

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

State of Illinois, Department of Central)	
Management Services, (Department of)	
Employment Security),)	
)	
Employer)	
)	
and)	Case No. S-DE-14-030
)	
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, 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 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.¹

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

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.

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 (Rules), 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. 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 66 positions at the Illinois Department of Employment Security 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 6.1(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. 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 that provide position descriptions for the designated positions.

AFSCME has filed broad objections arguing that Section 1300.60(a)(3) of the Rules, under which objections to this designation must be filed within ten days of service thereof, and the failure of the Rules to provide a procedure through which AFSCME can obtain information on which to base its objections, do not comply with the statutory and constitutional requirements that the Board evaluate designations under Section 6.1 of the Act in a manner consistent with the

requirements of due process. Additionally, AFSCME has filed specific objections relating to 5 positions: positions numbers 40070-44-35-000-00-01 (Venkata Twarankavi), 40070-44-35-100-10-01 (Nasrin Rahmani), 40070-44-36-000-00-01 (Arpana Sen-Yeldandi), 40070-44-30-500-00-01 (Vacant), and 40070-44-37-000-00-01 (Vacant). AFSCME argues that these SPSA Option 3 positions are subject to an active petition for certification in a bargaining unit as that term is defined in Section 3(t) of the Act. The procedural posture of this active petition for certification includes a partial certification in which some SPSA Option 3 positions were included in a bargaining unit. AFSCME argues that it is arbitrary to exclude the designated positions from collective bargaining, despite the inclusion of positions with similar working titles, based solely on their classification as SPSAs. Finally, AFSCME argues that these positions are not properly classified as SPSAs.

II. FINDINGS OF FACT

The 66 positions designated by CMS are all employees at the Illinois Department of Employment Security. 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, approximately 45 of the designated positions are subject to one of three active petitions for certification in a bargaining unit in which AFSCME has petitioned to represent a classification of SPSAs. The active petition in Case No. S-RC-10-220 specifically pertains to the SPSA Option 3 positions for which AFSCME has filed specific objections.²

Attached to its objections, AFSCME included the class specification promulgated by CMS for the SPSA position. This class specification states, in relevant part, that positions subject to the provisions of collective bargaining agreements are specifically excluded from classification as SPSAs. AFSCME is the exclusive representative of various bargaining units of State employees, some of which include positions classified as SPSAs, including SPSA Option 3 positions certified as included in the RC-63 bargaining unit in Case No. S-RC-10-220.

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

² However, CMS states that position numbers 40070-44-35-000-00-01 (Venkata Twarakavi) and 40070-44-36-000-00-01 (Arpana Sen-Yeldandi) are not subject to the petition in Case No. S-RC-10-220 because, though that petition seeks to represent all SPSA Option 3s, those positions did not exist at the time the petition was filed.

Section 6.1 of the Act is properly made. 5 ILCS 315/6.1(d) (2012). CMS's initial filing clearly indicates that both conditions are satisfied as to all 66 designated positions, and AFSCME has alleged neither that the designation positions have previously been certified into a collective bargaining unit nor that the positions are not actually classified as SPSAs. Therefore, all 66 positions are properly designable under Section 6.1 of the Act. I will thus examine each of AFSCME's objections to determine whether any are sufficient to overcome the presumption that these positions have been properly designated for exclusion from the self-organization and collective bargaining provisions of Section 6 of the Act.

Allegations that the Positions are Misclassified

AFSCME argues that the five SPSA Option 3 positions at issue are misclassified as SPSAs. In support of this argument, AFSCME highlights a provision in the SPSA class specification stating that positions subject to the provisions of a collective bargaining agreement are specifically excluded from classification as SPSAs. Thus, AFSCME argues, the positions currently represented by AFSCME cannot properly be classified as SPSAs, despite their actual classification. Likewise, AFSCME continues, the positions at issue cannot be properly classified as SPSAs because they perform duties that are substantially similar to those of represented positions that cannot be classified as SPSAs under the class specification.

This argument is insufficient as a matter of law. 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. If this were not the case, the General Assembly could have accomplished its purposes by reference to a position's duties alone, without including a reference to a position's title. AFSCME's argument regarding misclassification improperly focuses on the duties of the position, which it alleges are similar to the duties of positions that it argues cannot properly be classified as SPSAs. Here, the sole inquiry is whether CMS has classified the positions as SPSAs. Because CMS has clearly done so, AFSCME's argument that this classification is improper in light of the employees' duties

must fail according to the Act's clear language permitting designation based solely on classification.³

Allegations that Exclusion of the Designated Positions Would Be Arbitrary

Next, AFSCME argues that exclusions of the designation positions based solely on their SPSA classification would be arbitrary. In support of this contention, AFSCME cites to the SPSA Option 3 positions with similar working titles that are included in a bargaining unit, many by stipulated agreement of CMS in Case No. S-RC-10-220.

An agency's action is 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. Deen v. Lustig, 337 Ill. App. 3d 294, 302 (4th Dist. 2003). Furthermore, an agency is bound to follow its own rules. Dep't of Cent. Mgmt Serv./Ill. Commerce Com'n v. Ill. Labor Rel. Bd., 406 Ill. App. 3d 766, 771 (4th Dist. 2010). As noted above, the plain language of the statute permits the designation of a position based solely on its classification as an SPSA. Furthermore, AFSCME has raised no claim that the Board has failed to follow its own Rules regarding the instant designation. Therefore, despite CMS's stipulation to the inclusion in the RC-63 bargaining unit of the SPSA Option 3 positions not at issue in this designation, it is not arbitrary for the Board to permit designation of the positions at issue because it is adhering to its own rules and the plain language of the statute in doing so. AFSCME's contentions on this issue must fail.

Allegations that the Board's Procedures Do Not Comport with Due Process

Finally, AFSCME broadly argues that the Board's procedures in this matter do not comport with the statutory and constitutional requirements that the Board provide due process in evaluating designations filed under Section 6.1 of the Act. Specifically, AFSCME alleges that the 10 days it had to file objections to the instant designations under Rule 1300.60(a)(3) was insufficient, and that the lack of a discovery procedure deprived AFSCME of an opportunity to gather information to formulate objections.

³ As a corollary 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, the designated positions are performing work properly assigned to a bargaining unit represented by AFSCME. Because I need not determine whether these positions are properly classified as SPSAs in order to evaluate this designation, I will not address this argument except to note that a Gubernatorial designation under Section 6.1 is not the appropriate context in which to address allegations of erosion of bargaining unit work.

It is not clear that AFSCME has standing to raise objections on some of the instant designations. CMS states that approximately 11 of the designated positions are neither currently represented for the purposes of collective bargaining nor subject to an active petition for certification in a bargaining unit. AFSCME has not indicated what interest it has that may be the basis of its standing to object to the exclusion of positions for which it is neither certified as the exclusive bargaining representative nor the petitioner in an active petition for certification. Nonetheless, I find that the Board's procedures and this matter are consistent with the requirements of due process.

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 Bd., 96 Ill. App. 3d 482, 486 (3rd Dist. 1981).

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. 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 10-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.

Furthermore, there is no factual support for AFSCME's allegations that it has been deprived of a meaningful opportunity to assert its claims because it has been unable to obtain information on which to base its objections. 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 as detailed above. 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, approximately 45 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.

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

40070-44-00-000-01-01 (Vacant)
40070-44-00-000-01-03 (Tom Dilbeck)
40070-44-00-600-00-01 (Greg Rivara)
40070-44-02-000-00-01 (Vacant)
40070-44-02-300-00-01 (Vacant)
40070-44-04-000-00-01 (Linda DeMore)
40070-44-04-000-10-01 (Vacant)
40070-44-04-500-00-01 (Briant Coombs)
40070-44-04-510-00-01 (Vacant)
40070-44-04-520-00-01 (Maria Toledo)
40070-44-04-600-00-01 (Kathy Harlan)
40070-44-06-000-00-01 (Betty Torres)
40070-44-07-000-00-01 (Joseph Mueller)
40070-44-07-100-00-01 (Gregory Ramel)
40070-44-07-110-00-01 (Vacant)
40070-44-07-120-00-01 (Kelly Waller)
40070-44-07-130-00-01 (Lois Feinberg)
40070-44-07-140-00-01 (Vacant)
40070-44-07-200-00-01 (Fred Baird)
40070-44-08-000-00-01 (Elizabeth Lindberg)
40070-44-08-300-00-01 (Jennifer Borowitz-Gutzke)
40070-44-09-010-00-01 (Allan Ross)
40070-44-09-400-00-01 (Mitch Daniels)
40070-44-09-500-00-01 (Vacant)
40070-44-11-000-00-02 (Barry Isaacson)
40070-44-12-000-00-01 (John Rogers)
40070-44-12-200-00-01 (Marlene Meriwether)
40070-44-13-000-00-01 (Loeita Williams)
40070-44-13-100-00-01 (Manuel Prado)
40070-44-13-300-00-01 (Vacant)
40070-44-13-500-00-01 (Marco Morales)
40070-44-13-610-00-01 (Sergio Estrada Jr.)
40070-44-15-000-00-01 (Phillip Cobb)
40070-44-20-010-00-01 (Julian Federle)
40070-44-21-000-00-01 (Karen Fratto)
40070-44-21-010-00-02 (John Waters)
40070-44-30-500-00-01 (Vacant)
40070-44-31-000-00-01 (Vacant)
40070-44-33-000-00-02 (Vacant)

40070-44-34-000-00-01 (Vacant)
40070-44-35-000-00-01 (Venkata Twarakavi)
40070-44-35-100-10-01 (Nasrin Rahmani)
40070-44-36-000-00-01 (Aparna Sen-Yeldandi)
40070-44-37-000-00-01 (Vacant)
40070-44-39-000-00-01 (Thomas Revane)
40070-44-40-000-00-02 (Gideon Blustein)
40070-44-40-010-00-01 (Bethani Whiting)
40070-44-40-110-00-01 (Patrick Durkin)
40070-44-40-200-00-01 (Margarite Faulkner)
40070-44-40-300-00-01 (Crystal Caison-Russell)
40070-44-40-500-00-01 (Andrew Tomlin)
40070-44-41-000-00-02 (Bennett Krause)
40070-44-42-200-00-01 (Vacant)
40070-44-46-000-00-01 (Jeff Panici)
40070-44-50-000-00-01 (Christine Cornell)
40070-44-51-000-00-01 (William Jamison)
40070-44-54-000-00-01 (Calvin Giles)
40070-44-55-000-00-01 (Janice Taylor Brown)
40070-44-56-000-00-01 (Alicia Harris)
40070-44-57-000-00-01 (Jillian Van Zandt)
40070-44-60-000-00-01 (Vacant)
40070-44-71-000-00-01 (Tom Corcoran)
40070-44-71-100-00-01 (Greggory Fahey)
40070-44-71-200-00-01 (Jacqueline Jones)
40070-44-72-000-00-01 (Geraldine Gorski)
40070-44-73-000-00-01 (Berlinito Cagadas)

VI. EXCEPTIONS

Pursuant to Section 1300.90 and Section 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300,⁴ 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. 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.

⁴ Available at <http://www.state.il.us/ilrb/subsections/pdfs/Section%201300%20Illinois%20Register.pdf>

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

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
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Heather R. Sidwell

**Heather R. Sidwell
Administrative Law Judge**