

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

In the Matter of

COUNTY MANAGER OF THE COUNTY OF  
UNION and/or UNION COUNTY BOARD  
OF CHOSEN FREEHOLDERS,

Respondent,

-and-

Docket No. CO-80-269-107

UNION COUNCIL NO. 8, N.J. CIVIL  
SERVICE ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Hearing Examiner denies a motion brought by Charging Party to enforce what it contends was a final and binding settlement agreement. The Hearing Examiner concludes that there was no meeting of the minds upon "substantial particulars" of the purported agreement. What the parties had agreed upon was an approach concerning how they would reach a settlement agreement; however, no mechanism was provided for definitely ascertaining the specifics of the parties' purported agreement. Having determined that there was no meeting of the minds on substantial particulars of the agreement, the Hearing Examiner concluded no final agreement was reached. Accordingly, the motion is denied.

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Appearances:

For the Respondent, Weinberg and Manoff, P.A.  
(Irwin Weinberg, Esq., Richard J. Kaplow, Esq. on the brief)

For the Charging Party, Fox and Fox, Esqs.  
(David I. Fox, Esq.)

HEARING EXAMINER'S DECISION ON  
MOTION TO ENFORCE SETTLEMENT

An Unfair Practice Charge (the "Charge") was filed with the Public Employment Relations Commission (the "Commission") on March 3, 1980, by Union Council No. 8, Civil Service Association (the "Charging Party"), alleging that the Union County Board of Chosen Freeholders and the County Manager (the "Respondent") was engaged in conduct violative of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. (the "Act"). On March 14, 1980, this Charge was amended. More specifically, it is alleged in the amended Charge that the Respondent unilaterally changed terms and conditions of employment (a) when it ceased providing "in charge

pay" to certain employees acting as head nurses and (b) when it required employees who worked a shift schedule to work on days which were originally scheduled as days off for the employees. Such conduct is alleged to be violative of N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4), (5) and (7). <sup>1/</sup> The Respondent denies having unilaterally changed terms and conditions of employment.

Background and History

In its charge, the Charging Party contends that the parties' then current collective negotiations agreement (covering January 1, 1978-December 31, 1980) provides that licensed practical nurses who are required to perform head nurse functions by the employer will be paid a daily premium for such duties. The Respondent contends that the charge is untimely. Additionally, the Respondent contends that ten licensed practical nurses who were performing supervisory duties were reclassified as Senior Practical Nurses by the Civil Service Commission. Because the Civil Service reclassification was due solely to their performance of supervisory duties, the Respondent contends these Licensed Practical Nurses were entitled to either "in charge pay" or to the Senior Practical Nurse's pay -- but not to both. The Respondent contends it followed the Civil Service procedure -- i.e., it reclassified the Licensed Practical Nurses as

1/ These subsections provide that public employers, their representatives or agents are prohibited from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) dominating or interfering with the formation, existence or administration of any employee organization; (3) discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act; (4) discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this Act; (5) refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative; (7) violating any of the rules and regulations established by the ~~commission~~ Commission."

Senior Practical Nurses and paid them accordingly -- and it ceased providing them with "in charge pay."

In the second part of its charge, the Charging Party contends that the Respondent unilaterally changed contractual terms by requiring that when shift employees called in sick on a weekend when they were scheduled to work, such employees were required to work on a subsequent weekend when they had originally been scheduled to be off from work. The Respondent notes that the County Hospital is a round-the-clock operation and that it hires personnel so as to maintain the institution on a seven-days-per-week, 24-hours-per-day basis. The Respondent further contends that there appears to be a type of "concerted action" by employees to avoid the weekend assignments. Thus, the Respondent states that on a given weekend, it is compelled to fill weekend vacancies with employees who were not originally scheduled to work on that weekend. Finally, the Respondent notes that the assignments are within the Respondent County's managerial prerogatives and are thus outside the scope of collective negotiations.

It appearing that the allegations of the Unfair Practice Charge, as amended, if true may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 19, 1980. A prehearing conference was scheduled for July 14, 1980, and hearings were scheduled for August 6 and 7, 1980. At the request of the parties, the matter was adjourned and the prehearing conference was rescheduled to August 4, 1980, and the hearing was rescheduled to September 30 and October 1, 1980.

At the prehearing conference on August 4, 1980, no informal resolution could be reached by the parties. However, on September 30, 1980, the first scheduled date for hearing, counsel for both parties herein entered into closed discussions (outside the presence of the Hearing Examiner). Counsel emerged from said discussions and indicated to the Hearing Examiner that they had reached an agreement to resolve the instant dispute. The Hearing Examiner then requested that the parties describe the agreement for the record; thereupon, the parties' respective counsel described the agreement for the record. The statement of any agreements reached by the parties is set forth in the transcript of proceedings of the instant matter dated September 30, 1980.

At the conclusion of the proceedings on September 30, 1980, the Charging Party agreed to produce, by November 1, 1980, documentation to support its claims for "in charge pay" alleged to be owed to unit employees under terms of the parties' collective negotiations agreement (1978-80). Thereafter, the Respondent was to review said documentation and compare it to the Respondent's own employment records. Finally, the parties were to meet to reach agreement upon the amount of back compensation to be paid to the affected employees.

By January 28, 1981, the Hearing Examiner was made aware that the parties were having difficulty in reaching agreement concerning the amount of the back payments to be made to unit employees who are alleged to have performed the head nurse or in charge duty. The Hearing Examiner contacted both counsel telephonically to suggest some concrete meeting times so that the parties could discuss

and come to some accord concerning the amount of back payments to be made herein. The parties agreed to meet and indicated they would advise the Hearing Examiner if their difficulties persisted.

Nothing further having been heard from the parties, on April 24, 1981, the Hearing Examiner sent a letter to the parties requesting that they advise the Hearing Examiner of the current status of this matter. By May 22, 1981, the Charging Party and the Respondent responded that they were still unable to achieve an agreement herein and both parties requested that the Hearing Examiner schedule a meeting to attempt to reconcile the differences between the parties. A conference was conducted by the Hearing Examiner on June 22, 1981; the parties were unable to resolve their differences concerning the amount of back payments to be made herein.

By July 9, 1981, the parties had submitted written statements of position to the Hearing Examiner. The Charging Party asserted that a final and definitive settlement had previously been reached by the parties and placed on the record on September 30, 1980; the Charging Party asserted that it would seek to enforce that settlement. The Respondent took a contrary view, indicating that it considered settlement efforts had failed to achieve a resolution acceptable to both parties and was prepared to go forward with a hearing in this matter.

By September 3, 1981, (a) the Charging Party submitted a Motion to Enforce Settlement and brief in support thereof, (b) Respondent submitted a brief in opposition to said motion and (c) the Charging Party submitted a reply letter memorandum.

The issues presented for consideration herein center around whether or not to enforce what the Charging Party contends is a final and binding settlement agreement. The Hearing Examiner has considered, among other issues: what was the nature of the agreements reached by the parties on September 30, 1980? Were these agreements a final, enforceable settlement of the case?

The Charging Party seeks an order stating that the instant matter was settled in accordance with the terms of the September 30, 1980 record in this matter. The Charging Party further seeks an order requiring the Respondent to make back payments of the contractual premium pay (\$4/day) to all Licensed Practical Nurses who performed head nurse functions retroactive to April 1978. The Charging Party notes that settlements are strongly favored in law and refers to the September 30, 1980 proceedings in arguing that the parties had reached a final resolution of the instant matter.

The Respondent characterizes the September 30, 1980 proceedings as "a procedure for determining whether the matter could be settled to the satisfaction of both parties" (Respondent's brief at 1). Respondent notes that stipulations of settlement will not be enforced by the courts where the parties have failed to agree upon substantial particulars. Further, Respondent argues that it is essential that the minds of the parties meet upon all essential elements of an agreement sought to be enforced.

Discussion of Facts and Law

It is clear that settlement of litigation ranks high in the public policy of this State. DeCaro v. Decaro, 13 N.J. 36 (1953). Indeed, assisting parties in reaching settlements concerning labor relations disputes is one of the primary functions of this agency. N.J.S.A. 34:13A-2 and 6.

Generally, the essence of a valid compromise agreement is grounded upon contractual principles. 15A Am. Jur. 2nd, Compromise and Settlement, §1. Fundamental to the valid consummation of a contract is a meeting of the minds of the contracting parties. So long as negotiations are pending over matters relating to the contract, and which the parties regard as material to it, then there is no contract unless and until the minds of the parties meet upon such issues and the terms as to those issues are settled. deVries v. The Evening Journal Assn., 9 N.J. 117 (1952). In Montclair Distributing Co. v. Arnold Bakers Inc., 1 N.J. Super. 568 (Ch. 1948), the court granted a summary judgment dismissing an action to enforce a contract for exclusive distribution rights on the grounds that the contract was too uncertain to be enforced. The court found that essential contractual terms were left for future determination -- there was no certainty concerning the quantity of goods to be sold or the price to be paid therefor. The court concluded that there must be a "fixed" price or a "stipulated" price, or there must be some method agreed upon for definitely ascertaining it. Moorestown Mgmt. v. Moorestown Bookshop, et al., 104 N.J. Super. 250 (Ch. 1969). Finally, in Kupper v. Barger, 33 N.J. Super. 491 (App. Div. 1955), the Appellate Division concluded



that a judgment entered on declarations made in open court during efforts to secure a settlement should be vacated. The court stated that the enforcement of a settlement stipulation entered into in open court will be denied where there appears to have been an absence of mutuality of accord between the parties or their attorneys concerning some substantial particulars, or where the stipulated agreement is incomplete in some of its essential terms. Kupper, supra, at p. 494.

In reviewing the record in the instant matter, the Hearing Examiner considered what the parties had agreed upon: at page 3 of the transcript of proceedings of September 30, 1980 (t-3), Charging Party's attorney states "we have reached a settlement and we (Charging Party) will withdraw the charges subject to the settlement." Charging Party's attorney described the settlement as follows: (referring to section 4, p. 24 of the parties' contract) "...as to people holding the title of senior Licensed Practical Nurse or Licensed Practical Nurse, retroactive to April 1978, the County will make this (\$4 per day) premium payment...." (t-3). It is later stated, "...we have developed a method for initially for trying to determine the amounts that each employee in each of these titles will be entitled to." (t-3). Continuing the description of this initial method for determination of payment amounts, "...the employees will each prepare an affidavit setting forth the days as to which they say they are entitled to it" (\$4 per day premium payment) (t-3-4). Thereafter, it is stated that these affidavits will be submitted to the Respondent which would then compare the affidavits with whatever records it had available. Finally, it is

stated in the record by the Charging Party:

We will then seek to reach agreement based upon his reviewing our affidavits as to the extent of the entitlement.

If we fail to agree, we will face the issue at that time as to how to resolve any dispute over the facts which may arise. We may seek your assistance in that regard; we may not.

Based upon this settlement and subject to it, I will withdraw the charge that was filed in this action on March 3, 1980.

Upon careful review of the facts herein and the law governing these circumstances, the Hearing Examiner hereby denies the motion brought by the Charging Party to enforce what it claims was a final settlement herein. There was no meeting of the minds upon "substantial particulars" of the "agreement" which the Charging Party seeks to enforce.

The Hearing Examiner thus concludes that there was no enforceable agreement made herein -- rather, what the parties had agreed upon was an outline or approach concerning how they would eventually reach a settlement. See Kupper v. Barger, supra, at p. 495.

The original charges essentially were as follows: (a) the County (the "Respondent") unilaterally ceased making premium payments to Licensed Practical Nurses who performed head nurse functions; (b) the County unilaterally changed the work schedule. The "settlement" was as follows: (1) the County would make the premium payments both retroactively (to April 1978; in an amount to be determined in the future, by unspecified means) and prospectively (unless negotiated otherwise); (2) Council 8 (the "Charging Party") would withdraw the charges.

The parties did not agree upon the amounts of back premium pay owed. The parties never indicated agreement to a back pay amount during the September 30, 1980 proceedings. While a procedure was set forth in the transcript of the September 30, 1980 proceedings concerning an initial method for determining the amounts of back premium pay which each employee was entitled to, that procedure was open-ended; it provided only for the production and comparison of documents and only generally alluded to possibly seeking the assistance of the Hearing Examiner if the parties could not reach agreement. <sup>2/</sup> In the event the parties followed the procedure and were unable to come to an agreement -- as occurred herein -- there was no definitive, binding procedure set forth or incorporated by reference in the parties' settlement agreement to ascertain the amount of back premium payments to employees.

Clearly, the amount of back premium payments was a substantial particular in the settlement mix. The absence of an agreement upon this point is a critical defect in the parties' attempted agreement. Lacking mutual agreement upon such a substantial issue as this, the parties' agreement cannot be enforced. Kupper, supra. Finally, it is noted that the charges have never been withdrawn and the Charging Party has not indicated that it has changed its position to its detri-

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<sup>2/</sup> As indicated previously, at the request of the parties, the Hearing Examiner did intercede herein in an attempt to assist the parties in reaching an agreement. Those efforts were not successful.

ment in reliance upon an anticipated settlement. <sup>3/</sup>

In conclusion, the Hearing Examiner finds that there was no meeting of the minds of the parties upon a substantial and material point in the attempted settlement. Thus, no final agreement was consummated. Accordingly, the Hearing Examiner is constrained to deny the instant motion.

3/ In the course of their arguments, the parties have each made at least one assertion in their motion papers which have no factual basis in the record before the Hearing Examiner.

The Charging party asserts that in accordance with the agreement reached by the parties on September 30, 1980, Respondent began making premium payments to any Licensed Practical Nurses who performed head nurse functions subsequent to the September 30, 1980 proceedings. Thus, the Charging Party argues that this action by Respondent supports the Charging Party's theory that a final agreement was reached by the parties at the September 30 conference.

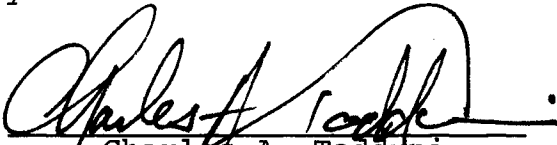
Respondent asserts that during the September 30, 1980 discussions between the parties (at which the Hearing Examiner was not in attendance), the Charging Party generally represented to the Respondent that the size of the back premium payments was not large. Respondent notes that it was on this basis that it entered into whatever type of agreement was struck September 30. Respondent argues that the Charging Party's later claim to the back premium payments was quite sizable and thus voided any understanding which the parties might have achieved on September 30, 1980.

These assertions, while perhaps relevant herein, are unsupported by affidavit or by any other acceptable documentation. Accordingly, the undersigned has not considered them in his determination of the motion.

The Hearing Examiner has set forth this point so that the parties understand the basis upon which this determination on motion is rendered. However, assuming *arguendo* that these assertions by the parties had been properly supported in the record, their consideration in the overall context of this matter would not have altered the determination rendered herein.

Further, even if the Charging Party is correct in its argument that the premium payments made by Respondent subsequent to the September 30, 1980 proceedings are consistent with its (Charging Party's) view of the terms of the settlement, that fact -- assuming it is true -- does not aid in establishing an agreement on the part of Respondent to a back pay amount. It was precisely this point -- a back pay amount -- which the parties left ultimately for future determination. Thus, the parties had never agreed upon a back pay amount, never could come to agreement upon one, and had never established a definitive mechanism for computing a back pay amount.

For the foregoing reasons, Charging Party's motion to enforce a claimed settlement agreement reached during the September 30, 1980 proceedings herein, is hereby denied.



Charles A. Tadduni  
Hearing Examiner

DATED: November 16, 1981  
Trenton, New Jersey