

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PATRICIA FULLER,)
)
 Petitioner,)
)
 vs.) Case No. 04-0873SED
)
 DEPARTMENT OF EDUCATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Notice was provided and on August 5, 2004, a formal hearing was held in this case. Authority for conducting the hearing is set forth in Sections 120.569 and 120.57(1), Florida Statutes (2004). The hearing location was the office of the Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida. The hearing was held before Charles C. Adams, Administrative Law Judge.

APPEARANCES

For Petitioner: Aaron J. Hilligas, Staff Counsel
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and

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For Respondent: R. W. Evans, Esquire
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STATEMENT OF THE ISSUE

Was Petitioner, Patricia Fuller properly reclassified from a Career Service position to an Exempt Service position in accordance with Section 110.205(2)(x), Florida Statutes (2001), by Respondent, Department of Education?

PRELIMINARY STATEMENT

On July 22, 2003, Respondent notified Petitioner of her right to petition Respondent for review of the decision to reclassify her employment position as Career Service to that of Exempt Service, on the basis that her position did not qualify for exempt status. Petitioner was afforded 21 days from receipt of the correspondence to file a petition with Respondent's agency clerk.

Petitioner availed herself of the opportunity to contest the reclassification by filing a petition with Respondent's

agency clerk seeking a formal hearing consistent with Sections 120.569 and 120.57(1), Florida Statutes. That petition was received on August 27, 2003.

On March 15, 2004, the Division of Administrative Hearings (DOAH) received the petition requesting the formal hearing to contest the reclassification as forwarded by Respondent. Upon receipt of the petition and letter of transmittal, the case was given a reference number and assigned to Barbara J. Staros, Administrative Law Judge pursuant to Section 120.569(2)(a), Florida Statutes (2004), in anticipation that a formal hearing would be conducted to resolve disputed issues of material fact between the parties. Following reassignment the final hearing was held before the present Administrative Law Judge.

Before the hearing Petitioner filed a Motion for Summary Disposition or Motion in Limine to Exclude Evidence. That motion was premised upon the argument that the Florida Public Employees Relations Commission (PERC) has exclusive jurisdiction to determine employment reclassifications under authority created by Chapter 447, Florida Statutes, and that Respondent had no power to reclassify Petitioner's position. Petitioner through the motion urged the Administrative Law Judge to enter a Recommended Order immediately returning Petitioner's position to Career Service status or in the alternative, exclude the evidence on subjects that were within the exclusive jurisdiction

of PERC. Respondent filed a response in opposition to the motion. On June 15, 2004, Judge Staros entered an order denying the motion.

When the hearing commenced Petitioner filed a Request for Administrative Notice in Support of Motion for Summary Disposition. That pleading referred to an administrative action styled Florida Public Employees Council 79, AFSCME v. State of Florida, CA-2001-048, a case before PERC. By this filing Petitioner sought to lend support for her Motion for Summary Disposition that had been previously ruled upon. This subsequent filing when the hearing commenced did not set aside the prior ruling by Judge Staros denying Petitioner's Motion for Summary Disposition. It was concluded that by the latter filing Petitioner sought to provide notice of the pendency of the PERC action. With the notice Petitioner intended to contend in her proposed recommended order for the present case that DOAH is preempted from considering the case given PERC's exclusive jurisdiction on the subject concerning reclassification of Petitioner's employment.

As reflected in the hearing transcript in this case, Petitioner's Request for Administrative Notice in Support of Motion for Summary Disposition filed at the beginning of the hearing was treated as a notification of the pendency of the action before PERC. But the parties were told that Petitioner's

case against Respondent before DOAH would proceed independently in keeping with the decision Reinshuttle v. Agency for Health Care Administration, 849 So. 2d 434 (Fla. 1st DCA 2003), without regard for the case before PERC.

Recognizing the nature of this dispute Respondent first proceeded with its case-in-chief. At the beginning it presented Amy Hammock and Patty Roberts as its witnesses. Petitioner testified in her case-in-chief. Amy Hammock and Carol Gordon were presented as rebuttal witnesses for Respondent.

Petitioner's Exhibits A and B were admitted. Respondent's Exhibits C, E, and D were admitted, the latter exhibit limited to the manual referred to as LAS/PBS. Respondent's Exhibits F, G, and H were denied admission. They are included with the record under proffer in relation to evidence by both parties concerning the significance of the master contract between the State of Florida and the Florida Public Employees Council 79, American Federation of State, County and Municipal Employees (AFSME) and the consequences which adherence to that master contract would have on Petitioner's right to proceed in her own right with the challenge to her job reclassification by Respondent. As explained in the transcript pertaining to the present case, the circumstances between the State of Florida and AFSCME have not been considered in resolving the dispute between Petitioner and Respondent. This choice was made given a reading

of Reinshuttle, supra, which led to the conclusion that the court intended that Petitioner be granted an opportunity to contest her reclassification by Respondent outside the experience of the master contract between the State of Florida and AFSCME. Nonetheless, the respective parties were allowed to proffer evidence that would facilitate review of that ruling by an appropriate court.

Official recognition is made of Florida Administrative Code Chapter 60K-1, predating January 2002. Official recognition is also made of Chapter 2001-043, Laws of Florida.

The parties prepared a Pre-Hearing Statement. In that Pre-Hearing Statement certain facts were agreed to. That agreement is acknowledged and the undisputed facts have been found in the Recommended Order.

Petitioner requested that the first sentence of Respondent's answer to Interrogatory 2 propounded to Respondent be admitted. That request was granted.

On August 17, 2004, a hearing transcript was filed with DOAH. Petitioner without opposition moved to extend the time for filing proposed recommended orders until September 10, 2004. The parties were advised that motion was granted, as memorialized by this reference. The parties timely submitted

proposed recommended orders on the extended schedule. Those proposed recommended orders have been considered in preparing the Recommended Order.

FINDINGS OF FACT

Stipulated Facts

1. Patricia Fuller was hired with the Agency (Department of Education) on or about June 1969, and worked with the Department of Education until her dismissal on or about January 7, 2003.

2. Until on or about July 1, 2001, the Petitioner was a permanent Career Service employee.

3. On or about July 1, 2001, Petitioner's position was reclassified to Exempt Service status.

Answer to Interrogatory 2

4. The Petitioner's position was transferred to Exempt Service from Career Service because (according to Respondent) she occupied a managerial and/or confidential position under Service First.

Additional Facts

5. Effective February 1, 2001, Petitioner's class title changed from that of Program Specialist II to Senior Management Analyst I. See Petitioner's Exhibit A. According to the document changing the Career Service system position description, it was executed as evidenced by signatures of

Petitioner, her immediate supervisor, the reviewing authority, and the agency personnel officer. In pertinent part, the position description as of February 1, 2001, stated the following:

RESPONSIBILITIES:

This position provides management consulting services to improve budget management capabilities and operational procedures performed by the Bureau of Budget Management, pursuant to the requirements of Chapters 215 and 216, Florida Statutes. This position serves as liaison for the budgeting entities it serves to promote the most effective and efficient application of budget resources, as well as for the department with legislative and gubernatorial staffs as directed.

DUTIES:

Serve as budget officer by preparing and monitoring all financial activities while ensuring compliance with Florida Statutes as well as State and department goals, policies, and procedures.

Review and manage legislative bills pertaining to a specific budget entity within the Department of Education. This includes determining the effect of proposed legislation on the department, serving as liaison to the Legislative Affairs office as well as other budget entities, and determining distribution of final legislative actions to the appropriate bureaus and offices for assistance in operational planning and decision making.

Monitor and reconcile department salary rate and dollar projection programs as well as State COPES and department personnel systems.

Monitor the appropriation, approved budget, and allocation of funds for the budget entities served.

Assist in the administration of the LAS/PBS budgeting system and the department budget system (BUDS) which interfaces with SAMAS.

Assist in the preparation, review, and processing of legislative and operating budget amendments as well as the planning and coordination of the annual plan of operations for the release of appropriations.

Assist in preparing department budgeting policy and financial analysis.

Assist in reviewing and processing department reorganization initiatives.

Perform other related assignments as needed.

KNOWLEDGE, SKILLS, AND ABILITIES NOT LISTED AS PART OF THE CLASSIFICATION:

Knowledge of basic management principles and practices. Ability to effectively communicate both verbally and in written form. Ability to collect, evaluate, and analyze data. Ability to prepare correspondence, reports, understand and apply applicable rules, regulations, policies and procedures. Ability to utilize problem-solving techniques, work independently, plan, organize, and coordinate work assignments. Ability to maintain effective working relationships with others.

6. In anticipation of the "Service First Initiative" which was intended to reclassify certain positions that were managerial, carried supervisory responsibilities, or were confidential in nature to Exempt Service status, Petitioner's

Class Code 2224, Senior Management Analyst I, was to be included in the Initiative. This inclusion was announced in a memorandum dated May 18, 2001. Section 447.203(5), Florida Statutes (2001), refers to "confidential employees" who act to assist or aid "managerial employees" whose responsibilities are defined at Section 447.203(4), Florida Statutes (2001). "Supervisory responsibilities" in relation to "supervisory employees" were recognized effective July 1, 2001, under Section 110.205(2)(x), Florida Statutes (2001). All three categories of employees described referred to classes of employees who held positions that would be exempt from Career Service pursuant to Section 110.205(2)(x), Florida Statutes (2001).

7. The nature of Petitioner's duties and responsibilities in her position as Senior Management Analyst I, during times relevant to this inquiry, are further explained in a Performance Appraisal for Select Exempt Service pertaining to her position as Senior Management Analyst I. The Select Exempt Service for Professional Employee Performance Appraisal was effective July 31, 2001. The appraisal was signed by Petitioner on January 1, 2002. On that date it was also signed by the appraiser, and the reviewer. See Respondent's Exhibit C. The critical elements in the appraisal process are described as follows:

Problem Analysis/Decision Making - Analyzes problems comprehensively; makes timely, practical decisions.

Planning - Bases plans on department mission and goals and a thorough analysis of relevant facts; justifies costs and benefits; sets realistic goals and schedules.

Organizing - Arranges work for the most efficient handling and elimination of unnecessary activities; operates efficiently.

Work Products - Produces reports, correspondence, and other work products which meet the intended objectives, are produced in a timely manner, demonstrate professional competency, and reflect acceptable quality.

Technical Skills - Has knowledge of methods, techniques and skills required in own and/or related functions; applies specific methods, procedures, and techniques in functional area.

Conceptual Skills - Conceptualizes the organization's relationship with other entities; understands organizational sub-unit relationships and dependencies; acts accordingly.

Presentations - Develops clear, well-organized and logical presentations; reduces complex issues to simple terms; is sensitive to audience levels.

Self-Direction - Is personally well-organized; uses time effectively; acts independently.

Self-Motivation - Is motivated to succeed; stretches personal resources; building on strengths and works on deficiencies.

Human Relations Skills - Communicates clearly and listens effectively; keeps others informed; deals effectively with conflict.

Relationships - Develops and maintains effective working relationships with other departmental managers, state managers, legislature, media, service recipients, and the public.

* * *

RESULTS EXPECTED AND MEASUREMENT CRITERIA:

Results Expected are specific statements of the expectations or requirements established by management of the position. Measurement Criteria statements reflecting the basis for appraising the specific results expected.

- 1.R: Monitor the appropriation, approved budget, and allocation of funds.
- 1.M: Are allotments in line with appropriation?
- 2.R: Monitor and reconcile salary rate and dollar projection reports and provide to staff as needed:
- 2.M: Are positions funded properly?
Are rate responses provided timely?
- 3.R: Prepare and review entries into LAS/PBS budgeting system.
- 3.M: Were LBR & LRPP entries completed accurately?
- 4.R: Prepare, review, and process legislative budget amendments.
- 4.M: Have amendments been completed and submitted accurately?
- 5.R: Provide customer assistance as well as assist co-workers during times of excessive workload and special projects.
- 5.M: Have customers been given timely assistance?
Have co-workers been given timely assistance?

8. During the relevant time period, Amy Hammock was Petitioner's immediate supervisor in the employing agency.

Ms. Hammock's position was that of Senior Education Finance Manager. From that vantage point she was familiar with Petitioner's job duties and responsibilities and the integration of those functions within the overall organization. Prior to becoming the Senior Education Finance Manager, Ms. Hammock had performed the duties of a budget officer, which were similar in nature to the duties incumbent upon Petitioner as budget officer. Petitioner served as a budget officer at all times relevant to this inquiry.

9. As Ms. Hammock describes, Petitioner's duties as a budget officer remained the same with the advent of reclassification from Career Service to Exempt Service. This is borne out in the timing of events, as previously described, in which Petitioner's Career Service System Position Description as Senior Management Analyst I, became effective February 1, 2001, and was still in place on July 1, 2001, when she was declared an Exempt Service employee by reclassification.

10. Petitioner had duties involving the preparation and administration of Respondent's budget in calendar year 2001 and Petitioner's participation in that process was roughly divided into two functions. The first function related to the legislative budget. The second function related to the operating budget for her agency.

11. The proposed legislative budget was presented to the Governor's Office and the House and Senate of the Florida Legislature. The planning of the legislative budget commenced in July 2001, and it was to be presented to the House and Senate by September 15, 2001. Part of those activities involved what is referred to as Long-Range Program Planning (LRPP). Petitioner and other budget officers in her agency were involved with the preparation of LRPP. LRPP was associated with the legislative budget request by the agency. LRPP and the legislative budget request constituted different approaches to presenting the figures in support of the legislative budget pertaining to Respondent. It was intended that the two approaches match in their outcome to assist the legislative members to understand what was being supported by appropriated funds.

12. The legislative budget examined three years. It involved the prior year expenditures, current year estimated expenditures based upon the Appropriations Act that was in effect at the time, and then an out-year which would have been the amount sought for the upcoming budget request year.

13. The budget officers, to include Petitioner, in relation to LRPP, had a list of activities that had been approved and were aware of those activities that pertained to the divisions within the agency to which they were assigned.

Petitioner's division was titled Professional Educators. In this respect Petitioner gathered information related to the budget on the subject of the certification of professional educators, the establishment of standards for those educators, and the disciplining of professional educators.

14. Within the 2001-2002 budgetary process, Petitioner and other budget officers working from the prior budget year, the current year, and the out-year, would input the information gathered concerning budgetary activities into an automated system involving the legislative budget process, which is referred to as the Legislative Appropriations System Planning and Budgeting Sub-system (LAS/PBS). The LAS/PBS is a mainframe system used by all state agencies, the Governor's Office, and the House and Senate staff intended to assist in the creation of the budget for the State of Florida.

15. In association with the LAS/PBS data input the budget officers, including Petitioner, in preparing information in calendar year 2001, for the upcoming legislative session independently determined the prior year expenditures. Petitioner performed that task related to the Division of Professional Educators, as well as for current year expenditures and projections for the out-year. This process involved the use of codes familiar to the budget officers for placing the data in the computer database.

16. The contribution which budget officers made to the budgetary process in relation to data generated for the budget preparation, was one in which the budget officers derived the data to be put into the system. Their function was not merely that of entering the data created by some other person. Specifically, the budget officer would be responsible for making certain that the data they contributed was an accurate reflection of the circumstances and then they would input the data consistent with the LAS/PBS manual. See Respondent's Exhibit D.

17. In relation to the prior year information entered into the LAS/PBS system, the budget officers would review internal budget reports for the prior year, referred to as SAMAS reports or Level Fours. The information that was obtained was translated into an activity level within a division, bureau or section and broken out for input into the LAS/PBS. The SAMAS reports utilized had been automatically generated from the comptrollers office and were available to the public. The functions just explained in relation to the prior year experience also had application to the current year under consideration.

18. By contrast, in determining inputs for establishing data to be used in the LAS/PBS system for the out-year, this would take into account the circumstances within the current

year plus any new issues. Petitioner would run a report out of LAS/PBS to see what the new issues were. The establishment of the new issues was at a higher level than Petitioner was assigned.

19. Respondent submitted the proposed budget created to the Governor's Office and the House and Senate for further review by September 15, 2001. The Governor's Office would then have created its own budget recommendations by using the LAS/PBS to be submitted to the Legislature in advance of the legislative session in accordance with deadlines established by statute.

20. Respondent's contribution to the budgetary process in 2001, was constructed upon data provided to each budget officer within the Agency.

21. The other budget in which Petitioner as a budget officer participated in 2001, was the operating budget. The operating budget was established on the basis of monies appropriated in the Appropriations Act. Activities undertaken in accordance with the operating budget influence the preparation of the upcoming legislative budget. The operating budget for 2001-2002 commenced on July 1, 2001.

22. In the time in question, Petitioner and other budget officers would be involved in activities pertaining to the operating budget at the beginning of the year. In this pursuit the budget officers consult with other people in putting that

budget together. Certain cost items would be taken into account such as, travel expenditures, supplies, rent, and the apportionment of rent among sections within a division based upon the number of full-time employees (FTEs).

23. In relation to the operating budget, the budget officers were responsible for acting consistent with the funding source in relation to activities performed by Respondent's employees as part of the budget process.

24. Under the terms of the operating budget in the instance where expenditures in the current year were unusual, the budget officers would discuss the matter with the director of the division and other persons within the division to address the circumstances.

25. The operating budget for Respondent was established in categories authorized by the Legislature under terms set forth in the Appropriations Act. The budget officer could look at allocations within the category, for example, if the travel allocation was exceeding the original budget that had been established, Petitioner, among other budget officers, could look at a different allocation such as supplies and move a part of that allocation into the travel allocation, so that the net effect would be not to exceed the budget that had been established concerning the expenditures for travel. Sometimes the division director would be consulted before making these

adjustments in the more substantial examples. Otherwise, the budget officer would make these adjustments that were not especially significant in their import.

26. Petitioner in the relevant time period was authorized to move funds through an internal budget amendment process within the agency. That involved the movement of funds between object codes. Object codes make up a category. An example would be moving funds within the travel object code to the supply object code. Funds could be moved between sections within the division. If one section had more funds available in the budget for their travel object code than were needed, some of those funds could be moved to another section that had less budget for travel than was needed.

27. Certain areas within the overall operating budget for Respondent would pertain solely to the Division of Professional Educators where Petitioner acted as budget officer. The funding source for the operating budget of the Division of Professional Educators came from general revenue, funding for projects, contracts, grants, and the teacher certification trust fund. The latter funding source was unique to the Division of Professional Educators.

28. Taking the teacher certification trust fund as an example of her duties, Petitioner would have been responsible for analyzing the revenues coming into that trust fund as to the

pattern of distribution of revenues and whether the pattern was consistent with projections, understanding that the pattern would influence the legislative budget request. There was the duty to look at expenditures from the trust fund to determine if those expenditures were as had been projected before the expense. If something about these relationships of revenue collection and expenditures did not seem appropriate, Petitioner would bring it to her supervisor's attention or contact the Director of the Division of Professional Educators to address the problem.

29. Petitioner as a budget officer reviewed purchase requisitions for the agency related to her division, to make sure that the funding source corresponded to the purchase requisition. If not, the item could not be paid for from an unrelated trust fund.

30. Concerning projects, contracts, and grants, Petitioner's supervisor would work on the projected revenues for those functions. The budget officer in-turn would provide information on actual expenditures related to projects, contracts, and grants. Out of this process the budget officer would input information concerning the operating budget pertaining to projects, contracts, and grants. Petitioner's supervisor would establish category amounts. Petitioner would determine the object code amount under a category and could make

adjustments during the course of the fiscal year within the object code and could make adjustments between operating sections within a bureau pertaining to object codes.

31. Concerning the Career Service System Position Description, Petitioner's Exhibit A, Ms. Hammock as supervisor for Petitioner had additional insights to impart in relation to responsibilities identified in the position description. The consulting services referred to in the document would mean "anybody and everybody." In particular, it was contemplated that the budget officer work with bureau chiefs and division directors on budget issues.

32. Some examples of consultation between the budget officer and the division director, or bureau chief on budget issues, would be if personnel actions were being processed and the budget officer observed that the salary rate was becoming a problem for a division, the budget officer would bring this to the attention of the supervising personnel.

33. Toward the end of the fiscal year outstanding purchase requisitions or contracts would be scrutinized by budget officers to see if they could be concluded. To avoid asking the Governor's Office to certify those items forward they would use the SAMAS internal operating system in that endeavor and work with persons within the division to close the items out. This involved constant analysis.

34. Personnel reports referred to as COPES reports were analyzed by the budget officers each month to make sure the funding information was correct, that grant numbers were correct, and that retirement rates were correct, as examples of functions performed by the budget officer.

35. In performing tasks involving the allocation of the budget Petitioner had available a spreadsheet to facilitate that process. Some of the monies that were involved were not appropriated through the Appropriations Act during the period in question. That was in reference to an off-line budget.

36. As stated, the ability of the budget officer to make decisions, took into account the views held by division directors and bureau chiefs, as well as the supervisor to the budget officer, including the movement of the funds within object codes and between sections. This was accomplished by utilizing a form to be submitted to the Comptroller's Office where these actions would be input into the internal accounting system. Significant problems required that the budget officer consult with the next two levels of supervisors and sometimes higher authorities would be involved within the agency. On occasion budget amendments through the Legislature would be necessary outside the authority of the budget officer to correct budget problems.

37. As Petitioner recalls her responsibilities as Senior Management Analyst I, her supervisor would give her a sheet pertaining to the funding of employee positions and Petitioner would execute forms in association with the funding. In addition, Petitioner monitored the financial activities within the Division of Professional Educators.

38. Between July and September 2001, Petitioner agrees with her former supervisor's memory of the events that Petitioner allocated funds within the operating budget and assisted with preparation of the legislative budget request. Petitioner was provided figures to input into LRPP which came from the Level Four information base containing expenditures for the previous year and expenditures made during the current year. For the previous year Petitioner used an end-of-the-year report in association with LRPP. For the out-year, Petitioner utilized information pertaining to the current year and projections for the upcoming year. The out-year projections were based on consultations with the section head, bureau chief, and director to ascertain needs for the upcoming fiscal year, what activities those persons wanted funded based upon experience with recurring expenses.

39. Petitioner had no authority to delete recommendations made by section heads, bureau chiefs, and the division director, in association with the out-year budget requests.

40. In relation to the Level Four report generated through the Comptroller's Office, Petitioner entered certain allotments associated with the operating budget.

41. Petitioner's familiarity with her role in the LAS/PBS data entry process was that the system was automated as has been previously described and she had a code that was used to access the system. Once in the system a format was used to input figures after compiling those figures through LRPP. Once the information was input into the LAS/PBS Petitioner checked the data placed. Petitioner checked the results to determine the compatibility of the issues that were involved in the budget request in association with what the division director had submitted as projections for the out-year, as well as information concerning the current year and the previous year. If Petitioner needed assistance in this process her supervisor, Carol Gordon, upon request, would edit the data being prepared. A printout of the corrected work would be given to the supervisor.

42. A booklet was prepared and referred to as the Legislative Budget Request constituted of the efforts of all budget officers and the supervisors. That concluded Petitioner's involvement in that preparation.

43. Concerning the allocations of funds out of the legislative appropriations, Petitioner refers to a legislative

appropriations booklet that details the amount allotted for certain programs and whether they were trust funds or funds from general revenue. She would allocate the funds based upon object codes. To perform this task she used a spreadsheet.

44. Petitioner did not write the program for the spreadsheet and was not authorized to change that program. The information related to object codes was obtained through the Level Four report for June 30th. If the Petitioner encountered an object code that was overspent during the fiscal year, she could increase that object code by five percent for the future or to the contrary could decrease an object code that was not spent up to expectations.

45. Petitioner describes her role in monitoring financial activities within her division as consisting of reviewing purchase requisitions which were established by purchase cards. She also reviewed miscellaneous invoice transactions. Petitioner had involvement in financial matters pertaining to personnel action forms. Petitioner was responsible for monitoring salary projections on a monthly or sometimes yearly basis. Petitioner maintained a roster of employees within the division and the salary attributable to those positions, and the salary rate for the positions.

46. Petitioner explains her role in the purchase requisition processes as taking a purchase request executed by

various persons in the hierarchy and reviewing it for accuracy in association with object codes and information pertaining to the division, bureau, and section. Petitioner looked at the requisition to make certain that it complied with applicable rules of the Respondent and the State of Florida as to the nature of the item to be purchased. If an item was not within the guidelines, Petitioner would contact the section head and let the person know that it was not allowed. Coding errors were corrected by Petitioner. If funding was not available to make the purchase Petitioner contacted the bureau chief and division director to make them aware of the unavailability of funds. Those persons who had been contacted could then select another funding source. Petitioner was without the authority to deny a purchase requisition that met guidelines and for which funds were available.

47. On a monthly basis her supervisor would give Petitioner a spreadsheet to enter salary rate. The rate was provided from the Governor's Appropriations Office. This was compared to the earnings for the employees on the roster. If rate was less than earnings, it was necessary to prepare a budget amendment for the Governor's Office requesting additional salary. That function was performed by Ms. Gordon, Petitioner's supervisor.

48. Petitioner explains that when personnel action forms were presented to her, she would enter the funding source information. She would look to see if it was a salary in association with a promotion or the hiring of a new employee. The salary information was obtained from what is referred as PAF 12. The division director, bureau chief, or section head recommended the salary amount.

49. Petitioner describes her role in relation to the payment of rent and insurance. The payment of rent was on the basis of FTE and square footage to be assigned to each FTE. In association with the funding source for paying the rent, this calculation was made by using a formula in place and in response to an invoice requesting the payment of the rent.

50. During the time in question budget officers, to include Petitioner, did not supervise or manage other employees within the agency. As a budget officer Petitioner did not serve any role in labor relations.

51. In her time with the Agency Petitioner did not participate in collective bargaining negotiations. She had not access to sensitive employee information such as drug test results, examination results, or medical information. She did not provide direct assistance to anyone that was engaged in collective bargaining negotiations. She was never involved in

the investigation of labor-related complaints by employees. She never made any determination on how a grievance or employee complaint should be resolved.

CONCLUSIONS OF LAW

52. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in accordance with Sections 120.569 and 120.57(1), Florida Statutes (2004).

53. This case preceded to hearing based upon the holding in Reinshuttle v. Agency for Health Care Administration, 849 So. 2d 439 (Fla. 1st DCA 2003). The purpose was to factually determine whether Petitioner's position as Senior Management Analyst I was properly reclassified from Career Service to Exempt Service consistent with the expectations set forth in Section 110.205(2)(x), Florida Statutes (2001).

54. Because Respondent sought to reclassify the employment position from Career Service to Exempt Service, it bears the burden or proof by a preponderance of evidence that the reclassification met statutory expectations. See Florida Department of Transportation v. J.W.C., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977); and Young v. Department of Community Affairs, 625 So. 2d 831 (Fla. 1993).

55. Section 110.205(2)(x), Florida Statutes (2001),
states:

Effective July 1, 2001, managerial employees, as defined in s. 447.203(4), confidential employees as defined in s. 447.203(5). And 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. Excluded are employees also designated as special risk or special risk administrative support¹ and attorneys who serve as administrative law judges pursuant to s. 120.65 or for hearings conducted pursuant to s. 120.57(1)(a). Additionally, registered nurses licensed under chapter 464, dentists licensed under chapter 466, psychologists licensed under chapter 490 or chapter 491, nutritionists or dieticians licensed under part X of chapter 468, pharmacists licensed under chapter 465, psychological specialists licensed under chapter 491, physical therapists licensed under chapter 486, and speech therapists licensed under part I of chapter 468 are excluded, unless otherwise collectively bargained.

¹/ **Note.** --The word "and" was inserted by the editors.

56. Section 447.203(4) and (5), Florida Statutes (2001)
states:

(4) "Managerial employees" are those employees who:

(a) Perform jobs that are not of a routine, clerical, or ministerial nature and require the exercise of independent judgment in the performance of such jobs and to whom one or more of the following applies:

1. They formulate or assist in formulating policies which are applicable to bargaining unit employees.
2. They may reasonably be required on behalf of the employer to assist in the preparation for the conduct of collective bargaining negotiations.
3. They have a role in the administration of agreements resulting from collective bargaining negotiations.
4. They have a significant role in personnel administration.
5. They have a significant role in employee relations.
6. They are included in the definition of administrative personnel contained in s. 228.041(10).
7. They have a significant role in the preparation or administration of budgets for any public agency or institution or subdivision thereof.

(b) Serve as police chiefs, fire chiefs, or directors of public safety of any police, fire, or public safety department. Other police officers, as defined in s. 943.10(1), and firefighters, as defined in s. 633.30(1), may be determined by the commission to be managerial employees of such departments. In making such determinations, the commission shall consider, in addition to the criteria established in paragraph (a), the paramilitary organizational structure of the department involved.

However, in determining whether an individual is a managerial employee pursuant to either paragraph (a) or paragraph (b), above, the commission may consider historic relationships of the employee to the public employer and to coemployees.

(5) "Confidential employees" are persons who act in a confidential capacity to assist or aid managerial employees as defined in subsection (4).

57. The facts do not reveal that during the relevant time frame Petitioner served as a "supervisory employee" within the definition set forth in Section 110.205(2)(x), Florida Statutes (2001).

58. The facts do not reveal that in the relevant time frame Petitioner acted as a "confidential employee" as defined in Section 447.203(5), Florida Statutes (2001).

59. Based upon the facts, the only criterion related to "managerial employees" that arguably could pertain to Petitioner in the relevant time frame would be Section 447.203(4)(a) 7, Florida Statutes (2001) related to budget matters. All other criteria that might establish Petitioner's role as "managerial employee" set forth in Section 447.203(4), Florida Statutes (2001), do not pertain.

60. Concerning the question of whether the role which Petitioner performed in relation to her duties as Senior Management Analyst I, further described as a budget officer, was significant in either the preparation or administration of budgets for Respondent, the terms set forth in that criterion are given their ordinary meaning, absent further definition in the statute. See Southeastern Fisheries Assoc. v. Dept. of

Natural Resources, 453 So. 2d 1351 (Fla. 1984). The facts found establish that Petitioner had a role in the preparation and administration of budgets associated with Respondent, a public agency but was it a significant role? The facts that describe the duties must also be considered to determine if the duties were routine, clerical, or ministerial in nature and required the exercise of independent judgment in the performance of those duties. Although the duties in the job were more than clerical or ministerial in nature, there were routines carried out to meet the obligations. A certain level of independence was allowed, but never outside the control of her supervisors and other managers with Respondent and the design of the budgetary process concerning its format. Petitioner was in a lower echelon within an apparatus used to establish and administer the budgets. Petitioner's placement within the Agency concerning the preparation and administration of budgets had limited influence and effect on the outcome, not enough to describe her role as significant. For that reason she does not meet the definition of "managerial employee" to justify her reclassification from Career Service to Exempt Service.

61. Concerning Petitioner's assertion that the Respondent failed to comply with Florida Administrative Code Rule 60K-1.0081(3), in effect at the time of reclassification, wherein it is stated: "Any classification action to be taken by


an employing agency shall be initiated by preparation of a current position description," that claim has not been established. Well in advance of the effective date of July 1, 2001, Respondent established a current position description for the position of Senior Management Analyst I, which was duly-executed by Petitioner and other appropriate parties.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law reached it is,

RECOMMENDED that a final order be entered finding that Petitioner's position of Senior Management Analyst I, is that of a Career Service employee, setting aside the classification as Exempt Service, and reinstating Petitioner as a person entitled to rights pertaining to Career Service employees as of the time of her improper reclassification.

DONE AND ENTERED this 7th day of October, 2004, in Tallahassee, Leon County, Florida.



CHARLES C. ADAMS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of October, 2004.

ENDNOTE

^{1/} Counsel has since filed a notice of withdrawal as attorney.

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.