

H.E. NO. 96-21

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
TOWNSHIP OF EDISON,

Respondent,

-and-

Docket No. CO-H-95-67

IAFF LOCAL 1197,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission dismiss an unfair practice charge filed by the Edison Township Firefighters' Association, Local 1197, I.A.F.F. against the Township of Edison. Local 1197 alleged that the Township had repudiated their collective bargaining agreement, in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5). The Hearing Examiner found that the Charging Party did not prove, by a preponderance of the evidence, that the parties had reached agreement on a subject raised under the reopener Article of their collective negotiations agreement. The Hearing Examiner also bases her conclusions on the the absence of a writing and execution of the purported modification, as required by Article 21 of the parties' agreement.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent, Karcher & Rainone
(Louis N. Rainone, of counsel)

For the Charging Party, Kroll & Heineman, P.A.
(Raymond G. Heineman, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On September 8, 1994, the Edison Fire Fighters' Association, Local 1197, I.A.F.F. filed an unfair practice charge with the Public Employment Relations Commission against the Township of Edison. The charge alleges that on September 1, 1994, the Township withdrew a one-half percent wage increase negotiated in February 1994. The Township's actions allegedly repudiates an agreement with Local 1197 and unilaterally reduces firefighters' wages without negotiations, in violation of subsections 5.4(a)(1)

and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/}

On February 22, 1995, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On March 27, 1995, the Township filed an Answer, denying any violation of the Act. It specifically denies that the parties reached a binding agreement on the disputed one-half percent wage increase.^{2/} On May 31, 1995, I conducted Hearing at which the parties examined witnesses and presented exhibits. Post-hearing briefs were filed by October 19, 1995.

Upon the record, I make the following:

FINDINGS OF FACT

1. Local 1197 represents all firefighters and inspectors employed by Edison Township (T18). The Township and Local 1197 have been parties to a series of collective negotiations agreements, the most recent of which is effective from January 1, 1992 to December 31, 1995 (CP-1).

^{1/} These subsections prohibit public employers, their representatives or agents from: (1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

^{2/} "J" refers to joint exhibits; "T" refers to the transcript of the hearing, followed by a page number; "CP-" refers to charging party exhibits.

2. The parties agreement states:

**ARTICLE 21
FULLY BARGAINED PROVISIONS**

This Agreement shall not be modified in whole or part by the parties except by an instrument in writing only, executed by both parties.
(CP-1, p.10)

**ARTICLE 27
ANNUAL SALARY**

Section 1. All employees covered by this agreement shall receive three (3) percent increase for 1992, four (4) percent for the year 1993, four and one-half (4-1/2) percent for the year 1994 and, five (5) percent for the year 1995. All monies retroactive to January 1st of the respective year.
(Emphasis added) (CP-1, p.15-16)

**ARTICLE 48
RE-OPENER CLAUSE**

In the event that any other township employee receives any economic or non-economic benefit greater than, or in addition to those provided herein, the Union at it's [sic] option may reopen this contract for further negotiations.
(CP-1, p.37)

3. Article XXVIII of the collective negotiations agreement between the Township and the Policemen's Benevolent Association, Local # 75, Inc., effective from January 1, 1992 through December 31, 1995, states, in relevant part:

**ARTICLE XXVIII
WAGES AND LONGEVITY**

1. Wages for 1992, retroactive to the first day of the year, shall be (except for the wage of first year officers, which shall continue to the 1991 figure) increased by sums equal to 3%, ...

2. Wages for 1993, retroactive to January 1, 1993, shall, except for the wage of the first year of employment which shall remain at \$27,866.00, be increased by sums equal to 4-1/2%, ...

3. Wages for 1994 shall be increased by sums equal to 5% ...

4. Wages for 1995 shall be increased by sums equal to 5-1/2%...
(CP-2, p. 42-43, Emphasis added)

4. Generally, the Township is represented in negotiations sessions by a law firm, but the Mayor and Business Administrator have also participated (T76). Local 1197 is represented by its officers (T76-T77). Typically, after the negotiators reach agreement, the Mayor presents items to the Township Council for ratification and Local 1197 members ratify as well (T91-T93, T118, T123-T124). Robert Yackel is the president of Local 1197, and has participated in collective negotiations in Edison for about twenty years (T18, T74). There is no evidence that a chief of staff ever participated in negotiations. The Mayor signed the most recent agreement for the Township (T77).

5. The agreement between the Township and IAFF Local 1197 was signed on February 19, 1993, by Mayor Convery for the Township and by Robert Yackel for Local 1197. The agreement between the Township and the PBA was signed sometime after February 1993 (T19, T25). The Township and PBA had negotiated a half percent per year greater wage increase over the final three years (1993, 1994, 1995) of the agreement for police officers than was negotiated for firefighters.

6. Upon learning of this greater increase for police officers, Local 1197 initiated reopener negotiations pursuant to Article 48 of its agreement (T40, T97-T98, CP-3, CP-1, p.37). On

September 28, 1993, Yackel sent a letter to Township Mayor Samuel Convery invoking Local 1197's right to reopen negotiations under Article 48 and requesting a meeting (CP-3, T40). On November 10, 1993, Yackel sent a letter to Business Administrator Paul Abati outlining five issues he intended to raise in the reopener negotiations:

1. Proposed increase of 1/2 percent for the years 1993, 1994 and 1995;
2. Proposed increase of (10) ten dollars per college credit;
3. Proposed increase in the clothing maintenance allowance;
4. Hospital confinement policy; and,
5. Emergency medical technicians wages and duties (CP-4, T41).

As a result of the Fall 1993 elections, George Spadaro became Mayor of Edison Township (T41). On January 4, 1994, Yackel sent a third letter, again seeking to reopen negotiations with the new Mayor Spadaro (CP-5, T43-T44).

7. On January 18, 1994, Yackel and Local 1197's Vice President Doug Kosup met with the Township's Chief of Staff, Arthur Cifelli (T44, T97-T98, T110). The meeting had been arranged by Yackel's phone call to Cifelli (T44-T45). Kosup has been an officer of Local 1197 for about seven years and has participated in one round of negotiations (T103-T104). Cifelli had just become Chief of Staff. In July 1994, he also assumed the responsibilities of acting Business Administrator (T109).

Because Cifelli was new, Yackel explained the background to Cifelli; that even though the Township's negotiators had represented during their negotiations that no employees would receive a greater percentage increase than the firefighters had received, the Township later negotiated a half-percent more for police officers than for firefighters for the final three years of the contracts (T45-T46). Local 1197 demanded the same increase as had been negotiated for the police (T46).

8. At the January 18th meeting, Cifelli directed the Township's personnel office to prepare figures representing a half-percent increase for 1993, 1994 and 1995 to assess the cost of the proposal (T48-T49, T87, T99-T100, T113-T114, T117, T127-T128). Cifelli told Yackel and Kosup that he would present everything that was discussed to the Mayor (T127). Kosup thought that Cifelli seemed "very willing to go with the half percent and that's when he told us that he would work on the figures and we left there very, I thought, content, both sides." (T100)

9. The clothing allowance issue was also raised, but held in abeyance until Cifelli could discuss it with the Mayor (T46). According to Yackel, the PBA received an increase in their annual clothing allowance benefit greater than that negotiated for Local 1197, and Local 1197 sought the same level of benefit (T26).

10. Another issue raised with Cifelli involved emergency medical technicians' terms and conditions of employment. During contract negotiations, Yackel had proposed a wage differential for

firefighters who serve as EMTs (T80-T81). Yackel attempted to "reopen" negotiations on this issue, though this subject did not strictly fall under the parties' reopener clause (CP-1, Art. 48). Rather, Local 1197 was concerned because there had been an expansion in the assignment of EMT duties to fire officers, and not that other employees had received a greater economic benefit after CP-1 was negotiated (T81-T83).^{3/}

11. The hospital confinement policy was raised and eventually resolved (T46-T49, T101, T110-T113). Local 1197 asserted that the Township's fire and police departments interpreted identical language regarding the use of sick leave for illnesses requiring hospitalization in disparate ways (T79-T80).

12. The PBA had negotiated an increase in the benefit for college credits which caused a stir in the press and political arena for the Township (T48, T99). Yackel offered to forego pressing an increase in college credit benefits in exchange for the Town's agreement to the half-percent for 1993, 1994 and 1995 (T48).^{4/}

^{3/} Yackel attempted to frame this issue as a reopener, within the meaning of Article 48, as a comparison with special services in the police department who receive extra benefits for their SWAT team duties, but his testimony does not establish that this was the primary reason for "reopening" negotiations on the EMT duties issue. He admitted that he had raised it before and "reiterated" it at the January 18th meeting (T80, T82-T84).

^{4/} Although both Yackel and Kosup believed Cifelli agreed that if the Township would agree to the half-percent, Local 1197 would

13. On about February 1, 1994, at the Township's offices, Cifelli handed Yackel and Kosup a multi-page chart prepared by the Township's payroll office (T50-T51, T102, T115, CP-6A-F). The charts contain the proposed half-percent increase for all fire officers and inspectors (T57, T103-T104, CP-6A-CP-6F). CP-6A lists the 1993 base salary plus an additional half-percent, the 1994 base salary, 1994 holiday pay, 1994 longevity and the total 1994 salary. CP-6B represents the 1994 salary figures with the half-percent increase (T55, CP-6B). CP-6C represents the negotiated 1995 rates; CP-6D represents 1995 rates with the half-percent increase (T55-T56, CP-6C, CP-6D).^{5/}

14. By submitting the payroll figures to Yackel and Kosup, Cifelli was not offering to settle the issue (T117). Rather, he had the proposal prepared to show its cost impact (T117, T128). Cifelli

4/ Footnote Continued From Previous Page

forego a fight over the college credit increase, I do not find this to be accurate (T48, T98-T100). Cifelli was interested in the college credits discussion because he lacked full understanding of the issue and sought clarification (T113). The form of the college credit benefit as it existed in Edison seemed unusual to him and he wanted further clarification (T112-T114). Cifelli testified credibly that he did not believe an agreement was reached (T118-T119).

5/ CP-6E and CP-6F represent rates for the emergency medical technicians (T56-T57, CP-6E, CP-6F). However, these rates are not the subject of this unfair practice charge.

informed Yackel at the meeting that he would present everything that had been raised to the Mayor (T127).^{6/}

15. There was no further written correspondence between Yackel and the Township's administration between February 1994 and September 1994 on the subject of the proposed half-percent increase (T84). No further negotiations meetings were requested and none occurred. The alleged agreement to pay an additional half-percent to firefighters was never reduced to writing and neither side presented the subject to the Council or membership for ratification (T72, T91, T93, T108, T119, T131). Although Yackel is familiar with the process followed by the parties: ratification by both sides, and a signature which "makes it binding," he stated that in negotiating the half-percent increase in 1994, he believed "trust was good enough" and did not pursue a written signed document with Cifelli (T75-T77, T91-T93). Kosup also believed a verbal agreement was just as good as having it in the contract (T106-T107).

16. On about February 20, 1994, Yackel was informed that an arbitrator's award, known as the "Murray award," had been issued in Local 1197's favor. The Murray award effected an increase of

^{6/} Kosup contradicted Cifelli's statement that he needed to talk to the Mayor regarding the half-percent issue (T101, T127). I credit Cifelli's testimony because his version is more consistent with his situation as a new employee. Kosup unreasonably concluded that Cifelli alone had authority to conclude a deal on that one issue because Cifelli had stated he would discuss some of the other issues (clothing allowance and EMT issues) with the Mayor, but Kosup did not hear Cifelli say he would have to discuss the half-percent with the Mayor.

each officer/inspector's pay by a dollar per hour for the life of the agreement from January 1, 1992, 1993 and 1994 (T50, T58). Yackel called Cifelli by phone to inform him that Local 1197 would use the documents Cifelli had previously provided and hire an accounting firm to prepare salary adjustments figures representing the Murray award and half-percent increase (T58-T59).

17. Yackel hired an accounting firm to develop a payroll chart to have the Township implement the Murray award, and half-percent increase which he believed had been finalized in negotiations with the Township in January 1994. (T58-T60, T88 CP-6A-6F). The accountant produced a set of charts representing the new payroll amounts, CP-7A and CP-7B (T60-T61, CP-7A, CP-7B). Yackel hand delivered the accountant's salary charts to then-Business Administrator Cesala, explained what the charts represented and asked that the adjustments be implemented (T63-T64). It appeared to Yackel that Cesala "wanted to get it paid right away to get it out of his hair" (T64).

18. Since the salary adjustments were not made and Local 1197 had heard nothing further from Cesala, it filed an order to show cause in Superior Court to have the Murray award enforced (T65). On August 18, 1994, a Consent was entered, and the Murray award was subsequently implemented (T65, T67).

19. The Township decided to distribute the retroactive portion of the Murray award by issuing two lump-sum checks (T122). It relied on Local 1197's salary worksheet to implement the award

(T122). Although no specific column on the worksheet shows the addition of the disputed half-percent increase, Business Administrator Cifelli knew that Local 1197 had added in the half-percent increase requested in January 1994 (T91, T121-122, T129). But rather than correcting what he perceived to be the incorrect figures, since he believed no agreement on the half-percent increase had been finalized, Cifelli decided to make adjustments for the overpayment in the second checks (T121-122).

20. The disputed half-percent amounts, as drafted in CP-7A and CP-7B, were paid for 1993 and the first quarter of 1994, up to April 1, 1994 (T65, T73, T122). After the issuance of the first Murray award back pay check, no additional amounts representing the disputed half-percent increase were paid to members of Local 1197's unit (T73, T122, CP-8). There is no evidence that the Township recouped the overpayment in issuing the second Murray award lump sum payment.

21. Upon noting that the current payroll rates were less the amount representing the half-percent increase, Yackel complained to Cifelli, who then informed Yackel that the Township had not agreed to the half-percent increase (T68). The half-percent was never presented to the Township Council for approval by the Township administration (T72)-T73).

22. On September 7, 1994, Yackel sent a letter to Mayor Spadoro, stating, in relevant part:

Due to the changes in administrations we waited until January of 1994 to meet with your Chief of staff

Arthur Cifelli. At that time we agreed that the .50% that the police unions received would also apply to the firefighters. . .

Since then as you are aware local #1197 was successful in an arbitration case with regard to the hourly rate issue. The town prepared salary adjustment sheets for our use in the hiring of a Certified Public accounting firm to calculate the retro-active monies owed to local #1197 bargaining unit members. When the monies were finally paid the .50% was included in the amount. We are now told that no one ever agreed to the increase and our pay checks do not reflect the increase. Therefore we are exercising our right under article #48 to re-open the collective bargaining agreement on the list provided to you on November 10, 1993.

(CP-8) (emphasis added)

23. On September 12, 1994, Director of Law Louis Rainone sent a reply to Raymond Heineman, attorney for Local 1197, stating, in relevant part:

I do not have any record of a 1/2% wage increase having been approved by the Mayor and the governing body, and therefore I would appreciate it if you could forward to me any documents which you have which indicate that a signed agreement was reached and that the governing body approved same.

(CP-10)

The half-percent issue was never submitted to the Council or to Local 1197's membership for ratification of an amendment adding in the half-percent increase (T108, T119, T123-T124).

24. In January 1995, Local 1197 filed a request for interest arbitration on issues first identified in November 1993, including the disputed half-percent increase for 1993, 1994 and 1995 (T94-T95).

ANALYSIS

Local 1197 alleges that in September 1994, the Township repudiated its agreement to increase the wages of members of Local 1197's negotiations unit by one-half percent for 1993, 1994 and 1995, and unilaterally reduced those employees' wages after partially implementing the increase. The Township asserts that it never agreed to the alleged increase and, therefore, could not have repudiated the claimed agreement or "reduced" unit members' "wages."

I find that Local 1197 did not prove by a preponderance of the evidence that the parties had reached agreement to the half-percent increase. Without such agreement no repudiation is possible.

Subsection 5.4(a)(5) of the Act prohibits public employers from "refusing to negotiate in good faith with the exclusive majority representative over terms and conditions of employment." Repudiating negotiated terms of employment breaches the duty of good faith negotiations and is a violation of subsections 5.4(a)(5) and, derivatively, (a)(1).

Cifelli's Lack of Apparent Authority

Local 1197 argues that Cifelli had apparent authority to bind the Township. In East Brunswick Board of Education and East Brunswick Administrators Association, P.E.R.C. No. 77-6, 2 NJPER 279 (1976), mot. for recon. den., P.E.R.C. No. 77-26, 3 NJPER 16 (1977), [dism. as moot NJPER Supp.2d 42 (¶29 App. Div. 1977), App. Div. Dkt. No. A-250-76 (12/2/77)] the Commission set forth a standard to be

applied in resolving questions of apparent authority:

"The test which has been applied by the courts in determining whether apparent authority existed as to a third party who had transacted business with an agent is whether the principal has, by his voluntary act, placed the agent in such a situation that a person of ordinary prudence, conversant with business usages and the nature of the particular business involved, is justified in presuming that such agent has the authority to perform the particular act in question.

While all authority must derive from the principal, apparent authority may derive from a principal's adoption of or acquiescence in similar acts done on other occasions by an agent. Acquiescence by a principal in an extension of the authority he gave an agent may be sufficient to create an appearance of authority beyond that actually given said agent." Id. at 281

Local 1197 contends that Cifelli agreed with the proposal and led Local 1197's representatives on to believe that he would take care of it. Local 1197 asserts that it was entitled to rely on his "apparent authority" to bind the Township.

Cifelli had been Chief of Staff for about three weeks when the initial meeting occurred. Yackel acknowledged that it was necessary to inform Cifelli about the issues because of his unfamiliarity with them. In the customary negotiations between the Township and Local 1197, the Township was represented by a law firm, but sometimes the Mayor or Business Administrator participated. Yackel usually represented Local 1197. There is no evidence that a chief of staff ever participated. It is not reasonable to conclude that a new employee of a newly-elected Mayor would possess authority to bind the Township. Nor is it reasonable to conclude, based on the testimony in this case, that Cifelli stated, intimated or

suggested that he possessed such authority. Cifelli stated that he informed Local 1197 that he would present everything that had been discussed to the Mayor.

The usual procedure was that after agreement was reached and signed off by both sides' negotiators, the written agreement was submitted to the Township's Council and to the unit membership for ratification. Here, no memorandum of agreement or initialled copy of the purported terms was produced demonstrating that the parties signed off on a writing representing their agreement. Further, neither party took steps to have the half-percent increase ratified. Nor did Local 1197 take steps in the four months following the second meeting with Cifelli to press the matter forward, such as sending a letter requesting the status of the issue, or soliciting the Township's confirmation that the half-percent was being proposed, ratified and/or implemented. Yackel's explanation to this inaction was that he believed trust was sufficient. But I infer, based on Yackel's negotiations experience with the Township, that he knew that negotiations never occurred merely on trust alone.

Each side argues for different inferences about the meaning of Cifelli's act of producing cost figures of the proposed half-percent wage increase by the Township's personnel office. Local 1197 contends that this is evidence of Cifelli's apparent authority to bind the Township. But I found, in agreement with the Township, that he merely wanted to assess the cost of the demand and was not entering into an agreement by having the figures prepared.

As to Cifelli's qualifying statements about his own authority, I found that he informed Yackel that he had to present all issues that were raised and that this put Local 1197 on notice that no final agreement had been reached. In Black Horse Pike Reg. School Dist. Bd. of Ed., P.E.R.C. No. 78-83, 4 NJPER 249 (¶4126 1978) the Commission held that in cases raising a question about apparent authority of negotiators, it will consider only whether, during the course of particular negotiations in dispute, there was an absence of oral or written qualifying statements or general conduct by negotiating representatives from which binding authority to conclude an agreement could reasonably be inferred. There the Commission found that oral statements made by representatives evinced the need for the Association membership to ratify a tentative agreement and placed the other side on notice. Local 1197 also contends that Cifelli agreed to the half-percent as a quid pro quo for the union's conceding any claim to higher college credit benefit, but even if Cifelli did so agree, that is not evidence of his authority to bind the Township.

Most persuasive against Local 1197's argument for apparent authority and for agreement having been finalized, is the requirement, under Article 48, that no modifications be made except "by an instrument in writing only, executed by both parties." Local 1197 agreed to this term and now asks this Commission to carve out an exception. Local 1197 is entitled to the enforcement of the clear, unambiguous language of its agreement and nothing more or

less. Its representatives chose to rely on oral statements as evidence that agreement had been finalized and they did so at their own risk. Even if one accepts Cifelli's claimed authority, he could only have formed an enforceable agreement in compliance with this Article.

Applying the East Brunswick test, I do not find that the Township placed Cifelli in a situation that a person of ordinary prudence, conversant with the ordinary "business usages and the nature of the particular business involved," ie., the parties' agreement to modify their contract exclusively by a signed writing, that Local 1197 was justified in presuming that Cifelli had the authority to bind the Township to the proposed one-half percent increase.

Local 1197 cites In re Bergenfield Bd. of Ed., P.E.R.C. No. 90, 1 NJPER 44 (1975) in support of its apparent authority argument. But Bergenfield is distinguishable on factual grounds. There, the parties developed a memorandum of agreement consisting of a doctored salary guide containing signatures of a member of each party's duly authorized negotiating team. The parties in Bergenfield stipulated that the memorandum contained the words "Agreed to: 12/16/74," directly under the signatures of a member of each party's duly authorized negotiating team. This case is different in that the Local 1197 did not reasonably assume that Cifelli was the duly authorized negotiator, capable of binding the Township without the Mayor or Council's approval. Even accepting

Local 1197's position as to Cifelli, there was no signed document showing the party's agreement as was present in Bergenfield. Further, in Bergenfield, certain members of the Board of Education, including the Board President, actually participated in the sessions. That is not so here. The Board's actions in Bergenfield more closely approximate the actions of the "principal" than an agent of the principal. Finally, in Bergenfield, unlike here, the parties stipulated that their representatives were "duly authorized" and were working within their general guidelines with respect to negotiations. Here, no such stipulation is possible because the general guidelines would have included a written signed document at least, and ratification by both parties, at best.

Similarly, Charging Party cites East Brunswick in support of its charge, a case which is also factually distinguishable. There, the parties' negotiations stretched out over seven months. They used the designation "TOK" to signify that an item had been agreed to and could be set aside. Such items were set aside during the entire period. The Board in East Brunswick sent its experienced chief negotiator and the Superintendent with no express qualifications placed on their authority to conclude an agreement, but later argued that its negotiators did not have authority to bind the Board. The Commission concluded that these agents had authority to bind the Board, and that there was a consistent pattern of conduct indicating an ability to conclude agreement. In contrast, here there were no initialled items indicating that Cifelli and

Yackel had agreed to the half-percent, and their actions do not fit into any consistent pattern of negotiations. For example, as late as September 7, 1994, Yackel indicated Local 1197's exercise of its right to reopen negotiations, a position inconsistent with a belief that such negotiations had concluded months earlier with a binding agreement (CP-8). In East Brunswick, the Board's experienced negotiator believed he had the authority to reach agreement for the Board. In this case, the Township's inexperienced negotiator did not believe he had the ability to bind the Township.

The Implementation and Withdrawal of
One-Half Percent in August 1994

Local 1197 argues that the Township unilaterally reduced the wages of unit members, without negotiations, when it withdrew the payment of the one-half percent as of the second Murray award lump sum payment. An employer who unilaterally grants a benefit, even though it is mistaken in so doing may violate the Act's requirement to negotiate changes in terms and conditions of employment by later withdrawing that benefit. Here, the Township relied on the Local's accountant's payroll worksheets in implementing the half percent, and there was a change of Business Administrator in the process. Business Administrator Cesala was only employed with the Township for a short time, from Spring 1994 to June 1994. It was Cesala who was informed that the Murray award payroll worksheets would include the half-percent increase. But, when it was time to implement that payroll change, Cifelli was

acting Business Administrator. He caught the "mistake" and decided to authorize the first payment, with the intention of avoiding further delay and making up the discrepancy in the subsequent payment. The current payroll was never changed to include the half-percent increase. Since I found that the Local was incorrect in assuming it had an agreement with the Township, and the Township knew it was incorrect in paying the additional half-percent, I conclude that both parties operated under a mistake in paying that portion of the half-percent increase which was later discontinued.

Accordingly, on the basis of the entire record and the analysis set forth above, I make the following:

CONCLUSIONS OF LAW

The Township of Edison did not violate N.J.S.A. 34:13A-5.4(a) (1) and (5) by refusing to pay to members of the fire officers and inspectors' unit, Local 1197, a one-half percent increase for three quarters of 1994, and 1995, or by paying the one-half percent for 1993 and the first quarter of 1994.

RECOMMENDATIONS

I recommend that the Commission ORDER that the Complaint be dismissed.

Elizabeth J. McGoldrick
Hearing Examiner

Dated: April 30, 1996
Trenton, New Jersey