

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

State of Illinois, Department of Central Management Services,)	
)	
)	
Petitioner)	
)	
and)	Case No. S-DE-14-101
)	
American Federation of State, County and Municipal Employees, Council 31,)	
)	
)	
Labor Organization-Objector)	
)	

**ADMINISTRATIVE LAW JUDGE'S
RECOMMENDED DECISION AND ORDER**

I. BACKGROUND

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, and, of those, only 1,900 positions which have already been certified to be in a collective bargaining unit may be designated.

Moreover, to properly qualify for designation, the employment position must meet one or more of five requirements identified in Sections 6.1(b) of the Act. Relevant to this case, Section 6.1(b)(2) of the Act provides that the employment position:

 must have a title of, or authorize a person who holds that position to exercise substantially similar duties as an Agency General Counsel, Agency Deputy Director, Agency Executive Director, Agency Deputy Director, agency Chief Fiscal Officer, Agency Human Resources Director, Senior Public Service Administrator, Public Information Officer, or Chief Information Officer[.]

Section 6.1(d) creates a presumption that any such designation made by the Governor was properly made. It also requires that within 60 days after the designation, the Illinois Labor Relations Board determine, in a manner consistent with due process, whether the designation comports with the requirements of Section 6.1.

The Board promulgated emergency 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 23, 2013, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation petition 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 designations 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 designations, the objections, and arguments submitted in support of those objections, I find the designations contained in this petition to have been properly submitted and consistent with the requirements of Section 6.1 of the Act. Consequently, I recommend that the Executive Director certify the designations 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.

There are seven employment positions at issue in this designation petition, all classified as Senior Public Service Administrators (SPSAs):

Illinois Department of Central Management Services

position number	employee name	working title
40070-37-10-200-10-01	Vacant	
40070-37-16-150-00-01	Vacant	Assistant Chief Information Security Officer
40070-37-18-200-00-01	Harvey, Debra	End User Support Executive

Illinois Department of Employment Security¹

position number	employee name	working title
40070-44-30-300-00-01	Hamilton, Bruce	Manager Web/Intranet Services

¹ On October 1, 2013, per CMS’s request, the Board’s Executive Director removed the position held by Hal Waggoner from the designation petition.

Illinois Department of Human Services

position number	employee name	working title
40070-10-06-132-00-01	Carpenter, Craig	Manager of Client Systems/Vocational Rehabilitation
40070-10-06-131-10-01	Hamlin, Susan	IPAC's Concurrent Unit

Illinois Department of Corrections

position number	employee name	working title
40070-29-00-122-00-01	Vacant	Management Systems Specialist

AFSCME objects to the designation of all the employment positions at issue.

CMS's designation petition indicates that the positions at issue qualify for designation under Section 6.1(b)(2) of the Act. CMS also filed position descriptions (CMS-104s) and a summary spreadsheet in support of its petition which indicate that the designated positions hold the title of SPSA. The summary spreadsheet identifies the following information for each designated position: the agency that the position works under, the classification as SPSA Option 3, the position number, the name of the incumbent employee, the position's working title, the incumbent employee's e-mail address, whether the position is represented by a bargaining unit, the name of the bargaining unit, the date the position was certified into the bargaining unit, the certification number of the bargaining unit, the statutory category that serves as the basis of the designation, and the employment position's job duties as identified in the attached CMS-104 position descriptions.

II. ISSUES AND CONTENTIONS

AFSCME objects to these designations because it argues that Section 6.1 of the Act is unconstitutional, that these designations are arbitrary and capricious because the Act should require that either all SPSAs are designated under Section 6.1 of the Act or no SPSAs are designated under Section 6.1 of the Act, and that an oral hearing is required in order to comply with due process.

AFSCME argues that section 6.1 of the Act is unconstitutional for three reasons. First, it violates a separation of powers between the executive branch and the legislative branch because in allowing the governor to make these designations the legislature has delegated its legislative power to the governor. Second, it violates the Equal Protection clauses contained in the Illinois

and the United States Constitutions. Finally, the employees holding the positions at issue have been certified into a bargaining unit and this designation petition to exclude these employment positions from collective bargaining violates the employees' rights to enter into contracts pursuant to the Illinois Constitution.

AFSCME argues that the designations of these positions is arbitrary because there is no rational bases for treating these SPSA positions differently than the many other positions which hold the same title and/or have similar duties.

Finally, AFSCME argues that due process requires the Board to hold an oral hearing to address whether the positions at issue are properly classified as SPSAs based on the positions' job duties, and to address whether there is a legal basis for the designation of these positions and the effect of such designation.

III. DISCUSSION AND ANALYSIS

AFSCME's objections, that section 6.1 of the Act is unconstitutional, that the designation of these positions based solely on their status as SPSAs is arbitrary, and that due process requires an oral hearing on the duties of the positions at issue, do not overcome the presumption that the designations are proper.

a. constitutionality

Section 6.1(d) of the Act gives the Board authority to determine whether the designation of the employment positions at issue comport with Section 6.1 of the Act. As an administrative agency, the Board has no authority to declare statutes unconstitutional or even to question their validity. See Goodman v. Ward, 241 Ill. 2d 398, 411 (2011); see also Metropolitan Alliance of Police, Coal City Police Chapter No. 186, No. 6 v. Ill. State Labor Rel. Bd., 299 Ill. App. 3d 377, 379 (3rd Dist. 1998); Ill. Dep't Cent Mgmt Serv. v. Am Fed'n of State, Cnty. & Mun. Employees, Council 31, Case Nos. S-DE-14-005 etc (IL LRB-SP Oct. 7, 2013). Analysis of the Act's constitutionality is beyond my limited authority as an Administrative Law Judge (ALJ) for the Board, to review. Thus, AFSCME's objections that Section 6.1 of the Act is unconstitutional because it violates the separation of powers between the legislative branch and the executive branch, violates equal protection, and violates its right to enter into a contract with CMS, are not relevant to my determination of whether the designation of the positions at issue comport with Section 6.1 of the Act.

b. arbitrariness

In order to properly designate a State employment position as exempt from the self-organization and collective bargaining provisions of Section 6 of the Act, Section 6.1(b) of the Act requires the Governor or its agents, to provide to the Board, in writing, “the job title and job duties of the employment position, if any; the name of the State agency employing the public employee; and the category under which the position qualifies for designation.” In order to qualify for designation, Section 6.1(b)(2), states, in relevant part, that the employment position must have the title *or* the authority to exercise the duties of an SPSA (emphasis added).

When interpreting a statute the language must be given its plain and ordinary meaning. Cnty. of DuPage v. Ill. Labor Rel. Bd., 231 Ill. 2d 593, 603–04 (2008). The seven positions at issue all hold the SPSA title. A plain and ordinary reading of section 6.1(b)(2) of the Act indicates that these positions are properly included in the designation, and the only relevant inquiry would involve whether the positions are misidentified as having the SPSA title.

AFSCME argues that either all SPSAs should be designated or no SPSAs should be designated under Section 6.1 of the Act. Essentially AFSCME is arguing that the designations are arbitrary because they are fragmenting positions with similar duties and/or titles. The Board considers fragmentation as a factor in determining the appropriateness of a bargaining unit in representation cases. See 5 ILCS 315/9(2)(b) (2012). This is a gubernatorial designation case where the governor has the discretion to designate positions as exempt from the collective bargaining provisions of the Act as long as they comport with Section 6.1 of the Act, and Section 6.1 is silent on the issue of fragmentation. See 5 ILCS 315/6.1 (2012). An administrative agency’s decision is arbitrary and capricious when it does not comport with the relevant enabling statute. Bigelow Group, Inc. v. Rickert, 377 Ill. App. 3d 165, 175 (2nd Dist. 2007). It is not arbitrary for the Board to permit designation of these positions based on the positions holding the SPSA title because the Board is adhering to the plain language of the statute. Therefore, whether the Governor designates every SPSA or not one SPSA under Section 6.1, is not relevant to whether the designations comport to the requirements set out in that Section, because fragmentation is not at issue in Section 6.1.

c. oral hearing

The Board is not required to hold an oral hearing in order to provide AFSCME with due process. As an administrative agency, the Board was created to carry out the Act's purpose, and the Board is bound by the provisions of the Act. See 5 ILCS 315/5. The Act states that the Board's procedures for determining whether these designations are proper must be consistent with due process. 5 ILCS 315/6.1. Notice and an opportunity to be heard are necessary principles of procedural due process. East St. Louis Fed'n of Teachers, Local 1220 v. East St. Louis School Dist. No. 189 Fin. Oversight Panel, 178 Ill. 2d 399, 419-20 (1997); Segal v. Dep't. of Ins., 404 Ill. App. 3d 998, 1002 (1st Dist. 2010) citing People ex rel. Ill. Commerce Comm'n v. Operator Commc'n, Inc., 281 Ill. App. 3d 297, 302 (1st Dist. 1996). In the administrative context parties could be heard through their "written arguments and documentary evidence." Dep't. of Cent. Mgmt. Serv./Ill. Commerce Comm'n v. Ill. Labor Rel. Bd., 406 Ill. App. 3d 766, 768 (4th Dist. 2010) citing Lawless v. Cent. Prod. Credit Ass'n., 228 Ill. App. 3d 500, 515 (4th Dist. 1992).

The Board's rules provide that the incumbent employee and the representing collective bargaining unit may each file objections to the designation of the employment position. 80 Ill. Admin. Code Section 1300.60(a)(3). Any objector is required to set forth its "position with respect to the matters asserted in the designation[,] ... specifically state the basis for such objection," and "include supporting documentation." Id. The Board's rules state that if objections are filed, the designations and the objections will be assigned to an ALJ for review. 80 Ill. Admin. Code Section 1300.60(d)(2). Based upon a review of these documents, the ALJ will order an oral hearing only if it "finds that the objections submitted raise an issue of law or fact that might overcome the presumption that the designation is proper under Section 6.1 of the Act."² 80 Ill. Admin. Code Section 1300.60(d)(2)(B). Conversely, if the ALJ finds that the objections submitted "fail to overcome the presumption that the designation is proper" the ALJ may make a factual finding that the designation is proper based solely on the information submitted, and will issue a recommended decision and order to the Board that the designation be certified. 80 Ill. Admin. Code Section 1300.60(d)(2). In other words, an oral hearing is only necessary if the objections provide evidence that might negate the requirements for the designations at issue.

² Section 6.1(d) of the Act provides that any "designation made by the Governor under this Section shall be presumed to have been properly made," thus the objecting party has the burden to overcome this presumption.

Here, the positions at issue qualify for designation under Section 6.1(b)(2) of the Act, which states, in relevant part, that the employment position “must have a title of, or authorize a person who holds that position to exercise substantially similar duties as a[] ... Senior Public Service Administrator[.]” As stated above, a plain and ordinary reading of section 6.1(b)(2) of the Act indicates that since these positions hold the SPSA title, they are properly included in the designation petition. Due process requires that AFSCME is given the opportunity to provide argument and evidence, but does not necessarily require an oral hearing. Due process was satisfied when AFSCME was provided with the opportunity to be heard in filing objections and filing documentation in support of its objections to the designations. Neither due process nor the Board’s rules require an oral hearing. In this case, despite AFSCME’s argument to the contrary, the only evidence that might raise a sufficient issue to require an oral hearing would be evidence that the positions at issue are misidentified as having the SPSA title. Since, AFSCME has not provided evidence that the positions at issue do not in fact hold the title of SPSA, it has failed to raise an issue that might overcome the presumption that these designations are proper, thus an oral hearing is not necessary.

IV. CONCLUSION

Pursuant to Section 1300.60 of the Board’s Rules, I find that the designations are proper based solely on the information submitted to the Board and AFSCME’s objections fail to overcome the presumption that the designation is proper under Section 6.1 of the 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 are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

Illinois Department of Central Management Services

position number	working title
40070-37-10-200-10-01	Vacant
40070-37-16-150-00-01	Assistant Chief Information Security Officer
40070-37-18-200-00-01	End User Support Executive

Illinois Department of Employment Security

position number	working title
40070-44-30-300-00-01	Manager Web/Intranet Services

Illinois Department of Human Services

position number	working title
40070-10-06-132-00-01	Manager of Client Systems/Vocational Rehabilitation
40070-10-06-131-10-01	IPAC's Concurrent Unit

Illinois Department of Corrections

position number	working title
40070-29-00-122-00-01	Management Systems Specialist

VI. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300,³ parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order in briefs in support of those exceptions no later than 3 days after service of this recommended decision and order. Exceptions shall be filed with the Board by electronic mail at an electronic mail address designated by the Board for such purpose, ILRB.Filing@illinois.gov, and served on all other parties via electronic mail at their e-mail addresses as indicated on the designation form. Any exception to a ruling, finding conclusion or recommendation that is not specifically urged shall be considered waived. A party not filing timely exceptions waives its right to object to this recommended decision and order.

Issued at Chicago, Illinois this 10th day of October, 2013.

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

/s/ Deena Sanceda

**Deena Sanceda
Administrative Law Judge**

³ Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf