

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

State of Illinois, Department of Central	)	
Management Services (Illinois	)	
Emergency Management Agency),	)	
	)	
Petitioner,	)	Case Nos. S-DE-14-134
	)	S-DE-14-135 and
and	)	S-DE-14-136
	)	
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 21, 2013, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designations pursuant to Section 6.1 of the Act and Section 1300.50 of the Board's Rules. The designations pertain to positions within the Illinois Emergency Management Agency (IEMA). On December 5, 2013, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) filed objections to the designations pursuant to Section 1300.60(a)(3) of the Board's Rules. Based on my review of the designations, the documents submitted as part of the designations, the objections, and the documents and arguments submitted in support of those objections, I find the designations 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 these matters 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:

**Assistant to the Director** (position no. 37015-50-17-000-00-01)(Lisa Desai); **Section Head, Mitigation and Infrastructure** (position no. 37015-50-17-300-10-01)(Curtis Caldwell); **Section Head, Catastrophic Disaster Preparedness** (position no. 37015-50-17-300-20-01)(Jana Farrow); **Section Head, Radiological Emergency Preparedness** (position no. 37015-50-17-300-40-01)(William Conway); **Manager, Regional Office** (position no. 37015-50-17-500-50-01)(vacant); **Section Head, Communications** (position no. 37015-50-17-500-59-01)(Walt Lewis); **Section Head, Federal Deposits and Reporting** (position no. 37015-50-17-000-10-01)(Jean Ladd); **Budget Manager** (position no. 37015-50-17-000-30-01)(Patricia Senor Carter); **Section Head, Nuclear Monitoring** (position no. 83693-50-17-600-30-01)(Sheryl Klein); **Section Head, Environmental Management** (position no. 83693-50-17-700-20-01)(Kelly Horn); and **Section Head, Radiation Measurement and Analysis** (position no. 83693-50-17-700-30-01)(vacant).

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

AFSCME makes several general objections regarding the Act, along with several general objections regarding these designations. AFSCME also specifically objects to the designation of Patricia Senor Carter's position. Generally, the Objector 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. The Objector 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. The Objector 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 11 of the designated positions were certified in Case Nos. S-RC-08-036; S-RC-07-049; S-RC-08-074 and S-RC-09-196 and CMS agreed to their certification. AFSCME claims that CMS has not shown that the designated employees' job duties have

changed. The Objector 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 one of the 11 designated positions. AFSCME claims that Patricia Senor Carter's position is not properly designated under Section 6.1(b)(5). Carter has no role in developing policy and her position is not in the upper levels of IEMA management. They allege that Carter's position functions as staff to the Bureau of Fiscal Management Officer and, as such, she is limited to technical and administrative work as directed. Carter is required to follow procedures and rules developed by others. Therefore, AFSCME claims that Carter does not manage the IEMA budget and her position is not properly designated under Section 6.1(b)(5).

## **II. 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>

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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 judicial precedent, 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).

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 these cases. 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 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 party bears 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 these designations do 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 11 of the positions designated in these petitions were certified in a bargaining unit in Case Nos. S-RC-08-036; S-RC-07-049; S-RC-08-074 and S-RC-09-196 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(b)(5) allows the Governor to designate positions that authorize an employee to have “significant and independent discretionary authority.” 5 ILCS 315/6.1(b)(5). The Act goes on to provide three tests by which a person can be found to have “significant and independent discretionary authority.” Section 6.1(c)(i) sets forth the first two tests, while Section 6.1(c)(ii) sets forth a third. In its petitions, CMS contends that the at-issue positions confer on the position holder “significant and discretionary authority” as further defined by either Section 6.1(c)(i) or both Section 6.1(c)(i) and (ii).

In order to meet the burden to raise an issue that might overcome the presumption that the designations are proper, the objector must provide specific examples to negate each of the three tests set out in Section 6.1(c). If even one of these tests is met, then the objector has not sufficiently raised an issue, and the designations are proper. Ill. Dep't Cent. Mgmt. Serv., 30 PERI ¶ 85.

The first test under Section 6.1(c)(i) is substantively similar to the traditional test for managerial exclusions articulated in Section 3(j). To illustrate, Section 6.1(c)(i) provides that a position authorizes an employee in that position with significant and independent discretionary authority if “the employee is... engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency.” 5 ILCS 315/6.1(c)(i).

Though similar to the Act's general definition of a managerial employee in Section 3(j), 5 ILCS 315/3(j), the Section 6.1(c)(i) definition is more broad in that it does not include a predominance element and requires only that the employee is “charged with the effectuation” of policies, not that the employee is responsible for directing the effectuation. An employee directs the effectuation of management policy when he or 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), 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). However, in order to meet the first test set out in Section 6.1(c), a position holder need not develop the

means and methods of reaching policy objections. It is sufficient that the position holder is charged with carrying out the policy in order to meet its objectives.

The Section 6.1(c)(i) test is unlike the traditional test where a position is deemed managerial only if it is charged with *directing* the effectuation of policies. Under the traditional test, for example, “where an individual merely performs duties essential to the employer’s ability to accomplish its mission, that individual is not a managerial employee,” Ill. Dep’t of Cent. Mgmt. Serv. (Dep’t of Revenue), 21 PERI ¶ 205 (IL LRB-SP 2005), because he or she “does not determine the how and to what extent policy objectives will be implemented and the authority to oversee and coordinate the same.” INA, 23 PERI ¶ 173 (*citing City of Evanston v. Ill. Labor Rel. Bd.*, 227 Ill. App. 3d 955, 975 (1<sup>st</sup> Dist. 1992)). However, under Section 6.1(c)(i), a position need not determine the manner or method of implementation of management policies. Performing duties that carry out the agency or department’s mission is sufficient to satisfy the second prong of the first managerial test.

The second test under Section 6.1(c)(i) also relates to the traditional test for managerial exclusion because it reflects the manner in which the courts have expanded that test. A designation is proper under this test if the position holder “represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency.” 5 ILCS 315/6.1(c)(i). The Illinois Appellate Court has observed that the definition of a managerial employee in Section 3(j) is very similar to the definition of a managerial employee in the Supreme Court’s decision in Nat’l Labor Rel. Bd. v. Yeshiva Univ. (“Yeshiva”), 444 U.S. 672 (1980). Dep’t of Cent. Mgmt. Serv./ Illinois Commerce Com’n v. Ill. Labor Rel. Bd. (“ICC”), 406 Ill. App. 3d 766, 776 (4<sup>th</sup> Dist. 2010)(*citing Yeshiva*, 444 U.S. at 683). Further, the Court noted that the ILRB, like its federal counterpart, “incorporated ‘effective recommendations’ into its interpretation of the term ‘managerial employee.’” ICC, 406 Ill. App. at 776. Indeed, the Court emphasized that “the concept of effective recommendations... [set forth in Yeshiva] applies with equal force to the managerial exclusion under the Illinois statute.” Id.

In light of this analysis, the second test under Section 6.1(c)(i) is similar to the expanded traditional managerial test because it is virtually identical to the statement of law in Yeshiva which the Illinois Appellate Court and the Illinois Supreme Court have incorporated into the

traditional managerial test. Id. (*quoting Chief Judge of the Sixteenth Judicial Circuit v. Ill. State Labor Rel. Bd.*, 178 Ill. 2d 333, 339-40 (1997)).

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 10 positions not held by 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 10 positions not held by Carter, the designation of these 10 positions is proper under section 6.1(b)(5) of the Act.

AFSCME does not overcome the statutory presumption that Carter is managerial under Section 6.1(c)(i) of the Act because they fail to negate either management test. Carter's position description states that she plans, coordinates, develops and implements the IEMA budget. It also states that she monitors agency spending and makes suggestions on budget expenditures and transfers. AFSCME does not show that Carter is not engaged in executive and management functions because she has a role in managing the agency's budget. Carter presents budgetary information to the Chief Financial Officer, analyzes agency expenditures, projects agency expenditures and analyzes the impact of new hires. Through all these functions, Carter ensures the agency operates efficiently. In their objections, AFSCME asserts that Carter is not allowed to make unilateral decisions related to agency policy. However, AFSCME does not claim that Carter does not have the authority to recommend. Therefore, I must assume that Carter does make effective recommendations.

Carter's position is 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 Carter 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 manager under the NLRA, I find it unnecessary to address whether her position description is also authorized to exercise independent discretionary authority as a supervisor 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 Carter's position is proper under section 6.1(b)(5) of the Act.

### **III. Conclusions of Law**

The Governor's designation in these cases is properly made.

### **IV. Recommended Order**

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

**Assistant to the Director** (position no. 37015-50-17-000-00-01)(Lisa Desai); **Section Head, Mitigation and Infrastructure** (position no. 37015-50-17-300-10-01)(Curtis Caldwell); **Section Head, Catastrophic Disaster Preparedness** (position no. 37015-50-17-300-20-01)(Jana Farrow); **Section Head, Radiological Emergency Preparedness** (position no. 37015-50-17-300-40-01)(William Conway); **Manager, Regional Office** (position no. 37015-50-17-500-50-01)(vacant); **Section Head, Communications** (position no. 37015-50-17-500-59-01)(Walt Lewis); **Section Head, Federal Deposits and Reporting** (position no. 37015-50-17-000-10-01)(Jean Ladd); **Budget Manager** (position no. 37015-50-17-000-30-01)(Patricia Senor Carter); **Section Head, Nuclear Monitoring** (position no. 83693-50-17-600-30-01)(Sheryl Klein); **Section Head, Environmental Management** (position no. 83693-50-17-700-20-01)(Kelly Horn); and **Section Head, Radiation Measurement and Analysis** (position no. 83693-50-17-700-30-01)(vacant).

### **V. 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](mailto: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.

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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

**Issued at Chicago, Illinois, this 30<sup>th</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**