
BOSTON SCHOOL COMMITTEE AND BOSTON TEACHERS UNION, LOCAL 66, AFT, AFL-CIO, SI-156
(11/15/83). NOTICE TO PARTIES.

92.311 service
108.5 strikes--sufficiency of proof

Commissioners Participating:

Paul T. Edgar, Chairman
Gary D. Altman, Commissioner
Maria C. Walsh, Commissioner

Appearances:

Cheryl Pilgrim Clarke, Esq. and Michael J. Betcher, Esq.	- Representing the Boston School Committee
James T. Grady, Esq.	- Representing the Boston Teachers Union, Local 66, AFT, AFL-CIO

NOTICE TO PARTIES

On October 27, 1983, the Boston School Committee (School Committee) filed a petition with the Labor Relations Commission (Commission) for a Strike Investigation pursuant to Section 9A(b) of G.L. c.150E (the Law) alleging that the Boston Teachers Union, Local 66, AFT, AFL-CIO (Union),¹ by certain officers, had threatened to strike. The petition alleged, *inter alia*, that Edward J. Doherty, President of the Union, had publicly stated that the Executive Board of the Union had voted to recommend that the general membership of the Union should authorize a strike. The School Committee further alleged that on November 9, 1983, the Union's membership voted to place the question of whether a one-day strike should be held on December 15, 1983 on the agenda of the next general membership meeting scheduled for December 14, 1983.

An investigation was conducted on Friday, November 4, 1983, by an agent of the Commission. The School Committee appeared and argued that the Commission should issue an order restraining Union officers from further encouraging or inducing job action violative of Section 9A(a) of the Law. The Union appeared specially and moved to dismiss the petition, arguing that the School Committee had failed to prove that illegal action either was occurring, or was about to occur, and that the petition was procedurally defective. The investigation was adjourned pending a ruling on the Union's Motion. We grant the Union's Motion for the following reasons:

¹ Although the Petition refers to the "Boston Teachers Union, Local 66, American Federation of Teachers, AFL-CIO," the Commission will take administrative notice of the fact that the correct local number of the Union is "66."



Boston School Committee and Boston Teachers Union, 10 MLC 1289

DISCUSSION

Section 9A(a) of the Law prohibits public employees and employee organizations from engaging in, inducing, encouraging or condoning any strike, work stoppage, slowdown or withholding of services. A public employer may petition the Commission to investigate alleged violations of Sections 9A(a) "whenever a strike occurs or is about to occur." G.L. c.150E, Section 9A(b).

In a prior strike petition involving these same parties, we refused to issue a cease and desist order based upon facts similar to those of the present case. In Boston School Committee and B.T.U. Local 66, SI-140 (1981), we found that the President of the Union announced that the Executive Board had recommended to the membership that the membership should, on a future date, take a vote to strike. The meeting of the membership, at which the vote would be taken on the question of striking, was scheduled to be held in the near future. We concluded that the facts did not permit a finding that a job action violative of Section 9A either was occurring or was about to occur.

The facts presented in the instant petition do not warrant a different result. Thus, accepting the allegations of the Petition as true for the purpose of ruling on the Union's Motion to Dismiss,² the facts pleaded do not permit a finding that a strike is occurring or is about to occur. Rather, we have merely the speculation that the general membership, in a meeting scheduled to be held on December 14, 1983, may vote to strike on December 15, 1983. It is of course equally plausible that the general membership either will not vote on the question or will vote against any unlawful job action. Therefore, we conclude that it would not effectuate the policies of G.L. c.150E to issue a cease and desist order at this time.³

Moreover, we agree with the Union's argument that the School Committee's Petition is procedurally defective in two respects. First, the School Committee failed to serve a copy of the petition on an officer or legal representative of the Union. Section 16.03(2) of the Commission's Rules provides in part that:

"The employer shall serve a copy of the petition on an officer or representative of the employee organization or the public employees alleged to have violated or to be about to violate Section 9A(a) of the Law."

A copy of the petition was delivered to James Grady, Esq., counsel to the Union in

²The Union has neither admitted nor denied the allegations of the Petition.

³Our decision that an order would be inappropriate at this time is not to be construed as a finding that the Union has not engaged in activity which violates Section 9A(a) of the Law. Such decision reflects instead our determination that the extraordinary powers afforded the Commission under Section 9A(a) are not appropriately invoked under these circumstances.



Boston School Committee and Boston Teachers Union, 10 MLC 1289

the instant matter. There is, however, no evidence that Attorney Grady is authorized generally to accept service on behalf of the Union. To the contrary, at the investigation Attorney Grady asserted that he was not authorized to, and did not, accept service of the petition on behalf of the Union in the instant case. No other service was made upon the Union. Accordingly, we conclude that the School Committee has failed to comply with the requirements of Section 16.03(2).

Second, Section 16.04 of the Commission's Rules requires that:

"All petitions and requests filed under this chapter shall be in writing and shall contain a declaration by the person signing it, under the penalties of perjury, that its contents are true to the best of his or her knowledge or belief."

The petition filed by the School Committee is signed but lacks the requisite declaration of truth. Accordingly, we conclude that the School Committee failed to comply with the requirements of Section 16.04. For all the aforesaid reasons, we hereby dismiss the petition in SI-156.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman

GARY D. ALTMAN, Commissioner

MARIA C. WALSH, Commissioner

