

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

State of Illinois, Department of Central Management Services, (Department of Revenue),)	
)	
)	
Petitioner)	Case No. S-DE-14-202
)	
and)	
)	
American Federation of State, County and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	
)	
and)	
)	
Mary Duesterhaus and Angela Miller,)	
)	
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 February 3, 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. On February 5, 2014, Mary Duesterhaus, an employee of the State of Illinois who occupies one of the positions designated as excluded from collective bargaining rights, filed an objection to the designation. On February 10, 2014, Angela Miller, an employee of the State of Illinois who occupies one of the positions designated as excluded from collective bargaining rights, filed an objection to the designation. On February 13, 2014, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) similarly filed objections to the designation pursuant to Section 1300.60(a)(3) of the Board's Rules. On February 13, 2014, AFSCME also filed two supplemental objections. Based on my review of the designation, the documents submitted as part of the designation, the objections, and the documents and arguments submitted in support of those objections, I find that the designation was properly submitted, that it is consistent with the requirements of Section 6.1 of the Act, and that the objections fail to raise an issue of law or fact that might overcome the presumption that the designation is proper. Consequently, I recommend that the Executive Director certify the designation of the positions at issue in this matter as set out below and, to the extent necessary, amend any applicable certifications of exclusive representatives to eliminate any existing inclusion of these positions within any collective bargaining unit.

The following 34 positions within the Illinois Department of Revenue are at issue in this designation:

37015-25-48-260-00-01	High Risk & Lien Payoffs Supervisor	Branham, Terri
37015-25-48-300-00-01	Technical & Collection Support Division Manager	Carey, Teena
37015-25-55-100-00-01	Chicago Metro Liquor Compliance Manager	Cass, II, Richard
37015-25-41-000-10-01	Staff Assistant to Audit Program Administrator	Cochran, Beth

37015-25-42-321-00-01	Payroll, Benefits & Timekeeping Manager	Davis, Stacy
37015-25-81-000-00-01	Problems Resolution Manager	
37015-25-55-300-00-01	Metro South #2 Liquor Compliance Manager	Doyle, Gary
37015-25-42-311-00-01	Classifications Manager	Duesterhaus, Mary
37015-25-42-300-40-01	Business IT Analyst	Garbett, Michael
37015-25-42-324-00-01	Administrative Transactions/FMLA Manager	Kirk, Stephanie
37015-25-42-300-20-01	Customer Service Liaison	Klintworth, David
37015-25-33-160-10-01	Assistant Division Manager - Alcohol, Tobacco & Fuel	Knoles, Trent
37015-25-05-200-10-01	Gentax Liaison	Letterly, Max
37015-25-71-110-00-01	Licensing Manager	Marijan, Dusanka
37015-25-42-313-00-01	Hiring Posting Manager	Miller, Angela
37015-25-17-000-00-01	Operational/Special Services Division Manager	Neposchlan, Jay
37015-25-45-100-10-01	Advanced Training Specialist	Reid, John
37015-25-55-400-00-01	Downstate Area #3 Liquor Compliance Manager	Robinson, Bonds
37015-25-13-000-00-01	Property Management & Telecommunications Division Manager	Romang, Joseph
37015-25-10-200-20-01	Procurement Office Supervisor	Stephens, Jr, Don
37015-25-31-170-00-01	Chicago Operations Division Manager	Washington, Latanya
37015-25-06-000-30-01	Audit Liaison	
37015-25-82-120-30-01	Exemptions Manager	
37015-25-00-100-00-01	Assistant to Director of Revenue	
37015-25-05-200-00-01	Assistant to Associate Director	
37015-25-07-500-10-01	Assistant Division Manager -Litigation Office	
37015-25-31-160-10-02	Assistant Division Manager- Records Management	
37015-25-00-000-10-01	Assistant to Chief of Staff	
37015-25-03-300-00-01	Publications Management Division Manager	
37015-25-08-200-00-01	Planning Office Manager	
37015-25-83-110-30-01	Technology Support Supervisor	

37015-25-42-300-10-01	Executive Assistant to Human Resources Director
37015-25-45-100-00-01	Training & Development Manager
37015-25-02-100-00-01	Research Analyst

CMS's petition indicates the positions at issue qualify for designation under Section 6.1(b)(5) of the Act which permits designation if the position authorizes an employee in that position to have "significant and independent discretionary authority."² AFSCME objects to designation of all listed positions. Mary Duesterhaus and Angela Miller object to the designation of their own positions.

I. Objections

First, AFSCME states that Section 6.1 of the Act is unconstitutional, on its face and as applied, both under the Illinois Constitution and the Constitution of the United States of America because it deprives AFSCME of due process and violates the equal protection clauses, the prohibition against impairment of contracts, and the separation of powers clause of the Illinois Constitution.

Further, AFSCME generally objects to the use of position descriptions to support the petition and to the allocation of the burden of proof. AFSCME also argues that there can be no showing of managerial authority based solely on an affidavit, which states that the position at issue is authorized to effectuate departmental policy, where the position description does not reference any specific policy. Further, AFSCME states that CMS has presented no evidence that the employees at issue ever exercised their referenced supervisory or quasi-managerial authority. Similarly, AFSCME asserts that CMS has not shown that it told the employees they possessed such authority. In addition, AFSCME argues that the positions at issue are professional and not managerial. Finally, AFSCME urges the Board not to rely on the Petitioner's affidavits because the affidavits do not explain how the affiant is familiar with the job duties of the positions at issue.

AFSCME also filed position-specific exceptions with respect to the positions held by Mary Duesterhaus, Michael Garbett, Dave Klintworth, Angela Miller, Bonds Robinson Jr., Max

² CMS filed position descriptions (CMS-104s) for the positions and affidavits in support of its assertion. These positions are currently represented by AFSCME.

Letterly, and Gary Doyle. It requests that these employees “be retained in the bargaining unit for reasons stated in [their] questionnaire and because of the information contained therein.” In particular, AFSCME asserts that Garbett and Klintworth are professional and that they have no subordinates.

AFSCME concludes that there is a high likelihood that all the position descriptions are inaccurate because specific individuals identified inaccuracies in their own position descriptions. On this basis, AFSCME asserts that the Board should order a hearing on all positions at issue because to decline to do so would compel speech in violation of the First Amendment.

II. Material Facts

a. 37015-25-42-311-00-01 - Duesterhaus, Mary

Mary Duesterhaus’s job description provides that she serves as a working supervisor, assigns and reviews work, provides guidance and training to assigned staff, counsels staff regarding work performance, reassigns staff to meet day-to-day operating needs, establishes annual goals and objectives, approves time off, and prepares and signs performance evaluations. Duesterhaus attached documents to her objections including a recommendation to Acting ARSSC Human Resources Director Matt Bilinsky that subordinate Kathy Barrow receive a 5% wage increase.

Duesterhaus admits that she oversees six subordinates and that she gives her subordinates direction and instructions on special requests and projects. She further admits that she assigns work to her subordinates.

b. 37015-25-42-313-00-01 - Miller, Angela

Angela Miller is a Public Service Administrator Option 1, Hiring/Posting Manager. She oversees five subordinates. Miller admits that she has authority to recommend discipline and suspension. Further she states that she directs employees. She specified that she directs employees to perform special projects outside their daily routine and that she provides guidance and direction to them in accomplishing the task.

c. 37015-25-55-300-00-01 - Doyle, Gary

Gary Doyle oversees five subordinates. He asserts that he has authority to assign his subordinates work and to “direct employees as to specific work schedules.” Doyle’s position description provides that he serves as a working supervisor.

d. 37015-25-05-200-10-01 - Letterly, Max

Max Letterly admits that he is responsible for making recommendations to Senior Staff and the Steering Committee regarding the GenTax system implementation and on-going development. He asserts that his recommendations are based on system limitations, best practices, and input from business areas impacted. He further asserts that any forthcoming policy decision is determined by the Steering Committee and Senior Staff.

Letterly also states that he has a role in the budget process by providing recommendations to Senior Staff and the Steering Committee on available upgrades and enhancements to the GenTax system. However, he asserts that Senior Staff and the Steering Committee make the decision to implement any of those recommendations.

e. 37015-25-42-300-40-01 - Garbett, Michael

Michael Garbett’s position description provides that he “performs complex professional and advisory functions in the development, maintenance and ongoing enhancement for [sic] the business functions in the human resource (HR) and fiscal information technology systems and administration of the SharePoint site.” Garbett asserts that he does not make the final decisions with respect to such matters and merely advises his superiors. He serves as business analyst by researching and analyzing HR and fiscal business functions for the development and/or improvement of the HR and fiscal systems through the use of business process maps. Further, he analyzes the HR and fiscal business functions to coordinate the integration of the IT systems with the broader state technology platforms and other internal systems. His performance evaluation provides that his objectives include planning and implementing through IT support, business function interfaces and links between the various HR and fiscal IT systems to provide the most expeditious and effective methods of establishing new and revised business processes.

f. 37015-25-42-300-20-01 - Klintworth, David

David Klintworth asserts that he is the Workers' Compensation Coordinator for eight state agencies. He states that he does not serve as a working supervisor and that he oversees no subordinates. However, he admits that he provides feedback, insights and vision for continuous Administrative and Regulatory Center updates and improvements. He denies collaborating with functional managers to develop policies and procedures related to the support function.

Jessica Nunes, Assistant Human Resources Director of Strategic Processes for the Administrative & Regulatory Shared Services Center, filed an affidavit with the Board asserting that Klintworth develops and conducts training programs on agency policies and procedures, HIPPA, FMLA, Ethics Act, Sexual Harassment Prevention, and any other mandatory training required by the State of Illinois. Klintworth admits that he maintains quality, productivity, and training standards as defined by service levels and internal standards. He further admits that he keeps all HR forms and manuals updated including training materials. However, Klintworth asserts that the only training he conducts is New Employee Orientation for the eight agencies he serves and Revenue-specific training for new employees to introduce them to the agency. He asserts that he does not perform human resources training and that he does not develop instructional manuals or lesson plans. Nevertheless, he admits that he develops handouts for training, makes PowerPoint presentations, conducts training presentations, and develops training evaluation surveys for completion by employees after training sessions. Finally, he admits that he reviews evaluation surveys, assesses progress towards accomplishment of the goals and objectives, and makes adjustments to training programs as needed.

g. 37015-25-55-400-00-01 - Robinson, Bonds

Bonds Robinson asserts that he oversees seven subordinates. His job description provides that he serves as a working supervisor and that he prepares and signs his subordinates' performance evaluations. It further states that he plans and reviews the activities of subordinate staff engaged in conducting investigations and enforcing provisions of the Illinois Liquor Control Act. He does not deny that he directs his subordinates.

III. Discussion and Analysis

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

Section 6.1(b)(5) of the Act 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 provides three tests by which a person may be found to have “significant and independent discretionary authority.” Section 6.1(c)(i) sets forth the first two tests, while Section 6.1(c)(ii) sets forth a third. In its petition, CMS contends that the at-issue positions confers on 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).

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. Each of the three tests is discussed below.

i. The first test under 6.1(c)(i) — management and executive functions and effectuating management policies and practices

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).

However, the Section 6.1(c)(i) definition is broader than the traditional test because it does not include a predominance element and requires only that the employee be “charged with the effectuation” of policies, not that the employee be responsible for directing the effectuation. An employee directs the effectuation of management policy when he 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 be charged with carrying out the policy in order to meet its objectives.

The Section 6.1(c)(i) test is unlike the traditional test where a position is deemed managerial only if it is charged with directing the effectuation of policies. Under the traditional test, for example, “where an individual merely performs duties essential to the employer’s ability to accomplish its mission, that individual is not a managerial employee,” Ill. Dep’t of Cent. Mgmt. Serv. (Dep’t of Revenue), 21 PERI ¶ 205 (IL LRB SP 2005), because “he 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.

- ii. The second test under 6.1(c)(i) — represents management interests by taking or recommending discretionary actions

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

In light of this analysis, the second test under Section 6.1(c)(i) is similar to the expanded traditional managerial test because it is virtually identical to the statement of law in Yeshiva which the Illinois Appellate Court and the Illinois Supreme Court have incorporated into the traditional managerial test. Id. (quoting Chief Judge of the Sixteenth Judicial Circuit v. Ill. State Labor Rel. Bd., 178 Ill. 2d 333, 339-40 (1997)).

iii. The third test under 6.1(c)(ii) — qualifies as a supervisor as defined by the NLRA

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.

b. 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. Serv., 30 PERI ¶ 80 (IL LRB-SP 2013) (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 decision.

c. Non-Constitutional General Objections

AFSCME’s general objections are without merit and do not raise issues of fact or law that might rebut the presumption that the designation is properly made.

First, the Board has previously rejected AFSCME’s objections concerning the statutorily-mandated presumption, the burden of proof, and the manner in which ALJs have applied them. See State of Ill., Dep’t of Cent. Mgmt. Serv., 30 PERI ¶ 80 and all subsequent Board designation cases.

Here, most of AFSCME’s objections may be restated as objections to this now well-established framework because they presuppose that CMS must initially prove that the designation is proper. For example, AFSCME argues that CMS “failed to carry its burden of proof” and “presented no evidence” that the employees at issue ever exercise their purported authority or were told they possessed it. Similarly, AFSCME asserts that “there can be no showing of managerial authority based solely on [an] affidavit,” which is phrased in general terms. Likewise, AFSCME states that “there is no demonstration [by CMS] that the employees at issue have...authority to complete the job duties...[in their]...position descriptions.” Finally, AFSCME generally asserts that CMS’s affidavits are unreliable because there is no indication that they are accurate.

Contrary to AFSCME’s general assertion, the burden is on AFSCME, not CMS. Accordingly, these objections must be rejected because they ignore the presumption and misallocate the burden.

Second, the Board has similarly rejected AFSCME’s objections based on the bald statement that the designated positions do not have significant and independent discretionary authority because they are professional rather than managerial positions. 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.

In sum, AFSCME's general objections do not raise issues of fact or law that might rebut the presumption that CMS's designation is properly made.

- d. Vacant positions: 37015-25-81-000-00-01; 37015-25-06-000-30-01; 37015-25-82-120-30-01; 37015-25-00-100-00-01; 37015-25-05-200-00-01; 37015-25-07-500-10-01; 37015-25-31-160-10-02; 37015-25-00-000-10-01; 37015-25-03-300-00-01; 37015-25-08-200-00-01; 37015-25-83-110-30-01; 37015-25-42-300-10-01; 37015-25-45-100-00-01; 37015-25-02-100-00-01

CMS's designation of these positions is proper because the designation is presumed to be properly made and AFSCME has introduced no specific evidence to suggest that CMS has limited the position holders' discretion or independent authority, within the meaning of Section 6.1(c)(i) or (ii). State of Ill., Dep't of Cent. Mgmt. Serv., 30 PERI ¶ 164 (IL LRB-SP 2014) (objectors must provide specific examples to negate each of the three tests in Section 6.1(c)); see also State of Ill., Dep't Cent. Mgmt. Serv., 30 PERI ¶ 85 (IL LRB-SP 2013).

AFSCME has not raised issues of fact for hearing by asserting that there is a "high likelihood" that the position descriptions are inaccurate because AFSCME has not specifically identified any such alleged inaccuracies. State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Revenue), 30 PERI ¶ 110 (IL LRB-SP 2013) (general statement that position description is inaccurate does not raise issues of fact for hearing).³

Thus, CMS properly designated these positions.

- a. 37015-25-42-311-00-01 - Duesterhaus, Mary

CMS's designation of this position is proper because the designation is presumed to be properly made and AFSCME has introduced no evidence to suggest that CMS has limited the position holder's discretion or independent authority within the meaning of Section 6.1(c)(ii).

³ The alleged constitutional implications of this ruling are not addressed here for reasons set forth in section IV.d. of this RDO.

Duesterhaus has significant and independent discretionary authority because she possesses authority to responsibly direct her subordinates. First, the position description states that the position holds the authority to act as a working supervisor and Duesterhaus confirms that she gives her subordinates direction and instructions on special requests and projects. Further, based on this evidence, the position holder, Duesterhaus, exercises the use of independent judgment and is accountable for her subordinates' work because the designation is presumed proper under Section 6.1(d) of the Act and the position description does not expressly limit the position holder's discretion, independent authority, or accountability.

Thus, the designation of this position is properly made.

b. 37015-25-42-313-00-01 - Miller, Angela

CMS's designation of this position is proper because the designation is presumed to be properly made and AFSCME has introduced no evidence to suggest that CMS has limited the position holder's discretion or independent authority within the meaning of Section 6.1(c)(ii).

Miller has significant and independent discretionary authority because she possesses authority to effectively recommend discipline and suspension. Miller admits that she has authority to recommend discipline and suspension. These recommendations are presumed effective because White does not identify any circumstances in which her superiors ever rejected her recommendations, despite the fact that AFSCME specifically solicited such information from her on the questionnaire.

Thus, the designation is properly made.

e. 37015-25-55-300-00-01 - Doyle, Gary

CMS's designation of this position is proper because the designation is presumed to be properly made and AFSCME has introduced no evidence to suggest that CMS has limited the position holder's discretion or independent authority within the meaning of Section 6.1(c)(ii).

Doyle has significant and independent discretionary authority because he possesses authority to responsibly direct his subordinates. First, the position description states that the position holds the authority to act as a working supervisor and Doyle confirms that he gives his subordinates direction as to specific work schedules. Further, based on this evidence, the position holder, Doyle, exercises the use of independent judgment and is accountable for his

subordinates' work because the designation is presumed proper under Section 6.1(d) of the Act and the position description does not expressly limit the position holder's discretion, independent authority, or accountability.

Thus, the designation of this position is properly made.

f. 37015-25-55-400-00-01 - Robinson, Bonds

CMS's designation of this position is proper because the designation is presumed to be properly made and AFSCME has introduced no evidence to suggest that CMS has limited the position holder's discretion or independent authority within the meaning of Section 6.1(c)(ii).

Robinson has significant and independent discretionary authority because he possesses authority to responsibly direct his subordinates. First, the position description states that the position holder possesses the authority to act as a working supervisor and that he prepares and signs his subordinates' performance evaluations. Further, Robinson never denied that he directs his subordinates. Based on this evidence, the position holder, Robinson, exercises the use of independent judgment and is accountable for his subordinates' work because the designation is presumed proper under Section 6.1(d) of the Act and the position description does not expressly limit the position holder's discretion, independent authority, or accountability.

Thus, the designation of this position is properly made.

g. 37015-25-05-200-10-01 - Letterly, Max

CMS's designation of this position is proper because the designation is presumed to be properly made and the evidence presented supports this conclusion because it shows that position holder Letterly is engaged in executive and management functions of a State agency and is charged with the effectuation of management policies and practices of a State agency.

Here, Letterly is engaged in executive and management functions because he admits that he plays a role in the budget process by providing recommendations to Senior Staff and the Steering Committee on available upgrades and enhancements to the GenTax system. State of Ill. Dep't of Cent. Mgmt. Serv. (Ill. Commerce Comm'n) v. Ill. Labor Rel. Bd., State Panel (ICC, 406 Ill. App. 3d 766, 774, (4th Dist. 2010)(preparing the budget and ensuring the department runs effectively are executive and management functions).

Second, Letterly is charged with the effectuation of management policies and practices because he never denied that his superiors adopt his recommendations to expend resources that will upgrade or enhance the GenTax system almost all the time. Dep't of Cent. Mgmt. Serv./ Ill. Commerce Com'n, 406 Ill. App. 3d at 775 (effective recommendations are those that are accepted almost all the time without modification). Contrary to Letterly's assertion, it is immaterial that he does not have final authority to determine the contents of the budget. ICC at 775 (final independent authority not required, even under more restrictive test).

Thus, the designation of this position is properly made.

h. 37015-25-42-300-40-01 - Garbett, Michael

Garbett is properly designated within the meaning of Section 6.1(c)(i) of the Act because he represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency.

Here, Garbett has authority to represent management interests in his capacity as business analyst because he helps maintain, develop, and enhance the business functions in the Human Resource and Fiscal sections of the department, thereby ensuring that the Department can continue to function efficiently. Further, he recommends discretionary actions because he admits that he provides advice to his superiors concerning such matters and that he waits for their approval before moving forward with certain projects. Finally, his recommendations effectively control or implement the Department of Revenue's policies because his recommendations serve to provide the Department with more efficient and expeditious IT systems and methods for processing transactions. This, in turn, ensures that the Department fulfills its primary tax collection function in a productive manner and meets its policy objectives.

Thus, the designation is properly made.

a. 37015-25-42-300-20-01 - Klintworth, David

Klintworth is properly designated within the meaning of Section 6.1(c)(i) of the Act because he represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency.

Klintworth represents management interests when he conducts and develops new employee training for the Department of Revenue because he helps ensure that new employees

are properly oriented when they begin work with the Department. Klintworth takes discretionary action because he reviews evaluation surveys completed by the employees he trains, assesses progress towards accomplishment of training goals and objectives, and makes adjustments to training programs when he believes changes are needed. Klintworth's decisions concerning the content and manner of new employee training implements the policies of the Department of Revenue because it assures that new employees are aware of the Department's policies and that they are well-equipped to further those policies during the course of their employment.

Thus, the designation is properly made.

IV. Conclusions of Law

The Governor's designation in this case is 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 in the Illinois Department of Revenue are excluded from the self-organization and collective bargaining provisions of Section 6 of the Illinois Public Labor Relations Act:

37015-25-48-260-00-01	High Risk & Lien Payoffs Supervisor	Branham, Terri
37015-25-48-300-00-01	Technical & Collection Support Division Manager	Carey, Teena
37015-25-55-100-00-01	Chicago Metro Liquor Compliance Manager	Cass, II, Richard
37015-25-41-000-10-01	Staff Assistant to Audit Program Administrator	Cochran, Beth
37015-25-42-321-00-01	Payroll, Benefits & Timekeeping Manager	Davis, Stacy
37015-25-81-000-00-01	Problems Resolution Manager	
37015-25-55-300-00-01	Metro South #2 Liquor Compliance Manager	Doyle, Gary
37015-25-42-311-00-01	Classifications Manager	Duesterhaus, Mary
37015-25-42-300-40-01	Business IT Analyst	Garbett, Michael
37015-25-42-324-00-01	Administrative Transactions/FMLA Manager	Kirk, Stephanie

37015-25-42-300-20-01	Customer Service Liaison	Klintworth, David
37015-25-33-160-10-01	Assistant Division Manager - Alcohol, Tobacco & Fuel	Knoles, Trent
37015-25-05-200-10-01	Gentax Liaison	Letterly, Max
37015-25-71-110-00-01	Licensing Manager	Marijan, Dusanka
37015-25-42-313-00-01	Hiring Posting Manager	Miller, Angela
37015-25-17-000-00-01	Operational/Special Services Division Manager	Neposchlan, Jay
37015-25-45-100-10-01	Advanced Training Specialist	Reid, John
37015-25-55-400-00-01	Downstate Area #3 Liquor Compliance Manager	Robinson, Bonds
37015-25-13-000-00-01	Property Management & Telecommunications Division Manager	Romang, Joseph
37015-25-10-200-20-01	Procurement Office Supervisor	Stephens, Jr, Don
37015-25-31-170-00-01	Chicago Operations Division Manager	Washington, Latanya
37015-25-06-000-30-01	Audit Liaison	
37015-25-82-120-30-01	Exemptions Manager	
37015-25-00-100-00-01	Assistant to Director of Revenue	
37015-25-05-200-00-01	Assistant to Associate Director	
37015-25-07-500-10-01	Assistant Division Manager -Litigation Office	
37015-25-31-160-10-02	Assistant Division Manager- Records Management	
37015-25-00-000-10-01	Assistant to Chief of Staff	
37015-25-03-300-00-01	Publications Management Division Manager	
37015-25-08-200-00-01	Planning Office Manager	
37015-25-83-110-30-01	Technology Support Supervisor	
37015-25-42-300-10-01	Executive Assistant to Human Resources Director	
37015-25-45-100-00-01	Training & Development Manager	
37015-25-02-100-00-01	Research Analyst	

VI. Exceptions

Pursuant to Section 1300.90 and 1300.130 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1300,⁴ parties may file exceptions to the Administrative Law Judge's recommended decision and order, and briefs in support of those exceptions, not later than 3 days after service of the recommended decision and order. All exceptions shall be filed and served in accordance with Section 1300.90 of the Board's Rules. Exceptions must be filed by electronic mail to ILRB.Filing@illinois.gov. Each party shall serve its exceptions on the other parties. If the original exceptions are withdrawn, then all subsequent exceptions are moot. A party not filing timely exceptions waives its right to object to the Administrative Law Judge's recommended decision and order.

Issued at Chicago, Illinois this 26th day of February, 2014

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

/s/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**

⁴ Available at <http://www.state.il.us/ilrb/subsections/pdfs/Section%201300%20Illinois%20Register.pdf>.