

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

State of Illinois, Department of Central)	
Management Services, (Illinois State Police),)	
)	
Petitioner)	
)	Case No. S-DE-14-110
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 may be positions which have already been certified to be in a collective bargaining unit.

Moreover, to be properly designated, the position must fall into 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, an Agency General Counsel, Agency Chief of Staff, Agency Executive Director, Agency Deputy Director, Agency Fiscal Officer, Agency Human Resources Director, Senior Public Service Administrator, Public Information Officer, or Chief Information Officer;

- 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 either:
 - (i) is 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 August 23, 2013. 37 Ill. Reg. 14,070 (September 6, 2013). These rules are contained in Part 1300 of the Board’s Rules and Regulations (Rules), 80 Ill. Admin. Code Part 1300.

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.

On October 3, 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 10, 2013, the Board's General Counsel granted a motion filed by the American Federation of State, County and Municipal Employees, Council 31, (AFSCME) seeking an extension of time in which to file objections in this matter. The time to file objections was extended up to and including October 18, 2013. On October 18, 2013, AFSCME filed timely objections.

Based on my review of the designation, the documents submitted as part of the designation, the objections, and the arguments submitted in support of those objections, I have determined that AFSCME has failed to raise an issue that would require a hearing. Therefore, I find the designation to have been properly submitted and consistent with the requirements of Section 6.1 of the Act and 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.

I. ISSUES AND CONTENTIONS

The instant petition designates two positions at the Illinois State Police for exclusion from the self-organization and collective bargaining provisions of Section 6 of the Act. CMS states that these positions qualify for designation under Section 6.1(b)(2) because each is classified as a Senior Public Service Administrator (SPSA). CMS also states that these positions are currently represented for the purposes of collective bargaining. In support of its contentions, CMS has provided a spreadsheet containing information on the classification, position number, working title, and bargaining unit certification of the designated positions. Additionally, CMS has filed CMS-104 documents containing the position description for the designated positions.

AFSCME has objected to the instant designation on the grounds that the designated positions are not properly classified as SPSAs. Additionally, AFSCME has filed broad objections to P.A. 97-1172 and the Gubernatorial designation process. First, AFSCME argues that there is no rational basis for excluding the designated positions from the self-organization and collective bargaining provisions of Section 6 because these positions have previously been certified into a bargaining unit by the Board and positions in the same classification with similar working titles and duties remain in various collective bargaining units. Second, AFSCME

alleges that P.A. 97-1172 is unconstitutional as an unlawful delegation of legislative power under the Illinois Constitution, as a violation of the equal protection guarantees found in Article I, Section 2 of the Illinois Constitution and in the 5th and 14th Amendments of the United States Constitution, and, because the designated positions are currently covered by a collective bargaining agreement to which the State is a party, under Article I, Section 16 of the Illinois Constitution and Article I, Section 10 of the United States Constitution. Finally, AFSCME states that the Board must hold a hearing to determine whether there is a legal basis for the instant designations in order to comport with the requirements of due process.

II. FINDINGS OF FACT

Both of the positions designated by CMS are employees of the Illinois State Police classified as SPSA Option 3s by the employer. Both positions were vacant at the time the instant designation was filed. These positions are in the RC-63 bargaining unit represented by AFSCME, as certified by the Board on February 4, 2013, in Case. No. S-RC-10-220.

III. DISCUSSION AND ANALYSIS

As stated above, a position is properly designable, among other circumstances, if: (1) it was first certified to be in a bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008; and (2) it has the title of SPSA. 5 ILCS 315/6.1 (2012). Additionally, it is presumed that any designation made by the Governor under Section 6.1 of the Act is properly made. 5 ILCS 315/6.1(d) (2012). Rule 1300.60(d)(2)(A) permits an Administrative Law Judge (ALJ) to find that a designation is proper based solely on the information submitted to the Board in cases in which no objections sufficient to overcome this presumption are filed. 80 Ill. Admin. Code 1300.60(d)(2)(A). CMS's initial filing clearly indicates, and AFSCME concedes, that the designated positions were first certified in a collective bargaining unit on or after December 2, 2008. Furthermore, AFSCME has failed to allege that the designated positions are not actually classified as SPSAs. Therefore, I find that both positions are properly designable under Section 6.1 of the Act.

ALLEGATIONS THAT THE POSITIONS ARE MISCLASSIFIED

AFSCME argues that the positions at issue are misclassified as SPSAs. In support of this argument, AFSCME states that the professional status of these positions and their inclusion in a bargaining unit demonstrate that the designated positions are not properly classified as SPSAs because the class specification for SPSAs specifically excludes both professional positions and

positions subject to the provisions of a collective bargaining agreement. Thus, these positions cannot properly be classified as SPSAs, despite their actual classification.

This argument is insufficient as a matter of law. The plain language of the Act provides that a position is designatable if it has the title *or* duties of an SPSA. This indicates the legislature's clear intent that the employer's classification of a position as one of the enumerated titles would be sufficient to render that position properly designatable. Furthermore, Section 6.1 says nothing about whether a position must be properly classified as an SPSA in order to be designatable. State of Illinois, Department of Central Management Services, ILRB Nos. S-DE-14-005 etc. (IL LRB-SP October 7, 2013).² Thus, the sole inquiry is whether CMS has classified the positions as SPSAs. Because CMS has clearly done so, AFSCME's argument that this classification is inaccurate is not sufficient to demonstrate that the instant designation is improper.

AFSCME'S GENERAL OBJECTIONS

AFSCME argues that there is no rational basis for treating designated positions differently from the non-designated positions in the same classification with similar working titles and duties. These allegations speak to the constitutionality of P.A. 97-1172. AFSCME also argues that P.A. 97-1172 violates the separation of powers provisions of the Illinois Constitution, the guarantee of equal protection under the Illinois and United States Constitutions, and the impairment of contract prohibitions of both the Illinois and United States Constitutions. However, 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. 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.").

Finally, AFSCME argues that due process requires the Board to hold a hearing to determine whether the designated positions are properly classified as SPSAs. As discussed above, however, any potential misclassification is not relevant to the Board's inquiry in this matter. Furthermore, due process does not require the Board to hold an oral hearing in this matter. Adequate notice of a proposed governmental action and a meaningful opportunity to be

² Available at <http://www.state.il.us/ilrb/subsections/pdfs/BoardDecisions/S-DE-14-005.pdf>.

heard are the fundamental prerequisites of due process. Peacock v. Bd. of Tr. of the Police Pension Fund, 395 Ill. App. 3d 644, 654 (1st Dist. 2009) (citing Goldberg v. Kelly, 397 U.S. 254, 267-68 (1970)). To provide a party with the meaningful opportunity to be heard, the Board must provide a party affected by its proceedings with a meaningful procedure to assert his or her claim prior to the deprivation or impairment of a right. Peacock, 395 Ill. App. 3d at 654 (citing Matthews v. Eldridge, 424 U.S. 319, 332 (1976) and Wendl v. Moline Police Pension Bd., 96 Ill. App. 3d 482, 486 (3rd Dist. 1981)). In support of its contention that the positions are designable, CMS has provided documentation indicating that the designated positions meet the requirements for designability under Section 6.1(b)(2). AFSCME has been given an opportunity to assert its opposition to the designation in its objections, and I have determined that AFSCME has not alleged any facts that, if proven, would be sufficient to support judgment in its favor. Due process does not require that the Board nonetheless provide an oral hearing at which AFSCME may adduce evidence and testimony to support objections that I have deemed to be insufficient.

IV. CONCLUSION OF LAW

The Governor’s designation in this case is properly made.

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:

40070-21-42-300-00-01	Assistant Bureau Chief
40070-21-17-000-00-01	Program Administration Bureau Chief

VI. EXCEPTIONS

Pursuant to Section 1300.90 and Section 1300.130 of the Board’s Rules and Regulations, 80 Ill. Admin. Code Part 1300, parties may file exceptions to the Administration Law Judge’s recommended decision and order, and briefs in support of those exceptions, not later than three 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 sent to ILRB.Filing@Illinois.gov. Each party shall serve its exception 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 24th day of October, 2013

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A handwritten signature in black ink that reads "Heather R. Sidwell". The signature is written in a cursive style and is positioned above a horizontal line.

**Heather R. Sidwell
Administrative Law Judge**