2012 IL App (4th) 120690-U

NO. 4-12-0690

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 26, 2012
Carla Bender
4th District Appellate
Court, IL

THE ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD and THE AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31, Plaintiffs-Appellees, v. THE BOARD OF EDUCATION OF COMMUNITY UNIT SCHOOL DISTRICT NO. 5, McLEAN AND WOODFORD COUNTIES, ILLINOIS, a/k/a McLEAN COUNTY UNIT SCHOOL DISTRICT NO. 5, Defendants-Appellants and FIRST STUDENT, INC., Defendant.	)	Appeal from Circuit Court of McLean County No. 12CH246 Honorable Scott Drazewski, Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: Where the Illinois Educational Labor Relations Board raised a fair question of an unfair labor practice committed by the District, the circuit court did not abuse its discretion in granting the petition for a preliminary injunction.

¶ 2 Where the Illinois Educational Labor Relations Act controls over any conflicts with the School Code, the circuit court did not err in denying the District's petition for an order of prohibition.

¶ 3 In June 2012, plaintiff, the Illinois Educational Labor Relations Board (IELRB), filed a petition for temporary restraining order and preliminary injunction against defendants, the Board of Education of Community Unit School District No. 5, McLean and Woodford Counties

(District), seeking to enjoin the District from effectuating an agreement with defendant, First Student, Inc. (First Student), to subcontract the District's student transportation services. In July 2012, the District filed a motion for temporary or preliminary order of prohibition, seeking to prohibit the IELRB from taking any action on any administrative complaint or charges arising out of the District's decision to contract with First Student. Following a hearing, the circuit court granted the petition for preliminary injunction until the IELRB renders its decision in a pending matter between the District and plaintiff, American Federation of State, County and Municipal Employees, Council 31 (AFSCME). The court also denied the District's motion for an order of prohibition.

¶ 4 In this interlocutory appeal, the District argues the circuit court erred in granting the IELRB's petition for a preliminary injunction and in denying the District's motion for a temporary or preliminary order of prohibition. We affirm.

¶ 5 I. BACKGROUND

¶ 6 The District currently employs bus drivers and bus monitors as part of its in-house transportation department. The District considered subcontracting its transportation services in 2003 and 2009. In 2009, the District contracted with an outside consultant, who ultimately recommended the District contract out bus services. However, the District did not do so at that time.

¶ 7 Prior to October 2011, the District's drivers and monitors were represented by a meet and confer committee. In May 2011, AFSCME filed a representation petition. The IELRB conducted an election in August 2011 and certified AFSCME as the exclusive bargaining representative of the District's bus drivers and bus monitors in October 2011.

¶ 8 On December 2, 2011, the District informed AFSCME that it was considering subcontracting its bus services. AFSCME demanded bargaining over the subcontracting work performed by the District's drivers and monitors. On December 14, 2011, the District's Board of Education passed a resolution authorizing its superintendent to investigate subcontracting student transportation services and to solicit bids.

¶ 9 The District received two bids in response to a second request for proposals. One bid came from First Student, which would reduce the District's student transportation costs by $1.6 million over three years. On April 11, 2012, the District's Board of Education voted to accept First Student's bid and authorized the District's superintendent to negotiate a three-year transportation services agreement. AFSCME continued to bargain with the District in May and June 2012.

¶ 10 On May 22, 2012, AFSCME filed an unfair labor practice charge with the IELRB against the District, alleging it violated sections 14(a)(1), 14(a)(3), and 14(a)(5) of the Illinois Educational Labor Relations Act (Act) (115 ILCS 5/14(a)(1), 14(a)(3), and 14(a)(5) (West 2010)). AFSCME alleged the District violated the Act by deciding to contract out school bus services in retaliation against the bus drivers and bus monitors for choosing AFSCME as their representative and by failing to bargain in good faith.

¶ 11 On June 5, 2012, the District voted unanimously to enter into a three-year contract for student transportation with First Student. In its resolution authorizing the contract, the District noted its enrollment had grown nearly 50% since the 1996-97 school year, the number of bus routes had grown by 35%, and the District was unable to attract, hire, train, and retain enough qualified bus drivers and monitors to keep pace with demand. Because of an "excessive

number of absences," among other issues, buses had been "extremely late in picking-up and dropping-off students" or failed to show up at all. To address operational issues and to determine any cost savings, the District solicited bids and First Student's bid was estimated to save the District approximately $1.5 million over three years. The contract was to take effect on July 1, 2012.

¶ 12 On June 15, 2012, the Executive Director of the IELRB issued a complaint and notice of hearing against the District, alleging it had engaged in unfair labor practices regarding its decision to subcontract student transportation work in violation of the Act. The Executive Director indicated a hearing would take place on August 20 and 21, 2012, before an administrative law judge.

¶ 13 On June 21, 2012, the IELRB heard oral argument. In its written opinion and order, the IELRB found, in part, the District did not decide to subcontract student transportation services until after AFSCME was certified as the exclusive collecting-bargaining representative of the bus drivers and bus monitors. The IELRB found a significant likelihood that AFSCME would prevail on the merits of its unfair labor practice charge based on a theory that the District's conduct would predictably undermine employees' exercise of their statutory rights. The IELRB voted to seek a preliminary injunction in the circuit court to prevent the District from effectuating an agreement with First Student to subcontract the District's student transportation services.

¶ 14 On June 25, 2012, the IELRB, by and through its counsel, the Attorney General, filed a verified complaint for injunctive relief and a petition for temporary restraining order and preliminary injunction in the circuit court against the District, seeking to enjoin the District from effectuating an agreement with First Student to subcontract the District's student transportation

services. The IELRB argued that if the status quo was not maintained, and the contract with First Student was allowed to go into effect on July 1, 2012, there would potentially be no remedy under the Act for the alleged retaliation against the drivers and monitors.

¶ 15 On July 17, 2012, the District filed a motion for temporary or preliminary order of prohibition, seeking to prohibit the IELRB from taking any action on any administrative complaint or charges arising out of the District's decision to contract with First Student. The District argued its discretionary decision to contract with First Student was not subject to the IELRB's review or the requirements of the Act. Further, the District argued section 10-22.34c(a) of the School Code (105 ILCS 5/10-22.34c(a) (West 2010)) authorized its actions and the IELRB had no authority to review or reverse that decision. Without relief, the District claimed it would suffer immediate and irreparable harm, including the costs and risks associated with preparing for an unauthorized agency hearing, the strong likelihood the District would be forced to bargain with AFSCME in a weakened posture, and the harm to the safe and effective transportation of its students.

¶ 16 On July 17 and 18, 2012, the circuit court held a hearing on the motions. The court permitted First Student to withdraw but declined to enter a dismissal in its favor. The court found section 16(d) of the Act vested it with the authority to enforce the IELRB's order. The court also noted its reliance on *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 786 N.E.2d 139 (2003), and *County of Du Page v. Gavrilos*, 359 Ill. App. 3d 629, 834 N.E.2d 643 (2005).

¶ 17 Citing *Cryns*, 203 Ill. 2d at 277, 786 N.E.2d at 149, the circuit court stated when a state or governmental agency is expressly authorized by statute to seek injunctive relief, the traditional equitable elements necessary to obtain an injunction need not be satisfied. Instead, the

agency seeking the injunction need only state the statute allowed for injunctive relief and there was a likelihood of a violation. The court found that harm in this case would be irreparable without an order preserving the status quo. Also, the court found the IELRB met its burden of proof under both the limited standard of *Gavrilos* as well as under the more extensive common-law principles.

¶ 18 The circuit court concluded it was appropriate to preserve the status quo until such time as a full hearing on the merits could be held. The court granted the preliminary injunction and enjoined the District from releasing, terminating, discharging, or otherwise altering the terms and conditions of employment of the bus drivers and bus monitors as a result of the contract with First Student until the IELRB renders its decision in the pending matter. The court did not enjoin the District from discharging an employee consistent with the terms and conditions of their employment. The court also denied the District's motion for an order of prohibition and its motion for stay of the order granting the preliminary injunction.

¶ 19 As to the circuit court's order granting the preliminary injunction, the District filed a notice of appeal pursuant to Illinois Supreme Court Rule 307 (eff. Feb. 26, 2010). As to the court's order denying the motion for temporary or preliminary order of prohibition, the District appealed pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) following the court's certification that there was no just reason for delaying either enforcement or appeal, or both.

¶ 20 II. ANALYSIS

¶ 21 A. Standard of Review and Scope of Review

¶ 22 In the case *sub judice*, the circuit court granted the IELRB's request for a

preliminary injunction. In an interlocutory appeal under Supreme Court Rule 307, the standard of review "is whether the circuit court abused its discretion granting or denying the interlocutory relief requested." *Yandell v. Church Mutual Insurance Co.*, 274 Ill. App. 3d 828, 831, 654 N.E.2d 1388, 1389 (1995); see also *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62-63, 866 N.E.2d 85, 91 (2006) (stating a decision to grant or deny a preliminary injunction is reviewed for an abuse of discretion). "However, where a question of law is presented, a reviewing court examines the issue *de novo*." *Advanced Imaging Center of Northern Illinois Ltd. Partnership v. Cassidy*, 335 Ill. App. 3d 746, 748, 781 N.E.2d 664, 666 (2002); see also *Hamlin v. Harbaugh Enterprises, Inc.*, 324 Ill. App. 3d 612, 616, 755 N.E.2d 993, 996 (2001) (noting the standard of review is whether the circuit court abused its discretion unless the question is one of law, which a reviewing court determines independent of the circuit court's judgment).

¶ 23 In an appeal under Illinois Supreme Court Rule 307, "the only question properly before us is whether a sufficient showing was made to the trial court to sustain its order granting or denying the relief sought." *Prairie Eye Center, Ltd. v. Butler*, 305 Ill. App. 3d 442, 444, 713 N.E.2d 610, 612-13 (1999). An appeal under Rule 307 "may not be used as a vehicle to determine the merits of a plaintiff's case." *Postma v. Jack Brown Buick, Inc.*, 157 Ill. 2d 391, 399, 626 N.E.2d 199, 203 (1993).

¶ 24 B. The Act

¶ 25 AFSCME filed an unfair labor practice charge with the IELRB against the District, alleging it violated sections 14(a)(1), 14(a)(3), and 14(a)(5) of the Act, which provide, in part, as follows:

"(a) Educational employers, their agents or representatives

are prohibited from:

> (1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed under this Act.
>
> ***
>
> (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization.
>
> ***
>
> (5) Refusing to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit ***." 115 ILCS 5/14(a)(1), (a)(3), and (a)(5) (West 2010).

¶ 26 Section 15 of the Act states a charge of unfair labor practice may be filed with the IELRB by an employer, an individual, or a labor organization. 115 ILCS 5/15 (West 2010). If an investigation by the IELRB finds the charge states an issue of law or fact, it shall issue a complaint and hold a hearing on the charges. 115 ILCS 5/15 (West 2010). "At hearing, the

charging party may also present evidence in support of the charges and the party charged may file an answer to the charges, appear in person or by attorney, and present evidence in defense against the charges." 115 ILCS 5/15 (West 2010). If the IELRB finds an unfair labor practice has been committed, "it shall make findings of fact and is empowered to issue an order requiring the party charged to stop the unfair labor practice." 115 ILCS 5/15 (West 2010). The IELRB "may petition the circuit court of the county in which the unfair labor practice in question occurred or where the party charged with the unfair labor practice resides or transacts business to enforce an order and for other relief which may include, but is not limited to, injunctions." 115 ILCS 5/15 (West 2010).

¶ 27 Section 16 of the Act (115 ILCS 5/16 (West 2010)) sets forth the procedures for judicial review. Judicial review of the IELRB's final order shall be taken directly to the appellate court of a judicial district in which the IELRB maintains an office. 115 ILCS 5/16(a) (West 2010). Pertinent to this case is section 16(d) of the Act (115 ILCS 5/16(d) (West 2010)), which provides as follows:

> "The [IELRB] may, upon issuance of an unfair labor practice complaint, petition the circuit court where the alleged unfair practice which is the subject of the [IELRB]'s complaint was allegedly committed, or where a person required to cease and desist from such alleged unfair labor practice resides or transacts business, for appropriate temporary relief or a restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction

to grant to the [IELRB] such temporary relief or restraining order as it deems just and proper."

¶ 28 Here, as noted, AFSCME filed an unfair labor practice charge with the IELRB against the District in May 2012. In June 2012, the executive director of the IELRB issued a complaint and notice of hearing against the District. Both AFSCME and the District submitted documents to the IELRB in support of their positions. After hearing oral arguments, the IELRB found a reasonable likelihood of success on the merits of the unfair labor practice charge and that irreparable harm would occur without an injunction to preserve the status quo. Thereafter, the IELRB filed a petition in the circuit court for a temporary restraining order and a preliminary injunction pursuant to section 16(d) of the Act. In July 2012, the court held a hearing on the petition, heard the parties' arguments, and granted the petition for preliminary injunction. An evidentiary hearing scheduled on the merits of the alleged section 14(a)(3) violation was scheduled for August 2012 before an administrative law judge.

¶ 29 The District argues the circuit court erred in refusing to receive evidence that it did not violate section 14(a)(3) of the Act. The court refused all evidence submitted by the District as to the merits of whether it violated section 14(a)(3). The court stated its role under section 16(d) was not to review the IELRB's determination to seek injunctive relief but to provide "muscle" to that determination.

¶ 30 Section 16(d) does not require a circuit court finding that the District committed an unfair labor practice to enter a preliminary injunction. Moreover, section 16(d) does not provide for a hearing where the District could present evidence to address the merits of the IELRB's unfair labor practice complaint. However, section 16(d) does not constrain the court to

use its "muscle" simply as a rubber stamp to the IELRB's decision to seek injunctive relief. We find section 16 gives the court discretion to grant relief it deems just and proper. Therefore, the court has the discretion to consider documents, exhibits, affidavits, and other evidence as necessary to determine what is just and proper relief.

¶ 31 The issue then becomes what is required of a petitioner to obtain injunctive relief under section 16(d) of the Act. As noted by the District, no reported Illinois decision states the standard for issuing an injunction under section 16(d), and the statutory language does not provide any guidance either. The District argues the circuit court should have used the traditional test for the granting of injunctions. Under that test, a party seeking a preliminary injunction is required to establish "(1) a clearly ascertained right in need of protection, (2) irreparable injury in the absence of an injunction, (3) no adequate remedy at law, and (4) a likelihood of success on the merits of the case." *Mohanty*, 225 Ill. 2d at 62, 866 N.E.2d at 91. The District contends the court erred in preventing it from presenting evidence to show AFSCME was unlikely to prevail on the merits.

¶ 32 The IELRB and AFSCME, on the other hand, argue Illinois courts have held a petitioner need not show all of the equitable factors at common law for injunctive relief when there is a possible violation of the law and a statute expressly authorizes injunctive relief. The supreme court has held that where "the State or a governmental agency is expressly authorized by statute to seek injunctive relief, the traditional equitable elements necessary to obtain an injunction need not be satisfied." *Cryns*, 203 Ill. 2d at 277, 786 N.E.2d at 149; see also *Gavrilos*, 359 Ill. App. 3d at 629, 634, 834 N.E.2d at 648-49. Instead, "[t]he State or the agency seeking the injunction need only show that the statute was violated and that the statute relied upon

specifically allows for injunctive relief." *Cryns*, 203 Ill. 2d at 277, 786 N.E.2d at 150. "In the enforcement of any statute or ordinance, there is a presumption that the public is harmed when the statute or ordinance is violated." *Gavrilos*, 359 Ill. App. 3d at 634, 834 N.E.2d at 649.

¶ 33 Under either test set forth by the parties, "the party seeking relief is not required to make out its entire case that would entitle it to relief on the merits; rather it need show only that it raises a ' " 'fair question' " ' about the existence of its right and that the court should preserve the status quo until the case can be decided on the merits." *Gavrilos*, 359 Ill. App. 3d at 634, 834 N.E.2d at 649 (quoting *Buzz Barton & Associates, Inc. v. Giannone*, 108 Ill. 2d 373, 382, 483 N.E.2d 1271, 1275 (1985)).

¶ 34 This court recently addressed whether the traditional test or the exception where injunctive relief is authorized by statute applies in a case involving the Open Meetings Act (5 ILCS 120/1 to 7.5 (West 2010)). *Roxana Community Unit School District No. 1 v. WRB Refining, LP*, 2012 IL App (4th) 120331, ¶¶ 23-25, 973 N.E.2d 1073, 1079-80. We noted the intent of the Open Meetings Act was " 'to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly.' " *Roxana Community Unit School District*, 2012 IL App (4th) 120331, ¶ 26, 973 N.E.2d at 1080 (quoting 5 ILCS 120/1 (West 2010)). Further, we found section 3(c) of the Open Meetings Act (5 ILCS 120/3(c) (West 2010)) granted the circuit court the authority to grant appropriate relief, including the issuance of an injunction, where a party has been aggrieved by a violation of the statute. *Roxana Community Unit School District*, 2012 IL App (4th) 120331, ¶ 26, 973 N.E.2d at 1080.

> "As with the statutes in cases applying the exception to the traditional pleading requirements ***, the Open Meetings Act expressly

> provides for injunctive relief where justified. Considering the Open Meeting Act's purpose of ensuring that meetings of public bodies are accessible to the public, we find the provision allowing injunctions gives rise to a presumption that the violation of this statute causes a distinctly public harm. Moreover, an injunction against violations of the Open Meetings Act restrains officials from breaching their statutory duty to conduct their public business openly. For these reasons, the limited pleading requirements for injunctions expressly authorized by statute applies in this case." *Roxana Community Unit School District*, 2012 IL App (4th) 120331, ¶ 26, 973 N.E.2d at 1080.

¶ 35 Considering the case law and under the facts of the case before us, we find the test set forth by the IELRB and AFSCME applies. The intent of the Act is "to promote orderly and constructive relationships between all educational employees and their employers." 115 ILCS 5/1 (West 2010). The General Assembly found public policy recognized educational employees have a right to organize and select a representative of their choosing, require educational employers to negotiate and bargain with those representatives, and establish "procedures to provide for the protection of the rights of the educational employee, the educational employer and the public." 115 ILCS 5/1 (West 2010).

¶ 36 The Act also establishes that certain actions of an educational employer constitute unfair labor practices (115 ILCS 5/14(a) (West 2010)) and provides a mechanism for bringing an unfair labor practice charge and the issuance of a complaint (115 ILCS 5/15 (West 2010)).

Section 16(d) authorizes the IELRB to seek injunctive relief in the circuit court after the issuance of an unfair labor practice complaint. Considering the Act's purpose of permitting educational employees to organize and bargain through their representative organization without discrimination, we find section 16(d) allowing for injunctive relief gives rise to a presumption that a violation of the Act causes a distinctly public harm. Thus, the limited pleading requirements for injunctions expressly authorized by statute apply in this case.

¶ 37 Next, we must determine whether the circuit court erred in finding the IELRB satisfied its burden in seeking a preliminary injunction. When presented with the petition for injunctive relief, the court need only determine if the IELRB raised a fair question that the District committed an unfair labor practice in outsourcing its bus services at the time it was negotiating its first bargaining agreement with AFSCME. See 115 ILCS 15/14(a)(3) (West 2010) (prohibiting discrimination based on union activity). If the IELRB raised a fair question, the court could then enter such injunctive relief "as it deems just and proper." 115 ILCS 5/16(d) (West 2010).

¶ 38 A *prima facie* case of a section 14(a)(3) violation is made by presenting evidence showing the employees were engaged in activity protected by that section, the District was aware of the activity, and the District took adverse action against the employees for engaging in that activity. *Board of Education, City of Peoria School District No. 150 v. Illinois Educational Labor Relations Board*, 318 Ill. App. 3d 144, 150, 741 N.E.2d 690, 695 (2000); *Bloom Township High School District 206 v. Illinois Educational Labor Relations Board*, 312 Ill. App. 3d 943, 957, 728 N.E.2d 612, 624 (2000).

¶ 39 The District had previously considered subcontracting its bus services in 2003 and

2009 but did not do so. In October 2011, AFSCME was certified as the exclusive bargaining representative of the District's bus drivers and bus monitors. The District became aware of this activity. In December 2011, the District informed AFSCME of its intent to outsource the jobs held by the newly formed bargaining unit. AFSCME then sought to bargain over the proposed subcontracting and thereafter filed an unfair labor practice charge with the IELRB. While the charge was pending, the District entered into a contract with First Student that was to take effect on July 1, 2012.

¶ 40 Based on the evidence presented, AFSCME raised a fair question whether the employees were engaged in union activity protected by section 14(a)(3) and the District was aware of that activity. A fair question was also raised that the District took adverse action against the employees for engaging in the activity. Thus, a *prima facie* case of a section 14(a)(3) violation was made.

¶ 41 In arguing the circuit court erred in preventing it from presenting evidence on the merits, the District relies on *SPEED District 802 v. Warning*, 242 Ill. 2d 92, 950 N.E.2d 1069 (2011). In that case, the supreme court stated that "even if a *prima facie* showing has been made, there can be no finding that an unfair labor practice occurred if the employer can demonstrate, by a preponderance of the evidence, that the adverse action would have occurred notwithstanding the protected activity." *SPEED District 802*, 242 Ill. 2d at 113, 950 N.E.2d at 1081.

¶ 42 We note *SPEED District 802* involved a different stage of the proceedings than the case before us. There, the IELRB filed an unfair labor practice complaint against the school district, the matter went before an administrative law judge, and the IELRB issued a final decision. *SPEED District 802*, 242 Ill. 2d at 109-10, 950 N.E.2d at 1079-80. Thus, a hearing

was conducted and a decision on the merits was made by the IELRB. Here, the proceedings did not reach the merits stage. The District argues it had a legitimate business reason for its alleged nonunion action. The troubles the District was having with its bus drivers concerning absenteeism, tardiness, and general incompetence, along with the potential costs savings of a contract with First Student, not to mention the fiscal constraints confronting school districts brought on by the economic woes gripping Illinois's government, are all issues that go to the merits of whether a section 14(a)(3) violation occurred, however, and are not relevant to the issues currently at hand.

¶ 43 The District also argues the IELRB improperly relied on the timing of the District's decision. The District cites *Lake Zurich School District No. 95*, 1 PERI ¶ 1031 (IELRB 1984), where, in a similar case, the IELRB stated "[t]he timing of the action, even though arguably suspect, standing alone and unsupported by statements, documents, or data to suggest, at least in part, a desire to frustrate union organization or an anti-union animus is not sufficient to establish a *prima facie* case warranting the issuance of an unfair labor practice complaint." See also *Bloom*, 312 Ill. App. 3d at 959, 728 N.E.2d at 625 (stating "proximity in time is insufficient by itself to sustain an unfair labor practice charge"). The IELRB affirmed the dismissal of the unfair labor practice charge in that case, and while a similar result may well be appropriate here, it is best left to the determination by the IELRB after a hearing on the merits.

¶ 44 Here, the IELRB had before it the Board of Education's resolution which summarized its position for contracting with First Student. The factors noted in the resolution appear to gravitate toward negating any violation of sections 14(a)(1), 14(a)(3), or 14(a)(5). Nonetheless, the IELRB determined there was a significant likelihood AFSCME would prevail on the merits and the circuit court was aware the IELRB's determination was reached after

consideration of the resolution. Thus, we conclude it was within the circuit court's discretion to confine the evidence to what was necessary to reach a just and proper outcome and to consider IELRB's determination. On this record, we find no abuse of discretion in maintaining the status quo.

¶ 45 C. The School Code

¶ 46 The District also argues the preliminary injunction was improper because the District's contract with First Student was authorized by subsection 10-22.34c of the School Code (105 ILCS 5/10-22.34c (West 2010)), which preempts the Act. We disagree.

¶ 47 Section 10-22.34c of the School Code permits a board of education to enter into contracts with third parties "for non-instructional services currently performed by any employee or bargaining unit member or lay off those educational support personnel employees upon 90 days written notice to the affected employees," provided certain procedures and safeguards are followed. 105 ILCS 5/10-22.34c(a) (West 2010). Those procedures and safeguards include, *inter alia*, (1) the outsource contract cannot be entered into and become effective during the term of an existing collective-bargaining agreement; (2) bidders on the outsource contract must offer comparable benefits to those provided to school board employees who perform the same duties; (3) a public hearing; and (4) the contractor must offer available employee positions to qualified school district employees whose employment is terminated by the contract. 105 ILCS 5/10-22.34c(a) (West 2010).

¶ 48 Subsection 10-22.34c(b) of the School Code (105 ILCS 5/10-22.34c(b) (West 2010)) permits a board of education to enter into a contract, not to exceed three months in length, "in an emergency situation that threatens the safety or health of the school district's students or

staff, *provided that the school board meets all of its obligations under the Illinois Educational Labor Relations Act*." (Emphasis added.)

¶ 49 The District argues the emphasized language in subsection 10-22.34c(b) mentioning the Act indicates the General Assembly "implicitly excluded from that Act a board of education's decision to outsource work, on a non-emergency basis where no collective bargaining agreement exists, even where that work is currently performed by bargaining unit members." Thus, the District contends the Act cannot apply to outsourcing decisions made pursuant to subsection 10-22.34c(a) and the IELRB has no authority to seek to enjoin actions that the School Code governs.

¶ 50 We find the District's argument unconvincing. The IELRB has jurisdiction over the matters contained in the Act, including any conduct by an educational employer that is alleged to have violated the Act, such as an unfair labor practice. The School Code, however, does not contain language that shows it controls over the Act. On the contrary, section 17 of the Act provides, in part, as follows: "[i]n case of any conflict between the provisions of this Act and any other law ***, the provisions of this Act shall prevail and control." 115 ILCS 5/17 (West 2010); see also *Board of Education, Granite City Community Unit School District No. 9 v. Sered*, 366 Ill. App. 3d 330, 338, 850 N.E.2d 821, 829 (2006) (stating "where any other law conflicts with the Act, the Act controls"). Thus, we find the IELRB had jurisdiction over this matter.

¶ 51 D. Motion for Order of Prohibition

¶ 52 The District argues the circuit court erred in denying its motion for a temporary or preliminary order of prohibition, where the School Code divests the IELRB of authority to

second-guess the District's decision to outsource transportation services.

> "There are four requirements that must be met before a writ of prohibition may be issued: (1) the action to be prohibited must be judicial or quasi-judicial in nature; (2) the jurisdiction of the tribunal against which the writ issues must be inferior to that of the issuing court; (3) the action prohibited must be outside the tribunal's jurisdiction or, if within its jurisdiction, beyond its legitimate authority; and (4) the petitioner must be without any other adequate remedy." *People ex rel. Devine v. Stralka*, 226 Ill. 2d 445, 450, 877 N.E.2d 416, 420 (2007).

Because we have found the School Code does not divest the IELRB of authority or jurisdiction here, we find no error in the circuit court's denial of the District's motion for an order of prohibition.

¶ 53 III. CONCLUSION

¶ 54 For the reasons stated, we affirm the circuit court's judgment.

¶ 55 Affirmed.