

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

State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity),)	
)	
Petitioner)	
)	
and)	Case No. S-DE-14-200
)	
American Federation of State, County and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	
)	
Lisa Logan,)	
)	
Employee-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 18, 2014, Administrative Law Judge (ALJ) Sarah R. Kerley 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 Senior Public Service Administrator (SPSA) Option 1 position at the Illinois Department of Commerce and Economic

Opportunity held by Lisa Logan. It made the designation pursuant to Section 6.1(b)(2) of the Act, which allows designations of positions which

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

5 ILCS 315/6.1(b)(2) (2012) (emphasis supplied).

The American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed objections to the petition 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 Lisa Logan. However, in Logan's "objections" she stated she was not challenging the designation given this Board's precedent. She cited our earlier decision in State of Illinois, Dep't of Cent. Mgmt. Servs. and Am. Fed'n of State, Cnty. & Mun. Empl., Council 31, Case Nos. S-DE-14-005 etc., 30 PERI ¶ 80 (IL LRB-SP 2013), in which we found designation of SPSA positions to have been appropriate. Logan stated she could show that she does not have significant and independent discretionary authority—which is relevant to a designation made pursuant to Section 6.1(b)(5), but not one under Section 6.1(b)(2)—and also asserted that she was not properly classified as an SPSA, an assertion that is not relevant given the wording of 6.1(b)(2), which makes having the title of an SPSA sufficient for exclusion. In addition to asserting that Section 6.1 is unconstitutional, an issue we decline to address, AFSCME asserted that professionals should not be classified as SPSAs. Again, whether Logan's position was properly classified is not relevant under Section 6.1(b)(2) and, as we explained in Case No. S-DE-14-005, an issue that is not within our authority to consider.

The ALJ concluded that the designation was proper in that both positions met the requirements of Section 6.1(b)(2). She found that the objectors' arguments not only failed to overcome the presumption of appropriateness in Section 6.1(d), but that they tended to confirm the appropriateness of the designation.

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
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STATE PANEL**

State of Illinois, Department of Central)	
Management Services (Department of)	
Commerce and Economic Opportunity),)	
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Employer,)	
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American Federation of State, County)	
and Municipal Employees, Council 31,)	
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Labor Organization-Objector,)	
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and)	
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Lisa Logan,)	
)	
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) (Act) *added* by Public Act 97-1172 (effective April 5, 2013), allows the Governor of the State of Illinois to designate certain public employment positions with the State of Illinois as excluded from collective bargaining rights which might otherwise be granted under the Illinois Public Labor Relations Act. There are three broad categories of positions which may be so designated: (1) positions which were first certified to be in a bargaining unit by the Illinois Labor Relations Board (Board) on or after December 2, 2008; (2) positions which were the subject of a petition for such certification pending on April 5, 2013, (the effective date of Public Act 97-1172); or (3) positions which have never been certified to have been in a collective bargaining unit. Only 3,580 of such positions may be so designated by the Governor, and, of those, only 1,900 positions which have already been certified to be in a collective bargaining unit.

Moreover, to properly qualify for designation, the employment position must meet one or more of the following five requirements:

- (1) it must authorize an employee in the position to act as a legislative liaison;
- (2) it must have a title of or authorize a person who holds the position to exercise substantially similar duties as a Senior Public Service Administrator, Public Information Officer, or Chief Information Officer, or as an agency General Counsel, Chief of Staff, Executive Director, Deputy Director, Chief Fiscal Officer, or Human Resources Director;
- (3) it must be designated by the employer as exempt from the requirements arising out of the settlement of Rutan v. Republican Party of Illinois, 479 U.S. 62 (1990), and be completely exempt from jurisdiction B of the Personnel Code, 20 ILCS 415/8b through 8b.20 (2012), *see* 20 ILCS 415/4 through 4d (2012);
- (4) it must be a term appointed position pursuant to Section 8b.18 or 8b.19 of the Personnel Code, 20 ILCS 415/8b.18, 8b.19 (2012); or
- (5) it must authorize an employee in that position to have “significant and independent discretionary authority as an employee” by which the Act means the employee is either
 - (i) engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency or represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency; or
 - (ii) qualifies as a supervisor of a State agency as that term is defined under Section 152 of the National Labor Relations Act, 29 U.S.C. 152(11), or any orders of the National Labor Relations Board interpreting that provision or decisions of courts reviewing decisions of the National Labor Relations Board.

Section 6.1(d) creates a presumption that any such designation made by the Governor was properly made. It also requires the Illinois Labor Relations Board to determine, in a manner consistent with due process, whether the designation comports with the requirements of Section 6.1, and to do so within 60 days.¹

¹ Public Act 98-100, which became effective July 19, 2013, added subsections (e) and (f) to Section 6.1 which shield certain specified positions from such Gubernatorial designations, but none of those positions are at issue here.

As noted, Public Act 97-1172 and Section 6.1 of the Illinois Public Labor Relations Act became effective on April 5, 2013, and allow the Governor 365 days from that date to make such designations. The Board promulgated rules to effectuate Section 6.1, which became effective on August 23, 2013, 37 Ill. Reg. 14,066 (September 6, 2013). These rules are contained in Part 1300 of the Board’s Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On January 9, 2014, the Illinois Department of Central Management Services (“CMS”), on behalf of the Governor, filed the above-captioned designation petition pursuant to Section 6.1(b)(2) of the Act and Section 1300.50 of the Board’s Rules.² The following SPSA-Option 3 position at the Illinois Department of Commerce and Economic Opportunity (“DCEO”) is identified for designation in this case:

<u>Position No.</u>	<u>Incumbent</u>	<u>Working Title</u>
40070-42-00-540-00-01	Lisa Logan	Senior Public Service Administrator

In support of its petition,³ CMS filed the position description for the position. The petition indicates that the SPSA-Option 3 position was certified on February 4, 2013.

American Federation of State, County and Municipal Employees, Council 31 (“AFSCME”) and both individuals filed objections to the designation pursuant to Section 1300.60(a)(3) of the Board’s Rules.

I reviewed the designation petition and accompanying position description, the objections raised by AFSCME, and the filing of Ms. Logan. My review indicates that no issue of law or fact exists that might overcome the presumption that the designation is proper such that a hearing is be necessary as to the propriety of the designation.

After consideration of the information before me, I find that the designation is properly submitted and is consistent with the requirements of Section 6.1 of the Act. Accordingly, I recommend that the Executive Director certify the designation of the position at issue in this matter and, to the extent necessary, amend any applicable certification of exclusive representatives to eliminate any existing inclusion of this position within any collective bargaining unit.

² Section 6.1(b0(2) *in relevant part* reads, “To qualify for designation under this Section, the employment position must meet one or more of the following requirements: (2) it must have a title of ... Senior Public Service Administrator.”

³ This position was previously designated for exclusion in case number S-DE-14-149. However, on January 22, 2014, CMS withdrew the petition, and later refiled the designation of this position in the present petition.

I. OBJECTIONS

A. AFSCME's Objections

AFSCME objects to the designation for a number of reasons. Through its written objections and documents, AFSCME makes the following arguments.

AFSCME argues that Section 6.1 violates provisions of the United States and Illinois Constitutions in a number of ways. First, the designation is an improper delegation of legislative authority to the executive branch. Second, selective designation results in employees being treated unequally based on whether an individual's position was subject to a designation petition. Third, the designation unlawfully impairs the contractual rights of individuals whose positions⁴ were subject to the provision of a collective bargaining agreement prior to the position being designated for exclusion.

AFSCME also contends that because the "positions have been certified into a bargaining unit by the Board based on the stipulation of the parties that the position is properly included in the RC-63 bargaining unit," the position should not now be designated for exclusion. AFSCME also argues that the position is a "professional position and is not properly classified as SPSA both due to its professional status as well as its inclusion in a bargaining unit."

B. Ms. Logan's Objections

On January 30, 2014, the Board received a copy of a memorandum from Ms. Logan. In the memorandum in response to her designation, Ms. Logan states that "[g]iven ILRB precedent, I am not challenging the proposed gubernatorial designation." Ms. Logan goes on to cite ILRB cases where the Board has found designation of SPSA positions appropriate under Section 6.1(b)(2) of the Act. Ms. Logan states that she "could" demonstrate that she does "not have significant and independent discretionary authority as an employee," and that her position is not properly classified as that of a Senior Public Service Administrator. Ms. Logan provides no additional, position-specific information.

II. DISCUSSION AND ANALYSIS

The law creates a presumption that designations made by the Governor are properly made. In order to overcome the presumption of a properly submitted designation under Section 6.1(b)(2), the objectors must raise an issue of law or fact that the position does not "have the title

⁴ Even though this matter concerns a single position, AFSCME's Objections were often phrased in the plural. Those arguments are recounted here as written.

of ... Senior Public Service Administrator.” The objections raised by AFSCME and Ms. Logan not only fail to overcome that presumption or raise a question of law or fact that requires a hearing, they, in fact, confirm that the position has the title of Senior Public Service Administrator. For this reason and those reasons stated more fully below, I find the designation is proper.

A. Constitutional Arguments

It is beyond the Board’s capacity to rule that the Illinois Public Labor Relations Act, as amended by Public Act 97-1172, either on its face or as applied, violates provisions of the United States and Illinois constitutions. State of Ill., Dep’t of Cent. Mgmt. Servs., 30 PERI ¶80, Case No. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013) appeal pending, No. 1-13-3454 (Ill. App. Ct. 1st Dist.) (citing Goodman v. Ward, 241 Ill. 2d 398, 411 (2011) (“Administrative agencies ... have no authority to declare statutes unconstitutional or even to question their validity. [citations omitted]. When they do so, their actions are a nullity and cannot be upheld.”)). Accordingly, these issues are not addressed in this recommended decision and order.

B. Substantive Issues

Neither AFSCME nor Ms. Logan challenge the fact that the position at issue in this case does, indeed, “have the title of ... Senior Public Service Administrator,” thus making it appropriate for designation under Section 6.1(b)(2) of the Act. Instead, both objectors state, without additional information or analysis, that the position is inappropriately classified as an SPSA, and should, therefore, not be subject to designation based on its classification.

AFSCME’s objections are irrelevant for designations made pursuant to Section 6.1(b)(2), because they do not address the Board’s sole inquiry. Section 6.1(b)(2) provides in relevant part that for a position to be designable, “it must have a title of... Senior Public Service Administrator.” Here, CMS specified that the designated position holds the SPSA title and submitted a position description to that effect. Accordingly, the sole inquiry with respect to designations made under Section 6.1(b)(2) is whether CMS erroneously specified that this position holds the SPSA title. State of Ill., Dep’t of Cent. Mgmt. Serv., Case No. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013). Yet here, AFSCME instead argues that the Board should not permit the position’s designation, despite its SPSA title, because other positions with the same title or duties are included in the unit and have not been designated by CMS. Similarly, AFSCME argues that CMS should not have classified this position as an SPSA because it is

included in the bargaining unit and performs professional duties. Likewise, AFSCME argues that CMS's designation is improper because it runs counter to the Board's previous decision to include the position in the unit.

These arguments must fail in light of the Act's clear language which permits designation of the positions under Section 6.1(b)(2) based solely on SPSA title and without regard to the classification and job duties of positions not at issue, the job duties of the designated position, or prior Board action in related representation proceedings. *Id.* (finding job duties irrelevant when designation is based on a clear-cut criterion such as title; holding that Board need not determine whether the SPSA title and the positions' job duties match). Accordingly, I find that CMS's designation is properly made under Section 6.1(b)(2).

D. CONCLUSIONS OF LAW

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

III. RECOMMENDED ORDER

Unless this Recommended Decision and Order is rejected or modified by the Board, the following position with the Illinois Department of Commerce and Economic Opportunity is excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

<u>Position No.</u>	<u>Incumbent</u>
40070-42-00-540-00-01	Lisa Logan

IV. EXCEPTIONS

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

⁵ Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf

Issued at Springfield, Illinois, this 18th day of February 2014.

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

Sarah R. Kerley

**Sarah Kerley
Administrative Law Judge**