

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SEMINOLE COMMUNITY COLLEGE, )  
 )  
 Petitioner, )  
 )  
 vs. ) CASE NO. 91-4075  
 )  
 ROBERT R. REKO, )  
 )  
 Respondent. )  
 )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing in the above-styled matter was held on February 13-14, 1992, in Sanford, Florida, before Joyous D. Parrish, a designated Hearing Officer of the Division of Administrative Hearings. The parties were represented at the hearing as follows:

APPEARANCES

For Petitioner: J. Dana Fogle  
FOGLE & FOGLE, P.A.  
217 East Plymouth Avenue  
Post Office Box 817  
DeLand, Florida 32721-0817

For Respondent: Joseph Egan, Jr.  
EGAN, LEV & SIWICA, P.A.  
P.O. Box 2231  
Orlando, Florida 32802

STATEMENT OF THE ISSUES

The central issue in this case is whether Respondent's employment with the Petitioner should be terminated.

PRELIMINARY STATEMENT

This case began on April 9, 1991, when the Board of Trustees, Seminole Community College met and voted to eliminate three vocational programs then offered by the college. The programs (upholstery, culinary arts, and welding) were taught by three instructors who had been on continuing contract with the college. The Respondent in this case, Robert R. Reko, taught the welding course. The decision to eliminate the programs was viewed as a concurrent determination to not renew the continuing contracts held by Reko and the other instructors.

Respondent challenged the decision to not renew his continuing contract, and the Board of Trustees met again to reconsider the matter. At that time, the Respondent requested a continuance so that the matter could be referred to the

Division of Administrative Hearings for formal hearing. By order entered June 24, 1991, the continuance was granted, and the request for assignment of hearing officer was issued. That request was filed with the Division of Administrative Hearings for formal proceedings on June 28, 1992.

Initially, the case was scheduled to be heard October 16, 1991; however, the Respondent filed a motion for continuance which was granted, and the case was rescheduled for February 13, 1992. At the hearing, the Petitioner presented the testimony of the following witnesses: Joseph Williams, Jr., former upholstery instructor; Matilda Morabito, former instructor of the culinary arts class; Robert R. Reko; Suzanne Tesinsky, Dean of Applied Technologies; Margaret Culp, Dean of Student Services; Russ Calvet, Dean of Personnel Services; and Keith Samuels, Vice President for Instructions. The Petitioner's exhibits numbered 1-43, 45-57, and 60 were admitted into evidence. Petitioner's exhibits 58 and 59 were proffered for the record.

The Respondent testified in his own behalf and presented the testimony of the following witnesses: Russ Calvet, Joseph Williams, Jr., and Matilda Morabito. The Respondent's exhibits numbered 1 through 4, 6, 8, 9, and 12 through 19 were admitted into evidence.

The transcript of the hearing was filed on April 2, 1992. The Respondent filed two motions for enlargement of time within which to file the proposed recommended orders; those requests were granted. The Respondent's corrected brief was filed on May 29, 1992. The proposed findings of fact submitted by the parties have been considered in the preparation of this order. Specific rulings addressing those proposed findings of fact are included in the attached appendix.

#### FINDINGS OF FACT

Based upon the testimony of the witnesses and the documentary evidence received at the hearing, the following findings of fact are made:

1. The Petitioner, Seminole Community College, is a community college governed by a community college district board of trustees vested with the responsibility of operating the college in accordance with applicable statutes, rules of the State Board of Education and State Board of Community Colleges, as well as its own rules.
2. Each community college board of trustees is responsible for establishing and discontinuing programs and course offerings.
3. Each community college board of trustees is responsible for the appointment, employment, and removal of personnel. Such personnel includes course instructors employed by the college to teach specific courses or programs offered by the school.
4. The Petitioner offers instruction in courses ranging from basic academic subjects, which might be comparable to high school courses, to sophisticated courses that might be comparable to four-year college courses. Additionally, the Petitioner is the area vocational center and adult continuing education function for Seminole County.
5. Prior to April 9, 1991, the Respondent had been a continuing contract instructor employed by the Petitioner for several years. Respondent was employed to teach the welding course/program offered by the college.

6. In January, 1991, Dr. Samuels, as Vice President for Instructions, issued a memorandum to the Deans' Council advising them of budget cuts incurred and expected by the college. Further, the memorandum provided that it was expected that instruction would have to absorb a major fraction of the expected future decrease in funding.

7. On January 17, 1991, the college president issued a memorandum to all full-time college employees that addressed the cuts experienced to that date and the expectation of cuts which would be considered for planning the next budget year.

8. In connection with planning for the 1991-92 budget year, Dr. Samuels met with the deans for areas of instruction under his supervision and requested that they consider alternatives given budget cuts of three levels: \$200,000; \$400,000; and \$600,000. The goal was to prioritize spending to meet the instructional needs of the college, and to assume potential budget "worst case" scenarios.

9. Dean Tesinsky gave the directors of her applied technologies area the following guidelines to prepare their proposals for services and programs: to preserve full-time faculty positions; to preserve full-time equivalent (FTE) student hours; if possible, to reduce regular part-time support first; and to eliminate unproductive programs.

10. "Unproductive programs" were defined as having low enrollment relative to capacity and a decreasing enrollment trend. Such programs are also referred to as "weak programs" in this record.

11. When the directors completed the reviews of their programs, Dean Tesinsky reported the findings to Dr. Samuels. Ultimately, such findings recommended the elimination of the upholstery, welding and culinary arts (on-campus) programs at the \$600,000 budget cut level.

12. The reviews performed by the directors and Dean Tesinsky did not follow the guidelines set forth in Appendix K. Appendix K is a procedure utilized by the Petitioner to evaluate and review programs or courses offered by the school.

13. Concurrent with the planning performed incidental to the expected budget cuts, Dr. Samuels reviewed information regarding the course offerings and courses or sections not available at the college but for which large numbers of students had expressed demand.

14. Courses of instruction which were identified as being in critical need of full-time instructors were: computer assisted drafting (CAD); biology, with laboratory experience; mathematics, foreign languages, and humanities. Further, there were vocational programs within the applied technologies area where additional sections and, consequently, instructors, were needed to meet student demand for courses.

15. As a result of the foregoing, Dr. Samuels concluded that the budget amounts needed for instructors' salaries would have to increase, not decrease. To that end, Dr. Samuels concluded that monies captured from the elimination of unproductive programs could be redistributed to fund sections in the high demand areas of instruction previously identified.

16. Given the notion that they would have to eliminate Respondent's program, Dean Tesinsky, Dr. Samuels, and Russ Calvet attempted to relocate Respondent to another program or course of instruction. However, no course or instructor opening was found for which they felt Respondent could qualify.

17. On March 22, 1991, the college president issued a letter to Respondent that provided, in part, as follows:

I have been informed that it is no longer feasible to continue the Welding program. Therefore, in consideration of the College's mission to meet the educational needs of the community, the current budget concerns for the next fiscal year, and the past, present, and projected future enrollments of the Welding program, it has been determined that the program will be discontinued at the end of this fiscal year.

It is therefore with considerable regret that I inform you that a recommendation shall be made to the District Board of Trustees on April 9, that your contract with the College be terminated as of June 30, 1991.

Your educational qualifications do not make it possible to reassign you to another instructional program area; however, should a position vacancy occur for which you are qualified, you will be notified.

18. On April 1, 1991, the president forwarded a memorandum to the district board of trustees members that addressed the proposed termination of employment of the three vocational instructors. That memorandum reiterated the information given to the Respondent in the letter dated March 22, 1991.

19. On April 9, 1991, the board of trustees voted to terminate the full-time, continuing contract position held by Respondent.

20. Subsequently, Respondent timely requested an administrative hearing to review that decision.

#### CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings.

22. Rule 6A-14.0411, Florida Administrative Code, sets forth the provisions related to community colleges and the issuance of continuing contracts for instructional personnel. That rule provides, in pertinent part:

(5) Should the board have to choose from among its personnel who are on continuing contracts as to which should be retained, among the criteria to be considered shall be educational qualifications, efficiency, compatibility, character and capacity to meet the educational needs of the community. Whenever a board is required to or does consolidate or reduce its program, the board may determine on the basis of the foregoing criteria from its own personnel and any other instructional personnel, which college employees shall be employed for service at the college and any employee

no longer needed may be dismissed. The decision of the board shall not be controlled by any previous contractual relationship. In the evaluation of these factors, the decision of the board shall be final.

23. The foregoing rule is reiterated as part of Seminole Community College Policy 3.1900.

24. Seminole Community College Policy 3.1910 sets forth the guidelines the college is to follow in the event of a reduction in non-project work force. That rule directs the president of the college to implement a defined course when "either significantly decreased enrollments, decreased funding or changes in Federal, State, or local mission have occurred during the current year or are anticipated for the succeeding year." In this case, it is concluded that the guidelines addressed by that rule are not applicable. First, Petitioner has not experienced a decrease in enrollment. Its enrollment has steadily increased over the last few years. While the enrollment trends have changed (i.e. from courses like upholstery to biology), the overall enrollment projections suggest current and future growth. Thus, the college is in a state of growth, not cutback.

Secondly, the funding for instructional purposes has not decreased. In fact, Petitioner increased the amounts for instructional personnel despite the looming threat of budget cuts. While they planned for potentially severe cuts, those measures did not result in a reduction of non-project work force.

Finally, the mission of the college has remained constant. That it has eliminated three programs deemed weak has not altered its mission to meet the needs of the community it serves. In fact, by adding the highly requested sections of biology, foreign languages, and mathematics, it is meeting a greater number of students' need.

25. Respondent has not shown that his termination was for any purpose other than that acknowledged by the Petitioner. Additionally, efforts to reassign Respondent to another area of instruction were reasonable given the Respondent's record and qualifications. Respondent has not shown he was qualified to teach a subject or that an opening was available for which he was refused consideration. In fact, Respondent was offered, and accepted, a position teaching welding in the evening program at the college.

#### RECOMMENDATION

Based on the foregoing, it is

RECOMMENDED:

That the Board of Trustees of the Seminole Community College enter a final order confirming the elimination of the welding program and the termination of Respondent's continuing contract.

DONE and ENTERED this \_\_30th\_\_ day of July, 1992, in Tallahassee, Leon County, Florida.

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JOYOUS D. PARRISH  
Hearing Officer  
Division of Administrative  
Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32301  
(904)488-9675

Filed with the Clerk of the  
Division of Administrative  
Hearings this \_\_30th\_\_ day of  
July, 1992.

#### APPENDIX TO RECOMMENDED ORDER

##### RULINGS ON THE PROPOSED FINDINGS OF FACT SUBMITTED BY THE PETITIONER:

1. Paragraphs 1 through 3, 5 through 8, 11, 13 through 21 are accepted.
2. As to paragraph 4, it is accepted that Respondent was hand-delivered the letter notice dated March 22, 1991; otherwise rejected as a conclusion of law, not fact. It has been concluded, however, that such letter was sufficient to place the Respondent on notice of the college's position regarding the proposed actions.
3. Paragraph 9 is rejected as a misstatement of Petitioner's exhibit 42. That exhibit showed the headcounts as stated but showed the "instructor salary w/benefits" to be \$57,133.
4. With the following clarifications, paragraph 10 is accepted: that additional full-time instructors were needed; that the number of adjunct instructors would be reduced since full-time instructors would be added; that adding full-time instructors was a meaningful goal in order to upgrade programs/courses; add "therapy" after the word "respiratory" in the first sentence of 11b.; add under 11c., that there are now less than 500 students on overload status.
5. The first sentence of paragraph 12 is accepted. The remainder is rejected as irrelevant.

##### RULINGS ON THE PROPOSED FINDINGS OF FACT SUBMITTED BY THE RESPONDENT:

1. To the extent addressed in the foregoing findings of fact, paragraphs 1 and 2 are accepted.
2. Paragraphs 3 through 5 are accepted but are irrelevant.
3. With regard to paragraph 6, it is accepted that Dr. Samuels is Vice President for Instructions with the general responsibility for all the instructional programs at the college and that he made recommendations to the president of the college; otherwise rejected as not supported by the record cited.
4. Paragraph 7 is accepted.
5. Paragraph 8 is rejected as not supported by record cited.
6. Paragraph 9 is accepted with the clarification that Mr. Calvet's title is Dean of Personnel Services.
7. Paragraph 10 is accepted.
8. Paragraph 11 is rejected as it does not make sense.

9. Paragraph 12 is rejected as contrary to the weight of the evidence.
10. Paragraph 13 is rejected as not supported by the record cited.
11. Paragraph 14 is rejected as irrelevant; no wrongdoing or misconduct has been suggested by the Petitioner.
12. With regard to paragraph 15, it is accepted that the letter dated March 22, 1991, was the first written notice of the proposed action; otherwise rejected as contrary to the weight of the evidence.
13. With regard to paragraph 16, see comment above regarding proposed finding of fact 15.
14. Paragraph 17 is rejected as a misstatement of the record. To suggest the Petitioner contemplating "firing" Respondents grossly misstates their position. The Respondents' programs were eliminated and, consequently, their continuing contracts terminated. No suggestion of misconduct, incompetence, or wrongdoing on the part of these instructors should be suggested. To the contrary, these instructors were well qualified in their respective fields and respected by the employer.
15. Paragraphs 18 and 19 are accepted.
16. Paragraph 20 is accepted to the extent addressed ruling 12 above.
17. Paragraph 21 is rejected as repetitive; see above.
18. Paragraph 22 is rejected as contrary to the weight of credible evidence.
19. Paragraph 23 is rejected as repetitive; see above.
20. Paragraphs 24 through 30 are rejected as contrary to the weight of the evidence, irrelevant, or not supported by the record cited.
21. Paragraphs 31 through 37 are accepted.
22. Paragraph 38 is accepted when clarified to add "an administrative procedure" for "the" after the word "out."
23. Paragraph 39 is accepted.
24. Paragraph 40 is rejected as a conclusion not supported by the record cited.
25. Paragraph 41 is rejected as contrary to the weight of the evidence.
26. Paragraph 42 is accepted.
27. Paragraph 43 is rejected as repetitive or irrelevant.
28. Paragraph 44 is rejected as not supported by the record cited or irrelevant.
29. Paragraph 45 is rejected as not supported by the record cited or irrelevant.
30. Paragraph 46 is accepted but is irrelevant.
31. Paragraph 47 is rejected as argument and irrelevant.
32. Paragraph 48 is rejected as argument and irrelevant.
33. Paragraphs 49 through 52 are accepted.
34. Paragraph 53 is rejected as contrary to the weight of the credible evidence.
35. Paragraph 54 is accepted.
36. Paragraph 55 is rejected as contrary to the weight of the credible evidence.
37. Paragraph 56 is accepted.
38. With the deletion of the word "only" paragraph 57 is accepted.
39. Paragraph 58 is rejected as contrary to the weight of the credible evidence.
40. Paragraph 59 is rejected as not supported by the record cited.
41. Paragraph 60 is rejected as repetitive or irrelevant.
42. Paragraph 61 is rejected as irrelevant or contrary to the weight of the evidence.
43. Paragraph 62 is accepted.
44. The first sentence of paragraph 63 is accepted; otherwise rejected as irrelevant or not supported by the evidence cited or speculation.
45. Paragraph 64 is accepted.
46. Paragraphs 65 and 66 are rejected as not supported by the record cited.

47. Paragraphs 67 is accepted to the extent that the meeting(s) identified the programs as "weaker."
48. Paragraph 68 is accepted but is irrelevant.
49. Paragraph 69 is accepted but is irrelevant.
50. Paragraphs 70 through 73 are rejected as argumentative, irrelevant, or not supported by record cited.
51. The first sentence of paragraph 74 is accepted; otherwise rejected as argument, irrelevant, or not supported by record cited.
52. Paragraph 75 is rejected as argumentative, irrelevant, or not supported by record cited.
53. The first two sentences of paragraph 76 are accepted; otherwise rejected as not supported record cited or contrary to the weight of evidence.
54. Paragraph 77 is rejected as repetitive, irrelevant, and not supported by record cited.
55. Paragraph 78 is rejected as conclusion of law or irrelevant.
56. Paragraph 79 is rejected as it does not make sense or irrelevant.
57. Paragraph 80 is rejected as contrary to the weight of the evidence.
58. Paragraph 81 is rejected as irrelevant.
59. With the addition of the phrase "or could be" after the word "would," paragraph 84 is accepted; otherwise rejected as contrary to the record cited.
60. Paragraphs 85 and 86 are rejected as contrary to the record cited.
61. Paragraph 87 is accepted.
62. Paragraph 88 is rejected as contrary to the weight of the evidence.
63. Paragraph 89 is repetitive in part but is accepted.
64. Paragraph 90 is rejected as contrary to the weight of the evidence.
65. Paragraph 91 is rejected as irrelevant.
66. Paragraphs 92 and 93 are accepted.
67. Paragraph 94 is rejected as irrelevant.
68. Paragraph 95 is rejected as not supported by the record cited.
69. Paragraph 96 is rejected as repetitive or irrelevant.
70. Paragraph 97 is rejected as irrelevant.
71. Paragraph 98 is rejected as not supported by record cited, contrary to the weight of evidence.
72. Paragraph 99 is rejected as repetitive and irrelevant.
73. Paragraph 100 is rejected as repetitive and irrelevant.
74. Paragraph 101 is accepted.
75. Paragraphs 102 through 105 are rejected as repetitive or irrelevant.
76. Paragraphs 106 through 110 are accepted but are irrelevant.
77. Paragraph 111 is rejected as contrary to the evidence.
78. Paragraphs 112 through 115 are accepted.
79. Paragraph 116 is rejected as argumentative.
80. Paragraph 117 is accepted but is irrelevant.
81. Paragraph 118 is rejected as not supported by record cited.
82. Paragraphs 119 through 122 are accepted.
83. Paragraph 123 is rejected as repetitive.
84. Paragraphs 124 and 125 are accepted. Insert word "contact" after "thirty" in paragraph 125.
85. Paragraph 126 is rejected as irrelevant or argumentative.
86. Paragraph 127 is accepted but is irrelevant.
87. Paragraph 128 is rejected as contrary to the weight of the evidence.
88. Paragraph 129 is accepted.
89. Paragraph 130 is rejected as irrelevant.
90. Paragraphs 131 through 134 are accepted.
91. Paragraph 135 is rejected as contrary to the weight of the evidence.
92. Paragraphs 136 and 137 are accepted with the addition to paragraph 137 that such position was only part-time and not vacant.
93. Paragraph 138 is rejected as irrelevant.



94. Paragraphs 139 through 141 are accepted.
95. Paragraph 142 is rejected as repetitive or irrelevant.
96. Paragraphs 143 through 147 are accepted.
97. Paragraph 148 is rejected as contrary to the weight of the evidence.
98. Paragraphs 149 through 152 are accepted.
99. Paragraph 153 is rejected as not supported by the record cited.
100. Paragraph 154 is rejected as not supported by the record cited.
101. Paragraphs 155 through 160 though repetitive in part are accepted.
102. Paragraph 161 is rejected as contrary to the weight of the evidence.
103. Paragraph 162 is rejected as repetitive, argumentative, or irrelevant.
104. Paragraph 163 is rejected as contrary to the weight of the evidence.

COPIES FURNISHED:

J. Dana Fogle  
FOGLE & FOGLE, P.A.  
217 East Plymouth Avenue  
Post Office Box 817  
DeLand, Florida 32721-0817

Joseph Egan, Jr.  
EGAN, LEV & SIWICA, P.A.  
P.O. Box 2231  
Orlando, Florida 32802

Margaret T. Roberts  
COBLE, BARKIN, GORDON,  
MORRIS & REYNOLDS, P.A.  
1020 Volusia Avenue  
Post Office Drawer 9670  
Daytona Beach, Florida 32120

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.

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AGENCY FINAL ORDER

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STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SEMINOLE COMMUNITY COLLEGE,

Petitioner,

vs.

Case Number 91-4075

ROBERT REKO,

Respondent.

\_\_\_\_\_ /

FINAL ORDER

This cause came before the District Board of Trustees of SEMINOLE COMMUNITY COLLEGE the 13th day of October, 1992 for consideration of the Recommended Order, including Appendix entered by the Hearing Examiner on July 30, 1992, containing her Findings of Fact, Conclusions of Law, and Recommendation of Final Order and the Board having duly considered the pleadings, stipulations and statements of the parties hereby FINDS THAT:

1. Each of the individual Board Members of the District Board of Trustees heretofore received a copy of the Recommended Order, has read same, and has been advised that the entire record of the Administrative Hearing, including all transcribed testimony and documentary exhibits is available to each of them for review, pursuant to Fla. Stat. Ch. 120.

2. Pursuant to Schomer v. Dept. of Professional Regulation, 417 So.2d 1089 (Fla. 3rd DCA 1982), the District Board of Trustees hereby adopts, and incorporates herein by reference and by attachment certain parts of the Recommended Order dated July 30, 1992, as executed by Hearing Examiner Joyous D. Parrish, Esquire, as follows: Findings of Fact, paragraphs 1 through 23, inclusive, and Conclusions of Law, paragraphs 1 through 3, inclusive, and 5.

3. The District Board of Trustees of SEMINOLE COMMUNITY COLLEGE specifically rejects in part the Conclusions of Law contained in paragraph 4. The Petitioner planned for potentially severe cuts in funding, the cuts being anticipated for the succeeding year. SEMINOLE COMMUNITY COLLEGE Policy 3.1910 applies when decreased funding is anticipated for the succeeding year and results in a reduction in non-project work force. It is hereby

ORDERED AND ADJUDGED that:

1. ROBERT REKO's continuing contract shall be reinstated effective October 14, 1992 and shall continue in full force and effect pursuant to the laws of the State of Florida and the Rules and policies of SEMINOLE COMMUNITY COLLEGE.

2. ROBERT REKO, by formal waiver made for the record by counsel at the October 13, 1992 hearing has waived all elements of wages and compensation accruing since the effective date of his dismissal to October 14, 1992, except Florida Retirement System contributions, annual leave accruals, if and as mandated by law including sick leave accruals, and reimbursement for replacement coverage premiums paid on health and life insurance, if any.

3. As to Florida Retirement System contributions, SEMINOLE COMMUNITY COLLEGE shall pay an amount equal to the contributions that would have ordinarily been contributed on behalf of ROBERT REKO, notwithstanding the dismissal which was the subject of this cause. Said payment shall be made to the employee upon receipt of evidence that the employee has bought back credits in the Florida Retirement System for the time between dismissal and reinstatement.

4. ROBERT REKO shall be deemed to have retained his status as a continuing contract employee of SEMINOLE COMMUNITY COLLEGE during the subject dismissal and administrative proceedings, as though he had never been dismissed.

5. SEMINOLE COMMUNITY COLLEGE Administration shall conduct a review of the welding program in accordance with applicable laws, rules and policies, and shall report its findings and recommendations to the Board of Trustees. This ORDER shall not be construed to entitle ROBERT REKO to instruct the same program or course offering as assigned prior to the dismissal.

DONE AND ORDERED this 10th day of November, 1992 in Seminole County, Florida.

DISTRICT BOARD OF TRUSTEES OF  
SEMINOLE COMMUNITY COLLEGE

By: \_\_\_\_\_  
Its Chairman

ATTEST: \_\_\_\_\_  
Secretary

COPIES FURNISHED:

Dana Fogle, Esquire  
P.O. Box 817  
DeLand, Florida 32721-0817

Joseph Egan, Jr., Esquire  
P.O. Box 2231  
Orlando, Florida 32802

Joyous D. Parrish, Hearing Examiner  
Department of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32301

NOTICE OF RIGHT TO JUDICIAL REVIEW

Pursuant to Fla. Stat. Sec. 120.68, any appeal of this Order shall be instituted by filing a petition in the Fifth District Court of Appeals, Daytona Beach, Florida, within thirty (30) days of rendition of the above stated Order. See Florida Rules of Appellate Procedure 9.110; *Denson v. Sang*, 491 So.2d 288 (Fla. 1st DCA 1986).