

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

State of Illinois, Department of Central	)	
Management Services (Illinois Criminal	)	
Justice Information Authority),	)	
	)	
Petitioner,	)	
	)	
and	)	Case No. S-DE-14-127
	)	
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) *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 (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 be properly designated, the position must fit one of the following five categories:

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

Counsel, Chief of Staff, Executive Director, Deputy Director, Chief Fiscal Officer, or Human Resources Director;

- 3) it must be designated by the employer as exempt from the requirements arising out of the settlement of Rutan v. Republican Party of Illinois, 497 U.S. 62 (1990), and be completely exempt from jurisdiction B of the Personnel Code, 20 ILCS 415/8b through 8b.20 (2012), see 20 ILCS 415/4 through 4d (2012);
- 4) it must be a term appointed position pursuant to Section 8b.18 or 8b.19 of the Personnel Code, 20 ILCS 415/8b.18, 8b.19 (2012); or
- 5) it must authorize an employee in that position to have “significant and independent discretionary authority as an employee” by which the 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 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.<sup>1</sup>

As noted, Public Act 97-1172 and Section 6.1 of the 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.

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<sup>1</sup> 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 in this case.

Reg. 14,070 (September 6, 2013). These rules are contained in Part 1300 of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300.

On November 15, 2013, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation pursuant to Section 6.1 of the Act and Section 1300.50 of the Board's Rules. The designation pertains to positions within the Illinois Criminal Justice Information Authority (ICJIA). On November 25, 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. Pursuant to Rule 1300.70, a hearing was held on December 13, 2013, in Chicago, Illinois. At that time the parties appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses and argue orally.

Based on the testimony, documentary evidence and arguments presented at hearing, I find the designation to have been properly submitted and consistent with the requirements of Section 6.1 of the Act and consequently I recommend that the Executive Director certify the designation of the positions at issue in this matter as set out below and, to the extent necessary, amend any applicable certifications of exclusive representatives to eliminate any existing inclusion of these positions within any collective bargaining unit:

**Director of Strategic Planning** (position no. 37015-50-05-000-10-01)(vacant); **Director of Special Projects and Information Sharing** (position no. 37015-50-05-000-40-01)(Michael Carter); **Victim Services Program Manager** (position no. 37015-50-05-300-10-01)(Ronnie Reichgelt); and **Motor Vehicle/JAG Program Manager** (position no. 37015-50-05-300-40-01)(Gregory Stevens).

#### **I. AFSCME's Objections**

AFSCME makes several general objections regarding the Act, along with several general objections regarding this designation. AFSCME also specifically objects to the designation of two positions. Generally, AFSCME claims Section 6.1 of the Act violates the separation of powers doctrine established by the Illinois Constitution. AFSCME alleges that the legislature has improperly delegated its power to exclude or include employees from the Act to the Governor, by giving the Governor the power to make changes to a law without any standards. AFSCME also claims that Section 6.1 of the Act violates the promise of equal protection under Article I, Section 2 of the Illinois Constitution. AFSCME alleges the Act denies employees equal

protection because the Governor can remove some positions from the Act while leaving identical positions without giving any rational basis for the decision. Finally, AFSCME claims that Section 6.1 of the Act violates Article I of the Illinois Constitution prohibiting the impairment of contracts because the employees designated are beneficiaries of collective bargaining agreements.

AFSCME claims that this designation does not fully comply with the requirements of Section 6.1 of the Act. AFSCME alleges that Section 6.1(b)(5) requires CMS to provide a list of job duties for each designated employee but the designation only includes position descriptions and some affidavits regarding the employees' job duties. AFSCME claims that CMS has not demonstrated that the designated employees have actual authority to complete the job duties listed in their position descriptions. AFSCME alleges that the position descriptions are also insufficient because they only list potential responsibilities while the employees' actual duties are assigned at their supervisors' discretion. AFSCME claims that if individuals hold the same position title but have different duties, the Petitioner should bear the burden to show why those different duties should not apply to all individuals holding that job title.

AFSCME claims that the designated employees are not supervisory or managerial under the National Labor Relations Act (NLRA), as required by Section 6.1(b)(5). AFSCME alleges that CMS presented no evidence that the designated employees exercise any of the job duties in the position descriptions or that they act with independent discretionary authority. AFSCME claims that the NLRA standard requires the party raising the exclusion, here CMS, to bear the burden of proof. AFSCME alleges that the supervisory exclusion under the NLRA is dependent on facts, so therefore, CMS must demonstrate that the designated employees have actual authority to act or effectively recommend one of the 11 supervisory functions with independent judgment. Finally, AFSCME claims that there is a distinction between professional and managerial employees under both the Act and the NLRA. AFSCME asserts that the employees at issue here exercise professional discretion rather than managerial discretion.

AFSCME notes that all four of the designated positions were certified in Case No. S-RC-10-028 and CMS agreed to their certification. AFSCME claims that CMS has not shown that the designated employees' job duties have changed. AFSCME alleges that designating these positions violates due process and is arbitrary and capricious because it would eliminate the

employees' right to associate with a labor organization. AFSCME claims that the risk of error is high in this case because of the strong presumption favoring CMS and the designation.

AFSCME specifically objects to the designation of two positions. AFSCME claims that Ronnie Reichgelt's position is not properly designated under Section 6.1(b)(5). AFSCME alleges that Reichgelt's position description states all of his work is under administrative direction so he does not exercise discretion or independent judgment. AFSCME also claims that when participating in hiring, Reichgelt scores interviews based on established criteria developed by his supervisor and that his supervisor makes the final hiring decision. AFSCME alleges that Reichgelt does not exercise independent judgment because he assigns work routinely and based on workload. AFSCME claims that Reichgelt does not participate in the development of policy. Finally, AFSCME alleges that Reichgelt does not implement policy because all policies are implemented by executive staff.

AFSCME claims that Gregory Stevens' position is not properly designated under Section 6.1(b)(5). AFSCME alleges that Stevens does not formulate policy or procedures. Therefore, he not only does not exercise discretion regarding policies, but is not even involved in formulating any policies. AFSCME claims that Stevens has no role in the disciplinary process and no authority to determine the staffing needs of the agency. AFSCME alleges that when Stevens is asked to participate in hiring interviews, he scores interviews based on established criteria developed by his supervisor and that his supervisor makes the final hiring decision. Finally, Reichgelt does not exercise independent judgment because he assigns work routinely and based on workload.

## **II. Preliminary Findings**

The parties stipulate and I find:

- 1) Stevens is a public employee as defined by Section 3(n) of the Act.
- 2) Stevens is in a bargaining unit represented by AFSCME, Council 31, which the Board certified.
- 3) Reichgelt is a public employee as defined by Section 3(n) of the Act.
- 4) Reichgelt is in a bargaining unit represented by AFSCME, Council 31, which the Board certified.
- 5) AFSCME, Council 31 and CMS are parties to a collective bargaining agreement.

- 6) Stevens and Reichgelt engage in substantially similar job functions in relation to their subordinate employees for purposes of the supervisory portion of Section 6.1(c)(ii).

### **III. Findings of Fact**

Ronnie Reichgelt is employed by the Illinois Criminal Justice Information Authority (ICJIA) in the position of Victim Service Program Administrator. Reichgelt was hired by the ICJIA on April 12, 1999 as a Program Monitor. Reichgelt currently works in the Federal and State Grants Unit (FSGU) and oversees the administration of three funds. Specifically, the Victims of Crimes Act (VOCA) and the Violence Against Women Act (VAWA) from the United States Department of Justice (DOJ) and the Death Penalty Abolition Program from the State of Illinois. The federal government allocates the funds for VOCA and VAWA based on a formula using population and crime data for Illinois. Reichgelt is in charge of compiling the necessary information to submit to the federal government to apply for Illinois' VOCA and VAWA grants. The VOCA and VAWA funds are then given to non-governmental organizations (NGOs) to carry out the purpose of those acts. The DOJ establishes guidelines that these NGOs must follow in order to use VOCA or VAWA funds. As a result, only certain services and agencies are eligible to receive VOCA and VAWA funds. Reichgelt's direct supervisor is the Associate Director of FSGU, Wendy McCambridge. Reichgelt has come to know his authority through experience and by viewing his position description.

Gregory Stevens is employed by the ICJIA in the position of Motor Vehicle/JAG Program Manager. Stevens was hired in February 2001 and he currently works in the FSGU. Stevens manages the Motor Vehicle Theft Prevention Council (MVTPC). His role is to ensure that the grants from the MVTPC are directed to the correct places. The MVTPC is comprised of a board that makes decisions through the ICJIA's Executive Director, Jack Cutrone. Stevens' direct supervisor is also Associate Director of the FSGU Wendy McCambridge. Stevens has also come to know his authority through experience and by viewing his position description.

Reichgelt currently has five subordinate Grant Monitors who each oversee administration of an individual grant. Stevens currently has six subordinate employees, five Grant Monitors and one Vehicle Acquisition Specialist. Reichgelt and Stevens assign Grant Monitors to oversee a grant based on many factors, with the main consideration being to ensure that all Grant Monitors have an equal workload. Many grants continue from year to year and are known as "continuation

grants.” If a Grant Monitor is assigned to a “continuation grant”, Reichgelt and Stevens make sure that an employee knows his or her continuing responsibilities for that grant. Certain Grant Monitors are hired to work on specific grants. Reichgelt and Stevens do not have the authority to assign a different grant to these employees. Reichgelt and Stevens’ authority to assign work is primarily exercised when assigning a new grant. In addition to workload, they also take into account a Grant Monitor’s expertise with the subject matter of the grant and whether he or she can handle the complexity of the matter. There are currently Grant Monitors who typically handle more complex grants. Stevens recommended that a continuing grant be transferred to that Grant Monitor who has been handling more complex grants. That grant was transferred.

Grants are assigned to NGOs through a request for proposal (RFP) or the continuation of a program. A grant is generally continued if Reichgelt or Stevens determines that the NGO is spending their allocated funds properly according to federal and program guidelines. An RFP is issued based on the grant program’s guidelines and a group (including Reichgelt and Stevens) reviews and scores the submissions. Reichgelt or Stevens make a recommendation to the Budget Committee, which then approves the chosen programs. The Budget Committee is comprised of members of the ICJIA Board. Reichgelt and Stevens are not on the Budget Committee.

Reichgelt and Stevens are primarily involved in hiring new employees through their participation in the interview process. Reichgelt, Stevens and McCambridge discuss questions to ask in the interviews, with McCambridge ultimately having the final say on which questions to ask. During the interviews, all three interviewers rank the interviewees on a score sheet developed by McCambridge. McCambridge determines how much weight to give to each section. These score sheets are comprised of weighted sections. The interviewers give the interviewee a percentage in each of these sections. Half of the score comes from questions regarding the candidate’s education and qualifications for the job. These questions are objective and are as simple as whether the candidate has the degree required for the job. The other half of the score comes from questions regarding categories of experience. These questions are subjective and the interviewers are able to use their discretion and award more points to a candidate they believe has more experience in a category. The subjective section of the score sheet is designed to ensure that the interviewers do not all have the same score for the same candidate.

Reichgelt and Stevens' subordinates perform their jobs based on the rules set out in a manual. They also grants time off requests based on the rules in the manual. If Reichgelt or Stevens are not there to approve a time off request, McCambridge approves the request based on the rules in the manual. McCambridge does not review their decisions to grant time off requests in any other situations.

Reichgelt and Stevens' subordinates submit several reports in their roles as Grant Monitors. They submit quarterly fiscal reports detailing the expenses of the grants they monitor. They also submit quarterly data reports with qualitative and quantitative information detailing what the grant they monitor did that quarter. Finally, at the end of the grant's term, Grant Monitors submit a close out report consisting of all fiscal and data reports from the term of the grant. Reichgelt or Stevens review these reports to ensure they are correct and that they comply with guidelines. The fiscal reports must comply with federal guidelines while the data reports must comply with the program's guidelines.

Reichgelt and Stevens evaluate their subordinates annually through performance reviews. Prior to the performance review, Reichgelt and Stevens each meet with their subordinates to determine objectives for the next year. Some of these objectives are dictated by federal guidelines. Reichgelt and Stevens evaluate their subordinates based on their work from the past year. They conduct performance reviews using a general form and established guidelines. The form requires them to mark whether the employee has "exceeded", "met" or "not met" his or her objectives from the previous year. The form also lists 10 categories and requires Reichgelt and Stevens to check whether the employee "exceeds expectations", "meets expectations" or "needs improvement". There is a section where they can add their own narrative remarks as well as a section to list the employee's objectives for the next year. These evaluations are then submitted to McCambridge, human resources, the Chief of Staff and the Executive Director before Reichgelt or Stevens discusses the evaluation with the employee. The outcome of the evaluation can not affect a subordinate employee's pay or employment status. None of the employees who review Reichgelt and Stevens' evaluations has ever changed their marks. Reichgelt and Stevens have each evaluated an employee since McCambridge became their supervisor. In each case, McCambridge did not make any changes to their evaluations.

Reichgelt and Stevens have authority to discipline their subordinate employees. In the past, they have both disciplined an employee for poor performance. Specifically, Stevens sought

advice from Chief of Staff to the General Counsel Lisa Stephens on how to develop a corrective action plan for his subordinate employee Terry Dugan. Stephens advised Stevens on how to implement a corrective action plan. Stevens then implemented the plan with Dugan. Stephens told Stevens that she would support his actions regarding Dugan. Reichgelt and Stevens' evaluations of their subordinates could be used as evidence of an employee's poor performance. An employee's poor performance could result in a step increase being withheld or in the release of an employee after his or her probationary period. Neither Reichgelt nor Stevens have ever been held responsible for a subordinate's poor performance.

When Reichgelt or Stevens encounter a problem administering grants they develop a proposed solution to that problem and then present it to McCambridge. For example, Reichgelt encountered a problem with a grant under one of his programs. Reichgelt found evidence that the grantee was not properly administering its grant so he proposed the grant be terminated. Reichgelt made this recommendation to McCambridge who forwarded the recommendation to the ICJIA General Counsel Lisa Stephens. Reichgelt's recommendation was accepted and the grant was terminated. Stevens has the same authority to make recommendations for grants under his programs.

Reichgelt and Stevens are not directly involved in determining the ICJIA's objectives. However, Reichgelt is involved in developing policy for the FSGU. In 2012, Reichgelt, along with other employees, developed the Federal and State Grants Unit Policies and Procedures (Manual). The committee consisted of many employees from different parts of the FSGU. The Acting Associate Director assigned Reichgelt to the committee. This committee worked together to revise portions of the manual, working individually on certain sections and then convening to finalize their recommendations. Finally, the committee proposed changes to Executive Director Jack Cutrone for approval. The Manual contains rules for how to process grants within FSGU and with other units in the ICJIA. This manual contains rules for administering all ten federal grants that FSGU receives. Stevens was not on this committee.

Reichgelt and Stevens do not plan the ICJIA's budget. They each review the proposed budget to ensure that proposed budget items are allowable under the federal guidelines for their programs. Specifically, they check to be sure that there is enough federal money available to fund all the items of the ICJIA's budget.

#### **IV. Discussion and Analysis**

##### **a. Procedural**

AFSCME raises three general objections to this designation, claiming that Section 6.1 of the Act violates the Illinois Constitution. However, the Board has held that it is beyond its 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 Illinois, Department of Central Management Services, 30 PERI ¶ 80 Cons. Case Nos. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013) citing Goodman v. Ward, 241 Ill. 2d 398, 411 (2011). In Case No. S-DE-14-005 the Board expressed its concern with AFSCME’s due process arguments but maintained that it has taken necessary measures to prevent a violation of such.<sup>2</sup> Therefore, AFSCME’s due process rights have not been violated by the Board following the policies and procedures mandated by the legislature.

##### **b. Substantive**

AFSCME makes several claims asserting that the burden of proof should be shifted from the Objector (AFSCME) to the Petitioner (CMS) in certain portions of this case. 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

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<sup>2</sup> The Board found in Case No. S-DE-14-005, issued October 7, 2013, that consistent with the Fourth District, it has, “insured that the individual employees as well as their representative and potential representative receive notice soon after designation petitions are filed, usually within hours, and have provided for redundant notice by means of posting at the worksite... we provided them an opportunity to file objections, and where they raise issues of fact or law that might overcome the statutory presumption of appropriateness, an opportunity for a hearing, [and]... require a written recommended decision by an administrative law judge in each case in which objections have been filed.” See Arvia v. Madigan, 209 Ill. 2d 520 (2004), and Gruwell v. Ill. Dep’t of Financial and Professional Regulations, 406 Ill. App. 3d 283, 296-8 (4th Dist. 2010). Additionally, the Board found that it has “allowed an opportunity to appeal those recommendations for consideration to the full Board by means of filing exceptions... doubled the frequency of our scheduled public meetings in order to provide adequate review of any exceptions in advance of the 60-day deadline and... issu[e] written final agency decisions which may be judicially reviewed pursuant to the Administrative Review Law”, in an effort to adhere to due process. State of Illinois, Department of Central Management Services, 30 PERI ¶ 80 Cons. Case Nos. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013).

otherwise be granted under the Illinois Public Labor Relations Act. Section 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).

AFSCME generally claims that this designation does not fully comply with the requirements of Section 6.1 of the Act because CMS is required to provide more than the position descriptions and affidavits to show the job duties of the designated employees. AFSCME alleges that the position descriptions only list potential responsibilities and do not demonstrate that the designated employees have actual authority to complete those job duties. However, this does not render the designation inappropriate 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.).

AFSCME also alleges that all four of the positions designated in the petition were certified in a bargaining unit in Case No. S-RC-10-028 and CMS has not shown that the employees' job duties have changed. However, this objection 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.

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).

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.

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 (4<sup>th</sup>) 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) 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).

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).

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. 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). 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 vacant position and the position held by Michael Carter, are supervisory, because AFSCME does not provide sufficient, or even any factual evidence that these positions lack significant independent discretionary authority as supervisors.

Therefore, 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 they have not submitted specific objections to the designation of the vacant position and the position held by Carter, the designation of these positions is proper under section 6.1(b)(5) of the Act.

AFSCME does not overcome the statutory presumption that Reichgelt and Stevens are supervisors under Section 6.1(c)(ii) of the Act because they fail to demonstrate that Reichgelt and Stevens lack the authority to hire and assign employees, or to effectively recommend such actions.

Reichgelt and Stevens testified that they have the authority to interview potential new employees and participate in the hiring process. Reichgelt and Stevens have both been involved in the interview of subordinate positions. They participated in the interview process with McCambridge by developing interview questions for the applicants, scoring the interview questions, and discussing their findings with her. The record shows that one time, Reichgelt's highest scoring candidate was not hired. However, the presumption that the designation is proper places the burden on the objector to demonstrate that Reichgelt and Stevens did not make any recommendations to McCambridge and that these recommendations were ineffective, because she did not almost always follow Reichgelt and Stevens' individual recommendations. The record does not show that every single time Reichgelt and Stevens participated in the hiring process, their recommendation was not followed. Absent evidence to the contrary, the substance of the discussion between Reichgelt, Stevens and McCambridge is presumed to be a

recommendation by Reichgelt to McCambridge and a recommendation from Stevens to McCambridge. Therefore, the objector has failed to overcome the presumption that Reichgelt and Stevens' positions are authorized to make effective recommendations in the hiring of their subordinates.

Reichgelt and Stevens' position descriptions give them 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 evidence shows that Reichgelt has five subordinate employees and Stevens has six subordinate employees. They are authorized to assign these employees to specific grants. Reichgelt and Stevens are authorized to remove a subordinate from one grant and assign him or her to another grant, thus determining that employee's duties. Reichgelt and Stevens are also authorized to assign a new grant to any of his five subordinate employees based on their own judgment. Finally, Reichgelt and Stevens are authorized to approve their subordinates' time off requests. While they do not have the final authority to approve time off requests, their approval acts as an effective recommendation to Associate Director Wendy McCambridge to approve the request.

Reichgelt and Stevens have 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 Reichgelt and Stevens have independent discretionary authority as both a manager and a supervisor. Since I have determined that they are authorized to exercise independent discretionary authority as a supervisor under the NLRA, I find it unnecessary to address whether their position descriptions are 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 fails to overcome the presumption that the designation of the Reichgelt and Stevens' positions is proper under section 6.1(b)(5) of the Act.

**V. Conclusions of Law**

The Governor's designation in this case is properly made.

**VI. Recommended Order**

Unless this Recommended Decision and Order is rejected or modified by the Board, the following positions in the Illinois Criminal Justice Information Authority are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

**Director of Strategic Planning** (position no. 37015-50-05-000-10-01)(vacant); **Director of Special Projects and Information Sharing** (position no. 37015-50-05-000-40-01)(Michael Carter); **Victim Services Program Manager** (position no. 37015-50-05-300-10-01)(Ronnie Reichgelt); and **Motor Vehicle/JAG Program Manager** (position no. 37015-50-05-300-40-01)(Gregory Stevens).

**VII. Exceptions**

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300<sup>3</sup>, 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 the recommended decision and order. All exceptions shall be filed and served in accordance with Section 1300.90 of the Board's Rules. Exceptions must be filed by electronic mail to ILRB.Filing@illinois.gov. Each party shall serve its exceptions on the other parties. If the original exceptions are withdrawn, then all subsequent exceptions are moot. A party not filing timely exceptions waives its right to object to the Administrative Law Judge's recommended decision and order.

**Issued at Chicago, Illinois, this 23<sup>rd</sup> day of December, 2013.**

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

*Thomas R. Allen*

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**Thomas R. Allen  
Administrative Law Judge**

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<sup>3</sup> Available at [www.state.il.us/ilrb/subsections/pdfs/Section](http://www.state.il.us/ilrb/subsections/pdfs/Section) 1300 Illinois Register.pdf