



STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of William Pierce, City
of Hackensack

CSC Docket No. 2013-3358
OAL Docket No. CSV 08936-13

Remand to the
Office of Administrative Law

ISSUED: AUG 13 2014 (HS)

The appeal of William Pierce, a Police Officer with the City of Hackensack, of his return to his previously held title at the end of his working test period effective May 26, 2013, was before Administrative Law Judge Gail M. Cookson (ALJ), who rendered her initial decision on June 17, 2014, dismissing the appeal. Exceptions were filed on behalf of the appellant.

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 on July 30, 2014, ordered that this matter be remanded to the Office of Administrative Law (OAL).

DISCUSSION

The appointing authority notified the appellant that he had failed his working test period for the promotional position of Police Sergeant as of May 26, 2013. Upon the appellant's appeal of that determination, the matter was transmitted to the OAL for a hearing as a contested case.

In her initial decision, the ALJ noted that a settlement conference was convened telephonically with her on July 30, 2013. The parties then announced that they had reached a tentative resolution and agreed to reduce their agreement to writing for incorporation into an Order. By letter dated September 17, 2013, the parties requested that the ALJ execute and file an enclosed Order of Settlement. However, that submission was not signed by either party. On September 20, 2013,

the ALJ advised both counsel that they must submit a fully-executed Settlement Agreement that she could approve through an Initial Decision. The ALJ did not thereafter receive an executed agreement. Her office again contacted counsel on November 22, 2013, but counsel did not comply. On May 20, 2014, the ALJ again advised counsel that the matter remained open and that they must submit an executed Settlement Agreement to her office or place an agreement on the record in person with their clients present. The ALJ gave the parties until June 13, 2014 to comply. In her initial decision recommending the dismissal of the matter, the ALJ noted that “[t]o date, neither party has seen fit to even contact our office.” Although the ALJ observed that the parties appeared to be satisfied with the terms arrived at for resolution of the dispute, she found that neither party had complied with the requirements of the OAL for the submittal of a Settlement Agreement to the ALJ. The ALJ further stated that no order or decision could issue from the OAL memorializing any stipulation and that the parties could not seek recourse for any breach of any agreement through judicial or administrative avenues. Based on the foregoing, the ALJ dismissed the appellant’s appeal.

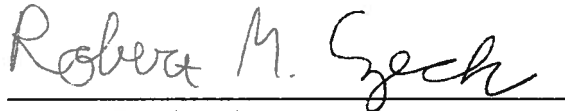
In the appellant’s exceptions, his attorney, William T. Smith, Esq., states that although he did not receive a call from the OAL on September 20, 2013, he did receive a call from the appointing authority’s attorney, Raymond R. Wiss, Esq., who advised him that the ALJ wanted the parties to sign the proposed Order of Settlement. Mr. Wiss indicated that he would revise the Order, have his client sign it and would forward it to Mr. Smith for the appellant’s signature and submission to the ALJ. Mr. Smith asserts that despite repeated phone calls and a January 28, 2014 letter, Mr. Wiss never forwarded the signed proposed Order to him. Furthermore, Mr. Smith maintains that contrary to the ALJ’s indication that her office contacted the parties on May 20, 2014, his office was never contacted.

Upon its *de novo* review of the record, the Commission does not agree with the ALJ’s decision to dismiss the appellant’s appeal. The Commission notes that the exceptions indicate that the appellant’s attorney was never directly contacted by anyone from the OAL. Moreover, the record does not contain any actual correspondence from the OAL to the parties regarding the settlement. Under these circumstances, the Commission finds that it would be appropriate to remand this matter to the OAL to allow it to be scheduled for further proceedings rather than to dismiss the appeal. Given the history of this matter, the parties should be informed in writing of the date by which they must either submit a settlement agreement or proceed to a hearing, and the consequences for failure to comply. Should the parties settle this matter, they must present the ALJ with a fully signed and executed agreement or place the terms of the agreement on the hearing record.

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 30TH DAY OF JULY 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, NJ 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION DISMISSAL

OAL DKT. NO. CSV 08936-13

AGENCY DKT. NO. 2013-3358

**IN THE MATTER OF WILLIAM PIERCE,
CITY OF HACKENSACK POLICE
DEPARTMENT.**

William T. Smith, Esq., for appellant William Pierce (Hook, Smith & Meyer,
attorneys)

Raymond R. Wiss, Esq., for respondent City of Hackensack Police Department
(Wiss & Bouregy, attorneys)

Record Closed: June 13, 2014

Decided: June 17, 2014

BEFORE **GAIL M. COOKSON, ALJ**:

STATEMENT OF THE CASE

Under letter dated June 11, 2013, appellant William Pierce (appellant) filed an appeal from notice provided by the Police Department of the City of Hackensack that he had failed the working test period for the promotional position of Sergeant as of May 26, 2013. The appeal was transmitted to the Office of Administrative Law where it was filed as a contested case on June 21, 2013.

A settlement conference was convened telephonically with the undersigned at the Office of Administrative Law on July 30, 2013. At that time, the parties announced

that they had reached a tentative resolution and agreed to reduce said agreement to writing for incorporation into an Order. Under cover of September 17, 2013, the parties submitted to the undersigned an Order of Settlement requesting that I execute and file same; however, the submission did not contain any signatures of either party. Accordingly, I advised both counsel on September 20, 2013, that they must submit a fully-executed Settlement Agreement that I could approve through an Initial Decision Settlement. When we had still not received an executed agreement, my office contacted counsel again on November 22, 2013. Counsel did not comply. Once again, on May 20, 2014, my office advised them that the matter remained open and that they must submit an executed Settlement Agreement to my office or place an agreement on the record in person with clients present. I gave them until June 13, 2014, to complete this requirement. To date, neither counsel has seen fit to even contact our office.

While both parties apparently are satisfied with the terms they arrived at for resolving their dispute, I **FIND** that neither party has complied with the requirements of the Office of Administrative Law for the submittal of a Settlement Agreement to the undersigned.

(a) Where the parties to a case wish to settle the matter, and the transmitting agency is not a party, the judge shall require the parties to disclose the full settlement terms:

1. In writing, by consent order or stipulation signed by all parties or their attorneys; or
2. Orally, by the parties or their representatives.

[N.J.A.C. 1:1-19.1]

Thus, in this matter there can be no order or decision forthcoming from the Office of Administrative Law memorializing any stipulation. The parties are specifically put on notice that they cannot seek recourse for any breach of any agreement through judicial or administrative avenues that otherwise would have been available to them had they complied with N.J.A.C. 1:1-19.1.

ORDER

Accordingly, it is **ORDERED** that the appeal of appellant William Pierce is hereby dismissed for failure to prosecute.

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.

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.

June 17, 2014
DATE

Gail M. Cookson
GAIL M. COOKSON, ALJ

Date Received at Agency:

Date Mailed to Parties:

JUN 19 2014

Lucia Sanders
DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

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