

# FAQ: PUBLIC SECTOR STRIKES IN MASSACHUSETTS

*Prepared by MTA Legal Services Division\**

As strike activity surges across the country, including in our Commonwealth, local union members have questions about strikes in Massachusetts. This FAQ is designed to provide information on public sector strikes for educational purposes only. It is not intended to violate any part of M.G.L. c. 150E, s. 9A (hereinafter, “the current law”).<sup>1</sup>

## 1. What is a strike?

M.G.L. c. 150E, s. 1 defines a “strike” as:

*“a public employee’s refusal, in concerted action with others, to report for duty, or his willful absence from his position, or his stoppage of work, or his abstinence in whole or in part from the performance of the duties of employment as established by an existing collective bargaining agreement or in a collective bargaining agreement expiring immediately preceding the alleged strike, or in the absence of any such agreement, by written personnel policies in effect at least one year prior to the alleged strike...”* (emphasis added).

## 2. Is striking illegal for public sector employees in Massachusetts?

Yes. According to the current law, it is illegal for public employees or employee organizations to engage in a strike.

It is also illegal for public employees or employee organizations to *induce, encourage or condone* any strike, work stoppage, slowdown or withholding of services by such public employees.<sup>2</sup>

## 3. Is striking illegal for private sector employees in Massachusetts?

No. Private sector employees in Massachusetts have the legal right to strike.<sup>3</sup>

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<sup>1</sup> Pursuant to M.G.L. c. 150E, s. 9A(a), “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.”

<sup>2</sup> *Id.*

<sup>3</sup> M.G.L. c. 150A, s. 9; 29 USC § 163.

#### **4. How is the current law enforced against public sector strikes?**

When a public employer believes it has sufficient evidence to show that a strike is occurring or about to occur, it can file a strike petition with the Department of Labor Relations (DLR) to request that the Commonwealth Employment Relations Board (CERB) conduct an investigation of the employer's allegations of the union's unlawful involvement in a strike.<sup>4</sup> If the evidence is insufficient, the CERB will dismiss the strike petition. If CERB determines that the union is responsible for a strike that is occurring or about to occur, it will order the union to cease and desist, and disavow, any strike activity. Failure to comply with the agency order could cause the CERB to pursue court enforcement by seeking an emergency preliminary injunction. If the injunction is granted, failure to comply with the judge's order could result in a finding of contempt, which could be accompanied by an assessment of coercive fines and, in very rare instances, even jail time.<sup>5</sup>

#### **5. When is a strike "about to occur?"**

The CERB has ruled that a union's undertaking or authorization of a strike vote; threats of a strike/strike vote; or preparations toward a strike/strike vote, are examples of evidence that a strike is about to occur.<sup>6</sup>

#### **6. What does it mean to "induce, encourage, or condone" a strike?**

The CERB has ruled that a union official's failure to report to work; a union official's participation in a picket line during working hours; or a union official's remarks indicating the existence of a strike vote by union members, are examples of inducing, encouraging, and condoning a strike in violation of the current law.<sup>7</sup>

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<sup>4</sup> Although the current law does not require a public employer to file a strike petition with CERB to implement emergency measures in response to an on-going strike, it must do so to seek administrative or judicial relief. Town of Braintree, 8 MLC 1825 (1982), aff'd sub nom. Utility Workers of America, Local 466 v. Labor Relations Commission, 389 Mass. 500 (1983).

<sup>5</sup> Pursuant to M.G.L. c. 150E, section 9A(b), "Whenever a strike occurs or is about to occur, the employer shall petition the commission [CERB] 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."

<sup>6</sup> A Guide to the Massachusetts Public Employee Collective Bargaining Law (10/2017)(hereinafter, "DLR's Guide") at page 192, available at <https://www.mass.gov/a-guide-to-the-massachusetts-public-employee-collective-bargaining-law>, citing Boston School Committee, 33 MLC 133 (2007), aff'd sub nom. Commonwealth Employment Relations Board v. Boston Teachers Union, Local 66, 74 Mass. App. Ct. 500 (2009).

<sup>7</sup> DLR's Guide, *supra* at page 188.

**7. What are potential consequences to individual public employees who violate the current law?**

Termination or non-renewal, employer discipline, loss of pay, arrest, lock-out, and disqualification for unemployment benefits related to the strike period.

**8. What are potential consequences to public employee organizations who violate the current law?**

Actual incurred costs by the public employer for the temporary halt of public services or cancellation of school; orders to publicly rescind, oppose or disavow the strike; coercive fines, grievances, unfair labor practice charges; and continued litigation to end the work stoppage and return the striking employees to work. Moreover, local union officers may also be named individually for allegedly violating the law.

**9. How are coercive fines determined by the court?**

Rather than “punitive” fines intended to punish the guilty party, the courts are authorized to issue “coercive” fines which are remedial and designed to discourage or stop the illegal activity. Coercive fines are determined on a case-by-case basis and often assessed daily, escalating in amount each day the union fails to comply with the court order.<sup>8</sup>

Coercive fines can also quickly and significantly accumulate to six figures or more. Although the courts have discretion when setting such fines, it must consider factors such as: 1) the character and magnitude of the harm threatened by the continued action by the union; 2) the probable effectiveness of any suggested sanction in bringing about the conclusion of the strike; 3) the amount of the union’s financial resources; and 4) the seriousness of the burden to the union.<sup>9</sup>

**10. Is the public employer still required to negotiate with the striking employees?**

Yes. Regardless of strike activity, the public employer is still legally required to negotiate in good faith with public employees.<sup>10</sup>

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<sup>8</sup> Labor Relations Com. v. Fall River Educators’ Assoc., 382 Mass. 465, 477 (1981).

<sup>9</sup> *Id.* at 482.

<sup>10</sup> DLR’s Guide, *supra* at page 193, *citing* Hudson School Committee, 14 MLC 1403 (1987); Lexington School Committee, 14 MLC 1343 (1987)

**11. Is “Work to Rule” considered a strike?**

No. Work to Rule is a long-established, protected concerted activity that permits employees to withhold or refuse to perform voluntary activities of employment that are not set forth in the collective bargaining agreement, intrinsic to the position, or considered an enforceable past practice of the employee bargaining unit.<sup>11</sup>

**12. Does the MTA have any control or authority over the strike activities of local unions?**

No. Each local union is an autonomous body with a separate and distinct legal status, board leadership, governance structure and bylaws. If a local union decides to strike, it does so based on a majority vote of its local membership. The MTA is not involved in the local union’s decision-making process, nor does the MTA have control over the actions and activities of the local union.

**13. Does the MTA support legalizing the right to strike?**

Yes. The MTA is the leading proponent of [right to strike legislation](#) as a basic fundamental right for all workers. As one of the MTA’s major legislative priorities, it would address inequities in the current law and balance the bargaining power of the parties by legalizing strikes for public employees after six (6) months of failed negotiations with the public employer.

**\* This FAQ has been prepared and approved by the MTA.  
Any other strike-related FAQ is not authorized by the MTA.**

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<sup>11</sup> [Lenox Educ. Ass’n v. Labor Relations Com’n](#), 393 Mass. 276 (1984). See also, [DLR’s Guide](#), *supra* at pages 190-91.