STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services (Department of Juvenile Justice),	)	
Petitioner	)	
and	)	Case No. S-DE-14-192
American Federation of State, County and Municipal Employees, Council 31,	)	
Labor Organization-Objector	)	

ORDER

On February 5, 2014, Administrative Law Judge Martin Kehoe, on behalf of the Illinois Labor Relations Board, State Panel, issued a Recommended Decision and Order in the above-captioned case. No party filed exceptions to the Administrative Law Judge's Recommended Decision and Order during the time allotted, and at its March 11, 2014 public meeting, the Board declined to take the matter up on its own motion.

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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Springfield, Illinois, this 13th day of March 2014.

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Jerald S. Post
General Counsel

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ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

Section 6.1 of the Illinois Public Labor Relations Act, 5 ILCS 315/6.1 (2012), added by Public Act 97-1172, allows the Governor of the State of Illinois to designate certain public employment positions with the State as excluded from the collective bargaining rights which might otherwise be granted under the Illinois Public Labor Relations Act. Section 6.1 and Public Act 97-1172 became effective on April 5, 2013 and allow the Governor 365 days from that date to make such designations. The Illinois Labor Relations Board (Board) promulgated rules to effectuate Section 6.1 that became effective on August 23, 2013, 37 Ill. Reg. 14070 (Sept. 6, 2013). Those rules are contained in Part 1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On January 17, 2014, the State of 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 Illinois Public Labor Relations Act and Section 1300.50 of the Board's rules.[1] The ten positions at issue are affiliated with the Illinois Department of Juvenile Justice and are Public Service Administrator, Option 1 positions. (Five of those positions are vacant.) On January 21, 2014, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed an objection to CMS' petition pursuant to Section 1300.60(a)(3) of the Board's rules. After full consideration of the record, I, the undersigned Administrative Law Judge, recommend the following.

I. DISCUSSION AND ANALYSIS

The instant analysis must determine whether the petitioned-for positions may lawfully be selected for designation under Section 6.1 of the Illinois Public Labor Relations Act. State of Illinois, Department of Central Management Services (Department of Natural Resources), 30 PERI ¶112 (IL LRB-SP 2013). Under Section 6.1, 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 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. Moreover, to be properly designated, the position must also fit one or more of the five categories provided by Section 6.1(b).[2] Here, CMS contends that the positions at issue qualify for designation under Section 6.1(b)(5).

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[1] In support of and along with its petition, CMS provided a position description for each of the positions at issue. It also provided affidavits that contend, inter alia, that the included position descriptions fairly and accurately represent the duties and responsibilities of those positions.

[2] 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. I also note that Public Act 98-100, which became effective July 19, 2013, added subsections (e) and (f) to Section 6.1. Those subsections shield certain specified positions from such designations, but none of those positions are at issue in this case.

Section 6.1(b)(5) requires a petitioned-for position to authorize an employee in that position to have "significant and independent discretionary authority as an employee." That authority is defined in Section 6.1(c), which requires the employee to either be (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 represent management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency or (ii) qualify 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 (NLRB) interpreting that provision or decisions of courts reviewing decisions of the NLRB.

General Objections

In its objection, AFSCME initially asserts that CMS' submissions fail to demonstrate that each of the positions at issue has "actual authority" to complete the job duties listed in its position description. That assertion and AFSCME's related arguments are misguided. Indeed, the plain language of Section 6.1(b)(5) fairly clearly encompasses positions that simply authorize employees in those positions to have significant and independent discretionary authority. In addition, the language of Section 6.1 does not overtly require that an employee in a petitioned-for position be fully aware or informed of the extent of his or her authorized duties and responsibilities. Moreover, the possibility that the extent of an employee's duties may be influenced by his or her supervisors is not dispositive. State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity), 30 PERI ¶163 (IL LRB-SP 2014); State of Illinois, Department of Central Management Services (Emergency Management Agency), 30 PERI ¶105 (IL LRB-SP 2013).

Separately, AFSCME asserts that the definition set forth in Section 6.1(c) "essentially follows the manager and supervisor definitions as developed by the NLRB and case law interpreting the same" and, accordingly, CMS, as the party seeking the exclusions, bears the burden of proof. AFSCME then claims that CMS has failed to produce evidence that can support its petition. For similar reasons, AFSCME also asserts that the Board should use the NLRB's current standards for determining an employee's "managerial" status. I disagree. I also find that AFSCME routinely undervalues the unique presumption of appropriateness granted by Section 6.1(d).

Generally, in order to properly designate a State employment position under Section 6.1, CMS must simply provide the Board with (1) the job title and job duties of the employment position; (2) the name of the State employee currently in the employment position, if any; (3) the name of the State agency employing the public employee; and (4) the category under which the position qualifies for designation. State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity), 30 PERI ¶163; State of Illinois, Department of Central Management Services (Department of Natural Resources), 30 PERI ¶112. CMS has provided that information. By doing so, it has provided a basis for its petitioned-for exclusion and the minimum notice and showing required by Section 6.1.

I would concede that, to a degree, the language of Sections 6.1(b)(5) and 6.1(c) does parallel the language commonly used by the NLRB. I also recognize that Section 6.1(c)(ii) (the latter of the two Section 6.1(c) options outlined above) specifically references the NLRB's definition of a "supervisor." However, the Board has not so strictly applied the NLRB's standards when conducting a Section 6.1(b)(5) analysis. The distinction between a professional and a manager has not been dispositive. See State of Illinois, Department of Central

Management Services (Department of Commerce and Economic Opportunity), 30 PERI ¶163; State of Illinois, Department of Central Management Services (Department of Natural Resources), 30 PERI ¶112; State of Illinois, Department of Central Management Services (Department of Agriculture), 30 PERI ¶84 (IL LRB-SP 2013). I also note that, although many decisions of the NLRB and the federal courts provide useful or even "persuasive" guidance, generally speaking, those decisions are not strictly binding on the Board. State of Illinois, Departments of Central Management Services and Corrections, 25 PERI ¶12 (IL LRB-SP 2009).

In addition to the foregoing, AFSCME notes that the petitioned-for positions have previously been certified by the Board. AFSCME also suggests that CMS has made no showing that the job duties have significantly changed since the Board reviewed the positions for certification. Simply put, Section 6.1 requires no such showing. Furthermore, the language of Section 6.1 does not bar the exclusion of positions that are covered by collective bargaining agreements. State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity), 30 PERI ¶163.

AFSCME's objection also alleges that Section 6.1 violates the Illinois Constitution and the United States Constitution. However, significantly, the Board is largely unable to address those kinds of allegations, as administrative agencies have no authority to declare statutes unconstitutional or question their validity. Goodman v. Ward, 241 Ill. 2d 398, 411, 948 N.E.2d 580, 588 (2011); State of Illinois, Department of Central Management Services, 30 PERI ¶80 (IL LRB-SP 2013). Accordingly, though AFSCME's concerns are quite notable, this Recommended Decision and Order need not analyze the gravity of the rights affected by the Governor's designation or otherwise address AFSCME's constitutional concerns in detail. See State of Illinois, Department of Central Management Services, 30 PERI ¶148 (IL LRB-SP 2013).

Specific Objections

AFSCME "specifically objects" to the proposed designation of Position No. 37015-27-50-100-00-01. That position is presently occupied by Michelle Buchanan, a Business Administrator who has a number of subordinates. Ultimately, I recommend that the Board reject AFSCME's specific objection.

According to AFSCME, "Buchanan disavows the claim that she has the authority to hire, fire, discipline, or reward employees." Also, Buchannan (via an attachment to AFSCME's objection) contends that "the Union and the Administration must be consulted" before "reassigning staff to meet day-to-day needs" and suggests that some of her functions are affected by a collective bargaining agreement. I find that those assertions do not render CMS' proposed designation invalid.

Significantly, AFSCME has not disputed the part of Buchanan's position description which indicates that she can assign and review work, provide guidance and training to her staff, and counsel her staff regarding work performance. I also note that Buchanan confirms that she serves as a "working supervisor" who can provide direction to her staff and "assist staff in prioritizing their work load as needed." Additionally, she does not deny the part of her position description that suggests she formally evaluates her subordinates and approves time off.

I recommend that the foregoing circumstances, when combined with Section 6.1(d)'s presumption of appropriateness, satisfy the standard of Section 6.1(c)(ii) and, accordingly, that of Section 6.1(b)(5) as well. In this context, assigning and directing work demonstrate supervisory authority. See State of Illinois, Department of Central Management Services (Department of Employment Security), 30 PERI ¶79 (IL LRB-SP G.C. 2013). I am not dissuaded by the possibility that her superior reviews her evaluations. See State of Illinois, Department of Central

Management Services (Illinois Gaming Board), ILRB No. S-DE-14-121 (IL LRB-SP January 3, 2013); State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity), 30 PERI ¶163.

If necessary, I would further recommend that Buchanan's position also satisfies the standard of Section 6.1(c)(i). According to AFSCME, "Buchanan refutes that she plays a role in policy determination or implementation." However, her position description indicates without contradiction that she works with her superiors on "revisions," prepares a budget and budget reports, "advises on program formulations," and "makes suggestions in [her] area of responsibility within the facility." Further, Buchanan concedes that she "oversees the accounting area," coordinates her facility's "budgetary process," "purchasing," and "requisitioning," and signs off on the facility's expenditures. She does not deny that those functions require some discretion. In this context, the possibility that a superior may need to approve her purchases or expenditures in some way is not determinative. See State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity), 30 PERI ¶163 (IL LRB-SP 2014). "Managerial status" is not limited to those at the very highest level of the governmental entity at issue. See Village of Niles, 30 PERI ¶151 (IL LRB-SP G.C. 2013).

II. CONCLUSION OF LAW

Based on my review of the designation, the documents submitted as part of the designation, the objection, and the documents and arguments submitted in support of that objection, I find the instant designation to have been properly submitted and consistent with the requirements of Section 6.1 of the Illinois Public Labor Relations Act.

III. 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 Juvenile Justice are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

Position Number	Working Title
37015-27-00-000-05-01	HR Admin
37015-27-00-000-10-01	
37015-27-00-001-00-02	
37015-27-00-001-05-03	
37015-27-15-100-00-01	Business Admin
37015-27-17-100-00-01	Business Admin
37015-27-18-100-00-01	Business Admin
37015-27-20-100-00-01	Business Admin
37015-27-42-100-00-01	Business Admin
37015-27-50-100-00-01	Business Admin

IV. EXCEPTIONS

Pursuant to Sections 1300.90 and 1300.130 of the Board's rules, 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 the Administrative Law Judge's Recommended Decision and Order. All exceptions shall be filed and served in accordance with Section 1300.90 of the rules. Notably, exceptions must be filed by electronic mail sent to ILRB.Filing@Illinois.gov. Each party shall serve its exceptions on the other parties. A party that does not file timely exceptions waives its right to except to the Administrative Law Judge's Recommended Decision and Order.

Issued in Chicago, Illinois this 5th day of February 2014.

STATE OF ILLINOIS
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STATE PANEL

Martin Kehoe
Administrative Law Judge