

**AGENCY FOR WORKFORCE INNOVATION  
TALLAHASSEE, FLORIDA**

**PETITIONER:**

Employer Account No. - 9976239  
FLAGLER CO SUPERVISOR OF ELECTIONS  
PO BOX 901  
BUNNELL FL 32110-0901

**RESPONDENT:**

State of Florida  
Agency for Workforce Innovation  
c/o Department of Revenue

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**PROTEST OF LIABILITY  
DOCKET NO. 2010-83591R**

**ORDER**

This matter comes before me for final Agency Order.

Having fully considered the Special Deputy's Recommended Order and the record of the case and in the absence of any exceptions to the Recommended Order, I adopt the Findings of Fact and Conclusions of Law as set forth therein. A copy of the Recommended Order is attached and incorporated in this Final Order.

In consideration thereof, it is ORDERED that the determination dated April 13, 2010, is AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this \_\_\_\_\_ day of **November, 2010**.



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**TOM CLENDENNING**  
Assistant Director  
AGENCY FOR WORKFORCE INNOVATION

**AGENCY FOR WORKFORCE INNOVATION  
Unemployment Compensation Appeals**

MSC 345 CALDWELL BUILDING  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143

**PETITIONER:**

Employer Account No. - 9976239  
FLAGLER CO SUPERVISOR OF ELECTIONS  
KIMBERLE B WEEKS  
PO BOX 901  
BUNNELL FL 32110-0901

**PROTEST OF LIABILITY  
DOCKET NO. 2010-83591R**

**RESPONDENT:**

State of Florida  
Agency for Workforce Innovation  
c/o Department of Revenue

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: Assistant Director  
Agency for Workforce Innovation

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated April 13, 2010.

After due notice to the parties, a telephone hearing was held on August 23, 2010. The Petitioner was represented by its attorney. The Supervisor of Elections testified as a witness. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified.

The record of the case, including the recording of the hearing and any exhibits submitted in evidence, is herewith transmitted. Proposed Findings of Fact and Conclusions of Law were received from the Petitioner.

**Issue:**

Whether the Petitioner is required to reimburse the Unemployment Compensation Trust Fund for benefit payments made to the claimant, pursuant to Sections 443.1312 and 443.1313, Florida Statutes.

**Findings of Fact:**

1. The Petitioner, Flagler County Supervisor of Elections, is a political subdivision of the State of Florida.
2. The Petitioner is registered for reporting wages for unemployment compensation benefits and is a reimbursable employer rather than a contributory employer.
3. A former employee, Kimble Medley, filed a claim for unemployment compensation benefits. Initially, a determination was issued holding the claimant not disqualified from receiving benefits. The Petitioner filed an appeal and following a hearing an appeals referee issued a decision holding the claimant disqualified from receiving benefits.
4. Another former employee, Louann Hamacher, worked for the Petitioner for approximately three weeks and was discharged for unsatisfactory work performance during a probationary period. The

claimant filed a claim for unemployment compensation benefits and the claims adjudicator issued a determination holding that benefits were payable because the discharge was for reasons other than misconduct in connection with work. The determination also notified the Petitioner that the benefits were not chargeable to the employer because the employment was not in the base period of the claim. Based on the fact that benefits were not chargeable to the employer, the Petitioner believed that benefits had been denied. The Petitioner did not file an appeal. When the initial claim expired the claimant filed a new claim. The Petitioner was a base period employer on the new claim and the Petitioner was charged with a portion of the benefits paid on the new claim.

5. Reimbursement invoices were mailed to the Petitioner notifying the Petitioner that the Petitioner was required to reimburse the Unemployment Compensation Trust Fund for benefits paid. The Petitioner protested the reimbursement invoices. On April 27, 2010, the Agency for Workforce Innovation responded to the protest and advised the Petitioner of its right to file an appeal. The Petitioner filed an appeal by letter dated April 30, 2010.

### Conclusions of Law:

6. Section 443.1313(1)(a), Florida Statutes, provides that, unless a public employer elects to become a contributing employer the public employer must reimburse the Unemployment Compensation Trust Fund for the amount of benefits paid to individuals based on wages paid by the public employer for services performed by the employees. (emphasis supplied)
7. Section 443.131(3), Florida Statutes, provides conditions under which a contributing employer will not be charged for benefits paid. However, Section 443.131(4), Florida Statutes, provides that the provisions of subsection (3) do not apply to reimbursing employers.
8. There are no provisions in The Unemployment Compensation Law to relieve a reimbursable employer of the requirement to reimburse the Unemployment Compensation Trust Fund, even if the benefits are paid by the Agency for Workforce Innovation in error.
9. The Petitioner argues that Section 443.1313(1)(b), Florida Statutes provides that a political subdivision of the state is not required to reimburse the trust fund if it is shown that the benefits were erroneously paid due to fraud on the part of the claimant or due to a redetermination or a decision of an appeals referee requiring the claimant to repay the benefits. The Petitioner's reliance is misplaced. The paragraph cited by the Petitioner does not address whether or not the political subdivision is required to reimburse the trust fund but instead addresses a collection procedure which may be applied if the public employer is delinquent in paying the reimbursement. The paragraph specifically addresses the authority of the Department of Revenue or the Department of Financial Services to deduct the amount owed by a public employer from any funds to be distributed by the Department of Revenue or the Department of Financial Services to the public employer, if the public employer is more than 120 days delinquent on reimbursements due to the Unemployment Compensation Trust Fund.
10. The Petitioner must reimburse the Unemployment Compensation Trust Fund in full for the benefits charged to the Petitioner.

**Recommendation:** It is recommended that the determination dated April 13, 2010, be AFFIRMED.

Respectfully submitted on September 15, 2010.



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R. O. SMITH, Special Deputy  
Office of Appeals