STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services (Department of Public Health),	)	
Petitioner	)	
	)	Case No. S-DE-14-160
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, 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 January 10, 2014, the State of 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.[1] The position at issue in this case, which is vacant, is affiliated with the Illinois Department of Public Health and is a Public Service Administrator, Option 2 position. On January 21, 2014, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed an objection to CMS' petition pursuant to Section 1300.60(a)(3) of the Board's rules. 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 position may lawfully be selected for designation under Section 6.1 of the Illinois Public Labor Relations Act. State of Illinois, Department of Central Management Services (Department of Natural Resources), 30 PERI ¶112 (IL LRB-SP 2013). 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).[2] Here, CMS contends that the position at issue qualifies for designation under Section 6.1(b)(5).

[1] In support of and along with its petition, CMS provided a position description for the position at issue. It also provided an affidavit that contends, inter alia, that the included position description fairly and accurately represents the duties and responsibilities of that position.

[2] 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.

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 (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 represent management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency or (ii) 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 initially asserts that CMS' submissions fail to demonstrate that the position at issue has "actual authority" to complete to the job duties listed in its position description. That assertion and AFSCME's related arguments are misguided. Indeed, the plain language of Section 6.1(b)(5) fairly clearly encompasses positions that simply authorize employees in those positions to have "significant and independent discretionary authority." Moreover, the possibility that the extent of the petitioned-for position's duties may be influenced by its supervisors is not dispositive. In addition, the language of Section 6.1 does not overtly require that an employee in the petitioned-for position be fully aware of or informed of the extent of their authorized duties and responsibilities. State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity), 30 PERI ¶163 (IL LRB-SP 2014); State of Illinois, Department of Central Management Services (Emergency Management Agency), 30 PERI ¶105 (IL LRB-SP 2013). I would also reiterate that the position

at issue in this case is currently vacant and thus there is no "employee at issue" as AFSCME's objection implies.

Separately, AFSCME asserts that the definition set forth in Section 6.1(c) "essentially follows the manager and supervisor definitions as developed by the NLRB and case law interpreting the same" and, accordingly, CMS, as the party seeking the exclusions, bears the burden of proof. AFSCME then claims that CMS has failed to produce evidence that can support its petition. For similar reasons, AFSCME also asserts that the Board should use the NLRB's current standards for determining an employee's "managerial" status. I disagree. I also find that AFSCME undervalues the unique presumption of appropriateness granted by Section 6.1(d).

Generally, 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. State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity), 30 PERI ¶163; State of Illinois, Department of Central Management Services (Department of Natural Resources), 30 PERI ¶112. CMS has provided that information. By doing so, it has provided a basis for its petitioned-for exclusion and the minimum notice and showing required by Section 6.1.

I would concede that, to a degree, the language of Sections 6.1(b)(5) and 6.1(c) does parallel the language commonly used by the NLRB. I also recognize that Section 6.1(c)(ii) (the latter of the two Section 6.1(c) options outlined above) specifically references the NLRB's definition of a "supervisor." However, the Board has not so strictly applied the NLRB's

standards when conducting a Section 6.1(b)(5) analysis. The distinction between a professional and a manager has not been entirely dispositive. See State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity), 30 PERI ¶163; State of Illinois, Department of Central Management Services (Department of Natural Resources), 30 PERI ¶112; State of Illinois, Department of Central Management Services (Department of Agriculture), 30 PERI ¶84 (IL LRB-SP 2013). I also note that, although many decisions of the NLRB and the federal courts provide useful or even "persuasive" guidance, generally speaking, those decisions are not strictly binding on the Board. State of Illinois, Departments of Central Management Services and Corrections, 25 PERI ¶12 (IL LRB-SP 2009).

In addition to the foregoing, AFSCME notes that the petitioned-for position has previously been certified by the Board. AFSCME also suggests that CMS has made no showing that the job duties have significantly changed since the Board reviewed the position for certification. Simply put, Section 6.1 requires no such showing. Furthermore, the language of Section 6.1 does not bar the exclusion of positions that are covered by collective bargaining agreements. State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity), 30 PERI ¶163.

AFSCME's objection also alleges that Section 6.1 violates the Illinois Constitution and the United States Constitution. However, significantly, 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, 30 PERI ¶80 (IL LRB-SP 2013). Accordingly, though AFSCME's concerns are quite 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. See State of Illinois, Department of Central Management Services, 30 PERI ¶148 (IL LRB-SP 2013).

II. CONCLUSION OF LAW

Based on my review of the designation, the documents submitted as part of the designation, the objection, and the documents and arguments submitted in support of that objection, 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 position with the Illinois Department of Public Health is excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

Position Number	Working Title
37015-20-10-001-00-01	Budget Officer

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. Each party shall serve its exceptions on the other parties.

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 31st day of January 2014.

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Martin Kehoe
Administrative Law Judge