

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 31,
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.

**SECOND RULING ON STRIKE PETITION AND SUPPLEMENTAL INTERIM ORDER
PERTAINING TO MTA**

1 On January 27, 2023, the Commonwealth Employment Relations Board (CERB)
2 issued a Ruling on Strike Petition and Interim Order finding that the Woburn Teachers
3 Association (WTA) and WTA President Barbara Locke (Locke), in her official capacity,
4 had induced encouraged and condoned an unlawful strike and that the WTA was about
5 to hold a vote to authorize an unlawful strike. A copy of that ruling is attached herein as
6 Appendix One and its findings and conclusions are incorporated and supplemented
7 below.¹ During the strike investigation, the Massachusetts Teachers Association (MTA)
8 filed a motion to dismiss the strike petition on three grounds: 1) that strike petitions under
9 Section 9A of M.G. L. c. 150E (the Law) may be brought only against employee
10 organizations that actually represent the employees of the employer in question; 2) that
11 the allegations against the MTA set forth in the Woburn School committee's Strike Petition
12 are "riddled with inaccuracies" and do not justify an inference that the MTA was engaged
13 in unlawful activity under Section 9A; and 3) that the Strike Petition otherwise relies on
14 protected, concerted activity.

15 The MTA provided three affidavits with its Motion to Dismiss:

16 1. An affidavit from the MTA's Director of Field and Organizing Mike Fadel (Fadel)
17 in which Fadel denied that the MTA distributed the Frequently Asked Questions

¹ The CERB takes administrative notice of the Verified Complaint for Injunctive Relief filed by the CERB on January 30, 2023 in Middlesex Superior Court in C.A .No. 2381CV288. The Verified Complaint alleged that the WTA and its employees failed to comply with the CERB's Interim Order by, among other things, taking a strike vote on January 27, 2023 to begin an open-ended strike beginning on Monday, January 30, 2023 and, upon information and belief, subsequently going out on strike on January 30, 2023. On the evening of January 30, 2023, Associate Justice Maureen Mulligan issued an order restraining the WTA from failing to comply with the CERB's Interim Order, as modified.

- 1 document² that was attached as Exhibit E to the Woburn School Committee
2 Strike Petition to WTA members.³
3
- 4 2. An affidavit from the MTA’s Director of Government Relations, Eric Nakajima
5 (Nakajima), stating that the MTA publicly supports certain legislation filed in the
6 Massachusetts House and Senate that would allow certain public employees
7 to engage in strikes under certain circumstances.
8
- 9 3. An affidavit from the MTA’s Director of Communications Amanda Torres-Price
10 (Torres-Price) attaching an Excel spreadsheet that described various social
11 media postings that the MTA had re-posted or retweeted concerning many
12 different MTA local affiliates. Torres-Price attests that the postings are “routine
13 union communications and do not necessarily imply endorsement of an original
14 post or tweet” but rather “serve to draw attention to an important issue or to
15 news of interest to our members at large.” Torres-Price stated that “MTA’s
16 social media about the Woburn contract dispute has not endorsed, induced,
17 encouraged or any work stoppage.”⁴

18 We deny the MTA’s motion to dismiss and find that the MTA has unlawfully,
19 encouraged or condoned a strike vote and future strike activity by the WTA.

20 Relevant Facts

² The FAQ’s were entered without objection as Petitioner Exhibit 5 during the Investigation. The FAQs are discussed on pages 13, 21 and footnote 21 of the Strike Ruling and Interim Order.

³ Fadel also addressed the documents that comprised proposed Petitioner Exhibit 13. The Petitioner did not offer Exhibit 13 during the strike investigation – we therefore do not address this aspect of Fadel’s affidavit.

⁴ The Strike Investigation began at approximately 11:00 AM on January 26, 2023. MTA filed the Motion to Dismiss at around 2:38 PM. The MTA’s attorney explained that the affiants were not available to testify that day due to an offsite meeting but offered to make them available the following day should the CERB deem their testimony necessary. The School Committee objected to this offer, noting that the investigation was being conducted virtually and that the MTA could have and should have made the witnesses available on the day of Investigation. Even assuming the truth of the statements in the affidavits, we deny the motion to dismiss for the reasons stated in this ruling. We therefore do not need to have live testimony, nor do we need to determine whether the affidavits would otherwise have been admissible.

1 Without reiterating all of the findings and stipulations in the January 27 Strike
2 ruling, this ruling is based primarily on the following portions of the investigation record:

3 1. Stipulation 8, which states:

4 The WTA is an affiliate of the Massachusetts Teachers Association
5 (MTA). The MTA is an employee organization within the meaning of
6 Section 1 of the Law. The MTA supplies field representatives and
7 legal counsel to advise and represent the WTA in certain labor
8 relations matters, including contract administration.
9

10 2. The un rebutted finding on p. 7 of the Strike Ruling that MTA representative Jean
11 Venette (Venette) was present at most WTA and School Committee successor
12 bargaining sessions.

13
14 3. Petitioner Exhibit 6A, which is an email exchange between Locke and a bargaining
15 unit member.⁵ The exchange began on Monday, November 7, 2022 at 8:17 AM
16 with the following email from a bargaining unit member.

17
18 Hi Barbara,

19
20 On behalf of myself and many of the staff, I strongly urge you to call
21 for us to take a sick day tomorrow in solidarity. We have had enough.
22 The vote was strong but attending another ridiculous personal day
23 when we could call out and make a difference without affecting the
24 students sends a powerful message. To come in wearing t-shirts is
25 quite frankly, weak. To not encourage us all to take tomorrow off
26 would be a missed opportunity.
27

28 Union President Barbara Locke (Locke) responded on November 7, 2022
29 at 10:08 AM from her Woburn Public Schools (WPS) email account as
30 follows:

31
32 Good Monday Morning!

33
34 I have reached out to MTA's Kevin Tierney (the MTA Action leader
35 for Haverhill's strike) asking his opinion on this exact action. He
36 strongly disagrees with Woburn taking any kind of strike action
37 (which a sick out is considered) at this stage and especially on a PD
38 Day. We (WTA Action Team and Board) are meeting with him
39 tomorrow at 3:30 pm for his *advice, expertise and plan moving*
40 *forward*. Our Negotiation Team is also meeting with the SC and
41 Mayor tonight at 5pm.

⁵ Page 7 of the Strike Ruling included an excerpt from that exchange.

1 I respect and understand your frustrations...more than you know.
2 But I believe at this time we need to stay disciplined, united and listen
3 to MTA. Would you like to attend the meeting tomorrow? I can send
4 the link to you ... just in case.

5
6 Respectfully, Barbara
7

- 8 4. Stipulation 19, stating that WTA has not engaged in any unlawful strikes from
9 August 21, 2021 until January 26, 2023 at 4:00 PM.
10
11 5. Petitioner Exhibit 5, a document containing Frequently Asked Questions
12 (FAQs) This document indicates, among other things, that the MTA
13 maintains a Crisis Support/strike fund that reimburses certain eligible
14 striking employees up to one half of their net pay lost due to a strike.
15
16 6. That portion of Petitioner Exhibit 5 describing the timing of strike activity and stating
17 that strike votes are held only after tallying "supermajority" support for the vote.
18
19 7. Petitioner Exhibit 11, an invitation that WTA President Barbara Locke (Locke) sent
20 from her WPS email address to Venette and several WPS employees containing
21 a link to a Google Meet meeting on January 25, 2023, two days before the planned
22 strike vote.
23
24 8. Petitioner Exhibit 4, which included on pages 2 and 4, a flyer for a Woburn
25 Educators Rally on Saturday, January 28, 2023, the day after the planned
26 strike vote. The flyer stating that, "Educators, students, and families in
27 Woburn have had enough" and announced a "special guest" MTA President
28 Max Page. A WTA tweet accompanying the thread (also contained in
29 Petitioner Exhibit 4) stated, "Come join us as we fight for respect and a fair
30 contract."
31
32

33 Ruling

34

35 Section 9A(a) of the Law states:
36

37 No public employee or employee organization shall engage in a strike, and
38 no public employee or employee organization shall induce, encourage or
39 condone any strike, work stoppage, slowdown or withholding of service by
40 such public employees.
41

42 We address each of the MTA's arguments in support of its motion to dismiss in
43 turn.

44 MTA as Respondent

1 The MTA argues that Section 9A was not intended to apply to employee
2 organizations other than the ones that are party to a work stoppage or a presumed work
3 stoppage. It asserts that it is not in a collective bargaining relationship with the School
4 Committee and does not represent the WPS employees – rather it only has an affiliate
5 relationship with the WTA. Further, it has not previously defended itself from claims that
6 it violated Section 9A. We are not persuaded by these arguments or by the MTA’s
7 construction of 9A or relevant CERB caselaw.

8 First, the MTA stipulated that it is an employee organization within the meaning of
9 Section 1 of the Law and Section 9A(a) of the Law prohibits an “employee organization”
10 from inducing any work stoppage, slowdown or withholding of services.” The MTA further
11 stipulated that it supplied field representatives and legal counsel to advise and represent
12 the WTA in certain labor relations matters, including contract enforcement. Thus, as a
13 simple matter of statutory construction, the MTA, as an employee organization, is subject
14 to Section 9A(a)’s prohibitions. Even if we were to construe the Law as prohibiting only
15 employee organizations that have some type of relationship with the bargaining unit at
16 issue from inducing, encouraging or condoning any work stoppage, that nexus would be
17 easily met by the MTA’s admitted role in advising and representing the WTA in certain
18 labor relations matters.

19 Chapter 150E caselaw confirms this. The School Committee is correct that in
20 cases where CERB has dismissed strike petitions against MTA, it has done so because
21 CERB found insufficient evidence that MTA has induced, condoned, or encouraged a
22 strike and *not* because it was not the recognized or certified representative of the
23 employees for purposes of collective bargaining, or a party to the CBA. See, e.g., Medford

1 School Committee, 21 MLC 1349, SI-251 (October 14, 1994) (dismissing strike petition
2 as to MTA because CERB found no facts showing that MTA had been involved);
3 Tewksbury School Committee, 21 MLC 1494, SI-255 (December 6, 1994) (same).

4 Further, on a least two occasions the CERB held that a parent labor organization
5 or a representative of such an organization violated Section 9A(a) by unlawfully inducing,
6 encouraging and condoning a strike conducted by the local affiliate. In Brockton School
7 Committee and Brockton Public School Secretaries Association (BPSSA) and Local 925,
8 SEIU, 13 MLC 1545, SI-197 (March 27, 1987), the collective bargaining agreement was
9 between BPSSA and the Brockton School Committee, but Local 925, SEIU's president
10 and field representative Dorine Levasseur (Levasseur), was a member of the BPSSA's
11 bargaining team. The CERB made two findings with respect to Levasseur and Local 925,
12 SEIU – 1) that Levasseur was observed participating in picketing and 2) that Local 925,
13 SEIU had not presented any evidence showing that “Levasseur took any affirmative steps
14 to encourage members of the bargaining unit to refrain from engaging in the illegal
15 withholding of services or to return to their assigned duties.” The CERB held that “such
16 conduct by an agent of Local 925, SEIU is evidence that Local 925, SEIU induced,
17 encouraged and condoned the illegal withholding of services.” Id. at 1549. The CERB
18 ordered Local 925, SEIU and Levasseur to immediately cease and desist from that
19 conduct. Id.

20 Similarly, in City of Worcester, Worcester Vocational Teachers Association
21 (WVTA), MTA, et al., 13 MLC 1627, SI-198 (April 23, 1987), the strike petition named
22 various officers and bargaining team members as respondents, including Gerald E.
23 Coleman (Coleman), who was employed by the MTA as a field representative and was

1 the WVTA's chief spokesman. The CERB found that Coleman condoned the strike when
2 he informed the School Committee that the Union's membership had voted to strike. As
3 part of its order, the CERB ordered Coleman not to induce, encourage or condone the
4 strike.⁶ Id. at 1630.

5 More recently, Haverhill School Committee, SI-22-9605 (Ruling on Strike Petition
6 and Interim Order, October 15, 2022), the CERB found, and a Superior Court judge
7 agreed, that the MTA was unlawfully inducing and condoning a strike by its local affiliate.⁷

8 Thus, based on the foregoing analysis and precedent, the MTA's argument that
9 Section 9A was not intended to apply to the MTA, or similar employee organizations, and
10 lacks merit.

11 The Investigation Record Supports the Inference that the MTA is Inducing, Encouraging
12 or Condoning a Strike

13
14 Even assuming the truth of Fadel's attestation that the MTA did not distribute FAQs
15 to bargaining unit members in this case, there remain sufficient facts from which CERB
16 can infer that MTA was inducing, encouraging or condoning strike. The November 7
17 email exchange between Locke and a bargaining unit member provides the most
18 compelling evidence of this. This exchange shows that within two hours of a bargaining
19 unit member sending an email to Locke stating that she and other staff members

⁶ Although the MTA was named as a respondent, the CERB's decision did not address whether the MTA itself had violated Section 9A(a).

⁷ See CERB v. Haverhill Education Association, et. al., Essex County Superior Court, C.A. No. 2277CV00990, Docket Nos. 1, 13 (October 17, 2022), The MTA subsequently brought a separate cause of action in Suffolk Superior Court under M.G.L. c. 249, §4, alleging that the CERB's actions were based upon substantial errors of law evident in the record. Massachusetts Teachers Association v. Commonwealth Employment Relations Board, Suffolk Superior Court, Docket No. 2284CV02832. That matter is pending.

1 supported calling out sick the next day “in solidarity,” Locke reported that she had
2 consulted Kevin Tierney (Tierney), whom she identified as the MTA’s Action leader for
3 the Haverhill’s strike. Locke reported that Tierney “strongly disagreed” with the WTA
4 taking any kind of strike action “*at this stage.*” (Emphasis added). Despite acknowledging
5 the bargaining unit member’s and her own frustrations, Locke and the WTA apparently
6 complied with this advice as there is no evidence that the WTA engaged in a sickout in
7 November and the parties stipulated that there had been no unlawful strike action in that
8 time frame.

9 Locke’s email provides further evidence that the MTA’s Action Leader for the
10 Haverhill strike was advising the WTA when Locke informs the bargaining unit member
11 that she is meeting with Tierney the next day for his “*advice, expertise and plan moving*
12 *forward.*” (Emphasis added). That Locke intended to follow Tierney’s advice is evident
13 from her next statement that, despite recognizing and understanding the bargaining unit
14 member’s frustrations, Locke believed that, at this time, “they needed to “stay disciplined,
15 united and listen to the MTA.” She even invited the bargaining unit member to attend the
16 meeting with Tierney. Given our findings in our earlier ruling that the Woburn strike
17 followed virtually the same pattern as Haverhill’s, i.e., strike vote, followed by rally,
18 followed by strike, and this email showing that WTA sought out and intended to follow
19 Tierney’s advice, it is reasonable to infer that “part of the plan moving forward,” was the
20 January 27 strike vote and potential strike that the WTA engaged in a strike vote based
21 on the advice and expertise of Tierney or some other MTA representative.

22 Other evidence that we relied upon in our Haverhill decision that the MTA induced,
23 encouraged or condoned a strike is present here – MTA president Max Page being a

1 featured guest speaker at a rally the day after a strike vote which, based on the FAQs,
2 was likely to pass; the presence of the MTA representatives at meetings the week of the
3 strike vote; and the availability of the MTA Crisis Support/strike fund to compensate
4 eligible strikers for some portion of their lost wages.

5 Finally, we note, that here, as in Brockton, supra, the MTA provided no evidence
6 that any of their representatives had taken any affirmative steps to encourage members
7 to refrain from engaging in the illegal withholding of services, even though it had the
8 opportunity to present such evidence at the strike investigation. Even though Fadel denied
9 in his affidavit that the MTA had distributed the FAQs to WTA membership, neither Fadel,
10 nor the other two affiants, denied that the MTA had induced, encouraged or condoned the
11 WTA's strike vote or any resulting strike, work stoppage or other withholding of services.
12 See Labor Relations Commission v. Fall River Education Association, 382 Mass. 465, n.
13 7 (1981) (a hearing officer would be warranted "in drawing an inference adverse to an
14 employee organization from its failure to present information from its officer or other
15 persons available to it"). As a whole, this evidence is sufficient for us to conclude that the
16 MTA, like the WTA, is inducing, condoning and encouraging a strike in violation of the Law.

17 Protected Concerted Activity
18

19 The MTA seeks to dismiss the petition on grounds that it relies on protected,
20 concerted activity. We agree with the MTA that its posts or re-tweets regarding other
21 labor organizations in general constitute lawful protected activity and we do not rely on
22 those posts in reaching our conclusion here. Nor do we rely in any way on MTA's lawful
23 conduct in support of proposed legislation that would amend Section 9A to allow certain
24 strike by certain public employees. If such legislation were enacted, the CERB would

1 enforce it. At present, however, strikes by public sector employees in Massachusetts are
2 illegal and Section 9A prohibits labor organizations from inducing, encouraging and
3 condoning such unlawful behavior. For the reasons set forth in the preceding section, we
4 conclude that the MTA is inducing, condoning and encouraging a strike in violation of the
5 Law.

6 Conclusion

7
8 For the foregoing reasons, we conclude that the MTA is inducing, encouraging and
9 condoning an unlawful withholding of services in violation of Section 9A of the Law.
10 Accordingly, pursuant to Section 9A(a) and (b) we issue the following supplemental
11 Order:

- 12 1) The MTA and its officers shall immediately cease and desist from inducing,
13 encouraging or condoning any strike, work stoppage, slowdown or other
14 withholding of services. The MTA shall not permit its officers to encourage,
15 condone or induce any strike, work stoppage, slowdown or other withholding
16 of services.
17
- 18 2) The MTA and its officers shall publicly state, no later than 5:00 PM on January
19 31, 2023 that (1) any strike that has resulted from the strike vote that was
20 scheduled to take place on January 27, 2022, as well as any other work
21 stoppage, slowdown, or other withholding of services is illegal and must
22 therefore cease; and 2) that the WTA's members must immediately return to
23 work.
24
- 25 3) The MTA, and its officers shall notify the Department of Labor Relations in
26 writing of the steps taken to comply with this order by no later than Tuesday,
27 January 31, 2023 at 5:00 PM.
28
- 29 4) The MTA and its officers should appear as required by the CERB for a
30 proceeding to determine compliance with this Supplemental Order.
31

32 SO ORDERED.
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COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

Marjorie F. Wittner

MARJORIE F. WITTNER, CHAIR

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