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TEWKSBURY SCHOOL COMMITTEE AND TEWKSBURY TEACHERS ASSOCIATION, SI-180 (11/1/85).

108. Strikes  
108.51 notice of investigation  
108.7 lockout

## Commissioners participating:

Paul T. Edgar, Chairman  
Maria C. Walsh, Commissioner

## Appearances:

Peter B. Finn, Esq.	-- Representing the Tewksbury School Committee
Sandra Quinn, Esq.	-- Representing the Tewksbury Teachers Association
Lee Weissinger, Esq.	-- Representing the Massachusetts Teachers Association

INTERIM DIRECTIVE TO THE PARTIES

On October 31, 1985, the Tewksbury School Committee (herein School Committee) filed a petition with the Labor Relations Commission (Commission) pursuant to G.L. c.150E, Section 9A. The Petition alleges that the Tewksbury Teachers Association (herein the TTA), the Massachusetts Teachers Association (herein MTA), and certain named individuals, both individually and as officers of the TTA, including Richard Mousseau, President of the TTA, Ann Read, First Vice-President of the TTA, Elizabeth Kyle, Second Vice-President of the TTA, Mary Ann Primerano, Treasurer of the TTA, and Carol Rodgers, Secretary of the TTA are engaged in conduct that violates G.L. c.150E, Section 9A.

On October 31, 1985, beginning at approximately 5:00 p.m., the Commission conducted an investigation of the School Committee's allegations. The School Committee appeared and presented witnesses and evidence. Counsel for the TTA and for the MTA appeared and argued that they were "appearing specially" for the sole purpose of contesting the sufficiency of the service and notice of the School Committee's Petition and the Commission's Notice of the Strike Investigation. The investigation continued until approximately 11:30 p.m. No other parties introduced evidence or presented witnesses. Both the TTA and the MTA argue that they received inadequate notice of the investigation and that, as a result, the Petition is defective as to them. We have carefully considered the arguments raised by the unions. Strike investigations, by their nature, require expeditious handling by the Commission. As a result, the desire for lengthy notice to the respondents must be balanced against the public interest in prompt resolution of the alleged unlawful strike. We conclude that the evidence is sufficient to permit us to conclude that both the TTA and the MTA, by their presence at the investigation, had notice of the date, time and place of the investigation. Both unions were present during the School Committee's presentation and have had full notice of the School Committee's allegations. Therefore, we



overrule the unions' objections to our consideration of the Petition. We will, however, continue the investigation at 2:00 p.m. on Friday, November 1, 1985, in order to permit the unions the opportunity to present any relevant evidence concerning the alleged strike.

Because we shall permit the unions the opportunity to present evidence and witnesses at 2:00 p.m. on Friday, November 1, 1985, we do not make factual findings concerning the conduct of either the TTA or the MTA. Instead, however, we find that the evidence submitted by the School Committee gives us probable cause to believe the following allegations:

The TTA, affiliated with the MTA, and the School Committee are parties to a collective bargaining agreement that expired in August 31, 1985. The parties have been in negotiations since November, 1984, for a successor agreement. The negotiations have been unsuccessful and the parties are currently bargaining with the assistance of a mediator. An emergency TTA meeting was held on Thursday, October 24, 1985. A bargaining mediation session commenced at 7:30 p.m. on Wednesday, October 30, 1985, and continued until 5:30 a.m. on Thursday, October 31, 1985. No agreement was reached between the parties as a result of the bargaining mediation session.

On the morning of October 31, 1985, at approximately 7:30 a.m., TTA President Richard Mousseau was identified as having announced in interviews with two local radio stations, that the Tewksbury teachers were "on strike." The TTA, affiliated with the MTA, (herein referred to collectively as the Union) represents a bargaining unit that consists of 273 classroom and special needs teachers in one high school, one junior high school and four elementary schools. Of the 273 teachers in the bargaining unit, only ten (10) reported to their classrooms to teach on October 31, 1985. Of the remaining 263 teachers, two (2) were on approved extended leaves of absence. Historically, the average number of bargaining unit teachers who take sick leave daily is approximately ten (10). On October 31, 1985, therefore, it appears that approximately 251 teachers were absent from work without authorization.

During the day of October 31, 1985, groups of teachers were observed picketing in front of the high school, the North Street elementary school, the Dewing elementary school, and in the vicinity of North and Main Streets in the town center of Tewksbury during regular school hours. The picketing teachers were observed carrying signs, some of which stated, "Teachers On Strike." Also observed among the picketing teachers were certain officers of the TTA, and a representative of the MTA was observed standing in the vicinity of a group of picketing teachers.

Based upon the evidence submitted by the School Committee in support of its allegations, we find probable cause to believe that a strike has occurred in the Tewksbury public schools on October 31, 1985, in violation of G.L. c.150E, Section 9A(a). The Commission therefore denies the TTA Motion for a Directed Finding and the MTA Motion to Dismiss without prejudice to the right of each union to renew such motion upon the conclusion of the investigation scheduled to continue at 2:00 p.m., Friday, November 1, 1985.<sup>1</sup>

<sup>1</sup>The School Committee has withdrawn the Petition insofar as it names certain individuals in their individual capacity.



The Commission further directs that the Union take reasonable steps to inform its members, and the employees whom it represents, of the provisions of G.L. c.150E, Section 9A(a) and also to inform its members, and the employees whom it represents, that the Union does not condone any strike or other unlawful withholding of services in violation of the provisions of G.L. c.150E, Section 9A(a).

The Commission further directs that the investigation of the Petition in this matter shall continue at the offices of the Commission at 2:00 p.m., Friday, November 1, 1985.

COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman  
MARIA C. WALSH, Commissioner

INTERIM ORDER

On October 31, 1985, the Tewksbury School Committee (herein School Committee) filed a petition with the Labor Relations Commission (Commission) pursuant to G.L. c.150E, Section 9A. The Petition alleged that the Tewksbury Teachers Association (herein the TTA), the Massachusetts Teachers Association (herein MTA), and certain named individuals, both individually and as officers of the TTA, including Richard Mousseau, President of the TTA, Ann Read, First Vice-President of the TTA, Elizabeth Kyle, Second Vice-President of the TTA, Mary Ann Primerano, Treasurer of the TTA, and Carol Rodgers, Secretary of the TTA<sup>1</sup> engaged in conduct that violates G.L. c.150E, Section 9A.

The Commission scheduled an investigation to commence at 5:00 p.m. on October 31, 1985 and issued a Notice of Investigation. The School Committee undertook to serve the Notice of Investigation upon the parties.

On October 31, 1985, beginning at approximately 5:00 p.m., the Commission conducted an investigation of the School Committee's allegations. The School Committee appeared and presented witnesses and evidence. Counsel for the TTA and for the MTA appeared and argued that they were "appearing specially" for the sole purpose of contesting the sufficiency of the service and notice of the School Committee's Petition and the Commission's Notice of the Strike Investigation. The investigation continued until approximately 11:30 p.m. No other parties introduced evidence or presented witnesses. Both the TTA and the MTA argued that they had received inadequate notice of the investigation and that, as a result, the Petition is defective as to them. We have carefully considered the arguments raised by the unions. Strike investigations, by their nature, require expeditious handling by the Commission. As a result, the

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<sup>1</sup> The School Committee has withdrawn the Petition insofar as it names the TTA officers in their individual capacities.



desire for lengthy notice to the respondents must be balanced against the public interest in prompt resolution of the alleged unlawful strike. We conclude that both the TTA and the MTA, by their presence at the investigation, had notice of the date, time and place of the investigation. Both unions were present during the School Committee's presentation and have had full notice of the School Committee's allegations.<sup>2</sup> In addition, to permit both the TTA and the MTA ample opportunity to prepare and present evidence concerning the allegations, the Commission continued the investigation to 2:00 p.m. on Friday, November 1, 1985.<sup>3</sup> At approximately 1:45 p.m. on November 1, 1985, counsel for the TTA telephoned the Commission and, on behalf of the MTA and the School Committee, represented that no party wished to present further evidence. Accordingly, upon consideration of all the evidence presented the Commission makes the following findings.

#### Findings

1. The petitioners Dr. Carol Wareing, Louis Carciofi, James E. Sullivan, Thomas Cooke and Mary Hallisey are all duly elected members of the School Committee of the Town of Tewksbury (hereafter "School Committee"). The office of the School Committee is located in the Loella F. Dewing School, 1469 Andover Street, Tewksbury, Massachusetts 01876, telephone no. 851-7347. The School Committee is represented by Peter B. Finn, Esquire, of Rubin and Rudman, Suite 800, Three Center Plaza, Boston, Massachusetts 02108.
2. The School Committee is empowered under G.L. c.71, Section 37 with the general charge of all the public schools in the Town of Tewksbury, and its employees.
3. The Tewksbury Teachers Association (the "TTA"), affiliated with the Massachusetts Teachers Association (the "MTA"), is a voluntary, unincorporated association and a labor organization which represents approximately 273 teachers employed by the School Committee at the Town's public schools. The TTA has a usual place of business at Room 800E, 853 Main Street, Tewksbury, Massachusetts 01876. The TTA is represented by Sandra C. Quinn, Esquire, 20 Ashburton Place, Boston, Massachusetts 02108. The MTA has a usual place of business at 20 Ashburton Place, Boston, Massachusetts 02108. The MTA is represented by Susan Lee Weissinger, Esquire, 20 Ashburton Place, Boston, Massachusetts 02108.

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<sup>2</sup>The School Committee submitted affidavits of service prepared by a messenger to establish the time when a copy of the School Committee's Petition and the Commission's Notice of Investigation were served. According to such affidavits the messenger delivered a copy of the Petition and Notice to the TTA's usual place of business at 1:55 p.m. and to the MTA's usual place of business at 3:15 p.m. No evidence was introduced to refute the assertions contained in the affidavits.

<sup>3</sup>At approximately 1:15 a.m. on November 1, 1985, the Commission issued an Interim Directive to the Parties denying a Motion by the TTA for a Directed Finding and denying a Motion to Dismiss filed by the MTA. The Interim Directive also notified the parties of the date, time and place of the continued investigation.



4. The TTA, affiliated with the MTA, is an employee organization within the meaning of G.L. c.150E, Section 1.
5. Richard Mousseau is a member and the President of the TTA. He is a teacher employed by the School Committee.
6. Ann Read is a member and the First Vice-President of the TTA. She is a teacher employed by the School Committee.
7. Elizabeth Kyle is a member and the Second Vice-President of the TTA. She is a teacher employed by the School Committee.
8. Mary Ann Primerano is a member and the Treasurer of the TTA. She is a teacher employed by the School Committee.
9. Carol Rodgers is a member and the Secretary of the TTA. She is a teacher employed by the School Committee.
10. John R. Manheim is a staff representative of the MTA and is the principal spokesperson on behalf of the TTA at the contract negotiations for a successor collective bargaining agreement.
11. The TTA, affiliated with the MTA, and the School Committee are parties to a collective bargaining agreement that expired on August 31, 1985. The parties have been in negotiations for a successor agreement since November, 1984. The negotiations have been unsuccessful, and the parties are currently bargaining with the assistance of a mediator.
12. On October 21, 1985, the TTA announced an "emergency union meeting" to be held at St. Williams Hall, Main Street, Tewksbury, MA. The printed announcement stated that "[t]he Crisis Committee will report on the status of the contract. The decisions made at this meeting will determine our future course."
13. On October 22, 1985, the "emergency union meeting" referred to in paragraph 12 was postponed until October 24, 1985.
14. On October 24, 1985, Acting Tewksbury School Superintendent Edward Farley was informed by TTA President Richard Mousseau that the TTA membership present at the meeting referred to in paragraph 13 voted 1) to "work-to-rule" commencing October 25, 1985 and 2) to take other undisclosed action.
15. A bargaining mediation session commenced at 7:30 p.m. on Wednesday, October 30, 1985 had continued until 5:30 a.m. on Thursday, October 31, 1985. No agreement was reached between the parties as a result of the bargaining mediation session.



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16. At a proximately 7:30 a.m. on October 31, 1985,<sup>4</sup> TTA President Mousseau was identified as having announced in interviews with radio stations WLLH and WCAP that "the Tewksbury teachers were on strike."
17. Between approximately 7:15 a.m. and 7:40 a.m., Acting Superintendent Farley made announcements over radio stations WLLH and WCAP that all Tewksbury teachers were to report to their classrooms for a full day of work. The school buildings remained open during the day.
18. The School Committee operates six schools in the Town of Tewksbury: one high school, one junior high school and four elementary schools. Of the 273 classroom and special needs teachers in the bargaining unit, only ten (10) reported to their classrooms to teach on October 31, 1985. Of the remaining 263 teachers, two (2) were on approved extended leaves of absence. Historically, sick leave on a given day is approximately ten (10). On October 31, 1985, therefore, it appears that approximately 251 teachers out of 273 were absent from work without authorization.
19. At the Dewing Elementary School, teachers are required to report to work by 8:30 a.m. From approximately 8:30 a.m. to approximately 9:30 a.m., approximately twenty-five teachers were observed picketing at the entrances to the driveway in front of the building. Certain of the picketing teachers were carrying signs, some of which stated, "Teachers On Strike." Among the picketing teachers were TTA First Vice-President Ann Read and TTA Treasurer Mary Ann Primerano.
20. At the North Street Elementary School, teachers are required to report to work by 8:30 a.m. At approximately 8:15 a.m., a group of approximately fifteen (15) teachers was observed picketing at the driveway in front of the building. Certain of the picketing teachers were carrying signs, some of which read, "Teachers On Strike."
21. At the Tewksbury High School, approximately thirty (30) teachers were observed picketing and carrying signs at the end of the driveway in front of the building between 7:10 a.m. and 7:50 a.m.
22. Between approximately 1:30 p.m. and 1:45 p.m., approximately seventy-five teachers were observed picketing in the vicinity of North Street and Main Street in the Tewksbury town center. Some of the picketing teachers were carrying signs, some of which stated, "Teachers on Strike." Among the picketing teachers was TTA First Vice-President Ann Read. MTA representative Manheim was observed standing in the vicinity of the picketing teachers, but was not engaged in picketing activity.

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<sup>4</sup>Unless otherwise specified, all events hereafter described occurred on October 31, 1985.



DISCUSSION

It is apparent from the facts recited above that teachers represented by the TTA, affiliated with the MTA, engaged in a strike on Thursday, October 31, 1985. The concerted withholding of services by nearly 100% of the teachers regularly scheduled to work occurred in the context of a collective bargaining dispute between the School Committee and the Union over a successor collective bargaining agreement. Moreover, teachers were observed picketing in front of the schools during school hours with placards that read "Teachers On Strike."

At the investigation, the TTA contended that the teachers were not on strike, but had instead been "locked out" of the school building on the morning of October 31, 1985. The facts clearly refute this contention. Between approximately 7:15 a.m. and 7:40 a.m. on October 31, 1985, Acting Superintendent Farley announced over local radio stations WLLH and WCAP that all Tewksbury teachers were to report to their classrooms for a full day of work. Nonetheless, at approximately 7:30 a.m., TTA President Mousseau announced, during interviews with radio stations WLLH and WCAP that "the Tewksbury teachers were on strike." Thereafter, although the school building remained open, the teachers did not report to their classrooms. Accordingly, we find no evidence to support the TTA's contention that teachers were "locked out."

Evidence concerning the involvement of the MTA in this strike is too insufficient to warrant a conclusion that the MTA induced, encouraged or condoned the strike. The School Committee offered evidence that a representative of the MTA, John Manheim, was observed briefly standing near a group of picketing teachers. Later the teachers ceased their picketing. There is no evidence of what, if anything, Manheim said to the teachers; nor is there evidence that Manheim carried a picket sign or engaged in other activity demonstrating support or condonation of the teachers. Accordingly, we grant the MTA's Motion to Dismiss the Petition as to the MTA.

The TTA filed a Motion for Directed Finding asking the Commission to dismiss the Petition as to the TTA for insufficient evidence. Our review of the evidence submitted at the investigation compels our conclusion that the TTA, by the actions of certain of its officers, did encourage, condone and induce the strike. Specifically, First Vice-President Ann Read and Treasurer Mary Ann Primerano were observed as they picketed outside the Dewing Elementary School during school hours. First Vice-President Ann Read was also observed picketing in the vicinity of North Street and Main Street in Tewksbury town center during school hours in the early afternoon. In addition, the job action involved nearly 100% of the unit employees who were scheduled to report to work. The strike began Thursday morning and picket lines were established. The job action occurred in the context of a collective bargaining dispute between the School Committee and the Union over a successor collective bargaining agreement. Accordingly, the TTA's Motion for Directed Finding is denied.

WHEREFORE, on the basis of the facts set forth above, we conclude that the Tewksbury Teachers Association, and the employees whom it represents, have engaged in a strike, work stoppage, slowdown or withholding of services in violation of Section 9A(a) of G.L. c.150E. We further find that the Tewksbury Teachers Association,



by the conduct of its officers, has induced, encouraged and condoned the unlawful withholding of services.

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

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

2. The TTA, its officers, agents and members, shall immediately cease and desist from encouraging, condoning or inducing any strike, work stoppage, slowdown or other withholding of services. The TTA shall not permit its officers or agents to encourage, condone or induce any strike, work stoppage, slowdown, or other withholding of services.

3. The TTA shall take necessary action before the start of the next regularly scheduled school day to inform its members of the provisions of Section 9A(a) of the Law and the contents of this Interim Order.

4. The full School Committee and bargaining representatives of the TTA shall meet for such further around-the-clock mediation sessions as may be directed by the Board of Conciliation and Arbitration.

5. The TTA and the School Committee shall notify the Commission by 9:00 a.m. on November 4, 1985 of the steps taken to comply with this Interim Order.

6. Representatives of the School Committee and of the TTA shall appear at the Commission at 1:30 p.m. on Tuesday November 5, 1985 at which time the Commission will conduct an investigation of charge number MUP-6098 Tewksbury School Committee.<sup>5</sup>

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

COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman  
MARIA C. WALSH, Commissioner

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<sup>5</sup>On November 1, 1985, the TTA filed a Motion to schedule a hearing on MUP-6098 immediately. By separate letter of the same date, the School Committee moved for a hearing in the case to be heard on November 25, 1985. Through their Motions both the TTA and the School Committee asked the Commission to waive the investigation of the charge and the determination of probable cause. The Commission has concluded that an investigation should be conducted in this case as soon as possible. Following the investigation the Commission will determine whether there exists probable cause to believe that G.L. c.150E has been violated.

