H.E. NO. 2018-6

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY,
DEPARTMENT OF CORRECTIONS,

Respondent,

-and- Docket No. CO-2016-156

ESSEX COUNTY SUPERIOR
OFFICERS ASSOCIATION,
FOP LODGE 106,

Charging Party.

SYNOPSIS

A Hearing Examiner denies Charging Party's motion to enforce settlement agreement, concluding there was not a sufficient basis upon which to find a binding agreement existed and Charging Party had not pled an a(6) violation.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent
Genova Burns, LLC
(Joseph M. Hannon, of counsel)

For the Charging Party
C. Elston & Associates, LLC
(Catherine M. Elston, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On February 16, 2016 and June 21, 2016, Essex County Superior Officers Association, FOP Lodge 106 (FOP) filed an unfair practice charge and amended charge, respectively, against Essex County, Department of Corrections (County) alleging failure to negotiate terms and conditions of employment for the title "Investigator/Secured Facilities." Additionally, the charges

allege threats of and actual retaliation against certain officers.

A Complaint and Notice of Hearing was issued by Director Mazuco on July 11, 2017, on the claim under N.J.S.A. 34:13A-5.4a(1), (3) and (5).

Respondent filed an Answer on July 21, 2017.

On July 24, 2017, the FOP filed a Motion to Enforce Settlement Agreement. The Motion was held in abeyance pending multiple settlement conferences in August through October of 2017. Upon exhaustion of mediation, Respondent filed a response to the Motion on November 3, 2017 and the FOP filed a reply on November 14, 2017. I have reviewed the parties submissions.

The FOP asserts that the parties reached a written agreement on terms and conditions of employment with respect to the title "Investigator, Secured Facilities," and that the County will not sign the Agreement under N.J.S.A. 34:13A-5.4(6). The FOP also argues that the settlement agreement resolves part of the within charge and therefore it is enforceable, citing, Hamilton Tp. Bd. of Ed., P.E.R.C. No. 90-80, 16 NJPER 176 (¶21075 1990), aff'd NJPER Supp.2d 258 (¶214 App. Div. 1991).

The County maintains that the settlement agreement which the FOP is seeking to enforce was merely a proposed, partial settlement as to one aspect of the within charge. However, when

the remainder of the charge could not be resolved, the County declined to settle the charge in piecemeal, seeking a global settlement on all issues.

The FOP's Motion is hereby denied for reasons set forth below. The FOP's reliance on Hamilton Tp. Bd. of Ed., supra, is not instructive. In Hamilton, the settlement agreement in question was a settlement of a prior unfair practice charge that was signed and ratified by the parties. PERC's later reliance on that settlement agreement in a subsequent charge on the same issue between the parties was solely to demonstrate there had not been a waiver by the Association. Here, there was no prior settlement agreement signed and ratified by the parties. There were draft settlement proposals, not a signed settlement agreement.

The instant case is analogous to City of Plainfield and Fire Offrs. Ass'n., P.E.R.C. No. 2017-73, 44 NJPER 30 (¶9 2017). The union in Plainfield filed a charge alleging that the city failed to execute a written memorandum of agreement regarding implementation of agreed upon terms and conditions of employment. In denying the City's motion for summary judgment, the Commission held,

> Whether a valid oral contract was made is 'solely a matter of intent determined in large by a credibility evaluation of witnesses.' McBarron v. Kipling Woods L.L.C., 365 N.J. Super. 114, 117 (App. Div. 2004).

* * *

> Among the factors to guide a determination of whether the parties intended to enter into a binding oral agreement are (1) the circumstances surrounding the transaction, (2) the nature of the transaction, (3) the relationship between the parties, (4) the parties' contemporaneous statements, and (5) the parties' prior dealings. Morton v. 4 Orchard Land Trust, 180 N.J. 118, 126 (2004). Of particular importance here, the only contemporaneous statement presented as to what was said at the March 16 meeting - that the director stated that he wanted the issues resolved today - if credited, is insufficient to support a finding that the parties intended to enter into a verbal agreement. We deny the City's motion for summary judgment because the question of whether a verbal agreement was made turns on intent and credibility evaluations and the record lacks the parties' contemporaneous statements regarding their discussions and the terms of the alleged agreement entered at the March 16 meeting. Of course, the second issue of whether the FOA's draft MOA accurately reflects the parties' verbal agreement requires a determination that a verbal agreement was made at the meeting. Id.

There is no fully executed settlement agreement in this case. As in Plainfield, whether a valid oral agreement exists is in dispute. By the Charging Party's own admissions, the unsigned draft agreement does not fully reflect all of the terms it alleges were encompassed by verbal agreement. The briefs and certifications of the parties are not sufficient alone to find there was a binding agreement.

The FOP correctly asserts that N.J.S.A. 34:13A-5.4(6) prohibits employers from "refusing to reduce a negotiated agreement to writing and to sign such an agreement."

> A prerequisite to finding that an employer refused to sign a negotiated agreement is that the parties reached a "meeting of the minds" on the terms of that agreement. Wayne Bd. of Ed. and Wayne Ed. Assoc., D.U.P. No. 86-23, 12 NJPER 549 (¶17208 1986). See also Passaic Valley Water Commission, P.E.R.C. No. 85-4, 10 NJPER 487 (¶15219 1984); Mt. Olive Bd. of Ed.; Borough of Wood-Ridge, P.E.R.C. No. 81-105, 7 NJPER 149 (¶12066 1981); Borough of Matawan, P.E.R.C. No. 86-87, 12 NJPER 135 (¶17052 1986); Long Branch Bd. of Ed., P.E.R.C. No. 86-97, 12 NJPER 204 (¶17080 1986). In a "meeting of the minds" case, the parties may have agreed on a specific provision, but not on its meaning or application; or the parties may have agreed on some but not all language; or may have negotiated over a topic but do not mutually agree that a final agreement was reached on the topic. See Washington Tp., H.E. No. 97-25, 23 NJPER 266 (¶28128 1997).

State of New Jersey (Kean University), D.U.P. No. 2012-1, 38 NJPER 167 (¶49 2011).

The Charging Party did not plead a violation under N.J.S.A. 34:13A-5.4(6) in either its original or amended charge, and therefore the issue is not properly before me. Had the FOP pled

an a(6) allegation, and a complaint issued on same, the within motion would be a dispositive motion.[1/] The Charging Party's motion is, therefore, denied.

/s/Deirdre K. Hartman-Zohlman
Deirdre K. Hartman-Zohlman
Hearing Examiner

DATED: December 4, 2017
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-4.8(e) this ruling may only be appealed to the Commission by special permission in accordance with N.J.A.C. 19:14-4.6.

Any request for special permission to appeal is due by December 14, 2017.

1/ See, N.J.A.C. 19:14-4.8, et seq.