STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services (Law Enforcement Training Standards Board),	)	
Petitioner	)	
and	)	Case No. S-DE-14-197
American Federation of State, County and Municipal Employees, Council 31,	)	
Labor Organization-Objector	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

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 collective bargaining rights which might otherwise be available under Section 6 of the Act. This case involves such a designation made on the Governor's behalf by the Illinois Department of Central Management Services (CMS). On February 21, 2014, Administrative Law Judge (ALJ) Heather R. Sidwell issued a Recommended Decision and Order (RDO) in this case, finding that the designation was properly made.

CMS had petitioned to designate for exclusion a single Public Service Administrator Option 1 position at the Law Enforcement Training Standards Board held by Jennifer Wooldridge. It made the designation pursuant to Section 6.1(b)(5) of the Act, which allows

designations of positions with "significant and independent discretionary authority," a phrase defined by Section 6.1(c).[1]

The American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed objections pursuant to Section 1300.60 of the Board's rules for implementing Section 6.1 of the Act, 80 Ill. Admin. Code §1300.60, and so did Wooldridge. AFSCME raised both generally applicable objections and objections specific to the position at issue, and Wooldridge expressed concern that her position description might be inaccurate and that she might be designated for exclusion against her superiors' wishes.

The ALJ determined that the objections failed to raise an issue warranting a hearing, and, based on the documentary evidence and arguments, ultimately concluded that the designation was proper. She declined to rule on AFSCME's arguments that Section 6.1 was unconstitutional, found its other generally applicable objections to be without merit, and with respect to the specific objections, found that Wooldridge's position met the requirements of Section 6.1(c)(i) in that, while she denied that portion of her job description that indicated she was responsible for *developing* program policies and improvements, she did not take issue with the portions indicating she was responsible for *implementing* revised, new, and existing program policies and program improvements. She even admitted to being responsible for the implementation of many small projects and programs.

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[1] Section 6.1(c) provides:

> For the purposes of this Section, a person has significant and independent discretionary authority as an employee if he or she (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 or any orders of the National Labor Relations Board interpreting that provision or decisions of courts reviewing decisions of the National Labor Relations Board.

AFSCME filed timely exceptions to the ALJ's RDO pursuant to Section 1300.130 of the Board's rules, 80 Ill. Admin. Code §1300.130. Based on our review of the exceptions, the record, and the RDO, we reject the exceptions and adopt the RDO. We find the designation comports with the requirements of Section 6.1, and direct the Executive Director to issue a certification consistent with that finding.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

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

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

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

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

/s/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, on March 11, 2014; written decision issued at Springfield, Illinois, March 25, 2014.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services, (Law Enforcement Training Standards Board),	)	
Petitioner	)	
and	)	
American Federation of State, County and Municipal Employees, Council 31,	)	Case No. S-DE-14-197
Labor Organization-Objector	)	
and	)	
Jennifer Wooldridge,	)	
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 (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]

[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.

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.

On January 24, 2014, 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 January 30, 2014, Jennifer Wooldridge filed a timely objection to the designation of her position. Finally, on February 3, 2014, the American Federation of State, County and Municipal Employees (AFSCME) filed a timely objection to the designation.

Based on my review of the designation, the documents submitted therewith, the objections filed by Wooldridge and AFSCME (collectively, Objectors), and the documents and arguments submitted in support of those objections, I have determined that the Objectors have 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 position 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 this position within any collective bargaining unit.

I. ISSUES AND CONTENTIONS

The instant petition designates one position at the Law Enforcement Training Standards Board (LETSB) for exclusion from the self-organization and collective bargaining provisions of Section 6 of the Act. CMS states that this position qualifies for designation under Section 6.1(b)(5). CMS also states that this position is currently represented by AFSCME for the purposes of collective bargaining. In support of its contentions, CMS has filed a CMS-104 containing the position description for the designated position.

AFSCME objects to the instant designation on the grounds that CMS has failed to demonstrate that the position at issue has 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 designated position is neither supervisory nor

managerial under the relevant definitions. AFSCME next argues that the designation violates due process and is arbitrary and capricious. Finally, AFSCME alleges that P.A. 97-1172 is unconstitutional under several provisions of the Illinois and United States Constitutions.

Wooldridge also objects to the designation, expressing concern that her position may be designated despite, she claims, the objections of her superiors at the LETSB and that such designation may be based a CMS-104 that she alleges is inaccurate.

II. FINDINGS OF FACT

The designated position is a Public Service Administrator Option 1 employed by the LETSB in the working title of Manager of Operations. At the time the designation was filed, this position was held by Jennifer Wooldridge. The position was first certified to be in a collective bargaining unit on January 20, 2010, in Case No. S-RC-08-036.

III. POSITION DESCRIPTIONS

The CMS-104 submitted along with the designation describes the following relevant responsibilities of the Manager of Operations:

1) Develops objectives and standards for assigned programs; confers with the Executive Director, Board members, and staff to discuss specialized training implemented through statutory directives by the General Assembly, including those programs under the Executive Institute; develops and implements revised, new, and existing programs policies and program improvements; tracks and reviews pending legislation, advises Executive Director of possible or immediate impact on the Board and its programs; monitors training programs to ensure compliance with legislative mandates;
2) Supervises as full line supervisor; assigns work and reviews work; provides guidance and training to assigned staff; counsels staff regarding work performance; reassigns staff to meet day-to-day operational needs; establishes annual goals and objectives; approves time off; adjusts first level grievances; effectively recommends and imposes discipline, up to and including discharge; prepares and signs performance evaluations; determines and recommends staffing needs;
3) Serves as spokesperson for the Executive Director; responds to requests from representatives of State, local, and federal government offices, private and public organizations, and the general public; interprets and explains program policies, goals,

and objectives; gathers and distributes information and resolves issues; analyzes critical information and develops briefings for the Executive Director;

4) Conducts special studies and extensive research; identifies and resolves problematic issues; drafts recommendations to the Executive Director; reviews grants and budgets and coordinates the completion and submission of quarterly reports; tracks overdue reports and assists with completion;
5) Oversees information technology (IT) operations for the Board; consults with the Chief IT Officer to evaluate formal requests for IT equipment and determines feasibility, cost, and compliance with state policies, procedures, and guidelines; consults with the Executive Director regarding updates for the Board's web page and confers with the Chief IT Officer for implementation;
6) Consults with staff and offers advice concerning personnel issues; counsels staff regarding attendance policies, hours of work, internal agency employee/work policies, work ethics, productivity, and discipline policies; and
7) Performs other duties as required or assigned.

The CMS-104 lists ten funded positions that report to the Manager of Operations; in her objections, Wooldridge stated that she currently has five subordinates.

Wooldridge's objections detail the portions of the CMS-104 for her position that she alleges do not accurately describe her duties. In those objections, Wooldridge lists each duty enumerated in the CMS-104 and describes in red parenthetical text the inaccuracies, if any, of each. The CMS-104 for Wooldridge's position has an effective date of December 1, 2008; Wooldridge states that since that time, the Board has hired a new Executive Director and has hired employees in the new positions of Deputy Director, Manager of Mandated Training, and Manager of In-Service Training. Wooldridge alleges that employees in these new positions are now responsible for some of the duties listed on her CMS-104. For example, Wooldridge states that the two Managers are now responsible for developing objectives and standards for assigned programs and monitoring training programs to ensure compliance with legislative mandates. She also states that some unspecified duties have been reassigned to the Deputy Director, leaving her responsible for the implementation of many small projects and programs. Further, Wooldridge denies that she develops revised and new program policies and improvements, adjusts grievances, or recommends and imposes discipline. Finally, Wooldridge states that she spends a

significant portion of her time as the Crisis Intervention Team (CIT) Training Coordinator, ensuring that law enforcement agencies that want officers to receive CIT training to assist in dealing with persons in a mental health crisis have access to the training program.

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 designation.

CMS's initial filing clearly indicates, and AFSCME does not contest, that the designated position was first certified in a bargaining unit on January 20, 2010. The first statutory requirement is thus satisfied. As to the second statutory requirement, the submission is consistent with the designation because the CMS-104 tends to show that an employee in the position of Manager of Operations is authorized to exercise significant and independent discretionary authority as that term is defined in Section 6.1(c)(i).[2]

An employee is authorized to have significant and independent discretionary authority as 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

[2] Because I find that an employee in the designated position is 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 instant designation is proper, I will not address the assertion that an employee in the designated position is also authorized to exercise significant and independent discretionary authority as that term is defined in Section 6.1(c)(ii).

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. Furthermore, the Board has held the second component of Section 6.1(c)(i) does not require that an employee engage in policy *making*, merely that an employee take or recommend discretionary action that effectively *implements* policy. State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity), Case No. S-DE-14-115 (IL LRB-SP January 7, 2014). In the instant case, the CMS-104 for her position states that Wooldridge is responsible for developing and implementing revised, new, and existing program policies and program improvements. The only notation in Wooldridge's objections regarding this duty is her assertion that she is not responsible for developing, suggesting that Wooldridge herself agrees that she is responsible for implementing revised, new, and existing program policies and program improvements. Wooldridge goes on to concede as much, stating that she is "responsible for the implementation of many small projects and programs." Nothing on the face of CMS's submission or in the assertions made by the Objectors suggests that Wooldridge lacks discretion in carrying out this responsibility. Therefore, I conclude that CMS's submission is consistent with its assertion that Wooldridge, as Manager of Operations for the LETSB, is authorized to have significant and independent discretionary authority as defined in Section 6.1(c)(i).

B. The Objectors have raised no assertions that, if proven, might demonstrate that the designation is inappropriate.

AFSCME alleges that the position at issue is not managerial. In support of this contention, AFSCME states: (1) the burden of demonstrating that the position at issue is properly designable should be allocated to CMS; (2) even if this burden is shifted by the presumption in Section 6.1(d), the CMS-104 is insufficient to demonstrate that the job duties of the designated position are consistent with the designation because there is no demonstration of "actual authority" to perform the enumerated functions, the CMS-104 lists only potential duties, and there is no evidence that Wooldridge has either actually completed the enumerated duties or been instructed that she is authorized to do so; and (3) the Board must distinguish between professional and managerial discretion in determining whether an employee in the designated position is authorized to exercise significant and independent discretionary authority of a managerial nature.

First, AFSCME misconstrues the relevant issue in this matter. The pertinent question is not whether the position at issue is managerial, but whether an employee in that position is authorized to have significant and independent discretionary authority of a managerial nature. The Board has 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. State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity), 30 PERI ¶ 86 (IL LRB-SP 2013).

In addition to misconstruing the relevant issue, AFSCME misconstrues the relevant precedent, alleging not only that the designated position is not managerial, but specifically that it is not managerial as that term is defined by precedent of the National Labor Relations Board (NLRB). The Board has specifically rejected AFSCME's contention that it should look first to NLRB precedent in interpreting Section 6.1(c)(i). Id. ("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.").

AFSCME's contention that CMS should be allocated the burden of proving that the position at issue is properly designable is rooted in its insistence that the Board apply NLRB precedent relating to managerial positions in making its determination. In doing so, AFSCME not only continues to insist on the misapplication of precedent, but also ignores the plain language of the statute and the Board's precedent regarding the issue. In Section 6.1(d), the General Assembly clearly allocated the burden of proving that a designation is improper to the objecting party and the Board has consistently rejected AFSCME's argument that CMS should nonetheless bear the burden of proof on this issue. Id.

As discussed above, 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. Id. Under this rubric, the Board has repeatedly upheld designations made under Section 6.1(b)(5) based on the submission of CMS-104s enumerating duties consistent with the designation, the statutory presumption that the designation is proper, and the failure of objectors to raise any allegations that, if proven, might demonstrate that the designation is inappropriate. Id. AFSCME cites no authority for its contention that CMS must

nonetheless provide evidence that Wooldridge has "actual authority" to perform the enumerated functions, that she has performed the functions, or that she has been instructed that she is authorized to do so. To require CMS to do so would be contrary to the presumption of appropriateness contained in Section 6.1(d); it is instead the Objectors' responsibility to provide evidence that Wooldridge is not authorized to have significant and independent discretionary authority. Moreover, the broad provision in the CMS-104 that Wooldridge performs her duties "under administrative direction" is insufficient to demonstrate that she lacks the authority to perform the duties enumerated in the CMS-104 for her position. Therefore, I conclude that the CMS-104 submitted by CMS is sufficient to demonstrate that the job duties of the position at issue are consistent with the designation.

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…").

Wooldridge claims that her superiors at the LETSB disapprove of the designation of her position and expresses concern that her position may nonetheless be excluded from the self-organization and collective bargaining provisions of Section 6 of the Act based on an inaccurate CMS-104. First, I make no finding regarding whether Wooldridge's superiors support the designation of her position; I merely address these allegations to note that they have no bearing on the Board's determination in this matter. To the extent Wooldridge alleges that her superiors disagree with the designation of her position, the authority to designate a position from among the properly designable positions at an agency is allocated to the Governor and not to the staff of a State agency at which an employee in a designated position is employed. Furthermore, the exercise of this authority is not contingent on the support of an employee's superiors. To the extent Wooldridge alleges that her superiors disagree that her position is even properly designable, the statute has allocated the responsibility of making that determination to the Board. 5 ILCS 315/6.1(b) (2012). Finally, in response to Wooldridge's concerns about the accuracy of the CMS-104 for her position, I note that my conclusion that the instant designation is proper is based not on portions of the CMS-104 that Wooldridge disputes, but on duties which Wooldridge does not dispute and even concedes that she is authorized to perform.

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

AFSCME generally argues that the instant designation violates due process and is arbitrary and capricious because the position at issue has previously been certified into a bargaining unit by the Board, the position's job duties and functions have not changed since its certification, and the position is 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 designation. Therefore, it is not arbitrary for the Board to permit designation of the position 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 this matter.

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 position at the Law Enforcement Training Standards Board is excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

37015-50-88-100-00-01 Manager of Operations

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 21st day of February, 2014

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/s/ Heather R. Sidwell

Heather R. Sidwell
Administrative Law Judge