MTA statement on the Department of Labor Relations and educator collective bargaining negotiations

MTA President Max Page and Vice President Deb McCarthy issued the following statement regarding the Department of Labor Relations and the Commonwealth Employment Relations Board.

Through a public records request, we learned about an inappropriate email exchange between the chief manager of the Department of Labor Relations (DLR) and school committee lawyers. The nature of this email confirmed what many union educators have suspected for years, that the DLR has veered sharply away from its role as a neutral arbiter for labor disputes in the public sector, and instead is aligning itself with school committees against public school educators and their unions in both K-12 and public higher education.

Collective bargaining is meant to be a fair process for both parties, one in which a neutral body ensures that both sides are bargaining in good faith. In Massachusetts, the DLR is supposed to serve as that neutral body, together with its Commonwealth Employment Relations Board (CERB), which issues legal rulings on labor disputes between public employers and public employee unions.

The inappropriate email exchange is far from the only union concern with the DLR and the CERB. In recent years it's become clear that the DLR and the CERB do not have the staff or capacity needed to complete their review of unfair labor practice charges and appeals in a timely manner. Underfunded by the administration of former Governor Charlie Baker, these agencies have let legitimate, unfair labor practice claims by educators languish, delaying justice. This is unacceptable.

There is one area, however, in which the DLR and the CERB are extremely efficient – often meeting and rendering decisions in the dead of night and on weekends, sometimes within hours of a filing: when there is an allegation of a strike by public school employees. There is nothing that moves with greater speed in the Massachusetts government than the DLR and CERB when a school committee alleges strike activity.

Staffed by Baker holdovers, the DLR and CERB appear to operate in a way that seems contrary to the purpose and mandate of the DLR – to the detriment of workers and their unions. Examples include:

- Long delays in processing unfair labor practices against employers, but extremely expeditious when processing a strike petition filed by employers against unions, even when there is no imminent threat of a work stoppage, such as last school year in Wellesley, and this year in Newton.
- Inappropriate communications, which excluded union attorneys, between the department and management attorneys about legal strategies for active and future cases.
- Ratifying, and thereby legitimizing, school employers who are conducting broad, unfettered surveillance of members' emails on school equipment, including members' private emails regarding lawful union activity, in search of evidence of strike activity.
- Changing how the CERB judges that a local or the MTA is "inducing, condoning and encouraging" a strike (the standard in the law), so that the CERB is effectively treating our protected union activities as evidence of guilt. This is a dangerous undermining of union rights.
- The CERB regularly leaves the record open (for more school committee accusations) to try to frighten union members from engaging in legitimate union action, for fear it will trigger a further liability or investigation.
- Relying on problematic mediators who are deferential to management, who allow them to engage in delay tactics while hurrying impasse procedures, who lack sufficient knowledge of labor law, and who reveal bias against workers.

These disturbing developments suggest a governmental agency diverging from impartiality. New evidence that MTA uncovered reveals this is more than appearance. Philip Roberts, director of the Department of Labor Relations, worked closely with school committee lawyers, including Nick Dominello of Valerio Dominello & Hillman, and David Connelly of Morgan, Brown & Joy, in strategizing on how school committees could attack local unions, the MTA, and even take the savings and homes of local union leaders.

For example, in an email exchange between Roberts and attorneys Dominello and Connelly, in preparation for a private closed-door meeting of school committee lawyers, Roberts was asked to discuss strategies that school committees might use to get favorable rulings from the CERB. These topics included: clarifying what "evidence the DLR likes to see to sustain a strike petition:" what could be "the future of fines, $50,000, $250,000 or more?;" how to ratchet up the "consequences for union/union leaders? Fines/extra days at end of year/discipline" or "payments to SC [school committees] in addition to fines?;" establishing a "new standard" for having "MTA as a named respondent;" and "how to stop this concerted action" – i.e. "MTA's role in multiple districts."

This kind of collaboration – some might call it collusion – between employer-side lawyers and the head of the DLR is shocking, outrageous, unethical and simply unacceptable.

Recent contract negotiations in Newton and Andover also call into question the CERB's objectivity.

In Newton, the CERB declared that Newton Teachers Association (NTA) members were on strike simply because they didn't attend a ceremonial convocation that had historically been voluntary for educators. Instead, the educators were in their classrooms, preparing for the arrival of students. In response to the NTA's collective action, the Newton School Committee pursued a strike petition, wasting time that could have been better spent on bargaining a fair contract, and wasting

money that could have been spent on direct student services. A farcical petition resulted in a farcical decision.

Despite the Newton School Committee abusing the strike investigation process to upend a long-established legal precedent on the "work-to-rule" action during the convocation, the NTA preserved an important victory when the CERB determined that Newton educators were engaged in protected union activity when they remained silent during meetings with administrators. Given the Baker-appointed labor board's ongoing bias against unions and alliance with school committees and their lawyers, its rejection of the Newton School Committee charge revealed the speciousness of the accusation. Forcing educators to speak – which is what the school committee was demanding – was a bridge too far even for this labor board. Concerted union activity of this type is our only leverage in moving negotiations toward a settlement.

The Andover Education Association has at least four contract disputes before the DLR that may go before the CERB, including complaints of retaliation at a school, refusal of union days to attend the MTA Annual Meeting of Delegates, a charge against the school committee's lawyer (Dominello), for unlawfully limiting the size of the Andover bargaining team, and a specious complaint by the school committee against the union for seeking town meeting approval for more pay for the lowest-paid school workers. Andover members have little hope that their cases will be heard in a timely and, more importantly, an impartial manner, , when employers can violate collective bargaining laws with impunity and when the agency director has undermined his credibility and that of the agency.

The MTA and its members in nearly 400 locals deserve a change in leadership of the DLR and the CERB at a moment when the terms of the DLR Director and the CERB Chair have recently expired. We also want full funding and sufficient staffing of the Department, to reflect the values and protections of public sector labor laws in Massachusetts. Doing so might begin to help the agency recover from self-inflicted harm to its credibility.