

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

State of Illinois, Department of Central)	
Management Services, (Department of)	
Revenue),)	
)	
Petitioner)	Case No. S-DE-14-204
)	
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 February 3, 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 February 13, 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 position 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 this position within any collective bargaining unit.

The following Public Service Administrator, Option 8L position within the Illinois Department of Revenue is at issue in this designation:

37015-25-25-000-02-01 Craig Callahan

CMS's petition indicates the position at issue qualifies 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."² AFSCME objects to designation of the listed position.

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

² CMS filed a position description (CMS-104s) for the position and an affidavit in support of its assertion. This position is currently represented by AFSCME.

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. Further, AFSCME states that CMS has presented no evidence that the employees at issue ever exercised his referenced supervisory or quasi-managerial authority. Similarly, AFSCME asserts that CMS has not shown that it told the employee he possessed such authority. In addition, AFSCME argues that the position at issue is professional and not managerial. Finally, AFSCME urges the Board not to rely on the Petitioner's affidavit because the affidavit does not explain how the affiant is familiar with the job duties of the position at issue.

AFSCME also filed position-specific exceptions with respect to the position held by Craig Callahan. It "requests that Mr. Callahan be retained in the bargaining unit for reasons stated in his questionnaire and because of the information contained therein."

II. Material Facts

a. 37015-25-25-000-02-01 - Craig Callahan

Craig Callahan represents the Department of Revenue in highly complex cases involving disputes over State tax liability. He negotiates proposed dispositions, conducts conferences with taxpayers to achieve equitable settlements of disputed liabilities and claims for refund, and prepares cases for issuance of assessment. Further, he prepares proposed dispositions for the Administrator of the Informal Conference Board indicating acceptance or rejection of taxpayer proposals based on information adduced at conferences.

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 employee at issue ever exercised his purported authority or was told he 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 employee...at issue has...authority to complete the job duties...[in his]...position description.” 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 positions do not have significant and independent discretionary authority because they are professional rather than managerial positions. 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. 37015-25-25-000-02-01 - Craig Callahan

CMS's designation of this position is proper because the designation is presumed to be properly made and the evidence presented supports this conclusion because it shows that position holder Callahan represents management interest by taking or recommending discretionary actions that effectively control or implement the policy of a state agency when he makes recommendations to the Informal Conference Board (ICB) concerning the settlement of disputed tax liabilities and claims for refund.

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 & Economic Opportunity), 30 PERI ¶ 86.

Here, Callahan represents management's interests because he helps determine whether, or to what extent, the Department of Revenue should seek to collect on a disputed tax liability

and therefore, the manner in which it should perform its core function—tax collection. Further, he recommends discretionary action because he writes proposed dispositions for the Administrator of the Informal Conference Board which constitutes his advice on whether the ICB should accept or reject a taxpayer’s proposal concerning the taxpayer’s obligation and liability. Such recommendations, when accepted, implement the policy of the Department of Revenue because they necessarily ensure that the Department operates efficiently and that it does not proceed when there is uncertainty as to the correctness of a proposed audit adjustment. Notably, Callahan has introduced no evidence that the ICB has rejected his recommendations.

Contrary to Callahan’s assertion, he may satisfy this test for exclusion even though he asserts that he merely applies the facts to the law. State of Ill., Dep’t of Cent. Mgmt. Servs. (Dep’t of Cent. Mgmt. Servs.), 30 PERI ¶ 85 (professional employees are not exempt from exclusion as managerial under Section 6.1). Similarly, the designation is properly made even though it is the Informal Conference Board and not Callahan that ultimately makes a determination as to whether an adjustment is appropriate. Chief Judge of the Sixteenth Judicial Circuit v. Ill. State Labor Relations Bd., 178 Ill. 2d 333, 339-40 (1997) (final authority not required even under more restrictive, traditional test).

Thus, the designation of this position 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 position in the Illinois Department of Revenue is excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

37015-25-25-000-02-01 Craig Callahan

VI. Exceptions

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300,³ 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 26th day of February, 2014

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

/s/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**

³ Available at <http://www.state.il.us/ilrb/subsections/pdfs/Section%201300%20Illinois%20Register.pdf>.