

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018 CA 1405

TERRELL GOODWIN

VERSUS

LOUISIANA DEPARTMENT OF HEALTH, OFFICE OF CITIZENS WITH DEVELOPMENTAL DISABILITIES, PINECREST SUPPORTS AND SERVICES CENTER

Judgment Rendered: MAY 31 2019

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On Appeal from the  
State Civil Service Commission  
State of Louisiana  
Docket No. 18,420

Honorable David Duplantier, Chairman; D. Scott Hughes, Vice-Chairman; John McLure, G. Lee Griffin, C. "Pete" Fremin, Ronald M. Carrere, Jr. and Jo Ann Nixon, Presiding Commissioners of the State Civil Service Commission

Bryon P. Decoteau, Jr., Director Department of State Civil Service

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

*McCleendon, J. concurs with the result reached by the majority.*

## **HIGGINBOTHAM, J.**

In this Civil Service case, the Louisiana Department of Health (LDH) challenges the Louisiana Civil Service Commission's decision ordering LDH to pay Terrell Goodwin, a civil service employee, back pay in conformance with the terms of a settlement agreement.

### **FACTS AND PROCEDURAL HISTORY**

In January 2018, Mr. Goodwin was employed as a Residential Services Specialist 2 at Pinecrest Supports and Services Center, which is part of the LDH's Office of Citizens with Developmental Disabilities. By a letter from LDH dated January 22, 2018, Mr. Goodwin was dismissed from his position. Mr. Goodwin appealed his dismissal to the Civil Service Commission. On April 20, 2018, the day Mr. Goodwin's appeal was set for hearing, Mr. Goodwin and LDH entered into a settlement agreement. The settlement agreement provided, in pertinent part:

1. [Mr. Goodwin] agrees to withdraw appeal with prejudice.
2. [LDH] agrees to rescind disciplinary action effective 4:30pm January 26, 2018 and remove any and all documents from the personnel and electronic file.
3. [LDH] agrees to reinstate [Mr. Goodwin] to his position of Residential Services Specialist 2 and pay back wages with required deductions from 4:30pm January 26, 2018 to 4:30pm April 20, 2018 and subject to offset of wages earned by [Mr. Goodwin] through other employment during this period.
4. [Mr. Goodwin] agrees to voluntarily resign effective 4:30pm April 20, 2018 and [LDH] agrees to accept the resignation.

The settlement agreement was signed by Mr. Goodwin and his attorney as well as the appointing authority for LDH and LDH's attorney. Subsequently, the settlement agreement was approved under Civil Service Rule 13.31<sup>1</sup> by the Civil Service Commission Referee and constituted a final disposition of Mr. Goodwin's appeal.

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<sup>1</sup> Civil Service Rule 13.31 states: "In any appeal pending before the Commission, the parties thereto may agree to submit a proposed settlement which, if approved by the Commission or a Referee, shall constitute a final disposition of the appeal."

Shortly thereafter, Mr. Goodwin sent a letter to the Civil Service Commission Referee stating that when he attempted to recover back wages from January 26, 2018, to April 20, 2018, from LDH, he was asked whether or not he earned wages from any other job during that period. Mr. Goodwin informed LDH that he did not receive any wages through other employment, but he did receive unemployment compensation benefits. Mr. Goodwin's position was that his unemployment compensation benefits should not be deducted from his back wages under the terms of the settlement agreement which provides for an offset for "wages earned by [Mr. Goodwin] through other employment." Therefore, in his letter, Mr. Goodwin requested an opinion by the Civil Service Commission Referee as to whether or not his unemployment compensation benefits are considered wages earned through other employment as per the settlement agreement and whether LDH can deduct those benefits from the back wages LDH owed to Mr. Goodwin. After receiving Mr. Goodwin's request, the Civil Service Commission Referee sent to LDH a "Notice to Agency of Possible Defects in Action" giving LDH fifteen days to explain in writing why it withheld unemployment benefits from Mr. Goodwin's back wage award.

LDH responded stating that it had not disbursed the back wage award to Mr. Goodwin because it had "not received satisfactory proof of all wages earned and or unemployment compensation received as stipulated in Civil Service Rule 13.38, from 4:30pm January 26, 2018 to 4:30pm April 20, 2018."

Based on a review of the filings by Mr. Goodwin and LDH, the Civil Service Commission Referee summarily granted the appeal concluding that LDH should not withhold unemployment benefits from Mr. Goodwin's back wage award, and ordered LDH to process Mr. Goodwin's back wage award in accordance with terms of the settlement agreement. In so concluding, the Referee stated:

A settlement is a negotiated agreement between the parties and is binding. The settlement speaks for itself. In this case, the settlement states that the back wage award is “subject to offset of wages earned by [Mr. Goodwin] through other employment during this period” but it is silent about offset received from unemployment benefits. The parties specifically stated what would be offset and it did not include any unemployment benefits, therefore[,] I do not believe that [LDH] can claim this offset.

It is from this final decision of the Civil Service Commission<sup>2</sup> that LDH appeals, contending that the Civil Service Commission Referee erred by ordering that LDH should not offset Mr. Goodwin’s unemployment compensation benefits from his back wage award and not considering whether unemployment benefits should be reimbursed in lieu of the offset.

### **LAW AND ANALYSIS**

LDH argues that the Civil Service Commission Referee’s reasoning is contrary to the law and public interest because it allows a reinstated employee to “double dip” by receiving unemployment benefits from another agency and also receive back wages for the same time period, and that regardless of the language used in the agreement, unemployment benefits should be offset from back pay wages. Specifically, LDH contends that although the written settlement agreement does not explicitly state that Mr. Goodwin’s back wages should be offset by his unemployment compensation benefits, the jurisprudence, the Civil Service Commission’s past practices, and public interest considered in conjunction with

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<sup>2</sup> In this case, no application for review of the Civil Service Commission Referee’s decision was filed with the Civil Service Commission, making the decision of the Civil Service Referee the final decision of the Civil Service Commission. See Louisiana Constitution Article 10 §12 (A) which provides, in pertinent part:

The State Civil Service Commission shall have the exclusive power and authority to hear and decide all removal and disciplinary cases, with subpoena power and power to administer oaths. It may appoint a referee, with subpoena power and power to administer oaths, to take testimony, hear, and decide removal and disciplinary cases. The decision of a referee is subject to review by the commission on any question of law or fact upon the filing of an application for review with the commission within fifteen calendar days after the decision of the referee is rendered. If an application for review is not timely filed with the commission, the decision of the referee becomes the final decision of the commission as of the date the decision was rendered. If an application for review is timely filed with the commission and, after a review of the application by the commission, the application is denied, the decision of the referee becomes the final decision of the commission as of the date the application is denied. The final decision of the commission shall be subject to review on any question of law or fact upon appeal to the court of appeal wherein the commission is located, upon application filed with the commission within thirty calendar days after its decision becomes final.

Civil Service Rule 13.38 should outweigh the lack of specific language addressing unemployment compensation. In response, Mr. Goodwin contends that the settlement agreement was negotiated between the parties in good faith, is a binding contract, and should be enforced as written. Mr. Goodwin also contends that, during negotiation of the settlement agreement, there was no doubt that unemployment compensation benefits were not to be used as an offset to the back wages he was owed.

A compromise is a contract whereby the parties, through concessions made by one or more of them, settle a dispute or an uncertainty concerning an obligation or other legal relationship. La. Civ. Code art. 3071. Parties can agree to any terms in settling a case provided it is not against a public policy of this state and provided it would not cause deleterious effect on the public. **In re Katrina Canal Breaches Litigation**, 2010-1823 (La. 5/10/11), 63 So.3d 955, 963. It is well settled in our jurisprudence that compromise agreements between parties to avoid litigation are favored by law, and courts will not declare a settlement void without a clear showing that it violates good morals or public interest. **Walton v. Walton**, 597 So.2d 479, 484 (La. App. 1st Cir. 1992).

In favor of its position that the Civil Services Commission Referee's decision enforcing the settlement agreement as written was contrary to the law and public policy, LDH cites several First Circuit cases which approved the Commission's offset of a civil service employee's unemployment compensation benefits against back wages including **Westrope v. Dept. of Health and Human Resources**, 489 So.2d 1024, 1026 (La. App. 1st Cir. 1986); **Dept. of Health and Human Resources v. Payton**, 498 So.2d 181, 188 (La. App. 1st Cir. 1986)(on rehearing); and **Boozer v. Department of Health and Human Resources**, 470 So.2d 490, 491-492 (La. App. 1st Cir.), writ denied, 475 So.2d 356 (La. 1985). However, in each of these cases, unlike the settlement agreement herein, the Commission ordered the

employees' back pay award to be offset by the unemployment compensation benefits received by the employee. While the jurisprudence has approved the offset of unemployment benefits from back pay when ordered by the Commission or agreed to by the parties, it has not gone as far as mandating that all back pay wages be offset by unemployment benefits received during that period. See Alongi v. Department of Police, 480 So.2d 1001, 1002-1003 (La. App. 4th Cir. 1985), writ denied, 481 So.2d 1351 (La. 1986); and Ceaser v. State Dept. of Public Safety and Corrections, 583 So.2d 145, 147 n.2 (La. App. 1st Cir. 1991), holding that unemployment compensation was not to be deducted from an award of back pay.

Further, La. R.S. 49:113 which provides that “[e]mployees in the state or city civil service, who have been illegally discharged from their employment, as found by the appellate courts, shall be entitled to be paid by the employing agency all salaries and wages withheld during the period of illegal separation, against, which amount **shall be credited and set-off all wages and salaries earned by the employee in private employment in the period of separation[,]**” mandates set-off of all wages earned by an employee in private employment. On the other hand, there is no equivalent mandatory provision regarding set-off for unemployment compensation benefits received. (See Ceaser, 583 So.2d at 148, wherein this court reversed the trial court’s decision finding that the right to set-off for earnings from a private employment was not automatic. In so doing, this court pointed out that La. R.S. 49:113 mandates that an illegally terminated civil service employee is entitled to back pay less set-off for earnings from private employment; therefore, it is unnecessary for a judgment ordering reinstatement with back pay to include a set-off provision regarding salaries earned from private employment, because, in the absence of such a set-off provision, the mandates of the statutory law will govern. Ceaser, 583 So.2d at 147-148.)

However, LDH contends that despite the language in La. R.S. 49:113, because Civil Service Rule 13.38 requires proof of earned wages and unemployment compensation received, the Civil Service Commission Referee should have ordered Mr. Goodwin's back wage award to be offset by the unemployment benefits he received. Civil Service Rule 13.38(a) provides:

Following the **granting** of an appeal of a separation and within fifteen (15) calendar days from the date of the mailing of the decision, the Appellant shall present himself ready for work at the time and place of his employment as it existed prior to the separation, shall be returned by the appointing authority to the regular payroll at that time, and **shall, at that time or as soon thereafter as possible, present to his employer satisfactory proof of all wages earned and unemployment compensation received, if any, during the period of Appellant's separation**, or, if no wages or unemployment compensation have been so received, Appellant shall present a written and signed statement to that effect to his employer upon his return. (Emphasis added.)

Rule 13.38 applies after the granting of an appeal by the Commission. In this case, the appeal of Mr. Goodwin's termination was not granted, and instead Mr. Goodwin's appeal was withdrawn by Mr. Goodwin as part of the settlement agreement. Furthermore, the rule provides what documents should be provided, but does not mandate that unemployment compensation be offset from any back pay wages owed. Also, as pointed out by the Civil Service Commission Referee when addressing whether "other employment" is the same as "unemployment benefits," Civil Service Rule 13.38 draws an appropriate distinction between wages and unemployment compensation as wages are earned and unemployment compensation is a benefit.

Having found no public policy or legislative prohibition against a settlement of a civil service employee not providing for an offset of unemployment compensation benefits, we agree with the conclusion of the Civil Service Commission Referee that the settlement agreement negotiated between Mr. Goodwin and LDH is a binding contract and as such, should be enforced as written. By the language of Article 3071, the settlement agreement constitutes a legal and

binding compromise. The clear language of the settlement agreement signed by LDH and Mr. Goodwin provided for an offset of wages earned by Mr. Goodwin through other employment, but not for unemployment benefits. Thus, we find no error in the Civil Service Commission Referee ordering that LDH process Mr. Goodwin's back wage award in accordance with the terms of the settlement agreement with no offset for Mr. Goodwin's unemployment benefits from his back wage award.

LDH also argued that the Civil Service Commission Referee erred in not considering whether Mr. Goodwin's unemployment benefits should be reimbursed to the Louisiana Department of Labor in lieu of an offset and that the Department of Labor is an indispensable party. Indispensable parties to an action are those whose interests in the subject matter are so interrelated that a complete and equitable adjudication of the controversy cannot be made unless they are joined in the action. See La. Code Civ. P. art. 641. A party is indispensable only when the facts clearly establish that no complete and equitable adjudication of the controversy can be made in his absence. **Carter v. Baton Rouge City-Parish Employees' Retirement System**, 612 So.2d 765, 767 (La. App. 1st Cir. 1992). Mr. Goodwin can proceed against LDH to enforce the settlement agreement without any prejudice to the rights of the Department of Labor. Therefore, the Civil Service Commission Referee did not err in not considering whether the unemployment benefits should be reimbursed to the Department of Labor, nor is the Department of Labor an indispensable party in this action.

### **CONCLUSION**

For the foregoing reasons, we affirm the decision of the Civil Service Commission. All costs of this appeal in the amount of \$333.50 are assessed to appellant, Louisiana Department of Health.

**AFFIRMED.**