

NEWTON SCHOOL COMMITTEE AND LOCAL 454, SEIU, AFL-CIO, SI-147 (1/18/83). NOTICE TO PARTIES.

(10 Definitions)  
16. Strike  
(100 Impasse)  
108.21 refusal of overtime)

Commissioners participating:

Paul T. Edgar, Chairman  
Joan G. Dolan, Commissioner  
Gary D. Altman, Commissioner

Appearances:

Michael C. Lehan, Esq.	- Representing the Newton School Committee
Kathryn M. Noonon, Esq.	- Representing Local 454, SEIU, AFL-CIO

NOTICE TO PARTIES

On January 7, 1983 the Newton School Committee (Employer) filed a petition with the Labor Relations Commission (Commission) pursuant to G.L. c.150E, Section 9A(b) requesting a strike investigation. The essence of the Employer's petition is that the Newton School Custodians Association, Local 454, S.E.I.U., AFL-CIO (Union) and its members are engaging in activity in violation of G.L. c.150E, Section 9A(b) by refusing overtime assignments. The petition further alleges that the respondents have induced, condoned and encouraged the alleged illegal strike activity.

On January 12, 1983, the Commission conducted a thorough investigation of the allegations set forth in the Employer's petition. On the basis of that investigation, we make the following findings:

On November 7, 1982, the Union membership met. One of the issues discussed at that meeting was whether the members, as a means of pressuring the Employer to adopt a new collective bargaining agreement, would adopt a policy whereby they would refuse all voluntary overtime work, except in emergency situations. Sometime in December, 1982, the Executive Board of the Union met and voted that, effective January 7, 1983, the bargaining unit will be on a strict forty-hour work week. Following the Executive Board's decision, on January 5, 1983, the Union sent the following letter to the Superintendent of the Newton Public Schools.

John M. Strand, Superintendent  
Newton Public Schools  
100 Walnut Street  
Newtonville, MA 02160

Dear Mr. Strand:

Local 454 Service Employees International Union has been in negotiations for a new contract for a year with no success. When the Newton School



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Committee did finally complete negotiations with the other employee groups and contracts were settled on we thought that negotiations with our group would begin to open up in earnest (sic) and have a contract this month, but it appears to our people that the Newton School Committee is not sincerely interested in dealing with our group in a fair and equitable manner as they did with the other employee groups.

Because of the manner in which the Newton School Committee has conducted their negotiations with Local 454 over the past year, and the very obvious lack of sincerity on their part at the last negotiation session to reach an agreement, we feel that at this time we must take an action we are very reluctant to take.

By the recommendation of the President and Negotiating Committee, the vote of the Executive Board and membership of Local 454, effective Friday, January 7, 1983 commencing at 12:01 A.M. the Bargaining Unit will be on a strict forty hour work week throughout the school system. This will remain in affect (sic) until such time as Local 454 and the Newton School Committee has reached a written and signed agreement, (contract).

Very Truly Yours,

Carmine J. Testa  
Secretary

On January 6, Union officials notified the membership by telephone that this letter had been sent to the Employer and urged them not to accept voluntary overtime work, except in emergency cases.

Article XVIII of the most recent agreement between the parties contains the following provision regarding overtime:

- G. Overtime work shall be voluntary except in case of an emergency. If qualified volunteers on a system-wide basis are not available for the performance of overtime work, the Administration shall assign overtime work to employees covered by this Agreement.

Normally, overtime work becomes available when special events such as a PTA meeting, a basketball game or special classes held on the weekend take place at the various public schools in Newton. The practice has been that employees wishing to work overtime would leave their names on a machine referred to as the "codaphone," indicating their availability. When overtime work becomes available, the Supervisor of Custodians, Eugene Sweeney, would call on the employees whose names are on the codaphone.

During the weekend of January 7 through the 9th, following the release of the Union's letter, overtime work became available in the following locations because special events were scheduled: 1) Newton North High School 2) Newton South High 3) Bigelow Junior High 4) Dade Junior High 5) Cabot School 6) the Youth Center at Hyde School. At North High, a custodian normally works from Tuesday through Saturday



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On Saturdays, however, overtime cleaning always becomes available. On Saturday, January 8, the custodian worked his normal hours, but no one volunteered for the overtime cleaning. Consequently, Sweeney contacted the custodians who normally work at Newton High and asked them whether they would be willing to work overtime. They all declined to volunteer.

Similarly, at Newton South, no bargaining unit member volunteered for overtime work. Sweeney therefore called the Senior Custodian for that school, Tom Ryan, and asked him to find someone to cover the overtime work at Newton South. Only custodians normally assigned to Newton South were contacted to perform the work available there. They all declined to volunteer.

Sweeney followed the same procedure in attempting to find employees willing to perform the overtime work which became available at each location during the weekend of January 7 through the 9th. In all cases, the employees declined to volunteer. Sweeney admitted, however, that he "did not want to force them to come in." None of the employees contacted were ordered to work. In addition, not all 109 bargaining unit members were contacted. Only those employees who usually cover a particular school were asked to perform overtime work available at such school.

Opinion

Section 9A(a) of the Law reads:

No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall induce, encourage or condone any strike, work stoppage, slowdown or withholding of services.

In prior cases we have considered issues similar to those in the instant case where employees are refusing to perform some portion of their assigned work. Town of Arlington, 6 MLC 1327 (1979); Lenox School Committee, 7 MLC 1761 (1980); Southeastern Regional School District Committee, 7 MLC 1801 (1980). In determining whether public employees are engaging in a strike or withholding of services, we consider the following factors: 1) whether the service is one which employees must perform as a condition of employment; 2) whether the service was in fact withheld; and 3) who bears the responsibility for the withholding.

In the instant case, there is no question that voluntary overtime work was withheld by the custodians. During the weekend of January 7 through 9th, all the custodians contacted by Sweeney declined to accept voluntary overtime. The second factor is therefore satisfied. With respect to the third factor, the Union here communicated by letter to the Superintendent of Schools its intention to urge its membership not to accept voluntary overtime work except in emergency situations. Therefore, there is no doubt that the refusal to accept voluntary overtime was a concerted activity, taken in accordance with a vote by the Executive Board of the Union.

In light of the evidence presented by the parties, however, we dismiss the petition. Article XVIII of the most recent agreement between the parties provides that overtime work is voluntary except in emergency cases. This provision of the contract



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further states that when qualified volunteers on a system-wide basis are not available to perform such work, the Administration will assign overtime work to employees. The evidence adduced at the investigation shows that, during the weekend of January 7 through the 9th, custodians assigned to certain schools declined to accept overtime work which became available at their particular place of work when contacted by Sweeney. Sweeney, however, admitted that he did not order any custodian to come to work. He simply asked whether they would volunteer to work. Anyone is free to decline to do voluntary work. The contract clearly states that the Employer must assign overtime when qualified volunteers are not available. Since the Employer failed to show 1) that qualified volunteers system-wide were in fact not available, 2) that because of the non-availability of volunteers, it assigned employees to perform overtime, and 3) that these employees refused to perform the assignment, the strike petition is hereby DISMISSED.

COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman

JOAN G. DOLAN, Commissioner

GARY D. ALTMAN, Commissioner

