

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

State of Illinois, Department of Central )  
Management Services (Department of )  
Healthcare and Family Services), )  
 )  
                  Petitioner )  
 )  
      and )  
 )  
American Federation of State, County and )  
Municipal Employees, Council 31, )  
 )  
                  Labor Organization-Objector )  
 )  
      and )  
 )  
Timothy Hattemer, Michael McIntyre, Dale )  
Webb, Mark Woloshyn, )  
 )  
                  Employee-Objectors )

Case No. S-DE-14-109

**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, allows the Governor of the State of Illinois to designate certain public employment positions with the State as excluded from the collective bargaining rights which might otherwise be granted under the Illinois Public Labor Relations Act. Section 6.1 and Public Act 97-1172 became effective on April 5, 2013 and allow the Governor 365 days from that date to make such designations. The Illinois Labor Relations Board (Board) promulgated rules to effectuate Section 6.1 that became effective on August 23, 2013, 37 Ill. Reg. 14070 (Sept. 6, 2013). Those rules are contained in Part 1300 of the Board’s Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On October 3, 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 Illinois Public Labor Relations Act and Section 1300.50 of the Board's rules. All 11 of the petitioned-for positions are affiliated with the Illinois Department of Healthcare and Family Services. On October 11, 2013, Timothy Hattemer, Michael McIntyre, and Mark Woloshyn separately filed objections to the designation pursuant to Section 1300.60(a)(3) of the Board's rules. Dale Webb filed his own objection on October 17, 2013. The American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed another on October 18, 2013.<sup>1</sup> After full consideration of the record, I, the undersigned Administrative Law Judge, recommend the following.

#### I. DISCUSSION AND ANALYSIS

The instant analysis must determine whether the petitioned-for positions may lawfully be selected for designation under Section 6.1 of the Illinois Public Labor Relations Act. Under Section 6.1, 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 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. Moreover, to be properly designated, the position must also fit one or more of the five categories provided by Section 6.1(b).<sup>2</sup> Here, CMS

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<sup>1</sup> On October 10, 2013, AFSCME filed a motion for an extension of time to file its objection. Later that day, the Board's General Counsel allowed AFSCME's motion. The time for filing objections was extended to and included October 18, 2013.

<sup>2</sup> 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. I also note that Public Act 98-100, which became effective July 19, 2013, added subsections (e) and (f) to Section 6.1. Those subsections shield certain specified positions from such designations, but none of those positions are at issue in this case.

contends that the statutory categories under which the positions at issue qualify for designation are Sections 6.1(b)(2) and 6.1(b)(5).

Section 6.1(b)(2)

Section 6.1(b)(2) requires a petitioned-for position to have a title of or authorize a person who holds the position to exercise substantially similar duties as a Senior Public Service Administrator (SPSA), Public Information Officer, Chief Information Officer, or agency General Counsel, Chief of Staff, Executive Director, Deputy Director, Chief Fiscal Officer, or Human Resources Director. In this instance, CMS asserts that the petitioned-for positions are classified as SPSA positions. Significantly, the objectors do not squarely dispute that key assertion.

By failing to dispute CMS' assertion, the objections do not address one of the primary issues of this case. They also fail to overcome Section 6.1(d), which creates a presumption that a designation made by the Governor was properly made. Indeed, all of the objectors plainly concede that the positions are in fact classified as SPSA positions. Therefore, I find that the Governor's designation is proper. I also find that there is no compelling reason to conduct a hearing. See State of Illinois, Department of Central Management Services, ILRB No. S-DE-14-046 (IL LRB-SP Oct. 15, 2013); State of Illinois, Department of Central Management Services, ILRB Nos. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013).

In its objection, AFSCME argues that CMS' petition is improper because "[t]here are other State employees who hold the same classification as the employee[s] herein who are in the bargaining unit as well as other State employees who perform the same duties although classified as PSA Option 3 rather than SPSA." Additionally, AFSCME argues that the positions at issue are not properly classified as SPSA positions and may not be designated because they are "professional positions" and are included in AFSCME's RC-63 bargaining unit. It also contends

that the positions “are covered by a collective bargaining agreement which CMS entered into subsequent to the enactment of 6.1” and argues that, for that reason, the petition “violates due process and is arbitrary and capricious.” Other objectors assert that the provided position descriptions are partially inaccurate. All of those arguments are unpersuasive.

As AFSCME’s objection concedes, nothing in Section 6.1 prevents the Governor from excluding some positions that are “identical” to other positions he chooses not to exclude. I also note that nothing in Section 6.1 suggests that the Board is necessarily responsible for determining whether a position is properly classified as an SPSA or whether a particular position description is entirely accurate. Further, the possibility that a position performs some “professional” work or may be covered by a collective bargaining agreement does not appear to preclude a designation. See State of Illinois, Department of Central Management Services (Department of Natural Resources), ILRB No. S-DE-14-084 (IL LRB-SP Oct. 21, 2013); State of Illinois, Department of Central Management Services (Emergency Management Agency), ILRB No. S-DE-14-061 (IL LRB-SP Oct. 21, 2013); State of Illinois, Department of Central Management Services (Department of Agriculture); ILRB No. S-DE-14-050 (IL LRB-SP Oct. 21, 2013); State of Illinois, Department of Central Management Services, ILRB No. S-DE-14-046 (IL LRB-SP Oct. 15, 2013); State of Illinois, Department of Central Management Services, ILRB Nos. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013).

Section 6.1(b)(5)

Section 6.1(b)(5) requires a petitioned-for position to authorize an employee in that position to have “significant and independent discretionary authority as an employee.” That authority is defined in Section 6.1(c), which requires the employee to either be (1) 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 represent management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency or (2) qualify 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 (NLRB) interpreting that provision or decisions of courts reviewing decisions of the NLRB.

In its objection, AFSCME contends that CMS submitted no evidence in support of its Section 6.1(b)(5) exclusion and that, therefore, AFSCME cannot provide a “meaningful response” and has not been provided the “due process” required by Section 6.1. I find that AFSCME’s contention essentially overlooks the presumption of appropriateness provided by Section 6.1(d). It also appears to misinterpret the general requirements of Section 6.1.

In order to properly designate a State employment position under Section 6.1, CMS must simply provide the Board with (1) the job title and job duties of the employment position; (2) the name of the State employee currently in the employment position, if any; (3) the name of the State agency employing the public employee; and (4) the category under which the position qualifies for designation. CMS has provided that basic information. By doing so, CMS has provided a basis for the designation and the minimum notice and showing required by Section 6.1. See State of Illinois, Department of Central Management Services (Department of Natural Resources), ILRB No. S-DE-14-084 (Oct. 21, 2013); State of Illinois, Department of Central Management Services (Emergency Management Agency), ILRB No. S-DE-14-061 (Oct. 21, 2013); State of Illinois, Department of Central Management Services (Department of Agriculture), ILRB No. S-DE-14-050 (Oct. 21, 2013); State of Illinois, Department of Central Management Services (Department of Transportation), ILRB No. S-DE-14-070 (Oct. 8, 2013).

Ultimately, I find that the objectors have failed to meaningfully refute CMS' proffered basis for designation or raise an issue of fact or law regarding CMS' Section 6.1(b)(5) designation that warrants a hearing. However, to be clear, nothing in Section 6.1 requires that the Governor provide more than one appropriate basis for each of his designations. As noted, it is clear that the petitioned-for positions are in fact SPSA positions and thus excludable via Section 6.1(b)(2). Therefore, logically, even if I were to conclude that an objector has raised an issue of fact or law regarding CMS' Section 6.1(b)(5) designation, I would not need to conduct a hearing to resolve that dispute.

#### AFSCME's Constitutional Concerns

AFSCME's objection alleges that Section 6.1 violates the Illinois Constitution and the United States Constitution. However, the Board is largely unable to address those kinds of allegations, as administrative agencies have no authority to declare statutes unconstitutional or question their validity. Goodman v. Ward, 241 Ill. 2d 398, 411, 948 N.E.2d 580, 588 (2011); State of Illinois, Department of Central Management Services, ILRB Nos. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013). Accordingly, I find that, though AFSCME's concerns are notable, this Recommended Decision and Order need not "analyze the gravity of the rights affected by the Governor's designation" or otherwise address AFSCME's constitutional concerns in detail.

## **II. CONCLUSION OF LAW**

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 find the instant designation to have been properly submitted and consistent with the requirements of Section 6.1 of the Illinois Public Labor Relations Act.

### III. RECOMMENDED ORDER

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

<u>Position Number</u>	<u>Working Title</u>
40070-33-62-210-00-61	Manager
40070-33-62-220-00-61	Manager
40070-33-62-230-00-61	Manager
40070-33-62-630-00-61	Manager
40070-33-62-640-00-61	Manager
40070-33-62-660-00-61	Manager
40070-33-62-670-00-61	Manager
40070-33-62-710-00-91	Manager
40070-33-62-720-00-91	Manager
40070-33-62-730-00-91	Manager
40070-33-62-740-00-91	Manager

### IV. EXCEPTIONS

Pursuant to Sections 1300.90 and 1300.130 of the Board's rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order, and briefs in support of those exceptions, no later than three days after service of the Administrative Law Judge's Recommended Decision and Order. All exceptions shall be filed and served in accordance with Section 1300.90 of the rules. Notably, exceptions must be filed by electronic mail sent to [ILRB.Filing@Illinois.gov](mailto: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 that does not file timely exceptions waives its right to except to the Administrative Law Judge's Recommended Decision and Order.

Issued in Chicago, Illinois this 1st day of November 2013.

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A handwritten signature in cursive script that reads "Martin Kehoe". The signature is written in black ink and is positioned above a horizontal line.

**Martin Kehoe**  
**Administrative Law Judge**