

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

State of Illinois, Department of Central Management Services (Department of Healthcare & Family Services),)	
)	
Petitioner)	
)	
and	)	Cons. Case Nos.
	)	S-DE-14-170
American Federation of State, County and Municipal Employees, Council 31,	)	S-DE-14-171
	)	S-DE-14-172
	)	S-DE-14-173 &
Labor Organization-Objector	)	S-DE-14-175
)	
Brian Bond, Edna Canas, Ron Wiggins, Sara Barger and Terry Rogers)	
)	
)	
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 cases, which we consolidate for resolution, involve such designations made on the Governor's behalf by the Illinois Department of Central Management Services (CMS). From January 30, 2014, through February 20, 2014, Administrative Law Judge Elaine L. Tarver issued Recommended Decision and Orders (RDOs) in the above-referenced cases, finding the designations comport with the requirements of Section 6.1. We agree with her assessment.

All five petitions at issue designated for exclusion employment positions at the Illinois Department of Healthcare and Family Services, specifically, the petition filed in Case No. S-DE-

14-170 designated 53 Public Service Administrator (PSA) Option 1 positions, that filed in Case No. S-DE-14-171 designated 6 PSA Option 2 positions, that filed in Case No. S-DE-14-172 designated 4 PSA Option 6 positions, that filed in Case No. S-DE-14-173 designated 16 PSA Option 8L positions, and that filed in Case No. S-DE-14-175 designated 7 PSA Option 8N positions. All these designations were made 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 in each case pursuant to Section 1300.60 of the Board’s rules for implementing Section 6.1 of the Act, 80 Ill. Admin. Code §1300.60, and so did some of the employees.² AFSCME raised general objections with respect to all the positions, and specific objections with respect to many. The ALJ declined to rule on the objections challenging the constitutionality of Section 6.1, rejected the other general objections, and with respect to the objections relating to specific positions found each of the designations met the requirements of Section 6.1(c)(i), Section 6.1(c)(ii), or both.

AFSCME filed timely exceptions to the ALJ’s RDOs pursuant to Section 1300.130 of the Board’s rules, 80 Ill. Admin. Code §1300.130. Based on our review of the exceptions, the records, and the RDOs, we reject the exceptions and adopt the RDOs. We find the designations

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 Brian Bond and Edna Canas filed objections in Case No. S-DE-14-170, Ron Wiggins did the same in Case No. S-DE-14-171, and Sara Barger and Terry Rogers filed objections in Case No. S-DE-14-172.

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
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

State of Illinois, Department of Central)	
Management Services (Department of)	
Healthcare and Family Services),)	
)	
Petitioner)	
)	
and	)	Case No. S-DE-14-170
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	
)	
Brian Bond and Edna Canas,)	
)	
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, 497 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.

On January 15, 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. CMS' petition designates the exclusion of the following Public Service Administrators employed at the Department of Healthcare and Family Services based on Section 6.1(b)(5) of the Act:

**Public Service Administrator, Option 1
Employed at Department of Healthcare and Family Services**

<u>Position No.</u>	<u>Working title</u>	<u>Incumbent</u>
37015-33-10-210-00-61	Classification Unit Mgr	LANG TAMMY
37015-33-10-220-00-61	Selection and Recruitment Mgr	VACANT
37015-33-10-240-00-61	Benefits Mgr and FMLA Coordinator	JONES SONJA M
37015-33-10-250-00-61	Employee Svcs & Transactions Supervisor	MOSCARDELLI PATRICIA
37015-33-10-310-00-21	EEO/ADA Program Coordinator	VACANT
37015-33-11-500-00-61	Assist Bureau Chief of Admin Services	DORCHINECZ STEPHEN M
37015-33-15-200-20-61	Personnel Liaison Inspector General	HUDGINS LORI
37015-33-17-120-00-61	Manager Quality Control Review /OIG	BECKER TERRI
37015-33-17-430-00-61	Program Mgr	Vacant
37015-33-19-020-00-61	Manager Financial Crimes Task Force	BRINKMAN JAMES L
37015-33-19-120-00-21	Manager of Welfare Fraud Investigations Cook	CAMPOS BARBARA M
37015-33-19-150-00-21	Mgr Medical Fraud-Special Programs Unit	VACANT
37015-33-19-430-00-61	Manager Southern Region - Welfare Fraud	BOND BRIAN J
37015-33-19-440-00-61	Manager Asset Discovery Unit	VACANT
37015-33-19-450-00-61	Supervisor of Snap Program	KEISER DAWN D
37015-33-20-020-20-61	Staff Assist to The Deputy Admin of Medical Programs	VACANT
37015-33-20-030-40-61	Special Projects Program Supv	VACANT

37015-33-20-030-50-61	Data Control Program Supv	VACANT
37015-33-29-100-00-61	Supervisor	WATSON G ERIC
37015-33-29-100-00-61	Supervisor	MINDER SUSAN M
37015-33-29-330-00-61	Supervisor	CANAS EDNA
37015-33-33-220-00-61	Supervisor	VACANT
37015-33-33-230-00-61	Supervisor	BARGER DAVID L
37015-33-33-300-00-61	Manager	MCCARTY SHERI L
37015-33-33-420-00-61	Supervisor	JONES FRANCES M
37015-33-33-430-00-61	Supervisor	LYNN PAMELA M
37015-33-33-450-00-61	Supervisor	SAVAGE LESLEY R
37015-33-36-210-00-61	Manager	VACANT
37015-33-50-000-20-91	Manager	VACANT
37015-33-50-100-00-91	Personnel Manager	DAY, RUTH ANN
37015-33-50-332-00-91	Manager	GILBEY DENISE J
37015-33-51-353-00-91	Manager	GRIMBLE LINDA J
37015-33-53-600-00-41	Manager	VACANT
37015-33-54-200-00-41	Supervisor	VACANT
37015-33-54-300-00-41	Regional Manager	MONTES, OSCAR
37015-33-54-500-00-41	Regional manager	MARKETTE-MALONE SHAR
37015-33-54-500-20-41	Supervisor	VACANT
37015-33-54-600-00-41	Manger	MANUEL TRACY V
37015-33-55-120-00-91	Regional Manager	VACANT
37015-33-55-130-00-91	Regional Manager	MEDERNACH LORI R
37015-33-55-140-00-91	Regional Manager	QUARLES SHARON M
37015-33-55-150-00-91	Regional Manager	GLEASMAN TRUDI M
37015-33-55-210-00-91	Regional Manager	RUNGE SHERRIE M
37015-33-55-220-00-91	Regional Manager	DUDUIT AMY J ²
37015-33-55-230-00-91	Regional Manager	VACANT
37015-33-55-260-00-91	Regional Manager	KUTTIN MARILYN K
37015-33-57-210-00-91	Manager	TRIBBLE BRYAN
37015-33-57-320-00-91	Manager	BAKER THOMAS E
37015-33-60-100-00-62	Manager	TIFFANY LEIGH E
37015-33-61-300-00-61	Supervisor - Procurement	VACANT
37015-33-70-010-00-61	Personnel Liaison - Division of Finance	HOMER RHONDA S
37015-33-71-230-00-61	Supervisor - DHFS Payroll Office	GENTRY DUANE T
37015-33-73-130-00-61	Supervisor	VACANT

In support of its petition, CMS submitted job descriptions (CMS-104s) for each position, affidavits and a summary spreadsheet. The spreadsheet identifies position numbers, titles, name of the incumbents, bargaining unit, certifications date and case number, statutory category of

² January 15, 2014, the Board received notification that Amy Duduit was no longer in this position.

designation and a list of job duties that support the presumptions that the positions are supervisory or managerial. On January 20, 2010, the positions at issue were certified into the RC-63 bargaining unit pursuant to the actions of the Board in Case No. S-RC-08-036. On January 17, 2014, Brian Bond filed an objection to the designation. On January 23, 2014, Edna Canas filed an objection to the designation. On January 27, 2014, the American Federation of State, County and Municipal Employees (AFSCME) filed objections to the designation. All objections were timely filed.

Based on my review of the designation, the documents submitted as part of the designation, the objections, and the arguments submitted in support of those objections, I have determined that the objections have failed to raise an issue that would require a hearing.

Therefore, I find the designation to have been properly submitted and consistent with the requirements of Section 6.1 of the Act and 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 any existing inclusion of these positions within any collective bargaining unit.

I. ISSUES AND OBJECTIONS

AFSCME makes several general objections to the petition arguing that Section 6.1 of the Act violates due process, the separation of powers doctrine in the Illinois Constitution, equal protection under Article I, Section 2 of the Illinois Constitution, and the Fifth and Fourteenth Amendments to the United States Constitution, and impairs the contractual right of the employees prohibited by the impairment of contract clause in the Illinois Constitution.

AFSCME specifically objects to the designation of the positions arguing that the positions do not possess significant and independent discretionary authority as required by Section 6.1. AFSCME also contends that the designated positions are merely professional where the employee uses their professional skills to understand and follow the guidelines established by the Department, negating the claim that the positions are managerial in nature. The individual employees submitted statements attesting to their job functions.

As it relates to the employees' supervisory authority, AFSCME maintains that the employees do not have authority to engage in any supervisory function with independent judgment. Moreover, although they prepare performance evaluations, it is argued that the evaluations are without reward or consequence.

Lastly, AFSCME argues that these positions have been certified into the bargaining unit pursuant to the actions of the Board and there is no rational basis for treating them differently than the many other positions which hold the same title or have similar duties. AFSCME requests a hearing be held to determine whether there is a legal basis for the exclusion of this position and the effect of such exclusion. AFSCME maintains that failure to hold a hearing on the issues raised is also a denial of due process.

Brian Bond states that he has four subordinates and he does not have the authority to, or effectively recommend, hire, transfer, suspend, layoff, recall employees from layoff, promote, discharge, assign, reward or discipline his subordinates. Bond also denies overseeing any department or unit, writing or recommending policies, having any role in the budgetary process, having any authority to decide how policies or legislation is implemented or recommending any actions that control or implement legislation that affects the department's policies.

Edna Canas argues that in her position she provides high-level supervision to her subordinate staff of ten. Canas maintains that she does not initiate Healthcare and Family Services policies but she does receive notifications when a new policy is being established, and she makes suggestions on the language to help document or explain those policies. Canas states that these suggestions are given consideration but decisions are made at a higher level. Canas also argues that, contrary to her job description, she does not make decisions on the Medicaid budget or handle the Outreach Program. Canas maintains that she does not have any discretionary authority regarding hiring, transferring, suspending, laying off, recalling, promoting, discharging, assigning, rewarding, disciplining, adjusting grievances or responsibly directing subordinates.

II. FINDINGS OF FACT

AFSCME specifically objects to the positions held by: Steve Dorchinecz, Frances Jones, Pamela Lynn, Brian Bond, James Brinkman, Linda Grimble, Edna Canas, David Barger, Trudi Gleasman, Dawn Keiser, Marilyn Kuttin, Sherrie Runge, Sharon Quarles, Lori Medernach, Eric Watson, Sheri McCarty and Sharon Markette-Malone. Both Brian Bond and Edna Canas also

filed individual objections. All of the specifically objected to employees, including those who submitted individual objections, submitted statements regarding their job duties and functions.³

Assist Bureau Chief of Administrative Services, Steve Dorchinecz, position number 37015-33-11-500-00-61, states that he oversees the work of an advisor within the Forms Control and Design Unit who creates all forms and envelopes used within the agency; and a PSA who is responsible for the Records and Retention and Mail units. He also assigns work to the storekeeper daily. As a general matter, Dorchinecz oversees the Office Services Unit which includes the distribution of commodities, forms, furniture, and equipment to users throughout the State of Illinois. The unit also stores and pulls any agency record deemed necessary by the agency. Lastly, the unit distributes agency mail locally, and creates and revises all forms and envelopes used by the agency. Dorchinecz does not deny the position's authority to assign and responsibly direct subordinates using independent judgment.

Frances Jones – Supervisor, position number 37015-33-33-420-00-61, has five subordinates who are direct reports. Jones states that her responsibilities in overseeing include ensuring the staff reviews mail, answers phone calls and responds to inquiries regarding ongoing eligibility for state medical programs. Jones does not refute that she responsibly directs her subordinates using independent discretionary authority. This direction also includes reviewing work, providing guidance and training to assigned staff, counseling staff regarding work performance, establishing annual goals and objectives, approving time off and preparing and signing performance evaluations.

According to Supervisor Pamela Lynn, position number 37015-33-33-430-00-61, her job duties include processing medical applications, answering phone calls from clients, and reviewing and signing off on reimbursement vouchers, completing evaluations and reports and consulting with workers on difficult case situations. Lynn has three subordinates who are direct reports. They also have subordinates. Lynn is required to sit in disciplinary meetings but states that she does not speak or participate. Lynn states that she makes sure her staff meets day-to-day annual goals and objectives as established by her superiors. She directs their work and prepare and sign evaluations (but does not “plan”) for All Kids caseworkers for the Bureau of All Kids.

³ For brevity, this decision only addresses those functions and duties that relate to the employees supervisory or managerial status. Each employee specifically objected to also generally contends that either they do not perform supervisory or managerial functions or if they do, they do not do so with independent discretionary authority.

She also explains and implements program policies and procedures, confers with management on the integration of program functional activities and recommends program functional improvements. Lastly, Lynn approves time-off and prepares and signs performance evaluations after her superior reviews them.

Manager Southern Region – Welfare Fraud, Brian Bond, position number 37015-33-19-430-00-61, supervises Medicaid fraud investigators for the southern region. He has four subordinates. Bond contends that he does not have any supervisory or managerial authority. However, Bond does not specifically refute his duties that include assigning and reviewing work, providing guidance and training to assigned staff, counseling staff regarding work performance, reassigning staff to meet day-to-day operating needs, establishing annual goals and objectives, approving time-off and preparing and signing performance evaluations.

Financial Crimes Task Force Manager, James Brinkman, position number 37015-33-19-020-00-61, oversees at least two subordinates. In this position, Brinkman reviews and critiques investigation reports completed by investigators. Brinkman also monitors caseloads and production and prepares monthly and annual reports for the Bureau.

Linda Grimble – Manager, position number 37015-33-353-00-91, states that she supervises/manages a call center and maintains that she is not allowed to make decisions without her superior's approval. Grimble has five direct subordinates for whom she provides guidance and training, counsels regarding work performance, reassigns to meet day-to-day operating needs, establishes annual goals and objectives, approves time off, prepares and signs performance evaluations and determines and recommends staffing needs.

Ednas Canas – Supervisor, position number 37015-33-29-330-00-61, states that she supervises professional level staff that work independently and she provides higher level intervention when needed. Canas points out, as evidence that she does not have independent authority, that her job description states that her position operates subject to management approval. Canas makes sure new billing policy information is clarified to providers by issuing notices and updating handbooks and the website. When new policies are mandated, Canas translates their information into the department's practical practice by providing her expertise to staff on how the programming affects billing. She also works with the Policy Unit to draft provider notices and update handbooks. Canas does have the opportunity suggest language for

newly established policies but does she not decide how policies or legislation will be implemented.

David Barger – Supervisor, position number 37015-33-33-230-00-61, has at least two direct subordinates. Barger states that any decisions concerning worker performance, corrective action, discipline, workflow, counsel and reassignment of staff are made by the Bureau Chief level or higher. Barger notes that he does assign priority applications to his subordinates based on medical needs, on an as needed basis. Otherwise, Barger states that his staff works independently. When making these assignments, Barger does not dispute that he uses his discretion when deciding medical need. Barger also states that he reviews proposed policies written by other staff and provides comments to upper management for their review and approval. Barger admits to being charged with effectuation of management policies and practices but maintains that this does not have anything to do with independent discretionary authority.

Regional Manager Trudi Gleasman, position number 37015-33-55-150-00-91, manages the Rockford Regional Child Support Office under the direction of her superior. Gleasman states that she consults her superior on any discipline or personnel matters. Gleasman does not refute her authority to assign staff, approve time off, provide guidance and training, effectively recommend grievance resolutions, complete and sign performance evaluations, counsel staff on problems with productivity, quality of work and conduct and determine staffing needs to achieve program objectives.

Supervisor of SNAP Program Dawn Keiser, position number 37015-33-19-450-00-61, has four direct reports. Keiser states that she assigns and reviews work, provides guidance and training to staff, approves time off, prepares and signs performance evaluations, collects data on computer-based programs regarding SNAP fraud and reports those figures to fraud superiors.

Regional Manager Marilyn Kuttin, position number 37015-33-55-260-00-91, has three direct subordinates. Kuttin maintains that she does not have authority to perform any supervisory functions which is evidenced by the fact that she has been disciplined for interpreting policy on a grievance in 2013. Kuttin was informed that grievances were a “gray area” and she should have consulted with her superiors prior to making a decision. Kuttin admits that she does have some discretion when making assignments. Kuttin’s objectives include monitoring the scheduling queue to ensure cases do not remain in queue over 30 days and

monitoring reception desk activities to ensure that customer service is provided in a professional manner within the period established by the regional office. Kuttin also performs the following management functions by reviewing and monitoring her subordinates when they: prepare performance evaluations, counsel their subordinates, administer corrective action plans, monitor available benefit time and train subordinate staff. Kuttin ensures individual performance problems are documented and corrective action plans are implemented in a timely manner.

Regional Manager Sherrie Runge, position number 37015-33-55-210-0091, has one direct subordinate. Runge's objectives also include monitoring the scheduling queue to ensure cases do not remain in queue over 30 days and monitoring reception desk activities to ensure that customer service is provided in a professional manner within the period established by the regional office. Runge also performs the following management functions by reviewing and monitoring her subordinates when they: prepare performance evaluations, counseling their subordinates, administer corrective action plans, monitor available benefit time and train subordinate staff. Runge ensures individual performance problems are documented and corrective action plans are implemented in a timely manner.

Regional Manager Sharon Quarles, position number 37015-33-140-00-91, has three direct subordinates. Quarles states that her responsibilities in overseeing include ensuring that the unit meets the goals of the region for child support. Although Quarles states that she does not perform any supervisory functions, she maintains that she does review and analyze the work performed by the unit to make sure the unit reaches the goals within the state. In this capacity, Quarles does not refute her authority to assign and review work, counsel staff regarding work performance, take corrective action, monitor workflow, evaluate subordinates' work performance and reassign staff to meet day-to-day operating needs.

Regional Manager Lori Medernach, position number 37015-33-55-130-00-91, has three direct subordinates and she oversees the day-to-day- operations for her region. Medernach ensures that the goals of the agency are met regarding paternity establishment, support orders and collections. Although Medernach states that she does not perform supervisory duties, she does not refute her authority to assign and review work, counsel staff regarding work performance, take corrective action, monitor workflow, evaluate subordinates' work performance and reassign staff to meet day-to-day operating needs.

G. Eric Watson – Supervisor, position number 37015-33-29-100-00-61, has two direct subordinates. Watson states that he reviews applications for acceptance in the electronic health records program. Watson maintains that he is a working supervisor who performs duties within a limited structure and with strict guidelines. He states that there is not much room for independent discretion. Specifically, Watson states that this position has little authority to determine any action outside a set of clearly defined parameters. Watson states that he can, and does, participate in meetings to discuss the program structure, but that he has no authority to establish procedures or policy. Watson does not refute his authority to direct his subordinates by assigning and reviewing work, providing guidance and training, counseling staff regarding work performance, reassigning staff to meet day-to-day operating need, approving time off, and preparing and signing performance evaluations.

Sheri McCarty – Manager, position number 37015-33-33-300-00-61, has one subordinate who reports directly to her. McCarty states that her duty is database administration and as an overseer, her job is to make sure her subordinates complete their work. McCarty does not specifically refute her authority to responsibly direct, assign and review the work of her subordinates with independent judgment. According to her superior, this position also has the authority to counsel staff regarding work performance, take corrective action, monitor workflow, and complete and sign performance evaluations.

Regional Manager Sharon Markette-Malone, position number 37015-33-54-500-00-41, has two direct subordinates. Malone states that she does not have supervisory authority but she does make disciplinary recommendations to the Audit Manager. As a part of her duties, Malone states that she serves as full line supervisor, assigns and reviews work, provides guidance and training to assigned staff, establishes annual goals and objectives, approves time off, interprets new/established program regulations and audit policies and procedures and provides input into the revision of audit manuals and guidelines for obtaining goals and objectives.

III. DISCUSSION AND ANALYSIS

a. Procedural Objections

First, the Board has held that it is beyond its capacity to rule on the constitutional allegations made by AFSCME. Specifically, it is beyond the Board's purview to rule whether the Illinois Public Labor Relations Act, as amended, violates provisions of the United States and Illinois constitutions. The Board noted that administrative agencies have no authority to declare

statutes unconstitutional or even to question their validity and in doing so, their actions are null and void and cannot be upheld. State of Illinois, Department of Central Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013) (citing Goodman v. Ward, 241 Ill. 2d 398, 411 (2011)). As such, I will not address the constitutional objections in this decision.

The Board has also expressed its concern with AFSCME's due process arguments but maintains that it has taken necessary measures to prevent such a violation. Therefore, the Board held that consistent with judicial precedent it has "insured that the individual employees as well as their representative and potential representative receive notice soon after designation petitions are filed, usually within hours, and have provided for redundant notice by means of posting at the worksite....we provided them an opportunity to file objections, and where they raise issues of fact or law that might overcome the statutory presumption of appropriateness, an opportunity for a hearing, [and]...require a written recommended decision by an administrative law judge in each case in which objections have been filed." State of Illinois, Department of Central Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013) (citing Arvia v. Madigan, 209 Ill. 2d 520 (2004), and Gruwell v. Ill. Dep't of Financial and Professional Regulations, 406 Ill. App. 3d 283, 296-98 (4th Dist. 2010)). Additionally, the Board found that it has "allowed an opportunity to appeal those recommendations for consideration by the full Board by means of filing exceptions,...doubled the frequency of our scheduled public meetings in order to provide adequate review of any exceptions in advance of the 60-day deadline and... issu[e] written final agency decisions which may be judicially reviewed pursuant to the Administrative Review Law", in an effort to adhere to due process. State of Illinois, Department of Central Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013).

Moreover, in administrative hearings, failing to go to an oral hearing is not necessarily the denial of a hearing where submission of written documents could suffice as a hearing. Department of Central Management Services (Illinois Commerce Commission) v. Illinois Labor Relations Board, State Panel, 406 Ill. App. 3d 766, 769-70 (4th Dist. 2010). Therefore, AFSCME's due process rights have not been violated by the Board following the policies and procedures mandated by the legislature and I find there is no issue of law or fact warranting a hearing.

Regarding the burden of proof, AFSCME has the burden to demonstrate that the designation is not proper. The Act is clear in that "any designation made by the Governor...shall

be presumed to have been properly made,” 5 ILCS 315/6.1 (2012). Therefore, the burden of proof shifts to the objector to prove that the designation is, in fact, improper.

Lastly, Illinois Appellate Courts have held that the Board’s consideration of job descriptions alone, is an adequate basis upon which to evaluate an exclusion. See Village of Maryville v. Illinois Labor Relations Board, 402 Ill. App. 3d 369 (5th Dist. 2010); Ill. Dep’t of Cent. Mgmt. Servs. v. Ill. Labor Rel. Bd., 2011 Ill App. (4th Dist.) 090966; but see Vill. of Broadview v. Ill. Labor Rel. Bd., 402 Ill. App. 3d 503, 508 (1st Dist. 2010); see also Ill. Dep’t of Cent. Mgmt. Servs. v. Ill. Labor Rel. Bd., 382 Ill. App. 3d 208, 228-29 (4th Dist. 2008); City of Peru v. Ill. Labor Rel. Bd., 167 Ill. App. 3d 284, 291 (3d Dist. 1988). Accordingly, the Board has sufficient evidence from which to establish whether the designation is proper.

b. Designations under Section 6.1(b)(5)

As stated above, a position is properly designated if, amongst other reasons, it was first certified to the bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008, and it authorizes an employee in the position to have “significant and independent discretionary authority as an employee” as defined by Section 6(c) of the Act. Moreover, designations made by the Governor are presumed proper under Section 6.1 of the Act.

It is undisputed that the positions at issue were certified into bargaining unit RC-63 in Case No. S-RC-04-130 on January 20, 2010. At issue is whether the petitioned-for positions have significant and independent discretionary authority as described in Section 6.1(c), to be designated as supervisory or managerial under the Act. I find that all of the objected employees to be properly designated as supervisory or managerial under the Act.

Section 6.1(b)(5) allows the Governor to desinate positions that authorize an employee to have “significant and independent discretionary authority.” 5 ILCS 315/6.5(b)(5). 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 the first two tests, while Section 6.1(c)(ii) sets forth the third.⁴

⁴ Section 6.1(c) provides that 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

The first test is substantively similar to the traditional test for the managerial exclusion articulated in Section 3(j). Section 6.1(c)(i) provides that a position authorizes an employee with significant and independent discretionary authority if “the employee is...engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency.” However, 6.1(c)(i) provides a broader definition than the traditional test found in Section 3(j), in that it does not include a preponderance element and only requires that an employee be “charged with the effectuation” of policies and not that the employee direct the effectuation. According to the traditional test, 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. Elk Grove Village, 245 Ill. App. 3d at 122, Evanston, 227 Ill. App. 3d at 975. Here, however, in order to meet the first test set out in Section 6.1, a position holder need only be charged with carrying out the policy in order to meet the Department’s objective.

The second test under 6.1(c)(i) makes a designation proper if the position “represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of the agency.” 5 ILCS 315/6.1(c)(i) (2012). 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 in the Supreme Court’s decision in National Labor Relations Board v. Yeshiva University, 444 U.S. 672 (1980). Dep’t of Cent. Mgmt. Serv. Ill. Commerce Com’n v. Ill. Labor Rel. Bd., 406 App. 766, 776 (4th Dist. 2010) (citing Yeshiva, 444 U.S. at 683). The Court noted that the ILRB, “incorporated effective recommendations into its interpretation of the term ‘managerial employee.’” ICC, 406 Ill. App. at 776.

Section 6.1(c)(ii) states that under the NLRA, a supervisor is an employee who has “authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” 29 U.S.C.A. § 152(11).

Relations Board interpreting that provision or decisions of courts reviewing decisions of the National Labor Relations Board.

In other words, “employees are statutory supervisors if (1) they hold the authority to engage in any one of the 12 listed supervisory functions, (2) their ‘exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment,’ and (3) their authority is held ‘in the interest of the employer.’” NLRB v. Kentucky River Comm. Care, Inc. (“Kentucky River”), 532 U.S. 706, 713 (2001) (quoting NLRB v. Health Care & Retirement Corp. of America, 511 U.S. 571, 573-574 (1994)); See also Oakwood Healthcare, Inc. v. United Automobile, Aerospace and Agricultural Implement Workers of America (“Oakwood Healthcare”), 348 NLRB 686, 687 (2006). A decision that is “dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement” is not independent. Oakwood Healthcare, 348 NLRB at 689.

Section 6.1(d) requires us to presume the Governor’s designation is proper, and the evidence as a whole fails to overcome that presumption. Therefore, I find that the positions are properly designated as supervisory or managerial.

First, the position held by Ednas Canas and David Barger are properly designated as managerial under Section 6.1 of the Act. The Board has rejected AFSCME’s objections that the designated positions do not have significant and independent discretionary authority because they are professional rather than managerial. State of Ill., Dep’t of Cent. Mgmt.Servs. (Dep’t of Cent. Mgmt. Servs.), 30 PERI ¶ 85 (IL LRB-SP 2013). The terms managerial and professional are not mutually exclusive and there is no exception for professional employees in the language of Section 6.1(c)(i). State of Ill, Dep’t of Cent. Mgmt. Servs. (Dep’t of Commerce & Economic Opportunity), 30 PERI ¶ 86 (citing Dep’t of Cent. Mgmt. Servs ./ Ill. Pollution Control Bd., 2013 IL App (4th) 110877). As such, where a position meets one of the two alternative tests set out in Section 6.1(c)(i), it may appropriately be designated by the Governor for exclusion from collective bargaining rights regardless of whether it is also a professional position. *Id.*

Next, Canas and Barger both engage in executive and management functions because they review and assist with the drafting of policies and procedures for their departments to meet their objectives. Moreover, neither have ever denied that their superiors accept their draft policies almost all the time. See, Dep’t of Cent. Mgmt. Serv./ Ill. Commerce Com’n, 406 Ill. App. 3d 766, 775 (effective recommendations are those that are accepted most of the time without modification).

Barger also specifically admits to being charged with the effectuation of management policies and practices. Canas is also charged with the effectuation of management policies and practices because she works with the Policy Unit when drafting provider notices and updating handbooks and she interprets and translates newly mandated policies. Dep't of Cent. Mgmt. Serv. (Pollution Control Bd.), v. Ill. Labor Rel. Bd., State Panel, 2013 IL App (4th) 110877 ¶ 25 (establishing policies and procedures is an executive and management function); State of Ill. Dep't of Cent. Mgmt. Serv. (Ill. Commerce Comm'n) v. Ill. Labor Rel. Bd., State Panel, 406 Ill. App. 3d at 774, (4th Dist. 2010).

The remaining positions objected to are properly designated as supervisory under Section 6.1(c)(ii) of the Act. An employee with the purported authority to responsibly direct must carry out such direction with independent judgment. Further, "it must be shown that the employer delegated to the putative supervisor the authority...to take corrective action, if necessary." In addition, there must be a "prospect of adverse consequences for the putative supervisor" arising from his direction of other employees. Oakwood Healthcare, Inc., 348 NLRB 686, 687 (2006).

Here, the objected to employees possess significant and independent discretionary authority because they all have the authority to responsibly direct their subordinates. Specifically, their position descriptions state that these positions hold the authority to direct their subordinates. The position holders also admit the same. Based on this evidence, the objected to positions exercise the use of independent judgment and are accountable for their subordinates' work because either their position description does not expressly limit the objectors discretion, independent authority, or accountability, the objectors admit to such, or the objector does not refute such.

Further, the objectors have significant and independent discretionary authority because they have the authority to assign staff, approve time off, provide guidance and training and counsel staff regarding work performance. Based on this evidence, the objected to positions exercise the use of independent judgment because either their position description do not expressly limit the objectors discretion, independent authority, or accountability, the objectors admit to such, or the objector does not refute such.

Moreover, the objectors' use of independent judgment when assigning and responsibly directing their subordinates is also presumed proper under Section 6.1(d) of the Act. Therefore,

the positions at issue are managerial or supervisory according to Section 6.1(c)(i) and 6.1(c)(ii) of the Act and are properly designated for exclusion.

IV. CONCLUSIONS OF LAW

The designations in this case are 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 are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

**Public Service Administrator, Option 1
Employed at Department of Healthcare and Family Services**

<u>Position No.</u>	<u>Working title</u>	<u>Incumbent</u>
37015-33-10-210-00-61	Classification Unit Mgr	LANG TAMMY
37015-33-10-220-00-61	Selection and Recruitment Mgr	VACANT
37015-33-10-240-00-61	Benefits Mgr and FMLA Coordinator	JONES SONJA M
37015-33-10-250-00-61	Employee Svcs & Transactions Supervisor	MOSCARDELLI PATRICIA
37015-33-10-310-00-21	EEO/ADA Program Coordinator	VACANT
37015-33-11-500-00-61	Assist Bureau Chief of Admin Services	DORCHINECZ STEPHEN M
37015-33-15-200-20-61	Personnel Liaison Inspector General	HUDGINS LORI
37015-33-17-120-00-61	Manager Quality Control Review /OIG	BECKER TERRI
37015-33-17-430-00-61	Program Mgr	Vacant
37015-33-19-020-00-61	Manager Financial Crimes Task Force	BRINKMAN JAMES L
37015-33-19-120-00-21	Manager of Welfare Fraud Investigations Cook	CAMPOS BARBARA M
37015-33-19-150-00-21	Mgr Medical Fraud-Special Programs Unit	VACANT
37015-33-19-430-00-61	Manager Southern Region - Welfare Fraud	BOND BRIAN J
37015-33-19-440-00-61	Manager Asset Discovery Unit	VACANT
37015-33-19-450-00-61	Supervisor of Snap Program	KEISER DAWN D
37015-33-20-020-20-61	Staff Assist to The Deputy Admin of Medical Programs	VACANT
37015-33-20-030-40-61	Special Projects Program Supv	VACANT

37015-33-20-030-50-61	Data Control Program Supv	VACANT
37015-33-29-100-00-61	Supervisor	WATSON G ERIC
37015-33-29-100-00-61	Supervisor	MINDER SUSAN M
37015-33-29-330-00-61	Supervisor	CANAS EDNA
37015-33-33-220-00-61	Supervisor	VACANT
37015-33-33-230-00-61	Supervisor	BARGER DAVID L
37015-33-33-300-00-61	Manager	MCCARTY SHERI L
37015-33-33-420-00-61	Supervisor	JONES FRANCES M
37015-33-33-430-00-61	Supervisor	LYNN PAMELA M
37015-33-33-450-00-61	Supervisor	SAVAGE LESLEY R
37015-33-36-210-00-61	Manager	VACANT
37015-33-50-000-20-91	Manager	VACANT
37015-33-50-100-00-91	Personnel Manager	DAY, RUTH ANN
37015-33-50-332-00-91	Manager	GILBEY DENISE J
37015-33-51-353-00-91	Manager	GRIMBLE LINDA J
37015-33-53-600-00-41	Manager	VACANT
37015-33-54-200-00-41	Supervisor	VACANT
37015-33-54-300-00-41	Regional Manager	MONTES, OSCAR
37015-33-54-500-00-41	Regional manager	MARKETTE-MALONE SHAR
37015-33-54-500-20-41	Supervisor	VACANT
37015-33-54-600-00-41	Manger	MANUEL TRACY V
37015-33-55-120-00-91	Regional Manager	VACANT
37015-33-55-130-00-91	Regional Manager	MEDERNACH LORI R
37015-33-55-140-00-91	Regional Manager	QUARLES SHARON M
37015-33-55-150-00-91	Regional Manager	GLEASMAN TRUDI M
37015-33-55-210-00-91	Regional Manager	RUNGE SHERRIE M
37015-33-55-220-00-91	Regional Manager	DUDUIT AMY J ⁵
37015-33-55-230-00-91	Regional Manager	VACANT
37015-33-55-260-00-91	Regional Manager	KUTTIN MARILYN K
37015-33-57-210-00-91	Manager	TRIBBLE BRYAN
37015-33-57-320-00-91	Manager	BAKER THOMAS E
37015-33-60-100-00-62	Manager	TIFFANY LEIGH E
37015-33-61-300-00-61	Supervisor - Procurement	VACANT
37015-33-70-010-00-61	Personnel Liaison - Division of Finance	HOMER RHONDA S
37015-33-71-230-00-61	Supervisor - DHFS Payroll Office	GENTRY DUANE T
37015-33-73-130-00-61	Supervisor	VACANT

VI. EXCEPTIONS

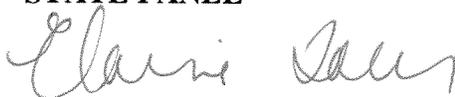
Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300, parties may file exceptions to the Administrative Law Judge's recommended decision and order, and briefs in support of those exceptions, no later than 3 days

⁵ January 15, 2014, the Board received notification that Amy Duduit was no longer in this position.

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 and Regulations. Exceptions must be filed by electronic mail sent to ILRB.filing@illinois.gov. Each party shall serve its exceptions 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 6th day of February, 2014

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

A handwritten signature in cursive script, appearing to read "Elaine Tarver", written in black ink.

Elaine L. Tarver, Administrative Law Judge

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

State of Illinois, Department of Central)	
Management Services (Department of)	
Healthcare and Family Services),)	
)	
Petitioner)	
)	
and	)	Case No. S-DE-14-171
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	
)	
Ron Wiggins,)	
)	
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, 497 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

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 on August

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.

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.

On January 15, 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. CMS' petition designates the exclusion of the following Public Service Administrators employed at the Department of Healthcare and Family Services based on Section 6.1(b)(5) of the Act:

**Public Service Administrator, Option 2
Employed at Department of Healthcare and Family Services**

<u>Position No.</u>	<u>Working Title</u>	<u>Incumbent</u>
37015-33-15-223-00-61	MANAGER FISCAL OPERATIONS OIG	DEPPE DIANE M
37015-33-17-415-50-61	SUPV AUDIT TEAM	RODGERS LEONA B
37015-33-53-700-00-91	ACCOUNTING MANGER	VACANT
37015-33-53-800-00-91	ACCOUNTING MANGER	FERGUSON MARK A
37015-33-61-600-00-61	BUDGET SUPERVISOR	WIGGINS RON G
37015-33-73-310-00-61	SUPERVISOR	SCHISLER LORI J

In support of its petition, CMS submitted job descriptions (CMS-104s) for each position, affidavits and a summary spreadsheet. The spreadsheet identifies position numbers, titles, name of the incumbents, bargaining unit, certifications date and case number, statutory category of designation and a list of job duties that support the presumptions that the positions are supervisory or managerial. On November 8, 2009, the positions at issue were certified into the RC-62 bargaining unit pursuant to the actions of the Board in Case No. S-RC-07-048. On January 27, 2014, the American Federation of State, County and Municipal Employees (AFSCME) filed timely objections to the designation.

Based on my review of the designation, the documents submitted as part of the designation, AFSCME's objections, and the arguments submitted in support of those objections, I have determined that AFSCME has failed to raise an issue that would require a hearing.

Therefore, I find the designation to have been properly submitted and consistent with the requirements of Section 6.1 of the Act and 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 any existing inclusion of these positions within any collective bargaining unit.

I. ISSUES AND OBJECTIONS

AFSCME makes several general objections to the petition arguing that Section 6.1 of the Act violates due process, the separation of powers doctrine in the Illinois Constitution, equal protection under Article I, Section 2 of the Illinois Constitution, and the Fifth and Fourteenth Amendments to the United States Constitution, and impairs the contractual right of the employees prohibited by the impairment of contract clause in the Illinois Constitution.

AFSCME specifically objects to the designation of positions held by Mark Ferguson, Ron Wiggins and Lori Schisler. Wiggins also filed individual objections. The objecting parties argue that these designated positions do not possess significant and independent discretionary authority as required by Section 6.1 to exclude as either supervisory or managerial employees from bargaining. Moreover, the objections maintain that the designated positions are professional positions and not supervisory or managerial, which requires a fact-intensive inquiry into the specific responsibilities of the employees. Lastly, the objections argue that failure to hold a hearing on the issues is a denial of due process.

II. FINDINGS OF FACT

Mark Ferguson serves as the Account Adjustment Manager – North. In his affidavit, Deputy Administrator for Field Operations for the Illinois Department of Healthcare and Family Services, Division of Child Support Services, Norris Stevens, attests to being familiar with this position's duties, maintaining that the CMS-104 submitted by CMS fairly and accurately represents the duties it is authorized to perform. Ron Wiggins serves as the Budget Supervisor for the department. In her affidavit, Chief of the Bureau of Operations within the Division of Information Services for Illinois Department of Healthcare and Family Services, Eppie Dietz, asserts that she is familiar with this position's duties and maintains that the CMS-104 submitted by CMS fairly and accurately represents the duties it is authorized to perform. Lastly, Lori Schisler serves as the Supervisor of the Medial Liability Unit and her superior, Michael Casey, Administrator in the Division of Finance for the Department of Healthcare and Family Services maintains that he is familiar with this position's duties stating that the CMS-104 submitted by CMS fairly and accurately represents the duties it is authorized to perform.

Mark Ferguson, position number 37015-33-53-800-00-91, states that he has 17 subordinates who report directly to him. Although Ferguson maintains that he does not have the

authority to perform supervisory functions, he states that he uses existing policies and guidelines to supervise the overall work product completed by his subordinates. He also works directly with and, trains several of his subordinates to perform their “lead worker” duties. Ferguson states that he does not engage in the implementation of policy making with independent judgment and he points out that there are other employees who perform similar duties who have not been selected for designation.

Ron Wiggins, position number 37015-33-61-600-00-61, does not have any subordinates and Wiggins has never had any in this position. As such, AFSCME argues that the position description is inaccurate. Wiggins maintains that he does not have any independent discretionary authority and his duties consist of compiling the IT budget for the department by acquiring information from other employees and inputting the information into a database. Wiggins maintains that he does not interpret or apply any policies or procedure; however, he does coordinate the approval of federal budgets with the Bureau of Federal Finance to ensure correct federal reporting.

Lori Schisler, position number 37015-33-73-310-00-61, describes her job duties as supervising four staff members by communicating assignments pertaining to preparation of liability estimates and appropriation requests and subsequent inquires after the budget is passed. She reads and responds to voluminous amounts of e-mail regarding upper management decisions pertaining to changes in policy that impact liability. Schisler reviews legislative proposals and works with staff to prepare independent fiscal analysis for different divisions, which require their approval before submitting the legislative affairs. Schisler maintains that she and her staff are responsible for tracking the budget approved by the general assembly throughout the year by monitoring appropriation balances and cash resources. As it relates to supervisory indicia, Schisler states that she is Rutan-certified to participate in the hiring process as a technical expert and has participated in the counseling of one employee once. She maintains that she does not perform any other supervisory indicia. Schisler does state that her responsibilities overseeing her subordinates include assigning and reviewing work, approving time off and preparing evaluations.

III. DISCUSSION AND ANALYSIS

a. Procedural Objections

First, the Board has held that it is beyond its capacity to rule on the constitutional allegations made by AFSCME. Specifically, it is beyond the Board's purview to rule whether the Illinois Public Labor Relations Act, as amended, violates provisions of the United States and Illinois constitutions. The Board noted that administrative agencies have no authority to declare statutes unconstitutional or even to question their validity and in doing so, their actions are null and void and cannot be upheld. State of Illinois, Department of Central Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013) (citing Goodman v. Ward, 241 Ill. 2d. 398, 411 (2011)). As such, I will not address the constitutional objections in this decision.

The Board has also expressed its concern with AFSCME's due process arguments but maintains that it has taken necessary measures to prevent such a violation. Therefore, the Board held that, consistent with judicial precedent, it has "insured that the individual employees as well as their representative and potential representative receive notice soon after designation petitions are filed, usually within hours, and have provided for redundant notice by means of posting at the worksite....we provided them an opportunity to file objections, and where they raise issues of fact or law that might overcome the statutory presumption of appropriateness, an opportunity for a hearing, [and]...require a written recommended decision by an administrative law judge in each case in which objections have been filed." State of Illinois, Department of Central Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013) (citing Arvia v. Madigan, 209 Ill. 2d 520 (2004), and Gruwell v. Ill. Dep't of Financial and Professional Regulations, 406 Ill. App. 3d 283, 296-98 (4th Dist. 2010)). Additionally, the Board found that it has "allowed an opportunity to appeal those recommendations for consideration by the full Board by means of filing exceptions,...doubled the frequency of our scheduled public meetings in order to provide adequate review of any exceptions in advance of the 60-day deadline and... issu[e] written final agency decisions which may be judicially reviewed pursuant to the Administrative Review Law", in an effort to adhere to due process. State of Illinois, Department of Central Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013).

Moreover, in administrative hearings, failing to go to an oral hearing is not necessarily the denial of a hearing where submission of written documents could suffice as a hearing. Department of Central Management Services (Illinois Commerce Commission) v. Illinois Labor Relations Board, State Panel, 406 Ill. App. 3d 766, 769-70 (4th Dist. 2010). Therefore, AFSCME's due process rights have not been violated by the Board following the policies and

procedures mandated by the legislature and I find there is no issue of law or fact warranting a hearing.

Regarding the burden of proof, AFSCME has the burden to demonstrate that the designation is not proper. The Act is clear in that “any designation made by the Governor...shall be presumed to have been properly made,” 5 ILCS 315/6.1 (2012). Therefore, the burden of proof shifts to the objector to prove that the designation is, in fact, improper.

Lastly, Illinois Appellate Courts have held that the Board’s consideration of job descriptions alone is an adequate basis upon which to evaluate exclusion. See Village of Maryville v. Illinois Labor Relations Board, 402 Ill. App. 3d 369 (5th Dist. 2010); Ill. Dep’t of Cent. Mgmt. Servs. V. Ill. Labor Rel. Bd., 2011 Ill App. (4th Dist.) 090966; but see Vill. of Broadview v. Ill. Labor Rel. Bd., 402 Ill. App. 3d 503, 508 (1st Dist. 2010); see also Ill. Dep’t of Cent. Mgmt. Servs. v. Ill. Labor Rel. Bd., 382 Ill. App. 3d 208, 228-29 (4th Dist. 2008); City of Peru v. Ill. Labor Rel. Bd., 167 Ill. App. 3d 284, 291 (3d Dist. 1988). Accordingly, the Board has sufficient evidence from which to establish whether the designation is proper.

b. Designations under Section 6.1(b)(5)

As stated above, a position is properly designated if, amongst other reasons, it was first certified to the bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008, and it authorizes an employee in the position to have “significant and independent discretionary authority as an employee” as defined by Section 6(c) of the Act. Moreover, designations made by the Governor are presumed proper under Section 6.1 of the Act.

It is undisputed that the positions at issue were certified into bargaining unit RC-62 in Case No. S-RC-07-048 on November 8, 2009. At issue is whether the petitioned-for positions have significant and independent discretionary authority as described in Section 6.1(c), to be designated as supervisory or managerial under the Act.

Section 6.1(b)(5) allows the Governor to designate positions that authorize an employee to have “significant and independent discretionary authority.” 5 ILCS 315/6.5(b)(5). 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 the first two tests, while Section 6.1(c)(ii)

sets forth the third.² The above-referenced positions are properly designated under Section 6.1(c)(i) of the Act and therefore, I will not address Section 6.1(c)(ii).

The first test is substantively similar to the traditional test for the managerial exclusion articulated in Section 3(j). Section 6.1(c)(i) provides that a position authorizes an employee with significant and independent discretionary authority if “the employee is...engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency.” However, 6.1(c)(i) provides a broader definition than the traditional test found in Section 3(j), in that it does not include a preponderance element and only requires that an employee is “charged with the effectuation” of policies and not that the employee is directing the effectuation. According to the traditional test, 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. Elk Grove Village, 245 Ill. App. 3d at 122, Evanston, 227 Ill. App. 3d at 975. Here, however, in order to meet the first test set out in Section 6.1, a position holder need only carry out the policy in order to meet the Department’s objective.

The second test under 6.1(c)(i) makes a designation proper if the position “represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of the agency.” 5 ILCS 315/6.1(c)(i). The Illinois Appellate Court has observed that the definition of a managerial employee in Section 3(j) is very similar to the definition of a managerial employee in the Supreme Court’s decision in National Labor Relations Board v. Yeshiva University, 444 U.S. 672 (1980). Dep’t of Cent. Mgmt. Serv. Ill. Commerce Com’n v. Ill. Labor Rel. Bd., 406 App. 766, 776 (4th Dist. 2010) (citing Yeshiva, 444 U.S. at 683). The Court noted that the ILRB, “incorporated effective recommendations into its interpretation of the term ‘managerial employee.’” ICC, 406 Ill. App. at 776.

² Section 6.1(c) provides that 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.

The third test under Section 6.1(c)(ii) states that under the NLRA, a supervisor is an employee who has “authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” 29 U.S.C.A. § 152(11).

In other words, “employees are statutory supervisors if (1) they hold the authority to engage in any one of the 12 listed supervisory functions, (2) their ‘exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment,’ and (3) their authority is held ‘in the interest of the employer.’” NLRB v. Kentucky River Comm. Care, Inc. (“Kentucky River”), 532 U.S. 706, 713 (2001) (quoting NLRB v. Health Care & Retirement Corp. of America, 511 U.S. 571, 573-574 (1994); See also Oakwood Healthcare, Inc. v. United Auto Automobile, Aerospace and Agricultural Implement Workers of America (“Oakwood Healthcare”), 348 NLRB 686, 687 (2006). A decision that is “dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement” is not independent. Oakwood Healthcare, 348 NLRB at 689.

Here, both Ferguson and Schisler are properly designated as supervisors under the Act. Ferguson states that he supervises the overall work product of his subordinates and directly works with, and trains several of them to perform their “lead worker” functions which include training, quality control and technical support. Schisler explains that her responsibilities include assigning and reviewing work, approving time off and preparing evaluations. The work Schisler assigns and reviews includes liability estimates and budget models, budget documents that determine appropriation requests and cash resources and monthly liability reports. She reviews these documents prior to submitting them to upper management. Ferguson and Schisler direct the work of their subordinates and their review, prior to submitting the their superiors, is evidence of responsible direction. Neither Ferguson nor Schisler deny using independent judgment when performing these duties.

Wiggins and Schisler are also properly designated as managerial under Section 6.1 of the Act. As part of his duties, Wiggins states that he coordinates the approval of federal budgets with other departments to ensure correct federal reporting. In doing so, Wiggins is carrying out

policy to ensure the Department is meeting its directives. Schisler also attested to, in pertinent part, being involved in the decision-making process pertaining to changes in policy that impact her department and reviewing legislative proposals. She also develops monthly cash spending scenarios related to monthly cash availability caps imposed by the Office of the Comptroller. These are clear examples of managerial authority under Section 6.1(c)(i) because the position requires Wiggins, Ferguson and Schisler to represent management's interest by taking or recommending discretionary actions that effectively control or implement the policies of the agency.

Thus, the positions at issue are managerial or supervisory according to Section 6.1(c)(i) and 6.1(c)(ii) of the Act and are properly designated for exclusion.

IV. CONCLUSIONS OF LAW

The designations in this case are 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 are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

**Public Service Administrator, Option 2
Employed at Department of Healthcare and Family Services**

<u>Position No.</u>	<u>Working Title</u>	<u>Incumbent</u>
37015-33-15-223-00-61	MANAGER FISCAL OPERATIONS OIG	DEPPE DIANE M
37015-33-17-415-50-61	SUPV AUDIT TEAM	RODGERS LEONA B
37015-33-53-700-00-91	ACCOUNTING MANGER	VACANT
37015-33-53-800-00-91	ACCOUNTING MANGER	FERGUSON MARK A
37015-33-61-600-00-61	BUDGET SUPERVISOR	WIGGINS RON G
37015-33-73-310-00-61	SUPERVISOR	SCHISLER LORI J

VI. EXCEPTIONS

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300, parties may file exceptions to the Administrative Law Judge's recommended decision and order, and briefs in support of those exceptions, no later than 3 days

after service of the recommended decision and order. All exceptions shall be filed and served in accordance with Section 1300.90 of the Board's Rules and Regulations. Exceptions must be filed by electronic mail sent to ILRB.filing@illinois.gov. Each party shall serve its exceptions 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 30th day of January, 2014

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



Elaine L. Tarver, Administrative Law Judge

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

State of Illinois, Department of Central)	
Management Services (Department of)	
Healthcare and Family Services),)	
)	
Petitioner)	
)	
and	)	Case No. S-DE-14-172
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	
)	
Sara Barger and Terry Rogers,)	
)	
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, 497 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

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 on August

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.

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.

On January 15, 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. CMS' petition designates the exclusion of the following Public Service Administrators employed at the Department of Healthcare and Family Services based on Section 6.1(b)(5) of the Act:

**Public Service Administrator, Option 6
Employed at Department of Healthcare and Family Services**

<u>Position No.</u>	<u>Working Title</u>	<u>Incumbent</u>
37015-33-29-320-00-61	MANAGER	ROGERS TERRY L
37015-33-29-320-00-61	MANAGER	SARA BARGER
37015-33-46-241-60-21	GENERAL COUNSEL - SUPERVISOR	VACANT
37015-33-46-241-70-21	General Counsel - SUPERVISOR	VACANT

In support of its petition, CMS submitted job descriptions (CMS-104s) for each position, affidavits and a summary spreadsheet. The spreadsheet identifies position numbers, titles, name of the incumbents, bargaining unit, certifications date and case number, statutory category of designation and a list of job duties that support the presumptions that the positions are supervisory or managerial. On December 2, 2008, the positions at issue were certified into the RC-63 bargaining unit. On January 27, 2014, the American Federation of State, County and Municipal Employees (AFSCME) filed timely objections to the designation.

Based on my review of the designation, the documents submitted as part of the designation, AFSCME's objections, and the arguments submitted in support of those objections, I have determined that AFSCME has failed to raise an issue that would require a hearing.

Therefore, I find the designation to have been properly submitted and consistent with the requirements of Section 6.1 of the Act and 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 any existing inclusion of these positions within any collective bargaining unit.

I. ISSUES AND OBJECTIONS

AFSCME makes several general objections to the petition arguing that Section 6.1 of the Act violates due process, the separation of powers doctrine in the Illinois Constitution, equal protection under Article I, Section 2 of the Illinois Constitution, and the Fifth and Fourteenth Amendments to the United States Constitution, and impairs the contractual right of the employees prohibited by the impairment of contract clause in the Illinois Constitution.

AFSCME specifically objects to the designation of positions held by Sara Barger and Terry Rogers. Barger and Rogers also filed individual objections. The objecting parties argue that these designated positions do not possess significant and independent discretionary authority as required by Section 6.1 to exclude as either supervisory or managerial employees from bargaining. Moreover, the objections maintain that the designated positions are professional positions and not supervisory or managerial, which requires a fact-intensive inquiry into the specific responsibilities of the employees. Lastly, the objections argue that failure to hold a hearing on the issues is a denial of due process.

II. FINDINGS OF FACT

Sara Barger and Terry Rogers serve in the position of Supervisor in the Non-Institutional Provider Services Section of the Department of Healthcare and Family Services. As the Chief of the Bureau of Pharmacy Services in the department, Lisa Arndt submitted an affidavit attesting to being familiar with this position's duties, maintaining that the CMS-104 submitted by CMS fairly and accurately represents the duties the above-mentioned positions have the authority to perform.

According to Sara Barger, position number 37015-33-29-320-00-61, her position reviews policy and procedure changes, participates in meetings and discussions concerning policy revisions and provider policy notices and handbooks and provides detail on billing that could impact policy changes. In this position, Barger also reviews mandated policy and procedure changes including state and federal regulations, HIPAA revisions, Affordable Care Act and National Correct Coding Initiatives and provide comments to management for approval. Barger also states she assists with changes associated with new, revised and discontinued "CPT" and "HCPCS" code annually and intermittently. As a supervisor, Barger explains that she only approves time off and makes rare assignments of work. Barger explains that this position is said

to be the “Additional Identical” to Terry Rogers’ position, as such she is considered back up when Rogers is absent.

Terry Rogers, position number 37015-33-29-320-00-31, maintains that this position does not formulate policy but directs the interpretation of medical policy and billing and payment policies and procedures. Rogers states that this position reviews and evaluates drafts of notifications of policies but does not evaluate the policy itself. When establishing new policies, Rogers, along with the subordinate staff, may suggest language to help document or explain policy to staff and providers, and these suggestions are given consideration but upper management makes the decisions. As a supervisor, Rogers has 12 direct subordinates and tasks are assigned based on the job’s description and through a rotation of those available personnel. As it relates to discipline, Rogers gathers the facts and forwards them to the SPSA who makes the final disciplinary decisions.

III. DISCUSSION AND ANALYSIS

a. Procedural Objections

First, the Board has held that it is beyond its capacity to rule on the constitutional allegations made by AFSCME. Specifically, it is beyond the Board’s purview to rule whether the Illinois Public Labor Relations Act, as amended, violate provisions of the United States and Illinois constitutions. The Board noted that administrative agencies have no authority to declare statutes unconstitutional or even to question their validity and in doing so, their actions are null and void and cannot be upheld. State of Illinois, Department of Central Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013) (citing Goodman v. Ward, 241 Ill. 2d. 398, 411 (2011)). As such, I will not address the constitutional objections in this decision.

The Board has also expressed its concern with AFSCME’s due process arguments but maintains that it has taken necessary measures to prevent such a violation. Therefore, the Board held that consistent with judicial precedent it has “insured that the individual employees as well as their representative and potential representative receive notice soon after designation petitions are filed, usually within hours, and have provided for redundant notice by means of posting at the worksite....we provided them an opportunity to file objections, and where they raise issues of fact or law that might overcome the statutory presumption of appropriateness, an opportunity for a hearing, [and]...require a written recommended decision by an administrative law judge in each case in which objections have been filed.” State of Illinois, Department of Central

Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013) (citing Arvia v. Madigan, 209 Ill. 2d 520 (2004), and Gruwell v. Ill. Dep't of Financial and Professional Regulations, 406 Ill. App. 3d 283, 296-98 (4th Dist. 2010)). Additionally, the Board found that it has “allowed an opportunity to appeal those recommendations for consideration by the full Board by means of filing exceptions,...doubled the frequency of our scheduled public meetings in order to provide adequate review of any exceptions in advance of the 60-day deadline and... issu[e] written final agency decisions which may be judicially reviewed pursuant to the Administrative Review Law”, in an effort to adhere to due process. State of Illinois, Department of Central Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013).

Moreover, in administrative hearings, failing to go to an oral hearing is not necessarily the denial of a hearing where submission of written documents could suffice as a hearing. Department of Central Management Services (Illinois Commerce Commission) v. Illinois Labor Relations Board, State Panel, 406 Ill. App. 3d 766, 769-70 (4th Dist. 2010). Therefore, AFSCME’s due process rights have not been violated by the Board following the policies and procedures mandated by the legislature and I find there is no issue of law or fact warranting a hearing.

Regarding the burden of proof, AFSCME has the burden to demonstrate that the designation is not proper. The Act is clear in that “any designation made by the Governor...shall be presumed to have been properly made,” 5 ILCS 315/6.1 (2012). Therefore, the burden of proof shifts to the objector to prove that the designation is, in fact, improper.

Lastly, Illinois Appellate Courts have held that the Board’s consideration of job descriptions alone is an adequate basis upon which to evaluate exclusion. See Village of Maryville v. Illinois Labor Relations Board, 402 Ill. App. 3d 369 (5th Dist. 2010); Ill. Dep’t of Cent. Mgmt. Servs. V. Ill. Labor Rel. Bd., 2011 Ill App. (4th Dist.) 090966; but see Vill. of Broadview v. Ill. Labor Rel. Bd., 402 Ill. App. 3d 503, 508 (1st Dist. 2010); see also Ill. Dep’t of Cent. Mgmt. Servs. v. Ill. Labor Rel. Bd., 382 Ill. App. 3d 208, 228-29 (4th Dist. 2008); City of Peru v. Ill. Labor Rel. Bd., 167 Ill. App. 3d 284, 291 (3d Dist. 1988). Accordingly, the Board has sufficient evidence from which to establish whether the designation is proper.

b. Designations under Section 6.1(b)(5)

As stated above, a position is properly designated if, amongst other reasons, it was first certified to the bargaining unit by the Illinois Labor Relations Board on or after December 2,

2008, and it authorizes an employee in the position to have “significant and independent discretionary authority as an employee” as defined by Section 6(c) of the Act. Moreover, designations made by the Governor are presumed proper under Section 6.1 of the Act.

It is undisputed that the positions at issue were certified into bargaining unit RC-63 on December 2, 2008. At issue is whether the petitioned-for positions have significant and independent discretionary authority as described in Section 6.1(c), to be designated as supervisory or managerial under the Act.

Section 6.1(b)(5) allows the Governor to designate positions that authorize an employee to have “significant and independent discretionary authority.” 5 ILCS 315/6.5(b)(5). 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 the first two tests, while Section 6.1(c)(ii) sets forth the third.² The above-referenced positions are properly designated under Section 6.1(c)(i) of the Act and therefore, I will not address Section 6.1(c)(ii).

The first test is substantively similar to the traditional test for the managerial exclusion articulated in Section 3(j). Section 6.1(c)(i) provides that a position authorizes an employee with significant and independent discretionary authority if “the employee is...engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency.” However, 6.1(c)(i) provides a broader definition than the traditional test found in Section 3(j), in that it does not include a preponderance element and only requires that an employee is “charged with the effectuation” of policies and not that the employee is directing the effectuation. According to the traditional test, 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. Elk Grove Village, 245 Ill. App. 3d at 122, Evanston, 227 Ill. App. 3d at 975. Here, however, in order to meet the first test set out

² Section 6.1(c) provides that 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.

in Section 6.1, a position holder need only carry out the policy in order to meet the Department's objective.

The second test under 6.1(c)(i) makes a designation proper if the position "represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of the agency." 5 ILCS 315/6.1(c)(i). The Illinois Appellate Court has observed that the definition of a managerial employee in Section 3(j) is very similar to the definition of a managerial employee in the Supreme Court's decision in National Labor Relations Board v. Yeshiva University, 444 U.S. 672 (1980). Dep't of Cent. Mgmt. Serv. Ill. Commerce Com'n v. Ill. Labor Rel. Bd., 406 App. 766, 776 (4th Dist. 2010) (citing Yeshiva, 444 U.S. at 683). The Court noted that the ILRB, "incorporated effective recommendations into its interpretation of the term 'managerial employee.'" ICC, 406 Ill. App. at 776.

Here, both Barger and Rogers are properly designated as managerial under Section 6.1 of the Act. Barger and Rogers both stated that their jobs consist of reviewing, interpreting and assisting with the drafting of policies and procedures that effect their department, in order to follow federal guidelines and meet their department's objectives. This is a clear example of managerial authority under Section 6.1(c)(i) because the position requires both Barger and Rogers to represent management's interest by taking or recommending discretionary actions that effectively control or implement the policies of the agency.

Thus, the positions at issue are managerial according to Section 6.1(c)(i) of the Act and are properly designated for exclusion.

IV. CONCLUSIONS OF LAW

The designations in this case are 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 are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

**Public Service Administrator, Option 6
Employed at Department of Healthcare and Family Services**

Position No.

Working Title

Incumbent

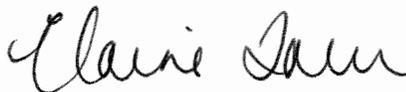
37015-33-29-320-00-61	MANAGER	ROGERS TERRY L
37015-33-29-320-00-61	MANAGER	SARA BARGER
37015-33-46-241-60-21	GENERAL COUNSEL - SUPERVISOR	VACANT
37015-33-46-241-70-21	General Counsel - SUPERVISOR	VACANT

VI. EXCEPTIONS

Pursuant to Section 1300.90 and 1300.130 of the Board’s Rules and Regulations, 80 Ill. Admin. Code Parts 1300, parties may file exceptions to the Administrative Law Judge’s recommended decision and order, and briefs in support of those exceptions, no later than 3 days after service of the recommended decision and order. All exceptions shall be filed and served in accordance with Section 1300.90 of the Board’s Rules and Regulations. Exceptions must be filed by electronic mail sent to ILRB.filing@illinois.gov. Each party shall serve its exceptions 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 30th day of January, 2014

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



Elaine L. Tarver, Administrative Law Judge

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

State of Illinois, Department of Central)	
Management Services (Department of)	
Healthcare and Family Services),)	
)	
Petitioner)	
)	
and	)	Case No. S-DE-14-173
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization-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, 497 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

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

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.

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.

On January 15, 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. CMS' petition designates the exclusion of the following Public Service Administrators employed at the Department of Healthcare and Family Services based on Section 6.1(b)(5) of the Act:

**Public Service Administrator, Option 8L
Employed at Department of Healthcare and Family Services**

<u>Position No.</u>	<u>Working Title</u>		<u>Incumbent</u>
	DEPUTY	GENERAL	
37015-33-46-110-20-61	COUNSEL		VACANT
	DEPUTY	GENERAL	
37015-33-46-120-20-61	COUNSEL		VACANT
	ASSIST	GENERAL	
37015-33-46-150-20-61	COUNSEL		DEES MARILYN T
	DEPUTY	GENERAL	
37015-33-46-210-20-21	COUNSEL		VACANT
	DEPUTY	GENERAL	
37015-33-46-220-20-61	COUNSEL		VACANT
37015-33-46-241-00-21	BUREAU CHIEF		JOHNS HILARY B
37015-33-46-242-00-21	SUPERVISOR		ANTOLEC SONIA
	ADMINISTRATIVE	LAW	
37015-33-46-242-20-21	JUDGE		TISCH ROBERT L
	ADMINISTRATIVE	LAW	
37015-33-46-242-20-21	JUDGE		CASTILLO LISA M
	ADMINISTRATIVE	LAW	
37015-33-46-242-20-21	JUDGE		FESTA ELIZABETH P
	ADMINISTRATIVE	LAW	
37015-33-46-242-20-21	JUDGE		HERRING QUEEN V
	ADMINISTRATIVE	LAW	
37015-33-46-242-20-21	JUDGE		ADELMAN WILMA L
	ADMINISTRATIVE	LAW	
37015-33-46-242-20-22	JUDGE		VACANT
	ADMINISTRATIVE	LAW	
37015-33-46-242-20-23	JUDGE		Dora McNew-Clarke
	ASSIST	GENERAL	
37015-33-46-400-20-21	COUNSEL		VACANT
	ASSIST	GENERAL	
37015-33-46-400-20-22	COUNSEL		VACANT

In support of its petition, CMS submitted job descriptions (CMS-104s) for each position, affidavits and a summary spreadsheet. The spreadsheet identifies position numbers, titles, name of the incumbents, bargaining unit, certifications date and case number, statutory category of designation and a list of job duties that support the presumptions that the positions are supervisory or managerial. The positions at issue were certified into the RC-10 bargaining unit on November 15, 2010. On January 30, 2014, the American Federation of State, County and Municipal Employees (AFSCME) filed timely objections to the designation.²

Based on my review of the designation, the documents submitted as part of the designation, the objections, and the arguments submitted in support of those objections, I have determined that the objections have failed to raise an issue that would require a hearing.

I find the designation to have been properly submitted and consistent with the requirements of Section 6.1 of the Act. Therefore, 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 any existing inclusion of these positions within any collective bargaining unit.

I. ISSUES AND OBJECTIONS

AFSCME makes several general objections to the petition. AFSCME argues that Section 6.1 of the Act violates due process, the separation of powers doctrine in the Illinois Constitution, equal protection under Article I, Section 2 of the Illinois Constitution, and the Fifth and Fourteenth Amendments to the United States Constitution, and impairs the contractual right of the employees prohibited by the impairment of contract clause in the Illinois Constitution.

AFSCME specifically objects to the Administrative Law Judge (ALJ) positions (six of the seven positions have incumbent employees) and the seven positions designated as Deputy/Assistant General Counsel, with only one incumbent employee, Marilyn Thomas Dees.³ AFSCME maintains that contrary to their position descriptions and the affidavit of Jeannet Badrov, General Counsel for the Department of Healthcare and Family Services, attesting to the positions' job duties, the ALJs do not have independent discretionary authority because their

² This petition was filed on January 15, 2014. On January 27, 2014, the Union requested an extension of time to submit their objections. The Board's General Counsel granted the Union's request for an extension in time until close of business January 30, 2014.

³ AFSCME's objection names the incumbent employee "Marilyn Thomas" but CMS' evidence names the employee "Marilyn Thomas Dees." For purposes of consistency, I refer to the employee as "Marilyn Thomas" throughout this decision.

analysis and recommendations are subject to many levels of review and are often changed by their superiors. Moreover, AFSCME maintains that the ALJs use professional discretion within guidelines provided by the Department, to hold hearings and draft decisions, which they do not issue or even recommend to the Director. Furthermore, AFSCME contends that the designated ALJs merely come to work and do their jobs, and consistent with the Board's decision this does not amount to the effectuation of policy. State of Illinois, Department of Central Management Services, 28 PERI ¶160 (IL LRB-SP 2012). Lastly, AFSCME argues that the position of Deputy/Assistant General Counsel is not properly designated because, contrary to Deputy General Counsel for Programs Leo Howard's affidavit, Thomas' duties are purely professional and she merely uses professional discretion, which is not an executive or management function.

AFSCME contends that the position descriptions or the organizational charts submitted by CMS are not evidence to support the contention that any of the designated positions have supervisory authority. Therefore, AFSCME concludes that the Board should dismiss the petition or schedule a hearing on the designated positions.

I. FINDINGS OF FACT

According to the job descriptions, CMS' affidavits and employees' statements (included with AFSCME's objections) the ALJs, conduct and draft recommendations for Medical Vendor and Fair Hearings. Hearing Officers also conduct Fair Hearings. The ALJs identify the issues before them, and decide what regulations and laws apply when drafting Final Administrative Decisions. These decisions become final actions of the agency. These decisions are subject to review by supervisors, the Bureau Chief and the Director. Badrov estimates that 95% of the ALJs recommended decisions are accepted by the Director. However, the Director does have the option to draft and issue his/her own decision if he/she does not agree with an ALJ's conclusions.

The ALJs agree that during the course of hearings they have the authority to: determine whether evidence including testimony, documents and other exhibits shall be admitted; determine the order of presentation; control the hearing; rule on objections; apply and interpret applicable statutes, rules, regulations, policies and procedures; assess credibility of witnesses and monitor decorum. However, the ALJs contend that they must follow the objectives set forth by the Vendor Supervisor and Chief ALJ. In doing so, they must seek supervisory guidance

whenever appropriate, make sound recommendations for the resolution of problems and report any unusual circumstances and motions to their superiors.

During hearings, ALJs may also allow and respond to oral motions but any rulings on motions that will affect the outcome of the case can only be ruled upon by the ALJ in its recommended decision. However, ALJs must bring all requests for subpoenas to the Chief ALJ to be granted and signed. The ALJs must also follow specific requirements for conduct in a hearing. These requirements are taught through mandatory trainings and comments on correctness after a supervisor has observed a hearing.

The ALJs contend that they do not draft written recommendations for the Director. Instead, the Vendor Supervisor, who can and has made changes to them, first reviews their decisions. The supervisor also has the authority to change the outcome of the decision and has done so. Once the supervisor approves the decision, it is then sent to the Fair Hearings Supervisor for final review and approval. This supervisor can issue the decision on behalf of the Director. A similar process is followed for Medical Vendor Hearing recommendations where the Chief ALJ and Assistant General Counsel can make changes and revisions. If the Assistant General Counsel disagrees with the decision, he/she may draft a document explaining its reasoning to the Director. The Director issues final decisions.

The ALJs maintain that they merely interpret and apply polices and legislation in recommending a course of action for the Director. It is argued that these recommendations do not affect agency policy and do not have any binding authority beyond the individual case at hand. At least one ALJ states that the fact that an estimated 95% of his recommendations are accepted by the Director is only reflective of his high level of performance and is not evidence of independent discretionary authority. The ALJs do not have any subordinates.

AFSCME maintains that the Deputy/Assistant General Counsel position description merely describes its professional duties including the application of the federal statute HIPAA. The incumbent, Marilyn Thomas, is the department's HIPAA Privacy Officer. According to CMS, in this capacity Ms. Thomas is authorized to represent management's interest by directing the department's compliance with the privacy provisions of HIPAA, which effectively implements or controls the department's policies and practices. For example, Ms. Thomas directs other areas of the department to have HIPAA Business Associate language updated or

incorporated in the Department's contracts or agreements, and she successfully directs the department's response to any HIPAA breach.

II. DISCUSSION AND ANALYSIS

a. Procedural Objections

First, the Board has held that it is beyond its capacity to rule on the constitutional allegations made by AFSCME. Specifically, it is beyond the Board's purview to rule whether the Illinois Public Labor Relations Act, as amended, violates provisions of the United States and Illinois constitutions. The Board noted that administrative agencies have no authority to declare statutes unconstitutional or even to question their validity and in doing so, their actions are null and void and cannot be upheld. State of Illinois, Department of Central Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013) (citing Goodman v. Ward, 241 Ill. 2d. 398, 411 (2011)). As such, I will not address the constitutional objections in this decision.

The Board has also expressed its concern with AFSCME's due process arguments but maintains that it has taken necessary measures to prevent such a violation. Therefore, the Board held that consistent with judicial precedent it has "insured that the individual employees as well as their representative and potential representative receive notice soon after designation petitions are filed, usually within hours, and have provided for redundant notice by means of posting at the worksite....we provided them an opportunity to file objections, and where they raise issues of fact or law that might overcome the statutory presumption of appropriateness, an opportunity for a hearing, [and]...require a written recommended decision by an administrative law judge in each case in which objections have been filed." State of Illinois, Department of Central Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013) (citing Arvia v. Madigan, 209 Ill. 2d 520 (2004), and Gruwell v. Ill. Dep't of Financial and Professional Regulations, 406 Ill. App. 3d 283, 296-98 (4th Dist. 2010)). Additionally, the Board found that it has "allowed an opportunity to appeal those recommendations for consideration by the full Board by means of filing exceptions,...doubled the frequency of our scheduled public meetings in order to provide adequate review of any exceptions in advance of the 60-day deadline and... issu[e] written final agency decisions which may be judicially reviewed pursuant to the Administrative Review Law", in an effort to adhere to due process. State of Illinois, Department of Central Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013).

Moreover, in administrative hearings, failing to go to an oral hearing is not necessarily the denial of a hearing where submission of written documents could suffice as a hearing. Department of Central Management Services (Illinois Commerce Commission) v. Illinois Labor Relations Board, State Panel, 406 Ill. App. 3d 766, 769-70 (4th Dist. 2010). Therefore, AFSCME's due process rights have not been violated by the Board following the policies and procedures mandated by the legislature and I find there is no issue of law or fact warranting a hearing.

Regarding the burden of proof, AFSCME has the burden to demonstrate that the designation is not proper. The Act is clear in that "any designation made by the Governor...shall be presumed to have been properly made," 5 ILCS 315/6.1 (2012). Therefore, the burden of proof shifts to the objector to prove that the designation is, in fact, improper.

Lastly, Illinois Appellate Courts have held that the Board's consideration of job descriptions alone, is an adequate basis upon which to evaluate an exclusion. See Village of Maryville v. Illinois Labor Relations Board, 402 Ill. App. 3d 369 (5th Dist. 2010); Ill. Dep't of Cent. Mgmt. Servs. V. Ill. Labor Rel. Bd., 2011 Ill App. (4th Dist.) 090966; but see Vill. of Broadview v. Ill. Labor Rel. Bd., 402 Ill. App. 3d 503, 508 (1st Dist. 2010); see also Ill. Dep't of Cent. Mgmt. Servs. v. Ill. Labor Rel. Bd., 382 Ill. App. 3d 208, 228-29 (4th Dist. 2008); City of Peru v. Ill. Labor Rel. Bd., 167 Ill. App. 3d 284, 291 (3d Dist. 1988). Accordingly, the Board has sufficient evidence from which to establish whether the designation is proper.

b. Designations under Section 6.1(b)(5)

As stated above, a position is properly designated if, amongst other reasons, it was first certified to the bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008, and it authorizes an employee in the position to have "significant and independent discretionary authority as an employee" as defined by Section 6(c) of the Act. Moreover, designations made by the Governor are presumed proper under Section 6.1 of the Act.

It is undisputed that the positions at issue were certified into bargaining unit RC-10 on November 15, 2010. At issue is whether the petitioned-for positions have significant and independent discretionary authority as described in Section 6.1(c), to be designated as supervisory or managerial under the Act.

Section 6.1(b)(5) allows the Governor to designate positions that authorize an employee to have "significant and independent discretionary authority." 5 ILCS 315/6.5(b)(5). 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 the first two tests, while Section 6.1(c)(ii) sets forth the third.⁴ I find the employees are properly designated under Section 6.1(c)(i) of the Act, therefore I will not address their authority under Section 6.1(c)(ii).⁵

The first test is substantively similar to the traditional test for the managerial exclusion articulated in Section 3(j). Section 6.1(c)(i) provides that a position authorizes an employee with significant and independent discretionary authority if “the employee is...engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency.” However, 6.1(c)(i) provides a broader definition than the traditional test found in Section 3(j), in that it does not include a preponderance element and only requires that an employee be “charged with the effectuation” of policies and not that the employee direct the effectuation. According to the traditional test, 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. Elk Grove Village, 245 Ill. App. 3d at 122, Evanston, 227 Ill. App. 3d at 975. Here, however, in order to meet the first test set out

⁴ Section 6.1(c) provides that a person has significant and independent discretionary authority as an employee if he or she (i) is engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency or represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency or (ii) qualifies as a supervisor of a State agency as that term is defined under Section 152 of the National Labor Relations Act or any orders of the National Labor Relations Board interpreting that provision or decisions of courts reviewing decisions of the National Labor Relations Board.

⁵ Section 6.1(c)(ii) states that under the NLRA, a supervisor is an employee who has “authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” 29 U.S.C.A. § 152(11). In other words, “employees are statutory supervisors if (1) they hold the authority to engage in any one of the 12 listed supervisory functions, (2) their ‘exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment,’ and (3) their authority is held ‘in the interest of the employer.’” NLRB v. Kentucky River Comm. Care, Inc. (“Kentucky River”), 532 U.S. 706, 713 (2001) (quoting NLRB v. Health Care & Retirement Corp. of America, 511 U.S. 571, 573-574 (1994)); See also Oakwood Healthcare, Inc. v. United Automobile, Aerospace and Agricultural Implement Workers of America (“Oakwood Healthcare”), 348 NLRB 686, 687 (2006). A decision that is “dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement” is not independent. Oakwood Healthcare, 348 NLRB at 689.

in Section 6.1, a position holder need only be charged with carrying out the policy in order to meet the Department's objective.

The second test under 6.1(c)(i) makes a designation proper if the position "represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of the agency." 5 ILCS 315/6.1(c)(i) (2012). 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 in the Supreme Court's decision in National Labor Relations Board v. Yeshiva University, 444 U.S. 672 (1980). Dep't of Cent. Mgmt. Serv. Ill. Commerce Com'n v. Ill. Labor Rel. Bd., 406 App. 766, 776 (4th Dist. 2010) (citing Yeshiva, 444 U.S. at 683). The Court noted that the ILRB, "incorporated effective recommendations into its interpretation of the term 'managerial employee.'" ICC, 406 Ill. App. at 776.

Section 6.1(d) requires us to presume the Governor's designation is proper, and the evidence as a whole fails to overcome that presumption. Therefore, I find that the positions are properly designated as managerial.

The Board has rejected AFSCME's objections that the designated positions do not have significant and independent discretionary authority because they are professional rather than managerial. State of Ill., Dep't of Cent. Mgmt.Servs. (Dep't of Cent. Mgmt. Servs.), 30 PERI ¶ 85 (IL LRB-SP 2013). The terms managerial and professional are not mutually exclusive and there is no exception for professional employees in the language of Section 6.1(c)(i). State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Commerce & Economic Opportunity), 30 PERI ¶ 86 (citing Dep't of Cent. Mgmt. Servs. / Ill. Pollution Control Bd., 2013 IL App (4th) 110877). As such, where a position meets one of the two alternative tests set out in Section 6.1(c)(i), it may appropriately be designated by the Governor for exclusion from collective bargaining rights regardless of whether it is also a professional position. Id.

The evidence indicates that ALJs perform the typical tasks of in-house attorneys. In doing so, they interpret and apply polices and legislation in recommending a course of action for the Director. These recommendations are effective as it is not refuted that these recommendations are accepted approximately 90% of the time. Even though the ALJs' recommendations must go through several levels of review, and sometimes changes, this is not always the case. The evidence suggest that changes can be made and have been in the past, but mostly, the ALJ's decisions are accepted as is, minus spelling and grammatical errors. See, Dep't

of Cent. Mgmt. Serv./ Ill. Commerce Com'n, 406 Ill. App. 3d 766, 775 (effective recommendations are those that are accepted most of the time without modification).

As to the Deputy/Assistant General Counsel, it is not refuted that this position is charged with directing other areas of the department in HIPAA requirements and updates to ensure the department's policies and procedures are in compliance with the federal statute. In doing so, Ms. Thomas uses her discretion when representing management interests by taking actions that effectively control or implement the policy of the agency.

Because the managerial-like component of Section 6.1(b) set out in Section 6.1(c)(i) sweeps broader than the meaning of manager within Section 3(j) of the Act, representing the employer's interest in these decisions is managerial authority. Therefore, the positions at issue are managerial in accordance with to Section 6.1(c)(i) of the Act and are properly designated for exclusion.

III. CONCLUSIONS OF LAW

The designations in this case are properly made.

IV. RECOMMENDED ORDER

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

**Public Service Administrator, Option 8L
Employed at Department of Healthcare and Family Services**

<u>Position No.</u>	<u>Working Title</u>		<u>Incumbent</u>
37015-33-46-110-20-61	DEPUTY COUNSEL	GENERAL	VACANT
37015-33-46-120-20-61	DEPUTY COUNSEL	GENERAL	VACANT
37015-33-46-150-20-61	ASSIST COUNSEL	GENERAL	DEES MARILYN T
37015-33-46-210-20-21	DEPUTY COUNSEL	GENERAL	VACANT
37015-33-46-220-20-61	DEPUTY COUNSEL	GENERAL	VACANT
37015-33-46-241-00-21	BUREAU CHIEF		JOHNS HILARY B
37015-33-46-242-00-21	SUPERVISOR		ANTOLEC SONIA

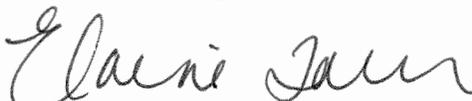
37015-33-46-242-20-21	ADMINISTRATIVE JUDGE	LAW	TISCH ROBERT L
37015-33-46-242-20-21	ADMINISTRATIVE JUDGE	LAW	CASTILLO LISA M
37015-33-46-242-20-21	ADMINISTRATIVE JUDGE	LAW	FESTA ELIZABETH P
37015-33-46-242-20-21	ADMINISTRATIVE JUDGE	LAW	HERRING QUEEN V
37015-33-46-242-20-21	ADMINISTRATIVE JUDGE	LAW	ADELMAN WILMA L
37015-33-46-242-20-22	ADMINISTRATIVE JUDGE	LAW	VACANT
37015-33-46-242-20-23	ADMINISTRATIVE JUDGE	LAW	Dora McNew-Clarke
37015-33-46-400-20-21	ASSIST COUNSEL	GENERAL	VACANT
37015-33-46-400-20-22	ASSIST COUNSEL	GENERAL	VACANT

V. EXCEPTIONS

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300, parties may file exceptions to the Administrative Law Judge's recommended decision and order, and briefs in support of those exceptions, no later than 3 days after service of the recommended decision and order. All exceptions shall be filed and served in accordance with Section 1300.90 of the Board's Rules and Regulations. Exceptions must be filed by electronic mail sent to ILRB.filing@illinois.gov. Each party shall serve its exceptions 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 20th day of February, 2014

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



Elaine L. Tarver, Administrative Law Judge

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

State of Illinois, Department of Central)	
Management Services (Department of)	
Healthcare and Family Services),)	
)	
Petitioner)	
)	
and	)	Case No. S-DE-14-175
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization-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, 497 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

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

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.

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.

On January 15, 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. CMS' petition designates the exclusion of the following Public Service Administrators employed at the Department of Healthcare and Family Services based on Section 6.1(b)(5) of the Act:

**Public Service Administrator, Option 8N
Employed at Department of Healthcare and Family Services**

<u>Position No.</u>	<u>Working Title</u>		<u>Incumbent</u>
37015-33-23-112-00-61	LONG TERM SUPERVISOR	CARE	CARLISLE BARBARA B
37015-33-23-113-00-61	LONG TERM SUPERVISOR	CARE	PRZADA SUSAN D
37015-33-23-114-00-61	LONG TERM SUPERVISOR	CARE	COONROD ROBERTA S
37015-33-23-121-00-21	LONG TERM SUPERVISOR	CARE	OTTAVIANO ROXANE M
37015-33-23-123-00-61	LONG TERM SUPERVISOR	CARE	WOJCIECHOWSKI LORI J
37015-33-23-124-00-21	LONG TERM SUPERVISOR	CARE	PULPHUS GLORIA J
37015-33-23-125-00-61	LONG TERM SUPERVISOR	CARE	SCHMECK JODY S

In support of its petition, CMS submitted job descriptions (CMS-104s) for each position, affidavits and a summary spreadsheet. The spreadsheet identifies position numbers, titles, name of the incumbents, bargaining unit, certifications date and case number, statutory category of designation and a list of job duties that support the presumptions that the positions are supervisory or managerial. On October 28, 2009, the positions at issue were certified into the RC-63 bargaining unit pursuant to the actions of the Board in Case No. S-RC-04-130. On January 27, 2014, the American Federation of State, County and Municipal Employees (AFSCME) filed timely objections to the designation.²

² On January 28, 2014, the Board received Susan Przada's individual objections to this petition. Subsequently, Przada submitted a revision of her objection to the Board January 29, 2014. Objections in this case were due January 27, 2014, and Przada has shown or argued any reason why the Board should grant a variance to allow the submission of this filing. However, Przada's objections are almost verbatim

Based on my review of the designation, the documents submitted as part of the designation, AFSCME's objections, and the arguments submitted in support of those objections, I have determined that AFSCME has failed to raise an issue that would require a hearing.

Therefore, I find the designation to have been properly submitted and consistent with the requirements of Section 6.1 of the Act and 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 any existing inclusion of these positions within any collective bargaining unit.

I. ISSUES AND OBJECTIONS

AFSCME makes several general objections to the petition arguing that Section 6.1 of the Act violates due process, the separation of powers doctrine in the Illinois Constitution, equal protection under Article I, Section 2 of the Illinois Constitution, and the Fifth and Fourteenth Amendments to the United States Constitution, and impairs the contractual right of the employees prohibited by the impairment of contract clause in the Illinois Constitution.

AFSCME specifically objects to the designation of the positions arguing that the positions do not possess significant and independent discretionary authority as required by Section 6.1. The individual employees submitted statements that state that their main job function is to complete field surveys pursuant to the direction of the central office, they do not perform most of the duties as described in the position description, particularly any planning, directing, implementing development, or recommendation regarding policies and goals of the department. AFSCME contends that the designated positions are merely professional where the employee uses professional skills to understand and follow the guidelines established by the Department, negating the claim that the positions are managerial in nature.

As it relates to the employees' supervisory authority, AFSCME maintains that the employees do not have authority to engage in any supervisory function with independent judgment. Instead, the employees state that the assignment of work is done either by geography or equalization and approval of time is routine given that they can grant it but cannot deny it. Moreover, although they prepare performance evaluations, the evaluations are without reward or consequence.

to the objections timely submitted by AFSCME on her behalf. As such, those issues will be addressed in this decision.

Lastly, AFSCME argues that these positions have been certified into the bargaining unit pursuant to the actions of the Board for over four years and there is no rational basis for treating them differently than the many other positions which hold the same title or have similar duties. AFSCME requests a hearing be held to determine whether there is a legal basis for the exclusion of this position and the effect of such exclusion. AFSCME maintains that failure to hold a hearing on the issues raised is also a denial of due process.

II. FINDINGS OF FACT

The position designated by this petition has the working title of Long Term Care Supervisor or Region Field Office Supervisor. Kelly Cunningham is the Chief of the Bureau Long Term Care in the Department of Healthcare and Family Services. Cunningham, by affidavit, asserts that she is familiar with the designated employees' duties and that the CMS-104 submitted by CMS fairly and accurately represents the duties they are authorized to perform.

As it relates to their supervisory duties, the job description states that the designated employees serve as full line supervisors who assign and review work; provide guidance and training to assigned staff; counsel staff regarding work performance; reassign staff to meet day-to-day operating needs; establish annual goals and objectives; approve time off; adjust first level grievances; effectively recommend and impose discipline, up to and including discharge; prepare and sign performance evaluations and determine and recommend staffing needs.

The statements by the designated employees specifically address their supervisor duties. These employees state that they do not serve as full line supervisors. They maintain that they do not have the authority to adjust first level grievances, effectively recommend discipline, or determine/recommend staffing needs. Although they approve time off, it is argued that they have no authority to deny time off or counsel an employee absent direction from management. Work assignments are done based on either geography or equalization and although they prepare performance evaluations, these evaluations are based on objective criteria and reviewed by their supervisors prior to going to the individual employee. Lastly, the employees state that they do not responsibly direct their subordinates.

Regarding presumably managerial duties, the designated employees maintain that they are not engaged in executive or management functions or charged with the effectuation of management policy and practices, nor do they represent management interests by taking or recommending discretionary actions that effectively control or implement the policy of the

department. Specifically, the employees contend, contrary to their job descriptions, that they do not develop, recommend and implement policies and procedures, develop and implement program goals and objectives, confer with management on integration of program function activities, resolve administrative problems or recommend program function improvements.

Instead, the designated employees state that they are responsible for the completion of surveys (MDS and SLF surveys) as required by the central office, which reflect data compiled by the long term care facility or supportive living facility detailing the services provided to the recipient. MDS surveys are used to insure that the services reported as provided to a recipient and charged to Medicaid were provided. The SLF surveys are completed to determine care and services are provided within the scope of the regulation. The designated employees' subordinates, field staff nurses, are assigned to complete these surveys and the designated employees review all completed surveys and make the necessary changes as required by their manual of instruction, prior to forwarding them to central office.

III. DISCUSSION AND ANALYSIS

a. Procedural Objections

First, the Board has held that it is beyond its capacity to rule on the constitutional allegations made by AFSCME. Specifically, it is beyond the Board's purview to rule whether the Illinois Public Labor Relations Act, as amended, violates provisions of the United States and Illinois constitutions. The Board noted that administrative agencies have no authority to declare statutes unconstitutional or even to question their validity and in doing so, their actions are null and void and cannot be upheld. State of Illinois, Department of Central Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013) (citing Goodman v. Ward, 241 Ill. 2d. 398, 411 (2011)). As such, I will not address the constitutional objections in this decision.

The Board has also expressed its concern with AFSCME's due process arguments but maintains that it has taken necessary measures to prevent such a violation. Therefore, the Board held that consistent with judicial precedent it has "insured that the individual employees as well as their representative and potential representative receive notice soon after designation petitions are filed, usually within hours, and have provided for redundant notice by means of posting at the worksite....we provided them an opportunity to file objections, and where they raise issues of fact or law that might overcome the statutory presumption of appropriateness, an opportunity for a hearing, [and]...require a written recommended decision by an administrative law judge in

each case in which objections have been filed.” State of Illinois, Department of Central Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013) (citing Arvia v. Madigan, 209 Ill. 2d 520 (2004), and Gruwell v. Ill. Dep’t of Financial and Professional Regulations, 406 Ill. App. 3d 283, 296-98 (4th Dist. 2010)). Additionally, the Board found that it has “allowed an opportunity to appeal those recommendations for consideration by the full Board by means of filing exceptions,...doubled the frequency of our scheduled public meetings in order to provide adequate review of any exceptions in advance of the 60-day deadline and... issu[e] written final agency decisions which may be judicially reviewed pursuant to the Administrative Review Law”, in an effort to adhere to due process. State of Illinois, Department of Central Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013).

Moreover, in administrative hearings, failing to go to an oral hearing is not necessarily the denial of a hearing where submission of written documents could suffice as a hearing. Department of Central Management Services (Illinois Commerce Commission) v. Illinois Labor Relations Board, State Panel, 406 Ill. App. 3d 766, 769-70 (4th Dist. 2010). Therefore, AFSCME’s due process rights have not been violated by the Board following the policies and procedures mandated by the legislature and I find there is no issue of law or fact warranting a hearing.

Regarding the burden of proof, AFSCME has the burden to demonstrate that the designation is not proper. The Act is clear in that “any designation made by the Governor...shall be presumed to have been properly made,” 5 ILCS 315/6.1 (2012). Therefore, the burden of proof shifts to the objector to prove that the designation is, in fact, improper.

Lastly, Illinois Appellate Courts have held that the Board’s consideration of job descriptions alone, is an adequate basis upon which to evaluate an exclusion. See Village of Maryville v. Illinois Labor Relations Board, 402 Ill. App. 3d 369 (5th Dist. 2010); Ill. Dep’t of Cent. Mgmt. Servs. V. Ill. Labor Rel. Bd., 2011 Ill App. (4th Dist.) 090966; but see Vill. of Broadview v. Ill. Labor Rel. Bd., 402 Ill. App. 3d 503, 508 (1st Dist. 2010); see also Ill. Dep’t of Cent. Mgmt. Servs. v. Ill. Labor Rel. Bd., 382 Ill. App. 3d 208, 228-29 (4th Dist. 2008); City of Peru v. Ill. Labor Rel. Bd., 167 Ill. App. 3d 284, 291 (3d Dist. 1988). Accordingly, the Board has sufficient evidence from which to establish whether the designation is proper.

b. Designations under Section 6.1(b)(5)

As stated above, a position is properly designated if, amongst other reasons, it was first certified to the bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008, and it authorizes an employee in the position to have “significant and independent discretionary authority as an employee” as defined by Section 6(c) of the Act. Moreover, designations made by the Governor are presumed proper under Section 6.1 of the Act.

It is undisputed that the positions at issue were certified into bargaining unit RC-63 in Case No. S-RC-04-130 on October 28, 2009. At issue is whether the petitioned-for positions have significant and independent discretionary authority as described in Section 6.1(c), to be designated as supervisory or managerial under the Act.

Section 6.1(b)(5) allows the Governor to designate positions that authorize an employee to have “significant and independent discretionary authority.” 5 ILCS 315/6.5(b)(5). 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 the first two tests, while Section 6.1(c)(ii) sets forth the third.³

The first test is substantively similar to the traditional test for the managerial exclusion articulated in Section 3(j). Section 6.1(c)(i) provides that a position authorizes an employee with significant and independent discretionary authority if “the employee is...engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency.” However, 6.1(c)(i) provides a broader definition than the traditional test found in Section 3(j), in that it does not include a preponderance element and only requires that an employee be “charged with the effectuation” of policies and not that the employee direct the effectuation. According to the traditional test, 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. Elk Grove Village, 245 Ill. App. 3d at 122, Evanston, 227 Ill. App. 3d at 975. Here, however, in order to meet the first test set out

³ Section 6.1(c) provides that 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.

in Section 6.1, a position holder need only be charged with carrying out the policy in order to meet the Department's objective.

The second test under 6.1(c)(i) makes a designation proper if the position "represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of the agency." 5 ILCS 315/6.1(c)(i) (2012). The Illinois Appellate Court has observed that the definition of a managerial employee in Section 3(j) is very similar to the definition of a managerial employee in the Supreme Court's decision in National Labor Relations Board v. Yeshiva University, 444 U.S. 672 (1980). Dep't of Cent. Mgmt. Serv. Ill. Commerce Com'n v. Ill. Labor Rel. Bd., 406 App. 766, 776 (4th Dist. 2010) (citing Yeshiva, 444 U.S. at 683). The Court noted that the ILRB, "incorporated effective recommendations into its interpretation of the term 'managerial employee.'" ICC, 406 Ill. App. at 776.

The third test under Section 6.1(c)(ii) states that under the NLRA, a supervisor is an employee who has "authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." 29 U.S.C.A. § 152(11).

In other words, "employees are statutory supervisors if (1) they hold the authority to engage in any one of the 12 listed supervisory functions, (2) their 'exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment,' and (3) their authority is held 'in the interest of the employer.'" NLRB v. Kentucky River Comm. Care, Inc. ("Kentucky River"), 532 U.S. 706, 713 (2001) (quoting NLRB v. Health Care & Retirement Corp. of America, 511 U.S. 571, 573-574 (1994); See also Oakwood Healthcare, Inc. v. United Automobile, Aerospace and Agricultural Implement Workers of America ("Oakwood Healthcare"), 348 NLRB 686, 687 (2006). A decision that is "dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement" is not independent. Oakwood Healthcare, 348 NLRB at 689.

I find the designated employees are authorized to have significant and independent discretionary authority meeting the managerial and supervisory component in Section 6.1 of the Act. Section 6.1(d) requires us to presume the Governor's designation is proper, and the

evidence as a whole fails to overcome that presumption. Although the designated employees state that they do not responsibly direct their subordinates, they explain that they gather the surveys submitted by their subordinates and make necessary changes to ensure they reflect and follow guidelines. When doing so, the designated employees use some discretion by deciding to what extent the surveys correctly reflect the services reported and provided for by the recipients, within the scope of the regulations. Moreover, as liaison between their subordinates and the central office, the designated employees state that they ensure their staff is following any changes in policy implemented by central office. Therefore, the designated employees use discretionary action to effectively implement agency policy, and are properly designated as managerial.

The designated employees also deny responsibly directing their subordinates but do not refute actively reviewing and correcting the surveys submitted by their subordinates, prior to turning them over to the central office. Although the dates and time lines for the surveys are set by central office, the designated employees ensure these surveys are submitted to central office on time and that they meet the scope and subject as set out by upper management. It is not refuted that this type of review is performed with independent judgment and that the designated employees are responsible for the work of their subordinates. Moreover, the designated employees do not refute the contention that they also use independent and discretionary authority when providing guidance and training assigned staff. Thus, the designated employees' responsibly direct their subordinates and review and monitor of their subordinates' work.

Therefore, the positions at issue are managerial and supervisory according to Section 6.1(c)(i) and 6.1(c)(ii) of the Act and are properly designated for exclusion.

IV. CONCLUSIONS OF LAW

The designations in this case are 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 are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

Public Service Administrator, Option 8N

Employed at Department of Healthcare and Family Services

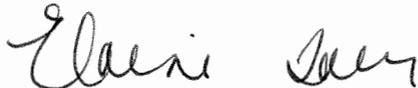
<u>Position No.</u>	<u>Working Title</u>	<u>Incumbent</u>
37015-33-23-112-00-61	LONG TERM SUPERVISOR	CARE CARLISLE BARBARA B
37015-33-23-113-00-61	LONG TERM SUPERVISOR	CARE PRZADA SUSAN D
37015-33-23-114-00-61	LONG TERM SUPERVISOR	CARE COONROD ROBERTA S
37015-33-23-121-00-21	LONG TERM SUPERVISOR	CARE OTTAVIANO ROXANE M
37015-33-23-123-00-61	LONG TERM SUPERVISOR	CARE WOJCIECHOWSKI LORI J
37015-33-23-124-00-21	LONG TERM SUPERVISOR	CARE PULPHUS GLORIA J
37015-33-23-125-00-61	LONG TERM SUPERVISOR	CARE SCHMECK JODY S

VI. EXCEPTIONS

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300, parties may file exceptions to the Administrative Law Judge's recommended decision and order, and briefs in support of those exceptions, no later than 3 days after service of the recommended decision and order. All exceptions shall be filed and served in accordance with Section 1300.90 of the Board's Rules and Regulations. Exceptions must be filed by electronic mail sent to ILRB.filing@illinois.gov. Each party shall serve its exceptions 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 30th day of January, 2014

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



Elaine L. Tarver, Administrative Law Judge