STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services,	)	
Petitioner	)	
and	)	Case No. S-DE-14-106
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

[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.

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 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. CMS' petition designates the exclusion of the following Senior Public Service Administrator in the Department of Central Management Services based on Section 6.1(b)(2) of the Act:

Senior Public Service Administrator, Option 3
Employed at Department of Human Services
Position No. 40070-10-230-00-01
Incumbent: Roger Williams

In support of its petition, CMS submitted a job description (CMS-104) for the 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. This position was certified into the RC-63 bargaining unit pursuant to the actions of the Board in Case. No. S-RC-10-220 on February 04, 2013.

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, here are my findings:

I. OBJECTIONS

On October 11, 2013, AFSCME filed objections to the designation pursuant to Section 1300.60(a)(3) of the Board's Rules.

AFSCME argues that the position is a professional position and is included in the bargaining unit and therefore is not properly classified as an SPSA. AFSCME maintains that the position description describes the technical duties of the position and based on those duties, on its face, the SPSA classification is not appropriate. AFSCME further contends that the designation of the position violates due process and is arbitrary and capricious as Section 6.1 of the Act violates equal protection under Article I, Section 2 of the Illinois Constitution and the Fifth and Fourteenth Amendments to the United States Constitution.

II. DISCUSSION AND ANALYSIS

The designation comports with the requirements of Section 6.1(d) and AFSCME's objections do not overcome the presumption that the designation was made properly. Section 6.1 makes a position properly designated if it: (1) has been first certified to be in a bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008, and (2) has the title of SPSA. 5 ILCS 315/6.1 (2012). The Act presumes that any designation made by the Governor under Section 6.1 is properly made.

As to AFSCME's constitutional objections, 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).

The Board has also expressed its concern with AFSCME's due process arguments but maintained that it has taken necessary measures to prevent a violation of such. Therefore, consistent with the Fourth District, the Board held that it "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).

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 the legislature and there is no issue of law or fact warranting a hearing.

AFSCME also objects on the basis that the Board should not allow the designation of this particular position when the Governor failed to petition the designation of all positions of the same classification that perform the same or similar duties. Additionally, AFSCME makes note of the fact that the job duties have not changed since this position has been certified, arguing that a hearing is necessary in deciding whether the designation is proper. The Act's language is plain and unambiguous. Section 6.1(b)(2) provides, in relevant part, that to designate a position, "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." The Board has held that job duties are irrelevant when designations are based on clear cut criterion such as title. State of Illinois, Department of Central Management Services, _ PERI _ Cons. Case Nos. S-DE-14-005 etc. There is also no requirement related to designating the same or positions similarly situated. For this designation to be proper, this position only needs to be classified as an SPSA and have been certified by the Board on or after December 2, 2008.

Lastly, AFSCME maintains that the position is inappropriately classified as an SPSA as the job duties listed do not conform to those of an SPSA, and the Board should hold a hearing to determine if the position is properly classified. The Act is clear that the title alone makes a designation proper. The Board held that whether the position's duties described or performed show the position is authorized to perform substantially the same duties as an SPSA is unnecessary where they have the actual title. State of Illinois, Department of Central Management Services, _ PERI _ Cons. Case Nos. S-DE-14-005 etc. AFSCME has not provided sufficient evidence to warrant a hearing on this issue where it merely states that the specifications of this position "eliminate professional positions and require that the positions include duties which are more than professional," as its only evidence of its SPSA misclassification argument.

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:

Senior Public Service Administrator, Option 3
Employed at Department of Human Services
Position No. 40070-10-230-00-01
Incumbent: Roger Williams

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 17th day of October, 2013

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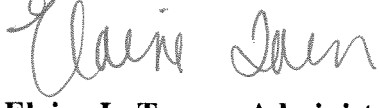

Elaine L. Tarver, Administrative Law Judge