

Volume: I of I  
Pages: 1-44

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
Docket No. 2481CV00148

\* \* \* \* \*

COMMONWEALTH EMPLOYMENT  
RELATIONS BOARD,  
Plaintiff,

v.

NEWTON TEACHERS ASSOCIATION and  
MICHAEL ZILLES, IN HIS  
OFFICIAL CAPACITY,  
Defendants

\* \* \* \* \*

BEFORE THE HONORABLE CHRISTOPHER BARRY-SMITH

Woburn, Massachusetts

Room 710

February 2, 2024

Lisa Cimmino

Approved Court Transcriber

APPEARANCES

For the Commonwealth Employment Relations Board: Massachusetts Department of Labor Relations 2 Ave de Lafayette Lafayette City Center Boston, Massachusetts 02111 By: Lan Kantany, Esq.

For Michael Zilles, in his Official Capacity and Newton Teachers Association: Massachusetts Teachers Association 2 Heritage Drive, 8th Floor Quincy, Massachusetts 02171 By: Richard A. Mullane, Esq. Laurie R. Houle, Esq.

For Other Interested Party Newton School Committee: Valerio Dominello and Hillman, LLC One University Ave., Suite 300B Westwood, Massachusetts 02090 By: Jennifer King, Esq.

1 (Court called to order.) 2 (3:09 p.m.) 3 THE COURT: Good afternoon. 4 THE CLERK: Good afternoon, Your Honor. Your Honor, the 5 matter before the Court is Docket Number 2481CV00148, 6 Commonwealth Employment Relations Board vs. Newton Teachers 7 Association, et al. If the parties could please stand and 8 identify yourself for the Court and the record, starting with 9 the plaintiff. 10 MS. KANTANY: Lan Kantany on behalf of the Commonwealth 11 Employment Relations Board. Good afternoon, Your Honor. 12 THE COURT: Good afternoon. 13 MS. KING: Jennifer King on behalf of the Newton School 14 Committee. Good afternoon, Your Honor. 15 THE COURT: Good afternoon. 16 MS. HOULE: Good afternoon, Your Honor. Laurie Houle on 17 behalf of the Newton Teachers Association and Michael Zilles, 18 President of the NTA. 19 THE COURT: Good afternoon. 20 MR. MULLANE: Yes, good afternoon, Your Honor. Rich 21 Mullane. I'm co-counsel with Ms. Houle for the Newton Teachers 22 Association and Mr. Zilles. 23 THE COURT: Good afternoon. All right. I'd like to just 24 set the agenda, things that are on my list for us to talk 25 about. I have a couple of housekeeping matters, because

1 there's been a lot of communications coming into the court, and 2 I want to let the parties understand how I'm treating them. 3 And then we have a few issues that I'll probably take up, 4 both all together and separately, the request for increased 5 fines, the request for a different remedy, binding arbitration 6 or something like that, to break the impasse. 7 And why don't I first ask if there's anything else that 8 should be on the agenda. We have two pending motions, and 9 anything else you want to talk about? 10 MS. KING: I think briefly, Your Honor. Counsel had a 11 moment to step outside and discuss a few updates, and some of 12 these motions have been filed yesterday. I certainly defer to 13 co-counsel and to opposing counsel, but I think the Union and 14 the School Committee feel comfortable representing that we are 15 very close to an agreement, hopefully getting something, you 16 know, in the next few hours, which, you know, hopefully 17 obviates the need for certain discussions here, but I think 18 that is an important point to make you aware of in terms of 19 some of the relief that's requested. 20 I think to that point, and again, letting other parties 21 weigh in, it's important, you know, these last -- it's crucial, 22 for these last few hours, to let the parties do what they need 23 to do at the table to try to coordinate this. And I think one 24 of the Committee's positions that it wants to bring forth today 25 is that, you know, to date, we know so much has been accrued in

1 coercive fines, and, again, subject to confirmation from other 2 counsel, that we would ask that the coercive fines to date be 3 converted to compensatory fines to be made payable to the 4 School Committee, you know, that the School Committee has 5 amassed significant expense so far and would be amenable to 6 that amount contributing toward that. 7 Certainly it doesn't speak to the whole amount that the 8 School Committee would potentially be seeking as compensation. 9 We're hopeful that might be something the parties can work out 10 at the table, anything in excess of that, but we thought that 11 those updates were important to bring to your attention. 12 THE COURT: All right. Well, I'll add that to the list. 13 It's just -- I was going to bring up compensatory fines, but I 14 view that as actually separate from what's already occurred. 15 MS. KING: Sure. 16 THE COURT: What's already occurred are coercive fines. 17 The law provides also for compensatory fines -- 18 MS. KING: Right. 19 THE COURT: -- which Newton has suggested its interest in, 20 but I don't have a real good idea of exactly what that means, 21 so I was going to invite more information on that front. As 22 for converting, I don't know that that can happen, but maybe 23 you can persuade me that it's possible. 24 MS. HOULE: Your Honor, if I may, this is actually 25 something that has happened in the past where the parties have

1 -- the parties at the table have jointly requested that CERB  
2 agree and that the Court agree that the fines issued by the  
3 Court as coercive fines be -- and we could wordsmith what we  
4 call it, but essentially apply towards what the School  
5 Committee would seek as damages. It happened in Quincy. I  
6 think it's happened in a couple of the other ones that have  
7 happened in the last few years.

8 Obviously it's the discretion of the Court, but given we  
9 are so hopefully -- so close to the end line here, and what I'm  
10 understanding from my clients as well is, if this is something  
11 that is acceptable to the CERB and the Court, it will be  
12 helpful to moving the parties that much closer to that end  
13 line. So it has been done. We believe it can be done,  
14 obviously at your discretion.

15 THE COURT: Okay.

16 MS. KANTANY: Your Honor, may I state the Board's position  
17 on --

18 THE COURT: Please do.

19 MS. KANTANY: The Board's position is that the contempt  
20 fines should be increased and should be payable -- or should at  
21 least be in place, and I understand the parties are asking for  
22 it to be payable to the School Committee. That portion, we do  
23 not take any position on. However, I do think it's important  
24 that there be coercive contempt fines in place against the NTA  
25 and Zilles.

1 THE COURT: All right. Well, you know, this really puts  
2 me in a bind, because I'm going to do whatever I can to  
3 facilitate a settlement, but what you're describing I think is  
4 inconsistent with the law. I mean, the coercive fines are  
5 payable to the Commonwealth for the purpose of getting  
6 compliance with the law. Do I think it makes a lot of sense  
7 for \$625,000 of NTA money to be payable to the Commonwealth?  
8 Not especially, but that's what the law provides.

9 And now I'm being asked to transform them into something  
10 else because it would help get a settlement. And I guess my  
11 answer is maybe, but that's not really the way the law works.  
12 I guess the question is how much flexibility I have, but, you  
13 know, my priority's going to be on -- and my priority's the  
14 same as it has been for the last two weeks, which is to try to  
15 make sure there's a resolution.

16 So that'll continue to be my mindset, but I can't promise  
17 that I'm going to transform coercive fines, which are for one  
18 purpose, into something else, even though I acknowledge the law  
19 provides for compensatory fines, but we haven't adjudicated  
20 compensatory fines in any manner so far, right? It's been an  
21 idea.

22 I was going to announce today, in an effort to put  
23 everything on the table, that if Newton wants to pursue that,  
24 now's the time, tell me what it means and how you want to  
25 adjudicate it, because it requires evidence to prove

1 compensatory relief. So I guess what I'm saying is, I think I  
2 agree with the Commonwealth's position, because it happens to  
3 be the same as the Court's interests in enforcing coercive  
4 fines, but perhaps I can be persuaded that I should view it a  
5 different way. All right. We'll include that on the agenda.

6 Let me do a little bit of housekeeping. Since Monday,  
7 I've received -- I don't know what the count is now, I knew it  
8 in the midweek, but more than a hundred communications, almost  
9 all from parents in Newton. Because I read them, I think it's  
10 important that they become part of the record, so I think we  
11 started doing that on Monday, but it might not have shown up  
12 until Tuesday or Wednesday.

13 So everything that's coming into the court is being placed  
14 into the record, I think under the title of correspondence or  
15 something. If you haven't seen it yet, I urge you to ask -- to  
16 suggest to your clients that it should be required reading. I  
17 appreciate that you're hopefully at the end of these  
18 negotiations, but if they need anything to get over the line,  
19 perhaps they can read what I've been reading all week, which is  
20 about -- I think it's the legal principle, enough is enough,  
21 this has gone on too long. It's hurting a lot of people,  
22 particularly the students. And because I've read them, I'm  
23 placing them in the record, okay? Everyone should know that.

24 I should also state, we've redacted those before putting  
25 them in the record, because I have no idea whether people

1 writing to the court appreciated that they'd become public  
2 record. So we don't identify the people, especially the  
3 students involved, but they're all in the record. Please, if  
4 your clients aren't aware, please make sure that they become  
5 aware of what all these interested parties are saying, okay,  
6 because it's pretty powerful with respect to the continuing to  
7 escalate harm involved when the schools aren't open.

8 All right. I also want to mention intervention, because  
9 somebody inquired to the clerk whether that would be heard  
10 today. A couple of parties moved to intervene. They satisfy  
11 the first two elements; they're timely, and they express an  
12 interest in the action, but the third element is that their  
13 interests aren't adequately represent- -- aren't, are not  
14 adequately represented.

15 Here, I'm quite sure both of the plaintiffs want schools  
16 to reopen. That's what virtually all of the would-be  
17 interveners want. I find that they're adequately represented  
18 already, and without prejudice to the future, for now those  
19 motions to intervene are denied, but everyone should understand  
20 that I've read everything that's come in, the letters, et  
21 cetera.

22 All right. So I'd like to talk about the particular  
23 motions. So the first one that came in, which I wasn't  
24 surprised to get, as the strike has continued on, is to  
25 increase fines. I first want to ask -- and then I was going to

Page 10

1 ask, what is CERB's position on the fines, and then I got -- I  
 2 learned that CERB has a different approach that you proposed.  
 3 So maybe that's the answer, but what is CERB's position on  
 4 increasing fines, in light of the fact that we're now eleven  
 5 days instead of six days into this strike?  
 6 MS. KANTANY: The CERB takes no position on increasing the  
 7 fines. We do support the portion requesting the amount of the  
 8 donations that the NTA has received, but in terms of increasing  
 9 the fines, we take no position. I think from our motion, you  
 10 can see that standing alone, we don't perceive the fines to be  
 11 enough to coerce compliance with the law and to end the strike,  
 12 which is the Board's goal, and that's why we filed a separate  
 13 motion, which I can get into separately. But that's our  
 14 position on the fines.  
 15 THE COURT: I'm going to take up the alternative  
 16 approaches beyond fines, but I want to talk about fines first,  
 17 since it's what's already in place. So I don't think it's  
 18 going out on a limb to suggest that the fines haven't worked,  
 19 right? This is 11 days that schools have been closed.  
 20 So let me just turn to the factors. I think the NTA  
 21 suggests that there's no basis to increase fines. We talked  
 22 about this a while ago, but the character and magnitude of the  
 23 threatened harm, so that's the closed schools. I perceive that  
 24 that has just been going up. The probable effectiveness of any  
 25 suggested sanction, I think we now know that they're

Page 12

1 MS. HOULE: Yup.  
 2 THE COURT: -- it's kind of straightforward.  
 3 MS. HOULE: Yup. So --  
 4 THE COURT: Of course they're not working, because they  
 5 haven't coerced compliance with the law. So shouldn't I do  
 6 more?  
 7 MS. HOULE: So I hearken back to sort of some of the  
 8 observations you were making previously and your skepticism  
 9 about whether coercive fines work at all, but I think what we  
 10 have and what I know and what we've submitted today is that the  
 11 higher, the steeper escalating fines when they were imposed  
 12 definitely did not move the ball in terms of the parties  
 13 getting to agreement at the table and ending this crisis.  
 14 When those fines ease but are still coercive and mounting  
 15 up fast -- so I don't want to give the impression they are  
 16 nothing. They certainly are still coercive, but because it  
 17 took sort of what -- like, the sword of Damocles no longer  
 18 hanging over quite as close to the heads of the NTA, there has  
 19 been movement. Once that -- almost immediately that evening,  
 20 there was a shift at the table, as indicated in the affidavit  
 21 from Mr. Zilles, and they have made steady progress. It's been  
 22 bumpy, it's been a long week for them, but they have made  
 23 steady progress and they are almost at the end line.  
 24 And so my position is and the NTA's position is, it  
 25 actually is working in terms of ending the crisis, and the real

Page 11

1 ineffective, so it would appear that more should be done by me  
 2 in the coercion realm. And those are the ones I'm really  
 3 focused on.  
 4 I guess my question to the NTA is, in light of eleven days  
 5 of closed school and the level of fines that I issued all this  
 6 week because of my concerns about interrupting the collective  
 7 bargaining agreement or negotiations, it would appear to me the  
 8 answer is, of course they should go up, because they're not  
 9 working. Why do you think I'm wrong?  
 10 MS. HOULE: Yes, Your Honor, thank you. Just since you  
 11 were focusing on Fall River as -- I don't want to spend too  
 12 much time on what we put in writing, as we indicated, though,  
 13 while we understand the closing of the schools is distressing  
 14 on many levels for some people, but the people who are  
 15 contacting you directly are a subsection of -- and I don't want  
 16 that to be the only perception I have --  
 17 THE COURT: Oh, I should have said, I understand that if  
 18 I've got a hundred letters, there's 11,000 or something like  
 19 that. So I understand it's a --  
 20 MS. HOULE: Fair enough, Your Honor.  
 21 THE COURT: -- it's a subset illustration, and if I want  
 22 to look at other subsets and illustrations, I can see what's in  
 23 the press. I understand there's all --  
 24 MS. HOULE: Sure.  
 25 THE COURT: -- all sorts of views. I guess my point --

Page 13

1 fear is that if, now, when we may hopefully, cross fingers, be  
 2 hours away from a deal, word comes down that the fines are  
 3 going to just shoot back up again, that that's just going to  
 4 halt that progress or put a hurdle, at least, in the way of the  
 5 parties being able to finish this up and get the kids back in  
 6 school on Monday.  
 7 So I understand that this has been -- this may be, you  
 8 know, trying to your patience and a lot of people's patience,  
 9 but it is a process that we hope is coming to the end, and I  
 10 think drastically changing the circumstances under which the  
 11 parties are bargaining right now has a real possibility of  
 12 interfering and interrupting that progress in getting the deal  
 13 done. So if the real concern -- and I understand --  
 14 THE COURT: It sounds like --  
 15 MS. HOULE: -- there's a law --  
 16 THE COURT: It sounds like --  
 17 MS. HOULE: -- and they're violating the law.  
 18 THE COURT: It sounds like you might suggest it'd be a  
 19 better idea, if I'm inclined to increase, dramatically, the  
 20 fines, to make them kick in on Sunday night, because then you  
 21 won't experience them unless you don't reach an agreement by  
 22 Sunday night. Is that a better idea?  
 23 MS. HOULE: It is certainly an option that would be  
 24 preferable to having them kick in today at five or eight.  
 25 THE COURT: So here's the problem, the way we're

Page 14

1 discussing the dynamics of the negotiating table and how  
 2 coercive fines might affect them. It's as though we're  
 3 painting on a clean slate, and the problem with this discussion  
 4 and the frustration that I think many, many people feel is that  
 5 part of the context for the discussion of whether or not fines  
 6 will interrupt the collective bargaining dynamic is that the  
 7 strike is illegal, right?  
 8 MS. HOULE: Yes, Your Honor.  
 9 THE COURT: And I feel like last Friday I perceived this  
 10 problem with the bargaining dynamic and decided that maybe that  
 11 wasn't the best approach to get to an agreement, which I  
 12 perceived as the only solution to this problem, and it didn't  
 13 work, because now it's a week later.  
 14 MS. HOULE: I understand the perspective that you're  
 15 positing, Your Honor, in that, hasn't worked yet, because we're  
 16 still here, technically, out, but it has worked in that there  
 17 has been significant progress being made, and so it --  
 18 THE COURT: It has worked so long as I and everyone else  
 19 can live with an unlawful strike as part of the baseline.  
 20 MS. HOULE: I don't know that I would call it a baseline.  
 21 I think I'm approaching it more from -- this is, like, a  
 22 practical application of things. I get, like, we completely  
 23 understand 9A and its existence and -- but if the goal is to  
 24 get the kids back in school on Monday, ultimately the biggest  
 25 interest of everybody in this room is to have the kids back in

Page 16

1 really felt like I gave more equal --  
 2 MS. HOULE: Yes, Your Honor.  
 3 THE COURT: -- fair, and effective bargaining a chance --  
 4 MS. HOULE: Absolutely, Your Honor.  
 5 THE COURT: -- and I'm very surprised it's a week later  
 6 and we're still here, so --  
 7 MS. HOULE: But we are so close.  
 8 THE COURT: Okay. Well, whoever on the plaintiff's side  
 9 would like to be heard with respect to fines, now's the time.  
 10 MS. KING: Yeah, I think briefly, Your Honor, the School  
 11 Committee, acknowledging this is our motion, I think we  
 12 acknowledge and accept the position of the Board that the fines  
 13 have not worked, because there is still an illegal strike.  
 14 There is clearly sufficient evidence that there is, you know, a  
 15 lot of character and magnitude of harm that is incalculable to  
 16 families and students.  
 17 We don't believe that the fines thus far have been  
 18 reasonable and effective, but we also acknowledge and accept  
 19 the representation of union counsel that the parties are very  
 20 close to an agreement. So I think to that end, we would defer  
 21 to the Court in terms of next steps on how you want to proceed  
 22 with any further relief.  
 23 THE COURT: Well, in light of the update that I got at the  
 24 beginning of this hearing, as you may be able to tell from my  
 25 questions so far, I was inclined to increase the fines because

Page 15

1 school on Monday, then our position is, don't change the  
 2 current set of circumstances that the parties are operating  
 3 under. I think they're -- we believe that they're too close.  
 4 And so I understand the legal side of it, I certainly do,  
 5 Your Honor, but on the practical side, we want to get these  
 6 kids back in school. The teachers want to be back in school.  
 7 All the educators want to be back in school. We're too close.  
 8 I would just urge the Court to proceed with caution, if you  
 9 would, please.  
 10 THE COURT: Well, with respect, I proceeded with caution  
 11 last Friday and, didn't work.  
 12 MS. HOULE: Respectfully, we think it has.  
 13 THE COURT: I'm considering returning to a more  
 14 traditional approach --  
 15 MS. HOULE: Sure.  
 16 THE COURT: -- which is what I had in mind in the first  
 17 place, which is surely the best way to gauge whether something  
 18 is working is by increasing it each day. And I have no idea if  
 19 that would have worked, but the reason I chose not to do that  
 20 is because I thought it was so apparent the impact that could  
 21 have on the bargaining dynamic --  
 22 MS. HOULE: And we agree with --  
 23 THE COURT: -- but now I guess --  
 24 MS. HOULE: -- your observations.  
 25 THE COURT: But now I guess I feel like -- I really -- I

Page 17

1 I felt like I gave plenty of time with the other approach. But  
 2 now perhaps I'd consider increasing the fines with an  
 3 implementation date Sunday night at 8 p.m. to ensure that over  
 4 the next 48 hours, there's no continued strike -- I'm sorry,  
 5 the strike, you know, is avoided. Do you think that's a better  
 6 idea than just starting immediately?  
 7 MS. KING: Again, I think we'd defer to your judgment.  
 8 You know, certainly want to see progress and acknowledging how  
 9 close the parties are. However, as you've noted, we are eleven  
 10 days into this strike and it is still occurring. Don't want to  
 11 hamper progress; however, we still have a lot of harm that is  
 12 being caused. And again, we'll defer to your judgment on when  
 13 the appropriate timeframe would be.  
 14 THE COURT: All right. Another aspect of the fines motion  
 15 is that which has been accrued already, \$625,000, should be  
 16 payable immediately. I had that option at the front end. I  
 17 thought it also might tilt the scales in a manner that kept the  
 18 CBA from being finalized, and didn't do it then, but surely  
 19 now, now's the time, right?  
 20 There's no dispute as to the 625 that's already been  
 21 incurred as coercive fines. I'm inclined to have judgment  
 22 enter, you know, promptly. I say today. It might be Monday,  
 23 given the way judgments enter. But any objection to that? I  
 24 know you asked for it. Do you still ask for it?  
 25 MS. KING: The Committee is still seeking compensatory

Page 18

1 fines.

2 THE COURT: Well --

3 MS. KING: Or, sorry, yes --

4 THE COURT: -- that's a different question.

5 MS. KING: -- I'm sorry, yes.

6 THE COURT: Right now what's in place is \$625,000 --

7 MS. KING: Right.

8 THE COURT: -- of coercive fines. I am suggesting that

9 because those have not been challenged, despite my invitation,

10 right, I was pretty clear that if you think there's no good-

11 faith bargaining, then unions should be telling me that,

12 because that's a conceivable way to avoid fines. I got no

13 motions. The fines are in place. It would appear to me time

14 that judgment enter. So are you now saying not so fast because

15 we might want to recharacterize those fines, or do you think

16 judgment should -- I'm asking Newton -- or do you think

17 judgment should enter for \$625,000 coercive fines?

18 MS. KING: Okay.

19 THE COURT: What's your position?

20 MS. HOULE: Yes, Your Honor. I actually would request

21 perhaps, if you're amenable, to waiting on that. As I said, we

22 have -- you know, I don't think NTA will have a problem with

23 continuing to call the fines, no matter where the payment is

24 made, coercive, because I understand that's an interest that

25 CERB has, to make sure that that message is out there and that

Page 20

1 entire file with me, so I apologize for that.

2 So, you know, certainly the decisions talk about coercive

3 as well as compensatory fines, and they aren't mutually-

4 exclusive, necessarily, but it is certainly something that the

5 Court has discretion and has been exercised in other

6 circumstances --

7 THE COURT: I think in Fall --

8 MS. HOULE: -- in aid of getting the crisis --

9 THE COURT: I think in Fall River, at the end of that

10 decision, they say a court, at the end of a contempt

11 situation --

12 MS. HOULE: Yes.

13 THE COURT: -- can determine whether to increase,

14 decrease, or recharacterize -- they don't use the word

15 recharacterize, but I think that's what --

16 MS. HOULE: Right, or --

17 THE COURT: -- the SJC said --

18 MS. HOULE: -- or waive or, you know, all sorts of

19 options, which is part of why we have argued from the beginning

20 that waiting for a final judgment makes sense, because then,

21 again, gives the parties the tools at the table. It allows us

22 to come back to the court and make arguments on, you know,

23 fines amounts and waiver and allocation, whatever it may be,

24 and --

25 THE COURT: Do you realize, though, that flexibility

Page 19

1 that's --

2 THE COURT: Hold -- let me just interrupt. They may have

3 that interest. It's actually the court system that has an

4 interest, right --

5 MS. HOULE: Absolutely, Your Honor.

6 THE COURT: -- it's a court order --

7 MS. HOULE: -- absolutely.

8 THE COURT: -- let's be -- the idea behind coercive fines

9 is so that when a judge --

10 MS. HOULE: Yes.

11 THE COURT: -- whatever it's worth, writes a court order,

12 they're not ignored.

13 MS. HOULE: Yes.

14 THE COURT: That's the point.

15 MS. HOULE: You're absolutely --

16 THE COURT: It may also happen to correspond with the

17 agency's interests in enforcing labor relations, but --

18 MS. HOULE: Sure.

19 THE COURT: -- I'm pretty sure that's the primary purpose.

20 MS. HOULE: Right, Your Honor, but as I mentioned, it has

21 been done before, and if you give us until Monday, we can dig a

22 little deeper and get, hopefully, some of the examples of how

23 it was done in other cases. I know in Quincy, and it might be

24 on the docket, that was originally put with the CERB's initial

25 contempt complaint, we were trying to find -- I didn't bring my

Page 21

1 serves every party's interests except for the Court's?

2 MS. HOULE: Yes, I do, Your Honor, and you've been

3 extremely patient, and we do appreciate that, but, you know,

4 certainly my clients understand, and we've always been very

5 clear with them throughout this process, that the coercive

6 fines are because they are in contempt of the court order and

7 that those are, you know, up front, payable to the court, and

8 that we hope that maybe along the line there can be some

9 agreement that's reached.

10 We've never guaranteed it. It's not that the defendants

11 are disrespectful of the Court. Again, my concern and I'm

12 hoping everybody's concern here is to get the kids back in

13 school on Monday, so let's give them all the tools, and it's

14 not in any way disrespectful or intended to be disrespectful to

15 the Court and the Court's orders, but trying to bring this to a

16 closure so that the parties can move on and the kids can be

17 back in school.

18 THE COURT: Yeah, I don't -- I'm not concerned about any

19 of the counsel in this room being disrespectful to the Court --

20 MS. HOULE: No, I understand, Your Honor.

21 THE COURT: -- it's the process that's being described,

22 this flexibility. While I completely understand --

23 MS. HOULE: Sure.

24 THE COURT: -- having more dollars on the negotiating

25 table helps, but those dollars are already attributed to

Page 22

1 enforcing court orders --  
 2 MS. HOULE: And just --  
 3 THE COURT: -- and so in the name of flexibility and  
 4 getting to a deal, we would retract that -- whatever that was  
 5 worth, which it hasn't apparently been much --  
 6 MS. HOULE: It's been a lot, Your Honor.  
 7 THE COURT: -- whatever that was worth, we'll then retract  
 8 it and basically help fund a settlement.  
 9 MS. HOULE: Sure.  
 10 THE COURT: The parties should consider themselves  
 11 fortunate that my overarching interest is to make sure that  
 12 this ends --  
 13 MS. HOULE: Right.  
 14 THE COURT: -- and so maybe I'll go along --  
 15 MS. HOULE: And --  
 16 THE COURT: -- but you hear my reservations. It really --  
 17 MS. HOULE: Yes.  
 18 THE COURT: -- does not make sense as far as enforcing the  
 19 law if, in the end, we re-characterize these things as  
 20 compensatory. I know compensatory fines exist.  
 21 MS. HOULE: Sure.  
 22 THE COURT: I would need evidence of what is it for, how  
 23 do you evaluate -- how do you value it --  
 24 MS. HOULE: Yup.  
 25 THE COURT: -- that type of thing --

Page 24

1 THE COURT: -- I'm confident --  
 2 MS. HOULE: -- times having to do that.  
 3 THE COURT: -- there is a way to do that. All right. So  
 4 Newton's official position is that even if I issue judgment on  
 5 the fines already collected, you don't want me to be explicit  
 6 that those are coercive fines like the NTA; you want a little  
 7 flexibility on how they might be characterized.  
 8 MS. KING: That would be our position, but at the end of  
 9 the day, again, we're going to defer to your judgment, so --  
 10 THE COURT: But the Employment Relations Board feels  
 11 differently?  
 12 MS. KANTANY: We believe there should be contempt --  
 13 coercive contempt fines, Your Honor.  
 14 THE COURT: Okay.  
 15 MS. KANTANY: Who it's payable to, we take no position on  
 16 that.  
 17 THE COURT: Well, but who it's payable to is the  
 18 treasurer. I mean, that's not up to me or you; it's the law.  
 19 That's where coercive fines go, to the general fund of the  
 20 Commonwealth. I mean, that's what the case law says, so -- all  
 21 right.  
 22 Let's talk about the alternative relief proposed by the  
 23 Commonwealth. So 150E clearly provides for arbitration, but  
 24 it's also pretty clear that it's by agreement of the parties.  
 25 And I think you're asking me to order it as a matter of equity

Page 23

1 MS. HOULE: So for -- procedurally --  
 2 THE COURT: -- all right, but I'll --  
 3 MS. HOULE: -- and for --  
 4 THE COURT: -- I'll consider it.  
 5 MS. HOULE: Yes, Your Honor, I appreciate that. So  
 6 procedurally and efficiency for the Court, it seems to make  
 7 sense to hold off on the final judgment, because if we get a  
 8 final judgment that's not really final, I mean, god forbid, I'm  
 9 sure -- hopefully there will be settlement over the weekend, it  
 10 wouldn't be an issue, but if, let's say, hypothetically  
 11 speaking, they weren't, there's a final judgment, but the  
 12 parties aren't really settled yet, and then if fines are  
 13 accruing again, is there another final judgment, and then if  
 14 we're going to appeal or seek a waiver, at what point, what  
 15 amount are we appealing, I think it just, procedurally, would  
 16 become very complicated.  
 17 THE COURT: Well, so when the Court enters a judgment and  
 18 there is a process by which the parties can ask to revisit the  
 19 judgment --  
 20 MS. HOULE: Yes.  
 21 THE COURT: -- under Rule 60, I mean, I have no idea if it  
 22 applies here, but --  
 23 MS. HOULE: I guess I'm trying --  
 24 THE COURT: -- I'm confident --  
 25 MS. HOULE: -- I'm trying to avoid multiple --

Page 25

1 in these particular circumstances; is that right?  
 2 MS. KANTANY: That's correct, Your Honor. We're past the  
 3 point of 150E framework. We're in the -- Your Honor's contempt  
 4 proceedings and clear contempt of your orders for approximately  
 5 two weeks now, and the traditional methods that we have used in  
 6 order to coerce compliance with the law have not worked. And  
 7 the Court has broad discretion to fashion remedies in contempt  
 8 proceedings to prevent threats to the integrity of the Court's  
 9 orders.  
 10 So in these circumstances that are extraordinary, we  
 11 believe that a binding arbitration is appropriate if the  
 12 parties cannot reach an agreement. It will cut through the  
 13 bargaining issues of he said/she said. It will provide a  
 14 neutral party to look at the school's finances and each party's  
 15 positions and issue a neutral determination.  
 16 THE COURT: And I -- so I don't practice in this area. I  
 17 assume an arbitration is not a one-day exercise, it is a long  
 18 exercise; is that right?  
 19 MS. HOULE: Yes, Your Honor.  
 20 MS. KANTANY: It can be --  
 21 MS. KING: Yes.  
 22 MS. KANTANY: -- yes.  
 23 THE COURT: So part and parcel of your suggestion, I just  
 24 want to make clear, is mandatory arbitration and the strike  
 25 must end, right, the --

1 MS. KANTANY: Yeah --  
 2 THE COURT: -- the arbitration is the way to reach an  
 3 agreement, and we know it wouldn't take a day or two, it would  
 4 take a while, right?  
 5 MS. KANTANY: Well, I think under -- I think your order  
 6 already says to end the strike, so I don't think this is  
 7 conditioned upon, it's a --  
 8 THE COURT: Well, I know, so this is -- but this is my  
 9 concern is, if I were to order that in the absence of an  
 10 agreement by Sunday at 8 p.m., I'm signing an order Monday  
 11 morning that, in these unusual circumstances, requires binding  
 12 arbitration, I do not share your confidence that the NTA will  
 13 be at binding arbitration and end the strike. I perceive  
 14 there's a good chance the strike would continue. That's my  
 15 concern. We'd be in a new context but in the same situation.  
 16 And I'm not asking you to promise me that either way, but this  
 17 is my concern.  
 18 MS. KANTANY: I understand your concern. I share your  
 19 concern. The Newton Teachers Association and the educators,  
 20 its members, are the only ones who can end the strike and  
 21 comply with the Board's orders or the Court's orders. And this  
 22 is why we're asking for this relief, because it does not appear  
 23 that fines alone has worked. So this is --  
 24 THE COURT: And so I --  
 25 MS. KANTANY: -- something new.

1 THE COURT: This is why it appeals to me in the last --  
 2 since I read this only recently, you know, I got the motion  
 3 this morning, it has been brought to my attention by various  
 4 interested parties, including the NTA, all the problems with  
 5 this idea. But this wouldn't be ordering arbitration when  
 6 parties don't agree to it as a general matter; it would be  
 7 ordering arbitration when parties don't agree to it when a  
 8 strike is underway that's unlawful, when the strike lasts  
 9 eleven days, when \$625,000 of coercive fines have already been  
 10 imposed, and those coercive fines, in my view, are ineffective  
 11 in ending the strike, and it appears to me that neither side is  
 12 sufficiently focused on good-faith negotiations to reach to  
 13 break the impasse. It's in those very unusual circumstances  
 14 that the pretty dramatic remedy of a different way of breaking  
 15 the impasse comes in.  
 16 So I'm responding sort of to some of the letters that have  
 17 come in recently and how this would shake up the way  
 18 municipalities deal with unions in a way that's unfair and robs  
 19 local municipalities of control and the like. I get that, but  
 20 I'm not writing a law here. I'm not changing the law. I'm  
 21 saying, in these circumstances, when everything else seems to  
 22 have failed, why wouldn't this be a way to break the logjam.  
 23 I want to hear from the NTA, but just like I asked the  
 24 Commonwealth what their position was on increased fines, what  
 25 is the School Committee's position on this new version of

1 breaking an impasse?  
 2 MS. KING: Certainly. So the School Committee would  
 3 oppose this and the idea that there isn't -- there is an  
 4 absence of clear statutory authority to require binding  
 5 arbitration this --  
 6 THE COURT: No question --  
 7 MS. KING: No, right --  
 8 THE COURT: -- no question.  
 9 MS. KING: Yeah.  
 10 THE COURT: Right?  
 11 MS. KING: Right. In that sense --  
 12 THE COURT: That's why I talk about the unique  
 13 circumstances --  
 14 MS. KING: Right.  
 15 THE COURT: -- that lead us to this point.  
 16 MS. KING: Right, we understand that, but we do want to  
 17 make clear on the record that any order that requires the  
 18 parties to enter binding arbitration, we don't believe that  
 19 there is authority. We are certainly in some unchartered  
 20 territory at the moment that the legislature did not  
 21 contemplate when it was enacting Chapter 150E in the 1970s.  
 22 They contemplated a procedure for public safety with the JLMC  
 23 and different other mechanisms for those unions, but again, in  
 24 this sense, just have to say that, you know, the School  
 25 Committee would oppose any mechanism that forces the parties

1 into binding arbitration.  
 2 And I think you hit some very salient points as to  
 3 arbitration generally. It can be a long process. It can be a  
 4 costly process. I mean, certainly the School Committee  
 5 wouldn't be opposed to doing anything that -- you know, if we  
 6 feel that there -- if the mediator feels we are at an impasse  
 7 and can't go further, you know, exploring fact-finding  
 8 arbitration, something of that nature, again, just looking at  
 9 the statutory language.  
 10 But at the same time, there is a deep concern if there was  
 11 an agreement or an order to go through with this process and  
 12 the strike is still ongoing. You know, what happens when we  
 13 have an arbitration that is scheduled or is going to take  
 14 several weeks to take place and the educators are still on  
 15 strike. That is a deep, deep concern of the Committee in  
 16 potentially entertaining this motion.  
 17 THE COURT: Oh, let me be clear, if I ordered an  
 18 arbitration and it took place and the strike continued, that  
 19 would probably be even a bigger failure than \$625,000 --  
 20 MS. KING: Right.  
 21 THE COURT: -- of fines not making a difference. I  
 22 readily admit that. The idea here is that it would somehow  
 23 force the end to the strike. What's the NTA's position?  
 24 MS. HOULE: Thank you, Your Honor. We concur with the  
 25 School Committee and the School Committee's concerns, so I

1 won't rearticulate those. On a practical level, we're very  
2 concerned, as I said, I believe we are very close to the end,  
3 and such an order, putting aside, you know, authority or what  
4 that would mean for the parties -- and by the way, arbitration  
5 isn't scheduled overnight, it would be scheduled whenever we  
6 can find arbitrators to do it -- that it halts the progress  
7 being made at a critical juncture.

8 And it's not the panacea that I think CERB thinks it is,  
9 because the -- it's binding in quotes, because it is still  
10 subject to funding. And as we have been saying all along, we  
11 have a mayor and the city council that are controlling purse  
12 strings. So they could go -- the parties could go through this  
13 whole process, get a decision from this -- either a panel or an  
14 individual arbitrator and the city could still not fund it, and  
15 then we're back to square one. So it seems better to stay the  
16 course that the parties are currently on, as much as I  
17 understand the pace of it has been extremely frustrating and  
18 trying of the Court's patience.

19 THE COURT: Oh, can I just be clear? My patience doesn't  
20 matter that much, because I sit here and I read the papers as  
21 they come in and try to decide if there's anything I can do to  
22 make a difference. I think the patience involved is these  
23 letters that I've been -- the parents --

24 MS. HOULE: Yes.

25 THE COURT: -- and the kids, right --

1 MS. HOULE: Yes.

2 THE COURT: -- just to be clear. I'm not claiming --

3 MS. HOULE: I appreciate that, Your Honor.

4 THE COURT: I'm not really -- I'm not really put out by  
5 this that much, all right? I think it's the people who live in  
6 Newton.

7 MS. HOULE: Appreciate that, Your Honor.

8 THE COURT: All right. Let me hear from the Commonwealth.  
9 I am looking for a solution, but I am worried that this is very  
10 hard to implement, in part because I don't know how long  
11 arbitrations take. I don't know how promptly people choose an  
12 arbitrator. But I'll give you a chance to persuade me that  
13 this is the solution.

14 MS. KANTANY: If Your Honor orders binding arbitration,  
15 the Department of Labor Relations will work quickly to -- it  
16 already has a roster of arbitrators because of the Joint Labor  
17 Management Committee process, so we could easily contact an  
18 arbitrator, check their availability as quickly as possible and  
19 set a procedure for binding arbitration. Obviously -- the DOR  
20 has been part of the mediation processes throughout and is  
21 determined to act quickly as well to assist the parties to come  
22 to a resolution, and we think that this is an important step to  
23 try and end this strike.

24 And I might add that there is another portion, is to have  
25 twice-daily status conferences. I know that puts a burden on

1 Your Honor to have the parties come before you, but I do think  
2 that's also important to get a sense of where the parties are  
3 at. And Secretary Tutwiler is also present and can speak to  
4 the harms that the children in the Commonwealth, the 12,000  
5 students of Newton are facing as well.

6 THE COURT: I appreciate the offer, but I feel like I have  
7 a good sense of the profound harms involved because I've been  
8 reading these letters that come in. Even if they're an  
9 illustration, it doesn't really stretch the imagination to know  
10 that this is really impactful.

11 MS. KANTANY: Understood. I just wanted to offer that  
12 Secretary Tutwiler is here.

13 THE COURT: So on the notion of me being involved on a  
14 daily basis or twice daily, first of all, we're in the middle  
15 of a two-week trial. I'm busy from nine to one. And the only  
16 time it makes sense, in my view, for a third party like me to  
17 get involved is if either you start banging heads to get people  
18 to an agreement, but that's a mediator's job, not me, or you  
19 start choosing sides and saying here's how we're going to  
20 settle this, like an arbitrator would, and that's not my job  
21 either.

22 I'm still considering arbitration, but it's going to be  
23 something that I consider kicking in next week and only after  
24 convincing myself that it's lawful to do so and that it would  
25 actually end the strike. That's my real concern is that we'd

1 have a new set of circumstances and a continuing strike. Okay.  
2 So --

3 MS. HOULE: And, Your Honor, just to point out, as  
4 somebody that does arbitrations day in, day out, usually we get  
5 -- and I don't -- perhaps the system under JLMC works a little  
6 bit differently and faster, and I can let CERB speak to that,  
7 but a lot of the arbitrators I think overlap, and it is --  
8 usually when we're scheduling arbitrations, we are getting  
9 dates three to nine months out from the arbitrators to schedule  
10 something.

11 THE COURT: All right. Well, usually when people file  
12 motions in this session, they get a date a couple months out  
13 for a hearing. And the reason we do it in this case the next  
14 day is because it's important. So I would hope that if this  
15 path were chosen, we'd all be able to find somebody promptly,  
16 but, you know, I guess I can't say how easy or hard that would  
17 be.

18 I will say, though, I've already told you my concerns  
19 about breaking an impasse with some sort of third party that  
20 basically makes decisions and chooses, and I completely  
21 appreciate it's not provided in the law as written, but what  
22 courts do sometimes is decide what an appropriate remedy is to  
23 break a complex situation. I already outlined our situation  
24 here. The traditional tools have not worked. And it's in that  
25 context I will consider this. I'm not going to do it right

1 now. I'm going to think about it, and I hope we don't reach  
 2 that, given your representations so far.

3 So I'll give you a chance to respond to this, but I'll  
 4 tell you what I anticipate doing. I do think it's time to have  
 5 judgment entered with respect to those fines that have already  
 6 been incurred so that it's not a complete fictitious obligation  
 7 floating out there. I was going to say judgment for 625,000  
 8 shall enter immediately, but in light of what you're saying and  
 9 the possibility that those would somehow be recharacterized in  
 10 a way to aid the likelihood of settlement, what I'm going to do  
 11 is say the time has come, for fines already incurred, that  
 12 judgment will enter, so that's payable immediately, but I'll do  
 13 that Monday at noon. And that gives you all time Monday  
 14 morning to file something with me, jointly or separately, that  
 15 says I have the authority to recharacterize these coercive  
 16 fines as something else.

17 I do recall the single sentence in the Fall River case  
 18 that talks about reframing things, basically, at the end of a  
 19 contempt situation, so I think you're probably right, and  
 20 you're also going to point to a few cases where this has  
 21 already happened. From an institutional perspective, it's  
 22 still troubling, but I'm focused on making sure that this  
 23 strike ends, so I'll be as flexible as the law permits, okay?

24 So that's what I'll do on the judgment. The coercive  
 25 fines are official, they haven't been challenged, and the

1 judgment's going to enter, unless you get to me by noon on  
 2 Monday with a different proposal, in which case I'll hear that  
 3 promptly and we'll talk about recharacterizing.

4 Okay. On the compensatory fines, I'll tell you what I was  
 5 going to do, and then -- well, I'll tell you what I was going  
 6 to do, and that is, Newton has mentioned -- they are a separate  
 7 form of sanction or relief for a contempt, and this contempt's  
 8 been going on for eleven or twelve days, and so it's time to  
 9 start talking about whatever relief might be available to try  
 10 to promote compliance with the law.

11 So if Newton intends to seek compensatory relief or  
 12 compensatory fines for this contempt, I need to hear more about  
 13 how that works. So I was suggesting, next week you file a  
 14 memorandum explaining what you think you're entitled to, what  
 15 qualifies as compensatory in this context, and what the process  
 16 is for adjudicating that. And you'll do that next week, and  
 17 we'll decide how to proceed.

18 Now, if that's the subject of agreement and you all draw a  
 19 line and say beyond this amount of money, we won't seek any  
 20 compensation and we're asking for it to be reframed, I might  
 21 see that on Monday. But in the absence of an agreement, if  
 22 this all falls apart and we're back where we are, then Newton  
 23 will have a chance next week to start the process of  
 24 compensatory fines, how are you going to prove it to me in a  
 25 concise manner, you can object, and that'll be on the table,

1 okay. I have no idea if that's one dollar or a million  
 2 dollars. I have no idea, because I've never done this before,  
 3 and I don't know that anyone else has actually adjudicated  
 4 compensatory fines as compared to characterize them at the  
 5 parties' request. Okay? So that'll be on the table next week  
 6 if necessary.

7 As to the fines, first of all, I've found what I hope is a  
 8 better way to harmonize my concerns about impacting the  
 9 collective bargaining negotiations and enforcing the law. Last  
 10 Friday, to try to strike that balance, I decided to keep the  
 11 fines at a more traditional level instead of escalating upward.

12 Here's what I hope is a better way. I am going to  
 13 increase the fines starting Sunday and continuing on next week.  
 14 I am still concerned about that undermining collective  
 15 bargaining, so what I'm going to do is impose the fines of a  
 16 settlement if the strike doesn't end 8 p.m. February 4th but  
 17 make clear that imposition of any coercive fines, you know,  
 18 requires and presumes compliance with the other parts.

19 So I'm going to set up a system where, as I impose the  
 20 fines, if anyone contends the other side wasn't negotiating in  
 21 good faith during the 24-hour period for which the fines are  
 22 assessed, you can get to me, by 10 a.m., a notice objecting to  
 23 the fines because of an absence of good-faith agreement.

24 I decided I still want to focus on that potential problem,  
 25 but I feel compelled to increase the fines, because the current

1 level hasn't worked, okay. You'll see that in my order, but  
 2 that leads to the question of, what is good-faith negotiating,  
 3 something I've been thinking about and trying to learn about.

4 And so I've set forth for the parties how I'm going to be  
 5 guided in determining whether one side or the other -- and the  
 6 case law is kind of -- is it a little bit helpful on this  
 7 front, right, although I admit it could be very subjective. A  
 8 sincere effort to reach a common ground. That's what I'm  
 9 concerned has been lacking over the course of the last two  
 10 weeks, because any time any side says this is it, we can do no  
 11 more, you're either truly at an impasse, in which case I  
 12 supposed that can be sincere, or if you then move, well, that's  
 13 not a sincere effort at reaching common ground.

14 I'm going to allow this safety valve so that the fines, as  
 15 I increase them to 100,000 instead of 50,000, don't result in  
 16 what I was concerned about last week, but, candidly, the NTA  
 17 will have to prove that to me, all right?

18 MS. HOULE: Understood.

19 THE COURT: And if there is a bona-fide question of good-  
 20 faith negotiating, then I suppose I might hold off on imposing  
 21 the fine for that particular day. Now, how are we going to  
 22 adjudicate that? It's not going to be in real time. We're not  
 23 going to have a hearing every morning at 10 a.m., when there's  
 24 a notice that says we don't think they're in good faith and  
 25 therefore you shouldn't impose the fine. If I see enough

1 information in this sworn statement of why that's the case,  
2 then we'll have to talk about how we're going to adjudicate  
3 that.

4 So I want that safety valve, but I also want to increase  
5 the fines, and that's how I'm going to proceed. You'll see it  
6 in the order, and then I've tried to set forth what I  
7 understand the law to be concerning good-faith negotiating, and  
8 that way at least the lawyers here can all make sure the  
9 negotiators in the room know that this is how I'll be  
10 approaching the problem. But it's not my words, it's other  
11 courts -- I'm sorry, appellate courts who have described this  
12 concept of an open and fair mind, a sincere effort to reach  
13 common ground, and we'll have to gauge whether that's the case  
14 or not.

15 Based on what you've said so far, that -- or that you said  
16 at the beginning of this hearing, I presume that what's  
17 happening right now is good-faith negotiating, but everyone  
18 should keep in mind that that's a prerequisite to these  
19 elevated fines, okay.

20 I'm going to make some adjustments to this with respect to  
21 the entry of judgment, which was going to be immediately, and  
22 now it's going to be Monday at noon. So you all can get to me  
23 if you have a different proposal, but otherwise I'm going to  
24 sign this and get it in your hands. So the fines are going to  
25 be increased to a hundred as of Sunday with this -- coupled

1 with this requirement that good-faith negotiating be underway  
2 during that period.

3 And so if what you predicted at the beginning of this  
4 hearing is true, then I guess the increased fines won't kick  
5 in, but I have to approach -- I've approached this hearing  
6 presuming that the goal is to avoid being back here ever again,  
7 including next Monday or any other day next week.

8 So I'm going to presume there is no settlement, and that's  
9 my approach. I said I'd give you a chance to comment on it, so  
10 now's your chance. Newton, you can go first.

11 MS. KING: I think we'd be amenable to the order that you  
12 have in place, again, remaining hopeful with the status, that  
13 we don't have to be back here for your position.

14 THE COURT: Okay. Employment Relations Board, any  
15 comments?

16 MS. KANTANY: No objection or position on what you've  
17 framed so far except to note the absence of a decision on  
18 our request for further relief, but I understand that's  
19 something --

20 THE COURT: Yeah, I'm not --

21 MS. KANTANY: -- you are considering --

22 THE COURT: -- denying that.

23 MS. KANTANY: Okay.

24 THE COURT: I'm going to view that as the next step,  
25 possibly. I'll share with the parties, I think I -- given

1 these facts and circumstances, I could write an order that  
2 explains why this exceptional remedy of mandatory arbitration,  
3 when a statute doesn't provide for mandatory arbitration, would  
4 pass muster, but I guess it's not up to me whether it passes  
5 muster, but given there's unusual circumstances and the need to  
6 end the strike, I think it's probably lawful.

7 Okay. NTA? I know you don't want it to increase to a  
8 hundred. I have attempted to address your concern about the --  
9 interrupting the negotiations by making explicit this good-  
10 faith negotiating requirement, but anything else?

11 MS. HOULE: No, Your Honor, just clarification in terms --  
12 so I can let my client know. We appreciate that you've  
13 listened to our concerns. Obviously these -- the increase to  
14 100,000 on Sunday night at eight o'clock, I assume, and you  
15 said continuing? Are they going to escalate, or is it a  
16 hundred every night after that? I just want to be clear with  
17 my client when I talk to them after. Obviously our position  
18 would be stay the course.

19 THE COURT: Just like the current one is fifty every day  
20 -- you know how much I don't want to even answer your question,  
21 because that suggests that maybe --

22 MS. HOULE: Okay.

23 THE COURT: -- we'll be talking about this next week, but  
24 the answer to your question is, it's -- like it used to be  
25 fifty every day at 8 p.m., it's a hundred every day at 8 p.m.

1 MS. HOULE: Understood, Your Honor. I appreciate the  
2 clarification.

3 THE COURT: And I'm going to get this order in your hands  
4 right now after I make a couple of adjustments, it should take  
5 me no more than a couple of minutes, so everyone understands.  
6 And for a couple of reasons, you should understand that -- or I  
7 want to let you know, I may have some time Monday afternoon,  
8 unexpectedly. And if there is no resolution, I may ask you  
9 back to talk about this compulsory arbitration or some other  
10 means of breaking the impasse, not replacing, but in addition  
11 to the coercive fines.

12 If you have -- if there is an agreement and you want --  
13 and you think I have authority to do something different with  
14 the coercive fines, please get me a motion before noon on  
15 Monday, because otherwise the fines through today are entered  
16 and that will -- let's be clear, it's just another order  
17 requiring the NTA to do something, but it will be, you know,  
18 immediately payable to the Commonwealth treasurer when that  
19 issues at noon on Monday, unless you get to me.

20 MS. HOULE: Understood, Your Honor. Thank you.

21 THE COURT: Okay? Anything else we need to discuss?

22 MS. KANTANY: No, thank you, Your Honor.

23 MS. KING: No.

24 MS. HOULE: No, Your Honor.

25 MS. KING: Thank you.

Page 42

1 THE COURT: I hope you take it in the spirit I offer it  
 2 when I say I hope not to see you again. Please keep us  
 3 apprised. Otherwise, I'm going to keep Monday afternoon at two  
 4 available.  
 5 MS. HOULE: Yes, Your Honor.  
 6 THE COURT: And I'll call you in, so you should keep it  
 7 available, too, if there's no resolution. Thank you.  
 8 MS. KANTANY: Thank you, Your Honor.  
 9 MS. KING: Thank you, Your Honor.  
 10 MS. HOULE: Thank you, Your Honor.  
 11 MR. MULLANE: Thank you, Your Honor.  
 12 (Case concluded at 4:05 p.m.)  
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Page 43

The Commonwealth of Massachusetts  
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 AUDIO ASSESSMENT FORM  
 TODAY'S DATE: 2-10-24 TRANSCRIBER Lisa M. Cimmino  
 NAME:  
 CASE NAME: Comm. Employment DOCKET 2481CV00148  
 Relations Board v. NO.:  
 Newton Teachers Assn  
 and Michael Zilles  
 JUDGE: RECORDING DATE TRANSCRIPT I OF I  
 Christopher 2-2-24 VOLUME:  
 Barry-Smith  
 TYPE: CD ELECTRONICQUALITY:EXCELLENTGOOD FAIR POOR  
 (circle all that apply) ISSUES (include time stamp):  
 background noise time  
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COMMENTS:

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1 CERTIFICATE  
 2 I, Lisa Cimmino, an Approved Court Transcriber, do hereby  
 3 certify that the foregoing is a true and accurate transcript  
 4 from the audio recording provided to me of the Middlesex  
 5 Superior Court Department proceedings in the above-entitled  
 6 matter.  
 7 I, Lisa Cimmino, further certify that the foregoing is in  
 8 compliance with the Administrative Office of the Trial Court  
 9 Directive on Transcript Format.  
 10 I, Lisa Cimmino, further certify that I neither am counsel  
 11 for, related to, nor employed by any of the parties to the  
 12 action in which this hearing was taken, and further that I am  
 13 not financially nor otherwise interested in the outcome of the  
 14 action.  
 15  
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