STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services (Office of the State Fire Marshall),	)	
Petitioner	)	
and	)	Case No. S-DE-14-131
American Federation of State, County and Municipal Employees, Council 31,	)	
Labor Organization-Objector	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Section 6.1 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012), allows the Governor to designate certain employment positions with the State of Illinois as excluded from collective bargaining rights which might otherwise be available under Section 6 of the Act. This case involves such designations made on the Governor's behalf by the Illinois Department of Central Management Services (CMS). On January 3, 2014, Administrative Law Judge (ALJ) Deena Sanceda issued a Recommended Decision and Order (RDO) in Case No. S-DE-14-131, finding the designations comport with the requirements of Section 6.1. We agree.

CMS's petition designates for exclusion five positions at the Office of the State Fire Marshall: 1) Division Manager – Division of Special Projects held by Joanna K. Schrage; 2) Northern Regional Administrator – Division of Fire Prevention held by Joseph M. August, Sr.; 3) Northern Regional Administrator – Division of Petroleum and Chemical Safety held by Scott R. Johnson; 4) Southern Regional Administrator – Division of Fire Prevention held by Mary R.

LeVault; and 5) Division Manager – Arson Division, a vacant position. All five positions are classified as Public Service Administrator Option 1 positions, and all were designated for exclusion pursuant to Section 6.1(b)(5) of the Act. Section 6.1(b)(5) allows designation of positions which "authorize an employee in that position to have significant and independent discretionary authority as an employee." Section 6.1(c) defines that phrase as follows:

> For the purposes of this Section, a person has significant and independent discretionary authority as an employee if he or she (i) 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 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 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 American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed timely objections to the petition pursuant to Section 1300.60 of the rules promulgated by the Board to effectuate Section 6.1 of the Act, 80 Ill. Admin. Code Part 1300. Most were generally applicable to all five positions, but others were specific to the "Regional Administrator" positions held by August, Johnson and LeVault. The ALJ rejected the general objections. She found that the positions held by August, Johnson and LeVault met the supervisory component of Sections 6.1(b)(5) and 6.1(c)(ii), and found it unnecessary to determine whether they also met the managerial component of Sections 6.1(b)(5) and 6.1(c)(i). She concluded that all five positions were properly designated.

AFSCME filed timely exceptions to the ALJ's RDO pursuant to Section 1300.130 of the Board's rules, 80 Ill. Admin. Code §1300.130. Based on our review of the exceptions, the record, and the RDO, we reject the exceptions and adopt the RDO. For the reasons articulated in

the ALJ's RDO, we find the designations comport with the requirements of Section 6.1, and direct the Executive Director to issue a certification consistent with our finding.

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 Chicago, Illinois, on January 16, 2014; written decision issued at Springfield, Illinois, January 21, 2014.

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and	)	Case No. S-DE-14-131
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 (the Board) on or after December 2, 2008, 2) positions which were the subject of a petition for such certification pending on April 5, 2013 (the effective date of Public Act 97-1172), or 3) positions which have never been certified into a collective bargaining unit. Only 3,580 of such positions may be so designated, and, of those, only 1,900 positions which have already been certified to be in a collective bargaining unit may be designated.

Moreover, to properly qualify for designation, the employment position must meet one or more of five requirements identified in Sections 6.1(b) of the Act. Relevant to this case, Section 6.1(b)(5) of the Act allows the designation of an employment position if the position authorizes an employee in that position to have "significant and independent discretionary authority as an employee," which under section 6.1(c) of the Act means that 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 that within 60 days after the designation, the Board, in a manner consistent with due process, determine whether the designation comports with the requirements of Section 6.1. This subsection also specifies that the qualifying categories identified in subsection 6.1(b) "are operative and function solely within this Section and do not expand or restrict the scope of any other provision contained in this Act." The Board promulgated rules to effectuate Section 6.1, which became effective on August 23, 2013, 37 Ill. Reg. 14,070 (Sept. 6, 2013). See 80 Ill. Admin. Code Part 1300.

On November 19, 2013, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation petition pursuant to Section 6.1 of the Act and Section 1300.50 of the Board's Rules. The petition seeks to exclude the following Option 1 Public Service Administrators (PSAs) at the Office of the State Fire Marshall (OSFM):

Position Number	**Working Title**	**Incumbent**
37015-50-50-007-00-84	Division Manager - Division of Special Projects	Joanna K. Schrage
37015-50-50-110-00-16	Northern Regional Administrator - Division of Fire Prevention	Joseph M. August, Sr.
37015-50-50-530-00-16	Northern Regional Administrator - Division of Petroleum and Chemical Safety	Scott R. Johnson
37015-50-50-130-00-00	Southern Regional Administrator - Division of Fire Prevention	Mary R. LeVault
37015-50-50-800-00-84	Division Manager - Arson Division	Vacant

AFSCME objects to the designation of every position within the designation petition.

CMS filed the designation petition with an attached summary spreadsheet, and for each position it submitted a CMS-104 position description, an organizational chart, and an affidavit completed by the OSFM's Chief of Staff, Jim Watts.

On November 27, 2013, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME), pursuant to Section 1300.60(a)(3) of the Board's Rules, filed objections to the designation petition.[1]

Based on my review of the designation petition, the documents submitted in support of the designation petition, the objections, and the arguments and documents submitted in support of those objections, I find the designations to have been properly submitted and are consistent with the requirements of Section 6.1 of the Act. Consequently, I recommend that the Executive Director certify the designation of the positions at issue as set out below, and, to the extent necessary, amend the applicable certification of the exclusive representative to eliminate the existing inclusion of these positions within the collective bargaining unit.

II. ISSUES AND CONTENTIONS

A. Designation Petition

CMS's designation petition and the attached documentation indicate that the positions at issue qualify for designation under Section 6.1(b)(5) of the Act, and, in 2010, the Board certified the positions into bargaining unit RC-63.

1. job duties and responsibilities

The job duties of each position are identified in the summary spreadsheet and in the submitted CMS-104 position descriptions.[2]

i. Joseph August, Sr.

The summary spreadsheet identifies that the job duties of the Northern Regional Administrator for the Division of Fire Prevention are to serve as the direct supervisor/manager of the 11 full time field subordinates in the Chicago regional office by assigning their work schedules, reviewing notices of violations and inspection reports, and by taking corrective

[1] On December 2, 2013, the undersigned informed the parties that there were discrepancies between the position numbers identified in the CMS-104s, the organizational chart, and the summary spreadsheet, for several of the positions at issue. On December 4, 2013, CMS submitted a Personnel History Report reflecting that the position numbers changed and are not accurately reflected on the CMS-104's but that the authorized duties in the CMS-104s are current. CMS also submitted an updated CMS-104 for the position Schrage holds dated 10/1/2013.

[2] CMS submitted the duties for all five of the positions at issue, in the interest of brevity, this RDO only includes the duties of the positions to which AFSCME specifically objects.

actions independently as needed. As the incumbent of this position, August ensures that subordinates are properly trained so that they can perform their jobs' essential functions. August recommends and issues discipline. He conducts performance evaluations, and has the sole discretion in allowing variances or changes to corrective actions by Fire Prevention Act violators. Finally, August interprets, and is charged with effectuating agency policies and procedures for field staff and the community regulated.

The CMS-104, in relevant part, identifies the following as a "current and accurate statement of the position duties and responsibilities" of the Northern Regional Manager for the Division of Fire Prevention. Under the administrative direction of the Division Director, as the incumbent, August travels throughout the state to manage the field staff in the Division of Fire Prevention's northern region involving the fire prevention inspection program, and serves as the working supervisor to the Northern Region's Fire Prevention Inspector Is and IIs. August "travel[s] throughout the state to direct the activities of the *Southern* Regional field staff for the Fire Prevention Division." He "[d]irects the activities in the *Southern* Area for the Fire Prevention with other divisions of the agency and with other state and local agencies" by assisting in developing the Fire Prevention Inspectors' monthly schedules and assignments to ensure timely submission of reports and recommendations to the Assistant Division Director, and by coordinating office procedures pertaining to correspondence, supplies, forms, and reports within the areas of responsibility as directed by the Assistant Division Director. August is authorized to supervise 5 Fire Prevention Inspector Is, 9 Fire Prevention Inspector IIs, and 4 Fire Prevention Inspector Trainees. Finally, he reviews reports to determine continued compliance with the Illinois Rules and Regulation for Fire Prevention and Safety.

ii. Scott R. Johnson

The summary spreadsheet identifies that the job duties of the Statewide Administrator[3] for the Division of Petroleum and Chemical Safety are, to serve as a direct line supervisor/manager of 16 field subordinates, and to oversee the City of Chicago underground storage tank grant program. As the position's incumbent, Johnson exercises independent

[3] The petition and Johnson's CMS-104 identify his job title as the *Northern Regional Administrator for the Division of Petroleum and Chemical Safety*; and the job duties in the summary spreadsheet and Watts' affidavit identify Johnson as the *Statewide Administrator* based out of the Chicago Regional Office. Since the discrepancy in Johnson's duties only relate to whether he has supervisory authority over the "Storage Tank Safety Specialists in the *Northern Region*" or over "all division field staff *statewide*," and AFSCME does not address this inconsistency, the RDO will analyze his authority over the Storage Tank Safety Specialists, wherever their geographic location.

authority in job assignments, and he ensures that subordinate staff is properly trained so that they can perform their jobs' essential functions. He conducts interviews, recommends hiring, recommends performance rewards as needed, and recommends and issues disciplinary actions. Johnson conducts performance evaluations and work product reviews. Finally, he ensures that agency policies are carried out and enforced by all subordinate staff.

The CMS-104, in relevant part, identifies the following as a "current and accurate statement of the position duties and responsibilities" for the Northern Region Field Manager of the Petroleum and Chemical Safety Division. Under the administrative direction of the Division Director, the position's incumbent implements policy, organizes and plans field operations, supervises a staff of 10 highly trained Storage Tank Safety Specialists. As the incumbent, Johnson is responsible for effective and efficient inspections, emergency incident responses, and executes full line supervisory authority and responsibility. He supervises the Storage Tank Safety Specialists' scheduling and training. Johnson assigns and reviews the Specialists' work, provides guidance, counsels them regarding work performance, reassigns them to meet day-to-day operating needs, approves their time off, prepares and signs their performance evaluations, and reviews their activity reports. He serves as a policy implementer for field operations, including tank removal, repair, installation and hazardous incident response. Finally, Johnson is responsible to develop procedures, and to create forms and plans for the development and execution of filed activities relating to above and below ground tanks.

iii. Mary LeVault

The summary spreadsheet identifies that the job duties of the Southern Regional Administrator for the Division of Fire Prevention are to serve as the direct supervisor/manager of the Marion regional office. As the position's incumbent, LeVault supervises six full time field subordinates by assigning their work schedules, reviewing notices of violations and inspection reports, and making corrective actions independently as needed. She ensures that her subordinates are properly trained so that they can perform the essential functions of the job. LeVault recommends and issues discipline. She conducts performance evaluations and has the sole discretion in allowing variances or changes to corrective actions by violators of the Fire Prevention Act. She interprets, and is charged with effectuating agency policies and procedures for field staff and the community.

The CMS-104, in relevant part, identifies the following as a "current and accurate statement of the position duties and responsibilities" of the Southern Regional Manager for the Division of Fire Prevention. Under administrative direction of the Division Director, as the incumbent, LeVault travels throughout the state to manage the field staff in the Division of Fire Prevention's southern area region involving the fire prevention inspection program, and serves as the working supervisor to the Southern Region's Fire Prevention Inspector Is and IIs. She "travel[s] throughout the state to direct the activities of the Southern Regional field staff for the Fire Prevention Division." LeVault "[d]irects the activities in the Southern Area for the Fire Prevention with other divisions of the agency and with other state and local agencies" by "assist[ing] in the monthly development of schedules and assignments of Fire Prevention Inspectors, to ensure timely submission of reports and recommendations to the Assistant Division Director," and by coordinating office procedures pertaining to correspondence, supplies, forms, and reports within the areas of responsibility as directed by the Assistant Division Director. LeVault is authorized to supervise Fire Prevention Inspector Is and IIs, and Fire Prevention Inspector Trainees. She reviews all Life Safety Code Reports and makes recommendations to correct deficiencies. She contacts Fire Prevention Inspectors and providers of facilities regarding deficiencies and methods to correct the deficiencies to ensure that facilities come into compliance with the Illinois Rules and Regulation for Fire Prevention and Safety. Finally, she assigns complaints to the Fire Prevention Inspectors.

2. affidavits

The OFSM's Chief of Staff, Jim Watts, wrote affidavits asserting that all the positions at issue are authorized to have independent discretionary authority as managers, as defined by Section 6.1(c)(i) of the Act, and as supervisors, as defined by Section 6.1(c)(ii) of the Act.

i. managerial authority

Watts' affidavits assert that the employment positions at issue are "authorized to be engaged in executive and management functions of the [OSFM] and charged with the effectuation of management policies and practices of the [OSFM] or represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of the [OFSM]." Watts states, as the Northern Regional Administrator, August "is charged with effectuating the [OFM's] policies in ensuring field staff is properly providing services for the northern half" of Illinois. As the Statewide Administrator, Johnson "is charged

with effectuating the [OSFM's] policies for all division field staff statewide." As the Southern Regional Administrator, LeVault "is charged with effectuating the [OSFM's] policies in ensuring field staff is properly providing services for the southern half" of Illinois.

ii. supervisory authority

Watts' affidavits assert that the employment positions at issue are "authorized to, in the interest of the [OSFM], among other things, assign, responsibly to direct, and review the work of [the positions'] subordinates with independent judgment. The position[s are] authorized to assign and review work, counsel staff regarding work performance, take corrective action, monitor work flow, and reassign staff to meet day to day operating needs."

B. Objections

AFSCME's objections include attachments of questionnaires completed by three of the employees at issue. AFSCME makes general objections applicable to all the positions in the designation petition, and specific objections applicable only to the designation of the positions that August, Johnson, and LeVault hold.

1. general objections

AFSCME argues that CMS should bear the burden of persuasion, that the CMS-104s and affidavits provide insufficient bases for designation, that this RDO should consider the fact that the job duties of the positions at issue have not changed since the positions were certified into a collective bargaining unit, that the positions at issue are not those of managers or supervisors within the meaning of the NLRA, and argues that the designations are improper on constitutional grounds.

2. specific objections and supporting questionnaires

AFSCME's specific objections are based upon factual information provided by the employees through a "questionnaire to ascertain the job duties the at-issue employees actually exercise." Relevant to the instant case are the following questions:

> **9)** If you have employees who report directly to you[,] do you have authority to either do any of the following or to effectively recommend to management any of the following with respect to those employees:
>
> **a)** Hire employees? **b)** Transfer employees? **c)** Suspend employees? **d)** Lay off employees? **e)** Recall employees from layoff? **f)** Promote employees? **g)** Discharge employees? **h)** Assign employees? **i)** Reward employees? **j)** Discipline employees?

Only LeVault's questionnaire includes the following subpart to question 9:

> **k)** Direct employees, if yes explain specifically what direction you provide to your direct reports.

i. August

Regarding August's position, AFSCME argues that because the CMS-104 attributes many of the duties to the Southern Region, and August is the Northern Regional Administrator, "there can be no showing that August completes those duties unless evidence is presented to the contrary." In his questionnaire, August states that the portions in the CMS-104 that refer to the southern region are "[n]ot applicable" because they are "directed to the Southern Region and not the Northern Region."

AFSCME also argues that August is not a supervisor because he "exercises none of the enumerated supervisory functions with independent authority." In response to question 9a-j of the questionnaire, August states that he has "no authority" to hire, transfer, suspend, lay off, recall from lay off, promote, discharge, assign, reward, or to discipline employees, and that all "first level grievances go [his] manager." Specifically, August states that only one of his subordinates has ever been discharged, and he was "not informed" of the reason for the discharge nor was he "privy to any of the decision making that resulted in [t]his discharge." Regarding his authority to assign subordinates, August states that all Fire Prevention Inspectors are hired into an assigned county, he has no authority to reassign the inspectors from those assigned counties, but, he has limited authority to request that inspectors conduct additional inspections in counties that are temporarily without an inspector. August also states, his CMS-104 incorrectly identifies the "titles and position numbers [of the employees] reporting to [him]."

Finally, AFSCME argues that August is not a manager because he neither writes nor recommends the adoption of OSFM polices. August states that he is "only involved [in writing policies or recommending the adoption of policies] to the extent that [he] recommend[s] that a policy or clarifying memo is necessary because of outdated procedures or rules that do not adequately address a problem that [he] or [his] subordinates have [encountered]." He has "no authority to write or [to] issue such policy." August states that he has no role in the budget process, no authority to decide how policies or legislation will be implemented, and finally, that he does not recommend any actions that control or implement legislation that affects the OSFM.

ii. Johnson

AFSCME argues that Johnson is not a supervisor because he "exercises none of the enumerated supervisory functions with independent judgment." In response to question 9a-j of the questionnaire, Johnson states that he has "no authority" to hire, transfer, suspend, lay off, recall from lay off, promote, discharge, assign, reward, or discipline any employees, and that all "first level grievances go [his] manager." Regarding is authority to assign employees, Johnson states that Storage Tank Safety Specialists are hired to an assigned county, and he has no authority to reassign the employee from the assigned county, but that he has the *limited* authority to reassign the work of vacant territories to these inspectors, and will temporarily shift work between inspectors to balance their workload. AFSCME argues that Johnson's ability to assign work does not require independent judgment because he only reassigns inspectors in order to balance workloads because of temporary geographic voids.

AFSCME also argues that Johnson is "not a *professional* employee because he does not write or recommend the adoption of agency policies." He "is merely involved in the necessary technical/professional expertise to allow the agency to function efficiently."[4] Johnson states that he is "only involved [in writing policies or recommending the adoption of policies] to the extent that [he] recommend[s] that a policy or clarifying memo is necessary because of outdated procedures or rules that do not adequately address a problem that [he] or [his] subordinates have [encountered]. " He has "no authority to write or [to] issue such policy." Johnson states that he has no role in the budget process, no authority to decide how policies or legislation will be implemented, and finally, that he does not recommend any actions that control or implement legislation that affects the OSFM.

iii. LeVault

AFSCME argues that "LeVault specifically refutes that she has the authority to independently exercise any of the enumerated supervisory functions with regard to her subordinate employees." In response to questions 9a-k of the questionnaire, LeVault states that she does not have the authority to hire, transfer, suspend, lay off, recall from lay off, promote, discharge, assign, reward, discipline, or to direct employees, and that "all step [one] grievances go to the Division Manager and the Division Director." Regarding her authority to assign her

[4] Whether AFSCME's assertion that "Johnson is not a *professional* employee" is intended to be "Johnson is not a *managerial* employee" is not detrimental to AFSCME's position because the RDO will address AFSCME's general objection regarding professional employees, and because AFSCME's argument that Johnson does "not write or recommend the adoption of agency policies" is relevant to his managerial status and will be analyzed accordingly. See infra III A 5 and III B 2 ii.

subordinates, LeVault states that Fire Prevention subordinates are hired by her supervisors and are assigned a territory. She assigns inspection requests to inspectors based upon the territory the inspections are located. She states that, she has "no knowledge of 'developing monthly schedules and assignments for inspectors' that are submitted to the Assistant Division Director. [She] did not know that Fire Prevention had an Assistant Director." Regarding her authority to direct her subordinates, LeVault explains that:

> [she] direct[s] inspectors with clarification on occupancy classifications, inspection types, and applicable codes and Rules and Regulations in accordance with the State adopted codes and State Statutes. [She] explain[s] policies created and established by [her] superiors. [Her] responsibilities are to ensure that inspectors are applying the code properly and uniformly throughout the Region.

AFSCME also argues that LeVault does not exercise independent judgment because she simply follows the Division Manager's instructions and directions. LeVault states that when she reassigns inspectors to complete inspections in a territory that temporarily lacks an assigned inspector, the Division Manager must give prior approval of the reassignment.

AFSCME argues that LeVault is "merely exercising her professional/technical expertise," she does not develop programs for her division, and she is excluded from attending executive and management meetings. LeVault states that her job requires knowledge of the State adopted codes, rules and regulations applicable to fire prevention; she does not have the authority to adopt policies. The fact that she is excluded from attending Executive and Management meetings demonstrates that she has not been authorized, nor has she engaged in executive and management functions. AFSCME argues that LeVault does not develop programs for the OSFM, nor does she assist the Division Manager in developing policies. LeVault states that the Division Manager directs the Fire Prevention Division activities, and she follows the Division Manager's "instructions and directives[.]" She does not direct methods to improve the standard and living conditions for all persons residing in state institutions. She "answer[s] code questions in accordance with the State adopted Life Safety Code and Rules and Regulations."

III. <u>DISCUSSION AND ANALYSIS</u>

AFSCME fails to overcome the presumption that the designations of the positions at issue are proper under Section 6.1 of the Act.

A. General Objections

1. 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 Cir. 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 allows the Governor to exclude certain public employment positions from collective bargaining rights which might otherwise be granted under the Act. It specifically allows the exclusion of 1900 positions that are already certified into bargaining units, and [does not expand or restrict the scope of any other provision" of the Act. Section 6.1(d) also provides that any designation made under Section 6.1 "shall be presumed" proper.

Since it is clear that policy of Section 6.1 is diametrically opposite from the purpose of the rest of the Act, Section 6.1 must be treated as a separate and distinct policy. See Ill. Dep't Cent. Mgmt. Serv. (Ill. State Police) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 109 (IL LRB-SP 2013) appeal pending, No. 13-3600 (Ill. App. Ct. 1st Dist.). 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 Ill. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App (4th) 090966. Here, because AFSCME is opposing the State's public policy as stated in Section 6.1 of the Act, the burden is on AFSCME to demonstrate that the employees at issue are not eligible for designation. Ill. Dep't Cent. Mgmt. Serv. (Ill. State Police) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 109 (IL LRB-SP 2013), No. 13-3600 (Ill. App. Ct. 1st Dist.). 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 objector must provide specific evidence, demonstrating that each employee does not properly qualify for designation under the submitted category of the Act. See Id. If the objector fails to even raise an issue that *might* overcome the presumption that the designation is proper, then the State prevails absent an oral hearing. Id.; see also Board Rules Section 1300.609(d)(2)(B).

2. sufficiency of job duties identified in the CMS-104s and affidavits

i. CMS-104s

AFSCME argues that the submitted CMS 104's and affidavits only identify *potential* responsibilities that can be given to the employee within that position. This argument fails to meet AFSMCE's burden because it is inconsistent with Board precedent, ignores the "job duties" identified in the spreadsheet attached to the designation petition, and because it concedes that the designations meet the statutory requirement.

The Board has previously determined that CMS-104's are sufficient to meet the "job duties" requirement of Section 6.1 of the Act. See Id.; State of Ill. Dep't of Cent. Mgmt. Serv. and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 80 (IL LRB-SP 2013) appeal pending, No. 13-3454 (Ill. App. Ct. 1st Dist.). AFSCME ignores the "job duties" included on the spreadsheet attached to the designation petition. Assuming *arguendo* that the CMS-104s are insufficient, the information contained in the summary spreadsheet also identifies the positions' job duties. Finally, this argument also fails because Section 6.1 requires that the employees within the position be *authorized* to exercise such responsibilities, and AFSCME concedes that the "evidence submitted by CMS […] demonstrates that the at-issue positions are *authorized* to complete such job duties." Thus, because the Act specifies that the authorization is required, and AFSCME concedes that the CMS 104s and the submitted affidavits provide authorization, further analysis is unnecessary. However, because this argument is inconsistent with the remainder of AFSCME's objections, and I do not believe that AFSCME is conceding its entire position, I will analyze the remaining objections.

ii. affidavits

AFSCME argues that the affidavits written by Watts are vague and insufficient. It argues that the affidavits are vague because they do not identify the policy that the employees effectuate or are authorized to effectuate, and because Watts does not explain how he is familiar with the job duties of the at-issue positions. AFSCME also argues that the affidavits are insufficient because they only identify the positions' potential responsibilities. These arguments are unpersuasive. As with the CMS-104 position descriptions, since the designations are presumed proper, the objector bears the burden to raise an issue that might overcome the presumption. Without citing a specific requirement that is not met under Section 6.1 of the Act, claiming that the information provided is insufficient either because it is vague or comes from an insufficiently identified source does not raise a legitimate issue. See Ill. Dep't Cent. Mgmt. Serv. (Dep't of

Revenue) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 110 (IL LRB-SP 2013, appeal pending, No. 13-3601 (Ill. App. Ct. 1st Dist.).

3. job duties since certification into a bargaining unit

AFSCME's argument that the Board should consider that there is no showing that the job duties of the positions have changed since the Board certified the positions into a bargaining unit, does not recognize, as the Board has, that "Section 6.1 is a new creation." State of Ill. Dep't of Cent. Mgmt. Serv. and Am Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 80 (IL LRB-SP 2013). "It does not modify pre-existing means of determining collective bargaining units, but is a self-contained and entirely new means of decreasing the number of State employees in collective bargaining units." Id. The certification the positions into bargaining units under the Act prior to the addition of Section 6.1 did not prevent the legislature from subsequently amending the Act to provide for the removal of these employment positions from the bargaining unit. Id. Thus, the fact that the positions' job duties have not change since their certification into the bargaining unit is not relevant to whether the designation of the positions at issue comport with the requirements of Section 6.1 of the Act.

4. constitutionality

Section 6.1(d) of the Act gives the Board the authority to determine whether the designation of the employment positions at issue comport with Section 6.1 of the Act. As an administrative agency, the Board has no authority to rule that the Illinois Public Labor Relations Act, as amended by Public Act 97-1172, is unconstitutional, either on its face or as applied. Id., (*citing* Goodman v. Ward, 241 Ill. 2d 398, 411 (2011)); see also Metro. 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) (noting that administrative agencies lack the authority to invalidate a statute on constitutional grounds or even to question its validity). Analysis of the Act's constitutionality, on its face, or as applied here, is beyond my limited authority as an administrative law judge for the Board. Thus, the constitutional objections are immaterial to my determination of whether the designations of the positions at issue comport with Section 6.1 of the Act.

5. professional v. managerial

AFSCME contends that Section 6.1 incorporates the NLRA's managerial definition, and that the Board must distinguish between professional employees and managerial employees in

reviewing these designations. These arguments are unpersuasive because the Board has already held that Section 6.1 of the Act *does not* incorporate the NLRA's manager definition, nor does Section 6.1 distinguish between managerial and professional employees. Ill. Dep't Cent. Mgmt. Serv. (Dep't of Agric.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 84 (IL LRB-SP 2013) appeal pending, No. 13-3598 (Ill. App. Ct. 1st Dist.).

6. supervisors or managers under the NLRA

The objections that the positions at issue are neither supervisors nor managers under the NLRA fail to raise an issue that might overcome the presumption that the designations are proper because Section 6.1 of the Act does not incorporate the NLRA definition of manager, and AFSCME provides no evidence to overcome the presumption that the employment positions are properly designated.

Proper designation under Section 6.1(b)(5) requires the employees at issue to be authorized to 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. Id.

i. manager

Section 6.1(c)(i) of the Act provides that an employment position is managerial, eligible for exclusion if the position authorizes the incumbent employee 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 *charged with* 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." Id.

a. first managerial test

The first managerial test identified in Section 6.1 is very similar to the traditional managerial test under the managerial exclusion, identified in Section 3(j) of the Act. The relevant distinction lies within the second prong of the test where Section 3(j) requires that the

employee is *responsible for directing* the effectuation of policies, and Section 6.1 requires only that the employment position is authorized to be *charged with* the effectuation of policies.[5] 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. Id. (*citing* 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) ("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. Ill. Dep't Cent. Mgmt. Serv. (Dep't of Veterans Affairs) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 111 (IL LRB-SP 2013), appeal pending, No. 13-3618 (Ill. App. Ct. 1st Dist.) (*citing* 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) ("INA"). Executive functions require more than simply the exercise of professional discretion and technical expertise. Ill. Dep't Cent. Mgmt. Serv. (Dep't of Veterans Affairs) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 111 (IL LRB-SP 2013) (*citing* 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).

As noted above, the first managerial test is very similar to the traditional managerial test under the managerial exclusion as identified in Section 3(j) of the Act. However, because the definition of a managerial employee under 6.1 is broader than under Section 3(j), an employment position may be managerial under Section 6.1 of the Act, and not under Section 3(j). Under Section 3(j) an employee is managerial, when he *directs the effectuation* of management policies when he 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

[5] Section 3(j) also requires that the employee *predominately* engaged in executive and management functions. Predominately has been interpreted to mean, a predominance of time. See Cnty. of Cook v. Ill. Labor Rel. Bd., Local Panel, 351 Ill. App. 3d 379, 384 (1st Dist. 2004). Section 6.1 has no predominance of time requirement.

achieved. Ill. Dep't Cent. Mgmt. Serv. (Ill. State Police) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 109 (IL LRB-SP 2013) (*citing* Cnty. of Cook (Oak Forest Hospital) v. Ill. Labor Rel. Bd., 351 Ill. App. 3d at 387). Such individuals must be empowered with a substantial measure of discretion to determine how policies will be affected. Id. (*citing* 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); Dep't of Cent. Mgmt. Serv., 2 PERI ¶ 2019 (IL SLRB 1986). Under Section 6.1, to meet the second prong of the managerial test, the employee is charged with the effectuation of management policy when it has the authority to *carry out* the department or agency's mission.

b. second managerial test

The second managerial test requires that the position holder "represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency." 5 ILCS 315/6.1(c)(i). As with the first managerial test under Section 6.1, this test also relates to the managerial test under Section 3(j) of the Act because it codifies the manner in which the courts have interpreted and expanded the test under Section 3(j). The language of the second managerial test under Section 6.1(c)(i) of the Act is essentially identical to the language the United States Supreme Court used in its interpretation of the NLRA in Nat'l Labor Rel. Bd. v. Yeshiva Univ. 444 U.S. 672, 683 ("Yeshiva")). Like the Supreme Court in interpreting the NLRA, the Illinois Appellate Court has "incorporated 'effective recommendations' into its interpretation of the term 'managerial employee'" under Section 3(j) of the Act. ICC, 406 Ill. App. at 776 (*quoting* Chief Judge of the Sixteenth Jud. Cir. v. Ill. State. Labor Rel. Bd., 178 Ill. 2d 333, 339-40 (1997). The Appellate Court noted that "the concept of effective recommendations [as articulated in Yeshiva,] applies with equal force to the managerial exclusion under the Illinois statute." Id.

Thus, under the Section 6.1(c)(i) of the Act, an employee is managerial when he makes "effective recommendations" that control management functions or that implement the department's mission. See Ill. Dep't Cent. Mgmt. Serv. and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 85 (IL LRB-SP 2013) appeal pending, No. 13-3604 (Ill. App. Ct. 1st Dist.). The Court also noted that 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* Yeshiva, 444 U.S. at 677).

ii. supervisor

Section 6.1(c)(ii) of the Act provides that an employee is a supervisor eligible for exclusion if the employment 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 [NLRB]."

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. Ill. Dep't Cent. Mgmt. Serv. (Dep't of Veterans Affairs) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 111 (IL LRB SP-2013) (*citing* 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 within the meaning of the NLRA involves a degree of discretion that rises above the "routine and clerical," and is personal judgment based on personal experience, training, and ability. Id. at 693. Judgment is not independent if it is controlled by a higher authority, such as verbal or detailed instructions, or regulations. Id.

iii. burden

In order to meet its burden to overcome the presumption that the designation is proper, the objector must provide specific examples to negate each applicable test for each employment position, because if even *one* of the applicable tests is met, then the objector has not raised an issue to overcome the presumption, and the designation is proper. Ill. Dep't Cent. Mgmt. Serv. and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 85 (IL LRB-SP 2013).

In order to overcome the presumption that the employees at issue are not managerial under Section 6.1, the objector must negate both managerial tests for every employee. Id. To negate the first managerial test the objector must provide factual evidence to support its argument that the employees do not meet at least one of the elements of the test. Id. It can do this by demonstrating that the employee is not engaged in executive and management functions, or that the employee is not engaged in the effectuation of management policies and practices of the OSFM. Id. 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 the recommendations are not "effective" because they do not almost always persuade the decision-maker. Id.

In order to overcome the presumption that the employment positions are supervisors under Section 6.1 of the Act, the objector must negate at least one of the three prongs of the supervisor test for each position. Ill. Dep't Cent. Mgmt. Serv. (Dep't of Veterans Affairs) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 111 (IL LRB-SP 2013). 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. Id. In order to negate this prong, the objector must provide specific examples where the employee was directed not to engage in the supervisory function. Id. The objector must provide this example for every function listed. Id. To negate the second prong, the objector must demonstrate or effectively argue that the employee does not use independent judgment in exercising the supervisory duties. Id. 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. Id.

AFSCME's general objections and arguments in support of these objections do not meet its burden. Its argument that the positions at issue are not managerial under the NLRA is not relevant, because the NLRA managerial definition is not controlling authority under Section 6.1 of the Act. See Id. While the second managerial test does originate from the Supreme Court's interpretation of the NLRA, this interpretation has since been adopted by the Illinois Appellate Court and the Board in their interpretations of the Act. Thus, this RDO is only bound by interpretations of the Act, not by interpretation of the NLRA. AFSCME's argument that all the

positions lack significant independent discretionary authority as managers under Section 6.1 also fails to overcome the presumption that they have such authority because AFSCME does not provide evidence to support its contention that the position held by Joanna Schrage, and the Arson Division Manager are not managerial. See Id. Regarding AFSCME's argument that all the positions are not supervisory under the NLRA definition is insufficient to overcome the presumption that Joanna Schrage's position and the Arson Division Manager are supervisory, because AFSCME does not provide any factual evidence that these positions lack significant independent discretionary authority as supervisors.

Thus, because AFSCME's general objections are insufficient to overcome the presumption that the designation of the positions at issue are proper, and it has not submitted specific objections to the designation of Joanna Schrage's position or to the designation of the Arson Division Manager, the designation of these positions are proper under section 6.1(b)(5) of the Act.

B. Specific Objections

Neither AFSCME's specific objections, nor the factual information provided as the basis of the objections overcome the presumption that the positions held by August, Johnson, and LeVault are designated properly.

1. August

AFSCME does not overcome the presumption that August's position is designated properly under Section 6.1(b)(5) of the Act, because fails to demonstrate that August lacks independent discretionary authority as an employee.

i. authorized regional area

AFSCME argues that because the CMS-104 attributes many of the duties to the Southern Region, and August is the Northern Regional Administrator, there is no presumption that the duties identified within the CMS-104 are correct, and this places the burden on CMS to demonstrate that August "completes those duties" as identifies in the CMS-104. This argument is misplaced because AFSCME is burdened to demonstrate that the position is not authorized to have independent discretionary authority, and AFSCME give no plausible reason to shift this burden. The fact that the CMS-104 partially misidentifies the region in which August is authorized to exercise these duties, does not address whether the position is authorized to exercise these duties in the region that August is authorized to exercise his duties. August

addresses the duties identified by stating that they are "[n]ot applicable" because they are "directed to the Southern Region and not the Northern Region," not that they incorrectly identify duties that he is authorized to perform in the Northern Region. Also, even if the CMS-104 was not considered, the job duties identified in the spreadsheet and in Watts' affidavit are sufficiently support CMS's contention that the position August holds is authorized to have independent discretionary authority under Section 6.1 of the Act.

ii. supervisory employee

AFSCME fails to negate any prong of the supervisor test.[6]

a. supervisory function - responsibly to direct

A putative supervisor has the authority to responsibly to direct subordinates when his employer has delegated to him the authority to "direct the work and the authority to take corrective action if necessary." Oakwood Healthcare, Inc., 348 NLRB at 692.

Where the authority to "assign" is limited to "designat[ing] an employee to a place, appoint an employee to a time, such as a shift or an overtime period, or give significant overall duties to an employee;" the "responsibly to direct" is two pronged, and requires that the putative supervisor have the authority to direct the employee by "decid[ing] what job to be undertaken next or who shall do it," (internal quotations omitted) and this is done responsibly when there is "a prospect of adverse consequences for the putative supervisor if he[] does not take these steps." Oakwood Healthcare Inc., 348 NLRB at 689. Under Section 6.1(d) of the Act there is a presumption that this test is met, and the objector is burdened to present evidence to the contrary.

AFSCME argues that August exercises none of the enumerated supervisory functions with independent judgment, and as factual support references the questionnaire where August denied performing any of the supervisory functions listed on the questionnaire. The questionnaire only addresses 11 of the 12 supervisory functions, it does not address whether August's position is authorized to "responsibly to direct" his subordinate employees. Thus, AFSCME's objections do not address whether August's position is authorized to "responsibly to direct." AFSCME's argument lacks factual support, because August only denied performing the 11 functions identified in the questionnaire. Since AFSMCE does not provide evidence, or even

[6] AFSCME argues "August exercises none of the enumerated supervisory functions with independent judgment," This statement is ambiguous as to whether August exercises the supervisory functions, but he does not do so with independent judgment; or, he neither exercises supervisory functions, nor does he exercise the functions with independent judgment. Since AFSCME bears the burden to negate *any* prong of this test, I will interpret its argument as the latter.

address this supervisory function, in accordance with Section 6.1(d) of the Act, the presumption stands, and the August's position is authorized to responsibly to direct its subordinates.

Thus, because the evidence presented does not address all of the enumerated supervisory functions, and without even addressing the veracity of AFSCME's arguments regarding the functions August does deny having the authority to perform, AFSCME does not meet its burden to demonstrate that August is not authorized to exercise *any* of the supervisory functions.

b. independent judgment

As noted above, to negate the second prong, AFSCME must demonstrate that August's authority to engage in *any one* of the enumerated supervisory duties is done without independent judgment. See Id. at 692. Independent judgment involves a degree of discretion that rises above the "routine and clerical," and is personal judgment based on personal experience, training, and ability. Id. at 693. Judgment is not independent if it is controlled by a higher authority, such as verbal instructions, or detailed instructions or regulations. Id.

AFSCME argues that August does not use independent judgment when reassigning his subordinates geographic locations, and states that "[i]n total, it appears that all decision making is made by [August's] superiors and the agency's legal department," and cites to August's questionnaire to support this argument. However, since August's questionnaire does not address his authority to responsibly to direct his subordinates, it similarly does not address whether he uses independent judgment when exercising this authority. Thus, the presumption that August's position is authorized to use independent judgment in exercising such direction stands.

c. authority held in the interest of the employer

The third prong of the supervisory test requires that the employee's "authority is held in the interest of the employer." NLRB v. Kentucky River Comm. Care, Inc., 532 U.S. 706 at 713. AFSCME does not address whether August's authority is held in the interest of the OSFM.

AFSCME's objections do not negate any of the three prongs of the supervisory test, thus it has not overcome the presumption that August has independent discretionary authority as a supervisor as defined by Section 6.1(c)(ii) of the Act.

iii. managerial employee

CMS asserts that as the Northern Regional Administrator, August "is charged with effectuating the [OSFM's] policies in ensuring field staff are properly providing services for the northern half of the State of Illinois," and AFSCME is burdened with negating this assertion.

However, because I have determined that August's employment position is authorized to exercise independent discretionary authority as a supervisor under Section 6.1 of the Act, it is unnecessary to address whether his position is also authorized to exercise independent discretionary authority as a manager under the Section 6.1. See Ill. Dep't Cent Mgmt Serv. and Am Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 85 (IL LRB-SP 2013) (accepting the ALJ's conclusion that since the employee's designation was proper under one subsection of Section 6.1, it was unnecessary to determine whether he also qualified for designation under a separate subsection of the Act).

Therefore, AFSCME fails to overcome the presumption that August's position is properly designated under section 6.1(b)(5) of the Act.

2. Johnson

AFSCME fails to overcome the presumption that Johnson's position is designated properly under Section 6.1(b)(5) of the Act, because it does not demonstrate that Johnson lacks independent discretionary authority as an employee.

i. supervisory employee

AFSCME fails to negate any prong of the supervisory test.

a. supervisory function - responsibly to direct

AFSCME fails to raise an issue to overcome the presumption that Johnson's position has independent discretionary authority as a supervisor under the Act for the same reason its arguments fail regarding August, because AFSCME does not address the "responsibly to direct" function. Since AFSMCE does not provide evidence, or even address whether Johnson's position is authorized to responsibly to direct his subordinates, the presumption stands, and Johnson's position is authorized to responsibly to direct his subordinates. Since AFSCME must negate every supervisory function and it does not address the "responsibly to direct" function, I find it unnecessary to analyze the veracity of its arguments and factual evidence regarding the other enumerated supervisory functions.

b. independent judgment

To negate the second prong, AFSCME must demonstrate that Johnson's authority to responsibly to direct his subordinates is not done with independent judgment. See Oakwood Healthcare Inc., 348 NLRB at 692. AFSCME makes the same argument as it did with August: that Johnson does not use independent judgment when reassigning his subordinates geographic

locations, and states that "[i]n total, it appears that all decision making is made by his superiors and the agency's legal department." Also like August, AFSCME cites to Johnson's questionnaire to support this argument. Since AFSCME makes the same argument it made regarding August's use of independent judgment, and that argument failed, its argument regarding Johnson's use of independent judgment similarly fails: because Johnson's questionnaire does not address his authority to responsibly to direct his subordinates, it similarly does not address whether he uses independent judgment when exercising this authority. Thus, the presumption that Johnson's position is authorized to use independent judgment in exercising such direction stands.

c. authority held in the interest of the employer

The third prong of the supervisory test requires that the employee's "authority is held in the interest of the employer." NLRB v. Kentucky River Comm. Care, Inc., 532 U.S. 706 at 713. AFSCME does not address whether Johnson's authority is held in the interest of the OSFM.

AFSCME's objections do not negate any of the three prongs of the supervisory test, thus it has not overcome the presumption that Johnson has independent discretionary authority as a supervisor as defined by Section 6.1(c)(ii) of the Act.

ii. managerial employee

CMS asserts, that as the Statewide Administrator, Johnson "is charged with effectuating the Agency's policies for all division field staff statewide," however because I have already determined that Johnson's position has been properly designated as having independent discretionary authority as a supervisor, it is unnecessary to address whether he also possesses the same authority as a manager.

Therefore, AFSCME fails to overcome the presumption that the designation of Johnson's position is proper under section 6.1(b)(5) of the Act.

3. LeVault

AFSCME does not overcome the presumption that LeVault's position is designated properly under Section 6.1(b)(5) of the Act, because fails to demonstrate that LeVault lacks independent discretionary authority as an employee.

i. supervisory employee

AFSCME fails to negate any prong of the supervisory test.

a. supervisory functions

AFSCME fails to meet its burden to show that LeVault lacks the authority to engage in any of the enumerated supervisory functions, because it neither demonstrates nor effectively argues that LeVault lacks the authority to assign, or to responsibly to direct her subordinates.

1) assign

AFSCME does not demonstrate that LeVault lacks the authority to assign employees. In its interpretation of Section 2(11) of the NLRA, the NLRB has defined "assign" as to designate an employee to a place, appoint an employee to a time, such as a shift or an overtime period, or give significant overall duties to an employee. Oakwood Healthcare Inc., 348 NLRB at 689. The job duties in the summary spreadsheet identify that LeVault "assigns work schedules." The CMS-104 states that her position is authorized to "assist in the monthly development of schedule and assignments of Fire Prevent Inspectors, *to ensure* timely submission of reports and recommendations to the Assistant Division Director." To negate these assertions, the objector must demonstrate that LeVault is *not authorized* to create the Inspector's schedules, nor is she authorized to assign them inspections to complete. AFSCME's objection to LeVault's authority to assign her subordinates refers to her ability to assign the subordinates' geographic location, and LeVault states that she has "no knowledge of 'developing monthly schedules and assignments for inspectors' that are submitted to the Assistant Division Director. [She] did not know that Fire Prevention had an Assistant Director." Her response misunderstands the enumerated job duty. Thus, AFSCME's objections, and LeVault's responses insufficiently address whether she has the authority to assign her subordinates' work schedule or whether she has the authority to assign her subordinates inspections to complete.

2) responsibly to direct

AFSCME's objections do not sufficiently address whether LeVault's position has the authority to responsibly to direct her subordinates. Unlike August's and Johnson's questionnaires, LeVault's questionnaire does inquire whether she has the authority to direct her employees. However, in response to this inquiry LeVault stated that she provides her subordinates with "clarifications on occupancy classifications, inspection types, and applicable codes[,]" and these actions are not applicable to whether her position has the authority to "decide what job to be undertaken next or who shall do it." See Id. LeVault's response to the question of her authority to direct largely refers to the factual information she provides to her subordinate inspectors, not whether she has the authority to "decide what job [the inspectors

will] undertake next or who shall do [the job]." Also, to responsibly to direct is two pronged, LeVault did not appropriately address her authority to direct her subordinates, and the questionnaire does not address whether there is "a prospect of adverse consequences for the putative supervisor if []she does not take these steps." See Id. Thus, AFSCME has failed to demonstrate that LeVault lacks the authority to responsibly to direct her subordinate employees.

b. independent judgment

AFSCME's objections do not adequately address whether LeVault's authority to assign her subordinates requires her to use independent judgment. AFSCME argues that LeVault assigns "inspections in accordance with the inspector's prescribed territories as set forth by the Division Manager." The Division Manager assigns the locations, but there is no evidence that when LeVault assigns the employee's their work schedules that she is complying with any direction, thus AFSCME has not demonstrated that LeVault lacks independent judgment in assigning the inspectors their work schedule.

c. in the interest of the employer

AFSCME does not address whether LeVault's authority is held in the OSFM's interest.

Thus, because AFSCME's objections do not negate any of the three prongs of the supervisory test, it has not overcome the presumption that LeVault's position has independent discretionary authority as a supervisor as defined by Section 6.1(c)(ii) of the Act.

ii. managerial employee

CMS asserts, that as the Southern Regional Administrator, LeVault "is charged with effectuating the Agency's policies in ensuring field staff are properly providing services for the southern half of the State of Illinois." As with August and Johnson, because I have already determined that LeVault's position has been properly designated as having "independent discretionary authority" as a supervisor under Section 6.1, I find it is unnecessary to address whether she also possesses the same authority as a manager under the same section.

Therefore, AFSCME fails to overcome the presumption that LeVault's position is properly designated under section 6.1(b)(5) 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 because AFSCME's objections do not overcome the presumption that the designations are 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 at the Illinois Department of State Fire Marshall are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

Position Number	Working Title
37015-50-50-007-00-84	Division Manager - Division of Special Projects
37015-50-50-110-00-16	Northern Regional Administrator - Division of Fire Prevention
37015-50-50-530-00-16	Northern Regional Administrator - Division of Petroleum and Chemical Safety
37015-50-50-130-00-00	Southern Regional Administrator - Division of Fire Prevention
37015-50-50-800-00-84	Division Manager - Arson Division

VI. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300,[7] 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 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 argued 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 3rd day of January, 2014.

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

STATE OF ILLINOIS
ILLINIOIS LABOR RELATIONS BOARD
STATE PANEL

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