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-14-195
American Federation of State, County and Municipal Employees, Council 31,	)	
Labor Organization-Objector	)	

ORDER

On February 18, 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 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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.

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Jerald S. Post

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General Counsel

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Petitioner	)	
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American Federation of State, County and Municipal Employees, Council 31,	)	Case No. S-DE-14-195
Labor Organization-Objector	)	
and	)	
Valerie Jackson,	)	
Employee-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, 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] CMS amended that petition on January 21, 2014. The eight positions at issue are affiliated with the Illinois Department of Juvenile Justice and are Public Service Administrator, Option 8T positions. (One position is vacant.) On January 24, 2014, Valerie Jackson, a petitioned-for incumbent employee, filed an objection to CMS' petition pursuant to Section 1300.60(a)(3) of the Board's rules. The American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed its own objection on February 3, 2014. 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

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

provided by Section 6.1(b).[2] Here, CMS contends that the positions at issue qualify for designation under Section 6.1(b)(5).

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 the positions at issue have "actual authority" to complete the job duties listed in the position descriptions. 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

[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.

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 exclusions 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, 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, 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

Rita Adamitis – Position No. 37015-27-10-409-00-01

Regarding a possible Section 6.1(c)(i) exclusion, AFSCME asserts Adamitis, a school principal, "denies that she is engaged in any agency policy development or implementation" and denies she "develops alternative sources of funding." However, Adamitis, via an attachment to AFSCME's objection, confirms she makes sure her school district's policies are carried out by her staff. Further, AFSCME and Adamitis do not strictly dispute the parts of Adamitis' position description that state Adamitis "plans, develops, coordinates, and administers [the] educational program at [the] facility;" "directs the planning for all aspects of instruction;" and "[f]unctions under broad latitude of independence." They do not deny that those functions require the use of discretion. See State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity), 30 PERI ¶163. I find that those circumstances, when combined with Section 6.1(d)'s presumption of appropriateness, meet the standard of Section 6.1(c)(i) and, accordingly, that of Section 6.1(b)(5) as well.

Regarding a possible Section 6.1(c)(ii) exclusion, AFSCME contends "Adamitis denies that she possesses the ability to hire, fire, transfer or discipline employees" and asserts that she does not hear first-level grievances. Yet, in AFSCME's filing, Adamitis actually confirms that she can recommend discipline. Moreover, she indicates that she interviews potential hires and makes related recommendations, can give a superior facts that can lead to a discharge, assigns

work, and directs subordinates regarding what subjects they teach and what classroom they are assigned to. I also note that neither Adamitis nor AFSCME denies the parts of Adamitis' position description that state Adamitis reviews work and performance reports, 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, and prepares and signs performance evaluations. I find that those functions generally demonstrate supervisory authority and sufficiently suggest the authority to use independent judgment. 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 Military Affairs), 28 PERI ¶113 (IL LRB-SP G.C. 2012). Accordingly, Adamitis' position meets the standard of Section 6.1(c)(ii) as well.

Cindy Gochenour – Position No. 37015-27-10-315-00-01

Regarding Section 6.1(c)(i), AFSCME contends Gochenour, another school principal, "denies that she develops, plans, or effectuates the budget or policy." However, AFSCME and Gochenour do not specifically dispute the parts of Gochenour's position description that indicate Gochenour "plans, develops, coordinates, and administers [the] educational program at [the] facility;" "directs the planning for all aspects of instruction;" "consults with other administrators on program achievements/weaknesses to exchange ideas of methods/procedures;" and "functions under broad latitude of independence." Also, they do not deny that those functions require the use of discretion. I find that those circumstances, when combined with Section 6.1(d)'s presumption of appropriateness, satisfy the basal standards of Sections 6.1(c)(i) and 6.1(b)(5). Notably, the mere possibility that Gochenour's authority might generally be subject to the final approval of her superiors or subject to a State law or regulation is not determinative. 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 (Emergency Management Agency), 30 PERI ¶105.

Regarding Section 6.1(c)(ii), AFSCME contends "Gochenour refutes that she has the ability to hire, fire, transfer, reward, or discipline employees." She also contends that her position cannot "determine work/shift assignments" or "determine the curriculum." Additionally, according to Gochenour, the work that she does assign is divided equally among her employees. That being said, Gochenour concedes that she can impose counseling and refer employees to an employee assistance program. Moreover, AFSCME and Gochenour do not dispute the parts of Gochenour's position description that state Gochenour reviews work and activity reports, provides guidance and training to assigned staff, establishes annual goals and objectives, approves time off, adjusts grievances, and prepares and signs performance evaluations. They also do not deny that those functions could require the use of independent judgment. On balance, I find that those circumstances, when combined with Section 6.1(d)'s presumption of appropriateness, satisfy the standards of Sections 6.1(c)(ii) and 6.1(b)(5).

AFSCME separately notes that Gochenour challenges the accuracy of a provided organizational chart. Specifically, Gochenour contends that she in fact reports to a superintendent of programs and is not his equal as the document purportedly suggests. That concern is not determinative in this instance, as it does not meaningfully refute the findings noted above. I also note that, previously, absolute precision has not been required. See State of Illinois, Department of Central Management Services (Illinois Gaming Board), 30 PERI ¶167 (IL LRB-SP 2014); State of Illinois, Department of Central Management Services (Emergency Management Agency), 30 PERI ¶105.

Valerie Jackson – Position No. 37015-27-10-407-00-01

Regarding Section 6.1(c)(i), AFSCME contends Jackson, who is also a school principal, "disclaims that she plays any role in policy determination/implementation or the budgetary process." Nevertheless, neither AFSCME nor Jackson denies the parts of Jackson's position description that state she "develops, coordinates, and administers [the] educational program at [the] facility;" "continually reviews and evaluates program goals and objectives;" and "consults with other administrators on program achievements/weaknesses to exchange ideas of methods/procedures." Moreover, they do not deny that those functions require the use of discretion or the part of Jackson's position description that states Jackson "[f]unctions under broad latitude of independence." I find that those circumstances, when combined with Section 6.1(d)'s presumption, satisfy the standards of Sections 6.1(c)(i) and 6.1(b)(5).

Regarding Section 6.1(c)(ii), AFSCME contends "Jackson notes that she has no authority to hire, fire, discipline, transfer, or reward employees." However, Jackson, via her objection, essentially concedes that she can assign work to and direct her employees and can "meet with staff to discuss concerns." Further, AFSCME and Jackson do not deny the part of Jackson's position description that states she "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; [and] reviews activity reports." In this context, those functions can be considered supervisory authority. 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 Military Affairs), 28 PERI ¶113. I also note that neither

AFSCME nor Jackson denies that those functions could require independent judgment. Accordingly, I find that Jackson's position satisfies the standard of Section 6.1(c)(ii) as well.

II. CONCLUSION OF LAW

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, I find the instant designations 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
37015-27-10-100-00-01	Career & Tech Ed Director
37015-27-10-000-40-01	Special Ed Director
37015-27-10-211-00-01	Prinicpal-Harrisburg
37015-27-10-314-00-01	Prinicpal-Kewanee
37015-27-10-315-00-01	Prinicpal-Pere Marquette
37015-27-10-407-00-01	Prinicpal-Chicago
37015-27-10-409-00-01	Prinicpal-St. Charles
37015-27-10-411-00-01	Prinicpal-Warrenville

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 18th day of February 2014.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Martin Kehoe
Administrative Law Judge