

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

State of Illinois, Department of Central Management Services (Department of Children & Family Services),)	
)	
Petitioner)	
)	
and)	Case No. S-DE-14-168
)	
American Federation of State, County and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	
)	
Kathleen Clark,)	
)	
Employee-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 21, 2014, Administrative Law Judge Michelle Owen issued a Recommended Decision and Order (RDO) in Case No. S-DE-14-168, finding the designations comport with the requirements of Section 6.1. We agree with her assessment.

The petition at issued designated for exclusion 26 Public Service Administrator (PSA) Option 6 positions at the Department of Children and Family Services. 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

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. An employee occupying one of the designated positions, Kathleen Clark, did the same. AFSCME raised general objections with respect to all the positions, and raised specific objections relating to the positions held by Clark (Manager Cook County Program Review/Statewide Aristotle P. Programs), Miriam Mojica (Clinical Services Manager) and Lourdes Rodriguez-Colon (Burgos Coordinator). The ALJ determined that the objectors had raised issues warranting a hearing with respect to these three positions, but not with respect to the other positions in that case. Ultimately, based on the evidence and arguments, she concluded that all the designations were proper. She declined to rule on AFSCME’s constitutional arguments, found its other generally applicable objections to be without merit, found AFSCME had failed to overcome the presumption of appropriateness established by Section 6.1(d) for the 23 positions for which it had not filed specific objections, and also found the specific objections insufficient to overcome the presumption that the designations were proper.

¹ Section 6.1(c) defines that term:

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

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

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

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

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

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

/s/ 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 17, 2014.

**STATE OF ILLINOIS
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STATE PANEL**

State of Illinois, Department of Central)	
Management Services (Department of)	
Children and Family Services),)	
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Employer)	
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and Municipal Employees, Council 31,)	
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Employee-Objector)	

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 pursuant to Section 6.1 of the Act and Section 1300.50 of the Board's Rules. The petition designates 26 Public Service Administrator (PSA), Option 6 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 petition indicates that all of the positions qualify for designation under Section 6.1(b)(5). The petition indicates that the positions at issue were certified on December 2, 2008 in Case Nos. S-RC-07-078 and S-RC-07-150.

In support of its petition, 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 16, 2014, Kathleen Clark, an employee in one of the designated positions, filed an objection to the exclusion of her position from collective bargaining rights. On January 24, 2014, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed objections to the exclusion of all 26 positions. In support of its objections, AFSCME provided information forms completed by Kathleen Clark, Miriam Mojica, and Lourdes Rodriguez-Colon.

AFSCME generally objects to the petitions arguing that Section 6.1 of the Act violates due process; freedom of association and speech under Article I, Section 4 of the Illinois Constitution and the First Amendment of the United States Constitution; 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 asserts that CMS submitted no actual evidence in support of its designation of the positions. AFSCME argues that the evidence submitted by CMS in the form of position descriptions cannot on their face satisfy Section 6.1(b)(5) because the alleged duties are subject to “whatever approval or authority is provided by administration.” CMS argues that the affidavits submitted offer legal conclusions and do not provide any actual facts regarding the duties of the positions at issue. 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, and if so, whether independent judgment is utilized. As such, AFSCME argues that CMS has not met its burden of providing the job duties of the positions as required by Section 6.1. In addition, AFSCME argues that the positions at issue are professional and not managerial. AFSCME asserts that the NLRB and the courts have long held that any claim of managerial status requires that the party raising the exclusion bear the burden of proof. Further, AFSCME contends that the definition of managerial employee is construed narrowly by the Board since those who are considered in those categories are denied substantial rights. Therefore, AFSCME maintains that the positions at issue are neither supervisory nor managerial within the meaning of Section 6.1 of the Act. Finally, AFSCME contends that the Board must hold a hearing to determine whether there is a legal basis for the designations in order to comport with due process.

AFSCME specifically objects to the positions held by Kathleen Clark, Miriam Mojica, and Lourdes Rodriguez-Colon. AFSCME provided written statements as evidence in support of the conclusion that the positions at issue are not managerial or supervisory within the meaning of the Act.

After reviewing the designations, I determined that an issue of fact and/or law had been raised with respect to the positions held by Kathleen Clark, Miriam Mojica, and Lourdes Gonzalez-Colon. I determined that there were no issues of law or fact for hearing with respect to the remaining positions. On February 10, 2014, a hearing was conducted concerning whether the three positions held significant and independent discretionary authority.

Based on my review of the designation, the documents submitted as part of the designation, the objections, the documents and arguments submitted in support of those objections, and the evidence presented at hearing, I find that the designations 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 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 here.

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.") AFSCME's arguments regarding the use of position descriptions and affidavits to support the petition; the burden of proof; CMS' failure to provide specific evidence that the positions at issue have actual authority to perform the listed job duties; and the necessity for hearing must be rejected because these arguments ignore the presumption and

misallocate the burden, which is on AFSCME, not CMS. Further, the failure to go to an oral hearing is not necessarily the denial of a hearing where written documents could suffice as a hearing. Dep't of Cent. Mgmt. Servs. (Ill. Commerce Comm'n) v. Ill. Labor Relations Bd., State Panel, 406 Ill App. 3d 766, 769-70 (4th Dist. 2010).

Second, the Board has also rejected AFSCME's objections regarding 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 Board has noted that 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. Accordingly, the Board has held that a position may be appropriately 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.

In sum, AFSCME's general objections do not raise issues of fact or law that might rebut the presumption that the designation was properly made.

C. Specific Objections

I find that the objections fail to overcome the presumption that the designation has been properly submitted and is consistent with the requirements of Section 6.1 of the Act.

A position is properly designatable under Section 6.1(b)(5) if the employee in that position is authorized to have "significant and independent discretionary authority as an employee." The Act provides three tests by which a person 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.

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 authorizes an employee to have significant and independent discretionary authority if he or she "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 Act's 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 second test under Section 6.1(c)(i) also relates to the traditional test for managerial status by reflecting 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 observed 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. At 776, citing Yeshiva, 444 U.S. at 683. Further, the Appellate Court 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).

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), 30 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 individuals 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.

1. Lourdes Rodriguez-Colon

Rodriguez-Colon is the Burgos Consent Decree Coordinator for the Division of Affirmative Action’s Latino Services Unit. She is responsible for monitoring compliance with the Burgos Consent Decree, which is a federal mandate requiring that DCFS provide appropriate social services to Spanish-speaking clients, hire bilingual employees in certain areas and positions, and place Spanish-speaking children with Spanish-speaking foster parents. As part of monitoring compliance, Rodriguez-Colon completes a report that details the number of bilingual staff at DCFS. Rodriguez-Colon is also the spokesperson for DCFS regarding the Burgos Consent Decree and responds to caseworkers and parents who are seeking Spanish-speaking resources. She is also responsible for testing prospective candidates for bilingual Spanish certification. Rodriguez-Colon reports to Joe Lopez, the Chief of Latino Services, and to Sheila Riley, the Deputy Director of the Office of Affirmative Action.

Rodriguez-Colon was appointed by the Director of DCFS to serve on the Latino Family Commission as the representative of the Director and DCFS. She is an ex-officio member. The purpose of the Commission is to advise the Governor and the General Assembly, as well as work directly with State agencies to improve and expand existing policies, services programs, and opportunities for Latino families. She is also the DCFS representative on the CMS Hispanic Employment Council. The Council looks at bilingual and Hispanic employment issues across all state agencies including DCFS. She also serves on DCFS’ Latino Advisory Committee as an ex-officio member. The Committee advises and makes recommendations to the Director of DCFS concerning DCFS’s servicing of Latino clients, and of any concern involving Latino personnel.

CMS asserts that Rodriguez-Colon has significant and independent discretionary authority as an employee because as the Burgos Consent Decree Coordinator, she represents DCFS’ interests and effectuates DCFS’ policies by monitoring Spanish speaking child welfare

services; develops policies and procedures for the management/implementation of the Burgos Consent Decree; and serves as the spokesperson regarding the Burgos Consent Decree to internal and external groups.

Rodriguez-Colon maintains that she does not have the authority to develop policies, rules, or procedures, or recommend the same. She contends that methods, policies, and procedures are developed and formulated by Riley, the Office of Legal Services, and the Attorney General's Office for Child Welfare Division. Rodriguez-Colon admits that she carries out DCFS' policies, procedures, and rules, but maintains she does not make independent recommendations on the same or have any authority to change policies, rules, or procedures. Rodriguez-Colon contends that she does not formulate methods or procedures.

Rodriguez-Colon is authorized to have significant and independent discretionary authority because she represents management interests by taking or recommending discretionary actions that effectively control or implement policy through her role as DCFS representative on the Latino Family Commission, the CMS Hispanic Employment Council, and the Latino Advisory Committee, and by monitoring DCFS' compliance with the Burgos Consent Decree. See Dep't of Commerce & Econ. Opportunity, 30 PERI ¶ 163. Rodriguez-Colon no doubt uses some discretion in assessing the extent to which DCFS is meeting the requirements of the Burgos Consent Decree. Rodriguez-Colon maintains that she does not make any independent recommendations or have any authority to change policy, rules, or procedures. Regardless, the Illinois Appellate Court has held that where employees implement management policies and practices, the fact that they "do not do so 'independently' is unimportant, given that the Act does not require such independence in management functions." Dep't of Central Mgmt. Servs. v. Ill. Labor Relations Bd., 2011 IL App (4th) 090966 at ¶ 186. Thus, the designation of her position is proper.

2. Kathleen Clark

Clark is the Manager of the Cook County Program Review and Statewide Aristotle P. Consent Decree Program. The Cook County Program Review is responsible for reviewing the performance and efficiency of DCFS' programs. The Aristotle Consent Decree Program is responsible for ensuring that DCFS is making a diligent search to locate joint placements for siblings under the care of DCFS and for facilitating visitation between siblings who are in

separate placements. Clark reports to Joan Nelson-Phillips, Deputy of the Division of Quality Assurance and Research.

Clark has six subordinates who work within the Cook County Program Review. Their job functions include conducting reviews and completing reports as requested by the Department Director. Clark is responsible for ensuring that the review process is efficient and timely. Clark reviews her subordinates' reports before they are sent to Nelson-Phillips. Clark completes performance evaluations for her subordinates, reports staffing issues to Nelson-Phillips, and approves leave requests. Phillips testified that Clark has the authority to take corrective action and would be held accountable if Clark's subordinates were not performing their duties.

CMS maintains that Clark has significant and discretionary authority as an employee because she is authorized to assign, responsibly direct, and review the work of her subordinates with independent judgment. Further, CMS maintains that Clark is authorized to counsel staff regarding work performance, take corrective action, monitor work flow, and reassign staff to meet day to day operating needs.

Clark contends that she does not have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, or reward employees, or to effectively recommend such action. In regard to discipline, she maintains that "[a]s a supervisor I could be placed in the position to initiate discipline based on employee performance, but have never done so. Such action would require the Deputy's involvement." Clark also contends that she has no authority to make decisions with independent judgment and that all of her job functions are dictated by her supervisor.

Clark is authorized to have significant and independent discretionary authority because she is authorized to responsibly direct the work of her subordinates. AFSCME and Clark failed to establish that this authority does not require the use of independent judgment and is not held in the interest of DCFS. Further, Clark's supervisor testified that Clark has the authority to take corrective action and would be held accountable if her subordinates were not performing their duties. Thus, the designation of her position is proper under Section 6.1(c)(ii).²

² CMS also argues that Clark has significant and independent discretionary authority because she is charged with effectuating DCFS' policies by formulating and reviewing policies to ensure compliance with statutes, accreditation standards, and is authorized to monitor the effectiveness of divisional operations and quality assurance. Since Clark'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).

3. Miriam Mojica

Mojica is the Regional Clinical Manager for the Cook Central Division of Clinical Practice for DCFS. The Division is responsible for conducting clinical consultations, clinical staffing, and child placement reviews for the Cook Central region. Consultations and staffings involve the review of cases within the region. The reviews include looking at the service needs of the client, permanency issues, and safety concerns. Mojica reports to the Statewide Social Work Administrator. Mojica has six subordinates: four Clinical Service Coordinators and two Sexual Abuse Coordinators.

The Division receives cases by geography. Mojica reviews the cases for her region and determines whether the case will need a consultation, staffing, or child placement review. The cases are then handled by the Clinical Coordinators. The Clinical Coordinators must follow certain procedures for the cases, including strict timelines. Mojica assigns the cases to the Clinical Coordinators. She assigns cases based on a rotation and to balance work load. However, she also assigns based on assessment of the Clinical Coordinators' expertise and skill set. The Clinical Coordinators complete a report with findings, clinical recommendations, and/or action plans for each case. After the Clinical Coordinator completes the report, it is submitted to Mojica for review and approval. Mojica then reviews the action plan and recommendation with the Clinical Coordinator. Mojica also approves timesheets and leave requests for her subordinates.

CMS asserts that Mojica has significant and discretionary authority as an employee because she is authorized to assign, responsibly direct, counsel, take corrective action, monitor work flow, reassign staff to meet day to day operating needs, and review the work of her subordinates with independent judgment.

Mojica maintains that she does not have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, or reward employees, or to effectively recommend the same. She also asserts that she does not write policies or recommend the adoption of policies. She states that she has no role in the budget process. She maintains that she has no authority to decide how policies or legislation will be implemented. She also contends that she does not recommend any actions that control or implement legislation that affect DCFS or DCFS policy.

Mojica is authorized to have significant and independent discretionary authority because she is authorized to assign work to her subordinates. AFSCME failed to establish that Mojica's assessment of her subordinates' expertise and skill sets in the assignment of cases does not require the use of independent judgment and is not held in the interest of DCFS. Thus, the designation of her position is proper under Section 6.1(c)(ii).³

4. 23 remaining positions

CMS' designation of the remaining 23 positions is proper because the designation is 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 hearing because AFSCME has not specifically identified any alleged inaccuracies in the job descriptions for the 23 remaining positions. State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Revenue), 30 PERI ¶ 110 (IL LRB-SP 2013). 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 these 23 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 designation comports with the requirements of Section 6.1 and the objections do not overcome the presumption that the Governor's designation was properly made.

IV. CONCLUSION OF LAW

The Governor's designation in this case was 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 Children

³ CMS also argues that Mojica has significant and independent discretionary authority because she is charged with effectuating DCFS' policies by managing programs and subordinate staff engaged in development and delivery of regional based child welfare clinical services program, and is authorized to evaluate the quality of services being provided to department clients. Since Mojica'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).

and Family Services 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
6	37015-16-05-200-20-99	Lourdes Rodriguez-Colon	Burgos Coordinator
6	37015-16-08-340-00-01	Vacant	Cook County QA Manager
6	37015-16-08-350-00-01	Vacant	Downstate QA Manager
6	37015-16-08-360-00-01	Kathleen Clark	Mgr, Cook Co Program Review/Statewide Aristotle P. Programs
6	37015-16-13-500-10-01	Nora Hoover	Enforcement Unit Manager
6	37015-16-13-110-00-01	Scott Wiseman	Downstate Field Manager-Agency Performance
6	37015-16-13-120-00-01	Treva Hamilton	Cook County Field Manager-Agency Performance
6	37015-16-13-210-00-01	Linda Karfs	Downstate Field Service Manager-Residential Monitoring
6	37015-16-13-220-00-01	Lauren Williams	Cook County Field Service Manager-Residential Monitoring
6	37015-16-13-550-00-01	Vacant	Statewide Mgr, A&I Licensing
6	37015-16-13-610-00-01	Vacant	Day Care Manager
6	37015-16-13-620-00-01	Richard Alexander	Licensing Administrator
6	37015-16-13-630-00-01	Marsha Townsend	Licensing Administrator
6	37015-16-13-640-00-01	Carol Morris	Licensing Administrator
6	37015-16-13-710-00-01	Jennifer Kitzmiller	Downstate Foster Home Licensing Manager
6	37015-16-13-720-00-01	Legertha Barner	Cook County Foster Home Licensing Manager
6	37015-16-00-241-00-01	Vacant	ACR Program Administrator
6	37015-16-00-242-00-01	Vacant	ACR Program Administrator
6	37015-16-15-214-00-01	Samuel Gillespie	Statewide Administrator, Substance Abuse Programs
6	37015-16-15-232-00-01	Anne Bergstrom	Clinical Services Manager
6	37015-16-15-233-00-01	Vacant	Clinical Services Manager
6	37015-16-15-237-00-01	Daniel Davis	Clinical Services Manager

6	37015-16-15-247-00-01	Vacant	Clinical Services Manager
6	37015-16-15-248-00-99	Miriam Mojica	Clinical Services Manager
6	37015-16-15-249-00-01	Ramona Milam	Clinical Services Manager
6	37015-16-60-450-00-01	Vacant	Statewide Recruitment/Resources

VI. EXCEPTIONS

Pursuant to Section 1300.90 and Section 1300.130 of the Board’s Rules and Regulations, 80 Ill. Admin. Code Part 1300,⁴ 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. 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 21st day of February, 2014

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

/s/ Michelle Owen

**Michelle Owen
Administrative Law Judge**

⁴ Available at <http://www.state.il.us/ilrb/subsections/pdfs/Section%201300%20Illinois%20Register.pdf>