

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

State of Illinois, Department of)	
Central Management Services)	
(Department of Natural Resources),)	
)	
Petitioner)	Consolidated Case Nos.
)	S-DE-14-140
and)	S-DE-14-141
)	S-DE-14-142
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	
)	
Amina Everett & Megan Buskirk,)	
)	
Employee-Objectors)	

**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) in three petitions filed in Case Nos. S-DE-14-140, S-DE-14-141 and S-DE-14-142. Administrative Law Judge (ALJ) Sarah Kerley consolidated these cases for decision, and on January 9, 2014, issued a Recommended Decision and Order (RDO), finding the designations comport with the requirements of Section 6.1. We agree with her assessment.

All three petitions designate for exclusion positions at the Illinois Department of Natural Resources. The petition filed in Case No. S-DE-14-140 designated 13 positions classified as Public Service Administrator (PSA) Option 1 positions; that filed in Case No. S-DE-14-141 designated three positions classified as PSA Option 2 positions; and that filed in Case No. S-DE-14-142 designated three positions classified as Human Resource Specialist positions. All positions 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.

Two of the employees occupying designated positions, PSA Option 1 Amina Everett and PSA Option 2 Megan Buskirk, filed timely objections to the petitions 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. The American Federation of State, County and Municipal Employees, Council 31 (AFSCME) also filed objections. Most were generally applicable to all 19 positions, but others were specific to three of the PSA Option 1 positions (those held by Everett, Jennifer Aherin, and Valerie Keener), to the PSA Option 2 (that held by Buskirk), or to two of the Human Resource Specialist positions (those held by Jason Brewer and Lori Elston). CMS subsequently

withdrew from its petitions the designations of the positions held by Everett and Buskirk, leaving 17 positions at issue.

The ALJ rejected the general objections, and also rejected each of the specific objections. She found Aherin's PSA Option 1 position with the working title of Federal Aid Fiscal Review Manager met both the supervisory and the managerial components of Sections 6.1(b)(5) and 6.1(c)(i) and (ii). She found the same with respect to Keener's PSA Option 1 position with the working title of Manager of the Division of Education. She found the Human Resources Specialist position held by Jason Brewer met the second test for the managerial component of Sections 6.1(b)(5) and 6.1(c)(i), while that held by Lori Elston met the first, two-part test for the managerial component. There were no specific objections with respect to the other positions, and the ALJ therefore concluded that the designations remaining at issue comport with the requirements of Section 6.1.

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. We find the designations comport with the requirements of Section 6.1, and direct the Executive Director to issue a certification consistent with that 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.

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

State of Illinois, Department of Central)	
Management Services (Department of Natural)	
Resources),)	
)	
Employer,)	
)	
and)	Case No. S-DE-14-140
)	S-DE-14-141
American Federation of State, County)	S-DE-14-142
and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector,)	
)	
and)	
)	
Amina Everett and Megan Buskirk,)	
)	
Employee-Objectors.)	

**ADMINISTRATIVE LAW JUDGE'S
RECOMMENDED DECISION AND ORDER**

Section 6.1 of the Illinois Public Labor Relations Act, 5 ILCS 315/6.1 (2012) (Act) *added by* Public Act 97-1172 (effective 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 (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 properly qualify for designation, the employment position must meet one or more of the following five requirements:

- (1) it must authorize an employee in the position to act as a legislative liaison;
- (2) it must have a title of or authorize a person who holds the position to exercise substantially similar duties as a Senior Public Service Administrator, Public Information Officer, or Chief Information Officer, or as an agency General Counsel, Chief of Staff, Executive Director, Deputy Director, Chief Fiscal Officer, or Human Resources Director;
- (3) it must be designated by the employer as exempt from the requirements arising out of the settlement of Rutan v. Republican Party of Illinois, 479 U.S. 62 (1990), and be completely exempt from jurisdiction B of the Personnel Code, 20 ILCS 415/8b through 8b.20 (2012), *see* 20 ILCS 415/4 through 4d (2012);
- (4) it must be a term appointed position pursuant to Section 8b.18 or 8b.19 of the Personnel Code, 20 ILCS 415/8b.18, 8b.19 (2012); or
- (5) it must authorize an employee in that position to have “significant and independent discretionary authority as an employee” by which the Act means the employee is either
 - (i) engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency or represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency; or
 - (ii) qualifies as a supervisor of a State agency as that term is defined under Section 152 of the National Labor Relations Act, 29 U.S.C. 152(11), or any orders of the National Labor Relations Board interpreting that provision or decisions of courts reviewing decisions of the National Labor Relations Board.

Section 6.1(d) creates a presumption that any such designation made by the Governor was properly made. It also requires the Illinois Labor Relations Board to determine, in a manner consistent with due process, whether the designation comports with the requirements of Section 6.1, and to do so within 60 days.¹

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.

As noted, Public Act 97-1172 and Section 6.1 of the Illinois Public Labor Relations Act became effective on April 5, 2013, and allow the Governor 365 days from that date to make such designations. The Board promulgated rules to effectuate Section 6.1, which became effective on August 23, 2013, 37 Ill. Reg. 14,066 (September 6, 2013). These rules are contained in Part 1300 of the Board’s Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On November 25, 2013, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation petitions pursuant to Section 6.1(b)(5) of the Act and Section 1300.50 of the Board’s Rules. The following 13 PSA-Option 1 positions at the Illinois Department of Natural Resources (“Department” or “DNR”) are identified for designation in case number S-DE-14-140:

<u>Position No.</u>	<u>Incumbent</u>
37015-12-00-000-20-01	
37015-12-00-710-00-01	Gwillim, Terry
37015-12-00-750-00-01	
37015-12-32-000-40-01	
37015-12-32-200-02-01	
37015-12-32-710-10-01	Suthard, David
37015-12-05-500-00-01	Aherin, Jennifer
37015-12-05-500-20-01	Everett, Amina
37015-12-07-220-00-01	
37015-12-07-600-00-01	Hopkins, Jeff
37015-12-07-700-00-01	
37015-12-07-800-00-01	Christian, Nicky
37015-12-07-500-00-01	Keener, Valerie

The following three PSA-Option 2 positions at DNR are identified for designation in case number S-DE-14-141:

<u>Position No.</u>	<u>Incumbent</u>
37015-12-05-210-00-01	Eddinger-Rueter, Karen
37015-12-05-330-10-01	Appleman, Bob
37015-12-05-400-00-01	Buskirk, Megan

The following three Human Resources (“HR”) Specialist positions at DNR are identified for designation in case number S-DE-14-142:

<u>Position No.</u>	<u>Incumbent</u>
19693-12-00-001-11-01	Brewer, Jason
19693-12-00-740-00-01	Johnson, Sabrina
19693-12-00-750-01-01	Elston, Lori

In support of its petitions, CMS filed position descriptions (CMS-104s) for each position, affidavits from individuals with knowledge of the duties and responsibilities of the at-issue positions, and a summary spreadsheet. The spreadsheet indicates that the PSA-Option 1 positions at issue were certified on January 20, 2010; the PSA-Option 2 positions at issue were certified on November 18, 2009; and the HR Specialist positions at issue were certified on December 15, 2008.

American Federation of State, County and Municipal Employees, Council 31 (“AFSCME”) and a number of individuals filed objections to the designation pursuant to Section 1300.60(a)(3) of the Board’s Rules. The position-specific objections were raised relating to the following 6 positions:

Position Number	Title	Incumbent
37015-12-05-500-00-01	PSA-Option 1	Aherin, Jennifer
37015-12-05-500-20-01	PSA-Option 1	Everett, Amina
37015-12-07-500-00-01	PSA-Option 1	Keener, Valerie
37015-12-05-400-00-01	PSA-Option 2	Buskirk, Megan
19693-12-00-001-11-01	HR Specialist	Brewer, Jason
19693-12-00-750-01-01	HR Specialist	Elston, Lori

On January 6, 2014, CMS withdrew its petitions inasmuch as they related to the positions held by Ms. Everett and Ms. Buskirk. Therefore, this recommended decision and order will only address the propriety of the designation of the remaining 17 positions.

I have reviewed and considered the designation petition, the documents accompanying the designation petitions, the objections raised by AFSCME, the objections raised by individual employees, and the documents submitted in support of the objections. I find that the objections fail to raise an issue of law or fact that might overcome the presumption that the designation is proper such that a hearing would be necessary as to the propriety of those designations.

After consideration of the information before me, I find that the designations are properly submitted and are consistent with the requirements of Section 6.1 of the Act. Accordingly, I recommend that the Executive Director certify the designation of the 17 positions at issue in this consolidated matter 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.

I. AFSCME'S OBJECTIONS

AFSCME objects to the designation in a number of ways. AFSCME included the following documents in support of its objections: affidavits by Tracy Abman; an AFSCME Information Form completed by Jennifer Aherin, with attachments; an AFSCME Information Form completed by Amina Everett, with attachments; an AFSCME Information Form completed by Valerie Keener; an AFSCME Information Form completed by Jason Brewer; and an AFSCME Information Form completed by Lori Elston.

Through its written objections and documents, AFSCME makes the following arguments.

A. Constitutional Claims

AFSCME argues that Section 6.1 violates provisions of the United States and Illinois Constitutions in a number of ways. First, the designation is an improper delegation of legislative authority to the executive branch. Second, selective designation results in employees being treated unequally based on whether an individual's position was subject to a designation petition. Third, the designation unlawfully impairs the contractual rights of individuals whose positions were subject to the provision of a collective bargaining agreement prior to the position being designated for exclusion.

AFSCME also contends that because the "employees holding the position identified by this petition are covered by a collective bargaining agreement which CMS entered into subsequent to the enactment of [Section] 6.1," the designation of these positions "violates due process and is arbitrary and capricious."

B. Substantive Claims

AFSCME contends that under the National Labor Relations Board ("NLRB") precedent and case law interpreting the same, "any claim of supervisory or managerial status requires that *the party raising the exclusion bear the burden of proof.*"² AFSCME argues that CMS seeks the exclusion of employees who are not "supervisors" or "managers" as defined by the National Labor Relations Act ("NLRA"), 29 U.S.C. 152 *et seq.*, or NLRB. AFSCME contends that CMS has presented evidence only that the "at-issue positions are *authorized* to complete such job duties,"³ not that the employees actually exercise that authority. Accordingly, AFSCME argues

² Emphasis in original.

³ Emphasis in original.

that CMS should bear the burden of proving that the designated employees exercise duties that would make them supervisory or managerial, that the position exercises managerial discretion rather than just professional discretion, and that the designated position has different duties than a position with the same title that performs “wholly professional” duties.

AFSCME further contends that CMS cannot prove a position is managerial where the position description identifies that the position effectuates policies but does not identify specific policies the position effectuates. AFSCME argues that CMS cannot prove that an employee is a supervisor by generalizing supervisory functions rather than demonstrating that the employee has actual authority to act or effectively recommend one of the 11 enumerated supervisory functions. Finally, AFSCME asks the Board not to consider as evidence of authorized duties those position descriptions that do not have an effective date or are not signed by the Director of CMS or his designee.

C. Position-specific Objections

In addition to the general objections described above, AFSCME, relying on information submitted to it by the employees, makes specific arguments regarding the authority of positions and the accuracy of the position descriptions for the positions held by Jennifer Aherin, Valerie Keener, Jason Brewer, and Lori Elston.⁴ AFSCME argues that because the six specific individuals raised issues with their position descriptions, “there exists a high likelihood” that position descriptions of the other positions are “inaccurate and/or they are not authorized to perform the alleged job duties.”

II. DISCUSSION AND ANALYSIS

The law creates a presumption that designations made by the Governor are properly made. In order to overcome the presumption of a properly submitted designation under Section 6.1(b)(5), the objectors would need to raise an issue of law or fact that the position does not meet either of the managerial tests set out in Section 6.1(c)(i) or the supervisory test set out in Section 6.1(c)(ii).

AFSCME’s objections fail to overcome that presumption or raise a question of law or fact that requires a hearing. For the reasons stated more fully below, I find the designations are proper.

⁴ AFSCME also specifically objected to the designation of the positions held by Amina Everett and Megan Buskirk, but as those designations were withdrawn, they are not further discussed.

A. Constitutional Arguments

It is beyond the Board’s capacity to rule that the Illinois Public Labor Relations Act, as amended by Public Act 97-1172, either on its face or as applied, violates provisions of the United States and Illinois constitutions. State of Ill., Dep’t of Cent. Mgmt. Servs., 30 PERI ¶80, Case No. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013) appeal pending, No. 1-13-3454 (Ill. App. Ct. 1st Dist.)(*citing* Goodman v. Ward, 241 Ill. 2d 398, 411 (2011) (“Administrative agencies ... have no authority to declare statutes unconstitutional or even to question their validity. [citations omitted]. When they do so, their actions are a nullity and cannot be upheld.”)). Accordingly, these issues are not addressed in this recommended decision and order.

B. Sufficiency of Evidence Related to Position Descriptions and Effectuation of Policies

AFSCME objects to the designation by arguing that CMS has failed to provide sufficient information to prove that the designated positions are managerial. “To the extent an affidavit states that an employee at issue effectuates policies or is authorized to effectuate departmental policy, and the position description for the at issue employee does not define a policy, there can be no showing that the employee is managerial.”⁵ However, nothing in the law or accompanying rules require the Governor to identify specific policies an employee is authorized to effectuate. Section 6.1(b) requires the Governor to provide only “the job title and job duties of the employment positions; the name of the State employee currently in the employment position, if any; the name of the State agency employing the public employee; and the category under which the position qualifies for designation under this Section.” 5 ILCS 315/6.1(b).

Moreover, the Board’s Rules, the Act, and relevant case law demonstrate that position descriptions provide an adequate basis on which to evaluate the propriety of a designation. First, the Act and the Rules contemplate that the Board may make such a determination based on a job description alone, because they require CMS to provide information concerning a position’s job title and job duties and, at the same time, provide that CMS’s designation is presumed proper once it submits such information. If such information constituted an insufficient basis for considering a designation, the Act and the Rules would not specify that the designation, when completed by the submission of such information, is presumed to be properly made. Second, Illinois Appellate Courts have held that position descriptions alone constitute an adequate basis

⁵ AFSCME Objections.

upon which to evaluate a proposed exclusion.⁶ See Vill. of Maryville v. Ill. Labor Rel. Bd., 402 Ill. App. 3d 369 (5th Dist. 2010); Ill. Dep't of Cent. Mgmt. Servs. v. Ill. Labor Rel. Bd., 2011 IL App (4th) 090966; *but see* Vill. of Broadview v. Ill. Labor Rel. Bd., 402 Ill. App. 3d 503, 508 (1st Dist. 2010); *see also* Ill. Dep't of Cent. Mgmt. Servs. v. Ill. Labor Rel. Bd., 382 Ill. App. 3d 208, 228-29 (4th Dist. 2008); City of Peru v. Ill. Labor Rel. Bd., 167 Ill. App. 3d 284, 291 (3rd Dist. 1988).

AFSCME also argues that the Board should not rely on position descriptions that do not have an effective date or are missing the Director of CMS's signature as evidence that CMS has authorized the employee to perform the duties contained in the position description. However, each of the position descriptions attached to the petitions contains both an effective date and a signature by the Director of CMS or his designee, and AFSCME does not present competing position descriptions for the Board's consideration.

Finally, AFSCME argues that because several employees raised issues with their position descriptions, "there exists a high likelihood" that position descriptions of the other designated positions are "inaccurate and/or they are not authorized to perform the alleged job duties." Even if some position descriptions were inaccurate, AFSCME has failed to bring any alleged inaccuracies to the Board's attention or to provide any legal analysis of the impact that any alleged factual inaccuracies might have on the Board's analysis of the propriety of the designations.

Accordingly, the position descriptions provide the Board with sufficient evidence from which to establish the propriety of the designations.

C. AFSCME bears the burden of proving that a designation is improper.

AFSCME argues that CMS should bear the burden in at least two ways. First, it argues that because CMS is seeking an exclusion, under NLRA case law, CMS should bear the burden. In so arguing, AFSCME fails to appreciate that Section 6.1 is a wholly new legislative creation. The Act's provision that "any designation made by the Governor...shall be presumed to have been properly made," 5 ILCS 315/6.1(d), shifts the burden of proving that a designation is improper on the objector. Therefore, AFSCME and the individual employees have the burden to

⁶ While these cases address the Employer's burden in the majority interest process, they are nevertheless relevant to address AFSCME's general argument concerning the sufficiency of job descriptions to establish a position's job duties.

demonstrate that the designation is improper.

In this case, CMS designated this position under Section 6.1(b)(5) which provides that the position must “authorize an employee in that position to have significant and independent discretionary authority as an employee.” 5 ILCS 315/6.1(b)(5). The Act then outlines in Section 6.1(c) three tests to determine whether a position has “significant and independent discretionary authority as an employee,” as that term is used in Section 6.1(b)(5). 5 ILCS 315/6.1(c). Thus, the burden is on the objector to demonstrate that the designation is not proper in that the employer has not conferred significant discretionary authority upon that position, as that term is defined in the Act.

Second, AFSCME also argues that CMS should bear the burden of showing that the designated positions have different duties than other positions with the same position title that may be “wholly professional.” This argument does not require additional analysis. To the extent that AFSCME is concerned that the designations may be carried out in an arbitrary manner, that constitutional question is not for the Board to decide. To the extent that this argument is a repackaging of AFSCME’s contention that the designated positions are not managerial because they are “wholly professional,” AFSCME still bears the burden of proving that contention to be true. It has failed to do so here.

With respect to the 13 positions for which AFSCME and the individual in the position have failed to provide any position-specific information or evidence, I find that they have failed to overcome the presumption of validity. Accordingly, I find that these designations are proper and will further analyze only the positions held by Jennifer Aherin, Valerie Keener, Jason Brewer, and Lori Elston.

D. Tests for Designations made under Section 6.1(b)(5)

Section 6.1(b)(5) allows the Governor to designate positions that authorize an employee to have “significant and independent discretionary authority.” 5 ILCS 315/6.1(b)(5). The Act goes on to provide three tests by which a person can be found to have “significant and independent discretionary authority.” Section 6.1(c)(i) sets forth the first two tests, while Section 6.1(c)(ii) sets forth a third.⁷ In its petition, CMS contends that the at-issue positions confer on

⁷ Section 6.1(c) reads in full 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

the position holder “significant and independent discretionary authority” as further defined by either Section 6.1(c)(i) or both Section 6.1(c)(i) and (ii).

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 of the three tests set out in Section 6.1(c). If even one of the three tests is met, then the objector has not sufficiently raised an issue, and the designation is proper. Ill. Dep’t Cent. Mgmt. Serv., 30 PERI ¶ 85.

Each of the three tests are discussed below.

1. Section 6.1(c)(i) sets out two tests for designation under Section 6.1 (b)(5)

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

Though similar to the Act’s general definition of managerial employee in Section 3(j), 5 ILCS 315/3(j), the Section 6.1(c)(i) definition is broader in that it does not include a predominance element and requires only that the employee is “charged with the effectuation” of policies not that the employee is responsible for **directing** the effectuation. 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. Ill. Dep’t Cent. Mgmt. Serv. (Ill. State Police), 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); INA, 23 PERI ¶ 173 (IL LRB-SP 2007). However, in order to meet the first test set out in Section 6.1, a position holder need not develop the means and methods of reaching policy objections. It is sufficient that the position holder is charged with carrying out the policy in order to meet its objectives.

The Section 6.1(c)(i) test is unlike the traditional test where a position is deemed

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. 5 ILCS 315/6.1(c).

managerial only if it is charged with *directing* the effectuation of policies. Under the traditional test, for example, “where an individual merely performs duties essential to the employer's ability to accomplish its mission, that individual is not a managerial employee,” Ill. Dep't of Cent. Mgmt. Serv. (Dep't of Revenue), 21 PERI ¶ 205 (IL LRB SP 2005), because “he does not determine the how and to what extent policy objectives will be implemented and the authority to oversee and coordinate the same.” INA, 23 PERI ¶ 173 (*citing City of Evanston v. Ill. Labor Rel. Bd.*, 227 Ill. App. 3d 955, 975 (1st Dist. 1992)). However, under Section 6.1(c)(i), a position need not determine the manner or method of implementation of management policies. Performing duties that carry out the agency or department’s mission is sufficient to satisfy the second prong of the first managerial test.

The second test under Section 6.1(c)(i) indicates that a designation is proper if 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). This second test allows a position to be designated upon a showing that it either (a) takes discretionary actions that effectively control or implement agency policy or (b) effectively recommends such discretionary actions.

2. Section 6.1(c)(ii) establishes a third test for designation under Section 6.1(b)(5)

Under the NLRA, a supervisor is an employee who has “authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or 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).

In other words, “employees are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 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. (“Kentucky River”), 532 U.S. 706, 713 (2001) (*quoting NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574 (1994)); *See also Oakwood Healthcare, Inc. v. United Auto Automobile, Aerospace and Agricultural Implement Workers of America* (“Oakwood

Healthcare”), 348 NLRB 686, 687 (2006). A decision that is “dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement” is not independent. Oakwood Healthcare, 348 NLRB at 689.

E. The designation of the PSA Option 1 position held by Jennifer Aherin is proper.

Ms. Aherin’s position is designated under Section 6.1(b)(5), and the affidavit supporting the petition asserts that Ms. Aherin’s position meets the 6.1(b)(5) requirement as further defined by Sections 6.1(c)(i) and (ii). Therefore, if the information presented supports any one of the three tests above, the designation is proper.

1. Ms. Aherin’s position qualifies as a supervisor of a State agency as that term is defined by the NLRA and NLRB.

For the reasons stated below, I find that Ms. Aherin’s position is appropriately designated pursuant to Section 6.1(b)(5) as further defined by Section 6.1(c)(ii). Ms. Aherin submitted an AFSCME Information Form in which she takes issue with the position description filed with the petition and provides her own description of her duties, responsibilities, and place in the organizational structure. Ms. Aherin states that her working title is Federal Aid Fiscal Review Manager in the Federal Aid/Special Funds Section in the Office of Resource Conservation. The position description filed by CMS indicates the position was clarified in May 2012 to place it in the Office of Fiscal Management rather than the Office of Resource Conservation. However, according to Ms. Aherin, this change was never carried out. Ms. Aherin states that she still works in the Office of Resource Conservation and reports to Senior Public Service Administrator Charles Good, who oversees the Office of Resource Conservation. This discrepancy does not make the designation improper if the duties Ms. Aherin performs meet the requirements of Section 6.1(b)(5).

In her submission to AFSCME, Ms. Aherin indicated that she reviewed her position description and that this review revealed that it did not “accurately reflect [her] responsibilities regarding the oversight of the fiscal aspects of all federal grants and FEMA grant coordination for the Department.” In addition to the supplemental description of her duties provided on the form, Ms. Aherin attached her 2011 and 2012 performance evaluations, her Appraisal of Objectives for 2011 and 2012, and a September 2013 document entitled “Office of Resource

Conservation, Federal Aid & Special Funds Unit Staffing and Job Assignments” as evidence of her actual duties and responsibilities. Based on the duties and responsibilities as described by Ms. Aherin and evidenced by her performance evaluations, the position is appropriately designated as it meets the requirements of Section 6.1(c)(ii).

A designation on the grounds that the employee is supervisory as defined in Section 6.1(c)(ii) is appropriate where: (1) the designated employee has the authority to engage in any of the enumerated supervisory functions (hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances); (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. State of Ill., Dep’t of Cent. Mgmt. Servs., (Dep’t of Public Health) (“DPH”), Case No. S-DE-14-111 (IL LRB-SP November 27, 2013) appeal pending, No. 1-13-3911 (Ill. App. Ct. 1st Dist.) (citing Kentucky River, 532 U.S. at 713, and Oakwood Healthcare, 348 NLRB at 687.).

A position is authorized with the responsibility to direct if the position holder has subordinates, decides what jobs his subordinates should perform next, and who should perform those tasks. Id. Moreover, the position holder must be accountable for his subordinates’ work and must carry out such direction with independent judgment. Oakwood Healthcare, 348 NLRB at 691-2. In other words, “it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary,” and that “there is a prospect of adverse consequences for the putative supervisor,” arising from his direction of other employees. Id. In applying the second portion of the “responsibly direct” test, the statutory presumption that the designation is proper places the burden on the objector to demonstrate that there is not a prospect of adverse consequences for the position holder if he does not direct the work or does not take corrective action where necessary.

Ms. Aherin identifies that three employees report to her: PSA-Option 1 Amina Everett, Conservation Grant Administrator II Lamma Parrack, and Conservation Grant Administrator II Dave Blatchford. Ms. Everett in turn has one subordinate, Conservation Grant Administrator II Debbie Dix. Ms. Aherin’s description of her duties and those of her subordinates makes clear that she has the responsibility to direct her subordinates. In describing the responsibilities of her subordinates, Ms. Aherin states that each of them performs their duties “under [her] direction.”

Moreover, Ms. Aherin specifically indicates that she directs her subordinates in the “assignment of work load, review and revision of work product, [and] approval of time and leave requests.” In her 2011 Appraisal of Objectives, Ms. Aherin describes that she has succeeded in fully training her subordinate Grant Administrator II and that in doing so, they “meet periodically to review specific issues that have developed in the[] two programs” the subordinate is responsible for administering. During the same period, Ms. Aherin reported having “instituted quarterly reports” for her subordinate to issue and review. In her 2012 evaluation, Ms. Aherin was credited with “implement[ing] processes for enhancing the flow of work within her area of responsibility.”

These descriptions make clear that in directing her subordinates, Ms. Aherin is not merely acting in a clerical or routine nature, but is assessing workloads, prioritizing tasks, and making and implementing process changes and other innovations to accomplish greater efficiency. In doing so, she exercises independent judgment in the direction of her subordinate employees. *See Entergy Mississippi, Inc. v. IBEW Local 608 and 985*, 357 NLRB No. 178 at *14 (December 30, 2011)(independent judgment in the direction of employees where supervisors “take into account various considerations to prioritize responses”).

The information presented also reflects that Ms. Aherin is accountable for her subordinates’ work. Her supervisory responsibilities account for two of the ten performance categories upon which she was evaluated. In both the 2011 and 2012 performance evaluations Ms. Aherin submitted to AFSCME, she was evaluated on leadership, which is described as “sets high standards – provides good managerial example – encourages subordinates to perform efficiently – communicates effectively, and subordinate development, which is described as “helps subordinates plan career development – trains potential replacements – gives guidance and counsel.” In both 2011 and 2012, Ms. Aherin was evaluated as exceeding expectations for leadership and meeting expectations in subordinate development. Furthermore, her supervisory responsibilities also form the basis for her objectives for upcoming evaluation periods. For the period of 2010-2011, three of the six objectives related to training or oversight of subordinates. For the period of 2011-2012, one of three objectives related to reviewing workflow and meeting with subordinates. In each instance, Ms. Aherin was evaluated as having met that objective.

Because Ms. Aherin is authorized to direct the work of her subordinate employees with independent judgment and is held accountable for supervising her subordinates, her position is

appropriately designated under Section 6.1(b)(5) as further defined in Section 6.1(c)(ii).

2. Ms. Aherin's position represents management interests by taking or recommending discretionary action that effectively control or implement the policy of a State agency.

A position is appropriately designated under Section 6.1(b)(5) as further defined in Section 6.1(c)(i) if the position takes or recommends discretionary actions that effectively control or implement the policy of a State agency. Because Ms. Aherin's position does this as well, the designation of the position would be proper under that section as well.

In her supplemental materials, Ms. Aherin states that she is responsible for the "oversight of the fiscal aspects of all federal grants and FEMA grant coordination for the Department." She also describes that she has "developed and implemented a process for subgrantee monitoring," "instituted quarterly reports" for monitoring and providing financial oversight for federal grants awarded to DNR, and led a work group of 14 DNR employees to refine the Department's programmatic accounting codes. This last project, according to Ms. Aherin, resulted in the development of policy and procedures, through which "management controls [are] attainable." These discretionary actions effectively control or implement the Department's policies related to federal grant monitoring and accounting; therefore the designation of her position would also be appropriate under Section 6.1(b)(5) as further defined by Section 6.1(c)(i).

F. The designation of the PSA Option 1 position held by Valerie Keener is proper.

This position is designated under Section 6.1(b)(5), as further defined by Section 6.1(c)(i) and (ii). Ms. Keener works as the Manager of DNR's Division of Education. In her submission to AFSCME, Ms. Keener stated that the attached position description is "fairly accurate in describing" what she does, and provided additional detail and clarification of her duties and responsibilities. The following duties were contained in Ms. Keener's position description and were not contested by either Ms. Keener or AFSCME:

- Direct and coordinate the statewide conservation resource education program including developing goals and objectives;
- Administer the budget for the Division of Education;
- Supervise four employees - one Administrative Assistant I, one Executive II, a Public Information Officer III, and a Public Services Administrator I; and

- In supervising her subordinates, she assigns work, approves time off, provides guidance and training, completes and signs performance evaluations, establishes annual goals and objectives, counsels staff on problems with productivity, quality of work, and conduct.

Based on these duties, I find that Ms. Keener's position is properly designated.

1. Ms. Keener's position is engaged in executive and management functions and effectuates management policies and practices.

Under Section 6.1(c)(i), a designation is proper where a position is engaged in executive and management functions of a State agency and is charged with effectuation of management policies and practices of the agency. Ms. Keener is engaged in executive and management functions and effectuates management policies; therefore, the designation is proper.

"Executive and management functions" are those that specifically relate to the running of an agency including establishing policies and procedures, preparing a budget, or otherwise assuring that an agency or department runs effectively. Dep't of Cent. Mgmt. Serv. (Pollution Control Bd.), v. Ill. Labor Rel. Bd., State Panel ("PCB"), 2013 IL App (4th) 110877 ¶ 25; Dep't of Cent. Mgmt. Serv./ Illinois Commerce Com'n v. Ill. Labor Rel. Bd. ("ICC"), 406 Ill. App. 766, 774 (4th Dist. 2010). Ms. Keener refers to herself as the "Head" of the agency's Education Division. In performing that role, Ms. Keener plans, executes, controls and evaluates statewide education programs, and is responsible for developing goals and objectives for the Division. Ms. Keener is responsible for assuring that the Division and its statewide programs run effectively. Ms. Keener also works with the Office Director to establish, implement, and direct operational policies and procedures for the Section. Accordingly, she performs executive and management functions.

Ms. Keener also is responsible for carrying out the Department's policies regarding the educational programs her Division develops and coordinates. In her AFSCME Information Form, Ms. Keener said that she promotes the materials and programs that the Division develops, plans functions for the year, and carries out other administrative duties for the Division. Moreover, Ms. Keener stated in her submission to AFSCME that she is "in charge of the two grant programs" her Division offers. In performing these duties, Ms. Keener effectuates Department policy and practices.

Because she is engaged in executive and management functions and effectuates

management policies, the designation of Ms. Keener's position is proper.

2. Ms. Keener's position qualifies as a supervisor of a State agency as that term is defined by the NLRA and NLRB.

A designation on the grounds that the employee is supervisory as defined in Section 6.1(c)(ii) is appropriate where: (1) the designated employee has the authority to engage in any of the enumerated supervisory functions (hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances); (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. DPH, Case No. S-DE-14-111 (*citing Kentucky River*, 532 U.S. at 713, and Oakwood Healthcare, 348 NLRB at 687.).

In her affidavit, Ms. Keener's supervisor Marceo Haywood indicates that Ms. Keener's position is authorized to assign, responsibly direct, and review the work of her subordinates with independent judgment. Ms. Haywood further states that Ms. Keener's position is authorized to counsel staff regarding work performance, take corrective action, monitor work flow, and reassign staff to meet day-to-day operating needs. Ms. Keener does not contest this, except to point out that because her position is in the union, she "can recommend discipline, but [she] cannot enforce it."

Ms. Keener acknowledges that she is responsible for assigning work for her subordinates, and that she evaluates their performance of the work she assigns. In her AFSCME Information Form, Ms. Keener describes that when two positions transferred into her Division after a reorganization, she determined what work they would be doing. In short, the information submitted fails to overcome the presumption that the designation was properly made in that it supports a finding that Ms. Keener's position is a supervisor as that term is defined by the NLRA and NLRB. Accordingly, I find the designation proper.

G. The designation of the Human Resources Specialist position held by Jason Brewer is proper.

The petition alleges that each of these positions is appropriately designated under Section 6.1(b)(5) as further defined by Section 6.1(c)(i). Mr. Brewer represents management interest by taking or recommending discretionary action that effectively control or implement the policy of the Department; therefore, the designation of his position is appropriate.

According to the affidavit submitted with the petition, Mr. Brewer is a Human Resources Specialist who serves as the “Ombudsman to the Director of the Department of Natural Resources and as an EEO and Recruitment Officer.” In his submission to AFSCME, Mr. Brewer went through his position description and only contested the portion of his position description that related to supervisory functions.⁸ Based on the affidavit submitted in support of the petition and the portions of the position description to which Mr. Brewer raises no challenge, I find the designation to be proper.

Neither Mr. Brewer nor AFSCME contest that the position is responsible for establishing, coordinating, and implementing various programs for recruitment of qualified applicants. In carrying out those duties, Mr. Brewer’s position is authorized to take discretionary action to implement the Department’s policies regarding equal employment opportunities.

Mr. Brewer also represents the Director of DNR as an ombudsman in order to resolve complaints. In doing so, Mr. Brewer collects and evaluates information relative to the complaint and makes recommendations to correct the situation. Though Mr. Brewer points to one specific example where a recommended policy change was not implemented, neither he nor AFSCME contest that his position is charged with making recommendations to resolve complaints brought to him as the Director’s ombudsman or that in making those recommendations he is not recommending discretionary actions that control or implement the policy of the agency.

Accordingly, I find that the designation is proper, in that there was insufficient evidence to overcome the presumption of propriety and because the Human Resources Specialist position represents management interest by taking or recommending discretionary action that effectively control or implement the policy of a State agency.

G. The designation of the Human Resources Specialist position held by Lori Elston is proper.

The documents supporting the petition indicate that Ms. Elston’s position is designated because her position is authorized to have significant and independent discretionary authority as that is further defined in Section 6.1(c)(i) and (ii). Because Ms. Elston does not appear to have any subordinates, I find that her position is not properly designated as a supervisor, as that term is defined by the NLRA and NLRB. However, because Ms. Elston’s position is engaged in

⁸ Mr. Brewer states that, despite the duties outlined in number six in his position description, he has not supervised anyone since 2008 and that there is no intent to fill his subordinate positions in the future. However, the position was not designated as supervisory, as further defined in Section 6.1(c)(ii).

executive and management functions and effectuates management policies and practices, I find that the designation of her position is proper under Section 6.1(b)(5) as further defined in Section 6.1(c)(i).

Ms. Elston is a Human Resources Specialist who serves as the Administrator of the Department's Timekeeping Programs. In her submission to AFSCME, Ms. Elston stated that her position description is "current and accurate" and provided additional detail on her job duties. Ms. Elston's position description contains the following duties:

- Administers the Department's Timekeeping program;
- Implements timekeeping policies and procedures;
- Ensures the Department's timekeeping policies and procedures are in compliance with the FLSA, Personnel Rules, Collective Bargaining Agreements and the Pay Plan;
- Provides interpretations of FLSA, Personnel Rules, Collective Bargaining Agreements and the Pay Plan governing timekeeping to timekeepers, personnel liaisons and supervisors; and
- Updates and maintains the Department's Timekeeping Handbook.

"Executive and management functions" are those that specifically relate to the running of an agency including establishing policies and procedures, preparing a budget, or otherwise assuring that an agency or department runs effectively. PCB, 2013 IL App (4th) 110877 ¶ 25; ICC, 406 Ill. App. 3d at 774. Central to the effective operation of any agency is a method by which employees efficiently document time worked so that they are accurately and consistently compensated. At DNR, Ms. Elston is the person who establishes policies and procedures for recording and keeping record of time worked and is responsible for ensuring those policies and procedures comply with applicable law, administrative rules, and collective bargaining agreements. Ms. Elston described that she does this by developing, updating, maintaining, and distributing DNR's Timekeeping Handbook, which is used by all the agency's numerous timekeepers. When changes to the law or applicable collective bargaining agreements occur, Ms. Elston updates the handbook to align the Department's policies and procedures to the changes. In order to maintain the effective documentation of time (and the resulting pay), Ms. Elston's position provides interpretations to agency timekeepers, personnel liaisons, and supervisors, on the impact laws, administrative rules, and collective bargaining agreements have

on the Department’s timekeeping program.

Because she performs executive and management functions, the designation of her position is proper if she is also charged with effectuating management policies and practices. In her AFSCME submission, Ms. Elston confirmed this. She stated, “I do play a role in implementing policies and procedures that pertain to timekeeping only. I decide how to disseminate the information and how to process pay variances, etc.” This statement is further supported by the duties outlined in her position description, which specifically includes the responsibility to implement timekeeping policies and procedures.

Because Ms. Elston’s position is engaged in executive and management functions and effectuates management policies and practices, I find that the designation of her position is proper.

III. CONCLUSIONS OF LAW

The Governor’s designations in this case are properly made.

IV. RECOMMENDED ORDER

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

<u>Position No.</u>	<u>Incumbent</u>
37015-12-00-000-20-01	
37015-12-00-710-00-01	Gwillim, Terry
37015-12-00-750-00-01	
37015-12-32-000-40-01	
37015-12-32-200-02-01	
37015-12-32-710-10-01	Suthard, David
37015-12-05-500-00-01	Aherin, Jennifer
37015-12-07-220-00-01	
37015-12-07-600-00-01	Hopkins, Jeff
37015-12-07-700-00-01	
37015-12-07-800-00-01	Christian, Nicky
37015-12-07-500-00-01	Keener, Valerie
37015-12-05-210-00-01	Eddinger-Rueter, Karen
37015-12-05-330-10-01	Appleman, Bob
19693-12-00-001-11-01	Brewer, Jason
19693-12-00-740-00-01	Johnson, Sabrina
19693-12-00-750-01-01	Elston, Lori

V. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300,⁹ parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than three 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 its e-mail address 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 Springfield, Illinois, this 9th day of January, 2014.

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

Sarah R. Kerley

**Sarah Kerley
Administrative Law Judge**

⁹ Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf