



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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ROCHESTER SCHOOL BOARD AND CITY OF  
ROCHESTER

Petitioner

v.

ROCHESTER FEDERATION OF TEACHERS AND  
AMERICAN FEDERATION OF TEACHERS  
LOCAL 3607

Respondent

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CASE NO. T-03338:4

DECISION NO. 86- 63

### APPEARANCES

#### For the Rochester School Board and City of Rochester:

Wayne Murray, Esquire, Counsel  
Richard Hamilton, Superintendent of Schools  
David Chick, Assistant Superintendent of Schools

#### For the Rochester Federation of Teachers:

Emmanuel Krasner, Esquire, Counsel  
Suzann Cushman, President of the Federation

### BACKGROUND

This case comes before the Public Employee Labor Relations Board as a result of unfair labor practice charges filed by the Rochester School Board and City of Rochester alleging violations of RSA 273-A:5 II (e) and (f) and violation of RSA 273-A:13. Specifically, the Complainant alleges that the union and its members engaged in an illegal job action constituting concerted activity in that on September 9, 1986 teachers undertook a "sick-out", calling in sick and failing to appear for work which necessitated closing schools in Rochester on that day. Further, the allegation states that this was an activity sponsored and countenanced by the union. The case was initially heard by the Strafford County Superior Court which issued a temporary restraining order on September 9, 1986. The Courts order stated "pending further order of the Court, the Rochester Federation of Teachers is enjoined from participating in a "sick-out" or any other similar job action".

The Court deferred any further action pending hearing and order by the PELRB in accordance with the provisions of RSA 273-A:13. The PELRB held a hearing pursuant to notice in the City Council Chambers in Rochester on September 22, 1986.

At the hearing, the City set forth its case stating that the union had engaged in an activity in which it encouraged and its members carried out a job action. Evidence at the hearing presented by the School Board indicated that the union was dissatisfied with the progress of negotiations for a contract in Rochester and that on September 8, 1986 a meeting was held for teachers which meeting was chaired by Suzann Cushman, President of the union. The meeting began at approximately 3:30 p.m. and ended at 4:50 p.m. Approximately 120 teachers were at the meeting. At some point, according to the evidence presented by Ms. Cushman, she believed she was losing control of the meeting and therefore asked that it be adjourned. The meeting went on after she left. Later in the day, at approximately 5 p.m., people began to call Karen Muzzey and Pauline Webster, the school employees to whom teachers made calls if they were sick. On a typical day, each of these individuals receives between 3 and 12 telephone calls. On September 8, in the evening more than 100 calls were received.

Acting on the evidence of massive numbers of calls and the inability to find substitutes, the Superintendent of Schools and Assistant Superintendent of Schools in a series of consultations between themselves and with other appropriate officials decided that school should not be held on September 9 and it was not held.

Evidence presented showed that union officers other than the president called in sick.

The union president testified that she knew nothing of any plans for any action, heard no discussion of any action, did not sanction any action or participate in it. Further, she testified that both union and non-union teachers called in sick. She testified that she did nothing to seek to have the teachers return to work. Under cross examination, she stated she did nothing and no one else that she knew did anything to encourage the job action. She stated that she had never asked or investigated what had occurred or who had encouraged any action.

Testimony indicated that 96 members of the union called in sick and 22 teachers not in the union called in sick. There are 254 teachers in the school district.

### FINDINGS OF FACT

While there was no direct testimony at the hearing that the union encouraged or planned the "sick-out" which the Board finds as matter of fact occurred in Rochester by calls on September 8 and 9 for the school day of September 9, circumstantial evidence can be used to establish what occurred. First, a meeting of the teachers was held which broke up at approximately 4:50 p.m. Within a hour thereafter, calls began to be made to the appropriate school officials. Indeed, the majority of the officers of the union made such calls. Concerted action was taken almost immediately after the union meeting which was primarily held to discuss dissatisfaction with the progress of negotiations.

It is obvious from testimony that the union president was either isolated from or claims to have been isolated from any planning or activity. Frankly, the Board finds it difficult to believe the testimony of the president of the union. If the testimony is believed, the president suffered from an uncanny lack of curiosity into what was going on within her own school and union and it is more probable and logical that what occurred was that she isolated herself or was isolated by others from the incident to avoid being tied into illegal concerted activity.

The Board finds that the teachers were never discouraged by the union from engaging in the activity, no action was taken to urge them to stop their action and there was obvious concerted activity in violation of RSA 273-A:13 and RSA 273-A:5 II.

Because of these factors, and because there is no other logical explanation for what occurred, the Board finds as a matter of fact that the Rochester Federation of Teachers and its members engaged in concerted activity which resulted in the "sick-out" on September 9, 1986.

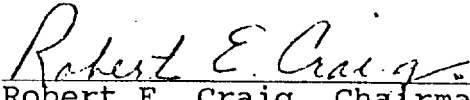
### RULINGS OF LAW

Having found concerted activity as a matter of fact, the Board rules that there has been a violation of RSA 273-A:13 and RSA 273-A:5 II (e).

Because it would serve no particular purpose to interfere with the negotiation processes in Rochester and the apparent desire of the parties to reach agreement on a new contract, the Board does not believe that extreme remedies or the awarding of counsel fees or costs are appropriate in this case. It does believe that a Cease and Desist Order is appropriate as issued by the Superior Court. Therefore, the Board issues the following order.

ORDER

The Board orders the Rochester Federation of Teachers and its members to Cease and Desist any further concerted activity or "sick-out" as engaged in on September 8 and September 9, 1986.

  
Robert E. Craig, Chairman

Members Molan and Roulx also present. All concurred. Also present Executive Director Evelyn C. Lebrun and Counsel Bradford . Cook.

Signed this 17th day of October, 1986.