

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

State of Illinois, Department of)	
Central Management Services)	
(Illinois Commerce Commission),)	
)	
Petitioner)	
)	
and)	Case No. S-DE-14-047
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	

Consolidated With

State of Illinois, Department of)	
Central Management Services)	
(Workers' Compensation Commission),)	
)	
Petitioner)	
)	
and)	Case No. S-DE-14-083
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	

Consolidated With

State of Illinois, Department of)	
Central Management Services)	
(Pollution Control Board),)	
)	
Petitioner)	
)	
and)	Case No. S-DE-14-086
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	

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

Public Act 97-1172 amended the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) (Act), in a variety of ways, all with the effect of diminishing the number of employees of the State of Illinois in higher level positions with access to collective bargaining rights under Section 6 of the Act. Specifically at issue in this case is one method provided through the addition of Section 6.1. New Section 6.1 authorizes the Governor to designate for exclusion from self-organization and collective bargaining rights up to 3,580 State employment positions “within State agencies directly responsible to the Governor.” 5 ILCS 315/6.1(a) (2012). These three consolidated cases present the issue whether that authority extends to positions within the Illinois Commerce Commission, the Illinois Workers’ Compensation Commission, and the Illinois Pollution Control Board. It is undisputed that these three agencies are not, in fact, directly responsible to the Governor, and finding as we more fully explain below that the limiting phrase “directly responsible to the Governor” is unambiguous, we conclude that the Governor’s authority under Section 6.1 does not extend to positions within these agencies.

On August 15, 2013, on behalf of the Governor and pursuant to Section 6.1 of the Act and implementing regulations, 80 Ill. Admin. Code Part 1300,¹ the Illinois Department of Central Management Services (CMS) filed a Petition in Case No. S-DE-14-047 with the Illinois Labor Relations Board, State Panel, seeking to designate certain positions within the Illinois Commerce Commission (ICC) as excluded from the self-organization and collective bargaining provisions of Section 6. Six days later, on August 21, 2013, it filed a similar petition in Case No. S-DE-14-083, designating for exclusion certain positions within the Illinois Workers’ Compensation

¹ The Board promulgated emergency regulations effective April 22, 2013, 37 Ill. Reg. 5901 (May 3, 2013), and permanent rules effective August 23, 2013, 37 Ill. Reg. 14070 (Sept. 6, 2013). These have been codified at 80 Ill. Admin. Code Part 1300, and are also available on the Board’s website at <http://www.state.il.us/ilrb/subsections/pdfs/Section%201300%20Illinois%20Register.pdf>

Commission (WCC). Five days later, on August 26, 2013, it filed a third such petition in Case No. S-DE-14-086, designating for exclusion certain positions within the Illinois Pollution Control Board (PCB).² The American Federation of State, County and Municipal Employees, Council 31 (AFSCME), filed timely objections to all three petitions, raising, among other arguments, that all three petitions were improper because the three employing agencies were not “State agencies directly responsible to the Governor” as required by Section 6.1(a).

All three cases were assigned to Administrative Law Judge (ALJ) Michelle N. Owen, who issued recommended decisions and orders in Case Nos. S-DE-14-047 and S-DE-14-086 on September 9, 2013, and in Case No. S-DE-14-083 on September 11, 2013. In her decisions, ALJ Owen relied on the definition of a “State agency” in Section 3(q-5) of the Illinois Public Labor Relations Act, 5 ILCS 315/3(q-5) (2012), as well as on the Executive Reorganization Implementation Act, 15 ILCS 15 (2012) (ERIA), to find that the ICC, PCB, and WCC were, indeed, not “State agencies directly responsible to the Governor” within the meaning of Section 6.1. For that reason, she found each of the petitions to have been improper, and recommended that they be dismissed. She did not address AFSCME’s alternative objections.

On September 12, 2013, CMS filed separate exceptions to the ALJ’s recommendations in Case Nos. S-DE-14-047 and S-DE-14-086, pursuant to Board regulation Section 1300.130, and on September 13, 2013, CMS filed exceptions in Case No. S-DE-14-083. In those exceptions,

² Section 6.1(a) limits the Governor’s authority to designate to three categories of positions based on their status with respect to collective bargaining: (1) positions certified to be within a collective bargaining unit after December 2, 2008, (2) positions for which a petition for certification was pending on the date Public Act 97-1172 became effective (April 5, 2013), and (3) positions which have never been certified and have no pending petition for certification. Section 6.1(b) further limits the Governor’s authority to five categories of positions based on their title, duties, or other characteristics with respect to civil service or exemption pursuant to the settlement of Rutan v. Republican Party of Illinois, 497 U.S. 62 (1990). In its petitions, CMS claimed the positions at the ICC met categories 6.1(b)(2), (3) and (5), those at the PCB met category 6.1(b)(3), and those at the WCC met category 6.1(b)(5). (Its exceptions in the WCC case erroneously state that categories 6.1(b)(2), (3) and (5) were at issue.) Because of the nature of her ruling, the ALJ did not address whether these designations met these requirements.

CMS argues that the ALJ failed to apply the canons of statutory construction, failed to consider legislative intent, failed to apply the presumption contained in Section 6.1(d) that any designation made by the Governor should be presumed to be proper, and had issued decisions at odds with certifications issued by the Board's Executive Director in Case Nos. S-DE-14-004, S-DE-14-019, and S-DE-14-048. Alternatively, CMS argues that it was improper for the ALJ to issue her recommended decisions without first holding an oral hearing.

Submitted with CMS's exceptions were affidavits of Robb Craddock, the Deputy Director of Labor Relations for CMS, who avers that he was instrumental in drafting the bill which became Public Act 97-1172, which, as stated, added Section 6.1 to the Act. In fact, Craddock claims to be a subject matter expert on the content of Public Act 97-1172 in that he lobbied for its passage, testified before a legislative committee, and conversed with the leaders of all four caucuses of the legislature regarding it. He stated that the intent of the legislation was "to remove certain employee positions from participation in the collective bargaining process, ensuring that they could more effectively perform their job duties as managers, supervisors, legislative liaisons, etc." He stated that, as originally drafted, the legislation had a limited definition of state agency, and that this definition was modified to include additional agencies including the ICC, WCC, and PCB.³ However, he admits that this modification was not made to ("the modifier was not added to") Section 6.1(a), stating that not doing so was intended to "avoid duplicative language." Craddock also states that active petitions (for representation pursuant to Section 9(a) or 9(a-5)) were referenced in Section 3(t), a section of the Act also added by Public Act 97-1172, and that included in that list of active petitions was the petition by which a union was attempting to be recognized as the exclusive representative of the ICC employees at issue in

³ Craddock also referenced the Civil Service Commission, the Illinois Racing Board and the Department of State Police Merit Board.

Case No. S-DE-14-047.⁴ Finally, Craddock states that it was the intention of the drafters of the legislation to “have the agencies listed under the definition of state agency in section 3(q-5) to be included as part of the agencies from which the governor could designate certain employee positions as being excluded from bargaining unit[s] under section 6.1(a).”

Both CMS and AFSCME presented oral argument on their positions at our meeting held on September 24, 2013. Following argument, we voted to accept the ALJ’s recommended decision and dismiss the petitions; however, following that meeting and prior to issuance of our written decision, CMS filed a motion to reconsider our oral ruling, and AFSCME filed a response to that motion. At our next meeting held on October 8, 2013, we declined to reconsider our decision. Our reasoning follows.

Analysis

In addressing the extent of the Governor’s authority under Section 6.1 of the Act, our objective is to effectuate legislative intent. Gruszczyka v. Ill. Workers’ Compensation Comm’n, 2013 IL 114212 ¶ 12; County of Du Page v. Ill. Labor Relations Bd., 231 Ill. 2d 593, 603-04 (2008); Kraft, Inc. v. Edgar, 138 Ill. 2d 178, 189 (1990). That intent is best evidenced by the language used by the legislature. Kraft, Inc., 138 Ill. 2d at 189. Where an enactment is clear and unambiguous, we have no liberty to depart from the plain language and meaning of the statute by reading into it exceptions, limitations and conditions the legislature did not express. Id. We must read the statute as a whole, with all relevant parts considered, and attempt to construe it so that no word or phrase is rendered superfluous or meaningless. Id.

⁴ The nearly identical affidavit submitted in Case No. S-DE-14-086 substitutes reference to employees of the PCB in place of those of the ICC, but the affidavit submitted in Case No. S-DE-14-083 does not include a similar assertion with respect to the employment positions with the WCC, both of which are vacant.

Although we do not find this to be the case here, where a statute is capable of more than one reasonable meaning, an ambiguity exists, and one may refer to extrinsic aids to statutory construction such as legislative history. County of Du Page, 231 Ill. 2d at 604. Under such circumstances, in addition to the language used, courts may also consider the purpose behind the law, the evils sought to be remedied, and the consequences of interpreting the law one way or the other. Id. In interpreting legislative intent behind ambiguous language, courts may consider the comments of legislators during legislative debates, Krohe v. City of Bloomington, 329 Ill. App. 3d 1133, 1136-37 (4th Dist. 2002), and often place particular weight on those comments of a bill's sponsor, see, e.g., O'Laughlin v. Vill. of River Forest, 338 Ill. App. 3d 189 (1st Dist. 2003); however, the Illinois Supreme Court has also stated that a statute's meaning is *not* to be interpreted by a bill's sponsor's comments when introducing legislation or by the statements of legislators who voted for the legislation. People v. Burdunice, 211 Ill. 2d 264, 270-71 (2004) (correct to call such statements "inapposite"). That court had earlier stated that comments made by legislators outside the context of an actual debate (being immune from verbal interplay or the presentation of countervailing ideas inherent in the process of debate), do not constitute meaningful evidence of legislative intent, though statements made during actual debate could be useful. Morel v. Coronet Ins. Co., 117 Ill. 2d 18, 24-25 (1987). Where the language is ambiguous, courts may also consider comments made by legislative committees. People v. Hunter, 2013 IL 114100 ¶ 17. And where language is ambiguous, courts may consider the history of the statute, People v. Maldonado, 386 Ill. App. 3d 964, 968 (2008), including amendments made while a bill was pending, Swanson v. Bd. of Educ. of Forman Cmty. Unit School Dist. 124, 135 Ill. App. 3d 466, 471 (4th Dist. 1985).⁵ Courts do not allow expert

⁵ The language that became Public Act 97-1172 was added by House Floor Amendment No. 2 (which

testimony on legislative history. Town of City of Bloomington v. Bloomington Twp., 233 Ill. App. 3d 724, 735-36 (4th Dist. 1992) (“Allowing tailored court testimony purporting to explain what the legislature *meant* to say is unacceptable and potentially dangerous.”).

As an initial matter, the language within Section 6.1 is not at all ambiguous. Section 6.1 allows the Governor to “designate ... positions collectively within State agencies directly responsible to the Governor[.]” As the ALJ pointed out, the Executive Reorganization Implementation Act (ERIA) indicates that the ICC, WCC and PCB are *not* State agencies directly responsible to the Governor, 15 ILCS 15/3.1 (2012).⁶ The ERIA defines the exact same term used in Section 6.1(a): “Agency directly responsible to the Governor,” and defines it in a manner to exclude these agencies. There is a presumption the General Assembly knows the content of other acts, Laborers’ Int’l Union of N. Am. Local 1280 v. State Labor Relations Bd., 154 Ill. App. 3d 1045, 1050 (5th Dist. 1987) (state legislature presumed to know federal court

replaced all pre-existing language in the bill). It was never subsequently modified from that point through the Governor’s signature.

⁶ Section 3.1 of that the ERIA provides:

“Agency directly responsible to the Governor” or “agency” means any office, officer, division, or part thereof, and any other office, nonelective officer, department, division, bureau, board, or commission in the executive branch of State government, except that it does not apply to any agency whose primary function is service to the General Assembly or the Judicial Branch of State government, or to any agency administered by the Attorney General, Secretary of State, State Comptroller or State Treasurer. In addition the term does not apply to the following agencies created by law with the primary responsibility of exercising regulatory or adjudicatory functions independently of the Governor:

- (1) the State Board of Elections;
- (2) the State Board of Education;
- (3) the Illinois Commerce Commission;
- (4) the Illinois Workers’ Compensation Commission;
- (5) the Civil Service Commission;
- (6) the Fair Employment Practices Commission;
- (7) the Pollution Control Board;
- (8) the Department of State Police Merit Board;
- (9) the Illinois Racing Board;
- (10) the Illinois Power Agency.

15 ILCS 15/3.1 (2012).

interpretation of language in federal statute before using similar language in state statute), and that seems particularly apt where it chooses to use exactly the same term concerning the subject of government organization that is the very the theme of the ERIA. Moreover, the ERIA has been excluding these three entities from being directly responsible to the Governor since 1979, Ill. Rev. Stat. ch. 127, ¶1803.1 (1979),⁷ so their status was well established and no doubt well recognized by the legislature.

In addition to using a term long defined by the ERIA, the legislature, simultaneous with its promulgation of Section 6.1 of the Act, added to Section 3 of the Act a definition of the term “State agency”:

“State agency” means an agency directly responsible to the Governor, as defined in Section 3.1 of the Executive Reorganization Implementation Act, and the Illinois Commerce Commission, the Illinois Workers’ Compensation Commission, the Civil Service Commission, the Pollution Control Board, the Illinois Racing Board, and the Department of State Police Merit Board.

5 ILCS 315/3(q-5) (2012). This is conclusive evidence that the legislature was fully aware of the ERIA, and of its exclusion of the ICC, WCC and PCB from its definition of “agency directly responsible to the Governor.” Moreover, Section 3(q-5) includes two groups within its definition of “State agency”: 1) those defined by ERIA as “agencies directly responsible to the Governor” and 2) six other agencies incorporated by specific reference, including the ICC, WCC and PCB. If the ICC, WCC and PCB were contained within the first group, there would have been no cause to list them in the second, and the language setting out the second group would have been superfluous. Consequently, the definition itself recognizes that these three agencies are not “agencies directly responsible to the Governor.” Repetition of that phrase in Section 6.1 must mean the same thing.

⁷ The name of the Workers’ Compensation Commission was substituted for its predecessor Industrial Commission in 2005. Public Act 93-721, §15 (eff. Jan. 1, 2005).

Under a plain reading of the statutory language in Section 6.1, whether standing by itself or construed in conjunction with new and concurrently adopted Section 3(q-5), we would have to conclude that the Governor is without authority to designate for exclusion from bargaining rights employment positions within the ICC, WCC and PCB. Indeed, to hold otherwise would require us to read out of Section 6.1(a) the phrase “directly responsible to the Governor,” leaving merely the term “State agencies” which, as defined in Section 3(q-5), would include these three agencies. However, that goes directly contrary to a basic tenet of statutory construction: a statute should be construed so that no word or phrase is rendered superfluous or meaningless. Kraft, Inc., 138 Ill. 2d at 189.

We note that interpreting the authorization clause in Section 6.1 as excluding these three agencies does not render superfluous the new definition of a “State agency” in Section 3(q-5). Prior to Public Act 97-1172, the Illinois Public Labor Relations Act did not once use the terms “State agency” or “State agencies,”⁸ so the need to define the term arises within Public Act 97-1172 itself. If that term were used only in new Section 6.1(a), we would have a quandary: no matter which way we ruled we would be implicitly finding either wording in new Section 3(q-5) or wording in new Section 6.1(a) to be without effect.

But the phrase “State agency” is used elsewhere in Public Act 97-1172 outside the context of Section 6.1 designations and in a manner that precludes certain categories of employees of the ICC, WCC and PCB from future organization through Section 9(a) and Section 9(a-5) representation proceedings. Public Act 97-1172 directly uses the term “State agency” three times when adding exceptions to the definition of “public employee” in Section 3(n):

⁸ The Act did use the term “State ... or any agency thereof,” but only in the context of limitations on outside employment of Board members, 5 ILCS 315/5(d) (2012), and in defining the entities against whom the Board might issue sanctions, 5 ILCS 315/11(c) (2012), matters that hardly needed refinement.

but excluding all of the following: ... any employee of a **State agency** who (i) holds the title or position of, or exercises substantially similar duties as a legislative liaison, Agency General Counsel, Agency Chief of Staff, Agency Executive Director, Agency Deputy Director, Agency Chief Fiscal Officer, Agency Human Resources Director, Public Information Officer, or Chief Information Officer and (ii) was neither included in a bargaining unit nor subject to an active petition for certification in a bargaining unit; any employee of a **State agency** who (i) is in a position that is Rutan-exempt, as designated by the employer, and completely exempt from jurisdiction B of the Personnel Code and (ii) was neither included in a bargaining unit nor subject to an active petition for certification in a bargaining unit; any term appointed employee of a **State agency** pursuant to Section 8b.18 or 8b.19 of the Personnel Code who was neither included in a bargaining unit nor subject to an active petition for certification in a bargaining unit[.]

5 ILCS 315/3(n) as amended by Public Act 97-1172 (emphasis supplied). It also added an exclusion for legislative liaisons to the Section 3(n) definition of public employee, and provided a definition of that term in new Section 3(i-5) which, in turn, uses the term “State agency”:

“Legislative liaison” means a person who is an employee of a **State agency**, the Attorney General, the Secretary of State, the Comptroller, or the Treasurer, as the case may be, and whose job duties require the person to regularly communicate in the course of his or her employment with any official or staff of the General Assembly of the State of Illinois for the purpose of influencing any legislative action.

5 ILCS 315/3(i-5) as added by Public Act 97-1172 (emphasis supplied). New Section 3(q-5) clearly impacts these portions of the Act, and consequently will have meaning no matter how we rule with respect to Section 6.1(a).

At oral argument, CMS stressed that the term “state agency” is also used elsewhere within Section 6.1. Section 6.1(b) provides some of the mechanics for a designation, including that the Governor list “the name of the State agency.” And in Section 6.1(c) the legislature defined “significant and independent discretionary authority” (the fifth category for designation set out in Section 6.1(b)(5)), as follows:

For the purposes of this Section, a person has significant and independent discretionary authority as an employee if he or she (i) is 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 or any orders of the National Labor Relations Board interpreting that provision or decisions of courts reviewing decisions of the National Labor Relations Board.

5 ILCS 315/6.1(c) (2012) (emphasis added). Because Section 3(q-5) defines “State agency” in a manner that includes the ICC, WCC and PCB, the use of that term in Sections 6.1(b) and (c) could conceivably include reference to these entities, but only if the Governor had the authority to make designations of positions from these agencies in the first place. That brings us back to Section 6.1(a), which provides his authority, and to the legislature’s addition of the limiting phrase “directly responsible to the Governor” to the term “State agency” in that context.

Section 6.1(d) provides that “[a]ny designation made by the Governor under this Section shall be presumed to have been properly made,” and CMS argues this presumption precludes the Board from finding the designation of positions within the ICC, WCC and PCB invalid. To the extent CMS is suggesting the presumption is non-rebuttable, it renders meaningless the last sentence of Section 6.1(b) which requires this Board to ascertain whether the designation comports with the requirements of Section 6.1. More significantly, CMS’s position suggests that the presumption of appropriateness cannot be rebutted, even by clear statutory language expressing limits on the Governor’s authority. CMS’s position with respect to the presumption is extreme, cannot be reflective of legislative intent, and is rejected.

CMS argues that the ALJ failed to consider that a Section 9 petition for representation of the ICC employees was amongst the list of petitions defined as an “active petition” in new

Section 3(t).⁹ From this, it assumes the legislature must have intended that the Governor's authority to make Section 6.1 designations extends to ICC employees. However, the newly defined term "active petition" does not appear in Section 6.1.¹⁰ Rather, it appears in the amendments to the definition of "public employee" in Section 3(n), and there is used to limit the reach of the amendment by shielding positions subject to "active petitions" from a new, narrower definition of "public employee."¹¹ In other words, it has no relevance to Gubernatorial designations under Section 6.1, but only to future petitions for representation under Section 9.

CMS claims the statutory language is ambiguous because the interpretation given it by the ALJ differs from that which it proffers. Thus assuming ambiguity, it states it is proper to consider extrinsic evidence of legislative intent and offers Robb Craddock's affidavit as such

⁹ Section 3(t) provides:

"Active petition for certification in a bargaining unit" means a petition for certification filed with the Board under one of the following case numbers: S-RC-11-110; S-RC-11-098; S-UC-11-080; S-RC-11-086; S-RC-11-074; S-RC-11-076; S-RC-11-078; S-UC-11-052; S-UC-11-054; S-RC-11-062; S-RC-11-060; S-RC-11-042; S-RC-11-014; S-RC-11-016; S-RC-11-020; S-RC-11-030; S-RC-11-004; S-RC-10-244; S-RC-10-228; S-RC-10-222; S-RC-10-220; S-RC-10-214; S-RC-10-196; S-RC-10-194; S-RC-10-178; S-RC-10-176; S-RC-10-162; S-RC-10-156; S-RC-10-088; S-RC-10-074; S-RC-10-076; S-RC-10-078; S-RC-10-060; S-RC-10-070; S-RC-10-044; S-RC-10-038; S-RC-10-040; S-RC-10-042; S-RC-10-018; S-RC-10-024; S-RC-10-004; S-RC-10-006; S-RC-10-008; S-RC-10-010; S-RC-10-012; S-RC-09-202; S-RC-09-182; S-RC-09-180; S-RC-09-156; S-UC-09-196; S-UC-09-182; S-RC-08-130; S-RC-07-110; or S-RC-07-100.

¹⁰ Section 6.1 does use the term "pending petition," but there is no list of petitions deemed "pending" as there is for those deemed "active." Moreover, attempting to apply the list of active petitions to Section 6.1 would have the consequence of limiting the applicability of Section 6.1, not expanding it.

¹¹ The relevant portion of Section 3(n), as amended by Public Act 97-1172 reads:

but excluding all of the following: ... any employee of a State agency who (i) holds the title or position of, or exercises substantially similar duties as a legislative liaison, Agency General Counsel, Agency Chief of Staff, Agency Executive Director, Agency Deputy Director, Agency Chief Fiscal Officer, Agency Human Resources Director, Public Information Officer, or Chief Information Officer and (ii) was neither included in a bargaining unit nor subject to an **active petition** for certification in a bargaining unit; any employee of a State agency who (i) is in a position that is Rutan-exempt, as designated by the employer, and completely exempt from jurisdiction B of the Personnel Code and (ii) was neither included in a bargaining unit nor subject to an **active petition** for certification in a bargaining unit; any term appointed employee of a State agency pursuant to Section 8b.18 or 8b.19 of the Personnel Code who was neither included in a bargaining unit nor subject to an **active petition** for certification in a bargaining unit; any employment position properly designated pursuant to Section 6.1 of this Act[.]

extrinsic evidence. We initially note that “[s]tatutory ambiguity is not created simply because the parties disagree.” Kaider v. Hamos, 2012 IL App 111109 ¶12. If that were the case, there would be no judicial decisions issued based on the presence of unambiguous language. We reject the contention that the limiting phrase “State agencies directly responsible to the Governor” is ambiguous with respect to the three agencies before us.

Moreover, Craddock’s affidavit does not constitute extrinsic evidence of legislative intent. Courts are somewhat mixed about using statements made by actual legislators in open session. They are concerned with what the *legislature* intended, not necessarily what an individual legislator intended by his vote. Some are even skeptical of statements made by the bill’s sponsor unless made in the context of an actual debate, People v. Burdunice, 211 Ill. 2d at 270-71; Morel, 117 Ill. 2d at 24-25, and those statements at least have the benefit of having been made in the presence of the legislative body as a whole and thus could conceivably have informed the legislative body prior to the vote.

Craddock is not a legislator, he is here an agent of a litigant and in his prior capacity, lobbied on its behalf. Moreover, his statement is not being made in advance of the vote of a legislative body, but as an after event explanation of what the legislature did. He may well have been involved in drafting the bill, and in discussing it with various legislators, legislative committees and legislative leaders, but even if that is so the written document presented to those legislators, and more importantly to the rest of the legislative body, plainly states something different from what he now suggests was his intent. *His* intent may well have been to include the ICC, WCC and PCB in the Section 6.1 process, but the draft legislation he presumably presented did not state this, and one must assume that the *legislature’s* intent when voting was based on the language before it. Even if we were to find the statutory language ambiguous, and we do not,

Craddock's affidavit does not constitute reliable evidence of legislative intent. Town of City of Bloomington, 233 Ill. App. 3d at 735-36.

CMS points out that the ALJ's recommendations are inconsistent with other certifications issued by the Board's Executive Director. On September 6, 2013, the Executive Director issued a certification in Case No. S-DE-14-004, involving a petition concerning the Civil Service Commission, an agency which stands in the same posture as the ICC, WCC and PCB under ERIA and under Section 6.1(a). On that same date, she issued a certification in Case No. S-DE-14-019, involving a petition concerning two positions at the PCB. Following issuance of the first two of the ALJ recommendations at issue in this case, the Executive Director similarly issued certification for a petition involving the WCC in Case No. S-DE-14-024 on September 10, 2013, and following the ALJ's issuance of the third recommendation, the Executive Director issued certification for a petition involving the ICC in Case No. S-DE-14-048 on September 12, 2013. In none of these cases were any objections filed, and consequently they were never assigned to an administrative law judge for consideration, nor brought before us for our review. The certifications contain no analysis, they had no precedential value for the ALJ, and they certainly are not binding on this Board.

CMS's final objection was that the ALJ should have held hearings before issuing her recommendations. The Board's rules clearly contemplate that hearings will *not* be required in situations where the objector *fails* to raise an issue of fact or law that might overcome the presumption that the designation was proper,¹² but here the objector had raised an issue of law

¹² Section 1300.60(d)(2) of the Board's Rules provide:

The assigned ALJ will review the designation, any objections, and the documentation in support of such objections.

(though not of fact) and, while issues of law do not need factual development and therefore do not logically call for an evidentiary hearing, cf. Dep't of Cent. Mgmt. Serv./Ill. Commerce Comm'n v. Ill. Labor Relation Bd., 406 Ill. App. 3d 766, 770 (4th Dist. 2010) (denial of an oral hearing is not denial of a hearing), Board Rule 1300.60(d)(2)(B) provides that where an ALJ finds that objections raise an “issue of law or fact that might overcome the presumption that the designation is proper under Section 6.1 of the Act, the Administrative Law Judge will order a hearing to be held to determine whether the designation is proper.”

In light of this, we allowed the parties to present oral argument to the full Board. In their exceptions and at argument, the parties were free to direct us to any relevant matter of which we might take administrative notice. To the extent it may have been relevant, the parties could have directed us to legislative history in the form of legislative debates and committee reports, for example. They referenced nothing specific, and when pressed at argument, could not give examples of anything they might have presented at a hearing relevant to the legal issue concerning the extent of the Governor’s authority to designate positions at these three agencies. Counsel for CMS stated “maybe it’s no harm no foul,” but insisted that our rules nevertheless required a hearing.¹³ Under the circumstances of this case, we find that a remand for a hearing

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- A) The ALJ may make a factual finding that the designation is proper based solely on the information submitted to the Board in cases in which the objections submitted fail to overcome the presumption that the designation is proper under Section 6.1 of the Act. In those cases, the ALJ will issue a recommended decision and order to the Board that such designation be certified.
 - B) If the ALJ finds that the objections submitted raise an issue of law or fact that might overcome the presumption that the designation is proper under Section 6.1 of the Act, the ALJ will order a hearing to be held to determine whether the designation is proper. After the hearing, the ALJ shall issue a recommended decision and order to the Board regarding the designation.

¹³ Although we have not considered the substance of CMS’s motion for reconsideration, we note that in that document CMS attempts to demonstrate what evidence it might have presented.

would be a waste of resources where no party can explain any benefit the procedure might provide to the resolution of the legal issue at hand. We decline to do so where it would jeopardize our ability to meet the statutory 60-day deadline for resolving this matter set out in Section 6.1(b).

Conclusion

We take no issue with CMS’s characterization of the overall intent of Public Act 97-1172. While pending in the legislature, Senate Bill 1556 was commonly referred to as the “management bill.”¹⁴ Viewed as a vector, the direction is clear: this legislation aims to diminish the number of State employees with access to collective bargaining rights. However, the length of the vector is not infinite: the portion of the legislation that narrows the definition of “public employee” in Section 3(n) did not extend to positions subject to “active petitions”; the Governor’s ability to designate under 6.1 was limited to 3,580 positions; the Governor was given no right to designate positions in the employ of the other constitutional officers; and the Governor’s ability to otherwise designate positions within the executive branch was expressly limited to positions within “State agencies directly responsible to the Governor.”

The legislative intent to limit those with bargaining rights was not unbounded. Our task here is to ascertain the boundaries. Finding that the Governor’s authority to designate positions

¹⁴ Legislative comments speak generally of the need to reduce the number of higher level employees in collective bargaining units, but make no mention of a specific need with respect to the ICC, WCC and PCB, or of a perceived need to step outside the normal bounds of lines of responsibility established in ERIA to expose those positions to the Gubernatorial designations under Section 6.1. 97th Ill. Gen’l Assembly, House of Rep. Tr. May 31, 2011, pp. 295-309; 97th Ill. Gen’l Assembly, Senate Tr. Jan. 3, 2013 pp. 91-96, 131-33. Moreover, while we place little weight on the narrowness of his comments, in part because the narrowness adds rhetorical strength and may not have been intended to add precision, we note that Senator Harmon’s statement upon withdrawing his motion for reconsideration of this legislation spoke of the Governor’s need to assemble a team of managers accountable to him—an intent that would not literally apply to agencies like the ICC, WCC and PCB which are not “directly responsible to the Governor.”

under Section 6.1 is limited to “State agencies directly responsible to the Governor,” and finding that language to be unambiguous, we conclude that the attempt to designate positions within the Illinois Commerce Commission, the Illinois Workers’ Compensation Commission, and the Illinois Pollution Control Board, which under ERIA are not “directly responsible to the Governor,” is contrary to the intent of the legislature, as expressed in the clear and unambiguous language of Section 6.1(a) of the Act. For that reason, we accept the ALJ’s recommendations and dismiss the petitions in Case Nos. S-DE-14-047, S-DE-14-083 and S-DE-14-086.

Denial of reconsideration

Our procedural rules do not provide for the filing of motions for reconsideration, and according to the Appellate Court’s decision in Board of Education of Mundelein Elementary School v. Ill. Educational Labor Relations Bd., 179 Ill. App. 3d 696 (4th Dist. 1989), involving our sister agency, the Illinois Educational Labor Relations Board, without a rule, we lack authority to reconsider our September 24, 2013 oral ruling in this matter. For that reason, we deny CMS’s motion for reconsideration.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Paul S. Besson
Paul S. Besson, Member

/s/ James Q. Brennwald
James Q. Brennwald, Member

/s/ Albert Washington
Albert Washington, Member

Chairman Hartnett and Member Coli, dissenting:

We respectfully dissent. Section 3(q-5) was added simultaneously with Section 6.1 and can only have been intended to clarify that, for the purposes of the Act, the ICC, the WCC and the PCB, as well as the Civil Service Commission, the Illinois Racing Board and the Department of State Police Merit Board, were to be included in the definition of “State agency.” We reject the majority’s interpretation that 3(q-5) sets forth two groups of State agencies, and it is only the first group that is referenced in Section 6.1. Indeed, it was “and” instead of “or” that was chosen as the conjunction in (q-5):

“State agency” means an agency directly responsible to the Governor, as defined in Section 3.1 of the Executive Reorganization Implementation Act, *and* the Illinois Commerce Commission, the Illinois Workers’ Compensation Commission, the Civil Service Commission, the Pollution Control Board, the Illinois Racing Board, and the Department of State Police Merit Board. (Emphasis added.)

Because of the definition in Section 3(q-5), the first three words of the phrase, “within State agencies directly responsible to the Governor,” necessarily includes reference to the ICC, WCC and PCB. We think it highly improbable that the legislature intended, within a single eight-word phrase, to pull in two diametrically opposed directions. In fact, the subsections of Section 6.1 immediately following Subsection 6.1(a) repeatedly use the unadorned phrase “State agency.” Under the majority’s ruling, the Governor’s authority under Section 6.1(a) is narrower than the definition of “State agency” in Section 3(q-5), yet the legislature undoubtedly used the broader term “State agency” when providing the means of implementing that authority in Subsections 6.1(b) and (c). The broader aspect of this language is rendered meaningless under the majority’s narrow interpretation of the Governor’s authority.

Further, we reject any suggestions, implied in the majority’s ruling, that the applicability of Section 3(q-5) extends only to Section 3 of the Act. Clearly, Section 3 of the Act sets forth

the definition of terms to be applied throughout the rest of the Act. In this case, the definition of State agency found in 3(q-5) must be applied to Section 6.1. Again, the majority's interpretation renders meaningless the definition of "State agency" found in 3(q-5), or at least meaningless as the definition is applied to Section 6.1.

Given that our reasoning and interpretation differs significantly from that of the majority, the phrase "within State agencies directly responsible to the Governor" is, at the very least, ambiguous as used in Section 6.1(a), particularly when it is read in conjunction with Section 3(q-5). The ambiguity of the phrase "within State agencies directly responsible to the Governor" becomes even more obvious when we consider the other amendments added with Public Act 97-1172. The majority's interpretation assumes that the phrase is a reference to Section 3.1 of the ERIA. This interpretation fails to read the phrase in context with the other amendments added with Public Act 97-1172. When read in this context, the phrase can be read as an indicator that the authority to make Designated Exclusions, found in Section 6.1 of the Act, was intended to be reserved to the Governor and to extend only to the State agencies which he represents in collective bargaining, as opposed to the other Constitutional Officers.

Other amendments added with Public Act 97-1172 affected the various Constitutional Officers within the State of Illinois. For example, the definition of "managerial employee" found in Section 3(j) of the Act, was amended by adding the following language:

With respect only to State employees *in positions under the jurisdiction of the Attorney General, Secretary of State, Comptroller, or Treasurer* (i) that were certified in a bargaining unit on or after December 2, 2008, (ii) for which a petition is filed with the Illinois Public Labor Relations Board on or after April 5, 2013 (the effective date of Public Act 97-1172), or (iii) for which a petition is pending before the Illinois Public Labor Relations Board on that date, "managerial employee" means an individual who is engaged in executive and management functions or who is charged with the effectuation of management policies and practices or who represents management interests by taking or recommending discretionary actions that effectively control or implement policy.

Nothing in this definition prohibits an individual from also meeting the definition of “supervisor” under subsection (r) of this Section.
(Emphasis added.)

As plainly stated, this new language applies only to the State employees under the jurisdiction of the Attorney General, Secretary of State, Comptroller or Treasurer. State agencies under the jurisdiction of the Governor were not included in or affected by this new definition of “managerial employee.”

Similarly, the definition of “supervisor,” found in Section 3(r) of the Act, was amended to include Section (2), which states:

With respect only to State employees in positions *under the jurisdiction of the Attorney General, Secretary of State, Comptroller, or Treasurer* (i) that were certified in a bargaining unit on or after December 2, 2008, (ii) for which a petition is filed with the Illinois Public Labor Relations Board on or after April 5, 2013 (the effective date of Public Act 97-1172), or (iii) for which a petition is pending before the Illinois Public Labor Relations Board on that date, an employee who qualifies as a supervisor under (A) Section 152 of the National Labor Relations Act and (B) orders of the National Labor Relations Board interpreting that provision or decisions of courts reviewing decisions of the National Labor Relations Board.
(Emphasis added.)

Again, as plainly stated, this new language applies only to the State employees under the jurisdiction of the Attorney General, Secretary of State, Comptroller or Treasurer. State agencies under the jurisdiction of the Governor were not included or affected by this new definition of “supervisor.”

To discern how Public Act 97-1172 affected State agencies under the jurisdiction of the Governor, we must look to Section 6.1. It is in Section 6.1 that we find the concept of “Gubernatorial designation,” a unique statutory creation that differs from any language existing in the Act. Instead of being a reference to the ERIA, as the majority presumes, we believe that the phrase “within State agencies directly responsible to the Governor” was intended to exclude

the other Constitutional Officers and to indicate that the unique statutory right created by Section 6.1 was only to be utilized by the Governor with regard to the State agencies he represents in collective bargaining. This interpretation is more easily harmonized with entirety of the amendments of Public Act 97-1172 instead of rendering particular portions meaningless.

In addition, we find it to be significant that a Section 9 petition for representation of ICC employees was amongst the list of petitions defined as an “active petition” in new Section 3(t), another amendment to the Act added by Public Act 97-1172. The inclusion of this case is recognition that that the Governor, via CMS, represents this agency for purposes of collective bargaining. Further, even if the term “pending petition” utilized in Section 6.1 is not synonymous with “active petition,” it clearly can be read to encompass those active petitions that were still pending as of the effective date of Public Act 97-1172. In any event, the term “pending petition” certainly does not exclude any petition filed by the ICC, WCC or PCB that was pending as of the effective date of Public Act 97-1172.

Finding that reasonable minds might draw different conclusions from the language used in Section 6.1(a) when that language is considered in the broader context of Section 6.1 as a whole and in the broader context of Public Act 97-1172, we deem it necessary to consider all relevant evidence of legislative intent. Most compelling among this evidence is the purpose of Public Act 97-1172. While pending in the legislature, this legislation was known as “the management bill,” and for very good reason. As the majority notes, its purpose was to make very significant adjustments to the extraordinarily high number of upper level State employees who have become members of collective bargaining units in recent years and to restore a level of management in State agencies. The ICC, WCC and PCB were not immune from that phenomenon.

It is simply illogical to conclude that the management bill was drafted to shield the ICC, WCC and PCB from Section 6.1. We see no expression in the legislative debates, or elsewhere, of a legislative intent to shield positions at these agencies from the effect of Public Act 97-1172. We do not believe that the Act should be interpreted in such a way as to lead to absurd results; however, this is exactly what the majority's ruling does. The Board simply cannot turn a blind eye to the fact that the Governor, via CMS, has been representing the ICC, WCC and the PCB at the bargaining table for decades. The Board cannot ignore the fact that employees from the ICC, WCC and the PCB are included in broad bargaining units containing other agencies directly responsible to the Governor and that this Board has certified employees from the ICC, WCC and PCB as included in those units. The Board cannot ignore AFSCME's historical concurrence with the ICC, WCC and PCB falling under the jurisdiction of the Governor for the purposes of collective bargaining - exactly those purposes that are contemplated by the Act. Nor should the Board fail to consider the impact of the decision in this case on those bargaining units and on the collective bargaining relationship between these parties.

For all of these reasons, we conclude that the Governor has the authority under Section 6.1 to designate positions at the ICC, WCC and PCB. We would have reversed the Recommended Decision and Order of the ALJ and remanded to allow the ALJ to consider evidence regarding the objections to the designations raised by AFSCME.

Further, even if a majority of the Board was unconvinced that the Governor has authority under Section 6.1 to designate positions at the ICC, WCC and PCB, we would have at least favored a hearing on that topic. Section 1300.60(d)(2)(B) of our rules require such a hearing whenever objections raise an issue of fact or law on whether a designation comports with the requirements of Section 6.1. That fact, together with our desire to have the full range of

evidence available on the important topic of the extent of the Governor's authority to make designations under Section 6.1, compels us also to find that we should have reconsidered our initial vote. We would have granted the motion for reconsideration for that reason.

/s/ John J. Hartnett

John J. Hartnett, Chairman

/s/ Michael G. Coli

Michael G. Coli, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, on September 24, 2013; decision with respect to reconsideration 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)	
(Illinois Commerce Commission),)	
)	
Petitioner)	
)	
and)	Case No. S-DE-14-047
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization-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;

- 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, 497 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); or
- 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

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

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.

effective on April 22, 2013, 37 Ill. Reg. 5901 (May 3, 2013), and the Board promulgated permanent rules for the same purpose which became effective on August 23, 2013, 37 Ill. Reg. 14070 (Sept. 6, 2013). 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 30, 2013, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed timely objections to the designation pursuant to Section 1300.60(a)(3) of the Board's Rules.² Based on my review of the designation, the documents submitted as part of the designation, the objections, and the documents and arguments submitted in support of those objections, I have determined that the designation is not consistent with the requirements of Section 6.1 of the Act and consequently I recommend that the petition be dismissed.

The petition designates the following nine positions at the Illinois Commerce Commission for exclusion from the self-organization and collective bargaining provisions of Section 6 of the Act:

68920-31-12-000-40-01	Director of Retail Market Development
68920-31-21-000-00-01	Director of Consumer Services
68920-31-22-000-00-01	Director of Governmental Affairs
68920-31-23-000-00-01	Director of Public Affairs
68920-31-51-000-00-01	Director of Safety and Reliability
68920-31-52-000-00-01	Director of Policy
68920-31-53-000-00-01	Director of Financial Analysis
68920-31-72-000-00-01	Director of Administrative Services
68920-31-73-000-00-01	Director of Information Technology

The petition indicates that each of the nine positions qualify for designation under Sections 6.1(b)(2), 6.1(b)(3), and 6.1(b)(5). In support of the petition, CMS provided a spreadsheet showing the classification of each designated position and indicating that each position is currently not represented for the purposes of collective bargaining. CMS submitted CMS-104s

² On August 23, 2013, AFSCME filed a motion for an extension of time within which to file objections in this case. On August 23, 2013, the Board's General Counsel issued an order extending the time for filing objections in this case from August 28, 2013 to August 30, 2013.

for each position, each of which indicates that the position is classified as Rutan-exempt. All nine positions are subject to the pending petition for certification in Case No. S-RC-11-078.

I. OBJECTIONS

AFSCME objects to the petition and argues that it should be dismissed. AFSCME asserts that Section 6.1 of the Act limits gubernatorial designations to state agencies that are “directly responsible to the Governor.” AFSCME argues that because the Illinois Commerce Commission is not a state agency “directly responsible to the Governor,” the Governor does not have the authority under the Act to designate positions within the Illinois Commerce Commission.³ AFSCME notes that Section 3(q-5) of the Act, which provides a definition of state agency, specifically acknowledges that the Illinois Commerce Commission is not a state agency “directly responsible to the Governor”. AFSCME also notes that the Executive Reorganization Implementation Act, 15 ILCS 15 (2012), similarly acknowledges that the Illinois Commerce Commission is not a state agency “directly responsible to the Governor.”

II. DISCUSSION AND ANALYSIS

The designation does not comport with the requirements of Section 6.1 of the Act and the petition should be dismissed because the Illinois Commerce Commission is not a state agency “directly responsible to the Governor.”

Section 6.1(a) of the Act states in relevant part, “the Governor is authorized to designate up to 3,580 State employment positions collectively within State agencies *directly responsible to the Governor*, and, upon designation, those positions and employees in those positions, if any, are hereby excluded from the self-organization and collective bargaining provisions of Section 6 of this Act.” 5 ILCS 315/6.1(a) (2012) (emphasis added). Thus, the Board must initially determine whether the positions designated for exclusion are within a state agency “directly responsible to the Governor.” In this case, the positions are within the Illinois Commerce Commission, which is not a state agency “directly responsible to the Governor.”

Section 3(q-5) of the Act defines state agency:

"State agency" means an agency directly responsible to the Governor, as defined in Section 3.1 of the Executive Reorganization Implementation Act, and *the*

³ AFSCME provided additional objections to the petition. However, since the stated objection is sufficient to conclude that the petition should be dismissed, it is unnecessary to consider those additional objections.

Illinois Commerce Commission, the Illinois Workers' Compensation Commission, the Civil Service Commission, the Pollution Control Board, the Illinois Racing Board, and the Department of State Police Merit Board.

5 ILCS 315/3(q-5) (2012) (emphasis added). Thus, the Act acknowledges that the Illinois Commerce Commission is not an “agency directly responsible to the Governor,” by defining “state agency” as those agencies directly responsible to the Governor and then including various other commission and boards.

Section 3.1 of the Executive Reorganization Implementation Act similarly acknowledges that the Illinois Commerce Commission is not a State agency “directly responsible to the Governor.” 15 ILCS 15/3.1 (2012). Section 3.1 states:

"Agency directly responsible to the Governor" or "agency" means any office, officer, division, or part thereof, and any other office, nonelective officer, department, division, bureau, board, or commission in the executive branch of State government, except that it does not apply to any agency whose primary function is service to the General Assembly or the Judicial Branch of State government, or to any agency administered by the Attorney General, Secretary of State, State Comptroller or State Treasurer. In addition the term *does not apply* to the following agencies created by law with the primary responsibility of exercising regulatory or adjudicatory functions independently of the Governor:

- (1) the State Board of Elections;
- (2) the State Board of Education;
- (3) *the Illinois Commerce Commission*;
- (4) the Illinois Workers' Compensation Commission;
- (5) the Civil Service Commission;
- (6) the Fair Employment Practices Commission;
- (7) the Pollution Control Board;
- (8) the Department of State Police Merit Board;
- (9) the Illinois Racing Board;
- (10) the Illinois Power Agency.

15 ILCS 15/3.1 (2012) (emphasis added). Thus, Section 3.1 specifically states that the term “agency directly responsible to the Governor” does not apply to the Illinois Commerce Commission.

As previously noted, Section 6.1 of the Act authorizes the Governor to designate positions within State agencies “directly responsible to the Governor.” Pursuant to Section 3(q-5) of the Act and Section 3.1 of the Executive Reorganization Implementation Act, the Illinois Commerce Commission is not a State agency “directly responsible to the Governor,” and thus the positions are not designable under Section 6.1 of the Act.

III. CONCLUSION OF LAW

The Governor's designation does not comport with the requirements of Section 6.1 of the Act.

IV. RECOMMENDED ORDER

It is hereby recommended that the petition be dismissed.

V. EXCEPTIONS

Pursuant to Section 1300.90 and Section 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300,⁴ parties may file exceptions to the Administration Law Judge's recommended decision and order, and briefs in support of those exceptions, not later than three 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 sent to ILRB.Filing@Illinois.gov. Each party shall serve its exception 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.

Issued at Chicago, Illinois, this 9th day of September, 2013

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

/s/ Michelle Owen

**Michelle Owen
Administrative Law Judge**

⁴ Available at <http://www.state.il.us/ilrb/subsections/pdfs/Section%201300%20Illinois%20Register.pdf>

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

State of Illinois, Department of Central Management Services (Workers' Compensation Commission),)	
)	
Petitioner)	
)	
and)	Case No. S-DE-14-083
)	
American Federation of State, County and Municipal Employees, Council 31,)	
)	
Labor Organization-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;

- 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, 497 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); or
- 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

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

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.

effective on April 22, 2013, 37 Ill. Reg. 5901 (May 3, 2013), and the Board promulgated permanent rules for the same purpose which became effective on August 23, 2013, 37 Ill. Reg. 14070 (Sept. 6, 2013). These rules are contained in Part 1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On August 21, 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 September 9, 2013, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed timely objections to the designation pursuant to Section 1300.60(a)(3) of the Board's Rules.² Based on my review of the designation, the documents submitted as part of the designation, the objections, and the documents and arguments submitted in support of those objections, I have determined that the designation is not consistent with the requirements of Section 6.1 of the Act and consequently I recommend that the petition be dismissed.

The petition designates the following two positions at the Illinois Workers' Compensation Commission for exclusion from the self-organization and collective bargaining provisions of Section 6 of the Act:

37015-50-37-000-00-08	Recorder of Decisions
37015-50-37-100-00-02	Self Insurance Counsel

The petition indicates that both positions qualify for designation under Section 6.1(b)(5) of the Act. In support of the petition, CMS provided a spreadsheet showing the classification of each designated position. The spreadsheet indicates that each position is not currently represented for the purposes of collective bargaining. CMS submitted CMS-104s for each position.

I. OBJECTIONS

AFSCME objects to the petition and argues that it should be dismissed. AFSCME asserts that Section 6.1 of the Act limits gubernatorial designations to State agencies that are "directly responsible to the Governor." AFSCME argues that because the Workers' Compensation Commission is not a State agency "directly responsible to the Governor," the Governor does not have the authority under the Act to designate positions within the Workers' Compensation

² On September 9, 2013, AFSCME filed a motion for an extension of time to file objections, from the close of business on September 9, 2013, to 11:59 p.m. on September 9, 2013. On September 9, 2013, the Board's General Counsel granted the motion.

Commission.³ AFSCME notes that Section 3(q-5) of the Act provides a definition of State agency and specifically acknowledges that the Workers' Compensation Commission is not a State agency "directly responsible to the Governor." AFSCME also notes that under Section 3.1 of the Executive Reorganization Act, 15 ILCS 15 (2012), the Worker's Compensation Commission is not a State agency "directly responsible to the Governor." AFSCME asserts that Section 3.1 specifically excludes the Workers' Compensation Commission along with several other agencies created by law which have the responsibility of exercising regulatory or adjudicatory functions independently of the Governor.

II. DISCUSSION AND ANALYSIS

The designation does not comport with the requirements of Section 6.1 of the Act and the petition should be dismissed because the Workers' Compensation Commission is not a State agency "directly responsible to the Governor."

Section 6.1(a) of the Act states in relevant part, "the Governor is authorized to designate up to 3,580 State employment positions collectively within State agencies *directly responsible to the Governor*, and, upon designation, those positions and employees in those positions, if any, are hereby excluded from the self-organization and collective bargaining provisions of Section 6 of this Act." 5 ILCS 315/6.1(a) (2012) (emphasis added). Thus, the Board must initially determine whether the positions designated for exclusion are within a State agency "directly responsible to the Governor." In this case, the positions are within the Workers' Compensation Commission, which is not a State agency "directly responsible to the Governor."

Section 3(q-5) of the Act defines State agency:

"State agency" means an agency directly responsible to the Governor, as defined in Section 3.1 of the Executive Reorganization Implementation Act, and the Illinois Commerce Commission, *the Illinois Workers' Compensation Commission*, the Civil Service Commission, the Pollution Control Board, the Illinois Racing Board, and the Department of State Police Merit Board.

5 ILCS 315/3(q-5) (2012) (emphasis added). Thus, the Act acknowledges that the Workers' Compensation Commission is not an "agency directly responsible to the Governor," by defining

³ AFSCME provided additional objections to the petition. However, since the stated objection is sufficient to conclude that the petition should be dismissed, it is unnecessary to consider those additional objections.

“State agency” as those agencies directly responsible to the Governor and then including various other commission and boards.

Section 3.1 of the Executive Reorganization Implementation Act similarly acknowledges that the Workers’ Compensation Commission is not a State agency “directly responsible to the Governor.” 15 ILCS 15/3.1 (2012). Section 3.1 states:

“Agency directly responsible to the Governor” or “agency” means any office, officer, division, or part thereof, and any other office, nonelective officer, department, division, bureau, board, or commission in the executive branch of State government, except that it does not apply to any agency whose primary function is service to the General Assembly or the Judicial Branch of State government, or to any agency administered by the Attorney General, Secretary of State, State Comptroller or State Treasurer. In addition the term *does not apply to* the following agencies created by law with the primary responsibility of exercising regulatory or adjudicatory functions independently of the Governor:

- (1) the State Board of Elections;
- (2) the State Board of Education;
- (3) the Illinois Commerce Commission;
- (4) *the Illinois Workers' Compensation Commission*;
- (5) the Civil Service Commission;
- (6) the Fair Employment Practices Commission;
- (7) the Pollution Control Board;
- (8) the Department of State Police Merit Board;
- (9) the Illinois Racing Board;
- (10) the Illinois Power Agency.

15 ILCS 15/3.1 (2012) (emphasis added). Thus, Section 3.1 specifically states that the term “agency directly responsible to the Governor” does not apply to the Workers’ Compensation Commission.

As previously noted, Section 6.1 of the Act authorizes the Governor to designate positions within State agencies “directly responsible to the Governor.” Pursuant to Section 3(q-5) of the Act and Section 3.1 of the Executive Reorganization Implementation Act, the Workers’ Compensation Commission is not a State agency “directly responsible to the Governor,” and thus the positions are not designable under Section 6.1 of the Act.

III. CONCLUSION OF LAW

The Governor’s designation does not comport with the requirements of Section 6.1 of the Act.

IV. RECOMMENDED ORDER

It is hereby recommended that the petition be dismissed.

V. EXCEPTIONS

Pursuant to Section 1300.90 and Section 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300,⁴ parties may file exceptions to the Administration Law Judge's recommended decision and order, and briefs in support of those exceptions, not later than three 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 sent to ILRB.Filing@Illinois.gov. Each party shall serve its exception 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.

Issued at Chicago, Illinois, this 11th day of September, 2013

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

/s/ Michelle Owen

**Michelle Owen
Administrative Law Judge**

⁴ Available at <http://www.state.il.us/ilrb/subsections/pdfs/Section%201300%20Illinois%20Register.pdf>

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

State of Illinois, Department of Central Management Services (Pollution Control Board),)	
)	
Petitioner)	
)	
and)	Case No. S-DE-14-086
)	
American Federation of State, County and Municipal Employees, Council 31,)	
)	
Labor Organization-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;

- 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, 497 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); or
- 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

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

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.

effective on April 22, 2013, 37 Ill. Reg. 5901 (May 3, 2013), and the Board promulgated permanent rules for the same purpose which became effective on August 23, 2013, 37 Ill. Reg. 14070 (Sept. 6, 2013). These rules are contained in Part 1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On August 26, 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 September 4, 2013, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed timely objections to the designation pursuant to Section 1300.60(a)(3) of the Board's Rules. Based on my review of the designation, the documents submitted as part of the designation, the objections, and the documents and arguments submitted in support of those objections, I have determined that the designation is not consistent with the requirements of Section 6.1 of the Act and consequently I recommend that the petition be dismissed.

The petition designates the following two positions at the Pollution Control Board for exclusion from the self-organization and collective bargaining provisions of Section 6 of the Act:

70755-50-80-000-00-01	Environmental Scientist I
70756-50-80-100-00-01	Environmental Scientist II

The petition indicates that both positions qualify for designation under Section 6.1(b)(3). In support of the petition, CMS provided a spreadsheet showing the classification of each designated position and indicating that each position is currently not represented for the purposes of collective bargaining. CMS submitted CMS-104s for each position. Both positions are subject to the pending petition for certification in Case No. S-RC-11-062.

I. OBJECTIONS

AFSCME objects to the petition and argues that it should be dismissed. AFSCME asserts that Section 6.1 of the Act limits gubernatorial designations to state agencies that are "directly responsible to the Governor." AFSCME argues that because the Pollution Control Board is not a state agency "directly responsible to the Governor," the Governor does not have the authority under the Act to designate positions within the Pollution Control Board.² AFSCME notes that

² AFSCME provided additional objections to the petition. However, since the stated objection is sufficient to conclude that the petition should be dismissed, it is unnecessary to consider those additional objections.

Section 3(q-5) of the Act, which provides a definition of state agency, specifically acknowledges that the Pollution Control Board is not a state agency “directly responsible to the Governor”. AFSCME also notes that the Executive Reorganization Implementation Act, 15 ILCS 15 (2012), similarly acknowledges that the Pollution Control Board is not a state agency “directly responsible to the Governor.”

II. DISCUSSION AND ANALYSIS

The designation does not comport with the requirements of Section 6.1 of the Act and the petition should be dismissed because the Pollution Control Board is not a state agency “directly responsible to the Governor.”

Section 6.1(a) of the Act states in relevant part, “the Governor is authorized to designate up to 3,580 State employment positions collectively within State agencies *directly responsible to the Governor*, and, upon designation, those positions and employees in those positions, if any, are hereby excluded from the self-organization and collective bargaining provisions of Section 6 of this Act.” 5 ILCS 315/6.1(a) (2012) (emphasis added). Thus, the Board must initially determine whether the positions designated for exclusion are within a state agency “directly responsible to the Governor.” In this case, the positions are within the Pollution Control Board, which is not a state agency “directly responsible to the Governor.”

Section 3(q-5) of the Act defines state agency:

"State agency" means an agency directly responsible to the Governor, as defined in Section 3.1 of the Executive Reorganization Implementation Act, and the Illinois Commerce Commission, the Illinois Workers' Compensation Commission, the Civil Service Commission, *the Pollution Control Board*, the Illinois Racing Board, and the Department of State Police Merit Board.

5 ILCS 315/3(q-5) (2012) (emphasis added). Thus, the Act acknowledges that the Pollution Control Board is not an “agency directly responsible to the Governor,” by defining “state agency” as those agencies directly responsible to the Governor and then including various other commission and boards.

Section 3.1 of the Executive Reorganization Implementation Act similarly acknowledges that the Pollution Control Board is not a State agency “directly responsible to the Governor.” 15 ILCS 15/3.1 (2012). Section 3.1 states:

"Agency directly responsible to the Governor" or "agency" means any office, officer, division, or part thereof, and any other office, nonelective officer, department, division, bureau, board, or commission in the executive branch of State government, except that it does not apply to any agency whose primary function is service to the General Assembly or the Judicial Branch of State government, or to any agency administered by the Attorney General, Secretary of State, State Comptroller or State Treasurer. In addition the term *does not apply* to the following agencies created by law with the primary responsibility of exercising regulatory or adjudicatory functions independently of the Governor:

- (1) the State Board of Elections;
- (2) the State Board of Education;
- (3) the Illinois Commerce Commission;
- (4) the Illinois Workers' Compensation Commission;
- (5) the Civil Service Commission;
- (6) the Fair Employment Practices Commission;
- (7) *the Pollution Control Board*;
- (8) the Department of State Police Merit Board;
- (9) the Illinois Racing Board;
- (10) the Illinois Power Agency.

15 ILCS 15/3.1 (2012) (emphasis added). Thus, Section 3.1 specifically states that the term "agency directly responsible to the Governor" does not apply to the Pollution Control Board.

As previously noted, Section 6.1 of the Act authorizes the Governor to designate positions within State agencies "directly responsible to the Governor." Pursuant to Section 3(q-5) of the Act and Section 3.1 of the Executive Reorganization Implementation Act, the Pollution Control Board is not a State agency "directly responsible to the Governor," and thus the positions are not designatable under Section 6.1 of the Act.

III. CONCLUSION OF LAW

The Governor's designation does not comport with the requirements of Section 6.1 of the Act.

IV. RECOMMENDED ORDER

It is hereby recommended that the petition be dismissed.

V. EXCEPTIONS

Pursuant to Section 1300.90 and Section 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300,³ parties may file exceptions to the Administration Law Judge's recommended decision and order, and briefs in support of those exceptions, not later than three

³ Available at <http://www.state.il.us/ilrb/subsections/pdfs/Section%201300%20Illinois%20Register.pdf>

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 sent to ILRB.Filing@Illinois.gov. Each party shall serve its exception 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.

Issued at Chicago, Illinois, this 9th day of September, 2013

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

/s/ Michelle Owen

**Michelle Owen
Administrative Law Judge**