

ILLINOIS POLLUTION CONTROL BOARD
August 24, 1995

DOROTHY L. HOFFMAN,)
)
 Complainant,)
)
 v.) PCB 94-146
) (Enforcement-Noise)
 CITY OF COLUMBIA,)
 a municipal corporation,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Yi):

This matter is before the Board pursuant to a motion to enforce settlement agreement filed by the complainant on May 19, 1995. On May 5, 1994 Dorothy L. Hoffman filed this citizen's enforcement complaint before the Board against respondent, the City of Columbia (City). The complaint alleges that respondent violated 415 ILCS 5/23 and 5/24 of the Environmental Protection Act (Act) and 35 Ill. Adm. Code 900.102, in its operation of the City's trucks at its Public Works Department facility, resulting in noise pollution. On June 2, 1994 the Board found this matter was not frivolous or duplicitous and sent it to hearing.

On October 25, 1994 a hearing was held at the offices of Columbia City Hall, Columbia, Illinois. At the hearing the parties entered opening statements and discussed a settlement agreement. At the close of the settlement agreement discussion, the hearing officer continued the cause and directed both parties to file the settlement papers by November 30, 1994.

On May 19, 1995 complainant filed a motion to enforce settlement and a memorandum in support of the motion to enforce settlement. In the motion to enforce, complainant states that at the hearing, after opening statements, "[a] brief recess, lasting approximately 2 1/2 hours, was taken wherein the parties entered into negotiations to settle the controversy." (Mot. at 2.)¹ Complainant posits that at the close of those negotiations an settlement agreement was reached and approved by four alderman present through their attorneys, Mayor Schneider and herself. (Mot. at 2.) Complainant states that after the discussions, the

¹The complainant's motion to enforce settlement will be referenced as "Mot. at "; the complainant's memorandum in support of the motion will be referenced as "Mem. at "; the respondent's response will be referred to as "Resp. at "; and the respondent's memorandum in support of denial of the motion to enforce will be referred to as "Mem. at. ".

settlement agreement was read into the hearing record. Complainant asserts that on or about December 6, 1994, attorneys for the City notified her that the City would not sign the settlement agreement. (Mot. at 3.) It is this settlement agreement which complainant requests the Board to find and enforce against respondent.

In support of its position, complainant argues that an oral settlement agreement was entered into by the parties. Citing to Brewer v. National Railroad Passenger Corp., 256 Ill. App.3d 1083, 194 Ill.Dec. 834, 628 N.E.2d 331, 335 (1st Dist. 1994), complainant asserts that an oral agreement to settle will be enforced if there is an offer and an acceptance of the terms and a meeting of the minds. (Mem. at 2.) Complainant asserts that the record of the hearing clearly establishes that there was an oral settlement agreement and that the City is avoiding the settlement agreement because it subsequently discovered it would be more costly than first expected. (Mem. at 2.) Complainant argues that the City's mistake is not a legal reason for the Board not to find that the oral agreement should not bind the City and cites to Brewer. (Mem. at 3.) Complainant requests the Board to enter an order finding the existence of a settlement agreement and to retain jurisdiction to enforce this settlement agreement. (Mem. at 3.)

On May 31, 1995 respondent filed a response to the motion to enforce. In the response it states that present during the hearing and the negotiations were the City Attorneys, Mayor, City Engineer, and three alderman and that the City Council consists of eight (8) members and one mayor. (Resp. at 1.) Respondent, citing to pages 29-33 of the transcript, also states that the Board's hearing officer made several comments in the record that the Columbia City Council needed to approve the settlement agreement. (Resp. at 2.) The respondent asserts that the complainant "...acknowledged the necessity of passing ordinances reflecting the Columbia City Council's approval of the settlement agreement prior to the City's formal execution..." citing to pages 30 and 33 of the record. (Resp. at 2.) The City also argues that since the Board is an administrative agency and part of the executive branch of the State, it "...does not have jurisdiction to determine issues related to the formation, existence, and non-existence of a contract or the respective rights of parties to a contract." (Resp. at 3.) In addition the respondent argue that Section 3-11-17 of the Illinois Municipal Code (65 ILCS 5/3-11-17 (1994)), and case precedent provides that in order for the City to incur a "...liability or expend or appropriate it funds" an ordinance must be passed by a majority of the City council members. (Resp. at 3.)

The City also filed a motion for an extension of time to file a memorandum in support of its response to the motion to enforce on June 12, 1995. The City filed its memorandum in

support on June 30, 1995. No responses to the motion or the filing of the memorandum were filed by complainant as of the date of this order. The Board grants the motion and accepts the memorandum in support of complainant's response. In the memorandum the complainant states certain facts stated above and argues once again that the Board does not have jurisdiction to enforce the settlement agreement and that the mayor, aldermen, and the City attorney's could not bind the City without securing approval from the City council.

In its memorandum, the City argues that, pursuant to the separation of powers doctrine and supporting case law, the Board "...is not authorized to apply law and make a judicial determination of contract rights or to adjudicate disputed rights arising from such contracts." (Mem. at 3.) Citing to Toledo, Peoria and Western Railroad v. Brown, 375 Ill. 438, 31 N.E.2d 767 (1941) and Mitchell v. Ill. Central Railroad Company, 317 Ill.App. 501, 47 N.E.2d 115 (3rd Dist. 1943), the City states the Supreme Court has held that "...the Commerce Commission, an administrative agency of the executive branch, did not have jurisdiction to adjudicate disputed rights or effects of a contract." (Mem. at 4.) The City asserts, citing to Fahner v. Colorado City Lot Owners and Taxpayers Association, 108 Ill.App.3d 266, 438 N.E.2d 1273, 63 Ill.Dec. 910 (1st Dist. 1992), that the settlement agreement is a contract and subject to the rules applicable to general contracts. The City states that the Act does not specifically give the Board authority to determine contractual rights of the litigants. (Mem. at 4-5.) Accordingly, the City concludes that the Board is analogous to the Commerce Commission and does not have the authority to grant the motion to enforce because the Board lacks jurisdiction. (Mem. at 5.)

Additionally, the City argues that the representatives of the City at the hearing could not legally bind the City to the settlement agreement. The City argues that, if a process by which an agent or representative may bind a corporation exists that process must be followed. (Wacker-Wabash Corporation v. City of Chicago, 350 Ill.App. 343, 112 N.E.2d 903 (1st Dist. 1953).) The City then cites to the following cases for the proposition that a city may only contract by ordinance approving the same, and that a agent or representative without prior approval or specific grant of authority can not bind that city to a contract. Bank of Pawnee v. Joslin, 166 Ill.App.3d 927, 521 N.E.2d 1177, 118 Ill.Dec. 484 (4th Dist. 1988); Schwartz v. City of Chicago, 221 Ill.App. 328 (1st Dist. 1921); D.C. Consulting Engineers, Inc. v. Batavia Park District, 143 Ill.App.3d 60, 492 N.E.2d 1000, 97 Ill.Dec. 341 (2nd Dist. 1986); Chicago Food Management, Inc. v. City of Chicago, 163 Ill.App.3d 638, 516 N.E.2d 880, 114 Ill.Dec. 725 (1st Dist. 1987); Page v. City of Hickory Hills, 10 Ill.App.3d 1072, 295 N.E.2d 518 (1st Dist. 1973); and Galion Iron Works and Manufacturing Company v. City of

Georgetown, 322 Ill.App. 498, 54 N.E.2d 601 (3rd Dist. 1944) (Mem. at 6-10.) Applying this to the present circumstances, the City asserts that it must adopt an ordinance approving any settlement agreement that was reached at the hearing by its representatives before it can be bound. (Mem. at 10.)

Finally the City argues in rebuttal to the complainant's reasoning that an oral settlement agreement had been reached. The City asserts that the complainant is correct in that an oral settlement agreement is enforceable as long as there is an offer, an acceptance and a meeting of the minds. (Mem. at 11.) The City, however, argues that there has been no acceptance by the City and there was no meeting of the minds. (Mem. at 11.) The City states that, after the hearing, the complainant requested changes to the settlement agreement in a letter dated November 28, 1994, which the City asserts as evidence to demonstrate that there was no meeting of the minds. (Mem. at 12.) The City requests the Board to deny the complainant's motion to enforce the settlement for the reasons stated in its response to the motion and its memorandum in support.

Discussion

The courts have held that the Board and the circuit courts have concurrent jurisdiction under the Act. (See Janson v. Illinois Pollution Control Board, 69 Ill.App.3d 324, 387 N.E.2d 404, 25 Ill.Dec. 748 (3rd Dist. 1979).) In Janson the court states "[t]he Pollution Control Board and the circuit court do have some concurrent jurisdiction." (Id. at 407.) Furthermore the courts have said "...where there is an express grant of authority there is likewise the clear and express grant of power to do all that is reasonably necessary to execute the power to perform the duty specifically conferred." (Chemetco, Inc. v. Illinois Pollution Control Board, 140 Ill.App.3d 283, 488 N.E.2d 639, at 643.) The Chemetco court further stated that the Board in adopting 35 Ill. Adm. Code 103.180 pursuant to its authority under the enforcement provisions of the Act "...it is undeniable that settlements are of the Board's own making and comport with the purposes of the Act." (Id. at 643.) Additionally, the Court stated that the Board has the authority to accept or reject the proposed agreement, suggest revisions and even direct further hearings. (Id. at 643.) The Board has been given the express authority to rule in enforcement proceedings and the power to perform that duty. Therefore, we find that the Board does have the jurisdiction to decide if a oral settlement agreement has been reached and enter it as a Board order which could be enforceable by the Board or court of competent jurisdiction.

In this case it is clear from the record of the hearing that the parties reached a tentative settlement agreement but did not

reach a settlement agreement which is enforceable.² (Transcript 29-34.) As correctly stated, by the hearing officer, the Board's procedural rules generally do not allow for oral settlement agreements. (Tr. at 31.) The procedural rules require that the parties enter into the record a written settlement agreement signed by the parties that meets certain information requirements set forth at 35 Ill. Adm. Code 103.180. The Board may reject an oral settlement agreement between the parties and request that an agreement be made in writing.

Here, it is evident from the record that both the complainant and the respondent were in agreement that it was necessary for the City Council to adopt an ordinance or otherwise approve any settlement agreement before there was any acceptance on the part of the City. No evidence of such acceptance is contained in the record. We find that the parties did not enter into an enforceable oral settlement agreement but instead agreed to a tentative settlement agreement pending the approval of the City. Since there is no valid settlement agreement to enforce the complainants' motion is accordingly denied. We direct the parties to proceed with the hearing in this matter.

²At the hearing the following is an example of the discussion that took place at the hearing.

(BY HEARING OFFICER HUDSPETH): When we previously had said that the settlement papers would be filed within 30 days, I don't know if that still holds true considering your need for ordinance --

(BY MR. ADAMS): This will be taken care of the first meeting in November, which is the first Monday in November, whatever -- I guess maybe I better lengthen that a little bit and say hopefully the second meeting, but they meet on the first and third Monday of each month, so --

(BY HEARING OFFICER HUDSPETH): I'm going to direct that the parties have all of the documentation prepared, signed, and in the mail by November 30.

(BY MR. ADAMS): That should not be a problem for us.

(BY HEARING OFFICER HUDSPETH): Does Petitioner find that acceptable?

(BY MR. MARLEN): That is fine.

(Transcript page 33.)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 24th day of August, 1995, by a vote of 7-0.

Dorothy M. Gunn, Clerk
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Illinois Pollution Control Board