

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

State of Illinois, Department of Central)	
Management Services (Illinois Department)	
of Veterans' Affairs),)	
)	
Petitioner)	
)	
and)	Case No. S-DE-14-034
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	
)	

**ADMINISTRATIVE LAW JUDGE'S
RECOMMENDED DECISION AND ORDER**

I. BACKGROUND

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, and, of those, only 1,900 positions which have already been certified to be in a collective bargaining unit may be designated.

Moreover, to properly qualify for designation, the employment position must meet one or more of the following five requirements:

- 1) the employment position must authorize an employee in the position to act as a legislative liaison;
- 2) the employment position 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) the employment position 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) the employment position 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) the employment position 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 is proper. It also requires that within 60 days after the designation, the Illinois Labor Relations Board determine, in a manner consistent with due process, whether the designation complies with the requirements of Section 6.1.¹

As noted, Public Act 97-1172 and Section 6.1 of the Illinois Public Labor Relations Act became effective on April 5, 2013, and allow the Governor 365 days from that date to make such designations. The Board implemented emergency rules to effectuate Section 6.1, which became effective on April 22, 2013, 37 Ill. Reg. 5901 (May 3, 2013), and the Board implemented permanent rules for the same purpose which became effective on August 23, 2013, 37 Ill. Reg.

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 here.

14064 (Sept. 6, 2013) (collectively referred to as Board's rules). 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 15, 2013, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) submitted a motion for an extension of time of unspecified length to file objections to this designation petition.² By order dated August 16, 2013, the Board's General Counsel granted AFSCME's motion to extend the due date for objections until August 23, 2013. On August 23, 2013 AFSCME filed a renewed motion to extend the due date for objections to September 27, 2013. By order, dated August 23, 2013 the Board's General Counsel granted AFSCME's motion, extending the due date to August 26, 2013, but stated that any extension beyond that date would jeopardize the Board's ability to grant due process and still meet its statutory deadline. On August 26, 2013, 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, 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 the any existing inclusion of these positions within any collective bargaining unit.

The following fifteen positions are at issue. All positions are classified as Senior Public Service Administrators (SPSAs), at the Illinois Department of Veterans' Affairs:

40070-34-00-000-01-01	Wlodarski, Simon J.	Chief of Staff
40070-34-00-000-10-02	Amizich, A.	Senior Program Manager
40070-34-00-210-00-01	McGill, Patricia	Deputy General Counsel
40070-34-00-300-00-01	Calderon, M.	Deputy Director of HR
40070-34-00-700-00-01	Mackey, Deanna	Prince Homeless & Disabled - Home Administrator

² On August 8 and 9, 2013 CMS filed 34 designation petitions containing 930 employment positions. CMS later withdrew 1 of the 34 designation petitions. AFSCME's motion for extension of time was filed on behalf of all 33 pending designation petitions.

40070-34-15-000-00-01	Ryan, Joan	School Approval Administrator
40070-34-25-000-00-01	Sawyer, Henry	Veteran Service Officer Manager
40070-34-30-000-00-01	Vaca, Bruce J.	Quincy Home Administrator
40070-34-30-130-00-01	Page, C.	Director of Nursing - Quincy
40070-34-40-000-00-01	Koehler, John G.	LaSalle Home Administrator
40070-34-40-210-00-01	Pappas, B.	Director of Nursing - LaSalle
40070-34-50-000-00-01	Booker, Reginald L.	Maintenance Home Administrator
40070-34-50-130-00-01	Ward, D.	Director of Nursing - Manteno
40070-34-60-000-00-01	Hadley, Linda S.	Anna Home Administrator
40070-34-60-130-00-01	Hungate T.	Director of Nursing – Anna

AFSCME objects to the designation of all the positions at issue.

CMS’s designation petition indicates that the positions at issue qualify for designation under Section 6.1(b)(2) of the Act. CMS also filed position descriptions (CMS-104s) and a summary spreadsheet in support of its petition which indicate that the designated positions hold the title of Senior Public Service Administrator (SPSA). The summary spreadsheet identifies the following information for each designated position: position number, name of incumbent, position title, whether the position is a term appointment, whether the position is Rutan exempt, the e-mail address of the incumbent in the position, the statutory category that serves as the basis of the exemption, whether the position is subject to an active representation petition, and the applicable representation petition number.

II. ISSUES AND CONTENTIONS

AFSCME objects to the designations solely on procedural grounds, arguing that the procedures and period of time allotted to file the objections deny AFSCME due process. AFSCME argues it was denied due process because it was impossible to file specific objections without additional time because of the following: the Governor’s designation of over 1,000 employment positions in less than one week,³ the lack of information provided by CMS, the lack of any procedure to obtain any additional information, the time lapse between AFSCME’s filing of any representation petition and CMS filing this designation petition, and the Board’s General

³ Between the dates of August 8 and August 15, 2013, the Governor filed 48 designation petitions, containing 1332 employment positions.

Counsel's Orders that denied AFSCME "sufficient" additional time to review the information provided and seek additional information.

III. DISCUSSION AND ANALYSIS

AFSCME was not denied due process: when the Governor filed designations for over 1,000 employment positions within one week, when CMS allegedly provided a lack of information in support of this designation petition, when the Board allegedly failed to provide any procedure to obtain any additional information prior to filing objections, when there was a substantial amount of time between AFSCME filing representation petitions and CMS filing this designation petition, or when the Board's General Counsel denied AFSCME's request to extend the due date to file objections to September 27, 2013.

As an administrative agency, the Board was created to carry out the Act's purpose, and the Board is bound by the provisions of the Act. See 5 ILCS 315/5. The Act states that the Board's procedures for determining whether these designations are proper must be consistent with due process. 5 ILCS 315/6.1. The purpose of procedural due process is to minimize error. See 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). Notice and an opportunity to be heard are necessary principles of procedural due process. Id.; Segal v. Dep't. of Ins., 404 Ill. App. 3d 998, 1002 (1st Dist. 2010) citing People ex rel. Ill. Commerce Comm'n v. Operator Communication, Inc., 281 Ill. App. 3d 297, 302 (1996). Notice must be reasonably calculated "to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Segal, 404 Ill. App. 3d at 1002, citing Hwang v. Dep't of Public Aid, 333 Ill. App. 3d 698, 707 (1st Dist. 2002).

Administrative agencies do not have the authority to question the validity of the statutes under which they were created. See Goodman v. Ward, 241 Ill. 2d 398, 411 (2011) see also Metropolitan Alliance of Police, Coal City Police Chapter No. 186, No. 6 v. Ill. State Labor Rel. Bd., 299 Ill. App. 3d 377, 379 (3rd Dist.1998). In order to process these designations the Board added Part 1300 to its Rules and Regulations, which details the regulations that the Governor, the Board and any objectors must abide by when the Governor files such designation petitions. See 80 Ill. Admin. Code Part 1300. When an administrative agency has adopted rules and regulations under its statutory authority for carrying out its duties, the agency is bound by those

rules and regulations and cannot arbitrarily disregard them. Springwood Assoc. v. Health Facilities Planning Bd. 269 Ill. App. 3d 944, 948 (4th Dist.1995) citing Union Electric Co. v. Dep't. of Revenue, 136 Ill. 2d 385, 391 (1990). Administrative rules have the force and effect of law and are presumed valid. People v. Molnar, 222 Ill. 2d 495, 508, (2006); Dep't. of Cent. Mgmt. Servs., 406 Ill. App. 3d 766, 771 (4th Dist. 2011).

As an administrative agency the Board is bound to follow the Act and the Board's Rules and Regulations. The only issue is whether AFSCME's objections overcome the presumption that the designations of the employment positions are consistent with Section 6.1 of the Act. Whether the Board's rules comply with due process is not within my limited scope of authority. With this in mind, I will now address AFSCME's reasons for its broad objection that it has been denied due process.

a. Governor designated nearly one-third of the allowable positions in less than one week

AFSCME was not denied due process when the Governor designated over 1,000 employee positions as exempt from the collective bargaining provisions of Section 6 of the Act within one week.

Section 6.1 of the Act limits the number of designations and the time in which the Governor has to file them. The Governor has one year from April 15, 2013 to designate up to 3,580 employee positions as exempt for the collective bargaining provisions of Section 6 of the Act.

AFSCME argues that it is not required to anticipate the manner in which the Governor would choose to file the designation petitions both in form and in timing. This argument is not compelling. While AFSCME is not required to anticipate the Governor's actions, it is required to file any objections to the designation within the 10 days stated in the Board's rules. The Act limits the Governor in the number of positions he can designate and the amount of time he has to make those designations, but the Act does not set a limit on the amount of positions in each designation petition, or require the Governor to spread out the designation petitions over the course of the one-year period. The Act does create a requirement that the Board issue a decision on these petitions within 60 days. Since the Board is bound by the Act, the amount of employees the Governor designates and the time frame he makes those designations does not alter the Board's duty, which is to decide whether this petition complies with the Act by October 7, 2013.

Therefore, AFSCME was not denied due process when the Governor designated over 1,000 employees as exempt for the collective bargaining provisions of Section 6 of the Act in less than one week.

b. lack of information provided by the State

AFSCME was not denied due process based on the designation petition's alleged lack of information.

In order to properly designate a State employment position as exempt from the self-organization and collective bargaining provisions of Section 6 of the Act, Section 6.1(b) of the Act requires the Governor or its agents, to provide in writing to the Board, "the job title and job duties of the employment position, if any; the name of the State agency employing the public employee; and the category under which the position qualifies for designation." Section 1300.60 of the Board Rules requires that the Board serve the designation petition on the collective bargaining representative who represents the designated position, and to the incumbent employee within that position, (or if the incumbent employee is unrepresented, only to the employee). In order to qualify for designation, Section 6.1(b), states, in relevant part, that the employment position must have the title or duties of Senior Public Service Administrator (SPSA).

When interpreting a statute the language must be given its plain and ordinary meaning. Cnty. of DuPage v. Ill. Labor Rel. Bd., 231 Ill.2d 593, 603-04 (2008). The 15 positions at issue all have the title of Senior Public Service Administrator. A plain and ordinary reading of section 6.1(b)(2) of the Act indicates that these positions are properly included in the designation, and the only relevant inquiry would involve whether the positions are misidentified as having the SPSA title. The Act requires CMS provide the relevant information, and CMS in fact provided the information. AFSCME does not state what information is lacking or what relevance any additional information might have on its objections to the designations at issue. Therefore, AFSCME was not denied due process because the designation petitions allegedly lack information.⁴

⁴ AFSCME also argues, the fact that it has representation petitions pending for 10 of the 15 employees at issue does not materially advance its ability to file objections, because even if it was already in possession of this unspecified information, it does not have enough time to retrieve the information given the number of positions contained in this petition and the limited time provided to file the objections. I find this argument unpersuasive for the reasons stated within this recommended decision and order, and because AFSCME does not provide an explanation to support its inability to retrieve information that it may have in its possession.

c. lack of any procedure to obtain any additional information

AFSCME was not denied due process by the application of the Board's administrative rules which are silent to pre-objection discovery.

AFSCME's objection that the Act and the Board's Rules lack any procedure to obtain any additional information is beyond my authority to review. As stated above, the Board's function is to interpret and implement the Act. The Act and the Rules are both silent as to a procedure to obtain additional information prior to filing objections to the gubernatorial designation, therefore the Board is not required to provide a method.

In this case, the designation is solely based on title of the positions, and relevant objections to the designations would be based upon the position's title. Since AFSCME has not demonstrated how a procedure for additional discovery prior to filing objections in this case would lead to other relevant information, and the Rules and the Act are silent to pre-objection discovery, the Board is not required to provide a method for such discovery. Therefore, AFSCME was not denied due process by the application of the Board's administrative rules which do not specify a method to obtain additional information prior to filing objections.

d. time lapse between AFSCME filing a representation petition and CMS filing this designation petition

The time lapse between AFSCME filing a representation petition and CMS filing this designation petition does not support AFSCME's contention that it has been denied due process.

Section 6.1 of the Act created three broad categories of employment positions that are eligible for designation based on the status of a representation petition containing that position: (1) employment positions that were certified into bargaining units on or after December 2, 2008,⁵ (2) employment positions that were subject to a pending representation petitions when 6.1 was added to the Act on April 15, 2013, and (3) employment positions that have never been certified into a collective bargaining unit. The Act requires that the Governor make such designations within 365 days after April 15, 2013, thus the Governor can make designations through April 15, 2014. Under the first category, a position that was certified into a bargaining unit up to approximately five years before the effective date of the Act is eligible to be designated under Section 6.1. Given this time frame, it is evident that the legislature contemplated extensive periods of time between a union filing a representation petition and the Governor filing a

⁵ In order to be certified into a bargaining unit, the union must first file a representation petition.

designation petition involving the same group of employment positions. AFSCME does not state when it submitted its last representation petition, but in its supporting documents, CMS identified that 10 of the 15 positions at issue are subject to representation petitions in cases S-RC-11-098 and S-RC-11-014. Based on the case numbers, both representation petitions were filed in 2011.⁶ Since the time between certifications made on or after December 2, 2008 and a designation petition filed in April 2014 is not too much of a lapse in time to be considered inconsistent with the Act, the lapse in time between representation petitions filed in 2011 and a designation petition filed in 2013, is also not inconsistent with the Act. Since the legislature clearly contemplated extensive lapses in time between the union filing a representation petition and the Governor filing a designation petition for the same employment position, and because AFSCME has not provided any explanation as to how such a time lapse denies it due process, I find AFSCME's argument unpersuasive. Therefore, AFSCME was not denied due process because of the time lapse between AFSCME's last filed a representation petition and CMS's filing of this designation petition.

e. denial by General Counsel of sufficient additional time to review the information provided and seek additional information for objections

AFSCME was not denied due process when the Board's General Counsel denied AFSCME's request to extend the due date to submit objections to September 27, 2013.

Section 6.1(b)(5) provides "within 60 days after the Governor make a designation under this Section, the Board shall determine, in a manner that is consistent with the requirements of due process, whether the designation comports with the requirements of this Section." Section 1300.60(a)(3) of the Board Rules and Procedures provides that "the collective bargaining representative or incumbent employee shall have 10 days from the date of service of the designation to object to the designation." See 80 Ill. Admin. Code 1300.60. As an administrative rule, the Board's time limit to object to the designation petition is presumed valid.

Here AFSCME filed motions requesting extensions of time to file objections. AFSCME requested that the due date to file objections be extended from August 23, 2013 to September 27,

⁶ Each portion of the case number identifies a characteristic of the case. "S" identifies that the case is under the jurisdiction of State Panel of the Illinois Labor Relations Board. "RC" identifies that the case involves a representation certification. "11" identifies that the representation petition was filed during the 2011 fiscal year which spanned from July 1, 2010 to June 30. "14" identifies that this case was the fourteenth representation petition filed in 2011. Similarly, the "11" in case number S-RC-11-098 identifies that the representation petition for this case was also filed during the 2011 fiscal year.

2013. The Board's General Counsel issued an Order granting the request by extending the due date to August 26, 2013, in light of the volume of designations submitted, but denied any further extension, because that would jeopardize the Board's ability to provide due process and still meet its statutory requirement to issue a decision by October 7, 2013.

Here the General Counsel's refusal to allow AFSCME's additional time beyond August 26, 2013, was in light of the Act's requirement that the Board issue a decision in this case within 60 days. Further, while the Board has no authority to question the validity of the Act or the Rules under which the Board administers the Act, it is of note that the time limits imposed by the Rules are reasonable given the statutory time frame the Board has to process each designation petition. The Act requires that the Board determine the lawfulness of the designation within 60 days from the date of filing. CMS filed this designation petition on August 8, 2013, and the Act requires the Board to determine whether these designations comport with Section 6.1 of the Act by October 7, 2013. In order for the Board to issue a decision, the Board must allow: (1) time for the parties to file objections; (2) time for the Administrative Law Judge (ALJ) to review the petition, any objections, and hold a hearing, if necessary, in order to draft, issue, and serve its Recommended Decision and Order (RDO); (3) time for the parties to file exceptions to the ALJ's RDO; (4) time for the Board and its staff to review the RDO and any exceptions; (5) time for the Board to set an agenda for the Board meeting, pursuant to the Open Meetings Act;⁷ and (6) time for the Board to rule on the ALJ's recommendation before it can issue a written decision. As the General Counsel explained in his Order, the last Board meeting before the decision is required to be issued will be held on September 24, 2013. Granting AFSCME's request to extend the objection due date to September 27, 2013, would make it impossible for the Board to issue its decision by the required deadline of October 7, 2013, because the Board will not meet between the proposed date the objections are submitted and the date the Board decision must be issued. Therefore, AFSCME was not denied due process when the Board's General Counsel denied AFSCME's request to extend the due date to submit objections to September 27, 2013.

IV. CONCLUSION

⁷ The Open Meetings Act requires the Board to post an agenda for each regular meeting to be posted at the Board's principal office and at the location where the meeting is to be held at least 48 hours in advance of the meeting. See 5 ILCS 120/2.02 (2012).

Pursuant to Section 1300.60 of the Board’s Rules, since AFSCME has not filed specific objections, and its broad objections are largely irrelevant to the appropriateness of the designations, I find that the designation is proper based solely on the information submitted to the Board and AFSCME’s objections fail to overcome the presumption that the designation is proper under Section 6.1 of the Act.

V. RECOMMENDED ORDER

Unless this Recommended Decision and Order Directing Certification of the Designation is rejected or modified by the Board, the following positions at the Illinois Department of Veterans’ Affairs are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

40070-34-00-000-01-01	Chief of Staff
40070-34-00-000-10-02	Senior Program Manager
40070-34-00-210-00-01	Deputy General Counsel
40070-34-00-300-00-01	Deputy Director of HR
40070-34-00-700-00-01	Prince Homeless & Disabled - Home Administrator
40070-34-15-000-00-01	School Approval Administrator
40070-34-25-000-00-01	Veteran Service Officer Manager
40070-34-30-000-00-01	Quincy Home Administrator
40070-34-30-130-00-01	Director of Nursing – Quincy
40070-34-40-000-00-01	LaSalle Home Administrator
40070-34-40-210-00-01	Director of Nursing – LaSalle
40070-34-50-000-00-01	Maintenance Home Administrator
40070-34-50-130-00-01	Director of Nursing – Manteno
40070-34-60-000-00-01	Anna Home Administrator
40070-34-60-130-00-01	Director of Nursing – Anna

VI. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board’s Rules and Regulations, 80 Ill. Admin. Code Parts 1300,⁸ parties may file exceptions to the Administrative Law Judge’s

⁸ Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf

Recommended Decision and Order in briefs in support of those exceptions no later than 3 days after service of this recommended decision and order. Exceptions shall be filed with the Board by electronic mail at an electronic mail address designated by the Board for such purpose, ILRB.Filing@illinois.gov, and served on all other parties via electronic mail at their e-mail addresses as indicated on the designation form. Any exception to a ruling, finding conclusion or recommendation that is not specifically urged shall be considered waived. A party not filing timely exceptions waives its right to object to this recommended decision and order.

Issued at Chicago, Illinois this 9th day of September, 2013.

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

/s/ Deena Sanceda _____

**Deena Sanceda
Administrative Law Judge**