

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

State of Illinois, Department of Central	)	
Management Services (Department of	)	
Human Services),	)	
	)	
Petitioner	)	
	)	Case Nos. S-DE-14-039
and	)	S-DE-14-040
	)	S-DE-14-041
American Federation of State, County and	)	S-DE-14-042
Municipal Employees, Council 31,	)	S-DE-14-043
	)	S-DE-14-044
Labor Organization-Objector	)	S-DE-14-045
	)	
and	)	
	)	
Maureen Haugh-Stover,	)	
Employee-Objector	)	

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

Section 6.1 of the Illinois Public Labor Relations Act, 5 ILCS 315/6.1 (2012), added by Public Act 97-1172, 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. Section 6.1 and Public Act 97-1172 became effective on April 5, 2013 and allow the Governor 365 days from that date to make such designations. The Illinois Labor Relations Board (Board) promulgated emergency rules to effectuate Section 6.1 that became effective on April 22, 2013, 37 Ill. Reg. 5901 (May 3, 2013). In addition, the Board promulgated permanent rules for the same purpose that became effective on August 23, 2013, 37 Ill. Reg. 14070 (Sept. 6, 2013). Those rules are contained in Part 1300 of the Board’s Rules and Regulations, 80 Ill. Admin. Code Part 1300.

There are three broad categories of positions which may be designated: (1) positions which were first certified to be in a bargaining unit by the 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. Moreover, to be properly designated, the position must fit one or more 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 (SPSA), 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 Illinois Public Labor Relations 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 order

of the National Labor Relations Board interpreting that provision or decisions of courts reviewing decisions of the National Labor Relations Board.<sup>1</sup>

On August 14, 2013, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the seven above-captioned designations pursuant to Section 6.1 of the Illinois Public Labor Relations Act and Section 1300.50 of the Board's rules. All of the petitioned-for positions in those cases are affiliated with the Illinois Department of Human Services and, accordingly, those cases have been consolidated. On August 28, 2013, Maureen Haugh-Stover, a petitioned-for ("incumbent") employee, filed an objection to a petitioned-for exclusion in Case No. S-DE-14-042. Subsequently, on September 5, 2013, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed objections to all seven of the above-captioned designations. All of the objections were filed pursuant to Section 1300.60(a)(3) of the Board's rules.

## **I. DISCUSSION AND ANALYSIS**

Section 6.1(b) of the Illinois Public Labor Relations Act requires the Board to determine, in a manner consistent with due process, whether each designation comports with the requirements of Section 6.1 (and do so within 60 days). Notably, Section 6.1(d) creates a presumption that a designation made by the Governor was properly made. In this instance, CMS asserts that the statutory category under which the positions at issue in the above-captioned cases qualify for designation is Section 6.1(b)(2). Specifically, CMS asserts that the positions at issue have the title of SPSA. In their objections, AFSCME and Haugh-Stover object to the applicable

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<sup>1</sup> 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. Separately, I note that Public Act 98-100, which became effective July 19, 2013, added subsections (e) and (f) to Section 6.1. Those subsections shield certain specified positions from such designations, but none of those positions are at issue in this case.

designations, but do not squarely dispute the assertion that the positions at issue are in fact classified as SPSA positions. By failing to do so, the objections do not address the primary issue in this instance and do not rebut the presumption of Section 6.1(d). Accordingly, I find that the Governor's designations were properly made. I also find no compelling reason to conduct a hearing in this instance.

When Haugh-Stover objects to the exclusion of her position (as sought in Case No. S-DE-14-042), Haugh-Stover largely appears to argue that, although she may technically be classified as an SPSA, because of an assortment of alleged factors, she should not be so classified.<sup>2</sup> However, significantly, Section 6.1 does not mandate that the Board investigate whether a selected position has been properly classified as an SPSA position. Instead, in this instance, it appears that the Board must simply determine whether a selected position is actually classified as an SPSA position. Haugh-Stover does not dispute that particular issue. Indeed, she confirms that she is classified as an SPSA.

Haugh-Stover also suggests that the Board cannot sufficiently consider a position's duties and activities from a position description that, according to Haugh-Stover, simply provides a "broad overview" of a position's job functions and does not meaningfully detail what "level of administrative decisions are made" or a position's "independent decision making or independent authority." According to Haugh-Stover, that sort of information can only come from the employee occupying the position at issue. While Haugh-Stover's argument rings true to a degree, it overlooks the unique presumption mandated by Section 6.1(d). Moreover, as suggested by the foregoing, because the petition of Case No. S-DE-14-042 merely seeks to

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<sup>2</sup> Haugh-Stover comments that, while her position statement suggests otherwise, she has not been involved with "budgetary processes." She also asserts that, in her agency's organizational chart, she is ranked below other SPSAs and is parallel to Public Service Administrators who allegedly "have the same level of decision making/authority" as she does. In addition, Haugh-Stover suggests that she reports to another SPSA and that any decisions that she makes "that are of any significance" are always reviewed by the other SPSA.

exclude her position by its actual title, the Board need not conduct a meaningful analysis or audit of her actual duties and activities at this time. Accordingly, the possibility that Haugh-Stover's position description is partially inaccurate is largely irrelevant.

AFSCME makes similar arguments in its own objection. Specifically, AFSCME contends that a host of positions at issue in this instance "are not appropriately classified as SPSA positions and therefore should not be excluded just based on the title assigned to the position." According to AFSCME, "actual duties should play a significant role in the designation process." Moreover, like Haugh-Stover, AFSCME suggests that the actual job duties of a position cannot be determined based on a "104" (i.e., a CMS position description) alone. Those arguments are largely at odds with the language of Section 6.1(b)(2), which appears to allow a selection of a position based on title alone.<sup>3</sup> Thus, in this specific context, the "actual job duties" of the positions at issue (or their colleagues) are irrelevant.<sup>4</sup>

In addition to the foregoing, AFSCME asserts that, although the Board's General Counsel granted AFSCME "some additional time" to file objections, the failure to provide AFSCME with "sufficient additional time" to respond to the above-captioned designations did not provide the "due process" required by the language of Section 6.1. I sympathize with AFSCME's difficult circumstances. That being said, one must also recognize that Section 6.1(b) clearly mandates that the Board shall determine whether a designation comports with the requirements of Section 6.1 within 60 days after the Governor makes a designation. That "condensed timeline" reasonably justifies the standard 10-day filing period provided by Section 1300.60(a)(3) of the Board's rules. To some extent, it also effectively necessitates that the Board and its agents grant

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<sup>3</sup> While I would grant that Section 6.1 of the Illinois Public Labor Relations Act and Section 1300.50(a) of the Board's rules require CMS to provide a position's "job duties," neither authority overtly requires the level of precision demanded by AFSCME's objection.

<sup>4</sup> Likewise, I also recommend that the Board need not, at this time, consider whether there has been an "erosion of non-SPSA bargaining unit work" or whether CMS has appropriately handled a petitioned-for employee's grievance.

extensions or variances as seldom as reasonably possible. The fact that CMS has opted to designate a large number of employees for exclusion in a relatively short period of time does not free the Board from the requirements of Section 6.1.

AFSCME also bemoans “the lack of any procedure to obtain any additional information” and “the time lapse between the filing of any petition by AFSCME and the filing of the designation petition.” While I would grant, for example, that the rules do not provide objectors an obvious method for acquiring subpoenas prior to the filing of an objection, here, it generally appears that AFSCME simply needed to determine whether the positions at issue in the above-captioned cases were in fact classified as SPSA positions. Presumably, AFSCME did not need a considerable amount of time or information in order to make that determination.

Notably, a position’s classification is quite often readily discoverable via publically-accessible online databases such as the State of Illinois Transparency & Accountability Portal. Likewise, I suspect that AFSCME could have discovered similar information via a Freedom of Information Act request. I would also posit that AFSCME is likely to already know a position’s title when it has previously petitioned to represent that position. Separately, I note that, in its objections, AFSCME overtly admits that many of the positions at issue in this case are classified as SPSA positions. To some degree, that kind of admission further suggests that AFSCME had access to the basic information it needed to appropriately respond to the designation petitions at issue.

AFSCME separately suggests that CMS has provided insufficient information in support of its exclusions. It also suggests that CMS’ attachments inaccurately state that certain positions are not subject to an active petition. According to AFSCME, CMS should have indicated that

position nos. 40070-10-40-140-00-01 (James Giganti<sup>5</sup>) and 40070-10-64-140-00-01 (Steven Washburn) are actually affiliated with Case No. S-RC-10-220 (a case that addresses SPSA, Option 3 positions).<sup>6</sup> AFSCME also asserts that position nos. 40070-10-70-300-10-21 (Emmy Florence Bactol-Henry), 40070-10-72-310-00-21 (Deon Myles<sup>7</sup>), 40070-10-75-002-03-20 (Jennifer Gill)<sup>8</sup>, 40070-10-80-200-40-01 (Stacy Willyerd<sup>9</sup>), 40070-10-80-400-15-01 (Linda Parsons), 40070-10-81-400-00-21 (Ginette Leinbach), and 40070-10-82-500-00-21 (Robert Petkofski)<sup>10</sup> are actually affiliated with Case No. S-RC-11-014 (a case that addresses SPSA, Option 8N positions).<sup>11</sup> In sum, I recommend that the insufficiencies and inaccuracies asserted by AFSCME do not render the instant petitions invalid.

In order to properly designate a State employment position under Section 6.1, CMS must simply provide (1) the job title and job duties of the employment position; (2) the name of the State employee currently in the employment position, if any; (3) the name of the State agency employing the public employee; and (4) the category under which the position qualifies for designation. CMS has provided that information. While it is true that Section 1300.50(b) of the Board's rules asserts that a failure to "fully complete" a designation form "could result in rejection of the filing of the designation by the Board," I submit that a rejection is unnecessary in this instance, especially when (1) AFSCME is evidently aware of the information it asserts AFSCME has omitted and (2) AFSCME does not dispute that the petitioned-for positions are in fact classified as SPSA positions.

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<sup>5</sup> AFSCME incorrectly lists the employee's name as "James Jiganti."

<sup>6</sup> AFSCME concedes that those positions are "SPSA Opt 3 positions."

<sup>7</sup> AFSCME incorrectly lists the employee's name as "Dean Myles."

<sup>8</sup> AFSCME incorrectly lists the position no. as 40070-10-75-002-03-02.

<sup>9</sup> AFSCME incorrectly lists the employee's name as "Stacy Willyard."

<sup>10</sup> AFSCME incorrectly lists the position no. as 40070-10-85-500-00-21

<sup>11</sup> AFSCME concedes that those positions are "SPSA 8N positions."

## **II. CONCLUSION OF LAW**

Based on my review of the designations, the documents submitted as part of the designation, the objections, and the documents and arguments submitted in support of those objections, I find the instant designations to have been properly submitted and consistent with the requirements of Section 6.1 of the Illinois Public Labor Relations Act.

## **III. RECOMMENDED ORDER**

Unless this Recommended Decision and Order Directing Certification of the Designation is rejected or modified by the Board, the following positions with the 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 Number</u>	<u>Working Title</u>
40070-10-00-000-10-01	
40070-10-00-000-11-02	
40070-10-00-000-11-03	
40070-10-00-000-12-29	Director of GONA
40070-10-00-200-00-01	Open Door Manager
40070-10-00-300-00-01	
40070-10-00-310-00-01	
40070-10-00-410-00-01	
40070-10-00-500-00-01	Chief Operations Officer
40070-10-00-510-00-01	Director of CSEP
40070-10-00-700-00-01	Agency Procurement Officer
40070-10-00-810-00-01	
40070-10-00-820-00-01	Evaluation, Knowledge Dissemination & Technology Transfer Manager
40070-10-02-000-00-01	Senior Policy Advisor
40070-10-04-000-00-01	Contract Administration Director
40070-10-04-200-00-01	
40070-10-04-300-00-01	
40070-10-07-000-00-01	

40070-10-07-100-00-01	
40070-10-07-160-00-01	
40070-10-07-300-00-01	
40070-10-07-350-00-01	
40070-10-07-400-10-01	
40070-10-07-700-00-01	
40070-10-07-700-10-01	Assistant Bureau Chief
40070-10-08-400-00-02	
40070-10-08-500-00-01	Bureau Chief of Transitional Services/Budget
40070-10-08-600-00-01	
40070-10-10-000-00-01	Bureau Chief
40070-10-10-100-00-01	Bureau Chief
40070-10-10-150-00-01	
40070-10-10-240-00-01	Bureau Chief
40070-10-11-200-00-01	Chief, Recruit/Selection
40070-10-12-200-00-29	
40070-10-14-100-10-01	Deputy Inspector General
40070-10-14-700-00-01	Bureau Chief of Hotline and Intake
40070-10-15-000-00-01	Director
40070-10-16-300-00-01	Bureau Chief
40070-10-17-000-00-01	
40070-10-17-100-00-01	Deputy General Counsel
40070-10-17-200-00-01	Deputy General Counsel
40070-10-17-300-00-01	Deputy General Counsel
40070-10-17-400-00-01	Deputy General Counsel
40070-10-17-500-00-01	
40070-10-17-510-00-01	Bureau Chief of Administrative Rules
40070-10-17-520-00-02	
40070-10-17-530-00-01	
40070-10-17-600-00-01	
40070-10-17-700-00-01	Deputy General Counsel
40070-10-17-800-00-01	Deputy General Counsel
40070-10-17-900-10-01	Deputy General Counsel
40070-10-18-000-00-02	Director of Communications
40070-10-20-300-00-01	
40070-10-40-100-00-01	Bureau Chief of Administration and Quality Assurance
40070-10-40-140-00-01	
40070-10-40-180-00-01	

40070-10-40-240-00-01	
40070-10-40-300-00-01	Bureau Chief of Program Services
40070-10-40-500-00-01	
40070-10-40-500-10-01	Manager, Contract Management
40070-10-41-030-00-01	Disability Policy Admin
40070-10-41-100-00-29	Assistant Director
40070-10-41-140-00-01	Manager of Rehab Technology
40070-10-41-200-00-20	Superintendent of Schools
40070-10-41-300-00-01	Bureau Chief - Home Services Program
40070-10-41-310-00-01	Assistant Bureau Chief
40070-10-41-340-00-01	Assistant Bureau Chief
40070-10-41-900-00-20	VR Support Manager
40070-10-41-920-00-01	Independent Living Manager
40070-10-43-000-00-20	Superintendent of ISD
40070-10-43-200-00-20	Director of Student Life
40070-10-43-300-00-20	Assistant Superintendent
40070-10-44-000-00-01	Superintendent
40070-10-45-100-00-01	Assistant Superintendent
40070-10-45-200-00-01	Manager of Support Services
40070-10-47-000-00-01	Bureau Chief
40070-10-48-000-00-01	Assistant Bureau Chief
40070-10-49-000-00-01	Assistant Bureau Chief
40070-10-50-000-00-01	Assistant Bureau Chief
40070-10-51-000-00-01	
40070-10-55-200-00-01	
40070-10-56-000-00-01	BBS Superintendent
40070-10-64-000-10-01	Manager
40070-10-64-110-00-01	Manager - Quality Assurance and Training
40070-10-64-140-00-01	
40070-10-64-200-00-01	
40070-10-64-310-00-01	Section Chief
40070-10-64-320-00-01	Section Chief
40070-10-64-330-00-01	Section Chief
40070-10-64-340-00-01	Section Chief
40070-10-64-350-00-01	Section Chief
40070-10-64-360-00-01	Section Chief
40070-10-64-370-00-01	Section Chief
40070-10-65-900-00-01	

40070-10-66-100-00-01	Deputy Director
40070-10-66-140-00-01	Bureau Chief
40070-10-66-170-10-01	Bureau Chief
40070-10-66-200-00-01	Deputy Director
40070-10-66-200-10-01	Associate Deputy Director
40070-10-66-210-00-01	
40070-10-66-500-10-01	
40070-10-67-000-00-21	Center Director
40070-10-67-300-00-01	Director of Nursing
40070-10-68-000-00-21	
40070-10-69-200-00-21	Psyc Services Admin
40070-10-69-300-00-21	Nursing Services Admin
40070-10-69-500-00-21	Assistant Center Director
40070-10-70-100-10-21	Director of Support Services
40070-10-70-210-10-21	
40070-10-70-230-10-21	
40070-10-70-250-10-21	Unit Administrator
40070-10-70-300-10-21	Director of Nursing
40070-10-72-100-00-01	
40070-10-72-200-00-01	
40070-10-72-310-00-21	Director of Nursing
40070-10-72-400-00-01	
40070-10-72-400-00-21	40070-10-72-500-00-01
40070-10-73-000-00-01	Assistant Facility Director
40070-10-73-000-00-21	Facility Director
40070-10-74-000-35-21	Chief Psychologist
40070-10-74-050-00-21	Assistant Center Director
40070-10-74-300-00-21	Residential Serv Director
40070-10-75-002-03-20	Director of Nursing
40070-10-75-090-00-21	Clinical Director
40070-10-75-091-00-21	Assistant QA Director
40070-10-75-092-00-21	Clinical Director
40070-10-75-100-01-21	Unit Director
40070-10-75-201-01-21	
40070-10-75-202-01-21	Unit Director
40070-10-75-300-01-21	Unit Director
40070-10-75-400-01-21	Unit Director
40070-10-75-500-01-21	
40070-10-75-600-01-21	Unit Director
40070-10-75-700-01-21	Unit Director

40070-10-75-800-01-21	Unit Director
40070-10-75-900-00-21	Unit Director
40070-10-76-000-10-01	System Transformation Admin
40070-10-76-200-00-01	Bureau Chief
40070-10-76-220-00-02	
40070-10-76-320-00-01	Deputy Director
40070-10-76-321-00-01	
40070-10-76-340-00-01	Deputy Director
40070-10-76-343-00-01	
40070-10-76-500-00-01	Bureau Chief
40070-10-76-520-00-01	Network Sys & Pol Admin
40070-10-76-530-00-01	Assoc. Director of Decision Support/Research and Evaluation
40070-10-76-600-00-01	Deputy Director for Clinical Op
40070-10-76-600-20-01	Statewide Dir of Rehab Serv
40070-10-76-630-00-01	Statewide Nursing Coord
40070-10-76-640-00-01	Statewide Psychology Coord
40070-10-76-650-00-01	Statewide Soc Work Coord
40070-10-76-700-00-01	Deputy Clinical Dir MH & Justice Svc
40070-10-76-710-00-01	Assoc Dep Dir Forensic Svc
40070-10-76-730-00-01	Section Chief
40070-10-76-731-30-01	
40070-10-76-910-00-01	
40070-10-76-920-00-01	
40070-10-77-000-00-01	Regional Manager
40070-10-77-320-00-88	Clinical Director
40070-10-77-600-00-88	Director of Nursing
40070-10-78-250-00-21	Director of Clinical Services
40070-10-78-260-00-21	Director of Nursing
40070-10-78-260-70-01	Director of Psychology
40070-10-79-000-00-01	Region Executive Dir
40070-10-79-010-00-01	Hospital Administrator
40070-10-79-110-00-01	Clinical Services Admin
40070-10-79-110-20-20	Director of Psychology

40070-10-80-000-00-01	Facility Director
40070-10-80-001-00-01	Southern Network Manager
40070-10-80-040-00-01	QA & Improvement Admin
40070-10-80-200-00-01	
40070-10-80-200-40-01	Director of Nursing
40070-10-80-400-15-01	Director of Nursing
40070-10-81-400-00-21	Director of Nursing
40070-10-81-730-00-21	Director of Psychology
40070-10-82-000-00-01	Regional Executive Director
40070-10-82-100-00-21	Hospital Administrator
40070-10-82-410-00-21	Director of Psychology
40070-10-82-500-00-21	Director of Nursing
40070-10-83-220-00-01	Director of Nursing
40070-10-83-230-00-01	Treatment Svcs Admin
40070-10-83-300-00-01	Quality Manager
40070-10-87-000-00-01	Region Executive Dir
40070-10-87-100-02-01	Assoc Network Manager
40070-10-88-000-00-01	Program Director
40070-10-88-300-00-01	Security Director
40070-10-88-400-00-01	Assistant Director
40070-10-89-300-00-01	
40070-10-90-000-10-01	
40070-10-90-010-00-01	Assistant Director
40070-10-90-112-00-01	
40070-10-90-112-40-01	Nutrition Services Coord
40070-10-90-113-00-01	
40070-10-90-222-00-01	
40070-10-90-223-00-01	
40070-10-90-224-00-01	
40070-10-90-225-00-01	
40070-10-90-334-00-01	
40070-10-90-334-10-01	
40070-10-90-335-00-01	
40070-10-92-000-00-01	Regional Administrator
40070-10-93-000-00-01	Regional Administrator
40070-10-95-000-00-01	Regional Administrator
40070-10-96-444-00-01	
40070-10-96-445-00-01	Bureau Chief
40070-10-96-447-00-01	Bureau Chief
40070-10-97-555-00-01	
40070-10-97-556-00-01	Bureau Chief
40070-10-97-557-00-01	
40070-10-97-557-10-01	

40070-10-97-557-20-01  
40070-10-97-666-00-01  
40070-10-97-888-00-01 FCRC Associate  
Director  
40070-10-99-777-00-01 Associate Director  
40070-10-99-778-00-01  
40070-10-99-779-00-01 Bureau Chief  
40070-10-99-780-00-01  
40070-10-99-781-00-01  
40070-10-99-781-10-01  
40070-10-99-781-20--01 Regional Administrator  
40070-10-99-781-30-01  
40070-10-99-781-40-01  
40070-10-99-781-50-01

#### **IV. EXCEPTIONS**

Pursuant to Sections 1300.90 and 1300.130 of the Board's adopted rules, 80 Ill. Admin. Code Part 1300, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order, and briefs in support of those exceptions, no later than three days after service of the Administrative Law Judge's Recommended Decision and Order. All exceptions shall be filed and served in accordance with Section 1300.90 of the Board's adopted rules. Notably, exceptions must be filed by electronic mail sent to ILRB.Filing@Illinois.gov. Each party shall serve its exceptions on the other parties. If the original exceptions are withdrawn, then all subsequent exceptions are moot. A party that does not file timely exceptions waives its right to except to the Administrative Law Judge's Recommended Decision and Order.

Issued at Chicago, Illinois, this 10th day of September, 2013.

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ILLINOIS LABOR RELATIONS BOARD  
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A handwritten signature in cursive script, reading "Martin Kehoe", written in black ink.

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**Martin Kehoe**  
**Administrative Law Judge**