



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Nikia Rivera,
Cumberland County

CSC Docket No. 2014-2237

Request for Reconsideration

ISSUED: AUG 15 2014 (DASV)

Nikia Rivera, a County Correction Officer with Cumberland County, represented by Stuart J. Alterman, Esq., requests reconsideration of that portion of the attached Civil Service Commission (Commission) decision, rendered on December 18, 2013, denying her back pay.

By way of background, the petitioner was removed, effective January 24, 2012, on the charge of job abandonment as a result of being absent from work without permission for five consecutive days. Upon the petitioner's appeal, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing. On July 16, 2012, the parties entered into a settlement agreement and presented the agreement to the Administrative Law Judge (ALJ), who recommended acknowledging the agreement. The settlement provided in part for the petitioner's return to work when a custom vest was complete and ready to wear and for the petitioner to undergo a fitness for duty examination. Additionally, the petitioner agreed to waive back pay and have her separation from employment be recorded as an unpaid medical leave of absence as all of the charges would be deemed withdrawn. However, upon its review at its October 3, 2012 meeting, the Commission remanded the matter to the OAL to address what would happen if the petitioner did not pass the fitness for duty examination. In the initial decision on remand, rendered on November 4, 2013, the ALJ set forth that, prior to the Commission's decision, a medical report had been issued on September 11, 2012, finding that the petitioner was fit for duty. Thus, the ALJ determined that the only issue remaining was the petitioner's procurement of a custom vest, which was much

more difficult than anticipated. The ALJ determined that the petitioner acted in good faith in seeking a fitted vest and there was no reliable evidence that she engaged in fraud which would be a basis to rescind the settlement agreement. Accordingly, the ALJ concluded that the petitioner passed the fitness for duty examination which "removed jurisdiction from the OAL." Alternatively, the ALJ granted the petitioner's motion to enforce the settlement agreement and recommended that she be awarded back pay and benefits effective September 13, 2013, the date her representative provided the appointing authority with notice that she acquired an approved vest.

Upon its *de novo* review of the matter, the Commission found no competent evidence to rescind the settlement agreement based on fraud. Moreover, there was not a sufficient basis to grant the appointing authority's request for a hearing on the charges, as the settlement was voluntarily entered into by the parties and the agreement was executed by parties. Additionally, since the petitioner passed her fitness for duty examination, the consequence of her failure was rendered moot. Therefore, the Commission found that the terms of the settlement, as clarified, did not contravene Civil Service law or rules and acknowledged the settlement. Moreover, the Commission noted that enforcement of the settlement agreement was premature since the Commission was only currently acknowledging the settlement at that time. Therefore, since the petitioner had obtained a custom approved vest, the Commission indicated that she should be returned to work pursuant to the settlement agreement without back pay since she had agreed to waive the same. The Commission suggested that even if it had acknowledged the settlement at its meeting on October 3, 2012, and the petitioner requested enforcement after September 13, 2013 when the appointing authority was provided notice that she acquired an approved vest, the settlement agreement explicitly stated that the petitioner waived back pay and other monetary relief. The only remedy that the petitioner would have received would have been reinstatement, which had been effected.

In her request for reconsideration, the petitioner contends that the Commission's rejection of the ALJ's recommendation regarding back pay constitutes a clear material error which should be reversed. She argues that since her removal was reversed, it qualifies her to receive back pay pursuant to *N.J.A.C.* 4A:2-2.10. The petitioner also maintains that *N.J.A.C.* 4A:2-1.5 authorizes the award of back pay since the appointing authority unreasonably failed or delayed to carry out the terms of the settlement agreement. Thus, it was inappropriate for her to lose pay due to the appointing authority's "bad-faith delays." Accordingly, she contends that she should receive back pay commencing after the medical report was issued that she was fit for duty. Furthermore, the petitioner maintains that she did not waive her claims for back pay after September 11, 2012 under the settlement agreement. She only agreed that the period of time she was absent from work "until the date she returns" be treated as an unpaid leave of absence. As such, since she claims she

should have returned to work on September 11, 2012 when she obtained her vest and was deemed fit for duty,¹ she only waived back pay up to that date. The petitioner emphasizes that to read the agreement in any other way is an improper waiver to claims against the appointing authority “in perpetuity” and essentially waives claims that she does not know exists. The petitioner reiterates that the appointing authority was the only party to have intentionally delayed fulfillment of the terms of the agreement, as it was “dancing around” providing her with a purchase order for the vest. She notes that at no time did she purposely delay in procuring her fitted protected vest. She states that there were unexpected problems with the vendors. Therefore, the petitioner requests back pay during the time the appointing authority “refused to comply with the settlement agreement, as recommended by the ALJ.”

In response, the appointing authority, represented by William G. Blaney, Esq., initially indicates that despite taking the fitness for duty examination and being aware of the Commission’s October 3, 2012 remand, the petitioner did not get fitted for the vest until April 2013. She also did not obtain an acceptable vest which complied with safety standards until September 13, 2013. Regarding the petitioner’s arguments, the appointing authority maintains that neither *N.J.A.C. 4A:2-2.10* nor *N.J.A.C. 4A:2-1.5* is applicable in awarding the petitioner back pay. *N.J.A.C. 4A:2-2.10* does not apply because the Commission did not reverse or modify a disciplinary penalty. Rather, it approved a settlement agreement between the parties. The appointing authority also states that *N.J.A.C. 4A:2-1.5* is not relevant because the underlying action is a disciplinary appeal which was settled. Furthermore, it maintains that the extensive delay in implementing the settlement was caused by the petitioner’s own failure to obtain a proper vest. Thus, the appointing authority contends that there is nothing in the record which demonstrates that it acted in bad faith. It notes that the Commission did not acknowledge the settlement agreement until its meeting on December 18, 2013. As such, the appointing authority could not have delayed the implementation of the settlement nor engaged in bad faith conduct. Moreover, it maintains that the petitioner’s argument that she is entitled to back pay from “September 1, 2012” is “defective on its face” since the petitioner passed her fitness for duty examination on September 11, 2012 and not until over one year later on September 13, 2013 did she obtain her vest. Further, the appointing authority submits that the terms of the settlement agreement are very clear that the petitioner would withdraw her appeal “and waives back pay.” In another section of the agreement, the petitioner reiterates that she would waive all other claims with regard to this matter, including back pay. Therefore, the appointing authority maintains that the petitioner cannot now be permitted to rewrite the clear terms of the settlement

¹ In her request, the petitioner indicates that she should have been returned to work on September 1, 2012. Although she repeats this date throughout her submission, she does not explain the basis for a date earlier than September 11, 2012. The September 1, 2012 may have been a typographical error.

agreement. It notes that it showed good faith in returning the petitioner to work after the ALJ's November 4, 2013 decision and prior to the issuance of the Commission's decision on February 14, 2014.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. A review of the record in the instant matter reveals that reconsideration is not justified.

The petitioner argues that the Commission made a clear material error in denying her back pay. However, as indicated in the Commission's prior decision, the clear terms of the settlement agreement provide for a waiver of back pay. Contrary to the petitioner's "perpetuity" argument, the waiver was for the specific matter of her discipline which she settled. In that regard, Section E. of the agreement states that "Appellant waives all other claims against Respondent Appointing Authority with regard to **this matter, including any award of back pay**, counsel fees or other monetary award." [Emphasis added]. Moreover, the petitioner's reliance on *N.J.A.C.* 4A:2-2.10 and *N.J.A.C.* 4A:2-1.5 is misplaced. *N.J.A.C.* 4A:2-2.10(a) provides that "[w]here a disciplinary penalty has been reversed, the Commission shall award back pay, benefits, seniority or restitution of a fine. Such items may be awarded when a disciplinary penalty is modified." In this case, the Commission did not reverse or modify a penalty. Rather, it acknowledged the parties' agreement, which provided for the withdrawal of the charges against the petitioner and her reinstatement.

Moreover, *N.J.A.C.* 4A:2-1.5(b) states that "[b]ack pay, benefits and counsel fees may be awarded in disciplinary appeals and where a layoff action has been in bad faith. See *N.J.A.C.* 4A:2-2.10. In all other appeals, such relief may be granted where the appointing authority has unreasonably failed or delayed to carry out an order of the [Commission] or where the Commission finds sufficient cause based on the particular case. A finding of sufficient cause may be made where the employee demonstrates that the appointing authority took adverse action against the employee in bad faith or with invidious motivation." In this case, there was no order of the Commission for the appointing authority to have delayed carrying out prior to the Commission's acknowledgement of the settlement agreement on December 18, 2013. Moreover, the petitioner was reinstated before the Commission issued its written decision on February 14, 2014, which was at most two months from when the Commission acknowledged the settlement. Thus, the record does not demonstrate that the appointing authority acted in bad faith in implementing the

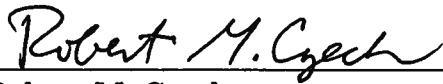
terms of the settlement agreement. As indicated in the Commission's prior decision, reinstatement was the only remedy that the petitioner would have received had the settlement agreement been acknowledged by the Commission at its October 3, 2012 meeting. Accordingly, the Commission finds no grounds on which to grant reconsideration of its prior decision.

ORDER

Therefore, it is ordered that this request for reconsideration be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 13TH DAY OF AUGUST, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: Nikia Rivera
Stuart J. Alterman, Esq.
Craig E. Atkinson
William G. Blaney, Esq.
Kenneth Connolly
Joseph Gambino

A-7



STATE OF NEW JERSEY

In the Matter of Nikia Rivera,
Cumberland County

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2012-2405
OAL Docket Nos. CSR 14030-12 and
CSR 1669-12 (on remand)

ISSUED: FEB 14 2014 (DASV)

The appeal of Nikia Rivera, a County Correction Officer with Cumberland County, of her removal, effective January 24, 2012, on charges, was before Administrative Law Judge W. Todd Miller (ALJ), who rendered his initial decision on November 4, 2013. Exceptions were filed on behalf of the appointing authority, and cross exceptions were filed by the appellant.

The ALJ originally rendered an initial decision on July 16, 2012, recommending acknowledgment of a settlement agreement entered between the parties. However, at its meeting on October 3, 2012, the Civil Service Commission (Commission) remanded the matter to the Office of Administrative Law (OAL) for further proceedings. Specifically, the Commission could not approve the settlement as it did not address the consequences of the appellant failing a fitness for duty examination, which she agreed to undergo pursuant to the settlement. Having considered the record and the ALJ's attached initial decisions, and having made an independent evaluation of the record, the Commission, at its meeting on December 18, 2013, acknowledged the clarified settlement agreement but did not adopt the ALJ's recommendation to grant back pay.

DISCUSSION

The appellant was removed, effective January 24, 2012, on the charge of job abandonment as a result of being absent from work without permission for five consecutive days. Specifically, the appointing authority asserted that the appellant failed to report to work from September 6, 2011 through December 5, 2011. Upon

the appellant's appeal, the matter was transmitted to the OAL for a hearing as a contested case. Subsequently, on July 16, 2012, the parties entered into a settlement agreement and presented the agreement to the ALJ. The ALJ found that the parties entered into the agreement voluntarily and the settlement fully disposed of all the issues in controversy. Therefore, the ALJ recommended acknowledging the settlement agreement, which provided in part for the appellant's return to work when her custom vest¹ was complete and ready to wear; the appellant wearing the vest during her regular eight-hour shift; the appellant not unreasonably refusing mandatory overtime; and the appellant undergoing a fitness for duty examination with a physician chosen by the appointing authority. Additionally, the appellant agreed to waive back pay and have her separation from employment be recorded as an unpaid medical leave of absence as all of the charges would be deemed withdrawn. However, since the agreement did not address what would happen if the appellant did not pass the fitness for duty examination, the Commission, upon its review, remanded the matter to the OAL.

On remand, the ALJ set forth that prior to the Commission's October 3, 2012 decision, the appellant had already undergone a fitness for duty examination. The Commission was not apprised of that fact. A medical report had been issued on September 11, 2012, finding that the appellant was fit for duty. Thus, the ALJ determined that the issue had already been resolved. Nonetheless, the ALJ stated that "assuming the above disposition is insufficient," the only issue remaining was the appellant's procurement of a custom vest. The ALJ reported that the appellant's search for a special vest was much more difficult than anticipated. She eventually acquired an oversized or non-structured type of vest, since a fitted vest could not be procured. The ALJ stated that the appointing authority thereafter refused to abide by the settlement agreement. On October 4, 2013, the appellant filed a motion to compel the appointing authority to return her to work. However, as indicated by the ALJ, the appointing authority suggested that the settlement agreement should not be honored because of the delays caused by the appellant. The ALJ determined that the appellant acted in good faith in seeking a fitted vest and there was no reliable evidence that she engaged in fraud which would provide a basis to rescind the settlement agreement. Accordingly, the ALJ concluded that the appellant passed the fitness for duty examination which "removed jurisdiction from the OAL." Alternatively, the ALJ granted the appellant's motion to enforce the settlement agreement and recommended that she be awarded back pay and benefits effective September 13, 2013, the date her representative provided the appointing authority with notice that she acquired an approved vest.

In its exceptions, the appointing authority emphasizes that the ALJ's recommendation seeks to enforce a settlement agreement which the appellant failed

¹ The appellant had claimed that she could not wear the standard protective vests due to medical reasons.

to comply with and the Commission has not approved. In regard to the former, the appointing authority states that the appellant took over a year and two months to purchase a vest which appears not to meet the medical criterion that she initially claimed was necessary. It indicates that the appellant now seeks to be reinstated with a non-structured vest. Thus, it claims that the appellant breached "the implied covenant of good faith and fair dealing" and enforcement of the settlement agreement would not be proper under the circumstances. It also notes that the settlement agreement would only be effective if approved by the Commission. Further, the appointing authority takes exception with the ALJ's recommendation of back pay. It emphasizes that the settlement agreement has not yet been approved and the provisions of the settlement specifically excluded back pay. Therefore, the appointing authority requests that the matter proceed to a hearing on the merits of the underlying charges as "the enforceability" of the settlement agreement "is unsalvageable."

In her cross exceptions, the appellant underscores that the terms of the settlement agreement were written and signed on July 16, 2012. Subsequently, on September 11, 2012, she was found fit for duty. Thus, the appellant argues that she should have been back to work as of September 11, 2012, on light duty capacity, pending the receipt of her vest. She claims that she made every attempt to procure a vest, and there was no deliberate delay on her part. Moreover, the appellant disputes that she denied the appointing authority the "benefit of the bargain," as it has not suffered harm or significant burden by her reasonable delay. She also notes that it was the appointing authority's doctor who concluded that she required a custom vest. Moreover, the appellant submits that an award of back pay is appropriate given that she has made a good faith attempt to fulfill the terms of the settlement agreement. She notes that if the appointing authority contributed in this matter by assisting her in obtaining a vest, she would have been back to work.

Upon its *de novo* review of the matter, the Commission acknowledges the settlement agreement between the parties. Initially, it is emphasized that the policy of the judicial system strongly favors settlement. See *Nolan v. Lee Ho*, 120 N.J. 465 (1990); *Honeywell v. Bubb*, 130 N.J. Super. 130 (App. Div. 1974); *Jannarone v. W.T. Co.*, 65 N.J. Super. 472 (App. Div. 1961), *cert. denied*, 35 N.J. 61 (1961). This policy is equally applicable in the administrative area. A settlement will be set aside only where there is fraud or other compelling circumstances. See *Nolan, supra*. Although the appointing authority suggests that the appellant did not act in good faith, no competent evidence has been presented to rescind the settlement based on that claim. The ALJ specifically found that the appellant made a good faith effort to procure a custom vest. Moreover, there is not a sufficient basis to grant the appointing authority's request for a hearing on the merits of the underlying charges against the appellant. The settlement was voluntarily entered into by the parties and the agreement was set forth in writing and executed by the signatures of the parties. The only issue that needed to be resolved was the

examination. However, since that issue has been resolved, the Commission finds that the settlement agreement represents a final disposition of the disciplinary action against the appellant. In this regard, the Commission notes that the matter should have been referred back to the Commission to acknowledge the settlement once the appellant passed the examination since the consequences of her failing an examination were rendered moot. Therefore, the Commission finds that the terms of the settlement, as clarified, do not contravene Civil Service law or rules.

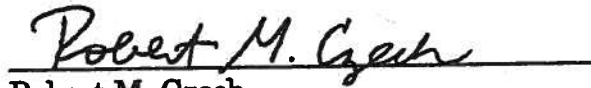
With regard to the ALJ's finding on the enforceability of the terms of the agreement, it is well settled that the Commission acknowledges settlement agreements to allow for the resolution of matters properly before it. The Commission also reviews settlement agreements to ensure compliance with Civil Service law and rules. If a term of the agreement is later violated by either party, the Commission has jurisdiction to enforce the term. *See e.g., In the Matter of Police Officer and Superior Officer, Essex County (1991 Layoffs), Docket No. A-5755-94T5 (App. Div. April 22, 1996).* In this case, enforcement of the settlement agreement is premature since the Commission is only currently acknowledging the settlement. Indeed, section H of the settlement agreement provides that it takes effect only if approved by the Commission. As such, the terms of the settlement agreement can only now have effect. Accordingly, the appellant and the appointing authority may now immediately implement the terms of the agreement. It is noted that the agreement states that the appellant will return to work when her custom vest is complete and ready to wear. There was no time frame specified with regard to acquiring the vest, nor did the terms of the agreement identify a type of vest. Thus, notwithstanding the argument of the appointing authority as to the type of vest, the appellant has in fact obtained a custom approved vest and should be returned to work pursuant to section B.1. of the settlement agreement. Furthermore, as set forth in the settlement agreement, the appellant agreed to waive back pay. Even assuming that the Commission acknowledged the settlement at its meeting on October 3, 2012 and the appellant requested enforcement after September 13, 2013 when the appointing authority was provided notice that she acquired an approved vest, Section C. and E. of the settlement agreement explicitly state that the appellant waives back pay and other monetary relief. Therefore, the only relief that the appellant would have received at that time would have been the enforcement of the terms of the agreement, such as reinstatement. Accordingly, the appellant is not entitled to back pay.

ORDER

The Commission acknowledges the clarified settlement agreement in this matter and rejects the ALJ's recommendation to grant back pay. The Commission further orders that any outstanding terms of the settlement agreement, including the appellant's return to work, be implemented immediately.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18TH DAY OF DECEMBER, 2013

A handwritten signature in cursive script, reading "Robert M. Czech", is written over a horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

**(On Remand from CSR 1669-12)
(On Motion to Enforce Settlement)
OAL DKT. NO. CSR 14030-12
AGENCY DKT. NO. --**

**IN THE MATTER OF NIKIA RIVERA,
CUMBERLAND COUNTY DEPARTMENT
OF CORRECTIONS.**

Stuart J. Alterman, Esq., for appellant (Alterman & Associates, attorneys)

William G. Blaney, Esq., for respondent (Blaney & Donohue, P.A., attorneys)

Record Closed: October 17, 2013

Decided: November 4, 2013

BEFORE W. TODD MILLER, ALJ:

STATEMENT OF CASE AND PROCEDURAL HISTORY

On January 30, 2012, the Cumberland County Department of Corrections (Cumberland County) issued a Final Notice of Disciplinary Action (FNDA) against appellant, Nikia Rivera. The charges sustained in the FNDA were abandonment of job - absent from work without permission for five consecutive days in violation of N.J.A.C. 4A:2-2.3(a)11. Cumberland County asserts that Rivera failed to show up for work from September 6, 2011, through December 5, 2011. Her removal was effective January 24, 2012.

An appeal of the FNDA was filed with the Office of Administrative Law by Rivera on February 2, 2012, to N.J.S.A. 40A:14-202(d).

A plenary hearing was scheduled for July 8, 2012, before the Office of Administrative Law. The parties entered into a tentative settlement agreement on that date. The terms of the settlement agreement were codified in a written document dated July 16, 2012. The pertinent terms of the settlement agreement are as follows:

B. The parties have agreed to the following:

1. Appellant will return to work when her custom vest is complete and ready to wear and as soon as practicable.
2. Appellant will be required to wear a vest for her regular eight hour shift.
3. Appellant will not unreasonably refuse mandatory overtime.
4. Appellant will attend a fitness for duty examination with a physician chosen by the appointing authority.
5. The time Appellant was absent from work until the date she returns will be treated as an unpaid medical leave of absence, as all charges are withdrawn.
6. Appellant will purchase a vest for mandatory wear at work that is equal to or better than the one she was issued by the appointing authority and the appointing authority will reimburse Appellant for the cost over \$780.00 within 30 days after Appellant supplies the receipt for the purchase of the vest.

C. Appellant Nikia Rivera withdraws her appeal and request for a hearing and waives back pay.

D. Cumberland County shall amend Appellant's personnel records to confirm to the terms of the settlement. All internal records of the Appointing Authority, Cumberland County, will be kept intact. Nothing herein shall preclude the Appointing Authority from releasing information on this matter to anyone who has a release executed by Appellant or as consistent with the law. Any information regarding the

underlying charges will be provided to the Police and Fire Retirement System upon request.

E. Appellant waives all other claims against Respondent Appointing Authority with regard to this matter, including any award of back pay, counsel fees or other monetary relief.

F. Nothing in this Settlement Agreement shall be deemed to be an admission of liability on behalf of either party. This Settlement Agreement shall not constitute a precedent in matters involving other employees.

G. The parties agree that if any portion of this Settlement Agreement is deemed unenforceable, the remainder of this Settlement Agreement shall be fully enforceable.

H. This agreement will become effective only if approved by the **CIVIL SERVICE COMMISSION**. Any disapproval by the **CIVIL SERVICE COMMISSION** shall not interfere with the rights of either party to pursue the matter further.

The settlement agreement recognized that appellant had a medical condition that prevented her from wearing the standard issued protective or armored vest. Wearing a protective vest is mandated for correction officers by Cumberland County. Rivera has large breasts and, due to that condition, the standard issued protective vest became intolerable for her to wear. The settlement agreement recognized this medical condition¹ and allowed Rivera to go out on the market and purchase a custom made vest fit for her condition. She also had to pass a physical fitness examination prior to returning to work.

On October 4, 2012, the Civil Service Commission (CSV) reviewed the settlement agreement. CSC determined that the settlement agreement was tentative due to one specific contingency. The CSC stated:

...the terms of the settlement cannot be honored. The terms of a settlement must be definite and specific, serve as a final disposition of the appeal, and may not be inconsistent with

¹ Alleged to be costochondritis which causes inflammation around the breast bone (www.mayoclinic.com)

applicable law and rules. As this settlement does not constitute a final disposition of the appeal since it does not address the circumstance if appellant fails to pass the fitness for duty examination...

The matter was remanded to the Office of Administrative Law for further proceedings as indicated by the CSC.

CONCLUSIONS

On September 11, 2012, Dr. Prabhaker S. Patel, M.D., issued a written report stating that Rivera was fit for duty. The report from Dr. Patel predates the CSC's remand of the settlement (September 11 v. October 4). Consequently, the condition upon which the CSC concluded that the settlement agreement was tentative had already been satisfied prior to the remand. Unfortunately, the CSC was not apprised of this fact by counsel for either party. Thus the conditional nature of the settlement had been cured and the only remaining issue was appellant's procurement of an armored vest. I **CONCLUDE** this resolves the issues that were remand to the OAL by the CSC. And to that end, the jurisdiction of the OAL is concluded because the only issue that was transmitted is resolved. N.J.A.C. 1:1-3.2.

Assuming the above disposition is insufficient and some limited OAL jurisdiction remains, my ruling is as follows.

Court-enunciated principles encouraging settlements also apply to settlement agreements made before administrative agencies. In Zuccarelli v. State, 326 N.J. Super. 372, 380-381 (App. Div. 1999), the Court noted the strong public policy favoring the settlement of litigation, citing Nolan v. Lee Ho, 120 N.J. 465, 472 (1990) (quoting Jannarone v. W.T. Co., 65 N.J. Super. 472, 476 (App. Div. 1961), certif. denied, 35 N.J. 61 (1961)). Thus, when an agreement to settle a lawsuit is voluntarily entered into it is binding on the parties. Pascarella v. Bruck, 190 N.J. Super. 118 (App. Div. 1983), certif. denied, 94 N.J. 600 (1983). A settlement agreement between parties to a lawsuit is a contract. Nolan, supra, 120 N.J. at 472 (citing Pascarella, supra, 190 N.J. Super.

at 124). In Pascarella it was noted that an agreement to settle a lawsuit is a contract which, like all contracts, may be freely entered into and which a court, absent a demonstration of fraud or other compelling circumstances, should honor and enforce as it does other contracts. Pascarella, supra, 190 N.J. Super. at 124-25; Hannigan v. Township of Old Bridge, 288 N.J. Super. 313, 319 (App. Div. 1996), certif. denied, 144 N.J. 588 (1996); Montville Bd. of Ed. v. Pinto, 94 N.J.A.R.2d (EDU) 507, 511.

At the time the settlement agreement was executed, all parties were of the belief that procuring a special vest would not be difficult. However, this task proved to be much more difficult than anticipated. After the matter was remanded to the OAL, Rivera proceeded to seek a vender to make her a fitted vest. Rivera approached several vendors. Some of the vendors would not accept her request for a fitted vest unless they received written authorization from Cumberland County. Numerous settlement conferences followed during Rivera's efforts to procure the vest. While the undersigned was frustrated, at no time did I find as a matter of fact, that Rivera was purposely delaying her procurement of a fitted protective vest. Rather, there were unexpected problems with the vendors, including the manufacturing of an incorrect vest, illnesses by the vendor staff constructing the vest, and other miscommunications or errors that was not entirely attributable to Rivera. Eventually it was determined that a fitted vest could not be procured, but, in lieu of a fitted vest, an oversized or non-structured type of vest was procured by Rivera. And it was received by Rivera on or before September 13, 2013 (Certification of William Blaney, Esq., Counsel for Cumberland County, ¶ 21). Based upon these events, Cumberland County refused to abide by the settlement agreement.

On October 4, 2013, Rivera filed a motion to compel Cumberland County to return her to work in accordance with the settlement agreement. On October 17, 2013, Cumberland County filed opposition to the motion. Cumberland County refuses to take Rivera back as a corrections employee because of the delays she experienced in obtaining a fitted vest. Cumberland County infers that the vest procurement delays were caused by Rivera and the settlement should not be honored. (Certification of

William Blaney, Esq. Counsel for Cumberland County). It took Rivera a year and two months to purchase the vest, and the vest is not fitted or custom made for her condition. The vest was finally received on or about September 13, 2013.

The inference asserted by Cumberland County is that Rivera never needed a fitted vest, her medical condition was a sham, and the delays, together with the fact she was able to return to work without a custom vest, is proof that her original medical defense was illusory. And therefore Cumberland County should not be required to take Rivera back as a corrections officer.

Indeed it was the Cumberland County's doctor² (Levitsky), not petitioner, who concluded that petitioner required a custom vest. (Certification of William Blaney, Esq., Counsel for Cumberland County, ¶ 6). Dr. Levitsky sent a report on this topic to Cumberland County on August 31, 2012, and again on February 26, 2013. Id. Petitioner is not a vest manufacturer. She was dependant on third parties to make the vest. Cumberland County has not put forth any reliable facts in its supporting certifications that conclusively illustrate that Rivera caused or contrived the delay. It is merely supposition or frustration that Cumberland County is arguing.

I **CONCLUDE** that Rivera acted in good faith in seeking a fitted vest. She followed the medical advice of her treating doctor who was also the county's doctor. Rivera reached out to several vendors shortly after the settlement was signed in an effort to procure a fitted vest, but was confronted with delays and setbacks, mostly caused by the vendors. Furthermore the settlement was remanded to the OAL on October 4, 2012, creating further uncertainty and delay. There is no reliable evidence that Rivera engaged in fraud such that the settlement should be rescinded or deemed unenforceable as a matter of law or public policy. Id.

² Dr. Levitsky is also Rivera's doctor. (Certification of William Blaney, Esq. counsel for Cumberland County ¶ 6)

ORDER

I **ORDER** that this matter was resolved once Rivera passed the fitness for duty examination that was completed on or before September 11, 2012. This event or action removed jurisdiction from the OAL. Alternatively, Rivera's motion to enforce the settlement is **GRANTED**. It is further **ORDERED** that back pay, pension credit, together with all other benefits and emoluments shall be granted to Rivera effective on the date her representative provided notice to Cumberland County that she procured an approved vest (September 13, 2013).

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. 40A:14-204.

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.

November 4, 2013

DATE


W. TODD MILLER, ALJ

Date Received at Agency:

11-4-13

Date Mailed to Parties:

11-4-13

/sd

DOCUMENTS CONSIDERED

Appellant's Motion to Enforce Settlement, 10/4/13

Respondent's Response, 10/17/17



STATE OF NEW JERSEY

In the Matter of Nikia Rivera,
Cumberland County
Department of Corrections

**DECISION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2012-2405
OAL Docket No. CSR 1669-12

**REMAND
TO THE OFFICE OF
ADMINISTRATIVE LAW**

ISSUED: October 4, 2012 (PM)

The appeal of Nikia Rivera, a County Correction Officer with Cumberland County, Department of Corrections, of a removal, on charges, effective January 24, 2012, was before Administrative Law Judge W. Todd Miller, who rendered his initial decision on July 16, 2012, recommending acknowledgement of the settlement of the parties.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of October 3, 2012, ordered that no action be taken on the settlement and that this matter be remanded to the Office of Administrative Law (OAL) for further proceedings.

DISCUSSION

The settlement agreement provides that the appellant will return to work when her custom vest is complete and ready to wear and as soon as practicable. The appellant will be required to wear a vest for her regular eight hour shift. The appellant will not unreasonably refuse mandatory overtime. Additionally, the settlement provides that the appellant will attend a fitness for duty examination with a physician chosen by the appointing authority. However, the agreement does not address what will happen if the appellant does not pass the fitness for duty

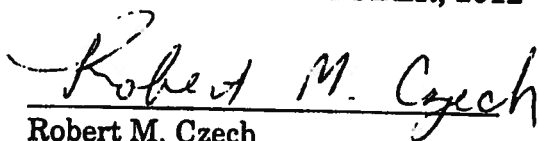
examination. The parties also agreed that the time period the appellant was absent from work until the date she returns will be treated as an unpaid medical leave of absence, as all charges are withdrawn. Further, the appellant will purchase a vest for mandatory wear at work that is equal to or better than the one she was issued by the appointing authority and the appointing authority will reimburse the appellant for the cost over \$780.00 within 30 days after the appellant supplies the receipt of the purchase of the vest. Staff from the Division of Appeals and Regulatory Affairs contacted the parties seeking clarification regarding what the parties intended to do if the appellant did not pass the fitness for duty examination; however, no reply was received from either party.

The ALJ recommended that the settlement be acknowledged and forwarded it for that purpose. However, the Commission finds the terms of this settlement cannot be honored. The terms of a settlement must be definite and specific, serve as a final disposition of the appeal, and may not be inconsistent with applicable law and rules. As this settlement does not constitute a final disposition of the appeal since it does not address the circumstance if the appellant fails to pass the fitness for duty examination, it cannot be approved. Accordingly, the Commission will take no action on the settlement agreement and orders that this matter be remanded to the OAL for further proceedings.

ORDER

The Commission orders that this matter be remanded to the Office of Administrative Law for further proceedings as set forth above.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 3RD DAY OF OCTOBER, 2012



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and Correspondence

Henry Maurer
Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Hearings Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

**c: Nikia Rivera
 Stuart Alterman, Esq.
 Jane Capasso, Esq.**



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CSR 1669-12

AGENCY DKT. NO. -- 2012-2405

**I/M/O NIKIA RIVERA,
CUMBERLAND COUNTY.**

Stuart J. Alterman, Esq., for appellant (Alterman & Associates, attorneys)

**Jane B. Capasso, Esq., for respondent (Lipman, Antonelli, Batt, Gilson,
Malestein, Rothman & Capasso, attorneys)**

Record Closed: July 16, 2012

Decided: July 16, 2012

BEFORE W. TODD MILLER, ALJ:

This matter was filed at the Office of Administrative Law on February 8, 2012, for determination as a contested case, pursuant to N.J.S.A. 40A:14-202d.

The parties have agreed to a settlement and have prepared a Settlement Agreement indicating the terms thereof, which is attached and fully incorporated herein.

I have reviewed the record and the terms of settlement and I **FIND:**

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures and as placed on the record on July 16, 2012.
2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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. 40A:14-204.

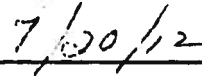
DATE



W. TODD MILLER, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____



/sd

I, Nikia Rivera, being the moving party in this matter, hereby certify that I have reviewed this Settlement Agreement and fully understand its meaning and terms. I acknowledge my understanding and verify my acceptance of the terms of this Settlement Agreement. I acknowledge that my representative questioned my understanding, verified my acceptance of the terms of this Settlement Agreement, and answered all my questions regarding this settlement to my satisfaction. I am satisfied with my representation and I enter into this Settlement Agreement voluntarily.

I also understand that if this Settlement Agreement is approved by the **CIVIL SERVICE COMMISSION**, my claim against the Respondent will terminate.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

7/16/12
DATE July 16, 2012

X Nikia S. Rivera
NAME Nikia Rivera

SETTLEMENT AGREEMENT

**NIKIA RIVERA vs. CUMBERLAND
COUNTY**

The parties in this appeal have voluntarily resolved all disputed matters and enter into the following settlement, which fully disposes of all issues in controversy between them.

A. The Final Notice of Disciplinary Action dated January 30, 2012 contained the following charges and proposed discipline:

Charge

1. **N.J.A.C. 4A:2-2.3(a)-11** - Abandonment of job as a result of absence from work as scheduled without permission for five (5) consecutive days.

<u>Discipline</u>	<u>Effective Date</u>
Removal	January 24, 2012

B. The parties have agreed to the following:

1. Appellant will return to work when her custom vest is complete and ready to wear and as soon as practicable.
2. Appellant will be required to wear a vest for her regular eight hour shift.
3. Appellant will not unreasonably refuse mandatory overtime.
4. Appellant will attend a fitness for duty examination with a physician chosen by the appointing authority.
5. The time Appellant was absent from work until the date she returns will be treated as an unpaid medical leave of absence, as all charges are withdrawn.
6. Appellant will purchase a vest for mandatory wear at work that is equal to or better than the one she was issued by the appointing authority and the appointing authority will reimburse Appellant for the cost over \$780.00 within 30 days after Appellant supplies the receipt for the purchase of the vest.

I, Nikia Rivera, being the moving party in this matter, hereby certify that I have reviewed this Settlement Agreement and fully understand its meaning and terms. I acknowledge my understanding and verify my acceptance of the terms of this Settlement Agreement. I acknowledge that my representative questioned my understanding, verified my acceptance of the terms of this Settlement Agreement, and answered all my questions regarding this settlement to my satisfaction. I am satisfied with my representation and I enter into this Settlement Agreement voluntarily.

I also understand that if this Settlement Agreement is approved by the **CIVIL SERVICE COMMISSION**, my claim against the Respondent will terminate.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

7/16/12
DATE July 16, 2012

X Nikia S. Rivera
NAME Nikia Rivera