

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

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| State of Illinois, Department of Central Management Services,             | ) |                      |
|   | ) |                      |
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| Petitioner  | ) |                      |
|   | ) |                      |
| and   | ) | Case No. S-DE-14-010 |
|   | ) |                      |
| 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, 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.<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 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.

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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.

\_\_\_\_. 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 pursuant to Section 6.1 of the Act and Section 1300.50 of the Board's Rules. CMS' designation petitions the exclusion of 50 Senior Public Service Administrators (SPSA) in the Department of Natural Resources based on Section 6.1(b)(2) of the Act. On August 22, 2013, the American Federation 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 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, to the extent necessary, amend any applicable certifications of exclusive representatives to eliminate any existing inclusion of this position within any collective bargaining unit.

## **I. ISSUES AND CONTENTIONS**

CMS contends that 50 positions within the Department of Natural Resources qualify for designation under Section 6.1(b)(2) of the Act because they are all classified as Senior Public Service Administrators (SPSAs). In support of this contention, CMS has provided a spreadsheet showing the classification of each designated position and indicating whether each position is currently represented for the purposes of collective bargaining. Additionally, CMS has filed CMS-104 documents that provide position descriptions for the designated positions.

AFSCME argues that the Board denied it due process because it had an inadequate period of time in which to file objections and lacked any method of obtaining information in support of its objections. AFSCME specifically argues that it is arbitrary to permit the removal of a single SPSA Option 8e (position no. 40070-12-23-100-00-01) that is certified as included in the RC-63 bargaining unit pursuant to an order issued by the Board in Case Nos. S-RC-09-038 and S-RC-09-060, when there are numerous other SPSA Option 8e positions covered by a collective bargaining agreement.

Moreover, AFSCME contends that this position should not be classified as an SPSA position based on the class specifications which provide that positions subject to collective bargaining agreements are not SPSA positions, and given that this position, with others, have been certified into the bargaining unit. Lastly, AFSCME argues that in excluding this position there is an issue of erosion of non-SPSA bargaining unit work that needs to be determined through the interpretation of a collective bargaining agreement.

## **II. DISCUSSION AND ANALYSIS**

### **a. Procedural Issues**

The Board's application of its rules requiring AFSCME to file its objections within 10 days, without offering a method in which information should be obtained, did not violate AFSCME's due process rights. Due process requires notice and an opportunity to be heard. East St. Louis Federations of Teachers, Local 1220 v. East St. Louis School District No. 189 Financial Oversight Panel, 178 Ill. 2d. 399, 419-20m (1997). The Board's reasonable compliance with its rules does not impinge upon AFSCME's due process it has received notice and an opportunity to be heard.

Here, the Board's Emergency Rules, which specify time limits for filing objections, does not deprive AFSCME of due process because they are reasonable considering the short statutory time frame in which the Board must process designation petitions. The Act provides that the Board has 60 days to determine whether the designation comports with the requirements of Section 6.1 of the Act. Moreover, AFSCME was granted an extension and given four additional days to file its objections in this matter. AFSCME has also been aware of the of the requirements of Section 6.1 of the Act since Public Act 97-1172 became effective on April 5, 2013, and aware of the Board's rules since they were published in the Illinois Register on May 3, 2013.

As to its lack of a method to obtain information necessary for its objections, here, AFSCME admits that the position designated for exclusion was certified into the bargaining unit in 2009 in Case Nos. S-RC-09-038 and 060. As the exclusive representative, AFSCME has obvious familiarity with the petitioned-for position. More specific information generally retrieved through employee testimony would be unavailable here because the position is vacant.

As such, AFSCME has, or should have, all information necessary to file its objections to the designation of the position in this matter.

**b. Substantive Issues**

Contrary to AFSCME's contention, it is not arbitrary for the Board to exclude the petitioned-for designation, even though there are other positions of the same title covered by a collective bargaining agreement. An agency's acts are arbitrary and capricious only if the agency "contravenes the legislature's intent, fails to consider a crucial aspect of the problem or offers an explanation which is so implausible that it runs contrary to agency expertise." Dean v. Lustig, 337 Ill. App. 3d 294, 302 (4th Dist. 2003). For example, an agency's decision is arbitrary and capricious if it fails to follow its own rules or fails to adhere to the statute at issue. Department of Central Management Services, Illinois Commerce Commission v. Illinois Labor Relations Board, 406 Ill. App. 3d 766, 771 (4th Dist. 2010) (held that the agency must follow its own rules); Steinhouse v. Ashcroft, 247 F. Supp. 2d 201, 210 (D. Conn. 2003) (agency's failure to adhere to statute at issue is arbitrary and capricious) citing Yousefi v. INS, 260 F. 3d 318, 328 (4th Cir. 2001).

Here, the Board's exclusion of the designation would not be arbitrary. The Board is bound to Section 6.1 of the Act that permits the exclusion of "positions which were first certified to be in a bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008." The designation at issue was first certified into the bargaining unit June 2, 2009 meeting the first category in which positions may be designated for exclusion. Moreover, the designation also meets the requirements of Section 6.1(b)(2) of the Act that offers that the designation of an excluded position only has to "have a title of... Senior Public Service Administrator."

AFSCME's arguments regarding whether the SPSA classification is proper based on the position perform the same or similar duties as other SPSA Option 8e in the bargaining unit and the erosion of bargaining unit work are not relevant to the Section 6.1 designations. The plain language of the Act provides that a position is designable if it has the title *or* duties of an SPSA. This indicates the legislature's clear intent that the employer's classification of a position as one of the enumerated titles would be sufficient to render that position properly designable. Further, it is clear that the legislature intended to permit designation of a position classified in an enumerated title whether an employee in that position actually exercised the duties of that title or

not. Further, the Board does not have jurisdiction to decide whether CMS has properly classified certain positions as Senior Public Service Administrators.

As explained above, CMS has met its burden simply by providing evidence that the designation *is* currently classified as a Senior Public Service Administrator. AFSCME’s objection has not overcome that burden. Thus, the designation is proper and AFSCME’s objections raise no issue of law or fact warranting a hearing in this matter.

**III. CONCLUSIONS OF LAW**

The designation in this case is properly made.

**IV. 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:

| <b>Position Number</b> | <b>Name of Incumbent</b> | <b>Working Title</b>                  |
|------------------------|--------------------------|---------------------------------------|
| 40070-12-00-001-00-01  | Todd Main                | Chief of Staff                        |
| 40070-12-00-010-00-01  | Chris McCloud            | Dir of Office of Cons Res Marketing   |
| 40070-12-00-100-00-01  | Elizabeth Norden         | Deputy Director - Cook                |
| 40070-12-00-120-00-01  | Jon Woods                | Strategic Planning                    |
| 40070-12-00-200-00-01  | Travis Loyd              | Deputy Director - Franklin            |
| 40070-12-00-300-00-01  | Matthew Fruth            | Regional Economic Development         |
| 40070-12-00-400-00-01  | Lynn Boerman             | No. IL Coordinator                    |
| 40070-12-00-600-00-01  | Diane Tecic              | Manager of Coastal Zone               |
| 40070-12-00-800-00-01  | Elizabeth Penesis        | Deputy Director - DuPage              |
| 40070-12-00-900-00-01  | vacant                   | Dir of Off of Sci Research & Analysis |
| 40070-12-01-000-00-01  | Jeffrey Jones            | Community Outreach                    |
| 40070-12-02-100-00-01  | Virginia Yang            | Staff Attorney                        |
| 40070-12-02-200-00-01  | vacant                   | Staff Attorney                        |
| 40070-12-03-000-00-01  | vacant                   | Manager of Millennium Reserve         |
| 40070-12-04-000-00-01  | Arthur Ashbrook          | Sparta WSRC Exec Director             |
| 40070-12-05-000-00-01  | Scott Harper             | CFO                                   |
| 40070-12-05-200-00-01  | vacant                   | Asst CFO                              |
| 40070-12-06-000-00-01  | Michael Ziri             | Chief Legislative Liaison             |
| 40070-12-07-000-00-01  | Marceo Haywood           | Director of Strategic Services        |
| 40070-12-08-000-00-01  | Dan Lorenc               | Office Director - Information Svcs    |

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| 40070-12-09-000-00-01 | vacant                 | Director of Business Mgmt             |
| 40070-12-23-000-00-01 | John Evans             | Engineering Division Manager          |
| 40070-12-23-100-00-01 | vacant                 | Senior Professional Engineer          |
| 40070-12-24-000-00-01 | vacant                 | Grants Division Manager               |
| 40070-12-32-000-00-01 | Jim Modglin            | Division Manager - Parks              |
| 40070-12-32-710-00-01 | vacant                 | Dir of North Point Marina             |
| 40070-12-40-001-00-01 | Charles Good           | ORC Bus Manager                       |
| 40070-12-40-101-00-01 | vacant                 | Section Mgr - Program Support         |
| 40070-12-45-000-00-01 | Deborah Bruce          | Division Manager - Fisheries          |
| 40070-12-46-000-00-01 | John Buhnerkempe       | Division Manager - Wildlife           |
| 40070-12-50-000-00-01 | Vacant                 | Office Director - Performance Mgmt    |
| 40070-12-60-000-00-01 | Arlan Juhl             | Office Director - Water Resources     |
| 40070-12-61-000-00-01 | vacant                 | Div of Admin Services Mgr             |
| 40070-12-62-200-00-01 | vacant                 | Div of Prog Dev Mgt                   |
| 40070-12-64-400-00-01 | Daniel Injerd          | Section Mgr - Lake Mich/Ports Mgmt    |
| 40070-12-65-110-00-01 | vacant                 | Section Mgr - Appraisal/Relocation    |
| 40070-12-70-000-00-01 | Michael Woods          | Office Director - Mines & Minerals    |
| 40070-12-70-100-00-01 | Anthony Mayville       | Section Mgr                           |
| 40070-12-70-300-00-01 | vacant                 | Section Mgr                           |
| 40070-12-73-000-00-01 | vacant-in ePAR process | Div Mgr - Oil & Gas                   |
| 40070-12-74-000-00-01 | Scott Fowler           | Div Mgr - Land Reclamation            |
| 40070-12-80-000-00-01 | Rafael Gutierrez       | Chief of Law Enforcement              |
| 40070-12-81-000-02-01 | vacant                 | staff specialist to Div Chief         |
| 40070-12-82-000-00-01 | vacant                 | Law Enforcement Supp Serv             |
| 40070-12-83-000-00-01 | vacant                 | Investigations                        |
| 40070-12-90-000-00-01 | Todd Rettig            | Office Director-Realty & Env Planning |
| 40070-12-91-000-00-01 | Connie Waggoner        | Div of Realty Mgr                     |
| 40070-12-91-200-00-01 | vacant                 | Concessions/Leasing Div Mgr           |
| 40070-12-94-000-00-01 | vacant                 | Environmental Planning Div Mgr        |

## V. **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, not 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 29th day of August, 2013**

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

*Elaine L. Tarver*

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