

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

**SUPERIOR COURT
CIVIL ACTION
NO: 22-00990-B**

**COMMONWEALTH EMPLOYMENT RELATIONS BOARD,
Plaintiff**

and

**Haverhill School Committee,
Plaintiff-Intervenor,**

vs.

**Haverhill Education Association,
Massachusetts Teachers Association,
TIM BRIGGS, in his capacity as President of the Haverhill Education Association, and
CHRISTINE HICKEY, in her capacity as a member and building representative of the
Haverhill Education Association,
Defendants**

**ORDER ON PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

On October 17, 2022, upon consideration of written pleadings only (which included the Verified Complaint for Injunctive Relief filed by the plaintiff, Commonwealth Employment Relations Board (CERB), and the opposition of the defendant, Haverhill Education Association (HEA)), the court issued a temporary restraining order (TRO). In the TRO, the court concluded that CERB had established a clear likelihood that it would succeed in obtaining a preliminary injunction in some form after a hearing at which the defendants can be fully heard and that the students of the Haverhill School system would suffer irreparable harm if the TRO did not issue. The court therefore entered the following TRO order, which was somewhat narrow than that which CERB had requested:

- a. HEA and MTA [Massachusetts Teachers Association], their officers, the employees

they represent, and [Christine] Hickey and [Tim] Briggs, in their official capacities, shall immediately cease and desist from engaging in a strike or work stoppage, slowdown or other withholding of services to the Haverhill Public Schools.

b. The HEA and its officers and Hickey and Briggs shall take any necessary steps immediately to notify the employees whom HEA represents of their obligation to fully perform the duties of their employment, including the obligation to refrain from any form of a strike or work stoppage. Such notification shall include notice of the issuance of this ORDER and its terms.

Concurrent with issuing the TRO, the court scheduled an adversarial hearing for 11:30 a.m. this date, October 18, 2022, on CERB's request for a preliminary injunction. Just prior to commencement of the hearing, the plaintiff-intervenor, the Haverhill School Board (School Board), filed a Verified Complaint for Civil Contempt. It contends therein, and in its supporting papers, that the defendants were in clear violation of the TRO because striking activity by the HEA membership continued today.

At today's hearing, counsel for CERB, the School Board, the HEA, and the MTA were present and fully heard.¹ The focus of the hearing was primarily on the HEA and the MTA's stated opposition to any inclusion in a preliminary injunction of the language that appears in Paragraph (c) of CERB's Verified Complaint and on the MTA's argument that it should not be included in any preliminary injunction. Neither of those defendants contested the propriety of the TRO that entered, which was based on the clear statutory prohibition under G.L. c. 150E, s. 9A on strikes by public employees.²

¹ The HEA's counsel advised the court that he represents the two individual defendants, Tim Briggs and Christine Hickey, who are both named solely in their official capacities as members of the HEA, and that both opted not to attend today's preliminary injunction hearing.

² In ruling on CERB's requests for a TRO and preliminary injunction, the court has applied the familiar principles set forth in *John T. Callahan & Sons, Inc. v. City of Malden*, 430 Mass. 124,

With respect to Paragraph (c), which, if included in a preliminary injunction, would require the MTA, the HEA, their officers, and Briggs and Hickey to publicly disavow and disclaim the strike vote that took place on October 14, 2022, and to notify all employees represented by them of such disavowal and disclaimer, the defendants raise a so-called “prior restraint” First Amendment objection. The court notes that such a proactive directive was approved by the Supreme Judicial Court (SJC) in *Labor Relations Commission v. Fall River Educators’ Association*, 382 Mass. 465, 473 (1981). The defendants acknowledge the SJC’s holding therein, but they assert that it is outdated. Yet that decision remains precedent that is binding on this court, as it has never been altered or overruled by the SJC. Moreover, in a far more recent case, the Appeals Court rejected an argument that a judge impermissibly imposed a judicial prior restraint by issuing an injunction that required a teachers’ union to disavow prior statements supporting a strike. *Commonwealth Employment Relations Board v. Boston Teachers Union, Local 66, AFT, AFL-CIO*, 74 Mass. App. Ct. 500, 506 (2009). In any event, at the suggestion of MTA’s counsel, and with the expressed assent of CERB’s counsel, the court will modify the language of Paragraph (c) somewhat, i.e., to require the defendants to publicly state: (1) that the current strike that has resulted from the strike vote that took place on October 14, 2022, as well as any other work stoppage, slowdown, or other withholding of services, is illegal and must therefore cease; and (2) that HEA’s members must immediately return to work.

The court turns to the MTA’s argument that CERB made an unsupported finding in its Ruling on Strike Petition and Interim Order that the MTA has induced, encouraged or condoned

130-131 (1991), and *Packaging Industries Corp. v. Cheney*, 380 Mass. 609, 617 (1980).

any strike activity. The MTA asserts that the evidence established nothing more than that the MTA has engaged in protected activity. The court disagrees. Without determining precisely what standard applies to the factual findings that CERB makes when conducting a non-adjudicatory investigative hearing under s. 9A(b), the court concludes that CERB's determination that MTA had induced, encouraged, and condoned the strike activity was, based on the record before CERB and the reasonable inferences that could be drawn from that record, not arbitrary or capricious or an abuse of discretion. The preliminary injunction issued herein shall therefore include MTA.

For the foregoing reasons, the plaintiffs' motion for a preliminary injunction is **ALLOWED**.

The court **ORDERS** as follows (all components of this **ORDER** pertain solely to activities relating to the Haverhill Public Schools and the ongoing labor dispute between the Haverhill School Committee and the Haverhill Education Association):

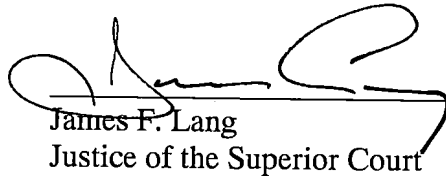
All of the named defendants are hereby temporarily restrained from failing and refusing to comply with the Order of CERB dated October 15, 2022, and as modified as follows:

- a. The HEA and its officers and the employees it represents, and Christine Hickey and Tim Briggs, in their official capacities, shall immediately cease and desist from engaging or threatening to engage in a strike or work stoppage, slowdown or other withholding of services;
- b. The MTA, the HEA and its officers and the employees it represents, and Hickey and Briggs, in their official capacities, shall immediately cease and desist from inducing, encouraging, or condoning any strike, work stoppage, or other withholding of services;
- c. The MTA, the HEA and its officers, and Hickey and Briggs, in their official capacities, shall publicly state: (1) that the current strike that has resulted from the strike vote that took place on October 14, 2022, as well as any other work stoppage, slowdown, or other

withholding of services, is illegal and must therefore cease; and (2) that HEA's members must immediately return to work;

- d. The HEA and its officers and Hickey and Briggs, in their official capacities, shall take any necessary steps to notify the employees whom the HEA represents of their obligation to fully perform the duties of their employment including the obligation to refrain from any form of a strike or work stoppage. Such notification shall be completed immediately upon receipt of this Order and shall entail all of its usual means of communicating with its bargaining unit members;
- e. The HEA and its officers and Hickey and Briggs, in their official capacities, shall take any and all necessary steps to inform the employees whom the HEA represents of the provisions of section 9A(a) and (b) of the Law;
- f. The MTA, the HEA, and its officers and Hickey and Briggs, in their official capacities, shall notify the Department of Labor Relations in writing of the steps taken to comply with this Order by no later than Monday, October 19, 2022, at 9:00 a.m.;
- g. The HEA and the School Committee shall immediately initiate or resume 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; and
- h. The MTA, the HEA, and its officers and Hickey and Briggs, in their official capacities, should appear as required by the CERB for a proceeding to determine compliance with this Order and the Board's Interim Order.

SO ORDERED


James F. Lang
Justice of the Superior Court

Dated: October 18, 2022