

COOK COUNTY, ILLINOIS

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CASE NO. _____
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LAW DIVISION
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CLASS ACTION
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JURY TRIAL DEMANDED
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PLAINTIFF AMY KESSEM, et al., CLASS ACTION COMPLAINT

Plaintiffs, Amy Kessem and Robert Roth, by and through their undersigned attorneys,
individually and behalf of their minor children and as representatives of plaintiff classes, for their
Complaint against Defendants Chicago Teachers Union, Jesse Sharkey, and Stacy Davis Gates,
individually and as representatives of a defendant class, and American Federation of Teachers,
state as follows:

INTRODUCTION

1. Schools exist to educate students. *See* Ill. Const. Art. X, Sec. 1 (“A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.”). Teachers and other educational employees are hired to serve this goal.

2. Under Illinois law, educational employees have the right to engage in certain protected forms of concerted activity, including the right to organize, select representatives of their own choosing, and engage in collective bargaining.
3. Illinois law provides a statutory scheme to protect the rights of students, parents, and the community while providing for an orderly and constructive relationships between educational employees and their employers, including a protocol educational employees must follow before engaging in a strike.
4. Illinois law also provides that educational employee unions and employers can agree to “no strike” provisions in their collective bargaining agreements, prohibiting strikes during the term of collective bargaining agreements.
5. Despite these provisions of Illinois law, and despite the existence of a “no strike” clause in their collective bargaining agreement, from January 5 to January 11, 2022, members of the Chicago Teachers’ Union (“CTU”) engaged in an illegal and unlawful strike in violation of Illinois law and in clear breach of CTU’s collective bargaining agreement with the Chicago Board of Education (“Chicago Public Schools” or CPS). As a result of the unlawful strike, hundreds of thousands of students and parents saw a week of their lives upended: Students lost the opportunity to learn, and parents’ work and routines were thrown into chaos as they had to miss scheduled shifts or use vacation and sick days unexpectedly to care for their minor children. Others incurred unexpected costs paying babysitters or day care to watch their kids.
6. That chaos was the direct, foreseeable result of the strike – indeed, it was the *point* of the strike, because that chaos is what puts pressure on the mayor and school board to cave to the union’s demands.

7. CTU's January 2022 strike was illegal and tortious, and the students and parents who suffered as a result deserve to be made whole for the union's intentionally injurious and illegal behavior.

PARTIES

8. Plaintiff Amelia (Amy) Kessem is the parent of two children who attended public schools operated by CPS in January 2022.
9. Plaintiff Robert Roth is the parent of one child who attended public schools operated by CPS in January 2022.
10. The Chicago Teachers Union is an “employee organization” or “labor organization” as defined by the Illinois Educational Labor Relations Act, 115 ILCS 5/2(c). Additionally, CTU is an “exclusive representative” as defined by the Illinois Educational Labor Relations Act, 115 ILCS 5/2(d), as it has been recognized by CPS as the exclusive representative of CPS teachers.
11. The American Federation of Teachers (“AFT”) is a national labor union for teachers. CTU is Local 1 of the AFT.
12. Jesse Sharkey was president of CTU during January 2022.
13. Stacy Davis Gates was vice president of CTU during January 2022. She is now president.

JURISDICTION & VENUE

14. This Court has subject matter jurisdiction as a court of general jurisdiction to hear tort and contract claims. Ill. Const. Art. VI, Sec. 9. The Court also has jurisdiction as to the request for declaratory relief pursuant to 735 ILCS 5/2-701.
15. This Court has personal jurisdiction over the Defendants for their business, their contract, and their tortious conduct in Illinois. 735 ILCS 5/2-209.
16. Venue is proper because Plaintiffs reside in Cook County, CTU, Sharkey, and Gates reside in Cook County, and all relevant actions that concern this matter took place in Cook County. 735 ILCS 5/2-101.

FACTUAL ALLEGATIONS

The Covid-19 Pandemic

17. On March 13, 2020, the President of the United States declared a nationwide emergency due to the 2019 SARS-Cov-2 (“COVID-19”) pandemic, and the Illinois Governor directed that all schools in Illinois suspend in-classroom learning at schools across the state.

18. In order to ensure that students in Chicago could continue to receive their education despite the pandemic, Chicago Public Schools (“CPS”) initiated remote learning protocols across the school district on April 13, 2020. CPS continued remote learning for the remainder of the 2019-2020 and 2020-2021 school years.

19. Throughout the spring of 2020, while scientists participated in research programs to produce vaccines against COVID-19, public health officials directed the use of COVID-19 spread mitigation strategies, including social distancing and masking.

20. In November and December of 2020, the United States Food and Drug Administration (“FDA”) granted emergency use authorization for various vaccines to address the COVID-19 pandemic.

21. According to the CDC, by April 21, 2021, more than 200 million COVID-19 vaccine doses had been administered in the United States.

22. On May 12, 2021, the CDC recommended vaccines be administered for all adolescents ages 12-15 years old.

23. On August 11, 2021, the CDC released a statement assuring the public that COVID-19 vaccination is safe for pregnant and breastfeeding people and that there was no evidence that any of the COVID-19 vaccines cause fertility problems in women or men.

24. On August 23, 2021, the FDA fully approved the Pfizer vaccine for all people 18 and older.
25. On December 17, 2021, the CDC released two reports highlighting the use of test-to-stay practices to help keep students in school during the COVID-19 pandemic.
26. On December 27, 2021, the CDC shortened the recommended isolation period for people with COVID-19 to 5 days, followed by 5 days of wearing a mask around others if they are asymptomatic or their symptoms are resolving.

Chicago Public Schools during the COVID-19 Pandemic

27. As the nation adjusted to masking and vaccines, parents and students demanded that schools reopen for in-person learning.
28. In August 2020, when CPS considered a partial return to in-person learning, CTU threatened to strike until CPS caved.¹
29. In October 2020-January 2021, CPS announced a plan to return its students pre-K to eighth grade to in-person learning. CTU challenged CPS's plan by filing unfair labor practices charges with the Illinois Educational Labor Relations Board, and then CTU called a vote on a work stoppage. After the vote passed overwhelmingly, CPS reversed its plan to return to in-person learning and instead continued remote learning for all grades.²

¹ <https://www.cbs58.com/news/chicago-public-schools-will-start-the-school-year-all-virtual>.

² <https://chicago.suntimes.com/education/2021/1/21/22242706/ctu-cps-strike-walkout-remote-learning-public-schools-teachers-union>; <https://www.ctulocal1.org/posts/educators-overwhelmingly-vote-in-favor-of-safety-continued-remote-learning/>; <https://wgntv.com/news/coronavirus/cps-students-resume-remote-learning-wednesday-as-threat-of-teachers-strike-looms/>.

30. CPS finally achieved full, all-week, district-wide, in-person classes at the start of the 2021-22 school year. From August to December 2021, CPS successfully managed districtwide, in-person education for all of its students.

31. In December of 2021, CPS announced that it would return to in-person learning on January 3, 2022, after the winter holiday break.

The January Strike of 2022

32. On January 5, 2022, CTU initiated a strike against CPS, and members of CTU walked off the job and refused to report to work (hereafter, the “January Strike”).

33. The January Strike was the culmination of a lingering dispute between CTU and CPS concerning the COVID-19 pandemic and CTU’s objection to in-person learning.

34. In April 2021, after CPS returned to in-person learning for K-8 students, CTU threatened a walk-out over a return for high school students.³

35. On December 28, 2021, CTU polled its members whether they would support a “city-wide work stoppage” if CPS forced them to return to in-person learning given the emergent Omnicron version of COVID.⁴

36. 91 percent of the survey respondents voted to support the work stoppage.⁵

37. CPS informed parents, who were seeing news stories about CTU’s poll, that school would return from winter break as scheduled on January 3. CPS did hold in-person learning on Monday, January 3, and Tuesday, January 4.

³ <https://www.chalkbeat.org/chicago/2021/4/11/22379120/chicago-teachers-union-sets-date-for-possible-walkout-as-negotiations-continue/>

⁴ <https://www.dailywire.com/news/chicago-teachers-union-asks-their-members-to-decide-if-they-will-return-to-remote-learning>

⁵ <https://dailycaller.com/2021/12/29/majority-chicago-union-teachers-strike-remote-learning/>

38. On the evening of Tuesday, January 4, the CTU House of Delegates (its governing body) held a meeting and voted to send a poll to members about a work stoppage.

39. “73% of voting rank-and-file members opted to pause in-person learning and teach remotely until Jan. 18 or until COVID rates declined. Voting took place electronically Tuesday evening after a meeting of the union’s delegate body, with 14,290 teachers voting in favor of the remote-work-only resolution and 5,208 voting against out of the group’s total 25,000 membership.”⁶

40. The results of that vote were announced at approximately 11 p.m.

41. The strike was called by the union, not CPS—AFT President Randi Weingarten referred to it publicly as a “teacher-union-called job action.”⁷

42. A statement from CTU indicated: “The action will end when one of the following conditions is met: The current surge in cases substantially subsides, or the mayor’s team at CPS signs an agreement establishing conditions for return that are voted on and approved by the the [sic] CTU House of Delegates.”⁸

43. The House of Delegates did not approve a plan until the night of Monday, January 10. However, the plan included a provision that only teachers would return to school buildings on Tuesday, January 11, but that school would be cancelled for students.⁹

44. Thus, as the direct result of CTU’s illegal strike, CPS schools were closed January 5, 6, 7, 10, and 11—five scheduled school days.

⁶ <https://www.chalkbeat.org/chicago/2022/1/4/22867772/chicago-schools-close-ctu-vote-teachers-union-omicron/>

⁷ <https://www.nytimes.com/2022/01/10/opinion/omicron-school-closures.html>

⁸ <https://abc7chicago.com/chicago-public-schools-covid-testing-cps-news/11423469/>

⁹ <https://news.wttw.com/2022/01/10/students-set-return-classroom-chicago-teachers-suspend-labor-action>

45. As a result of the January Strike, five school days were cancelled in January 2022 because CTU ordered its members not to follow their employer's instructions to report to work.
46. Regardless of whether the teachers' work refusal was referred to as a remote-work job action, a sick-out, or a work stoppage, the conduct constituted a strike within the meaning of the Illinois Educational Labor Relations Act. *See Chi. Bd. of Educ. v. Chi. Teachers Union*, 33 2017 IL ERB LEXIS 50, *11-12, 33 PERI ¶ 124.¹⁰ "[T]he test is not whether the union calls its action a strike, but whether the effect of its action is equivalent to that of a strike," *i.e.*, "whether the union's conduct constitutes a concerted failure to report for work." *Id.*
47. CTU's conduct in the January Strike was a concerted failure to report to work: CPS told teachers to come to their buildings to teach, and CTU ordered them not to do so.
48. The January Strike was in violation of the provisions governing strikes by educational employees under Illinois law, so it was illegal. 115 ILCS 5/13(b). It also breached the collective bargaining agreement between CTU and CPS.
49. During the course of the strike, "Mayor Lori Lightfoot repeatedly referred to it as an 'illegal work stoppage.'"¹¹

¹⁰ *Accord Ky. ex rel. Beshear v. Dickerson*, Civil Action No. 3: 19-033-DCR, 2019 U.S. Dist. LEXIS 78524, at *14 (E.D. Ky. May 9, 2019); *City of Santa Ana v. Santa Ana Police Benevolent Ass'n*, 207 Cal. App. 3d 1568, 1573, 255 Cal. Rptr. 688, 691 (1989); *Manchester v. Manchester Firefighters Ass'n*, 120 N.H. 230, 234, 413 A.2d 577, 579 (1980); *Air Transp. Assn. v. Prof'l Air Traffic Controllers Org. ('PATCO')*, 453 F. Supp. 1287, 1289 (E.D.N.Y. 1978); *Foam & Plastics Div., Tenneco Chems., Inc. v. Gen. Drivers & Helpers Local Union 401, etc.*, 520 F.2d 945, 947 (3d Cir. 1975); *Johnson v. Hertz Corp.*, 387 F. Supp. 208, 211 (D.N.J. 1974). These cases "have uniformly asserted substance over formality in considering whether or not a particular activity, such as a 'sick out,' constitutes a strike." *Cal. Trucking Assn. v. Bhd. of Teamsters & Auto Truck Drivers, Local 70*, Nos. C-70-883 AJZ and C-70-1057 AJZ., 1977 U.S. Dist. LEXIS 17179, at *27-28 (N.D. Cal. Feb. 25, 1977), *rev'd on other grounds*, 679 F.2d 1275 (9th Cir. 1981)

¹¹ <https://news.wttw.com/2022/02/02/jesse-sharkey-president-chicago-teachers-union-not-running-reelection>

50. During the course of the strike, CPS also called it an “illegal work stoppage.”¹²
51. During the course of the strike, several parents (including Kessem) filed a lawsuit in Cook County Circuit Court to enjoin it as an illegal strike¹³ (the strike ended before the court ruled).
52. Mayor Lightfoot, CPS, and the Parents were right then and the Plaintiffs are right now: The January Strike was an illegal strike.

Strikes by Educational Employees under Illinois Law

53. Illinois’s educational labor relations act specifies when a strike is legal. 115 ILCS 5/13(b) requires a number of safeguards before a strike, including: (A) attempted mediation, (B) a vote in support of the strike by at least three-fourths of all bargaining unit employees who are members of the exclusive bargaining representative, (C) at least 10 days have elapsed after a notice of intent to strike has been given by the exclusive bargaining representative to the educational employer, the regional superintendent and the Illinois Educational Labor Relations Board, and (D) the collective bargaining agreement between the educational employer and educational employees, if any, has expired or been terminated.
54. However, CTU’s January Strike did not comply with the procedural requirements of Section 13 of the Illinois Educational Labor Relations Act.
55. CPS and CTU did not engage in mediation on the issues that prompted the strike.
56. Only 73 percent of CTU members voted to strike, not the 75 percent required by Section 2.10.

¹² <https://thesouthlandjournal.com/chicago-public-schools-responds-to-illegal-work-stoppage/>

¹³ *Golden v. Chicago Teachers Union*, Case 2022CH00144 (Cook Cty. Cir. Ct., Chancery Div.).

57. CTU never sent a notice of its intent to strike to CPS or the Educational Labor Relations Board.

58. 10 days did not pass between the vote to strike and the start of the strike.

59. The collective bargaining agreement had not expired or been terminated.

CTU's Collective Bargaining Agreement

60. The January Strike was also a breach of the collective bargaining agreement that existed between CTU and the Chicago Board of Education.

61. In November 2019, CPS and CTU entered a five-year (2019–2024) collective bargaining agreement governing the wages, hours, terms and conditions of employment of teachers in district/traditional (non-charter) employed by CPS (the “CBA”). The CBA is attached as Exhibit A to the Complaint.

62. The CBA was adopted November 20, 2019, and by its terms remains in force until June 30, 2024. *Id.*

63. Part of the CBA provides: “During the term of this Agreement, the UNION agrees not to strike nor to picket in any manner which would tend to disrupt the operation of any public school in the city of Chicago or of the administrative offices or any other facility of the BOARD.” *Id.*

64. That CBA makes clear that the students of CPS are intended third-party beneficiaries of the agreement from its opening lines: “The purpose of this Agreement is to reaffirm the parties’ common responsibility to maintain a collaborative and collegial collective bargaining relationship that furthers the parties’ shared goal of delivering high quality instructional programs and significantly advancing a well-rounded public education for the students of the Chicago public school system.”¹⁴

¹⁴ <https://www.ctulocal1.org/wp-content/uploads/2021/09/CPS-CBA-2019-24.pdf>

65. The CBA continues, “The parties firmly believe that a well-rounded public education is an absolute necessity for any graduate to be considered college-, career- and citizenship-ready. The parties also recognize that a well-rounded public education includes, but is by no means limited to, providing students with an enriched, diverse and comprehensive curriculum that allows them to obtain essential knowledge and skills; engage in critical and creative thinking; develop independent inquiry skills and an appreciation for the arts, music and literature; improve their physical and emotional health; prepare for leadership roles in their communities; attain the technical skills necessary to become career-ready; develop the academic discipline and proficiency in the intelligent use of technology necessary to become college-ready; and ultimately graduate from the Chicago public school system prepared to become productive and self-confident citizens capable of ethical participation in a free and democratic society.” *Id.*

66. The CBA continues, “to foster a cosmopolitan spirit and better develop CPS students as tolerant and unbiased citizens, the BOARD and the UNION shall work affirmatively to the end that each student may have the educational advantage of an integrated school.” *Id.*

CTU’S Duty to Students and Parents

67. In addition to the general common law duties to exercise ordinary or reasonable care and to follow the law, CTU described itself in its own materials as owing a special obligation to the students of CPS and their families.

68. On the “About Us” section of its website, CTU says: “Our union is a fellowship of educators across this city who care for students and equip them for their destinies. As we band together for the common good, we must remind ourselves constantly of the amazing things that

each of our teachers, paraprofessionals and clinicians do every day in support of children and their families.”¹⁵

69. On every one of its press releases, CTU ends with a summary description of itself for journalists: “The Chicago Teachers Union represents nearly 30,000 teachers and educational support personnel working in Chicago Public Schools, and by extension, the more than 300,000 students and families they serve.”¹⁶

70. Elsewhere on its website, CTU states, “For more than 75 years the Chicago Teachers Union has fought for the schools Chicago’s students deserve. The CTU represents nearly 30,000 teachers, paraprofessional and school-related personnel, and school clinicians working in the Chicago Public Schools and, by extension, the students and families they serve.”¹⁷

71. In its mission statement, CTU says, “Our Mission: We, teachers, and other educational personnel in the Chicago Public Schools, being members of the Chicago Teachers Union, do hereby declare this Union to have the following purposes: 01. to protect and improve the services of the public schools as a social agency for developing the capacities of the young and promoting adult education.”¹⁸

72. In CTU’s own vision of its role, it claims to act as a privileged voice for and servant of parents and students, and also owes them a corresponding duty.

CTU Executives Jesse Sharkey and Stacy Davis Gates

73. At the time of the January Strike, Sharkey was president of CTU. As such, he was “chief executive officer of the union.” *See* CTU Constitution, Art. VI, Sec. 1; Art. VII, Sec. 1.¹⁹

¹⁵ <https://www.ctulocal1.org/union/>

¹⁶ See, e.g., <https://www.ctulocal1.org/posts/bhm-blood-drive-press-announcement/>

¹⁷ <https://www.ctulocal1.org/about/>

¹⁸ <https://www.ctulocal1.org/about/>

¹⁹ <https://www.ctulocal1.org/union/constitution/>

74. Sharkey signed the CBA on behalf of CTU.
75. At the time of the January Strike, Gates was vice president of CTU.
76. As the president and vice president, Sharkey and Gates were the principal executive officers of the union responsible for leading the union’s policy on the strike.
77. As the president and vice president, Sharkey and Gates were ex officio members of the House of Delegates. CTU Constitution Art. XIII, Sec. 2(b).
78. In the lead-up to the January Strike, Sharkey told a local radio station, “A temporary short-term pause of in-person instruction is necessary.”²⁰
79. At the time of the January Strike, Sharkey took responsibility, for instance telling the *Washington Post*, “The only thing we can control is whether we go into the buildings.”²¹ The story continued, “He said teachers would not come back before Jan. 18 unless the surge in cases subsides or the union reaches an agreement with the city. . . .”
80. Gates was also a prominent public spokesperson for the strike alongside Sharkey. “‘We had to wal ... hmm.,’ she said, pausing. ‘We had to go on a remote action for face coverings in the middle of a pandemic. We had to go on a remote action to get more testing inside of our school communities in the middle of a pandemic.’”²²
81. MembersFirst, a caucus of members within CTU opposed to the January Strike, said following the strike, “The current leadership of the CTU [*i.e.*, Sharkey and Gates] sees work

²⁰ <https://wgnradio.com/john-williams/ctu-president-jesse-sharkey-a-temporary-short-term-pause-of-in-person-instruction-is-necessary/>.

²¹ <https://www.washingtonpost.com/education/2022/01/05/chicago-teachers-union-classes-canceled-covid/>

²² <https://patch.com/illinois/chicago/ctu-bosses-need-build-better-relationship-truth>.

stoppages and strikes as the first step, and not the last one. They are far more focused on being in front of the camera and advancing their own political careers than delivering for us.”²³

American Federation of Teachers

82. The American Federation for Teachers encouraged, supported, and conspired with CTU on its illegal strike.

83. During the pandemic, AFT President Randi Weingarten called a return to in-person learning “reckless, callous, and cruel.”²⁴

84. Politico reported that “[t]he American Federation of Teachers called Tuesday for ‘safety strikes’ as a last resort if school reopening plans don’t meet demands for keeping educators healthy and safe amid the coronavirus pandemic. Union President Randi Weingarten delivered that battle cry during an address to union members.”²⁵

85. AFT got what it called for when CTU refused to return to in-person learning and called a five-day illegal strike to force CPS to accept its demands.

86. At the time Weingarten tweeted, “Mayor Lightfoot should be moving heaven and earth to get it right in Chicago,” blaming the Mayor and CPS for the strike rather than CTU.²⁶

87. Similarly, the *New York Times* reported that Weingarten was blaming CPS rather than CTU for the strike.²⁷

88. During the course of the strike, the *New York Times* has reported, Weingarten and AFT “supported the C.T.U., while also saying that children needed to be in the classroom. Behind the

²³ <https://www.chicagotribune.com/2022/01/25/chicago-teachers-union-leaders-face-challenge-from-within-their-ranks-following-covid-19-work-action-that-canceled-school-for-5-days/>

²⁴ <https://www.theguardian.com/us-news/2020/jul/17/trump-teachers-reopening-schools-coronavirus-randi-weingarten>

²⁵ <https://www.politico.com/news/2020/07/28/aft-strikes-school-reopening-384133>

²⁶ <https://www.foxnews.com/us/chicago-school-system-teachers-union-omicron>

²⁷ <https://www.nytimes.com/2022/01/04/us/chicago-teachers-union-remote-learning.html>

scenes, she was calling and texting Sharkey constantly, offering to do anything she could — even arrange a call with people at the White House — to help press [Mayor] Lightfoot and end the strike.”²⁸

89. In other words, AFT knew of the strike, publicly supported the strike, was in constant communication with Sharkey and CTU during the strike, and was actively conspiring with Sharkey and CTU and others to force concessions from the Mayor and CPS as a payoff for ending the illegal strike.

Factual Allegations as to Plaintiffs

90. Plaintiff Amelia (Amy) Kessem is the parent of two children who attended public schools operated by CPS in January 2022. They were forced to stay home from school by the strike, upsetting their plans and routines and work schedules.

91. Plaintiff Robert Roth is a Chicago Police officer.

92. He is the parent of CPS student Sasha Roth, a minor who was in eighth grade at the time of the strike.

93. During the CTU strike of 2022, Roth’s daughter was very upset that she was not at school once again. She thrived in a social learning environment among her friends and teachers and had a hard time emotionally doing classwork from home.

94. The strike also caused a great deal of stress and anxiety as her mom was dealing with a medical injury, while Robert was working as a police officer.

95. The strike forced them to scramble to find babysitters, whom they had to pay out-of-pocket for help.

²⁸ <https://www.nytimes.com/2023/04/28/magazine/randi-weingarten-teachers-unions.html>.

96. It also caused Robert a lack of sleep between shifts as he tried to balance work and home in the midst of all the demands of caring for a child during the school day and caring for his wife with her injury while also continuing his important work as an officer.

STUDENT PLAINTIFF CLASS ALLEGATIONS

97. Pursuant to 735 ILCS § 5/2-801, the Plaintiffs request certification of the following class: all parents and legal guardians of minor children, on behalf of their minor children, and all adult students (*i.e.*, students over age 18) enrolled in Chicago Public Schools's district schools (*i.e.*, all of CPS except for charter schools) from January 5 to January 12, 2022.

98. The class is too numerous that joinder of all members is impracticable. Chicago Public Schools enrolled 323,251 at the start of the 2023-24 school year in its traditional, charter, contract, and SAFE schools.²⁹ Of those, approximately 290,000 were enrolled in non-charter schools at the time of the strike.³⁰ A class of 290,000 or so students is too numerous for joinder of all individual members.

99. The question of fact is common to the entire class: every single student missed five days of school because CTU engaged in an illegal strike during the January Strike.

100. The questions of law are also common to the entire class:

- a. Count 1 – Did CTU's illegal strike breach its duty of ordinary care, and did that breach cause them harm, such that it committed the tort of negligence?
- b. Count 2 – Did CTU's illegal strike constitute a public nuisance that endangered the public safety, convenience, and comfort of the students, and did that nuisance cause the students harm?

²⁹ <https://www.cps.edu/about/district-data/demographics/>

³⁰ <https://chicago.suntimes.com/education/2022/1/4/22867100/cps-ctu-classes-district-proposal-teachers-vote-remote-learning>

- c. Count 3 – Did CTU conspire with Sharkey, Gates, and AFT to commit its tortious misconduct?
- d. Count 4 – Did CTU’s strike violate the School Code, and is an implied cause of action available to students for such violations?
- e. Count 5 – Is the class third-party beneficiaries of the collective bargaining agreement, and did CTU breach the agreement?

101. The Plaintiffs are appropriate class representatives. They will fairly and adequately protect the interests of the class. Kessem was a plaintiff in an initial action to stop the CTU strike while it was underway, demonstrating her commitment to this cause. They have hired experienced litigation counsel to represent them, and they have no conflicts of interest vis-à-vis the rest of the class.

102. The class action is an appropriate method for the fair and efficient disposition of this dispute, as it will result in a timely and consistent result for all affected parties compared to piecemeal litigation.

103. Contact information for the class is available from the business records of the Chicago Public Schools, which are allowed to disclose such directory information under the Federal Educational Rights and Privacy Act (FERPA).

PARENT PLAINTIFF CLASS ALLEGATIONS

104. Pursuant to 735 ILCS § 5/2-801, the Plaintiffs request certification of the following class: all parents and legal guardians of minor children enrolled in Chicago Public Schools's district schools (*i.e.*, those subject to the collective bargaining agreement) from January 5 to January 12, 2022.

105. The class is too numerous that joinder of all members is impracticable. Approximately 290,000 students saw their classes cancelled because of the strike.³¹ Assuming that each of these students comes from a typical American family with 1.94 children, that means approximately 145,000 families.

106. The questions of law are common to the entire class:

- a. Count 1 – Did CTU's illegal strike breach its duty of ordinary care, and did that breach cause the parents harm, such that it committed the tort of negligence?
- b. Count 2 – Did CTU's illegal strike constitute a public nuisance that endangered the public safety, convenience, and comfort of the students and parents, and did that nuisance cause the parents harm?
- c. Count 3 – Did CTU conspire with Sharkey, Gates, and AFT to commit its tortious misconduct?
- d. Count 4 – Did CTU's strike violate the School Code, and is an implied cause of action available to parents for such violations?

³¹ <https://chicago.suntimes.com/education/2022/1/4/22867100/cps-ctu-classes-district-proposal-teachers-vote-remote-learning>

- e. Count 5 – Is the class third-party beneficiaries of the collective bargaining agreement, and did CTU breach the agreement?

107. The primary question of fact is common to the entire class: every single parent or guardian was responsible for a student who missed five days of school because CTU undertook an illegal strike.

108. The plaintiffs are appropriate class representatives. They will fairly and adequately protect the interests of the class. Kessem was a plaintiff in an initial action to stop the CTU strike while it was underway, demonstrating her commitment to this cause. They have hired experienced litigation counsel to represent them, and they have no conflicts of interest vis-à-vis the rest of the class.

109. The class action is an appropriate method for the fair and efficient disposition of this dispute, as it will result in a timely and consistent result for all affected parties compared to piecemeal litigation.

110. Contact information for the class is available from the business records of the Chicago Public Schools, which are allowed to disclose such directory information under the Federal Educational Rights and Privacy Act (FERPA).

DEFENDANT CLASS ALLEGATIONS

111. CTU is an unincorporated voluntary association. It is not incorporated or registered as an entity with the Illinois Secretary of State. As such, it can be sued in its own name and for its own assets. 735 ILCS 5/2-209.1.

112. Members of a nonprofit voluntary unincorporated association may be personally liable for the torts of the organization or a fellow member when they have authorized or ratified the

tortious conduct or actively participated in the tortious conduct. *Pecoraro v. Balkonis*, 891 NE 2d 484, 491-92 (1st Dept. 2008).

113. On January 4, 2022, Chalkbeat reported: “A majority of Chicago teachers voted to refuse to report to school buildings Wednesday because of concerns over COVID safety and the city’s rising positivity rate, effectively shutting down the nation’s third-largest school district for the day — and possibly for days to come. The union said 73% of voting rank-and-file members opted to pause in-person learning and teach remotely until Jan. 18 or until COVID rates declined. Voting took place electronically Tuesday evening after a meeting of the union’s delegate body, with 14,290 teachers voting in favor of the remote-work-only resolution and 5,208 voting against out of the group’s total 25,000 membership.”³² CBS News reports, “Usually, it is just the House of Delegates that make decisions on such issues. But a CTU spokesperson said since remote learning is such a critically important decision, all 25,000 members of the rank-and-file are also being asked to weigh in on this by electronic ballot on Tuesday.”³³

114. Thus, pursuant to 735 ICLS § 5/2-801, Plaintiffs request certification of a defendant class of all members of CTU who voted in favor of the illegal strike.

115. Pursuant to the same statute, in the alternative, because the CTU House of Delegates is the supreme decision-making body for the union, Plaintiffs request certification of a sub-class of all members of the CTU House of Delegates who voted in favor of the illegal strike.

116. The class is too numerous to name individually: 14,290 persons. The alternative class of the House of Delegates is also too numerous: 600 persons.

³² <https://www.chalkbeat.org/chicago/2022/1/4/22867772/chicago-schools-close-ctu-vote-teachers-union-omicron/>

³³ <https://www.cbsnews.com/chicago/news/chicago-teachers-union-cps-remote-learning-vote-january-2022/>

117. The question of fact is common to all individuals: did they vote to ratify the strike? The list of persons who voted in favor of the strike can be discerned from the business records of CTU.

118. The questions of law are also common to all individuals:

- a. Count 1 – Did CTU’s illegal strike breach its duty of ordinary care, and did that breach cause the students and parents harm, such that it committed the tort of negligence? If so, did the Defendant Class’s vote to ratify the strike make it liable for this tort?
- b. Count 2 – Did CTU’s illegal strike constitute a public nuisance that endangered the public safety, convenience, and comfort of the plaintiff classes, and did that nuisance cause the students and parents harm? If so, did the Defendant Class’s vote to ratify the strike make it liable for this tort?
- c. Count 3 – Did CTU and the Defendant Class conspire with Sharkey, Gates, and AFT to commit its tortious misconduct?
- d. Count 4 – Did CTU’s strike violate the School Code, and is an implied cause of action available to students and parents for such violations? If so, did the Defendant Class’s vote to ratify the strike make it liable for this cause of action?
- e. Count 5 – Are the students third-party beneficiaries of the collective bargaining agreement, and did CTU breach the agreement? If so, did the Defendant Class’s vote to ratify the strike make it liable for this breach?

119. Sharkey, who was president at the time, and Davis, who was vice president at the time and is president now, are adequate and appropriate representatives of the class. They were voting

members of CTU, voting members of the House of Delegates, and elected representatives of the membership overall.

120. The class action is an appropriate method for the fair and efficient disposition of this dispute, as it will result in a timely and consistent result for all affected parties compared to piecemeal litigation.

121. Contact information for the members of the class can be readily discerned from the business records of CTU.

FACTUAL ALLEGATIONS AS TO DAMAGES

122. Professor Joshua Goodman teaches in Boston University's Wheelock College of Education & Human Development. He's also a former public high school math teacher in Watertown, Massachusetts, and a former senior economist in the Biden White House Council of Economic Advisers (2022-23). Speaking of a recent illegal strike in Massachusetts, he said: "Newton students have now lost about 4 percent of their school year, and thus likely 4 percent of the knowledge they would have gained this year. That learning loss will persist until Newton adds back that instructional time, either at the end of the year or in summer school or in after-school hours, all of which seems unlikely to happen."³⁴

123. CPS did not add back or make up days into the summer in 2022.

124. He continues, "I'm sad to see the walkout, given what we've learned these past few years about the importance of keeping kids in school. I do think there are other strategies teachers could use that would be less harmful to students and families." *Id.*

125. He concludes, "I don't think teacher strikes should be legal. These are vital services and families have no alternatives when such critical supports fall apart." *Id.*

³⁴ <https://www.bu.edu/articles/2024/should-teachers-strike/>

126. In his interview, Professor Goodman highlights two injuries that necessarily, obviously, foreseeably flow from a teacher strike: student learning loss and family disruption.

127. To quote Mayor Lightfoot, because of a teacher strike, “learning loss is real.”³⁵

128. President Obama’s political strategist and Chicago native David Axelrod similarly urged teachers to return to in-person learning instead of striking, saying, “What our kids have suffered thru long absences from classrooms already has had a devastating impact.”³⁶

129. As the *Washington Post* reported concerning a 2012 strike by CTU: “what does the strike itself mean for students? Nothing good, the best empirical evidence suggests.” Analyzing studies on teacher strikes in foreign countries and on teacher absences (*i.e.*, when a substitute is called in), the *Post*’s Dylan Matthews finds strikes result in “real lost instructional time and big effects on student learning as a result,” and that these effects “affect their lives for years into the future.”³⁷

130. A working paper from four economists at the University of Nebraska finds that “each day of school missed due to teacher strikes is associated with a 0.015-point decline in GPA for affected [high school] students. . . . Low-performing students are also significantly less likely to graduate after a strike.”³⁸

131. Further evidence is available from academic studies of snow days. Research by Professors David Marcotte and Benjamin Hansen summarized in Education Next found that missing around five days of school due to inclement weather dropped reading and math test

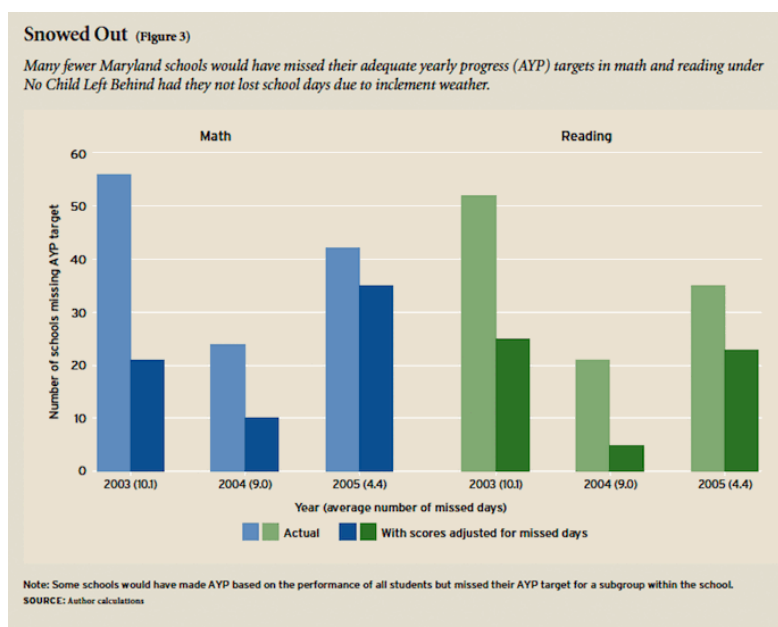
³⁵ <https://news.yahoo.com/learning-loss-real-lori-lightfoot-163845892.html>

³⁶ <https://twitchy.com/gregp/2022/01/05/david-axelrod-slams-the-chicago-teachers-union-over-vote-to-teach-remotely-during-the-covid-surge-n2113685>

³⁷ <https://www.washingtonpost.com/news/wonk/wp/2012/09/10/how-teacher-strikes-hurt-student-achievement/>

³⁸ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4569850

scores for the average Maryland student by about five points. These data confirm other studies they cite showing consistently that more time in school leads to higher test scores.³⁹



132. High school seniors experience additional disruption as they prepare for the next stage in their lives. One student summarized a *San Francisco Chronicle* article about a teacher strike: “The San Francisco Chronicle article discusses the difficulties seniors face, particularly with relation to college applications and standardized testing. Students may miss vital lessons, tests, or assistance during a teacher strike that is essential to their academic progress. This might have an impact on their long-term educational trajectory by causing knowledge gaps and lower performance.”⁴⁰

³⁹ <https://www.educationnext.org/time-for-school/>

⁴⁰ <https://greatschoolvoices.org/2023/05/the-oakland-teachers-strike-impact-on-student-learning/>

133. We can see the value of these days from the money CPS spends to educate its students. According to data from the State Board of Education,⁴¹ CPS spends \$25,910 in instructional spending per student in combined district and state funds (“Instructional Spending Per Student includes only the activities directly dealing with the teaching of students or the interaction between teachers and students”). Federal funds may increase this number further.

134. Regardless, \$25,910 spread over 176 required days of school equals a value of \$147.21 per day of school. Using this method of valuation, the student class missed \$213.4 million worth of learning time, exclusive of the other damages they or their parents experienced.

135. Separate from the missed days themselves, the unexpected break for a week causes learning loss as well. Compare the strike week to winter break. As one school says: “[F]or K-12 students, this can also be the time for learning loss. It is a fact that students can lose almost two months of academic progress over the holidays. This puts a strain on their education come January when they return to school.”⁴²

136. According to one academic study, “shorter breaks, such as winter break and spring break, are also built into the school year and have the potential to negatively impact student achievement (Zvoch, 2016) particularly for students with identified disabilities (Allinder & Fuchs, 1994; Menard & Wilson, 2014). . . . Allinder and Fuchs (1994) studied the effects of a short winter break on math skills for elementary students with and without mild disabilities. Results indicated evidence of loss of math skills after the short winter break.”

⁴¹

<https://www.illinoisreportcard.com/district.aspx?source=environment&source2=perstudentspending&Districtid=15016299025>

⁴² <https://www.methodschoools.org/old-blog/preventing-learning-loss-over-the-holidays#:~:text=However%2C%20for%20K%2D12%20students,when%20they%20return%20to%20school.>

137. Learning loss does real academic and therefore economic harm to students. The Organization for Economic Cooperation and Development, summarizing an academic study, found “long-term effects of strike-related school closures for Argentina: they find that pupils who were affected by teacher strikes in primary school later suffer salary losses of 2-3% on the labour market. They are also more often exposed to unemployment and work in occupations with lower skill requirements.”⁴³

138. Papers by the Harvard University Center for Education Policy Research,⁴⁴ the World Bank,⁴⁵ the OECD,⁴⁶ and the Stanford University Institute for Economic Policy Research all show the strong relationship between learning loss and lifetime earnings.⁴⁷

139. In other words, academic research demonstrates that members of the student class experience a diminished earning capacity over their lifetimes because of this learning loss.

140. In addition to learning loss, Professor Goodman also highlights the family disruption that caretakers experience. As another academic study puts it, “Teacher industrial action is a leading cause of temporary school closures around the globe. These events leave millions of families struggling with disrupted childcare arrangements.”

141. Economists David Jaume and Alexander Willen continue, “These temporary school closures leave millions of families struggling with disrupted childcare arrangements and may have important consequences for the labor market outcomes of parents. This is especially the

⁴³ [https://one.oecd.org/document/EDU/WKP\(2020\)13/en/pdf](https://one.oecd.org/document/EDU/WKP(2020)13/en/pdf)

⁴⁴ <https://cepr.harvard.edu/news/analysis-pandemic-learning-loss-could-cost-us-students-2-trillion-lifetime-earnings-whatthe>

⁴⁵ <https://www.worldbank.org/en/news/press-release/2021/12/06/learning-losses-from-covid-19-could-cost-this-generation-of-students-close-to-17-trillion-in-lifetime-earnings>

⁴⁶ <https://www.oecd.org/education/the-economic-impacts-of-learning-losses-21908d74-en.htm>

⁴⁷ <https://siepr.stanford.edu/publications/policy-brief/simple-and-complete-solution-learning-loss-problem>

case for more vulnerable and disadvantaged individuals, such as low-income mums [sic], who may find it particularly difficult to secure alternative childcare options.”

142. Their study of Argentina finds that: “teacher strikes negatively impact the labor market participation of mothers, and that this translates into a significant reduction in earnings.

Specifically, a mother whose child is exposed to ten days of teacher strikes in the previous year is 2.7 percent less likely to be employed, and suffers a decline in total earnings equivalent to 2.4 percent, relative to the respective means.”

143. Some parents skip work, other parents use sick days or vacation days, and still others are forced to pay for care, as this example from another recent teacher strike shows: “On the first three days of the Portland teacher strike, Cory Hoppmann got his school-aged son back in day care for \$72 a day. The next couple of days, he found a neighborhood babysitter, another \$120. This week, he hired a nanny at a cost of \$600. By the end of this week, Hoppmann’s expenses from the strike will be nearly \$1,000 and could exceed \$2,000 if he doesn’t get prepaid costs for his son’s pre-kindergarten program at Irvington Elementary refunded.”⁴⁸

144. The Hoppmann’s story continues, “On top of that, Hoppmann, who works as an architect, has been working from 9 p.m. to 1 a.m. some nights to catch up on work. Hoppmann and his wife, who works as a respiratory therapist, are burning through vacation time.”

145. And further, “But Hoppmann said he and his wife are ‘at the end of our rope’ and ‘exhausted mentally and physically’ by the strike. And most importantly, he said the strike’s been difficult on his son. ‘The whole program at Irvington has been amazing,’ he said. ‘But it’s

⁴⁸ <https://www.oregonlive.com/business/2023/11/portland-teachers-strike-weighs-on-families-finances-but-unlikely-to-rattle-economy.html>

hard for him. He's sad about it. He doesn't understand.'" Parents across Chicago can tell similar stories.

146. "My daughter cried Thursday and Friday because the schools were closed. My 11-year-old asked if she could switch schools just so she can have in-person classes," [CPS Parent Toni] Larocco [told one reporter]. "That's heartbreaking as a parent, to hear that she would leave everything just to attend school in person."⁴⁹

147. These anecdotal experiences of trauma and distress are validated by academic research on the intense angry and upset feelings students experience during a teacher strike. *See* Esther Greenglass, et al., *Stressful Effects of a University Faculty Strike on Students: Implications for Coping*, 33 *Interchange* 261 (2002). This emotional damage is the third type of damage beyond learning loss (and corresponding earning loss) and direct economic loss (out-of-pocket costs, missed shifts, and burned vacation and sick days).

148. These ramifications happen across the community. As Mayor Lightfoot said: "'The worst thing we can do is shut the entire system down,' she said, noting that she's heard of parents who lost their jobs because they had to stay home with their children the last time CPS went remote. 'If we pause, what do we say to those parents who can't afford to hire someone to come in and watch their kids, who can't ship their kids off to some other place? What do we say to those students who are already struggling?'" An illegal strike "could lead to 'catastrophic consequences' for students and their families."⁵⁰

⁴⁹ <https://www.illinoispolicy.org/strike-cost-chicago-students-5-days-amendment-1-could-cost-them-many-more/>

⁵⁰ <https://news.wttw.com/2022/01/04/cps-cancel-wednesday-classes-if-teachers-union-votes-work-remotely>

149. CTU undertook this illegal strike at a time when 75.9% of students in CPS in 2023 were classified as low-income.

150. CTU undertook this illegal strike in an environment where the overwhelming number of affected students would be from communities of color. *See* Ella Ceron and Shruti Singh, “Chicago’s Cancelled Classes Intensify Debate Over What’s Best for Black, Latinx Students,” Bloomberg News (Jan. 7, 2022).⁵¹

151. CTU undertook this illegal strike at a time when average income in Chicago was \$45,840 in 2022, according to the Census Bureau.

152. The average income for a Chicago Public Schools Teacher was \$87,763 in 2023.

153. In other words, CTU undertook this illegal strike at a time when its members made nearly twice what the average household in Chicago made, and struck knowing it would impose additional out-of-pocket costs for child care on these overwhelmingly low-income and minority student families.

154. CTU has engaged in or threatened multiple work actions in the past several years that disrupted the city and the lives of students and parents.

155. Since CTU’s illegal strike, numerous other teachers unions have also engaged in illegal strikes across the country, including one just this month.⁵²

156. Damages are appropriate to deter CTU, other Illinois teachers unions, and other teachers unions nationally from further illegal strikes. *See* Note, *Statutory and Common Law Considerations in Defining the Tort Liability of Public Employee Unions to Private Citizens for Damages Inflicted by illegal Strikes*, 80 Mich. L. Rev. 1271, 1286 (1982) (“Damage actions

⁵¹ <https://www.bloomberg.com/news/articles/2022-01-07/chicago-public-schools-closed-strike-hits-black-latinx-students?embedded-checkout=true>

⁵² <https://www.k12dive.com/news/newton-ma-teachers-strike-ends/706561/>

impose a cost on public employee unions for illegal strikes. Everything else being equal, this cost will tend to discourage unions from striking and thus further the policy against illegal strikes. And this deterrence is likely to operate more effectively than sanction spelled out under a statute because of the large number of potential plaintiffs.”).

COUNT 1 – NEGLIGENCE

157. Plaintiffs re-allege the allegations set forth in paragraphs 1 through 149.

158. In order to recover for negligence, a plaintiff must plead and prove that: (1) A duty was owed to the plaintiff by the defendant; (2) Injuries or damages were sustained by the plaintiff; and (3) Defendant’s breach of the duty owed to plaintiff was the proximate cause of plaintiff’s injuries or damages. *Dinkins v. Ebbersten*, 234 Ill. App. 3d 978, 983 (4th Dist. 1992); *Thompson v. County of Cook*, 154 Ill. 2d 374, 382 (Ill. 1993).

159. “Violation of a statutory duty gives rise to prima facie evidence of negligence when the plaintiff falls within the group which the statute is intended to protect, and when the harm suffered by the plaintiff is of a type the statute was designed to prevent.” *Cravens v. Inman*, 586 NE 2d 367, 379 (1st Dist. 1991).

160. The strike’s illegality under Section 5/13(b) is prima facie evidence of negligence—the Student and Parent Plaintiff Classes are those the statute is designed to protect, and the harms they suffered are the harms the statute is designed to prevent.

161. CTU owed a duty to the students and parents of CPS to perform its duties, namely to allow its members to work pursuant to their employer’s instructions, and only to engage in a strike in accordance with the requirements of Illinois law.

162. CTU owed a duty to the students and parents of CPS to follow its contractual obligations to CPS, including its promise not to strike.

163. The Defendant Class owed a duty to the students and parents of CPS to show up to work as directed by their employer.

164. CTU should bear the burden of its duty because it incentivizes CTU to follow the law, and placing the burden on CTU ensures that it will follow the law.

165. CTU and the Defendant Class breached their duty by engaging in an illegal strike. The most basic standard of care is to follow the law.

166. CTU and the Defendant Class breached their duty—engaging in an illegal strike is not ordinary, reasonable, or caring.

167. CTU’s illegal strike was the proximate cause of the students’ learning loss. Students had already spent a full semester with in-person learning when CTU refused to return to in-person learning after winter break as directed by the employer, and as a result classes were cancelled.

168. CTU’s illegal strike was the proximate cause of the parents’ missed wages, missed work, and use of vacation, sick, and other paid-time-off benefits, and increased out-of-pocket child-care expenses.

169. CTU’s illegal strike was the proximate cause of the students’ and parents’ emotional distress.⁵³

170. These injuries were foreseeable based on CTU’s experience in prior strikes, CTU’s goals of putting public pressure on the Mayor and School Board to cave, and general knowledge about children, parents, schools, and unions.

COUNT 2 – PUBLIC NUISANCE

171. Plaintiffs re-allege the allegations set forth in paragraphs 1 through 149.

⁵³ Separate from a claim for intentional or negligent infliction of emotional distress, emotional distress is a type of damage resulting from another species of tort for which compensation can be awarded. *Cochran v. Securitas SEC Services USA Inc.*, 93 NE 3d 493, ¶ 24 (Ill. 2017).

172. “A public nuisance is an unreasonable interference with a right common to the general public.” *City of Chicago v. Beretta USA Corp.*, 821 N.E.2d 1099, 1111 (Ill. 2004) (quoting Restatement (Second) of Torts § 821B (1979)).

173. “[F]acts must be alleged in support of four distinct elements of a public nuisance claim: the existence of a public right, a substantial and unreasonable interference with that right by the defendant, proximate cause, and injury.” *Id.*

174. There is a public right to public schools operated in accordance with law and the policy decisions of the responsible policy-makers, here the Chicago Board of Education and Mayor.

175. An illegal strike is a substantial and unreasonable interference with that right.

176. The illegal strike caused the cancellation of school, the proximate cause of the injuries to the students and parents.

177. The students were injured by learning loss.

178. The parents were injured by lost work time and unwillingly used vacation and sick days and out-of-pocket child-care expenses.

179. The students and parents were injured by emotional distress.

180. A public nuisance “works some substantial annoyance, inconvenience or injury to the public.”

181. The closure of all public schools in Chicago works a substantial annoyance and inconvenience to all students, to all parents, and to all employers in Chicago, and to many employers near the City, and injures all students and parents.

182. It also works an annoyance and inconvenience to the public at large, such as neighbors, family friends, and grandparents who are called upon to provide child-care last minute, or faith-

based and community groups that planned their activities on the assumption that school would happen.

183. The closure of all schools in Chicago is a significant interference to public safety, public convenience, and public comfort.

184. In addition to the interference with public convenience and comfort for the reasons described above, the closure of school also works a significant interference to public safety: one academic study has found that weekdays without school during the school year see a 20 percent increase in juvenile crime.⁵⁴

185. Additionally, the conduct of a work stoppage is proscribed by statute.

186. Though the public nuisance affected all of Chicago to some extent, it particularly, specifically, and in a unique and direct way affected the Plaintiff Classes as students and parents.

COUNT 3 – CIVIL CONSPIRACY

187. Plaintiffs re-allege the allegations set forth in paragraphs 1 through 149.

188. AFT, Sharkey, Gates, and the Defendant Class tortiously conspired with CTU in its unlawful and tortious acts.

189. Civil conspiracy is “a combination of two or more persons for the purpose of accomplishing by concerted action either an unlawful purpose or a lawful purpose by unlawful means.” *Buckner v. Atlantic Plant Maintenance, Inc.*, 182 Ill.2d 12, 23, 230 Ill.Dec. 596, 694 N.E.2d 565 (1998).

190. “To state a cause of action for conspiracy, a plaintiff must allege not only that one of the conspirators committed an overt act in furtherance of the conspiracy, but also that such act was

⁵⁴ Stefanie Fischer & Daniel Argyle, *Juvenile crime and the four-day school week*, 64 *Economics of Educ. R.* 31 (2018).

tortious or unlawful in character.” *Adcock v. Brakegate, Ltd.*, 164 Ill.2d 54, 62-64, 206 Ill.Dec. 636, 645 N.E.2d 888 (1994).

191. The strike was an unlawful and tortious overt act by CTU, it harmed students and their parents, and Sharkey, Gates, the Defendant Class, and AFT agreed with, encouraged, ratified, participated in, and/or supported CTU in its strike.

192. AFT knowingly and voluntarily participated in the common scheme with CTU to commit the unlawful act, namely the illegal strike, through their support, encouragement, coordination, and public statements.

193. The Defendant Class knowingly and voluntarily participated in the common scheme with CTU to commit the unlawful act, namely the illegal strike, by voting to ratify it and then complying with it once it was declared.

194. The Defendant Class, Sharkey, Gates, and AFT understood the general objectives of the conspiratorial scheme, accepted them, and agreed to each do its part to further those objectives.

COUNT 4 – IMPLIED RIGHT OF ACTION – PROHIBITION ON STRIKES

195. Plaintiffs re-allege the allegations set forth in paragraphs 1 through 149.

196. The Defendant Class has a statutory duty not to strike unless certain conditions are met. 115 ILCS 5/13(b) (“educational employees in a school district organized under Article 34 of the School Code other than educational supervisors as provided under subsection (c) shall not engage in a strike except under the following conditions.”).

197. Several of those conditions (2, 2.10, 3, 4) were not met. As a result, the Defendant Class breached its statutory duty not to strike.

198. “When a statute is enacted for the protection of a particular class of individuals, a violation of its terms may result in civil as well as criminal liability, even though the former

remedy is not mentioned specifically therein.” *Boyer v. Atchison, Topeka, and Santa Fe Railway Co.*, 38 Ill.2d 31, 36 (1967).

199. Such an implied right of action exists when “(1) the plaintiff is a member of the class for whose benefit the statute was enacted, (2) the plaintiff's injury is one the statute was designed to protect, (3) implying a private right of action would be consistent with the purposes of the statute and the overall statutory scheme, and (4) implying a private right of action is necessary to provide an adequate remedy for violations of the statute.”

200. The plaintiff student class and the plaintiff parent class are the class of individuals whom the strike statute is designed to protect.

201. The plaintiff classes’ injuries from the illegal strike are those the statute was designed to prevent.

202. A private right of action would advance the purposes of the overall statutory scheme. *See Caso v. Dist. Council 37*, 43 AD 2d 159 (N.Y. App. Div., 2nd Dept. 1973).

203. Prior experience with CTU and other teachers unions nationally has shown that a statutory prohibition on strikes is not an adequate remedy for violations.

204. This January 2022 experience with CTU shows that an injunctive remedy is insufficient when the strike does not last long enough to get an injunction issued, if CPS even sought one (it did not; parents sought one).

205. This January 2022 experience with CTU and CPS shows that an administrative remedy is insufficient for the damage done to third parties.

CLAIM 5 – BREACH OF CONTRACT

206. Plaintiffs re-allege the allegations set forth in paragraphs 1 through 149.

207. A contract existed between the Chicago Teachers Union and Chicago Public Schools, namely the collective bargaining agreement. *See Village of Orland Park v. First Federal Savings & Loan Ass'n*, 135 Ill.App.3d 520, 529, 90 Ill.Dec. 146, 152, 481 N.E.2d 946, 952 (1985) (listing factors for a breach-of-contract claim).
208. CPS was not in substantive breach of the contract in January 2022.
209. The Chicago Teachers Union breached the contract with its January 2022 illegal strike.
210. The third-party beneficiaries of the contract, namely CPS's students, were damaged by the breach.
211. Students are the intended third-party beneficiaries of the collective bargaining agreement between the CTU and CPS. *See Hutsonville Community School District v. Illinois High School Ass'n*, 2021 IL App (5th) 210308; *Monts ex rel. Monts v. Ill. High School Ass'n*, 789 NE 2d 413, 418 (Ill. App. 4th 2003); *Hall v. National Collegiate Athletic Ass'n*, 985 F.Supp. 782, 796 (N.D.Ill. 1997).
212. The CTU's contract breach directly harmed students through learning loss and emotional damage.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

- A. Certify the plaintiff student class.
- B. Certify the plaintiff parent class.
- C. Certify all members of CTU who voted to ratify the strike as a defendant class.
- D. Certify the members of CTU's House of Delegates as a Defendant sub-class with particular responsibility under CTU's by-laws for the strike decision.
- E. Declare that the January 2022 work stoppage was a strike.
- F. Declare that the January 2022 strike was illegal under the Illinois School Code.
- G. Declare that students are the intended third-party beneficiaries of the collective bargaining agreement between CTU and CPS.
- H. Declare that CTU breached the collective bargaining agreement.
- I. Find that CTU and the Defendant Class committed the tort of negligence.
- J. Find that CTU and the Defendant Class committed the tort of public nuisance.
- K. Find that CTU, Sharkey, Gates, AFT, and the Defendant Class committed the tort of civil conspiracy by their agreement and actions in support of the illegal strike.
- L. Find that CTU, Sharkey, Gates, AFT and the Defendant Class are jointly and severally liable for damages.
- M. Find that CTU, Sharkey, Gates, and the Defendant Class acted willfully and wantonly to either knowingly violate the law or in reckless disregard for the law, to the detriment of the Plaintiffs, and that they and others must be deterred from future illegal strikes,

- N. Award the Plaintiff Student Class nominal, actual, and all other appropriate damages and judicial relief.
- O. Award the Plaintiff Parent Class nominal, actual, and all other appropriate damages and judicial relief.
- P. Award attorney's fees from the class recovery.
- Q. And grant such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues triable by a jury.

Dated: February 16, 2024

Respectfully submitted,

By: /s/ Patrick J. Hughes

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Daniel R. Suhr, WI #1056658, PHV forthcoming

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