

In the Matter of BOSTON TEACHERS UNION, LOCAL 66, AFT - MASSACHUSETTS, RICHARD STUTMAN, in his capacity as President, PATRICK CONNOLLY, in his capacity as Executive Vice President, EDWARD A. WELCH, in his capacity as Secretary-Treasurer, MICHAEL MCLAUGHLIN, in his capacity as Elementary Field Representative and Executive Board Member, CAREN CAREW, in her capacity as Secondary Field Representative and Executive Board member, JENNA FITZGERALD in her capacity as Paraprofessional/Substitute Field Representative and Executive Board member, PATRICIA ARMSTRONG, in her capacity as Political Organizer and Executive Board member, ROB CARROLL, ISILDA COLONETTE, ANGELA CHRISTIANI, ALLISON DOHERTY-LACASSE, DEE ESPOSITO, MARY F. GLYNN, ROBERT F. JANGO, CHARLIE JOHNSON, CHERYL L. KELLY, MICHAEL MAGUIRE, JAMES PHILIP, and MARY ANN URBAN, in their capacities as Executive Board members

and

BOSTON SCHOOL COMMITTEE

Case No. SI-07-272

82.12	<i>other affirmative action</i>
82.4	<i>bargaining orders</i>
92.45	<i>motion to re-open</i>
92.47	<i>motion to dismiss</i>
108.4	<i>setting requirements under Chapter 150E, Section 9</i>
108.5	<i>strikes – sufficiency of charge</i>
108.8	<i>constitutionality</i>

January 18, 2007

John F. Jesensky, Chairman
Hugh L. Reilly, Commissioner
Paul T. O'Neill, Commissioner

Matthew Dwyer, Esq. *Representing the Boston Teachers Union, Local 66, AFT - Massachusetts, and its officers and Executive Board members*

Elizabeth Valerio, Esq. *Representing the Boston School Committee*
Robert M. Spiegel, Esq.

FINAL ORDER 9A PROCEEDINGS

On January 9, 2007, the Boston School Committee (School Committee) filed a petition with the Labor Relations Commission (Commission) for a strike investigation (Petition) pursuant to Section 9A(b) of Massachusetts General Laws, Chapter 150E (the Law). The Petition alleges that the Boston Teachers Union, Local 66, AFT - Massachusetts (Union) is about to engage in a strike, and that the Union, its officers, and its Executive Board members have induced, encouraged, and condoned a strike, work stoppage, or withholding of services in violation of Section 9A(a) of the Law. The Commission conducted an investigation of the Pe-

tion on January 11, 2007. Both parties had an opportunity to be heard, to examine witnesses, and to introduce evidence. The investigation was closed on January 11, 2007.

Motion to Dismiss

During the investigation, the Union filed a motion to dismiss the strike petition (Motion To Dismiss) on the grounds that the School Committee failed to show that a strike is occurring or about to occur within the meaning of Section 9A(b) of the Law. The Union filed a memorandum of law in support of its Motion to Dismiss on January 11, 2007. The School Committee opposes the Motion to Dismiss and filed a memorandum of law in support of its position on January 11, 2007. Both the School Committee and the Union filed a reply to the opposing party's memorandum of law on January 12, 2007. The Commission has decided to deny the Motion to Dismiss for the reasons stated below.

Motion to Reopen

The Union also filed a motion to reopen/augment the record on January 11, 2007 (Motion to Reopen) to accept affidavit testimony from the Union President about the intended meaning of the Union's communications about Fairness Friday. In support of its Motion to Reopen, the Union states that the affiant was not available to testify at the investigation on less than twenty-four hours notice and that Union counsel was unable to confer directly with the Union President until after the investigation had concluded.

The School Committee filed its opposition to the Motion to Reopen on January 12, 2007. The School Committee opposes the Motion to Reopen because: 1) the Union has not adequately supported its contention that the Union President was not available to attend the January 11, 2007 investigation; and 2) it does not have an opportunity to cross-examine the Union President about the information contained in his affidavit.

The Commission has decided to deny the Motion to Reopen because: 1) the School Committee has not had the opportunity to cross-examine the Union President on the content of his affidavit; and, 2) the Commission declines to permit the parties to backfill the record testimony through affidavits on issues that are material to the Commission's determination of whether the named respondents have violated Section 9A(a) of the Law.

Parties' Stipulations

1. The City of Boston (City) is a public employer within the meaning of Section 1 of M.G.L. c. 150E (the Law).
2. The Boston School Committee (School Committee) is the collective bargaining representative of the City for the purpose of dealing with school employees.
3. The Boston Teachers Union, Local 66, AFT - Massachusetts (Union) is an employee organization within the meaning of Section 1 of the Law.
4. The Union represents teachers, nurses, and certain other professional employees, paraprofessionals and certain substitute teachers who work for the Boston School Committee

5. The School Committee and the Union were parties to collective bargaining agreements effective September 1, 2003 and continuing in full force and effect through August 31, 2006.

6. The School Committee and the Union have been negotiating since January 2006 for successor collective bargaining agreements.

7. Michael Contompasis (Contompasis) is the Superintendent for the Boston public schools.

8. Richard Stutman (Stutman) is president of the Union.

9. Patrick Connolly is the executive vice-president of the Union.

10. Edward A. Welch is the secretary-treasurer of the Union.

11. Michael McLaughlin is the Union's elementary field representative and a member of the Union's Executive Board.

12. Caren Carew is the Union's secondary field representative and a member of the Union's Executive Board.

13. Jenna Fitzgerald is the Union's paraprofessional/substitute field representative and a member of the Union's Executive Board.

14. Patricia Armstrong is the Union's political organizer and a member of the Union's Executive Board.

15. Rob Carroll, Isilda Colonette, Angela Christiani, Allison Doherty-Lacasse, Dee Esposito, Mary F. Glynn, Robert F. Jango, Charlie Johnson, Cheryl L. Kelly, Michael Maguire, James Philip, and MaryAnn Urban are members of the Union's Executive Board.

16. The Union maintains a web site at www.btu.org.

Findings of Fact

Based upon the investigation conducted, the Commission makes the following findings of fact:

There are about 149 schools in the Boston public school system, and about 58,000 students attend the Boston public schools. The Union represents about 8,000 School Committee employees. Friday, January 19, 2007 and Thursday, February 15, 2007 are full school days for the students who attend the Boston public schools and full work days for the teachers, nurses, certain other professional employees, paraprofessionals, and certain substitute teachers who work for the School Committee and who are represented for the purposes of collective bargaining by the Union.

Union By-laws

The Union maintains a by-law provision, Article X, Section 1.(b), stating, "A general membership meeting is the only body which may accept or reject contracts or call a work stoppage."

Contract Provisions

Article V.E.2(b), *Length of the School Day*, of the collective bargaining agreement that contains the terms and conditions of employment for teachers (Teachers Contract) states:

(b) The fifteen minutes before and fifteen minutes after school time for teachers shall be reduced to a total of twenty minutes, ten minutes before and ten minutes after school. The faculty, by a majority vote and with the approval of the principal, may change the allocation of the twenty minutes before and after school time.

According to Contompasis, the intent of this contract language, above, is that the ten minutes before the time the students start school and the ten minutes after the school time ends for the students would be the standard in the Boston public school system for the teachers covered by the contract. Any variation from that standard would have to be done in accordance with the contractual procedure, that is, "[t]he faculty, by a majority vote and with the approval of the principal, may change the allocation of the twenty minutes before and after school time."

Article II. A., *Work Schedule and Duties*, of the collective bargaining agreement that contains the terms and conditions of employment for the substitute teachers (Substitute Teachers Contract), in part, states:

Substitute teachers will generally be required to perform the work schedules and duties, in and out of the classroom, of the regular teacher who is being covered by the substitute; provided, however, the teacher assignment procedures, teacher program guidelines, and teaching load provisions of the teachers' contract shall not be considered as established policy or binding contractual commitment. No long term substitute teacher may be assigned teaching periods or administrative duties in excess of the maximum allowed for other teachers in the building.

Article X. F., *Resolution of Differences by Peaceful Means*

The Union and Committee agree that differences between the parties shall be settled by peaceful means as provided within this Agreement. The Union, in consideration of the value of this Agreement and its terms and conditions and the legislation which engendered it, will not engage in, instigate, or condone any strike, work stoppage, or any concerted refusal to perform normal work duties on the part of any employee covered by this Agreement.¹

Union Bulletin #22

On or about January 4, 2007, the Union posted on its web site E-Bulletin #22 (Bulletin #22) dated January 4, 2007. Bulletin #22 states, in part:

Fairness Friday event on 1/19, with more details to be announced later. We ask all staff to picket BEFORE entering school on Friday 1/19. We will then enter right at the beginning of school, no earlier. You will have all week to prepare for the shortened school day. At the end of the school day we will have another activity planned, which we will announce. Picket signs will be available at the BTU membership meeting on 1/10. (Emphasis in the original.)

Stutman signed Bulletin #22 in his capacity as Union president.

1. The same provision is contained in the teachers' agreement, the paraprofessionals' agreement, and the substitute teachers' agreement. (Joint Exhibit 1)

Emergency Union Bulletin #23

On or about January 6, 2007, the Union posted on its web site Emergency BTU E-Bulletin #23 (Bulletin #23) dated January 6, 2007. Bulletin #23 states:

Good morning: Today the Boston Teachers Union is announcing a motion that our Executive Board approved on December 20. The motion passed our 19-member Executive Board unanimously after a two-hour discussion. The motion speaks for itself.

Motion: To place before the membership on February 14, 2007 for discussion, consideration, and debate by that body, in accordance with the bylaws, the question whether there should be a one-day strike on February 15, 2007 or on such other dates as may be chosen by the membership. (Emphasis in the original.)

We have been at the bargaining table since January 27, 2006 and have spent hundreds of hours over 30 plus sessions. The sessions have not been productive and we are still far apart on key issues. We have presented to management a thoughtful bargaining proposal that is both reasonable and fair to our members. Our proposal will improve both our teaching conditions and our students' learning conditions. Their proposal improves neither. The truth is, their proposal is insulting to us and harmful to the children we teach. Consider the following:

- The School Committee *wants to increase class size by two students per classroom* across the board. The committee also wants to eliminate the following sentence from our contract: "Ultimately, the classroom teacher may insist that the class size maximum be enforced." Keeping class size limits is most important to us, and here is an example why:

In 1986-7 the class size limit in grades 6-8 was 36 students per class. Today is 28. It has taken us 20 long, hard years of negotiating to get this far. Our effort has been good for us and the students we teach. The school committee now wants to increase class size in middle schools to 30, as part of its proposal to increase class size in every classroom throughout the city. We're not going backwards.

- Both the union and the school committee want to improve under-performing schools. We each have items on the table that the other can live with. But the committee actually has an item on the table that states that a principal in any of the 20 schools deemed as superintendent's schools can remove a teacher who has a bad "attitude" - one who 'may not adopt and embrace the (principal's) reform strategy.' We all *question*, we all *think*, we all will have a bad 'attitude' from time to time.

- Lastly, on the issue of health insurance... We are sympathetic to the rising costs of health insurance. We are willing to work with the city to help control costs. In fact, we have hired arguably the foremost health insurance expert in the state to advise us. But the committee's proposal to double the cost of HMO insurance coverage while offering only a small salary increase will cause a *loss* in take-home pay for many of our members. That's unacceptable.

We have been firm but reasonable. We wish to settle this contract. But we have been treated with disrespect. The school committee has taken good care of principals most of whom who have received a sal-

ary increase of more than double what we have been offered over a *shorter* time period. We seek equal treatment.

The school committee is apparently willing to foist the contract settlement on the new superintendent, using stall and crawl tactics. We are not. The committee ought to come to the table and make a good faith effort to settle this contract. We remain willing to meet around the clock.

As per the Executive Board motion, over the next five weeks, we will be preparing for all exigencies that could result.

1. The next monthly membership meeting is this Wednesday, 1/10, at 4:00.
2. Friday, January 19, will be **Fairness Friday**. More information will be forthcoming.
3. Until we have a contract settlement, *Work for Fairness* will continue.
4. There is an emergency Area Captains meeting on Thursday, 1/11, at 4:00.
5. There is an emergency, sign-in Building Representatives meeting on Thursday, 2/1, at 4:00.
6. On February 14 at the regularly scheduled membership meeting, the above motion will be discussed, considered and debated in accordance with our by-laws.
7. Please circulate this to your friends and colleagues and tell them that we need their *home* email address. They can sign up here.

(Emphasis in the original.)

Stutman signed Bulletin #23 in his capacity as Union president.

On Saturday, January 6, 2007, Stutman telephoned Contompasis at his school department office.² During this telephone conversation, which lasted about three to four minutes, Stutman notified Contompasis that, on December 20, 2006, the Union's Executive Board had voted to take a motion to the membership to take a strike vote on February 14, 2007, with a strike date of February 15, 2007, if the motion passed. Contompasis thanked Stutman for the "heads up."

Stutman did not discuss Fairness Friday on January 19, 2007 (Fairness Friday) with Contompasis either during this January 6, 2007 telephone conversation or at any other time. Contompasis's knowledge about Fairness Friday, including whether the Union is going to have teachers report late for their work day on that date, is limited to the information that is contained in the Union's bulletins. Contompasis regularly and routinely receives communications from the Union by electronic mail and he received both Bulletin #22 and Bulletin #23 from the Union by electronic mail.

Union Bulletin #24

On or about January 11, 2007, the Union posted on its web site E-Bulletin #24 (Bulletin #24) dated January 11, 2007. Bulletin #24 states, in part:

2. Contompasis has served as the Superintendent of the Boston public schools since May of 2006. Contompasis has worked for the School Committee for about forty-two years, serving as: 1) the Chief Operating Officer for the Boston public schools from 1998 to May of 2006; 2) the headmaster for the Boston Latin School

from 1976 to 1998; and 3) a teacher in the Boston public schools for about ten years prior to 1976.

Yesterday the BTU membership voted in approval of the below motion, which notices the membership that another vote will be taken after consideration, debate, and discussion, at the February membership meeting. The motion is self-explanatory. Yesterday's meeting was highest-attended membership meeting in over two years, with more than 650 people in attendance. The vote yesterday was unanimous, surprising many. The maker of the motion spoke in support of the motion. No one spoke against it. The motion follows:

Motion: To place before the membership on February 14, 2007 for discussion, consideration, and debate by that body, in accordance with the bylaws, the question whether there should be a one-day strike on February 15, 2007 or on such other dates as may be chosen by the membership. (Emphasis in the original.)

• Friday, 1/19, is *Fairness Friday*, 1/19/07; Logistics - meet outside your school in the AM, don't go into school, picket outside school for 20 minutes and walk in as a group precisely at teacher or Para sign-in time. This is not a violation of any school department rule or regulation. You are free to do what you want on your time. The informational picketing outside each school is a way to show BTUnity. This is a most important event and we ask that all participate. We ask that you give 20 minutes of your time outside the building to send Court St. a clear message that class size and health insurance are important issues to our membership. (Emphasis in the original.)

Stutman signed Bulletin #24 in his capacity as Union president.

System-wide protocol requires staff to sign in when they report to work each day. These automated records are reviewed occasionally by school headmasters to monitor the teachers' compliance with the before-school requirements found in Article V.E.2(b), *Length of the School Day*. There is no system-wide protocol that requires staff to sign out at the end of the day. Rather, the sign-out procedure varies by school.

Discussion

Section 9A of the Law³

Section 9A(a) of the Law states:

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 by such public employees.

Section 9A(b) of the Law states:

Whenever a strike occurs or is about to occur, the employer shall petition the commission to make an investigation. If, after investigation, the commission determines that any provision of paragraph (a) of this section has been or is about to be violated, it shall immedi-

ately set requirements that must be complied with, including, but not limited to, instituting appropriate proceedings in the superior court for the county wherein such violation has occurred or is about to occur for enforcement of such requirements.

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, or in the absence of any such agreement, by written personnel policies in effect at least one year prior to the alleged strike; provided that nothing herein shall limit or impair the right of any public employee to express or communicate a complaint or opinion on any matter related to conditions of employment.

Fairness Friday - January 19, 2007

The School Committee argues that the Union, its officers, and its Executive Board members violated Section 9A(a) of the Law by unilaterally scheduling a shortened work day on January 19, 2007 and by inducing and encouraging the employees it represents to work a shortened work day on January 19, 2007 as evidenced by certain text of Bulletin #22. Further, the School Committee asserts that the Union did not cure this violation of the Law when, following the filing of the instant strike petition and during the Commission's investigation of the School Committee's petition, the Union issued Bulletin #24.⁴

In *Dedham Education Association, Inc. et. al*, 31 MLC 163 (2005), the Commission decided that the union and its membership were engaged in an unlawful strike when its members left work before the end of their contractual work day and again, when they were engaged in picketing at a time when they were undisputedly required by the terms of their collective bargaining agreement to have begun their work day. *Id.* at 167, citing, *Lenox Education Association v. Labor Relations Commission*, 393 Mass. 272 (1984) (concerted refusal by a school system's teachers to perform services customarily required of them constitutes a strike), further citations omitted.

Here, the facts demonstrate that January 19, 2007 is a full school day for the students who attend the Boston public schools and a full work day for the School Committee employees represented by the Union for the purposes of collective bargaining. The facts also establish that Article V.E.2(b), *Length of the School Day*, of the Teachers Contract requires teachers to work an aggregate of twenty minutes before and after school time. Further, Article II.A.,

3. The Commission declines to address the constitutional issues raised by the parties for three reasons. First, the Commission is obligated to presume the constitutionality of the Law it administers. Second, there is no indication that either party notified the Attorney General that the constitutionality of the Law was being attacked, and so the Attorney General has had no opportunity to defend the constitutionality of the Law. Third, the Union has explicitly waived the right to engage in a strike or work stoppage by its agreement to resolve differences by peaceful means, Article X.F. of the parties' collective bargaining agreement. Were we called upon to address this issue, we would find that the Law is constitutional, because there is a compelling public interest in preventing strikes and strike threats, there are several reasonable alternatives for the employee organization to communicate its message and have the issues that separate the parties resolved, and, in this context, the re-

strictions upon strikes and strike threats are the least restrictive of the union's free speech rights, and are directed to the employee organization's actions and not pure speech.

4. Because we find that the text in Bulletin #22 specific to Fairness Friday does not violate Section 9A(a), it is unnecessary to address: 1) the School Committee's argument that Bulletin #24 is not relevant to whether the named respondents violated the Law by issuing Bulletin #22; or 2) the Union's argument that the further explanation about Fairness Friday that is contained in Bulletin #24 effectively clarified Bulletin #22's prior message thus nullifying or curing any alleged violation of Section 9A(a).

Work Schedule and Duties, of the Substitute Teachers Contract, in part, states that substitute teachers are generally required to perform the work schedules and duties, in and out of the classroom, of the regular teacher who is being covered by the substitute.

Based on these facts, we find that the act of emailing Bulletin #22 to the 8000 unit members asking “all staff to picket BEFORE entering school on Friday, 1/19 ...[and] then enter right at the beginning of school, no earlier” does not violate Section 9A(a) of the Law. Despite the inclusion of a reference in the bulletin to a “shortened school day,” the request to “enter right at the beginning of school” is insufficient, absent other evidence, to establish that a strike or withholding of services is about to occur on January 19, 2007, and that the Union, its officers, and its Executive Board members have induced, encouraged, or condoned any strike, work stoppage, slowdown or withholding of services on January 19, 2007.

Actions Surrounding the February 15, 2007 Strike Vote

The Commission concludes that the Union has violated Section 9A(a) of the Law with respect to the call for a strike on February 15, 2007. That conclusion is based upon the facts presented by the parties. Most pertinent are, the Union’s by-laws include a provision that contemplates the initiation of a work stoppage; the Union’s Executive Board called for a membership vote on conducting a work stoppage; the Union conducted a preliminary membership vote on holding a second vote on conducting a work stoppage; the Union sent the membership incendiary messages to induce or encourage a work stoppage, including statements that “We’re not going backwards” and “That’s unacceptable,” referring to the School Committee’s bargaining proposals (Bulletin #23); and scheduled the second strike vote for 4:00 p.m. on the day before the scheduled strike date, February 15, 2007, effectively denying the School Committee time to present its case to the Commission, for the Commission to deliberate and issue an opinion and order, and then proceed to court to obtain enforcement of the Commission’s order. (The Commission’s orders are not self-enforcing.) The Union’s advocacy for a strike is further shown by Bulletin #24, which reports that the Executive Committee’s motion for a strike vote was *unanimously* supported at the January 10, 2007 meeting of 650 Union members.

Based on the parties’ stipulations and the facts set forth above, we conclude that a strike, work stoppage, slowdown, or other withholding of services is about to occur and that the Union, its officers, and Executive Board members are inducing, encouraging, and condoning such action in violation of Section 9A(a) of the Law. To the extent our decision here conflicts with prior Commission decisions that required an affirmative strike vote as a prerequisite to a finding that a strike violative of Section 9A either was occurring or was about to occur, the prior decisions are overruled. See, e.g. *Boston School Committee*, 27 MLC 32, 34 (2000); *Brockton School Committee*, 20 MLC 1253, 1258 (1993); *City of Worcester*, 13 MLC 1627, 1630 (1987); *Boston School Committee*, 10 MLC 1289, 1290 (1983). Those decisions required an actual strike vote as a predicate to a finding of violation of Section 9A(a). Such a prerequisite allows for the kinds of strike threats, disruptions, and manipulation of strike votes and strike dates that

preclude timely and effective enforcement to prevent, and not merely interrupt, actions that the Law prohibits.

The purposes of the Law, especially Section 9A, are best effectuated by prudent Commission intervention in a labor dispute at a point in time where the Commission may act to set the necessary requirements to prevent an unlawful disruption of public services. Stated otherwise, we decline to withhold preventive action that is specifically authorized by the plain and unequivocal language of Section 9A where the evidence adequately supports a finding that a strike is about to occur. *Town of Walpole*, 12 MLC 1039 (1985).

We construe the phrase “about to occur” that appears in Section 9A(b) to include situations where actions by employee organizations, their officials or members demonstrate that an actual threat of strike, work stoppage, or slowdown exists so that public officials would reasonably engage in contingency planning, to prevent the interruption of important public services. Although a strike vote incontrovertibly establishes a violation of Section 9A of the Law, other facts and circumstances, such as those found here, exist that are reasonably construed as constituting “induce[ment], encourage[ment] or condon[ation of] any strike, work stoppage, slowdown or withholding of services by such public employees” and should be disavowed. *Town of Walpole*, above.

Unquestionably, by approving a motion to bring a strike vote to the general membership, the Union, its officers, and its Executive Board members have started in motion the approval and authorization by a vote of the general membership to engage in a one-day strike as early as February 15, 2007. A strike by 8,000 School Committee employees who work in the Boston public schools, even a one-day strike, would likely inflict financial harm on the City of Boston and the School Committee. (During a strike investigation, the Commission can make findings in the absence of direct evidence, *Boston School Committee*, 20 MLC 1244, 1248 (1993).)

Equal, if not more fundamental, is the non-economic, incalculable harm and chaos that would be caused by an illegal strike or work stoppage by 8000 public school teachers and other public school employees in 149 schools throughout the City of Boston. As a direct result of such an illegal job action, 58,000 school children would inappropriately be denied, at least on a temporary basis, their constitutionally guaranteed right to public education under the State Constitution. Part II, c. 5, Section 2; *McDuffy v. Secretary of the Executive Office of Educ.*, 415 Mass. 545, 621 (1993). We hold that such a deprivation constitutes an irreparable harm of the highest degree, and is exactly the type of harm which Chapter 150E and Section 9A are expressly intended to prevent.

Furthermore, the contemplated illegal strike or work stoppage has foreseeable, severe and irreparable ripple effects on the parents and guardians of students who would be unable to attend school during the work stoppage, as well as on the greater public at large. For example, as the result of a strike, parents of school age children would suddenly be forced to make alternate arrangements for child care. Under such short notice and crisis circumstances which would exist across the entire city for all parents and guardians of school children, such emergency child care would be difficult, if

not impossible, to obtain. As a result, working parents and guardians would in many instances be faced with the choice of leaving children at home unsupervised, or of not reporting to work as scheduled. Choosing to leave younger children unsupervised may subject families to legal sanction, and choosing not to report to work as scheduled, even though a reasonable, and logical choice under the circumstances, could likewise subject working parents to discipline or termination at work. In addition to this foreseeable personal adverse job action suffered by working parents and guardians, thousands, and potentially tens of thousands of people not showing up for work on the same day would unquestionably have a significant effect on the ability of the business community to serve public needs, as well as on the Massachusetts economy. We further note that the severity of these conditions and hardships for students, families, and the public would significantly worsen the longer the duration of an illegal strike or work stoppage.

Finally, even absent an actual strike or work stoppage, further irreparable harm would occur as a result of the necessity of shifting and mobilizing public resources to deal with the threatened consequences of an illegal strike or work stoppage. First, prudent contingency planning required for public sector institutions and officials to deal with a strike is a difficult, complex process, in and of itself, that necessarily deflects attention away from the primary mission of the public institution, i.e., important educational matters. Likewise, such required contingency planning necessarily draws scarce public resources and dollars away from other critical public, and in this case, educational issues. The loss of attention to the primary mission of public institutions and loss of public resources that would otherwise have been devoted to the primary mission issues is permanent, and in that sense, irreparable as well.

We further note that suddenly having a significant number of school children on the streets of Boston would also pose a significant increased burden on police and public safety personnel, as studies show a correlation between neighborhood conflict, youth crime and gang violence during times when school is not in session. This potential result is yet another example of the ripple effects of an illegal strike or work stoppage upon the public that the Law is specifically designed to prevent.⁵

Given the facts in evidence in this case, we find that: the Union's maintenance of By-law IX, Section 1(b); the Executive Board's December 20, 2006 act of voting to place a strike vote before the membership, and the Union's actions in calling a general membership meeting on January 10, 2007, where the Executive Board's motion was presented to the membership and the membership voted to place a strike vote on the agenda for the next membership meeting, and the referenced bulletin statements all support a finding that a strike, work stoppage, slowdown or withholding of services is about to occur and that the Union, its officers, and Executive Board members have induced, encouraged, and condoned such action in violation of Section 9A(a) of the Law.

Conclusion

Based on the parties' stipulations and the facts set forth above, we conclude that: the Union and its membership are about to engage in a strike in violation of Section 9A of the Law and that the Union, its officers, and its Executive Board are inducing, encouraging, and condoning such action in violation of Section 9A of the Law.

Order

Accordingly, pursuant to the authority vested in the Commission by Sections 9A(a) and (b) of the Law, we order that:

1. The Union, its officers, Executive Board members, and employees it represents shall not engage in or threaten to engage in, a strike or work stoppage of any type.

2. The Union, its officers, and Executive Board members shall immediately cease and desist from inducing, encouraging, or condoning any strike, work stoppage, or other withholding of services.

3. The Union, its officers, and Executive Board members shall immediately, but in no event any later than 1:00 p.m. on January 31, 2007, convene a meeting of the nineteen member Executive Board and take any necessary action to rescind the vote of December 20, 2006 that placed the following Motion before the Union's general membership:

Motion: To place before the membership on February 14, 2007 for discussion, consideration, and debate by that body, in accordance with the bylaws, the question whether there should be a one-day strike on February 15, 2007 or on such other dates as may be chosen by the membership.

4. The Union, its officers, and Executive Board members shall publicly disavow the December 20, 2006 vote of the Executive Board that placed the Motion in paragraph 3, above, before the Union's general membership by announcing this disavowal to the media in the same manner and method that the Union uses to announce other issues of importance to its membership. Such disavowal shall be completed on or before 1:00 p.m. on January 31, 2007.⁶

5. The Union, its officers, and Executive Board members shall take any necessary steps to notify the employees whom it represents of: its public disavowal of the December 20, 2006 vote of the Executive Board that placed the Motion in paragraph 3, above, before the Union's general membership. Such notification shall be completed before 1:00 p.m. on January 31, 2007 and shall be accomplished using the Union's usual methods of communicating with the employees it represents, including but not limited to: a) posting an emergency information bulletin on the Union's web site; and b) broadcasting an electronic mail message to all those employees and other persons to whom the Union regularly and routinely sends electronic mail.

5. Fox J. A. (2003), *Time of day for youth violence (ages 10-17)*, 1999. Boston, MA: Northeastern University, adapted from 1999 NIBRS data.

6. *Boston Teachers Union*, 30 MLC 129, 131 (2004).

6. The Union, its officers, and Executive Board members shall take any necessary steps to notify the employees whom it represents of their obligation to fully perform the duties of their employment, including the obligation to not participate in any form of strike or work stoppage. Such notification shall be completed before 1:00 p.m. on January 31, 2007 and shall entail the methods of communication set forth in Paragraph 5(a)-(b) of this Order.

7. The Union, its officers, and Executive Board members shall take any necessary steps to inform the employees whom it represents of the provisions of Sections 9A(a) and (b) of the Law and the contents of this Order. Such notification shall be completed before 1:00 p.m. on January 31, 2007 and shall entail the methods of communication set forth in Paragraph 5(a)-(b) of this Order.

8. The Union shall expunge Article IX, Section 1(b) from its By-laws.

9. The Union and the School Committee shall immediately initiate or resume negotiations to resolution or impasse over the issues that separate them, and utilize the procedures for resolving disputes provided in their collective bargaining agreements and M.G.L. 150E.

10. The Union and the School Committee shall appear at 1:00 p.m. on Wednesday, January 31, 2007 at the offices of the Labor Relations Commission, 399 Washington Street, 4th floor, Boston, MA for a proceeding to determine compliance with this Order.

11. The Commission shall retain jurisdiction of this matter to set further requirements as may be appropriate for compliance with this Order.

SO ORDERED.

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