

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

State of Illinois, Department of Central)	
Management Services,)	
)	
Employer)	
)	
and)	Case No. S-DE-14-005
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	

**ADMINISTRATIVE LAW JUDGE'S
RECOMMENDED DECISION AND ORDER**

I. BACKGROUND

Section 6.1 of the Illinois Public Labor Relations Act, 5 ILCS 315/6.1 (2012) (Act) *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 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 Ill., 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

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 emergency rules to effectuate Section 6.1, which became effective on April 22, 2013, 37 Ill. Reg. 5901 (May 3, 2013), and the Board promulgated permanent rules for the same purpose which became effective on August 23, 2013, 37 Ill. Reg. ____ (collectively referred to as the Board’s rules). These rules are contained in Part 1300 of the Board’s Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On August 8, 2013, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation petition pursuant to Section 6.1 of

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.

the Act and Section 1300.50 of the Board’s Rules.² On August 22, 2013, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Union) filed objections to the designation pursuant to Section 1300.60(a)(3) of the Board’s Rules. Based on my review of the designations, the documents submitted as part of the designation, the objections, and the documents and arguments submitted in support of those objections, I find the designation to have been properly submitted and consistent with the requirements of Section 6.1 of the Act and consequently 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.

The following six positions are at issue in this designation. All positions are classified as Senior Public Service Administrators (SPSAs) at the Illinois Criminal Justice Information Authority:

40070-50-05-100-00-01	Henry, Anthony	Associate Director - Office of Administrative Services
40070-50-05-300-01-01	McCambridge, Wendy A.	Associate Director - Grants Unit
40070-50-05-200-00-01	Vacant	Chief Fiscal Officer
40070-50-05-400-10-01	Vacant	Associate Director - Statistical Research Center
40070-50-05-500-00-01	Vacant	Associate Director - Information Systems Unit
40070-50-05-500-10-01	Vacant	Assistant Associate Director - Information Systems Unit

AFSCME objects to the designation of the following two positions:

40070-50-05-500-00-01	Vacant	Associate Director - Information Systems Unit
40070-50-05-500-10-01	Vacant	Assistant Associate Director - Information Systems Unit

CMS’s designation petition indicates that the positions at issue qualify for designation under Section 6.1(b)(2) of the Act. CMS also filed position descriptions (CMS-104s) for each

² On August 8 and 9, 2013 CMS filed 33 separate designation petitions involving approximately 900 employment positions.

petition and a summary spreadsheet in support of its petition which indicate that the designated positions hold the title of Senior Public Service Administrator (SPSA). The summary spreadsheet identifies the following information for each designated position: position number, name of incumbent, position title, whether the position is a term appointment, whether the position is Rutan exempt, the e-mail address of the incumbent in the position, the statutory category that serves as the basis of the exemption, whether the position is subject to an active representation petition, and the applicable representation petition number.

II. ISSUES AND CONTENTIONS

AFSCME objections to the designations present procedural and substantive issues. The first procedural issue is whether the period of time AFSCME was given to file objections was sufficient to provide it with due process as required by the Act. The second procedural issue is whether the Board's failure to provide AFSCME with a method to obtain information denies AFSCME due process as required by the Act.

The substantive issues involve whether vacant positions 40070-50-05-500-00-01 and 40070-50-05-500-10-01 were properly excluded from collective bargaining pursuant to Section 6.1(b)(2) of the Act. AFSCME first argues that it is arbitrary to exclude the designated positions based solely upon their SPSA status. Second, AFSCME argues that the two vacant positions are classified as Option 3, and thus subject to the representation petition, S-RC-10-220. AFSCME's final objections relate to the job duties of these vacant positions. AFSCME argues that these two positions are misclassified as SPSA because positions with similar duties have been certified into the bargaining unit, and the SPSA class specification specifically excludes "positions subject to the collective bargaining contracts." AFSCME argues that if these positions are classified improperly as SPSA's the future incumbents will be performing work outside the SPSA class specification, and this will constitute an erosion of bargaining unit work, requiring interpretation of a collective bargaining agreement.

III. DISCUSSION AND ANALYSIS

a. procedural due process

The Board did not deny AFSCME due process when it required AFSCME to file objections to the designations in accordance with the Board's rules, and when it allegedly failed to provide AFSCME a method to obtain information to support its objections.

The purpose of procedural due process is to minimize error. See East St. Louis Fed'n of Teachers, Local 1220 v. East St Louis School Dist. No. 189 Financial Oversight Panel, 178 Ill. 2d 399, 419-20 (1997). Notice and an opportunity to be heard are necessary principles of procedural due process. Id.; Segal v. Dep't. of Ins., 404 Ill. App. 3d 998, 1002 (1st Dist. 2010) citing People ex rel. Ill. Commerce Comm'n v. Operator Communication, Inc., 281 Ill. App. 3d 297, 302 (1996). Notice must be reasonably calculated “to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Segal, 404 Ill. App. 3d at 1002, citing Hwang v. Dep't of Public Aid, 333 Ill. App. 3d 698, 707 (2002).

Administrative rules have the force and effect of law and are presumed valid. People v. Molnar, 222 Ill. 2d 495, 508, (2006); Dep't. of Cent. Mgmt. Servs., 406 Ill. App. 3d 766, 771 (4th Dist. 2011). Generally, administrative agencies must follow their own rules as written. Mattoon Community Unit School District No. 2 v. Ill. Educational Labor Rel. Bd., 193 Ill. App. 3d 875, 881, (4th Dist. 1990). When an administrative agency has adopted rules and regulations under its statutory authority for carrying out its duties, the agency is bound by those rules and regulations and cannot arbitrarily disregard them. Springwood Assoc. v. Health Facilities Planning Bd. 269 Ill. App. 3d 944, 948 (4th Dist. 1995) citing Union Electric Co. v. Dep't. of Revenue, 136 Ill. 2d 385, 391 (1990).

i. 10-day requirement

Section 6.1(b)(5) provides “within 60 days after the Governor make a designation under this Section, the Board shall determine, in a manner that is consistent with the requirements of due process, whether the designation comports with the requirements of this Section.” Section 1300.60(a)(3) of the Board Rules and Procedures provides that “the collective bargaining representative or incumbent employee shall have 10 days from the date of service of the designation to object to the designation.” See 80 Ill. Admin. Code 1300.60. As an administrative rule, the Board’s requirement that the 10-day deadline to object to the designation petition is presumed valid.

Here the Board’s Rules placing time limits for filing objections, do not deprive AFSCME of due process because they are reasonable given the statutory time frame the Board has to process each designation petition. The Act requires that the Board determine the validity of the designation within 60 days from the date of filing. CMS filed this designation petition on August 8, 2013, and the Act requires the Board to determine whether these designations comport

with Section 6.1 of the Act by October 7, 2013. In order for the Board to issue a decision, the Board must allow: (1) time for the parties to file objections; (2) time for the Administrative Law Judge (ALJ) to review the petition, any objections, and hold a hearing, if necessary, in order to draft, issue, and serve its Recommended Decision and Order (RDO); (3) time for the parties to file exceptions to the ALJ's RDO; (4) time for the Board and its staff to review the RDO and any exceptions; (5) time for the Board to set an agenda for the Board meeting, pursuant to the Open Meetings Act;³ (6) time for the Board to rule on the ALJ's recommendation before it can issue a written decision. Given the process that must occur for the Board to issue a decision within the 60 days as required by the Act, the Board's 10-day time limit for filing objections is reasonable, and therefore does not deprive AFSCME of due process.

ii. method to obtain information

The Board did not deprive AFSCME of due process by failing to provide a method to obtain information to support its objections.

In order to properly designate a State employment position exempt from the self-organization and collective bargaining provisions of Section 6 of the Act, Section 6.1(b) of the Act requires the Governor or its agents, to provide in writing to the Board, "the job title and job duties of the employment position, if any; the name of the State agency employing the public employee; and the category under which the position qualifies for designation." Section 1300.60 of the Board Rules requires that the Board serve the designation petition on the collective bargaining representative who represents the designated position, and to the incumbent employee within that position, (or if the incumbent employee is unrepresented, only to the employee). In order to qualify for designation, Section 6.1(b), states, in relevant part, that the employment position must have the title or duties of Senior Public Service Administrator (SPSA).

The six positions at issue all have the title of Senior Public Service Administrator. A plain and ordinary reading of the statute indicates that these positions are properly included in the designation, and the only relevant inquiry would be whether these positions are identified properly as SPSAs, and whether the correct position number is identified. In the attachment to the designation petition, CMS identifies that four of the six positions are vacant. All the

³ The Open Meetings Act requires the Board to post an agenda for each regular meeting to be posted at the Board's principal office and at the location where meeting is to be held at least 48 hours in advance of the meeting. See 5 ILCS 120/2.02 (2012).

positions include the job descriptions, and the two occupied positions include the names of the incumbent, and the work e-mail addresses of the incumbents. The Act requires CMS provide the relevant information, and CMS in fact provided the information. AFSCME fails to demonstrate any relevant information likely to be uncovered by additional discovery.

Therefore, the Board did not deprive AFSCME of due process by not specifying a method to obtain additional information prior to filing objections.

b. vacant positions 40070-50-05-500-00-01 and 40070-50-05-500-10-01

The designations of positions 40070-50-05-500-00-01 and 40070-50-05-500-10-01 are properly made. Since there is a presumption that any such designation made by the Governor was properly made, AFSCME's objections must overcome that presumption in order for the Board to determine that the designations are not consistent with section 6.1 of the Act. None of AFSCME's objections overcome this presumption. First, designation solely based on status is not arbitrary. Second, whether these positions are subject to a currently-pending petition is irrelevant, because the positions fall within one of the three designatable categories. Similarly, AFSCME's remaining arguments, that the positions are misclassified and that SPSAs are performing work not within the SPSA class specification, creating an erosion of bargaining unit work, are all irrelevant to this matter.

i. designation based upon SPSA status is not arbitrary

It is not arbitrary for the Board to permit designation of these positions, and specifically positions 40070-50-05-500-00-01 and 40070-50-05-500-10-01, based on their status as SPSAs, because the Board is adhering to the plain language of the statute. An action by an administrative agency is "arbitrary and capricious if it contravenes the legislature's intent, fails to consider a crucial aspect of the problem, or offers an explanation so implausible that it runs contrary to agency expertise." Cook Cnty. State's Attorney v. Ill. State Labor Rel. Bd., 292 Ill. App. 3d 1, 6 (1st Dist.1997). An agency's decision is arbitrary and capricious when it does not comport with the relevant enabling statute. Bigelow Group, Inc. v. Rickert, 377 Ill. App. 3d 165, 175 (2nd Dist. 2007).

Section 1300.10 of the Board Rules state that it is a function of the Board to determine whether designations made by the Governor or his agents comport with Section 6.1 of the Act. Section 6.1 of the Act specifically identifies SPSAs as eligible for designation based on the

positions title or based on the position's exercise of "substantially similar duties" as an SPSA. Therefore, it is not arbitrary for the Board to permit designation of positions 40070-50-05-500-00-01 and 40070-50-05-500-10-01 based on SPSA status alone.

ii. representation petition S-RC-10-220

AFCME's objection to the designation based upon the pending representation petition is irrelevant. Section 6.1(a) of the Acts states that the positions eligible to be designated must fall into one of the following three categories: 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. CMS identified positions 40070-50-05-500-00-01 and 40070-50-05-500-10-01 as not subject to any active certification petitions. AFSCME argues that as Option 3 SPSAs, the positions are subject to representation petition S-RC-10-220, but were not included in the petition because it is a common practice of CMS and the Board to limit hearings to the occupied positions. Whether the two vacant positions are subject to petition S-RC-10-220 is irrelevant to the designation. Since the certification petition was not certified before December 2, 2008, even if the positions were considered within the petitioned for unit, they are still subject to the designation, because the positions still fit in one of the three designatable categories.

Therefore AFSCME's objection that of positions 0070-50-05-500-00-01 and 40070-50-05-500-10-01 are subject to a pending representation petition does not overcome the presumption that the gubernatorial designation is correct.

iii. misclassification and job duties

AFSCME's remaining objections are not pertinent because they are based on the position's job duties, and do not address the sole issue in this certification petition. Here, the positions at issue qualify for designation because they have the SPSA title, therefore AFSCME's objections based on the misclassification of positions 40070-50-05-500-00-01 and 40070-50-05-500-10-01, and any speculated consequences of any alleged misclassification are irrelevant. Section 6.1(a)(2) provides, in relevant part that a position with the "title of . . . Senior Public Service Administrator" is eligible to be designated as exempt from the bargaining provisions of Section 6 of the Act. As stated above, since this designation is based solely upon the positions holding the title of SPSA, the only inquiry is whether these positions have been correctly

identified as having the title of SPSA. AFSCME does not claim that these positions are misidentified, and instead argues that the Board should not consider these positions to be classified as SPSAs based on speculative job duties that future holders of the positions might perform. AFSCME also speculates as to whether the Board’s exclusion or inclusion of these currently vacant positions into a bargaining unit will properly address the erosion non-SPSA bargaining unit work. However, these arguments are hypothetical, and inconsequential, because the Act clearly identifies the designation of SPSA positions based on title alone, without regard to job duties or the possible future erosion of bargaining unit work.

Thus, whether future incumbents of positions 40070-50-05-500-00-01 and 40070-50-05-500-10-01 might not be performing the duties of an SPSA is irrelevant, because the positions hold the SPSA title.

IV. CONCLUSION

Pursuant to Section 1300.60 of the Board’s Rules, I find that the designation is proper based solely on the information submitted to the Board and AFSCME’s objections fail to overcome the presumption that the designation is proper under Section 6.1 of the Act.

V. RECOMMENDED ORDER

Unless this Recommended Decision and Order Directing Certification of the Designation is rejected or modified by the Board, the following positions with the Illinois Criminal Justice Information Authority are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

40070-50-05-100-00-01	Henry, Anthony	Associate Director - Office of Administrative Services
40070-50-05-300-01-01	McCambridge, Wendy A.	Associate Director - Grants Unit
40070-50-05-200-00-01	Vacant	Chief Fiscal Officer
40070-50-05-400-10-01	Vacant	Associate Director - Statistical Research Center
40070-50-05-500-00-01	Vacant	Associate Director - Information Systems Unit

VI. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300,⁴ 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.

Issued at Chicago, Illinois this 4th day of September, 2013.

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

/s/ Deena Sanceda _____

**Deena Sanceda
Administrative Law Judge**

⁴ Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf