

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

CHALERIA GREEN KNOWLES,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2010-1875
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
	)	
_____	)	

**FINAL ORDER**

On January 4, 2011, the Presiding Officer submitted her Recommended Order to the State Board of Administration in this proceeding. A copy of the Recommended Order indicates that copies were served upon the pro se Petitioner, Chaleria Green Knowles, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order, but Petitioner did not. The matter is now pending before the Senior Defined Contribution Programs Officer for final agency action.

**ORDERED**

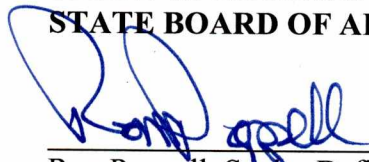
The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner's request that she be permitted to enroll in the Florida Retirement System as a retiree who was rehired after July 1, 2010 hereby is denied.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the State

Board of Administration in the Office of the General Counsel, State Board of Administration, 1801 Hermitage Boulevard, Suite 200, Tallahassee, Florida, 32308, and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days from the date the Final Order is filed with the Clerk of the State Board of Administration.

DONE AND ORDERED this 21<sup>st</sup> day of January, 2011, in Tallahassee, Florida.

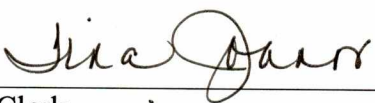
**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



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Ron Poppell, Senior Defined Contribution  
Programs Officer  
State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, Florida 32308  
(850) 488-4406

FILED ON THIS DATE PURSUANT TO  
SECTION 120.52, FLORIDA STATUTES  
WITH THE DESIGNATED CLERK OF THE  
STATE BOARD OF ADMINISTRATION,  
RECEIPT OF WHICH IS HEREBY  
ACKNOWLEDGED.

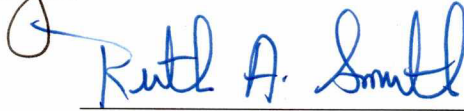


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Clerk TINA JOANOS

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent by UPS to [REDACTED], and by U.S. mail to Brian Newman and Brandice Dickson, Esq., at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 21st day of January, 2011.



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Ruth A. Smith  
Assistant General Counsel  
State Board of Administration of Florida  
1801 Hermitage Boulevard  
Suite 100  
Tallahassee, FL 32308

STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION

CHALERIA GREEN KNOWLES,

Petitioner

vs.

Case No.: 2010-1875

STATE BOARD OF ADMINISTRATION,

Respondent

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GENERAL COUNSEL'S OFFICE

**RECOMMENDED ORDER**

This case was heard in an informal proceeding before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on September 21, 2010, in Tallahassee, Florida. The appearances were as follows:

**APPEARANCES**

For Petitioner: Chaleria Green Knowles

[REDACTED]

For Respondent: Brandice D. Dickson, Esquire  
Pennington, Moore, Wilkinson,  
Bell & Dunbar, P.A.  
215 S. Monroe Street, Suite 200  
Tallahassee, Florida 32301

**STATEMENT OF THE ISSUE**

The issue is whether Petitioner may enroll in the Florida Retirement System (FRS) as a rehired retiree.

## **PRELIMINARY STATEMENT**

On August 12, 2010, Petitioner submitted a Request for Intervention to the SBA, asking that she be allowed to re-enroll in the FRS. By letter of August 16, 2010 from Daniel Beard, SBA Director of Policy, Risk Management, and Compliance, this request was denied based on the provisions of Section 121.122, Florida Statutes, which currently forbid a retiree of a state-administered retirement system initially rehired on or after July 1, 2010 from re-enrolling in the FRS and receiving an additional retirement benefit. Petitioner then filed a Petition for Hearing raising the same issues, and the instant proceeding ensued.

Petitioner attended the hearing by telephone and testified on her own behalf. Respondent presented the testimony of Mr. Beard, and offered Respondent's Exhibits R-1 through R-5, which were admitted into evidence without objection.

A transcript of the informal hearing was filed with the agency and provided to the parties, who were invited to submit proposed recommended orders. Respondent filed a proposed recommended order; Petitioner made no further filings.

## **UNDISPUTED MATERIAL FACTS**

1. Petitioner is an elementary school teacher who was employed by St. Lucie County from 2002-2005 and was a member of the FRS Investment Plan during that time.
2. After moving to Georgia, Petitioner faced financial difficulties and, in 2008, took a distribution of some \$ [REDACTED] from her FRS Investment Plan account.
3. Petitioner later returned to Florida and was rehired by St. Lucie County. Her first day of work was August 11, 2010.



4. Petitioner contacted FRS in early 2010 about “buying back” her three years of service, and was told that this was not possible in the Investment Plan and that she had taken a distribution from her account. Petitioner was not told at this time that new provisions governing rehired retirees would go into effect on July 1, 2010. Petitioner was re-employed by an FRS participating employer in late July, 2010 and began working August 11, 2010.

5. Petitioner will be working for approximately 25 additional years and will have no possibility of participating in the FRS and building a retirement benefit unless she is afforded some relief from the present law.

### CONCLUSIONS OF LAW

6. During the 2009 legislative session, the Florida Legislature revised Section 121.122, Florida Statutes. That revised section now states:

#### **121.122 Renewed membership in system. --**

**(2) A retiree of a state-administered retirement system who is initially reemployed on or after July 1, 2010, is not eligible for renewed membership.**

§121.122, Fla.Stat. (2009)(emphasis added).

7. The applicable statutes define a retiree as “a former member of the Florida Retirement System or an existing system who has terminated employment and is receiving benefit payments from the system in which he or she was a member.” §121.021(60), Fla.Stat. (2010). When Petitioner terminated her FRS employment and took a benefit payment in the form of a distribution from her Investment Plan account, she became a retiree within the meaning of the statutes.

8. Effective July 1, 2010, a retiree who is reemployed with an FRS participating employer is not eligible to participate in the Florida Retirement System.

9. The legislative history of the statutory changes made in 2009 shows that the legislature was aware of the result of excluding from participation in the FRS those who had terminated employment and taken a distribution early in their working years. As the agency affected by the proposed change in the statute, Respondent submitted an analysis of House Bill 479 to the Full Appropriations Council on General Government & Health Care and stated as follows with regard to the change at issue here:

HB 479 would also close the renewed membership class to retirees of a state-administered retirement system initially reemployed by a Florida Retirement System participating employer on or after January 1, 2010. However, this bill would require employer contributions to be paid on the salary of reemployed retirees who are not enrolled as renewed members to maintain the funding base for the Health Insurance Subsidy Program. In addition, this bill would require the employer to pay any unfunded actuarial liability portion of the employer contribution rate for active members if an unfunded actuarial liability cost re-emerges. The bill does not provide for the paying of the Investment Plan administrative contribution.

Retirees initially reemployed before January 1, 2010, would continue their renewed membership and employers would continue to owe the total employer contribution rate for these renewed members. As the number of retirees who are enrolled as renewed members in the FRS is reduced over time, this would gradually reduce the overall cost to employers.

In the longer-term, these changes could result in savings to the FRS Pension Plan by limiting future liabilities for renewed membership and by altering retirement patterns based upon plans for returning to work within a few months of terminating employment. The actual impact would have to be determined by an actuarial special study conducted by the Division of Retirement's consulting actuary.

**Closing the Renewed Membership Class to future participation would impact not only those reemployed retirees who retired at normal retirement, but it would also impact those who retired early.**

Under the FRS Pension Plan a member becomes vested with six years of service. A retiree may take an early retirement if vested and within 20 years of the normal retirement age. However, in doing so the benefit is reduced by five percent for each year remaining before the retiree reaches normal retirement age. For retirees of the Special Risk Class, the earliest a member could receive an early retirement benefit would be at age 35 and one month. For retirees of the other membership classes, early retirement benefit would be at age 42 and one month if vested.

These early retirement retirees would be ineligible for renewed membership should they return to FRS employment.

**Under the FRS Investment Plan, a participant vests after only one year of service. If a member terminates and takes a distribution, he or she is considered a retiree and ineligible for renewed membership in the FRS. Conceivably, a retiree who participated in the Investment Plan for one year and took a distribution at the age of 24 could later return to work for an FRS employer for 30 years or more and never be eligible for a retirement benefit. This could impact the ability of FRS employer's (sic) to recruit employees in the future.**

Florida State Board of Administration Report to Full Appropriations Council on General Government & Health Care on HB # 479, Feb. 16, 2009, p. 5 (emphasis added).

10. The SBA cannot deviate from the statutes which create and control the FRS Investment Plan, Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.), and its construction and application of Chapter 121, Florida Statutes, are entitled to great weight and will be followed unless proven to be clearly erroneous or amounting to an abuse of discretion. Level 3 Communications v. C.V. Jacobs, 841 So.2d 447, 450 (Fla. 2002); Okeechobee Health Care v. Collins, 726 So.2d 775 (Fla. 1st DCA 1998).

11. When Petitioner left her first FRS employment in 2005 and then took a distribution from her Investment Plan account in 2008, she did so under the laws in effect at that time. Neither Petitioner nor Respondent could have known that the law controlling rehired retirees' participation in the FRS would be dramatically changed in 2009. When Petitioner was rehired in July, 2010, the new law prohibiting her from participating in FRS was in place, as it had gone into effect on July 1, 2010. Petitioner states that her employer did not inform her of this fact until she attended new teacher orientation, and that she would not have taken the job had she known. But even assuming no dispute as to the fact of this statement, there is no basis in it for a



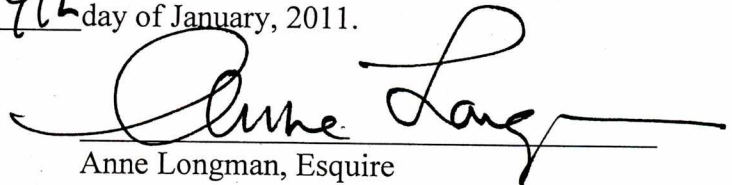
claim of detrimental reliance and no jurisdiction in this forum as to any complaint Petitioner may have against her employer.

12. It is extremely unfortunate that the timing of Petitioner's rehire by St. Lucie County caused her to fall within the absolute statutory proscription against participation in the FRS created by the 2009 statutory amendments, and that the predictable negative effects of those amendments, as outlined in the materials cited above, have been visited on her. But Petitioner was not entitled to assume that the law would remain the same in the five years after her first period of FRS employment, and the SBA is obligated to follow the law duly enacted and now applicable in Petitioner's circumstance.

### RECOMMENDATION

Having considered the law and the undisputed facts of record, I recommend that Respondent, State Board of Administration, issue a final order denying the relief requested.

RESPECTFULLY SUBMITTED this 9th day of January, 2011.



Anne Longman, Esquire  
Presiding Officer  
For the State Board of Administration  
Lewis, Longman & Walker, P.A.  
P.O. Box 16098  
Tallahassee, FL 32317

### NOTICE: THIS IS NOT A FINAL ORDER

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order, which must be filed with the Agency Clerk of the State Board of Administration and served on opposing counsel at the addresses shown below. The SBA then will enter a Final Order which will set out the final agency decision in this case.

Filed with:  
Agency Clerk  
Office of the General Counsel  
Florida State Board of Administration  
1801 Hermitage Blvd., Suite 100  
Tallahassee, FL 32308  
(850) 488-4406

This 4th day of January, 2011.

Copies furnished to:

Chalera Green Knowles

[REDACTED]

Petitioner

Brian A. Newman, Esquire  
Brandice D. Dickson  
Pennington, Moore, Wilkinson Bell & Dunbar  
Post Office Box 10095  
Tallahassee, FL 32302-2095  
Attorneys for Respondent