



STATE OF NEW JERSEY

In the Matter of Robert Gundy
Newark Public School District

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2019-1838
OAL DKT. NO. CSV 04192-19

ISSUED: AUGUST 16, 2019 BW

The appeal of Robert Gundy, Custodial Worker, Newark Public School District, removal and resignation not in good standing effective October 15, 2018, on charges, was heard by Administrative Law Judge Ernest M. Bongiovanni, who rendered his initial decision on July 23, 2019. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on August 14, 2019, accepted and adopted the Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission dismisses the above appeal based on appellant's failure to appear.

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
THE 14TH DAY OF AUGUST, 2019

Deirdre L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
44 S. Clinton Ave.
P. O. Box 312
Trenton, New Jersey 08625-0312



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. CSV 04192-19

AGENCY REF. NO.2019-1838

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

Jesse Humphries, appearing for appellant Robert Gundy (Oxfield Cohen,
attorneys)

Bernardo Mercado, Esq., appearing on behalf of respondent, Newark Public
School District

Record Closed: July 18, 2019

Decided: July 23, 2019

BEFORE ERNEST M. BONGIOVANNI, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On March 25, 2019 this matter was transmitted to the Office of Administrative Law (OAL) for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14f 1 to-13. A telephone prehearing was held on April 16, 2019. At the conference both attorneys advised that there were no Discovery issues and that the matter could be listed for a hearing as early as June 11, 2019, although they anticipated

a settlement would be reached before then. Notice of the hearing to take place on June 11, at 10:00 a.m. was sent to both attorneys. On June 6, 2019, I received an email from appellant's attorney, Mr. Humphries, asking that the hearing be rescheduled, with the consent of counsel for the respondent, Mr. Mercado, because his office had received a copy of the settlement agreement that the attorneys had negotiated and the only outstanding item left was for Mr. Gundy to come to his office. The matter was adjourned with the condition that the settlement be sent and sent to the OAL by June 17, 2019. On June 19, 2019, I received a letter, dated June 18, 2019 from Mr. Humphries, a copy of which was sent by certified mail to Mr. Humphries. Mr. Humphries letter explained that Mr. Gundy was aware of a settlement agreement that was awaiting his review at Mr. Humphries' office, but that Mr. Gundy had failed to come to his office to review and sign the settlement. Further Mr. Gundy had not responded to various voicemail messages and failed to return his calls even though he left messages for Gundy that the agreement had to be signed by June 17, 2019. The letter also stated that since that time, despite counsel's warning, that Mr. Gundy failed to respond in any way to the concerns of his June 11, 2019 letter. Mr. Humphries asked that the petition be "withdrawn."

Mr. Humphries was advised he could file a formal motion to be relieved as counsel but that the matter would be relisted for a hearing. On June 19, 2019, a notice for a hearing to be held on July 18, 2019 was sent to both attorneys. On June 27, 2019, counsel requested a telephone status conference be held and the conference was held the next day, June 28, 2019. At the conference, it was determined that nothing had changed, and that Mr. Gundy was still not cooperating with his counsel.

At the hearing on July 18, 2019, both attorneys were present, but appellant was not. Mr. Humphries advised that he had spoke to Mr. Gundy that morning, that Mr. Gundy had found a new job and that he advised Mr. Humphries he was not interested in the settlement or in the proceedings any longer.

CONCLUSIONS OF LAW

N.J.A.C. 1:1-14.4(a) provides that, if after appropriate notice, a party does not appear in a proceeding scheduled by the Clerk of OAL, the judge may direct the Clerk to return the matter to the transmitting agency if the judge does not receive an explanation for the nonappearance within one day. Appellant was noticed through his attorney of the status conference on the original hearing date of June 11, 2019, later he was advised of the fact that a settlement agreement was awaiting his review and signature. Further on the morning of the July 18, 2019 hearing, the appellant spoke with his lawyer by phone and advised him he no longer wished to contest the case, as he had obtained a new position. Consequently he failed to appear.

For the above reasons, I **CONCLUDE** that appellant failed to cooperate with his counsel and failed to appear for the hearing of July 18, 2019, and therefore, that this matter should be dismissed for lack of prosecution.

ORDER

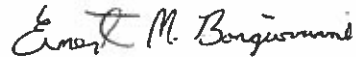
It is **ORDERED** that Gundy's application for relief be **DISMISSED** pursuant to N.J.A.C. 1:1-14.4, and I **DIRECT** the Clerk to return the matter to the Civil Service Commission for appropriate disposition.

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.

July 23, 2019



DATE

ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency:

7/23/19

Date Mailed to Parties:

id