

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

State of Illinois, Department of Central)	
Management Services, (Department of)	
Financial and Professional Regulation),)	
)	
Petitioner)	
)	
and)	
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	Case No. S-DE-14-229
)	
Labor Organization-Objector)	
)	
and)	
)	
Joel Campuzano,)	
)	
Employee-Objector)	
)	

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

I. BACKGROUND

Section 6.1 of the Illinois Public Labor Relations Act, 5 ILCS 315/6.1 (2012) *added by* Public Act 97-1172 (eff. April 5, 2013), allows the Governor of the State of Illinois to designate certain public employment positions with the State of Illinois as excluded from collective bargaining rights which might otherwise be granted under the Illinois Public Labor Relations Act (Act). In order for a designation to be proper the position must be *eligible* for designation based upon its bargaining unit status, the position must *qualify* for designation based upon its job title and/or job duties, and the Governor must provide the Illinois Labor Relations Board (Board) *specific information* as identified in the Act.

Section 6.1 identifies three broad categories of employment positions that may be *eligible* for designation based upon the position’s status in a certified bargaining unit. 1) positions which were first certified to be in a bargaining unit by the 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.

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

- (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[, 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(b) also provides that in order for a position to be properly designated, the Governor or his agent shall provide in writing to the Board the *following information*: the job title of the designated employment position, the job duties of the employment position, the name of the employee currently in the employment position, the name of the State agency employing the incumbent employee, and the category under which the position qualifies for designation.

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

On March 13, 2014, the Illinois Department of Central Management Services (CMS), on behalf of the Governor, filed the above-captioned designation petition pursuant to Section 6.1 of the Act and Section 1300.50 of the Board’s Rules. The petition seeks to exclude the following

Option 1 Public Service Administrators (PSAs) at the Illinois Department of Financial and Professional Regulations (IDFPR):

<u>Option</u>	<u>Position Number</u>	<u>Working Title</u>	<u>Incumbent</u>
Option 1	37015-13-40-625-00-01	Manager - Real Estate Licensing	Jo Ingram
Option SS1	37015-13-40-961-00-01	Supervisor - Athletic and Professional Boxing Investigations	Joel Campuzano

Along with the designation petition, for each position CMS submitted a CMS-104 position description, an organizational chart, and an affidavit from an individual with knowledge of the duties and responsibilities of the at-issue position.

On March 21, 2014, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME), pursuant to Section 1300.60(a)(3) of the Board's Rules, filed objections to the designation of both positions contained in the above referenced petition. Based on my review of the designations, the documents submitted as part of the designation, documents I have incorporated into the record, the objections, and the arguments and documents submitted in support of those objections, I find that the designations have been properly submitted and are consistent with the requirements of Section 6.1 of the Act. Consequently, I recommend that the Executive Director certify the designation of the positions at issue 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.

Case No. S-DE-14-162

The two positions at issue were previously subject to the designation petition filed in Case No. S-DE-14-162, but CMS withdrew the two positions from the petition prior to the Board reaching a final decision on the matter. On January 13, 2014, CMS, on behalf of the Governor, filed designation petition in Case No. S-DE-14-162 pursuant to Section 6.1 of the Act and Section 1300.50 of the Board's Rules. The petition sought to exclude 12 PSAs at IDFPR, including the two positions at issue here.

On January 22, 2014, AFSCME filed objections to the designation of all the positions at issue in Case No. S-DE-14-162. Also on January 22, 2014, Joel Campuzano, an employee of the State of Illinois who occupies one of the positions designated as excluded from collective bargaining rights, filed objections to the designation of the position that he occupies. Upon review, I found that the objections sufficiently raised issues that *might* overcome the presumption

that the designation of Campuzano's position was proper under Section 6.1 of the Act. Accordingly, a hearing was held on February 4, 2014, before the undersigned in Chicago, Illinois, at which time all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, and to argue orally.¹ On February 21, 2014, I issued a Recommended Decision and Order (RDO) finding that while the positions held by Ingrum and Campuzano qualified for designation under Section 6.1(b)(5), the designations did not comport with the requirements of Section 6.1 because CMS was required to provide the names of any incumbents in designated positions in writing to the Board, and neither the petition, nor any subsequent documents provided by CMS include this information. Accordingly, on February 21, 2014, I recommended that the Executive Director certify the designation of 10 of the positions but decline to certify the designation of the two positions held by Ingrum and Campuzano.

On February 24, 2014 CMS moved to withdraw the designation of these two positions. On February 24, 2014, the Board's General Counsel issued an order granting CMS's motion to withdraw Ingrum and Campuzano's positions from Case No. S-DE-14-162. On February 26, 2014, pursuant to Board rules, 80 Ill. Admin. Code §1300.130, AFSCME filed exceptions to the RDO, which included an exception to the General's Counsel's Order allowing CMS to withdraw Ingrum's and Campuzano's positions from Case No. S-DE-14-162. On March 11, 2014, the Board issued a Decision and Order in Case No. S-DE-14-162. The Board declined to address AFSCME's constitutional exceptions, rejected all of AFSCME's exceptions, and certified the 10 positions as recommended in the RDO. However, because the Board rejected AFSCME's exception and allowed CMS to withdrawal the two positions from the petition, the Board did not address the ALJ's findings with respect to the positions held by Ingrum and Campuzano.

As stated above, CMS filed the current petition on March, 13, 2014. In the interest of judicial economy, since I was the assigned ALJ in Case No. S-DE-14-162, I am also the ALJ assigned to this matter. On March 14, 2014, in light of record developed in Case No. S-DE-14-162, I e-mailed the parties, informing them that I am incorporating the following documents from Case No. S-DE-14-162 into the record of the instant case: AFSCME's objections, in their

¹ The hearing was held to resolve issues regarding Campuzano's position, and the position held by Nancy Illg, also an employee at issue in Case No. S-DE-14-162. The designation of Illg's position is not at issue in this current petition.

entirety;² Campuzano's objections; the hearing transcript; and the Recommended Decision and Order.³ I also clarified that the inclusion of the previous objections did not preclude any party from filing new objections, and that any new objections should: 1) address whether AFSCME or Campuzano disclaim any previous objections; 2) address whether the parties object to the findings or analysis in the previous RDO, with arguments supporting such objections; and 3) include any new arguments as to why Ingram's position and Campuzano's positions should not be excluded under Section 6.1 of the Act. Finally, I included attached copies of the objections and RDO, and informed Campuzano and Ingram that copies of the transcript are available at the Board's offices for them to review in order to form any objections they wish to submit.⁴

II. STIPULATIONS⁵

1. The Board's State Panel has jurisdiction to hear this matter pursuant to Section 5 and Section 20(b) of the Act.
2. American Federation of State, County and Municipal Employees, Council 31 is a Labor Organization within the meaning of Section 3(i) of the Act.
3. Department of Central Management Services is a Public Employer within Section 3(o) of the Act.
4. Joel Campuzano is a public employee as defined by Section 3(n) of the Act.
5. American Federation of State, County and Municipal Employees, Council 31 is the exclusive representative of a bargaining unit of which Joel Campuzano is a member.
6. There exists a collective bargaining agreement between CMS and AFSCME which covers the at-issue employees.⁶

² While only some of the previous objections are relevant to the instant case, it is unnecessarily cumbersome to incorporate only certain pages of the objections.

³ The Board Decision for Case No. S-DE-14-162 was issued later on that same date, and as such was not incorporated into the record.

⁴ Campuzano did not file additional objections, but because I have incorporated the objections he filed in Case No. S-DE-14-162 into the record, I find that his inability to provide additional objections does not bar his status as a party to this case.

⁵ The stipulations were proposed during the hearing for Case No. S-DE-14-162. AFSCME and Campuzano were provided the opportunity to object to the findings and analysis in the previous RDO that incorporated such stipulations. The filed objections do not address the stipulations, and there is no evidence of a change in facts or law that would make the previous stipulations inapplicable. On March 25, 2014, I issued an Order to Show Cause instructing CMS to provide evidence of a change in facts or applicable law that would make the previous stipulations inapplicable, and absence a response the previous stipulations would be incorporated into the record of the instant case. CMS did not file a response. Accordingly, the parties are bound by their previous stipulations. See County of Kankakee and Coroner of Kankakee County, 28 PERI ¶ 21 (IL LRB-SP 2011)(binding the petitioner to its previous stipulation in part because the petitioner did not provide evidence of applicable facts or change in applicable law).

III. ISSUES AND CONTENTIONS

The issue is whether the designations as identified in the petition and supporting documentation comport with Section 6.1 of the Act. CMS contends that the designations are proper, and the objectors contend that the designations are improper. CMS's designation petition and the attached documentation indicate that the positions at issue qualify for designation under Section 6.1(b)(5) of the Act, and that the Board certified the positions into bargaining unit RC-63 on January 20, 2010.

AFSCME's objections consist of three main portions: first AFSCME incorporates its Objections from Case No. S-DE-14-162 (incorporated objections); second, AFSCME incorporates its Exceptions and Brief in Support from the Recommended Decision and Order issued in Case No. S-DE-14-162 (incorporated exceptions); and third, AFSCME objects to this designation petition because AFSCME argues that it has been prejudiced by CMS's petition of employees that were previously petitioned for because AFSCME has to present the same argument it previously presented before the Board.⁷ AFSCME's incorporated objections include both general objections and specific objections. In its general objections AFSCME argues that the petition itself is improper under Section 6.1 of the Act. In its specific objections, AFSCME argues that the positions identified in the petition should not be designated under Section 6.1 of the Act, and include factual allegations to support this contention.

A. Issues Specific to the Employment Positions At Issue

AFSCME's Director of Organizing, Tracey Abman, wrote an affidavit attesting that she sent an AFSCME Information Form (form) to all the at-issue employees in order to ascertain the "actual job duties" of the employees subject to the designation petition, and to "allow the employees to describe any inaccuracies in their position description." The specific objections are based upon the information provided by the employees that completed the form, both of which are attached to the objections. Campuzano's individual objections are identical to the form.

1. Incorporated Objections to CMS's filing

As stated above, CMS's filing consists of the designation petition, and for each position identified in the petition CMS filed a CMS-104 position description, an organizational chart, and

⁶ The parties did not respond to an Order to Show Cause, as such, the meaning remains as "all the petitioned-for employees in Case No. S-DE-14-162."

⁷ Arguments incorporated from Case No. S-DE-14-162 addressing specific employment positions not at issue in the present petition, will not be addressed.

an affidavit from an individual with knowledge of the duties and responsibilities of the designated position. Each CMS-104 identifies that the information contained within as a “current and accurate statement of the position duties and responsibilities” of each position at issue. Each organizational chart is dated March 6, 2014, identifies each position by position number, the position’s incumbent, if any, and the subordinates and supervisors of each position.

a. Jo Ingram

i. CMS’s filing

Jeff Read, the Assistant Deputy Director, for IDFPR’s Licensing and Testing, completed and signed an affidavit attesting that Jo Ingram is authorized to have significant and independent discretionary authority as an employee, as defined by Sections 6.1(c)(i) and 6.1(c)(ii) of the Act. As the Real Estate Licensing and Education Manager, Ingram effectuates policies and represents management interests by overseeing a professional licensing program for the Division of Professional Regulation (DPR) for IDFPR. Among other things, Ingram interprets and applies laws, rules and policy to determine whether the applicant for a real estate license should receive a license. Read further attests that this position is also authorized to draft, organize, and develop proposed changes to the statute and the administrative rules that the Real Estate Unit operates under.

The CMS-104 for Ingram’s position states, subject to administrative approval, the Real Estate Licensing and Education Manager administers and manages a comprehensive program of an operational section. As the position’s incumbent, Ingram plans, assigns, prioritizes, coordinates, evaluates, reviews and maintains records of the production and performance of subordinate supervisors and staff in the completion of duties associated with the initial and renewal licensing of individuals in various professions.⁸ Ingram interprets and implements laws, rules, regulations and policies and procedures applicable to the licensing of the Department’s real estate professions. He reviews licensees’ breaches of laws, rules, regulations, policies and procedures, and meets with the Enforcement Division. He also confers with other managers regarding licensing restrictions of regulated industries. He reviews and analyzes licensing processes and effectiveness, and he confers with superiors to provide input and information to resolve administrative problems and program function improvement. As a supervisor Ingram is

⁸ These professions include real estate brokers and salespersons, real estate schools and instructors, real estate appraisers, auctioneers, and other entities under the agency’s jurisdiction.

authorized to provide the appropriate training, technical assistance and counseling for subordinate development. He is also authorized to recommend other personnel actions such as promotions, transfers, salary adjustments, salary increases, transfers and demotions. Finally, Ingram is authorized to determine the discipline level which he deems appropriate for a particular situation, and is authorized to impose such discipline.

ii. AFSCME's Incorporated Objections

AFSCME argues that Ingram does not have significant and independent discretionary authority within the meaning of Section 6.1(c)(i) because Ingram specifically states that he does not make any managerial decisions without approval from his supervisor, the Deputy Bureau Chief, and thus there cannot be a showing that he exercises independent discretion. AFSCME also argues that because Ingram states that he has not effectuated any supervisory duties on his own, he does not have significant and independent discretionary authority within the meaning of Section 6.1(c)(ii). In his form, Ingram states that he started in this position effective December 16, 2013, and "there has been a great deal of reluctance from the unit to be 'managed.'" Such that he currently does not make any managerial decisions without the approval of his supervisor, and that to date he has not effectuated any supervisory decisions on his own.

b. Joel Campuzano

i. CMS's filing

Jay Stewart, the DPR Director, completed and signed an affidavit attesting that as the Manager of Boxing, Joel Campuzano is authorized to have significant and independent discretionary authority as employees, as defined by Sections 6.1(c)(i) and 6.1(c)(ii) of the Act. Campuzano effectuates policy and represents management interests by making recommendations on athletic license applications and event permit applications. Campuzano has the authority to approve fight cards, stop or prevent a match in the interest of public health, safety or welfare; require additional information to support a license application; and operate a professional event in conjunction with and in the absence of the Director of the Athletics Unit. Campuzano is "authorized to, in the interest of IDFP, among other things, assign, responsibly direct, and review the work of [the position's] subordinates with independent judgment. He is authorized to assign and review work, counsel staff regarding work performance, take corrective action, monitor work flow, and reassign staff to meet day to day operating needs." Stewart also attests that Campuzano is "authorized to be engaged in executive and management functions of IDFP

and charged with the effectuation of management policies and practices of IDFPR or represent management interests by taking or recommending discretionary actions that effectively control or implement the policy” of the IDFPR. Stewart states that the organizational chart included in the designation is the most current chart and accurately reflects the organization structure of the IDFPR, DPR, Athletic Subsection.

The CMS-104 for Campuzano’s position states that, under administrative direction, as the Athletic Unit’s Professional Boxing PSA, Campuzano develops, implements and administers the Division’s statewide enforcement and regulation program in accordance with the Illinois Professional Boxing Act, and he is authorized to determine the need for revision of the program and methods of operation, and to revise and implement new procedures and methods as necessary. He represents the Board and Department in various functions. Campuzano issues licenses based upon his evaluation of qualifications of individuals and the effect on the sport to all officials of the Athletic Board. These officials include physicians, timekeepers, announcers, boxers, boxing judges, managers, etc. He makes assignments to all officials at each athletic exhibition. Campuzano maintains records of all exhibitions and all active contestants, records of individual win/loss record, suspensions, and reinstatements from throughout the jurisdiction of the World Boxing Associations. He recommends approval or rejection of individual contests arranged by matchmakers to the Illinois Athletic Board based on his evaluation of records. He attends and maintains a record of all board meetings. Through a subordinate supervisor, Campuzano directs and supervises the licensure of all promoters and matchmakers and the investigation of promoters or matchmakers’ background and resources. He informs prospective promoters of requirements such as public liability and property damage insurance, surety bond of State tax, and what records must be available, i.e. public safety inspection of site, manifest of tickets printed and building lease. Campuzano compiles data and documentation in support of project requirements on licensing and enforcement activities, and verifies documentation/reports for accuracy. Campuzano is authorized to participate in the Unit budget for the program and personnel, including travel, equipment, and miscellaneous funds. He also develops quantifiable data to justify additional staff and/or how to more efficiently and effectively utilize current resources.

The CMS-104 for Campuzano’s position that Campuzano is authorized to directly supervise at least one subordinate by assigning work, approving time off, providing guidance and

training, giving oral reprimands, effectively recommends grievance resolutions, and complete and sign performance evaluations. He is also authorized to counsel staff on problems with productivity, conduct, quality of work, and to determine staffing needs to achieve program objectives.

The organizational chart for the Athletics Unit, within the DPR identifies that the Executive II position that reports directly to the Professional Boxing PSA is vacant, and that the Administrative Assistant position that reports directly to the Executive II position is also vacant.

ii. AFSCME's and Campuzano's Incorporated Objections

AFSCME argues that Campuzano does not have significant and independent discretionary authority within the meaning of Section 6.1(c)(i) because Campuzano does not write policies or recommend the adoption of policies. He does not engage in independent or discretionary actions because his duties are limited to enforcing previously established policies and only his supervisor has the authority to make the decisions in implementing the established policies. All of Campuzano's decisions are defined either by law or department policy, are made using his professional and technical expertise, or require the prior approval of his supervisor. Campuzano's recommendations to his supervisor are based upon his technical knowledge. Additionally, Campuzano contends that any significant or independent judgment in how he is able to perform his job duties is severely limited or non-existent due to the narrow confines of the regulatory duties and responsibilities meted out by the enabling statute or administrative rules his unit is charged with enforcing.

AFSCME also argues that Campuzano is not a supervisor because he has no subordinates, and thus he is not engaged in any of the enumerated supervisory functions. Campuzano argues that no subordinates currently report to him, there have never been a subordinate listed in the position subordinate to his, and that it is common practice to hire employees from a temporary agency that report directly to the Director of the Athletic Unit.

2. Incorporated Exceptions

In its incorporated exceptions, AFSCME argues that the previous RDO is incorrect, and should not be adopted. AFSCME takes exception to the following Findings of Fact based upon the information provided at hearing: Campuzano has some discretion in determining whether a particular match should go forward, and Campuzano, or his direct supervisor is ultimately responsible for a boxing event complying with the governing act and rules. AFSCME takes

exception to the RDO's conclusion that Ingrum's and Campuzano's positions do *qualify* for designation. Finally, AFSCME argues that its previous objections and the arguments advanced at oral hearing were incorrectly rejected.

B. General Issues Not Specific to Positions at-Issue

1. Incorporated Objections

AFSCME argues that CMS should bear the burden of persuasion, that the CMS-104s and affidavits provide insufficient bases for designation, that this RDO should consider the fact that the job duties of the positions at issue have not changed since the positions were certified into a collective bargaining unit, that the positions at issue are not those of managers or supervisors within the meaning of the National Labor Relations Act, (NLRA), and that the designations are unconstitutional.

2. Incorporated Exceptions

AFSCME reiterates its argument that CMS should bear the burden of proof. In regards to whether CMS has submitted the requisite information to comport with Section 6.1 of the Act, AFSCME takes exception to the finding in the RDO that the job duties of each position are identified in the submitted CMS-104 position descriptions, and the finding that CMS-104 position descriptions authorize the employee to engage in all the duties listed within. AFSCME's remaining exceptions are reiterations of its constitutional objections that were not addressed in the previous RDO.

IV. FINDINGS OF FACT⁹

The DPR regulates licensure and discipline of over one million licensees in over 60 professions in the State of Illinois. Licenses are issued to ensure that individuals are qualified to engage in particular professions and discipline is administered if a licensee's conduct violates the relevant rules and statute regarding their professional conduct. The Athletic Unit of the DPR administers, implements, and enforces the Boxing and Full-contact Martial Arts Act. 225 ILCS 105 (Boxing Act). The legislature declared:

⁹ This section is taken directly from the relevant Findings of Fact in the RDO for Case No. S-DE-14-162, with subsequent information identified in footnotes. These findings are based upon testimony, and exhibits provided at hearing on February 4, 2014. While AFSCME's incorporated exceptions dispute some of these findings, it provides no argument to support its position that these finding should be rejected. Absent supporting arguments, I find no reason to reject any of the previous Findings of Fact.

Professional boxing and full-contact martial arts contests in the State of Illinois, and amateur boxing and full-contact martial arts contests, are hereby declared to affect the public health, safety, and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that only qualified persons be authorized to participate in these contests and events in the State of Illinois. This Act shall be liberally construed to best carry out these objects and purposes. 225 ILCS 105/0.05.

The Athletic Unit administers the Boxing Act in accordance with administrative rules. See Rules for the Administration of the Boxing and Full-Contact Martial Arts Act. 68 Ill. Admin. Code Part 1370.

The Athletic Unit is organized into two sections, the Boxing section, and the Martial Arts section. The Boxing section consists of the PSA of Athletic and Professional Boxing Investigation, an Executive II position and an Administrative Assistant. The Professional Boxing PSA reports directly to the Athletic Director. The Administrative Assistant reports directly to the Professional Boxing PSA and the Executive II reports directly to the Administrative Assistant. The Executive position and the Administrative Assistant position have been vacant since at least 2011. In 2007, the Policies and Procedures Unit for the DPR began writing and revising the Athletic Unit's administrative rules. In 2011, the DPR's Policies and Procedures Unit began to review the Athletic Unit. In summer 2012, the Athletic Director left and the Unit was run by Acting Director, Nancy Illg. In December 2013, Shannon Rigby was hired as Director of the Athletic Unit.¹⁰

Campuzano has been employed in Athletic Unit since 1995 and as the Professional Boxing PSA since approximately 2003. In 2010, Campuzano was placed on administrative leave, and was terminated in the summer of 2013. Campuzano was later reinstated to his PSA position, effective on December 16, 2013. Prior to his employment in the Athletic Unit, Campuzano was an amateur boxer. As a PSA, Campuzano processes and reviews licenses for the Athletic Unit to ensure that the applications for licenses comply with the Boxing Act and its administrative rules. Prior to a match, the Athletic Unit ensures that all the individuals involved in the match are

¹⁰ In response to Orders to Show Cause, CMS provides an affidavit from IDFPR's General Counsel, Richard DiDomenico attesting that on February 25, 2014, Shannon Rigby left her position as the Director of Athletics. DiDomenico further attests that Campuzano currently reports to Nancy Illg, who is again the Acting Director of the Athletic Unit, but that management intends to fill this vacancy as soon as possible. CMS also asserts that no other material changes have taken place relating to Findings of Fact in the RDO for Case No. S-DE-14-162. Despite the absence of an official Director, because CMS asserts that there are not other material changes in facts, the previous findings regarding the structure of the Athletic Unit and Campuzano's duties are unchanged.

properly licensed, and assign the referees, judges, and fight inspectors. The Athletic Unit must license each promoter, matchmaker, manager, contestant, timekeeper, referee, and judge. In order to put on a match, the Athletic Unit must issue a permit to a licensed promoter, and ensure that both contestants are licensed. The Athletic Unit then assigns licensed referees, judges and other necessary officials to the match. Campuzano reviews the applications and utilizes the administrative rules to determine whether the submitted applications comply with the boxing act and boxing rules. Campuzano has input to licensing decisions, assignment decisions, and at the Director's request, run events. Campuzano and Illg have some discretion in determining whether a particular match should go forward. The Director is vested with the final authority to disallow a match, but all Athletic Unit employees have the authority to inquire further, raise specific questions for the Director to address, and to make recommendations. If the match meets the statutory minimum, the PSAs have the discretion to recommend to the Director, whether the bout should go forward. If for instance, the match is one-sided and non-competitive, the Director has the discretion to disallow the match. Also, the Athletic Unit employees have the discretion to request additional information, if in their opinion more information is necessary for a match to proceed, such as additional medical records. The boxing or mixed martial arts matches are attended by the Director or in her absence the PSA over the sport. The PSA's attend these matches to ensure that the Act and Rules are being followed. The Director or the designated PSA are ultimately responsible for the event complying the governing act and rules. For example, when Campuzano attends boxing events he is responsible for following the safety guidelines, that the inspectors have ensured that boxers are properly gloved, properly wrapped, that the boxers are wearing the necessary equipment such as the correct sized gloves, mouthpieces, and protective cups.

The Athletic Unit is structured such that the PSAs and temporary employees function to process the applications and submit them to the Director for approval. From 2011 through 2013, in her capacity as Acting Director, Illg repeatedly recommended that the positions subordinate to the PSAs be abolished. Jay Stewart, the Director of DPR, testified that at least one consideration for allowing the positions to remain vacant is that the unit was restructured while Campuzano was on leave, and Campuzano and Director Rigby need to acclimate to the Athletic Unit before deciding whether additional employees are necessary, and that he is unaware of any intention to

abolish the administrative and executive positions. He also testified that he is unaware of any plans to fill the positions.

On, or soon after January 7, 2014, Director Rigby and Campuzano discussed Campuzano's job duties. They discussed his CMS-104 and the Athletic Unit's organization. Specifically, Rigby informed Campuzano that he is authorized to directly supervise the Administrative Assistant position. In the event that the Administrative Assistant position is filled, he is expected to exercise the supervisory duties identified in the CMS-104 for his position.

V. DISCUSSION AND ANALYSIS

The objectors bear the burden to demonstrate that each designation of the employment positions at issue are improper because the objectors' positions are contrary to the policy of Section 6.1 and because the presumption articulated in Section 6.1(d) requires that the objectors overcome the presumption that the designations are proper. The Illinois Appellate Court has held that the party opposing the public policy as demonstrated in the language of the statute at issue has the burden to prove the party's position. See Ill. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App (4th) 090966. Section 6.1 specifically allows the Governor to exclude certain public employment positions from collective bargaining rights which might otherwise be granted under the Act. AFSCME is opposing the State's public policy to exclude certain positions from collective bargaining, as stated in Section 6.1 of the Act, thus the burden is on AFSCME to demonstrate that the employees at issue are not eligible for such exclusion. Ill. Dep't Cent. Mgmt. Serv. (Ill. State Police) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶109 (IL LRB-SP 2013) appeal pending, No. 1-13-3600 (Ill. App. Ct. 1st Dist.). Section 6.1(d) states that any designation for exclusion made by the Governor or his agents under Section 6.1 "shall be presumed to have been properly made." Like all presumptions, this presumption can be rebutted. Dep't of Cent. Mgmt. Serv. /Dep't of Healthcare & Fmly. Serv. v. Ill. Labor Rel. Bd. State Panel, 388 Ill. App. 3d 319, 335 (4th Dist. 2009). If contrary evidence is introduced that sufficiently rebuts the presumption, then it vanishes and the issue will be determined as if no presumption ever existed. Id. To rebut the presumption, the evidence must be sufficient to support a finding that the presumed fact does not exist. Id. at 335-336. Here, the objectors must present evidence that the positions at-issue are

ineligible for designation, do not qualify for designation, or that the designations are otherwise improper because the submission does not comport with the requirements of Section 6.1 of the Act.

A. Eligibility

Positions which were first certified to be in a bargaining unit by the Illinois Labor Relations Board on or after December 2, 2008 are eligible for designation. CMS and AFSCME agree that the at-issue positions have been certified into a bargaining unit. It is uncontested that this bargaining unit is RC-63, and that the certification was on January 20, 2010. Thus, I find that the presumption that both at-issue positions are eligible for designation as excluded from the collective bargaining provisions of the Act remains unrebutted.

B. Information Submitted by CMS

In its incorporated exceptions, AFSCME makes several contentions regarding the CMS-104s, affidavits, and organizational charts CMS submitted. However, because AFSCME does not supply arguments in support of these contentions I cannot analyze the validity of these declarative statements. However, to the extent that AFSCME made the same contention and provided support for that contention in its incorporated objections, those arguments are analyzed below.

In order to properly designate an employment position, CMS must submit in writing to the Board the job title of the designated employment position, the job duties of the employment position, the name of the State employee currently in the employment position, the name of the State agency employing the incumbent employee, and the category under which the position qualifies for designation under this Section. In the designation petition and the supporting documentation CMS identifies the official job title and the working job title of each position at issue. CMS submitted the CMS-104 position description in order to meet the requirement that it provide each position's job duties, and properly identified the name of the incumbent employees in the affidavits and organizational charts. Finally, in the petition and supporting affidavits, CMS identified that it alleges that each position at issue qualifies for designation under Section 6.1(b)(5) of the Act.

In its incorporated objections AFSCME contends that CMS has not provided the Board with the information required to properly designate an employment position by arguing that the

submitted CMS-104s do not meet the job duties requirements because they only identify potential responsibilities and are often inaccurate. AFSCME argues that the CMS-104s and affidavits only identify *potential* responsibilities that can be given to the employee within that position, and there is no evidence that the employees actually perform the duties identified within the CMS-104s. This argument fails to meet AFSCME's burden because the Board has previously determined that CMS-104s are sufficient to meet the "job duties" requirement of Section 6.1 of the Act, and because, as stated above, whether the employees actually exercise all their authorized duties is not the issue as articulated in the language of the statute. See Ill. Dep't Cent. Mgmt. Serv. (Dep't of Commerce and Econ. Opp.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶163 (IL LRB-SP 2014); State of Ill. Dep't of Cent. Mgmt. Serv. and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶80 (IL LRB-SP 2013) appeal pending, No. 1-13-3454 (Ill. App. Ct. 1st Dist.).

AFSCME's argument that CMS-104s are so often inaccurate that they cannot be considered factual also does not overcome the presumption that the designations are proper. The issue is whether the CMS-104s identify the job duties of these employees. Only Campuzano alleges inaccuracies in his CMS-104. Whether the submitted CMS-104s present inaccurate information are questions of fact. The Board rules provide that an Administrative Law Judge (ALJ) may make factual findings that the designation is proper based solely on the information submitted to the Board, or if the ALJ finds that the objections submitted raise an issue of fact or law that might overcome the presumption that the designation is proper under Section 6.1 of the Act, the ALJ will order a hearing in order to determine whether the designation is proper. 1300.60(d)(2). A hearing was held in accordance with this section for Case No. S-DE-14-162, and the objectors raised no argument against incorporating the transcripts from that hearing into the record of the current matter. Thus, the objectors were provided sufficient opportunity to address any inaccuracies at the hearing held in Case No. S-DE-14-162. The issue is whether the CMS-104 identifies the duties Campuzano is authorized to perform, not whether it also identifies duties that Campuzano is not authorized to perform. As such, given the testimony provided at hearing, I find that the CMS-104 for Campuzano's position identifies his job duties, and thus

CMS's submission of the document satisfies this requirement of Section 6.1(b) of the Act.¹¹ To the extent that AFSCME is arguing that none of the information in any of the submitted CMS-104s can be considered accurate because some of the information contained in one of the submitted CMS-104s is contested as inaccurate, I must reject this argument because the burden remains with AFSCME to provide specific evidence that each piece of information is inaccurate. See Ill. Dep't Cent. Mgmt. Serv. (Dep't of Veterans' Affairs) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 30 PERI ¶111 (IL LRB-SP 2013) appeal pending, No. 1-13-3618 (Ill. App. Ct. 1st Dist.); Ill. Dep't Cent. Mgmt. Serv. (Dep't of Revenue) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶110 (IL LRB-SP 2013) appeal pending, No. 1-13-3601 (Ill. App. Ct. 1st Dist.)(finding that evidence that some CMS-104s were inaccurate does not by extension mean that all CMS-104s are inaccurate and unreliable).¹²

C. Qualifications

1. General Objections

AFSCME's general objections do not overcome the presumption that the positions at issue qualify for designation under Section 6.1(b)(5) of the Act because its objections only go to *how* the Board should apply the tests articulated in Section 6.1(c), arguments the Board has previously rejected, and because the general objections do not include contrary evidence to rebut the presumption that the employment positions authorize the employees in these positions to have significant and independent discretionary authority. See Ill. Dep't Cent. Mgmt. Serv. (Gaming Bd.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, S-DE-14-121 (IL LRB-SP Jan. 21, 2014) appeal pending, No. 1-14-0278 (Ill. App. Ct. 1st Dist.); Ill. Dep't Cent. Mgmt. Serv. (Dep't of Commerce and Econ. Opp.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶163 (IL LRB-SP 2014) appeal pending, No. 1-14-0276 (Ill. App. Ct. 1st Dist.).

An employment position may be properly designated under Section 6.1(b)(5) only if the position authorizes an employee in that position to have significant and independent

¹¹ Analysis of whether Campuzano's position qualifies for designation based upon his position possessing independent discretionary authority will be limited to the information that is uncontested in the CMS-104, and my Findings of Fact based upon the information provided at the hearing.

¹² AFSCME's final argument that the designation of these positions violates due process and is arbitrary and capricious because there is no showing that the job duties have changed since the Board previously reviewed the positions for inclusion in the bargaining unit, is an as-applied constitutional challenge to the Act, and will be treated accordingly. See *infra* (V)(D)(3).

discretionary authority as articulated in the statutory tests provided in Section 6.1(c)(i) and Section 6.1(c)(ii) of the Act. 5 ILCS 315/6.1. CMS asserts that both positions at issue hold significant and independent discretionary authority within the meaning of both Sections 6.1(c)(ii) and (c)(i). There is a presumption that the designation is proper; accordingly, there is also a presumption that the requirements that make the designation proper are satisfied. In other words, there is a presumption that the position qualifies for designation under at least one of the categories identified in Section 6.1(b)(1) through (5). To qualify for designation under Section 6.1(b)(5) an employee must meet one of the statutory tests articulated in Section 6.1(c). Since there is a presumption that these positions qualify for designation under Section 6.1(b)(5), there is also a presumption that the positions satisfy at least one of the requisite tests articulated in Section 6.1(c). Section 6.1(c) identifies three statutory tests with 6.1(c)(i) establishing two of these tests, and 6.1(c)(ii) establishing the third test. The effect of CMS's allegation that both of the positions at issue qualify for designation under both Sections 6.1(c)(i) and 6.1(c)(ii), results in the presumption that both positions meet the statutory test under Section 6.1(c)(ii) and at least one of the tests articulated in Section 6.1(c)(i).

a. (c)(ii)

Section 6.1(c)(ii) of the Act provides that an employee is a supervisor if the employment position authorizes the employee in that position to “qualif[y] as a supervisor of a State agency as that term is defined under Section 152 of the National Labor Relations Act, 29 U.S.C. 152(11) (NLRA), or any orders of the National Labor Relations Board (NLRB) interpreting that provision or decisions of courts reviewing decisions of the [NLRB].”

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

In their interpretations, the NLRB and the U.S. Supreme Court have held that employees are statutory supervisors under the NLRA if “1) they hold the authority to engage in any one of the 12 listed supervisory functions, 2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment, and 3) their authority is held in

the interest of the employer.” NLRB v. Kentucky River Comm. Care, Inc., 532 U.S. 706, 713 (2001) (internal quotes omitted); see also Oakwood Healthcare, Inc., 348 NLRB 686, 687 (2006).

As stated above, there is a presumption that the positions at issue meet the test articulated in Section 6.1(c)(ii), thus, CMS is not required to prove every prong of the supervisory test articulated in this section of the Act. Rather, AFSCME has the burden to overcome the presumption that the positions meet the supervisory test by providing specific evidence negating at least one prong of the test. Absent such contrary evidence the presumption that each position at issue qualifies for designation because they satisfy this test stands.

AFSCME argues that the employees at issue are not supervisors because CMS presents no evidence that the employees were ever authorized, told, or actually exercise any of the enumerated supervisor duties, and because CMS does not prove that all three prongs of the supervisory test are met. The first prong of the NLRA supervisor test only requires that the employee *hold the authority* to engage in one of the enumerated supervisory functions. The issue is whether the employees are authorized to perform such duties, the CMS-104 provides evidence of such authorization, and AFSCME supplies no evidence to the contrary. Furthermore, that an employment position may be properly designated without requiring an incumbent employee to actually exercise the duties the position authorizes it to perform is supported by the fact that the Board has certified designations that include vacant positions because without an incumbent such authorized duties cannot actually be exercised. See Ill. Dep’t Cent. Mgmt. Serv. (Dep’t of Emp. Sec.) and Am. Fed’n of State, Cnty. & Mun. Emp., Council 31 30 PERI ¶168 (IL LRB-SP 2014) appeal pending, No. 1-14-0386 (Ill. App. Ct. 1st Dist.); Ill. Dep’t Cent. Mgmt. Serv. and Am. Fed’n of State, Cnty. & Mun. Emp., Council 31 30 PERI ¶164 (IL LRB-SP 2014) appeal pending, No. 1-14-0348 (Ill. App. Ct. 1st Dist.); Ill. Dep’t Cent. Mgmt. Serv. (Dep’t of Veterans’ Affairs) and Am. Fed’n of State, Cnty. & Mun. Emp., Council 30 PERI ¶111 (IL LRB-SP 2013). The CMS-104 position descriptions authorize the employee to engage in all the duties listed within because, as stated above, the Board has already held that the functions identified in the CMS-104 are sufficient to constitute the positions’ duties, and AFSCME does not contend that the duties identified within the submitted CMS-104s do not qualify as any of the enumerated supervisory functions, nor does AFSCME provide evidence that the at-issue employees are unaware of the authority as identified in the CMS-104s. AFSCME

argues that the second prong is not met because CMS has not provided a specific showing that the at-issue employees use independent judgment. Again, it is presumed that the supervisory test is met, which includes the use of independent judgment, and AFSCME must provide a specific showing that the at-issue employees do not use independent judgment. Accordingly, since AFSCME does not attempt to address whether the at-issue positions meet the third prong because their supervisory duties are held in the interest of CMS, and because these arguments do not negate the first two prong of the test, AFSCME's general objections do not overcome the presumption that the positions held by Ingram and Campuzano meet the test articulated in Section 6.1(c)(ii) of the Act.

b. (c)(i)

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

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

AFSCME argues that the tests for independent discretionary authority articulated in Section 6.1(c) essentially follow the manager and supervisor definition as developed by the NLRB, and argues that the Board should apply the interpretation of those definitions. As noted above, Section 6.1(c)(ii) does specifically incorporate the NLRB's definition and interpretation of a supervisory employee. However, while Section 6.1(c)(i) does use the same language the Supreme Court used in interpreting a managerial employee as identified by the NLRB,¹³ unlike

¹³ In Nat'l Labor Rel. Bd. v. Yeshiva Univ., the Supreme Court held that under the NLRA an employee may be excluded as managerial only if he “represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy.” 444 U.S. 672, 683 (1980). Section 6.1(c)(i) states, in relevant part, that an employment position authorizes an employee in that position to have independent discretionary authority as an employee if he or she “represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency.” 5 ILCS 315/6.1 (2012).

subsection (c)(ii), subsection (c)(i) is silent as to whether it also incorporates the Court's interpretation of a managerial employee under the NLRB. Thus applying the NLRB's analysis of managerial employee is not supported by the statute, and the only inquiry is whether the petitioned-for employees comport with any of the tests *as written* in Section 6.1(c) of the Act. Ill. Dep't Cent. Mgmt. Serv. (Dep't of Commerce and Econ. Opp.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶163 (IL LRB-SP 2014)(specifically rejecting AFSCME's application of the historical origins of Section 6.1(c)(i)).

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

Finally, without specifically applying this to any at-issue position, AFSCME argues that there can be no showing that an employee is managerial if an affidavit states that the employee is authorized to effectuate department policy if the CMS-104 does not define a policy. This argument is unpersuasive because nothing in Section 6.1(c) requires that effectuating the overall policy of IDFP is insufficient to meet the meaning of the term policy as written in the text. As such, there is also no requirement that the employee effectuate a specific policy. Accordingly, AFSCME's general objections do not overcome the presumption that all the at-issue positions meet at least one of the tests articulated in Section 6.1(c)(i).

In sum, AFSCME only protests that CMS has not met its burden of proof. In fact AFSCME has the burden, which it fails to meet because it provides absolutely no evidence to demonstrate that the designated employment positions are not supervisory and it does not actually argue that the designated employment positions are not authorized to exercise independent discretionary authority *as written* in the text of Section 6.1(c) of the Act. CMS asserts that both at-issue positions qualify for designation under Section 6.1(b)(5) because they meet at least one of the tests articulated in Section 6.1(c)(i) and because they also meet the test articulated in Section 6.1(c)(ii). AFSCME is required to provide specific facts to rebut the presumption that the positions qualify for designation, but it provides no facts here.

Accordingly, AFSCME's general objections fail to overcome the presumption that the at-issue positions qualify for designation.

2. Position specific objections

Neither AFSCME's specific objections, the factual information provided as the basis of the objections, nor Campuzano's individual objections overcome the presumption that the positions held by Ingrum and Campuzano properly qualify for designation under Section 6.1(b)(5) of the Act.

a. Ingrum

AFSCME fails to sufficiently address whether Ingrum's position properly qualifies for designation under Section 6.1(5) of the Act. As stated above, in order to properly qualify for designation under Section 6.1(b)(5) of the Act, an incumbent holding the position at issue must be authorized to exercise independent discretionary authority, and this can only be met by satisfying at least one of the statutory tests articulated in Section 61.(c) of the Act. Since there is a presumption that at least one of the tests is satisfied, AFSCME must provide specific evidence to rebut this presumption. AFSCME's argument that because Ingrum has *yet to exercise* his authority without the approval of the Deputy Director because Ingrum has been the Real Estate Licensing Manager for such a short time does not go to the issue to be resolved. AFSCME does not argue that the duties identified in the submitted CMS-104 do not meet the requisite test. As such, since AFSCME only argues that Ingrum has *yet to exercise* his supervisory duties without the approval of the Deputy Director, does not rebut the presumption because as stated above, the tests do not require that the incumbent actually exercise the authority. Also, according to the submitted CMS-104, the Real Estate Manager is authorized to train his subordinates, recommend personnel actions, and determine the level of appropriate disciplinary actions. Under Section 6.1(c)(ii) of the Act, a supervisor must have the authority to engage in any of the 12 enumerated supervisory functions "or effectively to recommend such action." The objections only provide that Ingrum has "not effectuated any supervisory decisions on [his] own[.]" I take this to mean that Ingrum has actually made supervisory decisions, but because he is new in this position, the Deputy Director implements the decision. Also, even if Ingrum's actions were simply recommendations for the Deputy Director to make and implement, the test is still satisfied. On its face this objection does not negate the first prong of the supervisory test, and since there is no objection to whether Ingrum uses independent judgment when he makes these decisions, or

whether his authority is held in the interest of the IDFPR, the presumption stands. Thus, Ingrum's position properly qualifies for designation under Section 6.1(5) because it satisfies at least one of the tests articulated in Section 6.1(c) of the Act.

To the extent that the Board chooses to address whether Ingrum's position also satisfies the requirements of Section 6.1(c)(i), I find that it does. The CMS-104 position description demonstrates that the Real Estate Manager is authorized to be engaged in executive and management functions because the position is authorized to "draft, organize and develop" proposed changes to the enabling statute and administrative rules under which the Real Estate Unit operates. The Real Estate Manager is authorized to effectuate or carry out these policies when he drafts, organizes, and develops, changes to the unit's policies and procedures, and when he reviews licensee breaches of the enabling statute and other applicable rules. Also, the objections do not negate the second test articulated in Section 6.1(c)(i), because *at a minimum*, when Ingrum obtains his supervisor's approval before making "managerial decisions" he recommends discretionary actions that effectively control or implement IDFPR's policy. Accordingly, I find that Ingrum's position *qualifies* for designation under Section 6.1(b)(5) of the Act.

b. Campuzano

Campuzano's position qualifies for designation under Section 6.1(b)(5) because it satisfies the second 6.1(c)(i) test. Under Section 6.1(c)(i), an employment position authorizes an employee to have independent discretionary authority if he "represents management interests by taking or recommending discretionary actions that effectively control or implement the policy of a State agency." As stated above this section articulates two different tests, and when a position satisfies either test it qualifies for designation under Section 6.1(b)(5). The second test does not require that an employee *create* policy, but only requires that an employee *implement* policy. Ill. Dep't Cent. Mgmt. Serv. (Gaming Bd.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶167 (IL LRB-SP 2014) appeal pending, No. 1-14-0278 (Ill. App. Ct. 1st Dist.). Campuzano's role is to implement the Boxing Act. Campuzano has the authority to recommend whether an individual should be licensed, whether an event should receive a permit, and the authority to determine whether the proposed participants should be is authorized to fight in the event. Campuzano also has the authority to stop an event in process if he or she determines that to proceed with the event would violate the Boxing Act, i.e. if continuing the match would be

against the public policy in that it would endanger public health, safety, or public welfare. The rules for licensing identify the minimum requirements, but Campuzano has the discretion to require additional information, if in his opinion further information is warranted. The rules specifically provide that if a situation occurs at the contest and there are no regulations in place to cover the situation, the DPR representative shall make a decision on the matter, and that decision shall be final. Since Campuzano is authorized to attend boxing and martial arts matches on behalf of the DPR, when such a situation arises, he also has the discretion to make a decision using only his professional and personal judgment. Also, the Boxing Act specifically states that its purpose is to promote the health and safety at boxing matches in Illinois. This sweeping generalization provides Campuzano with the discretion to stop or prevent a match, even if allowing the match to go forward would not violate a specific provision of the Boxing Act or its administrative rules, because the Act and the rules are merely avenues for the Athletic Unit to meet the Boxing Act's overall purpose. Accordingly, I find that the position held by Campuzano qualifies for designation under Section 6.1(b)(5) of the Act.

I further find that Campuzano's position does not satisfy the Section 6.1(c)(ii) test, because he currently does not have any subordinates to supervise, and without subordinates Campuzano cannot exercise any supervisory authority. The position descriptions grants Campuzano the authority to supervise the employees holding subordinate positions, and he is not required to actually exercise this authority to meet supervisory test under Section 6.1(c)(ii). However, the fact that no employees hold the subordinate positions provides clear evidence that Campuzano does not actually possess such authority, and the position descriptions grants Campuzano the authority *only in the event* that employees hold the subordinate positions. See Ill. Dep't Cent. Mgmt. Serv. and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶183 (IL LRB-SP) appeal pending, No. 1-14-0469 (Ill. App. Ct. 1st Dist.); Ill. Dep't Cent. Mgmt. Serv. (Ill. Gaming Bd.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, 30 PERI ¶167 (IL LRB-SP 2014); see also Newton-Wellesley Hospital, 219 NLRB No. 80. In the event that employees are hired to fill the subordinate positions, Campuzano is authorized to supervise those employees. However, the positions have not been filled in at least three years, and CMS has no current plans to fill those positions. See Montgomery Ward & Co., Inc. (Binghamton, N. Y.), 70 NLRB No. 125. Accordingly, I find that the position held by Campuzano does not satisfy the test identified in Section 6.1(c)(ii) of the Act.

D. Remaining Arguments

I find that AFSCME's remaining arguments lack merit.

1. Rejection of previous objections and hearing arguments

AFSCME's argument that the contents of the previous RDO should be rejected because AFSCME's objections and arguments at hearing were improperly rejected does not raise an issue that might overcome the presumption that the at-issue designations are proper because it does not identify which objections and arguments to which it is referring. As such, I interpret this argument as a general plea that the previous RDO be rejected as a whole. Since the previous objections and the hearing transcript were incorporated into the record in this instant case, and AFSCME offers no new or expanded reasoning as to why its arguments should now be accepted, I again reject AFSCME's previous objections and hearing arguments regarding the designation of the positions held by Ingrum and Campuzano.

2. Prejudice

AFSCME's argument that it is prejudiced in this matter is without merit. AFSCME argues that it is prejudiced because it must present the same argument it presented in Case No. S-DE-14-162. First, I note that AFSCME provides no legal authority to support its argument that it is prejudiced because this petition includes employment positions that AFSCME previously argued should not be designated. Also, the Board has held that in a new case involving the same parties and issues that was not previously fully adjudicated on the merits, the objector is not required to present the same arguments from the previous case. Ill. Dep't Cent. Mgmt. Serv. (Ill. Dep't of Fin. and Prof. Reg.) and Am. Fed'n of State, Cnty. & Mun. Emp., Council 31, Case No. S-DE-14-162 (IL LRB-SP March 11, 2014). The objector has the option to stipulate to the record developed in the previous case. Id. Here, CMS withdrew the at-issue employees from the previous petition before the Board reached a final judgment on the merits. While it has not stipulated to the inclusion of the previously developed record, AFSCME was informed that its previous objections, the hearing transcript,¹⁴ and the resulting RDO were incorporated into the record of the instant case. Thus, prior to filing any objections in this case, AFSCME was presented with the following three options: 1) to rest solely on its previous arguments; 2) to maintain its previous arguments and present new arguments; or 3) to disclaim the previous

¹⁴ Pursuant to Board Rule 1300.70(c), the parties provided oral argument at the closing of the hearing in lieu of post-hearing briefs.

arguments and present new arguments. Also, because the Board rules do not require all parties with standing to object to designations made under Section 6.1 of the Act, AFSCME had the option to disclaim the arguments in its previous objections and not file new objections. See Board Rules 1300.60. AFSCME was not required to present the same argument it presented in the previous case because it was specifically informed that its previous objections and hearing arguments were incorporated into the record, and as such was not actually required to submit any documentation to the Board in this matter at this stage. Thus, CMS's filing this petition does not prejudice AFSCME.

3. Constitutionality

Section 6.1(d) of the Act gives the Board the authority to determine whether the designation of the employment positions at issue comport with Section 6.1 of the Act. As an administrative agency, the Board has no authority to rule that the Illinois Public Labor Relations Act, as amended by Public Act 97-1172, is unconstitutional, either on its face or as applied. *Id.*, (citing Goodman v. Ward, 241 Ill. 2d 398, 411 (2011)); see also Metro. Alliance of Police, Coal City Police Chapter No. 186, No. 6 v. Ill. State Labor Rel. Bd., 299 Ill. App. 3d 377, 379 (3rd Dist. 1998) (noting that administrative agencies lack the authority to invalidate a statute on constitutional grounds or even to question its validity). Analysis of the Act's constitutionality, on its face, or as applied here, is beyond my limited authority as an administrative law judge for the Board. Thus, the constitutional objections are not a factor to my determination of whether the designations of the positions at issue comport with Section 6.1 of the Act.

VI. CONCLUSION

Pursuant to Section 1300.60 of the Board's Rules, I find that the positions at issue are properly designated.

VII. RECOMMENDED ORDER

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

Position Number

Working Title

37015-13-40-625-00-01 Manager - Real Estate Licensing

37015-13-40-961-00-01 Supervisor - Athletic and Professional Boxing Investigations

VIII. EXCEPTIONS

Pursuant to Sections 1300.130 and 1300.90(d)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code Part 1300,¹⁵ parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 3 days after service of this recommended decision and order. Exceptions shall be filed with the Board by electronic mail at an electronic mail address designated by the Board for such purpose, ILRB.Filing@illinois.gov, and served on all other parties via electronic mail at their e-mail addresses as indicated on the designation form. Any exception to a ruling, finding, conclusion, or recommendation that is not specifically argued shall be considered waived. A party not filing timely exceptions waives its right to object to this recommended decision and order.

Issued at Chicago, Illinois this 1st day of April, 2014.

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

/s/ Deena Sanceda

**Deena Sanceda
Administrative Law Judge**

¹⁵ Available at www.state.il.us/ilrb/subsections/pdfs/Section1300IllinoisRegister.pdf