

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

State of Illinois, Department of Central Management Services,)	
)	
)	
Employer)	
)	
and)	
)	
American Federation of State, County and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	Case No. S-DE-14-021
)	
and)	
)	
Glen Bell,)	
)	
Employee-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.¹

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 in this case.

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. ___. These rules are contained in Part 1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On August 9, 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. On August 22, 2013, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed timely objections to the designation pursuant to Section 1300.60(a)(3) of the Board's Rules.² On August 22, 2013, Glen Bell, an employee of the State of Illinois who occupies one of the positions designated as excluded from collective bargaining rights, similarly filed a timely objection to the designation.³ 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 and Bell 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 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 the existing inclusion of these positions within any collective bargaining unit.

² On August 15, 2013, AFSCME filed a motion for an extension of time within which to file objections in this case. On August 16, 2013, the Board's General Counsel issued an order extending the time for filing objections in this case from August 21, 2013 to August 22, 2013.

³ On August 23, 2013, Paul Havey, an employee of the State of Illinois who also occupies one of the positions designated as excluded from collective bargaining rights, similarly filed an objection to the designation. Pursuant to Section 1300.60(a)(3) of the Board's Rules and the General Counsel's extension of time, objections were due by August 22, 2013. Thus, Havey's objection was untimely and I will not consider it. However, it should be noted that AFSCME's timely objection did specifically object to the designation of Havey's position.

I. ISSUES AND CONTENTIONS

The petition designates 48 positions at the Department of Revenue for exclusion from the self-organization and collective bargaining provisions of Section 6 of the Act. The petition indicates that the 48 positions qualify for designation under Section 6.1(b)(2) because they are all classified as Senior Public Service Administrators (SPSAs). In support of its petition, CMS provided a spreadsheet showing the classification of each designated position and indicating that each position is currently not represented for the purposes of collective bargaining. CMS also submitted CMS-104s for each position, each of which indicates that the position is classified as an SPSA.

AFSCME objects to the designation arguing that it has been denied due process because the Board failed to provide AFSCME an adequate period of time to file objections and likewise failed to provide AFSCME any method by which it could obtain information to support its objections. Additionally, AFSCME specifically objects to the designation of two positions: 400070-25-20-330-00-01 (Glen Bell) and 40070-25-20-150-00-01 (Paul Havey). AFSCME argues that the designation does not conform with the Board's Rules because the designation erroneously stated that the two positions are not subject to a pending representation petition. AFSCME notes that the two positions are in fact subject to an active petition for certification. Like AFSCME, Bell objects to the designation based on CMS' failure to identify his position as being subject to a pending petition.⁴ Next, AFSCME argues that it is arbitrary to exclude Bell and Havey's positions from collective bargaining, when other employees with the same title, duties, and responsibilities have been previously certified. Bell similarly objects to the designation arguing that he is being treated differently than other employees with his same title, duties, and responsibilities. Finally, AFSCME asserts that the two positions are not properly classified as SPSA positions because the SPSA class specification states that positions which are subject to the provisions of a collective bargaining agreement are not properly SPSA positions.

⁴ Bell's objection states that he designates AFSCME as his representative to present argument and evidence on his objections to the designation. For this reason, and due to the fact that his objections mirror AFSCME's objections, I will consider both objections together.

II. FACTS

The 48 positions designated for exclusion are all employees of the Department of Revenue. Each position is classified as an SPSA, Option 1, 2, 2A, 3 or 7. None of the designated positions are currently represented for purposes of collective bargaining. Forty-five of the designated positions are subject to one of two active petitions for certification in a bargaining unit in which AFSMCE is the petitioner.

Currently, Bell and Havey are both classified as SPSA Option 3s. They both hold the working title of Section Manager in Information Services. Bell and Haley's positions are subject to the active petition in Case No. S-RC-10-220, which sought the inclusion of all SPSA Option 3 positions. The case is currently pending before the Board on remand from the Appellate Court.

AFSCME notes that at the time of the hearings for the Case No. S-RC-10-220 petition, CMS agreed that all of the section managers employed in Information Systems were appropriately part of the bargaining unit known as RC-63, and thus AFSCME and CMS stipulated to the inclusion of their positions in that unit. On or about February 2013, a certification was issued including those SPSA Option 3 positions in the RC-63 bargaining unit.⁵ AFSCME asserts that the hearings and the stipulations of the parties were predicated on the practice of CMS and the Board to limit hearings to positions which are occupied at or about the time a petition is filed. AFSCME asserts that Bell and Havey's positions were not disclosed by CMS at the time of the filing of the representation petition or the time of the hearings on the petition, or were not identified by CMS during the representation process. Thus, Bell and Havey's positions were not included in the February 2013 certification.

The SPSA class specification states that positions subject to the provisions of a collective bargaining agreement are not properly SPSA positions. AFSCME represents various bargaining units, some of which include positions classified as SPSAs, including the RC-63 bargaining unit.

III. DISCUSSION AND ANALYSIS

Here, the designation comports with the requirements of Section 6.1(d) and AFSCME and Bell's objections do not overcome the presumption that the Governor's designation was properly made.

⁵ Those positions are not subject to this designation.

A position is properly designatable if: (1) it has never been certified into a collective bargaining agreement, and (2) it has the title of SPSA. 5 ILCS 315/6.1 (2012). The Act presumes that any designation made by the Governor under Section 6.1 is properly made. 5 ILCS 315/6.1(d) (2012). Here, CMS's filings clearly indicate that both conditions are met as to all 48 designated positions, and AFSCME does not allege otherwise. Thus, all 48 designated positions are designatable under Section 6.1. The only remaining issue is whether AFSCME and Bell's objections overcome the presumption that the designations were proper.

A. Due Process

The Board did not deny AFSCME due process when it applied its rules, which required AFSCME to file its objections within 10 days, and when it allegedly failed to provide AFSCME a method by which it could obtain information to support its objections.

Administrative proceedings are governed by the fundamental principles and requirements of due process. Abrahamson v. Ill. Dep't of Prof'l Regulation, 153 Ill. 2d 76, 92 (1992). Due process is a flexible concept and calls for procedural protections as fundamental principles of justice and the particular situation demand. Id.; E. St. Louis Fed'n of Teachers, Local 1220 v. E. St. Louis School Dist. No. 189 Fin. Oversight Panel, 178 Ill. 2d 399, 419 (1997); Scott v. Dep't of Commerce & Comty. Affairs, 84 Ill. 2d 42, 51 (1981). At a minimum, due process requires (1) adequate notice and (2) a meaningful opportunity to be heard. E. St. Louis Fed'n of Teachers, Local 1220, 178 Ill. 2d at 419-20; Peacock v. Bd. of Trs. of Police Pension Fund, 395 Ill. App. 3d 644, 654 (1st Dist. 2009), citing Goldberg v. Kelly, 397 U.S. 254, 267-68 (1970) and Abrahamson, 153 Ill. 2d at 92. To satisfy the second requirement, a party affected by the proceedings must be afforded a meaningful procedure to assert its claim prior to the deprivation or impairment of a right. Peacock, 395 Ill. App. 3d at 654, citing Matthews v. Eldridge, 424 U.S. 319, 32 (1976) and Wendl v. Moline Police Pension Bd., 96 Ill. App. 3d 482, 486 (3rd Dist. 1981).

Administrative regulations carry the same presumption of validity as statutes, and will thus be set aside if they are arbitrary, unreasonable, or capricious. City of Chi. v. Ill. Labor Relations Bd., Local Panel, 396 Ill. App. 3d 61, 73 (1st Dist. 2009), citing Granite City Div. of Nat'l Steel Co. v. Ill. Pollution Control Bd., 155 Ill. 2d 149, 162 (Ill. 1993).

Here, the Board's Rules, which specify time limits for filing objections do not deprive AFSCME of due process because they are reasonable in light of the short statutory time frame in which the Board must process the designation petitions. The Act states that the Board has 60 days to determine whether the designation comports with the requirements of Section 6.1 of the Act. 5 ILCS 315/6.1(b)(5) (2012). During those 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. Moreover, 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 10-day limit for filing objections is reasonable, and thus comports with the Board's obligation to provide the parties affected by its decision with due process.

Also, the Board has not deprived AFSCME of a meaningful opportunity to be heard by failing to provide a method by which AFSCME may obtain information to support its position. Section 1300.110 of the Rules provides that a party may ask the Board to issue subpoenas for witnesses and documents. See 80 Ill. Admin. Code 1300.110. While this subpoena power is only available to the parties after the ALJ determines that there are issues of fact for an oral hearing, the subpoena power available to the parties is identical to that available to the parties in all other proceedings before the Board and thus does not deprive AFSCME of due process. Compare 80 Ill. Admin. Code 1300.110 with 80 Ill. Admin. Code 1200.90. Furthermore, it is not clear what additional relevant information AFSCME would seek through any discovery procedures in this case. Notably, AFSCME does not dispute that the positions at issue in this case are classified as SPSAs, nor does it dispute that the positions at issue are not currently represented in a unit. In light of both the fact that the sole issue is whether the designated positions have been properly identified as SPSAs and are not currently represented for the purposes of collective bargaining, the lack of additional discovery procedures has not deprived AFSCME of a meaningful opportunity to be heard.

B. Pending petition

AFSCME argues that the designation erroneously stated that Bell and Havey's positions are not subject to a pending representation petition, when in fact they are both subject to an active petition for certification. Here, CMS' error does not affect the determination of whether the positions are properly designable under Section 6.1. By arguing that the two positions are subject to an active petition for certification, AFSCME has conceded that the positions meet one of the three required categories for positions that can be properly designated under Section 6.1 of the Act. Further, while the Board's rules provide that "failure to fully complete the form could result in rejection of the filing of the designation by the Board," the Rules do not mandate dismissal where CMS has made a clerical error, as CMS may have done in this case. 80 Ill. Admin. Code 1300.50(b). Thus, the Board should not dismiss the petition even though CMS failed to indicate that the Bell and Havey's positions are subject to a pending petition.

C. Arbitrary exclusion

AFSCME argues that it is arbitrary for CMS to seek to exclude Bell's and Havey's positions, when CMS has previously stipulated to the inclusion of positions with the same title, duties, and responsibilities.

An agency's action is arbitrary and capricious 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. Deen v. Lustig, 337 Ill. App. 3d 294, 302 (4th Dist. 2003). In addition, an agency must follow its own rules. Dep't of Cent. Mgmt. Servs./Ill. Commerce Comm'n v. Ill. Labor Relations Bd., 406 Ill. App. 3d 766, 771 (4th Dist. 2010). Here, the Board is tasked with determining whether the instant designation comports with Section 6.1 of the Act. Section 6.1(b)(2) provides in relevant part that for a position to be designable, "it must have a title of . . . Senior Public Service Administrator." It is undisputed that CMS has classified Bell and Havey's positions as SPSA positions. Further, the Act unambiguously and without qualification permits the designation of positions based solely on this classification. Thus, it is not arbitrary for the Board to permit the designation of Bell and Havey's positions because in so doing the Board is adhering to its own rules and the plain language of the statute. In sum, AFSCME's argument fails in light of the Act's clear language, which, in this case, permits designation of the positions based solely on classification.

D. SPSA Classification

ASCME also argues that the positions at issue are not properly classified as SPSAs because of the language in the SPSA class specification.⁶ Again, this argument is not relevant to the determination of whether the positions are designable under Section 6.1 of the Act. The Act does not require that a position is properly classified as an SPSA. It only requires that a position is actually classified as an SPSA. Thus, the sole inquiry is whether CMS has in fact classified the position as an SPSA. As noted previously, AFSCME does not contest that the positions at issue are classified as SPSAs. Thus, this argument does not overcome the presumption that the designation was properly made. In sum, I find that the Board provided AFSCME due process and that the designation comports with the requirements of Section 6.1.

IV. CONCLUSION OF LAW

The Governor’s designation in this case was 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:

<u>Position Number</u>	<u>Name of Incumbent</u>	<u>Working Title</u>
40070-25-00-100-40-01	VACANT	Director's Office
40070-25-00-100-50-01	TAYLOR, RUBY	EEO Office

⁶ Related to this argument, AFSCME reasons that if the positions at issue are properly classified as SPSAs despite performing duties substantially similar to positions that AFSCME argues cannot be SPSAs then the designated positions are performing work properly assigned to bargaining unit members represented by AFSCME. Since I need not determine whether these positions are properly classified as SPSAs in order to evaluate this designation, I will not address this argument. AFSCME remains free to file grievances and unfair labor practice charges regarding its concern over the erosion of bargaining unit work.

40070-25-00-100-60-01	VACANT	Director's Office
40070-25-03-130-00-02	VACANT	Communications Office
40070-25-08-000-00-01	STALEY, CORY	Budget Office
40070-25-08-100-00-01	VACANT	Budget Office
40070-25-09-000-00-01	HARTIGAN, MARK	Internal Affairs Office
40070-25-10-200-00-01	CLOW, BRYAN	Administrative Services
40070-25-18-000-00-01	VACANT (LASCODY, LAWRENCE - 75 DAY APPT)	Administrative Services
40070-25-18-100-00-01	BEAN, JAMES	Administrative Services
40070-25-19-000-00-01	TOWERS, BRENDA	Administrative Services
40070-25-20-100-00-01	VACANT	Information Technology
40070-25-20-330-00-01	BELL, GLEN	Information Technology
40070-25-20-470-00-01	HAVEY, PAUL	Information Technology
40070-25-31-100-00-01	WALBAUM, PATTI	Account Processing
40070-25-31-110-00-01	HUTCHINSON-GROSS, DOROTHY	Account Processing
40070-25-31-120-00-01	FRESCURA, THOMAS	Account Processing
40070-25-31-140-00-01	RICHARDS, KEVIN	Account Processing

40070-25-33-000-00-01	VACANT	Account Processing
40070-25-33-110-00-01	MARCHIZZA, MONICA	Account Processing
40070-25-33-140-00-01	LEININGER, CARRIE	Account Processing
40070-25-33-150-00-01	CRUMLY, TERRY (LOA)	Account Processing
40070-25-33-160-00-01	VACANT	Account Processing
40070-25-41-000-00-01	HALL, DANIEL E.	Audit
40070-25-41-100-00-01	KOSS, ROGER	Audit
40070-25-41-110-00-01	STOUT, DEBORAH	Audit
40070-25-41-120-00-01	VACANT	Audit
40070-25-41-130-00-01	KREITER, STEVEN	Audit
40070-25-41-200-00-01	STOUT, RAYMOND	Audit
40070-25-41-300-00-01	CAMPBELL, CHARLES	Audit
40070-25-41-310-00-01	VACANT	Audit
40070-25-41-350-00-01	MCGRAIL, BRIAN	Audit
40070-25-42-100-00-01	VACANT	A and R Shared Services
40070-25-42-310-00-01	NUNES, JESSICA	A and R Shared Services

40070-25-42-320-00-01	VACANT	A and R Shared Services
40070-25-42-400-00-01	WESTWATER, MELINDA	A and R Shared Services
40070-25-42-410-00-02	HANLON, KATHRYN	A and R Shared Services
40070-25-42-420-00-02	VACANT	A and R Shared Services
40070-25-45-000-00-01	VACANT	Human Resource Mgmt
40070-25-48-200-00-01	HAYES, STEVEN D.	Collections
40070-25-48-500-00-01	SMITH, WILLIAM	Collections
40070-25-50-000-00-01	VACANT	Tax Enforcement
40070-25-60-000-00-01	BOROFF, JAY B.	Information Security
40070-25-71-000-00-01	MATERRE, GLORIA L.	Liquor Control Commission
40070-25-71-100-00-01	VACANT	Liquor Control Commission
40070-25-71-120-00-01	VACANT	Liquor Control Commission
40070-25-82-110-00-01	BYRNE, DENISE	Taxpayer Services
40070-25-82-120-00-01	FUNDERBURK, RICHARD	Taxpayer Services

VI. EXCEPTIONS

Pursuant to Section 1300.90 and Section 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300,⁷ parties may file exceptions to the Administration Law Judge's

⁷ Available at <http://www.state.il.us/ilrb/subsections/pdfs/Section%201300%20Illinois%20Register.pdf>

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. 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.

Issued at Chicago, Illinois, this 30th day of August, 2013

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

/s/ Michelle Owen

**Michelle Owen
Administrative Law Judge**