

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

State of Illinois, Department of Central)	
Management Services (Historic Preservation)	
Agency),)	
)	
Employer,)	
)	
and)	Case Nos. S-DE-14-155
)	S-DE-14-156
American Federation of State, County)	S-DE-14-157
and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector,)	
)	
and)	
)	
Pamela Jefferies and Richard Green,)	
)	
Employee-Objectors.)	

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

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

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

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

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

¹ Public Act 98-100, which became effective July 19, 2013, added subsections (e) and (f) to Section 6.1 which shield certain specified positions from such Gubernatorial designations, but none of those positions are at issue here.

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

On January 10, 2014, the Illinois Department of Central Management Services (“CMS”), on behalf of the Governor, filed the above-captioned designation petitions pursuant to Section 6.1(b)(5) of the Act and Section 1300.50 of the Board’s Rules. The following PSA-Option 1 positions at the Historic Preservation Agency (“IHPA” or “Agency”) are designated in case number S-DE-14-155:

<u>Position Number</u>	<u>Working Title</u>	<u>Incumbent</u>
37015-48-00-501-00-01	Facilities Rental Programs Manager	Brackney, Britta
37015-48-20-300-00-01	Historic Sites	Vacant
37015-48-30-400-00-01	Preservation Services	Haaker, Anne
37015-48-40-100-00-01	Constituent Serv.	Vacant
37015-48-52-400-00-01	Research & Collections	Stowell, Daniel
37015-48-53-000-00-01	Museum Shows Programs	Funkenbusch, Philip
37015-48-54-300-00-01	Lincoln Lib & Museum Guest Entry Manager	Thorpe, Clara
37015-48-57-000-00-01	Educations Program Div	Vacant

The following IHPA Historical Library Chief of Acquisitions position is designated in case number S-DE-14-156:

<u>Position Number</u>	<u>Working Title</u>	<u>Incumbent</u>
18987-48-52-300-00-01	Historical Library Chief of Acquisitions	Stockton, Gary

The following PSA-Option 2 positions at IHPA are designated in case number S-DE-14-157:

<u>Position Number</u>	<u>Working Title</u>	<u>Incumbent</u>
37015-48-00-120-00-01	Manager of Payroll and General Services	White, David
37015-48-00-130-00-01	Grant and Accounting Manager and Chief Accountant	Fisher, James

37015-48-50-200-00-01	Lincoln Library & Museum Fiscal Manager	Cherrier, Theresa
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In support of its petitions, CMS filed position descriptions for each position, affidavits from individuals with knowledge of the duties and responsibilities of the at-issue positions, and summary spreadsheets. The spreadsheets indicate that the PSA-Option 1 positions were certified on January 20, 2010, the Historical Library Chief of Acquisitions was certified on January 5, 2010, and the PSA-Option 2 positions were certified on January 5, 2010.

American Federation of State, County and Municipal Employees, Council 31 (“AFSCME”) and several individuals filed objections² to the designation pursuant to Section 1300.60(a)(3) of the Board’s Rules. Position-specific objections were raised to the designation of the following seven positions:

<u>Position Number</u>	<u>Working Title</u>	<u>Incumbent</u>
37015-48-00-501-00-01	Facilities Rental Programs Manager	Brackney, Britta
37015-48-53-000-00-01	Museum Shows Division Manager	Funkenbusch, Philip
37015-48-54-300-00-01	Lincoln Library & Museum Guest Entry Manager	Thorpe, Clara
18987-48-52-300-00-01	Historical Library Chief of Acquisitions	Stockton, Gary
37015-48-00-120-00-01	Manager of Payroll and General Services	White, David
37015-48-00-130-00-01	Grant and Accounting Manager and Chief Accountant	Fisher, James
37015-48-50-200-00-01	Lincoln Library & Museum Fiscal Manager	Cherrier, Theresa

I reviewed the documents accompanying the designation petitions, the objections raised by AFSCME, the objections raised by individual employees, and the documents submitted in support of the objections. My review indicates that there is no issue of law or fact that might overcome the presumption that the designation is proper such that a hearing is necessary to determine the propriety of those designations.

² AFSCME’s objections to the petitions were filed on January 21, 2014. The following individuals filed individual objections: Philip Funkenbusch on January 15, 2014; Theresa Cherrier on January 15, 2014; David White on January 16, 2014; James Fisher on January 16, 2014; Britta Brackney on January 17, 2014; and Clara Thorpe on January 22, 2014.

After consideration of the information before me, including the testimony and evidence presented at the hearing, I find that the designations are properly submitted and are consistent with the requirements of Section 6.1 of the Act. Accordingly, I recommend that the Executive Director certify the designation of the positions at issue in this consolidated matter and, to the extent necessary, amend any applicable certifications of exclusive representatives to eliminate any existing inclusion of these positions within any collective bargaining unit.

I. OBJECTIONS

AFSCME objects to the designation petitions in a number of ways. AFSCME included the following documents in support of its objections: affidavits by AFSCME Representative Tracy Abman; an AFSCME Information Form completed by Clara Thorpe; an AFSCME Information Form completed by Britta Brackney, with attachments; an AFSCME Information Form completed by Philip Funkenbusch; an AFSCME Information Form completed by Gary Stockton; an AFSCME Information Form completed by James Fisher; an AFSCME Information Form completed by Theresa Cherrier, with attachments; and an AFSCME Information Form completed by David White, with attachments. Some individuals also filed objections individually with the Board. The individual objections did not contain additional information from that which was submitted with AFSCME's Objections; therefore, they are not discussed separately.

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

A. Constitutional Claims

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

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

B. Substantive Claims

AFSCME contends that under the National Labor Relations Board (“NLRB”) precedent and case law interpreting the same, “any claim of supervisory or managerial status requires that *the party raising the exclusion bear the burden of proof.*”³ AFSCME argues that CMS seeks the exclusion of employees who are not “supervisors” or “managers” as defined by the National Labor Relations Act (“NLRA”), 29 U.S.C. 152 *et seq.*, or NLRB. AFSCME contends that CMS has presented evidence only of the “*potential* responsibilities that can be given to the employee within the position” and has not demonstrated that the employees have actual authority to complete the duties. Accordingly, AFSCME argues that CMS should bear the burden of proving that the designated employees exercise duties that would make them supervisory or managerial, that the position exercises managerial discretion rather than just professional discretion, and that the designated position has different duties than a position with the same title that performs “wholly professional” duties.

AFSCME further contends that CMS cannot prove a position is managerial where the position description identifies that the position effectuates policies but does not identify specific policies the position effectuates. AFSCME argues that CMS cannot prove that an employee is a supervisor by generalizing supervisory functions rather than demonstrating that the employee has actual authority to act or effectively recommend one of the 11 enumerated supervisory functions.

C. Position-specific Objections

In addition to the general objections described above, AFSCME, relying on information submitted to it by the employees, makes specific arguments regarding the authority of positions and the accuracy of the position descriptions for the positions held by Britta Brackney, Theresa Cherrier, James Fisher, Philip Funkenbusch, Clara Thorpe, Gary Stockton, and David White. AFSCME argues that because the seven specific individuals raised issues with their position descriptions, “there exists a high likelihood” that position descriptions of the other positions are “inaccurate and/or they are not authorized to perform the alleged job duties.”

II. DISCUSSION AND ANALYSIS

The law creates a presumption that designations made by the Governor are properly made. In order to overcome the presumption of a properly submitted designation under Section

³ Emphasis in original.

6.1(b)(5), the objectors would need to raise an issue of law or fact that the position does not meet either of the managerial tests set out in Section 6.1(c)(i) or the supervisory test set out in Section 6.1(c)(ii).

AFSCME's objections fail to overcome that presumption or raise a question of law or fact that requires a hearing. For the reasons stated more fully below, I find the designations are proper.

A. Constitutional Arguments

It is beyond the Board's capacity to rule that the Illinois Public Labor Relations Act, as amended by Public Act 97-1172, either on its face or as applied, violates provisions of the United States and Illinois constitutions. State of Ill., Dep't of Cent. Mgmt. Servs., 30 PERI ¶80, Case No. S-DE-14-005 etc. (IL LRB-SP Oct. 7, 2013) appeal pending, No. 1-13-3454 (Ill. App. Ct. 1st Dist.) (*citing* Goodman v. Ward, 241 Ill. 2d 398, 411 (2011) ("Administrative agencies ... have no authority to declare statutes unconstitutional or even to question their validity. [citations omitted]. When they do so, their actions are a nullity and cannot be upheld.")). Accordingly, these issues are not addressed in this recommended decision and order.

B. Sufficiency of Evidence Related to Position Descriptions and Effectuation of Policies

AFSCME objects to the designation by arguing that CMS has failed to provide sufficient information to prove that the designated positions are managerial. "To the extent an affidavit states that an employee at issue effectuates policies or is authorized to effectuate departmental policy, and the position description for the at issue employee does not define a policy, there can be no showing that the employee is managerial."⁴ However, nothing in the law or accompanying rules requires the Governor to identify specific policies an employee is authorized to effectuate. Section 6.1(b) requires the Governor to provide only "the job title and job duties of the employment positions; the name of the State employee currently in the employment position, if any; the name of the State agency employing the public employee; and the category under which the position qualifies for designation under this Section." 5 ILCS 315/6.1(b).

Moreover, the Board's Rules, the Act, and relevant case law demonstrate that position descriptions provide an adequate basis on which to evaluate the propriety of a designation. First, the Act and the Rules contemplate that the Board may make such a determination based on a job

⁴ AFSCME Objections.

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

Finally, AFSCME argues that because several employees raised issues with their position descriptions, "there exists a high likelihood" that position descriptions of the other designated positions are "inaccurate and/or they are not authorized to perform the alleged job duties." Even if some position descriptions were inaccurate, AFSCME has failed to bring any alleged inaccuracies to the Board's attention or to provide any legal analysis of the impact that any alleged factual inaccuracies might have on the Board's analysis of the propriety of the designations.

Accordingly, the position descriptions provide the Board with sufficient evidence from which to establish the propriety of the designations.

C. The Objector bears the burden of proving that a designation is improper.

AFSCME argues that CMS should bear the burden of proof in at least two ways. First, it argues that because CMS is seeking an exclusion, under NLRA case law, CMS should bear the burden. In so arguing, AFSCME fails to appreciate that Section 6.1 is a wholly new legislative creation. The Act's provision that "any designation made by the Governor...shall be presumed to have been properly made," 5 ILCS 315/6.1(d), shifts the burden of proving that a designation is improper on the objector. Therefore, AFSCME and the individual employees have the burden

⁵ While these cases address the Employer's burden in the majority interest process, they are nevertheless relevant to address AFSCME's general argument concerning the sufficiency of job descriptions to establish a position's job duties.

to demonstrate that the designation is improper.

In this case, CMS designated this position under Section 6.1(b)(5) which provides that the position must “authorize an employee in that position to have significant and independent discretionary authority as an employee.” 5 ILCS 315/6.1(b)(5). The Act then outlines in Section 6.1(c) three tests to determine whether a position has “significant and independent discretionary authority as an employee,” as that term is used in Section 6.1(b)(5). 5 ILCS 315/6.1(c). Thus, the burden is on the objector to demonstrate that the designation is not proper in that the employer has not conferred significant discretionary authority upon that position, as that term is defined in the Act.

Second, AFSCME also argues that CMS should bear the burden of showing that the designated positions have different duties than other positions with the same position title that may be “wholly professional.” This argument does not require additional analysis. To the extent that AFSCME is concerned that the designations may be carried out in an arbitrary manner, that constitutional question is not for the Board to decide. To the extent that this argument is a repackaging of AFSCME’s contention that the designated positions are not managerial because they are “wholly professional,” AFSCME still bears the burden of proving that contention to be true. It has failed to do so here.

With respect to the five positions for which AFSCME and the individual in the position have failed to provide any position-specific information or evidence, I find that they have failed to overcome the presumption of validity. Accordingly, I find that these designations are proper and will further analyze only the positions held by Britta Brackney, Theresa Cherrier, James Fisher, Philip Funkenbusch, Clara Thorpe, Gary Stockton, and David White.

D. Tests for Designations made under Section 6.1(b)(5)

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.⁶ In its petition, CMS contends that the at-issue positions confer on

⁶ Section 6.1(c) reads in full as follows: For the purposes of this Section, a person has significant and independent discretionary authority as an employee if he or she (i) 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 or represents management interests by taking or recommending discretionary

the position holder “significant and independent 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 designation is 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 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., 30 PERI ¶ 85 (ILRB-SP 2014).

Each of the three tests are discussed below.

1. Section 6.1(c)(i) sets out two tests for designation under Section 6.1 (b)(5)

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

Though similar to the Act’s general definition of managerial employee in Section 3(j), 5 ILCS 315/3(j), the Section 6.1(c)(i) definition is broader 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/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, 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 first Section 6.1(c)(i) test is unlike the traditional test where a position is deemed

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 or any orders of the National Labor Relations Board interpreting that provision or decisions of courts reviewing decisions of the National Labor Relations Board. 5 ILCS 315/6.1(c).

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 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 (1st 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) indicates that a designation is proper 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). This second test allows a position to be designated upon a showing that it either (a) takes discretionary actions that effectively control or implement agency policy or (b) effectively recommends such discretionary actions.

2. Section 6.1(c)(ii) establishes a third test for designation under Section 6.1(b)(5)

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

In other words, “employees are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 listed supervisory functions, (2) their ‘exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment,’ and (3) their authority is held ‘in the interest of the employer.’” NLRB v. Kentucky River Comm. Care, Inc. (“Kentucky River”), 532 U.S. 706, 713 (2001) (*quoting NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574 (1994); *See also Oakwood Healthcare, Inc. v. United Auto Automobile, Aerospace and Agricultural Implement Workers of America* (“Oakwood

Healthcare”), 348 NLRB 686, 687 (2006). A decision that is “dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement” is not independent. Oakwood Healthcare, 348 NLRB at 689.

E. The designation of the PSA-Option 1 position held by Britta Brackney is proper.

Ms. Brackney’s position is designated under Section 6.1(b)(5), and the affidavit supporting the petition asserts that Ms. Brackney’s position meets the 6.1(b)(5) requirement as further defined by Sections 6.1(c)(i) and (ii).

Ms. Brackney serves as the Facilities Rental Programs Manager for the Abraham Lincoln Presidential Library and Museum (“ALPLM”). In his affidavit, ALPLM Chief of Staff Kenneth Crutcher states that Ms. Brackney is authorized to represent management interests by taking or recommending discretionary actions that effectively control or implement the policy of the IHPA and ALPLM.

Ms. Brackney submitted materials wherein she identified areas of her position description and the affidavit submitted by Mr. Crutcher that she contends are not accurate and provides additional information and supporting documentation regarding her responsibilities. She also provides several examples where she contends her independence to act has been limited by the Director of Guest Services, and specifically challenges her authority to supervise the subordinate identified in her position description. Ms. Brackney attached an email from IHPA Personnel Officer Dawn DeFraties indicating that effective December 17, 2012, Ms. Brackney and her “subordinate” will both report to the Manager of Museum Guest Services. Because a question of fact exists as to Ms. Brackney’s authority to supervise, I do not rely on that assertion in assessing the propriety of the designation of Ms. Brackney’s position.

However, a position is appropriately designated under Section 6.1(b)(5) as further defined in Section 6.1(c)(i) if the position takes or recommends discretionary actions that effectively control or implement the policy of a State agency. Based on the portions of the position description and affidavit to which Ms. Brackney raises no challenge, as well as the supplemental materials she supplied in objection to the petition, I find that her position is properly designated because it represents management interests by taking or recommending discretionary action that effectively control or implement agency policy.

Ms. Brackney does not contest the following duties contained in her position description:

- Plans, organizes, coordinates, and implements the daily operations of the ALPLM Facilities Rental Programs;
- Develops and implements clear operating policies and procedures and develops a strategy and business plan for the Facilities Rental Section;
- Confers with management staff on the effectiveness of the program policies and makes functional changes or improvements;
- Acts as primary representative of the ALPLM and the agency to all institutions, organizations, and individuals regarding the ALPLM facility rental;
- Fosters consistent and open communication and maintains a strong visible profile for the ALPLM within the local communities and statewide;
- Meets with prospective and contracted parties to determine special event needs in connection with planning and scheduling events;
- Reviews and monitors the Facilities Rental operational budget; and
- Monitors and prepares statements and reports on the expenditures, continually inspect the budget and expenses for any possible fiscal savings or shortages.

Ms. Brackney describes her job as “manag[ing] all responsibilities of day-to-day work of the Facilities Rental Department” and indicates that she has researched and drafted facilities rental policies, which are then subject to approval. Ms. Brackney does not contest that she represents management interests in coordinating, organizing, planning, executing, controlling, and evaluating the operation of the ALPLM’s Facilities Rental Program. Moreover, Ms. Brackney’s performance evaluation included the following objectives for the 2013-2014 reporting period: (1) implement and organize birthday parties at the ALPLM campus; (2) implement cash bar (non-host bar) at the ALPLM campus; and (3) implement and organize weddings at the ALPLM campus.

From Ms. Brackney’s submission, it appears that prior to 2013, the ALPLM’s policies did not allow for weddings, birthday parties, or events with a cash bar to be held at the ALPLM. However, the agency and the ALPLM lifted these restrictions, and Ms. Brackney has been charged with implementing those changes. To that end, Ms. Brackney identified administrative, logistical, and strategic issues to be addressed during implementation and made various

recommendations. Though, Ms. Brackney states that current “management does not rely on managers for recommendations as much as past management did,” she does not contend her recommendations are ineffective. Ms. Brackney also does not contend that she is not authorized to take discretionary actions in carrying out her assigned objectives, which specifically include implementation of agency policy changes.

Based on this evidence, I find that Ms. Brackney, represents management interests by taking and recommending discretionary actions that effectively control and implement the Department’s policies related to the revenue-generating ALPLM rental program. Accordingly, I find that the designation of the PSA-Option 1 position in which Ms. Brackney is employed is proper because it is presumed to be proper, and the evidence supports the designation.

F. The designation of the PSA-Option 2 position held by Theresa Cherrier is proper.

This position is designated under Section 6.1(b)(5), as further defined by Sections 6.1(c)(i) and (ii). Ms. Cherrier works as the Finance Manager for the ALPLM. In her submission to AFSCME, Ms. Cherrier stated that the incorrect position description was attached to the designation petition, noting that her position was changed on May 30, 2013, to alter her reporting structure. Ms. Cherrier stated that she now functionally reports to the IHPA Accounting Manager, and administratively reports to the ALPLM Chief of Staff. Ms. Cherrier attached the May 30, 2013, position description, identified where it was inaccurate, and provided additional description of her work functions. The following duties were contained in Ms. Cherrier’s May 30, 2013, position description (and not contested by either Ms. Cherrier or AFSCME) or were included in Ms. Cherrier’s supplemental materials:

- “[C]oordinates all budgetary and financial activities relating to the preparation and submission of the ALPLM operating budget proposals and other financial reporting;”
- Makes “funding assignments” and provides “assistance on allocation of resources” for approved budget submissions;
- “[C]oordinates the preparation of the budget for the ALPLM;” and
- “[A]ssists in the initiation and facilitation of the ALPLM procurement initiatives.”

Based on these duties, I find that Ms. Cherrier’s position is properly designated.

Under Section 6.1(c)(i), a designation is proper where a position is engaged in executive

and management functions of a State agency and is charged with effectuation of management policies and practices of the agency. Ms. Cherrier is engaged in executive and management functions and effectuates management policies; therefore, the designation is proper.

“Executive and management functions” are those that specifically relate to the running of an agency including establishing policies and procedures, preparing a budget, or otherwise assuring that an agency or department runs effectively. Dep’t of Cent. Mgmt. Serv. (Pollution Control Bd.), v. Ill. Labor Rel. Bd., State Panel (“PCB”), 2013 IL App (4th) 110877 ¶ 25; Dep’t of Cent. Mgmt. Serv./ Illinois Commerce Comm'n v. Ill. Labor Rel. Bd. (“ICC”), 406 Ill. App. 766, 774 (4th Dist. 2010). As position as the ALPLM Finance Manager for the Agency, Ms. Cherrier is responsible for coordinating the budget preparation process for the ALPLM. She is also responsible for the ALPLM’s procurement initiatives. In carrying out these functions, she is engaged in executive and management functions. Therefore, Ms. Cherrier’s designation is proper if she is also charged with the effectuation of management policies and practices.

In responding to the question of whether she writes or recommends policies, Ms. Cherrier states that she follows management policies and “explain[s] existing policy and procedures to staff related to purchasing and procurement of goods and services.” Further, neither Ms. Cherrier nor AFSCME contest that she is responsible for assisting with the initiation and facilitation of ALPLM procurement initiatives, and, in doing so, is required to adhere to all procurement rules and regulations. The Finance Manager position in which Ms. Cherrier is employed carries out the fiscal and procurement policies and practices of the IHPA and the ALPLM. Because she is engaged in executive and management functions and effectuates management policies and practices, the designation of Ms. Cherrier’s position is proper.

G. The designation of the PSA-Option 2 position held by James Fisher is proper.

The petition and supporting materials indicate that the position held by James Fisher is designated under Section 6.1(b)(5) as further defined by Sections 6.1(c)(i) and (ii). The information submitted establishes that Mr. Fisher’s position is properly designated because it meets each of the three tests set out in Section 6.1(c)(i) and (ii). Each is discussed more fully below.

Mr. Fisher is the IHPA’s Accounting Manager. In his submission to AFSCME, Mr. Fisher identified that, in addition to performing the duties of his Accounting Manager position, he is also working as the Acting Chief Fiscal Officer, a position that is vacant. Mr. Fisher

provided additional information regarding his duties, and did not challenge any specific provisions of his Accounting Manager position description.

Mr. Fisher's position description, which Mr. Fisher does not contest, contains the following duties:

- As Chief Accountant for IHPA, develops policies and procedures as it relates to the sections accounting functions;
- Plans, directs, and supervises the processing of all IHPA vouchers;
- Assures compliance with Illinois statutes, the Comptroller Act, internal and external regulations and policies;
- As the IHPA Grants Manager, manages all aspects of federal and state grants;
- Interprets federal and state laws and rules on grants; submits applications for federal funding in excess of \$500,000;
- Performs budget duties for the Preservations Services Division;
- Serves as full line supervisor to subordinate secretarial and accounting staff; and
- Assigns, reviews, controls, and evaluates the performance of staff assigned.

Based on the affidavit submitted in support of the petition and the position description to which Mr. Fisher raises no challenge, I find the designation to be proper.

1. Mr. Fisher's position is engaged in executive and management functions and is charged with effectuating management policies and practices.

Executive and management functions include establishing policies and procedures, preparing a budget, or otherwise assuring that an agency or department runs effectively. PCB, 2013 IL App (4th) 110877 ¶ 25. According to Mr. Fisher's position description, he is charged with developing policies and procedures as they relate to the Agency's accounting functions and also performing budget duties for the Preservation Services division. Neither Mr. Fisher nor AFSCME challenges these duties. Therefore, I find that Mr. Fisher's position is engaged in executive and management functions.

Accordingly, Mr. Fisher's position is properly designated if it also is charged with carrying out the policies and practices of the Agency. Mr. Fisher is responsible for planning, executing, and controlling the state and federal grant programs. Moreover, in his supplemental materials, Mr. Fisher states that, as Accounting Manager, he ensures that the Agency follows policies established by the Office of the Comptroller and the Treasurer's Office. Mr. Fisher's

position description also details that he is responsible for assuring compliance with internal and external regulations and policies.

Because this position effectuates the Agency's policies and practices related to obtaining, disbursing, and monitoring federal funds used for historical preservation services, it is properly designated under Section 6.1(b)(5) as it is further defined by the first test set out in Section 6.1(c)(i).

2. Mr. Fisher's position represents management interest by taking or recommending discretionary action that effectively control or implement the policy of the Agency.

Neither Mr. Fisher nor AFSCME contest that his position is responsible for planning, executing, and controlling state and federal grant programs. In carrying out those duties, Mr. Fisher's position is authorized to take and recommend discretionary action that control and implement the Agency's policies and practices regarding funding outside requests for historical preservation funds. Mr. Fisher, on behalf of the Agency, applies for federal funding in excess of \$500,000 that is then used by the Preservations Services division. According to his position description (and not refuted elsewhere), Mr. Fisher determines the required levels of funding. This discretionary action effectively controls the extent to which the IHPA can fund preservation activities to sub-grantees. Mr. Fisher's position also recommends discretionary actions when he advises the State Historic Preservation Officer on the proper use of grant funds requested by other agencies. Neither Mr. Fisher nor AFSCME contend that these recommendations are not effective.

Based on this information, Mr. Fisher's position is properly designated under Section 6.1(b)(5) as it is further defined by the second test set out in Section 6.1(c)(i). Specifically, I find that there was insufficient evidence to overcome the presumption of propriety and that the Accounting Manager position represents management interest by taking or recommending discretionary action that effectively control or implement the policy of a State agency.

3. Mr. Fisher's position qualifies as a supervisor of a State agency as that term is defined by the NLRA and NLRB.

A designation on the grounds that the employee is supervisory as defined in Section 6.1(c)(ii) is appropriate where: (1) the designated employee has the authority to engage in any of the enumerated supervisory functions (hire, transfer, suspend, lay off, recall, promote, discharge,

assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances); (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. DPH, 40 PERI ¶ 149, appeal pending, No. 1-13-3911 (Ill. App. Ct. 1st Dist.)(*citing Kentucky River*, 532 U.S. at 713, and Oakwood Healthcare, 348 NLRB at 687.). A position is authorized with the responsibility to direct if the position holder has subordinates, decides what jobs his subordinates should perform next, and who should perform those tasks. Id. Moreover, the position holder must be accountable for his subordinates' work and must carry out such direction with independent judgment. Oakwood Healthcare, 348 NLRB at 691-2. In other words, "it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary," and that "there is a prospect of adverse consequences for the putative supervisor," arising from his direction of other employees. Id. In applying the second portion of the "responsibly direct" test, the statutory presumption that the designation is proper places the burden on the objector to demonstrate that there is not a prospect of adverse consequences for the position holder if he does not direct the work or does not take corrective action where necessary.

In her affidavit, Director Amy Martin indicates that Mr. Fisher's position is authorized to responsibly direct and review the work of his subordinates with independent judgment. Director Martin further states that Mr. Fisher's position is authorized to counsel staff regarding work performance, take corrective action, monitor work flow, and reassign staff to meet day-to-day operating needs. Mr. Fisher does not contest this, and affirmatively states that he is responsible for directing his subordinate Account Technician, noting that he works closely with the Account Technician regarding voucher and obligation questions, reconciliations and other fiscal matters related [to] the Agency appropriations and expenditure processes."

Based on the information submitted, I find that Mr. Fisher's position is a supervisor as that term is defined by the NLRA and NLRB; thus, I find that the position was properly designated pursuant to Section 6.1(c)(ii).

G. The designation of the PSA-Option 1 position held by Phil Funkenbusch is proper.

The documents supporting the petition indicate that Mr. Funkenbusch's position is designated because his position is authorized to have significant and independent discretionary

authority as that is further defined in Section 6.1(c)(i) and (ii).

Mr. Funkenbusch works as the ALPLM's Shows Division Manager. In the materials he submitted, Mr. Funkenbusch describes his work as "atypical from the standard state office managerial environment. It is a live Drama [and] Theatre program in which I train actors [and] site interpreters and produce projects" such as the daily *Ghosts of the Library* show, living history actors in exhibits, hosting musicians or readings, and putting on theatre productions. Mr. Funkenbusch described his responsibilities overseeing the Shows Division as follows: "Organizes, plan, executes, controls and evaluates operations of Shows Div[ision]. Directs staff on the priorities and times of completion of their work assignments."

Mr. Funkenbusch's position description, to which he does not raise an objection, also provides the following duties:

- Develops and implements program policies and procedures, goals, and objectives for the Shows Division;
- Ensures that all the goals and objectives of the Shows programs meet the standards defined by the museum and are achieved in a timely and efficient manner;
- Administers the Shows operating budget and evaluates and monitors all expenses;
- Plans, organizes, coordinates, and implements the daily operations of the ALPLM Shows Programs;
- Monitors the daily operation parameters to ensure they are at their optimum efficiency levels and, when necessary, formulates adjustments or revisions to preserve or expand services; and
- Supervises staff in the operation and administration of the Attractions, Systems, and Wardrobe units, plans the work to be accomplished, sets priorities, evaluates work performance.

Based on these duties, and more fully described below, I find that the designation of Mr. Funkenbusch's position is proper. Because Mr. Funkenbusch's position is a supervisor as that term is defined by the NLRA and NLRB, so the designation of his position is proper under Section 6.1(b)(5) as further defined by Section 6.1(c)(ii). Mr. Funkenbusch's position is also authorized to take or recommend discretionary actions that effectively control or implement the policy of the Agency, I find that the designation of his position is proper under Section 6.1(b)(5)

as further defined in Section 6.1(c)(i).

1. Mr. Funkenbusch's position qualifies as a supervisor of a State agency as that term is defined by the NLRA and NLRB.

In the affidavit supporting the petition, ALPLM Chief of Staff Kenneth Crutcher states that Mr. Funkenbusch's position is authorized to, in the interest of IHPA, responsibly direct and review the work of his subordinates with independent judgment, as well as assigning and reviewing work, counseling staff regarding work performance, taking corrective action, monitoring work flow, and reassigning staff to meet day-to-day operating needs. In his supplemental materials, Mr. Funkenbusch stated he "[d]irects staff on the priorities and times of completion of their work assignments." Moreover, Mr. Funkenbusch confirmed that that he has two subordinate employees who directly report to him. The Systems Manager and his two subordinate employees, an intern, and a contractual employee, are responsible for the production systems and technical aspects of the museum shows, and the Attractions Coordinator coordinates the actors and site interpreters, schedules their work, assists in training, and assists in the presentation of the theatre productions.

A designation on the grounds that the employee is supervisory as defined in Section 6.1(c)(ii) is appropriate where: (1) the designated employee has the authority to engage in any of the enumerated supervisory functions (hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances); (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. DPH, 40 PERI ¶ 149 (*citing Kentucky River*, 532 U.S. at 713, and Oakwood Healthcare, 348 NLRB at 687.). Mr. Funkenbusch indicates that he directs the work of his subordinates.

A position is authorized with the responsibility to direct if the position holder has subordinates, decides what jobs his subordinates should perform next, and who should perform those tasks. Id. Moreover, the position holder must be accountable for his subordinates' work and must carry out such direction with independent judgment. Oakwood Healthcare, 348 NLRB at 691-2. In other words, "it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary," and that "there is a prospect of adverse consequences for the putative supervisor,"

arising from his direction of other employees. Id. In applying the second portion of the “responsibly direct” test, the statutory presumption that the designation is proper places the burden on the objector to demonstrate that there is not a prospect of adverse consequences for the position holder if he does not direct the work or does not take corrective action where necessary.

Mr. Funkenbusch affirms that he is responsible for directing staff and that, in doing so, he is assessing and prioritizing work. As such, he is not merely acting in a routine or clerical manner. *See Entergy Mississippi, Inc. v. IBEW Local 608 and 985*, 357 NLRB No. 178 at *14 (December 30, 2011)(independent judgment in the direction of employees where supervisors “take into account various considerations to prioritize responses”). Accordingly, I find that Mr. Funkenbusch’s position is properly designated under Section 6.1(b)(5) as that is further defined in Section 6.1(c)(ii).

2. Mr. Funkenbusch’s position represents management interests by taking and recommending discretionary action that effectively control or implement the policy of the Agency.

Mr. Funkenbusch is responsible for operating the ALPLM Shows Division of the IHPA in that he “organizes, plans, executes, controls and evaluates” the operations of the Division. ALPLM Chief of Staff Kenneth Crutcher states in his affidavit that Mr. Funkenbusch’s position is responsible for ensuring that all objectives of the Shows programs meet the standards defined by the museum and are achieved in a timely and efficient manner. In implementing the daily operations of the Shows Division, Mr. Funkenbusch’s position is charged with taking discretionary action to ensure optimum efficiency and, “when necessary, formulate[] adjustments or revisions to preserve or expand services.” In doing so, Mr. Funkenbusch represents management interest to effectively control or implement the policy of the ALPLM and IHPA. As such, I find the designation proper.

H. The designation of the Chief of Acquisitions position held by Gary Stockton is proper.

Gary Stockton works is the Historical Library Chief of Acquisitions. The documents supporting the petition indicate that Mr. Stockton’s position is designated because his position is authorized to have significant and independent discretionary authority as that is further defined in Section 6.1(c)(i). Mr. Stockton completed an AFSCME Information Form wherein he provided additional information about his duties. Though asked to point out every example of

duties listed in the position description that he does not perform, he did not identify any specific duties in his position description that he did not perform or identify other inaccuracies. Mr. Stockton does, however, contest using his management of the ALPLM's artifacts collection as a basis of his designation. Mr. Stockton states that overseeing the artifacts collection is not a duty contained in his position description, but is something he agreed to do on a temporary basis. He notes that he has continued to perform these duties for over three years. Because the permanence of these duties are in question, I do not rely on them in determining the propriety of the designation. Based on the duties in Mr. Stockton's position description and the information he provided in his AFSCME Information Sheet, I find that he represents management interests by taking and recommending discretionary actions that effectively control or implement the policy of IHPA. Therefore, his designation is proper.

Mr. Stockton's position description, which he does not contest, contains the following duties:

- Locates, identifies, evaluates, and acquires historically significant material;
- Negotiates conditions for which individual items and collections will be acquired;
- Represents the Illinois State Historian on the State Records Commission, the Downstate Local Records Commission, and the Cook County Local Records Commission;
- Serves as the Agency's records management coordinator;
- Represents the Abraham Lincoln Presidential Library ("ALPL") to the public;
- Assists in developing the ALPL's collection policy and collecting priorities; and
- Independently performs the duties for acquiring historically significant material for ALPL's collections.

Mr. Stockton stated that he offers suggestions and makes recommendations for the Library's collection policy. Mr. Stockton does not contend that his suggestions and recommendations are ignored or infrequently followed, but notes that these recommendations are sent up his chain of command and ultimately subject to approval by a board of trustees.

Based on these duties, I find that, on behalf of management, Mr. Stockton takes discretionary actions related to obtaining historically significant material, thus, implementing the ALPL's acquisition policy. Moreover, in his affidavit, Kenneth Crutcher contends that Mr. Stockton's recommendations effectively control or implement the policy of the IHPA. The

information presented by AFSCME and Mr. Stockton does not challenge the effectiveness of the recommendations; therefore, it is insufficient to overcome the presumption that the designation was properly made. Accordingly, I find that the designation is proper.

I. The designation of the PSA-Option 1 position held by Clara Thorpe is proper.

The documents supporting the petition indicate that Ms. Thorpe's position is designated because her position is authorized to have significant and independent discretionary authority as that is further defined in Section 6.1(c)(i) and (ii). Because her position qualifies as a supervisor of a State agency as that term is defined by the NLRA and NLRB, the designation is proper.

Ms. Thorpe serves as the Guest Entry Manager at the ALPLM. Ms. Thorpe completed an AFSCME Information Form, in which she indicated that her position description is inaccurate in that she does not perform duties related to formulating departmental operating and capital equipment budgets. Ms. Thorpe makes no other challenge to her position description. The unchallenged portion of her position description contains the following duties:

- Develops, implements, and administers clear operating policies and procedures for the Guest Entry Section;
- Organizes, plans, executes, controls, and evaluates the goals and objectives of the agency to ensure proper compliance within the division;
- Continually evaluates the section's development in relation to the required sales goals of the ALPLM;
- Ensures operating plans are in line with the overall business objectives by monitoring annual attendance forecasts and providing financial input to the Sales & Marketing Division;
- Supervises staff, assigns work, approves time off, provides guidance and training, gives oral reprimands and refers employees for more severe discipline, effectively recommends grievance resolutions;
- Completes, discusses, and signs performance evaluations; established annual goals and objectives; counsels staff on problems with productivity, quality of work, and conduct;
- Determines staffing needs to achieve program objectives;
- Maintains appropriate procedures for receiving VIP and special guests;

- Reviews and manages the division’s plan and timelines;
- Responsible for the effective and efficient utilization of employee services for pre-opening activities within the department;
- Develops clear and concise departmental mission statement and standard operating procedures; and
- Provides on-the-job training for all entry functions including guest services, cash handling, courtesy, and safety.

Ms. Thorpe also described her duties as they relate to employees who directly report to her. According to Ms. Thorpe, her position has four subordinate employees who are responsible for selling museum tickets, providing services at the museum information desk, and booking and greeting school groups. Ms. Thorpe stated that she is responsible for assigning all work to her subordinates, directing work, providing guest assistance, and managing the cash drawers of her subordinates while they are on break or lunch.

Based on the duties of Ms. Thorpe’s position description that she does not challenge, as well as her description of her work, I find that the designation is proper. Ms. Thorpe’s position is authorized to engage in the executive function of establishing policies and procedures and is charged with carrying out the policies and practices of the ALPLM and IHPA. Moreover, her position is that one a supervisor as defined by the NLRA and NLRB. Therefore, the designation of Ms. Thorpe’s position is proper.

1. Ms. Thorpe’s position is engaged in executive and management functions of a State agency and is charged with the effectuation of management policies and practices.

Ms. Thorpe’s position is authorized to establish policies and procedures that govern the way that every guest first experiences the ALPLM, as they enter the facility. Moreover, her position is responsible for maintaining appropriate procedures for receiving VIP and special guests. Establishing policies and procedures and ensuring that an agency or department runs effectively have both been recognized by the Board and Illinois courts as executive and management functions. *See PCB*, 2013 IL App (4th) 110877 ¶ 25; *ICC*, 406 Ill. App. at 774.

Ms. Thorpe’s position is also charged with effectuating management policies and procedures in that it is responsible for organizing, planning, executing, controlling, and evaluating the goals and objectives of the agency to ensure proper compliance within the

division; coordinating the department's operating parameters; and ensuring that the operating plans are in line with the overall business objectives by monitoring annual attendance forecasts and providing input or other divisions.

Accordingly, her position is properly designated pursuant to Section 6.1(b)(5) as further defined by Section 6.1(c)(i).

2. Ms. Thorpe's position qualifies as a supervisor of a State agency as that term is defines by the NLRA and NLRB.

In his affidavit in support of the petition, ALPLM Chief of Staff Kenneth Crutcher states that Ms. Thorpe's position is authorized to carry out various supervisory tasks with independent judgment. Ms. Thorpe did not challenge any provision of her position description related to her authority and responsibility to supervise her subordinates and specifically described that she is responsible for assigning all work, directing staff, and overseeing the financial aspect of her subordinates' work.

Ms. Thorpe not only decides what jobs her subordinates should perform next, and who should perform those tasks, *see Oakwood Healthcare*, 348 NLRB at 691-2, inasmuch as she is responsible for developing and implementing the standard procedures, she also determines the manner in which her employees will perform their duties. No information has been presented to suggest that Ms. Thorpe is not responsible for her subordinates' work. In fact, she describes in her materials, that, as the section supervisor, she, and she alone, is responsible for overseeing the cash drawers of her subordinates when they are away from their work station.

Based on these duties and the information before me, I find that Ms. Thorpe's position is properly designated pursuant to Section 6.1(b)(5) as further defined by Section 6.1(c)(ii).

J. The designation of the PSA-Option 2 position held by David White is proper.

The documents supporting the petition indicate that Mr. White's position is designated because his position is authorized to have significant and independent discretionary authority as that is further defined in Section 6.1(c)(i) and (ii).

Mr. White serves as the Manager of Payroll and General Services. IHPA Director Amy Martin completed an affidavit in which she states that Mr. White is engaged in executive and management functions and represents management interests in the taking and recommending of discretionary actions that effectively control or implement the policy of the IHPA. Director Martin also states that Mr. White is authorized to supervise subordinate employees. Mr. White

completed an AFSCME Information Form challenging various aspects of his position description, contending that the 13-year-old position description fails to account for changes to the department, including headcount reduction and changes in the functions of the Division. However, Mr. White confirms that he supervises a Storekeeper I, that he assigns work to the Storekeeper, and oversees the mailroom operation for the agency. Based on the duties in Mr. White's position description he does not challenge and the information provided in his AFSCME Information Form, I find that the designation of his position is proper pursuant to Section 6.1(b)(5) as it is further defined by Section 6.1(c)(ii).

A designation on the grounds that the employee is supervisory as defined in Section 6.1(c)(ii) is appropriate where: (1) the designated employee has the authority to engage in any of the enumerated supervisory functions (hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances); (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. DPH, 40 PERI ¶ 149 (*citing Kentucky River*, 532 U.S. at 713, and Oakwood Healthcare, 348 NLRB at 687.).

A position is authorized with the responsibility to direct if the position holder has subordinates, decides what jobs his subordinates should perform next, and who should perform those tasks. Id. Moreover, the position holder must be accountable for his subordinates' work and must carry out such direction with independent judgment. Oakwood Healthcare, 348 NLRB at 691-2.

According to Mr. White, he supervises one Storekeeper, for whom he "establishes the routine" and assigns his work. Mr. Whites does not challenge the portion of his position description that authorizes him to supervise subordinate staff in the assignment of duties and planning, assigning, prioritizing, coordinating, evaluating and reviewing work. Mr. White stated that he established procedures to ensure the efficient operation of the agency's mailroom. Further, no information has been presented to suggest that Mr. White is not responsible for his subordinates' work.

As such, I find that the designation of Mr. White's position is proper.

III. CONCLUSIONS OF LAW

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

IV. RECOMMENDED ORDER

Unless this Recommended Decision and Order is rejected or modified by the Board, the following positions with the Illinois Historic Preservation Agency 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>	<u>Incumbent</u>
37015-48-00-501-00-01	Facilities Rental Programs Manager	Brackney, Britta
37015-48-20-300-00-01	Historic Sites	Vacant
37015-48-30-400-00-01	Preservation Services	Haaker, Anne
37015-48-40-100-00-01	Constituent Serv.	Vacant
37015-48-52-400-00-01	Research & Collections	Stowell, Daniel
37015-48-53-000-00-01	Museum Shows Division Manager	Funkenbusch, Philip
37015-48-54-300-00-01	Lincoln Lib & Museum Guest Entry Manager	Thorpe, Clara
37015-48-57-000-00-01	Educations Program Div	Vacant
18987-48-52-300-00-01	Historical Library Chief of Acquisitions	Stockton, Gary
37015-48-00-120-00-01	Manager of Payroll and General Services	White, David
37015-48-00-130-00-01	Grant and Accounting Manager and Chief Accountant	Fisher, James
37015-48-50-200-00-01	Lincoln Library & Museum Fiscal Manager	Cherrier, Theresa

V. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300,⁷ parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than three days after service of this recommended decision and order. Exceptions shall be filed with the Board by electronic mail at an electronic mail address designated by the Board for such purpose, ILRB.Filing@illinois.gov, and served on all other parties via electronic mail at its e-mail address

⁷ Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf

as indicated on the designation form. Any exception to a ruling, finding conclusion or recommendation that is not specifically urged shall be considered waived. A party not filing timely exceptions waives its right to object to this recommended decision and order.

Issued at Springfield, Illinois, this 31st day of January, 2014.

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

Sarah R. Kerley

**Sarah Kerley
Administrative Law Judge**