

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

In the Matter of

BEVERLY TEACHERS ASSOCIATION

and

JULIA BROTHERTON, in her capacity as
Co-President of the BTA

and

BEVERLY SCHOOL COMMITTEE

Case No.: SI-24-10951

Date issued: November 20, 2024

CERB Members Participating:

Kelly B. Strong, CERB Member

Victoria B. Caldwell, CERB Member

Appearances:

Robert D. Hillman, Esq. - Representing the Beverly School Committee
Eric T. McKenna, Esq.

Richard Mullane, Esq. - Representing the Beverly Teachers
Quesiyah Ali, Esq. Association and the individually named
Respondents

CERB SECOND RULING ON STRIKE PETITION

1 On November 7, 2024, the Department of Labor Relations (DLR), on behalf of the
2 Commonwealth Employment Relations Board (Board), held an investigation pursuant to Section
3 9A of Massachusetts General Laws Chapter 150E (the Law) and 456 CMR 16.03 after the
4 Beverly School Committee (School Committee) filed a Petition for Strike Investigation, alleging

1 that the Beverly Teachers Association (BTA or Union) and its officers induced, encouraged, and
2 condoned a strike in violation of Section 9A of the Law.

3 After reviewing all of the evidence, which included uncontested evidence that the Union
4 held a vote on the evening of Thursday, November 7, 2024 authorizing a strike to begin
5 immediately, the Board issued a Ruling on Strike Petition and Interim Order (Interim Order) the
6 same night, on November 7, 2024. In the Interim Order, the Board concluded that the Union, and
7 its BTA's co-president, Julia Brotherton (Brotherton), in her official capacity, violated Section 9A
8 of the Law by inducing, encouraging, and condoning a strike in violation of Section 9A of the
9 Law. The Board ordered the Union to, among other things:

- 10 1. The BTA and its officers and the employees it represents shall immediately
11 cease and desist from engaging in or threatening to engage in a strike or work
12 stoppage, slowdown or other withholding of services.
13
- 14 2. The BTA and its officers, including Julia Brotherton, in her official capacity, shall
15 immediately cease and desist from inducing, encouraging, or condoning any
16 strike, work stoppage, or other withholding of services, either directly or through
17 surrogates. The BTA shall not permit its officers to encourage, condone, or
18 induce any strike, work stoppage, slowdown, or other withholding of services.
19
- 20 3. The BTA and its officers, including Julia Brotherton in her official capacity, shall
21 publicly state that:
 - 22 a. any vote authorizing a strike including, but not limited to, a vote that
23 took place on November 7, 2024 authorizing a strike to begin on
24 November 8, 2024, is cancelled and will not be rescheduled. There
25 will be no strike action.
26
 - 27 b. engaging in, planning, inducing, encouraging, and condoning a
28 strike, work stoppage, slowdown, or other withholding of services, is
29 illegal and must therefore cease.
30
 - 31 . . .
32
- 33 9. The BTA and the School Committee shall immediately resume negotiations and
34 mediation in accordance with the provisions of 456 CMR 21.00 et. seq before
35 a mediator assigned by the DLR to bargain over the issues that separate them.
36 The parties' continued participation in mediation ordered by the CERB shall not
37 affect their rights under Section 9 of the Law.

1
2 10. The BTA and its officers shall appear as required for a proceeding to determine
3 compliance with this Order.
4

5 11. The DLR and the CERB shall retain jurisdiction of this matter to set further
6 requirements as appropriate.

7 The Union, its members, and Brotherton failed to comply with paragraphs 1-3 of the
8 Board's Interim Order by continuing to engage in an illegal strike on November 8, 2024 and
9 induce, encourage, and condone the strike. As such, on November 8, 2024, the Board sought,
10 and obtained, a preliminary injunction to enforce its Interim Order.¹ Among other things, the
11 Preliminary Injunction requires the BTA, its officers, and Julia Brotherton, in her official capacity,
and the employees the BTA represents to comply as follows:

12 a. The BTA and its officers and the employees it represents shall immediately
13 cease and desist from engaging in or threatening to engage in this strike or
14 work stoppage, slowdown or other withholding of services, and shall
15 immediately return to their assigned work locations on November 12, 2024.
16

17 b. The BTA, its officers, Julia Brotherton, in her official capacity, and the
18 employees it represents shall immediately cease and desist from inducing,
19 encouraging, or condoning this strike, work stoppage, or other withholding of
20 services, either directly or through surrogates. The BTA shall not permit its
21 officers to encourage, condone, or induce any strike, work stoppage, slowdown,
22 or other withholding of services.
23

24 c. The BTA and its officers, in her official capacity as President of the BTA, shall
25 publicly state by 10:00 a.m. on Monday, November 11, 2024 that: (1) the strike
26 is cancelled and there will be no continued strike action; (2) engaging in,
27 planning, inducing, encouraging, and condoning a strike, work stoppage,
28 slowdown, or other withholding of services, is illegal and must therefore cease.
29

30 d. The BTA and the School Committee shall immediately resume negotiations and
31 mediation in accordance with the provisions of 456 CMR 21.00 et. seq before
32 a mediator assigned by the DLR to bargain over the issues that separate them.
33

34 e. The BTA and its officers shall appear as required by the Board for a proceeding
35 to determine compliance with this order and the Board's Interim Order.

¹ The School Committee intervened in the action. See CERB v. Beverly Teachers Association et al, Essex County Superior Court, C.A. No. 2477CV01172.

1 The DLR and the CERB shall retain jurisdiction of this matter to set further
2 requirements as appropriate.

3 Notwithstanding the Court's Preliminary Injunction Order, the Union and Brotherton
4 continued to fail to comply with the Board's Interim Order and the Court's Preliminary Injunction
5 Order by continuing to engage in a second day of an illegal strike on November 12, 2024 and
6 induce, encourage, and condone the illegal strike. As such, the Board and the School Committee
7 filed a Complaint for Civil Contempt on Tuesday, November 12, 2024² against the Union and
8 Brotherton, seeking coercive prospective fines in the amount of \$50,000 per day with a \$10,000
9 escalator. The following day, on November 13, 2024, the strike continued, and at or about 4:07
10 p.m., the Court granted the Board and School Committee's request for coercive prospective fines
11 to be immediately paid on a daily basis. The Court ordered the Union to comply with the Law
12 and the Preliminary Injunction Order or pay the requested coercive prospective fine.

13 Shortly after the Court's Contempt Order, at or about November 13, 2024 at 6:38 p.m.,
14 the BTA filed an unfair labor practice charge, alleging that the School Committee violated
15 Sections 10(a)(5) and 10(a)(1) of the Law by, among other things, regressive bargaining and
16 failing to bargain in good faith during bargaining sessions that occurred while the BTA was on
17 strike.³

18 Due to its continued contempt, and pursuant to the Court's Contempt Order, the BTA
19 delivered checks to the DLR, for remittance to the Commonwealth's General Fund, in the amount

² November 11, 2024 was the Veterans Day holiday and the schools and courts were closed.

³ Prior to this date, the Union had not filed any charges against the School Committee alleging that the School Committee violated Section 10(a)(5) of the Law by failing to bargain in good faith during successor bargaining sessions. We acknowledge and take administrative notice of MUP-24-10847 where the Union filed a charge alleging the School Committee unilaterally implemented a policy prohibiting union signs.

1 of \$50,000 and \$60,000. By November 15, 2024 at 3 p.m., due to the BTA's continued strike and
2 failure to comply with the Court's Preliminary Injunction Order, the BTA incurred an additional
3 \$70,000 in fines but has not fully paid it.

4 On Friday, November 15, 2024, the BTA filed a motion with the Court alleging that it does
5 not have adequate funds to pay the \$70,000 fine. Shortly after, the School Committee filed a
6 motion with the Board asserting that coercive fines have not been performing their function of
7 coercing the BTA to end its strike and requesting the Board to determine alternative or additional
8 remedies of enforcement mechanisms that are reasonably calculated to cause the BTA to
9 discontinue the strike.

10 Since the Board's Interim Order on November 7, 2024, the DLR's mediator has been
11 assisting the parties in mediation, pursuant to Paragraph 9 of the Board's Interim Order and
12 Section 9 of the Law. On October 18, 2024, the School Committee filed a unilateral petition with
13 the DLR to determine the existence of an impasse between the School Committee and the BTA's
14 Units A and C, at issue in the strike, and to invoke the mediation and fact-finding process under
15 Section 9 of the Law. On October 30, 2024, the BTA agreed that the parties were at an impasse
16 and informed the DLR on October 31, 2024, that the BTA did not object to the School
17 Committee's mediation request. The mediations have occurred every day, including over two
18 weekends, for many hours each day.⁴

⁴ According to the Union's Response to the Show Cause letter, since the Board's Interim Order, the parties have bargained for over 86 hours.

1 The strike has continued into a second week, and it has been at least eleven (11) days
2 since the strike began and the students at Beverly Public Schools have been deprived of at least
3 six (6) days of school.⁵

4 In light of the above-referenced facts and the School Committee's motion for alternative
5 or additional remedies, on November 18, 2024, we ordered the Union to show cause (Show
6 Cause letter) why the Board should not issue an order finding that the School Committee is
7 henceforth not required to bargain while the BTA's unlawful strike is ongoing.⁶ The School
8 Committee was also permitted to submit its position and provide additional argument and briefing
9 on this specific issue. Both the Union and the School Committee filed responses to the Board's
10 Show Cause letter.⁷ Neither party disputed the facts set forth above in the Show Cause letter.

11 Ruling

12 Section 9A(a) of the Law prohibits public employees and employee organizations from
13 engaging in, inducing, encouraging, or condoning any strike, work stoppage, slowdown, or
14 withholding of services. It is undisputed that the Union has been inducing, encouraging, and
15 condoning an illegal strike for over eleven (11) days, and that the Union has been on strike for
16 over seven (7) school days. Further, it is undisputed that the Union has disobeyed Section 9A(a)
17 of the Law despite both the Board's order and the Court's preliminary injunction order requiring

⁵ There is no evidence that the strike has ended since the Show Cause letter was issued. As such, as of today, it has now been thirteen (13) days since the strike began and eight (8) days of school that the students at Beverly Public Schools have been deprived of school.

⁶ The Board also asked the parties to brief the issue of whether the Board should request the Court to order the parties to engage in binding arbitration under the Court's equitable powers. We are not deciding this issue at this time.

⁷ The Board ordered the parties to file their responses to the Show Cause letter by 2:00 p.m. The Union filed a motion to extend the time to respond to the Show Cause letter and for oral argument, and the School Committee filed an opposition to the motion. The Board denied the Union's motion.

1 the Union to cease its illegal strike. Finally, it is clear that the Court's fines, issued in its November
2 13, 2024 Contempt Order, by themselves, have not had their intended effect of coercing the
3 Union to comply with the Court's preliminary injunction order to cease its illegal strike. In light of
4 the Union's representation that it has run out of monies to pay the fines, it appears that some
5 other order besides coercive fines is required to bring the Union into compliance with the Law.

6 Section 6 of the Law states, in relevant part, that:

7 The employer and the exclusive representative shall meet **at reasonable times**,
8 including meetings in advance of the employer's budget-making process and shall
9 **negotiate in good faith** with respect to wages, hours, standards or productivity
10 and performance, and any other terms and conditions of employment, including
11 without limitation, in the case of teaching personnel employed by a school
12 committee, class size and workload, **but such obligation shall not compel either**
13 **party to agree to a proposal or make a concession.**

14
15 (emphasis added).
16

17 Here, the Union has engaged in self-help and is undisputedly engaging in an illegal strike,
18 placing thousands of students at Beverly Public Schools out of school. While it has alleged in
19 the public forum, that it had to go on strike because the School Committee has not bargained in
20 good faith and that it would not cease its illegal activity until the School Committee reached a
21 "fair" settlement with it, the Union did not file any charges of prohibited practice with the DLR
22 under the procedures set forth in Section 11 of the Law, prior to going out on strike, alleging a
23 failure by the School Committee to bargain in good faith during negotiations for a successor
24 agreement.⁸ Further, there is a process under Section 9 of the Law for resolving an impasse

⁸ We take administrative notice of the Petitioner's Exhibit 2, which the School Committee's entered into evidence at the strike investigation without opposition. It is a screenshot of the BTA's public Instagram page where the BTA posted an image announcing the strike with text over it stating that "[t]he BTA will remain on strike until the Beverly School Committee bargains in good faith and settles fair contracts for Units A and C."

1 during contract negotiations, which includes fact-finding, in which the Union and the School
2 Committee would have a full opportunity to present their position before a neutral fact-finder and
3 a neutral fact-finder would make his or her recommendations to the parties based on the full
4 record before him or her. See Labor Relations Com'n v. Chelsea Teachers' Union, 400 Mass.
5 120 (1987) (declining to address the union's arguments against the Section 9A strike prohibition
6 where the Union failed to exhaust its administrative statutory procedures under Section 9 of the
7 Law, including the fact-finding process which the Court opined "moral suasion, supported by
8 mediation and fact-finding, might have produced a settlement"). The Union also declined to
9 engage in this process prior to going out on strike that provides a full and fair opportunity for both
10 parties to be heard before a neutral party.

11 Instead, the Union's public actions in announcing its strike and engaging in a strike, with
12 the message that the School Committee was not acting "fair" or in "good faith" were clearly
13 designed to garner the public attention to coerce the School Committee into capitulating to its
14 demands.⁹ See Board of Selectmen of Marion v. Labor Relations Commission, 7 Mass. App. Ct.
15 360 (1979) (acknowledging that "bargaining in public would tend to prolong negotiations and
16 damage the procedure of compromise inherent in collective bargaining" and that "[t]he reason
17 underlying this conclusion is that the presence of the press and public induced rigidity and
18 posturing by the negotiating teams and provokes in them anxiety that compromise will look like
19 retreat"). Where the Union has continued its illegal strike in violation of Section 9A(a) of the Law

⁹ We note that pursuant to our well-established decisions in Holbrook Education Association, 14 MLC 1737, MUPL-2892 (May 19, 1988) and Local 285, SEIU, 17 MLC 1610, MUPL-3722 (March 21, 1991), engaging in a strike is not only a violation of Section 9A of the Law but is also a refusal to bargain in good faith and interferes, restrains, and coerces the employer in the exercise of its rights under the Law which are prohibited practices in violation Sections 10(b)(2) and (1) of the Law where the strike is used as a bargaining tactic for the purposes of gaining concessions at the bargaining table.

1 despite the judicial enforcement process and contempt fines have not been effective, the Board
2 finds that there is no requirement under the Law that the School Committee continue to bargain
3 with the Union henceforth while the Union and its members remains on strike.

4 As such, we are modifying our order to eliminate any requirement that the School
5 Committee continue to bargain while the Union is engaged in an unlawful strike. Therefore, if the
6 School Committee decides not to bargain at all with the Union while the Union's strike is ongoing,
7 such a decision is not a prohibited practice under the Law.¹⁰ To the extent that this ruling
8 conflicts with Lexington School Committee, 14 MLC 1343, SI-209 (Nov. 30, 1987) and Hudson
9 School Committee, 14 MLC 1403, SI-211 (Dec. 7, 1987), where the Labor Relations Commission
10 (LRC), the Board's predecessor, held that the school committees were required to continue
11 bargaining regardless of the unions' strike activity, we hereby overturn those rulings. While the
12 Commonwealth's public sector labor law statute, M.G.L. Chapter 150E, favors collective
13 bargaining in order to resolve workplace disputes, the Legislature, in enacting Chapter 150E,
14 included Section 9A of the Law which is a broad, express and specific public policy against
15 strikes by public sector employees. See Director of Division of Emp. Relations of Dept. of Admin.
16 And Fin. v. Labor Relations Commission, 370 Mass. 162 (1976) (detailing the legislative history
17 of the Commonwealth's public sector strike prohibition which drafts had provided some limited
18 circumstances under which public sector employees could strike, but ultimately the final enacted
19 statute, Section 9A of the Law, expresses a clear prohibition against strikes in any
20 circumstances).

¹⁰ We acknowledge that the School Committee may still wish to continue bargaining with the Union in order to reach an agreement so that the underlying successor contract dispute may be resolved while the strike is ongoing. To the extent that School Committee does, the Board's Order that the parties do so in accordance with the provisions of 456 CMR 21.00 et. seq before a mediator assigned by the DLR remains.

1 The Union argues that suspending the School Committee's duty to bargain will unfairly
2 disrupt the balance of power between the School Committee and the Union and unlawfully favor
3 the School Committee in the bargaining process in a way that is not contemplated or supported
4 by the Law. However, the Union fails to acknowledge its own clear and unmistakable violation
5 of the Law which expressly prohibits the Union from engaging in a strike, and withholding
6 services to thousands of students, as a bargaining tool. As previously stated, the Union has
7 denounced any of the statutory options available to it under Sections 9 and 11 for resolving its
8 labor disputes with the School Committee. It was only after the Union engaged in a strike that it
9 alleged that the School Committee was bargaining in bad faith during the strike. Prior to this, the
10 Union had not filed a charge of prohibited practice with the DLR alleging that the School
11 Committee was bargaining in bad faith at the bargaining table during these successor contract
12 negotiations. Further, to the extent that the Union genuinely believes its proposals at the
13 bargaining table are fair and reasonable, the Union has failed to subject itself to the fact-finding
14 process under Section 9 of the Law, whereupon a neutral arbitrator can review the bargaining
15 proposals from both the Union and the School Committee and make his or her
16 recommendations, before engaging in an unlawful strike.¹¹

17 These statutory options are available to any union that believes its employer is not
18 engaging in good faith bargaining and believes that its proposals are fair and reasonable. We
19 take administrative notice of an increase in educators' strikes that have occurred since 2022,
20 including our decisions that a strike has occurred or is about to occur and ensuing judicial

¹¹ In fact, on or about November 18, 2024, the Board requested the Court order the Union and the School Committee to participate in immediate expedited fact-finding but the Union has opposed the Board's motion. The Board's motion is currently pending a decision by the Court in CERB v. Beverly Teachers Association et al, Essex County Superior Court, C.A. No. 2477CV01172.

1 enforcement actions in the following cases: CERB v. Brookline Educators Union, Norfolk County
2 Superior Court C.A. No. 2282CV00453; CERB v. Haverhill Education Association, Essex County
3 Superior Court C.A. No. 2277CV00990; CERB v. Woburn Teachers Association, Middlesex
4 County Superior Court C.A. No. 2381CV00288; CERB v. Andover Education Association, Essex
5 County Superior Court C.A. No. 2377CV01082; CERB v. Newton Teachers Association,
6 Middlesex County Superior Court C.A. No. 2481CV00148.¹² We do not overturn prior cases
7 lightly. However, in light of this wave of illegal strikes which signals to us that the illegal strikes
8 have been improperly and regularly used as a bargaining tool, and the clear public policy
9 established by Section 9A of the Law expressly prohibiting public sector employees from
10 engaging in a strike, we find, as a matter of public policy and interpretation of Chapter 150E as
11 a whole, that it is appropriate. A strike by the union and its employees is expressly prohibited by
12 Section 9A of the Law and, as such, an employer's concomitant duty to bargain with the union
13 under Section 6 of the Law while the union and its employees are engaged in a strike is
14 suspended.

15 There remains nothing to prevent the Union and its members from returning to work and
16 continuing negotiations with the School Committee, while continuing with the processes set forth
17 in Chapter 150E, including those under Sections 9 and 11 of the Law.

18 Conclusion

19
20 For the foregoing reasons, we conclude that the School Committee is not required under
21 Chapter 150E of the Law to henceforth bargain with the Union while the strike is ongoing.

¹² Indeed, there are two other communities in the Commonwealth where educators are currently on strike as well, Gloucester and Marblehead. See CERB v. Gloucester Teachers Association et al, Essex County Superior Court C.A. No. 2477CV01171; CERB v. Marblehead Education Association, Essex County Superior Court C.A. No. 2477CV01172.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



KELLY B. STRONG, CERB MEMBER



VICTORIA B. CALDWELL, CERB MEMBER