

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

State of Illinois, Department of)	
Central Management Services)	
(Department of Human Services),)	
)	
Petitioner)	
)	
and)	Case No. S-DE-14-220
)	
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 a designation made on the Governor’s behalf by the Illinois Department of Central Management Services (CMS). On March 14, 2014, Administrative Law Judge (ALJ) Sarah R. Kerley issued a Recommended Decision and Order (RDO) in this case, finding that the designation was properly made. We agree.

CMS petitioned to designate for exclusion a single position at the Illinois Department of Human Services classified as Public Service Administrator Option 8L held by Susan Bradshaw.¹

¹ Regulations promulgated by the Department of Central Management Services provide classification of a PSA position as Option 8L for “Special License - Law License.” 80 Ill. Admin. Code 310.50.

The designation was made 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. The objections raised constitutional and other generally applicable objections, as well as objections specific to this position. Most significantly, AFSCME objected that Bradshaw’s position could not meet the managerial requirements of Section 6.1(c)(i) of the Act, because the Board had previously determined in AFSCME Council 31 and State of Ill, Dep’t of Cent. Mgmt. Servs. (Dep’t of Human Servs.), Case No. S-RC-08-154, 28 PERI ¶126 (IL LRB-SP 2012), that she did not perform executive and managerial functions within the meaning of Section 3(j) of the Act.

The ALJ declined to rule on those objections alleging Section 6.1 was unconstitutional, and also rejected other of AFSCME’s generally applicable objections. She also rejected AFSCME’s specific objections noting (1) that unlike Section 3(j), Section 6.1(c)(i) does not require the position to perform managerial functions predominantly and (2) Bradshaw’s position description had been amended following issuance of our decision in the representation case. Considering the evidence of record, the ALJ concluded that Bradshaw’s position met both

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.

elements of the first test for managerial status under Section 6.1(c)(i), and that it also met the second test for managerial status under 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 that portion of the RDO finding that Bradshaw’s position meets the second test for managerial status under Section 6.1(c)(i) in that it “represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency.” We note that this test has no equivalent in Section 3(j), and was in no manner addressed in our prior decision in Case No. S-RC-08-154. Because we are able to reach a determination based on this test, we do not address whether the position might also meet the first test under Section 6.1(c)(i).

We find the designation comports 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 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**

State of Illinois, Department of Central)	
Management Services (Department of)	
Human Services),)	
)	
Employer)	
)	
and)	Case No. S-DE-14-220
)	
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) (Act) *added by* Public Act 97-1172 (effective 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 (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 properly qualify for designation, the employment position must meet one or more of the following five requirements:

- (1) it must authorize an employee in the position to act as a legislative liaison;
- (2) it must have a title of or authorize a person who holds the position to exercise substantially similar duties as a Senior Public Service Administrator, Public Information Officer, or Chief Information Officer, or as an agency General

Counsel, Chief of Staff, Executive Director, Deputy Director, Chief Fiscal Officer, or Human Resources Director;

- (3) it must be designated by the employer as exempt from the requirements arising out of the settlement of Rutan v. Republican Party of Illinois, 479 U.S. 62 (1990), and be completely exempt from jurisdiction B of the Personnel Code, 20 ILCS 415/8b through 8b.20 (2012), *see* 20 ILCS 415/4 through 4d (2012);
- (4) it must be a term appointed position pursuant to Section 8b.18 or 8b.19 of the Personnel Code, 20 ILCS 415/8b.18, 8b.19 (2012); or
- (5) it must authorize an employee in that position to have “significant and independent discretionary authority as an employee” by which the Act means the employee is either
 - (i) engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency or represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency; or
 - (ii) qualifies as a supervisor of a State agency as that term is defined under Section 152 of the National Labor Relations Act, 29 U.S.C. 152(11), or any orders of the National Labor Relations Board interpreting that provision or decisions of courts reviewing decisions of the National Labor Relations Board.

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

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. 14,066 (September 6, 2013). These rules are contained in Part

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 here.

1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On February 6, 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(b)(5) of the Act and Section 1300.50 of the Board's Rules. The following PSA-Option 8L position at the Illinois Department of Human Services ("Department" or "DHS") is identified for designation in this case:

Position No.	Incumbent	Working Title
37015-10-17-500-00-01	Susan Bradshaw	Administrative Law Judge

In support of its petition, CMS filed the position description for the position and an affidavit from Deputy General Counsel Matthew Langer, the Department's Labor Relations Manager. The PSA-Option 8L position was certified following the Board's February 23, 2012, decision in representation case number S-RC-08-154.²

On February 18, 2014, American Federation of State, County and Municipal Employees, Council 31 ("AFSCME") filed objections to the designation pursuant to Section 1300.60(a)(3) of the Board's Rules, and included therein the AFSCME Information Form completed by Bradshaw and the Recommended Decision and Order and Board decision in case number S-RC-08-154.

I reviewed the designation petition, position description, supporting affidavit, the objections raised by AFSCME, and the supporting documents provided by AFSCME. My review indicates that the Objectors have failed to raise an issue of law or fact that might overcome the presumption that the designation is proper such that a hearing is necessary as to the propriety of the designation.

After consideration of the information before me, I find that the designation is properly submitted and is consistent with the requirements of Section 6.1 of the Act. Accordingly, I recommend that the Executive Director certify the designation of the position at issue in this matter and, to the extent necessary, amend any applicable certification of exclusive representatives to eliminate any existing inclusion of this position within any collective bargaining unit.

² The case was appealed and remanded for a hearing to further consider Bradshaw's position. ALJ Martin Kehoe issued a Recommended Decision and Order on December 13, 2011, finding that Bradshaw's position was not managerial as that term is defined in Section 3(j) of the Act. The RDO and Board decision is found at Ill. Dep't of Cent. Mgmt. Serv. (Dep't of Human Serv.) ("Bradshaw Case"), 28 PERI ¶ 126 (IL LRB-SP 2012).

I. AFSCME OBJECTIONS

AFSCME objects to the designation petitions in a number of ways. Through its written objections and documents, AFSCME makes the following arguments.

A. General Objections

AFSCME initially argues that CMS has failed to meet its burden regarding the actual duties of the position, the level of discretion afforded the position, and whether any discretion requires independent judgment. AFSCME contends that CMS “submitted no actual evidence in support of its designation of this position to show that the position meets the criteria” of Section 6.1, and in failing to do so, has failed to provide the “factual basis for the exclusion to allow any meaningful response.”

AFSCME argues that Section 6.1 violates provisions of the United States and Illinois Constitutions in a number of ways. First, the designation is an improper delegation of legislative authority to the executive branch. Second, selective designation results in employees being treated unequally based on whether an individual’s position was subject to a designation petition. Third, the designation unlawfully impairs the contractual rights of individuals whose positions were subject to the provision of a collective bargaining agreement prior to the position being designated for exclusion.

AFSCME also contends that because the “employees holding the position identified by this petition are covered by a collective bargaining agreement which CMS entered into subsequent to the enactment of [Section] 6.1,” the designation of these positions “violates due process and is arbitrary and capricious.”

More substantively, AFSCME contends that under the National Labor Relations Board (“NLRB”) precedent and case law interpreting the same, “any claim of supervisory or managerial status requires that *the party raising the exclusion bear the burden of proof.*”³ AFSCME argues that CMS seeks the exclusion of employees who are not “supervisors” or “managers” as defined by the National Labor Relations Act (“NLRA”), 29 U.S.C. 152 *et seq.*, or the NLRB. AFSCME contends that CMS has presented evidence only of the “*potential* responsibilities that can be given to the employee within the position” and has not demonstrated that the employees have actual authority to complete the duties. Accordingly, AFSCME argues

³ Emphasis in original.

that CMS should bear the burden of proving that the designated employees exercise duties that would make them supervisory or managerial and that the position exercises managerial discretion rather than just professional discretion.

B. Position-specific Objections

AFSCME argues that Bradshaw does not perform any duties related to training or giving policy advice. AFSCME argues that Section 6.1(c) of the Act applies the same standard as the 3(j) standard that was analyzed and applied in the underlying representation petition. Therefore, the designation is improper as the ALJ and Board in 2012 found that Bradshaw was not managerial under Section 3(j). AFSCME argues that the ALJ in the underlying case found that Bradshaw's position was not engaged in executive or management functions, was not a "core function" of the agency, and that Bradshaw did not effectively recommend discretionary actions, noting her recommended decisions travel through a number of levels of supervision before being finalized. AFSCME also alleges that the position is "professional rather than managerial or supervisory," as evidenced by the Board's inclusion of the position in an RC-10 bargaining unit that includes only attorneys.

II. DISCUSSION AND ANALYSIS

The law creates a presumption that designations made by the Governor are properly made. In order to overcome the presumption of a properly submitted designation under Section 6.1(b)(5), the Objectors would need to raise an issue of law or fact that the position does not meet either of the managerial tests set out in Section 6.1(c)(i).

A. AFSCME'S General Objections

1. Sufficiency of CMS's evidence

AFSCME argues that CMS has failed to meet its burden regarding the actual duties of the position, the level of discretion afforded the position based on those duties, and whether any discretion exercised requires independent judgment. AFSCME contends that CMS "submitted no actual evidence in support of its designation of this position to show that the position meets the criteria" of Section 6.1, and in failing to do so, has failed to provide the "factual basis for the exclusion to allow any meaningful response."

First, Section 6.1(b) requires the Governor to provide only "the job title and job duties of the employment positions; the name of the State employee currently in the employment position, if any; the name of the State agency employing the public employee; and the category under

which the position qualifies for designation under this Section.” 5 ILCS 315/6.1(b).

The Board’s Rules, the Act, and relevant case law demonstrate that position descriptions provide an adequate basis on which to evaluate the propriety of a designation. First, the Act and the Rules contemplate that the Board may make such a determination based on a job description alone because they require CMS to provide information concerning a position’s job title and job duties and, at the same time, provide that CMS’s designation is presumed proper once it submits such information. If such information constituted an insufficient basis for considering a designation, the Act and the Rules would not specify that the designation, when completed by the submission of such information, is presumed to be properly made. Illinois Appellate Courts have also held that position descriptions alone constitute an adequate basis upon which to evaluate a proposed exclusion.⁴ See Vill. of Maryville v. Ill. Labor Rel. Bd., 402 Ill. App. 3d 369 (5th Dist. 2010); Ill. Dep’t of Cent. Mgmt. Servs. v. Ill. Labor Rel. Bd., 2011 IL App (4th) 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 (3rd Dist. 1988). Accordingly, the Board has sufficient evidence from which to establish the propriety of the designation.

Second, and most importantly, AFSCME’s argument ignores an important fact upon which the question of the sufficiency of CMS’s evidence turns. For proper designation, Section 6.1(b)(5) requires that the *employment position authorize* an employee in that position to have certain authority. The Section 6.1 inquiry is not what authority or duties the incumbent employee *exercises*. Instead, the applicable inquiry looks at what authority inherently exists in the position, which could then authorize an employee to (a) engage in executive and management functions of a State agency and effectuate management policies and practices of a State agency; (b) represent management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency; or (c) qualify as a supervisor, as defined by the NLRA and NLRB.

In the context of the appropriate inquiry, CMS has presented affidavit testimony of the

⁴ While these cases address the Employer’s burden in the majority interest process, they are nevertheless relevant to address AFSCME’s general argument concerning the sufficiency of job descriptions to establish a position’s job duties.

Deputy General Counsel for the Division of Administrative Hearings and Rules Matthew Langer. Langer indicates therein that he has personal knowledge of the duties and responsibilities of the position at issue, and that the position description “fairly and accurately represents the duties and responsibilities that the position at issue is authorized to perform.” Langer further attests that Bradshaw takes and/or recommends discretionary actions that effectively control implementation of Department policies in the conduct of administrative hearings on behalf of the Department.” I find this information is sufficient evidence of the duties of the position and basis for the designation from which to analyze whether the position is properly designated.

2. Constitutional Claims

It is beyond the Board’s capacity to rule that the Illinois Public Labor Relations Act, as amended by Public Act 97-1172, either on its face or as applied, violates provisions of the United States and Illinois constitutions. State of Ill., Dep’t of Cent. Mgmt. Servs., 30 PERI ¶80, Case No. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013) appeal pending, No. 1-13-3454 (Ill. App. Ct. 1st Dist.)(*citing* Goodman v. Ward, 241 Ill. 2d 398, 411 (2011) (“Administrative agencies ... have no authority to declare statutes unconstitutional or even to question their validity. [citations omitted]. When they do so, their actions are a nullity and cannot be upheld.”)). Accordingly, these issues are not addressed in this recommended decision and order.

3. AFSCME Properly Bears the Burden

AFSCME argues in its objections that CMS should bear the burden in at least two ways. First, it argues that because CMS is seeking an exclusion, under NLRA case law, CMS should bear the burden of proof, and should have had to present its case-in-chief first at the hearing. In so arguing, AFSCME fails to appreciate that Section 6.1 is a wholly new legislative creation. The Act’s provision that “any designation made by the Governor...shall be presumed to have been properly made,” 5 ILCS 315/6.1(d), shifts the burden of proving that a designation is improper on the Objector. Therefore, AFSCME and the individual employees have the burden to demonstrate that the designation is improper.

B. Tests for Designations made under Section 6.1(b)(5)

Section 6.1(b)(5) allows the Governor to designate positions that authorize an employee to have “significant and independent discretionary authority.” 5 ILCS 315/6.1(b)(5). The Act goes on to provide 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 a third.⁵ In its petition, CMS contends that the at-issue position confers on the position holder “significant and independent discretionary authority” as further defined by Section 6.1(c)(i). Therefore, this recommended decision does not address Section 6.1(c)(ii).

In order to meet the burden to raise an issue that might overcome the presumption that the designation is proper, an Objector must provide specific examples to negate each of the tests set out in Section 6.1(c). If even one of the three tests is met, then the Objector has not sufficiently raised an issue, and the designation is proper. Ill. Dep’t Cent. Mgmt. Serv., 30 PERI ¶ 85.

The first test under Section 6.1(c)(i) is substantively similar to the traditional test for managerial exclusion articulated in Section 3(j). To illustrate, Section 6.1(c)(i) provides that a position authorizes an employee in that position 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.” 5 ILCS 315/6.1(c)(i).

Though similar to the Act’s general definition of managerial employee in Section 3(j), 5 ILCS 315/3(j), the Section 6.1(c)(i) definition is broader in that it does not include a predominance element and requires only that the employee is “charged with the effectuation” of policies not that the employee is responsible for **directing** the effectuation. An employee **directs** the effectuation of management policy when he/she oversees or coordinates policy implementation by developing the means and methods of reaching policy objectives, and by determining the extent to which the objectives will be achieved. Ill. Dep’t Cent. Mgmt. Serv. (Ill. State Police), 30 PERI ¶ 109 (IL LRB-SP 2013) (*citing* Cnty. of Cook (Oak Forest Hospital) v. Ill. Labor Rel. Bd., 351 Ill. App. 3d at 387); INA, 23 PERI ¶ 173 (IL LRB-SP 2007). However, in order to meet the first test set out in Section 6.1, a position holder need not develop

⁵ Section 6.1(c) reads in full as follows:

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.

5 ILCS 315/6.1(c).

the means and methods of reaching policy objections. It is sufficient that the position holder is charged with carrying out the policy in order to meet its objectives.

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

The second test under Section 6.1(c)(i) indicates that a designation is proper if the position holder “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(c)(i). This second test allows a position to be designated upon a showing that it either (a) takes discretionary actions that effectively control or implement agency policy or (b) effectively recommends such discretionary actions.

D. The designation of the PSA-Option 8L position held by Susan Bradshaw is proper.

Bradshaw’s position is designated under Section 6.1(b)(5), and CMS asserts that it meets the 6.1(b)(5) requirement as further defined by Section 6.1(c)(i). Bradshaw contends in her AFSCME Information Form that the issues in this case “have been litigated,” and attaches the Recommended Decision and Order and Board decision in the underlying representation petition. AFSCME argues in its objections that Section 6.1(c) of the Act applies the same standard that was analyzed and applied in the underlying representation petition. AFSCME argues that the designation is improper because the Board has already determined that Bradshaw’s position was not engaged in executive or management functions, did not perform a “core function” of the agency, and that Bradshaw did not effectively recommend discretionary actions because her recommended decisions travel through a number of levels of supervision before finalized.

Bradshaw states in her information form that all she does “is hearings and decisions.” In response to AFSCME’s inquiry about whether she writes policies or recommends the adoption of policies, Bradshaw responds that she “write[s] admin[istrative] decisions approved by [the] Sec[retary],” and directs the Board’s attention to the decision in case number S-RC-08-154, Bradshaw Case, 28 PERI ¶ 126. Likewise, in its objection, AFSCME relies on the decision and order in the underlying representation petition to support its contention that “Bradshaw takes issue with the statement that she acts with significant independent discretion or engages in executive or management functions.”

AFSCME’s argument neglects two key facts. First, unlike the 3(j) managerial test that was used to determine the propriety of Bradshaw’s inclusion in 2012, Section 6.1 does not contain a “predominance” requirement. Second, Bradshaw’s position description was updated in June 2013, more than a year after the Board’s decision in the underlying representation petition. Therefore, the Board has never analyzed the duties as described in Bradshaw’s present position description. To the extent that the Board did not address any specific duty currently in Bradshaw’s position description, neither AFSCME nor Bradshaw contest the duties as described in her current position description.

1. Bradshaw’s position is appropriately designated under the first Section 6.1(c)(i) test.

“Executive and management functions” are those that specifically relate to the running of an agency including establishing policies and procedures, preparing a budget, or otherwise assuring that an agency or department runs effectively. Dep’t of Cent. Mgmt. Serv. (Pollution Control Bd.), v. Ill. Labor Rel. Bd., State Panel (“PCB”), 2013 IL App (4th) 110877 ¶ 25; Dep’t of Cent. Mgmt. Serv./ Illinois Commerce Comm’n v. Ill. Labor Rel. Bd. (“ICC”), 406 Ill. App. 766, 774 (4th Dist. 2010). In the underlying representation petition, the ALJ found that Bradshaw was not *predominantly* engaged in executive and management functions. Bradshaw Case, 28 PERI ¶ 126. Specifically, the ALJ found that Bradshaw’s involvement or participation in the executive and management function of policy development through providing suggestions or input to her superior was “sporadic or occasional;” thus, it was not sufficient to support that the position was managerial under 3(j). The Board relied on the ALJ’s analysis to find that Bradshaw is not engaged *predominantly* in executive and management duties. Bradshaw Case, 28 PERI ¶ 126 (emphasis added). However, no such predominance requirement exists in Section

6.1.

In the present case, Bradshaw states generally that she does not perform policy advice duties, but does not address the duties outlined in her current position description, which include the following:

- reviews, establishes, or modifies all the practices, procedure and policies to operate the Hearings Unit;
- confers and advises management on policy, legal, or administrative problems related to the appeals process;
- plans, evaluates, develops, and validates appeals process standards, policies, methods, techniques, and procedures; and assists in their implementation.

Neither AFSCME nor Bradshaw deny that her position is authorized to perform these functions, or otherwise identify that her authority to carry out these duties have been limited in some way.

By identifying problems with the hearings process; advising management of these problems; developing process standards, policies, and procedures; and assisting in the implementation, Bradshaw's position is authorized to engage in executive and management functions that work to ensure that the Department runs efficiently. Therefore, the designation of her position is appropriate under the first test in Section 6.1(c)(i) if it is also authorized to effectuate Department policies and practices.

The ALJ in the underlying representation case found that in drafting recommended decision and reports, Bradshaw applies and carries out a variety of DHS policies and rules, but notes that she is not independently responsible for formulating the policies or rules. However, the Act, and Section 6.1 in particular, does not require a person to exercise exclusive authority in the effectuation of management policies. *See Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd.*, 2011 IL App (4th) 090966 at ¶ 186 (4th Dist. 2011)(Where employees implement management policies and practices, the fact that they “do not do so ‘independently’ is unimportant, given that the Act does not require such independence in management functions.”).

Accordingly, I find that the designation of Bradshaw's position is proper in that the position is authorized to perform executive and management functions and is charged with the effectuation of Department policies and practices.

2. Bradshaw's position is appropriately designated under the second Section 6.1(c)(i) test.

Under the second Section 6.1(c)(i) test, the designation of Bradshaw's position is appropriate if it represents management interests by either (a) taking discretionary actions that control or implement agency policy or (b) effectively recommending such discretionary actions. Applying this standard to Bradshaw's uncontested duties related to holding hearings and recommending decisions for the Secretary's approval reveals that her designation is appropriate. The designation is proper, because she both takes discretionary actions and effectively recommends discretionary actions that implement agency policy.

DHS administers a number of programs and has an inherent interest in those programs running correctly. By adjudicating disputes arising in the programs Bradshaw is representing management's interests. Neither AFSCME nor Bradshaw deny that in conducting administrative hearings her position is authorized to take discretionary actions in determining how to coordinate assigned hearings and appeals, whether and how to hold informal conferences, and disposing of procedural requests and motions.

Further, the ALJ found that Bradshaw's recommendations to the Secretary were effective, in that Bradshaw's recommendations had only been "overturned" three times in three and a half years. Bradshaw Case, 28 PERI ¶ 126. However, the ALJ reasoned that the ALJ's authority was predominately limited to non-managerial responsibilities. Bradshaw Case, 28 PERI ¶ 126. AFSCME notes in its objections that Bradshaw's recommendations go through levels of approval prior to the Secretary's approval. *But see ICC*, 406 Ill. App. 3d at 777 (The test to determine whether a recommendation is effective is not the presence or absence of review, but rather the "effectiveness, power, or influence of the recommendation"). The Board questioned the extent to which Bradshaw's recommendations were altered prior to submission for Secretary approval; therefore, they were unwilling to rely on this element to find that Bradshaw was a managerial employee under Section 3(j). The Board found that the employer had failed to meet its burden on this point. Bradshaw Case, 28 PERI ¶ 126. Of course, the presumption of appropriateness found in Section 6.1(d) results in a different burden in gubernatorial designation proceedings than in representation cases under Section 3(j). Here, CMS has presented evidence that Bradshaw makes recommendations that effectively control the implementation of Department policies. Bradshaw and AFSCME counter that assertion only by

pointing to the underlying representation case, which analyzed a prior position description and applied a different standard.

The Board ruled that she was not a managerial employee *under Section 3(j)*, because Bradshaw's recommendations did not control broad managerial tasks through her case determination. Bradshaw Case, 28 PERI ¶ 126 (emphasis added). However, in the context of a gubernatorial designation under Section 6.1, a position need not necessarily control broad managerial tasks where the effective recommendations implement the policy of the agency. Bradshaw implements the Department's administrative hearing policies, and both the ALJ and the Board in the underlying case found that Bradshaw implements a variety of agency policies in the context of the cases she adjudicates.

Accordingly, I find that the designation of Bradshaw's position is also proper under the second test set out in Section 6.1(c)(i), as she takes and recommends discretionary actions that effectively implements the Department's policies.

III. CONCLUSIONS OF LAW

The Governor's designation in this case is properly made.

IV. RECOMMENDED ORDER

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

<u>Position No.</u>	<u>Incumbent</u>	<u>Working Title</u>
37015-10-17-500-00-01	Susan Bradshaw	Administrative Law Judge

V. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300,⁶ parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than three 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 its e-mail address as indicated on the designation form. Any exception to a ruling, finding, conclusion or

⁶ Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf

recommendation that is not specifically urged shall be considered waived. A party not filing timely exceptions waives its right to object to this recommended decision and order.

Issued at Springfield, Illinois, this 14th day of March, 2014.

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

Sarah R. Kerley

**Sarah Kerley
Administrative Law Judge**