STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services (Department of Agriculture),	)	
Petitioner	)	
	)	Case No. S-DE-14-050
and	)	
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, 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. Section 6.1 and Public Act 97-1172 became effective on April 5, 2013 and allow the Governor 365 days from that date to make such designations.

The Illinois Labor Relations Board (Board) promulgated emergency rules to effectuate Section 6.1 that became effective on April 22, 2013, 37 Ill. Reg. 5901 (May 3, 2013). In addition, the Board promulgated permanent rules for the same purpose that became effective on August 23, 2013, 37 Ill. Reg. 14070 (Sept. 6, 2013). Those rules are contained in Part 1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On August 20, 2013, the Illinois Department of Central Management Services (Petitioner or CMS), on behalf of the Governor, filed the above-captioned designation pursuant to Section

6.1 of the Illinois Public Labor Relations Act and Section 1300.50 of the Board's rules. The petitioned-for position is affiliated with the Illinois Department of Agriculture (IDA). On September 9, 2013, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME), filed an objection to the designation pursuant to Section 1300.60(a)(3) of the Board's rules. After full consideration of the record, I, the undersigned Administrative Law Judge, recommend the following.

I. DISCUSSION AND ANALYSIS

The instant analysis must determine whether the petitioned-for position may lawfully be selected for designation under Section 6.1 of the Illinois Public Labor Relations Act. Under Section 6.1, 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 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. Moreover, to be properly designated, the position must fit one or more 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."[1]

In this instance, CMS asserts that the statutory category under which the position at issue qualifies for designation is Section 6.1(b)(5). Put differently, CMS asserts that the position at issue authorizes the employee holding that position to have "significant and independent discretionary authority as an employee." Despite that clear assertion, AFSCME contends that the instant petition and the provided job description do not specify any basis for an exclusion pursuant to Section 6.1(b)(5). It also suggests that CMS has provided no evidence in support of its designation and, accordingly, AFSCME cannot provide "any meaningful response." I disagree.

In order to properly designate a State employment position under Section 6.1, CMS must simply provide the Board with (1) the job title and job duties of the employment position; (2) the name of the State employee currently in the employment position, if any; (3) the name of the State agency employing the public employee; and (4) the category under which the position qualifies for designation. CMS has provided that information. By doing so, CMS has provided a basis for the exclusion and the minimum "notice" and "showing" required by Section 6.1.

Section 6.1(c) provides that, for the purposes of Section 6.1, a person has significant and independent discretionary authority as an employee if he or she is either (1) engaged in executive and management functions of a State agency and charged with the effectuation of management

[1] As an aside, I note that 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. I also note that Public Act 98-100, which became effective July 19, 2013, added subsections (e) and (f) to Section 6.1. Those subsections shield certain specified positions from such designations, but none of those positions are at issue in this case.

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 (2) 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 order of the National Labor Relations Board (NLRB) interpreting that provision or decisions of courts reviewing decisions of the NLRB. AFSCME's objection suggests that the foregoing definition essentially follows and adopts the definitions of "manager" and "supervisor" presently used by the NLRB and, therefore, the Board should use the NLRB's current standards when reviewing the instant petition.

I would concede that, to a degree, the language used by Sections 6.1(b)(5) and 6.1(c) does parallel language and terms commonly used by the NLRB. I also recognize that Section 6.1(c)(ii) (the latter of the two Section 6.1(c) options outlined above) specifically references the NLRB's definition of a "supervisor." However, I would not so readily or so broadly apply the NLRB's standards to a Section 6.1 analysis.

Significantly, AFSCME's arguments overlook Section 6.1(d), which creates a unique presumption that a designation made by the Governor was properly made (and necessarily permeates this analysis). I would also note that, although many decisions of the NLRB and the federal courts provide useful or even "persuasive" guidance, those decisions are not strictly binding on the Board. State of Illinois, Departments of Central Management Services and Corrections, 25 PERI ¶12 (IL LRB-SP 2009). That principle is especially fitting in this instance, as no part of the National Labor Relations Act squarely aligns with Section 6.1 of the Illinois Public Labor Relations Act. Further, it does not appear that CMS seeks a Section 6.1(c)(ii) exclusion in this instance.

When considering a Section 6.1 petition, I generally would limit the strict application of NLRB precedent to those instances in which Section 6.1 specifically directs the Board to do so – namely, Section 6.1(c)(ii). In its objection, AFSCME centrally asserts that the employee at issue does not satisfy Section 6.1(b)(5) because he is a "professional" employee and thus is not a "managerial employee" as those terms are understood by the NLRB. However, Section 6.1 does not address that type of distinction.[2] Accordingly, I find that AFSCME's objection fails to raise an issue of law or fact that justifies a hearing.

II. CONCLUSION OF LAW

Based on my review of the designation, the documents submitted as part of the designation, the objection, and the documents and arguments submitted in support of that objection, I find the instant designation to have been properly submitted and consistent with the requirements of Section 6.1 of the Illinois Public Labor Relations Act.

III. RECOMMENDED ORDER

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

Position Number	Working Title
37015-11-01-300-00-01	Staff Attorney

[2] To clarify, I find that the instant case can be distinguished from more traditional Board cases such as State of Illinois, Department of Central Management Services, 26 PERI ¶132 (IL LRB-SP 2010), in which the Board, while considering whether an attorney was a manager, concluded that the attorney's exercise of professional technical expertise was not the same as "management" as defined by Section 3(j) of the Illinois Public Labor Relations Act.

IV. EXCEPTIONS

Pursuant to Sections 1300.90 and 1300.130 of the Board's adopted rules, 80 Ill. Admin. Code Part 1300, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order, and briefs in support of those exceptions, no later than three days after service of the Administrative Law Judge's Recommended Decision and Order. All exceptions shall be filed and served in accordance with Section 1300.90 of the Board's adopted rules. Notably, exceptions must be filed by electronic mail sent 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 that does not file timely exceptions waives its right to except to the Administrative Law Judge's Recommended Decision and Order.

Issued at Chicago, Illinois, this 26th day of September, 2013.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Martin Kehoe
Administrative Law Judge