STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Chicago Teachers Union, Local No. 1, IFT-AFT, AFL-CIO,	)	
Complainant	)	
and	)	Case No. 2021-CA-0043-C
Chicago Board of Education,	)	
Respondent	)	

OPINION AND ORDER

On October 23, 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 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*., by unilaterally announcing its decision to resume in person learning for several thousand students during the COVID-19 pandemic without bargaining in good faith with the Union, by refusing to allow the Union and its experts to inspect the premises with HVAC systems that are not fully operational and that have maintenance problems, by refusing to provide documents with respect to its own assessment of the ventilation systems, by failing to respond to other Union information requests relevant to bargaining in a timely manner, and by refusing to arbitrate the Union's grievance over Article 14-2 and 1-15 of the parties collective bargaining agreement (CBA) in a manner that will allow an arbitrator to provide a meaningful remedy. In its charge, the Union requested that the IELRB seek preliminary injunctive relief under Section 16(d) of the Act. On October 30, 2020, the Board's Executive Director issued a Complaint and Notice of Hearing alleging that CBE violated Section 14(a)(5), and derivatively 14(a)(1) of the Act, by (1) failing and refusing to provide the Union with information it requested regarding CBE staff members testing positive for COVID-19 and regarding CBE's assessment of its HVAC system; (2) by announcing its intent to re-open school buildings for pre-kindergarten and students enrolled in moderate and cluster intensive programs later in its second quarter of the school year; and (3) by only providing the Union with partial information as to its assessment of the HVAC system in breach of the CBA so as to indicate repudiation or renunciation of its terms. Also on October 30, 2020, the Executive Director issued a Recommended Decision and Order dismissing the portion of the charge alleging CBE violated the Act by refusing to arbitrate the Union's grievance.

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 below, we denied the Union's request that the IELRB seek preliminary injunctive relief pursuant to Section 16(d) of the Act.

I. Discussion

The Complaint alleges that CBE violated Section 14(a)(5) of the Act by announcing its intent to re-open school buildings for pre-kindergarten and students enrolled in moderate and cluster intensive programs later in its second quarter of the school year without bargaining in good faith with the Union. The second quarter of the school year begins on or about November 9. On October 16, CBE announced its goal to reopen school buildings later in the second quarter of the school year for pre-kindergarten and students enrolled in moderate and intensive cluster programs.

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. Is there 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).

Secton14(a)(5) of the Act prohibits educational employers from refusing to bargain collectively in good faith with the exclusive representative of a bargaining unit of its employees. 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.

In this case, 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. Employee

safety is a mandatory subject of bargaining. *Chicago Board of Education*, ____ PERI ____ , Case No. 2021-CA-0014-C (IELRB Opinion, September 17, 2020); *Western Illinois University*, ____ PERI ___, Case No. 2021-CA-0009-C (IELRB Opinion, September 17, 2020); *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).

The Union reports that CBE has been vague about the date it intends to resume in person learning. It broadly, and perhaps presumptively, argues that when CBE proceeds, it will do so in violation of the fundamental tenants of the Act. However, there is no showing that CBE has taken, or is about to take, any action to require employees to be physically present in schools. During the current COVID-19 pandemic, we granted a union's request to seek injunctive relief to enjoin an employer from resuming face to face instruction until it has bargained in good faith with the Union over its decision to do so. *Western Illinois University*, ____ PERI ____, Case No. 2021-CA-0009-C (IELRB Opinion, September 17, 2020). The employer had directed bargaining unit members to return to the physical workplace in *WIU*. Whereas here, CBE has not done so. CBE has announced a goal of bargaining unit members returning to the physical workplace at an uncertain date. A goal that is likely shared by all employers, educational and otherwise. Yet as the record is before us, CBE has not made any movement in furtherance of its goal that would amount to a unilateral change. Thus, there is not reasonable cause to believe that the Act has been violated.[1] *Local 143, International Union of Operating Engineers, AFL-CIO*, 3 PERI 1109, Case No. 86-CA-0098-C (IELRB Opinion and Order, September 11, 1987).

CBE argues that the resumption of in person learning is a permissive subject of bargaining under Section 4.5 of the Act because it concerns places of instruction.[2] According to CBE, it is obligated to bargain over the impact of that decision if requested by the Union, but is authorized to implement its decision while impact bargaining is ongoing. We make no finding here as to whether 4.5 renders the resumption of in person learning a permissive subject of bargaining because the issue before us at this stage of the case is simply whether to seek injunctive relief. Yet that unresolved issue of law demonstrates that the Union has not established reasonable cause to believe that CBE violated the Act regarding the allegation that it made unilateral changes to bargaining unit members' terms and conditions of employment without first bargaining with the Union. *East St. Louis School District 189*, 11 PERI 1082, Case No. 96-CA-0008-C (IELRB Opinion and Order, September 28, 1995).

B. Is preliminary relief just and proper?

Because there is not reasonable cause to believe that the Act was violated when CBE announced its intent to re-open school buildings for pre-kindergarten and students enrolled in moderate and cluster

1 If CBE directs employees to return to work on a specific date without first bargaining in good faith with the Union, we would be open to reviewing whether there is reasonable cause to believe the Act has been violated.

2 Section 4.5 of the Act is only applicable to collective bargaining between an educational employer whose territorial boundaries are coterminous with those of a city having a population in excess of 500,000 and an exclusive representative of its employees.

intensive programs later in its second quarter of the school year, we will not address whether preliminary relief is just and proper as to that portion of the Complaint. The Complaint also alleges that CBE violated Section 14(a)(5) of the Act by failing and refusing to provide the Union with information it requested regarding CBE staff members testing positive for COVID-19 and regarding CBE's assessment of its HVAC system and by only providing the Union with partial information as to its assessment of the HVAC system in breach of the CBA so as to indicate repudiation or renunciation of its terms. Even assuming, *arguendo*, there was reasonable cause to believe that the Act may have been violated as to these allegations, there is nothing extraordinary that warrants injunctive relief about this portion of the alleged misconduct.

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).

Decided: **November 19, 2020**
Issued: **November 19,2020**

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

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

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