

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

State of Illinois, Department of Central)	
Management Services (Department of)	
Public Health),)	
)	
Petitioner)	
)	
and)	
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	Case No. S-DE-14-239
Labor Organization-Objector)	
)	
and)	
)	
George Dizikes, John Nawrocki and)	
Raymond Weidenburner,)	
)	
Employee-Objectors)	
)	

**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 (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 (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 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 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 August 23, 2013, 37 Ill. Reg. 14,070 (September 6, 2013). These rules are contained in Part 1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On March 21, 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. The designation pertains to positions within the Department of Public Health and is made pursuant to Section 6.1(b)(2) of the Act. Section 6.1(b)(2) allows positions to be designated that have a title of or authorize a person who holds the position to exercise substantially similar duties as a Senior Public Service Administrator (SPSA). All eight positions designated have the title of SPSA. On March 26, 2014, George Dizikes, John Nawrocki and Raymond Weidenburner each filed individual objections to the designation pursuant to Section 1300.60(a)(3) of the Board's Rules. On April 2, 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 the designation to have been properly submitted and consistent with the requirements of Section 6.1 of the Act and 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 the following positions within any collective bargaining unit:

Laboratory Manager (position nos. 40070-20-55-100-00-81 and 40070-20-55-800-00-51)(one vacant position and one held by Raymond Weidenburner); **CLIA Director** (position no. 40070-20-55-900-00-81(vacant); (positions nos. 40070-20-55-100-00-31; 40070-20-55-400-00-81; 40070-20-55-420-00-81; and 40070-20-55-500-00-81) (Patricia Kloppenburg; George Dizikes;

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.

Glenn Yoshimura; and John Nawrocki); and **Section Chief** (position no. 40070-20-55-910-00-31)(Maria Kaminski).

I. AFSCME's Objections

AFSCME makes several general objections regarding the Act, along with several general objections regarding these designations. Generally, the Objector claims Section 6.1 of the Act violates the guarantee of due process and the separation of powers doctrine established by the Illinois Constitution. AFSCME alleges that the legislature has improperly delegated its power to exclude or include employees from the Act to the Governor by giving the Governor the power to make changes to a law without any standards. AFSCME also claims that Section 6.1 of the Act violates the promise of equal protection under Article I, Section 2 of the Illinois Constitution. The Objector alleges the Act denies employees equal protection because the Governor can remove some positions from the Act while leaving identical positions without giving any rational basis for the decision. Finally, AFSCME claims that Section 6.1 of the Act violates Article I of the Illinois Constitution prohibiting the impairment of contracts because the employees designated are beneficiaries of a collective bargaining agreement.

AFSCME claims that this designation does not fully comply with the requirements of Section 6.1 of the Act. AFSCME alleges that the designated employees' duties are not consistent with Section 6.1(b)(2) or the duties of other SPSAs because they perform highly technical and scientific work and hold professional positions. The Objector claims that the designated employees should not be classified as SPSAs and therefore can not be designated under Section 6.1(b)(2) of the Act.

AFSCME notes that the designated positions were certified in the RC-63 bargaining unit in Case No. S-RC-09-180 following a hearing. In Case No. S-RC-09-180, CMS argued that these positions were managers and/or supervisors under the Act but the Board ruled they were not. AFSCME claims that CMS has not shown that the designated positions' job duties have changed and there is no rational basis for treating these positions differently than other positions in the same title and/or with the same job duties. AFSCME alleges that other state employees perform similar duties but have a different classification and are not excluded from collective bargaining. The Objector claims that designating these positions violates due process and is arbitrary and capricious because it would eliminate the employees' right to associate with a labor organization.

AFSCME alleges that there must be a hearing to determine if there is a legal basis to exclude the designated positions.

II. Employee Objections

George Dizikes objects to his designation on the grounds that he has no authority relating to fiscal issues, personnel issues or the scientific tests he performs. Dizikes objects to the accuracy of his position description in detail but does not deny that his position is classified as an SPSA, Option 4.

John Nawrocki objects to his designation on the grounds that he has no authority relating to fiscal issues, hiring, discipline or the scientific tests he performs. Nawrocki objects to the accuracy of his position description in detail but does not deny that his position is classified as an SPSA, Option 4.

Raymond Weidenburner objects to his designation on the grounds that his position description does not accurately describe his job duties. Nawrocki objects to the position description in detail but does not deny that his position is classified as an SPSA, Option 4.

III. Discussion and Analysis

a. Procedural

AFSCME raises three general objections to this designation, claiming that Section 6.1 of the Act violates the Illinois Constitution. However, the Board has held that it is beyond its 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 Illinois, Department of Central Management Services, Cons. Case Nos. S-DE-14-005 etc. 30 PERI ¶ 80 (IL LRB-SP Oct. 7, 2013) citing Goodman v. Ward, 241 Ill. 2d 398, 411 (2011). In Case No. S-DE-14-005 the Board expressed its concern with AFSCME’s due process arguments but maintained that it has taken necessary measures to prevent a violation of such.²

² The Board found in Case No. S-DE-14-005, issued October 7, 2013, that consistent with the judicial precedent, it has “insured that the individual employees as well as their representative and potential representative receive notice soon after designation petitions are filed, usually within hours, and have provided for redundant notice by means of posting at the worksite... we provided them an opportunity to file objections, and where they raise issues of fact or law that might overcome the statutory presumption of appropriateness, an opportunity for a hearing, [and]... require a written recommended decision by an administrative law judge in each case in which objections have been filed.” See Arvia v. Madigan, 209 Ill. 2d 520 (2004), and Gruwell v. Ill. Dep’t of Financial and Professional Regulations, 406 Ill. App. 3d 283, 296-8 (4th Dist. 2010). Additionally, the Board found that it has “allowed an opportunity to appeal those recommendations for consideration to the full Board by means of filing exceptions... doubled the frequency of our scheduled public meetings in order to provide adequate review of any exceptions in advance of the 60-day deadline and... issu[e] written final agency decisions which may be judicially reviewed pursuant to the

Therefore, AFSCME's due process rights have not been violated by the Board following the policies and procedures mandated by the legislature.

b. Substantive

AFSCME claims that the designated positions were included in the RC-63 bargaining unit in Case No. S-RC-09-180 after a ruling that they were not managerial or supervisory. AFSCME provides no additional argument or language in the Act to support its apparent position that the Board's decision makes these positions inappropriate for designation. To qualify for designation under Section 6.1 of the Act, the position in question must fall into one of the three broad categories of designatable positions and must likewise fall into one of the five categories which describe its classification, title or characteristics. These positions fall into one of the three broad designatable categories because they were certified by the Board after December 2, 2008. Similarly, these positions fall within one of the five categories which describe the nature of the position because all eight hold the title of Senior Public Service Administrator.

Here, AFSCME appears to argue that because the Board ruled that these positions be included in a bargaining unit, they are inappropriate for designation. However, this does not address the Board's sole inquiry in this particular case. Here, the Board must determine whether the designated positions meet the criteria set forth in Section 6.1 of the Act. Section 6.1(b)(2) provides in relevant part that for a position to be designatable, "it must have a title of... Senior Public Service Administrator." In this case, it is clear that these positions fall into one of the three broad designatable categories. It is undisputed that CMS has classified these positions as SPSA positions. The fact that the Board ruled that these positions met the requirements of Section 3(n) of the Act is not material in light of the clear language of the new Section 6.1 which, in this case, permits exclusion of a position based solely on classification.

Finally, AFSCME argues that the positions are not properly classified as SPSA positions in that they perform highly technical and scientific work in professional positions. It asserts that there must be an inquiry into whether the positions at issue here conform to the requirements for an SPSA position. However, this is not the inquiry required under Section 6.1 of the Act. Section 6.1(b)(2) provides in relevant part that for a position to be designatable, "it must have a title of...

Administrative Review Law" in an effort to adhere to due process. State of Illinois, Department of Central Management Services, 30 PERI ¶ 80 Cons. Case Nos. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013).

Senior Public Service Administrator.” It is undisputed that CMS has classified the positions as SPSA positions, accordingly, the designation comports with the requirements of Section 6.1.

IV. Conclusions of Law

The Governor’s designation in this case is properly made.

V. Recommended Order

Unless this Recommended Decision and Order is rejected or modified by the Board, the following positions in the Department of Public Health are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

Laboratory Manager (position nos. 40070-20-55-100-00-81 and 40070-20-55-800-00-51)(one vacant position and one held by Raymond Weidenburner); **CLIA Director** (position no. 40070-20-55-900-00-81(vacant); (positions nos. 40070-20-55-100-00-31; 40070-20-55-400-00-81; 40070-20-55-420-00-81; and 40070-20-55-500-00-81) (Patricia Kloppenburg; George Dizikes; Glenn Yoshimura; and John Nawrocki); and **Section Chief** (position no. 40070-20-55-910-00-31)(Maria Kaminski).

VI. Exceptions

Pursuant to Section 1300.90 and 1300.130 of the Board’s Rules and Regulations, 80 Ill. Admin. Code Parts 1300³, 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 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. 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 7th day of April, 2014.

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

Thomas R. Allen

**Thomas R. Allen
Administrative Law Judge**

³ Available at www.state.il.us/ilrb/subsections/pdfs/Section 1300 Illinois Register.pdf