STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services (Department of Financial & Professional Regulation),	)	
Petitioner	)	
and	)	
	)	Case No. S-DE-14-162
American Federation of State, County and Municipal Employees, Council 31,	)	
Labor Organization-Objector	)	
Joel Campuzano and Nancy Illg,	)	
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) Deena Sanceda issued a Recommended Decision and Order (RDO) in Case No. S-DE-14-162 finding that designations of positions made on behalf of the Governor by the Illinois Department of Central Management Services (CMS) pursuant to Section 6.1 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) (Act), were properly made, but that the designation of two of

the positions did not comport with the requirements of Section 6.1. We agree with her assessment.

In its petition, CMS designated for exclusion 12 Public Service Administrator (PSA) Option 1 positions at the Illinois Department of Financial and Professional Regulation. All were designated for exclusion pursuant to Section 6.1(b)(5) of the Act. Section 6.1(b)(5) allows designation of positions with "significant and independent discretionary authority" as that term is defined in Section 6.1(c).[1]

The American Federation of State, County and Municipal Employees, Council 31 (AFSCME) 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. So did two of the employees occupying designated positions: Joel Campuzano, Supervisor-Athletic and Professional Boxing Investigations, and Nancy Illg, Manager of Martial Arts Unit. Finding the objections raised an issue that warranted a hearing, the ALJ held a hearing on February 4, 2014.

Ultimately, based on the evidence and arguments presented, the ALJ determined that it was proper to designate all of these positions for exclusion, but that the petition itself did not comport with the requirements of Section 6.1 with respect to the position held by Campuzano and the Manager-Real Estate Licensing position held by Jo Ingrum. The petition listed each of these positions as "vacant," when in fact Campuzano had been re-instated and Ingrum had been

[1] 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.

hired in December 2013. As the ALJ explained, the deficiency was not a lack of notice required by due process—while Board agents had not emailed the petition to Campuzano or Ingrum because their names were not listed on the petition, their collective bargaining representative was served and CMS posted notice of the petition on bulletin boards. In fact, there is evidence that Campuzano became aware that his position had been designated through notice posted on a bulletin board, and he was able to timely file his objections.

While lack of notice was not an issue, a petition is required to identify the incumbent in each designated position. Section 6.1(b) provides:

> **In order to properly designate** a State employment position under this Section, the Governor shall provide in writing to the Board: the job title and job duties of the employment position; **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.[2]

Given that rather clear instruction, the ALJ properly found that the petition did not comport with the requirements of Section 6.1 with respect to the two positions improperly marked as vacant.

CMS has filed no exceptions to this or any other of the ALJ's determinations. Instead, after issuance of the RDO, CMS moved to withdraw the designation of these two positions. On February 24, 2014, the Board's General Counsel issued an order granting that motion and extending the time in which to file exceptions up to and including February 27, 2014.

Although CMS filed no exceptions, 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, including an exception to the General Counsel's order allowing CMS to withdraw from the petition the designation of Ingrum and Campuzano's positions after issuance of the RDO. AFSCME argues that the General Counsel's decision to grant CMS's motion without providing AFSCME an

[2] Emphasis added.

opportunity to respond is inconsistent with due process. Further, AFSCME states that it has been prejudiced by CMS's alleged refusal to withdraw the petition prior to the issuance of the RDO because it was forced to litigate issues that are no longer before the Board and will be required to re-litigate these issues when Ingrum and Campuzano's positions are designated in a subsequent petition. We reject AFSCME's exceptions with regard to the issue of withdrawal.

AFSCME cites no authority for its contention that its response was necessary before the Board's General Counsel could grant CMS's request to withdraw. The Board's Rules governing Gubernatorial designation petitions, 80 Ill. Adm. Code Part 1300, do not address the withdrawal of a petition. Elsewhere, however, the Rules do address withdrawal of a representation petition, 80 Ill. Adm. Code 1210.40, and withdrawal of an unfair labor practice charge, 80 Ill. Adm. Code 1220.20. In each instance, the Rules provide a petitioner or charging party the opportunity to withdraw a petition or charge upon request.[3] With respect to unfair labor practice charges, Rule 1220.20 specifically contemplates the withdrawal of a charge while it is pending before the Board, stating that a charging party may request that a charge be withdrawn and, upon receipt, the Board's General Counsel will either grant or deny the request. 80 Ill. Adm. Code 1220.20(f). In neither instance do the Board's Rules provide another party with the opportunity to respond to a request to withdraw. Furthermore, in a non-precedential decision an ALJ specifically noted the Board's practice to grant requests to withdraw in lieu of ruling on a voluntary motion to dismiss, as is customary in other forums. City of Freeport, 25 PERI ¶ 57 (IL LRB-SP ALJ 2009). Moreover, this practice has already been adopted with respect to Gubernatorial designation

[3] There are limitations on a petitioner's right to withdraw a representation petition in two instances. First, when the Board has already directed an election or approved a consent election, a petitioner may withdraw its petition, but will thereafter be barred from petitioning to represent all or part of the same unit during the subsequent six months. Finally, if another party has intervened in a representation petition, the original petitioner may not withdraw without the consent of all parties, but may file a statement asserting that it no longer wishes to appear on the ballot.

petitions. CMS has previously requested the partial withdrawal of designation petitions; the practice of the ALJs in these cases has been to grant the request to withdraw and proceed on the remaining portions of the designation.

Furthermore, AFSCME has experienced no legal prejudice as a result of CMS's failure to withdraw the designation of Ingrum and Campuzano's positions prior to the issuance of an RDO for the following reasons. First, though AFSCME complains that it was required to present argument at hearing on an issue that is no longer before the Board and will be required to present the same argument in a subsequent petition regarding the same positions, it is by no means required to present the same argument and evidence at a subsequent hearing on Ingrum and Campuzano's positions. AFSCME may instead stipulate to the record developed in this hearing. Second, the failure to address this deficiency prior to the hearing is at least partially attributable to AFSCME, which did not object to the deficiency. Finally, even if we were to hold that it was error to permit the withdrawal of a portion of the designation after the issuance of an RDO, this would be harmless error. Had the Board's General Counsel ultimately denied CMS's request to withdraw, this denial would not alleviate the inconvenience of which AFSCME complains. If CMS's request had been denied, instead of ruling on the decision to permit withdrawal, we would be in the position to affirm, reject, or modify the ALJ's conclusion that CMS failed to comply with Section 6.1(b) in its designation of Ingrum and Campuzano's positions. In such a case, even if we were to accept this conclusion, our decision would act as a final decision on the merits only as to whether CMS met the procedural requirements for filing a Gubernatorial designation in the instant case, and not as to the ultimate designability of Ingrum and Campuzano's positions. Thus, CMS would still be permitted to re-file the Gubernatorial

designation of these positions to seek a final determination on the ultimate issue of their designability.

With respect to AFSCME's remaining exceptions, we again decline to rule on the constitutionality of the Public Labor Relations Act as amended by Public Act 97-1182 and, based on our review of the record, and the RDO, we reject all other 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 held in Chicago, Illinois, on March 11, 2014; written decision issued at Springfield, Illinois, March 14, 2014.

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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.

Section 6.1(b) also provides:

> In order to properly designate a State employment position under this Section, the Governor shall provide in writing to the Board: the job title and job duties of the employment position; 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.

On January 13, 2014, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation pursuant to Section 6.1 of the Act and Section 1300.50 of the Board's Rules. The petition seeks to exclude the following Option 1 Public Service Administrators (PSAs) at the Illinois Department of Financial and Professional Regulations (IDFPR):

Option	**Position Number**	**Working Title**	**Incumbent**
Option 1	37015-13-00-200-00-01	Shared Services Liaison	Lisa Prose

Option 1	37015-13-01-000-10-01	Affirmative Action Officer	Vivian Tolliver
Option 1	37015-13-40-000-10-01	Policies, Procedures, Planning and Performance Review Coordinator	Debra Niemann
Option SS1	37015-13-10-010-00-01	Manager of Consumer Services	Mario Pantoja
Option 1	37015-13-05-200-00-01	Records Management Personnel	Nancy Haines
Option 1	37015-13-10-500-10-01	Community Outreach Supervisor	vacant[1]
Option 1	37015-13-40-622-00-01	Manager - Professional Services	James Koehl
Option 1	37015-13-40-623-00-01	Manager - Health Services	Sandra Dunn
Option 1	37015-13-40-625-00-01	Manager - Real Estate Licensing	Jo Ingrum[2]
Option 1	37015-13-40-621-00-01	Testing Officer	Young Brockhouse
Option SS1	37015-13-40-961-00-01	Supervisor – Athletic and Professional Boxing Investigations	Joel Campuzano[3]
Option 1	37015-13-40-962-00-01	Manager of Martial Arts Unit	Nancy Illg

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 affidavits completed by IDFPR directors.

On January 22, 2014, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME), pursuant to Section 1300.60(a)(3) of the Board's Rules, each filed objections to the designation of all the at-issue positions. Also on January 22, 2014, Joel Campuzano, an employee of the State of Illinois who occupies one of the positions designated as excluded from collective bargaining rights, filed objections to the designation of the position that he occupies. On January 23, 2014, Nancy Illg, also an employee who occupies one of the positions at issue, similarly filed objections to the designation of the position that she occupies.

Upon review of AFSCME's and incumbent employees' objections to the designations of the employment positions held by Campuzano and Illg, I found that the objections sufficiently

[1] The designation petition does not identify the incumbent. AFSCME's objections identify this position as vacant.
[2] The petition does not identify the incumbent. Jo Ingrum was only identified as the incumbent through AFSCME's objections.
[3] The petition does not identify the incumbent. Joel Campuzano was first identified as the incumbent through AFSCME's objections, and then by Campuzano himself through his own objections.

raised issues that *might* overcome the presumption that the designation of those positions are proper under Section 6.1 of the Act. Accordingly, a hearing was held on February 4, 2014, before the undersigned in Chicago, Illinois, at which time all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, and to argue orally.

Based on my review of the designation petition, the documents submitted as part of, and in support of the petition, the objections, the documents and arguments submitted in support of those objections, evidence presented at hearing, and upon the entire record of the case, I recommend that the Board find that the designations of the employment positions held by Lisa Prose, Vivian Toliver, Debra Niemann, Mario Pantoja, Nancy Haines, James Koehl, Sandra Dunn, Young Brockhouse, Nancy Illg, and the Community Outreach Supervisor to have been 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 these positions as set out below and, to the extent necessary, amend any applicable certifications of exclusive representatives to eliminate the existing inclusion of these positions within collective bargaining units. I further find that the designation of the positions currently held by Jo Ingrum and Joel Campuzano do not comport with the requirements of Section 6.1 because CMS is required to provide the names of any incumbents in designated positions in writing to the Board, and neither the petition, nor any subsequent documents provided by CMS include this information. However, but for this deficiency, these positions would have been properly designated.

II. STIPULATIONS[4]

1. The Board's State Panel has jurisdiction to hear this matter pursuant to Section 5 and Section 20(b) of the Act.
2. American Federation of State, County and Municipal Employees, Council 31 is a Labor Organization within the meaning of Section 3(i) of the Act.
3. Department of Central Management Services is a Public Employer within Section 3(o) of the Act.
4. Joel Campuzano is a public employee as defined by Section 3(n) of the Act.
5. Nancy Illg is a public employee as defined by Section 3(n) of the Act.
6. American Federation of State, County and Municipal Employees, Council 31 is the exclusive representative of a bargaining unit of which Joel Campuzano is a member.

[4] The stipulations were proposed prior to the hearing, but were accepted in Illg's absence because she arrived late, and could not be reached by telephone.

7. American Federation of State, County and Municipal Employees, Council 31 is the exclusive representative of a bargaining unit of which Nancy Illg is a member.

8. There exists a collective bargaining agreement between CMS and AFSCME which covers the at-issue employees.

III. 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, that in 2010, the Board certified the positions into bargaining unit RC-63.

1. affidavits

The Deputy General Counsel of the Division of Banking (DOB) for the IDFPR, Michael Diaz, attests in an affidavit, that as the Director of Consumer Services, Pantoja is authorized to have significant and independent discretionary authority as an employee, as defined by Sections 6.1(c)(i) and 6.1(c)(ii) of the Act. Pantoja "effectuates management policies in his role managing the investigative function of the DOB's commercial and mortgage banking operations.

The Director of Administrative Services for the IDFPR, Cathy Gonzalez, attests that as the Records Manager, Nancy Haines is authorized to have significant and independent discretionary authority as an employee, as defined by Sections 6.1(c)(i) and 6.1(c)(ii) of the Act. Haines is responsible for maintaining, tracking and filing the records generated by the IDFPR. She manages the record retention system for the IDFPR in accordance with applicable law and rules related to the maintenance of administrative records.

In affidavits for each of the following at-issue employees, Jeff Read, the Assistant Deputy Director, for the IDFPR's Licensing and Testing, attests that James Koehl, Sandra Dunn, the Real Estate Licensing Manager, and Young Brockhouse are all authorized to have significant and independent discretionary authority as employees, as defined by Sections 6.1(c)(i) and 6.1(c)(ii) of the Act. As the Professional Services Licensing Manager, Koehl oversees a professional licensing program for the Division of Professional Regulation (DPR) within the IDFPR, and among other things, he interprets and applies laws, rules and policy to determine whether an applicant for a license in the professional services field should receive a license. As the Health and Services Licensing Manager Dunn oversees a professional licensing program for the DPR, and among other things she interprets and applies laws, rules, and policy to determine

whether an applicant for a license in the health services field should receive a license. The Real Estate Licensing and Education Manager oversees a professional licensing program for the DPR, and among other things interprets and applies laws, rules and policy to determine whether the applicant for a real estate license should receive a license. As the Education and Testing Unit's Testing Officer, Brockhouse effectuates policies and represents management interests by overseeing the DPR's licensure examination program.

In affidavits for each of the following at-issue employees, DPR Director Jay Stewart attests that the employees in the positions held by Joel Campuzano and Nancy Illg are each authorized to have significant and independent discretionary authority as employees, as defined by Sections 6.1(c)(i) and 6.1(c)(ii) of the Act. The Manager of Boxing effectuates policy and represents management interests by regulating all boxing bouts in Illinois. As the Manager of Martial Arts, Illg effectuates policy and represents management interests by regulating all mixed martial arts bouts in Illinois.

The affiants also assert that all the employees in their position capacity are "authorized to, in the interest of IDFPR, among other things, assign, responsibly direct, and review the work of [the position's] subordinates with independent judgment. These positions 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." The affiants attest that all the employment positions are "authorized to be engaged in executive and management functions of IDFPR and charged with the effectuation of management policies and practices of IDFPR or represent management interests by taking or recommending discretionary actions that effectively control or implement the policy" of the IDFPR. Each affiant states that the organizational charts included in the designations are the most current chart and accurately reflect the organization structure of the relevant division of the IDFPR. Each affiant also states that the submitted CMS-104s "fairly and accurately represents the duties and responsibilities that the position at issue is authorized to perform." Each affidavit was signed between November 20th, and November 25th, 2013.

2. organizational charts and CMS-104s

The submitted organizational chart for each position is a graphical representation of the division that the position functions within. The organizational charts identify each position, by position number, the position's incumbent, if any, and the subordinates and supervisors of each

position on the organizational chart. Each submitted organizational chart identifies that they were last updated on July 16, 2013. The job duties of each position are identified in the submitted CMS-104 position descriptions. Each CMS-104, in relevant part, identifies the following as a "current and accurate statement of the position duties and responsibilities" for the at-issue employment positions.[5]

a. Pantoja

Under the administrative direction of the Deputy Commissioner, Consumer Services Manager Pantoja directs and supervises the Consumer Services Program. He serves as a liaison between the DPR's Division of Banking, the industries regulated by the Bureaus (the Bureau of Banks and Trust Companies, and the Bureau of Residential Finance), and the consumers of services provided by those industries. He receives complaints about the operations, methods, policies, procedures, etc. of the entities regulated by the Bureaus, and ensures complaints are routed to appropriate personnel within the Bureaus for handling within established time frames. Pantoja researches the complaints, determines their validity, and when necessary contacts the appropriate officials of the applicable regulated entities. Pantoja formulates rules and regulations affecting the industries regulated by the Bureaus as they relate to consumer services. He confers with the Bureau's management to determine and initiate changes, additions, or clarifications to Agency policies, procedures and rules. He recommends changes to the Assistant Commissioners and the Deputy Commissioners regarding statutes affecting the Consumer Services Program. Pantoja supervises, assigns, reviews, and plans the work of the support staff. He implements or recommends personnel actions for subordinate staff such as hiring, discharge, discipline, promotion, receiving grievances, approving time off, evaluating performance and salary increases. He is authorized to be the direct supervisor to the Administrative Assistant I position.

b. Haines

Under administrative direction, Records Manager Haines organizes, plans, controls and evaluates the activities and personnel of the Record Management Section and serves as a full line supervisor to six clerical employees. She centralizes filing and microfilm for the IDFPR's Administrative Services department. Haines serves as assistant to the Director and serves as a Telecommunications Coordinator and Recycling Coordinator for Administrative Services. As a

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

supervisor to at least one subordinate, Haines assigns and reviews work, provides guidance and training, counsels staff regarding work performance, reassigns staff to meet day-to-day operating needs, and establishes goals and objectives. Haines approves time off, adjusts first level grievances, effectively recommends and imposes discipline up to and including discharge, determines and recommends staffing needs, and prepares and signs performance evaluations.

c. Koehl

Under the administrative direction of the Division Director, Section Manager of the Professional Services Unit Koehl is authorized to administer and manage a comprehensive program for professional licensure and re-licensure of individuals in various professions,[6] and serves a working supervisor to five subordinates. Koehl interprets and implements policies for compliance with the laws, rules, regulations, policies and procedures for the licensing of professional licensure. Koehl is responsible for the development and implementation of policy for the initial review and evaluation of applications, and the issuance of the professional licenses. He is responsible to ensure compliance with the licensure portion of the various governing statutes for specific professions in the implementation of licensure procedures. Koehl is authorized to draft, organize, and develop proposed revisions to licensing laws, rules, regulations, policies and procedures. He also develops the Unit's objectives and establishes reliable evaluation methods to measure the achievement of the goals and objectives. He attends and participates in internal and external meetings regarding professional licensing related matters. As a supervisor, Koehl is authorized to assign and review work, provide guidance and training to assigned staff, counsel staff regarding work performance and reassign staff to meet day-to-day operating needs. He also approves time off and prepares and signs performance evaluations.

d. Dunn

Subject to administrative approval, Section Manager of Health Services Dune is authorized to administer and manage a comprehensive program of an operations section and serves as a working supervisor to five subordinates. Dunn administers and manages a program

[6] These professions include Genetic Counselor, Certified Shorthand Reporter, Roofing, Environmental Health Practitioner, Geologist, Private Detective, Security Contractor, Alarm Contractor, Locksmith and Fingerprint Vendor, Collection Agency, Detection of Deception, Medical Corporation, Professional Service Corporation, Limited Liability, Cosmetology, Barber, Esthetics, Nail Technician, Electrology and Hairbraiders, Massage Therapy, Public Accounting, Dental Controlled Substance, Dental, Interior Design, Landscape Architect, Funeral Director/Embalmer, Uniform Athletic Agents, Structural Engineer, Land Surveyor, and Architect and Design Firms.

of an operational section involved in the review and evaluation of applications for health related licensures of individuals in various professions regulated by the DPR. She is authorized to develop and articulate policies governing DPR administrative programs impacting the Division of Licensing and Testing. She collaborates with IDPR division representatives to affect proactive functional program planning, implementation, and evaluation. She is authorized to confer with superiors to provide input and information to resolve administrative problems and program function improvements. As a supervisor, Dunn is authorized to supervise staff, assign work, approve time off, provide guidance and training, give oral reprimands, and complete and signs performance evaluations. She also counsels staff on problems with productivity, conduct, and quality of work.

e. Ingrum

Subject to administrative approval, Real Estate Licensing and Education Manager Ingrum plans, assigns, prioritizes, coordinates, evaluates, reviews and maintains records of the production and performance of subordinate supervisors and staff in the completion of duties associated with the initial and renewal licensing of individuals in various professions.[7] Ingrum is authorized to interpret and implement laws, rules, regulations, policies and procedures applicable to the licensing of the Department's real estate professions. He reviews licensees' breaches of laws, rules, regulations, policies and procedures, and meets with Enforcement Division. He also confers with other managers regarding licensing restrictions of regulated industries. He reviews and analyzes licensing processes and effectiveness, and he confers with superiors to provide input and information to resolve administrative problems and program function improvement. As a supervisor Ingrum is authorized to provide the appropriate training, technical assistance and counseling for subordinate development. He is also authorized to recommend other personnel actions such as promotions, transfers, salary adjustments, salary increases, transfers and demotions. Finally, Ingrum is authorized to determine the appropriate discipline level and to impose such discipline.

The organizational chart for the Licensing and Testing Department, within the Division of Professional Regulation identifies that the Real Estate Licensing and Education position is vacant.

[7] These professions include real estate brokers and salespersons, real estate schools and instructors, real estate appraisers, auctioneers, and other entities under the agency's jurisdiction.

f. Brockhouse

Subject to administrative approval, Testing Officer for the Division of Professional Regulation Brockhouse is authorized to develop, implement, and administer the statewide operation of the Department's licensure examination programs, serves as a working supervisor to at least three employees. He develops, articulates and implements policies, procedures and processes for the review and evaluation, and the maintenance of licensure examination programs. He also directs and coordinates activities in collaborating with external testing organizations for the development/design, procurement and delivery of testing services, and licensure examination programs for a variety of licensed professions. Brockhouse confers with superiors to provide input and information to resolve administrative problems and program function improvements. He also receives and evaluates statistical information to formulate recommendations for operational modifications to achieve optimum output. As a supervisor, Brockhouse has the authority to assign and review work, provide guidance and training, counsels staff regarding work performance, and reassigns staff to meet day-to-day operating needs. As a supervisor Brockhouse also has the authority to establish annual goals and objectives, approve time off, and prepare and sign performance evaluations.

g. Campuzano

Under administrative direction, as the Athletic Unit's Professional Boxing PSA, Campuzano develops, implements and administers the Division's statewide enforcement and regulation program in accordance with the Illinois Professional Boxing Act, and he is authorized to determine the need for revision of the program and methods of operation, and to revise and implement new procedures and methods as necessary. He represents the Board and Department in various functions. Campuzano issues licenses based upon his evaluation of qualifications of individuals and the effect on the sport to all officials of the Athletic Board. These officials included physicians, timekeepers, announcers, boxers, boxing judges, managers, etc. He makes assignments to all officials at each athletic exhibition. Campuzano maintains records of all exhibitions and all active contestants, records of individual win/loss record, suspensions, and reinstatements from throughout the jurisdiction of the World Boxing Associations. He recommends approval or rejection of individual contests arranged by matchmakers to the Illinois Athletic Board based on his evaluation of records. He attends and maintains a record of all board meetings.

Through a subordinate supervisor, Campuzano directs and supervises the licensure of all promoters and matchmakers and the investigation of promoters or matchmakers' background and resources. He informs prospective promoters of requirements such as public liability and property damage insurance, surety bond of State tax, and what records must be available, i.e. public safety inspection of site, manifest of tickets printed and building lease. Campuzano compiles data and documentation in support of project requirements on licensing and enforcement activities, and verifies documentation/reports for accuracy. Campuzano is authorized to participate in the Unit budget for the program and personnel, including travel, equipment, and miscellaneous funds. He also develops quantifiable data to justify additional staff and/or how to more efficiently and effectively utilize current resources.

Campuzano is authorized to directly supervise at least one subordinate by assigning work, approving time off, providing guidance and training, giving oral reprimands, effectively recommends grievance resolutions, and complete and sign performance evaluations. He is also authorized to counsel staff on problems with productivity, conduct, quality of work, and to determine staffing needs to achieve program objectives. The organizational chart for the Athletics Unit, within the DPR identifies that the Professional Boxing PSA position is vacant. The chart also shows that the Executive II position that reports directly to the Professional Boxing PSA is vacant, and that the Administrative Assistant position that reports directly to the Executive II position is also vacant.

h. Illg

Under administrative direction, as the Manager of Martial Arts of the Athletics Unit of the DPR, Illg is responsible for the development and implementation of policy set forth in the Professional Boxing Act, and ensures compliance for the Division of Professional Regulation. She directs the Martial Arts and Mixed Martial Arts Program through the development and administration of statewide policies, by providing administrative information to promoters or matchmakers. She also travels to various sites to attend major promotions, Illinois Athletic Board meetings, and other various meeting, and/or hearings. She serves as a technical resource in the role of Manager of the Martial Arts Unit, and full-line supervisor.

Illg serves as the manager of the Martial Arts Unit responsible for the development, administration and articulation of statewide policies for the enforcement and regulation program in accordance with the Illinois Professional Boxing Act. She speaks on behalf of the Director of

Athletics in directing and advising Department staff in implementation of policy. She establishes procedures, develops the goals and objectives of the program and establishes reliable evaluation methods of operation and revises and implements new policies, procedures, and methods. Illg is authorized to determine the need for revision of the program and methods of operation, and to revise and implement new procedures and methods as necessary.

Through a subordinate supervisor, Illg directs and supervises the licensure of all promoters and matchmakers and the investigation of promoters or matchmakers' background and resources. She informs prospective promoter of requirements such as public liability and property damage insurance, surety bond of State tax, and what records must be available, i.e. public safety inspection of site, manifest of tickets printed and building lease. Illg compiles data and documentation in support of project requirements on licensing and enforcement activities, and verifies documentation/reports for accuracy. Illg maintains records of all exhibitions and all active contestants, records of individual win/loss record, suspensions, and reinstatements from throughout the jurisdiction of the World Boxing Associations. She recommends approval or rejection of individual contests arranged by matchmakers to the Illinois Athletic Board based on his evaluation of records. He attends and maintains a record of all board meetings. Illg issues licenses based upon evaluation of qualifications of individuals and the effect on the sport to all officials of the Athletic Board. These officials included physicians, timekeepers, announcers, boxers, boxing judges, managers, etc. She makes assignments to all officials at each athletic exhibition.

Illg is authorized to directly supervise three subordinates by assigning and reviewing work, providing guidance and training, counseling staff regarding work performance, reassigning staff to meet day-to-day operations, and by establishing goals and objectives. She also approves time off, adjusts first level grievances, effectively recommends and imposes discipline, up to and including discharge, and prepares and signs performance evaluations. The organizational chart for Athletics Unit, within the DPR shows that the three positions that report directly to the Martial Arts PSA are vacant.

B. objections

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 Pantoja, Haines, Koehl, Dunn, Ingrum, Brockhouse, Campuzano, and Illg 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 at issue. AFSCME's Director of Organizing, Tracy Adman, wrote an affidavit attesting that she sent a questionnaire to all the at-issue employees in order to ascertain the "actual job duties" of the employees subject to the designation petition, and to "allow the employees to describe any inaccuracies in their position description." AFSCME's specific objections are based upon the information provided by the eight employees that responded to the questionnaire. These completed questionnaires are attached to the objections. Campuzano and Illg also filed individual objections, which are very similar to the information included in their questionnaires. Relevant to the instant case, the questionnaires asked the following questions:

> **7.** Review your CMS-104 (Under the new law, your CMS-104 is presumed to be 100% correct unless specifically refuted). Please point out every example of what you do not do as described in the CMS-104. If your CMS-104 states that your job duties include planning, directing, or effectuating program or policy[,] describe your actual duties being as specific as possible in describing those functions. Please feel free to attach additional pages or your latest performance evaluation if necessary to describe these functions […]
>
> **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 work to employees

i. Reward employees
j. Discipline employees
k. Direct employees, if yes explain specifically what direction you provide to your direct reports.

a. Pantoja

AFSCME argues that Pantoja does not utilize significant discretion or independent judgment, rather he merely follows prescribed IDFPR policies and regulations. Pantoja conducts complaint intake from consumers, which requires that he process the complaints, issue letters to the consumers in response to their complaint, and forwards any violations to the legal section for enforcement. Pantoja states that he has no authority to decide how policies or legislation will be implemented, nor does he recommend any actions that control or implement legislation that affect his agency or agency policy. AFSCME also argues that Pantoja does not utilize independent judgment or discretion when he assigns and directs his subordinate. Pantoja states that his subordinate is a Criminal Intelligence Analyst who conducts investigations for licensed entities, but that after January 31, 2014 he will no longer have any subordinates reporting to him. Pantoja provides that he assigns work to this subordinate, and directs this employee by providing guidance regarding the employee's daily work activities.

b. Haines

AFSCME argues that Haines does not have significant and independent discretionary authority within the meaning of Section 6.1(c)(i) because Haines makes no policies, is not involved in budget preparation, she does not sit on any external task forces, committees, or working groups that implement policies. Haines also states that while she does not write policies, she writes guidelines and procedures for various agency record keeping functions to ensure that all work is maintained in accordance with the IL State Records Act and JCAR rules. Currently she is working with the Agency's divisions and sections to transition from a paper-based to image-based process, which requires her to use her technical expertise.

AFSCME also argues that Haines is not a supervisor under the test in Section 6.1(c)(ii) because Haines does not exercise independent judgment when she assigns and directs her subordinates. Her assignment and direction of workload is based upon agency determined priorities. Haines states that the most severe disciplinary action she can impose is a verbal reprimand which requires her supervisor's approval, but that she does recommend discipline to her supervisor. Her only direct report is Chuck Sours. Sours has never required discipline. She

assigns Sours work, in some instances they split the work based on when a task must be completed or who is present, and alters Sours' work priorities from time to time.

c. Koehl

With regard to whether Koehl has the authority to have significant and independent discretionary authority within the meaning of Section 6.1(c)(i), AFSCME states that Koehl "merely ensures that the acts and rules for the processions to which he is assigned are complied with regarding the licensure processes for the division." Koehl states he also provides input and guidance when changes are enacted regarding legislation, including revisions to applications, manuals, employee training and notifying other Units in the Division of such changes.

AFSCME also argues that Koehl does not engage in many of the enumerated supervisory functions, and there is no showing that he uses independence or discretion in the performance these supervisory duties. Koehl states that he has no authority to transfer, suspend, lay off, recall employees, promote, discharge, reward, or recall employees from lay off. He directs and assigns work to employees by dividing the work evenly, and that the employees are assigned daily tasks in addition to processing applications. Regarding discipline, Koehl states that he "may give oral reprimands when necessary."

d. Dunn

With regard to whether Dunn has the authority to have significant and independent discretionary authority within the meaning of Section 6.1(c)(i), AFSCME states that Dunn does not write or recommend the adoption of policies. AFSCME argues that Dunn assists others based upon changes in licensing requirements using technical expertise not independent judgment, and thus does not implement policies within the meaning of Section 6.1(c)(i). Dunn denies that she develops policies governing IDFPRs' administrative programs, and she follows previous guidelines and procedures developed by previous program directors, executive staff, and legal counsel. Dunn states that she provides historical information, and assists the staff with complex licensing issues as well as providing direction in Board duties and other job responsibilities.

AFSCME concedes that Dunn directs and assigns work to her subordinates, but that this does not require independent judgment because her subordinates have predetermined job duties and perform their functions according to DPR procedures and policies. In her questionnaire, Dunn states that she is the direct supervisor to five subordinates. In regard to whether she directs

employees, she states that her subordinates' job duties are predetermined, but she does distribute requests for special projects and information as requested by the Deputy Director and Executive Staff.

e. Ingrum

AFSCME argues that Ingrum does not have significant and independent discretionary authority within the meaning of Section 6.1(c)(i) because Ingram specifically states that he does not make any managerial decisions without approval from his supervisor, the Deputy Bureau Chief, and thus there cannot be a showing that he exercises independent discretion. AFSCME also argues that because Ingram states that he has not effectuated any supervisory duties on this own, he does not have significant and independent discretionary authority within the meaning of Section 6.1(c)(ii).

In his questionnaire, Ingram states that he started in this position effective December 16, 2013, and "there has been a great deal of reluctance form the unit to be 'managed.'" Such that he currently does not make any managerial decisions without the approval of his supervisor, and that to date he has not effectuated any supervisory decisions on his own.

f. Brockhouse

AFSCME argues that Brockhouse does not have significant and independent discretionary authority within the meaning of Section 6.1(c)(i) because Brockhouse is a technical expert regarding psychometrics in the development and maintenance of exams, and is a liaison between Department units and testing vendors but he does not develop or recommend any policies, administrative rules, or laws, and his section does not operate under any such rules. Brockhouse states that in regards to whether he directs and coordinates section and department activities with external testing organizations, his function is to work with testing vendors and department profession liaisons so the vendor will follow department policies, procedures, and laws/rules and serve as an expert in the testing field. He works with test vendors' psychometricians to write pre-licensing exams based on laws/rules and exam reference materials selected by subject matter experts. Brockhouse states that he functions as a technical expert for testing rather than a manager, supervisor, or policy-maker for the department.

AFSCME also argues that Brockhouse is not a supervisor as defined in Section 6.1(c)(ii) because he does not utilize any independent judgment or discretion. Brockhouse states that when he assigns work he distributes the work evenly to his subordinates, but that the vast

majority of the work comes directly from test vendors and is completed without direction by him.

g. Campuzano

AFSCME argues that Campuzano does not have significant and independent discretionary authority within the meaning of Section 6.1(c)(i) because Campuzano does not write policies or recommend the adoption of policies. He does not engage in independent or discretionary actions because his duties are limited to enforcing previously established policies and only his supervisor has the authority to make the decisions in implementing the established policies. All of Campuzano's decisions are defined either by law or department policy, are made using his professional and technical expertise, or require the prior approval of his supervisor. Campuzano's recommendations to his supervisor are based upon his technical knowledge. Additionally, Campuzano argues any significant or independent judgment in how he is able to perform his job duties is severely limited or non-existent due to the narrow confines of the regulatory duties and responsibilities meted out by the enabling statute or administrative rules his unit is charged with enforcing.

AFSCME also argues that Campuzano is not a supervisor because he has no subordinates, and thus he is not engaged in any of the enumerated supervisory functions. Campuzano argues that no subordinates currently report to him, there have never been subordinates listed in the positions subordinate to his, and that it is common practice to hire employees from a temporary agency that report directly to the Director of the Athletic unit.

h. Illg

AFSCME argues that Illg does not have significant and independent discretionary authority within the meaning of Section 6.1(c)(i) because Illg does not write policies or recommend the adoption of policies, nor does she have any discretion in how she performs her duties. She does not engage in independent or discretionary actions because her duties are limited to the enforcement of previously established policies and her supervisor has all authority to make the decisions in implementing the established policies. AFSCME argues that the CMS-104 incorrectly identifies the enforcement of policies and implementation as one in the same. All of Illg's decisions are defined either by law or department policy, are based upon her professional or technical expertise, or require the prior approval of her supervisor. Additionally, Illg argues any significant or independent judgment in how she is able to perform her job duties

is severely limited or non-existent due to the narrow confines of the regulatory duties and responsibilities meted out by the Act and Rules her unit is charged with enforcing.

AFSCME also argues that Illg is not a supervisor because she has no subordinates, thus she is not engaged in any of the enumerated supervisory functions. Illg argues that no subordinates currently report to her, and there have never been subordinates listed in the positions subordinate to her, and she believes they never will be filled because it is common practice to hire employees from a temporary agency that report directly to the Director of the Athletic unit.

C. additional argument raised at hearing

AFSCME argues that the Board denied Campuzano due process because it did not e-mail Campuzano the designation petition and the supporting documents submitted by CMS. CMS responds that Campuzano was provided due process because actual notice of the filing of the designation petition is evidenced by the fact that he filed objections on his own behalf and is a party to the matter, and that failure on part of the Board to provide Campuzano with the filed petition was harmless error because the Board provided him notice of the subsequent hearing, and he participated in the hearing.

IV. FINDINGS OF FACT

The DPR regulates licensure and discipline of over one million licensees in over 60 professions in the State of Illinois. Licenses are issued to ensure that individuals are qualified to engage in particular professions and discipline is administered if a licensee's conduct violates the relevant rules and statute regarding their professional conduct. The Athletic Unit of the DPR administers, implements, and enforces the Boxing and Full-contact Martial Arts Act. 225 ILCS 105 (Boxing Act). The legislature declared:

> Professional boxing and full-contact martial arts contests in the State of Illinois, and amateur boxing and full-contact martial arts contests, are hereby declared to affect the public health, safety, and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that only qualified persons be authorized to participate in these contests and events in the State of Illinois. This Act shall be liberally construed to best carry out these objects and purposes. 225 ILCS 105/0.05.

The Athletic Unit administers the Boxing Act in accordance with administrative rules. See Rules for the Administration of the Boxing and Full-Contact Martial Arts Act. 68 Ill. Admin. Code Part 1370.

The Athletic Unit is organized into two sections, the Boxing section, and the Martial Arts section. The Boxing section consists of the PSA of Athletic and Professional Boxing Investigation, an Executive II position and an Administrative Assistant. The Professional Boxing PSA reports directly to the Athletic Director. The Administrative Assistant reports directly to the Professional Boxing PSA and the Executive II reports directly to the Administrative Assistant. The Executive position and the Administrative Assistants position have been vacant since at least 2011. The Martial Arts section consists of the Martial Arts PSA (also referred to as the Manager of Martial Arts), an Administrative Assistant, and two Executive IIs. The Martial Arts PSA reports directly to the Athletic Director. The Administrative Assistant and the Executive IIs report directly to the Martial Arts PSA. Like the positions in the Boxing section, the Martial Arts Administrative Assistant position and Executive II positions have been vacant since at least 2011. Currently, the Athletic Unit functions with the Director of Athletics, the two PSAs and various temporary employees.

Campuzano has been employed in Athletic Unit since 1995 and as the Professional Boxing PSA since approximately 2003. In 2010, Campuzano was placed on administrative leave, and was terminated in the summer of 2013. Campuzano was later reinstated to his PSA position, effective on December 16, 2013. Prior to his employment in the Athletic Unit, Campuzano was an amateur boxer.

Illg began working with the Athletic Unit in 2007, as a Policy Coordinator within the Policies and Procedures Unit for the DPR. As a Policy Coordinator Illg began assisting writing and revising the Athletic Unit's administrative rules. In 2011, Illg was chosen to lead the review of the Athletic Unit because she was already working specifically with the Athletic Unit rewriting the Boxing Act and the administrative rules. She became Acting Director of the Athletic Unit in the summer of 2012. In the spring of 2013, while Illg was functioning as Acting Director, she left her official position of Policy Coordinator, and became the Martial Arts PSA, but continued to also function as Acting Director. In December 2013, Shannon Rigby was hired as Director of the Athletic Unit.

As PSAs, Campuzano and Illg process and review licenses for the Athletic Unit to ensure that the applications for licenses comply with the Boxing Act and its administrative rules. Prior to a match, the Athletic Unit ensures that all the individuals involved in the match are properly licensed, and assign the referees, judges, and fight inspectors. The Athletic Unit must license each promoter, matchmaker, manager, contestant, timekeeper, referee, and judge. In order to put on a match, the Athletic Unit must issue a permit to a licensed promoter, and ensure that both contestants are licensed. The Athletic Unit then assigns licensed referees, judges and other necessary officials to the match. Campuzano and Illg review the applications and utilize the administrative rules to determine whether the submitted applications comply with the boxing act and boxing rules. Campuzano and Illg have input to licensing decisions, assignment decisions, and at the Director's request, run events. Campuzano and Illg have some discretion in determining whether a particular match should go forward. Director Rigby has the final authority to disallow a match, but all Athletic Unit employees have the authority to inquire further, raise specific questions for Rigby to address, and to make recommendations. If the match meets the statutory minimum, the PSAs have the discretion to recommend to the Director, whether the bout should go forward. If for instance, if in the match is one-sided and non competitive, the Director has the discretion to disallow the match. Also, the Athletic Unit employees have the discretion to request additional information, if in their opinion more information is necessary for a match to proceed, such as additional medical records.

The boxing or mixed martial arts matches are attended by Director Rigby or in her absence the PSA over the sport. The PSA's attend these matches to ensure that the Act and Rules are being followed. The Director or the designated PSA are ultimately responsible for the event complying the governing act and rules. For example, when Campuzano attends boxing events he is responsible for following the safety guidelines, that the inspectors have ensured that boxers' are properly gloved, properly wrapped, that the boxers are wearing the necessary equipment such as the correct sized gloves, mouthpieces, and protective cups.

Currently the PSAs and temporary employees function to process the applications and submit them to the Director for her approval. From 2011 through 2013, Illg repeatedly recommended that the positions subordinate to the PSAs be abolished. Jay Stewart, the Director of DPR, testified that at least one consideration for allowing the positions to remain vacant is that the unit was restructured while Campuzano was on leave, and he and Director Rigby need to

acclimate to the Athletic Unit before deciding whether additional employees are necessary, and that he is unaware of any intention to abolish the administrative and executive positions. He also testified that he is unaware of any plans to fill the positions.

On, or soon after January 7, 2014, Director Rigby and Campuzano discussed Campuzano's job duties. They discussed his CMS-104 and the Athletic Unit's organization. Specifically, Rigby informed Campuzano that he is authorized to directly supervise the Administrative Assistant position. In the event that the Administrative Assistant position is filled, he is expected to exercise the supervisory duties identified in the CMS-104 for his position.

On January 13, 2014, pursuant to Board rules, a Board Agent e-mailed to nine of the incumbent employees, an AFSCME representative, several attorneys representing AFSCME and several attorneys representing CMS, the following documents: the designation petition for case S-DE-14-126, the documents submitted in support of the petition, a "Notice to Employees" and a "Proof of Posting." The contents of the e-mail identified the option number, position number, working title, and with the exception of the positions held by Joel Campuzano and Jo Ingrum, it identified the incumbents of the positions identified in the documents filed by CMS. The e-mail also notified CMS that it was required to post the "Notice to Employees" within two days of receiving the e-mail, and that the Notice was to remain posted for 10 consecutive days. In order to demonstrate compliance, CMS was required to certify that the Notice was posted by completing and returning the attached Proof of Posting. The record demonstrates that the documents CMS submitted in support of this designation petition were compiled between July 2013 and November, 2013. Since Ingrum became employed in December 2013, and Campuzano was terminated during the time the documentation was compiled, neither Ingrum nor Campuzano were identified as the incumbents of their employment positions, and were not provided the e-mail.

Some time before January 22, 2014, but on or after January 13, 2014, Illg informed Campuzano that the e-mail attachment included a CMS-104 that sounded similar to his position, and forwarded him the e-mail from the Board Agent with the attached documents. Also some time before January 22, 2014, a law clerk for CMS posted the "Notice to Employees" on bulletin boards on the 5th and 9th floors of the James R. Thompson Center (JRTC), where several of the at-issue employees are assigned.

The Notice, in relevant part, states that:

> **NOTICE TO EMPLOYEES**
> **FROM THE ILLINOIS LABOR RELATIONS BOARD**
>
> On January 13, 2014, a GUBERNATORIAL DESIGNATION of positions excluded from collective bargaining was filed with this agency by [**CMS**], seeking to designate certain positions as excluded from collective bargaining pursuant to Section 6.1 of the Illinois Public Labor Relations Act, 5ILCS 315 (2013) *as amended*.
>
> This case is being investigated and NO DETERMINATION HAS BEEN MADE AT THIS TIME by the Illinois Labor Relations Board.
> ***
> The proposed gubernatorial designation is to EXCLUDE the following position(s) from collective bargaining:
> **Public Service Administrator, Option 1**
> **Employed at Department of Financial and Professional Regulation**
>
> ***
>
> | | | |
> |---|---|---|
> | Option SS1 | 37015-13-40-961-00-01 | Supv - Athletic and Prof Boxing Investigations |
>
> ***
> An employee who is the incumbent in one of the foregoing positions, a labor organization which is the collective bargaining representative of the foregoing positions . . . may within 10 days of the filing of the Gubernatorial Designation, object to the designation of this position in accordance with the applicable Rules and Regulations of the Illinois Labor Relations Board. See www.state.il.us/ilrb/subsections/act/. Please review these rules carefully as they provide specific information on the required content, service, and filing of an objection.
>
> Inquiries regarding this case may be directed to the Board Agent listed below. . . .
>
> Lori Novak
> One Natural Resources way
> Springfield, IL 62702
> (217) 785-4017
> lori.novak@illinois.gov

While the law clerk was posting copies of the Notice, he encountered Campuzano on the 5th floor of the JRTC, where Campuzano is assigned, and Campuzano inquired about the Notice. Campuzano testified that he saw the posted Notice prior to his filing objections, and that he recognized that his job title was identified in the Notice.

V. DISCUSSION AND ANALYSIS

As a threshold matter I note that the designation petition identifies that the positions' held by Ingrum and Campuzano are vacant, when in fact Ingrum and Campuzano have been the incumbents in those positions since December 2013, one month prior to the filing of the petition. Section 6.1(b) requires that CMS provide to the Board in writing, the name of the incumbent employees. To date, CMS has not provided the Board with the names of the incumbent employees for the Real Estate Manager position or the Professional Boxing PSA. Upon a plain reading of the statute, I must recommend that the designation of the positions held by Ingrum and Campuzano do not comport with Section 6.1(b) of the Act. In the alternative, if the Board were to determine the petition's initial deficiency does not necessitate a finding that the designation fails to comport with the requirements of Section 6.1(b) of the Act, my analysis will address whether the positions properly *qualify* for designation.

A. general objections

The general objections fail to overcome the presumption that the designations of the positions at issue are proper under Section 6.1 of the Act.

1. burden

The objectors bear the burden to demonstrate that the designation of the employment positions at issue are improper because the objectors' positions are contrary to the policy of Section 6.1 and because the presumption articulated in Section 6.1(d) requires that the objectors overcome the presumption that the designation is proper.

The Illinois Appellate 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. Section 6.1 specifically allows the Governor to exclude certain public employment positions from collective bargaining rights which might otherwise be granted under the Act. Section 6.1 also allows the exclusion of 1,900 positions that are already certified into bargaining units. AFSCME is opposing the State's public policy to exclude certain positions from collective bargaining, as stated in Section 6.1 of the Act, thus the burden is on AFSCME to demonstrate that the employees at issue are not eligible for such exclusion. 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) states that any designation for exclusion made by the Governor or his agents under Section 6.1 "shall be presumed to have been properly made." Like all presumptions, this presumption can be rebutted. Dep't of Cent. Mgmt. Serv. /Dep't of Healthcare & Fmly. Serv. v. Ill. Labor Rel. Bd. State Panel, 388 Ill. App. 3d 319, 335 (4th Dist. 2009). If contrary evidence is introduced that sufficiently rebuts the presumption, then it vanishes and the issue will be determined as if no presumption ever existed. Id. To rebut the presumption, the evidence must be sufficient to support a finding that the presumed fact does not exist. Id. at 335-336.

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

AFSCME argues that the submitted CMS-104s and affidavits only identify *potential* responsibilities that can be given to the employee within that position. This argument fails to meet AFSCME's burden because the Board has previously determined that CMS-104s are sufficient to meet the "job duties" requirement of Section 6.1 of the Act. See 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.).

3. 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 not a factor to my determination of whether the designations of the positions at issue comport with Section 6.1 of the Act.

4. 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 under Section 6.1(b)(5) of the Act because it provides no evidence to rebut the presumption.

An employment position may be properly designated under Section 6.1(b)(5) only if the position authorizes an incumbent to have "significant and independent discretionary authority" as defined by Section 6.1(c)(i) or Section 6.1(c)(ii) of the Act. 5 ILCS 315/6.1. CMS asserts that the positions at issue hold significant and independent discretionary authority within the meaning of Sections 6.1(c).

a. (c)(ii)

Section 6.1(c)(ii) of the Act provides that an employee holds significant and independent discretionary authority 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) (NLRA), or any orders of the National Labor Relations Board (NLRB) 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).

In their interpretation, the NLRB and the Courts have held that employees are statutory supervisors under the NLRA if "1) they hold the authority to engage in any one 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., 532 U.S. 706, 713 (2001) (internal quotes omitted); See also Oakwood Healthcare, Inc., 348 NLRB 686, 687 (2006).

AFSCME argues that the employees at issue are not supervisors only because CMS presents no evidence that the employees were ever authorized, told, or actually exercise any of the enumerated supervisor duties, and because CMS does not prove that all three prongs of the

supervisory test are met. The first prong of the NLRA supervisor test only requires that the employee ***hold the authority*** to engage in at least one of the enumerated supervisory functions, not that the employee actually exercises supervisory functions. CMS-104 position descriptions authorize the employee to engage in all the duties listed within, and AFSCME must demonstrate that the duties identified within the submitted CMS-104s do not qualify as any of the 12 enumerated supervisory functions, or it must provide evidence that the employee has actually been denied the authority to perform all of the enumerated supervisory functions.

CMS is not required to prove that every employment position at issue meets every prong of the supervisor test because there is a presumption that the employment positions are properly designated within the meaning of Section 6.1. Rather, to overcome the presumption, AFSCME has the burden to provide specific evidence that each at-issue employment position *does not* meet at least one prong of the supervisory test. Absent such contrary evidence the presumption stands.

b. (c)(i)

Section 6.1(c)(i) of the Act provides that an employment position is 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." Section 6.1(c)(i) of the Act, requires that the employee meet one of two tests. The first test requires the employee to a) be engaged in executive and management functions; and b) 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."

AFSCME argues that the tests for independent discretionary authority articulated in Section 6.1(c) essentially follow the manager and supervisor definition as developed by the NLRB, and argues that the Board should apply the interpretation of those definitions. As noted above, Section 6.1(c)(ii) does specifically incorporate the NLRB's definition and interpretation of a supervisory employee. However, while Section 6.1(c)(i) does use the same language the Supreme Court used in interpreting a managerial employee as identified by the NLRB,[8] unlike

[8] In Nat'l Labor Rel. Bd. v. Yeshiva Univ. the Supreme Court held that under the NLRA an employee may be excluded as managerial only if he "represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy." 444 U.S. 672, 683 (1980). Section 6.1(c)(i) states,

subsection (c)(ii), subsection (c)(i) is silent as to whether it also incorporates the Court's interpretation of a managerial employee under the NLRB. Thus applying the NLRB's analysis of managerial employee is not supported by the statute, and the only inquiry is whether the petitioned-for employees comport with any of the tests ***as written*** in Section 6.1(c) of the Act. Ill. Dep't Cent. Mgmt. Serv. (Dep't of Commerce and Econ. Opp.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶163 (IL LRB-SP 2014) appeal pending, No. 14-0276 (Ill. App. Ct. 1st Dist.)(specifically rejecting AFSCME's application and its interpretation of the historical origins of Section 6.1(c)(i)).

AFSCME also argues that the Board must distinguish between professional employees and managerial employees in reviewing these designations. This argument is unpersuasive because as written, Section 6.1 of the Act does not distinguish between managerial and professional employees, and the Board has yet to specifically address this issue. See 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.)(adopting the ALJ's conclusion that the designation was proper but determining that it was unnecessary to adopt the ALJ's specific finding that Section 6.1 of the Act does not distinguish between managerial and professional employees).

AFSCME' general objections only protest that CMS has not met its burden of proof. In fact AFSCME has the burden, which it fails to meet because it provides absolutely no evidence to demonstrate that the designated employment positions are not supervisors and it does not actually argue that the designated employment positions are not authorized to exercise independent discretionary authority ***as written*** in the text of Section 6.1(c) of the Act. 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 the Community Outreach Supervisor, nor the positions held by Lisa Prose, Vivian Toliver, Debra Niemann, these positions are properly designated under section 6.1(b)(5) of the Act.

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in relevant part, that an employment position authorizes an employee in that position to have independent discretionary authority as an employee if he or she "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.

B. specific objections and arguments

Neither AFSCME's specific objections, the factual information provided as the basis of the objections, nor Campuzano's and Illg's individual objections overcome the presumption that the positions held by Pantoja, Haines, Koehl, Dunn, Brockhouse, and Illg properly designated under Section 6.1(b)(5). Also, the positions held by Ingrum and Campuzano properly qualify for designation under section 6.1(b)(5).

1. Pantoja

AFSCME does not overcome the presumption that Pantoja's position is designated properly under Section 6.1(b)(5) of the Act. An employment position qualifies for designation when it authorizes an employee in that position to have significant and independent discretionary authority as an employee. Section 6.1(c)(i) of the Act provides that a person has significant and independent discretionary authority as an employee when he represents management interests by taking discretionary actions that effectively implement the policy of the Agency. Pantoja takes discretionary actions that implement the policy of the IDFPR when he processes and responds to the consumer complaints, determines whether the facts alleged in the complaint violate any of the rules, policies, regulations, law or procedures of the institutions the bureaus regulate, and when he forwards his determination of such violations to the enforcement department. The Board has found that the designation was proper when an employee gathers information from the business, checks that information against guidelines, and summarizes her findings, to determine whether a specific business qualifies for incentives because the employee "no doubt uses some discretion in assessing the extent to which the business meets the guidelines." Ill. Dep't Cent. Mgmt. Serv. (Dep't of Commerce and Econ. Opp.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶163 (IL LRB-SP 2014). Similarly, Pantoja must use some discretion in assessing the extent of any violation.

Pantoja also implements policy when he contacts the appropriate officials of the applicable regulated entity and when he confers with the Assistant Commissioners, Deputy Commissioner or Commissioner on an "as needed basis" on matters requiring consumer inquiries. Pantoja's CMS-104 indicates that discretion is required to determine when it is necessary to contact the official of the regulated entity, and when to confer with the Commissioner or his representatives regarding consumer inquiries. Since neither AFSCME nor Pantoja argue that Pantoja lacks this discretion, given the presumption as identified in Section

6.1(d), I find that Pantoja possesses the discretion to determine when he will contact the agencies he liaises with, and when he will confer with the Commissioner or the Commissioner's representatives.

AFSCME also argues that Pantoja utilizes neither independent judgment nor discretion when he directs and assigns work to his subordinate, but does not support this argument with any evidence. Also the fact that Pantoja will no longer have subordinates as of January 31, 2014, which is after the petition was filed, is an insufficient issue to overcome the presumption that the designation is proper. This argument addresses Pantoja's future status, and the Board must address his status as a putative supervisor at the time the petition was filed. On the day the petition was filed, and the day AFSCME filed its objections, Pantoja supervised at least one employee. However, there is limited support to consider future supervisory duties when determining whether an employee is a supervisor within the meaning of Section 152 of the NLRA. The NLRB found that department heads were supervisors because they were assigned subordinates throughout the year as business conditions required even though they did not have subordinates at the time the NLRB heard the case. Montgomery Ward & Co., Inc. (Binghamton, N. Y.), 70 NLRB No. 125 (1946). In a later case, the NLRB could not determine whether an employee should be excluded from a bargaining unit as a supervisor or a managerial employee because while she had no subordinates at the time the matter was before the NLRB, the evidence suggested that a subordinate employee was scheduled to be hired in the upcoming year. Newton-Wellesley Hospital, 219 NLRB No. 80 (1975). As a result the at-issue employee was included in the bargaining unit because the employer had not met its burden to prove that the employee should be excluded. Id. Based on the evidence presented in the objections, I cannot conclusively determine whether Pantoja's future status is sufficient to negate CMS's assertion that he is authorized to have significant and independent discretionary authority as defined by Section 6.1(c)(ii). Given the presumption that the designation is proper and that the objector has the burden to overcome the presumption, I must find that Pantoja in fact possesses such authority. Also, if I were to determine that Pantoja's arguments do raise an issue that might overcome the presumption that he is a supervisor under Section 6.1(c)(ii), a hearing would still not be required because I have already found that he possesses the required authority under Section 6.1(c)(i), and the Board rules only require a hearing if I find that the objections submitted raise an issue of fact or law that might overcome the presumption that the designation

is proper under Section 6.1. 1300.60(d)(2)(B). Since proper designation only requires that Pantoja's position meets one of the tests articulated in Section 6.1(c), a hearing is unnecessary.

2. Haines

Haines' position also meets the test identified in Section 6.1(c)(ii) because neither AFSCME nor Haines address whether she has the authority to assign her subordinate employees within the meaning of the NLRA. The NLRB has specifically adopted definitions for the terms "assign," and "responsibly to direct" as those terms are used in Section 152(11) of the NLRA. Oakwood Healthcare Inc., 348 NLRB at 688-692. "Assign" within the meaning of the NLRA is designating 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." Id. at 689. The "responsibly to direct" is a two-pronged test. First, the putative supervisor must have the authority to ***direct*** the employee by "decid[ing] what job to be undertaken next or who shall do it," (internal quotations omitted). Id. at 692. Second, this action is done ***responsibly*** when the "person directing and performing the oversight of the employee must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly." Id. In other words, there must be a prospect of adverse consequences for the putative supervisor if she does not take the corrective action necessary to secure that her subordinates are properly performing their duties. Id. Question 9(h) in the questionnaire addresses whether Haines has the authority to "assign work to employees." This question goes to whether she has the authority to "direct" her subordinates within the meaning of the NLRA by deciding what job to be undertaken next, not to "assign" within the meaning of the NLRA. The CMS-104 identifies that Haines has the authority to approve time off for her subordinates. Approving time off falls within the meaning of "assign" as the term is used in Section 152(11) of the NLRA.

AFSCME bears the burden to demonstrate that Haines' position does not meet the statutory test identified in Section 6.1(c)(ii), which requires the objector to negate any prong of the test. AFSCME argues that Haines' authority to direct and assign work to her subordinates is only done in a routine and clerical manner such that no discretion is required. This does not address whether she uses independent judgment when she approves her subordinate's requests for time off. In its general objections, AFSCME argues that CMS has the burden to prove a when a purported supervisor approves time off the approval is more than routine and not merely

based on established practices. As addressed above, *the objectors* have the burden to negate any prong of the supervisory test, without contrary evidence there is a presumption that the designation is proper. Since neither AFSCME nor Haines argue that Haines' approval is in fact routine and based upon established practices, AFSCME has failed to negate the second prong of the supervisory test. Finally, the objections do not address whether Haines' authority to assign her subordinate is held in the interest of CMS, and because it fails to negate the other two prongs of the supervisory test, AFSCME does not overcome the presumption that Haines' position meets the test articulated in Section 6.1(c)(ii) of the Act.

Haines' position also has significant and independent discretionary authority as an employee within the meaning of Section 6.1(c)(i). An employee who takes discretionary actions that implement the policy of the Agency meets the test under Section 6.1(c). AFSCME only argues that aspects of Haines' CMS-104 are incorrect. Haines states that she works in furtherance of the enabling statute and the applicable administrative rules in implementing the policy of the enabling statute. As noted above, the Section 6.1 of the Act does not require discretion to be a specific type of discretion, and there is no evidence that Haines' use of her technical expertise does not require her to use discretion. In assessing whether guidelines are met is sufficient use of discretion to properly qualify for designation under the test articulated in Section 6.1(c)(i). See Ill. Dep't Cent. Mgmt. Serv. (Dep't of Commerce and Econ. Opp.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶163 (IL LRB-SP 2014).

3. Koehl

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

Section 6.1(c)(i) of the Act provides that an employment position qualifies 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." As stated above, 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 first test identified in Section 6.1(c)(i) is very similar to the traditional managerial

test under the managerial exclusion, identified in Section 3(j) of the Act. The only controlling authority is previous Board decisions interpreting Section 6.1 of the Act because Section 6.1(d) specifically states that the qualifying categories identified in Section 6.1(b) are "operative and function solely within this Section[.]" However, precedent regarding the interpretation of specific terms of art used elsewhere in the Act is helpful.

Regarding the first prong of the first test, the Appellate Court has noted that under the Act, executive and management functions generally, but not solely, consist of ensuring that the agency operates efficiently. Dep't of Cent. Mgmt. Serv. (Pollution Control Bd.), v. Ill. Labor Rel. Bd., State Panel, 2013 IL App (4th) 110877 ¶ 25); State of Ill. Dep't of Cent. Mgmt. Serv. (Ill. Commerce Comm' n) v. Ill. Labor Rel. Bd., State Panel, 406 Ill. App. 3d 766, 774, (4th Dist. 2010). 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. State of Ill. Dep't of CMS (Healthcare and Family Serv.), 23 PERI ¶ 173 (IL LRB-SP 2007); see also Cnty. of Cook (Oak Forest Hospital) v. Ill. Labor Rel. Bd., 351 Ill. App. 3d 379, 386, (1st Dist. 2004). To satisfy the second prong of this 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. One of Koehl's duties is to ensure that a license application complies with the governing act and procedural rules. Koehl's CMS-104 authorizes him to draft, organize, and develop proposed revisions to these governing acts and procedural rules, and neither Koehl nor AFSCME specifically refute this assertion.[9] Koehl states that he "provides input and guidance" in revising forms, manuals, and employment training procedures in order to carry out the policy identified in the acts and rules. These actions sufficiently demonstrate that he is authorized to effectuate IDFPR's policies.

Koehl's position also satisfies the second 6.1(c)(i) test. The second test does not require that an employee *create* policy, but only requires that an employee *implement* policy. Ill. Dep't Cent. Mgmt. Serv. (Gaming Bd.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, S-DE-14-121 (IL LRB-SP Jan. 21, 2014) appeal pending, No. 14-0278 (Ill. App. Ct. 1st Dist.).

[9] In response to the question "Do you write policies or recommend the adoption of policies? If so, describe the nature of the policies and the extent to which policies you write or recommend are adopted," Koehl stated "I ensure that the Acts and Rules of the professions I am assigned are complied with regarding the licensure processes with the Divisions." He does not specifically identify whether he has any role in writing or making recommendations to makes changes to the acts or rules.

Koehl implements the IDFPR's policy when he exercises his authority to ensure that the licensing process complies with the professions' governing acts and rules. Thus, because neither AFSCME nor Koehl specifically object to CMS's assertion that Koehl is authorized to participate in the development of the governing act and rules, and because he does have the authority to carry out and implement these rules Koehl possesses significant and independent discretionary authority as an employee as defined by Section 6.1(c)(i) of the Act.

Koehl's position also meets the test identified in Section 6.1(c)(ii) because neither AFSCME nor Koehl address whether he has the authority to assign his subordinate employees within the meaning of the NLRA. As with Haines position, Koehl's CMS-104 identifies that he has the authority to approve time off for his subordinates, and the objections and supporting questionnaire do not address this assertion. AFSCME bears the burden to demonstrate that Koehl's position does not meet the statutory test, which requires negating at least one prong of the test. The objections do not address Koehl's authority to "assign" employees by approving time off, AFSCME also does not argue that Koehl does not use independent judgment when exercising this authority, nor do the objections address whether Koehl's authority to assign his subordinates is held in the interest of CMS. Accordingly, AFSCME fails to negate any prong of the supervisory test.

4. Dunn

Dunn's position satisfies the second 6.1(c)(i) test. Dunn implements the IDFPR's policy when she exercises her authority to ensure that licensing process complies with the professions' governing acts and rules. Also, the CMS-104 for her position grants her authority to "confer[] with superiors to provide input and information to resolve administrative problems and program function improvements." Dunn argues that the rules she operates under are already in place, but she does not protest that she lacks the authority to suggest changes to these rules.

Dunn's position also satisfies the 6.1(c)(ii) test. As with Haines' and Koehl's positions, Dunn's CMS-104 identifies that she has the authority to approve time off for her subordinates, and the objections and supporting questionnaire fail to address this assertion. There is no evidence that Dunne's approval of time off or that all her direction is done in a routine nature. Since the objections do not address Dunne's authority to "assign" employees by approving time off, it similarly does not address whether she uses independent judgment when exercising this authority. Also, in her questionnaire, Dunn states that five subordinates report to her. The

subordinates' job duties are predetermined, but she does not identify what criteria, if any she uses to determine how she distributes the Deputy Director and Executive Staff requests for special projects. It appears that she distributes the projects to her subordinates, but there is no indication that she is instructed as to which of her five subordinates receive these projects. Absent evidence to the contrary there is a presumption that she makes these distributions based upon her personal experience, training, and ability. Also, AFSCME again does not address whether the third prong of the supervisor test is met, and since it has not negated any other prong of the test, AFSCME does not overcome the presumption that Dunn's position is authorized to exercise significant independent discretionary authority within the meaning of Section 6.1(c)(ii).

5. Ingrum

Neither AFSCME nor Ingrum argue that in his capacity as the Real Estate Licensing Manager he does not meet the tests articulated in Section 6.1(c). Rather, they argue that because Ingrum has been in this position for such a short time, he has *yet to exercise* his authority without the approval of the Deputy Director. This argument provides is no evidence that the incumbent holding position of Real Estate Manager is not authorized to have significant and independent discretionary authority within the tests articulated in Section 6.1(c) of the Act.

As the incumbent Real Estate Manager, Ingrum has the requisite authority to satisfy both tests under Section 6.1(c)(i) of the Act. The CMS-104 position description demonstrates that the Real Estate Manager is authorized to be engaged in executive and management functions because the position is authorized to "draft, organize and develop" proposed changes to the enabling statute and administrative rules under which the Real Estate Unit operates. The Real Estate Manager is authorized to effectuate or carry out these policies when he drafts, organizes, and develops, changes to the unit's policies and procedures, and when he reviews licensee breaches of the enabling statute and other applicable rules. Also, the objections do not negate the second test articulated in Section 61.(c)(i), because ***at a minimum***, when Ingrum obtains his supervisor's approval before making "managerial decisions" he recommends discretionary actions that effectively control or implement IDFPR's policy.

Ingrum also possesses the requisite authority to satisfy the supervisor test under Section 6.1(c)(ii) of the Act. The Real Estate Manager is authorized to train his subordinates, recommend personnel actions, and determine the level of appropriate disciplinary actions. A supervisor must have the authority to engage in any of the 12 enumerated supervisory functions

"or effectively to recommend such action." The objections only provide that Ingrum has "not effectuated any supervisory decisions on [his] own[.]" This implies that Ingrum has actually made supervisory decisions, but because he is new in this position, he requested that the Deputy Director implements the decision. On its face this objection does not negate the first prong of the supervisory test, and since there is no objection to whether Ingrum uses independent judgment when he makes these decisions, or whether his authority is held in the interest of the IDFPR, the presumption stands. Accordingly, I find that Ingrum's position *qualifies* for designation under Section 6.1(b)(5) of the Act.

6. Brockhouse

As the Testing Officer, Brockhouse has the requisite authority to satisfy both tests under Section 6.1(c)(i) of the Act. Based on Brockhouse's assertions in his questionnaire, he works with testing vendors and unit staff to ensure that vendors follow department policies and procedures and laws, and serves as an expert in the testing field, is implementing the department's policies and procedures, and does so within his personal knowledge and expertise. Brockhouse recommends discretionary actions that effectively control or implement the policy of the Agency when he confers with superiors to resolve administrative and program function improvements, and when he evaluates statistical information to formulate recommendations for operational modifications.

AFSCME does not overcome the presumption that Brockhouse's position meets the supervisor test articulated in Section 6.1(c)(ii). As with other at-issue positions, Brockhouse's CMS-104 identifies that he has the authority to approve time off for his subordinates, and the objections and supporting questionnaire fail to address this assertion. AFSCME bears the burden to demonstrate that Brockhouse's position does not meet the statutory test, which requires negating every prong of the test. AFSCME also does not argue that Brockhouse is not authorized to use independent judgment when exercising his authority to approve his subordinates request for time off. Finally, the objections do not address whether Brockhouse's authority to assign his subordinates is held in the interest of CMS, and because it fails to negate the other two prongs of the supervisory test, AFSCME does not overcome the presumption that Brockhouse's position is authorized to exercise independent discretionary authority within the meaning of Section 6.1(c)(ii).

7. Campuzano and Illg

a. notice

The Board's failure to e-mail Campuzano the designation petition did not deny him procedural due process because Campuzano was otherwise provided constructive and actual notice.

Procedural due process is satisfied where a litigant is provided actual or constructive notice of a claim against his interest and has an opportunity to be heard and to protect his rights. Tri–G, Inc. v. Burke, Bosselman & Weaver, 222 Ill. 2d 218, 244 (2004). Notice required by procedural due process must be reasonably calculated to apprise interested parties of contemplated action and to afford interested parties opportunity to present their objections. E. St. Louis Fed'n of Teachers, Local 1220, Am. Fed'n of Teachers, AFL-CIO v. E. St. Louis School Dist. No. 189 Fin. Oversight Panel, 178 Ill. 2d 399, 421 (1997).

Here, the record shows that the designation petition and the supporting documents were not sent directly to Campuzano, but at the Board's instruction, CMS posted the "Notice to Employees" (Notice), which identified that Campuzano's position was being investigated for designation, and any incumbent employees' inquiries should be directed to the Board Agent identified on the Notice. This Notice was posted on the floor of the building that Campuzano worked. The posted Notice identified that Campuzano's position was being investigated for designation, informed him of his opportunity to object to the designation, when such objections were due, where to send the objections, and where to inquire for further information. Also the Board sent the petition to AFSCME, Campuzano's certified bargaining representative. Though the Board did not send Campuzano the designation petition itself, the Board's actions were reasonably calculated to apprise Campuzano of the designation.

Campuzano was also not deprived of due process because he received actual notice and was not prejudiced by the technical deficiency. "The object of notice is to inform the party notified, and if the information is obtained in any way other than by formal notice, the object of notice is attained." People ex rel. Kelly v. $16,500 U.S. Currency, No. 5-13-0075, 2014 IL App (5th) 2014 WL 280518, at *6 (Jan 24, 2014) (*quoting* Campbell v. Cook Cnty. Sheriff's Merit Bd., 215 Ill. App. 3d 868, 870, (1st Dist. 1991)). "Generally, a party who has received actual notice must show prejudice to prevail on a claim based on a technical deficiency." People ex rel. Douglass v. One Toyota Supra, 202 Ill. App. 3d 797, 801 (3rd Dist. 1990). Statutes imposing

certain technical requirements for notice may not be strictly enforced if the party seeking enforcement had actual notice and cannot show prejudice as a result of the opposing party's failure to comply with the technical requirements. Prairie Vista, Inc. v. Cent. Ill. Light Co., 37 Ill. App. 3d 909, 912 (4th Dist. 1976). Campuzano received actual notice of the designation because he saw the posting and recognized his job title as one of the positions under investigation for designation, and when Illg forwarded him the e-mail that contained the designation petition itself. The record demonstrates that Campuzano filed his own objections. AFSCME also filed objections on Campuzano's behalf based upon information he provided it, thus AFSCME also provided Campuzano with actual notice of the designation, and because it asked Campuzano to refute items in his CMS-104, an inference can be made that it provided him with a copy of the petition and the supporting documents filed with the petition. It is obvious from the facts in this case that Campuzano was not denied due process because he received constructive notice and actual notice. Also, Campuzano sustained no prejudice from the Board's failure to directly serve him a copy of the designation petition.

b. significant and independent discretionary authority

The evidence presented at hearing demonstrates that Campuzano and Illg both operate under the same enabling statute and administrative rules, and because the only discernible distinction in their authorized duties is that they license different sports, combined analysis of whether these positions hold the requisite authority under Section 6.1(b)(5) is appropriate. Campuzano and Illg possess significant and independent discretionary authority as employees within the meaning of Section 6.1(c)(i). Campuzano and Illg have the authority to recommend whether an individual should be licensed, whether an event should receive a permit, and the authority to determine whether the proposed participants should be is authorized to fight in the event. Campuzano and Illg also have the authority to stop an event in process if he or she determines that to proceed with the event would violate the Boxing Act, i.e. if the continuing the match would be against the public policy in that it would endanger public health, safety, or public welfare. The rules for licensing identify the minimum requirements, but Campuzano and Illg have the authority to require additional information, if in his or her opinion further information is warranted. The rules specifically provide that if situation occurs at the contest and there are no regulations in place to cover the situation, the DPR representative shall make a decision on the matter, and that decision shall be final. Since Campuzano and Illg are authorized

to attend boxing and martial arts matches on behalf of the DPR, when such a situation arises, they each have the discretion to make a decision using only their professional and personal judgment. Also, the Boxing Act specifically states that its purpose is to promote the health and safety at boxing matches in Illinois. This sweeping generalization provides Campuzano and Illg with the discretion to stop or prevent a match, even if allowing the match to go forward would not violate a specific provision of the Boxing Act or its administrative rules, because the Act and the rules are merely avenues for the Athletic Unit to meet the Boxing Act's overall purpose. Accordingly, I find that the positions held by Campuzano and Illg qualify for designation under Section 6.1(b)(5) of the Act. To the extent that the Board adopts my assessment that these positions properly qualify for designation under Section 6.1(c)(i), I recommend that is unnecessary to address whether these positions also qualify under the test in Section 6.1(c)(ii).

To the extent that the Board chooses to address whether Campuzano and Illg satisfy the Section 6.1(c)(ii) test, I would find that neither Campuzano nor Illg are supervisors because they currently do not have any subordinates to supervise, and without subordinates they cannot exercise any supervisory authority. The position descriptions grant Campuzano and Illg the authority to supervise the employees holding subordinate positions, and they are not required to actually exercise this authority to meet supervisory test under Section 6.1(c)(ii). However, the fact that no employees hold the subordinate positions provides clear evidence that Campuzano and Illg do not actually possesses such authority, and the position descriptions grants Campuzano and Illg the authority *only in the event* that employees hold the subordinate positions. See Ill. Dep't Cent. Mgmt. Serv. and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, S-De-14-140 et al (IL LRB-SP Jan. 16, 2014); Ill. Dep't Cent. Mgmt. Serv. (Ill. Gaming Bd.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶167 (IL LRB-SP 2014); see also Newton-Wellesley Hospital, 219 NLRB No. 80. In the event that employees are hired to fill the subordinate positions, Campuzano and Illg are authorized to supervise those employees. However, the positions have not been filled in at least three years, and CMS has no current plans to fill those positions. See Montgomery Ward & Co., Inc. (Binghamton, N. Y.), 70 NLRB No. 125. Accordingly, I would find that the positions held by Campuzano and Illg do not satisfy the test identified in Section 6.1(c)(ii) of the Act.

VI. CONCLUSION

Pursuant to Section 1300.60 of the Board's Rules, I find that the all the positions at issue properly qualify for designation. However I find that the designations of the positions currently occupied by Jo Ingrum and Joel Campuzano do not comport with the requirements of Section 6.1, and that only the employment positions identified below are properly designated.

VII. 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 Financial and Professional Regulations are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

Position Number	Working Title
37015-13-00-200-00-01	Shared Services Liaison
37015-13-01-000-10-01	Affirmative Action Officer
37015-13-40-000-10-01	Policies, Procedures, Planning and Performance Review Coordinator
37015-13-10-010-00-01	Manager of Consumer Services
37015-13-05-200-00-01	Records Management Personnel
37015-13-10-500-10-01	Community Outreach Supervisor
37015-13-40-622-00-01	Manager - Professional Services
37015-13-40-623-00-01	Manager - Health Services
37015-13-40-621-00-01	Testing Officer
37015-13-40-962-00-01	Manager of Martial Arts Unit

VIII. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300,[10] 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,

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

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 21st day of February, 2014.

STATE OF ILLINOIS
ILLINIOIS LABOR RELATIONS BOARD
STATE PANEL

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