

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

State of Illinois, Department of Central)	
Management Services (Department of)	
Human Services),)	
)	
Employer)	
)	
and)	Case Nos. S-DE-14-211
)	S-DE-14-212
American Federation of State, County)	S-DE-14-225
and Municipal Employees, Council 31,)	
)	
Labor Organization-Objector)	
)	
Monica Cripe, Lisa Fleigle, Breah Head, Lori)	
McGuire, Susan Pennell, Kathy Shuster, and)	
Terry Woodcock,)	
)	
Employee-Objectors)	

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

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

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

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

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

6.1, and to do so within 60 days.¹

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

On February 4, 2014, and February 27, 2014, the Illinois Department of Central Management Services (“CMS”), on behalf of the Governor, filed the above-captioned designation petitions pursuant to Section 6.1(b)(5) of the Act and Section 1300.50 of the Board’s Rules. The petition in case number S-DE-14-211 identified the following PSA-Option 2 positions at the Illinois Department of Human Services (“Department” or “DHS”) for designation:

<u>Position Number</u>	<u>Working Title</u>	<u>Incumbent</u>
37015-10-07-010-00-01	System Administrator and Supervisor	Kelly Turner
37015-10-07-141-00-29	AMU/TOP Supervisor	Mario Lopez
37015-10-07-200-00-01	Bureau Chief - Audit Liaisons	Albert Okwuegbunam
37015-10-07-200-11-01	Liaison between external and DHS re: Financial and Compliance Audits	Anna Moore
37015-10-07-200-12-01	Liaison between external and DHS re: Financial and Compliance Audits	Sunday Odele
37015-10-07-310-00-01	Grant Reporting Supervisor	Kathy Shuster
37015-10-07-320-00-01	Draw Unit Supervisor	Monica Cripe
37015-10-07-340-00-01	Medical/Grant Reporting Supervisor	Lisa Fleigle
37015-10-07-350-10-01	Administrative Claims Supervisor	Lori McGuire
37015-10-07-350-20-01	Cost Allocation Supervisor	Terry Woodcock
37015-10-07-360-00-01	Grant Reporting Supervisor	Vacant
37015-10-07-370-00-01	Grant Reporting Supervisor	Vacant
37015-10-07-400-12-01	Financial Reporting Supervisor	Vacant ²
37015-10-07-400-13-01	General Ledger Maintenance	Melanie Griffiths

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

² This position was withdrawn from the petition in Case No. S-DE-14-211 when CMS learned that the position was occupied by Mahdi Tamam.

	Supervisor	
37015-10-07-410-20-01	Cash Receipts and Adjustments Supervisor	Vacant
37015-10-07-710-00-01	Voucher Unit Supervisor	Jerry Meado
37015-10-08-000-00-01	Budget Liaison	Vacant
37015-10-08-410-00-01	Budget Liaison	Lynda Vallorz
37015-10-08-500-10-01	Budget Liaison	Vacant
37015-10-08-500-20-01	Budget Liaison	Vacant
37015-10-08-600-10-01	Budget Liaison	Vacant
37015-10-08-600-40-01	Budget Liaison	Vacant
37015-10-44-800-00-01	Fiscal/Budget Manager	Moses Tejuso
37015-10-64-220-00-01	Fiscal/Budget Manager	Mary Gorman
37015-10-66-053-00-01	Manager of Policy and Procedures for the Program Development Section	Sims, Constance
37015-10-66-520-00-01	Data for budget development	Solomon, Elizabeth
37015-10-83-400-00-01	Business Administrator	Jeffrey Frey
37015-10-88-440-00-01	Business Administrator	Susan Pennell
37015-10-99-780-10-01	Supervisory/Budget	Vacant
37015-10-99-780-20-01	Supervisory/Budget	Breah Head
37015-10-99-780-30-01	Supervisory/Budget	Vacant
37015-10-41-310-10-01	Fiscal/Budget Manager	Russell Hatchett

The petition indicates that the PSA-Option 2 positions were certified on November 18, 2009.

The petition in case number S-DE-14-212 identified the following PSA-Option 8C positions at the DHS for designation:

<u>Position Number</u>	<u>Working Title</u>	<u>Incumbent</u>
37015-10-07-400-10-01	CPA	Jerri Vogel
37015-10-07-400-11-01	Agency Accounting Supervisor	Vacant

The petition indicates that the PSA-Option 8C positions were certified on October 15, 2010.

The petition in case number S-DE-14-225 identified the following PSA-Option 2 position at the DHS for designation:

<u>Position Number</u>	<u>Working Title</u>	<u>Incumbent</u>
37015-10-07-400-12-01	Financial Reporting Supervisor	Mahdi Tamam

The petition indicates that this PSA-Option 2 position was certified on November 18, 2009.

In support of its petitions, CMS filed the position descriptions for the positions, organizational charts, and affidavits from individuals familiar with the work of the position.

Pursuant to Section 1300.60(a)(3) of the Board's Rules, on February 14, 2014, American Federation of State, County and Municipal Employees, Council 31 ("AFSCME") objected to the

petitions in case numbers S-DE-14-211 and S-DE-14-212. On March 10, 2014, AFSCME objected to the petition in case number S-DE-14-225. In its Objections, AFSCME submitted the following information in support of its objections: affidavits of Tracy Abman; an AFSCME Information Form completed by Monica Cripe, with attachments; an AFSCME Information Form completed by Lisa Fleigle; an AFSCME Information Form completed by Mary Gorman; an AFSCME Information Form completed by Melanie Griffiths; an AFSCME Information Form completed by Mario Lopez; an AFSCME Information Form completed by Lori McGuire; an AFSCME Information Form completed by Jerry Meado; an AFSCME Information Form completed by Anna Moore; an AFSCME Information Form completed by Sunday Odele, with attachments; an AFSCME Information Form completed by Albert Okwuegbunam, with attachments, an AFSCME Information Form completed by Susan Pennell; an AFSCME Information Form completed by Kathy Shuster; an AFSCME Information Form completed by Elizabeth Solomon; an AFSCME Information Form completed by Moses O. Tejuoso, with attachments; an AFSCME Information Form completed by Teresa Woodcock, with attachments; an AFSCME Information Form completed by Jerri Vogel; and an AFSCME Information Form completed by Mahdi Tamam.

The following employees also filed objections: Monica Cripe, Lisa Fleigle, Breah Head, Lori McGuire, Susan Pennell, Kathy Shuster, and Terry Woodcock.

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

After consideration of the information before me, I find that the designation is properly submitted and is consistent with the requirements of Section 6.1 of the Act. Accordingly, I recommend that the Executive Director certify the designation of the position at issue in this matter and, to the extent necessary, amend any applicable certification of exclusive representatives to eliminate any existing inclusion of this position within any collective bargaining unit.

I. AFSCME OBJECTIONS

AFSCME objects to the designation petitions in a number of ways. Through its written

objections and documents, AFSCME makes the following arguments.

A. General Objections

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

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

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

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

³ Emphasis in original.

B. Position-specific Objections

Position-specific objections were filed regarding the designation of positions filled by the following employees.

Case No. S-DE-14-211:

Position Number	Incumbent
37015-10-64-220-00-01	Mary Gorman
37015-10-07-200-00-01	Albert Okwuegbunam
37015-10-07-200-12-01	Sunday Odele
37015-10-07-200-11-01	Anna Moore
37015-10-07-310-00-01	Kathy Shuster
37015-10-07-320-00-01	Monica Cripe
37015-10-07-340-00-01	Lisa Fleigle
37015-10-07-350-10-01	Lori McGuire
37015-10-07-350-20-01	Terry Woodcock
37015-10-07-141-00-29	Mario Lopez
37015-10-66-520-00-01	Solomon, Elizabeth
37015-10-07-400-13-01	Melanie Griffiths
37015-10-07-710-00-01	Jerry Meado
37015-10-44-800-00-01	Moses Tejuoso
37015-10-99-780-20-01	Breah Head
37015-10-88-440-00-01	Susan Pennell

Case No. S-DE-14-212:

37015-10-07-400-10-01	Jerri Vogel
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Case No. S-DE-14-225:

37015-10-07-400-12-01 ⁴	Mahdi Taman
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II. DISCUSSION AND ANALYSIS

The law creates a presumption that designations made by the Governor are properly made. In order to overcome the presumption of a properly submitted designation under Section 6.1(b)(5), the objectors would need to raise an issue of law or fact that the position does not meet either of the managerial tests set out in Section 6.1(c)(i) or the supervisory test set out in Section 6.1(c)(ii).

⁴ This position was initially designated in Case No. S-DE-14-211 and identified as being vacant. Upon learning that the position was filled by Mahdi Tamam, CMS withdrew the petition as to that position. The designation of the position was refiled in Case No. S-DE-14-225.

A. AFSCME’S Procedural Arguments

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

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

With respect to the 16 positions in Case Nos. S-DE-14-211 and S-DE-14-212 for which neither AFSCME nor the individual in the position have provided any position-specific information or evidence, they have failed to overcome the presumption of validity. Accordingly, I find that these designations are proper and will further analyze only the positions held by Monica Cripe, Kathy Shuster, Lisa Fleigle, Mary Gorman, Melanie Griffiths, Mario Lopez, Lori McGuire, Jerry Meado, Anna Moore, Sunday Odele, Albert Okwuegbunam, Susan Pennell, Elizabeth Solomon, Moses O. Tejuoso, Teresa Woodcock, Breah Head, Jerri Vogel, and Mahdi Tamam.

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

Section 6.1(b)(5) allows the Governor to designate positions that authorize an employee to have “significant and independent discretionary authority.” 5 ILCS 315/6.1(b)(5). The Act goes on to provide three tests by which a person can be found to have “significant and independent discretionary authority.” Section 6.1(c)(i) sets forth the first two tests, while Section

6.1(c)(ii) sets forth a third.⁵ In its petition, CMS contends that the at-issue positions confer 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).

In order to meet the burden to raise an issue that might overcome the presumption that the designation is proper, an 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 are discussed below.

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

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

Though similar to the Act’s general definition of managerial employee in Section 3(j), 5 ILCS 315/3(j), the Section 6.1(c)(i) definition is broader in that it does not include a predominance element and requires only that the employee is “charged with the effectuation” of policies not that the employee is responsible for **directing** the effectuation. An employee **directs** the effectuation of management policy when he/she oversees or coordinates policy implementation by developing the means and methods of reaching policy objectives, and by determining the extent to which the objectives will be achieved. Ill. Dep’t Cent. Mgmt. Serv. (Ill. State Police), 30 PERI ¶ 109 (IL LRB-SP 2013) (*citing* Cnty. of Cook (Oak Forest Hospital))

⁵ Section 6.1(c) reads in full as follows:

For the purposes of this Section, a person has significant and independent discretionary authority as an employee if he or she (i) is engaged in executive and management functions of a State agency and charged with the effectuation of management policies and practices of a State agency or represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency or (ii) qualifies as a supervisor of a State agency as that term is defined under Section 152 of the National Labor Relations Act or any orders of the National Labor Relations Board interpreting that provision or decisions of courts reviewing decisions of the National Labor Relations Board.

5 ILCS 315/6.1(c).

v. Ill. Labor Rel. Bd., 351 Ill. App. 3d at 387); INA, 23 PERI ¶ 173 (IL LRB-SP 2007). However, in order to meet the first test set out in Section 6.1, a position holder need not develop the means and methods of reaching policy objections. It is sufficient that the position holder is charged with carrying out the policy in order to meet its objectives.

The 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.

The second test under Section 6.1(c)(i) indicates that a designation is proper if the position holder “represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency.” 5 ILCS 315/6.1(c)(i). This second test allows a position to be designated upon a showing that it either (a) takes discretionary actions that effectively control or implement agency policy or (b) effectively recommends such discretionary actions.

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

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

In other words, “employees are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 listed supervisory functions, (2) their ‘exercise of such authority is not

of a merely routine or clerical nature, but requires the use of independent judgment,’ and (3) their authority is held ‘in the interest of the employer.’” NLRB v. Kentucky River Comm. Care, Inc. (“Kentucky River”), 532 U.S. 706, 713 (2001) (*quoting* NLRB v. Health Care & Retirement Corp. of America, 511 U.S. 571, 573-574 (1994); *See also* Oakwood Healthcare, Inc. v. United Auto Automobile, Aerospace and Agricultural Implement Workers of America (“Oakwood Healthcare”), 348 NLRB 686, 687 (2006). A decision that is “dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement” is not independent. Oakwood Healthcare, 348 NLRB at 689.

C. The designation of the Bureau of Revenue Management & Federal Reporting PSA-Option 2 positions are proper.

The Bureau of Revenue Management and Federal Reporting is a subdivision of DHS’s centralized Office of Fiscal Services. All five employees designated in this Bureau presently supervise at least one subordinate employee, many of whom perform repetitive tasks related to gathering, monitoring, and reporting federal and state grant monies received or administered by DHS. State/Federal Grant Reporting Unit Supervisor Kathy Shuster, Draw Unit Supervisor Monica Cripe, Medical/Grant Reporting Unit Supervisor Lisa Fleigle, Administrative Claiming Unit Supervisor Lori McGuire, and Cost Allocation Unit PSA Teresa Woodcock are designated in Case No. S-DE-14-211 pursuant to Section 6.1(b)(5) as defined by Section 6.1(c)(i) and (ii). Each of these employees indicated that special assignments may be delegated from the Senior Public Service Administrator (SPSA) to the PSAs in the Bureau, who in turn disburse the work throughout the units.

A designation on the grounds that the employee is supervisory as defined in Section 6.1(c)(ii) is appropriate where: (1) the designated employee has the authority to engage in any of the enumerated supervisory functions (hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances); (2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment, and (3) their authority is held in the interest of the employer. Ill. Dep’t of Cent. Mgmt. Serv. (Dep’t of Public Health), Case No. S-DE-14-111 (IL LRB-SP 2013) (*citing* Kentucky River, 532 U.S. at 713, and Oakwood Healthcare, 348 NLRB at 687. A discussion of each position follows.

1. The designation of Kathy Shuster’s Supervisor of the Federal/State Grant Reporting position is proper.

Kathy Shuster’s unit is involved in gathering, reviewing and reporting State and Federal grant expenditures. Shuster and AFSCME both filed position-specific objections to the designation arguing that Shuster has two, not three, subordinates. AFSCME further states in its Objections that her “only role as to subordinates is to physically divide the work according to the subordinates’ job description and to review their work against tightly mandated guidelines.”

In her AFSCME Information Form Shuster acknowledges that she supervises two Accountant Advanced positions who are involved in gathering data and expenditures for grant reporting, maintaining records for various grants, completing grants, and reviewing grant budgets. Shuster contends that she spends approximately five percent of her time assigning work to her subordinates, five percent supervising, and fifteen percent reviewing the work of her subordinates, pointing out errors, and instructing her subordinates on ways to correct their work deficiencies. Shuster’s position description also includes the following uncontested duties:

- Supervises accounting activities of staff performing timely generation of reports required for federal report purposes and various fiscal information for enhancement of federal matching; and
- Coordinates, assigns, and reviews all required accounting reports within a specific time period.

Shuster’s position is authorized to responsibly direct her subordinates. Shuster has subordinates and, as necessary, decides what jobs her subordinates should perform next, and who should perform those tasks. Oakwood Healthcare, 348 NLRB at 691-2; *see also* Superior Officers Council and Cnty. of Cook, Sheriff of Cook Cnty. (Dep’t of Corrections), 15 PERI ¶3022 (IL LLRB 1999)(in order for an alleged supervisor to effectively direct subordinates, the supervisor “must be actively involved in checking, correcting and giving instruction to subordinates.”). Moreover, the position holder must be accountable for his subordinates’ work and must carry out such direction with independent judgment. Id. In other words, “it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary,” and that “there is a prospect of adverse consequences for the putative supervisor,” arising from his direction of other employees. Id.

Shuster's position description makes clear that she is held accountable for her staff's *timely generation* of reports and reviewing work within specific time periods. From these uncontested responsibilities, it is clear that Shuster would face adverse consequences if her subordinates did not timely produce their assigned work.

Based on the duties of her position description which she does not contest and the information she provided, Shuster's position is properly designated under Section 6.1(c)(ii) as she is authorized to responsibly direct her subordinates.⁶

2. The designation of Monica Cripe's Supervisor of Draw Unit position is proper.

Monica Cripe's unit is responsible for controlling cash flow of the Department's appropriation fund accounts and federal allocation accounts, including disbursing moneys and drawing down federal funds for reimbursement. Both Cripe and AFSCME filed position-specific objections to the designation, arguing that her supervision of her subordinates is routine and she plays no role in developing budgets, policy, or legislation. In her AFSCME Information Form, Cripe reviewed her position description and identified where she disagreed with her stated responsibilities.

According to the organizational chart, and Cripe's review of her position description, Cripe's position supervises an Accountant Advanced and an Executive 1, who in turn supervises an Accountant Advanced. Because the Executive 1 position is vacant, Cripe is directly supervising the Accountant Advanced. Cripe says she does not daily assign tasks because her subordinates perform repetitive tasks daily as they were assigned when they were hired. Cripe contends that the only other assignment she makes is when her Bureau Chief instructs his subordinate PSAs (including Cripe) to have a special project completed.

Cripe's position is authorized to assign work to her subordinates. Cripe (or her predecessor) apparently decided the tasks her subordinate would perform when they were initially hired, and by not exercising her authority to change their duties, she is continually maintaining her subordinates' assignments. Moreover, her subordinates have daily responsibilities, so in assigning special projects, Cripe must decide what, if any, duties will be performed, whether to reassign certain duties from one Accountant Advanced to the other or to

⁶ Because I find that the designation of Shuster's position is appropriate under Section 6.1(c)(ii), I make no determination as to the propriety of the designation under Section 6.1(c)(i).

perform any additional duties herself. Prioritizing the work in this way is exercising independent judgment. *See e.g. Entergy Mississippi, Inc. v. IBEW Local 608 and 985*, 357 NLRB No. 178 at *14 (December 30, 2011)(by taking into account various considerations to prioritize responses, supervisor exercised independent judgment).

Accordingly, I find that Cripe's position is properly designated pursuant to Section 6.1(b)(5) as defined by Section 6.1(c)(ii), in that her position qualifies as a supervisor as defined by the NLRA or interpreted by the NLRB.⁷

3. The designation of Lisa Fleigle's Supervisor of the Medical/Grant Reporting Unit position is proper.

Lisa Fleigle's Medical/Grant Reporting Unit is responsible for completing Medicare and Medicaid Cost Reports for State-operated facilities; coordinating federal programs for state facilities/school; and coordinating certain efforts between DHS, the Illinois Department of Healthcare and Family Services, and community healthcare providers. As Supervisor of the Unit, Fleigle supervises two employees, an Executive 2 and Executive 1.

Both she and AFSCME filed position-specific objections to the designation arguing that her only "supervisory" duties are signing off on time off requests and performing annual evaluations, which are clerical and routine in nature. However, AFSCME's assertion is not supported by Fleigle's Information Form. Fleigle states that she does not give daily assignments, as the employees are aware of the repetitive work their position is responsible for completing. Like her colleagues Cripe and Shuster, the SPSA to whom they all report, at times, assigns or delegates additional work to the PSAs for each to distribute amongst her staff. Like Cripe's subordinates, Fleigle's subordinates generally perform repetitive daily tasks. In order to assign the work of the special projects, Fleigle must decide what, if any, duties will be performed, whether to reassign certain duties from one subordinate to the other or to perform any additional duties herself. Prioritizing the work in this way is exercising independent judgment.

Accordingly, I find that Fleigle's position is properly designated pursuant to Section 6.1(b)(5) as defined by Section 6.1(c)(ii), in that her position qualifies as a supervisor as defined by the NLRA or interpreted by the NLRB.⁸

⁷ Because I find that the designation of Cripe's position is appropriate under Section 6.1(c)(i), I make no determination as to the propriety of the designation under Section 6.1(c)(ii).

⁸ Because I find that the designation of Fleigle's position is appropriate under Section 6.1(c)(ii), I make no determination as to the propriety of the designation under Section 6.1(c)(i).

4. The designation of Lori McGuire's Supervisor of the Administrative Claiming Unit position is proper.

Lori McGuire's unit is responsible for gathering and compiling expenditure information for federal financial grant reporting. As Supervisor of the Administrative Claiming Unit, McGuire supervises two employees. Both McGuire and AFSCME filed position-specific objections to the designation arguing that she does not exercise independent judgment when granting time off and that her completion of annual evaluations is routine and discretionary.

However, McGuire admits that she assigns work to her subordinates, though not necessarily on a daily basis. Her subordinates have duties they perform on a regular basis, but the McGuire's supervisor at times delegates work to the PSAs, including McGuire, who, in turn, distributes that work to her staff. McGuire also reviews the work of her coworkers, stating that the majority of the twenty percent of her time designated for supervision is likely spent reviewing work and training when new staff is hired.

McGuire does not contend that her authority to assign and review work has been limited in any way, and by deciding how to distribute work of special projects delegated by the SPSA, McGuire exercises independent judgment. As with her colleagues, McGuire's subordinates have daily responsibilities, so in assigning special projects, McGuire must decide what, if any, duties will be performed, whether to reassign certain duties from the Accountant Advanced to the Executive I, for example, or to perform any additional duties herself. Prioritizing the work in this way is exercising independent judgment. *See e.g. Entergy Mississippi, Inc.*, 357 NLRB No. 178 at *14 (by taking into account various considerations to prioritize responses, supervisor exercised independent judgment).

Accordingly, I find that McGuire's position is properly designated pursuant to Section 6.1(b)(5) as defined by Section 6.1(c)(ii), in that her position qualifies as a supervisor as defined by the NLRA or interpreted by the NLRB.⁹

5. The designation of the Teresa Woodcock's Cost Allocation PSA-Option 2 position is proper.

As a PSA-Option 2 in the Cost Allocation Unit, Teresa Woodcock is responsible for

⁹ Because I find that the designation of McGuire's position is appropriate under Section 6.1(c)(ii), I make no determination as to the propriety of the designation under Section 6.1(c)(i).

monitoring the review and maintenance of DHS's agency-wide grant accounting system. Both Woodcock and AFSCME filed position-specific objections to the designation arguing that she does not exercise independent discretion in supervising her one subordinate, she will not supervise her subordinate for much longer, and she has no role in the development of budgets, policies, or legislation.

Woodcock's position has been amended over the years, most recently in March 2013. Woodcock submitted historical position descriptions and organizational charts reflecting that prior to 2013, her position has not been authorized to supervise subordinates.¹⁰

Woodcock reviewed her current position description and identified where she believed there were inaccuracies, including the outline of supervisory responsibilities. Woodcock does not contest the following duties:

- Confers with manager of other Divisions, Bureau, and Offices on policy analysis and development;
- Confers with the Bureau Chief on feasibility of recommended policies;
- Serves as primary point of contact with other Bureaus and Offices;
- Works and confers with Bureau staff and other DHS staff coordinating activities engaged in agency-wide financial reporting activities and those related to fiscal review of new grant applications in meeting requirements specified or mandated, carries out appropriate responses as deemed by the Bureau Chief;
- Assists Bureau Chief with analysis related to Cost Allocation methodologies and preparation of the Departmental Public Assistance Cost Allocation Plan;
- Assists with coordinating and gathering information necessary for the preparation of the Department Indirect Cost Allocation Plan.

Woodcock argues that the designation of her position is improper, because her duties are "directed by, reviewed by, and/or approved by the Bureau Chief." Woodcock also contends that

¹⁰ In her AFSCME Information Form, Woodcock reports that her supervisor indicated that the CFO wanted each PSA to supervise someone so that the PSAs would all be removed from the union. Woodcock reports that her supervisor has indicated that this position will be transferred under the supervision of a different PSA-Option 2, and that Woodcock would, in the future, be responsible for the supervision of an as-yet-created Accountant position. Woodcock argues that her position was given a subordinate because the Chief Financial Officer wanted every PSA to supervise someone. However, because Woodcock's position is properly delegated under Section 6.1(c)(i), I need not address the propriety of her designation under Section 6.1(c)(ii).

she does not “have the authority to make decisions [or] set or revise policies and/or procedures.”

In addition to those duties listed above, Woodcock’s position description also includes the responsibility to “make[] recommendations for revisions of policies and procedures relative to the Bureau of Revenue Management and Federal Reporting.” With respect to this responsibility, Woodcock asserts that she “does **not** make recommendations for revision of **policy and procedures.**”¹¹ However, the historical position description provided by Woodcock reveals that this position has been authorized to make recommendations on revising Bureau policies and procedures since at least 2008.

Woodcock’s position description also contains the following duties:

- Meets with other DHS staff to develop, draft, and submit Public Assistant Cost Allocation Plan amendments resulting from new grants, mandated legislation, regulations, operations, personnel, and organizational structure changes; and
- Incorporates recommendations of various committees into the development and establishment of policy and procedures utilized in implementation and maintenance of programs under the purview of the Office of Fiscal Services.

With respect to this responsibility, Woodcock asserts, “I meet with DHS staff to ensure that the Division, Bureaus, and Offices **follow** current policies, procedures, and guidelines when updating methodologies of claiming costs in the Public Assistance Cost Allocation Plan.”¹² According to Woodcock, “Any and all changes in methodology are reviewed and approved/denied by [the Bureau Chief] or upper management,” and she incorporates “updates or changes in to the [Plan] amendments but **I do not develop or establish** these policies and procedures.”¹³ Woodcock does not contend that her authority to perform this responsibility has been limited in any way or that if she were to exercise this authority, her recommendations would be ineffective.

Based on the uncontested duties of the position, and in light of the information submitted by Woodcock, I find that her position is authorized to represent management interests by recommending discretionary actions that effectively control or implement DHS policy. Woodcock concedes that she confers with other managers on policy analysis, with the Bureau Chief on the feasibility of recommended policies, advises the Bureau Chief regarding grant

¹¹ Emphasis in Woodcock’s AFSCME Information Form.

¹² Emphasis in Woodcock’s AFSCME Information Form.

¹³ Emphasis in Woodcock’s AFSCME Information Form.

status, and assists the Bureau Chief with analyzing the methodologies and preparing the Cost Allocation Plan. Woodcock then simultaneously contends that she does not recommend any action but that the Bureau Chief reviews and approves changes. Regardless of whether Woodcock chooses to exercise the authority of her position to make recommendations, it is clear that since at least 2008, her position has been authorized to make recommendations regarding the agency-wide system and Plan she monitors. If the position were not authorized to make recommendations, no purpose would be served by having the position-holder confer with other managers on policy analysis and development or confer with the Bureau Chief on the feasibility of recommended policies – duties Woodcock does not contest.

Moreover, the recommendations the position is authorized to make relate directly to DHS management's policy positions, which are then implemented agency-wide. Neither Woodcock nor AFSCME contend that Woodcock's authority to make the recommendations specifically outlined in her position description have been limited in any way.

Accordingly, I find that Woodcock's position is properly designated under Section 6.1(b)(5) as further defined by Section 6.1(c)(i) in that she represents management interest by recommending discretionary actions that effectively control and implement DHS policy.

D. The designation of the PSA-Option 2/Fiscal/Budget Manager position held by Mary Gorman is proper.

Mary Gorman's position is designated in Case No. S-DE-14-211 pursuant to Section 6.1(b)(5) as further defined by Section 6.1(c)(i) and (ii). As the Bureau of Disability Determination Services's Fiscal/Budget Manager, Gorman directly supervises two employees, who in turn supervise two more employees. Through her staff, Gorman's Unit processes vouchers, resolves billing problems, updates spending plans, processes Court of Claims actions, and performs other fiscal functions. Based on Gorman's Information Form, AFSCME filed position-specific objections to the designation arguing that Gorman creates budget documents "as dictated by the SSA Program Operations manual," which are forwarded up her chain of command. AFSCME also contends that she exercises no supervisory authority. AFSCME's assertions are not supported by the information provided by Gorman, upon which AFSCME indicates all factual assertions are based.¹⁴

¹⁴ See AFSCME's Objections in Case No. S-DE-14-211, FN 1.

1. Gorman's position qualifies as a supervisor as defined by the NLRA or interpreted by the NLRB.

In her Information Form, Gorman identifies areas in her position description that she contests are inaccurate. Gorman does not contest that her position has the following duties:

- Assigns and reviews work;
- Provides guidance and training to assigned staff;
- Reassigns staff to meet day-to-day operating needs;
- Approves time off; and
- Prepares and signs performance evaluations.

Gorman indicates that she assigns work to “employees based on their job.” The fact that Gorman considers that her subordinates have different roles in the Unit (one is an Executive Secretary, while another is an Office Administrator supervising an Account Clerk and Office Clerk) does not eliminate the discretion she exercises to determine who will perform what work. Moreover, from Gorman’s description of the work performed by her subordinates, it appears that their work is not wholly comprised of routine, repetitive tasks that require no input or guidance.

Accordingly, I find that Gorman’s position is properly designated pursuant to Section 6.1(b)(5) as defined by Section 6.1(c)(ii), in that her position qualifies as a supervisor as defined by the NLRA or interpreted by the NLRB.

2. Gorman's position is engaged in executive and management functions and charged with the effectuation of management policies and practices.

In her Information Form, Gorman also confirms that she has a role in the budget process in that she “plans, develops, and monitors all aspects of the [Bureau’s] State and Federal Budgets.” According to Gorman, she completes the yearly annual plan/budget based on (1) the SSA’s workload and forecast of probable development and (2) DHS’s proposed costs. This plan is approved by her supervisors and then submitted to the Social Security Administration.

Preparing a budget has long been held by the Board and Illinois Appellate Court to be an executive and management function. *See Dep’t of Cent. Mgmt. Serv. (Pollution Control Bd.), v. Ill. Labor Rel. Bd., State Panel (“PCB”),* 2013 IL App (4th) 110877 ¶ 25; *Dep’t of Cent. Mgmt. Serv./ Illinois Commerce Comm’n v. Ill. Labor Rel. Bd. (“ICC”),* 406 Ill. App. 766, 774 (4th Dist. 2010). Therefore, Gorman’s position is properly designated under Section 6.1(c)(i) if it is

also charged with effectuating management policies and practices. In her Information Form, Gorman indicates that she is responsible for “interpreting State and Federal fiscal policy to formulate policies for vendor payments to ensure compliance.” Performing this function not only effectuates Department policy but also directs the manner in which the policies will be effectuated.

Accordingly, I find that Gorman’s position is also properly designated under Section 6.1(b)(5) as further defined by Section 6.1(c)(i) in that she is engaged in executive and management functions and charged with effectuating management policies.

E. The designation of the PSA-Option 2 position held by Melanie Griffiths is proper.

Melanie Griffiths’s position is designated in Case No. S-DE-14-211 pursuant to Section 6.1(b)(5) as further defined by Section 6.1(c)(i) and (ii). Griffiths is responsible for monitoring the general ledger system of the Department’s decentralized accounting system. Based on Griffiths’s AFSCME Information Form, AFSCME filed position-specific objections to the designation arguing that Griffiths does not have any subordinates, plays no role in developing policy, budgets, or legislation, and her duties do not involve managerial discretion or independent judgment.

Griffiths reviewed her position description and identified areas where she believed it was inaccurate. Griffiths identified that the subordinate, direct report listed on her position description actually reports to the SPSA, so she does not performance any of the listed supervisory duties. Griffiths does not contest that performs the following duties:

- Monitors and maintains the Department’s automated general ledger system;
- Reviews the activities of the technical staff engaged in general accounting; and
- Provides guidance and direction to facility staff regarding technical problems or issues arising from the general ledger system.

Griffiths’s position description also indicates that this position is expected to review systems and recommend changes. In response to this responsibility, Griffiths indicates that she “do[es] not recommend/develop any plans of action[] to change the modification process nor any changes in the system.” However, Griffiths does not contend that she is not charged with recommending changes based on the problems she uncovers or difficulties she encounters resolving problems.

Griffiths concedes that she “analyzes and resolves internal and external audit issues,” as

described in her position description. Her position description further places responsibility on this position to “modify departmental policies and procedures” in relationship to resolving audit issues. In response to this responsibility, Griffiths does not contest that she modifies policies, but states that she “update[s] the [Unit’s] procedural manual” but “does not implement any modifications.” It is logical that Griffiths would not necessary implement modifications, as the general ledger system is a decentralized system with other DHS staff entering information. Regardless, her policy modifications control how DHS staff work in order to hopefully avoid future audit findings.

Nothing in Griffiths’s comments calls into question the authority vested in the position to take, or at a minimum, recommend discretionary actions that control or implement Department policy regarding the Department’s accounting system. Griffiths does not deny that she is expected to make recommended changes or suggest that her authority to recommend changes has been limited in some way.

Accordingly, I find that Gorman’s position is also properly designated under Section 6.1(b)(5) as further defined by Section 6.1(c)(i) in that her position is authorized to represent management interests by taking and recommending discretionary actions that control DHS policy.

F. The designation of the PSA-Option SS2¹⁵/Supervisor of the Field Recovery Unit position held by Mario Lopez is proper.

Mario Lopez’s position is designated in Case No. S-DE-14-211 pursuant to Section 6.1(b)(5) as further defined by Section 6.1(c)(i) and (ii). The Field Recovery Unit is responsible for completing tasks related to DHS’s attempt to recover SNAP and TANF over payments. As supervisor of this unit, Lopez directly supervises two Executive 2s, who in turn supervise approximately ten other positions. Based on Lopez’s Information Form, AFSCME filed position-specific objections to the designation arguing that Lopez’s position does not require the exercise of independent judgment or managerial discretion and that Lopez reviews work against “explicit departmental guidelines.”

1. Lopez’s position qualifies as a supervisor as defined by the NLRA or interpreted by the NLRB.

¹⁵ The Option SS2 refers to the fact that this PSA-Option 2 position requires the holder to possess the ability to communicate in Spanish at a colloquial level.

Lopez reviewed his position description and identified where he disagreed with the responsibilities outlined therein. In one instance, Lopez indicates that his supervision “consists of only ensuring that [the Executive 2s] are correctly following our pre-established working procedures.” Lopez does not contest, however, that his position is authorized to review work, provide guidance and training to assigned staff, counsel staff regarding work performance, reassign staff to meet day-to-day operating need, establish annual goals and objectives, approve time off, and prepare and sign performance evaluations. With respect to assigning work, Lopez indicates that he does not assign work, because his subordinates give out all of the work assignments. However, Lopez’s statement that the Executive 2s make work assignments does not refute that Lopez’s position is authorized to exercise independent authority to assign work to Unit staff, and his direct subordinates in particular. Instead, it only raises a question of whether Lopez chooses to exercise the authority granted to him or whether he uses a more passive supervisory approach and delegates the supervisory authority granted to him by his employer to his subordinate. Even if Lopez, in exercising his discretion, chooses to delegate his authority to a subordinate, his position still qualifies as a supervisor. Neither AFSCME nor Lopez point to any manner in which his authority to assign work among his Unit has been limited in any manner.

Lopez also points to language in the 2012-2015 AFSCME Master Contract regarding working supervisors arguing that on the basis of his designation as a working supervisor, he should not be excluded from collective bargaining. However, the contract language existed prior to the amendment to the Act. Further, Section 15 of the Act makes clear that the Act, and not contracts entered into pursuant to the Act, takes precedence. 5 ILCS 315/15 (West 2012).

Accordingly, I find that Lopez’s position is properly designated pursuant to Section 6.1(b)(5) as defined by Section 6.1(c)(ii), in that his position qualifies as a supervisor as defined by the NLRA or interpreted by the NLRB.

2. Lopez’s position represents management interests by taking or recommending discretionary actions that effectively control or implement DHS policy.

Lopez does not contest that his position is responsible for identifying problems in systems and procedures used to collect overpayments and is authorized to notify and make recommendations for resolution to higher management. In the information he supplied to

AFSCME, Lopez indicated that he has recommended improvement to existing procedures, and that those recommendations were followed. However, Lopez states that his suggestions “had to be approved by managers above [his] position prior to their implementation.”

Lopez does not contend that his recommendations are routinely ignored or that they are otherwise ineffective in implementing policy. Instead, from his own statements, Lopez’s suggested improvements to agency procedures were approved and implemented. As such, I find that Lopez’s position is also properly designated under Section 6.1(b)(5) as further defined by Section 6.1 (c)(i) in that it represents management interests by taking or recommending discretionary actions that effectively control or implement DHS policy.

G. The designation of the PSA-Option 2/ Supervisor of the Expenditure Control Unit position held by Jerry Meado is proper.

Jerry Meado’s position is designated in Case No. S-DE-14-211 pursuant to Section 6.1(b)(5) as further defined by Section 6.1(c)(i) and (ii). Meado is the Supervisor of the Expenditure Control Unit, which is responsible for ensuring the DHS staff is properly reviewing and approving expenditure vouchers. Meado directly supervises four employees, an Executive 2, an Accountant Advanced, and two Account Technician 2s. According to Meado, the Accountant Advanced serves as a lead worker for the two Account Technician 2s, who are responsible for working with the Comptroller’s Office regarding the Agency’s rejected payments and processing adjustment documents. According to Meado, the Executive 2 that directly reports to him supervises other Unit staff. Based on the information Meado provided, AFSCME filed position-specific objections to the designation arguing that he does not adjust grievances and has no role in agency hiring, budget development, policies or legislation.

AFSCME also argues that he is “required to perform with independent judgment none of the attributes of being a supervisor.” However, this is not supported by the information provided by Meado. Meado reviewed his CMS 104 and identified duties he does not perform and other inaccuracies. Meado does not contest that his position is responsible for the following duties:

- Manages and review the work of professional staff responsible for the daily posting and approving of administrative activity to the Department’s Consolidated Accounting and Reporting System;
- Supervises and evaluates the activities of staff;
- Establishes goals and objectives of staff;

- Prepares and conducts annual performance evaluations;
- Sets schedules;
- Approves time off;
- Provides training; and
- Assigns duties.

Furthermore, Meado specifically states that he “can assign work to my staff, based on workloads and priorities” and can “give directions on how to proceed on work items to my staff.” As stated above, prioritizing the work in this way is exercising independent judgment.

Accordingly, I find that Meado’s position is properly designated pursuant to Section 6.1(b)(5) as defined by Section 6.1(c)(ii), in that his position qualifies as a supervisor as defined by the NLRA or interpreted by the NLRB.¹⁶

H. The designation of the Bureau of Audit Liaison PSA-Option 2s (Bureau Chief Albert Okwuegbunam and Audit Liaisons Anna Moore and Sunday Odele) is proper.

In Case No. S-DE-14-211, the petition identifies three PSA-Option 2 positions in the Bureau of Audit Liaison for designation. Audit Liaisons Anna Moore and Sunday Odele are both designated pursuant to Section 6.1(b)(5) as further defined by Section 6.1(c)(i). Bureau Chief Albert Okwuegbunam is designated pursuant to Section 6.1(b)(5) as further defined by Section 6.1(c)(i) and (ii).

Based on the AFSCME Information Forms and supplemental information submitted by the employees, AFSCME objects to the designation of the positions arguing that none of the employees play a role in the development of budgets, policy, or legislation. AFSCME also points to inaccuracies in the position descriptions, and contends that Okwuegbunam does not exercise independent judgment in carrying out his supervisory responsibilities. In their Information Forms, the employees each point out that their work product is reviewed by their chain of command and ultimately approved by others, including the Secretary. They also assert that they perform their duties at the direction of others, including external auditors.

The Bureau of Audit Liaison is responsible for coordinating the Department’s responses to internal and external audits, reviewing audits, and draft Agency responses. The Audit

¹⁶ Because I find that the designation of Meado’s position is appropriate under Section 6.1(c)(ii), I make no determination as to the propriety of the designation under Section 6.1(c)(i).

Liaisons¹⁷ are, as their working title suggests, the liaisons between DHS and external auditors.

Okweugbunam describes their work as follows:

[An] Audit Liaison[] serves as the Department's Auditor Coordinator for the audits of DHS programs, Coordinates responses to audit requests of external audits being conducted at DHS. Confers with departmental staff in confirming findings and to ascertain feasibility of impact of audit findings and recommendations. Prepares activity reports containing updated status of on-going audits; coordinates preparation of responses to the external audit findings and recommendations. Maintains tracking system of all federal, external, and internal reports pertaining to DHS external audits.

Each employee reviewed their position description and identified areas where there were inaccuracies. The position descriptions contain the following common uncontested duties:

- Coordinates the Department's response to requests for documentation;
- Consults with staff on problem areas emerging from federal claims, grants, etc.;
- Reviews supporting documentation for DHS staff and other state agencies and audit findings for accuracy and adherence to auditing requirements and standards;
- Drafts reports for supervisor documenting...recommendations to resolve the problem and to enhance utilization of resources and achievement of organizational objectives; and
- Confers with departmental staff in confirming findings and to ascertain feasibility of impact of recommendations.

The affidavit in support of the designation also contain the statement that the Audit Liaisons are authorized to review audits and draft Agency responses. These responsibilities are not contested.

The designation of these three positions is proper because they are authorized to represent management interests by recommending discretionary actions that effectively control or implement DHS policy. The Audit Liaisons are the face of DHS to the external auditors who are responsible for ensuring agency compliance with federal program guidelines, financial controls, and other operational controls. The Audit Liaisons are the primary individuals reaching out to program staff, gathering information for submission to external auditors, intervening where disagreements arise between auditors and agency staff, and reviewing agency information prior

¹⁷ Though Okweugbunam is the Bureau Chief, he also performs liaison duties with external auditors. In this section, when referring to duties common to the Audit Liaisons, I am including Okweugbunam's position in its performance of Audit Liaison duties.

to submission to make sure it is accurate and compliant with standards. The Audit Liaisons also review audit findings, review findings and recommendations with program staff, confer with program staff to ensure the feasibility of implementing recommendations, confer with program staff to develop corrective action plans, and formulate the agency responses. In performing these duties, the Audit Liaisons are recommending discretionary actions that control or implement DHS policy.

The Audit Liaisons argue that they should not be designated because their work is reviewed and approved by others. However, the Illinois appellate court has held that where employees implement management policies and practices, the fact that they “do not do so ‘independently’ is unimportant, given that the Act does not require such independence in management functions.” *See e.g. Dep’t of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd.*, 2011 IL App (4th) 090966 at ¶ 186. In the case of responding to audit findings and the accompanying responses and corrective actions plans, it is logical that managers in the affected program area, as well as other DHS managers would also be involved in reviewing the agency response. This does not negate the uncontested fact that the at-issue positions are authorized to recommend discretionary actions in the drafting of DHS’s responses to audit findings that control the Department policy. None of the three employees contend that their authority to make recommendations has been limited in some way or that their recommendations are otherwise ineffective.

Accordingly, I find that the designation of the PSA-Option 2 position held by Moore, Odele, and Okweugbunam¹⁸ are properly designated pursuant to Section 6.1(b)(5) as defined by Section 6.1(c)(i) in that they represent management interests by taking or recommending discretionary actions that effectively control or implement the policy of the Department.

I. The designation of the PSA-Option 2/Fiscal Services Manager position held by Susan Pennell is proper.

Susan Pennell’s position is designated in Case No. S-DE-14-211 pursuant to Section 6.1(b)(5) as further defined by Section 6.1(c)(i). Pennell is the Fiscal Services Manager at McFarland Mental Health Center under a Fiscal Shared Services Program with Treatment and Detention Facility (TDF).

¹⁸ Because I find that the designation of Okweugbunam’s position is appropriate under Section 6.1(c)(i), I make no determination as to the propriety of the designation under Section 6.1(c)(ii).

She and AFSCME both filed position-specific objections to the designation arguing that she does not have any subordinates, is not involved in budget preparation, and is following policies and procedures in the performance of her job. Pennell reviewed her position description and identified where inaccuracies existed (e.g. her alleged subordinate that has been removed from headcount). However, Pennell does not contest that her position is authorized to perform the following duties outlined in her position description:

- Controls and implements the contract negotiations process for TDF;
- Manages the budget analysis, accounting system and contract negotiations;
- Provides budgetary reports for Central Office, Facility Director, Facility Director of Administration, and McFarland Business Administrator and maintains current staffing and personal services projections;
- Reviews the facility personnel needs and utilization in terms of budget, participates in discussions of staffing, recommends personnel action to TDF management as it pertains to fiscal operations;
- Performs procurement functions, including reviewing, evaluating, prioritizing, and authorizing purchases;

Based on these uncontested duties, it is evident that Pennell's position is authorized to take or recommend discretionary actions that effectively control and implement DHS policy. Pennell is responsible for knowing how much money the TDF has spent and is likely to spend in the future. Based on this information, Pennell's position is responsible for participating in discussions regarding what, if any, personnel actions are required by the fiscal outlook. Pennell's position is also responsible for controlling and implementing the contract negotiations process for the TDF. In order to perform those duties, a person in Pennell's position must either take discretionary actions or recommend them. In fact, the position description for the position specifically charges the position holder with making recommendations for the fiscal management of DHS's facility and programs. Moreover, neither Pennell nor AFSCME contend that Pennell's recommendations are ineffective or that her authority to take or recommend discretionary actions has been somehow limited.

Accordingly, I find that Pennell's position is properly designated pursuant to Section 6.1(b)(5) as defined by Section 6.1(c)(i) in that it represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of the

Department.

J. The designation of the PSA-Option 2/Program Support Manager position held by Elizabeth Solomon is proper.

Elizabeth Solomon's position is designated in Case No. S-DE-14-211 pursuant to Section 6.1(b)(5) as further defined by Section 6.1(c)(i) and (ii). Solomon is the Program Support Manager in the Division of Developmental Disabilities. She supervises one employee, who performs work similar to hers.

Based on Solomon's Information Form, AFSCME filed position-specific objections to the designation arguing that Solomon has no supervisory authority, as she does the same work as her subordinate, has no discretionary power, and no role in budgets, policy, or legislation. Solomon contends that the attached position description with a 2011 effective date is not the same position description that was attached to the posting for the position, which bore a 2007 effective date. Specifically, Solomon contends that paragraph 4 of the 2011 (current) position description, which refers to duties related to special projects within the Division Agency Plan process, is inaccurate. However, Solomon does not contest the following duties in her current position description:

- Determines annual funding levels for grant-funded program and determines funding adjustments;
- Prepares budget projections for community-based services;
- Serves as Division expert on resolving community-provider agency issues;
- Makes recommendations regarding statewide Division policy development related to maximizing federal Medicaid waiver funding;
- Makes determinations regarding Division community provider funding (e.g. grant adjustments, lapse fund recoveries as per the Illinois Grant Funds Recovery Act);
- Assists in problem resolution of fiscal issues and solves service reporting and billing issues;
- Serves as liaison between providers, other Division staff, MIS and Office of Clinical, Administrative and Program Support to resolve issues related to client enrollment, billing payments, and other Problems; and
- Recommends solutions for funding issues or other matters.

Solomon describes her work to include the following:

- Develops, implements, and tracks all community-based service provider funding and annual contract allocations for the Division of Developmental Disabilities;
- Determines annual contracting levels;
- Coordinates the associated procurement and CAAF approvals and implement contract documents and related materials; and
- Track Division spending regarding community appropriations.

Solomon's uncontested duties reveal that she represents the Division by taking discretionary actions in resolving issues with community providers, adjusting grants as she determines necessary, and serving as a liaison for Division programs. Solomon's position is also specifically authorized to recommend discretionary action regarding statewide Division policy development related to maximizing federal Medicaid waiver funding and resolving funding issues. Neither Solomon or AFSCME contend that these recommendations are ineffective or that Solomon's authority has been limited in some way.

Accordingly, I find that Solomon's position is properly designated pursuant to Section 6.1(b)(5) as defined by Section 6.1(c)(i) in that it represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of the Department.¹⁹

K. The designation of the PSA-Option 2/Business Administrator position held by Moses O. Tejuoso is proper.

Tejuoso's position is designated in Case No. S-DE-14-211 pursuant to Section 6.1(b)(5) as further defined by Section 6.1(c)(i) and (ii). Tejuoso is the Business Administrator at the Division of Rehabilitation Service's Illinois Center for Rehabilitation and Education-Roosevelt (ICRE-R). As Business Administrator, Tejuoso reports directly to the Superintendent and directly supervises five employees – an Accountant Advanced, an Office Associate, an Account Technician, an Information Services Specialist II, and a Storekeeper I.

Relying on Tejuoso's AFSCME Information Form, AFSCME objects to the designation arguing that Tejuoso is not a manager because he has "no role in formulation of departmental

¹⁹ Because I find that the designation of Solomon's position is appropriate under Section 6.1(c)(i), I make no determination as to the propriety of the designation under Section 6.1(c)(ii).

policy or legislation,” and his role in the budget is “only to inform his supervisors of the prior year’s experience.” Further, AFSCME argues that Tejuso “need exercise no independent judgment as he follows routine and pre-established policies.” However, in its Objections, AFSCME states that, to the extent its position-specific objections are fact-based, the facts arise from the attached AFSCME Information Forms.²⁰ Tejuso completed an Information Form and attached a performance evaluation and position description with handwritten notes. Tejuso’s submitted documentation contradicts AFSCME’s assertions regarding his position.

Tejuso describes his work to include, the following:

- Supervises information technology and accounting staff engaged in technical support, budget monitoring and fiscal activities;
- Confers with DHR/DRS Fiscal Unit to implement a workable budget, budget revision and monitoring in order to maintain fiscal responsibilities for ICRE-R;
- Confers with and assists the superintendent in the maintenance and preparation of annual budgets; and
- Confers with internal and external auditors to reduce and eliminate audit findings in the area of fiscal activities at ICRE-R.

Tejuso also does not contest the following duties contained in his position description:

- Supervises and evaluates activities of staff responsible for the ICRE-R business office including technical support and fiscal responsibilities;
- Establishes goals and objectives for subordinate staff;
- Provides training and assigns duties;
- Sets staff schedules and approves time off;
- Prepares, conducts, and signs annual performance evaluation of staff; and
- Counsels employees concerning work performance, productivity, and/or conduct.

Tejuso also states that he assigns work to the employees in his unit and directs his subordinate employees regarding their work on assignments based on their position descriptions. Tejuso’s evaluation, wherein Tejuso is evaluated as having exceeded expectations in all areas, including leadership and subordinate development. The evaluation also contains the following comments regarding Tejuso’s performance:

²⁰ See AFSCME Objections in Case No. S-DE-14-211, FN 1.

- Tejuso “consistently demonstrates a high level of initiative and responsibility assisting the Superintendent in planning and managing the budget for the school and coordinating the operational needs and projects of the school;”
 - He “works with his Business Office staff to ensure that all fiscal guidelines and operational needs are met or exceeded” even though his unit is “two positions down;”
 - Tejuso “has positive working relationships with key partners throughout the agency allowing ICRE-R to be well represented and to ensure the most productive outcomes on projects, initiatives and routine business operations.”
1. Tejuso’s position qualifies as a supervisor as defined by the NLRA or interpreted by the NLRB.

Tejuso’s description of his work, the uncontested duties in his position description, and the comments of his supervisor in his glowing performance evaluation make clear that Tejuso’s position is properly designated under Section 6.1(c)(ii). Tejuso has five subordinates, assigns duties to them, and utilizes his staff to carry out ICRE-R’s fiscal, information technology, and budget functions. Tejuso mentions that he directs work according to his subordinates’ position descriptions, which is logical since many of his subordinates have very different functions. Though deciding to assign audit compliance functions to one of the accountants and not to the storekeeper may not require a large degree of independent discretion, the other evidence presented makes clear that Tejuso exercises discretion in determining how best to disburse work given that all of the subordinate positions are not filled. Moreover, his evaluation makes clear that in addition to routine Business Office functions, Tejuso oversees other projects and initiatives.

Accordingly, I find that Tejuso’s position is properly designated pursuant to Section 6.1(b)(5) as defined by Section 6.1(c)(ii), in that his position qualifies as a supervisor as defined by the NLRA or interpreted by the NLRB.

2. Tejuso’s position is engaged in executive and management functions and is charged with effectuation of management policies and practices.

Tejuso’s responsibilities related to budget formulation, implementation, and monitoring, as described by Tejuso in his Information Form and by his supervisor in his performance evaluation, reveal that Tejuso is engaged in executive and management functions and charged

with effectuation of management policies and practices. See PCB, 2013 IL App (4th) 110877 ¶ 25; ICC, 406 Ill. App. 3d at 774 (“executive and management functions” include preparing a budget and assuring that an agency or department runs effectively).

Therefore, I find that his position is also appropriately designated under Section 6.1(b)(5) as that is further defined by Section 6.1(c)(i).

L. The designation of the PSA-Option 2/Supervisor of the Administrative Payment Unit position held by Breah Head is proper.

Head’s position is designated in Case No. S-DE-14-211 pursuant to Section 6.1(b)(5) as further defined by Section 6.1(c)(i) and (ii). Head is the Supervisor of the Administrative Payment Unit, which processes payments for the Division of Family and Community Services’s community health and prevention programs. As Supervisor, Head directly supervises five employees – four Accountant Advanced positions and one Administrative Assistant. Though AFSCME did not file a specific objection, Head filed an objection on her own behalf. Head indicates that she is not involved in policy development, budgeting, or deciding how policies or legislation will be implemented. Head indicates that five subordinates directly report to her and that she does assign work to her employees with input from her direct supervisor, and gives her employees direction “with respect to their work and how to complete it.”

A designation on the grounds that the employee is supervisory as defined in Section 6.1(c)(ii) is appropriate where: (1) the designated employee has the authority to engage in any of the enumerated supervisory functions (hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances); (2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment, and (3) their authority is held in the interest of the employer. Ill. Dep’t of Cent. Mgmt. Serv. (Dep’t of Public Health), Case No. S-DE-14-111 (IL LRB-SP 2013) (*citing* Kentucky River, 532 U.S. at 713, and Oakwood Healthcare, 348 NLRB at 687).

Here, Head admits that she is authorized to assign work to her subordinates and does not contest the duties in her position description which authorize her to assign and review work, provide guidance and training to assigned staff, counsel staff regarding work performance, reassign staff to meet day-to-day operating needs, establish annual goals and objectives, approve

time off, and prepare and sign performance evaluations. Moreover, Head does not contend that her exercise of the authority is routine or clerical in nature.

Accordingly, I find that Head's position is properly designated pursuant to Section 6.1(b)(5) as defined by Section 6.1(c)(ii),²¹ in that her position qualifies as a supervisor as defined by the NLRA or interpreted by the NLRB.

M. The designation of the PSA-Option 8C position held by Jerri Vogel is proper.

Vogel's position was designated in Case No. S-DE-14-212 pursuant to Section 6.1(b)(5) as further defined by Section 6.1(c)(i). AFSCME, relying on Vogel's AFSCME Information Form, filed position-specific objections to the designation arguing that the position does not supervise any subordinates and final decisions are made by her supervisor. Based on the duties of her position that she does not contest, I find that Vogel's position is properly designated in that it represents management interests by taking or recommending discretionary actions that effectively control or implement DHS policy.

Vogel is a Certified Public Accountant (CPA) whose position reports directly to the Bureau Chief of the General Accounting Bureau of DHS's Office of Fiscal Services. Vogel's uncontested duties include, among others, the following:

- Serves as a liaison to external auditors and drafts response audit findings;
- Serves as liaison to the Federal Reporting Unit for information required for GAAP reports;
- Confers with managers on policy analysis and development, makes recommendations for revision of policies and procedures relative to the Office of Fiscal Services;
- Drafts recommended policy and program procedures resulting from mandated legislation, regulations, operations, personnel, organization structure, and the Secretary;
- Confers with the Chief or Assistant Chief, administrative staff, and the Secretary's Office on feasibility of recommended policies;
- Interprets new legislation and administrative policies and procedures applicable to the Office in partnership with the DHS Office of Legislation;

²¹ Because I find that the designation of Head's position is appropriate under Section 6.1(c)(ii), I make no determination as to the propriety of the designation under Section 6.1(c)(i).

- Acts with authority in the implementation of the goals and objectives of the Chief or Assistant Chief;
- Examines issues impacting agency management and statewide operation;
- Prepares drafts for funding issues, prepares issue papers, drafts recommendations for the Chief or Assistant Chief's review;
- May represent the Chief or Assistant Chief at designated meetings, conferences, and other situations; and
- Makes recommendations to the Chief or Assistant Chief regarding specific courses of action.

Vogel's duties require her to represent management interests by taking or recommending discretionary actions. Vogel's position is authorized to be an integral part of DHS's overall management of coordinated financial reporting and accounting systems. Neither Vogel nor AFSCME contest that the position is specifically charged with making policy recommendations and advising superiors as to the appropriate course of action. Vogel contends that she does not have the authority to approve or implement policies or procedures without the approval of the Assistant Chief. However, the Illinois Appellate Court has held that where employees implement management policies and practices, the fact that they "do not do so 'independently' is unimportant, given that the Act does not require such independence in management functions." *See e.g. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd.*, 2011 IL App (4th) 090966 at ¶ 186. Moreover, neither Vogel nor AFSCME contend that Vogel's recommendations are ineffective or that her authority to take or recommend discretionary actions has been somehow limited.

Accordingly, I find that Vogel's position is properly designated pursuant to Section 6.1(b)(5) as defined by Section 6.1(c)(i) in that it represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of the Department.

N. The designation of the PSA-Option 2/Financial Reporting Supervisor position held by Mahdi Tamam is proper.

Tamam's position was designated in Case No. S-DE-14-225,²² pursuant to Section

²² As referenced above, this position was initially designated in Case No. S-DE-14-211 and identified as vacant. It was later withdrawn and refiled in Case No. S-DE-14-225, which correctly identified Tamam as the occupant of the position.

6.1(b)(5) as further defined by Section 6.1(c)(i) and (ii). Relying on the information form completed by Tamam, AFSCME objected to the designation arguing that the position description was inaccurate and that Tamam did not have any subordinates. However, a review of Tamam's Information Form indicates that Tamam did not state that his position description was inaccurate. Instead, Tamam states repeatedly that in the two months he has been in the position (Tamam accepted the position on December 1, 2013, and completed his AFSCME Information Form on February 7, 2014), he has not performed certain tasks outlined in the position description.

Included in the duties, which Tamam states that he has yet to complete, is the responsibility to "analyze[] and resolve[] internal and external audit issues, and modif[y] departmental policies and procedures." Tamam does not contest that his position is authorized to perform these functions or otherwise argue that his authority in this area has been limited in some way by the Department. Because establishing policies and procedures is a recognized executive and management function, ICC, 406 Ill. App. 3d at 774, Tamam's designation is proper if the position is also charged with the effectuation of management policies and practices.

I find that based on the information provided by Tamam, this criterion is also met. Tamam describes that as lead worker on "the IDHS Cash Management project," he prepared the functional requirements for the project, developed a flow chart, and user tools for the fiscal manager and MIS manager's review. Generally, the position is authorized to carry out the Department's accounting and fiscal reporting policies and practices. The position is responsible for conferring with various organizations of the department in resolving operation accounting and reporting problems as they relate to Comptroller operations and monitoring and maintain the Department's automated general ledger system.

Accordingly, I find that Tamam's position is properly designated under Section 6.1(b)(5) as it is further defined by Section 6.1(c)(i),²³ in that it is engaged in executive and management functions and charged with the effectuation of management policies and practices of the Department.

III. CONCLUSIONS OF LAW

The Governor's designations in these cases are properly made.

IV. RECOMMENDED ORDER

²³ Because I find that the designation of Tamam's position is appropriate under Section 6.1(c)(i), I make no determination as to the propriety of the designation under Section 6.1(c)(ii).

Unless this Recommended Decision and Order is rejected or modified by the Board, the following PSA-Option 2 positions with 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:

<u>Position Number</u>	<u>Working Title</u>	<u>Incumbent</u>
37015-10-07-010-00-01	System Administrator and Supervisor	Kelly Turner
37015-10-07-141-00-29	AMU/TOP Supervisor	Mario Lopez
37015-10-07-200-00-01	Bureau Chief - Audit Liaisons	Albert Okwuegbunam
37015-10-07-200-11-01	Liaison between external and DHS re: Financial and Compliance Audits	Anna Moore
37015-10-07-200-12-01	Liaison between external and DHS re: Financial and Compliance Audits	Sunday Odele
37015-10-07-310-00-01	Grant Reporting Supervisor	Kathy Shuster
37015-10-07-320-00-01	Draw Unit Supervisor	Monica Cripe
37015-10-07-340-00-01	Medical/Grant Reporting Supervisor	Lisa Fleigle
37015-10-07-350-10-01	Administrative Claims Supervisor	Lori McGuire
37015-10-07-350-20-01	Cost Allocation Supervisor	Terry Woodcock
37015-10-07-360-00-01	Grant Reporting Supervisor	Vacant
37015-10-07-370-00-01	Grant Reporting Supervisor	Vacant
37015-10-07-400-13-01	General Ledger Maintenance Supervisor	Melanie Griffiths
37015-10-07-410-20-01	Cash Receipts and Adjustments Supervisor	Vacant
37015-10-07-710-00-01	Voucher Unit Supervisor	Jerry Meado
37015-10-08-000-00-01	Budget Liaison	Vacant
37015-10-08-410-00-01	Budget Liaison	Lynda Vallorz
37015-10-08-500-10-01	Budget Liaison	Vacant
37015-10-08-500-20-01	Budget Liaison	Vacant
37015-10-08-600-10-01	Budget Liaison	Vacant
37015-10-08-600-40-01	Budget Liaison	Vacant
37015-10-44-800-00-01	Fiscal/Budget Manager	Moses Tejuso
37015-10-64-220-00-01	Fiscal/Budget Manager	Mary Gorman
37015-10-66-053-00-01	Manager of Policy and Procedures for the Program Development Section	Sims, Constance
37015-10-66-520-00-01	Data for budget development	Solomon, Elizabeth
37015-10-83-400-00-01	Business Administrator	Jeffrey Frey
37015-10-88-440-00-01	Business Administrator	Susan Pennell

37015-10-99-780-10-01	Supervisory/Budget	Vacant
37015-10-99-780-20-01	Supervisory/Budget	Breah Head
37015-10-99-780-30-01	Supervisory/Budget	Vacant
37015-10-41-310-10-01	Fiscal/Budget Manager	Russell Hatchett
37015-10-07-400-12-01	Financial Reporting Supervisor	Mahdi Tamam

Unless this Recommended Decision and Order is rejected or modified by the Board, the following PSA-Option 8C positions with 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:

37015-10-07-400-10-01	CPA	Jerri Vogel
37015-10-07-400-11-01	Agency Accounting Supervisor	Vacant

V. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board’s Rules and Regulations, 80 Ill. Admin. Code Parts 1300,²⁴ parties may file exceptions to the Administrative Law Judge’s Recommended Decision and Order and briefs in support of those exceptions no later than three days after service of this recommended decision and order. Exceptions shall be filed with the Board by electronic mail at an electronic mail address designated by the Board for such purpose, ILRB.Filing@illinois.gov, and served on all other parties via electronic mail at its e-mail address as indicated on the designation form. Any exception to a ruling, finding, conclusion or recommendation that is not specifically urged shall be considered waived. A party not filing timely exceptions waives its right to object to this recommended decision and order.

Issued at Springfield, Illinois, this 24th day of March, 2014.

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

Sarah R. Kerley

**Sarah Kerley
Administrative Law Judge**

²⁴ Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf