TOWN OF ARLINGTON AND AFSCME, LOCAL 680, SI-21,41 (11/17/76).

(90 Commission Practice and Procedure)
91.6 deferral to prior arbitration award)
(100) Impasse)
108.21 refusal of overtime
108.4 setting requirements under c. 150E, Section 9

DECISION AND ORDER

Statement of the Case

On November 12, 1976, the Town of Arlington (Town) filed a Petition to Investigate Strike (Case No. SI-42) with the Labor Relations Commission (Commission) alleging that Local 680, Council 41, American Federation of State, County and Municipal Employees, AFL-CIO (the Union) had engaged in a violation of Section 9A(a) of Chapter 150E of the General Laws (the Law). On November 15, 1976, the Commission investigated the Petition. All parties appeared and were represented.

Background of the Dispute:

In the fall of 1975, the Town unilaterally decided to eliminate "lumpers"--the second man on sanding trucks used in snow emergencies. This decision generated a refusal to report for duty by certain pbulic works employees represented by Local 680. The Town petitioned the Commission to investigate the work stoppage (SI-21), and on November 25, 1975, the Commission issued an Interim Order directing that the employees cease and desist from the refusal to report for snow removal duty. In addition, the Commission ordered the parties to submit to arbitration the issue of whether the unilateral elimination of "lumpers" violated the collective bargaining agreement between the Town and the Union.

The Interim Order was complied with, and on October 18, 1976, Arbitrator Edward Pinkus issued his award, concluding that the Town had not violated the contract by eliminating the lumpers, but had breached its duty to negotiate with the Union over the effects of that decision. Pursuant to the award, the parties commenced bargaining over the subject matter of the dispute. Negotiations were held on October 28, November 4, and November 10. No resolution was reached.

November 10, 1976 the first significant snowfall of the season occurred. Snow removal operations proceeded normally on the tenth. On the eleventh, a holiday, the Public Works Director determined that additional sanding was required on certain ice covered streets. The watchman and night foreman called the homes of twenty-eight qualified operators. Of the twenty who answered, only four reported for work.

There is no direct evidence of union sponsorship or support of any job action. Such evidence is seldom available in a strike situation, and need not prevent a finding of a violation of the statute if the objective evidence gives rise to a fair inference of Union support.

We do not believe that the evidence presented in this case warrants an inference of misconduct by the Union. There is no indication that any Union meeting was held to authorize strike action, or that Union officials contacted members

prior to the refusal to report. No picket line was set up, and no additional demands were made by the Union at the time of the work stoppage. Some Union members did report for work on November 11, apparently without sanction or reprisal by the Union. While it is possible that the Union instigated the refusal to report after the unsuccessful bargaining session on November 10, 1976, it is at least as likely that the affected employees, aware of the lack of progress in the talks, conspired to refuse sanding work on their own, without approval.

The dismissal of SI-42 against Council 41 and Local 680 does not end our deliberation, however. Still outstanding is the Interim Order of the Commission in SI-21. It is now apparent that, although the provisions of that Order were initially complied with, (the refusal to perform services ceased, and the dispute was submitted to an Arbitrator), that Order has failed to resolve the underlying dispute, or remove the danger of a violation of the statute. The Order in SI-21 directed "every person who is included in the bargaining unit... [to] cease and desist from participating in or encouragin any strike, work stoppage, slowdown, or withholding of services including, but not limited to refusal to perform sanding operations and refusal to accept overtime assignments as may be required by the Department of Public Works of the Town of Arlington."[1] While the evidence introduced on November 15, 1976 will not support a finding against the Union, it is clearly sufficient to convince the Commission that certain employees are no longer complying with the terms of the Order in SI-21. We believe, therefore, that it is in the public interest to issue a Supplemental Order in an attempt to remove a threat of an interruption of public services.

In considering what order to issue we have carefully considered the recommendations of the parties. The Union has indicated a desire to have the Commission order arbitration of the dispute over compensation of drivers. The Town objects to arbitration but indicates that the participation of a mediator might be desirable. We conclude that, however desirable, an order to arbitrate running against the Town, is beyond the authority of the Commissionunder Section 9A(b). In Director of Division of Employee Relations of the Department of Administration and Finance v. Labor Relations Commission, 346 N.E.2d 852, 1976 Mass. ADV. Sheets 1045 (1976) the Supreme Judicial Court concluded that the Commission was without authority under Section 9A(b) to order an employer to arbitrate a dispute over the workload provisions of a collective bargaining contract. We believe that precedent applicable to this case. While such an order could be

[1]The Union asserts that our Decision in City of Beverly, SI-40, MUP-2599, MUPL-2093, 2099, 2101 (10/27/76) should be read as permitting the public works employees to refuse the work in dispute. We disagree. In the Beverly case the Collective Bargaining Agreement made all such overtime work voluntary. In this case, Article IV of the contract requires the employees to accept overtime relating to snow removal. Thus, the duties are required by a contract, and the refusal to perform services, in concert with others, would violate section 9A(a) of the Law. In addition, the Beverly case did not involve "emergency" overtime. We believe that a public employer has certain residual authority, in an emergency situation to protect the public interest by requiring the performance of services which would otherwise be voluntary.

issued under other provisions of the statute (e.g., section 8 or 11,) the Commission may not set such a requirement under the strike provision of the law.

As third party assistance seems desirable in this matter, mediation remains as the appropriate vehicle. The Union suggests that, in the event of an order to mediate, the Commission should order that, pending resolution, the "lumpers" return to the trucks. We have considered this suggestion, but deem it inappropriate. The award did not make the legitimacy of eliminating "lumpers" contingent of the obligation to bargain over the impact of the decision. To accept the Union request would grant a benefit not required by the contract.

Resolution of this issue should be prompt. Each day that passes increases the possibility of another snow emergency, and with it the danger of a further refusal to perform overtime. We caution the employees who might consider a further refusal that they subject themselves to loss of pay, and discipline or discharge if they persist in violation of the law. We further call the attention of the parties to the obligation of the Union to take affirmative action to disavow such job actions when they occur. Article IV of the contract provides:

> Should any employee or group of employees covered by this agreement engage in any strike, slowdown, work stoppage, or withholding of services, the Union shall forthwith disavow any such strike, work stoppage, slowdown, or withholding of services and shall refuse to recognize any picket line established in connection therewith. Furthermore, at the request of the Municipal Employer, the Union shall take all reasonable means to induce such employee or group of employees to terminate the strike, work stoppage, slowdown, or withholding of services and to return to work forthwith.

Upon the foregoing, and pursuant to Section 9A(b) of the Law, we hereby amend our Interim Order in Case No. SI-21, and issue the following Supplemental Order:

1. The parties, the Town of Arlington and Local 680, State Council 41, American Federation of State, County and Municipal Employees, AFL-CIO, select and appoint a mediator to assist in resolution of the issues over which Arbitrator Edward Pinkus has directed further bargaining. If the parties are unable to agree on a mediator within forth-eight (48) hours from the issuance of this Order, either party may so inform the Commission, which will appoint a mediator.

2. The parties shall expedite bargaining, meeting at least twice a week, unless the mediator deems such meeting unnecessary.

3. The mediator shall have the authority, if he deems it advisable, to compel the attendance of the principals to the negotiations, including the Town Manager, as well as the representatives of the parties.

4. The mediator shall report to the Commission weekly as to the progress of the negotiations.

5. Paragraphs one and two of the Interim Order of November 25, 1976 in SI-21 are continued in full force and effect.

6. The Commission retains jurisdiction over the dispute to issue such further requirements as may be appropriate to resolve this dispute.

SO ORDERED:

James S. Cooper, Chairman

Madeline H. Miceli, Commissioner

Garry J. Wooters, Commissioner