

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

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In the Matter of

DEDHAM SCHOOL COMMITTEE

and

DEDHAM EDUCATION ASSOCIATION

and

TIM DWYER, RACHEL DUDLEY, DAN  
MEGAN, MARGARET WILDS,  
HEIDI DINEEN-SERPIS  
GERALDINE KELLY,  
individually and in his/her capacity as officers  
and/or members of the bargaining team of the  
Dedham Education Association

\*\*\*\*\*

Case No. S.I.-19-7658

Date issued: October 24, 2019

CERB Members Participating

Marjorie F. Wittner, Chair  
Katherine G. Lev, CERB Member  
Joan Ackerstein, CERB Member

Appearances:

Kevin Bresnahan, Esq. -

Representing the Dedham  
School Committee

Laurie Houle, Esq. -

Representing Dedham  
Education Association and  
the individually named  
respondents

RULING ON STRIKE PETITION

1 On October 23, 2019, the Dedham School Committee (School Committee or  
2 Employer) filed a petition with the Department of Labor Relations (DLR) for a strike  
3 investigation (Petition) pursuant to Section 9A(b) of M.G.L. c. 150E (the Law). The  
4 Petition alleges that a strike within the meaning of M.G.L. c. 150E, §9A(a) is about to occur  
5 and that this strike has been induced, encouraged and condoned by the Dedham  
6 Education Association (DEA or Union), and its officers and members of the bargaining  
7 team, and the Massachusetts Teachers Association (MTA).

8 On October 23, 2019, the DLR issued a Notice of Strike Investigation that the  
9 School Committee caused to be served on each of the named respondents. On October  
10 24, 2019, Marjorie F. Wittner, Chair of the Commonwealth Employment Relations Board  
11 (CERB), conducted a strike investigation pursuant to Section 11 of the Law and Rule  
12 16.08 of the DLR's Rules, 456 CMR 16.08. The School Committee and the DEA had an  
13 opportunity to be heard, to examine witnesses and to introduce evidence.<sup>1</sup> The record  
14 was closed on October 24, 2019.

#### 15 Motions during Investigation

16 The School Committee moved to amend its petition to remove the MTA as a named  
17 respondent. The MTA had no objection and the motion was granted without prejudice.

18 The DEA moved to postpone the investigation until after 4:00 p.m. on October 24<sup>th</sup>.  
19 The Hearing Officer denied the Motion. The DEA also moved to dismiss the petition as  
20 to all individually named respondents. For the reasons discussed below, the CERB  
21 grants that motion with respect to all individually named respondents except for DEA

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<sup>1</sup> None of the individually named employees appeared at the hearing and Welch was the only witness for the School Committee.

1 President Tim Dwyer (Dwyer). At the conclusion of the hearing, the DEA also moved to  
2 dismiss the petition in its entirety. The CERB denies that motion for the reasons stated  
3 below.

4 Stipulations of Fact

- 5 1. The Town of Dedham (Town) is a public employer within the meaning of Section  
6 1 of the Law.
- 7  
8 2. The School Committee is the collective bargaining representative of the Town for  
9 the purpose of dealing with school employees.
- 10  
11 3. Michael Welch (Welch) is the Superintendent of the Dedham Public Schools and  
12 an agent of the School Committee.
- 13  
14 4. The Dedham Education Association is an employee organization within the  
15 meaning of Section 1 of the Law.
- 16  
17 5. The DEA is an affiliate of the Massachusetts Teachers Association (MTA). The  
18 MTA supplies field representatives and legal counsel to advise and represent the  
19 DEA in certain labor relations matters, including contract administration. Carl  
20 Stamm (Stamm) is the current MTA field representative assigned to the DEA.
- 21  
22 6. The DEA represents in "Unit A," all full-time and regular part-time professional  
23 employees of the School Committee, as defined in M.G.L. c. 150E, Section 1,  
24 including permanent floating substitutes, but excluding permanent substitutes who  
25 are hired to provide preparation time, the Superintendent of Schools, assistant  
26 superintendents, directors, principals, assistant principals, substitute teachers,  
27 teacher aides, independent tutors/therapists and all non-professional employees  
28 of the School Committee.
- 29  
30 7. Dwyer is employed by the School Committee as a teacher and is the President of  
31 the DEA and a member of the DEA's bargaining team.
- 32  
33 8. Respondent Rachel Dudley (Dudley) is employed by the School Committee as a  
34 teacher and is a member of the DEA's bargaining team.
- 35  
36 9. Respondent Dan Megan (Megan) is employed by the School Committee as a  
37 teacher and is a member of the DEA's bargaining team.
- 38  
39 10. Respondent Margaret Wilds (Wilds) is employed by the School Committee as a  
40 teacher and is a member of the DEA's bargaining team.
- 41

- 1 11. Respondent Heidi Dineen-Serpis (Dineen-Serpis) is employed by the School  
2 Committee as a teacher and is a member of the DEA's bargaining team.  
3
- 4 12. Respondent Geraldine Kelly (Kelly) is employed by the School Committee as a  
5 school nurse and is a member of the DEA's bargaining team.  
6
- 7 13. The DEA, Unit A, and the School Committee were parties to a collective bargaining  
8 agreement (CBA) that expired on August 31, 2018.  
9
- 10 14. There are seven schools in the Dedham school system: a high school, four  
11 elementary schools, a middle school and the Early Childhood Education Center  
12 (ECEC).  
13

14 Findings of Fact

15  
16 Background

17  
18 There are approximately 2700 students who attend the Dedham school system  
19 from Pre-K (three-year old's) to 12th grade. There are approximately 307 members of  
20 Unit A.

21 Successor Negotiations; Mediation and Fact-finding

22 The DEA and the School Committee were parties to a CBA that expired on August  
23 31, 2017. On October 10, 2017, they entered into a Memorandum of Agreement that  
24 extended the terms of that agreement to August 31, 2018. On or about February 13,  
25 2018, the DEA and the School Committee commenced bargaining for a successor CBA.  
26 After approximately fifteen bargaining sessions, the School Committee filed a petition for  
27 mediation and fact-finding with the DLR on March 12, 2019.<sup>2</sup> A DLR Mediator was  
28 assigned to mediate the dispute. The parties held approximately seven mediation  
29 sessions between April 9, 2019 and August 1, 2019 but the parties did not reach an  
30 agreement. On August 13, 2019, the DLR informed the parties that it has instituted fact-

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<sup>2</sup> The CERB takes administrative notice of the Petition for Mediation and Fact-Finding in Case No. PS-19-7212.

1 finding in accordance with Section 9 of the Law. The parties selected a fact-finder who  
2 scheduled fact-finding hearings for October 3 and November 19, 2019. The DEA  
3 cancelled the October 3, 2019 session. As of the investigation, the November 19<sup>th</sup> fact-  
4 finding session remained scheduled.

#### 5 Picketing/Leafleting

6 Starting in the fall of 2018, members of the DEA have engaged in informational  
7 picketing regarding the status of the contract negotiations outside each of the seven  
8 Dedham public schools as frequently as once a week. Since the start of the 2019-2020  
9 school year, picketing and leafleting have also occurred at Parent Teachers Organization  
10 (PTO) meetings and during open school nights. Both parties have also taken ads in the  
11 Dedham Times, the local Dedham newspaper, aimed at informing the public of the state  
12 of negotiations and their various positions.

#### 13 Dwyer's October 9, 2019 Email

14 There is no dispute that the DEA scheduled a membership meeting for the  
15 afternoon of Thursday October 24, 2019 at 4:00 p.m.<sup>3</sup> On October 9, 2019, Dwyer sent  
16 an email to "Fellow DEA Members."<sup>4</sup> The email began by stating, "As we draw closer to  
17 our General Meeting it is important that we step back and assess where we are. We  
18 always want to make our decisions based on solid facts, not on emotion or misleading  
19 propaganda." The email then reviews a number of areas of contention between the

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<sup>3</sup> The DEA and the School Committee stipulated to this fact during the course of the investigation.

<sup>4</sup> Welch obtained a copy of this email from an unnamed person whom he described as a school superintendent from a different community.

1 parties, including health insurance,<sup>5</sup> percentage wage increases and step increases, use  
2 of non-working time, cell phone and sexual harassment policy, etc. In the email, Dwyer  
3 contested some of the statements that Welch had made at a PTO Leaders meeting  
4 regarding bargaining unit members' existing compensation. The final paragraph of the  
5 email stated:

6 As we approach our General Meeting it is understandable that we would get  
7 nervous, even scared. This is a time when we need to stick together. The  
8 changes to elementary parent nights do not affect me directly, but I would  
9 never agree to a contract that so burdens my fellow union members. We  
10 are in this together. If we do not stay strong and united this Administration  
11 will take great advantage of us. He refuses to meet with us. He refuses to  
12 bargain with us. He refuses to allow our bargaining team to attend Fact  
13 Finding without his pre-approval. Rather than negotiating with us, the  
14 Superintendent has tried to undermine the DEA Bargaining by presenting  
15 deceptive, misleading information to our members. We should all be angry  
16 with the Superintendent's unwillingness to bargain in good faith. What  
17 options are left for us? Tonight you will receive a text message from a  
18 colleague who is your team captain. This communication network is what  
19 we will use to keep you updated over the next few weeks.

20  
21 In solidarity,  
22 Tim Dwyer

23  
24 Strike Flyer

25  
26 On October 20, 2019, Welch received a copy of a flyer from the Dedham Chief of  
27 Police. The top of the flyer stated, "*Dedham Education Association*," followed by the  
28 words, "**Please join us in a show of support for our strike**" (Strike Flyer). The Strike  
29 Flyer stated in pertinent part:

30 **When:** October 25, 2019 rallies at 7:30 and 4:30 p.m.  
31

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<sup>5</sup> The Town changed the DEA's health insurance plans in July 1, 2018. The Union's literature contends that the deductibles and co-pays in that plan are much higher than what bargaining unit members paid under the prior plan.

1           **Where:** 100 Whiting Avenue Dedham, MA (Dedham Public School  
2 Administration Building)<sup>6</sup>

3  
4           **Why:** [Union briefly reiterates the bargaining disputes described in Dwyer's  
5 October 9<sup>th</sup> email]

6  
7                   **Our contract expired August 31<sup>st</sup>, 2018.** This is the second year  
8 that we have started the school year without a contract. Mediation and  
9 arbitration<sup>7</sup> have both broken down. Enough is enough.

10  
11           Tim Dwyer, President of the Dedham Education Association<sup>8</sup>

12  
13 Meetings Between Dwyer and Welch

14           On October 22, 2019, Welch, along with Human Resources Administrator Kathleen  
15 O'Leary (O'Leary) met with Dwyer regarding the Strike Flyer. Dwyer admitted that he had  
16 authored it and that he had caused it to be sent to other AFL-CIO member organizations.<sup>9</sup>  
17 According to Welch, Dwyer stated that he believed that "averting a strike" was "still  
18 possible," and that the parties were "close." Dwyer indicated a desire to meet "one on  
19 one" prior to October 24<sup>th</sup> to discuss the issues that remained in dispute. Welch replied  
20 that he was not authorized to negotiate without consulting with his committee but that he  
21 would seek authorization. Welch asked Dwyer to prioritize the issues that he wanted to  
22 bargain over and Dwyer named three. At some point in the conversation, Welch also  
23 indicated to Dwyer that he needed to be able to make a contingency plan in the event  
24

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<sup>6</sup> The Administration building is housed in the same building as the high school but in a separate wing and with a separate address. The address of the high school is 140 Whiting Avenue in Dedham.

<sup>7</sup> The record does not reflect what the reference to arbitration means.

<sup>8</sup> Dwyer included his cell phone and personal email address.

<sup>9</sup> The DEA is not an AFL-CIO organization. Welch was not sure which, if any other unions in Dedham were affiliated with the AFL-CIO.

1 there was a strike and told Dwyer that he had been getting many inquiries from people  
2 regarding a potential strike.

3 After receiving authorization to meet with Dwyer, Welch initiated a meeting with  
4 Dwyer on the morning of October 23. O'Leary and Respondent Dudley also attended the  
5 meeting, which took place at around 9:35 a.m. During the meeting, Welch made an offer  
6 to Dwyer that included changes that he characterized as moving the School Committee's  
7 bargaining position closer to the DEA on the three bargaining issues that the DEA had  
8 prioritized. Dwyer rejected the proposals and did not offer a counterproposal. The  
9 meeting lasted between ten and twelve minutes.

10 October 22 Email from "Educators for a Democratic Union"

11 On the evening of October 22, 2019, an organization called "Educators for a  
12 Democratic Union" (EDU) sent the following email to its subscribers to its email  
13 communication. The logo in the email described EDU as "A Progressive Caucus in the  
14 MTA." The email stated in pertinent part (all formatting and boldface in original):

15 Greetings, EDU!

16 Just a quick update this week, focused on supporting educators in the  
17 [DEA] who will be taking a **strike vote** on Thursday! Should Dedham  
18 educators authorize the strike, they will be hitting the picket lines starting  
19 Friday.

20  
21 **That means it's time for all of us to turn out in solidarity for these**  
22 **rallies on Friday:**

23  
24 Friday, October 25<sup>th</sup>, rallies at 7:30 am and 3:30 pm  
25 Dedham Public School Administration Building  
26 1000 Whiting Avenue, Dedham

27  
28 Parking available at the American Legion, 155 Eastern Ave  
29



1 Following a photo of a number of picketers and a red banner stating, "DEA Seeks MTA  
2 Board Support for Strike Vote," the email included a "report from an EDU member who  
3 was at the MTA Board of Directors meeting this weekend." This report stated in pertinent  
4 part:

5 "Member-driven unionism showed its muscle when EDU member Tim  
6 Dwyer sought support of the MTA Board as his local, the [DEA] prepares  
7 for a strike vote. . . . After Tim spoke, an EDU member made a motion for  
8 the . . . MTA to publicly support the DEA strike. Debates over fiduciary  
9 responsibility and legal limits followed. Despite efforts of the EDU  
10 members to win full MTA support for the DEA and 'the human right to  
11 strike,' the Board would not go so far as to put MTA on the line in supporting  
12 an unlawful strike. Instead, the Board adopted amended watered-down  
13 language substituting the word "strike" with language that supports the  
14 DEA's 'efforts to bargain a fair contract.'"  
15

#### 16 Earlier Indications of Potential Strike Vote and Strike

17 In the three weeks preceding this investigation, Welch was contacted by other  
18 School employees. For example, on October 10, 2019, Robin Carew (Carew), a traffic  
19 director, sent an email to Virginia Cullen (Cullen), an employee in the School  
20 Department's business office who tracks attendance. Carew informed Cullen that Mark  
21 Serpis (Serpis), another traffic director, had told her that he would not be coming into work  
22 on October 25, 2019 because "of a teacher's strike that has been scheduled for October  
23 25." Carew indicated parenthetically that she did not know if it was true. Serpis is married  
24 to Dineen-Serpis, who is a member of the DEA's bargaining team.

25 Within the two weeks prior to the October 24, 2019 hearing, Welch received a  
26 number of calls and inquiries from staff and parents about a potential October 25<sup>th</sup> strike  
27 and whether schools would be open. They included an inquiry from the principal of a  
28 Dedham elementary school (the Riverdale Elementary School) about whether the early  
29 childhood program would be open on October 25<sup>th</sup>, the day of the proposed strike, and

1 from an athletic coach as to whether games would need to be rescheduled. Welch also  
2 received a call from an agent of the Dedham YMCA, which operates a Before and After  
3 school childcare program at four elementary schools. The YMCA employee asked  
4 whether schools would be open on October 25<sup>th</sup> and whether the YMCA would be able to  
5 gain access to the schools in the event of a strike. Welch also had two meetings with  
6 Dedham's Chief of Police to discuss the situation and to request police details at each of  
7 the schools on October 25<sup>th</sup>.

#### 8 Contingency Plans

##### 9 October 23, 2019 District Alert

10 As a result of the information he received, including the inquiries and concerns  
11 expressed from parents and employees, on October 23, 2019, Welch made the decision  
12 to make October 25<sup>th</sup> an in-service day in the event a strike occurred.<sup>10</sup> On October 23,  
13 2019 at 12:02 a.m., Welch emailed School Committee employees and parents who were  
14 on the School Committee's email list a "District Alert" regarding "Possible Changes to  
15 School Day on Friday, October 25, 2019." It stated in pertinent part:

16 I am reaching out to parents to share important information with our  
17 community. Despite best efforts to ensure ongoing contract negotiations  
18 with Unit A educators do not impact our student learning environments, I  
19 have been made aware of a possible educator work action vote scheduled  
20 for late in the day on Thursday afternoon, October 24. This vote has the  
21 potential to disrupt the education of our students on Friday, October 25.  
22 Ongoing scheduled communication efforts continue as both parties try to  
23 reach an agreement that avoids this situation.

24  
25 If the Dedham Education Association votes to proceed with actions that  
26 would alter the normal course of a school day schedule, the Dedham Public  
27 Schools will conduct a District In-Service Day on Friday October 25<sup>th</sup> with

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<sup>10</sup> There are generally three in-service days per year where students are excused from attending classes.

1 no school for students. All Dedham Public School Employees and  
2 educators will be required to report to work.  
3

4 I wanted to share this possibility in advance with parents in order to provide  
5 time for you to explore possible alternative plans for your children. In all  
6 such decisions, the safety, security and emotional well-being of our Pre K-  
7 12 students will guide our actions.  
8

9 If the DEA votes not to take any actions then Friday, October 25<sup>th</sup> will  
10 proceed as a regularly scheduled school day for all students and educators.  
11

12 \* \* \*

13  
14 In the recent weeks, Welch also had two meetings with Dedham's Chief of Police  
15 to discuss the situation and to request police details at each of the schools on October  
16 25<sup>th</sup>.

#### 17 October 25, 2019

18 October 25, 2019 is a scheduled work day for all bargaining unit members.  
19 Pursuant to an amendment to the most recent MOA that the DEA and School Committee  
20 entered into on November 2, 2017, teachers at the high school are required to be at work  
21 in their building by 7:30 a.m.<sup>11</sup>

#### 22 Previous Strikes

23 The DEA previously engaged in a one-day strike in 1990 and several non-full days  
24 of unlawful walkouts in 2005. See Dedham School Committee, 16 MLC 1624 (1990);  
25 Dedham Education Association, 31 MLC 163, SI-05-271 (May 12, 2005).

#### 26 Ruling

27 Section 9A(a) of the Law states:

28 No public employee or employee organization shall engage in a strike, and no  
29 public employee or employee organization shall induce, encourage or condone

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<sup>11</sup> The contractual arrival times at other schools are later.

1 any strike, work stoppage, slowdown or withholding of services by such public  
2 employees.

3  
4 Section 9A(b) of the Law states:

5  
6 Whenever a strike occurs or is about to occur, the employer shall petition the [DLR]  
7 to make an investigation. If, after investigation, the [DLR] determines that any  
8 provision of paragraph (a) of this section has been or is about to be violated, it shall  
9 immediately set requirements that must be complied with, including but not limited  
10 to, instituting appropriate proceedings in the superior court for the county wherein  
11 such violation has occurred or is about to occur for enforcement of such  
12 requirements.

13  
14 Section 1 of the Law defines a strike as:

15  
16 A public employee's refusal, in concerted action with others, to report for  
17 duty, or his [or her] willful absence from his [or her] position, or his [or her]  
18 stoppage of work, or his or her abstinence in whole or in part from the  
19 performance of the duties of employment as established by an existing  
20 collective bargaining agreement or in a collective bargaining agreement  
21 immediately preceding the alleged strike . . .; provided that nothing herein  
22 shall limit or impair the right of any public employee to express or  
23 communicate a complaint or opinion on any matter relating to conditions of  
24 employment.

25  
26 The School Committee argues that the facts set out above support a finding that  
27 an illegal strike within the meaning of Section 9A of the Law is about to occur and that the  
28 strike has been and is being induced, encouraged and condoned by the DEA and its  
29 officers and bargaining team members. The DEA argues that the situation is fluid; that a  
30 strike vote has not yet been held; and that it not yet known whether the DEA is going to  
31 strike until October 25th. Thus, the DEA claims that any order from the CERB preventing  
32 a strike vote or a strike is premature and speculative. The DEA also claims that the DLR's  
33 quick scheduling of this matter implicates its due process rights, as it was served only at  
34 4 p.m., the previous day. The DEA also suggests that preventing a strike vote from  
35 occurring would violate its First Amendment rights.

1           The CERB concludes that the Union has violated Section 9A(a) of the Law by  
2 inducing, encouraging and condoning a strike or work stoppage on October 25, 2019.

3           As a preliminary matter, we address the DEA's motion to dismiss the strike petition  
4 as to all the individually named respondents. We grant that motion with respect to all the  
5 respondents except Dwyer. Apart from being a member of the bargaining team, there is  
6 no evidence in the investigation record that Dudley, Megan, Wilds, Dineen-Serpis or Kelly  
7 induced, encouraged or condoned a strike on October 25, 2019. We reach a different  
8 conclusion as to Dwyer based primarily on two things: 1) the Strike Flyer, which he signed  
9 and admittedly authored, and 2) his statement to Welch on October 23 that it might still  
10 be possible to avert a strike, thus implying the imminence of such a strike unless a  
11 settlement was reached.

12           In Boston Teachers Union, Local 66, et.al, 33 MLC 133, SI-07-272 (January 18,  
13 2007) (BTU) *aff'd*. 74 Mass. App. Ct. 500 (2009), *further appellate rev. den'd*, 455 Mass.  
14 1102 (2009), *pet for cert. den'd* 599 U.S. 992 (2010), the CERB held that an affirmative  
15 strike vote is not a per se prerequisite to a finding that a strike in violation of Section 9A(a)  
16 has occurred or is about to occur. 33 MLC at 137. In BTU, the CERB has construed the  
17 phrase "about to occur" appearing in Section 9A(b) to include "situations where actions  
18 by employee organizations, their officials or members demonstrate that an actual threat  
19 of strike work stoppage, or slowdown exists so that public officials could reasonably  
20 engage in contingency planning, to prevent the interruption of important public services."  
21 Id. The circumstances that led the CERB to conclude in BTU that a strike was about to  
22 occur, and that the Union, its officers and board members were inducing, encouraging  
23 and condoning such action in violation of Section 9A(a) of the Law, included the BTU

1 Executive Board's act of voting to place a strike vote before the general membership,  
2 sending membership what the CERB deemed incendiary messages to induce or  
3 encourage a work stoppage including statements like "We're not going backwards," and  
4 "That's unacceptable," and the scheduling of a strike vote for 5 pm on the day before the  
5 scheduled strike. Based on the closeness in time between the strike vote and the planned  
6 strike, the CERB held that the BTU had effectively denied the School Committee time to  
7 present a strike petition to the CERB, or for the CERB to deliberate and then to proceed  
8 to court to obtain enforcement of the CERB's order. On appeal of the various enforcement  
9 and contempt proceedings in Superior Court, and an order of a Single Justice of the  
10 Appeals Court,<sup>12</sup> the Appeals Court held that the "purpose of the [Law], set forth in clear  
11 and unequivocal language, is to allow the [CERB] to intervene in a labor dispute at a point  
12 where the [CERB] may set the requirements necessary to prevent an illegal strike that is  
13 about to occur." Boston Teachers Union (BTU), 74 Mass. App. at 505 (citing Utility  
14 Workers of America, Local 466 v. Labor Relations Commission, 389 Mass. 500, 505-505  
15 (1983) for the proposition that "strikes by public employees 'may create exigent and  
16 unpredictable situations,' therefore a public employer may act in good faith 'to prevent  
17 public services from being disrupted.'"). The Appeals Court also agreed, based on the  
18 BTU's emails and bulletins and articles in the BTU newspaper, that a "reasonable  
19 inference that the union was involved in encouraging a strike was warranted, if not  
20 compelled, by all of the evidence."

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<sup>12</sup> CERB rulings in strike investigations are not adjudicatory decisions subject to direct appeal under Section 11 of the Law. Labor Relations Commission v. Fall River Educators' Association, 382 Mass. 465, 469-470 (1981).

1           Here, there is ample evidence that a strike is about to occur and that the DEA and  
2 Dwyer have induced, encouraged and condoned such strike. The most direct piece of  
3 evidence is the contents of the Strike Flyer, in which the DEA asks other unions to join  
4 the DEA in a show of support for a strike scheduled for October 25, 2019. This flyer  
5 shows a clear intent to strike and the reasons for the strike. Although Dwyer stated to  
6 Welch and to the public that averting a strike is still possible, and that the parties could  
7 still talk, the evidence shows that at the meeting between Welch and Dwyer on October  
8 23<sup>rd</sup>, one day before the strike vote took place, Welch made new proposals on the three  
9 issues that the DEA had identified as its most important issues, but Dwyer rejected the  
10 proposals and made no counterproposals. This failure to make counterproposals in light  
11 of the School Committee's movement on issues important to the DEA is yet additional  
12 evidence that a strike is likely to occur.

13           Thus, under BTU, given the imminence of the October 24<sup>th</sup> strike vote, to be  
14 followed less than twenty-four hours later by an illegal strike, it is incumbent upon the  
15 CERB to intervene at this time to prevent this from occurring. As in BTU, the fact that the  
16 investigation record did not reflect that a strike vote had taken place does not change our  
17 ruling where, in addition to the admissions from Dwyer that a strike is contemplated, there  
18 is other evidence that for the past three weeks, the Union has induced, encouraged and  
19 condoned a strike and that a strike is about to occur, including evidence that bargaining  
20 unit members were aware that a strike vote was scheduled and that, if approved, the  
21 strike would take place on October 25, 2019. It is particularly notable that there was  
22 enough information about the strike for the School Committee to put into place  
23 contingency plans, including arranging for police details, and notifying parents of an in-

1 service day to prevent disruption and ensure the safety of the students. Where in BTU,  
2 the CERB has construed the phrase "about to occur" in Section 9A(b) to include situations  
3 where actions regarding the actual threat of a strike exists such that public officials can  
4 reasonably engage in contingency planning, that situation is present here. 33 MLC at 137.

5 Further, in BTU, in concluding that a strike was about to occur, both the CERB  
6 and the court relied upon statements made by Union officers such as "We're not going  
7 backwards;" and "That's unacceptable." Strikingly similar statements by the Union in this  
8 case include Dwyer's statement in his October 9<sup>th</sup> email, "What options are left for us?"  
9 and "Enough is enough."

10 We therefore deny the motion to dismiss this matter as premature or without merit.  
11 This case falls squarely within the judicially-approved precedent established by the  
12 BTU.<sup>13</sup>

### 13 Conclusion

14  
15 Based on the parties' stipulations and the facts set forth above, we conclude that:  
16 the Union and its membership are about to engage in a strike in violation of Section 9A  
17 of the Law and that the Union, its officers, and its Executive Board are inducing,  
18 encouraging, and condoning such action in violation of Section 9A of the Law.

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<sup>13</sup> To the extent the DEA raises any First Amendment concerns, the Appeals Court's decision in BTU addressed the same argument, finding that the CERB's application of Section 9A to find that a strike was about to occur before a strike vote took place was not unconstitutional, "as there is no constitutional right of employees to strike." 74 Mass. App. Ct. at 506. The Appeals Court further held that to the extent that the conduct regulated by Section 9A "includes both 'speech' and 'nonspeech' elements, the purpose of the statute is entirely unrelated to the suppression of free expression." Id. (citing Zora v. State Ethics Commission, 415 Mass. 640, 651 (1993)). Further quoting Zora, the Appeals Court held that the CERB has a "substantial interest in preventing a strike by union members, and '[a]ny incidental limitation of First Amendment freedoms' is justified." Id.



1           Accordingly, pursuant to Sections 9A(a) and (b) of the Law, we issue the following  
2 order.

3 **ORDER**

- 4
- 5       1.     The DEA, Dwyer and its officers, agents and the employees it represents, shall  
6           immediately cease and desist from engaging or threatening to engage in, a  
7           strike or work stoppage, slowdown, or other withholding of services.  
8
  - 9       2.     The DEA, Dwyer, its officers, and agents shall immediately cease and desist  
10          from financing, inducing, encouraging, or condoning any strike, work stoppage,  
11          or other withholding of services, either directly or through surrogates. The  
12          Union shall not permit its officers or agents to encourage, condone or induce  
13          any strike, work stoppage, slowdown, or other withholding of services.  
14
  - 15      3.     The DEA, Dwyer, its officers, and agents shall immediately, upon receipt of this  
16          order, cancel any scheduled strike vote or strike.  
17
  - 18      4.     The DEA, Dwyer, its officers, and agents shall publicly disavow and disclaim  
19          any future strike, work stoppage, slowdown, or other withholding of services,  
20          any future strike vote and any and all other illegal strike activity. The Union shall  
21          immediately notify all employees it represents of said public disavowal  
22          immediately upon receipt of this order, using its all of its usual means of  
23          communicating with its bargaining unit members.  
24
  - 25      5.     The DEA, Dwyer, its officers and agents shall take any necessary steps to notify  
26          the employees whom it represents of their obligation to fully perform the duties  
27          of their employment, including the obligation to not participate in any form of  
28          strike or work stoppage. Such notification shall be completed immediately upon  
29          receipt of this order and shall entail all of its usual means of communicating with  
30          its bargaining unit members.  
31
  - 32      6.     The DEA, Dwyer, its officers, and agents shall take any and all necessary steps  
33          to inform the employees whom it represents of the provisions of Sections 9A(a)  
34          and (b) of the Law and the contents of this Order. Such notification shall be  
35          completed immediately upon receipt of this order and shall entail all of its usual  
36          means of communicating with its bargaining unit members.  
37
  - 38      7.     The DEA shall bargain in good faith by, among other things, participating fully  
39          and in good faith in the fact-finding hearing scheduled for November 19, 2019.  
40
  - 41      8.     The DEA and the School Committee shall appear as required at the DLR's  
42          offices at 19 Staniford Street, Boston, Massachusetts for a proceeding to  
43          determine compliance with this Order.

1 9. The DLR shall retain jurisdiction of this matter to set further requirements as  
2 may be appropriate.  
3

4 **SO ORDERED**

COMMONWEALTH OF MASSACHUSETTS  
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

  
MARJORIE F. WITTNER, CHAIR

  
KATHERINE G. LEV, CERB MEMBER

  
JOAN ACKERSTEIN, CERB MEMBER