

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

State of Illinois, Department of Central	)	
Management Services (Department of	)	
Juvenile Justice),	)	
	)	
Petitioner	)	
	)	Case No. S-DE-14-194
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 17, 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.<sup>1</sup> The seven positions at issue are affiliated with the Illinois Department of Juvenile Justice and are Public Service Administrator, Option 8N positions. (Four of those positions are vacant.) 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).<sup>2</sup> Here, CMS contends that the positions at issue qualify for designation under Section 6.1(b)(5).

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<sup>1</sup> In support of and along with its petition, CMS provided position descriptions for the positions at issue. It also provided affidavits that contend, inter alia, that the included position descriptions fairly and accurately represent the positions' duties and responsibilities.

<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.

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.

#### General Objections

In its objection, AFSCME initially asserts that CMS’ submissions fail to demonstrate that the positions at issue have “actual authority” to complete the job duties listed in the position descriptions. 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. In addition, the language of Section 6.1 does not overtly require that an employee in a petitioned-for position be fully aware or informed of the extent of his or her authorized duties and responsibilities. Moreover, the possibility that the extent of an employee’s duties may be influenced by his or her supervisors is not dispositive. 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).

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 routinely 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 exclusions 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 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 positions have 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 positions 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, 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).

## Specific Objections

### Shellie Adkison-Hilgendorf – Position No. 37015-27-18-210-00-01

Regarding a possible Section 6.1(c)(i) exclusion, AFSCME asserts Adkison-Hilgendorf “denies that she plays a role in any agency policy implementation.” Nevertheless, Adkison-Hilgendorf, via an attachment to AFSCME’s objection, admits that she writes “local health care procedures” that can later be approved by a superior. She also indicates that she can make suggestions regarding how policies or legislation will be implemented. Additionally, neither AFSCME nor Adkison-Hilgendorf deny the parts of Adkison-Hilgendorf’s position description that suggest Adkison-Hilgendorf “organizes, plans, executes, controls and evaluates the operation of the Health Care Unit; organizes the goals and objectives; establishes priorities among assignments and establishes time of completion;” “directs and coordinates studies and surveys to collect information to evaluate program effectiveness;” and “provides interpretation of administrative policies and procedures.” Further, they do not deny that those functions require the use of discretion. See State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity), 30 PERI ¶163. Thus, I find that the circumstances satisfy the standard of Section 6.1(c)(1) and, accordingly, that of Section 6.1(b)(5) as well.

Regarding a possible Section 6.1(c)(ii) exclusion, AFSCME claims Adkison-Hilgendorf “denies that she has any employees that report to her” and claims that “she does not possess the ability to hire, fire, or discipline employees.” Evidently, Adkison-Hilgendorf exclusively oversees a number of independent “contractual” employees. That wrinkle could unnecessarily complicate the instant Section 6.1(b)(5) analysis, as it is unclear whether authority over individuals who are not public employees as defined by Section 3(n) can constitute supervisory

authority in this context. See State of Illinois, Department of Central Management Services (Department of Military Affairs), 28 PERI ¶113 (IL LRB-SP G.C. 2012). Accordingly, I recommend that the Board simply find that Adkison-Hilgendorf’s position meets the standards of Sections 6.1(c)(i) and 6.1(b)(5) for the reasons stated above. If the Board would like to address the issue, I would find that, because Adkison-Hilgendorf evidently does not oversee public employees as defined by Section 3(n), her position does not satisfy the standard of Section 6.1(c)(ii).

Jeremy Burtis – Position No. 37015-27-20-200-00-01

Regarding Section 6.1(c)(i), AFSCME asserts “Burtis refutes that he plays any role in the budgetary process or policy implementation.” However, Burtis, via an attachment to AFSCME’s objection, actually concedes that he implements established policies and assists his facility’s medical director by providing recommendations regarding healthcare policies. Further, AFSCME and Burtis do not dispute the parts of Burtis’ position description that state Burtis “monitors adherence to treatment protocols and charting format,” “reviews cases and makes recommendations relative to designated treatment,” “[c]hairs Health Care Services Review Committee to gather information and ensure that all medical concerns are addressed properly and timely,” and “coordinates audits and surveys in [h]ealth care areas and uses gathered data to ensure compliance with an [sic] necessary plans of action and follow-up.” AFSCME and Burtis do not deny that those functions require the use of discretion. I find that those circumstances, when combined with the Section 6.1(d)’s presumption of appropriateness, satisfy the standards of Sections 6.1(c)(i) and 6.1(b)(5).

Regarding Section 6.1(c)(ii), AFSCME asserts “Burtis refutes that he has the authority to hire, fire, discipline, or reward employees.” Yet, Burtis concedes that he has a number of

subordinates and can recommend suspensions, be involved with discharges, and assign duties to and direct his nursing staff. He also claims that he can issue overtime if that overtime is approved by a superior. Moreover, AFSCME and Burtis do not dispute the parts of his position description that state Burtis reviews his subordinates' work, provides guidance and training to assigned staff, counsels staff regarding work performance, reassigns staff to meet day-to-day operating needs, establishes annual goals and objectives, approves time off, and prepares and signs performance evaluations. I find that those circumstances, when combined with Section 6.1(d)'s presumption of appropriateness, satisfy the standards of Sections 6.1(c)(ii) and 6.1(b)(5). In this context, assigning and directing work and effectively recommending suspensions can demonstrate supervisory authority. State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity), 30 PERI ¶163; see State of Illinois, Department of Central Management Services (Department of Employment Security), 30 PERI ¶79 (IL LRB-SP G.C. 2013).

Edith Duckworth – Position No. 37015-27-42-210-00-01

Regarding Section 6.1(c)(i), AFSCME asserts Duckworth “notes that she neither plays a role in the budgetary process nor policy implementation.” However, Duckworth, via an attachment to AFSCME’s objection, states that she writes local procedures. Presumably, the possibility that those local procedures may need to be approved by her superiors is not determinative. 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 (Emergency Management Agency), 30 PERI ¶105. Furthermore, AFSCME and Duckworth have not denied the parts of Duckworth’s position description that state Duckworth “organizes, coordinates and evaluates patient care,” “[m]anages and reviews the

collection of health care data,” and “conducts internal and external audits.” In addition, AFSCME and Duckworth do not deny that those functions require the use of discretion. Accordingly, I find that the circumstances, when combined with the presumption of Section 6.1(d), satisfy the standards of Sections 6.1(c)(i) and 6.1(b)(5).

Regarding Section 6.1(c)(ii), AFSCME asserts Duckworth “denies that she has the authority to or effectively recommends employee hiring, firing, promotion or discipline.” However, Duckworth confirms that she directs her nursing staff, and directing subordinates can demonstrate supervisory authority. See State of Illinois, Department of Central Management Services (Department of Veterans Affairs), 30 PERI ¶111 (IL LRB-SP 2013); State of Illinois, Department of Central Management Services (Department of Employment Security), 30 PERI ¶79. Thus, I also find that Duckworth’s position satisfies the standards of Sections 6.1(c)(ii) and 6.1(b)(5).

## **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

Juvenile Justice is excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

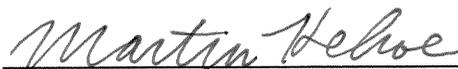
<u>Position Number</u>	<u>Working Title</u>
37015-27-20-200-00-01	
37015-27-15-210-00-01	Health Care Admin
37015-27-15-210-10-01	Health Care Admin
37015-27-15-210-00-02	Health Care Admin
37015-27-17-210-10-01	Health Care Admin
37015-27-18-210-00-01	Health Care Admin
37015-27-42-210-00-01	Health Care Admin

#### **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. 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 14th day of February 2014.**

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**Martin Kehoe  
Administrative Law Judge**