

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

State of Illinois, Department of Central Management Services, (Department of Commerce and Economic Opportunity, Department of Revenue, Environmental Protection Agency, Gaming Board, and Department of Public Health),)	
)	
)	
)	
)	
)	
Petitioner,)	Case No. S-DE-14-098
)	
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 (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; or
- 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

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.

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 18, 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 October 3, 2013, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed objections to the designation pursuant to Section 1300.60(a)(3) of the Board's Rules. 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 that the designation was properly submitted, that it is consistent with the requirements of Section 6.1 of the Act, and that the objections fail to raise an issue of law or fact that might overcome the presumption that the designation is proper. 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 any existing inclusion of these positions within any collective bargaining unit.

The following seven positions within the Department of Commerce and Economic Opportunity (DCEO), the Environmental Protection Agency (EPA), the Gaming Board, the Department of Public Health (DPH), and the Department of Revenue are at issue in this designation.

DCEO	40070-42-00-400-00-01	Bill Hoback	Deputy Director
DCEO	40070-42-00-400-10-01	Mike Murphy	Coal Programs Manager
DCEO	40070-42-70-000-10-01	Kate Tomford	Energy and Econ. Dev. Policy Advisor
EPA	40070-46-10-400-00-01	Roger D. Lauder	Manager, Office of Emergency Op.
Gaming	40070-50-69-100-00-01	vacant (ISP)	Dep. Administrator, Investigations
Revenue	40070-25-09-400-00-01	vacant	Internal Affairs/Chicago
DPH	40070-20-53-000-00-01	Kenneth McCann	Division Chief

CMS's petition indicates the positions at issue qualify for designation under Section 6.1(b)(3) of the Act which permits designation on the basis of a position's Rutan-exempt status

its exemption from jurisdiction B of the Personnel Code.² AFSCME objects to designation of all positions on the grounds set forth below.

I. AFSCME's Objections

First, AFSCME states that Section 6.1 of the Act is unconstitutional, on its face and as applied, both under the Illinois Constitution and the Constitution of the United States of America because it deprives AFSCME of due process and violates the separation of powers clause, the equal protection clause, and the prohibition against impairment of contracts.³

Next, AFSCME asserts that the designation is arbitrary because other State employees within the bargaining unit hold the same classification as the designated positions and perform similar duties but have not been designated by CMS. Further, AFSCME argues that the designation is arbitrary because the positions' job duties have not changed significantly since the positions' certification.

AFSCME does not deny that the positions in question are Rutan-exempt and that they are completely exempt from jurisdiction B of the Personnel Code.

II. Discussion and Analysis

a. Constitutional Arguments

It is beyond the Board's 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 Ill., Dep't of Cent. Mgmt. Serv., Case No. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013) (citing Goodman v. Ward, 241 Ill. 2d 398, 411 (2011) ("Administrative agencies ... have no authority to declare statutes unconstitutional or even to question their validity. [citations omitted] When they do so, their actions are a nullity and cannot be upheld.")). Accordingly, these issues are not addressed in this decision.

² CMS filed position descriptions (CMS-104s) for the positions in support of its assertion. These positions are currently represented by AFSCME. Notably, these positions also hold the Senior Public Service Administrator title.

³ Specifically, AFSCME explains that these positions are covered by a collective bargaining agreement into which CMS entered after the enactment of Section 6.1 of the Act. AFSCME asserts that CMS's designation of these positions violates provisions of the U.S. and Illinois Constitutions because it impairs the position holders' contractual rights.

b. Propriety of the Designation

CMS properly designated the positions at issue.

As noted above, Section 6.1(a) sets out three categories of positions from which designations may be made, defined in terms of their relation to collective bargaining. Section 6.1(b) further restricts the positions which might be designated to those fitting one or more of five categories defined on the basis of the positions' title, duties, or classification with respect to civil service or restrictions on political hiring. To be properly designated, the position must fit one or more of those categories.

Here, there is no dispute that the positions at issue fall into one of the three broad designable categories because the Board certified them into the bargaining unit after December 2, 2008. Similarly, these positions fall within one of the five categories which describe the positions' title, duties, or classification because they are completely exempt from jurisdiction B of the Personnel Code and are Rutan-exempt.

AFSCME's objections are inapposite because they do not address the Board's sole inquiry in this particular case. Section 6.1(b)(3) provides in relevant part that for a position to be designable, "it must be... Rutan-exempt, as designated by the employer... and completely exempt from jurisdiction B of the Personnel Code." Here, it is undisputed that the positions are Rutan-exempt and completely exempt from jurisdiction B of the Personnel Code ("double exempt"). Accordingly, the sole inquiry in this designation petition is whether CMS erroneously identified these positions as double-exempt. Yet here, AFSCME instead argues that the Board should not permit the positions' designation, despite their exempt status, because they hold the same classification and perform similar duties as other positions in the unit which CMS has not designated. Similarly, AFSCME argues that the designated positions' duties have not changed since their certification and that their exclusion pursuant to Section 6.1 of the Act is therefore arbitrary. These arguments must fail in light of the Act's clear language which, in this case, permits designation of the positions based solely on double-exempt status and without regard to the classification and job duties of other positions not at issue, or the job duties of the designated positions. See State of Ill., Dep't of Cent. Mgmt. Serv., Case No. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013) (applying similar rationale to designations made under Section 6.1(b)(2); finding job duties irrelevant when designation is based on a clear-cut criterion such as title).

Thus CMS's designation of these positions is properly made.

III. Conclusions of Law

The Governor's designation in this case is 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 in the Department of Commerce and Economic Opportunity (DCEO), the Environmental Protection Agency (EPA), the Gaming Board, the Department of Public Health (DPH), and the Department of Revenue are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

40070-42-00-400-00-01	Deputy Director
40070-42-00-400-10-01	Coal Programs Manager
40070-42-70-000-10-01	Energy and Econ. Dev. Policy Advisor
40070-46-10-400-00-01	Manager, Office of Emergency Op.
40070-50-69-100-00-01	Dep. Administrator, Investigations
40070-25-09-400-00-01	Internal Affairs/Chicago
40070-20-53-000-00-01	Division Chief

V. Exceptions

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300,⁴ parties may file exceptions to the Administrative Law Judge's recommended decision and order, and briefs in support of those exceptions, not 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. Exceptions must be filed by electronic mail 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.

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

Issued at Chicago, Illinois this 15th day of October, 2013

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

/s/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**