

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

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|--------------------------------------|---|----------------------|
| State of Illinois, Department of |) | |
| Central Management Services |) | |
| (Department of Human Services), |) | |
| |) | |
| Petitioner |) | |
| |) | |
| and |) | Case No. S-DE-14-214 |
| |) | |
| American Federation of State, County |) | |
| and Municipal Employees, Council 31, |) | |
| |) | |
| Labor Organization-Objector |) | |

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

Section 6.1 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012), allows the Governor to designate certain employment positions with the State of Illinois as excluded from collective bargaining rights which might otherwise be available under Section 6 of the Act. This case involves such designations made on the Governor’s behalf by the Illinois Department of Central Management Services (CMS). On February 27, 2014, Administrative Law Judge (ALJ) Deena Sanceda issued a Recommended Decision and Order (RDO) in this case, finding that the designations were properly made. We agree.

CMS petitioned to designate for exclusion nine Public Service Administrator positions at the Illinois Department of Human Services classified as either Option 8T or Option 8TMC.¹ Associated working titles were High School Principal, CTE Principal, Vocational Principal, Principal, Evaluation Center Director and Curriculum Center Director. Accompanying

¹ Regulations promulgated by the Department of Central Management Services provide designation of a PSA position as Option 8T for “Special License - Administrative Certificate issued by the Illinois State Board of Education.” 80 Ill. Admin. Code 310.50.

documents indicate the positions are located at the Illinois School for the Deaf, the Illinois School for the Visually Impaired, or the Illinois Center for Rehabilitation and Education-Roosevelt. All positions were designated for exclusion pursuant to Section 6.1(b)(5) of the Act, which allows designations of positions with “significant and independent discretionary authority.”²

The American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed objections to the petition pursuant to Section 1300.60 of the Board’s rules for implementing Section 6.1 of the Act, 80 Ill. Admin. Code §1300.60, raising constitutional and other generally applicable objections. The ALJ declined to rule on those objections that alleged Section 6.1 was unconstitutional, rejected other of AFSCME’s generally applicable objections, and found that AFSCME had not provided evidence tending to negate CMS’s assertion that these positions meet the supervisory component of Section 6.1(c)(ii) and at least one of the tests for managerial component of Section 6.1(c)(i).

AFSCME filed timely exceptions to the ALJ’s RDO pursuant to Section 1300.130 of the Board’s rules, 80 Ill. Admin. Code §1300.130. Based on our review of the exceptions, the record, and the RDO, we reject the exceptions and adopt the RDO. We find AFSCME has failed to overcome the presumption established in Section 6.1(d) that the designations under Section 6.1(b)(5) were appropriate. Consequently, we find the designations comport with the

² This phrase is defined by Section 6.1(c) of the Act:

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.

requirements of Section 6.1, and direct the Executive Director to issue a certification consistent with that finding.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

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

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

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

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

/s/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public meeting held via videoconference in Chicago, Illinois and Springfield, Illinois, on April 1, 2014; written decision issued at Springfield, Illinois, April 7, 2014.

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

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| |) | |
| Labor Organization-Objector |) | |
| |) | |

**ADMINISTRATIVE LAW JUDGE’S
RECOMMENDED DECISION AND ORDER**

I. BACKGROUND

Section 6.1 of the Illinois Public Labor Relations Act, 5 ILCS 315/6.1 (2012) *added by* Public Act 97-1172 (eff. April 5, 2013), allows the Governor of the State of Illinois to designate certain public employment positions with the State of Illinois as excluded from collective bargaining rights which might otherwise be granted under the Illinois Public Labor Relations Act (Act). In order for a designation to be proper the position must be eligible for designation based upon its bargaining unit status, the position must qualify for designation based upon its job title and/or job duties, and the Governor must provide the Board specific information as identified in the Act.

Section 6.1 identifies three broad categories of employment positions that may be eligible for designation based upon the position’s status in a certified bargaining unit. 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.

To qualify for designation, the employment position must meet one or more of five requirements identified in Sections 6.1(b) of the Act. Relevant to this case, Section 6.1(b)(5) of the Act allows the designation of an employment position if the position authorizes an employee in that position to have “significant and independent discretionary authority as an employee,” which under section 6.1(c) of the Act means that the employee either:

- (i) is engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency or represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency[;] or
- (ii) qualifies as a supervisor of a State agency as that term is defined under Section 152 of the National Labor Relations Act[, 29 U.S.C. 152(11),] or any orders of the National Labor Relations Board interpreting that provision or decisions of courts reviewing decisions of the National Labor Relations Board.

Section 6.1(b) also provides that in order for a position to be properly designated, the Governor or his agent shall provide in writing to the Board the following information: the job title of the designated employment position, the job duties of the employment position, the name of the employee currently in the employment position, the name of the State agency employing the incumbent employee, and the category under which the position qualifies for designation.

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. This subsection also specifies that the qualifying categories identified in subsection 6.1(b) “are operative and function solely within this Section and do not expand or restrict the scope of any other provision contained in this Act.” The Board promulgated rules to effectuate Section 6.1, which became effective on August 23, 2013, 37 Ill. Reg. 14,070 (Sept. 6, 2013). See 80 Ill. Admin. Code Part 1300.

On February 4, 2014, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation petition pursuant to Section 6.1 of the Act and Section 1300.50 of the Board’s Rules. The petition seeks to exclude the following Public Service Administrators at the Department of Human Services (DHS):

| <u>Option</u> | <u>Position No.</u> | <u>Working Title</u> | <u>Incumbent</u> |
|----------------------|----------------------------|-----------------------------|-------------------------|
| 8TMC | 37015-10-43-320-00-20 | Junior High Principal | Angela Kuhn |

| | | | |
|------|-----------------------|----------------------------|---------------------|
| 8TMC | 37015-10-43-330-00-20 | High School Principal | Christine Good-Deal |
| 8TMC | 37015-10-43-330-30-20 | High School Principal | Sheila Stephens |
| 8TMC | 37015-10-43-340-00-20 | CTE Principal | Jill Whitmore |
| 8TMC | 37015-10-43-360-00-20 | Evaluation Center Director | Kathryn Surbeck |
| 8TMC | 37015-10-43-370-00-20 | Curriculum Director | vacant |
| 8T | 37015-10-44-500-00-01 | Principal | Colleen Dunigan |
| 8T | 37015-10-45-100-00-01 | High School Principal | Aimee Veith |
| 8T | 37015-10-45-100-10-01 | Vocational Principal | vacant |

CMS filed the designation petition with an attached summary spreadsheet, and for each position it submitted a CMS-104 position description, an organizational chart, and an affidavit completed by Superintendents in the DHS’s Division of Rehabilitation Services.

On February 14, 2014, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME), pursuant to Section 1300.60(a)(3) of the Board’s Rules, filed objections to the designation petition. AFSCME objects to the designation of every position within the designation petition.

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

II. ISSUES AND CONTENTIONS

The issue is whether the designations as identified in the petition and supporting documentation comport with Section 6.1 of the Act. CMS contends that the designations are proper, and through its objections AFSCME contends that the designations are improper.

A. Designation Petition

CMS’s designation petition and the attached documentation indicate that the positions at issue qualify for designation under Section 6.1(b)(5) of the Act, and that the Board certified the positions into bargaining unit RC-63 on September 28, 2009.

1. Affidavits

In separate affidavits, the Superintendent that oversees each respective position identified that each position at issue is assigned to either the Illinois School for the Deaf, the Illinois School for the Visually Impaired, or the Illinois Center for Rehabilitation and Education - Roosevelt. The Superintendents attest that every position is authorized to have significant and independent discretionary authority as defined by Sections 6.1(c)(i) and 6.1(c)(ii) of the Act. The affiants attest that each of the employment positions at issue is “authorized to be engaged in executive and management functions of [DHS] and charged with the effectuation of management policies and practices of [DHS] or represent management interests by taking or recommending discretionary actions that effectively control or implement the policy” of DHS. Each employee at issue is “charged with effectuating” the Department’s policies in ensuring that the students at the affected schools “receive the appropriate education program as identified in their individual education programs.” The Superintendents also attest that each of the employment positions at issue are “authorized to, in the interest of [DHS], among other things, assign, responsibly direct, and review the work of [the positions’] subordinates with independent judgment. [Each] position is authorized to assign and review work, counsel staff regarding work performance, take corrective action, monitor work flow, and reassign staff to meet day to day operating needs.”

2. CMS-104s

Each CMS-104, in relevant part, identifies the information contained within as a “current and accurate statement of the position duties and responsibilities” of each position at issue.

B. Objections

AFSCME argues that CMS should bear the burden of persuasion, and that the at-issue positions are not those of managers or supervisors within the meaning of the National Labor Relations Act (NLRA), that the CMS-104s and affidavits provide insufficient bases for designation, and that the designations are unconstitutional.

III. DISCUSSION AND ANALYSIS

The objectors bear the burden to demonstrate that each designation of the employment positions at issue are improper because the objectors’ positions are contrary to the policy of Section 6.1 and because the presumption articulated in Section 6.1(d) requires that the objectors overcome the presumption that the designations are proper. The Illinois Appellate Court has

held that the party opposing the public policy as demonstrated in the statutory language of the statute at issue has the burden to prove the party's position. See Ill. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App (4th) 090966. Section 6.1 specifically allows the Governor to exclude certain public employment positions from collective bargaining rights which might otherwise be granted under the Act. Section 6.1 also allows the exclusion of 1,900 positions that are already certified into bargaining units. AFSCME is opposing the State's public policy to exclude certain positions from collective bargaining, as stated in Section 6.1 of the Act, thus the burden is on AFSCME to demonstrate that the employees at issue are not eligible for such exclusion. Ill. Dep't Cent. Mgmt. Serv. (Ill. State Police) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 109 (IL LRB-SP 2013), No. 13-3600 (Ill. App. Ct. 1st Dist.). Section 6.1(d) states that any designation for exclusion made by the Governor or his agents under Section 6.1 "shall be presumed to have been properly made." Like all presumptions, this presumption can be rebutted. Dep't of Cent. Mgmt. Serv. /Dep't of Healthcare & Fmly. Serv. v. Ill. Labor Rel. Bd. State Panel, 388 Ill. App. 3d 319, 335 (4th Dist. 2009). If contrary evidence is introduced that sufficiently rebuts the presumption, then it vanishes and the issue will be determined as if no presumption ever existed. Id. To rebut the presumption, the evidence must be sufficient to support a finding that the presumed fact does not exist. Id. at 335-336. Here, AFSCME must present evidence that the positions are not eligible for designation, do not qualify for designation, or that each designation is otherwise improper because the submission does not comport with the requirements of Section 6.1 of the Act.

A. Eligibility

As stated above, positions which were first certified to be in a bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008 are eligible for designation. The parties agree that the at-issue positions have been certified into bargaining unit RC-63, and it is uncontested that the certification was on September 28, 2009. Thus, I find that the presumption that every at-issue position is eligible for designation as excluded from the collective bargaining provisions of the Act remains unrebutted.

B. Qualifications

AFSCME does not overcome the presumption that the positions at issue qualify for designation under Section 6.1(b)(5) of the Act because its objections only go to *how* the Board

should apply the tests articulated in Section 6.1(c), arguments the Board has previously rejected, and because AFSCME provides no evidence to rebut the presumption that the employment positions authorize the employees in these positions to have significant and independent discretionary authority. See Ill. Dep't Cent. Mgmt. Serv. (Gaming Bd.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, S-DE-14-121 (IL LRB-SP Jan. 21, 2014) appeal pending, No. 14-0278 (Ill. App. Ct. 1st Dist.); Ill. Dep't Cent. Mgmt. Serv. (Dep't of Commerce and Econ. Opp.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶163 (IL LRB-SP 2014 Jan. 7, 2014) appeal pending, No. 14-0276 (Ill. App. Ct. 1st Dist.).

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

1. (c)(ii)

Section 6.1(c)(ii) of the Act provides that an employee is a supervisor if the employment position authorizes the employee in that position to “qualif[y] as a supervisor of a State agency as that term is defined under Section 152 of the National Labor Relations Act, 29 U.S.C. 152(11) (NLRA), or any orders of the National Labor Relations Board (NLRB) interpreting that provision or decisions of courts reviewing decisions of the [NLRB].”

The NLRA defines a supervisor as “any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” 29 U.S.C.A § 152(11).

In their interpretations, the NLRB and the Courts have held that employees are statutory supervisors under the NLRA if “1) they hold the authority to engage in any one of the 12 listed supervisory functions, 2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment, and 3) their authority is held in the interest of the employer.” NLRB v. Kentucky River Comm. Care, Inc., 532 U.S. 706, 713 (2001) (internal quotes omitted); see also Oakwood Healthcare, Inc., 348 NLRB 686, 687 (2006).

As stated above, proper designation requires that the position be eligible for designation, that the position qualify for designation, and that CMS submit required information. There is a presumption that the designation is proper, accordingly there is also a presumption that the requirements that make the designation proper are satisfied. Which means there is a presumption that the position qualifies for designation under at least one of the categories identified in Section 6.1(b)(1) through (5). To qualify for designation under Section 6.1(b)(5) and employee must meet one of the statutory tests articulated in Section 6.1(c). Section 6.1(c) identifies three statutory tests with 6.1(c)(i) establishing two of these tests, and 6.1(c)(ii) establishing the third test. CMS alleges that the positions at issue qualify for designation under both Sections 6.1(c)(i) and 6.1(c)(ii). Since there is a presumption that these positions qualify for designation under Section 6.1(b)(5), there is also a presumption that the positions satisfy the requisite tests articulated in Section 6.1(c). Thus, CMS is not required to prove every prong of the supervisory test articulated in Section 6.1(c)(ii). Rather AFSCME has the burden to overcome the presumption that the positions meet the supervisory test by providing specific evidence negating at least one prong of the test. Absent such contrary evidence the presumption that each position at issue qualifies for designation because they satisfy this test stands.

AFSCME argues that the employees at issue are not supervisors because CMS presents no evidence that the employees were ever authorized, told, or actually exercise any of the enumerated supervisor duties, and because CMS does not prove that all three prongs of the supervisory test are met. The first prong of the NLRA supervisor test only requires that the employee *hold the authority* to engage in one of the enumerated supervisory functions. The issue is whether the employees are authorized to perform such duties, the CMS-104 provides evidence of such authorization, and AFSCME supplies no evidence to the contrary. That an employment position may be properly designated without requiring an incumbent employee to actually exercise the duties the position authorizes it to perform is supported by the fact that the Board has certified designations that include vacant positions because without an incumbent such authorized duties cannot actually be exercised. See Ill. Dep't Cent. Mgmt. Serv. (Dep't of Emp. Sec.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31 30 PERI ¶ 168 (IL LRB-SP 2014 Jan. 13, 2014) appeal pending 1-14-0386 (Ill. App. Ct. 1st Dist.); Ill. Dep't Cent. Mgmt. Serv. and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31 30 PERI ¶ 164 (IL LRB-SP 2014 Jan. 7, 2014) appeal pending 1-14-0348 (Ill. App. Ct. 1st Dist.); Ill. Dep't Cent. Mgmt. Serv.(Dep't of

Veterans' Affairs) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 30 PERI ¶ 111 (IL LRB-SP 2013) appeal pending 1-13-3618 (Ill. App. Ct. 1st Dist.). The CMS-104 position descriptions authorize the employee to engage in all the duties listed within, and AFSCME does not contend that the duties identified within the submitted CMS-104s do not qualify as any of the enumerated supervisory functions, nor does AFSCME provide evidence that the at-issue employees are unaware of the authority as identified in the CMS-104s. AFSCME argues that the second prong is not met because CMS has not provided a specific showing that the at-issue employees use independent judgment. Again, it is presumed that the supervisory test is met, which includes the use of independent judgment, and AFSCME must provide a specific showing that the at-issue employees do not use independent judgment. Accordingly, since AFSCME does not at all address whether the at-issue positions meet the third prong because their supervisory duties are held in the interest of CMS, and because it does not negate the first two prong of the test, AFSCME has not overcome the presumption the employees who hold the at-issue positions meet the test articulated in Section 6.1(c)(ii).

2. (c)(i)

Section 6.1(c)(i) of the Act provides that an employment position is eligible for exclusion if the position authorizes the incumbent employee to be “engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency or represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency.”

Section 6.1(c)(i) of the Act, requires that the employee meet one of two tests. The first test requires the employee to a) be engaged in executive and management functions; and b) be *charged with* the effectuation of management policies and practices of the Agency. The second test requires that the employee “represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of the Agency.”

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

Supreme Court used in interpreting a managerial employee as identified by the NLRB,¹ unlike subsection (c)(ii) subsection (c)(i) is silent as to whether it also incorporates the Court's interpretation of a managerial employee under the NLRB. Thus applying the NLRB's analysis of managerial employee is not supported by the statute, and the only inquiry is whether the petitioned-for employees comport with any of the tests *as written* in Section 6.1(c) of the Act. Ill. Dep't Cent. Mgmt. Serv. (Dep't of Commerce and Econ. Opp.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶163 (IL LRB-SP 2014 Jan. 7, 2014)(specifically rejecting AFSCME's application of the historical origins of Section 6.1(c)(i)).

AFSCME also argues that Board must distinguish between professional employees and managerial employees in reviewing these designations. This argument is unpersuasive because the Board has already held that unlike the NLRA, Section 6.1 of the Act does not distinguish between managerial and professional employees. Ill. Dep't Cent. Mgmt. Serv. (Dep't of Agric.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 84 (IL LRB-SP 2013) appeal pending, No. 13-3598 (Ill. App. Ct. 1st Dist.).

Finally, without specifically applying this to any at-issue position, AFSCME argues that there can be no showing that an employee is managerial if an affidavit states that the employee is authorized to effectuate department policy if the CMS-104 does not define a policy. This argument is unpersuasive because nothing in Section 6.1(c) requires that effectuating the overall policy of DHS is insufficient to meet the meaning of the term policy as written in the text. As such there is also no requirement that the employee effectuate a specific policy. AFSCME's argument as applied to the facts here is also unpersuasive. Every at-issue position is an administrator at a school. The Superintendents attest that each at-issue employee is charged with effectuating DHS's policies in ensuring that the students at the affected schools "receive the appropriate education program as identified in their individual education programs." That the policy of a school is to ensure that its students receive an education is apparent on its face.

In sum, AFSCME only protests that CMS has not met its burden of proof. In fact AFSCME has the burden, which it fails to meet because it provides absolutely no evidence to

¹ In Nat'l Labor Rel. Bd. v. Yeshiva Univ. the Supreme Court held that under the NLRA an employee may be excluded as managerial only if he "represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy." 444 U.S. 672, 683 (1980). Section 6.1(c)(i) states, in relevant part, that an employment position authorizes an employee in that position to have independent discretionary authority as an employee if he or she "represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency." 5 ILCS 315/6.1.

demonstrate that the designated employment positions are not supervisory and it does not actually argue that the designated employment position are not authorized to exercise independent discretionary authority *as written* in the text of Section 6.1(c) of the Act. CMS asserts that all the at-issue positions qualify for designation under Section 6.1(b)(5) because the positions meet the test articulate in Section 6.1(c)(ii) and because they meet at least one of the tests articulated in Section 6.1(c)(i). AFSCME is required to provide specific facts to rebut the presumption that the positions do qualify for designation, but it provides no facts here. Accordingly, since AFSCME has provided no facts to support its objections, I find that all the at-issue positions qualify for designation under Section 6.1(b)(5) because they meet at least one of the tests articulated in Section 6.1(c).

C. Information provided by CMS

In order to properly designate an employment position, CMS must submit in writing to the Board the job title of the designated employment position, the job duties of the employment position, the name of the State employee currently in the employment position, the name of the State agency employing the incumbent employee, and the category under which the position qualifies for designation under this Section. In the designation petition, and the supporting documentation, CMS identifies the official job title and the working job title of each position at issue. CMS submitted the CMS-104 position description in order to meet the requirement that it provide each position's job duties. It identified the name of the seven incumbent employees, and also identified that the remaining two positions at issue are vacant. Finally, CMS identified that it alleges that each position at issue qualifies for designation under Section 6.1(b)(5) of the Act.

AFSCME's only objection that CMS has not provided the Board with the information required to properly designate an employment position is that it argues that the submitted CMS-104s do not meet the job duties requirements. AFSCME argues that the CMS-104s and affidavits only identify *potential* responsibilities that can be given to the employee within that position, and there is no evidence that the employees actually perform the duties identified within the CMS-104s. This argument fails to meet AFSCME's burden because the Board has previously determined that CMS-104s are sufficient to meet the "job duties" requirement of Section 6.1 of the Act, and because, as stated above, whether the employees actually exercise all their authorized duties is not the issue as articulated in the language of the statute. See State of Ill. Dep't of Cent. Mgmt. Serv. and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30

PERI ¶ 80 (IL LRB-SP 2013) appeal pending, No. 13-3454 (Ill. App. Ct. 1st Dist.); Ill. Dep't Cent. Mgmt. Serv. (Dep't of Commerce and Econ. Opp.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶163 (IL LRB-SP 2014 Jan. 7, 2014).

D. Constitutionality

AFSCME's remaining arguments go to whether Section 6.1 is constitutional. Section 6.1(d) of the Act grants the Board the authority to determine whether the designation of the employment positions at issue comport with Section 6.1 of the Act. As an administrative agency, the Board has no authority to rule that the Illinois Public Labor Relations Act, as amended by Public Act 97-1172, is unconstitutional, either on its face or as applied. Ill. Dep't Cent. Mgmt. Serv. (Gaming Bd.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, S-DE-14-121 (IL LRB-SP Jan. 21, 2014); State of Ill. Dep't of Cent. Mgmt. Serv. and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 80 (IL LRB-SP 2013) appeal pending, No. 13-3454 (Ill. App. Ct. 1st Dist.), (*citing* Goodman v. Ward, 241 Ill. 2d 398, 411 (2011)); see also Metro. Alliance of Police, Coal City Police Chapter No. 186, No. 6 v. Ill. State Labor Rel. Bd., 299 Ill. App. 3d 377, 379 (3rd Dist. 1998) (noting that administrative agencies lack the authority to invalidate a statute on constitutional grounds or even to question its validity). It is beyond my limited scope of authority as an administrative law judge for the Board to analyze the Act's constitutionality on its face or as applied to the at-issue designation petition. Thus, I find that it is unnecessary to include AFSCME's constitutional arguments in my analysis of whether the designations of the positions at issue comport with Section 6.1 of the Act.

IV. CONCLUSION

Pursuant to Section 1300.60 of the Board's Rules, I find that the designations are proper based solely on the information submitted to the Board because the at-issue positions are eligible and qualify for designation, the designations comport with Section 6.1 because CMS has submitted the required information, and AFSCME's objections do not overcome the presumption that the designations are proper under Section 6.1 of the Act.

V. RECOMMENDED ORDER

Unless this Recommended Decision and Order Directing Certification of the Designation is rejected or modified by the Board, the following positions at the Illinois Department of Human

Services are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

| <u>Position No.</u> | <u>Working Title</u> |
|----------------------------|-----------------------------|
| 37015-10-43-320-00-20 | Junior High Principal |
| 37015-10-43-330-00-20 | High School Principal |
| 37015-10-43-330-30-20 | High School Principal |
| 37015-10-43-340-00-20 | CTE Principal |
| 37015-10-43-360-00-20 | Evaluation Center Director |
| 37015-10-43-370-00-20 | Curriculum Director |
| 37015-10-44-500-00-01 | Principal |
| 37015-10-45-100-00-01 | High School Principal |
| 37015-10-45-100-10-01 | Vocational Principal |

VI. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300,² parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 3 days after service of this recommended decision and order. Exceptions shall be filed with the Board by electronic mail at an electronic mail address designated by the Board for such purpose, ILRB.Filing@illinois.gov, and served on all other parties via electronic mail at their e-mail addresses as indicated on the designation form. Any exception to a ruling, finding, conclusion, or recommendation that is not specifically argued shall be considered waived. A party not filing timely exceptions waives its right to object to this recommended decision and order.

Issued at Chicago, Illinois this 27th day of February, 2014.

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

/s/ Deena Sanceda

Deena Sanceda
Administrative Law Judge

² Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf