

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CITY OF MOORE HAVEN,)
)
Petitioner,)
)
vs.) CASE NO. 94-2187
)
DEPARTMENT OF MANAGEMENT)
SERVICES, DIVISION OF)
RETIREMENT,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, final hearing in the above-styled case was held in Ft. Myers, Florida, on July 5, 1994, before Robert E. Meale, Hearing Officer of the Division of Administrative Hearings.

APPEARANCES

The parties were represented at the hearing as follows:

For Petitioner: Steven A. Ramunni
Watkins & Ramunni, P.A.
Post Office Box 250
LaBelle, Florida 33935

For Respondent: Jodi B. Jennings
Assistant Division Attorney
Division of Retirement
Cedars Executive Center, Building C
2639 North Monroe Street
Tallahassee, Florida 32399-1560

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner is liable for retirement contributions on compensation paid Thaddeus Kmiecik in his capacity as city dockmaster.

PRELIMINARY STATEMENT

By letter dated March 7, 1994, Respondent determined that Petitioner was liable for retirement contributions to the State-Administered Retirement System for compensation paid Thaddeus Kmiecik in his capacity as city dockmaster.

By petition dated March 30, 1994, Petitioner challenged the determination and requested a formal hearing.

At the hearing, Petitioner called two witnesses and offered into evidence one exhibit. Respondent called one witness and offered into evidence three exhibits. All exhibits were admitted.

No transcript was ordered. Respondent filed a proposed recommended order, and rulings on the proposed findings are in the appendix.

FINDINGS OF FACT

1. The City of Moore Haven is located west of Lake Okeechobee alongside a waterway that connects Stuart on the east coast with Ft. Myers on the west coast. Petitioner maintains docks that boaters may use overnight, provided they pay a docking fee. A dockmaster supervises the dock and collects the docking fee from boaters.

2. Petitioner's first dockmaster served without compensation. Whenever he became ill or went out of town, he asked Petitioner to hire someone to replace him.

3. Pursuant to Ordinance No. 156, which went into effect in 1982, Petitioner hired replacements for the first dockmaster. Ordinance No. 156 provides that specified docking fees shall be paid by all boats docking at the city docks between the hours of 6:00 pm and 8:00 am or at other times, if the boat remains docked over three hours. However, the ordinance allows the dockmaster to enter into special contracts with commercial users, subject to the approval of City Commission.

4. Ordinance No. 156 states that the City Commission shall appoint one or more persons as dockmaster, who shall "check all boats at the City dock both evening and morning of each day." The ordinance requires the dockmaster to record all relevant information about the boat in a log. The ordinance states that the dockmaster is "responsible seven days a week for the collection of dockage fees, giv[ing] a receipt from a numbered book, and giv[ing] copies of all receipts to the City Clerk each working day." The dockmaster must also tell the City Clerk if the docks need repairs or maintenance. The dockmaster is also required to assume at least certain responsibilities of the City Manager if the position is vacant.

5. The health of the original dockmaster deteriorated and it became necessary to hire someone else to collect the fees. By agreement between the original dockmaster and the person doing the collections, the dockmaster allowed the collector to retain a percentage of the docking fees collected. The remainder evidently was remitted to Petitioner.

6. When the original dockmaster died, Petitioner hired Thaddeus Kmiecik as the new dockmaster. The agreement between Petitioner and Mr. Kmiecik requires that he answer directly to the City Commission. He is to ensure that the docking fees are collected and all money taken directly to City Hall. Boaters needing reservations call Mr. Kmiecik at home.

7. Mr. Kmiecik is responsible for his own expenses, but he earns a commission, payable monthly, of 20 percent of the collected docking fees. From 1986 through 1993, Petitioner has filed IRS Forms 1099, showing that Mr. Kmiecik has received the following "nonemployee compensation": 1986--\$1936.52; 1987--\$2324.83; 1988 1992--\$3457.50; and 1993--\$2621.08.

8. The arrangement between Petitioner and Mr. Kmiecik is fairly loose. He has never received any training, except how to complete the receipt book, which is provided by Petitioner. He has never received any orders as to how to perform his job, except that he is to ensure that the docks are checked nightly for boats and that all docking fees are promptly remitted to Petitioner. Mr. Kmiecik does not check the docks in the morning, and the City Commission has never insisted that he do so, even though the ordinance so requires.

9. Mr. Kmiecik has attended only one City Commission meeting and has never reported anything to the City Commission. He can hire anyone whom he chooses to help him or perform the services when he is out of town or otherwise unavailable. He may supplement his income from the docks by performing other services, such as taking boaters to the airport, and he retains all compensation for such additional services.

10. Although not required to do so, Mr. Kmiecik sometimes wears a city uniform when he appears at the docks. But this is the uniform for his fulltime job at Petitioner's water plant. Other persons checking the boats at night do not have a uniform.

11. Petitioner is a participating local agency in the State-Administered Retirement System. Petitioner makes retirement contributions on Mr. Kmiecik's pay for his work at the water plant in recognition of the fact that this position is a regularly established position under the State-Administered Retirement System. However, Petitioner has always treated Mr. Kmiecik as an independent contractor for his work as dockmaster and has thus made no retirement contributions for his dockmaster compensation.

12. The record is silent as to when Mr. Kmiecik first became employed with Petitioner in the water plant and whether he has been continuously so employed. On June 3, 1993, Petitioner answered a questionnaire acknowledging that Mr. Kmiecik worked at the city water plant also. Based on the record, June 3, 1993, is the earliest date on which Mr. Kmiecik worked at the city water plant.

13. By letter dated January 21, 1994, Respondent informed Petitioner that Mr. Kmiecik was an employee when performing dockmaster services and demanded retroactive retirement contributions from the unspecified date of his employment in that position. By letter dated January 25, 1994, Petitioner supplied additional information and requested further review of this decision.

14. By letter dated March 7, 1994, Respondent advised Petitioner that Respondent had determined that Mr. Kmiecik was performing the services of dockmaster in an employer-employee relationship, rather than an independent contractor relationship. The letter adds that Mr. Kmiecik is filling a "regularly established position" as an operator of the water plant and is "performing additional duties" as the dockmaster. Petitioner requested a formal hearing on the issue.

15. Based on the relevant law, Mr. Kmiecik is an independent contractor with respect to his dockmaster services.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties. Section 120.57(1), Florida Statutes. (All references to Sections are to Florida Statutes. All references to Rules are to the Florida Administrative Code.)

17. Rule 60S-6.001(33) provides that an "independent contractor" is

an individual who is not subject to the control and direction of the employer for whom work is being performed, with respect not only to what shall be done but to how it shall be done. If the employer has the right to exert such control, an employee-employer relationship exists and the person is an employee and not an independent contractor. The Division has adopted the following factors as guidelines to aid in determining whether an individual is an employee or an independent contractor. The weight given each factor is not always the same and varies depending on the particular situation.

1. Instructions: An employee must comply with instructions from his employer about when, where, and how to work. The instructions may be oral or may be in the form of manuals or written procedures which show how the desired result is to be accomplished. Even if no actual instructions are given, the control factor is present if the employer has the right to give instructions.

2. Training: An employee is trained to perform services in a particular manner. This is relevant when the skills and experience which would be used as an independent contractor were gained as a result of previous employment. Independent contractors ordinarily use their own methods and receive no training from the purchasers of their services.

3. Integration: An employee's services are integrated into the business operations because the services are critical and essential to the success or continuation of an agency's progress/operation. This shows that the employee is subject to direction and control.

4. Services Rendered Personally: An employee renders services personally. This shows that the employer is interested in the methods as well as the results. Lack of employer control may be indicated when a person has the right to hire a substitute without the employer's knowledge or approval.

5. Hiring Assistants: An employee works for an employer who hires, supervises, and pays assistants. An independent contractor hires, supervises, and pays assistants under a contract that requires him or her to provide materials and labor and to be responsible only for the result.

6. Continuing Relationship: An employee has

a continuing relationship with an employer. A continuing relationship may exist where work is performed at frequently recurring, although irregular intervals.

7. Set Hours of Work: An employee usually has set hours of work established by an employer. An independent contractor is the master of his or her own time and works on his own schedule.

8. Full-time or Part-time Work: An employee may work either full-time or part-time for an employer. Full-time does not necessarily mean an 8-hour day or a 5 or 6-day week. Its meanings may vary with the intent of the parties, the nature of the occupation and customs in the locality. These conditions should be considered in defining "full-time." An independent contractor can work when and for whom he or she chooses.

9. Work Done on Premises: An employee works on the premises of an employer, or works on a route or at a location designated by an employer. The performance of work on the employer's premises is not controlling in itself; however, it does imply that the employer has control over the employee. Work performed off the employer's premises does indicate some freedom from control; however, it does not in itself mean the worker is not an employee.

10. Order or Sequence of Services: An employee generally performs services in the order or sequence set by an employer. This shows that the employee is subject to direction and control of the employer.

11. Reports: An employee submits oral or written reports to an employer. This shows that the employee must account to the employer for his or her actions.

12. Payments: An employee is usually paid by the hour, week, or month. An independent contractor is paid periodically (usually a percent of the total payment) by the job or on a straight commission.

13. Expenses: An employee's business and/or travel expenses are paid for by an employer. This shows that the employer is in a position to control expenses, and, therefore, the employee is subject to regulations and control.

14. Tools and Materials: An employee is furnished significant tools, materials, and other equipment by an employer. An independent contractor usually provides his own tools, material, etc.

15. Investment: An employee is usually furnished the necessary facilities. An independent contractor has a significant

investment in the facilities he or she uses in performing services for someone else.

16. Profit or Loss: An employee performs the services for an agreed upon wage and is not in a position to realize a profit or suffer a loss as a result of his services. An independent contractor can make a profit or suffer a loss. Profit or loss implies the use of capital by the individual in an independent business of his own.

17. Works for More than One Person or Firm: An employee usually works for one organization. However, a person may work for a number of people or organizations and still be an employee of one or all of them. An independent contractor provides his or her services to two or more unrelated persons or firms at the same time.

18. Offers Services to General Public: An independent contractor makes his or her services available to the general public. This can be done in a number of ways: Having his/her own office and assistants, hanging out a "shingle," holding business licenses, having listings in business directories and telephone directories, and advertising in newspapers, trade journals, etc.

19. Right to Terminate Employment: An employee can be fired by an employer. An independent contractor cannot be fired so long as he or she produces a result that meets the specifications of the contract. An independent contractor can be terminated, but usually he will be entitled to damages for expenses incurred, lost profit, etc.

20. Right to Quit: An employee can quit his or her job at any time without incurring liability. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion, or is legally obligated to make good for failure to complete it.

18. Respondent has asserted that Mr. Kmiecik's compensation as dockmaster requires retirement contributions from Petitioner to the State-Administered System. Therefore, Respondent has the burden of proof. However, the determination of Mr. Kmiecik's status as an independent contractor is not dependent upon the allocation of the burden of proof.

19. The evidence is unconvincing that the dockmaster is an employee of Petitioner. Petitioner does not control the dockmaster and does not generally spell out how the dockmaster is to perform his duties. Petitioner supplies a receipt book and requires that the receipts be completed. Petitioner expects the dock to be checked each evening, but that much is necessary to ensure that docked boats pay the fee. Petitioner has not insisted upon recurring checks through the evening and into the next morning. Petitioner has given the dockmaster the discretion to make special deals with commercial users, subject

to City Commission review. In fact, the dockmaster has performed his services for years without ever reporting to the City Commission.

20. The dockmaster receives no training from Petitioner. His services stand alone and are not integrated into larger business operations of Petitioner. Mr. Kmiecik often does not personally provide the services, nor is he expected to. He may and does hire assistants; when he does so, it is without any prior approval of Petitioner, and Mr. Kmiecik is responsible for their payment. The dockmaster receives a commission, absorbs his own expenses, and is free to make additional arrangements with boaters.

21. The dockmaster lacks a couple of important characteristics of an independent contractor. He does not invest in his enterprise nor in any tools or equipment, except possibly his own telephone. There was no indication whether Mr. Kmiecik maintains a home office. The remaining factors are either inapplicable or, at most, mildly favorable to Respondent's position. On balance, though, the factors more strongly suggest that the dockmaster is not an employee of Petitioner.

22. Although the position of dockmaster involves an independent contractor rather than an employee, and thus is not subject to the State-Administered Retirement System, Mr. Kmiecik presently holds a regularly established position with Petitioner as a water plant operator. Rule 60S-1.004(4)(c)1 states:

A member filling a regularly established position who performs additional duties for the same employer is considered to be filling a regularly established position for the total employment and the employer shall make the required retirement contributions.

23. Despite the fact that the dockmaster is an independent contractor, the compensation paid to Mr. Kmiecik is therefore subject to the State-Administered Retirement System because Mr. Kmiecik holds a fulltime regularly established position with Petitioner and, as dockmaster, is performing parttime additional duties. However, the retroactivity of Petitioner's liability is limited to June 3, 1993, which is the earliest point in the record of Mr. Kmiecik's employment at the city water plant.

RECOMMENDATION

Based on the foregoing, it is hereby

RECOMMENDED that the Division of Retirement enter a final order requiring the City of Moore Haven to pay retirement contributions with respect to the compensation paid Mr. Kmiecik for services as a dockmaster, retroactive to June 3, 1993.

ENTERED on July 21, 1994, in Tallahassee, Florida.

ROBERT E. MEALE
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
on July 21, 1994.

APPENDIX

Rulings on Respondent's Proposed Findings

- 1: adopted or adopted in substance.
- 2-3: rejected as subordinate.
- 4-10: adopted or adopted in substance.
- 11: adopted or adopted in substance, but only to the minimal extent of the use of the receipt books.
- 12-18: adopted or adopted in substance.

COPIES FURNISHED

Steven A. Ramunni
Watkins & Ramunni, P.A.
P.O. Box 250
LaBelle, FL 33935

Jodi B. Jennings
Assistant Division Attorney
Division of Retirement
Cedars Executive Center, Bldg C
2639 North Monroe St.
Tallahassee, FL 32399-1560

William H. Lindner, Secretary
Department of Management Services
Knight Building, Suite 307
Koger Executive Center
2737 Centerview Drive
Tallahassee, FL 32399-0950

Paul A. Rowell, General Counsel
Department of Management Services
Knight Building, Suite 312
Koger Executive Center
2737 Centerview Drive
Tallahassee, FL 32399-0950

A. J. McMullian, III, Director
Division of Retirement
Department of Management Services
Cedars Executive Center, Bldg. C
2639 N. Monroe St.
Tallahassee, FL 32399-1560

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.

=====

AGENCY FINAL ORDER

=====

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CITY OF MOORE HAVEN,

Petitioner,

vs.

DOR CASE NO. DMS-DOR94-06

CASE NO. 94-2187

DIVISION OF RETIREMENT,

Respondent.

_____ /

FINAL ORDER

This matter was heard in Fort Myers, Florida on July 5, 1994, before Robert E. Meale, a duly designated Hearing Officer of the Division of Administrative Hearings. Petitioner did not file proposed findings of fact and conclusions of law. Respondent filed proposed findings of fact and conclusions of law. Appearances for the parties at the hearing were as follows:

APPEARANCES

For Petitioner: Steven A. Ramunni
Watkins & Ramunni, P.A.
Post Office Box 250
LaBelle, Florida 33935

For Respondent: Jodi B. Jennings
Assistant Division Attorney
Division of Retirement
Cedars Executive Center, Bldg. C
2639 North Monroe Street
Tallahassee, Florida 32399-1560

A Recommended Order was issued on July 21, 1994. A copy of the Recommended Order is attached hereto, incorporated by reference and made part of this Final Order as an exhibit. Neither party filed exceptions to the Recommended Order.

After consideration of all matters of record in this case, the Recommended Order and the exhibits introduced at the hearing, the Division of Retirement now enters its Final Order.

FINDINGS OF FACT

The Division of Retirement hereby adopts and incorporates the Findings of Fact set forth in the Recommended Order.

CONCLUSIONS OF LAW

1. The Division of Retirement has jurisdiction of the parties to and the subject matter of this proceeding. Section 120.57(1), Fla. Stat. (1993).

2. Section 120.57(1)(b)(10) of the Florida Statutes (1993) provides, in pertinent part:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the recommended order. .

3. Chapter 121 of the Florida Statutes established the Florida Retirement System in 1970. The Division of Retirement, pursuant to Section 121.031(1), Florida Statutes (1993) is authorized to implement rules for the efficient administration of the system.

4. The rules of the Division of Retirement contain a definition of independent contractor. "Independent contractor" is defined at Rule 60S-6.001(33) of the Florida Administrative Code, which provides:

INDEPENDENT CONTRACTOR -- Means an individual who is not subject to the control and discretion of the employer, for whom the work is being performed, with respect not only to what shall be done but to how it shall be done. If the employer has the right to exert such control, an employee-employer relationship exists and the person is an employee and not an independent contractor. The Division has adopted the following factors as guidelines to aid in determining whether an individual is an

employee or an independent contractor.
The weight given each factor is not
always the same and varies depending on
the particular situation.

The rule provides twenty criteria to be considered in determining whether
an individual is an independent contractor:

- a. Instructions
- b. Training
- c. Integration
- d. Services rendered personally
- e. Hiring assistants
- f. Continuing relationship
- g. Set hours of work
- h. Full-time or part-time work
- i. Work done on premises
- j. Order or sequence of services
- k. Reports -
- l. Payments
- m. Expenses
- n. Tools and materials
- o. Investments
- p. Profit or loss
- q. Works for more than one person or firm
- r. Offers services to general public
- s. Right to terminate employment
- t. Right to quit

5. The determination of whether an individual is an employee or an independent contractor depends not only upon the statements of the parties but upon all the circumstances of their dealings with each other, *Cantor v. Cochran*, 184 So.2d 173 (Fla. 1966), with the most important element being the right of the employer to maintain control over the individual. *Messer v. Dept. of Labor and Employment*, 500 So.2d 220, 221 (Fla. 5th DCA 1988).

6. Applying the foregoing criteria to the present case, the following conclusions are reached:

a. Instructions -- Some instructions were given to Mr. Kmiecik by the City. The City Clerk provided instructions to Mr. Kmiecik regarding how to manage the receipt book. Additional instructions on keeping the receipt book are contained within Ordinance No. 156 itself. The ordinance further provided that boats are to be checked in the morning and evening each day. The City did not instruct Mr. Kmiecik on how often to check boats between his scheduled hours. This factor has aspects of both an employee and an independent contractor.

b. Training -- The City provided no formal training to Mr. Kmiecik. This factor is indicative of an independent contractor relationship.

c. Integration -- The fact that the dockmaster position is established by city ordinance is an indication that the position is essential to the operation of the City. In practice, however, the City oversees this position in a loose manner, providing a minimum of direction to Mr. Kmiecik. This indicates that

Mr. Kmiecik's duties are not controlled by the City, and that the position is not of critical importance to the City. His services are not entirely integrated into the business operations of the City. This factor suggests an independent contractor relationship.

d. Services rendered personally -- Mr. Kmiecik is not required to render services personally but may hire individuals to perform dockmaster duties in his place. This factor is strongly indicative of an independent contractor.

e. Hiring assistants -- Mr. Kmiecik hires and pays assistants himself. This factor is strongly indicative of an independent contractor.

f. Continuing relationship -- Mr. Kmiecik has a continuing relationship with the City. He was not hired to perform dockmaster duties for a limited period of time. The length of this relationship is characteristic of an employee.

g. Set hours of work -- The ordinance provides that Mr. Kmiecik is to perform as dockmaster between the hours of 6:00 p.m. and 8:00 a.m. However, the City does not require Mr. Kmiecik to check on boats at specific intervals during these scheduled hours. This factor has elements of both an employee and an independent contractor.

h. Full-time or part-time work -- This factor has little weight in an analysis of this case because both full and part time employees are compulsory members of the Florida Retirement System.

i. Work done on premises -- Mr. Kmiecik performs dockmaster services at the City docks. This factor is more characteristic of an employee.

j. Order or sequence of services -- The City requires Mr. Kmiecik to maintain a receipt book and to remit the fees he collects to the City. Otherwise, the City does not direct the order or sequence of services Mr. Kmiecik provides. This factor is more characteristic of an independent contractor.

k. Reports -- Mr. Kmiecik has never reported to the City Commission and is not required to report on a regular basis to the City. Mr. Kmiecik has the discretion to enter into special contracts with commercial users subject to review by the City Commission. This factor is more indicative of an independent contractor.

l. Payments -- Mr. Kmiecik is paid a commission of twenty percent of the fees he collects as dockmaster. He is not paid a salary. This factor is strongly indicative of an independent contractor relationship.

m. Expenses -- The City furnishes Mr. Kmiecik the receipt books. Mr. Kmiecik pays his own-expenses. This factor is more indicative of an independent contractor.

n. Tools and materials -- The City furnishes the receipt books. Mr. Kmiecik does not furnish tools and materials, except possibly his own telephone. This factor is more indicative of an employee.

o. Investment -- Mr. Kmiecik has no investment in the City. The lack of investment is more indicative of an employee.

p. Profit or loss -- Mr. Kmiecik is not in a position to realize a profit or suffer a loss. This factor is strongly indicative of an employee/employer relationship.

q. Works for more than one person or firm -- Mr. Kmiecik does not have his own business and works only for the City. This factor is more indicative of an employee.

r. Offers services to the general public -- Mr. Kmiecik does not advertise or otherwise offer his services to the general public. Mr. Kmiecik is allowed, however, to perform additional services for boaters, such as taking them to the airport, and to retain any compensation for these additional services. This factor has aspects of both an employee and an independent contractor.

s. Right to terminate employment -- The City can terminate Mr. Kmiecik without incurring liability. This factor is more indicative of an employee.

t. Right to quit -- Mr. Kmiecik can quit without incurring liability. This factor is more indicative of an employee.

7. Mr. Kmiecik's duties as dockmaster have some characteristics of an employee. He has no investment in the City; is not able to suffer a profit or loss; and can quit or be terminated without liability being incurred. However, the weight of the evidence indicates that the City does not maintain control over Mr. Kmiecik; he is not required to perform services personally; hires and pays assistants himself; and maintains control over the order of services he provides. It is therefore concluded that Mr. Kmiecik is an independent contractor with respect to the dockmaster duties he performs for the City of Moore Haven.

8. A member filling a regularly established position who performs additional duties as an employee for the same employer must be reported for purposes of retirement.

Rule 60S-1.004(4)(c)1., Florida Administrative Code, provides:

1. A member filling a regularly established position who performs additional duties for the same employer is considered to be filling a regularly established position for the total employment and the employer shall make the required retirement contributions. (Emphasis added).

9. Because Mr. Kmiecik is an independent contractor with respect to his dockmaster duties, his dockmaster duties cannot be considered "employment," and consequently no retirement contributions are due from the City for the duties Mr. Kmiecik performs as dockmaster.

THEREFORE, based upon the foregoing, it is

ORDERED AND DIRECTED that Mr. Kmiecik is an independent contractor with respect to his duties as dockmaster with the City of Moore Haven, and no retirement contributions are due for his dockmaster duties.

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68 OF THE FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DIVISION OF RETIREMENT, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT THERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

DONE AND ORDERED this 26th day of September, 1994, at Tallahassee, Leon County, Florida.

A. J. McMULLIAN III
State Retirement Director
Division of Retirement

FILED WITH THE CLERK OF THE DIVISION
OF RETIREMENT THIS 26th DAY OF
SEPTEMBER, 1994.

COPIES FURNISHED:

Steven A. Ramunni, Esquire
Watkins & Ramunni, P.A.
P.O. Box 250
LaBelle, Florida 33935

Robert E. Meale
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550

Clerk
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550

Jodi B. Jennings
Assistant Division Attorney
Division of Retirement
Cedars Executive Center
2639 North Monroe Street
Building C
Tallahassee, Florida 32399-1560