
CITY OF LAWRENCE AND LAWRENCE INDEPENDENT MUNICIPAL EMPLOYEES, SI-169 (12/10/84).
INTERIM ORDER

- 108.2 withdrawal of services
- 108.22 sick out
- 108.4 setting requirements under Chapter 150E, Section 9

Commissioners participating:

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

Appearances:

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| Sally J. Calhoun, Esq. | - Counsel for the City of Lawrence |
| Anthony J. Randazzo, Jr., Esq. | - Counsel for the Lawrence Independent
Municipal Employees and certain
individuals |

INTERIM ORDER

On December 7, 1984, the City of Lawrence (City) filed a petition pursuant to General Laws Chapter 150E Section 9A(b) with the Labor Relations Commission (Commission). The petition alleged that a strike, work stoppage, slowdown or withholding of services and sick out was occurring among certain employees employed by the City and represented by the Lawrence Independent Municipal Employees (LIME) and that said conduct by the City's employees was being induced, encouraged and condoned by LIME and certain of its individual officers and members. Pursuant to notice, the Commission conducted an investigation on December 10, 1984. On the basis of the investigation, we make the following findings:¹

1. The City is a public employer within the meaning of Massachusetts General Law, Chapter 150E (the Law), Section 1.
2. LIME is a labor organization within the meaning of the Law and is the exclusive bargaining representative of certain public employees within the meaning of the Law.
3. The Following individuals are officers of LIME, holding the positions indicated: Daniel DiFruscio, President; Thomas Healy, Vice-President; Edward Curran, Treasurer; Bernard Lavoie, Recording Secretary; Alfred Norris, Vice President of Grievances.

¹ The parties do not contest the jurisdiction of the Commission to determine this matter.



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4. The City and LIME are parties to a collective bargaining agreement effective, by its own terms, from July 1, 1980 through June 30, 1983.
5. For the past several months the City and LIME have been involved in negotiations for a successor agreement.
6. On December 6, 1984, the City and LIME held a negotiation session. Attorney Alan Drachman represented the City for the first time at this session. During prior negotiations the City had been represented by Attorney George Arvanitis.
7. At the December 6, 1984 negotiation session, the City rejected a wage offer which LIME claims the City had previously made.
8. Also at the December 6, 1984 negotiation session, the City advised the Union that the City needed time to prepare counterproposals and suggested that the parties next meet on December 18, 1984.
9. In the evening of December 6, 1984, LIME held a membership meeting to inform the membership of the status of contract negotiations. At this meeting, LIME officers expressed their dissatisfaction with the City's bargaining position.
10. LIME Vice President Norris opined that members of LIME were disgusted with the reported position of the City concerning negotiations.
11. LIME officers claim to have informed the members, during the December 6, 1984 membership meeting, that they should not engage in a job action or sick-out.
12. On Friday, December 7, 1984, a large proportion of the bargaining unit called in sick and did not report to work. In the Engineering Department, which has two shifts on Fridays, twenty-one of twenty-six employees scheduled to work the 8 a.m. to 5 p.m. shift called in sick. The two employees scheduled to work the 5 p.m. to midnight shift reported to work.
13. On December 7, none of the forty-five bargaining unit members scheduled to work that day in the Health Department reported to work. All called in sick. Eight other employees, normally scheduled to work in that department, had prearranged absences, such as vacation or personal leave.
14. None of the employees scheduled to work on December 7 in the Departments of Public Properties and Parks reported to work. Thirty-four employees had been scheduled to work in those departments: all called in sick.
15. On Saturday December 8 and Sunday December 9, the complement of employees in departments that have weekend shifts returned to normal. Employees scheduled to work in the Engineering Department and the Department of Parks and Public Properties all reported to work.



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16. On Monday, December 10, two of the twenty-four employees scheduled to work in the Engineering Department reported to work. Twenty-two employees called in sick. In addition, two of the LIME officers who appeared at the investigation of this petition had been scheduled to work in the Engineering Department on December 10.
17. All forty-two of the scheduled employees of the Health Department called in sick on December 10. Eleven other employees had prearranged absences. All thirty-two scheduled employees of the Departments of Parks and Public Properties called in sick on December 10. Five other employees had prearranged absences.
18. President Daniel DiFruscio; Recording Secretary Bernard Lavoie; Vice President of Grievances Alfred Norris and Treasurer Edward Curran were among those who called in sick on Friday, December 7, 1984. The other LIME officer, Vice-President Thomas Healy, had previously arranged to take vacation leave on both December 7 and 10.
19. By comparison, the Engineering Department ordinarily has four or five employees per day who call in sick. The Department of Health normally has a seven to ten percent absentee rate per day. The Departments of Property and Parks usually have one or two employees call in sick per five day week.
20. On the morning of December 7, 1984, LIME President DiFruscio called Alderman Kevin Sullivan and told him that he was in a car accident on the evening of December 6. DiFruscio also commented that "we have to get rid of Drachman." DiFruscio told Alderman Sullivan that it was purely a coincidence that employees had called in sick that day.

CONCLUSION

It is apparent from the facts above that certain employees of the City have acted in concert to withhold their services from the City. It is also clear that this action, involving approximately ninety percent of the unit employees scheduled to report to work, was supported and condoned by LIME. At least two of the LIME officers were among those employees who failed to report to work without offering any justification for their absence.² The work stoppage started on cue, on the morning after a LIME membership meeting. The sick out occurred in the context of a collective bargaining dispute between the City and LIME over a successor collective bargaining agreement. In particular, the LIME officers were displeased with the new City negotiator who first appeared at the December 6 negotiation session. According to LIME, the new City representative told the LIME bargaining team that the wage

²LIME and its officers were served with the strike petition and Notice of the Commission's investigation. All of the LIME officers appeared at the investigation. Only one testified that he was sick and therefore did not report to work on December 7, 1984. The City offered no evidence to rebut Vice-President Norris's testimony that he was genuinely ill on December 7, and we therefore do not find that Norris
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proposals which the LIME membership had previously ratified were now being rejected by the City, and that a new wage proposal would be forthcoming.

It strains credulity to conclude that this work stoppage was not condoned by LIME in order to pressure the City in the ongoing negotiations. The failure to erect a picket line, and to formally endorse the strike, cannot shield LIME from liability under these circumstances.

WHEREFORE, on the basis of the facts set forth above, we conclude that LIME, and the employees whom it represents, are engaged in a strike, work stoppage, slowdown or withholding of services in violation of Section 9A(a) of G.L. c.150E. We further rule that LIME, by the conduct of officers Curran and Lavoie, has condoned the strike, work stoppage, slowdown or withholding of services described above in violation of Section 9A(a) of G.L. c.150E.

ORDER

Accordingly, by virtue of the power vested in the Commission by G.L. c.150E, Section 9A(b), we hereby order that:

1. The Lawrence Independent Municipal Employees and the employees whom it represents, shall immediately cease and desist from engaging in any strike, work stoppage, slowdown or withholding of services.
2. The Lawrence Independent Municipal Employees, its officers, agents and members shall immediately cease and desist from condoning any strike, work stoppage, slowdown or withholding of services. The Lawrence Independent Municipal Employees shall not permit its officers or agents to condone any strike, work stoppage, slowdown or withholding of services.
3. The Lawrence Independent Municipal Employees shall, before the start of the next regularly scheduled work shift, take steps necessary to inform its members, and the employees whom it represents, of the provisions of Section 9A(a) of G.L. c.150E and of the contents of this Interim Order.
4. The Lawrence Independent Municipal Employees and the City of Lawrence shall immediately engage in good faith collective bargaining.
5. The Lawrence Independent Municipal Employees and the City of Lawrence shall notify the Commission by 10:00 a.m. on December 14, 1984 of the steps taken to comply with this Interim Order.

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engaged in a strike. LIME President DiFruscio was in a car accident and did not report to work on December 7. Vice President Healy was on a scheduled vacation day, and therefore there is no evidence of his involvement in the strike. LIME officials Curran and Lavoie, however, did not testify. We therefore infer that both were engaged in unlawful strike activity and, as LIME officials, they condoned the strike.



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6. The Commission will retain jurisdiction of this matter to set such further requirements as may be appropriate.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman
GARY D. ALTMAN, Commissioner
MARIA C. WALSH, Commissioner

