

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

State of Illinois, Department of Central)	
Management Services (Department of)	
Healthcare and Family Services),)	
)	
Petitioner)	
)	
and)	Case No. S-DE-14-170
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	
)	
Brian Bond and Edna Canas,)	
)	
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) added by Public Act 97-1172 (eff. April 5, 2013), allows the Governor of the State of Illinois to designate certain public employment positions with the State of Illinois as excluded from collective bargaining rights which might otherwise be granted under the Illinois Public Labor Relations Act. There are three broad categories of positions which may be so designated: 1) positions which were first certified to be in a bargaining unit by the Illinois Labor Relations Board 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 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 in this case.

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

On January 15, 2014, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation pursuant to Section 6.1 of the Act and Section 1300.50 of the Board's Rules. CMS' petition designates the exclusion of the following Public Service Administrators employed at the Department of Healthcare and Family Services based on Section 6.1(b)(5) of the Act:

**Public Service Administrator, Option 1
Employed at Department of Healthcare and Family Services**

<u>Position No.</u>	<u>Working title</u>	<u>Incumbent</u>
37015-33-10-210-00-61	Classification Unit Mgr	LANG TAMMY
37015-33-10-220-00-61	Selection and Recruitment Mgr	VACANT
37015-33-10-240-00-61	Benefits Mgr and FMLA Coordinator	JONES SONJA M
37015-33-10-250-00-61	Employee Svcs & Transactions Supervisor	MOSCARDELLI PATRICIA
37015-33-10-310-00-21	EEO/ADA Program Coordinator	VACANT
37015-33-11-500-00-61	Assist Bureau Chief of Admin Services	DORCHINECZ STEPHEN M
37015-33-15-200-20-61	Personnel Liaison Inspector General	HUDGINS LORI
37015-33-17-120-00-61	Manager Quality Control Review /OIG	BECKER TERRI
37015-33-17-430-00-61	Program Mgr	Vacant
37015-33-19-020-00-61	Manager Financial Crimes Task Force	BRINKMAN JAMES L
37015-33-19-120-00-21	Manager of Welfare Fraud Investigations Cook	CAMPOS BARBARA M
37015-33-19-150-00-21	Mgr Medical Fraud-Special Programs Unit	VACANT
37015-33-19-430-00-61	Manager Southern Region - Welfare Fraud	BOND BRIAN J
37015-33-19-440-00-61	Manager Asset Discovery Unit	VACANT
37015-33-19-450-00-61	Supervisor of Snap Program	KEISER DAWN D
37015-33-20-020-20-61	Staff Assist to The Deputy Admin of Medical Programs	VACANT
37015-33-20-030-40-61	Special Projects Program Supv	VACANT

37015-33-20-030-50-61	Data Control Program Supv	VACANT
37015-33-29-100-00-61	Supervisor	WATSON G ERIC
37015-33-29-100-00-61	Supervisor	MINDER SUSAN M
37015-33-29-330-00-61	Supervisor	CANAS EDNA
37015-33-33-220-00-61	Supervisor	VACANT
37015-33-33-230-00-61	Supervisor	BARGER DAVID L
37015-33-33-300-00-61	Manager	MCCARTY SHERI L
37015-33-33-420-00-61	Supervisor	JONES FRANCES M
37015-33-33-430-00-61	Supervisor	LYNN PAMELA M
37015-33-33-450-00-61	Supervisor	SAVAGE LESLEY R
37015-33-36-210-00-61	Manager	VACANT
37015-33-50-000-20-91	Manager	VACANT
37015-33-50-100-00-91	Personnel Manager	DAY, RUTH ANN
37015-33-50-332-00-91	Manager	GILBEY DENISE J
37015-33-51-353-00-91	Manager	GRIMBLE LINDA J
37015-33-53-600-00-41	Manager	VACANT
37015-33-54-200-00-41	Supervisor	VACANT
37015-33-54-300-00-41	Regional Manager	MONTES, OSCAR
37015-33-54-500-00-41	Regional manager	MARKETTE-MALONE SHAR
37015-33-54-500-20-41	Supervisor	VACANT
37015-33-54-600-00-41	Manger	MANUEL TRACY V
37015-33-55-120-00-91	Regional Manager	VACANT
37015-33-55-130-00-91	Regional Manager	MEDERNACH LORI R
37015-33-55-140-00-91	Regional Manager	QUARLES SHARON M
37015-33-55-150-00-91	Regional Manager	GLEASMAN TRUDI M
37015-33-55-210-00-91	Regional Manager	RUNGE SHERRIE M
37015-33-55-220-00-91	Regional Manager	DUDUIT AMY J ²
37015-33-55-230-00-91	Regional Manager	VACANT
37015-33-55-260-00-91	Regional Manager	KUTTIN MARILYN K
37015-33-57-210-00-91	Manager	TRIBBLE BRYAN
37015-33-57-320-00-91	Manager	BAKER THOMAS E
37015-33-60-100-00-62	Manager	TIFFANY LEIGH E
37015-33-61-300-00-61	Supervisor - Procurement	VACANT
37015-33-70-010-00-61	Personnel Liaison - Division of Finance	HOMER RHONDA S
37015-33-71-230-00-61	Supervisor - DHFS Payroll Office	GENTRY DUANE T
37015-33-73-130-00-61	Supervisor	VACANT

In support of its petition, CMS submitted job descriptions (CMS-104s) for each position, affidavits and a summary spreadsheet. The spreadsheet identifies position numbers, titles, name of the incumbents, bargaining unit, certifications date and case number, statutory category of

² January 15, 2014, the Board received notification that Amy Duduit was no longer in this position.

designation and a list of job duties that support the presumptions that the positions are supervisory or managerial. On January 20, 2010, the positions at issue were certified into the RC-63 bargaining unit pursuant to the actions of the Board in Case No. S-RC-08-036. On January 17, 2014, Brian Bond filed an objection to the designation. On January 23, 2014, Edna Canas filed an objection to the designation. On January 27, 2014, the American Federation of State, County and Municipal Employees (AFSCME) filed objections to the designation. All objections were timely filed.

Based on my review of the designation, the documents submitted as part of the designation, the objections, and the arguments submitted in support of those objections, I have determined that the objections have failed to raise an issue that would require a hearing.

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

I. ISSUES AND OBJECTIONS

AFSCME makes several general objections to the petition arguing that Section 6.1 of the Act violates due process, the separation of powers doctrine in the Illinois Constitution, equal protection under Article I, Section 2 of the Illinois Constitution, and the Fifth and Fourteenth Amendments to the United States Constitution, and impairs the contractual right of the employees prohibited by the impairment of contract clause in the Illinois Constitution.

AFSCME specifically objects to the designation of the positions arguing that the positions do not possess significant and independent discretionary authority as required by Section 6.1. AFSCME also contends that the designated positions are merely professional where the employee uses their professional skills to understand and follow the guidelines established by the Department, negating the claim that the positions are managerial in nature. The individual employees submitted statements attesting to their job functions.

As it relates to the employees' supervisory authority, AFSCME maintains that the employees do not have authority to engage in any supervisory function with independent judgment. Moreover, although they prepare performance evaluations, it is argued that the evaluations are without reward or consequence.

Lastly, AFSCME argues that these positions have been certified into the bargaining unit pursuant to the actions of the Board and there is no rational basis for treating them differently than the many other positions which hold the same title or have similar duties. AFSCME requests a hearing be held to determine whether there is a legal basis for the exclusion of this position and the effect of such exclusion. AFSCME maintains that failure to hold a hearing on the issues raised is also a denial of due process.

Brian Bond states that he has four subordinates and he does not have the authority to, or effectively recommend, hire, transfer, suspend, layoff, recall employees from layoff, promote, discharge, assign, reward or discipline his subordinates. Bond also denies overseeing any department or unit, writing or recommending policies, having any role in the budgetary process, having any authority to decide how policies or legislation is implemented or recommending any actions that control or implement legislation that affects the department's policies.

Edna Canas argues that in her position she provides high-level supervision to her subordinate staff of ten. Canas maintains that she does not initiate Healthcare and Family Services policies but she does receive notifications when a new policy is being established, and she makes suggestions on the language to help document or explain those policies. Canas states that these suggestions are given consideration but decisions are made at a higher level. Canas also argues that, contrary to her job description, she does not make decisions on the Medicaid budget or handle the Outreach Program. Canas maintains that she does not have any discretionary authority regarding hiring, transferring, suspending, laying off, recalling, promoting, discharging, assigning, rewarding, disciplining, adjusting grievances or responsibly directing subordinates.

II. FINDINGS OF FACT

AFSCME specifically objects to the positions held by: Steve Dorchinecz, Frances Jones, Pamela Lynn, Brian Bond, James Brinkman, Linda Grimble, Edna Canas, David Barger, Trudi Gleasman, Dawn Keiser, Marilyn Kuttin, Sherrie Runge, Sharon Quarles, Lori Medernach, Eric Watson, Sheri McCarty and Sharon Markette-Malone. Both Brian Bond and Edna Canas also

filed individual objections. All of the specifically objected to employees, including those who submitted individual objections, submitted statements regarding their job duties and functions.³

Assist Bureau Chief of Administrative Services, Steve Dorchinecz, position number 37015-33-11-500-00-61, states that he oversees the work of an advisor within the Forms Control and Design Unit who creates all forms and envelopes used within the agency; and a PSA who is responsible for the Records and Retention and Mail units. He also assigns work to the storekeeper daily. As a general matter, Dorchinecz oversees the Office Services Unit which includes the distribution of commodities, forms, furniture, and equipment to users throughout the State of Illinois. The unit also stores and pulls any agency record deemed necessary by the agency. Lastly, the unit distributes agency mail locally, and creates and revises all forms and envelopes used by the agency. Dorchinecz does not deny the position's authority to assign and responsibly direct subordinates using independent judgment.

Frances Jones – Supervisor, position number 37015-33-33-420-00-61, has five subordinates who are direct reports. Jones states that her responsibilities in overseeing include ensuring the staff reviews mail, answers phone calls and responds to inquiries regarding ongoing eligibility for state medical programs. Jones does not refute that she responsibly directs her subordinates using independent discretionary authority. This direction also includes reviewing work, providing guidance and training to assigned staff, counseling staff regarding work performance, establishing annual goals and objectives, approving time off and preparing and signing performance evaluations.

According to Supervisor Pamela Lynn, position number 37015-33-33-430-00-61, her job duties include processing medical applications, answering phone calls from clients, and reviewing and signing off on reimbursement vouchers, completing evaluations and reports and consulting with workers on difficult case situations. Lynn has three subordinates who are direct reports. They also have subordinates. Lynn is required to sit in disciplinary meetings but states that she does not speak or participate. Lynn states that she makes sure her staff meets day-to-day annual goals and objectives as established by her superiors. She directs their work and prepare and sign evaluations (but does not “plan”) for All Kids caseworkers for the Bureau of All Kids.

³ For brevity, this decision only addresses those functions and duties that relate to the employees supervisory or managerial status. Each employee specifically objected to also generally contends that either they do not perform supervisory or managerial functions or if they do, they do not do so with independent discretionary authority.

She also explains and implements program policies and procedures, confers with management on the integration of program functional activities and recommends program functional improvements. Lastly, Lynn approves time-off and prepares and signs performance evaluations after her superior reviews them.

Manager Southern Region – Welfare Fraud, Brian Bond, position number 37015-33-19-430-00-61, supervises Medicaid fraud investigators for the southern region. He has four subordinates. Bond contends that he does not have any supervisory or managerial authority. However, Bond does not specifically refute his duties that include assigning and reviewing work, providing guidance and training to assigned staff, counseling staff regarding work performance, reassigning staff to meet day-to-day operating needs, establishing annual goals and objectives, approving time-off and preparing and signing performance evaluations.

Financial Crimes Task Force Manager, James Brinkman, position number 37015-33-19-020-00-61, oversees at least two subordinates. In this position, Brinkman reviews and critiques investigation reports completed by investigators. Brinkman also monitors caseloads and production and prepares monthly and annual reports for the Bureau.

Linda Grimble – Manager, position number 37015-33-353-00-91, states that she supervises/manages a call center and maintains that she is not allowed to make decisions without her superior's approval. Grimble has five direct subordinates for whom she provides guidance and training, counsels regarding work performance, reassigns to meet day-to-day operating needs, establishes annual goals and objectives, approves time off, prepares and signs performance evaluations and determines and recommends staffing needs.

Ednas Canas – Supervisor, position number 37015-33-29-330-00-61, states that she supervises professional level staff that work independently and she provides higher level intervention when needed. Canas points out, as evidence that she does not have independent authority, that her job description states that her position operates subject to management approval. Canas makes sure new billing policy information is clarified to providers by issuing notices and updating handbooks and the website. When new policies are mandated, Canas translates their information into the department's practical practice by providing her expertise to staff on how the programming affects billing. She also works with the Policy Unit to draft provider notices and update handbooks. Canas does have the opportunity suggest language for

newly established policies but does she not decide how policies or legislation will be implemented.

David Barger – Supervisor, position number 37015-33-33-230-00-61, has at least two direct subordinates. Barger states that any decisions concerning worker performance, corrective action, discipline, workflow, counsel and reassignment of staff are made by the Bureau Chief level or higher. Barger notes that he does assign priority applications to his subordinates based on medical needs, on an as needed basis. Otherwise, Barger states that his staff works independently. When making these assignments, Barger does not dispute that he uses his discretion when deciding medical need. Barger also states that he reviews proposed policies written by other staff and provides comments to upper management for their review and approval. Barger admits to being charged with effectuation of management policies and practices but maintains that this does not have anything to do with independent discretionary authority.

Regional Manager Trudi Gleasman, position number 37015-33-55-150-00-91, manages the Rockford Regional Child Support Office under the direction of her superior. Gleasman states that she consults her superior on any discipline or personnel matters. Gleasman does not refute her authority to assign staff, approve time off, provide guidance and training, effectively recommend grievance resolutions, complete and sign performance evaluations, counsel staff on problems with productivity, quality of work and conduct and determine staffing needs to achieve program objectives.

Supervisor of SNAP Program Dawn Keiser, position number 37015-33-19-450-00-61, has four direct reports. Keiser states that she assigns and reviews work, provides guidance and training to staff, approves time off, prepares and signs performance evaluations, collects data on computer-based programs regarding SNAP fraud and reports those figures to fraud superiors.

Regional Manager Marilyn Kuttin, position number 37015-33-55-260-00-91, has three direct subordinates. Kuttin maintains that she does not have authority to perform any supervisory functions which is evidenced by the fact that she has been disciplined for interpreting policy on a grievance in 2013. Kuttin was informed that grievances were a “gray area” and she should have consulted with her superiors prior to making a decision. Kuttin admits that she does have some discretion when making assignments. Kuttin’s objectives include monitoring the scheduling queue to ensure cases do not remain in queue over 30 days and

monitoring reception desk activities to ensure that customer service is provided in a professional manner within the period established by the regional office. Kuttin also performs the following management functions by reviewing and monitoring her subordinates when they: prepare performance evaluations, counsel their subordinates, administer corrective action plans, monitor available benefit time and train subordinate staff. Kuttin ensures individual performance problems are documented and corrective action plans are implemented in a timely manner.

Regional Manager Sherrie Runge, position number 37015-33-55-210-0091, has one direct subordinate. Runge's objectives also include monitoring the scheduling queue to ensure cases do not remain in queue over 30 days and monitoring reception desk activities to ensure that customer service is provided in a professional manner within the period established by the regional office. Runge also performs the following management functions by reviewing and monitoring her subordinates when they: prepare performance evaluations, counseling their subordinates, administer corrective action plans, monitor available benefit time and train subordinate staff. Runge ensures individual performance problems are documented and corrective action plans are implemented in a timely manner.

Regional Manager Sharon Quarles, position number 37015-33-140-00-91, has three direct subordinates. Quarles states that her responsibilities in overseeing include ensuring that the unit meets the goals of the region for child support. Although Quarles states that she does not perform any supervisory functions, she maintains that she does review and analyze the work performed by the unit to make sure the unit reaches the goals within the state. In this capacity, Quarles does not refute her authority to assign and review work, counsel staff regarding work performance, take corrective action, monitor workflow, evaluate subordinates' work performance and reassign staff to meet day-to-day operating needs.

Regional Manager Lori Medernach, position number 37015-33-55-130-00-91, has three direct subordinates and she oversees the day-to-day- operations for her region. Medernach ensures that the goals of the agency are met regarding paternity establishment, support orders and collections. Although Medernach states that she does not perform supervisory duties, she does not refute her authority to assign and review work, counsel staff regarding work performance, take corrective action, monitor workflow, evaluate subordinates' work performance and reassign staff to meet day-to-day operating needs.

G. Eric Watson – Supervisor, position number 37015-33-29-100-00-61, has two direct subordinates. Watson states that he reviews applications for acceptance in the electronic health records program. Watson maintains that he is a working supervisor who performs duties within a limited structure and with strict guidelines. He states that there is not much room for independent discretion. Specifically, Watson states that this position has little authority to determine any action outside a set of clearly defined parameters. Watson states that he can, and does, participate in meetings to discuss the program structure, but that he has no authority to establish procedures or policy. Watson does not refute his authority to direct his subordinates by assigning and reviewing work, providing guidance and training, counseling staff regarding work performance, reassigning staff to meet day-to-day operating need, approving time off, and preparing and signing performance evaluations.

Sheri McCarty – Manager, position number 37015-33-33-300-00-61, has one subordinate who reports directly to her. McCarty states that her duty is database administration and as an overseer, her job is to make sure her subordinates complete their work. McCarty does not specifically refute her authority to responsibly direct, assign and review the work of her subordinates with independent judgment. According to her superior, this position also has the authority to counsel staff regarding work performance, take corrective action, monitor workflow, and complete and sign performance evaluations.

Regional Manager Sharon Markette-Malone, position number 37015-33-54-500-00-41, has two direct subordinates. Malone states that she does not have supervisory authority but she does make disciplinary recommendations to the Audit Manager. As a part of her duties, Malone states that she serves as full line supervisor, assigns and reviews work, provides guidance and training to assigned staff, establishes annual goals and objectives, approves time off, interprets new/established program regulations and audit policies and procedures and provides input into the revision of audit manuals and guidelines for obtaining goals and objectives.

III. DISCUSSION AND ANALYSIS

a. Procedural Objections

First, the Board has held that it is beyond its capacity to rule on the constitutional allegations made by AFSCME. Specifically, it is beyond the Board's purview to rule whether the Illinois Public Labor Relations Act, as amended, violates provisions of the United States and Illinois constitutions. The Board noted that administrative agencies have no authority to declare

statutes unconstitutional or even to question their validity and in doing so, their actions are null and void and cannot be upheld. State of Illinois, Department of Central Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013) (citing Goodman v. Ward, 241 Ill. 2d. 398, 411 (2011)). As such, I will not address the constitutional objections in this decision.

The Board has also expressed its concern with AFSCME's due process arguments but maintains that it has taken necessary measures to prevent such a violation. Therefore, the Board held that consistent with 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." State of Illinois, Department of Central Management Services, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013) (citing Arvia v. Madigan, 209 Ill. 2d 520 (2004), and Gruwell v. Ill. Dep't of Financial and Professional Regulations, 406 Ill. App. 3d 283, 296-98 (4th Dist. 2010)). Additionally, the Board found that it has "allowed an opportunity to appeal those recommendations for consideration by 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, Case No. S-DE-14-005 (IL LRB-SP Oct. 7, 2013).

Moreover, in administrative hearings, failing to go to an oral hearing is not necessarily the denial of a hearing where submission of written documents could suffice as a hearing. Department of Central Management Services (Illinois Commerce Commission) v. Illinois Labor Relations Board, State Panel, 406 Ill. App. 3d 766, 769-70 (4th Dist. 2010). Therefore, AFSCME's due process rights have not been violated by the Board following the policies and procedures mandated by the legislature and I find there is no issue of law or fact warranting a hearing.

Regarding the burden of proof, AFSCME has the burden to demonstrate that the designation is not proper. The Act is clear in that "any designation made by the Governor...shall

be presumed to have been properly made,” 5 ILCS 315/6.1 (2012). Therefore, the burden of proof shifts to the objector to prove that the designation is, in fact, improper.

Lastly, Illinois Appellate Courts have held that the Board’s consideration of job descriptions alone, is an adequate basis upon which to evaluate an exclusion. See Village of Maryville v. Illinois Labor Relations Board, 402 Ill. App. 3d 369 (5th Dist. 2010); Ill. Dep’t of Cent. Mgmt. Servs. v. Ill. Labor Rel. Bd., 2011 Ill App. (4th Dist.) 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 (3d Dist. 1988). Accordingly, the Board has sufficient evidence from which to establish whether the designation is proper.

b. Designations under Section 6.1(b)(5)

As stated above, a position is properly designated if, amongst other reasons, it was first certified to the bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008, and it authorizes an employee in the position to have “significant and independent discretionary authority as an employee” as defined by Section 6(c) of the Act. Moreover, designations made by the Governor are presumed proper under Section 6.1 of the Act.

It is undisputed that the positions at issue were certified into bargaining unit RC-63 in Case No. S-RC-04-130 on January 20, 2010. At issue is whether the petitioned-for positions have significant and independent discretionary authority as described in Section 6.1(c), to be designated as supervisory or managerial under the Act. I find that all of the objected employees to be properly designated as supervisory or managerial under the Act.

Section 6.1(b)(5) allows the Governor to desinate positions that authorize an employee to have “significant and independent discretionary authority.” 5 ILCS 315/6.5(b)(5). The Act provides 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 the third.⁴

⁴ Section 6.1(c) provides that 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 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

The first test is substantively similar to the traditional test for the managerial exclusion articulated in Section 3(j). Section 6.1(c)(i) provides that a position authorizes an employee 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.” However, 6.1(c)(i) provides a broader definition than the traditional test found in Section 3(j), in that it does not include a preponderance element and only requires that an employee be “charged with the effectuation” of policies and not that the employee direct the effectuation. According to the traditional test, 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. Elk Grove Village, 245 Ill. App. 3d at 122, Evanston, 227 Ill. App. 3d at 975. Here, however, in order to meet the first test set out in Section 6.1, a position holder need only be charged with carrying out the policy in order to meet the Department’s objective.

The second test under 6.1(c)(i) makes a designation proper if the position “represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of the agency.” 5 ILCS 315/6.1(c)(i) (2012). The Illinois Appellate Court has observed that the definition of a managerial employee in Section 3(j) is very similar to the definition of managerial employee in the Supreme Court’s decision in National Labor Relations Board v. Yeshiva University, 444 U.S. 672 (1980). Dep’t of Cent. Mgmt. Serv. Ill. Commerce Com’n v. Ill. Labor Rel. Bd., 406 App. 766, 776 (4th Dist. 2010) (citing Yeshiva, 444 U.S. at 683). The Court noted that the ILRB, “incorporated effective recommendations into its interpretation of the term ‘managerial employee.’” ICC, 406 Ill. App. at 776.

Section 6.1(c)(ii) states that 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).

Relations Board interpreting that provision or decisions of courts reviewing decisions of the National Labor Relations Board.

In other words, “employees are statutory supervisors 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. (“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 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.

Section 6.1(d) requires us to presume the Governor’s designation is proper, and the evidence as a whole fails to overcome that presumption. Therefore, I find that the positions are properly designated as supervisory or managerial.

First, the position held by Ednas Canas and David Barger are properly designated as managerial under Section 6.1 of the Act. The Board has rejected AFSCME’s objections that the designated positions do not have significant and independent discretionary authority because they are professional rather than managerial. State of Ill., Dep’t of Cent. Mgmt.Servs. (Dep’t of Cent. Mgmt. Servs.), 30 PERI ¶ 85 (IL LRB-SP 2013). The terms managerial and professional are not mutually exclusive and there is no exception for professional employees in the language of Section 6.1(c)(i). State of Ill, Dep’t of Cent. Mgmt. Servs. (Dep’t of Commerce & Economic Opportunity), 30 PERI ¶ 86 (citing Dep’t of Cent. Mgmt. Servs. / Ill. Pollution Control Bd., 2013 IL App (4th) 110877). As such, where a position meets one of the two alternative tests set out in Section 6.1(c)(i), it may appropriately be designated by the Governor for exclusion from collective bargaining rights regardless of whether it is also a professional position. *Id.*

Next, Canas and Barger both engage in executive and management functions because they review and assist with the drafting of policies and procedures for their departments to meet their objectives. Moreover, neither have ever denied that their superiors accept their draft policies almost all the time. See, Dep’t of Cent. Mgmt. Serv./ Ill. Commerce Com’n, 406 Ill. App. 3d 766, 775 (effective recommendations are those that are accepted most of the time without modification).

Barger also specifically admits to being charged with the effectuation of management policies and practices. Canas is also charged with the effectuation of management policies and practices because she works with the Policy Unit when drafting provider notices and updating handbooks and she interprets and translates newly mandated policies. Dep't of Cent. Mgmt. Serv. (Pollution Control Bd.), v. Ill. Labor Rel. Bd., State Panel, 2013 IL App (4th) 110877 ¶ 25 (establishing policies and procedures is an executive and management function); State of Ill. Dep't of Cent. Mgmt. Serv. (Ill. Commerce Comm'n) v. Ill. Labor Rel. Bd., State Panel, 406 Ill. App. 3d at 774, (4th Dist. 2010).

The remaining positions objected to are properly designated as supervisory under Section 6.1(c)(ii) of the Act. An employee with the purported authority to responsibly direct must carry out such direction with independent judgment. Further, "it must be shown that the employer delegated to the putative supervisor the authority...to take corrective action, if necessary." In addition, there must be a "prospect of adverse consequences for the putative supervisor" arising from his direction of other employees. Oakwood Healthcare, Inc., 348 NLRB 686, 687 (2006).

Here, the objected to employees possess significant and independent discretionary authority because they all have the authority to responsibly direct their subordinates. Specifically, their position descriptions state that these positions hold the authority to direct their subordinates. The position holders also admit the same. Based on this evidence, the objected to positions exercise the use of independent judgment and are accountable for their subordinates' work because either their position description does not expressly limit the objectors discretion, independent authority, or accountability, the objectors admit to such, or the objector does not refute such.

Further, the objectors have significant and independent discretionary authority because they have the authority to assign staff, approve time off, provide guidance and training and counsel staff regarding work performance. Based on this evidence, the objected to positions exercise the use of independent judgment because either their position description do not expressly limit the objectors discretion, independent authority, or accountability, the objectors admit to such, or the objector does not refute such.

Moreover, the objectors' use of independent judgment when assigning and responsibly directing their subordinates is also presumed proper under Section 6.1(d) of the Act. Therefore,

the positions at issue are managerial or supervisory according to Section 6.1(c)(i) and 6.1(c)(ii) of the Act and are properly designated for exclusion.

IV. CONCLUSIONS OF LAW

The designations in this case are properly made.

V. RECOMMENDED ORDER

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

**Public Service Administrator, Option 1
Employed at Department of Healthcare and Family Services**

<u>Position No.</u>	<u>Working title</u>	<u>Incumbent</u>
37015-33-10-210-00-61	Classification Unit Mgr	LANG TAMMY
37015-33-10-220-00-61	Selection and Recruitment Mgr	VACANT
37015-33-10-240-00-61	Benefits Mgr and FMLA Coordinator	JONES SONJA M
37015-33-10-250-00-61	Employee Svcs & Transactions Supervisor	MOSCARDELLI PATRICIA
37015-33-10-310-00-21	EEO/ADA Program Coordinator	VACANT
37015-33-11-500-00-61	Assist Bureau Chief of Admin Services	DORCHINECZ STEPHEN M
37015-33-15-200-20-61	Personnel Liaison Inspector General	HUDGINS LORI
37015-33-17-120-00-61	Manager Quality Control Review /OIG	BECKER TERRI
37015-33-17-430-00-61	Program Mgr	Vacant
37015-33-19-020-00-61	Manager Financial Crimes Task Force	BRINKMAN JAMES L
37015-33-19-120-00-21	Manager of Welfare Fraud Investigations Cook	CAMPOS BARBARA M
37015-33-19-150-00-21	Mgr Medical Fraud-Special Programs Unit	VACANT
37015-33-19-430-00-61	Manager Southern Region - Welfare Fraud	BOND BRIAN J
37015-33-19-440-00-61	Manager Asset Discovery Unit	VACANT
37015-33-19-450-00-61	Supervisor of Snap Program	KEISER DAWN D
37015-33-20-020-20-61	Staff Assist to The Deputy Admin of Medical Programs	VACANT
37015-33-20-030-40-61	Special Projects Program Supv	VACANT

37015-33-20-030-50-61	Data Control Program Supv	VACANT
37015-33-29-100-00-61	Supervisor	WATSON G ERIC
37015-33-29-100-00-61	Supervisor	MINDER SUSAN M
37015-33-29-330-00-61	Supervisor	CANAS EDNA
37015-33-33-220-00-61	Supervisor	VACANT
37015-33-33-230-00-61	Supervisor	BARGER DAVID L
37015-33-33-300-00-61	Manager	MCCARTY SHERI L
37015-33-33-420-00-61	Supervisor	JONES FRANCES M
37015-33-33-430-00-61	Supervisor	LYNN PAMELA M
37015-33-33-450-00-61	Supervisor	SAVAGE LESLEY R
37015-33-36-210-00-61	Manager	VACANT
37015-33-50-000-20-91	Manager	VACANT
37015-33-50-100-00-91	Personnel Manager	DAY, RUTH ANN
37015-33-50-332-00-91	Manager	GILBEY DENISE J
37015-33-51-353-00-91	Manager	GRIMBLE LINDA J
37015-33-53-600-00-41	Manager	VACANT
37015-33-54-200-00-41	Supervisor	VACANT
37015-33-54-300-00-41	Regional Manager	MONTES, OSCAR
37015-33-54-500-00-41	Regional manager	MARKETTE-MALONE SHAR
37015-33-54-500-20-41	Supervisor	VACANT
37015-33-54-600-00-41	Manger	MANUEL TRACY V
37015-33-55-120-00-91	Regional Manager	VACANT
37015-33-55-130-00-91	Regional Manager	MEDERNACH LORI R
37015-33-55-140-00-91	Regional Manager	QUARLES SHARON M
37015-33-55-150-00-91	Regional Manager	GLEASMAN TRUDI M
37015-33-55-210-00-91	Regional Manager	RUNGE SHERRIE M
37015-33-55-220-00-91	Regional Manager	DUDUIT AMY J ⁵
37015-33-55-230-00-91	Regional Manager	VACANT
37015-33-55-260-00-91	Regional Manager	KUTTIN MARILYN K
37015-33-57-210-00-91	Manager	TRIBBLE BRYAN
37015-33-57-320-00-91	Manager	BAKER THOMAS E
37015-33-60-100-00-62	Manager	TIFFANY LEIGH E
37015-33-61-300-00-61	Supervisor - Procurement	VACANT
37015-33-70-010-00-61	Personnel Liaison - Division of Finance	HOMER RHONDA S
37015-33-71-230-00-61	Supervisor - DHFS Payroll Office	GENTRY DUANE T
37015-33-73-130-00-61	Supervisor	VACANT

VI. EXCEPTIONS

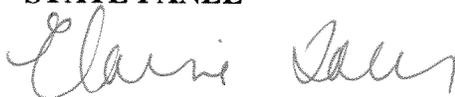
Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300, parties may file exceptions to the Administrative Law Judge's recommended decision and order, and briefs in support of those exceptions, no later than 3 days

⁵ January 15, 2014, the Board received notification that Amy Duduit was no longer in this position.

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 and Regulations. Exceptions must be filed by electronic mail sent to ILRB.filing@illinois.gov. Each party shall serve its exceptions on the other parties. If the original exceptions are withdrawn, then all subsequent exceptions are moot. A party not filing timely exceptions waives its right to object to the Administrative Law Judge's recommended decision and order.

Issued at Chicago, Illinois this 6th day of February, 2014

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

A handwritten signature in cursive script, appearing to read "Elaine Tarver".

Elaine L. Tarver, Administrative Law Judge