

FINDINGS OF FACT

1. The Mascenic School District is a "public employer" of teachers and other personnel as defined by RSA 273-A:1 X.
2. The Mascenic Education Association is the duly certified bargaining agent for teachers and other personnel employed by the District.
3. The District and the Association were parties to a collective bargaining agreement which expired on June 30, 1992. Most extra-curricular and co-curricular positions hired and filled by the District are held by members of the bargaining unit represented by the Association. Compensation for these extra-curricular and co-curricular positions was not covered by or mentioned in the CBA.
4. During the 1991-92 school year, the District and the Association engaged in the process of negotiating a successor CBA. A tentative agreement reflecting contract settlement was reached on May 6, 1992. That tentative agreement provided no salary increases for the 1992-93 school year. A further element of the tentative agreement involved a side letter by which the parties agreed to continue reviewing compensation for extra-curricular and co-curricular activities.
5. The side letter provided that: (1) the extra-curricular and co-curricular compensation committee would be composed of an equal number of representatives appointed by the Association and by the Board, (2) recommendations would be presented to each party prior to November 15, 1992, (3) that, if there was agreement, the charges would be implemented as Board policy no later than July 1, 1993, (4) lacking an agreement, the parties would continue to discuss the issues, and (5) it (the side letter) shall not be considered part of the CBA. The side letter was intended to cover school years 1992-93 and 1993-94, with a stated intent that it would expire by its "own terms" on June 30, 1994."
6. On June 3, 1992, almost a month after the mediation and tentative agreement of May 6, 1992, the District posted a schedule of co-curricular and extra-curricular positions for the 1992-93 school year. (Association Ex. No. 7). That schedule reflected: (1) creation of a new

position (Department Head in Guidance), (2) stipends for previously unpaid team leader positions, and (3) increased stipends for head teachers at four elementary schools. These changes were not agreed upon by or announced to the Association before the schedule was posted on June 3, 1992.

7. The schedule which was posted on June 3, 1992 (Association Exhibit No. 7) resulted in increases for extra-curricular stipends ranging from 0% to 67.6%, with an average increase of 31.8%, with a total cost of \$17,028. (Association Ex. No. 8).
8. The Association made proposals relative to extra-curricular and co-curricular compensation in negotiations occurring in 1986 and 1990 but both were withdrawn as part of the overall contract settlements. (District Exhibit Nos. 1, 2 and 3).
9. Historically, the Board has created and deleted positions from its co-curricular and extra-curricular schedule (Association Ex. No. 7 and earlier editions of a similar document) depending on levels of student interest.
10. There is no evidence that the posting of June 3, 1992 (Association Ex. No. 7) resulted from direct dealing between the District and bargaining unit members, that it decreased extra-curricular or co-curricular compensation for bargaining unit members, or that it restricted or coerced the activities of any bargaining unit members in violation of RSA 273-A:5 I (a), (b) or (c).

DECISION AND ORDER

This case presents the unusual situation where the Association is complaining about a unilateral increase in benefits without any showing that that increase was prejudicial to the Associations' status as exclusive representative under RSA 273-A:10 IV or that it was coercive, restrictive or discriminatory to its membership. While the side letter set up the means for a joint committee to study extra-curricular and co-curricular structure and compensation, and while it provided for implementation no later than July 1, 1993 in the case of agreement, it did not prohibit enhancement to benefits (compensation) either pending or in the absence of an agreement. Even if it may have been wiser for the District to have discussed the changes with the Association prior to posting on June 3, 1992 and consistent with the spirit of the

side letter, failure to have done so is not an unfair labor practice.


Given that the nature of some of the positions in question may change from year to year depending on student interest, the public employer must have the flexibility to address these needs. This is assured under RSA 273-A:1 XI. Then, once the positions are established and filled, the parties have the obligation to bargain about extra-curricular compensation. Appeal of Berlin Education Association, 125 N.H. 779 at 784 (1984).

Under the particular circumstances of this case, the District's conduct does not rise to the level of an unfair labor practice for failure or refusal to bargain under RSA 273-A:5 I (g) or (i). There has been no refusal to bargain. The side letter is evidence both of the parties' interest and obligation to bargain under a procedure to which they both have agreed. In the meantime, the District merely followed what had grown to become a practice, absent any contract language, that it would periodically review and adjust the co-curricular/extra-curricular schedule. Its doing so shows no evidence of anti-union animus or of attempts to engage in direct dealing. Instead, it appears to have been prompted by an intention to maintain competitive levels of compensation, according to the Superintendent.

We find no unfair labor practice; the ULP complaint is DISMISSED.

So Ordered.

Signed this 10TH day of FEBRUARY, 1993.


EDWARD J. HASELTINE, Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Seymour Osman and Arthur Blanchette present and voting.