

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

In the matter of
WOBURN SCHOOL COMMITTEE

and

MASSACHUSETTS TEACHERS ASSOCIATION

and

WOBURN TEACHERS ASSOCIATION

and

BARBARA LOCKE, Individually and in her capacity
as President of the WTA

Case No. S.I.-23-9811

Date issued: January 27,
2023

CERB Members Participating:

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

Appearances:

Colby Brunt, Esq. - Representing the Woburn School Committee
Thomas P. Delmar, Esq.

Ryan P. Dunn, Esq. - Representing the WTA and Barbara Locke
Quesiyah Ali, Esq.

Mark Hickernell, Esq. - Representing the MTA
Ashley Walter, Esq.

1 **RULING ON STRIKE PETITION AND INTERIM ORDER**
2 On January 24, 2023, the Woburn School Committee (School Committee) filed a
3 petition with the Department of Labor Relations (DLR) for a strike investigation pursuant

1 to Section 9A(b) of M.G.L. c. 150E (the Law). The petition alleges that an illegal strike in
2 violation of Section 9A of the Law is about to occur, and that the strike has been induced,
3 encouraged, and condoned by the Woburn Teachers' Association (WTA), the
4 Massachusetts Teachers Association (MTA) and Barbara Locke (Locke), individually and
5 in her capacity as WTA president (collectively, the Respondents). In particular, the School
6 Committee alleged that, upon information and belief, on Friday, January 27, 2023, the
7 WTA intends to hold a vote to authorize a strike.

8 On January 25, 2023, the DLR issued a Notice of Strike Investigation (Notice) that
9 the School Committee caused to be served on each of the Respondents.¹ On January
10 26, 2023, Marjorie F. Wittner, Chair of the Commonwealth Employment Relations Board
11 (CERB), conducted the investigation on behalf of the CERB pursuant to 456 CMR
12 16.03(2)(c).² The School Committee and the Respondents had an opportunity to be
13 heard, to examine and cross-examine witnesses, and to introduce evidence.³ Parties
14 presented closing arguments in lieu of briefs.

¹ The School Committee served the Notice electronically on representatives of the MTA and the WTA. As described below, it also provided in-hand service of the Notice on Locke. Prior to the investigation, the School Committee also sent an email to the DLR and Respondents' representatives asking that the Locke be present at the investigation so she could "definitely state whether there is a vote to strike that is scheduled." The WTA did not respond to that email.

² The investigation was conducted remotely using the WebEx videoconference platform. All CERB members attended the proceeding.

³ The School Committee called three witnesses: Woburn Public Schools (WPS) Superintendent, Dr. Matthew Crowley (Matthew Crowley), School Committee Member Ellen Crowley (Ellen Crowley), and WPS Director of Technology and Innovation Jennifer Judkins (Judkins). The Respondents did not call any witnesses. Only their attorneys attended the investigation.

1 Motions

2 Before the hearing, the WTA and Locke filed a Motion to Dismiss the petition, to
3 which the School Committee responded. At hearing, the MTA made an oral motion to
4 dismiss and indicated that it would later provide a written motion with affidavits. The
5 CERB took both motions under advisement and left the investigation record open at the
6 end of the hearing for the School Committee to file a reply to the MTA's motion, to finalize
7 stipulations and for the School Committee to submit an exhibit.⁴

8 Based on the following stipulations and findings, and for the reasons set forth
9 below, the CERB finds that the WTA and Barbara Locke, in her official capacity as WTA
10 president are inducing, encouraging and condoning an unlawful strike and that the WTA
11 is about to hold a vote to authorize an unlawful strike. The CERB denies the WTA's motion
12 to dismiss.⁵

13 Stipulations of Fact

- 14 1. The City of Woburn is a public employer within the meaning of Section 1 of M.G.L.
15 c. 150E (the Law).
16 2. The Woburn School Committee (School Committee) is the collective bargaining
17 representative of the City for the purpose of dealing with school employees.
18
19 3. Dr. Matthew Crowley (Dr. Crowley) is the Superintendent of the Woburn Public
20 Schools and an agent of the School Committee.
21

⁴ On the morning of January 27, the School Committee filed a motion to reopen the record to take an affidavit from Matt Crowley regarding teacher attire. The WTA and Barbara Locke opposed the motion. The CERB denies the motion.

⁵ This ruling pertains only to Respondents WTA and Barbara Locke and thus, only addresses the WTA's Motion. The CERB will issue a ruling regarding the MTA at a later date. The MTA requested that it be allowed to call witnesses to support its Motion to Dismiss if the CERB was not willing to take its affidavits to the motion on its face. At the investigation, the CERB took that request under advisement and will decide it at a later date.

- 1 4. The School Committee consists of seven elected members, Christopher Kisiel
2 (Chair), John Wells, Ph.D, Patricia Chisholm, Colleen Cormier, Ellen Crowley,
3 Andrew Lipsett, and Michael Mulrenan.
4
- 5 5. The Woburn Public Schools is responsible for approximately 4,299 students.
6
- 7 6. The Woburn Teachers Association (WTA or Union) is an employee organization
8 within the meaning of Section 1 of the Law.
9
- 10 7. Barbara Locke (Locke) is an educator in the Woburn Public Schools and the
11 president of the WTA.
12
- 13 8. The WTA is an affiliate of the Massachusetts Teachers Association (MTA). The
14 MTA is an employee organization within the meaning of Section 1 of the Law. The
15 MTA supplies field representatives and legal counsel to advise and represent the
16 WTA in certain labor relations matters, including contract administration.
17
- 18 9. The WTA represents the Woburn Public School's teachers, nurses and
19 paraprofessionals. The MTA is not a named party or a signatory to the collective
20 bargaining agreement between the WTA and the School Committee.
21
- 22 10. Since 2018, School Committee member Ellen Crowley (E. Crowley) has been the
23 School Committee's lead negotiator for successor contract negotiations with the
24 WTA.
25
- 26 11. The collective bargaining agreement between the WTA and the School Committee
27 expired on August 31, 2021. On January 27, 2021, the WTA and the School
28 Committee entered into a Memorandum of Agreement that extended the terms of
29 the prior agreement except as noted. That MOA was effective from September 1,
30 2021 until August 31, 2022.
31
- 32 12. From November 10, 2021 to January 18, 2023, the School Committee and the
33 WTA held multiple bargaining sessions.
34
- 35 13. On or about October 26, 2022, the School Committee and the WTA agreed to a
36 proposed Memorandum of Agreement (MOA).
37
- 38 14. On or about November 2, 2022, the WTA's bargaining unit members held a
39 ratification vote on the proposed MOA. Approximately 98% of the bargaining unit
40 voted against it.
41
- 42 15. Between November 2, 2022 and January 18, 2023, the School Committee and the
43 WTA held additional bargaining sessions but did not reach an agreement.
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- 45 16. On January 18, 2023 at 7:25 p.m., E. Crowley sent an email from her Woburn
46 Public Schools email account to Locke:

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Hi,
We propose Jan. 23 (Monday) or Jan 25 (Wed) to meet, each day 3:30 PM.
Please extend our thanks to your team (and you) for continuing to work with us.
Thank you so much,
Ellen
--
Ellen A. Crowley, Esq.
Woburn School Committee Member

17. On January 19, 2023 at 10:47 AM, Locke replied to the email referenced in paragraph 16 using her Woburn Public Schools email account. The email stated:

Hi Ellen,
Monday the 23rd does not work for me as the WTA has an important Executive Board meeting scheduled. The 25th may work . . . However, . . .after conferring with our teamwe feel it is of the utmost importance that we get back to the table with our paraprofessionals and would like next week to schedule that meeting. I know you are not at that table, but Matt Crowley and Pat Chisholm are and we have not met since November. We do not want our paras to fall through the cracks as their financial compensation differs greatly from teachers.

Therefore, I have already reached out to Matt about this. Maybe we can sit together (paras and teachers) as that is the way we do business in our schools and get this contract ratified.

18. On January 22, 2023 at 6:30 PM, E. Crowley replied using her Woburn Public Schools' email account. The email stated:

Hi Barbara, (on behalf of the WTA)

I am sorry for the delay . . .

After conferring with our team, the School Committee would like to meet on Wednesday, 1/25/2023 to continue what we believe to be productive discussions. We are not able to negotiate with two units at the same time, so this meeting will be dedicated to collective bargaining with the Teachers' Association. However, Dr. Crowley told me that he proposed two dates to the paraprofessionals.

Thank you to you and your team for continuing to work with us. Let me know about 1/25 so we can reserve the SC conference room.

1 Best, Ellen
2 on behalf of the SC
3

4 19. From August 21, 2021 until January 26, 2023 at 4:00 PM, the members of the
5 WTA have not engaged in any unlawful strikes as defined in Section 1 of M.G. L.
6 c. 150E.
7

8 Findings of Fact

9 The WTA represents three bargaining units in the Woburn Public Schools (WPS),
10 a professional unit that includes teachers, a paraprofessionals unit and a school nurses
11 unit. An integrated collective bargaining agreement containing separate agreements for
12 all three bargaining units expired on August 31, 2021. As reflected in Stipulation 11, in
13 January 2021, the parties entered into a MOA that extended the terms of the agreements,
14 with certain changes from September 1, 2021 until August 31, 2022.

15 Starting on November 10, 2021, the School Committee and the WTA met regularly
16 to bargain on about twenty-five occasions. School Committee Member Ellen Crowley
17 served as the lead negotiator for those sessions. Superintendent Matt Crowley also
18 attended most of those sessions. Union President Locke also attended on behalf of the
19 WTA. An MTA representative, Jean Venette, was also present at most sessions.

20 As noted in the stipulations, a tentative agreement that the WTA and School
21 Committee entered into in late October 2022 was resoundingly voted down by the
22 membership in early November 2022.⁶ The School Committee and the WTA returned to
23 the table, however, to try to reach an agreement and the parties met approximately
24 another six times. Their last bargaining session took place on January 18. Although both

⁶ According to Ellen Crowley, the main issues separating the parties were a cost-of-living (COLA) issue and five additional language issues that were not specified. The School Committee resolved the language issues but not the COLA.

1 Ellen Crowley and Matt Crowley were encouraged at the conclusion of this session that
2 they were close to reaching a settlement, the WTA's conduct between November 7 and
3 the date of this hearing, including a "rolling work to rule" action, coupled with emails and
4 social media posts from WTA members and leadership reflect the WTA's dissatisfaction
5 with the School Committee's proposals and the School Committee's and the Mayor's
6 conduct during bargaining.

7 In particular, on November 7, 2022, five days after the proposed MOA was voted
8 down, a bargaining unit member wrote to Locke from her WPS email account, stating:⁷

9 We have had enough . . . [A]ttending another ridiculous personal day when
10 we could call out and make a difference without affecting the students sends
11 a powerful message. To come in wearing t-shirts is quite frankly, weak. To
12 not encourage us to take tomorrow off would be a missed opportunity.
13

14 Locke responded the same day as follows:
15

16 I have reached out to MTA's Kevin Tierney (the MTA's Action leader for
17 Haverhill's strike) asking his opinion on this exact action. He strongly
18 disagrees with Woburn taking any kind of strike action (which a sick out is
19 considered) at this stage and especially on a PD day. We (WTA Action
20 Team and Board) are meeting with him tomorrow at 3:30 PM for his advice,
21 expertise and plan moving forward. Our negotiating Team is also meeting
22 with the SC and Mayor tonight at 5 pm.
23

24 I respect and understand your frustrations . . . more than you know. But I
25 believe at this time we need to stay disciplined, united and listen to MTA.
26

27 On December 20, 2022, Locke sent the following email from her WPS email
28 account to an email group called "WTA Communications".⁸

⁷ The suffix for WPS accounts is "woburnps.com."

⁸ The WTA Communications group had a "gmail" address. Judkins testified that this is a staff group that WPS has granted access to the WTA to manage. WPS does not manage the group. We assume from Locke's greeting on the 12/20/22 email, "Dear Members," that this group is comprised of WTA bargaining unit members.

1 Dear Members,

2
3 We were hoping that the District would counter our very fair offer but
4 unfortunately the Mayor stated that they could not (or would not give a
5 counter proposal and announced that they would be filing for mediation.⁹

6
7 The Negotiation Team has decided not to file jointly with the district as we
8 felt that an agreement could be made. However, mediation is inevitable
9 even if we do not file.

10
11 It is the District who truly has lost . . .Lost the respect of those who witnessed
12 the dictatorship-like negotiations that the mayor prides himself on while
13 School Committee members along with administrators showed no support
14 for the teachers of Woburn. Even after the mayor told us "you are all
15 replaceable." Not only shameful but disgraceful

16
17 While the mayor, superintendent, and school committee members feel okay
18 about sending our members on break for the holidays thinking they're
19 considered replaceable . . .As your Union President and on behalf of the
20 Executive Board, we KNOW you are indispensable and wish you all Happy
21 Holidays and a restful break.

22
23 They have quit . . . but we will not!
24 In solidarity,
25 Barbara Locke, WTA President. (Emphasis in original).

26
27 Shortly thereafter, bargaining unit member Paul McElheney (P. McElheney) sent
28 an email that stated in pertinent part,

29 As a past negotiation team member that went to mediation in 2019, I felt
30 that this was a waste of time and we bypass mediation this time and
31 consider striking.

32 The Mayor is doing this on purpose to drag this and wear us down...
33 He has insulted us, not only with the replaceable comment but the latest
34 offer was the same offer with a different twist.

35 It is not so much the contract bothering me now, it's that I am tired of being
36 considered stupid and replaceable by our mayor, school committee and the
37 administration,

38 The writing is on the wall, we go to mediation and get beat down over
39 months or we strike.

40
41 Thanks again Barbara.

⁹ The CERB takes administrative notice that as of the date of this ruling, neither party filed a petition seeking mediation with the DLR pursuant to section 9 of the Law.

1 The record does not contain a response from Locke. However, one other
2 bargaining unit member wrote back agreeing with McElheney and thanking Locke for “all
3 you do.”

4 On January 6, 2023, the WTA tweeted a photo of what appears to be a placard at
5 a WTA rally, along with a flyer setting forth various bargaining goals, with the title,
6 “Educators = Great Schools for Woburn Families” along with the text:

7 Whether it be rain, snow or sunshine – we will continue the fight!! The
8 School committee and Mayor wanted a contract that demanded students
9 be out of school for an additional 5 FULL DAYS or 10 HALF DAYS. We vote
10 no!! #Why we fight

11
12 A similarly themed WTA tweet posted the same day included the hashtags
13 #notreplaceable, #Faircontract now.¹⁰

14 Despite the sentiments expressed in these emails and tweets, the WTA continued
15 to meet for successor bargaining sessions, and, on the last day that they met, January
16 18th, both Ellen Crowley and Matt Crowley felt that they had had a productive session and
17 left feeling hopeful that a settlement was near. That night, Ellen Crowley sent an email
18 to Locke that is set forth in stipulation 16, asking whether the parties could meet on
19 January 23 or 25th. Locke responded on January 19, indicating that the WTA had an

¹⁰ Other social media posts between January 6 and 18th included several tweets in support of the Melrose Education Association (MEA), who, as the tweets indicate, had a strike vote on Friday January 13 to go out on strike on the Tuesday after the Martin Luther King, Jr. holiday, January 17, unless a contract was reached before then. On January 13, WTA tweeted, “The WTA stands in complete support of the MEA in their historic vote on Friday afternoon.” On January 15, the WTA sent a tweet congratulating the MEA on their tentative agreement, stating “Melrose stayed strong and won a fair contract.” Results of a search that Judkins did on the WPS email server reflect that around the same time, a few WPS staff members shared other publicly available information about that strike, including the Melrose Superintendents’ letter to parents and guardians, the MEA’s press release and a local news article about the strike vote.

1 “important” Executive Board meeting scheduled on January 23.¹¹ Locke did not rule out
2 January 25 but expressed a desire to meet with the paraprofessionals. Ellen Crowley
3 responded on Monday, January 22, 2023 declining to meet with both units but asking to
4 hear about January 25. Ellen Crowley sent another email on January 23, asking to meet
5 on January 26 but, for the first time, did not hear back from Locke to schedule the next
6 meeting.

7 In the same time frame (from January 18 to January 26), both Ellen Crowley and
8 Matt Crowley heard rumors from School Committee members and administration of a
9 possible strike vote. Specifically, Ellen Crowley heard from Matt Crowley on Monday
10 January 22, that he had heard rumors that a strike was going to take place. Matt Crowley
11 also heard these rumors from various Assistant Superintendents, principals and assistant
12 principals.¹²

13 Over the next six days, various WTA social media postings and the results of
14 searches on the WPS computer servers¹³ revealed additional information about an
15 upcoming WTA rally and a potential strike vote on Friday, January 27, at 3:15 PM.

¹¹ During the investigation, the School Committee provided another document confirming that the WTA held an executive board meeting on Monday, January 23.

¹² Matt Crowley testified that he started speaking to principals after January 18, when despite what he thought were productive negotiations, the WTA was not scheduling another date to return to the bargaining table. He also testified that he had a conversation with the Superintendent in Melrose who asked him if he was aware that a strike vote was being planned in Woburn.

¹³ As described in footnote 14, below on January 24, Matt Crowley asked Judkins to search the WPS servers for evidence relating to a possible strike vote later that week.

1 On January 21, the WTA tweeted that it would be holding a rally on Saturday,
2 January 28 at 1:00 PM on the City Hall/Woburn Common. The tweet stated, “Come join
3 us as we fight for respect and a fair contract.” The tweet included the hashtags,
4 #notreplaceable, #solidarity, #FairContractNow and #nomorebusinessasusual.” The
5 tweet included a flyer giving date, time and location of the rally, with the text, “Educators,
6 students, and families in Woburn have had enough.” The bottom of the flyer indicated
7 that special guests would be “MTA President Max Page and others.”^{14 15}

8 On January 22, 2022, the WTA posted another flyer stating “Woburn Educators
9 Deserve a Fair Contract Now!” The words “Fair Contract Now” were in the center of the
10 page, surrounded by aspirational phrases such as “Working Conditions,” “Respect,”
11 Dignity, “Educator Led Professional Development,” etc. It tweeted a second poster for

¹⁴ The CERB takes administrative notice that, except for the rally’s time and date and WTA name and logo, this flyer is nearly identical in formatting, font and wording to the flyer for a post-strike vote rally described in the CERB’s strike ruling in Haverhill School Committee, SI-22-9605, slip. op. at 14 (Ruling on Strike Petition and Interim Order, October 15, 2022) (Haverhill). In Haverhill, after a strike investigation, the CERB concluded that a strike vote was about to occur on October 14, 2022, and issued an order that required the Haverhill Education Association and other respondents to, among other things, cancel the vote. Subsequent court proceedings revealed that the strike vote took place on Friday, October 14 in accordance with the CERB’s findings, and the strike began on the following Monday. See CERB v. Haverhill Education Association, et. al., Essex County Superior Court, C.A. No. 2277CV00990, Docket Nos. 1, 13 (October 17, 2022).

¹⁵ The investigation record shows that flyer was retweeted by other groups in Massachusetts including Deb Gesualdo (Gesualdo), the President of the Malden Teachers Association. (We take administrative notice of the strike petition filed by the Malden School Committee on October 17, 2022 in Case No. SI-22-9622. The petition alleged that a strike by Malden School teachers was occurring. The CERB conducted an investigation, but the School Committee withdrew the petition after parties settled their contract.) On January 23, a group called “MTA New Members” expressed its support for the January 28th rally.

1 January 28th rally that had the words “Call to Action! Rally for a Fair and Just Contract”
2 with the words “Fighting for the Schools Our Students and Educators Deserve!” The text
3 was surrounded by pictures of teachers holding picket signs, some of which were Woburn
4 specific. The “Call to Action Flyer” also appeared on the WTA Facebook page, with the
5 text “What else has Mayor Scott Galvin and the School Committee . . . rejected? Smaller
6 class sizes.”¹⁶

7 On January 24, 2023, Ellen Crowley spoke to School Committee Chair Christopher
8 Kisiel (Kisiel) about a possible, imminent strike vote.¹⁷ Kisiel sent Ellen Crowley a
9 screenshot of an email that he received from an unidentified bargaining unit member.¹⁸
10 The email stated, “IMPORTANT GOOGLE FORM” on top and was addressed to “WTA
11 Communications and 1 more.” It was dated “yesterday at 6:58 p.m.”¹⁹ The email stated:

¹⁶ The Facebook posting included comments to the posting, including one from a non-WPS staff member stating, “Hopefully your vote to strike passes Friday.”

¹⁷ Kisiel did not testify.

¹⁸ Judkins discovered the same email, which was admitted without objection as Petitioner Ex. 15, in the WPS email accounts of five other WPS staff members. Judkins testified that those members forwarded the email from their personal email accounts to the WPS email account. Judkins discovered the email and several other documents described below after Matt Crowley asked her on January 24, 2023, to search WPS servers for documents pertaining to a potential strike vote. Judkins initially did so by first performing a search for terms like, “strike,” “striking,” “vote” and “voting.” After receiving more information about when and where the strike vote would be held, Judkins searched additional terms like meetings, and also searched the Google calendars of staff members for the dates in question. She additionally performed searched for particular names including Imcleheney, pmcleheney, blocke and MTA president, Max Page. She converted her search results into a pdf and sent them to Matt Crowley.

¹⁹ Based on Ellen Crowley’s testimony that Kisiel sent her the Google form email on January 24, it would appear that the document was sent to the WTA Communications staff group on January 23 or January 24.

1 **Dear Members:**

2 **GOOGLE FORM:**

3 Please fill out this form. Very important that we get phone numbers going
4 into next week for swift communication. Thank you so much.

5
6 **VOTE -WEAR BLACK**

7 **WEAR BLACK FOR FRIDAY'S VOTE!! (Location: Woburn Bowladrome**
8 **@3:15)**

9 ***-THIS VOTE IS FOR ALL TEACHERS, PARAPROFESSIONALS, AND***
10 ***NURSES.-***

11
12 **RALLY AND SOCIAL MEDIA**

13 Remember that the rally is on Saturday @1:00 at City Hall/Woburn
14 Common. Share out the flyer on social media!!

15 We created a "Support Woburn Teachers" Facebook Group, please
16 join and encourage Wobunites who support us to join too. Please
17 change your profile pics to the "Fair Contract Now" graphic shared
18 out by the WTA twitter/FB accounts.

19
20 **In solidarity,**

21 **The Action Team, E-Board and Negotiations Team** (Formatting and
22 boldface in original).

23
24 On the same day, Matt Crowley authorized Judkins to search WPS computer servers for
25 evidence regarding a possible strike vote.²⁰ One of the first documents uncovered by the
26 search was "Copy of MAD-Crisis FAQ.pdf," which she found as an attachment in the WPS
27 email account or Google drive of five individual staff members. This document contains
28 the same title and is substantially the same as the "Frequently Asked Questions"
29 regarding strikes in Massachusetts that is described in and appended to the Haverhill
30 School Committee strike ruling.²¹ As we pointed out in Haverhill, one item of particular

²⁰ See footnote 17, above.

²¹ As described in the CERB's Haverhill strike ruling, the employer in that case discovered that document on the school Google drive of one of the individual respondents in that matter, who had given herself permission to edit the document. The FAQs in Haverhill were similar to those introduced in the Brookline case, but had been modified in a number of ways, including to include the actual date the Haverhill strike vote was scheduled to

1 note in that document is the question, “In the past, when did unions typically vote on the
2 action.” The response stated:

3 Strong unions have an ongoing internal communication structure that
4 enables them to find out if a super majority supports going out on strike
5 *before* they call any vote. If that readiness of the membership has been
6 tallied in a decentralized way, an open vote (no-secret) is then held very
7 close to the time of the strike. Otherwise, the district will have time to use
8 anti-worker law to get an injunction.
9

10 The search also uncovered emails that Locke sent on January 24, 2023 to several
11 WPS staff groups, including WTA teachers, paraprofessionals and nurses groups, as well
12 as responses that Locke received to the email. Locke’s email consisted of one sentence,
13 “WTA United! Click on the ‘WTA!’” The WTA link opened to a YouTube video of the singer
14 Sara Bareilles singing the song “Brave”.²² Recipients’ responses to the video included
15 heart emojis, “YES!!! IT’S TIME!!!,” and “OMG that was fantastic. Okay, you convinced
16 me. I was on the fence. We have to stand up!!!”

17 The search also uncovered Google calendar entries made by WTA members. The
18 exhibits containing this entry contains multiple entries for a union meeting on January 26,
19 2023, most of which were from “15:00 – 5:00” and six separate entries for events variously

take place, October 14. Haverhill School Committee, supra, slip. op. at 10. Although the document produced during the investigation of the instant matter contained the same October strike vote date, at least two other portions had been modified, including a cell titled, “Do strikers have to make up the lost days at the end of the year?” and the cell titled “What if you have a personal day already scheduled.” Unlike in Haverhill, however, we have no evidence that any particular Woburn staff employee had the right to edit the document.

²² A link to the YouTube video was entered into evidence. The link, which included lyrics, shows that the song includes the refrain, “Say what you wanna say; And let the words fall out, Honestly I wanna see you be brave.”

1 titled "Union vote;" "vote;" "CONTRACT VOTE to Strike;" "Vote;"²³ and "Union vote." The
2 event date for all events pertaining to a vote was "1/27/23."²⁴

3 Other events

4 On January 25, 2023, Matt Crowley served a copy of the CERB's Notice of Strike
5 Investigation by hand on Locke.²⁵ Locke told Matt Crowley words to the effect that she
6 knew that this was coming, but she just did not know from whom." Matt Crowley and
7 Locke then shook hands but Locke said nothing further regarding the contents of the
8 Notice.

9 Acceptable Use Policy

10 WPS maintains two policies regarding acceptable use of Staff Technology, one
11 that is distributed annually to staff, students and families for their signature, and one
12 contained in the employee handbook that is more directly geared to staff. The staff policy
13 contains the following paragraphs regarding staff expectations of privacy:

14 The Woburn Public Schools reserves the right to retrieve and read any
15 electronic communication of other data stored on school-owned equipment
16 for any purpose without prior notice or limitations including systems
17 maintenance and compliance monitoring. Employees should not assume
18 that voice mail, fax mail, e-mail messages, internet postings, or accessing
19 Internet websites are personal or confidential. In fact, the opposite is true
20 Electronic communications may be discoverable even though the

²³ The staff member who made this entry changed the title of "Vote" to "Vote/Bowl."

²⁴ The start and end times of the event were not consistent, with two starting at "15:45," two starting at "16:15" and two starting at "19:00." The end time was the same, "5:00." The events were also created on different days, ranging from 1/11/23 to 1/23/23.

²⁵ Among other things, the Notice indicated that Locke had been named individually and in her capacity as WTA President that that the School Committee was alleging that the respondents were "engaging in a strike, and have induced encouraged, or condoned a strike, work stoppage, slow-down or other withholding of services within the meaning of Section 9A of the Law."

1 messages have been deleted. Subject to certain exceptions in the law,
2 electronic communications may also be considered public records.

3 ***

4 . . . Employees should not have any expectation of privacy with regard to
5 any communication passing through the schools' systems or material
6 generated or stored on the schools' systems.

7
8 School Calendar

9
10 According to the WPS 2022-2023 School calendar, January 30, 2023 is a
11 regularly--scheduled school day.

12 Ruling²⁶

13 Section 1 of the Law defines a strike as:

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

24
25 Section 9A(a) of the Law states:

26 No public employee or employee organization shall engage in a strike, and no
27 public employee or employee organization shall induce, encourage or condone
28 any strike, work stoppage, slowdown or withholding of services by such public
29 employees.

30
31 As in our Haverhill School Committee ruling issued just three months ago, the
32 issue before the CERB is whether there is sufficient evidence to determine that an illegal
33 strike within the meaning of Section 1 of the Law is about to occur and that the strike has
34 been and is being induced, encouraged and condoned by the Respondents. The School
35 Committee, pointing out the many similarities between the evidence that it has presented

²⁶ The CERB's jurisdiction is not contested.

1 during the investigation and the evidence the CERB relied upon in finding a violation of
2 Section 9A in Haverhill, supra, urges the CERB to find, based on the totality of the
3 evidence that it presented, that the Law has been violated as alleged and to take
4 immediate steps to order the Respondents to cease and desist from engaging in such
5 activity. The WTA, having put in no evidence or witnesses, did not rebut any of the
6 evidence that the School Committee presented but argues, both in its Motion to Dismiss
7 and during the investigation, that the School Committee has presented insufficient
8 evidence to support any finding that links the Respondents to an upcoming strike vote or
9 strike. The WTA further argues that most of the evidence that the School Committee
10 presented constitutes protected, concerted activity within the meaning of Section 2 of the
11 Law and that the School Committee's efforts to uncover same is tantamount to unlawful
12 surveillance. As explained below, we conclude, based the totality of the unrebutted
13 evidence presented by the School Committee that the WTA and Locke in her official
14 capacity as Union president, are inducing, encouraging and condoning a strike in
15 violation of Section 9A of the Law and that, based on the impending strike vote, a strike
16 is about to occur.

17 First, as in the prior Boston Teachers Union, Haverhill, Dedham strike rulings, the
18 School Committee's evidence of an upcoming strike was presented in the context of
19 contentious successor contract negotiations. See Boston Teachers Union, Local 66, et.
20 al., 33 MLC 133, SI-07-272 (January 18, 2007) (BTU) *aff'd sub nom. Commonwealth*
21 Employment Relations Board v. BTU, 74 Mass. App. Ct. 500 (2009), *further appellate*
22 *rev. den'd*, 455 Mass 1102 (2009), *pet. for cert. den'd* 599 U.S. 992 (2010); Dedham
23 Education Association, 46 MLC 76, SI-19-7658 (October 24, 2019); Haverhill, slip op. at

1 17. In this case, the parties had been engaged in negotiations since November 2021,
2 the WTA had engaged in “rolling work to rule” action, and an October 2022 proposed
3 MOA was overwhelmingly rejected in November 2022 by the WTA membership. The
4 emails, tweets and social media postings described above express both Locke’s and
5 bargaining unit members’ anger at the Mayor and the School Committee at both the
6 substance of proposals, e.g., additional personal days and classroom size, as well as
7 the disrespectful way they believed they were being treated during bargaining, including
8 in particular, the Mayor’s statement just before winter break that teachers were
9 “replaceable.”

10 As in the Haverhill and Dedham decisions, the WTA’s postings and pamphlets
11 were replete with language expressing the WTA’s having reached a breaking point in
12 negotiations, including Twitter hashtags such as “nomorebusinessasusual” and a rally
13 poster virtually identical to that distributed in Haverhill stating that “Woburn educators
14 have had enough.” Other flyers indicated the WTA’s willingness to “fight” and “take
15 action”, such as the January 22 flyer that stated, “fighting for the schools our students
16 and Educators deserve” and the “Call to Action” flyer.

17 Further, contract talks appear to have stalled, at least in the period before the
18 expected strike vote. Despite Ellen Crowley’s efforts to schedule a bargaining date after
19 January 18, when she believed that further movement was likely, Locke replied that she
20 was busy on one proposed date or wanted to discuss teachers and paraprofessionals
21 together the following week, i.e., after January 27. When Ellen Crowley suggested
22 January 26, Locke sent no reply at all, which was unusual. This is similar to the situation
23 in Dedham, where, the day before a scheduled strike vote, the union president declined

1 to present any counterproposals to the School Committee's most recent proposals,
2 which represented movement on issues important to the union. We considered this
3 refusal to provide counterproposals evidence a strike was likely to occur. Dedham, 46
4 MLC at 80.

5 The timing of the WTA's actions in this case are also significant for a number of
6 reasons. First, it closely resembles the timing in Brookline Educators Union, 48 MLC
7 307, SI-22-9294 (May 12, 2022)²⁷ and Haverhill, supra. In those cases, as here, several
8 union meetings were scheduled for a week in which a strike vote was scheduled to (and
9 ultimately did) take place, and a rally in support of the local union educators was
10 scheduled within days of the strike vote.²⁸ The record in this case shows three meetings
11 scheduled for the week beginning January (January 23, January 25 and January 26)
12 followed by a rally on Saturday, January 28. We agree with the WTA that union meetings
13 and public rallies in support of getting a "fair contract" are quintessential protected
14 activities. Nevertheless, when viewed as a whole, and where the issue before us is
15 whether there is sufficient evidence to conclude that a strike is about to occur, we cannot
16 ignore the virtually identical pattern of union activity in this case, and in the two most
17 recent CERB decisions that resulted in strikes when inferring that a strike vote, followed
18 by a strike, is about to occur.

²⁷ The CERB takes administrative notice of the strike investigation record in Brookline.

²⁸ In Brookline, the strike vote was originally scheduled for Thursday, May 12 with a strike scheduled for Friday, May 13. The scheduled strike was moved to May 16. 48 MLC at 311. The Brookline Educators Union held two meetings that week, including a logistics meeting and strike school. Id. at 309. In Haverhill, the union held fourteen separate meetings with union executive board and MTA staff members in week preceding a scheduled October 14 strike vote with an MTA information meeting taking place on October 10. SI-22-9605, slip. op. at 9.

1 The most direct evidence that a strike vote is scheduled for January 27 and that
2 a strike is about to occur, comes from the Google form document sent to “Members” in
3 or around the week of January 22, that asked them to provide a phone number for “swift
4 communication” into “next week” and, most critically, stating “vote and wear black for
5 Friday’s vote at the Woburn Bowladrome at 3:15 for all teachers, paraprofessionals and
6 nurses.” The date of the vote is further confirmed by the Google calendar document that
7 Judkins found, which showed six entries for a “vote,” “Union vote,” or most tellingly, a
8 “Union strike vote” occurring on January 27, 2023. There is no tentative agreement or
9 other matter in evidence that the WTA may be voting on other than a strike vote.

10 We also rely to a lesser degree on Locke’s sharing the “Brave” YouTube video
11 with members, which resulted in one recipient stating that the video had now convinced
12 to that “We have to stand up.”²⁹ We also consider the comment on the WTA Facebook
13 page expressing hope that a strike vote passes on Friday. While standing alone this
14 would not have much weight at all, given the other evidence listed above, it lends
15 credence to the School Committee’s argument that the January 27 strike vote was “the
16 worst-kept secret in Woburn.”

17 In addition to finding that a strike vote is about to occur, we conclude that a strike
18 is about to occur. Here, evidence that a strike is about to occur may be inferred from the
19 Google forms document, which requested WTA members phone number to allow “swift”
20 action over the following week, and by the strong similarities in the timing of a strike vote,

²⁹ We do not find the tweets or retweets from the WTA regarding the Melrose strike or from Gesualdo to be particularly informative here. Teachers strikes in Massachusetts, though becoming increasingly frequent, are still newsworthy events and it is not surprising that union leadership or bargaining unit members would be interested in following and sharing information about such events.

1 a rally and the actual withholding of services, described in Brookline and Haverhill. It
2 may also be found in the FAQs, which, as distributed and ultimately borne out in
3 Brookline and Haverhill, make clear the WTA's strategy and pattern of determining strike
4 support before the strike vote so as to ensure that it passes, and holding an open vote
5 "very close in time" to a strike to avoid giving the district enough time to use what the
6 authors deem the "anti-worker" law, to get an injunction.

7 Finally, for many years prior to its decision in BTU, the CERB determined that a
8 strike "was about to occur" when a strike vote actually happened. The CERB reasoned
9 that it was then that the union had to take no further action for the strike to occur. BTU,
10 33 MLC 133 at 137 (citations omitted). The BTU line of cases modified that reasoning,
11 construing the phrase, "about to occur" appearing in Section 9A(b) of the Law to include
12 "situations where actions by employee organizations, their officials or members
13 demonstrate that an actual threat of strike work stoppage, or slowdown exists so that
14 public officials could reasonably engage in contingency planning, to prevent the
15 interruption of important public services. BTU, 74 Mass. App. Ct. at 503, fn. 6. The
16 Appeals Court ruled in subsequent proceedings that the "purpose of the [Law], set forth
17 in clear and unequivocal language, is to allow the [CERB] to intervene in a labor dispute
18 a point where the [CERB] may set the requirements necessary to prevent an illegal strike
19 that is about to occur." 74 Mass. App. at 505 (citing Utility Workers of America, Local
20 466 v. Labor Relations Commission, 389 Mass. 500, 505-506 (1986) for the proposition
21 that "strike by public employees 'may create exigent and unpredictable situations,'
22 therefore a public employer may act in good faith 'to prevent public services from being
23 disrupted.'").

1 More specifically, in BTU, the CERB found that a strike was about to occur based
2 on a motion that the BTU took on January 10, 2007 to approve holding a strike vote on
3 February 14 to hold a strike “on February 15 or such dates as may be chosen by
4 membership.” BTU, 33 MLC at 136. In affirming the CERB, the Appeals Court reasoned
5 that intervening at that point, i.e., nearly one month before a scheduled strike vote/strike,
6 would allow the CERB to act to prevent a strike instead of waiting for the actual strike to
7 occur. Here, there is ample evidence that a strike vote is about to occur. Therefore,
8 acting at this time, when it is likely based on the pattern of previous cases that a strike
9 will occur following Saturday’s rally unless the parties settle, allows us to set
10 requirements necessary to prevent an illegal strike.³⁰

11 In so finding, we consider the WTA’s argument that the School Committee’s
12 discovery of these documents amounts to unlawful surveillance of protected concerted
13 activity. We disagree. First, the WPS “Acceptable Use” of technology policy clearly
14 states that staff members have no expectation of privacy in emails or other documents
15 sent or received using the WPS server and grants it the right to retrieve and read such
16 documents. Further, while the search uncovered evidence of union meetings, there is
17 no evidence and the WTA does not contend that the School Committee surveilled those
18 meetings. Thus, as the SJC stated in Utility Workers of America, Local 466 v. Labor

³⁰ Because it appears that negotiations may have stalled and because it is the DLR’s mission to expeditiously encourage the parties to a labor dispute to agree on the terms of a settlement, see M.G.L c. 23, 90, as set forth in our Order, we are also requiring the parties to return to the table, to bargain in good faith and to participate in mediation. See Greater Lawrence Regional Vocational Technical High School District, 16 MLC 139, SI-225 (October 23, 1989) (ordering the parties to continue to bargain in good faith and participate in mediation as may be directed by the [former] Board of Conciliation and Arbitration); Hanover School Committee, 15 MLC 1182, SI-217 (September 27, 1988) (same).

1 Relations Commission, 389 Mass. at 505, “as long as a public employer acts in good
2 faith it must be permitted to take emergency actions to prevent public services from being
3 disrupted. A contrary interpretation of the statutory language would severely limit the
4 ability of the employer to protect and maintain important public services.” Here, there is
5 no indication that the School Committee acted in anything other than good faith when it
6 instructed Judkins to search its servers to confirm rumors regarding an upcoming strike
7 vote in order to prevent disruption to its services.

8 Inducing, Encouraging and Condoning

9 We also find that the WTA and Locke, in her official capacity as Union president,
10 were inducing, encouraging and condoning the strike. In so finding, we rely on the
11 evidence described above showing the WTA’s and Locke’s involvement in urging
12 members to, among other things, “fight,” “be brave,” and most tellingly, to vote on Friday.
13 We also consider that, given the opportunity at the investigation to disavow any
14 upcoming strike action, it failed to do so. Locke, when presented with the strike petition
15 by Matt Crowley simply responded, “I was expecting this.” Further, the WTA offered no
16 explanation as to why Locke was not present at the hearing after having been requested
17 by the School Committee to have Locke available to rectify any possible
18 misunderstanding that the School Committee had in its belief that a strike vote was
19 scheduled for January 27.

20 Finally, we dismiss the petition as to Locke in her individual capacity. We find no
21 evidence that any of the actions she took with respect to the upcoming strike vote were
22 done in anything other than her official capacity as WTA president. See Haverhill, supra,
23 slip op. at 23-24; Brookline, 48 MLC at 310.

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Conclusion

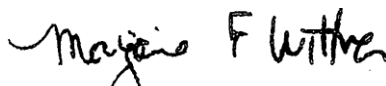
For the foregoing reasons, we conclude that the WTA and its officers and the employees it represents, and Locke in her official capacity, are about to engage in a strike in violation of Section 9A of the Law and that WTA and its officers and the employees it represents, and Locke in her official capacity, are inducing, encouraging and condoning such action in violation of Section 9A of the Law. Accordingly, pursuant to Section 9A(a) and (b) of the Law, we issue the following Order.

1. The WTA and its officers and the employees it represents, and Barbara Locke, in her official capacity, shall immediately cease and desist from engaging or threatening to engage in a strike or work stoppage, slowdown or other withholding of services.
2. The WTA and its officers and the employees it represents, and Locke, in her official capacity, shall immediately cease and desist from inducing, encouraging, or condoning any strike, work stoppage, or other withholding of services, either directly or through surrogates. The WTA shall not permit its officers to encourage, condone, or induce any strike, work stoppage, slowdown, or other withholding of services.
3. The WTA and its officers, and Locke, in her official capacity, shall publicly state that: (1) any vote to strike including, but not limited to, a vote to strike scheduled for January 27, 2023, regarding the current bargaining dispute between the WTA and School Committee is cancelled, and will not be rescheduled. (2) that any vote authorizing a strike to take place, which occurred after the investigation and prior to this interim order, is cancelled and there will be no strike action; 3) planning, inducing, encouraging, and condoning a strike, work stoppage, slowdown, or other withholding of services, is illegal and must therefore cease. The WTA and its officers and Locke in her official capacity shall immediately notify all employees the WTA represents of said statements immediately upon receipt of this order, using all of its usual means of communicating with its bargaining unit members including, but not limited to, posting the statements on its Facebook page and any other social media it uses to regularly communicate with its membership.
4. The WTA and its officers shall refrain from scheduling any further strike vote in connection with the same bargaining dispute.
5. The WTA and its officers and Locke, in her official capacity, shall take any necessary steps to notify the employees whom it represents of their obligation to fully perform the duties of their employment including the obligation to refrain from

- 1 any form of a strike or work stoppage. Such notification shall be completed
- 2 immediately upon receipt of this order and shall entail all of its usual means of
- 3 communicating with its bargaining unit members.
- 4
- 5 6. The WTA and its officers and Locke, in her official capacity, shall take any and all
- 6 necessary steps to inform the employees whom the WTA represents of the
- 7 provisions of Section 9A(a) and (b) of the Law and the contents of this order. Such
- 8 notification shall be completed immediately upon receipt of this order and shall
- 9 entail all of its usual means of communicating with its bargaining unit members.
- 10
- 11 7. The WTA, and its officers and Locke, in her official capacity, shall notify the DLR in
- 12 writing of the steps taken to comply with this Order by no later than Saturday,
- 13 January 28, 2022, at 12:01 p.m.
- 14
- 15 8. The WTA and the School Committee shall immediately initiate or resume
- 16 negotiations to resolution or impasse over the issues that separate them and utilize
- 17 the procedures for resolving disputes provided in their collective bargaining
- 18 agreements and M.G.L. c. 150E.
- 19
- 20 9. The WTA and the School Committee shall bargain in good faith for a successor
- 21 collective bargaining agreement and participate in mediation before a mediator
- 22 assigned by the DLR to bargain over the issues that separate them. The parties'
- 23 participation in mediation ordered by the CERB shall not affect their rights under
- 24 Section 9 of the Law.
- 25
- 26 10. The WTA, and its officers and Locke, in her official capacity, shall appear as
- 27 required by the CERB for a proceeding to determine compliance with this Order.
- 28
- 29 11. The DLR shall retain jurisdiction of this matter to set further requirements as
- 30 appropriate.
- 31

SO ORDERED

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



MARJORIE F. WITTNER, CHAIR



KELLY B. STRONG, MEMBER

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Victoria B. Caldwell

VICTORIA B. CALDWELL, MEMBER