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COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT

COMMONWEALTH EMPLOYMENT
RELATIONS BOARD
Plaintiff

and

MARBLEHEAD SCHOOL COMMITTEE
Plaintiff-Intervenor

v.

MARBLEHEAD EDUCATION
ASSOCIATION
Defendant.

CIVIL ACTION NO. 2477CV01182

MEMORANDUM IN SUPPORT OF MOTION FOR ADDITIONAL RELIEF FOR
CONTEMPT OF THE COURT'S ORDER

Yesterday, on November 18, 2024, at a hearing before the Court, the Plaintiff Commonwealth Employment Relations Board (the "Board") made an oral motion for additional relief for contempt of the Court's Preliminary Injunction Order issued on November 12, 2024 after the Marblehead Education Association ("MEA" or "Union") remained on strike despite the Court's Contempt Order issued on November 14, 2024. The Board hereby submits this brief, pursuant to the Court's permission, in support of its motion for 1) increased fines at the judge's discretion; 2) order immediate fact-finding under Section 9 of M.G.L. c. 150E, §9 under the Court's equitable powers.

Background

The strike that began a week ago on Tuesday, November 12, 2024, remains ongoing despite the Court's Contempt Order, and the approximately 2,600 students of the Marblehead Public Schools have been out of school for six (6) school days now.

On November 8, 2024, the Department of Labor Relations (DLR), on behalf of the Board, held an investigation pursuant to Section 9A of Massachusetts General Laws Chapter 150E ("the Law") and 456 CMR 16.03 after the Marblehead School Committee ("School Committee") filed a Petition for Strike Investigation, alleging that the Marblehead Education Association ("MEA" or "Union") and its officers induced, encouraged, and condoned a strike in violation of Section 9A of the Law.

After reviewing all of the evidence, which included uncontested evidence that the Union held a vote on the evening of Friday, November 8, 2024 authorizing a strike to begin immediately, the Board issued a Ruling on Strike Petition and Interim Order (Interim Order) the same night, on November 8, 2024. In the Interim Order, the Board concluded that the Union violated Section 9A of the Law by inducing, encouraging, and condoning a strike in violation of Section 9A of the Law. The Board ordered the Union to, among other things:

1. The MEA and its officers and the employees it represents shall immediately cease and desist from engaging in or threatening to engage in a strike or work stoppage, slowdown or other withholding of services.
2. The MEA and its officers 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 MEA shall not permit its officers to encourage, condone, or induce any strike, work stoppage, slowdown, or other withholding of services.
3. The MEA and its officers shall publicly state that:
 - a. any vote authorizing a strike including, but not limited to, a vote that took place on November 8, 2024 authorizing a strike to begin on

November 12, 2024, is cancelled and will not be rescheduled. There will be no strike action.

- b. engaging in, planning, inducing, encouraging, and condoning a strike, work stoppage, slowdown, or other withholding of services, is illegal and must therefore cease.

...

- 9. The MEA and the School Committee shall immediately resume negotiations and mediation in accordance with the provisions of 456 CMR 21.00 et. seq before a mediator assigned by the DLR to bargain over the issues that separate them. The parties' continued participation in mediation ordered by the CERB shall not affect their rights under Section 9 of the Law.
- 10. The MEA and its officers shall appear as required for a proceeding to determine compliance with this Order.
- 11. The DLR and the CERB shall retain jurisdiction of this matter to set further requirements as appropriate.

The Union and its members failed to comply with paragraphs 1-3 of the Board's Interim Order by continuing to engage in a strike on November 12, 2024 and induce, encourage, and condone the strike. As such, on November 12, 2024, the Board sought, and obtained, a preliminary injunction to enforce its Interim Order.¹ Among other things, the Preliminary Injunction requires the MEA, its officers, and the employees the MEA represents to comply as follows:

- a. The MEA and its officers and the employees they represent shall immediately cease and desist from engaging in or threatening to engage in this strike or work stoppage, slowdown or other withholding of services, and shall immediately return to their assigned work locations on November 13, 2024 at their regularly scheduled work hours.
- b. The MEA and their officers and the employees they represents shall immediately cease and desist from inducing, encouraging, or condoning this strike, work stoppage, or other withholding of services, either directly or through surrogates. The MEA shall not permit their officers to encourage, condone, or induce any strike, work stoppage, slowdown, or other withholding of services.

¹ The School Committee intervened in the action.

- c. The MEA shall publicly state by 12:00 p.m. on Wednesday, November 13, 2024 that: (1) the strike is cancelled and there will be no continued strike action; (2) engaging in, planning, inducing, encouraging, and condoning a strike, work stoppage, slowdown, or other withholding of services, is illegal and must therefore cease.

Notwithstanding the Court's Preliminary Injunction Order, the Union and Brotherton continued to fail to comply with the Board's Interim Order and the Court's Preliminary Injunction Order by engaging in a second day of a strike on November 13, 2024 and inducing, encouraging, and condoning the strike. As such, the Board and the School Committee filed a Complaint for Civil Contempt on Wednesday, November 13, 2024² against the Union, seeking coercive prospective fines in the amount of \$50,000 per day with a \$10,000 escalator. The following day, on November 14, 2024, the strike continued, and at or about 3:27 p.m., the Court granted the Board and School Committee's request for coercive prospective fines. The Court ordered the Union to comply with the Law and the Preliminary Injunction Order or pay the requested coercive prospective fine.

Due to its continued contempt, and pursuant to the Court's Contempt Order, the MEA delivered checks to the DLR, for remittance to the Commonwealth's General Fund. However, in Court yesterday, the MEA represented that it does not have sufficient funds to continue paying the fines on a daily basis. Additional fines have been incurred that have not been paid.

Since the Board's Interim Order on November 8, 2024, the DLR's mediator has been assisting the parties in mediation, pursuant to Paragraph 9 of the Board's Interim Order. The mediations have occurred every day, including over two weekends, except on Sunday, November 10, 2024, for several hours each day.

² November 11, 2024 was the Veteran's Day holiday and the schools and courts were closed.

Argument

Since the Court's Contempt order issued on November 14, 2024, three (3) days have passed where the MEA continues in violation of the Court's Injunction and is accruing fines pursuant to the Contempt Order. It is clear that fines alone, and at the amount ordered, are insufficient to coerce compliance with the Court's Injunction. As such, the Board requests that the Court increase the fines, at its discretion, and the Board relies on the arguments in its memorandum in support of Civil Contempt (Docket #8.1).

With respect to the request for immediate fact-finding, the Board asserts that there is no dispute that the parties are an impasse in light of the Union's claims that it was required to go on strike despite lengthy negotiations thus far. Despite attempts from a DLR mediator to bargain with the parties since November 9, 2024, every day, except for on Sunday, November 10, 2024, for several hours a day, there has still been no agreement on the terms of a successor contract. While the Union argued at the hearing that the parties are not an impasse such that the fact-finding would be appropriate because the School Committee has not been bargaining in good faith, these arguments have not yet been adjudicated by the DLR.³ Instead, the Union is attempting to litigate these issues in the public forum. *See Board of Selectmen of Marion v. Labor Relations Commission*, 7 Mass. App. Ct. 360 (1979) (acknowledging that "bargaining in public would tend to prolong negotiations and damage the procedure of compromise inherent in collective bargaining" and that "[t]he reason underlying this conclusion is that the presence of the press and public induced rigidity and posturing by the negotiating teams and provokes in them anxiety that compromise will look like retreat").

³ The Board rescinds its arguments that the Union had not filed charges of prohibited practices prior to the strike alleging bad faith bargaining against the School Committee.

Further, with this strike, the Union has continuously asserted that its proposals are fair and reasonable, and the School Committee has asserted it has budgetary constraints that prevent it from acceding to the Union's proposals. The fact-finding process under Section 9 of the Law for resolving an impasse during contract negotiations provides the Union and the School Committee a full opportunity to present their positions before a neutral fact-finder, or a panel of fact-finders, and a neutral fact-finder would make his or her recommendations to the parties based on the full record before him or her. *See Labor Relations Com'n v. Chelsea Teachers' Union*, 400 Mass. 120 (1987) (declining to address the union's arguments against the Section 9A strike prohibition where the Union failed to exhaust its administrative statutory procedures under Section 9 of the Law, including the fact-finding process which the Court opined "moral suasion, supported by mediation and fact-finding, might have produced a settlement"). If the Union believes its contract proposals are fair and reasonable, the appropriate process to follow is under the Section 9 process. The Board requests that the Court exercise its powers in equity to order the parties to immediately begin expedited fact-finding under the direction of the DLR by a neutral fact-finder or panel of fact-finders pursuant to the procedures set forth in 456 CMR 21.11 through 21.17. The Board acknowledges that the process for scheduling fact-finding is normally slow, however, the DLR is prepared to expedite the process given the emergency situation at hand, and requests that the Court order the parties to an expedited fact-finding schedule under the direction of the DLR.

Conclusion

Because the coercive prospective fines the Court ordered on November 13, 2024 have not had a sufficiently coercive effect alone, the Board respectfully requests that the Court order the following:

- 1) Increased coercive prospective fines against the Union at the judge's discretion
- 2) Expedited fact-finding to begin immediately under the direction of the Department of Labor Relations by a neutral fact-finder or panel of fact-finders pursuant to the procedures set forth in 456 CMR 21.11 through 21.17.

Respectfully submitted,

COMMONWEALTH EMPLOYMENT
RELATIONS BOARD

By its attorney,



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Dated: November 19, 2024

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the above document on counsel for the Defendant, Ashley Walter, by e-mail at awalter@massteacher.org, and counsel for the School Committee, Robert Hillman, by e-mail at robert.hillman@vdbhoston.com, in the above-captioned matter on November 15, 2024.



Lan T. Kantany, Esq.