

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

THE CHILDREN'S TRUST OF MIAMI-)
DADE COUNTY,)
)
Petitioner,)
)
vs.) Case No. 05-2429
)
DEPARTMENT OF MANAGEMENT)
SERVICES, DIVISION OF)
RETIREMENT,)
)
Respondent.)
_____)

RECOMMENDED ORDER

This cause came for formal hearing on January 17, 2006, in Tallahassee, Florida, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Maria Arista-Volsky, Esquire
Miami-Dade County Attorney's Office
111 Northwest 1st Street, 27th Floor
Miami, Florida 33128

For Respondent: Robert B. Button, Esquire
Department of Management Services
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STATEMENT OF THE ISSUES

Whether Petitioner was eligible for membership in the Florida Retirement System (FRS) during the effective dates of

the Client Service Agreement (Agreement) between Petitioner and ADP TotalSource Services, Inc. (TotalSource).¹

Whether Respondent is estopped to deny Petitioner's request to purchase retirement credit for the subject employees during the seven-month period during which the Agreement was in effect.

PRELIMINARY STATEMENT

The Children's Trust (TCT) is a duly-created independent special district in Miami-Dade County, Florida. Between October 1, 2003, and May 1, 2004, the Agreement was in effect between Petitioner and TotalSource. Respondent's Division of Retirement (DOR) determined, based on the terms of the Agreement, that during the effective period of the Agreement, the employees who provided services to TCT were, at a minimum, co-employees of Petitioner and TotalSource. Because TotalSource is not an entity that is entitled to membership in FRS, Respondent ruled the subject employees to be ineligible for membership in FRS. Based on that determination, TCT terminated the Agreement with TotalSource and entered into a similar, but more narrowly drafted, agreement with another company (AlphaStaff)² to provide human resources services to TCT. Following the termination of the Agreement, Respondent determined that TCT's employees were entitled to membership in FRS. TCT thereafter requested that it be permitted to purchase retirement credit for its workforce for the time the workforce

provided services to TCT during the effective period of the Agreement. Respondent denied that request, which TCT timely challenged. The matter was forwarded to DOAH where it was assigned DOAH Case No. 05-2429, and this proceeding followed.

At the hearing, Modesto Abety, president and Chief Executive Officer of TCT, testified on behalf of TCT. Cathy Smith, Bureau Chief of Respondent's Bureau of Enrollment and Contributions, testified on behalf of the Respondent. The parties jointly introduced 17 Exhibits, which included the deposition of Miguel Maseda, General Manager for TotalSource and the Agreement (Joint Exhibit 6). The exhibits offered at the hearing were accepted into evidence. Prior to the hearing, the parties stipulated to 23 Findings of Fact, which are recited below in slightly edited form in paragraphs 1-23.

A Transcript of the hearing was filed January 27, 2006. Both parties filed Proposed Recommended Orders, which have been duly-considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

1. TCT is an independent special taxing district of local government established pursuant to Section 1.01(A)(11) of the Miami-Dade County Home Rule Charter; Ordinance No. 02-247, Sections 1-11 (adopted December 3, 2002); and Section 125.901, Florida Statutes, et. seq., for the provision of children's

services. TCT is devoted to funding "improvements for the children of Miami-Dade County in the areas of health, safety, parental responsibility, community responsibility and other necessary and important services." Miami-Dade County Code Art. CIII, §§ 2-1521-2-1531.

2. Other special taxing districts for services in the State of Florida participate in the FRS.

3. On July 23, 2003, officials from TCT contacted DOR to communicate TCT's desire to participate in FRS and request instructions on how to enroll its employees for FRS retirement benefits.

4. On July 24, 2003, Ms. Smith, acting in her capacity as a benefits administrator employed by Respondent, forwarded to TCT an FRS membership package which included a Resolution relating to FRS membership to be approved by TCT's Board and two accompanying FRS Agreements.

5. On July 30, 2003, Resolution #2003-01, Resolution Relating to Membership into the FRS, was adopted by TCT's Board.

6. On September 1, 2003, after receiving TCT's Notice of Employer Identification Number from the Internal Revenue Service on August 27, 2003, Mr. Abety, in his capacity as the president and CEO of TCT, signed the two FRS Agreements.

7. On September 9, 2003, Mr. Abety sent a letter to Ms. Smith enclosing the two FRS Agreements, TCT's Resolution

Relating to Membership into the FRS, and the IRS Notice of Employer Identification Number, fully expecting that FRS coverage would be initiated on October 1, 2003.

8. Mr. Abety again corresponded with Ms. Smith on September 17, 2003, to advise that TCT would make its retirement contributions to FRS by check and asked if FRS preferred bi-weekly or monthly payments.

9. On September 5, TCT entered into the Agreement with TotalSource to provide TCT with payroll, health insurance, life insurance, short and long-term disability insurance, and dental and vision coverage.

10. TotalSource did not provide TCT employees with any retirement benefits.

11. After reviewing TCT's Agreement with TotalSource, FRS advised TCT on September 23, 2003, that because it appeared the employees covered under the Agreement would be under the control and direction of TotalSource, they were employees of a private company and thus ineligible for FRS benefits.

12. Following Respondent's denial of participation in FRS, TCT began the process of entering into a new agreement for the provision of personnel services with a vendor other than TotalSource. On February 18, 2004, TCT emailed DOR a new proposed agreement between TCT and AlphaStaff for the provision of payroll, insurance and other human resources services in

order to determine if the agreement would permit FRS benefits to begin for TCT employees.

13. On April 20, 2004, FRS determined that the agreement between TCT and AlphaStaff would not bar the workforce of TCT from participating in FRS because AlphaStaff provided only "routine personnel services" to TCT.³ After approving the agreement between TCT and AlphaStaff, DOR accepted TCT as an FRS member effective May 1, 2004.

14. On April 22, 2004, TCT transmitted to DOR the County Ordinance creating TCT, two FRS Agreements, a Resolution Relating to Membership in FRS, TCT's federal employer tax identification number, and a notification that a fully executed agreement between TCT and AlphaStaff would be forwarded on April 26, 2004. The two FRS Agreements, the Resolution, and the employer tax identification number were identical to those sent to FRS in September 2003. The agreement between TCT and AlphaStaff that had been approved by FRS was fully executed on April 26, 2004.

15. On April 29, 2004, DOR signed and approved the FRS Agreement to commence FRS benefits effective May 1, 2004.

16. Per letter dated May 7, 2004, DOR advised TCT that "since your agency did not qualify for FRS membership until May 1, 2004, past service cannot be purchased prior to the amendment date."

17. Per letter dated May 27, 2004, Mr. Abety requested the FRS effective date be changed to October 1, 2003.

18. Throughout the period TCT attempted to secure FRS membership. TCT did not participate in any other retirement plan. After being informed in September 2003 that its contract with TotalSource precluded participation in FRS, TCT was engaged in the process of entering into an agreement for personnel services that DOR would find acceptable.

19. On June 23, 2004, TCT received notice of a final agency action from DOR in which DOR rejected TCT's request to purchase past service and advised TCT of its appeal rights.

20. TCT filed its Petition to review final agency action requesting an evidentiary proceeding on July 15, 2004.

21. Past FRS benefits are being requested for the seven-month period beginning October 1, 2003 and ending May 1, 2004.

22. The 18 TCT employees affected are:⁴

Modesto E. Abety
Lilia R. Abril
Emily Cardenas
Dwight Danie
Robin J. Douglas
David C. Freeman
Lisete Fuertes
K. Lori Hanson
Andrea Harris
Chareka Hawes
Christine Muriel Jeanty
Jolie C. Jerry
Jean S. Logan
Susan B. Marian
Eric R. Pinzon

Diana Ragbeer
Deborah Robinson
Margaret L. Santiago

23. The six employees who are vested in the FRS are:

Modesto E. Abety
Dwight Danie
Andrea Harris
Jolie C. Jerry
Diana Ragbeer
Deborah Robinson.

24. TotalSource is a licensed employee leasing company under Part XI of Chapter 468, Florida Statutes. "Employee leasing" is defined by Section 468.520(4), Florida Statutes, as being ". . . an arrangement whereby a leasing company assigns its employees to a client and allocates the direction and control over the leased employees between the leasing company and the client. . . ." ⁵

25. TCT is referred to as the "client" in the Agreement between TotalSource and TCT.

26. Section (1) of the Agreement, styled "The Parties Relationship," provides as follows:

The parties intend to create an arrangement so that TotalSource, as the Professional Employer Organization (PEO), can provide human resource services to Client. As provided by the Florida legislature, TotalSource shall have sufficient authority so as to maintain a right of direction and control over Worksite Employees (defined in Section 2) assigned to Client's location, and shall retain the authority to hire, terminate, discipline, and reassign Worksite Employees. Client

shall, however, retain sufficient direction and control over the Worksite Employees as is necessary to conduct Client's business and without which Client would be unable to conduct its business, discharge any fiduciary responsibility that it may have, or comply with an applicable licensure, regulatory, or statutory requirement of Client. Such authority maintained by Client shall include the right to accept or cancel the assignment of any Worksite Employee. Additionally, Client shall have sole and exclusive control over the day to day job duties of Worksite Employees and over the job site at which, or from which, Worksite Employees perform their services. Client expressly absolves TotalSource of liability which results from control over the Worksite Employee's day-to-day job duties and the job site at which, or from which, Worksite Employees perform their services. Further, Client retains full responsibility for its business products and services, worksite premises, property, and any actions by a third party, contractor, independent contractor or non-Worksite Employee. Client acknowledges that TotalSource has the right to retain and reassign a Worksite Employee who has been terminated by Client.

27. Section 2 of the Agreement, styled "TotalSource Relationship to the Worksite Employees," provides as follows:

The term "Worksite Employees" means individuals hired by TotalSource, assigned to Client's worksite, after the individuals [have] satisfactorily completed TotalSource pre-employment paperwork [and] background screens as necessary. Client agrees to submit to TotalSource the completed TotalSource pre-employment paperwork no later than two (2) business days after the Client selects the person for employment. The term excludes 1) those employees hired by TotalSource to perform services for TotalSource and not assigned to any Client

Worksite (i.e., TotalSource Corporate Employees), and 2) Independent contractors or individuals who may be providing services to Client through any other arrangement entered into solely by Client. TotalSource will notify all Worksite Employees in writing about the PEO arrangement at the beginning and end of this Agreement. During the Agreement, both Client and TotalSource will employ each Worksite Employee. This Agreement does not change the underlying employment relationship between any Worksite Employee and Client that existed prior to or may be created after the Effective Date. Further, this Agreement does not create any rights for any Worksite Employee that did not previously exist (e.g., creating an employment contract with the Worksite Employee).

28. In Section 5(F) of the Agreement, the parties acknowledge that the Client exercises control over the primary terms and conditions of employment for the subject employees.

29. Miguel Masedo was the General Manager for the Southeastern operations for TotalSource when it entered into the Agreement with TCT. Mr. Masedo did not negotiate the Agreement between his company and TCT, but he did sign the Agreement, and he testified as to the manner in which his company operated with TCT.

30. Mr. Masedo's deposition was admitted as Joint Exhibit 17. On page 22, beginning at line 12, the following Questions from Ms. Arista-Volsky and Answers from Mr. Masedo appear:

Q. Okay. Earlier you told me and we discussed that The Trust employees in fact were hired by The Trust before they contracted with your services, correct?

A. Yes.

Q. So basically when they entered into this contract and were put on the payroll for the purposes of payroll processing, that's when you make the determination, or you're saying that they became . . . [sic]

A. We actually hired them into ADP TotalSource, they signed new documentation, I-9s, W-4s, they gave us their employment information, so we literally hired them on to ADP TotalSource.[⁶]

31. On page 23, beginning at line 13, the following Questions from Ms. Arista-Volsky and Answers from Mr. Masedo appear:

Q. And the Client Services Agreement did not change the underlying employment relationship between The Trust and its employees; correct?

A. What the Client Services Agreement did was it defined us as another employer for these employees, so we are under a co-employment relationship, so certain employment responsibilities would have been the responsibilities of The Trust and would have remained, and other employment responsibilities would have transferred over to ADP TotalSource.

32. TotalSource was the named employer on each employee's W-2 forms. For each subject employee, TotalSource also paid social security taxes and provided workers' compensation coverage. TotalSource issued salary warrants to each employee. These payments were to be from funds TCT was required by the Agreement to pay to TotalSource. TotalSource was, by the terms

of the Agreement, responsible for the payment of the subject employees even if TCT failed to make its required payments to TotalSource.

33. Although by the terms of the Agreement, TotalSource had legal authority to hire, supervise, and discipline the subject employees, TotalSource rarely exercised those rights in dealing with a client and it did not do so in its dealings with TCT. TotalSource never attempted to control or run the affairs of TCT. It never attempted to exercise any direction or control over Mr. Abety or any other subject employee.

34. TCT initially recruited and hired all of the subject employees.

35. At no time during the period at issue did a TotalSource corporate employee come to the TCT worksite for the purposes of supervising or monitoring the activities of the subject employees. TCT controlled the daily activities of the subject employees at all times relevant to this proceeding.

36. At all times relevant to this proceeding, Mr. Abety and his staff set the terms and conditions of employment for the subject employees and supervised the day-to-day operations of TCT.

37. At no time relevant to this proceeding did Mr. Abety, acting on behalf of TCT, intend for TotalSource to exercise any control over the subject employees. Mr. Abety intended only

that TotalSource provide human resources services in the forms of payroll services, worker's compensation coverage, and a benefits package (excluding a retirement plan).

38. Mr. Abety testified that he did not construe the Agreement as being a contract to lease the subject employees from TotalSource. Based on the findings that follow, it is found that Mr. Abety knew or should have known that he was entering into an employee leasing agreement with TotalSource. As set forth above, in the Agreement, TotalSource refers to itself as a Professional Employer Organization, which is a term for an employee leasing company. The Agreement provides that TotalSource shall have ". . . sufficient authority so as to maintain a right of direction and control over Worksite Employees . . . and shall retain the authority to hire, terminate, discipline, and reassign Worksite Employees. . . ." Moreover, in the final paragraph of the Agreement, under the heading of "Additional Client Representation" the following appears:

"Client understands that, pursuant to Florida law, it may not enter into a PEO (sometimes referred to as an employee leasing) agreement with TotalSource if Client owes a current or prior PEO any money pursuant to any service agreement which existed between that current or prior PEO and Client, or if Client owes a current or prior insurer any premium payments. . . ."

39. DOR denied TCT's request for past service because, under the terms of the Agreement, and Part XI of Chapter 468, Florida Statutes, the subject employees appeared to be employees of TotalSource. In its letter dated June 23, 2004, with the style of "Final Agency Action", DOR advised Mr. Abety that TCT ". . . joined the FRS effective May 1, 2004 and is ineligible to purchase past service since prior to that date the employees were employed by ADP TotalSource Services, Inc., a private company."

40. While the Agreement was in effect, the subject employees were employees of both TCT and TotalSource for certain purposes. Under the Agreement between TotalSource and TCT, TotalSource and TCT were dual or joint employers. There was a co-employment relationship.

41. DOR agrees that TCT and TotalSource were co-employers or joint employers. In paragraph 25 of its Proposed Recommended Order, DOR submitted the proposed finding of fact that during the effective dates of the Agreement, the subject employees were ". . . dual or joint employers. There [was] a co-employment arrangement." In paragraph 53 of its Proposed Recommended Order, DOR proposed the following conclusion of law:

53. However, the totality of the evidence establishes that TotalSource and Children's Trust are, as Mr. Masedo testified, 'under a co-employment relationship.' Children's Trust and TotalSource were inextricably

linked as co-employers, or joint or dual employers. They both shared attributes of being an 'employer.'

42. Prior to entering into the Agreement, staff of TCT contacted staff of DOR to inquire what needed to be done for TCT employees to become members of the FRS. DOR staff advised that a membership package would be mailed and that the TCT employees would become part of the FRS after the membership package was processed. For service performed by TCT employees prior to the date TCT became part of the FRS, DOR staff advised that TCT employees could purchase credit for that prior service period if TCT did not participate in another retirement plan.

43. TCT maintains that the information provided by DOR staff that TCT could participate in FRS as long as TCT did not participate in another retirement plan was misleading. TCT further maintains that it detrimentally relied on that misleading information from DOR and that DOR should be estopped to deny the right to purchase credit for the seven-month period at issue in this proceeding.

44. TCT did not disclose to DOR that they were contemplating entering into the Agreement with TotalSource prior to doing so. Consequently, DOR had no reason to discuss with TCT its position that the Agreement would preclude TCT's membership in FRS. DOR staff gave TCT staff accurate advice based on the information provided to DOR by TCT.

45. TCT would not have executed the Agreement had it known that the terms of the Agreement would disqualify it from membership in FRS. Most of the subject employees were initially recruited by TCT because they were experienced government employees. It was important to TCT from its inception that its employees continue to be eligible for FRS benefits.

46. TCT made diligent efforts to locate a suitable human resources provider to replace TotalSource after it learned from DOR that the terms of the Agreement disqualified the subject employees from membership in FRS. It took TCT almost the entire seven-month period at issue in this proceeding to locate the replacement provider (AlphaStaff).

CONCLUSIONS OF LAW

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

48. In administrative proceedings, the standard of proof is a preponderance of evidence. Agrico Chemical Co. v. Department of Environmental Regulation, 265 So. 2d 759 at 763 (Fla. 1st DCA 1979), rev. denied, 376 So.2d 74. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," Black's Law Dictionary 1201 (7th ed. 1999), or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d

276, 289 n.1 (Fla. 2000)(relying on American Tobacco Co. v. State, 697 So. 2d 1249, 1254 (Fla. 4th DCA 1997) quoting Bourjaily v. United States, 483 U.S. 171, 175 (1987)).

49. The burden of going forward and the burden of persuasion are on the party asserting the affirmative of the issue. Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977), Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). Accordingly, it is Petitioner's burden to demonstrate its entitlement to purchase past service for the subject employees.

50. An agency's interpretation of the statutes it is required to enforce is entitled to deference unless the interpretation contradicts the plain meaning of the statute, is clearly erroneous, or is contrary to law. See Level 3 Communications, LLC v. Jacobs, 841 So. 2d 447 (Fla. 2003) and Osorio v. Board of Professional Surveyors and Mappers, 898 So. 2d 188, (Fla. 5th DCA 2005).

51. Section 121.021(10), Florida Statutes, defines "employer":

"Employer" means any agency, branch, department, institution, university, institution of higher education, or board of the state, or any county agency, branch, department, board, district school board, or special district of the state, or any city of the state which participates in the

system for the benefit of certain of its employees, or a charter school or charter technical career center that participates as provided in s. 121.051(2)(d).

52. TotalSource is a private corporation. It is not an employer as that term is defined by Section 121.021(10), Florida Statutes.

53. A special taxing district such as TCT can be an "employer" within the meaning of Section 121.021(10), Florida Statutes, if the special taxing district has any employees. It is axiomatic that to be an employer, an entity has to have employees.

54. Following his review of the proposed AlphaStaff contract, Alberto L. Dominguez, general counsel of the Department of Management Services, wrote to inform TCT Chief Financial Officer Joile C. Jerry that the AlphaStaff contract would be acceptable and that TCT would be eligible for membership in FRS following its execution. That letter, dated April 20, 2004, and introduced as Exhibit 10, articulated DOR's position as to the appropriate standard to determine whether an employer-employee relationship exists. That standard, which provides, in part, as follows, has been accepted by the undersigned:

To participate in the Florida Retirement System (FRS), an employee must work for an FRS public employer. (See §§ 121.021(10), (11), and 121.051, Fla. Stat.) The Division

accepts that the Trust is an independent special district and is eligible to participate in the FRS. Under the terms of the proposed Administrative Services Agreement between the Trust and AlphaStaff, AlphaStaff provides services limited to payroll processing, record keeping, fringe benefits, human resources training, related personnel services, etc. It does not exercise direction and control of the Children's Trust workforce.

The general principle is that direction and control is the crucial test in determining an employee-employer relationship. (Berrier v. Associated Indemnity Company, 196 So. 2d 188 at 192 (Fla. 1940), Patton v. Glisson, 38 So. 2d 839 at 840 (Fla. 1949), Gibney Auto Sales v. Cutchins, 97 So. 2d 145 (Fla. 3d DCA 1957), Crawford v. Dept. of Military Affairs, 412 So. 2d 449 (Fla. 5th DCA 1982)). Therefore, because the Agreement does not provide that AlphaStaff may exercise control and direction of the Children's Trust employees, or make hiring and firing decisions - the usual requisites for finding and [sic] employee-employer relationship - the Children's Trust is the employer.

55. There is no doubt that the subject employees were, at all times relevant to this proceeding, providing valuable governmental services to the public by virtue of their co-employment with TCT and TotalSource. If these employees are entitled to purchase past retirement credit for the seven months that the Agreement was in effect, it must be by virtue of their employment with TCT, not their employment with TotalSource.

56. Section 121.021(18), Florida Statutes, defines "past service":

"Past service" of any member, as provided in s. 121.081(1), means the number of years and complete months and any fractional part of a month, recognized and credited by an employer and approved by the administrator, during which the member was in the active employ of an employer prior to his or her date of participation.

57. Respondent correctly argues that there is no statutory authority that employee leasing companies are employers under the FRS. It also correctly argues that there is no express statutory authority to recognize co-employers, or dual or joint employers where one employer is a public entity and the other is a private employing entity.

58. Respondent correctly construed the Agreement, which contains confusing and conflicting provisions. Respondent correctly concluded that an employer-employee relationship existed between the subject employees and TotalSource. Respondent also correctly concluded that TotalSource is not an agency whose employees are entitled to membership in FRS by virtue of their employment with TotalSource. Respondent also correctly concluded that TCT had an employer-employee relationship with the subject employees.

59. Respondent incorrectly concluded that said relationship between TotalSource and the subject employees precluded TCT from membership in FRS. Petitioner established that during the applicable period it was an agency as defined by

statute, it had an employer-employee relationship with the subject employees, and it was, consequently, entitled to membership in FRS as of October 1, 2003. That is all the statutory scheme requires.

60. To establish estoppel against the state, the claimant must prove:

(1) a representation by an agent of the state as to a material fact that is contrary to a later asserted position; (2) reasonable reliance on the representation; and (3) a change in position detrimental to the party claiming estoppel caused by the representation and reliance thereon.

Harris v. Department of Administration, Div. of State Employees' Ins., 577 So. 2d 1363, 1366 (Fla. 1st DCA 1991). In addition, "rare and exceptional circumstances" must be shown to exist. See Sutron Corp. v. Lake County Water Authority, 870 So. 2d 930, 933 (Fla. 5th DCA 2004). As the court in Sutron Corp. explained:

The cases in which [estoppel] has been applied against a government agency involve potentially severe economic consequences to the person who relied on a government agent's misstatement of fact, or situations in which the conduct of the government was unbearably egregious.

61. Petitioner did not prove that the doctrine of estoppel should be applied to the facts of this proceeding.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Respondent enter a Final Order providing that TCT be granted membership in FRS effective October 1, 2003, and that it be permitted to purchase retirement credit for the subject employees for the seven-month period beginning October 1, 2003, and ending April 30, 2004.

DONE AND ENTERED this 28th day of April, 2006, in Tallahassee, Leon County, Florida.



CLAUDE B. ARRINGTON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of April, 2006.

ENDNOTES

^{1/} Petitioner in this proceeding is the Children's Trust, not the employees who will be impacted by the Final Order that will be entered. Petitioner has not asserted, on behalf of the subject employees, any right to seek credit for the subject period of time pursuant to the provisions of Section 121.081(1)(f), Florida Statutes. All statutory references are to Florida Statutes (2005).

^{2/} This entity is also referred to at times by the parties and in some exhibits as AlphaStaffing.

^{3/} This letter was admitted as Exhibit 10 and is discussed in more detail in a subsequent paragraph.

^{4/} These 18 employees will be subsequently referred to as the subject employees.

^{5/} Section 469.520(4)(b), Florida Statutes, sets forth exceptions to the definition that are not applicable to this proceeding.

^{6/} Unfortunately, this paperwork was not introduced as an exhibit.

COPIES FURNISHED:

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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.