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In the Matter of PEABODY SCHOOL COMMITTEE  
and  
PEABODY FEDERATION OF TEACHERS, LOCAL 1289,  
AFT, AFL-CIO

Case No. SI-04-269

92.47      *motion to dismiss*  
108.5      *strikes – sufficiency of charge*

August 24, 2004

Allan W. Drachman, Chairman  
Helen A. Moreschi, Commissioner  
Hugh L. Reilly, Commissioner

Jeffrey W. Jacobsen, Esq.      *Representing the Peabody  
Federation of Teachers, Local  
1289, AFT, AFL-CIO*

Daniel Kulak, Esq.      *Representing the Peabody  
School Committee*

**AMENDED RULING ON MOTION TO DISMISS <sup>1</sup>**

On August 9, 2004, the Peabody School Committee (School Committee) filed a Petition for a Strike Investigation with the Labor Relations Commission (Commission) for a strike investigation pursuant to Section 9A(b) of Chapter 150E of Massachusetts General Laws, (the Law). The petition alleges that the Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO (Union) and Michalene Hague (Hague), a Union spokesperson, violated Section 9A of the Law, by Hague's public statement, which is quoted in the June 21, 2004 edition of the Salem News, that the Union and its members are preparing to strike, even though she acknowledged that "a strike would be illegal under state law."

On August 10, 2004, the Commission sent a notice to the parties that it would conduct a strike investigation on August 25, 2004 at 10:00 a.m. <sup>2</sup>

On August 12, 2004, the Union filed *Respondent's Motion to Dismiss or Continue* (Motion to Dismiss). The Union moves to dismiss the petition on grounds that it is filed prematurely and in bad

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1. The Commission has amended the original Ruling on Motion to Dismiss, which was faxed to the parties on August 24, 2004, to include two case citations that were inadvertently omitted from the end of the opinion.

2. In the cover letter to the petition, dated August 6, 2004, counsel for the School Committee asked that the Commission not schedule the investigation before August 23, 2004, because counsel's offices would be closed until then for vacation.

faith. The Union alternatively moves the Commission to continue and reschedule the strike investigation for the week of August 30, 2004, because the Peabody school year does not begin until after Labor Day (September 6, 2004). The School Committee filed a response to the Motion to Dismiss on August 24, 2004, contending that the Commission should conduct an investigation based on the statements that Hague made and the fact that the school year is scheduled to begin the day after Labor Day.

#### FACTS

For purposes of deciding the Motion to Dismiss, we assume the truth of the School Committee's allegations, set forth in the Strike Petition and its attachments.

The Petition alleges that the Union is the exclusive representative of a bargaining unit of employees consisting of "classroom teachers including permanent substitute teachers, guidance counselors, librarians, assistant librarians, part-time classical language instructors, learning disabilities teachers, CORE Evaluation Team, therapists and full-time and regular part-time non-supervisory Chapter I (Title 1) teachers and tutors."

The Union and the School Committee are parties to a collective bargaining agreement that expired by its terms on August 31, 2003.

On or about June 23, 2003, the parties began negotiations for a successor collective bargaining agreement. Since that date, the parties have participated in fifteen (15) negotiating sessions, the last six of which were conducted under the direction of a mediator appointed by the Massachusetts Board of Conciliation and Arbitration.

On or about June 4, 2004, members of the bargaining unit voted to work only their contractually mandated hours on Tuesdays and Thursdays for the rest of the school year.

On June 21, 2004, the Salem News published an article that stated in pertinent part:

Peabody teachers say this afternoon's informational picket outside City Hall could be the prelude to a possible strike in September.

"We are in preparation mode," said union spokeswoman Michalene Hague, head of the high school English Department. "I think this is the point in time where we prepare for the worst and hope for the best."

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Hague said the two sides remain far apart, and teachers have begun to plan a strike even as they hold out hope that one can be avoided. She noted that a strike would be illegal under state law, but said teachers are prepared to do so anyway.

"Any kind of action like that is illegal and we would just as soon not do that, but we have to be prepared to defend our interests," she said.

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#### Opinion

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). (Emphasis added.) Where the evidence is speculative, or where the unit must take essential predicate action, such as a strike vote, before a strike can occur, the Commission has concluded that a threatened strike is not imminent. *City of Worcester*, 13 MLC 1627, 1629 (1987). However, where the union has taken all of the essential steps to undertake a strike, the Commission has found a violation of Section 9A(a). Under present Commission case law, that point is reached when a strike vote results in a decision to strike. *Boston School Committee*, 30 MLC 129 (2004); *Boston School Committee*, 27 MLC 32, 34 (2000); *City of Worcester*, 13 MLC 1627, 1629 (1987).

The School Committee relies on two events to support its allegation that Union is about to engage in an unlawful strike under Section 9A(a) of the Law. First, that the bargaining unit worked only their contractually-mandated hours on Tuesdays and Thursdays in June 2004. However, the petition provides no details regarding this work-to-rule action, i.e. what contract provisions or past practice terms have been violated, or if there were any required duties that were not performed since the end of the 2003-2004 school year. Second, the School Committee relies on Hague's statements to the Salem News, to the effect that Peabody teachers had begun to plan for, and were prepared to engage in, a strike.

Neither allegation, standing alone, or together with its counterpart, leads us to conclude that a threatened strike is about to occur because there is no evidence that the Union has held or even scheduled a strike vote or that any Union activity has occurred since June to advance the alleged strike preparation. There is not enough certainty of continued strike preparation to justify a hearing at this time. This case is distinguishable from *Boston Teachers Union, Local 66*, 30 MLC 129 (2004). In that case, the Commission concluded that an illegal strike was about to occur where the membership voted to strike in a planned and well-publicized strike vote, and the union announced the results of its strike on its website, in a recorded telephone message, and in a meeting with school officials. *Id.* at 130-131. In marked contrast, the Union's strike preparations here, as set forth in the petition, were more than two months old when the petition was filed, with no evidence that they continue. *City of Medford*, 7 MLC 1181 (1980); *Northeast Metropolitan Vocational School District*, 13 MLC 1213, 1217 n. 5 (1986).

We therefore DISMISS the petition, without prejudice.<sup>3</sup>

The charging party may, within ten (10) days of receipt of this notice seek a review of this determination by the Commission, pursu-

3. Because we dismiss the petition on its merits, we do not rule on other aspects of the Motion to Dismiss.

## CITE AS 31 MLC 52

ant to MLRC rules 456 CMR 15.04(3) and 456 CMR 17.10(2). The request shall contain a complete statement setting forth the facts and reasons upon which such request is based. The charging party shall include a certificate of service indicating that is has served a copy of its request for review on the opposing party or its counsel. Within seven (7) days of receipt of the charging party's request for review, any other party to the proceeding may file a response to the charging party's request with the Commission

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