

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

MATTHEW ALLEN, *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 THE BOARD OF EDUCATION OF)
 NORTH MAC COMMUNITY UNIT)
 SCHOOL DISTRICT#34, *et al.*,)
)
 Defendants.)

2021-CH-500007
FILED
FEB 04 2022
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Clerk of the
Circuit Court

ORDER ON PLAINTIFFS' MOTION TO CERTIFY THE CLASS

This matter is before the Court on Plaintiffs' motion to certify the class filed on December 8, 2021 in Macoupin County and refiled on December 16, 2021 in Sangamon County Case Number 2021-CH-500007. This Court, having jurisdiction, heard arguments on January 19, 2022 and took the matter under advisement. The Court having considered the record, including arguments of counsel, all filed pleadings and applicable case law, finds as follows:

In order to determine if a class action should be certified, this Court is required to examine the following: (1) whether the class is so numerous that joinder of all members is impracticable; (2) whether common questions of fact or law predominate over any questions affecting individual plaintiffs; (3) whether the class representative will fairly and adequately protect the interests of the individual class members; and (4) whether class action is the most appropriate method for fair and efficient adjudication of the controversy. 735 ILCS 5/2 801. A plaintiff who seeks to represent a class has the burden of proving that the proposed class meets the four statutory requirements. *McCabe v. Burgess*, 75 Ill.2d 457 (1979).

When deciding whether to certify a class, the Court considers any matters of law or fact properly presented by the record including pleadings, depositions, affidavits, answers to interrogatories, and evidence adduced at hearings. *Arriola v. Time Insurance Company*, 296 Ill.App.3d 303, 307 (1st Dist.1998).

Since the class certification requirements in Section 5/2-801 are similar to the requirements set forth in Rule 23 of the Federal Rules of Civil Procedure, Illinois courts have often relied on the class certification analysis in federal cases. See *Steinberg v. Chicago Medical School*, 69 Ill. 2d 320 (1977); *Getto v. The City of Chicago*, 86 Ill.2d 39 (1981). Under Illinois and federal case law, in determining whether class certification is proper, factual allegations in the complaint are taken as true and the court does not examine the merits of plaintiff's case. *Purcell and Wardrope Chartered v. The Hertz Corp.*, 175 Ill. App. 3d 1069 (1st Dist. 1988); *Zapka v. The Coca-Cola Company*, 2000 U.S. Dist. LEXIS 16552 at *5 (N.D. Ill. 2000).

JURISDICTION

The State defendants initially raised the issue that this Court does not have jurisdiction over several of the named defendants as process has not been served upon all of them. Despite this representation, the Court has received many entries of appearances filed by several attorneys representing named defendants. A defendant may consent to personal jurisdiction by their appearance, or the defendant may have personal jurisdiction imposed upon them by effective service of summons. *In re: M.W.*, 232 Ill.2d 408 (2009). Personal jurisdiction refers to whether a court has acquired the ability to apply its subject-matter jurisdiction to an individual. *In re Shawn B.*, 218 Ill.App.3d 374, 378, 578 N.E.2d 269, 272 (1st Dist. 1991). Once the trial court acquires personal jurisdiction over a party, the court has the power to impose personal obligations on the party, and that jurisdiction continues until all issues of fact and law in the case are determined. *Id.*

at 426. Thus, a lack of personal jurisdiction does not deprive the court of jurisdiction over the subject matter of the case but, instead, deprives the court of the ability to impose judgment on parties over whom it lacks personal jurisdiction. *Id.* at 426–27. In light of those defendants who have filed an entry of appearance, answer or otherwise appeared, the Court has jurisdiction over those parties.¹

CLASS ACTION CONSIDERATIONS

(1) NUMEROSITY – The named Plaintiff seeks to serve as the class representative of all educators within the school districts and claims that the number of putative class Plaintiffs is so numerous that joinder of all members is impracticable. The Court has no reason to doubt Plaintiff's assertions in light of the sheer number of named Plaintiffs in this matter. Additionally, the potential to have others similarly situated, not named, hold the same position as Plaintiffs exists. A presumption can be made that these individuals satisfy the numerosity requirement.

(2) COMMONALITY/TYPICALITY - To certify a class, the Court must find common questions of fact or law predominate over individual issues. A common question of both law and fact is not required. Either will satisfy the test if it is predominating. *Miner v. Gillette*, 87 Ill.2d 7 (1981). Plaintiff proposes that the common question of law is whether educators can be required to wear a mask while on school property or be required to be vaccinated or submit to testing by the school districts without due process protection.

It must be determined which issues will predominate and whether the issues are common to the class. This Court must ensure that the class members will receive proper protection of their interests. While an interest need not be exactly the same, the representative cannot seek relief that is antagonistic to the interests of other potential class members. See *Purcell & Wardrope*

¹ As of the date of the filing of this Order, only the Board of Education of Springfield School District #186 had not been served, filed an entry of appearance, or otherwise appeared.

Chartered v. Hertz Corp., 175 Ill. App. 3d 1069 (1st Dist. 1988). The evidence before the Court does not demonstrate that this action meets the commonality and predominance requirement as set forth in the statute. The Court is aware of educators on both sides of this issue, especially in light of the Verified Petition to Intervene, which this Court previously denied.² The Verified Petition To Intervene asserts that other local associations are likely to seek intervention in the future. The intervenors hold positions in direct contrast to those of the named Plaintiffs.

(3) ADEQUENCY OF REPRESENTATION – To adequately represent the class, the proposed class action plaintiff must be a member of the class. *Bueker v. Madison County*, 2016 IL App (5th) 150282, ¶40, 61 N.E.2d 237. The named plaintiffs must be able to maintain an individual cause of action against the defendant and establish they are not seeking relief which is potentially antagonistic to the non-represented members of the class. *Client Follow-Up Co. v. Hynes*, 105 Ill. App. 3d 619 (1st Dist. 1982). From the face of the pleadings, it appears the named Plaintiffs can maintain a cause of action but there is the possibility of relief that could be potentially antagonistic to non-represented class members as referenced above.

As to Plaintiffs' counsel, Thomas DeVore, the only information provided to the court is that he is qualified. The Court must be satisfied that the proposed class counsel is "qualified, experienced and generally able to conduct the proposed litigation." *Lee v. Buth-Na-Bodhaige, Inc.*, 2019 IL App (5th) 180033 ¶63. While Mr. DeVore has alleged he can adequately represent the proposed class, there is no evidence before the Court other than this blanket statement. This Court is unaware if counsel has handled any prior class litigation or if he has any experience in this

² On December 27, 2021, a Verified Petition to Intervene was filed by Edwardsville Education Association, IEA-NEA; Edwardsville School Service Personnel Association, IEA-NEA; Triad Education Association, IEA-NEA; Triad Educational Support Personnel Association, IEA-NEA; and Triad Custodial, Maintenance & Utility Association, IEA-NEA. The intervenor associations are voluntary unincorporated local associations affiliated with the Illinois Education Association.

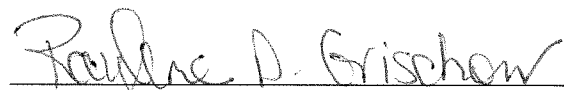
particular area. The Court also does not know if counsel can undertake the financial responsibility of paying for and executing direct individual notice to each of the individuals he seeks to represent. As pled and presented, this element has not been satisfied.³

(4) APPROPRIATENESS OF ADJUDICATION BY CLASS ACTION – All this Court has to consider are filed pleadings as no discovery has been undertaken. Typically, a motion to certify a class is brought by a putative class member who asks the court, based on the evidentiary materials adduced through discovery, to find that the case can proceed as a class action. *Weiss v. Waterhouse Securities, Inc.*, 208 Ill.2d 439 (2004). The blanket statement set forth in the motion that class action is an appropriate method for the adjudication of this controversy is insufficient to satisfy this prong. It is not appropriate for this Court to speculate that a class action is the most appropriate method and that joinder may prove to be more time consuming and expensive. Therefore, at this juncture, this element has not been satisfied.

Following a review of all pleadings and careful consideration of the oral arguments, this Court cannot find Plaintiffs' claims can be efficiently or fairly adjudicated as a class action. Given the procedural posture of this case, class certification is premature and the motion to certify the class is denied without prejudice. Plaintiffs are given leave to refile the motion in the future should they desire to undertake this endeavor once more evidence has been discovered.

IT IS SO ORDERED.

Date: February 4, 2022


Raylene DeWitte Grischow, Circuit Court Judge

³ The Court is not suggesting Mr. DeVore is not a qualified and capable attorney. The Motion To Certify the Class simply does not meet the pleading requirements.