

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

State of Illinois, Department of	)	
Central Management Services	)	
(Department of Employment	)	
Security),	)	
	)	
Petitioner	)	
	)	
and	)	
	)	
American Federation of State, County	)	Case No. S-DE-14-065
and Municipal Employees, Council 31,	)	
	)	
Labor Organization-Objector	)	
	)	
and	)	
	)	
Steven Kiolbasa and Rex Crossland,	)	
	)	
Employee-Objectors	)	

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD  
STATE PANEL**

On September 27, 2013, Administrative Law Judge Thomas R. Allen issued a Recommended Decision and Order finding that designations made on behalf of the Governor by the Illinois Department of Central Management Services (CMS) pursuant to Section 6.1 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012), were properly made. CMS's petition designated six positions at the Illinois Department of Employment Security, all pursuant to Section 6.1(b)(5).

The occupants of two of these positions, Steven Kiolbasa and Rex Crossland, filed objections to the designations pursuant to Section 1300.60 of the Rules and Regulations of the Illinois Labor Relations Board promulgated to implement Section 6.1, 80 Ill. Admin. Code Part 1300, and so did the American Federation of State, County and Municipal Employees, Council

31 (AFSCME). Following issuance of the Recommended Decision and Order, AFSCME filed exceptions pursuant to Section 1300.130 of the Board's Rules.

After reviewing these exceptions and the record, we accept the Administrative Law Judge's recommendation for the reasons articulated in his Recommended Decision and Order and for the reasons we previously articulated in our decision in State of Illinois, Department of Central Management Services, Cons. Case Nos. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013). Consistent with that action, we direct the Executive Director to certify that the positions designated are excluded from collective bargaining rights under Section 6.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett  
John J. Hartnett, Chairman

/s/ Paul S. Besson  
Paul S. Besson, Member

/s/ James Q. Brennwald  
James Q. Brennwald, Member

/s/ Michael G. Coli  
Michael G. Coli, Member

/s/ Albert Washington  
Albert Washington, Member

Decision made at the State Panel's public meeting in Springfield, Illinois, on October 8, 2013; written decision issued at Springfield, Illinois, October 21, 2013.

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

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Management Services (Department of	)	
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	)	
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	)	
and	)	
	)	
Steve Kiolbasa,	)	
	)	
Employee-Objector,	)	
	)	
and	)	
	)	
Rex Crossland,	)	
	)	
Employee-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 (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.<sup>1</sup>

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 emergency rules to effectuate Section 6.1, which became effective on April 22, 2013, 37 Ill. Reg. 5901 (May 3, 2013), and the Board promulgated permanent rules for the same purpose which became effective on August 23, 2013. These rules are contained in Part 1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On August 20, 2013, 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 Employment Security. On August 27, 2013, Steve Kiolbasa filed objections to the designation of his position pursuant to Section 1300.60(a)(3) of the Board's Rules. On August 27, 2013, Rex Crossland filed objections to the designation of his position pursuant to Section 1300.60(a)(3) of the Board's Rules. On September 6, 2013, 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 designations, 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 these positions within any collective bargaining unit:

**Payroll Manager** (position no. 37015-44-04-513-00-01); **Local Office Manager** (position no. 37015-44-71-221-00-01); **the position currently occupied by Robert Eggebrecht** (position no. 37015-44-04-300-10-01); **the position currently occupied by Maureen Gibbons** (position no.

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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.

37015-44-04-512-00-01); **the position currently occupied by Rex Crossland** (position no. 37015-44-71-231-00-01); and **one vacant position** (position no. 37015-44-04-100-00-01).

## **I. AFSCME's Objections**

Generally, AFSCME claims that the Board's Rules make it impossible for it to file specific objections without more time because CMS filed for more than one third of the designatable positions in less than a week, CMS provided a lack of information with the designation, the Rules do not provide a procedure for AFSCME to obtain additional information about the positions subject to the designation and the Board's General Counsel denied AFSCME's motion for more time to file objections. Finally, AFSCME alleges that the mere fact that there is a representation petition pending for some of the positions subject to designation does not make it easier to file objections because a significant amount of time has passed since those representation petitions were filed.

AFSCME also claims that the Rules do not comport with due process because they do not provide adequate time for an objector to make a substantive objection. AFSCME alleges that the requirements of due process can not be met with a time period of 10 days to file objections. AFSCME claims that the Rules deny objectors the procedures in the Act and Rules for filing objections that are available in other instances.

AFSCME also alleges that the Act requires CMS to provide a list of job duties for each position designated and the position descriptions provided with the designation are inadequate. AFSCME claims that the position descriptions do not provide an affidavit or statement asserting that the jobs duties are accurate. Additionally, AFSCME alleges position descriptions state that the listed job duties are only potential duties and the employee's actual duties are at the discretion of his or her supervisor. AFSCME claims that in order for a designation to be proper under Section 6.1(b)(5), CMS must state what an employee does rather than what an employee could do. AFSCME alleges that without this statement, the Board can not determine whether a designation is proper under Section 6.1(b)(5).

AFSCME also objects to all six designations and to the designation of individual positions. Regarding the designation of all six positions, AFSCME claims that the National Labor Relations Act (NLRA) requires that an employee's authorization to engage in a job duty must actually be executed. AFSCME alleges that the designation does not include any evidence that

any of the six employees have engaged in any of the 12 supervisory functions listed in the NLRA. Therefore, AFSCME asserts that none of the six positions are properly designated under Section 6.1(b)(5).

Specifically, AFSCME objects to the designation of three positions. AFSCME cites sworn testimony in Case No. S-RC-07-048 that show three employees do not meet the requirements of Section 6.1(b)(5). AFSCME alleges that this testimony shows that Steve Kiolbasa merely reviews audits to ensure that they comply with internal rules. AFSCME notes that Kiolbasa reports to a bargaining unit employee and has no authority to give raises or promotions to other employees. AFSCME claims raises and promotions for employees who report to Kiolbasa occur according to department rules rather than based on Kiolbasa's independent discretion.

AFSCME claims that the sworn testimony in S-RC-07-048 shows that Curtis Williams primarily fills out and submits forms to the Comptroller. AFSCME alleges that Williams has no role in discipline or grievances and spends about 80% of his time doing the same work as his subordinate employees. Finally, AFSCME claims that the sworn testimony in S-RC-07-048 shows that Maureen Gibbons enters accounts according to rules and without independent discretion. AFSCME notes that Gibbons has one subordinate and she spends about 80% of her time doing the same work as that subordinate employee. AFSCME also notes that Gibbons is not involved in discipline or grievances and that there is no evidence that she exercises any supervisory power.

## **II. Steve Kiolbasa's Objections**

Steve Kiolbasa objects to his designation on several grounds. First, Kiolbasa claims that he is one of seven state employees with the job title of "Field Audit Supervisor" but CMS only filed to designate two of those positions. Therefore, Kiolbasa alleges that it must be assumed the designation was arbitrary or made for discriminatory or illegal reasons. Next, Kiolbasa claims that he and all seven Field Audit Supervisors report to Field Audit Assistant Manager Mike Klein who is in a bargaining unit. Therefore, Kiolbasa alleges that he can not act with independent discretionary authority because his authority is subject to that of a bargaining unit employee. Additionally, Kiolbasa notes that his evaluation is done by a bargaining unit employee and all of his audits are subject to review by a bargaining unit employee. Third, Kiolbasa alleges that he can not unilaterally take any of the 12 supervisory actions. Kiolbasa claims that only the

Field Audit Manager under the direction of the Human Resources Department can take those actions. Fourth, Kiolbasa claims that his position description lists actions that are not supervisory under the NLRA. Finally, Kiolbasa alleges that the proceedings in S-RC-07-048 were unfair. Kiolbasa claims that the charge was suspended before a hearing and other Field Audit Supervisors have been in the bargaining unit and receiving the benefits of a collective bargaining agreement while he has not.

### **III. Rex Crossland's Objections**

Rex Crossland objects to his designation on many of the same grounds as Kiolbasa. Both employees are employed as "Field Audit Supervisors" and have similar objections. Crossland asserts all five of Kiolbasa's exceptions but includes some additional claims and facts. Additionally, Crossland claims that a lawyer in the Human Resources Department told him the chain of command would not be changed. Crossland also claims that he had never seen his position description before CMS designated his position.

### **IV. Discussion and Analysis**

#### **a. Procedural**

The Board did not deny AFSCME due process when it applied its rules, which required AFSCME to file objections to the designation within 10 days, and when it allegedly failed to provide AFSCME an avenue by which it could obtain information to support its objections.

Due process requires notice and an opportunity to be heard. East St. Louis Fed'n of Teachers, Local 1220 v. East St. Louis School Dist. No. 189 Financial Oversight Panel, 178 Ill. 2d 399, 419-20 (1997). Although due process applies to administrative hearings<sup>2</sup> and requires a "fair hearing" and "rudimentary elements of fair play," "[a]n administrative agency has broad discretion to reasonably regulate the time periods afforded parties to present evidence." Clark v. Bd. of Directors of the School Dist. of Kansas City, 915 S.W. 2d 766, 772-73 (Mo. App. W.D. 1996).

Administrative rules and regulations have the force and effect of law and must be construed under the same standards which govern the construction of statutes. Northern Ill. Automobile Wreckers and Rebuilders Ass'n v. Dixon, 75 Ill. 2d 53 (1979); DeGrazio v. Civil Service

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<sup>2</sup> Dep't of Cent. Mgmt. Services/Ill. Commerce Comm'n v. Ill. Labor Rel. Bd., State Panel, 406 Ill. App. 3d 766, 769-70 (4th Dist. 2010) (denial of an "oral hearing" is not necessarily the denial of a "hearing" because written arguments could suffice as a hearing in the administrative context).

Comm'n., 31 Ill. 2d 482, 485 (1964). Like a statute, an administrative rule or regulation enjoys a presumption of validity. Northern Ill. Automobile Wreckers and Rebuilders Ass'n v. Dixon, 75 Ill. 2d 53 (1979). A court will set aside an administrative rule only if the court finds it clearly arbitrary, unreasonable or capricious. Pauly v. Werries, 122 Ill. App. 3d 263 (4th Dist. 1984); Aurora East Public School District No. 131 v. Cronin, 92 Ill. App. 3d 1010 (2nd Dist. 1981).

Here, the Board's Rules, which specify time limits for filing objections, do not deprive AFSCME of due process because they are reasonable in light of the short statutory time frame in which the Board must process designation petitions and the high volume of such petitions the Board is expected to receive. The Act provides that the Board has a mere 60 days to determine whether the designation comports with the requirements of Section 6.1 of the Act. 5 ILCS 315/6.1(b)(5) (2012). In that 60 days, the Board must allow time (1) for parties to file objections, (2) for an Administrative Law Judge (ALJ) to draft, issue and serve the decision on the parties, (3) for the parties to file exceptions to the ALJ's Recommended Decision and Order (RDO), (4) for the Board and its staff to review the RDO in light of the exceptions and draft a recommendation to the Board, (5) for the Board to set an agenda for the Board meeting pursuant to the requirements of the Open Meetings Act<sup>3</sup> and (6) for the Board to rule on the ALJ's decision concerning the designation. In addition, the Board is expected to receive a high volume of these petitions because the Governor is statutorily permitted to designate up to 3,580 positions for exclusion. Taken together, these factors demonstrate that the Board's 10 day time limit for filing objections is reasonable and therefore does not deprive AFSCME of due process.

Second, the Board did not deprive AFSCME of due process by failing to provide a means by which AFSCME may obtain information to support its position because it did provide such means. Indeed, Section 1300.110 of the Board's Rules provides that a party may ask the Board to issue subpoenas for witnesses and documents. 80 Ill. Admin. Code 1300.110. While this subpoena power is only available to the parties after the ALJ determines that there are issues of fact for an oral hearing, the subpoena power available to the parties is identical to that available to the parties in all other proceedings before the Board and therefore does not deprive AFSCME of due process. See 80 Ill. Admin. Code 1200.90.

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<sup>3</sup> The Open Meetings Act provides that "an agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." 5 ILCS 120/2.02 (2012).

**b. Substantive**

CMS' designation of these positions is proper because the Objectors failed to rebut the statutory presumption that the designation is proper. The Act provides that "any designation made by the Governor... shall be presumed to have been properly made." 5 ILCS 315/6.1(d) (2012). Accordingly, the burden is on the Objector to demonstrate that the designation is not proper and that the employer has not conferred significant discretionary authority upon that position. This designation involves employees who exercise both supervisory and managerial authority. In this case, CMS designated these positions under Section 6.1(b)(5) of the Act, which provides that the position must "authorize an employee in that position to have significant and independent discretionary authority as an employee." 5 ILCS 315/6.1(b)(5) (2012). Under Section 6.1(c)(ii), a person has significant and independent discretionary authority if he or she qualifies as a supervisor as the term is defined under the NLRA and the National Labor Relations Board's (NLRB) case law or managerial within the meaning of the Illinois Public Labor Relations Act.

Under the NLRA, a supervisor is an employee who has "authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." 29 U.S.C.A. § 152 (2011).

In other words, "employees are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 supervisory functions, (2) their 'exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment,' and (3) their authority is held 'in the interest of the employer.'" NLRB v. Kentucky River Comm. Care, Inc., 532 U.S. 706, 713 (2001) (quoting NLRB v. Health Care & Retirement Corp. of America, 511 U.S. 571, 573-4 (1994); see also Oakwood Healthcare, Inc., 348 NLRB 686, 687 (2006). A decision that is "dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement" is not independent. Oakwood Healthcare, Inc., 348 NLRB at 689.

The Board must follow Illinois case law pertaining to the traditional managerial test, where applicable, to evaluate a position's authority under Section 6.1(b)(5) and (c)(i) because the

“significant and independent discretionary authority” inquiry substantially reflects the existing traditional managerial exclusion under Section 3(j) and the legislature intended the Board to apply Illinois case law to this analysis. The discussion below first addresses the nature of the tests and then addresses the applicability of Illinois case law.

The first test under Section 6.1(c)(i) is substantively similar to the traditional test for managerial exclusion articulated in Section 3(j). To illustrate, Section 6.1(c)(i) provides that a position authorizes an employee in that position with significant and independent discretionary authority if “the employee is...engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency.” 5 ILCS 315/6.1(c)(i) (2012). Similarly, Section 3(j) provides that a managerial employee is one who “is engaged predominantly in executive and management functions and is charged with the responsibility of directing the effectuation of management policies and practices.” 5 ILCS 315/3(j) (2012).

These definitions differ from each other in two primary respects, both of which indicate that the legislature intended the new definition to be broader than the traditional definition it echoes. First, the traditional definition contains a predominance element while the new definition does not. Second, the traditional definition requires the employee to be “charged with the responsibility of directing the effectuation” of policies while the new definition merely requires that the employee be “charged with the effectuation” of policies. (emphasis added) Taken together, these differences indicate that the first test under 6.1(c)(i) was intended cover a wider swath of positions than the traditional test.

The second test under Section 6.1(c)(i) also relates to the traditional test for managerial exclusion because it reflects the manner in which the courts have expanded that test. In Dep’t of Cent. Mgmt. Serv./Illinois Commerce Com’n (“ICC”), the Appellate Court observed that the definition of a managerial employee in Section 3(j) is very similar to the definition of managerial employee in National Labor Relations Board v. Yeshiva University, 444 U.S. 672 (1980). Dep’t of Cent. Mgmt. Serv./Illinois Commerce Com’n v. Ill. Labor Red. Bd. (“ICC”), 406 Ill. App. 3d 766, 776 (4th Dist. 2010)(citing Nat’l Labor Rel. Bd. v. Yeshiva Univ., 444 U.S. 672, 683 (1980)). Further, the Court noted that the ILRB, like its federal counterpart, “incorporated ‘effective recommendations’ into its interpretation of the term ‘managerial employee.’” ICC, 406 Ill. App. 3d at 776. Indeed, the Court emphasized that “the concept of effective

recommendations... [set forth in Yeshiva] applies with equal force to the managerial exclusion under the Illinois statute.” Id. In light of this analysis, the second test under Section 6.1(c)(i) is similar to the expanded traditional managerial test because it is virtually identical to the statement of law in Yeshiva which the Illinois Appellate Court and the Illinois Supreme Court have incorporated into the traditional managerial test. Id. (quoting Chief Judge of the Sixteenth Judicial Circuit v. Ill. State Labor Rel. Bd., 178 Ill. 2d 333, 339–40 (1997)). To illustrate, the U.S. Supreme Court in Yeshiva held that an employee may be excluded as managerial if “he represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy.” Yeshiva Univ., 444 U.S. at 683. Similarly, the second test under Section 6.1(c)(i) states that a position authorizes an employee with significant discretionary authority if the employee “represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency.”

In light of this precedent, the Board must apply Illinois case law addressing the traditional managerial exclusion to an analysis of a position’s executive/management functions and a position’s recommendations under Section 6.1(c)(i) because it is applicable both substantively and under the plain language of the Act. Substantively, Illinois precedent is applicable to evaluate a position’s executive and management functions because the courts make an identical qualitative assessment of a position’s duties when applying the traditional managerial test. See Dep’t of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., 959 N.E. 2d 114 (4th Dist. 2011). Notably, the Court’s quantitative assessment under the traditional test, applied pursuant to the predominance requirement, is easily separable from the qualitative assessment and therefore does not cloud the issue. Id.

Similarly, Illinois precedent is applicable to evaluate the nature of a position’s recommendation because the test in Section 6.1(c)(i) merely codifies relevant aspects of existing case law pertaining to the traditional managerial exclusion. See Dep’t of Cent. Mgmt. Serv./Ill. Commerce Com’n, 406 Ill. App. 3d at 775 (an advisory employee who makes effective recommendations can be managerial within the meaning of the Act, quoting Yeshiva).

Therefore, AFSCME has the burden to prove the designation is improperly made and the Board must consider Illinois case law with respect to traditional managerial exclusion, where

applicable, to assess a position's "significant and independent discretionary authority" under Section 6.1(b)(5) and (c)(i).

Here, AFSCME does not present enough evidence to overcome the statutory presumption that the six positions are properly designated. CMS only provided the position descriptions with their designation. However, in their objections, AFSCME noted sworn testimony given in Case No. S-RC-07-048 regarding some of the positions at issue. The objections also contain assertions from AFSCME and two of the employees at issue regarding job duties. I will consider all of this available evidence when determining whether the Governor's designation was properly made.

i. Steve Kiolbasa

Steve Kiolbasa is employed in the Department of Employment Security in the position of Field Audit Supervisor. The evidence regarding Kiolbasa's position includes the position description, Kiolbasa's testimony in Case No. S-RC-07-048, testimony by Jacqueline Jones in S-RC-07-048, statements made by Kiolbasa in his objections to this designation and statements made by AFSCME in their objections to this designation. Kiolbasa's position description lists his general duties along with 6 categories of job functions. The information provided by the position description indicates that Kiolbasa is a supervisor under the NLRA. The position description repeatedly references Kiolbasa's role in assigning work to his subordinates. It states that he works "under general direction" but otherwise describes his authority to use his independent judgment to assign work. Everything in the position statement supports the statutory presumption that Kiolbasa's designation is valid.

Kiolbasa gave sworn testimony regarding his job duties in the hearing for S-RC-07-048. Although AFSCME claims that testimony in S-RC-07-048 indicated Kiolbasa does not meet the requirements of Section 6.1(b)(5), I find that Kiolbasa's and Jones' testimony supports CMS' designation of his position. Jones' testimony supports the position description's evidence that Kiolbasa performs the supervisory task of assigning work to 7 subordinate auditors. Kiolbasa is solely responsible for assigning audits to subordinate auditors based on various factors. Kiolbasa also testified regarding the way he assigns work to his subordinate auditors. Jones testified that Kiolbasa is 100% responsible for assigning audits to specific auditors and for creating the workload for the auditors. Jones' testimony also indicates that Kiolbasa is authorized to have a role in hiring of his subordinate employees. Although some auditor promotions are automatic,

Jones testified that Kiolbasa has the authority to request to promote an employee ahead of schedule and that his approval is necessary for an auditor to be promoted from Tax Auditor I to Tax Auditor II. At the very least, the testimony in S-RC-07-048 supports the presumption that Kiolbasa assigns work. It also indicates that he may engage in the supervisory functions of hiring and promoting subordinate employees. Therefore, contrary to AFSCME's assertion, the testimony in S-RC-07-048 shows that the designation of Kiolbasa's position was properly made.

Kiolbasa himself asserts that his position is not properly designable under Section 6.1(b)(5). First Kiolbasa claims that he does not act with independent discretionary authority because his authority is subject to a bargaining unit employee. He also claims that only the Field Audit Manager (Jones) under the direction of Human Resources can engage in any of the 12 supervisory functions. Kiolbasa's claim that he does not act with independent discretionary authority because he is subordinate to a bargaining unit employee is irrelevant because the fact that his superior employee is in a bargaining unit does not change the fact that Kiolbasa assigns work. In fact, the Field Audit Manager herself testified that Kiolbasa is completely in charge of assigning work to his subordinate auditors based on a number of factors and that it is Kiolbasa alone who creates their workload. The job description and testimony in S-RC-07-048 contradict Kiolbasa's assertion that his superior employee must do all 12 supervisory functions.

Finally, AFSCME objects to the designation of Kiolbasa's position and claims that he merely reviews audits to ensure that they comply with internal rules, has no authority to give raises or promotions and reports to a bargaining unit employee. By claiming that Kiolbasa merely reviews audits to ensure that they comply with internal rules and has no authority to give raises or promotions, AFSCME appears to allege that Kiolbasa does not devote a preponderance of his time to exercising supervisory authority. However, Section 6.1(b)(5) requires analysis under the supervisory test of the NLRA which does not require an employee to devote a preponderance of his or her time to exercising supervisory authority in order to be considered a supervisor. Therefore, for the purpose of the analysis of the designation of Kiolbasa's position in this case, it does not matter how much time he spends exercising supervisory authority but merely that he has supervisory authority and does exercise it. The available evidence shows that Kiolbasa does. This coupled with the presumption that the designation is valid lead to the conclusion that the designation of Kiolbasa's position was properly made.

ii. Rex Crossland

Rex Crossland is also employed in the Department of Employment Security in the position of Field Audit Supervisor. The evidence regarding Crossland's position is almost identical to the evidence for Kiolbasa's position with the one exception that Crossland did not testify in S-RC-07-048. The employee who previously held Crossland's position, Don McClain testified regarding his job duties in the position. Crossland's position description lists his general duties along with 6 categories of job functions. The information provided by the position description indicates that Crossland is a supervisor under the NLRA. The position statement repeatedly references Crossland's role in assigning work to his subordinates. It states that he works "under general direction" but otherwise describes his authority to use his independent judgment to assign work. Everything in the position statement supports the statutory presumption that Crossland's designation is valid.

Although Crossland's predecessor testified regarding the job duties of Crossland's position in S-RC-07-048, the objectors do not assert that testimony in S-RC-07-048 shows Crossland's position is not properly designated under the Act. In light of the plain language of Crossland's job description, it is not necessary to consider testimony given regarding the executed job duties of a previous employee. Next I will consider Crossland's own objections to the designation of his petition. Crossland claims that a lawyer in CMS' Human Resources Department told him the chain of command in the Department of Employment Security would not change. This is not relevant to determining whether Crossland's position is properly designated under Section 6.1 of the Act because it does not concern Crossland's job duties. Crossland also claims that his position description lists actions that are not supervisory under the NLRA. While this may be the case, under Section 6.1(b)(5), an employee must only engage in any of the 12 supervisory functions under the NLRA. Crossland's position description, like Kiolbasa's, clearly states that he has the authority to assign work. The fact that he might not engage in any of the other 11 functions does not change the fact that his position is properly designated. Finally, Crossland alleges that he had never seen his position description before CMS filed this designation and that the proceedings in S-RC-07-048 were unfair in many ways. Both of these objections are irrelevant to determining whether Crossland's position is properly designated because they do not concern Crossland's job duties.

Finally, AFSCME objects to all of the positions designated and claims that Crossland's position description does not include any evidence that he engaged in any of the 12 supervisory functions. While Crossland's position description does not provide explicit proof that he has engaged in the supervisory task of assigning work with independent judgment, Section 6.1(d) of the Act places a heavy burden on the Objector which AFSCME is unable to overcome. CMS' designation of Crossland's position is presumptively valid. Additionally, an employee in the same job title and with the exact same position description as Crossland testified that he assigns work to subordinate employees with independent judgment. AFSCME did not make an argument or present any evidence to suggest that Crossland's job duties were different than another employee with the exact same position description. While the NLRA does require an employee's authorization to engage in a job duty to be actually executed, the presumption of validity places a heavy burden of proof on an Objector. In order to show that CMS' designation was invalid, the Objector must show that the employee does not engage in any of the 12 supervisory functions and that the employee could not engage in these functions. In this case, AFSCME claims that Crossland does not actually assign work as his position description states. However, in order to overcome the substantial presumption in Section 6.1(d), the Objector must also show that the employee in question could not engage in any of the 12 supervisory functions under the NLRA. Otherwise, I must default to the plain language of the position description which clearly states that Crossland assigns work several times. Additionally, the other evidence shows that an employee in the same job and with the same position description as Crossland, does assign work. AFSCME presents its own assertion that Crossland does not engage in any of the 12 supervisory functions when the evidence in his position description, the position description of an employee in the same job as Crossland, and testimony regarding that other employee's job duties show that Crossland does assign work. This coupled with the presumption that the designation is valid lead to the conclusion that the designation of Crossland's position was properly made.

iii. Curtis Williams

Curtis Williams is employed in the Department of Employment Security as a Payroll Manager. The evidence regarding Williams' position includes his position description, testimony regarding his job duties by his supervisor, Jim McCarte and AFSCME's objections to the designation of Williams' position. Williams' position description lists his general duties along

with 6 categories of job functions. The information provided by the position description indicates that Williams is a supervisor under the NLRA. The position description repeatedly references Williams' role in assigning work to his subordinates. The position description also repeatedly references the job duty of directing his subordinate employees' work. Finally, the position description states that Williams hears first level grievances and effectively imposes disciplinary action. It states that he works "under administrative direction" but otherwise describes his authority to use his independent judgment to assign work, direct work and discipline subordinate employees. Everything in the position statement supports the statutory presumption that Williams' designation is valid.

Williams' supervisor, Jim McCarte gave sworn testimony in S-RC-07-048 that supports the evidence in Williams' position statement that he engages in some of the 12 supervisory functions under the NLRA. McCarte testified that Williams is solely responsible for assigning work to his three subordinate employees. Williams determines to whom work should be assigned and ensures those employees complete their tasks. Like Kiolbasa, Williams considers a number of factors when assigning work. In these job functions, Williams also directs his subordinate employees' work. McCarte's testimony also shows that Williams does have the authority to discipline subordinate employees as his position description states. McCarte testified that Williams is authorized to give subordinate employees an oral or written reprimand and that he has the authority to adjust subordinate employees' grievances at level one of the contractual grievance process. However, McCarte goes on to state that Williams has not played a role in the grievance process since a reorganization that occurred around 20 years ago. This seems to negate McCarte's earlier testimony that Williams has the job duty of adjusting grievances at level one. However, it does not negate McCarte's testimony that Williams can discipline subordinate employees by giving an oral or written reprimand. Therefore, based on the testimony in S-RC-07-048, Williams has the authority to and does engage in the supervisory functions of directing, assigning and disciplining subordinate employees.

Finally, AFSCME objects to the designation of Williams' position and claims that he primarily fills out and submits forms to the Comptroller, has no role in discipline or the grievance process and spends about 80% of his time doing the same work as his subordinate employees. By claiming that Williams primarily fills out and submits forms and spends about

80% of his time doing the same work as his subordinate employees, AFSCME appears to allege that Williams does not devote a preponderance of his time to exercising supervisory authority. However, Section 6.1(b)(5) requires analysis under the supervisory test of the NLRA which does not require an employee to devote a preponderance of his or her time to exercising supervisory authority in order to be considered a supervisor. Therefore, for the purpose of the analysis of the designation of Williams' position in this case, it does not matter how much time he spends exercising supervisory authority but merely that he has supervisory authority and does exercise it. The available evidence shows that Williams does. AFSCME also alleges that Williams has no role in discipline or the grievance process. However, as noted above, Williams has the authority to adjust grievances at level one and give oral or written reprimands. While McCarte did testify that Williams has not had a role in the grievance process in around 20 years, the available evidence show he has authority to discipline subordinate employees and does not conclusively show that he has never exercised this authority. This coupled with the presumption that the designation is valid lead to the conclusion that the designation of Williams' position was properly made.

iv. Maureen Gibbons

Maureen Gibbons is employed in the Department of Employment Security as the Manager of Accounts Payable. The evidence regarding Gibbons' position includes her position description, testimony regarding her job duties by her supervisor, Jim McCarte and AFSCME's objections to the designation of Gibbons' position. Gibbons' position description lists her general duties along with 5 categories of job functions. The information provided by the position description indicates that Gibbons is a supervisor under the NLRA. The position description repeatedly references Gibbons' role in directing the work of her subordinate employees. Finally, the position description states that Gibbons effectively recommends disciplinary action and adjusts grievances. It states that she works "under administrative direction" but otherwise describes her authority to use her independent judgment to direct work and discipline subordinate employees. Everything in the position statement supports the statutory presumption that Gibbons' designation is valid.

Gibbons' supervisor, Jim McCarte gave sworn testimony in Case No. S-RC-07-048 that supports the evidence in Gibbons' position description that she engages in some of the 12

supervisory functions under the NLRA. McCarte testified that Gibbons' assigns work to her one subordinate employee and directs her subordinate employee in that work. Like Kiolbasa, Crossland and Williams, Gibbons considers a number of factors when assigning work. Gibbons is also responsible for directing her subordinate's work and ensuring that work gets done. McCarte also testified that Gibbons has the authority to give oral and written reprimands and adjust grievances at the first level. McCarte stated that Gibbons' authority and role in these areas is similar to Williams'. However, unlike his testimony regarding Williams' job duties, McCarte clearly testified that Gibbons has not had a role in discipline or grievances since her superior employee retired around 6 to 8 years ago. Based on McCarte's testimony regarding Gibbons' job duties, I conclude that she does not actively engage in all three supervisory functions that her position description states she does. McCarte's testimony supports the fact that Gibbons assigns work to her subordinate employee and directs her subordinate employee in that work. However, McCarte's testimony shows that while Gibbons' position description gives her the authority to discipline and adjust grievances, she does not actually execute that authority. Therefore, the testimony in S-RC-07-048 shows Gibbons is a supervisor under the NLRA, but only that she engages in the supervisory functions of assigning and directing work.

AFSCME claims that the testimony in S-RC-07-048 shows that Gibbons merely enters accounts according to rules and without independent discretion, spends about 80% of her time doing the same work as her subordinate employee, is not involved in discipline or grievances and does not exercise supervisory authority. The testimony in S-RC-07-048 does show that Gibbons enters accounts according to rules but it also shows that she assigns work to her subordinate employee and directs her subordinate employee's work with independent discretion. By claiming that Gibbons primarily spends about 80% of her time doing the same work as her subordinate employee, AFSCME appears to allege that Gibbons does not devote a preponderance of her time to exercising supervisory authority. However, Section 6.1(b)(5) requires analysis under the supervisory test of the NLRA which does not require an employee to devote a preponderance of his or her time to exercising supervisory authority in order to be considered a supervisor. Therefore, for the purpose of the analysis of the designation of Gibbons' position in this case, it does not matter how much time she spends exercising supervisory authority but merely that she has supervisory authority and does exercise it. The available evidence shows that Gibbons does.

AFSCME is correct to argue that Gibbons is not involved in discipline or grievances, this does not change the fact that designation of her position was properly made. Even if Gibbons does not discipline subordinate employees or have a role in their grievances, she still engages in other supervisory functions. Gibbons' position description and McCarte's testimony regarding her job duties in S-RC-07-048 show that she engages in the supervisory functions of directing and assigning work. Therefore, the designation of Gibbons' position was properly made.

v. Robert Eggebrecht

Robert Eggebrecht is employed in the Department of Employment Security in the Office of the Budget. The evidence available regarding his position includes only his position description. Eggebrecht's position description lists his general duties along with nine categories of job functions. The information provided by the position description indicates that Eggebrecht is authorized to have significant and independent discretionary authority under Section 6.1(c)(i). The position description repeatedly references Eggebrecht's role in formulating and making policy decisions. The position description also states that Eggebrecht directs expenditure analyses and revenue projections to determine potential budget surplus or deficit. It states that he is "subject to administrative direction of the Director of the Office of the Budget" but otherwise describes his authority to use his independent judgment to make policy decisions and prepare the budget. Everything in the position statement supports the statutory presumption that Eggebrecht's designation is valid.

While AFSCME claims that the job duties listed in position descriptions are only potential duties and CMS must state what an employee actually does in order for a designation to be proper under Section 6.1(b)(5), this argument ignores the statutory presumption that a designation is valid. In order to overcome the substantial presumption in Section 6.1(d), the Objector must also show that the employee in question could not engage in any of the managerial functions under the Act. Otherwise, I must default to the plain language of the position statement which clearly states several times that Eggebrecht is engaged in the executive and management functions of formulating policy and preparing the budget and that he is charged with effectuating management policies in these areas. The plain language of the position description coupled with the presumption that the designation is valid lead to the conclusion that the designation of Eggebrecht's position was properly made.

vi. Vacant Position

The final position designated by CMS is a vacant position with the position no. 37015-44-01-100-00-01. The evidence available regarding his position includes only the position description. The position description states this position is in the Department of Employment Security in the Office of the Budget. The position description lists general duties and 12 categories of job functions. The information provided by the position description indicates that this position is authorized to have significant and independent discretionary authority under Section 6.1(c)(i). The majority of the position description describes the position's job duties related to preparing the agency's budget. It states that the position is "subject to administrative direction of the Director of the Office of the Budget" but otherwise describes its authority to use independent judgment to prepare the budget. Everything in the position statement supports the statutory presumption that the designation of this position is valid.

While AFSCME claims that the job duties listed in position descriptions are only potential duties and CMS must state what an employee actually does in order for a designation to be proper under Section 6.1(b)(5), this argument ignores the statutory presumption that a designation is valid. In order to overcome the substantial presumption in Section 6.1(d), the Objector must also show that the employee in question could not engage in any of the managerial functions under the Act. Otherwise, I must default to the plain language of the position statement which clearly states that the employee in this position is engaged in the executive and management functions of preparing the budget and that he or she is charged with effectuating management policies in these areas. The plain language of the position description coupled with the presumption that the designation is valid lead to the conclusion that the designation of this position was properly made.

**V. Conclusions of Law**

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

**VI. Recommended Order**

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

**Payroll Manager** (position no. 37015-44-04-513-00-01); **Local Office Manager** (position no. 37015-44-71-221-00-01); **the position currently occupied by Robert Eggebrecht** (position no. 37015-44-04-300-10-01); **the position currently occupied by Maureen Gibbons** (position no. 37015-44-04-512-00-01); **the position currently occupied by Rex Crossland** (position no. 37015-44-71-231-00-01); and **one vacant position** (position no. 37015-44-04-100-00-01).

## **VII. Exceptions**

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300<sup>4</sup>, 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. If the original exceptions are withdrawn, then all subsequent exceptions are moot. 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 27<sup>th</sup> day of September, 2013.**

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

*Thomas R. Allen*

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**Thomas R. Allen  
Administrative Law Judge**

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<sup>4</sup> Available at [www.state.il.us/ilrb/subsections/pdfs/Section](http://www.state.il.us/ilrb/subsections/pdfs/Section) 1300 Illinois Register.pdf