

P.E.R.C. NO. 2002-73

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ASBURY PARK
and IAFF LOCAL 384,

Respondents,

-and-

Docket No. CI-2001-63

ROBERT R. FARRELL, SR.,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies an appeal of D.U.P. No. 2002-9, 28 NJPER 160 (¶33057 2002). In that decision, the Director of Unfair Practices refused to issue a Complaint based on an unfair practice charge filed by Robert R. Farrell, Sr. against the City of Asbury Park and IAFF Local 384. The charge seeks enforcement of a settlement agreement resolving two prior charges (CI-H-99-48 and CI-2001-6) against the City or reinstatement of those charges. The Commission finds that nothing in the appeal addresses the dismissal as to the IAFF. The Commission further finds that a charge alleging a mere breach of a settlement agreement does not warrant a Complaint and Notice of Hearing. In addition, the Commission finds that the Director did not abuse his discretion in refusing to reopen the prior charges.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

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

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

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

DECISION

On March 5, 2002, Robert R. Farrell, Sr. appealed D.U.P.
No. 2002-9, 28 NJPER 160 (133057 2002). In that decision, the
Director of Unfair Practices refused to issue a Complaint based on
an unfair practice charge filed by Farrell. The charge seeks
enforcement of a settlement agreement resolving two prior charges
(CI-H-99-48 and CI-2001-6) against the City or reinstatement of
those charges. The charge alleges that the City has refused to
comply with an alleged requirement of the settlement agreement
that it compensate him for 15.3 days of leave not taken.

The Director found that, as a retiree, Farrell lacked standing to file a charge; a breach of a settlement agreement resolving unfair practice charges does not violate the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.; there are no specific allegations that the IAFF violated the Act; and there are no compelling reasons to reopen the prior charges.

Farrell argues that the settlement agreement was written by a PERC staff attorney and that we should intervene to ensure compliance. The agreement provides, in 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 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.

Farrell withdrew his charge and was later paid a sum the City claims fulfilled its obligation under the settlement agreement. Farrell claims that in addition to the money he was paid, he is entitled to payment for sick and vacation time accrued between June 25 and December 1, 2000 and pay for all holidays during that period. Farrell alternatively argues that if we lack jurisdiction to consider his current claim, then we lacked jurisdiction to accept the settlement of the two prior charges since he had retired before then.

On March 22, 2002, the IAFF filed a response opposing the appeal. It argues that the appeal was untimely or belatedly served on the IAFF, alleges facts not previously presented, raises claims outside our jurisdiction, and does not address the dismissal as to the IAFF.

On April 5, 2002, the City filed a response opposing the appeal. It asserts that the Director's decision accurately applies the precedent. It relies on earlier submissions claiming that paragraph 2 of the settlement agreement established a number of days to be paid in settlement of "all outstanding leave time claims."

We hold that Farrell does have standing as a public employee to file this charge. The charge seeks compensation for a period when he was a public employee. Borough of Belmar, P.E.R.C. No. 89-27, 14 NJPER 625 (¶19262 1988), is distinguishable. That case involved a union's attempt to challenge an employer's grant

of benefits to employees after they had retired. This case seeks compensation for benefits allegedly earned while a public employee and allegedly called for by an agreement settling Farell's earlier unfair practice charges.. To the extent Town of West New York (Sancho), D.U.P. No. 2001-3, 26 NJPER 353 (¶31139 2000) and PBA Local 245 (Maggio), D.U.P. No. 97-27, 23 NJPER 72 (¶28043 1996), suggest a contrary holding, we decline to follow them. The full Commission did not review those cases.

As to the IAFF, we uphold the dismissal. Nothing in the appeal addresses the dismissal as to that party.

As to the City, we agree with the Director that a mere breach of a settlement agreement does not ordinarily violate the Act and that an unfair practice alleging such a breach does not warrant a Complaint and Notice of Hearing. Since a settlement agreement is essentially a contract between the parties, a mere difference of opinion concerning the extent to which compliance has been achieved does not rise to the level of a new unfair practice. See State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). We distinguish a repudiation of a settlement agreement where a party denies the existence of an agreement or otherwise does not comply with its clear terms. See, e.g., Red Bank Bd. of Ed., P.E.R.C. No. 87-39, 12 NJPER 802 (¶17305 1986) (in absence of exceptions, Chairman adopted recommendation to find a violation of the Act where employer had repudiated settlement agreement). Where the parties have entered into a settlement agreement and a party seeks

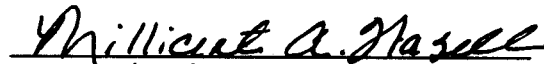
enforcement of that agreement, that party must seek enforcement in the Superior Court. We have power to seek enforcement of Commission orders only. N.J.S.A. 34:13A-5.4f.

We also find that the Director did not abuse his discretion in refusing to reopen Farrell's prior charges. The Director did not err in finding that what appears to be a good faith dispute over the interpretation of a settlement agreement is not grounds to reopen a withdrawn charge. To the extent the Director's decision suggests that the terms of the settlement were effected, it is dicta and we take no position on that question. It is for the court, not this agency, to determine whether Farrell's contractual claim is valid.

ORDER

The appeal of D.U.P. 2002-9 and the request to reopen CI-H-99-48 and CI-2001-6 are denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Katz, Muscato, Ricci and Sandman voted in favor of this decision. Commissioner McGlynn was not present. None opposed.

DATED: May 30, 2002
Trenton, New Jersey
ISSUED: May 31, 2002