STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Chicago Teachers Union, Local No. 1, IFT-AFT, AFL-CIO,	)	
Complainant	)	
and	)	Case No. 2021-CA-0014-C
Chicago Board of Education,	)	
Respondent	)	

OPINION AND ORDER

On August 24, 2020, Chicago Teachers Union, Local No. 1, IFT-AFT, AFL-CIO (Union) filed an unfair labor practice charge against Chicago Board of Education (CBE) with the Illinois Educational Labor Relations Board (IELRB or Board) alleging that that CBE 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 required bargaining unit employees in the title or classification of school clerk (clerk) to be physically present in schools without bargaining in good faith with the Union and by taking action to prevent the Union's August 21, 2020 grievance from being arbitrated. In its charge, the Union requested that the IELRB seek preliminary injunctive relief under Section 16(d) of the Act. On September 4, 2020, the Board's Executive Director issued a Complaint and Notice of Hearing alleging that CBE violated Sections 14(a)(1) and 14(a)(5) of the Act.

The parties have set forth their positions on the Union's request for injunctive relief through oral argument and written submissions. We have carefully considered those positions. For the reasons set forth below, we denied the Union's request that the IELRB seek preliminary injunctive relief pursuant to Section 16(d) of the Act.

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 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 CBE violated Section 14(a)(5) of the Act by requiring school clerks to be physically present in schools without bargaining in good faith with the Union. 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 in schools 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 ¶106 (IL LRB-LP ALJRDO 2017). However, there are factual disputes as to whether CBE's conduct amounted to bad faith bargaining. Indeed, CBE contends the parties were bargaining the issue of clerks returning to work in person, it was the Union who indicated it objected to any employees returning to work in person. The Union asserts that there are many instances of school clerks returning to the physical workplace to find little or no safety precautions being taken to prevent the spread of COVID 19. Yet CBE disputes this. The resolution of these factual disputes depends upon the testimony of witnesses in an evidentiary hearing before an ALJ. Thus, whether a substantial likelihood of prevailing on the merits exists depends on a relative assessment of the credibility of both Union and CBE witnesses. This is something that is done by the ALJ, not the Board. Whether the Union is likely to prevail on the merits depends on credibility resolutions in its favor. The credibility of witnesses' testimony on this point cannot be assessed at this stage of the proceedings. We cannot conclude that there is a significant likelihood of the Union prevailing on the merits because critical facts are still in dispute.

The Complaint also alleges that CBE violated Sections 14(a)(1) and 14(a)(5) of the Act by taking action to prevent the Union's August 21 grievance from being arbitrated. But CBE disputes this, reporting that it has done nothing of the sort and that the parties quickly moved through the process of filing the demand for arbitration to scheduling dates for arbitration and that the arbitration is scheduled to occur during the week of September 14, 2020. There is nothing in the record before the Board to indicate that there is a significant likelihood that the Union would succeed on the merits of this portion of the Complaint. Therefore, there is not reasonable cause to believe that the Act may have been violated regarding the Union's allegation that CBE took action to prevent the grievance from being filed.

B. Whether preliminary relief is just and proper

Even if the Union had satisfied the first prong of test for injunctive relief, preliminary injunctive relief is not just and proper because ordinary IELRB remedies could suffice. It was the Union who proposed on August 11 that CBE pay school clerks hazard pay when they perform their duties in person at school. After a hearing, if the ALJ determines CBE violated the Act, she could award hazard pay to affected employees as a traditional monetary remedy as originally proposed by the Union.

II.

For these reasons, we denied the Union'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).[1]

Decided: **September 17, 2020**
Issued: **September 17, 2020**

/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

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[1] Member Sered joins the Board in its decision to deny the request for injunctive relief because the Union did not satisfy the first prong of the test for injunctive relief. However, if the Union had satisfied the first prong, unlike her colleagues, Member Sered would have found in favor of the Union because there may be irreparable harm that would make injunctive relief just and proper. *Western Illinois University*, 37 PERI ___, Case No. 2021-CA-0009-C (IELRB Opinion and Order, September 17, 2020).