STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Board of Trustees of Triton Community College District No. 504, Complainant and Cook County College Teachers Union, Local 1600, IFT-AFT, AFL-CIO, Respondent	)	Case Nos. 2020-CB-0006-C 2020-CB-0007-C

OPINION AND ORDER

On November 4, 2019,[1] Triton Community College District No. 504 (College) filed two charges with the Illinois Educational Labor Relations Board (Board or IELRB) against Cook County College Teachers Union, Local 1600, IFT-AFT, AFL-CIO (Union). In Case No. 2020-CB-0006-C, the College alleged that the Union violated Section 14(b)(3) and (1) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1, *et seq*. (2018), *as amended*, when it unlawfully withdrew from, proposed changes to and attempted to renegotiate the parties' tentative agreement (TA) regarding a successor collective bargaining agreement, engaged in regressive and bad faith bargaining, failed to designate agents with sufficient bargaining authority to engage in meaningful negotiations, failed to affirmatively support the parties' TA, and unlawfully failed and refused to bargain in good faith. In Case No. 2020-CB-0007-C, the College alleged that the Union violated Section 14(b)(3) and (1) and Section 13(b) of the Act when it announced its intent to engage in a strike prior to completing all the requirements in Section 13(b) of the Act. The College subsequently amended 2020-CB-0007-C to allege that the Union engaged in a strike on November 6 prior to completing all the requirements in Section 13(b) of the Act. The College requested preliminary injunctive relief pursuant to Section 16(d) of the Act as part of its charges. On November 20, the Board's Executive Director issued a Complaint and Notice of Hearing alleging that the Union violated Section 14(b)(3) of the Act.

Both parties have set forth their positions on the College's request for injunctive relief through oral argument and the College also submitted a written brief. We have carefully considered those positions. For the reasons set forth below, we deny the College's request that the IELRB seek preliminary injunctive relief pursuant to Section 16(d) of the Act.

[1] All dates referenced occur in 2019, unless otherwise indicated.

I.

Section 16(d) of the Act provides that, upon issuance of an unfair labor practice complaint, the IELRB may petition the circuit court for appropriate temporary relief or a restraining order. Preliminary injunctive relief is appropriate where there is reasonable cause to believe that the Act may have been violated and where injunctive relief is just and proper. *University of Illinois Hospital*, 2 PERI 1138, Case Nos. 86-CA-0043-C, 86-CA-0044-C (IELRB Opinion and Order, October 21, 1986).

Case No. 2020-CB-0006-C

1. Is there reasonable cause to believe that the Act may have been violated?

The College alleges that the Union violated Section 14(b)(3) of the Act when it withdrew from, proposed changes to and attempted to renegotiate the TA, engaged in regressive and bad faith bargaining, failed to designate agents with sufficient bargaining authority to engage in meaningful negotiations, failed to affirmatively support the TA, and unlawfully failed and refused to bargain in good faith. Section 14(b)(3) of the Act prohibits labor organizations, their agents or representatives from "refusing to bargain collectively in good faith with an educational employer," if the labor organization has been designated in accordance with the provisions of the IELRA as an exclusive representative. For there to be reasonable cause to believe that the Act may have been violated, there must be a significant likelihood of the complainant prevailing on the merits. *Cahokia Community Unit School District No. 187*, 11 PERI 1059, Case No. 95-CA-0029-S (IELRB Opinion and Order, June 15, 1995). This first prong of the test for injunctive relief is not satisfied just because a complaint has issued. Under the Act, a complaint is issued when questions of law or fact are presented. The issuance of complaint alone is not enough to constitute a substantial likelihood of prevailing on the merits. *Board of Trustees of Southern Illinois University at Carbondale*, 14 PERI 1006, Case No.98-CA-0004-S (IELRB, October 30, 1997); *Kirby School District No. 140*, 11 PERI 1017, Case No. 95-CA-0037-C (IELRB, January 25, 1995).

The College reports that the parties reached an overall TA on October 24. Both parties' representatives signed the TA. The TA included the following language: "By signing below, the parties agree that this is the settlement agreed to between them and shall be presented to their respective bodies for ratification and shall be recommended for approval." According to the College, the Union's bargaining team presented the TA to its membership as the College's last, best and final offer rather than as a TA that they had negotiated. The College says that the Union's negotiators refused to seek answers from the College to members' questions about specific terms set forth in the TA that the Union's negotiators could not answer. On October 30, the bargaining unit rejected what was presented to them for ratification vote. The College argues that the Union actively flouted its duty to support the TA by distributing it to its membership without any explanations whatsoever,

undermined and essentially sabotaged the existence of the TA by presenting it as the College's last, best and final offer rather than the TA, and by subsequently withdrawing from that agreement on key terms and introducing new items at the very last minute of negotiations. If taken as true, there is reasonable cause to determine that the Union may have violated the Act in Case No. 2020-CB-0006-C.

2. Is preliminary relief just and proper?

In determining whether preliminary injunctive relief is just and proper, the IELRB considers whether an injunction is necessary to prevent frustration of the basic remedial purposes of the Act; the degree, if any, to which the public interest is affected by a continuing violation; the need to immediately restore the status quo ante; whether ordinary IELRB remedies are inadequate; and whether irreparable harm will result without preliminary injunctive relief. *Cahokia CUSD No. 87*, 11 PERI 1059. Preliminary injunctive relief should be limited to those cases where the alleged violations are serious and extraordinary. *Id.*

Unfair labor practice charges alleging bad faith bargaining are filed regularly with the IELRB. What makes this charge unique is not the misconduct alleged, but that the misconduct is being alleged by an educational employer against a labor organization instead of the other way around. *Granite City CUSD No. 9 v. IELRB*, 366 Ill. App. 330, 850 N.E.2d 821 (1st Dist. 2006) (school district violated Section 14(a)(5) of the Act by reneging on TA and engaging in regressive bargaining); *Rock Valley College Support Staff, Local 6569, IFT-AFT, AFL-CIO/Rock Valley College*, 35 PERI 150, Case Nos. 2017-CA-0031-C & 2017-CA-0045-C (IELRB Opinion and Order, March 21, 2019); *Western Illinois University*, 35 PERI 60, Case No. 2017-CA-0001-S (IELRB Opinion and Order, September 24, 2018); *Country Club Hills Education Association, IEA-NEA*, 34 PERI 148, Case No. 2015-CA-0055-C (IELRB Opinion and Order, January 22, 2018). Bad faith bargaining charges are more frequently filed by a union against an educational employer.[2] The remedy in those cases is often that the respondent cease and desist from refusing to bargain and does not warrant the extraordinary remedy of injunctive relief. The same is true in this matter. Because the Union's alleged conduct is not a serious and extraordinary violation of the Act, we find that preliminary injunctive relief is not just and proper in Case No. 2020-CB-0006-C.

[2] The language of Section 14(b)(3) "essentially parallels" the language of Section 14(a)(5) of the Act. *Brookfield-LaGrange Park School Dist. 95/Teachers Association of Brookfield-LaGrange Park. IEA-NEA*, 3 PERI 1117, Case No. 86-CB-0019-C (IELRB Opinion and Order, November 2, 1987). Section 14(a)(5) prohibits educational employers from "[r]efusing to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit."

Case No. 2020-CB-0007-C

1. Is there reasonable cause to believe that the Act may have been violated?

A strike that does not meet the requirements of Section 13 of the Act violates Section 14(b)(3), which makes it an unfair practice for a union to "refuse to bargain collectively in good faith with an educational employer". *Chicago Board of Education*, 33 PERI 124, Case No. 2017-CB-0027-C (IELRB Opinion and Order, May 18, 2017). The College alleges that the Union had not met the requirements for a lawful strike set forth in Section 13(b) of the Act when it engaged in a one-day strike on November 6. In particular, the Union did not comply with the requirement in Section 13(b)(3) "that at least 10 days have elapsed after a notice of intent to strike has been given by the exclusive bargaining representative to the educational employer, the regional superintendent and the Illinois Educational Labor Relations Board."

The College contends that the strike was unlawful because Union did not serve its notice of intent to strike on the regional superintendent. In *Joliet Junior College*, the Board granted a community college employer's request to seek injunctive relief where the union engaged in a strike without serving the regional superintendent with a notice of intent to strike. 8 PERI 1011, Case No. 92-CB-0024-C (IELRB Opinion and Order, December 27, 1991). The Board rejected the union's argument that service on the regional superintendent was not required because there was no regional superintendent for community colleges, noting that Section 13 of the Act "contains no special rules dispensing with service of the Notice of Intent to Strike on the Regional Superintendent when the educational employer is a community college." *Id*. At the time *Joliet Junior College* was decided in 1991, that was true. However, Section 1130.40(a) of the Board's Rules and Regulations was amended in 2014 to require that a notice of intent to strike be served on the regional superintendent "if one exists with jurisdiction over the educational employer." 80 Ill. Adm. Code 1130.40(a). If there is no regional superintendent for community colleges, the changes to Section 1130.40(a) excuse the Union from serving a notice of intent to strike on the regional superintendent. At this time it is unclear whether there is a regional superintendent with jurisdiction over the College. This is an issue of fact to be determined by the Administrative Law Judge.

The College does not have a significant likelihood of prevailing on the merits of this case because if there is no regional superintendent with jurisdiction over the College, the strike will meet the requirements in 13(b) and the College will not prevail on the merits.

2. Is preliminary relief just and proper?

The strike at issue in this matter lasted one day, November 6. The amended charge requests an order prohibiting all future strikes from occurring prior to completion of the Section 13(b) requirements, injunctive relief, and an order requiring posting of appropriate notices. Even assuming, *arguendo*, that the College satisfied the first prong of test, preliminary injunctive relief is

not just and proper because there is nothing here for an injunction to restore because the strike is over and the bargaining unit employees have returned to work. There is no evidence in this case that there is any threat of another strike. *Cf. Chicago Board of Education*, 32 PERI 194, Case No. 2016-CB-0018-C (IELRB Opinion and Order, May 20, 2016) (injunctive relief appropriate following one day strike where the facts created more than a mere possibility of another strike). This is demonstrated by a letter from Union President Tony Johnston (Johnston) to College Vice President of Business Services Sean Sullivan dated November 20. Therein, Johnston stated that this was a one-day strike, that he held final authority over issuing any official intent to strike, and that there would not be another strike without fulfilling the statutory requirements in the IELRA. *Cf. Id*. (union president's similar letter to employer did not make employer's request for injunctive relief moot where the union's house of delegates, rather than its president, had supreme and final authority under its membership, and the membership had the final authority to authorize a strike). Accordingly, even if there was reasonable cause to believe that the Act may have been violated by the strike, preliminary injunctive relief is not just and proper in Case No. 2020-CB-0007-C.

II.

For these reasons, we deny the College's request that we seek preliminary injunctive relief pursuant to Section 16(d) of the Act.

III.

This is not a final order that may be appealed under the Administrative Review Law. *See* 5 ILCS 100/10-50(b); 115 ILCS 5/16(a).

Decided: **December 19, 2019**
Issued: **Chicago, Illinois**

/s/ Andrea R. Waintroob
Andrea R. Waintroob, Chairman

/s/ Judy Biggert
Judy Biggert, Member

/s/ Gilbert F. O'Brien
Gilbert F. O'Brien, Member

/s/ Lynne O. Sered
Lynne O. Sered, Member

/s/ Lara D. Shayne
Lara D. Shayne, Member