

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

State of Illinois, Department of Central)
Management Services (Department of)
Commerce and Economic Opportunity),)
)
 Petitioner)
)
 and)
)
American Federation of State, County and)
Municipal Employees, Council 31,)
)
 Labor Organization-Objector)
)
 and)
)
Kevin Burke, Christine DeGroot, Thomas)
Hagle, Anthony Rolando, Virden Trotter II,)
Brian Turner,)
)
 Employee-Objectors)

Case No. S-DE-14-115

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 as excluded from the 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 rules to effectuate Section 6.1 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.

On November 6, 2013, the State of Illinois, Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation petition pursuant to Section 6.1 of the Illinois Public Labor Relations Act and Section 1300.50 of the Board's rules. All of the positions at issue in this case are affiliated with the Illinois Department of Commerce and Economic Opportunity (IDCEO) and are Public Service Administrator positions. In support of and along with its petition, CMS provided a position description for each of the positions at issue. In addition, CMS provided affidavits that contend, *inter alia*, that the included position descriptions fairly and accurately represent the duties and responsibilities of those positions.

Objections to the designation petition were filed pursuant to Section 1300.60(a)(3) of the Board's rules. Anthony Rolando filed an objection on November 12, 2013. Thomas Hagle filed an objection on November 13, 2013. Christine DeGroot filed an objection on November 14, 2013. Kevin Burke and Brian Turner filed separate objections on November 15, 2013. The American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed an objection on November 18, 2013. Virden Trotter II filed an objection on November 19, 2013.

A hearing was held on December 13, 16, and 20, 2013 before the undersigned. At that time, the parties appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. After full consideration of the record, I, the undersigned Administrative Law Judge, recommend the following.

I. DISCUSSION AND ANALYSIS

Centrally, the instant analysis must determine whether the petitioned-for positions may lawfully be selected for designation under Section 6.1 of the Illinois Public Labor Relations Act. Under Section 6.1, 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 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 also fit one or more of the five categories provided by Section 6.1(b).¹ Here, CMS contends that the positions at issue qualify for designation under Section 6.1(b)(5).

Section 6.1(b)(5) requires a petitioned-for position to authorize an employee in that position to have “significant and independent discretionary authority as an employee.” That authority is defined in Section 6.1(c), which requires the employee to either be (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 represent management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency or (ii) qualify 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 (NLRB) interpreting that provision or decisions of courts reviewing decisions of the NLRB.

General Objections

In its objection, AFSCME asserts that AFSCME’s submissions merely demonstrate that the positions at issue are “authorized” to complete the job duties alleged therein. According to AFSCME, in order to properly designate a position for exclusion, CMS needed to demonstrate that the employees at issue have “actual authority” to complete the job duties listed in their

¹ 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. I also 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.

position descriptions or that they have actually exercised all of the powers authorized by their positions. Strictly speaking, those positions do not seem to reflect the standard provided by Section 6.1. Indeed, the plain language of Section 6.1(b)(5) fairly clearly encompasses positions that simply authorize employees in those positions to have “significant and independent discretionary authority.”

Separately, I suggest that the mere possibility that the extent of the petitioned-for employees’ duties may be influenced by their supervisors is not necessarily dispositive. See State of Illinois, Department of Central Management Services (Emergency Management Agency), 30 PERI ¶105 (IL LRB-SP 2013). I also note that the language of Section 6.1 does not overtly require that the petitioned-for employees be fully aware or informed of the extent of their authorized duties and responsibilities. Moreover, it does not appear to distinguish between “professional” and “managerial” work to the extent that AFSCME seems to contend. See State of Illinois, Department of Central Management Services (Department of Natural Resources), 30 PERI ¶112 (IL LRB-SP 2013); State of Illinois, Department of Central Management Services (Department of Agriculture), 30 PERI ¶84 (IL LRB-SP 2013).

I am also unmoved by the fact that the petitioned-for positions have previously been included in bargaining units or by the fact that, subsequent to the enactment of Section 6.1, AFSCME and CMS agreed to a collective bargaining agreement that covers the positions at issue. In general, it appears that an employer should be allowed to pursue an exclusion at any time if, at any point, it determines an exclusion is appropriate. Department of Central Management Services v. Illinois Labor Relations Board, State Panel, 364 Ill. App. 3d 1028, 1036, 848 N.E.2d 118, 124 (4th Dist. 2006); State of Illinois, Department of Central Management Services, 30 PERI ¶80 (IL LRB-SP 2013). I also note that nothing in Section 6.1

suggests that the Governor must seek to exclude either all Public Service Administrator positions or none of them.

AFSCME further asserts that “[t]he NLRB and the courts have systematically held that any claim of supervisory or managerial status requires that the party raising the exclusion bear the burden of proof.” (According to AFSCME, CMS has failed to carry that burden.) It also contends that, to the extent that one of CMS’ affidavits states that an employee effectuates policies or is authorized to effectuate departmental policy and the position description does not define a policy, there can be no showing that the employee is “managerial.” In sum, I suggest that the foregoing positions overlook the presumption of appropriateness provided by Section 6.1(d) and the unique requirements of Section 6.1. See State of Illinois, Department of Central Management Services (Department of Natural Resources), 30 PERI ¶112.

Generally speaking, in order to properly designate a State employment position under Section 6.1, CMS must simply provide the Board with (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 provided that basic information. By doing so, CMS provided a basis for the designation and the minimum notice and showing required by Section 6.1. I also note that, for this particular type of case, absolute precision has not been required by the Board in the past. See State of Illinois, Department of Central Management Services (Emergency Management Agency), 30 PERI ¶105; State of Illinois, Department of Central Management Services, 30 PERI ¶80.

AFSCME’s objection also alleges that Section 6.1 violates the Illinois Constitution and the United States Constitution. However, significantly, the Board is largely unable to address

those kinds of allegations, as administrative agencies have no authority to declare statutes unconstitutional or question their validity. Goodman v. Ward, 241 Ill. 2d 398, 411, 948 N.E.2d 580, 588 (2011); State of Illinois, Department of Central Management Services, 30 PERI ¶80. Accordingly, I find that, though AFSCME’s concerns are quite notable, this Recommended Decision and Order need not analyze the gravity of the rights affected by the Governor’s designation or otherwise address AFSCME’s constitutional concerns in detail.

Position-Specific Objections

John Baldini

Baldini is a Business Development Representative affiliated with the IDCEO’s Office of Business Development. (He has also been described as a Market Development Representative.) Baldini regularly reviews businesses’ requests for State incentives, gathers information for those businesses, and determines what State programs the businesses might qualify for. He also provides “technical assistance” to businesses and others employed by the IDCEO by telling them what State programs are available and what those programs’ guidelines are.

When a business applies for an incentive, it must fill out an application form. Once Baldini gets those forms and they are complete, he passes them to his superiors. He does not approve or deny the applications. Applications must simply meet preset guidelines or requirements. Baldini cannot alter those requirements or deny an applicant that has satisfied them. Indeed, Baldini does not write any of his agency’s policies. Moreover, Baldini has never been asked to recommend a policy change and, in fact, has never submitted a formal recommendation regarding a policy or practice.

The record also indicates that businesses that are interested in State assistance may be asked to fill out an intake document. Those documents are given to Baldini, who then reviews

the information in them and enters that information into a project summary form. Project summary forms are discussed during weekly meetings. Baldini participates in those meetings by telephone. He does not make formal recommendations during the meetings.

Although its exact parameters are not yet clearly defined by Board precedent, I recommend that Baldini's position does not satisfy the standards of Section 6.1(c)(i). It does not appear that Baldini is engaged in executive and management functions in the traditional sense. It also does not appear that Baldini is charged with the effectuation of management policies and practices. Further, he does not seem to take or recommend discretionary actions that meaningfully control or implement policy. Instead, it appears that Baldini largely functions as an "ambassador" and essentially provides technical assistance and advice related to his area of "professional expertise." Presumably, merely "discussing" or being aware of an existing State policy that one cannot alter does meet the standard. Moreover, Baldini has no subordinates and, accordingly, I would not find that he satisfies the standard of Section 6.1(c)(ii). State of Illinois, Department of Central Management Services (Emergency Management Agency), 30 PERI ¶105. Thus, I recommend finding that Baldini's position does not satisfy the standard of Section 6.1(b)(5).

Kevin Burke

Burke is an Intelligence Control Manager. He largely performs a variety of work that requires him to use his professional accounting skills. For example, Burke makes sure that financial reports his department sends to federal agencies are accurate and generally ensures that federal guidelines are being followed. He also makes sure an internal accounting system is accurate.

Burke currently has two subordinates. Both are accountants. Although their work does not change much from one day to the next, Burke is nevertheless responsible for assigning the two subordinates work. The subordinates' assignments are currently distributed in accordance with an established procedure, but Burke's superiors leave it up to Burke to decide how his subordinates' work should be divided. He is expected to reassign his staff in order to meet day-to-day operating needs.

Burke reviews his subordinates' work and makes sure his subordinates are processing the office's documents properly and are otherwise completing the tasks assigned to them. If they are not, Burke can recommend to his superior that his subordinates work overtime to catch up. Evidently, Burke's superior would accept Burke's recommendation every time. It is not clear that Burke's review of his subordinates' work requires a great deal of discretion or independent judgment when he is simply checking for accuracy. However, it must be noted that Burke also completes more detailed performance evaluations. Significantly, that function requires Burke to establish annual goals and objectives for his subordinates.

Burke provides guidance and training when his subordinates do not understand something and have questions. That could involve, for example, showing a subordinate how to input something into a system. Burke's subordinates might also have a question about guidelines that must be followed.

Burke approves and reviews his subordinates' time off requests. In practice, Burke has never denied a time off request when the subordinate had the time available. Nonetheless, it appears that he does have the authority to do that. Before he would do so, however, Burke would ask a superior for permission.

Burke has not received training related to disciplining his subordinates. Indeed, Burke allegedly has never been told he has any disciplinary authority. However, he evidently does have the authority to discipline by issuing an oral reprimand. Further, if Burke feels that additional or more severe discipline is necessary, he can make a corresponding recommendation to his superior. It appears that, in practice, Burke's superior would rely on Burke's disciplinary recommendations and reporting.

I recommend that Burke's position does not satisfy the standard of Section 6.1(c)(i), as it is not clear that he is engaged in traditional executive and management functions or is charged with the effectuation of management policies and practices. It also is unclear that Burke takes or recommends discretionary actions that effectively control or implement the policy of his agency. However, I also recommend that Burke's position, as described above, does satisfy the standard of Section 6.1(c)(ii). Thus, I recommend finding that Burke's position satisfies the standard of Section 6.1(b)(5).

AFSCME highlights the fact that the position description identifies that it is only in the absence of other section managers that Burke directs staff in assignments. According to AFSCME, it therefore cannot be said that Burke is authorized to complete a supervisory function. That argument appears to oversimplify the issue. The NLRB, when deciding the status of individuals temporarily assigned to a supervisory position, will find the individual a supervisor under the National Labor Relations Act if he or she spends a "regular and substantial portion" of his or her working time performing supervisory tasks. See City of Mt. Vernon, 9 PERI ¶2022 (IL SLRB 1993); Aladdin Hotel, 270 NLRB 838 (1984); Honda of San Diego, 254 NLRB 1248 (1981). Burke appears to do that.

Christine DeGroot

DeGroot is a Cash Program Manager or Program Accounting Manager. She works in the IDCEO's accounting office and oversees a number of subordinates. DeGroot performs work related to grant reports. She also works with the agency's "cash desk" to ensure that enough cash is available in the appropriate accounts to cover expenditures. That cash desk work can require DeGroot to transfer money from one account to another. When DeGroot does that, she works within established guidelines and has very little discretion. DeGroot does not create a budget and does not write policies for the agency. However, purportedly, DeGroot may advise or assist others with the review of policies and methodologies. Allegedly, she would also alert a superior if she thought that an action were unlawful.

DeGroot cannot transfer a subordinate from her section of the agency to another. She also cannot hire a subordinate without the involvement of a superior or the agency's human resources department. That being said, DeGroot, who is apparently "Rutan certified," does interview and rate candidates who are looking to work in the accounting office. Those ratings are used, in part, to determine which applicant is best qualified for the position at issue and will be hired. Notably, DeGroot's ratings count as much as those of DeGroot's superior, who also rates applicants.

DeGroot generally appears to direct a variety of subordinates and assign and reassign their work at her discretion. Although DeGroot's subordinates allegedly know what their work is on a day-to-day basis, DeGroot does train them to follow and understand the agency's policies and provides guidance as needed. While DeGroot's work assignments do not affect her subordinates' pay, they can affect how many hours per week her subordinates need to work.

DeGroot has no role in laying off employees or recalling them from a layoff. She also cannot make a subordinate work during a weekend and cannot mandate that a subordinate work late. However, testimony suggests that DeGroot has assigned her subordinates overtime and that that assignment was approved by her DeGroot's superior. Purportedly, DeGroot also determines which subordinate gets to work overtime hours. Additionally, she approves her subordinates' time off requests.

In practice, DeGroot has never discharged or suspended a subordinate or issued a written reprimand. Yet, the record indicates (and DeGroot concedes) that DeGroot can discipline her subordinates with her superior's approval. Specifically, it appears that DeGroot can give oral and written reprimands and, in addition, can counsel her subordinates when they have problems with productivity, quality of work, and conduct. DeGroot has also indicated that she can recommend discharge.

DeGroot completes annual performance evaluations for all of her subordinates. (That function requires her to establish annual goals and objectives.) Notably, one of DeGroot's subordinates is currently participating in a performance improvement plan. That plan, which was implemented after DeGroot and her superior determined that the subordinate's work was inadequate, has the subordinate evaluated on a monthly basis. If DeGroot gives the subordinate sufficiently negative evaluations, the subordinate will not be certified and will not be retained.

I recommend that DeGroot's position does not meet the standard of Section 6.1(c)(i). She does not appear to engage in traditional management and executive functions. It is also unclear what management policies and practices she effectuates or controls or implements. Admittedly, the record does suggest that DeGroot participates in meetings in which she is asked for and then provides her input regarding unnamed "procedures." The record also ambiguously

suggests that she “implements new procedures and programs.” I find that those vague suggestions are unconvincing. However, I do find that the foregoing circumstances demonstrate that DeGroot’s position satisfies the standard of 6.1(c)(ii). Accordingly, I find that DeGroot’s position meets the standard of Section 6.1(b)(5).

Dale Fesser

Fesser is currently a “loan analyst” or “loan officer.” (He has also been called a Business Loan Specialist.) Primarily, he receives applications and then recommends whether those applications should be approved. Fesser’s recommendations are always made in accordance with preset standards that he cannot waive or modify. Only the Director of the IDCEO has the authority to waive some of those standards. If an application does not meet the relevant standards, Fesser might have a discussion with an applicant to see if the application can be improved. However, at least according to Fesser, if the standards are not met, he cannot recommend that the application be approved.

Fesser does some work that is affiliated with the Advantage Illinois Program’s loan committee. That committee determines whether that program’s applications are approved. If a project is approved, the project is submitted to the Director for his approval. Fesser brings some loans to the loan committee’s attention, and most of the loans Fesser submits are ultimately approved. Fesser makes a note when an applicant has not met a standard. Evidently, Fesser could theoretically recommend to the loan committee that a particular standard be waived. However, it appears that that has never occurred and it is not immediately clear how such a recommendation would be taken. Fesser would not recommend against an applicant that meets the standards.

Fesser has no role in the budget process and does not write policies. In practice, he also is not asked to make policy recommendations. It is likely that Fesser recommended some “policies” in 1994 and 1995, but what those recommendations were (or whether those recommendations were accepted or had any weight or effect) is not clear from the limited record.

I recommend that Fesser’s position does not meet Section 6.1(b)(5)’s standard. Regarding Section 6.1(c)(i), I suggest that Fesser is not engaged in executive and management functions and is not charged with the effectuation of management policies and practices. Moreover, Fesser’s actions appear to require little to no discretion. (Evidence suggests that all of his work must be done within preset “programmatic requirements.”) I also note that Fesser has no subordinates and, accordingly, I find that his position cannot satisfy the standard of Section 6.1(c)(ii). State of Illinois, Department of Central Management Services (Emergency Management Agency), 30 PERI ¶105.

Angela Foster

Foster is Assistant Deputy Director of the IDCEO’s Office of Urban Assistance. She is also Program Manager for the Urban Weatherization Initiative (UWI) Program, a program of the Office of Urban Assistance. Much of the UWI’s work is performed by the “UWI team,” which Foster oversees. The number of employees who are on that team fluctuates. There are currently three active team members, and two more are expected to join shortly.

Foster contends that she cannot write policy. She cannot, for example, alter the requirements of a grant agreement. However, significantly, she is often responsible for the communication and expression of existing agency policies. For example, Foster appears to have overseen the creation of a detailed program manual and an application that are now being used by grantees. Moreover, it appears that she is responsible for coming up with day-to-day

procedures that will help to implement existing policies effectively. Foster has created a variety of templates which are now being used by the office.

Foster is generally responsible for the day-to-day activities of all of her team members. Among other things, Foster directs, assigns, and corrects their work. She also runs team meetings. Foster does not need to ask for her superior's permission before she gives an assignment. In practice, Foster assigns work by geographic location and tries to balance workloads. However, it is not clear that she must assign work in that fashion. Moreover, it appears that Foster meaningfully considers the complexity of each assignment and establishes corresponding timeframes for completion.

I should note that Foster's directions can be overridden by her superiors. In one instance, Foster's superior rejected Foster's instruction to a particular subordinate to take meeting minutes. Evidently, Foster's superior preferred a different, more experienced employee take the meeting minutes instead. However, that type of instance does not appear to represent the norm.

In addition to the powers described above, Foster can approve or deny overtime. Foster is also expected to either approve or deny her subordinates' time off requests. (Evidence suggests that Foster would not deny a time off request when the requesting employee had that time available.) Moreover, Foster evaluates her team members' work. Soon, that will include the completion of annual performance evaluations. I must also note that Foster has the authority to discipline her subordinates.

In sum, I recommend that Foster's position satisfies the standard of Section 6.1(c)(i), as I find that she is generally engaged in executive and managerial functions and is essentially charged with the effectuation of management policies and policies. For many of the reasons outlined above, I also recommend that Foster's position satisfies the standard of Section

6.1(c)(ii) as well. Accordingly, I recommend finding that Foster's position satisfies the standard of Section 6.1(b)(5).

John Glazier

Glazier and his subordinate, Josh Hedstrom, generally perform very similar work. That work includes regularly reviewing grant applications and quarterly reports for technical accuracy and eligibility. That work is divided evenly by Glazier between himself and Hedstrom. The work that Glazier assigns comes from Glazier's superiors.

Evidently, Glazier cannot deny or approve a grant application. However, he can tell an applicant if an application is deficient. In order for an application to ultimately be approved, the applicant must meet the relevant preset standards that are affiliated with the applied-for program. Glazier does not have the authority to change those standards. Further, he does not have the authority to decide how policies or legislation will be implemented.

Glazier has not disciplined Hedstrom and has not received training related to discipline. Moreover, Glazier has not been told by his superior that he is responsible for disciplining Hedstrom. Nevertheless, Glazier does have the authority to give Hedstrom a verbal or written reprimand if appropriate and can counsel and take other "corrective actions." To the extent that Glazier's superior would need to approve that discipline, that superior would approve it after a simple verification. Glazier is held accountable by his superiors if one of his subordinates was not doing his or her job correctly. That being said, Glazier has not been told that he is "responsible" for Hedstrom's mistakes.

Glazier demonstrates other indicia of supervisory authority as well. For example, Glazier annually evaluates Hedstrom's performance and, for each performance evaluation, determines whether Hedstrom has met his objectives for the year. Glazier is also responsible for approving

Hedstrom's time off requests. (Although, Glazier has never denied his subordinate's time off request when the subordinate was entitled to time off according to the applicable rules.) Additionally, Glazier closely reviews Hedstrom's work and gives Hedstrom guidance and training. If Hedstrom has a question about his work, Hedstrom looks to Glazier for an answer. I might note, however, that Glazier does not have a role related to hiring, did not have a role in Hedstrom's transfer, and cannot suspend, layoff, recall, promote, discharge, or reward.²

I recommend that Glazier's position does not satisfy the standard of Section 6.1(c)(i), as it does not appear that Glazier is engaged in traditional executive and management functions. It also does not appear that he is charged with the effectuation of management policies and practices. Further, Glazier does not seem to take or recommend truly discretionary actions that effectively control or implement agency policy. At the same time, however, I also recommend that Glazier's position does satisfy the standard of Section 6.1(c)(ii) for many of the reasons highlighted above. Thus, I find that Glazier's position satisfies the standard of Section 6.1(b)(5).

Dennis Gorss

Gorss is Manager of the Economic Development for a Growing Economy (EDGE) Tax Credit Program. Companies apply to that program to see if they can receive that particular tax credit. The clear majority of Gorss' work involves reviewing related application forms to make sure they are complete. He also makes sure that each company is "sound." After Gorss' review, he sends a letter to the Director of the IDCEO. Gorss cannot change those forms and, evidently, does not review policies or recommend policy changes.

² It must also be noted that Glazier also assigns and delegates Melody Sanderfield work. It does not appear that Sanderfield is permanently assigned to Glazier. Further, Glazier does not appear to evaluate her performance. Because I am recommending that Glazier "supervises" Hedstrom, I suggest that the Board need not address this issue in detail.

Although Gorss generally contends that he has no subordinates, he currently completes Dee Smith's annual performance evaluations and did so in 2012 and 2013. Those evaluations require that Gorss set annual goals and objectives for Smith and closely monitor her work. Also, while it may not require the use of meaningful independent judgment, I note that Gorss also assigns Smith work to the extent that he writes things out by hand and then has Smith type them. More importantly, Gorss has the authority to provide guidance and training. Further, when necessary, Gorss is responsible for recommending that Smith be disciplined. Notably, Gorss previously gave a subordinate an oral and a written reprimand. (Those reprimands were given after Gorss reviewed the subordinate's attendance record.) However, Gorss cannot change Smith's shift and cannot mandate that Smith work overtime and be paid for it.

I recommend that Gorss' position does not satisfy the standard of Section 6.1(c)(i). It is not clear that he is engaged in executive and management functions and he does not appear to be charged with the effectuation of management policies and practices. Moreover, it is not clear that he takes or recommends meaningful discretionary actions that effectively control or implement agency policy. That being said, I also recommend that the foregoing circumstances do demonstrate, on balance, that Gorss' position satisfies the standard of Section 6.1(c)(ii). In that way, Gorss' position would satisfy that of Section 6.1(b)(5) as well.

Brian Turner

Turner, one of two Budget Analysts in the IDCEO's budget office, performs a lot of data analysis and "allocates costs" throughout a given year. When Turner allocates costs, he often does so, fairly mechanically, in accordance with time sheets that are given to him. Evidence suggests that that task does not require any discretion. Similarly, Turner, following predefined

guidelines, sometimes works with the Comptroller to make sure appropriations are correctly entered and coded.

In addition to allocating costs, Turner estimates payroll costs for his department and advises his superior on a variety of issues related to the budget office. In practice, his superior relies heavily on his input. Turner has also gathered data related to the agency's affirmative action plan. Additionally, testimony suggests that, in his superior's absence, Turner can and does make some decisions on behalf of the budget office and his superior. However, those decisions were not explained. Likewise, testimony indicates that Turner has advised his superior about how a policy should be enforced and how a budget should be developed, but those assertions, too, were not meaningfully developed.

I recommend that Turner's position does not satisfy the standard of Section 6.1(c)(i). It does not appear that he is charged with the effectuation of management policies and practices. It also does not appear that Turner truly takes or recommends discretionary actions that effectively control or implement policy. According to Turner, he does not write any policies or recommend that any policies be adopted and does not have the authority to decide how policies or legislation should be implemented. He largely appears to be a key technical reference or analyst and, presumably, not all sophisticated "fiscal planning" or budget-related functions meet the standard.

Separately, I note that Turner currently has no subordinates and, in fact, has not had subordinates for seven years. I suggest that, for those reasons, his position does not satisfy the standard of Section 6.1(c)(ii). State of Illinois, Department of Central Management Services (Emergency Management Agency), 30 PERI ¶105. Thus, I also recommend finding that Turner's position does not satisfy the standard of Section 6.1(b)(5). Purportedly, Turner might have subordinates in the future. However, to be sure, the two positions that would report to him

are currently vacant. Intuitively, the possibility of having subordinates one day is not enough to characterize Turner as a “supervisor” as that term is meant by Section 6.1(c)(ii).

Anthony Rolando and Virden Trotter II

Rolando and Trotter are Regional Economic Developers for the IDCEO’s Office of Regional Economic Development. (They have also been called Senior Account Managers.) In practice, the Regional Economic Developers primarily serve as “information conduits” for businesses, communities and other “contacts” in the geographic regions assigned to them. The two use their “regional knowledge” to build relationships with such contacts and explain and promote the State’s many policies and programs to them.

To be clear, Rolando and Trotter do not decide whether a particular contact qualifies for a State program. Rather, whether a contact qualifies for a particular program is determined by preset standards that the Regional Economic Developers cannot alter. Indeed, the two cannot alter any State policies or practices. Further, they have not been asked to draft policies or legislation and do not initiate projects. (Rolando asserts that he has “no input in agency goals.”) The two do not appear to have a role in their office’s budget process.

It does not appear that the Regional Economic Developers are engaged in any executive and management functions or are charged with the effectuations of management policies. It also does not appear that they take or recommend any meaningful discretionary actions that effectively control or implement the IDCEO’s policy. Therefore, I suggest that their positions do not satisfy the standard of Section 6.1(c)(i). Further, Rolando and Trotter have no subordinates and, accordingly, I would not find that their positions satisfy the standard of Section 6.1(c)(ii).

State of Illinois, Department of Central Management Services (Emergency Management

Agency), 30 PERI ¶105. Thus, I would also find that they do not satisfy the standard of Section 6.1(b)(5).

Deveda Francois and Carol Watson

Francois and Watson work for the IDCEO's Office of Business Development. Both are Business Development Representatives. However, Francois has also been called a Market Industry Specialist and Watson has also been called an Economic Development Representative.

Both Economic Development Representatives receive all of their assignments from their superiors. Allegedly, both employees are authorized to "consult with industry specialists" and speak to companies under the direction of their superiors. They are also purportedly authorized, at least when instructed to do so by a superior, to establish relationships with agencies and municipalities to help identify companies that may need incentive packages. Further, if a superior tells them to, they are authorized to propose initiatives to their superiors or draft legislative initiatives.

That being said, it appears that, in reality, they do not consult with industry specialists, have not provided or been asked for recommendations, and essentially cannot change agency policies, practices, or procedures. It also appears that they have never proposed initiatives or legislation. Additionally, they do not have a role in the budget, do not maintain marketing data, and do not attend trade shows (as their position descriptions would suggest).

The record suggests that, in practice, Watson is often assigned a business and is asked to determine whether it qualifies for State incentives. At that point, Watson gets the necessary information from the business. Watson then checks that information against preset guidelines. (Watson does not interpret or change the guidelines, which allegedly are quite specific.) Next, Watson summarizes her findings in accordance with a standard format. (That summary does not

include a recommendation.) Watson later submits the summary to her superior. After that submission, Watson may be asked to answer her superiors' follow-up questions. To get those answers, Watson may need to contact the business being considered for additional information.

I recommend that the two Business Development Representative positions do not satisfy the standard of Section 6.1(c)(i). The record does not contain meaningful evidence that suggests that either is engaged in traditional executive and management functions or charged with the effectuation of management policies. In addition, it does not appear that they take or recommend discretionary actions that effectively control or implement the policy of their agency. At most, it appears that both currently function as technical assistants. Also, neither Business Development Representative has a subordinate. Accordingly, neither position should be found to satisfy the standard of Section 6.1(c)(ii). State of Illinois, Department of Central Management Services (Emergency Management Agency), 30 PERI ¶105. Therefore, I recommend that neither position satisfies the standard of Section 6.1(b)(5).

Thomas Hagle, Terrence LaRocca, Samson Ntum, Zhigang Ren, and Iwona Wegrzyn-Bochenska

Hagle, LaRocca, Ntum, Ren, and Wegrzyn-Bochenska are Trade Specialists who work for the IDCEO's Office of Trade and Investment. Each Trade Specialist is affiliated with a unique country or region of the world. Other than that difference, it appears that the Trade Specialists generally perform the same or very similar work. Most of a Trade Specialist's work is related to the office's "trade missions," which are sponsored, targeted events that are conducted in other countries and are meant to promote Illinois businesses abroad. Trade Specialists are responsible for recruiting or marketing to businesses to participate in the trade

missions. They also are generally expected to provide recommendations and answer questions when asked to do so by their superiors.

Trade Specialists regularly receive trade mission applications. Those applications, which are 14 pages long, help determine whether interested businesses are eligible for participation in a trade mission. An application can determine whether a business has the right number of employees or enough revenue, for example. Trade Specialists make sure that all of an application's blanks are filled in. If something is missing, a Trade Specialist informs the business of its error. In that context, Trade Specialists might also be required to visit a business' facility in person to make sure it is "legitimate."

Once an application is filled out, the Trade Specialist forwards the completed application to his or her superiors, who subsequently determine whether the business can participate. A very small portion of completed applications are rejected by the Trade Specialists' superiors. At some point, a list of participating businesses is formulated. Once that list exists, the Trade Specialists are expected to provide information and referrals to the participating businesses if they have questions.

Trade Specialists do not have the authority to modify trade mission applications. However, significantly, a Trade Specialist can independently highlight or recommend a business be included in a trade mission that does not satisfy a particular standard. Those recommendations have been accepted by superiors in the past.

It is also important to note that Trade Specialists also help to plan the trade missions. Typically, by design, trade missions focus on certain industries or regions and, eventually, there is a set number of trade missions per year per area. The number of participants for a particular trade mission can also be capped. To be sure, Trade Specialists do not unilaterally determine

those themes or numbers, and Trade Specialists cannot prioritize among applicants. However, the overall record suggests that the Trade Specialists are expected to and often do play an important, notable role in many of those determinations.

Similarly, I note that Trade Specialists do not appear to unilaterally determine how much a trade mission will cost in every instance. It seems that, sometimes, Trade Specialists simply provide their superiors with cost estimates that have been calculated by a foreign office or other organization. Also, estimated budgets can and have been modified by the Trade Specialists' superiors. However, the Trade Specialists do appear to have some level of meaningful input in that context.

Trade Specialists are also expected to personally attend all of the trade missions occurring in their assigned country or region. While attending a trade mission, Trade Specialists act as facilitators and work to make sure the shows run smoothly. That could involve handling straightforward logistical issues on site or providing other kinds of help. In practice, Trade Specialists do not make formal speeches in front of the trade missions' guests. However, it appears that they do have the authority to do so when appropriate.

As an initial matter, I note that none of the Trade Specialists have subordinates. Accordingly, I recommend that their positions do not satisfy the standard of Section 6.1(c)(ii), State of Illinois, Department of Central Management Services (Emergency Management Agency), 30 PERI ¶105. Whether the Trade Specialists satisfy Section 6.1(c)(i) is a more difficult determination.

In part, it seems that the Trade Representatives often function as “marketing representatives” who help Illinois companies export by alerting them of the office’s programs and providing general assistance. I propose that those functions are not what would traditionally

be understood as executive or management functions. The same can be said for the Trade Representatives' general responsibility for acting as general technical experts regarding their assigned countries or regions for their superiors.

Despite the foregoing, I ultimately find that the Trade Specialists' authority rises to meet the standard of Section 6.1(c)(i) when they effectively "lead" and control the creation and implementation of trade missions, which are one of their office's central concerns. I would also posit that that role requires a meaningful degree of discretion. Granted, the overall record suggests that whatever recommendations are made by the Trade Specialists to their superiors are advisory in nature. However, it appears that the vast majority of those recommendations are ultimately adopted and implemented. See State of Illinois, Department of Central Management Services (Emergency Management Agency), 30 PERI ¶105. Further, as I see it, the fact that the Trade Specialists often work with others to formulate their recommendations is not dispositive in this instance. Accordingly, on balance, I recommend that the Trade Specialist position satisfies the standard of Section 6.1(c)(i) and, accordingly, that of Section 6.1(b)(5) as well.

II. CONCLUSION OF LAW

Based on my review of the designation, the documents submitted as part of the designation, the objections, and the documents, the testimony, and arguments submitted in support of those objections, I find the instant designation to have been properly submitted and consistent with the requirements of Section 6.1 of the Illinois Public Labor Relations Act. However, I find that the designation is improper to the extent that it seeks to designate the positions currently occupied by Baldini, Fesser, Francois, Rolando, Trotter, Turner, and Watson.

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 Commerce and Economic Opportunity 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>
37015-42-35-050-00-01	Building and Site Support Manager
37015-42-35-230-20-01	Large Business Development and Edge Manager
37015-42-35-300-10-01	Communication and Marketing Media
37015-42-35-420-00-01	Incentive ETIP Manager
37015-42-35-000-20-01	Community Infrastructure supervisor
37015-42-35-140-30-05	Economic Development Representative Specialist
37015-42-35-410-00-01	Competitive ETIP Manager
37015-42-05-100-00-01	Bill Payment Assistance Manager
37015-42-05-200-00-01	Weatherization Program Manager
37015-42-00-310-30-01	Expenditure Planning Manager
37015-42-00-330-10-01	Grant Close-Out Unit Manager
37015-42-00-330-20-01	Accounting Controls Operation Manager
37015-42-00-330-50-01	Cash Management and Cash Account Control
37015-42-00-094-12-01	Trade Specialist/International Marketing Representative
37015-42-00-094-12-03	Trade Specialist/International Marketing Representative
37015-42-00-095-15-01	Trade Specialist/International Marketing Representative
37015-42-00-095-15-02	Trade Specialist/International Marketing Representative
37015-42-00-095-15-03	Trade Specialist/International Marketing Representative
37015-42-00-095-15-05	International Marketing FDI Representative
37015-42-00-096-10-01	Trade Specialist/International Marketing Representative
37015-42-00-000-03-01	Deputy Chief of Staff
37015-42-00-030-10-01	Assistant Deputy Director
37015-42-10-050-00-01	Senior Accounts Manager
37015-42-10-050-00-02	Senior Accounts Manager
37015-42-10-050-00-03	Senior Accounts Manager
37015-42-10-050-10-01	Senior Accounts Manager
37015-42-10-300-00-01	Senior Accounts Manager
37015-42-10-400-00-01	Senior Accounts Manager
37015-42-10-600-00-01	Senior Accounts Manager
37015-42-10-700-00-01	Senior Accounts Manager
37015-42-10-800-00-01	Senior Accounts Manager
37015-42-10-900-00-01	Senior Accounts Manager
37015-42-10-900-00-02	Senior Accounts Manager

IV. EXCEPTIONS

Pursuant to Sections 1300.90 and 1300.130 of the Board's rules, 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 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 in Chicago, Illinois this 26th day of December 2013.

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



**Martin Kehoe
Administrative Law Judge**