

## MASSACHUSETTS LABOR CASES

CITE AS 14 MLC 1406

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BOSTON SCHOOL COMMITTEE AND BOSTON PUBLIC SCHOOL BUILDING CUSTODIANS' ASSOCIATION,  
SI-212 (12/24/87). INTERIM ORDER.

92.49 other motions  
108. Strikes  
108.22 sick-out  
108.4 setting requirements under Chapter 150E, Section 9  
108.51 notice of investigation

### Commissioners participating:

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

### Appearances by:

Stephanie Carter, Esq.	- Representing the Boston School Committee
Gabriel Dumont, Esq. Matthew Dwyer, Esq.	- Representing the Boston School Building Custodians' Association

### INTERIM ORDER

On December 21, 1987, the Boston School Committee (Employer or Committee) filed a Petition for a Strike Investigation with the Labor Relations Commission (Commission) pursuant to G.L.c.150E, Section 9A (the Law). The petition alleged that the Boston Public School Building Custodians' Association (Association) was engaging in an unlawful strike and work stoppage in violation of the Law.

Pursuant to notice, the Commission conducted an investigation at 11:00 a.m. on December 23, 1987, at the Commission offices.<sup>1</sup> The Employer served copies of the notice of investigation upon the Association's President, John Diggin, Jr.; Vice President, Paul Wood; Secretary/Treasurer, John J. Carleton; and Finance Secretary, Donald Mullen.

On the basis of that investigation, we hereby make the following findings of fact:

### FACTS

1. The Boston School Committee is a public employer within the meaning of Section 1 of the Law.

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<sup>1</sup> Upon receipt of the Petition, the Commission scheduled the investigation for December 22, 1987 at 2:30 p.m. The School Committee was unable to serve notice of the investigation upon the Association, however, and the Commission postponed the investigation until December 23, 1987, in order to permit service on the Association.



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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 approximately 460 custodians employed by the Respondent.

3. The most recent collective bargaining agreement between the Employer and the Association expired on August 31, 1986. Since at least August 1987, the parties have bargained with the assistance of a mediator from the Massachusetts Board of Conciliation and Arbitration. The Employer presented its latest offer to the Association on Friday, December 18, 1987. No further negotiations between the parties are scheduled at this time.

4. The Employer has responsibility for 127 schools within the City of Boston. Two custodial work shifts are operated each day at the schools.

5. On Sunday, December 20, 1987, the four area managers, who act as custodial supervisors, received telephone calls from custodial employees. The number of calls received by each manager ranged from 2 to approximately 35. The substance of the calls was similar. In each call an employee reported that he or she would be absent the next day. The reasons given for the absences were: illness, medical appointments, flu, or illness in the family.

6. On December 21, 1987, 244 custodians were scheduled to report for the first work shift. Only nine custodians actually reported. Not one of the 119 employees scheduled for duty on the second shift reported.

7. On December 22, 1987, 244 custodians were again scheduled to work the first shift. Only three employees reported. The scheduled attendance for duty on the second shift was 220 custodians. No custodian scheduled to work the second shift reported. One custodian from the first shift remained at work, and performed overtime duties through the second shift.

8. None of the Association officers reported for scheduled work on December 21 and 22. Association Vice President Woods was on approved vacation leave. The three remaining Association officers were absent.

9. All schools but one were opened by the area managers on the mornings of December 21 and 22. The supervisors unchained doors, turned off alarms, and checked lighting and heat. Thus, all schools except the Faneuil School, remained open on December 21 and 22.

10. Custodial employees reported for work as scheduled on December 23.

### DISCUSSION

At the investigation on December 23rd, the Association was represented by Gabriel Dumont, Esq., who filed a motion to continue the hearing for 24 hours. That motion was duly argued, and the reasons for it were threefold: 1) the alleged lateness of service; 2) the fact that Attorney Dwyer was engaged in an arbitration matter on December 23rd; and 3) that there was no indication that the sick



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out, if one existed, was of a continuing nature. The Association's motion to continue the hearing was denied. It was apparent that the Respondent was represented by a capable counsel from the same law firm, and that attorneys from that firm had had actual notice of the contents of the Petition for Strike Investigation since December 21, 1987.

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

The investigation disclosed that approximately 97% of the bargaining unit employees failed or refused to report to work during their scheduled shifts on Monday, December 21 and Tuesday, December 22, 1987. Virtually all of the employees who refused or failed to report for their scheduled work shifts claimed to be ill.

We have noted that the Association's collective bargaining agreement with the School Committee expired August 31, 1986, and that the parties had been negotiating with the assistance of a mediator at least since August, 1987. The Association requested the Commission to take administrative notice of a decision issued by a hearing officer of the Commission four days before the most recent bargaining session on December 18, 1987. In her opinion the hearing officer ruled, *inter alia*, that the School Committee's failure to meet with the Association from approximately August 20 to November 18, 1986 was an unreasonable delay; that the School Committee had failed to invest its negotiator with sufficient authority to make a wage offer; and that the School Committee had submitted new proposals in violation of an agreed-upon ground rule that all proposals would be submitted at an earlier date. She found that Section 10(a)(1) and (5) of the Law had been violated by this conduct.<sup>2</sup>

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 bargaining had taken a frustrated turn, demonstrates that the employees were engaged in a strike in violation of G.L. c.150E, Section 9A.

Although there is no evidence of employee or Respondent 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., Wakefield Municipal Light Dept., 13 MLC 1521, 1523 (1987); Town of Abington, 12 MLC 1084, 1085-86 (1985).

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<sup>2</sup>We take administrative notice of the Hearing Officer's decision in case MUP-6400. It is currently under appeal to the full commission.



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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 three Association officers did not report to work as scheduled. Although served with notice of the investigation, none of the officers appeared to explain his absence. We conclude on the basis of the facts presented that each was engaged in a strike. Their participation in the unlawful strike constitutes encouragement and condonation of the employees' 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); Wakefield Municipal Light Department, supra.

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

1. Custodians employed by the Boston School Committee and represented by the Boston School Building Custodians Association (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 shall take necessary steps to inform the employees whom it represents who are employed by the Boston School Committee 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 inform the Executive Secretary of the Commission, or her representative, at 9:30 a.m. on Monday, December 28, 1987 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

