STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services (Department of Human Services),	)	
Petitioner	)	
and	)	Case No. S-DE-14-161
American Federation of State, County and Municipal Employees, Council 31,	)	
Labor Organization-Objector	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

I. BACKGROUND

Section 6.1 of the Illinois Public Labor Relations Act, 5 ILCS 315/6.1 (2012) *added by* Public Act 97-1172 (eff. April 5, 2013), allows the Governor of the State of Illinois to designate certain public employment positions with the State of Illinois as excluded from collective bargaining rights which might otherwise be granted under the Illinois Public Labor Relations Act (Act). Section 6.1 identifies three broad categories of employment positions that may be eligible for designation based upon the position's status in a certified bargaining unit. Relevant to this case, positions which were first certified to be in a bargaining unit by the Illinois Labor Relations Board (Board) on or after December 2, 2008, are eligible for such designation. Only 1,900 such relevant positions may be designated.

Along with bargaining unit status, to properly qualify for designation, the employment position must meet one or more of five requirements identified in Sections 6.1(b) of the Act. Relevant to this case, Section 6.1(b)(5) of the Act allows the designation of an employment position if the position authorizes an employee in that position to have "significant and independent discretionary authority as an employee," which under section 6.1(c) of the Act means that the employee is either:

(i) engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency or represents

management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency; or

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

Section 6.1(d) creates a presumption that any such designation made by the Governor was properly made. It also requires that within 60 days after the designation, the Board, in a manner consistent with due process, determine whether the designation comports with the requirements of Section 6.1. This subsection also specifies that the qualifying categories identified in subsection 6.1(b) "are operative and function solely within this Section and do not expand or restrict the scope of any other provision contained in this Act." The Board promulgated rules to effectuate Section 6.1, which became effective on August 23, 2013, 37 Ill. Reg. 14,070 (Sept. 6, 2013). See 80 Ill. Admin. Code Part 1300.

On January 13, 2013, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation petition pursuant to Section 6.1 of the Act and Section 1300.50 of the Board's Rules. The petition seeks to exclude the following positions:

Public Service Administrator, Option 6, Local Office Administrator
employed at the Department of Human Services (DHS):

option	position number	office	incumbent
Option 6	37015-10-91-101-00-01	Stroger	Courtland Wilson
Option SS6	37015-10-91-133-00-29	Northern	Aida Sanchez-Romano
Option 6	37015-10-91-204-00-29	Uptown	Wanda Catalan
Option 6	37015-10-91-402-00-01	Hunter	vacant
Option 6	37015-10-91-405-00-01	Wabash Central	vacant
Option 6	37015-10-91-415-00-01	Garfield	vacant
Option 6	37015-10-91-512-00-01	Woodlawn	Kelly Richards
Option 6	37015-10-91-736-00-01	Roseland	vacant (Delores Allgood)
Option 6	37015-10-91-818-00-01	Southeast	L.K. McIntosh
Option 6	37015-10-92-114-00-01	Elgin	Jacqueline Lofton

Option 6	37015-10-93-045-00-01	Henry	vacant
Option 6	37015-10-94-020-00-01	Christian	Janelle Clemens
Option 6	37015-10-94-033-00-01	Effingham	Gene Cottone
Option 6	37015-10-94-091-00-51	Sangamon	Debra Tinsley
Option 6	37015-10-94-163-00-01	Long Term Care	vacant
Option 6	37015-10-95-108-00-51	Williamson	Brenda Evans
Option 6	37015-10-91-406-00-01	IMRP- Broadway Central Office	vacant

CMS filed the designation petition with an attached summary spreadsheet, and for each position it submitted a CMS-104 position description, an organizational chart, and an affidavit completed by the DHS Regional Administrator who functions as the position's direct supervisor.

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

Based on my review of the designation petition, the documents submitted in support of the designation petition, the objections, and the arguments and documents submitted in support of those objections, I find the designations to have been properly submitted and are consistent with the requirements of Section 6.1 of the Act. Consequently, I recommend that the Executive Director certify the designation of the positions at issue as set out below, and, to the extent necessary, amend the applicable certification of the exclusive representative to eliminate the existing inclusion of these positions within the collective bargaining unit.

II. ISSUES AND CONTENTIONS

A. Designation Petition

CMS's designation petition and the attached documentation indicate that the positions at issue qualify for designation under Section 6.1(b)(5) of the Act, and that the Board certified the positions into bargaining unit RC-63 on December 2, 2008.

1. affidavits

The Regional Administrators stated that every position at issue is authorized to have significant and independent discretionary authority as as defined by Sections 6.1(c)(i) and 6.1(c)(ii) of the Act.

The Regional Administrators' affidavits assert that each of the employment positions at issue is "authorized to be engaged in executive and management functions of [DHS] and charged with the effectuation of management policies and practices of [DHS] or represent management interests by taking or recommending discretionary actions that effectively control or implement the policy" of DHS. Each Local Office Administrator is "charged with effectuating the Department's policies in ensuring field staff are properly providing services in the Family and Community Resource Center."

The Regional Administrators' affidavits assert that each of the employment positions at issue are "authorized to, in the interest of [DHS], among other things, assign, responsibly direct, and review the work of [the positions'] subordinates with independent judgment. The position is authorized to assign and review work, counsel staff regarding work performance, take corrective action, monitor work flow, and reassign staff to meet day to day operating needs."

2. CMS-104s

All the submitted CMS-104s are similar because all the at-issue positions have the same working title and perform the same duties, only at different locations. Each CMS-104, in relevant part, identifies the following as a "current and accurate statement of the position duties and responsibilities" of each Local Office Administrator. Each position is authorized, under administrative direction, to serve as administrator of a local office in the Division of Family & Community Services, DHS. The employees are authorized to serve as working supervisors by supervising and administering the activities of the professional and clerical staff that provide a full range of social and welfare casework services to applicants or recipients of public assistance. The at-issue employees assign, review work, provide guidance and train assigned staff. The at-issue employees counsel staff regarding work performance, reassign staff to meet day-to-day operating needs, approve time off, and prepare and sign performance evaluations.

The at-issue employees interpret and implement new procedures for existing programs and new initiatives. The employees conduct or facilitate training for staff on new initiatives and programs, and implement and interpret new initiatives related to welfare reform.

B. objections

AFSCME argues that CMS should bear the burden of persuasion, that the CMS-104s and affidavits provide insufficient bases for designation, that the designations are unconstitutional, and

that the positions at issue are not those of managers or supervisors within the meaning of the National Labor Relations Act (NLRA).[1]

III. DISCUSSION AND ANALYSIS

AFSCME does not overcome the presumption that the designations of the positions at issue are proper under Section 6.1(b)(5) of the Act because it fails to demonstrate that the employment positions do not authorize the employees in the at-issue positions to have significant and independent discretionary authority.

A. burden

The objectors bear the burden to demonstrate that the designation of the employment positions at issue are improper because AFSCME's position is contrary to the policy of Section 6.1 and because the presumption articulated in Section 6.1(d) requires that AFSCME overcome the presumption that the designation is proper.

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 of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App (4th) 090966. Section 6.1 specifically allows the Governor to exclude certain public employment positions from obtaining collective bargaining rights which might otherwise be granted under the Act. Section 6.1 also allows the exclusion of 1,900 positions that are already certified into bargaining units. AFSCME is opposing the State's public policy to exclude certain positions from collective bargaining, as stated in Section 6.1 of the Act, thus the burden is on AFSCME to demonstrate that the employees at issue are not eligible for such exclusion. 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), No. 13-3600 (Ill. App. Ct. 1st Dist.).

Section 6.1(d) states that any designation for exclusion made by the Governor or his agents under Section 6.1 "shall be presumed to have been properly made." Like all presumptions, this presumption can be rebutted. Dep't of Cent. Mgmt. Serv. /Dep't of Healthcare & Fmly. Serv. v. Ill.

[1] AFSCME also proposes two arguments that are inapplicable to the facts of this case. First, the argument that begins, "to the extent that individuals hold the same position title and their duties differ . . ." is not applicable because all the positions at-issue have the same duties and working title. AFSCME's remaining argument that begins, "to the extent that CMS relies on Position Descriptions that do not have effective dates or that they were approved by CMS . . ." is similarly inapplicable because all the submitted CMS-104 positions descriptions have effective dates and were approved by CMS's Director. As such, I will not address these arguments.

Labor Rel. Bd. State Panel, 388 Ill. App. 3d 319, 335 (4th Dist. 2009). If contrary evidence is introduced that sufficiently rebuts the presumption, then it vanishes and the issue will be determined as if no presumption ever existed. Id. To rebut the presumption, the evidence must be sufficient to support a finding that the presumed fact does not exist. Id. at 335-336.

B. sufficiency of job duties identified in the CMS-104s

AFSCME argues that the submitted CMS-104s and affidavits only identify *potential* responsibilities that can be given to the employee within that position. This argument fails to meet AFSCME's burden because the Board has previously determined that CMS-104s are sufficient to meet the "job duties" requirement of Section 6.1 of the Act. See 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.).

C. constitutionality

Section 6.1(d) of the Act grants the Board the authority to determine whether the designation of the employment positions at issue comport with Section 6.1 of the Act. As an administrative agency, the Board has no authority to rule that the Illinois Public Labor Relations Act, as amended by Public Act 97-1172, is unconstitutional, either on its face or as applied. Id., (*citing* Goodman v. Ward, 241 Ill. 2d 398, 411 (2011)); see also Metro. Alliance of Police, Coal City Police Chapter No. 186, No. 6 v. Ill. State Labor Rel. Bd., 299 Ill. App. 3d 377, 379 (3rd Dist. 1998) (noting that administrative agencies lack the authority to invalidate a statute on constitutional grounds or even to question its validity). It is beyond my limited scope of authority as an administrative law judge for the Board to analyze the Act's constitutionality on its face or as applied to the at-issue designation petition. Thus, the constitutional objections are immaterial to my determination of whether the designations of the positions at issue comport with Section 6.1 of the Act.

D. supervisors or managers under the NLRA

The objections that the positions at issue are neither supervisors nor managers under the NLRA fail to raise an issue that might overcome the presumption that the designations are proper under Section 6.1(b)(5) of the Act because it provides no evidence to rebut the presumption.

An employment position may be properly designated under Section 6.1(b)(5) only if the position authorized an employee in that position to have "significant and independent discretionary authority" as defined by Section 6.1(c)(i) or Section 6.1(c)(ii) of the Act. 5 ILCS 315/6.1. CMS

asserts that the positions at issue hold significant and independent discretionary authority within the meaning of Sections 6.1(c)(ii) and (c)(i).

1. (c)(ii)

Section 6.1(c)(ii) of the Act provides that an employee is a supervisor if the employment 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) (NLRA), or any orders of the National Labor Relations Board (NLRB) 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).

In their interpretation, the NLRB and the Courts have held that employees are statutory supervisors under the NLRA if "1) they hold the authority to engage in any one of the 12 listed supervisory functions, 2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment, and 3) their authority is held in the interest of the employer." NLRB v. Kentucky River Comm. Care, Inc., 532 U.S. 706, 713 (2001) (internal quotes omitted); See also Oakwood Healthcare, Inc., 348 NLRB 686, 687 (2006).

AFSCME argues that the employees at issue are not supervisors only because CMS presents no evidence that the employees were ever authorized, told, or actually exercise any of the enumerated supervisor duties, and because CMS does not prove that all three prongs of the supervisory test are met. Whether the employees actually exercise any of the enumerated supervisory duties is immaterial to whether the employment position is designated properly as a supervisor under Section 6.1(c)(ii) because the first prong of the NLRA supervisor test only requires that the employee ***hold the authority*** to engage in one of the enumerated supervisory duties, not that the employee actually exercise a supervisory duty. CMS-104 position descriptions authorize the employee to engage in all the duties listed within, and AFSCME does not contend that the duties identified within the submitted CMS-104s do not qualify as any of the 12 enumerated supervisory functions.

CMS is not required to prove that every employment position at issue meets every prong of the supervisor test because there is a presumption that the employment positions are properly designated within the meaning of Section 6.1(c)(ii). Rather, to overcome the presumption, AFSCME has the burden to provide specific evidence that each at-issue employment position *does not* meet at least one prong the supervisory test. Absent such contrary evidence the presumption stands.

2. (c)(i)

Section 6.1(c)(i) of the Act provides that an employment position is eligible for exclusion if the position authorizes the incumbent employee to be "engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency or represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency."

Section 6.1(c)(i) of the Act, requires that the employee meet one of two tests. The first test requires the employee to a) be engaged in executive and management functions; and b) be *charged with* the effectuation of management policies and practices of the Agency. The second test requires that the employee "represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of the Agency."

AFSCME argues that the tests for independent discretionary authority articulated in Section 6.1(c) essentially follow the manager and supervisor definition as developed by the NLRB, and argues that the Board should apply the interpretation of those definitions. As noted above, Section 6.1(c)(ii) does specifically incorporate the NLRB's definition and interpretation of a supervisory employee. However, while Section 6.1(c)(i) does use the same language the Supreme Court used in interpreting a managerial employee as identified by the NLRB,[2] unlike subsection (c)(ii) subsection (c)(i) is silent to whether it also incorporates the Court's interpretation of a managerial employee under the NLRB. Thus applying the NLRB's analysis of managerial employee is not supported by the statute, and the only inquiry is whether the petitioned-for employees comport with any of the tests ***as written*** in Section 6.1(c) of the Act. Ill. Dep't Cent. Mgmt. Serv. (Dep't of Commerce and

[2] In Nat'l Labor Rel. Bd. v. Yeshiva Univ. the Supreme Court held that under the NLRA an employee may be excluded as managerial only if he "represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy." 444 U.S. 672, 683 (1980). Section 6.1(c)(i) states, in relevant part, that an employment position authorizes an employee in that position to have independent discretionary authority as an employee if he or she "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.

Econ. Opp.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶163 (IL LRB-SP 2014) (specifically rejecting AFSCME's application of the historical origins of Section 6.1(c)(i)).

AFSCME also argues that Board must distinguish between professional employees and managerial employees in reviewing these designations. This argument is unpersuasive because the Board has already held that unlike the NLRA, Section 6.1 of the Act does not distinguish between managerial and professional employees. Ill. Dep't Cent. Mgmt. Serv. (Dep't of Agric.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶ 84 (IL LRB-SP 2013) appeal pending, No. 13-3598 (Ill. App. Ct. 1st Dist.).

AFSCME only protests that CMS has not met its burden of proof. In fact AFSCME has the burden, which it fails to meet because it provides absolutely no evidence to demonstrate that the designated employment positions are not supervisors and it does not actually argue that the designated employment position are not authorized to exercise independent discretionary authority ***as written*** in the text of Section 6.1(c) of the Act.

IV. CONCLUSION

Pursuant to Section 1300.60 of the Board's Rules, I find that the designations are proper based solely on the information submitted to the Board because AFSCME's objections do not overcome the presumption that the designations are proper under Section 6.1 of the Act.

V. RECOMMENDED ORDER

Unless this Recommended Decision and Order Directing Certification of the Designation is rejected or modified by the Board, the following positions at the Illinois Department of Human Services are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

option	**position number**	**working title**
Option 6	37015-10-91-101-00-01	Local Office Administrator - Stroger
Option SS6	37015-10-91-133-00-29	Local Office Administrator - Northern
Option 6	37015-10-91-204-00-29	Local Office Administrator – Uptown
Option 6	37015-10-91-402-00-01	Local Office Administrator - Hunter
Option 6	37015-10-91-405-00-01	Local Office Administrator - Wabash Central
Option 6	37015-10-91-415-00-01	Local Office Administrator - Garfield
Option 6	37015-10-91-512-00-01	Local Office Administrator - Woodlawn

Option 6	37015-10-91-736-00-01	Local Office Administrator - Roseland
Option 6	37015-10-91-818-00-01	Local Office Administrator - Southeast
Option 6	37015-10-92-114-00-01	Local Office Administrator - Elgin
Option 6	37015-10-93-045-00-01	Local Office Administrator - Henry
Option 6	37015-10-94-020-00-01	Local Office Administrator - Christian
Option 6	37015-10-94-033-00-01	Local Office Administrator - Effingham
Option 6	37015-10-94-091-00-51	Local Office Administrator - Sangamon
Option 6	37015-10-94-163-00-01	Local Office Administrator - Long Term Care
Option 6	37015-10-95-108-00-51	Local Office Administrator - Williamson
Option 6	37015-10-91-406-00-01	Local Office Administrator - IMRP Broadway Central

VI. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300,[3] parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 3 days after service of this recommended decision and order. Exceptions shall be filed with the Board by electronic mail at an electronic mail address designated by the Board for such purpose, ILRB.Filing@illinois.gov, and served on all other parties via electronic mail at their e-mail addresses as indicated on the designation form. Any exception to a ruling, finding, conclusion, or recommendation that is not specifically argued shall be considered waived. A party not filing timely exceptions waives its right to object to this recommended decision and order.

Issued at Chicago, Illinois this 4th day of February, 2014.

STATE OF ILLINOIS
ILLINIOIS LABOR RELATIONS BOARD
STATE PANEL

/s/ *Deena Sanceda*
Deena Sanceda
Administrative Law Judge

[3] Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf