

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

State of Illinois, Department of Central	)	
Management Services (Department of	)	
Healthcare & Family Services),	)	
	)	
Employer	)	
	)	Case No. S-DE-14-244
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, 479 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.<sup>1</sup>

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 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.

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<sup>1</sup> 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.

## **I. PETITION**

On March 27, 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 designates three vacant Public Service Administrator (PSA), Option 1 positions at the Department of Healthcare & Family Services (DHS) for exclusion from the self-organization and collective bargaining provisions of Section 6 of the Act. The petition indicates that the positions qualify for designation under Section 6.1(b)(5). The petition indicates that the positions were certified on January 20, 2010, in Case No. S-RC-08-036.

In support of its petition, CMS provided position descriptions (CMS-104s) for the positions. CMS also provided documentation identifying the position number, title, bargaining unit, certification date and case number, and statutory category that serves as the basis for the exemption.

## **II. OBJECTIONS**

On April 4, 2014, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed timely objections to the petition. AFSCME objects to the petition arguing that Section 6.1 of the Act violates due process, the separation of powers doctrine of the Illinois Constitution, equal protection under Article I, Section 2 of the Illinois Constitution and the Fifth and Fourteenth Amendments of the United States Constitution, and the prohibition against impairment of contracts of the Illinois Constitution.

AFSCME next objects to the petition arguing that the designated positions are not managerial under decisions of the National Labor Relations Board, and courts interpreting the same. AFSCME further objects to the use of position descriptions to support the petition and to the allocation of the burden of proof. AFSCME asserts that the evidence submitted by CMS in the form of a position description, organizational chart, and affidavit merely acknowledges the positions' potential responsibilities. Likewise, AFSCME argues that CMS has failed to provide specific evidence that the positions at issue have actual authority to perform the listed job duties. As such, AFSCME argues that the employees in the positions at issue were never informed of their significant and independent discretionary authority to perform supervisory or managerial functions and CMS has not met its burden of demonstrating that the positions possess the

requisite significant and independent discretionary authority. In addition, AFSCME argues that the positions at issue are professional and not managerial. AFSCME also maintains that to the extent the affidavit states an employee at issue effectuates policies or is authorized to effectuate policy, and the position description does not define a policy, there can be no showing that the employee is managerial, and the burden is on CMS to show why different duties should not apply to others holding the same title. Therefore, AFSCME maintains that the positions at issue are neither supervisory nor managerial within the meaning of Section 6.1 of the Act.

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 have determined that AFSCME has failed to raise an issue that would require a hearing. 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 the existing inclusion of the position within any collective bargaining unit.

<b>Position Number</b>	<b>Incumbent</b>	<b>Working Title</b>
37015-33-34-110-00-61	Vacant	Medical Eligibility System Reporting
37015-33-34-120-00-61	Vacant	Modified Adjusted Gross Income Rules Engine Program
37015-33-34-130-00-61	Vacant	Non-Modified Adjusted Gross Income Rules Engine Program

### **III. DISCUSSION**

#### **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 violated provisions of the United States and Illinois constitutions.” State of Ill., Dep’t of Cent. Mgmt. Servs., 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.”) Thus, AFSCME’s constitutional arguments are not addressed in this decision.

## **B. Non-Constitutional General Objections**

AFSCME objects that the positions at issue are not those of managers within the definition used by the National Labor Relations Board. However, the Board has specifically rejected AFSCME's argument that the Board should look first to NLRB precedent in interpreting Section 6.1(c)(i). State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Commerce and Econ. Opportunity), 30 PERI ¶ 86 (IL LRB-SP 2013) ("To the extent precedent is relevant to interpretation of Section 6.1(c)(i), we look first to precedent established by Illinois courts, this Board, and where relevant the Illinois Educational Labor Relations Board, then to federal precedent interpreting similarly worded provisions of the NLRA.")

AFSCME's remaining general objections are without merit and do not raise issues of fact or law that might rebut the presumption that the designations have been 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. State of Ill., Dep't of Cent. Mgmt. Servs., 30 PERI ¶ 80 ("Submission of position descriptions that are consistent with the designation made, combined with the presumption of appropriateness, and in the absence of any contrary evidence from objectors like AFSCME that might demonstrate that the designation is inappropriate, leads to the conclusion that the designation comports with the requirements of Section 6.1.") AFSCME's arguments regarding the use of position descriptions, organizational charts, and affidavits to support the petition; the burden of proof; and CMS' failure to provide specific evidence that the positions at issue have actual authority to perform the listed job duties must be rejected because these arguments ignore the presumption and misallocate the burden, which is on AFSCME, not CMS.

The Board has also rejected AFSCME's objections relating to the distinction between managerial and professional status. Dep't of Commerce & Econ. Opportunity, 30 PERI ¶ 86. The terms managerial and professional are not mutually exclusive and "there certainly is no exception for professional employees in the language of Section 3(c)(i) [sic]." Id. Accordingly, the Board has held that a position may be appropriately designated for exclusion if it meets one of the two alternative tests set out in Section 6.1(c)(i), regardless of whether the position is also professional, and even if the position fails to meet the definition of a managerial employee in Section 3(j) of the Act. Id.

In sum, AFSCME’s general objections do not raise issues of fact or law that might rebut the presumption that the designations were properly made.

### **C. Designation under Section 6.1(b)(5)**

The law creates a presumption that the designations are properly made. To overcome the presumption of a properly submitted designation under Section 6.1(b)(5), the objector must raise an issue of fact or law that the position does not meet either of the managerial tests set out in Section 6.1(c)(i) or the supervisory test set out in Section 6.1(c)(ii). In this case, AFSCME did not provide any position-specific information or evidence to support that the designations are improper. Thus, AFSCME has failed to overcome the presumption that the designations are proper.

### **IV. CONCLUSION OF LAW**

The Governor’s designation in this case was 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 positions with the Department of Healthcare & Family Services are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

<b>Position Number</b>	<b>Incumbent</b>	<b>Working Title</b>
37015-33-34-110-00-61	Vacant	Medical Eligibility System Reporting
37015-33-34-120-00-61	Vacant	Modified Adjusted Gross Income Rules Engine Program
37015-33-34-130-00-61	Vacant	Non-Modified Adjusted Gross Income Rules Engine Program

### **VI. EXCEPTIONS**

Pursuant to Section 1300.90 and Section 1300.130 of the Board’s Rules and Regulations, 80 Ill. Admin. Code Part 1300,<sup>2</sup> parties may file exceptions to the Administrative Law Judge’s recommended decision and order, and briefs in support of those exceptions, not later than three 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 sent to [ILRB.Filing@Illinois.gov](mailto:ILRB.Filing@Illinois.gov). Each party shall serve its exception on the other parties. If the original exceptions are withdrawn, then all subsequent exceptions are moot.

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<sup>2</sup> Available at <http://www.state.il.us/ilrb/subsections/pdfs/Section%201300%20Illinois%20Register.pdf>

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 10th day of April, 2014**

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
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*/s/ Michelle Owen*

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**Michelle Owen  
Administrative Law Judge**