STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services (Illinois Lottery)	)	
Petitioner	)	
and	)	Case Nos. S-DE-14-153 S-DE-14-154
American Federation of State, County and Municipal Employees, Council 31,	)	
Labor Organization-Objector	)	

ORDER

On February 19, 2014, Administrative Law Judge Heather Sidwell, on behalf of the Illinois Labor Relations Board, State Panel, issued a Recommended Decision and Order in the above-captioned cases. No party filed exceptions to the Administrative Law Judge's Recommended Decision and Order during the time allotted, and at its February 28, 2014 public meeting, the Board denied the Labor Organization-Objector's motion for a variance pursuant to Section 1300.150 of the Board's Rules and Regulations, 80 Ill. Admin. Code §1300.150, and also declined to take the matter up on its own motion.

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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Springfield, Illinois, this 5th day of March 2014.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Jerald S. Post

Jerald S. Post
General Counsel

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services, (Illinois Lottery),	)	
Petitioner	)	
and	)	Case Nos. S-DE-14-153 and S-DE-14-154
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 (Act). Three broad categories of positions may be so designated: (1) positions that were first certified to be in a bargaining unit by the Illinois Labor Relations Board (Board) on or after December 2, 2008; (2) positions that 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 that have never been certified to have been in a collective bargaining unit. Only 3,580 such positions may be so designated by the Governor, and of those, only 1,900 may be positions that have already been certified to be in a collective bargaining unit.

Moreover, to be properly designated, a 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 January 10, 2014, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designations pursuant to Section 6.1 of the Act and Section 1300.50 of the Board's Rules. On January 21, 2014, the American Federation of State, County and Municipal Employees (AFSCME) filed timely objections to each designation.

Based on my review of the designations, the documents submitted therewith, AFSCME's objections, and the documents and 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 designations 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 petitions designate eight positions at the Illinois Lottery (Lottery) 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)(5). CMS also states that these positions are currently represented by AFSCME for the purposes of collective bargaining. In support of its contentions, CMS has filed CMS-104s containing the position description for the designated positions and affidavits from the Lottery's Deputy Director and Chief Financial Officer stating, among other things, that the CMS-104s fairly and accurately represent the duties that employees in the designated positions are authorized to perform.

AFSCME objects to these designations on the grounds that CMS has failed to demonstrate that the positions at issue have significant and independent discretionary authority as that term is used in Section 6.1(b)(5) and defined in Section 6.1(c). AFSCME raises several arguments in support of its contention that the positions at issue are not those of supervisors or managers under the relevant definitions. AFSCME also states—through questionnaires filled out by Marc Hoffman and Tiffany Blair, employees that hold two of the designated positions—that the CMS-104s for the positions held by Hoffman and Blair are inaccurate. AFSCME next argues that the designations violate due process and are arbitrary and capricious. Finally, AFSCME alleges that P.A. 97-1172 is unconstitutional under several provisions of the Illinois and United States Constitutions.

II. FINDINGS OF FACT

The positions designated by CMS are all Public Service Administrators (PSAs) employed by the Lottery. They are: six PSA Option 1 positions with the working title of Regional Manager, four of which are currently vacant and the other two of which are held by Marc Hoffman and Arturo Diaz; one PSA Option 1 position in the working title of Budgets and Accounts Payable Officer, currently held by Tiffany Blair; and one PSA Option 2 position in the working title of Budget and Accounts Payable Officer, which is currently vacant. The PSA Option 1 positions were first certified to be in a collective bargaining unit on January 20, 2010, Case No. S-RC-08-036. The PSA Option 2 position was first certified to be in a collective bargaining unit on November 18, 2009, Case No. S-RC-07-048.

III. POSITION DESCRIPTIONS

Victor Golden, Deputy Director of the Lottery, states by affidavit that he is familiar with the responsibilities of the designated Regional Manager positions and that the CMS-104s submitted for those positions accurately describe the responsibilities that employees in those positions are authorized to perform. These CMS-104s describe the following relevant responsibilities of the Regional Manager position:

1) Directs and manages the Lottery operations and staff activities within a designated region of the state; organizes, plans, and coordinates the marketing and sales programs; devises, develops, and recommends promotional programs to achieve sales goals and objectives; and
2) Travels to sales outlets with field staff to study and assess operations; enforces Lottery rules, regulations, and policies; assists and advises staff on unusual or controversial sales and accountability problems; resolves reconciliation differences between licensed agents and Lottery Central; monitors ticket reconciliation, accounts receivable, and collection procedures to verify they are finalized in a timely manner.

Additionally, the CMS-104s for the Regional Managers in Regions 2, 3, 4, 5, and 6 provides that employees in those positions are authorized to:

1) Serve as working supervisor; assign and review work; provide guidance and training to assigned staff; counsel staff regarding work performance; reassign staff to meet day-to-day operating needs; establish annual goals and objectives; approve time off; prepare and sign performance evaluations;

2) Meet with corporate representatives to introduce new games, review policies and procedures, resolve problems, and assist in developing and initiating special promotions; and
3) Assist Sales Manager; provide input regarding the application of agency policies to field personnel and to Lottery retailers; provide comments on changes to administrative rules that impact field operations; develop administrative responsibility by developing procedures for day-to-day operations in the Regional Offices; monitor field staff performance and appropriate handling of instant ticket inventory and returned tickets from retailers to ensure audit trail.

The CMS-104 for the Regional Manager in Region 1 diverges from the position descriptions for the other Regional Managers in that it instead provides that an employee in the position of Regional Manager for Region 1 is authorized to:

1) Supervise staff; assign work; approve time off; provide guidance and training; give oral reprimands; effectively recommend grievance resolutions; complete and sign performance evaluations; establish annual goals and objectives; counsel staff on problems with productivity, quality of work, and conduct; determine staffing needs to achieve program objective; and
2) Assist Sales Manager; recommend administrative operation and the extension of agency policies; develop administrative responsibility and internal control; assist in formulating statewide policy.

It appears that, unlike the CMS-104s for the other Regional Manager positions, the CMS-104 for the position of Regional Manager in Region 1 has not been updated since the position's inclusion in a collective bargaining unit.

Each Regional Manager position has between four and five funded subordinates.

Golden also states by affidavit that he is familiar with the responsibilities of the position of Budget and Accounts Payable Officer position held by Tiffany Blair and that the CMS-104s submitted for this position accurately describes the responsibilities Blair is authorized to perform. The CMS-104 describes the following relevant responsibilities of the Budget and Accounts Payable Officer:

1) Develops internal records to provide detail and justification for the agency budget and expenditure forecasting; performs short and long term planning to ensure timely

adjustments to appropriation levels to meet funding levels; monitors active headcount to budget and reports monthly to the Governor's Office of Management and Budget (GOMB);

2) Ensures appropriate funding source is utilized for contract obligations and monitors expenditures against the obligation amount; supervises, plans, directs, and coordinates through subordinate supervisors the cash control and accounts payable activities of the Department including payment of prizes; monitors prize payments against appropriations throughout the year and advises CFO if prize claim activity indicates a supplemental appropriation will be required;
3) Coordinates expenditure planning activities for the Department; serves as liaison to GOMB; prepares expenditure information as required by GOMB, as well as House and Senate reports; compares actual expenditures to budgeted expenditures; monitors all Department expenditures, projects lapse and/or deficit of funds; with management approval, transfers funds as required to ensure adequate funding for planned expenditures;
4) Serves as working supervisor; assigns and reviews work; provides guidance and training to assigned staff; counsels staff regarding work performance; reassigns staff to meet day-to-day operating needs; establishes annual goals and objectives; approves time off; prepares and signs performance evaluations; confers with and advises subordinates as to interpretation and application of State Lottery Law, rules and regulations, policies, and procedures;
5) Assists in developing accounting methods, systems, and/or procedures as required by the introduction of new Lottery games and prize structures; assists in development of new or revised procedures or processing methods necessitated by statutes or system changes; assists in assembling supportive documentation for Lottery contracts;
6) Assists CFO in maintaining updated operational procedures; and
7) Completes preliminary review of all Lottery contracts to ensure availability of funds and compliance with the Comptroller's Statewide Accounting Management System.

The CMS-104 for this position and the organizational chart submitted by CMS list no funded subordinates for this position. Nonetheless, Blair stated by questionnaire that she has one direct and 18 indirect subordinates.

Finally, Brett Finley, Acting Chief Financial Officer of the Lottery, states by affidavit that he is familiar with the responsibilities of the designated PSA Option 2 position with the working title of Budget and Accounts Payable Officer and that the CMS-104 submitted for this position accurately describes the responsibilities an employee in that position is authorized to perform. The responsibilities listed on this CMS-104 are the same as those listed on the CMS-104 for Blair's position. However, the CMS-104 for this position lists seven funded subordinates.

IV. DISCUSSION AND ANALYSIS

As stated above, a position is properly designable, among other circumstances, if: (1) it was first certified to be in a collective bargaining unit on or after December 2, 2008; and (2) it authorizes an employee in that position to have significant and independent discretionary authority as an employee. 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). Furthermore, the Board has held that the submission of position descriptions that are consistent with a designation, combined with the presumption under Section 6.1(d) and the absence of any evidence that the designation is inappropriate, leads to the conclusion that the designation comports with Section 6.1. State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity), 30 PERI ¶ 86 (IL LRB-SP 2013).

A. CMS's submission is consistent with the designations.

CMS's initial filing clearly indicates, and AFSCME does not contest, that the designated positions were first certified in a bargaining unit on or after December 2, 2008. The first statutory requirement is thus satisfied. As to the second statutory requirement, the submission is consistent with the designation because the CMS-104s tends to show that employees in the designated positions are authorized to exercise significant and independent discretionary authority as that term is defined in Section 6.1(c)(i).[2]

[2] Because I find that an employees in the positions at issue are authorized to exercise significant and independent discretionary authority as that term is defined in Section 6.1(c)(i), and that finding alone is sufficient to support a conclusion that the designations are proper, I will not address the assertion that employees in the designated

An employee is authorized to have significant and independent discretionary authority as that term is defined in Section 6.1(c)(i) if he or she is authorized to: (1) engage in executive and management functions of a State agency and be charged with the effectuation of management policies and practices of a State agency; or (2) represent management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency.

At the outset, I note that several points raised in AFSCME's general objections are inconsistent with the plain language of Section 6.1 and Board precedent regarding the same. AFSCME broadly objects that the positions at issue are not managers within the definition used by the National Labor Relations Board (NLRB). However, the Board has specifically rejected AFSCME's contention that it should look first to NLRB precedent in interpreting Section 6.1(c)(i). State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity), 30 PERI ¶ 86 (IL LRB-SP 2013) ("To the extent precedent is relevant to interpretation of Section 6.1(c)(i), we look first to precedent established by Illinois courts, this Board, and where relevant the Illinois Educational Labor Relations Board, then to federal precedent interpreting similarly worded provisions of the NLRA."). The Board has likewise rejected AFSCME's allegation, based on its erroneous application of NLRB precedent, that CMS should have the burden of demonstrating that a designation meets the statutory standards enumerated in Section 6.1. Id. Finally, the Board rejected AFSCME's contention that Section 6.1(c)(i) requires the Board to distinguish between merely professional employees and employees with managerial authority. Id. ("Where a position meets one of the two alternative tests set out in Section 3(c)(i), it may appropriately be designated by the Governor for exclusion from collective bargaining rights regardless of whether it is also a professional position…"). With these principles in mind, CMS's submission is consistent with its assertion that employees in the positions at issue are authorized to have significant and independent discretionary authority because each is authorized to engage in executive and management functions of the Lottery and be charged with the effectuation of management policies and practices of the Lottery.

---

positions are also authorized to exercise significant and independent discretionary authority as that term is defined in Section 6.1(c)(ii).

To the extent that the legislature employed phrases in Section 6.1(c)(i) that it had previously used when enacting Section 3(j), Board precedent interpreting Section 3(j) is instructive in determining whether an employee is authorized to have significant and independent discretionary authority as defined in Section 6.1(c)(i). Id. The phrase "engaged in executive and management functions" is an example of language used in both Sections.[3] The Board has held that "executive and management functions" amount to the running of an agency, such as establishing policies and procedures, preparing a budget, or otherwise assuring that an agency or department runs effectively. Department of Central Management Services/Illinois Commerce Commission (ICC) v. Illinois Labor Relations Board, 406 Ill. App. 3d 766, 774 (4th Dist. 2010) (citing, American Federation of State, County and Municipal Employees, Council 31, 25 PERI ¶ 68 (IL LRB-SP 2009); City of Freeport, 2 PERI ¶ 2052 (IL SLRB 1986)). Other executive and management functions include using independent discretion to make policy decisions as opposed to following established policy, changing the focus of an employer's organization, being responsible for day to day operations, negotiating on behalf of an employer with its employees or the public, and exercising authority to pledge an employer's credit. Circuit Clerk of Champaign County, 17 PERI ¶ 2032 (ILRB SP 2001); City of Chicago (Chicago Public Library), 10 PERI ¶ 3016 (IL LLRB 1994); State of Illinois (Department of Central Management Services), 8 PERI ¶ 2052 (IL SLRB 1992).

The requirement that an employee be charged with the effectuation of management policies and practices diverges from similar language used in Section 3(j) in that Section 3(j) requires that an employee *direct*, rather than merely be charged with, the effectuation of management policies and practices. An employee directs the effectuation of management policies and practices if he or she oversees or coordinates policy implementation through development of means and methods of achieving policy objectives, determines the extent to which policy objectives will be achieved, and is empowered with a substantial amount of discretion to determine how policies will be effected. ICC at 775. However, for a position to be designable under Section 6.1(b), an employee in that position need only be charged with carrying out agency policy.

[3] Though, as the Board has noted, Section 3(j) requires an employee to be engaged *predominantly* in executive and management functions; Section 6.1(c)(i) contains no predominance requirement. Id.

CMS's submission is consistent with its assertion that employees in the position of Regional Manager are authorized to be engaged in executive and management functions because the CMS-104s for these positions provide that these employees are responsible for directing the Lottery's operations in their region. Likewise, employees in these positions are authorized to be charged with the effectuation of management policies and practices because the CMS-104s provide that employees in these positions enforce Lottery rules, regulations, and policies.

CMS's submission is also consistent with its assertion that employees in the position of Budget and Accounts Payable Officer are authorized to be engaged in executive and management functions because the CMS-104s for these positions demonstrate that these employees have significant responsibilities relating to the Lottery's budget, including monitoring expenditures for contracts and prize payments, advising the Lottery's Chief Financial Officer when a supplemental appropriation may be necessary, and coordinating expenditure planning activities for the Department. Finally, employees in these positions are authorized to be charged with the effectuation of management policies and practices because the CMS-104s provide that employees in these positions confer with and advise Lottery staff as to the interpretation of State Lottery Law, rules and regulations, policies, and procedures.

B. <u>AFSCME has raised no assertions that, if proven, might demonstrate that the designations are inappropriate.</u>

AFSCME alleges that the positions at issue are not managerial. In support of this contention, AFSCME states: (1) that the CMS-104s are insufficient to demonstrate that the job duties of the designated positions are consistent with the designation because there is no demonstration of "actual authority" to perform the enumerated functions, the CMS-104s list only potential duties, and there is no evidence that employees in these positions have actually completed the enumerated duties or been instructed that they are authorized to do so; and (2) that the CMS-104s for the positions held by Hoffman and Blair are inaccurate.

First, AFSCME misconstrues the relevant issue in this matter. The pertinent question is not whether a position is managerial, but whether an employee in that position is authorized to have significant and independent discretionary authority of a managerial nature.[4] The Board has

[4] A position is properly designable if it authorizes an employee to have significant and independent discretionary authority as an employee. 5 ILCS 6.1(b)(5) (2012). An employee has significant and independent discretionary authority as an employee if he or she 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

already determined that a position that meets the requirements of Section 6.1 is properly designable even if it is not a managerial position as defined in Section 3(j) of the Act. Id. Furthermore, AFSCME's insistence on evidence that employees have "actual authority" to perform the duties listed in the CMS-104s or that employees have actually completed the enumerated duties or been instructed that they are authorized to do so is rooted in its insistence that the Board should apply NLRB precedent relating to managerial positions. As discussed above, these contentions have no foundation in either the plain language of the statute or Board precedent regarding the same.

Moreover, in providing a presumption that any Gubernatorial designation is properly made, the General Assembly clearly allocated the burden of proving that a designation is improper to the party who objects.[5] See 5 ILCS 315/6.1(d) (2012). Based on this allocation, it is not CMS which must provide evidence that an incumbent has actually completed the duties enumerated in the CMS-104 in order to demonstrate that he or she has authority to complete those duties, but AFSCME which must produce evidence that he or she does not have such authority. Where there is some question as to these issues, a hearing may be required. But where AFSCME has failed to refute these points with anything other than conclusory statements that are unsupported by any factual assertions, no hearing is warranted.

Finally, even if AFSCME were to demonstrate that the CMS-104s for the positions held by Hoffman and Blair are inaccurate as detailed in the questionnaires filled out by each, this allegation is insufficient to overcome the presumption that the designation of these positions is nonetheless proper because Hoffman and Blair each fail to contest that they are authorized to complete duties which are sufficient to support the designation of their position. While Hoffman alleges that directing marketing and relating staff activities in his region is now the responsibility of a contractor, he does not contest that he is authorized to direct and manage other aspects of

---

interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency. 5 ILCS 6.1(c)(ii) (2012). Substituting the legislature's definition of significant and independent discretionary authority, Section 6.1(b)(5) reads as follows: "[To be designable, a position]… must authorize an employee in that position to… [1] [engage] in executive and management functions of a State agency and [be] charged with the effectuation of management policies and practices of a State agency or [2] [represent] management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency."

[5] AFSCME further argues that even if Section 6.1(d) shifts this burden—which it does—CMS has nonetheless failed to satisfy the burden of producing evidence to support the presumption that the designation is properly made. However, as previously discussed, CMS's submission tends to support its assertion that employees in the designated positions are authorized to exercise significant and independent discretionary authority.

Lottery operations for the region or that he enforces Lottery rules, regulations, and policies. Likewise, in her questionnaire Blair admits that she is responsible for working with executive staff to request sufficient appropriations, preparing documents to support agency budget requests, and reporting to the General Assembly on the Lottery's budget. Furthermore, she does not contest that she is authorized to advise staff on the interpretation of State Lottery Law, rules and regulations, policies, and procedures.

C. AFSCME's remaining objections do not warrant dismissal of the instant designations.

AFSCME generally argues that the instant designations violate due process and are arbitrary and capricious because the positions at issue have previously been certified into a bargaining unit by the Board, the positions' job duties and functions have not changed since their certification, and the positions are covered by a collective bargaining agreement which CMS entered into subsequent to the enactment of Section 6.1. Finally, AFSCME alleges that P.A. 97-1172 is unconstitutional under provisions of the Illinois and United States Constitutions.

An agency's action is arbitrary and capricious only if the agency contravenes the legislature's intent, fails to consider a crucial aspect of the problem, or offers an explanation which is so implausible that it runs contrary to agency expertise. Deen v. Lustig, 337 Ill. App. 3d 294, 302 (4th Dist. 2003). Furthermore, an agency is bound to follow its own rules. State of Illinois, Department of Central Management Services (Illinois Commerce Commission) v. Illinois Labor Relations Board, 406 Ill. App. 3d 766, 771 (4th Dist. 2010). As noted above, the plain language of the statute permits the designation of a position based solely on the criteria enumerated in Sections 6.1(a) and (b)(5). Furthermore, AFSCME has raised no claim that the Board has failed to follow its own Rules regarding the instant designations. Therefore, it is not arbitrary for the Board to permit designation of the positions at issue because it is adhering to its own rules and the plain language of the statute in doing so.

As to the requirements of due process, adequate notice of a proposed governmental action and a meaningful opportunity to be 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)). AFSCME has not articulated how it has been deprived of either in these matters.

AFSCME alleges 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.").

V. CONCLUSION OF LAW

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

VI. RECOMMENDED ORDER

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

37015-45-30-100-00-01	Regional Manager
37015-45-30-200-00-01	Regional Manager
37015-45-30-300-00-01	Regional Manager
37015-45-30-400-00-01	Regional Manager
37015-45-30-500-00-01	Regional Manager
37015-45-30-500-00-01	Regional Manager
37015-45-10-200-00-01	Budget and Accounts Payable Officer
37015-45-10-200-00-02	Budget and Accounts Payable Officer

VII. 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. 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 19th day of February, 2014

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/s/ Heather R. Sidwell

Heather R. Sidwell
Administrative Law Judge