

D.U.P. NO. 2002-9

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

CITY OF ASBURY PARK
& IAFF LOCAL 384,

Respondents,

-and-

Docket No. CI-2001-63

ROBERT R. FARRELL, SR.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint on an unfair practice charge filed by Robert Farrell, Sr., against the City of Asbury Park. Farrell alleged that the City refused to comply with a settlement agreement concerning previous unfair practice charges he filed by failing to include pay for 15.3 days accrued leave time in the settlement amount paid to Farrell. The Director found that as Farrell has retired, he was no longer a public employee entitled to the protections of the New Jersey Employer-Employee Relations Act, and lacked standing to file an unfair practice charge. The Director found that Farrell's charge raised a dispute concerning the appropriate interpretation of the parties' settlement agreement. The Commission lacks jurisdiction to interpret or enforce the terms of a private agreement between an employer and an individual. The Commission is a neutral agency which does not provide legal representation for any party, and lacked authority to refer this matter to the Division on Civil Rights on Farrell's behalf.

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Appearances:

For the Respondent City of Asbury Park
Murray, Murray & Corrigan, attorney
(Karen A. Murray, of counsel)

For the Respondent IAFF Local 384
Zazzali, Fagella & Nowak, attorneys
(Paul L. Kleinbaum, of counsel)

For the Charging Party,
Robert R. Farrell, Sr., pro se

REFUSAL TO ISSUE COMPLAINT

On June 20, 2001, Robert Farrell Sr., a former employee of the City of Asbury Park (City), filed an unfair practice charge against the City and IAFF Local #384 (IAFF), Farrell's former majority representative. The charge alleges violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.,

specifically 5.4a(1)^{1/} and 5.4b(1).^{2/} Farrell alleges that the City has refused to comply with a settlement agreement the parties signed on December 20, 2000, which settled Farrell's previous unfair practice charges by reinstating his employment status with the City for the period June 25, 2000 until December 1, 2000, the date of his retirement. Although Farrell names IAFF Local 384 as a respondent, the charge raises no specific factual allegations against IAFF.

Farrell asks that we order the City to comply with the settlement terms by directing payment of approximately \$5400 for 15.3 days accrued leave time. Alternatively, Farrell requests that we void the settlement, return the parties to their respective positions prior thereto, and reopen his earlier charges so that Farrell may pursue an "appeal." Farrell further requests that the Commission refer this matter to the State Division on Civil Rights.

The City asserts that, with the exception of collectively negotiated increases which have not yet been determined, it has promptly and fully complied with all terms of the settlement agreement, which specifically settled "all outstanding leave time claims." The City further argues that Farrell's discontent with the agreed-upon settlement does not constitute an unfair practice.

^{1/} This provision prohibits a public employer, its agents or representatives from "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

^{2/} This provision prohibits employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

IAFF asserts that the settlement agreement created no obligations on IAFF's part, the charge raises no allegations that IAFF breached the agreement, and the charge against IAFF should be dismissed.

The Commission has authority to issue a Complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the Complaint issuance standard has not been met, I may decline to issue a Complaint. N.J.A.C. 19:14-2.3.

In correspondence dated January 16, 2002, I advised the parties that I was not inclined to issue a Complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. After being granted an extension of time, Farrell filed a response on February 14, 2002.^{3/} Based upon the following, I find that the Complaint issuance standard has not been met.

FINDINGS OF FACT

Robert Farrell was employed by the City of Asbury Park as a firefighter. Farrell filed unfair practice charges against the City and IAFF Local 384 on January 15, 1999 and on July 20, 2000,

^{3/} Any responses were initially due by January 28, 2002. Farrell requested and was granted a two-week extension to February 11, 2002. I nonetheless consider Charging Party's untimely submission.

(Commission docket numbers CI-H-99-48 and CI-2001-6, respectively), alleging certain unfair practices arising out of his employment with the City. Pursuant to N.J.A.C. 19:14-2.1, a Complaint was issued on both charges and the consolidated matter was scheduled for hearing before Hearing Examiner Jonathan Roth. On December 20, 2000, during the hearing with Roth, Farrell and the City executed a settlement agreement to resolve the charges. The agreement was signed by Farrell and City Manager Terrence Weldon^{4/} and provided in pertinent part:

1. Robert R. Farrell Sr. shall be returned to the City payroll on pay status from June 25, 2000, until December 1, 2000, inclusive. Upon execution of the successor collective agreement between the City and IAFF Local 384, Farrell shall receive all retroactive wage and benefit increases from January 1, 1998 until the date of his retirement, December 1, 2000.

2. The City agrees to promptly compensate Farrell an amount equivalent to 18 days compensation at a rate of 12 hours per day or a total of 216 hours at the current and appropriate negotiated hourly rate, to be adjusted upon execution of the collective agreement referenced in paragraph 1. This amount includes the settlement of the minor disciplinary action of October 23, 1998, and all outstanding leave time claims.

* * *

4. With the exception of cases currently pending in workers compensation court, Mr. Farrell agrees to withdraw all complaints and litigation, including matters pending in DOP, PERC, Federal and State courts, and agrees to file no further

^{4/} While N.J.A.C. 19:11-6.2 and 6.3 permit the hearing examiner to conduct a settlement conference with the parties, the Commission is not a party to any resulting settlement.

complaints or lawsuits in any forum, regarding his employment as a firefighter with Asbury Park against Asbury Park or his union, IAFF Local 384, Asbury Park.

Subsequently, Farrell apparently sought payment from the City for 15.3 days' accrued leave time Farrell alleges he was owed for the time period stated in the Memorandum of Agreement. Farrell asserts that he is entitled to sick and vacation leave time accrued between June 25 and December 1, 2000, and pay for all holidays occurring during that period.

By letter dated January 31, 2001, City Attorney Karen Murray advised Farrell that the City Council had ratified the settlement agreement and that a check would be issued to Farrell shortly. Murray further advised Farrell that the agreement included the settlement of "all outstanding leave time claims;" therefore, the City was "not obligated to pay any additional amounts for accrued leave time claims."

Thereafter, the City issued a check to Farrell, which he accepted, in the amount of \$20,048.82 for the period beginning June 26, 2000 and ending November 30, 2000. The City also issued a Certification of Service and Final Salary for Farrell to the New Jersey Division of Pension and Benefits, Police and Firemen's Retirement System, indicating that quarterly pension contributions had been made for the time period covered by the check.

ANALYSIS

At the outset, I note that Farrell lacks standing to file this unfair practice charge. Pursuant to the terms of the

settlement, Farrell retired effective December 1, 2000; therefore, he is no longer a public employee. N.J.S.A. 34:13A-5.3 guarantees public employees the right to organize and negotiate collectively over terms and conditions of employment (emphasis added). N.J.S.A. 34:13A-5.4 makes it an unfair practice for a public employer to interfere with those employee rights. N.J.S.A. 34:13A-3(d) defines "public employee" as "...any person holding a position, by appointment or contract, or employment in the service of a public employer...." The term includes, "...any individual whose work has ceased as a consequence of or in connection with any current labor dispute or because of any unfair labor practice...." In addition, N.J.A.C. 19:14-1.1 permits unfair practice charges to be filed only by "...any public employer, public employee, public employee organization, or their representative." When Farrell retired, he ceased to enjoy the rights guaranteed to public employees by our Act. The Commission has previously found that we do not have jurisdiction over individuals who are no longer public employees, such as individuals who have resigned or retired. See Borough of Belmar, P.E.R.C. No. 89-27, 14 NJPER 625 (¶19262 1988) (retirees are not public employees within the meaning of the Act). See also Town of West New York (Sancho), D.U.P. No. 2001-3, 26 NJPER 353 (¶31139 2000) (resignee did not have standing to allege that town unlawfully withheld payment for contractual severance benefits); PBA Local 245 (Maggio), D.U.P. No. 97-27, 23 NJPER 72 (¶28043 1996) (retired police officer not public employee under the Act).

Farrell claims that Sancho should not be applied to bar his claim. Farrell reasons that, if he was not a public employee on December 20, 2000, the Commission lacked jurisdiction to facilitate a settlement agreement on that date and the settlement was therefore fraudulently executed and should be voided.

In Sancho, the employee resigned on January 28, 1999 and on July 8, 1999, several months after he ceased to be a public employee, filed an unfair practice charge claiming that he was entitled to severance benefits. I found that because Sancho was no longer a public employee by the time the charge was filed, he no longer had standing to file an unfair practice charge.

In this matter, the charges forming the basis for the settlement were filed on January 15, 1999 and July 20, 2000, respectively. Farrell was still a public employee at those times and the issues in those charges arose out of Farrell's public employment. The Commission exercised proper jurisdiction over those charges. The current charge was filed on June 20, 2001, well after December 1, 2000, the effective date of Farrell's retirement and when he ceased to be a public employee. Therefore, I find that Farrell is no longer a public employee within the meaning of the Act and this Commission does not have jurisdiction over his current dispute with the City. The City's actions in construing the settlement agreement against additional payment could not "interfere with, restrain, or coerce public employee[s] in the exercise of the rights guaranteed to them by this act" since Farrell is no longer a

public employee. Accordingly, the charge does not meet the Commission's complaint issuance standard and must be dismissed.

Even assuming Farrell has standing, I find that an alleged breach of a settlement agreement between an employer and an individual does not constitute a violation of the Act, at least under these facts. The City argues that the express terms of the settlement agreement resolved "all outstanding claims" and that Farrell agreed in the settlement not to file additional charges. It states that Farrell agreed to the settlement language and accepted payment in consideration of the settlement. Farrell claims that the City misinterpreted the agreement which has led to a breach in its terms. He contends that the 15.3 days pay he now seeks does not represent "additional" compensation, but an amount which the City agreed to in the settlement, but failed to pay. Farrell asserts that the phrase, "settlement of all outstanding leave time claims" should be interpreted to refer to Farrell's past leave time claims, and not to his present claim for leave time under the settlement agreement.

Settlement of litigation ranks high in New Jersey's public policy and courts will be very reluctant to set such agreements aside. See Red Bank Bd. of Ed., P.E.R.C. No. 87-39, 12 NJPER 802 (¶17305 1986), citing Jannarone v. W.T. Co., 65 N.J. Super. 472 (App. Div. 1961) certif. denied sub nom. Jannarone v. Calamoneri, 35 N.J. 61 (1961). The Commission is charged with the responsibility for the prevention or prompt settlement of labor disputes...."

N.J.S.A. 34:13A-2 and 6. Consistent with this responsibility, the Commission strongly advocates the voluntary resolution of labor disputes. To this end, the Commission has adopted rules specifically granting its hearing examiners the discretion and authority to assist the parties in reaching amicable settlements on unfair practice issues at all stages of the process. N.J.A.C. 19:14-1.6(c); N.J.A.C. 19:14-6.2; N.J.A.C. 19:14-6.3(a) (7). See also Borough of Hawthorne, P.E.R.C. No. 82-37, 7 NJPER 602 (¶12268 1981). This policy presumes finality in the process. When the parties reach a settlement and withdraw an unfair practice charge based upon such settlement, the Commission will only reopen such a matter in the most compelling circumstances, such as where the agreement is fraudulent or otherwise conflicts with State law or regulations. N. Brunswick Tp. Bd. of Ed., P.E.R.C. No. 82-107, 8 NJPER 314, 315 (¶13141 1982); Borough of E. Rutherford, P.E.R.C. No. 82-51, 7 NJPER 680 (¶12307 1981); Union Cty. Voc. and Tech. Bd. of Ed., D.U.P. No. 2002-8, 28 NJPER 91 (¶33034 2001).

Farrell and the City entered into a settlement agreement to resolve prior unfair practice charges. The terms of the settlement required the City to pay Farrell back pay for a specified period of time. The agreement further provided on its face that the payment and other terms of the agreement would constitute the settlement of "all outstanding leave time claims" by Farrell. On January 30, 2001, the City issued Farrell a check in the amount of \$20,048.82 for the period beginning June 26, 2000 and ending November 30, 2000.

It is apparent that the parties entered into a detailed agreement to settle the unfair practice charges, which agreement was final by its very terms. In accordance with the Commission's policy favoring the voluntary settlement of labor disputes, I do not find a compelling reason to reopen the earlier unfair practice charges.

The facts of this matter are similar to those in Union Cty. In that case, the parties negotiated a settlement agreement which included the Association's agreement to withdraw its unfair practice charge in exchange for the Board's agreement to pay two employees retroactively to their termination. In exchange for signed releases, the Board paid the two employees \$13,043.69 and \$10,813.94, respectively. A Commission hearing examiner deemed the charge withdrawn based upon the implementation of the settlements terms. The Association subsequently filed a second unfair practice charge alleging that the employees were terminated and the Board later subcontracted for police services because of the employees' activities in seeking contractual health coverage. I dismissed the charge, holding that the Association waived its right to pursue those claims by voluntarily entering into a settlement agreement, resolving those issues. Since the employees had already entered into the settlement and were compensated in return for the withdrawal of their claims, I found that those claims could not be reopened.

Here, although Farrell alleges that the City has refused to comply with the settlement, a substantial sum was issued to him and

it appears that the terms of the settlement were effected. Farrell does not assert that the terms of the settlement agreement are uncertain. Rather, Farrell interprets the agreement to include his entitlement to 15.3 days compensation for accrued leave time. The City apparently construes the settlement to mean that all possible claims were satisfied by the agreement. At best, Farrell's charge raises a dispute concerning the appropriate interpretation of the parties' memorandum of agreement. As such, it raises an issue of contract enforcement appropriately resolved in another forum, and does not implicate a violation of our Act. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984) (parties' good faith dispute over the interpretation of contract terms does not constitute an unfair practice); see also City of Newark (Montgomery), P.E.R.C. No. 2000-57, 26 NJPER 91 (¶31036 2000) (Commission will not assert jurisdiction over individual's claimed contract rights). This Commission will not interpret or enforce the terms of a private agreement between an employer and an individual.

Charging Party also avers that he was unaware of the prevailing legal authority because he was not represented by legal counsel and was not assigned counsel by "the State (PERC)" and therefore, the settlement agreement should be voided. N.J.A.C. 19:14-6.5 gives parties the right to be represented in hearing by an authorized representative of their choosing. The Commission is a neutral administrative agency which does not represent any of the

parties which come before its jurisdiction, nor does it provide legal representation for any party. Moreover, the Commission is not a party to a settlement agreement-- the agreement is a private agreement between the parties.

There is no indication that Farrell has been incapable of representing himself or was deprived of the opportunity to seek legal counsel in any of the matters he brought before the Commission. Farrell had been told on a number of occasions of his right to be represented by counsel.

The Commission has no authority to refer this matter to the Division on Civil Rights on Charging Party's behalf. Charging Party retains any rights he may have to pursue any asserted violation of his rights in any appropriate forum.

Farrell requests that the settlement agreement be voided and the previous unfair practice charges reopened, returning the parties to their respective positions on that date. I find no compelling reason to do so. Returning the parties to the status quo ante at this juncture would be impractical at best. The parties stand in materially different shoes at this point in the litigation. The reopening of the previous unfair practice charges at this time would presumably require Farrell to return the sum which he has already received from the City. It is unclear whether Farrell is prepared to do so. Nevertheless, I decline to reopen the earlier charges.

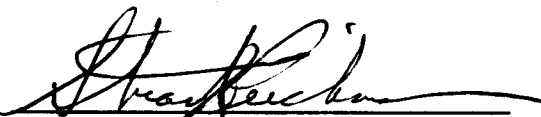
Finally, although the charge names IAFF as a respondent, the charge raises no specific factual allegations against IAFF. The charge against IAFF appears to allege a violation of the duty of fair representation. However, N.J.A.C. 19:14-1.1 provides that unfair practice charges alleging violations of N.J.S.A. 34:13A-5.4 may only be filed by public employers, public employees, employee organizations, or their representatives. Since Farrell is now retired, IAFF has no further duty under the Act to represent him. See Sancho; Maggio (employee representative not obligated to represent retiree). Therefore, I dismiss the unfair practice charge as to IAFF as well.

For the foregoing reasons, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.^{5/}

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Stuart Reichman, Director

DATED: February 25, 2002
Trenton, New Jersey