STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services, Charging Party/Respondent, and American Federation of State, County and Municipal Employees, Council 31, Respondent/Charging Party.	)	Case Nos. S-CA-16-087 S-CB-16-017

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

On January 15, 2016, the State of Illinois, Department of Central Management Services (CMS) filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board (Board) in Case No. S-CB-16-017 (CMS' charge), alleging that American Federation of State, County and Municipal Employees (AFSCME or Union) violated Sections 10(b)(4) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315/1, *as amended,* (Act). Specifically, CMS alleged that negotiations for a successor agreement between the parties reached a legitimate impasse as of January 8, 2016, the date on which CMS presented its Last, Best, and Final offer. CMS alleged that AFSCME failed to bargain in good faith when it refused to agree that the parties had reached impasse and did not agree to submit the dispute with respect to the existence of an impasse to the Board, as required by the parties' Tolling Agreement. The Board investigated CMS' charge in accordance with Section 11 of the Act, and the Executive Director issued a Complaint for Hearing on CMS' charge March 22, 2016.

On February 22, 2016, AFSCME filed an unfair labor practice charge with the Board's State Panel in Case No. S-CB-16-087 (AFSCME's charge), alleging that CMS violated Sections 10(a)(4) and (1) of the Act within the context of the parties' negotiations for the successor agreement referenced in CMS' charge and otherwise. The Board investigated AFSCME's charge in accordance with Section 11 of the Act, and, on March 22, 2016, the Executive Director issued a Complaint for Hearing on AFSCME's charge. The Executive Director also directed that the Complaints in Case Nos. S-CB-16-017 and S-CB-16-087 (collectively, the Complaints) be consolidated, and assigned to an Administrative Law Judge (ALJ) for hearing.[1]

The hearing in this matter concluded on June 9, 2016, after approximately twenty-five (25) days of hearing. On June 7, 2016, CMS filed its *Motion of State of Illinois for the Board to Expedite Its Final Decision and Order* (Motion or Motion to Expedite). Citing, among other things, the objective of potentially saving Illinois taxpayers an estimated $35 to $40 million dollars per month in health care-related costs, CMS requests that the Board expedite the decision in this matter. More specifically, CMS requests that the Board direct the parties to file their post-hearing briefs directly with the Board in lieu of filing them with the ALJ to be followed by her written Recommended Decision and Order (RDO) and subsequent written exceptions/cross-exceptions and responses before the matter is presented to the Board for decision, as is the typical post-hearing process.

As it is integral to CMS' Motion, we begin with a summary of the relevant procedural history in this case.

[1] On April 21, 2016, the ALJ granted AFSCME's motion for leave to file an amended complaint.

Procedural History:

After the Complaints issued, the ALJ held a scheduling conference with the parties' counsel on March 31, 2016. At that time, counsel for AFSCME anticipated needing 10-13 hearing dates in order to put on AFSCME's case-in-chief, and proposed 13 May hearing dates. CMS indicated that it anticipated needing no more that five (5) days for its case-in-chief, and that CMS was available to begin the hearing any time after April 11, 2016. CMS urged a prompt hearing, arguing that the importance of this case, coupled with the large monthly costs associated with maintaining the status quo on health care, militated in favor of an expedited hearing. The Union's attorneys, however, were unavailable for most of the week of April 11 and 18 due to various professional conflicts.

Based on AFSCME counsels' availability and allowing for the intervening Passover holiday, the ALJ scheduled hearing to begin on April 25, 2016, and she set aside 18 hearing days between April 25 and May 24, 2016,[2] memorializing these dates in a written *Scheduling Order.*

On April 5, 2016, CMS filed a Motion to Reconsider the Scheduling Order (Motion to Reconsider), supported by the affidavit of Teresa Flesch, Assistant Deputy Director of Benefits for the State of Illinois (Flesch Affidavit), detailing the processes involved in making changes to the health care insurance plans and costs associated with delays in implementation of those changes. In the Motion to Reconsider, CMS urged that the ALJ: 1) issue a new and even further expedited hearing schedule; or 2) require the parties to submit pre-filed direct evidence of their cases-in-chief; and 3) order the parties to file briefs within 30 days of the last hearing date or June 16, whichever was earlier.

[2] The ALJ also ordered the parties to work on stipulations in order to expedite the hearing process.

AFSCME objected to the Motion to Reconsider on the bases that: 1) the matter was already scheduled in an unprecedented expedited manner and any further expediting would be unreasonable; 2) the Motion to Reconsider required AFSCME to present evidence in a manner prohibited by the Act and the Board's Rules; and 3) it was premature for the ALJ to set a date for post hearing briefs as the volume of the record was not yet known.

The ALJ declined to modify the hearing schedule and took the request to set a briefing schedule under advisement, but she reiterated her anticipation of a 30-day time frame for post-hearing briefs. Further, the ALJ disagreed with AFSCME's assertion that CMS' request that evidence be submitted in a written manner was proscribed either by Board law or Board Rule. However, while the ALJ found merit in CMS' request and noted numerous benefits associated with its proffered approach, she declined to dictate the most effective way for each party to put on its case. Instead, the ALJ granted CMS' Motion to Reconsider, in part, allowing the parties the option of submitting pre-filed direct evidence, but encouraged both parties to consider this approach.

CMS filed pre-filed testimony from each of the four (4) witnesses it presented in its case-in-chief and presented small amounts of live, direct testimony from its several witnesses. CMS rested its case on April 29, 2016; the remainder of that week was taken up with procedural matters, AFSCME's cross-examination of the CMS' witnesses, and the direct testimony of three AFSCME witnesses who were taken out of order by agreement of the parties. AFSCME declined to submit any pre-filed direct witness testimony. All of the remaining hearing dates were used for AFSCME to present its witnesses, including the extensive testimony of Michael Newman, who testified about every written proposal and counter-proposal exchanged by the parties at each of the sixty-seven (67) bargaining sessions.

When AFSCME did not complete its case-in-chief by the week of May 23, 2016, the ALJ set additional hearing dates for May 31, June 1, June 7, June 8 and June 9 to allow AFSCME to conclude its case and the parties to present rebuttal evidence. The ALJ allowed CMS to pre-file its rebuttal testimony to ensure that the hearing would conclude by June 9. At the conclusion of the hearing, the ALJ ordered that the parties to submit their post-hearing briefs by July 13, 2016.[3]

CMS' Motion to Expedite:

On June 7, 2016, two days before the hearing concluded, CMS filed the instant Motion to Expedite, citing the financial-related exigencies set out in the Flesch Affidavit as well as the unreasonable delay that CMS attributes to AFSCME's effort to stall resolution of this matter or at least its failure to engage in any effort to expedite the hearing process.

CMS' argument in support of its Motion

In support of the procedural propriety for its Motion, CMS argues that while Board Rule 1220.50 allows for the typical process of an ALJ's conducting a hearing and issuing an RDO, the Act does not mandate this process because, Section 11(a) of the Act provides that if investigation identifies an issue of fact or law warranting a hearing, "the Board shall issue a complaint and cause to be served upon the person a complaint . . . accompanied by a notice of **hearing before the Board or a member thereof designated by the Board or before a qualified hearing officer designated by the Board. . . .**" (emphasis added).

CMS argues further that Section 11(c) of that Act allows the Board to rule on an unfair labor practice charge without receiving an RDO in a situation, such as this, where the ALJ received testimony and exhibits *via* an evidentiary hearing. The relevant statutory language proffered by CMS in support of this proposition is as follows:

[3] We are advised that the parties timely filed post-hearing briefs pursuant to the ALJ's order.

> Any testimony taken by the Board, or a member designated by the Board or a hearing officer thereof, must be reduced to writing and filed with the Board. . . . If, upon a preponderance of the evidence taken, *the Board is of the opinion* that any person named in the charge has engaged in or is engaging in an unfair labor practice, then it shall state its finding of fact and shall issue and cause to be served upon the person an order requiring him to cease and desist from the unfair labor practice. . . .

Finally, CMS argues that even if Rule 1220.50 expressly mandated, rather than merely allowed for, an ALJ to issue an RDO following the conclusion of hearing, Rule 1200.160 *Variances and Suspension of Rules* (Variance Rule), expressly empowers the Board to waive its Rules, subject to the restrictions set forth in Rule 1200.160, which states:

> The provisions of this Part of 80 Ill. Adm. Code 1210, 1220 or 1230 may be waived by the Board when it finds that:
>
> a) The provision from which the variance is granted is not statutorily mandated;
> b) No party will be injured by the granting of the variance; and
> c) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

Accordingly, CMS urges that in any event a variance under the Board Rule is warranted in this case because 1) it does not contravene a statutorily mandated process 2) no party will be injured because the Act ultimately vests in the Board the authority to determine the underlying unfair labor practice claims and 3) the financial impact of extended delay is unreasonably burdensome on the State.

AFSCME's argument in opposition to the Motion

AFSCME strenuously opposes the Motion to Expedite, characterizing it as requesting "that the Board impose an unknown and unprecedented procedure for the decision in this case. . . ." More specifically, AFSCME objects to CMS' Motion to Expedite on several bases beginning with the assertion that this matter has already proceeded on an extremely expedited

basis, having been investigated and heard ahead of many other unfair labor practice charges pending before the Executive Director and other ALJs.

AFSCME also cites the practical consideration of the voluminous record that has been amassed over twenty-five (25) days of hearing, noting that the ALJ's list of exhibits identified by the parties is 50 pages long, and the exhibits themselves are compiled in multiple exhibit books. All of which, AFSCME argues, evinces the highly fact-intensive nature of this case and underscores the practical concerns that militate against eliminating the RDO/exceptions process.

Further, AFSCME argues that CMS is incorrect when it contends that Board Rule 1220.50 does not expressly provide that this is the only procedure by which an unfair labor practice may be resolved. In its response, AFSCME listed a litany of Board Rules that are typically followed with respect to hearing, RDOs and final decisions in unfair labor practice cases, including Section 1220.50(a), (d) and (g), Section 1220.135 (b)(1) and (b)(4). AFSCME argues that these various provisions that dictate timelines and procedures for RDOs, exceptions, *etc.*, evince that these procedures are mandated by Board Rules and that the Motion to Expedite asks the Board to depart improperly from these mandated procedures.

AFSCME also argues that the applicable Board Rules governing the processes related to unfair labor practices were promulgated pursuant to the Administrative Procedure Act, 5 ILCS 100/1-1 *et seq.* (APA), which requires that "All agencies shall adopt rules establishing procedures for contested case hearings."[4] AFSCME further contends that absent a written stipulation by the parties, nothing in the APA provides that an agency may suspend its procedures for contested case hearings absent such a stipulation and that the APA specifically

[4] The APA defines a "contested case" as "an adjudicatory proceeding. . . in which the individual legal rights, duties, or privileges of a party are required by law to be determined by an agency only after an opportunity for a hearing." 5 ILCS 100/1-30.

provides that "A decision by an agency in a contested case under this [APA] shall be void unless the proceedings are conducted in compliance with the provisions of this [APA] relating to contested cases. . . . " 5 ILCS 100/10-50(c). Further, AFSCME argues that the Motion to expedite should be denied because a party can insist on the Board's compliance with its own rules, which have the force and effect of law. *Illinois Department of Central Management Services v. Illinois Labor Relations Board,* 406 Ill. App. 3d 766, 771 (4th Dist. 2010), *appeal denied,* 949 N.E. 2d 1097 (2011).

AFSCME also contends that CMS' Motion cannot be legitimized under the Board's Variance Rule, because Section 1200.160 has been used only in exceptional circumstances to grant variances from procedural filing requirements, and has not been applied to waive or suspend rules established for the hearing and consideration of claims, defenses and arguments on their merits.

AFSCME also disagrees with CMS' assertion that Section 11(a) allows the Board to issue a decision in an unfair labor practice where the hearing has been conducted by an ALJ without the ALJ having first written and served an RDO. Rather, Section 11(a) simply establishes that hearing may be conducted by the Board itself, a member of the Board or a hearing officer. AFSCME distinguishes the unfair labor practice context of the instant matter from the Board's strike investigation hearing protocols. In the latter instance, Section 1230.190(c) requires the Board to hold an expedited hearing and issue its findings within 72 hours following the filing of the petition. In the strike investigation context, the Board's practice has been for the ALJ to conduct the hearing in the presence of the Board Members, with the Board making findings of fact and issuing a decision following the close of the hearing.

AFSCME also argues that the unfair labor practice component of our Act is patterned after Section 10 of the National Labor Relations Act (NLRA), 29 U.S.C. §160. The National Labor Relations Board's (NLRB) rules provide a process that mirrors the process AFSCME urges in this instance, *i.e.*, at the close of hearing, the ALJ prepares a decision stating findings of fact and conclusions law as well as the reasons for the determinations on all merits, and makes recommendations as to the action which should be taken in the case. (29 CFR 101.11(a)). The NLRB rules further allow for the parties to file exceptions, the equivalent of a response and cross exceptions. If the parties file exceptions, the NLRB reviews the entire record and issues its decision. 29 CFR 101.12(a).

AFSCME points out that NLRB rules provide for the removal of an unfair labor practice from the ALJ to the board for decision only by agreement where there are no disputed facts. The Illinois Education Labor Relations Board (IELRB) rules similarly provide for the removal of an unfair labor practice case to the board for decision only in cases in which there are no disputed material facts (Section 1120.40 of the IELRB Rules, 89 Ill. Adm. Code 1120.40). However, AFSCME stresses that unlike the NLRB and IELRB, the ILRB Rules contain no such removal provisions. Moreover, as AFSCME contends, because this case involves numerous disputed material facts, the parties have a right to file exceptions with the Board with respect to the ALJ's findings of fact, conclusions of law and recommended decision and order, as prescribed by ILRB and NLRB rules.

Finally, AFSCME insists that the Variance Rule does not apply in this context but rather that the Board is bound to follow Section 1220.50(g), which AFSCME maintains requires that an ALJ issue an RDO, as that provision is mandatory and has the force and effect of law. Further, AFSCME argues that even if the Variance Rule were to be considered, the

variance requirements are not met because: 1) the provisions from which CMS seeks a variance are statutorily mandated as they are contested case hearing rules adopted in accordance with the APA and have not been waived by stipulation; 2) AFSCME would be injured by granting the variance as it has a right to have the Board follow its own rules in this case and because AFSCME would be deprived of its right to review the ALJ's initial findings in a case involving such an extensive factual record and numerous legal issues, as well as its right to except to the ALJ's finding and 3) CMS has not shown that the rule is unreasonable or unduly burdensome because CMS knew of the rules prior to the start of the hearing, and because the Flesch Affidavit has no foundation for the asserted estimated monthly costs.

Analysis:

The issue raised by CMS' Motion and AFSCME's opposing argument - *whether the Board may elect to directly review the record in this matter and render a final decision without the ALJ's generating an RDO and the parties' having an opportunity to assert related exceptions/responses* - is one of first impression for this Board. We note there is no Board precedent or case law providing definitive direction to us on the question presented, and we can find no anecdotal evidence of the Board's ever having engaged in the alternate procedure that CMS is urging in its Motion to Expedite. However, there is a statutory provision in the APA, which we believe affords significant guidance in this matter.

The APA contains the following relevant provision:

> Section 10-45. Proposal for decision. Except where otherwise expressly provided by law, when in a contested case a majority of the officials of the agency who are to render the final decision has not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency, shall not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and to present a brief and, if the agency so permits, oral argument to the agency officials who are to render the decision. The proposal for decision shall contain

> a statement of the reasons therefore and of each issue of fact or law necessary to the proposed decision and shall be prepared by the persons who conducted the hearing or who has read the record.

We find no Board or other case law applying or interpreting this Section of the APA in any way that is applicable to the question at issue. However, the plain language of the APA appears clear and unambiguous. First, this is a *contested case* under the APA definition, as noted above. Section 10-45 establishes the requirements that would allow this panel to render a decision where a majority of our members has not (a) heard the case or (b) read the record. However, Section 10-45 places some significant procedural restrictions in this event. Specifically, no decision may be made (where the majority has not heard the case or read the record) until 1) a proposal for decision is served on the parties and 2) the party adversely affected has an opportunity to file exceptions and supporting briefs (and possibly present oral argument). Further, the APA defines the contours of the proposal for decision itself, requiring that it contain a statement of the reason for the proposal as well as each issue of fact and law that underlies the proposed decision. Importantly, the person who conducted the hearing or one who has read the record must prepare the proposed decision.

Based on the language in this section, we conclude that if the majority of this panel had heard the case or read the record, we could make a decision without generating a proposal for decision and going through the related procedures summarized above, which essentially mirror the Board's typical hearing/RDO/exceptions/responses/decision process. However, no Board member attended the hearing and the practical impediments to having three members of this panel now read a record that spans 25 days of hearing plus concomitant voluminous exhibits are staggering, if not simply impossible to overcome.

Accordingly, in order for the Board to comply with Section 10-45, someone must prepare the proposal for decision, which essentially matches the description of an RDO, and that someone has to be either the person who conducted the hearing (the ALJ) or some other designated agent of the Board, *e.g.*, a Board Member or the General Counsel who has read the record. However, to the extent that the objective of taking this approach would be to allow the Board to render its decision in a more expedited fashion, the process outlined in Section 45-10 is hardly calculated to accomplish that end in any speedier fashion than if the case proceeded to the Board in the routine way. Moreover, if the Board were to delegate the preparation of the proposal for decision to someone other than the ALJ, one who must then read, synthesize and distill the record, the Board's ultimate decision, will certainly only be delayed further.

Both CMS and AFSCME focus their briefs extensively on the question of whether the current and typical post-hearing procedures are mandated by the Act and or the Rules. We do not find that either party makes a compelling case supported by dispositive authority or persuasive interpretation of our Act or Rules. Contrary to CMS' position, neither Section 11(a) nor Section 11(c) clearly evinces the Board's authority to allow the truncated procedure it requests. First, CMS' reliance on the language of Section 11(a) of the Act is misplaced. This language simply gives the Board the latitude of choosing to schedule hearing before the Board or before a designated Board member or hearing officer. Although that language does not expressly preclude CMS' Motion, it cannot reasonably be construed to authorize the atypical process that CMS is urging.

Second, CMS also erroneously relies on Section 11(c) of that Act, arguing that it allows the Board to rule directly on this unfair labor practice charge without receiving a post-hearing RDO. However, even if we construed this provision as liberally as CMS suggests, Section

11(c) cannot be read independently of the requirements and proscriptions of Section 10-45 of the APA.

Similarly, AFSCME focuses its brief on a myriad of Board Rules that simply establish timelines and procedures that control the flow of events **when** the ALJ conducts a hearing and issues an RDO. AFSCME's insistence that these references dispositively establish that the Board must follow the typical post-hearing practice is unpersuasive, particularly in light of the express APA provision contained in Section 10-45 that clearly indicates that the Board may make a final decision absent an RDO or proposal for decision if the majority of the panel has read the record (or heard the case).

Further, both parties discuss extensively the application of the Board's Variance Rule. CMS contends that even if the RDO/exceptions procedures are required by the Act and/or Rules, the Board may grant a variance in this instance because 1) eliminating the ALJ's RDO does not contravene a statutorily mandated process, 2) no party will be injured because the Act ultimately vests in the Board the authority to determine the underlying unfair labor practice claims, and 3) the financial impact of extended delay is unreasonably burdensome on the State.

AFSCME's position is that the Variance Rule has been and may only be used to allow relief from procedural mandates so as to permit an adjudication on the merits. While AFSCME cites to numerous cases in which the Variance Rule has been used in this fashion, it cites to no authority that expressly precludes a broader use of the Variance Rule as urged by CMS in its motion, and we decline to make such a rule in the context of deciding the instant Motion. However, while AFSCME has not provided any definitive authority categorically proscribing the Board's use of the Variance Rule beyond relief from procedural filing requirements, it

raises a more serious question as to whether granting a variance here would, indeed, contravene a statutorily mandated process.

If the Board were to grant a variance from the Board Rules regarding the post-hearing RDO/exceptions process, but still comport with the requirements of Section 10-45 of the APA, it would not contravene the APA's mandated process. However, granting a variance so as to allow the Board to decide this case without an RDO or a proposal for decision (and related processes) per Section 10-45 of the APA, runs afoul of the first limitation set forth in the Variance Rule as it contravened the APA's statutorily mandated process for adjudicating contested hearings.

Clearly, in this matter the Board is considering complex legal matters with multiple component parts, most of which are entirely matters of first impression. While we have addressed CMS and AFSCME's extensive legal arguments and the absence of guiding, much less binding, legal precedence, we find that the end result in this matter is more properly rooted in practicable considerations that abound in this matter.

The first of these is the nature and scope of the record. There is no question that the record includes a transcript recording 25 days of hearing as well as voluminous exhibits. This was underscored by the objective description of the record that the ALJ provided to the Board at our Special Meeting, including her determination that a resolution of certain material issues in this case requires the resolution of credibility questions. We note that the question of likely credibility determinations implicates due process considerations, adding yet another layer of complexity to the possibility of eliminating the ALJ's RDO in favor of a proposal for decision drafted by someone other than the ALJ.

While the Board may be sympathetic to CMS' explanation as to the urgency of having this matter resolved at the Board level as expeditiously as possible, as well as CMS' suggestion that AFSCME has inordinately extended the hearing process and ultimately delayed the Board's resolution, we recognize that granting CMS' Motion in an effort to expedite resolution of the underlying cases may easily have the opposite effect.

Even assuming that the Board were inclined to resolve any legal ambiguities and uncertainties presented in this case in favor of granting the Motion under any of the theories advanced by CMS, including application of the Variance Rule, adopting this truncated procedure would reflect a wholesale departure from the Board's well-established procedures and its historic interpretation of the Variance Rule; intense scrutiny by the appellate court will be inevitable. Consequently, if the Board were to proceed in this fashion and reaches a decision in the underlying case, it is a *fait accompli* that whichever party does not prevail on the merits will seek appellate court review. The significance of this case is undeniable. Whatever decision the Board ultimately reaches on the merits, we prefer to have the appellate review focus solely on that substantive decision without the significant distraction of the collateral question of whether the Board improperly failed to follow requisite procedures. Moreover, even if the Board ultimately prevailed on that issue, at a minimum, the procedural question will complicate and delay the appellate review process. With this comes the possibility that the appellate court may not even reach the merits, but rather remand the case for further proceedings that are more consistent with the Board's historical procedures and application of the Variance Rule. We note also the further possibility that if the Board grants CMS' Motion and elects to move forward without an RDO on this expedited basis as requested, AFSCME may consider seeking immediate interim injunctive relief to restrain the Board. Even if such an

action were summarily dismissed at the earliest stage of litigation, resolution of this matter would likely be delayed well beyond the time that is reasonably anticipated if the process runs its natural course.

At present, the parties are scheduled to file their post-hearing briefs by July 13, 2016. Assuming the ALJ issues an RDO by the end of August, and the parties filed exceptions/cross-exceptions/responses by the end of October, the matter could be presented to the Board at the November meeting. If the Board elected to forego the RDO, it would require time sufficient to distill and analyze the voluminous record, including identifying and addressing any material credibility determinations. At the earliest, the Board could not be adequately prepared to render a decision before its September Board meeting, if not later.

CMS has urged that it has a significant interest in an expeditious resolution of this case. In our view, there are numerous stakeholders, including AFSCME and its members, who ultimately will benefit from an expeditious resolution of this matter. However, we believe that those interests are better served in this matter by the Board's strictly managing our usual procedures by eliminating extended briefing schedules and avoiding potential interim litigation so as to ensure that this very significant matter is presented to the Board for decision on the merits at the earliest opportunity.

For these reasons, CMS' Motion to Expedite is denied. We further direct that all future post-hearing briefs in this matter be submitted within the time provided by Board Rules, which shall be strictly enforced, and that no extensions or enlargement of time will be granted.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett
John J. Hartnett, Chairman

/s/ Michael G. Coli
Michael G. Coli, Member

/s/ John R. Samolis
John R. Samolis, Member

/s/ Keith A. Snyder
Keith A. Snyder, Member

/s/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public Special Meeting held in Chicago, Illinois on July 7, 2016, written decision issued in Chicago, Illinois, July 29, 2016