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CINCINNATI FEDERATION OF TEACHERS AND CINCINNATI F A 2100376

vs.
BOARD OF EDUCATION OF
THE CITY SCHOOL DISTRICT
OF

FILING TYPE: INITIAL FILING (IN COUNTY) WITH NO JURY DEMAND

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IN THE COURT OF COMMON PLEAS HAMILTON COUNTY, OHIO

CINCINNATI FEDERATION OF	CASE NO.:
TEACHERS and CINCINNATI	
FEDERATION OF OFFICE	
PROFESSIONALS, LOCAL 1520	
2368 Victory Parkway, Suite 100	JUDGE:
Cincinnati, Ohio 45206	
Plaintiff,	
v.	
BOARD OF EDUCATION OF THE	
CITY SCHOOL DISTRICT OF THE	VERIFIED COMPLAINT FOR
CITY OF CINCINNATI	TEMPORARY RESTRAINING
2651 Burnet Avenue	ORDER, PRELIMINARY
Cincinnati, Ohio 45219	INJUNCTION, AND
)	DECLARATORY AND
Defendant.	INJUNCTIVE RELIEF
)	

Plaintiff Cincinnati Federation of Teachers and Cincinnati Federation of Office Professionals, Local 1520, for its Verified Complaint for Temporary Restraining Order, Preliminary Injunction, and Declaratory and Injunctive Relief state as follows:

INTRODUCTION

1. Plaintiff Cincinnati Federation of Teachers ("CFT") and Cincinnati Federation of Office Professionals ("CFOP"), Local 1520 (collectively "Union") brings this action, pursuant to Ohio Revised Code Chapter 2711 and Rule 65 of the Ohio Rules of Civil Procedure, for a Temporary Restraining Order, Preliminary Injunction, and Declaratory and Injunctive Relief requiring Defendant Board of Education of the City School District of the City of Cincinnati ("Board") to maintain the status quo in effect as

of this filing, namely for teachers to continue remote instruction, pending arbitration of the Plaintiff's corresponding grievance.

PARTIES AND VENUE

- 2. Plaintiff is the exclusive bargaining representative for all classroom teachers, certificated night-school teachers and summer school teachers who are also day-school classroom teachers on an annual rate, librarians/media specialists, school social workers, coordinating teachers, nurses, counselors, psychologists, occupational therapists, physical therapists, audiologists, speech and language pathologists, pre-school teachers, and daily-rate substitutes. (Ex. 1, p.1: Collective Bargaining Agreement between CFT and the Board, effective July 1, 2017).
- 3. Plaintiff is also the exclusive bargaining representative for all clerical employees on Civil Service Salary Schedule B, and for classifications of special service assistant hired before December 31, 1996; physical therapy assistants and occupational therapist assistants; senior buyer, buyer, and assistant buyer; auxiliary services clerks in nonpublic schools who work fifty percent time or more, inventory coordinator and transportation specialists. (Ex. 2, p.1: Collective Bargaining Agreement between CFOP and the Board, effective July 1, 2017).
- 4. Defendant is a public school district incorporated under the laws of the State of Ohio. Defendant is governed by a seven-member board located within Hamilton County, and acts as a public employer of the employees represented by the Union.
 - 5. Venue is proper pursuant to Rule 3(B) of the Ohio Rules of Civil Procedure.

STATEMENT OF FACTS

- 6. The Union and the Board (collectively "Parties") are parties to a collective bargaining agreement ("CBA") effective July 1, 2017 to June 30, 2020. (Ex. 1, p. 85; and Ex. 2, pp. 2, 64).
- 7. The Parties extended the effective date of their CBAs, by way of a Memorandum of Understanding ("MOU"), to June 30, 2021.
- 8. On March 9, 2020, Ohio confirmed its first case of COVID-19, an infectious disease caused by severe acute respiratory syndrome coronavirus 2, which spreads primarily when an infected person is in close contact with someone, but which also spreads by way of contaminated surfaces.
- 9. On March 16, 2020, the Board closed schools to in-person instruction to slow the spread of COVID-19.
- 10. On March 22, 2020 the Ohio Department of Health issued the first of two Stay At Home Orders to slow the spread of COVID-19.
- 11. Circa July 2020, the Board announced it would suspend in-person instruction if the coronavirus positivity rate in Hamilton County remained above five percent.
- 12. On December 16, 2020, the Board presented its "Return to Blended Learning Timeline" ("Timeline"). (Exh. 3). Among other items, the Timeline called for a return to in-person instruction for pre-kindergarten to third grade, and for specialized classrooms, the week of February 1 if for two weeks the community spread rate remained at 40 new cases per day per 100,000 Hamilton County residents. (Exh. 3, p. 21).

- 13. The Timeline called for a return to in-person instruction the week of February 15 for grades four to eight "[i]f [the community spread rate remained at] 30 for two weeks and staff absenteeism is sustainable." (Exh. 3, p. 21).
- 14. The Timeline called for a return to in-person instruction the week of March 1 for grades nine to twelve "if [the] 30 [new cases per day per 100,000 Hamilton County residents] trend continues and staff absenteeism is sustainable." (Exh. 3, p. 21).
- 15. On January 16, 2021, the Board voted to disregard the Timeline and resume in-person instruction the week of February 1, 2021 for preschool through third grade; to resume in-person instruction the week of February 15 for four to six and nine to twelve; and to resume in-person instruction the week of March 1 for grades seven and eight.
- 16. On January 18, the County's community spread rate was 69 new cases per day per 100,000 Hamilton County residents, which is well above the 40 new cases threshold the Board established a month earlier on December 16.
- 17. On January 18, the County's positivity rate was 14.6 percent, which is well above the 5 percent threshold the Board established a month earlier on December 16, 2020.
- 18. From January 16 to the present, the Union received dozens of calls and emails from CFT and CFOP members who are reluctant or adamantly opposed to a February 1 return to in-person instruction.
- 19. In hopes of finding an explanation for the decision to abandon the Timeline, on January 21 the Union submitted to the Board a public records request. (Exh. 4) As of this filing, the Board had not produced any records in response to the Union's request.
- 20. Under CBA Section 300, "Grievance Procedure," disputes between the Union and the Board concerning "an alleged violation, misinterpretation or misapplication

of any provision(s) of [the] contract" must be resolved by way of the CBA's grievance-arbitration procedure, which ends with final and binding arbitration. (Ex. 1, pp. 49-53).

- 21. CBA Section 240.7 ("Health and Safety") part "a" ("Cooperation of Board and Federation") provides that "[t]he Board and the [Union] will cooperate in making reasonable provisions for the safety and health of its teachers." (Ex. 1, p. 40).
- 22. CBA Section 240.7(b) ("Grieving Hazardous Conditions") provides that "[a] teacher or group of teachers who believes that a teacher is being required to work under conditions which are unsafe or unhealthy beyond the normal hazard inherent in the assignment in question shall have the right to file a grievance at Level Two." (Ex. 1, p. 40).
- 23. Level two provides that "[w]ithin seven (7) days after such written grievance is filed, the grievant, the Federation, and the Superintendent or his/her designee should meet to resolve the grievance. The Superintendent or his/her designee shall file his/her decision within five (5) days of the Level Two meeting and communicate it to the grievant and the Federation." (Exh. 1, p. 51).
- 24. On January 22, 2021, the Union submitted a Grievance Form, pursuant to Sections 240.7(a) and (b) of the CBA, seeking to postpone the return to in-person instruction until the community-spread measures set forth in the Timeline are met. In the alternative, the Union sought to postpone the return to in-person instruction until all teachers have had the opportunity to receive both doses of the COVID-19 vaccine and enough time has elapsed after the second dose for the vaccine to have achieved its greatest efficacy. (Ex. 5).
- 25. On January 26, 2021 the Union surveyed its membership, and the results indicate that 77 percent of respondents do not feel comfortable resuming in-person

instruction before receiving a COVID-19 vaccine, and approximately 90 percent of respondents wanted to delay the return to in-person instruction until March 1, or until they received a vaccine. (Exh. 6).

- 26. On January 26, the Parties held a Level Two grievance meeting, and during that meeting the Union advised the Board of its concerns regarding the risks posed by returning to in-person instruction February 1 before teachers and other building personnel have been vaccinated, while Hamilton County remained in the Purple, and with a vaccine available to teachers and building personnel within the next month.
 - 27. The Board's superintendent declined the Union's invitation to this meeting.
- 28. During the January 26 meeting, the Union asked the Board to reverse its decision to resume in-person instruction on February 1, and to continue remote instruction until all teachers and all school-building personnel have been offered a vaccine.
- 29. On January 26, the Board advised the Union that it would not reverse its decision, and that in-person instruction would resume February 1, 2021.
- 30. On January 26, the Union advised the Board of its demand to arbitrate the grievance and requested an expedited hearing, but the Defendant refused and advised the Union of its intent to take five days to respond as permitted in the CBA.
- 31. On January 28, the Union consulted with an infectious disease expert, Bruce P. Bernard, MD, MPH, who opined that "the current state of the COVID-19 pandemic in Hamilton County presents an undue health and safety risk to Cincinnati Public School (CPS) teachers," and that "in-person instruction should not occur at this time." (Exh. 7, pp. 1-2, ¶¶ 6-7).

- 32. As of January 29, 2021, Hamilton County remained in the red level of Ohio's Public Health Advisory System, where exposure and spread are "very high," and activities should be limited as much as possible.
- 33. By February 1, 2021, the Board will have delivered exclusively remote instruction for six and a half of the nine months since schools closed on March 16, 2020.

CLAIMS FOR RELIEF

COUNT I:

Claim for Declaratory Judgment, Temporary Restraining Order, and Preliminary Injunction Pending Arbitration of the Union's Grievance

Plaintiff alleges and incorporates Paragraphs 1 through 33 of the Verified Complaint for Declaratory and Injunctive Relief.

- 34. The Board's decision to resume in-person instruction on February 1, 2021, without notice to the union, violates the clear and express terms of Section 240.7(a) of the CBA requiring "[t]he Board and the [Union to] cooperate in making reasonable provisions for the safety and health of its teachers." (Ex. 1, p. 40).
- 35. A global pandemic involving a deadly infection creates work conditions which are unsafe and unhealthy beyond the normal hazard inherent in any assignment.
- 36. Coronavirus is a deadly pandemic, and the Board's decision to resume inperson instruction on February 1, 2021 will require the Union's members to work under conditions which are unsafe and unhealthy beyond the normal hazard inherent in their assignment.
- 37. Pursuant to CBA Section 300.3, the Union filed a grievance in response to the Board's violation of Sections 240.7(a) and (b). (Exh. 5).

- 38. On January 26, 2021, the Board advised the Union that it would not reverse its decision to resume in-person instruction on February 1.
- 39. If the Board follows through with its plan to resume in-person instruction February 1, while the parties await the arbitrator's decision resolving the grievance, the Board increases the risk of teachers and staff, their families and communities, becoming infected with a potentially deadly virus.
- 40. The risk to teachers, staff, families, and communities is unreasonable and unnecessary given that the Board has delivered remote instruction for six and a half of the nine months schools have been open since March 2020.
- 41. The risk to teachers, staff, families, and communities is unreasonable and unnecessary given that a highly effective vaccine will be available to all teachers and personnel within the next month.
- 42. If the Board follows through with its plan to resume in-person instruction February 1, while the parties await the arbitrator's decision resolving the grievance, there is no remedy to reverse potentially permanent side effects or death.
- 43. If the Board follows through with its plan to resume in-person instruction February 1, while the parties await the arbitrator's decision resolving the grievance, Sections 240.7(a) and (b) will be unenforceable as to that dispute, rendering the CBA's grievance-arbitration procedure ineffective and meaningless.
- 44. If the Board moves forward with its plan to resume in-person instruction February 1, the Board increases the risk of an outbreak requiring a return to remote instruction and further delaying a permanent return to in-person instruction.

- 45. If the Board is not enjoined from violating the terms of Section 240.7, while the parties await the arbitrator's decision resolving the grievance, the Union and its members face the quantifiable and unnecessary risk of unquantifiable and irreparable harm up to and including shortness of breath, muscle and joint pain, depression, headache, intermittent fever, loss of sleep, loss of memory, difficulty concentrating, acute kidney injury, inflammation of the heart, and death.
- 46. Therefore, the Union requests a Temporary Restraining Order and Preliminary Injunction pending resolution of its grievance through final and binding arbitration as set forth under the CBA's grievance-arbitration procedure.

PRAYER FOR RELIEF

Plaintiff submits the following prayer for relief:

- (1) A judgment declaring the Union entitled to have its grievance resolved in accordance with the procedures set forth in Section 300 of the CBA;
- (2) A Temporary Restraining Order enjoining the Defendant from resuming inperson instruction on February 1, in violation of Section 240.7(a) and (b) or any other applicable articles, pending resolution of the Union's grievance in accordance with the CBA's binding-arbitration provisions;
- (3) An evidentiary hearing for issuance of a Preliminary Injunction enjoining Defendant from resuming in-person instruction on February 1, in violation of Sections 240.7(a) and (b) or any other applicable articles, pending resolution of the Union's grievance in accordance with the CBA's binding-arbitration provisions;
- (4) For this Court to retain jurisdiction for purposes of enforcing the judgment of this Court and the decision of the arbitrator regarding these matters; and

(5) An award of reasonable attorneys' fees and costs, as well as any other relief this Court deems just and equitable.

Respectfully submitted,

COOK, ALLEN & LOGOTHETIS, LLC by

/s/ Bennett P. Allen

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STATE OF OHIO }
} ss: VERIFICATION & AFFIDAVIT OF
COUNTY OF HAMILTON}
JULIE SELLERS

I, Julie Sellers, first being duly sworn according to law, hereby state:

- 1. I am president of the Cincinnati Federation of Teachers, Local 1520 ("CFT"), and in that capacity, I hold the highest union office.
- 2. I have reviewed the foregoing Verified Complaint for Temporary Restraining Order, Preliminary Injunction, and Declaratory Judgment and Injunctive Relief (the "Complaint"), and the accompanying exhibits.
- 3. I hereby swear that the allegations contained in the Complaint are true to the best of my knowledge.
- 4. Exhibit 1 to the Plaintiff's Complaint is a true copy of the Collective Bargaining Agreement ("CBA") between CFT and the Board of Education of the City School District of the City of Cincinnati ("Board"), effective July 1, 2017 through June 30, 2020, and is the CBA the parties are currently operating under.
- 5. Exhibit 2 to the Plaintiff's Complaint is a true copy of the CBA between the Cincinnati Federation of Office Professionals and the Board, effective July 1, 2017 through June 30, 2020, and is the CBA the parties are currently operating under.
- 6. Exhibit 4 to the Plaintiff's Complaint is a true copy of the public records request for information regarding the decision to resume in-person instruction on February 1, dated January 21, 2021.
- 7. Exhibit 5 to the Plaintiff's Complaint is a true copy of the Grievance Form filed by the Union on January 25, 2021, contesting the Board's decision requiring teachers to resume inperson instruction on February 1, 2021.

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- 8. On January 26, 2021, I met with Defendant at a Level Two grievance meeting during which Defendant denied the grievance and indicated its intent to take five days before putting the denial in writing.
- 9. In the past, the Board conferred with CFT when deciding whether and how to shift from in-person instruction to remote instruction.
- 10. At the Board's January 16 meeting, I was denied an opportunity to speak, which left Board members under-informed with respect to the practical implications and unintended consequences of a February 1 return to in-person instruction.
- 11. In denying me an opportunity to speak, Board members were also left under informed with respect to teachers' concerns regarding a February 1 return to in-person instruction.
- 12. At least one Board member has publicly stated that they would have voted differently with respect to the February 1 return to in-person instruction had they known at the January 16 meeting what they learned on January 18.
- 13. In my capacity as CFT president, I hear directly from our members, and I hear from our members by way of CFT staff, that teachers are afraid of returning to work February 1 given the state of the pandemic, particularly the state of the pandemic in Hamilton County.
- 14. In my capacity as CFT president, I have heard from members at different schools who complained of insufficient safety protocols and that safety protocols were being ignored.
- 15. On January 26, 2021, the Union surveyed its membership regarding the Board's decision to resume in-person instruction on February 1.
- 16. Close to 80 percent of respondents indicated they do not feel comfortable resuming in-person instruction before being fully vaccinated, and approximately 90 percent of respondents wanted to delay in-person instruction until March 1, 2021.

17.	Exhibit	6 to	the	Plaintiff's	Complaint	is	a tru	e copy	of	the	Union's	January	26
1,													
survey results.													

Affiant further sayeth naught.

Sworn to and subscribed to me this 29th day of and any

Notary Public

RABEN LYNN (MBUS, Attorney at Law Notary Public: State of Ohio My Gommission has no expiration date Section 147 03