

AWI Order No. 2003/09-00714FOI Date: 9/25/03
FILED
Agency for Workforce Innovation
AGENCY CLERK
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By: Veronica Moss

**STATE OF FLORIDA
AGENCY FOR WORKFORCE INNOVATION**

ROMULO BREA,

Petitioner,

AWI Case No.: 2003/09-00714

v.

STATE OF FLORIDA,
AGENCY FOR WORKFORCE INNOVATION,

Respondent.

FINAL AGENCY ORDER OF DISMISSAL

THIS MATTER came before the Agency for Workforce Innovation, in accordance with Chapter 120, Florida Statutes, and Rule Chapter 28-106, Florida Administrative Code, for consideration of the Petitioner's Petition for Review of Final Agency Action Reclassifying Named Employees from Career Service to Select Exempt Service.

STATEMENT OF FACTS

1. On July 21, 2003, the Agency mailed notices to current and former employees whose positions had been reclassified from the Career Service class to the Selected Service pursuant to amendments to Florida Statutes by Chapter 2001-43, Laws of Florida. The notices offered such employees a 21-day period in which to challenge the Agency's determination that their positions be reclassified.

2. According to the Agency's records, Petitioner's position was not reclassified from the Career Service to the Selected Exempt Service class. A records search dating back to July 1, 2001, revealed that Petitioner was in the Career Service class from the beginning of the search period until the date of termination from the Agency on July 7, 2003.
3. Petitioner occupied a Career Service position of Customer Service Specialist at the time of separation from the Agency on July 7, 2003.
4. Petitioner's name was not included on the list of current and former employees who were mailed the July 21, 2003, letter.
5. On August 8, 2003, counsel for the Petitioner filed a letter on behalf of fifteen (15) current and former employees of the Agency, including Petitioner, seeking "an administrative proceeding for each to determine whether their respective positions, if any, at the time in 2001-2002 were reclassified according to the legislature's specific statutory criteria for exemption from the career service system pursuant to section 110.205(2), Florida Statutes (2001)."
6. Via letter dated August 11, 2003, the Agency notified the attorney for the Petitioner that a petition meeting the requirements of Chapter 120, Florida Statutes, and Rule 28-106.201, Florida Administrative Code, must be filed in order to request an administrative hearing.
7. On August 18, 2003, Petitioner filed an amended request, entitled "Employee's Petition for Review of Final Agency Action Reclassifying Named Employees from Career Service to Select Exempt Service." The amended request named 16 employees, including Petitioner, on whose behalf review was sought.
8. The amended request stated that the petitioners wished to challenge their reclassifications to the Selected Exempt Service, and sought return to the Career Service class.

FINDINGS OF LAW

9. Administrative review of agency action is available to a "party" whose "substantial interests" are determined by an agency. Section 120.569(1), Florida Statutes. Thus, Petitioner's standing to seek administrative review of agency action initially turns on whether the petitioner is a "party" as defined in section 120.52(12), F.S.

10. Section 120.52(12), F.S., defines "party" to mean:

(a) Specifically named persons whose substantial interests are being determined by an agency.

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(d) Any county representative, agency, department, or unit funded and authorized by state statute or county ordinance to represent the interests of the consumers of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the representative, agency, department, or unit to represent the class of interested persons. The authorizing resolution shall apply to a specific proceeding and to appeals and ancillary proceedings thereto, and it shall not be required to state the names of the persons whose interests are to be represented.

The term "party" does not include a member government of a regional water supply authority or a governmental or quasi-judicial board or commission established by local ordinance or special or general law where the governing membership of such board or commission is shared with, in whole or in part, or appointed by a member government of a regional water supply authority in proceedings under s. 120.569, s. 120.57, or s. 120.68, to the extent that an interlocal agreement under ss. 163.01 and 373.1962 exists in which the member government has agreed that its substantial

interests are not affected by the proceedings or that it is to be bound by alternative dispute resolution in lieu of participating in the proceedings. This exclusion applies only to those particular types of disputes or controversies, if any, identified in an interlocal agreement.

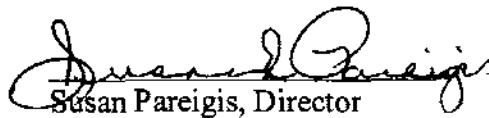
11. Section 120.52(12)(a), F.S., does not apply because Petitioner is not a specifically named person whose substantial interests are being determined by the Agency's reclassification of certain Career Service positions to the Selected Exempt Service class.
12. Section 120.52(12)(b), F.S., does not apply because Petitioner is not entitled to participate according to the State or federal Constitution, statute, or any agency regulation; and because Petitioner's substantial interests will not be affected by proposed agency action.
13. Section 120.52(12)(c), F.S., does not apply because Petitioner has not been granted any sort of authority to intervene or participate in agency proceedings.
14. Section 120.52(12)(d), F.S., does not apply because that section involves county governmental action.
15. Even if Petitioner were considered a party under section 120.52(12), F.S., he must still meet the Section 120.569(1), F.S., requirement that his "substantial interests" are determined by the Agency's action. *Cf. Legal Environmental Assistance Foundation, Inc. v. Clark, 668 So. 2d 982, 987 (Fla. 1996)* (to have standing to appeal final agency action, person must be a party and must be adversely affected by the agency action). Because Petitioner was not moved from the Career Service to the Selected Service class, this requirement is not met.

ORDER

Based on the foregoing, it is hereby ORDERED:

That the Petitioner's Petition for Review of Final Agency Action Reclassifying Named Employees from Career Service to Select Exempt Service is DISMISSED for lack of standing.

DONE AND ORDERED in Tallahassee, Florida, this 25th day of September, 2003.

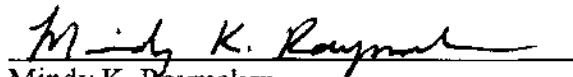

Susan Pareigis, Director
Agency for Workforce Innovation

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION. Pursuant to Section 120.68(2), Florida Statutes, judicial review of this proceeding may be instituted by filing a notice of appeal in the district court of appeal in the appellate district where the Agency maintains its headquarters or where a party resides. Such notice of appeal must be filed with the district court of appeals within thirty (30) calendar days of the date on which this order is rendered, as indicated in the certification of the Agency Clerk, or further review will be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a true copy of the foregoing was furnished, by certified mail, this 25th day of September, 2003.


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