

CITY OF WORCESTER AND WORCESTER VOCATIONAL TEACHERS ASSOCIATION, ET AL., SI-198
(4/23/87). INTERIM ORDER.

92.47 motions to dismiss
108. Strikes

Commissioners participating:

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

Appearances:

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| Janice Borg Silverman, Esq. | - Representing the City of Worcester |
| Peter R. Campagna, Esq. | |
| Brian A. Riley, Esq. ¹ | - Representing the Respondent Associations and the Respondent individuals in their capacity as officers of the Association and/or members of the bargaining team |

INTERIM ORDER

On April 17, 1987, the City of Worcester (City) filed a petition with the Labor Relations Commission (Commission), pursuant to Section 9A(b) of G.L. c.150E (the Law), alleging that the Worcester Vocational Teachers Association (the Union), the Massachusetts Teachers Association (MTA), and various officers and bargaining team members of the Union had decided to engage in a strike, effective Monday, April 27, 1987, in violation of Section 9A(a) of the Law.

On April 22, 1986, the Commission, through designated agents, conducted an investigation of the petition. Based on that investigation, as well as the parties' stipulations, we hereby make the following findings of fact:

1. The City of Worcester, acting through its chief executive officer, William J. Mulford, the City Manager, is a public employer within the meaning of Section 1 of the Law.
2. The Worcester Vocational Teachers Association (Union), affiliated with the MTA, is an employee organization within the meaning of Section 1 of the Law.
3. The Union is the exclusive bargaining representative for approximately 164 professional day school teachers, department heads and librarians employed by the City in the associated schools of the Worcester Vocational School Department.

¹Mr. Riley filed a special appearance on behalf of his clients and does not concede the Commission's jurisdiction in this case.



4. Roland Woodill is a member of the bargaining unit represented by the Union and is the Union's President.
5. S. Joseph LaSorsa is a member of the bargaining unit represented by the Union and is the Union's Vice-President.
6. Martin McGillicuddy is a member of the bargaining unit represented by the Union and is the Union's Treasurer.
7. Ann McCarthy is a member of the bargaining unit represented by the Union and is the Union's Secretary.
8. Roland Woodill, S. Joseph LaSorsa, Martin McGillicuddy, Ann McCarthy, Arthur Metras, Lorraine Griffin, James Lunt, Ian MacNeil, A.J. Prendergast, and Winifred Volkhausen are members of the bargaining unit and of the Union's bargaining team.
9. Gerald E. Coleman is employed by the MTA as a field representative and is the chief spokesman for the Union at the bargaining table.
10. The most recent collective bargaining agreement between the City and the Union expired June 30, 1986.
11. Negotiations for a successor agreement began on May 14, 1986, and continued, except for a hiatus of approximately three months, until December 4, 1986.
12. Beginning on or about January 13, 1987, the parties engaged in approximately six sessions of mediation, under the auspices of the Board of Conciliation and Arbitration (BCA), with the assistance of state-appointed mediator George Fitzpatrick.
13. At the conclusion of a mediation session on April 2, 1987, mediator Fitzpatrick informed the parties that he intended to initiate the paper-work necessary to have an impasse declared, pursuant to the provisions of Section 9 of the Law.
14. By letter dated April 16, 1987, the BCA informed the parties that it had instituted fact-finding in accordance with the provisions of Section 9 of the Law; as of the date of this investigation, a factfinder had not yet been selected.
15. The parties had not met for mediation or negotiations between April 13, 1987 and April 22, 1987. The parties are scheduled to resume mediation on or about April 23, 1987.
16. On or about April 14, 1987, at a general membership meeting, the Union membership voted to engage in a strike commencing on April 27, 1987, if a successor agreement had not been reached by that date.



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17. Since on or about April 16, 1987, the Union has maintained a "strike headquarters" at 22 Front Street in Worcester.
18. Approximately 24 bargaining unit members have been scheduled to work on April 22, 23, and 24, 1987. Employees reported to work as scheduled on April 22, 1987, and there is no allegation that they will not report to work on either April 23 or April 24, 1987.
19. The next regularly scheduled work day for the majority of bargaining unit members is Monday, April 27, 1987.
20. On April 21, 1987, Union spokesman Gerald Coleman informed the Board of Trustees of the Worcester Vocational School Department and the City Council that the Union's membership had voted to strike on April 27, 1987, if a contract had not been negotiated by that date.

Discussion

Section 9A(a) of the Law prohibits public employees and employee organizations from engaging in, inducing, encouraging, or condoning any strike, work stoppage, slowdown, or withholding of services. A public employer may petition the Commission to investigate alleged violations of Sections 9A(a) "whenever a strike occurs or is about to occur." G.L. c.150E, Section 9A(b).

The extraordinary provisions of Section 9A(b) are appropriately applied only to situations where the evidence indicates that no further union action is necessary before the strike will begin. Where, instead, the evidence is speculative, or where further action must be taken by the union before a strike can occur, the Commission has concluded that a threatened strike is not imminent. See Boston School Committee, 10 MLC 1289, 1290 (1983); Boston School Committee, Case No. SI-189 (September 10, 1986) (slip. op. at 5); Boston School Committee, Case No. SI-140 (September 4, 1981) (slip. op. at 4). In these cases, the Commission declined to issue orders prohibiting strike activity where, despite the Union leadership's recommendation, the membership had not yet voted to engage in a work stoppage. Declining to speculate upon the outcome of the pending strike vote, the Commission concluded in those cases that no strike was yet imminent. The Commission also has declined to proceed with Section 9A(b) strike petitions where the alleged strike activity has ceased and the parties have resolved the underlying contract dispute, despite an employer's claimed need for a Commission adjudication in order to either discipline employees or deter future strikes. Town of Plymouth, Case No. SI-193 (March 9, 1987); Boston Housing Authority, Case No. SI-182 (February 19, 1987).

On the other hand, where a union has announced its intent to withhold services at a specified future date, the Commission has issued a Section 9A order prohibiting that conduct. See Town of Walpole, 12 MLC 1039 (1985) (police officers who announced intent to withhold performance of EMT duties on a specified date were ordered to cease and desist). In the present case, the Union, by membership vote, has decided to strike on April 27, 1987, the next regularly scheduled work day for the vast



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majority of the unit. The Union has not suggested, nor did the investigation disclose, any further actions which must be taken to finalize the strike decision. Although an intervening settlement of the contract could avert the strike, we conclude that the pendency of further negotiations and the possibility of a contract settlement, in the context of this case, do not in themselves render the strike petition premature. In the absence of a contract settlement the Union has indicated that it will strike. Implicit in every threat is at least one contingency: if the parties reach mutual agreement then the Union need not strike. But the presence of such a contingency does not reduce the likelihood that a strike will occur. Only when further action must be taken to authorize a strike can we say that the threat of a strike is not imminent. Here, however, we have found that the Union has taken all necessary steps to begin a strike on April 27, 1987. Therefore, we conclude that a strike is "about to occur."

Because Union officials have condoned the imminent strike, as evidenced by the fact that Union officials informed the City of the Union's intent to engage in a strike, we order those officials to take appropriate steps to inform the membership of the requirements of this Order and of Section 9A(a) of the Law.²

WHEREFORE, on the basis of the facts set forth above, we conclude that the Union and its membership are about to engage in a strike, work stoppage, slowdown, or other withholding of services in violation of Section 9A(a) of G.L. c.150E. Accordingly, by virtue of the power vested in the Commission by G.L. c.150E, Section 9A(b), we hereby order that:

1. All employees represented by the Union shall report for work on their next regularly scheduled work day, unless their absence is excused;
2. If a strike or other withholding of services should occur, so that employees do not, without excuse, report for work on their next regularly scheduled work day, the Union and its officers, including Roland Woodill, S. Joseph LaSorsa, Martin McGillicuddy, Ann McCarthy, Arthur Metras, Lorraine Griffin, James Lunt, Ian McNeil, A.J. Prendergast, Winifred Volkhausen, and Gerald Coleman, shall not induce, encourage, or condone such strike or withholding of services.
3. The Union, including its officer, stewards, and bargaining team members,

²The Union moved to dismiss the petition on the ground that it constitutes prior restraint of the Union officers' and members' First Amendment rights, inasmuch as no strike activity is presently underway. Since our Order prohibits only actual withholding of services and any accompanying Union inducement, encouragement or condonation, our order does not inhibit any right employees may have to advocate a strike. Cf. *Boston Teachers Union, L.66 v. Edgar, et al.*, 787 F.2d 12, ____ n.8, (1st Cir. 1986).



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- shall take necessary action before April 27, 1987 to inform the employees of the bargaining unit of the provisions of Section 9A(a) of the Law and the contents of this Interim Order.
4. The bargaining representatives of the Union and the City shall meet for such further collective bargaining negotiations, including mediation, as may be directed by the Board of Conciliation and Arbitration.
 5. The Union and the City shall notify the Commission between 9:30 A.M. and 10:00 A.M. on Monday, April 27, 1987 of the steps taken to comply with this Interim Order.
 6. The Commission shall retain jurisdiction of this matter to set such further requirements as may be appropriate.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

MARIA C. WALSH, COMMISSIONER
ELIZABETH K. BOYER, COMMISSIONER

