

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

State of Illinois, Department of Central)	
Management Services, (Department of)	
Veterans' Affairs),)	
)	
Petitioner,)	Case No. S-DE-14-183
)	
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.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 January 16, 2014, 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 January 21, 2014, CMS withdrew its petition with respect to four of the six listed positions.² On January 27, 2014, 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 designation, 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 two positions within the Department of Veterans' Affairs are at issue in this designation:

37015-34-00-310-00-01	Financial and Operations Reporting Manager	Long, Trudy
37015-34-00-310-00-02	Procurement Manager	Castor-Young, Mary

CMS's petition indicates the positions at issue qualify for designation under Section 6.1(b)(5) of the Act which permits designation if the position authorizes an employee in that position to have "significant and independent discretionary authority."³ AFSCME objects to the designation of all listed positions.

² These include the following position numbers: 37015-34-00-310-00-10, 37015-34-40-200-00-01, 37015-34-50-220-00-01, and 37015-34-30-210-00-01.

³ CMS filed position descriptions (CMS-104s) for the positions and affidavits in support of its assertion. These positions are currently represented by AFSCME.

I. 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 equal protection clauses, the prohibition against impairment of contracts, and the separation of powers clause of the Illinois Constitution.

Further, AFSCME generally objects to the use of position descriptions to support the petition and to the allocation of the burden of proof. AFSCME also argues that there can be no showing of managerial authority based solely on an affidavit, which states that the position at issue is authorized to effectuate departmental policy, where the position description does not reference any specific policy. Similarly, AFSCME states that the position descriptions set forth only potential responsibilities, not actual ones. In the same vein, AFSCME asserts that CMS has presented no evidence that the employees at issue ever exercised their referenced supervisory or quasi-managerial authority. Likewise, AFSCME asserts that CMS has not shown that it told the employees they possessed such authority. In addition, AFSCME argues that the positions at issue are professional and not managerial.

Finally, AFSCME advances specific objections with respect to the positions held by Trudy Long and Mary Castor-Young for “the reasons stated in [their] questionnaire[s] and because of the information contained therein.” In particular, AFSCME notes that Long has no subordinates. Further, AFSCME asserts that both Long’s and Castor-Young’s position descriptions contain errors. AFSCME concludes that there is a high likelihood that all the position descriptions are inaccurate because specific individuals identified inaccuracies in their own position descriptions. On this basis, AFSCME asserts that the Board should order a hearing on all positions at issue because to decline to do so would compel speech in violation of the First Amendment.

II. Material Facts

a. 37015-34-00-310-00-01 - Long, Trudy

Trudy Long is a public Service Administrator Option 2. According to her job description, she is the Generally Accepted Accounting Standards and Principles (GAAP) Coordinator for the Department of Veterans’ Affairs. In that capacity, she directs the

Department's fiscal staff in the interpretation of the required financial accounting and reporting standards and principles of Illinois State Government used by all State agencies. She also directs the Department in complying with those standards. Further, she directs the Department's fiscal staff in complying with the US Office of Management and Budget (US OMB) and the US Department of Veterans' Affairs (US DVA) regulations so that the Department may receive and expend federal funds.

As the Department's GAAP coordinator, she interprets and provides administrative direction to the Department's administrators, fiscal administrators, and fiscal staff, agency-wide, in the preparation of the required financial statements and reports governed by the GAAP of the State of Illinois, the Governmental Accounting, Auditing and Financial Reporting (GAAFR) statements, the Governmental Accounting Standards Board Statement (GASBS) standards, US OMB regulations; the US DVA regulations, and the Illinois Office of the Comptroller, Statewide Accounting and Management System (SAMS) manual.

Further, she provides guidance to operations staff within the Department of Veterans' Affairs during developmental stages of programs and grant applications to ensure reporting requirements under the State and Federal Guidelines are met. She also directs the preparation of financial statement, reports and budgets required by other State or Federal agencies to fulfill grant application requirements.

Long's position description provides that she assists the Chief Fiscal Officer with division operating expense budgeting for all agency divisions. Long admits that the current Fiscal Supervisor sometimes asks her for assistance on how to calculate, prepare, and complete some budgetary projects.

Long asserts that she does not write policies or recommend the adoption of policies. However, she concedes that she has written certain procedures that assist others in performing their job duties. Long asserts that she has no authority to decide how policies or legislation will be implemented. Further, she states that she does not recommend any actions that control or implement legislation that affects her agency or agency policy.

b. 37015-34-00-310-00-02 - Castor-Young, Mary

Mary Castor-Young is the Agency Procurement Officer. She ensures that the agency conducts procurements in accordance with the Illinois Procurement Code and the associated

rules and policy directives issued by the Department of Central Management Services. She authorizes expenditures, assigns and maintains purchase order numbers, and monitors purchase order completion for Central Office and Field Services Divisions. She prepares Central Office and Field Division Procurement Business Cases and contracts. She reviews, approves, and maintains agency Procurement Business Cases and contract documents for execution by the Fiscal Officers or Agency Director. She supports and participates in the CMS Supplier Relationship Program, completes vendor surveys, and holds vendor meetings as needed. Castor-Young stated that all her procurements are approved by the State Procurement Officer.

III. 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., 30 PERI ¶ 80 (IL LRB-SP 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. Non-Constitutional General Objections

AFSCME's general objections are without merit and do not raise issues of fact or law that might rebut the presumption that the designation is properly made.

First, the Board has previously rejected AFSCME's objections concerning the statutorily-mandated presumption, the burden of proof, and the manner in which ALJs have applied them. See State of Ill., Dep't of Cent. Mgmt. Serv., 30 PERI ¶ 80 and all subsequent Board designation cases.

Here, most of AFSCME's objections may be restated as objections to this now well-established framework because they presuppose that CMS must initially prove that the designation is proper. For example, AFSCME argues that CMS "failed to carry its burden of proof" and "presented no evidence" that the employees at issue ever exercise their purported authority or were told they possessed it. Similarly, AFSCME asserts that "there can be no

showing of managerial authority based solely on [an] affidavit,” which is phrased in general terms. Likewise, AFSCME states that “there is no demonstration [by CMS] that the employees at issue have...authority to complete the job duties...[in their]...position descriptions.” Finally, AFSCME generally asserts that CMS’s affidavits are unreliable because there is no indication that they are accurate.

Contrary to AFSCME’s general assertion, the burden is on AFSCME, not CMS. Accordingly, these objections must be rejected because they ignore the presumption and misallocate the burden.

Second, the Board has similarly rejected AFSCME’s objections based on the bald statement that the designated position does not have significant and independent discretionary authority because it is professional rather than managerial. State of Ill., Dep’t of Cent. Mgmt. Servs. (Dep’t of Cent. Mgmt. Servs.), 30 PERI ¶ 85 (IL LRB-SP 2013). The terms managerial and professional are not mutually exclusive and there is no exception for professional employees in the language of Section 6.1(c)(i). State of Ill, Dep’t of Cent. Mgmt. Servs. (Dep’t of Commerce & Economic Opportunity), 30 PERI ¶ 86 (citing Dep’t of Cent. Mgmt. Servs. / Ill. Pollution Control Bd., 2013 IL App (4th) 110877). As such, where a position meets one of the two alternative tests set out in Section 6.1(c)(i), it may appropriately be designated by the Governor for exclusion from collective bargaining rights regardless of whether it is also a professional position. Id.

In sum, AFSCME’s general objections do not raise issues of fact or law that might rebut the presumption that CMS’s designation is properly made.

c. 37015-34-00-310-00-01 - Long, Trudy

CMS’s designation of this position is proper because the designation is presumed to be properly made and AFSCME has introduced no evidence to suggest that CMS has limited the position holder’s discretion or independent authority within the meaning of Section 6.1(c)(i).

Under Section 6.1(c)(i) “a person has significant and independent discretionary authority as an employee if he or she “[1] 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 [2] represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency.” When addressing the meaning of

Section 6.1(b)(5), one must first look to the language of that section of the Act. The Board may consider case precedent pertaining to the traditional managerial exclusion under Section 3(j) to the extent that the precedent explains the meaning of terms commonly used in both Section 3(j) and section 6.1(b)(5). State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Commerce & Economic Opportunity), 30 PERI ¶ 86 (citing City of Bloomington v. Ill. Labor Relations Bd., 373 Ill. App. 3d 599, 608 (4th Dist. 2007) (“When statutes are enacted after judicial opinions are published, it is presumed that the legislature acted with knowledge of the prevailing case law.”)). Finally, the burden is on AFSCME to prove that the designation is improperly made. State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Commerce & Econ. Opportunity), 30 PERI ¶ 86.

Long satisfies the first test under Section 6.1(c)(i) because she is engaged in executive and management functions of a State agency and is charged with the effectuation of management policies and practices of a State agency. First, Long is engaged in executive and management functions because she admitted that she helps the Fiscal Supervisor in calculating, preparing, and completing some budgetary projects. See Dep't of Cent. Mgmt. Serv. (Pollution Control Bd.), v. Ill. Labor Rel. Bd., State Panel, 2013 IL App (4th) 110877 ¶ 25 (preparing a budget constitutes an executive and management function); State of Ill. Dep't of Cent. Mgmt. Serv. (Ill. Commerce Comm'n) v. Ill. Labor Rel. Bd., State Panel, 406 Ill. App. 3d 766, 774, (4th Dist. 2010). Although Long asserted that her job duties do not include budgetary matters, her more specific statement belies this denial and compels the conclusion that Long is engaged in executive and management functions. Second, Long is charged with the effectuation of management policies and practices because it is the Department's policy to adhere to US OMB and US DVA regulations, and Long ensures that that the department achieves and maintains such compliance.

Similarly, Long satisfies the second test under Section 6.1(c)(i) because she has authority to represent management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency. Here, Long provides guidance to operations staff within the Department of Veterans' Affairs during the developmental stages of program creation and grant applications. In that capacity, she takes or recommends discretionary actions because she must necessarily exercise judgment in advising the Department of applicable laws, rules and procedures under the State and Federal Guidelines to ensure that the Department fulfills grant application and reporting requirements. As such, Long effectively controls or implements the policy of her agency because her duties ensure that the Department is eligible to

receive State and Federal funding necessary to achieve its core mission and implement its policies. See State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Commerce and Econ. Opportunity), 27 PERI ¶ 56 (IL LRB-SP 2011) (employees' involvement in seeking outside funding contributed to a finding of managerial status under the more restrictive test set forth in Section 3(j)).

Thus, the designation is properly made.

d. 37015-34-00-310-00-02 - Castor-Young, Mary

CMS's designation of this position is proper because the designation is presumed to be properly made and AFSCME has introduced no evidence to suggest that CMS has limited the position holder's discretion or independent authority within the meaning of Section 6.1(c)(i).

Castor-Young satisfies the second test under Section 6.1(c)(i) of the Act because she has authority to represent management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency when she acts as the Agency Procurement Officer. In that capacity, she exercises significant discretion by making recommendations concerning contracts for services and authorization of expenditures which necessarily require her to choose among a wide array of service options. Castor-Young's recommendations on these matters are effective because the State Procurement officer approves all her procurement recommendations. In turn, these effective recommendations control or implement the policy of her agency because they determine the means by which the Department will obtain the raw materials that enable it to run effectively and to achieve its mission. Dep't of Central Mgmt. Servs. (Ill. Commerce Comm'n), 29 PERI ¶ 76 (IL LRB-SP 2012) (employees who advanced new methods of procurement through their effective recommendations satisfied the more restrictive test for managerial authority under Section 3(j)).

Thus, the designation is properly made.

IV. Conclusions 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 in the Department of Veterans' Affairs are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

37015-34-00-310-00-01	Financial and Operations Reporting Manager	Long, Trudy
37015-34-00-310-00-02	Procurement Manager	Castor-Young, Mary

VI. Exceptions

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300,⁴ 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. 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 4th day of February, 2014

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

/s/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**

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