

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

State of Illinois, Department of Central)	
Management Services (Department of Military)	
Affairs),)	
)	
Employer,)	
)	
and)	Case No. S-DE-14-117
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector.)	

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

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

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

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

Officer, or Human Resources Director;

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

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

As noted, Public Act 97-1172 and Section 6.1 of the Illinois Public Labor Relations Act became effective on April 5, 2013, and allow the Governor 365 days from that date to make such designations. The Board promulgated rules to effectuate Section 6.1, which became effective on August 23, 2013, 37 Ill. Reg. 14,066 (September 6, 2013). These rules are contained in Part 1300 of the Board’s Rules and Regulations, 80 Ill. Admin. Code Part 1300.

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.

On November 12, 2013, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation petition pursuant to Section 6.1(b)(2) of the Act and Section 1300.50 of the Board's Rules. The following five positions at the Illinois Department of Military Affairs are at issue in this designation petition:

<u>Title</u>	<u>Position No.</u>	<u>Working Title</u>	<u>Incumbent</u>
Public Service Administrator, Opt. 2	37015-35-02-000-00-01	CFO Assistant	Wilson, Harold L.
Public Service Administrator, Opt. 1	37015-35-03-001-01-01	Agency Procurement Officer	Mays, Leesa
Military Facilities Officer I	82910-35-03-001-02-02	Northern Facility Officer	Hamilton, Gary
Military Facilities Officer I	82910-35-03-001-02-01	Chicago Area Facility Officer	Stanbery, Dannie
Military Facilities Officer I	82910-35-03-001-02-03	Southern Facility Officer	Winner, Michael

In support of its petition, CMS filed position descriptions (CMS-104s) for each petition, affidavits from individuals who supervise the listed positions, and a summary spreadsheet. The spreadsheet indicates that the PSA, Option 1 positions at issue were certified on January 20, 2010; the PSA, Option 2 positions at issue were certified on November 18, 2009; and the PSA Option 8L positions at issue were certified on August 13, 2010.

On November 22, 2013, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed objections to the designation pursuant to Section 1300.60(a)(3) of the Board's Rules.

I have reviewed and considered the designation petition, the documents accompanying the designation petition, the objections raised by AFSCME, and the documents submitted in support of the objections. I find that the objections fail to raise an issue of law or fact that might overcome the presumption that the designation is proper such that a hearing would be necessary. Moreover, after consideration of the information before me, I find that the designation was properly submitted and that it is consistent with the requirements of Section 6.1 of the Act. Accordingly, I recommend that the Executive Director certify the designation of the positions at issue in this matter 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.

I. AFSCME'S OBJECTIONS

AFSCME objects to the designation in a number of ways. AFSCME included the following documents in support of its objections: the affidavit of Tracy Abman; an AFSCME

Information Form completed by Leesa Mays, with attachments; and an AFSCME Information Form completed by Gary Hamilton, with attachments.

Through its written objections and documents, AFSCME makes the following arguments.

A. Procedural Issues

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

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

B. Substantive Issues

AFSCME contends that under the National Labor Relations Board (NLRB) precedent and case law interpreting the same, “any claim of supervisory or managerial status requires that *the party raising the exclusion bear the burden of proof.*”² Accordingly, AFSCME argues that CMS should bear the burden of proving that the designated employees exercise duties that would make them supervisory or managerial and that the position exercises managerial discretion rather than just professional discretion.

AFSCME argues that CMS seeks the exclusion of employees who are not “supervisors” or “managers” as defined by the NLRA or NLRB. AFSCME contends that CMS has presented evidence only that the “at-issue positions are *authorized* to complete such job duties,” (emphasis in original) not that the employees actually exercise that authority. Moreover, AFSCME contends that CMS cannot prove a position is managerial where the position description identifies that the position effectuates policies but does not identify specific policies the position effectuates.

AFSCME raised position-specific objections to the positions held by Leesa Mays and

² Emphasis in AFSCME Objections

Gary Hamilton. AFSCME argues that the designation of Ms. Mays's Agency Procurement Officer position is improper, because, as she performs her functions "[u]nder direction of the Facilities Management Branch Chief," she does not exercise discretionary judgment. AFSCME further argues that Ms. Mays' discretion is merely technical and professional discretion applied to following the Illinois Procurement Code and Rules.

AFSCME argues that the designation of Military Facilities Officer I Gary Hamilton is improper because he has no authority to obligate funds and does not perform certain tasks set out in his position description. Moreover, AFSCME argues that the undersigned should hold a hearing with respect to Mr. Hamilton's duties, because the position description attached to the petition is not signed by the Director of CMS.

Finally, AFSCME contends that, because two employees have questioned the accuracy of their position descriptions, the Board should hold a hearing related to the duties performed by all five positions at issue in this designation petition. AFSCME argues that failing to do so compels speech in violation of the First Amendment.

II. DISCUSSION AND ANALYSIS

The law creates a presumption that designations made by the Governor are properly made. AFSCME's objections do not overcome that presumption or raise a question of law or fact which requires a hearing. For the reasons stated more fully below, I find the designations are proper.

A. Constitutional Arguments

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

B. Sufficiency of Position Descriptions as Evidence of Duties

Contrary to AFSCME's assertion, the Board has sufficient information to decide this case because the Board's Rules, the Act, and relevant case law demonstrate that position descriptions provide an adequate basis on which to evaluate the propriety of a designation. First, the Act and

the Rules contemplate that the Board may make such a determination based on a job description alone because they require CMS to provide information concerning a position's job title and job duties and, at the same time, provide that CMS's designation is presumed proper once it submits such information. If such information constituted an insufficient basis for considering a designation, the Act and the Rules would not specify that the designation, when completed by the submission of such information, is presumed to be properly made. Second, Illinois Appellate Courts have held that position descriptions alone constitute an adequate basis upon which to evaluate a proposed exclusion.³ See Vill. of Maryville v. Ill. Labor Rel. Bd., 402 Ill. App. 3d 369 (5th Dist. 2010); Ill. Dep't of Cent. Mgmt. Servs. v. Ill. Labor Rel. Bd., 2011 IL App (4th) 090966; *but see* Vill. of Broadview v. Ill. Labor Rel. Bd., 402 Ill. App. 3d 503, 508 (1st Dist. 2010); *see also* Ill. Dep't of Cent. Mgmt. Servs. v. Ill. Labor Rel. Bd., 382 Ill. App. 3d 208, 228-29 (4th Dist. 2008); City of Peru v. Ill. Labor Rel. Bd., 167 Ill. App. 3d 284, 291 (3rd Dist. 1988). Accordingly, the Board has sufficient evidence from which to establish the propriety of the designation.

B. AFSCME bears the burden of proving that a designation is improper.

AFSCME has the burden to demonstrate that the designation is not proper. The Act's provision that "any designation made by the Governor...shall be presumed to have been properly made," 5 ILCS 315/6.1, shifts the burden of proving that a designation is improper on the objector (here, AFSCME). In this case, CMS designated this position under Section 6.1(b)(5) which provides that the position must "authorize an employee in that position to have significant and independent discretionary authority as an employee." 5 ILCS 315/6.1(b)(5). Thus, the burden is on the objector to demonstrate that the designation is not proper in that the employer has not conferred significant discretionary authority upon that position.

With respect to the three positions for which AFSCME has failed to provide any position-specific information or evidence, AFSCME has failed to overcome the presumption of validity. Accordingly, I find that these designations are proper and will further analyze only the positions held by Ms. Mays and Mr. Hamilton.

C. Designations under Section 6.1(b)(5)

³ While these cases address the Employer's burden in the majority interest process, they are nevertheless relevant to address AFSCME's general argument concerning the sufficiency of job descriptions to establish a position's job duties.

Section 6.1(b)(5) allows the Governor to designate positions that authorize an employee to have “significant and independent discretionary authority.” 5 ILCS 315/6.1(b)(5). The Act goes on to provide three tests by which a person can be found to have “significant and independent discretionary authority.” Section 6.1(c)(i) sets forth the first two tests, while Section 6.1(c)(ii) sets forth a third. In its petition, CMS contends that Mr. Hamilton’s position confers on him “significant and independent discretionary authority” as further defined in both Section 6.1(c)(i) and (ii). In its petition, CMS contends that Ms. Mays’ position confers on her “significant and independent discretionary authority” within the meaning of Section 6.1(c)(i).

Each of the three tests are discussed below.

1. The first test under 6.1(c)(i) – management and executive functions and effectuating management policies and practices

The first test under Section 6.1(c)(i) is substantively similar to the traditional test for managerial exclusion articulated in Section 3(j). To illustrate, Section 6.1(c)(i) provides that a position authorizes an employee in that position with significant and independent discretionary authority if “the employee is...engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency.” 5 ILCS 315/6.1(c)(i). Though similar to the Act’s general definition of managerial employee in Section 3(j), 5 ILCS 315/3(j), the Section 6.1(c)(i) definition is more broad in that it does not include a predominance element and requires only that the employee is “charged with the effectuation” of policies not that the employee is responsible for directing the effectuation.

2. The second test under 6.1(c)(i) – represents management interests by taking or recommending discretionary actions

The second test under Section 6.1(c)(i) also relates to the traditional test for managerial exclusion because it reflects the manner in which the courts have expanded that test. The Illinois Appellate Court has observed that the definition of a managerial employee in Section 3(j) is very similar to the definition of managerial employee in the Supreme Court’s decision in Nat’l Labor Rel. Bd. v. Yeshiva Univ. (“Yeshiva”), 444 U.S. 672 (1980). Dep’t of Cent. Mgmt. Serv./ Illinois Commerce Com’n v. Ill. Labor Rel. Bd. (“ICC”), 406 Ill. App. 766, 776 (4th Dist. 2010)(*citing* Yeshiva, 444 U.S. at 683). Further, the Court noted that the ILRB, like its federal counterpart, “incorporated ‘effective recommendations’ into its interpretation of the term ‘managerial employee.’” ICC, 406 Ill. App. at 776. Indeed, the Court emphasized that “the

concept of effective recommendations...[set forth in Yeshiva] applies with equal force to the managerial exclusion under the Illinois statute.” Id.

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

3. The third test under 6.1(c)(ii) – qualifies as a supervisor as defined by the NLRA

Under the NLRA, a supervisor is an employee who has “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).

In other words, “employees are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 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) (*quoting NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574 (1994); *See also Oakwood Healthcare, Inc. v. United Auto Automobile, Aerospace and Agricultural Implement Workers of America*, 348 NLRB 686, 687 (2006). A decision that is “dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement” is not independent. Oakwood Healthcare, 348 NLRB at 689.

D. The Designation of Agency Procurement Officer Leesa Mays is Proper.

CMS contends that Ms. Mays represents management interests by taking and/or recommending actions that implement agency procurement rules and ensuring that the agency’s staff follows them. AFSCME argues that the designation of the Agency Procurement Officer position in which Leesa Mays is employed is improper, because she performs her functions “[u]nder direction of the Facilities Management Branch Chief.” In her submission to AFSCME,

Ms. Mays argues that she does not have “independent discretionary authority” because she “cannot make decisions independently outside of the law and code set forth.”

AFSCME’s objection, and Ms. Mays’s contentions about her position upon which AFSCME relies, fails to demonstrate that the designation is improper. To the contrary, Ms. Mays’s description of her duties and her affirmation of specific portions of her position description make clear that her position is authorized to represent management interests by taking or recommending discretionary actions that effectively control or implement the Department of Military Affairs’ procurement policies. Merely because Ms. Mays has a supervisor and an outside entity plays an oversight role over procurement functions does not change the fact that Ms. Mays’s position is responsible for determining, managing, and implementing the agency’s procurement policies and practices. *See e.g. Dep’t of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd.*, 2011 IL App (4th) 090966 at ¶ 186 (4th Dist. 2011)(The Act does not require a person to exercise exclusive authority in the effectuation of management policies. Where employees implement management policies and practices, the fact that they “do not do so ‘independently’ is unimportant, given that the Act does not require such independence in management functions.”).

Though Ms. Mays challenged various sections of her position description, she does not contest that, as Agency Procurement Officer, she is charged with “organizing, planning, executing, controlling, and evaluating statewide program functions involving contracting, property management/accounting, and procurement.” Ms. Mays affirmed that she “[d]etermines and administers agency procurement functions;” “ensures procurements meet established standards for quality and timeliness;” reviews procurements “to ensure that all [Department of Military Affairs] purchases comply with the Illinois Procurement Code, Small Business Set Aside, BEP, and internal Departmental procedures;” “serves as a liaison between the Facilities and Engineering Directorate and other agency managers, vendors, the Executive Ethics Commission, CMS, and other concerned parties;” and works with other agency managers to “plan and facilitate timely and cost-effective utilization of contractual resources.”

Ms. Mays argues that the agency’s procurement rules are “those of the State of Illinois.” While procurement in Illinois is an area that is highly regulated, Ms. Mays’s position description authorizes her to take and recommend action to determine the way in which the agency implements and complies with those regulations. Ms. Mays recognizes as much when she

describes her work as “manag[ing] the procurement process,” “mak[ing] sure the agency follows the Illinois Procurement Code, under the approval of the State Procurement Officer and Procurement Compliance Monitor,” and “ensur[ing] that agency employees are aware of and follow current code and law.” There is no evidence before me that anyone at the agency other than Ms. Mays is responsible for implementing the agency’s procurement functions or ensuring that staff complies with the law, rules, and internal policies.

Therefore, I find that the designation of the Agency Procurement Officer position in which Ms. Mays is currently employed is proper.

E. The Designation of Military Facilities Officer I Gary Hamilton is Proper.

AFSCME raised specific objections to the designation of Military Facilities Officer I Gary Hamilton. CMS contends that designation is proper both because Mr. Hamilton is a managerial employee, as described in Section 6.1(c)(i) and because he is a supervisor as defined by the NLRA, as required under Section 6.1(c)(ii). Because I find that Mr. Hamilton’s position is properly designated as a supervisor under Section 6.1(c)(ii), I need not reach a decision on whether Mr. Hamilton’s position is properly designated under Section 6.1(c)(i).

CMS contends that Mr. Hamilton’s position is authorized to, among other things, assign, responsibly direct, and review the work of his subordinates with independent judgment. It is also authorized to assign and review work, counsel staff regarding work performance, take corrective action, monitor work flow, and reassign staff to meet day-to-day operating needs. AFSCME, relying on Mr. Hamilton’s AFSCME Information Form, objects to the designation arguing that Mr. Hamilton’s supervisory functions are routine and do not involve independent judgment, and Mr. Hamilton does not perform certain duties in his position description. Moreover, AFSCME argues that because the provided position description is not signed by the Director of CMS, it should not be used as evidence of Mr. Hamilton’s duties.

1. The position description is sufficient.

AFSCME argues that the Board should not rely on the position description attached to the petition, because it is not signed by the Director of CMS. AFSCME does not present a competing position description that contains different duties, or otherwise present evidence that the position description is inherently untrustworthy. The attached position description is incorporated as an exhibit to Col. Randall Scott’s affidavit, in which Col. Scott attests that the attached position description fairly and accurately describes the duties and responsibilities of Mr.

Hamilton's position. Just as position descriptions generally are sufficient evidence of duties of a position, here, the position description accompanied by the affidavit of Col. Scott, is sufficient evidence to be considered by the Board. Therefore, the argument fails to raise an issue that requires a hearing.

2. Mr. Hamilton's position qualifies as a supervisor, as that term is defined under the NLRA.

Under the NLRA, a supervisor is an employee who has the authority, in the interest of the employer, to engage in one of the 12 listed supervisory functions (hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances), and who exercises such authority using independent judgment, not merely in a routine or clerical manner. Oakwood Healthcare, 348 NLRB at 687.

Through his submission to AFSCME, Mr. Hamilton contests certain aspects of his position description; he also provides additional information and description regarding his position. The fact that an employee takes issue with certain issues in his position description does not create an issue of law or fact that might overcome the presumption of a proper designation, where, as here, the uncontested information sufficiently demonstrates the propriety of the designation. In his submission to AFSCME, Mr. Hamilton states that he participates in interviews, makes recommendations regarding hiring, and has performed annual evaluations. He is responsible for deciding whether repairs will be made in-house with agency personnel or whether to contract with local vendors. According to Mr. Hamilton, once he decides that agency maintenance teams will perform the repairs, he assigns the tasks to the teams and ensures they have the resources necessary to complete the tasks he has assigned. Mr. Hamilton contends that in light of the fact that the maintenance teams include a working supervisor, the team does not require direct supervision from him, and he generally does not directly supervise the team.

a. The designation is proper because the position exercises supervisory authority in the assignment of work.

Here, AFSCME has failed to demonstrate that the designation of Mr. Hamilton's position is improper, because the position exercises supervisory authority in the assignment of work. Mr. Hamilton acknowledges that he undergoes a deliberative process by which he exercises his authority to determining the method of completing repairs and then to assign certain work to his subordinates. These duties are squarely supervisory, and the exercise of that authority is neither

routine or clerical. *See State of Illinois, Dep't of Cent. Mgmt. Serv (Dep't of Corrections), 28 PERI ¶46 (IL LRB-SP 2011) (where assigning work based on subordinates' particular expertise presented a choice between two significant courses of action...that is an exercise of independent judgment that is more than a routine and/or clerical function).*

Mr. Hamilton contends that the maintenance teams may “be going away” at some point in the future, and points to unfilled vacancies that are, in some cases two years old. However, Section 6.1 requires an analysis of a position’s present responsibilities, not what responsibilities a position may have following a future reorganization.

b. The designation is proper because the position exercises supervisory authority to responsibly direct and review subordinates.

AFSCME has also failed to demonstrate that the designation of Mr. Hamilton’s position is improper because nothing in AFSCME’s objection or Mr. Hamilton’s submission to AFSCME contradicts CMS’s contention that Mr. Hamilton’s position is authorized to responsibly direct and review the work of his subordinates. A position has responsibility to direct if the position holder has subordinates, decides what jobs his subordinates should perform next, and who should perform those tasks. *Oakwood Healthcare, 348 NLRB at 691-2*. In addition, the position holder must be accountable for his subordinates’ work and must carry out such direction with independent judgment. *Id.* In other words, “it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary,” and that “there is a prospect of adverse consequences for the putative supervisor,” arising from his direction of other employees. *Id.*

In this case, the position description states that the position holds the authority to direct employees in the interest of the employer because the position holder must “guid[e] and direct[] subordinates in completion of their duties assuring completion of work” and evaluates subordinates’ performance. Further, Col. Scott attests that Mr. Hamilton’s position is authorized to assign and review work, counsel staff regarding work performance, take corrective action, monitor work flow, and reassign staff to meet day-to-day operating needs. Mr. Hamilton acknowledges that he has been responsible for completing evaluations. Mr. Hamilton contends that he does not “generally supervise [the maintenance team] directly” because one of his subordinates on the team is a “working supervisor.”

However, neither AFSCME in its objections nor Mr. Hamilton in his submission to AFSCME present any evidence that his position is not accountable for the work completed by the maintenance teams, is not responsible for the guidance and review of work, that his decisions with respect to direction of subordinates are controlled by detailed instructions set forth by a higher authority or by the employer's rules and policies, or that the authority vested to him through his position description is otherwise limited.⁴

III. CONCLUSIONS OF LAW

The Governor's designations in this case are properly made.

IV. 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 Military Affairs⁵ are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

<u>Title</u>	<u>Position No.</u>	<u>Working Title</u>	<u>Incumbent</u>
Public Service Administrator, Opt. 2	37015-35-02-000-00-01	CFO Assistant	Wilson, Harold L.
Public Service Administrator, Opt. 1	37015-35-03-001-01-01	Agency Procurement Officer	Mays, Leesa
Military Facilities Officer I	82910-35-03-001-02-02	Northern Facility Officer	Hamilton, Gary
Military Facilities Officer I	82910-35-03-001-02-01	Chicago Area Facility Officer	Stanbery, Dannie
Military Facilities Officer I	82910-35-03-001-02-03	Southern Facility Officer	Winner, Michael

V. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300,⁶ parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than three days after service of this recommended decision and order. Exceptions shall be filed with the

⁴ I take administrative notice of ILRB Case No. S-RC-10-228, the certification case that resulted in the Facility Officer positions being included in a bargaining unit. In that case, an ALJ heard testimony, including the testimony of Mr. Hamilton and the other Facility Officers, regarding the duties and responsibilities of the position. In that case, the ALJ determined that the positions have supervisory authority to assign and monitor work and evaluate and train subordinates. The ALJ also found that the Facility Officer effectively recommend the hiring of employees. However, the ALJ found that the record did not support that the Facility Officers spent a preponderance of their time exercising supervisory authority over their subordinate State employees (as opposed to supervising contractual workers). However, Section 6.1 designations do not have a preponderance of time element.

⁵ A Recommended Order and Decision incorrectly identified the agency at issue as the Department of Revenue was served on the parties on December 12, 2013. This corrected version replaces that earlier Recommended Order and Decision.

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

Board by electronic mail at an electronic mail address designated by the Board for such purpose, ILRB.Filing@illinois.gov, and served on all other parties via electronic mail at its e-mail address as indicated on the designation form. Any exception to a ruling, finding conclusion or recommendation that is not specifically urged shall be considered waived. A party not filing timely exceptions waives its right to object to this recommended decision and order.

Issued at Springfield, Illinois, this 12th day of December, 2013.

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

Sarah R. Kerley

**Sarah Kerley
Administrative Law Judge**