STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services, (Department of (Children & Family Services),	)	
Petitioner	)	Consolidated Case Nos. S-DE-14-164 S-DE-14-165 & S-DE-14-166
and	)	
American Federation of State, County and Municipal Employees, Council 31,	)	
Labor Organization-Objector	)	
Melissa Cimarossa, Cynthia Mills, Jason House, Suzanne Oates, Roger Thompson, Carol Curtis, Herman Gansz, Paul Larson, Vicki Libbra, Larry Marques, Kevin Milward & Marie Meadows,	)	
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. These consolidated cases involve such designations made on the Governor's behalf by the Illinois Department of Central Management Services (CMS). On February 3, 2014, Administrative Law Judge Michelle Owen issued a Recommended Decision and Order (RDO) in Consolidated Case Nos. S-DE-14-164, S-DE-14-165 and S-DE-14-166, finding the designations comport with the requirements of Section 6.1. We agree with her assessment.

The designations in all three petitions concern positions at the Illinois Department of Children and Family Services: the petition filed in Case No. S-DE-14-164 designated for exclusion 15 Public Service Administrator (PSA) Option 1 positions; the petition in Case No. S-DE-14-165 designated 12 PSA Option 2 positions; and the petition in Case No. S-DE-14-166 designated a single PSA Option 8N position held by Jerilyn Pearson-Minor. All were designated for exclusion pursuant to Section 6.1(b)(5) of the Act, which allows designations of positions with "significant and independent discretionary authority."[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. A number of employees holding designated positions did as well.[2] Based on the documentary evidence and arguments presented, the ALJ determined that the petitions were proper and recommended that the Board find they comported with the requirements of Section 6.1 and that the positions designated should be excluded from collective bargaining. She specifically found that AFSCME failed to show that the positions held by Melissa Cimarossa, Vicki Libbra and Marie Meadows did not meet the supervisory component of Section 6.1(c)(ii); that AFSCME failed to negate evidence that positions held by Cynthia Mills and Paul Larson met both the supervisory component of Section

[1] Section 6.1(c) defines that term:

> For the purposes of this Section, a person has significant and independent discretionary authority as an employee if he or she (i) is engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency or represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency or (ii) qualifies as a supervisor of a State agency as that term is defined under Section 152 of the National Labor Relations Act or any orders of the National Labor Relations Board interpreting that provision or decisions of courts reviewing decisions of the National Labor Relations Board.

[2] Objections were filed by Melissa Cimarossa, Cynthia Mills, Jason House, Suzanne Oates, Roger Thompson, Carol Curtis, Herman Gansz, Paul Larson, Vicki Libbra, Larry Marques, Kevein Milward and Marie Meadows.

6.1(c)(ii) and the managerial component of Section 6.1(c)(i); and that AFSCME failed to negate evidence that positions held by Jason House, Suzanne Oates, Roger Thompson, Carol Curtis, Kevin Milward, Herman Gansz and Larry Marques met the managerial component of Section 6.1(c)(i). The ALJ found the remaining 16 positions were properly designated because designations are presumed appropriate under Section 6.1(d) of the Act, and AFSCME failed to present any specific evidence with respect to these positions.

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

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett
John J. Hartnett, Chairman

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

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

/s/ Albert Washington
Albert Washington, Member

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

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services (Department of Children and Family Services),	)	
Employer	)	
and	)	Case Nos. S-DE-14-164
	)	S-DE-14-165
American Federation of State, County and Municipal Employees, Council 31,	)	S-DE-14-166
Labor Organization-Objector	)	
and	)	
Melissa Cimarossa, Cynthia Mills, Jason House, Suzanne Oates, Roger Thompson, Carol Curtis, Herman Gansz, Paul Larson, Vicki Libbra, Larry Marques, Kevin Milward, and Marie Meadows	)	
Employee-Objectors	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

Section 6.1 of the Illinois Public Labor Relations Act, 5 ILCS 315/6.1 (2012) *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 on or after December 2, 2008, 2) positions which were the subject of a petition for such certification pending on April 5, 2013 (the effective date of Public Act 97-1172), or 3) positions which have never been certified to have been in a collective bargaining unit. Only 3,580 of such positions may be so designated by the Governor, and, of those, only 1,900 positions which have already been certified to be in a collective bargaining unit.

Moreover, to be properly designated, the position must fit one of the following five categories:

1) it must authorize an employee in the position to act as a legislative liaison;

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

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

[1] Public Act 98-100, which became effective July 19, 2013, added subsections (e) and (f) to Section 6.1 which shield certain specified positions from such Gubernatorial designations, but none of those positions are at issue in this case.

As noted, Public Act 97-1172 and Section 6.1 of the Illinois Public Labor Relations Act became effective on April 5, 2013, and allow the Governor 365 days from that date to make such designations. The Board promulgated rules to effectuate Section 6.1, which became effective on August 23, 2013, 37 Ill. Reg. 14,070 (Sept. 6, 2013). These rules are contained in Part 1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

I. PETITION

On January 14, 2014, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation petitions pursuant to Section 6.1 of the Act and Section 1300.50 of the Board's Rules.[2] The petitions designate 28 positions at the Department of Children and Family Services (DCFS) for exclusion from the self-organization and collective bargaining provisions of Section 6 of the Act. The petitions indicate that all of the positions qualify for designation under Section 6.1(b)(5). The petitions indicate that the Public Service Administrator (PSA), Option 1 positions at issue were certified on January 20, 2010 in Case No. S-RC-08-036; the PSA, Option 2 positions at issue were certified on November 18, 2009 in Case Nos. S-RC-07-048 and S-RC-08-074; and the PSA, Option 8N position at issue was certified on October 28, 2009 in Case No. S-RC-04-130.

In support of its petitions, CMS provided position descriptions (CMS-104s) for each position and affidavits from individuals who supervise the listed positions. CMS also provided documentation identifying the position number, title, name of incumbent, bargaining unit, certification date and case number, statutory category that serves as the basis for the exemption, and a list of the job duties that support the presumption that the position is supervisory and/or managerial.

II. OBJECTIONS

On January 24, 2014, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed objections to the exclusion of all 28 positions. In support of its objections, AFSCME provided affidavits from Tracy Abman, the Director of Organizing for AFSCME, and information forms completed by Melissa Cimarossa, Cynthia Mills, Jason House, Suzanne Oates, Roger Thompson, Carol Curtis, Herman Gansz, Paul Larson, Vicki Libbra, and Larry Marques. On January 27, 2014, AFSCME filed an objection on behalf

[2] On January 23, 2014, I granted AFSCME's motion to consolidate Case Nos. S-DE-14-164, S-DE-14-165, and S-DE-14-166 for purposes of filing objections to the designations. CMS had no objection.

of Kevin Millwood.[3] On January 29, 2014, AFSCME filed an objection on behalf of Marie Meadows.[4]

AFSCME generally objects to the petitions arguing that Section 6.1 of the Act violates due process, the separation of powers doctrine of the Illinois Constitution, equal protection under Article I, Section 2 of the Illinois Constitution and the Fifth and Fourteenth Amendments of the United States Constitution, and the prohibition against impairment of contracts of the Illinois Constitution.

AFSCME also objects to the use of position descriptions to support the petitions and to the allocation of the burden of proof. AFSCME asserts that the evidence submitted by CMS in the form of position descriptions, organizational charts, and affidavits merely acknowledges the position's potential responsibilities. Likewise, AFSCME argues that CMS has failed to provide specific evidence that the positions at issue have actual authority to perform the listed job duties.

As such, AFSCME argues that the employees in the positions at issue were never informed of their significant and independent discretionary authority to perform supervisory or managerial functions and CMS has not met its burden of demonstrating that the positions possess the requisite significant and independent discretionary authority. In addition, AFSCME argues that the positions at issue are professional and not managerial. AFSCME also maintains that to the extent the affidavits state an employee at issues effectuates policies or is authorized to effectuate policy, and the position description does not define a policy, there can be no showing that the employee is managerial, and the burden is on CMS to show why different duties should not apply to others holding the same title. Therefore, AFSCME maintains that the positions at issue are neither supervisory nor managerial within the meaning of Section 6.1 of the Act.

AFSCME specifically objects to the positions held by Melissa Cimarossa, Cynthia Mills, Jason House, Suzanne Oates, Roger Thompson, Carol Curtis, Herman Gansz, Paul Larson, Vicki Libbra, Larry Marques, Kevin Milward, and Marie Meadows. AFSCME provided written statements from the employees in these positions as evidence in support of the conclusion that the positions at issue are not managerial or supervisory within the meaning of the Act. AFSCME

[3] On January 27, 2014, I granted AFSCME's motion for leave to file a supplement to its objections to include the objection of Kevin Millwood and an additional one page from Vicki Libbra's information form, which had not been included with AFSCME's original objection. CMS had no objection.

[4] On January 29, 2014, I granted AFSCME's motion for leave to file the objection of Marie Meadows. CMS had no objection.

asserts that there is a high likelihood that all the position descriptions are inaccurate because specific individuals identified inaccuracies in their own position descriptions. On that basis, AFSCME asserts that the Board should order a hearing on all of the positions at issue.

Based on my review of the designations, the documents submitted as part of the designations, the objections, and the documents and arguments submitted in support of those objections, I have determined that AFSCME and the employee objectors have failed to raise an issue that would require a hearing. I find the designations to have been properly submitted and consistent with the requirements of Section 6.1 of the Act and consequently I recommend that the Executive Director certify the designations of the positions at issue in this matter 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 any collective bargaining unit.

III. DISCUSSION

A. Constitutional Arguments

It is beyond the Board's "capacity to rule that the Illinois Public Labor Relations Act, as amended by Public Act 97-1172, either on its face or as applied violated provisions of the United States and Illinois constitutions." State of Ill., Dep't of Cent. Mgmt. Servs., 30 PERI ¶ 80 (IL LRB-SP 2013), citing Goodman v. Ward, 241 Ill. 2d 398, 411 (2011) ("Administrative agencies . . . have no authority to declare statutes unconstitutional or even to question their validity. [citations omitted] When they do so, their actions are a nullity and cannot be upheld.") Thus, AFSCME's constitutional arguments are not addressed in this decision.

B. Non-Constitutional General Objections

AFSCME's remaining general objections are without merit and do not raise issues of fact or law that might rebut the presumption that the designations have been properly made. First, the Board has previously rejected AFSCME's objections concerning the statutorily-mandated presumption, the burden of proof, and the manner in which ALJs have applied them. State of Ill., Dep't of Cent. Mgmt. Servs., 30 PERI ¶ 80 ("Submission of position descriptions that are consistent with the designation made, combined with the presumption of appropriateness, and in the absence of any contrary evidence from objectors like AFSCME that might demonstrate that the designation is inappropriate, leads to the conclusion that the designation comports with the

requirements of Section 6.1.") Thus, AFSCME's arguments regarding the use of position descriptions, organizational charts, and affidavits to support the petition; the burden of proof; and CMS' failure to provide specific evidence that the positions at issue have actual authority to perform the listed job duties must be rejected because these arguments ignore the presumption and misallocate the burden, which is on AFSCME not CMS.

The Board has also rejected AFSCME's objections relating to the distinction between managerial and professional status. State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Commerce & Econ. Opportunity, 30 PERI ¶ 86 (IL LRB-SP 2013). The terms managerial and professional are not mutually exclusive and "there certainly is no exception for professional employees in the language of Section 3(c)(i) [sic]." Id. As such, the Board has held that a position may be properly designated for exclusion if it meets one of the two alternative tests set out in Section 6.1(c)(i), regardless of whether the position is also professional, and even if the position fails to meet the definition of a managerial employee in Section 3(j) of the Act. Id.

C. Designation under Section 6.1(b)(5)

A position is properly designable under Section 6.1(b)(5) if it authorizes an employee in that position to have "significant and independent discretionary authority as an employee." The Act provides three tests by which an employee can be found to have "significant and independent discretionary authority." Section 6.1(c)(i) sets forth two tests. Section 6.1(c)(ii) sets forth the third.

1. Section 6.1(c)(i)

The first test in Section 6.1(c)(i) is substantively similar to the traditional test for managerial status articulated in Section 3(j). Section 6.1(c)(i) provides that a position is authorized to have significant and independent discretionary authority if the employee "is engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency." Though similar to the general definition of a managerial employee in Section 3(j), the Section 6.1(c)(i) definition is broader in that it does not include a predominance requirement and requires only that the employee is "charged with the effectuation" of policies, not that the employee is responsible for "directing the effectuation." An employee directs the effectuation of management policy when he or she oversees or coordinates policy implementation by developing the means and methods

of reaching policy objectives, and by determining the extent to which the objectives will be achieved. Ill. Dep't of Cent. Mgmt. Servs. (Ill. State Police), 30 PERI ¶ 109 (IL LRB-SP 2013), citing Cnty. of Cook (Oak Forest Hospital) v. Ill. Labor Rel. Bd., 351 Ill. App. 3d 379, 387 (1st Dist. 2004); State of Ill., Dep't of Cent. Mgmt. Servs. (Healthcare & Family Servs.), 23 PERI ¶ 173 (IL LRB-SP 2007). However, in order to meet the first test set out in Section 6.1, a position holder need not develop the means and methods of reaching policy objectives. It is sufficient if the position holder is charged with carrying out the policy in order to meet its objectives.

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

The Board may consider case precedent pertaining to the traditional managerial exclusion set forth in Section 3(j) to the extent that the precedent explains the meaning of terms commonly used in both Section 3(j) and Section 6.1(b)(5). Dep't of Commerce & Econ. Opportunity, 30 PERI ¶ 86, citing City of Bloomington v. Ill. Labor Relations Bd., 373 Ill. App. 3d 599, 608 (4th Dist. 2007) ("When statutes are enacted after judicial opinions are published, it is presumed that the legislature acted with knowledge of the prevailing case law.") For example, "executive and management functions," which case law has long explained refers to matters which "specifically relate to running a department and include such activities as formulating department policy, preparing the budget, and assuring efficient and effective operations of the department." Dep't of Commerce & Econ. Opportunity, 30 PERI ¶ 86, quoting Vill. of Elk Grove Vill. v. Ill. State Labor Relations Bd., 245 Ill. App. 3d 109, 121-22 (1st Dist. 1993).

The second test under Section 6.1(c)(i) also relates to the traditional test for managerial status because it reflects the manner in which the courts have interpreted that test. A designation is proper under this test if the position holder "represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency." The Illinois Appellate Court has noted that the definition of a managerial employee in Section 3(j) is very similar to the definition of managerial employee set out in the Supreme Court's decision in National Labor Relations Board v. Yeshiva University, 444 U.S. 672 (1980). Dep't of Cent. Mgmt. Servs./Ill. Commerce Comm'n v. Ill. Labor Rel. Bd., 406 Ill. App. 766, 776 (4th Dist. 2010), citing Yeshiva, 444 U.S. at 683. Further, the Appellate Court has noted that the ILRB, like its federal counterpart, "incorporated 'effective recommendation' into its interpretation of the term 'managerial employee.'" ICC, 406 Ill. App. at 776. Indeed, the Court emphasized that "the concept of effective recommendations . . . [set forth in Yeshiva] applies with equal force to the managerial exclusion under the Illinois statute." Id.

In light of this analysis, the second test under Section 6.1(c)(i) is similar to the expanded traditional test of Section 3(j) because the second test is virtually identical to the statement of law in Yeshiva, which the Illinois Appellate Court and the Illinois Supreme Court have incorporated into the traditional managerial test. Id., quoting Chief Judge of the Sixteenth Judicial Circuit v. Ill. State Labor Rel. Bd., 178 Ill. 2d 333, 339-40 (1997). However, "Section 6.1(c)(i) does not require that an employee engage in policy making; rather it allows designation if the employee merely takes discretionary action that effectively implements agency policy." Ill. Dep't of Cent. Mgmt. Servs. (Dep't of Commerce & Econ. Opportunity), 30 PERI ¶ 163 (IL LRB-SP 2014) (Employee responsible for determining whether particular businesses qualify for incentives, by gathering information from the business, checking that information against guidelines, and summarizing her findings, was properly designated under Section 6.1 because she "no doubt uses some discretion in assessing the extent to which the business meets the guidelines.")

2. Section 6.1(c)(ii)

The third test under Section 6.1(c)(ii) provides that an employee has "significant and independent discretionary authority" if he or she qualifies as a "supervisor" within the meaning of the National Labor Relations Act. 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. Section 152(11). Thus, employees are supervisors if (1) they hold the authority to engage in any of the 12 listed supervisory functions, (2) their exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment, and (3) their authority is held in the interest of the employer. State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Public Health), 40 PERI ¶ 149 (IL LRB-SP 2013), citing NLRB v. Kentucky River Cmty. Care, Inc., 532 U.S. 706, 713 (2001), and Oakwood Healthcare, Inc., 348 NLRB 686, 687 (2006). Unlike the definition of supervisor in Section 3(r) of the Act, Section 6.1(c)(ii) does not require that the individual devote a preponderance of their employment to exercising their supervisory authority.

A position has the responsibility to direct if the position holder has subordinates, decides what jobs his or her subordinates should perform next, and who should perform those tasks. Oakwood Healthcare, 348 NLRB at 691-92. The position holder must also be accountable for his or her subordinates' work and must carry out such direction with independent judgment. Id. In other words, "it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary," and that "there is a prospect of adverse consequences for the putative supervisor," arising from his direction of other employees. Id. In applying the second portion of the "responsibly direct" test, the statutory presumption that the designation is proper places the burden on the objector to demonstrate that there is not a prospect of adverse consequences for the position holder if he does not direct the work or does not take corrective action where necessary.

a. Melissa Cimarossa

Cimarossa is the Supervisor of the Title IV-E & Medicaid Unit for DCFS. She has three employees who report to her: a Reimbursement Officer II, a Management Operations Analyst II, and a Methods and Procedures Advisor II. The Reimbursement Officer II has nine subordinate Reimbursement Officer Is who report to her. Cimarossa oversees eligibility determinations completed by the Reimbursement Officers. Cimarossa has interviewed for job openings with a team of others in Rutan interviews. Cimarossa maintains that she has not disciplined any

employees in the last couple years. Cimarossa's position description states that she serves as the working supervisor; assigns and reviews work; provides guidance and training to assigned staff; counsels staff regarding work performance; reassigns staff to meet day-to-day operating needs; establishes annual goals and objectives; approves/disapproves time off requests; and prepares and signs performance evaluations.

Cimarossa maintains that she does not write policy and has no role in the budget process. She admits that she has participated in meetings regarding policy and/or legislation implementation. However, she maintains that she has no power or authority on final decision-making. Cimarossa contends that she no authority to transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline employees or to effectively recommend the same.

The objections fail to raise an issue that might overcome the presumption that the designation is proper because they did not negate the three-factor test for supervisory status in Section 6.1(c)(ii).[5] The objections failed to show that Cimarossa does not have the authority to hire or discipline or to effectively recommend the same. Cimarossa merely states that she has not disciplined in the "last couple years." In addition, Cimarossa admits that she has participated in the interview process. The objections failed to show that Cimarossa's responsibility for interviewing candidates does not require the use of independent judgment or that this authority is not held in the interest of the employer. Thus, the designation of her position is proper.

b. Cynthia Mills

Mills is the Manager of the Administrative Support Services Office in the Division of Budget and Finance. She is responsible for assuring any telecommunications equipment is ordered, repaired, and replaced; assuring facility work orders are reported to CMS and resolved in a timely manner; working with CMS and DCFS managers for appropriate building leases; assuring proper documentation and maintenance of inventory; and assuring the mail room is functioning properly. She is involved in the budget process through maintaining contracts and monies associated with the operation of the Office of Administrative Support Services. She has four employees who report to her: one Mail Room Supervisor/Records Manager and three Executive IIs. Mills asserts that the Office of Personnel handles the hire, transfer, suspension, lay off, recall, discharge, assignment, reward, and discipline of employees. Mills states if she is

[5] Since Cimarossa's position qualifies for exclusion under Section 6.1(c)(ii), it is unnecessary to determine whether the position also qualifies for exclusion under Section 6.1(c)(i).

asked to be a part of the interview team, she merely follows the Rutan guidelines in doing so. In regard to lay offs, Mills asserts that discussion may occur with the Deputy Director regarding which titles Mills would recommend for lay off. In regard to discipline, Mills states that once discipline is given, she assures that it is completed by the employee.

The objections fail to raise an issue that might overcome the presumption that the designation is proper. The objections failed to show that Mills is not engaged in executive and management functions and charged with the effectuation of management policies and practices when she assures efficient and effective operations of the Administrative Support Services Office and is involved in the budget process. Further, the objections did not negate the three-factor test for supervisory status in Section 6.1(c)(ii). The objections failed to show that Mills' responsibility for interviewing candidates does not require the use of independent judgment or that this authority is not held in the interest of the employer. Further, Mills fails to show that her recommendations as to which positions should be laid off would not be effective. Thus, the designation of her position is proper.

c. Jason House

House is a Budget Analyst in the Division of Budget and Finance. He performs data analysis, reporting, distribution, and projections. He reports to the Assistant Budget Officer. House's position description states that he reviews operations budget requests on a statewide basis; directs and monitors development of spending plans and availability of funds; represents DCFS in meetings with the Office of Management and Budget and various legislative committees; develops divisional spending plans and consults with the deputy director regarding planned contracts and expenditures.

House maintains that he does not write policies or recommend the adoption of policies but rather informs policy decision makers. He contends that he merely quantifies the impact of policy decisions and options and assists with the technical aspects of implementing the decisions of policy makers. House has no subordinates.

The objections fail to raise an issue that might overcome the presumption that the designation is proper because they failed to show that House does not represent management interests by taking or recommending discretionary actions that effectively control or implement the policy of DCFS. House failed to show that in performing data analysis, reporting,

distribution, and projections, he is not taking discretionary actions. Further, House admits that he assists with the technical aspects of implementing the decisions of policy makers. Thus, the designation of his position is proper.

d. Suzanne Oates

Oates works in the Bureau of Operations in the Division of Permanency Practice. She serves as the personnel liaison for the Bureau. She handles all steps in the posting and filling of vacancies, including submitting requests to fill vacancies, posting positions, entering bids, scheduling interviews, and offering positions. She also reviews organizational structure of regional and central offices, monitors staff and number of vacancies, and monitors headcount. She reports to the Deputy Bureau Chief of the Permanency Practice. She maintains that several years ago she was actively involved in and assisted with a planned layoff and subsequent reorganization. Oates' job description states that she is responsible, on behalf of the Division, for responding to recommendations from the Office of the Inspector General; developing responses on the implementation of recommendations on disciplinary matters, corrective action plans, and development of new rules and procedures; and developing reports for the Deputy Bureau Chief. Oates asserts that "years ago" she had a role in responding and following up on Office of Inspector General issues, but has not been asked to be involved in or assist in this function for the past two to three years. Oates has no subordinates.

The objections fail to show that Oates does not represent management interests by taking or recommending discretionary actions that effectively control or implement the policy of DCFS when she participates in layoffs and responds to recommendations from the Office of the Inspector General. Although Oates stated that she has not responded to recommendations from the Office of Inspector General in the past few years, her job description still lists this as one of her position's objectives. Further, Oates does not allege that she would not be asked to respond to recommendations in the future. Thus, the designation of this position is proper.

e. Roger Thompson

Thompson is the Rate Setting Administrator with the Division of Budget and Finance. Working under the direction of the DCFS Assistant Budget Officer, Thompson calculates, using non-discretionary Rule-based formulas, rates of pay for various services purchased by DCFS. The Assistant Budget Officer reviews Thompson's work and either approves or returns it for

modification. Thompson maintains that in his 20+ years with DCFS, he has only written two draft policy documents. He contends that he has no role in the budget process, but will occasionally retrieve information from computer databases at the direction of the budget officer. He asserts that he has no authority to decide how policies or legislation will be implemented. He maintains that he is bound to follow DCFS rules and has no signification discretion. He contends that he does not recommend any actions that control or implement legislation that affect his agency or agency policy. Thompson has no subordinates.

The objections fail to raise an issue that might overcome the presumption that the designation is proper because Thompson failed to show that by writing two draft policy documents, he was not taking or recommending discretionary action that effectively controls or implements the policy of DCFS. Although, Thompson alleges that he has only worked on two of these documents in the 20+ years that he has worked for DCFS, he did not state when this work occurred or that he would not be asked to work on policy documents in the future. Thus, the designation of his position is proper.

f. Carol Curtis

Curtis is the Administrator of the Accounts Receivable Unit of the Division of Budget and Finance. Under administrative direction, she plans, develops, organizes, and controls activities of the Unit. She is responsible for monitoring the Unit to ensure compliance with federal regulations, state statutes, and administrative rules. She also ensures that the Unit is timely and accurately processing payments and collections. She has at least two subordinates who report to her: an Office Coordinator, Betty Matheis, and one Public Service Administrator Option 2, Kevin Milward.

The objections fail to raise an issue that might overcome the presumption that the designation is proper because they fail to show that Curtis does not represent management interests by taking or recommending discretionary actions that effectively control or implement the policy when she ensures that the Unit is in compliance with regulations, statutes, and rules.[6] Further, the objections fail to show how Curtis is not engaged in executive and management functions and charged with the effectuation of management policies and practices when she

[6] Since Curtis' position qualifies for exclusion under Section 6.1(c)(i), it is unnecessary to determine whether the position also qualifies for exclusion under Section 6.1(c)(ii).

plans, develops, organizes, and controls the activities of the entire Unit. Thus, the designation of her position is proper.

g. Kevin Milward

Milward is the Supervisor of the Accounts Receivable Unit. He reports to Carol Curtis. His position description states that he plans, organizes, and directs the operations of the Accounts Receivable Unit; implements statewide policies and procedures; provides oversight of the maintenance, reporting, and collection of DCFS Accounts Receivable, including overpayments made to substitute care providers and parental assessments due from eligible parents of children in the care of the Department; and develops cooperative working agreements with outside agencies and offices to acquire assistance and cooperation in the collection of required monies. Milward is responsible for managing the maintenance and reconciliation of Departmental Accounts Receivable Summary and Detail and Aging Reports, the preparation of quarterly State Comptroller's Accounts Receivable Reporting System reports and other financial reports related to Accounts Receivable as required by internal and external sources. Milward has no subordinates.

Milward maintains that he merely follows established rules and does not implement or evaluate policies and procedures. He asserts that he does not develop the process of collecting fees or manage or develop these rules. He contends that he does not write policy or recommend the adoption of policy, plays no role in the budget, has no authority to decide how policies or legislation will be implemented, and does not recommend actions that control or implement legislation that affects DCFS or DCFS policy. He admits that he prepares reports for the Comptroller's Office regarding receivables, but asserts that in doing so he merely follows rules established by the Comptroller.

The objections fail to raise an issue that might overcome the presumption that the designation is proper because they fail to show that Milward does not represent management interests by taking or recommending discretionary actions that effectively control or implement the policy when he prepares reports for the Comptroller's Office regarding receivables. Milward maintains that he merely follows the Comptroller's Office's rules when preparing these reports. However, the objections do not provide specific examples of how preparing reports does not require the use of discretion. Thus, the designation of his position is proper.

h. Herman Gansz and Larry Marques

Gansz and Marques are Auditors with the Division of Internal Audits. They are responsible for performing internal audits and audits of the grants and contracts of service providers. The auditing process involves checking to see if provider agencies are following policies as established by DCFS. Gansz and Marques report in their findings whether federal or state laws are being adhered to. When auditing grants and contracts, the Auditors verify if the contract or grant provisions are being followed and proper bills were submitted to DCFS for payment. Gansz and Marques maintain that their duties do not include creating or establishing policies. They have no subordinates.

The objections fail to raise an issue that might overcome the presumption that the designation of these two positions is proper because they fail to show that Gansz and Marques do not represent management interests by taking or recommending discretionary actions that effectively control or implement the policy when they check to see if agencies are following policies, laws are being adhered to, and contract or grant provisions are being followed. See Dep't of Commerce & Econ. Opportunity, 30 PERI ¶ 163. Thus, the designation of their positions is proper.

i. Paul Larson

Larson is the Supervisor of the Audit and Audit Approval Unit in the Division of Budget and Finance's Office of Financial Management. He oversees the Unit by supervising Audit staff, maintaining various online systems used in financial transactions, and acting as a liaison with the Comptroller's Office. He ensures that DCFS follows the Governor's Travel Control Board policies. Larson reports to Patrick Dominguez, the Administrator of Financial Management. Larson has three Account Technician II employees who report to him. Larson participates in Rutan interviews. After the interviews, documents are sent to CMS where decisions are made. Larson also signs time off requests for his subordinates.

The objections fail to raise an issue that might overcome the presumption that the designation is proper because they fail to show that Larson does not represent management interests by taking or recommending discretionary actions that effectively control or implement the policy when he oversees the entire Audit and Audit Approval Unit and ensures that DCFS is following the Governor's Travel Control Board policies. See Dep't of Commerce & Econ.

Opportunity, 30 PERI ¶ 163. The objections also fail to negate the three-factor test for supervisory status in Section 6.1(c)(ii). The objections did not establish that Larson's authority to conduct interviews and sign time off requests does not require the use of independent judgment or that his authority is not held in the interest of the employer. Further, Larson did not state whether he provides recommendations as part of the hiring process or whether he routinely grants time off requests. Thus, the designation of his position is proper.

j. Vicki Libbra

Libbra is the Manager of the General Accounting Unit for the Division of Budget and Finance. She reports to Patrick Dominguez, the Administrator of Financial Management. Libbra oversees the Unit, which is responsible for monitoring certain federal funds and maintaining all cash receipts received by DCFS and all claims for payments made by the Court of Claims cases through the Secretary of State and Attorney General's Office. Libbra also prepares quarterly and yearly federal reports. Libbra asserts that the Unit follows procedures, which are dictated by other agencies: the State Treasurer's rules for depositing checks and drawing federal funds to state accounts and for completing forgery cases for the Treasurer to investigate; the Comptroller's Office's rules for completing receipt deposit transmittals, expenditure account transmittals, cancelled warrants, and quarterly reporting of locally held funds; the Secretary of State and Attorney General's Office's rules for completing Court of Claims cases; and the federal Department of Human Services' rule for withdrawing federal grant funds.

Libbra maintains that currently the Unit only has two employees and as such her duties consist mostly of data entry and clerical work. Libbra has one subordinate. She maintains that she does not have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline employees or to effectively recommend the same. She maintains that these functions are performed by CMS. Libbra's subordinate is responsible for processing monthly reconciliations for receipts, refunds, appropriations, and funds. Libbra reviews her subordinate's work.

The objections fail to raise an issue that might overcome the presumption that the designation is proper because they did not negate the three-factor test for supervisory status in Section 6.1(c)(ii).[7] The objections fail to show that Libbra's authority to review her

[7] Since Libbra' position qualifies for exclusion under Section 6.1(c)(ii), it is unnecessary to determine whether the position also qualifies for exclusion under Section 6.1(c)(i).

subordinate's work does not require the use of independent judgment or that this authority is not held in the interest of the employer. Moreover, the objections did not assert that there would not be a prospect of adverse consequences for Libbra if she did not review her subordinate's work or take corrective action where necessary. Thus, the designation of her position is proper.

k. Marie Meadows

Meadows is the Budget and Payroll Manager for the Division of Budget and Finance. In her position, she is also the agency administrator for the State Employees' Retirement System and the Deferred Compensation Program. She maintains that the vast majority of her time is spent doing data entry and assisting employees. She asserts that she is not authorized to write policy but she has attended meetings where policy is going to be written by other employees in the agency. She has also attended meetings dealing with issues, such as late travel vouchers processed through the payroll office. She maintains that her role was to provide feedback. She has five subordinates: three Executive IIs, one Executive I, and an Office Coordinator. She maintains that she is not authorized to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline, or to effectively recommend the same. However, she admits that she completes yearly performance evaluations for her staff. Meadows' 2012-2013 performance evaluation states that one of her objectives for the year also included cross training employees within payroll.

The objections fail to raise an issue that might overcome the presumption that the designation is proper because they did not negate the three-factor test for supervisory status in Section 6.1(c)(ii).[8] The objections fail to show that Meadows' authority to conduct yearly performance evaluations and cross train employees within payroll does not require the use of independent judgment or that this authority is not held in the interest of the employer. Thus, the designation of her position is proper.

l. 16 remaining positions

CMS' designation of the remaining 16 positions is proper because the designations are presumed to be properly made and no specific evidence has been introduced by AFSCME or incumbent employees to suggest that the positions at issue do not have "significant and independent discretionary authority as an employee." AFSCME has not raised issues of fact for

[8] Since Meadow's position qualifies for exclusion under Section 6.1(c)(ii), it is unnecessary to determine whether the position also qualifies for exclusion under Section 6.1(c)(i).

hearing simply by asserting that there is a "high likelihood" that the position descriptions are inaccurate because AFSCME has not specifically identified any such alleged inaccuracies. State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Revenue), 30 PERI ¶ 110 (IL LRB-SP 2013) (general statement that position description is inaccurate does not raise issues of fact for hearing). Since no evidence was provided that contradicts the positions' job duties and responsibilities, AFSCME has failed to raise an issue that overcomes the presumption that the designation of the remaining positions is proper. As such, there is no evidence that the positions do not have significant independent and discretionary authority when performing the tasks set forth in the position descriptions. Thus, CMS properly designated these positions.

The designations comport with the requirements of Section 6.1 and the objections do not overcome the presumption that the Governor's designations were properly made.

IV. CONCLUSION OF LAW

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

V. RECOMMENDED ORDER

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

PSA, Opt.	Position Number	Name of Incumbent	Working Title
1	37015-16-05-400-00-66	Vacant	Chief, Asian-American Services
1	37015-16-07-300-00-01	Vacant	Personnel Manager
1	37015-16-07-400-00-01	Jerry D Mathis	Classification Manager
1	37015-16-07-700-00-01	Geny Chiaradonna	Employment Selection and Leaves Administrator
1	37015-16-07-800-00-01	Vacant	FMLA/Employee Benefits Administrator
1	37015-16-18-111-00-01	Denise Margerum-Luckett	Administrator, Case Assignment/Placement Unit
1	37015-16-20-312-00-01	Melissa Cimarossa	Title IV-E & Medicaid Supervisor
1	37015-16-20-400-00-01	Christopher Towers	Administrative Support Services Mgr
1	37015-16-20-511-00-01	Royce Kirkpatrick	Asst Budget Officer

1	37015-16-20-511-30-01	Roger Thompson	Rate Setting Administrator
1	37015-16-20-511-40-01	Jason House	Budget Analyst
1	37015-16-20-700-00-01	Cynthia Mills	Administrative Support Services Mgr
1	37015-16-20-810-00-01	Marie Meadows	Payroll Administrator
1	37015-16-60-200-20-01	Suzanne Oates	Staff Asst/Problem Resolution Administrator
1	37015-16-64-500-00-01	Marcetta Trowbridge	Administrative Services Manager-Contracts
2	37015-16-01-100-10-01	Herman Gansz	Auditor in Charge
2	37015-16-01-200-10-01	Larry Marques	Auditor in Charge
2	37015-16-20-110-00-01	Carol Curtis	Client Payment and Accounts Receivable Administrator
2	37015-16-20-112-00-01	Kevin Milward	Accounts Receivable Unit Supervisor
2	37015-16-20-123-00-01	Vicki Libbra	Administrator, General Accounting
2	37015-16-20-124-00-01	Paul Larson	Audit Approval Unit Supervisor
2	37015-16-20-900-10-01	Vacant	Field Auditor
2	37015-16-20-900-20-01	Daniel Breit	Field Auditor
2	37015-16-20-900-30-01	Vacant	Field Auditor
2	37015-16-20-900-40-01	Quincy Washington	Field Auditor
2	37015-16-20-900-50-01	Karen Saulsberry	Field Auditor
2	37015-16-20-900-60-01	Jeanette Booker	Field Auditor
8N	37015-16-15-210-10-01	Jerrilyn Pearson-Minor	Chief of Nursing Services

VI. EXCEPTIONS

Pursuant to Section 1300.90 and Section 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300,[9] parties may file exceptions to the Administration Law Judge's recommended decision and order, and briefs in support of those exceptions, not later than three days after service of the recommended decision and order. All exceptions shall be filed and served in accordance with Section 1300.90 of the Board's Rules. Exceptions must be filed by electronic mail sent to ILRB.Filing@Illinois.gov. Each party shall serve its exception on the other parties. If the original exceptions are withdrawn, then all subsequent exceptions are moot.

9 Available at http://www.state.il.us/ilrb/subsections/pdfs/Section%201300%20Illinois%20Register.pdf

A party not filing timely exceptions waives its right to object to the Administrative Law Judge's recommended decision and order.

Issued at Chicago, Illinois, this 3rd day of February, 2014

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/s/ Michelle Owen

Michelle Owen
Administrative Law Judge