

In the Matter of AMERICAN FEDERATION OF
TEACHERS, LAWRENCE TEACHERS' UNION LOCAL
1019, GARY M. MARCOUX, JEAN ZEMBRUSKI, KATHY
DELANEY, ROBERT SHARPE, JAMES LICCIARDI,
MARY W. HARGREAVES, and RACHEL CONRAD

and

LAWRENCE SCHOOL COMMITTEE

Case No. SI-261

108. *Strikes*
108.2 *withdrawal of services*
108.5 *strikes - sufficiency of charge*

June 25, 1999

Robert C. Dumont, *Chairman*
Helen A. Moreschi, *Commissioner*

Deborah McCutcheon, Esq. *Representing the Lawrence
Teachers' Union, Local 1019
and its individual members*
Howard Greenspan, Esq. *Representing the Lawrence
and Terry Williams School Committee*
Valentine, Esq.

INTERIM ORDER

On June 22, 1999, the Lawrence School Committee (the School Committee) filed a petition with the Labor Relations Commission (the Commission) for a strike investigation pursuant to Section 9A (b) of Massachusetts General Laws, Chapter 150E (the Law). The petition alleges that the Lawrence Teachers' Union Local 1019 (the Union), certain individual members of the Union,¹ and the American Federation of Teachers (AFT)² 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 further alleges that the employees represented by the Union refused to teach summer school classes and attend professional development programs at the end of the 1998-1999 school year. The Commission conducted an investigation of the School Committee's petition on June 24, 1999. Both parties had an opportunity to be heard, to examine witnesses, and to introduce evidence.

Findings of Fact

The City of Lawrence is a public employer within the meaning of Section 1 of the Law. The School Committee is the collective bargaining representative of the City of Lawrence for the purpose of dealing with school employees. The Union is an employee organization within the meaning of Section 1 of the Law. The Union is the exclusive collective bargaining representative for the

school teachers employed by the City of Lawrence. Gary M. Marcoux (Marcoux) is president of the Union and a teacher employed in the Lawrence school system.

The School Committee and the Union are parties to a collective bargaining agreement that will expire on June 30, 1999 (the Agreement). Article IV, Part B of the Agreement provides that the work year shall be 183 days. Article IV, Part Q, Section 4e of the Agreement requires teachers to participate in 21 hours of district directed professional development activities per year. Section 4e further provides that the Superintendent shall give the Union a calendar of when the teachers must perform professional development activities on or before October 15, 1998 for the first half of the school year and on or before January 15, 1999 for the second half of the school year.

The parties have been engaged in successor contract negotiations since February 1999 and are currently mediating a successor collective bargaining agreement. During a bargaining session on June 2, 1999, members of the Union's negotiating team notified members of the School Committee's bargaining team that bargaining unit members would not teach summer school classes or attend professional development courses during the summer. On or about June 7, 1999, Marcoux sent a letter to various union presidents in Massachusetts to request that they encourage their membership not to apply to the School Committee to teach summer school classes. Since June 22, 1999, unit members have engaged in informational picketing.

Prior to June 1999, teachers applied to teach building-based and department-based summer school programs and attended professional development courses during the summer. However, teachers were not required to teach summer school classes or to attend professional development programs at the end of the school year.

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, § 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. . . .

1. The School Committee did not serve copies of the strike petition and notice of investigation on Jean Zembruski, Kathy Delaney, Robert Sharpe, James Licciardi, Mary W. Hargreaves and Rachel Conrad. Accordingly, we dismiss the allegations against them. See, *Medford School Committee*, 14 MLC 1213, 1215 (1987).

2. The School Committee agreed to dismiss the allegations against the AFT.

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 an existing contract; or 2) duties and 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 substantial 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). If employees withhold services that are not duties as defined in *Lenox School Committee*, they are engaged in concerted, protected activity. See also, *Southeastern Regional School Committee*, 7 MLC 1801, 1805 (1981).

Here, the School Committee argues that the teachers' refusal to teach summer school classes and to attend professional development programs constitutes a strike because: 1) there is an express or implied contract between the School Committee and the Union covering the performance of these duties; and 2) the teachers have performed these duties in the past. We first examine the parties' Agreement to determine if the teachers are contractually obligated to teach summer school classes and to attend professional development programs at the end of the school year.

Article IV, Part B of the parties' Agreement provides that the school year is 183 days in length. There is no language in the Agreement requiring teachers to work beyond the school year as defined in Article IV, Part B. Although Article IV, Part Q, Section 4e requires teachers to participate in 21 hours of professional development activities per year, this section also provides that the School Superintendent will calendar these activities during the school year. The Agreement does not contain any language that would obligate teachers to attend professional development programs during the summer. Therefore, we do not conclude that the Agreement expressly requires teachers to teach summer school classes and to attend professional development courses after the school year ends. The School Committee argues, nevertheless, that there is an implied contract between the parties that requires teachers to perform these duties. The School Committee relies on the following information to support its argument: 1) a memorandum from Marcoux to Commissioner of Education Driscoll (Driscoll) dated December 9, 1998;³ 2) the Department of Education's (DOE) involvement in the collective bargaining process; and 3) the attachment to the memorandum of agreement between the parties outlining Driscoll's expectations.⁴ Although this evidence demonstrates the Union's desire to work toward resolving the problems in the Lawrence school system, it does not rise to the level of a contract or create working conditions different from those specified in the Agreement. Thus, we find that there is no implied contract that requires teachers to teach summer school classes or to attend professional development courses. We next turn to examine whether the duties in question are intrinsic to the position or whether

bargaining unit members have performed these duties as a group on a consistent basis over a substantial period of time.

The evidence fails to establish that teachers previously have been required to teach summer school classes or to attend professional development courses once the school year has ended. Both Union witness Marcoux and School Committee witness Director of Human Resources Salvatore Petralia (Petralia) testified that, while teachers have taught summer school classes and have attended professional development courses during past summers, they were not required to perform either function. Thus, we find that the bargaining unit has not historically performed these duties on a regular basis. We further find that these duties are not intrinsic to the position.

Conclusion

Based on the facts set forth above, we conclude that the Union and the employees it represents are not engaged in a strike, work stoppage, slowdown, or other withholding of services in violation of Section 9A (a) of the Law. Accordingly, we dismiss the School Committee's petition.

SO ORDERED.

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3. It is uncertain whether the School Superintendent ever forwarded this document to Driscoll or whether the School Superintendent had any involvement in drafting the memorandum.

4. It is uncertain whether the attachment to the memorandum of agreement is part of the Agreement.