



STATE OF NEW JERSEY

DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of William Johnson
Irvington, Department of Public
Works

CSC Docket No. 2022-1225
OAL Docket No. CSV 10339-21

Remand

ISSUED: DECEMBER 12, 2022

The appeal of William Johnson, Sewer Repairer Supervisor, Irvington, Department of Public Works, removal, effective November 10, 2021, on charges, was considered by Administrative Law Judge-Anthony Tiscornia (ALJ), who rendered his initial decision on July 27, 2022, recommending that the proposed settlement between the parties be approved.

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on October 12, 2022, remanded the matter to the Office of Administrative Law (OAL) for further proceedings.

DISCUSSION

As required, the Commission thoroughly reviewed the proposed settlement in this matter. The Commission regularly acknowledges settlements where such settlements are in compliance with Civil Service law and rules. In this regard, 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*. In this matter, the Commission finds compelling circumstances since some terms within the settlement as proposed are not in compliance with Civil Service law and rules and cannot be acknowledged.

Much of the proposed settlement is non-problematic. The settlement provides for, *inter alia*, that Johnson's removal will be converted to reinstatement and an "unpaid administrative leave" from September 21, 2021 through July 15, 2022. It also indicates that Johnson will receive "full seniority, earned sick leave and vacation leave, and earned pension benefits . . . as of September 21, 2022." This term is not in accord with Civil Service rules. Specifically, per *N.J.A.C.* 4A:6-1.3(c), paid sick leave cannot accrue during an unpaid leave of absence. Further, an employee cannot receive Civil Service seniority credit during an unpaid leave of absence for examination or layoff purposes pursuant to *N.J.A.C.* 4A:4-2.15(d) and *N.J.A.C.* 4A:8-2.4(e).¹

As is customary, upon receipt of the initial decision, Commission staff reviewed the settlement and identified the above deficiencies. Staff proceeded to contact the attorneys representing the parties indicating that the Commission could not acknowledge the settlement as drafted, and requested clarification from the parties on the problematic terms. After repeated attempts to receive such clarification over several months, none was provided. As such, the matter was forwarded to the Commission.

Upon review, the Commission finds that, based on the deficiencies in the settlement outlined above, it cannot acknowledge the settlement and is required, therefore, to remand the matter to OAL for further proceedings. The Commission notes, however, that this determination does not foreclose the parties from subsequently clarifying the above terms or otherwise further agreeing to settle the matter.

ORDER

The Civil Service Commission remands the appeal of William Johnson to the Office of Administrative Law for further proceedings.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 7TH DAY OF DECEMBER, 2022



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

¹ The portion of that term providing vacation leave is permissible. Also, while it is not under the Commission's jurisdiction, and therefore, would not need clarification for its purposes, the appellant may not be able to receive "earned pension benefits" during the unpaid leave of absence. To ensure that such a remedy is available, the Division of Pensions and Benefits should be consulted.

Inquiries
and
Correspondence:

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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

SETTLEMENT

OAL DKT. NO. CSV 10339-21

AGENCY DKT. NO. 2022-1225

**IN THE MATTER OF WILLIAM JOHNSON,
IRVINGTON TOWNSHIP, DEPARTMENT
OF PUBLIC WORKS.**

Juan C. Cervantes, Esq., (Forman Cardonsky and Tsinman, attorneys) for
appellant,

Lester Taylor, III, Esq., (Fliro, Perrucci, Steinhardt, Cappelli, Tipton and Taylor,
attorneys) for respondent

Record Closed: July 26, 2022

Decided: July 27, 2022

BEFORE JUDE-ANTHONY TISCORNIA, ALJ:

This matter was transmitted to the Office of Administrative Law (OAL) from the Civil Service Commission on December 20, 2021, for hearing as a contested case, pursuant to N.J.S.A.52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The parties reached an amicable resolution of the matter, and submitted the Settlement Agreement indicating the terms thereof, which is attached and fully incorporated herein. I have reviewed the record and the settlement terms and **FIND:**

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures.
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. 52:14B-10.

July 27, 2022

DATE

Date Received at Agency:

Date Mailed to Parties:

id



JUDE-ANTHONY TISCORNIA, ALJ

7-29-22

7-29-22

SETTLEMENT AGREEMENT

This Settlement Agreement and (the "Agreement") dated this 24 the day of June, 2022, is made by, between and among WILLIAM JOHNSON (hereinafter referred to as "Johnson") and TOWNSHIP OF IRVINGTON (hereinafter collectively referred to as the "Township") and shall be deemed in full force and effect on the dates set forth below with each Party's respective signature.

RECITALS

WHEREAS, William Johnson was terminated for failure to adhere to the Township of Irvington's policies and procedures by failing to report to work and failure to obtain authorization from his supervisor on or about August 26, 2021 and August 27, 2021; and

WHEREAS, Johnson pleads guilty to Conduct Unbecoming pursuant to N.J.A.C. 4A:2-2.3(6) and Insubordination pursuant to N.J.A.C. 4A:2-2.3(2) as a result of violating the Township of Irvington's policies and procedures; and

WHEREAS, Johnson shall be reinstated with his full seniority, earned sick leave and vacation leave, and earned pension benefits with the Township as of September 21, 2021; and

WHEREAS, Johnson shall receive no back pay for the time of his unpaid administrative leave from September 21, 2021 through July ~~4~~¹³, 2022; and

WHEREAS, Johnson shall be provided all benefits and entitlements pursuant to the governing Collective Bargaining Agreement upon reinstatement; and

WHEREAS, Johnson shall begin work on July ~~7~~¹³, 2022; and

WHEREAS, Johnson and the Township agree to release all claims set forth in matter CSV-10339-21; and

WHEREAS, the Parties intend for this Agreement to constitute the full and final settlement of all claims and/or matters arising from the matter before the Office of Administrative Law, Docket Number CSV-10339-21, as referenced above; and

NOW, THEREFORE, in consideration of the mutual agreements, promises and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

- A. As full and final settlement of all matters between the parties, William Johnson shall be reinstated with his full seniority, earned pension benefits, and earned vacation and sick leave with the Township as of July 5, 2022 and be

provided all benefits and entitlements pursuant to the governing Collective Bargaining Agreement at the time of reinstatement. Parties also agree for William Johnson to begin work on July 8, 2022.

B. William Johnson agrees that his unpaid administrative leave will effectively run from September 21, 2021 through July 15, 2022.

C. William Johnson shall plead guilty to one charge of Conduct Unbecoming pursuant to N.J.A.C. 4A:2-2.3(6) and one charge of Insubordination pursuant to N.J.A.C. 4A:2-2.3(2). Parties further agree to release all claims in the matter of CSV-10339-21.

D. Release and Discharge. In consideration of the exchange of the above terms of settlement and the other obligations set forth in this Agreement, the Parties, including their parents, subsidiaries, successors and assigns release and forever discharge each other and each such Party's employees, parents, subsidiaries, successors and assigns, from all losses, liabilities, claims, liens, and demands, whether arising from the within matter or otherwise, known or unknown, that the Parties had, now have or will ever have, or that were or could have been asserted in the within matter, in contract, tort or otherwise.

E. Governing Law. This Agreement shall be construed in accordance with the laws of the State of New Jersey.

F. Entire Agreement. The Parties agree that this Agreement, as written, constitutes the entire agreement between the Parties with regard to its subject matter, and that there are no other prior or contemporaneous, oral or written agreements by and among the Parties. To the extent any provision of that Agreement is inconsistent with this Agreement, this Agreement supersedes same.

G. Equally Construed. This Agreement shall not be construed by any Party as the drafting party, but shall be construed as if all Parties hereto participated equally in drafting it. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties concerning the subject matter hereof are merged herein. This is an integrated agreement. The terms of this Agreement may not be modified except by written instrument duly signed by all Parties.

H. No Admission of Liability. This Agreement shall not be construed as an admission of liability by any Party to any other Party, but is knowingly, willingly and voluntarily entered into by all Parties, after consultation with their respective counsel, to settle and compromise disputed claims, and to avoid the expense and inconvenience of further litigation.

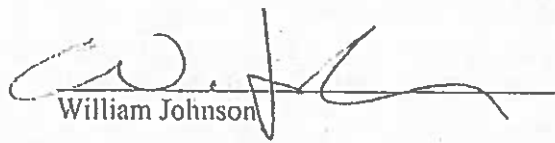
I. Reasonableness of Settlement. All Parties stipulate that the terms of this

Settlement Agreement are fair and reasonable and that the consideration provided is adequate..

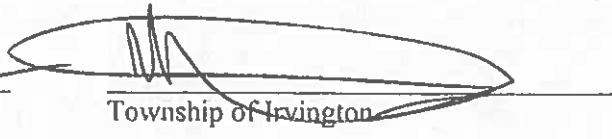
J. Binding Upon Successors. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective estates, heirs, successors and assigns.

K. Enforcement of Settlement Agreement. Nothing herein shall preclude the Parties from commencing any action to enforce this Settlement Agreement.

Witness
Dated: 06-24-22


William Johnson

Witness
Dated: 07.15.22


Township of Irvington