

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

State of Illinois, Department of Central	)	
Management Services, (Department of	)	
Commerce and Economic Opportunity),	)	
	)	
Petitioner	)	
	)	
and	)	Case No. S-DE-14-008
	)	
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 may be positions which have already been certified to be in a collective bargaining unit.

Moreover, to be properly designated, the 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 allows 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

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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.

permanent rules for the same purpose which became effective on 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 August 8, 2013, 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. The Board's General Counsel granted two motions filed by the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) seeking an extension of time in which to file objections pursuant to Section 1300.60(a)(3). The first order of the General Counsel, issued August 16, 2013, extended AFSCME's time in which to file objections in this matter from August 21, 2013, to August 22, 2013. The second order, issued August 23, 2013, gave AFSCME an additional extension up to and including August 26, 2013. On August 26, 2013, AFSCME filed timely objections to the designation. 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 have determined that AFSCME has failed to raise an issue that would require a hearing. 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 92 positions at the Illinois Department of Commerce and Economic Opportunity 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(b)(2) because they are all classified as Senior Public Service Administrators (SPSAs). CMS also states that none of these positions are currently represented for the purposes of collective bargaining, though all are subject to active petitions for certification in a bargaining unit filed by AFSCME. In support of these contentions, CMS has provided a spreadsheet showing the classification of each designated position and indicating that each is currently not represented for the purposes of collective bargaining. Additionally, CMS has filed CMS-104 documents containing the position description for each designated position.

AFSCME has broadly objected to the designations. However, rather than detailing the grounds for its objections, AFSCME complains that it is unable to file specific objections given the constraints of the Gubernatorial designation process. According to AFSCME, these constraints are: (1) that CMS filed more than one third of the authorized 3,580 designations in a time period of less than one week; (2) that CMS did not provide information to support its designations; (3) that no procedures exist under which AFSCME may discover additional information; (4) that the time lapse between the filing of AFSCME's active petitions for these positions and CMS's filing of the instant designation negates any opportunity AFSCME would otherwise have to be in possession of information on which to base its objections to the designation of these positions; and (5) the denial of sufficient additional time in which to file objections. Taken together, AFSCME argues that these factors do not comport with the statutory and constitutional requirements that the Board evaluate Gubernatorial designations filed pursuant to Section 6.1 in a manner that comports with due process. AFSCME concludes that "[t]he requirements of due process cannot be met within a ten day or even a seventeen day period given both the number of petitions filed and the number of positions that were covered by the first group of petitions."

## **II. FINDINGS OF FACT**

The 92 positions designated by CMS are all employees at the Illinois Department of Commerce and Economic Opportunity. All of these positions are classified as SPSAs by the employer. None of the designated positions are currently represented for purposes of collective bargaining. However, 86 of the designated positions are SPSA Option 1 or Option 8N positions subject to an active petition for certification in a bargaining unit filed by AFSCME in Case No. S-RC-11-098. The remaining five are SPSA Option 2 positions subject to an active petition for certification in a bargaining unit filed by AFSCME in Case No. S-RC-11-042.

On August 15, 2013, AFSCME filed with the Board's General Counsel a motion for an extension of time in which to file objections in this and 32 other designations filed on August 8 and 9, 2013. This motion was granted as to this designation, and AFSCME was given until August 22, 2013, to file objections. On August 22, 2013, AFSCME filed a renewed motion requesting that the time in which it must file objections in this and 32 other designations be extended until September 27, 2013. This motion was granted in part as to this designation, and

AFSCME was given until August 26, 2013, to file objections. Thus, AFSCME was given a total of eighteen days from the filing date of this designation in which to file objections.<sup>2</sup>

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

As stated above, a position is properly designable, among other circumstances, if: (1) it has never been certified into a collective bargaining unit; and (2) it has the title of SPSA. 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). CMS's initial filing clearly indicates both that all 92 designated positions have never been certified into a collective bargaining unit and that they each have the title of SPSA. Furthermore, AFSCME has failed to allege either that the designated positions have previously been certified into a collective bargaining unit or that the positions are not actually classified as SPSAs. Therefore, I find that all 92 positions are properly designable under Section 6.1 of the Act.

Regarding its objections to the overall Gubernatorial designation process, AFSCME essentially argues that the procedures provided do not, under the circumstances, comport with the requirements of due process. For the reasons that follow, AFSCME's contentions on this issue must fail.

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)). In this instance, AFSCME argues that the alleged deficiencies in the Board's procedure deprived AFSCME of a meaningful opportunity to be heard. In order to satisfy this requirement, the Board must provide a party affected by its proceedings with a meaningful procedure to assert his or her claim prior to the deprivation or impairment of a right. Peacock v. Bd. of Tr. of the Police Pension Fund, 395 Ill. App. 3d at 654 (citing Matthews v. Eldridge, 424 U.S. 319, 332 (1976) and Wendl v. Moline Police Pension Board, 96 Ill. App. 3d 482, 486 (3rd

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<sup>2</sup> AFSCME also filed a "corrected renewed motion" for an extension of time that included a request to extend the time in which to file objections on the 33 designations included in its renewed motion and an additional 10 designation not included in that motion. Because the Board's General Counsel issued an order ruling on the renewed motion before receiving AFSCME's corrected renewed motion, this was treated as a third request for an extension and was denied as it pertains to the instant designation.

Dist. 1981). AFSCME's complaints relate five circumstances surrounding the Gubernatorial designation process, which together, it claims, have prevented AFSCME from filing timely specific objections to this designation. Thus, AFSCME has essentially argued that it has not had a meaningful opportunity to assert its claims and has thus been deprived of the due process right to be heard. I will examine each complained-of circumstance in turn.

First, AFSCME alleges that it has been denied a meaningful opportunity to assert its claims in this matter because CMS filed nearly one-third of the permitted 3,580 designations in a span of less than one week. Presumably, AFSCME's complaint on this point is that it has been unable to review so many designations to discern what, if any, objections it may assert. AFSCME cites no authority in support of this contention. However, Section 6.1 of the Act authorizes the Governor to designate up to 3,580 positions, with the only time constraint being that all must be filed within one year of the effective date of P.A. 97-1172. Therefore, the quantity of designations filed by CMS constitutes a valid use of the Governor's authority under Section 6.1. Absent authority to the contrary, where the use of this authority has complied with the statute, I will not find a violation of due process.

Second, AFSCME argues that CMS has not provided information in support of its exclusions. This complaint has no basis in fact. CMS's filing in this matter included the CMS-104 position description for the designated positions. These CMS-104 documents clearly indicate that each designated position is classified as an SPSA.

Third, AFSCME complains that there is no procedure by which it may obtain additional information on which to base its objections. This allegation again has no basis in fact. There are several procedures by which AFSCME could have obtained information that would support an assertion that the positions at issue are not properly designable. By visiting the Employee Salary Database at <http://ledger.illinoiscomptroller.com/>, anyone can search by state employee name or agency to determine whether a designated position with an incumbent employee has been properly identified by classified title. Furthermore, certain information can be obtained by written request under the Freedom of Information Act, 5 ILCS 140, with a response from the receiving public body due within five business days of the receipt of such a request. 5 ILCS 140/3(d)(5) (2012). Additionally, any employee affected by a gubernatorial designation may inspect his or her personnel file within seven working days of a request, and obtain a copy thereof, under the Personnel Record Review Act. 820 ILCS 40/2 (2012). Finally, all of the

designated positions are subject to an active petition for certification in a collective bargaining unit in which AFSCME is the petitioner. It is reasonable to presume that AFSCME is able to obtain, if not already in possession of, additional information with respect to the positions at issue in those petitions. Furthermore, AFSCME has not specified what additional *relevant* information it would seek through any discovery procedures. In light both of the fact that the sole issue in this matter is whether the designated positions have been properly identified as being classified as SPSAs and not currently represented for the purposes of collective bargaining and the multiple means both AFSCME and the incumbent employees had to obtain information relevant to this issue, I find that the lack of additional discovery procedures has not deprived AFSCME of a meaningful opportunity to assert its claims in violation of due process.

Fourth, AFSCME cites the lapse of time between the filing of its active petitions for these positions and the filing of the instant designation, negating the above stated inference that it should be able to obtain, if not already in possession of, the information AFSCME states that it lacks. Assuming, *arguendo*, that this inference were successfully negated, multiple means to obtain such information remained available to AFSCME.

Finally, AFSCME states that the denial of sufficient time to file objections does not comport with the requirements of due process. This contention fails for two reasons. First, whereas AFSCME characterizes the Board's General Counsel's rulings on its motions for an extension as a denial, the General Counsel granted AFSCME two extensions. AFSCME was given 18 days, rather than the ten specified by Rule 1300.60(a)(3), in which to file objections. Second the Board has complied with its own Rules in requiring AFSCME to file timely objections to Gubernatorial designations. Administrative regulations have the force and effect of law, are presumed valid, and will be construed under the same standards that apply in construing statutes. City of Chicago v. Ill. Labor Rel. Bd., Local Panel, 396 Ill. App. 3d 61, 73 (1st Dist. 2009) (citing Granite City Division of National Steel Co. v. Ill. Pollution Control Bd., 155 Ill. 2d 149, 162 (Ill. 1993)). Regulations adopted by an agency pursuant to its statutory authority will not be set aside unless they are arbitrary and capricious. Id. In this case, Rule 1300.60(a)(3) is reasonable, particularly in light of the statutory requirement that the Board fully evaluate designations filed under Section 6.1 within 60 days thereof. During these 60 days, the Board must allow time: (1) for the parties to file objections; (2) for an Administrative Law Judge (ALJ) to hold a hearing, if necessary, and to draft, issue, and serve a Recommended Decision and Order

(RDO) on the parties; (3) for the parties to file exceptions to the ALJ's RDO; (4) for the Board and its staff to evaluate the exceptions; (5) for the Board to set an agenda for the Board meeting pursuant to the requirements of the Open Meetings Act, 5 ILCS 120; and (6) for the Board to rule on the ALJ's RDO concerning the designation. In addition, the Board is expected to receive a high volume of these petitions because the Governor is statutorily permitted to designate up to 3,580 positions for exclusion. Taken together, these factors demonstrate that the Board's ten-day time limit for filing objections is reasonable and thus consistent with the Board's obligation to provide due process to parties affected by its decision.

**IV. CONCLUSION OF LAW**

The Governor's designation in this case is 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 at the Department of Commerce and Economic Opportunity are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

- 40070-42-00-000-01-01 Confidential Assistant
- 40070-42-00-000-02-01
- 40070-42-00-000-03-01 Chief of Staff
- 40070-42-00-000-04-01 Chief Operating Officer
- 40070-42-00-000-20-01 Market Events Manager
- 40070-42-00-000-30-01 Federal Legislation Manager
- 40070-42-00-000-40-01 Small Business Utilities Advocate
- 40070-42-00-000-50-01 Agency Procurement Officer
- 40070-42-00-005-00-01 Deputy Director
- 40070-42-00-010-00-01 Deputy Director
- 40070-42-00-015-00-01 Local Government Initiative Manager
- 40070-42-00-020-00-01 Real Estate Development
- 40070-42-00-030-00-01 Deputy Director
- 40070-42-00-050-00-01 Deputy Director
- 40070-42-00-060-00-01 Deputy Director
- 40070-42-00-070-00-01 Deputy Director
- 40070-42-00-071-00-02 Policy and Program Development
- 40070-42-00-090-00-01 Deputy Director
- 40070-42-00-090-05-01 Assistant Deputy Director
- 40070-42-00-094-00-01 Asia Pacific Office Manager
- 40070-42-00-095-00-01 America's Office Manager
- 40070-42-00-096-00-01 Foreign Direct Investment Manager
- 40070-42-00-100-00-01 Women's Business Development Manager
- 40070-42-00-200-00-01 Deputy Director

40070-42-00-220-00-01	Grant Management
40070-42-00-220-10-01	Program Review
40070-42-00-300-00-01	Chief Financial Officer
40070-42-00-310-00-01	Budget Director
40070-42-00-310-05-01	Assistant Budget Officer
40070-42-00-320-00-01	Fiscal Operations
40070-42-00-330-00-01	Accounting Section
40070-42-00-600-00-01	Deputy Director
40070-42-00-700-00-01	Deputy Director
40070-42-00-700-06-01	Assistant Deputy Director
40070-42-00-710-00-01	Small Business Office
40070-42-00-710-10-01	Small Business Network
40070-42-00-740-00-01	Innovation and Technology Manager
40070-42-00-740-10-01	Entrepreneur Network
40070-42-00-740-20-01	Technology Sector Development
40070-42-00-800-00-01	Deputy Director
40070-42-00-810-00-01	Performance Measurement Manager
40070-42-00-820-00-01	Accountability Program
40070-42-00-830-00-01	External Accountability
40070-42-00-900-05-01	Deputy Chief Auditor
40070-42-05-000-00-01	Deputy Director
40070-42-05-000-05-01	Assistant Deputy Director
40070-42-10-000-00-01	Deputy Director
40070-42-10-000-05-01	Assistant Deputy Director
40070-42-10-025-00-01	Illinois Main Street Manager
40070-42-10-050-00-01	Northeast Region Manager
40070-42-10-100-00-01	Northern Stateline Region Manager
40070-42-10-200-00-01	Northwest Region Manager
40070-42-10-300-00-01	East Central Region Manager
40070-42-10-400-00-01	Central Region Manager
40070-42-10-500-00-01	North Central Region Manager
40070-42-10-600-00-01	West Central Region Manager
40070-42-10-700-00-01	Southeastern Region Manager
40070-42-10-800-00-01	Southern Region Manager
40070-42-10-900-00-01	Southwestern Region Manager
40070-42-25-000-00-01	Deputy Director
40070-42-25-000-05-01	Assistant Deputy Director
40070-42-25-100-00-01	Marketing Division
40070-42-25-200-00-01	Local Tourism
40070-42-35-000-00-01	Deputy Director
40070-42-35-000-05-01	Assistant Deputy Director
40070-42-35-140-00-01	Marketing Development Manager
40070-42-35-200-00-01	Business Finance
40070-42-35-210-00-01	Loan and Investment
40070-42-35-220-00-01	Financial Review
40070-42-35-400-00-01	Job Training

40070-42-40-000-00-01	Deputy Director
40070-42-40-100-00-01	Assistant Deputy Director
40070-42-40-140-00-01	Northern Workforce Development
40070-42-40-200-00-01	OET Budget Planning
40070-42-40-420-00-01	Northeast Region
40070-42-40-500-00-01	Technical Assistance
40070-42-40-700-00-01	Program Development
40070-42-40-710-00-01	Performance Management
40070-42-40-720-00-01	Policy and Grants
40070-42-50-000-00-01	Deputy Director
40070-42-50-000-05-01	Assistant Deputy Director
40070-42-50-200-00-01	Economic Opportunity
40070-42-50-300-00-01	Community Assistance
40070-42-70-000-00-01	Deputy Director
40070-42-70-000-05-01	Assistant Deputy Director
40070-42-70-100-00-01	Energy Division
40070-42-70-150-00-01	Energy Finance
40070-42-70-150-10-01	Energy Efficiency Manager
40070-42-70-200-00-01	Communication and Education
40070-42-80-000-00-01	Deputy Director
40070-42-80-000-05-01	Assistant Deputy Director
40070-42-80-200-00-01	Washington, DC

## **VI. EXCEPTIONS**

Pursuant to Section 1300.90 and Section 1300.130 of the Board’s Rules and Regulations, 80 Ill. Admin. Code Part 1300,<sup>3</sup> 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. 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.

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<sup>3</sup> Available at <http://www.state.il.us/ilrb/subsections/pdfs/Section%201300%20Illinois%20Register.pdf>

Issued at Chicago, Illinois, this 6<sup>th</sup> day of September, 2013

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Heather R. Sidwell  
Administrative Law Judge