



NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

January 12, 1990

FILE NO. 90-001

ADMINISTRATIVE LAW:
Power to Appoint Subordinates

The Illinois Local Labor Relations Board
William Brogan, Chairman
Raymond F. Simon
Walter H. Clark
111 North Canal Street, Suite 940
Chicago, Illinois 60606

Gentlemen:

I have received a letter from one of your staff members which requests, on your behalf, an opinion as to whether the Chairman of the Illinois Local Labor Relations Board has the authority to appoint an executive director and an attorney for the Board over the objection of the remaining two members of the Board. For the reasons hereinafter stated, it is my opinion that the power to appoint or employ subordinates is expressly vested in the Illinois Local Labor Relations

William Brogan, Chairman - 2.
Raymond F. Simon
Walter H. Clark

Board, not its Chairman, and, consequently, the Chairman of the Board does not have the authority to make unilateral appointments of subordinates.

In 1983, the General Assembly enacted the Illinois Public Labor Relations Act, effective July 1, 1984 (Ill. Rev. Stat. 1987, ch. 48, par. 1601 et seq.), which created the Illinois State Labor Relations Board ("State Board") and the Illinois Local Labor Relations Board ("Local Board"). The Local Board is comprised of the chairman of the State Board, who serves, ex officio, as the chairman of the Local Board, a member appointed by the mayor of the city of Chicago and a member appointed by the president of the board of commissioners of Cook County. (Ill. Rev. Stat. 1988 Supp., ch. 48, par. 1605(b).)

According to the information supplied to me, the two Boards have, until recently, maintained separate staffs, each including an executive director, attorneys, investigators and clerical and administrative personnel, although they have jointly employed a fiscal officer and a receptionist. On or about October 1, 1989, Chairman Brogan announced that he had appointed the general counsel and the executive director of the State Board to serve in those capacities for the Local Board as well. At a subsequent meeting of the Local Board, Mssrs. Simon and Clark voted to rescind the purported appointments made by Chairman Brogan, to which they had not assented, and to

William Brogan, Chairman - 3.
Raymond F. Simon
Walter H. Clark

continue the practice of employing a separate staff for the Local Board. The issue presented is whether the Chairman of the Local Board has the power to appoint or employ subordinates over the objection of the majority of the Board's members.

Section 5 of the Illinois Public Labor Relations Act (Ill. Rev. Stat. 1988 Supp., ch. 48, par. 1605) provides, in part:

" * * *

(g) Each governing board may appoint or employ an executive director, attorneys, hearing officers, mediators, fact-finders, arbitrators, and such other employees as they deem necessary to perform their functions. The governing boards shall prescribe the duties and qualifications of such persons appointed and, subject to the annual appropriation, fix their compensation and provide for reimbursement of actual and necessary expenses incurred in the performance of their duties.

* * * "

The term "governing board" means either the Local Board or the State Board (Ill. Rev. Stat. 1988 Supp., ch. 48, par. 1603(a)), as the case may be. Thus, the Local Board, rather than its Chairman, has been given express authority to appoint an executive director and such attorneys as it deems necessary.

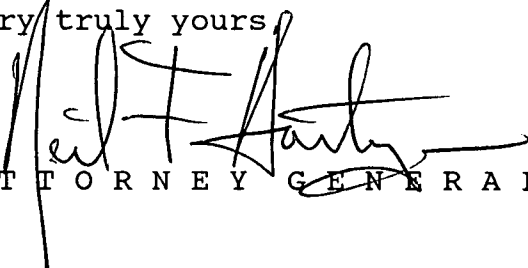
An administrative agency or the holder of a public office created by statute has no common law or inherent powers, and can exercise only those powers that are conferred by express provision of law or those powers found by fair implication and intendment to be incident to those which have been

William Brogan, Chairman - 4.
Raymond F. Simon
Walter H. Clark

expressly granted. (Department of Public Aid v. Brazziel (1978), 61 Ill. App. 3d 168, 172; McKenzie v. McIntosh (1964), 50 Ill. App. 2d 370, 376-77.) Where a body comprised of individuals designated in a manner provided by law is charged with the conduct of public affairs, the body so created is powerless to act except together and as a body. (People ex rel. Browne v. Chicago and Eastern Illinois Railway Co. (1923), 306 Ill. 402, 412.) Thus, the members of an administrative board are powerless to act except as a board. (Quinn v. Retirement Board of Firemen's Annuity and Benefit Fund of Chicago (1972), 7 Ill. App. 3d, 791, 796.) Unless otherwise provided by law, a majority of those serving on a public body must concur in order for a valid action to be taken by the body. See, Gage v. City of Chicago (1901), 192 Ill. 586, 588; Hinkle v. City of Mattoon (1897), 170 Ill. 316, 320-21; Ill. Rev. Stat. 1987, ch. 1, par. 1010.

Therefore, it is my opinion that the Chairman of the Local Board does not have the authority to make a unilateral appointment of an executive director or attorney for the Local Board over the objection of the remaining two members of the Board, as a majority of the Board has not concurred in the action.

Very truly yours,



A T T O R N E Y G E N E R A L