STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services,	)	
Petitioner	)	
and	)	Case No. S-DE-14-051
American Federation of State, County and Municipal Employees, Council 31,	)	
Labor Organization-Objector	)	
and	)	
Suzanne C. Scronce,	)	
Employee-Objector	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

I. BACKGROUND

Section 6.1 of the Illinois Public Labor Relations Act, 5 ILCS 315/6.1 (2012) *added by* Public Act 97-1172 (eff. April 5, 2013), allows the Governor of the State of Illinois to designate certain public employment positions with the State of Illinois as excluded from collective bargaining rights which might otherwise be granted under the Illinois Public Labor Relations Act. There are three broad categories of positions which may be so designated: 1) positions which were first certified to be in a bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008, 2) positions which were the subject of a petition for such certification pending on April 5, 2013 (the effective date of Public Act 97-1172), or 3) positions which have never been certified to have been in a collective bargaining unit. Only 3,580 of such positions may be so designated, and, of those, only 1,900 positions which have already been certified to be in a collective bargaining unit may be designated.

Moreover, to properly qualify for designation, the employment position must meet one or more of the following five requirements:

1) the employment position must authorize an employee in the position to act as a legislative liaison;
2) the employment position 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) the employment position 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) the employment position 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) the employment position 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 that within 60 days after the designation, the Illinois Labor Relations Board determine, in a manner consistent with due process, whether the designation comports with the requirements of Section 6.1.[1]

[1] Public Act 98-100, which became effective July 19, 2013, added subsections (e) and (f) to Section 6.1 which shield certain specified positions from such Gubernatorial designations, but none of those positions are at issue here.

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 emergency rules to effectuate Section 6.1, which became effective on April 22, 2013, 37 Ill. Reg. 5901 (May 3, 2013), and the Board promulgated permanent rules for the same purpose which became effective on August 23, 2013, 37 Ill. Reg. 14,070(Sept. 6, 2013). These rules are contained in Part 1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On August 20, 2013, 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. On August 22, 2013, Suzanne Scronce, an employee of the State of Illinois who occupies one of the positions designated as excluded from collective bargaining rights, filed an objection to the designation. On September 9, 2013, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed objections to the designations pursuant to Section 1300.60(a)(3) of the Board's Rules. 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 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 positions at issue in this matter as set out below and, to the extent necessary, amend any applicable certifications of exclusive representatives to eliminate any existing inclusion of these positions within any collective bargaining unit.

There are eleven positions at issue in this designation, all classified as Public Service Administrators (PSAs), Option 2, at the Illinois Department Central Management Services, (CMS).

37015-37-01-100-00-01	Dvoretskayal-emme, Mila	Agency Support Manager
37015-37-01-310-00-01	Hollis, David	Assistant Division Manager
37015-37-30-000-02-01	Vacant	Legislative Liaison
37015-37-31-300-00-01	Kavish, Kimberly	Agency Services Manager
37015-37-31-310-00-01	Ewald, Daniel	Manager - Analysis and Resolution Unit
37015-37-31-330-01-01	Reter, Daniel	Manager – Membership Unit

37015-37-50-000-50-01	Scronce, Suzanne	Admin. Ops. Financial Coordinator
37015-37-50-110-10-01	Robinson, Suzanne	Personal Services Budget Analyst
37015-37-60-200-01-01	Owens, Gregory	Budget Planning & Control Assistant
37015-37-60-210-02-01	Patterson, Heather	Rate and Billing Manager
37015-37-60-210-10-01	Scott, Neil	Contract and Obligation Manager

AFSCME objects to the designation all of the positions at issue, except position:

37015-37-30-000-02-01	Vacant	Legislative Liaison

CMS's designation petition indicates that the positions at issue qualify for designation under Section 6.1(b)(5) of the Act. CMS also filed two sets of supporting documents, CMS-104 position description forms and a summary spreadsheet for each position. The position description form states that it is a "complete, current and accurate statement of position['s] essential functions." The summary spreadsheet identifies the following information for each designated position: position number, name of incumbent, position title, whether the position is a term appointment, whether the position is Rutan exempt, the e-mail address of the incumbent in the position, the statutory category that serves as the basis of the exemption, whether the position is subject to an active representation petition with the petition number, and the job duties as identified in the attached position description.

Case No. S-RC-07-048

Several of the positions at issue were subject to the representation petition filed in Case No. S-RC-07-48. I am taking judicial notice of the following information, any documents referenced are listed in the footnotes and Appendix of this RDO, and physical copies are included in the record of case S-DE-14-051:

In October 2006, AFSCME filed a majority interest representation petition seeking to include all PSA, Option 2s into existing bargaining unit RC-62. Ill. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App (4th) 090966.[2] CMS argued that over 130 of the PSA Option 2s, working at over 10 state agencies should be excluded from the bargaining unit because of their status was supervisory, managerial, or confidential employees as defined by Section 3 of the Act. Id. ¶ 6. Relevant to the instant case, CMS argued that the following employees of the CMS Bureau of Property Management were confidential as defined by Section

[2] See Appendix.

3(c) of the Act, and should be excluded from the bargaining unit: Greg Owens, Heather Patterson, and Neil Scott. Id. ¶ 11. CMS also sought to exclude the following employees of the CMS Group Insurance Division under Section 3 of the Act: Daniel Ewald as supervisory, managerial, and confidential, and Daniel Reter, as supervisory, managerial, and confidential. Id. On October 1, 2008, ALJ Colleen Harvey issued an Intermediate Order finding that CMS had failed to raise a question of fact or law with regard to the status of 92 of the employees, and recommended that they be included in the bargaining unit.[3] In November 2009, the Board issued a decision that in relevant part, adopted the ALJ's finding as stated in her Intermediate Order. Id. ¶ 13. Since the Board held that there was no issue of fact or law, a hearing was not required and the 92 employees were included in the bargaining unit. Id. ¶ 13[4]

CMS appealed the Board's decision, arguing that the Board erred in denying it an oral hearing, and, specific to this matter, erred in concluding that the employee's at CMS Bureau of Property Management were not confidential, and also erred in concluding that the employee's at CMS Group Insurance Division were not confidential, managerial, nor supervisory. Id. ¶ 19. The Appellate Court reversed the Board's ruling regarding 37 of the 92 employees, and remanded the case for a hearing before the Board. Id. ¶ 226. The Court ruled that a sufficient question of law existed as to whether the employees at the agencies identified above were confidential as defined by Section 3(c) of the Act.[5] Id. ¶ 221. The Court noted that it was CMS's burden to provide sufficient information to require an oral hearing, and that the Board erred in determining that CMS had not met this burden regarding these employees' status as confidential employees. Id. ¶ 121. The Court upheld the Board's decision regarding Ewald's and Reter's non-managerial and non-supervisory statuses, but did not state whether it was because CMS had failed to provide sufficient evidence, or whether the evidence provided was definitive in that it demonstrated that Ewald and Reter were in fact not managers nor supervisors as defined by 3(j)[6] and 3(r)[7] of the Act. See Id. ¶ 122.

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[3] See Appendix Intermediate Order at 24.

[4] See Appendix, Certification of Representative.

[5] Section 3(c) defines confidential employees, as employees who "in the regular course of his or her duties, assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations or who, in the regular course of his or her duties, has authorized access to information relating to the effectuation or review of the employer's collective bargaining policies."

[6] Section 3(j) defines managerial employees as employees "engaged predominantly in executive and management functions and charged with the responsibility of directing the effectuation of management policies and practices."

[7] Section 3(r) defines "Supervisor" in relevant part, as "an employee whose principal work is substantially different from that of his or her subordinates and who has authority, in the interest of his or her subordinates and who has

A hearing was scheduled for the fall of 2012. Two days of testimony were taken for three of the employees at issue. On October 31, 2012, Paul Romiti, Chief Fiscal Officer of CMS, testified regarding Suzanne Scronce's status as a confidential employee.[8] On December 14, 2012, Janice Bonneville, the Deputy Director of the Bureau of Benefits at CMS testified regarding Daniel Ewald's and Daniel Reter's statuses as confidential employees.[9] To date there has been five days of testimony, regarding the 37 positions at issue in Case No. S-RC-07-048, but the record remains open. On March 22, 2013, the Board's General Counsel granted the joint motion to hold this case in abeyance.[10] Since, the Board has not issued a decision in this matter, no legal or factual determinations have been made. I will only reference the contents of the hearing as necessary to properly address any relevant objections.

II. POSITION DESCRIPTIONS

The position descriptions of the objected to employment positions, are as follows, in relevant part:

1. Mila Dvoretskayal-emme

As the Agency Support Manager, Dvoretskayal-emme is authorized to organize, plan, execute, and control and evaluate the operation of the Agency Support Division. She is authorized to review, plan, and track Division budget and staffing issues while operating within approved appropriations, and she is authorized to supervise staff. Her immediate supervisor is the Assistant Director of CMS.

Dvoretskayal-emme organizes, plans, executes, controls, and evaluates the operation of the Agency Support Division, under general direction. She provides direction to ensure activities of the Division are performed efficiently, economically and timely, while interacting with all levels of personnel, agency liaisons, government officials and members of the legislative body as they relate to CMS's Mail and Messenger. She provides delivery of statewide inter-agency mail for all agencies, and oversees the operation of Agency Administration Services which includes

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authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, to adjust their grievance, or to effectively recommend any of those actions, if the exercise of that authority is not of a merely routine or clerical nature, but requires the consistent use of independent judgment. [T]he tern 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising that authority, State supervisors notwithstanding."

[8] See Appendix, tr. 145-242.

[9] See Appendix, tr.670-726.

[10] See Appendix.

records retention and distribution, and telecommunication coordination. She plans, develops, recommends, and implements policies and procedures for these respective areas, which include developing long-range plans, and monitoring progress toward goals.

Dvoretskayal-emme reviews, plans, and tracks Division budget issues and provides recommendations to ensure all expenditures are appropriately planned, approved, and incurred to minimize total cost, and increase office efficiency, productivity, and quality. She organizes, plans, implements, and coordinates personnel matters within Agency Support with the Bureau of Personnel in order to maintain appropriate staffing levels while minimizing service disruption to the agencies.

Dvoretskayal-emme supervises the five subordinates who work under her by assigning them work, approving their time off, providing them guidance and training, and signing their performance evaluations. She disciplines these employees by giving them oral reprimands and effectively recommending grievance resolutions.

2. David Hollis

Under general direction, as the Agency Support Manager, Hollis is authorized to organize, plan, execute, control, and evaluate the operation of Agency Support Division. Hollis is authorized to review, plan, and track Division budget and staffing issues while operating within approved appropriations, and he is authorized to supervise five subordinate employees.

Hollis provides direction to ensure that the Division's activities are performed efficiently, economically, and timely. Hollis oversees the operation of Agency Administrative Services, which includes records retention and distribution, and telecommunication coordination. He plans, develops, recommends and implements policies and procedures for the Division. This includes developing, approving and implementing programs, policies and procedures for the preparation, sorting, and delivery of state mail.

Hollis reviews, plans, and tracks Division budget and provides recommendations to ensure all expenditures are appropriately planned, approved and incurred to minimize total cost and increase office efficiency, productivity, and quality. He organizes, plans, implements, and coordinates personnel matters within Agency Support with the Bureau of Personnel in order to maintain appropriate staffing levels while minimizing service disruption to the agency. This includes determining staffing needs to achieve program objectives.

Hollis supervises five subordinate employees by assigning them work, approving their time off, providing guidance and training, and signing their performance evaluations. Hollis disciplines these employees by counseling them on problems with productivity, quality of work and conduct, by giving them oral reprimands and effectively recommending grievance resolutions.

3. Kimberly Kavish

As the Agency Service Manager for the Benefits/Group Insurance Division of CMS, Kavish is authorized to plan, organize, direct, and evaluate the operation of the Section, under general direction of the Division Manager. Kavish develops and implements policy, supervises staff, coordinates and develops internal procedures in response to new legislation. She monitors and evaluates work product and activities, directs the flow of annual Benefits Choice Seminars, develops, drafts, and assists in the editing of administrative rules, policy manuals, and handbooks.

Kavish plans, organizes, directs, and evaluates the operations of the Agency Services Section. She develops and implements policy for employee services at the Division which requires that she interpret state insurance policy for State agencies, universities, boards and commissions regarding the enrollment eligibility requirements of various state programs.

Kavish also supervises the seven employees subordinate to her by assigning them work, approving their time off, providing guidance and training, and signing their performance evaluations. Kavish disciplines these employees by counseling them on problems with productivity, quality of work and conduct, by giving them oral reprimands and effectively recommending grievance resolutions.

Kavish coordinates and develops internal procedures in response to new legislation, and monitors and evaluates work product and activities of the Section units. She implements studies and/or program evaluations for various state programs and develops and proves analysis and reports her evaluations to management.

Finally Kavish organizes the annual Benefits Choice Seminars. She develops, drafts, and assists in the editing of administrative rules, policy manuals and handbooks for programs within the Bureau of Benefits.

4. Daniel Ewald

As the Manager of the Analysis and Resolution Unit, Ewald is authorized to supervise staff, organize, plan, control, and evaluate the operations of the Analyst and Resolution Unit, under the direction of the Agency Services Manager. Ewald is authorized to manage the day-to-day operations of the Group Insurance Financial Control System (GIFCS), which requires that he coordinate the production of monthly carrier payment reports, develop weekly reports on activity, training, and schedule, and approve invoice vouchers and Contractual Services Vouchers for refunds.

Ewald supervises the six employees subordinate to him by assigning them work, approving their time off, coordinating training for the new system, and signing their performance evaluations. Ewald disciplines these employees by counseling them on problems with productivity, quality of work and conduct, and by giving them oral reprimands and effectively recommending grievance resolutions.

Ewald organizes, plans, controls, and evaluates the operations of the Analysis and Resolution Unit, which requires him to identify priorities, review Unit practices to ensure compliance with the rules, policies and procedures, and makes recommendations to the Section Manager for enhancement and development. He develops goals and objectives for the Unit, develops and implements procedures for evaluating attainment of goals and objectives, which includes determining staffing needs to achieve the program objective, and attending staff meetings.

As a part of his management of the day-to-day operations of GIFCS, Ewald makes recommendations to the Section Manager for its enhancement, and prepares letters of Understanding for agencies requesting on-line access capabilities to the system.

Finally, Ewald interprets State and Federal rules and regulations impacting premium collection processes for members and insurance carriers.

5. Daniel Reter

As the Manager of the Membership Unit, Reter is authorized to supervise staff, organize, plan, control and evaluate the operations of the Membership Unit, under the direction of the Agency Services Manager. Reter is authorized to review complex membership concerns and make determinations, to review transaction requests of a technical or complex nature, and to determine acceptability prior to processing. He is also authorized to interpret eligibility rules, policies and guidelines, and provide training.

Reter supervises the six employees subordinate to him by assigning them work, approving their time off, coordinating training for the new system, and by completing and signing their performance evaluations. Reter disciplines these employees by counseling them on problems with productivity, and quality of work and conduct, by giving them oral reprimands, by adjusting first level grievances, and by effectively recommending and imposing discipline, up to and including discharge.

Reter organizes, plans, controls, and evaluates the operations of the Membership Unit, by identifying priorities, reviewing Unit practices to ensure compliance with rules, policies and procedures, and makes recommendations to the Section Manager for the enhancement and development. He develops goals and objectives for the Unit, and develops and implements procedures for evaluating attainment of goals and objectives, and determining staffing needs to meet objectives. Reter also interprets Personnel Rules and Personnel Code for state employees.

Reter reviews transaction requests of a technical or complex nature and determines acceptability prior to processing, and updates and corrects the GEM database.

Reter determines appropriate guidelines in the review and resolution of complex membership issue, interprets and explains eligibility rules, policies and guidelines to subordinate staff and Insurance Representatives. He provides input for on-site training material. He provides training to subordinate staff on eligibility rules and policies, appropriate documentation standards, and processing forms by Membership Unit and online updates to the database.

Finally, Reter researches, analyzes, and develops projects based upon legislative/union agreements, which impact the membership enrollment database, develops reports on routine membership activities, training and schedules for weekly submittal to Agency Services Manager.

6. Suzanne Scronce

As the Bureau Fiscal Coordinator, Scronce is authorized to perform complex budgetary analysis for budget development and monitoring of multiple assigned funds, under the general direction of the Chief Financial Officer. Scronce is authorized to review, plan, track, and monitor all bureau spending in order to maintain within the appropriations allotted, and recommend fund transfers as necessary. She is authorized to calculate projections for the monthly spending plans, and coordinate the procurement of goods and services in compliance with Procurement rules and agency procurement standards. Scronce is also authorized to supervise staff, coordinate property control activities including annual inventory reconciliation

and certification, and monitor and project electronic data processing expenditures. She is also authorized to develop various complex reports relating to fiscal operations of the agency.

Scronce performs complex budgetary analysis for budget development and monitoring of multiple assigned funds. She reviews plans, tracks, and monitors all spending in order to maintain expenditures within appropriations allocated, and recommends fund transfers as necessary. She confers with management and executive staff to determine program needs, makes recommendations for increased funding, and completes documentation to justify the additional funding requests.

Scronce supervises the two employees subordinate to her by assigning them work, approving their time off, providing guidance and training, and completing and signing their performance evaluations. Scronce disciplines these employees by counseling them on problems with productivity, quality of work and conduct, by giving them oral reprimands and effectively recommending grievance resolutions.

7. Suzanne Robinson

As the Personal Services Budget Analyst, Robinson is authorized to perform a wide variety of highly complex advanced level duties to facilitate management decisions, under the administrative direction of the Budget Manager. Robinson is authorized to perform a variety of administrative functions, independently overseeing the Personal Services and related line budget for the Department. She is authorized to perform complex computation to produce various projections as needed. Robinson is authorized to supervise staff, to function as a budget analyst and program coordinator for all CMS bureaus, and to review budget initiative proposals. She is authorized to plan, coordinate, and organize special projects, initiatives and expansion as required by the Bureau Manager, and Robinson is authorized to direct the effectuation of management policies.

Robinson organizes, plans, and executes major projects within the Bureau Office, including representing the Budget office in implementing Personal Services program initiatives and working directly with Managers to ensure guidelines are established, communicated, and understood, and that target dates are met. She advises the Manager on administrative, personnel, and budget matters affecting the Personal Services operation of the department, and evaluates and makes recommendations for action. Robinson represents the Manager and agency by participating in meetings, often of a highly confidential and controversial nature with

intradepartmental entities and other state agencies at the Manager's request, possessing authority to make formal policy recommendations on the Manager's behalf.

As Personal Services Budget Analyst for all bureaus, Robinson assists various bureaus in CMS to develop staffing plans within fiscal limitations.

Robinson supervises one subordinate employee by assigning and reviewing the employee's work, approving the employee's time off, and completing and signing the employee's performance evaluations. Robinson disciplines this employee by counseling the employee on problems with productivity, quality of work and conduct, by giving the employee oral reprimands, by adjusting first level grievances, and by effectively recommending and imposing discipline, up to and including discharge.

Robinson is responsible for the Personal Services appropriation request and submission for the entire agency by conducting budget exercise to get appropriation approval and formalizes the Department's legislative request. She submits forms for the entire agency regarding personal Services appropriations to the Illinois State Legislature. Robinson prepares documentation for House and Senate questions as well as the Budget Briefing Book, and serves as liaison with the Office of Finance and Management staff, Senate and House Appropriations staff, and elected members of the General Assembly gathering data to logically explain costs associated with salaries.

Finally, Robinson confers with officials of the Governor's Office of Management and Budget for the Department's annual budget and other projects throughout the year, and provides various reports to the Governor's Office of Management and Budget and CMS Executive Staff.

8. Gregory Owens

As a staff assistant in the Budget Planning and Control Division of CMS, Owens is authorized to serve as the primary technical resource in administering the annual facility management budgeting process and ongoing budget tracking, under the administrative direction of the Chief Financial Officer (CFO). He is authorized to administer the monthly spend plans of the facilities Management Revolving Fund (FMRF), and manage detailed budgets by facility, coordinate systems and data associated with the budgeting and spend plan process. Owens is authorized to conduct ongoing analysis and research of progress on operations components of the budgeting and spend plan operations, research methods of enhancements, and serve as a resource to property owners.

Owens serves a primary technical resource in administering the annual facility management budgeting process and ongoing budget tracking. He monitors financial reports completion and submission to the CFO, which includes monitoring the budget cycle to initiate requisite work and components and monitoring progress of completion by components to tract concurrently with the established budgeting cycle schedule, monitoring completion of overall facility management and agency fiscal staff budgets within scheduled timeframes, verifying compliance from facility management and agency fiscal staff, conducting preliminary review of draft budgets prior to submittal to the CFO for assessment and final approval, analyzing validity of budgets submitted by senior facility management staff, with agencies and client management to resolve potential budgetary issues, assisting in monitoring facility annual financial reports, assessing the format and validity of financial analysis completed by financial reporting staff, assisting in tracking and analyzing planned versus actual budget and reports on status to the CFOS, assisting the CFO on budget and reporting related issues, and coordinating with the Bureau Planning and Construction group to ensure operational budgeting is performed in coordination with capital budget development.

Owens also administers the monthly spend plans of the Facilities Management Revolving Fund (FMRF) in accordance with specifications set forth by the CMS Office of Finance and Management. He prepares the cash flow analysis of FMRF in coordination with other fiscal unit managers and senior facility management staff using spreadsheet and/or database applications.

Owens manages detailed budgets by facility and monitors the preparation of budgets by facility, including overhead costs which roll up to the Bureau's total annual budget. He also analyzes the validity of budgets submitted by senior facility management staff.

Owens coordinates systems and data associated with the budgeting and spend plan process, evaluates system and process enhancements, makes recommendations to the CFO for improvements. He also develops data management process and organizes and updates files and data associates with the budgeting cycle.

Owens conducts ongoing analysis and research of progress on operational components of the budgeting and spend plan operations, and researches methods of enhancement, and based on his findings, assists in recommending implementation enhancements to the CFO. He assists in developing and monitoring goals and objectives, and assists in evaluating operational functions to insure efficient performance, assists in developing and implementing strategic planning and

evaluation criteria for operations, assists in establishing key performance measures for all categories and tracking forecast versus actual performance. He provides ongoing monitoring of measures and indicators, and develops and forwards resultant reports to the CFO.

Finally, Owens serves as a resource to property owners, landlords, and officials from client agencies. He explains and interprets the policies and the intent of the Bureau of Property Management budgeting and spending plan. Owens functions to enhance the effectiveness of understanding, standardization and integration of intent to client agencies and related concerned parties.

9. Heather Patterson

As the Fund Billing Assistant, Patterson has the authority to coordinate and direct Facilities Management Revolving Fund (FMRF) billing and revenue and collections operations, under the administrative direction of the Assistant Chief Financial Officer of the Bureau of Property Management for FMRF. She has the authority to develop and implement statewide billing policies and procedures, work with client agencies to monitor the billing and collection processes, work with the Bureau Assistant CFO and Agency Federal Funding Manager in developing, enhancing and documenting the federal funding reimbursement model and processes. She also has the authority to prepare specialized reports and analyses for measurement regarding billing, revenues and service utilization.

Patterson conducts ongoing analysis and research of progress on operational components of the facility management billing operations and researches methods of enhancement. She also recommends implementation of enhancements to Assistant CFO.

10. Neil Scott

As the Contract and Obligation Manager for Leased Property, Scott has the authority to monitor contracts/obligations to verify and reconcile inclusion of facility-related contracts, ensures appropriations are available for initial contract obligations to be established and for required amendments, prepares detailed projections of contractual services by detail object code for various statewide services, analyzes facility projections of contractual services by detail object code for various statewide services, and analyzes facility contracts for Bureau Assistant Chief Financial Officer to justify changes in facility contract amounts necessitating amendments, under the Assistant Chief Financial Officer of Bureau of Property Management. He also has the authority to confer with client agencies to monitor the contract and obligation process, authorizes

payment for the bureau contracts that are obligated with the comptroller. Scott supervises seven subordinate employees. He is authorized to conduct ongoing analysis and research of progress on operational components of the facility management contracts/obligations operations and researches methods of enhancement. Scott is authorized to provide specialized reports and analyses for measurement regarding contracts/obligations processed for the Bureau. He is authorized to serve as a resource to property owners, landlords and officials from client agencies explaining and interpreting the policies and intent of the Facilities Services Revolving Fund contract/obligation functions to enhance the effectiveness of understanding, standardization and integration of intent to all client agencies and related concerned parties.

Scott represents the CFO and Assistant CFO for the Bureau of Property Management on assigned tasks and committees.

As a supervisor of seven subordinate employees, Scott assigns work, approves time off, provides guidance and training, completes and assigns performance evaluations and establishes the employees' annual goals and objectives. Scott also disciplines the employees by counseling them on problems with productivity, quality of work, and conduct, and effectively recommending and imposing discipline up to and including discharge.

III. ISSUES AND CONTENTIONS

AFSCME argues that this designation does not comply with Section 6.1 of the Act because the designation does not include supporting evidence or information identifying the basis for the designation, and it does not comply with due process. AFSCME also argues that CMS should be required to bear the burden to prove that the positions are properly designated, and that NLRB interpretation of "manager" should apply.

Regarding the specific positions, AFSCME argues that there is no evidence that Dvoretskayal-emme, Hollis, or Kavish have actual managerial authority or may exercise the authority with independent judgment. AFSCME also argues that because Hollis has the working title of "Assistant Division Manager" there is an implication that only the Division Manager actually holds any discretionary authority. AFSCME argues that an ALJ in representation Case No. S-RC-07-048 found that Owens did not exercise any discretionary authority, and during a hearing for Case No. S-RC-07-048, CMS stipulated that Ewald and Reter have no supervisory or managerial authority. Regarding Patterson and Robinson, AFSCME argues that Patterson's

position description does not support CMS's claim that she has significant and independent discretionary authority, and that Robinson's position description does not indicate that she is a supervisor.

Both Scronce and AFSCME filed objections to the designation of Scronce's position. Scronce argues that she does not effectuate management policies nor does she have the authority to recommend or implement policy. She argues that she provides advice on procedures implemented to effect theses policies, but makes no recommendations regarding the policies themselves. AFSCME argues that in a hearing for Case No. S-RC-07-048 testimony was provided that Scronce has no significant discretion and Scronce has no subordinates over which to exercise her supervisory authority.

IV. DISCUSSION AND ANALYSIS

AFSCME's arguments that it was denied due process, that the CMS-104 position descriptions alone are insufficient to determine whether the designations are proper, that CMS did not provide specific evidence that the employees are authorized to exercise managerial or supervisory duties, that I adopt the NLRB interpretation of manager and that the employees are not supervisors because there is no evidence that the employees have actual authority or that the employees exercise any such authority with independent judgment, all fail to raise an issue that might overcome the presumption that the employees are designated properly under Section 6.1 of the Act. Scronce's argument that she is not a manager, while persuasive, when considered in the context of the Act, also does not raise an issue that might overcome the presumption that this designation is proper, because Scronce did not argue that she is not a supervisor under Section 6.1 of the Act.

a. Due Process

AFSCME was not denied due process when CMS allegedly provided a lack of information to support this designation petition, when CMS allegedly did not provide a basis for excluding the employment positions at issue, when the Governor filed designations for over 1,000 employment positions within one week, or when the Board did not provide pre-objection discovery.

As an administrative agency, the Board was created to carry out the Act's purpose, and the Board is bound by the provisions of the Act. See 5 ILCS 315/5 (2012). The Act states that

the Board's procedures for determining whether these designations are proper must be consistent with due process. 5 ILCS 315/6.1 (2012). The purpose of procedural due process is to minimize error. See East St. Louis Fed'n of Teachers, Local 1220 v. East St Louis School Dist. No. 189 Financial Oversight Panel, 178 Ill. 2d 399, 419-20 (1997). Notice and an opportunity to be heard are necessary principles of procedural due process. Id.; Segal v. Dep't of Ins., 404 Ill. App. 3d 998, 1002 (1st Dist. 2010) citing People ex rel. Ill. Commerce Comm'n v. Operator Commun., Inc., 281 Ill. App. 3d 297, 302 (1st Dist. 1996). Notice must be reasonably calculated "to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Segal, 404 Ill. App. 3d at 1002, citing Hwang v. Dep't of Public Aid, 333 Ill. App. 3d 698, 707 (1st Dist. 2002).

Administrative agencies do not have the authority to question the validity of the statutes under which they were created. See Goodman v. Ward, 241 Ill. 2d 398, 411 (2011) see also Metropolitan Alliance of Police, Coal City Police Chapter No. 186, No. 6 v. Ill. State Labor Rel. Bd., 299 Ill. App. 3d 377, 379 (3rd Dist. 1998). In order to process these designations the Board added Part 1300 to its Rules and Regulations, which details the regulations the Governor, the Board and any objectors must abide by when the Governor files such designation petitions. See 80 Ill. Admin. Code Part 1300. When an administrative agency has adopted rules and regulations under its statutory authority for carrying out its duties, the agency is bound by those rules and regulations and cannot arbitrarily disregard them. Springwood Assoc. v. Health Facilities Planning Bd. 269 Ill. App. 3d 944, 948 (4th Dist. 1995) citing Union Electric Co. v. Dep't of Revenue, 136 Ill. 2d 385, 391 (1990). Administrative rules have the force and effect of law and are presumed valid. People v. Molnar, 222 Ill. 2d 495, 508, (2006); Dep't of Cent. Mgmt. Servs., 406 Ill. App. 3d 766, 771 (4th Dist. 2011).

As an administrative agency the Board is bound to follow the Act and the Board's Rules and Regulations. The only issue is whether the objections raise an issue of fact or law that might overcome the presumption that the designations of the employment positions are consistent with Section 6.1 of the Act. Whether the Board's rules comply with due process is not within my limited scope of authority. With this in mind, I will now address the basis for AFSCME's objection that it has been denied due process.

1. lack of information

AFSCME was not denied due process based on the designation petition's alleged lack of information.

The Act states that in order to properly designate employment positions under Section 6.1 of the Act, the State must provide 1) the employment position's job title, 2) the employment position's job duties, 3) the name of the incumbent employee, 4) the name of State agency employing the public employee, and 5) the category under which the position qualifies for designation. 5 ILCS 315/6.1(b) (2012).

CMS provided the information required to properly designate a position under Section 6.1 of the Act. CMS submitted the CMS-104 position descriptions for each employment position, which meet the first requirement that CMS identify the employment positions' job title because the position descriptions identify the position title as Public Service Administrator, and in many cases, identifies the position's "working title." The position descriptions also meets the second requirement, that CMS identify the position's job duties, because the position descriptions are "complete, current and accurate statement[s] of position[s'] essential functions." The summary spreadsheet CMS filed with the designation petition provides the information necessary to meet the third, fourth, and fifth requirements of Section 6.1, in that it identifies the name of any incumbent in each position, the agency employing the public employee is identified as CMS, and the category under which the position qualifies for designation is identified as 6.1(b)(5). Since CMS provided the required information, the designation is presumed proper per Section 6.1(d) of the Act.

Under Section 6.1(b)(5) a position qualifies as exempt when it possesses "significant and independent discretionary authority." The CMS-104 position description is the "complete, current and accurate statement of position['s] essential functions." The requisite authority would be granted in the position description's listed job duties. Here, the relevant information is the job duties, and the CMS-104 position descriptions state the job duties of the positions at issue, thus the State did not provide a lack of information. Therefore AFSCME was not denied due process.

2. basis for exclusion

AFSCME was not denied due process when CMS did not specify whether the employees at issue were excluded based on their supervisory or managerial status.

Section 6.1 of the Act requires, that when the State files a designation for the exemption of an employment position, the State must identify "the category under which the position

qualifies for designation." Section 6.1(b) identifies the five possible categories the position may fall into in order to properly qualify for designation. Section 6.1(b)(5) states that an employment position that "authorizes an employee in that position to have significant and independent discretionary authority as an employee" is one of said five categories. Section 1300.50(a) of the Board's Rules requires that when the State files its designation petition, the State must identify "the category under which the position qualifies for designation under Section 6.1(b) of the Act." 80 Ill. Admin. Code Part 1300.50.

Here, CMS identified the employees as qualifying for designation under Section 6.1(b)(5) of the Act, in that the positions authorize the employees to have significant discretionary authority. The Board's Rules require that CMS identify under which of the five categories that the employees at issue qualify for designation. As noted above, administrative rules are presumed valid. See People v. Molnar, 222 Ill. 2d at 508; Dep't of Cent. Mgmt. Servs., 406 Ill. App. 3d at 771. Since the rules are presumed valid, and CMS complied with the Board's rules, AFSCME was not denied due process when CMS identified that the employees qualify for designation under Section 6.1(b)(5) of the Act.

3. number of petitions filed in such a short period of time

AFSCME was not denied due process when the Governor designated over 1,000 employee positions as exempt from the collective bargaining provisions of Section 6 of the Act within one week.

Section 6.1 of the Act limits the number of designations and the time in which the Governor has to file them. The Act allows the Governor to designate up to 3,580 employee positions as exempt from the collective bargaining provisions of Section 6 of the Act between April 5, 2013 and April 5, 2014. The Act limits the Governor in the number of positions he can designate and the amount of time he has to make those designations, but the Act does not set a limit on the amount of positions in each designation petition, or require the Governor to spread out the designation petitions over the course of the one-year period. Thus the Act does not prohibit the Governor from filing designation petitions containing over 1,000 employment positions within one week. Therefore, AFSCME was not denied due process when the Governor designated over 1,000 employees as exempt for the collective bargaining provisions of Section 6 of the Act in less than one week.

4. lack of pre-objection discovery

AFSCME was not denied due process by the application of the Board's administrative rules which are silent as to pre-objection discovery.

AFSCME's objection that the Act and the Board's Rules lack any procedure to obtain any additional information is beyond my authority to review. As stated above, the Board's function is to interpret and implement the Act. The Act and the Rules are both silent as to a procedure to obtain additional information prior to filing objections to the gubernatorial designation, therefore the Board is not required to provide a method.

As noted above, the provided position descriptions are the "complete, current and accurate statement of position['s] essential functions." Since the Rules and the Act are silent to pre-objection discovery, and AFSCME has not demonstrated how a procedure for additional discovery prior to filing objections in this case would lead to other relevant information, the Board is not required to provide a method for such discovery. Therefore, AFSCME was not denied due process by the application of the Board's administrative rules which do not specify a method to obtain additional information prior to filing objections.

b. SUBSTANTIVE OBJECTIONS

CMS's designation of the positions at issue is proper because they are presumed proper under the Act, and the objections do not raise an issue that might overcome that presumption.

1. Burden

In representation cases 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 Circuit 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. 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 also 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 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 Id. Here, because the objectors are opposing the State's public policy as stated in Section 6.1 of the Act, the objecting parties bear 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 State of Illinois, Department of Central Management Services, 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 Board Rules Section 1300.609(d)(2)(B).

CMS has filed this designation under Section 6.1(b)(5). To be properly designated under this Section, the employees at issue must 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.

a. manager tests

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

To qualify as a managerial employee under Section 6.1 of the Illinois Public Labor Relations Act, the employee must meet one of two tests. The first test requires the employee to 1) be engaged in executive and management functions; and 2) be responsible for the effectuation of management policies and practices of the Agency. The second test requires that the employee "represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of the Agency."

i. first managerial test

To the extent the management component of Section 6.1's definition of "significant independent discretion" uses terminology from the Act's Section 3(j)'s definition of a managerial employee, it is useful to look at the court's interpretation of those terms.

Regarding the first prong of the first managerial test, the Appellate Court has noted that executive and management functions generally, but not solely, consist of ensuring that the agency operates efficiently. Dep't of Cent. Mgmt. Serv. (Pollution Control Bd.), v. Ill. Labor Rel. Bd., State Panel, 2013 IL App (4th) 110877 ¶ 25; State of Ill. Dep't of Cent. Mgmt. Serv. (Ill. Commerce Comm' n) v. Ill. Labor Rel. Bd., State Panel, 406 Ill. App. 3d 766, 774, (4th Dist. 2010) (commonly referred to as ICC). The Board has defined executive and management functions as those functions which specifically relate to the running of an agency or department, including the following: establishment of policies and procedures, preparation of the budget, or the responsibility for assuring that the department or agency operates effectively. Cnty. of Cook (Oak Forest Hospital) v. Ill. Labor Rel. Bd., 351 Ill. App. 3d 379, 386, (1st Dist. 2004); State of Ill., Dep't of CMS (Healthcare and Family Serv.), 23 PERI ¶ 173 (IL LRB-SP 2007) (commonly referred to as INA). Executive functions require more than simply the exercise of professional discretion and technical expertise. Cnty. of Cook (Oak Forest Hospital) v Ill. Labor Rel. Bd., 351 Ill. App. 3d 379, 386 (1st Dist. 2004); City of Evanston v. State Labor Rel. Bd., 227 Ill. App. 3d 955, 975 (1st Dist. 1992); INA, 23 PERI ¶ 173 (IL LRB-SP 2007); State of Ill. Dep't of Cent. Mgmt. Serv., 1 PERI ¶ 2014 (IL SLRB 1985). The second prong of the first managerial test requires that the alleged managerial employee exercise responsibility for directing the effectuation of such management policies and practices. Cnty. of Cook (Oak Forest Hospital) v. Ill. Labor Rel. Bd., 351 Ill. App. 3d at 386; INA, 23 PERI ¶ 173 (IL LRB-SP 2007); Dep't of Cent. Mgmt. Serv., 2 PERI ¶ 2019 (IL SLRB 1986). 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. 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); State of Ill. Dep't of Cent. Mgmt. Serv. (Public Aid), 2 PERI ¶ 2019 (IL SLRB 1986). Such individuals must be empowered with a substantial measure of discretion to determine how policies will be affected. Cnty. of Cook (Oak

Forest Hospital) Cnty. of Cook (Oak Forest Hospital) v. Ill. Labor Rel. Bd., 351 Ill. App. 3d at 387; INA, 23 PERI ¶ 1736 (IL LRB-SP 2007).

ii. alternative managerial test

The second, alternative managerial test requires that the employee's "effective recommendations" direct the effectuation of management policies. Because superiors often make decisions based on a variety of factors, the "litmus test" of whether the employees' recommendations are influential is whether the recommendations "almost always persuade the superiors." ICC**,** 406 Ill. App. 3d at 777 citing Nat. Labor Rel. Bd. v Yeshiva Univ., 444 U.S. 672, 677 (1980).

b. supervisor test

Section 6.1(c)(ii) of the Act provides that an employee is a supervisor eligible of 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 National Labor Relations Board." 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. 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 is a key issue in determining whether an employee is a supervisor under the NLRA. See Id. at 689. Judgment is not independent if it is controlled by a higher authority, such as verbal instructions, or detailed instructions or regulations. Id.

c. objector's burden to overcome all three tests

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.

In order to raise an issue that the employees at issue are not managerial the objector must negate both managerial tests for every employee at issue. To negate the first managerial test the objector must demonstrate, or effectively argue that the employees do not meet at least one of the elements of the test. 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. 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.

In order to raise an issue that the employees at issue are not supervisors under Section 6.1 of the Act, the objector must negate at least one of the three prongs of the supervisor test. 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. 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. 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. 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.

2. CMS-104 position descriptions alone

Contrary to AFSCME's protestation, it is possible to determine whether the designations are proper based on the CMS-104 position descriptions alone. First, as noted above, the position descriptions are the "complete, current and accurate statement[s]" of the position's "essential functions" and thus meet the Act's requirement that CMS identify the position's job duties. Second, the Act and Rules provide that the designation is presumed proper when the designation

identifies the job title and the job duties, and is silent to "specific" examples. If the job title and duties were insufficient, the Act would not specify that the designation, when completed by submission of such information is presumed proper. Third, the Board has determined whether employees have the status of supervisor or manager based upon the position descriptions submitted by the employer. See Ill. State Bd. of Elections, 28 PERI ¶ 70 (IL LRB-SP 2011); but see Dep't of Cent. Mgmt. Serv., 26 PERI ¶ 34 (IL LRB-SP 2010). Finally, the Illinois Appellate Courts have held that position descriptions alone provide adequate information in order to evaluate whether a position is managerial or supervisory under the Act. See Vill. of Maryville v. Ill. Labor Rel. Bd., State Panel, 402 Ill. App. 3d 369 (5th Dist. 2010); City of Chicago v. Ill. Labor Rel. Bd. Local Panel,396 Ill. App. 3d 61 (1st Dist. 2010); but see Ill. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App (4th) 090966; Vill. of Broadview v. Ill. Labor Rel. Bd., 402 Ill. App. 3d 503,508 (1st Dist. 2010). Therefore, the position descriptions at issue are alone sufficient evidence from which to determine whether the designation is proper under Section 6.1 of the Act.

3. specific facts

AFSCME's argument that CMS did not provide specific facts to demonstrate that the employees at issue are either managers or supervisors as defined by section 6.1 of the Act, does not raise an issue that might overcome the presumption that the designation is proper. As stated above, the Act, the rules, the Board, and the Illinois Appellate Court have utilized position descriptions alone in order to determine an employee's status as a manager or supervisor. The existence of the presumption within Section 6.1 that the employees are properly designated as managers or supervisors eliminates any requirement that CMS provide specific examples of each employee engaging in managerial or supervisory activities. Thus, this argument does not raise an issue that might overcome the presumption that the designation is proper.

4. technical discretion versus managerial discretion

AFSCME's contentions that Section 6.1 incorporates the NLRAs definition of manager, and that analysis of the NLRA distinction between professional employees and managerial employees is necessary to determine whether these designations comport to Section 6.1 are unpersuasive.

Section 6.1 applies the NLRA's definition of supervisor, not its definition of manager. See 5 ILCS 315/6.1(c) (2012). Section 6.1(b)(5) of the Act states that an employment position is

eligible for designation if the employment position "authorizes an employee in that position to have significant and independent discretionary authority." Section 6.1(c) states that an employee has significant and independent discretionary authority if the employee "qualifies as a supervisor of a State agency as that term is defined under Section 152 of the National Labor Relations Act" (NLRA) or is a manager. As stated above, in order to be a manager, the employee must meet one of two tests, which are specifically set out in Section 6.1(c)(i) of the Act. Since the managerial requirement does not reference the NLRA, prior Board precedent that is on point is the controlling authority, and NLRB precedent may be used as persuasive authority if it does not contradict with Board precedent, and is relevant to the objections raised here.

Regarding the distinction between technical discretion and managerial discretion, the Appellate Court has found that employees who use their technical expertise to make recommendations that effectuate policy can be managerial employees under the Act. ICC, 406 Ill. App. 3d at 777 (holding that administrative law judges who use their legal expertise to make recommendations that effectuate policy can be managers).

In support of its argument that employees that exercise technical expertise cannot be managerial employees, AFSCME relies on the NLRB's recent holding in Connecticut Humane Society. 358 NLRB No. 31 (2012). In Connecticut Humane Society, the NLRB held that an Information Tech who recommended computer software changes was not a manager of an animal shelter company because the employee's use of her technical expertise with respect to computers was merely a tool in carrying out the company's business, which was animal care and not computers. 358 NLRB No. 31 (2012). This decision is not inconsistent with the Appellate Court's holding in ICC, because in the NLRB case, the employee was not a manager because her use of technical discretion was too tangential to the company's purpose, and in ICC the purpose of the Illinois Commerce Commission was to regulate public utilities, and the administrative law judges were the primary means by which the Commission fulfilled this purpose. 406 Ill. App. 3d at 777.

As noted above, NLRB opinions are merely persuasive authority, and I find that since the opinion AFSCME relies upon does not conflict with the ICC decision Connecticut Humane Society could be applicable to the matter at hand, but because AFSCME fails to explain its applicability to the instant issue of whether the employees holding the positions at issue are

designated properly under Section 6.1, I find it inapplicable. See 406 Ill. App. 3d at 777; 358 NLRB No. 31 (2012).

5. Mila Dvoretskayal-emme

a. supervisor

AFSCME argues that because there is no evidence that Dvoretskayal-emme has actual authority or that she exercises any such authority with independent judgment, she is not a supervisor. This "lack of evidence" argument is inconsistent with the facts and the law.

Dvoretskayal-emme has the authority granted to her in the CMS-104 position description for her employment position. The position description for Dvoretskayal-emme states that as an Agency Support Manager, she is authorized to conduct many supervisory duties. Dvoretskayal-emme has the authority to supervise staff, assign work, approve time off, provide guidance and training, and to complete and sign performance evaluations. Dvoretskayal-emme is also authorized to discipline her subordinates by giving oral reprimands, and effectively recommending grievance resolutions.

Whether Dvoretskayal-emme exercises her supervisory duties with independent judgment is presumed because of the presumption that the designation is proper if properly filed, making specific evidence on this point unnecessary. The presumption burdens the objector to provide evidence to show that the employee is not authorized to exercise, for example, that she is to follow a certain protocol or to see a supervisor before exercising her supervisory authority. Thus, the lack of specific evidence that Dvoretskayal-emme exercises independent judgment in exercising the supervisory duties she is authorized to exercise, does not raise an issue that might overcome the presumption that the Dvoretskayal-emme is designated properly as a supervisor under Section 6.1 of the Act.

Since AFSCME made no argument regarding Dvoretskayal-emme's managerial status, and its argument regarding her supervisory status failed, I find that AFSCME has failed to state an issue that might overcome the presumption that Dvoretskayal-emme has been designated properly under Section 6.1 of the Act.

6. Kimberly Kavish

a. supervisor

AFSCME argues that because there is no evidence that Kavish has actual authority or that she exercises any such authority with independent judgment, she is not a supervisor. This "lack of evidence" argument is inconsistent with the facts and the law.

Kavish has the authority granted to her in the CMS-104 position description for her employment position. The position description for Kavish states that as an Agency Service Manager, she is authorized to conduct many supervisory duties. Kavish has the authority to supervise staff, assign work, approve time off, provide guidance and training, complete and sign performance evaluations and counsel staff of problems with productivity and quality of work and conduct. Kavish is also authorized to discipline her subordinates by giving oral reprimands, and effectively recommending grievance resolutions.

Whether Kavish exercises her supervisory duties with independent judgment is presumed because of the presumption that the designation is proper if properly filed, making specific evidence on this point unnecessary. The presumption burdens the objector to provide evidence that shows that Kavish is not authorized to exercise her independent discretion. Therefore, the lack of specific evidence that Kavish exercises independent judgment in exercising the supervisory duties she is authorized to exercise, does not raise an issue that might overcome the presumption that she is designated properly as a supervisor under Section 6.1 of the Act.

Since AFSCME made no argument regarding Kavish's managerial status, and its argument regarding her supervisory status failed, I find that AFSCME has failed to state an issue that might overcome the presumption that Kavish's employment position has been designated properly under Section 6.1 of the Act.

7. David Hollis

a. discretionary authority of the Assistant Division Manager

AFSCME's argument that Hollis' title of Assistant Division Manager implies that only the Division Manager has discretionary authority is contrary to the "manager at law" test created by the Court which specifically finds that assistants can the discretionary authority to engage in management functions because they are surrogates of the position they assist. See Chief Judge of the Sixteenth Judicial Circuit v. Ill. State Labor Re. Bd., 178 Ill. 2d 333, 344 (1997) (holding that assistant public defenders were managerial employees as a matter of law where they were "surrogates" of public defenders); Cook Cnty. State's Attorney v. Ill. Local Labor Rel. Bd., 166 Ill. 2d 296, 302 (1995) (holding that assistant State's Attorneys were managerial employees as a

matter of law because they were "surrogates" of State's Attorneys). This is not an application of the manager at law test, but a demonstration that its application to positions' whose position titles include the word "Assistant" have been found to be managers under the Act, and thus contradicts AFSCME's argument that the very existence of the word "Assistant" automatically disqualifies Hollis as a managerial employee. Therefore Hollis' title of "Assistant Division Manager" is not evidence that he is not a managerial employee, and AFSCME's reliance upon his title is insufficient to raise an issue that might overcome the presumption that Hollis is a manager as defined by Section 6.1 of the Act.

AFSCME's "assistant" argument also fails to raise an issue that might overcome the presumption that Hollis is a supervisor under the NLRA because the NLRB has long held that job titles are not dispositive. T. K. Harvin & Sons, Inc., 316 NLRB 510, 530 (1995). Rather, the "status of a supervisor under the Act is determined by an individual's duties, not by his title or job classification." Id.; see also RCC Fabricators, Inc., 352 NLRB 701 (2008) (finding field foremen are statutory supervisors). Therefore Hollis' title of "Assistant Division Manager" is not evidence that he is not a supervisory employee, and AFSCME's reliance upon his title is insufficient to raise an issue that might overcome the presumption that Hollis is a supervisor as defined by Section 6.1 of the Act.

b. authority

AFSCME argues that because there is no evidence that Hollis has actual authority or that he exercises any such authority with independent judgment, he is not a supervisor. As with Dvoretskayal-emme and Kavish, this "lack of evidence" argument is also inconsistent with the facts and the law in regards to Hollis.

Hollis has the authority granted to him in the CMS-104 position description for his employment position. As the Assistant Division Manager, he is authorized to conduct many supervisory duties. Hollis is the full-line supervisor, as such he assigns and reviews work, provides guidance and training to assigned staff, counsels staff regarding work performance, reassigns staff to meet operating needs, approves time off, and prepares and signs performance evaluations. Hollis is also authorized to impose discipline up to and including discharge.

Whether Hollis exercises his supervisory duties with independent judgment is presumed because of the presumption that the designation is proper if properly filed, making specific evidence unnecessary. The presumption burdens the objector to provide evidence that

demonstrates that Hollis is not authorized to exercise any independent judgment. In other words AFSCME must show that Hollis is not given the discretion to determine when or how to engage in any of his supervisory functions. Therefore, the lack of specific evidence that Hollis exercises independent judgment in exercising the supervisory duties she is authorized to exercise, does not raise an issue that might overcome the presumption that he is designated properly as a supervisor under Section 6.1 of the Act.

Thus, AFSCME has failed to raise an issue that might overcome the presumption that Hollis' employment position has been designated properly under Section 6.1 of the Act.

8. Gregory Owens

a. independent discretionary authority

AFSCME's argument that in an intermediate order of case no S-RC-07-048, the ALJ found that Owens did not exercise independent discretionary authority does not overcome the presumption that Owens' designation is proper because AFSCME's argument is factually incorrect.

In case no S-RC-07-048, ALJ Colleen Harvey issued an Intermediate Order, stating, in relevant part, that she found that CMS failed to "raise a question of law or fact as to the confidential status of Owens."[11] In order to be a confidential employee under the "labor-nexus" test, the employee at issue must assist in a confidential capacity, a person who formulates, determines and effectuates labor relations policies. Chief Judge of Cir. Ct. of Cook Cnty. v. Am. Fed'n. of State, Cnty. and Mun. Emp. Local 31, 153 Ill. 2d 508, 523 (1992). In order to find that an employee has confidential status, there must first be a finding that the person assisted by the employee performs all three functions of formulating, determining and effectuating labor relations policy. Id. In her order, ALJ Harvey found that CMS had failed to raise a question of fact or law regarding Owens' confidential status because CMS provided no evidence that the person Owens assisted formulated, determined and effectuated labor policy. ALJ Harvey made no finding regarding whether Owens exercised discretionary authority.[12] Therefore, since AFSCME's argument is factually incorrect, I find it unnecessary to determine whether this

[11] Intermediate Order, at 5. See Appendix

[12] The Appellate Court reversed ALJ Harvey' denial of an oral hearing on this issue, and the case is currently pending before the Board. See Ill. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App (4th) 090966 (4th Dist. 2011).

Intermediate Order is even applicable to the instant matter. Therefore this argument fails to raise an issue that might overcome the presumption that the designation is proper.

b. evidence of supervisory authority

AFSCME's argument that there is no evidence that Owens is a supervisor does not sufficiently raise an issue that might overcome the presumption that the designation is proper. As noted above, in order to effectively raise an issue that might overcome the presumption that the designation is proper, the objector must provide evidence that the employee does not meet the supervisory test or either of the managerial tests**.** Since AFSCME does not successfully object to Owens' designation based upon managerial grounds, I find it unnecessary to address AFSCME's supervisory argument, because it must successfully demonstrate that Owens does not meet any of the determinative tests. Therefore, I find that AFSCME has failed to raise an issue that might overcome the presumption that Owens' employment position has been designated properly under Section 6.1 of the Act.

9. Daniel Ewald and Daniel Reter

AFSCME's argument that CMS previously stipulated that Ewald and Reter have no supervisory or managerial authority does not raise an issue that might overcome the presumption that the designation of their employments position is proper, because AFSCME's argument is based on a misstatement of the facts. CMS did not stipulate that neither Ewald nor Reter have either supervisory or managerial authority. At the hearing where Bonneville testified regarding Ewald's and Reter's statuses as confidential employees, CMS stipulated that "there are no supervisory or managerial exclusions being asserted with respect to" Ewald and Reter.[13] This is not a stipulation that Ewald and Reter are neither supervisors nor managers, merely that neither status was within the scope of the hearing.

CMS did previously argue that Ewald and Reter were managers and supervisors. See Case No. S-RC-07-048 Intermediate Order at 6. When the Appellate Court reversed the Board's ruling and remanded the case for hearing it limited the scope of the hearing to the issue of whether Ewald and Reter were confidential employees. See Ill. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App (4th) 090966 ¶ 121. On first glance, the Court's

[13] Tr. at 670.

failure to remand the case on the managerial or supervisory issues could potentially raise an issue that might rebut the presumption that these employees are managers or supervisors under Section 6.1 of the Act. However, upon more careful review, I find that it does not for several reasons. First, the Court did not definitively state that Ewald and Reter were not managers under section 3(j) of the Act, or supervisors under section 3(r) of the Act. See Id. Second, in representation cases, the burden is on CMS to raise the issue that the employee is a manager under 3(j), or a supervisor under Section 3(r), and here the burden is on AFSCME to raise the issue that the employees are not managers under 6.1(c)(i) or supervisors under 6.1(c)(ii). See Chief Judge of the Circuit Court of Cook Cnty., 18 PERI ¶ 2016. Third, even if the Court had explicitly stated that the employees were not managers under the 3(j) definition of "managerial employee," or supervisors under the 3(r) definition of "supervisor," the definition of manager and supervisor under Section 6.1 differ, and any reliance on the Court's interpretation of Sections 3(j) and 3(r) of the Act must reconcile those differences. See 5/ILCS 315.3(j), 3(r), 6.1(c)(i)-6.1(c)(ii). Here, AFSCME has not provided any argument to reconcile the definitions.

Therefore AFSCME failed to raise an issue that might overcome the presumption that the designations of Ewald's and Reter's positions are proper under Section 6.1 of the Act.

10. Suzanne Scronce

Both Scronce and AFSCME filed objections to the designation of Sconce's position. Since Sconce herself is the better authority and has the most knowledge as to what her day-to-day activities are, I will address her objections first. As noted above, to sufficiently raise an issue that might overcome the presumption that this designation is proper the objections must negate the supervisor test and both managerial tests. This can be done through evidence of specific examples or through effective arguments.

a. Scronce's objections

Scronce's objections fail to raise an issue that might overcome the presumption that the designation is proper because her position description giver her supervisory authority and her objections do not address her supervisory authority.

Scronce argues that she does not effectuate management policies nor does she have the authority to recommend or implement policy. Scronce details her duties as a liaison between the bureaus within the Administrative Operations, and states that she only ensures that the bureaus are complying with current policies. She states that she monitors the "adhesion of existing

policy procedures" and "does not make any recommendations" regarding the policy decisions. It appears that Scronce has raised an issue that might overcome the presumption that she is a manager as defined by Section 6.1 of the Act, however, Scronce does not address her supervisory status, and since the designation is based on her authority as a manger and/or a supervisor, she has failed to overcome the presumption that the designation is proper.

b. AFSCME's objections

i. subordinates

AFSCME's argument that Scronce is not a supervisor because the positions she is authorized to supervise were vacant when Romiti testified at the hearing for Case No. S-RC-07-048, does not raise an issue that might overcome the presumption that Scronce was properly designated under Section 6.1 because Scronce's position description grants her supervisory authority, and because Scronce herself did not argue that she currently does not supervise any subordinates.

First, the supervisor test requires that Scronce hold the authority to engage in *any one* of the listed supervisory functions. In order to negate this prong, the objector must provide specific examples where the employee was directed not to engage in the managerial function. AFSCME's argument that in 2012 Scronce did not actually exercise these duties does not overcome this presumption because the job description grants Scronce the authority to supervise staff, assign work, approve time off, provide guidance and training, give oral reprimand, effectively recommend grievance resolutions and complete and sign the performance evaluations of the two employees that hold the positions subordinate to her. AFSCME has not provided any examples that she does not have the authority to exercise these functions, its argument is that as of the date of the representation hearing she had not yet had the opportunity. Therefore, this argument does not raise an issue that might overcome the presumption that the designation is proper because Scronce does hold the authority to engage in at least one supervisory duty.

AFSCME's argument also fails, because the testimony at the hearing is nearly a year old and Scronce's objections do not address her current supervisory status. Here, the objectors bear the burden, and reconciling the possible inconsistency of these objections indicates that while the subordinate positions that Scronce has the authority to supervise were vacant when testimony was presented at the representation hearing on October 31, 2012, the fact that AFSCME does not argue that the positions are currently vacant, and the fact that Scronce did not address her

supervisory status at all in her objections, implies that she does currently exercise her supervisory duties. In the objections Scronce filed on September 3, 2013, she only argued that she does not effectuate policy, she not address whether she exercises authority to supervise subordinate employees. Since the objectors bear the burden, I find that because Scronce did not address her supervisory status in her objections, any reference to her previously having no subordinates to supervise does not raise an issue that might overcome the presumption that Scronce is a supervisor as defined by Section 6.1 of the Act.

ii. significant independent discretionary authority

AFSCME's argument that the Romiti's testimony demonstrates that Scronce does not exercise significant independent discretionary authority does not raise an issue that might overcome the presumption that the designation is proper because the scope of the testimony was limited to Scronce's status as a confidential employee. See Ill. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App (4th) 090966 ¶ 121. An employee can possess confidential status without exercising discretionary authority. See Chief Judge of Circuit Court of Cook Cnty. v. Am. Fed. of State, Cnty. and Mun. Employees, 153 Ill. 2d at 523. Thus any testimony that Scronce exercises discretionary authority would not necessarily have been pertinent.

Therefore Sconce and AFSCME have failed to raise an issue that might overcome the presumption that the designation of Sconce's position is proper under Section 6.1 of the Act.

11. Heather Patterson

AFSCME's argument that Patterson's position description does not support CMS's position that Patterson exercises significant and independent discretionary authority, does not sufficiently raise an issue that might overcome the presumption that Patterson does exercise significant and independent discretionary authority because her position description gives her the authority to recommend implementation enhancements to the Assistant CFO, and AFSCME has made no argument nor provided any examples regarding the effectiveness of Patterson's recommendations.

Therefore AFSCME have failed to raise an issue that might overcome the presumption that the designation of Patterson's position is proper under Section 6.1 of the Act.

12. **Suzanne Robinson**

AFSCME's argument that Robinson's position description does not indicate whether she is a supervisor is factually incorrect, and thus fails to raise an issue that might overcome the presumption that Robinson is designated properly as a supervisor as defined in Section 6.1 of the Act. The CMS-104 position description for Robinson's positions authorizes her to serve as a supervisor to the Executive I position, by assigning and reviewing work, providing training, counseling Executive I position regarding work performance, approving time off, and preparing and evaluating performance evaluations. Robinson is also authorized to discipline the employee holding the Executive I position by adjusting first level grievances, and effectively recommending and imposing discipline, up to and including discharge. Therefore AFSCME's argument that the position description does not indicate whether Robinson is a supervisor fails to raise an issue that might overcome the presumption that her employment position has been designated properly as a supervisor as defined in Section 6.1 of the Act.

13. Neil Scott

AFSCME objects to this designation based on its argument that the CMS-104 position description is insufficient because it provides no specific facts as to the duties of this position, that the position description does not show that Scott exercises independent judgment, and that CMS did not identify the basis for this exclusion. Since I have previously addressed these objections above, and AFSCME provides no specific objections regarding Scott's supervisory or managerial status, I find that AFSCME has failed to raise an issue that might overcome the presumption that the designation of Scott's employment position is proper under Section 6.1 of the Act.

V. CONCLUSION

Pursuant to Section 1300.60 of the Board's Rules, I find that the designation is proper based solely on the information submitted to the Board and AFSCME's objections fail to overcome the presumption that the designation is proper under Section 6.1 of the Act.

VI. RECOMMENDED ORDER

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

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

37015-37-01-100-00-01	Support Manager
37015-37-01-310-00-01	Assistant Division Manager
37015-37-30-000-02-01	Legislative Liaison
37015-37-31-300-00-01	Agency Services Manager
37015-37-31-310-00-01	Manager - Analysis and Resolution Unit
37015-37-31-330-01-01	Manager - Membership Unit
37015-37-50-000-50-01	Admin. Ops. Financial Coordinator
37015-37-50-110-10-01	Personal Services Budget Analyst
37015-37-60-200-01-01	Budget Planning & Control Assistant
37015-37-60-210-02-01	Rate and Billing Manager
37015-37-60-210-10-01	Contract and Obligation Manager

VII. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300,[14] parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order in briefs in support of those exceptions no later than 3 days after service of this recommended decision and order. Exceptions shall be filed with the Board by electronic mail at an electronic mail address designated by the Board for such purpose, ILRB.Filing@illinois.gov, and served on all other parties via electronic mail at their e-mail addresses as indicated on the designation form. Any exception to a ruling, finding conclusion or recommendation that is not specifically urged shall be considered waived. A party not filing timely exceptions waives its right to object to this recommended decision and order.

Issued at Chicago, Illinois this 27th day of September, 2013.

STATE OF ILLINOIS
ILLINIOIS LABOR RELATIONS BOARD
STATE PANEL

[14] Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf

/s/ *Deena Sanceda*

Deena Sanceda
Administrative Law Judge

APPENDIX
Recommended Decision and Order Case No. S-DS-14-051

Documents included by reference for Case No. S-RC-07-048

1. Ill. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App (4th) 090966.
2. Intermediate Order.
3. Certification of Representative
4. Testimony of Paul Romiti regarding Suzanne Scronce, tr. 145-252.
5. Testimony of Janice Bonneville regarding Daniel Ewald and Daniel Reter, tr.668-726.
6. E-mails between the Board's General Counsel and the parties, agreeing to an abeyance.
7. Testimony of James McCarte regarding Maureen Gibbons, tr. 508, 543-549.
8. Testimony of Jacqueline Jones, tr. 338, 340, 344, 348, 355-359.
9. Corrected Partial Revocation of Certification.