

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

|                                    |   |                         |
|------------------------------------|---|-------------------------|
| Chicago Teachers Union, Local No.1 | ) |                         |
| IFT-AFT,                           | ) |                         |
| Charging Party,                    | ) |                         |
|                                    | ) |                         |
| v.                                 | ) | Case No. 2021-CA-0043-C |
|                                    | ) |                         |
| Chicago Board of Education,        | ) |                         |
| Respondent.                        | ) |                         |

**CTU’s Amended Renewed Motion for Injunctive Relief under Section 16(d) of the Act**

The Charging Party hereby renews its Motion for the IELRB to seek relief in this case under Section 16(d) of the Illinois Educational Labor Relations Act (“IELRA”), 115 ILCS 5/16(d). These are the reasons for the Motion:

1. A plague grips the United States, Illinois, and the City of Chicago. It spreads almost unnoticed and causes debilitating illness and death. It will shortly worsen and then worsen again – so much so that national public health officials have characterized it as a health crisis like no other in the nation’s history. Notwithstanding this pandemic, the Chicago Board of Education (“CBE”) has unilaterally ordered its teachers and its professional and paraprofessional staff to resume in person classes beginning on January 11, 2020. As stated by CBE CEO Janice Jackson in a citywide radio broadcast last week: “The question of whether students should be in school – we’re past that point. The mayor, the board, many of the leaders of CPS, many parents feel like we need to be back in school.”<sup>1</sup> The CBE’s authority to take such unilateral action rests upon a slender reed: the claim that the CBE’s right to determine “places of instruction” includes the right to unilaterally put its teachers and staff into danger without meaningful bargaining. Accordingly,

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<sup>1</sup> CTU Exh. A, attached hereto.

the CTU renews its request that the IELRB seek injunctive relief so that the terms for resumption of in person classes can be determined by good faith collective bargaining instead of by executive fiat. The support for this conclusion is outlined in the following paragraphs and in the Supplemental Memorandum submitted this day as well.

2. As the IELRB knows, on October 16, 2020, the CBE announced a plan to resume in person learning for pre-kindergarten and students in special education clusters. This plan potentially covered 22,000 students and 5,000 teachers, professional staff, and other paraprofessional staff represented by the Chicago Teachers Union Local No. 1 (“CTU”). This decision was announced without notice to or bargaining with the Union. On October 23, 2020, the CTU filed the ULP charge in this case, along with a request that the IELRB seek relief under Section 16(d) of the Act. The IELRB issued a complaint on October 30, 2020 and the case is set for hearing on January 26 and 28, 2021.

3. On November 5, 2020, the IELRB heard arguments and denied the request to seek injunctive relief. The IELRB agreed with the Union’s assertion that the health and safety of employees was a mandatory subject of bargaining. It found, however, that “CBE has not made any movement in furtherance of its goal that would amount to a unilateral change.” *Chicago Board of Education*, \_\_\_ PERI \_\_\_, Case No. 2021-CA-0043-C, slip op. at 2-3 (November 19, 2020). It noted, however, that it would be open to reviewing its decision if CPS directed employees to return to work on a specific date. *Chicago Board of Education, supra* , slip op. at 3, n.1.

4. As set out in the Memorandum accompanying this Motion, the COVID-19 pandemic continues to rage. During the week prior to the filing of this Motion and the accompanying

Supplemental Memorandum, one million more Americans have become infected with this disease. During same period, Illinois led the nation in deaths due to the disease. While the State and the City have ordered mitigating actions, the impact of those actions remains to be seen.

According to Dr. Anthony Fauci, there is a great likelihood of a “surge upon a surge” which will shatter records for infections, hospitalizations, and deaths. According to the White House

Coronavirus Task Force briefing of November 29, 2020:

The COVID risk to all Americans is at a historic high. The national daily COVID incidence after Memorial Day, but before the summer surge, was fewer than 25,000 new cases and is now more than 180,000 new cases/day; COVID inpatients then were fewer than 30,000 but are now more than 90,000; fatalities have more than doubled. We are in a very dangerous place due to the current, extremely high COVID baseline and limited hospital capacity; a further post-Thanksgiving surge will compromise COVID patient care, as well as medical care overall.

CTU Exh. B.

On December 2, 2020, the New York Times reported following statements by officials at the Centers for Disease Control:

The director of the Centers for Disease Control and Prevention warned on Wednesday that the nation is facing a devastating winter, predicting that total deaths from Covid-19 could reach “close to 450,00” by February unless a large percentage of Americans follow precautions like mask wearing. “The reality is, December and January and February are going to be rough times,” said Dr. Robert Redfield, the head of the C.D.C., in an address to the Chamber of Commerce Foundation. “I actually believe they’re going to be the most difficult time in the public health history of the nation.”

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“The best thing for American to do during the holiday season is to stay at home and not travel.” said Dr. Henry Walke, who oversees day to day

management of pandemic response for the agency.

CTU Exh. C.

National coronavirus response coordinator, Dr. Deborah Birx, elaborated on December 6, 2020:

This is not just the worst public health event. This is the worst event that this country will face, not just from the public health side.

CTU Exh. D.

The former head of the Food and Drug Administration, Scott Gottlieb, said on November 30<sup>th</sup> that he believed that 30% of Americans may be infected with coronavirus by years end. CTU

Exh. E.

5. In the midst of this explosion of cases, illness, and death, the CBE has announced a schedule for returning to in person learning in its schools. On November 17, 2020, it set forth the following schedule for return to in-person learning at CPS:

- November 23, 2020: Intent to return form sent to K-8 staff
- December 7, 2020: Intent to return deadline for K-8 staff
- January 4, 2021: Return of Pre-K and cluster program staff
- January 11, 2021: Students in pre-K and cluster programs return
- January 25, 2021: Return of K-8 staff
- February 1, 2021: Return of K-8 students

CTU Exh. F.

6. CPS announced this decision without notice to the CTU and without bargaining about the decision with the CTU. CPS states that it will proceed with its plan unless coronavirus cases

are doubling within an 18 day period of time. It has not bargained about its decision to employ this metric for determining to proceed with its plan.

7. On December 2, 2020, the Chief Executive Officer of CPS, Janice Jackson amplified these points in a radio interview on WBEZ. Jackson stated:

All staff will be expected to return, with exception of people who have waivers to FMLA accommodations – we will most certainly respect those . . . . We have to create a pathway back to in-person instruction that starts with our staff returning to schools, and we don't want to incentivize one model over another by giving that type of flexibility over staff. The first step is getting the adults back into the classroom and then also making sure we create a safe environment to bring kids back – an environment where we can educate them properly.

CTU Exh.A.

8. Since CPS has now set a specific schedule for employees to return to work, this case is now ripe for relief under Section 16(d) of the IELRA. As demonstrated in the Charging Party's initial motion and in the Supplemental Memorandum filed with this Motion, these actions create conditions that endanger the health and safety of the CTU's members. CBE had an obligation to bargain about its decision before it announced its decision to the public and to its employees. As the IELRB pointed in a recent case involving Western Illinois University, such a unilateral change violates Section 14(a)(5) of the Act because "the fact that the University already announced its decision on the matter being bargained 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." *Western Illinois University*, Case No. 2021-CA-0009-C (September 17, 2020).

9. Given the gravity of the danger to teachers and other staff, the IELRB should now proceed under Section 16(d) of the Act to obtain an injunction prohibiting CBE from requiring teachers and staff to report for in-person learning until they have bargained in good faith about the decision to do so.

Respectfully submitted,

/s/ Stephen A. Yokich

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**Certificate of Filing and Service**

I, Stephen A. Yokich, hereby certify that I filed this **CTU's Amended Renewed Motion for Injunctive Relief under Section 16(d) of the Act** by email at the web site of the IELRB on December 7, 2020 and that I served opposing counsel on that day by electronic means at:

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