

MASSACHUSETTS LABOR CASES

CITE AS 14 MLC 1343

LEXINGTON SCHOOL COMMITTEE AND LEXINGTON EDUCATION ASSOCIATION, SI-209 (11/30/87).
INTERIM ORDER.

- 107. Picketing
- 108. Strikes
- 108.4 setting requirements under Chapter 150E, Section 9

Commissioners Participating:

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

Appearances:

- | | |
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| Alan S. Miller, Esq. | - Representing the Lexington School Committee |
| Brian Riley, Esq. | - Representing the Lexington Education Association |

INTERIM ORDER

On November 30, 1987, the Lexington School Committee (School Committee) filed a petition with the Labor Relations Commission (Commission) pursuant to Section 9A(b) of G.L. c.150E (the Law). The School Committee alleged that the Lexington Education Association (Association) and its members had engaged in a strike on November 30, 1987.

The Commission scheduled an investigation to commence at 1:30 p.m. on November 30, 1987. Both parties appeared, and the Association assented to the time of the investigation.

On November 30, 1987, an investigation of the School Committee's allegations was conducted by the Commission. On the basis of that investigation, we hereby make the following findings of fact.

FACTS

The Association represents a bargaining unit of approximately 450 teachers, assistant principals and principals employed by the School Committee. The most recent collective bargaining agreement between the parties expired on August 31, 1987, and the parties have been negotiating for a successor agreement since January, 1987. We take administrative notice of the fact that the parties are currently in mediation under the auspices of the Board of Conciliation and Arbitration, pursuant to c.150E, Section 9.

The parties participated in a bargaining session which began on November 29, 1987 at 7:00 p.m. and ended on November 30, 1987 at approximately 4:45 a.m. During the course of this bargaining session, Ralph Devlin, spokesman for the Association,



informed the School Committee that the members of the Association were scheduled to take a strike vote at 6:00 a.m. on November 30, 1987. Devlin further informed the School Committee that in all likelihood a strike would occur, absent a settlement. This session did not result in an agreement between the parties.

On November 30, 1987, a strike vote was taken by members of the Association. On November 30, 1987, approximately 435 members of the bargaining unit, including Association officers and members of the Association bargaining team, failed to report for work and were not absent for excused absences. The average number of daily absences is approximately 20.

Upon receiving notification from a member of the bargaining unit that a vote to strike had taken place, the School Committee cancelled classes for students but not for teachers. Approximately 15 members of the bargaining unit reported for work.

Bargaining unit members were observed picketing outside all school buildings during school hours on November 30, 1987. Bargaining unit members carried signs that read, inter alia, "On Strike for Kids' Sake," "No Contract = Crisis," and "Teachers Strike for Kids."

DISCUSSION

Based on the facts above, we conclude that the members of the bargaining unit represented by the Association engaged in a strike on November 30, 1987. The Commission can infer the existence of a strike from, inter alia, the absence of nearly 100% of the teachers regularly scheduled to report for class in the context of a dispute between the parties over a successor collective bargaining agreement. Tewksbury School Committee, 12 MLC 1353, 1359 (1985).

The evidence establishes that the parties have been negotiating for a successor collective bargaining agreement since January, 1987, and that on November 29 through November 30, the parties engaged in an extended but unsuccessful bargaining session. The evidence further establishes that on November 30, 1987, 97% of the teachers regularly scheduled for work failed to report. Moreover, there is un rebutted evidence that bargaining unit members were observed on picket lines holding signs reading "On Strike for Kids' Sake" and "Teachers Strike for Kids" during school hours. Therefore, it is apparent that employees represented by the Lexington Education Association are engaging in a strike, work stoppage or other withholding of services.

Furthermore, no Association officers or bargaining team members reported for work on November 30, 1987. In addition, Association representative Ralph Devlin advised the School Committee of the Association's intent to strike should no settlement be reached. On the basis of this evidence, we find these facts sufficient to conclude that the Association induced, encouraged and condoned the strike in violation of the Law.

The School Committee suggests that no obligation to engage in further bargaining be included in the Commission's order in this case. The School Committee argues



that it has committed no unfair labor practice and that an order to bargain in good faith while the strike continues will give the union an unwarranted advantage. While we understand the School Committee's position, we are constrained to disagree. The Law imposes on both parties the obligation to bargain in good faith and does not excuse that obligation when one side acts unlawfully. In this case the parties have been in mediation, and each has an obligation to continue to mediate their collective bargaining dispute in good faith. Accordingly, we include in our order the obligation of each party to continue to bargain through the auspices of the Board of Conciliation and Arbitration.

CONCLUSION

WHEREFORE, on the basis of the facts set forth above, we conclude that the Lexington Education 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 Lexington Education Association through its officers had induced, encouraged and condoned the strike.

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

1. The School Committee shall serve a copy of this Interim Order upon appropriate representatives of the Lexington Education Association.
2. The Lexington Education Association and the employees whom it represents shall immediately cease and desist from engaging in any strike, work stoppage, slowdown or other withholding of services.
3. The Lexington Education Association, 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 Lexington Education Association shall not permit its officers or agents to encourage, condone or induce any strike, work stoppage, slowdown or other withholding of services.
4. The Lexington Education Association and its officers shall take necessary action before the start of the next regularly scheduled school day following receipt of service of this Interim Order to inform its members of the provisions of Section 9A(a) of the Law and of the contents of this Interim Order.
5. The School Committee and the Lexington Education Association shall continue to bargain in good faith and further, shall participate in mediation as may be directed by the Board of Conciliation and Arbitration.
6. The Lexington Education Association and the School Committee shall notify the Commission at 9:30 a.m. on December 2, 1987 of the steps taken to comply with this Interim Order.



MASSACHUSETTS LABOR CASES

CITE AS 14 MLC 1346

Lexington School Committee and Lexington Education Association, 14 MLC 1343

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

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, CHAIRMAN

MARIA C. WALSH, COMMISSIONER

ELIZABETH K. BOYER, COMMISSIONER

