

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

State of Illinois, Department of)	
Central Management Services,)	
)	
Petitioner)	
)	
and)	
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	Case No. S-DE-14-046
)	
Labor Organization-Objector)	
)	
and)	
)	
Florence P. Martin,)	
)	
Employee-Objector)	

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

On September 3, 2013, Administrative Law Judge Anna Hamburg-Gal issued a Recommended Decision and Order finding that designations made on behalf of the Governor by the Illinois Department of Central Management Services (CMS) pursuant to Section 6.1 of the Illinois Public Labor Relations Act, 5 ILCS 315/6.1 (2012), were properly made. The petition designated 44 positions at various State agencies with the title of either Private Secretary I or Private Secretary II. The effect of the designation would be to preclude the occupants of such positions from collective bargaining rights that might otherwise be available pursuant to Section 6 of the Act.

The occupant of one of those positions, Florence P. Martin, filed objections to the designation pursuant to Section 1300.60 of the Rules and Regulations of the Illinois Labor Relations Board promulgated to implement Section 6.1. 80 Ill. Admin. Code Part 1300. So did

the American Federation of State, County and Municipal Employees, Council 31 (AFSCME), which has been certified as the exclusive representative of a bargaining unit containing some of these positions. Upon the Administrative Law Judge's issuance of her Recommended Decision and Order, AFSCME also filed exceptions pursuant to Section 1300.130 of the Board's Rules.

Section 6.1(a) sets out three categories of positions from which such designations may be made, all defined in terms of the positions' relation to collective bargaining. The Governor may designate 1) positions which were first certified to be in a bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008, 2) positions which were the subject of a petition for such certification pending on April 5, 2013 (the effective date of Public Act 97-1172), or 3) positions which have never been certified to have been in a collective bargaining unit and are not subject to pending petitions. Section 6.1(b) further restricts the positions which might be designated to those fitting one or more of five categories defined on the basis of the positions' title, duties, or classification with respect to civil service or restrictions on political hiring.

At issue here is whether the designation meets the third of such categories, that set out in Section 6.1(b)(3) for positions which are designated by the employer as exempt from the prohibitions on political hiring arising out of the settlement of Rutan v. Republican Party of Illinois, 497 U.S. 62 (1990), and which are completely exempt from jurisdiction B of the Personnel Code, 20 ILCS 415/8b through 8b.20 (2012), see 20 ILCS 415/4 through 4d (2012). At least the designations were *made* pursuant to Section 6.1(b)(3), and whether the designations in fact met those requirements would have been in issue had AFSCME filed exceptions asserting that they were not. That is not the case. Instead of arguing that Section 6.1(b)(3) did not apply to these positions, AFSCME argues that CMS erred in failing to note that it was the exclusive representative of collective bargaining units containing some of these positions, and has posited

more general challenges to the designations by alleging that it was not afforded due process and that the legislation, either on its face or as applied, is otherwise unconstitutional.

We agree with the Administrative Law Judge that CMS erred in failing to note AFSCME's role with respect to some of these positions, but we also agree with her conclusion that this does not mean the designation fails to comport with the requirements of Section 6.1. It is required on our form, but not by the statute or our rules.¹ We have previously stated our position with respect to AFSCME's due process and constitutional arguments in our recent decision in State of Illinois, Department of Central Management Services, Cons. Case Nos. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013). We reject the exceptions and accept the Administrative Law Judge's Recommended Decision and Order for the reasons articulated in that document and for the reasons articulated in our decision referenced immediately above. Consistent with that action, we direct the Executive Director to certify that the positions designated are excluded from collective bargaining rights under Section 6.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett

John J. Hartnett, Chairman

/s/ Paul S. Besson

Paul S. Besson, Member

/s/ James Q. Brennwald

James Q. Brennwald, Member

/s/ Michael G. Coli

Michael G. Coli, Member

/s/ Albert Washington

Albert Washington, Member

¹ We caution that our rules provide that “[f]ailure to fully complete the form *could* result in rejection of the filing of the designation by the Board.” 80 Ill. Admin. Cod §1300.50(b) (emphasis added).

Decision made at the State Panel's public meeting in Springfield, Illinois, on October 8, 2013;
written decision issued at Springfield, Illinois, October 15, 2013.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

State of Illinois, Department of Central Management Services,)	
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Employer)	
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and)	Case No. S-DE-14-046
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American Federation of State, County and Municipal Employees, Council 31,)	
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Labor Organization-Objector)	
)	
)	
Florence P. Martin,)	
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Employee-Objector)	

**ADMINISTRATIVE LAW JUDGE'S
RECOMMENDED DECISION AND ORDER**

Section 6.1 of the Illinois Public Labor Relations Act, 5 ILCS 315/6.1 (2012) *added by* Public Act 97-1172 (eff. April 5, 2013), allows the Governor of the State of Illinois to designate certain public employment positions with the State of Illinois as excluded from collective bargaining rights which might otherwise be granted under the Illinois Public Labor Relations Act. There are three broad categories of positions which may be so designated: 1) positions which were first certified to be in a bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008, 2) positions which were the subject of a petition for such certification pending on April 5, 2013 (the effective date of Public Act 97-1172), or 3) positions which have never been certified to have been in a collective bargaining unit. Only 3,580 of such positions may be so designated by the Governor, and, of those, only 1,900 positions which have already been certified to be in a collective bargaining unit.

Moreover, to be properly designated, the position must fit one of the following five categories:

- 1) it must authorize an employee in the position to act as a legislative liaison;

- 2) it must have a title of or authorize a person who holds the position to exercise substantially similar duties as a Senior Public Service Administrator, Public Information Officer, or Chief Information Officer, or as an agency General Counsel, Chief of Staff, Executive Director, Deputy Director, Chief Fiscal Officer, or Human Resources Director; or
- 3) it must be designated by the employer as exempt from the requirements arising out of the settlement of Rutan v. Republican Party of Illinois, 479 U.S. 62 (1990), and be completely exempt from jurisdiction B of the Personnel Code, 20 ILCS 415/8b through 8b.20 (2012), see 20 ILCS 415/4 through 4d (2012);
- 4) it must be a term appointed position pursuant to Section 8b.18 or 8b.19 of the Personnel Code, 20 ILCS 415/8b.18, 8b.19 (2012);
- 5) it must authorize an employee in that position to have “significant and independent discretionary authority as an employee” by which the Act means the employee is either
 - (i) engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency or represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency; or
 - (ii) qualifies as a supervisor of a State agency as that term is defined under Section 152 of the National Labor Relations Act, 29 U.S.C. 152(11), or any orders of the National Labor Relations Board interpreting that provision or decisions of courts reviewing decisions of the National Labor Relations Board.

Section 6.1(d) creates a presumption that any such designation made by the Governor was properly made. It also requires the Illinois Labor Relations Board to determine, in a manner consistent with due process, whether the designation comports with the requirements of Section 6.1, and to do so within 60 days.¹

¹ Public Act 98-100, which became effective July 19, 2013, added subsections (e) and (f) to Section 6.1 which shield certain specified positions from such Gubernatorial designations, but none of those positions are at issue in this case.

As noted, Public Act 97-1172 and Section 6.1 of the Illinois Public Labor Relations Act became effective on April 5, 2013, and allow the Governor 365 days from that date to make such designations. The Board promulgated emergency rules to effectuate Section 6.1, which became effective on April 22, 2013, 37 Ill. Reg. 5901 (May 3, 2013), and the Board promulgated rules for the same purpose effective on August 23, 2013, 37 Ill. Reg. ____ (collectively referred to as the Board's rules). These rules are contained in Part 1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On August 15, 2013, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation pursuant to Section 6.1 of the Act and Section 1300.50 of the Board's Rules. On August 29, 2013, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed objections to the designation pursuant to Section 1300.60(a)(3) of the Board's Rules. On August 27, 2013, Florence P. Martin, an employee of the State of Illinois who occupies one of the positions designated as excluded from collective bargaining rights, similarly filed an objection to the designation. Based on my review of the designations, the documents submitted as part of the designation, the objections, and the documents and arguments submitted in support of those objections, I find that the designation was properly submitted, that it is consistent with the requirements of Section 6.1 of the Act, and that the objections fail to raise an issue of law or fact that might overcome the presumption that the designation is proper. Consequently I recommend that the Executive Director certify the designation of the positions at issue in this matter as set out below and, to the extent necessary, amend any applicable certifications of exclusive representatives to eliminate any existing inclusion of these positions within any collective bargaining unit.

The following 44 positions are at issue in this designation. The positions are within various agencies, as indicated below.² The persons currently occupying the positions and the positions' working titles are also listed.

² AGR – Illinois Department of Agriculture; Arts Cncl – Illinois Arts Council; CFS – Children and Family Services; CJIA – Illinois Criminal Justice Information Authority; CMS – Central Management Services; DCEO – Department of Commerce and Economic Opportunity; DHR – Department of Human Rights; DHS – Department of Human Services; Emp. Sec - Employment Security; EPA – Environmental Protection Agency; Fin. & Prof. Reg – Finance and Professional Regulation; GAC – Guardian and Advocacy Commission; HFS – Healthcare and Family Services; LETSB – Illinois Law Enforcement

AGR	34202-11-01-000-00-01	Julie Ressler	
Arts Cncl	34202-50-90-000-01-01	Pam Thomas	Executive Assistant
CFS	34202-16-00-000-01-20	Kelly A. Beauchamp	
CFS	34202-16-00-000-01-21	Tanesha McGhee-Davis	
CJIA	34202-50-05-000-00-01	Harriet W. Ellis	Private Sec to Ex Director
CMS	34202-37-00-000-01-01	Jacqueline Salgado	Private Secretary 2
CMS	34201-37-00-000-01-01	Demetria W Rupert	Private Secretary 1
Corrections	34202-29-00-000-00-01	Amber Bolden	Private Sec 2
Corrections	34202-29-00-000-00-02	Tracey Williams	Private Sec 2
DCEO	34202-42-00-000-01-01	Tyler Hanners	Private Secretary
DCEO	34202-42-00-000-01-02	Jessica LaPorta	Private Secretary
DHR	34202-49-00-000-00-01	Jolene Tolliver	Administration - Director's Private Secretary
DHS	34202-10-00-000-30-01	Dolores Griffin	Private Secretary
DHS	34202-10-00-000-30-02	Millie Releford	Private Secretary
Emp Sec	34202-44-00-000-00-01	Markus	
EPA	34202-46-00-000-00-02	Vacant	Secretary to the Director
Fin & Prof Reg	34202-13-00-000-01-01	Rudi Hancock	
Fin & Prof Reg	34202-13-00-000-02-01	Diana Ochoa	
Fin & Prof Reg	34202-13-20-000-01-01	Ernest D. Sinclair	
Fin & Prof Reg	34202-13-20-000-02-01	Josephine Gordils	
Fin & Prof Reg	34202-13-40-000-01-01	Kendra Newman	
Fin & Prof Reg	34202-13-40-000-02-01	Marisol Rosario	
GAC	34201-50-70-001-00-01	Vacant	
GAC	34202-50-70-010-00-02	Florence Martin	Private Secretary to the Director

Training and Standards Board; MDC – Illinois Medical District Commission; PTAB – Property Tax Appeal Board; WCC – Illinois Workers Compensation Commission.

HFS	34201-33-00-000-10-61	Vacant	
HFS	34202-33-00-000-10-21	Susan Rossi	
Insurance	34202-114-00-000-00-01	Ryan Gillespie	Assistant to the Director
Insurance	34202-14-00-000-00-02	Miryam Ramirez	Assistant to the Director
Juvenile Justice	34202-27-00-000-05-01	Deloris Smith	
Labor	34202-15-00-000-00-01	Vacant	Private Secretary
LETSB	34202-50-88-000-00-01	Vacant	
MDC	34202-50-54-001-01-01		
Mil Affairs	34202-35-00-000-00-01	Vacant	
Natural Res	34202-12-00-000-10-01	Lindsey Evans	Director's secretary
Natural Res	34202-12-00-000-11-01	Gina Thompson	Director's secretary
PTAB	34201-50-48-000-01-51	Callie Wasilewski	Private Secretary
PTAB	34202-50-48-000-01-01	Dianne Lerman	Private Secretary
Public Health	34202-20-01-010-30-81	Taylor Delacy	Executive Assistant
Revenue	34202-25-00-100-00-01	Vacant	Director's Office
Revenue	34202-25-00-200-00-01	Sisco	Director's Office
State Fire Marshal	34202-50-50-000-00-16	Katelyn A. Tye	
State Fire Marshal	34202-50-50-000-00-84	Justin Stofferahn	
Torture Comm	34202-50-02-000-01-01	Martinez, Rosa	
WCC	34202-50-37-000-00-01	Nicholas Velazquez	Assistant to the Chairman

Martin objects to the designation of her own position. AFSCME objects to designation of the following four positions:

34201-37-00-000-01-01	Demetria W Rupert	Private Secretary 1
34201-50-48-000-01-51	Callie Wasilewski	Private Secretary
34201-50-70-001-00-01	Vacant	

CMS's petition indicates the positions at issue qualify for designation under Section 6.1(b)(3) of the Act by asserting that all the positions are completely exempt from jurisdiction B of the Personnel Code and that they are Rutan-exempt. CMS filed position descriptions (104s) for each position and a spreadsheet in support of its petition which confirm its assertion.

I. Martin's and AFSCME's Objections

Martin argues that she should not be subject to designation because she is not a confidential employee within the meaning of the Act and because she does not write or implement policy.

AFSCME objects to the designations on both procedural and substantive grounds. Procedurally, AFSCME argues that the Board denied it due process because the Board failed to provide AFSCME adequate time to file objections and the General Counsel failed to grant AFSCME a sufficient extension of time to review the information provided and to seek additional information. Next, AFSCME argues that the Board likewise denied it due process when it failed to provide any means by which AFSCME could obtain information to support its position. AFSCME also notes that there was a lack of information provided by CMS in support of its exclusions. Finally, AFSCME argues that these factors, combined with CMS's decision to file one-third of all the allowable designations within less than a week, deprives AFSCME of due process.

Substantively, AFSCME first argues that CMS erroneously represents that the four Private Secretary I positions are not currently represented. AFSCME asserts that the Board certified AFSCME as the representative Private Secretary Is in Case No. S-RC-11-004, issued on November 15, 2013 and corrected on November 25, 2012. AFSCME noted that the certification of representative did not list any Private Secretary I positions as excluded from the unit.

Second, AFSCME asserts that it would be arbitrary for the Board to permit the designation of these four Private Secretary I titles when they perform similar work to that performed by employees currently represented by AFSCME in the same position.

Third, on that basis, AFSCME asserts that the Board should not permit CMS to designate these positions as excluded from collective bargaining because to do so would erode bargaining unit work.

II. Discussion and Analysis

a. Procedural Issues

The Board's procedures do not deny AFSCME due process.

First, the Board did not deny AFSCME due process when it applied its rules, which required AFSCME to file objections to the designation within 10 days, and when the General Counsel granted only a two-day extension for AFSCME to file its objections.

Due process requires notice and an opportunity to be heard. East St. Louis Fed'n of Teachers, Local 1220 v. East St. Louis School Dist. No. 189 Financial Oversight Panel, 178 Ill. 2d 399, 419–20 (1997). Although due process applies to administrative hearings³ and requires a “fair hearing” and “rudimentary elements of fair play,” “[a]n administrative agency has broad discretion to reasonably regulate the time periods afforded parties to present evidence.” Clark v. Bd. of Directors of the School Dist. of Kansas City, 915 S.W.2d 766, 772–73 (Mo. App. W.D.1996).

Administrative rules and regulations have the force and effect of law, and must be construed under the same standards which govern the construction of statutes. Northern Ill. Automobile Wreckers and Rebuilders Ass'n v Dixon, 75 Ill. 2d 53 (1979); DeGrazio v. Civil Service Com., 31 Ill. 2d 482, 485 (1964). Like a statute, an administrative rule or regulation enjoys a presumption of validity. Northern Ill. Automobile Wreckers and Rebuilders Ass'n v Dixon, 75 Ill. 2d 53 (1979). A court will set aside an administrative rule only if the court finds it clearly arbitrary, unreasonable, or capricious. Pauly v. Werries, 122 Ill. App. 3d 263 (4th Dist. 1984); Aurora East Public School District No. 131 v. Cronin, 92 Ill. App. 3d 1010 (1981).

³ Dep't of Cent. Mgmt. Services/Ill. Commerce Comm'n v. Ill. Labor Rel. Bd., State Panel, 406 Ill. App. 3d 766, 769–70 (4th Dist. 2010) (denial of an “oral hearing” is not necessarily the denial of a “hearing” because written arguments could suffice as a hearing in the administrative context).

Here, the Board's Rules, which specify time limits for filing objections, and the General Counsel's grant of only a limited extension, do not deprive AFSCME of due process because they are reasonable in light of the short statutory time frame in which the Board must process designation petitions and the high volume of such petitions the Board expects to receive. The Act provides that the Board has a mere 60 days to determine whether the designation comports with the requirements of Section 6.1 of the Act. 5 ILCS 315/6.1(b)(5) (2012). In that 60 days, the Board must allow time (1) for parties to file objections, (2) for an Administrative Law Judge (ALJ) to hold a hearing (if deemed necessary) and to draft, issue, and serve the decision on the parties, (3) for the parties to file exceptions to the ALJ's Recommended Decision and Order (RDO), (4) for the Board's staff to review the RDO in light of the exceptions, (5) for the Board to set an agenda for the Board meeting pursuant to the requirements of the Open Meetings Act,⁴ and (6) for the Board to rule on the ALJ's decision concerning the designation. In addition, the Board expects to receive a high volume of these petitions because the Governor is statutorily permitted to designate up to 3,580 positions for exclusion. Taken together, these factors demonstrate that the Board's 10-day time limit for filing objections and the General Counsel's grant of only a limited extension of time to file objections is reasonable and thus does not deprive AFSCME of due process.

Second, the Board did not deprive AFSCME of due process when it allegedly failed to provide AFSCME an avenue by which it could obtain information to support its objections because AFSCME has all the relevant information at its disposal. Here, the only relevant information concerns the "double-exempt" status of the designated positions. AFSCME could have obtained such information by making a Freedom of Information Act request and would have obtained that information within the time for filing objections. See 5 ILCS 140/3 ("Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request").

Notably, the Board did provide a means by which AFSCME may obtain information to support its position. Indeed, Section 1300.110 of the Board's Emergency Rules provides that a party may ask the Board to issue subpoenas for witnesses and documents. See 80 Ill. Admin. Code 1300.110. While this subpoena power is only available to the parties after the ALJ

⁴ The Open Meetings Act provides that "an agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." 5 ILCS 120/2.02 (2012).

determines that there are issues of fact for an oral hearing, the subpoena power available to the parties is identical to that available to the parties in all other proceedings before the Board and thus does not deprive AFSCME of due process. Compare 80 Ill. Admin. Code 1300.110 with 80 Ill. Admin. Code 1200.90.

Finally, the Board's procedures do not deprive AFSCME of due process, even though CMS filed a high volume of cases in a short period of time, because many (if not most) of those cases sought exclusion based solely on the positions' title or exempt status and therefore did not present complex issues of fact which required extensive discovery. As such, the volume of these cases does not "substantially hinder" AFSCME's ability to file objections, even in light of the Board's time limits.

In sum, the Board did not deprive AFSCME of due process in applying its rules here.

b. Substantive Issues

i. Martin's Objections

CMS's designation of Martin's position is properly made.

As noted above, to qualify for designation under Section 6.1 of the Act, the position in question must fall into one of the three broad categories of designatable positions and must likewise fall into one of the five categories which describe its classification, title, or characteristics.

Here, Martin's position falls into one of the three broad designatable categories because it is subject to a pending petition, S-RC-11-110. Similarly, her position falls within one of the five categories which describe the nature of the position because she is completely exempt from the jurisdiction B of the Personnel Code and is Rutan-exempt.

Martin's objections do not alter this conclusion. Indeed, Martin's objections are inapposite because they focus on her job duties and do not address the Board's sole inquiry in this particular case. Here, the Board must determine whether the designated position meets the criteria set forth in Section 6.1 of the Act. Section 6.1(b)(3) provides in relevant part that for a position to be designatable, "it must be... Rutan-exempt, as designated by the employer... and completely exempt from jurisdiction B of the Personnel Code." In this case, it is clear that Martin's position falls into one of the three designatable categories. Similarly, it is undisputed that her position is Rutan-exempt and completely exempt from jurisdiction B of the Personnel

Code (“double exempt”). Accordingly, the sole inquiry here is whether CMS erroneously identified Martin as double-exempt. Yet here, Martin instead argues that the Board should not permit her designation, despite her exempt status, because she is not a confidential employee and does not write or implement policy. However, as discussed above, these arguments must fail in light of the Act’s clear language which, in this case, permits designation of the position based solely on double-exempt status and without regard to job duties.

ii. AFSCME’s objections

CMS’s properly designated the Private Secretary I positions at issue in AFSCME’s objections.

As noted above, to qualify for designation under Section 6.1 of the Act, the position in question must fall into one of the three broad categories of designatable positions and must likewise fall into one of the five categories which describe its classification, title, or characteristics.

Here, the Private Secretary I positions at issue fall into one of the three broad designatable categories because, according to AFSCME’s assertion, the Board certified them into the bargaining unit after December 2, 2008. Similarly, these positions fall within one of the five categories which describe the nature of the positions because they are completely exempt from the jurisdiction B of the Personnel Code and are Rutan-exempt.

None of the objections advanced by AFSCME alter this conclusion. First, CMS’s failure to note that the positions in question are covered by a certification of representative does not warrant dismissal of the petition because CMS’s error does not affect the determination of whether the positions are properly designatable under Section 6.1. By arguing that the positions were certified in a bargaining unit on November 15, 2012 (corrected on November 25, 2012), AFSCME has conceded that the positions meet one of the three required categories for positions that can be properly designated under Section 6.1 of the Act. Further, while the Board’s rules provide that “failure to fully complete the form could result in rejection of the filing of the designation by the Board,” the Rules do not mandate dismissal where CMS has made a clerical error, as CMS may have done in this case. 80 Ill. Admin. Code 1300.50(b). Thus, the Board should not dismiss the petition even though CMS failed to indicate that the four Private Secretary I positions are allegedly covered by a certificate of representative.

Second, contrary to AFSCME's contention, it is not arbitrary for the Board to exclude these positions, even though the Board has included other Private Secretary I titles in the bargaining unit, because the Board is merely adhering to its own rules. "Agency action is arbitrary and capricious only if the agency contravenes the legislature's intent, fails to consider a crucial aspect of the problem, or offers an explanation which is so implausible that it runs contrary to agency expertise." Deen v. Lustig, 337 Ill. App. 3d 294, 302 (4th Dist. 2003). For example, an agency's decision is arbitrary and capricious if it fails to follow its own rules or fails to adhere to the statute at issue. Dep't of Cent. Mgmt Serv./Ill. Commerce Com'n v. Ill. Labor Rel. Bd., 406 Ill. App. 3d 766, 771 (4th Dist. 2010)(agency must follow its own rules); Crane by Crane v. Indiana High School Athletic Ass'n., 975 F.2d 1315, 1320 (7th Cir. 1992) (agency acts arbitrarily and capriciously when it fails to follow its own rules); Steinhouse v. Ashcroft, 247 F. Supp. 2d 201, 210 (D. Conn. 2003)(agency's failure to adhere to statute at issue is arbitrary and capricious) (Citing Yousefi v. INS, 260 F.3d 318, 328 (4th Cir. 2001)).

Finally, AFSCME's remaining arguments are inapposite because they focus on the job duties of the positions, and do not address the Board's sole inquiry in this particular case. Section 6.1(b)(3) provides in relevant part that for a position to be designatable, "it must be... Rutan-exempt, as designated by the employer... and completely exempt from jurisdiction B of the Personnel Code." In this case, it is clear that the four Private Secretary I positions fall into one of the three designatable categories. Similarly, it is undisputed that they are Rutan-exempt and completely exempt from jurisdiction B of the Personnel Code ("double exempt"). Accordingly, the sole inquiry here is whether CMS erroneously identified these positions as double exempt. Yet here, AFSCME instead argues that the Board should not permit their designation, despite their exempt status, because they perform similar work to that performed by employees currently represented by AFSCME in the same position and because their inclusion therefore might erode the bargaining unit. However, as discussed above, these arguments must fail in light of the Act's clear language which, in this case, permits designation of the position based solely on double-exempt status and without regard to job duties.

Thus CMS's designation of these positions is properly made.

III. Conclusions of Law

The Governor's designation in this case is properly made.

IV. Recommended Order

Unless this Recommended Decision and Order Directing Certification of the Designation is rejected or modified by the Board, the following positions are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

34202-11-01-000-00-01	Julie Ressler	
34202-50-90-000-01-01	Pam Thomas	Executive Assistant
34202-16-00-000-01-20	Kelly A. Beauchamp	
34202-16-00-000-01-21	Tanesha McGhee-Davis	
34202-50-05-000-00-01	Harriet W. Ellis	Private Sec to Ex Director
34202-37-00-000-01-01	Jacqueline Salgado	Private Secretary 2
34201-37-00-000-01-01	Demetria W Rupert	Private Secretary 1
34202-29-00-000-00-01	Amber Bolden	Private Sec 2
34202-29-00-000-00-02	Tracey Williams	Private Sec 2
34202-42-00-000-01-01	Tyler Hanners	Private Secretary
34202-42-00-000-01-02	Jessica LaPorta	Private Secretary
34202-49-00-000-00-01	Jolene Tolliver	Administration - Director's Private Secretary
34202-10-00-000-30-01	Dolores Griffin	Private Secretary
34202-10-00-000-30-02	Millie Releford	Private Secretary
34202-44-00-000-00-01	Markus	
34202-46-00-000-00-02	Vacant	Secretary to the Director
34202-13-00-000-01-01	Rudi Hancock	
34202-13-00-000-02-01	Diana Ochoa	
34202-13-20-000-01-01	Ernest D. Sinclair	
34202-13-20-000-02-01	Josephine Gordils	
34202-13-40-000-01-01	Kendra Newman	
34202-13-40-000-02-01	Marisol Rosario	
34201-50-70-001-00-01	Vacant	
34202-50-70-010-00-02	Florence Martin	Private Secretary to the Director
34201-33-00-000-10-61	Vacant	
34202-33-00-000-10-21	Susan Rossi	
34202-114-00-000-00-01	Ryan Gillespie	Assistant to the Director

34202-14-00-000-00-02	Miryam Ramirez	Assistant to the Director
34202-27-00-000-05-01	Deloris Smith	
34202-15-00-000-00-01	Vacant	Private Secretary
34202-50-88-000-00-01	Vacant	
34202-50-54-001-01-01		
34202-35-00-000-00-01	Vacant	
34202-12-00-000-10-01	Lindsey Evans	Director's secretary
34202-12-00-000-11-01	Gina Thompson	Director's secretary
34201-50-48-000-01-51	Callie Wasilewski	Private Secretary
34202-50-48-000-01-01	Dianne Lerman	Private Secretary
34202-20-01-010-30-81	Taylor Delacy	Executive Assistant
34202-25-00-100-00-01	Vacant	Director's Office
34202-25-00-200-00-01	Sisco	Director's Office
34202-50-50-000-00-16	Katelyn A Tye	
34202-50-50-000-00-84	Justin Stofferahn	
34202-50-02-000-01-01	Martinez, Rosa	
34202-50-37-000-00-01	Nicholas Velazquez	Assistant to the Chairman

V. Exceptions

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300,⁵ parties may file exceptions to the Administrative Law Judge's recommended decision and order, and briefs in support of those exceptions, not later than 3 days after service of the recommended decision and order. All exceptions shall be filed and served in accordance with Section 1300.90 of the Board's Rules. Exceptions must be filed by electronic mail to ILRB.Filing@illinois.gov. Each party shall serve its exceptions on the other parties. If the original exceptions are withdrawn, then all subsequent exceptions are moot. A party not filing timely exceptions waives its right to object to the Administrative Law Judge's recommended decision and order.

⁵ Available at <http://www.state.il.us/ilrb/subsections/pdfs/Section%201300%20Illinois%20Register.pdf>.

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**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

/s/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**