

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

State of Illinois, Department of)	
Central Management Services (Department)	
of Central Management Services),)	
)	
Petitioner)	
)	
and)	Case No. S-DE-14-146
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	
)	
Pamela Jefferies and Richard Green,)	
)	
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). On February 21, 2014, Administrative Law Judge (ALJ) Sarah Kerley issued a Recommended Decision and Order (RDO), finding the designations comport with the requirements of Section 6.1. We agree with her assessment.

The petition designates for exclusion two positions at the Illinois Department of Central Management Services: one held by Pamela Jefferies with the working title of Senior Benefits Analyst, and the second held by Richard Green with the working title of CMS

Transactions/Leasing Staff. Both positions were designated for exclusion pursuant to Section 6.1(b)(5) of the Act. Section 6.1(b)(5) allows designations of positions with “significant and independent discretionary authority.”¹

Both employees occupying these positions filed objections pursuant to Section 1300.60 of the Board’s rules for implementing Section 6.1 of the Act, 80 Ill. Admin. Code §1300.60, and so did the American Federation of State, County and Municipal Employees, Council 31 (AFSCME). The ALJ held a hearing on January 30, 2014, and, based on the evidence and arguments presented, ultimately determined that the designations were proper, and recommended that the Board find they comport with the requirements of Section 6.1 and that the positions should be excluded from collective bargaining. CMS asserted that the positions had “significant and independent discretionary authority” as defined in Section 6.1(c)(i) (the managerial-like provision). It did not assert the positions met Section 6.1(c)(ii) (the supervisor-like provision). After a detailed discussion of the nature of the positions, and of the statutory tests under Section 6.1(c)(i), she concluded that the position held by Green has significant and independent discretionary authority because it met the first test set out in Section 6.1(c)(i), and that the position held by Jefferies similarly has significant and independent discretionary authority as defined in Section 6.1(c)(i). She rejected AFSCME’s general objections to the petition, and declined to rule on whether Section 6.1 was constitutional.

¹ Section 6.1(c) defines that term:

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.

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/ Albert Washington

Albert Washington, Member

Decision made at the State Panel's public meeting held by videoconference in Chicago, Illinois, and Springfield Illinois, on February 28, 2014; written decision issued at Springfield, Illinois, March 10, 2014.

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Management Services (Department of Central)	
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**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 January 9, 2014, the Illinois Department of Central Management Services (“CMS” or “Department”), on behalf of the Governor, filed the above-captioned designation petition pursuant to Section 6.1(b)(5) of the Act and Section 1300.50 of the Board’s Rules. The following PSA-Option 1 positions at CMS are identified for designation in this case:

<u>Position No.</u>	<u>Incumbent</u>	<u>Working Title</u>
37015-37-34-000-10-01	Pamela Jefferies	Senior Benefits Analyst
37015-27-62-300-05-01	Richard Green	CMS Transactions/ Leasing Staff

In support of its petition,² CMS filed position descriptions 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 were certified on January 20, 2010.

American Federation of State, County and Municipal Employees, Council 31 (“AFSCME”) and both individuals filed objections to the designation pursuant to Section 1300.60(a)(3) of the Board’s Rules.

I reviewed the documents accompanying the designation petition, the objections raised by AFSCME, the objections raised by the employees, and the documents submitted in support of the objections. My review revealed that an issue of law or fact existed that might overcome the presumption that the designation is proper such that a hearing was necessary as to the propriety of those designations. A hearing on the propriety of these petitions was held on January 30, 2014.

After consideration of the information before me, including the testimony and evidence presented at the hearing, 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

² Both of these positions had previously been designated in petition S-DE-14-116. However, on December 9, 2013, CMS withdrew the petitions as they related to the positions held by Ms. Jefferies and Mr. Green. CMS then refiled the current petitions.

Director certify the designation of the positions at issue 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. ISSUES AND OBJECTIONS

I find that the only issue for hearing is whether the petitioned-for positions currently filled by Richard Green and Pamela Jefferies are authorized to have significant and independent discretionary authority, as that term is further defined by Section 6.1(c)(i) of the Act.

AFSCME objects to the designations for a number of reasons. 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; and, 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."

AFSCME further 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.*"³ 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 the NLRB. AFSCME contends that CMS has presented evidence only that the "at-issue positions are *authorized* to complete such job duties,"⁴ not that the employees actually exercise that authority. Accordingly, AFSCME argues 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.

³ Emphasis in original.

⁴ Emphasis in original.

In addition to the general objections described above, AFSCME and the individuals provided written statements and testimony as evidence in support of the conclusion that the positions at issue do not comport with Section 6.1(c) of the Act.

II. FINDINGS OF FACT

The Illinois Department of Central Management Services is a State agency that performs a number of different functions. Its operations are divided into nine bureaus, including the Bureau of Property Management and the Bureau of Benefits.⁵

A. Richard Green

Mr. Green is employed in a Transactions/Leasing Representative position in CMS's Bureau of Property Management. Mr. Green ultimately reports to Bureau of Property Management Chief Operating Officer Terry Schierholz due to multiple vacancies. Mr. Green's position is currently represented by AFSCME for the purposes of collective bargaining, as first certified by the Board on January 20, 2010.

On June 28, 2011, then-Deputy Director of the Bureau of Property Management Nick Kanellopoulos directed CMS leasing staff that all Chicago-area leases were being reassigned to a leasing employee in the Chicago office. In an attempt to compensate for the retirement of a long-term Property Management employee, on March 12, 2012, then Deputy Director Kanellopoulos directed Mr. Green to dedicate 100% of his time evaluating Requests for Information (RFIs) and assisting with space planning functions. This change in duties was described to be a "short term" change, but Mr. Green continues to perform these duties nearly two years later. Evaluating RFIs is within the duties of a Leasing Representative

Prior to March 2012, Mr. Green completed various duties related to leasing real estate on behalf of State agencies. In the last six or seven years, the Bureau's procedures regarding the RFI process and documentation of the leasing process have changed. However, Leasing Representative duties related to negotiating leases with potential landlords has remained the same.

Leasing Representatives receive a transaction after a "Best and Final Offer" has been submitted, and are then responsible for negotiating with the property owner. Leasing Representatives have always had and continue to have discretion in the manner in which they negotiate leases. Leasing Representatives propose to Mr. Schierholz how they intend to proceed

⁵ <http://www2.illinois.gov/cms/About/Bureaus/Pages/default.aspx>, (As viewed on Feb. 19, 2014).

with negotiating the lease. Leasing Representatives receive guidance or suggestions regarding terms of the leases they negotiate. Leasing Representatives influence the final terms of the lease by their initial suggestions as to terms, the manner in which they negotiate, and the agreement ultimately reached as a result of the negotiation.

The Bureau of Property Management continues to have a number of unfilled vacancies that require Bureau staff to do more with less people. However, Mr. Green will be expected to perform Leasing Representative duties in the future.

B. Pamela Jefferies

Pamela Jefferies is employed as a PSA-Option 1 with the working title of “Procurement Coordinator” in CMS’s Bureau of Benefits. The Bureau of Benefits procures State employee benefits, such as health, dental, and vision insurance. Ms. Jefferies reports to Nancy King, Manager of the Bureau of Benefits’s Benefits Management Division. Ms. Jefferies’s position is currently represented by AFSCME for the purposes of collective bargaining, as first certified by the Board on January 20, 2010.

The process by which things are procured by the State is proscribed by State law and administrative rules. Multiple entities perform procurement oversight functions, including CMS’s Bureau of Strategic Sourcing, the State Procurement Officer, the Executive Ethics Commission, and the Procurement Policy Board.

Ms. Jefferies describes her job as “simply ensur[ing] compliance” with procurement laws and rules, though she has no ability to change those laws or rules. Her expertise is in the State’s procurement laws and rules. She is also responsible for keeping up-to-date on changes to the State procurement laws, rules, and forms. Ms. Jefferies is responsible for educating Division staff as to changes in the procurement process.

Ms. Jefferies is also responsible for coordinating, routing for approval, and tracking the Bureau’s various procurements for State employee benefits contracts. Ms. Jefferies tracks the Bureau’s procurements, from when the assessment of need has been completed, through to completion. Bureau procurements do not require Ms. Jefferies to provide signature approval.

Ms. Jefferies identifies procurement policy and procedural problems, like the fact that the procurement process takes too long. Though Ms. Jefferies says she lacks the authority to influence the improvement or revision of the current Statewide procurement process and policy, as it relates to the Bureau of Benefits, she establishes the procedures by which the Bureau will

comply with procurement laws and rules. There is no written procedure dictating how the Bureau will handle processing a procurement; in performing her duties, Ms. Jefferies provides that procedure for the Bureau. Ms. Jefferies also plans the timeframes by which the Bureau will comply with the steps of the procurement process. CMS's Bureau of Strategic Sourcing provides oversight of procurement procedures for the Bureau, just like it does for other State agencies.

With respect to requests for proposals or invitations for bid, Ms. Jefferies is responsible for ensuring the correct templates are used, compiling the procurement-specific information to be included in the template, reviewing the completed product to ensure that it is appropriate according to the Procurement Code and Rules, and obtaining the proper approvals. She also compiles information for inclusion in required procurement correspondence, ensures that the information is included in the appropriate forms, obtains the proper approvals, and submits the correspondence.

Ms. Jefferies speaks with vendors, though infrequently. These conversations usually involve Ms. Jefferies explaining to vendors what the Bureau is asking of them or directing them how to appropriately complete required documentation. With respect to more complicated questions Ms. Jefferies may consult with the State Procurement Officer when advising a vendor.

Ms. Jefferies is the point of contact for the Executive Ethics Commission and the Chief Procurement Officer (CPO) regarding procurement matters for the Bureau. Within the existing law and rules, Ms. Jefferies is responsible for making sure procurements are completed in an efficient manner. To that end, Ms. Jefferies has reached out to the Executive Ethics Commission to "clear the way" for the Bureau's approach to completing a procurement. In at least one instance, Ms. Jefferies ran her proposed approach by the CPO's office to ensure that, in doing so, the Bureau was acting appropriately. Ms. Jefferies approach was intended to save time and avoid having the CPO reject the Bureau's procurement for failing to comply with the law and rules.

Ms. Jefferies participates in meetings with CMS upper management and legal staff, wherein she serves as a procurement resource and gathers details to ensure consistency within documents used to process the Bureau's procurements. CMS upper management and legal staff may seek her advice, which she gives, but she is not authorized to make final decisions about the manner in which to proceed.

III. 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).

A. Procedural 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.

AFSCME argued in its objections and at the hearing in this matter, 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 of proof, and should have had to present its case-in-chief first at the hearing. 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 demonstrate that the designation is improper.

B. Tests for designations made under Section 6.1(b)(5) as further defined by Section 6.1(c)(i).

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.⁶ In its petition, CMS contends that the at-issue positions confer on

⁶ Section 6.1(c) reads in full as follows:

the position holder “significant and independent discretionary authority” as further defined by Section 6.1(c)(i). The two tests set out in Section 6.1(c)(i) are discussed below.

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 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.

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.

5 ILCS 315/6.1(c).

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.

C. The designation of the PSA-Option 1 position held by Richard Green is proper.

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. The Board has long held that executive and management functions include “negotiating on behalf of an employer with its employees or the public.” Ill. Dep't of Cent. Mgmt. Serv. (Dep't of Revenue), 21 PERI ¶ 205. Mr. Green and Mr. Schierholz both confirm that Leasing Representatives, on behalf of CMS, are responsible for negotiating leases with landlords. Leasing representatives receive guidance and suggestions prior to negotiating, and the results of the negotiation are approved before the lease is executed. However, Leasing Representatives have always had and continue to have discretion in the manner in which they negotiate leases. Therefore, I find that in negotiating on behalf of CMS, these positions are engaged in executive and management functions.

Accordingly, the designation is proper under the first Section 6.1(c)(i) test if the position is also charged with effectuation of management policies. Under this test, 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 evidence adduced at the hearing reveals that Leasing Representatives

influence the final terms of the lease by their initial suggestions as to terms, the manner in which they negotiate, and the agreement ultimately reached as a result of the negotiation. They implement Bureau policies in a hands-on way when they directly negotiate lease terms and resolve issues that arise in the final process of the leasing process. Moreover, Mr. Green testified that he also plays a role in carrying out the Bureau's policies regarding the evaluation of RFIs and disposing of surplus property.

Finally, though Mr. Green has received a special assignment due to continued staff shortages, I find that the designated position – the position in which Mr. Green is employed - is authorized to perform the functions referenced above. Mr. Schierholz credibly testified that Mr. Green will “absolutely” perform Leasing Representative duties in the future. Therefore, Mr. Green's current assignment does not abolish the authority of the position in which he is employed.

Because Mr. Green's position is engaged in executive and management functions and is charged with effectuating management policies, the designation is proper.

F. The designation of the PSA-Option 1 position held by Pamela Jefferies is proper.

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. “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, 2013 IL App (4th) 110877 ¶ 25; ICC, 406 Ill. App. 3d at 774.

Ms. Jefferies performs executive and management functions in that her position's primary purpose is to assure that the Bureau runs effectively. Ms. Jefferies oversees the procurement of the services that make up State employee benefits programs that the Bureau administers. Without the timely and appropriate procurement of, for example, employee health insurance programs, the Bureau would be unable to effectively carry out its mission and purpose. Ms. Jefferies's job is to ensure that procurements are completed effectively (in compliance with the applicable laws and rules) and efficiently. In carrying out her duties, Ms. Jefferies is also the individual who establishes the procedures by which the Bureau handles the processing of its

procurements.

As Procurement Coordinator, Ms. Jefferies effectuates management's procurement policies and practices. She educates staff on requirements of the law, administrative rules, and oversight agencies; compiles information from various sources; reviews procurement documents to determine whether they are appropriate; obtains necessary approvals; advises staff and vendors regarding completion of submissions; and communicates with oversight agencies in order to ensure approval.

In her testimony and her written submission, Ms. Jefferies references that the law, rules, and oversight agencies' direction leave little room for discretion and points out that procurements do not require her signature approval. The fact that Ms. Jefferies does not sign off on procurements, and instead is required by law to obtain various levels of approval both in the agency and with outside entities playing oversight roles does not change the fact that Ms. Jefferies's position is responsible for coordinating and implementing the agency's procurement policies and practices. *See e.g. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd.*, 2011 IL App (4th) 090966 at ¶ 186 (4th Dist. 2011)(The Act does not require a person to exercise exclusive authority in the effectuation of management policies. Where employees implement management policies and practices, the fact that they "do not do so 'independently' is unimportant, given that the Act does not require such independence in management functions."). While procurement in Illinois is an area that is highly regulated, Ms. Jefferies's position is authorized to effectuate procurement policies for the Bureau of Benefits. Ms. Jefferies acknowledges exercising that authority when she describes her work as coordinating the procurement process and "simply ensur[ing] compliance" with procurement laws and rules.

I find that the Procurement Coordinator position in which Ms. Jefferies is currently employed is engaged in executive and management functions and is charged with effectuating management policies and practices. Therefore, I find that the designation of the position is proper under Section 6.1(b)(5) as further defined by Section 6.1(c)(i).

IV. CONCLUSIONS OF LAW

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

V. RECOMMENDED ORDER

Unless this Recommended Decision and Order is rejected or modified by the Board, the following positions with the Illinois Department of Central Management Services 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>	<u>Working Title</u>
37015-37-34-000-10-01	Pamela Jefferies	Senior Benefits Analyst
37015-27-62-300-05-01	Richard Green	CMS Transactions/ Leasing Staff

VI. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300,⁷ parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 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 __th day of February, 2014.

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

Sarah R. Kerley

**Sarah Kerley
Administrative Law Judge**

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