

MASSACHUSETTS LABOR CASES

CITE AS 15 MLC 1147

PEABODY SCHOOL COMMITTEE AND PEABODY FEDERATION OF TEACHERS, LOCAL 1289, AFT,
AFL-CIO, SI-216 (9/7/88). 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 By:

- | | |
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| Daniel B. Kulak, Esq. | - Representing the Peabody School Committee |
| Jeffrey Jacobsen, Esq. | - Representing the Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO |

INTERIM ORDER

On September 6, 1988, the Peabody 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 Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO (Union) and its members were engaged in a strike and/or withholding of services beginning on September 6, 1988.

The Commission scheduled an investigation to commence at 1:00 p.m. on September 7, 1988, and issued a Notice of Investigation to the parties.¹

The investigation began at approximately 1:30 p.m. and on the basis of the investigation, we hereby make the following findings of fact.

FACTS

The Union represents a bargaining unit of 401 teachers employed by the School Committee.

The most recent collective bargaining agreement between the School Committee and the Association expired on August 31, 1988. The parties have been bargaining for a successor agreement since January 1988. Since the commencement of negotiations, the parties have held fourteen negotiation sessions of which the last three have been conducted under the direction of the Massachusetts Board of Conciliation and Arbitration. The last session was held on September 5, 1988

¹The School Committee served the Notice of Investigation upon the Union.



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beginning at 2 p.m. At approximately 8:30 p.m. on Monday, September 5, 1988, the state mediator informed the School Committee that the Federation had rejected the latest offer of the School Committee and that the Federation had no further counterproposals to offer. The mediator further informed the School Committee that the session was concluded. No agreement was reached.

There are 11 schools in Peabody serving approximately 5600 pupils. The reporting hours for teachers at the elementary schools is 8:30 a.m.; at the high school it is 7:15 a.m.; and at the middle school it is 7:55 a.m.

Under the most recently expired collective bargaining agreement between the parties, particularly Article III, Section F.2, the school term commences the "Wednesday following Labor Day" with "the school year for teachers commencing one day prior to the opening of school!...". Under the collective bargaining agreement, the members of the bargaining unit were scheduled to report to duty at 9 a.m. on September 6, 1988.

On September 2, 1988, James E. Cassidy, President of the Union, informed the Superintendent of the Peabody Schools, Dr. James J. Buckley, Jr. that the Union would hold a meeting of the membership on the morning of September 6, 1988, to vote on whether to strike. By 11:00 a.m. on September 6, 1988, the Superintendent had received word that the teachers had voted to strike.

At approximately 10:15 a.m. on September 6, 1988, the Union, distributed or caused to be distributed, citywide, a "flyer" stating in part that "Tomorrow - Schools Will Not Be Open."

On September 6, 1988, 5 teachers out of 401 reported to work. On September 7, 1988, one teacher out of 401 reported to work. On both days, the remaining bargaining unit members were absent without excuse.

On September 7, 1988, at approximately 8:00 a.m., the Superintendent observed teachers picketing at the Higgins Middle School. Teachers at the Higgins Middle School are scheduled to report for duty at 7:55 a.m. Between 9:00 and 10:00 a.m., the Superintendent observed picketing at four other elementary schools (Center, Carroll, William Welch and South Memorial elementary schools). Teachers are scheduled to report for work at the elementary schools at 8:30 a.m. At Center School, the Superintendent saw Karen McCaffergy and Barbara Forsey, two members of the Union's bargaining team, on the picket line with other teachers. At the William Welch School, the Superintendent recognized Anne Marie DuBois, also a member of the Union's bargaining team, on the picket line. In addition, the Superintendent saw Arlene McDonald, the Recording Secretary for the Union, on the picket line at the South Memorial School. None of these individuals were authorized to be absent.

Teachers on the picket lines at the schools were observed carrying a variety of picket signs including "Teachers Need Salary Increases," "Support Your Local Teachers," and "We Deserve A Good Contract."



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DISCUSSION

Based upon the facts above, we conclude that the teachers represented by the Union have been engaged in a strike beginning on September 6, 1988, and continuing to date.

The Union argues that the expiration of the collective bargaining agreement on August 31, 1988, eliminates the employees' contractual obligation to report to work on the Tuesday following Labor Day (i.e., on September 6, 1988). The Union does not argue that the employees were unaware that the School Committee expected them to report to work on September 6, 1988; nor does the Union dispute that in the past the teachers had been required to report to work on the day prior to the start of the students' classes. We conclude that the Union's contention lacks merit. The facts clearly demonstrate that the collective bargaining agreement required the teachers to report to work on the Tuesday after Labor Day. Therefore, when the teachers concertedly refused to work on September 6, 1988, they engaged in a "strike" within the meaning of G.L. c.150E, Section 1.

The Commission can infer the existence of a strike from, *inter alia*, the absence without excuse or authorization of nearly 100% of the teachers regularly scheduled to report to work in the context of a dispute over the terms of a successor collective bargaining agreement and the fact that employees carried picket signs outside of schools during working hours on September 7, 1988. See e.g., Everett School Committee, 14 MLC 1284 (1987); Tewksbury School Committee, 12 MLC 1353, 1359 (1985).

We further note that all the Union officers were among the approximately 396 teachers who did not report for work on September 6, and among the 400 teachers who did not report to work on September 7. We have found that the Union President indicated the Union's intent to meet to conduct a strike vote on September 6, 1988, and that also on September 6, the Union caused the distribution of the leaflet announcing that School would not be held on September 7, 1988. Also on September 7, 1988, one Union officer and several bargaining team members picketed schools during working hours. We infer from these facts that the Union was both aware of and involved in the concerted withholding of services by the employees. Taken together, we find these facts are sufficient to conclude that the Union induced, encouraged and condoned the strike in violation of the Law. See Northeast Metropolitan Regional Vocational School Committee, 13 MLC 1213, 1216 (1986).

WHEREFORE, on the basis of the facts set forth above, we conclude that the Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO and the employees whom it represents, are 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 Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO through its officers has induced, encouraged and condoned the strike in violation of Section 9A(a) of G.L. c.150E.



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

1. The Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO and the employees whom it represents shall immediately cease and desist from engaging in any strike, work stoppage, slowdown or other withholding of services.
2. The Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO, 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 Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO shall not permit its officers or agents to encourage, condone or induce any strike, work stoppage, slowdown or other withholding of services.
3. The Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO and its officers shall take necessary action before the start of the next regularly scheduled school day to inform its members of the provisions of Section 9A(a) of the Law and of the contents of this Interim Order.
4. The School Committee and the Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO shall continue to bargain in good faith and further, shall participate in mediation as may be directed by the Board of Conciliation and Arbitration.
5. The Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO and the School Committee, shall notify the Commission at 9:30 a.m. on September 8, 1988, of the steps taken to comply with this Interim Order.
6. The Commission retains 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

