

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

NEWTON TEACHERS ASSOCIATION

and

MICHAEL ZILLES, in his capacity
as President of the NTA

and

NEWTON SCHOOL COMMITTEE

Case No. SI-23-10203
Issued: January 24, 2024

1 CERB Amended Ruling on Supplemental Strike Petition¹

2 On January 16, 2024, the Newton School Committee (School Committee) filed a
3 petition (Supplemental Petition) with the Department of Labor Relations (DLR) for a strike
4 investigation pursuant to Section 9A(b) of M.G.L. c. 150E (the Law). The Supplemental
5 Petition alleges that a strike within the meaning of Section 1 and Section 9A(a) of the Law
6 is about to occur, and that the Newton Teachers Association (NTA or Union) and Michael
7 Zilles (Zilles) in his capacity as President of the NTA (collectively, the Respondents) were
8 inducing, encouraging, or condoning that strike in violation of Section 9A(a) of the Law.
9 In particular, the School Committee alleged that it had reason to believe that the
10 Respondents intend to hold a strike vote among all NTA bargaining unit members on

¹ This Ruling has amended to correct the description of the NPS employee who sent the December 18th email described on page 8 of this Ruling. The sender was not a “library teacher” as previously described.

1 Thursday, January 18, 2024, with an open-ended strike scheduled to begin on January
2 19, 2024.

3 On January 16, 2024, the DLR issued a Notice of Supplemental Strike
4 Investigation that the School Committee caused to be served on all parties.² On January
5 18, 2024, Marjorie F. Wittner, Chair of the Commonwealth Employment Relations Board
6 (CERB), conducted a strike investigation on behalf of the CERB pursuant to 456 CMR
7 16.03(3).³ CERB Member Victoria Caldwell attended the hearing and had the opportunity
8 to participate by asking questions and assisting Chair Wittner with rulings and other
9 hearing matters.⁴ The School Committee and the Respondents had an opportunity to be
10 heard, to examine and cross-examine witnesses and to introduce evidence.⁵ The
11 investigation record is now closed.

12 For the reasons set forth below, the CERB concludes that the NTA and the
13 employees it represents are about to engage in a strike in violation of Section 9A(a) of
14 the Law and that the NTA and its officers, including Zilles in his capacity as Union
15 president, have induced, encouraged, and condoned the strike.

16 Motions

² The School Committee filed an affidavit of compliance with the service requirements, stating that MTA counsel agreed to service of the petition in lieu of in-hand service.

³ The investigation was conducted remotely using the WebEx videoconference platform.

⁴ CERB Member Kelly Strong did not attend the investigation and did not participate in the investigation or this ruling.

⁵ The School Committee called two witnesses: Superintendent Anna Nolin and METCO Director Lisa Gilbert-Smith and introduced ten exhibits. The Respondents cross-examined these witnesses but did not call any of their own witnesses.

1 At the conclusion of the investigation, the NTA orally moved to dismiss the petition
2 for lack of evidence and further moved to dismiss Zilles as a respondent in his official
3 capacity as NTA president. For the reasons stated below, the CERB denies both motions.

4 Stipulations of Fact

5 The parties agreed to the following stipulations:

- 6 1. The City of Newton is a public employer within the meaning of Section 1 of M.G.L. c.
7 150E (the Law).
- 8
9 2. The Newton School Committee (School Committee) is the representative of the City
10 for the purpose of dealing with school employees.
- 11
12 3. Anna P. Nolin (Nolin) is the Superintendent of the Newton Public Schools (NPS).
- 13
14 4. Christopher Brezski is the current Chair of the School Committee.
- 15
16 5. The Newton Teachers Association (NTA) is an employee organization within the
17 meaning of Section 1 of the Law.
- 18
19 6. Respondent Michael Zilles (Zilles) is the NTA's president.
- 20
21 7. The NTA represents certain NPS employees in five different bargaining units, Unit A,
22 B, C, D, and E.
- 23
24 8. Unit A is comprised of full-time and regular part-time classroom teachers, librarians,
25 guidance counselors and other employees as described in Article I, Section 1 of the
26 parties' Unit A collective bargaining agreement. See Supp. JX 1A-D. There are
27 approximately 1,350 employees in Unit A.
- 28
29 9. Unit B is a unit of Assistant Principals, Assistant Directors, Senior High School
30 Department Heads and other employees as described in Article I, Section 1 of the
31 parties' Unit B collective bargaining agreement. See Supp. JX 2A-D. There are
32 approximately 78 employees in Unit B.
- 33
34 10. Unit C consists of all full-time and regular part-time Education Support Professionals
35 and other employees as described in Article I, Section I of the parties' Unit C collective
36 bargaining agreement. See Supp. JX 3A-D.
- 37
38 11. Unit D consists of Instructional Support Staff and other employees described in Article
39 I, Section 1 of the parties' Unit D collective bargaining agreement. See Supp. JX 4A-
40 D.
- 41

- 1 12. Unit E consists of Administrative Technology Specialist, Network Specialist, Research
2 Assistant, Student Information System Specialist, and other employees as described
3 in Article I, Section I of the parties' Unit E collective bargaining Agreement. See Supp.
4 JX 5A-D.
5
- 6 13. There are a total of approximately 550 employees in Units C, D, and E.
7 14. The NPS and the School Committee have been parties to a series of collective
8 bargaining agreement and memoranda of understanding (MOAs) for each of the
9 bargaining units described in paragraph 7. All of the MOAs expired August 31, 2023.
10
- 11 15. As of January 16, 2024, the School Committee and the NTA have not reached
12 agreement on a successor agreement for any of the five bargaining units listed in
13 paragraph 7.
14
- 15 16. On January 16, 2024, the School Committee filed the instant supplemental strike
16 petition (Supplemental Petition) naming the NTA and Michael Zilles in his official
17 capacity as NTA president.
18
- 19 17. Pursuant to the Newton School Calendar, Friday, January 19, 2024 is a regularly
20 scheduled NPS workday and school day.
21

22 Findings of Fact

23
24 Background

25 There are 22 schools in the City of Newton. These schools serve nearly 12,000
26 students.

27 The parties have been engaged in negotiations for a successor agreement for
28 each of the five bargaining units set forth above since October 2022. There is no dispute
29 that negotiations have been fraught and contentious. In July and August 2023, the NTA
30 filed five unfair labor practice charges contending that the School Committee was not

1 bargaining in good faith.⁶ In August 2023, the DLR granted the School Committee's
2 unilateral request for mediation for each of the five contracts over the NTA's objection.⁷

3 At the beginning of the 2023-2024 school year, the Union commenced certain work
4 actions in connection with the ongoing negotiations. Certain of those actions led the
5 School Committee, to file a strike petition with the DLR on September 5, 2023, alleging
6 that an unlawful strike in violation of Section 9A of the Law had occurred and was still
7 occurring, and that the strike had been induced, encouraged, and condoned by the NTA
8 and Zilles, in both his individual and official capacity and another NTA Officer. The petition
9 concerned two separate actions conducted by the NTA – a “silent meeting” action, and a
10 boycott of a district wide meeting (convocation) on August 30, 2023.⁸

11 After conducting a strike investigation, on September 26, 2023, the CERB issued
12 a Ruling on Strike Petition and Interim Order (Ruling I). The CERB dismissed the petition

⁶ The CERB takes administrative notice of the case files in Case Nos. MUP-23-10151, MUP-21-10165, MUP-23-10166, MUP-23-10167, and MUP-23-10168, which the DLR consolidated for investigation. As of the supplemental strike investigation, these matters were pending a probable cause determination.

⁷ On July 20, 2023, the School Committee unilaterally filed five petitions for contract mediation with the DLR for Units A-E. The CERB takes administrative notice of the mediation files in Case Nos. PS-23-10141, 10142, 10143, 10144, 10145. On July 24, 2023, the Union filed a letter with the DLR requesting that it deny the School Committee's petitions on grounds that the parties were not at impasse. The School Committee filed a reply on July 31, 2023, contending, among other things, that “impasse exists over wage increases and that none of the remaining issues would result in an agreement while the Union continues to insist on unaffordable wage increases and rejection of all of the Committee's health insurance proposals.” On August 21, 2023, the DLR determined that the parties had negotiated for a reasonable period of time and appointed a mediator to conduct mediation sessions.

⁸ The CERB takes administrative notice of the strike petition that the School Committee filed on September 5, 2023, and of the ruling that the CERB issued on September 26, 2023, after it conducted the strike investigation.

1 with respect to the silent meeting action. With respect to the convocation, the CERB
2 concluded that the NTA and its members were engaged in an unlawful strike with the
3 meaning of Sections 1 and 9A of the Law, and that the NTA and its officers and Zilles, in
4 his official capacity, had induced, encouraged and condoned the unlawful strike. The
5 ruling included the following Interim Order:

- 6 1. The NTA, its officers and the employees it represents shall immediately
7 cease and desist from engaging in any strike, work stoppage, slowdown or
8 other withholding of services.
9
- 10 2. The NTA and its officers, including Michael Zilles, in his official capacity,
11 shall immediately cease and desist from inducing, encouraging, or
12 condoning any strike, work stoppage or other withholding of services, either
13 directly or through surrogates. The NTA shall not permit its officers or
14 agents to induce, encourage or condone any strike, work stoppage,
15 slowdown or other withholding of services.
16
- 17 3. Michael Zilles shall immediately desist from encouraging, condoning, or
18 inducing a strike work stoppage, slowdown or other withholding of services.
19
- 20 4. Immediately upon receipt of a copy of this order, the NTA, its officers and
21 Zilles shall take any necessary steps to notify NTA bargaining unit members
22 of their obligation to fully perform the duties of their employment, including
23 the obligation to not participate in any form of strike or work stoppage. Such
24 notification shall be completed immediately upon receipt of this order and
25 shall entail all of its usual means of communicating with its bargaining unit
26 members.
27
- 28 5. Immediately upon receipt of a copy of this Order, the NTA, its officers and
29 Zilles shall take any and all necessary steps to inform NTA bargaining unit
30 members of the provisions of Sections 9A(a) and (b) of the Law and the
31 contents of this Order. Such notification shall be completed immediately
32 upon receipt of this Order and shall entail all of its usual means of
33 communicating with its bargaining unit members.
34
- 35 6. The NTA and its officers and Zilles, in his official capacity, shall notify the
36 DLR in writing of the steps taken to comply with this Order by no later than
37 September 27, 2023 at 4:00 p.m.
38
7. The DLR shall retain jurisdiction of this matter to set further requirements
as may be appropriate.

1 On September 27, 2023, the NTA's counsel sent a letter to the CERB stating that the
2 NTA and Zilles had complied with the CERB's order. The NTA requested that the matter
3 be closed. On October 6, 2023, the CERB issued a ruling (Supplemental Ruling I)
4 denying the request to reconsider its ruling. The CERB also denied the request to close
5 the case. Among other things, the CERB stated that it was exercising its discretion to
6 keep the matter open because, "[t]he contract dispute that led to the first job action has
7 not been resolved and therefore the possibility for a recurrence of strike activity remains."
8 The CERB accordingly retained jurisdiction over the matter, stating that it would continue
9 to do so until the parties report that the contract is settled. The CERB added that "[u]pon
10 proper motion by the School Committee, the CERB may set further requirements or take
11 any other action available under Section 9A(b) of the Law as appropriate.⁹

12 As indicated in the stipulations, despite participating in several mediation sessions,
13 the parties have yet to reach agreement on successor contracts.

14 Supplemental Strike Petition

15 Around mid-November 2023, Nolin began hearing rumors that the Union was
16 planning to engage in a strike. As a result, she directed the District's Information
17 Technology Director to periodically search emails that NPS employees have sent using
18 the District's email server for emails that included the term strike, or synonyms for a strike,

⁹ The Union has sought judicial review of the CERB's first strike ruling. On November 27, 2023, the Union filed Complaint and Action in the Nature of Certiorari Pursuant to M.G.L. c. 249, §4 with a Single Justice of the Supreme Judicial Court (Certiorari Complaint) The case was docketed as SJC-23-0470. The Certiorari Complaint names the CERB as the sole Defendant and seeks to set aside the CERB's Ruling I and Supplemental Ruling I. On January 3, 2024, a single Justice of the SJC granted the School Committee's motion to intervene. The matter is pending.

1 such as “work stoppage.”¹⁰ These searches yielded a number of results from NPS
2 employees using their NPS email accounts.¹¹ In the past week, after hearing rumors that
3 a strike vote was going to take place on January 18, 2023, at Temple Shalom in Newton,
4 Nolin further instructed the IT Director to include the terms “Temple” or “Temple Shalom.”
5 As described below, these emails and other documents in the record demonstrate that
6 since at least mid-December, different NPS employees, administrators, and PTO
7 members knew either that the Union was planning to hold a strike vote and/or that it was
8 planning to strike. The emails generated by these searches are described below.

9 On December 18, 2023, an NPS teacher sent an email to a number of individuals
10 with NPS email addresses, including F.A. Day Principal Jackie Mann. The email was part
11 of a chain that began in November 2023, when Principal Mann sent an email to staff
12 regarding a possible holiday party. After some back and forth as to the date and location,
13 the teacher sent an email to the staff members on the chain, which stated:

14 Hi-

¹⁰ The School Committee introduced the District’s Employee Technology and Online Acceptable Use Guidelines (Guidelines). The Guidelines state in pertinent part that:

Newton Public Schools retain control, custody, and supervision of all school technology and online resources owned, leased or paid by it. NPS reserves the right to monitor all technology and online resources, such as computer, Internet and E-mail activity by employees and other system users. Employees have no expectation of privacy in their use of school technology and online resources, regardless of whether such use is for school purposes or incidental personal use. E-mails concerning official school business are generally considered public record information subject to disclosure under Massachusetts Public Records Laws, M.G.L. c. 66, sec. 10; M.G.L. c. 4, sec. 7(26). Additionally, all actions performed by employees utilizing PS’ technology and online resources may be subject to disclosure or production in discovery in litigation.

¹¹ The emails that the School Committee provided were either sent to, or from individuals whose email addresses ended in the suffix “@newton.k.12.ma.us.”

1 So, a few people have commented to me that we should hold off on the
2 holiday party as we could be on strike. Apparently, we would vote to go on
3 strike on the 19th of January, the same day as the party. What are your
4 thoughts, I am happy to move forward with planning, but I just do not want
5 to lose my deposit.
6

7 On January 11, 2024, a member of the Franklin Elementary School PTO Board
8 sent an email to “Franklin families” with the subject line “Important Information from the
9 PTO Board” stating in pertinent part:

10 The PTO Board wants to call an important update to your attention:
11 educator contract negotiations are effectively at an impasse, and we may
12 be headed toward a job action (which may include a strike) in the near
13 future.
14

15 Across the district, educators describe that their personal and professional
16 basic needs are not being provided by the city; city leadership has met their
17 concerns with hostility and obfuscation. Our educators’ needs and the
18 needs of our students go hand in hand; our educators are asking for things
19 like team preparation and planning time to better serve our students, and
20 these requests are being denied by our city leadership.

21 However educators are heartened by the support they have received from
22 parents, so **the best way for us to continue to support our educators
23 and to do our part, as parent, to head off a possible strike – is to be
24 vocal with city leadership.** To our current understanding, this next week
25 is crucial for community action to change the outcome of negotiations before
26 a possible strike.

27 **(Boldface in original)**
28
29

30 Later in the day on January 11, 2024, a recipient of the PTO message forwarded it to
31 Zilles from her NPS email account. Within an hour of receiving the email, Zilles replied
32 stating, “Thanks for sending this. Holy moly! That’s amazing! The PTO!”

33 On January 14, 2024, an NPS employee who identified herself as the union
34 representative at the Underwood School wrote to “Ernesto” stating that, “Since I am split
35 between two schools I wanted to give you a heads up...that I will be reporting each day

1 to Bowen's designated strike location (Newton Centre) in case you need to know for
2 attendance purposes."

3 The most significant piece of evidence uncovered by the IT Director regarding a
4 strike vote was a Google calendar invitation sent in the form of an email, with the subject
5 matter "Union Strike vote."¹² The organizer of the event identified on the invitation was
6 an NPS staff member and NTA bargaining unit member. The invitation reflected that the
7 vote would take place at Temple Shalom in Newton from 4:30 – 5:00 p.m. EST. A note
8 on the invitation indicated the time for elementary and middle school teachers was "3:30
9 – vote at 4:00." The invitees were NPS bargaining unit members.

10 Some communications regarding the strike vote and strike also occurred by text.
11 On January 3, METCO Director Lisa Gilbert-Smith (Gilbert-Smith) received a text from
12 METCO counselor with whom Gilbert-Smith had previously corresponded on group texts.
13 In the text, the counselor, who is a member of one of the NTA's bargaining units, stated:

14 Good afternoon Lisa and bus monitors. Well my building two [sic] said if
15 things are agreed upon on January 18th we will strike on the 19th...
16 Lisa can you set up a text message feed with our METCO counselors to get
17 possible rides with bus monitors to the various Newton sites on the strike
18 days?
19 I'm hoping they come to a resolution so we don't strike but looks like we will.
20

21 On January 15, 2024, at 10:07 p.m., a Peirce Elementary School staff member
22 and bargaining unit member sent an email to a NPS social worker and bargaining unit
23 member:¹³

¹² The NPS uses "Google Suite" for its staff email and calendaring functions.

¹³ The Social Worker is an NTA bargaining unit member. Her email signature reflects that she works at three schools in Newton, including Peirce.

1 I texted out a reminder earlier tonight about Peirce's informational meeting
2 Wednesday at 12:30 in Kelly's room. I know Monday is usually our [sic] day
3 with us, but wanted to make sure you had a way to join a meeting before
4 our General Membership Meeting on Thursday at Temple Shalom.

5
6 Another way to get up to Date information is to join the Contract Action
7 Team Zoom tomorrow night at 7:00 p.m.

8
9 There are two brief General Membership meetings Thursday, one right after
10 the other. Doors open at 3:30 so people can begin checking in for the 4:00
11 meeting¹⁴

12
13 January 18th Meeting Location Changed

14 On January 17, 2024, at 7:19 pm, the NTA, using the email address
15 *ntapresident@newteach.org*, sent out an email with the subject "General Membership
16 Meeting Update." The email stated in part:

17 Dear Colleagues:

18 In the face of attempts to silence us, educators raise our voices.

19
20 **We write to inform you of a change to the way in which NTA members**
21 **will meet tomorrow and to announce an all member rally following our**
22 **meeting tomorrow that will commence at 5:00 pm at City Hall.**

23
24 Instead of meeting tomorrow at Temple Shalom, we will now be meeting on
25 Zoom according to the below schedule.

26
27 **Why are we meeting over Zoom as opposed to Temple Shalom?**

28
29 The Temple communicated with us in an email this afternoon that we would
30 not be able to use their space. **It is clear the Mayor and the School**
31 **Committee have made their first attempt to silence us all in this**
32 **process.** We knew they would try various ways of silencing the educators

¹⁴ The subject line of these emails contained the following language: "Would like to send you a text but do not have your number in my phone." The CERB infers from this subject line and other statements in the email that this staff member was predominantly using texts, not email, to communicate information about union meetings and the reason this particular exchange took place via email was because the staff member did not have the social worker's phone number. When replying, the social worker indicated that she had replied by email because she believed it was too late to text.

1 and community of Newton. Unfortunately for them, we all have experience
2 pivoting to Zoom, and this will not stop us fighting for what is right.

3
4 There will be two meeting times – please choose one:

5
6 3:45 pm General Membership meeting – **preregistration required**
7 [hyperlink for registration]

8 4:30 pm General Membership Meeting 2 – **preregistration required**
9 [hyperlink for registration]

10
11 5:00 pm: Join us in person at City Hall if you can for a press conference and
12 rally.

13
14 ***Attendance at each meeting is limited to 1000 members. In order to***
15 ***register, click the above links for your appropriate meeting and fill in***
16 ***your information. Once approved, you will receive an email back with***
17 ***a link to the Zoom meeting.***

18
19 ***If your commute from Newton is lengthy, join the Zoom from your***
20 ***phone (off of school WiFi). Not located somewhere with good service?***
21 ***Head to a nearby public library or other locations that offer guest WiFi.***

22
23 They have attempted to prevent us all from meeting in person as a union
24 and publicly stating that we will no longer tolerate the deliberate
25 underfunding of our schools, the punishment of our educators, and the
26 penalties to our students. **As such, we will be holding a rally and press**
27 **conference at City Hall tomorrow following our Zoom meetings. We**
28 **will stand together to show that educators are not afraid to fight for**
29 **what is right and that any pathetic attempts to silence us will only**
30 **make us stronger.**

31
32 We are honored to stand together with you because of the work you do each
33 day for our students and community but also because of your courage: the
34 courage to stand up for what is right.

35
36 In solidarity,

37
38 Mike Zilles, President
39 Chris Walsh, Treasurer,
40 Your bargaining team

41
42 **(Boldface and italic in original).**

43
44 Press Coverage

1 1627, 1630, SI-198 (April 23,1987); Boston School Committee, 10 MLC 1289, 1290, SI-
2 156 (November 15, 1983).

3 Referencing Boston Teachers Union, Local 66 et al, 33 MLC 133, SI-7-272
4 (January 18, 2007) *aff'd sub nom. Commonwealth Employment Relations board et. al. v.*
5 Boston Local 66, 74 Mass. App. Ct. 500 (2009) *further appellate rev. den'd* 455 Mass.
6 1102 (2009), *cert den'd* 599 U.S. 992 (2010), the School Committee argues that the
7 evidence it provided supports a finding that an illegal strike within the meaning of Section
8 9A of the Law is about to occur and that the strike has been and is being induced,
9 encouraged, and condoned by the NTA and its president. The Union, having put on no
10 witnesses, does not rebut any of the evidence that the School Committee provided in
11 support of its petition but claims that the evidence is insufficient and contends that the
12 School Committee's means of obtaining the emails is unlawful surveillance.¹⁶

13 Viewed in their totality, we find that the texts and emails described above
14 demonstrate that the NTA is planning to hold a strike vote on the afternoon of January 18
15 via Zoom for an open-ended strike starting on January 19, 2024. As we indicated above,
16 the most compelling piece of evidence is the Google calendar invitation with the subject
17 line "Union strike vote," with a date and time for the vote, January 18. The information
18 contained in this document conforms closely to the information contained in the email
19 message that Zilles and other NTA officers sent yesterday informing members that the
20 General Membership meeting originally planned to be held at Temple Shalom was being

¹⁶ In its closing argument, the NTA also reserved its right to make arguments concerning the First Amendment. We have previously rejected such arguments and do the same here to the extent they have been properly raised for the reasons stated in Brookline Educators Union, 48 MLC at 311 (quoting Dedham School Committee, 46 MLC 76, 80, n. 13, SI-19-7658 (October 24, 2019)).

1 changed to a Zoom meeting, leading us to conclude that the Zoom Union meeting
2 scheduled for this afternoon is the same strike vote referenced in the Google invite. That
3 the Union immediately plans to hold a rally and press conference after the meeting is
4 notable, as this is the pattern that occurred in other recent CERB decisions, where, as
5 here, the CERB conducted a strike investigation before an actual strike occurred, but
6 where there was sufficient information in the record from which the CERB could infer that
7 one was imminent. See, e.g., Brookline Educators Union, 48 MLC 307, 309, SI-22-9294
8 (May 12, 2022); Haverhill School Committee, 49 MLC 112, 117, SI-22-9605 (October 15,
9 2022), Woburn School Committee, 49 MLC 222, 226, SI-23-9811 (January 27, 2023).
10 We also find other aspects of the January 17 email significant, particularly, the Union's
11 assertion that their inability to use Temple Shalom's space was the "Mayor and School
12 Committee's first attempt to silence us in the process," and that this would not stop the
13 Union from "fight[ing] for what is right." Given other evidence reflecting that a strike vote
14 was scheduled for January 18, 2024, we reasonably construe the Union's reference to
15 "this process" and the Union's "fighting for what is right," as referring to a strike vote and
16 subsequent strike.

17 When we view these two documents in conjunction with the other documents in
18 this record that show that teachers, administrators, and the PTO were aware that a strike
19 vote was being scheduled for an strike commencing the next day, along with other factors
20 that we have found significant in our prior decisions -- several union meetings occurring
21 in the same week as a strike vote, see e.g., Brookline School Committee, 48 MLC at 310-
22 311, Haverhill School Committee, 49 MLC at 117, Woburn School Committee, 49 MLC at
23 228; a strike vote scheduled for the evening prior to a scheduled strike, see e.g., BTU, 33

1 MLC at 137, Dedham School Committee, 46 MLC at 80, Brookline School Committee, 48
2 MLC at 311, Haverhill School Committee, 49 MLC at 117; and undisputedly contentious
3 negotiations; unfair labor practice charges; and critical statements from the Union that
4 reflect the NTA's dissatisfaction and frustration with the Mayor, the School Committee,
5 and the process of bargaining, see e.g., Haverhill School Committee, 49 MLC at 117,
6 Woburn School Committee, 49 MLC at 228; we conclude that a strike vote with a strike
7 to follow is about to occur.

8 In the 2007 Boston Teachers Union decision cited above, the Appeals Court held
9 that "the purpose of the [Law] set forth in clear and unequivocal language, is to allow the
10 [CERB] to intervene in a labor dispute at a point where the [CERB] may set the
11 requirements necessary to prevent an illegal strike that is about to occur. 74 Mass. App.
12 at 505. In so holding, it affirmed the CERB's determination that a strike was about to
13 occur prior to an actual strike vote being held. Where here, as in BTU, the NTA has
14 scheduled a strike vote to occur on the day before a strike is scheduled to occur, we find
15 this period immediately preceding a strike vote to be an opportune and indeed critical time
16 for the CERB to intervene so that it may set the requirements necessary to prevent an
17 illegal strike. Id. (citing Utility Workers of America, Local 466 v. Labor Relations
18 Commission, 389 Mass. 500-505-506 (1986) for the proposition that strikes by public
19 employees "may create exigent and unpredictable situations," therefore a public employer
20 "may act in good faith to prevent public services from being disrupted.")

21 Motions

22 Throughout the strike investigation, the Union objected to the admission of the
23 emails and texts described above on two grounds – that they were unreliable hearsay

1 and that they were the product of unlawful surveillance, i.e., the “fruit of the poisonous
2 tree.” Indeed, the Union has moved to dismiss the petition on grounds that the School
3 committee’s presented insufficient and unreliable evidence that a strike is about to occur.
4 We disagree and deny the motion.

5 Regarding the hearsay argument, we note that, generally, the CERB is not bound
6 by the formal rules of evidence and that it can admit documents that are hearsay and give
7 them the weight it deems necessary. See 456 CMR 13.03 (g) (“In any hearing, the
8 Department shall not be bound by the technical rules of evidence prevailing in the courts”).
9 Further, where, as here, “direct evidence of a strike is unavailable, the [CERB] may make
10 its findings upon available facts and reasonable inferences drawn therefrom.” Boston
11 School Committee, 20 MLC 1244, 1248, SI-246 (1993). This is particularly true in the
12 case of a strike investigation, because, as the SJC has noted, “Section 9A deals with
13 situations often requiring prompt action in response to an unlawful strike by public
14 employees.” Labor Relations Commission v. Fall River Education Association, 382 Mass.
15 465, 473 (1981). Furthermore, the NTA did not put on any witnesses to either confirm or
16 deny the emails or texts, or the inferences the School Committee was asking the CERB
17 to draw from those documents. See Id. at 471, fn. 7 (1981) (stating that a hearing officer
18 would be warranted “in drawing an inference adverse to an employee organization from
19 its failure to present information from its officers or other persons available to it”
20 particularly where it is “on a subject particularly within their knowledge”). Based on the
21 foregoing, the CERB finds the evidence submitted by the School Committee is, in its
22 totality, sufficient to support the conclusion that a strike vote and strike are about to occur.

1 We also reject the Union's argument that conducting limited searches of staff
2 members' emails on the NPS server amounts to unlawful surveillance of protected,
3 concerted activity. First, the terms were limited to "strike" and its synonyms, and to
4 "Temple" and "Temple Shalom," the location where the School Committee had reason to
5 believe that the strike vote would occur, and thus were narrowly targeted to find
6 information with public documents relating to potentially unlawful strike activity. Second,
7 the NPS Acceptable Use Policy clearly states that staff members have no expectation of
8 privacy in emails or other documents sent or received using the server and permits the
9 disclosure of these documents as public documents or during litigation. Finally, while the
10 search uncovered evidence of union meetings, there is no evidence, and the NTA does
11 not contend, that the School Committee surveilled those meetings. Thus, as the SJC
12 stated in Utility Workers of America, Local 466 v. Labor Relations Commission, 389 Mass.
13 at 505, "as long as a public employer acts in good faith it must be permitted to take
14 emergency actions to prevent public services from being disrupted. A contrary
15 interpretation of the statutory language would severely limit the ability of the employer to
16 protect and maintain important public services." Here, as we found under similar
17 circumstances in Woburn School Committee, 49 MLC at 229, there is no indication that
18 Nolin acted in anything other than good faith when she instructed its IT Director to search
19 NPS' servers using search terms limited to a potential strike.

20 For these reasons, we deny the Union's motion to dismiss the petition.

21 Inducing, Condoning and Encouraging Activity

22 Having found that a strike vote is about to occur, we address whether there is
23 evidence that the NTA is inducing, encouraging or condoning the strike. We find that they

1 are based on the January 17 email sent from the NTA president's email address and
2 signed the NTA president, the NTA Treasurer, the Bargaining Team and the Contract
3 Action Team. For the reasons stated above, we have found that the General Membership
4 Zoom meeting that is scheduled for later today is a meeting to hold a strike vote and that
5 by NTAs' officers', and its Negotiating and Contract Action Teams' urging bargaining unit
6 members to register to participate in that meeting and to vote on a strike scheduled to
7 take place the next day, they have unlawfully induced, condoned and encouraged a strike.

8 As a final matter, we address the Union's motion to dismiss the petition as to Zilles
9 in his capacity as Union president. We deny that motion based on the January 17 email,
10 which Zilles sent and signed.

11 Conclusion

12 For the foregoing reasons, we conclude that the NTA and the employees it
13 represents are about to engage in a strike in violation of Section 9A of the Law and that
14 the NTA, the NTA's officers and Zilles, in his official capacity is inducing, encouraging and
15 condoning such action in violation of Section 9A of the law. Accordingly, pursuant to
16 Section 9(a) and (b) of the Law, we issue the following Supplemental Order.

- 17 1. The NTA and its officers and the employees it represents and Zilles, in his official
18 capacity, shall immediately cease and desist from engaging in or threatening to
19 engage in a strike or work stoppage, slowdown, or other withholding of services.
20
21 2. The NTA and its officers and Zilles in his official capacity, shall immediately cease and
22 desist from inducing, encouraging, or condoning any strike, work stoppage, or other
23 withholding of services, either directly or through surrogates. The NTA shall not permit
24 its officers to encourage, condone, or induce any strike, work stoppage, slowdown, or
25 other withholding of services.
26
27 3. The NTA and its officers, and Zilles in his official capacity, shall publicly state that:
28 a. any vote authorizing a strike including, but not limited, to a vote to strike
29 scheduled for January 18, 2024, regarding the current bargaining dispute

1 between the NTA and School Committee is cancelled and will not be
2 rescheduled.

3
4 b. any vote authorizing a strike to take place, which occurred after the
5 investigation and prior to this interim order is cancelled and will not be
6 rescheduled and there will be no strike action.

7
8 c. engaging in, planning, inducing, encouraging, and condoning a strike, work
9 stoppage, slowdown, or other withholding of services, is illegal and must
10 therefore cease.

11
12 4. The NTA and its officers shall immediately notify all of its bargaining unit members of
13 the above statements upon receipt of this Order, using all of its usual means of
14 communicating with its bargaining unit members including, but not limited to, posting
15 the statements on its website, Facebook page, and/or any other social media it uses
16 to regularly communicate with its membership.

17
18 5. The NTA and its officers shall refrain from scheduling any further strike vote in
19 connection with the same bargaining dispute.

20
21 6. The NTA and its officers shall take any necessary steps to notify the employees whom
22 it represents of their obligation to fully perform the duties of their employment including
23 the obligation to refrain from any form of a strike or work stoppage. Such notification
24 shall be completed immediately upon receipt of this Order and shall entail all of its
25 usual means of communicating with its bargaining unit members, including but not
26 limited to, posting the statements on its website, Facebook page, and/or any other
27 social media it uses to regularly communicate with its membership.

28
29 7. The NTA and its officers shall take any and all necessary steps to inform the
30 employees whom the NTA represents of the provisions of Section 9A(a) and (b) of the
31 Law and the contents of this order. Such notification shall be completed immediately
32 upon receipt of this order and shall entail all of its usual means of communicating with
33 its bargaining unit members, including but not limited to, posting the statements on its
34 website, Facebook page, and/or any other social media it uses to regularly
35 communicate with its membership.

36
37 8. The NTA and its officers shall notify the DLR in writing of the steps taken to comply
38 with this Order by no later than **Friday, January 19, 2024 at 8:00 a.m.** Such
39 notification shall include whether or not the NTA and its members voted on January
40 18, 2024, to go on strike on January 19, 2024, and whether they are on strike on
41 January 19, 2024.

42
43 9. The NTA and the School Committee shall immediately resume negotiations and
44 mediation in accordance with the provisions of 456 CMR 21.00 et. seq before a
45 mediator assigned by the DLR to bargain over the issues that separate them. The

- 1 parties' continued participation in mediation ordered by the CERB shall not affect their
2 rights under Section 9 of the Law.
3
4 10. The NTA and the School Committee shall bargain in good faith for a successor
5 collective bargaining agreement and participate in good faith in mediation before the
6 mediator assigned by the DLR to bargain over the issues that separate them.
7
8 11. The NTA, and its officers shall appear as required by the CERB for a proceeding to
9 determine compliance with this Order.
10
11 12. The DLR and the CERB shall retain jurisdiction of this matter to set further
12 requirements as appropriate.
13 **SO ORDERED.**

Marjorie F Wittner

MARJORIE F. WITTNER, CHAIR

Victoria B. Caldwell

VICTORIA B. CALDWELL, CERB MEMBER