STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services (Department of Revenue),	)	
Petitioner	)	
	)	Case No. S-DE-14-081
and	)	
American Federation of State, County and Municipal Employees, Council 31,	)	
Labor Organization-Objector	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

On September 27, 2013, Administrative Law Judge Deena Sanceda issued a Recommended Decision and Order finding that a designation 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), was properly made. CMS's petition designated nine Public Service Administrator positions at the Illinois Department of Revenue, all nine pursuant to Section 6.1(b)(5), but one position, held by Trevor Atkins, also pursuant to Section 6.1(b)(3).

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, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed objections to the designation of six of the positions, including that held by Atkins, pursuant to Section 6.1(b)(5). It did not object to the designation of Atkins pursuant to Section 6.1(b)(3).

Following issuance of the Recommended Decision and Order, AFSCME also 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 the 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 position designated be 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

State of Illinois, Department of Central Management Services,	)	
Employer	)	
and	)	Case No. S-DE-14-081
American Federation of State, County and Municipal Employees, Council 31,	)	
Labor Organization-Objector	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

I. BACKGROUND

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 meet one or more of the following five requirements:

1) the position must authorize an employee in the position to act as a legislative liaison;
2) the position 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) the position 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) the position 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) the position 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.[1]

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 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, 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.

[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 here.

On August 21, 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. On September 6, 2013, 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, and the objections, I find that 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.

The following nine positions at issue are all classified as Public Service Administrators (PSAs), at the Illinois Department of Revenue:

37015-25-31-110-20-01	Logue, Krista	Returns and Deposit Operations Bureau/ Document Control Deposit
37015-25-33-160-30-01	Towsley, Tim	Central Processing Alcohol Tobacco Fuel
37015-25-33-160-40-01	Vacant	Central Processing Alcohol Tobacco Fuel
37015-25-82-110-01-01	Atkins, Trevor	Taxpayer Assistance/Technical Sales Tax
37015-25-82-110-11-01	Clark, Vicki	Taxpayer Services/Taxpayer Assistant
37015-25-82-120-10-01	Irwin, Gregory	Taxpayer Services/Central Registration
37015-25-82-120-20-01	Horn, Brian	Taxpayer Services/Central Registration
37015-25-83-110-00-01	Mahr, JoEllen	Taxpayer Services/Property Tax/Special Services
37015-25-83-120-00-01	Vacant	Taxpayer Services/Property Tax Appraisals

AFSCME objects to the designation of the following six positions:

37015-25-31-110-20-01	Logue, Krista	Returns and Deposit Operations Bureau/ Document Control Deposit
37015-25-82-110-01-01	Atkins, Trevor	Taxpayer Assistance/Technical Sales Tax
37015-25-82-110-11-01	Clark, Vicki	Taxpayer Services/Taxpayer Assistant
37015-25-82-120-10-01	Irwin, Gregory	Taxpayer Services/Central Registration
37015-25-82-120-20-01	Horn, Brian	Taxpayer Services/Central Registration

37015-25-83-110-00-01	Mahr, JoEllen	Taxpayer Services/Property Tax/Special Services

CMS's designation petition indicates that the positions at issue qualify for designation under Section 6.1(b)(5) of the Act. CMS also designates the position Trevor Atkins occupies based upon both Section 6.1(b)(5) and Section 6.1(b)(3) of the Act. CMS also filed two sets of supporting documents, CMS-104 position description forms, and a summary spreadsheet for each position. The position description forms are "complete, current and accurate statement[s] of [the] position[s'] essential functions." The summary spreadsheet identifies the following information for each designated position: position number, name of incumbent, position title, whether the position is a term appointment, the e-mail address of the incumbent in the position, the statutory category/categories that serve(s) as the basis of the exemption, whether the position is subject to an active representation petition with the petition number, and the job duties as identified in the attached position description.

II. ISSUES AND CONTENTIONS

AFSCME provides general objections to the designation of Logue's position, Atkins's position, Clark's position, Irwin's position, Horn's position, and Mahr's position, and AFSCME provides objections specific to the designations of Irwin's position, Horn's position, and Mahr's position.

AFSCME generally objects because it argues that it has been denied due process, that CMS's submissions of the CMS-104 position descriptions do not accurately describe the job duties of the employment position at issue, and because the employees are not "supervisors" within the meaning of the NLRA.

AFSCME specifically objects to the designation of Irwin's position, Horn's position, and Mahr's position. AFSCME argues that Irwin has no authority to grant overtime, hire, lay off, transfer discipline and grievances because he has never been trained in those duties, and that the evaluation objective for his team are developed from above him and he is directed to use the objectives. AFSCME argues that Horn does not have any discretionary managerial or supervisory authority, and has not been trained on his role, if any, regarding discipline or grievances, and Horn spends most of his time in direct contact with taxpayers answering their questions. AFSCME argues that Mahr plays no role in discipline, has received no training on how to handle a grievance, does not have an active role in assigning work, her evaluations of

employees cannot result in reward nor discipline for her team, and she spends the vast majority of her time answering questions related to technical tasks for her team.

III. DISCUSSION AND ANALYSIS

a. due process

AFSCME was not denied due process: when the Governor filed designations for over 1,000 employment positions within one week, when CMS allegedly provided a lack of information in support of this designation petition, when the Board failed to provide pre-objection discovery, when there was a time lapse between AFSCME filing a representation petition and CMS filing this designation petition, or when the Board's General Counsel denied AFSCME's request to extend the due date to file objections to September 17, 2013.

As an administrative agency, the Board was created to carry out the Act's purpose, and the Board is bound by the provisions of the Act. See 5 ILCS 315/5 (2012). The Act states that the Board's procedures for determining whether these designations are proper must be consistent with due process. 5 ILCS 315/6.1 (2012). The purpose of procedural due process is to minimize error. See 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). Notice and an opportunity to be heard are necessary principles of procedural due process. Id.; Segal v. Dep't of Ins., 404 Ill. App. 3d 998, 1002 (1st Dist. 2010) citing People ex rel. Ill. Commerce Comm'n v. Operator Commun., Inc., 281 Ill. App. 3d 297, 302 (1st Dist. 1996). Notice must be reasonably calculated "to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Segal, 404 Ill. App. 3d at 1002, citing Hwang v. Dep't of Public Aid, 333 Ill. App. 3d 698, 707 (1st Dist. 2002).

Administrative agencies do not have the authority to question the validity of the statutes under which they were created. See Goodman v. Ward, 241 Ill. 2d 398, 411 (2011) see also Metropolitan Alliance of Police, Coal City Police Chapter No. 186, No. 6 v. Ill. State Labor Rel. Bd., 299 Ill. App. 3d 377, 379 (3rd Dist. 1998). In order to process these designations the Board added Part 1300 to its Rules and Regulations, which details the regulations the Governor, the Board and any objectors must abide by when the Governor files such designation petitions. See 80 Ill. Admin. Code Part 1300. When an administrative agency has adopted rules and regulations under its statutory authority for carrying out its duties, the agency is bound by those rules and regulations and cannot arbitrarily disregard them. Springwood Assoc. v. Health

Facilities Planning Bd. 269 Ill. App. 3d 944, 948 (4th Dist. 1995) citing Union Electric Co. v. Dep't of Revenue, 136 Ill. 2d 385, 391 (1990). Administrative rules have the force and effect of law and are presumed valid. People v. Molnar, 222 Ill. 2d 495, 508, (2006); Dep't of Cent. Mgmt. Servs., 406 Ill. App. 3d 766, 771 (4th Dist. 2011).

As an administrative agency the Board is bound to follow the Act and the Board's Rules and Regulations. The only issue is whether the objections raise an issue of fact or law that might overcome the presumption that the designations of the employment positions are consistent with Section 6.1 of the Act. Whether the Board's rules comply with due process is not within my limited scope of authority. With this in mind, I will now address the basis for AFSCME's objection that it has been denied due process.

i. Governor filed petitions designating over 1,000 employees within one week

AFSCME was not denied due process when the Governor designated over 1,000 employee positions as exempt from the collective bargaining provisions of Section 6 of the Act within one week.

Section 6.1 of the Act limits the number of designations and the time in which the Governor has to file them. The Act allows the Governor to designate up to 3,580 employee positions as exempt from the collective bargaining provisions of Section 6 of the Act between April 5, 2013 and April 5, 2014. The Act limits the Governor in the number of positions he can designate and the amount of time he has to make those designations, but the Act does not set a limit on the amount of positions in each designation petition, or require the Governor to spread out the designation petitions over the course of the one-year period. Therefore the Act does not prohibit the Governor from filing designation petitions containing over 1,000 employment positions within one week. Therefore, AFSCME was not denied due process when the Governor designated over 1,000 employees as exempt for the collective bargaining provisions of Section 6 of the Act in less than one week.

ii. lack of information provided by the State

AFSCME was not denied due process based on the designation petition's alleged lack of information.

The Act states that in order to properly designate employment positions under Section 6.1 of the Act, the State must provide 1) the employment position's job title, 2) the employment position's job duties, 3) the name of the incumbent employee, 4) the name of State agency

employing the public employee, and 5) the category under which the position qualifies for designation. 5 ILCS 315/6.1(b) (2012).

CMS provided the information required to properly designate a position under Section 6.1 of the Act. CMS submitted the CMS-104 position descriptions for each employment position, which meets the first requirement that CMS identify the employment positions' job title because the position descriptions identify the position title as Public Service Administrator, and in many cases, identifies the position's "working title." The position descriptions also meets the second requirement, that CMS identify the position's job duties, because the position descriptions are "complete, current and accurate statement[s] of position[s'] essential functions." The summary spreadsheet CMS filed with the designation petition provides the information necessary to meet the third, fourth, and fifth requirements of Section 6.1, in that it identifies the name of any incumbent in each position, the agency employing the public employee is identified as CMS, and the category under which the position qualifies for designation is identified as 6.1(b)(5). Since CMS provided the required information, the designation is presumed proper per Section 6.1(d) of the Act.

Under Section 6.1(b)(5) a position qualifies as exempt when it possesses "significant and independent discretionary authority." The CMS-104 position description is the "complete, current and accurate statement of position['s] essential functions." The requisite authority would be granted in the position description's listed job duties. Here, the relevant information is the job duties, and the CMS-104 position descriptions state the job duties of the positions at issue, thus the State did not provide a lack of information.

Under Section 6.1(b)(3) a position qualifies as exempt when it is "Rutan-exempt, as designated by the employer, and is completely exempt from [J]urisdiction B of the Personnel Code." An employee is Rutan-exempt when the employer identifies them as such on the employee's job description. A position is exempt to Jurisdiction B of the Personnel Code when the position is specifically listed as exempt in 20 ILCS 415/4(c). Since Atkins was the only person designated under Section 6.1(b)(3), and his position description states that he is Rutan-exempt, and the positions that are exempt from Jurisdiction B of the Personnel Code is listed in a public statute, CMS provided AFSCME with the relevant information.

Therefore AFSCME was not denied due process.

iii. lack of procedure to obtain additional information

AFSCME was not denied due process by the application of the Board's administrative rules which are silent to pre-objection discovery.

AFSCME's objection that the Act and the Board's Rules lack any procedure to obtain any additional information is beyond my authority to review. As stated above, the Board's function is to interpret and implement the Act. The Act and the Rules are both silent as to a procedure to obtain additional information prior to filing objections to the gubernatorial designation, therefore the Board is not required to provide a method.

As noted above, the provided position descriptions are the "complete, current and accurate statement of position[s'] essential functions." Since the Rules and the Act are silent to pre-objection discovery, and AFSCME has not demonstrated how a procedure for additional discovery prior to filing objections in this case would lead to other relevant information, the Board is not required to provide a method for such discovery. Therefore, AFSCME was not denied due process by the application of the Board's administrative rules which do not specify a method to obtain additional information prior to filing objections.

iv. time lapse between AFSCME filing a representation petition and CMS filing this designation petition

The time lapse between AFSCME filing a representation petition and CMS filing this designation petition does not support AFSCME's contention that it has been denied due process.

Section 6.1 of the Act establishes three categories of positions that can be designated based on the status of the representation petition. These categories are: 1) positions that were certified into bargaining units on or after December 2, 2008, 2) positions that were subject to pending representation petitions when Section 6.1 was added to the Act on April 5, 2013, and 3) positions that have never been certified into a collective bargaining unit. The Act requires that the Governor make any designations within 365 days from April 5, 2013, thus the Governor can make designations through April 4, 2014. Under the first category, a position that was certified into a bargaining unit up to approximately five years before the effective date of the Act is eligible to be designated under Section 6.1. In order to be certified the union must first have filed a representation petition. Given this time fame, it is evident the legislature contemplated extensive periods of time between a union filing a representation petition and the Governor filing a designation petition involving the same group of employment positions.

Under the second category, a position within any pending petition is eligible for designation. Given that the legislature contemplated a time frame of over five years between when a certified representation petition was first filed and when the gubernatorial designation was filed, it can be inferred that the absence of a time frame between when a representation petition that remains pending was filed, and when a gubernatorial designation is filed is an intentional omission. Also, because AFSCME has not explained how such a time lapse denies it due process, I find this argument unpersuasive. Therefore, AFSCME was not denied due process because of the time lapse between AFSCME's last filed representation petition and CMS's filing of this designation petition.

v. General Counsel's denial of "sufficient" additional time

AFSCME was not denied due process when the Board's General Counsel denied AFSCME's request to extend the due date to submit objections to September 17, 2013.

Section 6.1(b)(5) provides "within 60 days after the Governor make 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." Section 1300.60(a)(3) of the Board Rules and Procedures provides that "the collective bargaining representative or incumbent employee shall have 10 days from the date of service of the designation to object." See 80 Ill. Admin. Code 1300.60. As an administrative rule, the Board's time limit with in which to object to the designation petition is presumed valid.

Here AFSCME filed motions requesting extensions of time to file objections. AFSCME requested that the due date to file objections be extended from September 3, 2013 to September 17, 2013. The Board's General Counsel issued an Order granting the request by extending the due date to September 6, 2013, but denied any further extension, because that would jeopardize the Board's ability to provide due process and still meet its statutory requirement to issue a decision by October 8, 2013.

The General Counsel's refusal to allow AFSCME additional time beyond September 6, 2013, was in light of the Act's requirement that the Board issue a decision in this case within 60 days. Further, while I have no authority to question the validity of the Act or the Rules under which the Board administers the Act, it is of note that the time limits imposed by the Rules are reasonable given the statutory time frame the Board has to process each designation petition. The Act requires that the Board determine the lawfulness of the designation within 60 days from

the date of filing. CMS filed this designation petition on August 21, 2013, and the Act requires the Board to determine whether these designations comport with Section 6.1 of the Act by October 20, 2013. As the General Counsel explained in his Order, the last Board meeting before the decision is required to be issued will be held on October 8, 2013. In order for the Board to issue a decision, the Board must allow: (1) time for the parties to file objections; (2) time for the Administrative Law Judge (ALJ) to review the petition, any objections, and hold a hearing, if necessary, in order to draft, issue, and serve its Recommended Decision and Order (RDO); (3) time for the parties to file exceptions to the ALJ's RDO; (4) time for the Board and its staff to review the RDO and any exceptions; (5) time for the Board to set an agenda for the Board meeting, pursuant to the Open Meetings Act;[2] and (6) time for the Board to rule on the ALJ's recommendation before it can issue a written decision. Granting AFSCME's request to extend the objection due date to September 17, 2013, would likely leave insufficient time for the procedural protections contemplated by Part 1300 of the Board's Rules, and for the Board to issue its decision by the required deadline. Therefore, AFSCME was not denied due process when the Board's General Counsel denied AFSCME's request to extend the due date to submit objections to September 17, 2013.

Therefore, AFSCME was not denied due process when the Board applied its rules here.

b. substantive objections

CMS's designation of the positions at issue is proper because they are presumed proper under the Act, and the objections do not raise an issue that might overcome that presumption.

burden

In representation cases the burden of proof is on the employer seeking to exclude employees from bargaining units because this burden is "in accordance with the State's public policy, determined by the legislature, which is to grant public employees full freedom of association, self-organization, and designation of representatives of their own choosing." Chief Judge of the Circuit Court of Cook Cnty., 18 PERI ¶ 2016 (IL LRB–SP 2002); see Ill. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App (4th) 090966. Section 6.1 of the Act, which was added to the Act in 2013, when the legislature passed Public Act 97-1172, allows the Governor to exclude certain public employment positions from collective bargaining

[2] The Open Meetings Act requires the Board to post an agenda for each regular meeting to be posted at the Board's principal office and at the location where the meeting is to be held at least 48 hours in advance of the meeting. See 5 ILCS 120/2.02 (2012).

rights which might otherwise be granted under the Illinois Public Labor Relations Act. Section 6.1(d) of the Act also provides that any designation made under Section 6.1 "shall be presumed" proper, and the categories eligible for designation "do not expand or restrict the scope of any other provision" of the Act.

Here, since it is clear that the legislature was aware that the policy of 6.1 is diametrically opposite from the rest of the Act, the purposes of each must be treated as separate and distinct policies. The Court has held that the party opposing the public policy as demonstrated in the statutory language of the statute at issue has the burden to prove the party's position. See Id. Here, because the objectors are opposing the State's public policy as stated in Section 6.1 of the Act, the objecting parties bear the burden to demonstrate that the employees at issue are not eligible for designation. Section 6.1(d) provides that "[a]ny designation made by the Governor under this Section shall be presumed to have been properly made." In order to overcome this presumption, or even raise an issue that might overcome the presumption, the objecting party must provide specific examples for every employee at issue, demonstrating that the employee does not properly qualify for designation under the submitted category. See State of Illinois, Department of Central Management Services, 24 PERI ¶ 112 (IL LRB SP 2008). If the objector fails to even raise an issue that might overcome the presumption that the designation is proper, then the State prevails absent a hearing. See Board Rules Section 1300.609(d)(2)(B).

CMS has filed these designations under Section 6.1(b)(5). To be properly designated under this Section, the employees at issue must exercise "significant independent discretion" as managers defined by Section 6.1(c)(i) of the Act or as supervisors defined by Section 6.1(c)(ii) of the Act, incorporating Section 152 of the NLRA, 29 U.S.C § 152.

CMS has filed these designations under Section 6.1(b)(5) and one under Section 6.1(b)(5 and 6.1(b)(3).

Section 6.1(b)(5)

To be properly designated under Section 6.1(b)(5), the employees at issue must exercise "significant independent discretion" as managers defined by Section 6.1(c)(i) of the Act or as supervisors defined by Section 6.1(c)(ii) of the Act.

Manager

Section 6.1(c)(i) of the Act provides that an employee is a manager eligible of exclusion if the employee position authorizes the employee in that position to be "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."

To qualify as a managerial employee under Section 6.1 of the Illinois Public Labor Relations Act, the employee must meet one of two tests. The first test requires the employee to 1) be engaged in executive and management functions; and 2) be responsible for the effectuation of management policies and practices of the Agency. The second test requires that the employee "represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of the Agency."

To the extent the management component of Section 6.1's definition of "significant independent discretion" uses terminology from the Act's Section 3(j)'s definition of a managerial employee, it is useful to look at the court's interpretation of those terms.

Regarding the first prong of the first managerial test, the Appellate Court has noted that executive and management functions generally, but not solely, consist of ensuring that the agency operates efficiently. Dep't of Cent. Mgmt. Serv. (Pollution Control Bd.), v. Ill. Labor Rel. Bd., State Panel, 2013 IL App (4th) 110877 ¶ 25; State of Ill. Dep't of Cent. Mgmt. Serv. (Ill. Commerce Comm' n) v. Ill. Labor Rel. Bd., State Panel, 406 Ill. App. 3d 766, 774, (4th Dist. 2010) (commonly referred to as ICC). The Board has defined executive and management functions as those functions which specifically relate to the running of an agency or department, including the following: establishment of policies and procedures, preparation of the budget, or the responsibility for assuring that the department or agency operates effectively. Cnty. of Cook (Oak Forest Hospital) v. Ill. Labor Rel. Bd., 351 Ill. App. 3d 379, 386, (1st Dist. 2004); State of Ill., Dep't of CMS (Healthcare and Family Serv.), 23 PERI ¶ 173 (IL LRB-SP 2007) (commonly referred to as INA). Executive functions require more than simply the exercise of professional discretion and technical expertise. Cnty. of Cook (Oak Forest Hospital) v Ill. Labor Rel. Bd., 351 Ill. App. 3d 379, 386 (1st Dist. 2004); City of Evanston v. State Labor Rel. Bd., 227 Ill. App. 3d 955, 975 (1st Dist. 1992); INA, 23 PERI ¶ 173 (IL LRB-SP 2007); State of Ill. Dep't of Cent. Mgmt. Serv., 1 PERI ¶ 2014 (IL SLRB 1985).

The second prong of the first managerial test requires that the alleged managerial employee exercise responsibility for directing the effectuation of such management policies and

practices. Cnty. of Cook (Oak Forest Hospital) v. Ill. Labor Rel. Bd., 351 Ill. App. 3d at 386; INA, 23 PERI ¶ 173 (IL LRB-SP 2007); Dep't of Cent. Mgmt. Serv., 2 PERI ¶ 2019 (IL SLRB 1986). An employee directs the effectuation of management policy when he/she oversees or coordinates policy implementation by developing the means and methods of reaching policy objectives, and by determining the extent to which the objectives will be achieved. Cnty. of Cook (Oak Forest Hospital) v. Ill. Labor Rel. Bd., 351 Ill. App. 3d at 387; INA, 23 PERI ¶ 173 (IL LRB-SP 2007); State of Ill. Dep't of Cent. Mgmt. Serv. (Public Aid), 2 PERI ¶ 2019 (IL SLRB 1986). Such individuals must be empowered with a substantial measure of discretion to determine how policies will be affected. Cnty. of Cook (Oak Forest Hospital) Cnty. of Cook (Oak Forest Hospital) v. Ill. Labor Rel. Bd., 351 Ill. App. 3d at 387; INA, 23 PERI ¶ 1736 (IL LRB-SP 2007).

The second, alternative managerial test requires that the employee's "effective recommendations" direct the effectuation of management policies. Because superiors often make decisions based on a variety of factors, the "litmus test" of whether the employees' recommendations are influential is whether the recommendations "almost always persuade the superiors." ICC**,** 406 Ill. App. 3d at 777 citing Nat. Labor Rel. Bd. v Yeshiva Univ., 444 U.S. 672, 677 (1980).

Supervisor

Section 6.1(c)(ii) of the Act provides that an employee is a supervisor eligible of exclusion if the employee position authorizes the employee in that position to "qualif[y] 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."

The NLRA defines a supervisor as "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly 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(11).

Employees are supervisors if (1) they hold the authority to engage in any of the above listed 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); see also Oakwood Healthcare, Inc., 348 NLRB 686, 687 (2006). Independent judgment is a key issue in determining whether an employee is a supervisor under the NLRA. See Id. at 689. Judgment is not independent if it is controlled by a higher authority, such as verbal instructions, or detailed instructions or regulations. Id.

In order to meet the burden to raise an issue that might overcome the presumption that the designation is proper, the objector must provide specific examples to negate each test, because if even one of the three tests is met, then the objector has not sufficiently raised an issue, and the designation is proper.

In order to raise an issue that the employees at issue are not managerial the objector must negate both managerial tests for every employee at issue. To negate the first managerial test the objector must demonstrate, or effectively argue that the employees do not meet at least one of the elements of the test. It can do this by demonstrating that the employee is not engaged in executive and management functions, or that the employee is not responsible for the effectuation of management policies and practices of the Agency. In order to negate the second managerial test, the objector must demonstrate that the employee does not actually provide any recommendations regarding the effectuation of management policies, or that its recommendations are not "effective" because the recommendations do not almost always persuade the decision-maker.

In order to raise an issue that the employees at issue are not supervisors under Section 6.1 of the Act, the objector must negate at least one of the three prongs of the supervisor test. Negating the first prong may prove to be the most tedious, because it only requires that the employee hold the authority to engage in *any one* of the listed supervisory functions. In order to negate this prong, the objector must provide specific examples where the employee was directed not to engage in the supervisory function. The objector must provide the example for every indicia listed. To negate the second prong, the objector must demonstrate or effectively argue that the employee does not use independent discretion in exercising the supervisory duties. In order to negate the third prong of the supervisory test the objector must demonstrate or

effectively argue that the employee's authority to engage in the supervisory functions is not held in the interest of the employer, that it is done to benefit the employee or some third party.

Section 6.1(b)(3)

To be properly designated under Section 6.1(b)(3), the employment position at issue must be Rutan-exempt, as designated by the employer, and be completely exempt from jurisdiction B of the Personnel Code.

In order to raise an issue that might overcome the presumption that the designation under this section is proper, the Objector must provide specific evidence that the employment position is either not Rutan-exempt and/or is not completely exempt from jurisdiction B of the Personnel Code.

i. CMS-104 position descriptions

1. verification

AFSCME's objection that the position descriptions are insufficient because CMS did not verify their accuracy is factually incorrect. The position descriptions were submitted as an attachment to the designation petition. The petition requires that the individual filing on behalf of the Governor attest that "the statements contained [within the petition and its attachments] are true to the best of [his] knowledge and belief." The objection that the position descriptions are insufficient because CMS did not verify their accuracy is factually incorrect and therefore does not raise an issue that might overcome the presumption that this designation is proper.

2. evidence of job duties

Any objection that there is "no evidence that employees could exercise all or any of the duties listed [in the position description] without being actually given the authority," does not present an issue that might overcome the presumption that the designation is proper. To be properly designated under Section 6.1(b)(5) "the position must authorize an employee in that position to have 'significant and independent discretionary authority' as an employee," with *authorize* being the operative word. Here, the position descriptions are the authorizations that grant the employees the ability to exercise the job functions stated therein. Whether the employees actually exercise the authority granted within the position description does not determine whether the position is properly designated under Section 6.1(b)(5). To prevail and demonstrate that the employee lacks the authorization, AFSCME must provide a counter example. Simply stating that CMS provided no evidence that the employee actually exercised its

authority is insufficient. Therefore, since AFSCME has not provided specific examples to support its contention that the employees at issue are not in fact authorized to exercise the duties as described in the position descriptions, its argument does not raise an issue that might overcome the presumption that this designation is correct.

3. testimony that CMS-104 position descriptions are inaccurate

AFSCME's argument that testimony taken during a previous representation hearing indicating that the position descriptions are not accurate, does not overcome the presumption that the designations are correct, because AFSCME references testimony regarding employment positions not at issue in this case, and does not provide evidence that the position descriptions at issue are incorrect.

AFSCME's argument that many of the CMS-104 position descriptions are 20 years old and that there has been "ample testimony" that such position descriptions are inaccurate, is inconsistent with the facts as presented in this case. In support of its argument AFSCME cites to testimony taken in Case No. S-RC-07-048. However, the hearing for Case No. S-RC-07-048 involved 37 employees at 10 different state agencies. Ill. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App 4th 090966 ¶ 121. AFSCME is referring to testimony regarding the status of an employee at Illinois Department of Employment Security, whose job description was last updated in 1993.[3] The employees at issue in the designation petition are employed by the Department of Revenue. A general argument that testimony that a specific position description was inaccurate does not by extension mean that all position descriptions are inaccurate.

AFSCME's argument that the position description is too old to be accurate only applies to Atkins' employment position.[4] AFSCME and the employees at issue were all served with the petition, the position descriptions, and a spreadsheet summary. AFSCME filed objections to this designation, based on the documents CMS submitted. Here, AFSCME has not objected that the information within the Atkins' position description, or within any of the position descriptions at issue is inaccurate.

[3] See Appendix, tr. 546 - 549.

[4] Logue's position description was updated in 2012, Atkins' position description was updated in 1996, Clark's position description was updated in 2012, Irwin's position description was updated in 2011, Horn's position description was updated in 2013, and Mahr's position description was updated in 2012.

AFSCME next argues that even more recently updated position descriptions are also inaccurate, and cites testimony regarding the position of Field Auditor Supervisor at Illinois Department of Employment Security.[5] For the reasons listed above, because two of the position descriptions within one agency are inaccurate, does not by extension mean that all position descriptions in every agency are inaccurate. Therefore, because of the lack of specific evidence to support AFSMCE's argument that the position descriptions at issue are inaccurate, AFSCME has failed to raise an issue of fact or law that might overcome the presumption that the designations are proper.

ii. Kristen Logue

AFSCME fails to raise an issue that might overcome the presumption that the Logue's position has been designated properly under Section 6.1 of the Act because in order to raise an issue that might overcome the presumption that the designation is proper, AFSCME must provide specific examples that demonstrate Logue does not qualify for the exemption under the supervisory test or either of the managerial tests. AFSCME only argues that Logue is not a supervisor under the NLRA. Since it does not provide specific evidence that negates the supervisory test and both managerial tests, AFSCME has failed to raise an issue that might overcome the presumption that the designation of Logue's position is proper under Section 6.1 of the Act.

iii. Trevor Atkins

AFSCME fails to raise an issue that might overcome the presumption that the Atkins' position has been designated properly under Section 6.1 of the Act because in order to raise an issue that might overcome the presumption that the designation is proper, AFSCME must provide specific examples that demonstrate Atkins does not qualify for the exemption under the supervisory test or either of the managerial tests and must provide specific evidence that Atkins doesn't qualify for designation under Section 6.1(b)(3) of the Act because he is not Rutan-exempt and he is not exempt from Jurisdiction B of the Personnel Code. AFSCME only argues that Atkins is not a supervisor under the NLRA, since it does not provide specific evidence that negates the supervisory test and both managerial tests, nor even address Atkins' designation under Section 6.1(b)(3). Thus, AFSCME has failed to raise an issue that might overcome the presumption that the designation of Atkins' position is proper under Section 6.1 of the Act.

[5] See Appendix, tr. 338, 340, 344, 348, 355-359.

iv. Vicki Clark

AFSCME fails to raise an issue that might overcome the presumption that Clark's position has been designated properly under Section 6.1 of the Act because in order to raise an issue that might overcome the presumption that the designation is proper, AFSCME must provide specific examples that demonstrate that Clark does not qualify for the exemption under the supervisory test or either of the managerial tests. AFSCME only argues that Clark is not a supervisor under the NLRA, since it does not provide specific evidence that negates the supervisory test and both managerial tests, it has failed to raise an issue that might overcome the presumption that the designation of Clark's position is proper under Section 6.1 of the Act.

v. Gregory Irwin

AFSCME fails to raise an issue that might overcome the presumption that Irwin's position has been designated properly under Section 6.1 of the Act because in order to raise an issue that might overcome the presumption that the designation is proper, AFSCME must provide specific examples that demonstrate Irwin does not qualify for the exemption under the supervisory test or either of the managerial tests. AFSCME only provides some of the examples necessary to negate the supervisory test, but does not address the managerial test. Furthermore, AFSCME only negates some of the supervisory indicia identified in the test. Since AFSCME does not provide sufficient specific evidence that negates the supervisory test and both managerial tests, it has failed to raise an issue that might overcome the presumption that the designation of Logue's position is proper under Section 6.1 of the Act.

vi. Brian Horn

AFSCME's argument that Horn does not have any discretionary managerial or supervisory authority, and has not been trained in his role, if any, regarding discipline or grievances, and that Horn spends most of his time in direct contact with taxpayers answering their questions fails to raise an issue that might overcome the presumption that the Horn's position has been designated properly under Section 6.1 of the Act. AFSCME's general objection that Horn has no discretionary managerial or supervisory authority is inconsistent with this position description, which states that Horn is "delegated total responsibility for the administration and management of the Bingo/Account Maintenance II unit." While AFSCME is specific in its objection that Horn has not been trained regarding discipline or grievances, those are only two of the possible indicia that AFSCME must argue that Horn does not possess in

order to negate the first prong of the supervisory test. Since AFSCME provides no specific evidence that neither managerial tests are met, and it provides insufficient evidence to demonstrate that the supervisory test is not met, AFSCME has failed to raise an issue that might overcome the presumption that the designation of Horn's position is proper under Section 6.1 of the Act.

vii. JoEllen Mahr

AFSCME's argument that Mahr plays no role in discipline, has received no training on how to handle a grievance, does not have an active role in assigning work, cannot reward or discipline her team by manse of her evaluations of employees, and spends the vast majority of her time answering questions related to technical tasks for her team does not raise an issue that might overcome the presumption that the Mahr's position has been designated properly under Section 6.1 of the Act. While AFSCME is specific in its objections going to supervisory indicia of authority, these objections only demonstrate that Mahr does not actually exercise a few of the several supervisory indicia, but does not address whether she has the *authority to* exercise any of the indicia stated in the supervisory test. Since AFSCME provides no specific evidence that neither managerial tests are met, and it provides insufficient evidence to demonstrate that the supervisory test is not met, AFSCME has failed to raise an issue that might overcome the presumption that the designation of Mahr's position is proper under Section 6.1 of the Act.

IV. CONCLUSION

Pursuant to Section 1300.60 of the Board's Rules, I find that the designation is proper based solely on the information submitted to the Board and the objections fail to overcome the presumption that the designation is proper under Section 6.1 of the Act.

V. RECOMMENDED ORDER

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

37015-25-31-110-20-01	Returns and Deposit Operations Bureau/ Document Control Deposit
37015-25-33-160-30-01	Central Processing Alcohol Tobacco Fuel

37015-25-33-160-40-01	Central Processing Alcohol Tobacco Fuel
37015-25-82-110-01-01	Taxpayer Assistance/Technical Sales Tax
37015-25-82-110-11-01	Taxpayer Services/Taxpayer Assistant
37015-25-82-120-10-01	Taxpayer Services/Central Registration
37015-25-82-120-20-01	Taxpayer Services/Central Registration
37015-25-83-110-00-01	Taxpayer Services/Property Tax/Special Services
37015-25-83-120-00-01	Taxpayer Services/Property Tax Appraisals

VI. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300,[6] parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order in briefs in support of those exceptions no later than 3 days after service of this recommended decision and order. Exceptions shall be filed with the Board by electronic mail at an electronic mail address designated by the Board for such purpose, ILRB.Filing@illinois.gov, and served on all other parties via electronic mail at their e-mail addresses as indicated on the designation form. Any exception to a ruling, finding conclusion or recommendation that is not specifically urged shall be considered waived. A party not filing timely exceptions waives its right to object to this recommended decision and order.

Issued at Chicago, Illinois this 27th day of September, 2013.

STATE OF ILLINOIS
ILLINIOIS LABOR RELATIONS BOARD
STATE PANEL

/s/ *Deena Sanceda*
Deena Sanceda
Administrative Law Judge

[6] Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf

APPENDIX
Recommended Decision and Order Case No. S-DE-14-081

S-RC-07-048 evidentiary documents added to the record

1. Testimony of James McCarte regarding Maureen Gibbons, tr. 508, 543-549.
2. Testimony of Jacqueline Jones, tr. 338, 340, 344, 348, 355-359.