

**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-14-163
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

Section 6.1 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012), allows the Governor to designate certain employment positions with the State of Illinois as excluded from collective bargaining rights which might otherwise be available under Section 6 of the Act. This case involves such designations made on the Governor’s behalf by the Illinois Department of Central Management Services (CMS). On February 25, 2014, Administrative Law Judge Deena Sanceda issued a Recommended Decision and Order (RDO) in Case No. S-DE-14-163, finding the designations comport with the requirements of Section 6.1. We agree with her assessment.

The petition designated for exclusion 7 Public Service Administrator (PSA) Option 2 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 designations of positions with “significant and independent discretionary authority.”¹

¹ Section 6.1(c) defines that term:

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. The ALJ found no issue had been raised warranting a hearing, and ultimately determined, based on the documentary evidence and arguments presented, that the petition was proper and recommended that the Board find it comported with the requirements of Section 6.1 and exclude the positions from collective bargaining. She declined to rule on AFSCME's constitutional objections, found no merit to its other general objections, and rejected its specific objections concerning the Payday Loan Supervisor–Chicago position held by Barton Aplebaum, the Payday Loan Supervisor–Springfield position held by George Preski, and the Problem Case Officer position held by Bradley Losch.

AFSCME filed timely exceptions to the ALJ's RDO pursuant to Section 1300.130 of the Board's rules, 80 Ill. Admin. Code §1300.130. Based on our review of the exceptions, the record, and the RDO, we reject the exceptions and adopt the RDO. We find the designations comport with the requirements of Section 6.1, and direct the Executive Director to issue a certification consistent with that finding.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett

John J. Hartnett, Chairman

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.

/s/ Paul S. Besson
Paul S. Besson, Member

/s/ James Q. Brennwald
James Q. Brennwald, Member

/s/ Michael G. Coli
Michael G. Coli, Member

/s/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, on 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 (Act). Section 6.1 identifies three broad categories of employment positions that may be eligible for designation based upon the position’s status in a certified bargaining unit. Relevant to this case, positions which were first certified to be in a bargaining unit by the Illinois Labor Relations Board (Board) on or after December 2, 2008, are eligible for such designation. Only 1,900 such relevant positions may be designated.

Along with bargaining unit status, 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 either:

- (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, 29 U.S.C. 152(11), or any orders of the National Labor Relations Board interpreting that provision or decisions of courts reviewing decisions of the National Labor Relations Board.

Section 6.1(d) creates a presumption that any such designation made by the Governor was properly made. It also requires that within 60 days after the designation, the Board, in a manner consistent with due process, determine whether the designation comports with the requirements of Section 6.1. This subsection also specifies that the qualifying categories identified in subsection 6.1(b) “are operative and function solely within this Section and do not expand or restrict the scope of any other provision contained in this Act.” The Board promulgated rules to effectuate Section 6.1, which became effective on August 23, 2013, 37 Ill. Reg. 14,070 (Sept. 6, 2013). See 80 Ill. Admin. Code Part 1300.

On January 13, 2014, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation petition pursuant to Section 6.1 of the Act and Section 1300.50 of the Board’s Rules. The petition seeks to exclude the following Public Service Administrator, Option 2 positions employed at the Illinois Department of Financial and Professional Regulation (IDFPR):

<u>Position No.</u>	<u>Working Title</u>	<u>Incumbent</u>
37015-13-02-300-00-01	Quality Control/Reconciliation Manager	Soren Melick
37015-13-02-100-00-01	Budget Manager - DOB	Martin Rockhold
37015-13-20-207-00-01	Payday Loan Supervisor - Chicago	Barton Aplebaum
37015-13-20-208-00-01	Payday Loan Supervisor - Springfield	George Preski
37015-13-02-400-00-01	Strategic Planning Budget Analyst	vacant
37015-13-02-500-00-01	Internal Control Coordinator	vacant
37015-13-20-411-10-01	Problem Case Officer	Bradley Losch

CMS filed the designation petition with an attached summary spreadsheet, and for each position it submitted a CMS-104 position description, an organizational chart, and an affidavit completed by the DHS Regional Administrator who functions as the position’s direct supervisor.

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, filed objections to the designation petition. AFSCME objects to the designation of every position within the designation petition.

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

II. ISSUES AND CONTENTIONS

A. Designation Petition

CMS's designation petition and the attached documentation indicate that the positions at issue qualify for designation under Section 6.1(b)(5) of the Act, and that the Board certified the positions into bargaining unit RC-62 on November 18, 2009.

1. affidavits¹

Francisco Menchaca, the Acting Director of the Division of Financial Institutions (DFI) for the IDFPR, attests that the position held by Bradley Losch is authorized to have significant and independent discretionary authority as defined by Sections 6.1(c)(i) of the Act, and that the positions held by Barton Aplebaum, and Greg Preski, are authorized to have significant and independent discretionary authority as defined by Sections 6.1(c)(i) and 6.1(c)(ii) of the Act.

Menchaca's affidavits assert that each of the employment positions at issue is "authorized to be engaged in executive and management functions of the IDFPR and charged with the effectuation of management policies and practices of the IDFPR or represent management interests by taking or recommending discretionary actions that effectively control or implement the policy" of the IDFPR. As the Payday Loan Supervisor - Chicago, Aplebaum "effectuates management policies and practices in his role licensing and regulating financial institutions subject to the Consumer Installment Loan Act, Payday Loan Reform Act, and Sales Finance Act." As the Payday Loan Supervisor - Springfield, Preski "effectuates management policies and practices in his role licensing and regulating financial institutions subject to the Debt Management Act, Debt Settlement Act, and Transmitter of Money Act." As the Problem Case

¹ CMS filed affidavits, CMS-104 position descriptions, and organizational charts on behalf of all the employment positions at issue, but in the interest of brevity this RDO will only address the positions that AFSCME specifically objects.

Officer, Losch is responsible for “overseeing troubled credit unions and developing strategies to ensure effective management at institutions.”

Menchaca also asserts as the Payday Loan Supervisor - Chicago, Aplebaum is “authorized to, in the interest of the IDFP, among other things, assign, responsibly direct, and review the work of [his] subordinates with independent judgment. The position is 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.”

2. CMS-104s

Each CMS-104, in relevant part, identifies the following as a “current and accurate statement of the position duties and responsibilities” of each of the position’s “essential functions.”

a. Aplebaum

Under administrative direction, Aplebaum is authorized to approve, organize, plan, execute, control, and evaluate the operations of the Pay Day Loan Act of the Consumer Credit Section of the Division of Financial Institutions in accordance with Public Act 094-0013. Aplebaum serves as a senior specialist conducting examinations of payday loan institutions. He evaluates applications and renewals of Payday Loan Reform Act licenses. Aplebaum evaluates and develops procedures for review of applications submitted by companies desiring licensing under the Payday Loan Act. He reviews all financial statements submitted with applications to confirm that statutory requirements are met, and is authorized to approve applications for licensure. Aplebaum is also authorized to supervise two subordinate employees. He assigns work, approves time off, provides guidance and training, gives oral reprimands, effectively recommends grievance resolutions, and completes and signs performance evaluations. He also counsels staff on problems with productivity, quality of work and conduct, and determines staffing needs to achieve program objectives.

b. Preski

Under administrative direction, Preski approves, organizes, plans, executes, controls and evaluates the operation of the Payday Loan Act of the Consumer Credit Section in the Division of Financial Institutions in accordance with Public Act 094-0013. He also serves as senior examination specialist, ensures compliance with the Payday Loan Reform Statute, and serves as advisor to Payday Lenders. As a supervisor, Preski is authorized to assign and review work,

provide guidance and training to assigned staff, counsel staff regarding work performance, reassign staff to meet day-to-day operating needs, and determine and recommend staffing needs. He also approves time off, adjusts first level grievances, effectively recommends and imposes discipline, and prepares and signs performance evaluations.

c. Losch

Under administrative direction Losch assists and works directly with credit unions experiencing critical financial difficulties and issues of safety and soundness, along with highly sophisticated large asset-sized credit unions. Losch functions as a senior examiner-in-charge of selected financial institutions that are highly sophisticated in complexity and financial complications, along with large asset-sized credit unions. He reviews detailed operations and financial institution policies, assesses management policies and procedures, and meets with credit union's directors and managers to develop plans for corrective action. Losch receives, reviews, and analyzes the National Credit Union Administration (NCUA) quarterly financial 5300 Call Reports to evaluate the financial stability of the financial institution along with identifying new or potential problem areas. He then prepares reports of his findings and trend analysis and submits to "the proper authority" for review. He collaborates with credit union management and boards of directors under prompt corrective action on developing a net worth restoration plan and monitors the effectiveness of the restoration plan on a monthly basis. Losch assists in the coordination of the state's Risk-Based Examination Program with similar initiatives by the NCUA and American Share Insurance to ensure optimal resource allocations as well as prompt resolution of safety and soundness concerns.

B. Objections

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 the designations are unconstitutional, and that the positions at issue are not those of managers or supervisors within the meaning of the National Labor Relations Act (NLRA).

2. specific objections

AFSCME's specific objections are based upon factual information provided by the employees at issue. AFSCME's Director of Organizing, Tracy Abman, 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 three employees that responded to the questionnaire. These completed questionnaires are attached to the objections. 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.

Both Preski and Aplebaum state that certain aspects of their CMS-104s are not accurate, and detail the inaccuracies. In contrast, Losch states that his CMS-104 does accurately reflect his duties and responsibilities. AFSCME states that Aplebaum has no role in the budget process. AFSCME also argues that Aplebaum is not a supervisor as defined in Section 6.1(c)(ii) of the Act because when he directs and assigns work to his subordinates he does not utilize independent discretion, but merely manages workflow. AFSCME argues that Preski does not hold independent discretionary authority as defined in Section 6.1(c)(i) of the Act because he does not develop any procedures, does not make any decisions to implement changes in policies or procedures and because all of his job duties are delegated to him by his supervisor he engages in no independent or discretionary actions AFSCME also argues that Preski is not a supervisor as

defined by Section 6.1(c)(ii) because Preski does not use independent judgment when he directs and assign work to his subordinate. Finally, AFSCME argues that Losch has no role in recommending actions that control or implement legislation and he does not write nor recommend policies. While Losch concedes that the CMS-104 for his position is accurate, he argues that his duties do not rise to the level necessary to support the conclusion that he is authorized to have independent discretionary authority in any matter pertaining to the Department's operations, and specifically that he is not engaged in executive and management functions.

III. DISCUSSION AND ANALYSIS

AFSCME does not overcome the presumption that the designations of the positions at issue are proper under Section 6.1(b)(5) of the Act because it fails to demonstrate that the employment positions do not authorize the employees in the at-issue positions to have significant and independent discretionary authority.

A. General Objections

1. burden

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

The Court has held that the party opposing the public policy as demonstrated in the statutory language of the statute at issue has the burden to prove the party's position. See Ill. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App (4th) 090966. Section 6.1 specifically allows the Governor to exclude certain public employment positions from obtaining collective bargaining rights which might otherwise be granted under the Act. 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

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 grants 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). It is beyond my limited scope of authority as an administrative law judge for the Board to analyze the Act’s constitutionality on its face or as applied to the at-issue designation petition and will not be considered in my analysis 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 any issue that might overcome the presumption that the designations are

proper under Section 6.1(b)(5) of the Act because AFSCME provides no evidence to rebut the presumption. An employment position may be properly designated under Section 6.1(b)(5) only if the position authorized an employee in that position 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 held by at-issue employees 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 is a supervisor 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 supervisory 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 one of the enumerated supervisory duties, not that the employee actually exercises supervisory functions. The submitted CMS-104 position descriptions authorize the employees to engage in all the duties listed within, and AFSCME does

not contend that the duties identified within the submitted CMS-104s do not qualify as any 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(c)(ii). Rather, to overcome the presumption, AFSCME has the burden to provide specific evidence that the positions held by Martin Rockhold, Barton Aplebaum, and George Preski *do not* meet at least one prong the supervisory test.² 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,³ unlike subsection (c)(ii) subsection (c)(i) is silent as to whether it also incorporates the Court’s

² CMS alleges that every at-issue position meets the Section 6.1(c)(i) requirements, but only alleges that the positions held by Martin Rockhold, Barton Aplebaum, and George Preski *also* meet the Section 6.1(c)(ii) requirements.

³ 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, 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.

interpretation of a managerial employee under the NLRB. Therefore, 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) (specifically rejecting AFSCME's application 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's 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 designations are proper, and it has not submitted specific objections to the designations of the positions held by Soren Melick, Martin Rockhold, or the vacant positions of Strategic Planning Budget Analyst, the Internal Control Coordinator, these positions are properly designated under section 6.1(b)(5) of the Act.

B. Specific Objections

AFSCME's objections fail to overcome the presumption that the designation of the positions held by Aplebaum, Preski, or Losch are properly designated because the objections do not adequately address whether the incumbents hold significant and independent discretionary authority as defined by the tests articulated in Section 6.1(c) of the Act.

1. Aplebaum

Aplebaum's position satisfies the second 6.1(c)(i) test. This 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.). Aplebaum recommends discretionary actions that implement policy when he recommends changes to the examinations of pay day loan institutions. There is no indication that Aplebaum lacks the discretion to decide when changes are needed, nor is there any indication that Aplebaum lacks the discretion to determine the basis for the recommended changes.

Aplebaum's position also meets the test identified in Section 6.1(c)(ii) because while Aplebaum identifies some inaccuracies in his CMS-104, neither AFSCME nor Aplebaum address whether he has the authority to adjust the grievances of his subordinate employees. The CMS-104 for his position identifies that Aplebaum has the authority to effectively recommend grievance resolutions. As stated above, AFSCME bears the burden to demonstrate that Aplebaum's 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. Question 9 in the questionnaire addresses whether Aplebaum possesses the authority to engage in, or to effectively recommend to management, *many* of the enumerated supervisory functions as defined in Section 152(11) of the NLRA, but does not address Aplebaum's authority regarding grievance resolutions, and the authority to adjust grievances or to effectively recommend the adjustment of grievances is one of the enumerated supervisory functions identified in Section 152(11) of the NLRA. Thus, the objections do not negate the first prong of the supervisory test. The second prong of this test requires that the employee's authority to exercise one of the enumerated supervisory functions is not of a merely routine or clerical nature, but requires the use of independent judgment. NLRB v. Kentucky River Comm. Care, Inc., 532 U.S. at 713. Since the questionnaire does not address Aplebaum's authority to effectively recommend grievance resolutions, it similarly does not address whether he uses independent judgment when exercising this authority. Accordingly, the objections, and the attached questionnaire do not negate the second prong of the supervisory test. Finally, the objections do not address whether Aplebaum's authority to make effectively recommend grievance resolutions is held in the interest of CMS, and because it fails to negate

the other two prongs of the supervisory test, therefore AFSCME does not overcome the presumption that Aplebaum's position meets the test articulated in Section 6.1(c)(ii) of the Act.

2. Preski

AFSCME's argument that Preski's position does not properly qualify for designation because it does not meet the tests articulated under Section 6.1(c)(i) of the Act, is inconsistent with the facts presented in the questionnaire submitted in support of this argument. AFSCME argues that Preski does not make any decisions to implement changes in policies or procedures and because all of his job duties are delegated to him by his supervisor he engages in no independent or discretionary actions but Preski himself states that he makes recommendations on changes to existing procedures as necessary. Preski recommends actions that implement the policy of the agency, because the licensing procedure is how the Division implements its policy of ensuring that only qualified individuals are licensed in accordance with the relevant enabling statute. Preski also demonstrates that he has discretion in making these recommendations, because he makes such recommendations as he sees fit, and there is no indication that he lacks the freedom to decide the basis of the recommendations. Preski's position also meets the test identified in Section 6.1(c)(ii) for the same reason that Aplebaum's position does, because Preski's CMS-104 gives him the authority to adjust first level grievances, and neither AFSCME nor Preski address how this authority relates to his status as a purported supervisor. Accordingly, Preski's position is authorized to have significant and independent discretionary authority under Section 6.1(b)(5) of the Act.

3. Losch

Losch's position satisfies the second 6.1(c)(i) test. Under Section 6.1(c)(i), an employment position authorizes an employee in that position to have independent discretionary authority if he or she "represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency." As stated above this section articulates two different tests, and when a position satisfies either test it qualifies for designation under Section 6.1(b)(5). 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.). Losch's employment position functions to assist large or state-chartered credit unions that are experiencing financial difficulties and

having issues of safety and soundness to prevent them from collapsing. The soundness of financial institutions is of great public concern. Farmers State Bank of McNabb v. Dep't of Employment Sec. 216 Ill. App. 3d 633, 642 (3rd Dist. 1991). Losch's role is to implement public policy. He uses discretion in developing plans for corrective actions when he reviews the safety and soundness of credit unions that are experiencing financial difficulties. Therefore, Losch's position is authorized to have significant and independent discretionary authority under Section 6.1(b)(5) of the Act.

IV. CONCLUSION

Pursuant to Section 1300.60 of the Board's Rules, I find that the designations are proper based solely on the information submitted to the Board because AFSCME's objections do not overcome the presumption that the designations are proper under Section 6.1 of the Act.

V. RECOMMENDED ORDER

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

<u>Position No.</u>	<u>Working Title</u>
37015-13-02-300-00-01	Quality Control/Reconciliation Manager
37015-13-02-100-00-01	Budget Manager – DOB
37015-13-20-207-00-01	Payday Loan Supervisor – Chicago
37015-13-20-208-00-01	Payday Loan Supervisor – Springfield
37015-13-02-400-00-01	Strategic Planning Budget Analyst
37015-13-02-500-00-01	Internal Control Coordinator
37015-13-20-411-10-01	Problem Case Officer

VI. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300,⁴ 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

⁴ Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf

after service of this recommended decision and order. Exceptions shall be filed with the Board by electronic mail at an electronic mail address designated by the Board for such purpose, ILRB.Filing@illinois.gov, and served on all other parties via electronic mail at their e-mail addresses as indicated on the designation form. Any exception to a ruling, finding, conclusion, or recommendation that is not specifically argued shall be considered waived. A party not filing timely exceptions waives its right to object to this recommended decision and order.

Issued at Chicago, Illinois this 25th day of February, 2014.

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

/s/ Deena Sanceda _____
Deena Sanceda
Administrative Law Judge