**STATE OF ILLINOIS**
**EDUCATIONAL LABOR RELATIONS BOARD**

| | | |
|---|---|---|
| West Suburban Teachers Union, Local 571, IFT-AFT, AFL-CIO, Complainant, | ) | |
| and | ) | Case No. 2021-CA-0043-C |
| Proviso Township High School Dist. 209, Respondent. | ) | |

## OPINION AND ORDER

On October 20, 2020, West Suburban Teachers Union, Local 571, IFT-AFT, AFL-CIO (Union) filed an unfair labor practice charge against Proviso Township High School District 209 (District) with the Illinois Educational Labor Relations Board (IELRB or Board) alleging that that the District 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*. In its charge, the Union requested that the IELRB seek preliminary injunctive relief under Section 16(d) of the Act. The Board's Executive Director issued a Complaint and Notice of Hearing on November 2, 2020[1] alleging that the District 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 briefs. We have carefully considered those positions. For the reasons set forth below, we grant the Union's request that the IELRB seek preliminary injunctive relief pursuant to Section 16(d) of the Act.[2]

### I. Discussion

The Union has been and is the exclusive representative within the meaning of Section 2(d) of the Act of a bargaining unit of approximately 300 teachers employed by the District. The District consists of three schools: Proviso East High School, Proviso West High School, and Proviso Math and Science Academy. On or about August 11, in the midst of the ongoing COVID-19 pandemic, the parties entered into a Memorandum of Agreement (MOA) regarding the implementation of blended and/or remote learning for the upcoming school year, during such times as blended and/or remote learning are

[1] All dates herein occur in 2020 unless otherwise indicated.

[2] We grant the Union's request insofar as the portion of the Complaint regarding the unilateral change, not the refusal to provide information and refusal to arbitrate.

authorized by the Illinois State Board of Education regulations and/or Gubernatorial disaster declaration. Per the MOA, the onset of the school year would be in remote learning at a minimum until October 16 and the parties would meet no later than two weeks prior to the planned implementation of any period of the blended learning plan to determine if remote learning would continue. The MOA provided that "While Remote Learning is being implemented, teachers will have the daily (Monday – Friday) option of reporting to their classroom, home or another instructionally appropriate location." On September 29, the District's Superintendent notified bargaining unit members that they would no longer have a choice to work remotely during the 2020-2021 school year, but would have to be physically present in the schools to teach as their students continued to learn remotely, beginning October 19. Bargaining unit members returned to schools only to discover that there was no heat at Proviso East High School, no hot water at Proviso East or West, many rooms in all of the buildings had not been cleaned, school administrators failing to wear masks, and the District unable to supply appropriate personal protective equipment (PPE).

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. *District 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 Union alleges that the District violated Section 14(a)(5) of the Act by requiring bargaining unit members to be physically present in schools while conducting remote learning 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 of bargaining 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 the workplace 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 District argues that there is not reasonable cause to believe that the Act has been violated because the status quo is that teachers provide services at the schools, and that the MOA was a temporary pause from that status quo meant to last between the start of the year and October 16. Yet the language of the MOA does not indicate its expiration on that date, but that remote learning would be "at a minimum until October 16, 2020." From the evidence that is currently before us, to say that the MOA is not the current status quo would render the MOA, and the very notion of MOAs, worthless. This is because to do so would suggest that the parties are not bound by the MOA, even though they bargained for its terms. Yet here, the District has chosen not to follow the MOA's term allowing bargaining unit members the choice of where to teach as their students continue to remote learn. The fact that the MOA is intended to be temporary in its terms does not give the District the power to pick and choose which terms of the MOA it will follow while the MOA is still in effect.

The District claims that it fulfilled its obligation per the MOA to meet no later than two weeks before a change in status and that it engaged in a give and take with the Union which resulted in an agreement to come back to work. That the District already announced its decision on the matter 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 District 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 will be affected to a great degree by the District's refusal to bargain because it could lead to the further and unnecessary spread of COVID 19. Particularly at this time, when the number of COVID-19 cases is on the rise in Illinois. The District's argument that the underlying harm, that teachers could get sick, is speculative and cannot qualify as irreparable harm is shocking, given that getting sick with the COVID-19 virus has resulted in the death of many people in Illinois and worldwide. The District notes that the risk of COVID-19 infection is far greater for a bargaining unit member who goes shopping at a grocery store than one who comes to work in the District's schools. However, bargaining unit members have a choice whether to visit the grocery store or shop online, whether to shop at grocery store A over grocery store B because they believe store A engages in better sanitation, or to walk out of a grocery store altogether if they feel they are at risk. Bargaining unit members are afforded none of those choices as they teach from the District's buildings. The District did not even supply bargaining unit members with appropriate PPE or consistently have hot water necessary to wash their hands to prevent the further spread of the virus. Ordinary IELRB remedies, such as backpay, unfortunately are not adequate to remedy the irreparable harm resulting from the potential spread of COVID 19. The District suggests that bargaining unit members who contract COVID-19 in its buildings have available to them applicable relief under the State mandated workers' compensation structure. Although whatever relief is available under workers' compensation is outside of this Board's jurisdiction to award, it is hard to imagine it would be and adequate remedy to death and the further spread of the virus in Illinois. The effects of the District'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 grant the Union's request that the IELRB seek preliminary injunctive relief and authorize our General Counsel to seek the following injunctive relief: To enjoin the District from requiring bargaining unit members to teach remote learning

from the District's buildings 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: **November 5, 2020**
Issued: **November 5, 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

Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400
Chicago, Illinois 60601
312.793.3170 | 312.793.3369 Fax
elrb.mail@illinois.go