IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION

Cicero School District No. 99	)	
	)	
Plaintiff	)	
	)	Case No. 2021 CH 00222
v.	)	
	)	Honorable Raymond Mitchell
Cicero Council, West Suburban Teachers Union, Local 571, IFT-AFT, AFL-CIO	)	
	)	
Defendant	)	

Memorandum of Local 571 in Opposition to Motion for Preliminary Relief

I. Introduction

The world is in the grip of an unprecedented pandemic which has disrupted lives in countless ways. Over 25 million Americans have been infected with COVID-19 and more than 415,000 have died. The Circuit Court has been conducting civil hearings, including this one, by "zoom" for the better part of a year.

According to data compiled by the Cook County Department of Public Health, cases have increased in Cicero by 37.8% in the last 14 days and the current number of cases per hundred thousand is 338. The County rates the western suburbs as Orange or "Warning." The positivity rate in the western suburbs is 11%.[1]

One of the fundamental principles of current public health guidance is that individuals should avoid in person contact with people outside their immediate household except where

[1] Copies of documents posted on the Department of Public Health's website are attached as Exhibit A.

absolutely necessary. In late October, the Centers for Disease Control reaffirmed this basic fact: "The more a person interacts with different people, and the longer and closer the interaction, the higher the risk of COVID-19 spread."[2] Thus, the CDC advised that "[c]ommunity mitigation strategies should be layered upon one another and used at the same time – with several layers of safeguards to reduce the spread of disease and lower the risk of another spike in cases and deaths. No one strategy is sufficient."[3]

At the beginning of December, the CDC issued additional warnings against unnecessary contact with individuals outside one's own household. The CDC's Morbidity and Mortality Weekly Report – a report usually reserved for publishing the results of academic research – warned that "the U.S. has entered a phase of high-level transmission where a multi-pronged approach to implementing all evidence based public health strategies at both the individual and community levels is essential."[4] The Report further advises community-level policies to reduce transmission "by promoting flexible worksites (e.g. telework) and hours," in addition to other measures.[5]

The Cook County Department of Public Health has developed criteria for determining

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[2] Exhibit B. *Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission,* at 2, Centers for Disease Control, (Updated October 29, 2020)

[3] *Id.*

[4] Exhibit C. Honein, Rose et al., *Summary of Guidance for Public Health Strategies to Address High Levels of Community Transmission of SARS-CoV-2 and Related Deaths*, MMWR, at 1 (December 4, 2020).

[5] *Id.* at 2.

when substantial community transmission exists.[6] Exhibit D, p. 3. By all metrics listed in the table, western Cook County and Cicero are areas of substantial community transmission. Where substantial community transmission exists, the Department recommends remote-only instruction "out of an abundance of caution." Exhibit D, p.7.

An "abundance of caution" should be used when analyzing the risk of contracting COVID-19. Thus, the courts have found that irreparable harm exists from the risk of disease and death from COVID-19 in cases where employees sought injunctions to require employers to implement better work practices to control the spread of the disease. Circuit Court Judge Eve Reilly held, for example:

> It is difficult to imagine a harm more irreparable than serious illness or death caused by this highly contagious disease . . . Even though there is a possibility of full recovery from an infection the lasting ramifications are still largely unknown.

Massey v. McDonalds', 20 CH 4247, slip op. at 32-33 (June 24, 2020).

The teachers and other employees in the District believe that their risk of infection from COVID-19 is higher if they are required to report to school to teach than if they continue to teach remotely. This risk is even higher if thousands of students are in classes in the schools. Given the course of the pandemic over the last year, where public officials have consistently underestimated the dangers of the disease, it would be difficult to imagine how anyone could argue that such a belief is not reasonable. Yet the District has unilaterally determined that its schools are "safe enough" and ordered teachers and other employees to return to the school buildings to perform their duties. That order, among other things, has caused the instant dispute.

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[6] Exhibit D. *Clarification of Adaptive Pause Guidance for Schools, K-12,* Cook County Department of Public Health (October 16, 2020).

As will be demonstrated below, this Court should not intervene in the dispute. Judicial intervention would undermine the role of the administrative agency tasked with resolving educational labor relations disputes and take the court outside of its very narrow jurisdiction in such labor disputes. It is also not appropriate under traditional equitable principles because the District has not established a "clear and present danger" to the public health, because the balance of equities weighs against action and because the District has unclean hands. Finally, should the Court enjoin any actions by employees, it should also enter an order requiring the parties to go to interest arbitration before an impartial arbitrator over the disputes in this case.

II. Argument

A. The IELRB Has Jurisdiction Over This Case.

Educational labor disputes are governed by the Illinois Educational Labor Relations Act ("IELRA"), 115 ILCS 5/1 et. seq. The IELRA is a comprehensive system of resolving school labor disputes which places primary jurisdiction over labor disputes into the hands of an expert administrative agency, the Illinois Educational Labor Relations Board. The IELRB is the exclusive forum for resolving educational labor relations disputes. *Board of Education v. Benton Federation of Teachers, Local 1956, etc.,* 165 Ill. App. 3d 514 (5th Dist. 1988). Only the IELRB has authority to determine whether an unfair labor practice has been committed. *Board of Education of Community School District No. 1, Coles County v. Compton,* 123 Ill. 2d 216, 221 (1988). The circuit court has only three duties: to enforce subpoenas of the IELRB, to enjoin strikes if they present a clear and present danger to public health and safety and to enforce orders of the Board. *Board of Education of Warren Township High School District 121 v. Warren Township High School Federation of Teachers, Local 504,* 128 Ill. 2d 155 (1989).

There are two reasons why the Court should not exercise its jurisdiction in this case. First, the School District has filed an unfair labor practice charge ("ULP") which alleges that the Union is engaged in an illegal strike. It has invoked the jurisdiction of the IELRB and it has requested the IELRB to seek an injunction under Section 16(d) of the IELRA. 115 ILCS 5/16(d).[7] In the ULP, it alleges that the Union has called a strike and it cites some of the same evidence that it cites in the Verified Complaint in this case.

After it invoked the jurisdiction of the IELRB, the District filed the instant action. The action seeks a declaration from the Court that the "walk-off" is a violation of the IELRA. There is no way the Court can grant such relief without infringing upon the exclusive jurisdiction of the IELRA over unfair labor practices. In addition, the parallel legal and administrative proceedings contain other common areas of fact and law. This point also militates against proceeding with this action.[8]

Second, the Cicero Council has not called a strike. It has not taken a strike vote, received strike authorization from Local 571, or given a strike notice. It has not set up a picket line. Several hundred of its members reported to their classrooms and offices on January 11, 2021. Several hundred others are continuing to teach remotely exactly as they have done since March 2020. Not a single employee is withholding their services from the District.

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[7] The School District's unfair labor practice charge is submitted herewith as Exhibit E. The IELRB has scheduled a hearing to consider its request on February 18, 2021. The Court may take judicial notice of such public documents. *See Young-Gibson v. Board of Education*, 2011 IL App 103804 ¶ 52 (court may take judicial notice of public budget documents)

[8] As will be discussed below, the Union began proceeding under the IELRA on December 29, 2020. The IELRA has issued a complaint which alleges that the District has violated the duty to bargain about health and safety matters. Exhibit F.

The employees who have continued to work and teach remotely have made an individual decision to refuse to report to work because they believe that it is more dangerous to do so than teaching remotely. State law requires employers to provide a safe work place. 820 ILCS 219/1 et seq. Under the Illinois Safety and Health Act, the Illinois Department of Labor has promulgated a rule that allows employees to refuse to perform hazardous work. 56 Ill. Admin, Section 350.125(l). In the instant case, employees have not even refused work. Rather, they are performing the duties they have been performing for months. The Court has no authority to enjoin such the individual decisions of employees to continue to work remotely.

The power of this Court to enjoin strikes under the IELRA is limited by the Labor Disputes Act. 820 ILCS 5/1. That Act protects the right of employees to withhold their services from an employer. It states, in relevant part:

> Sec. 1. No restraining order or injunction shall be granted by any court of this State in any case involving or growing out of a dispute concerning terms or conditions of employment, enjoining or restraining any person or persons, either singly or in concert, from terminating any relation of employment or from ceasing to perform any work or labor, or from peaceably and without threats or intimidation recommending, advising, or persuading others so to do; or from peaceably and without threats or intimidation being upon any public street, or thoroughfare or highway for the purpose of obtaining or communicating information, or to peaceably and without threats or intimidation persuade any person or persons to work or to abstain from working, or to employ or to peaceably and without threats or intimidation cease to employ any party to a labor dispute, or to recommend, advise, or persuade others so to do.

(Empasis added). Under this statute, the Court cannot enjoin individual employees from "ceasing to perform any work or labor." Thus the Court in this case cannot exercise even the limited jurisdiction it has under Section 13 of the IELRA.

B. The District's Allegations Do Not Establish a Clear and Present Danger.

The District's original plan for "blended learning" required all employees to return in-person to their school assignments on January 11, 2021. The District planned for a small number of students to return on January 19th and for the majority of students to return on January 25, 2021. It has recently revised its plan – students are now set to return to school on February 2, 2021. Accordingly, there is not now any clear and present danger to the public if teachers continue to work remotely.

The District estimates that 16% of its students are ready to return to blended learning in the schools. This estimate is drawn from a recent "Board Update," that was submitted as an Exhibit in the IELRB proceedings. Exhibit G, p. 9.

It is difficult to understand why a "clear and present danger" to public health exists now. The students in the District have been learning remotely since last March. Nothing has changed. While all of the parties in this case would greatly prefer to return to in person learning, it is evident that both teachers and families are extremely skeptical of doing so. Under such conditions, the District cannot show a clear and present danger to the public health of continuing the status quo until the pandemic is finally under control.

C. The Balance of Equities Weighs Against the School District

In the introduction we described the concrete nature of the risk to teachers caused by the order to return to in-person learning. Contact with individuals outside their households will increase the risk that they and their family members will become infected or sick. According to the Board update cited above, the District had 37 confirmed or suspected cases of COVID-19 among its staff between January 5 and January 13, 2021. It also estimates that there were 27

close contacts of those individuals. Exhibit G, p.2. It is evident from those statistics, that the District does not have a reliable way to prevent infected staff from exposing other staff in its schools. This risk will only increase as additional people are in the schools.

This increased risk to employees must be balanced against the incremental benefits of in-person learning for the small percentage of families that opt for it. Every employee and their households will face a greater risk of infection.

The blended learning envisioned by the District will result in many very small classes, some that contain 1 or 2 students. Those students will not receive the benefits of socialization with their peers or the benefits of in class participation with their peers. Since teachers will be teaching the majority of students remotely, the students who are in school will still be tethered to their laptops. It is hard to see significant benefits to in-person instruction in such a situation.

This balance of equities weighs against the proposed injunctive relief.

D. The District Does Not Have Not Have Clean Hands

Section 13 of the IELRA states that the commission of unfair labor practices is a defense to an action seeking an injunction. In the instant case, the IELRB has already issued an unfair labor practice complaint against the District. Exhibit F. It alleges that the District has failed to bargain to bargain in good faith with the Union about its unilateral decision to require teachers and other school employees to return to work. Under the clear language of the statute, such an unfair labor practice is a defense to an injunction.

III. Remedy

Based upon the foregoing arguments, the Court should deny the request for preliminary relief. If the Court grants some or all of the relief requested, however, it also has the power to

attach stipulations to any injunction it issues. Section 13 of the IELRA authorizes the Court to grant appropriate remedies if it enjoins a strike. In this case, if the Court were to hold that teachers and other school employees must report for in-person instruction, it should also order the District to arbitrate the issue of whether such instruction presents an unreasonable risk to employees. If the Court holds that Section 13 bars the action taken by the employees in this case, then it has the authority to order the parties to another method for dispute resolution. In *State Dept. of Cent. Mgmt. v. State Labor Relations Board,* 373 Ill. App. 3d 242 (4th Dist. 2007), the Court held that the Illinois Public Labor Relations Act required the parties to go to arbitration over mid-contract disputes because the employees and their union did not have the right to strike. It relied on the need to give the union some form of bargaining leverage if the employees did not have the right to strike. Identical considerations apply here and justify an order to arbitrate if an injunction is granted.

Respectfully submitted,

/s/Stephen A. Yokich

Dowd, Bloch, Bennett, Cervone,
Auerbach & Yokich
8 S. Michigan, 19th Floor
Chicago, Illinois 60603
Firm ID Number: 12929

cell phone: 312-286-6723
office phone: 312-372-1361
fax: 312-372-6599

syokich@laboradvocates.com

Certificate of Filing and Service

I, Stephen A. Yokich, an attorney, certify that I caused this Memorandum of Local 571 in Opposition to Motion for Preliminary Relief to be filed with the Court through the e-fling system of the Circuit Court of Cook County and to be served by email upon the counsel of record listed below on January 21, 2021.

Cynthia S. Grandfield
Michael A. Albert
DEL GALDO LAW GROUP, LLC
1441 S. Harlem Avenue
Berwyn, Illinois 60402

grandfield@dlglawgroup.com
albert@dlglawgroup.com

/s/Stephen A. Yokich