

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

State of Illinois, Department of	)	
Central Management Services	)	
(Department of Healthcare and	)	
Family Services),	)	
	)	
Petitioner	)	
	)	
and	)	Case No. S-DE-14-236
	)	
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 April 7, 2014, Administrative Law Judge (ALJ) Elaine L. Tarver 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 positions at the Illinois Department of Healthcare and Family Services classified as Public Service Administrator Option 8N<sup>1</sup> with the working title of Assistant Manager or Supervisor. All were designated for exclusion pursuant to

---

<sup>1</sup> CMS regulations classify Public Service Administrator positions as Option 8N for positions requiring a license as a registered nurse. 80 Ill. Admin. Code 310.50.

Section 6.1(b)(5) of the Act, which allows designation 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 specific to the positions at issue. The ALJ declined to address the constitutional objections, rejected the other generally applicable objections and the position-specific objections and found that the positions met the requirements of Section 6.1(b)(5) of the Act and thus were 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 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

---

<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.

/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 May 13, 2014;  
written decision issued at Springfield, Illinois, May 19, 2014.

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

State of Illinois, Department of Central	)	
Management Services (Department of	)	
Healthcare and Family Services),	)	
	)	
Petitioner	)	
	)	
and	)	Case No. S-DE-14-236
	)	
American Federation of State, County	)	
and Municipal Employees, Council 31,	)	
	)	
Labor Organization-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. 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 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 be properly designated, the position must fit 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 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, 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 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.<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

---

<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 (Sept. 6, 2013). These rules are contained in Part 1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On March 18, 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. CMS' petition designates the exclusion of the following Public Service Administrators employed at the Department of Healthcare and Family Services based on Section 6.1(b)(5) of the Act:

**Public Service Administrator, Option 8N  
Vacant positions at Department of Healthcare and Family Services**

<u>Position No.</u>	<u>Working Title</u>
37015-33-16-220-00-62	Assistant Manager
37015-33-17-421-00-21	Supervisor
37015-33-17-423-00-61	Assistant Manager
37015-33-23-713-40-61	Supervisor
37015-33-23-713-50-61	Supervisor
37015-33-23-714-40-21	Supervisor
37015-33-23-714-50-61	Supervisor

In support of its petition, CMS submitted job descriptions (CMS-104s) for each position, affidavits and a summary spreadsheet. The spreadsheet identifies position numbers, titles, name of the incumbents, bargaining unit, certifications date and case number, statutory category of designation and a list of job duties that support the presumptions that the positions are supervisory or managerial. The positions at issue were certified into the RC-63 bargaining unit on October 28, 2009 in Case No. S-RC-04-130. On March 31, 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 as part of the designation, the objections, and the arguments submitted in support of those objections, I have determined that the objections have failed to raise an issue that would require a hearing.

I find the designation to have been properly submitted and consistent with the requirements of Section 6.1 of the Act. Therefore, 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 OBJECTIONS**

AFSCME makes several general objections to the petition. AFSCME argues that Section 6.1 of the Act violates due process, the separation of powers doctrine in the Illinois Constitution, equal protection under Article I, Section 2 of the Illinois Constitution, and the Fifth and Fourteenth Amendments to the United States Constitution, and impairs the contractual right of the employees prohibited by the impairment of contract clause in the Illinois Constitution.

AFSCME specifically objects to the designated positions arguing that they do not possess significant and independent discretionary authority to be either supervisory or managerial as set forth in Section 6.1(c) of the Act. AFSCME argues that the position of Assistant Manager of the Bureau of Fraud Science and Technology is a newly created position that has never been filled and the position description indicates that the employee in the position would perform duties that include review and analysis of records as well as providing testimony in administrative hearings. AFSCME contends that this is not executive or management functions.

AFSCME argues that the remaining positions perform duties very similar to the PSA Option 8N positions in Case No. S-DE-14-175, which it asserts appear to be lead worker duties acting to insure compliance with medical standards as well as Department policy by applying their medical knowledge, skill and ability to essentially an audit process performed in conjunction with Health Facility Service Nurses in their respective units.

AFSCME notes the designated positions and their subordinate positions are currently vacant.

## **II. FINDINGS OF FACT**

According to the job descriptions and CMS' affidavits, the position of Manager of the Bureau of Fraud Science and Technology serve as a working supervisor who assigns and reviews work, provides guidance and training to assigned staff, counsels staff regarding work performance, reassigns staff to meet day-to-day operating needs, establishes annual goals and objectives, approves time off and prepares and signs performance evaluations. This position also develops complex reports for top management review, develops management and budgetary impact statements for alternative courses of action and corrects problem areas or implements policies and programs to improve operations.

The remaining PSA Option 8Ns work in either the Office of the Inspector General or the Chief of the Bureau for Long Term Care. According to AFSCME, these positions perform the

same or similar duties. Those duties include serving as working supervisors who assign and review work, providing guidance and training to assigned staff, counsel staff regarding work performance, reassign staff to meet day-to-day operating needs, establish annual goals and objectives, approve time off and prepare performance evaluations, and determine and recommend staffing needs. These positions are also tasked with reviewing and approving letters containing departmental recommendations, creating correspondence and responding to inquiries concerning surveys and consulting with city, county and state health departments in cases of suspected poor quality of care. Lastly, the designated employees develop and modify working procedures for monitoring and ensuring quality of care and recommend and direct the implementation of program improvements.

### **III. DISCUSSION AND ANALYSIS**

#### **a. Procedural Objections**

First, the Board has held that it is beyond its capacity to rule on the constitutional allegations made by AFSCME. Specifically, it is beyond the Board's purview to rule whether the Illinois Public Labor Relations Act, as amended, violates provisions of the United States and Illinois constitutions. The Board noted that administrative agencies have no authority to declare statutes unconstitutional or even to question their validity and in doing so, their actions are null and void and cannot be upheld. State of Illinois, Department of Central Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013) (citing Goodman v. Ward, 241 Ill. 2d. 398, 411 (2011)). As such, I will not address the constitutional objections in this decision.

The Board has also expressed its concern with AFSCME's due process arguments but maintains that it has taken necessary measures to prevent such a violation. Therefore, the Board held that consistent with judicial precedent it has "insured that the individual employees as well as their representative and potential representative receive notice soon after designation petitions are filed, usually within hours, and have provided for redundant notice by means of posting at the worksite....we provided them an opportunity to file objections, and where they raise issues of fact or law that might overcome the statutory presumption of appropriateness, an opportunity for a hearing, [and]...require a written recommended decision by an administrative law judge in each case in which objections have been filed." State of Illinois, Department of Central Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013) (citing Arvia v. Madigan, 209 Ill. 2d 520 (2004), and Gruwell v. Ill. Dep't of Financial and Professional

Regulations, 406 Ill. App. 3d 283, 296-98 (4th Dist. 2010)). Additionally, the Board found that it has “allowed an opportunity to appeal those recommendations for consideration by the full Board by means of filing exceptions,...doubled the frequency of our scheduled public meetings in order to provide adequate review of any exceptions in advance of the 60-day deadline and... issu[e] written final agency decisions which may be judicially reviewed pursuant to the Administrative Review Law”, in an effort to adhere to due process. State of Illinois, Department of Central Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013).

Moreover, in administrative hearings, failing to go to an oral hearing is not necessarily the denial of a hearing where submission of written documents could suffice as a hearing. Department of Central Management Services (Illinois Commerce Commission) v. Illinois Labor Relations Board, State Panel, 406 Ill. App. 3d 766, 769-70 (4th Dist. 2010). Therefore, AFSCME’s due process rights have not been violated by the Board following the policies and procedures mandated by the legislature and I find there is no issue of law or fact warranting a hearing.

Regarding the burden of proof, AFSCME has the burden to demonstrate that the designation is not proper. The Act is clear in that “any designation made by the Governor...shall be presumed to have been properly made,” 5 ILCS 315/6.1 (2012). Therefore, the burden of proof shifts to the objector to prove that the designation is, in fact, improper.

Lastly, Illinois Appellate Courts have held that the Board’s consideration of job descriptions alone, is an adequate basis upon which to evaluate an exclusion. See Village of Maryville v. Illinois Labor Relations Board, 402 Ill. App. 3d 369 (5th Dist. 2010); Ill. Dep’t of Cent. Mgmt. Servs. V. Ill. Labor Rel. Bd., 2011 Ill App. (4th Dist.) 090966; but see Vill. of Broadview v. Ill. Labor Rel. Bd., 402 Ill. App. 3d 503, 508 (1st Dist. 2010); see also Ill. Dep’t of Cent. Mgmt. Servs. v. Ill. Labor Rel. Bd., 382 Ill. App. 3d 208, 228-29 (4th Dist. 2008); City of Peru v. Ill. Labor Rel. Bd., 167 Ill. App. 3d 284, 291 (3d Dist. 1988). Accordingly, the Board has sufficient evidence from which to establish whether the designation is proper.

**b. Designations under Section 6.1(b)(5)**

As stated above, a position is properly designated if, amongst other reasons, it was first certified to the bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008, and it authorizes an employee in the position to have “significant and independent

discretionary authority as an employee” as defined by Section 6(c) of the Act. Moreover, designations made by the Governor are presumed proper under Section 6.1 of the Act.

It is undisputed that the positions at issue were certified into bargaining unit RC-63 on October 28, 2009 in Case No. S-RC-04-130. At issue is whether the petitioned-for positions have significant and independent discretionary authority as described in Section 6.1(c), to be designated as supervisory or managerial under the Act.

Section 6.1(b)(5) allows the Governor to designate positions that authorize an employee to have “significant and independent discretionary authority.” 5 ILCS 315/6.5(b)(5). The Act provides three tests by which a person can be found to have “significant and independent discretionary authority.” Section 6.1(c)(i) sets forth the first two tests, while Section 6.1(c)(ii) sets forth the third.<sup>2</sup> I find the employees are properly designated under Section 6.1(c)(i) of the Act, therefore I will not address their authority under Section 6.1(c)(ii).

The first test is substantively similar to the traditional test for the managerial exclusion articulated in Section 3(j). Section 6.1(c)(i) provides that a position authorizes an employee with significant and independent discretionary authority if “the employee 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.” However, 6.1(c)(i) provides a broader definition than the traditional test found in Section 3(j), in that it does not include a preponderance element and only requires that an employee be “charged with the effectuation” of policies and not that the employee direct the effectuation. According to the traditional test, an employee directs the effectuation of management policy when he or she oversees or coordinates policy implementation by developing the means and methods of reaching policy objectives, and by determining the extent to which the objectives will be achieved. Elk Grove Village, 245 Ill. App. 3d at 122, Evanston, 227 Ill. App. 3d at 975. Here, however, in order to meet the first test set out in Section 6.1, a position holder need only be charged with carrying out the policy in order to meet the Department’s objective.

---

<sup>2</sup> Section 6.1(c) provides that 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.

The second test under 6.1(c)(i) makes a designation proper if the position “represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of the agency.” 5 ILCS 315/6.1(c)(i) (2012). The Illinois Appellate Court has observed that the definition of a managerial employee in Section 3(j) is very similar to the definition of a managerial employee in the Supreme Court’s decision in National Labor Relations Board v. Yeshiva University, 444 U.S. 672 (1980). Dep’t of Cent. Mgmt. Serv. Ill. Commerce Com’n v. Ill. Labor Rel. Bd., 406 App. 766, 776 (4th Dist. 2010) (citing Yeshiva, 444 U.S. at 683). The Court noted that the ILRB, “incorporated effective recommendations into its interpretation of the term ‘managerial employee.’” ICC, 406 Ill. App. at 776.

I find the designated employees are authorized to have significant and independent discretionary authority meeting the managerial component in Section 6.1 of the Act. Section 6.1(d) requires us to presume the Governor’s designation is proper, and the evidence as a whole fails to overcome that presumption. Although AFSCME states that the designated positions do not execute management functions, AFSCME provides no basis to refute the job descriptions. The Assistant Manager of the Bureau of Fraud Science and Technology engages in management functions when developing complex reports for top management to review; developing management and budgetary impact statements for alternative courses of action and correcting problem areas or implementing policies and programs to improve operations. The remaining PSA, Option 8Ns are engage in managerial duties when they develop and modify working procedures for monitoring and ensuring quality of care and recommend and direct the implementation of program improvements.

AFSCME has provided no evidence to refute the presumption that the designated positions perform with the requisite significant and independent discretionary authority. Therefore, these positions are properly designated as managerial in accordance with Section 6.1(c)(i) of the Act.

#### **IV. CONCLUSIONS OF LAW**

The designations in this case are properly made.

#### **V. RECOMMENDED ORDER**

Unless this Recommended Decision and Order Directing Certification of the Designation is rejected or modified by the Board, the following positions are excluded from the self-

organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

**Public Service Administrator, Option 8N  
Vacant positions at Department of Healthcare and Family Services**

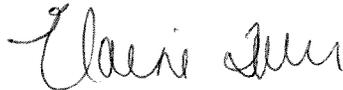
<b><u>Position No.</u></b>	<b><u>Working Title</u></b>
37015-33-16-220-00-62	Assistant Manager
37015-33-17-421-00-21	Supervisor
37015-33-17-423-00-61	Assistant Manager
37015-33-23-713-40-61	Supervisor
37015-33-23-713-50-61	Supervisor
37015-33-23-714-40-21	Supervisor
37015-33-23-714-50-61	Supervisor

**VI. EXCEPTIONS**

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300, parties may file exceptions to the Administrative Law Judge's recommended decision and order, and briefs in support of those exceptions, no later than 3 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 and Regulations. Exceptions must be filed by electronic mail sent to [ILRB.filing@illinois.gov](mailto:ILRB.filing@illinois.gov). Each party shall serve its exceptions on the other parties. If the original exceptions are withdrawn, then all subsequent exceptions are moot. 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 7th day of April, 2014**

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



**Elaine L. Tarver, Administrative Law Judge**