STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services (Department of Employment Security),	)	
Petitioner	)	
and	)	Case No S-DE-14-085
American Federation of State, County and Municipal Employees, Council 31,	)	
Labor Organization-Objector	)	

ORDER

On September 5, 2013, Administrative Law Judge Anna Hamburg-Gal, on behalf of the Illinois Labor Relations Board, State Panel, issued a Recommended Decision and Order in the above-captioned case. No party filed exceptions to the Administrative Law Judge's Recommended Decision and Order during the time allotted, and at its September 24, 2013 public meeting, the Board declined to take the matter up on its own motion.

THEREFORE, pursuant to Section 1300.130(a)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1300.130(a)(5), the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, this 24th day of September 2013.

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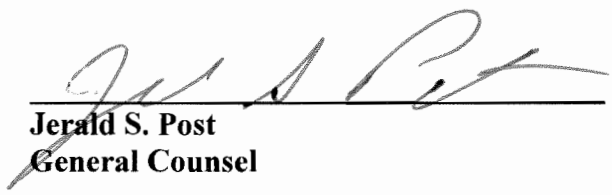

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ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

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, 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 effective on April 22, 2013, 37 Ill. Reg. 5901 (May 3, 2013), and the Board promulgated rules

[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.

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 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 3, 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. 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 single position is at issue in this designation:

Ill. Dep't of Empl. Security	37015-44-63-000-00-01	Vacant	Rock Island Call Center Manager

CMS's petition indicates the position at issue qualifies for designation under Section 6.1(b)(5) of the Act. CMS filed a position description (CMS-104) for the position in support of its assertion. CMS also notes that the Board certified the position into the RC-63 unit on January 20, 2010 in Case No. S-RC-08-036.

AFSCME objects to designation on the grounds set forth below.

I. AFSCME's Objections

First, AFSCME argues that the Board has not acted in a manner consistent with due process in determining whether the designation is appropriate because the Board failed to

provide a procedure by which AFSMCE could obtain information in support of its objections and did not grant AFSCME sufficient time to file its objections in light of the large number of designation petitions filed by CMS. AFSCME concludes that it cannot file more specific objections, given these limitations, particularly because the position at issue is vacant.

Next, AFSCME asserts that the position description does not support a finding that the designation is proper because "the Board has long held that [a] position description is not sufficient to establish the duties of an employee."

More specifically, AFSCME states that the position description does not indicate that the position is charged with performing supervisory functions with the requisite independent judgment, as required under the Act, because it merely recites that the position has the responsibility to direct and supervise.

Finally, AFSCME states that the position description does not indicate that the position is managerial because it does not provide that the position is charged with the effectuation of management policy or that the position holds the authority to effectively recommend actions which control policy. Instead, AFSCME notes that it merely indicates the position is under administrative direction and that it insures the delivery of services based on federal law, agency regulations, and operational directives. As such, AFSCME concludes that "there is no policy component to the position."

II. <u>Position Description</u>

The position description states that the position directs and manages Unemployment Insurance (UI) services and programs provided within the Rock Island Call Center under the administrative direction of the Manager of Call Center Operations. Further, it provides that the position establishes, implements, and evaluates operational plans, procedures, and policies to meet agency service delivery goals and objectives.

The position analyzes performance metrics of the call center and determines resolutions. It develops, implements, and monitors the appropriate process improvement initiatives that lead to the attainment of goals. It assures that the delivery of services and programs within the call center are in compliance with state and federal UI laws, regulations, agency procedures, policies, guidelines, operational methods, service standards, and goals. It analyzes operational procedures. Further, it identifies, develops and implements processes to enhance

telecommunication applications. It implements systems and procedures for the review of call center timeliness and quality standards. It conducts routine visits to call centers, serves as liaison to other department units and consults on customer service and productivity concerns. The position also resolves client issues, and makes recommendations for improvement of claims processing functions.

Finally, the position plans, directs, and supervises subordinate supervisors and staff in performing duties related to UI claims, benefits, services, and programs in the Rock Island Call Center. It oversees daily operations and ensures that the overall operations are customer-focused, efficient, and effective. Further, it conducts regular, individual reviews of staff performance, develops new goals and objectives where appropriate, and develops plans to improve individual staff members' performance in meeting goals. It identifies problems and plans /implements necessary corrective action. Further, it prepares and signs performance evaluations and compares the results attained with established goals and objectives. Lastly, it conducts meetings to inform staff of changes in policy, procedures, and operations.

III. 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.

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 hearings[2] 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.

[2] 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).

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 (2nd Dist. 1981).

Here, the Board's Rules, which specify time limits for filing objections 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,[3] 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 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 received all the relevant information pertaining to this case. Here, the relevant information concerns the position's job duties. Further, the only available information concerning the position's job duties is the position description because the position itself is vacant and, according to AFSCME's assertion, has never been filled. In this case, CMS provided AFSCME with that position description. Accordingly, the Board did not deprive

[3] 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).

AFSCME of due process because CMS gave AFSCME all the information relevant to AFSCME's objections. Indeed, AFSCME has not articulated what more it could seek.

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

CMS's designation of this position is proper because the designation is presumed proper and the position description does not rebut that presumption.

As a preliminary matter, the Act provides that "any designation made by the Governor…shall be presumed to have been properly made." 5 ILCS 315/6.1 (2012). In this case, CMS designated this position under Section 6.1(b)(5) which provides that the position must "authorize an employee in that position to have significant and independent discretionary authority as an employee." 5 ILCS 315/6.1(b)(5) (2012). Under Section 6.1(c), a position authorizes its holder with the requisite authority if the position is supervisory within the meaning of the National Labor Relations Act and the National Labor Relations Board's case law or managerial within the meaning of the Illinois Public Labor Relations Act. Accordingly, the burden is on the objector to demonstrate that the designation is not proper and that the employer has not conferred significant discretionary authority upon that position.

Under the NLRA, a supervisor is an employee who has "authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." 29 U.S.C.A. § 152(11).

In other words, "employees are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 listed supervisory functions, (2) their 'exercise of such authority is not

of a merely routine or clerical nature, but requires the use of independent judgment,' and (3) their authority is held 'in the interest of the employer.'" NLRB v. Kentucky River Comm. Care, Inc., 532 U.S. 706, 713 (2001) (quoting NLRB v. Health Care & Retirement Corp. of America, 511 U.S. 571, 573-574 (1994); See also Oakwood Healthcare, Inc., 348 NLRB 686, 687 (2006). A decision that is "dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement" is not independent. Oakwood Healthcare, Inc., 348 NLRB at 689.

Here, AFSCME failed to demonstrate that the designation of this vacant position is improper because the position description states that the holder has the authority to direct and does not expressly limit the holder's discretion, independent authority, or accountability. A position has responsibility to direct if the position holder has subordinates, decides what jobs his subordinates should perform next, and who should perform those tasks. Id. at 691-2. In addition, the position holder must be accountable for his subordinates' work and must carry out such direction with independent judgment. Id. In other words, "it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary," and also that "there is a prospect of adverse consequences for the putative supervisor," arising from his direction of other employees. Id.

In this case, the position description states that the position holds the authority to direct employees in the interest of the employer because the position holder must conduct regular reviews of his subordinates' performance, identify problems, plan and implement necessary corrective action, prepare performance evaluations, compare the results attained with established goals and objectives, and develop new goals and objectives where appropriate.

Further, based on this evidence, the position holder exercises the use of independent judgment and is accountable for his subordinates' work because the designation is presumed proper under Section 6.1(d) of the Act and the position description does not expressly limit the position holder's discretion, independent authority, or accountability. As discussed above, AFSCME has the burden to show that the designation is improper. Further, the job description is the only relevant piece of evidence in this case, where the position is vacant and has never been filled. Accordingly, under the specific circumstances of this particular designation, AFSCME may prevail if it identifies language in the job description which limits the position's supervisory authority, discretion, accountability, or need to exercise independent judgment. Yet, AFSCME

has not done so here. Indeed, there is no indication from the job description that the position holder is not accountable for his subordinates' work or that the position holder's decisions are controlled by detailed instructions set forth by a higher authority or by the employer's rules and policies.[4] But see Oakwood Healthcare, Inc., 348 NLRB at 689.

Contrary to AFSCME's contention, the position in question is supervisory, even though the position description states that the holder "directs and manages Unemployment Insurance services" under the "administrative direction of the Manager of Call Center Operations," because AFSCME has presented no evidence that the Manager dictates the position holder's decisions. Indeed, the Board cannot assume that the Manager exercises such control because the NLRB has held that "the responsibility to direct is not limited to department heads." Croft Metals, Inc., 348 NLRB 717, 721 (2006).

Finally, contrary to AFSCME's assertion, the Board has sufficient information to decide this case because the Board's rules, the Act, and relevant case law demonstrate that position descriptions provide an adequate basis on which to evaluate the propriety of a designation. First, the Act and the Rules contemplate that the Board may make such a determination based on a job description alone because they require CMS to provide information concerning a position's job title and job duties and, at the same time, provide that CMS's designation is presumed proper once it submits such information. If such information constituted an insufficient basis for considering a designation, the Act and the Rules would not specify that the designation, when completed by the submission of such information, is presumed to be properly made. Second, Illinois Appellate Courts have held that position descriptions alone constitute an adequate basis upon which to evaluation a proposed exclusion.[5] See Vill. of Maryville v. Ill. Labor Rel. Bd, 402 Ill. App. 3d 369 (5th Dist. 2010); Ill. Dep't of Cent. Mgmt. Servs. v . Ill. Labor Rel. Bd., State Panel, 2011 IL App 4th 090966; but see Vill. of Broadview v. Ill. Labor Rel. Bd, 402 Ill. App. 3d 503, 508 (1st Dist. 2010); See also, Ill. Dep ' t of Cent. Mgmt. Servs. v . Ill. Labor Rel. Bd., State Panel, 382 Ill. App. 3d 208, 228-29 (4th Dist. 2008); City of Peru, 167 Ill. App. 3d 284, 291 (3d

[4] Although the position description provides that the position must assure that the delivery of services is in compliance with agency procedures, operational methods, and guidelines, the position description does not reference those procedures, methods, and guidelines with respect to the position's supervisory duties. Notably, AFSCME does not refer to this portion of the position description at all.

[5] While these cases address the Employer's burden in the majority interest process, they are nevertheless relevant to address AFSCME's general argument concerning the sufficiency of job descriptions to establish a position's job duties.

Dist. 1988). Accordingly, the Board has sufficient evidence from which to establish the propriety of the designation.

Thus, the designation is proper because the position in question has significant and independent discretion by virtue of the position's supervisory authority. Accordingly, it is unnecessary to determine whether the position is also managerial within the meaning of the Act.

IV. Conclusions of Law

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

V. Recommended Order

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

37015-44-63-000-00-01	Rock Island Call Center Manager

VI. Exceptions

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300,[6] 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.

[6] Available at http://www.state.il.us/ilrb/subsections/pdfs/Section%201300%20Illinois%20Register.pdf.

Issued at Chicago, Illinois this 5th day of September, 2013

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/s/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge

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