BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition of Robert J. Crouch for review of reclassification of position from Career Service to Select Exempt Service.	DOCKET NO. 030871-OT ORDER NO. PSC-04-0201A-FOF-OT ISSUED: February 27, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

AMENDATORY ORDER ADOPTING ADMINISTRATIVE LAW JUDGE'S RECOMMENDED ORDER

BY THE COMMISSION:

I. Background

As a result of the "Service First" legislation in 2001, numerous state employees were reclassified from Career Service to Selected Exempt status effective July 1, 2001. The First District Court of Appeal subsequently decided that all such reclassified employees were entitled to a point of entry to proceedings to determine whether their positions met the statutory criteria for exemption from the Career Service. Reinshuttle v. Agency for Health Care Administration, 849 So. 2d 434 (Fla. 1st DCA 2003). Reclassified employees were notified of their right to seek an administrative hearing. Former Commission employee Robert J. Crouch, a Utility Systems/Communications Engineer Supervisor, timely requested a hearing to challenge the reclassification of his position.

We referred the matter to the Division of Administrative Hearings for a formal hearing. A hearing was held on November 13, 2003. After hearing the testimony of two witnesses and reviewing the exhibits, the Administrative Law Judge recommended that the evidence supported the conclusion that Petitioner, Mr. Crouch, was a supervisory employee as defined in section 110.205(2)(x), Florida Statutes (2001), and was therefore properly reclassified from Career Service to Selected Exempt Service effective on July 1, 2001. The Administrative Law Judge issued his Recommended Order on December 18, 2003, a copy of which is attached hereto and incorporated herein by reference. Mr. Crouch did not file any exceptions to the Recommended Order.

II. Decision

An agency may not reject or modify findings of fact made by the Administrative Law Judge unless a review of the complete record demonstrates that such findings were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. §120.57(1), Fla. Stat. (2003). A review of the record demonstrates that the findings of fact contained in the Recommended Order are supported by competent, substantial evidence in the record. In addition, we believe the conclusions of law correctly apply the applicable law to the facts of this case. We therefore adopt the Recommended Order as our Final Order.

ORDERED that the Findings of Fact and Conclusions of Law in the Recommended Order are adopted. It is further

ORDERED by the Florida Public Service Commission that the Administrative Law Judge's recommendation is accepted. It is further

ORDERED that the Petition of Robert J. Crouch is hereby denied. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 27th day of February, 2004.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(SEAL)

CTM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of any other action of the Commission by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROBERT J. CROUCH,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 03-3139SED
	)	
PUBLIC SERVICE COMMISSION,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

After due notice, a formal hearing was held on November 13, 2003, in Tallahassee, Florida, conducted by S. Scott Stephens, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Robert J. Crouch, pro se
245 Pond Court
Havana, Florida 32333

For Respondent: Michael Mattimore, Esquire
Allen, Norton & Blue, P.A.
906 North Monroe Street
Tallahassee, Florida 32303

and

Christiana T. Moore, Esquire
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

STATEMENT OF THE ISSUE

The issue presented is whether Petitioner was a supervisory employee as defined by Section 110.205(2)(x), Florida Statutes (2001), and was therefore properly reclassified from Career Service to Selected Exempt Service effective July 1, 2001.

PRELIMINARY STATEMENT

On August 14, 2003, Petitioner filed a request for review of agency action with the Respondent Public Service Commission (Commission) alleging that Respondent wrongly reclassified his position from Career Service to Selected Exempt Service effective July 1, 2001. The Commission forwarded the request to the Division of Administrative Hearings (DOAH) on August 29, 2003, for assignment of an administrative law judge to conduct a final hearing. After granting one continuance, the final hearing was held on November 13, 2003, in Tallahassee, Florida.

Petitioner presented his own testimony during the final hearing. The Commission presented the testimony of Marshall W. Willis, Bureau Chief of Rate Filings at the Public Service Commission. The Commission also called Mr. Crouch during its case-in-chief. The Commission's Exhibits 1 through 10 were admitted without objection. At the close of evidence, counsel for the Commission requested time to have the proceedings transcribed, after which the Petitioner and Commission would

prepare and file written final arguments and proposed recommended orders.

A Transcript was filed on November 25, 2003. Petitioner's Brief was filed on December 2, 2003. The Commission filed a Proposed Recommended Order on December 3, 2003. Both were considered in preparation of this Recommended Order.

Citations are to Florida Statutes (2001) unless otherwise noted.

FINDINGS OF FACT

1. Petitioner became employed by the Commission as an Engineering Supervisor in 1984, and held Select Exempt status prior to 1991, when he was reclassified to a Career Service employee. From 1997 until his retirement, he held Position No. 00168, titled "Utility Systems/Communications Engineer Supervisor." The first paragraph of his October 1, 1997, Position Description states:

> This is work supervising engineers in the Bureau of Economic Regulation. The primary duty of the employee in this position is to spend the majority of time communicating with, motivating, training and evaluating employees, planning and directing their work; and having the ability to effectively recommend to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline subordinate employees.

2. The October 1, 1997, Position Description was in effect at the time Petitioner was reclassified to Select Exempt following enactment of the Service First Initiative.

3. Following the decision of the District Court of Appeal in Reinshuttle v. Agency for Health Care Administration, 849 So. 2d 434 (1st DCA 2003), Petitioner was notified of his right to seek an administrative hearing for the purpose of challenging his reclassification. Petitioner timely requested a hearing on August 13, 2003.

4. Petitioner does not dispute the supervisory nature of the job outlined in the Position Description. He claims that despite his Position Description, his position was not truly "supervisory" as a practical matter and thus did not fit within the authorized grounds for reclassification under Section 110.205(2)(x), Florida Statutes (2001).

5. The Position Description alone is not controlling, because it is possible the actual nature of Petitioner's job changed and the Position Description had not been amended to reflect that. It is therefore appropriate to look behind the Position Description to see whether the actual duties expected of Petitioner were supervisory in nature. To support his claim that his responsibilities had "eroded" to the point they were no longer supervisory in nature, Petitioner points to the

hiring of several individuals to work in the section for which he was responsible.

6. Several individuals (Ed Fuchs, Ted Davis, Gerald Edwards, and Jeanette Sickel) were hired to work under Petitioner by the Commission. Petitioner objected to the hiring of some of those persons on the ground that they lacked qualifications, educational and otherwise, for their positions, but they were hired nevertheless. Another individual, Wetherington, was hired with Petitioner's assent after interviewing with Petitioner and the Bureau Chief.

7. Once the individuals were hired, they worked under the supervision of Petitioner. He was responsible for approving their time sheets, conducting their annual evaluations, approving travel and leave requests, and training.

8. Petitioner was responsible for assigning the work to employees Sickel, Munroe, Davis, Edwards, and Wetherington, and for monitoring its quality. It was Petitioner who the Commission held responsible for the work product of the section. Petitioner directed the manner in which the employees performed their work on a day-to-day basis.

9. Petitioner answered to Marshall Willis, Bureau Chief of Rate Filings. Willis was responsible for evaluating Petitioner's performance on the basis of how well Petitioner managed the performance of employees under Petitioner's

supervision, and Petitioner was rated and held accountable to communicate, train, direct, and assign work to subordinate employees assigned to him.

10. Petitioner's evaluation by Mr. Willis dated December 8, 2000, notes that Petitioner must put forth greater effort in reviewing the work of his engineering section and in improving the analysis reflected in written recommendations. Similar issues had been raised in an earlier evaluation. In response to a November 1998, evaluation of his performance by Mr. Willis, Petitioner acknowledged deficiencies in the performance of his engineering section, and provided assurance that he would "strive to do a better job of supervising my staff" in the future.

11. At all pertinent times, Petitioner's position was not of a routine, clerical, or ministerial nature, and did require the application of judgment. Petitioner had a significant role in personnel administration, as he served as the officer trusted by the state to verify the hours worked, to direct the amount and quality of work performed during those hours, and to be held accountable for the collective performance of the employees in the engineering section.

12. Petitioner did lack the ultimate authority to hire and fire personnel, but that does not make his role in personnel administration insignificant. While hiring and firing are

indeed important decisions, in state government the ultimate authority to hire and fire always resides with the agency head or office head. The bulk of the day-to-day management of personnel does not consist of hiring and firing, but rather of assigning the work and monitoring its successful completion.

13. In addition to the expectations set out in the Position Description, the course of conduct and of communications received from his Bureau Chief establish that supervisory responsibility was in fact a requirement of Petitioner's position. Petitioner was actually expected to spend a majority of his time communicating with, motivating, and training employees, and planning and directing their work.

14. The clearly established expectations for Petitioner's position would place upon the incumbent the responsibility for making effective recommendations for hiring, transfer, suspension, layoff, recall, promotion, discharge, assignment, reward, or discipline of subordinate employees. The instances of other Commission officials declining to follow Petitioner's recommendations regarding hiring reflect the officials' lack of satisfaction with the way Petitioner was carrying out those supervisory responsibilities, not an acknowledgement that those responsibilities do not exist.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. Sections 120.569 and 120.57(1), Florida Statutes (2003).

16. Petitioner's position was that of a managerial employee under Section 447.203(4), Florida Statutes (2003), when he was reclassified to Select Exempt status, because his duties were not of a routine clerical or ministerial nature and he had a significant role in personnel administration. Because the position met the definition of "managerial" in Section 447.203, Petitioner was subject to reclassification under Section 110.205(2)(x), which incorporates the definitional language in Section 447.203(4) by reference.

17. Petitioner is also subject to reclassification as Select Exempt on the separate and independent ground that his position was that of a "supervisory employee" as that term is defined in Section 110.205(2)(x), itself. To properly carry out his stated duties, it would be necessary for Petitioner to spend the majority of his time communicating with, motivating, training, and evaluating employees, and planning and directing employees' work. While it is true that Petitioner lacked the ultimate authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline subordinate

employees, his position did come with the authority and indeed expectation that it would effectively recommend such action. The determination of whether a reclassification was authorized by Section 110.205(2)(x) must focus on the position itself, its stated responsibilities, and its real world expectations, not on the quality of how the job was actually performed by the incumbent. An employee assigned to a supervisory position could not, by simply failing or refusing to perform supervisory functions, be excluded from the definition of a supervisory employee. While there is no contention that this Petitioner simply refused to perform his supervisory duties, there is evidence that the manner in which Petitioner performed those supervisory functions was unsatisfactory to his Bureau Chief. That being the case, it is hardly surprising that the bulk of Petitioner's recommendations about important decisions such as hiring and firing were not accepted by the Bureau Chief. Petitioner had very specific ideas about the nature of the qualifications that should be expected of those working under him, and obviously the Bureau Chief disagreed. Under these circumstances, the Commission's refusal to follow Petitioner's recommendation does not result from any lack of supervisory authority inherent in the position, but from lack of agreement with the way that the supervisory authority was exercised.

18. Petitioner was a supervisory employee as defined in Section 110.205(2)(x), Florida Statutes (2001), and was therefore properly reclassified from Career Service to Selected Exempt Service effective July 1, 2001.

RECOMMENDATION

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

RECOMMENDED that the Public Service Commission enter a final order that Petitioner's position was properly reclassified as Selected Exempt Service.

DONE AND ENTERED this 18th day of December, 2003, in Tallahassee, Leon County, Florida.

S Scott Stephens

S. SCOTT STEPHENS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of December, 2003.

COPIES FURNISHED:

Robert J. Crouch
245 Pond Court
Havana, Florida 32333

Michael Mattimore, Esquire
Allen, Norton & Blue, P.A.
906 North Monroe Street
Tallahassee, Florida 32302-1906

Christiana T. Moore, Esquire
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Blanco Bayo
Director of Records and Reporting
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

William D. Talbott, Executive Director
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Richard D. Melson, General Counsel
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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.