Page 1

	Volume: Pages:	
COMMONWEALTH (	OF MASSACHUSETTS	
MIDDLESEX, SS.	SUPERIOR COURT DE OF THE TRIAL COU Docket No. 2481C	RT
* * * * * * * * * * * * * *	* * *	
COMMONWEALTH EMPLOYMENT RELATIONS BOARD, Plaintiff,		
V.		
NEWTON TEACHERS ASSOCIATION & MICHAEL ZILLES, IN HIS OFFICIAL CAPACITY, Defendants	and	
* * * * * * * * * * * * * *	* * *	
BEFORE THE HONORABLE (	CHRISTOPHER BARRY-S	MITH
Woburn	, Massachusetts	
Room 7	10	
Februa	ry 2, 2024	
Lisa Cimmino	.,	
Approved Court T	ranscriber	

Dunn Reporting Services, Inc. 617-422-0005

(Pages 2 to 5)

	Page 2	Page 3
	APPEARANCES	1 (Court called to order.)
	For the Commonwealth Employment	2 (3:09 p.m.)
	Relations Board:	3 THE COURT: Good afternoon.
	Massachusetts Department of Labor Relations	4 THE CLERK: Good afternoon, Your Honor. Your Honor, the
	2 Ave de Lafayette	5 matter before the Court is Docket Number 2481CV00148,
	Lafayette City Center	6 Commonwealth Employment Relations Board vs. Newton Teachers
	Boston, Massachusetts 02111 By: Lan Kantany, Esq.	7 Association, et al. If the parties could please stand and
	By. Lan Kantany, Esq.	<sup>8</sup> identify yourself for the Court and the record, starting with
	For Michael Zilles, in his	<sup>9</sup> the plaintiff.
	Official Capacity and	10 MS. KANTANY: Lan Kantany on behalf of the Commonwealth
	Newton Teachers Association:	11 Employment Relations Board. Good afternoon, Your Honor.
	Massachusetts Teachers Association	12 THE COURT: Good afternoon.
	2 Heritage Drive, 8th Floor	13 MS. KING: Jennifer King on behalf of the Newton School
	Quincy, Massachusetts 02171 By: Bishard A. Mullana, Ess	14 Committee. Good afternoon, Your Honor.
	By: Richard A. Mullane, Esq. Laurie R. Houle, Esq.	15 THE COURT: Good afternoon.
	Laurie R. Houle, Esq.	16 MS. HOULE: Good afternoon, Your Honor. Laurie Houle on
	For Other Interested Party	17 behalf of the Newton Teachers Association and Michael Zilles,
	Newton School Committee:	18 President of the NTA.
	Valerio Dominello and Hillman, LLC	19 THE COURT: Good afternoon.
	One University Ave., Suite 300B	20 MR. MULLANE: Yes, good afternoon, Your Honor. Rich
	Westwood, Massachusetts 02090	21 Mullane. I'm co-counsel with Ms. Houle for the Newton Teachers
	By: Jennifer King, Esq.	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
		about. I have a couple of housekeeping matters, because
	Page 4	Page 5
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2	there's been a lot of communications coming into the court, and I want to let the parties understand how I'm treating them.	<ol> <li>coercive fines, and, again, subject to confirmation from other</li> <li>counsel, that we would ask that the coercive fines to date be</li> </ol>
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### (Pages 6 to 9)

	Page 6	Page 7
1	the parties at the table have jointly requested that CERB	<sup>1</sup> THE COURT: All right. Well, you know, this really puts
2	agree and that the Court agree that the fines issued by the	<sup>2</sup> me in a bind, because I'm going to do whatever I can to
3	Court as coercive fines be and we could wordsmith what we	<ul> <li>facilitate a settlement, but what you're describing I think is</li> </ul>
4	call it, but essentially apply towards what the School	<ul> <li>inconsistent with the law. I mean, the coercive fines are</li> </ul>
5	Committee would seek as damages. It happened in Quincy. I	5 payable to the Commonwealth for the purpose of getting
6	think it's happened in a couple of the other ones that have	<ul> <li>compliance with the law. Do I think it makes a lot of sense</li> </ul>
7	happened in the last few years.	7 for \$625,000 of NTA money to be payable to the Commonwealth?
8	Obviously it's the discretion of the Court, but given we	8 Not especially, but that's what the law provides.
9	are so hopefully so close to the end line here, and what I'm	9 And now I'm being asked to transform them into something
10	understanding from my clients as well is, if this is something	10 else because it would help get a settlement. And I guess my
11	that is acceptable to the CERB and the Court, it will be	answer is maybe, but that's not really the way the law works.
12	helpful to moving the parties that much closer to that end	12 I guess the question is how much flexibility I have, but, you
13	line. So it has been done. We believe it can be done,	13 know, my priority's going to be on and my priority's the
14	obviously at your discretion.	same as it has been for the last two weeks, which is to try to
15	THE COURT: Okay.	<sup>15</sup> make sure there's a resolution.
16	MS. KANTANY: Your Honor, may I state the Board's position	<sup>16</sup> So that'll continue to be my mindset, but I can't promise
17	on	<sup>17</sup> that I'm going to transform coercive fines, which are for one
18	THE COURT: Please do.	<sup>18</sup> purpose, into something else, even though I acknowledge the law
19	MS. KANTANY: The Board's position is that the contempt	<sup>19</sup> provides for compensatory fines, but we haven't adjudicated
20	fines should be increased and should be payable or should at	20 compensatory fines in any manner so far, right? It's been an
21	least be in place, and I understand the parties are asking for	21 idea.
22	it to be payable to the School Committee. That portion, we do	I was going to announce today, in an effort to put
23	not take any position on. However, I do think it's important	everything on the table, that if Newton wants to pursue that,
24	that there be coercive contempt fines in place against the NTA	now's the time, tell me what it means and how you want to
25	and Zilles.	adjudicate it, because it requires evidence to prove
	Page 8	Page 9
1	Page 8 compensatory relief. So I guess what I'm saying is, I think I	Page 9 1 writing to the court appreciated that they'd become public
1 2	-	_
	compensatory relief. So I guess what I'm saying is, I think I	1 writing to the court appreciated that they'd become public
2	compensatory relief. So I guess what I'm saying is, I think I agree with the Commonwealth's position, because it happens to	<ol> <li>writing to the court appreciated that they'd become public</li> <li>record. So we don't identify the people, especially the</li> </ol>
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### (Pages 10 to 13)

	Page 10		Page 11
1	ask, what is CERB's position on the fines, and then I got I	1 in	effective, so it would appear that more should be done by me
2	learned that CERB has a different approach that you proposed.		the coercion realm. And those are the ones I'm really
3	So maybe that's the answer, but what is CERB's position on	3 fo	beused on.
4	increasing fines, in light of the fact that we're now eleven	4	I guess my question to the NTA is, in light of eleven days
5	days instead of six days into this strike?	5 of	f closed school and the level of fines that I issued all this
6	MS. KANTANY: The CERB takes no position on increasing the	6 w	eek because of my concerns about interrupting the collective
7	fines. We do support the portion requesting the amount of the	7 ba	argaining agreement or negotiations, it would appear to me the
8	donations that the NTA has received, but in terms of increasing	8 an	nswer is, of course they should go up, because they're not
9	the fines, we take no position. I think from our motion, you	9 w	orking. Why do you think I'm wrong?
10	can see that standing alone, we don't perceive the fines to be	10	MS. HOULE: Yes, Your Honor, thank you. Just since you
11	enough to coerce compliance with the law and to end the strike,	11 w	ere focusing on Fall River as I don't want to spend too
12	which is the Board's goal, and that's why we filed a separate	12 m	uch time on what we put in writing, as we indicated, though,
13	motion, which I can get into separately. But that's our	13 w	hile we understand the closing of the schools is distressing
14	position on the fines.		n many levels for some people, but the people who are
15	THE COURT: I'm going to take up the alternative	15 cc	ontacting you directly are a subsection of and I don't want
16	approaches beyond fines, but I want to talk about fines first,	16 th	at to be the only perception I have
17	since it's what's already in place. So I don't think it's	17	THE COURT: Oh, I should have said, I understand that if
18	going out on a limb to suggest that the fines haven't worked,		ve got a hundred letters, there's 11,000 or something like
19	right? This is 11 days that schools have been closed.		at. So I understand it's a
20	So let me just turn to the factors. I think the NTA	20	MS. HOULE: Fair enough, Your Honor.
21	suggests that there's no basis to increase fines. We talked	21	THE COURT: it's a subset illustration, and if I want
22	about this a while ago, but the character and magnitude of the		look at other subsets and illustrations, I can see what's in
23	threatened harm, so that's the closed schools. I perceive that		e press. I understand there's all
24	that has just been going up. The probable effectiveness of any	24	MS. HOULE: Sure.
25	suggested sanction, I think we now know that they're	25	THE COURT: all sorts of views. I guess my point
	$\mathbf{D}_{\mathbf{r}}$		$D_{2} = 12$
	Page 12		Page 13
1	MS. HOULE: Yup.		ar is that if, now, when we may hopefully, cross fingers, be
2	MS. HOULE: Yup. THE COURT: it's kind of straightforward.	2 ho	ear is that if, now, when we may hopefully, cross fingers, be ours away from a deal, word comes down that the fines are
2 3	MS. HOULE: Yup. THE COURT: it's kind of straightforward. MS. HOULE: Yup. So	2 ho 3 go	ear is that if, now, when we may hopefully, cross fingers, be ours away from a deal, word comes down that the fines are ong to just shoot back up again, that that's just going to
2 3 4	MS. HOULE: Yup. THE COURT: it's kind of straightforward. MS. HOULE: Yup. So THE COURT: Of course they're not working, because they	2 ho 3 go 4 ha	ear is that if, now, when we may hopefully, cross fingers, be ours away from a deal, word comes down that the fines are bing to just shoot back up again, that that's just going to alt that progress or put a hurdle, at least, in the way of the
2 3 4 5	MS. HOULE: Yup. THE COURT: it's kind of straightforward. MS. HOULE: Yup. So THE COURT: Of course they're not working, because they haven't coerced compliance with the law. So shouldn't I do	2 ho 3 go 4 ha 5 pa	ar is that if, now, when we may hopefully, cross fingers, be ours away from a deal, word comes down that the fines are bing to just shoot back up again, that that's just going to alt that progress or put a hurdle, at least, in the way of the arties being able to finish this up and get the kids back in
2 3 4 5 6	MS. HOULE: Yup. THE COURT: it's kind of straightforward. MS. HOULE: Yup. So THE COURT: Of course they're not working, because they haven't coerced compliance with the law. So shouldn't I do more?	2 ho 3 go 4 ha 5 pa 6 sc	ar is that if, now, when we may hopefully, cross fingers, be ours away from a deal, word comes down that the fines are oing to just shoot back up again, that that's just going to alt that progress or put a hurdle, at least, in the way of the arties being able to finish this up and get the kids back in chool on Monday.
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## (Pages 14 to 17)

	Page 14		Page 15
1	discussing the dynamics of the negotiating table and how	1	school on Monday, then our position is, don't change the
2	coercive fines might affect them. It's as though we're	2	current set of circumstances that the parties are operating
3	painting on a clean slate, and the problem with this discussion	3	under. I think they're we believe that they're too close.
4	and the frustration that I think many, many people feel is that	4	And so I understand the legal side of it, I certainly do,
5	part of the context for the discussion of whether or not fines	5	Your Honor, but on the practical side, we want to get these
6	will interrupt the collective bargaining dynamic is that the	6	kids back in school. The teachers want to be back in school.
7	strike is illegal, right?	7	All the educators want to be back in school. We're too close.
8	MS. HOULE: Yes, Your Honor.	8	I would just urge the Court to proceed with caution, if you
9	THE COURT: And I feel like last Friday I perceived this	9	would, please.
10	problem with the bargaining dynamic and decided that maybe that	10	THE COURT: Well, with respect, I proceeded with caution
11	wasn't the best approach to get to an agreement, which I	11	last Friday and, didn't work.
12	perceived as the only solution to this problem, and it didn't	12	MS. HOULE: Respectfully, we think it has.
13	work, because now it's a week later.	13	THE COURT: I'm considering returning to a more
14	MS. HOULE: I understand the perspective that you're	14	traditional approach
15	positing, Your Honor, in that, hasn't worked yet, because we're	15	MS. HOULE: Sure.
16	still here, technically, out, but it has worked in that there	16	THE COURT: which is what I had in mind in the first
17	has been significant progress being made, and so it	17	place, which is surely the best way to gauge whether something
18	THE COURT: It has worked so long as I and everyone else	18	is working is by increasing it each day. And I have no idea if
19	can live with an unlawful strike as part of the baseline.	19	that would have worked, but the reason I chose not to do that
20	MS. HOULE: I don't know that I would call it a baseline.	20	is because I thought it was so apparent the impact that could
21	I think I'm approaching it more from this is, like, a	21	have on the bargaining dynamic
22	practical application of things. I get, like, we completely	22	MS. HOULE: And we agree with
23	understand 9A and its existence and but if the goal is to	23	THE COURT: but now I guess
24	get the kids back in school on Monday, ultimately the biggest	24	MS. HOULE: your observations.
25	interest of everybody in this room is to have the kids back in	25	THE COURT: But now I guess I feel like I really I
	5		
	Page 16		Page 17
1	really felt like I gave more equal	1	I felt like I gave plenty of time with the other approach. But
2	MS. HOULE: Yes, Your Honor.	2	now perhaps I'd consider increasing the fines with an
3	THE COURT: fair, and effective bargaining a chance	3	implementation date Sunday night at 8 p.m. to ensure that over
4	MS. HOULE: Absolutely, Your Honor.	4	the next 48 hours, there's no continued strike I'm sorry,
5	THE COURT: and I'm very surprised it's a week later	5	the strike, you know, is avoided. Do you think that's a better
6	and we're still here, so	6	idea than just starting immediately?
7	MS. HOULE: But we are so close.	7	MS. KING: Again, I think we'd defer to your judgment.
8	THE COURT: Okay. Well, whoever on the plaintiff's side	8	You know, certainly want to see progress and acknowledging how
9	would like to be heard with respect to fines, now's the time.	9	close the parties are. However, as you've noted, we are eleven
10	MS. KING: Yeah, I think briefly, Your Honor, the School	10	days into this strike and it is still occurring. Don't want to
11	•	11	hamper progress; however, we still have a lot of harm that is
	Committee, acknowledging this is our motion, I think we	12	
12	acknowledge and accept the position of the Board that the fines	13	being caused. And again, we'll defer to your judgment on when
13 14	have not worked, because there is still an illegal strike.	14	the appropriate timeframe would be.
14 15	There is clearly sufficient evidence that there is, you know, a	14	THE COURT: All right. Another aspect of the fines motion
	lot of character and magnitude of harm that is incalculable to		is that which has been accrued already, \$625,000, should be
16	families and students.	16	payable immediately. I had that option at the front end. I
17	We don't believe that the fines thus far have been	17	thought it also might tilt the scales in a manner that kept the
18	reasonable and effective, but we also acknowledge and accept	18	CBA from being finalized, and didn't do it then, but surely
19	the representation of union counsel that the parties are very	19	now, now's the time, right?
20	close to an agreement. So I think to that end, we would defer	20	There's no dispute as to the 625 that's already been
21	to the Court in terms of next steps on how you want to proceed	21	incurred as coercive fines. I'm inclined to have judgment
22	with any further relief.	22	enter, you know, promptly. I say today. It might be Monday,
23	THE COURT: Well, in light of the update that I got at the	23	given the way judgments enter. But any objection to that? I
24 25	beginning of this hearing, as you may be able to tell from my	24	know you asked for it. Do you still ask for it?
			MC KDIC, The Carlos and a state of the state
20	questions so far, I was inclined to increase the fines because	25	MS. KING: The Committee is still seeking compensatory

(Pages 18 to 21)

Image:       THE COURT: Well         MS, KNG: Cr, sorry, yes       THE COURT: Hold Item jast interrupt. They may have         MS, KNG: Cr, sorry, yes       THE COURT: Hold Item jast interrupt. They may have         MS, KNG: Right mow what's in place is \$625,000       MS, HOULE: A shouldely,         MS, KNG: Right mow what's in place is \$625,000       MS, HOULE: A shouldely,         THE COURT: Is of correive fines. I am suggesting that       THE COURT: Is whatever it's worth, wrises a court order,         they and that's a oncivolation way to avort shing the store incentifies are in place. It would appear to me time       MS, HOULE: Yes.         THE COURT: The ML - test may be avort store incentifies are on place. It would appear to me time       MS, HOULE: Yes.         MS, HOULE: Yes.       THE COURT: The ML appear to me time         MS, HOULE: Yes.       THE COURT: It may also happen to correspond with the         gages/s intersters in conforcing labor claims, but       MS, HOULE: Yes.         MS, HOULE: Yes.       THE COURT: The ML appear to me time         MS, HOULE: Yes.       MS, HOULE: Yes.         MS, HOULE: Yes.       THE COURT: The ML appear to me time         MS, HOULE: Yes.       MS, HOULE: Yes.         MS, HOULE: Yes.       THE COURT: The ML appear to me time         MS, HOULE: Yes.       MS, HOULE: Yes.         MS, HOULE: Yes.       MS, HOULE: Yes.		Page 18		Page 19
2       THE COURT: Well-       2       THE COURT: Hold - let mays in termsp. They may have that intersp. They ma	1		1 that!	
MS. KING: Or, sorry, yes -       -         MS. KING: Or, sorry, yes -       -         MS. KING: Or, sorry, yes -       -         MS. KING: Columposition of the source of the control of				
<ul> <li>THE COURT: - that's a different question.</li> <li>MS, KING: - The surry, yes.</li> <li>THE COURT: Right now shat's in place is S625,000 - MS, KING: - Finance of the second se</li></ul>				
5         MS. KING: Right now what's in place is \$625,000           6         THE COURT: Right now what's in place is \$625,000           7         MS. KING: Right           8         THE COURT: of accrive fines. I am suggesting that           1         because that's a conceivable way to avoid fines. I go to           11         motions. The fines are in place. It would appear to me time           14         that judgment enter. So are you now sign ports of the because           15         we might want to recharacterize those fines, or do you think           16         motions. The fines are in place. It would appear to me time           16         that judgment enter. So are you now sign ports fist because           17         IEC COURT: What's your position?           18         MS. HOULE: Yes, Your Honor. I actually would request?           19         prefrage, fy ordre amonable, to waiting on that As I said, we and it way alon in the correspond with the           19         made, coercive, because 1 understand that's an interest that           20         MS. HOULE: Net. Mas hould. P: makes any back of the destand they are problem with           21         entire file with me, so 1 apologize for that.           22         MS. HOULE: Reg. You Honor. I actually would request?           23         serves every party's interests except for the Courts?				
<ul> <li>THE COURT: Right now what's in place is \$625,000 MS. KING: Right.</li> <li>THE COURT: - of corerive fines. I am suggesting that because those have not been challenged, despite my invitation, right, It was pretry clear that if you think there's no good- in motions. The fines are in place. It would appear to me time that judgment shouldtrm asking Newton or do you think judgment shouldtrm asking Newton or do you think i judgment shouldtrm asking Newton or do you think i cominuing to call the fines, no matter Where the payment is constraing to call the fines, no matter Where the payment is a made, corcrive, because I understand that's an interest that cortea such as correisation and has been exercised in other circumstance THE COURT: I think in Fall A- a MS. HOULE: Yes, I do, Your Honor, and J might be contempt complaint, we were trying to fine. Law you how, we from the courts? MS. HOULE: Yes, I do, Your Honor, and you've been as well as compensatory fines, and they aren't mutually- ecterbark, necessarily, budy well as contempt of the court order and that we hope that mays a long to differ the rois THE COURT: - in a differ the rois THE COURT: Yesh, I fine, full B-court and that we hope that myse along the tools, and if's or other wells well think that's what the tocurs of this by partices, and the word recharkerse, which is part of wy wells weargued from the bourd recharkerse, which is part of wy wells weargued fro</li></ul>		-		, e
7       MS. KING: Right       7       MS. HOULE:				-
8         THE COURT: let's he the idea behind eccercive fines           9         because those have not been challenged, despite my invitation,           1         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 concurbale way to avoid fines. Ig to no           13         motions. The fines are inplace. It would appear to me time           14         that judgment entor. So are you now saying not so fast because           15         MS. HOULE: Yes.           16         judgment should are for \$652.000 coercive fines?           17         THE COURT: I than site powers           18         MS. KING: Okay.           19         THE COURT: What's your position?           10         Base coercive, because I understand that's an interest that           12         CERB has, to make sure that that message is out there and that           12         rentire file with me, so I apologize for that.           13         MS. HOULE: Right, or           14         MS. HOULE: File, but I fink if AP all -           15         made, coercive, because I understand that's an interest that           14         CERB has, to make sure that that message is out there and that           15         serves every party's i				
<ul> <li>because those have not been challenged, despite my invitation, 10 right, I was pretry clear that if you think there's no good- 11 fills bragaining, then unions should be telling me that, 12 they're not ignored.</li> <li>MS. HOULE: Yes.</li> <li>13 motions. The fines are inplace. 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 enter for \$625.000 coercive fines?</li> <li>MS. HOULE: Yes.</li> <li>MS. HOULE: Yes.</li> <li>MS. HOULE: Yes.</li> <li>THE COURT: That's the point.</li> <li>MS. HOULE: Sure.</li> <li>THE COURT: What's your position?</li> <li>MS. HOULE: Sure.</li> <li>THE COURT: That's the primary purpose.</li> <li>MS. HOULE: Sure.</li> <li>THE COURT: I way also happen to correspond with the 26 and corrective, because I understand that's an interest that 27 continuing to call the fines, no matter where the payment is 28 made, coercive, because I understand that's an interest that 29 certaive, because I understand that's an interest that 20 certainly my deisions talk about coercive 20 as well as compensatory fines, and they aren't mutually- 20 court has discretion and has been exercised in other 20 circumstances - 30 THE COURT: I think in Fall - 31 MS. HOULE: Yes.</li> <li>MS. HOULE: Yes.</li> <li>MS.</li></ul>		-		-
10       right, I was pretty clear that if you think there's no igood.         11       faith bargaining, then unions should be telling me that,         12       because that's a conceivable way to avoid fines. I go to motions. The fines are in place. It would appear to me time that it diggment enter. So are you now yating no so fast bear in the time that it diggment is hould enter for \$52,500 corever's fines?         13       THE COURT: I thank the primary purpose.         14       THE COURT: What's our position?         15       MS. KING: Okay.         16       prethaps, if you're amenable, to waiting on that. As I said, we have profiles with accontinuing to call the fines, no matter where the payment is contribuing to call the fines, no matter where the payment is a contempt some that's a contexple way account, at the extendes of that.         20       MS. HOULE: Yes, I do you think is a rottex that an interes that a contexple way a court, at the extendes of that.         21       entire file with me, so I apologize for that.       23         22       Sa, you know, eriting the crisins - 4       14         3       Serves every party's interests except for the court's?         3       serves are, you know, ido you know, eriting the crisins - 4         3       THE COURT: I think in Fall Ney are of that         4       accontary is and they aren't mutually-course.         5       returnely patient, and we'co apayreciate that, but, you know, eretainity me derisions talk about				
11       faith barganing, 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       Jidgment should cher for \$62.000 coercive fines?         18       MSL KNO: Cokay.         19       THE COURT: What's your position?         20       MSL HOULE: Star.         21       THE COURT: What's your position?         22       MSL HOULE: Star.         23       THE COURT: - whatever it's worth, writes a court order, it's was done in other cases.         24       mate, coercive, because I understand that's an interest that         25       MSL HOULE: New, the samples of how with the GERPS initial conterny to fine, and thy arun't mutually.         24       entire file with me, so I apologize for that.         25       So, you know, certainly the decisions talk about cocreive a swell as compensatory fines, and they arun't mutually.         26       rearest partial, and we've always been very clear with them throughout this process, that the court's and that was originally part wither scheadd.         26 <th></th> <th></th> <th></th> <th></th>				
12       because that's conceivable way to avoid fines. I got no         13       motions. The fines are in place. It would appent to me time         14       hudgment enter. So are you no way sing not so fins the cause         15       we might want to recharacterize those fines, or do you think         16       judgment should - Tm asking Newton - or do you think         17       MS. KINC: Okay.         18       MS. KINC: What's your position?         19       THE COURT: What's your position?         20       MS. HOULE: Yes, Your Honor. 1 actually would request         21       herey - you know, I don't thin KTA will have a problem with a continuing to call the fines, no matter where the payment is made, coercive, because I understand that's an interest that         21       entire file with me, so I apologize for that.         22       So, you know, certainly the decisions talk about coercive circumstances -         23       THE COURT: I think in Fall -         24       motions, to a langengize for that.         25       So, you know, certainly the decisions talk about coercive circumstances -         24       THE COURT: I think in Fall -         25       So, you know, curtainly and getting the crisis -         26       THE COURT: I think in Fall -         27       THE COURT: I think in Fall -         28       MS. HO				
13       motions. The fines are in place. It would appear to me time       13       MS. HOULE: Yes.         14       that judgment enter. So are you now saying not so fast because.       14       THE COURT: That's the point.         15       we might want to recharacterize these fines, or do you think       16       THE COURT: That's the point.         16       Judgment should - I'm asking Newton - or do you think       16       THE COURT: It has also happen to correspond with the agency's interests in enforcing labor relations, but -         16       MS. KING: Okay.       17       THE COURT: That's the point.         17       Perkaps, if you're amenable, to waiting on that. As I said, we       18       MS. HOULE: Yes, Your Honor. Tactually would request         18       MS. HOULE: Yes, Your Honor. Tactually would request       18       MS. HOULE: Right, Your Honor, Aut you're base and phone, it has         19       THE COURT: I think in TA will have a problem with       18       18       on the docket, that was originally put with the CERP's initial         10       early on them as o I apologize for that.       12       serves every party's interests except for the court's?         11       Structure in this directing in the firsis -       13       Structure in the origon and that bas the exercive in the inthroughout this process, that the occurd: and that we had the the minutely the decisions talk about cocrevive a swell as compenstory firse, and they at mose in ontereses, t			-	
14       that judgment enter. So are you now saying not so fast because we might want to recharacterize those fines, or do you think judgment should – ITT making Newton – or do you think judgment should – ITT making Newton – or do you think make S25,000 coercive fines?       15       MS. HOULE: You're absolutely – TTHE COURT: It may also happen to correspond with the agency's interests in enforcing labor relations, but – MS. HOULE: Yes, Your Honor. I actually would request perhaps, if you're amenable, to waiting on that. As I said, we have – you know, I don't think NTA will have a problem with continuing to call the fines, no matter where the payment is make, coercive, because I understand that's an interstant certainly new source and that's an interstant to contempt complaint, we were trying to find – I didn't bring my         20       Page 20         Page 20       Page 21         21       entire file with me, so I apologize for that.       serves every party's interests except for the Court's?         2       So, you know, certainly the decisions talk about coercive as well as compensatory fines, and they aren't mutually- ecclusive, necessarily, but it is certainty something that the decision, they say a court, at the end of a contempt istuation –       serves every party's interests except for the Court's?         2       MS. HOULE: Yes.       We want and and we've always been very clear with them throughout this process, that the coort, and that who spe that maybe along the line there can be some agreement that's reached.         1       MS. HOULE: Yes.       MS. HOULE: Yes.         1       MS. HOULE: - in aid of getting the crisis – its make actris the ook at in the word re		· · ·	)	-
15       we might want to recharacterize those fines, or do you think       13       MS. HOULE: You're absolutely         16       judgment should are for \$525.000 coercive fines?       16       THE COURT: It may also happen to correspond with the agency's interests in enforcing labor relations, but         18       MS. KING: Okay.       19       THE COURT: I'm pretty sure that's the primary purpose.         19       THE COURT: I'm pretty sure that's the primary purpose.       MS. HOULE: You're amenable, to waiting on that. As I said, we         20       have - you know, I don't think NTA will have a problem with       10       THE COURT: I'm pretty sure that's the primary purpose.         21       have - you know, I don't think NTA will have a problem with       22       It was done in other cases. I know in Quiney, and it might be made, coercive, because I understand that's an interest that       22       THE COURT: I'm we were trying to find - I didn't bring my         22       Fage 20       Fage 21       11       serves every party's interests except for the Court's?         33       Serves every party's interests except for the Court's?       11       serves every party's interests except for the Court's?         4       entire file with me, so I apologize for that.       11       serves every party's interests except for the Court's?         5       Court has discretion and has been exercised in other       11       serves every party's interests except for				
16       judgment should – I'm asking Newton – or do you think judgment should enter for \$625,000 coercive fines?       16       THE COURT: It may also happen to correspond with the agency's interests in caloricing labor relations, but –         18       MS, KING: Okay.       19       THE COURT: What's your position?         20       MS, HOULE: Yes,       19         21       perhaps, if your'e amenable, to waiting on that. As I said, we 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 ande, coercive, because I understand that's an interest that         25       CERB has, to make sure that that message is out there and that         26       Page 20         27       MS. HOULE: *, I, lo, Your Honor, and you've been         28       serves every party's interests except for the Court's?         29       So, you know, certainly something that the circumstances –         40       MS. HOULE: *, Yes,         11       situation –         12       MS. HOULE: Yes,         13       THE COURT: - think in Fall River, at the end of a contempt         14       decrease, or echamacterize - they don't use the word         15       rechamacterize, but I think in Fall Pare, at the end of a contempt         14       MS. HOULE: *, end determine whether to increase,       fines are because they are in out				-
17       judgment should enter for \$625,000 coercive fines?       17       agency's interests in enforcing labor relations, but         18       MS. KING: Okay.       18       MS. HOULE: Sure.         20       MS. HOULE: Yes, Your Honor. 1 actually would request       18       MS. HOULE: Sure.         21       back on point with the court with a set an interest that       20       MS. HOULE: Right, Your Honor, but as I mentioned, it has         22       have - you know, 1 don't think NTA will have a problem with       23       it was done in other cases. I know in Quincy, and it might be         23       continuing to call the fines, no matter where the payment is       made, coercive, because 1 understand thar's an interest that       24       it was done in other cases. I know in Quincy, and it might be         24       entire file with me, so 1 apologize for that.       25       So, you know, certainly the decisions talk about coercive       26       Facye 21         14       exclusive, necessarily, but it is certainly something that the       26       Court has discretion and has been exercised in other       27         26       Court Ni in Kain Fall Niver, at the end of a contempt       18       14       14       14         26       MS. HOULE: and determine whether to increase,       28       sectores on the wood in that we have been early so with we have been early incorteris at an dify ougeneret that's reached.	16	-		-
18       MS, KING: Okay,       18       MS, HOULE: Sure,         19       THE COURT: What's your position?       MS, HOULE: Right, Your Honor, tot as I mentioned, it has         20       MS, HOULE: Right, Your Honor, tot as I mentioned, it has         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, correive, because I understand that's an interest that         25       CERB has, to make sure that that message is out there and that         26       Page 20         27       So, you know, certainly the decisions talk about correive         3       as well as compensatory fines, and they aren't mutually-         4       exclusive, necessarily, but it is certainly something that the         28       Court has discretion and has been excretised in other         6       circumstances -         7       THE COURT: I think in Fall         8       MS. HOULE: vis, in aid of getting the crisis -         9       THE COURT: I think in Fall         10       decisan, they aya a court, at the end of that         10       decisan, they aya a court, at the end of a commenta,         11       situation -	17			
19       THE COURT: What's your position?       19       THE COURT:	18		-	•
20       MS. HOULE: Yes, Your Honor. I actually would request       20       MS. HOULE: Right, Your Honor, but as I mentioned, it has         21       have - you know, I don't think YTA will have a problem with       20       MS. HOULE: Right, Your Honor, but as I mentioned, it has         22       have - you know, I don't think YTA will have a problem with       20       MS. HOULE: Right, Your Honor, but as I mentioned, it has         23       corninuing to call the fines, no matter where the payment is       been done before, and if you give us until Monday, we can dig a         24       made, coercive, because I understand that's an interest that       20       It was done in other cases. I know in Quincy, and it might be         25       CERB has, to make sure that that message is out there and that       21       serves every party's interests except for the Court's?         26       MS. HOULE: Yes, I do, Your Honor, and you've been       extremely patient, and we do appreciate that, but, you know,         26       corruns discretion and has been exercised in other       5         27       Court has discretion and has been exercised in other       5         28       we call with the arge that, but, you know,       6         39       THE COURT: I think in Fall -       8         40       MS. HOULE: Yes,       10       We've never guaranteed it. It's not that the defendants         30       reelarac	19			
21       perhaps, if you're amenable, to waiting on that. As I said, we       21       been done before, and if you give us until Monday, we can dig a little deeper and get, hopefully, some of the examples of how         22       ittle deeper and get, hopefully, some of the examples of how       23         23       continuing to call the fines, no matter where the payment is       24         24       made, coercive, because I understand that's an interest that       25         25       CERB has, to make sure that that message is out there and that       25         26       rentire file with me, so I apologize for that.       25         27       So, you know, certainly the decisions talk about coercive as well as compensatory fines, and they aren't mutually-       exclusive, necessarily, but it is certainly so there and that       1         26       Court has discretion and has been exercised in other       1       serves every party's interests except for the Court's?         27       THE COURT: I think in Fall       MS. HOULE: Yes, I do, Your Honor, and You're been       extremely patient, and we do appreciate that, but, you know, certainly my clients understand, and we've always been very clear with them throughout this process, that the coercive         3       THE COURT: I think in Fall       MS. HOULE: Yes, I do, Your Honor, and You're been         3       THE COURT: I think in Fall       MS. HOULE: Yes, I do, Your Honor, and You're been         3	20			
22       have you know, I don't think NTA will have a problem with continuing to call the fines, no matter where the payment is continuing to call the fines, no matter where the payment is made, coercive, because 1 understand that's an interest that       22       little deeper and get, hopefully, some of the examples of how it was originally put with the CERBs initial contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to find - 1 didn't bring my contempt complaint, we were trying to	21	perhaps, if you're amenable, to waiting on that. As I said, we	21 beer	done before, and if you give us until Monday, we can dig a
24       made, coercive, because I understand that's an interest that       24       on the docket, that was originally put with the CERB's initial         25       CERB has, to make sure that that message is out there and that       25       on the docket, that was originally put with the CERB's initial         26       CERB has, to make sure that that message is out there and that       26       Page 20         1       entire file with me, so I apologize for that.       27       So, you know, certainly the decisions talk about coercive       3         3       as well as compensatory fines, and they aren't mutually-       4       extremely patient, and we do appreciate that, but, you know, certainly my clients understand, and we've always been very       27         2       Court has discretion and has been exercised in other       28       extremely patient, and we do appreciate that, but, you know, certainly my clients understand, and we've always been very         3       certainstances       7       THE COURT: I think in Fall       8         4       decrease, or recharacterize, and termine whether to increase,       7       THE COURT: I think in fall River, at the end of that         10       decrease, or recharacterize - they don't use the word       10       We've never guaranteed it. It's not that the defendants         11       situation       11       are disrespectful of the Court'. Again, my concern and Tm	22	have you know, I don't think NTA will have a problem with		
25       CERB has, to make sure that that message is out there and that       25       contempt complaint, we were trying to find - 1 didn't bring my         21       Page 20       Page 21         2       So, you know, certainly the decisions talk about coercive       as well as compensatory fines, and they aren't mutually-       2       Serves every party's interests except for the Court's?         2       So, you know, certainly something that the cell of a size every party, but it is certainly something that the cell of a size every party is interests except for the court size every party is understand, and we've always been very         3       certainly my clients understand, and we've always been very         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: - wan determine whether to increase,         14       decrease, or recharacterize - they don't use the word         15       recharacterize, but dift, that's what         16       MS. HOULE: Right, or	23	continuing to call the fines, no matter where the payment is	23 it wa	as done in other cases. I know in Quincy, and it might be
Page 20       Page 21         1       entire file with me, so I apologize for that.       1         2       So, you know, certainly the decisions talk about coercive as well as compensatory fines, and they aren't mutually- exclusive, necessarily, but it is certainly something that the Court has discretion and has been exercised in other circumstances       1       serves every party's interests except for the Court's?         3       as well as compensatory fines, and they aren't mutually- exclusive, necessarily, but it is certainly something that the Court has discretion and has been exercised in other circumstances       1       serves every party's interests except for the Court's?         4       extremely patient, and we do appreciate that, but, you know, ectrainly my clients understand, and we've always been very clear with them throughout this process, that the coercive fines are because they are in contempt of the court der and that those are, you know, up front, payable to the court, and that we hope that maybe along the line there can be some agreement that's reached.         10       decision, they say a court, at the end of a contempt situation       10         12       MS. HOULE: Yes.       11         13       THE COURT: can determine whether to increase, recharacterize, but I think that's what       12         16       MS. HOULE: Right, or       13         17       THE COURT: the SUC said       14         18       MS. HOULE: Right, or -       16         19       <	24	made, coercive, because I understand that's an interest that	24 on th	he docket, that was originally put with the CERB's initial
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		to come back to the court and make arguments on, you know,		
	23	to come back to the court and make arguments on, you know, fines amounts and waiver and allocation, whatever it may be,	23 N	MS. HOULE: Sure.

# (Pages 22 to 25)

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	Page 22		Page 23
1	enforcing court orders	1	MS. HOULE: So for procedurally
2	MS. HOULE: And just	2	THE COURT: all right, but I'll
3	THE COURT: and so in the name of flexibility and	3	MS. HOULE: and for
4	getting to a deal, we would retract that whatever that was	4	THE COURT: I'll consider it.
5	worth, which it hasn't apparently been much	5	MS. HOULE: Yes, Your Honor, I appreciate that. So
6	MS. HOULE: It's been a lot, Your Honor.	6	procedurally and efficiency for the Court, it seems to make
7	THE COURT: whatever that was worth, we'll then retract	7	sense to hold off on the final judgment, because if we get a
8	it and basically help fund a settlement.	8	final judgment that's not really final, I mean, god forbid, I'm
9	MS. HOULE: Sure.	9	sure hopefully there will be settlement over the weekend, it
10	THE COURT: The parties should consider themselves	10	wouldn't be an issue, but if, let's say, hypothetically
11	fortunate that my overarching interest is to make sure that	11	speaking, they weren't, there's a final judgment, but the
12	this ends	12	parties aren't really settled yet, and then if fines are
13	MS. HOULE: Right.	13	accruing again, is there another final judgment, and then if
14	THE COURT: and so maybe I'll go along	14	we're going to appeal or seek a waiver, at what point, what
15	MS. HOULE: And	15	amount are we appealing, I think it just, procedurally, would
16	THE COURT: but you hear my reservations. It really	16	become very complicated.
17	MS. HOULE: Yes.	17	THE COURT: Well, so when the Court enters a judgment and
18	THE COURT: does not make sense as far as enforcing the	18	there is a process by which the parties can ask to revisit the
19	law if, in the end, we re-characterize these things as	19	judgment
20	compensatory. I know compensatory fines exist.	20	MS. HOULE: Yes.
21	MS. HOULE: Sure.	21	THE COURT: under Rule 60, I mean, I have no idea if it
22	THE COURT: I would need evidence of what is it for, how	22	applies here, but
23	do you evaluate how do you value it	23	MS. HOULE: I guess I'm trying
24	MS. HOULE: Yup.	24	THE COURT: I'm confident
25	THE COURT: that type of thing	25	MS. HOULE: I'm trying to avoid multiple
	71 8		
	Page 24		Page 25
1	2		
	THE COURT: I'm confident	1	
	THE COURT: I'm confident MS_HOULE: times having to do that	1	in these particular circumstances; is that right?
2	MS. HOULE: times having to do that.	2	in these particular circumstances; is that right? MS. KANTANY: That's correct, Your Honor. We're past the
2 3	MS. HOULE: times having to do that. THE COURT: there is a way to do that. All right. So	2 3	in these particular circumstances; is that right? MS. KANTANY: That's correct, Your Honor. We're past the point of 150E framework. We're in the Your Honor's contempt
2 3 4	MS. HOULE: times having to do that. THE COURT: there is a way to do that. All right. So Newton's official position is that even if I issue judgment on	2	in these particular circumstances; is that right? MS. KANTANY: That's correct, Your Honor. We're past the point of 150E framework. We're in the Your Honor's contempt proceedings and clear contempt of your orders for approximately
2 3 4 5	MS. HOULE: times having to do that. THE COURT: there is a way to do that. All right. So Newton's official position is that even if I issue judgment on the fines already collected, you don't want me to be explicit	2 3 4 5	in these particular circumstances; is that right? MS. KANTANY: That's correct, Your Honor. We're past the point of 150E framework. We're in the Your Honor's contempt proceedings and clear contempt of your orders for approximately two weeks now, and the traditional methods that we have used in
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### (Pages 26 to 29)

	Page 26	Page 27
1	MS. KANTANY: Yeah	1 THE COURT: This is why it appeals to me in the last
2	THE COURT: the arbitration is the way to reach an	<sup>2</sup> since I read this only recently, you know, I got the motion
3	agreement, and we know it wouldn't take a day or two, it would	<sup>3</sup> this morning, it has been brought to my attention by various
4	take a while, right?	4 interested parties, including the NTA, all the problems with
5	MS. KANTANY: Well, I think under I think your order	5 this idea. But this wouldn't be ordering arbitration when
6	already says to end the strike, so I don't think this is	6 parties don't agree to it as a general matter; it would be
7	conditioned upon, it's a	7 ordering arbitration when parties don't agree to it when a
8	THE COURT: Well, I know, so this is but this is my	<sup>8</sup> strike is underway that's unlawful, when the strike lasts
9	concern is, if I were to order that in the absence of an	<sup>9</sup> eleven days, when \$625,000 of coercive fines have already be
10	agreement by Sunday at 8 p.m., I'm signing an order Monday	10 imposed, and those coercive fines, in my view, are ineffective
11	morning that, in these unusual circumstances, requires binding	<sup>11</sup> in ending the strike, and it appears to me that neither side is
12	arbitration, I do not share your confidence that the NTA will	<sup>12</sup> sufficiently focused on good-faith negotiations to reach to
13	be at binding arbitration and end the strike. I perceive	<sup>13</sup> break the impasse. It's in those very unusual circumstances
14	there's a good chance the strike would continue. That's my	14 that the pretty dramatic remedy of a different way of breaking
15	concern. We'd be in a new context but in the same situation.	15 the impasse comes in.
16	And I'm not asking you to promise me that either way, but this	<sup>16</sup> So I'm responding sort of to some of the letters that have
17	is my concern.	<sup>17</sup> come in recently and how this would shake up the way
18	MS. KANTANY: I understand your concern. I share your	<sup>18</sup> municipalities deal with unions in a way that's unfair and robs
19	concern. The Newton Teachers Association and the educators,	<sup>19</sup> local municipalities of control and the like. I get that, but
20	its members, are the only ones who can end the strike and	<sup>20</sup> I'm not writing a law here. I'm not changing the law. I'm
21	comply with the Board's orders or the Court's orders. And this	<sup>21</sup> saying, in these circumstances, when everything else seems to
22	is why we're asking for this relief, because it does not appear	have failed, why wouldn't this be a way to break the logjam.
23	that fines alone has worked. So this is	I want to hear from the NTA, but just like I asked the
24	THE COURT: And so I	24 Commonwealth what their position was on increased fines, wh
25	MS. KANTANY: something new.	25 is the School Committee's position on this new version of
	Page 28	Page 29
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1	_	_
1 2	breaking an impasse? MS. KING: Certainly. So the School Committee would	1 into binding arbitration.
	breaking an impasse?	1 into binding arbitration.
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# (Pages 30 to 33)

<b></b>			
	Page 30		Page 31
1	won't rearticulate those. On a practical level, we're very	1 MS. HOULE: Yes.	
2	concerned, as I said, I believe we are very close to the end,	2 THE COURT: just to be clear. I'm not claim	ming
3	and such an order, putting aside, you know, authority or what	<sup>3</sup> MS. HOULE: I appreciate that, Your Honor.	U
4	that would mean for the parties and by the way, arbitration	4 THE COURT: I'm not really I'm not really	put out by
5	isn't scheduled overnight, it would be scheduled whenever we	<ul> <li>this that much, all right? I think it's the people will</li> </ul>	
6	can find arbitrators to do it that it halts the progress	6 Newton.	io nve m
7		<ul> <li>MS. HOULE: Appreciate that, Your Honor.</li> </ul>	
8	being made at a critical juncture.	8 THE COURT: All right. Let me hear from th	o Commonwoolth
	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	hard to implement, in part because I don't know h	
11	have a mayor and the city council that are controlling purse	arbitrations take. I don't know how promptly peo	
12	strings. So they could go the parties could go through this	12 arbitrator. But I'll give you a chance to persuade	me that
13	whole process, get a decision from this either a panel or an	13 this is the solution.	
14	individual arbitrator and the city could still not fund it, and	14 MS. KANTANY: If Your Honor orders bindi	•
15	then we're back to square one. So it seems better to stay the	15 the Department of Labor Relations will work quie	
16	course that the parties are currently on, as much as I	already has a roster of arbitrators because of the J	
17	understand the pace of it has been extremely frustrating and	17 Management Committee process, so we could eas	•
18	trying of the Court's patience.	arbitrator, check their availability as quickly as po	
19	THE COURT: Oh, can I just be clear? My patience doesn't	19 set a procedure for binding arbitration. Obviously	
20	matter that much, because I sit here and I read the papers as	has been part of the mediation processes through	
21	they come in and try to decide if there's anything I can do to	determined to act quickly as well to assist the part	
22	make a difference. I think the patience involved is these	to a resolution, and we think that this is an import	ant step to
23	letters that I've been the parents	23 try and end this strike.	
24	MS. HOULE: Yes.	And I might add that there is another portion, i	s to have
25	THE COURT: and the kids, right	twice-daily status conferences. I know that puts a	u burden on
	Page 32		Page 33
1	Your Honor to have the parties come before you, but I do think	1 have a new set of circumstances and a continuit	ng strike. Okay.
2	that's also important to get a sense of where the parties are	2 So	
3	at. And Secretary Tutwiler is also present and can speak to	3 MS. HOULE: And, Your Honor, just to poi	nt out, as
4	the harms that the children in the Commonwealth, the 12,000	4 somebody that does arbitrations day in, day out	, usually we get
5	students of Newton are facing as well.	5 and I don't perhaps the system under JLMO	C works a little
6	THE COURT: I appreciate the offer, but I feel like I have	6 bit differently and faster, and I can let CERB sp	beak to that,
7	a good sense of the profound harms involved because I've been	<sup>7</sup> but a lot of the arbitrators I think overlap, and i	t is
8	reading these letters that come in. Even if they're an	<sup>8</sup> usually when we're scheduling arbitrations, we	are getting
9	illustration, it doesn't really stretch the imagination to know	<sup>9</sup> dates three to nine months out from the arbitrat	ors to schedule
10	that this is really impactful.	10 something.	
11	MS. KANTANY: Understood. I just wanted to offer that	11 THE COURT: All right. Well, usually whe	en people file
12	Secretary Tutwiler is here.	12 motions in this session, they get a date a couple	e months out
13	THE COURT: So on the notion of me being involved on a	<sup>13</sup> for a hearing. And the reason we do it in this c	
14	daily basis or twice daily, first of all, we're in the middle	14 day is because it's important. So I would hope	
15	of a two-week trial. I'm busy from nine to one. And the only	<sup>15</sup> path were chosen, we'd all be able to find some	
16	time it makes sense, in my view, for a third party like me to	<sup>16</sup> but, you know, I guess I can't say how easy or I	• • • •
17	get involved is if either you start banging heads to get people	17 be.	
18	to an agreement, but that's a mediator's job, not me, or you	<sup>18</sup> I will say, though, I've already told you my	concerns
19	start choosing sides and saying here's how we're going to	about breaking an impasse with some sort of th	
20	settle this, like an arbitrator would, and that's not my job	20 basically makes decisions and chooses, and I co	
21	either.	21 appreciate it's not provided in the law as written	
22	I'm still considering arbitration, but it's going to be	courts do sometimes is decide what an appropri	
23	something that I consider kicking in next week and only after	<ul> <li>break a complex situation. I already outlined o</li> </ul>	-
24	convincing myself that it's lawful to do so and that it would	here. The traditional tools have not worked. A	
25	actually end the strike. That's my real concern is that we'd	<ul> <li>context I will consider this. I'm not going to do</li> </ul>	
			8

# (Pages 34 to 37)

	Page 34		Page 35
1	now. I'm going to think about it, and I hope we don't reach	1	judgment's going to enter, unless you get to me by noon on
2	that, given your representations so far.	2	Monday with a different proposal, in which case I'll hear that
3	So I'll give you a chance to respond to this, but I'll	3	promptly and we'll talk about recharacterizing.
4	tell you what I anticipate doing. I do think it's time to have	4	Okay. On the compensatory fines, I'll tell you what I was
5	judgment entered with respect to those fines that have already	5	going to do, and then well, I'll tell you what I was going
6	been incurred so that it's not a complete fictitious obligation	6	to do, and that is, Newton has mentioned they are a separate
7	floating out there. I was going to say judgment for 625,000	7	form of sanction or relief for a contempt, and this contempt's
8	shall enter immediately, but in light of what you're saying and	8	been going on for eleven or twelve days, and so it's time to
9	the possibility that those would somehow be recharacterized in	9	start talking about whatever relief might be available to try
10	a way to aid the likelihood of settlement, what I'm going to do	10	to promote compliance with the law.
11	is say the time has come, for fines already incurred, that	11	So if Newton intends to seek compensatory relief or
12	judgment will enter, so that's payable immediately, but I'll do	12	compensatory fines for this contempt, I need to hear more about
13	that Monday at noon. And that gives you all time Monday	13	how that works. So I was suggesting, next week you file a
14	morning to file something with me, jointly or separately, that	14	memorandum explaining what you think you're entitled to, what
15	says I have the authority to recharacterize these coercive	15	qualifies as compensatory in this context, and what the process
16	fines as something else.	16	is for adjudicating that. And you'll do that next week, and
17	I do recall the single sentence in the Fall River case	17	we'll decide how to proceed.
18	that talks about reframing things, basically, at the end of a	18	Now, if that's the subject of agreement and you all draw a
19	contempt situation, so I think you're probably right, and	19	line and say beyond this amount of money, we won't seek any
20	you're also going to point to a few cases where this has	20	compensation and we're asking for it to be reframed, I might
21	already happened. From an institutional perspective, it's	21	see that on Monday. But in the absence of an agreement, if
22	still troubling, but I'm focused on making sure that this	22	this all falls apart and we're back where we are, then Newton
23	strike ends, so I'll be as flexible as the law permits, okay?	23	will have a chance next week to start the process of
24	So that's what I'll do on the judgment. The coercive	24	compensatory fines, how are you going to prove it to me in a
25	fines are official, they haven't been challenged, and the	25	concise manner, you can object, and that'll be on the table,
	Page 36		Page 37
1	Page 36	1	Page 37
1	okay. I have no idea if that's one dollar or a million	1	level hasn't worked, okay. You'll see that in my order, but
2	okay. I have no idea if that's one dollar or a million dollars. I have no idea, because I've never done this before,	2	level hasn't worked, okay. You'll see that in my order, but that leads to the question of, what is good-faith negotiating,
2 3	okay. I have no idea if that's one dollar or a million dollars. I have no idea, because I've never done this before, and I don't know that anyone else has actually adjudicated	2 3	level hasn't worked, okay. You'll see that in my order, but that leads to the question of, what is good-faith negotiating, something I've been thinking about and trying to learn about.
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- 25 but I feel compelled to increase the fines, because the current
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## (Pages 38 to 41)

	Page 38	Page 39
1	information in this sworn statement of why that's the case,	1 with this requirement that good-faith negotiating be underway
2	then we'll have to talk about how we're going to adjudicate	2 during that period.
3	that.	And so if what you predicted at the beginning of this
4	So I want that safety valve, but I also want to increase	<ul> <li>And so it what you predicted at the beginning of this</li> <li>hearing is true, then I guess the increased fines won't kick</li> </ul>
5	the fines, and that's how I'm going to proceed. You'll see it	<ul> <li>in, but I have to approach I've approached this hearing</li> </ul>
6		
	in the order, and then I've tried to set forth what I	presuming that the goal is to a total sening cuert here even again,
7	understand the law to be concerning good-faith negotiating, and	7 including next Monday or any other day next week.
8	that way at least the lawyers here can all make sure the	8 So I'm going to presume there is no settlement, and that's
9	negotiators in the room know that this is how I'll be	<sup>9</sup> my approach. I said I'd give you a chance to comment on it, so
10	approaching the problem. But it's not my words, it's other	10 now's your chance. Newton, you can go first.
11	courts I'm sorry, appellate courts who have described this	11 MS. KING: I think we'd be amenable to the order that you
12	concept of an open and fair mind, a sincere effort to reach	12 have in place, again, remaining hopeful with the status, that
13	common ground, and we'll have to gauge whether that's the case	13 we don't have to be back here for your position.
14	or not.	14         THE COURT: Okay. Employment Relations Board, any
15	Based on what you've said so far, that or that you said	15 comments?
16	at the beginning of this hearing, I presume that what's	16 MS. KANTANY: No objection or position on what you've
17	happening right now is good-faith negotiating, but everyone	17 framed so far except to note the absence of a decision on
18	should keep in mind that that's a prerequisite to these	18 our request for further relief, but I understand that's
19	elevated fines, okay.	19 something
20	I'm going to make some adjustments to this with respect to	20 THE COURT: Yeah, I'm not
21	the entry of judgment, which was going to be immediately, and	21 MS. KANTANY: you are considering
22	now it's going to be Monday at noon. So you all can get to me	22 THE COURT: denying that.
23	if you have a different proposal, but otherwise I'm going to	23 MS. KANTANY: Okay.
24	sign this and get it in your hands. So the fines are going to	THE COURT: I'm going to view that as the next step,
25	be increased to a hundred as of Sunday with this coupled	<sup>25</sup> possibly. I'll share with the parties, I think I given
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	Page 40	Page 41
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1	-	
1	these facts and circumstances, I could write an order that	1 MS. HOULE: Understood, Your Honor. I appreciate the
2	these facts and circumstances, I could write an order that explains why this exceptional remedy of mandatory arbitration,	1 MS. HOULE: Understood, Your Honor. I appreciate the 2 clarification.
2 3	these facts and circumstances, I could write an order that explains why this exceptional remedy of mandatory arbitration, when a statute doesn't provide for mandatory arbitration, would	<ol> <li>MS. HOULE: Understood, Your Honor. I appreciate the</li> <li>clarification.</li> <li>THE COURT: And I'm going to get this order in your hands</li> </ol>
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## (Pages 42 to 44)

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	THE COURT: I hope you take it in the spirit I offer it when I say I hope not to see you again. Please keep us apprised. Otherwise, I'm going to keep Monday afternoon at two available. MS. HOULE: Yes, Your Honor. THE COURT: And I'll call you in, so you should keep it available, too, if there's no resolution. Thank you. MS. KANTANY: Thank you, Your Honor. MS. KING: Thank you, Your Honor. MS. HOULE: Thank you, Your Honor. MR. MULLANE: Thank you, Your Honor. (Case concluded at 4:05 p.m.)	The Commonwealth of Massachusetts OFFICE OF COURT MANAGEMENT, Transcription Services 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 stamp: Low audio Low audio at sidebar Simultaneous speech speaking away from microphone other: Indiscernible time speech stamp:
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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 10	Directive on Transcript Format. I, Lisa Cimmino, further certify that I neither am counsel	
10	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.	
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