

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JOSEPH ANTHONY FULLER,

Petitioner,

vs.

Case No. 14-3094

BOARD OF TRUSTEES OF THE CITY  
OF JACKSONVILLE RETIREMENT  
SYSTEM,

Respondent.

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RECOMMENDED ORDER

On September 24, 2014, an administrative hearing in this case was held in Jacksonville, Florida, before Lawrence P. Stevenson, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: T. A. Delegal, Esquire  
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Jacksonville, Florida 32202

For Respondent: Wendy E. Byndloss, Esquire  
Office of General Counsel  
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STATEMENT OF THE ISSUE

The issue in this case is whether, pursuant to section 112.3172, Florida Statutes, the pension rights and privileges of

Petitioner, Joseph Anthony Fuller, in the City of Jacksonville Retirement System should be forfeited.

PRELIMINARY STATEMENT

By letter dated May 22, 2014, titled "Notice of Proposed Final Agency Action," the Board of Pension Trustees of the City of Jacksonville Retirement System (the "Board") notified Petitioner Joseph Anthony Fuller of its intention to enter a final order terminating the pension rights and privileges to which Mr. Fuller would be entitled due to his forfeiture of same. On June 13, 2014, Mr. Fuller timely filed a written request for a hearing. On June 27, 2014, the Board forwarded the notice and the hearing request to the Division of Administrative Hearings ("DOAH").

The hearing was scheduled for September 24, 2014, on which date it was convened and completed.

Mr. Fuller was not present at the hearing, appearing only through his counsel.

Despite the style of the case, the parties agreed that the Board had the burden of proving that Mr. Fuller had forfeited his pension rights. The parties stipulated to the admission of the Board's Exhibits 1, 2, 9 through 14, and 16.

At the hearing, the Board presented the testimony of Mark Beebe, who was at all times relevant to this proceeding a detective of the Jacksonville Sheriff's Office ("JSO") assigned

as a liaison to the Jacksonville Electric Authority ("JEA"); Thomas Wigand, a labor relations specialist with the JEA; and Raymond Ferngran, a pension administration manager for the City of Jacksonville. In addition to the stipulated exhibits, the Board's Exhibits 7 and 15 were admitted into evidence.

Petitioner offered no testimony or exhibits into evidence.

At the hearing, counsel for Petitioner objected to the Board's proposed Exhibits 3 through 6 on the ground that these were uncorroborated hearsay documents, and to the Board's Exhibit 15 on the ground that it contained coerced statements forbidden by the rule of Garrity v. New Jersey, 385 U.S. 493 (1967). The undersigned withheld ruling on Exhibits 3 through 6 and allowed the parties ten days in which to file written legal argument on both of Respondent's objections. Both parties timely filed their arguments on October 6, 2014. By Order dated October 20, 2014, the undersigned ruled that the Board's Exhibits 3 through 6 would be admitted but treated as hearsay that may be used only for the purpose of supplementing or explaining other evidence, pursuant to section 120.57(1)(c), Florida Statutes, and that the Board's Exhibit 15 did not meet the standard of Garrity and would remain admitted in evidence.

The one-volume Transcript of the hearing was filed at DOAH on October 14, 2014. The parties timely filed their Proposed Recommended Orders on October 24, 2014.

## FINDINGS OF FACT

1. Petitioner, Joseph Anthony Fuller, was employed by the JEA as a Senior Vehicle Coordinator in the Fleet Services Department. Mr. Fuller worked for the JEA for approximately 20 years.

2. In 2013, the JEA received reports from fellow employees that Mr. Fuller was stealing gasoline from JEA fleet pumps.

3. Mark Beebe was a JSO detective assigned as full-time liaison to the JEA. Pursuant to a contract between JSO and the JEA, Det. Beebe investigated all criminal allegations related to the JEA. Most of his investigations involved customer theft of electricity, but he also investigated allegations of theft by JEA employees. Det. Beebe investigated the allegations against Mr. Fuller.

4. During his investigation, Det. Beebe found evidence that Mr. Fuller had stolen from the JEA spools of copper wire and other items that he then sold to metal recyclers. These thefts began in 2012 and carried on until late 2013.

5. After he was satisfied that he had proof sufficient to establish Mr. Fuller's guilt, Det. Beebe interviewed Mr. Fuller on January 21, 2014. Det. Beebe gave Mr. Fuller his Miranda warnings. Mr. Fuller signed a waiver and voluntarily submitted to the interview.

6. During the interview, Mr. Fuller denied stealing gas

but admitted to taking and reselling the recyclable items. Mr. Fuller denied taking the recyclable items from anywhere other than the "trash pile," "the big dumpsters," and the recycling bins. Det. Beebe was understandably skeptical that such a large quantity of unused copper wire and electrical items could have been retrieved from the trash and the recycling bins at JEA.

7. After the interview, Det. Beebe placed Mr. Fuller under arrest and charged him with grand theft in violation of section 812.014(2)(c)2., Florida Statutes, a third-degree felony; giving false verification of ownership of pawned items in violation of section 539.001(8)(b)8.a., Florida Statutes, a third-degree felony; and dealing in stolen property in violation of section 812.019(1), Florida Statutes, a second-degree felony.

8. Det. Beebe's arrest report noted that Mr. Fuller received \$3,097.10 for all of his illegal transactions, but that the replacement cost of the lost items to JEA was \$6,082.21. The replacement cost was Det. Beebe's estimate, based on information provided by JEA.

9. Thomas Wigand is a Labor Relations Specialist with the JEA. Mr. Wigand is responsible for JEA's relations with unionized employees, including civil service and disciplinary matters. Mr. Wigand is the JEA's primary contact with the International Brotherhood of Electrical Workers ("IBEW"), Local

2358, of which Mr. Fuller was a member during his employment with the JEA.

10. IBEW Local 2358 and JEA have entered into a collective bargaining agreement (the "Agreement").<sup>1/</sup> Under the Agreement, Mr. Fuller had collective bargaining rights and was subject to the Agreement's rules on discipline, which provided that union member employees could be disciplined only for "just cause."

11. As an employee of the JEA, Mr. Fuller was governed by the City of Jacksonville's Civil Service System, including the City of Jacksonville's Civil Service and Personnel Rules and Regulations ("Civil Service Rules"). Chapter Nine of the Civil Service Rules covers disciplinary actions, grievances, and appeals. Rule 9.05 provides that an employee with permanent status in the Civil Service may only be dismissed "for cause." "Cause" includes, among other things, "willful violation of the provisions of law or department rules," "conduct unbecoming a public employee which would affect the employee's ability to perform the duties and responsibilities of the employee's job," and "willful falsification of records." An employee facing disciplinary action is entitled to a hearing before the Civil Service Board.

12. Petitioner was also subject to the JEA's company-wide guidelines for disciplinary action, which generally prescribed

progressive discipline. However, the guidelines also provided that theft is a ground for immediate termination.

13. After Det. Beebe submitted his investigative report to the JEA, Mr. Wigand convened a fact-finding meeting on January 29, 2014. Mr. Wigand testified that such a meeting was standard procedure under the JEA's disciplinary process and was designed to allow Mr. Fuller an opportunity to dispute the report or explain his actions. Mr. Wigand explained that, given the "compelling nature" of Det. Beebe's report, it seemed likely that the JEA would be seeking immediate termination of Mr. Fuller's employment after the fact-finding meeting, unless Mr. Fuller came forward with "exonerating evidence."

14. Prior to the fact-finding meeting, Mr. Wigand prepared a "notice of dismissal and immediate suspension" and a "letter of intent to discipline" Mr. Fuller. The letter of intent to discipline Mr. Fuller did not specify the nature of the discipline being sought by the JEA. Mr. Wigand presented this letter to Mr. Fuller for his signature at the outset of the fact-finding meeting, in compliance with the Agreement. The notice of dismissal and immediate suspension was more forthright, commencing with the statement "Your conduct as an employee of JEA has been unacceptable and requires terminal disciplinary action" before reciting the specific factual allegations and rule violations forming the basis of the

termination. There was no evidence indicating that Mr. Fuller was shown this notice at the meeting.

15. The fact-finding meeting was attended by Mr. Wigand, Mr. Fuller, two IBEW union representatives, and JEA audit manager Linda Schlager, who kept detailed notes of the meeting.

16. During the fact-finding portion of the meeting, Mr. Fuller initially denied remembering much about his interview with Det. Beebe. When he was specifically asked about the copper and other materials allegedly sold to the scrap recycler, Mr. Fuller continued to insist that he took the metal from a JEA dumpster. He denied taking it from either the JEA's recycling areas or from JEA trucks. He conceded only that he engaged in "dumpster diving" while on the clock for JEA.

17. At this point, Mr. Wigand began showing Mr. Fuller photos of specific items sold to the recycler.<sup>2/</sup> Mr. Wigand also stated that it is not JEA's practice to throw new spools of copper wire into the dumpster. After viewing some of these photos, Mr. Fuller requested a private conference with his union representatives. Mr. Wigand and Ms. Schlager stepped out of the conference room.

18. After approximately 15 minutes, one of the union representatives emerged from the conference room and made a proposition to Mr. Wigand to resolve the matter. Mr. Fuller would be willing to resign and use his accumulated annual leave



to pay restitution to the JEA, in return for JEA's agreement not to prosecute.

19. After some internal caucusing, the JEA agreed to allow Mr. Fuller to resign, contingent on his making full restitution to the JEA and providing an accurate account of how he stole JEA property. If Mr. Fuller complied with these conditions, the JEA would inform the state attorney that it had been made whole by Mr. Fuller and did not wish to prosecute. Mr. Wigand made it clear to Mr. Fuller that the JEA could not control whether the state attorney decided to go forward with the case.

20. One of the union representatives asked about the post-resignation status of Mr. Fuller's pension. Mr. Wigand stated that the JEA does not control the pension or make pension decisions.

21. Mr. Fuller agreed to the conditions and then admitted the thefts. He detailed where and how he stole the materials, and satisfied the JEA that he acted alone. He admitted to stealing gas on several occasions. At the JEA representatives' request, Mr. Fuller even offered advice on how the JEA could improve controls in order to prevent such thefts in the future.

22. At the conclusion of Mr. Fuller's statement, the union representatives, Mr. Fuller, and Mr. Wigand agreed that the effective date and time of Mr. Fuller's resignation was the current date, January 29, 2014, at 1:00 p.m.

23. An irrevocable letter of resignation was submitted by Mr. Fuller on the following day. The letter stated the date and time of his resignation and his agreement to reimburse the JEA in the amount of \$6,248.00. The letter also stated that the JEA "has agreed to accept this resignation in lieu of proceeding with disciplinary action."

24. On a date unspecified in the record, the state attorney declined to prosecute that case against Mr. Fuller, in part due to the JEA's notice that it had received restitution and did not wish for the matter to proceed.

25. On January 24, 2014, Mr. Fuller had submitted a "Retirement Information Request" to the City of Jacksonville Retirement System, asking for a computation of the benefits he would receive if he retired on that date. Counsel for Mr. Fuller argues that this document establishes that Mr. Fuller resigned on January 24, five days prior to the fact-finding meeting. The document is not a resignation letter under any common understanding of that term. As titled, the document is an information request.

26. The Board argues, for reasons explained in the following Conclusions of Law, that Mr. Fuller's resignation was in fact a constructive discharge. The Board contends that the JEA would have proceeded to terminate Mr. Fuller's employment if the allegations against him were proven, and therefore that his

resignation under pressure was the functional equivalent of termination.

27. Central to the Board's argument is the assertion that Mr. Fuller "voluntarily admitted" to Det. Beebe that he had stolen materials from the JEA, and that an evidentiary finding of theft was thus a foregone conclusion. The evidence of this "admission" is ambiguous at best. The interview with Det. Beebe consisted mostly of long monologues by the detective followed by monosyllabic responses by Mr. Fuller. In his own words, Mr. Fuller admitted only to taking materials from the "trash pile," "the bin," and the "big dumpsters." He described his takings as "stuff they throw away over there."

28. Mr. Fuller's counsel pointed out that there was no evidence establishing that materials contained in the recycling bins or trash dumpsters of the JEA remained the property of the JEA or retained any value for the JEA. Even assuming that the JEA could have established the value of the items and that Mr. Fuller could not have obtained them from the trash, there was no guarantee that a hearing before the Civil Service Board would have inevitably led to Mr. Fuller's termination. Mr. Wigand conceded under cross-examination that the outcome might have been some lesser form of discipline such as suspension. It is clear that as of January 29, 2014, the JEA entertained doubts about its chances of success in a termination

hearing, else it would not have allowed Mr. Fuller to resign.

29. The only full and unambiguous admission of guilt made by Mr. Fuller was pursuant to the resignation deal brokered by his union representatives on January 29, 2014. Mr. Fuller did not resign his position as the result of an admitted commission of a specified felony; rather, he admitted the thefts only after the JEA agreed to allow him to resign.

30. The resignation letter itself, which the January 29 meeting notes indicate was at least partially drafted by the JEA, states that the JEA "has agreed to accept this resignation in lieu of proceeding with disciplinary action." Even accepting that Mr. Fuller's statements to Det. Beebe were not credible and that the JEA would likely have prevailed at an evidentiary hearing before the Civil Service Board to terminate Mr. Fuller's employment on the ground of theft, there remains the problem of the quid pro quo that was part of the resignation agreement. By accepting Mr. Fuller's resignation, the JEA was spared the time and expense of litigating his termination and was afforded the certainty of Mr. Fuller's immediate and permanent removal from the workplace. Mr. Fuller was not the only party to benefit from the agreement that the Board now seeks to nullify.

31. It appears to the undersigned that if the Board were to be allowed to effectively rescind Mr. Fuller's letter of resignation and treat him as a terminated employee, then

Mr. Fuller should be entitled to go back to square one and invoke his right to challenge that termination before the Civil Service Board. It is doubtful that anyone involved in these events would desire such an outcome. The Board's position that Mr. Fuller's resignation from the JEA was tantamount to termination is implausible on its face and lacks record support.

32. The JEA was under no pressure to settle the case with Mr. Fuller. It presumably made the deal with its eyes open and aware of all the possible ramifications. The JEA allowed Mr. Fuller to retain his accumulated annual leave despite the fact that section 11.6 of the Agreement calls for forfeiture of unused annual leave by employees "who are discharged for stealing." The JEA plainly did not consider Mr. Fuller to have been "discharged" or "terminated." Though Mr. Wigand told the union representative that the JEA does not make pension decisions, the JEA in fact made such a decision when it allowed Mr. Fuller to resign. The JEA benefitted from making a deal with Mr. Fuller. The Board should not be permitted to step in and rewrite the deal after Mr. Fuller has given up his hearing rights and fully performed his end of the bargain.

#### CONCLUSIONS OF LAW

33. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2014).<sup>3/</sup>

34. Article II, section (8)(d) of the State Constitution provides:

Ethics in government.— A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

\* \* \*

(d) Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

35. Section 112.3173, Florida Statutes, provides:

(1) INTENT.— It is the intent of the Legislature to implement the provisions of s. 8(d), Art. II of the State Constitution.

(2) DEFINITIONS.— As used in this section, unless the context otherwise requires, the term:

(a) "Conviction" and "convicted" mean an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or of nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.

(b) "Court" means any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense.

(c) "Public officer or employee" means an officer or employee of any public body, political subdivision, or public instrumentality within the state.

(d) "Public retirement system" means any retirement system or plan to which the provisions of part VII of this chapter apply.

(e) "Specified offense" means:

1. The committing, aiding, or abetting of an embezzlement of public funds;
2. The committing, aiding, or abetting of any theft by a public officer or employee from his or her employer;
3. Bribery in connection with the employment of a public officer or employee;
4. Any felony specified in chapter 838, except ss. 838.15 and 838.16;
5. The committing of an impeachable offense;
6. The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position; or
7. The committing on or after October 1, 2008, of any felony defined in s. 800.04 against a victim younger than 16 years of age, or any felony defined in chapter 794 against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.

(3) FORFEITURE.— Any public officer or employee who is convicted of a specified offense committed prior to retirement, or whose office or employment is terminated by

reason of his or her admitted commission, aid, or abetment of a specified offense, shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

(4) NOTICE.—

(a) The clerk of a court in which a proceeding involving a specified offense is being conducted against a public officer or employee shall furnish notice of the proceeding to the Commission on Ethics after the state attorney advises the clerk that the defendant is a public officer or employee and that the defendant is alleged to have committed a specified offense. Such notice is sufficient if it is in the form of a copy of the indictment, information, or other document containing the charges. In addition, if a verdict of guilty is returned by a jury or by the court trying the case without a jury, or a plea of guilty or of nolo contendere is entered in the court by the public officer or employee, the clerk shall furnish a copy thereof to the Commission on Ethics.

(b) The Secretary of the Senate shall furnish to the Commission on Ethics notice of any proceeding of impeachment being conducted by the Senate. In addition, if such trial results in conviction, the Secretary of the Senate shall furnish notice of the conviction to the commission.

(c) The employer of any member whose office or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense shall forward notice thereof to the commission.

(d) The Commission on Ethics shall forward any notice and any other document received by it pursuant to this subsection to the governing body of the public retirement



system of which the public officer or employee is a member or from which the public officer or employee may be entitled to receive a benefit. When called on by the Commission on Ethics, the Department of Management Services shall assist the commission in identifying the appropriate public retirement system.

(5) FORFEITURE DETERMINATION.—

(a) Whenever the official or board responsible for paying benefits under a public retirement system receives notice pursuant to subsection (4), or otherwise has reason to believe that the rights and privileges of any person under such system are required to be forfeited under this section, such official or board shall give notice and hold a hearing in accordance with chapter 120 for the purpose of determining whether such rights and privileges are required to be forfeited. If the official or board determines that such rights and privileges are required to be forfeited, the official or board shall order such rights and privileges forfeited.

(b) Any order of forfeiture of retirement system rights and privileges is appealable to the district court of appeal.

(c) The payment of retirement benefits ordered forfeited, except payments drawn from nonemployer contributions to the retiree's account, shall be stayed pending an appeal as to a felony conviction. If such conviction is reversed, no retirement benefits shall be forfeited. If such conviction is affirmed, retirement benefits shall be forfeited as ordered in this section.

(d) If any person's rights and privileges under a public retirement system are forfeited pursuant to this section and that person has received benefits from the system in excess of his or her accumulated

contributions, such person shall pay back to the system the amount of the benefits received in excess of his or her accumulated contributions. If he or she fails to pay back such amount, the official or board responsible for paying benefits pursuant to the retirement system or pension plan may bring an action in circuit court to recover such amount, plus court costs.

(6) FORFEITURE NONEXCLUSIVE.—

(a) The forfeiture of retirement rights and privileges pursuant to this section is supplemental to any other forfeiture requirements provided by law.

(b) This section does not preclude or otherwise limit the Commission on Ethics in conducting under authority of other law an independent investigation of a complaint which it may receive against a public officer or employee involving a specified offense.

36. The City of Jacksonville Retirement System is a public retirement system subject to the forfeiture determination provisions of section 112.3173(5).

37. The Board is charged with managing and administering the City of Jacksonville Retirement System. See ch. 120, pt. I, Jacksonville, Florida Code of Ordinances (the "Ordinance Code").

38. While employed by the JEA, Mr. Fuller met the definition of "public officer or employee" found in section 112.3173(2)(c), Florida Statutes.

39. The general rule is that the burden of proof, apart from a statutory directive, is on the party asserting the affirmative of an issue before an administrative tribunal.

Young v. Dep't of Cmty. Aff., 625 So. 2d 831, 833-834 (Fla. 1993); Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778, 788 (Fla. 1st DCA 1981); Balino v. Dep't of HRS, 348 So. 2d 349, 350 (Fla. 1st DCA 1977). As the party seeking the forfeiture of Mr. Fuller's rights and benefits under the City of Jacksonville Retirement System, the Board bears the burden of proof by a preponderance of the evidence.

40. Section 112.3173(3) provides for the forfeiture of a public employee's accumulated rights and benefits under a public retirement system under either of two circumstances. The first, which the Board concedes is not applicable in this case, occurs when the employee is convicted of a specified offense committed prior to retirement. The "conviction" provision cannot be applied to Mr. Fuller because he was never prosecuted for the thefts in question.

41. The second circumstance for forfeiture occurs when the public employee's employment is "terminated by reason of his or her admitted commission, aid, or abetment of a specified offense." The Board contends that Mr. Fuller admitted committing the specified offense of theft from his employer, as described in subsection (2)(e)2., and that he was effectively terminated because of that admission.

42. Even if it were granted that his statements to Det. Beebe constituted an admission that Mr. Fuller committed

theft from his employer, the fact remains that Mr. Fuller's employment was not terminated by the JEA. He was allowed to resign as the result of a negotiation between his union representatives and the JEA.

43. Both parties benefitted from this resignation agreement. Mr. Fuller received the JEA's assurance that it would not seek prosecution for his actions and he was allowed to retain his accumulated annual leave. The JEA was spared the time and expense of proceedings before the Civil Service Board, obtained Mr. Fuller's full admission statement including the assurance that he was working alone, received full restitution for its property losses, and was assured that Mr. Fuller was permanently removed from his position with the JEA.

44. The statute requires that employment must be terminated for forfeiture to occur. The Board argues that the dictionary meaning of "terminated" is "ended" or "concluded," and that Mr. Fuller's resignation "concluded" his employment with the JEA. This argument is disingenuous. Whatever the general meaning of the word "terminate," in the employment context its plain meaning is to fire or dismiss an employee. The undersigned declines to adopt the Board's strained attempt to treat Mr. Fuller's resignation as a "termination." Mr. Fuller was not terminated and therefore is not subject to the forfeiture provisions of section 112.3173.

45. In its Proposed Recommended Order, the Board notes that subsection (6) (a) provides that the forfeiture of retirement rights and privileges pursuant to section 112.3173 is supplemental to any other forfeiture provision provided by law, and points out that section 120.209 of the Ordinance Code provides its own forfeiture provision that applies to Mr. Fuller. The undersigned declines to address this question, for two reasons. First, the assertion in its Proposed Recommended Order is the first time the Board has indicated an intention to claim forfeiture of Mr. Fuller's retirement benefits under any provision other than section 112.3173. The Notice of Proposed Final Agency Action is silent as to the Ordinance Code. Section 120.209 of the Ordinance Code was not mentioned at the evidentiary hearing. Fundamental fairness dictates that Mr. Fuller receives notice and has an opportunity to respond to this new claim of authority to order forfeiture of his benefits.

46. Second, section 112.3173(5) (a) provides for a chapter 120 hearing when the board responsible for paying benefits under a public retirement system "has reason to believe that the rights and privileges of any person under such system are required to be forfeited under this section." (Emphasis added). The emphasized language limits the scope of this chapter 120 proceeding to the grounds for forfeiture found in section

112.3173. The Ordinance Code is beyond the scope of this proceeding.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Board of Trustees of the City of Jacksonville Retirement System enter a final order withdrawing the Notice of Proposed Final Agency Action.

DONE AND ENTERED this 19th day of November, 2014, in Tallahassee, Leon County, Florida.



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LAWRENCE P. STEVENSON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 19th day of November, 2014.

ENDNOTES

<sup>1/</sup> The Agreement in effect at the time of the allegations against Mr. Fuller was that for the years 2009-2012.

<sup>2/</sup> These photos were part of the Board's Exhibits 3 through 6 that were admitted as hearsay evidence only. Because the Board presented no admissible evidence that these exhibits could be said to supplement or explain, and because of their prejudicial

effect in the absence of such evidence, the Board's Exhibits 3 through 6 have not been considered in the preparation of this Recommended Order.

<sup>3/</sup> References to Florida Statutes are to the 2014 version, unless otherwise indicated.

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.