

## MASSACHUSETTS LABOR CASES

CITE AS 12 MLC 1084

TOWN OF ABINGTON V. LOCAL 393, IBPO AND FRANCIS J. CURRAN, PRESIDENT, ET AL.,  
SI-178 (7/4/85; 7/9/85).

108. Strikes  
108.22 sick out  
108.4 setting requirements under Chapter 150E  
108.51 notice of investigation

### Commissioners participating:

Gary D. Altman, Commissioner  
Maria C. Walsh, Commissioner

### Appearances:

Paul J. Hodnett, Esq.	- Representing Local 393, International Brotherhood of Police Officers
Robert Canavan, Esq.	- Representing Town of Abington

### SUPPLEMENTAL INTERIM ORDER

On July 3, 1985, the Town of Abington (Town) filed a petition with the Labor Relations Commission (Commission) under G.L. c.150E, Section 9A(b) alleging that Local 393 of the International Brotherhood of Police Officers (the Union) and certain of its officers and the employees whom it represents were engaging in or about to engage in a strike, work stoppage, slowdown or withholding of services. The Commission scheduled an investigation into the allegations of the petition for 9 a.m. on Thursday, July 4, 1985. Notice of the scheduled date, time and place of the investigation, along with a copy of the petition was delivered to the Union, and to Francis J. Curran, Richard J. Carney III, Kevin M. Force and Richard L. Tower, its officers, and to the following employees: Kevin K. Smith, George H. Cook, Paul B. Connolly, Richard L. Franey, Nicholas Marzocca and Robert G. O'Keefe, Jr. Service was made in hand upon all named individuals except Tower, Cook, Marzocca and O'Keefe whose copies were left under their doors. None of the named individuals appeared at the investigation on July 4, 1985.

The Commission issued an Interim Order on July 4, 1985, a copy of which is attached hereto. By agreement of the parties the Commission recessed the investigation of individual culpability until Monday, July 9, 1985. Notice of the date, time and place of the continued investigation was delivered to the Union on July 4, 1985 and to the individually named employees on July 5, 1985.

Also on July 5, 1985, representatives of the Town and of the Union informed the Commission of the steps taken to comply with the terms of the Interim Order.<sup>1</sup> The Town and the Union confirmed that all employees had returned to work on July 4, 1985.

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<sup>1</sup> The Union had held a meeting of employees prior to 10 a.m. on July 5, 1985 to read the Interim Order to all employees.



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On July 8, 1985, the Commission reconvened the investigation. No individually named employees appeared at the investigation. Counsel for the Union argued that the July 3, 1985 service of notice of the July 4, 1985 investigation was inadequate because made by an employee of the law firm which represented the Town. Counsel for the Union also argued that the July 5, 1985 service of notice of the July 8, 1985 investigation was inadequate as to those employees for whom service was made by delivering notice to their last and usual place of abode,<sup>2</sup> including: Robert G. O'Keefe; Francis J. Curran; Paul B. Connolly; George H. Cook and Nicholas Marzocca. The Commission has carefully considered the method by which each named individual respondent was served with notices of the two investigation dates in this matter. We conclude that under the circumstances of this case each individual received adequate notice of the investigations. The Commission's Rules do not specify any particular method by which Petitions for Strike investigations must be served. 402 CMR 16.03. Nor do the Commission's Rules specify requirements for notice of the date, time or place of the Commission's strike investigations. The nature of a strike investigation dictates that time is of the essence but the Commission seeks to provide enough notice of the date, time and place of investigation to permit interested respondents to come and give information. In this case we conclude that each individual respondent had sufficient notice of the date, time and place of the investigation to either appear personally or to send a representative.

The failure of any individually named respondent to contact the Commission or to appear at the investigation for the purpose of giving information leads us to conclude that no individually named respondent had information to submit. Therefore we shall base our determination of individual culpability on the facts presented at the July 4, 1985 investigation. Our review of the facts leads us to conclude that each of the individually named respondents engaged in a concerted withholding of work services and therefore in a "strike" within the meaning of G.L. c.150E Section 1 when each called in "sick" to work on July 3 and July 4, 1985.<sup>3</sup>

The Union has argued that the Commission should not base its findings of a work stoppage upon circumstantial evidence. When public employees violate the law by refusing to work, they do not always announce their actions. Direct evidence often is unavailable in such cases. As a consequence the Commission may infer the existence of a strike from certain facts such as absenteeism of an abnormally high level (in this case 100% of the affected shifts was absent), similarity of employee excuses for absence (in this case all employees claimed illness), timing of absenteeism coincident to union meetings or expressed labor relations frustrations (in this case the Union meeting of July 1, 1985 preceded the strike). In the absence

<sup>2</sup>Service of the Interim Order and notice of the July 8, 1985 investigation was made in hand to the following: Richard L. Franey; Kevin M. Force; and Richard L. Tower. Service was made on Kevin K. Smith and Richard J. Carney by leaving the notice with the adult wife of each man.

<sup>3</sup>The exact shifts on which the individually named respondents called in sick are identified in the Interim Order.



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of direct, credible evidence to explain such absenteeism, we can, and do, conclude that the facts and the reasonable inferences to be drawn from them demonstrate the existence of a strike. See City of Lawrence, 11 MLC 1284, 1286-87 (1984).

Having concluded that certain named employees of the Town engaged in a strike we shall direct that the individually named respondents cease and desist from engaging further in such conduct. Because the provisions of the July 4, 1985 Interim Order have been complied with and because there is no evidence that the individually named respondents have continued their concerted withholding of services no further order is required at this time.

COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION

GARY D. ALTMAN, COMMISSIONER  
MARIA C. WALSH, COMMISSIONER

### INTERIM ORDER

July 4, 1985

#### Commissioners participating:

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

#### Appearances:

Joseph W. Monahan, III, Esquire - Representing Local 393, International  
Charles Hickey Brotherhood of Police Officers  
Robert Canavan, Esquire - Representing Town of Abington

### INTERIM ORDER

On July 3, 1985, the Town of Abington (Town) filed a petition with the Labor Relations Commission (Commission) under G.L. c.150E, Section 9A(b) alleging that the Local 393 of the International Brotherhood of Police Officers (the Union) and certain of its officers and the employees whom it represents are engaging in or about to engage in a strike, work stoppage, slowdown or withholding of services. Upon receipt of the Petition of July 3, 1985 the Commission issued a Notice to all parties scheduling an investigation of the Petition at 9 A.M. on July 4, 1985, at the offices of the Commission. On the basis of that investigation, we hereby make the following findings:



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1. The Town of Abington is a municipal corporation and is a public employer within the meaning of G.L. c.150E, Section 1.

2. The employees involved are public "employees" within the meaning of Mass. G.L. c.150E, Section 1.

3. The Union is an employee organization within the meaning of G.L. c.150E, Section 1 and is the exclusive representative of all full-time police officers employed by the Town excluding the Chief.

4. Officers of the Union are: Francis J. Curran, President; Richard J. Carney, III, Vice-President; Kevin M. Force, Secretary; Richard L. Tower, Treasurer.

5. The Town and the Union were Parites to an expired collective bargaining agreement which was effective until July 1, 1984.

6. The individual Respondents, including, Kevin K. Smith, George H. Cook, Richard L. Franey, Paul Connelly, Nicholas Marzocca, Richard J. Carney, III, Robert G. O'Keefe and Kevin M. Force are police officers in the Town of Abington.

7. Since approximately February 2, 1984, the Town and the Union have been engaged in collective bargaining negotiations, under the auspices of the Joint Labor Management Committee (JLMC) seeking a successor agreement to the agreement which expired June 30, 1984. By notice dated July 1, 1985 the J.L.M.C. referred the matter for Fact Finding.

8. On Monday, July 1, 1985, the membership of the Union conducted a membership meeting at which the membership became upset over the Town's refusal to consider a new contract proposal from the Union.

9. At approximately 12:00 noon on July 3, 1985, Patrolman George E. Cook went home from the Abington Police Station for lunch in a Department cruiser. He then telephoned the station and stated that he could not return to work as he was "dizzy."

10. At approximately 2:58 p.m., on July 3, 1985, Patrolman Paul B. Connelly telephoned the Police Station and stated that he was "sick to his stomach" and would not be able to work, as scheduled, on the 4:00 p.m. to midnight shift.

11. At approximately 2:58 p.m., on July 3, 1985 Patrolman Richard L. Franey telephoned the Police Station, reported himself sick, and indicated that he would not be able to work, as scheduled on the 4:00 p.m. to midnight shift that evening.

12. At approximately 3:02 p.m., on July 3, 1985, Patrolman Kevin K. Smith's wife called reporting Officer Smith to be suffering from the "flu" and that he would not be able to report for work at 4:00 p.m. as scheduled.



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13. At approximately 3:05 p.m., on July 3, 1985, Patrolman Kevin M. Force telephoned the Police Station and reported that he "had the bug" and would not be reporting for duty at 4:00 p.m. as scheduled.

14. Each of the following four (4) officers was scheduled to work the 4:00 p.m. to midnight shift and reported himself sick and unable to work. Paul B. Connolly, Richard L. Franey, Kevin K. Smith and Kevin M. Force.

15. The Following officers were scheduled to work the midnight to 8 a.m. shift on July 4, 1985: Nicholas Marzocca; Robert G. O'Keefe, Jr.; George H. Cook; and Richard J. Carney, III. At 10:05 p.m. on July 3, 1985 George H. Cook called the Police Department and reported that he was sick and unable to work. At 10:18 p.m. on July 3, 1985 Richard J. Carney, III called in sick to the Police Department. At 10:55 p.m. on July 3, 1985, Nicholas Marzocca called in sick to the Police Department. At 11:00 p.m. on July 3, 1985 and at 12:10 a.m. on July 4, 1985 Robert G. O'Keefe, Jr. called in sick to the Police Department. None of the above-named Officers appeared for work, as scheduled, on the midnight to 8 a.m. shift on July 4, 1985.

16. On July 4, 1985, all employees scheduled to work the 8 a.m. to 4 p.m. shift reported to work as scheduled.

17. At no time prior to the 4 p.m. to midnight shift on July 3, 1985, have all police officers scheduled to work been absent from work. The normal average number of absences on each of the three shifts is as follows: on the 4 p.m. to midnight shift -- 2 employees per week; on the midnight to 8 a.m. shift 3 employees per week; on the 8 a.m. to 4 p.m. shift 1 employee per week. There are between four and five officers regularly scheduled to work during the 4 p.m. to midnight and midnight to 8 a.m. shifts, while four uniformed officers are regularly scheduled to work the 8 a.m. to 4 p.m. shift.

18. Pursuant to his regular practice the Chief of Police tried to replace the absent officers by contacting officers on the overtime roster. The Chief was unable to secure any officers from the overtime roster either because the officers were unavailable to come to work or because no one answered the telephone. Pursuant to his regular practice the Chief also tried to reach members of the Auxiliary Police Force (who are not part of this bargaining unit) but was unable to secure any replacements for absent officers from members of the Auxiliary force.

19. There are a total of 22 employees in the Police Department, not including the Chief.

20. In October 1984 the Town and the Union reached a tentative agreement on a successor contract, subject to ratification. The membership of the Union rejected the proposed agreement. By letter of May 30, 1985, the Union proposed a new contract proposal to the Town. By letter dated June 21, 1985, the Town informed the Union that the Board of Selectmen had rejected the Union's proposal. Apparently on the July 1, 1985 membership meeting the membership discussed the Town's rejection of the Union's proposal.



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21. Fireworks in celebration of Independence Day were held in the Town during the evening of July 3, 1985, with approximately 8000 people in attendance. Police protection was provided by Massachusetts State Police with the assistance of the Chief of the Fire Department.

#### DISCUSSION

It is apparent from the above facts that there was a strike in progress on the 4 p.m. to midnight shift, Wednesday, July 3, 1985, and on the midnight to 8 a.m. shift, Thursday, July 4, 1985 among police officers employed by the Town of Abington and represented by the International Brotherhood of Police Officers, Local 393. The concerted withholding of services was conducted by 100% of the police officers assigned to provide coverage for those two shifts. Such absences are without precedent in the Police Department. The withholding of services occurred in the context of a collective bargaining dispute between the Town and the Union over a successor collective bargaining agreement. Specifically, following rejection by the Union membership of the tentative contract in October 1984, the parties had continued their negotiations. Recently, the Union had proposed a new contract and, by letter dated June 21, 1985, the Town had advised the Union that the Town rejected the new proposals. The Union's membership was extremely upset over the Town's refusal to consider the new contract proposals and, on Monday, July 1, 1985, a membership meeting of the Union was conducted. Accordingly, we find that the withholding of services from the two back-to-back shifts was a strike within the meaning of G.L. c.150E, Section 9A(a) by certain police officers of the Town of Abington.

We now turn to the question of whether the Union induced, encouraged or condoned the strike. We conclude that this strike was induced, encouraged or condoned by the International Brotherhood of Police Officers, Local 393. The job action involved 100% of the bargaining unit employees who were scheduled to work. Two of the absent police officers were also officers of Local 393: Union Vice-President Richard Carney, III, and Union Secretary Kevin M. Force. The job action occurred in the context of a collective bargaining dispute between the Town and the Union over a successor collective bargaining agreement. The unit membership was extremely upset over the Town's refusal to consider the Union's new proposal. A Union membership meeting was held following the Town's refusal, and immediately prior to the job action. We believe that the actions of the Union's officers, the timing of the membership meeting and the context of the dispute over the new proposal for a successor agreement support the conclusion that the Union induced, encouraged or condoned the unlawful withholding of services.

Finally, we have continued the investigation in this matter until 10:30 a.m. on Monday, July 8, 1985, for the purpose of considering the culpability of the individual named officers.

#### ORDER

The International Brotherhood of Police Officers, Local 393, its officers,



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members, and the employees whom it represents, shall immediately cease and desist from engaging in any strike, work stoppage, slowdown or other withholding of service.

WHEREFORE, pursuant to the power vested in the Commission by G.L. c.150E, Section 9A(b), we hereby issue the following order:

1. The International Brotherhood of Police Officers, Local 393, its Officers, members, and the employees whom it represents, shall immediately cease and desist from inducing, encouraging, or condoning any strike, work stoppage, slowdown or other withholding of services.
2. The International Brotherhood of Police Officers, Local 393, shall not permit its officers or agents to induce, encourage or condone any strike, work stoppage, slowdown, or other withholding of service.
3. The International Brotherhood of Police, Local 393 and its officers shall immediately take steps to inform its members and the employees whom it represents of the provisions of Section 9A(a) of G.L. c.150E and the contents of the Interim Order.
4. The International Brotherhood of Police Officers, Local 393, and the Town of Abington shall notify the Commission at 10:00 A.M. on Friday, July 5, 1985 of the steps taken to comply with this Interim Order.
5. The Commission will retain jurisdiction of this matter to set any further requirements that may be appropriate.
6. The investigation is continued until 10:30 a.m. on Monday, July 8, 1985, at the offices of the Labor Relations Commission, Room 1604, 100 Cambridge Street (the Saltonstall Building), Boston, MA. 02202. At that time, the individual police officers named as Respondents herein shall have the opportunity to appear at the investigation if they wish to present sworn testimony pertinent to the investigation.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION

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

