

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

NEWTON TEACHERS ASSOCIATION

and

MICHAEL ZILLES, in his capacity
as President of the NTA

and

NEWTON SCHOOL COMMITTEE

Case No. SI-23-10203

1 CERB Ruling on Supplemental Strike Petition

2 On January 16, 2024, the Newton School Committee (School Committee) filed a
3 petition (Supplemental Petition) with the Department of Labor Relations (DLR) for a strike
4 investigation pursuant to Section 9A(b) of M.G.L. c. 150E (the Law). The Supplemental
5 Petition alleges that a strike within the meaning of Section 1 and Section 9A(a) of the Law
6 is about to occur, and that the Newton Teachers Association (NTA or Union) and Michael
7 Zilles (Zilles) in his capacity as President of the NTA (collectively, the Respondents) were
8 inducing, encouraging, or condoning that strike in violation of Section 9A(a) of the Law.
9 In particular, the School Committee alleged that it had reason to believe that the
10 Respondents intend to hold a strike vote among all NTA bargaining unit members on
11 Thursday, January 18, 2024, with an open-ended strike scheduled to begin on January
12 19, 2024.

1 On January 16, 2024, the DLR issued a Notice of Supplemental Strike
2 Investigation that the School Committee caused to be served on all parties.¹ On January
3 18, 2024, Marjorie F. Wittner, Chair of the Commonwealth Employment Relations Board
4 (CERB), conducted a strike investigation on behalf of the CERB pursuant to 456 CMR
5 16.03(3).² CERB Member Victoria Caldwell attended the hearing and had the opportunity
6 to participate by asking questions and assisting Chair Wittner with rulings and other
7 hearing matters.³ The School Committee and the Respondents had an opportunity to be
8 heard, to examine and cross-examine witnesses and to introduce evidence.⁴ The
9 investigation record is now closed.

10 For the reasons set forth below, the CERB concludes that the NTA and the
11 employees it represents are about to engage in a strike in violation of Section 9A(a) of
12 the Law and that the NTA and its officers, including Zilles in his capacity as Union
13 president, have induced, encouraged, and condoned the strike.

14 Motions

15 At the conclusion of the investigation, the NTA orally moved to dismiss the petition
16 for lack of evidence and further moved to dismiss Zilles as a respondent in his official
17 capacity as NTA president. For the reasons stated below, the CERB denies both motions.

¹ The School Committee filed an affidavit of compliance with the service requirements, stating that MTA counsel agreed to service of the petition in lieu of in-hand service.

² The investigation was conducted remotely using the WebEx videoconference platform.

³ CERB Member Kelly Strong did not attend the investigation and did not participate in the investigation or this ruling.

⁴ The School Committee called two witnesses: Superintendent Anna Nolin and METCO Director Lisa Gilbert-Smith and introduced ten exhibits. The Respondents cross-examined these witnesses but did not call any of their own witnesses.

1 Stipulations of Fact

2 The parties agreed to the following stipulations:

- 3 1. The City of Newton is a public employer within the meaning of Section 1 of M.G.L. c.
4 150E (the Law).
5
6 2. The Newton School Committee (School Committee) is the representative of the City
7 for the purpose of dealing with school employees.
8
9 3. Anna P. Nolin (Nolin) is the Superintendent of the Newton Public Schools (NPS).
10
11 4. Christopher Brezski is the current Chair of the School Committee.
12
13 5. The Newton Teachers Association (NTA) is an employee organization within the
14 meaning of Section 1 of the Law.
15
16 6. Respondent Michael Zilles (Zilles) is the NTA's president.
17
18 7. The NTA represents certain NPS employees in five different bargaining units, Unit A,
19 B, C, D, and E.
20
21 8. Unit A is comprised of full-time and regular part-time classroom teachers, librarians,
22 guidance counselors and other employees as described in Article I, Section 1 of the
23 parties' Unit A collective bargaining agreement. See Supp. JX 1A-D. There are
24 approximately 1,350 employees in Unit A.
25
26 9. Unit B is a unit of Assistant Principals, Assistant Directors, Senior High School
27 Department Heads and other employees as described in Article I, Section 1 of the
28 parties' Unit B collective bargaining agreement. See Supp. JX 2A-D. There are
29 approximately 78 employees in Unit B.
30
31 10. Unit C consists of all full-time and regular part-time Education Support Professionals
32 and other employees as described in Article I, Section I of the parties' Unit C collective
33 bargaining agreement. See Supp. JX 3A-D.
34
35 11. Unit D consists of Instructional Support Staff and other employees described in Article
36 I, Section 1 of the parties' Unit D collective bargaining agreement. See Supp. JX 4A-
37 D.
38
39 12. Unit E consists of Administrative Technology Specialist, Network Specialist, Research
40 Assistant, Student Information System Specialist, and other employees as described
41 in Article I, Section I of the parties' Unit E collective bargaining Agreement. See Supp.
42 JX 5A-D.
43
44 13. There are a total of approximately 550 employees in Units C, D, and E.

1 14. The NPS and the School Committee have been parties to a series of collective
2 bargaining agreement and memoranda of understanding (MOAs) for each of the
3 bargaining units described in paragraph 7. All of the MOAs expired August 31, 2023.
4

5 15. As of January 16, 2024, the School Committee and the NTA have not reached
6 agreement on a successor agreement for any of the five bargaining units listed in
7 paragraph 7.
8

9 16. On January 16, 2024, the School Committee filed the instant supplemental strike
10 petition (Supplemental Petition) naming the NTA and Michael Zilles in his official
11 capacity as NTA president.
12

13 17. Pursuant to the Newton School Calendar, Friday, January 19, 2024 is a regularly
14 scheduled NPS workday and school day.
15

16 Findings of Fact

17 Background

18
19 There are 22 schools in the City of Newton. These schools serve nearly 12,000
20 students.

21 The parties have been engaged in negotiations for a successor agreement for
22 each of the five bargaining units set forth above since October 2022. There is no dispute
23 that negotiations have been fraught and contentious. In July and August 2023, the NTA
24 filed five unfair labor practice charges contending that the School Committee was not
25 bargaining in good faith.⁵ In August 2023, the DLR granted the School Committee's
26 unilateral request for mediation for each of the five contracts over the NTA's objection.⁶

⁵ The CERB takes administrative notice of the case files in Case Nos. MUP-23-10151, MUP-21-10165, MUP-23-10166, MUP-23-10167, and MUP-23-10168, which the DLR consolidated for investigation. As of the supplemental strike investigation, these matters were pending a probable cause determination.

⁶ On July 20, 2023, the School Committee unilaterally filed five petitions for contract mediation with the DLR for Units A-E. The CERB takes administrative notice of the mediation files in Case Nos. PS-23-10141, 10142, 10143, 10144, 10145. On July 24, 2023, the Union filed a letter with the DLR requesting that it deny the School Committee's petitions on grounds that the parties were not at impasse. The School Committee filed a

1 At the beginning of the 2023-2024 school year, the Union commenced certain work
2 actions in connection with the ongoing negotiations. Certain of those actions led the
3 School Committee, to file a strike petition with the DLR on September 5, 2023, alleging
4 that an unlawful strike in violation of Section 9A of the Law had occurred and was still
5 occurring, and that the strike had been induced, encouraged, and condoned by the NTA
6 and Zilles, in both his individual and official capacity and another NTA Officer. The petition
7 concerned two separate actions conducted by the NTA – a “silent meeting” action, and a
8 boycott of a district wide meeting (convocation) on August 30, 2023.⁷

9 After conducting a strike investigation, on September 26, 2023, the CERB issued
10 a Ruling on Strike Petition and Interim Order (Ruling I). The CERB dismissed the petition
11 with respect to the silent meeting action. With respect to the convocation, the CERB
12 concluded that the NTA and its members were engaged in an unlawful strike with the
13 meaning of Sections 1 and 9A of the Law, and that the NTA and its officers and Zilles, in
14 his official capacity, had induced, encouraged and condoned the unlawful strike. The
15 ruling included the following Interim Order:

- 16 1. The NTA, its officers and the employees it represents shall immediately
17 cease and desist from engaging in any strike, work stoppage, slowdown or
18 other withholding of services.
19

reply on July 31, 2023, contending, among other things, that “impasse exists over wage increases and that none of the remaining issues would result in an agreement while the Union continues to insist on unaffordable wage increases and rejection of all of the Committee’s health insurance proposals.” On August 21, 2023, the DLR determined that the parties had negotiated for a reasonable period of time and appointed a mediator to conduct mediation sessions.

⁷ The CERB takes administrative notice of the strike petition that the School Committee filed on September 5, 2023, and of the ruling that the CERB issued on September 26, 2023, after it conducted the strike investigation.

- 1 2. The NTA and its officers, including Michael Zilles, in his official capacity,
2 shall immediately cease and desist from inducing, encouraging, or
3 condoning any strike, work stoppage or other withholding of services, either
4 directly or through surrogates. The NTA shall not permit its officers or
5 agents to induce, encourage or condone any strike, work stoppage,
6 slowdown or other withholding of services.
7
- 8 3. Michael Zilles shall immediately desist from encouraging, condoning, or
9 inducing a strike work stoppage, slowdown or other withholding of services.
10
- 11 4. Immediately upon receipt of a copy of this order, the NTA, its officers and
12 Zilles shall take any necessary steps to notify NTA bargaining unit members
13 of their obligation to fully perform the duties of their employment, including
14 the obligation to not participate in any form of strike or work stoppage. Such
15 notification shall be completed immediately upon receipt of this order and
16 shall entail all of its usual means of communicating with its bargaining unit
17 members.
18
- 19 5. Immediately upon receipt of a copy of this Order, the NTA, its officers and
20 Zilles shall take any and all necessary steps to inform NTA bargaining unit
21 members of the provisions of Sections 9A(a) and (b) of the Law and the
22 contents of this Order. Such notification shall be completed immediately
23 upon receipt of this Order and shall entail all of its usual means of
24 communicating with its bargaining unit members.
25
- 26 6. The NTA and its officers and Zilles, in his official capacity, shall notify the
27 DLR in writing of the steps taken to comply with this Order by no later than
28 September 27, 2023 at 4:00 p.m.
29
7. The DLR shall retain jurisdiction of this matter to set further requirements
 as may be appropriate.

30 On September 27, 2023, the NTA's counsel sent a letter to the CERB stating that the
31 NTA and Zilles had complied with the CERB's order. The NTA requested that the matter
32 be closed. On October 6, 2023, the CERB issued a ruling (Supplemental Ruling I)
33 denying the request to reconsider its ruling. The CERB also denied the request to close
34 the case. Among other things, the CERB stated that it was exercising its discretion to
35 keep the matter open because, "[t]he contract dispute that led to the first job action has
36 not been resolved and therefore the possibility for a recurrence of strike activity remains."

1 The CERB accordingly retained jurisdiction over the matter, stating that it would continue
2 to do so until the parties report that the contract is settled. The CERB added that “[u]pon
3 proper motion by the School Committee, the CERB may set further requirements or take
4 any other action available under Section 9A(b) of the Law as appropriate.”⁸

5 As indicated in the stipulations, despite participating in several mediation sessions,
6 the parties have yet to reach agreement on successor contracts.

7 Supplemental Strike Petition

8 Around mid-November 2023, Nolin began hearing rumors that the Union was
9 planning to engage in a strike. As a result, she directed the District’s Information
10 Technology Director to periodically search emails that NPS employees have sent using
11 the District’s email server for emails that included the term strike, or synonyms for a strike,
12 such as “work stoppage.”⁹ These searches yielded a number of results from NPS

⁸ The Union has sought judicial review of the CERB’s first strike ruling. On November 27, 2023, the Union filed Complaint and Action in the Nature of Certiorari Pursuant to M.G.L. c. 249, §4 with a Single Justice of the Supreme Judicial Court (Certiorari Complaint). The case was docketed as SJC-23-0470. The Certiorari Complaint names the CERB as the sole Defendant and seeks to set aside the CERB’s Ruling I and Supplemental Ruling I. On January 3, 2024, a single Justice of the SJC granted the School Committee’s motion to intervene. The matter is pending.

⁹ The School Committee introduced the District’s Employee Technology and Online Acceptable Use Guidelines (Guidelines). The Guidelines state in pertinent part that:

Newton Public Schools retain control, custody, and supervision of all school technology and online resources owned, leased or paid by it. NPS reserves the right to monitor all technology and online resources, such as computer, Internet and E-mail activity by employees and other system users. Employees have no expectation of privacy in their use of school technology and online resources, regardless of whether such use is for school purposes or incidental personal use. E-mails concerning official school business are generally considered public record information subject to disclosure under Massachusetts Public Records Laws, M.G.L. c. 66, sec. 10; M.G.L. c. 4, sec. 7(26). Additionally, all actions performed by employees utilizing PS’

1 employees using their NPS email accounts.¹⁰ In the past week, after hearing rumors that
2 a strike vote was going to take place on January 18, 2023, at Temple Shalom in Newton,
3 Nolin further instructed the IT Director to include the terms “Temple” or “Temple Shalom.”
4 As described below, these emails and other documents in the record demonstrate that
5 since at least mid-December, different NPS employees, administrators, and PTO
6 members knew either that the Union was planning to hold a strike vote and/or that it was
7 planning to strike. The emails generated by these searches are described below.

8 On December 18, 2023, an NPS library teacher sent an email to a number of
9 individuals with NPS email addresses, including F.A. Day Principal Jackie Mann. The
10 email was part of a chain that began in November 2023, when Principal Mann sent an
11 email to staff regarding a possible holiday party. After some back and forth as to the date
12 and location, the library teacher sent an email to the staff members on the chain, which
13 stated:

14 Hi-
15 So, a few people have commented to me that we should hold off on the
16 holiday party as we could be on strike. Apparently, we would vote to go on
17 strike on the 19th of January, the same day as the party. What are your
18 thoughts, I am happy to move forward with planning, but I just do not want
19 to lose my deposit.

20
21 On January 11, 2024, a member of the Franklin Elementary School PTO Board
22 sent an email to “Franklin families” with the subject line “Important Information from the
23 PTO Board” stating in pertinent part:

technology and online resources may be subject to disclosure or production
in discovery in litigation.

¹⁰ The emails that the School Committee provided were either sent to, or from individuals whose email addresses ended in the suffix “@newton.k.12.ma.us.”

1 The PTO Board wants to call an important update to your attention:
2 educator contract negotiations are effectively at an impasse, and we may
3 be headed toward a job action (which may include a strike) in the near
4 future.

5
6 Across the district, educators describe that their personal and professional
7 basic needs are not being provided by the city; city leadership has met their
8 concerns with hostility and obfuscation. Our educators' needs and the
9 needs of our students go hand in hand; our educators are asking for things
10 like team preparation and planning time to better serve our students, and
11 these requests are being denied by our city leadership.

12 However educators are heartened by the support they have received from
13 parents, so **the best way for us to continue to support our educators
14 and to do our part, as parent, to head off a possible strike – is to be
15 vocal with city leadership.** To our current understanding, this next week
16 is crucial for community action to change the outcome of negotiations before
17 a possible strike.

18 **(Boldface in original)**
19
20

21 Later in the day on January 11, 2024, a recipient of the PTO message forwarded it to
22 Zilles from her NPS email account. Within an hour of receiving the email, Zilles replied
23 stating, "Thanks for sending this. Holy moly! That's amazing! The PTO!"

24 On January 14, 2024, an NPS employee who identified herself as the union
25 representative at the Underwood School wrote to "Ernesto" stating that, "Since I am split
26 between two schools I wanted to give you a heads up...that I will be reporting each day
27 to Bowen's designated strike location (Newton Centre) in case you need to know for
28 attendance purposes."

29 The most significant piece of evidence uncovered by the IT Director regarding a
30 strike vote was a Google calendar invitation sent in the form of an email, with the subject
31 matter "Union Strike vote."¹¹ The organizer of the event identified on the invitation was

¹¹ The NPS uses "Google Suite" for its staff email and calendaring functions.

1 an NPS staff member and NTA bargaining unit member. The invitation reflected that the
2 vote would take place at Temple Shalom in Newton from 4:30 – 5:00 p.m. EST. A note
3 on the invitation indicated the time for elementary and middle school teachers was “3:30
4 – vote at 4:00.” The invitees were NPS bargaining unit members.

5 Some communications regarding the strike vote and strike also occurred by text.
6 On January 3, METCO Director Lisa Gilbert-Smith (Gilbert-Smith) received a text from
7 METCO counselor with whom Gilbert-Smith had previously corresponded on group texts.
8 In the text, the counselor, who is a member of one of the NTA’s bargaining units, stated:

9 Good afternoon Lisa and bus monitors. Well my building two [sic] said if
10 things are agreed upon on January 18th we will strike on the 19th...
11 Lisa can you set up a text message feed with our METCO counselors to get
12 possible rides with bus monitors to the various Newton sites on the strike
13 days?
14 I’m hoping they come to a resolution so we don’t strike but looks like we will.
15

16 On January 15, 2024, at 10:07 p.m., a Peirce Elementary School staff member
17 and bargaining unit member sent an email to a NPS social worker and bargaining unit
18 member:¹²

19 I texted out a reminder earlier tonight about Peirce’s informational meeting
20 Wednesday at 12:30 in Kelly’s room. I know Monday is usually our [sic] day
21 with us, but wanted to make sure you had a way to join a meeting before
22 our General Membership Meeting on Thursday at Temple Shalom.

23
24 Another way to get up to Date information is to join the Contract Action
25 Team Zoom tomorrow night at 7:00 p.m.
26

¹² The Social Worker is an NTA bargaining unit member. Her email signature reflects that she works at three schools in Newton, including Peirce.

1 There are two brief General Membership meetings Thursday, one right after
 2 the other. Doors open at 3:30 so people can begin checking in for the 4:00
 3 meeting¹³

4
 5 January 18th Meeting Location Changed

6 On January 17, 2024, at 7:19 pm, the NTA, using the email address
 7 *ntapresident@newteach.org*, sent out an email with the subject “General Membership
 8 Meeting Update.” The email stated in part:

9 Dear Colleagues:

10 In the face of attempts to silence us, educators raise our voices.

11
 12 **We write to inform you of a change to the way in which NTA members**
 13 **will meet tomorrow and to announce an all member rally following our**
 14 **meeting tomorrow that will commence at 5:00 pm at City Hall.**

15
 16 Instead of meeting tomorrow at Temple Shalom, we will now be meeting on
 17 Zoom according to the below schedule.

18
 19 **Why are we meeting over Zoom as opposed to Temple Shalom?**

20
 21 The Temple communicated with us in an email this afternoon that we would
 22 not be able to use their space. **It is clear the Mayor and the School**
 23 **Committee have made their first attempt to silence us all in this**
 24 **process.** We knew they would try various ways of silencing the educators
 25 and community of Newton. Unfortunately for them, we all have experience
 26 pivoting to Zoom, and this will not stop us fighting for what is right.

27
 28 There will be two meeting times – please choose one:

29
 30 3:45 pm General Membership meeting – **preregistration required**
 31 [hyperlink for registration]

32 4:30 pm General Membership Meeting 2 – **preregistration required**
 33 [hyperlink for registration]

¹³ The subject line of these emails contained the following language: “Would like to send you a text but do not have your number in my phone.” The CERB infers from this subject line and other statements in the email that this staff member was predominantly using texts, not email, to communicate information about union meetings and the reason this particular exchange took place via email was because the staff member did not have the social worker’s phone number. When replying, the social worker indicated that she had replied by email because she believed it was too late to text.

1
2 5:00 pm: Join us in person at City Hall if you can for a press conference and
3 rally.
4

5 ***Attendance at each meeting is limited to 1000 members. In order to***
6 ***register, click the above links for your appropriate meeting and fill in***
7 ***your information. Once approved, you will receive an email back with***
8 ***a link to the Zoom meeting.***
9

10 ***If your commute from Newton is lengthy, join the Zoom from your***
11 ***phone (off of school WiFi). Not located somewhere with good service?***
12 ***Head to a nearby public library or other locations that offer guest WiFi.***
13

14 They have attempted to prevent us all from meeting in person as a union
15 and publicly stating that we will no longer tolerate the deliberate
16 underfunding of our schools, the punishment of our educators, and the
17 penalties to our students. **As such, we will be holding a rally and press**
18 **conference at City Hall tomorrow following our Zoom meetings. We**
19 **will stand together to show that educators are not afraid to fight for**
20 **what is right and that any pathetic attempts to silence us will only**
21 **make us stronger.**
22

23 We are honored to stand together with you because of the work you do each
24 day for our students and community but also because of your courage: the
25 courage to stand up for what is right.
26

27 In solidarity,
28

29 Mike Zilles, President
30 Chris Walsh, Treasurer,
31 Your bargaining team
32

33 **(Boldface and italic in original).**
34

35 Press Coverage

36 On January 17, 2024, the Newton Beacon published an article with the headline,
37 “Newton School Committee asks state to investigate NTA for planned strike.” The article
38 referenced statements by both the School Committee and Zilles. According to the article,
39 the School Committee stated:

40 The outcome and the impact of that vote are not known . . . It is our statutory
41 obligation to file a CERB petition if we become aware that an illegal strike

1 action may occur. We believe it is also our responsibility to inform the NPS
2 community of this possibility.

3
4 The article further stated that Zilles had issued a statement, which it quoted
5 as follows:

6 The NTA is committed to doing whatever it takes to settle a fair contract.
7 We urge Mayor Fuller and her bargaining team to end the legal publicity
8 stunts that come from the playbook of the high-priced law firm the school
9 committee and Mayor Fuller hired. Scheming to achieve a cheap []contract,
10 whatever their lawyer says, is not negotiating. Instead, Mayor Fuller and
11 the school committee should meet with the NTA bargaining team, advance
12 proposals that are worth considering and truly bargain in good faith.

13
14 Ruling¹⁴

15 Section 9A(a) of the Law prohibits public employees and employee organizations
16 from engaging in, inducing, encouraging, or condoning any strike, work stoppage,
17 slowdown, or withholding of services. Section 9A(b) permits a public employer to petition
18 the CERB to investigate alleged violations of Section 9A(a) “whenever a strike occurs *or*
19 *is about to occur*” (emphasis added). The CERB has applied Section 9A(b) of the Law to
20 situations where the evidence shows that a strike is occurring or is about to occur. Boston
21 School Committee, 27 MLC 32, 34, SI-264 (October 10, 2000); City of Worcester, 13 MLC
22 1627, 1630, SI-198 (April 23, 1987); Boston School Committee, 10 MLC 1289, 1290, SI-
23 156 (November 15, 1983).

24 Referencing Boston Teachers Union, Local 66 et al, 33 MLC 133, SI-7-272
25 (January 18, 2007) *aff'd sub nom. Commonwealth Employment Relations board et. al. v.*
26 Boston Local 66, 74 Mass. App. Ct. 500 (2009) *further appellate rev. den'd* 455 Mass.
27 1102 (2009), *cert den'd* 599 U.S. 992 (2010), the School Committee argues that the

¹⁴ The CERB’s jurisdiction is not contested.

1 evidence it provided supports a finding that an illegal strike within the meaning of Section
2 9A of the Law is about to occur and that the strike has been and is being induced,
3 encouraged, and condoned by the NTA and its president. The Union, having put on no
4 witnesses, does not rebut any of the evidence that the School Committee provided in
5 support of its petition but claims that the evidence is insufficient and contends that the
6 School Committee's means of obtaining the emails is unlawful surveillance.¹⁵

7 Viewed in their totality, we find that the texts and emails described above
8 demonstrate that the NTA is planning to hold a strike vote on the afternoon of January 18
9 via Zoom for an open-ended strike starting on January 19, 2024. As we indicated above,
10 the most compelling piece of evidence is the Google calendar invitation with the subject
11 line "Union strike vote," with a date and time for the vote, January 18. The information
12 contained in this document conforms closely to the information contained in the email
13 message that Zilles and other NTA officers sent yesterday informing members that the
14 General Membership meeting originally planned to be held at Temple Shalom was being
15 changed to a Zoom meeting, leading us to conclude that the Zoom Union meeting
16 scheduled for this afternoon is the same strike vote referenced in the Google invite. That
17 the Union immediately plans to hold a rally and press conference after the meeting is
18 notable, as this is the pattern that occurred in other recent CERB decisions, where, as
19 here, the CERB conducted a strike investigation before an actual strike occurred, but
20 where there was sufficient information in the record from which the CERB could infer that

¹⁵ In its closing argument, the NTA also reserved its right to make arguments concerning the First Amendment. We have previously rejected such arguments and do the same here to the extent they have been properly raised for the reasons stated in Brookline Educators Union, 48 MLC at 311 (quoting Dedham School Committee, 46 MLC 76, 80, n. 13, SI-19-7658 (October 24, 2019)).

1 one was imminent. See, e.g., Brookline Educators Union, 48 MLC 307, 309, SI-22-9294
2 (May 12, 2022); Haverhill School Committee, 49 MLC 112, 117, SI-22-9605 (October 15,
3 2022), Woburn School Committee, 49 MLC 222, 226, SI-23-9811 (January 27, 2023).
4 We also find other aspects of the January 17 email significant, particularly, the Union's
5 assertion that their inability to use Temple Shalom's space was the "Mayor and School
6 Committee's first attempt to silence us in the process," and that this would not stop the
7 Union from "fight[ing] for what is right." Given other evidence reflecting that a strike vote
8 was scheduled for January 18, 2024, we reasonably construe the Union's reference to
9 "this process" and the Union's "fighting for what is right," as referring to a strike vote and
10 subsequent strike.

11 When we view these two documents in conjunction with the other documents in
12 this record that show that teachers, administrators, and the PTO were aware that a strike
13 vote was being scheduled for an strike commencing the next day, along with other factors
14 that we have found significant in our prior decisions -- several union meetings occurring
15 in the same week as a strike vote, see e.g., Brookline School Committee, 48 MLC at 310-
16 311, Haverhill School Committee, 49 MLC at 117, Woburn School Committee, 49 MLC at
17 228; a strike vote scheduled for the evening prior to a scheduled strike, see e.g., BTU, 33
18 MLC at 137, Dedham School Committee, 46 MLC at 80, Brookline School Committee, 48
19 MLC at 311, Haverhill School Committee, 49 MLC at 117; and undisputedly contentious
20 negotiations; unfair labor practice charges; and critical statements from the Union that
21 reflect the NTA's dissatisfaction and frustration with the Mayor, the School Committee,
22 and the process of bargaining, see e.g., Haverhill School Committee, 49 MLC at 117,

1 Woburn School Committee, 49 MLC at 228; we conclude that a strike vote with a strike
2 to follow is about to occur.

3 In the 2007 Boston Teachers Union decision cited above, the Appeals Court held
4 that “the purpose of the [Law] set forth in clear and unequivocal language, is to allow the
5 [CERB] to intervene in a labor dispute at a point where the [CERB] may set the
6 requirements necessary to prevent an illegal strike that is about to occur. 74 Mass. App.
7 at 505. In so holding, it affirmed the CERB’s determination that a strike was about to
8 occur prior to an actual strike vote being held. Where here, as in BTU, the NTA has
9 scheduled a strike vote to occur on the day before a strike is scheduled to occur, we find
10 this period immediately preceding a strike vote to be an opportune and indeed critical time
11 for the CERB to intervene so that it may set the requirements necessary to prevent an
12 illegal strike. Id. (citing Utility Workers of America, Local 466 v. Labor Relations
13 Commission, 389 Mass. 500-505-506 (1986) for the proposition that strikes by public
14 employees “may create exigent and unpredictable situations,” therefore a public employer
15 “may act in good faith to prevent public services from being disrupted.”)

16 Motions

17 Throughout the strike investigation, the Union objected to the admission of the
18 emails and texts described above on two grounds – that they were unreliable hearsay
19 and that they were the product of unlawful surveillance, i.e., the “fruit of the poisonous
20 tree.” Indeed, the Union has moved to dismiss the petition on grounds that the School
21 committee’s presented insufficient and unreliable evidence that a strike is about to occur.
22 We disagree and deny the motion.

1 Regarding the hearsay argument, we note that, generally, the CERB is not bound
2 by the formal rules of evidence and that it can admit documents that are hearsay and give
3 them the weight it deems necessary. See 456 CMR 13.03 (g) (“In any hearing, the
4 Department shall not be bound by the technical rules of evidence prevailing in the courts”).
5 Further, where, as here, “direct evidence of a strike is unavailable, the [CERB] may make
6 its findings upon available facts and reasonable inferences drawn therefrom.” Boston
7 School Committee, 20 MLC 1244, 1248, SI-246 (1993). This is particularly true in the
8 case of a strike investigation, because, as the SJC has noted, “Section 9A deals with
9 situations often requiring prompt action in response to an unlawful strike by public
10 employees.” Labor Relations Commission v. Fall River Education Association, 382 Mass.
11 465, 473 (1981). Furthermore, the NTA did not put on any witnesses to either confirm or
12 deny the emails or texts, or the inferences the School Committee was asking the CERB
13 to draw from those documents. See Id. at 471, fn. 7 (1981) (stating that a hearing officer
14 would be warranted “in drawing an inference adverse to an employee organization from
15 its failure to present information from its officers or other persons available to it”
16 particularly where it is “on a subject particularly within their knowledge”). Based on the
17 foregoing, the CERB finds the evidence submitted by the School Committee is, in its
18 totality, sufficient to support the conclusion that a strike vote and strike are about to occur.

19 We also reject the Union’s argument that conducting limited searches of staff
20 members’ emails on the NPS server amounts to unlawful surveillance of protected,
21 concerted activity. First, the terms were limited to “strike” and its synonyms, and to
22 “Temple” and “Temple Shalom,” the location where the School Committee had reason to
23 believe that the strike vote would occur, and thus were narrowly targeted to find

1 information with public documents relating to potentially unlawful strike activity. Second,
2 the NPS Acceptable Use Policy clearly states that staff members have no expectation of
3 privacy in emails or other documents sent or received using the server and permits the
4 disclosure of these documents as public documents or during litigation. Finally, while the
5 search uncovered evidence of union meetings, there is no evidence, and the NTA does
6 not contend, that the School Committee surveilled those meetings. Thus, as the SJC
7 stated in Utility Workers of America, Local 466 v. Labor Relations Commission, 389 Mass.
8 at 505, “as long as a public employer acts in good faith it must be permitted to take
9 emergency actions to prevent public services from being disrupted. A contrary
10 interpretation of the statutory language would severely limit the ability of the employer to
11 protect and maintain important public services.” Here, as we found under similar
12 circumstances in Woburn School Committee, 49 MLC at 229, there is no indication that
13 Nolin acted in anything other than good faith when she instructed its IT Director to search
14 NPS’ servers using search terms limited to a potential strike.

15 For these reasons, we deny the Union’s motion to dismiss the petition.

16 Inducing, Condoning and Encouraging Activity

17 Having found that a strike vote is about to occur, we address whether there is
18 evidence that the NTA is inducing, encouraging or condoning the strike. We find that they
19 are based on the January 17 email sent from the NTA president’s email address and
20 signed the NTA president, the NTA Treasurer, the Bargaining Team and the Contract
21 Action Team. For the reasons stated above, we have found that the General Membership
22 Zoom meeting that is scheduled for later today is a meeting to hold a strike vote and that
23 by NTAs’ officers’, and its Negotiating and Contract Action Teams’ urging bargaining unit

1 members to register to participate in that meeting and to vote on a strike scheduled to
2 take place the next day, they have unlawfully induced, condoned and encouraged a strike.

3 As a final matter, we address the Union's motion to dismiss the petition as to Zilles
4 in his capacity as Union president. We deny that motion based on the January 17 email,
5 which Zilles sent and signed.

6 Conclusion

7 For the foregoing reasons, we conclude that the NTA and the employees it
8 represents are about to engage in a strike in violation of Section 9A of the Law and that
9 the NTA, the NTA's officers and Zilles, in his official capacity is inducing, encouraging and
10 condoning such action in violation of Section 9A of the law. Accordingly, pursuant to
11 Section 9(a) and (b) of the Law, we issue the following Supplemental Order.

- 12 1. The NTA and its officers and the employees it represents and Zilles, in his official
13 capacity, shall immediately cease and desist from engaging in or threatening to
14 engage in a strike or work stoppage, slowdown, or other withholding of services.
15
- 16 2. The NTA and its officers and Zilles in his official capacity, shall immediately cease and
17 desist from inducing, encouraging, or condoning any strike, work stoppage, or other
18 withholding of services, either directly or through surrogates. The NTA shall not permit
19 its officers to encourage, condone, or induce any strike, work stoppage, slowdown, or
20 other withholding of services.
21
- 22 3. The NTA and its officers, and Zilles in his official capacity, shall publicly state that:
23 a. any vote authorizing a strike including, but not limited, to a vote to strike
24 scheduled for January 18, 2024, regarding the current bargaining dispute
25 between the NTA and School Committee is cancelled and will not be
26 rescheduled.
27
- 28 b. any vote authorizing a strike to take place, which occurred after the
29 investigation and prior to this interim order is cancelled and will not be
30 rescheduled and there will be no strike action.
31
- 32 c. engaging in, planning, inducing, encouraging, and condoning a strike, work
33 stoppage, slowdown, or other withholding of services, is illegal and must
34 therefore cease.
35

- 1 4. The NTA and its officers shall immediately notify all of its bargaining unit members of
2 the above statements upon receipt of this Order, using all of its usual means of
3 communicating with its bargaining unit members including, but not limited to, posting
4 the statements on its website, Facebook page, and/or any other social media it uses
5 to regularly communicate with its membership.
6
- 7 5. The NTA and its officers shall refrain from scheduling any further strike vote in
8 connection with the same bargaining dispute.
9
- 10 6. The NTA and its officers shall take any necessary steps to notify the employees whom
11 it represents of their obligation to fully perform the duties of their employment including
12 the obligation to refrain from any form of a strike or work stoppage. Such notification
13 shall be completed immediately upon receipt of this Order and shall entail all of its
14 usual means of communicating with its bargaining unit members, including but not
15 limited to, posting the statements on its website, Facebook page, and/or any other
16 social media it uses to regularly communicate with its membership.
17
- 18 7. The NTA and its officers shall take any and all necessary steps to inform the
19 employees whom the NTA represents of the provisions of Section 9A(a) and (b) of the
20 Law and the contents of this order. Such notification shall be completed immediately
21 upon receipt of this order and shall entail all of its usual means of communicating with
22 its bargaining unit members, including but not limited to, posting the statements on its
23 website, Facebook page, and/or any other social media it uses to regularly
24 communicate with its membership.
25
- 26 8. The NTA and its officers shall notify the DLR in writing of the steps taken to comply
27 with this Order by no later than **Friday, January 19, 2024 at 8:00 a.m.** Such
28 notification shall include whether or not the NTA and its members voted on January
29 18, 2024, to go on strike on January 19, 2024, and whether they are on strike on
30 January 19, 2024.
31
- 32 9. The NTA and the School Committee shall immediately resume negotiations and
33 mediation in accordance with the provisions of 456 CMR 21.00 et. seq before a
34 mediator assigned by the DLR to bargain over the issues that separate them. The
35 parties' continued participation in mediation ordered by the CERB shall not affect their
36 rights under Section 9 of the Law.
37
- 38 10. The NTA and the School Committee shall bargain in good faith for a successor
39 collective bargaining agreement and participate in good faith in mediation before the
40 mediator assigned by the DLR to bargain over the issues that separate them.
41
- 42 11. The NTA, and its officers shall appear as required by the CERB for a proceeding to
43 determine compliance with this Order.
44
- 45 12. The DLR and the CERB shall retain jurisdiction of this matter to set further
46 requirements as appropriate.

1 **SO ORDERED.**

Marjorie F Wittner

MARJORIE F. WITTNER, CHAIR

Victoria B. Caldwell

VICTORIA B. CALDWELL, CERB MEMBER