

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

State of Illinois, Department of Central	)	
Management Services, (Department of	)	
Corrections)	)	
	)	
Petitioner,	)	
	)	
and	)	
	)	
American Federation of State, County	)	
and Municipal Employees, Council 31,	)	Case No. S-DE-14-026
	)	
Labor Organization-Objector,	)	
	)	
and	)	
	)	
Lisa Krebs,	)	
	)	
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 (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 (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, 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 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. 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. The designation pertains to positions within the Department of Corrections. On August 26, 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. On August 30, 2013, Lisa Krebs filed objections to the designation of her position 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:

**Chief of Constituency Services** (position no. 40070-29-00-000-10-02); **Chief of Intergovernmental Affairs** (position no. 40070-29-00-700-50-01); **Chief of Performance Based Audits** (position no. 40070-29-01-100-00-01); **Chief Fiscal Officer - ICI** (position no. 40070-29-06-100-10-01); **Manufacturing Shop Supervisor** (position no. 40070-29-06-200-00-01); **Food Shop Supervisor** (position no. 40070-29-06-250-00-01); **Chief Adult Education** (position no. 40070-29-10-000-00-01); **Deputy Director, Fiscal** (position no. 40070-29-40-300-00-01); **Assistant Deputy Director of Fiscal Operations** (position no. 40070-29-40-310-00-01); **Assistant Deputy Director, Fiscal Accounting Compliance** (position no. 40070-29-40-320-00-01); **Assistant Deputy Director, Fiscal Strategic Planning** (position no. 40070-29-40-330-00-01);

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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.

01); **Healthcare Unit Administrator** (position nos. 40070-29-82-430-20-01; 40070-29-87-210-00-01; 40070-29-92-210-00-01); **the job currently occupied by Steven Karr** (position no. 40070-29-01-300-00-01); **the position currently occupied by John Nunley** (position no. 40070-29-02-500-60-01); **the position current occupied by Charles Fasano** (position no. 40070-29-02-800-05-01); **the position currently occupied by Richard Mautino** (position no. 40070-29-06-000-10-01); **the position currently occupied by Christina Neely** (position no. 40070-29-40-100-00-01); **the position currently occupied by Mary Ann Pollard** (position no. 40070-29-40-200-00-01); **the position currently occupied by Brigitte Smith** (position no. 40070-29-40-220-00-01); and **ten vacant positions** (position nos. 40070-29-00-150-00-01; 40070-29-01-000-00-01; 40070-29-02-500-00-01; 40070-29-02-800-20-01; 40070-29-06-240-00-01; 40070-29-40-210-00-01; 40070-29-40-320-10-01; 40070-29-40-400-00-01; 40070-29-40-410-00-01 and 40070-29-40-420-00-01).

## **I. AFSCME's Objections**

AFSCME makes several general objections but does not object to the designation of specific positions. Generally, AFSCME claims that the Board's Rules make it impossible for it to file specific objections without more time because CMS filed for more than one third of the designatable positions in less than a week, CMS provided a lack of information with the designation, the Rules do not provide a procedure for AFSCME to obtain additional information about the positions subject to the designation and the Board's General Counsel denied AFSCME's motion for more time to file objections. Finally, AFSCME alleges that the mere fact that there is a representation petition pending for some of the positions subject to the designation petition does not make it easier to file objections because a significant amount of time has passed since the representation petition was filed.

AFSCME also claims that the Rules do not comport with due process because they do not provide adequate time for an objector to make a substantive objection. AFSCME alleges that the requirements of due process can not be met with a time period of 10 days to file objections. AFSCME claims that the Rules deny objectors the procedures in the Act and Rules for filing objections in other instances.

Finally, AFSCME objects to the form of the designation, specifically the lack of information CMS provided. AFSCME notes that CMS did not provide working titles for 17 of the 31 positions. AFSCME claims that while 20 of the 31 positions are subject to the pending petition in Case No. S-RC-11-098, only 13 of those positions were at issue when CMS filed its response to S-RC-11-098. AFSCME alleges that the pending petition does not make it easier for it to get information regarding the positions in this designation or make it any easier for it to object.

## **II. Lisa Krebs' Objections**

Lisa Krebs objects to her designation on the grounds that her position is actually classified as a Public Service Administrator rather than a Senior Public Service Administrator. The deadline to file objections to this designation was August 26, 2013. Krebs filed her objections on August 30, 2013 and they are untimely filed under Section 1300.60(a)(3) of the Rules. Therefore, I will not consider Krebs' objections.

## **III. Discussion and Analysis**

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

Due process requires notice and an opportunity to be heard. 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). Although due process applies to administrative hearings<sup>2</sup> and requires a "fair hearing" and "rudimentary elements of fair play," "[a]n administrative agency has broad discretion to reasonably regulate the time periods afforded parties to present evidence." Clark v. Bd. of Directors of the School Dist. of Kansas City, 915 S.W. 2d 766, 772-73 (Mo. App. W.D. 1996).

Administrative rules and regulations have the force and effect of law and must be construed under the same standards which govern the construction of statutes. Northern Ill. Automobile Wreckers and Rebuilders Ass'n v. Dixon, 75 Ill. 2d 53 (1979); DeGrazio v. Civil Service Comm'n., 31 Ill. 2d 482, 485 (1964). Like a statute, an administrative rule or regulation enjoys a presumption of validity. Northern Ill. Automobile Wreckers and Rebuilders Ass'n v. Dixon, 75 Ill. 2d 53 (1979). A court will set aside an administrative rule only if the court finds it clearly arbitrary, unreasonable or capricious. Pauly v. Werries, 122 Ill. App. 3d 263 (4th Dist. 1984); Aurora East Public School District No. 131 v. Cronin, 92 Ill. App. 3d 1010 (2nd Dist. 1981).

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 designation petitions and the high volume of such petitions the

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<sup>2</sup> Dep't of Cent. Mgmt. Services/Ill. Commerce Comm'n v. Ill. Labor Rel. Bd., State Panel, 406 Ill. App. 3d 766, 769-70 (4th Dist. 2010) (denial of an "oral hearing" is not necessarily the denial of a "hearing" because written arguments could suffice as a hearing in the administrative context).

Board is expected to receive. The Act provides that the Board has a mere 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). In that 60 days, the Board must allow time (1) for parties to file objections, (2) for an Administrative Law Judge (ALJ) to draft, issue and serve the decision on the parties, (3) for the parties to file exceptions to the ALJ's Recommended Decision and Order (RDO), (4) for the Board and its staff to review the RDO in light of the exceptions and draft a recommendation to the Board, (5) for the Board to set an agenda for the Board meeting pursuant to the requirements of the Open Meetings Act<sup>3</sup> and (6) for the Board to rule on the ALJ's decision 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 10 day time limit for filing objections is reasonable and therefore does not deprive AFSCME of due process.

Second, the Board did not deprive AFSCME of due process by failing to provide a means by which AFSCME may obtain information to support its position because it did provide such a means. Indeed, Section 1300.110 of the Board's Rules provides that a party may ask the Board to issue subpoenas for witnesses and documents. 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 therefore does not deprive AFSCME of due process. See 80 Ill. Admin. Code 1200.90.

Finally, CMS' designation of the positions at issue in this case is properly made. AFSCME objects to the fact that CMS did not provide job titles for 17 positions and to the fact that there were only 13 positions at issue when CMS responded to the petition in Case No. S-RC-11-098. Here, the Board must determine whether the designated positions meet the criteria set forth in Section 6.1 of the Act. Section 6.1(b)(2) provides in relevant part that for a position to be designatable, "it must have a title of... Senior Public Service Administrator." In this case, it is clear that the designated positions fall into one of the three broad designatable categories. Similarly, it is undisputed that CMS has classified the positions as SPSA positions. Accordingly,

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<sup>3</sup> The Open Meetings Act provides that "an agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." 5 ILCS 120/2.02 (2012).

the sole inquiry here is whether the designations comport with the requirements of the Act. CMS followed the requirements of the Act in designating the 31 positions at issue in this case. The fact that CMS did not provide job titles for 17 of the positions at issue here does not change the fact that all 31 positions are classified as SPSAs. Additionally, the fact that there are 18 more positions designated here than when CMS responded to the petition in Case No. S-RC-11-098 here is not material in light of the Act's clear language which, in this case, permits designation of a position based solely on classification.

#### **IV. Conclusions of Law**

The Governor's designation in this case is properly made.

#### **V. Recommended Order**

Unless this Recommended Decision and Order is rejected or modified by the Board, the following positions in the Department of Corrections are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

**Chief of Constituency Services** (position no. 40070-29-00-000-10-02); **Chief of Intergovernmental Affairs** (position no. 40070-29-00-700-50-01); **Chief of Performance Based Audits** (position no. 40070-29-01-100-00-01); **Chief Fiscal Officer - ICI** (position no. 40070-29-06-100-10-01); **Manufacturing Shop Supervisor** (position no. 40070-29-06-200-00-01); **Food Shop Supervisor** (position no. 40070-29-06-250-00-01); **Chief Adult Education** (position no. 40070-29-10-000-00-01); **Deputy Director, Fiscal** (position no. 40070-29-40-300-00-01); **Assistant Deputy Director of Fiscal Operations** (position no. 40070-29-40-310-00-01); **Assistant Deputy Director, Fiscal Accounting Compliance** (position no. 40070-29-40-320-00-01); **Assistant Deputy Director, Fiscal Strategic Planning** (position no. 40070-29-40-330-00-01); **Healthcare Unit Administrator** (position nos. 40070-29-82-430-20-01; 40070-29-87-210-00-01; 40070-29-92-210-00-01;); **the job currently occupied by Steven Karr** (position no. 40070-29-01-300-00-01); **the position currently occupied by John Nunley** (position no. 40070-29-02-500-60-01); **the position current occupied by Charles Fasano** (position no. 40070-29-02-800-05-01); **the position currently occupied by Richard Mautino** (position no. 40070-29-06-000-10-01); **the position currently occupied by Christina Neely** (position no. 40070-29-40-100-00-01); **the position currently occupied by Mary Ann Pollard** (position no. 40070-29-40-200-00-01); **the position currently occupied by Brigitte Smith** (position no. 40070-29-40-220-00-01); and **ten vacant positions** (position nos. 40070-29-00-150-00-01; 40070-29-01-000-00-01; 40070-29-02-500-00-01; 40070-29-02-800-20-01; 40070-29-06-240-00-01; 40070-29-40-210-00-01; 40070-29-40-320-10-01; 40070-29-40-400-00-01; 40070-29-40-410-00-01 and 40070-29-40-420-00-01).

#### **VI. Exceptions**

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300<sup>4</sup>, parties may file exceptions to the Administrative Law Judge's

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<sup>4</sup> Available at [www.state.il.us/ilrb/subsections/pdfs/Section](http://www.state.il.us/ilrb/subsections/pdfs/Section) 1300 Illinois Register.pdf

recommended decision and order, and briefs in support of those exceptions, no 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. Exceptions must be filed by electronic mail 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 object to the Administrative Law Judge's recommended decision and order.

**Issued at Chicago, Illinois, this 13<sup>th</sup> day of September, 2013.**

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

*Thomas R. Allen*

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**Thomas R. Allen  
Administrative Law Judge**