

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

State of Illinois, Department of Central	)	
Management Services, (Environmental	)	
Protection Agency),	)	
	)	
Petitioner,	)	Case No. S-DE-14-112
	)	
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 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.<sup>1</sup>

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

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<sup>1</sup> 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 4, 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 18, 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 designations, the documents submitted as part of the designation, the objections, and the documents and arguments submitted in support of those objections, I find that the designation was properly submitted, that it is consistent with the requirements of Section 6.1 of the Act, and that the objections fail to raise an issue of law or fact that might overcome the presumption that the designation is proper. Consequently, 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.

The following 35 positions within the Environmental Protection Agency are at issue in this designation:

40070-46-10-400-10-01	Manager, Chemical Safety Section	Bridgewater, Warren J.
40070-46-13-100-00-01	Manager, Division of Air Pollution Control	Ross, James R.
40070-46-13-110-00-01	Manager, Field Operation Section	Youngblut, Steven S.
40070-46-13-110-20-01	Manager, Field Operation Region 1	Narayan, Harish
40070-46-13-110-40-01	Manager, Field Operation Region 3	Benbenek, Jeffrey J.
40070-46-13-120-50-01	Manager, Clean Air Act Permits	Vacant
40070-46-13-130-00-01	Manager, Air Monitoring Section	Kierbach Jr., Ernie L.
40070-46-13-140-00-01	Manager, Compliance Management Section	Pilapil, Raymond E.
40070-46-13-150-00-01	Manager, Air Quality Planning Section	Bloomberg, David E.
40070-46-14-020-30-01	Manager, Drinking Water Compliance Section Manager	Mike Crumly
40070-46-14-050-00-01	Manager, Watershed Section Manager	Amy Walkenbach
40070-46-14-100-00-01	Manager, Water Pollution Control (WPC) Division Manager	Sanjay Sofat
40070-46-14-110-00-01	Manager, WPC Field Office Section (FOS) Manager	Vacant
40070-46-14-111-00-01	Manager, Rockford (FOS) Water	Charles Corley

40070-46-14-112-00-01	Pollution Control Manager Manager, Des Plaines Water Pollution Control Manager	Jitendra Patel
40070-46-14-113-00-01	Manager, Peoria (FOS) Water Pollution Control Manager	Vacant
40070-46-14-115-00-01	Manager, Springfield (FOS) Water Pollution Control Manager	Vacant
40070-46-14-116-00-01	Manager, Collinsville (FOS) Water Pollution Control Manager	Vacant
40070-46-14-150-00-02	Manager, WPC Surface Water Section Manager	Gregg Good
40070-46-14-200-00-01	Manager, Public Water Supply (PWS) Division Manger	William McMillan
40070-46-14-200-00-02	Manager, Public Water Supply (PWS) Deputy Division Manger	Richard Cobb
40070-46-14-210-00-01	Manager, Public Water Supply Field Operations Section	Vacant
40070-46-15-100-00-01	Manager, Division of Land Pollution Control (DLPC)/Bureau of Land (BOL)	Clay, Douglas W
40070-46-15-110-00-01	Manager, Field Operation Section (FOS)/DLPC/BOL	Purseglove, Paul M
40070-46-15-111-00-01	Manager, Des Plaines Region/FOS/DLPC/BOL	Grigalauski, Charles T (Chuck)
40070-46-15-112-00-01	Manager, Springfield Region at Headquarters/ FOS/DLPC/BOL	Jansen, David C
40070-46-15-113-00-01	Manager, Collinsville Region/FOS/DLPC/BOL	Cahnovsky, Chris N
40070-46-15-114-00-01	Manager, Rockford Region/FOS/DLPC/BOL	Retzlaff, David S
40070-46-15-115-00-01	Manager, Peoria Region/FOS/DLPC/BOL	Tripses, John G
40070-46-15-130-00-01	Manager, Waste Reduction and Compliance (WRC) Section/DLPC/BOL	Walters, David R
40070-46-15-200-00-01	Manager, Division of Remediation Management (DRM)/BOL	Vacant
40070-46-15-220-00-01	Manager, Leaking Underground Storage Tank Section (LUST)	Albarracin, Hernando A
40070-46-15-230-00-01	Manager, Federal Site Remediation Section (FSRS)/DRM/BOL	Smith, Clarence L
40070-46-25-300-20-01	Manager, Special Projects	Vacant
40070-46-30-300-00-01	Manager, Office of Community Relations (OCR)/Associate Director's Office (ADO)/Director	Neibergall, Kurt D

CMS's petition indicates the positions at issue qualify for designation under Section 6.1(b)(2) of the Act which, in relevant part, permits designation on the basis of a position's Senior Public Service Administrator title.<sup>2</sup> CMS also indicates the positions at issue qualify for designation under Section 6.1(b)(5), which permits designation if the position authorizes an employee in that position to have "significant and independent discretionary authority." AFSCME objects to designation of all positions on the grounds set forth below.

### **I. AFSCME's Objections**

First, AFSCME states that Section 6.1 of the Act is unconstitutional, on its face and as applied, both under the Illinois Constitution and the Constitution of the United States of America because it deprives AFSCME of due process and violates the separation of powers clause, the equal protection clause, and the prohibition against impairment of contracts.

Next, AFSCME asserts that the designation is arbitrary because other State employees within the bargaining unit perform similar duties but have not been designated by CMS. AFSCME notes that some of those employees hold the same "classification" as the designated positions while others hold the Public Service Administrator title.<sup>3</sup> Further, AFSCME argues that the designation is arbitrary because the Board previously included these positions in the unit. In addition, AFSCME states that the positions are not properly classified as SPSA positions because they are included in the bargaining unit and perform professional rather than managerial work. Next, AFSCME asserts that the position descriptions contain numerous errors with respect to the positions' duties. Finally, AFSCME argues that the positions do not possess the authority to act with significant and independent judgment and discretion, as evidenced by the Board's discussion in the representation case which led to the positions' certification into the unit.

AFSCME does not deny that the positions in question hold the title Senior Public Service Administrator.

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<sup>2</sup> CMS filed position descriptions (CMS-104s) for the positions in support of its assertion. These positions are currently represented by AFSCME.

<sup>3</sup> With respect to the position held by Warren Bridgewater in particular, AFSCME asserts that Bridgewater is assigned to the Office of Emergency Response, not Chemical Safety and that that his designation is arbitrary because there are comparable positions in two other Emergency Operations unit which have not been designated.

## **II. Discussion and Analysis**

### **a. Constitutional Arguments**

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. State of Ill., Dep't of Cent. Mgmt. Serv., Case No. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013) (citing 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.")). Accordingly, these issues are not addressed in this decision.

### **b. Propriety of the Designation Under Section 6.1(b)(2)**

CMS properly designated the positions at issue.

As noted above, Section 6.1(a) sets out three categories of positions from which designations may be made, defined in terms of their relation to collective bargaining. Section 6.1(b) further restricts the positions which might be designated to those fitting one or more of five categories defined on the basis of the positions' title, duties, or classification with respect to civil service or restrictions on political hiring. To be properly designated, the position must fit one or more of those categories.

Here, there is no dispute that the positions at issue fall into one of the three broad designable categories because the Board certified them into the bargaining unit after December 2, 2008. Similarly, these positions fall within one of the five categories which describe the positions' title, duties, or classification because they hold the title Senior Public Service Administrator.

AFSCME's objections are inapposite with respect to designations made pursuant to Section 6.1(b)(2) because they do not address the Board's sole inquiry. Section 6.1(b)(2) provides in relevant part that for a position to be designable, "it must have a title of... Senior Public Service Administrator." Here, CMS specified that the designated positions hold the SPSA title and submitted position descriptions to that effect. Accordingly, the sole inquiry with respect to designations made under Section 6.1(b)(2) is whether CMS erroneously specified that these positions hold the SPSA title. State of Ill., Dep't of Cent. Mgmt. Serv., Case No. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013). Yet here, AFSCME instead argues that the Board should not

permit the positions' designation, despite their SPSA title, because they hold the same classification and/or perform similar duties as other positions in the unit which CMS has not designated. Similarly, AFSCME argues that CMS should not have classified these positions as SPSAs because they are included in the bargaining unit and perform professional or technical rather than managerial work. Likewise, AFSCME argues that CMS's designation is improper because it runs counter to the Board's previous decision to include these positions in the unit. These arguments must fail in light of the Act's clear language which permits designation of the positions under Section 6.1(b)(2) based solely on SPSA title and without regard to the classification and job duties of positions not at issue, the job duties of the designated positions, or prior Board action in related representation proceedings. *Id.* (finding job duties irrelevant when designation is based on a clear-cut criterion such as title; holding that Board need not determine whether the SPSA title and the positions' job duties match).

Thus, CMS's designation of these positions is properly made under Section 6.1(b)(2). Accordingly, it is unnecessary to determine whether the positions are also properly designated under Section 6.1(b)(5).

### **III. Conclusions of Law**

The Governor's designation in this case is 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 in the Environmental Protection Agency are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

40070-46-10-400-10-01	Manager, Chemical Safety Section
40070-46-13-100-00-01	Manager, Division of Air Pollution Control
40070-46-13-110-00-01	Manager, Field Operation Section
40070-46-13-110-20-01	Manager, Field Operation Region 1
40070-46-13-110-40-01	Manager, Field Operation Region 3
40070-46-13-120-50-01	Manager, Clean Air Act Permits
40070-46-13-130-00-01	Manager, Air Monitoring Section
40070-46-13-140-00-01	Manager, Compliance Management Section
40070-46-13-150-00-01	Manager, Air Quality Planning

	Section
40070-46-14-020-30-01	Manager, Drinking Water Compliance Section Manager
40070-46-14-050-00-01	Manager, Watershed Section Manager
40070-46-14-100-00-01	Manager, Water Pollution Control (WPC) Division Manager
40070-46-14-110-00-01	Manager, WPC Field Office Section (FOS) Manager
40070-46-14-111-00-01	Manager, Rockford (FOS) Water Pollution Control Manager
40070-46-14-112-00-01	Manager, Des Plaines Water Pollution Control Manager
40070-46-14-113-00-01	Manager, Peoria (FOS) Water Pollution Control Manager
40070-46-14-115-00-01	Manager, Springfield (FOS) Water Pollution Control Manager
40070-46-14-116-00-01	Manager, Collinsville (FOS) Water Pollution Control Manager
40070-46-14-150-00-02	Manager, WPC Surface Water Section Manager
40070-46-14-200-00-01	Manager, Public Water Supply (PWS) Division Manger
40070-46-14-200-00-02	Manager, Public Water Supply (PWS) Deputy Division Manger
40070-46-14-210-00-01	Manager, Public Water Supply Field Operations Section
40070-46-15-100-00-01	Manager, Division of Land Pollution Control (DLPC)/Bureau of Land (BOL)
40070-46-15-110-00-01	Manager, Field Operation Section (FOS)/DLPC/BOL
40070-46-15-111-00-01	Manager, Des Plaines Region/FOS/DLPC/BOL
40070-46-15-112-00-01	Manager, Springfield Region at Headquarters/ FOS/DLPC/BOL
40070-46-15-113-00-01	Manager, Collinsville Region/FOS/DLPC/BOL
40070-46-15-114-00-01	Manager, Rockford Region/FOS/DLPC/BOL
40070-46-15-115-00-01	Manager, Peoria Region/FOS/DLPC/BOL
40070-46-15-130-00-01	Manager, Waste Reduction and Compliance (WRC) Section/DLPC/BOL
40070-46-15-200-00-01	Manager, Division of Remediation

40070-46-15-220-00-01	Management (DRM)/BOL Manager, Leaking Underground Storage Tank Section (LUST)
40070-46-15-230-00-01	Manager, Federal Site Remediation Section (FSRS)/DRM/BOL
40070-46-25-300-20-01	Manager, Special Projects
40070-46-30-300-00-01	Manager, Office of Community Relations (OCR)/Associate Director's Office (ADO)/Director

**V. Exceptions**

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300,<sup>4</sup> parties may file exceptions to the Administrative Law Judge's recommended decision and order, and briefs in support of those exceptions, not 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. Exceptions must be filed by electronic mail 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 not filing timely exceptions waives its right to object to the Administrative Law Judge's recommended decision and order.

**Issued at Chicago, Illinois this 25th day of October, 2013**

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

*/s/ Anna Hamburg-Gal*

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**Anna Hamburg-Gal  
Administrative Law Judge**

<sup>4</sup> Available at <http://www.state.il.us/ilrb/subsections/pdfs/Section%201300%20Illinois%20Register.pdf>.