

**STATE OF OHIO  
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

Riser Military Academy,

Respondent.

Case Nos. 1999-ULP-12-0734, 2000-ULP-01-0009,  
2000-ULP-01-0011, & 2000-ULP-01-0012

**ORDER  
(OPINION ATTACHED)**

Before Chairman Drake, Vice Chairman Gillmor, and Board Member Verich:  
April 21, 2005.

On December 17, 1999, and January 4, 2000, the Professionals Guild of Ohio ("Union") filed unfair labor practice charges against the Riser Military Academy ("Respondent"). On January 4, 2000, Theodore E. Wade and Paul S. Whisman filed unfair labor practice charges against the Respondent. On March 2, 2000, the State Employment Relations Board ("SERB" or "Complainant") determined that probable cause existed for believing the Respondent had committed or was committing unfair labor practices, authorized the issuance of a complaint, referred the matter to hearing, and directed the parties to the unfair labor practice mediation process. On May 2, 2000, the parties filed a settlement agreement that resolved the underlying dispute. The settlement agreement consisted of the Respondent agreeing to pay various sums of money to nine persons for reduced wages. Darryl Riser, Superintendent, and John W. Waddy, Attorney, signed the settlement agreement on behalf of the Respondent. On May 18, 2000, SERB approved and adopted the settlement agreement; construed the settlement agreement as a motion to withdraw and dismiss; granted the motion; dismissed the complaint; and dismissed with prejudice the unfair labor practice charges.

On June 5, 2000, the Union filed a motion to enforce compliance with the settlement agreement. On June 19, 2000, the Counsel for Complainant filed a memorandum in response to the motion to enforce. On July 13, 2000, this matter was directed to hearing to determine whether the Respondent had complied with the settlement agreement in these cases and, if not, what acts must be taken to be in compliance.

OPINION

Case Nos. 99-ULP-12-0734, 00-ULP-01-0009,  
00-ULP-01-0011, 00-ULP-01-0012

Page 2 of 10

This matter has been stayed due to Darryl Riser's numerous bankruptcy filings and refilings. On September 19, 2003, the Counsel for Complainant filed a motion to dismiss the motion to show cause. The Union filed a memorandum in opposition to the motion to dismiss. On December 2, 2003, a Proposed Order was issued by the Administrative Law Judge, recommending that the Board grant the Counsel for Complainant's motion to dismiss the motion to show cause. On December 23, 2003, the Union filed exceptions to the Proposed Order. On January 5, 2004, the Counsel for Complainant filed a response to the exceptions.

After reviewing the Proposed Order, exceptions, response to exceptions, and all other filings in this case, the Board grants the Counsel for Complainant's motion to dismiss for the reasons set forth in the attached Opinion, incorporated by reference. Therefore, the direction to show cause hearing is rescinded, and the motion to enforce compliance is dismissed without prejudice.

It is so ordered.

DRAKE, Chairman; GILLMOR, Vice Chairman; and VERICH, Board Member,  
concur.

/s/ Carol Nolan Drake  
CAROL NOLAN DRAKE, CHAIRMAN

You are hereby notified that an appeal may be perfected, pursuant to Ohio Revised Code Section 4117.13(D) by filing a notice of appeal with the State Employment Relations Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, and with the court of common pleas in the county where the unfair labor practice in question was alleged to have been engaged in, or where the person resides or transacts business, within fifteen days after the mailing of the State Employment Relations Board's order.

I certify that a copy of this document was served upon each party's representative by certified mail, return receipt requested, this 29th day of April, 2005.

/s/ Tonya D. Jones  
TONYA D. JONES, ADMINISTRATIVE ASSISTANT

**STATE OF OHIO  
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant

v.

Riser Military Academy,

Respondent.

Case Nos. 1999-ULP-12-0734, 2000-ULP-01-0009,  
2000-ULP-01-0011, & 2000-ULP-01-0012

**OPINION**

DRAKE, Chairman:

This matter comes before the State Employment Relations Board (“Board” or “Complainant”) upon the issuance of a Proposed Order on December 2, 2003, the filing of exceptions to the Proposed Order by the Professionals Guild of Ohio, and the filing of a response to the exceptions by the Counsel for Complainant. For the reasons that follow, the Board grants the Counsel for Complainant’s motion to dismiss the Professionals Guild of Ohio’s motion to enforce compliance.

**BACKGROUND**

On December 17, 1999, and January 4, 2000, the Professionals Guild of Ohio (“Union”) filed unfair labor practice charges against the Riser Military Academy (“Respondent”). On January 4, 2000, Theodore E. Wade and Paul S. Whisman filed unfair labor practice charges against the Respondent. On March 2, 2000, the Board determined that probable cause existed for believing the Respondent had committed or

OPINION

Case Nos. 99-ULP-12-0734, 00-ULP-01-0009,  
00-ULP-01-0011, 00-ULP-01-0012

Page 4 of 10

was committing unfair labor practices, authorized the issuance of a complaint, referred the matter to hearing, and directed the parties to unfair labor practice mediation.

On May 2, 2000, the parties filed a settlement agreement that resolved the underlying dispute. The settlement included the Respondent's agreement to pay various sums of money to nine persons for reduced wages. Darryl Riser, Superintendent, and John W. Waddy, Attorney, signed the settlement agreement on behalf of the Respondent. On May 18, 2000, the Board approved and adopted the settlement agreement, construed the settlement agreement as a motion to withdraw and dismiss, granted the motion, dismissed the complaint, and dismissed with prejudice the unfair labor practice charges.

On June 5, 2000, the Union filed a motion to enforce compliance with the settlement agreement. In the motion, the Union contended that the Respondent had failed to comply with the terms of paragraphs 1-10 of the settlement agreement. On June 19, 2000, the Counsel for Complainant filed a memorandum in response to the motion to enforce, raising questions as to whether a reasonable time had elapsed before the motion was filed, the fact that some of the Charging Parties had already recovered judgments in Municipal Court, and the fact that the Respondent's charter was to be revoked on July 5, 2000. This matter was directed to hearing without these issues being formally addressed. The matter had been stayed due to Darryl Riser's numerous bankruptcy filings and re-filings, as well as his military status. The Respondent's charter was revoked on July 5, 2000.

### **DISCUSSION**

At stake in this matter are the settlement agreements agreed to by the Respondent, Riser Military Academy, and executed by its superintendent, Darryl Riser, on May 2, 2000, to compensate several members of the Professionals Guild of Ohio,

OPINION

Case Nos. 99-ULP-12-0734, 00-ULP-01-0009,  
00-ULP-01-0011, 00-ULP-01-0012

Page 5 of 10

who were former employees of the Respondent. The settlement agreement included language that clearly stated the Board “retains jurisdiction over this matter for purposes of enforcement.”

The vehicle of settlement agreements – utilized by the Counsel for Complainant, a charging party, and a respondent – facilitates resolution of a pending charge or charges before the Board. Historically, the Board retains jurisdiction for purposes of enforcement in order to ensure that the parties fully comply with the settlement agreement. The settlement agreement in the matter before the Board does not contain a date by which the Respondent agreed to compensate the various parties.

The Respondent, through its superintendent, executed the settlement agreements on May 2, 2000. The agreements were entered into before the Board made a determination on the merits in any of the pending cases, although the Board had made initial determinations that probable cause existed, thereby triggering the issuance of complaints in each of the cases. On May 18, 2000, the Board approved and adopted the settlement agreements. On June 5, 2000, the Professionals Guild of Ohio filed the motion to enforce compliance with the settlement agreements. Such a filing indicated that approximately thirty days after signing the settlement agreements, the Respondent had not compensated some or all of the members listed in the settlement agreements. In the interim, some of the initial Charging Parties sought and recovered judgments in the Franklin County Municipal Court against Riser Military Academy and Darryl Riser, individually.

Several factors complicated the Board’s hearing of the motion in a timely manner. The Respondent, Riser Military Academy, at the time of the initial unfair labor practice filings, was operating as a charter school. Darryl Riser was the superintendent of the Academy. Mr. Riser was not listed as an individual Respondent in any of the four unfair labor practice charges. While Mr. Riser executed each of the settlement

OPINION

Case Nos. 99-ULP-12-0734, 00-ULP-01-0009,  
00-ULP-01-0011, 00-ULP-01-0012

Page 6 of 10

agreements as the superintendent and obvious agent of Riser Military Academy, he did not incur personal liability for the terms of payment under the settlement agreements.

The Respondent was a so-called charter or community school, and was organized pursuant to Ohio Revised Code (“O.R.C.”) §§ 3314.01 et seq. It owed its legal existence entirely to a corporate status created by the General Assembly in O.R.C. Chapter 3314 as a purely corporate entity. The terms of that corporate existence specifically called for a “governing authority” to be the Respondent’s governing body.

O.R.C. § 3314.071, which was in effect when Mr. Riser executed the settlement agreements, provides:

Any contract entered into by the governing authority or any officer or director of a community school, including the contract required by sections 3314.02 and 3314.03 of the Revised Code, is deemed to be entered into by such individuals in their official capacities as representatives of the community school. No officer, director, or member of the governing authority of a community school incurs any personal liability by virtue of entering into any contract on behalf of the school.

Mr. Riser, aka Riser Alternative Educational Academy and Riser Military Academy, filed a Chapter 7 bankruptcy action in the United States Bankruptcy Court, Southern District of Ohio, Eastern Division on August 25, 2000. Mr. Riser also filed for a stay and continuance of all bankruptcy proceedings in 2001, invoking the Soldiers’ and Sailors’ Civil Relief Act, in support of his motion. Mr. Riser indicated that he was a member of the United States Army who had been called up for active duty for a period beginning October 27, 2001 and ending December 31, 2001. The active duty could be extended for up to two years. During this time frame, the Chapter 7 proceeding was converted to a Chapter 13 action.

A hearing on the debtor’s Chapter 13 plan was scheduled for November 15, 2001. Two of the people covered under the settlement agreements filed objections to

OPINION

Case Nos. 99-ULP-12-0734, 00-ULP-01-0009,  
00-ULP-01-0011, 00-ULP-01-0012

Page 7 of 10

confirmation of Chapter 13. Judge B.J. Sellers, in her Order, continued the confirmation hearing to a date after December 31, 2001, and indicated that if the debtor did not file the necessary amendments and make the scheduled plan payments, then the confirmation of Chapter 13 would be denied, and the case may be dismissed or re-converted to a Chapter 7 proceeding. Ultimately, the Chapter 13 proceeding was dismissed on February 27, 2002. Mr. Riser filed for personal bankruptcy on April 9, 2003. O.R.C. § 3314.071 precludes any recovery against Darryl Riser personally.

The Board has not previously determined under what circumstances a settlement agreement should be set aside or should be dispositive of the issues in dispute. Common law favors agreements that resolve litigation or potential litigation. *Bd. of Commrs. of Columbiana Cty. v. Samuelson* (1986), 24 Ohio St.3d 62, 24 OBR 142, 493 N.E.2d 245. Such compromises and settlements are contracts that once made and performed on one side become binding on the other party. *SERB v. East Palestine City School Dist. Bd. of Ed*, 1989 SERB 4-138 (CP, Columbiana, 10-31-89).

When both parties are satisfied with the bargain reached, absent any outstanding important public policy questions, that agreement will generally be dispositive. Without question, the Board favors settlements. "Settlements constitute the 'lifeblood' of the administrative process, especially in labor relations." *Ohio Council 8, AFSCME v. SERB*, SERB 89-003 (2-8-89), citing *NLRB v. United Food & Commercial Workers*, 484 U.S. 112, 108 S.Ct. 413, 98 L. Ed. 2d 429 (1987). But in instances such as this case where one of the parties claims that the settlement has been repudiated, the Board must determine whether a failed settlement merits litigation of the unfair labor practice, enforcement of the settlement agreement in the appropriate forum, or neither because the lack of a remedy would make litigation or enforcement an exercise in futility.

Once the parties agree to the terms of a settlement agreement to be enforced by the Board, they must adhere to its terms. A remedy provided by a settlement

OPINION

Case Nos. 99-ULP-12-0734, 00-ULP-01-0009,  
00-ULP-01-0011, 00-ULP-01-0012

Page 8 of 10

agreement is not the only remedy available to the Board; the Board has wide discretion in fashioning remedies based on the circumstances of each individual case. *In re Princeton City School District Board of Education*, SERB 86-008 (2-28-86).

The National Labor Relations Board recognizes a procedure for case closing when the respondent is without any means of making payment of back pay or other monetary liabilities. While the NLRB sets out a procedure for closing a case without further proceedings, it does so after an investigation. Section 10605 of the *NLRB Casehandling Manual* provides:

When the investigation has established that the respondent is without any means of making any payment of backpay or other monetary liabilities, the Region may request authorization from the Division of Operations-Management to close the case without further proceedings.

The request should be through a memorandum that sets forth fully the basis for the Region's recommendation. Appropriate to the circumstances of each case, the memorandum should address such issues as the background of the underlying unfair labor practice; the amount owed; the current status of the respondent's operations and the likelihood of their future resumption; the disposition of the respondent's assets; a description of liens and judgments against the respondent; whether the corporate charter or business licenses have been revoked; whether there are related entities, such as parent or subsidiary corporations, which may be held liable for backpay; whether there is evidence to establish derivative liability through determination of alter ego, successorship, or individual liability of corporate officers or owners; and an assessment as to whether those for whom there may be derivative liability have the financial means to make payment of the monetary remedy.

The charging party's position regarding further compliance efforts should be solicited prior to submitting a recommendation to close. As appropriate, further investigation should be conducted in the face of any leads identified by the charging party. The charging party's position should be reflected in the Region's memorandum recommending closure.

OPINION

Case Nos. 99-ULP-12-0734, 00-ULP-01-0009,  
00-ULP-01-0011, 00-ULP-01-0012

Page 9 of 10

The case, once closed pursuant to Division of Operations-Management authorization, is subject to reopening should subsequent events reveal that compliance could then be achieved.

If it is deemed appropriate to have a judgment lien before closing the case, see Compliance Manual section 10593.4 for more information.

The Board hereby adopts a similar standard for public sector cases in Ohio. When an investigation establishes that a party is without any means of making any payment of back pay or other monetary liabilities, the Board may dismiss the case without further proceedings. If subsequent events reveal that compliance could then be achieved, the case will be reopened. The Board would not apply this standard if a party were merely arguing that compliance would create a hardship or that it might have a prospective inability to pay.

Applying this new standard, the Board finds that the Respondent, Riser Military Academy, has not complied with the settlement agreement for the four unfair labor practice charges. It is clear from the timing of the bankruptcy filing that the Respondent's agent, Darryl Riser, was unable to make, or did not intend to make, any payments on behalf of Riser Military Academy when he signed the settlement agreements. The various Charging Parties have not been compensated fully under the terms of the agreement.

The Board also finds that the Respondent, Riser Military Academy, is no longer in business and has no apparent likelihood of future operation or resumption of activity. It is undisputed that the Respondent's contract with the Ohio Department of Education has been terminated pursuant to O.R.C. § 3314.07. The Respondent is not operating now and has not operated in several years. The four pending cases should be dismissed because the Respondent is without the means of making any payment of back pay or other monetary liabilities. Unfortunately, the Board has no ability at this juncture to continue to litigate the unfair labor practice cases or seek enforcement of the

OPINION

Case Nos. 99-ULP-12-0734, 00-ULP-01-0009,  
00-ULP-01-0011, 00-ULP-01-0012

Page 10 of 10

settlement agreements in the appropriate forum via a judgment lien against Riser Military Academy.

Therefore, granting the Counsel for Complainant's motion to dismiss the Union's motion to enforce compliance is appropriate at this time. If the Union acquires evidence that Riser Military Academy exists, or should subsequent events reveal that compliance with the settlement agreements by the Respondent could be achieved, the Union may re-file its motion to enforce the settlement agreement.

**CONCLUSION**

For the reasons set forth above, the Board grants the Counsel for Complainant's motion to dismiss, dismisses without prejudice the Professionals Guild of Ohio's motion to enforce compliance, and rescinds the direction to show cause hearing.

Gillmor, Vice Chairman, and Verich, Board Member, concur.