

No. 13-3866

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

AMERICAN FEDERATION OF STATE,)	Petition for Review of a Decision
COUNTY, AND MUNICIPAL EMPLOYEES)	and Order of the Illinois Labor
(AFSCME), COUNCIL 31,)	Relations Board, State Panel.
)	
Petitioner,)	
)	
v.)	
)	
THE STATE OF ILLINOIS, THE DEPARTMENT)	
OF CENTRAL MANAGEMENT SERVICES, and)	
THE ILLINOIS LABOR RELATIONS BOARD,)	
STATE PANEL,)	
)	Nos. S-DE-14-092, S-DE-14-093,
Respondents.)	and S-DE-14-094

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Pierce and Justice Neville concurred in the judgment and opinion.

ORDER

¶ 1 Held: The individuals represented by petitioner do not qualify for exclusion from their collective bargaining units under the designation statute because they are not in an agency directly responsible to the Governor. The Governor's designation petitions should have been dismissed.

¶ 2 This is an appeal from a final administrative decision by the Illinois Labor Relations Board.

The Board found that the individuals represented by petitioner, a collection of employees from the

Pollution Control Board, were subject to removal from their collective bargaining units upon being designated by the Governor as exempt from collective bargaining under a 2013 statute. We find that the individuals' collective bargaining rights were beyond the reach of the Governor and that the Board should have dismissed the Governor's petitions. Therefore, we reverse.

¶ 3 BACKGROUND

¶ 4 In 2013, the Governor signed into law what became section 6.1 of the Illinois Public Labor Relations Act (Act) (5 ILCS 315/6.1 (West Supp. 2013)). The Act allows the Governor to designate a certain number of state employees as exempt from collective bargaining on the basis that they are managerial-type employees who need to supervise general employees rather than collectively bargain with them. The stated objective of the statute is to promote efficiency in the state government.

¶ 5 The statute at issue is the Illinois Public Labor Relations Act (5 ILCS 315/1 *et seq.*). The statutory section challenged by the individuals is titled "Gubernatorial designation of certain public employment positions as excluded from collective bargaining." 5 ILCS 315/6.1 (West Supp. 2013). That section, in pertinent part, provides:

"The Governor is authorized to designate up to 3,580 State employment positions collectively within State agencies directly responsible to the Governor, and, upon designation, those positions and employees in those positions, if any, are hereby excluded from the self-organization and collective bargaining provisions of Section 6 of this Act. Only those employment positions that have been certified in a bargaining unit on or after December 2, 2008, that have a

pending petition for certification in a bargaining unit on April 5, 2013 (the effective date of Public Act 97-1172), or that neither have been certified in a bargaining unit on or after December 2, 2008 nor have a pending petition for certification in a bargaining unit on the effective date of this amendatory Act of the 97th General Assembly are eligible to be designated by the Governor under this Section. The Governor may not designate under this Section, however, more than 1,900 employment positions that have been certified in a bargaining unit on or after December 2, 2008." 5 ILCS 315/6.1(a) (West Supp. 2013).

The statute goes on to provide metrics to instruct the Governor as to which positions qualify for designation.

"To qualify for designation under this Section, the employment position must meet one or more of the following requirements:

(1) it must authorize an employee in that position to act as a legislative liaison;

(2) it must have a title of, or authorize a person who holds that position to exercise substantially similar duties as an, Agency General Counsel, Agency Chief of Staff, Agency Executive Director, Agency Deputy Director, Agency Chief Fiscal Officer, Agency Human Resources Director, Senior Public Service Administrator, Public Information Officer, or

Chief Information Officer;

(3) it must be a Rutan-exempt, as designated by the employer, position and completely exempt from jurisdiction B of the Personnel Code;

(4) it must be a term appointed position pursuant to Section 8b.18 or 8b.19 of the Personnel Code; or

(5) it must authorize an employee in that position to have significant and independent discretionary authority as an employee.

Within 60 days after the Governor makes a designation under this Section, the Board shall determine, in a manner that is consistent with the requirements of due process, whether the designation comports with the requirements of this Section." 5 ILCS 315/6.1(b) (West Supp. 2013).

The statute also provides that the Governor has only 365 days to designate the positions as exempt from collective bargaining (5 ILCS 315/6.1(d) (West Supp. 2013)) and expressly provides that some positions that might otherwise qualify as managerial under the Act cannot be designated (5 ILCS 315/6.1(e), (f) (West Supp. 2013)).

¶ 6 In September 2013, consistent with the procedures set forth in the Act, the Department of Central Management Services, on behalf of the Governor, filed petitions with the Illinois Labor Relations Board (ILRB) seeking to exclude the individuals represented by petitioner from their collective bargaining units. The individuals occupy positions on the Pollution Control Board.

AFSCME, on behalf of the individuals, contested their removal from their collective bargaining units and filed objections to the petitions. AFSCME argued that the statute unambiguously did not give the Governor authority to designate these individuals, maintaining that extrinsic evidence was unnecessary. The ILRB disagreed and the matter proceeded to a hearing in which the State called two witnesses who essentially testified that the statute was intended to cover employees of all executive state agencies, including the Pollution Control Board. Ultimately, the ILRB entered orders approving the Governor's decision to strip the collective bargaining rights from the employment positions occupied by these individuals. AFSCME appeals those orders.

¶ 7 In this appeal, AFSCME challenges whether the designation statute applies to the individuals it represents on appeal. It points to the statutory language itself which gives the Governor authority to designate those public employees "within State agencies directly responsible to the Governor." 5 ILCS 315/6.1(a) (West Supp. 2013). To follow that, AFSCME directs us to the Executive Reorganization Implementation Act (15 ILCS 15/1 *et seq.*) which defines the term "agency directly responsible to the Governor" as "any office *** in the executive branch of State government" but explicitly provides that "the term does not apply to *** the Pollution Control Board." 15 ILCS 15/3.1 (West 2012).

¶ 8 ANALYSIS

¶ 9 In *American Federation of State, City, Municipal Employees (AFSCME), Council 31 v. State, Department of Central Management Services*, 2015 IL App (1st) 133454, we thoroughly addressed the constitutionality of the statute. We also held that, at least as to the individual-objectors in that case, there was no need for an evidentiary hearing because the statute unambiguously applied to the individuals. *Id.* at 16-17. Here, the ILRB held an evidentiary

hearing to take testimony on whether members of the Pollution Control Board are covered by section 6.1. We hold that, as a matter of law, the statute is not ambiguous, and it does not authorize the Governor to designate the individuals at issue.

¶ 10 The whole designation statute is premised on the idea that the employees subject to designation are from an "agency directly responsible to the Governor." 5 ILCS 315/6.1(a) (West Supp. 2013). The State essentially asks us to disregard that provision and hold that the statute allows the Governor to designate positions from any executive agency. We decline to do so. We must construe the statute so that each word, clause, and sentence, if possible, is given a reasonable meaning and not rendered superfluous, avoiding an interpretation which would render any portion of the statute meaningless or void. *Sylvester v. Industrial Comm'n*, 197 Ill. 2d 225, 232 (2001). The statutory language itself unambiguously permits the Governor to designate only those public employees "within State agencies directly responsible to the Governor." 5 ILCS 315/6.1(a) (West Supp. 2013). The Executive Reorganization Implementation Act specifically provides that the Pollution Control Board is not an agency directly responsible to the Governor. 15 ILCS 15/3.1 (West 2012). Therefore, the individuals represented by petitioner are beyond the reach of section 6.1 as they are not in an agency from which the Governor can designate positions for exclusion from collective bargaining.

¶ 11 While this appeal was pending, the same arguments raised by the State here were rejected in *Department of Central Management Services v. Illinois Labor Relations Bd.*, 2015 IL App (4th) 131022 (leave to appeal denied at 39 N.E.3d 1001 (Ill. 2015)). In that case the court held that Pollution Control Board members do not qualify for designation because section 6.1 of the Labor Act is not applicable to that agency. *Id.* at ¶ 24, ¶ 28. We agree with the court's analysis and

holding in that case, and find that it applies equally here and covers all dispositive questions.

¶ 12 The designation statute was enacted so that the Governor could limit the number of management-type employees that were in collective bargaining units. But the authority given to the Governor was limited to employees in agencies that answer directly to the Governor, allowing him to designate "those from whom the State demands undivided loyalty" so that the Governor can "effectively run his executive department as he sees fit." *AFSCME, Council 31*, 2015 IL App (1st) 133454, at ¶ 35. The Pollution Control Board is classified by statute as an agency not directly responsible to the Governor precisely because it has "the primary responsibility of exercising regulatory or adjudicatory functions *independently of the Governor*." (Emphasis added.) 15 ILCS 15/3.1 (West 2012). Permitting the State to apply its broad reading of the statute to the Pollution Control Board would run counter to that statutorily-classified independence. Based on the foregoing, the ILRB improperly sustained the Governor's designation petitions excluding these Pollution Control Board employment positions from their collective bargaining units.

¶ 13 Conclusion

¶ 14 We reverse the Illinois Labor Relation Board's orders. Its orders are vacated and the Governor's designation petitions are dismissed.

¶ 15 Reversed.