

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

State of Illinois, Department of)	
Central Management Services)	
(Department of Healthcare)	
& Family Services),)	
)	
Petitioner)	
)	
and)	Case No. S-DE-14-089
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	

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

On September 30, 2013, Administrative Law Judge Thomas Allen issued a Recommended Decision and Order finding that a designation made on behalf of the Governor by the Illinois Department of Central Management Services (CMS) pursuant to Section 6.1 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012), was properly made. CMS's petition designated five Senior Public Service Administrator positions at the Illinois Department of Healthcare and Family Services, all pursuant to Section 6.1(b)(2) of the Act, which explicitly allows designations for positions with the title of Senior Public Service Administrator.

The American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed objections pursuant to Section 1300.60 of the Rules and Regulations of the Illinois Labor Relations Board promulgated to implement Section 6.1, 80 Ill. Admin. Code Part 1300, and following issuance of the Recommended Decision and Order, AFSCME also filed exceptions pursuant to Section 1300.130 of the Board's Rules.

After reviewing these exceptions and the record, we accept the Administrative Law Judge's recommendation for the reasons articulated in the Recommended Decision and Order and for the reasons we previously articulated in our decision in State of Illinois, Department of Central Management Services, Cons. Case Nos. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013). Consistent with that action, we direct the Executive Director to certify that the position designated be excluded from collective bargaining rights under Section 6.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

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

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

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

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

/s/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public meeting in Springfield, Illinois, on October 8, 2013; written decision issued at Springfield, Illinois, October 21, 2013.

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

State of Illinois, Department of Central)	
Management Services (Department of)	
Healthcare and Family Services),)	
)	
Petitioner,)	
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and)	Case No. S-DE-14-089
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American Federation of State, County)	
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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 (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 (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 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 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,

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.

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. These rules are contained in Part 1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On August 29, 2013, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation pursuant to Section 6.1(b)(2) of the Act and Section 1300.50 of the Board's Rules. The designation pertains to positions within the Department of Healthcare and Family Services. On September 12, 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 the designation to have been properly submitted and consistent with the requirements of Section 6.1 of the Act and 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:

Manager, Legal Services (position no. 40070-33-46-150-00-21); **Deputy General Counsel - Administration** (position no. 40070-33-46-200-00-21); **Manager, Administrative Hearings** (position no. 40070-33-46-240-00-21); **Assistant Ethics Officer** (position no. 40070-33-46-400-00-21); and **Assistant Administrator Child Support Services** (position no. 40070-33-50-030-00-92).

I. AFSCME's Objections

AFSCME makes several general objections and objects to the designation of three specific positions. Generally, AFSCME claims Section 6.1 of the Act is unconstitutional on its face. AFSCME also claims that Section 6.1 is unconstitutional as applied through the Board's Rules.

AFSCME specifically objects to the designation of the positions held by Kiran Mehta, Kyong Lee and Ryan Lipinski. AFSCME claims that those three positions were included in the RC-10 bargaining unit by the Administrative Law Judge in her Recommended Decision and Order in Case No. S-RC-10-156. AFSCME alleges that these positions do not have executive or managerial duties and that they only exercise independent discretion in professional, not managerial situations.

AFSCME claims that the SPSA position descriptions exclude professional positions that do not serve as policy makers or have major administrative functions. AFSCME alleges that CMS stipulated to including other SPSA Option 8L positions in the RC-10 bargaining unit.

Finally, AFSCME claims that there must be an inquiry into whether the functions and discretion of the positions at issue are centered on professional expertise rather than executive or managerial discretion. AFSCME alleges that an employee is not necessarily a manager because he or she is professional. AFSCME claims that failing to determine whether the positions at issue are actually SPSA positions does not comport with due process.

II. Discussion and Analysis

a. Procedural Objections

The Board did not deny AFSCME due process when it applied its rules, which required AFSCME to file objections to the designation within 10 days, and when it allegedly failed to provide AFSCME an avenue by which it could obtain information to support its objections.

Due process requires notice and an opportunity to be heard. East St. Louis Fed'n of Teachers, Local 1220 v. East St. Louis School Dist. No. 189 Financial Oversight Panel, 178 Ill. 2d 399, 419-20 (1997). Although due process applies to administrative hearings² and requires a “fair hearing” and “rudimentary elements of fair play,” “[a]n administrative agency has broad discretion to reasonably regulate the time periods afforded parties to present evidence.” Clark v. Bd. of Directors of the School Dist. of Kansas City, 915 S.W. 2d 766, 772-73 (Mo. App. W.D. 1996).

Administrative rules and regulations have the force and effect of law and must be construed under the same standards which govern the construction of statutes. Northern Ill. Automobile Wreckers and Rebuilders Ass'n v. Dixon, 75 Ill. 2d 53 (1979); DeGrazio v. Civil Service Comm'n., 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).

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).

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 is expected 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 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 and its staff to review the RDO in light of the exceptions and draft a recommendation to the Board, (5) for the Board to set an agenda for the Board meeting pursuant to the requirements of the Open Meetings Act³ and (6) for the Board to rule on the ALJ's decision concerning the designation. In addition, the Board is expected 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 therefore does not deprive AFSCME of due process.

Second, the Board did not deprive AFSCME of due process by failing to provide a means by which AFSCME may obtain information to support its position because it did provide such a means. Indeed, Section 1300.110 of the Board's Rules provides that a party may ask the Board to issue subpoenas for witnesses and documents. 80 Ill. Admin. Code 1300.110. While this subpoena power is only available to the parties after the ALJ determines that there are issues of fact for an oral hearing, the subpoena power available to the parties is identical to that available to the parties in all other proceedings before the Board and therefore does not deprive AFSCME of due process. See 80 Ill. Admin. Code 1200.90.

b. Substantive Objections

AFSCME claims that the positions held by Kiran Mehta, Kyong Lee and Ryan Lipinski were included in the RC-10 bargaining unit by the decision of the ALJ in Case No. S-RC-10-156, even though the Board never certified these positions as part of the RC-10 bargaining unit. AFSCME provides no additional argument or language in the Act to support its apparent position that the

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).

ALJ's decision makes these positions inappropriate for designation. To qualify for designation under Section 6.1 of the Act, the position in question must fall into one of the three broad categories of designatable positions and must likewise fall into one of the five categories which describe its classification, title or characteristics. These positions fall into one of the three broad designatable categories because they are subject to a pending petition for certification in a bargaining unit. Similarly, these positions fall within one of the five categories which describe the nature of the position because all three hold the title of Senior Public Service Administrator.

Here, AFSCME appears to argue that because the ALJ recommended that these positions be included in a bargaining unit, they are inappropriate for designation. However, this does not address the Board's sole inquiry in this particular case. Here, the Board must determine whether the designated positions meet the criteria set forth in Section 6.1 of the Act. Section 6.1(b)(2) provides in relevant part that for a position to be designatable, "it must have a title of... Senior Public Service Administrator." In this case, it is clear that these positions fall into one of the three broad designatable categories. Similarly, it is undisputed that CMS has classified these positions as SPSA positions. Accordingly, the sole inquiry here is whether the designation comports with the requirements of the Act. CMS followed the requirements of the Act in designating these positions. The fact that the ALJ recommended that these positions were covered by the Act in a different case is not material in light of the Act's clear language which, in this case, permits designation of a position based solely on classification and without regard to an ALJ's recommendations in another case.

Finally, AFSCME objects to the fact that the positions designated are classified as SPSA positions. AFSCME argues that SPSA position descriptions exclude professional employees that do not serve as policy makers or have major administrative functions. Therefore, AFSCME alleges that there must be an inquiry into whether the positions at issue here conform to the requirements for an SPSA position. However, this is not the inquiry required under Section 6.1 of the Act. Section 6.1(b)(2) provides in relevant part that for a position to be designatable, "it must have a title of... Senior Public Service Administrator." In this case, it is clear that the designated positions fall into one of the three broad designatable categories. Similarly, it is undisputed that CMS has classified the positions as SPSA positions. Accordingly, the sole inquiry here is whether the designations comport with the requirements of the Act. CMS

provided position descriptions showing the five positions designated are classified as Senior Public Service Administrators. This is the only determination required by the Act. CMS followed the requirements of the Act in designating the five positions at issue in this case.

III. Conclusions of Law

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

IV. Recommended Order

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

Manager, Legal Services (position no. 40070-33-46-150-00-21); **Deputy General Counsel - Administration** (position no. 40070-33-46-200-00-21); **Manager, Administrative Hearings** (position no. 40070-33-46-240-00-21); **Assistant Ethics Officer** (position no. 40070-33-46-400-00-21); and **Assistant Administrator Child Support Services** (position no. 40070-33-50-030-00-92).

V. Exceptions

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300⁴, parties may file exceptions to the Administrative Law Judge's recommended decision and order, and briefs in support of those exceptions, no 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.

⁴ Available at www.state.il.us/ilrb/subsections/pdfs/Section 1300 Illinois Register.pdf

Issued at Chicago, Illinois, this 30th day of September, 2013.

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

Thomas R. Allen

**Thomas R. Allen
Administrative Law Judge**