, loud outburst or inappropriate statements will not be tolerated."

Severe issued a letter of reprimand on June 3, 2014, to appellant after a one-on-one conversation. (R-F.) During a walk-through of the Annex at 7:45 a.m. on June 3, Severe noticed that: the front of the building was surrounded by trash; the glass entrance doors had not been cleaned; the floor on the first floor was dirty; and the entrance rugs had not been vacuumed. Appellant said she would go outside and sweep the sidewalk again. Appellant blamed the night custodian for not cleaning the building the previous night. Severe explained to appellant that she was in charge of the first floor to which she disputed that she, as head custodian as opposed to custodian, had such responsibility.

A June 9, 2014, second Letter of Reprimand complained that appellant neglected to sweep the front of the building before the students arrived at school. It stressed the importance of maintaining the front of the building and emptying the garbage in the first floor bathroom at the end of the day. The memorandum memorialized that appellant had stated that "you are only one person" and "the building could burn down after 3:00 p.m. and you would not be responsible." Severe described the comments to be sarcastic and insubordinate. Several photographs of debris on the sidewalk and adjacent grassy areas accompanied the memorandum.

Also, on June 9, Severe issued a memorandum to appellant directing that ten-minute breaks and lunch break may only be taken in the custodian's office, the teacher's lunchroom or by exiting the building. (R-H.) Severe issued an additional third Letter of Reprimand to appellant on June 9 for failing to notify her that there was a water problem in the basement. (R-I.)

Appellant's personnel file also reflects a twenty-day suspension in 1995 for conduct unbecoming and insubordination and a removal for insubordination and conduct unbecoming in 1996, both of which were appealed to the OAL. The parties reached a settlement whereby appellant accepted a six-month suspension and demotion. (R-B.) She thereafter received a five-day suspension on April 25, 2014, before Severe's assignment to the school also arising out of debris being left outside the school and mopping complaints. The suspension was imposed and upheld based on appellant's unprofessional disposition toward staff and the administration during December of 2013 and January 2014. (R-C.)

Severe confronted appellant on September 16, 2014, regarding several matters. Appellant's work hours were from 6:30 a.m. to 3:00 p.m. When Severe arrived at school that morning before the 8:20 a.m. student arrival time, she observed that the trash had not been removed from the front of the building and perimeter by appellant despite previous complaints about this problem. When Severe instructed appellant to remove the trash, she responded, "I do not have raingear" and failed to follow this directive. Appellant testified that, when she arrived at the school each morning at 6:30 a.m., one of her first tasks was to sweep the perimeter with a broom and deposit the debris in a dumpster by the playground, which she did on September 16 at a time when it was not raining. However, day laborers sit on the steps of the school waiting for work and leave litter after she has swept as do teenagers walking past the Annex on their way to Eastside High School. Appellant agreed that she later told Severe that she had no raingear as rain had started, and she, accordingly, did not follow Severe's order to sweep the perimeter. Appellant also claimed that Severe did not repeat her order to sweep outside after she told her that she did not have raingear. Appellant denied that she was being insubordinate in this instance.

Appellant testified that, when she encountered Severe in the lobby that morning, it was raining and she had already mopped on the steps and in the cafeteria as children were bringing water in on their boots. Severe asked appellant to put flattened cardboard boxes on the floor to prevent students from slipping, to which appellant responded that boxes are discarded daily. Appellant explained in her testimony that she made that comment because she had already discarded the cafeteria boxes in the dumpster, and they were wet because of the rain.

Severe also directed appellant to mop the wet spots in the lobby area caused by arriving students to prevent slipping, but she refused at that time. Appellant instead took photographs of the area. Appellant waited until all of the students were in their classrooms before mopping the area, instead of immediately following Severe's directive. Appellant testified that she did not mop the floor when directed by Severe because she did not see water on the floor as opposed to the mats at that time, and she was concerned that she might hit one of the children with a mop handle if she had engaged in that activity when they were present. She acknowledged that she did not inform Severe of her safety concern, but made a judgment call on her own. Principal Merlo emphasized the importance of constant mopping on rainy days when children are entering the building.

On September 16, Severe told appellant that there was no soap in the girl's bathroom on the second floor. When she directed appellant to put soap in the bathroom, appellant responded by saying, "it is regular." Without disputing that this response made no sense, appellant testified that she chose to use these words so that she would not appear to be confrontational or disrespectful.

Appellant received the District's telephone policy in June 2014. (R-M.) The District had issued a cellular phone to her with the proviso that the District would pay only those charges incurred in the course of performance of duties. Use of these phones to make or receive calls is discouraged except for emergency situations. The policy also provides that, unless otherwise authorized, District staff may only use

personal cellular phones during their own time or for an emergency. In May 2014, when Severe expressed to appellant concern about her cell phone use, appellant responded that she had a "504" allowing her to make cellular calls do to a family issue. A "504" is an authorization for special accommodations. In May, Severe directed that appellant produce documentation to support the "504" and file it in the main office. Appellant never complied. She testified that, for privacy reasons, she did not have to produce the documentation. However, there is no evidence that appellant ever protested to Severe that she had no right to this information. Severe complained that, throughout the morning of September 16, 2014, appellant was on her personal cellular phone instead of completing her assigned duties. Appellant did not deny cellular phone use that morning. She instead reiterated her entitlement to use her phone for "504" reasons and that there was an ongoing boiler issue in the building that required her to communicate with the duty desk of the District's maintenance center. She defended calls in the parking lot around 9:55 on September 16 as she was taking the breakfast trash from the cafeteria to the dumpster and her duties had delayed the time she usually took her break.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). Both guilt and penalty are redetermined on appeal from a determination by the appointing authority. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

The District suspended appellant for fifteen working days after charging her with a violation of Civil Service Rules N.J.A.C. 4A:2-2.3(a)(2), (7), and (12), that provide that an employee may be subject to discipline for insubordination, neglect of duty and other sufficient cause.

I **CONCLUDE** that the Department has sustained its burden of proof that appellant was insubordinate and neglected her duty.

Black's Law Dictionary 802 (7th Ed. 1999) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority; disobedient." Such dictionary definitions have been utilized by courts to define the term where it is not specifically defined in contract or regulation.

"Insubordination" is not defined in the agreement. Consequently, assuming for purposes of argument that its presence is implicit, we are obliged to accept its ordinary definition since it is not a technical term or word of art and there are no circumstances indicating that a different meaning was intended.

[Ricci v. Corp. Express of the E., 344 N.J. Super. 39, 45 (App. Div. 2001) (citation omitted).]

Importantly, this definition incorporates acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Thus, insubordination can occur even where no specific order or direction has been given to the allegedly insubordinate person.

It is a basic tenet of workplace culture that a subordinate obey a directive of a superior even if she disagrees with it unless the order would likely imperil the health or safety of the employee or those around her. She may thereafter grieve the order. Appellant has, for the most part, not disputed Severe's description of their interaction on September 16, 2014. Appellant's excuses for not responding to Severe's directives when they were made were specious at best. They were not justified by a health and

safety claim including the expressed concern of not wanting to hit the children with a mop handle or the lack of raingear. Severe's memoranda from the commencement of her assignment to the Lafayette Street School as well as her testimony depict a hands-on administrator who left no ambiguity as to her expectations of her staff. She is entitled to, and should be lauded for, presenting her subordinates with a clear list of expectations. Appellant's record regarding her short relationship with Severe even before September 16 reveals a resistance to authority, a disrespectful attitude, and a reluctance to perform duties as directed by her superior. Appellant's claim that she responded to the directive to fill the soap dispensers by saying "it is regular" in order avoid saying something confrontational actually had the opposite effect. The unresponsiveness was discourteous. Despite appellant's many years of service to the District, she has no right ignore her obligation to follow the policies of the District and the directives of her superiors. On September 16, appellant neglected her duty as directed and when directed to remove debris from outside the school, secure cardboard boxes, mop the wet floors, and attend to the soap dispensers. If there were a privacy issue with regard to providing documentation to support her special use of her cellular phone requested by Severe, it was incumbent on appellant to have addressed that issue in a professional manner rather than to just ignore it. Appellant's entire behavior that morning demonstrated repeated acts of insubordination and neglect of duty. Her behavior was consistent with attitude problems that had preceded that day and which had been memorialized in prior disciplinary determinations.

When dealing with the question of penalty in a de novo review of a disciplinary action against a civil service employee, the Merit System Board is required to re-evaluate the proofs and penalty on appeal, based on the charges presented. N.J.S.A. 11A:2-19; Henry, supra, 81 N.J. 571; Bock, supra, 38 N.J. 500. Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. Id. at 522-24. Major discipline may include removal, disciplinary demotion, a suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4. A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. The concept of progressive discipline is related to an

employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is the nature, number, and proximity of prior disciplinary infractions evaluated by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential.

Appellant, is an employee of long-standing with the District. She is not, however, without a disciplinary record. The District has attempted to remediate prior instances of insubordination and neglect of duty with moderate suspensions and, since Severe's assignment to the Lafayette School, with written Letters of Reprimand. Unfortunately, those efforts to encourage the development of employee potential have been unsuccessful. In light of the appellant's prior disciplinary record and in assessing the seriousness of appellant's behavior on September 16, 2015, I **CONCLUDE** that the fifteen-working-day suspension imposed by the District is appropriate.

ORDER

It is **ORDERED** that the charges of insubordination and neglect of duty and the imposition of a penalty of a fifteen-working-day suspension be **AFFIRMED**.

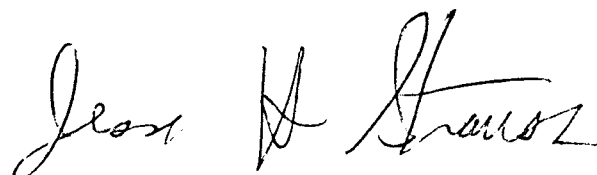
I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

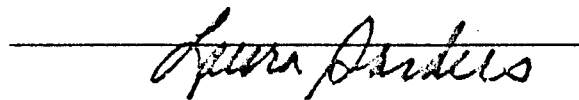
November 18, 2015

DATE



JESSE H. STRAUSS, ALJ

Date Received at Agency:



Date Mailed to Parties:

NOV 19 2015

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

id

APPENDIX

LIST OF WITNESSES

For Johnson-Still:

Felicia Johnson-Still

For the District:

Yolanda J. Severe

Maria Merlo

Pete Massieu

LIST OF EXHIBITS IN EVIDENCE

For Johnson Still:

None

For the District:

- R-A Final Notice of Disciplinary Action, September 12, 1995
- R-B Settlement Agreement, September 16, 1997
- R-C Final Notice of Disciplinary Action, April 25, 2014
- R-D Final Notice of Disciplinary Action, December 29, 2014
- R-E Memorandum, Severe to Johnson-Still, May 13, 2014
- R-F Letter of Reprimand, Severe to Johnson-Still, June 3, 2014
- R-G Letter of Reprimand, Severe to Johnson-Still, June 9, 2014
- R-H Memorandum, Severe to Johnson-Still, June 9, 2014
- R-I Letter of Reprimand, Severe to Johnson-Still, June 9, 2014
- R-J Memorandum, Severe to Johnson-Still, September 18, 2014
- R-K Not in Evidence
- R-L Photographs
- R-M District Phone Use Policy
- R-N Memorandum, Merlo to Labor Relations Department, September 18, 2014

