

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

State of Illinois, Department of Central Management Services,)	
)	
Employer)	
)	
and)	Case No. S-DE-14-009
)	
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, 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. 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.

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 (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 fit one or more 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 (SPSA), 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 Illinois Public Labor Relations 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 order of the National Labor Relations Board interpreting that provision or decisions of courts reviewing decisions of the National Labor Relations Board.¹

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

¹ 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. Separately, I 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.

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 Illinois Public Labor Relations Act and Section 1300.50 of the Board's emergency rules. On August 22, 2013, the American Federations of State, County and Municipal Employees, Council 31 (AFSCME) filed objections to the designation pursuant to Section 1300.60(a)(3) of the Board's emergency rules.

I. DISCUSSION AND ANALYSIS

AFSCME's August 22, 2013 Objections

Section 6.1(b) of the Illinois Public Labor Relations Act requires the Board to determine, in a manner consistent with due process, whether the designation comports with the requirements of Section 6.1 (and do so within 60 days). Notably, Section 6.1(d) creates a presumption that a designation made by the Governor was properly made. In this instance, CMS asserts that the statutory category under which the positions at issue in this case qualify for designation is Section 6.1(b)(2). Specifically, CMS asserts that the positions at issue have the title of SPSA. In its August 22, 2013 objections, AFSCME objects to the instant designation, but does not squarely dispute the assertion that the positions at issue are in fact SPSAs. By failing to do so, AFSCME's objections do not address the primary issue of this case and do not rebut the presumption of Section 6.1(d). Accordingly, I find that the Governor's designation was properly made. I also find no compelling reason to conduct a hearing in this instance.

AFSCME initially "objects to the inadequate period of time in which to file objections and the lack of any method of obtaining information to provide the due process required by the Act." However, significantly, AFSCME has not detailed precisely why the standard ten-day

time period provided by Section 1300.60(a)(3) of the emergency rules was inadequate or what a more adequate filing period would be. Moreover, AFSCME has not specifically articulated what information it needed to obtain but could not acquire. Those omissions are not helpful.

I would grant that the emergency rules do not provide objectors an obvious method for acquiring subpoenas prior to the filing of an objection. I would also grant that Section 6.1 and the emergency rules include “condensed time limits and deadlines.” However, here, it generally appears that AFSCME simply needed to determine whether the 23 positions at issue in this case were in fact SPSAs. Presumably, AFSCME did not need a considerable amount of time or information in order to make that determination.² Indeed, whether or not a position is an SPSA position is a fact that is quite often readily discoverable via publically-accessible online databases such as the State of Illinois Transparency & Accountability Portal. Likewise, I suspect that AFSCME could have discovered similar information via a Freedom of Information Act request. I would also posit that AFSCME is likely to already know a position’s title when it has previously petitioned to represent that position. Separately, I note that, in its objections, AFSCME overtly admits that many of the positions at issue in this case are SPSAs. To some degree, that kind of admission further suggests that AFSCME had access to the basic information it needed to appropriately respond to this designation petition. Under those circumstances, I find AFSCME’s initial objections to be unpersuasive.

After its initial objections, AFSCME specifically notes that certain designated positions are affiliated with Case No. S-RC-10-156, a pending representation petition. The positions that AFSCME specifically references as being part of Case No. S-RC-10-156 (and, notably, concedes

² One might also note that, on August 16, 2013, the Board’s General Counsel extended the time for filing objections in this case from August 21, 2013 to August 22, 2013. Moreover, through this Administrative Law Judge’s Recommended Decision and Order, I have granted AFSCME’s August 26, 2013 motion for leave to file an additional objection *instanter*.

are SPSA positions) are 40070-46-21-110-10-01 (Julie Armitage), 40070-46-21-120-00-01 (Connie Tonsor), 40070-46-21-130-00-01 (Marcus (Kyle) Rominger), 40070-46-21-130-10-01 (James Richardson), and 40070-46-21-110-20-01 (vacant). Put simply, AFSCME indicates that, “during the hearings on that petition,” CMS, in effect, agreed that those positions were appropriately included in the RC-10 bargaining unit. AFSCME concludes that it is “arbitrary and inconsistent” for CMS to now seek to exclude those positions from the unit.

AFSCME subsequently observes that the attachment to the instant designation petition indicates that two petitioned-for SPSA positions have the working title of section manager. Those two positions are (1) 40070-46-13-210-00-01 (Barbara Baxter) and (2) 40070-46-14-030-00-01 (Geoffrey Andres). AFSCME asserts that there are many other section managers in the Illinois Environmental Protection Agency who are also SPSAs and have been certified by the Board in Case Nos. S-RC-09-038, S-RC-09-160, and S-RC-09-180. (All of the positions at issue in the instant case are affiliated with the Illinois Environmental Protection Agency.) AFSCME then suggests that, based on the submitted “104s” (i.e., CMS position descriptions), the two petitioned-for employees noted above evidently “have the same type of duties” as those of certified employees. AFSCME contends that it is “arbitrary” for CMS to select the two positions for designation “without distinguishing duties or responsibilities.” AFSCME also argues that, because certain positions that have been included in a unit have the same duties and responsibilities as the above-referenced petitioned-for positions, those petitioned-for positions should not be classified as SPSAs.

In sum, I am unconvinced that the circumstances highlighted by AFSCME are relevant to the instant determination. To reiterate, in this instance, the Board must primarily determine whether the instant designation comports with Section 6.1 of the Illinois Public Labor Relations Act and, notably, Section 6.1 does not dictate that a designation may not be arbitrary or inconsistent. Regarding AFSCME’s “appropriateness” concerns, I also note that Section 6.1 does not appear to

mandate that the Board investigate whether a position is properly classified as an SPSA. Instead, it appears that the Board must simply determine whether the position is actually classified as an SPSA. Likewise, the Board need not, at this time, consider whether there has been an “erosion of non-SPSA bargaining unit work.” It is also worth commenting that the stipulation referenced above occurred prior to the passage of Section 6.1. The significance of that fact should not be overlooked. Accordingly, I find that AFSCME’s additional objections are misguided.

AFSCME’s August 26, 2013 Motion for Leave to File Additional Objection Instanter

On August 26, 2013, AFSCME filed a motion for leave to file an additional objection instanter. In that motion, AFSCME reported that, subsequent to the filing of its August 22, 2013 objections, AFSCME was made aware that Christopher Demeroukas (position no. 40070-46-13-200-00-02), another petitioned-for employee, also has duties that are similar to employees who are certified members of AFSCME bargaining unit RC-63 as a result of a decision of the Board in Case No. S-RC-09-180. Purportedly, counsel for AFSCME contacted Justin Smock, counsel for CMS, in order to determine whether Smock objected to the motion for leave to file instanter. According to AFSCME’s motion, he did not so object. For that reason, I see no compelling reason not to allow AFSCME to file the August 26, 2013 motion. That being said, I do not find that the arguments provided by the motion are meritorious.

The arguments AFSCME makes in its motion very closely parallel those of its initial objections and, for similar reasons, I reject those arguments as well. Significantly, in the motion, AFSCME contends that Demeroukas is an “SPSA Opt 1.” In my view, that sort of concession inherently diffuses AFSCME’s objection to the exclusion of Demeroukas’ position. I also find that the possibility that the Illinois Environmental Protection Agency employs other “division managers” who are represented by AFSCME and may perform work that is similar to that of a petitioned-for position is irrelevant. As noted, nothing in Section 6.1 of the Illinois Public Labor

Relations Act suggests that CMS, when selecting positions for exclusion, may not make an “arbitrary” selection.

II. CONCLUSION OF LAW

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 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 positions are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

Position Number	Name of Incumbent	Working Title
40070-46-00-000-00-03	Raghav Murali	Policy Advisor
40070-46-00-000-00-04	Eric Heineman	Policy Advisor
40070-46-00-000-00-07	vacant	Policy Advisor
40070-46-00-100-00-01	vacant	Manager, Fiscal Services
40070-46-00-200-00-01	Art Moore	Agency Purchasing Officer
40070-46-00-200-00-03	vacant	Manager, Office of Outreach and Citizen Response
40070-46-00-400-00-01	John Cross	Governmental Affairs Advisor
40070-46-05-100-00-01	vacant	Manager, Division of Administration
40070-46-10-000-00-01	vacant	Deputy Director

40070-46-10-500-00-01	vacant	Manager, Division of Records Management
40070-46-13-200-00-02	Christopher Demeroukas	Manager, Division of Mobile Source Programs
40070-46-13-210-00-01	Barbara Baxter	Section Manager, Vehicle Inspection Program
40070-46-14-030-00-01	Geoffrey Andres	Section Manager, Infrastructure Financial Assistance (Bureau of Water)
40070-46-21-100-00-01	John J Kim	Chief Legal Counsel
40070-46-21-110-10-01	Julie Armitage	Deputy General Counsel, Bureau of Air Enforcement Unit
40070-46-21-110-20-01	vacant	Deputy General Counsel, Bureau of Air Regulatory Development and Appeals Unit
40070-46-21-120-00-01	Connie Tonsor	Deputy General Counsel, Bureau of Water Enforcement Unit
40070-46-21-130-00-01	Marcus (Kyle) Rominger	Deputy General Counsel, Bureau of Land Regulatory Development and Appeals Unit
40070-46-21-130-10-01	James Richardson	Deputy General Counsel, Bureau of Land Enforcement Unit
40070-46-21-140-00-01	vacant	Deputy General Counsel, Bureau of Water Regulatory Development and Appeals Unit
40070-46-25-300-00-01	Dominic Saebeler	Chief Information Officer
40070-46-30-000-00-01	Elmo Dowd	Associate Director
40070-46-30-200-00-01	vacant	Community Outreach (Upstate)

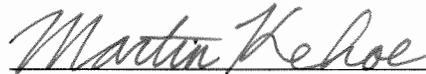
IV. EXCEPTIONS

Pursuant to Sections 1300.90 and 1300.130 of the Board's adopted rules, 80 Ill. Admin. Code Part 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 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 Board's adopted 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. If the original exceptions are withdrawn, then all subsequent exceptions are moot. A party not filing timely exceptions waives its right to except to the Administrative Law Judge's Recommended Decision and Order.

Issued at Chicago, Illinois, this 29th day of August, 2013.

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**Martin Kehoe
Administrative Law Judge**