

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

State of Illinois, Department of Central)	
Management Services (Property Tax)	
Appeal Board),)	
)	
Petitioner)	
)	
and)	Case No. S-DE-14-196
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	
)	

**ADMINISTRATIVE LAW JUDGE'S
RECOMMENDED DECISION AND ORDER**

I. BACKGROUND

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 (Act). Section 6.1 identifies three broad categories of employment positions that may be eligible for designation based upon the position's status in a certified bargaining unit: 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, and, of those, only 1,900 positions which have already been certified to be in a collective bargaining unit may be designated.

Moreover, to properly qualify for designation, the employment position must meet one or more of the following five requirements:

- 1) the employment position must authorize an employee in the position to act as a legislative liaison;

- 2) the employment position must have a title of or authorize a person who holds the position to exercise substantially similar duties as a General Counsel, Chief of Staff, Executive Director, Deputy Director, Chief Fiscal Officer, Human Resources Director, Senior Public Service Administrator, Public Information Officer, or Chief Information Officer;
- 3) the employment position 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) the employment position 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) the employment position 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 that within 60 days after the designation, the Board, in a manner consistent with due process, determine whether the designation comports with the requirements of Section 6.1. This subsection also specifies that the qualifying categories identified in subsection 6.1(b) “are operative and function solely within this Section and do not expand or restrict the scope of any other provision contained in this Act.” The Board promulgated rules to effectuate Section 6.1, which became effective on August 23, 2013, 37 Ill. Reg. 14,070 (Sept. 6, 2013). See 80 Ill. Admin. Code Part 1300.

On January 24, 2014, the 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

Act and Section 1300.50 of the Board’s Rules. The petition seeks to exclude the following position employed at the Property Tax Appeal Board:

Public Service Administrator, Option 2,

<u>position number</u>	<u>working title</u>	<u>incumbent</u>
37015-50-48-400-00-51	Fiscal Officer/Chief Fiscal Officer ¹	Rebecca Hesse

CMS filed the designation petition, and in support of the petition, filed a CMS-104 position description, an organizational chart, and an affidavit completed by the Executive Director of the Property Tax Appeal Board.

On February 3, 2014, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME), pursuant to Section 1300.60(a)(3) of the Board’s Rules, filed objections to the designation petition.

Based on my review of the designation petition, the documents submitted in support of the designation petition, the objections, and the arguments and documents submitted in support of those objections, I find the designation to have been properly submitted and is consistent with the requirements of Section 6.1 of the Act. Consequently, I recommend that the Executive Director certify the designation of the position at issue as set out below, and, to the extent necessary, amend the applicable certification of the exclusive representative to eliminate the existing inclusion of this position within the collective bargaining unit.

II. ISSUES AND CONTENTIONS

A. Designation Petition

CMS’s designation petition and the attached documentation indicate that the position at issue qualifies for designation under Sections 6.1(b)(2) and 6.1(b)(5) of the Act, and that the Board certified the positions into bargaining unit RC-62 on November 18, 2009.

1. affidavit

Executive Director, Louis G. Apostol stated that the position at issue is authorized to have significant and independent discretionary authority as as defined by Sections 6.1(c)(i) of the Act.

Apostol asserts that as the employee who serves in the position at issue, Hesse is “authorized to be engaged in executive and management functions of the Property Tax Appeal Board and

¹ The affidavit completed and signed by Executive Director Apostol states that “Hesse is a Public Service Administrator, who serves as the Fiscal Officer and Acting HR Manager[;]” but the submitted CMS-104 identifies Hesse’s official title as “Public Service Administrator” and her working title as “Chief Fiscal Officer.”

charged with the effectuation of management policies and practices of the Property Tax Appeal Board or represent management interests by taking or recommending discretionary actions that effectively control or implement the policy” of the Property Tax Appeal Board. Hesse serves as the Fiscal Officer and Acting HR Manager to the Executive Director, is “charged with effectuating the Department’s policies in ensuring field staff are properly providing services in the Springfield and Des Plaines Offices.”

2. CMS-104

The CMS-104, in relevant part, identifies the following as a “current and accurate statement of the position duties and responsibilities” of the Chief Fiscal Officer of the Fiscal Unit within the Property Tax Appeal Board. Under the direction of the Executive Director of the Property Tax Appeal Board, as the incumbent, Hesse is authorized to serve as the chief fiscal officer and financial analyst for the agency. She develops and prepares all documents, all forms and information required for the annual budget process. Hesse serves as an advisor to the Executive Director and Chairman of the Board relative to all Board fiscal requirements, is responsible for Board inventory of equipment and records, ensures proper accounting/fiscal systems are in place and maintains regulatory record control of expenditures and unencumbered funds to ascertain fiscal status. She also provides the Executive Director and the Chairman of the Board advice on the steps necessary to comply with all laws and regulations governing the agency’s expenditures.

B. objections

AFSCME argues that CMS should bear the burden of persuasion, that the CMS-104s and affidavits provide insufficient bases for designation, there is no showing that the job duties of the position have significantly changed since the position was certified into a bargaining unit, that the designations are unconstitutional, that the position at issue is not that of a manager or a supervisor within the meaning of the National Labor Relations Act (NLRA), and that because the affidavit does not define a policy, there can be no showing that Hesse is managerial.

III. DISCUSSION AND ANALYSIS

AFSCME does not overcome the presumption that the designation of the position at issue is proper under Section 6.1 of the Act because it does not address whether the position at issue qualifies for designation under Section 6.1(b)(2) of the Act.

A. burden

The objectors bear the burden to demonstrate that the designation of the employment positions at issue are improper because AFSCME’s position is contrary to the policy of Section 6.1 and because the presumption articulated in Section 6.1(d) requires that AFSCME overcome the presumption that the designation is proper.

The Court has held that the party opposing the public policy as demonstrated in the statutory language of the statute at issue has the burden to prove the party’s position. See Ill. Dep’t of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App (4th) 090966. Section 6.1 specifically allows the Governor to exclude certain public employment positions from obtaining collective bargaining rights which might otherwise be granted under the Act. Section 6.1 also allows the exclusion of 1,900 positions that are already certified into bargaining units. AFSCME is opposing the State’s public policy to exclude certain positions from collective bargaining, as stated in Section 6.1 of the Act, thus the burden is on AFSCME to demonstrate that the employees at issue are not eligible for such exclusion. Ill. Dep’t Cent. Mgmt. Serv. (Ill. State Police) and Am. Fed’n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 109 (IL LRB-SP 2013), appeal pending, No. 13-3600 (Ill. App. Ct. 1st Dist.).

Section 6.1(d) states that any designation for exclusion made by the Governor or his agents under Section 6.1 “shall be presumed to have been properly made.” Like all presumptions, this presumption can be rebutted. Dep’t of Cent. Mgmt. Serv. /Dep’t of Healthcare & Fmly. Serv. v. Ill. Labor Rel. Bd. State Panel, 388 Ill. App. 3d 319, 335 (4th Dist. 2009). If contrary evidence is introduced that sufficiently rebuts the presumption, then it vanishes and the issue will be determined as if no presumption ever existed. Id. To rebut the presumption, the evidence must be sufficient to support a finding that the presumed fact does not exist. Id. at 335-336.

B. job duties

1. as identified in the CMS-104

AFSCME argues that the submitted CMS-104 and affidavit only identify *potential* responsibilities that can be given to the employee within that position. This argument fails to meet AFSCME’s burden because AFSCME provides no evidence, or even argue that Hesse does not perform these duties, and because the Board has previously determined that CMS-104s are sufficient to meet the “job duties” requirement of Section 6.1 of the Act. See State of Ill. Dep’t of Cent.

Mgmt. Serv. and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 80 (IL LRB-SP 2013) appeal pending, No. 13-3454 (Ill. App. Ct. 1st Dist.).

2. since certification into bargaining unit

AFSCME's argument that the Board should consider that there is no showing that the job duties of Hesse's position has changed since the Board certified the position into a bargaining unit, does not recognize, as the Board has, that "Section 6.1 is a new creation." Id. "It does not modify pre-existing means of determining collective bargaining units, but is a self-contained and entirely new means of decreasing the number of State employees in collective bargaining units." Id. The certification of this position into a bargaining unit under the Act prior to the addition of Section 6.1 did not prevent the legislature from subsequently amending the Act to provide for the removal of this employment position from the bargaining unit. Id. Thus, whether the position's job duties have changed since its certification into the bargaining unit is immaterial to whether the designation of the position at issue comports with the requirements of Section 6.1 of the Act.

C. constitutionality

Section 6.1(d) of the Act grants the Board the authority to determine whether the designation of the employment positions at issue comport with Section 6.1 of the Act. As an administrative agency, the Board has no authority to rule that the Illinois Public Labor Relations Act, as amended by Public Act 97-1172, is unconstitutional, either on its face or as applied. Id., (*citing Goodman v. Ward*, 241 Ill. 2d 398, 411 (2011)); see also Metro. Alliance of Police, Coal City Police Chapter No. 186, No. 6 v. Ill. State Labor Rel. Bd., 299 Ill. App. 3d 377, 379 (3rd Dist. 1998) (noting that administrative agencies lack the authority to invalidate a statute on constitutional grounds or even to question its validity). It is beyond my limited scope of authority as an administrative law judge for the Board to analyze the Act's constitutionality on its face or as applied to the at-issue designation petition. Thus, the constitutional objections are immaterial to my determination of whether the designations of the position at issue comports with Section 6.1 of the Act.

D. Section 6.1(b)(2)

CMS identified that the position at issue also qualifies for designation under Section 6.1(b)(2) of the Act, and AFSCME raises no objection to whether the position at issue qualifies for designation under this section. To qualify for designation under Section 6.1(b)(2) a position:

must have a *title* of, *or* authorize a person who holds that position to *exercise substantially similar duties* as an, Agency General Counsel, Agency Chief of Staff, Agency Executive Director, Agency Deputy Director, Agency Chief Fiscal Officer, Agency Human Resources Director, Senior Public Service Administrator, Public Information Officer, or Chief Information Officer;

The position at issue has the title of Public Service Administrator, and has the informal working title of either a Fiscal Officer or the Chief Fiscal Officer. Given the presumption that the designation is proper, and because AFSCME's objections do not address whether the position's job title or job duties qualify it for designation under Section 6.1(b)(2), I find that the position is properly designated under Section 6.1(b)(2) of the Act.

E. Section 6.1(b)(5)

The designation petition identified that the position qualifies for designation under Section 6.1(b)(2) and Section 6.1(b)(5). Since I have determined that the position qualifies for designation under Section 6.1(b)(2) it is unnecessary to determine whether the position also qualifies for designation under Section 6.1(b)(5) of the Act.

I will note that the affidavit submitted by CMS only addresses the position's qualification under Section 6.1(b)(5) and does not address the qualification under Section 6.1(b)(2). However, because neither the Act nor the Rules require CMS to submit such an affidavit, and because the Board has already largely rejected the arguments CMS makes in support of its objection to the designation under Section 6.1(b)(5) as applied to other designations, and CMS does not state how such arguments are applicable to the facts here, I see no reason the address this portion of objections. See Ill. Dep't Cent. Mgmt. Serv. (Dep't of Commerce and Econ. Opp.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶163 (IL LRB-SP 2014); State of Ill. Dep't of Cent. Mgmt. Serv. and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 80.

IV. CONCLUSION

Pursuant to Section 1300.60 of the Board's Rules, I find that the designation is proper based solely on the information submitted to the Board because AFSCME's objections do not overcome the presumption that the designation is proper under Section 6.1 of the Act.

V. RECOMMENDED ORDER

Unless this Recommended Decision and Order Directing Certification of the Designation is rejected or modified by the Board, the following position at the Property Tax Appeal Board 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>
37015-50-48-400-00-51	Fiscal Officer/Chief Fiscal Officer

VI. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300,² parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 3 days after service of this recommended decision and order. Exceptions shall be filed with the Board by electronic mail at an electronic mail address designated by the Board for such purpose, ILRB.Filing@illinois.gov, and served on all other parties via electronic mail at their e-mail addresses as indicated on the designation form. Any exception to a ruling, finding, conclusion, or recommendation that is not specifically argued shall be considered waived. A party not filing timely exceptions waives its right to object to this recommended decision and order.

Issued at Chicago, Illinois this 13th day of February, 2014.

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

/s/ Deena Sanceda

Deena Sanceda
Administrative Law Judge

² Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf