



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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ALTON TEACHERS ASSOCIATION/  
NEA-NEW HAMPSHIRE

Complainant

v.

ALTON SCHOOL DISTRICT

Respondent

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CASE NO. T-0315:10

DECISION NO. 93-79

#### APPEARANCES

##### Representing Alton Teachers Association/NEA-NH:

Jan Paddleford, UniServ Director

##### Representing Alton School District:

Bradley F. Kidder, Esq., Counsel

##### Also appearing:

Dr. Elaine Brigman, Supt.  
June D. Tanguay, School Board  
Jack Henderson, School Board  
Charles Down, Alton Teachers Assoc.  
Donna Downie, Alton Teachers Assoc.  
Susan Blair, Alton Teachers Assoc.  
Mary Christy, Alton Teachers Assoc.  
Susan E. Long, Alton Teachers Assoc.  
George Rogers, Alton Schools  
Maureen L. Kalfas, Citizen

#### BACKGROUND

The Alton Teachers Association, NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges against the Alton School District (District) on January 12, 1993 alleging violations of RSA 273-A:5 I (a), (e), (g), (h) and (i) relative to unilateral changes in stipends for musical performances. The District filed its answer on January 22, 1993 after which this

matter was heard by the PELRB on April 22, 1993.

FINDINGS OF FACT

1. The Alton School District is a "public employer" of teachers and other employees within the meaning of RSA 273-A:1 X.
2. The Alton Teachers Association is the duly certified bargaining agent for teachers and other personnel employed by the district.
3. The Association and the District are parties to a collective bargaining agreement (CBA) which has expired. They have been engaged in negotiations for a successor agreement since the fall of 1991. Article XIII of the expired CBA provides that it "will remain in full force and effect until August 31, 1992 and thereafter renew itself automatically for successive terms of one year or until a successor agreement has been ratified."
4. Prior to the 1992-93 school year, music faculty have been given a stipend (4 x \$91.75 per unit or \$367.00) for the preparation and presentation of concerts. This is intended to compensate for four concerts, two elementary and two secondary. The stipend has been paid in two installments, one at Christmas and one at the end of the school year. This policy has continued for at least five school years.
5. The District has made no proposals to change the music stipends at any time during the negotiations for a successor contract which would follow the CBA which "expired" on August 31, 1992.
6. On or about October 2, 1992, the Alton School Board (Board) voted to eliminate the stipend for concerts. According to Music Director Long, the stipend was typically used for music, props, flowers, costumes and other program enhancements. After the stipend was eliminated, Long was informed by Principal George Rogers that the concerts were to continue notwithstanding the stipend elimination. Long was hired with the understanding that she would render services for preparing and presenting concerts and that she would receive the stipend therefor.
7. By letter of December 1, 1992, Association

President Downie asked Board Chairman Jack Henderson to open negotiations on the matter of the music stipend. Superintendent Elaine Brigman, responding on behalf of the Board by letter of December 15, 1992, informed Downie of the Board's intention not "to negotiate extra-curricular stipends because such stipends are not contractual."

8. This case was processed through the grievance procedure by a letter of December 14, 1992 from Downie to Rogers. On December 21, 1992 Rogers wrote Downie saying he (Rogers) could not grant the relief requested. Grievance chair Donna Downie wrote Brigman on December 21, 1992 pursuing the grievance at Step 2. Brigman wrote Donna Downie on January 18, 1993 denying the grievance. Donna Downie appealed that decision by letter to Henderson on January 20, 1993. By letter of March 11, 1993, Brigman wrote to Charles Downie denying the grievance on behalf of the Board.

#### DECISION AND ORDER

The conditions under which Long was hired and the history of the payment of the stipend cause us to conclude that (1) music teacher services at concerts is and was a condition of employment, (2) payment has traditionally been made to the music teacher involved, (3) the New Hampshire Supreme Court defined "wages" as "monetary remuneration by an employer...for labor or services..." in Appeal of Berlin Education Association, 125 N.H. 779 at 783 (1984), and (4) the duration of payment of the stipend over at least five years prior to the 1992-93 school year created both an expectation and a past practice. That past practice cannot now be changed unilaterally without negotiations. Likewise, because the stipends are paid to teachers, they are wages and, thus, a mandatory subject of bargaining. Berlin, supra, and Appeal of State Employees Association, 120 N.H. 690 at 692 (1980). The Board committed a ULP both by making a unilateral change in working conditions and by refusing to bargain over a mandatory subject with the Association, in violation of RSA 273-A:5 I (e). In distinguishing contractual wage steps from working conditions, a majority decision of the New Hampshire Supreme Court in Appeal of Milton School District, Slip. op., May 20, 1993, held that maintenance of the status quo "does not mean that the expired CBA continues in effect; rather, it means that the conditions under which the teachers worked endure throughout the collective bargaining process." We believe that standard applicable to this case and that the status quo must be so maintained during negotiations for a successor CBA.

By way of remedy we direct (1) that music teachers be compensated, retroactively if necessary, for services rendered in preparing and presenting concerts during the 1992-93 school year in a manner consistent with prior practice, (2) that the prior practice be maintained during the pendency of negotiations, (3) that the Board **CEASE** and **DESIST** from refusing to bargain over the subject of the music or concert stipends with the Association, and (4) that negotiations over those stipends commence forthwith upon request by either party to do so.

So ordered.

Signed this 20th day of June, 1993.

  
EDWARD J. HASELTINE  
Chairman

By majority vote. Members Seymour Osman and E. Vincent Hall voting in the majority and Chairman Edward J. Haseltine voting in the minority.