

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

ROBERT JENNINGS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2012-2434
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
	)	
	)	
	)	
_____	)	

**FINAL ORDER**

On October 3, 2012, 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, Robert Jennings, and upon counsel for the Respondent. Respondent timely filed a Proposed Recommended Order within 30 days after the hearing transcript was filed. Petitioner did not file a Proposed Recommended Order. Neither party filed exceptions, which were due on October 18, 2012. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Senior Defined Contribution Programs Officer for final agency action.

**ORDERED**

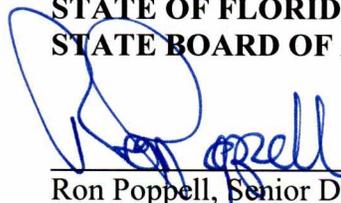
The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner's request to be transferred back to the Florida Retirement System ("FRS")

Pension Plan even though Petitioner already had used his second election to switch to the FRS Investment Plan 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 100, 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 8<sup>th</sup> day of November, 2012, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



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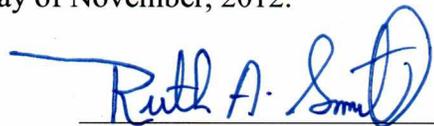
Ron Poppell, Senior Defined Contribution  
Programs Officer  
State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, Florida 32308  
(850) 488-4406

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.

  
\_\_\_\_\_  
Tina Joanos  
Agency Clerk

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent by UPS to Robert Jennings, pro se, [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 8th day of November, 2012.

  
\_\_\_\_\_  
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

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ROBERT JENNINGS,

Petitioner,

vs.

Case No.: 2012-2434

STATE BOARD OF ADMINISTRATION,

Respondent.

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**RECOMMENDED ORDER**

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on June 28, 2012, in Tallahassee, Florida. The appearances were as follows:

**APPEARANCES**

For Petitioner:

Robert Jennings  


For Respondent:

Brian A. Newman, 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's request to be placed back into the Florida Retirement System (FRS) Pension Plan may be granted.

## **PRELIMINARY STATEMENT**

Petitioner attended the hearing by telephone and testified on his own behalf. Respondent presented the testimony of Daniel Beard, Director of Policy, Risk Management, and Compliance, Defined Contribution Programs. Respondent's Exhibits R-1 through R-4 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency and provided to the parties, who were invited to submit proposed recommended orders within 30 days after the transcript was filed. Respondent filed a proposed recommended order; Petitioner made no further filings.

## **MATERIAL UNDISPUTED FACTS**

1. Petitioner has been employed as an educator by the Broward County Public Schools system, an FRS-covered agency, since August of 1999.

2. He had until November 30, 2002 to make an initial election between the FRS Pension Plan (a defined benefit plan with a six year vesting requirement) and the FRS Investment Plan (a defined contribution plan with a one year vesting requirement.) Petitioner made no affirmative initial election and therefore defaulted to Pension Plan membership, as provided by applicable law.

3. Petitioner signed and submitted a 2<sup>nd</sup> Election Retirement Plan Enrollment Form on May 26, 2011. This form Petitioner states in pertinent part:

I understand that this election will constitute my one-time second election as provided under the FRS and that I must remain in this retirement plan until my retirement. I understand that my one-time second election is irrevocable.

4. At the time the Petitioner submitted the second election form, he was not sure whether he wanted to continue with his teaching career.

5. The Petitioner's second election was processed and he was enrolled in the Investment Plan effective June 1, 2011. On June 30, 2011, the present value of Petitioner's Pension Plan benefit was transferred to his Investment Plan account.

6. Before submitting his second election form, Petitioner called the MyFRS Financial Guidance Line on multiple occasions. During these calls, he was given a detailed explanation of the differences between the benefits offered by the Pension Plan and the benefits of Investment Plan membership.

7. During a call to the MyFRS Financial Guidance Line on April 10, 2008, Petitioner was given the following advice by the Ernst & Young financial advisor:

FRS REPRESENTATIVE: Well, the thing is, what we usually see is that the Pension Plan, if you are a career employee, is - - staying there for the full 30 years, the Pension Plan would pay a greater benefit.

\* \* \*

MR. JENNINGS: ... My colleagues make it seem like we're total idiots to stay in the Pension Plan. They said no matter what that the Investment Plan is better.

FRS REPRESENTATIVE: They can't really say that.

MR. JENNINGS: Wow.

8. Petitioner stated repeatedly that he would likely change careers in the near future.

During the same April 10, 2008 call, Petitioner stated:

MR. JENNINGS: Well, you know what, see, the thing about it is, I'm not really sure if I'm going to be here but another - - you know, to be honest, my real dream is only be here another three years.

FRS REPRESENTATIVE: Well, I mean, is that a dream or is that reality?

MR. JENNINGS: I don't know because I'm always seeking a better job or a better career because I really don't want to be a teacher. I'm just doing this until I find something better, to be honest...

During a November 15, 2010 call to the Guidance Line, Petitioner stated:

MR. JENNINGS: Okay. Well, I'm thinking about doing the Investment because I may be a short-term employee because I am really thinking about leaving the school system in, like, within five years.

9. Petitioner was advised to review the information about the differences between the Pension Plan and the Investment Plan that is available on the MyFRS.com website, but he did not do so.

10. He also was advised, before he submitted his second election form, that his decision to transfer to the Investment Plan would be irrevocable. During his Guidance Line call on November 15, 2010, he was advised as follows:

MR. JENNINGS: ...Well, what do I do if I want to transfer over to the Investment?

FRS REPRESENTATIVE: There's a form you have to complete. It's called a second election form. But if you switched over to the Investment, you can't go back to the Pension Plan. So this is your one and final opportunity.

11. Petitioner was told that his benefits at retirement would likely be greater as a member of the Pension Plan if he remained an FRS member through retirement age. Petitioner stated, however, that he did not want to be a teacher for the remainder of his career and that his plan was to change careers within the next three to five years.

12. Petitioner submitted a Request for Intervention to the SBA dated May 8, 2012, requesting that he be allowed to change back to the Pension Plan.

13. Petitioner was advised by the Respondent on April 17, 2012 that his request to return to the Pension Plan could not be granted; he then timely filed a petition for hearing that initiated this administrative proceeding.

### CONCLUSIONS OF LAW

14. In 2002, the Florida Legislature amended the FRS retirement plan offerings and gave FRS-covered employees a choice between the traditional Pension Plan and the newly created Investment Plan. Because Petitioner did not make an affirmative initial election to join the Investment Plan, he defaulted to continued Pension Plan membership.

15. After the initial election period expired, Petitioner had a one-time, and irrevocable, second election that could be used to switch from the Pension Plan to the Investment Plan. Section 121.4501(4)(e), Florida Statutes (2007) provides in pertinent part that:

(e) After the period during which an eligible employee had the choice to elect the defined benefit program or the Public Employee Optional Retirement Program, or the month following the receipt of the eligible employee's plan election, if sooner, the employee shall have one opportunity, at the employee's discretion, to choose to move from the [Pension Plan] to the [Investment Plan] or from the [Investment Plan] to the [Pension Plan]...

§ 121.4501(4)(e), Fla. Stat. (2007) (Emphasis added). As stated in the above-cited statute, participants had only one opportunity to change plans after the initial election period expired. The Petitioner used his one opportunity to change plans when he submitted his second election form in May of 2011.

16. Petitioner received a detailed analysis of the benefits of remaining in the Pension Plan before he decided to change to the Investment Plan, including an estimate that his retirement benefit would be much greater if he remained in the Pension Plan. The second election form he signed warns again that the second election is irrevocable. Petitioner is charged with knowledge of the contents of a document he signed. See Addison v. Carballosa, 48 So. 3d 951, 951 (Fla. 3rd DCA 2010); Wexler v. Rich, 80 So. 3d 1097 (Fla. 4th DCA 2012).

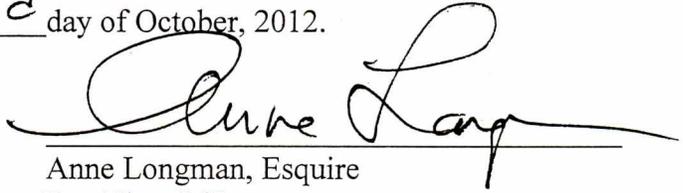
17. The SBA is not authorized to depart from the requirements of the Florida Statutes creating and governing the Florida Retirement System, Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.), and its construction and application of Chapter 121, Florida Statutes, the statute it is charged to implement, are entitled to great weight and will be followed unless proven to be clearly erroneous or amounting to an abuse of discretion. See 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).

18. It is unfortunate that Petitioner used his second election to switch to the Investment Plan, as he now believes it would have been better for him to remain in the Pension Plan. But I see no deficiencies in the information or guidance he was given before making his second election, and there is no authority for the SBA to allow any participant to make a third election.

### **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 3<sup>d</sup> day of October, 2012.



Anne Longman, Esquire  
Presiding Officer  
For the State Board of Administration  
Lewis, Longman & Walker, P.A.  
315 South Calhoun Street, Suite 830  
Tallahassee, FL 32301-1872

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

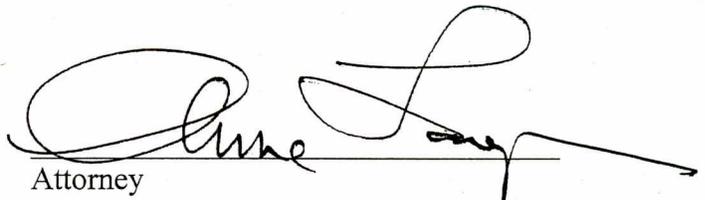
This 3<sup>d</sup> day of October, 2012.

Copies furnished to:

Robert Jennings

[REDACTED]

Brian A. Newman, Esquire  
Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.  
215 S. Monroe Street, Suite 200  
Tallahassee, Florida 32301



Attorney