

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

State of Illinois, Department of Central Management Services, (Department of Insurance),)	
)	
)	
Petitioner)	
)	
and)	Case No. S-DE-14-105
)	
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 (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. 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 [a] ... Senior Public Service Administrator[.]” 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 Board, in a manner consistent with due process, determine whether the designation comports with the requirements of Section 6.1. The Board promulgated rules to effectuate Section 6.1, which became effective on August 23, 2013, 37 Ill. Reg. 14,070 (Sept. 6, 2013). See 80 Ill. Admin. Code Part 1300.

On October 1, 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 11, 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 designation petition, the objections, and arguments submitted in support of those objections, I find that the designation contained in this petition has been properly submitted and is consistent with the requirements of Section 6.1 of the Act. Consequently, I recommend that the Executive Director certify the designation of the position at issue in this matter as set out below and, to the extent necessary, amend the applicable certification of the exclusive representative to eliminate the existing inclusion of this position within the collective bargaining unit.

There is one employment position at issue in this designation petition, classified as Senior Public Service Administrator (SPSA) at the Illinois Department of Insurance:

position number	employee name
40070-14-16-100-00-01	Escarraz, Paul

AFSCME objects to the designation of this employment position.

CMS's designation petition indicates that the position at issue has the title of SPSA, qualifies for designation under Section 6.1(b)(2) of the Act, and has been certified by the Board into the collective bargaining unit RC-63.

I. ISSUES AND CONTENTIONS

AFSCME objects to this designation because it argues that Section 6.1 of the Act is unconstitutional both on its face and as applied to this designation, that this designation is arbitrary and capricious because the Act should require that either all SPSAs are designated under Section 6.1 of the Act or that 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 on its face and as applied to this designation. AFSCME first argues that Section 6.1 of the Act is unconstitutional on its face because it violates the Equal Protection clauses contained in the Illinois and the United States Constitutions. AFSCME also argues that Section 6.1 of the Act is unconstitutional on its face because in allowing the governor to make these designations the legislature has delegated its legislative power to the governor, and this violates the constitutional separation of powers between the executive branch and the legislative branch. AFSCME argues that Section 6.1 of the Act is unconstitutional as applied to this designation because Escarraz benefits from the collective bargaining agreement between AFSCME and CMS and this petition to exclude his employment position from collective bargaining impairs his contractual rights, which the Illinois Constitution prohibits.

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

Finally, AFSCME argues that due process requires that the Board hold an oral hearing to address whether the employment position is properly classified as SPSA based on the position's job duties, address the legal basis for this designation, and address the effect of this designation.

II. DISCUSSION AND ANALYSIS

AFSCME's objections, that the Act's Section 6.1 of the Act is unconstitutional, that the designation of this position based on its SPSA status is arbitrary, and that due process requires an oral hearing, do not overcome the presumption that this designation is proper.

a. constitutionality

Section 6.1(d) of the Act gives the Board authority to determine whether the designation of the employment position at issue comports 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. and Am Fed'n of State, Cnty. & Mun. Employees, Council 31, Case Nos. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013).

Section 6.1 of the Act identifies one of the three broad categories of positions which may be designated as exempt from the collective bargaining provisions of Section 6 of the Act as “positions which were first certified to be in a bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008.” AFSCME’s objection that this designation is in violation of the Illinois Constitutional provision that prohibits the impairment to contract is an as applied constitutional objection to the above quoted provision of the Act’s Section 6.1. Analysis of the Act’s constitutionality whether on its face, or as applied to this designation, is beyond my limited authority as an administrative law judge for the Board. Thus, AFSCME’s objections that Section 6.1 of the Act is unconstitutional on its face because it violates equal protection and the separation of powers, and is unconstitutional as applied because it violates the employee’s right to benefit from the collective bargaining agreement between AFSCME and CMS, are not relevant to my determination of whether the designation of the position at issue comports with Section 6.1 of the Act.

b. arbitrariness

In order to qualify for designation as exempt from the self-organization and collective bargaining provisions of Section 6 of the Act under Section 6.1(b)(2), 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” (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 position at issue holds the SPSA title. A plain and ordinary reading of section 6.1(b)(2) of the Act indicates that this position is properly included in the designation, and the only relevant inquiry would involve whether the position is 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 this position based on the position holding the SPSA title because the Board is adhering to the plain language of the statute. Therefore, whether the Governor designates every SPSA or zero SPSAs under Section 6.1 is not relevant to whether this designation comports to the requirements set out in that Section, because fragmentation is not at issue in Section 6.1 of the Act.

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 this designation is 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 Comm'n, Inc., 281 Ill. App. 3d 297, 302 (1st Dist. 1996). In the administrative context parties can 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 collective bargaining unit representative 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 [any] supporting documentation." Id. The Board's rules state that if objections are filed, the designation and the objections will be assigned to an administrative law judge (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 the ALJ "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.”¹ 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 specific evidence that the employment position at issue does not qualify for designation under the statutory category which is identified in the designation petition filed by the Governor.

Here, the designation petition provides that the employment position at issue qualifies for designation under statutory category 6.1(b)(2) of the Act, which, in relevant part states 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” (emphasis added). The designation petition identifies the employment position at issue as holding the title of SPSA. As stated above, a plain and ordinary reading of section 6.1(b)(2) of the Act indicates that since this position holds the SPSA title it is properly designated. Due process requires that AFSCME is given the opportunity to provide argument and evidence to support its position, but does not necessarily require an oral hearing. Due process was satisfied when AFSCME was provided with the opportunity to be heard by filing objections to the designation. 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 employment position at issue is misidentified as having the SPSA title. Since, AFSCME has not provided evidence, or even suggested that the employment position at issue does not in fact hold the SPSA title, it has failed to raise an issue that might overcome the presumption that this designation is proper. Thus, I find that an oral hearing is unnecessary.

III. CONCLUSION

Pursuant to Section 1300.60 of the Board’s Rules, I find that the designation is proper based solely on the information submitted to the Board because AFSCME’s objections fail to overcome the presumption that the designation is proper under Section 6.1 of the Act.

¹ 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.” This places the burden to overcome the presumption on the objecting party.

IV. RECOMMENDED ORDER

Unless this Recommended Decision and Order Directing Certification of the Designation is rejected or modified by the Board, the following position at the Illinois Department of Insurance is excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

position number

40070-14-16-100-00-01

V. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300,² 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 16th day of October, 2013.

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

/s/ Deena Sanceda

**Deena Sanceda
Administrative Law Judge**

² Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf