

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

BOARD OF EDUCATION OF THE CITY OF)
CHICAGO,)

Plaintiff)

v.)

CHICAGO TEACHERS UNION, Local NO. 1,)
American Federation of Teachers, AFL-CIO,)

Defendant)

Case No: _____

**VERIFIED COMPLAINT FOR TEMPORARY RESTRAINING ORDER,
PRELIMINARY AND PERMANENT INJUNCTION AND DAMAGES**

Plaintiff Board of Education of the City of Chicago (the “Board of Education”) complains of Defendant Chicago Teachers Union, Local No. 1, American Federation of Teachers, AFL-CIO (the “CTU”) as follows:

NATURE OF THE ACTION

1. On September 10, 2012, approximately 26,000 members of the Chicago Teachers Union went on strike in the City of Chicago for the first time in twenty-five years. The Board brings this action for injunctive relief pursuant to Sections 4.5(b) of the Illinois Educational Labor Relations Act (“IELRA”), which expressly prohibits the CTU from striking over disputes concerning noneconomic subjects enumerated in Section 4.5, such as layoff and recall rights, class size, and length of the school day and school year, and deprives the Illinois Educational Labor Relations Board (“IELRB”) of jurisdiction over Section 4.5 disputes. 115 ILCS 5/4.5(b).

2. The CTU, through its public pronouncements, literature and contract demands has made it abundantly clear that it is waging this strike over issues and in pursuit of bargaining objectives the Illinois General Assembly has expressly determined cannot be the subject of a

lawful strike. These include the CTU's bargaining demands over layoff and recall rights for its members, class size, the length of the work and school year, the academic calendar, and class staffing and assignment. Further, the Union has deployed the strike weapon without regard for, and in violation of, its binding commitment to resolve disputes or impasses over these subjects through a mandatory mediation process agreed to by the parties and in place pursuant to statute since 2003.

3. The strike has affected nearly 355,000 students in the Chicago Public School ("CPS") system, a school system utterly unlike any other school system in Illinois, characterized by a student population strongly dependent upon a broad range of services extending far beyond the education they receive. Approximately 84% of these students come from low income families and they receive free or reduced price meals when school is in session. For many if not most of these students, the meals they receive at school are the only nutritious meals they receive on a regular school day. Additionally, while the City of Chicago makes every effort to reduce violence in our neighborhoods, the fact is that CPS students, like students in many urban areas, are at risk of violence when they are not in school. Finally, some 50,000 of these students qualify for special education services because of a range of conditions, including autism and other profound disabilities. Because of the strike, special needs students with Individual Education Programs may no longer be receiving their required special education services. All of these students now face the all too real prospect of prolonged hunger, increased risk of violence, and disruption of critical special educational services, and all because of decisions not of their making, in which they did not have a voice or a vote. At a critical time in their lives, a vulnerable population has been cast adrift by the CTU's decision to close down the schools, with consequent grave implications for the residents of the City of Chicago. These extreme hardships

imposed on hundreds of thousands of students constitute a clear and present danger to the health and safety of the public, caused by the CTU's strike that is fundamentally and unmistakably illegal under Illinois law.

4. Following commencement of the CTU strike on Monday, September 10, 2012, the parties continued negotiations for a final labor agreement to resolve the strike, with the result that on Friday, September 14, 2012, both sides reported reaching a framework for an agreement to end the strike. The parties finalized language on a tentative agreement over the weekend, and on Sunday, September 16, 2012, a final, tentative agreement was presented by the CTU senior bargaining committee to the CTU House of Delegates for a vote to end the strike and return students to school on Monday, September 17, 2012.

5. Notwithstanding the tentative agreement reached at the bargaining table, on the evening of September 16, 2012, the CTU failed to vote on the parties' agreement, failed to vote to end the strike, and scheduled another meeting on the subject of the strike for Tuesday, September 18, 2012. As a result, the CTU has advised that its strike will continue for an unknown duration while the House of Delegates reviews the agreement, notwithstanding the above described clear and present danger that continuation of the strike poses to the health and safety of the public.

6. Despite the CTU strike being a clear violation of Illinois law, the Board of Education did not move to enjoin the strike earlier because it had hoped to resolve the dispute at the negotiating table. With no end to the strike in sight, the Board now brings this action for injunctive relief pursuant to Sections 4.5 of the IELRA. A second and independent ground for the action is Section 13(b) of the IELRA, which expressly provides this court this Court the

authority to grant an injunction when a “strike is or has become a clear and present danger to the health or safety of the public.” 115 ILCS 5/13(b).

THE PARTIES

7. The Board of Education is statutorily charged with the governance, maintenance and financial oversight of CPS.

8. CPS is located in Cook County, Illinois. It is the third largest school district in the nation, serving 400,000 students in 675 schools and employing over 40,000 employees.

9. Regular track CPS schools had their first day of school on Tuesday, September 4, 2012. Year-round, or “Track E,” schools began their school year on August 13, 2012.

10. The Board of Education is organized under and primarily operates pursuant to Article 34 of the Illinois School Code and is an educational employer under Section 2(a) of the IELRA.

11. The CTU is a labor organization under Section 2(c) of the IELRA and is the exclusive bargaining representative of CPS’s teachers, paraprofessional and school-related educational personnel.

COUNT ONE

THE CTU STRIKE VIOLATES SECTION 4.5 OF THE IELRA

12. Section 4.5 of the IELRA prohibits strikes over certain subjects of bargaining by unions representing CPS employees, including the CTU. In lieu of a strike, Section 4.5 requires that bargaining disputes over these topics be resolved exclusively through an alternative dispute resolution process. 115 ILCS 5/4.5. CTU’s strike is in direct violation of this statutory mandate.

13. Section 4.5(b) of the IELRA prohibits strikes over the following subjects of bargaining, among others, set forth in Section 4.5(a) of the IELRA:

- Decisions to layoff or reduce in force employees;

- Decisions to determine class size, class staffing and assignment;
- Class schedules, academic calendar;
- Length of the work and school day and year;
- Hours and places of instruction; and
- Pupil assessment policies.

115 ILCS 5/4.5(a).

14. Section 4.5(b) also provides that:

If, after a reasonable period of bargaining, a dispute or impasse exists between the educational employer and the exclusive representative, *the dispute or impasse shall be resolved exclusively as set forth in subsection (b) of Section 12 of this Act in lieu of a strike under Section 13 of this Act.* Neither the [IELRB] nor any mediator or fact-finder . . . shall have jurisdiction over such a dispute or impasse.

115 ILCS 5/4.5(b) (emphasis added).

15. Section 12(b) of the IELRA provides that, if a dispute or impasse exists between the Board and the representative of its employees “over a subject or matter set forth in Section 4.5 of this Act, the parties shall submit the dispute or impasse to the dispute resolution procedure agreed to between the parties.” 115 ILCS 5/12(b).

16. As required by Section 12(b) of the IELRA, the Board of Education and the CTU negotiated and agreed to a procedure to resolve disputes covered by Section 4.5 of the IELRA. The parties’ agreement provides for mediation that either party may initiate by providing written notice to the other party. Exhibit A to the Verified Complaint.¹

17. Since November 2011, the Board of Education and the CTU have been negotiating a successor collective bargaining agreement to the one that expired June 30, 2012.

¹ All exhibits to this Verified Complaint are attached and referenced hereafter as “Exhibit _.”

The CTU's initial contract proposal addressed numerous topics, including a number of Section 4.5 subjects, such as class size, layoff and recall, length of the work and school year, and class staffing and assignment. Exhibit B. The CTU repeatedly has acknowledged the importance of these subjects to its members and its bargaining agenda and has continued to advance these subjects throughout negotiations. *See infra* ¶¶ 19-31.

18. On April 2, 2012, the CTU invoked the IELRA's fact-finding process, which is a separate and distinct process from the dispute resolution procedure required by Sections 4.5 and 12(b). The CTU submitted numerous Section 4.5 subjects to the fact-finding process. Exhibits C, D, and E.

19. On June 1, 2012, the CTU announced that it would conduct a strike authorization vote among its membership. In its announcement, the CTU described its primary disputed issues in bargaining, all of which are Section 4.5 subjects: class size, staffing levels, layoff and recall, length of the school and work day and compensation for working a longer day, and length of the work and school year. Exhibit F.

20. In explaining why it would not wait to conduct the strike authorization vote until after the legislatively-prescribed fact finder issued his report, the CTU again emphasized that its dispute with the Board of Education was about Section 4.5 subjects, many of which would not be addressed by the fact finder. The CTU stated that the fact-finding report "will only cover a small portion of disagreements between the CTU and CPS," and "[t]his report will not address some of the other key issues such as class size and resources for CPS students currently being negotiated." The CTU also stated that the strike authorization vote was not "just about the money," and that instead, the CTU was fighting for smaller class sizes, resources for students and schools, job security and adequate compensation for being required to work 20 percent

longer, all of which are Section 4.5 subjects. Exhibit G. All of these are permissive bargaining subjects the CTU may not lawfully strike over, and several, including class size and those going to class staffing and assignment, and class schedules, are Section 4.5 subjects for which the exclusive dispute remedy is the parties' mandatory mediation procedure.

21. The CTU acknowledged that the strike authorization vote was leverage to be used to negotiate over the summer months regarding issues including many Section 4.5 subjects, such as teacher compensation for a longer work day, class size, and layoff and recall. The CTU also has acknowledged that the vote was driven by member anxiety over the longer school day, a Section 4.5 subject. Exhibits H, I, and J.

22. On July 16, 2012, the fact finder issued recommendations for the terms of a successor agreement, and on July 18, 2012, both the Board of Education and the CTU rejected this report in its entirety. In its rejection, the CTU once again emphasized various Section 4.5 subjects, including class size, compensation for working a longer day, and layoff and recall as its key areas of concern in negotiations. Exhibits K, L, and M.

23. In August 2012, the CTU threatened to strike over Section 4.5 subjects. During the week of August 20-24, 2012, the CTU conducted informational picketing, which the CTU stated was necessary to "inform parents and the public about what's really at stake" in negotiations. Once again this picketing told parents and the public that what was "really at stake" were Section 4.5 subjects. CTU members carried picket signs, including signs demanding "smaller class sizes" and increased staffing levels for "nurses, counselors and social workers," and CTU officials distributed handbills demanding smaller class sizes. Exhibits N and O.

24. On August 22, 2012, at a meeting of the CTU's House of Delegates, CTU officials emphasized the CTU's three key priorities for a successor contract, at least two of which

are Section 4.5 subjects: recall rights, issues related to a longer school day, and fair compensation for more challenging work. Exhibit P. At the conclusion of the meeting, the House of Delegates voted to provide notice of the CTU's intent to strike. Exhibit Q.

25. On August 29, 2012, the CTU submitted written notice of its intent to strike, stating that the imposition of the longer school day and the requirements that teachers teach new curricula as part of that longer day and be evaluated based on student test results was "enough." The CTU also cited its concern about school closings and the privatization of public education in connection with its written notice of intent to strike. Exhibits R and S.

26. On August 31, 2012, the CTU ran a radio announcement called "Why We Fight" to inform teachers and the public why it was threatening to strike. This advertisement emphasized again that "[t]his isn't about the money" but, instead, the CTU is concerned about recall rights for its members and other Section 4.5 subjects. Exhibit T.

27. On September 7, 2012 CTU President Karen Lewis, in a letter to CPS CEO Jean Claude Brizard, expressly acknowledged that the CTU is prohibited from striking over Section 4.5 matters and tacitly acknowledged that the CTU had repeatedly told teachers and the public that it was striking over such matters. Lewis belatedly purported to "disavow" these repeated public statements. Exhibit U. Unlike CTU's many public statements both before this letter (see discussion above) and after this letter (see discussion below), this letter was not shared with teachers or the public. And even if it had been, it would not change the facts concerning CTU's repeated statements and actions, before and since the strike, making clear that the CTU is striking in support of, and conditioning any settlement of the strike on, its demands over Section 4.5 subjects.

28. On September 9, 2012, the day before striking, CTU Vice President Jesse Sharkey, in an interview with ABC7 news, again made clear that a strike would not be over economic issues, but pedagogical issues and other Section 4.5 subjects. He stated that “[t]he economics of the deal are close” and that job security was one of the main sticking points. Sharkey also said that “[i]f we settle on the big education issues we can come to a settlement on this deal.” Exhibit V.

29. On the evening of Sunday, September 9, 2012, in the course of negotiations over the CTU’s bargaining demands necessary for an agreement and to avoid a strike, the CTU advised the Board of Education that the CTU’s demands regarding the recall rights for laid off CTU members is a “deal breaker.”

30. Later that evening, when announcing that the CTU would strike the following day, CTU President Karen Lewis cataloged numerous Section 4.5 subjects as reasons for the CTU strike. Lewis went on to say that “[w]hile new Illinois law prohibits us from striking over the recall of laid-off teachers and compensation for a longer school year, we do not intend to sign an agreement until these matters are addressed.” Thus, the CTU President specifically conditioned any settlement of the strike and final agreement on the resolution of disputes over Section 4.5. subjects, about which the CTU is expressly prohibited from striking. Exhibit W.

31. Similarly, in the questions and answer session after the announcement of the strike, CTU Vice President Sharkey again emphasized that economic issues are not the point. Rather pedagogical issues, which are Section 4.5 subjects, are.

32. The CTU’s strike is patently unlawful under the plain language of Section 4.5 of the IELRA. Injunctive relief from this Court is appropriate to enjoin the CTU’s illegal strike in

violation of Section 4.5, which expressly states that the IELRB does not have jurisdiction over Section 4.5 disputes. *See* 115 ILCS 5/4.5(b).

33. It is unmistakably clear that the CTU is engaged in an illegal strike over Section 4.5 subjects. Simply put, the plain language of Section 4.5 and Section 12(b) of the IELRA prohibit the CTU from striking over Section 4.5 subjects. In defiance of this statutory mandate, the CTU publicly has admitted time and again that its priorities for a successor contract are Section 4.5 subjects, and that the strike is not about wages, but rather issues like layoff and recall, reduced class sizes, compensation for working a longer day, and staffing levels within CPS schools. CTU members are engaged in a strike over these subjects and have engaged in picketing that clearly identify these subjects as the focal point of their strike. The CTU's strike is illegal and is continuing and ongoing.

34. Equally incriminating, the CTU has unlawfully conditioned any settlement of the strike and a final labor agreement on the resolution of Section 4.5 subjects, including layoff and recall rights for its members, notwithstanding the prohibition against striking over such subjects.

35. The CTU's illegal strike over Section 4.5 subjects is causing irreparable harm and warrants injunctive relief. Illegal strike activity by public employees constitutes irreparable harm justifying injunctive relief. *See, e.g., City of Pana v. Crowe*, 57 Ill. 2d 547, 316 N.E.2d 513, 552-553 (1974) (recognizing that, in absence of legislative grant of right to strike, strike by Illinois public employees is unlawful and must be enjoined); *Board of Education of Comm. Unit School Dist. No. 2 v. Redding*, 32 Ill.2d 567, 572-576 (1965) (enjoining illegal strike of school custodial employees); *Anchorage Educ. Ass'n v. Anchorage Sch. Dist.*, 648 P.2d 993, 997-98 (Alaska 1982) (holding same and recognizing that, by making strike by teachers illegal,

legislature decided that teachers' strike would cause irreparable harm); *State of Del. v. Del. State Educ. Ass'n*, 326 A.2d 868, 875-76 (Del. Ch. 1974) (recognizing same).

36. The balance of harms clearly weighs in the Board of Education's favor. The Illinois General Assembly codified important public policy prohibiting strikes by CPS employees and their unions over Section 4.5 subjects when it created the mandatory dispute resolution process in lieu of allowing strikes. The CTU strike contravenes this legislative intent and express public policy and is plainly unlawful. The Board of Education does not have an adequate remedy at law.

37. The CTU strike is also illegal because it plainly violates the statutory dispute resolution process mandated by Section 4.5 and Section 12(b) of the IELRA, and agreed to by the parties in their Memorandum of Agreement. Exhibit A.

38. As such, an injunction of the CTU strike is warranted to preserve the alternative dispute resolution process mandated by Section 4.5 and Section 12(b) of the IELRA, and agreed to by the parties. *See, e.g., Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235, 26 L. Ed. 2d 199, 90 S. Ct. 1583 (1970) (enjoining strike over arbitrable dispute where necessary to avoid irreparable harm and preserve the parties' agreed upon arbitration procedure).

39. In sum, an injunction is required because the CTU's strike is unlawful, and because it is necessary to preserve the parties' agreed upon and statutorily mandated alternative dispute resolution process.

Wherefore, the Board of Education of the City of Chicago requests that the Court:

- 1) issue temporary, preliminary and permanent injunctive relief against the CTU, enjoining its current strike; and
- 2) grant such other relief, including monetary relief, as this Court deems appropriate.

COUNT TWO

THE CTU STRIKE IS A CLEAR AND PRESENT DANGER TO THE PUBLIC HEALTH AND SAFETY

40. The Board of Education, through CPS, provides educational and critical social services to students, including essential and nutritious meals to students who otherwise may not eat, a safe environment during school hours, and special education needs services.

41. First, the CTU strike is depriving many CPS students of necessary meals. Each regular school day, CPS serves more than 400,000 breakfasts, lunches, after-school snacks, and suppers to students, providing essential nutrition necessary for healthy growth and intellectual development. Approximately 84% of CPS students, or more than 338,000 kids, are eligible for free and reduced price school meals because of their family income level. For many of these students, these may be their only nutritious meals of the day. These meals provide a critical nutrition and hunger safety net for CPS students.

42. Moreover, families whose children qualify for the free and reduced meals program, which is fully funded by the U.S. Department of Agriculture (“USDA”), also qualify for the USDA’s Supplemental Nutrition Assistance Program (“SNAP”) (formerly Food Stamps). For a qualifying family of four, participating SNAP parents with two school age children enrolled in the free and reduced meals program through CPS receive approximately \$300 from SNAP at the beginning of each month to buy groceries. But this amount already reflects the assumption that the family’s two children who are students at CPS are receiving two or more free or reduced price meals per day, five days a week through CPS. With the schools closed during the CTU strike, the vast majority of these children are not receiving meals through CPS.

43. Aside from the significant logistical obstacles to trying to find and provide food service to hundreds of thousands of students during the strike, USDA regulations require that

CPS serve the meals in school. As a result, the CTU strike has created, and each day is exacerbating, a dangerous situation in which hundreds of thousands of Chicago's children in lower income families are going hungry. At the same time, CPS is facing massive food spoilage and the loss of approximately \$1.25 million per day in USDA funding.

44. This situation will only worsen as parents participating in SNAP exhaust their monthly food allowance without the meals anticipated to be provided to their children at school. This also is a clear and present danger to the health and safety of CPS students.

45. Second, school provides a safe haven for students from violence. No CPS student has been a victim of gun violence in a CPS school since at least 2007. Simply put, when students are not in school, they are decidedly less safe and more likely to be victims of gun violence than when they are in school.

46. In the recognition of the clear and present danger to the health and safety of CPS students, CPS has created and put into place a contingency plan for the strike, referred to as "Children First." As part of the plan, approximately 147 Children First site locations are open from 8:30 to 2:30 for CPS students. However, these sites can accommodate only approximately one-third of the students impacted by the strike. Finally, participation is voluntary, not compulsory, and so many students and families will choose not to participate. Students who are participating in the Children First contingency plan are receiving meals. But the many thousands of students who do not participate in the Children First plan are left without. For example, on September 10, 2012, the first day of the CTU strike, CPS served a total of only 4,800 meals to kids at the Children First sites, down from well over 400,000 meals served on a regular school day. The Children First program is a legitimate and necessary attempt to safeguard CPS

students, but it is not enough. Most CPS students are left without necessary nutrition, or a safe school environment because of the strike.

47. Additionally, CPS has over 50,000 students with special needs. These include students who suffer from autism, emotional disorders, Down syndrome and other severe disabilities. Because of the CTU strike, many of these students will not receive required special education and related services.

48. Under the Individuals with Disabilities Education Act (“IDEA”), students with disabilities have a right to receive a free appropriate public education. The IDEA requires that for every student with disabilities who has been determined to require special education and related services, an Individualized Education Program (“IEP”) must be developed. The IEP must include the special education and related services and supplementary aids and services that will be provided to enable the student: (1) to meet annual goals; (2) to participate and make progress in the general education curriculum, nonacademic parts of the school day and extracurricular activities; and (3) to be educated and integrated with age/grade appropriate nondisabled peers to the maximum extent appropriate.

49. Because of the strike, students with IEPs may no longer be receiving their required special education services. Students whose special education services are interrupted may suffer from loss of or decline in critical life skills, independent functioning, social and emotional development, behaviors or communication. Without a continuation of services, students may not recoup these skills at all, and likely will not recoup them at the same pace, as their nondisabled peers. Similarly, an interruption of services may disrupt students’ progress in developing critical skills and educational advancement, and will prevent them from attaining or maintaining goals.

50. In sum, because of the strike, students are deprived of essential nutritious meals, are exposed to an increased risk of violence, and are denied the special education services they need. The public safety and health is endangered when students do not receive the nutrition necessary for healthy growth and intellectual development, when students are exposed to violence, and when disabled students suffer a loss or decline in critical life skills and independent functioning because of a strike.

51. Section 13 of the IELRA limits the circumstances under which educational employees may strike, and Section 13(b) provides specifically, in relevant part, that:

If, however, in the opinion of an employer the strike is or has become a clear and present danger to the health or safety of the public, the employer may initiate in the circuit court of the county in which such danger exists an action for relief which may include, but is not limited to, injunction. The court may grant appropriate relief upon the finding that such clear and present danger exists.

115 ILCS 5/13(b).

52. As set forth in paragraphs 10 through 26, the CTU strike is a clear and present danger to the health and safety of the public. Therefore, this Court should grant appropriate relief and enter an injunction enjoining the strike.

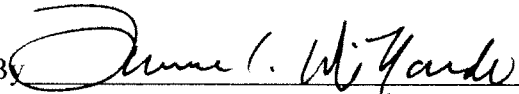
WHEREFORE, the Plaintiff Board of Education of the City of Chicago respectfully requests that the Court:

- 1) issue temporary, preliminary and permanent injunctive relief against CTU prohibiting it from engaging in a strike; and
- 2) grant such other relief, including monetary relief, as this Court deems appropriate.

Dated: September 17, 2012

Respectfully submitted,

BOARD OF EDUCATION OF THE CITY OF
CHICAGO

By _____

One of Their Attorneys

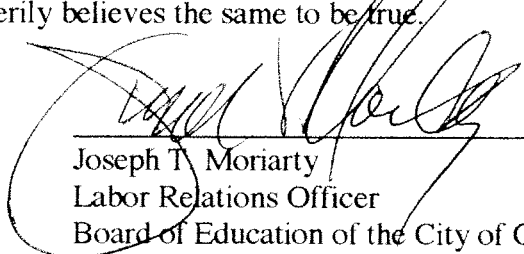
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VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Date: September 16, 2012



Joseph T. Moriarty
Labor Relations Officer
Board of Education of the City of Chicago

CERTIFICATE OF SERVICE

I, Elizabeth B. McRee, an attorney, hereby certify that I caused a true and correct copy of the foregoing *Verified Complaint for Temporary Restraining Order, Preliminary and Permanent Injunction and Damages* to be served on the following on this 17th day of September, 2012:

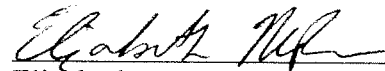
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