


DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
JULY 26, 2017



Robert M. Czedo, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

attachment

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. CSV 00314-17

AGENCY DKT. NO. 2017-1984

**IN THE MATTER OF LUIS VALLE,
CITY OF PASSAIC, DEPARTMENT OF
PUBLIC WORKS.**

Curtis T. Jameson, Esq. for Appellant Luis Valle

Eric M. Bernstein, Esq. for Respondent City of Passaic, Department of Public
Works (Eric M. Bernstein & Associates, attorneys)

Record Closed: June 9, 2017

Decided: June 20, 2017

BEFORE CAROL I. COHEN, ALJ t/a:

STATEMENT OF THE CASE

The Appellant is seeking to enforce a settlement that was put on the record on April 5, 2017; compel the Appellant to sign the Settlement Agreement and General Release; and incorporate the Settlement Agreement and General Release in the Initial Decision.

PROCEDURAL HISTORY

On December 2, 2016, the Appellant received a Final Notice of Disciplinary Action removing him from his position as Laborer/Maintenance Worker on the grounds that he had executed a Last Chance Agreement in March 2014 and he had not lived up to the terms of the Agreement. Based on the Last Chance, he was not entitled to a hearing. The grounds for removal included incompetency, inefficiency, failure to perform duties, insubordination, inability to perform duties, chronic or excessive absenteeism, conduct unbecoming a public employee, neglect of duty and other sufficient caused. The Appellant filed an appeal on December 20, 2016. The matter was forwarded to the Office of Administrative Law (OAL) on January 10, 2017. A prehearing conference was held on January 26, 2017 and the matter was set down for a hearing on April 5, 2017. After extensive discussions between the parties and a discussion with the ALJ, the Appellant agreed to settle the matter and a settlement was put on the record¹. On April 27, 2017 the court was informed that the Appellant was refusing to sign the settlement agreement, that memorialized the terms of the agreement which had been put on the record, and which had been forwarded to his attorney by Mr. Bernstein on April 6, 2017. The Respondent was instructed to file a Motion to Enforce the Settlement. The motion was received by the court on May 30, 2017.

ARGUMENTS OF THE PARTIES

The city argued that the Petitioner testified under oath that he accepted the terms of the settlement. There was no coercion, duress, fraud, dissatisfaction or questioning of the terms. In addition, the settlement was promptly reduced to writing within one day of the hearing and accepted by Mr. Valle's attorney. Subsequent to that, the Petitioner refused to sign the written Agreement. The City contended that an oral contract was created on April 5, 2017 and the written agreement, pursuant to Civil Service laws, merely memorialized the terms that were testified to and accepted by the Petitioner the day prior. The City pointed to the decision in In re Smith, CSV 6370-07, Initial Decision (December 17, 2007), affirmed, Merit System Board (January 30, 2008),

¹ See Transcript attached.

<http://njlaw.rutgers.edu/collections/oal/>, which was upheld by the Merit System Board. In that matter, on the day of the plenary hearing, the employee authorized her agent to settle the case. The employee then reconsidered and refused to sign the written agreement. In rendering his opinion upholding the settlement, the ALJ pointed out that there is a strong public policy favoring settlement of litigation. When a settlement is voluntary, it is binding on the parties. A settlement is equivalent to a contract and, if freely entered into, without fraud or other compelling circumstances, it should be honored and enforced. In addition, the fact that the oral agreement is later reduced to writing, makes it no less enforceable. Passaic also cited In re Tenure Jones, EDU 08618-05, Initial Decision (May 8, 2007), <http://njlaw.rutgers.edu/collections/oal/>, in which an unsigned draft settlement agreement was found to be a settlement. The ALJ's decision was subsequently upheld by the Commissioner of Education. In adopting the ALJ's decision the Commissioner of Education stated that what was required to enforce a settlement was that the Court determine:

From the written order/stipulation or from the parties' testimony under oath that the settlement is voluntary, consistent with the law and fully dispositive of all issues. In controversy, the judge shall issue an initial decision, incorporating the full terms and approving the settlement.
N.J.A.C. 1:1-19.1

Passaic argued that the present matter factually mirrored both Smith and Jones. The settlement was fairly negotiated and reached in the presence of the attorneys for the litigants. The settlement was then put on the record. The Petitioner assented to the terms of the Agreement under oath. Therefore, the terms of the Agreement should be incorporated into an Initial Decision.

The Petitioner did not file a responsive brief and made no argument in opposition to the City's motion.

CONCLUSIONS OF LAW

New Jersey has a "strong public policy in favor of settlement." Department of Public Advocate v. N.J. Board of Public Utilities, 206 N.J. Super. 523, 528 (App. Div.

1985). The courts have "strained" to uphold settlements. Ibid. The fact that the agreement is later reduced to writing does not mean that the oral contract is unenforceable, as long as the parties intended to be bound by the terms of the oral agreement. Berg Agency v. Sleepworld-Willingboro, Inc. 136 N.J. Super. 369, 374 (App. Div. 1975).

On April 5, 2017, the parties appeared for a hearing. Prior to the beginning of the hearing, I asked the attorneys if there had been any settlement negotiations and if there was any chance of resolving the matter. The attorneys and their clients took part in extensive settlement negotiations. In my presence, there was a discussion about the fact that, if there was an adverse ruling, Mr. Valle's pension could possibly be forfeited. Mr. Valle questioned whether the "last chance" agreement could be enforced. I said that if he wanted a hearing on the issues, then we would proceed to trial. Finally, Mr. Valle stated that he wished to settle the matter. At that point we went on the record and Mr. Bernstein outlined the terms of the Settlement. They included that:

1. Mr. Valle agreed that he was resigning in good standing as of December 2, 2016.
2. Any monies that he was owed up to December 2, 2016 would be paid to him through the City's Department of Human Services.
3. A neutral reference would be provided to Mr. Valle if he required a reference for another employment.
4. The City would take no action against Mr. Valle's pension.
5. The City would take no action against Mr. Valle's unemployment.
6. The Appellant would withdraw his appeal with prejudice.

Mr. Valle was sworn in and asked whether he heard the terms as outlined by Mr. Bernstein; if he understood the terms; if he had any questions regarding the terms; if he was under the influence of drugs or anything that could affect his ability to enter into the Agreement fully and fairly; if he was coerced into entering into the Agreement; if he was satisfied with the representation he had received; and if he had any questions of the attorneys or the court regarding the Settlement. Mr. Valle's responses to the questions were such that it was clear that he had entered into the Agreement voluntarily and with an understanding of the terms of the Agreement.

While the Appellant has chosen not to file a responsive brief, it is clear that at the time the settlement was put on the record, he fully understood the terms of the agreement and the implications of the Settlement, and consented to same. As ALJ Masin announced in the Jones matter, when there is clearly a meeting of the minds, the law contemplates that a binding agreement has been created, even though it is reduced to writing subsequently. While Mr. Valle may have remorse at this time, that does not negate the fact that he agreed to the settlement under oath and with the advice of counsel. I therefore, **CONCLUDE** that the terms of the Agreement that were negotiated by the parties; spread forth on the record; and later memorialized in a writing, are the terms of the Settlement.

ORDER

Based on the foregoing, it is **ORDERED** that the terms of the Agreement as outlined above are binding on the parties and are hereby incorporated in the Initial Decision.

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, PO 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.

June 20, 2017
DATE

Carol I. Cohen
CAROL I. COHEN, ALJ

Date Received at Agency:

June 20, 2017

Date Mailed to Parties:

June 20, 2017