STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services (Department of Human Services),	)	
Petitioner	)	
	)	Case No. S-DE-14-226
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 February 26, 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. The petition seeks to designate two Public Service Administrator, Option 6 positions affiliated

with the Illinois Department of Human Services (DHS). On March 10, 2014, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed an objection 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 positions 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).[1] Here, CMS contends that the positions at issue qualify for designation under Section 6.1(b)(5).

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

[1] 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.

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. A position that meets the standard of either Section 6.1(c)(i) or Section 6.1(c)(ii) meets the standard of Section 6.1(b)(5). See State of Illinois, Department of Central Management Services (Illinois Council on Developmental Disabilities), 30 PERI ¶169 (IL LRB-SP 2014).

In support of and along with its petition, CMS provided unique position descriptions for the two positions at issue. CMS also provided affidavits that contend, inter alia, that the included position descriptions fairly and accurately represent the positions' duties and responsibilities. Nevertheless, in its objection, AFSCME contends that CMS submitted no "actual evidence" that supports the designations, provides the job duties of the positions at issue, or shows how those positions meet the standard of Section 6.1(b)(5). I disagree, and find that the required information has been provided. That finding is reinforced by the unique presumption of appropriateness provided 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 (IL LRB-SP 2014); State

of Illinois, Department of Central Management Services (Department of Natural Resources), 30 PERI ¶112. CMS has provided that information. By doing so, CMS has provided a basis for its petitioned-for exclusions and the minimum notice and showing required by Section 6.1.

Separately, AFSCME asserts that the definition set forth in Section 6.1(c) essentially follows the manager and supervisor definitions developed by the NLRB and case law interpreting the same. Using that logic, AFSCME contends that CMS, as the party claiming managerial status, bears the burden of proof. AFSCME also contends that all of the employees at issue are professional employees and, accordingly, cannot perform executive and management functions (and thus cannot be considered managers). However, those contentions are not supported by the Board's precedent, and the distinction between a professional and a manager has not been dispositive. 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). Section 6.1 is a "unique statutory creation" that differs from the rest of the Illinois Public Labor Relations Act. State of Illinois, Department of Central Management Services (Illinois Commerce Commission), 30 PERI ¶83 (IL LRB-SP 2013).

AFSCME also notes that the two positions at issue are Assistant Local Office Administrators, and generally contends that each of the two reports to and operates under the direction of a Local Office Administrator. Generally speaking, that possibility has also not been dispositive. See 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). Further, it does not meaningfully negate significant aspects of the provided position descriptions.

To explain, regarding a Section 6.1(c)(i) designation, both positions descriptions indicate without contradiction that each position is authorized to serve as a liaison to other agencies; plan, organize, direct, review, and evaluate work concerning production and operational efficiency; recommend implementation of policy and procedural changes; establish goals, objectives, operating policies, and procedures; review and recommend staffing needs; review production reports; prepare operational reports; conduct regularly and specially scheduled staff meetings to discuss, interpret, and implement new policies and procedures or changes in existing policies and procedures; and plan and implement special management assignment projects. Additionally, regarding a Section 6.1(c)(ii) designation, the position descriptions indicate the two positions are authorized to provide leadership and administrative direction to staff, provide advice and guidance to subordinates, coordinate and provide training for staff, reassign staff to meet day-to-day operating needs, assign and review work, counsel staff regarding work performance, establish annual goals and objectives, approve time off, and prepare and sign performance evaluations. In short, I find that those circumstances meet the standard of Section 6.1(b)(5).

Continuing, I note that AFSCME's objection includes submissions authored by Cedric Berryhill, Dorothy Fairman, Felicia Guest, Ralphael Longmire, Ruby Powell, Rhonda Scruggs, Alfred Watson, and Daniel Williams. While those employees may in fact serve as Assistant Local Office Administrators for DHS, I find that their submissions are largely immaterial, as those employees do not occupy the particular positions at issue in this case – position nos. 37015-10-91-110-20-01 and 37015-10-91-110-30-01. Rather, those petitioned-for positions are currently occupied by Mike Lewis and Carla Roberts, who evidently did not provide

submissions. The positions and submissions of Berryhill, Fairman, Guest, Longmire, Powell Scruggs, Watson, and Williams are more properly considered in Case No. S-DE-14-221.

Lastly, I note that AFSCME's objection also routinely 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, 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 the objection, I find the instant designations 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 positions with the Illinois Department of Human Services are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

Position Number	Working Title
37015-10-91-110-30-01	ALOA
37015-10-91-110-20-01	ALOA

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 24th day of March 2014.

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Martin Kehoe
Administrative Law Judge