

MASSACHUSETTS LABOR CASES

CITE AS 12 MLC 1675

QUINCY SCHOOL COMMITTEE AND QUINCY PARAPROFESSIONAL ASSOCIATION, H.L.P.E. AND
H.L.P.E., ET AL., SI-184 (3/31/86).

108.22 sick out

10814 setting requirements under Chapter 150E, Section 9

Commissioners participating:

Paul T. Edgar, Chairman
Maria C. Walsh, Commissioner
Elizabeth K. Boyer, Commissioner

Appearances:

Edward F. Lenox

- Representing the Quincy School Committee

INTERIM ORDER

The Quincy School Committee (School Committee) filed a petition for a strike investigation pursuant to Section 9A(b) of G.L. c.150E (the Law) with the Labor Relations Commission (Commission) on March 28, 1986. In sum, the petition alleged that the Quincy Paraprofessional Association, Hospital, Library, and Public Employees Union (Association), certain of its officers, and its individual members were engaged in, or had induced, encouraged or condoned, a "sick-out" in the Quincy Public Schools on March 26 and 27, 1986, in violation of Section 9A(a) of the Law.

The Commission held an investigation at its offices on March 31, 1986, at 10:00 a.m. The School Committee had served copies of the petition and of the Commission's notice of the date, time and place of the investigation upon respondents Amy D'Olimpio (D'Olimpio) and Mary Beth Phillips (Pnillips) in hand on March 28, 1986. The School Committee had also served those papers upon respondent John Keefe (Keefe), Executive Director of the Hospital, Library and Public Employees Union (H.L.P.E.) on March 29, 1986 by leaving them at his last and usual place of abode.

No representative of or witness for any of the respondents appeared at the March 31, 1986 investigation. At 10:00 a.m. on March 31, a secretary from Keefe's office called the Commission and reported that Keefe was attending his mother's funeral and would not attend the investigation. Shortly thereafter, counsel for the School Committee verified, by calling the Quincy schools, that D'Olimpio and Phillips had reported to work that day. None of the respondents contacted the Commission to present information. We therefore base our conclusion on the School Committee's presentation.

The Association represents a bargaining unit consisting of 90 "paraprofessional" employees of the School Committee. One-third of these are Chapter 1 teachers' aides. Another third are Special Needs teachers' aides. The remaining third are so-called "regular" aides who perform various clerical and support functions. All bargaining unit members work part-time, and average 25 hours per week. Approximately 80 bargaining unit members work a five-day week; approximately 10 work fewer days per week.



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There are 17 public schools in Quincy. Bargaining unit members work in all of them, although some schools have more aides than others.

The parties' most recent collective bargaining agreement expired on August 31, 1984. They have not yet executed a successor. The parties began bargaining for a successor agreement in August, 1984. After seven bargaining sessions, the parties petitioned the Board of Conciliation and Arbitration (Board) to appoint a mediator. Their first mediation session occurred on April 11, 1985, and there were seven more thereafter. The Association's bargaining team has consisted of Keefe, D'Olimpio, who is president of the Association; and Phillips, a member of the bargaining unit.

The parties eventually petitioned the Board to initiate fact-finding proceedings, and on January 7, 1986 fact-finder Lawrence Katz conducted a one-day hearing. The fact-finder issued his report on March 13, 1986. Another mediation session is scheduled for April 1, 1986. The major issue dividing the parties at this point is the aides' salaries.

On Tuesday, March 25, Superintendent of Schools John Osterman was leaving his office at around 4:00 p.m. when he encountered Keefe in the hallway. Keefe told Osterman that he was about to meet with members of the Association. Osterman then observed a number of members of the Association, including Phillips, milling around the nearby School Committee room. The Association commonly holds membership meetings in the School Committee room. On the basis of this evidence we conclude that the Association held a meeting on the evening of Tuesday, March 25.

On Wednesday, March 26, 62 bargaining unit members called in sick and did not report to work that day. Two of these had previously excused absences. At around 11:00 a.m. on March 26, eight more bargaining unit members at North Quincy High School left work for the remainder of the day, reporting that they were sick. On Thursday, March 27, 78 bargaining unit members called in sick.¹ These included the same two aides with previously excused absences. Both D'Olimpio and Phillips called in sick on both March 26 and March 27.² Before March 26 and 27, the average number of bargaining unit members absent each day was three percent of the unit. The absentee rates of March 26 and 27 were unprecedented, according to Director of Personnel Carmen Mariano, who had been keeping attendance figures for seven years. Mariano could recall no more than 20 aides ever being absent on a single day.

On the morning of March 26, 1986, Wilfred Nolan, Director of Elementary and Middle Schools, heard on radio station WJDA a speaker, whom the radio commentator identified as John Keefe, utter certain statements. Nolan himself was able to identify the speaker as Keefe because he had heard Keefe speak at School Committee meetings over a ten-year period, and he was familiar with Keefe's voice. At the

¹ Friday, March 28, was Good Friday, a school holiday.

² Neither D'Olimpio nor Phillips was one of the aides whose absence on March 26 and 27 had been previously excused.



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investigation, the School Committee submitted a tape cassette, containing only Keefe's voice issuing a series of three discrete statements, separated by pauses in the tape. There is no commentator's voice. Nolan identified the voice on the cassette as Keefe's, and the statements as those he had heard on the radio. The statements, as they appear on the cassette, are as follows:

I understand the teacher aides are out sick today...some kind of a spontaneous illness arising out of their problem with the School Committee. 1984 contract calls for an upgrading of the teacher aides, who are the lowest paid in the area by some \$2.00 an hour, and the School Committee has done nothing about that upgrading since 1984. The fact that the School Committee is now looking to double their own salary and then the Mayor is looking for a \$10,000 increase, I suppose prompted this spontaneous illness that has come upon the teacher aides who are out sick today.

There have been no negotiations with the teacher aide group. A factfinder's report came in recently recommending some upgrading. We have contacted the school administration asking for an immediate meeting which is supposed to happen within 10 days under the factfinding rules. The School Committee member Mrs. Nigro has made herself available, but we have been unable to get the administration to set up a meeting promptly to settle this dispute. April 1st is the first time that they are making themselves available.

The Quincy teacher aides today, through the H.L.P.E. union, have filed a prohibited practice charge at the Massachusetts Labor Relations Commission and it's based on the fact that the factfinder's report came in on February 14 and the parties are required to meet within a 10-day period and settle the contract and the School Committee negotiators have refused to meet and so we have filed that prohibited practice charge at the Labor Relations Commission. The School Committee has indicated that they will not be available to meet until next April 1st.

The School Committee procured the tape from radio station WJDA, which is a local Quincy station.

Discussion

It is apparent to us from the above facts that there was a strike in progress on Wednesday, March 26, 1986 and Thursday, March 27, 1986 among paraprofessionals (Chapter 1 aides, Special Needs aides and "regular" teacher aides) employed by the Quincy School Committee and represented by the Quincy Paraprofessional Association, Hospital, Library and Public Employees Union. The concerted withholding of services was conducted by 69% of the bargaining unit, increasing to 78% by the end of the school day on March 26; and by 87% of the bargaining unit on March 27. Such



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absences are unprecedented in the bargaining unit, which has a normal daily average sick leave rate of only 3%. No other reason was given to explain these excessive absences, although two individually named employees were given the opportunity to do so.³

We find that this withholding of services occurred in the context of ongoing collective bargaining negotiations between the School Committee and the Association. Specifically, the parties had been unable to reach agreement over the terms of a successor collective bargaining agreement and had been negotiating under the auspices of a state mediator since April, 1985. On March 13, 1986, a factfinder issued his report and recommendations to the parties. However, the parties were not scheduled to recommence negotiations with the assistance of the mediator until Tuesday, April 1, 1986. On Tuesday, March 25, 1986, a meeting of the bargaining unit membership was held.

Thus, the investigation revealed an unprecedented absence by almost all of the bargaining unit occurring in the context of prolonged collective bargaining negotiations and immediately following a union meeting. Accordingly, we find that the withholding of services by certain paraprofessionals was a strike within the meaning of G.L. c.150E, Section 9A(a).

We now turn to the issue of whether the Quincy Paraprofessional Association or the Hospital, Library and Public Employees Union induced, encouraged or condoned the strike. We conclude that the evidence is insufficient to find that the strike was supported or condoned by either the Association or the H.L.P.E. The only evidence linking the Association to the job action was the presence of Mary Beth Phillips at the union membership meeting on March 25. There was no evidence that she induced, encouraged or condoned the unlawful withholding of services in her capacity as bargaining team member. Neither her presence at the meeting, nor her subsequent unexcused absences on March 26 and 27 are sufficient to show Association involvement in the strike. The evidence is even less persuasive in the case of Association president D'Olimpio, who was shown only to be absent without excuse on March 26 and 27.

With respect to H.L.P.E. president and executive director Keefe, the School Committee's evidence suggests the theory that his presence at the membership meeting on March 25, combined with statements broadcast over radio station WJDA, can fairly be said to show that H.L.P.E. induced, encouraged or condoned the unlawful

³As noted *supra*, the Commission's Notice to Parties was served in hand to D'Olimpio and Phillips on March 28, 1986. The Notice stated that the Commission would be conducting an investigation on Monday, March 31, 1986 at 10:00 a.m. at the offices of the Commission with respect to the employer's strike petition. The Notice further indicated that "[t]he respondents may contact the Commission and appear at the investigation should they wish to present information pertinent to the investigation." No respondent either contacted the Commission or appeared at the investigation.



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withholding of services. We disagree. There was no evidence of any statements made by Keefe at the membership meeting which could be said to encourage the strike. Nor were Keefe's radio broadcast remarks sufficient for us to find H.L.P.E. inducement, encouragement or condonation of the strike. We do not know the context of Keefe's remarks. Nor do we know that the tape and transcript submitted at the investigation accurately reflect the entirety of Keefe's remarks made during the broadcast. Assuming that the submitted tape is complete, however, we still do not find the remarks to be unlawful H.L.P.E. support for the strike. Keefe only speculates as to the reasons for what he "understands" to be a "spontaneous illness." He makes no statement that can be said to encourage the strike.

Finally, we turn to the question of the involvement of D'Olimpio and Phillips in their capacities as individual bargaining unit members, as they were named in the School Committee's petition. D'Olimpio and Phillips were absent without excuse or authorization on March 26 and 27, and hence were among those bargaining unit members who, we have concluded, engaged in a strike on March 26 and 27, 1986. Thus, D'Olimpio and Phillips, in their individual capacities, violated G.L. c.150E, Section 9A(a).⁴

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

1. The members of the bargaining unit represented by the Quincy Paraprofessional Association, H.L.P.E., shall cease and desist from engaging in any strike, work stoppage, slowdown, or other withholding of services.
2. Amy D'Olimpio, as an individual member of the bargaining unit represented by the Quincy Paraprofessional Association, H.L.P.E., shall cease and desist from engaging in any strike, work stoppage, slowdown, or other withholding of services.
3. Mary Beth Phillips, as an individual member of the bargaining unit represented by the Quincy Paraprofessional Association, H.L.P.E., shall cease and desist from engaging in any strike, work stoppage, slowdown, or other withholding of services.
4. The School Committee shall be responsible for notifying all members of the Association of the contents of this Interim Order and shall further report to the Commission at 10:00 a.m., April 1, 1986 on the status of this matter.

⁴The School Committee did not serve any other individual member of the bargaining unit with the petition or the Commission's notice.



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5. The bargaining representatives of the Association and of the School Committee shall meet at such further mediation sessions as may be directed by the Board of Conciliation and Arbitration.
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
MARIA C. WALSH, Commissioner
ELIZABETH K. BOYER, Commissioner

