

NORTHEAST METROPOLITAN REGIONAL VOCATIONAL SCHOOL COMMITTEE AND NORTHEAST TEACHERS ASSOCIATION AND MASSACHUSETTS TEACHERS ASSOCIATION AND JOHN MAHER, ET AL., SI-190 (10/17/86). INTERIM ORDER.

91.13 mootness
92.47 motion to dismiss
108. Strikes
108.22 sick-out
108.4 setting requirements under Chapter 150E, Section 9

Commissioners participating:

Maria C. Walsh, Commissioner
Elizabeth K. Boyer, Commissioner

Appearances:

Howard Greenspan, Esq.	- Representing the Northeast Metropolitan Regional Vocational School Committee
Americo Salini, Esq.	- Representing the Northeast Teachers Association and the named officers of the Northeast Teachers Association
Eileen Cenci, Esq.	- Representing the Massachusetts Teachers Association

INTERIM ORDER

On October 3, 1986, the Northeast Metropolitan Regional Vocational School Committee (School Committee) filed a petition with the Labor Relations Commission (Commission) under G.L. c.150E, Section 9A(b), alleging that the Northeast Teachers Association (NTA) and the Massachusetts Teachers Association (MTA), and certain of their officers, had engaged in a strike, work stoppage, slowdown or withholding of services. On October 6, 1986, the School Committee served copies of the petition upon the MTA, NTA, and all named officers, along with notice that the Commission would conduct an investigation thereon on October 9, 1986, at 10:00 a.m. at the Commission offices. On the basis of that investigation, we make the following findings:

Findings

1. The Northeast Metropolitan Regional Vocational School Committee (School Committee) is a public employer within the meaning of G.L. c.150E, Section 1.
2. The MTA and the NTA are employee organizations within the meaning of G.L. c.150E, Section 1. The NTA is the exclusive representative of a bargaining unit consisting of teachers and guidance counselors at Northeast Metropolitan Regional Vocational School. The MTA is the NTA's statewide affiliate.



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3. The employees in the bargaining unit are public employees within the meaning of G.L. c.150E, Section 1.

4. In the 1986-87 school year, the NTA had nineteen union officers, including the president, vice-presidents, secretary, treasurer, executive board, negotiating team, social committee, and P.A.C. committee. Among those officers are: John Maher, President; Barbara Salem and Louis Parriello, Vice-Presidents; Dorothy Deveney, Secretary; Patricia Cronin, Treasurer; and Joanne Ficaro, Henry Corcoran and George O'Clair, Executive Board Members.

5. The School Committee and the NTA were parties to a collective bargaining agreement that expired on August 31, 1986. They have not yet executed a successor.

6. The parties began negotiating a successor agreement in January, 1986. From January until June, 1986 the parties had six to ten negotiating sessions. In September, 1986 the parties had four or five negotiating sessions. During negotiation, Howard Greenspan, Esq. represented the School Committee and John Mannheim, an MTA field representative, represented the NTA.

7. On September 30, 1986 the parties attended a negotiating session that lasted approximately four hours. At the end of that session, Mr. Greenspan announced that in the School Committee's opinion the parties had reached an impasse. The School Committee subsequently petitioned the Massachusetts Board of Conciliation and Arbitration to mediate the contract impasse.

8. There are approximately 136 members of the bargaining unit. The average daily absentee rate among bargaining unit members is five to six, independent of "anticipated absences." Anticipated absences are those that are scheduled in advance such as personal days, professional development days, and long-term illnesses.

9. On Wednesday, October 1, 1986, the absentee rate among bargaining unit members was consistent with the average.

10. On Thursday, October 2, 1986, ninety-two bargaining unit members were absent. Of these, nine were anticipated absences. The remaining eighty-three called in sick either on the evening of October 1 or on the morning of October 2.

11. Among those who called in sick on October 2, 1986 were Patricia Cronin, Joanne Ficaro, Henry Corcoran, George O'Clair, Social Committee member Robert Osterberg, and P.A.C. Committee members Susan Engelke and Glen Melton. Social Committee member Paul Holmgren and vice-president Barbara Salem were absent with anticipated absences.¹ The ten remaining NTA officers reported to work.

¹We draw this account of union officers' absenteeism from contemporaneous absence records that were prepared on October 2. They very slightly from the testimony of Superintendent-Director Markham, the sole witness.



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12. Of the forty-four bargaining unit members who reported for work on October 2, 1986, eighteen were tenured and twenty-six were nontenured.

13. Bargaining unit members who reported to work on October 2, 1986 signed a sign-in sheet. Two of the signatories, neither of them NTA officers, annotated the sheet with the following comments next to their names: "(under protest)" and "In no way should my presence be construed as approval for the way negotiations are being conducted by the School Committee's team."

14. On October 2, 1986, five bargaining unit members, none of them NTA officers, sent a memo to the NTA negotiating team, with a copy to the Superintendent-Director of the School, Thomas F. Markham, Jr. The memo read, "Our attendance here today is not to be construed in any way as approval for the manner in which the School Committee's team is conducting negotiations. We fully support the efforts of our N.T.A. negotiating team."

15. The school day begins at 7:45 a.m. Because of the high rate of absenteeism among teachers on October 2, 1986, Superintendent-Director Markham cancelled school at around 8:00 a.m. He did not lock the doors.

16. On Friday, October 3, 1986, eleven bargaining unit members called in sick. Eight more had anticipated absences. Executive board member Corcoran was absent again that day. Barbara Salem remained absent with an anticipated absence. All other NTA officers returned to school.

17. Since 1980, there has been one comparable incidence of absenteeism at Northeast Metropolitan Regional Vocational School to that which occurred on October 2, 1986. In the spring of 1983, seventy bargaining unit members called in sick. This occurred in the midst of controversial collective bargaining negotiations.

18. Superintendent-Director Markham testified that he had no reason to believe that the conduct of October 2, 1986 would recur.

Discussion

It is apparent from the foregoing findings of fact that members of the bargaining unit of teachers and guidance counselors at the Northeast Metropolitan Regional Vocational School engaged in a strike on October 2, 1986.

The Commission can infer the existence of a strike from, *inter alia*, absenteeism of an abnormally high rate, similarity of employee excuses for absence, or timing of absenteeism coincident to expressed frustration with labor relations. See, e.g., Town of Abington, 12 MLC 1084, 1085-1086 (1985). In this case, all of these factors are present.

Two days prior to the strike, on September 30, 1986, the NTA negotiating team and the School Committee met to continue to bargain collectively toward a new contract. At that meeting, the School Committee declared that the negotiations were at



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an impasse. Subsequently, on the afternoon and evening of October 1, and the morning of October 2, 83 of the 127 employees scheduled to work called to report that they would be absent from work because of illness. Moreover, of the 44 employees who did report to work, several noted in writing that their presence at work should not be construed as approval of the School Committee's conduct in the contract negotiations.³ These notes evidence the employees' frustration with the collective bargaining process and indicate that the employees perceived their presence or absence at work on October 2 as a symbol of solidarity with the Union in the contract negotiations. Based upon these facts, the Commission finds that the members of the bargaining unit engaged in a concerted withholding of services, in violation of the statute.

The Commission also finds that four individuals who were named in the petition in their capacity as NTA officers and as individual employees, Patricia Cronin, Joanne Ficaro, Henry Corcoran and George O'Clair, participated in the unlawful concerted withholding of services.⁴ Although these individuals were served with copies of the petition and notice of investigation, and had the opportunity to appear at the investigation and present their defenses, none chose to do so. In light of their failure to appear and testify, we find that these individuals were engaged in an unlawful concerted withholding of services when they failed to report for work as scheduled on October 2, 1986. We further find that, as NTA officials, they unlawfully condoned the strike by their participation.

In addition, we find that the NTA encouraged and condoned the concerted withholding of services in violation of the statute. We have already specifically found that four NTA officials, in their representative capacity, unlawfully condoned the unlawful job action by their participation in the concerted withholding of services. In addition, the evidence indicated that a total of seven of the NTA's seventeen officials scheduled to work on October 2 called in sick. The NTA presented no evidence that any of these officers was justified in failing to report for work as scheduled, or that any of its officers have taken any steps to encourage bargaining unit employees to refrain from engaging in an illegal withholding of their services. Cf. City of Brockton, 10 MLC 1479 (1984), and City of Lawrence, 11 MLC 1284 (1984).

There was no evidence presented concerning involvement of the MTA in the

²There are 136 teachers and guidance counselors. On October 2, 127 employees were scheduled for work. Nine employees were out on "anticipated absences." Therefore, 65 percent of employees who were scheduled to work on October 2 were absent.

³See paragraphs 14 and 15 of the Findings of Fact for the texts of the notes and memorandum written by the employees who reported for work.

⁴There is no evidence in the record that Barbara Salem, a Union officer named individually in the Petition and absent from work on October 2, 1986, participated in the unlawful withholding of services. To the contrary, the record shows that Ms. Salem's absence on October 2 was an "anticipated absence."



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strike, and therefore we do not find that the MTA induced, encouraged, or condoned the strike.

The Union made two motions to dismiss the School Committee's petition. First, the Union moved that the petition be dismissed as legally insufficient because it lacked specific allegations about the conduct of the Union in inducing, encouraging, or condoning a strike. The Commission finds that the School Committee's allegations regarding absenteeism and the circumstances surrounding the contract negotiations are sufficient to permit the denial of the first motion to dismiss.

Secondly, the Union moved to dismiss on the grounds that the School Committee's petition was moot. The Union contends that the alleged job action occurred on October 2, that there has been no further job action, and finally, that the Superintendent himself testified that he has no reason to believe that such a job action was likely to recur. The Commission disagrees and finds that the issue is not moot.

The strike on October 2 was precipitated by conflicts between the School Committee and the NTA arising from contract negotiations. The parties have not yet signed a collective bargaining agreement, and the School Committee has petitioned the Massachusetts Board of Conciliation and Arbitration to mediate what it believes is an impasse in negotiations. Because the conflicts giving rise to the strike have not yet been resolved, the possibility for a recurrence of strike activity remains, and the issue is not moot.⁵

WHEREFORE, on the basis of the facts set forth above, we conclude that the teachers and guidance counselors represented by the NTA and employed by the Northeast Metropolitan Regional Vocational School have engaged in a strike, work stoppage, slowdown or withholding of services in violation of Section 9A(a) of G.L. c.150E by their concerted failure to report to work on October 2, 1986. Further, we find

⁵Compare, *City of Medford*, 7 MLC 1078 and 7 MLC 1181 (1980). There, the City of Medford filed a strike petition alleging that individual police officers were engaged in a strike, but unlike the present case served the petition only on the union. The Commission found that the evidence demonstrated that employees had concertedly withheld services but no evidence was presented to support a finding of union involvement in the strike. Because no individual employees had been served with the petition, the Commission declined to find that any specific individual was on strike. Therefore, the Commission permitted the employer the opportunity to amend its petition to name individual employees and to serve the employees. The employer, however, waited eighteen days after the withholding of services had ended before filing the amended petition. By request of the parties the investigation on the amended petition was postponed until more than one month after the cessation of the strike. When the investigation finally was convened the Commission concluded that the work stoppage had ceased and that no purpose would be served by proceeding further with the investigation. Therefore, the amended petition was dismissed.



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that Patricia Cronin, Joanne Ficaro, Henry Corcoran and George O'Clair, named Defendants in the School Committee's Petition, have, both individually and in their representative capacity as NTA officers, engaged in a strike, work stoppage, slowdown or withholding of services in violation of Section 9A(a) of G.L. c.150E by failure to report to work on October 2, 1986. In addition, by the acts of the aforementioned officers we find that the NTA condoned the strike in violation of Section 9A(a) of the Law.

Accordingly, by virtue of the power vested in the Commission by Section 9A(b) of the Law, we hereby issue the following ORDER:

1. Teachers and guidance counselors employed by the Northeast Metropolitan Regional Vocational School and Patricia Cronin, Joanne Ficaro, Henry Corcoran, and George O'Clair shall immediately cease and desist from engaging in any strike, work stoppage, slowdown, or other unlawful withholding of services.
2. The NTA shall immediately cease and desist from condoning any strike, work stoppage, slowdown or other unlawful withholding of services.
3. The School Committee and the NTA shall take steps necessary to inform employees about this Interim Order and their obligations under the Law.
4. The bargaining representatives of the NTA and of the School Committee shall meet at such further mediation sessions as may be directed by the Board of Conciliation and Arbitration.
5. The parties shall report to the Executive Secretary of the Commission, or her representative, at 10 a.m. on Tuesday, October 21, 1986 to inform the Commission of the steps taken to comply with this Interim Order.
6. The Commission shall retain jurisdiction in this matter to set such further requirements as shall be necessary.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

MARIA C. WALSH, COMMISSIONER

ELIZABETH K. BOYER, COMMISSIONER

