

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

State of Illinois, Department of Central Management Services (Illinois Commerce Commission),)	
)	
Petitioner)	
)	
and)	Case No. S-DE-14-047
)	
American Federation of State, County and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	

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

Section 6.1 of the Illinois Public Labor Relations Act, 5 ILCS 315/6.1 (2012) *added by* Public Act 97-1172 (eff. April 5, 2013), allows the Governor of the State of Illinois to designate certain public employment positions with the State of Illinois as excluded from collective bargaining rights which might otherwise be granted under the Illinois Public Labor Relations Act. There are three broad categories of positions which may be so designated: 1) positions which were first certified to be in a bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008, 2) positions which were the subject of a petition for such certification pending on April 5, 2013 (the effective date of Public Act 97-1172), or 3) positions which have never been certified to have been in a collective bargaining unit. Only 3,580 of such positions may be so designated by the Governor, and, of those, only 1,900 positions which have already been certified to be in a collective bargaining unit.

Moreover, to be properly designated, the position must fit one of the following five categories:

- 1) it must authorize an employee in the position to act as a legislative liaison;
- 2) it must have a title of or authorize a person who holds the position to exercise substantially similar duties as a Senior Public Service Administrator, Public Information Officer, or Chief Information Officer, or as an agency General

Counsel, Chief of Staff, Executive Director, Deputy Director, Chief Fiscal Officer, or Human Resources Director;

- 3) it must be designated by the employer as exempt from the requirements arising out of the settlement of Rutan v. Republican Party of Illinois, 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.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 promulgated emergency rules to effectuate Section 6.1, which became

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.

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. 14070 (Sept. 6, 2013). These rules are contained in Part 1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On August 15, 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 30, 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 Based on my review of the designation, 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 the designation is not consistent with the requirements of Section 6.1 of the Act and consequently I recommend that the petition be dismissed.

The petition designates the following nine positions at the Illinois Commerce Commission for exclusion from the self-organization and collective bargaining provisions of Section 6 of the Act:

68920-31-12-000-40-01	Director of Retail Market Development
68920-31-21-000-00-01	Director of Consumer Services
68920-31-22-000-00-01	Director of Governmental Affairs
68920-31-23-000-00-01	Director of Public Affairs
68920-31-51-000-00-01	Director of Safety and Reliability
68920-31-52-000-00-01	Director of Policy
68920-31-53-000-00-01	Director of Financial Analysis
68920-31-72-000-00-01	Director of Administrative Services
68920-31-73-000-00-01	Director of Information Technology

The petition indicates that each of the nine positions qualify for designation under Sections 6.1(b)(2), 6.1(b)(3), and 6.1(b)(5). In support of the 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 submitted CMS-104s

² On August 23, 2013, AFSCME filed a motion for an extension of time within which to file objections in this case. On August 23, 2013, the Board's General Counsel issued an order extending the time for filing objections in this case from August 28, 2013 to August 30, 2013.

for each position, each of which indicates that the position is classified as Rutan-exempt. All nine positions are subject to the pending petition for certification in Case No. S-RC-11-078.

I. OBJECTIONS

AFSCME objects to the petition and argues that it should be dismissed. AFSCME asserts that Section 6.1 of the Act limits gubernatorial designations to state agencies that are “directly responsible to the Governor.” AFSCME argues that because the Illinois Commerce Commission is not a state agency “directly responsible to the Governor,” the Governor does not have the authority under the Act to designate positions within the Illinois Commerce Commission.³ AFSCME notes that Section 3(q-5) of the Act, which provides a definition of state agency, specifically acknowledges that the Illinois Commerce Commission is not a state agency “directly responsible to the Governor”. AFSCME also notes that the Executive Reorganization Implementation Act, 15 ILCS 15 (2012), similarly acknowledges that the Illinois Commerce Commission is not a state agency “directly responsible to the Governor.”

II. DISCUSSION AND ANALYSIS

The designation does not comport with the requirements of Section 6.1 of the Act and the petition should be dismissed because the Illinois Commerce Commission is not a state agency “directly responsible to the Governor.”

Section 6.1(a) of the Act states in relevant part, “the Governor is authorized to designate up to 3,580 State employment positions collectively within State agencies *directly responsible to the Governor*, and, upon designation, those positions and employees in those positions, if any, are hereby excluded from the self-organization and collective bargaining provisions of Section 6 of this Act.” 5 ILCS 315/6.1(a) (2012) (emphasis added). Thus, the Board must initially determine whether the positions designated for exclusion are within a state agency “directly responsible to the Governor.” In this case, the positions are within the Illinois Commerce Commission, which is not a state agency “directly responsible to the Governor.”

Section 3(q-5) of the Act defines state agency:

"State agency" means an agency directly responsible to the Governor, as defined in Section 3.1 of the Executive Reorganization Implementation Act, and *the*

³ AFSCME provided additional objections to the petition. However, since the stated objection is sufficient to conclude that the petition should be dismissed, it is unnecessary to consider those additional objections.

Illinois Commerce Commission, the Illinois Workers' Compensation Commission, the Civil Service Commission, the Pollution Control Board, the Illinois Racing Board, and the Department of State Police Merit Board.

5 ILCS 315/3(q-5) (2012) (emphasis added). Thus, the Act acknowledges that the Illinois Commerce Commission is not an “agency directly responsible to the Governor,” by defining “state agency” as those agencies directly responsible to the Governor and then including various other commission and boards.

Section 3.1 of the Executive Reorganization Implementation Act similarly acknowledges that the Illinois Commerce Commission is not a State agency “directly responsible to the Governor.” 15 ILCS 15/3.1 (2012). Section 3.1 states:

"Agency directly responsible to the Governor" or "agency" means any office, officer, division, or part thereof, and any other office, nonelective officer, department, division, bureau, board, or commission in the executive branch of State government, except that it does not apply to any agency whose primary function is service to the General Assembly or the Judicial Branch of State government, or to any agency administered by the Attorney General, Secretary of State, State Comptroller or State Treasurer. In addition the term *does not apply* to the following agencies created by law with the primary responsibility of exercising regulatory or adjudicatory functions independently of the Governor:

- (1) the State Board of Elections;
- (2) the State Board of Education;
- (3) *the Illinois Commerce Commission*;
- (4) the Illinois Workers' Compensation Commission;
- (5) the Civil Service Commission;
- (6) the Fair Employment Practices Commission;
- (7) the Pollution Control Board;
- (8) the Department of State Police Merit Board;
- (9) the Illinois Racing Board;
- (10) the Illinois Power Agency.

15 ILCS 15/3.1 (2012) (emphasis added). Thus, Section 3.1 specifically states that the term “agency directly responsible to the Governor” does not apply to the Illinois Commerce Commission.

As previously noted, Section 6.1 of the Act authorizes the Governor to designate positions within State agencies “directly responsible to the Governor.” Pursuant to Section 3(q-5) of the Act and Section 3.1 of the Executive Reorganization Implementation Act, the Illinois Commerce Commission is not a State agency “directly responsible to the Governor,” and thus the positions are not designable under Section 6.1 of the Act.

III. CONCLUSION OF LAW

The Governor's designation does not comport with the requirements of Section 6.1 of the Act.

IV. RECOMMENDED ORDER

It is hereby recommended that the petition be dismissed.

V. 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.

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

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

/s/ Michelle Owen

**Michelle Owen
Administrative Law Judge**

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