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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

January 22, 2024

Lisa Cimmino

Approved Court Transcriber

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APPEARANCES

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

For Michael Zilles, in his Official Capacity and
 Newton Teachers Association:
 Massachusetts Teachers Association
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 By: Richard A. Mullane, Esq.
 Laurie R. Houle, Esq.

For Other Interested Party
 Newton School Committee:
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 By: Jennifer King, Esq.

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1 (12:03 p.m.)
 2 THE CLERK: Counsel, we did receive the complaint --
 3 MS. KANTANY: Thank you.
 4 THE CLERK: -- for contempt. Counsel, I don't know if you
 5 have an opposition and you'll be filing one at some point?
 6 MS. HOULE: Yeah, we literally -- like, I was on my way
 7 here --
 8 THE CLERK: Okay.
 9 MS. HOULE: -- when it came in my email, so I haven't --
 10 THE CLERK: Okay.
 11 MS. HOULE: -- had an opportunity. Just reading it now,
 12 in fact.
 13 THE CLERK: No problem.
 14 MS. HOULE: But yes, I would anticipate, depending on how
 15 it goes today, filing an opposition.
 16 (Off the record at 12:06 p.m.)
 17 (On the record at 12:13 p.m.)
 18 (Court called to order.)
 19 THE COURT: Good afternoon.
 20 THE CLERK: Good afternoon, Your Honor. Your Honor, we
 21 have all parties here on Docket Number 2481CV00148,
 22 Commonwealth Employment Relations Board vs. Newton Teachers
 23 Association, et al. Could all parties please stand and
 24 identify yourself for the court and the record, starting with
 25 the plaintiff.

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1 MS. KANTANY: Lan Kantany on behalf of the Commonwealth
 2 Employment Relations Board.
 3 MS. KING: Jennifer King on behalf of the Newton School
 4 Committee.
 5 THE COURT: Good afternoon.
 6 MS. HOULE: Laurie Houle on behalf of the Newton Teachers
 7 Association and Mr. Michael Zilles.
 8 MR. MULLANE: Hi. Richard Mullane, co-counsel with Ms.
 9 Houle.
 10 THE COURT: Good afternoon, everybody. All right. I've
 11 received and had a chance to review the complaint for contempt
 12 and the memorandum seeking a specific sanction, and I've
 13 familiarized myself with the law in these circumstances, mostly
 14 because several of my colleagues have been through this in the
 15 last couple of years and I've looked into what they've done,
 16 and the information that the plaintiff provided sort of
 17 collects that as well.
 18 So it seems to me -- well, first let me ask you, is there
 19 any update --
 20 MS. HOULE: No.
 21 THE COURT: -- since what I read in the papers?
 22 MS. HOULE: I believe the parties are at the table, Your
 23 Honor.
 24 THE COURT: Okay.
 25 MS. KANTANY: I don't think there's any dispute that

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1 they're on strike today. The parties are at the table
 2 negotiating today, and they have continued negotiating over the
 3 weekend as well.
 4 THE COURT: All right. I want to talk about a few things
 5 just to give us some structure here. I want to -- I
 6 anticipate, because it appears that the strike continues, that
 7 I will find some time today that there is contempt of the
 8 order, but the order had all these different subparts that you
 9 sort of collectively asked for or agreed to. So I know the
 10 answer to some of them, but I want to get the update as to each
 11 of the different subparts of the order.
 12 And so I'd like to do that first and then talk about,
 13 moving forward, the plaintiffs have asked for an order -- let
 14 me just make sure I understand what you're asking for, an order
 15 that would enter today and sanctions would start today.
 16 MS. KANTANY: Correct.
 17 THE COURT: And the question in my mind seems to be at
 18 what level and how they should escalate. So I'd like to talk
 19 about those things, compliance with the order or non-compliance
 20 with the order, and then what the order going forward should
 21 be. Is there anything else that should be on our agenda? I'll
 22 ask the defense first, since I've --
 23 MS. HOULE: Oh, so many things, Your Honor.
 24 THE COURT: -- captured the plaintiff's agenda.
 25 MS. HOULE: I think you've hit the broad strokes.

1 Obviously there's a lot of details within those categories that
 2 we will need to touch on.
 3 THE COURT: All right. Anything else, in your view, that
 4 should be on our agenda?
 5 MS. KANTANY: I think that covers it.
 6 THE COURT: All right. Let's talk about compliance with
 7 the order, because it seems to me much of it is uncontroverted,
 8 but I might as well make sure. As far as the order's
 9 requirement that there be no strike, the strike is ongoing as
 10 of this morning, right? The students are not in school?
 11 MS. HOULE: That is correct, Your Honor.
 12 THE COURT: I sort of view one and the same the next few,
 13 not encouraging or condoning a strike, stating the strike has
 14 been canceled, providing an -- well, I'm going to presume
 15 they've provided the order to their members, so there's
 16 compliance on that part.
 17 MS. HOULE: Yes, Your Honor, we did. We sent both the
 18 CERB ruling -- NTA sent both the CERB ruling and the Court's
 19 order to its members yesterday afternoon before three.
 20 THE COURT: All right. But as to the first three things,
 21 which I view as the strike, is there any dispute that as of
 22 today, leaving aside the future, as of today, that there is not
 23 compliance with those three aspects of the order?
 24 MS. HOULE: That is correct, the NTA members are not in
 25 school today.

1 THE COURT: Okay. And the reason I wanted to get into the
 2 details is, if I'm going to make findings about contempt, which
 3 it appears that I will, you know, the next few are a little
 4 different, the next few requirements of the order, "Shall
 5 immediately continue negotiations to a resolution or impasse
 6 and utilize the procedures in the collective bargaining
 7 agreement; shall bargain in good faith." Those are the main
 8 ones.
 9 But I think in light of the fact that they're an order,
 10 I'd like to hear a little bit about where things stand, because
 11 I'm not going to include an order that someone's not
 12 negotiating in good faith unless there's evidence to that
 13 effect. So maybe -- I don't know, are you seeking contempt as
 14 to subparagraphs F G, or is it only the strike-related aspects?
 15 MS. KANTANY: No, it's just related to the first three
 16 parts, which, in the motion, lays out where we're requesting
 17 for a contempt order. So it's the first paragraph about
 18 ceasing and desisting from engaging in a strike, then the --
 19 THE COURT: All right, so the state --
 20 MS. KANTANY: -- second part, inducing --
 21 THE COURT: -- or the School Committee is not making any
 22 contention about not following through on good-faith
 23 negotiations?
 24 MS. KANTANY: There's no allegation about that, no, Your
 25 Honor. Everything that we're asking for in terms of the

1 contempt order is in the motion for civil contempt, and it does
 2 not include any allegation that there is a failure to comply
 3 with the remaining parts of the Court's injunction order.
 4 THE COURT: All right. How about the teachers; is there
 5 any contention that the other side is not conforming to their
 6 obligation to negotiate in good faith?
 7 MS. HOULE: Your Honor, the parties were at the table all
 8 weekend and today. I've -- hearing some concern. Just for
 9 background for context, and I actually think it should come
 10 into play when we get to talking about fines levels, there is
 11 an outstanding -- actually five outstanding consolidated
 12 unfair-labor-practice charges alleging bad-faith bargaining
 13 against the School Committee. That pre-dated the current
 14 situation that we are dealing with. That is still pending
 15 before the Department of Labor Relations.
 16 I'm hearing concerns about continued conduct in line with
 17 those that were raised in that -- in those unfair-labor-
 18 practice charges, but, you know, obviously the parties are
 19 coming together at the table and there is assistance with
 20 mediation, too, so to that extent, then that has been complied
 21 with.
 22 THE COURT: So there is no contention that there is an
 23 absence of good-faith bargaining by either side; is that what
 24 I'm hearing?
 25 MS. HOULE: As I said, we have outstanding charges against

1 the School Committee, but in terms of --
 2 THE COURT: I know, so this order says, as of Friday
 3 afternoon, that both sides -- you know, you might recall on
 4 Friday I was a little anxious about putting in a bunch of
 5 details.
 6 MS. HOULE: Sure.
 7 THE COURT: But I did, because you all persuaded me it was
 8 a good idea, and so one of them says that both sides are to --
 9 MS. HOULE: Okay.
 10 THE COURT: -- engage in good-faith negotiations. So I
 11 think I'm entitled to ask any concerns on that point, because I
 12 do view compliance with every aspect of the order as something
 13 I can consider in deciding a remedy with respect to the most
 14 obvious aspects of the order; namely, that a strike continues
 15 underway. That's why I'm asking. So now is your chance to
 16 tell me --
 17 MS. HOULE: I understand.
 18 THE COURT: -- if you feel like there's not good-faith
 19 negotiations.
 20 MS. HOULE: I -- yes, so, Your Honor, for example, one of
 21 the concerns was, the NTA yesterday, when bargaining broke, was
 22 like, let's start at 9:00 and go through 9:00, like 12 hours
 23 we're going to set aside, let's see if we can make some
 24 substantial progress on this matter. And the School Committee
 25 only agreed to bargain from 10:00 to 1:30 today and 5:00 to

1 7:00 tonight.
 2 So, you know, the NTA is, you know, out there really
 3 trying to work hard and keep the parties focused at the table.
 4 You know, there might be legitimate reasons. I'm not there.
 5 I'm not party to those conversations or to the School
 6 Committee's calendars or whatever the situation may have been.
 7 But there's also some frustration I am hearing from my
 8 folks about delays, you know, sending proposals and then
 9 there'd be, like, four-hour delays before getting anything
 10 back, if anything, from the School Committee. Some of this I
 11 will -- you know, is part and parcel of the bargaining process,
 12 but when they've been at it for, you know, well over a year,
 13 one would think, and I think there was hope from the union,
 14 that there had been a little bit more evidence on both sides of
 15 the urgency of getting this deal done.
 16 I don't have enough information at this point to say
 17 whether we would be filing any additional unfair labor practice
 18 charges alleging bad faith at this. I just haven't had a
 19 chance to really dig into that.
 20 THE COURT: All right. I suspect I'm going to hear from
 21 the School Committee that they feel like they're waiting.
 22 MS. KING: Yes, and just briefly, Your Honor, I think you
 23 noted and you hit correctly that this seems to be a prospective
 24 order from Friday that the five ULPs that are out there or, you
 25 know, were filed over the summer, the School Committee has

1 denied those. They aren't relevant to this proceeding.
 2 We're just looking at this order from Friday. Since
 3 Friday, both parties have been mediating and been engaging in
 4 negotiations. On Friday, the parties negotiated for eight
 5 hours. On Saturday, they were at the table for ten hours.
 6 Yesterday they were there for almost nine hours.
 7 As you can imagine, members of the School Committee, you
 8 know, it is a volunteer position for them. Many of them have
 9 full-time employment. They are taking off vacation days from
 10 their own paid position to attend these negotiations. Some of
 11 them have other outstanding obligations, just, again, like the
 12 parents, who are in the same situation with this strike, that
 13 they are doing their best to try to manage, but in terms of
 14 today, we know that some of them had some obligations which
 15 wouldn't allow for a quorum to meet for this afternoon.
 16 We note that there is only, for this afternoon -- or for
 17 this evening, the superintendent has just asked for at least a
 18 brief stop at 7:00 p.m. so that way she has time to communicate
 19 to families whether the strike will continue tomorrow, but my
 20 understanding is, the Committee is more than willing to
 21 continue this evening if progress is being made.
 22 So in that vein, you know, we would certainly rebut that.
 23 I mean, we certainly have other anecdotal pieces that we could,
 24 you know, add in about the union not necessarily engaging in
 25 good faith over the weekend, but I think for the purposes of

1 this hearing and also affording deference to the appropriate
 2 agency, I think it would be more appropriate that if we are
 3 going to find any potential violation of that piece, that
 4 should come through the board and not from one of our parties.
 5 THE COURT: All right. Well, I guess what I'm thinking
 6 is, if I were to face this issue again on a short-term basis in
 7 the initial injunction, I'd be more reluctant than I am -- than
 8 I was on Friday to include this concept of both parties shall
 9 engage in good-faith negotiations, because if I'm supposed to
 10 determine compliance with the order, it'd seem to me I'd need
 11 some details about how things are going. It doesn't really
 12 seem like that's my job, so --
 13 MS. KING: I understand.
 14 THE COURT: -- I'm going to -- unless anyone wants to say
 15 that the other side is not engaged in good-faith negotiations,
 16 I'm going to view it as we are here about the first half of the
 17 order and not those detailed provisions. Everyone can reserve
 18 their rights to say that that's not happening in the future,
 19 but that's -- I just want to make sure what I'm being asked to
 20 find today with respect to contempt. I think it's the strike,
 21 but I wanted to raise the issue, since it's in the order.
 22 MS. KING: And I appreciate your thoughts on this, Your
 23 Honor, and I do think it was important that it was there on
 24 Friday, because there was some concern about whether the School
 25 Committee would negotiate over the weekend, and so I do think

1 it was beneficial in that aspect.
 2 THE COURT: All right. And I'm not hearing anything from
 3 the plaintiffs on those points, right?
 4 MS. KANTANY: No, Your Honor.
 5 THE COURT: All right. So the legislature has determined
 6 there can be no public strikes, and yet they happen. They seem
 7 to happen about a handful every couple of years, and the
 8 question is how to enforce the law, demand compliance with the
 9 law. And it seems to me the going rate seems to be about
 10 \$50,000 a day and then escalating, but this school system's --
 11 it might not be larger than all of them, but it's certainly
 12 larger than some of the most recent examples, by a magnitude.
 13 I guess I'll just hear from the parties on what I
 14 understand to be the things I'm supposed to gauge, character
 15 and magnitude of the threatened harm, the probable
 16 effectiveness of any suggested sanction, the defendant's
 17 financial resources, and the seriousness of the burden on that
 18 defendant. I want to talk about exactly what that last one
 19 means in your eyes, but does everyone agree those are the --
 20 that's all the appellate courts have told us about how to
 21 proceed here? Anybody else -- anybody think there's additional
 22 factors that should be considered?
 23 MS. HOULE: No, I think the Fall River case is pretty much
 24 considered the standard that we are using.
 25 MS. KANTANY: That's right.

1 THE COURT: All right. And let me just understand if the
2 parties have any insight into this last factor, the seriousness
3 of the burden on the defendant.
4 MS. KANTANY: My under- --
5 THE COURT: The burden of compliance?
6 MS. KANTANY: The burden of the sanctions on the
7 defendant. I --
8 THE COURT: The burden -- I think that's right, the burden
9 of complying with the sanction --
10 MS. KANTANY: Correct.
11 THE COURT: -- as opposed to the burden of complying with
12 the order.
13 MS. KANTANY: Right, correct.
14 MS. HOULE: Correct, Your Honor.
15 MS. KANTANY: It's the sanctions --
16 THE COURT: Complying with the order, we could do, but
17 it's not happening. Okay. All right. So it's pretty closely
18 linked to the amount --
19 MS. KANTANY: Yes.
20 THE COURT: -- which is also linked -- these things all
21 sort of work together --
22 MS. KANTANY: Two, three and four --
23 THE COURT: -- in my view, to ask the question what would
24 make a difference, what would help ensure compliance with the
25 law. All right. So I've read the papers from the plaintiff,

1 but why don't you -- I'll give you a chance to focus me in on
2 your answer to that question and how we should proceed.
3 I will say -- I want to -- so everyone can think about it
4 as they give me their thoughts, this notion of what will it
5 take to be effective, the probable effectiveness of sanctions,
6 I think we can all agree we're guessing, right? It's
7 conceivable that the parties will have success today and a
8 \$10,000 sanction would appear to be successful. I suppose a
9 \$100,000-per-day sanction would seem to make it more likely to
10 have an impact on the negotiations.
11 But I have to share with you that given the scope of the
12 contract negotiations, you know, there's a reference to cost of
13 doing business; we don't want this sanction process to become a
14 cost of doing business. It seems to me that's where we are,
15 because recent history shows that when they think it's
16 important, teachers' unions go on strike, and these sanctions
17 issued by courts might make a difference, but given the dollars
18 that are involved in the negotiations, I'm not so sure.
19 And then that gets me concerned that to really make a
20 difference, the approach is the one taken by Judge Fabricant in
21 2007, which seems pretty dramatic but I'm guessing was
22 successful in reaching a result more quickly. Do I have that
23 right? Was that order effective back in Quincy in 2007?
24 MS. KANTANY: Yes, I understand that there was compliance
25 either the same day or the next day.

1 THE COURT: Right.
2 MS. HOULE: If I may, Your Honor, I think -- as you've
3 noted, it's entirely speculative whether the sanctions had
4 anything to do with that. However, I do note in the papers, if
5 you had -- now I lost my page, I'm sorry, but I believe that
6 was actually stricken, the hourly. If you -- I think it was in
7 June. I apologize, Your Honor. I just received this, like, 20
8 minutes before we came in here.
9 So there's a notation in the court docket that the -- on
10 June 13, 2007, order of contempt is amended and that additional
11 language has been crossed out; specifically the language per
12 hour until the defendants comply in full with the enforced
13 hour.
14 THE COURT: Okay. I didn't want to -- I don't want to
15 give the wrong impression; I'm not saying that's what's on my
16 mind as the way to proceed. The concept of daily sanctions
17 seems to be the most standard approach, and I don't know --
18 MS. HOULE: Your Honor --
19 THE COURT: -- how best to approach that, but I pointed
20 that out as the -- the only example, when you're talking about,
21 hourly or --
22 MS. HOULE: Correct.
23 THE COURT: -- or every few hours, imposing new sanctions,
24 that what the Court says, in my view, would really make a
25 difference at the negotiation table. I don't actually think

1 it's a good idea for what the Court says to make a difference
2 in negotiations, because the scope of those discussions is much
3 broader than compliance with the court order, right? There's a
4 willful decision to not comply with the court order, because
5 it's worth it, given how much is at stake in the negotiations.
6 I guess I'm just saying that this -- the disconnect between
7 what actually has to happen, which is a collective bargaining
8 agreement, and this Court's role I think is pretty vast, but I
9 am going to try to craft an order that insists upon compliance
10 with the law.
11 And let me go back to what I was saying before that I
12 wanted you to take into account as you consider your remarks.
13 I think the concept of escalation is very important, because I
14 won't know the impact of my order on resulting in compliance
15 until the next day. So I'm not likely to start at a very, very
16 large number, even though I think that may indeed be what it
17 takes to actually impact compliance.
18 But my trade-off for that is that each day this goes on, I
19 think the harm increases dramatically. I don't think it's a
20 linear progression because of the amount of school missed and
21 the like, not to mention the impact on parents and the like,
22 but more importantly, gauging the effectiveness of a sanction
23 is easier to do each day it's violated. So I have in mind an
24 accelerating approach.
25 I'll leave it at that, and let me hear from each of you on

1 how you think I should approach this sanction issue, because I
2 don't perceive a dispute as to the first few prongs of the
3 order, that the strike is underway, and I'm inclined to do
4 something about it. Okay. So I'll hear from the plaintiff
5 first.

6 MS. KANTANY: So I think our brief lays out each detail of
7 the Fall River factors pretty clearly. I just want to, you
8 know, address some of what you've expressed for concerns, and
9 one of them is, I do think that the contempt fines have a clear
10 coercive effect. If you take a look at our chart that's
11 Exhibit 20, you can see when the fines were ordered, and then
12 the parties came into compliance within -- I think the most was
13 three days. And that was a -- I think -- I believe that was
14 Haverhill where they had a large amount of assets, like in this
15 case, which is why we're asking for a larger amount and
16 escalating from Haverhill, which was 50,000 with a 10,000
17 escalator.

18 We're increasing the amount from a \$10,000 escalator to a
19 \$25,000 escalator, because clearly the 50,000 with the \$10,000
20 escalator was not working. I'm sure Newton Teachers
21 Association is very well aware of these fines and how they've
22 been issued and yet has gone on strike and clearly continues to
23 go out on strike and violate the Court's injunction.

24 So that's the reasoning for why we placed it on the
25 escalating -- increased the escalating fines. And I just want

1 to clarify one piece, which I realized might be a little bit
2 confusing from my motion and the proposed contempt order, is
3 that we also suggest increasing the escalator as of Monday, the
4 following Monday, god forbid it continues to then, increasing
5 it by 50,000, because in Haverhill, they certainly were close
6 to getting into the next week, and we don't want that to happen
7 here. So we're suggesting increasing the escalating fine from
8 25,000 to 50,000 on Monday.

9 THE COURT: And you suggest the fines should start today?

10 MS. KANTANY: Absolutely.

11 THE COURT: And goes up 25 each day?

12 MS. KANTANY: Correct, so it would be 75 and then a
13 hundred for each day following that. This union has the -- it
14 impacts the most amount of students out of the most recent
15 strikes since 2019 at almost 12,000 students, so the character
16 and magnitude of harm is high. There's clear, blatant nature
17 of the violation. We have statements from Mr. Zilles, the
18 president of the union. There is harm to the students, the --
19 all of the students, but those particularly in the METCO
20 program, bussing in from Boston, and the specialized programs.
21 I think that's well-detailed in our memorandum. The rest of
22 the three factors I think kind of go together, as you
23 suggested.

24 This fine is not punitive. I think four is the
25 seriousness of the burden on the defendant, and one of the

1 concerns is so that the fine is not punitive. And here, the
2 Newton Teachers Association frankly could go on strike for --
3 until next Monday without depleting their assets. That's a
4 whole week of students out of class, so -- and then they could
5 go through Thursday with just the cash on hand.

6 And I did want to correct something in my memorandum. On
7 page 10, the numbers that I provided in the Newton cash on
8 hand, 486,229, and the rest of the numbers are actually from
9 their 2022 Forms 1 and 2. But it hasn't -- I included all
10 three just to demonstrate that their finances haven't
11 substantially changed. But just to update for 2023, they have
12 \$422,062 cash on hand, \$296,627 in other investments, and
13 23,386 in other assets, for a total of \$742,075. These are the
14 numbers taken from Exhibit 19. That's their 2023 Forms 1 and
15 2.

16 So no other unions have other assets that have been listed
17 in their Forms 1 and 2 or otherwise discovered. And so the
18 Newton Teachers Association has the most cash on hand. They're
19 the only ones with other assets that we are aware of. And so
20 this amount that we're requesting is, frankly, more than
21 reasonable to attempt to coerce compliance with the court's
22 order.

23 THE COURT: Okay. So let me just ask a question about
24 that notion of coercing compliance with the order and you point
25 to, well, most of the strikes tend to last two or three days

1 after fines are imposed. I understand that you can -- we can
2 all draw that, you know, causation, but is there anything more
3 deep than just the number of days and the like? Is there any
4 reason to believe that the dynamic of the negotiating table
5 actually changed because of the fines?

6 I don't even know if that's a good thing if it does, but
7 that seems to be what you're implying is that once the fines
8 are in order, people get serious at the negotiating table. And
9 as I said earlier, I feel like the scope of the negotiations
10 involves so much more and so much more money that I question
11 whether it actually does make a difference, but I'm asking
12 because you might have some insight if you've handled these
13 cases before.

14 MS. KANTANY: You know, it's -- what is the saying about
15 statistics, causation versus -- I'm not a math major, but I
16 think it provides some information, but as you said, there are
17 a lot of factors moving towards a resolution on the successor
18 collective bargaining agreement and agreement on that.

19 Really what we're focused on is placing a fine that puts
20 enough pressure on the educators' union to return to school,
21 and if they don't get an agreement, that doesn't mean that they
22 can't return back to the schools and do their jobs like all the
23 other public sector employees' unions do. They negotiate their
24 contracts while they're working, not while they're out on
25 strike.

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1 THE COURT: Okay. And would Newton like to add anything
 2 to that?
 3 MS. KING: Yeah, so I think the School Committee is in a
 4 very uniquely-postured position to address the non-economic
 5 harm here. And I know it's laid out in the memo and the Board
 6 touched on it in oral argument, but just to sort of hammer that
 7 point home, and I know you've mentioned a lot of this may be
 8 guessing or (indiscernible) speak, but that harm really isn't
 9 calculable. You know, we've provided information from the
 10 superintendent, the assistant superintendent of student
 11 services, and the METCO director which speaks directly to the
 12 harm that's caused to students and families while the strike is
 13 ongoing.
 14 First of all, we may need to extend the school year. That
 15 might trip into school vacations. It might mean going, you
 16 know, well into the end of June, that, you know, if this is
 17 going to be a longstanding strike, that is, you know, a major
 18 component at the outset.
 19 We have 12,000 students that are currently disrupted by
 20 this strike, as well as their parents, caregivers, anyone who
 21 may need to miss work, anyone who may need to make any other
 22 arrangements. We have 20 percent student population that
 23 receives special education services due to their higher level
 24 of vulnerability, and they may experience additional harm
 25 because of the change in circumstances and change in routine.

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1 willingness to continue with this strike and defy your orders.
 2 So just also relying on the memorandum, but we do think it
 3 would be appropriate to adopt the fines as requested in the
 4 proposed order beginning today should the NTA fail to take the
 5 steps required by your order.
 6 THE COURT: Okay. Before I hear from the teachers, can I
 7 just ask what you all -- do you have any views on my concept of
 8 a more meaningful escalation daily, regardless of what the
 9 starting point is?
 10 MS. KANTANY: I think Your Honor's --
 11 THE COURT: My thought being, one doesn't know if your
 12 order -- if my order is working until the next morning when
 13 school is not in session.
 14 MS. KANTANY: I think an escalating fine -- I don't know
 15 if it needs to be for every day, but some indicative hourly,
 16 per hour, kind of like in Quincy, would be helpful or a notice
 17 to the court of what's happening and the association's
 18 intentions with complying with the order, something so that, as
 19 you stated, we're not just waiting until we hear from the
 20 Newton Teachers Association.
 21 THE COURT: Okay. I forgot to ask a question of Newton or
 22 the state, whoever might know. Is there another mechanism for
 23 -- because my understanding is, I am not proceeding in a
 24 compensatory way. I'm not looking for what the costs are of
 25 shutting down the schools. This is strictly coercive. I think

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1 We then also have 415 students who attend through the
 2 METCO program, and their harm is, you know, additionally sort
 3 of incalculable, unlike the Newton students who are able to
 4 retain, you know, the grab-and-go breakfasts and lunches that
 5 are being provided to them and can rely on neighbors and
 6 friends to assist with that.
 7 There is just one location in Boston that those students
 8 right now are able to obtain those meals, and, you know, unlike
 9 having, you know, neighbors and friends nearby, it may be more
 10 difficult for them to obtain that. And if those students are
 11 facing food insecurity, again, that's even further harm to
 12 those students.
 13 Again, just the students that are experiencing and deal,
 14 on a daily basis, with complex emotional behavioral needs and
 15 rely on school, it is highly, highly disruptive to them and
 16 their families. It just -- it essentially creates a domino
 17 effect on them. We are hiring police details to be out with
 18 that piece.
 19 And we think that the fines would be appropriate in terms
 20 of coercion. As Board counsel spoke about, in past
 21 circumstances, you know, many other unions had less cash on
 22 hand. They had less students. Here you see sort of a
 23 departure from that. You see that we have many more students.
 24 You see that there is much more cash on hand. And we have
 25 statements from the union leadership which speaks to their

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1 everyone's in agreement with that?
 2 MS. KANTANY: That's correct, it would be a coercive
 3 prospective fine so they can -- the idea is to coerce
 4 compliance with the court's order, so conceivably, there could
 5 be no fine for --
 6 THE COURT: Okay. Is there --
 7 MS. KANTANY: -- if they comply today.
 8 THE COURT: Right, the hope is that there will be no fine,
 9 just to be clear.
 10 MS. KANTANY: Right.
 11 THE COURT: Is there another mechanism for compensatory
 12 damages, and what is that and what is Newton's current
 13 intentions with respect to that?
 14 MS. KING: Sure. So --
 15 THE COURT: Or is that all on the negotiating table, too?
 16 MS. KING: So typically as part of these proceedings, at
 17 the end of negotiations there is a return-to-work agreement,
 18 and that gets worked out between the parties, and it usually
 19 addresses compensatory services -- compensatory fines.
 20 So for the purposes of today's hearing, we're simply here
 21 for coercive fines. I mean, the Committee certainly reserves
 22 its -- any and all rights related to compensatory fines, but
 23 typically that is something that is worked out between the
 24 parties at the end of negotiations.
 25 THE COURT: Okay. So there's a mechanism, but it's

1 unlikely to --
 2 MS. KING: Correct, again, reserving all rights, so --
 3 THE COURT: -- or history says it's rarely used.
 4 MS. KING: Yes.
 5 THE COURT: Okay. All right. Thank you for your
 6 patience. I'll ask for your views on all the things we've been
 7 talking about so far.
 8 MS. HOULE: Yes, thank you, Your Honor, so many. I want
 9 to start, I think, with, obviously we have not seen anything of
 10 the magnitude of the request that CERB is making here in terms
 11 of the fines. And I will shortly get into why the numbers that
 12 you're hearing and seeing for Newton aren't quite as clear and
 13 grand as they're put out to be if you consider backing out some
 14 of the things that the cases, including Fall River and Salem,
 15 say you need to.
 16 I have to express a concern here that CERB and the School
 17 Committee are actually trying to accomplish more with this
 18 particular case than they have the authority to do. I've read
 19 briefly through the memo, because I just got it right before
 20 walking in here. And thank you for asking the question whether
 21 there was -- this was coercive versus compensatory, because at
 22 the start of the argument section of the memo, I was a little
 23 confused of whether -- which was being caught up here.
 24 To that end, I think the fact that the School Committees
 25 may actually seek additional damages beyond the coercive fines

1 that you would be setting here also needs to be taken into
 2 consideration. As sister counsel for the School Committee
 3 said, that often is worked out at the table what that amount
 4 may be, but it is something that comes into play for the
 5 parties, at least, at the table.
 6 But if you -- in reading the memo, there was reference, a
 7 lot of reference, and the tone made me believe, anyway, that
 8 the goal here for CERB is to actually have what happens here be
 9 a deterrent, as they said, to other potential strikes in the
 10 future. That is not among the standards articulated in Fall
 11 River for consideration. I believe it is beyond the authority
 12 that has been granted to CERB under Section 9A and 150E.
 13 So I just want to caution that we are dealing with Newton
 14 here. We are not, Newton sets an example and keeps all other
 15 public sector unions in the state from striking again.
 16 To get into the weeds of the financials -- and I do want
 17 to say, too, that I am concerned that things that have been
 18 said in mediation are now in a court affidavit. Posturing in
 19 mediation and in bargaining shouldn't necessarily come into
 20 play here. Mr. Zilles and the NTA and its members, they are
 21 teachers, they are educators. They value and live, you know,
 22 rules and order.
 23 And so I just want the Court to be assured that the non-
 24 compliance with part of the court's order at this point is not
 25 in any way intended to be a slap at the court or disrespectful

1 to the court. They are just caught up in a very protracted, as
 2 you have noted, battle over a lot of complicated and important
 3 issues in their collective bargaining agreement.
 4 But if we look at the application of Fall River here,
 5 first off, the statement of harm I believe is overstated, and I
 6 will be happy to put it in a written opposition at some point
 7 here. As Attorney King pointed out, the days can be made up.
 8 Teachers are not being paid when they're out on strike. If
 9 they have to be paid later, it's a wash. It's not a loss or
 10 damages that should be taken into consideration, and as you
 11 noted, there's a possibility of recouping some of those costs.
 12 The union's financial resources, there are some things, I
 13 think, that the Court must be aware of. As you've probably
 14 noted in Fall River and in the Salem cases, that the number you
 15 see in, like, the cash on hand and the investment account is
 16 just -- it's kind of a snapshot. You've got sort of money
 17 coming in for dues, money going out in terms of the affiliated
 18 dues structure.
 19 It's a little complicated. Our members pay dues to the
 20 Newton Teachers Association; the state affiliate, the
 21 Massachusetts Teachers Association; and our national affiliate,
 22 the National Education Association. And so as noted in the
 23 case law, the flow up of those dues that are taken in by the
 24 NTA are appropriately backed out from sort of looking at the
 25 total resources of --

1 THE COURT: But when does that occur? I mean, in the
 2 other cases, the cash on hand was actually much lower, and I
 3 gathered from what I read that it was much lower because most
 4 of -- it was a tiny fraction of the fees collected, but it was
 5 explained that that's because the vast majority goes upstream.
 6 MS. HOULE: Yeah.
 7 THE COURT: So are you telling me that the bills for the
 8 national and the state are, like, coming due February 1st or
 9 something or --
 10 MS. HOULE: They come due, as explained to me by the
 11 treasurer, and I actually have the invoice from December, so
 12 the NTA pays to the MTA both the MTA and NEA dues that are owed
 13 from their members, and they do it in payments from December
 14 through June.
 15 And so if you look on the invoice, and I'm happy to share
 16 this, basically, the beginning obligation for this year for
 17 both the state and the national level is 1.2 million. So --
 18 and that's paid over these -- you know, they made their first
 19 payment in December, but the rest is going to be owed through
 20 the rest of the school year.
 21 So there is -- I mean, then obviously that's huge if
 22 they're looking at, well, maybe dues are -- whatever's in here,
 23 I think it says 1.6, but 1.2 that has to go out to the state
 24 and national affiliate over time.
 25 There's also a couple other things I just want to bring to

1 your attention. I apologize for getting bogged down in the
2 weeds, but I do think this is important. In the investment
3 category of what they're saying the NTA has, about 56,000 of
4 that is actually untouchable. Somewhere along the line, and
5 the NTA's not even sure how, they were made administrators of a
6 scholarship fund that is funded by a family in Newton, so they
7 have this pocket of money. They give to students, every year,
8 a scholarship from that pocket. The NTA is not contributing to
9 it. It's just the administrator of it.

10 THE COURT: Okay. Fifty-six thousand, you said?
11 MS. HOULE: Yes.
12 THE COURT: Okay. Put it --
13 MS. HOULE: Approximately that --
14 THE COURT: -- to the side.
15 MS. HOULE: -- yes. The other thing, too, is, there's two
16 other buckets I'd like to have considered besides the dues and
17 the scholarship. The NTA is under obligation, under their
18 contract with the district, to reimburse the district for what
19 we call full-time release offices. So because the NTA is such
20 a large union, it has negotiated with the School Committee two
21 of its members who are not teaching; they are full-time working
22 for -- you know, work- -- doing the union work, and then the
23 union reimburses the district for that money.

24 Now, that is done at the end of the school year; the
25 district sends them, basically, a bill. And in June of '23,

1 for last school year, that total was basically \$222,000. I am
2 assuming that the school district is going to want their money
3 from that, and that's a contractual obligation that they have.

4 THE COURT: Yup.

5 MS. HOULE: And the only other note I wanted to make is,
6 the NTA, again, it's a little bit unprecedented; their
7 operating costs are very large. They have union office space
8 that they lease. There's lots of different costs and payments.
9 But part of that operating cost, which maybe the courts aren't
10 always as compelled by, but they have employees. They have an
11 executive secretary who's almost full-time and then a part-time
12 secretary.

13 These are not union members. These are employees, one of
14 whom is a resident of Newton. And their annual salary for this
15 year I believe is about 69,000. I just would not like the
16 optics of, you know, whatever we do here to have, you know,
17 sort of collateral damage on people who have just been hired to
18 do a job. And it's a very important job for the district -- I
19 mean for the union, because, like I said, a lot of members, a
20 lot of dues and dues allocations that need to be reconciled.

21 So those pockets of money I think are very important and
22 show that this sort of grand number that we're looking at for
23 Newton is not as grand as perhaps it seems at first glance.

24 And again, I know we've heard this from CERB before; this
25 concept that somehow strikes have become the cost of doing

1 business for teachers unions can't be farther from the truth.
2 This is very scary for unions, which I think shows their
3 commitment to the fight that they have undertaken for a good --
4 for a fair contract.

5 So it's -- again, I just don't want the Court to have sort
6 of this impression that somehow unions are just building this
7 into their cost of doing business. That's not how it works.
8 Unions just generally don't have that much sway in their
9 treasuries. And you talked about the burden on unions, and --

10 THE COURT: Let me just interrupt there --
11 MS. HOULE: Yup.

12 THE COURT: -- because I -- it might be a bad term, cost
13 of doing business. Let's change it. It's a strategic
14 decision. The hurdle for a teachers union to make the
15 strategic decision to go on strike might be higher than private
16 unions, but that's what I mean when I made reference to cost of
17 doing business, that if we look at a couple of years' worth of
18 this, the law says you can't do it. It happens. Courts get
19 involved. I question how much, you know, 50,000 or whatever
20 the fine might be makes a difference, but one way or another, a
21 few days later things resolve. So I'm happy to stop using the
22 term cost of doing business --

23 MS. HOULE: Appreciate that.

24 THE COURT: -- and instead substitute a strategic decision
25 to violate the law because it's worth it to get the larger

1 victory, if you will.

2 MS. HOULE: Yeah.

3 THE COURT: And I don't say that pejoratively. That's
4 what we're talking about when we say -- that's what I'm talking
5 about when I earlier used the term cost of doing business.

6 MS. HOULE: And I understand your perspective, and I
7 appreciate that, Your Honor, but again, so if we're looking at
8 the amount of money that NTA is obligated to pay out to its
9 state and its national affiliates, the scholarship fund, the
10 money it's going to owe the school district for the two full-
11 time release officers, the employees, the number comes, you
12 know, way down and I think we are really more in line with the
13 resources we saw in Haverhill in Brookline, you know, four-
14 hundred-some thousand.

15 So I -- again, I'm concerned that this escalator, this
16 just unprecedented escalator that is being requested -- I don't
17 know what's in your head yet, Your Honor -- is really motivated
18 not just by the circumstances here for NTA's resources but that
19 there's a broader agenda at play that, again, I think is not
20 appropriate and beyond their authority, so --

21 THE COURT: Okay, so let me clarify. My agenda, if I have
22 one, is, you know -- I'm sorry, I have one, but it's been
23 dictated by the legislature --

24 MS. HOULE: Sure.

25 THE COURT: -- compliance with the law, okay --

1 MS. HOULE: Yup, absolutely.
 2 THE COURT: -- so we'll clear that up. That's the agenda.
 3 You used the term deterrence, so --
 4 MS. HOULE: CERB used that term, Your Honor.
 5 THE COURT: -- we can skip the term deterrence.
 6 MS. HOULE: Okay.
 7 THE COURT: It's compliance. What does it take to get
 8 compliance with the law? What is an appropriate sanction? I
 9 mean, I could completely ignore that I issued an order. That's
 10 one order. I'm not going to do it. So what do you think the
 11 right answer is about -- in garnering compliance with my order
 12 of Friday?
 13 MS. HOULE: I think Your Honor sort of nailed it up front,
 14 that I think it's rather speculative. And I think every
 15 situation is different, and I'm not at the table with my
 16 client, I'm here. I haven't been in bargaining with them. I
 17 haven't been in the weeds with them on that. I get updates,
 18 but I can't sit here and say there's a magic number that gets
 19 them back to the table. What's going to get them -- I mean,
 20 back to -- back in classes, what's going to get them back in
 21 classes is a fair contract.
 22 And, you know, so they will have to review and digest
 23 whatever the Court issues today for its ruling, and they will,
 24 as will the School Committee, as will the public, factor this
 25 in, in terms of things moving forward. I think that

1 THE COURT: Oh, I said it's happened before. My question
 2 is, are you asking for it here?
 3 MS. KANTANY: No, but I think it is a reasonable thing to
 4 request for it to be immediately payable, but we are not
 5 expressly --
 6 THE COURT: Oh, okay.
 7 MS. KANTANY: -- requesting it.
 8 THE COURT: I raise it because counsel suggested maybe you
 9 were, so --
 10 MS. HOULE: I read per diem in the thing and I interpreted
 11 it that way, so if that was not the intent, I apologize, but I
 12 think it is --
 13 THE COURT: I think the reference to per diem is just to
 14 make clear that each day --
 15 MS. HOULE: It accumulates.
 16 THE COURT: -- it starts -- I mean here's day one, day two
 17 adds to that, right?
 18 MS. KANTANY: That's correct, but it isn't unprecedented;
 19 in Brockton, the court also ordered it to be paid, I think it
 20 was the following workday. So it seems to be something that
 21 courts have considered from the 1993 and onward, so I don't
 22 think it's unprecedented.
 23 THE COURT: Okay.
 24 MS. KANTANY: It's not something we're requesting, but I
 25 think it's something certainly within your discretion to order.

1 ultimately, my personal opinion, it's probably more the
 2 political pressure on both parties that ends up getting deals
 3 done, as well as the, you know, the pressure that's being
 4 applied from the court.
 5 I just want to put one other plug in, because I'm seeing a
 6 request, if I read it correctly, in the proposed contempt order
 7 that these fines be actually not just accruing daily at
 8 whatever level is decided on by Your Honor but also paid daily.
 9 And that is a new -- that's a rather new thing. I believe it
 10 first appeared in Woburn, and I think the judge in Andover just
 11 sort of adopted it, but all the other strike cases that I'm
 12 aware of, that has not been the case. And for various reasons,
 13 which I'll just articulate, I think it --
 14 THE COURT: Well, the SJC has said it's reasonable to
 15 allow payment over time, I think, a long time ago.
 16 MS. HOULE: Yeah, and I think -- and we've seen, in some
 17 cases --
 18 THE COURT: Let me just -- let me interrupt to say, I
 19 didn't actually appreciate that from what I was reading. Are
 20 you seeking payment as these fines come due?
 21 MS. KANTANY: Typically we don't, and we're --
 22 THE COURT: I'm just -- no, but --
 23 MS. KANTANY: -- we're not expressly requesting it here
 24 either. The court has, sua sponte, I guess, made it that way
 25 in Woburn and in --

1 MS. HOULE: Sure.
 2 THE COURT: Okay.
 3 MS. HOULE: And if I may, Your Honor, just briefly, the
 4 reason I'm pushing back against that is, well, one, it's a
 5 logistical nightmare. Two, our treasurer is at -- the NTA's
 6 treasurer is at the bargaining table, and it pulls people away
 7 from where we want their focus to be.
 8 But most importantly -- and at the end of the day, the
 9 final judgment's going to be the final judgment. It's not like
 10 paying it every day versus at the end is going to necessarily
 11 change the amount. However, I am concerned about taking a
 12 potential tool away from the parties at the table. As Attorney
 13 King noted, when the parties, you know, kind of reach that
 14 point in resolving their contract, they're also resolving
 15 everything, hopefully, how to get the teachers back into
 16 school, if there's damages that are going to be under
 17 consideration or not.
 18 And we have seen that sometimes the parties have --
 19 because oftentimes these resolutions happen, like, really late
 20 at night, so maybe we're past the official deadline imposed by
 21 the Court. Maybe the parties agree to ask -- and we understand
 22 that this would be subject to CERB and the Court's approval,
 23 but asking to waive that last day. I want to give the parties
 24 all the tools possible --
 25 THE COURT: Okay, let me just say, in a normal contempt

1 judgment, in a non-school-strike situation, it's usually a
2 judgment. I'm going to treat it that way. I'm not going to do
3 any --

4 MS. HOULE: Thank you, Your Honor.

5 THE COURT: I'm not going to do any daily thing. Okay.

6 MS. HOULE: I appreciate that. Thank you. So I guess,
7 you know, my -- to sort of wrap it up, given everything I've
8 said, I think that viewing this situation more in line with
9 Haverhill and Brookline where the starting fine -- I mean, I'd
10 like it to be lower, but I'm going to be realistic and not
11 waste your time here. If we're starting somewhere in the
12 vicinity, you know, 40, 50,000 is what we've been seeing, with
13 an escalation, 25 is a -- that's a huge jump, and I don't think
14 the resources of the NTA are that much more than, say, for
15 example, you know, Haverhill and Brookline that we've seen
16 before.

17 THE COURT: But the reason I would contemplate that is
18 because the best evidence of my sanctions not working is that
19 another day comes --

20 MS. HOULE: Sure.

21 THE COURT: -- and the strike hasn't ended. So just to be
22 clear, it's --

23 MS. HOULE: Of course.

24 THE COURT: -- it's related to this case, but --

25 MS. HOULE: Yup.

1 THE COURT: -- it's as the facts unfold in this case,
2 because it goes back to my initial comment that I am not sure
3 the real impact on dollars of fines as compared to the scope of
4 the discussion that's underway by the parties at the table.

5 And in light of that, if I'm a little skeptical about
6 whether the first 50 makes a difference, I'm just saying I
7 might start a little lower, but if I do that, I will escalate
8 quickly, because as each day goes by, it shows that my order
9 was not effective, because my whole mindset here is supposed to
10 be what does it take to get compliance --

11 MS. HOULE: Sure.

12 THE COURT: -- with the order, compliance with the law.
13 So that's why I'm contemplating that approach.

14 MS. HOULE: Understand, Your Honor.

15 THE COURT: So I asked you -- so I guess your answer --
16 and I understand why -- your answer is, to what does it take to
17 get compliance is something more like prior cases and nothing
18 too dramatic?

19 MS. HOULE: Well, yes, I think I -- yes, I don't think
20 it's necessary to have something as dramatic as CERB has
21 proposed. I understand the reasoning that you're saying about
22 an escalation clause that actually increases per day if you
23 start lower, but I, again, think when we're looking at the
24 totality of the resources and comparing to other cases, that
25 having the first escalation at \$25,000 is a pretty huge jump.

1 So unless you're planning on starting really low, much lower
2 than 50, that seems -- it's -- like I said, it's unprecedented
3 and I'm not sure where, you know, the NTA would have to go with
4 that.

5 But I'm hoping that -- we're all hopeful that they're at
6 the table and they're working hard and, you know, can reach an
7 agreement soon. We are already partway through today, and I
8 don't know if I -- I know I can guess what CERB's and the
9 School Committee's position would be, but if we give them a
10 chance to get through today and have the fines start tomorrow
11 as well, then, you know, that's a possibility as well, just to
12 throw it in the mix. Just giving you options, Your Honor.

13 THE COURT: Okay. But going back to this concept of a
14 strategic decision, I think I hear even the union's attorneys
15 acknowledging that the way this works is, there's not been
16 compliance with the order and there should be some coercive
17 approach to getting compliance with the order.

18 In other words, the way this has unfolded in case after
19 case, you seem to be accepting as -- I won't say the cost of
20 doing business, it's the cost of the strategic decision to
21 strike. You know there's going to be an order from me
22 assessing coercive fines, I gather, from your presentation.

23 MS. HOULE: What I am conceding, Your Honor, is that we
24 understand the state of the law and we understand the tools
25 that the law and the case have given you in order to enforce

1 the Court's order, and I am just trying to do my best by my
2 client within those confines.

3 THE COURT: Okay. I appreciate that candid answer.
4 Anything else before I give the plaintiffs a chance to respond?

5 MS. HOULE: Not at this moment, Your Honor.

6 THE COURT: All right. Anything else you'd like to add to
7 the record? I'm going to decide what I'm going to do, and I'll
8 do that promptly, but go ahead if you have anything else.

9 MS. KANTANY: Just to address a few of the points that
10 were made. We did cite a case, it's from the Seventh Circuit,
11 stating that fines can be based in part on deterrent effect on
12 the wrongdoers. Honestly, there's nothing in Massachusetts
13 that we're aware of that takes that into account. There's very
14 little case law on coercive prospective fines generally. So if
15 Your Honor doesn't consider that, I think that's fine. The
16 fines really that we've requested are based on Newton. It's
17 not based on what the other -- what effect it has on other
18 unions.

19 THE COURT: All right. So let me just ask about something
20 about logistics and when these fines start, because I'm going
21 to issue an order today finding that my order of Friday was
22 violated. But the actual contempt, you know, action starts
23 today, and then if I issue -- let me cut to the chase. I am
24 inclined, because of the timing -- you've done this as promptly
25 as you can, but if I find contempt today, I'm inclined to start

1 the sanction on the next school day, tomorrow. You want me to
 2 start it today, 4:00 p.m.; is that right?
 3 MS. KANTANY: Yes, Your Honor, similar to the reason why
 4 we requested the announcement that the strike is canceled, so
 5 that the community, the union is informed that the strike is,
 6 indeed, canceled effective today. Today -- they're not going
 7 back to school today, right, so the goal is to get them back to
 8 school tomorrow. And in order to do that, if the fines don't
 9 start until tomorrow, then there's no coercive effect to go
 10 back to school tomorrow.
 11 THE COURT: Okay. So you want one number today at the end
 12 of the day and you want a new number if they're not back
 13 tomorrow.
 14 MS. KANTANY: Yes, Your Honor.
 15 THE COURT: Would you agree that -- well, there's a bunch
 16 of different ways to do this. Would you agree that then
 17 thereafter, it's just each day?
 18 MS. KANTANY: That's what we're requesting. Certainly the
 19 Court can fashion different coercive fines if it so wishes. So
 20 that is what we have requested in the past and what we're
 21 requesting today simply because we've seen that it does work to
 22 some measure, and we've increased the amount only because it
 23 hasn't worked that well, right, because it's only prevented a
 24 few additional -- they've continued striking despite the fines,
 25 so --

1 of your order that the strike was supposed to cease yesterday.
 2 Therefore, it would be appropriate for these fines to commence
 3 beginning this afternoon.
 4 And again, just the distinguishing factors here, again,
 5 we're focused primarily on Newton, their student population.
 6 You know, there are five units here that are at the bargaining
 7 table compared to other previous strikes where it may have been
 8 one or two units of just teachers and instructional assistants.
 9 So here there are a lot more factors. Again, the harm, it is
 10 much more exponential, so it would be appropriate to increase
 11 those fines.
 12 THE COURT: Okay. Anything else you want to say before we
 13 adjourn?
 14 MS. HOULE: Yeah. My esteemed co-counsel here was just
 15 noting that under the CERB's proposed order, if you adopt it,
 16 which sounds like maybe you would be adjusting it, but if you
 17 adopted their proposal, by the end of this week, the entire
 18 treasury of the NTA would be emptied out, and I don't see how
 19 that is anything but punitive.
 20 You know, the deterrent effect, which came up again, the
 21 case cited is a criminal contempt case, the IBM case, which is
 22 cited in the United Mine Workers case as well as, I believe,
 23 that case, separates out the criminal versus the civil contempt
 24 in terms of the deterrent effect analysis part of it.
 25 So it's -- I look at these civil contempts with businesses

1 THE COURT: Well, you know, for all I know, there could
 2 have been two dozen teacher strikes but for the law. You know,
 3 it's a strategic decision, but the hurdle may, indeed, be very
 4 high to make that strategic decision, but -- okay.
 5 MS. KANTANY: Just getting back to some of the point that
 6 they've made about the dues, I do want to -- I acknowledge that
 7 there is the -- I believe it was the \$56,000 scholarship fund
 8 and understand that's not -- we wouldn't seek to divest any
 9 students of that or disturb that. But year-to-year, 2021, the
 10 NTA had 768,000, approximately; 2022, \$792,000, approximately;
 11 2023, \$742,000, approximately. So backing out the 56,000, they
 12 still have had approximately \$700,000 in assets year-to-year.
 13 So yes, dues may be -- to the other unions, to the MTA and
 14 the NEA may be due at some point throughout the year, but it's
 15 clear that year-to-year they have roughly the same amount of
 16 money and it's still significantly more than what the other
 17 unions have in Haverhill and in Brookline, which had the
 18 \$50,000 fine and the \$10,000 escalator.
 19 I think those were my main points, and I don't know if
 20 counsel for School Committee has any additional.
 21 MS. KING: I'll concur briefly, Your Honor, and also to
 22 adopt your terminology that there has clearly been and conceded
 23 a strategic decision here to engage in an illegal strike, and
 24 the coercive fines are intended to, again, coerce them away
 25 from that illegal behavior. There has been notice since Friday

1 with multi-million if not multi-billion-dollar treasuries, and
 2 their civil -- their coercive civil fines are -- I think in the
 3 IBM case was, like, five percent of their daily income, the
 4 daily fines. I -- so how is it that these multi-million-dollar
 5 -- it's sort of a problem I have with kind of how these have --
 6 not that it's -- I understand the precedent you're dealing
 7 with, but the coercive intent and impact on public sector
 8 unions in Massachusetts seems far beyond what we see in any
 9 other context for coercive fines, and I just don't want a
 10 runaway train on that on the backs of one union. Again, I
 11 won't reiterate why I think the financials are not what they
 12 say they are.
 13 THE COURT: I'm just playing this out. If the fines -- if
 14 the strike continued and the fines exceeded the cash on-hand,
 15 based on what you were saying about these bills coming due, the
 16 impact then would be the local telling the state and the
 17 national that we're not able to make the payment because of
 18 these strike fines. I find it hard -- I think they'd find a
 19 way to adjust, given the origin of the inability to pay. But
 20 again, we're getting far --
 21 MS. HOULE: Again, it's unprecedented --
 22 THE COURT: -- we're getting far down the road. That's
 23 just my --
 24 MS. HOULE: Yeah.
 25 THE COURT: -- that's just my supposition. Okay. So I'll

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1 get you an order by the end of the day, but I think -- I keep
 2 coming back to this concept that the best way to tell whether a
 3 sanction is working is to determine if there's been compliance.
 4 And so I don't want to make the financial impact unduly serious
 5 until it's clear that it's not working.
 6 MS. HOULE: Understood.
 7 THE COURT: So I'm not -- I have to decide when I'm going
 8 to start, but just so everyone has an expectation, my current
 9 expectation is to start a little low in hopes that everything
 10 will come together quickly, but 25 becomes 50 becomes 100
 11 becomes 200, et cetera, the idea being, if each one doesn't
 12 work, then something meaningfully more is in order, because the
 13 daily one or the one that increases just a little bit really
 14 does sound like the cost of doing business. You can literally
 15 look at the ledger and see what we're losing versus what we
 16 seek to gain at the negotiation table. It doesn't sound like
 17 compliance with the law. It sounds like a calculation.
 18 So I think I'm going to take that approach, and -- but
 19 nothing's official until I issue an order at the end of the
 20 day. I do have to decide, and this is not really focused on
 21 this case as much as the general concept of contempt, whether
 22 I'm going to start that, you know, tomorrow morning at 8:00
 23 a.m. when school doesn't start, is the first sanction, or I can
 24 do it this afternoon. I'm just going to think about that. But
 25 in either way, that's what -- I have to choose among those two

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1 options, and I expect that that's going to be my approach. But
 2 we'll get the order in your hands as soon as I can. Anything
 3 else anybody wants to say? No?
 4 MS. HOULE: No, Your Honor, thank you.
 5 THE COURT: All right. Thanks very much.
 6 MS. KANTANY: Thank you, Your Honor.
 7 MR. MULLANE: Thank you.
 8 (Case concluded at 1:16 p.m.)
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 JUDGE: RECORDING DATE TRANSCRIPT I OF I
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