

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOSEPH A. CONLEY,)
)
 Petitioner,)
)
 vs.) Case No. 03-4216SED
)
 DEPARTMENT OF CHILDREN AND)
 FAMILY SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, an administrative hearing was held in the above-styled case on February 3, 2004, in Tampa, Florida, before William R. Pfeiffer, a designated Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Joseph A. Conley, Jr., pro se
8511 Sunflower Lane
Bayonet Point, Florida 34667

For Respondent: Maria N. Sorolis, Esquire
Allen, Norton & Blue, P.A.
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STATEMENT OF THE ISSUE

The issue in this case is whether Respondent properly reclassified Petitioner's employment position from Career Service status to Selected Exempt Service status.

PRELIMINARY STATEMENT

On July 29, 2003, Respondent advised Petitioner that his position of employment with the State of Florida was being reclassified from Career Service status to Selected Exempt Service status in accordance with the Service First initiative Chapter 2001-43, Laws of Florida. Petitioner timely filed a petition challenging the reclassification, and a final hearing was held before the undersigned on February 3, 2004, in Tampa, Florida.

At final hearing, Petitioner appeared pro se and testified on his own behalf. Petitioner introduced Composite Exhibit 1 which was received into evidence. Respondent presented the testimony of Patty Roberts, Roseann Liriano, Nancy Levy, and James Saxon. Respondent introduced Composite Exhibits 1 through 6 which were received into evidence. The one-volume Transcript of the final hearing was filed with DOAH on March 16, 2004. Respondent timely filed its terse proposed recommended order on March 16, 2004, which was carefully considered.

FINDINGS OF FACT

1. In 2001, the Florida Legislature enacted a substantial revision to Florida's civil service system commonly referred to as the "Service First" initiative. See Ch. 2001-43, Laws of Fla. Among the significant changes, the revision redefined the parameters of the Selected Exempt Service classification for public employees. In essence, the Selected Exempt Service classification was expanded to include most of the supervisory level employee classifications which had previously been identified as part of the Career Service classification.

2. The statutory changes brought about by the Service First initiative became effective on May 14, 2001. Id. at 15.

3. Petitioner was employed under the Career Service classification by the Department of Children and Family Services since 1990, and served as a Public Assistance Specialist Supervisor, position number 64817, in the Suncoast Region.

4. In light of Section 110.25(2)(x), Florida Statutes (2003), Respondent reclassified Petitioner's Career Service position to Selected Exempt Service status in July 2003.

5. Petitioner's Career Service position description remained unchanged when it was reclassified to Select Exempt Service status. The position description specifically identifies supervisory responsibilities and states:

Duties and Responsibilities: This is a professional position primarily responsible for the supervision of a public assistance unit for determining the initial and ongoing eligibility of applicants for programs such as Food Stamps, Medicaid, ICP, OSS, Waiver, etc.

6. More specifically, pursuant to the written position description, the Public Assistance Specialist Supervisor is required to "supervise the appointment and case management system" to ensure that subordinates are correctly processing applications. The position is responsible for evaluating all scheduled work and appropriately reassigning work.

7. In addition, pursuant to the position description, the supervisor shall analyze work reports provided by subordinate employees, educate staff, schedule case reviews with supervised employees, and conduct monthly conferences with each employee. The supervisor is obligated to review their performance, identify their strengths and weaknesses, and provide supervisory assistance in achieving acceptable standards. The supervisor is required to prepare written evaluations, conduct staff meetings, and develop in-service training for under achieving employees.

8. Petitioner's actual duties and work-load were consistent with the written position description. Petitioner interviewed applicants and recommended candidates for job vacancies in his area. He supervised subordinates, recommended and levied appropriate corrective action, and organized and

distributed work. Petitioner set organizational goals, motivated employees, trained and developed their technical skills, resolved employee problems, and implemented performance and quality control standards.

9. Petitioner was responsible for ensuring that the staff assigned to him maintained at least a 90 percent accuracy rate on case reviews processed and a 96 percent processing rate on unit assigned client applications.

10. Petitioner admits that his supervisory duties consumed most of his time. He acknowledges that client interviews were not part of his normal duties and concedes that he regularly supervised employees, provided feedback to employees, and performed evaluations. In addition, he agrees that his recommendations regarding discipline were usually followed.

11. Petitioner routinely led staff meetings with his subordinates and frequently met with them individually. He controlled work-flow and made changes as he deemed appropriate within his department. Petitioner admits that he functioned as the supervisor in an area that was distinct and separate from the other units.

12. The evidence presented at hearing establishes that Petitioner's written and actual duties were supervisory in nature, and he spent the majority of his time performing those duties.

CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2003).

14. Although neither party addressed the issue of burden of proof, Respondent is seeking to change Petitioner's existing status quo and reclassify his employment position from Career Service status to Selected Exempt Service status. Hence, Respondent has the burden of proving its claim by a preponderance of the evidence. See Florida Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981); The Board of Trustees of the Northwest Florida Community Hospital v. Department of Management Services, 651 So. 2d 170 (Fla. 1st DCA 1995)("In accordance with the general rule, applicable in court proceedings, 'the burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal.'"); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977); § 120.57(1)(j), Fla. Stat. (2002)("Findings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute, and shall be based exclusively

on the evidence of record and on matters officially recognized.").

15. Pursuant to Subsection 110.205(2)(x), Florida Statutes (2003), employees exempt from Career Service status include:

supervisory employees who spend the majority of their time communicating with, motivating, training, and evaluating employees, and planning and directing employees' work, and who have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline subordinate employees or effectively recommend such action, including all employees serving as supervisors, administrators, and directors.

16. Respondent sufficiently proved that Petitioner spent the majority of his time motivating, training, evaluating, and directing employees' work. Furthermore, Respondent adequately demonstrated that Petitioner had the authority to hire and discipline subordinate employees or effectively recommend such action. Based upon the evidence, Respondent properly transferred Petitioner's Career Service position of Public Assistance Specialist Supervisor to the Selected Exempt Service status.

17. While Petitioner seemed to suggest that the Florida Legislature lacked the authority to unilaterally, retroactively, and statutorily rescind his existing property right of employment within a protected class, the undersigned does not

have the jurisdiction to determine the constitutionality of the statute.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Respondent enter a final order approving Petitioner's reclassification.

DONE AND ENTERED this 31st day of March, 2004, in Tallahassee, Leon County, Florida.



WILLIAM R. PFEIFFER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of March, 2004.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.