STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services,	)	
Petitioner	)	
and	)	Case No. S-DE-14-095
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 rules to effectuate Section 6.1, which became effective on August 23, 2013, 37 Ill. Reg. 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 September 16, 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 seven Public Service Administrators based on Section 6.1(b)(3) and (5) of the Act:

37015-13-10-000-10-01	Department of Financial & Professional Responsibility	Alan Anderson	Confidential Assistant
37015-49-00-000-00-02	Department of Human Resources	Voda Ebetting	Assistant to the Director
37015-50-17-050-00-01	Emergency Management Agency	Vacant	Assistant to the Director
37015-45-00-000-01-01	Illinois State Lottery	Victor Golden	Deputy Superintendent

[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.

37015-50-48-000-00-01	Property Tax Appeal Board	Eileen Castrovillari
37015-34-00-000-10-01	Department of Veteran Affairs	Vacant
37015-11-01-000-00-03	Department of Aging	Lyle Flach

In support of its petition, CMS submitted job descriptions (CMS-104s) for each position and a summary spreadsheet. The spreadsheet identifies, in pertinent part, position number, title, name of incumbent, bargaining unit, certification's date and case number and statutory category of designation. All seven positions have been certified into the RC-63 bargaining unit pursuant to the actions of the Board in Case. No. S-RC-08-036.

I. OBJECTIONS

On September 27, 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. AFSCME argues that the designation violates due process and is arbitrary and capricious, restating arguments made before the Board in Case Nos. S-DE-14-005, 009, 010, 029 and 031. Those arguments refer to the Board's timelines and failure to provide a procedure for objectors to obtain documents in support of their objections, and AFSCME's right to have a hearing. AFSCME also objects on the basis that all of the positions designated for exclusion in this petition have been certified in bargaining units and their job duties and functions have not changed, making exclusion, without hearing, improper.

Further, AFSCME contends that the evidence submitted by CMS fails to support the presumption that position number 37015-11-01-000-00-03 held by Lyle Flach is both Rutan-exempt and exempt under Jurisdiction B of the Personnel Code. AFSCME also challenges the evidence provided for position number 37015-34-00-000-10-01 (vacant) because there were two

job descriptions submitted for this position. The first description has no indication that the position is either Rutan exempt or exempt from Jurisdiction B of the Personnel Code. The second specifies that it is an updated description and indicates the position is under both exemptions; however, AFSCME contends that the second is "incomplete" as it does not specify the position's job duties.

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 AFSCME has failed to raise an issue that would require a hearing. 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 existing inclusion of these positions within any collective bargaining unit.

II. DISCUSSION AND ANALYSIS

a. Due Process

The designation comports with the requirements of Section 6.1 and AFSCME's objections do not overcome the presumption that the Governor's designation was properly made.

The Board has held that it is beyond its capacity to "rule that the Illinois Public Labor Relations Act, as amended by Public Act 97-1172, either on its face or as applied violates provisions of the United States and Illinois constitutions" (State of Illinois, Department of Central Management Services, _ PERI _ Cons. Case Nos. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013) citing Goodman v. Ward, 241 Ill. 2d 398, 411 (2011)). However, in Case No. S-DE-14-005 et al. the Board expressed its concern with AFSCME's due process arguments but

maintained that it has taken necessary measures to prevent a violation of such.[2] Moreover, in administrative hearings, failing to go to an oral hearing is not necessarily the denial of a hearing where written documents could suffice as a hearing. Department of Central Management Services (Illinois Commerce Commission) v. Illinois Labor Relations Board, State Panel, 406 Ill. App. 3d 766, 769-70 (4th Dist. 2010). Therefore, AFSCME's due process rights have not been violated by the Board following the policies and procedures mandated by legislature. Moreover, I find there is no issue of law or fact warranting hearing.

b. Substantive Issues

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). As stated above, proper designation includes positions which were first certified to be in a bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008 and 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

[2] The Board found in Case No. S-DE-14-005 et al issued October 7, 2013 that, consistent with the Fourth District, it has, "insured that the individual employees as well as their representative and potential representative receive notice soon after designation petitions are filed, usually without hours, and have provided for redundant notice by means of posting at the worksite....we provided them an opportunity to file objections, and where they raise issues of fact or law that might overcome the statutory presumption of appropriateness, an opportunity for a hearing, [and]...require a written recommended decision by an administrative law judge in each case in which objections have been filed. Arvia v. Madigan, 209 Ill. 2d 520 (2004), and Gruwell v. Ill. Dep't of Financial and Professional Regulations, 406 Ill. App. 3d 283, 296-98 (4th Dist. 2010). Additionally, the Board found that it has "allowed an opportunity to appeal those recommendations for consideration of the full Board by means of filing exceptions,...doubled the frequency of our scheduled public meetings in order to provide adequate review of any exceptions in advance of the 60-day deadline and... issu[e] written final agency decisions which may be judicially reviewed pursuant to the Administrative Review Law", in an effort to adhere to due process. (State of Illinois, Department of Central Management Services, _ PERI _ Cons. Case Nos. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013).

(2012), see 20 ILCS 415/4 through 4d (2012). Additionally, the Governor can designate 1,900 positions which have already been certified to be in a collective bargaining unit. Because the positions in the petition are all properly designated under Section 6.1(b)(3) of the Act, I will not address whether position number 37015-13-10-000-10-01 is also properly designated under Section 6.1(b)(5) of the Act.

AFSCME has not provided any evidence to refute the presumption that the positions at issue are in fact Rutan-exempt and exempt from Jurisdiction B of the Personnel Code. Specifically, the job descriptions provided for position number 37015-34-00-000-10-01 ultimately support the conclusion that this position is both Rutan-exempt and exempt from Jurisdiction B of the Personnel Code. CMS provided two job descriptions for this position. The first is dated from 2000 and does not indicate the position has either exemption. The second is an updated job description from 2002 which indicates that the position is subject to both exemptions.

AFSCME's argument that the second description seems incomplete is not persuasive to reject the designation. AFSCME failed to provide any evidence that the position is *not* Rutan-exempt or exempt from Jurisdiction B of the Personnel Code, instead, it assumes the updated job description is incomplete because it does not also list the position's job functions. The updated description seems to instead make note only in the areas that it actually updated. The county code and exemptions were the only items related to the job that were updated and documented. The lack of documentation related to job functions or other information does not invalidate the job descriptions. Consistent with other descriptions, it is signed off on by the director of CMS and the agency head. As such, I find that the position description ultimately lists the position as being exempt in accordance with Section 6.1(b)(3) of the Act.

As for position number 37015-11-01-000-00-03 held by Lyle Flach, the job description CMS tendered did not indicate the position as Rutan-exempt. AFSCME argues that CMS' failure to provide evidence that the position is also Rutan-exempt makes the petition improper and the Board should reject the designation. However, AFSCME provided no specific evidence that the position was *not* Rutan-exempt. Before deciding this issue, the undersigned requested additional information from both parties in support of their respective positions. CMS provided a position review/determination form and a position action notice for the position at issue.[3] The additional documents submitted indicate that the position is also Rutan-exempt. After reviewing all documents related to this position, the evidence is such that the position is both Rutan-exempt and exempt from Jurisdiction B of the Personnel Code in accordance with Section 6.1(b)(3) of the Act.

Lastly, AFSCME argues that these designations include positions that have been certified in bargaining units and that their exclusion, prior to having a hearing in this matter, is improper. Section 6.1 of the Act is clear that the Governor may designate up to 1,900 individuals who are currently in bargaining units that were certified on or after December 2, 2008. Therefore, there is no issue of law or fact warranting a hearing on this issue.

CONCLUSIONS OF LAW

The designations in this case are properly made.

[3] The undersigned issued a request for additional information on both parties October 7, 2013, giving the parties until close of business October 10, 2013 to produce the additional evidence requested. CMS submitted additional documentation October 11, 2013 asking the undersigned to consider such evidence even though it was submitted after the deadline. Shortly after CMS' submission, AFSCME notified the undersigned that it did not have additional documentation to provide as evidence in this matter and that it also did not object to the consideration of the late documentation submitted by CMS.

III. 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:

37015-13-10-000-10-01	Department of Financial & Professional Responsibility	Alan Anderson	Confidential Assistant
37015-49-00-000-00-02	Department of Human Resources	Voda Ebetting	Assistant to the Director
37015-50-17-050-00-01	Emergency Management Agency	Vacant	Assistant to the Director
37015-45-00-000-01-01	Illinois State Lottery	Victor Golden	Deputy Superintendent
37015-50-48-000-00-01	Property Tax Appeal Board	Eileen Castrovillari	
37015-34-00-000-10-01	Department of Veteran Affairs	Vacant	
37015-11-01-000-00-03	Department of Aging	Lyle Flach	

IV. 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

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

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 15th day of October, 2013

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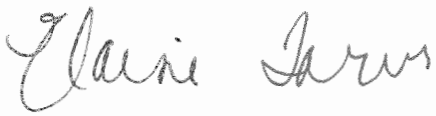

Elaine L. Tarver, Administrative Law Judge