STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services (Emergency Management Agency),	)	
Petitioner	)	
	)	Case No. S-DE-14-061
and	)	
Darryl Dragoo,	)	
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, 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. All of the petitioned-for positions in the designation are affiliated with the Illinois Emergency

Management Agency (IEMA). On August 26, 2013, Darryl Dragoo, a petitioned-for ("incumbent") employee, filed an objection to pursuant to Section 1300.60(a)(3) of the Board's rules. A hearing was held on September 18, 2013 before the undersigned. At that time, the parties appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. After full consideration of the parties' evidence and arguments, and upon the entire record of this case, I recommend the following.

I. ISSUES AND CONTENTIONS

CMS contends that the instant designation has been properly submitted and is consistent with the requirements of Section 6.1 of the Illinois Public Labor Relations Act and the Board's rules. Dragoo contends the designation is improper.

II. FINDINGS OF FACT

Dragoo is employed by the IEMA. The IEMA's central mission is to prepare, protect, and assist the citizens of the State of Illinois through planning, prevention, training, mitigation, response, and recovery. The IEMA is concerned with all hazards, natural or man-made.

Dragoo's formal position title is Nuclear Safety Health Physicist II (position number 83714-50-17-040-00-01). The working title for that position is Strategic Planner. He currently has no subordinates. At the moment, Dragoo reports directly to Bureau Chief Donald Kauerauf, an IEMA employee who currently serves as the Chair of the Bureau of Preparedness and Grants Administration, the portion of the IEMA that is tasked with providing administrative support for the Illinois Terrorism Task Force (ITTF).

The ITTF consists of 60 members. The IEMA is one of those members. The ITTF oversees and administers "federal preparedness funds" received by the IEMA. The ITTF is also responsible for providing and recommending homeland security policies to the Governor.

Much, if not all, of Dragoo's work is associated with a group closely affiliated with the ITTF called the Strategic Planning Cell (SPC). The SPC develops guidance materials that support the execution of State, local, and regional plans. The guidance materials represent what the IEMA considers "the best practices" and are meant to simplify the planning burden placed on jurisdictions preparing for acts of terrorism or natural disasters. While local units of government are encouraged by the IEMA to utilize the guidance materials, they are not strictly obligated to do so. The guidance materials are suggestions.

Currently, the SPC consists of Dragoo (representing the IEMA), an individual affiliated with the Illinois National Guard, and an individual affiliated with the Illinois Law Enforcement Alarm System. In the past, the SPC has also included individuals affiliated with the Illinois Association of Public Health Administrators, the Illinois Department of Public Health, and other State agencies. Although each individual who works with the SPC often performs a similar role, Kauerauf expects Dragoo to lead the group.

Dragoo does not independently find work. Rather, Dragoo receives assignments from Kauerauf or the IEMA's Director, Assistant Director, or Chief of Operations. (The majority of Dragoo's assignments are provided by Kauerauf.) When Dragoo receives an assignment, he is expected to pull together subject matter experts within the State of Illinois. Together, those experts review a range of relevant materials and guidance. After that review, the guidance materials are developed. Before they are formally issued, all of the guidance materials the SPC produces are reviewed by either the IEMA's Director, its Chief of Operations, Kauerauf, or, in

some instances, the full membership of the ITTF. While not all of the guidance materials developed are issued, ultimately, only 10% of the guidance materials that are generated are overtly rejected.

The record includes illustrative examples of the guidance materials generated by the SPC. One set of guidance materials was developed for the Illinois Department of Public Health. Those guidance materials were meant to be used by local units of government when executing mass care during a catastrophic event. In another instance, Dragoo and the SPC were asked to provide a review of the current standards for "emergency management accreditation." The IEMA's Food & Water Distribution Plan was also introduced. That comprehensive document is now available on the IEMA's website.

III. DISCUSSION AND ANALYSIS

The instant analysis must determine whether the petitioned-for positions 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 positions at issue in the above-captioned case qualify for designation is Section 6.1(b)(5). Put differently, CMS asserts that the positions at issue authorize employees holding those positions to have "significant and independent discretionary authority as an employee." In part, Dragoo contends that his position does not have that sort of authority. This analysis must resolve that dispute.

As provided by Section 6.1(c), 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 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

[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.

Labor Relations Board interpreting that provision or decisions of courts reviewing decisions of the National Labor Relations Board.

Because Dragoo presently has no subordinate employees, I find that Dragoo does not have the authority required by the latter of the two Section 6.1(b)(5) options. (CMS does not dispute that conclusion.) Generally speaking, an individual must have subordinates to be deemed a supervisor. See City of Carbondale, 27 PERI ¶68 (IL LRB-SP 2011). Whether or not Dragoo has the authority required by the first option is less obvious.

The Board has not yet had an opportunity to meaningfully interpret the language of Sections 6.1(b)(5) and 6.1(c). However, the Board has determined whether or not an employee should be considered a manager within the meaning of Section 3(j) of the Illinois Public Labor Relations Act. In that context, the Board has regularly indicated that "executive and management functions" relate to running an agency or department and can include formulating policy. See State of Illinois, Department of Central Management Services, 28 PERI ¶160 (IL LRB-SP 2012).

A reasonable argument can be made that Dragoo's work with the SPC, a department Dragoo is purportedly expected to lead, can be characterized as formulating IEMA policies. Moreover, in a sense, the guidance materials submitted by Dragoo can be considered a method by which the IEMA reaches its own policy objectives. The record indicates, for example, that IEMA is responsible for preparing the State of Illinois for a variety of disasters. The SPC's guidance materials help the IEMA "fulfill" that responsibility. It also generally appears that, once Dragoo receives an assignment, it is largely left to Dragoo and those he has "pulled together" to determine how the assignment will be completed. To that extent, I posit that the Board could reasonably find that Dragoo is engaged in the sort of executive and management

functions contemplated by Section 6.1(b)(5)(i). That position is bolstered by Section 6.1(d), which creates a presumption that a designation made by the Governor was properly made (and necessarily permeates this analysis).

Dragoo routinely highlights the fact that he cannot implement policies unilaterally, but I am not convinced that fact is dispositive in this instance. In related contexts, it has been said that "managerial status" is not limited to those at the very highest level of the governmental entity at issue. Salaried Employees of North America v. Illinois Local Labor Relations Board, 202 Ill. App. 3d 1013, 1020, 560 N.E.2d 926, 932 (1st Dist. 1990). Moreover, an advisory employee who makes "effective recommendations" can be deemed a manager. Department of Central Management Services/Illinois Commerce Commission v. Illinois Labor Relations Board, 406 Ill. App. 3d 766, 775, 943 N.E.2d 1136, 1144 (4th Dist. 2010). Here, it appears that, although Dragoo cannot independently implement a policy, in the ordinary sense, most of Dragoo's work product is acted on or followed. Dragoo's superiors are not "equally apt to take or leave" his recommendations, and few are outright rejected.

Separately, Dragoo's objection contends that, because his official position description is inaccurate, it cannot be used as a basis for the designation of his position. Inter alia, Dragoo contends that, since the most current position description was created, his immediate superior has changed. Additionally, Dragoo contends that he has lost a number of responsibilities over time. In sum, I find that those contentions, though accurate to a degree, are largely immaterial. I also find that Dragoo's attempt to elucidate the internal processes by which his position was selected for designation by the IEMA and CMS is misguided.

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.

While I would grant that Section 6.1 of the Illinois Public Labor Relations Act and Section 1300.50(a) of the Board's rules require CMS to provide a position's "job duties," neither authority overtly requires the level of precision demanded by Dragoo's objection. Further, in this instance, whatever might have been inappropriately transmitted via the provided position description has been meaningfully clarified and corrected through the September 25, 2013 hearing referenced above.

IV. CONCLUSION OF LAW

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 instant designation to have been properly submitted and consistent with the requirements of Section 6.1 of the Illinois Public Labor Relations 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 with the Illinois Emergency Management Agency are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

Position Number	Working Title
83714-50-17-040-00-01	Strategic Planning
83714-50-17-800-10-01	Manager, Electronic Products

VI. 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 23rd day of September, 2013.

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Martin Kehoe
Administrative Law Judge