H.E. No. 76-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

HANOVER TOWNSHIP EDUCATION ASSOCIATION,

Respondent,

-and- Docket No. CE-76-21-5

HANOVER TOWNSHIP BOARD OF EDUCATION,

Charging Party.

HANOVER TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and- Docket Nos. CO-76-28

HANOVER TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

For the Board of Education

Grotta, Oberwager & Glassman, Esqs.
by Lester Aron

For the Education Association

Simon, Goldberg & Selikoff, Esqs.
by Theodore M. Simon

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

An unfair practice charge was filed with the Public Employment Relations Commission on July 8, 1975 by the Hanover Township Board of Education ("Board") claiming the Hanover Township Education Association ("Association") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act ("Act") as amended, N.J.S.A. 34:13A-1 et seq. in that the Association refused to participate in a formal fact-finding proceeding in accordance with the Act. 1/

1/ More specifically the Board asserted that the action of the Association violated N.J.S.A. 34:13A-5.4(b) (1), (3), and (5). These subsections prohibit employees, their representatives, or agents from (1) interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (5) Violating any of the rules and regulations established by the commission.

The Association in turn on August 5, 1975, filed an unfair practice charge with the Public Employment Relations Commission alleging that the Board of Education had engaged in unfair practices within the meaning of the Act. It is alleged that the Board, through its duly authorized negotiating representatives, entered into a signed settlement agreement which was the full and final understanding establishing terms and conditions of employment for unit personnel from July 1, 1975 to June 30, 1977. The Board failed and refused to accept or adopt that agreement of June 3, 1975, as and for the agreement of Respondent Board of Education. 2/

It appearing that the allegations of either of these two charges, if true, might constitute unfair practices within the meaning of the Act, complaints and notices of hearing were issued on September 25, 1975 along with an order consolidating the two cases for hearing.

Pursuant to the complaints and notices of hearing, the hearing opened on October 21 and reconvened on November 7, and November 17, 1975. On all three occasions the hearings were in Newark. All parties were given an opportunity to examine witnesses, to present evidence and to argue orally. Briefs were submitted by the parties to this proceeding by March 15, 1976. Upon the entire record in the matter, the Hearing Examiner finds:

1. The Hanover Township Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Hanover Township Education Association is an employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. Unfair practice charges having been filed with the Commission alleging that the Hanover Township Board of Education and the Hanover Township Education Association have engaged or are engaging in unfair practices within the meaning of the Act, as amended, a question concerning alleged violations of the Act exists and this matter is appropriately before the Commission for

2/ More specifically the Association asserted that the action of the Board violated N.J.S.A. 34:13A-5.4(a) subsection (1), (5) and (6). These subsections prohibit employers, their representatives, or agents from (1) interfering with, restraining or coercing employees in the exercise of the right guaranteed to them by this Act. (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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement.

determination. 3/

I

The parties were involved in rather lengthy contract negotiations, however, with the assistance of mediator a memorandum of agreement was signed for 1975-76.

A short time later there was a disagreement between the parties as to the interpretation of the provisions of this same agreement. The Board rejected the agreement and then asked for mediation. When mediation failed, the Board served notice of impasse, and requested fact-finding. The Education Association refused fact-finding, maintaining that there was a binding contract in existence, and these charges were then filed.

It is undisputed that parties entered into a memorandum of understanding on June 3, 1976. The agreement provides that the "collective bargaining agreement dated July 1, 1973, shall remain the same except as specified below". There followed some fourteen paragraphs concerning new amendments and modifications of that contract. Paragraph 3 of the agreement provides that; salary increases for the period from July 1, 1975 to June 30, 1976 shall be as specified in the example found in Exhibit "A" which reads as follows:

Association Salary Proposal

1. Take each teachers present salary.
2. Apply 5% to that base to determine a dollar amount to be disbursed during the period through January.
3. Apply this dollar amount to the original base and establish the new base for applying an additional 5% on top of the new base.
4. New additional 5% will commence February and carry through June.

Example:

(a) $1,000 present teachers salary
(b) Apply 5% to salary = $50
(c) Disburse $50 over September through January.
(d) Establish new base - $1,050.
(e) Apply additional 5% - $52.50
(f) Disburse $52.50 over February through June.
Salary total - $1,102.50
Includes increment

3/ All of the facts referred to in this section are uncontroverted.

The final paragraph (15) reads:

The foregoing represents the full and final understanding of the parties with respect to a new collective bargaining agreement. Dated June 3, 1975.

For the Board of Education
/S/ Anthony M. Arcisi

For the Association
/S/ Selma Strauss

Fact-Finder
/S/ John M. Stochaj

The entire controversy revolves around these two provisions.

At the hearing, there was extensive and contradictory testimony as to the dollar amount of the raise under the Association Salary Proposal. Witnesses for both sides agreed that the agreement was supposed to have been a "split raise". Both parties introduced testimony to explain a split raise, and how it is used. Marvin Goldstein, a representative of the Board of Education, testified [4] that, in a situation where an employer might be willing to grant an increase up to only a given level and the employees may be willing only to accept a figure which is greater, the split raise operates as a compromise. Mechanically, the total amount of the raise is split, usually in half. Using the figure of 10% as the total raise, there would be an initial raise of 5% and then a subsequent raise in mid-year of another 5%. Because the total 10% increase is broken up, the employees are receiving the full raise for only half a year. The cost to the employer is considerably less than 10%; it works out to 7.65%. This offers the employer a considerable savings for that year. There is also a real advantage to the employees as well, for half of the year is at the 10% rate and more importantly, at the end of the year, the salary base of 10.25% is considerably higher than it would be if they received a straight raise. This means that even if an employee gets no additional raise the following year, the salary will still be increased in accordance with the new higher base. The Board of Education maintains that the contract calls for such a raise.

The Education Association agrees that the contract calls for a split raise. John Davis of the Association testified that the impact of a split raise

[4] Who was qualified as an expert at the hearing.

"would not be felt by the Board until the second half of the agreement, and it would allow for greater cash flow for the first half of the year as well as serve as a public relations factor to show the community that the higher rate does not come into effect right off the bat". But the Education Association maintains that the split raise in this instance grants what is in effect a 10% raise for the first five months and an additional 0.5% raise the second five months for a total cost of 10.25%.

The wide discrepancy between the two positions of the parties is based upon two interpretations of the example in the salary proposal. The Education Association argues the $1,000 figure in (a) of the example represents a yearly salary, while the Board asserts that the $1,000 figure represents a monthly salary. (See Appendix "A")

It was the Board's position that the $1,000 in (a) of the example had to be a monthly salary based on a ten month year, since no one earns only $1,000 for the year. Their interpretation of the proposal and example is as follows:

Starting with (2) of the salary proposal and (b) of the salary guide 5% of $1,000 is $50. Therefore, pursuant to (c) of the example, the Board would pay $50 a month for five months (September through January). The base salary plus the $50 would equal $1,050 per month or a 5% raise. $1,050 would then constitute a new base in accordance with proposal (3) and example (d). Applying an additional 5% in line with proposal (3) and example (e) would be .05 x $1,050 = $52.50. $52.50 would be disbursed for five months and the monthly salary is $1,102.50 ($1,050 + $52.50) in accordance with proposal (4) and example (f). The salary paid out would be $5,250 for the first five months ($1,050 x 5) and $5,512.50 for the second five months ($1,102.50 x 5) which equals an annual salary of $10,762.50 for a 7.625% cost increase over the year. The new monthly salary of $1,102.50, however, creates a 10.25% base or salary guide increase.

According to the Education Association the $1,000 figure in the example was chosen as a hypothetical only, for ease of computation. This money is to be disbursed over a ten month year (September through June). In accordance with step (2), 5% of the base ($1,000) is $50. This is the dollar amount to be disbursed over the first five months, September through January. The Education Association takes this to mean the total amount of money to be

APPENDIX "A"

Salary Proposed	Example	Association Interpretation	Board Interpretation
1. Take each teacher's present salary	(a) $1,000 present teacher's salary	$1,000 annual salary ($100 monthly) based on ten month year.	$1,000 monthly or ($10,000 annual) based on teacher's ten month year.
2. Apply 5% to that base to determine a dollar amount to be disbursed during the period September through January.	(b) Apply 5% to salary = $50	5% of $1,000 - $50	5% of $1,000 = $50
	(c) Disburse $50 over Sept. through Jan. *	$10 a month for 5 months (Sept. through Jan.) so monthly salary would be $110 per month. $100 base + $10. Total salary for first five months = $550 or a 10% raise.	$50 a month for five months (Sept. through Jan.) so monthly salary would be $1,050 $1,000 base + $50. Total salary for first five months would be $5,250 or 5% raise.
3. Apply this dollar amount to the original base and establish the new base for applying 5% <u>on top</u> of the <u>new</u> base.	(d) Establish new base $1,050	$1,000 + $50 = $1,050	$1,000 + $50 = $1,050
	(e) Apply additional 5% - $52.50	$1,050 x .05 = $52.50	$1,050 x .05 = $52.50
4. New additional 5% will commence February and carry through June.	(f) Disburse $52.50 over February through June.*	$52.50 ÷ 5 = $10.50 $10.50 a month for five months. Monthly salary would be $110.50. $100 + $10.50 for second five months = $552.50 or a 0.5% raise over the first five months. $ 550.00 for first five months $ <u>552.50</u> for second five months $1,102.50 for year Salary total $1,102.50 for year.	$52.50 + $1,050= $1,102.50. $1,102.50 monthly salar second five months. This equals $5,512.50 or a 5% raise over the first five months. $1,102.50 for month as above.

* Here the Education Association argues that in these two steps a <u>total</u> of $50 (or $52.50) is disbursed among the five months while the Board maintains that $50 (or $52.50) is disbursed <u>in</u> each of the five months.

disbursed as $50 so they would distribute $10 a month [5] for five months. This would be in accordance with (b) and (c) of the example. During this period, the salary under the example would be $550 for the five month period or a 10% increase over the base salary of $500. The next step is establishing the new base under step (3) of the salary proposal and example (d), by applying this dollar amount ($50) to the original $1,000 base and establish a new base of $1,050 and then, apply an additional 5% on top of the new base, or, .05 x $1,050 = $52.50. Then pay out $52.50 over five months, (February through June). When added to the old base of $500 this is $552.50. This is a $2.50 monthly increase over the salary of the first five month period, or a 0.5% increase between the pay from September through January ($550) andthe pay from February through June ($552.50). For the year, there is a 10.5% increase over the old base of $1,000 and an overall salary increase of 10.25% ($550 +$552.50 = $1,102.50 - 10.25 x $1,000 = $1,102.50)

There is no question but that there are ambiguities in the proposal guide. The most obvious is whether the $1,000 teachers salary in proposal (1) and example (1) refer to an annual or monthly salary. The Association argues that "salary" has to mean annual salary. They defend this position as the only possible interpretation. It is argued that there is no authority for any concept of monthly salary in the school law, (Title 18A) and cite various sections of Title 18A including N.J.S.A. 18A:27-6 which reads in part, "the salary at which he is employed shall be payable in equal semi-monthly or monthly payments".

The case of Koribanics v. Board of Education of Clifton 48 N.J. 1 (1956) at page 6 is cited [6] in support.

> "The term 'salary' used in a legislative enactment has been recognized judicially to apply to monies received by a person on a fixed and continuous basis, i.e., normally paid in regular periodic intervals in specific regular amounts. This is the commonly understood meaning of the term."

5/ In his testimony, Davis states that this amount of money would not necessarily equal $10 per month. This is an accounting problem and would possibly vary but the sum of $50 would be disbursed during September through January.

6/ In their brief the Association relies heavily upon court decisions involving contract interpretation. I found it appropriate to draw upon the experience of the courts and have done the same in this decision.

The term salary total as used in the example "can only mean a total salary for a year...The concept of disbursing certain increases throughout the year further elicits the only logical conclusion that the example of $1,000 was used for convenience as an annual salary example...Counsel for the Board wrote on the salary agreement 'includes increments'. A review of Title 18A discloses there is no such thing as a monthly increment, but only an annual increment. In any agreement, words must be given their ordinary meaning, since the law assumes that parties contract within the meaning of contemporary language".

What the Education Association is arguing, in effect, is that part of the definition of salary is that it is annual in nature. If that were true, the term annual salary as used in the Education Association's argument would be a redundancy. This is not so. The term annual does define salary. The definition of salary in Webster's New Collegiate Dictionary is "fixed compensation regularly paid or stipulated to be paid, for services as by the year, quarter, month or week." 7/

There is no question that the term salary means wages for a fixed and regular time period, but there is also no question that this time period may vary. I do not find the argument that the example must be an annual salary because there is no such thing as a monthly increment, only an annual one, persuasive. This is simply arguing in a circle. It is clear from the testimony that the reference to the increment was only referring to the total cost, or size, of the wage increase and has nothing to do with the procedures of computation.

If one takes the salary proposal and the example and follows through them using both interpretations, a number of other ambiguities become apparent. In step(2) "determine a dollar amount to be disbursed during the period September through January" seems to mean as the Association claims that one fixed total of money is to be divided and disbursed but it could mean as the Board claims, a fixed sum is to be paid each particular month; nor does step (2) specifically grant a 5% raise the first half of the year as the Board claims, rather it only fixes "a dollar amount to be disbursed" over one-half the year which happens to be 5% of the total yearly salary. The Association's interpretation may very well be misleading, for it grants a real raise of 10%, but their interpretation is consistent with the dollar amount in the example. Step (3) states "apply this dollar amount ($50)

7/ G. & C. Merriam Company, Publishers, Springfield, Massachusetts, (1961).

to the original base and establish the new base for applying an additional 5% on top of the new base". This would seem to mean that one would take the new base as the on going salary and apply an additional 5% raise, particularly after reading (4) of the proposal, which states, "new additional 5% will commence February and carry through June." This is exactly what happens in the Board's workup of the example; they take the new base of $1,050, take an additional 5% or $52.50 and pay out $1,102.50. In the Association's version, (2),(3) and (4) of the proposal means something entirely different, and something less apparent. As noted above they took 5% of the $1,000 or $50 and disbursed the entire amount over the first five months, giving an effective increase of 10%. In applying step (3) the first "5%" raise has already been exhausted; it was paid out in September through January, so a new additional "5%" raise is created again, based on an annual salary this time at a base of $1,050. Again, since the 5% is disbursed through only half the year, the effect of this distribution is to continue the real dollar raise of 10% from the first five months and grant a new raise of 0.5%.

Both interpretations of the provisions of the contract are logically consistent within the four corners of the contract. Therefore, I must look at the totality of the circumstances in the making of the writing as well as apply the standards of interpretation to determine if there is in fact a common intent and if so, what that intent may be. 8/

8/ Evidence of the circumstances is always admissable in aid of the interpretation of the intregrated agreement...The pole-star of construction is the intention of the parties to the contract as revealed by the language used taken as an entity, and in the quest for the intention, the situations of the parties, the attendant circumstances, and the object they were thereby striving to obtain are necessarily to be gathered. The admission of evidence of extrinsic facts is not for the purpose of changing the writing but to secure light by which to measure its actual significance. Such evidence is adducable only for the purpose of interpretating the writing - not for the purpose of modifying, or enlarging, or curtailing its terms, but to aid in determining the meaning of what has been said. So far as the evidence tends to show, not the meaning of the writing, but an intention wholly unexpressed in the writing, it is irrelevant. Atlantic Northern Airlines v. Schwimmer 12 N.J. 293 (1953).

Prior to the signing of the document there was a mediator assigned to the Hanover School District. Each side has its own version of where the parties stood in terms of these negotiations. The Association claims the Board offered a settlement package of a nine percent increase in salary. The Board claims that they were offering eight percent and the Association was looking for nine percent. Goldstein did testify that the mediator may have initated a nine percent package offer but claims that the negotiating team for the Board had never agreed to it and had no authority to go that high. 2/ In any event a fact-finder was scheduled to meet with the parties on June 3, 1975. On June 2, 1975, Davis and Goldstein met by themselves. Davis testified that Goldstein did raise the concept of splitting. He further testified that Goldstein stated that he wanted to get 7½% plugged into the agreement, but they did not discuss how this figure would be arrived at. Goldstein also testified about this meeting. Goldstein agrees that he introduced the concept of splitting. His testimony was much more detailed than Davis' about the meeting. He stated that he specifically showed Davis on a piece of paper that the split would be 5% and 5%. He further stated that it would cost the Board about 7% and Davis could sell it to his people for 10%.

I found Goldstein's testimony concerning this meeting to be credible while Davis was evasive. Further, since the salary proposal specifically uses 5% and 5% as the base of the split, it can only be assumed that a 5% and 5% split was discussed at some point in time between the parties and this definitely would be an appropriate time and place. I, therefore, find that Davis and Goldstein did discuss a 5% and 5% split raise as Goldstein testified. On the next evening, June 3, 1975, it was suggested to the fact-finder, prior to the fact-finding, that he serve as mediator. He agreed to do so. Davis reviewed the concept of split raises with the other members of the Association's negotiating team. They agreed to the concept. Davis then composed the salary proposal and example in question and submitted them in turn to the Board. When the three

2/ The person who served as mediator during these negotiations was subpoenaed by the Board to attend these hearings. The Hearing Examiner ruled that pursuant to N.J.A.C. 19:12-3.4 he could not testify. The Board argued in their brief that the Association acted in bad faith by not waiving their privilege to allow the mediator to testify. The Association's position is irrelevant to the Hearing Examiner's ruling. The rule is explicit and cannot be waived, "a mediator shall not...testify in regard to any mediation conducted by him on behalf of any party...in an unfair practice proceeding under chapter 14 of these rules".

members of the Board reviewed the document, Mr. Arcesi, the Chief Negotiator for the Board of Education and Mr. Goldstein only made mental calculations of the settlement. Mr. Arcesi did believe that the example of $1,000 was an annual figure. Mr. Rhodes, however, used a calculator to verify the figures in the example and he assumed that the $1,000 figure was for a monthly salary. All the Board members believed the dollar cost of the agreement would be about 7½% for the year. The parties met and signed the agreement. At this time the words "include increment" were added to the example. It is undisputed by either party that the salary increases were to include the increments in the then current contract.

It is significant that Davis, the author of the salary proposal and example knew what was in Goldstein's mind as to what constituted a split raise of 5% and 5% as based on the conversation of June 2, 1975. Also, as stated above, Davis testified that he had a working knowledge of split raises and he demonstrated such knowledge in his testimony as to the use of these raises. If one party to a contract knows that the meaning that the other intended to convey by his words then he is bound by that meaning. The same is true if he has reason to know what the other party intended. Cresswell v. United States 173 F. Sup. 805 (C.T.C.L. 1959). See also, Hurd v. Illinois Bell Tel. Co., D.C. 136 F. Sup. 5 affm'd 7 cir. 234 F. 2d 942, cert. denied and Seybold v. Western Electric 352 U.S. 918 the Restatement of Contracts pages 74-75. Here the language was written by Davis the agent of the Association. "Language is construed most strongly against him who uses it." Williston on Contracts 3rd edition 4 page 405. Davis created language which he knew or should have known would mislead the Board into believing they were signing a contract for a raise that would have granted a 5% raise in September and a 5% raise in February. There was no indication that the Board negotiators had any knowledge of the Association's interpretation of the contract. The fact that Davis' interpretation of this language is logical, will not relieve him of his obligations under the plain and clear meaning of this contract. It is possible that he was not aware that the figures in the example could be plugged into the Board's straight split raise interpretation, even so, that does not change the basic fact that he knew the Board negotiators' state of mind when he drafted the example.

The settled primary standard of interpretation of an integrated agreement is the meaning that would be "ascribed to it by a reasonably intelligent person who was acquainted with all the operative usages and circumstances surrounding the making of the writing...as an aid in ascertaining this meaning, prior negotiations

are admissable, provided they tend to uncover an interpretation which the written words will bear". Deerhurst Estates v. Meadow Homes, Inc., 64 N.J. Super. App. Div. 134, 149. The U.S. Court of Appeals applying New Jersey law, set forth the traditional rule that, in the absence of an intention to the contrary which is specifically set forth in the agreement, the words emphasized in a contract will be assigned in a clear, plain, generally accepted, grammatical and ordinary natural or normal meaning or sense. Independent Oil Workers v. Mobil Corp. 441 F. 2d 651 (3rd Cir. 1971). In the instant case, I find there is only one natural meaning in its generally accepted sense. Exhibit "A" calls for two 5% raises during the course of the year. There is nothing in the language of the exhibit or proposal which either mentions or implies that the Board should pay out a 10% raise the first half of the year and an additional 0.5% raise for the second half of the year. Example (a) states apply 5% to salary and (e) states apply an additional 5%. As the School Board correctly points out both sides introduced testimony of the cost reducing effects of a split formula. It makes no sense to enter into a complicated split raise contract if there are no significant cost savings. The Education Association's version of this contract would save the Board 0.25% on the year over a straight 10.5% raise. I further find based upon both the expert testimony introduced, and in accordance with N.J.A.C. 19:14-6.6 which states in part, "notice may be taken of generally recognized facts within the Commission's specialized knowledge in the field of labor relations in the public sector" that a split raise of 5% and 5% is commonly accepted to be in accordance with the Board's interpretation.

The position of the Association in the entire hearing is that the negotiators for the Association did have the power to bind the Association and I so find accordingly. I also find, that after a careful consideration of the words of the contract, in light of all the relevant circumstances of all the tentative rules of interpretation, based upon the experience of the Courts and this agency, a plain and definite meaning can be achieved, a meaning actually given by one party as the other had reason to know it. I will not disregard this plain and definite meaning. I find that this contract does create a common intention; to grant to the members of the bargaining unit a 5% raise in September of 1975 and an additional 5% raise February 1, 1976; such a raise will grant the unit members a total dollar raise of 7.625% for the year and create a new salary base that, in June of 1976, is 10.25% higher than the salary base in June of 1975. These raises include increments.

II

The second issue to be considered is whether or not the Board of Education was bound by the terms of this agreement. The Education Association introduced testimony that there was an understanding at the time the parties entered into the contract that both they and the Board of Education's negotiators had the power to enter into a binding agreement. The Board's witnesses claim there was no such agreement. Further, the Education Association argues that "extrinsic evidence as to any requirement for a subsequent ratification may not be appropriately considered in this cause, inasmuch as the parties embodied the complete terms of their agreement in an integrated document." Harker v. McKissock 12 N.J. 310 (1953) Atlantic Northern Airlines Inc. v. Schimmer, supra is also quoted "where the parties have made the writing the sole repository of their bargain, there is the integration which precludes evidence of antecedent understandings and negotiations to vary or contradict the writing." at 303.

There are no express qualifying conditions in the contract which limit the authority of the Board's negotiator. It is, therefore, argued that since the contract is silent as to these qualifying conditions, none can be considered by the Hearing Examiner. In support of their position they cite, In the Matter of Bergenfield Board of Education, Respondent and the Bergenfield Education Association, Charging Party P.E.R.C. No. 90, 1 NJPER 44 (1975) where in upholding a contract which was signed by the negotiators for the Bergenfield Board of Education, but later rejected by the Board, the Commission stated "the Charging Party under the circumstances presented, was entitled to rely upon the apparent authority of the Respondent negotiators in the absence of express qualifying conditions."

It is noted that in the charge submitted by the Board of Education in this matter, Docket No. CE-76-21, which was filed more than one month prior to the Association's charge, the Board admits that the negotiators were authorized to enter into settlement within certain limits. They further admit that they believed that when the contract in question was signed the contract was consistent with their authorization. Having found that the contract is, in fact, consistent with their authorization it follows that the Board has admitted that the Board did authorize the negotiators to enter a settlement or contract,

see In the Matter of Borough of Bogota and Patrolman's Benevolent Assoc., Local #86 (Bogota Unit), P.E.R.C. No. 76-22, 2 PERR 70. In light of this admission and in the absence of any qualifying language in the contract to the contrary, I find that the negotiators had the power to, and, did in fact, bind the Board. The Board, therefore, cannot refuse to accept the agreement.

III

As to this final issue, the charge of the Board of Education is that the Association refused to enter into fact-finding. I previously found that there was an existing contract at the time that fact-finding was requested. Clearly, there was no duty on the part of the Education Association to enter into such fact-finding.

ORDER

Accordingly for the reasons set forth above, it is HEREBY ORDERED that the Respondent in Docket No. CO-76-28 the Hanover Township Board of Education take the following affirmative action which will best effectuate the policies of the New Jersey Employer-Employee Relations Act as amended: Upon request, formally execute an agreement which will constitute the 1975-76 professional salary guide, reflecting the increases as contained in the memorandum of agreement signed by the parties of this action on June 3, 1975. Specifically, there shall be a 5% wage increase effective retroactively to the beginning of the school year in September 1975. This increase is to be calculated on an annual basis. There shall also be another, retroactive 5% wage increase effective February 1, 1976, again this wage increase is to be calculated on an annual basis. The cummulative effect of these raises is that the effected employees will have approximately a 7.625% salary increase on the year and at the conclusion of the year in June of 1976, the salary base will have increased 10.25% over the salary base of the prior year, 1975. These raises include increments.

IT IS FURTHER ORDERED that complaint No. CE-76-2 alleging that the Respondent, Hanover Township Education Association, committed an unfair practice by refusing to enter into fact-finding be dismissed in its entirety.

Edmund G. Gerber
Hearing Examiner

DATED: Trenton, New Jersey
May 25, 1976