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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2481CV00493

LITAL ASHER-DOLAN[1]

vs.

NEWTON TEACHERS ASSOCIATION, and others[2]

MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS' MOTIONS TO DISMISS

This lawsuit concerns the remedies citizens may seek arising from damages caused by striking public workers in Massachusetts. Public employees strikes, including by teachers, are prohibited by statute in Massachusetts. Under G.L. c. 150E, § 9A, it is illegal for public employees or employee organizations to "engage in a strike" or even "induce or encourage" a strike. Despite this plain prohibition, and an enforcement scheme built into the statute in the event an illegal strike does arise, over the last decade several teacher strikes have nevertheless occurred in the Commonwealth. These typically have lasted one, two, or three days before a new collective bargaining agreement ("CBA") is reached.[3] The 2024 Newton teacher strike lasted eleven days. During that time, the enforcement mechanism of the statute was employed through the entry of an injunction in the Superior Court, and the issuance of escalating fines against the striking Newton Teachers Association ("NTA") until agreement was reached. That this process took eleven days over more than two school weeks demonstrates the failure, at least in Newton's case, of the enforcement mechanisms built into the statute.

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[1] And others, on behalf of themselves and all others similarly situated.

[2] Michael Zilles, Massachusetts Teachers Association, National Education Association, and United Auto Workers.

[3] For example, prior to the Newton strike, CERB brought civil enforcement actions concerning strikes in Andover (2023), Woburn (2023), Haverhill (2022) and Dedham (2019). Following the Newton strike, teachers went on strike and injunctive lawsuits ensued in Gloucester, Beverly and Marblehead (November 2024). Those North Shore strikes were comparable in length to Newton.

Plaintiffs here, Newton students and their parents, propose to expand the remedial scheme applicable to unlawful public employee strikes. Citing the serious harm this strike caused, Plaintiffs filed this proposed class action against the NTA, and its president, Michael Zilles ("Zilles"). The complaint also names as defendants several entities that allegedly "induced, encouraged or condoned" the strike: the Massachusetts Teachers Association ("MTA"), the National Education Association ("NEA"), and the United Auto Workers ("UAW"). Plaintiffs contend that G.L. c. 150E, § 9A supports a private right of action for those harmed by the unlawful strike. They also allege common law claims for negligence, public nuisance, a tort alleging an illegal strike, breach of contract, conspiracy, aiding and abetting a tort, and statutory claims for civil rights violations pursuant to G.L. c. 12, §§ 11H & 11I and unfair or deceptive conduct in violation of G.L. c. 93A, § 2(a). Plaintiffs seek to certify a class of student plaintiffs, a class of parent plaintiffs, as well as a defendant class, where Zilles would represent all Newton teachers who approved the strike.

Presently before the court are the UAW, NEA and MTA's special motions to dismiss pursuant to G. L. c. 231, § 59H, the anti-SLAPP statute. All defendants also move to dismiss for failure to state a claim under Mass. R. Civ. P. 12(b)(6). Following a hearing on March 5, 2025, and consideration of the parties' submissions, the anti-SLAPP motions are **DENIED**, and the Rule 12(b)(6) motions are **ALLOWED**.

BACKGROUND

The following alleged facts are drawn from the plaintiffs' Second Amended Complaint ("SAC" or "complaint"), which are accepted as true for the purposes of the motions to dismiss.

This complaint arises out of the strike by Newton public school teachers outlined above, which caused the cancellation of eleven school days between January 19 and February 2, 2024.

Once it commenced, the Newton strike followed a familiar (though protracted) litigation path, all under the regulatory scheme enacted under c. 150E, namely:

- The Newton School Board petitioned the Commonwealth Employment Relations Board (CERB) to investigate an imminent strike on January 18, 2024, which CERB promptly did;

- When the strike commenced, CERB filed an action in Middlesex Superior Court, seeking a court order requiring that the NTA end the unlawful strike, which I promptly issued on January 19, 2024;

- When the NTA failed to follow that order, CERB sought to hold the NTA in contempt. On January 22, 2024, I found the NTA in contempt and issued fines, designed to compel compliance with my prior order, and with G.L. c. 150E, § 9A. Those fines were to increase each day that the NTA failed to comply.

- As the strike continued, contempt fines accumulated. I adjusted the contempt fines on two occasions, in an effort to ensure that both parties—the City and the NTA—were negotiating in good faith to end their CBA impasse.

The parties ultimately agreed to a new CBA. The NTA paid the contempt fines totaling $625,000, although a portion of those fines ($275,000) were "re-allocated" to "compensatory fines" payable to Newton, rather than "coercive fines" payable to the Commonwealth. See Order (February 20, 2024).

The plaintiffs are parents with children in the Newton Public School system during the time of the strike. The plaintiffs have brought suit against the Newton Teachers Association ("NTA"), its president Michael Zilles and a purported defendant class comprising Newton school employees, because they voted in favor of and participated in an unlawful public employee strike. Plaintiffs also sue three union defendants for inducing, encouraging or condoning the strike in violation of Section 9A, namely, the Massachusetts Teacher's Association ("MTA") National Education Association ("NEA") and The United Auto Workers ("UAW").

Plaintiffs allege that each of the defendants were aware that public employee strikes are illegal in Massachusetts. Plaintiffs allege that the strike was a deliberate negotiating tactic by the NTA to achieve a more favorable outcome in collective bargaining negotiations with Newton,

and that is why the NTA disregarded orders from CERB and the Superior Court. With respect to contempt fines, Plaintiffs allege that the NTA determined that contempt fines and any other costs due to an illegal strike would be outweighed by a better financial outcome in CBA negotiations.

Plaintiffs allege that Newton parents and students suffered damages due to the strike, including learning loss, which they believe translates to academic harm and ultimate economic loss, emotional distress, and out-of-pocket costs for parents including tutors, camps, day care, babysitters, used vacation and sick days, and missed work shifts. (SAC ¶¶ 158-179).

With respect to the MTA, plaintiffs allege that the MTA, aware that the Newton strike was unlawful, provided substantial assistance and encouragement to the strike. This included:

- In a 2023 memo, MTA general counsel wrote to MTA leadership that although strikes are currently illegal in Massachusetts, "workers understand that the power and solidarity of the collective, and the willingness to strike even when illegal or with restrictions, have generated stronger contracts. . . ."

- On January 24, 2024, the MTA posted on its website that: "Newton educators are fighting for what all of you are fighting for . . . Please go to newteach.org for more information and to find out how you and your locals can stand in solidarity with the NTA."

- The NTA's website featured a donation button on the top of the page, which linked another page which read in part, "Please consider a monetary donation to the Newton Teachers Association in support of our strike effort . . . funds may be used to offset other costs incurred by the strike including fines, printing signs and literature, meals and hot drinks for educators, or other necessary costs to help settle out contract."

- On January 31, 2024, MTA president Max Page spoke at an NTA rally while wearing an NTA hat. Page said, "It brings a smile to my face to see the incredible solidarity and commitment of all of you. . ."

- On February 1, 2024, the MTA posted on their website, "Everything you need to know about this incredible fight . . . and everything you need to know about how to help as an individual and as a local – is available at newteach.org."

- On February 7, 2024, after celebrating the "courage" of the NTA members, MTA posted on their website, "And please go to newteach.org and provide whatever support you and your locals can to help." These efforts helped raise money for striking Newton teachers.

- The MTA posted or reposted dozens of messages on X (formerly Twitter) in favor of the strike. One such post referenced a column by Hamilton Nolan supportive of the Newton strike. Nolan supported the right to strike generally, regardless of legality, and called upon readers to support these strikes, "whenever we see them."

- Staff for the MTA were also members of the NTA's collective bargaining team, known as "The Negotiations Committee," and participated in NTA strategic decisions including the decision to strike.

- MTA also made statements after the strike justifying the NTA strike, including at an MTA Winter Skills Conference, where NTA leadership gave a presentation on their strike to train other MTA locals on how to conduct illegal strikes.

- MTA president Max Page's campaign website stated that Page's campaign platform supported, among other things, "the use of strikes and other workplace actions when necessary." The "Meet Max" page of the website says that he has "supported local organizing as the key to our strength as a union, including helping striking locals" and lists several towns including Newton.

(SAC, ¶¶ 38-75)

With respect to the NEA, plaintiffs allege that the NEA provided substantial assistance and encouragement to the NTA's unlawful strike, including:

- On January 31, 2024, NEA president Becky Pringle headlined a rally in-person at an NTA office building. MTA president Max Page introduced Pringle saying she, "flew up to be in support of your fight for a fair contract."

- Among her statements at the January 31st rally, Pringle said, "I need you to know that the three million members of the largest labor union in this country are standing here with you. You are not alone." She told the audience, "Thank you. You are awesome. You are the NTA!"

- At the January 31st rally, Pringle initiated a call and response to the crowd, asking what they would do to achieve the NTA's goals, which was met with the response "whatever it takes."

- On February 1, 2024, the MTA posted that the day prior, president Pringle attended an NTA member meeting via Zoom.

When Pringle and the NEA offered this encouragement to striking Newton teachers, Plaintiffs allege, they knew that the strike was unlawful and had been enjoined. After the strike had ended,

Pringle tweeted a congratulations message to the NTA, saying, "It was an honor to join such determined, dedicated educators." (SAC, ¶¶ 75-93).

The NEA receives substantial revenues from within the Commonwealth, in the form of Units A, B, and E of the NTA paying $208 annually in NEA dues. A similar system occurs with respect to the MTA, with dues coming from roughly 117,000 members across 400 local MTA associations. (SAC, ¶¶ 94-95),

As to the UAW, plaintiffs allege that the UAW provided substantial assistance and encouragement to the NTA's strike, including:

- On October 24, 2023, UAW official Brandon Mancilla was quoted in an MTA press release in support of a bill to legalize public employee strikes, stating, "Union members who decide that striking is their only option left to reach a fair contract should not be prohibited by law from exercising that right."

- Also on October 24, 2023, an MTA news update stated a UAW labor leader testified before a legislative committee in favor of a bill to legalize public employee strikes.

- UAW president Shawn Fain reposted a message on X (formerly Twitter) by MorePerfectUnion made on January 26, 2024, which stated, "Teacher strikes are illegal in Massachusetts, but the Newton teachers were out of options. So they walked out. They've been on strike for a week and the union has been fined $375,000."

- On January 29, 2024, Fain tweeted, "The UAW stands with the @NewtonTeachers in Newton, Massachusetts who are Standing Up for a better life for their coworkers, their students, and their families. It doesn't matter what the law says: it is ALWAYS right to stand up for what's right. Stand Up for public education!" The NTA reposted this message on social media. The NTA used that post to pressure the U.S. Congressman representing Newton, to cease opposition to the strike.

- On February 9, 2024, after the strike, Fain gave a speech at a Harvard Trade Union program where he "praised the 'bad-ass teachers of Newton.'" Harvard posted a video of his talk online, where he also says, "[Y]ou know public sector strikes are illegal in this state. That's something that has to change. But we know the only illegal strike is an unsuccessful one."

- Fein also received The 2024 MTA Friend of Labor Award according to an MTA news update, where he said he was inspired by the educators in Newton who voted to strike.

(SAC, ¶¶ 96-107).

The UAW has several locals in the Commonwealth, including Holyoke, Boston University, Harvard University, Canton, Avon, Mansfield, and locals in New York with several Massachusetts employers. UAW Local 2322 at minimum includes public employees and the University of Massachusetts. Thousands of UAW members in Massachusetts provide substantial revenue to the UAW, and the UAW maintains a regional office in Canton, Massachusetts. (SAC, ¶¶ 108-110).

Citing Mass. R. Civ. P. 23, Plaintiffs seek to bring certain claims against a class of defendants, represented by Michael Zilles, comprising "all members of the NTA executive committee and representative assembly who voted in favor of the strike." (SAC, ¶¶ 111-122).

Also citing Mass. R. Civ. P. 23, Plaintiffs seek to bring certain claims on behalf of a class comprising all students enrolled in Newton Public Schools as of January 19, 2024, as well as a subclass comprising those students with an Individual Education Plan (IEP) due to special educational needs. (SAC, ¶¶ 127-140).

Based on these allegations, Plaintiffs have alleged ten claims:

i) a private right of action for violation of G.L. c. 150E, § 9A against all defendants;

ii) negligence against the NTA, the "defendant class" of Newton teachers, the MTA and NEA;

iii) public nuisance against the NTA, the "defendant class" of Newton teachers, the MTA and NEA;

iv) the "tort of illegal strike" against the NTA, the "defendant class" of Newton teachers, the MTA and NEA;

v) civil conspiracy between the MTA, NEA, and UAW with the NTA, to engage in an illegal strike;

vi) against the MTA, NEA and UAW for aiding and abetting the unlawful strike and related alleged torts by the NTA;

vii) violation of the civil rights of student class plaintiffs by the NTA, under G.L. c. 12, §§ 11H-11I;

viii) breach of contract by the NTA, brought by the student class plaintiffs as third-party beneficiaries of the collective bargaining agreements between Newton and the NTA;

ix) unfair or deceptive acts or practices in trade or commerce in violation of c. 93A, § 2(a), by the NTA, aided by the MTA and NEA, arising out of the illegal strike and the extortionate negotiating tactic of engaging in an illegal strike; and

x) equitable rescission of the collective bargaining agreement reached between Newton and the NTA due to economic duress.

(SAC, ¶¶ 180-298).

DISCUSSION

I. Anti-SLAPP Special Motions

A. Legal Framework

General Laws c. 231, § 59H, commonly referred to as the "Anti-SLAPP statute," was enacted to counteract SLAPP suits,[4] which the Legislature defined broadly as "lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." *Duracraft Corp. v. Holmes Prod. Corp.*, 427 Mass. 156, 161 (1998) ("*Duracraft*"). The statute provides a procedural vehicle pursuant to which litigants may seek the early dismissal of meritless SLAPP lawsuits, as well as attorney's fees, all before discovery has commenced. *Bristol Asphalt, Co. v. Rochester Bituminous Products, Inc.*, 493 Mass. 539, 548 (2024); *Vittands v. Sudduth*, 49 Mass. App. Ct. 401, 413 (2000).

In *Bristol Asphalt*, the Supreme Judicial Court renounced the often-complicated multistep Anti-SLAPP analysis employed since *Blanchard v. Steward Carney Hosp., Inc.*, 477 Mass. 141 (2017) and, generally speaking, returned to its prior two-step analytical approach established in *Duracraft*, 427 Mass. 156. Under that framework, to succeed on a special motion to dismiss under the statute, the moving party must first "make a threshold showing through the pleadings

[4] SLAPP is an acronym for "strategic litigation against public participation." *Cadle Co. v. Schlichtmann*, 448 Mass. 242, 242 n.2 (2007).

and affidavits that the claims against it are 'based on' the petitioning activities alone and have no substantial basis other than or in addition to the petitioning activities." *Duracraft*, 427 Mass. at 167-68. If this burden is met, the nonmoving party may then defeat the motion by showing that "(1) the moving party's exercise of its right to petition was devoid of any reasonable factual support or any arguable basis in law and (2) the moving party's acts caused actual injury to the responding party." G. L. c. 231, § 59H. See *Bristol Asphalt*, 493 Mass. at 555-560.

B. Legal Analysis

The MTA, NEA and UAW argue that they have met their burden under the first step of the analysis because Plaintiffs' action is based solely on their public advocacy for Newton teachers, for fair pay for teachers, and for unions generally, all of which is protected petitioning activity under the statute. The court agrees that public engagement in matters before municipal bodies is the type of classic petitioning activity the Anti-SLAPP law is designed to protect. See *North Am. Expositions Co. Ltd. Partnership v. Corcoran*, 452 Mass. 852, 863 (2009) ("The right to petition a governmental body for redress of a grievance is the very essence of petitioning activity"). At this superficial level, the special motions have some appeal. However, in light of the strike's illegality, as the Supreme Judicial Court recognized in *Duracraft*, it is "dubious that the Legislature intended to create an absolute privilege" to petition the government. 427 Mass. at 162-163. See *id.* at 162. As explained below, this additional pleaded fact means that the Plaintiffs' claims are not based solely on the union petitioning activity. Rather, they are based on *illegal* petitioning activity.

Duracraft examined a somewhat analogous situation. The court considered whether an enforceable contract limited the protection to petitioning provided by the Anti-SLAPP statute. See *id.* at 165-166. In that context, it observed that "[m]any preexisting legal relationships may properly limit a party's right to petition, including enforceable contracts in which parties waive

rights to otherwise legitimate petitioning." *Id.* at 165. Although it considered contractual limitations on petitioning specifically, the SJC stated: "But neither this example nor contractual or fiduciary relationships in general exhaust the conceivable occasions in which a party assumes obligations that in turn limit the party's subsequent free exercise of speech and petitioning rights." *Id.* at 166. Under this reasoning, the court held that a nondisclosure agreement constituted a "substantial basis other than [the] petitioning activity" to support the plaintiff's claims, and accordingly denied the special motion. *Id.* at 168. Here, the "preexisting legal relationship" that limits the scope of the union defendants' protected petitioning is G.L. c. 150E, § 9A.

This result makes sense because the constitutional First Amendment right to petition, like the First Amendment right to free speech, is subject to lawful restriction. Indeed, the two rights are closely related. The Anti-SLAPP statute defines "a party's exercise of its right of petition" as:

> *any written or oral statement* made before or submitted to a legislative, executive, or judicial body, or any other governmental proceeding;
>
> *any written or oral statement* made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other governmental proceeding;
>
> *any statement* reasonably likely to encourage consideration or review of an issue by a legislative, executive, or judicial body or any other governmental proceeding;
>
> *any statement* reasonably likely to enlist public participation in an effort to effect such consideration; or *any other statement* falling within constitutional protection of the right to petition government.

G.L. c. 231, § 59H (sixth para.) (emphasis supplied). The statute plainly protects speech, namely, statements directed to governmental bodies, or concerning proceedings before governmental bodies—whether legislative, executive, or judicial. See *Duracraft*, 427 Mass. at 161 (preamble language notes that there has "been a disturbing increase in lawsuits brought

primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances").

In *McDonald v. Smith*, 472 U.S. 479 (1985), the Supreme Court explained that the First Amendment's right "to petition the Government for a redress of grievances" is "cut from the same cloth as the other guarantees of that Amendment, and is an assurance of a particular freedom of expression." 472 U.S. at 482. And like the freedom of speech, the right to petition is not absolute: "Although the values in the right of petition as an important aspect of self-government are beyond question, it does not follow that the Framers of the First Amendment believed that the Petition Clause provided absolute immunity from damages for libel." *Id.* at 483. The limitation on protected petitioning is not restricted to defamation; other contexts also show that "the right to petition is not absolute." *Id.* at 484 ("For example, filing a complaint in court is a form of petitioning activity; but 'baseless litigation is not immunized by the First Amendment right to petition.'") (citations omitted). Thus, the same limits to constitutional protection of the freedom of speech apply to constitutional protection of the right to petition.

As stated in *Smith*, accepting that the unions here have absolute immunity to petition, despite the statutory prohibition:

> would elevate the First Amendment right to petition to special First Amendment status. The right to petition, however, was inspired by the same ideals of liberty and democracy that gave us the freedoms to speak, publish, and assemble. See *Mine Workers v. Illinois Bar Assn.*, 389 U. S. 217, 389 U. S. 222 (1967). These First Amendment rights are inseparable, *Thomas v. Collins*, 323 U. S. 516, 530 (1945), and there is no sound basis for granting greater constitutional protection to statements made in a petition to the President than other First Amendment expressions.

472 U.S. at 485.

The restriction at issue here, G.L. c. 150E, § 9A, has been upheld as constitutionally permissible notwithstanding any "incidental limitation of First Amendment freedoms." *Commonwealth Employee Rel. Bd. v. Boston Teacher's Union*, 74 Mass. 500, 506 (2009) ("To

the extent that the conduct regulated by § 9A includes both speech and nonspeech elements, the purpose of the statute is entirely unrelated to the suppression of free expression. The board has a substantial interest in preventing a strike by the union members, and any incidental limitation of First Amendment freedoms is justified.").

Accordingly, where statements or conduct that violate G.L. c. 150E, § 9A are not constitutionally protected, they cannot serve as the protected petitioning that provides the basis for an Anti-SLAPP special motion to dismiss. Therefore, with respect to each union defendant, if Plaintiffs have alleged the union made statements or engaged in conduct that violate § 9A, then the action against that union is not based solely on protected petitioning, and the special motion must be denied. The specific prohibitions of Section 9A are as follows:

> No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall induce, encourage or condone any strike, work stoppage, slowdown or withholding of services by such public employees.

G.L. c. 150E, § 9A(a). With that standard in mind, the allegations of Plaintiffs' Second Amended Complaint ("SAC") are as follows, as concerns each special movant.[5]

1. *MTA*. MTA's president, Max Page, attended and spoke at an NTA rally in Newton on January 31, 2024, while the strike was underway. In the speech, he explicitly supported the Newton strike. During the strike, the MTA sent a weekly newsletter out to its members, in which the MTA encouraged readers to go to the Newton teachers' website to find out how to "stand in solidarity with the NTA." The MTA website also urged its viewers to "provide whatever support you and your locals can to help." The Massachusetts Department of Labor Relations lists "Picketing by union officials during work hours" and "Information regarding the work action on the union's website" as violations of § 9A. *Massachusetts Public Employee*

[5] Set forth below is the alleged conduct by each special movant that most directly concerns "inducing [or] encouraging" a public employee strike. These allegations are not exhaustive. For a full summary of allegations against each special movant, see supra at pp. 4-7.

Collective Bargaining Law Guide, Mass. Dep't of Labor (June 14, 2018), available at http://www.mass.gov/info-details/i-strikes#1.-prohibited-conduct-. In light of the Plaintiffs' allegations that the MTA supported the strike by appearing at a rally and that MTA encouraged its members to support the striking teachers on its website and in its newsletter, Plaintiffs have alleged that the MTA violated § 9A by supporting, encouraging, or condoning the Newton strike.

2. *NEA*. NEA's president, Becky Pringle, headlined at a rally on the picket line for the striking Newton teachers. She stated, "I need you to know that the three million members of the largest labor union in this country are standing here with you. You are not alone." She also appeared on and spoke at a Zoom rally for striking members of the NTA. By those allegations, Plaintiffs have alleged that the NEA violated Section 9A by supporting, encouraging or condoning the Newton strike.

3. *UAW*. UAW's president, Shawn Fain, attended a virtual "picket line" Zoom rally during the Newton strike. On social media the UAW also stated, "it doesn't matter what the law says: it is ALWAYS right to stand up for what's right. Stand up for public education!" While that UAW statement on social media arguably could be interpreted as a general philosophical remark, the sentence immediately preceding it states that the UAW is "standing with" the NTA, which was then engaged in a public employee strike. Given the context, these statements on social media, as well as the UAW's appearance on a Zoom rally, likewise constitute supporting or encouraging a public employee strike in violation of § 9A.

C. Conclusion

Because protected petitioning activity under the anti-SLAPP statute does not encompass activity that violates G.L. c. 150E, § 9A, and Plaintiffs have alleged that each of the MTA, NEA, and UAW in fact violated § 9A, those union defendants cannot show that the action against them

is based solely on their petitioning activity. The special motions to dismiss under G.L. c. 231, § 59H, are accordingly **DENIED**.[6]

II. Rule 12(b)(6) Motions

A. Standard of Review

Rule 12(b)(6) allows for dismissal of a complaint when the factual allegations contained within it do not suggest a plausible entitlement to relief. *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 635-636 (2008); *Fraelick v. PerkettPR, Inc.*, 83 Mass. App. Ct. 698, 699-700 (2013). In ruling on the motions, the court accepts the factual allegations as true and draws all reasonable inferences in the non-moving party's favor. *Fraelick*, 83 Mass. App. Ct. at 699-700.

B. Analysis

The principal questions these motions raise is first whether G.L. c. 150E, § 9A, authorizes a private right of action for its violations, and second whether it impliedly preempts Plaintiffs from bringing their common law and other statutory claims. For the reasons discussed below, the first question is answered in the negative and the second in the affirmative.

1. Private Right of Action. Plaintiffs claim they are authorized to bring a private cause of action based on the defendants' violation of G.L. c. 150E, § 9A. That statute, however, does not expressly authorize a private right of action against unions in violation thereof. Its statutory enforcement mechanism, likewise "weighs against any such implication." *Tody's Serv., Inc. v. Liberty Mut. Ins. Co.*, 496 Mass. 197, 202 (2025), citing *Barbuto v. Advantage Sales & Mktg.,*

[6] In the context of abuse of process and malicious prosecution, the Appeals Court recently held that these unprotected types of petitioning activity are to be analyzed under the second prong of the *Duracraft* framework. *Hidalgo v. Watch City Constr. Corp.*, 105 Mass. App. Ct. 148, 152 (2024). Under that prong, if the petitioning has no reasonable factual support or arguable basis in law, "[the moving party's] constitutional right [to petition] falls away, and he can be subject to State sanction through [the imposition of a law]suit." *Id.* Likewise here, if viewed under the second prong, the unions would lose any constitutional right to petition inconsistent with §9A, which makes those activities illegal, or, as the anti-SLAPP statute states, without "arguable basis in the law." G.L. c. 231, § 59H.

LLC, 477 Mass. 456, 470 (2017); *Salvas v. Wal-Mart Stores, Inc.*, 452 Mass. 337, 373 (2008). Specifically, § 9A(b) provides:

> (b) Whenever a strike occurs or is about to occur, the employer shall petition the commission to make an investigation. If, after investigation, the commission determines that any provision of paragraph (a) of this section has been or is about to be violated, it shall immediately set requirements that must be complied with, including, but not limited to, instituting appropriate proceedings in the superior court for the county wherein such violation has occurred or is about to occur for enforcement of such requirements.

G.L. c 150E, § 9A(b). In short, the statutory remedy for a §9 violation is an enforcement action brought by the Commonwealth Employment Relations Board in the Superior Court. Having set in place this mechanism, the court declines to infer such a private right of enforcement in Plaintiffs' favor. See *Tody's Serv., Inc*, 496 Mass. at 202 (declining to infer private right of action in G.L. c. 159B, §6B). See also *Coons by Coons v. Kaiser*, 567 N.E.2d 851, 852 (Ind. Ct. App. 1991) (no private right of action under Indiana statute prohibiting public employee strikes where statute contained enforcement mechanism).

The exclusive role of CERB in remedying violations of Section 9A was central to the SJC's decision in *Allen v. Sch. Comm. of Bos.*, 396 Mass, 582, 585 (1986) ("*Allen I*"), where the court rejected the asserted right of parents to bring suit to enforce Section 9A. In the aftermath of a strike by bus drivers with whom Boston contracted to provide school bus service, the court held that parents of students with disabilities, seeking consistent transportation for their children to and from school, did not have standing to obtain injunctive relief against the public employee strike. *Id.* The "only avenue of judicial relief" available to enforce Section 9A and end an illegal strike is for the public employer to petition CERB. *Id.* This is so because of the "strong legislative policy" reflected in chapter 150E, looking to the involvement of "an impartial agency with specialized experience" to enforce the strike prohibition. *Id.* at 586. "If we were to allow other persons to obtain by direct litigation that which the public employer itself cannot, the requirements of § 9A(b) would be too easily circumvented." *Id.* Further, intervention by parents

or other "persons who would not be parties to any collective bargaining agreement" could hinder the bargaining process that chapter 150E is designed to promote. *Id.* at 587.

Although *Allen I* plainly rejects Plaintiffs' standing to litigate violations of Section 9A, Plaintiffs argue *Allen I* is limited to injunctive relief and *Allen II* authorizes parental claims for damages arising out of an illegal strike. See *Allen v. Sch. Comm. of Bos.*, 400 Mass. 193, 194-195 (1987) ("*Allen II*"). *Allen II* cannot nearly bear the weight Plaintiffs assign to it. *Allen II* concerned whether civil contempt remedies encompassed "compensatory fines," namely, an award of $20 per student for each day of school missed because transportation was not provided due to a strike by bus drivers who contracted with Boston. *Id.* at 195. The court upheld those daily compensatory fines as a contempt remedy, but those compensatory fines arose out of a 1976 consent decree that defined Boston's obligations to provide services, including transportation services, to disabled students. *Id.* at 194. The required transportation services were not provided during an illegal strike by the contract bus drivers—deemed to be public employees in *Allen I*, 396 Mass. at 585—and Boston was in contempt of the consent decree for the days it failed to provide transportation services. The compensatory fines were the parents' civil contempt remedy for Boston's contempt of the 1976 court order; they were not damages under Section 9A arising from an illegal strike. *Allen II* speaks only to remedies for contempt; it does not support a private right of action under Section 9A.

2. Implied Preemption of Common Law and other Claims.

When it appears that a person or persons are attempting to "circumvent procedural or other requirements imposed by a particular statute by pleading a common-law cause of action that asserts a right created under that statute and not previously recognized at common law," the doctrine of statutory preemption may apply. *Donis v. American Waste Servs., LLC*, 484 Mass. 257, 267 (2020). In *Lipsitt v. Plaud*, 466 Mass. 240 (2013), the court explained:

> It is well established that an existing common law remedy is not to be taken away by statute unless by direct enactment or necessary implication. . . . Where the statute does not contain any express language concerning the availability of common-law remedies, we consider the possibility of implied preemption. . . . This court has long held that a statutory repeal of the common law will not be lightly inferred; the Legislature's intent must be manifest."

Id. at 245-46 (citations and internal quotation marks omitted).

Where the statute at issue contains "no indication of legislative intent to preempt the common law, the question is one of practicality." *Lipsitt*, 466 Mass. at 247. In assessing whether a statute impliedly preempts a common law action, the court may "turn to extrinsic sources, including legislative history . . . for assistance" in the interpretation of the statute to "effectuate the intent of the Legislature in enacting it." *Passatempo v. McMenimen*, 461 Mass. 279, 287-288 (2012). If enforcement of a statute conflicts with an existing common law doctrine so as to effectively disrupt their harmonious coexistence, the statute will be viewed as impliedly preempting the common law. See *Business Interiors Floor Covering Bus. Tr. v. Graycor Constr. Co. Inc.*, 494 Mass. 216, 225-226 (2024) (key inquiry is: "[c]an the common-law doctrine and the statute reasonably coexist in harmony, or must the common-law doctrine necessarily give way in order to effectuate the purpose of the statute?").

The statute at issue here is G.L. c. 150E, which is a "complex statutory scheme" governing collective bargaining between public employees and public employers. *Bos. Teachers Union, Local 66 v. Boston*, 382 Mass. 553, 559 (1981). The statute's purpose is to "promote harmonious and cooperative relationships between government and its employees" by facilitating resolution of disputes when they arise. *Id.* at 564. Chapter 150E reflects that the Legislature was aware that public employee strikes remained a threat. Compared to predecessor statutes, G. L. c. 150E, § 9A incorporates a more "expanded scope of the prohibition against strikes." *Labor*

Relations Comm'n v. Bos. Teachers Union, Loc. 66, 374 Mass. 79, 94 (1977).[7] The statute contains fifteen sections, each governing different aspects of the collective bargaining process. See generally G. L. c. 150E, §§ 1-15. For example, § 2 enshrines the right for employees to self-organize and form unions for collective bargaining purposes; § 6 describes the negotiation and meeting processes between public employers and the exclusive representatives of public employees; § 9 governs when negotiations reach a point of impasse; and § 15 authorizes penalties for those who inhibit or violate the statute's requirements. As discussed, § 9A(a) expressly prohibits public employee strikes, *and* bars public employees and employee organizations from inducing, encouraging or condoning a public employee strike, while § 9A(b) provides an enforcement mechanism through agency investigation and court action.

Specifically, G. L. c. 150E, § 9A(b) provides that the employer school district is to petition CERB to conduct an investigation if it believes a public employee strike is about to occur. If that investigation reveals that a violation of § 9A has occurred or is about to occur, CERB can "set requirements"—namely, CERB can forbid the strike. Further, if necessary, CERB can bring an action in court to require persons to conform to CERB's "set requirements" and § 9A. G.L c. 150E, § 9A(b). A public employer "must proceed under G.L. c. 150E, § 9A(b), if it wishes to obtain administrative or judicial relief from employee violations of [§ 9A(a)]." *Allen v. Sch. Comm. of Bos.*, 396 Mass, 582, 586 (1986). By involving an "impartial agency with specialized experience" to address the bargaining impasse and to enforce the prohibition on strikes, the Legislature sought to make the end result "more acceptable" to the involved parties. *Id.*

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[7] The public strike prohibition in the predecessor statutes, G. L. c. 149, § 178F(10) and G. L. c. 149, § 178M, applied to public employees only, whereas the strike prohibition in Section 9A(a) applies also to "employee organizations." See *Labor Relations Comm'n v. Bos.*, 374 Mass. at 95. The new statute also added the "induce, encourage or condone" prohibition.

Given this statutory scheme, I conclude that Plaintiffs' common law and other claims are impliedly preempted. First, the prohibition on public employee strikes set forth in §9A is wholly "a creature of statute,"[8] — the statute did not displace or build upon any common law claim or doctrine. No Massachusetts common law doctrine recognizes a third party's right to recover damages allegedly incurred due to a public employee strike.[9] General Laws c. 150E was designed to promote successful collective bargaining between public employers and public employees. The statute reinforced the then-existing ban on public employee strikes, but established a regulatory process designed to overcome bargaining impasses and prevent strikes. As discussed, the statute authorizes only CERB to act, through investigation and court action. Plaintiffs propose to ignore the enforcement provisions of § 9A(b), in order to pursue common law claims against striking public employee unions and their affiliates. That is precisely what the case law forbids. See *Donis,* 484 Mass. at 267.

Second, allowing the common law and other claims to proceed against teachers for an illegal strike would contradict chapter 150E's overarching purpose of promoting public collective bargaining and encouraging "harmonious and cooperative" relations between public

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[8] *Lipsett*, 466 Mass. at 247.

[9] Older Massachusetts cases acknowledged that a "strike for an illegal purpose is a tort." See *Cappy's Inc. v. Dorgan*, 313 Mass. 170, 174-75 (1943); Restatement (Second) of Torts Nine Intro. Note (1979). But those claims were brought by *employers* against striking unions, not by third parties seeking damages allegedly attributable to a strike for an illegal purpose. Courts across the country have refused to recognize such a common law claim, and the Restatement Second of Torts has since distanced itself from such rationale in the public employer-employee context. In *Lamphere*, the Michigan Supreme Court refused to extend the common law prohibition against strikes to permit tort lability for damages to third parties, concluding that the legislative intent behind the state statute was that the "unitary and exclusive" remedies available by statute were intended for public employers only. See *Lamphere Sch. v. Lamphere Fed'n of Tchrs.*, 252 N.W.2d 818, 822 (Mich. 1977). See also *Loakman v. Transport Workers Union of Greater New York, AFL-CIO, Local 100*, 816 N.Y.S.2d 336, 340 (Civ. Ct. 2006), citing *Burns, Jackson, Miller, Summit & Spitzer v. Lindner*, 59 N.Y.2d 314 (1983). The Second Restatement of Torts omitted chapters concerning strikes that appeared in the First Restatement First of 1939, as the Restatement Second drafters recognized that area of law was moving towards governance through statutory and administrative regulations. See *City & Cnty. of San Francisco v. United Assn. of Journeyman*, 726 P.2d 538, 541 (Cal. 1986). By requiring employers to petition an independent board, CERB, to investigate in these impasses in public collective bargaining, the Legislature effectively created a new duty under § 9A that is "wholly the creature of a statute" and was not previously recognized at common law. *Lipsitt*, 466 Mass. at 247.

employers and employees. See *Bos. Teachers, Union, Loc. 66 v. Boston*, 382 Mass. 553, 564 (1981).[10] Recent history, including in Newton, demonstrates that collective bargaining between a municipality and its public employees can be complex and very difficult. The interests of parents and students necessarily must be represented by their elected and appointed officials in public bargaining. To insert those parental and student interests into the already difficult process by way of a direct cause of action to enforce Section 9A, through damages, would wholly undermine the public employer-employee relations that chapter 150E is designed to promote. This case is not like *Lipsett*, where the court held that allowing a common law claim to coexist with the Wage Act would have "minimal" impact. 466 Mass. at 249. Here, allowing a parental claim for violation of Section 9A would wreak havoc on employer-employee relations. Instead of public officials assessing the public interest and carrying out the public interest in sensitive CBA negotiations, litigating parents could disrupt that delicate task. In chapter 150E, the Legislature authorized only CERB to play such an intervening role in public employer-employee relations. Plaintiffs' common law and other claims would undermine that statutory scheme. See *Allen I*, 396 Mass. at 586 (declining to interpret c. 150E in a manner that allows third persons to obtain in litigation that which the public employer itself cannot, thereby circumventing the procedural requirements of c. 150E); *Business Interiors*, 494 Mass. at 225-226 (common law claims preempted when repugnant to statutory purpose).

Third, the Department of Labor Relations, which houses CERB, has enacted comprehensive regulations that govern enforcement and implementation of Section 9A. See 456 C.M.R. 16.00 *et seq*. CERB's regulations detail how a public employer may request a strike

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[10] See *Labor Relations Com'n v. Boston Teachers Union, Local 66*, 374 Mass. 79, 94-95 (1977) (chapter 150E expanded the bargaining and organizational power of public employees, increasing the power of employee organizations; made more comprehensive the prohibition on public employee strikes; but acknowledged that strikes "were not unlikely" and provided a new role for CERB to enforce the strike ban); *Allen v. School Com. of Boston*, 396 Mass. 582, 586 (1986) (strong legislative policy in c. 150E requires public employer to seek CERB's intervention in order to obtain judicial relief from a public employee work stoppage).

investigation, including the information required of the public employer. 456 C.M.R. 16.03. The regulations consistently refer to "the employer" as the entity that may enlist CERB's assistance to enforce Section 9A. See 456 C.M.R. 16.03. CERB's regulations contain no reference to parents or any other third parties that may be entitled to enforcement of Section 9A. That CERB—the agency tasked with enforcing Section 9A—provides no role for parents in the enforcement regime, reinforces that no private claims to enforce Section 9A should be inferred from the statute.

Finally, the case law relied upon by the Plaintiffs does not support their right to bring claims for damages arising out of an unlawful teacher's strike. See *Allen II*, 400 Mass. 193 (1987); *Allen I*, 396 Mass. 582 (1986); *Labor Relations,* 374 Mass. 79 (1977); *Sch. Comm. of Boston v. Reilly*, 362 Mass. 334, 338 (1972) ("*Reilly*"). As discussed *supra*, *Allen I* highlighted CERB's *exclusive* role in litigating to enforce the prohibition on public employee strikes, and *rejected* the right of parents to bring suit to enforce Section 9A. 396 Mass. at 585 (holding that individual citizens lack standing to enjoin unlawful strike). The court also identified the inherent disruption if parents or other "persons who would not be parties to any collective bargaining agreement" were allowed to be involved in the collective bargaining process. *Id.* at 587. *Allen II* concerns a party's civil contempt remedies; it does not support third-party claims for damages arising out of a violation of Section 9A. *Allen II*, 400 Mass. at 195; see supra at p. 17. The other precedent cited by Plaintiffs likewise does not support a claim for damages arising out of an unlawful strike.[11]

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[11] In *Labor Relations*, the union argued that it should not be subject to contempt fines for not complying with a court order obtained by CERB under Section 9A, because Section 15 of chapter 150E provided the exclusive remedy with respect to coercive fines. 374 Mass. at 92. The court disagreed, holding that contempt fines following a court order, a process provided in Section 9A of the statute, were not precluded by administrative fines authorized in Section 15. *Reilly* involved the predecessor statute to chapter 150E and again concerns entitlement to injunctive relief. 362 Mass. at 338. It offers no guidance on the question whether Plaintiffs can bring a damages claim for violation of Section 9A.

The statutory scheme governing public employee collective bargaining and prohibiting public employee strikes, chapter 150E, cannot harmoniously coexist with the claims for damages that Plaintiffs contend they are entitled to bring. Chapter 150E preempts, by implication, Plaintiffs' common law and other claims.

3. Plaintiffs' Common Law and other Claims based on the Unlawful Strike

The discussion in the preceding sections leads to the allowance of the defendants' motions to dismiss, in several respects.

First, because there is no private right of action for violation of G.L. c. 150E, § 9A, Count One alleging a private right of action for violation of Section 9A will be dismissed.

Second, chapter 150E impliedly preempts common law claims based on a violation of Section 9A, namely its prohibitions on public employee strikes and inducing, encouraging or condoning public employee strikes. For that reason, Plaintiffs' common law claims based on violation of Section 9A are preempted by statute and will be dismissed, namely: Count Two alleging negligence, Count Three alleging public nuisance, and Count Four alleging the "tort of illegal strike."[12] Counts Five (conspiracy) and Six (aiding and abetting) fail for the same reason, because they are common law claims that rely on defendants' unlawful strike in violation of Section 9A. Counts Five and Six also fail because the claims alleging the predicate act—the unlawful strike and related torts—are dismissed.[13] To the extent Count Eight (breach of contract) relies on the unlawful strike because it violated a clause of the CBA in effect between Newton and the NTA, it is likewise preempted, but also fails for other reasons discussed below.

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[12] I also agree with the MTA's argument that Plaintiffs' allegations that the NTA was MTA's agent, and MTA is therefore responsible for NTA's actions, are wholly conclusory and do not plausibly suggest that MTA is liable for NTA's conduct under agency principles. See MTA memorandum (Paper No. 36.1), at pp. 15-16. With respect to the proposed tort of illegal strike, beyond preemption, I agree with the NTA that, where it has been recognized, that tort is brought by employers, not third parties such as Plaintiffs. See NTA memorandum (Paper 37.1), at pp. 15-16 & n. 8.

[13] See *Bartle v. Berry*, 80 Mass. App. Ct. 372, 384 (2011) (aiding or abetting or conspiracy claims fail if underlying tort claim cannot be proven).

Plaintiffs' claims suffer from additional infirmities, discussed briefly below.

Civil Rights Law

Liability under the Massachusetts Civil Rights Act, G.L. c. 12, § 11I ("MCRA"), requires interference with a person's constitutional rights, achieved by "threats, intimidation or coercion." *Swanset Dev. Corp. v. Taunton*, 423 Mass. 390, 395 (1996) (quoting the MCRA). Substantially for the reasons set forth in NTA's memorandum (Paper 37.1) at pp. 35-37, I agree that the Second Amended Complaint does not allege conduct by the NTA, Newton teachers, or any other defendant, that qualifies as a threat, intimidation or coercion. It is not enough to suggest that a labor strike is inherently intimidating or coercing; that fails to qualify as an "individualized threat" that is required. *Id.* at pp. 36-37.

Chapter 93A Unfair or Deceptive Acts or Practices

Plaintiffs allege that the NTA, aided by the MTA and NEA, engaged in unfair or deceptive acts or practices in trade or commerce, in violation of c. 93A, § 2. This claim alleges that the NTA used extortionate tactics, namely an unlawful strike, in its collective bargaining negotiations with Newton.

The NTA asserts that its provision of NTA members' services to Newton are outside "trade or commerce" because, among other reasons, the SJC has held that employer-employee relations are not within the scope of chapter 93A. See, e.g., *Manning v. Zuckerman*, 388 Mass. 8, 15 (1983) (holding that Legislature did not intend c. 93A to "cover employment contract disputes between employers and the employees who work in the employer's organization."). In response, Plaintiffs compare the NTA to a staffing agency, which offers the services of NTA members, in a business transaction consistent with the requirements of c. 93A. I agree with the NTA. The broader context of a municipality providing public education services is not within trade or commerce, and the narrower context of NTA negotiating with Newton concerning the

professional services of its members is not within trade or commerce because employer-employee relations are outside the scope of c. 93A. Plaintiffs fail to state a plausible claim for relief for violation of c. 93A.

Breach of Contract and Rescission

Plaintiffs' claims for breach of contract and rescission rely on their contention that the Newton parents and students are third-party beneficiaries of the collective bargaining agreement (CBA) between Newton and the NTA. Substantially for the reasons set forth in the NTA's memorandum (Paper No. 37.1) at pp. 17-21, Plaintiffs cannot enforce the CBA as third-party beneficiaries. Under Massachusetts precedent, CBA's are not ordinary contracts, particularly public employer-employee CBA's governed by chapter 150E. Parents and students undoubtedly are impacted by the negotiated terms of CBA's, but that does not mean they are entitled to interpret or enforce those CBA terms in litigation.

Plaintiffs' inability to qualify as third-party beneficiaries likewise precludes their rescission claim. Only parties to a contract may seek to rescind it; this is particularly apparent for public collective bargaining agreements. See NTA Memorandum (Paper 37.1), at pp. 22-24. Plaintiffs' claims for breach of contract and rescission fail to plausibly state a basis for relief.

CONCLUSION AND ORDER

For the reasons discussed above, the Anti-SLAPP motions to dismiss filed by the MTA, NEA and UAW (Papers Nos. 35, 38 and 40) are **denied**. The motions filed by all defendants under Mass. R. Civ. P. 12(b)(6) for failure to state a claim (Papers Nos. 34, 36, 37, 39 and 41), are all **allowed**.[14] The Second Amended Complaint, as to all claims against all defendants, shall be **dismissed**.

[14] Because I determined that Plaintiffs fail to state a claim against any defendant, I need not reach the issues raised by the purported defendant class and Mr. Zilles, under Mass. R. Civ. P. 23 and otherwise.

So ordered.

Christopher K. Barry-Smith
Christopher K. Barry-Smith
Justice of the Superior Court

DATE: July 18, 2025

Attest: