

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss
SUPERIOR COURT

#2481CV00148

COMMONWEALTH EMPLOYMENT RELATIONS BOARD,
Plaintiff,

And

NEWTON SCHOOL COMMITTEE,
Plaintiff-Intervenor,

v.

NEWTON TEACHERS ASSOCIATION and
MICHAEL J. ZILLES, Defendants.

REPLACEMENT MOTION TO INTERVENE

Lital Asher-Dotan withdraws her pending pro se renewed motion to intervene (dated February 5, 2024) and submits to this Court in its place:

Pursuant to Mass. Rule of Civil Procedure 24, on behalf of herself and her minor children and a putative class of all others similarly situated, as specified in the proposed pleading attached hereto as Exhibit A, Lital Asher-Dotan moves to intervene and states as follows:

1. She is joined in this motion to intervene by new proposed plaintiff-intervenors Dmitriy Sokolovskiy and Barbara Cipriani, on behalf of themselves and their minor children (collectively hereafter “Dotan”).

2. Rule 24(a) governs intervention as a matter of right, and requires three things: timeliness, an interest in the transaction at issue that will be impeded or impaired by the case's resolution, and the inadequacy of existing representation. Dotan can demonstrate all three elements here.

3. To discern timeliness, a court inquires as to "(i) the length of time that the putative intervenor knew or should have known that his interests were at risk before he moved to intervene; (ii) the prejudice to existing parties should intervention be allowed; (iii) the prejudice to the putative intervenor should intervention be denied; and (iv) any special circumstances militating for or against intervention." *Galbi v. Celco Partnership*, 101 Mass. App. Ct. 260, 263 (2022).

Here, the putative intervenor has acted promptly. The complaint was filed on January 19. Dotan first moved this Court to intervene on January 29. At a hearing on February 2 on the injunction, this Court found that Dotan had standing, but denied intervention at that juncture because her interests were adequately represented at that time because they were 100% aligned with those of the CERB and the City. She then filed a renewed motion to intervene on February 5 for the damages phase. On February 12, she filed a notice asking this Court to hold consideration of her motion pending this filing. At all points, then, Dotan has acted promptly and with appropriate urgency for this fast-moving case (or at least fast-moving to this point).

The present parties will not experience prejudice from the intervention. As explained below, Dotan seeks compensation that is not currently addressed by the existing plaintiffs. Indeed, the existing plaintiffs' policy goals will be furthered by permitting intervention. Note, *Statutory and Common Law Considerations in Defining the Tort Liability of Public Employee Unions to Private Citizens for Damages Inflicted by Illegal Strikes*, 80 Mich. L. Rev. 1271, 1286 (1982) ("Damage actions impose a cost on public employee unions for illegal strikes. Everything

else being equal, this cost will tend to discourage unions from striking and thus further the policy against illegal strikes. And this deterrence is likely to operate more effectively than sanctions spelled out under a statute because of the large number of potential plaintiffs.”).

The union defendants will have to respond to another set of arguments, but it is more efficient and expedient for them to address those arguments in an existing case rather than having to brief and argue them in separate litigation on the same underlying facts.

Meanwhile, as explained in the next section, Dotan will experience prejudice if intervention is denied, because this case will set governing legal precedent for the questions she presents.

Also, timeliness for this motion to intervene should be considered in the context of the current phase of the case. This case is no longer on an extraordinarily expedited track. The fight now is over fines and damages, which is really just a fight over money—and fights over money can take place over time. Prompt action in respect of a pending motion for a TRO or preliminary injunction looks different from prompt action in a dispute over dollars.

In sum, as to timeliness, Dotan acted with urgency to participate in this case. She also acted with alacrity to secure counsel for this next phase, regarding damages and compensation, and so moved timely.

4. As to the second part, Dotan has “an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest” (MRCP 24(a)). The transaction that is the subject of this action is NTA’s illegal strike.

The decision of this Court regarding the legality of that strike will directly affect the viability of the claims set forth in the attached pleading. If NTA’s strike was legal, for instance,

then Dotan’s claim under the Massachusetts Civil Rights statute, Mass. Gen. Laws ch. 12, § 11H-I, would be substantially weakened. Conversely, a finding of its illegality and an associated finding of contempt would significantly ease her claim.

Similarly, her claims for negligence and public nuisance would be made significantly easier if this Court issues a judgment that the strike was illegal and NTA acted in contempt of this Court’s order. Though evidence of illegality is not necessary to a finding of negligence, “evidence of such a [violation] can be used to support a finding of negligence.” *Zinck v. Gateway Country Store, Inc.*, 72 Mass. App. Ct. 571, 577 (2008). Similarly, though illegality is not an element of public nuisance, demonstrating illegality bolsters such a claim. *See Seafood Servs. v. Town of Fairhaven*, 1998 Mass. Super. LEXIS 581, *12 (Bristol Cty. Sup. Ct. Nov. 3, 1998) (“An action to abate a public nuisance is intended to protect the public from unreasonable or illegal uses. . .”). Same to for a potential future claim under the Consumer Protection Act—an illegal act is prima facie an unfair business practice. As a result, the decision of this court will substantially impair her ability to protect her interest in successfully prosecuting her damages claims.

This case is analogous to *Beacon Residential Management, LP v. R.P.*, 477 Mass. 749, 755 (2017). There, a mother and her minor children were tenants in an apartment unit but not signatories to the lease. The landlord tried to remove them. The mother and children had certain unique defenses based on their status (under the Violence Against Women Act; the lease signer was an ex-partner). The Massachusetts Supreme Court concluded that the mother and the children had a sufficient interest to intervene in the action because it directly affected them and because they had unique defenses, even though they were not signatories to the lease.

This closely resembles the instant case, where the students and parents are not signatories to the collective bargaining agreement, but they are immediately impacted (they are the ones evicted from their schools during the strike) and they have unique claims as a result. Intervention as of right is appropriate under element two.

5. Finally, the existing parties are not adequate representatives of the intervenors' interests. This Court declined to permit intervention last time around because Dotan's interests were adequately represented by the CERB and City. Dotan understands and respects that ruling. At the injunction stage, Dotan's interests were fully aligned with those of CERB and the City—to see an effective injunction issued and obeyed.

Now, however, Dotan's interests have diverged from those of CERB and the City. As the attached pleading demonstrates, Dotan wishes to (1) certify two plaintiff classes (one of students, another of parents), (2) certify a defendant class (of union officials), (3) add additional union organizations as defendants (via civil conspiracy and aiding-and-abetting counts), and (4) bring multiple tort and contract counts against the existing and proposed union defendants. On that basis, Dotan's interests have become separate and distinct from those of the other plaintiffs. This again resembles *Beacon Residential Management*, where intervention was necessary because the non-signatory to the lease could bring unique defenses (here, unique claims) that were not available to the existing parties. 477 Mass. at 758 (non-signatory to lease has a right to intervene “to assert affirmative defenses to the eviction action on behalf of herself and her children” that were uniquely available to them under federal law). *See Prudential Ins. Co. v. Bd. of Appeals*, 18 Mass. App. Ct. 632, 634 n.3 (intervention by right appropriate where proposed intervenor has claims “different in their substance” while relating to the same overall issue).

These are claims that the CERB and City cannot bring because they did not suffer the damages which the proposed classes suffered. Only the students suffered learning loss, not the City or CERB. Only the parents paid out-of-pocket for babysitters or day care, or used sick and vacation days, or missed shifts of work. The City and CERB do not have standing to bring these claims (though, as pointed out above, the outcome of the resolution of the City and CERB's claims directly affects the legal viability of these claims).

These new, separate claims is what distinguishes this case from *Allen v. School Committee of Boston*, 396 Mass. 582 (1986), and *Mass. Federation of Teachers, AFT, AFL-CIO v. School Committee of Chelsea*, 409 Mass. 203, 209 (1991). *Allen* made a ruling that is straightforward on the law: only the entities specified in Section 9A have standing to pursue injunctive relief under the statute. That says nothing as to whether Dotan can claim an interest in this matter for her damages claims specified in the proposed pleading. As laid out in *Beacon Residential Management*, this motion is not the place for this Court to address the merits of the proposed intervenors' claims. At the intervention stage, "it is legally inappropriate at such an early stage to make findings regarding a prospective intervenor's claimed interest, at least where, as here, such a determination would go to the merits of the proposed pleading or of the underlying case." *Beacon Residential Management, LP*, 477 Mass. at 754. "Rule 24 (a) (2) requires only that the applicant *claim* an interest relating to the property in suit, even if the claim may ultimately fail on the merits." *Id.* at 753. This Court should not now decide whether Section 9A preempts common law claims, as NTA suggests (and about which NTA is absolutely wrong). All it needs to see is that Dotan has standing for her claims, and her claims are not based on the injunctive relief limited to certain types of parties in 9A, and so *Allen* is inapplicable (and NTA can always raise *Allen* again on a motion to dismiss for lack of standing if it wishes).

Similarly, in *Massachusetts Federation*, the parents had the same goals as the school committee for the litigation. There was no adversity of interests, so the committee's representation was adequate. Here, the parents' interests are no longer identical to the school committee or CERB. CERB and the school want this case to be over and done. The parents want this case to continue on, potentially for some time, through motion practice, discovery, and trial. CERB and the school want to limit the damages to the NTA. The parents want to ensure that the state and national unions that aided and abetted the NTA's illegal strikes and the NTA's leaders are also held liable for their role in these illegal acts. CERB and the school want fines to be settled; indeed, the school committee is limited by the settlement agreement to seek to reduce the amount the NTA owes for its illegal activities:

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.

So at the same time the parents are trying to substantially increase the cost of the illegal strike to the NTA, the school committee is contractually obligated to advocate for limits on the cost. At the most fundamental level, the school committee and NTA want to "get back to normal," working together as labor and management to make the schools work and the collective bargaining agreements work. For the parents, the strike cannot be so easily brushed under a rug—justice and restitution are necessary before the community can move forward.

These substantial divergences between the CERB and school committee's goals and the parents' positions mean the existing parties are not adequate representatives of their interests; though on the same side of the "v," CERB and the school committee have legal positions adverse to those of the parents. Separate representation and intervention are necessary to protect parents' rights.

Finally, in its response to the pro se renewed motion to intervene which this motion seeks to replace, the Newton Teachers Association asserts, "the Supreme Judicial Court held that private citizens may not obtain injunctive relief against a work stoppage by public sector employees. The direct corollary must be that personal damages are not available either." Opp. at 2. Dotan vigorously disagrees¹, but that is a question going to the merits that must be saved for a future motion to dismiss. That is what Dotan has done here: claim an interest in the transaction at issue, namely the illegal teacher strike by NTA.

All that this Court should consider is whether the claim in her proposed pleading substantially intersects and would be affected by the outcome of this case, and whether the existing parties adequately represent those claims. The answers are clearly yes—the proposed pleading is based on the same transaction and underlying set of facts and will be largely governed by the outcome of the existing case—and no—the existing plaintiffs are pursuing separate and distinct claims towards a separate and distinct goal.

Because Dotan's motion to intervene is timely, her claims will be impaired or impacted by the resolution of the existing causes of action, and her causes of action, interests, and goals

¹ See *Williams Bros. v. Peck*, 81 Mass. App. Ct. 682, 686 (2012); *Commonwealth v. G.F.*, 479 Mass. 180, 191 (2018); *Reading Coop. Bank v. Suffolk Constr. Co.*, 464 Mass. 543, 551-552 (2013); *Nardone v. Raytheon Co.*, 2014 Mass. Super. LEXIS 53, *7 (Middlesex Cty. Sup. Ct. May 19, 2014); *School Comm. of Boston v. Reilly*, 362 Mass. 334, 339 (1972); *Meyer v. Veolia Energy North America*, 482 Mass. 208, 225 (2019).

are separate from distinct from those of the existing plaintiffs at this stage, intervention as of right is necessary.

6. In the alternative, Dotan also requests intervention by permission under Rule 24(b).

Under this rule, intervention is appropriate “when an applicant’s claim or defense and the main action have a question of law or fact in common.” Here, Dotan’s claims have questions of law and fact in common with the existing action. Again, whether the strike was illegal is a question of law in common with her claims. Additionally, whether the strike took place and whether NTA and its president are liable for the union’s strike are questions of fact that are in common with her claims.

The rule further directs that “[i]n exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” Far from prejudicing or delaying the rights of the original parties, permitting intervention will be the most efficient method of resolution for the case. The NTA and its president are already defendants here, represented by the statewide union’s legal counsel (the statewide union is among those added defendants in the proposed pleading). The City, which may have damages claims of its own beyond the contempt fine, is already here.² And the City and CERB both have an ongoing interest in the interpretation of Section 9A and in Dotan’s argument that tort claims reinforce and support the goals of Section 9A.

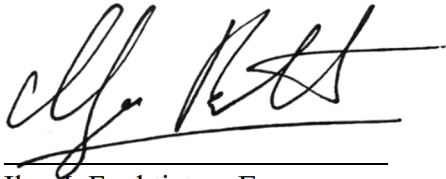
The alternative is that Dotan files a separate case, has to re-serve the same defendants, reach a stipulation as to the same facts, introduce the transcripts from this Court’s hearings and decisions into the record of a new case, and potentially bring a new judge up to speed on the

² Irene Rotondo, “Newton strike to cost district over \$1M as both parties see deal nearing,” Feb. 2, 2024, <https://www.masslive.com/news/2024/02/newton-strike-to-cost-district-over-1m-deal-as-both-parties-see-nearing-deal.html>.

underlying law and facts. Given that practical reality, the obvious answer from the perspective of efficiency for the courts and the parties is to permit intervention and allow full and comprehensive resolution of all claims in the existing case. *See Cosby v. Dept. of Social Serv.*, 32 Mass. App. Ct. 392, 395 (1992) (“efficiency” and “practical interests” are “factors which the judge may, in our view, properly consider” when determining permissive intervention).

For these reasons, Dotan respectfully requests that the Court grant intervention and file the attached pleading in this case on her behalf.

Respectfully submitted,
Lital Asher-Dotan et al.,
By their attorneys,

A handwritten signature in black ink, appearing to read 'Ilya I. Feoktistov', written over a horizontal line.

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PHV motion submitted concurrently
PHV Motion Forthcoming

February 16, 2024.

CERTIFICATE OF SERVICE

I hereby certify that true copies of this motion and attached complaint were served upon counsel for the parties by email.

Dated: February 16, 2024.

/s/

Daniel R. Suhr

Exhibit A

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT

#2481CV00148

COMMONWEALTH EMPLOYMENT RELATIONS BOARD,

Plaintiff,

And

NEWTON SCHOOL COMMITTEE,

Plaintiff-Intervenor,

v.

NEWTON TEACHERS ASSOCIATION and

MICHAEL J. ZILLES, Defendants.

PROPOSED PLEADING: COMPLAINT

Pursuant to Mass. Rule of Civil Procedure 24(c) (“The motion [to intervene] . . . shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.”), on behalf of herself and her minor children and a putative class of all others similarly situated, Lital Asher-Dotan, provides the following proposed pleading (complaint):

1. The members of the Newton Teachers Association knowingly, willfully, intentionally chose to break the law by engaging in an illegal strike, shutting down Newton's public schools for eleven days, and throwing the lives and educations of 12,000 students and their families into chaos as a result. Three of those parents now come to this Court seeking a certified class action against the NTA and those who conspired with it to break the law for justice and compensation to rectify the immense, documented damage its illegal acts inflicted on students and their families.

2. The NTA's illegal acts not only violated Section 9A of Massachusetts's public-sector labor law. They were also basic common-law torts: negligence and nuisance. They also interfered with the state constitutional right of these children to a public education through intimidation and coercion, a cause of action under state statute. They also breached NTA's contract with the Newton School Committee, of which the students are intended third-party beneficiaries. NTA did not undertake this action alone, but did so with the active assistance of other unions that chose to subsidize and support its illegal behavior, which constitutes the tort of civil conspiracy. These tortious acts created real damage: learning loss for the students, emotional distress for the students and parents, and out-of-pocket costs for parents like tutors, camps, day care, babysitters, burned vacation and sick days, and missed work shifts.

3. Indeed, creating these damages for students and their families were the key to the strike: the NTA calculated that the school committee would cave if the community could no longer tolerate the inconvenience and disruption caused by the strike. The union chose its illegal strike and chose to bear the costs of contempt of this court to keep striking to drive parents to a point of desperation: “Pay them whatever they want, just get my kid back in school.” That was willful, wanton, and wrong. The students and families of Newton deserve to be made whole for the real losses they experienced from the NTA’s knowing choice to intentionally, blatantly break the law and impose these damages on the putative classes.

4. This strike was controversial, but the legal issue here is simple: when someone breaks the law, and causes damage to others, is it not right and just for the law-breakers to make whole the victims of their misconduct?

PARTIES

5. Lital Asher-Dotan (“Dotan”), intervenor-plaintiff, is the parent of three children in the Newton schools. She brings this case on behalf of herself and her three minor children: Ron Dotan, 15 years old, 10th grade student at Newton South High School; Leia Dotan, 15 years old, 10th grade student at Newton South High School; and Omri (Omry) Dotan, 14 years old, 8th grade student at Oak Hill Middle School. Their place of residence is 53 Cloverdale Rd., Newton Highlands, MA 02461.

6. Dmitriy Sokolovskiy, intervenor-plaintiff, is the parent of two children in the Newton schools. He brings this case on behalf of himself and his two minor children: Maxim Sokolovskiy (kindergarten) and Tyler Sokolovskiy (6th grade). His residence is 412 Parker St., Unit H, Newton Center, MA 02459.
7. Barbara Cipriani, intervenor-plaintiff, is the parent of one child in the Newton schools. She brings this case on behalf of herself and her child: Gabriel, age 13 (8th grade). Her residence is 107 Parker Ave., Newton MA 02461.
8. The Commonwealth Employment Relations Board, plaintiff, is an agency of the Commonwealth of Massachusetts with statutory responsibilities regarding public sector labor relations. Its place of business is 2 Avenue de Lafayette, Boston, MA 02111.
9. The Newton School Committee, intervenor-plaintiff, is the public agency responsible for administering the Newton School District, which serves approximately 12,000 students. Its place of business is 100 Walnut Street, Newton MA 02460.
10. The Newton Teachers Association, NTA, defendant, is an unincorporated voluntary association that is the exclusive bargaining representative of approximately 2,000 employees of the Newton School Committee across five bargaining units (lettered A-E). It is affiliated with the Massachusetts Teachers

Association and the National Education Association. Its place of business is 46 Austin Street, Suite 302, Newtonville, MA 02460.

11. Michael Zilles, defendant, is the president of the NTA. His place of business is 46 Austin Street, Suite 302, Newtonville, MA 02460.

12. The Massachusetts Teachers Association (MTA), defendant, is the statewide federation of local unions of public school teachers, including the NTA. Its place of business is 2 Heritage Drive, 8th Floor, Quincy, Mass. 02171-2119.

13. The National Education Association, defendant, is the national federation of local unions of public school teachers, including the NTA and MTA. Its place of business is 1201 16th Street, NW, Washington, DC 20036-3290.

JURISDICTION AND VENUE

14. In addition to the existing injunctive action into which intervention is sought, this Court has jurisdiction specifically over Dotan's claims pursuant to M.G.L. Part 3, Title I, Ch. 212, Sec. 3, as this is a civil action for damages where the amount sought exceeds \$50,000 for the class.

15. This Court has personal jurisdiction over the defendants pursuant to M.G.L. Part III, Title II, Ch. 223A, Sec. 3(c) and (d), as they committed tortious acts and caused tortious injury in this commonwealth, or committed tortious acts outside this commonwealth with a direct connection to tortious acts being committed

inside this commonwealth while deriving substantial revenue from this commonwealth.

16. Venue is proper because Dotan and the other plaintiffs, all or virtually all of the members of the proposed plaintiff student class, all or virtually all of the members of the proposed plaintiff parent class, the Newton School Committee, and the NTA are located in Middlesex County.

FACTUAL ALLEGATIONS AS TO NTA

17. In its 2018 collective bargaining agreement, the NTA promised the school committee, students, and families of Newton: “The Association recognizes that the membership is prohibited by law from engaging in strikes and the Association agrees that it does not assert the right to strike against the City of Newton or its School Committee. The Association shall not cause or sponsor, and no professional employee represented by it in the City of Newton shall cause or participate in, any strike, work stoppage, slowdown, sanctions, or any other interferences with work.”¹

18. Having acknowledged publicly that striking would be a violation of state law, the NTA chose to go on strike anyway. NTA knowingly, willfully, intentionally, quite publicly, chose to break the law.

¹ https://www.newteach.org/files/ugd/68adaf_50dbe23192f94a688f93d166359d4ebd.pdf (Unit A CBA); https://www.newteach.org/files/ugd/68adaf_35413983b2ae4610b4f69f965a65d11c.pdf (Unit B CBA); https://www.newteach.org/files/ugd/68adaf_a36822367aa248f6a5cb9dc09d12c36e.pdf (Unit E CBA).

19. Michael Zilles is the president of NTA.

20. On the evening of Thursday, January 18, the NTA held a rally at City Hall. Standing in front of a sea of pre-printed signs proclaiming “NTA ON STRIKE” and “Newton Educators on strike,” Zilles announced, “Ninety-eight percent of our membership tonight voted yes to begin a strike tomorrow morning.”

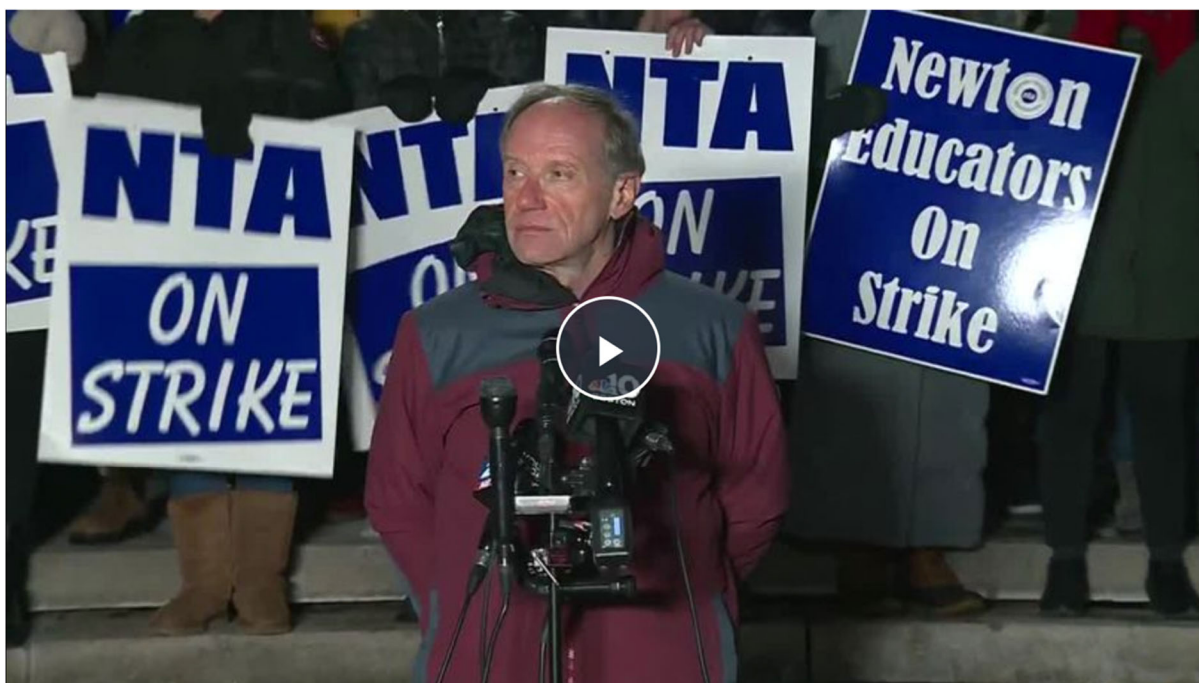


Image from WCVB News website.²

21. As a result, classes were cancelled for all Newton schools on Friday, January 19, 2024.

22. Classes were also cancelled as a result of NTA’s strike on January 22, 23, 24, 25, 26, 29, 30, 31, and February 1 and 2.

² <https://www.wcvb.com/article/newton-massachusetts-teacher-strike-vote/46446196>

23. Students finally returned to school on Monday, February 5, after a deal was struck on Friday, February 2.
24. Eleven school days were cancelled as a result of the strike.
25. As this Court knows well, the Commonwealth Employment Relations Board (CERB) concluded this was an illegal strike.
26. Plaintiff incorporates here the CERB’s findings of fact and conclusions of law in its *CERB Ruling on Supplemental Strike Petition*, Case No. SI-23-10203.³
27. NTA undertook and continued the strike in spite of this finding.
28. On January 19, 2024, this Court issued a preliminary injunction telling NTA not to strike. NTA continued the strike anyway.
29. On January 22, 2024, this Court found the NTA in contempt of its preliminary injunction. NTA continued the strike anyway.
30. “We knew when we took the vote to strike, there would be legal ramifications, including fines,” Newton Teachers Association representative Ashley Raven told media.⁴
31. In other words, they knew they were breaking the law. They budgeted for the fines. It was part of their strike game-plan, baked into the cake. They figured they

³ Available online at <https://figcitynews.com/wp-content/uploads/2024/01/SI-23-10203-CERB-Ruling-on-Supplemental-Strike-Petition.pdf>.

⁴ <https://www.masslive.com/news/2024/01/newton-teachers-union-faces-doubling-fines-if-strike-continues.html>

would gain more at the bargaining table through a strike than they would pay for contempt of court. But breaking the law should not pay. NTA should not make a profit from extortion.

FACTUAL ALLEGATIONS AS TO MTA AND NEA

32. The Massachusetts Teachers Association provided substantial assistance and/or encouragement to NTA throughout the strike.

33. On January 29, Max Page, president of MTA, and Deb McCarthy, vice president of MTA, published an editorial in the *Boston Globe* defending the NTA under the headline: “Teachers unions have no rights if they have no leverage to exercise those rights.”

34. The *Boston Globe* op-ed demonstrates conclusively that MTA was aware that NTA’s strike was illegal under existing law.

35. On February 7, MTA posted to its website: “Last Friday night the Newton Teachers Association reached an agreement on a great contract after members shut down the schools. It is hard to capture in words the courage of NTA members, the joy they exuded and the pride they felt in their campaign for living wages for Education Support Professionals, social workers for their students, paid parental leave, smaller class sizes and appropriate preparation and planning time. Here are some photos of the rallies and pickets. And be sure to look at what they won for their schools right now – and for all future students and educators in Newton. And

please go to newteach.org and provide whatever support you and your locals can to help.”

36. On February 1, MTA posted to its website, “Everything you need to know about this incredible fight for a fair contract and the schools Newton students deserve – and everything you need to know about how to help as an individual and as a local – is available at newteach.org.”

37. On January 24, MTA posted on its website, “Newton educators are fighting for what all of you are fighting for – fair pay, especially for our lowest paid ESP members, paid parental leave, prep time and a social worker in every building – to address the mental health crisis in our schools. Please go to newteach.org for more information and to find out how you and your locals can stand in solidarity with the NTA.”

38. When you go to newteach.org, the first thing you see is a huge Donate button. If you click on it, the next page reads, “Please consider a monetary donation to the Newton Teachers Association in support of our strike effort: our fight to win the fair contract that our students, educators, and community deserves. Your donation will be used for our Hardship Fund to support members who may need financial assistances as a result of the strike. Additionally, funds may be used to offset other costs incurred by the strike including fines, printing signs and

literature, meals and hot drinks for educators, or other necessary costs to help settle our contract.”

39. MTA consistently tweeted in support of Newton on its Twitter account, e.g.,

<https://twitter.com/massteacher/status/1754494559713702294>;

<https://twitter.com/massteacher/status/1754166907928748163>;

<https://twitter.com/FlyingWithSara/status/1753827999986880749> (retweet);

<https://twitter.com/SenWarren/status/1753900428817842457> (retweet);

<https://twitter.com/JamieEldridgeMA/status/1753807336961929240> (retweet);

<https://twitter.com/massteacher/status/1753764790625776003>;

<https://twitter.com/massteacher/status/1753404670284865746>;

<https://twitter.com/massteacher/status/1753038092557021426>;

<https://twitter.com/massteacher/status/1752815095837585680>;

<https://twitter.com/massteacher/status/1752809343257350560>;

<https://twitter.com/massteacher/status/1752668757615415365>;

<https://twitter.com/massteacher/status/1752325508786757855>;

<https://twitter.com/massteacher/status/1751951641597681744>;

<https://twitter.com/massteacher/status/1751028085468639574>;

<https://twitter.com/massteacher/status/1751018433397891084>;

<https://twitter.com/massteacher/status/1750872566204359112>;

<https://twitter.com/massteacher/status/1750678691246412195>;

<https://twitter.com/AyannaPressley/status/1750335690355966038> (retweet);

<https://twitter.com/massteacher/status/1750501610910839006>;

<https://twitter.com/massteacher/status/1749082142594740271>;

<https://twitter.com/massteacher/status/1748687579375890608>;

<https://twitter.com/massteacher/status/1748609290171007184>;

<https://twitter.com/massteacher/status/1748524256495890545>;

<https://twitter.com/massteacher/status/1748437795025137692>;

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<https://twitter.com/massteacher/status/1748331742027469301>;

<https://twitter.com/massteacher/status/1748159168823930901>;

<https://twitter.com/massteacher/status/1747986245853040859>; and

<https://twitter.com/massteacher/status/1747751200324309003>.

40. A number of these tweets or retweets were statements of support for the strike from elected officials.

41. One of these tweets encouraged followers to read a column by labor writer Hamilton Nolan entitled: “Getting Comfortable With Illegal Strikes.” The subheading: “Laws are made up. ‘Nobody doing work’ is real.” In it he writes of Newton, “The teachers who are right now on strike in Newton, Massachusetts are doing the exact same thing. Taking the step of striking illegally requires a good measure of bravery. All of us should support these strikes, whenever we see them.”

42. Coordinating financial support for NTA to sustain its illegal strike is assistance in agreement with and support of NTA's tortious acts.
43. Coordinating and providing coalitions, government, social media, grassroots, and media support and encouragement for NTA to sustain its illegal strike is assistance in agreement with and support of NTA's tortious acts.
44. The National Education Association provided substantial assistance and/or encouragement to the NTA throughout the strike as well.
45. On February 1, MTA posted on its website that on January 31, 2024, "our own NEA President Becky Pringle[] attended an NTA member meeting on Zoom."
46. NEA's president Becky Pringle also traveled to Newton and personally headlined a rally for the NTA at NTA's office building on January 31, 2024.
47. At the time of the NTA zoom meeting and at the time of the NTA in-person rally, CERB and this Court had already declared the strike illegal and enjoined its continuation. Upon information and belief, Pringle and NEA knew of these decisions or would be grossly negligent not to know of these decisions, not to mention the underlying Massachusetts statute on which they were based.
48. On information and belief, Pringle's remarks at the rally supported NTA. According to one news report, "The NTA has the support of the NEA's three million members and many Newton parents, which is important because its negotiators are tired and need continued support, Pringle told the crowd."

49. The news report continues, “The NEA’s president ended the rally by repeatedly asking the crowd what they would do to achieve the NTA’s goals, starting a call and response where the crowd answered ‘whatever it takes’ to every question.”

50. Whatever it takes apparently includes an illegal strike.

51. “NEA President Becky Pringle is supporting Newton educators because she recognizes that our fight is grounded in what all students and educators in public schools across the country deserve,” the NTA said in a press release regarding the rally.

52. Another journalist covering the rally reported: “National Education Association President Becky Pringle echoed messages from Massachusetts Teachers Association leaders that the striking Newton teachers were fighting a larger fight for education. The NEA – the nation’s largest labor union – joined other unions, including The Teamsters and AFL-CIO — in endorsing the Newton Teachers Association (NTA) strike for a range of contractual issues.”⁵

53. After the strike ended, NEA President Pringle tweeted, “Congratulations to NTA on a contract that gives educators and students the resources and respect they deserve! It was an honor to join such determined, dedicated educators and

⁵ <https://figcitynews.com/2024/01/hundreds-rally-at-ed-center-to-hear-nea-president-becky-pringle/>

community members on the picket line—never forget that your bravery and your power brought this victory.”

54. After the strike ended, NEA’s organization account tweeted, “After 11 days of standing strong on the picket line—the longest teachers’ strike in Massachusetts history—our mighty @NewtonTeachers union family has secured improved mental health support, wages, working conditions, and benefits for students and educators. Solidarity prevails!”

55. By providing active support, encouragement, and agreement, raising the media profile of the strike nationally, coordinating support from other unions, and otherwise aiding and abetting NTA’s tortious acts, NEA conspired in the strike.

56. All members of NTA are automatically members of MTA and NEA. Every full-time member of Units A, B, and E of NTA pays \$208 annually in NEA dues. Unit C members of NTA pay \$124.50 annually in NEA dues. Unit D members (substitute teachers) pay \$15 per week they work.⁶

57. Upon information and belief, NEA receives similar payments of dues from the 117,000 members in 400 local associations within MTA. These constitute substantial revenues from within the commonwealth to NEA.

DEFENDANT CLASS ALLEGATIONS

⁶ 2023-2024 Dues Information, https://www.newteach.org/_files/ugd/68adaf_4cca8df445504f3dafa0425076c39bf7.pdf.

58. Newton Teachers Association is an unincorporated voluntary association. As such, its leaders or members can personally liable for the organization's torts when they sponsor, ratify, agree with, support, or participate in those tortious acts.

59. Union members may be held liable for illegal acts they participate in or ratify. *See* MGL ch. 149, § 20B.

60. According to NTA's bylaws, leadership and decision-making for the organization rests in the executive officers, executive committee, and representative assembly.⁷

61. Pursuant to Massachusetts Rule of Civil Procedure 23, Plaintiffs ask that this Court certify a defendant class: All members of the NTA executive committee and representative assembly who voted in favor of the strike.

62. The class has in common the relevant question of fact: did they or did they not vote to ratify the illegal strike.

63. The class has in common the relevant questions of law:

- a. did the strike constitute the tort of negligence?
- b. did the strike constitute the tort of public nuisance?
- c. did the strike constitute the tort of striking for an illegal purpose?
- d. did the active agreement of NTA with MTA and NEA and the Defendant Class constitute a civil conspiracy?

⁷ https://www.newteach.org/_files/ugd/68adaf_4a2a1f3a60d74b62b0f7d74e78e8f559.pdf

e. did the active encouragement of the MTA and NEA constitute aiding and abetting a tort?

f. did the strike violate the civil rights of students by interfering with their constitutional right to a public education by attempted or real intimidation, harassment, and coercion?

64. These commonalities predominate over any other questions.

65. Any possible defenses to these claims are also common to the entire class.

66. The class is too numerous to join individually—over 100 persons. The Representative Assembly is comprised of approximately 85 members, and the Executive Committee is comprised of approximately 20 executive officers and committee chairs.

67. Zilles, as the elected president of NTA, is an adequate and appropriate representative of the class.

68. The members of the class and their contact information can be discerned from the business records of the NTA.

69. A class action is the fair and efficient way to resolve these claims from the perspective of the courts and the parties.

PLAINTIFF FACTUAL ALLEGATIONS

70. Dotan is the parent of three children in the Newton schools: Ron Dotan, 15 years old, 10th grade student at Newton South High School; Leia Dotan, 15 years

old, 10th grade student at Newton South High School; and Omri (Omry) Dotan, 14 years old, 8th grade student at Oak Hill Middle School.

71. She incorporates here by reference her previous filings with the Court detailing the impact of the strike on her children:

So far, the strike already has led to a significant interruption of these student intervenors' education, particularly impacting the two 10th Grade student intervenors' crucial stage where academic subjects are increasingly complex and independent. The lack of structured learning and continuity severely hamper their progress, as regular practice is vital for retaining and understanding new concepts

Proposed sophomore student intervenor, who requires Individualized Education Program (IEP) support, is facing setbacks in her critical high school year. Missing regular assistance in reading, writing, and math could jeopardize her chances of college acceptance. The prolonged strike exacerbates these issues, especially for students with special needs.

The social and emotional toll is significant. One of the proposed sophomore student intervenors, an avid hockey player, has missed valuable parts of the short hockey season, not just his athletic development but his social and emotional well-being. The strike has isolated him from his main social circle, leading to growing depression and detriments to his mental health.

Proposed eighth grade student intervenor has missed opportunities with the ski team club at Oak Hill Middle School, a key activity for socializing and physical activity. These missed experiences, particularly with the ski season ending soon, are irreplaceable.

As full-time working parents, proposed parent intervenor and her husband are unable during this break adequately to supervise their children, the proposed student intervenors. The increase in screen time, a result of the strike, heightens these parents' concern for the mental well-being of their children, the proposed student intervenors, considering the known risks associated with excessive social media use among youth.

The academic and developmental losses the proposed student intervenors are facing extend far beyond the classroom. Moreover, it is the interruption which is a crucial unrecoverable loss. Merely tacking some school days at the end of the school year does not address that.

72. Dmitriy Sokolovskiy, is the parent of two children in the Newton schools:

Maxim Sokolovskiy (kindergarten) and Tyler Sokolovskiy (6th grade). They were not able to attend school for 11 days because of the strike.

73. Gabriel Cipriani- Katebeh, 13 years old today, was diagnosed with autism at the age of 2.5 years old and has always had sensory issue and severe autism. The various programs in which he has been enrolled have proven that they can have a huge impact on Gabriel life both in a very positive or very negative way.

74. Once Covid was over and he went back in-person learning he had again problems in a program that did not meet his needs and lost his placement again and no public school would take him and there was no space in private ones at mid-year.

75. Barbara and her family invested all their family resources to take on significant mortgage debt to move to Newton, where Gabriel is thriving in his 8th grade program and where he feels accomplished and successful.

76. The strike brought absolute confusion and threw upside down his world and put him and his family at danger. Barbara had to scramble to find care for him for each day as Barbara is single working mom on a new job. His grandmother was able to help some, but she could not handle his needs full-day for two weeks.

77. Barbara paid thousands of dollars and had to borrow money to pay for the care during the strike.

78. What is even more serious is that Gabriel completely lost his routine and peace to the point that he was trying to leave the house to reach school or find the bus which he would not understand why it would not come to pick him up. He lost his entire world and starting having all kinds of tantrums and going like a mad fly from one window to another to check if they were open and leave the house.

79. Gabriel's experience is typical of many children with special needs whose routines were destroyed by the strike.

PLAINTIFF STUDENT CLASS ALLEGATIONS

80. Pursuant to Massachusetts Rule of Civil Procedure 23, Plaintiff requests a class be certified as follows: All students enrolled in Newton Public Schools as of January 19, 2024.

81. The class has in common the relevant question of fact: were they enrolled in Newton Public Schools at the time of the strike.

82. The class has in common the relevant questions of law:

- a. did the strike constitute the tort of negligence?
 - b. did the strike constitute the tort of public nuisance?
 - c. did the strike constitute the tort of striking for an illegal purpose?
 - d. did the active agreement of NTA with MTA and NEA and the Defendant Class constitute a civil conspiracy?
 - e. did the activities of MTA and NEA constitute aiding and abetting?
 - f. did the strike violate the civil rights of students by interfering with their constitutional right to a public education by attempted or real intimidation, harassment, and coercion?
 - g. did the strike breach the contracts of Units A, B, and E, and are the students intended third-party beneficiaries of those contracts?
83. These commonalities predominate over any other questions.
84. Any possible defenses to these claims are also common to the entire class.
85. The class is too numerous to join individually – there are approximately 12,000 students enrolled in Newton public schools.
86. Plaintiffs are an adequate and appropriate representative of the class. They experienced the strike, lived through the difficulty and experienced the damage, and can illustrate those damages in their own stories. They have retained experienced counsel to represent them and the class.

87. The members of the class and their contact information can be discerned from the business records of the Newton School Committee, which is already a plaintiff. Directory information of this nature is not problematic under the federal Family and Educational Rights Privacy Act (FERPA).

88. The Plaintiffs request that this Court certify as well a sub-class: all students enrolled in Newton public schools on January 19, 2024, who held a 504(b) or IDEA plan (IEP) for their special educational needs.

89. The sub-class is necessary because the damages suffered by these students are different and additional beyond those of the primary class.

90. The question of fact is common to all members of the sub-class: did they hold a 504(b) or IDEA plan for their special needs at the time of the strike?

91. The sub-class also has in common all the same questions of law and possible defenses as the primary class.

92. The sub-class is too numerous to join individually. Data submitted by Newton to the state Department of Elementary & Secondary Education indicates that approximately 25% of Newton graduates have an IEP.⁸ For a school system of 12,000 students, that means the sub-class includes at least 3,000 students.

8

https://profiles.doe.mass.edu/gis/sped_map.aspx?fycode=2020&orgcode=02070000

93. Plaintiffs, especially Barbara and her son Gabriel, are adequate and appropriate representatives of the sub-class. Gabriel has an IEP.
94. A class action is the fair and efficient way to resolve these claims from the perspective of the courts and the parties.

PLAINTIFF PARENT CLASS ALLEGATIONS

95. Pursuant to Massachusetts Rule of Civil Procedure 23, Plaintiff requests a class be certified as follows: All parents and legal guardians of students enrolled in Newton Public Schools as of January 19, 2024.
96. The class has in common the relevant question of fact: all of them were parents or legal guardians of students enrolled in Newton Public Schools at the time of the strike.
97. The class has in common the relevant questions of law:
- a. did the strike constitute the tort of negligence?
 - b. did the strike constitute the tort of public nuisance?
 - c. did the strike constitute the tort of striking for an illegal purpose?
 - d. did the active agreement of NTA with MTA and NEA and the Defendant Class constitute a civil conspiracy?
 - e. did the activities of MTA and NEA constitute aiding and abetting?
98. These commonalities predominate over any other questions.
99. Any possible defenses to these claims are also common to the entire class.

100. The class is too numerous to join individually – there are approximately 12,000 students enrolled in Newton public schools, which would indicate approximately 6,000 families (assuming 1.94 children per family).

101. Plaintiffs are an adequate and appropriate representative of the class. They experienced the strike, lived through the difficulty and experienced the damage, and can illustrate those damages in their own stories. They have retained experienced counsel to represent them and the class.

102. The members of the class and their contact information can be discerned from the business records of the Newton School Committee, which is already a plaintiff. Directory information of this nature is not problematic under the federal Family and Educational Rights Privacy Act (FERPA).

103. A class action is the fair and efficient way to resolve these claims from the perspective of the courts and the parties.

FACTUAL ALLEGATIONS AS TO DAMAGES

104. Professor Joshua Goodman teaches in Boston University's Wheelock College of Education & Human Development. He's also a former public high school math teacher in Watertown, Massachusetts, and a former senior economist in the Biden White House Council of Economic Advisers (2022-23).

105. Speaking of the Newton strike, he said, "I'm sad to see the walkout, given what we've learned these past few years about the importance of keeping kids in

school. I do think there are other strategies teachers could use that would be less harmful to students and families.” *Id.*

106. He concludes, “I don’t think teacher strikes should be legal. These are vital services and families have no alternatives when such critical supports fall apart.” *Id.*

107. In his interview, Professor Goodman highlights two injuries that necessarily, obviously, foreseeably flow from a teacher strike: student learning loss and family disruption.

108. To quote Chicago Mayor Lori Lightfoot, speaking of an illegal teacher strike in her city: “learning loss is real.”⁹

109. As the *Washington Post* reported concerning a 2012 teacher strike: “what does the strike itself mean for students? Nothing good, the best empirical evidence suggests.” Analyzing studies on teacher strikes in foreign countries and on teacher absences (*i.e.*, when a substitute is called in), the *Post*’s Dylan Matthews finds strikes result in “real lost instructional time and big effects on student learning as a result,” and that these effects “affect their lives for years into the future.”¹⁰

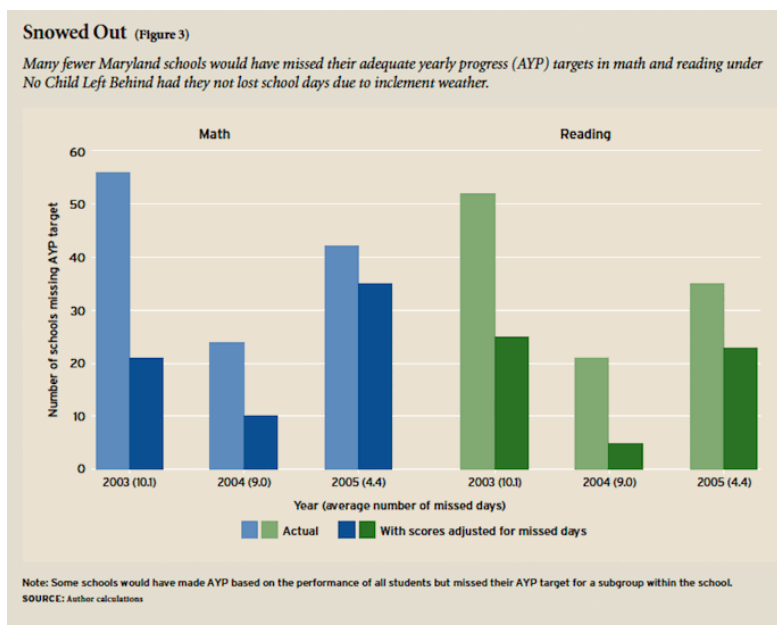
110. A working paper from four economists at the University of Nebraska finds that “each day of school missed due to teacher strikes is associated with a 0.015-

⁹ <https://news.yahoo.com/learning-loss-real-lori-lightfoot-163845892.html>

¹⁰ <https://www.washingtonpost.com/news/wonk/wp/2012/09/10/how-teacher-strikes-hurt-student-achievement/>

point decline in GPA for affected [high school] students. . . . Low-performing students are also significantly less likely to graduate after a strike.”¹¹

111. Further evidence is available from academic studies of snow days. Research by Professors David Marcotte and Benjamin Hansen summarized in *Education Next* found that missing around five days of school due to inclement weather dropped reading and math test scores for the average Maryland student by about five points. These data confirm other studies they cite showing consistently that more time in school leads to higher test scores.¹²



¹¹ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4569850

¹² <https://www.educationnext.org/time-for-school/>

112. High school seniors experience disruption as they prepare for the next stage in their lives. One student summarized a *San Francisco Chronicle* article about a teacher strike: “The San Francisco Chronicle article discusses the difficulties seniors face, particularly with relation to college applications and standardized testing. Students may miss vital lessons, tests, or assistance during a teacher strike that is essential to their academic progress. This might have an impact on their long-term educational trajectory by causing knowledge gaps and lower performance.”¹³

113. Making up the days elsewhere in the school year does not make up for the learning loss. Consider the academic research regarding winter break, when students also take off about two weeks of school.

114. As one school says: “[F]or K-12 students, this can also be the time for learning loss. It is a fact that students can lose almost two months of academic progress over the holidays. This puts a strain on their education come January when they return to school.”¹⁴

115. According to one academic study, “shorter breaks, such as winter break and spring break, are also built into the school year and have the potential to negatively

¹³ <https://greatschoolvoices.org/2023/05/the-oakland-teachers-strike-impact-on-student-learning/>

¹⁴ <https://www.methodschoools.org/old-blog/preventing-learning-loss-over-the-holidays#:~:text=However%2C%20for%20K%2D12%20students,when%20they%20return%20to%20school.>

impact student achievement (Zvoch, 2016) particularly for students with identified disabilities (Allinder & Fuchs, 1994; Menard & Wilson, 2014). . . . Allinder and Fuchs (1994) studied the effects of a short winter break on math skills for elementary students with and without mild disabilities. Results indicated evidence of loss of math skills after the short winter break.”

116. Learning loss does real academic and therefore economic harm to students. The Organization for Economic Cooperation and Development, summarizing an academic study, found “long-term effects of strike-related school closures for Argentina: they find that pupils who were affected by teacher strikes in primary school later suffer salary losses of 2-3% on the labour market. They are also more often exposed to unemployment and work in occupations with lower skill requirements.”¹⁵

117. Papers by the Harvard University Center for Education Policy Research,¹⁶ the World Bank,¹⁷ the OECD,¹⁸ and the Stanford University Institute for Economic Policy Research all show the strong relationship between learning loss and lifetime

¹⁵ [https://one.oecd.org/document/EDU/WKP\(2020\)13/en/pdf](https://one.oecd.org/document/EDU/WKP(2020)13/en/pdf)

¹⁶ <https://cepr.harvard.edu/news/analysis-pandemic-learning-loss-could-cost-us-students-2-trillion-lifetime-earnings-whatthe>

¹⁷ <https://www.worldbank.org/en/news/press-release/2021/12/06/learning-losses-from-covid-19-could-cost-this-generation-of-students-close-to-17-trillion-in-lifetime-earnings>

¹⁸ <https://www.oecd.org/education/the-economic-impacts-of-learning-losses-21908d74-en.htm>

earnings.¹⁹ This leads Plaintiffs to invoke Massachusetts’ Diminution of Earning Capacity as a damage from NTA’s illegal actions.

118. Though an expert witness will be necessary to guide the Court and jury through these studies and others, the academic evidence indicates that a disruption in the school year, even when the days are made up later, leads to documented learning loss, and that learning loss leads to documented earnings loss.

119. In addition to learning loss, Professor Goodman also highlights the family disruption that caretakers experience. As another academic study puts it, “Teacher industrial action is a leading cause of temporary school closures around the globe. These events leave millions of families struggling with disrupted childcare arrangements.” Economists David Jaume and Alexander Willen continue, “These temporary school closures leave millions of families struggling with disrupted childcare arrangements and may have important consequences for the labor market outcomes of parents. This is especially the case for more vulnerable and disadvantaged individuals, such as low-income mums [sic], who may find it particularly difficult to secure alternative childcare options.”

120. Their study of Argentina finds that: “teacher strikes negatively impact the labor market participation of mothers, and that this translates into a significant

¹⁹ <https://siepr.stanford.edu/publications/policy-brief/simple-and-complete-solution-learning-loss-problem>

reduction in earnings. Specifically, a mother whose child is exposed to ten days of teacher strikes in the previous year is 2.7 percent less likely to be employed, and suffers a decline in total earnings equivalent to 2.4 percent, relative to the respective means.”

121. Some parents skip work, other parents use sick days or vacation days, and still others are forced to pay for care, as this example from another recent teacher strike shows: “On the first three days of the Portland teacher strike, Cory Hoppmann got his school-aged son back in day care for \$72 a day. The next couple of days, he found a neighborhood babysitter, another \$120. This week, he hired a nanny at a cost of \$600. By the end of this week, Hoppmann’s expenses from the strike will be nearly \$1,000 and could exceed \$2,000 if he doesn’t get prepaid costs for his son’s pre-kindergarten program at Irvington Elementary refunded.”²⁰

122. “On top of that, Hoppmann, who works as an architect, has been working from 9 p.m. to 1 a.m. some nights to catch up on work. Hoppmann and his wife, who works as a respiratory therapist, are burning through vacation time.”

123. And further, “But Hoppmann said he and his wife are ‘at the end of our rope’ and ‘exhausted mentally and physically’ by the strike. And most importantly, he said the strike’s been difficult on his son. ‘The whole program at Irvington has

²⁰ <https://www.oregonlive.com/business/2023/11/portland-teachers-strike-weighs-on-families-finances-but-unlikely-to-rattle-economy.html>

been amazing,’ he said. ‘But it’s hard for him. He’s sad about it. He doesn’t understand.’”

124. As a parent during another illegal teacher strike said: “My daughter cried Thursday and Friday because the schools were closed. My 11-year-old asked if she could switch schools just so she can have in-person classes,” [Chicago Public Schools Parent Toni] Larocco [told one reporter]. “That’s heartbreaking as a parent, to hear that she would leave everything just to attend school in person.”²¹

125. Parents across Newton can tell similar stories, as Plaintiffs did above.

126. These anecdotal experiences of trauma and distress are validated by academic research on the intense angry and upset feelings students experience during a teacher strike. *See* Esther Greenglass, et al., *Stressful Effects of a University Faculty Strike on Students: Implications for Coping*, 33 *Interchange* 261 (2002).

127. Thus, because of the Defendants’ acts, the Student Class has sustained learning loss. The Student Sub-class of special needs students has sustained additional learning loss beyond that of the typical students because of their additional challenges in bouncing back to their prior point. These learning losses are both personal and economic in their ramifications. The Student Class has

²¹ <https://www.illinoispolicy.org/strike-cost-chicago-students-5-days-amendment-1-could-cost-them-many-more/>

sustained emotional distress damage. The Student Sub-class of special needs students has sustained additional emotional distress damage because of their added reliance on routine and predictable structures to mitigate their challenges. The Parent class has sustained emotional distress damage. And the Parent class has sustained economic damage from missed work, burned sick and vacation days, and out-of-pocket costs for babysitters, day care, and tutors. These damages are real, significant, and class-wide.

COUNT ONE – TORT OF NEGLIGENCE

128. There are three elements to negligence: duty, breach of duty, causation (actual and proximate), and damages. *Ulwick v. DeChristopher*, 411 Mass. 401, 408 (1991).

129. Teachers owe a duty of reasonable and ordinary care to their students and their families.

130. Acting illegally is strong evidence of a violation of duty.

131. Engaging in an illegal strike is not reasonable, not ordinary, and not caring.

132. The NTA and the Defendant Class engaged in an illegal strike here.

133. The illegal strike violated the duty of ordinary care the NTA members owed the students and their families.

134. This was not just garden variety negligence – it was premeditated and intentional. It was willful and wanton misconduct. *Herson v. New Boston Garden*

Corp., 40 Mass. App. Ct. 779, 789 (1996). *See Maryland Casualty Co. v. NSTAR Electric Co.*, 471 Mass. 416, 420 (2015).

COUNT TWO – TORT OF PUBLIC NUISANCE

135. “A public nuisance is an unreasonable interference with a right common to the general public.” Restatement (Second) of Torts §821B (1979).

136. Public education and public schools are a public right.

137. In determining whether there has been an unreasonable interference with a public right, a court may consider, inter alia, “[w]hether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience” (Quoting Restatement (Second) of Torts §821B).

138. Closing public schools for two full weeks interferes with the public safety: one academic study has found that weekdays without school during the school year see a 20 percent increase in juvenile crime.²²

139. Closing public schools also interferes with public comfort and convenience. Not only does it inconvenience the members of the plaintiff classes, but it inconveniences all the employers where the parents work, all the faith-based and other non-profits with routines built around students being in school. The entire

²² Stefanie Fischer & Daniel Argyle, *Juvenile crime and the four-day school week*, 64 *Economics of Educ. R.* 31 (2018).

community suffered during the strike, even as the particular members of the classes suffer disproportionately.

140. This disproportionate suffering by the plaintiff classes is a special injury of a direct and substantial character other than that borne by the general public.

COUNT THREE – TORT OF ILLEGAL STRIKE

1) A strike for illegal purposes is in itself a tort. “[A] strike for an illegal purpose is a tort.” *Cappy’s Inc. v. Dorgan*, 313 Mass. 170, 175 (1943). *Accord Fashioncraft, Inc. v. Halpern*, 313 Mass. 385, 391 (1943) (“In this Commonwealth a strike for a closed shop is for an unlawful labor objective. It is not a lawful dispute but is a tort.”).

141. Here, the NTA, Zilles, and Defendant Class undertook a strike for an illegal purpose—to extort the school committee into concessions through illegally withholding their labor—and this constitutes a tort at common law.

COUNT FOUR – CIVIL CONSPIRACY

142. “To state a cognizable claim that [MTA and NEA] engaged in a civil conspiracy with [NTA] to [commit a tort], it must sufficiently allege that [MTA/NEA] knew that the conduct of [NTA] constituted [a tort] and substantially assisted [NTA] in or encouraged that conduct.” *The Patriot Group, LLC v. Edmands*, 96 Mass. App. Ct. 478, 488 (2019).

143. MTA and NEA knew that the NTA was engaged in an illegal strike, and that the strike tortiously damaged the students and parents of Newton.

144. MTA and NEA substantially assisted the strike with media relations, government relations, coalition relations, grassroots relations, and as to MTA, publicly directing financial support to NTA.

145. MTA and NEA encouraged the strike through their public statements to the media, on social media, and presence at rallies and events.

COUNT FIVE – AIDING AND ABETTING TORT

146. To prove the tort of aiding and abetting another's tort, the plaintiff must show: (1) that the original tortfeasor (here, NTA and the Defendant class) committed the relevant tort; (2) that the aider/abettor (here, MTA and NEA) knew he was committing the tort; and (3) that the aider/abettor actively participated in or substantially assisted in his commission of the tort. *Go-Best Assets, Ltd. v. Citizens Bank*, 463 Mass. 50, 64 (2012).

147. MTA and NEA knew NTA was committing an illegal strike, and that the strike would damage the plaintiff classes.

148. MTA and NEA actively participated in the strike through the presence of their leaders at rallies and other events, literally walking the picket line with NTA.

149. MTA and NEA substantially assisted the strike by directing donor support to NTA and providing media relations, grassroots relations, coalition relations, government relations, and media and social media advocacy.

COUNT SIX – VIOLATION OF CIVIL RIGHTS

150. “Any person whose exercise or enjoyment of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth, has been interfered with, or attempted to be interfered with, as described in section 11H, may institute and prosecute in his own name and on his own behalf a civil action for injunctive and other appropriate equitable relief as provided for in said section, including the award of compensatory money damages.” M.G.L. Part I, Title II, Ch. 12, Sec. 11I.

151. The right to an adequate public education in a safe and secure learning environment is a right secured by the constitution of the commonwealth to the plaintiff student class. *Doe v. Superintendent of Schs. of Worcester*, 421 Mass. 117, 129-131 (1995).

152. The NTA’s strike substantially interfered with the plaintiff student class’s enjoyment of this right by shutting down Newton schools for 11 days.

153. An illegal strike is in its nature threatening, intimidating, and coercive—the goal of an illegal strike is to bring the public employer to its knees to secure concessions that could not be gained at the bargaining table through legal means.

154. It is in particular coercive as to students' access to their education—it wholly cuts them off from their civil right until such time as NTA chose to restore access by ending its illegal strike. Students don't even have the option to stand up to the union's bullying by exercising their civil right in spite of the intimidation or threats—the doors of the schoolhouse are simply shut to them because of NTA's choice to illegally strike.

COUNT SEVEN – BREACH OF CONTRACT

155. The intended beneficiary of a contract has a right to sue for breach of that contract and resulting damages. *James Family Charitable Found. v. State St. Bank & Trust Co.*, 80 Mass. App. Ct. 720, 723 (2011).

156. The members of the student plaintiff class are the intended beneficiaries of the collective bargaining agreements between NTA and Newton School Committees for Units A, B, and E.

157. All three CBA's begin in the preamble; "our prime purpose is to provide education of the highest possible quality for the children of Newton." Later, for Units A and B, the parties agree, "The filling of vacancies, including advancements or promotions, shall be based upon the Superintendent/Principal or Superintendent's, as the case may be, judgment as to what will best serve the interests of the students." And later, for Units A and B, the parties agree, "The

Association and the Committee believe that Smaller Learning Communities could enhance the High School Experience for students. . .”

158. CBA Article 42 of Unit A and CBA Article 36 of Unit B, in particular, focuses on the needs of students with physical and developmental disabilities as a particular area of care and concern for the school committee and the union.

159. As these materials make clear, the students of Newton are the intended beneficiaries of the CBAs—without them, the CBAs would not exist.

160. The Units A, B, and E CBA each promises no strikes: “The Association recognizes that the membership is prohibited by law from engaging in strikes and the Association agrees that it does not assert the right to strike against the City of Newton or its School Committee. The Association shall not cause or sponsor, and no professional employee represented by it in the City of Newton shall cause or participate in, any strike, work stoppage, slowdown, sanctions, or any other interferences with work.”

161. The contract was not in effect at the time of the strike, but the strike settlement agreements make the contract terms retroactive to September 1, 2023, as modified by the settlement agreement.²³

²³

https://www.newteach.org/_files/ugd/68adaf_aabf435ac418458ab1c352b11758d71d.pdf

162. The no-strike provision is not one of the provisions modified by the settlement agreement.

163. Therefore, the no-strike provision is retroactive to September 1, 2023, and the NTA breached the contracts with its strike in January 2024.

164. The no-strike provision and the settlement MOU apply to the collective bargaining agreements of NTA for Units A, B, and E.

165. The plaintiff student class, as third-party beneficiaries of these contracts, are entitled to damages for the NTA's breach of the contracts.

166. The Plaintiffs reserve the right to seek permission to add additional claims that become available through discovery or compliance with the notice provisions of the Consumer Protection Act.

PRAYER FOR RELIEF

A. Certify the plaintiff student class and sub-class of special needs students.

B. Certify the plaintiff parent class.

C. Certify all members of NTA's leadership (executive committee and representative assembly) who voted to ratify the strike as a defendant class.

D. Declare that the strike was illegal under Section 9A.

E. Find that NTA and the Defendant Class committed the tort of negligence.

F. Find that NTA and the Defendant Class committed the tort of public nuisance.

- G. Find that NTA and the Defendant Class committed the tort of a strike for an illegal purpose.
- H. Find that NTA, MTA, NEA, and the Defendant Class committed the tort of civil conspiracy by their agreement and actions in support of the illegal strike.
- I. Find that MTA and NEA committed the tort of aiding and abetting the tort of another through their substantial assistance and/or encouragement of the illegal strike.
- J. Find that NTA and the Defendant Class interfered by coercion, threats, and intimidation with the civil right to a public education of the student plaintiff class;
- K. Declare that students are the intended third-party beneficiaries of the Unit A, B, and E collective bargaining agreements between NTA and the school committee.
- L. Declare that NTA breached the no-strike provisions of the collective bargaining agreements for Units A, B, and E.
- M. Find that NTA, MTA, NEA, and the Defendant Class are jointly and severally liable for damages.
- N. Award the Plaintiff Student Class nominal and actual personal and economic damages.
- O. Award the Plaintiff Sub-Class of Special Needs Students additional nominal, personal, and economic damages.
- P. Award the Plaintiff Parent Class nominal, personal, and economic damages.

Q. Award such other relief as the Court deems just.

R. Award attorney's fees.

JURY DEMAND

S. Plaintiffs demand a jury to hear and decide all issues so triable.

Respectfully submitted,

Respectfully submitted,
Lital Asher-Dotan et al.,
By their attorneys,

A handwritten signature in black ink, appearing to read 'Ilya Feoktistov', written over a horizontal line.

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PHV motion submitted concurrently
PHV Motion Forthcoming

February 16, 2024.