

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

In the Matter of

ANDOVER EDUCATION ASSOCIATION

and

MATTHEW BACH; individually and in his
Capacity as President of the AEA, and JULIAN
DiGLORIA, individually and in his capacity
as Second-Vice President of the AEA

and

ANDOVER SCHOOL COMMITTEE

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Case No. S.I.-20-8176

Date issued: Sept. 8, 2020

CERB Members Participating

Marjorie F. Wittner, Esq., Chair
Joan Ackerstein, Esq., CERB Member
Kelly Strong, Esq., CERB Member

Appearances:

John Foskett, Esq.	-	Representing the Andover School Committee
Jennifer F. King, Esq.		
Jennifer L. McDougall, Esq.	-	Representing Andover Education Association and the individually named respondents

RULING ON STRIKE PETITION

Summary and Statement of Case

1 On September 1, 2020 the Andover School Committee (School Committee or
2 Employer) filed a petition with the Department of Labor Relations (DLR) for a strike
3 investigation (Petition) pursuant to Section 9A(b) of M.G.L. c. 150E (the Law). The Petition
4 alleged that a strike within the meaning of M.G.L. c. 150E, §9A(a) has occurred and is
5 about to occur and that this strike has been induced, encouraged and condoned by the
6 Andover Education Association (AEA or Union), and six named AEA officers, both
7 individually and in their capacity as AEA officials.

8 On September 2, 2020, the DLR issued a Notice of Strike Investigation, which the School
9 Committee caused to be served by hand on each of the named respondents. On
10 September 3, 2020, Marjorie F. Wittner, Chair of the Commonwealth Employment
11 Relations Board (CERB), conducted a strike investigation pursuant to Section 11 of the
12 Law and Rule 16.03 of the DLR's Rules, 456 CMR 16.03¹ with the understanding that
13 the CERB would issue a ruling in the first instance. During the investigation, the School
14 Committee and the Union had an opportunity to be heard, to examine witnesses and to
15 introduce evidence.² The record was closed on September 3, 2020, pending receipt of
16 post-investigation statements.

17 After reviewing the parties' stipulations and the Investigator's findings of fact, for
18 the reasons set forth below, the Commonwealth Employment Relations Board (CERB)

¹ Before the hearing opened, the School Committee moved to dismiss the petition with respect to four of the six Union officers named as Respondents in the Petition. Hearing no objection, the Investigator granted the motion and confirmed that the remaining two individually named Respondents were Union President Matthew Bach and Union Second Vice-President and Bargaining Team Chair Julian DiGloria.

² The investigation was conducted remotely pursuant to Governor Baker's teleworking directive to Executive Branch employees.

1 concludes that the AEA, its officers and the individually named Respondents engaged in
2 an unlawful strike when they refused to enter school buildings on August 31, 2020 to
3 engage in professional development activities. The CERB further finds that the AEA, its
4 officers and the individually named Respondents unlawfully induced, encouraged and
5 condoned that strike. As explained below, however, the CERB does not find that a strike
6 is about to occur or that this matter is moot.

7 Motions during Investigation

8 At the outset of the hearing, the Union moved to dismiss the petition with respect to
9 Respondents Matthew Bach (Bach) and Julian DiGloria (DiGloria) on grounds that the
10 Petition contained no evidence that these individuals had induced, encouraged or
11 condoned an illegal strike. The Investigator took the motion under advisement. The
12 Union reiterated the motion at the conclusion of the School Committee's case and the
13 Investigator again indicated that she would take it under advisement.

14 Stipulations of Fact

- 15 1. The Town of Andover (Town) is a public employer within the meaning of Section
16 1 of the Law.
- 17 2. The School Committee is the collective bargaining representative of the Town for
18 the purpose of dealing with school employees.
- 19 3. Sheldon Berman, Ed.D (Berman) is the Superintendent of the Andover Public
20 Schools and an agent of the School Committee.
- 21 4. Sandra Trach (Trach) is the Assistant Superintendent for Teaching and Learning
22 of the Andover Public Schools.
- 23 5. The Union is an employee organization within the meaning of Section 1 of the Law.
- 24 6. The Union represents a bargaining unit comprised classroom teachers, head
25 teachers, program heads with teaching assignments, media librarians/digital
26 learning specialists, learning specialists, guidance counselors, school social
27 workers, at moderate and severe special education teachers, speech and
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1 language therapists, Board Certified Behavioral Analysts with a DESE license,
2 registered nurses, coordinator of the gifted and talented program excluding
3 paraprofessionals and all other employees.
4

5 7. Respondent Matthew Bach (Bach) is employed by the School Committee as an
6 educator and is the President of the Union.
7

8 8. Respondent Julian DiGloria is employed by the School Committee as an educator
9 and is Second-Vice President of the Union.
10

11 9. The School Committee and the Union are parties to a collective bargaining
12 agreement (CBA) that was effective by its terms from September 1, 2017 to August
13 31, 2020.
14

15 10. On August 6, 2020, the School Committee approved the official Andover Public
16 Schools calendar for the 2020-2021 school year.
17

18 11. On August 10, 2020, pursuant to reopening guidance from DESE dated June 25,
19 2020 and July 15, 2020 regarding the reopening of schools for the 2020-2021
20 school year in the context of the Covid-19 pandemic, and following approval by
21 DESE, the School Committee adopted a hybrid plan for the instruction of students
22 which involves a combination of partial in-person instruction at school buildings for
23 two days and partial remote instruction for three days a week. (The plan also has
24 a fully-remote option for all five days for students whose parents elect that option).
25

26 Andover Public Schools

27 There are approximately 6,000 students who attend the Andover Public Schools
28 (APS or District) from Pre-K to 12th grade. APS employs approximately 1000 employees
29 of which approximately 700 are teachers. The District has ten school buildings in which
30 Union members work.

31 The School Committee and the Union are parties to a collective bargaining
32 agreement (CBA) that was effective by its terms from September 1, 2017 to August 31,
33 2020. On June 14, 2018, the School Committee and the Union entered into a
34 Memorandum of Agreement (MOA) that modified certain provisions of Article 7 of the
35 CBA, entitled Teacher Year, Day, Load. Article 7, as modified by the MOA, states in
36 pertinent part:

1 On March 10, 2020, Massachusetts Governor Charlie Baker declared a state of
2 emergency to respond to the 2019 novel Coronavirus also known as COVID-19.³ The
3 Governor issued numerous orders pursuant to this declaration, including a series of
4 orders beginning on March 15, 2020 that eventually closed all Massachusetts public
5 schools for in-person instruction until the end of the 2019-2020 school year.⁴ Andover
6 schools were closed pursuant to these orders and teachers began conducting their duties,
7 including teaching and spring and summer professional development duties, remotely.

8 2020-2021 School Year

9 DESE Guidance

10 On June 25, 2020, the Department of Elementary and Second Education (DESE)
11 issued an initial guidance for school reopening in the fall (June Guidance). On July 15,
12 2020, DESE issued a second guidance outlining a “Two Step Process for District Fall
13 Reopening Plan” (July Guidance). As described in the July Guidance, the June Guidance
14 “prioritize[d] getting students and staff safely back to school in person, following a
15 comprehensive set of health and safety requirements” and “required schools to create a
16 plan that include[d] three models: 1) in-person learning with new safety requirements; 2)
17 a hybrid of in-person and remote learning and 3) remote learning.”⁵

³ The CERB takes administrative notice of the State of Emergency declaration, which may be found here: <https://www.mass.gov/news/declaration-of-a-state-of-emergency-to-respond-to-covid-19> (last accessed September 8, 2020).

⁴ The CERB takes administrative notice of COVID-19 Order No. 28, titled “An Order Extending the Temporary Closure of All Public and Private Elementary and Secondary Schools, which may be found here: <https://www.mass.gov/doc/april-21-2020-school-closure-extension-order/download> (last accessed September 8, 2020).

⁵ Trach testified on cross-examination that she considered the requirements set forth in DESE’s guidances to be mandatory. She supported her belief by quoting Commissioner

1 The July Guidance provided an overview of a two-step process, which required
2 school districts to submit a preliminary reopening plan by July 31 and a final district
3 reopening plan on August 10, 2020. The July Guidance specified the contents of the
4 Final District Reopening Plans. It included a Section entitled “Student Support and
5 Professional Learning,” where school districts were asked to include certain information
6 including “A school calendar with start date and PD days prior to opening is recommended
7 [sic].” The July Guidance also indicated that by August 14, 2020, “districts must finalize
8 their comprehensive plan documents and release them publicly to their school
9 communities.”

10 To assist in formulating this plan, the APS sought input via surveys from
11 parents/members of the community and did a feasibility study of all three options. It also
12 put together a sixty-person task force comprised of staff (including administration and
13 AEA members), students, parents and other stakeholders. The sixty delegates were
14 assigned to one of six teams,⁶ and these teams or domains were further divided into forty-
15 two subtopics. APS asked the AEA to provide three members for the task force.
16 Respondents Bach and DiGloria and AEA Secretary Allyson Croswell served in this
17 capacity, although there were many other teachers and AEA members on the task force

Riley as stating during a conference call that he held with administrators that they should treat the Guidance as required. Trach’s statements are consistent with various statements in the DESE July 27 guidance, which also indicate that school district compliance was required. Trach admitted, however, and the CERB agrees, that while the Guidance required the School Committees to describe their reopening plan for each of the three options, it did not dictate which option they should select.

⁶ Health and Safety, Operations and Logistics, Social-Emotional Learning, Elementary and Secondary Learning, and Learning Tools.

1 as well. The AEA representatives' participation on the task force was separate from
2 bargaining. Bach believed that his input was largely ignored and characterized the AEA's
3 presence as "purely ornamental."

4 APS submitted its preliminary plan to DESE in a timely manner. After receiving no
5 comments from DESE, it submitted the preliminary plan to the School Committee for a
6 vote, which is discussed below.

7 July 27, 2020 DESE Agreement with Teachers' Unions

8 On July 27, 2020, DESE, the Massachusetts Teachers Association (MTA), the
9 American Federation of Teachers (Massachusetts) (AFT-MA) and the Boston Teachers
10 Union (BTU) entered into an agreement regarding the school calendar and professional
11 development. The purpose of the agreement was to reduce learning days and increase
12 the number of days to train faculty and staff on return to school plans. The agreement
13 states:

14 WHEREAS: The safety and well-being of students, families, and staff has
15 been and continues to be our top priority as an educational community.

16
17 WHEREAS: [DESE, MTA, AFT-MA and the BTU] are working together
18 collaboratively to support a successful start to the new school year.

19
20 WHEREAS: DESE, MTA, AFT-MA and the BTU recognize and agree that
21 in light of the COVID-19 pandemic, providing additional time for our
22 educators and staff to prepare prior to the start of instruction of students is
23 important for a safe and successful fall reopening.

24
25 NOW THEREFORE:

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1. DESE agrees that school districts will have 10 additional days at the start of the 2020-2021 school year before instruction of students begins, to work with educators to prepare for the new school year.
 2. The Commissioner will reduce the 180-day and student learning time requirements for the 2020-2021 school year to 170-days and 850 hours (for elementary schools) and 935 hours (for secondary schools) so long as districts

1 begin providing instruction to students no later than September 16, 2020. If a
2 district is unable to meet the September 16, 2020 requirement, it may apply for
3 a waiver.

4 The Commissioner of Elementary and Secondary Education Jeffrey C. Riley and the
5 presidents of the three unions signed the agreement. Other than the BTU, no local school
6 committees or unions were parties to or signed this Agreement. The School Committee
7 and the AEA did not bargain over this agreement.

8 School Calendar

9 On August 6, 2020, the School Committee voted to establish the revised official
10 school calendar for the 2020-2021 school year. The calendar reflects and the AEA does
11 not dispute that August 31, 2020 was the first workday for teachers and that professional
12 development days were scheduled for August 31 – September 3; September 8-11, and
13 September 14-15.

14 The first day for students is Wednesday, September 16, 2020. Because schools
15 are closed to students and staff on Wednesdays, the first day that students are scheduled
16 to be back inside the school buildings is Thursday, September 17, 2020.

17 APS Plan

18 On August 10, 2020, the School Committee, in a 3-2 vote, adopted an “AA-BB”
19 hybrid learning plan consisting of partial in-person instruction for Team A on Mondays
20 and Tuesdays, and learning remotely the rest of the week, and Team B learning remotely
21 on Mondays, Tuesdays and Wednesdays and attending class in person on Thursdays
22 and Fridays. All schools were closed to students and staff on Wednesdays for cleaning
23 and disinfecting. The Plan also indicated that fully remote learning would be available for
24 parents who selected that option.

1 The District released its written plan (Plan) to the public around August 14. In
2 addition to sections describing the In-Person, Hybrid and Remote Learning models, it
3 included the school calendar, results of feasibility studies, results of parent surveys,⁷
4 sections on Safety and Facilities, Health and Wellness, Special Ed, Technology and
5 School Calendar and Professional Development. An Acknowledgement section listed and
6 thanked the “60-person task force of teachers, parents, administrators, students, school
7 committee members, assistants and community members who worked tirelessly to
8 ensure APS has a plan that puts safety and care for our students, faculty and staff at the
9 forefront of the opening.”

10 The Safety and Wellness section included subheadings for Distancing, Ventilation
11 and Cleaning. Under Distancing, the Plan stated:

12 Andover public schools has evaluated classroom capacity for 3-6'
13 distancing. To meet social distancing requirements APS has identified
14 alternative instructional and lunch locations. Safeguards and precautions
15 are being taken including plexiglass dividers for offices and small group
16 instruction and evaluation, adaptation of bathrooms, way-finding signage for
17 hallways, arrival/dismissal procedures, and hygiene protocols . School
18 playgrounds will be zoned for specific types of facilitated activities.

19
20 The Ventilation section stated, among other things that the schools' HVAC systems
21 were designed to meet ASHRAE (American Society of Heating, Refrigerating, Air
22 Conditioning Engineers) standards, and that as “an additional precaution, Andover
23 custodial staff [would] conduct a daily air flush a minimum of 2 hours prior to occupancy
24 and run 2 hours post occupancy.” It also indicated that air quality was monitored by the

⁷ The published results showed that given a choice between a hybrid or fully remote model, 77% of the parents indicated that they were more likely to choose a hybrid model. When given a choice between a fully in-person model or a remote model, 61% selected the in-person model.

1 Town of Andover Building Management System (BMS) and all unit ventilators were also
2 controlled by BMS. This information was reiterated in an August 20, 2020 update on
3 HVAC that the School posted on its website.

4 Under the heading “School Calendar and Professional Development,” the Plan
5 listed the “proposed beginning of year professional development events” for bargaining
6 unit members. As listed below, most of the items related to remote learning, therapy,
7 and other COVID-19 related issues.

- 8 • Universal Mental Health Screening – BIMASII for social workers,
9 psychologists and administrators.
- 10 • Teletherapy for SLPs [Speech Language Pathologists] – APS 10-hour
11 course.
- 12 • Teletherapy for Social Workers – APS Policies and procedures course
13 outlined in the APS Telehealth handbook.
- 14 • Trauma-informed School Practices– APS Social Workers to provide
15 ongoing professional development for all APS staff.
- 16 • School Start Teacher Student Relationship Building – Social Emotional
17 Learning--based activities menu designed by APS staff
- 18 • Staff Self-Care and Reflective Practices – Bi-Weekly
- 19 • Schoology [Learning Management System] Training
- 20 • Blended Learning – Training in the Blended learning methodology for
21 teachers through Essex County Learning Community Grant⁸
- 22 • EMOTE – Emote software training for middle school staff .
- 23 • [Personal Protective Equipment] PPE – Special Populations - PPE training
24 for teachers in high proximity assignments with Constellations Behavioral
25 Services and APS Nurse Leader
- 26 • Safety Care – Adapted techniques in response to COVID-19 for BRIDGE
27 staff
- 28 • PPE Boot Camp – PPE and Health & Safety protocol training for all staff
29 with APS Director of Nursing
- 30 • Remote Assessment – Remote assessment protocols for special
31 educators, schools psychologists, and SLPs with APS mental health team
- 32 • Responsive Classroom – Level I and II certification training will be provided
33 to over 40 educators
- 34 • Mentoring and induction for new teachers – APS annually provides a
35 mentoring and induction orientation week and regular monthly trainings for
36 new teachers.

⁸ The APS Plan, described infra, defines blended learning as a combination of in-person and online discussion.

1 The Union and the School Committee did not bargain, and there is no evidence
2 that the Union ever demanded to bargain over the length or content of the PD scheduled
3 for that year.

4 According to Trach, professional development or PD, typically includes
5 professional learning, assessment, and meetings to determine what is necessary to
6 support students. It occurs at the beginning of the school year to prepare for opening and
7 on schools days, or after school throughout the school year, as well as over the summer.
8 The Union does not dispute that the past practice between the parties supports a
9 definition of “professional development that includes instruction and training with
10 collaborative and individual curriculum design.”

11 Return-to-School Bargaining

12 In June, the Union proposed that the Union and the District engage in a joint labor
13 management committee to plan for reopening, but the District did not agree to create the
14 committee.

15 In early July, the Union made a demand to bargain over return to school issues.
16 The District agreed to bargain and negotiations started on August 6 with the Union making
17 several proposals. The District’s bargaining subcommittee submitted the hybrid
18 reopening plan and expressed its intent to secure a vote of the School Committee
19 supporting the plan. The Union responded with twenty-six proposed health and safety
20 benchmarks, including proposals regarding masks and using HEP filters. The District did
21 not make any counterproposals because, according to Bach the APS Plan was already
22 set. There is no dispute that the Union and the School Committee did not bargain to

1 resolution or impasse over the contents of the Plan before it was submitted to the School
2 Committee or before the final version was released to the public.

3 On August 4, 2020, the AEA made an information request for building-by-building
4 reports on air quality. After receiving no response, the AEA reiterated this information
5 request on August 13. According to Bach, the District only partly responded to its
6 information request.⁹ The School Committee did, however, agree to an independent
7 evaluation of the HVAC systems. The Union expected to receive a report on September
8 4, and a bargaining session was scheduled for September 8. To date, the parties have
9 not entered into a memorandum of understanding regarding return-to-school issues.¹⁰

10 AEA Concerted Action Pre-August 31

11 In August 2020, the Union engaged in several concerted actions to protest what
12 it believed was the District's failure to respond to its bargaining proposals, including
13 protesting in downtown Andover and writing letters to the community.

14 On August 26, 2020, the Union held a general membership meeting via
15 videoconference to discuss their concerns about health and safety conditions in the
16 school buildings, and their belief that the School Committee was not negotiating in good
17 faith. They voted to conduct what they deemed a "Work Safety Action," in which the

⁹ On August 24, Berman provided a section by section response to the AEA's August 13, 2020 proposal and information request regarding HVAC. The letter, directed to Bach and DiGloria, reiterated, among other things, that the APS ventilation systems were designed to meet ASHRAE standards

¹⁰ We take administrative notice that on August 27 2020, the AEA filed an unfair labor practice charge with the DLR alleging that the School Committee had failed to bargain in good faith over health and safety benchmarks and other school reopening issues in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of M.G.L c. 150E (the Law). The DLR docketed the charge on August 31, 2020 as Case No. MUP-20-8168. The charge has yet to be investigated.

1 teachers would report to their school buildings, but not enter, and would perform their PD
2 activities remotely from outside of their school buildings. In this way, the Union believed
3 that its membership could publicize its concerns about bargaining and safety while still
4 completing their work duties. The Union did not discuss how long the “Work Safety
5 Action” would last at this meeting.

6 Both Bach and DiGloria voted in favor of the “Work Safety Action.” The Union did
7 not consider this to be a “strike vote” and the word “strike” was not part of the membership
8 motion. At no time did the Union consider any type of work action that involved not
9 performing work activities that could be performed without their members entering school
10 buildings.

11 The “Work Safety Action” was originally set to take place at the West Middle
12 School, on the campus of the Andover High School, where several witnesses testified
13 that beginning of school PD traditionally took place. However, some teachers expressed
14 that they would prefer to work outside of their assigned school buildings, and this is the
15 model that Union membership voted to adopt on August 28, once it received the August
16 27, 2020 announcement from Trach and Berman, discussed below

17 August 27, 2020 - APS Professional Development Announcement

18 On August 27, 2020, Trach and Berman emailed an announcement to educators
19 and staff regarding “Professional Development for APS Faculty and Staff.” The
20 announcement began:

21 Dear APS faculty and staff,

22 We look forward to welcoming you back to school on Monday, August 31st,
23 2020 for the start of 10 days of professional development. As in previous
24 years these days of planning and preparation are critical to the successful
25 return to school for our students. The stakes are higher this year and the

1 unique circumstances we find ourselves in require us to work together to
2 ensure our students receive the best possible educational opportunities.

3
4 To respect social distancing of a minimum of 6 feet, we will be convening in
5 our school classrooms in each school building as assigned below (with the
6 exception of those who have individual offices.) All educators are directed
7 to report to their school building at 8:30 AM on Monday August 31st for our
8 opening program on Monday. Social distancing and mask requirements will
9 apply on school property, including at sign-in, moving to classrooms or
10 offices, and within classrooms.

11
12 The letter then listed where teachers were supposed to report inside of all ten schools
13 and which educators were expected to report where. For example, at Andover High
14 School and Doherty Middle School, "All" educators were instructed to "sign in at main
15 foyer, proceed to classroom." At Wood Hill Middle School, all educators were instructed
16 to "sign in at front entrance, proceed to classroom/offices." At West Elementary, the
17 instructions were "Main entrance for sign-in, then proceed to classroom."

18 The letter further indicated, in bold-faced, large print, that:

19
20 **All PK-12 Professional development will run from 8:30 AM to 3:00 PM.**
21 **Attendance sign in & out will be taken each day at each building and in**
22 **all online PD sessions. School principals will provide more specifics**
23 **on each day.**

24
25 The letter concluded with a chart listing the day and date and the summary of PD
26 to be provided as follows:

27 August 31, September 1, September 14 and September 15 were designated as
28 "Building-Based Days" – The bulleted topics of discussion for those days were:

- 29
- 30 • Principals' welcome, Superintendent's Opening convocation
 - 31 • Faculty meeting to overview procedures
 - 32 • Collaboration/coordination meetings
 - 33 • Classroom and instructional preparation

34 September 2, September 3, September 8, September 9, September 10 and
35 September 11 were designated "District days." The bulleted topics of discussion were:

- 1 • Professional Development and Trainings
- 2 • Content and Department meetings
- 3 • Instructional preparation and common planning.

4 As in prior years, Trach designed a PD program for the fall of 2020 with input from
5 APS administration, principals and assistant principals. The 2020 program included new
6 PD activities that Trach, in consultation with others, had specifically designed to
7 familiarize teachers with the new teaching, safety and distancing protocols set forth in the
8 DESE Guidelines and APS Plan. Because many aspects of teaching and classroom and
9 public space layouts had to be changed as a result of the pandemic, several activities
10 had to be performed inside school buildings, such as setting up classrooms in compliance
11 with DESE guidelines, practicing way-finding around buildings that for health and safety
12 reasons now included one-way hallways and stairways, conducting technology tests to
13 make sure that the schools' Wi-Fi could handle the load of many people using it at once,
14 and tagging furniture that needed to be discarded or moved. According to Trach, the
15 building principals had given her specific input that they viewed such matters as a priority
16 before curriculum professional development. The District also wanted to get teachers'
17 feedback on these issues before the students arrived. Trach considered these activities
18 to be part of the "communication and collaboration" meetings of the PD described in the
19 August 27th letter.

20 August 28, 2020 AEA Press Release

21 On Friday, August 28, 2020, the Union issued a press release regarding its August
22 31 "Work Safety Action." Titled "Andover educators refuse to enter school buildings until
23 safety is negotiated," the press release stated in pertinent part:

1 Andover educators have overwhelmingly voted to begin the school year by
2 only working remotely while planning continues for a phased in, safe return
3 to in person learning based on agreed upon community health guidelines.
4

5 “It is simply not safe at this time for students and staff to be working together
6 in crowded settings in these buildings,” said Matthew Bach, president of the
7 Andover Education Association.
8

9 At an emergency meeting this week, AEA members voted to take action in
10 response to the Superintendent and School Committee's lack of good faith
11 bargaining over how to maintain the health and safety of educators and
12 students in the reopening of schools. To ensure the safety of all members
13 of the community during the Covid pandemic, Andover's educators will be
14 engaging in a workplace safety action . Usually spending their first day of
15 school in meetings at Andover high school, AEA members will instead
16 gather outside, maintain physical distancing and report for work remotely.
17

* * *

18 As required by law, the district and the AEA are negotiating the terms over
19 changing working conditions presented by the pandemic. While educators
20 sought a fully public bargaining process, the district agreed only to bargain
21 behind closed doors.
22

23 Julian DiGloria, a Wood Hill history teacher and chair of the AEA Bargaining
24 Team asked, “If the School Committee has detailed, transparent and
25 comprehensive information that proves in-person learning can be
26 conducted safely, then why has there not been a concerted effort to provide
27 it to the community? Why are they not prioritizing the best, safest possible
28 educational environment for our students?”
29

30 According to DiGloria, roughly 20% of Andover students families opted to
31 start the year remotely, which represents a significant number of students
32 across the district. “For these families, the school committee did not provide
33 enough detailed and transparent information with regard to health and
34 safety protocols,” he said.
35

36 Among other health and safety requirements, the AEA is seeking third party
37 documentation on the safety of school buildings.
38

39 “We all agree that in person learning is far better than remote instruction is.
40 We want nothing more than to be in our classroom as soon as possible, but
41 only when it's safe,” DiGloria said.
42

* * *

43 The press release was posted on the AEA's Facebook page and shared to local
44 media outlets.

1 August 30, 2020

2 On Sunday night, August 30, the Union held another videoconference membership
3 meeting in which it voted to engage in the “Work Safety Action” for just one day, on August
4 31 only, and to reassess that night whether it would continue to engage in this conduct.
5 The Union also took a no-confidence vote on Superintendent Berman that evening. The
6 Union did not notify the School Committee or APS administration about either vote on
7 Sunday night. Instead it gave notice of the one-day action to media outlets on Monday
8 morning, and issued a press release about the no-confidence vote on Monday night.

9 August 31, 2020

10 Teachers who participated in the Work Safety Action on August 31 began
11 gathering outside their schools as early as 7:00 a.m., and stayed outside until 3:00 p.m.,
12 the end of the scheduled PD day.¹¹

13 Union President Bach, a high school history teacher, stayed outside Andover High
14 School for most of the day, going to the West Middle School, which is on the same
15 campus, during lunch. When he arrived at his school building at 7:00 a.m., a police officer
16 told him that he had to decide whether he was coming in or not and that he could not
17 enter the building to sign in unless he planned to stay for the day.¹² Bach did not sign in

¹¹ The investigation record does not have an exact number of how many teachers refused to go inside the building, but Trach testified that at the high school and middle school, where she spent the morning of August 31, it appeared to her that “a majority” of teachers were either standing or sitting in chairs outside the building. The Union did not attempt to refute this description, either while cross-examining Trach or when examining its own witnesses

¹² Trach, who was the School Committee’s only witness, testified that although she was aware that there was a police detail at the high school on Monday morning, she was not aware of instances where police prevented anyone from entering the building. This testimony does not contradict Bach’s credible testimony that the police told him to remain

1 inside and instead the AEA made its own sign-in sheet for teachers who stayed outside
2 all day and provided it to the School Committee.¹³

3 Several days earlier, Bach had received an agenda from the high school detailing
4 the day's PD activities.¹⁴ According to Bach, the day began with the Superintendent's
5 video welcome, which Bach was able to watch outside on his computer. The agenda then
6 listed "group work," an outside "mask break" tour;¹⁵ way-finding, and finally more group
7 work. Bach believed that with the exception of the mask break tour, which he assumed
8 was outside, but which he could not find, he was able to perform all the professional
9 developments tasks that day and, in fact, he had had "the most productive professional
10 development day of his career."¹⁶ The tasks that he performed included reviewing a
11 syllabus for a class he was assigned but had not taught for a few years and having
12 curriculum discussions with other history teachers.

13 Bach noted, however, that throughout the day, the District took steps that made it
14 difficult for employees to perform their duties outside, including refusing to allow
15 employees to go inside to sign-in or to use restrooms unless they planned to stay inside;
16 police telling teachers who were able to connect to the school's Wi-Fi to move out of

outside, even if the record does not reflect who told the police to prevent teachers who otherwise planned to stay outside that day from entering.

¹³ Neither party sought to admit any sign-up sheets into evidence.

¹⁴ Neither party submitted any PD agendas.

¹⁵ Apparently, several mask break tours were scheduled through the day. Bach's was scheduled for some time before noon.

¹⁶ Bach mistakenly believed that the way-finding tours were part of the outside mask tour that he missed.

1 range; and refusing to permit delivery of portable toilets or a generator that the Union's
2 Action Committee had ordered to ensure that the teachers had adequate power to create
3 a mobile Wi-Fi network.¹⁷

4 DiGloria, who works at the Wood Hill Middle School and teaches 8th grade social
5 studies, also did not go inside his school building on August 31. Like Bach, he received
6 an agenda for the day a few days earlier, which consisted of signing-in; Woodhill Trivia,
7 which would be played online, the Superintendent's welcome speech, a staff meeting
8 accessible through a Google meet link, and lunch, followed by team meetings and tagging
9 unwanted furniture.

10 DiGloria arrived at work at around 8:10 a.m. on August 31, 2020. He did not sign
11 in, but along with other teachers who stayed outside, he submitted a digital sign-in sheet
12 to the administration. DiGloria reported that the only item he could not perform outside
13 was tagging unwanted furniture. DiGloria testified that he did not have to participate in
14 this activity because he had already done this on the few occasions he was allowed to go
15 back into the classroom over the summer. Unlike Bach, DiGloria testified that no one in
16 the administration interfered with teachers' ability to perform their work outside at Wood
17 Hill Middle School.

18 Katie Bickford (Bickford) is a music teacher at West Elementary School and an
19 AEA building representative. She arrived around 8:00 a.m. on August 31, 2020 with the

¹⁷ Bach testified that the Town's Fire Department and Department of Public Works did not allow the teachers to use the generator for reasons that Bach did not fully understand but that he believed were related to "grounding." Bach testified, however, that those teachers were able to join other teachers' mobile hotspots.

1 intention of staying outside all day. She did not sign in. The agenda that she received a
2 few days earlier contained only one scheduled event, the Superintendent's welcome
3 speech. Otherwise, it included a "menu" of PD activities teachers could choose from,
4 including the general instruction to "acclimate themselves to new protocols". Bickford
5 started the day doing various on-line trainings and policy reviews, like conflict of interest,
6 internet use, etc., that she had completed in a similar manner in prior years. After helping
7 instructional assistants access those trainings,¹⁸ Bickford met with other music teachers
8 to discuss the fall's curriculum. She also began training on "Schoology," a new learning
9 management system. In the afternoon, Bickford worked on how to readapt the Music
10 curriculum in light of COVID-19 restrictions. The agenda also required her to set up her
11 classroom, but because, as a specialist, Bickford no longer had a classroom to set up,
12 she could not perform this duty.

13 Bickford did not witness the administration preventing any teachers from
14 participating in PD outside, but overheard an administrator tell instructional assistants that
15 they would not give them the log-in information that they needed to contact their teachers
16 unless they came inside the building.

17 Colette Berard (Berard) works at the Doherty Middle School teaching 7th grade
18 Ancient Civilizations. She reported to Doherty around 8:30 am and signed a sign-up
19 sheet that was being passed around outside. She stayed outside for the remainder of the
20 day. Her PD agenda included a faculty meeting, which was conducted outside, preparing
21 a list of supplies she needed for the classroom and team meetings. Most of the teachers

¹⁸ This is the only mention in the record of instructional assistants not entering schools that day. Instructional assistants are not part of the teachers' bargaining unit and are not the subject of this Petition.

1 were outside for the team meetings and used Google docs. Berard was able to complete
2 a module training on-line using the school's Wi-Fi system and did so without any difficulty.
3 At the end of the day, her school's sign-up sheet had "8:30 a.m." next to the names of
4 those who participated outside.

5 None of the staff who remained outside were able to participate in the following
6 tasks: way-finding, identifying mask break areas and Wi-Fi testing.¹⁹

7 Docked Pay

8 At some point on August 31, 2020, Bach, DiGloria, Bickford and Berard were told
9 by their respective building principals/assistant principals to check APS' online
10 attendance system (AESOP). When they did so, they saw that that their entry for August
11 31 said, "Work Action, No Pay," which was a designation none of them had previously
12 seen.²⁰

13 August 31, 2020 After 3:30

14 The School Committee met the afternoon of August 31, 2020 and voted to
15 authorize their counsel to file the instant strike petition.

16 The AEA held another virtual union meeting that evening. They voted to suspend
17 the work action due to what they characterized as the School Committee's "punitive"

¹⁹ The record does not reflect that any Wi-Fi testing actually occurred on August 31, 2020, This stands to reason given that the purpose of the testing was to see how the Wi-Fi responded when all the teachers were attempting to use it. Bach testified that Wi-Fi testing at the high school occurred on Tuesday, September 1, 2020 when the teachers were back inside the building.

²⁰ On cross-examination, the teachers admitted that they had yet to receive a paycheck for the period covering August 31, 2020, so they could not know for sure whether their pay had been docked. The School Committee presented no evidence, however, that it planned to change the "No Pay" designation.

1 response to the Work Safety Action, including preventing them from using bathrooms,
2 generators and Wi-Fi, docking participants' pay and proceeding with the strike petition.
3 The Union also had a bargaining session scheduled for the next day, which it hoped would
4 be productive.

5 At no point during the meeting did the Union discuss participating in any future
6 strikes or work actions of any type, including on September 17, 2020, when the students
7 would be back inside the school buildings. They did consider wearing the color red in
8 unity on September 1 and walking together into the buildings in a socially-distanced
9 manner.²¹

10 The Union issued the following release regarding its decision to suspend its work
11 action:

12 No Confidence in Superintendent Berman

13 Superintendent Berman has shown persistent disregard for educators. He
14 does not respect our professionalism and fails to take a cooperative
15 approach in addressing the many challenges that face the district
16

17 His behavior during the COVID-19 pandemic has reached a point where his
18 autocratic style of management can no longer be tolerated, as it jeopardizes
19 the health and safety of students, educators, and the community at large.
20

21 Berman has repeatedly disregarded the many health and safety concerns
22 raised by both the Association and the community. He refuses to
23 meaningfully address the concerns and unanswered questions of educators
24 who have documented health issues that will have an impact on their
25 working conditions.
26

27 The members of the AEA want to do their jobs and to do them safely. For
28 these reasons, the AEA has no confidence in his ability to effectively
29 manage the operations of Andover public schools.
30

31 Additionally, our members have voted to suspend our workplace safety
32 action due to the excessive and punitive measures management took today

²¹ The record does not reflect whether the teachers actually did this.

1 to stifle and obstruct our ability to prepare for this school year. Instead, we
2 will reluctantly enter school buildings tomorrow under duress , and hope that
3 the school committee will begin to negotiate reasonable health and safety
4 benchmarks with us in good faith.

5
6 Educators who participated in the safety action completed the work that was
7 required on [sic] them. The school committee's decision to pursue a labor
8 charge further demonstrates the administration's antagonistic stance
9 toward educators. The AEA is fully committed to negotiating a resolution
10 that ensures the health and safety of students, their families, educators and
11 the community as the school year begins.

12 Tuesday, September 1, 2020

13 Consistent with their decision to suspend the “Work Safety Action,” AEA members
14 completed their PD activities inside schools buildings on Tuesday, September 1, 2020
15 and Thursday, September 3, 2020.

16 The record does not have any other indication that since August 31, 2020, the
17 AEA has engaged in, or has induced encouraged or condoned any future work action of
18 any type. The Union has not, however, given the School Committee any assurances that
19 it will not do so. Bach simply testified that if its bargaining concerns were not resolved,
20 he did not know what would happen.

21 Reasonable Accommodations

22 The District granted reasonable accommodations to about thirty-three teachers
23 who requested to work remotely for the 2020-2021 school year. The District required
24 these teachers to provide some kind of evidence that they needed accommodation. The
25 District did not excuse these teachers from all PD activities, but they were excused from
26 in-building PD activities, which they would not have needed anyway since they were not
27 going to be teaching inside the buildings. Their principals gave them specific tasks they
28 could do instead. There is no evidence, and the Union does not claim that any of the

1 participants who refused to go inside school buildings on August 31, 2020 had requested
2 reasonable accommodations.

3 COVID-19 Rates in the Town of Andover

4 The Massachusetts Department of Public Health COVID-19 Dashboard for the
5 week ending August 26, 2020 reflected that within the past fourteen days, Andover was
6 rated “Green,” which meant it had an average daily case rate of less than four cases per
7 100,000 residents.²²

8 Ruling

9 Section 1 of the Law defines a strike as:

10
11 A public employee’s refusal, in concerted action with others, to report for
12 duty, or his [or her] willful absence from his position, or his stoppage of
13 work, or his abstinence in whole or in part from the performance of the
14 duties of employment as established by an existing collective bargaining
15 agreement or in a collective bargaining agreement immediately preceding
16 the alleged strike . . .; provided that nothing herein shall limit or impair the
17 right of any public employee to express or communicate a complaint or
18 opinion on any matter relating to conditions of employment.

19

20 Section 9A(a) of the Law states:

21 No public employee or employee organization shall engage in a strike, and no
22 public employee or employee organization shall induce, encourage or condone
23 any strike, work stoppage, slowdown or withholding of services by such public
24 employees.

25

26 Section 9A(b) of the Law states:

27

28 Whenever a strike occurs or is about to occur, the employer shall petition the [DLR]
29 to make an investigation. If, after investigation, the [DLR] determines that any
30 provision of paragraph (a) of this section has been or is about to be violated, it shall
31 immediately set requirements that must be complied with, including but not limited
32 to, instituting appropriate proceedings in the superior court for the county wherein
33 such violation has occurred or is about to occur for enforcement of such
34 requirements.

²² The lowest possible color ranking was gray, which meant an average of less than 5 Covid-19 cases overall in the past 14 days.

1
2 In support of this Strike Petition, the School Committee argues that it is not up to
3 the Union or teachers to decide when, where or how to perform their duties, and that the
4 Union's condonation and participation in a so-called work action in which they refuse to
5 enter school buildings despite clear instructions to do so constitutes a strike within the
6 meaning of Section 1 and Section 9A of the Law. We agree.

7 These are unprecedented times and we are not unsympathetic to the Union's
8 concerns over the health and safety implications of requiring its members to work inside
9 school buildings or its desire to bargain to resolution with the School Committee over
10 these issues before its members return to work inside school buildings. However, the
11 Union cites to no legislation, permission, reasonable accommodation or bargained-for
12 agreement that permitted its members without consequence, to unilaterally dictate where
13 they perform their work. Although the Union argues that they may do so as a concerted,
14 protected protest in situations where they are otherwise performing their job duties,
15 Section 1 of the Law defines a strike not only as a full or partial refusal to perform duties
16 of employment but as a public employee's refusal "in concerted action with others, **to**
17 **report for duty.**" In an era where many employees can perform some or all of their work
18 remotely as long as they have a computer and reliable internet connection, and to the
19 extent this is not already self-evident, we hold that the phrase "report to duty" in Section
20 1 of the Law means reporting not only when but where the employer has ordered its
21 employees to report. In this case, that means inside the school buildings, including inside
22 classrooms. Cf. Lenox Education Association v. Labor Relations Commission, 393 Mass.
23 276, 284 (1984) (construing a collective bargaining provision setting forth teachers' hours
24 as setting the "time limits for the teachers' *physical presence at the school.*" (emphasis

1 supplied)). Construing the phrase “report to duty” in the manner the Union urges, as
2 reporting to *any* location from which one can perform one’s duties remotely, is not only
3 contrary to the common meaning of this phrase but would have enormous implications
4 for how the work of the Commonwealth, including public education, is performed. This
5 could not have been what the Legislature intended when it defined a strike as a concerted
6 refusal to “report to duty” and we decline to construe it in that manner.

7 In any event, the Union’s claim that its membership was able to perform all the
8 duties required of them remotely is inaccurate. The record demonstrates that AEA
9 members who worked outside were unable to participate in PD activities that could only
10 be performed inside school buildings, such as Wi-Fi testing, wayfinding, classroom set up
11 and tagging furniture. Citing King Philip Teachers Association, 37 MLC 81, S.I. 10-279
12 (October 25, 2010), however, the Union argues that it was not obliged to perform those
13 duties because they were new and not “intrinsic” to their normal duties. The Union thus
14 argues that the teachers’ failure to perform those new duties did not constitute an unlawful
15 strike within the meaning of the second part of the statutory definition. We disagree.

16 In Lenox Education Association, 7 MLC 1761, 1775, MUP-3229 (December
17 10,1980) *aff’d sub. nom.* Lenox Education Association v. Labor Relations Commission,
18 supra, the CERB defined the phrase “‘duties of employment,’ the abstinence in whole or
19 in part from which constitutes a strike” to include “duties specifically mentioned in an
20 existing or recently expired collective bargaining agreements . . . [and] also those
21 practices not unique to individual employees which are intrinsic to the position or which
22 have been performed by employees as a group on a consistent basis over a sustained
23 period of time.”

1 Here, there is no dispute, and the evidence supports that teachers were required
2 to participate in PD at the beginning of the school year both as a matter of contract and
3 practice and that such days were regularly scheduled workdays for which teachers were
4 expected to report. Section 7-01 of the CBA defines the teacher year as including
5 orientation days at the beginning of the school year. Section 7-02 grants to the School
6 Committee the ultimate right to set the school calendar, which, as of August 2020,
7 included ten days of PD before the students arrived at school. Beyond the contract,
8 several witnesses discussed participating in PD in the past and the Union's own press
9 release indicated that its members "*usually* spent the first day of school in meetings at
10 Andover High School." (emphasis supplied). This evidence, which is not in dispute,
11 persuades us that there was a practice of participating in back to school PD that was not
12 unique to individual employees.

13 We must therefore consider whether, under Lenox Education Association and King
14 Philip, the teachers could lawfully refuse to participate in the PD activities that had to be
15 performed inside the classroom because they were new practices that were not intrinsic
16 to the performance of their teaching duties. We hold that they could not. Although the
17 term PD (or even the term "orientation") is not defined in the CBA, it is reasonably and
18 commonly understood as consisting of the types of duties Trach described in her
19 testimony, including meetings to determine what is necessary to support students in the
20 upcoming school year. In this unique 2020-2021 school year, where safety and health
21 concerns dictate social distancing, masking requirements and internet-based lessons, we
22 view activities that require teachers to familiarize themselves with these new protocols
23 and ensure that they work properly as intrinsic to the teachers' duties.

1 We are not alone in this view, as we construe the agreement between the
2 Commissioner of Education and the state's three largest teachers' unions, including the
3 MTA, with whom the AEA is affiliated, to reduce the length of the school year so that it
4 could grant ten additional days to faculty and staff to prepare for the new school year, as
5 a particularly strong affirmation by both labor and DESE that the type of professional
6 development that APS planned was critical to a safe and successful fall reopening.

7 Thus, unlike in King Philip, where the CERB was faced with determining whether
8 three separate and unrelated tasks constituted mandatory duties, the tasks at issue here
9 were part of an overall mandatory PD program. The Union cites no cases, and we find
10 none where activities introduced for the first time during an otherwise mandatory PD
11 program were deemed voluntary or non-mandatory simply because they were new.

12 The Union also relies on Southeastern Regional School Committee, 7 MLC 1801,
13 MUP-2970 (February 2, 1981) to argue that the withholding of certain services there was
14 not a strike, but that decision is also distinguishable. In that case, the CERB found that
15 the union's boycott of an employer-sponsored parents' night did not amount to an illegal
16 strike because the parties' expired collective bargaining agreement was silent on the
17 issue of attendance at parents' nights, and there was only one prior event that resembled
18 a parents' night at which some teachers participated on a voluntary basis. Here, while
19 professional development is not expressly defined, the parties' CBA recognizes that the
20 "teacher year" includes "orientation days at the beginning of the school
21 year." Additionally, the evidence demonstrates that union members usually spend the
22 first day of school participating in back to school professional development in person, and
23 participation has never been optional or voluntary.

1 None of the other arguments that the Union makes in its defense result in a
2 contrary holding. As a preliminary and minor matter, the fact that the Union labelled this
3 a “Work Safety Action,” rather than a strike, does not mean that an unlawful strike has not
4 occurred. It is the actual conduct, not the label placed on it, that is dispositive here.

5 Nor are we persuaded that the School Committee’s own conduct improperly
6 thwarted bargaining unit members from performing their duties and/or that this conduct
7 amounts to an unlawful lockout. First, even if the School Committee had allowed high
8 school employees or other employees Wi-Fi access or meeting links or permitted them to
9 come inside the building to sign-in or use bathrooms, we would still have concluded that
10 an unlawful strike took place due to the employees’ refusal to report for duty or to perform
11 all of their required duties. Second, because the AEA’s conduct amounted to an
12 unlawful strike, the Employer could lawfully resort to self-help to prevent the disruption to
13 public services. As the SJC stated in Lenox Education Association, “nothing in the
14 language of Section 9A(b) suggests that by creating the petitioning process the
15 Legislature intended to limit the means by which a public employer may respond to an
16 illegal work stoppage”. 393 Mass. at 285 (quoting Utility Workers, Local 466 v. Labor
17 Relations Commission, 389 Mass. 500, 504 (1983)).

18 Finally, the fact that the Union cites the health and safety of its members as a basis
19 for refusing to enter school buildings does not excuse its conduct. Although, as stated
20 above, we do not lightly dismiss such concerns in the time of a global pandemic, unlike
21 the National Labor Relations Act, Chapter 150E does not contain any safety-related

1 exceptions to the definition of strike.²³ Moreover, although certain federal and state
2 regulations may grant employees the right to refuse work in situations where they harbor
3 a good faith reasonable belief that performing their duties could result in imminent serious
4 injury or death,²⁴ the Union has not defended its conduct here on such grounds, nor has
5 it presented evidence that such circumstances existed at any of the APS schools on
6 August 31, 2020.²⁵ We therefore need not and do not reach this issue.

²³ Section 502 of the Labor Management Relations Act, 29 U.S.C.A. § 143, states, in part:

. . . nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this act.

²⁴ OSHA regulation 29 CFR §1977.12(b)(2), promulgated in 1973, states:

However, occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition of causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee where possible must have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

As a general matter, all regulations promulgated by OSHA apply to public employers and employees in the state of Massachusetts and are enforced by the Department of Labor Standards. M.G.L. c. 149, §6 1/2 ; 454 CMR 25.02.

²⁵Bach and DiGloria testified that the independent HVAC report was due on September 4, 2020, the day after the investigation, and that it was possible that this report could reveal serious safety concerns about some of the school buildings, particularly the older

1 In sum, the evidence shows, and we find, that the AEA, its members and Bach and
2 DiGloria were engaged in an unlawful strike within the meaning of Section 1 and Section
3 9A of the Law. We thus turn to the remaining issues before us, whether the AEA and/or
4 Bach induced, encouraged and condoned the strike, whether a strike is about to occur
5 and whether this matter is moot. We treat each issue in turn.

6 First, we find that the AEA induced, encouraged and condoned the strike in
7 violation of the Law. The evidence, including the Union's August 28, 2020 press release,
8 clearly indicates that on August 26, 2020, the Union "overwhelming voted to begin the
9 school year by only working remotely." The press release included statements in support
10 of the action from Bach and DiGloria that included their Union titles. The Union's Action
11 Committee took several steps to support participating members that day by ordering
12 portable toilets and a generator. Although not all Union members participated in the
13 strike, a significant number did, including Bach and DiGloria. Where the Union presented
14 no evidence that these officials had permission or were otherwise excused from working
15 inside school buildings on August 31, 2020 or that they took any affirmative steps to
16 encourage members of the bargaining unit to refrain from working outside of school
17 buildings, there is ample evidence to support a finding that the Union induced,
18 encouraged and condoned the work action. See Dedham School Committee, 16 MLC
19 1624, SI-232 (March 8, 1990); Nashoba Valley Technical High School Committee, 13
20 MLC 1307, SI-191 (November 21, 1986).

ones. As of the hearing, however, Bach and DiGloria's concerns about the negative contents of the independent report were merely speculative.

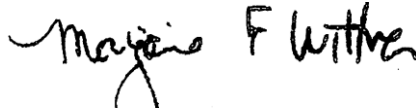
1 For the same reasons, we also find that by planning, publicizing and participating
2 in the strike, Bach and DiGloria, individually and in their official capacities, induced,
3 encouraged and condoned it in violation of the Law. See Dedham School Committee, 16
4 MLC at 1627-1628. We therefore deny the Union's motion to dismiss the petition with
5 respect to these two individuals and Union officers.

6 We decline, however, to find that a strike is imminent or about to occur or that
7 either the Union or Bach and DiGloria are continuing to induce and encourage their
8 members from reporting to their assigned buildings, as the School Committee argues.
9 The Union voted on the night of August 31, 2020 to suspend the workplace safety actions
10 and its members worked inside school buildings on September 1 and September 3, 2020.
11 Although Bach, during cross-examination, declined to speculate as to what could happen
12 if the AEA and the School Committee did not have any agreement by the first day of
13 school, both he and DiGloria credibly testified that there have been no Union meetings
14 discussing future work actions, stoppages or strikes and no votes are planned. Under
15 these circumstances, we cannot conclude that a strike is about to occur. Compare
16 Dedham School Committee, 46 MLC 76, SI-19-7658 (October 24, 2019) (strike imminent
17 even absent affirmative strike vote where strike vote was scheduled, union distributed
18 strike flyers asking other unions to join in show of support for scheduled strike, and union
19 failed to make counterproposals after School Committee made proposals on issues the
20 union identified as its most important issues)(citing Boston Teachers Union, Local 66,
21 et.al, 33 MLC 133, SI-07-272 (January 18, 2007), *aff'd.*, Commonwealth Employment
22 Relations Bd. v. Boston Teachers Union, 74 Mass. App. Ct. 500 (2009), *rev. den'd*, 455
23 Mass. 1102 (2009), *pet for cert. den'd*, 599 U.S. 992 (2010)).

- 1 4. Immediately upon receipt of a copy of this order, the AEA, its officers, and Bach
2 and DiGloria shall take any necessary steps to notify AEA bargaining unit members
3 of their obligation to fully perform the duties of their employment, including the
4 obligation to not participate in any form of strike or work stoppage. Such notification
5 shall be completed immediately upon receipt of this order and shall entail all of its
6 usual means of communicating with its bargaining unit members.
7
8 5. Immediately upon receipt of a copy of this Order, the AEA, its officers and Bach
9 and DiGloria shall take any and all necessary steps to inform AEA bargaining unit
10 members of the provisions of Sections 9A(a) and (b) of the Law and the contents
11 of this Order. Such notification shall be completed immediately upon receipt of this
12 order and shall entail all of its usual means of communicating with its bargaining
13 unit members.
14
15 6. The DLR shall retain jurisdiction of this matter to set further requirements as may
16 be appropriate.²⁶

17
18 **SO ORDERED**

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



MARJORIE F. WITTNER, CHAIR



JOAN ACKERSTEIN, CERB MEMBER



KELLY STRONG, CERB MEMBER

²⁶ We deny the School Committee's request to require Respondents to pay costs and damages to it for the costs and damages associated with the violation of Section 9A(a). Costs and damages are not a traditional aspect of a strike order, see, e.g., Boston Teachers Union, 33 MLC at 138-139; Dedham School Committee, 16 MLC at 1629; Nashoba Valley Technical High School, 13 MLC at 1310-1311.