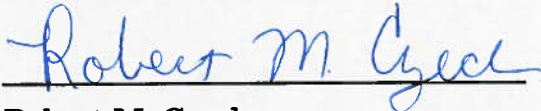


Re: Robert P. Williams

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
FEBRUARY 5 2015**



**Robert M. Czech
Chairperson
Civil Service Commission**

**Inquiries
and
Correspondence**

**Henry Maurer
Director
Merit System Practices
and Labor Relations
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 06264-14

2014-2733

**IN THE MATTER OF ROBERT P. WILLIAMS,
NEWARK PUBLIC SCHOOL DISTRICT.**

Robert P. Williams, appellant, pro se

Bernard Mercado, Esq., for respondent

Record Closed: October 20, 2014

Decided: December 3, 2014

BEFORE BARRY E. MOSCOWITZ, ALJ:

STATEMENT OF THE CASE

On March 17, 2014, Williams, a plumber and foreman with the Newark Public School District, brought a firearm to work. Although the firearm remained locked in his truck in the parking lot outside the boiler room at the Harold Wilson Public School, it was still present on school property. Must Williams be disciplined? Yes. Under Newark Public School policy, file code 4119.23, possession of firearms on school property is strictly prohibited.

PROCEDURAL HISTORY

On March 18, 2014, Newark served Williams with a Preliminary Notice of Disciplinary Action, charging him with conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6), and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12). In its specifications, Newark alleged that on March 17, 2014, Williams was engaged in conversation with two colleagues in the boiler room when his temper began to flare. The specifications continue that Williams then went to his car and returned to the boiler room with a firearm tucked into the waist of his pants, compromising the safety of everyone at the Harold Wilson Public School. Given these allegations, Newark suspended Williams and sought his removal.

Williams requested a hearing, which was held on April 21, 2014.

On April 28, 2014, Newark served Williams with a Final Notice of Disciplinary Action, sustaining the charges against him and removing Williams from his position of plumber, effective March 18, 2014.

Williams then appealed the determination.

On May 23, 2014, the Civil Service Commission transmitted the case to the Office of Administrative Law as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On October 20, 2010, I held the hearing and closed the record.

DISCUSSION AND FINDINGS OF FACT

I.

Davis

Brian Davis is an electrical foreman with the Newark Public Schools and works the night shift from 1:30 p.m. to 9:00 p.m. Davis testified that on March 17, 2014, around 2 p.m., he had a conversation with Williams and an electrical inspector about how the three of them as foremen were not being paid their salary differential, but Williams became agitated. According to Davis, Williams kept repeating that he was a "new man," that he knew how to "handle his," and that he would show them how he "handled his." Moreover, Davis testified that Williams left the boiler room, went to his car, and returned with a gun tucked into the waist of his pants.

This testimony matches the statement Davis provided on the date of the incident:

Sometime around 2 pm Robert Williams, Don Nolton and Myself was discussing not being paid our differential and Robert stated that he is a new man and that he handle his and repeated that a few times. Me and Don told him not to get himself all upset and this is business as usual. Once again he repeated how he handle his and that he would show us how he handle his and walk out of the office toward his car. I then turned to Don and Don said if he got something I don't want to be here when he gets back. I then went out the door where the security guard is stationed and saw Robert coming from his car and going into the boiler room where he saw me and said that is how I handle mine and lifted his shirt to reveal a gun tucked into the waist of his pants. Then I call Mr. Massieu and told him that Robert had a gun.

[Ex B.]

Davis explained at the hearing that he and Williams were in the parking lot, about fifty feet away from one another, when he saw Williams lift his shirt to show him the gun. Davis further explained that Williams then went into the building with the gun. Moreover, Davis explained that he was very afraid and feared for his life—even though

he had never had a problem with Williams and Williams told him he would not hurt him or his family.

Williams would later explain during his testimony that he never entered the building with a gun because he never took the gun out of his truck. More pointedly, Williams testified that he lifted his shirt in the parking lot to show Davis the holster to the gun, not the gun, and that the gun remained locked in its lockbox in his truck. Nevertheless, Williams testified that he did in fact have a gun in his truck parked in the parking lot outside the boiler room of the Harold Wilson School.

The incident report, taken by the Newark Police Department, includes additional detail. In the report, the police officer adds that Davis saw Williams take something out of his vehicle and put it under his shirt. It also varies from the testimony Davis provided when it states that Williams returned to the building before lifting up his shirt to show Davis the gun. Finally, the report specifies that Davis reported seeing the black handle of the gun.

On cross-examination, Davis testified that the incident report is incorrect when it states that he saw Williams take something out of his vehicle and return to the building before lifting up his shirt to show him the gun. Davis explained that the incident report is incorrect because he did not see Williams take anything out of his truck. Nevertheless, Davis repeated that he saw Williams lift his shirt to show him the gun.

On redirect examination, Davis further testified that Williams entered the building with the gun after showing it to him in the parking lot.

Davis also clarified that he did not hear Williams say, "Click Click Motha Fucker," as alleged in the specifications.

In short, Davis stated that he only heard Williams say, "That's how I handle my owns."

II.

Nolton

Don Nolton is an electrical inspector for the Newark Public Schools and was the electrical inspector who was seated with Williams and Davis in the boiler room when they discussed not being paid their salary differential. At the hearing, Nolton stood by the memorandum he wrote to the Executive Director of Facilities on the date of the incident.

In his memorandum, Nolton wrote that on March 17, 2014, at approximately 3:00 p.m., he, Williams, and Davis were having a discussion about not being paid their salary differential when Williams became frustrated. Nolton explained that he didn't really know what happened next because he had tuned Williams and Davis out. Nevertheless, Nolton stated that he did hear Williams say he did not want to go back to his younger days, that Williams said, "Click Click Motha Fucker," and that Williams repeated it when Davis asked Williams what he had said.

Nolton continued that Davis replied, "Nah Man, you ain't got that . . . you can't be serious," and that Williams responded, "OK, I'm going to my truck to get it."

At the hearing, Nolton explained that Davis was egging Williams on, that Williams meant he had a gun, that Davis meant he did not believe him, and that Williams was going to his truck to get his gun to prove it.

Williams did not dispute this version of events; he simply added "Click Click Motha Fucker" means people shooting.

In his memorandum, Nolton wrote that once Williams said, "OK, I'm going to my truck to get it," both he and Davis went outside to the parking lot. Nolton stated that he thought Davis left through the door in the boiler room and that he left through the door by the security desk. Significantly, Nolton explained that he saw Davis when he went outside the building into the parking lot but not Williams because Williams had already returned to the building.

Nolton also wrote that Williams tried to apologize to Davis because Davis felt threatened but Davis "didn't want to hear it." Nolton explained that Davis was agitated and advised that he was taking the rest of the day off. Finally, Nolton memorialized that Davis told him that he had seen Williams with a gun and that Williams had brought the gun into the building.

At the hearing, Nolton made it clear that he did not see Williams with a gun and that Williams apologized to him and Davis. Nolton also emphasized that Davis had been egging Williams on and that Williams had ignored Davis for a long time before he finally went to his truck. To be clear, Davis explained that he had a great relationship with Williams, that Williams had not fazed him, and that he got up and left the boiler room because he did not want to be around when Williams returned. As Nolton put it, he wanted to err on the side of caution.

III.

Williams

Williams testified that he was on vacation in Daytona, Florida, from March 9, 2014, until he returned to work in Newark, New Jersey, on March 17, 2014. Williams explained that he had driven straight to work from vacation because he did not want to

be late for work and that he prides himself on being on time. Williams further explained that he is disciplined, having served in the military and having studied martial arts, and that he regards being on time as being half-an-hour early. In fact, Williams asserted that he has never been late for work and that he has never taken even one sick day in the nine years he has worked for the Newark Public Schools. Yet Williams resigned that it was his punctuality which was his undoing in this case.

Williams testified that it had snowed on his return to New Jersey, with states of emergency in North Carolina and Maryland, so he went straight to work without stopping at home first. Williams explained that he had driven to Florida in his pick-up truck with his motorcycle in tow and with his gun locked in a lockbox in the bed of his truck. In his answers to interrogatories, Williams wrote that the gun is a nine-millimeter Smith and Wesson and that the bed of his truck is a separate compartment which he keeps locked. More important, Williams wrote in his answers to interrogatories that he did not have any ammunition in his possession or in his truck and explained at the hearing that he buys his ammunition at the range.

To put this in perspective, Williams testified that he did not even use the gun in Florida because it was bike week, that he rode his motorcycle instead, and in his answers to interrogatories, he wrote that the last time he even used his gun was twenty years ago at Ray's Sporting Shop in New Jersey.

Above all, Williams testified that when he left the boiler room to go to his truck, he did not go to get his gun but his holster, and that he showed Davis his holster, not his gun, when he lifted his shirt.

Regardless, Williams testified at the hearing and wrote in his answers to interrogatories that he had his gun on school property on March 17, 2014.

IV.

Given this discussion of the facts, I **FIND** that on March 17, 2014, Williams was engaged in conversation with two colleagues in the boiler room of the Harold Wilson

Public School when his temper began to flare, and that Williams went to his car and returned to the boiler room with the holster to a gun tucked into the waist of his pants, placing Davis in fear of his life.

In addition, I **FIND** that the gun was a nine-millimeter Smith and Wesson, that it was locked in a lockbox in the bed of his truck, that the bed of his truck is a separate compartment, which Williams kept locked, and that the truck was parked in the parking lot of the Harold Wilson Public School outside the boiler room.

Moreover, I **FIND** that Williams did not have any ammunition in his possession or in his truck.

To be clear, I **FIND** that when Williams left the boiler room to go to his truck, he did not go to get his gun but his holster, and that he showed Davis his holster, not his gun, when he lifted his shirt.

Regardless, I still **FIND** that Williams had his gun on school property on March 17, 2014.

DISCUSSION AND CONCLUSIONS OF LAW

I.

In appeals concerning major disciplinary action, the appointing authority bears the burden of proof. N.J.A.C. 4A:2-1.4(a). The burden of proof is by a preponderance of the evidence, Atkinson v. Parsekian, 37 N.J. 143, 149 (1962), and the hearing is de novo, Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980). On such appeals, the Civil Service Commission may increase or decrease the penalty, N.J.S.A. 11A:2-19, and the concept of progressive discipline guides that determination, In re Carter, 191 N.J. 474, 483-86 (2007).

Progressive discipline, however, may be bypassed when an employee engages in severe misconduct. In re Hermann, 192 N.J. 19, 33-34 (2007).

II.

The stated policy of the Newark Public Schools, file code 4119.23, "Possession of Drugs/Alcohol Prohibited; Gambling, Smoking, Possession of Firearms Prohibited," is that the possession of firearms on school property is strictly prohibited.

In this case, Williams brought a firearm onto school property. Although it remained locked in a lockbox in the bed of his truck, which Williams also kept locked, Williams still brought a firearm on school property, and when he returned to the boiler room with the holster to a gun tucked into the waist of his pants, he placed Davis in fear of his life. Given the heightened sensitivity to the presence of firearms at school, and the threat they pose to the safety and well-being of both students and faculty, I **CONCLUDE** that Williams engaged in severe misconduct.

More pointedly, I **CONCLUDE** that Williams engaged in conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6), and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12), for having violated Newark Public School policy, which strictly prohibits the possession of firearms on school property.

Given the severity of this misconduct, I **CONCLUDE** that progressive discipline must be bypassed in this case and that Williams must be removed from his position as a plumber with the Newark Public Schools.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that Williams be removed from his position as a plumber with the Newark Public Schools.

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, DIVISION OF APPEALS AND REGULATORY AFFAIRS, 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.

12/3/14
DATE


BARRY E. MOSCOWITZ, ALJ

Date Received at Agency: 12-3-14

Date Mailed to Parties: **DEC - 5 2014** 
DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

Witnesses

For Appellant:

Robert Williams

For Respondent:

Brian Davis

Felix West

Don Nolton

Jacqueline Chavis

Documents

For Appellant:

None

For Respondent:

Ex. A Final Notice of Disciplinary Action date April 28, 2014

Ex. B Email message from Davis to Keith Barton, Steve Morlino, and Frank Masella dated March 17, 2014

Ex. C Email message from Pete Massieu to Barton dated March 17, 2014

Ex. D Newark Police Incident Report dated April 4, 2014

Ex. E Memorandum from Felix West to Barton dated March 18, 2014

Ex. F Certification of West dated May 8, 2014

Ex. G Memorandum from Nolton to Morlino dated March 18, 2014

Ex. H Newark Public Schools Policy File Code 4119.23 undated

Ex. I N.J.S.A. 2C:39-4

Ex. J N.J.S.A. 2C:39-5

Ex. K Job Description

Ex. L Time Detail for Williams from July 1, 2014, to April 18, 2014

Ex. M New Jersey Permit to Purchase Smith and Wesson, Model 915, 9mm, handgun

Ex. N Picture of Smith and Wesson, Model 915, 9mm, handgun

Ex. O New Jersey Firearms Purchaser Identification Card