



agreement was forwarded to the appellant, she requested that it be revised. On November 20, 2014, a revised settlement agreement was forwarded to and accepted by the appellant. However, the revised agreement was not initially accepted by the Borough Council. Thereafter, on March 23, 2015, the Borough Council unanimously accepted the initial November 5, 2014 agreement. In response to the Borough Council's acceptance, on April 2, 2015, appellant's counsel sent an e-mail stating that appellant was now rejecting the initial November 5, 2014 agreement, and requested different terms to be added to the agreement. Thereafter, the appointing authority's counsel submitted a motion to enforce the settlement. Appellant's counsel replied asserting that "once the Borough Mayor and Council rejected the settlement agreement in late December 2014, the settlement agreement ceased to exist, and moreover, the subsequent approval had no force or effect and cannot be enforced." However, the ALJ granted the appointing authority's motion and ordered that the settlement be enforced.

In her exceptions to the ALJ's decision, the appellant reiterates that the appointing authority rejected the settlement agreement as represented in its letter of December 30, 2014. The appellant maintains that once the Borough Mayor and Council rejected the settlement agreement in late December 2014, the settlement agreement ceased to exist. Therefore, it cannot be enforced. The appellant argues that when the Borough, after initially rejecting the agreement, accepted the offer in its second vote, that acceptance was a new offer to which the appellant retained the right to make her counter offer. The appellant provides that if the appointing authority had accepted the initial settlement agreement in December 2014, she reasonably could have expected to be back at work being compensated with salary and benefits sometime in January 2015. Therefore, by the appointing authority waiting to have a second vote to approve the settlement agreement, her return to employment has been delayed.

In response, the appointing authority contends that a settlement was reached on November 5, 2014 and subsequently reduced to a written agreement which matched the terms of the oral agreement. Thereafter, it presents that the written agreement was revised and agreed upon by the appellant on December 4, 2014. The appointing authority then accepted the agreement on March 23, 2015. The ALJ was advised of the settlement and a slightly revised written agreement incorporating terms pursuant to Civil Service law was immediately presented for re-execution by the appellant. The appointing authority provides that the Commission has previously enforced an agreement where an employee authorized the settlement of a case and then reconsidered and refused to sign the written agreement. In this matter, there was a fairly negotiated agreement which the appellant reached in the presence of her counsel and accepted orally under oath before the ALJ in open court. Thereafter, the written agreement was accepted by the appellant and then accepted by the Borough by vote in an open public meeting. The appointing authority asserts that there were no material changes made to the

conditions agreed upon by the parties on November 5, 2014 and accepted in full by the Borough on March 23, 2015.

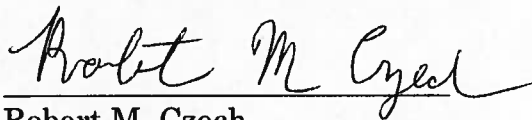
Upon on its *de novo* review of the record, the Commission is unable to adopt the ALJ's recommendation based on the existing record. The policy of the judicial system strongly favors settlement. See *Nolan v. Lee Ho*, 120 N.J. 465 (1990); *Honeywell v. Bubb*, 130 N.J. Super. 130 (App. Div. 1974); *Jannarone 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*.

However, as represented in the appointing authority's counsel's December 30, 2014 letter, the Mayor and Council of the Borough rejected the proposed settlement agreement and asked the OAL to set a new hearing date. Once the appointing authority "rejected" the settlement, there was no agreement or meeting of the minds. See *In the Matter of Frank Hoffman*, Docket No. A-6443-03T1 (App. Div. July 1, 2005), *In the Matter of Lisa Smith* (MSB, decided July 11, 2007), and *In the Matter of George Bello* (MSB, decided May 10, 2006). Consequently, its subsequent affirmance of the settlement was ineffective and would have only resulted in a valid settlement had the appellant subsequently agreed to the settlement, which she did not. It is of no significance that the appellant agreed to the settlement prior to that time. Therefore, the Commission is unable to acknowledge the settlement. Accordingly, the Commission must remand the matter to the OAL for further proceedings. Finally, the parties are reminded that they are free to continue to engage in settlement discussions regarding this matter.

### ORDER

The Civil Service Commission orders that this matter be remanded to the Office of Administrative Law for further proceedings.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 3<sup>rd</sup> DAY OF JUNE, 2015



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**

OAL DKT. NO. CSV 09113-14

AGENCY DKT NO. 2015-136

IN THE MATTER OF ELLEN O'BOYLE-  
GOLDY, BOROUGH OF RUTHERFORD,  
DEPARTMENT OF PUBLIC WORKS.

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Kathleen F. Mazzouccolo, Esq. for petitioner

Eric M. Bernstein, Esq. for respondent

Record Closed: April 30, 2015

Decided: May 12, 2015

BEFORE JOANN LASALA CANDIDO, ALAJ:

**STATEMENT OF THE CASE**

This matter involves the filing of disciplinary charges by the Borough of Rutherford, Department of Public Works (Borough or Respondent) against Ellen O'Boyle-Goldy (appellant) arising from an incident that occurred on May 8, 2014. Appellant was terminated effective May 8, 2014. Appellant appealed respondent's decision and the matter was transmitted the Office of Administrative Law pursuant to N.J.S.A. 52:14b-1 et seq. A telephone prehearing was conducted during which time the parties agreed on a

hearing date of November 5, 2014. On said date, the parties engaged in extensive settlement discussions and resolved all issues in dispute. The terms of the Last Chance Agreement and General Release (agreement) were subject to Borough Board approval. The undersigned took sworn testimony of appellant as to the terms of the settlement. The testimony was placed on the record and appellant agreed to the following terms:

1. Appellant accepted and pled to the charge of conduct unbecoming a public employee;
2. In exchange for the plea and resolution of this case, the Borough would convert appellant's termination to a suspension without pay from May 8 to November 8, 2014 and then to an unpaid leave of absence from November 9, 2014 until the date of her return to employment with the Borough;
3. Appellant would not be entitled to any back pay or back benefits of any kind;
4. Medical insurance premiums would be addressed separately, not within the agreement;
5. The agreement was to be executed by appellant; and
6. The executed agreement would be subject to the approval of the Mayor and Council of the Borough.

Appellant was voir dired as to her acceptance of this settlement. Appellant also agreed to the terms of this settlement upon advice of counsel and testified that she was satisfied with her attorney. However, when the written agreement was forwarded to appellant she requested that the agreement be revised. On November 20, 2014 a revised settlement agreement was forwarded to appellant. The revised agreement was acceptable by appellant.

On December 4, 2014 this office received a message from appellant's counsel stating that her client signed the agreement and it is waiting for Board approval. Said message is attached hereto for reference. The agreement was presented to the Borough Council and was not initially accepted. The undersigned scheduled a hearing for March 25, 2015.

On March 11, 2015 an adjournment request was made which was denied. On March 23, 2015, the Borough unanimously accepted the agreement that had been agreed to by appellant and confirmed on the record on November 5, 2014. The minutes from the meeting is attached hereto for reference.

On March 25, 2015 respondent sent the agreement to appellant's counsel for execution. Appellant reviewed the agreement with her family and requested clarifications to the agreement. On April 2, 2015 appellant's counsel sent an email that appellant was now rejecting the agreement that had been agreed upon in open court on November 5, 2014; approved by the Board on March 23, 2015 and requested different terms to be added to the agreement.

On April 21, 2015 respondent's counsel submitted a motion to enforce settlement. (attached hereto for reference). Appellant's counsel replied to respondent's motion on May 7, 2015 asserting that "once the Borough Mayor and Council rejected the settlement agreement in late December 2014, the settlement agreement ceased to exist, and moreover, the subsequent approval had no force or effect and cannot be enforced." I disagree. The Borough rejected the revised settlement agreement and accepted the agreement which was put on the record before the undersigned on November 5, 2014.

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.

Accordingly, it is hereby **ORDERED** that the above terms of the agreement are **AFFIRMED**.

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.

May 12, 2015  
DATE

[Signature]  
JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

May 12, 2015  
[Signature]

Date Mailed to Parties: May 13, 2015  
ljb

DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE