



3. On April 30, 1976, the appellant accompanied by his wife, met with Donald Huppertz, his supervisor and the Regional Director.

4. At this meeting Mr. Huppertz told the appellant that he would remove a formal reprimand and poor performance evaluation from his file if his record was good for 6 months.

5. At this meeting Mr. Huppertz did not promise appellant a promotion to Equal Rights Officer III, in exchange for withdrawing this appeal or on any other basis.

6. At the time of this conversation, Mr. Huppertz's opinion of the appellant's work performance was that he was the worst of the approximately 12 investigators assigned to him and that he (appellant) had more complaints against him than all of the other investigators combined.

7. As of the date of the conversation, Mr. Huppertz believed that it would have been impracticable to promote appellant to Equal Rights Officer III because of his perception of the appellant's work record.

8. As of the date of the conversation, Mr. Huppertz did not believe that he would have the option of making the promotion which appellant alleges he promised him, due to technical requirements relative to this transaction.

9. On May 21, 1976, the Board declined to conduct an investigation.

10. By letter of June 14, 1976, appellant requested that it be processed as an appeal.

11. By letter of June 17, 1976, appellant stated that he had changed his mind and wished to drop his appeal.

12. The Board dismissed this appeal on June 30, 1976.

CONCLUSION OF LAW

Since the respondent department did not induce the withdrawal of this appeal through any promise or inducement, there is no basis for reopening this appeal and the request therefore should be denied.

OPINION

There was conflicting testimony regarding what was said at the April 30, 1976, meeting between Mr. Huppertz, the appellant, and his wife. Findings were made as to Mr. Huppertz's opinions concerning the appellant's work record and his (Huppertz's) ability to make the promotion allegedly promised because these points bear on whether it would have been reasonable for him to have made such a promise. These surrounding circumstances contribute to the determination that the appellant did not meet his burden of proof as to the content of the conversation, and the ultimate finding that was made on this point. Another circumstance contributing to this finding is that appellant indicated to the Board as late as June 14, 1976, three days before the withdrawal, that he wished to have this matter processed as an appeal. Regardless of how the appellant interpreted this conversation, the department did not make any promise or inducement to withdraw this appeal, and if the withdrawal of the appeal was not attributable to any promise or inducement of the department there is no basis for reopening this appeal. Furthermore, the testimony of appellant and his wife with regard to the conversation in question would at the most establish that the quid pro quo or consideration for the alleged promise of promotion was that appellant refrain from filing 2 union grievances and generally refrain from "making trouble;" there was no specific mention of an agreement by appellant to dismiss this appeal.

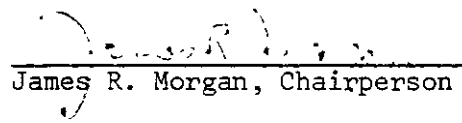
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ORDER

The appellant's request to reopen this appeal is denied.

Dated: June 16, 1978

STATE PERSONNEL BOARD

  
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James R. Morgan, Chairperson