

1 9A of the Law had occurred and was still occurring and that the strike had been induced,
2 encouraged, and condoned by the Newton Teachers Association (NTA or Union) and
3 Michael Zilles (Zilles) and Christine Walsh (Walsh) in their capacities as NTA officers and
4 representatives.¹ The strike petition alleged that two different work actions started on the
5 first two days of the 2023-2024 school year - the August 30, 2023 boycott of an opening
6 day event at Newton South High School by NTA teachers (Unit A) and administrators
7 (Unit B); and the “silent meetings” that teachers (Unit A) engaged in during building-
8 based, principal-led staff meetings that were held on August 30 and 31, which the NTA
9 plans to continue until the School Committee and the NTA agree on a successor collective
10 bargaining agreement.²

11 On September 5, 2023, the DLR issued a Notice of Strike Investigation, which the
12 School Committee served on each of the named respondents. On September 6, 2023,
13 the DLR issued an Amended Notice of Strike Petition.³ On September 7 and 8, 2023,
14 Marjorie F. Wittner, Chair of the Commonwealth Employment Relations Board (CERB)

¹ The strike petition also named Zilles and Walsh in their individual capacities. On the first day of the investigation, the NTA orally moved to dismiss the petition as to Zilles and Walsh individually. The School Committee agreed to withdraw this aspect of the petition and we have re-captioned this matter accordingly. The NTA also moved to dismiss the petition in its entirety as to Walsh. We address that motion below.

² The School Committee represented at the beginning of the investigation that the Silent Meetings allegation pertained to Unit A members only.

³ On September 5, 2023, the NTA moved to postpone the strike investigation for a week. Based on the parties' arguments and the CERB's availability, the CERB issued a ruling that declined to move the investigation to the following week, but moved the pre-investigation conference to the following morning and started the investigation two hours later than originally scheduled.

1 conducted a strike investigation on behalf of the CERB pursuant to 456 CMR 16.03(2)(c).⁴
2 During the investigation, the School Committee and the Union had an opportunity to be
3 heard, to examine witnesses, and to introduce evidence. The investigation record was
4 closed on September 11, 2023, after the CERB received the parties' post-investigation
5 memoranda of law.

6 Based on the following stipulations⁵ and findings, and for the reasons set forth
7 below, the CERB concludes that the NTA, its officers and membership engaged in an
8 unlawful strike when they boycotted a district-wide meeting on the educators' first
9 workday of the 2023-2024 school year and that the NTA, its officers, and Michael Zilles,
10 in his official capacity as Union president, unlawfully induced, encouraged and condoned
11 that strike. We further conclude that the NTA and its membership did not engage in, and
12 are not currently engaged in a strike, work stoppage, slowdown or other withholding of
13 services by remaining silent during certain staff meetings.

14 Stipulations of Fact

- 15 1. The City of Newton is a public employer within the meaning of Section 1 of M.G.L. c.
16 150E (the Law).
17
18 2. The Newton School Committee (School Committee) is the representative of the City
19 for the purpose of dealing with school employees.
20
21 3. Anna P. Nolin (Nolin) has been the Superintendent of the Newton Public Schools
22 (NPS) and an agent of the School Committee since July 1, 2023.
23
24 4. Toby Romer (Romer) is the Assistant Superintendent for Secondary Education in the
25 NPS.

⁴ The investigation was conducted remotely, via the WebEx videoconference platform. CERB members Kelly B. Strong and Victoria B. Caldwell observed the conference and had the opportunity to participate.

⁵ The parties orally assented to the stipulations at the outset of the investigation.

- 1
2 5. The Newton Teachers Association (NTA) is an employee organization within the
3 meaning of Section 1 of the Law.
4
5 6. Respondent Michael Zilles (Zilles) is a member and president of the NTA.
6
7 7. Respondent Christine Walsh (Walsh) is a member and Treasurer, Release Officer and
8 Chair of Professional Rights and Responsibilities of the NTA.
9
10 8. The NTA represents certain NPS employees in several different bargaining units,
11 including Unit A, a teachers' unit, and Unit B, an administrators' unit.
12
13 9. Unit A is comprised of approximately 1,350 employees. Unit B is comprised of about
14 78 employees. There are a total of approximately 600 employees in Units C, D, and
15 E.
16
17 10. The NTA and the School Committee have been parties to a series of collective
18 bargaining agreements and memoranda of understanding (MOAs). Prior to the close
19 of this proceeding, the parties will submit as JX 1A – 1C, and JX 2A-2C, the CBAs
20 and MOAs agreements that they have entered into since the 2015-2016 school year
21 with respect to Unit A. and Unit B, respectively. They will also submit as JX 1D and
22 2D a compiled but unexecuted version of the Unit A and B CBAs and MOAs described
23 in this paragraph.⁶
24
25 11. On or about June 11, 2023, the NTA posted a notice or "Ebulletin" on its website. See
26 JX 3.
27
28 12. On or before August 25, 2023, the NTA posted a document entitled "NTA Silent
29 Meeting Guidelines and FAQs" on its website. See JX 4.
30
31 13. The 2023-2024 NPS school calendar identified August 30, 2023 as teachers' and
32 other school employees' first day of work. The calendar identified Tuesday,
33 September 5, 2023 as the first day of instruction. See JX 5.
34
35 14. On August 22, 2023, Nolin sent an email to faculty and staff that included information
36 regarding opening day convocation. See JX 6.
37
38 15. On August 24, 2023, Zilles sent an email to Nolin and Romer confirming that he had
39 accepted their invitation to speak for ten minutes at the convocation. See JX 7.
40
41 16. On August 25, 2023, the NTA posted an EBulletin that discussed, among other things,
42 an opening day rally and convocation. See JX 8.

⁶ Before the close of the hearing, the parties submitted the Unit A contracts and MOAs that they agreed to mark as JX 1A-1E and JX 2A-2E.

- 1
2 17. On August 29, 2023, the NTA posted a notice that cancelled the rally referenced in
3 paragraph 16 and included a letter from Zilles. See JX 9.
4
5 18. On August 29, 2023, Nolin sent an email to faculty and staff with the subject line
6 “tomorrow” regarding the convocation. See JX 10.
7
8 19. On August 30, [2023,] a convocation was held at Newton South High School that
9 included a program and speakers as set forth in JX 11. Zilles did not attend or speak
10 at the convocation.
11
12 20. The School Committee and the NTA have bargained over evaluation standards and
13 criteria for Unit A and Unit B members. The Classroom Educator Rubric includes
14 standards pertaining to “Collaboration,” and “Decision-Making.” The Administrators’
15 Rubric includes standards pertaining to “Meetings.” See JX 12 and 13.
16
17 21. On September 4, 2023, the NTA posted an EBulletin that described various NTA
18 “contract actions,” including participating in “Silent Meetings.” See JX 14.

19 Findings of Fact

20 Opening Day before 2023-2024

21 The first day that Newton teachers return to work after their summer break and
22 before the first day of school is commonly referred to as “opening day.” In past years,
23 NPS has held a district-wide event for teachers and other staff on opening day morning.
24 The event typically included student performances and presentations and what one
25 witness referred to as “pump up” speeches by a number of local officials, including the
26 City’s mayor, School Committee members, the school superintendent, and the NTA
27 president.⁷ As reflected by the testimony of various teachers and administrators, prior to
28 the 2023-2024 school year, teachers had the discretion to decide whether or not to attend
29 the opening day event and could instead, without repercussion, report to their school

⁷ The other teacher who testified stated that in past years, the program included lots of “speechifying” rather than information that she needed to do her job.

1 buildings/classrooms and perform tasks associated with getting ready for the school year.
2 Teacher attendance at opening day varied from year to year from sparse to well-attended
3 in years when contract negotiations were underway.⁸ Teachers who chose to attend the
4 opening event were required to report back to their school buildings after it was over to
5 prepare for the school year and attend any building-based staff meetings that had been
6 scheduled.

7 NTA Negotiations

8 Around October 2022, the NTA and the School Committee began negotiations for
9 a successor to the three-year agreement that was due to expire on August 31, 2023.⁹
10 Sometime in April 2023,¹⁰ the School Committee made its first economic offer. The NTA
11 believed the offer was indicative of “hard bargaining.” Around that time, the NTA began
12 organizing various work-to-rule actions for its members, including a weekly “standout,”
13 where teachers wearing blue NTA t-shirts gathered outside before their scheduled arrival
14 time and walked in together at that time. Also, once a week, teachers who were in the
15 building outside of their scheduled work times worked behind closed doors with a “Do Not
16 Disturb” door hanger on their door to signal their unavailability.

17 Spring 2023 Communications Regarding Opening Day and NTA Contract Actions

⁸ Zilles has served as NTA president for the past thirteen years. He testified when he spoke at convocation during successor negotiations, he would “pack the house.”

⁹ In 2018, the parties entered into two memoranda of agreement, a one year MOA that expired on August 31, 2019 and a three-year MOA to succeed the 2015-2018 CBA that expired on August 31, 2018.

¹⁰ Hereafter, all dates are in 2023, unless otherwise indicated.

1 Zilles and Nolin spoke for the first time in March 2023, shortly after Nolin was first
2 appointed. They discussed a variety of matters including opening day and Zilles, who
3 has worked in the Newton Public Schools for over 28 years as a teacher, and for the past
4 thirteen years, as NTA president, mentioned that opening day was an opportunity for
5 bargaining unit members to rally and communicate their unhappiness with issues facing
6 NPS to a larger audience.¹¹ On May 18, 2023, the NPS communications director emailed
7 a newsletter called “NPS District News” to the group email address “All NPS faculty and
8 staff.”¹² The bulletin, which was directed towards families as well as staff, included a letter
9 from Nolin. The letter expressed Nolin’s desire to connect with and get feedback from
10 family and community members both before and after she officially joined NPS on July 1.
11 The letter included several hyperlinks to forms and surveys, such as a form to host a
12 “meet and greet” with Nolin, and a link to a survey that asked, “What are some things we
13 should stop, start, or continue to do in the Newton Public Schools.” In the final paragraphs
14 of the letter, under the heading, “Celebrate our Staff,” the letter stated, “Finally, and most
15 importantly, help me celebrate our staff on the Opening Day of School 2023-2024.” Nolin
16 asked readers to share, via a linked form, their stories of how “anyone” on the NPS staff
17 had “demonstrated care, expertise and excellence in serving the children of Newton.”

18 NTA continued to organize various activities to support its negotiating efforts and
19 to communicate its dissatisfaction with ongoing contract negotiations. On June 11, the

¹¹ Zilles mentioned in particular concerns about Newton underfunding of schools and that the mayor played too strong a role in setting education policy.

¹² This group email address includes Unit A and Unit B members.

1 NTA posted an “Ebulletin” on its website that announced a rally on July 15, in front of City
 2 Hall, for “parents, families, students, educators and community supporters.”¹³ In an
 3 accompanying letter, Zilles asked the NTA membership to participate in a number of
 4 different activities during the remainder of the school year and the summer, such as
 5 rallies, and lining the halls for an upcoming bargaining session. Regarding the fall, Zilles
 6 indicated that the NTA would continue to engage in contract actions and, pertinent here,
 7 announced plans with respect to opening day and “silent meetings” as follows:¹⁴

- 8 • **A Walk in on Opening Day.** Assuming that the opening day celebration
 9 will once again be held in the Newton South Field House, we will boycott
 10 the brunch, gather outside to march around the building, and enter the
 11 building together just before the ceremony begins.

12
 13 This of course, assumes that opening day will be held in the same manner
 14 as it has been held in the past. I am sure there will be enormous pressure
 15 brought upon our new superintendent, Anna Nolin, not to continue this
 16 tradition this year.

- 17
 18 • **Silent Meetings** Beginning with the first two days, staff return to school
 19 before students and continuing until we have a new contract, we are calling
 20 for silent meetings. This means all meetings: All school, department and
 21 professional development meetings.

22 * * *

23
 24 At some point in June, Zilles and Nolin met at NTA headquarters to discuss a
 25 variety of issues. They did not have a detailed discussion about the opening day, but
 26 Nolin mentioned that she had spoken to the Mayor. Nolin stated that she understood that

¹³ The NTA communicates with its members in a variety of ways, including via email and through EBulletins and blog posts that are public accessible on its website, www.newteach.org. Zilles writes most blog posts and Ebulletins. During the summer of 2023, Nolin had a practice of reviewing the NTA’s website.

¹⁴ The EBulletin announced other work-to-rule actions that are not pertinent here, such as not participating in voluntary activities.

1 the mayor had been a featured speaker at opening day each year, but this year, Nolin
2 asked the Mayor not to attend opening day, to avoid the day becoming a “political
3 scenario.”

4 July 14 meeting

5 On July 14, Nolin, Romer, Walsh and Zilles had a breakfast meeting at a local café
6 in which they had another discussion regarding opening day. Nolin stated that she
7 intended to change the format of opening day and that it would differ from prior opening
8 day events. Nolin indicated that she was aware the NTA intended to turn it into a rally
9 with t-shirts and signs and that she did not want it to be a political event, but rather a
10 celebration of teachers.¹⁵ Regarding the location of the event, Nolin stated that she was
11 considering having staggered meetings at two locations on the north and south sides of
12 the district to avoid what she had heard were traffic, delays, and parking issues that had
13 ensued when the entire school system attempted to travel to one building at the same
14 time.¹⁶ Zilles expressed his displeasure with the plan because he stated that he wanted
15 to have his whole Union together to send a message to the Mayor and the School

¹⁵ Nolin explained that this was based in part on her conversations with teachers who felt that no one had acknowledged what they had been through in recent years.

¹⁶ Nolin testified that her plan for two meetings was due to the difficulty of driving across Newton once school was in session. Zilles believed that Nolin’s intention was to dilute the effect of the Union rally. Nolin’s testimony regarding the traffic and timing reasons for wanting to have two meetings was plausible and credible. We need not address whether she was also motivated by a desire to have a less effective Union presence because: a) she never went through with the plan, and b) she made no secret of not wanting to politicize the event with a Union rally or having the Mayor speak.

1 Committee. Nolin reminded him that the event was not a political rally and that was why
2 she had asked the Mayor not to attend.

3 Nolin did not expressly state at this meeting that staff attendance was mandatory
4 and Zilles never agreed that it would be. Nolin did, however, believe that this requirement
5 was as, she testified, “assumed and implied” in their conversation and confirmed by Zilles
6 when he told her that the opening day provided him with the opportunity to address his
7 entire membership.¹⁷

8 As to format, Nolin told Zilles that the program would include speakers. Although
9 Nolin mentioned that the “idea for the program was to include professional development
10 and training,” Nolin provided no further details about the speakers or subject matter at
11 this meeting. Her focus instead was on the logistics of the meeting, e.g., one location or

¹⁷ The School Committee contends that the record supports a finding that Nolin was clear at this meeting that attendance at the opening day event was mandatory and that Zilles concurred. We disagree. In response to a question on direct examination as to whether she stated at the July 14 meeting that attendance at the opening day event would be mandatory, she replied that it “was an assumption and implied” and that Zilles had not objected. When asked if Zilles agreed that convocation would be mandatory, Nolin testified that they had not had a conversation where she asked his interpretation of whether it was mandatory – rather, he volunteered orally that it was. When probed on the basis of this statement, Nolin expressed that she understood Zilles’ concern about having two convocation events was because it was his expectation that everyone would be there, and it was upsetting to him because it was his only option to speak with everyone and have the School Committee there. According to Nolin, this affirmed her understanding that everyone would attend the event. Viewing this testimony as a whole, we do not find that Nolin clearly stated to Zilles that attendance was mandatory and that Zilles agreed it would be. Instead, we find that Nolin assumed that Zilles understood that attendance was mandatory based on Zilles’ disappointment that two convocations in separate places would prevent him from speaking to all of his membership at once. In the absence of a clear statement that attendance would be mandatory, Zilles’ concerns about not being able to speak to his membership does not constitute agreement that attendance would be mandatory.

1 two, and her desire that the event be a celebration of the schools, staff and teachers and
2 not a political event.

3 July 21 NTA Blog Post

4 One week after his meeting with Nolin, Zilles wrote a blog post titled “Response to
5 School Committee Negotiations Update.” In addition to disagreeing with the School
6 Committee’s decision to declare that negotiations were at an impasse, and protesting the
7 School Committee’s unilateral decision to file a petition for mediation at the DLR, Zilles
8 expressed his opinion that Nolin “has already attempted to thwart our concerted union
9 activity” by “cancelling” the NTA’s planned “opening day action at the Newton South Field
10 House,” and replacing it with “educator celebration” events at Newton South High School
11 and Newton North High School, the details of which she says she has not yet worked
12 out.” Zilles elaborated on opening day events by reprinting excerpts from a letter that he
13 had previously written to the co-presidents of the Newton PTO school council. The
14 excerpts included the following statements regarding opening day.

15 *The tradition has been for the whole staff to gather at Newton South, and to*
16 *have the mayor, the chair of the school committee, the president of the NTA,*
17 *and the superintendent address Newton Public School educators.*

18
19 *It tends to be an uncomfortable event for the mayor, the chair of the school*
20 *committee, and the superintendent, because as the president of the NTA, I*
21 *speak to and represent the needs and concerns of educators, and what is*
22 *foremost on their minds is the lack of a contract – again. It is an opportunity*
23 *for NTA members to show our elected and appointed school and city*
24 *leaders that, indeed, the NTA bargaining team has the full support of NTA*
25 *members. It’s an important event for that reason, among others, not least*
26 *of which is that this is the only time the full staff of the Newton Public Schools*
27 *has the opportunity to gather in one place as a community.*

28 *I have five minutes to speak, and everyone else, together, speak for about*
29 *30 to 45 minutes. Nonetheless, and of course the event has become more*
30 *of a union rally than a celebration of returning to school! Educators in*
31 *Newton have lost faith that their political and administrative leaders really*

1 *care about them – but they know their union does! The mayor and the chair*
2 *of the school committee need to hear that. And the new superintendent*
3 *needs to see a real measure of the work she has before her.*

4
5 *A "red carpet" welcome back also will be greeted with skepticism by the*
6 *members of the NTA as well . . .*

7 Zilles concluded his blog post with the following:

8 I will be meeting with the co-chairs to discuss our concerns and asking them
9 not to participate in this charade of showing educators how much they are
10 "appreciated" as they return to school for a new year. **We do not want**
11 **mere words or tokens of appreciation.** We want a fair contract, fairly and
12 respectfully negotiated. If the district persists on showing us the so-called
13 "red carpet," we will organize an action to show our disdain for this
14 treatment. Stay tuned!

15 Nolin's July 28 "Summer Note" Email

16 One week after the July 21 blog post,¹⁸ Nolin sent an email to "All Faculty and
17 Staff" which, among other things, included a list of four items that she had had to learn
18 that week. The fourth item was that she had not been "clear with our NTA president on
19 an item I thought we were in agreement on as we talked about possible plans for opening
20 day." Nolin expanded on this later in the email, stating:

21 In talking to President Zilles, we agreed that the [opening day] event would
22 be focused on the school and I shared that Mayor Fuller would not attend
23 at my request – which I arranged with her last May. Miscommunication
24 around further details occurred, and he has since explained his
25 understanding in public emails and to me privately, for which I am grateful.
26 So, I share with you the above so you know my intention and orientation to
27 opening day. . . .As for my actions, I have never done an opening day
28 without district union leadership as a partner in welcoming staff back and
29 having a positive convocation and kick off to the year.¹⁹ While I agree with
30 President Zilles that I explained to him that the purpose of a convocation is

¹⁸ Nolin's testimony reflects that she reads NTA blog posts and Ebulletins.

¹⁹ Prior to working for NPS, Nolin was the Superintendent of the Natick Public Schools.

1 to welcome everyone back and not a union rally, this was not an un-
2 invitation.

3
4 Speakers, busing, and spaces are still up in the air, and I'll be back in touch
5 once I have the schedule. These ideas were in play back in May (see May
6 email to parents from me), asking for speakers for opening day. They are
7 not related to anything that has happened recently with negotiations.

8 August 22 Welcome Back Email

9 Between July 28 and August 21, Zilles and Nolin had no communications regarding
10 what Nolin was calling the opening day "convocation" event.

11 On August 22, Zilles, Nolin, Walsh, and Romer met in Nolin's office to have an off
12 the record conversation about negotiations. At the end of the meeting, when they were
13 getting ready to go, Nolin stated that her convocation plans had changed, that she was
14 now going to have just one meeting at Newton South with a different type of agenda.
15 Nolin stated that she would speak first and that Zilles would speak last if he wanted to.
16 Nolin provided no further information regarding the agenda. That was the first that Zilles
17 had heard regarding the location of convocation since their July 14 meeting.

18 Later on August 22, Nolin sent an email to all faculty and staff with the subject line
19 "Welcome Back Colleagues." The email, included some personal reflections and broad
20 goals for the school year, and a section titled, "The Pickle," that began with her view that
21 "Legal advice on all sides of contract negotiation issues are often conflicting and may
22 appear to pit the School Committee and administration against school staff." Nolin
23 continued:

24 For example, there are differing understandings of what "work to rule" and
25 "work stoppages" are in our district. Our union representatives are doing
26 what is asked of them by asking principals to cancel events like open house
27 or "sneak peek days." They are also providing guidance about what to let
28 go of in prepping for our young people's arrival.

1
2 At the same time, it has been made clear to me in my learning from other
3 districts in similar situations that if our principals cancel anything, we run the
4 risk of creating a “lockout.” A “lock out” is when administrators create
5 conditions where staff cannot do their jobs in the fashion they always have,
6 and we cut off the ability for a teacher/staff member to make his/her/their
7 own decisions about how to proceed when conducting their professional
8 lives.

9 **So, here is the pickle. In that swirl of information and varied**
10 **perspectives, I have to open school and provide the same**
11 **opportunities for students that they have had in any other year in**
12 **Newton.** While I have never had to direct in this fashion, I have to do some
13 directing now to ensure clarity for our staff, families and students.

14
15 **To quote Brene Brown: “Clear is kind.”**
16 (Boldface in original).

17 What followed was a bulleted list of “Back-to-School Events and Preparation
18 Clarifications.” The list stated in part:

- 19 • Staff are directed during the contractual workday, to work as Newton staff
20 has worked in prior years. Newton teachers are directed to uphold the same
21 work routines and provide the same experiences that have existed in prior
22 years – welcoming students and interacting with members of the community
23 who care for children and visit schools.
24 * * *
- 25 • It is expected that staff attend our opening day convocation at Newton South
26 High School. Breakfast will be served prior, but only attendance at the
27 convocation is expected. In the future, trainings and professional
28 development germane to our district’s vision and strategic plan of the future
29 will be a part of this day.

30
31 For this year, given our current climate and the difficulties on all of us as we
32 open school in this tense time, **we will have inspirational speakers who**
33 **will honor and inspire Newton educators. I have invited educational**
34 **leaders, parents, and students who have been positively impacted by**
35 **your work.** There has not been enough celebration of educator work in
36 recent years and you need to hear as many times as possible about your
37 legacy and the importance of your work. (Boldface in original).

38
39 Indeed, it will be a rally about Newton Educator Excellence-because you
40 make a huge difference in the lives of students and to each other and the
41 community. It is a chance to focus on that excellence, celebrate it and
42 amplify it.

1
2 The day is intended to kick off our year together in a positive way and get
3 you back to your buildings to get ready! I know there is always much to do
4 in the first days, so I thank you . . .

5 Several paragraphs down, Nolin provided further details about the program, which
6 included that it would begin at 8:30 a.m. at Newton South Field House and reiterated that
7 attendance was expected at that time i.e.,

8 As this is a workday, attendance is expected by the start of the Opening
9 Day Program at 8:30 a.m. If you are unable to be there for emergency or
10 exceptional reasons, please notify your principal of your absence. . .

11 Nolin also stated that the Massachusetts Secretary of Education Patrick Tutwiler
12 (Tutwiler) would be attending and that he “seeks to support staff like you who have
13 experienced trauma while educating through the pandemic. His **Stabilize, Inspire,**
14 **Transform** vision serves to help us all envision the future of the profession.” Nolin added
15 that two commissioners from the Department of Elementary and Secondary Education
16 (DESE) would also be speaking but did not discuss the content of their presentations.
17 Finally, Nolin indicated that a former student from Newton North and a current 8th grader
18 would speak about the impact that NPS and teachers have had on their lives, and that
19 there would be student musical performances.

20 Zilles and Nolin did not speak with each other after Nolin issued this email. As of
21 the strike investigation, neither Zilles nor any other NTA representatives had made a
22 demand to bargain with the School Committee over the directives contained in Nolin’s
23 letter.

24 August 24 Zilles Email

1 On August 24, Zilles sent an email to Nolin and Romer regarding “Opening Day,”
2 stating, “I don’t know if Chris [Walsh] and I were explicit the end of our last meeting,²⁰ but
3 I want to confirm your invitation to speak for ten minutes at the Convocation at Newton
4 South.” Zilles did not speak to Nolin before sending this email.

5 August 25 and August 28 EBulletins

6 The EBulletin that the NTA sent to its members on August 25 covered a variety of
7 issues, including opening day and silent meetings. Regarding opening day, Zilles
8 expressed that he had been under the impression that there would be two convocation
9 events – one each on the north and south sides of the City. He also stated that “we had
10 anticipated that, as always, attendance would be voluntary.” Instead, he stated that, “NPS
11 are now ‘expected’ to gather at Newton South High School’ on August 30 for the “Staff
12 Convocation and Rally for Educator Excellence.” The next paragraph stated:

13 **What do we do now? First of all, because attendance is an**
14 **expectation, we must attend.**²¹ That said, you are NOT expected to
15 attend the informal gathering before the convocation. **Please don’t.**

16
17 **Instead, join your fellow union members outside Newton South High**
18 **school at our NTA Rally for a Fair Contract.**
19 (Emphasis in original).
20

²⁰ Zilles testified that he was referring to the August 22 meeting, that ran from 12 p.m. to 1:30 p.m., prior to Nolin’s email being sent.

²¹ Based on the plain meaning of the words contained in the Superintendent’s August 22 welcome back email concerning expected attendance at the opening day event, and Union leadership’s acknowledgement that members must attend the event, we find that a reasonable Newton employee would understand that they had been directed by their employer to attend the convocation. We note that the August 29th grievance, described below, grieves Nolin’s “directive” to attend the convocation.

1 The NTA rally was scheduled to begin at 7:45 a.m. After providing additional details
2 regarding the rally, Zilles clarified that attendance at the NTA rally was voluntary.

3 Zilles also wrote at length regarding the silent meetings that the NTA had planned
4 for the opening two days of schools, stating in pertinent part:

5 In addition to the directives Dr. Nolin issued directly to us in her August 22
6 email, she also issued a directive to all principals that they prepare two
7 agendas for staff meetings. Principals will begin meetings with an agenda
8 that require staff participation. . . . Then, if staff remain silent, they will shift
9 to an agenda that is presentational.

10
11 **We have organized members to not participate, and we are sticking**
12 **with that plan, with a couple [of] minor modifications.** . . .If you are
13 required to bring your computer to the meeting, do so.

- 14 • If you are asked to participate individually, do not respond unless given a
15 directive to do so. (Not likely.)
- 16 • When the meeting shifts to a presentational mode, if you are asked to use
17 your computer, use it and participate that way. If not, participate by taking
18 notes on everything that is presented. Careful, thorough notes. Do not do
19 other work. These meetings won't be painless, but hopefully they will be
20 short.²²

21 This email included a link to the NTA's silent meeting guidelines, which, among
22 other things, stated that the goal of silent meetings was "passive participation," that they
23 were engaging in such meetings "to send a message to the mayor, the school committee
24 and the administration that there will not be business as usual until they have a fair
25 contract," that the meetings would begin on August 30, and the types of meetings that
26 would be silent included City-wide department meetings, building staff meetings,

²² In the ensuing paragraphs, Zilles correctly speculated that once the School Committee learned that NTA members were silent at meetings, it would file a strike petition and that "legal wrangling" would "ensue about whether being silent at meetings is a 'work stoppage.'" Zilles also indicated that the NTA would be grieving "some of Dr. Nolin's directives," but did not specify which ones.

1 professional development meetings and meetings run by an administrator or Unit B
2 members in the high school only. Specifically excluded were meetings run by Unit A
3 members, team and grade level meetings, IEP meetings and others. The guidelines also
4 instructed members not to defy a directive given to them by a supervisor and to clarify
5 during silent meetings if a directive was being given.²³

6 On August 28, the NTA sent a short EBulletin reiterating the instructions in the
7 August 25 letter regarding attending the pre-convocation NTA rally and silent meetings.

8 August 29 Events

9 At some point on or before August 29, Zilles, in conjunction with other NTA
10 representatives, decided to boycott the convocation event entirely, instead of attending
11 and holding a pre-convocation rally. Zilles did not originally intend to tell the
12 Superintendent about this change in plans. However, on August 29, a WBUR reporter
13 contacted Zilles to discuss a press release that the NTA had sent out regarding the pre-
14 convocation rally.²⁴ Zilles informed the reporter that instead of rallying, the NTA had
15 decided to boycott the convocation instead.²⁵

16 The WBUR reporter also sent an email to Nolin regarding the NTA rally. According
17 to Nolin, when she called him back, the reporter stated that he had just received a press
18 release from the NTA indicating that the NTA intended to boycott the convocation to

²³ See "Silent Meetings Guidelines & FAQ," entered as Joint Exhibit 4, attached as an addendum and incorporated herein.

²⁴ That press release is not part of the investigation record.

²⁵ Zilles testified that he made the decision to boycott the convocation on the morning of August 29 in conjunction with other, unnamed NTA representatives.

1 embarrass her in front of state leadership. Nolin asked the reporter to send the press
2 release but when the reporter stated that he did not have it, she ended the telephone
3 conversation.

4 Nolin then called Zilles, who confirmed that the NTA was planning to boycott the
5 convocation.²⁶ When Nolin stated that this action would put members in the difficult
6 situation of disobeying a directive, Zilles replied that his members would be “okay.” Zilles
7 also expressed to Nolin that if the NTA had made the decision any earlier, he believed
8 that the School Committee would have filed a strike petition and potentially obtained an
9 injunction against the boycott.

10 Also on August 29, Zilles posted two items on the NTA website regarding the
11 boycott – a poster indicating that the rally had been cancelled and telling staff to report to
12 their school buildings instead, and a letter signed by Zilles, which stated:

13 As most of you are already aware, the NTA is calling off its planned rally for
14 tomorrow.²⁷

15
16 Instead, we are taking a different action. We are asking you: **Please DO**
17 **NOT ATTEND the Superintendent’s “Staff Convocation and Rally for**
18 **Educator Excellence.”** Instead, please report to your regular buildings,
19 classroom, and offices, and continue preparing for the arrival of students on
20 Tuesday, September 5.

21 We need a fair contract, and, in the future, we need to be invited to attend
22 a convocation. An event that has always been voluntary is just that,
23 voluntary. Please do not attend.

24
25 You may receive another email from Dr. Nolin that once again directs you
26 to attend. If you do, we ask that you remain firm in your resolve. Please do
27 not attend!

²⁶ Zilles told Nolin, however, that he had never stated to the reporter that the purpose of the boycott was to embarrass her.

²⁷ According to Zilles, before the website was updated, NTA leadership called someone from every school building to let them know about the change in plans.

1 At 3:01 p.m., Nolin sent an email to all staff and faculty with the subject line
2 “tomorrow” that stated:

3 Hi there:
4 Looking forward to meeting you all tomorrow!
5 Breakfast is served at 7:45 am and the kids’ performances begin at 8:30 am.

6
7 We have kids playing music and speaking about teachers, a parent and
8 alumni coming to do the same, and, of course, our state’s educational
9 leaders joining us to inspire as we begin the school year. In talking to the
10 student musicians, they are very excited to play for you! Such wonderful
11 kids!

12
13 Don’t forget to bring items for the food drive! It’s a chance to do good and
14 feel good!

15
16 Anna

17 Grievance

18 Five minutes later, Walsh emailed a grievance to Nolin that was signed by Zilles.²⁸
19 The grievance stated that the School Committee, through Nolin, had violated the Unit A
20 CBA by “issuing a directive that educators are required or expected to attend an opening
21 day convocation at the Newton South High School Field house on August 30, 2023, at
22 8:30 a.m. in violation of the “Work Year, Teaching Hours, and Teaching Load” contract

²⁸ Zilles testified that the grievance was presented on August 29, not August 28, as it was dated and that it may have been resent as a Step 2, not Step 1 grievance. According to the parties’ agreements, Step 2 grievances are filed with the Superintendent.

1 provisions,²⁹ as well as past practice. The requested remedy included rescission of the
2 directive, and an order to cease and desist from issuing such directives in the future.³⁰

3 August 30 Events

4 The convocation went forward as planned on August 30, 2023, except that only
5 approximately 70 Unit A and B members out of approximately 1,400 members attended.
6 Zilles did not attend.³¹

7 The program provided to attendees was titled “Staff Convocation & Rally for
8 Educator Excellence.” It listed Nolin, Tutwiler, two DESE commissioners, a former
9 student, a current student and Zilles as speakers, with music and entertainment provided
10 by NPS students. Tutwiler discussed his plans for pandemic recovery and teacher
11 support. The DESE commissioners provided some analysis of the NPS performance.
12 They highlighted those portions that, in Nolin’s words, were “places for growth and
13 celebration of teachers.” The DESE commissioners also discussed DESE’s new strategic
14 plan and expectations for culturally responsive instruction, which provided a backdrop for
15 future mandates and trainings at the district and building levels.

²⁹ No witness testified regarding these contract provisions, which provide for two “conference” days for teachers and administrators that “may” be scheduled on the Wednesday and Thursday prior to Labor Day. The provisions do not define what staff are expected to do on those days, or the meaning of the term “conference.” The first section also states that it is the School Committee’s “intention” to maintain existing practice with respect to total teacher hours of employment, length of school day and workload.”

³⁰ The record does not reflect if Nolin answered the grievance.

³¹ The parties do not dispute that Zilles, who, pursuant to the parties’ contract, was on a full-time leave of absence as NTA president, was not subject to the same attendance expectations as Unit A and Unit B members.

1 Two of the teachers who did not attend spent their morning readying their
2 classrooms for the students' arrival on September 5. They testified that both of their
3 principals were aware they had not attended the convocation but that they suffered no
4 consequences. Although both of these teachers were aware that DESE and Tutwiler
5 would be speaking, this did not affect their conclusion that the August 30 convocation
6 would be any different than prior opening day events, i.e., that it would be a celebratory
7 welcome back event that did not include professional development or training.³²

8 Post-Convocation Staff Meetings, Generally

9 NPS principals typically conduct mandatory staff meetings with their staff and
10 faculty on the first two days of school that last between one and a half to two hours.
11 Depending on the number of staff in the school, the all-staff meetings can have upwards
12 of 70 and as many as 150 staff members. In general, the purpose of such meeting is to
13 provide a welcome back to school, set the tone for the school year, set goals for
14 instructional work that align with district goals, and to provide specific information on the
15 business of running the school, such as different "traffic" patterns for the students,

³² Linda Kincaid (Kincaid), a middle school teacher who has taught at NPS for fifteen years, testified to her belief that the Superintendent made clear that the program would be a celebration of educators and that teachers were directed to attend. Linda Penczar (Penczar), an elementary school teacher who taught at NPS for over thirty years, testified that because Tutwiler and the DESE commissioners were listed as speakers, she did not think the program would be any different than in prior years that had also included a variety of speakers without specific professional development or training. Penczar testified that she decided not to attend this year's program when she received notice that the Union had cancelled its plan for a rally and instead encouraged teachers not to attend the convocation. Penczar testified that she was excited about this option because she had a lot to do in her classroom.

1 COVID-19 protocols, arrival and dismissal routines, scheduling issues, cafeteria changes,
2 etc.

3 Programs presented by principals typically had participatory and non-participatory
4 aspects – e.g., ice breaker activities that would require staff members to meet and greet
5 one another and sessions in which the information was conveyed by one person, with the
6 attendees just listening, a type of presentation referred to as a “sit and get.” Although the
7 principals reported that in the past staff were generally eager to speak or ask questions
8 at such meetings, they acknowledged that there is a wide range of participation that can
9 vary from person to person depending on the activity, with some people being frequent
10 and vocal contributors, and others not speaking at all. Both principals also acknowledged
11 that there were other ways to participate in meetings besides speaking, including through
12 active listening and taking notes.

13 In 2019, while successor negotiations were underway, the NTA engaged in silent
14 meetings for a period of about four months. No teachers were disciplined or evaluated
15 negatively for engaging in this work action.

16 Silent Meetings, August 30 and 31, 2023

17 As in prior years, school principals held mandatory staff meetings on the teachers’
18 first two days back to work, before the students arrived. The two principals who testified
19 at the investigation, F.A. Day Principal Jacqueline Mann (Mann), and Horace Mann
20 Elementary School Principal Mark Nardelli (Nardelli),³³ were aware that teachers might
21 again be engaging in silent meetings. In anticipation, they prepared two agendas for their

³³ Both Mann and Nardelli were experienced principals. Mann had served as principal for six years and Nardelli for thirteen.

1 meetings on those days, one that would require vocal participation and one that would
2 not. Both principals prepared slide decks setting out the topics that they intended to cover
3 during the meeting. Mann's slide deck included 48 slides that covered such topics as
4 district goals, school-based learning goals, "funds of knowledge" about students,
5 addressing last year's feedback, schedules for students, advisory and professional
6 development, and technology reminders. Nardelli's slide deck included an introduction
7 activity, and school logistics, like scheduling, lunch and "creating a mindset for a safe
8 learning environment." Nardelli's slide decks expressly included a number of "Plan B's" if
9 teachers participated silently.

10 All administrators had previously been given safety slide decks to present during
11 opening day meetings or later. School principals have presented safety training in the
12 past. This year's slide deck included slides reviewing emergency plans, core emergency
13 responses (evacuation, shelter in place, lockdown and hostile event response) and
14 planning for student drills. During past safety trainings, the teachers were able to enter
15 questions they had directly into a Google document that the principal set up for that
16 purpose.

17 At Mann's first staff meeting in the 2023-2024 school year on August 30, she asked
18 teachers to get up and introduce themselves to a new person. Although the teachers did
19 not get up, they did speak to the person next to them. Nardelli had a similar experience
20 after teachers declined to answer a question of whether they would be participating in an
21 activity he had put up on a slide that required them to go from table to table to meet one
22 another. Based on these responses, both principals understood that the teachers were
23 participating in silent meetings and, switched their presentation to a mode that did not

1 require that type of participation, or as Nardelli put it, a more “minimalist” presentation.
2 For example, at one point, Nardelli asked teachers to put their thoughts in writing, instead
3 of asking them to volunteer their thoughts to the group. At another point, the teachers
4 shared photos but did not have a discussion regarding their summer vacation.

5 The NTA does not dispute that the teachers attending the August 30 and 31
6 building staff meetings engaged in silent meetings as described in the guidelines that
7 NTA had sent out in Ebulletins and blogs. The two teachers who testified reported that
8 they participated in the actions. Kincaid testified that she nonetheless participated in the
9 meeting by taking notes and bookmarking the slide deck that she had already received
10 from her principal. As soon as the all-staff meeting was over, she and other teachers
11 practiced the traffic pattern that was going to be introduced to students that year. After
12 lunch, Kincaid met with other teachers in teams to continue getting ready for the year.
13 Penczar participated in her two-hour staff silent meeting by listening, reading slides, and
14 taking notes.

15 During the strike investigation, the administrators consistently testified that people
16 generally learn better when they are actively engaging with the content, rather than
17 listening to a lecture . Both principals credibly testified that having silent meetings was not
18 optimal – that greater teacher participation not only models the type of teaching they hope
19 teachers will utilize for their students, but because teachers were silent during the
20 meetings, they had no way of immediately gauging whether teachers understood the
21 material being presented. The silent meetings further provided no opportunity for
22 teachers in that room to share their best practices or past experiences. Both principals
23 acknowledged, however, that teachers could and did communicate their thoughts to them

1 one-on-one after the meetings, as well as in writing. In addition, they acknowledged that
2 teachers would be able to share best practices among themselves in smaller meetings
3 such as professional learning communities, or team or grade level meetings during which
4 the NTA was not advocating that staff engage in silent participation.

5 Beyond the first two days of school, the middle school has administrator-led staff
6 meetings three to four times a month. Other smaller schools meet just once a month. In
7 addition to regularly scheduled staff meetings, there are at least four other early release
8 professional development days that all building staff are required to attend.

9 September 4 (Labor Day) EBulletins

10 The Labor Day EBulletin featured photos of NTA members in their blue t-shirts and
11 holding signs and began by stating that the union had had a great week - that the NTA
12 had demonstrated its power and unity in a way that could not be ignored by the
13 Superintendent, School Committee or Mayor. The bulletin listed some upcoming NTA
14 events and again provided a link to the Silent Meeting guidelines. Regarding those
15 meetings, the EBulletin stated for the first time, "If the meeting sends you off to work in
16 small groups **away from the administrator**, then speak to your colleagues in these
17 groups."³⁴

18 Job Descriptions/Evaluations

³⁴ In contrast, the Silent Meeting FAQs stated that if a meeting broke into smaller work groups during the whole staff meeting, they should "Be silent in your smaller groups." As set forth above, however, and notwithstanding these instruction, Principal Mann testified that the teachers spoke among themselves when directed to do so during her first staff meeting. They did not, however, get out of their seats to meet someone new.

1 Several teachers' job descriptions listed participating or actively participating in
2 faculty meetings as an essential job duty. The job descriptions do not further define the
3 terms. Once drafted, job descriptions are used as the basis for job postings. They are
4 not provided to employees once hired or used as the basis for discipline or evaluation.

5 The School Committee and the NTA have bargained over evaluation standards
6 and criteria for Unit A and Unit B members. The Classroom Educator Rubric includes
7 standards pertaining to "Collaboration" and "Decision Making." This rubric requires,
8 among other things, that teachers "collaborate effectively with colleagues," "engage with
9 colleagues to support school culture and climate [and] become involved in schoolwide
10 decision making . . ." and "become involved in school-wide decision-making and take an
11 active role in school improvement planning."

12 Nowhere do the rubrics define the terms "participate" or "active participation."
13 Mann and Nardelli consistently testified that they had never given a teacher a negative
14 evaluation for failing to participate verbally at a meeting and that level of participation is
15 something they would address in dialogue with the teacher or when providing feedback.
16 When considering this factor, they also consider the totality of the teachers' participation
17 at staff meetings and any other type of meeting they might attend.

18 Ruling³⁵

19 Convocation

³⁵ The CERB's jurisdiction is not contested.

1 Section 9A(a) of the Law prohibits public employees, and employee organizations
2 from engaging in, inducing, encouraging, or condoning any strike, work stoppage,
3 slowdown, or withholding of services. Section 1 of the Law defines a strike as:

4 A public employee's refusal, in concerted action with others, to report for
5 duty, or his willful absence from his position, or his stoppage of work, or his
6 abstinence, in whole or in part from the performance of the duties of
7 employment as established by an existing collective bargaining agreement
8 or in a collective bargaining agreement expiring immediately preceding the
9 alleged strike, or in the absence of any such agreement, by written
10 personnel policies in effect at least one year prior to the alleged strike.

11
12 When construing this definition in Lenox Education Association, 7 MLC 1761,
13 MUP-3229 (December 10, 1980), *aff'd sub nom. Lenox Education Association v. Labor*
14 Relations Commission, 393 Mass. 284 (1984), the CERB concluded that, "duties of
15 employment,' the abstinence in whole or in part from which constitutes a strike,' includes
16 not only those duties specifically mentioned in an existing or recent expired collective
17 bargaining agreement (or personnel policies in effect for more than one year), but also
18 those practices not unique to individual employees that are intrinsic to the position or
19 which have been performed by employees as a group on a consistent basis over a
20 sustained period of time." Id. at 1765. In Lenox, the CERB carefully parsed the definition
21 of a strike and determined that the Law permitted public employees to engage in work to
22 rule actions to further their collective bargaining goals provided that they were not
23 withholding duties that they were otherwise obligated to perform as a matter of law or
24 practice. Id. at 1778. It further held that such actions would gain the protection of Section
25 2 of the Law, subject to the normal constraints that the action not be violent, unlawful, in
26 breach of contract or indefensibly disloyal. Id. at 1776.

1 Here, the Union argues that because bargaining unit members always had the
2 discretion to attend convocation, they did not engage in, and the Union did not induce,
3 encourage or condone them to engage in, an unlawful strike when they boycotted that
4 event. The School Committee conversely contends that because Nolin ordered
5 bargaining unit members to attend convocation, the outcome of this ruling is controlled by
6 Andover Education Association, 47 MLC 33, SI-20-8176 (September 8, 2020). There,
7 against the backdrop of the early stages of the COVID-19 pandemic, bargaining unit
8 members, at the urging of their union, collectively refused to enter their respective school
9 buildings to participate in beginning of the school year professional development activities
10 that included new COVID-19 protocols like masking, wayfinding,³⁶ ensuring that Wi-Fi
11 worked for new technology, etc. Instead, the teachers gathered outside of their school
12 buildings, where they attempted to participate remotely in some of the day's planned
13 activities, such as meeting with their teams and watching the superintendent's video
14 welcome. The school committee filed a strike petition alleging that the teachers were
15 engaged in an unlawful strike. The teachers disputed this, claiming that although they
16 were not inside their schools, they were still performing their required duties. Regarding
17 the specific duties that they were required to perform inside the school buildings, such as
18 practicing way-finding, the union argued that because those were new duties, they were
19 not intrinsic to their positions and thus, their inability to perform them did not amount to
20 an unlawful strike.

³⁶ COVID-19 precautions included creating one-way hallways and stairways, which the teachers had to practice using.

1 The CERB rejected both arguments, noting that the definition of a strike included
2 a public employee's refusal, in concerted action with others to "report to duty." In this
3 context, when addressing the teachers' refusal to work inside the school to perform their
4 required professional development duties, the CERB wrote:

5 In an era where many employees can perform some of all of their work
6 remotely as long as they have a computer and reliable internet connection,
7 and to the extent this is not already self-evident, we hold that the phrase
8 "report to duty" in Section 1 of the Law means reporting not only when but
9 where the employer has ordered its employees to report. In this case, that
10 means inside the school building, including inside classrooms.
11 47 MLC at 40-41.

12 The CERB also rejected the union's assertion that new professional development
13 duties were not intrinsic to the position, first determining that there was an established
14 practice of participating in back to school professional development that was not unique
15 to individual employees, and second, determining that such activities fell within the
16 definition of determining what is necessary to support students in the upcoming year. The
17 CERB further opined that, "in this unique 2020-2021 school year, where safety and health
18 concerns dictate social distancing, masking requirements and internet based lessons we
19 view activities that require teachers to familiarize themselves with these new protocols
20 and ensure that they work properly as intrinsic to the teachers' duties." Id. at 41.

21 Here, the School Committee argues that bargaining unit members' defiance of
22 Nolin's order to attend convocation, a workday event, was tantamount to a refusal to
23 report to duty and therefore, an unlawful strike. It also urges the CERB to reject the
24 Union's argument that attendance was not intrinsic to members' job duties because the
25 meeting addressed educator and student goals for the year.

1 While we agree with the School Committee that the boycott of the convocation was
2 a strike, we do so on limited grounds. Given that employees' ability to engage in work to
3 rule actions have, with judicial approval, been long recognized by the CERB as protected,
4 provided employees are not withholding duties they are otherwise required to perform,
5 unlike the School Committee and our concurring colleague, we do not believe that this
6 case is as simple as holding that an employer has the unfettered right to order employees
7 to report anywhere to do anything during the workday. To so hold would eviscerate the
8 nuanced jurisprudence surrounding work-to-rule actions, which from Lenox to Andover,
9 have invariably and correctly examined the nature of the duties being withheld to
10 determine whether the employees had the right to withhold them as a means of furthering
11 their collective bargaining goals. See, e.g., King Philip Regional School Committee, 37
12 MLC 81, SI-10-279 (October 25, 2010) and cases cited therein. Moreover, in Lenox, the
13 CERB recognized that a refusal to report to duty constitutes a strike "only when there is
14 a correlative right of the employer to require attendance." Lenox Education Association,
15 7 MLC at 1772. Thus, to decide this aspect of the petition, we must examine whether the
16 Superintendent had a right to order bargaining unit members to attend the convocation
17 event at Newton South, i.e., whether attendance at this district-wide meeting was a
18 practice intrinsic to their teaching positions or whether it has been performed by
19 employees as a group on a consistent basis over a sustained period of time.

20 Here, there is no dispute that bargaining unit members were expected to and did
21 regularly attend staff meetings during the workday on the first two days of school before
22 students return. The record reflects that these meetings served a variety of purposes,
23 not only to provide the "nuts and bolts" of starting the school year, but to welcome

1 teachers back, to introduce or re-introduce them to each other, to inspire them for the
2 upcoming year, and to provide them with resources for support and self-care (see, e.g.,
3 Mann's slides regarding the "bright side" of day school and tips on self-care). These
4 meetings easily meet the definition of both intrinsic and consistently-performed "duties of
5 employment" set forth in Lenox.

6 With respect to the convocation, while it is true that bargaining unit members
7 previously had the option to skip that event and instead, to work in their classrooms until
8 their mandatory building-based meetings began, as early as July 14, Nolin told the Union
9 that she wanted her first opening day event to differ from past events, that her plans
10 included asking the Mayor not to attend, and that she was hoping to hold it in two
11 locations, instead of one. Zilles' July 21 EBulletin noted these changes with some dismay,
12 stressing the importance of such events, because, among other things, it was the "only
13 time the full staff of the Newton Public Schools has the opportunity to gather in one place
14 as a community." One week later, Nolin's July 28th "Summer Note" further described her
15 still-nascent plans for the program, including that it would be focused on the schools, that
16 its purpose was to welcome everyone back and not be a union or political rally, but that
17 speakers, busing and spaces were still up in the air. Eventually, as set forth in her August
18 22 letter, Nolin settled on a program that would be in only one location, but that would
19 include state officials such as Secretary Tutwiler, who, according to Nolin had a "Stabilize,
20 Inspire and Transform" vision that was directed at supporting educators who had been
21 traumatized by the pandemic. In the same letter, Nolin issued a directive stating that the
22 staff was expected to attend the event and, on August 25, 2023, Zilles notified his
23 membership that they were required to be there. Four days later, however, he reversed

1 course and told his membership to boycott the event and report to their classrooms
2 instead.

3 We find that this boycott was an unlawful strike. As in Andover, Newton educators
4 were required to attend work-related meetings on their first days back at school. Thus,
5 when the Superintendent issued a directive stating that attendance at the convocation
6 event was expected, their subsequent boycott constituted an unlawful refusal to report to
7 duty.

8 The Union argues that attending opening day events were not such a duty because
9 bargaining unit members had not been required to attend such opening day events in the
10 past. However, very early in her tenure, Nolin made clear to the Union that she intended
11 her opening day meeting to be different from past meetings. Second, to give credence to
12 the Union's argument would permit unit members to refuse to go to any meeting they had
13 not previously attended or had not regularly attended on the first two days of school, even
14 if the meeting's overall substance and purpose, like other mandatory meetings, was
15 aimed at readying teachers to teach and support students in the upcoming year.³⁷ We
16 rejected a similar argument in Andover, and we do so here. Andover Education
17 Association, 47 MLC at 41.

³⁷ The Union's claim that the fact that the event was not intrinsic to employees' duties because it was a celebratory welcome back for staff, rather than a professional development meeting, ignores the fact that the building-based meetings that educators were required to attend also had welcome back aspects. It also ignores that, as described in Nolin's August 22 letter to staff, Tutwiler's remarks would address pandemic related and educator support/self-care issues, topics that were also discussed at building-based meetings. However, because the Union's decision to boycott the event was based on what Nolin communicated prior to the actual event, our holding here does not rest on the fact that the DESE speakers addressed matters specific to the Newton Public Schools.

1 Thus, while we acknowledge that the relevance of a directive in the context of
2 determining whether a strike within the meaning of Section 1 of the Law has occurred or
3 is occurring, must always be made on a case-by-case basis, see King Philip Regional
4 School Committee, 37 MLC at 89, n. 24, where, as here, the contract does not confer
5 upon the employees the unfettered right to refuse to attend workday meetings on the first
6 day of school, and it was a customary duty to attend such meetings, the CERB may order
7 employees to comply with an employer's directive to undertake such assignments.
8 Compare Town of Plymouth, 18 MLC 1191, SI-239 (October 30, 1991) (overtime work
9 that has merely been offered, rather than required, directed or ordered remains voluntary)
10 to Town of Nahant, 13 MLC 1041, SI-185 (June 20, 1986) (where CERB found that
11 performing police overtime was a duty of employment within the meaning of Lenox
12 Education Association, evidence that various officers had declined overtime opportunities
13 on various occasions does not establish a right to refuse direct orders of the chief to
14 perform police duties on an overtime basis).

15 Southeastern Regional School District Committee, 7 MLC 1801, MUP-2970
16 (February 2, 1981), cited by the Union, is also distinguishable. There, the CERB held
17 that employees were engaged in protected, concerted activity when, as part of a work-to-
18 rule they boycotted a "Parents Night" that was held after hours. 7 MLC at 1805-1806.
19 The CERB found that where only one Parents Night had previously been held and where
20 attendance was voluntary, attendance at such an event was not a duty of employment,
21 even when the employer made clear its expectations that employees attend. Where
22 attending such off-hour meetings had occurred only once prior and where teachers had
23 been free to go or not, the CERB readily found that this was not a required duty of

1 employment. Id. By contrast, the event at issue here took place on a workday and on a
2 day when teachers traditionally attended meetings designed to prepare them, in a variety
3 of ways, for the upcoming school year. Accordingly, when presented with a directive to
4 attend a similar meeting at a different location, the employees were required to attend,
5 just as they would have been required to attend any other comparable meeting scheduled
6 on the first two days of school.

7 Their refusal to do so at their Union's undisputed urging, including the notifications
8 appearing in the NTA's August 29, 2023 EBulletin signed by Zilles, leads us to conclude
9 that the NTA and its members were engaged in an unlawful strike within the meaning of
10 Section 1 and Section 9A of the Law, and that the NTA and its officers and Zilles, in his
11 official capacity, induced, encouraged, and condoned the unlawful strike.³⁸

12 Silent Meetings

13 While the Union does not dispute – and we agree – that participation in some types
14 of school meetings is an intrinsic part of teachers' duties, our analysis of this aspect of
15 the School Committee's petition differs from that set forth above and involves a
16 determination of what type of active participation is required. Here, the concerted action
17 is not refusing to attend mandatory meetings, nor an outright refusal to participate in them,
18 by, for example, performing other duties or being completely disengaged. Rather, it is
19 whether teachers' refusal to speak during administrator led meetings, rises to the level of
20 an unlawful withholding of services. Here, teachers participated by taking notes, actively

³⁸ We grant the Union's motion to dismiss the petition with respect to Walsh in her official capacity, as there is no evidence that Walsh induced, encouraged or condoned employees to engage in the boycott.

1 listening, speaking with one another during the meetings, obeying prompts to express
2 their thoughts in writing, posting questions in shared documents or after the meeting was
3 over, sharing requested materials electronically, and practicing the material presented
4 during the meetings among themselves, but did not volunteer information or ask
5 questions during meetings. To decide this aspect of the petition, therefore, we must
6 decide whether the general duty to participate, or actively participate at meetings,
7 included the duty to speak at those meetings.

8 The CERB has consistently held that when an employer fails to establish,
9 communicate and/or enforce rules governing the duties employees are obligated to
10 perform, employees or unions who withhold or urge or condone the withholding of those
11 services have not engaged in an illegal work stoppage within the meaning of Section 9A.
12 Andover Education Association, 40 MLC 1, 14, MUP-12-2294 (July 2, 2013) (citing King
13 Philip Teachers Association, 37 MLC at 81). Here, there is no evidence that the School
14 Committee has ever established, communicated, or enforced rules and expectations
15 about what the terms “participate” or “actively participate” mean as they are used in the
16 job descriptions or evaluations. The School Committee presented no evidence that those
17 terms are defined in the collective bargaining agreements or other documents or that they
18 clearly communicated what their expectations were. There is no evidence that any
19 employee has ever been disciplined or evaluated negatively based on their lack of
20 participation or their silence at meetings. Mann and Nardelli, both experienced principals,
21 testified that they have never negatively evaluated a teacher on this aspect of their
22 evaluation, including in 2019, when the teachers engaged in a silent meeting action
23 similar to the one at issue here.

1 Nor is there any evidence that employees were ever directed to participate in a
2 certain manner. King Philip Teachers Association, 37 MLC at 87-88 (holding that the
3 teachers' vote that they would spend less time on letters of recommendations did not
4 violate the Law where the administration failed to communicate their expectations, and
5 there was not an established practice with respect to how, when, how much time or what
6 standards are to be utilized for the letters). Indeed, there is no evidence that employees
7 were actually directed to speak or respond to a particular question, even though the NTA's
8 Silent Meeting Guidelines instructed employees to obey if they were given a directive.

9 Instead, the evidence shows that once it became apparent to administrators that
10 they were about to lead a silent meeting, they switched to their "Plan B," which enabled
11 them to present their information in a manner that did not require employees to speak.
12 Although this may have been suboptimal and uncomfortable for all involved, there is no
13 evidence that the principals were prevented from presenting the material they needed to
14 cover that day, which potentially could have removed this concerted action from the Law's
15 protections. See generally Town of Bolton, 32 MLC 13, 18, MUP-01-3255 (June 27, 2005)
16 (concerted activity can lose its protected status if, among other things, it is disruptive of
17 the employer's regular business activities).

18 Finally, as Mann and Nardelli testified, there is wide variation in the manner in
19 which employees participate in meetings, ranging from the handful of employees who
20 constantly raise their hands to speak, to others who remain silent the entire time. The fact
21 that all instead of some employees chose to remain silent does not support a finding that
22 Section 9A(a) has been violated where the CERB has previously held that a violation
23 cannot be based on conduct that the employer agrees is permissible if done alone but is

1 unprotected when carried out in a concerted fashion. Andover Education Association, 40
2 MLC at 15 (citing Town of Plymouth, 18 MLC 1191).

3 In sum, given the absence of clearly communicated expectations regarding the
4 level or type of participation required in any given meeting, we decline to find that Unit A
5 employees were engaged in an unlawful withholding of services by remaining silent
6 during certain staff meetings.

7 Accordingly, we dismiss this aspect of the strike petition.

8 Conclusion

9 Based on the parties' stipulations and the facts set forth above, we conclude that
10 the NTA and its membership engaged in a strike in violation of Section 9A(a) of the Law
11 on August 30, 2023 by boycotting the Superintendent's convocation event, and that the
12 NTA and Zilles, in his capacity as Union president, induced, encouraged, and condoned
13 the strike in violation of Section 9A(b) of the Law. We conclude that the teachers' conduct
14 with respect to the silent meeting actions did not constitute a strike, slowdown, or
15 withholding of services within the meaning of Section 9A and dismiss this aspect of the
16 School Committee's petition. We therefore issue the following Order.

17 ORDER

- 18 1. The NTA, its officers and the employees it represents shall immediately cease and
19 desist from engaging in any strike, work stoppage, slowdown or other withholding
20 of services.
21
- 22 2. The NTA and its officers, including Michael Zilles, in his official capacity, shall
23 immediately cease and desist from inducing, encouraging, or condoning any strike,
24 work stoppage or other withholding of services, either directly or through
25 surrogates. The NTA shall not permit its officers or agents to induce, encourage
26 or condone any strike, work stoppage, slowdown or other withholding of services
27

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

24 **SO ORDERED.**

COMMONWEALTH EMPLOYMENT RELATIONS BOARD

Marjorie F Wittner

MARJORIE. F. WITTNER, CHAIR

Kelly B Strong

KELLY B. STRONG, CERB MEMBER (as to Silent Meetings)

Victoria B. Caldwell

VICTORIA B. CALDWELL, CERB MEMBER

1 Member Strong, concurring

2 I concur in the majority's decision on both aspects of the strike petition, however,
3 for the portion of the decision concerning the August 30, 2023 convocation meeting, I
4 differ as to the reasons why a violation of Section 9A(a) of the Law occurred.

5 It is undisputed that August 30, 2023 was a designated workday scheduled in
6 accordance with the School Committee's contractual ability to schedule two conference
7 days on the Wednesday and Thursday prior to Labor Day.³⁹ The record clearly
8 establishes that the Union and its members knew August 30 was a workday and that the
9 Superintendent of Schools had directed them to report for duty at 8:30 a.m. to the Newton
10 South High School. Knowing that his membership had been directed to report for duty at
11 school at 8:30 a.m. on the August 30 workday, the NTA President admittedly induced and
12 encouraged the membership to refuse to report for duty as determined by the Newton
13 Schools. Because of this inducement and encouragement, the unit members in a
14 concerted action with each other did not report as directed to the Newton South High
15 School and the Union subsequently condoned their conduct. In summary, the Union and
16 the NTA leadership admittedly induced and encouraged its members to refuse to report
17 for duty on a recognized workday and the members in fact failed to report to duty as
18 directed by their employer, an action that was condoned by the NTA and its president.

³⁹ As noted by my colleagues in footnote 29, Article 17 of the Newton School Committee and Unit A 2018 – 2021 integrated CBA states that "... the two (2) conference days for teachers at the beginning of the school year may be scheduled on the Wednesday and Thursday before Labor Day." It should be noted Article 17 also allows the President of the Union to review the school calendar prior to its adoption by the School and he/she may suggest changes to the calendar.

1 The inquiry should stop there and as the Petitioner states in its post hearing
2 memorandum, “[t]he CERB does not need to, and should not, accept the Union’s
3 invitation to parse the content of the Convocation meeting to make a determination
4 whether the matters discussed were sufficiently “intrinsic” to their teaching practice to
5 require attendance.” Although the majority has reached the right decision concerning the
6 Union and its membership’s boycott of the Superintendent’s convocation meeting, it has
7 done so by engaging in such a parsing.

8 The obligation of an employee to report to duty as directed is a duty of employment
9 in and of itself, and in the present matter there is no need to go through an advanced
10 exercise of “connect the dots” to establish a refusal to report to duty under Section 9A(a)
11 of the Law. The Massachusetts Supreme Judicial Court in its affirmance of *Lenox*
12 *Education Association, supra*, stated that “duties of employment” may be expressly stated
13 or implied in a collective bargaining agreement and then recognized that “[a] collective
14 bargaining agreement cannot specify all the duties of employment. As stated by the
15 [CERB], “[t]he contract may nowhere say that a teacher shall teach, that a fire fighter shall
16 fight fires. Nevertheless, some duties are so essential to the very nature of the job as to
17 require no explication.”

18 There are few things that are more basic about the employer-employee
19 relationship than the job requirement that an employee must show up for work, a.k.a.
20 report for duty, and report for such duty at the location as determined by the employer, or
21 in accordance with a CBA in the case of a unionized workforce. I agree with my
22 colleagues that an employer does not have an unfettered right to order unionized
23 employees to report anywhere to do anything during the workday. An employer that

1 abuses its authority does so at its own peril as the union certainly has the right to
2 challenge the decision if it disagrees with the location where its members must report or
3 objects to the reason why they have been ordered to report the location. The proper way
4 to air the discord is through legally permissible avenues such as the grievance process
5 or by filing an unfair labor practice charge. What they cannot do is resort to self-help by
6 encouraging, inducing or engaging in an illegal refusal to report for duty – a strike.

7 The majority has come to the right decision with respect to the August 30, 2023
8 convocation meeting. But rather than focus on the undisputed fact that, at the behest of
9 Union leadership, approximately **1,300** NTA Unit A and B bargaining unit members
10 refused to report to duty as directed on a workday at a specific school location, today the
11 majority undertook an in-depth examination of the facts and circumstances surrounding
12 the August 30 meeting, past meetings and fine nuances identified in prior cases before
13 concluding that a violation of Section 9A(a) had occurred. I, however, reach the same
14 conclusion based on our analogous ruling in *Andover Education Association, supra*, and
15 because the obligation of an employee to report to duty as directed is an inherent duty of
16 employment and disobeying that directive, in concerted action with others, is an unlawful
17 refusal to report to duty under Section 9A(a) of the Law.



KELLY B. STRONG, CERB MEMBER

Addendum NTA Silent Meeting Guidelines & FAQ

1



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4

5

Meeting participants – Goal: Passive participation

6

- What to do:

7

- Attend the meeting

8

- Sit silently and respectfully

9

- If you are required to bring your computer to the meeting, do so.

10

- Respond if addressed or questioned directly:

11

- “I prefer not to answer that question right now.”

12

- “I’m not sure what I think about that.”

13

- “I will think about that.”

14

- “I don’t have an opinion right now.”

15

- If you are asked to use your computer, use it and participate that way. If not,

16

- participate by taking notes on everything that is presented. Careful, thorough notes.

17

- Do not do other work. These meetings won’t be painless, but hopefully they will be

18

- short.

19

- What not to do:

20

- Do not do other work during the meeting (e.g., grade papers, check emails, do

21

- lesson planning).

22

- Do not defy a directive. If a supervisor tells you to do something, tell them you

23

- would prefer not to and ask if they are giving you a directive.

24

25

- What exactly is a directive?

26

- A directive is something you *have* to do. You may have to ask for a clear directive if

27

- you are unsure if what you're being asked IS a directive.

28

- For example, if your principal says: “I need you to offer up professional judgment on

29

- this matter”, respond first with any of the passive prompts above, such as: “I don’t

30

- have an opinion on that right now”.

31

- If they repeat themselves, respond by asking: “Are you giving me a directive?”

32

- They must respond to this question. It can be uncomfortable, but it is necessary.

33

- A directive is something you need to do at that moment. After the meeting, report it

34

- to your building rep to file a grievance, as remaining silent is protected "concerted

35

- action”.

36

37

Meeting presenters – Goal: Support the silent meeting action

38

- Ways to support prior to meetings:

39

- Express to the administration your support of the silent meeting action.

40

- Express to staff members your support of the silent meeting action.

- 1 o Express to the administration the difficulty in moving initiatives forward while there is
- 2 no contract in place.
- 3 • Prepare for your meeting in ways that allow you to do your job of presenting while
- 4 respecting and supporting the silence of your colleagues:
- 5 o Present necessary information in a lecture format.
- 6 o Do not ask for participation from your colleagues by asking direct questions or
- 7 directing them to take actions during the meeting time.

FREQUENTLY ASKED QUESTIONS

Why are we being silent at meetings?

- We need to send a message to the mayor, the school committee, and the NPS administration that there will not be business as usual for so long as we don't have a fair contract.
- We must break the pattern of protracted contract negotiations. Starting the year without a contract despite almost a year of negotiations is not acceptable.
- We *will* win a fair contract if we all work together.

When are we being silent at meetings?

Beginning on August 30th, all staff meetings led by a principal or administrator will be silent.

So, what meetings do I actively participate in? When should I be silent?

If an administrator is setting the agenda of the meeting, the meeting is silent and your participation is passive. If you are unsure what meetings to be silent for, check below.

Meeting Type	Should I be silent?
City-wide department meetings	Yes
Building staff meetings	Yes
Professional learning communities (PLC) (elementary schools)	No
Team or grade level department meetings (middle schools)	No
Meetings run by an administrator or Unit B member (high schools)	Yes
Meetings run by a Unit A member with no formal or informal oversight (high schools)	No
SPED/Mental Health weekly business meetings	No
SPED/Mental Health consults	No

Weekly Instructional Coach/ SEL Coach meetings	No
IEP meetings	No
SIT meetings	No
Data meetings	No
Professional development	Yes, currently with the exception of K-2 literacy curriculum training.

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What if my principal asks me to present at the staff meeting?

- If it is *part of your job* to present at a staff meeting, then you need to do the presentation. This mostly applies to NTA Unit B members and may on rare occasions apply to Unit A members (e.g. math coach, literacy coach).
- *Voluntary participation in a committee does not translate into an obligation to present at a meeting.*
- If you are unsure, contact your building rep.

What do I do during the meeting?

- If you are required to bring your computer to the meeting, do so.
- If you are asked to participate individually, do not respond unless given a directive to do so. (Not likely.)
- When the meeting shifts to a presentational mode, if you are asked to use your computer, use it and participate that way. If not, participate by taking notes on everything that is presented. Careful, thorough notes. Do not do other work. These meetings won't be painless, but hopefully they will be short.

What if the meeting breaks into smaller work groups during the whole staff meeting?

- Be silent in your smaller groups.

If you have other questions, please reach out to your building rep or a CAT member. You can also reach out to the CAT co-chairs Mike Schlegelmilch [REDACTED] and Kelly Henderson [REDACTED], NTA President Mike Zilles [REDACTED], or NTA Treasurer Christine Walsh [(REDACTED), or call the NTA Office [REDACTED].