

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

State of Illinois, Department of)	
Central Management Services)	
(Department of Human Services),)	
)	
Petitioner)	
)	
and)	Case No. S-DE-14-228
)	
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 March 25, 2014, Administrative Law Judge (ALJ) Martin Kehoe issued a Recommended Decision and Order (RDO) in this case, finding that the designation was properly made. We agree.

CMS petitioned to designate for exclusion a single position at the Illinois Department of Human Services classified as Public Service Administrator Option 6¹ and occupied by Barry

¹ CMS regulations provide classification of a Public Service Administrator position as Option 6 for positions in “Health and Human Services.” 80 Ill. Admin. Code 310.50.

Smoot. It was designated for exclusion pursuant to Section 6.1(b)(5) of the Act, which allows designation of positions with “significant and independent discretionary authority.”²

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 specific to the position. The ALJ declined to address the constitutional objections, rejected the other generally applicable and specific objections and found that the position met the requirements of Section 6.1(b)(5) of the Act and thus was properly designated.

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

² 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.

/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 in Chicago, Illinois, on April 15, 2014;
written decision issued at Springfield, Illinois, April 28, 2014.

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State of Illinois, Department of Central Management Services (Department of Human Services),)	
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ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

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

On March 4, 2014, the State of Illinois, Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation petition pursuant to Section 6.1 of the Illinois Public Labor Relations Act and Section 1300.50 of the Board’s rules. The petition seeks to designate one Public Service Administrator, Option 6 position affiliated

with the Illinois Department of Human Services. On March 14, 2014, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed an objection pursuant to Section 1300.60(a)(3) of the Board's rules.¹ After full consideration of the record, I, the undersigned Administrative Law Judge, recommend the following.

I. DISCUSSION AND ANALYSIS

The instant analysis must determine whether the petitioned-for position may lawfully be selected for designation under Section 6.1 of the Illinois Public Labor Relations Act. State of Illinois, Department of Central Management Services (Department of Natural Resources), 30 PERI ¶112 (IL LRB-SP 2013). Under Section 6.1, there are three broad categories of positions which may be so designated: (1) positions which were first certified to be in a bargaining unit by the Board on or after December 2, 2008, (2) positions which were the subject of a petition for such certification pending on April 5, 2013 (the effective date of Public Act 97-1172), or (3) positions which have never been certified to have been in a collective bargaining unit. Moreover, to be properly designated, the position must also fit one or more of the five categories provided by Section 6.1(b).² Here, CMS contends that the position at issue qualifies for designation under Section 6.1(b)(5).

Section 6.1(b)(5) requires a petitioned-for position to authorize an employee in that position to have "significant and independent discretionary authority as an employee." That

¹ The instant petition seeks to designate position no. 37015-10-95-000-10-01. That position is currently occupied by Barry Smoot. In a March 14, 2014 e-mail message, Smoot informed the Board that he does not object to the designation of his position.

² Only 3,580 of such positions may be so designated by the Governor and, of those, only 1,900 positions which have already been certified to be in a collective bargaining unit. I also note that Public Act 98-100, which became effective July 19, 2013, added subsections (e) and (f) to Section 6.1. Those subsections shield certain specified positions from such designations, but none of those positions are at issue in this case.

authority is defined in Section 6.1(c), which requires the employee to either be (i) engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency or represent management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency or (ii) qualify as a “supervisor” of a State agency as that term is defined under Section 152 of the National Labor Relations Act, 29 U.S.C. 152(11), or any orders of the National Labor Relations Board (NLRB) interpreting that provision or decisions of courts reviewing decisions of the NLRB. A position that meets the standard of either Section 6.1(c)(i) or Section 6.1(c)(ii) meets the standard of Section 6.1(b)(5). See State of Illinois, Department of Central Management Services (Illinois Council on Developmental Disabilities), 30 PERI ¶169 (IL LRB-SP 2014).

In support of and along with its petition, CMS provided a unique position description for the position at issue. CMS also provided an affidavit that contends, inter alia, that the included position description fairly and accurately represents the position’s duties and responsibilities. Nevertheless, in its objection, AFSCME contends that CMS submitted no “actual evidence” that supports the designation, provides the job duties of the position at issue, or shows how that position meets the standard of Section 6.1(b)(5). I disagree, and find that the required information has been provided. That finding is reinforced by the unique presumption of appropriateness provided by Section 6.1(d).

AFSCME’s objection also suggests that CMS’ submission fails to demonstrate that the position at issue “actually” performs certain duties, but the plain language of Section 6.1(b)(5) fairly clearly encompasses positions that simply “authorize” employees in those positions to have significant and independent discretionary authority. Furthermore, the possibility that the

position's duties are subject to the approval of or controlled by a superior has not been dispositive in this type of case. See State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity), 30 PERI ¶163 (IL LRB-SP 2014); State of Illinois, Department of Central Management Services (Emergency Management Agency), 30 PERI ¶105 (IL LRB-SP 2013).

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

Separately, AFSCME asserts that the definition set forth in Section 6.1(c) essentially follows the manager and supervisor definitions developed by the NLRB and case law interpreting the same. Using that logic, AFSCME contends that CMS, as the party claiming managerial status, bears the burden of proof. AFSCME also generally contends that the employee at issue is a professional employee and, accordingly, cannot perform executive and management functions (and thus cannot be considered a manager). However, those contentions are not supported by the Board's precedent, and the distinction between a professional and a manager has not been dispositive. State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity), 30 PERI ¶163; State of Illinois,

Department of Central Management Services (Department of Natural Resources), 30 PERI ¶112; State of Illinois, Department of Central Management Services (Department of Agriculture), 30 PERI ¶84 (IL LRB-SP 2013). Section 6.1 is a “unique statutory creation” that differs from the rest of the Illinois Public Labor Relations Act. State of Illinois, Department of Central Management Services (Illinois Commerce Commission), 30 PERI ¶83 (IL LRB-SP 2013).

AFSCME also notes that the position at issue has just one subordinate, and baldly concludes that, for that reason, the “reassignment of staff and other alleged supervisory functions are necessarily limited.” In short, that alleged possibility does not raise an issue for hearing and fails to overcome Section 6.1(d)’s presumption of appropriateness. Notably, Section 6.1(b)(5) does not require petitioned-for positions to have more than one (or any) subordinate. State of Illinois, Department of Central Management Services (Department of Human Services), 30 PERI ¶103 (IL LRB-SP 2013); State of Illinois, Department of Central Management Services (Department of Commerce & Economic Opportunity), 30 PERI ¶86 (IL LRB-SP 2013).

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

II. CONCLUSION OF LAW

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

III. RECOMMENDED ORDER

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

<u>Position Number</u>	<u>Working Title</u>
37015-10-95-000-10-01	Regional Training Coordinator

IV. EXCEPTIONS

Pursuant to Sections 1300.90 and 1300.130 of the Board's rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order, and briefs in support of those exceptions, no later than three days after service of the Administrative Law Judge's Recommended Decision and Order. All exceptions shall be filed and served in accordance with Section 1300.90 of the rules. Notably, exceptions must be filed by electronic mail sent to ILRB.Filing@Illinois.gov. Each party shall serve its exceptions on the other parties. A party that does not file timely exceptions waives its right to except to the Administrative Law Judge's Recommended Decision and Order.

Issued in Chicago, Illinois this 25th day of March 2014.

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A handwritten signature in cursive script that reads "Martin Kehoe". The signature is written in black ink and is positioned above a horizontal line.

**Martin Kehoe
Administrative Law Judge**