STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services (Department of Human Services),	)	
Petitioner	)	
and	)	Case No. S-DE-14-070
Keith Stoddard	)	
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 (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, 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 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 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.

[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.

14,070 (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 21, 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. CMS' petition designates the exclusion of the following Land Surveyor V positions in the Illinois Department of Transportation based on Section 6.1(b)(5) of the Act:

Planning & Programming Unit Chief (vacant) PW805-23-50-501-10-01
Chief of Plats & Plans (Keith Stoddard) PW805-23-51-501-00-01

On August 30, 2013, Keith Stoddard filed objections to the exclusion of the Chief of Plats & Plans position which he currently occupies.

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, here are my findings:

I. BACKGROUND

CMS' gubernatorial designation of exclusion petition indicates that the positions at issue are properly designated under Section 6.1(b)(5) of the Act as supervisory or managerial in nature. In support of this contention, CMS has provided position descriptions (CMS-104s) for the designated positions.

The position description for the Chief of Plats & Plans provides that this position is supervisory. Specifically, this position has 8-10 direct subordinates that it supervises. The position establishes work schedules, allocates resources to complete assigned projects and monitors the progress of said projects. This position also reviews work to ensure its completeness and accurateness and trains and evaluates staff.

Keith Stoddard individually objects to the petition arguing that his position is not supervisory or managerial in accordance with the Act. Specifically, Stoddard maintains that he is directly accountable to the Bureau Chief and performs duties in accordance with standards and procedures that are established as a part of the land acquisition process. Further, Stoddard argues that he has no independent discretionary authority, significant or otherwise, to participate in any

activities or make decisions that impact management policy and practices. Stoddard states that although he supervises a small staff, he does not have the authority to hire, fire, promote, demote or discipline.

Lastly, Stoddard maintains that his position is a legislative liaison, exempt under the Personnel Code and is Rutan-exempt.

II. DISCUSSION AND ANALYSIS

The Act provides that any designation made by the Governor is presumed proper and 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. 5 ILCS 315/6.1 (2012). Here, CMS' designation of the positions at issue are proper according to Section 6.1(b)(5) of the Act. Under the Act, to be properly designated, the position must authorize an employee in that position to have "significant and independent discretionary authority as an employee." 5 ILCS 315/6.1 (2012). The Act qualifies an employee 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. The Act looks to the Illinois Public Labor Relations Act when deciding the meaning of a managerial employee.

Supervisory status is based on indicia in Section 2(11) of the National Labor Relations Act:

> "The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."29 U.S.C. §152 (11).

"Employees are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 listed supervisory functions, (2) their 'exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment,' and (3) their authority is held 'in the interest of the employer." NLRB v. Kentucky River

Community Care, Inc. 532 U.S. 706, 713 (2001) (quoting NLRB v. Health Care & Retirement Corp. of America, 511 U.S. 571, 573-574, (1994); See also Oakwood Healthcare, Inc., 348 NLRB 686, 87 (2006).

The term "assign" means "the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee." Oakwood Healthcare, Inc., 348 NLRB 686, 89 (2006).

A position has the responsibility to direct if the position holder has subordinates, decides what jobs his subordinates should perform next, and who should perform those tasks. Id at 691-92 To be considered a supervisor with "responsibility to direct," there must be accountability on the supervisor's part if the directed task is not performed properly. Id. at 691-92

Here, the designation of the position held by Keith Stoddard is proper as this position is supervisory under Section 6.1(b)(5) of the Act. Although Stoddard denies authority to hire, fire, promote, demote or discipline, it is clear by the job description that the position has the authority to assign and direct using independent authority. Specifically, the position has direct influence in ensuring all obligated construction funds are not lost by providing complete and high quality legal documents. As such, this position supervises the preparation of documents such as federal participation programming requests. It is also responsible for ensuring all work by staff is accurate and conforms to standard specification policies and professional surveying practices to perpetuate its obligations. This position is also tasked with training and evaluating staff, which are other indications of supervisory status. (B & B Insulations, 272 NLRB 185 (1984) (supervisory authority established where employee has responsibility for training, assignment and direction to ensure quality and safety of work). Stoddard does not deny that the position is challenged with the tasks above.

Therefore, I recommend the Board find the designation proper.

III. CONCLUSIONS OF LAW

The designations in this case are properly made.

IV. 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:

Planning & Programming Unit Chief (vacant) PW805-23-50-501-10-01

Chief of Plats & Plans (Keith Stoddard) PW805-23-51-501-00-01

V. EXCEPTIONS

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 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 3 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 and Regulations. 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 not filing timely exceptions waives its right to object to the Administrative Law Judge's recommended decision and order.

Issued at Chicago, Illinois this 20th day of September, 2013

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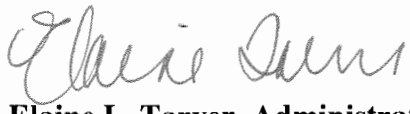

Elaine L. Tarver, Administrative Law Judge