STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
Chicago Board of Education,	)	
	)	
Complainant,	)	
	)	
and	)	Case No. 2016-CB-0018-C
	)	
Chicago Teachers Union, Local No. 1, IFT-AFT, AFL-CIO,	)	
	)	
Respondent.	)	

OPINION AND ORDER

On April 1, 2016, the Chicago Board of Education (CBE) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) against the Chicago Teachers Union, Local No. 1, IFT-AFT, AFL-CIO (Union) alleging that the Union violated Sections 14(b)(3) and 13(b) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq. (Act), by authorizing a strike that occurred prior to the completion of all the requirements of Section 13(b) of the Act. The CBE requested that the IELRB seek preliminary injunctive relief pursuant to Section 16(d) of the Act. On April 13, 2016, the Executive Director issued a Complaint and Notice of Hearing, which alleged that the Union violated Sections 14(b)(3) and 13 of the Act by authorizing and participating in a strike without meeting the requirements of Section 13 of the Act.

The parties have set forth their positions on the CBE's request for injunctive relief through oral argument and written submissions. We have carefully considered those positions. For the reasons set forth below, we have granted the CBE's request that the IELRB seek preliminary injunctive relief pursuant to Section 16(d) of the Act.

I.

Section 16(d) of the Act provides that, upon issuance of an unfair labor practice complaint, the IELRB may petition the circuit court for appropriate temporary relief or a restraining order. Because the Executive Director has issued a Complaint in this case, the statutory prerequisite has been satisfied.

In *University of Illinois Hospital*, 2 PERI 1138, Case Nos. 86-CA-0043-C, 86-CA-0044-C (IELRB Opinion and Order, October 21, 1986), we held that preliminary injunctive relief is appropriate where there is reasonable cause to believe that the Act may have been violated and where injunctive relief is just and proper. Thus, we examine this case to determine whether those prerequisites have been satisfied.

II.

A. Is there reasonable cause to believe that the Act may have been violated?

In order for there to be reasonable cause to believe that the Act may have been violated, there must be a significant likelihood of the Complainant prevailing on the merits. *Chicago Board of Education*, 32 PERI 168, Case No. 2016-CA-0036-C (IELRB Opinion and Order, March 16, 2016); *Board of Trustees of the University of Illinois*, 31 PERI 82 (IELRB Opinion and Order, October 16, 2014); *Board of Trustees/University of Illinois at Urbana-Champaign*, 23 PERI 86, Case Nos. 2007-CA-0015-S, et al. (IELRB Opinion and Order, June 17, 2007). This first prong of the test for injunctive relief is not satisfied by the mere issuance of a Complaint. Under the Act, a Complaint is issued when questions of law or fact are presented. Although issuance of a Complaint is the statutory prerequisite for our consideration of a request for injunctive relief, something more is required to establish a significant likelihood of prevailing on the merits. *Chicago Board of Education*; *Board of Trustees of the University of Illinois*, 31 PERI

82; *Zion-Benton Township High School District 126*, 17 PERI 1015, Case No. 2001-CA-0031-C (IELRB Opinion and Order, March 6, 2001). In this case, we determine that there is a significant likelihood that the CBE will prevail on the merits. Therefore, there is reasonable cause to believe that the Act may have been violated.

The most recent collective bargaining agreement between the Union and the CBE expired on June 30, 2015. Effective February 1, 2016, the parties engaged in the fact-finding process established by Section 12(a-10) of the Act. Section 13(b) of the Act provides, in relevant part:

> Notwithstanding the existence of any other provision in this Act or any other law…educational employees in a school district organized under Article 34 of the School Code[1] shall not engage in a strike except under the following conditions:
>
> ….
>
> (2-5) if fact-finding was invoked pursuant to subsection (a-10) of Section 12 of this Act, at least 30 days have elapsed after a fact-finding report has been issued for public information;
>
> ….
>
> (3) at least 10 days have elapsed after a notice of intent to strike was given by the exclusive bargaining representative to the educational employer, the regional superintendent and the Illinois Educational Labor Relations Board;
>
> ….

On March 23, 2016, the Union's House of Delegates passed the following resolution:

> The House of Delegates designates April 1, 2016 as a strike day for all members of the CTU in response to the funding crisis and BOARD's refusal to bargain in good faith, to commence that day at 12:01 AM and ending on April 1, at 12 midnight.

The reference in the resolution to the CBE's "refusal to bargain in good faith" concerned the CBE's refusal to pay step and lane increases during the 2015-2016 school year, which is the

[1] Article 34 of the School Code applies to "cities having a population exceeding 500,000", i.e., Chicago.

subject of the Union's pending unfair labor practice charge in Case No. 2016-CA-0036-C. The reference to "the funding crisis" concerned revenue for the Chicago Public Schools.

The Union in fact went on strike for one day on April 1, 2016. At the time of the strike, 30 days had not elapsed after the fact-finding report had been released for public information and the Union had not given 10 days notice of its intent to strike as required by the Act. Therefore, the April 1, 2016 strike did not meet the requirements of Section 13(b) of the Act.

The IELRB has previously ruled that a strike that does not meet the requirements of Section 13 of the Act violates Section 14(b)(3), which makes it an unfair labor practice for a union which is the exclusive representative of the employees to "refuse to bargain collectively in good faith with an educational employer." *Niles Township Federation of Teachers*, 15 PERI 1048, Case No. 97-CB-0011-C (IELRB Opinion and Order, April 6, 1998); [2] *Board of Trustees of Joliet Junior College Community College District No. 525*, 8 PERI 1011, Case No. 92-CB-0024-C (IELRB Opinion and Order, December 27, 1991). In *Joliet Junior College*, *quoting* Malin, "Implementing the Illinois Educational Labor Relations Act," 61 Chicago Kent Law Review 101, 142 (1985), the IELRB found that a union's failure to meet the requirements of Section 13 "'potentially undermines the bargaining process by ignoring safeguards built into that process,'".

The Union argues that, even if its strike was not protected by the Act, it was not an unfair labor practice, citing *NLRB v. Insurance Agents International Union*, 361 U.S. 477 (1960). However, this private sector decision under the National Labor Relations Act (NLRA) might not be applicable here. Under the common law in the private sector, strikes were legal. *See*

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[2] The Union cites the Administrative Law Judge's decision in the *Niles Township* case. However, it is the Board's decision in that case rather than the Administrative Law Judge's decision which is controlling, and the Board's decision clearly states that by engaging in a strike which does meet the requirements of Section 13, a union violates Section 14(b)(3).

American Steel Foundries v. Tri-City C.T. Council, 257 U.S. 184 (1921). The National Labor Relations Act provides: "Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interfere with or to impede or diminish in any way the right to strike, or to affect limitations or qualifications on that right." 29 U.S.C. §163.

Under the common law in Illinois, in contrast, employees of public schools did not have the right to strike. *Board of Education of Kankakee School District 111 v. Kankakee Federation of Teachers Local No. 886*, 46 Ill.2d 439, 264 N.E.2d 18 (1970); *Board of Education of Community Unit School District No.2 v. Redding*, 32 Ill.2d 567, 207 N.E.2d 427 (1965). As noted above, Section 13 of the Act provides: "Notwithstanding the existence of any other provision in this Act or any other law...educational employees in a school district organized under Article 34 of the School Code shall not engage in a strike except under the following conditions...." In other words, unlike in the private sector, educational employees in Illinois do not have the right to strike unless the Act provides otherwise. Thus, private sector precedent might not apply.

It is noteworthy that, in contrast to the Illinois Educational Labor Relations Act, the Illinois Public Labor Relations Act provides: "Nothing in this Act shall make it an unlawful or make it an unfair labor practice for public employees, other than security employees...Peace Officers, Fire Fighters and paramedics employed by fire departments and fire protection districts, to strike except as otherwise provided in this Act" 5 ILCS 315/17(a). The Illinois Educational Labor Relations Act was adopted at the same time as the Illinois Public Labor Relations Act, but does not contain language similar to this provision. Thus, the General Assembly knew how to prohibit strikes from being regarded as unfair labor practices, but did not do so in the Illinois Educational Labor Relations Act. This omission may imply that the General Assembly

contemplated that strikes by educational employees could constitute unfair labor practices under the appropriate circumstances. For the above reasons, we see no reason to reconsider our conclusion in *Joliet Junior College* and *Niles* that strikes which do not meet the requirements of Section 13 are unfair labor practices in violation of Section 14(b)(3) of the Act.

The Union also argues that it had the right to strike on April 1, 2016 because it was striking to protest an alleged unfair labor practice rather than striking in support of contract demands. It cites another NLRA case, *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (1956), in support of this proposition. However, private sector case law may not apply under the Illinois Educational Labor Relations Act for the reasons discussed above.

Under Illinois case law, statutes in derogation of the common law are limited to their express language. *Rush University Medical Center v. Sessions*, 2012 IL 112906, 980 N.E.2d 45 (2012), *citing Adams v. Northern Illinois Gas Co.*, 211 Ill.2d 32, 89 N.E.2d 1248 (2004); *see J.P. Morgan Chase, N.A. v. Earth Foods, Inc.*, 238 Ill.2d 455, 939 N.E.2d 487 (2010), *citing Summers v. Summers*, 40 Ill.2d 338, 239 N.E.2d 795 (1968). As noted above, the common law in Illinois was that strikes by employees of public schools were illegal. *Kankakee*; *Redding*. Thus, to the extent that the Act makes certain strikes legal, it may be in derogation of the common law, which could mean that the Act cannot be read to make strikes legal where it does not expressly state that they are legal.

Even in the private sector, the court held in *NLRB v. Washington Heights-West Harlem Mental Health Council, Inc.*, 897 F.2d 1238 (1990) that an unfair labor practice strike that did not comply with a statutory notice requirement was an unfair labor practice. The court reasoned that this notice requirement was enacted after the *Mastro Plastics* decision, but Congress did not include an exception to this requirement for unfair labor practice strikes. The same principle

applies here. The General Assembly knew about unfair labor practice strikes, as is reflected in the fact that it mentioned them in the Act as a defense to an employer's request for an injunction against a lawful strike. 115 ILCS 5/13(b). However, the General Assembly did not create a statutory exception for unfair labor practice strikes to the requirements for a lawful strike listed in Section 13(b).

Most significant, however, is the Illinois Appellate Court's decision in *Chicago Transit Authority v. ILRB*, 386 Ill.A.3d 556, 898 N.E.2d 176 (1st Dist. 2008). In that case, even under the broad authorization for strikes in the Illinois Public Labor Relations Act, the Appellate Court determined that a strike must satisfy the statutory requirements to be lawful. Although an actual strike in that case would have been an unfair labor practice strike, the court did not indicate that unfair labor practice strikes should be treated any differently from ordinary economic strikes. Therefore, even under the broad authorization for strikes in the Illinois Public Labor Relations Act, unfair labor practice strikes which do not meet statutory requirements are unlawful.

As the Union notes, finding a strike to be unlawful is not equivalent to finding that it is an unfair labor practice. However, the IELRB's decisions state that a union commits an unfair labor practice in violation of Section 14(b)(3) of the Illinois Educational Labor Relations Act by engaging in an unlawful strike. There is no basis in the Act or in Illinois case law to treat unlawful unfair labor practice strikes any differently from any other unlawful strikes. Rather, Illinois authority suggests that they should be treated similarly.

The Union also argues that the strike was protected because it was an appeal to the legislature for funding for the Chicago Public Schools. However, the cases that the Union cites for the proposition that appeals to legislators to improve working conditions are protected did not concern strikes. *See Eastex, Inc. v. NLRB*, 437 U.S. 556 (1978); *Cook County Hospital*, 10 PERI

3029 (ILRB 1994). Therefore, these cases do not demonstrate that the Union's strike was protected activity. Moreover, to accept the Union's argument that a union has the right to strike whenever it claims that there has been an unfair labor practice or whenever it wishes to bring issues to the attention of the legislature, regardless of whether it has complied with the statutory requirements for a strike, would completely eviscerate the very carefully constructed statutory scheme for when strikes can be lawful.

Our dissenting colleague argues that there is not reasonable cause to believe that the Act may have been violated on the basis that the IELRB has no established law regarding the issue of unfair labor practice strikes. However, the IELRB has clear and well established law stating that strikes that do not meet the statutory requirements constitute unfair labor practices. *See Niles*; *Joliet Junior College*. The Union's April 1, 2016 strike did not satisfy the statutory requirements. The *City Transit Authority* case discussed above indicates that even unfair labor practice strikes must satisfy the statutory requirements to be lawful. Therefore, there is established law sufficient to create reasonable cause to believe that the Union's April 1, 2016 strike violated Section 14(b)(3) of the Act.

Accordingly, there is a significant likelihood that the CBE will prevail on the merits of its claim that the Union violated Section 14(b)(3) of the Act by engaging in the April 1, 2016 strike. Thus, there is reasonable cause to believe that the Act may have been violated.

B. Is preliminary relief "just and proper?"

We must also determine whether preliminary injunctive relief is justified under the second prong of the test, i.e., whether preliminary relief is "just and proper." In determining whether preliminary injunctive relief is just and proper, the IELRB considers whether an injunction is necessary to prevent frustration of the basic remedial purposes of the Act; the

degree, if any, to which the public interest is affected by a continuing violation; the need to immediately restore the status quo ante; whether ordinary IELRB remedies are inadequate; and whether irreparable harm will result without preliminary injunctive relief. *Chicago Board of Education*; *Board of Trustees of the University of Illinois*, 31 PERI 82; *Board of Trustees/University of Illinois at Urbana-Champaign*, 23 PERI 86; *Crete-Monee School District 201-U*, 19 PERI 145 (IELRB Opinion and Order, August 20, 2003). Preliminary injunctive relief should be limited to those cases in which the alleged violations are serious and extraordinary. *Chicago Board of Educationi*; *Board of Trustees/University of Illinois at Urbana-Champaign*, 23 PERI 86; *Crete-Monee*. In this case, we determine that preliminary injunctive relief is "just and proper."

In *Joliet Junior College*, we stated:

> The carefully crafted provisions governing strikes are a central part of the Act. An untimely strike improperly skews the collective bargaining process by giving the union a weapon to which it is not legally entitled. Strikes that do not comply with the statutory prerequisites flout the General Assembly's determination that strikes are legal only if specific procedures are followed. Such harm cannot meaningfully be remedied by our unfair labor practice proceedings, since the conduct at issue involves a direct and immediate challenge to the collective bargaining process and the general public interest defined by the General Assembly.

Thus, an illegal strike causes irreparable harm to the collective bargaining process and is a serious and extraordinary violation of the statutory framework for collective bargaining. These considerations apply equally to future strikes as well as to strikes which are ongoing.

As also stated in *Joliet Junior College*, illegal strikes are contrary to the public interest. Prior to the Act, there was a public policy against strikes by school employees. In finding such a public policy in *Redding*, *supra*, 32 Ill.2d at 572, 207 N.E.2d at 430, the Illinois Supreme Court relied on language in Art. VIII, sec. 1 of the Illinois Constitution of 1870 providing for a

"thorough and efficient system of free schools." The Illinois Constitution was amended in 1970, but still embodies the same public policy. Article 10, §1 of the Illinois Constitution of 1970 provides for "an efficient system of high quality educational institutions and services."

Although the Act created a public policy in favor of collective bargaining, it did not eliminate the public policy against strikes by educational employees where strikes are not permitted under by the Act. Section 1 of the Act states that "[i]t is the public policy of this State and the purpose of this Act to promote orderly and constructive relationships between all educational employees and their employers." As the IELRB noted in *Joliet Junior College*, Section 1 expressly provides that "establishing procedures to provide for the protection of the rights of the educational employee, the educational employer and the public" is an essential part of achieving the overall policy of promoting orderly and constructive relationships. The Act's "carefully crafted provisions governing strikes" constitute procedures to provide for the protection of the rights of the educational employer and the public, while protecting the rights of educational employees by allowing them to engage in strikes when the statutory requirements have been met. Accordingly, a strike such as the Union engaged is contrary to the public interest.

Moreover, the IELRB's processes are not designed to deal with abbreviated strikes such as the one in this case. Before an injunction can be issued, this Board must investigate the unfair labor practice charge filed by the employer, issue a complaint, allow the parties to brief the issue and then hold a hearing. Then, if the Board decides to seek injunctive relief, it must ask the Attorney General's Office to go to court to petition for the injunction. Most one day strikes will be over before an injunction can be issued by the court. Moreover, a court could not use contempt proceedings to enforce its injunction since any one day strike would end before non-

compliance with the court's order occurred. Thus, in this case, an injunction is necessary to avoid frustration of the basic remedial purposes of the Act and ordinary IELRB remedies will be inadequate.

However, we must still consider whether there is a need to immediately restore the status quo under the circumstances of this case. The strike only lasted for one day, and, on April 6, 2016, Union President Karen Lewis (Lewis) wrote a letter to CBE Labor Relations Officer Joseph Moriarty in which she stated, in pertinent part:

> ...I will take this opportunity to formally notify you that the Chicago Teachers Union will not engage in another strike at the Chicago Public Schools except possibly a strike over the terms of our labor contract, and such a contract strike would only occur after the conclusion of the impasse procedures and following statutory notices required under the Illinois Educational Labor Relations Act. If anyone speaking for the CTU has asserted that the Union would engage in a non-contract strike on any day other than April 1, or that the CTU intended to repeat such a strike on another day, those statements were not authorized by the Union and they are expressly disavowed.

It is still appropriate, however, to consider the CBE's request for preliminary injunctive relief because this is a matter of substantial public interest. *See Bonaguro v. County Officers Electoral Board*, 158 Ill.2d 391, 634 N.E.2d 712 (1994). A court may appropriately enjoin unlawful conduct which is no longer occurring based on "(1) the public nature of the question, (2) the desirability of an authoritative determination for the purpose of guiding public officers, and (3) the likelihood that the question will recur," 158 Ill.2d at 395, 634 N.E.2d at 714. The profound effect of strikes on the relationships between educational employees and their employers and on the lives of members of the public establishes the public nature of the question and the desirability of an authoritative determination.

As to the likelihood that the question will recur, the Union has not acknowledged the illegality of the strike and has not taken official action to ensure that it would not recur. *Cf.*

Board of Education of City of Peoria School District No. 150 v. Peoria Education Association, 29 Ill.App.3d 411, 415, 330 N.E.2d 235, 238 (3rd Dist. 1975) (parties agreed that strike by public school teachers unlawful and that previous injunction against prior strike correct); *Johnson v. Du Page Airport Authority*, 268 Ill.App.3d 409, 644 N.E.2d 802 (1994) (airport authority passed resolution prohibiting challenged conduct); *Magnuson v. City of Hickory Hills*, 933 F.2d 562 (7th Cir. 1991) (homeowners removed from list of residents who were under threat of having water cut off); *Ragsdale v. Turnock*, 841 F.2d 1358 (7th Cir. 1988) (defendants acknowledged requirement unconstitutional and ceased to enforce it).

Rather, the Union has vigorously asserted that the April 1, 2016 strike was proper.[3] Lewis's letter, while no doubt sincere and worthy of consideration, is not the type of official action which was found to make requests for injunctive relief moot in *Johnson* and *Magnuson*. Under Article VI, Section 1 of the Union's constitution and Article IX, Section 1 of the Union's Bylaws, the Union's House of Delegates, rather than the Union's President, has supreme and final authority under the Union's membership, and the Union's membership has the final authority to authorize a strike. The House of Delegates and the Union membership did not take any action to ensure that there would not be another strike. Analogously to this case, the fact that in *Ragsdale*, the defendants testified that another requirement was no longer being enforced was not sufficient to make the issue of the requirement moot. The matters which gave rise to the strike in this case have continued to exist. *Cf. City of Peoria School District No. 150* (dispute which gave rise to strike settled). These facts create more than a "mere possibility" of another strike. *Cf. City of Peoria School District No. 150*; *Johnson*. The power of a court to grant

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[3] In *Board of Education of School District No. 196 v. Parkhill*, 50 Ill.App.3d 60, 365 N.E.2d 195 (5th Dist. 1977), where the Appellate Court found that the trial court had not erred in refusing to grant injunctive relief against defendants who had ceased aiding or supporting a strike, the defendants did not assert that their conduct was legal.

injunctive relief survives the discontinuance of the illegal conduct where there is more than a "mere possibility" that the conduct will recur, as there is here. *See City of Peoria School District No. 150*; *see U.S. v. W.T. Grant Co.*, 346 U.S. 629 (1953) (voluntary cessation of unlawful conduct does not make case moot); *Ragsdale* (same).

Our dissenting colleague argues that injunctive relief is not just and proper on the basis that it is speculative to assume that the Union will engage in another strike that does not meet the statutory requirements. However, this is the first time this Board has faced a situation where a union: 1) has claimed the right to strike without regard to the requirements of the Act; and 2) has voluntarily placed a one day limit on a strike which was likely illegal. Given that the conditions which motivated the one day strike still exist, the Union President's letter and the fact that the Union's likely illegal strike ended after one day as the Union had planned cannot give us any assurance that the Union has recognized that its conduct may be illegal and that it will refrain from similar actions in the future. The Union's claim that it can ignore the requirements of the Act and strike whenever it feels that it has been the victim of unfair labor practices or whenever it wishes to publicize its views to the General Assembly make it more than speculative that the Union will engage in another strike without meeting those requirements. Thus, it is critical that we notify the Union now that its strike was likely illegal and it may not repeat it.

We conclude that preliminary injunctive relief is just and proper under the circumstances of this case. Because there is reasonable cause to believe that the Act may have been violated and because preliminary injunctive relief was just and proper under the circumstances of this case, we have granted the CBE's request that we seek preliminary injunctive relief pursuant to Section 16(d) of the Act and have authorized the IELRB's General Counsel to seek the following

injunctive relief: To order the Union not to engage in any future strikes prior to completing the process required by Section 13(b) of the Act.

III.

This is not a final order that may be appealed under the Administrative Review Law. *See* 5 ILCS 100/10-50(b); 115 ILCS 5/16(a).

Decided: May 19, 2016
Issued: May 20, 2016
Chicago, Illinois

/s/ Andrea Waintroob
Andrea Waintroob, Chairman

/s/ Judy Biggert
Judy Biggert, Member

/s/ Gilbert O'Brien
Gilbert O'Brien, Member

/s/ Michael H. Prueter
Michael H. Prueter, Member

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Member Lynne O. Sered, dissenting

I disagree with my colleagues' conclusion that preliminary injunctive relief is warranted in this case. In my view, my colleagues' decision to pursue preliminary injunctive relief does not comport with the law.

First, I would find that there is not reasonable cause to believe that the Act has been violated. The IELRB has repeatedly refused to find reasonable cause to believe that the Act has been violated where the law is unsettled. *E.g.*, *Chicago Board of Education and Chicago School Finance Authority*, 9 PERI 1004, Case No. 93-CA-0011-C (IELRB Opinion and Order, November 12, 1992); *Zion-Benton Township High School District 126*, 8 PERI 1110, Case No.

93-CA-0001-C (IELRB Opinion and Order, October 1, 1992). In a case similar to the one currently before us, the IELRB refused to seek preliminary injunctive relief against a strike which allegedly did not meet all of the statutory prerequisites. *Niles Township High School District 219*, 13 PERI 1004, Case Nos. 97-CB-0011-C, 97-CB-0012-C (IELRB Opinion and Order, October 29, 1996). The employer contended that the requirement that mediation had been used without success had not been satisfied. The IELRB determined that the phrase "mediation without success" had not been defined. The IELRB concluded that, therefore, the employer had not established a significant likelihood of prevailing on the merits.

Similarly, in this case, the IELRB has no established law on whether unfair labor practice strikes which do not meet the requirements of Section 13(b) of the Act constitute unfair labor practices. Rather, the IELRB's case law only addresses whether ordinary economic strikes which do not meet those requirements are unfair labor practices. *See Niles Township High School District 219*, 15 PERI 1048, Case No. 97-CB-0011-C (IELRB Opinion and Order, April 6, 1998); *Board of Trustees of Joliet Junior College Community College District No. 525*, 8 PERI 1011, Case No. 92-CB-0024-C (IELRB Opinion and Order, December 27, 1991). In *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (1956), the United States Supreme Court held that the statutory waiting period provision in the National Labor Relations Act was not applicable to unfair labor practice strikes. The IELRB has not yet considered whether to follow this precedent.

My colleagues cite *Chicago Transit Authority v. ILRB*, 386 Ill.App.3d 556, 898 N.E.2d 176 (1st Dist. 2008). However, in that case, the court did not address whether strikes which do not meet the statutory requirements constitute unfair labor practices, but only whether they are lawful. The Appellate Court's findings relied upon by my colleagues are dicta. *Chicago Transit*

Authority deals only with whether the union violated Sections 14(b)(1) and (4) of the Illinois Public Relations Act, 5 ILCS 315/10(b)(1), 10(b)(4), when it conducted a strike authorization vote. In *NLRB v. Insurance Agents International Union*, 361 U.S. 477 (1960), the United States Supreme Court ruled that unprotected economic action by a union did not constitute an unfair labor practice. Accordingly, *Chicago Transit Authority* does not determine the issue before us. Because there is no established law on whether unfair labor practice strikes which do not meet the requirements of Section 13(b) of the Act are unfair labor practices, the CBE has not demonstrated that it has a significant likelihood of prevailing on the merits, and thus, there is not reasonable cause to believe that the Act may have been violated.

I would also find that preliminary injunctive relief is not "just and proper" in this case. The IELRB has declined to find preliminary injunctive relief "just and proper" where the harm which could occur without an injunction is speculative. *See Zion-Benton High School District 126*, 17 PERI 1015, Case No. 2001-CA-0031-C (IELRB Opinion and Order, March 6, 2001); *Peoria School District No. 150*, 4 PERI 1045, Case No. 88-CA-0027-S (IELRB Opinion and Order, February 25, 1988). The CBE's assertion here that the Union will engage in another allegedly illegal strike is purely speculative. The Union never said or did anything to indicate that it might engage in another strike, other than a strike on the terms of the contract in compliance with the requirements of Section 13(b). The Union President's letter expressly states that the Union would not engage in such a strike. In *Chicago Board of Education District 299*, 3 PERI 1109, Case No. 86-CA-0098-C (IELRB Opinion and Order, September 11, 1987), the IELRB declined to find preliminary injunctive relief "just and proper" where there was no showing that the employer had taken, or was about to take, any action to implement the results of

the challenged examination. As in that case, we cannot see into the future to find that the Union may do something which it has given no indication that it plans to do.

Therefore, I would find that there is not reasonable cause to believe that the Act may have been violated, and that preliminary injunctive relief is not "just and proper." Accordingly, I respectfully dissent.

/s/ Lynne O. Sered
Lynne O. Sered, Member