
WAKEFIELD MUNICIPAL LIGHT DEPARTMENT AND WAKEFIELD MUNICIPAL GAS AND ELECTRIC EMPLOYEES
ASSOCIATION AND CHARLES C. CURRAN, JR., SI-196 (3/12/87).

108.22 sick-out

Commissioners participating:

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

Appearances:

Thomas E. Shirley, Esq. - Representing the Wakefield Municipal
Barbara S. Kellman, Esq. Light Department

INTERIM ORDER

On March 11, 1985 the Wakefield Municipal Light Department (Employer or Department) filed a Petition for a Strike Investigation with the Labor Relations Commission (Commission) pursuant to G.L. Chapter 150E, Section 9A (the Law). The petition alleged that the Wakefield Municipal Gas and Electric Employees Association (Association) was engaging in an unlawful strike and work stoppage in violation of the Law.

The Commission scheduled an investigation to commence at 10:00 a.m. on March 12, 1987, at the Commission offices, and issued a notice of investigation. The Employer served copies of the notice of investigation upon the Association's president, Charles C. Curran, Jr., and upon Jeffrey H. Fisher, the Association's attorney and legal representative, on March 11, 1987. In addition, Barbara S. Kellman, Esq., one of the Employer's Counsel, served a copy of the notice, in hand, to Association attorney Fisher at his residence on March 11, 1987.

The Commission's investigation convened on March 12, 1987 at 10:40 a.m. No representative appeared on behalf of the Association, and Curran did not appear. A telephone call to the Association's counsel of record indicated that it did not choose to attend. Accordingly, the Employer presented its evidence *ex parte*. On the basis of the rebutted evidence presented by the Employer, we find the following facts:

FACTS

1. The Town of Wakefield is a public employer within the meaning of Section 1 of the Law, and the Wakefield Municipal Light Department is the representative of the Town for the purpose of collective bargaining with the Wakefield Municipal Light Department employees.

2. The Association is an employee organization within the meaning of Section 1 of the Law, and is the exclusive bargaining representative of a unit comprised of 45 employees including all full time and regular part time employees of the Employer, excluding the manager, assistant to the manager, office manager, electric superintendent, gas superintendent, secretary to the manager, staff analyst, and engineer.



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3. The most recent collective bargaining agreement between the Employer and the Association expired on May 31, 1985. Negotiations with respect to a new collective bargaining agreement have been in progress since March, 1985. Since May, 1986, the parties have bargained with the assistance of a mediator from the Massachusetts Board of Conciliation and Arbitration. The Employer presented its final offer to the Association on Wednesday, March 4, 1987. No further negotiations between the parties are scheduled at this time.

4. The Employer operates six sub-stations in Wakefield. It furnishes electrical service to approximately 10,000 customers and gas service to approximately 5,000 customers. There are six sub-station operators. On March 5, March 6 and March 7, 1987, only one of the six sub-station operators reported for scheduled work. On each day, the Employer called the remaining five sub-station operators, and each of them claimed to be unavailable for work due to "illness."

5. All Department employees reported for work as scheduled on March 8, 9, 10. On March 10, 1987, Attorney Fisher held a news conference with reporters from the Wakefield Daily Item, a local newspaper. That same day the newspaper printed a front page item wherein Fisher reported the state of labor negotiations between the Association and the Employer to be in "shambles."

6. On the following day, March 11, 1987, only one of the six sub-station operators reported to work as scheduled. Again, the Employer called the other five sub-station operators, and again all five claimed to be unavailable for work due to "illness." In addition to the sub-station operators, other Department employees called in sick with illness. In total, 42 of the 45 employees comprising the collective bargaining unit claimed to be incapacitated for scheduled work on March 11 due to illness. These included all of the officers of the Association, and all of the members of its five-person bargaining committee. Two or three of the employees were legitimately absent on scheduled vacation. Normally, only about one bargaining unit employee per day is absent from scheduled duty due to sickness.

7. The attendance pattern on March 12, the day of the investigation, was the same as it was on March 11. Forty-three of forty-five employees failed to report to work, claiming to be sick. None of the Association's officers or members of the bargaining committee reported for scheduled work. No employee was scheduled to be on vacation on March 12.

8. The engineer and the gas superintendent have been performing the duties of the five absent sub-station operators. Only essential duties are being performed. The remaining employees are unable to properly respond to emergencies such as gas leaks, downed wires, and burned-out cables. On the morning of March 12, a gas leak developed on Salem Street. The gas superintendent responded to the scene but was unable to effect a repair. Thus the Employer was required to engage an independent contractor to mend the leak.



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DISCUSSION

It is apparent from the foregoing findings of fact that members of the bargaining unit represented by the Association at the Wakefield Municipal Light Department are engaged in a strike, work stoppage, slowdown or withholding of services.

The investigation disclosed that nearly 90% of the bargaining unit employees failed or refused to report to work during their scheduled shifts on Wednesday March 11 and Thursday March 12, 1987. Virtually all of the employees who refused to failed to report for their scheduled work shifts claimed to be ill. This mass withholding of services came shortly after the Association's attorney publicly declared that the collective bargaining negotiations between the Employer and the Association were in "shambles." Protracted negotiations are a common source of employee frustration and, we conclude that in the instant case, the coordinated withholding of services by employees represented by the Association at the same time that the Association's representative was expressing public frustration with the progress of negotiations demonstrates that the employees were engaged in a strike in violation of the Law, G.L. c.150E Section 9A. Although there is no evidence of employee or Association picketing, 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 addition, we find that the Association has encouraged and condoned the concerted withholding of services in violation of the Law. We have specifically found that the two Association officers, as well as the members of the bargaining team, did not report to work as scheduled. Their participation in the unlawful strike constitutes encouragement and condonation of the concerted withholding of services. In the absence of evidence that any of these officers was justified in failing to report for work as scheduled, or that the Association has taken action to encourage bargaining unit employees to refrain from engaging in an illegal withholding of services, we conclude that the Association is condoning and encouraging the strike in violation of Section 9A(a) of the Law. See Northeast Metropolitan Regional Vocational School Committee, 13 MLC 1213 (1986).

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

1. Employees employed by the Wakefield Municipal Light Department and represented by the Wakefield Municipal Gas and Electric Employees Association shall immediately cease and desist from engaging in any strike, work stoppage, slowdown, or other unlawful withholding of services.
2. The Association shall immediately cease and desist from condoning or encouraging any strike, work stoppage, slowdown or other unlawful withholding of services.
3. Immediately upon receipt of a copy of this Interim Order the Association



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shall take necessary steps to inform the employees whom it represents who are employed by the Wakefield Municipal Light Department of the contents of this Interim Order in order to inform as many employees as reasonably possible before the start of the next regularly scheduled work shift.

4. The bargaining representatives of the Association and of the Employer shall participate in such further negotiations as shall be directed by the Massachusetts Board of Conciliation and Arbitration.
5. Both the Association and the Employer shall report to the Executive Secretary of the Commission, or her representative, at 9:30 a.m. on Friday, March 13, 1987, 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

PAUL T. EDGAR, CHAIRMAN

MARIA C. WALSH, COMMISSIONER

ELIZABETH K. BOYER, COMMISSIONER

