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**STATE OF FLORIDA
FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY**

BABU JAIN,

AT

Petitioner,

vs.

Case No. 03-3838

BJS-CWS

**FLORIDA AGRICULTURAL AND
MECHANICAL UNIVERSITY,**

Respondent.

FINAL ORDER

PRELIMINARY STATEMENT

Dr. Babu Jain filed an appeal of the decision of Florida Agricultural and Mechanical University (University) to nullify its employment contracts with him for Summer Semester 2003 due to his retirement in accordance with the Deferred Retirement Option Program. Dr. Jain's appeal regarding this matter was referred to the Division of Administrative Hearings.

Pursuant to notice, a formal hearing in the above styled case was held on January 14 - 15, 2004 in Tallahassee, Florida. Administrative Law Judge Barbara J. Staros presided over the proceedings.

At the formal hearing, both the Petitioner and the Respondent offered testimony and exhibits. A transcript of the proceedings was filed with the Division of Administrative Hearings. Both parties filed Proposed Recommended Orders. A Recommended Order was issued by the Administrative Law Judge on May 17, 2004.

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STATEMENT OF THE ISSUE

Whether Petitioner's employment with Respondent terminated on May 31, 2004, or whether Petitioner continued to be employed by Respondent during the next calendar month.

FINDINGS OF FACT

The University accepts the Findings of Fact set forth in the Administrative Law Judge's Recommended Order.

CONCLUSIONS OF LAW

The University accepts the Conclusions of Law set forth in the Recommended Order.

EXCEPTIONS

Both parties filed exceptions to the Recommended Order.

1. The Petitioner's exception regarding the failure to award attorneys fees is rejected. The Administrative Law Judge did not recommend the award of attorney's fees, citing that the Petitioner did not cite to the authority under which he made his request.

Section 120.595 (1)(b), Florida Statutes, under which a s.120.57 proceeding is governed provides that:

"The final order in a proceeding pursuant to a s. 120.57(1) shall award reasonable costs and a reasonable attorney's fee to the prevailing party only where the non-prevailing adverse party has been determined by the administrative law judge to have participated in the proceeding for an improper purpose."

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The Administrative Law Judge did not find that the University participated in the instant proceeding for an improper purpose, thus attorney's fees and costs are not justified.

In his exception, Dr. Jain cited Section 57.105, Florida Statutes as the authority for the grant of attorney's fees and costs. Section 57.105, Florida Statutes is not applicable in this case because Chapter 120 specifically provides for instances for which attorney's fee and costs should be awarded to a prevailing party to a s. 120.57(1) hearing. The instant case was filed pursuant to s.120.57 and as such, Section 57.105 is not applicable.

2. The Respondent's exceptions to Conclusions of Law 38 and 39 are rejected. A review of the complete record of the case supports Conclusions of Law 38 and 39. The record reflects that Dr. Babu Jain signed the Summer Semester 2003 employment contracts with Florida A&M University.

ORDER

Based on the foregoing, it is hereby ORDERED and DIRECTED that the Recommendation of the Administrative Law Judge is hereby ADOPTED. The University hereby rescinds its letters dated May 27 and 30, 2003. The University will reinstate the Petitioner to employment effective June 1, 2003, including all salary and benefits for the Summer Semester 2003 and for the 2003-2004 academic year, in the amount of \$98,565.28.

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DONE and ORDERED this 18th day of August 2004, in Tallahassee, Florida.



Fred Gainous
President
Florida A&M University
Lee Hall, Suite 400
Tallahassee, Florida 32307
(850) 599-3225

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, 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 Florida Agricultural and Mechanical University, Office of the General Counsel, Lee Hall Suite 301, Tallahassee, Florida 32307, and a second copy, accompanied by filing fees prescribed by law, with the First District Court of Appeal. The Notice of Appeal must be filed within 30 days of rendition of this Order.