

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

State of Illinois, Department of Central)	
Management Services, (Department on Aging),)	
)	
Petitioner)	
)	
and)	Case No. S-DE-14-126
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	
)	
and)	
)	
Susan Rohrer,)	
)	
Employee-Objector)	
)	
and)	
)	
Betsy Creamer,)	
)	
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 (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. 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 five requirements identified in Sections 6.1(b) of the Act. Relevant to this case, Section 6.1(b)(5) of the Act allows the designation of an employment position if the employment position authorizes an employee in that position to have “significant and independent discretionary authority” by which under section 6.1(c) of 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 Board, in a manner consistent with due process, determine whether the designation comports with the requirements of Section 6.1. The Board promulgated rules to effectuate Section 6.1, which became effective on August 23, 2013, 37 Ill. Reg. 14,070 (Sept. 6, 2013). See 80 Ill. Admin. Code Part 1300.

II. ISSUES AND CONTENTIONS

A. Designation Petition

On November 15, 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 of the Act and Section 1300.50 of the Board’s Rules. The designation petition seeks to exclude the following Public Service Administrators (PSAs) at the Illinois Department on Aging (IDO):

<u>Option</u>	<u>Position Number</u>	<u>Working Title</u>	<u>Incumbent</u>
Option 6	37015-47-30-400-00-01	State Long Term Care Ombudsman	Sally Petrone

Option 1	37015-47-70-000-20-01	Technical Advisor	Susan Rohrer
Option 1	37015-47-70-100-00-01	Supervisor	Enoch Smith
Option 2	37015-47-70-000-10-01	Technical Advisor	Rhonda Baer
Option 1	37015-47-70-300-00-01	Supervisor	Rachel Washington
Option 6	37015-47-30-300-20-01	Older American Services Supervisor	Betsy Creamer

CMS’s designation petition and the attached documentation indicate that the positions at issue qualify for designation under Section 6.1(b)(5) of the Act.¹ The attached documentation also identifies that Sally Petrone, Rhonda Baer, and Betsy Creamer are certified members of bargaining unit RC-62; and Susan Rohrer, Enoch Smith, and Rachel Washington are certified members of bargaining unit RC-63. Affidavits, completed by Division Manager, Jennifer Reif identify that Rohrer’s and Baer’s positions are authorized to have independent discretionary authority as managers, as defined by Section 6.1(c)(i) of the Act. Affidavits completed by Division Managers, Reif and Joseph Mason, identify that Petrone’s, Smith’s, Washington’s, and Creamer’s positions are authorized to have independent discretionary authority as managers, as defined by Section 6.1(c)(i) of the Act, and as supervisors, as defined by Section 6.1(c)(ii) of the Act.

Reif’s affidavits regarding Baer’s and Rohrer’s positions assert that as Technical Advisors to the Division Manager, Baer’s and Rohrer’s employment positions are “authorized to be engaged in executive and management functions of the [IDOA] and charged with the effectuation of management policies and practices of the [IDOA] or represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of the [IDOA].” Reif states that Baer “plans, coordinates, implements, and evaluates all activities of BEAM in implementing Department and State policies, program standards and

¹ In support of its petition, CMS also submitted a summary spreadsheet, affidavits written by the Division Managers for the positions, and job descriptions (CMS 104’s) for the positions. The designation petition identifies that statutory category under which the position qualifies for designation as 6.1(b)(5). The summary spreadsheet identifies that Sally Petrone, Rachel Washington and Betsy Creamer are designated under Section 6.1(b)(5), and that Susan Rohrer, Enoch Smith, and Rhonda Baer are designated under Section 6.1(b)(3). The affidavits written by the Division Managers state that all the positions at issue qualify for designation under Section 6.1(b)(5) and do not address whether Rohrer, Smith, or Baer are designated under Section 6.1(b)(3). On November 25, the undersigned issued an Order For Clarification, requesting that CMS correct this discrepancy. Accordingly, on November 25, 2013, CMS filed a “revised summary spreadsheet” identifying all positions within the designation qualify for designation solely under Section 6.1(b)(5) of the Act.

procedures.” Reif states that Rohrer “*is authorized* (emphasis added) to plan, coordinate, implement, and evaluate all activities of BEAM in implementing Department and State policies, program standards and procedures.”

Mason’s affidavit regarding Creamer’s position asserts that as the Older American Services Administrator/Supervisor, Creamer’s position ‘is authorized to be engaged in executive and management functions of the [IDOA] and charged with the effectuation of management policies and practices of the [IDOA] or represents management interest by taking or recommending discretionary actions that effectively control or implement the policy of the [IDOA].’” Mason states that as the Older American Services Administrator/Supervisor, Creamer is “charged with the effectuation of Department policies and practices in the administration of the Office of Older American Services.” The employment position “is authorized to have total control of the administrative function of the program.” Mason goes on to state that Creamer’s position “is authorized to, in the interest of the [IDOA], among other things, assign, responsibly direct, and review the work of [] her subordinates with independent judgment. The 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.”

B. Objections

On November 22, 2013, Susan Rohrer, an employee of the State of Illinois who occupies one of the positions designated as excluded from collective bargaining rights, pursuant to Section 1300.60(a)(3) of the Board’s Rules filed an objection to the designation. On November 25, 2013, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) similarly filed objections to every employment position designated in the petition. On November 26, 2013, Betsy Creamer, also an employee of the State of Illinois who occupies one of the positions designated, also filed objections.

AFSCME makes general objections applicable to all the positions in the designation petition, and specific objections applicable only to the designation of the positions that Baer, Rohrer, and Creamer hold. Rohrer and Creamer also make specific objections to the designation of their employment positions. AFSCME argues that CMS should bear the burden of persuasion, that the CMS-104s and affidavits provide insufficient bases for designation, that the Board should consider the fact that the job duties of the positions at issue have not changed since the positions were certified into collective bargaining units, that the positions at issue are not those

of managers or supervisors within the meaning of the NLRA, and argues that the designations are improper on constitutional grounds.

AFSCME argues that Baer is a professional, not a managerial employee, and that she has not been allowed to make policy decisions or implement policies without management approval.

AFSCME argues that Rohrer's position does not have any role in policy making or implementation with discretionary authority. In her individual objections, Rohrer argues that her CMS-104 position description is inaccurate, that because the Circuit Breaker program is no longer functional that her job duties have changed, that she is not routinely included in staff meetings, plays no part in policy decisions, and that she has not reviewed legislation for "at least a year and a half and [does] not anticipate doing so in the future."²

AFSCME argues that Creamer's position is neither supervisory nor managerial because she "has not been involved in the recruitment, transfer, suspension, lay-off, recall, promotion, discharge and discipline" of employees, that her supervisor reviews and approves all agency policy goals and objectives, and that her involvement in agency policies is merely that of a team member. In her individual objections, Creamer also argues that her assignment of work to her subordinates, signing of time-off requests and timesheets, and completion of her subordinates' annual performance evaluations are "routine daily responsibilities," and that the only policy development she was involved in was not approved by the Executive Office as presented.

Upon review of AFSCME's and incumbent employee's *specific* objections to the designations of the employment positions held by Rohrer and Creamer, I found that the objections sufficiently raised issues that *might* overcome the presumption that the designation of those positions are proper under Section 6.1 of the Act. Accordingly, a hearing was held on December 9, 2013, via video conference in Chicago and Springfield, Illinois, at which time all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, and to argue orally.

Based on my review of the designation petition, the documents submitted as part of, and in support of the petition, the objections, the documents and arguments submitted in support of those objections, evidence presented at hearing, and upon the entire record of the case, I recommend that the Board find that the designations of all the employment positions at issue to

² Since CMS's affidavit only identifies that Rohrer has independent discretionary authority as a manager, and not also as a supervisor, only the arguments that address whether Rohrer qualifies for designation under Section 6.1(b)(5) based upon managerial status as defined Section 6.1(c)(i) of the Act are relevant.

have been properly submitted and are consistent with the requirements of Section 6.1 of the Act. 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 the existing inclusion of these positions within collective bargaining units.

III. FINDINGS OF FACT

A. Rhonda Baer

Baer is employed as a Technical Advisor to the Division Manager of the Benefit Eligibility Access Monitoring (BEAM) Division of the IDOA. Baer is a PSA within that Division.

In her capacity as a Technical Advisor, under the administrative direction, Baer is authorized to work with division management staff on a variety of management related and/or specialized division projects. Baer is authorized to assist in developing new policies and legislation, or amendments to existing statutes relative to the BEAM program. She is authorized to direct studies of problems affecting operations relative to the division, recommends, and with management's approval implements changes in, or establishment of new policies and procedures.

B. Susan Rohrer

Rohrer is employed as a Technical Advisor to the Division Manager of the BEAM Division (f/k/a Circuit Breaker) of the IDOA.

The Circuit Breaker Program was a program designed to provide income tax relief to low-income households. Rohrer started in the Circuit Breaker Program in 2002 as a Public Service Administrator/Technical Advisor I. Reif became the Division Manager of the Circuit Breaker Division in August, 2010. The Circuit Breaker Division was defunded in June 2012, and was "repurposed" to what is now called the BEAM Division.³ Within the BEAM Division are the Benefits Access Application (BAA) and the Managed Care portion. The BAA portion involves the eligibility requirements of the program. As a part of the BEAM Division, seniors that fall below a certain income are eligible for programs such as the Regional Transportation

³ Much of Reif's testimony referenced Rohrer's authorized duties under the Circuit Breaker program. Since the program no longer exists, and Reif testified that the Department is restructuring, the relevant inquiry is Rohrer's authority under BEAM.

Authority (RTA) program, “Seniors Ride Free” and a discount on vehicle registration at the Department of Motor Vehicles. Rohrer predominately works with BAA, and other projects as assigned.

Since the BEAM program began in 2012, Rohrer’s daily activities consist of answering letters instructing residents how to apply online to the Benefits Access Program, answering SHIP (Senior Health Insurance Program)⁴ calls regarding Medicare assistance, and drafting letters informing public of changes to the program since transition from the Circuit Breaker Program to BEAM. The letters are reviewed by Reif to distribute to the citizenry and agencies such as the Secretary of State and RTA who administer the vehicle registration discount and ride-free program within the BEAM Division. Rohrer also drafted internal policies for the BAA program, and the building wide Safety Procedures, and responds to constituent questions forwarded by IDOA’s legislative liaison.

Reif testified that she considers Rohrer to be the “lead legislative person in the [Division].” Rohrer is authorized to provide statistical analysis on pending legislation involving the IDOA, and has done this on at least one occasion since the BEAM program began.⁵ This analysis provides a basis for the Agency’s position paper it submits on the proposed legislation.

Rohrer provides statistical analysis of the BAA programs when requested by the legislative liaison or the RTA. Rohrer has been involved in reviewing proposed legislation since the beginning her position in 2002, and continues to provide the same type of analysis under the BEAM program. Rohrer generates rationale statistics that provide the basis of the Agency’s position on legislative policies. Rohrer is authorized to state that based upon her analysis she has formulated a position that she “recommends” that the Agency support or pursue the legislative policy; or, she offers no opinion, and is “neutral” as the Agency’s position on the proposed policy; or, she is “opposed” to the Agency taking the proposed course of action. Rohrer makes this recommendation to the Division Manager. Reif testified that Rohrer’s recommendations are often on target, but the record does not reflect as to how frequent, or even whether the Agency has ever followed one of Rohrer’s recommendations.

⁴ Rohrer testified that the SHIP program is not administered by BEAM, and Reif testified that because the Circuit Breaker program was defunded and restructured; handling SHIP calls requires many employees. Whether this restructuring involves BEAM employees permanently administering SHIP is unclear.

⁵ Rohrer testified that the last time she provided analysis for proposed legislation was 10 or eleven months ago from the date of the hearing. The Circuit Breaker Program was defunded at the end of June 2012, between 17 and 18 months before the hearing date.

In 2011, an amendment to House Bill 1261 (HB1261) required that the IDOA receive vital information every three months. An IDOA legislative liaison requested that Rohrer review the amendment to HB1261, and inform her whether the Amendment will change the IDOA's position on the bill. Rohrer informed the legislative liaison that the amendment may result in some delay in record updating, but because the IDOA also received the death certificates she stated that she did not "see any change in position."

C. Betsy Creamer

The Division of Home & Community Services is a Division of the IDOA. Joseph Mason is the Division Manager of the Division of Home & Community Services Division. Prior to Mason becoming the Division Manager in mid 2012, the position was vacant for an unspecified time period. The Home and Community Services Division is responsible for four offices/bureaus, including the Bureau of Community Operations. The most recent Bureau Chief of the Bureau of Community Operations was Rance Carpenter. The Bureau Chief position has been vacant since Carpenter left the IDOA in August, 2011. The Older American Services Unit (OAS) is a unit within the Bureau of Community Operations. Elizabeth "Betsy" Creamer is a Public Service Administrator Option 6, who serves as the Older American Services Unit Administrator/Supervisor.

Creamer has been employed in her position for over 13 years, employed by the IDOA for approximately 15 years, and has 30 years of experience working with aging programs. As the Supervisor of the Older American Services Unit, Creamer works with Federal Grant Programs that the IDOA receives. Creamer works with 13 Area Agencies on Aging (AAA) who submit area plans on the IDOA that outline how to they will comply with Federal requirements and the types of services they will provide at the regional level, and works with other staff on some smaller grant programs. Creamer is the direct supervisor of 12 positions, 7 of which are currently filled. These positions are Social Service Program Planners, I and II, two Social Service Program Planner IIIs, two Social Service Program Planner IVs, three Executive IIs, a Public Service Administrator, Option 1, and a Social Services Career Trainee. The Social Service Program Planners are primarily responsible to review the AAA's area plans, and as their supervisor Creamer coordinates the review.

Creamer's 2012 performance evaluation was completed by Mason, where Mason attested that he "personally discussed the contents of this document with [Creamer]." The evaluation

identifies that Creamer’s objectives for the evaluation period and for the “next reporting period”⁶ are as followed:

Assume chief responsibility for Older American Unit with the Bureau of Community Operations. Performs lead responsibility for review of the IFF [(Illinois Facilities Fund)] and State Plan [on Aging] development. Performs lead responsibility for the development of the Area Plan format and designs the Area Plan review criteria. Updates grant application format and instructions for Area Agencies on Aging. Performs lead responsibility for on-site reviews and monitoring of Area Agencies on Aging. Coordinates joint plan process of staff engaged in the development and updating of Policies and Procedures and Standards Manual for Area Agencies on Aging. Coordinates and facilitates the program operations of the Caregiver Advisory Council and Nutrition Advisory Council. Prepares home delivered meal survey and annual home delivered meal report. Work with other staff and the Caregiver Advisory Council to prepare and conduct an assessment of the caregiver Support Program. Perform other duties as assigned.

Creamer’s position has the authority to supervise staff, assign and review the work of subordinates, provide guidance and training, and complete and sign performance evaluations. She is authorized to establish performance goals and objectives, counsel staff on problems with productivity and quality of work and conduct. She directs her subordinates assigned to State Plan on Aging, in order to ensure specific time frames and targets are met.

Creamer has the authority to approve or deny time off requests made by her subordinates, reviews and approves the employee’s weekly timesheets, and approves any requests for a flexible schedule (flex-time). Creamer reviews flex-time request submitted by subordinates, and has the discretion whether to approve the requests, though the authorization is given by the Division Manager after Creamer’s approval. The request form requires that the employee’s immediate supervisor answer a series of questions in order to determine whether to approve the employee’s request. The questionnaire consists of the following five questions:

1. Will a supervisor from the functional area be on duty during the employee’s requested flextime hours? If “yes,” write the name of the supervisor on duty.
If “no,” please explain.
2. Will you be able to effectively monitor the quality and quantity of work produced by the employee during the requested flextime hours?
If “no,” please explain.
3. Can all public contact or intra-agency communication responsibilities of the employee be successfully conducted during the flex-time hours?
If “no,” please explain.

⁶ The record does not reflect whether this is Ms. Creamer’s most recent performance evaluation.

4. Can you state with reasonable assurance that the operating needs of your area will not be adversely affected by the employee's flextime?
If "no," please explain.
5. As the employee's supervisor, I "Approve" or "Deny" this request for flextime.
If you deny the request, please explain.

The request form is then submitted to the employee's division manager who has the final authority to approve or deny the employee's flex-time request. Two flex-time requests have been made since mid 2012. Creamer has the authority to exercise her own discretion on whether to approve or deny flex-time requests before submitting the request to the Division Manager. On November 15, 2013, Executive II, Jennifer Morrell, submitted a flex-time request to Creamer asking that her work schedule be changed from 7:15am until 3:15pm to 8:00am until 4:00pm. Creamer answered "yes" to all questions on the form, approved Morrell's requested schedule, and submitted it to Mason. As the Division Manager, Mason authorized Morrell's request.

Creamer utilizes the standard form established by the State of Illinois to conduct her subordinates' annual performance evaluation. Creamer determines whether the employee being evaluated has "exceeded" "met" or "not met" the objectives set out in the standard form. The IDOA Director and the Division Manager review and approve the performance evaluations, and have the authority and discretion to alter the evaluations, but have never altered evaluations Creamer conducted. Pursuant to the CBA between AFSCME and CMS, the Social Service Planners are subject to "Semi-Automatic In-Series Advancement." Under this system, a satisfactory performance evaluation coupled with the required score on the administered test allows the position to automatically advance to the next grade of Social Service Planner, e.g. from Social Service Planner II to Social Service Planner III. An employee who advances to the next grade also receives a pay raise. Neither Creamer nor Mason can state what the effect a negative employment review would have on the employee's employment status, outside the "Semi-Automatic In-Series Advancement," because Creamer has "very good employees."

Creamer is authorized to assist and participate in the recruitment, selection, retention, and other employment dispositions of staff. Creamer has participated in interviews for two subordinate positions, and has attended the interviews for at least three non-subordinate positions at the IDOA. Several years ago, Creamer participated in the interview for a subordinate position that was Rutan exempt, which required specific questions to address the exemption. Together, Creamer and Carpenter, developed additional interview questions. Creamer and Carpenter participated in the interview, individually scored the applicants response to the questions,

discussed their individual findings, and made a joint recommendation which Carpenter discussed independently with the Division Manager. Creamer, two other PSAs, and a Senior Public Service Administrator observed an interview for the Deputy Division Manager, Nyle Robinson,⁷ in order to indicate whether they objected to or approved of Robinson being hired for the position. After a discussion, the group approved that the IDOA hire Robinson. Creamer testified that she is unaware whether the IDOA would have hired Robinson if she or the group objected.⁸ Creamer was similarly involved in the interview of an attorney hired at the IDOA, and Division Manager Mason.

Creamer's employment position is authorized to be involved in the design, development and implementation of the State Plan on Aging for the IDOA. She is authorized to coordinate and delegate assignments, review drafts, evaluate and analyze the plan to ensure the goals and objectives within her unit are met.

IV. DISCUSSION AND ANALYSIS

AFSCME's and the incumbent employees' objections fail to overcome the presumption that the designations of the positions at issue are proper under Section 6.1 of the Act.

A. General Objections

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 Cir. Court of Cook Cnty., 18 PERI ¶ 2016 (IL LRB-SP 2002); see Ill. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App (4th) 090966. 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

⁷ The Deputy Division Manager is directly subordinate to the Division Manager of the Home & Community Services, but the record demonstrates that the Bureau Chief of the Bureau of Community Operations reports directly to Deputy Division Manager. So, it is unclear what authority the Deputy Division Manager has over the Bureau of Community Operations.

⁸ The record does not indicate who made the decision to hire Robinson, or what other information the decision maker utilized in hiring Robinson.

6.1(d) of the Act provides that any designation made under Section 6.1 “shall be presumed” proper, and the categories eligible for designation “do not expand or restrict the scope of any other provision” of the Act.

Here, since it is clear that the legislature was aware that the policy of 6.1 is diametrically opposite from the rest of the Act, the purposes of each must be treated as separate and distinct policies. The Court has held that the party opposing the public policy as demonstrated in the statutory language of the statute at issue has the burden to prove the party’s position. See Ill. Dep’t Cent. Mgmt. Serv. (Ill. State Police) and Am. Fed’n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 109 (IL LRB-SP 2013) appeal pending, No. 13-3600 (Ill. App. Ct. 1st Dist.). Here, because the 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 Id. (citing State of Ill. Dep’t. of Cent Mgmt Serv., 24 PERI ¶ 112 (IL LRB-SP 2008)). If the objector fails to even raise an issue that might overcome the presumption that the designation is proper, then the State prevails absent a hearing. See Board Rules Section 1300.609(d)(2)(B).

2. sufficiency of CMS-104s and affidavits

AFSCME argues that the CMS 104’s and the affidavits submitted by the Division Managers are only potential responsibilities that can be given to the employee within that position. The argument fails because the Board has previously determined that CMS-104’s are sufficient to meet the “job duties” requirement of Section 6.1 of the Act. See Ill. Dep’t Cent. Mgmt. Serv. (Dep’t. of Revenue) and Am. Fed’n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 110 (IL LRB-SP 2013), appeal pending, No. 13-3601 (Ill. App. Ct. 1st Dist.); State of Ill. Dep’t. of Cent. Mgmt. Serv. and Am. Fed’n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 80 (IL LRB-SP 2013) appeal pending, No. 13-3454 (Ill. App. Ct. 1st Dist.). Also, Section 6.1 requires that the employees within the position be *authorized* to exercise such responsibilities, and AFSCME concedes that the “evidence submitted by CMS [...] demonstrates that the at-issue positions are *authorized* to complete such job duties.” Thus, because the Act specifies that the

authorization is required, and AFSCME concedes that the CMS 104s and the submitted affidavits provide authorization, further analysis unnecessary. However, because this argument is inconsistent with the remainder of AFSCME's objections, and I do not believe that AFSCME is conceding its entire position, I will continue with my analysis of the remaining objections.

3. job duties since certification into bargaining unit

AFSCME argument that the Board should consider the fact that each of the positions at issue have been certified into a bargaining unit and that there is no showing that the job duties of the positions have changed since the Board certified the positions in the bargaining unit, does not recognize, as the Board has, that "Section 6.1 is a new creation. It does not modify pre-existing means of determining collective bargaining units, but is a self-contained and entirely new means of decreasing the number of State employees in collective bargaining units." State of Ill. Dep't. of Cent. Mgmt. Serv. and Am Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 80 (IL LRB-SP 2013). Thus, certification of positions into bargaining units under the Act prior to the addition of Section 6.1 does not prevent the legislature from subsequently amending the Act to provide for the removal of these employment positions from the bargaining unit. Id.

4. constitutionality

Section 6.1(d) of the Act gives the Board authority to determine whether the designation of the employment positions at issue comport with Section 6.1 of the Act. As an administrative agency, the Board has no authority to rule that the Illinois Public Labor Relations Act, as amended by Public Act 97-1172, is unconstitutional, either on its face or as applied. Id., (citing Goodman v. Ward, 241 Ill. 2d 398, 411 (2011)); see also Metro. 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) (noting that administrative agencies lack the authority to invalidate a statute on constitutional grounds or even to question its validity). Analysis of the Act's constitutionality whether on its face, or as applied to this designation, is beyond my limited authority as an administrative law judge for the Board. Thus, AFSCME's constitutional objections are not relevant to my determination of whether the designation of the position at issue comports with Section 6.1 of the Act.

5. professional v. managerial

AFSCME contends that Section 6.1 incorporates the NLRA definition of manager, and that analysis of the distinction between professional employees and managerial employees is

necessary to determine whether these designations comport with Section 6.1. These arguments are unpersuasive because Section 6.1 of the Act does not incorporate the NLRA's definition of manager, and Section 6.1 of the Act does not distinguish between managerial and professional employees. See Ill. Dep't Cent. Mgmt. Serv. (Dep't. of Agric.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 84 (IL LRB-SP 2013) appeal pending, No. 13-3598 (Ill. App. Ct. 1st Dist.).

6. Division Manager affidavits

AFSCME's argument that the affidavits provided by Mason and Reif are vague because they do not identify the policy that the employees effectuate or are authorized to effectuate does not raise an issue that might overcome the presumption that the designation of the positions at issue are proper. As with the CMS-104 position descriptions, since the designations are presumed proper, the objectors have the burden to raise an issue that might overcome the presumption. Without citing to a specific requirement that is not met under Section 6.1 of the Act, claiming that the information provided is insufficient does not raise a legitimate issue. See Ill. Dep't Cent. Mgmt. Serv. and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 80 (IL LRB-SP 2013).

7. b(3) designation

AFSCME argues that I should limit my review of the petition solely to whether the designated positions meet the requirements under Section 6.1(b)(5) of the Act and not consider whether any of them also may qualify under Section 6.1(b)(3) of the Act because the petition itself identifies the sole bases for exclusion as Section 6.1(b)(5), and the supporting documents identify that the bases for some of the exclusions are Section 6.1(b)(3). This objections is moot because in response to the Order For Clarification, CMS filed revised documents identifying that all the positions at issue qualify for designation solely under Section 6.1(b)(5) of the Act.

8. supervisors or managers under the NLRA

The objections that the positions at issue are neither supervisors nor managers under the NLRA fail to raise an issue that might overcome the presumption that the designations are proper because Section 6.1 of the Act does not incorporate the NLRA definition of manager, and AFSCME provides no evidence to negate the presumption that the designations are proper. Proper designation under Section 6.1(b)(5) requires the employees at issue to be authorized to exercise "significant independent discretion" as managers defined by Section 6.1(c)(i) of the Act,

or as supervisors defined by Section 6.1(c)(ii) of the Act, incorporating Section 152 of the NLRA, 29 U.S.C § 152. Ill. Dep't Cent. Mgmt. Serv. (Dep't. of Revenue) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 110 (IL LRB-SP 2013).

i. manager

Section 6.1(c)(i) of the Act provides that an employee is a manager eligible for exclusion if the position authorizes the incumbent employee 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.” Id.

a. first managerial test

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. Id. (citing 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. Ill. Dep't Cent. Mgmt. Serv. (Dep't. of Veterans Affairs) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 111 (IL LRB-SP 2013), appeal pending, No. 13-3618 (Ill. App. Ct. 1st Dist.) (citing 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. Ill. Dep't Cent. Mgmt. Serv. (Dep't.

of Veterans Affairs) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 111 (IL LRB-SP 2013) (citing 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).

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. Ill. Dep't Cent. Mgmt. Serv. (Ill. State Police) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 109 (IL LRB-SP 2013) (citing 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. Ill. Dep't Cent. Mgmt. Serv. (Ill. State Police) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 109 (IL LRB-SP 2013) (citing Cnty. of Cook (Oak Forest Hospital) v. Ill. Labor Rel. Bd., 351 Ill. App. 3d at 387); INA, 23 PERI ¶ 173 (IL LRB-SP 2007). Such individuals must be empowered with a substantial measure of discretion to determine how policies will be affected. Ill. Dep't Cent. Mgmt. Serv. (Ill. State Police) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 109 (IL LRB-SP 2013) (citing 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).

b. second 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." Ill. Dep't Cent. Mgmt. Serv. and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 85 (IL LRB-SP 2013) appeal pending, No. 13-3604 (Ill. App. Ct. 1st Dist.) (citing ICC, 406 Ill. App. 3d at 777).

ii. supervisor

Section 6.1(c)(ii) of the Act provides that an employee is a supervisor eligible for exclusion if the employee position authorizes the employee in that position to "qualif[y] as a

supervisor of a State agency as that term is defined under Section 152 of the National Labor Relations Act, 29 U.S.C. 152(11), or any orders of the National Labor Relations Board interpreting that provision or decisions of courts reviewing decisions of the [NLRB].”

The NLRA defines a supervisor as “any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” 29 U.S.C.A § 152(11).

Employees are supervisors if (1) they hold the authority to engage in any of the above listed supervisory functions, (2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment, and (3) their authority is held in the interest of the employer. Ill. Dep’t Cent. Mgmt. Serv. (Dep’t. of Veterans Affairs) and Am. Fed’n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 111 (IL LRB SP-2013) (citing NLRB v. Kentucky River Comm. Care, Inc., 532 U.S. 706, 713 (2001)); see also Oakwood Healthcare, Inc., 348 NLRB 686, 687 (2006). Independent judgment within the meaning of the NLRA involves a degree of discretion that rises above the “routine and clerical,” and is personal judgment based on personal experience, training, and ability. Id. at 693. Judgment is not independent if it is controlled by a higher authority, such as verbal instructions, or detailed instructions or regulations. Id.

In order to meet the burden to raise an issue that might overcome the presumption that the designation is proper, the objector must provide specific examples to negate each test, because if even one of the three tests is met, then the objector has not sufficiently raised an issue, and the designation is proper. Ill. Dep’t Cent. Mgmt. Serv. and Am. Fed’n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 85 (IL LRB-SP 2013).

In order to raise an issue that the employees at issue are not managerial the objector must negate both managerial tests for every employee at issue. Id. 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. Id. It can do this by demonstrating that the employee is not engaged in executive and management functions, or that the employee is not responsible for the effectuation of management policies and practices of the Agency. Id. In order to negate the second

managerial test, the objector must demonstrate that the employee does not actually provide any recommendations regarding the effectuation of management policies, or that its recommendations are not “effective” because the recommendations do not almost always persuade the decision-maker. Id.

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

AFSCME’s argument that the positions at issue are not managerial under the NLRA is not relevant, because the NLRA managerial definition is not controlling authority under Section 6.1 of the Act. See Id. AFSCME’s argument that all the positions lack significant independent discretionary authority as managers under Section 6.1 also fails to overcome the presumption that they have such authority because AFSCME does not provide evidence to support this contention. See Id. AFSCME’s argument that all the positions at issue are not supervisory under the NLRA definition is insufficient to raise an issue that might overcome the presumption that the positions held by Sally Petrone, Enoch Smith, and Rachel Washington, are supervisory, because AFSCME does not provide sufficient, or even any factual evidence that these positions lack significant independent discretionary authority as supervisors.

Thus, because AFSCME’s general objections are insufficient to raise any issue that might overcome the presumption that the designation of the positions at issue are proper, and it has not submitted specific objections to the designation of the positions held by Petrone, Smith, and Washington, the designation of these positions are proper under section 6.1(b)(5) of the Act.

B. Specific Objections

1. Rhonda Baer

AFSCME fails to raise an issue that might overcome the presumption that the designation is proper under Section 6.1 of the Act, because it fails to demonstrate that Baer is not authorized to have managerial authority as defined by section 6.1(c)(1) of the Act. AFSCME's argument that Baer is a professional, not a managerial employee, is unpersuasive because as noted above, Section 6.1 of the Act does not distinguish between professional and managerial employees. AFSCME's objection that Baer is not allowed to make policy decisions or implement policies without management approval also does not raise an issue because, as the objector, AFSCME has the burden to demonstrate that Baer's position is not authorized to effectively recommend policy decisions. Absent this argument the presumption establishes that management approves Baer's policy decisions because of her effective recommendations. See Ill. Dep't Cent. Mgmt. Serv. and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 85 (IL LRB-SP 2013).

Therefore AFSCME's specific objections are insufficient to raise an issue that might overcome the presumption that the designation of the Baer's position is proper under section 6.1(b)(5) of the Act.

2. Susan Rohrer

Objectors, AFSCME and Rohrer, do not overcome the presumption that the designation is proper under Section 6.1 of the Act because they fail to demonstrate that Rohrer is not authorized to have managerial authority as defined by section 6.1(c)(1) of the Act.

As noted above, the objectors have the burden to negate both managerial tests. The objectors fail to overcome the first prong of the first managerial test, because they do not demonstrate that Rohrer does not create policy and procedures. In 2011, IDOA's legislative liaison contacted Rohrer directly and asked her to review an amendment to determine whether it changed the IDOA's position on HB1261. Upon reviewing the amendment, Rohrer directed the legislation liaison that the Agency's position regarding the bill should not change. This establishes that Rohrer possessed the authority to alter the Agency's position on this bill. While this incident happened prior to restructuring, Rohrer testified that the last time she reviewed legislation was 10 or 11 months ago, which was after the BEAM program began. Reif testified that Rohrer is the lead legislative contact in the Division, since the objectors did not present

contradictory evidence as to Rohrer's current authority, I conclude that as the lead legislative contact, her authority to provide such direction to IDOA's legislative liaisons currently exists.

The objectors fail to overcome the second prong of the second managerial test because they do not demonstrate that Rohrer does not "exercise responsibility for directing the effectuation of such management policies and practices." The duties that Rohrer is currently performing: drafting letters to program members regarding their applications, drafting letters to the RTA and the Legislature informing them of the changes in the Division, creating the internal BAA procedure, providing statistical analysis,⁹ and responding to constituent questions, are all the ways in which she effectuates management policies. She is specifically responsible for the internal BAA procedures, addressing the constituent questions, and providing statistical analysis.

The objectors also failed to overcome the second managerial test, because they have not demonstrated that the recommendations that Rohrer is authorized to make are not "almost always followed." Rohrer testified that she sometimes provides a "neutral" recommendation. However, she is also authorized to "recommend" or "oppose" a specified policy based upon her analysis. Under this test, the objectors have the burden to demonstrate that Rohrer's recommendations are not "almost always followed." Rohrer testified that she is unaware whether the Agency follows her recommendations. Thus, the objector's burden is not met.

Therefore AFSCME and Rohrer fail to overcome the presumption that the designation of the Rohrer's position is proper under section 6.1(b)(5) of the Act.

3. Betsy Creamer

i. supervisor

AFSCME and Creamer do not to overcome the presumption that Creamer is a supervisor under Section 6.1(c)(ii) of the Act because they fail to demonstrate that Creamer lacks the authority to hire, assign, responsibly direct, or to effectively recommend such actions.

a. hire

Creamer's CMS-104 gives her the authority to participate in the recruitment, selection and retention of staff. Creamer was twice involved in the interview of subordinate positions. Creamer assisted in developing interview questions for the applicant, scoring the interview questions, and discussing her findings with Carpenter in order to establish a joint recommendation which Carpenter discussed independently to the Division Manager. The

⁹ absent the recommendation

presumption that the designation is proper places the burden on the objectors to demonstrate that Creamer did not make any recommendations to Carpenter and that these recommendations were ineffective, because Carpenter did not almost always follow Creamer's individual recommendations when formulating their joint recommendations. Absent evidence to the contrary, the substance of Creamer and Carpenter's discussion is presumed to be a recommendation by Creamer to Carpenter. Also, because the record does not indicate whether Creamer's individual recommendation to Carpenter differs from the resulting joint recommendation, or whether the Division Manager adopted the resulting joint recommendation, Creamer's individual recommendation is presumed effective to both Carpenter and to the Division Manager. Thus, the objectors have failed to overcome the presumption that Creamer's position is authorized to make effective recommendations in the hiring her subordinates.¹⁰

b. assign

The objectors fail to demonstrate that Creamer lacks the authority to assign employees. Under Section 2(11) of the NLRA, the NLRB has defined "assign" as to designate an employee to a place, appoint an employee to a time, such as a shift or an overtime period, or give significant overall duties to an employee. Oakwood Healthcare Inc., 348 NLRB at 689. The record reflects that as the direct supervisor of 11 subordinate positions, Creamer is authorized to approve or deny her subordinates' requests for flex-time. The authority to approve or deny an employee's request for a change in schedule clearly falls into the supervisor indicia of assign, because Creamer is appointing the employee to the time in which she is to report to and leave work. While Creamer lacks the final authority to approve the requested flex-time schedule, based on the testimony provided at hearing and Morrell's request that is included in the record, I find that Creamer's approval functions as a recommendation that the Division Manager authorize the flex-time request. Mason authorized Morrell's request, and the record does not include the details of the second flex-time referenced, thus Creamer's recommendations are effective.

c. responsibly direct

A putative supervisor has the authority to responsibly direct subordinates when her employer has delegated to her the authority to "direct the work and the authority to take corrective action if necessary." Oakwood Healthcare, Inc., 348 NLRB at 692. In Oakwood, the

¹⁰ Creamer testified that she has been involved in the interview of two subordinate positions, but only provided details regarding one of the interviews.

NLRB goes on to state, that in order for a putative supervisor to have the authority to responsibly direct it “also must be shown that there is a prospect of adverse consequences for the putative supervisor if []she does not take these steps.” *Id.* In applying the second portion of the “responsibly direct” test under Section 6.1 of the Act, the presumption that the designation is proper places the burden on AFSCME do demonstrate that there is not a prospect of adverse consequences for the employee in the position at issue in the designation petition, she does not direct the work or does not take corrective action if necessary. Under Section 6.1(d) of the Act there is a presumption that this test is met, and the objectors bear the burden to present evidence to the contrary.

In the instant case, the objectors fail to demonstrate that Creamer lacks the authority to responsibly direct the employees who work under her supervision. Creamer’s performance review evaluated her on her objective to perform “lead responsibility for on-site reviews and monitoring of [AAA].” According to Creamer’s testimony, her subordinates, the Social Service Program Planners, are responsible for the AAA. Creamer’s performance evaluation rates how she has conducted this responsibility, thus granting her the authority to direct the Social Service Program Planners, and providing at least some accountability by receiving a rating on the matter. Regarding the second prong of the test, Creamer only demonstrated that she is unaware of any consequences she may suffer if her subordinates were performing unsatisfactorily, because she has never experienced unsatisfactory performances by her subordinates. Mason also testified that he is unaware of any consequences Creamer may suffer, because in his short tenure as the Division Manager of the Division of the Home and Community Services, he has yet to experience one of Creamer’s subordinates performing in an unsatisfactory manner.

Thus, because Creamer’s 2012 performance evaluation rates her on her ability to monitor her subordinates’ review of the AAAs, is an objective for the subsequent evaluation period, and the objectors fail to negate “prospect of adverse consequences” prong of the responsibly direct test, the objector’s fail to overcome the presumption that Creamer is a supervisor under Section 6.1 of the Act.

ii. manager

Creamer has been designated under Section 6.1(b)(5) of the Act which requires that a position have independent discretionary authority as a manager under the Act, or as a supervisor under the NLRA, and CMS asserts that Creamer has independent discretionary authority as both

a manager and a supervisor. Since I have determined that she is authorized to exercise independent discretionary authority as a supervisor under the NLRA, I find it unnecessary to address whether her position description is also authorized to exercise independent discretionary authority as a manager under the Act. See Ill. Dep't Cent Mgmt Serv. and Am Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 85 (IL LRB-SP 2013) (accepting the ALJ's conclusion that since the employee's designation was proper under one subsection of Section 6.1, it was unnecessary to determine whether he also qualified for designation under a separate subsection of the Act); see also Ill. Dep't Cent. Mgmt. Serv. (Dep't. of Revenue) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 110 (IL LRB-SP 2013). Therefore, AFSCME and Creamer fail to overcome the presumption that the designation of the Creamer's position is proper under section 6.1(b)(5) of the Act.

V. CONCLUSION

I find that the designations of the employment positions at issue in the instant designation petition are proper and consistent with the requirements of Section 6.1 of the Illinois Public Labor Relations 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 at the Illinois Department on Aging 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>
37015-47-30-400-00-01	State Long Term Care Ombudsman
37015-47-70-000-20-01	Technical Advisor
37015-47-70-100-00-01	Supervisor
37015-47-70-000-10-01	Technical Advisor
37015-47-70-300-00-01	Supervisor
37015-47-30-300-20-01	Older American Services Supervisor

VII. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300,¹¹ parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 3 days after service of 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 argued 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 18th day of December, 2013.

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

/s/ Deena Sanceda _____

**Deena Sanceda
Administrative Law Judge**

¹¹ Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf