

**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-14-227
	)	
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 24, 2014, Administrative Law Judge (ALJ) Thomas R. Allen 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 8S.<sup>1</sup> It has the working title of Associate Director of Social Work and is held by Yolanda Jackson. It was designated for

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<sup>1</sup> CMS regulations classify of a Public Service Administrator position as Option 8S if it requires a “Special License - Social Worker/Clinical Social Worker.” 80 Ill. Admin. Code 310.50.

exclusion pursuant to Section 6.1(b)(5) of the Act, which allows designation of positions with “significant and independent discretionary authority.”<sup>2</sup>

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 the position. The ALJ declined to address the constitutional objections, rejected the other generally applicable and specific objections and found that the position met the requirements of Section 6.1(b)(5) of the Act and thus was properly designated.

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

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<sup>2</sup> 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.

/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 in Chicago, Illinois, on April 15, 2014;  
written decision issued at Springfield, Illinois, April 28, 2014.

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

State of Illinois, Department of Central	)	
Management Services (Department of	)	
Human Services),	)	
	)	
Petitioner	)	
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and	)	
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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 (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 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 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.<sup>1</sup>

As noted, Public Act 97-1172 and Section 6.1 of the 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.

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<sup>1</sup> 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.

Reg. 14,070 (September 6, 2013). These rules are contained in Part 1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On February 26, 2014, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation pursuant to Section 6.1 of the Act and Section 1300.50 of the Board's Rules. The designation pertains to a position within the Department of Human Services. On March 10, 2014, the 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. Based on my review of the designation, the documents submitted as part of the designation, the objections, and the documents and arguments submitted in support of those objections, I find the designation to have been properly submitted and consistent with the requirements of Section 6.1 of the Act and consequently I recommend that the Executive Director certify the designation of the position 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 the following position within any collective bargaining unit:

**Associate Director of Social Work** (position no. 37015-10-82-481-00-21)(Yolanda Jordan).

**I. AFSCME's Objections**

AFSCME makes several general objections regarding the Act, along with several general objections regarding this designation. AFSCME also specifically objects to the designation of the position held by Yolanda Jordan. Generally, the Objector claims Section 6.1 of the Act violates the separation of powers doctrine established by the Illinois Constitution. AFSCME alleges that the legislature has improperly delegated its power to exclude or include employees from the Act to the Governor by giving the Governor the power to make changes to a law without any standards. AFSCME also claims that Section 6.1 of the Act violates the promise of equal protection under Article I, Section 2 of the Illinois Constitution. The Objector alleges the Act denies employees equal protection because the Governor can remove some positions from the Act while leaving identical positions without giving any rational basis for the decision. Finally, AFSCME claims that Section 6.1 of the Act violates Article I of the Illinois Constitution prohibiting the impairment of contracts because the employee designated is the beneficiary of a collective bargaining agreement.

AFSCME claims that this designation does not fully comply with the requirements of Section 6.1 of the Act. AFSCME alleges that Section 6.1(b)(5) requires CMS to provide a list of job duties for each designated employee but the designation only includes the position description and an affidavit regarding the employee's job duties. They claim that this is insufficient to show that the designated employee has actual authority to perform the duties listed in her position description because those duties are only potential responsibilities while the employee's actual duties are assigned at her supervisor's discretion. AFSCME alleges that the affidavit simply states legal conclusions and does not provide any evidence regarding the employee's authority or discretion in exercising her job duties. Ultimately, AFSCME claims that the evidence provided is insufficient to show that the designated employee has discretion to act with independent judgment.

AFSCME claims that the designated employee is not supervisory or managerial under the National Labor Relations Act (NLRA), as it claims is required by Section 6.1(b)(5). AFSCME alleges that CMS presented no evidence that the designated employee exercises any of the job duties in the position description or that she was told or authorized to use her discretion to alter the adoption of management policies with independent discretionary authority. AFSCME claims that NLRA case law requires the party raising the exclusion, here CMS, to bear the burden of proof on two matters. First, they allege that the definition of "significant independent authority" in Section 6.1 of the Act is similar to the manager and supervisor definitions under the NLRA. Therefore, AFSCME claims that NLRA case law requires CMS to bear the burden of proof. Also, AFSCME alleges that the supervisory exclusion under the NLRA is dependent on facts, so therefore, CMS must demonstrate that the designated employee has actual authority to act or effectively recommend one of the 11 supervisory functions with independent judgment. Finally, AFSCME claims that there is a distinction between professional and managerial employees under both the Act and the NLRA. AFSCME asserts that the employee at issue here exercises professional discretion rather than managerial discretion and a fact-intensive inquiry is necessary to determine what type of discretion the employee exercises.

AFSCME notes that the designated position was certified in Case No. S-RC-10-176, CMS has not shown that the designated employee's job duties have changed and there is no rational basis for treating this position differently from many other positions that hold the same title and/or have similar job duties. AFSCME claims that there must be a hearing to determine

whether there is any legal basis for excluding this position and to consider the effect of the exclusion of this position. The Objector alleges that designating this position without a hearing violates the due process rights guaranteed in Section 6.1 of the Act.

AFSCME specifically objects to the designation of the position held by Yolanda Jordan. AFSCME claims that Jordan's position is not properly designated under Section 6.1(b)(5) because she has no authority to exercise any of her job duties with independent judgment. AFSCME alleges that all of Jordan's job duties are undertaken at the direction of her supervisor. It claims that this means that Jordan does not have the authority to exercise any supervisory or managerial functions with independent judgment.

## **II. Discussion and Analysis**

### **a. Procedural**

AFSCME raises three general objections to this designation, claiming that Section 6.1 of the Act violates the Illinois Constitution. However, the Board has held that it is beyond its 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 Illinois, Department of Central Management Services, 30 PERI ¶ 80 Cons. Case Nos. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013) citing Goodman v. Ward, 241 Ill. 2d 398, 411 (2011). In Case No. S-DE-14-005 the Board expressed its concern with AFSCME's due process arguments but maintained that it has taken necessary measures to prevent a violation of such.<sup>2</sup> Therefore, AFSCME's due process rights have not been violated by the Board following the policies and procedures mandated by the legislature.

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<sup>2</sup> The Board found in Case No. S-DE-14-005, issued October 7, 2013, that, consistent with the 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." See Arvia v. Madigan, 209 Ill. 2d 520 (2004), and Gruwell v. Ill. Dep't of Financial and Professional Regulations, 406 Ill. App. 3d 283, 296-8 (4th Dist. 2010). Additionally, the Board found that it has "allowed an opportunity to appeal those recommendations for consideration to 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, 30 PERI ¶ 80 Cons. Case Nos. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013).

b. Substantive

AFSCME makes several claims asserting that the burden of proof should be shifted from the Objector (AFSCME) to the Petitioner (CMS) in certain portions of this case. In representation cases under Section 9 of the Act, the burden of proof is on the employer seeking to exclude employees from bargaining units because this burden is “in accordance with the State's public policy, determined by the legislature, which is to grant public employees full freedom of association, self-organization, and designation of representatives of their own choosing.” Chief Judge of the Cir. Court of Cook Cnty., 18 PERI ¶ 2016 (IL LRB–SP 2002); see Ill. Dep’t of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App (4th) 090966. As indicated, Section 6.1 of the Act, which was added to the Act in 2013 when the legislature passed Public Act 97-1172, allows the Governor to exclude certain public employment positions from collective bargaining rights which might otherwise be granted under the Illinois Public Labor Relations Act. Section 6.1(d) of the Act provides that any designation made under Section 6.1 “shall be presumed” proper, and the categories eligible for designation “do not expand or restrict the scope of any other provision” of the Act.

Here, since it is clear that the legislature was aware that the policy of Section 6.1 is diametrically opposite from the rest of the Act, the purposes of each must be treated as separate and distinct policies. The 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 Cent. Mgmt. Serv. (Ill. State Police) and Am. Fed’n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 109 (IL LRB-SP 2013) appeal pending, No. 13-3600 (Ill. App. Ct. 1st Dist.). Here, because the Objector is opposing the State’s public policy as stated in Section 6.1 of the Act, the objecting party bears the burden to demonstrate that the employees at issue are not eligible for designation. Section 6.1(d) provides that “[a]ny designation made by the Governor under this Section shall be presumed to have been properly made.” In order to overcome this presumption, or even raise an issue that might overcome the presumption, the objecting party must provide specific examples for every employee at issue, demonstrating that the employee does not properly qualify for designation under the submitted category. See Id. (citing State of Ill. Dep’t of Cent. Mgmt. Serv., 24 PERI ¶ 112 (IL LRB-SP 2008)). If the objector fails to even raise an issue that might overcome the presumption that the designation is proper, then the State prevails absent a hearing. See Rules Section 1300.60(d)(2)(B).

As noted, AFSCME generally claims that this designation does not fully comply with the requirements of Section 6.1 of the Act because CMS is required to provide more than the position description and an affidavit to show the job duties of the designated employee. AFSCME alleges that the position description only lists potential responsibilities and does not demonstrate that the designated employee has actual authority to complete those job duties. However, this does not render the designation inappropriate because the Board has previously determined that CMS-104s are sufficient to meet the “job duties” requirement of Section 6.1 of the Act. See Ill. Dep’t Cent. Mgmt. Serv. (Dep’t of Revenue) and Am. Fed’n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 110 (IL LRB-SP 2013), appeal pending, No. 13-3601 (Ill. App. Ct. 1st Dist.); 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.).

As indicated above, AFSCME also alleges that the position designated in this petition was certified in a bargaining unit in Case No. S-RC-10-176 and CMS has not shown that the employee’s job duties have changed. However, this objection does not recognize, as the Board has, that “Section 6.1 is a new creation. It does not modify pre-existing means of determining collective bargaining units, but is a self-contained and entirely new means of decreasing the number of State employees in collective bargaining units.” 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). Thus, certification of positions into bargaining units under the Act prior to the addition of Section 6.1 does not prevent the legislature from subsequently amending the Act to provide for the removal of these employment positions from the bargaining unit. Id.

The objections that the position at issue is neither that of a supervisor or manager under the NLRA fail to raise an issue that might overcome the presumption that the designation is proper because Section 6.1 of the Act does not incorporate the NLRA definition of manager, and AFSCME provides no evidence to negate the presumption that the designation is proper. Proper designation under Section 6.1(b)(5) requires the employees at issue to be authorized to exercise “significant independent discretion” as managers defined by Section 6.1(c)(i) of the Act, or as supervisors defined by Section 6.1(c)(ii) of the Act, incorporating Section 152 of the NLRA, 29 U.S.C § 152. Ill. Dep’t Cent. Mgmt. Serv. (Dep’t. of Revenue) and Am. Fed’n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 110 (IL LRB-SP 2013).

As indicated, 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. In its petitions, CMS contends that the at-issue positions confer on the position holder “significant and discretionary authority” as further defined by either Section 6.1(c)(i) or both Sections 6.1(c)(i) and (ii).

In order to meet the burden to raise an issue that might overcome the presumption that the designations are proper, the objector must provide specific examples to negate each of the three tests set out in Section 6.1(c). If even one of these tests is met, then the objector has not sufficiently raised an issue, and the designations are 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 exclusions 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 a 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 or she oversees or coordinates policy implementation by developing the means and methods of reaching policy objectives, and by determining the extent to which the objectives will be achieved. Ill. Dep’t 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(c), a position holder need not develop 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 or she “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 (1<sup>st</sup> 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) also relates to the traditional test for managerial exclusion because it reflects the manner in which the courts have expanded that test. A designation is proper under this test if the position holder “represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency.” 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 Nat’l Labor Rel. Bd. v. Yeshiva Univ. (“Yeshiva”), 444 U.S. 672 (1980). Dep’t of Cent. Mgmt. Serv./ Illinois Commerce Com’n v. Ill. Labor Rel. Bd. (“ICC”), 406 Ill. App. 3d 766, 776 (4<sup>th</sup> Dist. 2010)(*citing Yeshiva*, 444 U.S. at 683). Further, the Court noted that the ILRB, like its federal counterpart, “incorporated ‘effective recommendations’ into its interpretation of the term ‘managerial employee.’” ICC, 406 Ill. App. at 776. Indeed, the Court emphasized that “the concept of effective recommendations... [set forth in Yeshiva] applies with equal force to the managerial exclusion under the Illinois statute.” Id.

In light of this analysis, the second test under Section 6.1(c)(i) is similar to the expanded traditional managerial test because it is virtually identical to the statement of law in Yeshiva which the Illinois Appellate Court and the Illinois Supreme Court have incorporated into the traditional managerial test. Id. (*quoting Chief Judge of the Sixteenth Judicial Circuit v. Ill. State Labor Rel. Bd.*, 178 Ill. 2d 333, 339-40 (1997)).

Section 6.1(c)(ii) of the Act provides that an employee is a supervisor eligible for exclusion if the employee 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), or any orders of the National Labor Relations Board 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).

Employees are supervisors if (1) they hold the authority to engage in any of the above 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. Ill. Dep’t Cent. Mgmt. Serv. (Dep’t of Veterans Affairs) and Am. Fed’n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 111 (IL LRB SP-2013) (citing NLRB v. Kentucky River Comm. Care, Inc., 532 U.S. 706, 713 (2001)); see also Oakwood Healthcare, Inc., 348 NLRB 686, 687 (2006). Independent judgment within the meaning of the NLRA involves a degree of discretion that rises above the “routine and clerical,” and is personal judgment based on personal experience, training, and ability. Id. at 693. Judgment is not independent if it is controlled by a higher authority, such as verbal instructions, or detailed instructions or regulations. Id.

In order to meet the burden to raise an issue that might overcome the presumption that the designation is proper, the objector must provide specific examples to negate each test, because 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. and Am. Fed’n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 85 (IL LRB-SP 2013).

In order to raise an issue that the employee at issue is not managerial, the objector must negate both managerial tests for each employee at issue. Id. To negate the first managerial test the objector must demonstrate, or effectively argue that the employee does not meet at least one of the elements of the test. Id. It can do this by demonstrating that the employee is not engaged in

executive and management functions, or that the employee is not responsible for the effectuation of management policies and practices of the Agency. Id. In order to negate the second managerial test, the objector must demonstrate that the employee does not actually provide any recommendations regarding the effectuation of management policies, or that its recommendations are not “effective” because the recommendations do not almost always persuade the decision-maker. Id.

In order to raise an issue that the employee at issue is not a supervisor under Section 6.1 of the Act, the objector must negate at least one of the three prongs of the supervisor test. Ill. Dep’t Cent. Mgmt. Serv. (Dep’t of Veterans Affairs) and Am. Fed’n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 111 (IL LRB-SP 2013). Negating the first prong may prove to be the most tedious, because it only requires that the employee hold the authority to engage in *any one* of the listed supervisory functions. Id. In order to negate this prong, the objector must provide specific examples where the employee was directed not to engage in the supervisory function. The objector must provide the example for every indicia listed. Id. To negate the second prong, the objector must demonstrate or effectively argue that the employee does not use independent discretion in exercising the supervisory duties. Id. In order to negate the third prong of the supervisory test the objector must demonstrate or effectively argue that the employee’s authority to engage in the supervisory functions is not held in the interest of the employer, that it is done to benefit the employee or some third party. Id.

i. Yolanda Jordan

AFSCME does not overcome the statutory presumption that Jordan’s position is managerial under Section 6.1(c)(i) of the Act because it fails to negate the first management test. CMS states that Jordan’s position is eligible for designation under Section 6.1(b)(5) because she is in charge of effectuating the agency’s policies by organizing, implementing and evaluating social work services as well as developing and coordinating special behavioral program interventions. Jordan’s position description states that she provides clinical supervision and consultation to social workers regarding patients. Jordan’s own statements confirm that she reviews patient charts and monitors clinical services to patients at the direction of her supervisor, the Director of Social Work. Jordan also states that she follows up with programming issues, initiative or program changes as the Director recommends. AFSCME objects to the designation of Jordan’s position, stating that she does not exercise significant independent judgment because

she undertakes all managerial functions at the direction of the Director of Social Work. However, it is highly unlikely that the Director's instructions restrain Jordan's decision making enough to take away all independent judgment and discretion she would otherwise have when providing clinical support to social workers and following up on programming issues, initiative or program changes. It is far more likely that Jordan must use her independent judgment to ensure that the agency's clinical policies are properly implemented by her subordinate social workers. The first management test under Section 6.1(c)(i) does not require the employee to develop the means and methods of reaching the agency's objectives. The employee only needs to perform duties that carry out a mission of the agency with independent judgment and discretion. In this case, the burden of proof is on the Objector to refute the Petitioner's designation with specific examples of situations where the employee has not been allowed to use independent judgment and discretion. Here, there are several situations where it is reasonable that Jordan would need to use independent judgment and discretion when implementing policies to ensure that the clinical staff operates effectively. Therefore, AFSCME fails to overcome the presumption that the designation of Jordan's position is proper under section 6.1(b)(5) of the Act.

### **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 in the Department of Human Services is excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

**Associate Director of Social Work** (position no. 37015-10-82-481-00-21)(Yolanda Jordan).

### **V. Exceptions**

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300<sup>3</sup>, 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. Exceptions must be filed by electronic mail to [ILRB.Filing@illinois.gov](mailto:ILRB.Filing@illinois.gov). Each party shall serve its exceptions on the other parties. A

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<sup>3</sup> Available at [www.state.il.us/ilrb/subsections/pdfs/Section](http://www.state.il.us/ilrb/subsections/pdfs/Section) 1300 Illinois Register.pdf

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 24<sup>th</sup> day of March, 2014.**

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

*Thomas R. Allen*

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**Thomas R. Allen  
Administrative Law Judge**