

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

State of Illinois, Department of	)	
Central Management Services	)	
(Department of Corrections),	)	
	)	
Petitioner	)	
	)	
and	)	Case No. S-DE-14-216
	)	
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 designations made on the Governor’s behalf by the Illinois Department of Central Management Services (CMS). On March 21, 2014, Administrative Law Judge (ALJ) Heather R. Sidwell issued a Recommended Decision and Order (RDO) in this case, finding that the designations were properly made. We agree.

CMS petitioned to designate for exclusion seven Public Service Administrator Option 1 positions at the Illinois Department of Corrections,<sup>1</sup> all pursuant to Section 6.1(b)(5) of the Act,

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<sup>1</sup> Regulations promulgated by the Department of Central Management Services provide designation of a PSA position as Option 2 for “General Administration/Business Marketing/Labor/Personnel.” 80 Ill. Admin. Code 310.50.

which allows designations of positions with “significant and independent discretionary authority.”<sup>2</sup>

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. The objections raised constitutional and other generally applicable objections, as well as objections relevant to specific positions.

The ALJ declined to rule on those objections that alleged Section 6.1 was unconstitutional, and rejected other of AFSCME’s generally applicable objections. She addressed AFSCME’s specific objections by the three working titles for the positions: four Business Administrators, two Industry Superintendents, and one Infant Development Director. The ALJ concluded that each met the managerial requirements of Section 6.1(c)(i). Though the position descriptions indicated each had subordinates, she declined to rule on whether they might also meet the supervisory requirements of Section 6.1(c)(ii).

The ALJ noted that neither AFSCME nor the employees suggested that someone other than the Business Administrators were responsible for the day-to-day fiscal operations at their facilities, nor did they contest that they were charged with the effectuation of management

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<sup>2</sup> This phrase is defined by Section 6.1(c) of the Act:

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.

policies and practices or that they implement policy. In fact, the employees conceded they were responsible for ensuring compliance with DOC accounting procedures.

Although AFSCME denied that the Industry Superintendants make or implement policy, the ALJ found this contradicted the position statements and was not supported by the employees' own statements. One Industry Superintendent reported no inaccuracies for her position description, while the other merely denied that she creates policy and noted that her position description indicates she is authorized to implement policy.

The ALJ also noted that AFSCME's denial that the Infant Development Administrator had a role in creation or implementation of policy was inconsistent with the position description. That denial was also not supported by the occupant of that position, Carol Brand, who did not report inaccuracies in her position description and stated only that she does not write or recommend the adoption of policies and does not have the authority to decide how policies or legislation will be implemented or recommend any actions that control or implement legislation.

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. It argues that the Business Administrators do not have "total control," but total control is not a requirement of Section 6.1(c)(i). It points out that the Industry Superintendants denied making policy, but *making* policy also is not necessary to meet Section 6.1(c)(i); *implementing* policy is sufficient. AFSCME argues that Infant Development Administrator Carol Brand did not even have a position description, but that is not true. The CMS-104 description of Brand's position was included in the material submitted with the petition in this case and promptly served on both AFSCME and Brand.<sup>3</sup> AFSCME claims

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<sup>3</sup> All of the positions at issue in this case, including Brand's, had previously been designated in Case No. S-DE-14-186, but then withdrawn. In that earlier petition, Brand's position had been marked "vacant" when in fact she had recently been promoted into that position. Brand filed objections concerning that earlier petition, denying that she had ever seen her position description. That may have been true because

Brand denied implementing policy, but that also is not supported by the record. It also asserts that Brand had been in the position only a short time, which is true—she was promoted into it on November 18, 2014—but while that may support an assertion that *she* has not yet *exercised* all of the authority in her position, it tends to diminish the value of Brand’s statements concerning the breadth of the *position’s authority*, and it is the authority of the position with which Section 6.1(b)(5) is concerned. We find none of AFSCME’s exceptions warrant reversal of the RDO.

Although Brand did not file objections in this case,<sup>4</sup> following issuance of the RDO she exchanged a series of emails with a Board agent demonstrating a desire to appeal the RDO. As this took place in advance of the date for filing exceptions, we will treat them as exceptions, but in doing so find that they, too, fail to warrant reversal of the RDO.<sup>5</sup> Brand assumes that, since she is the only person holding her particular working title, it would be necessary for her to provide testimony about the position before it can be determined whether her position meets the requirements of Section 6.1(b)(5). In fact, CMS has submitted evidence by means of her position description which supports finding that her position has sufficient authority to meet the requirements of Section 6.1(b)(5). That, combined with the presumption established in Section 6.1(d) that the designation of her position is appropriate eliminates any need for an evidentiary hearing unless Brand provides evidence capable of rebutting the presumption. On that point, Brand does not dispute assertions of authority in her position description (which she undoubtedly

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she had not been listed as an incumbent in Case No. S-DE-14-186 and thus had not been served with the petition filed in that case, or with its supporting documents. AFSCME’s denial of the existence of such a position description may be erroneously based upon Brand’s denial of its receipt in that prior case.

<sup>4</sup> She had in Case No. S-DE-14-186, and apparently assumed those objections would automatically be included in the record for the new petition.

<sup>5</sup> Two days after the deadline for filing exceptions had passed, Brand also submitted a copy of the objections she had filed in Case No. S-DE-14-186 claiming she had not received notice and had never seen her position description, which may have been true in that earlier petition, but certainly is not true with respect to the current petition. She also submitted a cover document in which she denies exercising certain authority such as implementing policy with respect to one of the programs over which she is in charge. However, we find these submissions are untimely and do not consider them as exceptions in this case.

had received when the petition was filed on February 6, 2014) including that she has subordinates. She nevertheless claims that her superior, the Assistant Warden of Programs, makes all decisions and she makes the highly improbable assertion that she “has absolutely no decision-making ability.” She references no evidence that might tend to support her assertions, and an employee’s denials of authority, even emphatic denials of authority, are insufficient in themselves to overcome the presumption of validity. That seems particularly appropriate here because, as AFSCME points out, Brand has only been in her position a very short period of time, and apparently most of that time was unaware of her position description and thus unaware of the extent of her position’s authority.

Based on our review of the exceptions, the record, and the RDO, we reject the exceptions and adopt the RDO. We find the designations comport 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 held via videoconference in Chicago, Illinois and Springfield, Illinois, on April 1, 2014; written decision issued at Springfield, Illinois, April 7, 2014.

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
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Management Services, (Department of	)	
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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 (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.<sup>1</sup>

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

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<sup>1</sup> 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.

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 February 5, 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 February 18, 2014, the American Federation of State, County and Municipal Employees (AFSCME) filed timely objections to the designation.

Based on my review of the designation, the documents submitted therewith, the objections filed by AFSCME, 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 in this matter. 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 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 petition designates seven positions at the Department of Corrections (DOC) 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 descriptions for the designated positions along with affidavits from DOC's Chief of Staff, Chief Executive Officer (CEO) of Correctional Industries, and Chief of Programs and Support Services 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 the designation on the grounds that it does not comport with the requirements of Section 6.1. In support thereof, AFSCME alleges that CMS has failed to provide the job duties of the designated positions as required by Section 6.1 and that the designated positions do not qualify for designation under Section 6.1(b)(5). 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.

## **II. FINDINGS OF FACT**

The designated positions are all classified as Public Service Administrators (PSAs) Option 1. These positions were first certified to be in a collective bargaining unit on January 20, 2010, in Case Nos. S-RC-08-036.

Four of the designated positions are employed by DOC in the working title of Business Administrator. These positions were held by Michelle Grimsley, Michael Leathers, Michael Neal, and Nancy Stanfa at the time the instant designation was filed.

Two of the designated positions are employed by DOC in the working title of Industry Superintendent. At the time the instant designation was filed, these positions were held by Lori McKee and Caroline Petefish.

The final designated position is employed by DOC in the working title of Infant Development Administrator. Carol Brand held this position at the time the instant designation was filed.

## **III. POSITION DESCRIPTIONS**

### **Business Administrators**

The CMS-104s submitted by CMS list the following relevant responsibilities that employees in the position of Business Administrator are authorized to complete “[u]nder administrative direction”: plan, organize, execute, control, and evaluate all phases of the business and fiscal functions; implement policies and procedures; direct and coordinate the budgetary process with the facility and general office; control expenditures in line with available appropriations; serve as working supervisor by assigning and reviewing work, providing guidance and training, counseling staff regarding work performance, reassigning staff to meet day-to-day operating needs, establishing annual goals and objectives, approving time off, preparing and signing performance evaluations, and reviewing activity reports; direct accounting procedures in accordance with rules and regulations; make recommendations for new methods to improve systems for fiscal control; coordinate and direct purchasing, requisitioning, storage, distribution of items, and services; monitor procedures to comply with the State Purchasing Act. By affidavit Bryan Gleckler, Chief of Staff for DOC, asserts that he is familiar with the duties

that the designated Business Administrators are authorized to perform and that those duties are fairly and accurately described by the CMS-104s for the positions.

The CMS-104s list between four and nine funded subordinates for each designated Business Administrator. These subordinates have such working titles as Business Manager, Accountant, Accountant Supervisor, and Account Technician. Each Business Administrator reports directly to the Warden for his or her facility. Organizational charts submitted by CMS show that the designated Business Administrators are the highest level employees within the business and fiscal operations areas at their facilities.

### **Industry Superintendants**

The CMS-104s submitted by CMS list the following relevant responsibilities that employees in the position of Industry Superintendant are authorized to complete “[u]nder administrative direction”: organize, plan, execute, control, and evaluate the operations of the industry for their assigned correctional facility; implement policies for the total management process of that facility; plan for the effective and efficient utilization of program resources; organize goals of the industry for their facility; establish and maintain records and procedures for the control of raw materials, inventory, and finished goods inventory; plan production schedules, production levels, and all other inventory and inventory of raw materials; serve as working supervisor by assigning and reviewing work, providing guidance and training, counseling staff regarding work performance, establishing annual goals and objectives, approving time off, preparing and signing performance evaluations, and reviewing activity reports; monitor budget expenditures, prepare annual budget, and maintain expenditures within the annual budget as approved; establish and maintain business procedures and office records to ensure compliance with directives and procedures; and enforce compliance with DOC rules, administrative directives, Industry policies, ACA<sup>2</sup> standards, and institutional procedures. By affidavit Jennifer Aholt, CEO of Correctional Industries for DOC, asserts that she is familiar with the duties that the designated Industry Superintendants are authorized to perform and that those duties are fairly and accurately described by the CMS-104s for the positions. These CMS-104s list between two and three funded subordinates for each designated Industry Superintendant. These subordinates have such working titles as Account Technician and Correctional Industry Supervisor.

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<sup>2</sup> The CMS-104s do not identify what the acronym ACA stands for. While I presume that it stands for the American Correctional Association, this information is not relevant to my determination in this matter.

### **Infant Development Administrator**

The CMS-104s submitted by CMS list the following relevant responsibilities that an employee in the position of Infant Development Administrator is authorized to complete “[u]nder administrative direction”: organize, develop, and implement the Pregnant Mothers’ Programs, Infant Programs, and Infant Development Center Programs; organize, develop, and implement policies and procedures for these programs; coordinate program activities, including determining program priorities; serve as working supervisor by assigning and reviewing work, providing guidance and training, counseling staff regarding work performance, reassigning staff to meet day-to-day operating needs, establishing annual goals and objectives, approving time off, preparing and signing performance evaluations, and reviewing activity reports. By affidavit Shannis Stock, Chief of Programs and Support Services for DOC, asserts that she is familiar with the duties that the designated Infant Development Administrator is authorized to perform and that those duties are fairly and accurately described by the CMS-104 for the position. This CMS-104 lists two funded subordinates for the designated Infant Development Administrator and two positions that report to her on an “as assigned” basis. These subordinates have the working titles of Child Development Aid, Correctional Counselor, and Correctional Officer.

#### **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 a 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 concedes, that the positions at issue were first certified to be 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-104s for the designated positions tend to show that employees in those positions are authorized to exercise significant and independent discretionary authority as that term is defined in Section 6.1(c)(i).<sup>3</sup>

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 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. 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 the first component of 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). The phrase "engaged in executive and management functions" is an example of language used in both Sections.<sup>4</sup> 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)).

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<sup>3</sup> Because I find 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), and that finding alone is sufficient to support a conclusion that the instant designation is proper, I will not address the assertion that employees in the designated positions are also authorized to exercise significant and independent discretionary authority as that term is defined in Section 6.1(c)(ii).

<sup>4</sup> 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.

The requirement in the first component of Section 6.1(c)(i) 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.

Finally, 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), appeal pending, No. 1-14-0276 (Ill. App. Ct., 1st Dist.).

CMS's submission is consistent with its contention that the Business Administrators are authorized to have significant and independent discretionary authority as that term is defined in the first component of Section 6.1(c)(i). These employees are charged with the day-to-day business and fiscal operations at their facilities and are authorized to recommend new methods to improve fiscal control. In completing these responsibilities, the Business Administrators are authorized to be engaged in executive and management functions. They are also charged with the effectuation of management policies and practices of DOC. Each is authorized to oversee or supervise compliance with DOC accounting practices and is charged with the implementation of DOC policy and procedures during the budgetary process.

CMS's submission is also consistent with its contention that the Industry Superintendants are authorized to have significant and independent discretionary authority, this time as defined in the second component of Section 6.1(c)(i). They are charged with implementing policy for the total management process of the Industry at their assigned facility. In fulfilling this responsibility, they by definition take or recommend actions that effectively implement DOC policy; nothing on the face of CMS's submission indicates that the Industry Superintendants are not authorized to exercise discretion in doing so.

Finally, CMS's submission is consistent with its contention that the Infant Development Administrator is authorized to have significant and independent discretionary authority as that term is defined in the first component of Section 6.1(c)(i). She is authorized to be engaged in executive and management functions because she is responsible for organizing, developing, and implementing the Pregnant Mothers' Programs, Infant Programs, and Infant Development Center Programs at her facility; overseeing the day-to-day operation of these programs; and determining their priorities. She is also charged with the effectuation of management policy and practices because she is responsible for implementing DOC policy and procedure with respect to these programs.

**B. AFSCME has raised no assertions that, if proven, might demonstrate that the designation is inappropriate.**

AFSCME raises both general and specific objections to the designation of the positions at issue. Generally, AFSCME alleges that CMS has failed to provide the job duties of the designated positions and that there is no rational basis for treating the designated positions differently from other positions with the same title and/or similar duties that have not been designated. Specifically, AFSCME argues that the positions at issue do not meet the requirements for designation.

Section 6.1(b) provides that CMS must provide, among other information, the job duties of a designated position when filing a Gubernatorial designation petition. 5 ILCS 315/6.1(b) (2012). AFSCME argues that the affidavits and CMS-104s are insufficient for this purpose because: (1) the affidavits merely state legal conclusions; (2) the CMS-104s list only potential duties that are subject to the approval of a position's superior; and (3) the CMS-104s do not address the level of discretion an employee may exercise in performing the enumerated duties. However, AFSCME's allegation regarding the content of the affidavits is simply inaccurate. While they do contain the legal conclusions of the affiants as to the designability of the positions at issue, each affidavit also contains the affiant's statement that he or she is familiar with the duties of the designated positions and that the corresponding CMS-104s fairly and accurately describe those duties. I do not accept the affiants' conclusions as demonstrating any position's designability because that is the ultimate issue in this matter, and it is a question which the Board has been statutorily empowered to resolve. The affidavits do, however, have some value as foundation for the CMS-104s.

AFSCME's objections to the use of the CMS-104s are also unpersuasive. Assuming, without so finding, that AFSCME's allegation that the CMS-104s list only potential duties is accurate, this assertion alone is too speculative to provide a basis for finding that an employee in a designated position is not authorized to perform any particular enumerated duty which may support that position's designability. Given the presumption in Section 6.1(d), AFSCME must counter each duty that may support a position's designability with a specific assertion that, contrary to the CMS-104, an employee in the designated position is not authorized to perform that duty. Likewise, where CMS's submission is not on its face inconsistent with a finding that an employee is authorized to exercise discretion, it is incumbent on AFSCME to object with a specific assertion that no discretion is authorized.

AFSCME also alleges that there is no rational basis for treating the positions at issue differently from other positions with the same title and/or similar duties that have not been designated. AFSCME concludes that a hearing is necessary to determine whether there is a legal basis for such exclusion. This argument relates in part to AFSCME's contentions regarding the guarantee of equal protection, discussed below. To the extent AFSCME raises issues regarding the Board's basis for treating the designated positions differently, its objections must be rejected. The mere lawful exercise of the Governor's power to designate a position is itself a rational basis for the Board to treat a designated position differently from an arguably similar undesignated position. As to the need for a hearing, while a hearing may be necessary to determine whether there is a *factual* basis for a designation in the event an objector successfully undermines CMS's submission, the lawful exercise of the power granted in Section 6.1 is again a sufficient *legal* basis for the exclusion and no hearing is necessary.

AFSCME also raises specific objections with respect to each designated position. As to the Business Administrators, AFSCME points out that the employees in these positions dispute that they have a role in executing or controlling the business and fiscal operations at their facilities. It is true that each employee claims that the least accurate portion of the CMS-104 for his or her position is the statement that the Business Administrator is authorized to "execute" and "control" all phases of these functions. However, the employees appear to base this conclusion entirely on their allegations that "relevant" decisions are made higher in the fiscal or facility chain of command and that they are limited, based on the CMS-104s for their subordinates and the collective bargaining agreement which covers these subordinates, in their ability to assign

work. This does not negate the Business Administrator's responsibility for the day-to-day business and fiscal operations at their facilities. Each reports directly to the Warden at his or her facility, and, according to the organizational charts submitted by CMS, is the highest ranking employee in the business and fiscal operations field at each facility. Neither AFSCME nor the employees suggest that someone other than the Business Administrator is responsible for the day-to-day fiscal operations at their facilities, only that their ability to assign work and make unspecified decisions when overseeing these operations is curtailed. Furthermore, the employees do not contest that they are charged with the effectuation of management policies and practices; in fact, each concedes that he or she is responsible for ensuring compliance with DOC accounting procedures. Likewise, none deny that they implement policy and procedure, though this duty is clearly enumerated in the CMS-104 for these positions and each employee carefully detailed other portions of the CMS-104 which they deemed inaccurate.<sup>5</sup>

AFSCME denies that the Industry Superintendants make or implement policy. However, this allegation directly contradicts the clear authorization in the CMS-104 which provides that the Industry Superintendants implement policy for the total management process of the Industry at their assigned facilities. I cannot discern that AFSCME's denial is based on any statement made by McKee and Petefish in their response to AFSCME's questionnaire. McKee reported no inaccuracies in the CMS-104 for her position; Petefish denies only that she writes or creates policies, after specifically noting that the CMS-104 for her position indicates that she is authorized to implement policy.

Finally, AFSCME denies that Brand, as Infant Development Administrator, has a role in the creation or implementation of policy. Again, this contradicts language in the CMS-104 which provides that the Infant Development Administrator is authorized to implement policy and procedure for the relevant programs, and does not appear to be based on any statement made by Brand in her response to AFSCME's questionnaire. Brand reported no inaccuracies in the CMS-104 for her position, and stated only that she does not write or recommend the adoption of

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<sup>5</sup> In response to AFSCME's questionnaire, each denies that he or she writes policy or recommends any actions that control or implement legislation that affects DOC. All but Neal, whose answer to this question was non-responsive, deny that they decide how policy or legislation will be implemented. The Business Administrators' responses diverged on the issue of recommending policy: Grimsley stated that she can recommend policy, Neal and Stanfa did not respond, and Leathers stated that he does not recommend policy. Nowhere in these responses or in their refutations of the duties listed in the CMS-104s for their positions do the Business Administrators deny that they implement policy.

policies, have the authority to decide how policies or legislation will be implemented, or recommend any actions that control or implement legislation that affects DOC.

**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. 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 alleges that CMS's submission does not provide it with notice of the factual basis for the instant designation. However, I decline to find that notice is lacking where CMS's submission clearly indicates that the instant positions qualify for designation under Section 6.1(b)(5), the affidavits demonstrate CMS's contention that the positions have significant and independent discretionary authority as defined by both the managerial and supervisory portions of Section 6.1(c), and AFSCME has filed objections that are responsive to these contentions.

Beyond this assertion, AFSCME has not articulated how it has been deprived of either notice or an opportunity to be heard in this matter. Nonetheless, AFSCME's objections tout the dangers of accepting CMS's petition without inquiry. Therefore, I must note that I have not

accepted CMS's designation without inquiry. Though I have not granted AFSCME an oral hearing in this matter, I have considered the submissions of both CMS and AFSCME. Having determined that the objections, if proven, would not warrant dismissal of the instant petition, no oral hearing was necessary.

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 designations in these cases are 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 Department of Corrections are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

37015-29-06-243-00-01	Industry Superintendent
37015-29-06-254-00-01	Industry Superintendent
37015-29-59-100-00-01	Business Administrator
37015-29-61-270-00-01	Infant Development Administrator
37015-29-88-100-00-01	Business Administrator
37015-29-91-100-00-01	Business Administrator
37015-29-92-100-00-01	Business Administrator

**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](mailto: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 21<sup>st</sup> day of March, 2014**

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

*/s/ Heather R. Sidwell*

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**Heather R. Sidwell  
Administrative Law Judge**