

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

In the Matter of

ANDOVER EDUCATION ASSOCIATION

and

MATTHEW BACH, individually and in his
capacity as President of the AEA

and

ANDOVER SCHOOL COMMITTEE

Case No. SI-23-10320

Date issued: November 9, 2023

CERB Members participating:

Marjorie F. Wittner, Chair
Kelly B. Strong, CERB Member

Appearances:

James Racine, Esq
Jennifer MacDougall, Esq. - Representing the Andover Education
Association

Jennifer King, Esq.
Nicholas Dominello, Esq. - Representing the Andover School
Committee

RULING ON STRIKE PETITION AND INTERIM ORDER

1 On November 9, 2023, the Andover School Committee (School Committee or
2 Petitioner) filed a petition with the Department of Labor Relations (DLR) for a strike
3 investigation (Petition) pursuant to Section 9A(b) of M.G.L. c. 150E (the Law). The Petition
4 alleges that a strike is about to occur and that the Andover Education Association (AEA

1 or Union) and its officers, Matthew Bach, individually, and in his capacity as AEA President
2 (Bach) (collectively, the Respondents) were inducing, encouraging or condoning a strike
3 in violation of Section 9A(a) of the Law. In particular, the School Committee alleged that
4 it had reason to believe that the Respondents intended to hold a strike vote for two AEA
5 bargaining units, Unit A, a unit of classroom teachers and other employees, and a
6 separate unit of Instructional Assistants (Instructional Assistants Unit) on November 9,
7 2023, with a strike scheduled to begin on November 10, 2023.¹

8 On November 9, 2023, the DLR issued a Notice of Strike Investigation that the
9 School Committee caused to be served on each of the Respondents.² On November 9,
10 2023, Marjorie F. Wittner, Chair of the Commonwealth Employment Relations Board
11 (CERB), conducted a strike investigation pursuant to 456 CMR 16.03.³ The School
12 Committee and the Respondents had an opportunity to be heard, to examine and cross-
13 examine witnesses, and to introduce evidence.⁴ The investigation record is now closed.

14 As explained below, the CERB concludes that the Union, its officers and the
15 employees it represents are about to engage in a strike in violation of Section 9A(a) of

¹ The original petition also named the Massachusetts Teachers Association (MTA) and Julian DiGloria, AEA First-Vice President, as respondents. Before the investigation began, the School Committee withdrew its petition as to those respondents.

² On November 9, the School Committee's attorney provided proof of delivery of service of the Strike Petition and the DLR notice by email and hand-delivery on the Respondents, along with an affidavit of compliance with 456 CMR 16.03(2).

³ The investigation was conducted remotely using the WebEx videoconference platform. CERB member Kelly Strong also attended the hearing.

⁴ The School Committee called one witness, George Puddister (Puddister), the Andover Public Schools' Director of Human Resources. The Respondents did not call any witnesses and only their attorneys attended the investigation.

1 the Law and that the Union and its officers have induced, encouraged, and condoned the
2 strike.

3 Motions

4 During the investigation, the Union made an oral motion to dismiss the strike
5 petition with respect to Bach, who was named as a respondent in both his individual and
6 official capacity. The School Committee opposed the motion. For the reasons set forth
7 below, we grant that Union's motion.

8 Stipulations of Fact

9 At the outset of the investigation, the parties agreed to the following stipulations:

- 10 1. The Town of Andover (Town) is a public employer within the meaning of Section 1
11 of M.G.L. c. 150E (the Law).
- 12 2. The Andover School Committee (School Committee) is the collective bargaining
13 representative of the Town for the purpose of dealing with school employees.
- 14 3. Magda Parvey, Ed.D. is the superintendent of the Andover Public Schools (APS)
15 and an agent of the School Committee.
- 16 4. Tracy Spruce is the Chair of the Andover School Committee.
- 17 5. The Andover Education Association (AEA) is an employee organization within the
18 meaning of Section 1 of the Law.
- 19 6. Unit A consists of the classroom teachers and other employee classifications set
20 forth in Article I of the Unit A collective bargaining agreement.
- 21 7. The AEA represents a bargaining unit of Instructional Assistants.
- 22 8. Matthew Bach (Bach) is the president of the AEA.
- 23 9. The Unit A collective bargaining agreement (Unit A CBA) and the Instructional
24 Assistants collective bargaining agreement (Instructional Assistants CBA) were
25 each in effect from September 1, 2020-August 31, 2023.
- 26 10. Pursuant to the Andover Public Schools official school calendar, Friday, November
27 10 and Monday, November 13, 2023 are regularly scheduled workdays for APS
28 employees.
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2 11. On November 9, 2023, the School Committee filed a strike petition with the
3 Department of Labor Relations naming the AEA, the Massachusetts Teachers
4 Association, Bach, individually and in his official capacity as AEA president and
5 Julian DiGloria, individually and in his official capacity as First Vice-President of
6 the AEA as respondents. Shortly thereafter on November 9, 2023, the School
7 Committee filed a second strike petition that was identical to the first except that it
8 deleted the MTA as a respondent.

9 Findings of Fact

10 Background

11 There are approximately ten schools in the Andover Public Schools District
12 (District). Approximately 5500 students attend those schools.

13 Bargaining History

14 As of the strike investigation, representatives of the AEA and District had, without
15 reaching agreement, participated in thirteen bargaining sessions with respect to a
16 successor contract to the Unit A CBA and thirteen bargaining sessions with respect to a
17 successor contract for the Instructional Assistants CBA, for a total of 26 bargaining
18 sessions.

19 The most recent session occurred on November 8 and pertained to the
20 Instructional Assistants. At that meeting, after the District presented a proposal, the
21 parties agreed to caucus. After hearing nothing from the Union for about an hour, the
22 District attempted to contact the Union by phone and text. When the District did not
23 receive a response from the Union bargaining representatives, two District bargaining
24 team members searched the buildings and location where the AEA had caucused during
25 prior bargaining sessions. The District representatives were unable to locate the Union
26 bargaining team and concluded that the Union had left the building without telling them
27 and without responding to the proposal.

1 and Recess” and “Curriculum.” At around 5:34 pm, local news station WCVB posted a
2 photo on its website showing a large group of standing and seated individuals holding
3 red signs stating, “Andover Educators on Strike.”⁵ The photo was captioned “Breaking
4 News: Teachers in North Shore town vote to strike ‘effective immediately’.” The text
5 underneath the photo stated:

6 The Andover Education Association said its membership has
7 overwhelmingly voted to go on strike, effectively [sic] immediately.” In a
8 written statement, the union claims it has bargained with the Andover
9 School Committee 28 times.”⁶

10 Puddister testified that November 10 is a regularly scheduled school day. He
11 stated, however, that schools would be closed on November 10.

12 Ruling⁷

13 Section 9A(a) of the Law prohibits public employees and employee organizations
14 from engaging in, inducing, encouraging, or condoning any strike, work stoppage,
15 slowdown, or withholding of services. Section 9A(b) permits a public employer to petition
16 the CERB to investigate alleged violations of Section 9A(a) “whenever a strike occurs *or*
17 *is about to occur*” (emphasis added). The CERB has applied Section 9A(b) of the Law to
18 situations where the evidence shows that a strike is occurring or is about to occur. Boston
19 Teachers Union, Local 66, et. al., 33 MLC 133, SI-07-272 (January 18, 2007) aff’d. 74

⁵ Puddister identified one of the individuals in the picture as Bach. The quality of the photo, even when enlarged, is grainy and does not clearly show that the individual identified as Bach is holding a sign.

⁶ The School Committee sought to enter the AEA website postings, Facebook postings, and media articles into the investigation record through Puddister. The AEA did not object to their admission and did not cross-examine Puddister. As such, those documents were entered as Petitioner’s exhibits.

⁷ The CERB’s jurisdiction is not contested.

1 Mass. App. Ct. 500, 505 (2009) further appellate rev. den'd, 455 Mass. 1102 (2009), pet.
2 for cert. den'd 599 U.S. 992 (2010); Boston School Committee, 27 MLC 32, 34, SI-264
3 (October 10, 2000); City of Worcester, 13 MLC 1627, 1630, SI-198 (April 23, 1987); Boston
4 School Committee, 10 MLC 1289, 1290, SI-156 (November 15, 1983).

5 Here, the uncontested evidence shows that as of November 5, the AEA, by posting
6 items such as “Why are we striking” and providing links to a “GoFundMe page” to
7 contribute to a strike fund administered by the AEA clearly anticipated that it would be
8 going out on strike in the near future and that it supported the strike and would continue
9 to do so. When that evidence is coupled with further uncontested evidence that the AEA
10 held a strike vote on November 9 to go out on strike “immediately,” we find that the School
11 Committee has met its burden of showing that the AEA has voted to engage in a strike
12 effective immediately, and that by their Facebook and website postings, the AEA and its
13 officers are inducing, encouraging and condoning engaging in a strike, work stoppage or
14 other unlawful withholding of services in violations of Section 9A of the Law.

15 Unlike in previous decisions we have issued, however, we have virtually no
16 evidence that President Bach induced, encouraged, or condoned the strike vote or
17 upcoming strike in either his official or individual capacity prior to the vote taking place.
18 The only evidence provided during the hearing linking Bach to the strike vote was a photo
19 in the WCVB article of many individuals holding “Andover Educators on Strike!” signs.
20 Although Puddister testified that one of the individuals was Bach, given the poor quality
21 of the photo, even when enlarged, we do not rely upon it to find that Bach, as opposed to
22 the AEA’s officers as a whole, was individually, or in his capacity as Union president,
23 inducing, encouraging or condoning a strike. We therefore dismiss the petition to the

1 extent it names Bach as a respondent. We nevertheless recognize that a union can only
2 act through its officers. Therefore, the order we issue below is directed to the AEA *and*
3 its officers, and the CERB fully expects and requires that evidence of compliance with the
4 Order will come through an AEA officer.

5 Conclusion

6 For the foregoing reasons, we conclude that: (1) the AEA, its officers and the
7 employees it represents are about to engage in a strike in violation of Section 9A of the
8 Law; and (2) the AEA, and its officers are inducing, encouraging, and condoning such
9 action in violation of Section 9A(a) of the Law.

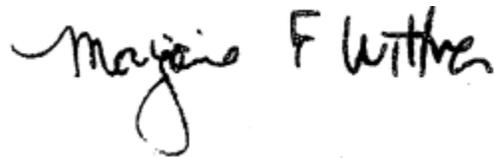
10 Accordingly, pursuant to Section 9A(a) and (b) of the Law, we order that:

- 11 1. The AEA and its officers and the employees it represents, shall immediately cease
12 and desist from engaging in or threatening to engage in a strike or work stoppage,
13 slowdown or other withholding of services.
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- 15 2. The AEA and its officers shall immediately cease and desist from inducing,
16 encouraging, or condoning any strike, work stoppage, or other withholding of
17 services, either directly or through surrogates. The AEA shall not permit its officers
18 to encourage, condone, or induce any strike, work stoppage, slowdown, or other
19 withholding of services.
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- 21 3. The AEA and its officers, shall publicly state that:
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 - 23 a. any vote authorizing a strike to take place is cancelled and there will be no
24 strike action;
 - 25 b. engaging in, planning, inducing, encouraging, and condoning a strike, work
26 stoppage, slowdown, or other withholding of services, is illegal and must
27 therefore cease.
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- 29 4. The AEA and its officers shall immediately notify all of its bargaining unit members
30 of the above statements upon receipt of this Order, using all of its usual means of
31 communicating with its bargaining unit members including, but not limited to,
32 posting the statements on its website, Facebook page and/or any other social
33 media it uses to regularly communicate with its membership.
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- 35 5. The AEA and its officers shall refrain from scheduling any further strike vote in
36 connection with the same bargaining dispute.

- 1 6. The AEA and its officers shall take any necessary steps to notify the employees
2 whom it represents of their obligation to fully perform the duties of their
3 employment including the obligation to refrain from any form of a strike or work
4 stoppage. Such notification shall be completed immediately upon receipt of this
5 Order and shall entail all of its usual means of communicating with its bargaining
6 unit members, but not limited to, posting the statements on its website, Facebook
7 page and/or any other social media it uses to regularly communicate with its
8 membership.
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- 10 7. The AEA and its officers shall take any and all necessary steps to inform the
11 employees whom the AEA represents of the provisions of Section 9A(a) and (b) of
12 the Law and the contents of this order. Such notification shall be completed
13 immediately upon receipt of this order and shall entail all of its usual means of
14 communicating with its bargaining unit members, but not limited to, posting the
15 statements on its website, Facebook page and/or any other social media it uses to
16 regularly communicate with its membership.
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- 18 8. The AEA and its officers shall notify the DLR in writing of the steps taken to comply
19 with this Order by no later than Friday, November 10, 2023 at 8:30 a.m.
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- 21 9. The AEA and the School Committee shall immediately initiate or resume
22 negotiations and utilize the procedures for resolving disputes provided in their
23 collective bargaining agreements and M.G.L. c. 150E.
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- 25 10. The AEA and the School Committee shall bargain in good faith for a successor
26 collective bargaining agreement.
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- 28 11. The AEA and the School Committee shall participate in good faith and in
29 accordance with the provisions of 456 CMR 21.00 et. seq. in mediation before a
30 mediator assigned by the DLR to bargain over the issues that separate them. The
31 parties' participation in mediation ordered by the CERB shall not affect their rights
32 under Section 9 of the Law.
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- 34 12. The AEA, and its officers shall appear as required by the CERB for a proceeding
35 to determine compliance with this Order
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- 37 13. The DLR and the CERB shall retain jurisdiction of this matter to set further
38 requirements as appropriate.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



MARJORIE F. WITTNER, CHAIR



KELLY B. STRONG, MEMBER