

8. On September 20, 1999, Moriarty forwarded a letter to McCook.⁶

9. Mary Zamorski (Zamorski)⁷ scheduled a nurses' meeting for September 23, 1999 at 2:45 p.m. at the Professional Development Building on 60 Alton Street in Springfield. The date of the meeting notice was September 15, 1999.

10. On September 24, 1999, the Petitioner filed a petition (the decertification petition)⁸ with the Commission alleging that it represented the majority of Springfield school nurses and was seeking certification as their exclusive representative for purposes of collective bargaining.

11. The Petitioner failed to submit any showing of interest with the original decertification petition filed on September 24, 1999.

12. On September 27, 1999, the School Committee received a copy of the Petitioner's decertification petition.

13. On September 30, 1999, McCook returned from his vacation.

14. On September 30, 1999 at approximately 9:30 a.m., McCook and Moriarty had a telephone conversation regarding the decertification petition filed by the Petitioner.

15. A collective bargaining session between the School Committee and the Association was scheduled for 3:00 p.m. on September 30, 1999.

16. McCook informed Moriarty that in light of the decertification petition he was canceling the bargaining session scheduled for 3:00 p.m. on September 30, 1999.

17. In addition to September 30, 1999, the following collective bargaining sessions were canceled: June 29, 1999, July 20, 1999, September 7, 1999, and October 13, 1999.

18. On September 30, 1999, Connor contacted McCook and advised him that, in his opinion, the decertification petition filed by the Petitioner was invalid because the Petitioner had failed to submit the requisite showing of interest and, therefore, the School Committee did not have a valid reason to cancel the bargaining session scheduled for 3:00 p.m. that day. Connor then demanded that the School Committee proceed with the 3:00 p.m. bargaining session scheduled for that day.

19. The parties did not negotiate on September 30, 1999.

20. On October 1, 1999, Moriarty sent a formal written demand that the School Committee continue negotiating.

21. On October 1, 1999, McCook sent a written response.

22. The usual workday for a Springfield Public School Nurse is 7:30 a.m. to 3:30 p.m.

23. On January 10, 2000, the School Committee forwarded to Moriarty Joint Exhibit 12.⁹

Findings of Fact¹⁰

Collective Bargaining

On or about January 7, 1999, the Association and the School Committee executed a collective bargaining agreement effective during the period July 1, 1996 to June 30, 1998 (the Agreement). Because the Agreement had expired at the time it was executed, the parties began to negotiate for a successor agreement in the spring of 1999.

The parties had negotiating sessions scheduled on September 30, 1999 and October 13, 1999 at 3:00 p.m. on both days. When McCook returned from vacation in the morning of September 30, 1999, he discovered that the Petitioner had filed a decertification petition with the Commission and that a representative of the Petitioner, Richard Abdow (Abdow), had left several messages for him. Prior to 9:30 a.m., McCook called Abdow. During their telephone conversation, Abdow inquired if McCook had received a copy of the decertification petition. Abdow also represented that the Petitioner had a sufficient showing of interest and asked McCook not to bargain with the Association.

Later that day at approximately 9:30 a.m., McCook called Moriarty to indicate that he had received a copy of the Petitioner's decertification petition and to cancel the bargaining session scheduled that afternoon.¹¹ Moriarty asked McCook to fax him a copy of the decertification petition. McCook did so at approximately 11:00 a.m. Moriarty showed Connor the copy of the decertification petition that he had received from McCook. Because the cover letter accompanying the decertification petition stated that authorization cards would be furnished under separate cover, Connor called the Commission to determine if the authorization cards had been filed.¹² After speaking to the Commission's Executive Secretary, Connor determined that the authorization cards had not been filed.¹³

6. In the letter, Moriarty confirmed that the parties had scheduled bargaining sessions on September 30, 1999 and October 13, 1999 at 3:00 p.m.

7. Zamorski worked as a nursing supervisor and attended bargaining sessions between the Association and the School Committee to advise the School Committee on nursing issues. Zamorski was not a member of the Association's bargaining unit.

8. The Hearing Officer took administrative notice of the fact that the Commission docketed the decertification petition as Case No. MCR-4773.

9. Joint Exhibit 12 is a letter dated January 10, 2000 from Collective Bargaining Agent Clement Chelli (Chelli) to Moriarty with letters from twelve unit members of the Association attached rescinding permission to withhold Association dues.

10. The Commission's jurisdiction is uncontested.

11. The record reflects that McCook relied on Abdow's representations that the Petitioner had a sufficient showing of interest to support the decertification petition when he called Moriarty and canceled the September 30 bargaining session.

12. Although the record indicates that McCook also called the Commission that day, there is no evidence showing the time of McCook's call or what he learned from Commission personnel.

13. The Hearing Officer took administrative notice of the letter from the Commission's Executive Secretary to Petitioner's attorney, David Rome (Rome), dated October 1, 1999 stating that the decertification petition would be dismissed unless the Petitioner submitted the required showing of interest no later than seven days after receipt of the notice.

Connor subsequently called McCook at approximately 12:00 p.m. or 1:00 p.m. that day. During the telephone conversation, Connor told McCook that the decertification petition was invalid and demanded to bargain at 3:00 p.m. as previously scheduled. Connor also told McCook that he thought Zamorski had scheduled a mandatory staff meeting beyond the nurses' regular workday on September 23, 1999 so the Petitioner could hold an organizational meeting immediately following the staff meeting.¹⁴ McCook refused to bargain that day.¹⁵

Moriarty wrote a letter to McCook on October 1, 1999 demanding to resume bargaining immediately because the Petitioner's decertification petition was not supported by the requisite showing of interest. Moriarty further alleged in his letter that Zamorski had booked a room for the Petitioner to conduct an organizational meeting following a mandatory staff meeting on September 23, 1999 and had authorized the use of interoffice mail to facilitate the decertification process. McCook wrote a letter to Moriarty that same date explaining that he canceled the September 30, 1999 bargaining session because he thought that continuing negotiations after the decertification petition had been filed could result in an unfair labor practice. In addition, McCook denied the Association's allegations concerning Zamorski and asserted that the October 13, 2000 bargaining session was still scheduled. In a letter to Moriarty dated approximately October 6, 1999, McCook canceled the October 13, 1999 bargaining session.¹⁶

Interoffice Mail

The Springfield School Department had an interoffice mail system that allowed School Department employees to mail correspondence to other School Department employees or to employees of the City of Springfield. There were mailboxes located at the School Department's central office. Mail traveled to and from the central office to forty or fifty sites using a courier service. Postage was not

required. In general, no one screened the mail that passed through the system.

Article 3, Section 3.04 of the Agreement addressed the Association's use of the interoffice mail system. That portion of the Agreement stated that the School Committee would provide the Association with the use of the School Committee's correspondence distribution system for the dissemination of union materials provided that the materials were not inflammatory or defamatory in nature and related to affairs pertinent to the bargaining unit.

At some point after September 23, 1999, Kathy DiGiovanni (DiGiovanni), a member of the Association's bargaining unit, received a union authorization card (the first card) in interoffice mail in an envelope that did not indicate the identity of the sender.¹⁷ DiGiovanni did not sign the first card. Approximately one week later, Christine Leary (Leary)¹⁸ visited DiGiovanni at work. Leary indicated to DiGiovanni that she had sent the first card and had brought another union authorization card (the second card) for DiGiovanni to sign.¹⁹ DiGiovanni told Leary that she had not received the first card. Although DiGiovanni's statement was inaccurate, she made that statement because she was undecided whether to support the Association or the Petitioner and wanted time to think before she made a choice. DiGiovanni signed the second card before Leary left that day.

On or about September 29, 1999, Bouchereau called Starla George (George)²⁰ and inquired if she could have a mailbox at the central office to receive interoffice mail from the other nurses.²¹ George and Bouchereau discussed whether the nurses were willing to send mail to Bouchereau's home using the U.S. Postal Service. George asked Bouchereau if the interoffice mail from the other nurses would pertain to union business. Bouchereau replied that it could pertain to both union business and to school business.²² George

14. The record does not clearly reflect whether Connor or Moriarty informed McCook on September 30 that the Association suspected Zamorski had authorized the Petitioner to distribute union authorization cards using interoffice mail and had denied the Association access to that system for union business.

15. Connor testified that, during his conversation with McCook on September 30, McCook canceled the October 13, 1999 bargaining session as well as the September 30, 1999 bargaining session. However, McCook testified that he only canceled the September 30 bargaining session. The Hearing Officer credited McCook's testimony because it is corroborated by a contemporaneous letter McCook wrote to Moriarty dated October 1, 1999 in which he stated, "I have not *as of this date* cancelled the October 13th meeting with the School Nurses." (Emphasis in original.) Although Moriarty's October 1, 1999 letter to McCook stated that McCook told Connor on September 30 that McCook was canceling all future bargaining sessions, that statement is *totem pole hearsay* and is insufficiently reliable to corroborate Connor's testimony. Further, the record does not indicate that Connor told Moriarty that McCook canceled the October 13, 1999 bargaining session.

16. The Hearing Officer took administrative notice of the Commission's Notice of Hearing in Case No. MCR-4773 dated October 5, 1999 stating that the showing of interest accompanying the Petitioner's decertification petition was sufficient and that the petition raised a question of representation.

17. The record does not reflect that any other correspondence relating the Petitioner's decertification petition passed through the School Department's interoffice mail system.

18. Leary was a member of the Association's bargaining unit and was active in the Petitioner's decertification effort. Leary and Zamorski were sisters.

19. Leary testified that she did not send a union authorization card to DiGiovanni through interoffice mail. However, the record reflects that Leary sent a letter via U.S. mail to unit member Marie Bogan (Bogan) on or about September 26, 1999 inviting Bogan to return an enclosed union authorization card either to Brown by U.S. mail or to Leary through interoffice mail. Because Leary invited Bogan to return a union authorization card to her using interoffice mail, it was likely that Leary would have used interoffice mail to send a union authorization card to DiGiovanni. Therefore, the Hearing Officer credited DiGiovanni's testimony.

20. George worked as a provisional principal clerk for Zamorski, Health Supervisor Colleen Walsh (Walsh), and Assistant to Superintendent for Technology Robert Hammel (Hammel).

21. Bouchereau testified that she asked for a mailbox at the central office to receive interoffice mail. George testified that Bouchereau spoke about using the interoffice mail system to receive mail from the nurses rather than about a mailbox. Because Bouchereau was more likely to recall the words she used during the conversation, the Hearing Officer credited Bouchereau's testimony.

22. Bouchereau testified that she responded to George's question by saying that she could receive both. The Hearing Officer inferred that Bouchereau's use of the term both meant interoffice mail about both union business and school business. However, in George's initial testimony, she indicated that Bouchereau hung up before responding to the question. When George was asked subsequently if she had said anything else to Bouchereau, George added that she told Bouchereau to call Executive Director of Human Resources David Cruise (Cruise). The Hearing Officer credited Bouchereau's testimony because: a) Bouchereau was more likely to recall how she responded to George's question; and b) it was unlikely that George would refer Bouchereau to Cruise without receiving a response from Bouchereau to the question.

told Bouchereau to call Cruise.²³ Bouchereau then hung up the phone.

September 23, 1999 Meetings

Sometime in mid-September 1999, Zamorski wanted to schedule a mandatory staff meeting with the nurses. Zamorski selected the week she wanted the staff meeting to occur and asked George to book a room. George called Nick Calabrese (Calabrese)²⁴ and asked what dates were available during the week Zamorski had indicated. Calabrese confirmed that George could book Room 107 in the Professional Development Center for one hour²⁵ starting at 2:45 p.m.²⁶ on September 23, 1999. Zamorski sent a memorandum dated September 15, 1999 to all nurses informing them about the staff meeting.

In the late afternoon of September 15, 1999,²⁷ fifteen members of the Association's bargaining unit met with Brown at the Bethesda Church to discuss the possibility of merging the Association with Petitioner's Local 1459.²⁸ As a result of that meeting, the fifteen unit members decided to schedule a meeting with the entire unit regarding the merger issue.

On September 16, 1999, Leary received Zamorski's memorandum regarding the September 23, 1999 staff meeting. Leary decided to schedule the meeting to discuss the merger on the same day as the staff meeting to ensure the highest possible attendance rate. On September 16, 1999, Leary and Brown drafted and addressed a letter to Bouchereau dated that same date. The letter called for a meeting of the Association's bargaining unit on September 23, 1999 at 3:30 p.m. in Room 107 of the Professional Building to discuss and to vote on a merger with Petitioner's Local 1459.²⁹ The fifteen unit members who had attended the September 15, 1999

organizational meeting signed the letter. Brown and Leary sent the letter by U.S. mail to all unit members.³⁰

On or about September 16 or September 17, 1999, Wescott left a message for Calabrese asking to book Room 107 at the Professional Development Center on September 23, 1999 at 3:30 p.m. and indicated that, if she did not hear from Calabrese, she would assume that the room was booked.³¹ Calabrese never called Wescott. Members of the Association's bargaining unit met with Brown in Room 107 as scheduled to discuss merging with the Petitioner.³²

Opinion

Here, we must decide whether the School Committee violated Section 10 (a) (2) and Section 10 (a) (5) of the Law by refusing to bargain with the Association after learning that the Petitioner filed a decertification petition but before the Commission determined if that petition raised a question of representation. We also must decide whether the School Committee violated Section 10 (a) (2) of the Law by: 1) allowing the Petitioner to use the interoffice mail system to distribute union authorization cards; 2) denying the Association access to the interoffice mail system for union business; and 3) permitting the Petitioner to schedule an organizational meeting to take place during part of the time the School Committee had scheduled a mandatory staff meeting.

Section 10 (a) (2) of the Law makes it a prohibited practice to dominate, interfere, or assist in the formation, existence, or administration of any employee organization. To establish a violation of Section 10(a)(2) of the Law, the evidence must demonstrate that the School Committee's conduct significantly interfered with the existence and administration of the Association. *See, Town of North Attleboro*, 26 MLC 84, 86 (2000), *citing City*

23. Bouchereau testified that George told her that she could not have a mailbox at the central office. However, the Hearing Officer credited George's testimony because: a) George was more likely to recall her own words; and b) it was likely that Bouchereau interpreted George's statement about calling Cruise as a denial of her request for a mailbox.

24. Calabrese worked as a Professional Development Support Specialist and was in charge of booking rooms at the Professional Development Building.

25. The record reflects that Zamorski typically scheduled staff meetings for one-hour periods.

26. The record does not clearly indicate how the decision was reached to book the room at 2:45 p.m.

27. Leary first called Brown in early September of 1999. She and Association unit member Roseanne Wescott (Wescott) met with Brown on or about September 7, 1999 to obtain information about the Petitioner and to express their concerns about the Association. Brown offered to assist Leary and Wescott to form their own union or to affiliate with the Petitioner. A few days after this meeting, Leary and Wescott called Brown and asked him to meet with other members of the bargaining unit on September 15, 1999 to discuss a merger with the Petitioner.

28. In its closing argument, the Association asked the Commission to infer that Zamorski told Leary about Brown because: a) Zamorski had met Brown during Connor's 1994 campaign for state representative; b) Zamorski and Leary were sisters; and c) Zamorski had a poor relationship with the Association. However, the record indicates that Leary learned about Brown through her husband. The record also reflects that Leary's husband obtained Brown's name from a member of his union, the National Association of Letter Carriers. Therefore, we decline to make the factual inference requested by the Association.

29. Leary anticipated that the staff meeting would end around 3:30 p.m.

30. In its closing argument, the Association asked the Commission to infer that Leary and Zamorski collaborated to schedule the mandatory staff meeting before the Petitioner's organizational meeting because: a) Zamorski and Leary were sisters; b) Zamorski had a poor relationship with the Association; c) Zamorski previously told Bouchereau that she would schedule mandatory staff meetings before the Association's unit meetings to boost attendance at the unit meetings; and d) although the nurses' workday ended at 3:30 p.m., Zamorski had booked the room until 3:45 p.m. However, the record reflects that Leary learned about the staff meeting after receiving Zamorski's memorandum and organized the union meeting with Brown and Wescott's help. Therefore, we decline to make the factual inference requested by the Association.

31. Former Association Vice President Trudi Piscitelli (Piscitelli) told Wescott how to book a room by calling Calabrese.

32. In its closing argument, the Association asked the Commission to infer that Zamorski, either personally or through George, booked the room for the Petitioner because: a) Calabrese did not remember Wescott calling to book the room; and b) Calabrese's logbook did not show that the Petitioner had booked the room. However, Calabrese did not demonstrate sufficiently reliable recall abilities during his testimony from which to draw the inference requested by the Association. Further, Calabrese testified that he wrote booking information on pads of paper that he did not save. The record does not reflect when Calabrese entered the booking information into the logbook. Because it was possible for Calabrese to inadvertently omit entering booking information into the logbook, we decline to make the factual inference requested by the Association.

of Boston, 14 MLC 1606, 1618 (1988); See also, *Blue Hills Regional Technical School District*, 9 MLC 1271 (1982).

An employer commits a *per se* violation of Sections 10 (a) (1) and 10 (a) (2) of the Law if it bargains with an incumbent after a question of representation has been raised by a rival union. *Commonwealth of Massachusetts*, 7 MLC 1228, 1235 (1980); *Town of Wakefield*, 10 MLC 1016, 1018 (1983). The obligation of strict employer neutrality arises at the point when the employer has notice that the Commission has made its initial determination that the rival union's petition and showing of interest are adequate to raise a question of representation. *Id.* In determining when employer neutrality arises, the Commission recognized two competing factors. First, requiring the cessation of bargaining between an employer and an incumbent on the basis of an unsupported challenge by a rival undermines labor stability and deprives employees of the benefits of their union's efforts. *Commonwealth of Massachusetts*, 7 MLC at 1236-1237. Second, employer neutrality has to arise at a meaningful point in the organizing process to permit employees to select or replace their bargaining representative without interfering with employee free choice, assisting a rival union, or impeding the Commission's election process. *Id.* at 1237.

Here, the School Committee refused to bargain on September 30, 1999 after learning that the Petitioner had filed a decertification petition but before the Commission determined whether that petition raised a question of representation. By refusing to bargain when there was no obligation to remain neutral, the School Committee allowed an unsupported petition to undermine its negotiations with the Association and deprived the Association of the opportunity to bargain a successor collective bargaining agreement for its unit members. See, *id.* at 1236-1237. As a result of these actions, the School Committee interfered with the stability of the parties' labor relations. Therefore, the School Committee interfered with the Association and assisted the Petitioner. Consequently, we conclude that the School Committee violated Section 10 (a) (2) and, derivatively, Section 10 (a) (1) of the Law by refusing to bargain on September 30, 1999.

The Association contends that the School Committee also violated Section 10 (a) (5) and, derivatively, Section 10 (a) (1) of the Law when it canceled the September 30, 1999 bargaining session. Section 6 of the Law requires public employers and unions that represent their employees to meet at reasonable times to negotiate in good faith regarding wages, hours, standards of productivity and performance, and any other terms and conditions of employment. Although there is no precise formula for determining what level of participation in the bargaining process is required by Section 6, refusing to meet is a *per se* violation of Sections 10 (a) (1) and (5) of the Law and does not require an affirmative demonstration of bad faith. *Boston School Committee*, 23 MLC 111, 112 (1996), citing *City of Chelsea*, 3 MLC 1169 (H.O. 1976), *aff'd* 3 MLC 1384 (1977).

The School Committee here refused to bargain on September 30, 1999 because the Petitioner had filed a decertification petition, although the Commission had not determined whether the petition raised a question of representation. Because the School Committee was not required to remain neutral on that date, it was possible that

the parties could have completed bargaining over a successor collective bargaining agreement. By canceling the negotiating session, however, the School Committee deprived the Association of this chance. Under these circumstances, we conclude that the School Committee violated Section 10 (a) (5) and, derivatively, Section 10 (a) (1) of the Law.

Further, the Association alleges that the School Committee violated Section 10 (a) (2) and, derivatively, Section 10 (a) (1) of the Law by allowing the Petitioner to use the interoffice mail system to distribute union authorization cards. However, only one authorization card passed through the interoffice mail system. Further, the record does not reflect that the School Committee knew or had any reason to know about the use of the interoffice mail system to distribute that card because: 1) no one screened the mail that passed through that system; and 2) the envelope did not indicate the identity of the sender.

The Association next alleges that the School Committee violated Section 10 (a) (2) and, derivatively, Section 10 (a) (1) by denying it access to the interoffice mail system for union business. Specifically, the Association asserts that George denied Bouchereau's request for a mailbox at the central office during a telephone conversation on September 29, 1999. However, George's response to Bouchereau's request was to refer her to Cruise. George did not deny Bouchereau's request for a mailbox. Moreover, referring Bouchereau to Cruise did not impede the Association's access to the interoffice mail system for union business.

The Association also argues that the School Committee permitted the Petitioner to schedule an organizational meeting to take place during part of the time the School Committee had scheduled a mandatory staff meeting. The Association relies primarily on two facts to support its argument: 1) Zamorski scheduled the staff meeting until 3:45 p.m., fifteen minutes beyond the end of a nurse's usual workday; and 2) Zamorski previously told Bouchereau that she would schedule staff meetings on days that Bouchereau wanted to schedule Association meetings to maximize unit member attendance. However, the record reflects that Leary, Wescott, and Brown worked together to schedule the organizational meeting and did not involve Zamorski. Accordingly, the facts advanced by the Association are not persuasive on this point.

Conclusion

We conclude that the School Committee violated Section 10 (a) (2), Section 10 (a) (5) and, derivatively, Section 10 (a) (1) of the Law by refusing to meet with the Association on September 30, 1999 to bargain over a successor collective bargaining agreement. However, we dismiss those portions of the complaint alleging that the School Committee violated Section 10 (a) (2) and, derivatively, Section 10 (a) (1) by: 1) allowing the Petitioner to use the interoffice mail system and denying the Association access to that system for union business; and 2) allowing the Petitioner to schedule an organizational meeting to take place during part of the time the School Committee had scheduled a mandatory staff meeting.

CITE AS 27 MLC 20

Order³³

WHEREFORE, based on the foregoing, it is hereby ordered that the School Committee shall:

1. Cease and desist from:

- a. Failing to bargain collectively in good faith with the Association by refusing to meet with the Association to bargain over the terms of a successor collective bargaining agreement.
- b. Dominating, interfering, and assisting in the formation, existence, and administration of the Association by refusing to meet with the Association to bargain over the terms of a successor collective bargaining agreement.
- c. In any similar manner, interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under the Law.

2. Take the following affirmative action that will effectuate the purposes of the Law:

- a. Upon request, bargain in good faith with the Association over the terms of a successor collective bargaining agreement.
- b. Sign and post immediately in conspicuous places where employees usually congregate or where notices to employees are usually posted and maintain for a period of thirty (30) days thereafter copies of the attached Notice to Employees.
- c. Notify the Commission in writing within thirty (30) days of service of this decision and order of the steps taken to comply herewith.

SO ORDERED.

* * * * *

33. Based on its decision and order here, the Commission will separately issue an Order Dismissing Petition in Case No. MCR-4773 [27 MLC 20].