

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 official capacity,
Defendants.

CIVIL ACTION NO. 2481CV00148

RECEIVED
2/2/2024

CITY OF NEWTON'S EMERGENCY MOTION TO INTERVENE

Pursuant to Mass. R. Civ. P. 24(a) and 24(b), the City of Newton (the "City") hereby moves to intervene in the above-captioned matter. As grounds for this Motion, the City states as follows:

1. On January 18, 2024, following an investigation, the Commonwealth Employment Relations Board ("CERB" or the "Board") issued an Order finding that the Newton Teachers Association ("NTA") was about to engage in a strike in violation of M.G.L. c. 150E, §9A. The Board's order, among other things, ordered the NTA and its officers and employees (including defendant Michael Zilles in his official capacity) to immediately cease and desist from engaging in, condoning, or inducing, a strike, work stoppage, slowdown, or withholding of services.
2. Despite the Board's Order, the NTA began engaging in an illegal strike on January 19, 2024.

3. On January 22, 2024, this Court issued an Order After Finding of Contempt imposing coercive fines against the NTA and ordering an end to the strike. A second contempt order was issued on January 26, 2024 reducing the daily coercive fines.
4. The NTA's illegal strike continues to date.
5. On February 1, 2024, the Newton School Committee filed an Emergency Motion for Reconsideration of Sanctions requesting immediate payment of accrued coercive fines and doubling fines each day that the NTA fails to comply with this Court's order.
6. Additionally, on February 1, 2024, CERB filed a Motion for Further Relief requesting, among other things, that the Court exercise its powers in equity to order the NTA and the School Committee to submit to binding arbitration if an agreement is not reached by February 2, 2024 at 5:00 pm.
7. The City seeks to intervene in this matter as the Board's Motion for Further Relief implicates the City of Newton's financial interests.
8. The City's budgetary authority to allocate funds to its departments is governed by M.G.L. c. 44, Section 32. In accordance with municipal financial law, the City has a direct interest in any outcome regarding binding arbitration, which will necessarily have a broad impact on the City's finances as a whole. This direct interest warrants intervention by the City.
9. This direct City interest cannot be represented adequately by either the Board or the School Committee. If this Court orders the parties to binding arbitration involuntarily, only the City can represent the financial interests of Newton as a whole and present evidence concerning the City-wide finances beyond the funding allocated to the School Committee. The Court's disposition of that issue will impact the City's

financial interests on a scale well beyond the School Committee's budget, requiring information and consideration of budgetary issues beyond the scope and authority of the School Committee alone.

10. The Board's request improperly conflates the role of this Court in ending the illegal strike with the on-going collective bargaining efforts between the School Committee and the NTA.

11. This Court's authority to enforce the Board's Order is limited by the plain language of M.G.L. c. 150E §9A.

12. In requesting an order for binding arbitration, the Board impermissibly requests that this Court intervene in the collective bargaining process, governed by M.G.L. c. 150E §9. There is no mechanism in §9 under which this Court may order the parties to binding arbitration. The law states clearly that arbitration must be voluntary and initiated by a mutual petition of the parties to the Board.

This motion is brought as an emergency motion under Superior Court Rule 9A(e). Allowing the City's Motion will not unduly delay or prejudice the adjudication of the rights of the original parties to this action. The relief sought by the Board may result in a Court order that directly implicates the financial interests of the City. Accordingly, if the procedural and timing requirements of Rule 9A were imposed, this motion would be rendered moot and the City's ability to participate in the proceeding would be effectively nullified, regardless of its merits.

In light of the foregoing, and in the event that the Court allows the City's Motion to Intervene, the City will respond to the Board's Motion for Further relief forthwith.

WHEREFORE, the City respectfully requests that the Court ALLOW its Motion to Intervene in the above-entitled matter.

Dated: February 2, 2024

THE CITY OF NEWTON

By its attorney,

/s/ Alissa O. Giuliani

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorneys of record for each party by email on February 2, 2024.

/s/ Jonah M. Temple

Jonah M. Temple