STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services (Department of Lottery),	)	
Petitioner	)	
and	)	Case No. S-DE-14-242
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 March 21, 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 one Public Service Administrator, Option 1 position affiliated

with the Illinois Department of Lottery. On March 28, 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 position may lawfully be selected for designation under Section 6.1. 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 position at issue qualifies 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 management policies and practices of a State agency or represent management interests by

[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.

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).

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 exclusion and the minimum notice and showing required by Section 6.1.

In support of and along with its petition, CMS provided a unique position description for the position at issue. CMS also provided an affidavit that contends, inter alia, that the included position description fairly and accurately represents the position's duties and responsibilities. AFSCME's objection suggests that those submissions fail to demonstrate that the position at issue "actually" performs the alluded to duties. However, 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. Furthermore, the possibility that the position's duties may be subject to the approval of or controlled by a superior has not been dispositive in this type of case. 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 (IL LRB-SP 2013).

AFSCME's objection separately contends that, to the extent that an affidavit states that the position at issue effectuates policies or is authorized to effectuate departmental policy and the provided position description does not define that policy, there can be no showing that the employee is "managerial" within the meaning of Section 6.1(c)(i). I generally disagree, and suggest that AFSCME's contention effectively overlooks the unique presumption of appropriateness provided by Section 6.1(d).

I also find, contrary to AFSCME's contentions, that the instant analysis need not consider whether the position's job duties have changed since the position was last reviewed by the Board or whether the position has been covered by a collective bargaining agreement. See State of Illinois, Department of Central Management Services, 30 PERI ¶80 (IL LRB-SP 2013). Further, I note that the distinction between a professional and a managerial has not been dispositive. See State of Illinois, Department of Central Management Services (Department of Commerce and Economic Opportunity), 30 PERI ¶163.

In addition to the foregoing, AFSCME's objection 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. 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).

AFSCME's objection also highlights an attached questionnaire completed by Michael Underwood, the current occupant of the petitioned-for position. Notably, in that questionnaire, Underwood, the Illinois Department of Lottery's Agency Procurement Officer, broadly states that he is responsible for "monitoring, recommending, implementing, evaluating, overseeing, researching, processing, engaging, and coordinating the procurement process." Moreover, Underwood does not specifically dispute the parts of his position description that indicate that he works with the State Ethics Commission's appointed State Purchasing Officer and Procurement Compliance Monitor to ensure that Underwood's department has implemented policies and procedures that carry out legislative and programmatic initiatives; implements his agency's procurement functions; plans policy for the sourcing of procurements and contracts; works in concert with CMS' Business Enterprise Program to enhance effectiveness and efficiency of procurements; monitors his agency's compliance with CMS policies, rules, and regulations; develops cost-reduction strategies for lottery contracts; ensures strict compliance with the Procurement Code, Standard Procurement Rules, all related federal, state, and local procurement laws and regulations, and all industry standards and indices; clarifies logistics of contracts with vendors in order to most efficiently and effectively meet department requirements; oversees periodic supplier reviews; solicits internal and external legal consultation; monitors department compliance based on compliance measures; and makes recommendations to his agency's

Superintendent and General Counsel to enhance control and increase cost savings. Underwood does not deny that those functions require the use of discretion. In short, for those reasons, I find that Underwood's position satisfies the "basal standard" of Section 6.1(c)(i) and, accordingly, that of Section 6.1(b)(5). 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 Juvenile Justice), 30 PERI ¶220 (IL LRB-SP G.C. 2014).

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 designation to have been properly submitted and consistent with the requirements of Section 6.1.

III. RECOMMENDED ORDER

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

Position Number	Working Title
37015-45-02-300-00-01	Agency Procurement Officer

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. 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 17th day of April 2014.

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Martin Kehoe
Administrative Law Judge