STATE OF NEW JERSEY

In the Matter of Jerome Morgan, Newark, Department of Administration	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket No. 2020-1245 OAL Docket No. CSV 16389-19	

ISSUED: AUGUST 14, 2024

The appeal of Jerome Morgan, Senior Administrative Analyst, Newark, Department of Administration, removal, effective October 27, 2019, on charges, was heard by Administrative Law Judge John P. Scollo (ALJ), who rendered his initial decision on July 8, 2024. Exceptions were filed on behalf of the appellant and a reply was filed on behalf of the appointing authority.

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on August 14, 2024, affirmed the ALJ's initial decision, which granted the appointing authority's motion to enforce the settlement.

The Commission makes the following comments. 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. Upon review of the settlement placed on the record before the ALJ, the Commission finds that it complies with Civil Service law and rules. As such, the Commission finds that the ALJ's determination to enforce that settlement was appropriate.

In this regard, any argument that the settlement was not agreed to or misunderstood by the appellant as he had apparent issues with some of its terms is unavailing. In addressing this contention, the ALJ stated:

> All terms that went into the settlement agreement were thoroughly discussed by both sides and the Tribunal. The parties had plenty of opportunities and time to discuss the ongoing negotiations with their respective attorneys in private throughout the settlement conference. The parties agreed that upon his resumption of work duties, after the City Council's approval of the settlement agreement, Morgan would be a Senior Administrative Analyst Step Two. At the inception of this matter, Morgan demanded "back pay." Throughout the settlement negotiations the main and most time-consuming topic was the amount of "back pay" that Morgan would receive. The parties used the term "back pay" in its ordinary sense, namely that amount of compensation that Morgan would have received had he not been suspended or terminated. The parties never expressed any desire to vary from the ordinary use of the term "back pay." "Back pay" contemplates the payment of wages from which applicable deductions for withholding of payroll taxes, Social Security, payment of health insurance premiums, union dues (if applicable) pension contributions, etcetera be taken. At no time was it discussed that any of the aforementioned mandatory and aforementioned usual and customary deductions would not apply in Morgan's case. At no time was it discussed that the Respondent-City was expected to pay any amount in addition to the amount of $150,000. Both sides had the benefit of legal counsel, ample time to raise questions, and ample time and opportunity to thoroughly discuss all demands and proposals. The two sides reached the settlement agreement fully aware of all its terms. Nothing was left unaddressed. Upon reaching the settlement, this judge queried the two sides to ensure that there was no misunderstanding or ambiguities. Having no reason to believe that there were any outstanding items, this judge ended the proceedings. The settlement agreement's terms were simply and clearly set forth in this judge's February 2, 2024 email to the parties.

The ALJ clearly indicated that the term used for the $150,000 payment was back pay. While the appellant, in his exceptions argues he did not understand the implications that back pay would include deductions for items such as social security taxes and pension contributions, if he had any doubts about this, he should have questioned his attorney or the judge at the time the matter was placed on the record.[1] As such, his apparent understanding that he would receive $150,000 from the appointing authority "free and clear" of any obligations is not considered sufficient to set aside the settlement. Moreover, the ALJ indicated that that the

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[1] Indeed, the Commission notes that under *N.J.A.C.* 4A:2-2.10(d), back pay shall include, among other things, unpaid salary and under *N.J.A.C.* 4A:2-2.10(d)2 "shall be reduced by the amount of taxes, social security payments, dues, pension payments, and any other sums normally withheld."

parties agreed to the essential terms of the agreement. The Commission agrees. The essential terms are that the removal would be rescinded, the appellant would be reinstated to his position, and he would receive, among other things, back pay. To reject the settlement under such circumstances would not be appropriate. *See e.g., In the Matter of Thomas Valente*, Docket No. A-3180-21 (App. Div. October 14, 2022).

ORDER

The Civil Service Commission affirms the ALJ's order to enforce the settlement in this matter.

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 14TH DAY OF AUGUST, 2024

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
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Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
ENFORCING SETTLEMENT
OAL DKT. NO.: CSV 16389-19
AGENCY REF. NO: 2020-1245

JEROME MORGAN,

Appellant,

v.

CITY OF NEWARK, DEPARTMENT OF ADMINISTRATION,

Respondent.

Lynsey A. Stehling, Esq., for appellant Jerome Morgan (Law Office of Daniel Zirrith, LLC, attorneys)

Cheyne R. Scott, Esq., for respondent City of Newark, Department of Administration (Law Office of Chasan, Lamparello, attorneys)

Record Closed: July 5, 2024 Decided: July 8, 2024

BEFORE: **JOHN P. SCOLLO**, ALJ:

Jerome Morgan ("Appellant" or "Morgan") appeals from the City of Newark's ("City" or "Newark") decision to terminate his employment based on his allegedly habitual lateness and / or absenteeism.

PROCEDURAL HISTORY

Jerome Morgan filed a Major Disciplinary appeal on October 15, 2019 with the Civil Service Commission ("CSC") seeking a recission of his termination; back pay and restoration of back benefits and seniority; expungement of his termination from his work history; and attorney's fees and costs. On November 20, 2019, the CSC transmitted the case to the Office of Administrative Law, where it was filed that same day as a contested case pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52: 14F-1 to -13 and assigned Docket Number CSV 16389-19. On November 25, 2019 the case was assigned to John P. Scollo, ALJ.

An initial telephone conference took place on December 6, 2019, and the Tribunal issued its Pre-Hearing Order on December 6, 2019, in which due dates were set for discovery, motions, the marking of exhibits and the submission of a Joint Statement of Facts. Several telephone conferences were held. In the course of the case, Appellant filed a Motion *in Limine*, received on October 16, 2020, seeking to bar from evidence certain documents and testimony related to prior charges from the years 2016 and 2018. Respondent-Newark filed Opposition papers received on November 23, 2020, to which the Appellant filed a Reply received on December 18, 2020. On August 16, 2021, this Tribunal decided the Motion *in Limine* barring the Respondent from using the documents unless and until the Appellant was found guilty of the charges set forth in the May 31, 2019 PNDA and of which Morgan was found guilty of violating as stated in the October 28, 2019 FNDA. In other words, the Tribunal ruled that the Respondent could not use the records from Morgan's prior discipline for tardiness and absenteeism to support its efforts to prove the charges of tardiness and absenteeism in the present matter. Furthermore, the Tribunal ruled that Respondent may only use evidence arising out of the present circumstances to prove the present charges.

The Tribunal and the parties saw an opportunity to discuss settlement of this matter. Settlement discussions took place on January 30, February 1, and February 2, 2024. On February 2, 2024, the parties reached an agreement on settlement terms.

Judge Scollo sent a letter dated February 2, 2024 (See the Tribunal's Attachment "A" annexed to this Order) setting forth the terms that the parties had agreed to in court; memorializing that the attorneys would attend to several operational details, none of which constituted a substantive disagreement; and requesting them to write and have their clients sign the settlement agreement. The only contingency was approval by the Newark City Council, whose approval was considered to be likely.

On June 11, 2024, the Tribunal granted the Respondent's Motion to Enforce the settlement reached on February 2, 2024; ordered Respondent's attorney to make whatever revisions to the settlement agreement that were necessary to reflect the parties' agreements on operational issues and on matters of form; and, ordered both attorneys to take whatever steps that were necessary to have the settlement agreement signed within the next twenty days and to present same to the Tribunal. On June 18, 2024, Ms. Stehling, the attorney for Appellant Morgan presented a Notice of Interlocutory Appeal to the Civil Service Commission (CSC). On June 28, 2024, the Civil Service Commission notified Attorney Stehling that it had declined to review the interlocutory motion and advised her that the issues raised in the Notice of Interlocutory Appeal could be raised at the time of the final determination. On July 3, 2024, Attorney Stehling wrote to the Civil Service Commission acknowledging the CSC's June 28, 2024 correspondence and noted that the June 11, 2024 Order of Judge Scollo did not provide information regarding the filing of exceptions. On July 5, 2024, the CSC wrote to Attorney Stehling (copy to ALJ Scollo) saying that the ALJ should be issuing an Initial Decision, after which Stehling could file exceptions. This writing revises the caption of the June 11, 2024 Order Granting Motion to Enforce Settlement to read: Initial Decision to Enforce Settlement; adds this paragraph to the Procedural History; and adds language to the Order section of this Initial decision to make it clear that Appellant's attorney has the right to file exceptions. All other provisions of the June 11, 2024 Order to Enforce Settlement remain the same.

THE ISSUE IN THE MOTION AT BAR

The Motion at bar was filed by the Respondent's counsel, Cheyene R. Scott, Esq., who seeks to have the Tribunal rule that the settlement reached on February 2, 2024 should be enforced.

In her Opposition papers, Appellant's counsel, Lynsey Stehling, Esq., argues that her client, Jerome Morgan, did not fully understand the settlement terms he agreed to on February 2, 2024. She requests the Tribunal either: (1) to reform the settlement agreement that Respondent's counsel memorialized to bring it in line with Morgan's interpretation of the settlement agreement's terms, which he set forth after February 2, 2024, or (2) to set aside the settlement agreement as memorialized by Respondent's counsel and proceed to hear the case.

The issue to be decided is whether to grant the Motion to Enforce the Settlement Agreement as memorialized by Respondent-Newark's counsel (Ms. Scott, Esq.) because there is sufficient evidence to demonstrate that the case was actually settled on February 2, 2024 in accordance with the terms as written in the Settlement Agreement, or whether to deny the Motion to Enforce the Settlement Agreement because the Appellant has demonstrated that there actually were unresolved issues at the end of the settlement discussions on February 2, 2024, namely Morgan's claim that only taxes should be deducted from the $150,000 settlement amount and Morgan's claim that the designation of Morgan as a "Step Two" Senior Administrative Analyst should be applied "immediately", i.e. at sometime before his actual physical return to the office for the resumption of his work duties. That is to say, Attorney Stehling's request is that either the Settlement Agreement should be reformed in accordance with Morgan's interpretation of the Settlement Agreement's terms, or that the Tribunal should set aside the Settlement Agreement and proceed to a hearing on the merits.

The Contentions of the Appellant, Jerome Morgan

On Page Seven of her Opposition papers, in the Argument Section, Attorney Stehling, claims that "substantial and material terms of the agreement are in dispute". In her March 26, 2024 letter to Attorney Scott, Stehling identifies two substantive disputes, which refer to Sections 2.2 and 2.10 of the written agreement sent to her by Scott. The requests for revisions in other sections (Sections 2.3, 2.9, 2.11, and Section 3 involve operational details or matters of form, rather than substance).

On Page 7 of her Opposition paper, Attorney Stehling argues that the difference (She uses the word "distinction") between Morgan's understanding of the two substantive terms set forth in the judge's 2/2/24 email (the first being the issue of deductions and the second being the issue of the timing of the change from step one status to step two status) and the City's understanding of same "materially alters the terms of the settlement agreement". The essence of her argument is that the parties never came to a meeting of the minds and thus failed to reach an enforceable agreement. Thus, the question comes down to whether or not the parties came to an agreement on the two substantive issues.

The substantive issues are as follows:

(1) As stated in Morgan's Certification, Paragraph 9, in regard to Section 2.2 Morgan claims that he did not understand that applicable pension and social security contributions, normally paid by the employee, would be deducted from the $150,000 settlement. Also in Morgan's Certification, Numbered Paragraph 9, he states that the basis for his belief is that he "did not believe it (i.e., the settlement payment) was considered a wage earner's paycheck". Morgan seeks additional money, over and above the $150,000 amount, to cover the cost of Social Security taxes and to cover the cost of his pension contributions.

(2) As stated in Morgan's certification, Paragraph 10, in regard to Section 2.10, Morgan believed that he "would immediately be entitled to step two of the Senior Administrative Analyst pay scale (40-hour work week) upon return to pay status. Morgan seeks an immediate step-up to step two status.

The Contentions of the Respondent, Newark Department of Administration

The Respondent-City's position is that the law requires employers to withhold / deduct income taxes and Social Security taxes. In regard to members of the Public Employees retirement System (PERS), the law (N.J.S.A. 43:15A-25) requires employers to withhold/deduct employee contributions to the pension system. The same type of deduction is required for workers who participate in State-sponsored health benefits plans. The Respondent-City's position is that Morgan's petition seeks "back pay" (salary, benefits, seniority) and that this settlement is indeed back pay. The Respondent-City argues that since there is no question that the $150,000 settlement is back pay, it follows that all usual deductions should be taken from the $150,000 amount for payment of the employee's portion of income taxes, Social Security taxes, pension contributions, and health benefits contributions (premiums). The parties engaged in extensive and prolonged back-and-forth settlement negotiations eventually reaching an unequivocal and all-encompassing $150,000 settlement figure. The City seeks to enforce the terms of the settlement as outlined in Judge Scollo's 2/2/24 email and as written in Attorney Scott's February 15, 2024, written settlement agreement.

DISCUSSION AND FINDINGS OF FACT

Having had the opportunity to review the Respondent's Motion to Enforce Settlement and Appellant's Opposition thereto and having had the opportunity to review all the exhibits attached to the papers, I make the following **FINDINGS OF FACT**.

1. Jerome Morgan has been an employee with the City of Newark since October 1, 2001. On May 31, 2019, Morgan was served with a PNDA imposing an indefinite suspension based on allegations of : (1) Incompetency, inefficiency, or failure to perform duties; (2) Inability to perform duties; (3) Chronic or excessive absenteeism or lateness; (4) Conduct Unbecoming a public employee; (5) Neglect of duty; and (6) Other sufficient cause. The May, 2019 charges (absenteeism and tardiness) in the case at bar arose out of Morgan being arrested at his workplace, being incarcerated, and his consequent inability to report to work. On September 27, 2019, Morgan was served with a letter terminating his employment with the City. He was not served with a FNDA until October 28, 2019. At the time of his termination, Morgan held the title of Senior Administrative Analyst, Step One, in the Department of Administration, Office of Management and Budget, City of Newark.

2. Morgan filed a Major Disciplinary Appeal with the Civil Service Commission on October 15, 2019. On November 20, 2019, the CSC transmitted the case to the Office of Administrative Law, where it was filed that same day as a contested case pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52: 14F-1 to -13 and assigned Docket Number CSV 16389-19.

3. On January 30, 2019 and February 1, 2024, the parties, their representatives and their attorneys appeared before John P. Scollo, ALJ in person for settlement conferences. The settlement conferences continued on February 2, 2024 via Zoom. On February 2, 2024, the matter settled for $150,000 (one hundred fifty thousand dollars), which ALJ Scollo memorialized in his email to the parties dated February 2, 2024 (see the Tribunal's Attachment 'A' to this Order). The Tribunal and the parties' counsel agreed that the parties would reduce the settlement agreement to writing

because of their need to use specific language in order to address the task of communicating with the Civil Service Commission, in regard to attending to and completing the details involved in placing Morgan back onto the City's payroll, and to address the task of communicating with the Division of Pensions with regard to working-out how the settlement money will be placed into Morgan's pension account. The parties also agreed to address the task of determining which days, between Morgan's signing of the settlement agreement and the City Council's approval of the settlement, that Morgan would use his accrued vacation days before returning to work. The parties understood and agreed that the tasks of communicating with the Civil Service Commission and with the Division of Pensions were operational details and did not affect the substance of the terms of the settlement agreement. The parties unequivocally acknowledged that the matter was settled and would not proceed to a hearing. The parties did not express the sentiment that the settlement language was too complex to be put into writing on February 2, 2024. Rather, the parties agreed that the substance of the settlement agreement was: (1) that the City will accept Morgan back at work in the title of "Senior Administrative Analyst", but he will no longer be a "Step One"; he will be a "Step Two"; (2) that the City will pay "back pay" (most of which would go into Morgan's pension account) in the lump sum of $150,000 (one hundred and fifty thousand dollars). The parties explicitly agreed that the one and only contingency to the matter being settled was whether the Newark City Council would approve the settlement agreement, but they also agreed that the City Council's approval was likely.

4. All terms that went into the settlement agreement were thoroughly discussed by both sides and by the Tribunal. The parties had plenty of opportunities and time to discuss the ongoing negotiations with their respective attorneys in private throughout the settlement conference. The parties agreed that upon his resumption of work duties, after the City Council's approval of the settlement agreement, Morgan would be a Senior Administrative Analyst, Step Two. At the inception of the matter, Morgan demanded "back pay'. Throughout the settlement negotiations the main and most time-consuming topic was the amount of "back pay" that Morgan would receive. The parties used the term "back pay' in its ordinary sense, namely that amount of compensation

that Morgan would have received had he not been suspended or terminated. The parties never expressed any desire to vary from the ordinary use of the term "back pay". "Back pay" contemplates the payment of wages from which all applicable deductions for the withholding of payroll taxes, Social Security, payment of health insurance premiums, union dues (if applicable), pension contributions, etcetera are taken. At no time was it discussed that any of the aforementioned mandatory and aforementioned usual and customary deductions would not apply in Morgan's case. At no time was it discussed that the Respondent-City was expected to pay any amount of money in addition to the amount of $150,000.00. Both sides had the benefit of legal counsel, ample time to raise questions, and ample time and opportunity to thoroughly discuss all demands and proposals. The two sides reached the settlement agreement fully aware of all its terms. Nothing was left unaddressed. Upon reaching the settlement, this judge queried the two sides to ensure that there were no misunderstandings or ambiguities. Having no reason to believe that there were any outstanding items, this judge ended the proceedings. The settlement agreement's terms were simply and clearly set forth in this judge's February 2, 2024 email to the parties.

Discussion of the First Substantive Issue

The Respondent-City's position is that all usual deductions should be taken from the $150,000 amount for payment of the employee's portion of taxes, Social Security contributions, pension contributions, and health benefits contributions (premiums).

In Ms. Stehling's March 26, 2024 letter to Ms. Scott, Stehling states:

> In accordance with our discussion regarding the draft settlement agreement ("draft agreement") associated with this matter, please be advised that Mr. Morgan is seeking the following changes:
>
> [1] Section 2.2 Mr. Morgan is seeking to change the language so that he only has payroll taxes deducted from the $150,000 payment. *Therefore, he is seeking to have the City pay any applicable pension and social security contributions associated with the gross salary payment.*

> Please note that Mr. Morgan did not receive any health benefits from the City, and as such, no deductions should be taken out of the payment for health contributions."]

In response to the City's position, Ms. Stehling states, on page three, first full paragraph, of Ms. Stehling's Opposition paper: "...Appellant [Morgan] did not believe it [the $150,000 settlement] was a wage earner's paycheck." The Tribunal notes that in common parlance, a wage earner's paycheck is his salary. In Ms. Stehling's March 26, 2024 letter to Ms. Scott, page one, in the section seeking changes to Section 2.2 , Ms. Stehling uses the phrase "the $150,000 payment" and in the next sentence, she uses the phrase "the gross salary payment", which obviously, by context, refers to the $150,000. Therefore, it is clear that Ms. Stehling uses the phrase "the $150,000 payment" and the phrase "the gross *salary* payment" interchangeably. The City's position is that the phrase "the $150,000 payment" is and always was considered by both sides to be "salary". The City thus maintains that by law, it is required that all mandatory deductions (like withholdings for taxes and social security) would and should be deducted from Morgan's salary and all other deductions (like withholdings for pension and health insurance premiums) would and should be deducted from the $150,000 salary. The Tribunal's recollection is that during settlement discussions, there was no mention of the City being called-upon to pay, in addition to the $150,000, the cost of the employee's deductions for pension contributions or for Social Security. It is certain that the City never offered or agreed to pay for such contributions over and above its $150,000 offer.

I **FIND** that during settlement negotiations the parties did not explicitly discuss an added obligation calling for the City to pay the cost of Morgan's contributions to Social Security or to his pension over and above the $150,000 amount. In the absence of any discussion during the settlement negotiations and in the absence of an explicit provision in the settlement agreement whereby the City, in addition to the amount of $150,000, would have specifically agreed to pay the cost of Morgan's pension contributions and / or Morgan's Social Security contributions (items normally payable by the employee in the course of receiving his salary), I **FIND** that there is no factual basis that supports Morgan's claimed belief that the settlement requires the Respondent-City to pay the

cost of the employee's Social Security contributions and / or to pay the cost of the employee's pension contributions over and above the $150,000.

Discussion of the Second Substantive Issue

In Ms. Stehling's March 26, 2024 letter to Ms. Scott, Stehling states:

> "In accordance with our discussion regarding the draft settlement agreement ("draft agreement") associated with this matter, please be advised that Mr. Morgan is seeking the following changes:
>
> [4] Section 2.10 Mr. Morgan is seeking to revise the language so that he will immediately be entitled to step two of the Senior Administrative Analyst pay scale at the forty (40) hour rate.

On this Second Substantive Issue of when Morgan would start to be paid as a "Step Two" level in the position of Senior Administrative Analyst", in his Certification, Morgan recited a portion of this judge's February 2, 2024 email to the parties. This judge sent this email immediately after the settlement was reached in court. The cited portion of the email reads as follows:

> "The terms of the settlement are; (1) that the City will accept Mr. Morgan back at work in the title of 'Senior Administrative Analyst', but he will no longer be a 'step one'; he will be a 'step two'". [The second term of the settlement, dealing with back pay and deductions, set forth in this judge's February 2, 2024 email has been discussed elsewhere, so it has been omitted from this quote.]

In Paragraph 10 of his certification, Morgan claims that he understood the above statement to mean that he would immediately be entitled to step two of the Senior Administrative Analyst pay scale (40-hour work week) *upon return to pay status*.

In regard to the Second Substantive Issue, we must determine whether or not the agreement, as written, sets forth the time reference for when the step one status to step

two status takes place. Stehling does not claim that the agreement sets forth a specific time for when the step-up from step one status to step two status takes place. She only claims that Mr. Morgan's understanding of the agreement was that it would take place "upon [his] return to 'pay status'". The upshot of the City's position is expressed in Sections 2.7 and 2.10 of the written settlement agreement sent to Attorney Stehling on February 15, 2024, and is expressed in paragraphs 7 through 14 of Attorney Scott's Certification dated May 8, 2024. The City's position is that the only date discussed for the step-up of status was February 26, 2024, the date that appears in Section 2.7 of the written agreement, namely the day on which Morgan was expected to return to the office to resume his job duties. The City's position is that during negotiations no other date was ever requested regarding the change from step one to step two.

I **FIND** that during negotiations, the step-up from step one status to step two status was indeed discussed. I **FIND** that the only reference as to when the change was to become effective (i.e., the time reference) was when Morgan actually reported to the office to resume his job duties. In addition, we must recall that up to the day that Morgan was to return to the office to resume his job duties he would be on vacation. There was no discussion about whether the rate of his vacation pay was to be paid out at the "step one rate" or at the "step two rate". Logic dictates that if the rate of his vacation pay was to be at the higher rate applicable to a step two employee, then it would be imperative for Morgan to have determined in advance the rate of pay to be applied to "x" number of accrued vacation days at the level of a step one employee and the rate of pay to be applied to "y" number of accrued vacation days at the level of a step two employee. That means that the parties would have had to determine a date of demarcation as to when the step one rate would apply and when the step two rate would apply to vacation pay. Obviously, it would behoove the recipient of the money to know what amounts of money he would be receiving as vacation pay. However, such a discussion did not take place. I **FIND** that a demarcation date (i.e., time reference) was never set.

I **FIND** that the only mention of a time reference for the change from "step one" status to "step two" status was the day that Morgan would return to the office to resume his work duties. This is reflected in the judge's February 2, 2024 email to the parties by the use of the future tense. In the above-quoted section of the judge's email dated 2/2/24, he uses the word "will" several times. The judge did not use the past tense or the present perfect tense; he used the future tense, which indicates future action. The judge said: "... the City *will* accept Mr. Morgan back at work in the title of "Senior Administrative Analyst", but he *will no longer be* a step one; he *will be* a step two ....".

I know and I **FIND** that the use of the future tense in the email reflected the intent of the parties, at the time the settlement was reached, that the step-up to "step two' would occur upon Morgan's return to the office for the resumption of his work duties. In addition, I **FIND** that the only evidence offered by Morgan to support his contention that his step-up was to be "immediate' is his own bare assertion.

I **FIND** that the revisions requested by Appellant's counsel in her letter dated March 26, 2024, in regard to Sections 2.3, 2.9, 2.11, and Section 3 of the written settlement agreement involve operational details or matters of form and do not constitute substantive disagreements or substantive ambiguities.

APPLICABLE LAW

General Provisions

The Civil Service Act and the implementing regulations govern the rights and duties of public employees. N.J.S.A. 11A:1-1 to 12-6; N.J.A.C. 4A:1-1.1 to 4A:10-3.2. An employee who commits a wrongful act related to his or her duties or who gives other just cause may be subject to major discipline. N.J.S.A. 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). In a civil-service disciplinary case, the employer bears the burden of proving sufficient, competent and credible evidence of facts essential to the charge. N.J.S.A. 11A:2-6(a)(2), -21; N.J.S.A. 52:14B-10(c); N.J.A.C. 1:1-2.1, "burden of proof"; N.J.A.C. 4A:2-1.4. That burden is to establish by a preponderance of the competent,

relevant, and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982).

Settlements

It has long been recognized that a settlement agreement between the parties to a lawsuit is a contract. Pascarella v. Bruck, 190 N.J. Super. 118, 124 (App. Div. 1983), certif. Denied, 94 N.J. 600 (1983). "Settlement of litigation ranks high in our public policy." Jannarone v. W.T. Co., 65 N.J. Super. 472 (App Div. 1961), certify denied 35 N.J. 61 (1961).

Nolan v. Lee Ho, 120 N.J. 465 (1990), was a case wherein it was alleged that plaintiff's counsel had committed a fraud upon the two defendant doctors during the discovery process. After settlements had been reached the alleged fraud was discovered, which led to the defendants seeking to vacate the settlements based on compelling circumstances. Nolan v. Lee Ho did not establish any new principles of law. At page 472 of Nolan v. Lee Ho, the Supreme Court cited Pascarella at 125 and DeCaro v. DeCaro, 13 N.J. 36 at 97. The Court said:

> "... our courts have refused to vacate final settlements absent compelling circumstances. In general, settlement agreements will be honored, absent a demonstration of fraud or other compelling circumstances. Before vacating a settlement agreement, our courts require clear and convincing proof that the agreement should be vacated".

The law in New Jersey is that absent compelling circumstances, like the finding that fraud had been committed, settlements will be enforced.

LEGAL ANALYSIS AND CONCLUSIONS

In regard to the First Substantive Issue, having found that there is no factual basis that supports Morgan's claimed belief that the settlement requires the Respondent-City to pay the cost of the employee's Social Security contributions and / or

to pay the cost of the employee's pension contributions, I **CONCLUDE** that there is no reasonable basis on which to identify a legal duty or impose a legal duty on the Respondent-City to pay for the cost of the employee's Social Security contributions or to pay the cost of the employee's pension contributions. I **CONCLUDE** that there is no legal basis for Morgan's claims that the Respondent-City is obligated to pay for the cost of his Social Security contributions or for his pension contributions over and above the negotiated $150,000 settlement figure. The fact that his own papers admit that "the $150,000 payment" is salary, undermines Morgan's argument. I **CONCLUDE** that Morgan's claim that the written settlement agreement is ambiguous, in regard to who is responsible to pay for the contributions for pension and social security, is unfounded.

I **CONCLUDE** that since the parties did not explicitly discuss an added obligation calling for the City to pay the cost of Morgan's contributions to Social Security or to his pension over and above the $150,000 amount, this satisfies the City's burden of proving that the agreement as written is an accurate expression of the parties' agreement on these issues.

It has been noted in the papers that Morgan argued that he should not have to pay for health insurance premiums since he did not receive any health benefits from the City during the time of his suspension / termination. Because the City has already agreed to forego making deductions for the payment of health benefits premiums, essentially conceding the point, it follows, and I **CONCLUDE**, that this Tribunal need not make a determination on that issue.

In regard to the Second Substantive Issue, having found that the only reference as to when the change from step one to step two was to become effective (i.e., the time reference) was when Morgan actually reported to the office to resume his job duties, and having found that the use of the future tense in the email reflected the intent of the parties, at the time the settlement was reached, that the step-up from step one to "step two' would occur upon Morgan's return to the office for the resumption of his work duties, I **CONCLUDE** that the Respondent-City has met its burden of proving that the parties did reach a meeting of the minds (i.e., that they reached a settlement on the

step-up issue) and that the issue of when the step-up from step one to step two is resolved in favor of the Respondent-City.

I **CONCLUDE** that Appellant-Morgan has not presented any compelling circumstances or evidence of fraud that would provide a reason to vacate the settlement agreement reached on February 2, 2024.

Having found that the items requested by the Appellant's counsel in her letter dated March 26, 2024, in regard to Sections 2.3, 2.9, 2.11, and Section 3 do not constitute substantive disagreements, I **CONCLUDE** that they do not stand in the way of the settlement of this matter.

ORDER

Based upon the foregoing, it is on this Eighth day of July, 2024, **ORDERED** that the Respondent's Motion to Enforce the settlement reached on February 2, 2024 is granted; and it is further,

ORDERED that Attorney Scott shall make whatever revisions to the settlement agreement, which she sent to Attorney Stehling on February 15, 2024, to reflect their agreements on operational issues and on matters of form; and it is further

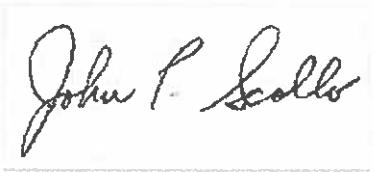
ORDERED that both attorneys shall take whatever steps that are necessary to have the settlement agreement signed by the parties within the next twenty days and to present a fully-signed copy of same to this Tribunal as soon as possible thereafter; and it is further

ORDERED that a copy of this **ORDER** be served upon all parties by email today.

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.



July 8, 2024
DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

db

APPENDIX

Tribunal Attachment A

February 2, 2024 email to the parties