

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT

COMMONWEALTH EMPLOYMENT
RELATIONS BOARD,
Plaintiff,

and

NEWTON SCHOOL COMMITTEE
Plaintiff-Intervenor,

v.

NEWTON TEACHERS ASSOCIATION and
MICHAEL ZILLES,
in his capacity as President of the NTA,
Defendants.

CIVIL ACTION NO.: 2481CV00148

RECEIVED

2/5/2024

JOINT MOTION FOR RECONSIDERATION OF FINES

Pursuant to this Court’s order entered on February 2, 2024 and the subsequent entry into successor collective bargaining agreements as well as an additional agreement between them regarding the coercive fines assessed by this Court for contempt, the defendant Newton Teachers Association (“the NTA”) and the plaintiff-intervenor Newton School Committee (“the Committee”) respectfully move this Court for an order addressing the issues of coercive fines and compensatory relief as set forth in more detail below.

On the evening of Friday, February 2, 2024, the NTA and the Committee reached agreement on successor collective bargaining agreements with all five of the NTA Units. The Committee approved these agreements on February 3, 2024, and the NTA membership ratified these agreements on February 4, 2024.

In addition to reaching successor collective bargaining agreements with all of the NTA Units, the Committee and the NTA entered into an agreement addressing the return to work (“Return To Work Agreement”) of employees represented by the NTA and on restitution to be paid by the NTA to the Committee. The Return To Work Agreement (“the RTW Agreement”) is attached to this Joint Motion as Exhibit 1 and includes the following provision:

Eleven-Day Strike and Restitution

The Committee agrees to request that the CERB join the NTA and Committee in requesting that the Superior Court reduce some or all of the contempt fines imposed by the Superior Court so that the moneys that would have been used to pay those contempt fines by the NTA will instead be paid by the NTA to the Newton Public Schools. Any amount of the fines that the Court reduces shall be paid by the NTA to the Newton Public Schools up to \$625,000.00. In no event shall the Committee be paid less than a total sum of \$275,000.00. Such payment to be made by the Union to the “Newton Public Schools” and delivered to the Newton Public Schools on or before February 29, 2024. The Committee releases and waives any and all other claims against the NTA for reimbursement for any and all expenses or damages related to CERB Case No. SI-23-10203 and Middlesex Superior Court Case No. 2481CV00148 through February 2, 2024.

The Committee filed the affidavit of its Assistant Superintendent and Chief Financial and Administrative Officer Liam Hurley on February 2, 2024 in this matter. Mr. Hurley’s affidavit includes a specification of the several categories of costs incurred as a direct result of the NTA’s failure to comply with the injunction entered by this court on January 19, 2024. Mr. Hurley’s affidavit provides an overall estimate of these expenses through eleven days to be in excess of \$1.3 million.

The Committee and the NTA hereby jointly move that this Court reconsider the coercive fines issued in this matter, in accordance with the provisions of the RTW Agreement. Specifically, the Committee and the NTA move that the Court exercise its discretion in ordering appropriate compensatory relief for the contempt, reduce the total coercive fines in whole or in part, and in accordance with the RTW Agreement enter an order that the NTA pay to the Newton Public Schools an amount equal to the amount that this Court reduces the fines no later than

February 29, 2024. Specifically, the Committee and the NTA request that the Court reduce the amount of the coercive fines to zero and issue an order directing the NTA to pay \$625,000 directly to the Newton Public Schools instead of to the Commonwealth's general fund. To the extent that the Court does not reduce the fines by the full amount, the Committee and the NTA move that the Court issue an order directing the NTA to pay the entire amount of the reduction to the Newton Public Schools. In support of this motion, the parties state as follows:

1. The parties appeared before this Court, Barry-Smith, J., on January 22, 2024,¹ on a contempt complaint filed by the Plaintiff Commonwealth Employment Relations Board ("CERB") and the Intervenor Committee. The Court found a contempt of its January 19 preliminary injunction and issued an order containing a coercive fines schedule with escalating daily amounts for the period January 22, 2024 through January 25, 2024.

2. The Court ordered the parties back on January 26 to address continued non-compliance. At that time, the Court amended its coercive fines schedule and revised the schedule effective January 28 to a flat amount of \$50,000 for every day of noncompliance moving forward.

3. The parties re-appeared before the Court on February 2 on motions by the CERB and the Committee to revisit contempt sanctions. At that time, the Court determined, *inter alia*, that judgment for \$625,000 against the Newton Teachers Association ("NTA") (the total accumulated fines at the time of the hearing) would enter on Monday, February 5, absent motion or communication from a party or parties with a different proposal regarding fines and judgment. The Court further ordered that the Committee file a motion regarding the question of compensatory sanctions by February 9, 2024.

¹ All dates herein are 2024.

4. On the evening of February 2, 2024 and after the hearing and issuance of the most recent order on that date, the NTA and the Committee reached a settlement of their successor collective bargaining agreements² as well as entering into and executing the RTW Agreement. The RTW Agreement includes, in part, an agreement that the strike ends, that all educators shall return to work on February 5, that all school days missed will be rescheduled, and that certain litigation matters between them that are unrelated directly to this one but that relate to the collective bargaining process be withdrawn.

5. As set forth above, the RTW Agreement also expressly provides for compensation by the NTA to Newton Public Schools for costs incurred by Newton Public Schools as a result of the strike and failure to comply with the injunction order. As such, the NTA and the Committee agreed to ask the CERB to join them in requesting that the Court reduce the coercive contempt fines in whole or in part and that the Court allow the total amount of the fines to be paid to the Newton Public Schools in lieu of to the Commonwealth's general fund.

6. As required by the Agreement the parties have requested the CERB to agree to a reduction of the coercive fines consistent with the provisions of the RTW Agreement. The CERB has indicated through counsel that its interests in this matter will be satisfied with the payment of fines, regardless of the payee, and in having the work stoppage end. As such, and without prejudice to relief it may seek in other actions, the CERB does not oppose the relief requested in the RTW agreement.

7. This Court has the authority and discretion to order such equitable relief. As an example, Exhibit 2 shows that the Superior Court in Norfolk County previously approved such a request in a strike case in 2007.

² The collective bargaining agreements have been ratified by both the NTA and the Committee.

8. Moreover, reduction of fines so that the amount not paid to the Commonwealth is paid to the Newton Public Schools fulfills the remedial purposes of civil contempt. Civil contempt orders may be coercive, compensatory, or both. *See U.S. v. United Mine Workers of Am.*, 330 U.S. 258, 303-04 (1947); *Labor Rel. Comm'n v. Fall River Educators' Ass'n*, 382 Mass. 465, 475-76 (1981). This Motion merely requests the Court order that the reduced amount of coercive fines be assessed in satisfaction of the compensatory relief that would otherwise be the subject of the process required by the Court to commence on February 9, 2024. It bears notice that the total of coercive fines assessed in this matter is well below the total set forth in the Hurley Affidavit and that the Committee's agreement to waive any amount exceeding the total of coercive fines is ample consideration for the RTW Agreement and its enforcement by this Court. To that end, the result may have the effect, at least in part, as compensatory but that still is consistent with the purpose and intent of civil contempt:

[T]o vindicate the authority of the court, *a civil contempt order is intended to be remedial and for the benefit of an aggrieved party*. For this reason, both compensatory and coercive orders are considered to be in the nature of civil contempt. Remedial or compensatory actions are essentially backward looking, seeking to compensate the complainant through the payment of money for damages caused by past acts of disobedience. Coercive sanctions, in contrast, look to the future and are designed to aid the plaintiff by bringing a defiant party into compliance with the court order or by assuring that a potentially contumacious party adheres to an injunction by setting forth in advance the penalties the court will impose if the party deviates from the path of obedience.

Labor Rel. Comm'n, 382 Mass. at 475-75 (internal citations and quotation marks omitted) (emphasis added).

9. Allowance of this Motion and entry of an Order that reduces the amount of the coercive fines, that assesses the amount of the reduction as compensatory, and that enforces the relevant provision of the RTW Agreement will resolve all outstanding issues between the parties, will obviate the need for the further proceedings contemplated by the February 2 order, and will

therefore conserve resources for all parties and the Court.

Therefore, the parties respectfully request that the Court enter an order:

1. reducing all or part of the coercive fines assessed through and including February 2, 2024;
2. providing that the amount of the reduction be assessed as compensatory relief payable from the NTA to the Newton Public Schools;
3. providing that the RTW Agreement be enforced in accordance with its terms; and
4. entering such other relief as is deemed just.

Date: February 5, 2024

COMMONWEALTH EMPLOYMENT RELATIONS
BOARD,
By its attorney,

/s/ Lan Kantany

Lan Kantany, Chief Counsel
BBO No.: 688387
DEPARTMENT OF LABOR RELATIONS
2 Avenue DeLafayette
Boston, MA 02111
(617) 626-7842
Lan.Kantany@mass.gov

NEWTON SCHOOL COMMITTEE,
By its attorney,

/s/ Jennifer King

Jennifer King
BBO No.: 698634
VALERIO, DOMINELLO & HILLMAN, LLC
One University Drive, Suite 300B
Westwood, MA 02090
(617) 862-2005
Jennifer.King@VDHBoston.com

NEWTON TEACHERS ASSOCIATION &
MICHAEL ZILLES,
By their attorneys,

/s/ Laurie R. Houle

Laurie R. Houle, Staff Counsel
BBO No.: 645206
Richard A. Mullane, Staff Counsel
BBO No.: 561828
MASSACHUSETTS TEACHERS ASSOCIATION
Division of Legal Services
2 Heritage Drive, 8th Floor
Quincy, MA 02172
(617) 878-8289
lhoule@massteacher.org
rmullane@massteacher.org

Certificate of Service

I hereby certify that I have this day, February 5, 2024, served the above Motion on Lan Kantany, Chief Counsel for the Department of Labor Relations, and Jennifer King, counsel for the Newton School Committee, via e-mail.

/s/ Laurie R. Houle

Laurie R. Houle

RETURN TO WORK AGREEMENT

This Settlement Agreement is entered into this 2nd day of February 2024 by and between the Newton School Committee ("Committee") as the bargaining agent for the City of Newton and the Newton Teachers Association (the "NTA"), collectively, the "Parties."

WHEREAS, the NTA and the Committee are parties to a Unit A, Unit B, Unit C, Unit D and Unit E collective bargaining agreement ("CBAs") for the period of September 1, 2020 to August 31, 2023; and

WHEREAS, the Parties began negotiations for a successor CBA in or about October, 2022; and

WHEREAS, the Commonwealth Employment Relations Board (CERB) issued a Ruling on Strike Petition and Interim Order (the "CERB Order") on January 18, 2024; and

WHEREAS, the CERB sought enforcement of the Order in Middlesex Superior Court (the "Court") and the Court issued a Preliminary Injunction Order ("PI Order") in Case No. 2481CV00148 on January 19, 2024; and

WHEREAS, all Parties wish to avoid the tangible and intangible costs of further litigation, including the negative impact on their labor relations, and mutually desire to resolve any and all disputes related to the CERB and PI Orders so that they may move forward with rebuilding their labor-management relationship on a more positive foundation; and

Now, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. 180 Student School Days

The Committee/Superintendent will schedule, and the Union agrees that its members will work, subject to authorized leaves, the one hundred eighty (180) days of instruction for students in the 2023-2024 school year. The members of bargaining units represented by the NTA shall be paid in full with no loss, reduction, or interruption of pay based on the work stoppage provided that they make up the days so that they work their full work year. Employees shall not take personal or unpaid days on any of the days scheduled as make-up days for the days lost as a result of the strike. Any employee who takes a personal illness/sick day for themselves or a family member/dear friend on any of the days scheduled to make up the days lost as a result of the strike shall provide a doctor's note substantiating the need for the day(s). Additionally, if an employee has a need to take one or more of the strike makeup days off for a reason satisfactory to the Human Resources Director, such as attendance at their wedding, the employee may do so without pay provided that the Human Resources Director authorizes the time off in writing or by email in advance of the absence. A request for such time off must be submitted to the Human Resources Director by 5:00 pm on Monday, February 5, 2024, and a response shall be provided not later than 5:00 pm on Friday, February 9, 2024.

2. Return to Work for Newton Public Schools

The Committee will permit all members of NTA bargaining units to return to work without disciplinary action or reprisals for failing to be at work because of the work stoppages which occurred during the August 30, 2023 Convocation and the strike that occurred on and between January 18, 2024 and February 2, 2024 provided that the members return to work on February 5, 2024, subject to any authorized absences. The NTA agrees not to take any retaliatory action against the Committee and its agents, and employees who opposed the NTA's work stoppages.

3. Evaluation Dates

All dates in January and February 2024 on the evaluation timeline for Units A and B will be revised as documented in the attachment linked below:

- 2023-24 Evaluation Timeline w Proposed Strike Changes.pdf

The Committee agrees not to commence or prosecute or continue to prosecute any suit, action, or administrative proceeding against the NTA, its affiliates, officers, agents, and members, individually, and/or in a representative capacity, as a result of the work stoppages which occurred at the August 2023 Convocation and the strike that occurred on and between January 18 to February 2, 2024.

4. Resolution of Current Litigation Associated with the Strike

The Union will inform the Superior Court on February 5, 2024 that: (1) the parties participated in mediation sessions; (2) the parties reached a settlement agreement (Memorandum of Understanding) inclusive of this Return to Work Agreement during the evening of February 2, 2024, and the School Committee is scheduled to approve said agreements on or before February 5, 2024 and there is a NTA ratification vote scheduled for a date on or before February 5, 2024; (3) employees represented by the Union will return to work for the Newton Public Schools on February 5, 2024.

The Union and its representatives agree not to appeal or otherwise challenge the January 16, 2024 petition for strike investigation (Docket No. SI-23-10203), the January 19, 2024 preliminary injunction (Docket No. 2481CV00148) and the January 22, 2024 contempt order (Docket No. 2481CV00148). The NTA waives all rights to, and shall not file, a writ of certiorari challenging the preliminary injunction or the contempt order. Within five (5) calendar days of the ratification of the agreements by both parties covering the periods from September 1, 2023 to August 31, 2024 and September 1, 2024 to August 31, 2027, the Union agrees to withdraw the following actions with prejudice: (1) Department of Labor Relations charges MUP-23-10151; MUP-23-10165; MUP-23-10166; MUP-23-10167; MUP-23-10168; MUP-23-10299; and MUP-23-10322, and (2) Supreme Judicial Court complaint SJ-2023-0470.

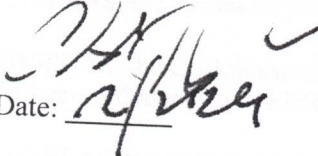
The NTA will comply with all aspects of the Commonwealth Employee Relations Board Orders and Superior Court Orders associated with the strike in January and February of 2024, including, but not limited to, notifying all employees that the strike is canceled and its members must return to work immediately using all of its usual means of communicating with its bargaining unit members including, but not limited to, posting the statements on its website, Facebook page and other social media it uses to regularly communicate with its membership.

5. Eleven-Day Strike and Restitution

The Committee agrees to request that the CERB join the NTA and Committee in requesting that the Superior Court reduce some or all of the contempt fines imposed by the Superior Court so that the moneys that would have been used to pay those contempt fines by the NTA will instead be paid by the NTA to the Newton Public Schools. Any amount of the fines that the Court reduces shall be paid by the NTA to the Newton Public Schools up to \$625,000.00. In no event shall the Committee be paid less than a total sum of \$275,000.00. Such payment to be made by the Union to the "Newton Public Schools" and delivered to the Newton Public Schools on or before February 29, 2024. The Committee releases and waives any and all other claims against the NTA for reimbursement for any and all expenses or damages related to CERB Case No. SI-23-10203 and Middlesex Superior Court Case No. 2481CV00148 through February 2, 2024.

Any proposals by either party related to the Return to Work Agreement that have not been mutually agreed upon by the parties are withdrawn without prejudice. Agreed to by the parties on the date(s) indicated below:

For: the Newton School Committee


Date: 2/2/24



For: the Newton Teachers Association

Date: 2-2-2024

~~[Proposed Form of Judgment]~~

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.
NOCV2007-00982-B

**COMMONWEALTH EMPLOYMENT
RELATIONS BOARD, et al.**

Plaintiffs,

v.

**QUINCY EDUCATION ASSOCIATION,
INC.,**

Defendant.

JUDGMENT

The parties to the above-captioned action having moved, pursuant to Mass. R. Civ. P. 58, that the Court enter final judgment in the form appearing herein, and the Court having considered and allowed said motion,

It is hereby ORDERED and ADJUDGED that:

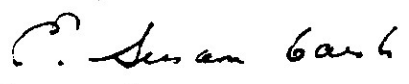
1. The civil contempt fines imposed by the Court in its amended Order of Contempt dated June 12, 2007 at 5:40 p.m. are hereby REMITTED to the total sum of one hundred thousand dollars (\$100,000.00), to be paid to the Plaintiff, Quincy School Committee, on or before February 10, 2009.
2. Sums paid under the preceding paragraph shall be applied toward the Defendant's, Quincy Education Association, Inc.'s (QEA), liability for damages owed to the Plaintiff, Quincy School Committee (QSC), as provided in the Settlement Agreement between the QEA and QSC dated November 12, 2008, and, when paid, shall constitute full

satisfaction of the QEA's obligations under the said Agreement and this Judgment.

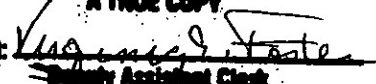
3. Each party shall bear its own costs. This Judgment shall constitute the final judgment in this action and shall thereby terminate all litigation in the present case, including all causes of action asserted in the Verified Complaint for Enforcement Pursuant to M.G.L.C.150E, paragraph 9A(b) and Application for Injunctive Relief, in the Quincy School Committee's Complaint In Intervention, and in the Verified Complaint for Civil Contempt, all of which were filed in this action. The parties expressly agree that, upon entry of this Judgment, and conditioned upon compliance with its terms, all rights of appeal are waived.

Dated: 12/24/08

By the Court:


Justice of the Superior Court

472997v1

A TRUE COPY
Attest: 
Deputy Assistant Clerk
12/29/08

Commonwealth of Massachusetts
County of Norfolk
The Superior Court

Civil Docket **NOCV2007-00982**

RE: Labor Relations Commission et al v Quincy Education Association Inc

TO: Matthew D Jones, Esquire
Mass State Teachers Association
20 Ashburton Place
Boston, MA 02108-0005

CLERK'S NOTICE

This is to notify you that in the above referenced case the Court's action on **12/29/2008**:

RE: Joint MOTION for entry of Final Judgment (Rec'd 12/5/2008)

is as follows:

Motion (P#27.0) ALLOWED (E. Susan Garsh, Associate Justice) dated 12/24/08.
Notices mailed 12/29/2008

Dated at Dedham, Massachusetts this 29th day of December,
2008.

Walter F. Tamily,
Clerk of the Courts

BY:

Assistant Clerk

Telephone:

Copies mailed 12/29/2008

Judgment

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2008 DEC 30 AM 11:08