

**STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
BUREAU OF CONTROVERSIES AND DISPUTES**

In the matter of the tenure hearing:

**Neptune Board of Education
Petitioner
and
Lawrence J. Wilson
Respondent**

Arbitrator's
Opinion
and
Award

Agency Docket No. 113 - 5/18

Stephen J. Rosen, Arbitrator

APPEARANCES:

For the Petitioner:
Weiner Law Group, LLP
By: Patricia C. Melia, Esq.

For the Respondent:
Chamlin, Rosen, Uliano & Witherington
By: James J. Uliano, Esq.

This matter arises out of tenure charges filed with the Commissioner of Education by Neptune Board of Education against the Respondent Lawrence J. Wilson, dated April 11, 2018. After determination that the charges warranted further action, the Bureau of Controversies and Disputes forwarded the applicable documents to me on or about May 31, 2018.

The first hearing via conference call took place on June 8, 2018. The earliest dates agreed to by the parties were August 14th and 15th, 2018.

Initially, the Respondent's attorney did not include Mr. Wilson's name on the witness list. Shortly before the first hearing, Attorney Uliano notified Board Attorney Mark A. Tabakin that Mr. Wilson would testify. Board Attorney Tabakin cited N.J.S.A. 18A: 6-17.1 (b) (3) that specifies a witness list be provided ten (10) days prior to the hearing. Mr. Wilson's name did not appear on any list produced within ten days of the scheduled hearing.

I determined that Mr. Wilson would be permitted to testify at the hearing. The Respondent, I reasoned, was not an individual of “minor” importance. In addition, the Board had interacted with Mr. Wilson on numerous occasions and had evaluated him many times over the years. Given that the Respondent is the subject of the action taken by the District, I concluded the process would best be served if Mr. Wilson were permitted to testify.

One day prior to the August 14th hearing, I was informed by Attorney Uliano that the Respondent had been hospitalized. A conference call was held on August 14th at which time verification of Mr. Wilson’s hospitalization was requested.

Hearings were scheduled and subsequently held on September 13 and 14, 2018, A transcript was prepared for both hearing dates. Both parties elected to submit post-hearing briefs after receipt of the transcripts.

BACKGROUND:

The Respondent had been employed as a Head Custodian by the Neptune Township Board of Education for eighteen (18) years at the time of his dismissal. He had been assigned to the Early Childhood Center, working from 6:30 a.m. to 3:00 p.m.

From December 22, 2017 through January 2, 2018, the district schools were closed for winter break. Except for the custodial staff, students and staff were not in attendance. Custodians worked their regular shifts performing regular duties and any additional tasks more easily completed during the winter break.

Mr. Wilson’s duties and responsibilities as Early Childhood Center (ECC) Head Custodian included maintenance and security of the building and grounds, supervising other custodians assigned to ECC, assisting and support of the principal, staff and cafeteria personnel. The Head Custodian also serves as “role model” for other custodians assigned to the building. Donald

Frangipane, Facilities Engineer/Custodial Supervisor, was Mr. Wilson's immediate supervisor. The ECC was under the supervision of Principal, Dr. Lori Burns.

One room in the Early Childhood Center is known as the Seahorse Café. It contains a refrigeration unit used to store food products and prepare food served to the students. The room also has a microwave that employees can use for coffee and other items.

On the day that school reopened after winter break, staff member Joseph Digeronimo discovered an empty bottle of vodka in the microwave. Mr. Digeronimo placed the empty bottle on the microwave. Principal Burns was informed about the empty bottle by lunch aide Ms. Terry Nickson. Principal Burns notified Facility Engineer Donald Frangipane and District Superintendent Tami Crader that an empty vodka bottle had been found in the Early Childhood Center.

After an investigation, the District determined that Mr. Wilson was guilty of "unbecoming conduct" and other policy violations that warranted removal from his tenured position as a school custodian. Among the allegations put forth by the Employer was the conclusion he engaged in highly suspicious activity during the December 2017 winter break. It was further alleged that in addition to the empty bottle of vodka Mr. Wilson failed to carry out the job duties he was required to perform from December 22, 2017 through December 29, 2017. It was alleged the Respondent did not work for one (1) hour and thirty-eight (38) minutes on December 22, 2017; did not work for five (5) hours and eleven (11) minutes on December 26; failed to perform any work duties for three (3) hours and fifteen (15) minutes on December 27, 2017; did not work for five (5) hours and nine (9) minutes while on duty on December 28, 2017 and did not engage in any work related activities for seven (7) hours and two (2) minutes on December 29, 2017.

While Mr. Wilson was remiss in performing his duties during this period, he requested and was granted 4.5 hours of overtime on December 29, 2017. Rather than use the overtime hours for work, he “lazed and loitered” with a fellow custodian from a nearby school, who did have a reason to be in the ECC, named Michael Miranda.

The District also questioned why the Respondent unplugged and moved a refrigeration unit located in the Café away from the wall and then failed to plug it back into the socket. Because the unit was unplugged for many hours, approximately \$590 worth of food had to be thrown out. When questioned by Principal Burns, the Respondent was unable to provide a plausible explanation concerning the refrigeration unit.

In addition to the lack of work performed during the winter break, the District charged that Mr. Wilson violated policy when he smoked cigarettes on school grounds. The District also questioned the Respondent’s other activities during the break. It was suggested that Mr. Wilson and Mr. Miranda were drinking alcohol and possibly ingesting illegal substances while on duty. The Employer characterized the Respondent’s behavior and movements as “suspicious.”

In addition to the lack of work performed during the winter break, the District charged Mr. Wilson had an extended pattern of “chronic and excessive absenteeism, tardiness, leaving work early, failing to comply with attendance reporting procedures, and failing to swipe in and out at building door readers.” While Respondent received numerous warnings and counseling, he repeatedly disregarded the District’s policies.

In response to the Board’s action, Respondent’s Attorney Uliano emphasized the District’s burden in support of the charges. “The burden rests on the District by preponderance of the evidence” in the removal of a tenured employee. Loss of employment, Mr. Uliano noted, has consequences that include loss of employment and possible impact on pension benefits.

The charges brought forth by the District were described by Attorney Uliano as a “kitchen sink” of allegations designed to remove Mr. Wilson from his employment. What began as an empty vodka bottle, Mr. Uliano argued, inadvertently left in the microwave, escalated into a theft of time charge, insubordination, review of attendance records and violation of various District policies.

Mr. Wilson explained that the empty vodka bottle had been placed in his gym bag after visiting a relative during the holiday week. When he entered the building, he removed the empty bottle and placed it in his jacket.

There was no evidence, Mr. Uliano contended, that explicitly confirmed Mr. Wilson consumed alcohol. The District argued that bottles seen in the video footage closely resembled the vodka bottle.

In response to any inferences concerning the use of drugs, Mr. Uliano argued, no evidence was produced that showed the Respondent had used any illegal substance. The different innuendos cited by the District, Mr. Uliano contended, failed to support allegations of drug use. Attorney Uliano also noted that Mr. Wilson had passed the drug test required by the District.

Attorney Uliano argued that each suspicious movements identified by the District in support of its allegations were weak. Mr. Uliano suggested the District sought to strengthen a weak case by introducing unrelated and unproved issues.

POSITION OF THE PETITIONER

As previously contended, the Respondent had failed to carry out his responsibilities as a building custodian during the winter break. Evidence of his dereliction of duty was clearly shown in the security camera footage. The charges against Mr. Wilson included numerous

violations beyond his theft of time. In reaching its decision to terminate the Respondent, the District also cited a list of Policy violations that occurred during and before the December 2017 winter break.

The winter break provides an opportunity to perform duties that lend themselves to a period when students, staff and visitors are not in the building. There were numerous projects that can and should be performed during winter break such as sanitizing all surfaces, washing and waxing the floors, cleaning catch basins, changing light bulbs and surveying the building grounds.

On the same day the empty vodka bottle was found, a staff member also discovered that a refrigerator unit had been unplugged, resulting in the spoilage of \$590 worth of food. Mr. Wilson acknowledged that he left the empty vodka bottle in the Café and admitted that he had erroneously failed to reconnect the refrigerator. He had also “voluntarily” apologized to Dr. Burns for his oversight.

Based upon the discovery of the empty vodka bottle and the unplugged refrigeration unit, Mr. Frangipane was instructed by the Administration to conduct an extensive review of security video footage. The ECC has thirty (30) interior and exterior surveillance cameras. Mr. Frangipane’s examination of the videos covered the period from December 22, 2017 until the vodka bottle was discovered by staff. Each camera is motion activated. It took Mr. Frangipane approximately, with assistance of the District’s video technicians, forty (40) hours within six (6) weeks to review and prepare his notes.

While reviewing video footage, Mr. Frangipane and other administrators discovered Respondent engaged in behaviors that could only be characterized as “odd” or “suspicious.” It was curious that when entering the Café Respondent never turned on the lights, even when it was

dark outside. Respondent was also seen continually walking in and out of the Café and the custodial office without any legitimate work purpose.

The District identified several suspicious occurrences noted in review of the video footage.

They were:

- (a) Respondent and Miranda repeatedly stationing themselves in the corner of the Café where they knew that video cameras could not record their activities (Ex. B-7)
- (b) Miranda reaching into his pocket, removing, and drinking from a bottle that appeared to be the vodka bottle found in the Café, then placing the bottle into a food insulation cart to conceal the bottle (Miranda had no valid reason for touching or opening the food insulation carts) (Ex. B-7).
- (c) Respondent removing the bottle, which Miranda had concealed in the food insulation cart, and drinking from it (Ex. B-7). (Respondent would have no reason to touch the food insulation carts, unless he was moving them to clean/sweep, which he did not do).
- (d) No one else carrying a bottle of any kind into the Café (Ex. B-7).
- (e) Respondent was not seen with a gym bag despite claiming that he removed the bottle from his bag while cleaning it out (Ex. B-7).
- (f) Respondent and Miranda on numerous occasions appearing to bend over the Café table as if they were “snorting” cocaine (Ex. B-7)
- (g) Respondent and Miranda consistently and repeatedly touching and wiping their noses in a manner consistent with cocaine use (Ex. B-7).
- (h) Respondent at the kitchen sink washing the lower portion of his face and nose (Ex. B-7).
- (i) Respondent at the sink with two (2) cigarettes appearing to doctor/alter the cigarettes to presumably add an illegal substance (Ex. B-7).
- (j) Respondent making suspicious, furtive movements, while looking over his shoulder (Ex. B-7).
- (k) Respondent remaining in or near the Café after his shift ended and did not go home to his family despite it being the holiday season (Ex. B-7).
- (l) Miranda spending significant periods of time at the ECC despite having no legitimate basis for being on the premises as he was assigned to work at Midtown, and Respondent knowingly permitting Miranda to enter and remain at the ECC for lengthy periods of time while Miranda should have been working at Midtown (Ex. B-7) and

(m) Respondent had no legitimate reason to spend so much time in the custodial office because there were no work orders to process on the computer.

Based upon the unimpeachable video evidence, the following facts are conclusively established:

- 1) In his review of the December 22, 2017 video footage, Mr. Frangipane did not see Respondent actually perform any work activities in the Café (Ex. B-7).
- 2) In his review of the December 26, 2017 video footage, Mr. Frangipane witnessed Miranda arriving at the ECC at approximately 11:17 a.m. despite Miranda being scheduled to begin his shift at Midtown at 11:00 a.m. (Ex. B-7). Miranda's behavior was highly suspicious because Miranda did not have any legitimate work reason for being at ECC during winter break.
- 3) Respondent not only granted Miranda entry into the ECC, but he knowingly permitted him to remain at the ECC and loiter for extended periods of time (they were "hanging out" together). While at the ECC, Miranda failed to perform his assigned duties at Midtown constituting a complete dereliction of his duties. Respondent, a Head Custodian, knew Miranda's complete abandonment of his job duties was wrong, yet still actively condoned and seemingly encouraged it (Ex. B-6).
- 4) On December 26, 2017:
 - a. Respondent spent fifty-one (51) minutes smoking on the loading dock;
 - b. Respondent spent seventy-one (71) minutes loitering in the Café;
 - c. Respondent left the building for twenty-six (26) minutes without swiping out;
 - d. Respondent spent two (2) hours and forty-three (43) minutes inside of the custodial office doing nothing and
 - e. Respondent spent a total of five (5) hours and eighteen (18) minutes off task on December 26, 2017 (Ex. B-7).
- 5) On December 27, 2017:
 - a. Respondent loitered for twenty-eight (28) minutes in the Café;
 - b. Respondent spent thirty-five (35) minutes smoking on the loading dock;
 - c. Respondent spent forty-nine (49) minutes in the custodial office doing nothing;
 - d. Respondent left the building without swiping out for ten (10) minutes and
 - e. Respondent spent a total of three (3) hours and fifteen (15) minutes off task.
- 6) On December 28, 2017:
 - a. Respondent spent six (6) minutes smoking on the loading dock;
 - b. Respondent left building for fifty-three (53) minutes without swiping out;
 - c. Respondent spent four (4) hours and ten (10) minutes in the custodial office doing nothing;
 - d. Respondent spent twenty-eight (28) minutes outside working on his personal car and
 - e. Respondent spent a total of five (5) hours and nine (9) minutes off task (Ex. B-7).
- 7) On December 29, 2017:

- a. Respondent spent three (3) hours and twenty-two (22) minutes in the Café;
- b. Respondent spent forty-five (45) minutes smoking on the loading dock;
- c. Respondent spent one (1) hour and forty-one (41) minutes in his custodial office doing nothing;
- d. Respondent spent a total of seven (7) hours and two (2) minutes off task on December 29, 2017, yet he requested four and one-half (4½) hours of overtime;
- e. During the time period he was supposed to be working "overtime" (3:00 p.m. to 7:20 p.m.), Respondent was either loitering in the corner of the Café or on the loading dock, but not performing any of his required job duties;
- f. Respondent unplugged the refrigeration unit causing almost \$590 worth of food to spoil. Respondent voluntarily told Dr. Burns that he moved the refrigerator to scrub the floor; however, the video shows that he did not clean anywhere near the unit;
- g. At the same time and place that Respondent unplugged the refrigeration unit, Miranda was at the ECC (when he should have been working at Midtown) where he and Respondent suspiciously hung out in the corner of the Café in the dark. Careful review of the video footage shows Mr. Miranda bending down over the table, putting something to his nose and wiping his nose. Respondent is also seen wiping/touching his nose when he leaves the Café corner.

Mr. Frangipane testified that after the winter break he inspected the ECC and found that many "tick items" had not been completed.

On several occasions Respondent was informed that his behavior and disregard of policies was unacceptable. Mr. Wilson was given ample opportunity to correct his unacceptable conduct. Mr. Frangipane testified that prior to the appointment of the current Superintendent he had recommended the termination of Respondent. However, he was advised to give Mr. Wilson a warning. It was alleged that the failure to discharge Respondent reflected that his sister was a member of the Board, his mother was employed by the District, and his mother-in-law worked for the Assistant Superintendent.

Respondent had testified that problems at work were influenced by the murder of his son in November 2016. The Employer understood the impact this had on Mr. Wilson. However, the District did not deny Respondent any benefits or time off. Because of chronic and excessive absenteeism, Mr. Wilson had exhausted his sick and personal leave. Although Respondent had the option to ask for bereavement leave or a leave of absence, he did not submit such a request.

In response to the negative drug test, the District argued it was administered one month after winter break. Thus, the test results were inclusive. The delay in performing a drug test reflected the length of time it took Mr. Frangipane to complete his review of the “extensive video footage.”

In spite of numerous warnings, Mr. Wilson ignored District policies and guidelines. The evidence clearly established that Respondent’s conduct warranted removal from his position.

POSITION OF THE RESPONDENT

The Respondent argued that he was singled out and, without credible evidence, terminated unfairly by the District. No other employee during the holiday week was investigated. One might ask if video footage would reveal if any other employees had been “off task” between Christmas and New Year’s Day.

The incident that triggered the investigation began after an empty bottle of vodka was found in the Café. There is no documentation that shows Mr. Wilson drinking alcohol while on duty. He explained the vodka had been consumed at a holiday party before he reported to work. The empty bottle had been placed in a gym bag and then transferred into his jacket pocket. The security video footage shows Mr. Wilson drinking from a bottle that contained only water.

Mr. Wilson testified that the bottle he placed in the food warmer contained frozen water he kept in his office and was placed in the warmer to defrost. The District suggested the bottle was the size of one containing vodka rather than water is without merit. Mr. Wilson was unable to explain how the empty bottle made its way into the microwave.

Attorney Uliano disputed the District’s reason the refrigerator was unplugged and moved. The District contended Mr. Wilson and Mr. Miranda unplugged the noisy refrigerator because

they wanted to hear if anyone was coming into the building. Also, Mr. Frangipane erroneously contended the refrigerator was moved to block the view from the gym into the Caf . However, the gym is equipped with a motor sensor light. Thus, the activated light would have alerted Mr. Wilson and Mr. Miranda if someone entered the building before they would be seen.

When asked about a "suspicious" vehicle arriving in the evening of December 29, 2017 at the ECC, Mr. Wilson explained that it was his daughter who asked to use his debit card. The appearance of the car was an additional accusation that falsely suggested suspicious activities.

Mr. Morris's testimony that he was asked to serve as a lookout cannot be accepted at face value. The allegation he was asked to serve as a "lookout" is unfounded. Mr. Morris stated that Mr. Wilson gave him a few "pointers" during the winter break and was limited to his position as head custodian. Furthermore, Respondent suggested his absence benefits Mr. Morris because it provides him with overtime. Mr. Wilson also had worked with Mr. Morris for a relatively short period (3 months) of time and had no more than a casual relationship with his fellow custodian.

An additional matter concerns the December 29, 2017 interaction Mr. Wilson had with Environmental Specialist, Supervisor Martin Cordero. Mr. Morris saw Mr. Cordero walking into the ECC building at 7:30 p.m. Mr. Morris observed Mr. Cordero and Mr. Wilson exchange New Year's wishes. Mr. Wilson was face-to-face with Supervisor Cordero. If Mr. Cordero had detected alcohol or drug use, he would surely have notified Mr. Frangipane. It is interesting to note that the District never bothered to speak to Mr. Cordero or call him as a witness. "The most logical theory regarding why Mr. Cordero never entered the district radar would be that Mr. Cordero viewed his interaction with Mr. Wilson that evening as ordinary."

In answer to Mr. Wilson's "unnecessary" request for winter break overtime, Respondent testified there was a miscommunication with Mr. Frangipane. The overtime request was needed

to clean the cubbies (after examination of building) and not the lobbies as assumed by Mr. Frangipane.

Mr. Wilson did not deny he smoked cigarettes outside the building during the winter break and would not have smoked on school grounds if children were present. Many of the cigarette butts found near the building were left by the outside contractors working during winter break. Mr. Uliano noted that Respondent had not been previously disciplined or warned for smoking on school grounds. Smoking did not warrant termination. At most, a minor suspension might be justified.

Unable to prove either drug use or alcohol consumption, the District sought to use attendance to justify the termination. Mr. Wilson explained that he had health and personal issues that resulted in his absenteeism. It was curious, Mr. Uliano stated, that the attendance issue did not become critical until 2018. Mr. Wilson testified that he came to school and opened the building even when sick and remained on duty until a fellow custodian reported in for the 11:00 a.m. shift. Prior to the termination, Mr. Wilson had never had his pay docked.

Mr. Wilson was described as a good employee assigned to a school of young children that contributed to a custodian's workload. Mr. Frangipane acknowledged that young children create more work for custodians. Mr. Wilson stated he often had to clean up vomit and feces but, readily carried out his responsibilities. Dr. Burns testified that Mr. Wilson always complied with her requests. Ms. Nickson testified that Mr. Wilson did a better job than other custodians.

Mr. Wilson explained that he walked in and out of the Café because he charged his cell phone in that room. Contrary to the District's accusation, he was not avoiding the security cameras.

The District failed to establish that they had met the burden of proof warranted for the termination. "It is conceded that nothing other than a small suspension would be appropriate discipline based on the evidence submitted in this matter."

DISCUSSION AND FINDINGS

The charges filed by the District fall into two categories. The first encompassed the Respondent's actions and behavior that occurred during the 2017-2018 winter break. The second category of charges entailed Respondent's employment record.

Respondent's legal council argued that Mr. Wilson's employment record had been considered only after the empty vodka bottle was discovered in the ECC building. Mr. Wilson's absenteeism, it was argued, was a secondary justification for the termination. Mr. Uliano contended absenteeism was designed to bolster an otherwise weak case.

An employee's past record is often introduced to support a party's position. A good record is considered a factor in the reduction in the level of discipline. A poor record is sometimes cited in support of an employer's decision to impose discipline.

A review of Respondent's early evaluations reveals a significant number of absences. In the March 2013 through February 2014 Evaluation, it was noted Mr. Wilson's tardiness and absenteeism continued to be excessive. Attendance and tardiness had also been included in the Evaluations completed for the ensuing two years. The Evaluation prepared in 2016 stated that excessive absenteeism is disruptive and could result in future disciplinary action. Mr. Wilson's unsatisfactory attendance record was also noted in the yearly Evaluation that was prepared in June 2017.

In a letter to Mr. Wilson dated December 6, 2017 (Ex. B-33), Mr. Frangipane emphasized

“unscheduled absences are not congruent with Board policy and have a deleterious impact on custodial operations at the Early Childhood Center.” Mr. Frangipane stated that as of the date of his December 6th letter, Mr. Wilson had been absent a total of 21 days, excluding vacation days.

Facilities Engineer Frangipane alerted Respondent to the consequences of habitual absenteeism such as withholding salary increment and termination of employment. Mr. Wilson was informed that given the failure to negotiate improvements in his attendance “further disciplinary action (would) be taken. Discipline action to be taken includes but is not limited to: a negative report on your evaluation, withholding of a salary increment and termination of employment. None of this has made any difference, your neglect of district attendance policy continues with impunity.”

Included in the yearly evaluations were references to a Failure to Swipe out when leaving the ECC. However, while citing shortcomings in certain custodial responsibilities, the District did not withhold an increment or not recommend continuation.

However, Respondent’s absenteeism and tardiness had been noted in several yearly evaluations. With few exceptions, Mr. Wilson had exceeded the fifteen (15) sick days granted under the collective bargaining agreement. On a number of occasions, he failed to record (swipe) his movement in and out of the ECC. There were also instances in which Mr. Wilson did not report his absences on AESOP, a self-reporting online and telephonic reporting system.

In a letter dated, February 28, 2014, Mr. Frangipane advised Mr. Wilson that neglect of reporting procedures would result in disciplinary action. The record includes a number of letters from Mr. Frangipane to Mr. Wilson concerning tardiness, leaving early and failure to report absences. The letters were dated September 17, 2015, October 1, 2015 and August 4, 2016.

While the District had not taken disciplinary action immediately, Mr. Wilson had been warned that his attendance record was unacceptable.

In November 2016, Mr. Wilson did experience a personal tragedy with the death of his son. He testified that he had exhausted his sick leave and personal days. The District contended Mr. Wilson did have the option of requesting unpaid leave but did not file a request for additional time off.

Notwithstanding the above tragedy, Mr. Wilson did not respond to the warnings. In the letter dated October 2015, Mr. Frangipane notified Mr. Wilson about a meeting he failed to attend. The meeting was in regard to tardiness, leaving early, and failure to report absences.

The record does support the charges related to absenteeism, tardiness, leaving his assignment early and not observing District policy when leaving a building or reporting absences.

The second category of charges addressed Respondent's activities during winter break. A review of Mr. Wilson's movements confirms that he devoted less than the number of hours expected for custodial duties. Mr. Frangipane's review of security videotapes, initiated by the discovery of the empty vodka bottle, brought about the examination of Mr. Wilson's activities.

I believe Mr. Wilson's explanation for the empty vodka bottle was suspect. If an empty bottle were inadvertently brought into the Café, why was it left in the microwave? While there is no image on the tapes Mr. Wilson had consumed alcohol in the ECC building, the discovery of the empty bottle is suspicious. It is also unclear when Mr. Wilson alleged he found the empty bottle in his gym bag or why he did not then take the bottle out of the building. The District contended the duffle bag was not seen on the videotapes and theorized it was concealed in Mr. Wilson's coat.

The video footage revealed that both Respondent and a custodian assigned to a different building (Miranda) had drank from a bottle concealed in a food insulation cart. Mr. Wilson testified he had placed frozen water bottles in the cart to defrost them.

Mr. Frangipane testified that Mr. Miranda had no reason to be in the ECC building. Mr. Wilson had contended Mr. Miranda was upset over personal problems and wanted his counsel. The District asked why they found it necessary to meet during work hours.

The videotape had shown Mr. Wilson at the Café sink removing tobacco from a cigarette. Mr. Wilson testified he had inserted a menthol filter onto a Marlboro that he had been given by a contractor. Mr. Frangipane thought this suspicious and unacceptable in a food prep area. The District suggested it was unusual in conjunction with Mr. Wilson frequently leaving the building. In the use of the Café sink, the Petitioner questioned why Mr. Wilson did not use the sink adjacent to his office. Mr. Frangipane also noted Mr. Wilson did not turn on the lights in the Café. On numerous occasions both Mr. Wilson and Mr. Miranda were in areas not recorded by security cameras.

The answers concerning the unplugged refrigerator were not convincing. Mr. Wilson alleged the refrigerator had been moved so the floor could be cleaned. Video footage failed to show Mr. Wilson cleaning the area around the refrigerator. After Mr. Wilson pulled the refrigerator from the wall he unplugged it and then sat down in the dark.

Although there was disagreement concerning the reason he requested four and a half hours overtime on December 29, 2017, at the end of the day he sat the entire time in the darkened Café with Mr. Miranda. On the 29th, Mr. Wilson spent over three (3) hours in the Café, 45 minutes on the loading dock and over one hour in his office. While one might consider that the

29th was a more “relaxed” day because it was the last workday of the year, it has to be judged in conjunction with the entire week.

The District alluded to suspicions Mr. Wilson had used prohibited substances. Mr. Wilson submitted to a drug test toward the end of January 2018. The results of the test were negative. Petitioner speculated that the lapse of time in administering the test negated evidence of substance abuse. Although the District believed Mr. Wilson’s actions were suspicious, the test result was negative.

Mr. Uliano suggested that Mr. Wilson had been investigated during winter break while other employees were not. However, interest in Mr. Wilson’s workweek began only after the discovery of the empty vodka bottle. If not for the empty vodka bottle, the security videotapes would not have been reviewed. Mr. Frangipane testified that if not for the empty vodka bottle he would not have spent many hours within a busy schedule viewing the tapes. Mr. Frangipane also testified the decision to review the tapes was made in collaboration with other administrators.

While Mr. Wilson had been alerted to the District’s policies, he failed to observe these rules and the advice of his superior. As a seventeen-year employee and head custodian, Mr. Wilson was familiar with these policies. Although the use of illegal drugs was not proven, the discovery of an empty vodka bottle placed in the microware lends credence to the District’s allegation that alcohol was consumed in the building. Although the intensity of work might be less during the winter break, Mr. Wilson clearly neglected his duties.

In consideration of the above, I have concluded the preponderance of evidence supports the charges brought forth by the Neptune Township Public School District against Lawrence Joseph Wilson.

AWARD:

For the reasons described above, the tenure charges submitted by the Neptune Township Public School District against Lawrence Joseph Wilson are sustained.

11/16/18
Date

Stephen J. Rosen
Stephen J. Rosen

State of New Jersey }
County of Essex }

On this 16th day of November, 2018, before me personally came and appeared Stephen J. Rosen, to me known to be the individual described in the foregoing instrument, and he acknowledged to me he executed same.

Susan G. Rosen
SUSAN G. ROSEN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 8/4/2019