

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

State of Illinois, Department of)	
Central Management Services,)	
)	
Petitioner)	
	)	Consolidated Case Nos.
and	)	S-DE-14-101
	)	S-DE-14-102
American Federation of State, County	)	S-DE-14-103
and Municipal Employees, Council 31,	)	S-DE-14-104
	)	S-DE-14-105
Labor Organization-Objector	)	S-DE-14-106 &
	)	S-DE-14-110
Timothy Hattemer, Michael McIntyre,)	
Dale Webb and Mark Woloshyn,)	
)	
Employee-Objectors)	

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

As we more fully explained in our recent decision in State of Illinois, Department of Central Management Services and American Federation of State, County and Municipal Employees, Council 31, Case Nos. S-DE-14-005 etc., 30 PERI ¶80 (IL LRB-SP Oct. 7, 2013), appeal pending, No. 1-13-3454 (Ill. App. Ct, 1st Dist.), Section 6.1 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012), allows the Governor to designate certain employment positions with the State of Illinois as excluded from the collective bargaining rights which might otherwise be available to State employees under Section 6 of the Act. The above-captioned cases, consolidated for purposes of determination by the Illinois Labor Relations Board, State Panel, all involve such designations made by the Illinois Department of Central Management Services (CMS) on behalf of the Governor of the State of Illinois.

On October 10, 2013, Administrative Law Judge (ALJ) Deena Sanceda issued a Recommended Decision and Order (RDO) in Case No. S-DE-14-101, finding that a set of such designations made by CMS pursuant to Section 6.1, was properly made. CMS's petition designated six positions at various State agencies, all designated pursuant to Section 6.1(b)(2) of the Act,¹ and all holding the job classification of Senior Public Service Administrator (SPSA).

On October 17, 2013, ALJ Elaine Tarver similarly issued a RDO in Case No. S-DE-14-102, finding a designation made by CMS pursuant to Section 6.1 was also properly made. CMS's petition designated one SPSA position at the Department of Central Management Services pursuant to Section 6.1(b)(2).

On October 25, 2013, ALJ Sarah Kerley issued a RDO in Case No. S-DE-14-103, finding that a third set of designations made by CMS pursuant to Section 6.1 was properly made. CMS's petition designated two attorney positions at the Illinois State Police, both SPSA positions and both pursuant to Section 6.1(b)(2).

On October 18, 2013, ALJ Anna Hamburg-Gal issued a RDO in Case No. S-DE-14-104, finding another set of designations made by CMS pursuant to Section 6.1 was also properly made. CMS's petition designated seven positions at the Department of Revenue, all SPSA positions and all designated pursuant to Section 6.1(b)(2).

On October 16, 2013, ALJ Deena Sanceda issued a RDO in Case No. S-DE-14-105, finding a designation made by CMS pursuant to Section 6.1 was also properly made. CMS's

¹ In relevant part, Section 6.1(b) provides:

To qualify for designation under this Section, the employment position must meet one or more of the following requirements:

* * *

(2) it must have a title of ... Senior Public Service Administrator[.]

petition designated one SPSA position at the Department of Insurance pursuant to Section 6.1(b)(2).

On October 17, 2013, ALJ Elaine Tarver issued a RDO in Case No. S-DE-14-106, finding a designation made by CMS pursuant to Section 6.1 was also properly made. CMS's petition designated one SPSA position at the Department of Human Services pursuant to Section 6.1(b)(2).

Finally, on October 24, 2013, ALJ Heather Sidwell issued a RDO in Case No. S-DE-14-110, finding another set of designations made by CMS pursuant to Section 6.1 was also properly made. CMS's petition designated two positions at the Illinois State Police, both SPSA positions and both designated pursuant to Section 6.1(b)(2).

In each of these cases, the American Federation of State, County and Municipal Employees, Council 31, filed objections to CMS's designations pursuant to Section 1300.60 of the rules promulgated by the Board to effectuate Section 6.1, 80 Ill. Admin. Code Part 1300. After the ALJs rejected these objections, AFSCME filed timely exceptions in each case pursuant to Section 1300.130 of the Board's rules. After reviewing these exceptions, the RDOs, and the underlying record, we reject the exceptions and adopt the RDOs for the reasons expressed in those RDOs and in our prior decision in Case No. S-DE-14-005, 30 PERI ¶80. We direct the Executive Director to issue certifications consistent with these recommendations.

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

ILRB Nos. S-DE-14-101, S-DE-14-102
S-DE-14-103, S-DE-14-104
S-DE-14-105, S-DE-14-106
& S-DE-14-110

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

/s/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, on November 19, 2013;
written decision issued at Springfield, Illinois, November 20, 2013.

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

State of Illinois, Department of Central Management Services,)	
)	
)	
Petitioner)	
)	
and	)	Case No. S-DE-14-101
)	
American Federation of State, County and Municipal Employees, Council 31,)	
)	
)	
Labor Organization-Objector)	
)	

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

I. BACKGROUND

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, and, of those, only 1,900 positions which have already been certified to be in a collective bargaining unit may be designated.

Moreover, to properly qualify for designation, the employment position must meet one or more of five requirements identified in Sections 6.1(b) of the Act. Relevant to this case, Section 6.1(b)(2) of the Act provides that the employment position:

must have a title of, or authorize a person who holds that position to exercise substantially similar duties as an Agency General Counsel, Agency Deputy Director, Agency Executive Director, Agency Deputy Director, agency Chief Fiscal Officer, Agency Human Resources Director, Senior Public Service Administrator, Public Information Officer, or Chief Information Officer[.]

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

The Board promulgated emergency rules to effectuate Section 6.1, which became effective on August 23, 2013, 37 Ill. Reg. 14,070 (Sept. 6, 2013). These rules are contained in Part 1300 of the Board’s Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On September 23, 2013, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation petition pursuant to Section 6.1 of the Act and Section 1300.50 of the Board’s Rules. On October 3, 2013, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed objections to the designations 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 designations, the objections, and arguments submitted in support of those objections, I find the designations contained in this petition to have been properly submitted and consistent with the requirements of Section 6.1 of the Act. Consequently, I recommend that the Executive Director certify the designations 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.

There are seven employment positions at issue in this designation petition, all classified as Senior Public Service Administrators (SPSAs):

Illinois Department of Central Management Services

position number	employee name	working title
40070-37-10-200-10-01	Vacant	
40070-37-16-150-00-01	Vacant	Assistant Chief Information Security Officer
40070-37-18-200-00-01	Harvey, Debra	End User Support Executive

Illinois Department of Employment Security¹

position number	employee name	working title
40070-44-30-300-00-01	Hamilton, Bruce	Manager Web/Intranet Services

¹ On October 1, 2013, per CMS’s request, the Board’s Executive Director removed the position held by Hal Waggoner from the designation petition.

Illinois Department of Human Services

position number	employee name	working title
40070-10-06-132-00-01	Carpenter, Craig	Manager of Client Systems/Vocational Rehabilitation
40070-10-06-131-10-01	Hamlin, Susan	IPAC's Concurrent Unit

Illinois Department of Corrections

position number	employee name	working title
40070-29-00-122-00-01	Vacant	Management Systems Specialist

AFSCME objects to the designation of all the employment positions at issue.

CMS's designation petition indicates that the positions at issue qualify for designation under Section 6.1(b)(2) of the Act. CMS also filed position descriptions (CMS-104s) and a summary spreadsheet in support of its petition which indicate that the designated positions hold the title of SPSA. The summary spreadsheet identifies the following information for each designated position: the agency that the position works under, the classification as SPSA Option 3, the position number, the name of the incumbent employee, the position's working title, the incumbent employee's e-mail address, whether the position is represented by a bargaining unit, the name of the bargaining unit, the date the position was certified into the bargaining unit, the certification number of the bargaining unit, the statutory category that serves as the basis of the designation, and the employment position's job duties as identified in the attached CMS-104 position descriptions.

II. ISSUES AND CONTENTIONS

AFSCME objects to these designations because it argues that Section 6.1 of the Act is unconstitutional, that these designations are arbitrary and capricious because the Act should require that either all SPSAs are designated under Section 6.1 of the Act or no SPSAs are designated under Section 6.1 of the Act, and that an oral hearing is required in order to comply with due process.

AFSCME argues that section 6.1 of the Act is unconstitutional for three reasons. First, it violates a separation of powers between the executive branch and the legislative branch because in allowing the governor to make these designations the legislature has delegated its legislative power to the governor. Second, it violates the Equal Protection clauses contained in the Illinois

and the United States Constitutions. Finally, the employees holding the positions at issue have been certified into a bargaining unit and this designation petition to exclude these employment positions from collective bargaining violates the employees' rights to enter into contracts pursuant to the Illinois Constitution.

AFSCME argues that the designations of these positions is arbitrary because there is no rational bases for treating these SPSA positions differently than the many other positions which hold the same title and/or have similar duties.

Finally, AFSCME argues that due process requires the Board to hold an oral hearing to address whether the positions at issue are properly classified as SPSAs based on the positions' job duties, and to address whether there is a legal basis for the designation of these positions and the effect of such designation.

III. DISCUSSION AND ANALYSIS

AFSCME's objections, that section 6.1 of the Act is unconstitutional, that the designation of these positions based solely on their status as SPSAs is arbitrary, and that due process requires an oral hearing on the duties of the positions at issue, do not overcome the presumption that the designations are proper.

a. constitutionality

Section 6.1(d) of the Act gives the Board authority to determine whether the designation of the employment positions at issue comport with Section 6.1 of the Act. As an administrative agency, the Board has no authority to declare statutes unconstitutional or even to question their validity. See Goodman v. Ward, 241 Ill. 2d 398, 411 (2011); see also Metropolitan Alliance of Police, Coal City Police Chapter No. 186, No. 6 v. Ill. State Labor Rel. Bd., 299 Ill. App. 3d 377, 379 (3rd Dist. 1998); Ill. Dep't Cent Mgmt Serv. v. Am Fed'n of State, Cnty. & Mun. Employees, Council 31, Case Nos. S-DE-14-005 etc (IL LRB-SP Oct. 7, 2013). Analysis of the Act's constitutionality is beyond my limited authority as an Administrative Law Judge (ALJ) for the Board, to review. Thus, AFSCME's objections that Section 6.1 of the Act is unconstitutional because it violates the separation of powers between the legislative branch and the executive branch, violates equal protection, and violates its right to enter into a contract with CMS, are not relevant to my determination of whether the designation of the positions at issue comport with Section 6.1 of the Act.

b. arbitrariness

In order to properly designate a State employment position as exempt from the self-organization and collective bargaining provisions of Section 6 of the Act, Section 6.1(b) of the Act requires the Governor or its agents, to provide to the Board, in writing, “the job title and job duties of the employment position, if any; the name of the State agency employing the public employee; and the category under which the position qualifies for designation.” In order to qualify for designation, Section 6.1(b)(2), states, in relevant part, that the employment position must have the title *or* the authority to exercise the duties of an SPSA (emphasis added).

When interpreting a statute the language must be given its plain and ordinary meaning. Cnty. of DuPage v. Ill. Labor Rel. Bd., 231 Ill. 2d 593, 603–04 (2008). The seven positions at issue all hold the SPSA title. A plain and ordinary reading of section 6.1(b)(2) of the Act indicates that these positions are properly included in the designation, and the only relevant inquiry would involve whether the positions are misidentified as having the SPSA title.

AFSCME argues that either all SPSAs should be designated or no SPSAs should be designated under Section 6.1 of the Act. Essentially AFSCME is arguing that the designations are arbitrary because they are fragmenting positions with similar duties and/or titles. The Board considers fragmentation as a factor in determining the appropriateness of a bargaining unit in representation cases. See 5 ILCS 315/9(2)(b) (2012). This is a gubernatorial designation case where the governor has the discretion to designate positions as exempt from the collective bargaining provisions of the Act as long as they comport with Section 6.1 of the Act, and Section 6.1 is silent on the issue of fragmentation. See 5 ILCS 315/6.1 (2012). An administrative agency’s decision is arbitrary and capricious when it does not comport with the relevant enabling statute. Bigelow Group, Inc. v. Rickert, 377 Ill. App. 3d 165, 175 (2nd Dist. 2007). It is not arbitrary for the Board to permit designation of these positions based on the positions holding the SPSA title because the Board is adhering to the plain language of the statute. Therefore, whether the Governor designates every SPSA or not one SPSA under Section 6.1, is not relevant to whether the designations comport to the requirements set out in that Section, because fragmentation is not at issue in Section 6.1.

c. oral hearing

The Board is not required to hold an oral hearing in order to provide AFSCME with due process. As an administrative agency, the Board was created to carry out the Act's purpose, and the Board is bound by the provisions of the Act. See 5 ILCS 315/5. The Act states that the Board's procedures for determining whether these designations are proper must be consistent with due process. 5 ILCS 315/6.1. Notice and an opportunity to be heard are necessary principles of procedural due process. East St. Louis Fed'n of Teachers, Local 1220 v. East St. Louis School Dist. No. 189 Fin. Oversight Panel, 178 Ill. 2d 399, 419-20 (1997); Segal v. Dep't. of Ins., 404 Ill. App. 3d 998, 1002 (1st Dist. 2010) citing People ex rel. Ill. Commerce Comm'n v. Operator Commc'n, Inc., 281 Ill. App. 3d 297, 302 (1st Dist. 1996). In the administrative context parties could be heard through their "written arguments and documentary evidence." Dep't. of Cent. Mgmt. Serv./Ill. Commerce Comm'n v. Ill. Labor Rel. Bd., 406 Ill. App. 3d 766, 768 (4th Dist. 2010) citing Lawless v. Cent. Prod. Credit Ass'n., 228 Ill. App. 3d 500, 515 (4th Dist. 1992).

The Board's rules provide that the incumbent employee and the representing collective bargaining unit may each file objections to the designation of the employment position. 80 Ill. Admin. Code Section 1300.60(a)(3). Any objector is required to set forth its "position with respect to the matters asserted in the designation[,] ... specifically state the basis for such objection," and "include supporting documentation." Id. The Board's rules state that if objections are filed, the designations and the objections will be assigned to an ALJ for review. 80 Ill. Admin. Code Section 1300.60(d)(2). Based upon a review of these documents, the ALJ will order an oral hearing only if it "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."² 80 Ill. Admin. Code Section 1300.60(d)(2)(B). Conversely, if the ALJ finds that the objections submitted "fail to overcome the presumption that the designation is proper" the ALJ may make a factual finding that the designation is proper based solely on the information submitted, and will issue a recommended decision and order to the Board that the designation be certified. 80 Ill. Admin. Code Section 1300.60(d)(2). In other words, an oral hearing is only necessary if the objections provide evidence that might negate the requirements for the designations at issue.

² Section 6.1(d) of the Act provides that any "designation made by the Governor under this Section shall be presumed to have been properly made," thus the objecting party has the burden to overcome this presumption.

Here, the positions at issue qualify for designation under Section 6.1(b)(2) of the Act, which states, in relevant part, that the employment position “must have a title of, or authorize a person who holds that position to exercise substantially similar duties as a[] ... Senior Public Service Administrator[.]” As stated above, a plain and ordinary reading of section 6.1(b)(2) of the Act indicates that since these positions hold the SPSA title, they are properly included in the designation petition. Due process requires that AFSCME is given the opportunity to provide argument and evidence, but does not necessarily require an oral hearing. Due process was satisfied when AFSCME was provided with the opportunity to be heard in filing objections and filing documentation in support of its objections to the designations. Neither due process nor the Board’s rules require an oral hearing. In this case, despite AFSCME’s argument to the contrary, the only evidence that might raise a sufficient issue to require an oral hearing would be evidence that the positions at issue are misidentified as having the SPSA title. Since, AFSCME has not provided evidence that the positions at issue do not in fact hold the title of SPSA, it has failed to raise an issue that might overcome the presumption that these designations are proper, thus an oral hearing is not necessary.

IV. CONCLUSION

Pursuant to Section 1300.60 of the Board’s Rules, I find that the designations are proper based solely on the information submitted to the Board and AFSCME’s objections fail to overcome the presumption that the designation is proper under Section 6.1 of the Act.

V. RECOMMENDED ORDER

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

Illinois Department of Central Management Services

position number	working title
40070-37-10-200-10-01	Vacant
40070-37-16-150-00-01	Assistant Chief Information Security Officer
40070-37-18-200-00-01	End User Support Executive

Illinois Department of Employment Security

position number	working title
40070-44-30-300-00-01	Manager Web/Intranet Services

Illinois Department of Human Services

position number	working title
40070-10-06-132-00-01	Manager of Client Systems/Vocational Rehabilitation
40070-10-06-131-10-01	IPAC's Concurrent Unit

Illinois Department of Corrections

position number	working title
40070-29-00-122-00-01	Management Systems Specialist

VI. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300,³ parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order in briefs in support of those exceptions no later than 3 days after service of this recommended decision and order. Exceptions shall be filed with the Board by electronic mail at an electronic mail address designated by the Board for such purpose, ILRB.Filing@illinois.gov, and served on all other parties via electronic mail at their e-mail addresses as indicated on the designation form. Any exception to a ruling, finding conclusion or recommendation that is not specifically urged shall be considered waived. A party not filing timely exceptions waives its right to object to this recommended decision and order.

Issued at Chicago, Illinois this 10th day of October, 2013.

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

/s/ Deena Sanceda

**Deena Sanceda
Administrative Law Judge**

³ Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf

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

State of Illinois, Department of Central Management Services,)	
)	
Petitioner)	
)	
and	)	Case No. S-DE-14-102
)	
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 rules to effectuate Section 6.1, which became effective on

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.

August 23, 2013, 37 Ill. Reg. 14,070 (Sept. 6, 2013). These rules are contained in Part 1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On September 25, 2013, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation petition pursuant to Section 6.1 of the Act and Section 1300.50 of the Board's Rules. CMS' petition designates the exclusion of the following Senior Public Service Administrator in the Department of Central Management Services based on Section 6.1(b)(2) of the Act:

**Senior Public Service Administrator, Option 3
Employed at Central Management Services
Position Number: 40070-37-17-100-00-01
Incumbent: Dennis Twitchell**

In support of its petition, CMS submitted job description (CMS-104) for the position and a summary spreadsheet. The spreadsheet identifies, in pertinent part, position number, title, name of incumbent, bargaining unit, certification's date and case number and statutory category of designation. This position was certified into the RC-63 bargaining unit pursuant to the actions of the Board in Case. No. S-RC-10-220 on February 04, 2013.

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, here are my findings:

I. OBJECTIONS

On October 7, 2013, AFSCME filed objections to the designation pursuant to Section 1300.60(a)(3) of the Board's Rules.

AFSCME argues that the position is a professional position and is included in the bargaining unit and therefore is not properly classified as an SPSA. AFSCME maintains that the position description describes the technical duties of the position and based on those duties, on its face, the SPSA classification is not appropriate. AFSCME further contends that the designation of the position violates due process and is arbitrary and capricious as Section 6.1 of the Act violates equal protection under Article I, Section 2 of the Illinois Constitution and the Fifth and Fourteenth Amendments to the United States Constitution.

II. DISCUSSION AND ANALYSIS

The designation comports with the requirements of Section 6.1(d) and AFSCME's objections do not overcome the presumption that the designation was made properly. Section 6.1 makes a position properly designated if it: (1) has been first certified to be in a bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008, and (2) has the title of SPSA. 5 ILCS 315/6.1 (2012). The Act presumes that any designation made by the Governor under Section 6.1 is properly made.

As to AFSCME's constitutional objections, the Board has held that it is beyond its capacity to "rule that the Illinois Public Labor Relations Act, as amended by Public Act 97-1172, either on its face or as applied violates provisions of the United States and Illinois constitutions." State of Illinois, Department of Central Management Services, _ PERI _ Cons. Case Nos. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013) (citing Goodman v. Ward, 241 Ill. 2d 398, 411 (2011)).

The Board has also expressed its concern with AFSCME's due process arguments but maintained that it has taken necessary measures to prevent a violation of such. Therefore, consistent with the Fourth District, the Board held that it "insured that the individual employees as well as their representative and potential representative receive notice soon after designation petitions are filed, usually without hours, and have provided for redundant notice by means of posting at the worksite....we provided them an opportunity to file objections, and where they raise issues of fact or law that might overcome the statutory presumption of appropriateness, an opportunity for a hearing, [and]...require a written recommended decision by an administrative law judge in each case in which objections have been filed. Arvia v. Madigan, 209 Ill. 2d 520 (2004), and Gruwell v. Ill. Dep't of Financial and Professional Regulations, 406 Ill. App. 3d 283, 296-98 (4th Dist. 2010). Additionally, the Board found that it has "allowed an opportunity to appeal those recommendations for consideration of the full Board by means of filing exceptions,...doubled the frequency of our scheduled public meetings in order to provide adequate review of any exceptions in advance of the 60-day deadline and... issu[e] written final agency decisions which may be judicially reviewed pursuant to the Administrative Review Law", in an effort to adhere to due process. State of Illinois, Department of Central Management Services, _ PERI _ Cons. Case Nos. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013).

Moreover, in administrative hearings, failing to go to an oral hearing is not necessarily the denial of a hearing where written documents could suffice as a hearing. Department of

Central Management Services (Illinois Commerce Commission) v. Illinois Labor Relations Board, State Panel, 406 Ill. App. 3d 766, 769-70 (4th Dist. 2010). Therefore, AFSCME's due process rights have not been violated by the Board following the policies and procedures mandated by the legislature and there is no issue of law or fact warranting a hearing.

AFSCME also objects on the basis that the Board should not allow the designation of this particular position when the Governor failed to petition the designation of all positions of the same classification that perform the same or similar duties. Additionally, AFSCME states that the job duties have not changed since this position has been certified, arguing that a hearing is necessary in deciding whether the designation is proper. The Act's language is plain and unambiguous. Section 6.1(b)(2) provides, in relevant part, that to designate a position, "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." The Board has held that job duties are irrelevant when designations are based on clear cut criterion such as title. State of Illinois, Department of Central Management Services, _ PERI _ Cons. Case Nos. S-DE-14-005 etc. There is also no requirement related to designating the same or positions similarly situated. For this designation to be proper, this position only needs to be classified as an SPSA and have been certified by the Board on or after December 2, 2008.

Lastly, AFSCME maintains that the position is inappropriately classified as an SPSA as the job duties listed do not conform to those of an SPSA, and the Board should hold a hearing to determine if the position is properly classified. The Act is clear that the title alone makes a designation proper. The Board held that whether the position's duties described or performed show the position is authorized to perform substantially the same duties as an SPSA is unnecessary where they have the actual title. State of Illinois, Department of Central Management Services, _ PERI _ Cons. Case Nos. S-DE-14-005 etc. AFSCME has not provided sufficient evidence to warrant a hearing on this issue where it merely states that the specifications of this position "eliminate professional positions and require that the positions include duties which are more than professional," as its only evidence in support of its SPSA misclassification argument.

III. CONCLUSIONS OF LAW

The designations in this case are properly made.

IV. RECOMMENDED ORDER

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

**Senior Public Service Administrator, Option 3
Employed at Central Management Services
Position Number: 40070-37-17-100-00-01
Incumbent: Dennis Twitchell**

V. EXCEPTIONS

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300, 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 and Regulations. Exceptions must be filed by electronic mail sent 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.

Issued at Chicago, Illinois this 17th day of October, 2013

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



Elaine L. Tarver, Administrative Law Judge

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

State of Illinois, Department of Central)	
Management Services (Department of)	
Revenue),)	
)	
Employer)	
)	
and	)	Case No. S-DE-14-103
)	
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) (Act) *added by* Public Act 97-1172 (effective 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 (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 properly qualify for designation, the employment position must meet one or more of the following five requirements:

- (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, 479 U.S. 62 (1990), and be completely exempt from jurisdiction B of the Personnel Code, 20 ILCS 415/8b through 8b.20 (2012), *see* 20 ILCS 415/4 through 4d (2012);
- (4) it must be a term appointed position pursuant to Section 8b.18 or 8b.19 of the Personnel Code, 20 ILCS 415/8b.18, 8b.19 (2012); 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 rules to effectuate Section 6.1, which became effective on August 23, 2013, 37 Ill. Reg. 14,066 (September 6, 2013). These rules are contained in Part

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 here.

1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On October 1, 2013, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation petition pursuant to Section 6.1(b)(2) of the Act and Section 1300.50 of the Board's Rules. On October 11, 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.

The following two positions at the Illinois Department of Revenue are at issue in this designation petition:

40070-25-07-000-10-01	Vacant	Assistant General Counsel
40070-25-07-310-00-01	Charlton, Terry	Senior Counsel

In support of its petition, CMS filed position descriptions (CMS-104s) for each petition, which indicate that the designated positions hold the title of Senior Public Service Administrator (SPSA) Option 8L, and a summary spreadsheet which reflects that the positions were first certified into a bargaining unit on October 25, 2012.

I have reviewed and considered the designation petition, the documents accompanying the designation petition, the objections raised by AFSCME, and the documents submitted in support of those objections. I find that the objections fail to raise an issue of law or fact that might overcome the presumption that the designation is proper such that a hearing would be necessary. Moreover, after consideration of the information before me, I find that the designation was properly submitted and that it is consistent with the requirements of Section 6.1 of the Act. Accordingly, I recommend that the Executive Director certify the designation of the positions at issue in this matter 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.

I. AFSCME'S OBJECTIONS

AFSCME objects to the designation in a number of ways. In support of its objections, AFSCME provided the Board with the following documents: stipulations in Case No. S-RC-10-222, wherein CMS stipulated that position number 40070-25-07-000-10-01 (the designated vacant position) was "properly included in the RC-10 bargaining unit" and Terry Charlton's

position² was “not supervisory within the meaning of the Act,” an organizational chart depicting the Office of Legal Services as of February 2010; the first page of a position description for position number 40070-25-07-000-10-01 that appears to be labeled as “Chipman;” and emails between James Chipman and Illinois Department of Revenue employee Brenda Teater from April 26, 2007. In the email, Mr. Chipman asks Ms. Teater whether his new position was exempt from “certified status” as “wholly professional.” In response, Ms. Teater writes, “You (Mr. Chipman) are moving into a certified position. You will be in a 6-months probationary status. The Wholly Professional status is new to us and Connie may be confused. I will talk with her about it.”

Through its written objections and documents, AFSCME makes the following arguments.

A. Procedural Issues

AFSCME contends that because the “employees³ holding the position identified by this petition are covered by a collective bargaining agreement which CMS entered into subsequent to the enactment of [Section] 6.1,” the designation of these positions “violates due process and is arbitrary and capricious.” AFSCME specifically alleges that failing to hold a hearing on the issue of “whether there is any legal basis for the exclusion of these positions and the effect of such exclusion” is a “denial of due process.”

AFSCME also argues that Section 6.1 violates provisions of the United States and Illinois Constitutions in a number of ways. First, the designation is an improper delegation of legislative authority to the executive branch. Second, selective designation results in employees being treated unequally based on whether an individual’s position was subject to a designation petition. Third, the designation unlawfully impairs the contractual rights of individuals whose positions were subject to the provision of a collective bargaining agreement prior to the position being designated for exclusion.

B. Substantive Issues

AFSCME argues that the positions should not be excluded because they are professional positions improperly classified as SPSAs. AFSCME notes that the class specification for an SPSA position requires a position to be managerial, not simply professional, and specifically

² The stipulations reference position number 40070-25-07-120-12-01 as Terry Charlton’s position. Documentation provided by CMS reflects that position number 40070-25-07-120-12-01 was renumbered to 40070-25-07-310-00-01, the position at issue in the present designation petition.

³ AFSCME mistakenly references “employees.” However, only one employee, Terry Charlton, is presently affected by the designation petition, as the other position is vacant.

excludes positions subject to the provisions of a collective bargaining agreement.⁴ AFSCME generally objects to the designation of both positions on the basis that the positions are inappropriately classified “due to their professional status as well as their inclusion in a bargaining unit.”

AFSCME provides additional support for each position. With respect to the contention that Mr. Charlton’s position is inappropriately classified, AFSCME argues that in 2010, CMS stipulated that Mr. Charlton’s position was “neither supervisory or managerial.”⁵ AFSCME states that the Board rejected CMS’s argument that a position subject to a term appointment should not be included in the bargaining unit and certified Mr. Charlton’s position as included in the bargaining unit.

With respect to the vacant position, AFSCME points out that in 2010, CMS stipulated that the inclusion of the position was “properly included in the unit. AFSCME argues that the vacant position is “wholly professional” and “by those terms alone is not properly classified as an SPSA position as described by the class specification.” AFSCME points to Ms. Teater’s email correspondence to support this contention.

AFSCME seeks a hearing on the duties of the positions to determine whether they are inappropriately classified as SPSAs, and, therefore, not subject to gubernatorial designation under Section 6.1(b)(2).

II. DISCUSSION AND ANALYSIS

The law creates a presumption that designations made by the Governor are properly made. AFSCME’s objections do not overcome that presumption or raise a question of law or fact which requires a hearing. For the reasons stated more fully below, I find the designations are proper.

A. Procedural Issues

1. The designations do not violate due process.

The Board does not deny AFSCME due process by determining that the designations are proper without an oral, evidentiary hearing.

⁴ In its Objections, AFSCME references that the position classification is attached to the brief. However, AFSCME’s filing did not include a copy of the position classification.

⁵ According to the stipulations attached to AFSCME’s objections, CMS and AFSCME stipulated that Charlton’s position was “not supervisory within the meaning of the Act.”

AFSCME contends that designating these two SPSA positions to be excluded from collective bargaining violates due process. AFSCME argues that in order to comply with due process, the Board must require a hearing to determine whether there is any legal basis for the exclusion of these positions and the effect of such exclusion.

“Under the constitutions of the United States and Illinois, the State may not ‘deprive any person of life, liberty, or property, without due process of law.’ ‘The core of due process is the right to notice and a meaningful opportunity to be heard’; no person may be deprived of a protected interest by an administrative adjudication of rights unless these safeguards are provided.” World Painting Company v. Costigan, 2012 IL App (4th) 110869, ¶ 14 (internal citations omitted).

“[D]ue process is a flexible concept and requires only such procedural protections as fundamental principles of justice and the particular situation demand.” Abrahamson v. Illinois Department of Professional Regulation, 153 Ill. 2d 76, 92 (1992). In an administrative context, procedural due process does not necessarily require a proceeding that is in the nature of a judicial proceeding. Id., at 92–93. Further, “[d]ue process does not necessitate a hearing in every case of government impairment of a private interest.” Key Outdoor, Inc. v. Department of Transportation, 322 Ill. App. 3d 316, 321 (4th Dist. 2001) *citing* Roosevelt-Wabash Currency Exchange, Inc. v. Fornelli, 49 Ill. App. 3d 896, 899 (1st Dist. 1977); *see also* Department of Central Management Services/Illinois Commerce Commission v. Illinois Labor Relations Board, 406 Ill. App. 3d 766, 770 (4th Dist. 2010) (“a hearing could be ‘written’ in the sense that parties could be heard solely through their presentation of written arguments and documentary evidence to the agency.”).

Board Rule 1300.60(d)(2)(B) provides that where an Administrative Law Judge 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.” However, the areas of inquiry AFSCME identifies do not require a hearing. The legal basis for the exclusion is the fact that the positions have the title of SPSA. AFSCME does not challenge this fact. The effect of the designation is that the positions are excluded from collective bargaining. This is set out in the statute. Inasmuch as AFSCME is seeking a hearing to challenge the constitutionality of Section 6.1, as discussed more fully below, that is beyond the purview of the Board.

In short, nothing in AFSCME's objections raise an issue of law or fact that might overcome the presumption that the designation was proper. Moreover, as evidenced by the record, AFSCME had an opportunity, which it exercised, to present its arguments and documentary evidence objecting to the designations. Furthermore, if it so chooses, AFSCME may also file exceptions to this Recommended Decision and Order for the Board's consideration. 80 Ill. Adm. Code 1300.130. These mechanisms provide sufficient process for AFSCME to challenge designations where there is no disputed fact or issue of law.

2. Designation based upon SPSA title is not arbitrary or capricious.

It is not arbitrary or capricious for the Board to permit the positions to be designated for exclusion from collective bargaining based on the title of SPSA, because, in doing so, the Board is adhering to the plain language of the statute. An action by an administrative agency is arbitrary and capricious if it "relies on factors that the statute does not intend, fails to consider an issue," Ellison v. Illinois Racing Board, 377 Ill. App. 3d 433, 441 (1st Dist. 2007), "or offers an explanation so implausible that it runs contrary to agency expertise." Cook County State's Attorney v. Illinois State Labor Relations Board, 292 Ill. App. 3d 1, 6 (1st Dist. 1997). An agency's decision is arbitrary and capricious when it does not comport with the relevant enabling statute. Bigelow Group, Inc. v. Rickert, 377 Ill. App. 3d 165, 175 (2nd Dist. 2007).

Section 6.1(b) of the Act requires the Board to determine whether the designations made by the Governor or his agents comport with Section 6.1 of the Act. 5 ILCS 315/6.1(b). The plain language of Section 6.1(b)(2) allows for designation of positions with the title of SPSA. Because a designation based solely on a position having the title of SPSA comports with the clear language of Section 6.1(b)(2), a Board determination that the designation is proper is not arbitrary or capricious.

3. The constitutionality of Section 6.1 of the Act is beyond the capacity of the Board.

AFSCME contends that the designation process created by Section 6.1 is unconstitutional in that it is an improper delegation of legislative authority to the executive branch, results in unequal treatment based on whether an individual's position was subject to a designation petition, and unlawfully impairs the contractual rights of individuals whose positions are covered by a collective bargaining agreement prior to designation.

The State Panel of the Board recently considered arguments that Section 6.1 is violative

of the United States and Illinois constitutions, as it ruled on 19 separate designation petitions designating multiple SPSA position to which AFSCME objected. State of Illinois, Department of Central Management Services v. American Federation of State, County and Municipal Employees, ___ PERI ___, Consolidated Case No. S-DE-14-005 etc. (IL LRB-SP October 7, 2013).⁶ In that decision, the Board recognized that it was “beyond its capacity” to rule that the Act violated the United States or Illinois constitutions. *See Goodman v. Ward*, 241 Ill. 2d 398, 411 (2011) (“Administrative agencies ... have no authority to declare statutes unconstitutional or even to question their validity. [citations omitted] When they do so, their actions are a nullity and cannot be upheld.”). Accordingly, these objections are not relevant to any issue upon which the Board is called to act.

B. Substantive Issues

AFSCME does not challenge the fact that the two positions at issue in this case do, indeed, “have the title of Senior Public Service Administrator,” thus making them appropriate for designation under Section 6.1(b)(2) of the Act. Instead, AFSCME argues that the positions are inappropriately classified as SPSAs, and should, therefore, not be subject to designation based on their classification.

AFSCME correctly points out that the class specification for the position of SPSA requires that a position be engaged in “managerial functions and not simply be professional” and excludes positions that are included in a bargaining unit and subject to a collective bargaining agreement. In support of its argument that the positions are inappropriately classified as SPSAs, AFSCME points to CMS’s stipulation that the positions were either appropriately within the bargaining unit or “not supervisory within the meaning of the Act.” However, these arguments ignore that Section 6.1 is a new creation of the legislature. Section 6.1 is a self-contained mechanism to allow positions to be excluded from collective bargaining, including, in some cases, position that have been subject to collective bargaining agreements for several years. Moreover, the authority to determine whether a position is appropriately classified⁷ lies with the Illinois Civil Service Commission, not with the Board. 20 ILCS 415/10(5).

⁶ The Board’s October 7, 2013, decision applied to the following cases, which were consolidated for consideration and decision: S-DE-14-005, S-DE-14-008, S-DE-14-009, S-DE-14-010, S-DE-14-017, S-DE-14-021, S-DE-14-026, S-DE-14-028, S-DE-14-030, S-DE-14-031, S-DE-14-032, S-DE-14-034, S-DE-14-039, S-DE-14-040, S-DE-14-041, S-DE-14-042, S-DE-14-043, S-DE-14-044, and S-DE-14-045.

⁷ The Illinois Civil Service Commission is authorized to “hear appeals of employees who do not accept the allocation of their positions under the position classification plan.” 20 ILCS 415/10(5). SPSA is a classification created by the classification plan under the Personnel Code. 80 Ill. Adm. Code 310.50.

Because the Act's clear language permits designation of the position based solely on classification, which AFSCME does not dispute, and without regard to job duties, I find that the designations are proper.

III. CONCLUSIONS OF LAW

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

IV. RECOMMENDED ORDER

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

40070-25-07-000-10-01	Vacant	Assistant General Counsel
40070-25-07-310-00-01	Charlton, Terry	Senior Counsel

V. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300,⁸ parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than three days after service of this recommended decision and order. Exceptions shall be filed with the Board by electronic mail at an electronic mail address designated by the Board for such purpose, ILRB.Filing@illinois.gov, and served on all other parties via electronic mail at its e-mail address as indicated on the designation form. Any exception to a ruling, finding conclusion or recommendation that is not specifically urged shall be considered waived. A party not filing timely exceptions waives its right to object to this recommended decision and order.

Issued at Springfield, Illinois, this 25th day of October, 2013.

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



Sarah Kerley
Administrative Law Judge

⁸ Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf

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

State of Illinois, Department of Central)	
Management Services, (Department)	
of Revenue),)	
)	
Petitioner,	)	Case No. S-DE-14-104
)	
and)	
)	
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; 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);
- 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 rules to effectuate Section 6.1, which became effective on

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.

August 23, 2013, 37 Ill. Reg. 14,070 (Sept. 6, 2013). These rules are contained in Part 1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On October 1, 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 October 11, 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 seven positions within the Department of Revenue are at issue in this designation:

40070-25-20-340-00-01	IT Section Manager	EULER, GEORGETTA L.
40070-25-20-410-00-01	IT Section Manager	BLAKEMAN, JOSHUA
40070-25-20-430-00-01	IT Section Manager	ADKINS, JOHN
40070-25-20-440-00-01	IT Section Manager	VACANT
40070-25-20-450-00-01	IT Section Manager	VACANT
40070-25-20-460-00-01	IT Section Manager	GRIFFIN, ROBERT
40070-25-20-480-00-01	IT Section Manager	VACANT

CMS's petition indicates the positions at issue qualify for designation under Section 6.1(b)(2) of the Act which, in relevant part, permits designation on the basis of a position's Senior Public Service Administrator title.² AFSCME objects to designation of all positions on the grounds set forth below.

² CMS filed position descriptions (CMS-104s) for the positions in support of its assertion. These positions are currently represented by AFSCME.

I. AFSCME's Objections

First, AFSCME states that Section 6.1 of the Act is unconstitutional, on its face and as applied, both under the Illinois Constitution and the Constitution of the United States of America because it deprives AFSCME of due process and violates the separation of powers clause, the equal protection clause, and the prohibition against impairment of contracts.³

Next, AFSCME asserts that the designation is arbitrary because other State employees within the bargaining unit perform similar duties but have not been designated by CMS. AFSCME notes that some of those employees hold the same "classification" as the designated positions while others hold the Public Service Administrator title. Further, AFSCME argues that the designation is arbitrary because the parties previously stipulated that the positions were properly included in the unit. Finally, AFSCME states that the positions are not properly classified as SPSA positions because they are included in the bargaining unit and perform professional rather than managerial work. AFSCME concludes that the Board should either dismiss the petition or hold a hearing to determine whether there is a legal basis on which to exclude the designated positions from collective bargaining.

AFSCME does not deny that the positions in question hold the title Senior Public Service Administrator.

II. Discussion and Analysis

a. Constitutional Arguments

It is beyond the Board's capacity to rule that the Illinois Public Labor Relations Act, as amended by Public Act 97-1172, either on its face or as applied, violates provisions of the United States and Illinois constitutions. State of Ill., Dep't of Cent. Mgmt. Serv., Case No. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013) (citing Goodman v. Ward, 241 Ill. 2d 398, 411 (2011) ("Administrative agencies ... have no authority to declare statutes unconstitutional or even to question their validity. [citations omitted] When they do so, their actions are a nullity and cannot be upheld.")). Accordingly, these issues are not addressed in this decision.

³ Specifically, AFSCME explains that these positions are covered by a collective bargaining agreement into which CMS entered after the enactment of Section 6.1 of the Act. AFSCME asserts that CMS's designation of these positions violates provisions of the U.S. and Illinois Constitutions because it impairs the position holders' contractual rights.

b. Propriety of the Designation

CMS properly designated the positions at issue.

As noted above, Section 6.1(a) sets out three categories of positions from which designations may be made, defined in terms of their relation to collective bargaining. Section 6.1(b) further restricts the positions which might be designated to those fitting one or more of five categories defined on the basis of the positions' title, duties, or classification with respect to civil service or restrictions on political hiring. To be properly designated, the position must fit one or more of those categories.

Here, there is no dispute that the positions at issue fall into one of the three broad designable categories because the Board certified them into the bargaining unit after December 2, 2008. Similarly, these positions fall within one of the five categories which describe the positions' title, duties, or classification because they hold the title Senior Public Service Administrator.

AFSCME's objections are inapposite because they do not address the Board's sole inquiry in this particular case. Section 6.1(b)(2) provides in relevant part that for a position to be designable, "it must have a title of... Senior Public Service Administrator." Here, CMS specified that the designated positions hold the SPSA title and submitted position descriptions to that effect. Accordingly, the sole inquiry in this designation petition is whether CMS erroneously specified that these positions hold the SPSA title. State of Ill., Dep't of Cent. Mgmt. Serv., Case No. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013). Yet here, AFSCME instead argues that the Board should not permit the positions' designation, despite their SPSA title, because they hold the same classification and/or perform similar duties as other positions in the unit which CMS has not designated. Similarly, AFSCME argues that CMS should not have classified these positions as SPSAs because they are included in the bargaining unit and perform professional rather than managerial work. Likewise, AFSCME argues that CMS's designation is improper because it runs counter to the parties' stipulation to include these positions in the unit. These arguments must fail in light of the Act's clear language which, in this case, permits designation of the positions based solely on SPSA title and without regard to the classification and job duties of positions not at issue, the job duties of the designated positions, or agreements concerning representation made by the parties prior to the Act's amendment. Id. (finding job duties

irrelevant when designation is based on a clear-cut criterion such as title; holding that Board need not determine whether the SPSA title and the positions' job duties match; the parties' prior agreement to include designated positions in the unit, made before the Act's amendment, does not alter the Board's analysis).

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

III. Conclusions of Law

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

IV. Recommended Order

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

40070-25-20-340-00-01	IT Section Manager
40070-25-20-410-00-01	IT Section Manager
40070-25-20-430-00-01	IT Section Manager
40070-25-20-440-00-01	IT Section Manager
40070-25-20-450-00-01	IT Section Manager
40070-25-20-460-00-01	IT Section Manager
40070-25-20-480-00-01	IT Section Manager

V. Exceptions

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300,⁴ 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.

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

Issued at Chicago, Illinois this 18th day of October, 2013

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

/s/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**

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

State of Illinois, Department of Central Management Services, (Department of Insurance),)	
)	
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Petitioner)	
)	
and)	Case No. S-DE-14-105
)	
American Federation of State, County and Municipal Employees, Council 31,)	
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)	
Labor Organization-Objector)	
)	

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

I. BACKGROUND

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 (the 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, and, of those, only 1,900 positions which have already been certified to be in a collective bargaining unit may be designated.

Moreover, to properly qualify for designation, the employment position must meet one or more of five requirements identified in Sections 6.1(b) of the Act. Relevant to this case, Section 6.1(b)(2) of the Act provides that the employment position “must have a title of, or authorize a person who holds that position to exercise substantially similar duties as [a] ... Senior Public Service Administrator[.]” Section 6.1(d) creates a presumption that any such designation made by the Governor was properly made. It also requires that within 60 days after the designation,

the Board, in a manner consistent with due process, determine whether the designation comports with the requirements of Section 6.1. The Board promulgated rules to effectuate Section 6.1, which became effective on August 23, 2013, 37 Ill. Reg. 14,070 (Sept. 6, 2013). See 80 Ill. Admin. Code Part 1300.

On October 1, 2013, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation petition pursuant to Section 6.1 of the Act and Section 1300.50 of the Board's Rules. On October 11, 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 designation petition, the objections, and arguments submitted in support of those objections, I find that the designation contained in this petition has been properly submitted and is consistent with the requirements of Section 6.1 of the Act. Consequently, I recommend that the Executive Director certify the designation of the position at issue in this matter as set out below and, to the extent necessary, amend the applicable certification of the exclusive representative to eliminate the existing inclusion of this position within the collective bargaining unit.

There is one employment position at issue in this designation petition, classified as Senior Public Service Administrator (SPSA) at the Illinois Department of Insurance:

position number	employee name
40070-14-16-100-00-01	Escarraz, Paul

AFSCME objects to the designation of this employment position.

CMS's designation petition indicates that the position at issue has the title of SPSA, qualifies for designation under Section 6.1(b)(2) of the Act, and has been certified by the Board into the collective bargaining unit RC-63.

I. ISSUES AND CONTENTIONS

AFSCME objects to this designation because it argues that Section 6.1 of the Act is unconstitutional both on its face and as applied to this designation, that this designation is arbitrary and capricious because the Act should require that either all SPSAs are designated under Section 6.1 of the Act or that no SPSAs are designated under Section 6.1 of the Act, and that an oral hearing is required in order to comply with due process.

AFSCME argues that section 6.1 of the Act is unconstitutional on its face and as applied to this designation. AFSCME first argues that Section 6.1 of the Act is unconstitutional on its face because it violates the Equal Protection clauses contained in the Illinois and the United States Constitutions. AFSCME also argues that Section 6.1 of the Act is unconstitutional on its face because in allowing the governor to make these designations the legislature has delegated its legislative power to the governor, and this violates the constitutional separation of powers between the executive branch and the legislative branch. AFSCME argues that Section 6.1 of the Act is unconstitutional as applied to this designation because Escarraz benefits from the collective bargaining agreement between AFSCME and CMS and this petition to exclude his employment position from collective bargaining impairs his contractual rights, which the Illinois Constitution prohibits.

AFSCME argues that the designation of this position is arbitrary because there is no rational basis for treating this SPSA position differently than the many other positions which hold the same title and/or have similar duties.

Finally, AFSCME argues that due process requires that the Board hold an oral hearing to address whether the employment position is properly classified as SPSA based on the position's job duties, address the legal basis for this designation, and address the effect of this designation.

II. DISCUSSION AND ANALYSIS

AFSCME's objections, that the Act's Section 6.1 of the Act is unconstitutional, that the designation of this position based on its SPSA status is arbitrary, and that due process requires an oral hearing, do not overcome the presumption that this designation is proper.

a. constitutionality

Section 6.1(d) of the Act gives the Board authority to determine whether the designation of the employment position at issue comports with Section 6.1 of the Act. As an administrative agency, the Board has no authority to declare statutes unconstitutional or even to question their validity. See Goodman v. Ward, 241 Ill. 2d 398, 411 (2011); see also Metropolitan Alliance of Police, Coal City Police Chapter No. 186, No. 6 v. Ill. State Labor Rel. Bd., 299 Ill. App. 3d 377, 379 (3rd Dist. 1998); Ill. Dep't Cent Mgmt Serv. and Am Fed'n of State, Cnty. & Mun. Employees, Council 31, Case Nos. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013).

Section 6.1 of the Act identifies one of the three broad categories of positions which may be designated as exempt from the collective bargaining provisions of Section 6 of the Act as “positions which were first certified to be in a bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008.” AFSCME’s objection that this designation is in violation of the Illinois Constitutional provision that prohibits the impairment to contract is an as applied constitutional objection to the above quoted provision of the Act’s Section 6.1. Analysis of the Act’s constitutionality whether on its face, or as applied to this designation, is beyond my limited authority as an administrative law judge for the Board. Thus, AFSCME’s objections that Section 6.1 of the Act is unconstitutional on its face because it violates equal protection and the separation of powers, and is unconstitutional as applied because it violates the employee’s right to benefit from the collective bargaining agreement between AFSCME and CMS, are not relevant to my determination of whether the designation of the position at issue comports with Section 6.1 of the Act.

b. arbitrariness

In order to qualify for designation as exempt from the self-organization and collective bargaining provisions of Section 6 of the Act under Section 6.1(b)(2), the employment position “must have a title of, *or* authorize a person who holds that position to exercise substantially similar duties as [a] ... Senior Public Service Administrator” (emphasis added). When interpreting a statute the language must be given its plain and ordinary meaning. Cnty. of DuPage v. Ill. Labor Rel. Bd., 231 Ill. 2d 593, 603–04 (2008). The position at issue holds the SPSA title. A plain and ordinary reading of section 6.1(b)(2) of the Act indicates that this position is properly included in the designation, and the only relevant inquiry would involve whether the position is misidentified as having the SPSA title.

AFSCME argues that either all SPSAs should be designated or no SPSAs should be designated under Section 6.1 of the Act. Essentially AFSCME is arguing that the designations are arbitrary because they are fragmenting positions with similar duties and/or titles. The Board considers fragmentation as a factor in determining the appropriateness of a bargaining unit in representation cases. See 5 ILCS 315/9(2)(b) (2012). This is a gubernatorial designation case where the governor has the discretion to designate positions as exempt from the collective bargaining provisions of the Act as long as they comport with Section 6.1 of the Act, and Section 6.1 is silent on the issue of fragmentation. See 5 ILCS 315/6.1 (2012). An administrative

agency's decision is arbitrary and capricious when it does not comport with the relevant enabling statute. Bigelow Group, Inc. v. Rickert, 377 Ill. App. 3d 165, 175 (2nd Dist. 2007). It is not arbitrary for the Board to permit designation of this position based on the position holding the SPSA title because the Board is adhering to the plain language of the statute. Therefore, whether the Governor designates every SPSA or zero SPSAs under Section 6.1 is not relevant to whether this designation comports to the requirements set out in that Section, because fragmentation is not at issue in Section 6.1 of the Act.

c. oral hearing

The Board is not required to hold an oral hearing in order to provide AFSCME with due process. As an administrative agency, the Board was created to carry out the Act's purpose, and the Board is bound by the provisions of the Act. See 5 ILCS 315/5. The Act states that the Board's procedures for determining whether this designation is proper must be consistent with due process. 5 ILCS 315/6.1. Notice and an opportunity to be heard are necessary principles of procedural due process. East St. Louis Fed'n of Teachers, Local 1220 v. East St Louis School Dist. No. 189 Fin. Oversight Panel, 178 Ill. 2d 399, 419-20 (1997); Segal v. Dep't. of Ins., 404 Ill. App. 3d 998, 1002 (1st Dist. 2010) citing People ex rel. Ill. Commerce Comm'n v. Operator Comm'n, Inc., 281 Ill. App. 3d 297, 302 (1st Dist. 1996). In the administrative context parties can be heard through their "written arguments and documentary evidence." Dep't. of Cent. Mgmt. Serv./Ill. Commerce Comm'n v. Ill. Labor Rel. Bd., 406 Ill. App. 3d 766, 768 (4th Dist. 2010) citing Lawless v. Cent. Prod. Credit Ass'n., 228 Ill. App. 3d 500, 515 (4th Dist. 1992).

The Board's rules provide that the incumbent employee and the collective bargaining unit representative may each file objections to the designation of the employment position. 80 Ill. Admin. Code Section 1300.60(a)(3). Any objector is required to set forth its "position with respect to the matters asserted in the designation[,] ... specifically state the basis for such objection," and "include [any] supporting documentation." Id. The Board's rules state that if objections are filed, the designation and the objections will be assigned to an administrative law judge (ALJ) for review. 80 Ill. Admin. Code Section 1300.60(d)(2). Based upon a review of these documents, the ALJ will order an oral hearing only 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.”¹ 80 Ill. Admin. Code Section 1300.60(d)(2)(B). Conversely, if the ALJ finds that the objections submitted “fail to overcome the presumption that the designation is proper” the ALJ may make a factual finding that the designation is proper based solely on the information submitted, and will issue a recommended decision and order to the Board that the designation be certified. 80 Ill. Admin. Code Section 1300.60(d)(2). In other words, an oral hearing is only necessary if the objections provide specific evidence that the employment position at issue does not qualify for designation under the statutory category which is identified in the designation petition filed by the Governor.

Here, the designation petition provides that the employment position at issue qualifies for designation under statutory category 6.1(b)(2) of the Act, which, in relevant part states that the employment position “must have a title of, *or* authorize a person who holds that position to exercise substantially similar duties as a[] ... Senior Public Service Administrator” (emphasis added). The designation petition identifies the employment position at issue as holding the title of SPSA. As stated above, a plain and ordinary reading of section 6.1(b)(2) of the Act indicates that since this position holds the SPSA title it is properly designated. Due process requires that AFSCME is given the opportunity to provide argument and evidence to support its position, but does not necessarily require an oral hearing. Due process was satisfied when AFSCME was provided with the opportunity to be heard by filing objections to the designation. In this case, despite AFSCME’s argument to the contrary, the only evidence that might raise a sufficient issue to require an oral hearing would be evidence that the employment position at issue is misidentified as having the SPSA title. Since, AFSCME has not provided evidence, or even suggested that the employment position at issue does not in fact hold the SPSA title, it has failed to raise an issue that might overcome the presumption that this designation is proper. Thus, I find that an oral hearing is unnecessary.

III. CONCLUSION

Pursuant to Section 1300.60 of the Board’s Rules, I find that the designation is proper based solely on the information submitted to the Board because AFSCME’s objections fail to overcome the presumption that the designation is proper under Section 6.1 of the Act.

¹ Section 6.1(d) of the Act provides that any “designation made by the Governor under this Section shall be presumed to have been properly made.” This places the burden to overcome the presumption on the objecting party.

IV. RECOMMENDED ORDER

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

position number
40070-14-16-100-00-01

V. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300,² parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order in briefs in support of those exceptions no later than 3 days after service of this recommended decision and order. Exceptions shall be filed with the Board by electronic mail at an electronic mail address designated by the Board for such purpose, ILRB.Filing@illinois.gov, and served on all other parties via electronic mail at their e-mail addresses as indicated on the designation form. Any exception to a ruling, finding conclusion or recommendation that is not specifically urged shall be considered waived. A party not filing timely exceptions waives its right to object to this recommended decision and order.

Issued at Chicago, Illinois this 16th day of October, 2013.

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

/s/ Deena Sanceda

Deena Sanceda
Administrative Law Judge

² Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf

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

State of Illinois, Department of Central Management Services,)	
)	
Petitioner)	
)	
and	)	Case No. S-DE-14-106
)	
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 rules to effectuate Section 6.1, which became effective on

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.

August 23, 2013, 37 Ill. Reg. 14,070 (Sept. 6, 2013). These rules are contained in Part 1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On October 1, 2013, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation petition pursuant to Section 6.1 of the Act and Section 1300.50 of the Board's Rules. CMS' petition designates the exclusion of the following Senior Public Service Administrator in the Department of Central Management Services based on Section 6.1(b)(2) of the Act:

**Senior Public Service Administrator, Option 3
Employed at Department of Human Services
Position No. 40070-10-230-00-01
Incumbent: Roger Williams**

In support of its petition, CMS submitted a job description (CMS-104) for the position and a summary spreadsheet. The spreadsheet identifies, in pertinent part, position number, title, name of incumbent, bargaining unit, certification's date and case number and statutory category of designation. This position was certified into the RC-63 bargaining unit pursuant to the actions of the Board in Case. No. S-RC-10-220 on February 04, 2013.

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, here are my findings:

I. OBJECTIONS

On October 11, 2013, AFSCME filed objections to the designation pursuant to Section 1300.60(a)(3) of the Board's Rules.

AFSCME argues that the position is a professional position and is included in the bargaining unit and therefore is not properly classified as an SPSA. AFSCME maintains that the position description describes the technical duties of the position and based on those duties, on its face, the SPSA classification is not appropriate. AFSCME further contends that the designation of the position violates due process and is arbitrary and capricious as Section 6.1 of the Act violates equal protection under Article I, Section 2 of the Illinois Constitution and the Fifth and Fourteenth Amendments to the United States Constitution.

II. DISCUSSION AND ANALYSIS

The designation comports with the requirements of Section 6.1(d) and AFSCME's objections do not overcome the presumption that the designation was made properly. Section 6.1 makes a position properly designated if it: (1) has been first certified to be in a bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008, and (2) has the title of SPSA. 5 ILCS 315/6.1 (2012). The Act presumes that any designation made by the Governor under Section 6.1 is properly made.

As to AFSCME's constitutional objections, the Board has held that it is beyond its capacity to "rule that the Illinois Public Labor Relations Act, as amended by Public Act 97-1172, either on its face or as applied violates provisions of the United States and Illinois constitutions." State of Illinois, Department of Central Management Services, _ PERI _ Cons. Case Nos. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013) (citing Goodman v. Ward, 241 Ill. 2d 398, 411 (2011)).

The Board has also expressed its concern with AFSCME's due process arguments but maintained that it has taken necessary measures to prevent a violation of such. Therefore, consistent with the Fourth District, the Board held that it "insured that the individual employees as well as their representative and potential representative receive notice soon after designation petitions are filed, usually without hours, and have provided for redundant notice by means of posting at the worksite....we provided them an opportunity to file objections, and where they raise issues of fact or law that might overcome the statutory presumption of appropriateness, an opportunity for a hearing, [and]...require a written recommended decision by an administrative law judge in each case in which objections have been filed. Arvia v. Madigan, 209 Ill. 2d 520 (2004), and Gruwell v. Ill. Dep't of Financial and Professional Regulations, 406 Ill. App. 3d 283, 296-98 (4th Dist. 2010). Additionally, the Board found that it has "allowed an opportunity to appeal those recommendations for consideration of the full Board by means of filing exceptions,...doubled the frequency of our scheduled public meetings in order to provide adequate review of any exceptions in advance of the 60-day deadline and... issu[e] written final agency decisions which may be judicially reviewed pursuant to the Administrative Review Law", in an effort to adhere to due process. State of Illinois, Department of Central Management Services, _ PERI _ Cons. Case Nos. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013).

Moreover, in administrative hearings, failing to go to an oral hearing is not necessarily the denial of a hearing where written documents could suffice as a hearing. Department of Central Management Services (Illinois Commerce Commission) v. Illinois Labor Relations Board, State Panel, 406 Ill. App. 3d 766, 769-70 (4th Dist. 2010). Therefore, AFSCME's due process rights have not been violated by the Board following the policies and procedures mandated by the legislature and there is no issue of law or fact warranting a hearing.

AFSCME also objects on the basis that the Board should not allow the designation of this particular position when the Governor failed to petition the designation of all positions of the same classification that perform the same or similar duties. Additionally, AFSCME makes note of the fact that the job duties have not changed since this position has been certified, arguing that a hearing is necessary in deciding whether the designation is proper. The Act's language is plain and unambiguous. Section 6.1(b)(2) provides, in relevant part, that to designate a position, "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." The Board has held that job duties are irrelevant when designations are based on clear cut criterion such as title. State of Illinois, Department of Central Management Services, _ PERI _ Cons. Case Nos. S-DE-14-005 etc. There is also no requirement related to designating the same or positions similarly situated. For this designation to be proper, this position only needs to be classified as an SPSA and have been certified by the Board on or after December 2, 2008.

Lastly, AFSCME maintains that the position is inappropriately classified as an SPSA as the job duties listed do not conform to those of an SPSA, and the Board should hold a hearing to determine if the position is properly classified. The Act is clear that the title alone makes a designation proper. The Board held that whether the position's duties described or performed show the position is authorized to perform substantially the same duties as an SPSA is unnecessary where they have the actual title. State of Illinois, Department of Central Management Services, _ PERI _ Cons. Case Nos. S-DE-14-005 etc. AFSCME has not provided sufficient evidence to warrant a hearing on this issue where it merely states that the specifications of this position "eliminate professional positions and require that the positions include duties which are more than professional," as its only evidence of its SPSA misclassification argument.

III. CONCLUSIONS OF LAW

The designations in this case are properly made.

IV. RECOMMENDED ORDER

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

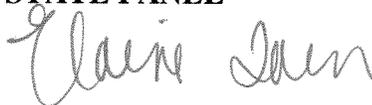
**Senior Public Service Administrator, Option 3
Employed at Department of Human Services
Position No. 40070-10-230-00-01
Incumbent: Roger Williams**

V. EXCEPTIONS

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300, 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 and Regulations. Exceptions must be filed by electronic mail sent 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.

Issued at Chicago, Illinois this 17th day of October, 2013

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



Elaine L. Tarver, Administrative Law Judge

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

State of Illinois, Department of Central)	
Management Services, (Illinois State Police),)	
)	
Petitioner)	
	)	Case No. S-DE-14-110
and)	
)	
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 may be positions which have already been certified to be in a collective bargaining unit.

Moreover, to be properly designated, the position must fall into 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, an Agency General Counsel, Agency Chief of Staff, Agency Executive Director, Agency Deputy Director, Agency Fiscal Officer, Agency Human Resources Director, Senior Public Service Administrator, Public Information Officer, or Chief Information Officer;

- 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 either:
 - (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, 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 rules to effectuate Section 6.1, which became effective on August 23, 2013. 37 Ill. Reg. 14,070 (September 6, 2013). These rules are contained in Part 1300 of the Board’s Rules and Regulations (Rules), 80 Ill. Admin. Code Part 1300.

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.

On October 3, 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 October 10, 2013, the Board's General Counsel granted a motion filed by the American Federation of State, County and Municipal Employees, Council 31, (AFSCME) seeking an extension of time in which to file objections in this matter. The time to file objections was extended up to and including October 18, 2013. On October 18, 2013, AFSCME filed timely objections.

Based on my review of the designation, the documents submitted as part of the designation, the objections, and the arguments submitted in support of those objections, I have determined that AFSCME has failed to raise an issue that would require a hearing. Therefore, I find the designation to have been properly submitted and consistent with the requirements of Section 6.1 of the Act and 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.

I. ISSUES AND CONTENTIONS

The instant petition designates two positions at the Illinois State Police for exclusion from the self-organization and collective bargaining provisions of Section 6 of the Act. CMS states that these positions qualify for designation under Section 6.1(b)(2) because each is classified as a Senior Public Service Administrator (SPSA). CMS also states that these positions are currently represented for the purposes of collective bargaining. In support of its contentions, CMS has provided a spreadsheet containing information on the classification, position number, working title, and bargaining unit certification of the designated positions. Additionally, CMS has filed CMS-104 documents containing the position description for the designated positions.

AFSCME has objected to the instant designation on the grounds that the designated positions are not properly classified as SPSAs. Additionally, AFSCME has filed broad objections to P.A. 97-1172 and the Gubernatorial designation process. First, AFSCME argues that there is no rational basis for excluding the designated positions from the self-organization and collective bargaining provisions of Section 6 because these positions have previously been certified into a bargaining unit by the Board and positions in the same classification with similar working titles and duties remain in various collective bargaining units. Second, AFSCME

alleges that P.A. 97-1172 is unconstitutional as an unlawful delegation of legislative power under the Illinois Constitution, as a violation of the equal protection guarantees found in Article I, Section 2 of the Illinois Constitution and in the 5th and 14th Amendments of the United States Constitution, and, because the designated positions are currently covered by a collective bargaining agreement to which the State is a party, under Article I, Section 16 of the Illinois Constitution and Article I, Section 10 of the United States Constitution. Finally, AFSCME states that the Board must hold a hearing to determine whether there is a legal basis for the instant designations in order to comport with the requirements of due process.

II. FINDINGS OF FACT

Both of the positions designated by CMS are employees of the Illinois State Police classified as SPSA Option 3s by the employer. Both positions were vacant at the time the instant designation was filed. These positions are in the RC-63 bargaining unit represented by AFSCME, as certified by the Board on February 4, 2013, in Case. No. S-RC-10-220.

III. DISCUSSION AND ANALYSIS

As stated above, a position is properly designable, among other circumstances, if: (1) it was first certified to be in a bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008; and (2) it has the title of SPSA. 5 ILCS 315/6.1 (2012). Additionally, it is presumed that any designation made by the Governor under Section 6.1 of the Act is properly made. 5 ILCS 315/6.1(d) (2012). Rule 1300.60(d)(2)(A) permits an Administrative Law Judge (ALJ) to find that a designation is proper based solely on the information submitted to the Board in cases in which no objections sufficient to overcome this presumption are filed. 80 Ill. Admin. Code 1300.60(d)(2)(A). CMS's initial filing clearly indicates, and AFSCME concedes, that the designated positions were first certified in a collective bargaining unit on or after December 2, 2008. Furthermore, AFSCME has failed to allege that the designated positions are not actually classified as SPSAs. Therefore, I find that both positions are properly designable under Section 6.1 of the Act.

ALLEGATIONS THAT THE POSITIONS ARE MISCLASSIFIED

AFSCME argues that the positions at issue are misclassified as SPSAs. In support of this argument, AFSCME states that the professional status of these positions and their inclusion in a bargaining unit demonstrate that the designated positions are not properly classified as SPSAs because the class specification for SPSAs specifically excludes both professional positions and

positions subject to the provisions of a collective bargaining agreement. Thus, these positions cannot properly be classified as SPSAs, despite their actual classification.

This argument is insufficient as a matter of law. The plain language of the Act provides that a position is designable if it has the title *or* duties of an SPSA. This indicates the legislature's clear intent that the employer's classification of a position as one of the enumerated titles would be sufficient to render that position properly designable. Furthermore, Section 6.1 says nothing about whether a position must be properly classified as an SPSA in order to be designable. State of Illinois, Department of Central Management Services, ILRB Nos. S-DE-14-005 etc. (IL LRB-SP October 7, 2013).² Thus, the sole inquiry is whether CMS has classified the positions as SPSAs. Because CMS has clearly done so, AFSCME's argument that this classification is inaccurate is not sufficient to demonstrate that the instant designation is improper.

AFSCME'S GENERAL OBJECTIONS

AFSCME argues that there is no rational basis for treating designated positions differently from the non-designated positions in the same classification with similar working titles and duties. These allegations speak to the constitutionality of P.A. 97-1172. AFSCME also argues that P.A. 97-1172 violates the separation of powers provisions of the Illinois Constitution, the guarantee of equal protection under the Illinois and United States Constitutions, and the impairment of contract prohibitions of both the Illinois and United States Constitutions. However, it is beyond the Board's capacity to rule that the Illinois Public Labor Relations Act, as amended by Public Act 97-1172, either on its face or as applied violates provisions of the United States and Illinois constitutions. Goodman v. Ward, 241 Ill. 2d 398, 411 (2011) ("Administrative agencies ... have no authority to declare statutes unconstitutional or even to question their validity. [citations omitted] When they do so, their actions are a nullity and cannot be upheld.").

Finally, AFSCME argues that due process requires the Board to hold a hearing to determine whether the designated positions are properly classified as SPSAs. As discussed above, however, any potential misclassification is not relevant to the Board's inquiry in this matter. Furthermore, due process does not require the Board to hold an oral hearing in this matter. Adequate notice of a proposed governmental action and a meaningful opportunity to be

² Available at <http://www.state.il.us/ilrb/subsections/pdfs/BoardDecisions/S-DE-14-005.pdf>.

heard are the fundamental prerequisites of due process. Peacock v. Bd. of Tr. of the Police Pension Fund, 395 Ill. App. 3d 644, 654 (1st Dist. 2009) (citing Goldberg v. Kelly, 397 U.S. 254, 267-68 (1970)). To provide a party with the meaningful opportunity to be heard, the Board must provide a party affected by its proceedings with a meaningful procedure to assert his or her claim prior to the deprivation or impairment of a right. Peacock, 395 Ill. App. 3d at 654 (citing Matthews v. Eldridge, 424 U.S. 319, 332 (1976) and Wendl v. Moline Police Pension Bd., 96 Ill. App. 3d 482, 486 (3rd Dist. 1981)). In support of its contention that the positions are designable, CMS has provided documentation indicating that the designated positions meet the requirements for designability under Section 6.1(b)(2). AFSCME has been given an opportunity to assert its opposition to the designation in its objections, and I have determined that AFSCME has not alleged any facts that, if proven, would be sufficient to support judgment in its favor. Due process does not require that the Board nonetheless provide an oral hearing at which AFSCME may adduce evidence and testimony to support objections that I have deemed to be insufficient.

IV. CONCLUSION 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 positions are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

40070-21-42-300-00-01	Assistant Bureau Chief
40070-21-17-000-00-01	Program Administration Bureau Chief

VI. EXCEPTIONS

Pursuant to Section 1300.90 and Section 1300.130 of the Board’s Rules and Regulations, 80 Ill. Admin. Code Part 1300, 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 24th day of October, 2013

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

A handwritten signature in black ink that reads "Heather R. Sidwell". The signature is written in a cursive style and is positioned above a horizontal line.

**Heather R. Sidwell
Administrative Law Judge**