

In the Matter of SHREWSBURY EDUCATION  
ASSOCIATION, and PATRICIA PENUCCI, ALICE  
JOHNSON, JACKIE TROTTA, JOANNE BILLINGS,  
DIANE LINDBERG, RUTH ANN ADAMS, ERNIE  
BORRACCINO, PATRICIA DEGON, KELLY FINNERAN,  
KERRI HOLLEY, TOM SMITH, in their representative  
capacity as Officers of the Association and Members of the  
Association's bargaining team

and

SHREWSBURY SCHOOL COMMITTEE

Case No. SI-262

105.3 *strikes and withdrawal of services*

108.4 *setting requirements under Chapter 150E, Section 9*

January 21, 2000

Robert C. Dumont, Chairman

Helen A. Moreschi, Commissioner

Mark A. Preble, Commissioner

Brian Riley, Esq.

*Representing the Shrewsbury  
Education Association*

James Toomey, Esq.

*Representing the Shrewsbury School  
Committee*

#### INTERIM ORDER

On January 19, 2000, the Shrewsbury School Committee (School Committee) filed a petition with the Labor Relations Commission (Commission) for a strike investigation pursuant to Section 9A(b) of Massachusetts General Laws, Chapter 150E (the Law). The petition alleges that the Shrewsbury Education Association (Association), the Massachusetts Teachers Association (MTA)<sup>1</sup>, and certain individual members of the Association in their representational capacity as Association officers and as members of the Association's bargaining team and as individuals<sup>2</sup> had violated Section 9A of the Law by engaging in and by inducing, condoning, and encouraging an illegal work stoppage and withholding of services. The petition specifically alleges that the Association voted on January 12, 2000 to suggest to bargaining unit members that they refrain from reporting for a professional development day scheduled for January 18, 2000. The petition further alleges that on January 18, 2000, 175<sup>3</sup> teachers out of 365 teachers reported for the previously-scheduled professional development day.

1. The School Committee did not serve a copy of the strike petition and notice of investigation on the MTA and the MTA has filed a Motion to Dismiss it as a party. Accordingly, we dismiss the allegations against the MTA.

2. Although the School Committee served a copy of the strike petition and the notice of investigation on all of the named individuals, the School Committee agreed to proceed at this time only against the individuals in their representative capacities. The School Committee will notify the Commission by end of the day on January 26, 2000 whether it intends to proceed against the named individuals in their individual capacities.

3. Although the strike petition alleged that 75 teachers attended school that day, the School Committee amended its petition to reflect that it was 175 teachers.

## FINDINGS OF FACT

The Town of Shrewsbury (Town) is a public employer within the meaning of Section 1 of the Law. The School Committee is the collective bargaining representative of the Town for the purpose of dealing with school employees. The Association is an employee organization within the meaning of Section 1 of the Law. The Association is the exclusive collective bargaining representative for 365 school teachers and 7 nurses employed by the Town. The following individuals are employed by the Shrewsbury school system and serve as Association officers: Patricia Panucci (Panucci), president; Alice Johnson (Johnson), vice president; Jackie Trotta (Trotta), secretary; Joanne Billings (Billings), treasurer; and Diane Lindberg (Lindberg), executive secretary. In addition, the following individuals are employed by the Shrewsbury school system and serve on the Association's bargaining team: Ruth Ann Adams (Adams), Ernie Borraccino (Borraccino), Patricia Degon (Degon), Kelly Finneran (Finneran), Kerri Holley (Holley), and Tom Smith (Smith).

The School Committee and the Association are parties to a collective bargaining agreement that expired on August 29, 1999. Article III, C. of the agreement provides that four days within the school year will be used for professional curriculum development. Bargaining unit members were aware that January 18, 2000 was one of the days within the 1999-2000 school year scheduled as professional development day. Students do not attend classes on professional development days. However, professional development days are a regularly-scheduled workday for teachers, and they are required to report to work on those days.

The parties commenced successor contract negotiations in November 1998 and are currently mediating a successor collective bargaining agreement.

Sometime prior to September 30, 1999, the Association created a Crisis Team. Beginning on September 30 the Crisis Team began publishing several documents entitled "Crisis Newsletter" listing numerous activities that bargaining unit members would no longer participate in until there was a contract settlement.

On January 13, 2000, Degon, a member of the Association's bargaining team, spoke with Assistant Superintendent Michael Brandmeyer (Brandmeyer) requesting that she be allowed to take a personal day on January 18, 2000. At first, he denied her request. She then explained that the Crisis Team had recommended that bargaining unit members call in sick on January 18, and that she needed the personal day to take her son to the doctor. He then granted her request.

Also, on January 13, Superintendent Anthony Bent (Bent) heard from one of the school principals that bargaining unit members would not be attending the professional development day on January 18. On January 14, 2000, Superintendent Bent sent an E-mail to all his staff advising them that he was aware that bargaining unit members may be calling in sick on January 18 and reminding them that "withdrawing services is against the law".

The usual daily absentee rate for teachers due to illness is fifteen to twenty teachers. On January 12 and 13, 2000, there were fifteen

teachers absent due to illness. On January 14, 2000, there were seventeen teachers absent. January 17, 2000 was Martin Luther King Day and a school holiday. On January 18, 2000, there were 195 teachers absent. Of the 195 absent, 178 called in sick, and the remaining 17 did not call. On January 19, 2000, nine teachers were absent.

Only one of the five Association officers attended school on January 18. Panucci, Billings, and Lindberg called in sick, and Trotta called to say she would not be in. On the bargaining team, Adams, Borraccino, Holley, and Smith called in sick on January 18. Degon had taken an authorized personal day, and there was no record of whether Finneran attended school or whether she had called in sick.

## 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. Section 9A(b) permits a public employer to petition the Commission to investigate alleged violations of Section 9A(a) "whenever a strike occurs or is about to occur." M.G.L. c. 150E, Section 9A(b).

Section 1 of the Law defines strike as:

A public employee's refusal, in concerted action with others, to report for duty, or his[or her] willful absence from his [or her] position, or his [or her] stoppage of work, or his [or her] abstinence in whole or in part from the performance of the duties of employment as established by an existing collective bargaining agreement or in a collective bargaining agreement expiring immediately preceding the alleged strike....

The Commission has held that employees are engaged in a strike in violation of Section 9A(a) of the Law if they abstain in whole or in part from the performance of: 1) duties specifically mentioned in existing or recently expired collective bargaining agreements (or personnel policies in effect for more than one year); or 2) practices not unique to individual employees that are intrinsic to the position or that have been performed by employees as a group on a consistent basis over a sustained period of time. *Lenox School Committee*, 7 MLC 1761, 1775 (1980), *aff'd. sub nom. Lenox Education Association v. Labor Relations Commission*, 393 Mass. 276 (1984). It is undisputed that the most recently expired collective bargaining agreement required bargaining unit members to attend professional development days and that January 18, 2000 was a scheduled professional development day.

The Commission has held that an abnormally high rate of absenteeism, the similarity of employee excuses for absence, and the timing of the absenteeism coincident to expressed frustration with contract negotiations may lead to an inference that bargaining unit members have engaged in a strike. *Boston School Committee*, 14 MLC 1406, 1408 (1987); *Wakefield Municipal Light Dept.*, 13 MLC 1521, 1523 (1987); *Town of Abington*, 12 MLC 1084, 1086 (1987). It is also undisputed that the parties were engaged in protracted contract negotiations and that the development of the Association's Crisis Team was a result of the Association's frustration of the parties' bargaining. Furthermore, one of the

members of the Association's bargaining team advised Assistant Superintendent Brandmeyer that the Crisis Team had recommended that bargaining unit members report sick on January 18. In addition, the fact that 195 out of 372 bargaining unit members were absent on January 18 and that among those absent were several Association officers and bargaining team members leads us to the conclusion that the Association, its officers, and bargaining team engaged in and encouraged unlawful concerted activity.

#### CONCLUSION

Based on the facts set forth above, we conclude that the Association and the employees it represents engaged in a strike, work stoppage, slowdown, or other withholding of services in violation of Section 9A(a) of the Law on January 18, 2000. We further conclude that the Association has induced, encouraged, and condoned the strike in violation of Section 9A(a) of the Law.

#### ORDER

1. The Shrewsbury Education Association, its members and officers, shall immediately cease and desist from engaging in any strike, work stoppage, slowdown, or other unlawful withholding of services.
2. The Shrewsbury Education Association shall immediately cease and desist from encouraging, condoning, or inducing any strike, work stoppage, slowdown, or other unlawful withholding of services.
3. Immediately upon receipt of a copy of this Interim Order, the Shrewsbury Education Association shall take necessary steps to inform the employees whom it represents of the contents of this Interim Order.
4. The Commission retains jurisdiction of this matter to set further requirements as may be appropriate.
5. The Shrewsbury Education Association shall notify the Commission by 9:00 a.m. on Monday, January 24, 2000 of the steps taken to comply with this order.

\* \* \* \* \*