AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA

PETITIONER:
Employer Account No. - 2688594

UNLIMITED MANAGEMENT GROUP LLC
DAMIAN MCNORTON
11530 SW 200TH STREET
MIAMI FL 33157-1060

PROTEST OF LIABILITY
DOCKET NO. 2010-24074L

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

O R D E R

This matter comes before me for final Agency Order.

The issue before me is whether services performed for the Petitioner by the Joined Party as a dentist constitute insured employment pursuant to Sections 443.036(19); 443.036(21); 443.1216, Florida Statutes, and if so, the effective date of liability.

The Joined Party filed an unemployment compensation claim in October 2009. An initial determination held that the Joined Party earned insufficient wages in insured employment to qualify for benefits. The Joined Party advised the Agency that he worked for the Petitioner during the qualifying period and requested consideration of those earnings in the benefit calculation. As the result of the Joined Party's request, the Department of Revenue conducted an investigation to determine whether work for the Petitioner was done as an employee or an independent contractor. If the Joined Party worked for the Petitioner as an employee, he would qualify for unemployment benefits, and the Petitioner would owe unemployment compensation taxes. On the other hand, if the Joined Party worked for the Petitioner as an independent contractor, he would remain ineligible for benefits, and the Petitioner would not owe unemployment compensation taxes on the remuneration it paid to the Joined Party. Upon completing the investigation, an auditor at the Department of Revenue determined that the services performed by the Joined Party were in insured employment. The Petitioner was required to pay unemployment compensation taxes on wages paid to the Joined Party. The Petitioner filed a timely protest of the determination. The claimant who requested the investigation was joined as a party because he had a

direct interest in the outcome of the case. That is, if the determination is reversed, the Joined Party will once again be ineligible for benefits and must repay all benefits received.

A telephone hearing was held on August 5, 2010. A representative appeared on behalf of the Petitioner. The Petitioner's President testified on behalf of the Petitioner. A Tax Specialist II appeared and testified on behalf of the Respondent. The Joined Party appeared and testified on his own behalf. The Special Deputy issued a Recommended Order on September 1, 2010.

The Special Deputy's Findings of Fact recite as follows:

1. The Petitioner is a limited liability corporation set up for the purpose of running a dental office.

2. The Joined Party performed services as a dentist for the Petitioner from January 28, 2006, through May 30, 2007, and from September 2007, through February 13, 2009.

3. The Joined Party contacted the Petitioner in response to an advertisement placed by the Petitioner. The Petitioner interviewed and then hired the Joined Party. The Petitioner informed the Joined Party that the relationship was to be an independent contractor relationship.

4. The Joined Party was initially expected to report to work Monday through Wednesday, from 8:30 to 4. The Joined Party was expected to report to work at the Petitioner's place of business. When the Joined Party began work for the second time with the Petitioner, the Joined Party was expected to work Thursdays and Fridays with the same hours.

5. The Joined Party's work included examining patients, diagnosing and treating patients. The Joined Party directed the work of dental assistants and schedulers. The patients were provided by the Petitioner. Patient charges were set by the Petitioner.

6. The Joined Party is a licensed dentist. The Joined Party maintains his own malpractice insurance and certification to write prescriptions.

7. The Joined Party was paid $650 per day when he worked the three day per week shift. The Joined Party was paid $600 per day when he worked the two day per week shift. The Joined Party was required to sign a sign in sheet each day. The Petitioner paid the Joined Party a Christmas bonus and a birthday bonus.

8. The Petitioner supplied all of the tools and equipment necessary to perform the work.

9. Either party could end the relationship at anytime and without liability.

10. The Joined Party was not allowed to sub-contract the work.

Based on these Findings of Fact, the Special Deputy recommended that the determination dated December 1, 2009, be affirmed. The Petitioner requested an extension of time to submit exceptions to the Recommended Order by fax dated September 15, 2010. The Special Deputy issued an order allowing an extension of time to submit exceptions to the Recommended Order on September 15, 2010. The order extended the time for submitting exceptions until September 27, 2010. The Petitioner's exceptions to the Recommended Order were received by fax dated September 27, 2010. No other submissions were received from any party.

With respect to the recommended order, Section 120.57(1)(l), Florida Statutes, provides:

> The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusions of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

With respect to exceptions, Section 120.57(1)(k), Florida Statutes, provides, in pertinent part:

> The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

The Petitioner's exceptions are addressed below. Additionally, the record of the case was carefully reviewed to determine whether the Special Deputy's Findings of Fact and Conclusions of Law were supported by the record, whether the proceedings complied with the substantial requirements of the law, and whether the Conclusions of Law reflect a reasonable application of the law to the facts.

Exceptions #1-3, 5, and 8-10 and portions of Exceptions #4, 6-7, and 11-12 propose findings of fact in accord with the Special Deputy's Findings of Fact, propose alternative findings of fact or conclusions of law, or attempt to enter additional evidence. Pursuant to section 120.57(1)(l), Florida Statutes, the Special

Deputy is the finder of fact in an administrative hearing, and the Agency may not reject or modify the Special Deputy's Findings of Fact unless the Agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. Also pursuant to section 120.57(1)(l), Florida Statutes, the Agency may not reject or modify the Special Deputy's Conclusions of Law unless the Agency first determines that the conclusions of law do not reflect a reasonable application of the law to the facts. A review of the record reveals that the Special Deputy's Findings of Fact are supported by competent substantial evidence in the record. Further review of the record also reveals that the Special Deputy's Conclusions of Law reflect a reasonable application of the law to the facts. As a result, the Agency may not modify the Special Deputy's Findings of Fact or Conclusions of Law pursuant to section 120.57(1)(l), Florida Statutes, and accepts the findings of fact and conclusions of law as written by the Special Deputy. Rule 60BB-2.035(19)(a), Florida Administrative Code, prohibits the acceptance of additional evidence after the hearing is closed. The Petitioner's request for the consideration of additional evidence is respectfully denied. Exceptions #1-3, 5, and 8-10 and the portions of Exceptions #4, 6-7, and 11-12 that propose findings of fact in accord with the Special Deputy's Findings of Fact, propose alternative findings of fact or conclusions of law, or attempt to enter additional evidence are respectfully rejected.

In Exception #4, the Petitioner argues that both parties agreed that they were entering into an independent contractor relationship and believed that they were entering into an independent contractor relationship. In *Keith v. News & Sun Sentinel Co.*, 667 So.2d 167 (Fla. 1995), the Florida Supreme Court provided guidance on how to approach an analysis of employment status. *Id*. at 171. The court held that the lack of an express agreement or clear evidence of the intent of the parties requires "a fact-specific analysis under the Restatement based on the actual practice of the parties." *Id*. However, when an agreement does exist between the parties, the court held that the courts should first look to the agreement and honor it "unless other provisions of the agreement, or the parties' actual practice, demonstrate that it is not a valid indicator of status." *Id*. As a result, the analysis in this case would not stop at an examination of the written agreement between the parties.

A complete analysis would examine whether the agreement and the other provisions of the agreement were consistent with the actual practice of the parties. If a conflict is present, *Keith* provides further guidance. *Id*. In *Keith*, the court concluded that the actual practice and relationship of the parties should control when the "other provisions of an agreement, or the actual practice of the parties, belie the creation of the status agreed to by the parties." *Id*. For example, in *Justice v. Belford Trucking Co*., 272

So.2d 131, 136 (Fla. 1972), the Florida Supreme Court held that the Judge of Industrial Claims erred when relying solely on the language of a contract instead of considering all aspects of the parties' working relationship. In doing so, the court found that the judge "did not recognize the employment relationship that actually existed." *Id.* at 136. Therefore, the mere existence of an independent contractor agreement and the specific terms of such an agreement would not be conclusive regarding the issue of the Joined Party's status. Although the Special Deputy found in Finding of Fact #3 that the Joined Party was informed by the Petitioner that the relationship would be an independent contractor relationship, the working relationship as described by the Special Deputy in the Findings of Fact would still merit the conclusion that an employer/employee relationship existed. Contrary to the result in *Keith*, the Special Deputy did not find that the behavior of the parties was consistent with an independent contractor status and did not find the Petitioner's right to control the Joined Party was limited to merely a right to control the results of the Joined Party's work. Instead, the Special Deputy concluded in Conclusion of Law #18 that the Petitioner controlled the surrounding circumstances of the Joined Party's work. Competent substantial evidence in the record supports the Special Deputy's ultimate conclusion that the Petitioner controlled the way the Joined Party performed his services in a manner characteristic of an employment relationship. Thus, the Special Deputy's Conclusions of Law reflect a reasonable application of the law to the facts and are not rejected by the Agency. The portion of Exception #4 that argues that both parties agreed that they were entering into an independent contractor relationship and believed that they were entering into an independent contractor relationship is respectfully rejected.

Also in Exception #4, the Petitioner argues that evidence in the record that shows that the Joined Party requested a Form 1099-MISC so that he could pay all of his taxes and that the Joined Party should be found to be an independent contractor because he is responsible for paying all of his taxes. In support of its argument, the Petitioner relies on alternative findings of fact and cites *Lenox v. Sound Entertainment, Inc.*, 470 So.2d 77 (Fla. 2d DCA 1985). The *Lenox* case is distinguishable from the case at hand because the court found that a disc jockey was an independent contractor because the worker was subject to control only in regard to the results of his work and the worker was not subject to control in regard to the manner in which he performed his services. *Id.* at 78. Unlike the Joined Party in the current case, the disc jockey leased his equipment and assumed "sole risk for the equipment's damage, loss, or destruction." *Id.* In Finding of Fact #8, the Special Deputy found that the Joined Party was provided all necessary tools and equipment by the Petitioner. In contrast to *Lenox*, the Special Deputy concluded that the Petitioner controlled the circumstances of the Joined Party's work in a manner consistent with an employer/employee relationship. As the Special Deputy's Findings of Fact are supported by competent substantial evidence in the record and the Special Deputy's Conclusions of Law reflect a reasonable application of the law to the

facts, the Agency is required to accept the findings of fact and conclusions of law as written by the Special Deputy pursuant to section 120.57(1)(l), Florida Statutes. The remaining portion of Exception #4 is respectfully rejected.

In Exception #6, the Petitioner cites *VIP Tours of Orlando, Inc. v. State, Dep't of Labor and Employment Sec.*, 449 So.2d 1307 (Fla. 5th DCA 1984); *T & T Communications, Inc. v. State, Dep't of Labor and Employment Sec.*, 460 So.2d 996 (Fla. 2d DCA 1984); and *Magarian v. Southern Fruit Distributors*, 146 Fla. 773, 1 So.2d 858 (Fla. 1941), in support of its argument that the Petitioner did not control the method of the Joined Party's work and it was instead the Joined Party who controlled what work he did, how he completed his work, and when he completed his work. In making its contention, the Petitioner relies on alternative findings of fact. The cases cited by the Petitioner are all distinguishable from the current case. In *VIP Tours*, the court concluded that tour guides that worked on an as-needed basis were independent contractors when the agency that hired the guides did not exercise a right of control over the manner in which the guides performed their services and "had little interest in the details of the guides' work." 449 So.2d at 1308-310. Similarly, in *T & T Communications*, cable installers who were hired by a communications company were considered independent contractors in light of several factors. 460 So.2d at 997. Primarily, the court found that the communications company was not concerned about manner in which the cable installers performed the work. *Id*. at 998. Factors that the court also considered were that the cable installers were not regularly employed and provided their own tools. *Id*. In *Magarian*, the court ruled that a seasonal worker hired to locate, inspect and buy fruit was an employee because he was not permitted to exercise his independent judgment in performing his job duties. 146 Fla. at 774, 1 So.2d at 859. The court made its ruling in spite of the parties' belief that the worker performed services as an independent contractor and further held that parties' mistaken beliefs about the worker's status would not change the worker's employee status. 146 Fla. at 778, 1 So.2d at 861. A review of the record reveals that the Special Deputy made very different findings of fact in the current case.

In the case at hand, the Special Deputy found in Findings of Fact #4 and 8 that that the Joined Party worked regularly on specific weekdays and that the Petitioner provided all necessary tools and equipment. Also, while recognizing that the Joined Party was a highly-skilled professional in Conclusion of Law #18, the Special Deputy also concluded that the Petitioner exerted sufficient control over the surrounding circumstances of the Joined Party's work as to form an employment relationship between the parties. In making this conclusion, the Special Deputy did not find the Joined Party's right to exercise his independent judgment as a skilled professional or the parties' belief that the Joined Party worked as an independent contractor as conclusive in regard to the determination of the Joined Party's status in light of the other

factors of control present in the working relationship. All of the Special Deputy's Findings of Fact are supported by competent substantial evidence in the record. The Special Deputy's Conclusions of Law, including the Special Deputy's ultimate conclusion that the Joined Party worked as an employee, reflect a reasonable application of the law to the facts. The remaining portion of Exception #6 is respectfully rejected.

In Exceptions #7 and 12, the Petitioner cites *La Grande v. B & L Servs., Inc.*, 432 So.2d 1364 (Fla. 1st DCA 1983), in support of its contention that the Joined Party was subject to governmental regulation in regard to which patients the Petitioner provided and in regard to why the Joined Party could not subcontract the work. Specifically, the Petitioner contends that this governmental regulation should not be considered control or supervision by the Petitioner. In making its contention, the Petitioner relies on evidence that was not presented at the hearing. In *La Grande*, the court determined that a taxi cab driver was an independent contractor and held that "[g]overnmental regulations do not constitute control or supervision by the putative employer." *Id*. at 1367. The facts of the *La Grande* case differ from the case at hand in that the taxi cab company provided equipment and services to the taxi cab driver at "a flat daily rate plus a certain amount per mile" and did not provide equipment and services without cost to the worker. *Id*. at 1366. A review of the record demonstrates that the Special Deputy ruled that the Petitioner supplied all necessary tools and equipment in Finding of Fact #7. The Special Deputy's Findings of Fact, including Finding of Fact #7, are supported by competent substantial evidence in the record. The Special Deputy's Conclusions of Law represent a reasonable application of the law to the facts. As previously stated, rule 60BB-2.035(19)(a) of the Florida Administrative Code prohibits the acceptance of evidence after the hearing is closed. The Petitioner's request for the consideration of additional evidence is respectfully denied. Exceptions #7 and 12 are respectfully rejected.

The Petitioner also cites *La Grande v. B & L Services, Inc.*, 432 So.2d 1364 (Fla. 1st DCA 1983), in Exception #11 in support of its argument that the fact that either party could end the relationship at anytime and without liability is not conclusive of the Joined Party's status. The record reflects that the Special Deputy found in Finding of Fact #9 that "[e]ither party could end the relationship at anytime and without liability." Further review of the record shows that the Special Deputy considered other factors in making his ruling and did not base his ruling solely on that factor. While it may be the case that the fact that either party could end the relationship at anytime and without liability is not conclusive of the Joined Party's status, it is one of the factors to be considered in an analysis under the Restatement factors. When completing his analysis of the Restatement factors, the Special Deputy determined that the Petitioner exercised control over the Joined Party as part of an employment relationship. The Special Deputy also

determined that the fact that either party could end the relationship at anytime and without liability was consistent with that type of relationship. Since there is competent substantial evidence in the record to support all of the Special Deputy's Findings of Fact and all of the Special Deputy's Conclusions of Law reflect a reasonable application of the law to the facts, the Agency may not modify or reject the Special Deputy's Findings of Fact and Conclusions of Law pursuant to section 120.57(1)(l), Florida Statutes. Exception # 11 is respectfully rejected.

A review of the record reveals that the Findings of Fact contained in the Recommended Order are based on competent, substantial evidence and that the proceedings on which the findings were based complied with the essential requirements of the law. The Special Deputy's Findings of Fact are thus adopted in this order. The Special Deputy's Conclusions of Law reflect a reasonable application of the law to the facts and are also adopted.

Having considered the record of this case, the Recommended Order of the Special Deputy, and the exceptions filed by the Petitioner, I hereby adopt the Findings of Fact and Conclusions of Law of the Special Deputy as set forth in the Recommended Order.

In consideration thereof, it is ORDERED that the determination dated December 1, 2009, is AFFIRMED.

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

_____

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

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Employer Account No. - 2688594
UNLIMITED MANAGEMENT GROUP LLC
DAMIAN MCNORTON
11530 SW 200TH STREET
MIAMI FL 33157-1060

PROTEST OF LIABILITY
DOCKET NO. 2010-24074L

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 December 1, 2009.

After due notice to the parties, a telephone hearing was held on August 5, 2010. The Petitioner's president appeared and provided testimony at the hearing. The Joined Party appeared and testified on his own behalf. A tax specialist II appeared and testified on behalf of the Respondent.

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 not received.

Issue:

Whether services performed for the Petitioner by the Joined Party constitute insured employment, and if so, the effective date of liability, pursuant to Section 443.036(19), 443.036(21); 443.1216, Florida Statutes.

Findings of Fact:

1. The Petitioner is a limited liability corporation set up for the purpose of running a dental office.

2. The Joined Party performed services as a dentist for the Petitioner from January 28, 2006, through May 30, 2007, and from September 2007, through February 13, 2009.

3. The Joined Party contacted the Petitioner in response to an advertisement placed by the Petitioner. The Petitioner interviewed and then hired the Joined Party. The Petitioner informed the Joined Party that the relationship was to be an independent contractor relationship.

4. The Joined Party was initially expected to report to work Monday through Wednesday, from 8:30 to 4. The Joined Party was expected to report to work at the Petitioner's place of business. When the Joined Party began work for the second time with the Petitioner, the Joined Party was expected to work Thursdays and Fridays with the same hours.

5. The Joined Party's work included examining patients, diagnosing and treating patients. The Joined Party directed the work of dental assistants and schedulers. The patients were provided by the Petitioner. Patient charges were set by the Petitioner.

6. The Joined Party is a licensed dentist. The Joined Party maintains his own malpractice insurance and certification to write prescriptions.

7. The Joined Party was paid $650 per day when he worked the three day per week shift. The Joined Party was paid $600 per day when he worked the two day per week shift. The Joined Party was required to sign a sign in sheet each day. The Petitioner paid the Joined Party a Christmas bonus and a birthday bonus.

8. The Petitioner supplied all of the tools and equipment necessary to perform the work.

9. Either party could end the relationship at anytime and without liability.

10. The Joined Party was not allowed to sub-contract the work.

Conclusions of Law:

11. The issue in this case, whether services performed for the Petitioner constitute employment subject to the Florida Unemployment Compensation Law, is governed by Chapter 443, Florida Statutes. Section 443.1216(1)(a)2., Florida Statutes, provides that employment subject to the chapter includes service performed by individuals under the usual common law rules applicable in determining an employer-employee relationship.

12. The Supreme Court of the United States held that the term "usual common law rules" is to be used in a generic sense to mean the "standards developed by the courts through the years of adjudication." United States v. W.M. Webb, Inc., 397 U.S. 179 (1970).

13. The Supreme Court of Florida adopted and approved the tests in 1 Restatement of Law, Agency 2d Section 220 (1958), for use to determine if an employment relationship exists. See Cantor v. Cochran, 184 So.2d 173 (Fla. 1966); Miami Herald Publishing Co. v. Kendall, 88 So.2d 276 (Fla. 1956); Magarian v. Southern Fruit Distributors, 1 So.2d 858 (Fla. 1941); see also Kane Furniture Corp. v. R. Miranda, 506 So.2d 1061 (Fla. 2d DCA 1987).

14. Restatement of Law is a publication, prepared under the auspices of the American Law Institute, which explains the meaning of the law with regard to various court rulings. The Restatement sets forth a nonexclusive list of factors that are to be considered when judging whether a relationship is an employment relationship or an independent contractor relationship.

15. 1 Restatement of Law, Agency 2d Section 220 (1958) provides:

    (1) A servant is a person employed to perform services for another and who, in the performance of the services, is subject to the other's control or right of control.

(2) The following matters of fact, among others, are to be considered:
   (a) the extent of control which, by the agreement, the business may exercise over the details of the work;
   (b) whether or not the one employed is engaged in a distinct occupation or business;
   (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
   (d) the skill required in the particular occupation;
   (e) whether the employer or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work;
   (f) the length of time for which the person is employed;
   (g) the method of payment, whether by the time or by the job;
   (h) whether or not the work is a part of the regular business of the employer;
   (i) whether or not the parties believe they are creating the relation of master and servant;
   (j) whether the principal is or is not in business.

16. Comments in the Restatement explain that the word "servant" does not exclusively connote manual labor, and the word "employee" has largely replaced "servant" in statutes dealing with various aspects of the working relationship between two parties. In Department of Health and Rehabilitative Services v. Department of Labor & Employment Security, 472 So.2d 1284 (Fla. 1st DCA 1985) the court confirmed that the factors listed in the Restatement are the proper factors to be considered in determining whether an employer-employee relationship exists. However, in citing La Grande v. B&L Services, Inc., 432 So.2d 1364, 1366 (Fla. 1st DCA 1983), the court acknowledged that the question of whether a person is properly classified an employee or an independent contractor often cannot be answered by reference to "hard and fast" rules, but rather must be addressed on a case-by-case basis.

17. The evidence presented in this case reveals that the Petitioner controlled where and when the Joined Party performed services. The Joined Party had a schedule set by the Petitioner and was required to report to work at the Petitioner's place of business.

18. The Joined Party is a licensed dentist and as such a highly skilled professional. It is often difficult to find control over the work in cases involving skilled professional workers. The court in Kay v. General Cable Corp., 144 F.2d 635 (3d Cir. 1944) stated that the circumstances surrounding the work had to be given greater weight in determining whether the work was controlled. In this case, the dentist's patients are provided by the Petitioner, the Joined Party used the Petitioner's facilities and equipment, and the Joined Party was subject to discharge.

19. The Joined Party was expected to supervise the Petitioner's workers. While an independent contractor may certainly supervise his own workers, it is inconsistent with an independent contractor relationship to supervise the workers of an employer.

20. The Joined Party worked for approximately a year and half in his second time of work with the Petitioner. The length of time worked demonstrates a permanent relationship rather than an occasional relationship and as such is indicative of an employer-employee relationship.

21. The Joined Party's services were not separate and distinct from the Petitioner's business but were an integral part of the business.

22. The relationship was terminable at will. Either party could end the relationship at any time without liability. In Cantor v. Cochran, 184 So.2d 173 (Fla. 1966), the court in quoting 1 Larson, Workmens' Compensation Law, Section 44.35 stated: "The power to fire is the power to control. The absolute right to terminate the relationship without liability is not consistent with the concept

of independent contractor, under which the contractor should have the legal right to complete the project contracted for and to treat any attempt to prevent completion as a breach of contract."

23. A preponderance of the evidence presented in this case reveals that the Petitioner established sufficient control over the Joined Party as to create an employer-employee relationship between the Petitioner and the Joined Party.

Recommendation: It is recommended that the determination dated December 1, 2009, be AFFIRMED.

Respectfully submitted on September 1, 2010.

KRIS LONKANI, Special Deputy
Office of Appeals