

STATE OF ILLINOIS  
EDUCATIONAL LABOR RELATIONS BOARD

Highland Community College Faculty	)	
Senate, Local 1957, IFT-AFT, AFL-CIO,	)	
	)	
Complainant	)	
	)	
and	)	Case No. 2022-CA-0033-C
	)	
Highland Community College, Dist. 519,	)	
	)	
Respondent	)	

**OPINION AND ORDER**

On December 22, 2021, Highland Community College Faculty Senate, Local 1957, IFT-AFT, AFL-CIO (Union) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) against Highland Community College, District 519 (College or Employer). The charge alleged that the College committed unfair labor practices within the meaning of Section 14(a) of the Act by unilaterally changing working conditions and placing bargaining unit members in unsafe conditions by failing to notify them of students who were not in compliance with Governor Pritzker’s Executive Order 2021-20. Executive Order 2021-20 provides, in relevant part, that higher education students who are not fully vaccinated against COVID-19 must test weekly and have negative test results. On December 28, 2021, the Union amended its charge to request preliminary injunctive relief pursuant to Section 16(d) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1 *et seq.*, to require that the College release names of these students. Following an investigation, the Board’s Executive Director issued a Complaint and Notice of Hearing (Complaint). The Complaint alleged that the College violated Section 14(a)(5) and, derivatively, Section 14(a)(1) of the Act by refusing to furnish the Union with the names of all students who attend classes on campus, were not in compliance with Executive Order 2021-20, and were not yet excluded from campus. 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). 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 the Board to consider 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).

An employer violates Section 14(a)(5) of the Act when it refuses to provide the union with information the union has requested that is directly related to its function as the exclusive bargaining representative and reasonably necessary for the union to perform this function. *Chicago School Reform Board of Trustees v. IELRB*, 315 Ill. App. 3d 522, 734 N.E.2d 69 (1st Dist. 2000); *Western Illinois University*, 31 PERI 201, Case No. 2014-CA-0007-S (IELRB Opinion and Order, May 21, 2015). At the current juncture in this case, it is not clear how the names of the students who have not complied with Executive Order 2021-20 relate to the Union's function

as the exclusive bargaining representative. The College asserts in its brief to the Board on the injunctive relief issue that the Union has failed to demonstrate that the information impacts working conditions. The Union, the party who is requesting the Board take the extraordinary step of petitioning the circuit court, does not address this issue to the Board. The Union did not file a brief to the Board on the injunctive relief issue, despite correspondence from the Board's General Counsel specifically directing it to do so. That is not to say that the student names are not or could not be related to the Union's role as exclusive representative. But that relevancy is a factual dispute to be determined by an Administrative Law Judge after a hearing. There is not a significant likelihood of the Union prevailing on the merits because critical facts are still in dispute.

Even where information is presumptively relevant, a union will not be entitled to the information requested when the employer has raised a bona fide objection, such as a reasonable good faith confidentiality concern. *Alton Community Unit School District 11*, 21 PERI 79, Case No. 2002-CA-0051-S (IELRB Opinion and Order, March 23, 2005); *Dupo Community Unit School District # 196*, 13 PERI 1044, Case No. 96-CA-0021-S (IELRB Opinion and Order, December 11, 2007). Here, the College contends that the student names are privileged under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, a federal law that protects the privacy of student education records. Whether the Union is not entitled to the student names because that information is privileged under FERPA is a bona fide objection is an unresolved issue of law that demonstrates that the Union has not established reasonable cause to believe that the College violated the Act. *Chicago Board of Education*, 2020 IL ERB LEXIS 81; *East St. Louis School District 189*, 11 PERI 1082, Case No. 96-CA-0008-C (IELRB Opinion and Order, September 28, 1995).

Because there is not reasonable cause to believe that the Act was violated, we will not address whether preliminary relief is just and proper in this case.

**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: **February 16, 2022**

Issued: **February 16, 2022**

/s/ Lara D. Shayne  
Lara D. Shayne, Chairman

/s/ Steve Grossman  
Steve Grossman, Member

/s/ Chad D. Hays  
Chad D. Hays, Member

/s/ Michelle Ishmael  
Michelle Ishmael, Member

/s/ Gilbert F. O’Brien  
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