

**STATE OF ILLINOIS  
EDUCATIONAL LABOR RELATIONS BOARD**

University Professionals of Illinois,	)	
Local 4100, IFT-AFT, AFL-CIO,	)	
	)	
Complainant,	)	
	)	
and	)	Case No. 2021-CA-0009-C
	)	
Western Illinois University,	)	
	)	
Respondent.	)	

**OPINION AND ORDER**

On August 12, 2020, University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO (Union) filed an unfair labor practice charge against Western Illinois University (University) with the Illinois Educational Labor Relations Board (IELRB or Board) alleging that that the University committed unfair labor practices within the meaning of Section 14(a) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1, *et seq.*, when it publicly announced that it was returning to face to face classes for Fall without prior bargaining with the Union, refused to bargain about working conditions for bargaining unit members who work in the library, and refused to respond to the Union’s demand for arbitration except to state that relevant administrators are on vacation. In its charge, the Union requested that the IELRB seek preliminary injunctive relief under Section 16(d) of the Act. On August 18, 2020, the Board’s Executive Director issued a Complaint and Notice of Hearing alleging that University violated Section 14(a)(5) and (1) of the Act.

The parties have set forth their positions on the Union’s request for injunctive relief through oral argument and the Union filed a written brief. We have carefully considered those positions. For the reasons set forth below, we granted the Union’s request that the IELRB seek preliminary injunctive relief pursuant to Section 16(d) of the Act.<sup>1</sup>

**I. Discussion**

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. Because the Executive Director has issued a Complaint in this case, the statutory prerequisite has been satisfied. Preliminary injunctive relief is appropriate where there is reasonable cause to

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<sup>1</sup> We granted the Union’s request insofar as the portion of the Complaint alleging bad faith bargaining, not the alleged refusal to arbitrate.

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). We examine this case to determine whether those prerequisites have been satisfied.

A. *Whether there is reasonable cause to believe that the Act may have been violated*

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). Although issuance of a complaint is the statutory prerequisite for our consideration of a request for injunctive relief, something more is required to establish a significant likelihood of prevailing on the merits. *Zion-Benton Township High School District 126*, 17 PERI 1015, Case No. 2001-CA-0031-C (IELRB Opinion and Order, March 6, 2001); *Chicago Teachers Union Local No. 1, IFT/AFT, AFL-CIO*, 3 PERI 1111, Case Nos. 88-CB-0003-C through 88-CB-0023-C (IELRB Opinion and Order, September 11, 1987).

The Complaint alleges that the University violated Section 14(a)(5) of the Act by announcing it would return to face to face instruction without bargaining in good faith with the Union over its decision. Section 14(a)(5) of the Act prohibits educational employers from refusing to bargain collectively in good faith. An educational employer violates Section 14(a)(5) when it unilaterally changes mandatory subjects without bargaining in good faith to impasse. *Vienna School District No. 55 v. IELRB*, 162 Ill. App. 3d 503, 515 N.E.2d 476 (4th Dist. 1987). It is well-settled that an employer must notify and bargain to impasse with an exclusive representative before implementing any change in employees' wages, hours, terms and conditions of employment that may be a mandatory subject of bargaining. Here, the Union alleges that requiring employees to be physically present for face to face instruction during the COVID-19 pandemic is a mandatory subject of bargaining because it is a health and safety issue. There is good cause to believe that the Union would succeed in its argument that employee safety is a mandatory subject of bargaining. Although this Board has not directly addressed the issue of employee safety as a mandatory subject of bargaining, the National Labor Relations Board has found that it is, and the Illinois Labor Relations Board left its Administrative Law Judge's (ALJ) finding that employee safety is a mandatory subject of bargaining undisturbed. *NLRB v. Gulf Power*, 384 F.2d 822 (5th Cir. 1967); *Voith Industrial Services*, 363 NLRB No. 109 (2016); *Forest Preserve District of Cook County*, 34 PERI ¶1106 (IL LRB-LP ALJRDO 2017).

The University did not file a brief to the Board regarding the issue of whether the Board should seek injunctive relief, despite being specifically invited to do so. The Union indicates in its brief and evidence it submitted to the Board that the parties have met to discuss the Union's

proposals. However, the fact that the University already announced its decision on the matter being bargained requires the Union to bargain uphill to reverse a decision that was made and publicly announced unilaterally. Such action violates the central command of the duty to bargain, which requires bargaining at a meaningful time over mandatory subjects of bargaining.

Accordingly, there is a significant likelihood that the Union will be able to demonstrate that the University failed to bargain in good faith. Therefore, there is reasonable cause to believe that the Act may have been violated.

*B. Whether preliminary relief is just and proper*

The public interest, particularly that of the community surrounding the University, will be affected to a great degree by its alleged refusal to bargain because it could potentially lead to the further and unnecessary spread of COVID 19. Ordinary IELRB remedies, such as backpay, unfortunately aren't adequate to remedy the irreparable harm resulting from the potential spread of COVID 19. The effects of the University's alleged violation of the IELRA, that is, its failure to bargain, are serious and extraordinary. Consequently, preliminary relief is just and proper.

**II.**

For these reasons, we granted the Union's request that the IELRB seek preliminary injunctive relief and authorized our General Counsel to seek the following injunctive relief: To enjoin the University from resuming face to face instruction until it has bargained in good faith with the Union over its decision to do so.

**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: **September 17, 2020**

Issued: **September 17, 2020**

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