

02/02/2024

ORDER: ON NEWTON SCHOOL COMMITTEE'S EMERGENCY MOTION FOR INCREASED SANCTIONS:

After hearing and for the reasons stated at the hearing, after applying to the current circumstances the factors set forth in *Labor Rels. Comm'n v. Fall River Educators' Ass'n*, 382 Mass. 465, 482 (1981) ("In determining the amount of a fine imposed as a means of securing future compliance, a judge should consider the character and magnitude of the threatened harm, the probable effectiveness of any suggested sanction, the defendant's financial resources, and the seriousness of the burden on that defendant."), The Newton School Committee's motion is allowed as follows:

1. With respect to coercive fines imposed through today, Judgment shall enter against the NTA, not later than Noon on February 5, 2024, in the amount of \$625,000 reflecting the coercive fines already imposed, payable immediately to the Commonwealth of Massachusetts. If the parties propose a different characterization of those coercive fines, and contend I have the authority to enter a different judgment, then they shall file a motion to that effect not later than 11:00 a.m. on February 5, 2024.
2. In addition to coercive fines payable to the Commonwealth, a plaintiff in a civil contempt action may seek compensatory fines payable to a party. The Newton School Committee has expressed in general terms its intention to seek such compensatory relief. Unlike coercive fines, an evidentiary hearing or trial would be required to assess compensatory relief. If the Newton School Committee intends to seek compensatory relief for NTA's contempt, it shall, on or before February 9, 2024 file and serve a memorandum (not to exceed ten pages) identifying with specificity the components of compensatory relief it requests to seek, including legal authority authorizing each type of relief, together with a proposal for adjudicating any claim to compensatory relief. If the School Committee files that memorandum, the NTA shall respond to the School Committee's proposal on or before February 16, 2024, after which the court will determine whether and how to adjudicate a claim for compensatory relief for contempt.
3. The School Committee's motion to reconsider and increase daily coercive fines is allowed in part as follows:
 - a. My prior order of January 26, 2024 will remain in effect for February 2 and February 3, 2024, that is, a coercive fine of \$50,000 is imposed at 8:00 p.m. on each of those days absent compliance with subparagraphs (a) - (c) of the Preliminary Injunction, subject to paragraph 3(c) below.
 - b. Also subject to paragraph 3(c) below, if the NTA and its officers and the employees it represents have failed to fully comply with the PI Order by February 4, 2024, at 8:00 p.m., NTA shall pay the sum of \$100,000 as a coercive fine payable to the general fund of the Commonwealth of Massachusetts. If the NTA's noncompliance continues after February 4, 2024, at 8:00 p.m., a daily coercive fine of \$100,000 will be imposed against the NTA at 8:00 p.m. on each day that noncompliance continues.

c. The imposition of coercive fines under this paragraph 3 requires compliance with the other provisions of the Preliminary Injunction, including the requirements that "the NTA and the School Committee shall bargain in good faith for a successor collective bargaining agreement" and "shall immediately continue negotiations to resolution or impasse over the issues that separate them and utilize the procedures for resolving disputes provided in their collective bargaining agreements and M.G.L.c. 150E." Preliminary Injunction, ¶¶ (g) and (f), respectively. If the NTA contends that a coercive fine, otherwise imposed at 8:00 p.m. on a given day (the "fine deadline"), should not be imposed because during the 24 hours preceding the fine deadline, the School Committee or the City of Newton did not negotiate in good faith, then the NTA shall file with the court, not later than 12:00 Noon on the next business day after the fine deadline, a notice captioned "Notice objecting to coercive fine." If the NTA files such a notice, it shall contain a concise sworn statement identifying the NTA's basis for its contention that the City did not negotiate in good faith during the relevant period. If any such notice is filed, and I determine it raises a bona fide question whether good faith bargaining occurred during the relevant period, then a judgment for coercive fines for contempt will not enter until the court adjudicates the question of good faith bargaining, or other issues of compliance with the Preliminary Injunction. The appropriate contours and timing of that adjudication, if it is necessary, will be determined in the future. Although this process is established to ensure that good faith bargaining continues in order to impose coercive fines against the NTA, nothing prevents the School Committee from pursuing a contempt action, if warranted, if it contends NTA has failed to comply with any provision of the Preliminary Injunction beyond the strike provisions (for which contempt already has been found).

d. Should it prove necessary for the court to assess compliance with the Preliminary Injunction's requirement that the parties negotiate in good faith, I will be guided by the following:

∫ "The duty to bargain in good faith is the duty to meet and negotiate in good faith. . . . 'Good faith' implies an open and fair mind as well as a sincere effort to reach a common ground." *Commissioner of Admin. & Fin. v. Commonwealth Employment Relations Bd.*, 477 Mass. 92, 98-99 (2017) (footnotes and internal citations and quotation marks omitted).

∫ "[A] public employer violates the obligation to bargain in good faith when the employer refuses to bargain at all, . . . or when it reaches an agreement with a union but then makes its execution contingent on approval by a supervisory entity" *Id.* at 99 (citations omitted).

∫ "[F]or a public employer to comply with the obligation to bargain and negotiate in good faith it must have an open and fair mind during the negotiating and bargaining process. *Id.*

∫ "'Good faith' implies an open and fair mind as well as a sincere effort to reach a common ground." *School Comm. of Newton v. Labor Relations Comm'n*, 388 Mass. 557, 572 (1983) (emphasis supplied).

∫ "The quality of the negotiations is evaluated by the totality of conduct." *Id.*

∫ "The parties' conduct [in negotiations] must always be calculated to move the negotiations forward, toward agreement. Conduct that is designed, or can be reasonably expected to move the negotiations backward is regressive and constitutes a refusal to bargain." In the matter of the Chief Justice for the Admin. & Mgmt. of the Trial Court and Nat'l Ass'n of Government Employees, 37 MLC 181, 186 (2011).

∫ Given the facts and circumstances of this dispute-the months of collective bargaining before the strike, the duration of the strike, and the serious harm occasioned upon some 11,700 students and their families-my evaluation of good faith negotiating will consider two additional criteria, namely: i) Promptness-this dispute demands urgency on the part of the NTA leadership and the City's elected officials. The points of contention between the parties are well known, presumably fully discussed, and the parties should progress toward agreement by responding promptly to each other. Evaluating, preparing, and making proposals, and evaluating and responding to the other side's proposals, should be the singular urgent priority each hour of each day, not a secondary task competing with other priorities. ii) Comprehensiveness of Proposals and Responses. Unless the parties can explain why a different approach is likely to bear fruit, after months of negotiations and to proceed to a final settlement, the parties should respond to comprehensive, multifaceted proposals with similarly comprehensive, multifaceted responses, responding to all issues. A sincere effort to reach common ground should consider all the issues that are in dispute and need resolution.

So ordered.

Judge: Barry-Smith, Hon. Christopher K