

STATE OF South CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
ROBERT L. REIBOLD ADMINISTRATIVE LAW
JUDGE

BOBBY LEANDER WATSON #277427
APPELLANT

V
SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

RESPONDENT

RECEIVED

DEC 27 2023

SC Court of Appeals

INITIAL BRIEF

APPELLANT SEEKS TO REVERSE AND REMAND
THE FINAL ORDER OF THE SOUTH CAROLINA
ADMINISTRATIVE LAW COURT (DOCKET NO. 23-ALJ-04-
0054-AP) ATTACHED.

THE FINAL ORDER STARTS OUT ON P.2. WITH
AN ERROR ACCORDING TO 1-23-380. THE STEP 1
GRIEVANCE REPLY IS QUOTED THEN THE COURT
STATES: "NO SPECIFIC PERIOD OF EMPLOYMENT
OR TYPES OF WORK WERE DISCUSSED BY THE
APPELLANT OR WARDEN!"

THIS IS ERRONEOUS AND AN ERROR OF
1-23-380 (E) AND (F).

ON ALL S.C.D.C. GRIEVANCES THERE IS A BOX THAT REQUIRES THE INMATE TO PROVIDE "INMATE NAME", "S.C.D.C. NUMBER", "INSTITUTION", "HOUSING UNIT", AND "WORK ASSIGNMENT". APPELLANT WROTE "PI-3 HASKO COORDINATOR" BESIDE WORK ASSIGNMENT.

THE HASKO COORDINATOR WORKS ON A PART OF MANUFACTURING LINE THAT CUTS THE BOARDS THAT ARE DEFECT AND REPLACE TONGUE AND GROOVE FOR TONGUE AND GROOVE ASSEMBLY.

IN PARAGRAPH ONE PAGE 3 THE 15 DAY TIME LIMIT THAT THE SOUTH CAROLINA COURT OF APPEALS HAS HEID IS EXCEPTED FOR WAGE DISPUTES. APPELLANT IS DISPUTING THE POLICY AND PROCEDURES THAT S.C.D.C. IS ERRONEOUSLY ENFORCING.

THIS RULING IS CLEARLY ERRONEOUS, AND AN ABUSE OF DISCRETION. THE ALJ FURTHER REVISITS THE ISSUE OF "NO SPECIFIC PERIODS OF EMPLOYMENT OR TYPES OF WORK WERE DISCUSSED BY THE APPELLANT OR RESPONSIBLE OFFICIAL." THIS ALSO IS CLEARLY ERRONEOUS AND IS IN VIOLATION 1-23-380 (5) (E) AND (F).

THE FINAL DECISION MISCONSTRUES THE ISSUE ON APPEAL SUCH THAT IT VIOLATES 1-23-380 (5) (A) AND DIVERTS ATTENTION. SEE: TORRENCE V. S.C.D.C. 373 S.C. 586, 646 S.E. 2d. 866 (2007) AND ACKERMAN V. S.C.D.C. 415 S.C. 412 R.H., R.G. DENIED. CERT. DENIED. FROM THE TRUE ISSUE AT HAND. APPELLANT CONSISTENTLY EMPHASIZED THAT HE WAS NOT BEING PAID CORRECTLY AND THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS KNEW THAT TO BE TRUE (SEE: 2002 WL 31728841). S.C.D.C. HAS KNOWN THEY WERE PAYING LESS THAN THE S.C. CODE 24-3-430, AND 24-3-430(D) REQUIRED. AMOUNT FOR MORE THAN 21 YEARS.

THE ADMINISTRATIVE LAW COURT CONTINUALLY REVISITS PROVISIONS OF ADM 15.13 AND ATTEMPTS TO SUPPLANT STATUTE 24-3-430, AND 24-3-430(D) WITH POLICY. THIS A VIOLATION OF 1-23-380 (5) (E) AND (F) AND DUE PROCESS RIGHTS GUARANTEED UNDER THE U.S. AND SOUTH CAROLINA CONSTITUTION.

THE ADMINISTRATIVE LAW COURT ON PAGE 9

PARAGRAPH II STATES. " HAVING CONCLUDED ...
REGARDING ADM 15.13 AND APPLY ANTI-TORRENCE
EXCEPTIONS. THE COURT " PRECLUDES THE
INMATE FROM RECEIVING BACK PAY. IT APPEARS
THAT THE PRO SE APPELLANT IS BEING HEID
TO AN UNACCEPTABLY HIGH STANDARD.

THE COURT SHOULD SEE AND KNOW THE TRUE
INTENT OF THE PRO SE APPELLANT AND NOT
MAKE AN UNFAIR AND UNJUST STANDARD (SEE
ALSO: HAINES V. KERNER 404 US 519, 92
US S.Ct. P. 594 (1972)). THE PRO SE
APPELLANT SHOULD BE HEID TO A LESS
STRINGENT STANDARD.

CONCLUSION

THE COURT SHOULD REVERSE AND
REMAND JUDGE REIBOLD'S DECISION
TO THE ADMINISTRATIVE COURT

Respectfully Submitted,

BOBBY LEANDER WATSON
SCDC NO. 277427
TYRCI U7B225
200 PRISON Road
ENDREE S.C 29335

CERTIFICATE OF SERVICE

I, BOBBY LEANDER WATSON #277427,
Hereby certify that I HAVE ON
THIS DATE SERVED A COPY OF THIS
APPEAL ON ALL PARTIES.
ON THIS 18th DAY OF DECEMBER 2023

Bobby Leander Watson
SCDC NO. 277427 / U7B2
Tyger River Correctional Institution
200 PRISON ROAD
ENDREE S.C. 29335

ADDENDUM

THE FOLLOWING EXHIBITS ARE SUBMITTED TO SHOW THAT THIS MATTER BEFORE THE COURT IS AN ONGOING AND CONTINUOUS VIOLATION OF APPELLANT'S RIGHTS.

LEGISLATIVE INTENT HAS BEEN IGNORED IN THE STATUTORY INTERPRETATION. § 24-3-430(D) SHOWS THE INTENT OF THE LEGISLATURE.

ALL INMATES WORKING IN THE PRISON INDUSTRIES PROGRAM MUST BE PAID "PREVAILING WAGE". THE LAW STATES THIS FACT AND THE SHAW INDUSTRIES / SCLDC CONTRACT (SEE PAGE 7) REITERATES THE EXPRESSED INTENT OF ALL PARTIES TO ABIDE BY THE DATA PROVIDED BY THE SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE. (SEE EXHIBITS B AND C). APPELLANT HAS ATTEMPTED TO GRIEVE PAY AT UNDER PREVAILING WAGE AND MET ROADBLOCKS BY SCLDC. THE GRIEVANCE WAS RETURNED UNPROCESSED (SEE EXHIBIT D)

ADDENDUM (CONTINUE)

SLDC IS IN CUSTODY AND CONTROL OF ALL WORK RECORDS. (EXHIBIT E) SHOWS A PRINTOUT OF JOB ASSIGNMENTS WITHIN THE DEPARTMENT OF CORRECTIONS.

THIS PRINTOUT WAS OBTAINED FROM THE SLDC CLASSIFICATION DEPARTMENT.

FOR SLDC TO ARGUE THAT APPELLANT IS SOMEHOW DISQUALIFIED FROM RELIEF FOR NOT PRODUCING RECORDS THAT SLDC IS IN CUSTODY AND CONTROL OF IS UNFAIR, ERRONEOUS, AND CONTRARY TO LOGIC.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Bobby Watson, #277427,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 23-ALJ-04-0054-AP

FINAL ORDER

STATEMENT OF THE CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal filed by Bobby Watson (Appellant), an inmate incarcerated by the South Carolina Department of Corrections (SCDC or the Department). In the present appeal, Appellant asserts that the Department is not paying him a prevailing wage,¹ and he is seeking "back pay without reprisal." For the reasons discussed herein, the Court affirms the decision of the Department.

PROCEDURAL HISTORY

Appellant filed a step 1 grievance with the Department on November 24, 2022. In that grievance, he asserts that "[t]he department continuously fails to pay me a prevailing wage there for[sic] the grievance involved is related to a policy" as contemplated in S.C. Code § 24-3-430 (2007) and *Torrence v. S.C. Department of Corrections*, 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021) *reh'g denied* (Aug. 4, 2021), *cert. denied* (Aug. 3, 2022). Elaborating on his position, Appellant explains that the inmate grievance system policy fails to define incident or policy and that his grievance is not a one-time event of not being paid a prevailing wage. He further asserts

¹ Appellant has clearly and consistently associated his claim for prevailing wages with S.C. Code Ann. § 24-3-430 (2007).



his policy claim falls under the *Torrence* exception to the time limits of the Department's Inmate Grievance System Policy GA-01.12², section 13.9.³

The Department denied the Step 1 grievance on December 2, 2022. In denying the Appellant's grievance, the Warden responded:

I have reviewed your concern. In it you stated that pursuant to *Torrence* vs SCDC you are entitled to prevailing wages with back pay for hours worked while involved with the Prison Industries Program. You have requested to be paid the prevailing wage and back pay without reprisal. Inmates voluntarily accept services provided by Prison Industries Private Sector Programs and Prison Industries Service Programs. Pursuant to SCDC Policy ADM-15.13 Inmate Pay, it establishes criteria for determining eligibility for inmate pay and ensures proper handling of all matters pertaining thereto. An employee is designated specifically to enter inmate pay data, provided by PI, into the Inmate Pay System. Inmates entering a PI program receives pay at that program's current rate. Problems in pay must be identified within 15 days of the payroll date error. Record of electronic notification must be retained. Failure to notify the Agency in writing and within 15 days, forfeits back pay. You were provided with wages that were approved by the governing authority of South Carolina at that time and accepted as such. Any additional information that you require should be addressed to companies outside SCDC. You have failed to prove pertinent staff performed their duties inconsistent with applicable policy and procedure.

Parties
have
not joined
the issue

No specific periods of employment or types of work were discussed by the Appellant or Warden.

Appellant received the Warden's denial on December 7, 2022.

² Although the Department policies were not included in the record, the Court may take judicial notice of Department policy GA-01.12, Inmate Grievance System (issue date: May 12, 2014)(subsequently modified on September 1, 2023) and ADM-15.13, "Inmate Pay" (issue dates: June 3, 2014, June 1, 2007, April 1, 2004, January 1, 2002, and January 20, 1998). *Martin v. Bay*, 400 S.C. 140, 153, 732 S.E.2d 667, 674 (Ct. App. 2012) (affirming judicial notice taken by lower court of agency rules and regulations (citing *Massey v. War Emergency Co-op. Ass'n*, 209 S.C. 292, 299, 39 S.E.2d 907, 912 (1946)); see also *Jones v. Anderson Cotton Mills*, 205 S.C. 247, 31 S.E.2d 447, 449 (1944) (demonstrating judicial notice by appellate court of agency rule)).

³ Appellant references Section 13.9 as the policy exception provision. However, the substance of Section 13.9 in prior versions of the policy is now designated as Section 13.10 and has been modified since *Torrence*. Currently, Section 13.10 of the Inmate Grievance System policy GA-01.12 (issue date: May 12, 2014) provides:
13.10 Exceptions to the eight (8) working day time limit requirement will be made for grievances concerning policies/procedures, and PREA allegations. Exceptions may also be made for incident grievances, provided that the inmate can show reasonable cause, i.e., inmate physically unable to initiate grievance due to hospitalization, court appearance, etc. All exceptions will be determined by the Branch Chief/Designee of the Inmate Grievance Branch.

Frame Issue I - 1 clearly erroneous or abuse of discretion

same issue II. Feb 2024

Appellant submitted a Step 2 grievance on December 7, 2022. Appellant reiterated his position that his claim falls within the Torrence policy exception for the time limits of "section 13.9" of the Department's grievance policy. In his Step 2 grievance, Appellant neither mentions Policy ADM-15.13 Inmate Pay nor indicates a wage claim was made to the Department under that policy. The responsible official denied this grievance on January 24, 2023. The responsible official concurred with the Warden's decision and further explained the denial utilizing a standard Department response⁴. No specific periods of employment or types of work were discussed by the Appellant or responsible official. Appellant received the responsible official's denial on February 3, 2023. 2 1-23-38025 (e) *1-23-38025 (f)

Appellant filed a notice of appeal with the Administrative Law Court on February 7, 2023. Appellant again asserted that the Department is not paying him a prevailing wage in compliance with section 24-3-430. Like his step 2 grievance, Appellant's notice of appeal does not mention Policy ADM-15.13 Inmate Pay or indicate that a wage claim was made to the Department under that policy. Again, no specific periods of employment or types of work were discussed by the Appellant.

This appeal was assigned to the undersigned on February 24, 2023. Appellant filed his initial brief on May 1, 2023. On May 3, 2023, the Department filed a motion to stay the case to provide time for the Department to evaluate the claim and attempt settlement. The Court granted the stay on May 31, 2023 with a modified schedule for briefing. Department filed the record on appeal with the Court on September 6, 2023. The record consists of a November 14, 2022 request to staff with the Department staff's response and the Step 1 and 2 grievances with the Department's responses. In the November 14, 2022 request, Appellant asked for prevailing wages under section 24-3-430 and Torrence and the Department's response was "I have not heard a final decision on this. As soon as I know, I will inform everyone. Until then your wages will stay the same." The Department filed its brief on September 28, 2023. Appellant filed, on October 6, 2023, an "Appellant's Response to Respondent's Motion for Remand and Partial Motion to Dismiss" and a copy of a "Service or PIE Inmate Agreement". The Department has not filed such a motion, and,

⁴ Curiously, the responsible official states that as of January 24, 2023 Torrence "is not yet final." However, certiorari was denied August 3, 2022 and no further appeal was indicated.

accordingly, Appellant's filing is misnamed. The Court will construe the filing as Appellant's reply brief.⁵

ISSUES ON APPEAL

Appellant's brief did not contain a specifically designated statement of issues on appeal. However, the initial paragraph of his brief provides:

Appellant appeals the Department's Final Decision denying his Step 2 Grievance because the Respondent does not include in its calculation of wages pursuant to S.C. Code § 24-3-430(d), the OCC (Occupational Code) of the Department of Employment and Workforce, as required by law, for inmates in the Prison Industries Program.[sic]

JURISDICTION

The Court's jurisdiction to hear inmate appeals is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). See also S.C. Code Ann. § 1-23-600(D) (Supp. 2022); *Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 170, 886 S.E.2d 671, 674 (2023) ("[T]he ALC has subject matter jurisdiction over inmate grievance appeals that have been properly filed."); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004) ("[T]he [ALC] has jurisdiction over all inmate grievance appeals that have been properly filed . . .").

In *Al-Shabazz*, the Court held that the ALC's jurisdiction in inmate appeals is generally limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. 338 S.C. at 369, 527 S.E.2d at 750. However, the South Carolina Supreme Court subsequently clarified that the ALC has the authority to review the Department's failure to pay the prevailing wage. See *Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 423-25, 602 S.E.2d 56, 57-58 (2004) (stating the ALC was authorized to review the Department's failure to pay the prevailing wage); *Adkins*, 360 S.C. 413, 419, 602 S.E.2d 51, 55 (stating inmates

⁵ Although accepting the filing as a reply brief, the Court is limited in considering the content which is couched as being responsive to motions the Department does not seem to have filed and otherwise raising new arguments that are not responsive to the Department's brief. See *ABB, Inc. v. Integrated Recycling Group of SC, LLC*, 432 S.C. 545, 553, 854 S.E.2d 171, 175 (Ct. App. 2021) (a party cannot raise an issue for the first time in an appellate reply brief).

could seek remedy for unfair pay by filing an inmate grievance.). Accordingly, the Court determines it has jurisdiction to hear the present appeal.

STANDARD OF REVIEW

In reviewing appeals of the Department's actions in inmate grievance matters, the Court sits in an appellate capacity and is, therefore, limited to review of the record on appeal. *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754. Section 1-23-380(5) of the South Carolina Code provides the standard used by appellate bodies to review final agency decisions. *See also* S.C. Code Ann. § 1-23-600(E) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380). Specifically, section 1-23-380(5) provides the following:

The [C]ourt may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The [C]ourt may affirm the decision of the agency or remand the case for further proceedings. The [C]ourt may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

See also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep't of Labor, Licensing & Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998). "[T]he burden rests squarely on the appellant to prove that substantive rights were prejudiced based on one of six statutory criteria" proscribed in section 1-23-380(5). *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 260, 659 S.E.2d 233, 235 (Ct. App. 2008).

DISCUSSION

As set forth in Appellant's initial brief, he disagrees with the Department's calculation and denial of his claim for prevailing wages. Appellant fundamentally claims that he is due a higher wage than what he has been paid. The Department asserts in response that Policy ADM-15.13 Inmate Pay forecloses Appellant's claims because he did not report any problems with his pay under that policy. Because the arguments made by the Department may, if successful, largely obviate the need for the Court to address other substantive arguments made by Appellant regarding prevailing wages, the Court will begin by addressing the Department's arguments.

I. Inmate Grievance System and Inmate Pay Policy

The threshold question relevant to this appeal is determining the relationship between the Department's general grievance policy, GA-01.12, Inmate Grievance System, and the more specific ADM-15.13, Inmate Pay policy. Appellant asserts primarily that his grievance is not time-barred under *Torrence* because the prevailing wage claim relates to a policy implemented by the Department rather than a specific incident or occurrence. The Department accurately states in response that *Torrence* does not address or analyze the application of ADM-15.13. According to the Department, the ADM-15-13 inmate pay policy establishes a mandatory prerequisite for a prevailing wage claim. The Department argues the Appellant was required to submit any wage dispute through the ADM-15.13 policy framework and has failed to do so.⁶

The current version of ADM-15.13 Section 12, which has been in effect since June 3, 2014, provides the following:

12. PROBLEMS WITH PAY:

12.1 Inmates must report any problems in their pay to their institution's inmate pay designee utilizing the Automated Request to Staff Member (ARTSM) within 15 days of the payroll date error. The inmate should maintain a record of the ARTSM reference number. The inmate pay designee will review the case and determine whether any additional pay is owed. Payroll corrections will be limited to the following:

- If the inmate fails to notify the Agency in writing and within 15 days, no back pay will be given.

⁶ The application of this policy to claims for prevailing wages does not appear to have been previously addressed by higher courts.

- The pay rate will be adjusted to the proper rate amount for future payrolls in accordance with these procedures.
- The inmate may receive additional pay owed for the previous two (2) pay periods only.

This policy has been in place at the Department since January 20, 1998.⁷

This Court is required to defer to the Department's construction of its own policy unless there is a compelling reason to reject it. See *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 33, 766 S.E.2d 707, 717 (2014); *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 77, 716 S.E.2d 877, 882 (2011); *Buist v. Huggins*, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006); *Brown v. S.C. Dep't of Health & Env't Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002); *Glover by Cauthen v. Suitt Constr. Co.*, 318 S.C. 465, 469, 458 S.E.2d 535, 537 (1995); *Faile v. S.C. Emp. Sec. Comm'n*, 267 S.C. 536, 540, 230 S.E.2d 219, 222 (1976) (explaining an agency's interpretation will not be overruled "without cogent reasons"); *Hadden v. S.C. Tax Comm'n*, 183 S.C. 38, 48, 190 S.E. 249, 253 (1937) (an agency's interpretation will "not be overruled without cogent reasons").

The Department takes the position that an inmate must submit a grievance under the ADM-15.13 policy to initiate a wage dispute. The Court does not find this construction to be arbitrary, capricious, or manifestly contrary to statutory authority. The policy statement clearly refers to employment under the Prison Industries Program (PIP), under which inmates are required to be paid a prevailing wage. If the Court were to construe this policy as *inapplicable* to wages paid under PIP, inmates employed under this program would be deprived of a means of redress for pay related issues.

Moreover, the policy, by its own terms, applies to instances in which an inmate claims an entitlement to a higher rate of pay. The policy specifically addresses remedies for issues with the "pay rate." It provides that if an inmate does not timely notify the Department of an issue regarding pay, no back pay will be given but "[t]he pay rate will be adjusted to the proper amount for future payrolls." SCDC Policy ADM-15.13(12.1). The "pay rate" is of course a reference to the appropriate hourly wage.

⁷ The 1998 and 2002 versions of "Problems with Pay" policy were in subsection 11 rather than 12.1. The 1998, 2002, 2004, and 2007 versions provided for submission of written complaints about pay rather than submission of complaints using the Department's Automated Request to Staff Member system. Otherwise, this policy has been substantively identical from 1998 to the current version of the policy.

Next, the Department has a legitimate interest in handling matters involving inmate pay in a timely manner. Pay records may be lost with the passage of time. Allowing claims for inmate pay to be raised long after the pay period in which the incorrect pay rate was used would require the Department to pay larger lump sum awards and will hamper the Department's annual ability to budget for expected expenses. Additionally, records and information necessary to compute a correct prevailing wage may be lost over time. Finally, the Department's ability to recoup back wages from the entity which contracted with the Department for inmate labor under PIP may be compromised with the passage of time, leaving the Department financially responsible for a loss which may have been born by another.

Although the Warden's denial of the Step 1 grievance clearly relied on Policy ADM-15.13, Appellant's brief does not reference Policy ADM-15.13 or assert in any way that Appellant submitted a claim under that policy. Appellant remained silent in the face of the Department's argument and did not dispute the Department's assertion that he had failed to submit such a claim. In his brief, Appellant does not even mention GA-01.12. Appellant did previously assert that GA-01.12 is controlling.

The Court disagrees. It does not construe the inmate pay policy (ADM-15.13) and the inmate grievance system (GA-01.12) as mutually exclusive alternatives. Department rules and policies are ordinarily construed in the same manner as statutes. *Converse Power Corp. v. S.C. Dep't of Health & Env'tl. Control*, 350 S.C. 39, 47-48, 564 S.E.2d 341, 346 (Ct.App.2002) (employing the rules of statutory construction to discern the meaning of a regulation); *see also*, *Vector Marketing Corp. v. New Hampshire Dept. of Revenue Admin.*, 942 A.2d 1261, 1263 (N.H. 2008) ("We use the same principles of construction in interpreting administrative rules as we use with statutes"); *Lewis v. Jacksonville Bldg. & Loan Ass'n*, 540 S.W.2d 307, 310 (Tex. 1976). The Court is therefore required to harmonize the inmate pay policy with the internal grievance system if possible. *Hodges v. Rainey*, 341 S.C. 79, 88-89, 533 S.E.2d 578, 583 (2000). Consequently, the inmate pay policy can be construed so that it and the inmate grievance system are effective. Section 12.1 of the inmate pay policy requires that inmates who question their rate of pay must report the issue through the Automated Request to Staff Member (ARTSM) within fifteen days of the payroll date error. If, after doing so, the Department does not take proper corrective action as outlined in the inmate pay policy, then the inmate may resort to the grievance system to address

inmate
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24-3-430
Thus
1-23-380
(5)(c)
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1-23-380 (5)(a)
and (c)

the Department's violation of the inmate pay policy. Both policies may be given effect in this manner.

II. Appellant's Claims for Prevailing Wages

Having concluded that the inmate pay policy ADM-15.13 applies to claims when an inmate has not been paid the prevailing wage for the inmate's position, the Court now turns to the question of what effect the policy has on Appellant's claims in this case. The current policy became effective on June 3, 2014 and, for claims arising after that time, provided that an inmate's failure to timely submit a claim involving the inmate's pay rate would preclude the inmate from receiving back pay. The fifteen-day reporting limit also existed in prior versions first adopted January 20, 1998.

In his brief, Appellant alleges he is due compensation for work from October 1, 2013 forward although there is no underlying documentation in the record substantiating this claim.⁸ In his "reply brief" filed on October 6, 2023, he references employment starting in June of 2018. For purposes of the Court's consideration of the Appellant's claim, his claim will be viewed as generously as possible to be a claim for wages from October 1, 2013.

Here, Appellant did not assert his claims for an improper pay rate as required by the policy. The record does not reflect that the Appellant filed a complaint about his pay through the automated system as required by the inmate pay policy. The Warden's response to the Step 1 grievance stated in part: "Problems in pay must be identified within 15 days of the payroll date error. Record of electronic notification must be retained. Failure to notify the Agency in writing and within 15 days, forfeits back pay." By not submitting any claims under the inmate pay policy, Appellant has not properly initiated a claim for back pay or wage adjustment at the time he filed his Step 1 grievance. The timing exception contained in section 13.10⁹ of the inmate grievance system also does not apply to the inmate pay policy. The exception was contained in the inmate grievance system policy and related to filing deadlines for grievances. The inmate pay policy is a

⁸ The record provides limited factual background in this appeal because the Court will consider only facts which appear in the record on appeal. S.C. Code Ann. § 1-23-380(4) (Supp. 2022) (the review "must be confined to the record"). Furthermore, SCALC Rules 58 and 61 prescribe the contents of a record on appeal. Therefore, the record is limited to the information filed by the Department on September 6, 2023. Consequently, the submission of new factual information by Appellant and Department which is not contained in the record cannot be considered by the Court in this appeal. However, for purposes of evaluating the Appellant's claims set forth in his brief, the court will consider the dates of Appellant's alleged employment for temporal context.

⁹ As noted above, although Appellant made reference to section 13.9 of the GA-01.12, the current designation is 13.10.

distinct policy and imposes separate requirements upon inmates who believe that their rate of pay was incorrect. Finally, the timing exception to the inmate grievance system at issue in *Torrence* and *Ackerman v. S.C. Department of Corrections*, 415 S.C. 412, 414, 782 S.E.2d 757, 758 (Ct. App. 2016) was substantially revised in the 2014 version applicable to this appeal, thus drawing into question the continued vitality of these cases.¹⁰ Therefore, the Department's denial of the Appellant's claims do not offend or fail the standard of review set forth in section 1-23-380(5).

Even if Appellant had timely and appropriately submitted a claim under the inmate pay policy, the scope of that claim would be limited to the preceding two pay periods pursuant to subsection 12.1 and could not afford relief from October 1, 2013 forward.

The Department's denial was appropriate under the inmate pay policy and is supported by the record before the Court. Having reached this conclusion, further consideration of Appellant's arguments related to the inmate grievance system (GA-01.12) would be premature and unwarranted.¹¹

ORDER

IT IS THEREFORE ORDERED that the Department's decision is **AFFIRMED**.

AND IT IS SO ORDERED.



The Honorable Robert L. Reibold
Administrative Law Judge

October 23, 2023
Columbia, South Carolina

¹⁰ Previously, SCDC Policy GA-01.12 provided that inmates filing grievances were to submit their grievances on Form 10-5 to the internal grievance coordinator with 15 days of the incident or conviction involved. Section 13.9 in turn provided that exceptions to the 15-day time limit will be made for grievances concerning policies/procedures. On May 12, 2014, however, the Department amended Policy GA-01.12. The current policy provides, as did the prior policy, that inmates must make an effort to informally resolve a grievance, but the new policy imposes a deadline of eight (8) working days in which to utilize informal grievance resolution. If for some reason informal grievance procedures are not available, then an inmate must complete Form 10-5 within five business days of the alleged incident. The new policy does not purport to impose a deadline for filing of a grievance if informal resolution is unsuccessful. Most importantly, the exception so central to *Ackerman* and *Torrence* now provides that "[e]xceptions to the eight (8) day working time limit" requirement will be made for grievances concerning policies/procedures. SCDC Policy GA-01.12(13.10) (emphasis added).

¹¹ See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

CERTIFICATE OF SERVICE

I, Van Whitehead, hereby certify that I have on this date served this order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Van Whitehead
Judicial Law Clerk

October 23, 2023
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

AGREEMENT

COUNTY OF RICHLAND)

THIS AGREEMENT between the South Carolina Department of Corrections (hereinafter called "SCDC") and its authorized agent Bryan P. Stirling, Director and Anderson Hardwood Floors, LLC, its successors, agents, assigns, parent corporations, subsidiaries, affiliates and purchasers (hereafter referred to as "Contractor") by its duly authorized agent ~~Jim Kirkpatrick~~ Frederick L. Hooper, III, Secretary and is effective upon the signature date of all parties.

~~Frederick L. Hooper, III~~
FREDERICK L. HOOPER, III
ASSISTANT SECRETARY

WHEREAS, SCDC's Division of Industries is charged with establishing business relationships with private enterprise so as to fulfill the intent of S.C. Code Ann. § 24-3-310, et seq., as amended;

WHEREAS, the Contractor represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, the Contractor intends to engage in the business of hardwood flooring at the Tyger River Correctional Institution (hereinafter referred to as "Tyger River CI") and,

WHEREAS, this Agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

SCDC shall provide three (3) industry buildings Tyger River CI and SCDC agrees to identify and screen inmates who want to voluntarily participate in this project, a project operated by SCDC's Division of Industries.

ARTICLE 2 Conditions of Occupancy of the Industry Facility:

The Contractor shall not have the right to sublease, assign transfer, or enter into any other Agreement regarding the occupancy herein granted without the express written consent of SCDC.

2.1. The Duties of the Contractor:

2.1.1. Maintenance: The contractor shall keep the occupied area clean, neat and tidy, and shall report any damage to the building structure or material fixtures (electrical fixture, plumbing, or items expressly fitted to the industries building.) or unsafe conditions to the appropriate institutional authority. Further, the Contractor shall be responsible for the routine maintenance except normal wear and tear of the facility.

STATE OF SOUTH CAROLINA)

AGREEMENT

COUNTY OF RICHLAND)

THIS AGREEMENT between the South Carolina Department of Corrections (hereinafter called "SCDC") and its authorized agent Bryan P. Stirling, Director and Anderson Hardwood Floors, LLC, its successors, agents, assigns, parent corporations, subsidiaries, affiliates and purchasers (hereafter referred to as "Contractor") by its duly authorized agent ~~Jim Kirkpatrick~~ Frederick L. Hooper, III and is effective upon the signature date of all parties.

Frederick L. Hooper, III
FREDERICK L. HOOPER, III
ASSISTANT SECRETARY

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~~Alan Handley~~
~~Jim Kirkpatrick~~

FREDERICK L. HOOPER, III
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2.1.2. Indemnity and Insurance: The Contractor shall defend and hold harmless the State of South Carolina, SCDC or its employees or agents thereof, from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of the Contractor or its subcontractors, agents, or employees under this Agreement. The Contractor shall maintain insurance coverage for its equipment, supplies and material located in the Industries building against casualty occurrences. The Contractor shall not be responsible for maintaining insurance on any items owned by SCDC. Further, the Contractor shall maintain liability insurance coverage on itself, its agents, servants and employees in an amount no less than \$300,000 per person per claim, \$600,000 aggregate. The Contractor shall also maintain Workers Compensation insurance on its employees in accordance with the laws of the State of South Carolina. The Contractor shall deliver to SCDC a duly authenticated certificate evidencing such insurance upon executing this Agreement and upon each insurance renewal date.

2.1.3. Telephone Service: The Contractor may, with prior approval of SCDC, which will not be unreasonably withheld, install telephones and/or computer lines in the Industries building, which must be secured at all times in accordance with SCDC guidelines. The cost of installation and maintenance of such telephones will be at the Contractor's sole expense.

2.1.4. Tools, Equipment and Supplies: The Contractor shall be responsible for providing all necessary tools, equipment, and/or supplies which may be necessary for the performance of the work herein contemplated. Such tools and equipment supplies by Contractor may be removed upon termination of the Agreement. It is the Contractor's responsibility to reimburse SCDC for maintenance performed on SCDC tools and/or equipment that is directly engaged in the private sector business.

2.1.5. Building Modification: The Contractor, at its own expense, may make alterations or improvements to the Industry building after obtaining prior written approval from SCDC in compliance with the manual for planning and execution of state permanent improvements. Any such improvements or equipment permanently installed or affixed shall become the property of SCDC.

2.1.6. Waiver of Subrogation: SCDC shall not be liable for any damages to the contractor's equipment, supplies and material located in the Industries building caused by casualty occurrence, it being understood that the Contractor shall look to its insurer for reimbursement and shall obtain from its insurer waiver of subrogation rights against SCDC.

2.1.7. Loss of Property: All personal property, inventory, equipment, improvements and/or fixtures or other property of any kind or description whatsoever, installed or brought into the area by the Contractor or the Contractor's employees or agents, shall be at the Contractor's sole risk and neither the State of South Carolina, SCDC or any employee or agent thereof, shall be liable for any damage done to or loss of such real or personal property or loss suffered by the business or occupation of the Contractor arising from any acts or occurrences whatsoever except where damage or loss is due to the malicious destruction of equipment caused by inmates (as determined by the SCDC). If SCDC is held liable, the loss or damage shall be limited to replacement cost or to the repair cost of damaged or destroyed property whichever is less. Consequential or punitive damages shall not be recoverable.

2.1.8. Payment of Property: The Contractor shall pay a fixed monthly amount of one (\$1.00) dollar for occupancy of the premises herein above described.

2.1.9. Condition of Property: Upon termination of this Agreement, the Contractor will surrender the buildings, equipment and fixtures belonging to SCDC in the same condition prior to the contract period as identified by SCDC in writing within thirty (30) days of termination.

2.1.10. Hazardous Waste: No hazardous waste shall be generated in the Industries building by the Contractor.

2.1.11 Waste Removal: Waste generated by Contractor shall be removed at Contractor's expense.

2.2. The Duties of SCDC:

2.2.1. Premises to be occupied: SCDC shall provide three (3) industry buildings at Tyger River CI. The occupancy of this area should be consistent with the terms of this Agreement regarding work authorized and hours.

2.2.2. Utilities: SCDC shall provide water, electricity, natural gas, and trash removal services and pass through actual cost to contractor for its use of the building or allow contractor to install, at its own cost, separate meters for calculating payment.

2.2.3. Insurance: SCDC will maintain insurance coverage on the building and its property therein as required by the laws of the State of South Carolina.

Article 3 Conditions Related to Use of Inmate Labor:

SCDC agrees to identify and screen inmates who want to voluntarily participate in this project, a project operated by SCDC's Division of Industries. The Contractor agrees to use a minimum of 100 inmates in its production activity. SCDC shall have the discretion to remove any agent or employee of Contractor from the institution in the event of a violation of any of SCDC's policies and procedures with regard to the institution.

3.1. Duties of Contractor Regarding the Use of Inmate Labor:

The Contractor shall provide to SCDC a description of the tasks associated with the production activity including its requirements and procedures for performing such tasks. From the pool of eligible inmate participants, SCDC, with appropriate input from the Contractor, shall select the inmates who will participate in production operations.

3.1.1. Scope of Work: Inmates participating in this project will produce hardwood flooring and wood products in accordance with the Contractor's proprietary engineering design and manufacturing specifications. The Contractor shall be solely responsible for the dissemination and distribution of a written quality control manual regarding its production operations and to ensure compliance with the standards established therein. The Contractor must submit a copy of its quality control manual to Division of Industries so that Division of Industries may review its provisions and ensure that its provisions meet SCDC safety and security standards before the Contractor may begin its production operations.

The Contractor is responsible for ensuring that the wood products produced in this project meet its quality control standards, and SCDC is responsible for the overall supervision of the inmate labor used in the Contractor's production activity.

3.1.2. Raw Materials: The Contractor shall provide all raw materials and component parts for its manufacturing and production operations.

All raw materials, personal property, inventory, machinery, equipment, and improvements and/or fixtures of other property of any kind or description whatsoever that the Contractor, its employees, or its agents install or bring into the SCDC shall be at the sole risk of the Contractor, its employees and its agents, and neither the State of South Carolina nor SCDC and its employees and agents shall be liable for any damage or loss suffered, except as provided in Section 2.1.7 of this Agreement.

The Contractor shall provide its management and supervision to all phases of its production operations and activities.

SCDC shall allow the Contractor's trucks, common carriers and other entities that transport raw materials, equipment and finished products reasonable access to and from Tyger River CI during normal business hours subject to SCDC's security requirements provided in Section 2.1.7 of this Agreement:

3.1.3. Security: The Contractor understands and specifically agrees that it and its employees must comply with all SCDC policies and procedures as well as all applicable federal, state and local laws, ordinances, regulations and accreditation standards. Deliveries, shipments and employees are subject to search before entering or leaving the premises of SCDC. SCDC will provide one civilian supervisor at Tyger River CI. The Contractor shall pay for any additional staff to ensure security and supervision on each shift. This position and any additional security supervision provided by SCDC will be passed through to the Contractor on a monthly basis.

3.1.4. Compliance With Rules and Regulations: The Contractor agrees that it and its employees must comply with all SCDC policies and procedures as well as all applicable federal, state, and local laws, ordinances, regulations and accreditation standards.

3.1.5. Remittance of Payment for Inmate Labor: SCDC will invoice the Contractor twice a month for the aggregate labor provided by all of the inmates participating in this project. The Contractor shall remit payment to SCDC's Division of Industries account for all sums due and owing within 15 days of its receipt of SCDC's invoice unless there is a written agreement between both parties. Contractor's failure to make any payment when due shall be deemed to be an automatic default and breach of this Agreement, in which case, the entire then outstanding Debt shall accelerate and become due in full. (SCDC shall, in addition to all other remedies available at law or in equity, be entitled to offset any amounts which SCDC may owe to Contractor.) SCDC shall after ninety (90) days, whereas the Contractor has not met their financial obligations, close all operations.

3.1.6. Specifications: The Contractor shall assume the responsibility to timely provide specifications for any requested modification to the Tyger River CI Industries building along with production equipment to be acquired by the Contractor.)

3.1.7. Training of Contractor's Staff by SCDC: The Contractor shall make available its civilian staff for training by SCDC's training staff regarding SCDC's safety and security practices, policies and procedures.

3.1.8. Supervisory Staff: The Contractor shall employ its own civilian supervisors in sufficient number to ensure that it can place at least one (1)

of its supervisors on each production shift. Should SCDC determine that additional SCDC personnel are required to ensure adequate security, the Contractor shall assume such cost through negotiations with SCDC.

The Contractor's staff shall observe and abide by all applicable SCDC practices, policies, and procedures. The Contractor understands and agrees that SCDC shall have the discretion to remove any of the Contractor's agents or employees from the in the event an agent or employee violates any SCDC's applicable policies and procedures.

3.1.9. Prohibition against Worker Displacement: Contractor agrees that none of its employees, as well as other non-inmate, non-institutional workers who perform work of a similar nature in the same location, will be displaced by the production activity contemplated by this Agreement.

3.2. Duties of SCDC Regarding the Use of Inmate Labor:

3.2.1. Inmate Pay: SCDC and the Contractor agree that SCDC will pay inmates who voluntarily participate in this Division of Industries project in accordance with a wage plan established by SCDC, a wage plan consistent with wage data provided to SCDC on an annual basis by the South Carolina Department of Employment and Workforce (See Appendix B).

Per this wage plan, SCDC will pay inmates a "Gross Hourly Inmate Pay Rate: equivalent to the federal minimum wage when they first begin participating in this project, and the inmates will train for the first four (4) weeks of their work assignments in this project.

At the conclusion of the first four (4) weeks of a participating inmate's work assignment, SCDC will evaluate the inmate's performance, with input from the Contractor, to determine whether the inmate's participation in this project shall continue. If SCDC retains the inmate after this evaluation, SCDC may increase the inmate's "Gross Hourly Inmate Pay Rate" and SCDC will annually thereafter evaluate the inmate's performance, with input from the Contractor, to determine the inmate's eligibility for other increases to his "Gross Hourly Inmate Pay Rate."

[The Contractor agrees to list in Appendix B, each production work assignment contemplated under this Agreement with the corresponding "Gross Hourly Inmate Pay Rate" the Contractor will remit to SCDC under this Agreement.

As stated in Section 3.1.5 of this Agreement, SCDC will invoice the Contractor twice a month for the aggregate labor provided by all of the inmates participating in this project.

SCDC will invoice the Contractor a "Total Hourly Inmate Labor Charge" which is the sum of the "Gross Hourly Inmate Pay Rate," the hourly prorata "Social Security Withholding Cost," and an "SCDC Division of Industries hourly Overhead Charge." The following example illustrates the manner by which the "Total Hourly Inmate Labor Charge" is determined:

Gross Hourly Inmate Pay Rate:

Current per inmate labor hour	+	\$7.25 Federal Wage Beginning July 24, 2009
Social Security Withholding Cost {FICA}	+	0.55 per inmate labor hour
S.C. Workers Compensation Premium	+	0.40 per inmate labor hour (Variable rate yearly)
SCDC Division of Industries Overhead Cost:	+	\$1.65 per inmate labor hour
=	=	\$9.85 per inmate labor hour

As stated above, SCDC will not pay inmates a "Gross Hourly Inmate Pay Rate" less than the applicable federal minimum wage at any time this Agreement is in effect.

As also stated above, SCDC will secure applicable wage data from the South Carolina Department of Employment and Workforce on an annual basis, and SCDC will then establish an annual "Gross Hourly Inmate Pay Rate" that will be consistent with the wage data provided by the Department of Employment and Workforce.

Upon its annual receipt of the wage data from the South Carolina Department of Employment and Workforce, SCDC will notify the Contractor in writing of any changes to the "Gross Hourly Inmate Pay Rate" SCDC previously established, and SCDC will then adjust the "Gross Hourly Inmate Pay Rate" reflected above as necessary.

In the event SCDC increases the "Gross Hourly Inmate Pay Rate," the hourly "Social Security Withholding Cost," or the hourly "S.C. Workers' Compensation Premium" while this Agreement is in effect, the Contractor agrees to remit to SCDC the resulting new "Total Hourly Inmate Labor Charge" beginning immediately upon the effective date of any such increase.

Additionally, if and when SCDC increases the "Gross Hourly Inmate Pay Rate," then SCDC may adjust the hourly "Social Security Withholding Cost" and the Hourly "SCDC Division of Industries Overhead Charge" shall remain fixed at \$1.65 per inmate labor hour for the first year of this Agreement. After the conclusion of the first year of this Agreement, this

hourly charge shall be increased by an amount agreed upon by SCDC and the Contractor.

SCDC and the Contractor may mutually agree upon an aggregate bonus plan for inmates based upon such criteria as the collective productivity of all inmates participating in the project and the conformity of the items collectively manufactured by the inmates participating in the project to the Contractor's quality control standards. Once any such bonus plan is agreed upon by the parties, SCDC shall invoice the Contractor the agreed upon bonus "Total Inmate Hourly Labor Charge" to SCDC in accordance with the provision of this section.

3.2.2. Federal Program Compliance:

SCDC and the Contractor agree that SCDC shall operate this project in accordance with the "Private Sector/Prison Industries Enhancement Certificate" program [commonly known as the "PIE" program] for the United States Department of Justice, Bureau of Justice as provided by §§609 B (O) and 609 K of the Justice Assistance Act of 1984, Pub. Law 98-173, Title II, Chapter VL. §609 B (O) of the Act amends §819 of the Omnibus Crime Control and Safe Streets Act of 1988, 42 U.S.C. § 3701, as amended and § 609 K of the Act amends 18 U.S.C. § 178. The major requirements of the "PIE" program are outlined in Appendix C of this Agreement.

3.2.3. Compliance with Federal and State Inmate Labor Laws:

SCDC and the Contractor agree that no goods produced or manufactured by inmate labor under this Agreement shall be placed into commerce in violation of South Carolina or Federal law regarding the use of inmate or convict labor. Should either South Carolina or Federal law change so as to prevent or prohibit the interstate shipment or transportation of goods produced or manufactured by inmate labor under this Agreement, the Contractor may terminate this Agreement without penalty.

ARTICLE 4 General Terms and Conditions:

The Contractor, his/her employees or agents performing under the Agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. The Contractor will not hold himself/herself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

4.1.1. Period of Performance: The term of this Agreement shall be for three (3) years commencing on the date of the execution of this Agreement.

4.1.2. Hold Harmless: The Contractor, its successors, assigns, agents, parent corporations, subsidiaries, affiliates or purchasers agrees to protect, defend and hold harmless the State of South Carolina, SCDC or its employees or agents thereof, from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of the Contractor or its subcontractors, agents, or employees under this Agreement, including injury to the Contractor's employees or agents, except where such liability claim is due to negligence of the State of South Carolina, SCDC or employees or agents thereof, arising out of the performance of this contract. The Contractor further agrees to protect, defend and hold harmless the State of South Carolina, SCDC or any employees or agents thereof, for any product liability claims relating to the products produced or services rendered under this contract. The Contractor expressly understands that SCDC or its employees or agents thereof, is not a guarantor of the work performed by the inmate workers referred by SCDC. Inmates shall not be considered employees of the Contractor, their affiliates or parent companies.

4.1.3. Notices: All notices regarding the terms of this contract, including terminations, amendments and disputes shall be sent by certified mail to SCDC as follows:

Bryan P. Stirling, Director
South Carolina Department of Corrections
4444 Broad River Road
Post Office Box 21787
Columbia, South Carolina 29221-1787

To the Contractor as follows:

Anderson Hardwood Floors, LLC
c/o Manager of Real Estate (with a copy to Chief Counsel)
616 East Walnut Avenue
Mail Drop 2128
Dalton, Georgia 30722

4.1.4. Non-Discrimination in Employment:

SCDC and the Contractor hereby agree, warrant and assure that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discriminations in the performance of this contract or in the employment practices of SCDC or the Contractor because of race, color, sex, religion, national origin, creed, marital status, age or the presence of any sensory mental or physical handicap, or any other

classification protected by Federal or South Carolina State constitutional, or statutory law.

4.1.5. Noncompliance with Nondiscrimination Requirements:

In the event the Contractor fails to comply with the discrimination laws, the contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts from SCDC. The Contractor shall, however, be given reasonable time in which to cure the noncompliance.

4.1.6. Records, Documents and Reports:

The Contractor shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect cost of any nature expended in the performance of this Agreement. These records shall be subject at all reasonable times for inspection, review or audit by SCDC personnel or other personnel duly authorized by SCDC, the office of the State Auditor and Federal Officials so authorized by law, rules regulations or contract such audit shall be at the expense of the auditing agency. The Contractor shall retain all books, records, documents and other materials relevant to this Agreement for five (5) years after termination of the Agreement and the authorities described herein above shall have full access to and the right to examine any of said materials during the extended period.

Only the Director of SCDC or his delegate, designee by writing shall have the expressed, implied, or apparent authority to renew, alter, modify or waive any clause or condition in this contract. Furthermore, any alterations, amendment or modification or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Director.

4.1.7. Termination:

It is understood and agreed that this Agreement shall terminate:

- a. Upon the written mutual, Agreement of the parties;
- b. Upon the material breach or default of any provision of this Agreement by either party, provided thirty (30) days written notice of the breach is given to the breaching party by the non-breaching party and the breaching party fails to cure within the thirty (30) days;
- c. If section 24-3-310 of the Code of Laws of the State of South Carolina, 1976, as amended, is materially changed, altered, amended, or repealed so as to abrogate this legislation charges with establishing business relationships with private enterprise;
- d. If federal, state, or local laws change to prevent the shipment of goods produced under the Agreement;

- e. If Contractor becomes bankrupt and such is not cured within sixty (60) days, insolvent, or makes an assignment for the benefit of creditors, or becomes subject to the administration of its assets in any kind of voluntary or involuntary creditors proceedings;
- f. If Contractor performs any intentional act which damages the reputation or property of SCDC;
- g. If Contractor loses its corporate charter in its state of incorporation or loses the authority to transact business in the State of South Carolina pursuant to mandate by the Secretary of the State of South Carolina, or if Contractor's corporation is dissolved voluntarily or involuntarily;
- h. Failure of Contractor to pay promptly any inmate wages due hereunder for a period of fifteen (15) days after written notice from SCDC to contractor of such default;
- i. At the end of any fiscal year (June 30) after the commencement date of this contract when sufficient appropriations, revenues, income, grants, or other funding from whatever source are not available to SCDC to carry on the purpose of program of SCDC, this sufficiency of funds to be solely determined by the State Budget and Control Board; and immediately in the event that the safety or security of the institution, its personnel or inmates is jeopardized.
- K. Failure to receive the appropriate certification from the Bureau of Justice or wage plan certification from the Department of Employment and Workforce.

Upon termination of the contract the Contractor shall have sixty (60) days to vacate the facilities of SCDC removing equipment and returning the facilities to the condition prior to the contract period as identified by SCDC in writing. SCDC assumes ownership of after sixty (60) days. Contractor may be billed for any disposal of equipment and/or material and clean up fees. Should the SCDC terminate this contract because the Contractor has breached it, the Contractor must pay all amounts owed within sixty (60) days of notification of termination.

4.1.8. Force Majeure:

Neither party shall be liable nor deemed to be in default for any delay or failure in performance under this Agreement or otherwise for an interruption of service of employment deemed resulting from civil or military authority, from acts of God, riots, war, or any similar or dissimilar cause beyond reasonable control of either part.

4.1.9. Governing Law:

This contract shall be governed by the laws of the State of South Carolina and venue shall be located in the Count of Richland, State of South Carolina.

4.1.10. Severability:

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provision of this contract which can be given effect without the invalid provision, and to this end the provisions of this agreement are to be declared to be severable.

4.1.11. All Writings Contained Herein:

This Agreement contains all the terms and conditions agreed upon by the parties, no other understandings oral or otherwise, regarding the subject matter of this Agreement shall be deemed binding.

IN WITNESS WHEREOF the parties have executed this contract on the first written herein above.

Witness

Maria Lyons
Debrah Skrell

Bryan P. Stirling
Bryan P. Stirling, Director

4/3/17
Date

Witness

Jim Kirkpatrick
Jim Kirkpatrick

Fredrick L. Hooper, III
Jim Kirkpatrick, Secretary

Date

FREDERICK L. HOOPER, III
ASSISTANT SECRETARY

APPENDIX A

HOLIDAY SCHEDULE

New Year's Day

Martin Luther Kings' Birthday

President's Day

Confederate Memorial Day

National Memorial Day

Independence Day

Labor Day

Veterans Day

Thanksgiving Day

Day after Thanksgiving

Christmas Eve

Christmas Day

Day after Christmas

jobs_1000	The number of jobs (employment) in the given occupation per 1,000 jobs in the given area. Only available for the state and MSA estimates; otherwise, this column is blank.
loc quotient	The location quotient represents the ratio of an occupation's share of employment in a given area to that occupation's share of employment in the U.S. as a whole. For example, an occupation that makes up 10 percent of employment in a specific metropolitan area compared with 2 percent of U.S. employment would have a location quotient of 5 for the area in question. Only available for the state, metropolitan area, and nonmetropolitan area estimates; otherwise, this column is blank.
pct_total	Percent of industry employment in the given occupation. Percents may not sum to 100 because the totals may include data for occupations that could not be published separately. Only available for the national industry estimates; otherwise, this column is blank.
pct_rpt	Percent of establishments reporting the given occupation for the cell. Only available for the national industry estimates; otherwise, this column is blank.
h_mean	Mean hourly wage
a_mean	Mean annual wage
mean_prse	Percent relative standard error (PRSE) for the mean wage estimate. PRSE is a measure of sampling error, expressed as a percentage of the corresponding estimate. Sampling error occurs when values for a population are estimated from a sample survey of the population, rather than calculated from data for all members of the population. Estimates with lower PRSEs are typically more precise in the presence of sampling error.
h_pct10	Hourly 10th percentile wage
h_pct25	Hourly 25th percentile wage
h_median	Hourly median wage (or the 50th percentile)
h_pct75	Hourly 75th percentile wage
h_pct90	Hourly 90th percentile wage
a_pct10	Annual 10th percentile wage
a_pct25	Annual 25th percentile wage
a_median	Annual median wage (or the 50th percentile)
a_pct75	Annual 75th percentile wage
a_pct90	Annual 90th percentile wage
annual	Contains "TRUE" if only annual wages are released. The OEWS program releases only annual wages for some occupations that typically work fewer than 2,080 hours per year, but are paid on an annual basis, such as teachers, pilots, and athletes.
hourly	Contains "TRUE" if only hourly wages are released. The OEWS program releases only hourly wages for some occupations that typically work fewer than 2,080 hours per year and are paid on an hourly basis, such as actors, dancers, and musicians and singers.

Notes:

* = indicates that a wage estimate is not available

** = indicates that an employment estimate is not available

= indicates a wage equal to or greater than \$100.00 per hour or \$208,000 per year

South Carolina Selected Occupational Average Mean Wage, May 2022

Occupation	SOC code	Hourly mean wage
Janitors and Cleaners, Except Maids and Housekeeping Cleaners	37-2011	\$13.44
Office Clerks, General	43-9061	\$16.32
Maintenance and Repair Workers, General	49-9071	\$20.75
Sawing Machine Setters, Operators, and Tenders, Wood	51-7041	\$17.09
Woodworking Machine Setters, Operators, and Tenders, Except Sawing	51-7042	\$18.30
Grinding and Polishing Workers, Hand	51-9022	\$20.79
Inspectors, Testers, Sorters, Samplers, and Weighers	51-9061	\$20.53
Industrial Truck and Tractor Operators	53-7051	\$19.02

Source: U.S. Bureau of Labor Statistics

May 2019 OES Estimates

AREA	ST	STATE	OCC_CODE	OCC_TITLE	GROUP	TOT_EMP	EMP_PRSE	JOBS_1000	LOC QUOTIEN	H_MEAN	A_MEAN
45	SC	SC	37-2011	Janitors and Cleaners, Except Maids and Housekeeping Cleaners	detailed	30,420	4.3	14.433	0.99	11.57	24,060
45	SC	SC	43-9061	Office Clerks, General Maintenance and Repair Workers,	detailed	34,230	2.2	16.241	0.81	13.70	28,500
45	SC	SC	49-9071	General Sawing Machine Setters,	detailed	27,430	2.0	13.016	1.35	18.09	37,630
45	SC	SC	51-7041	Operators, and Tenders, Wood Woodworking Machine Setters,	detailed	1,230	9.2	0.586	1.70	15.24	31,700
45	SC	SC	51-7042	Operators, and Tenders, Except Sawing	detailed	1,170	10.9	0.554	1.03	14.39	29,940
45	SC	SC	51-9022	Grinding and Polishing Workers, Hand	detailed	380	12.9	0.182	0.92	13.89	28,890
45	SC	SC	51-9061	Inspectors, Testers, Sorters, Samplers, and Weighers	detailed	14,060	4.1	6.670	1.70	19.12	39,770
45	SC	SC	53-7051	Industrial Truck and Tractor Operators	detailed	10,030	7.7	4.761	1.11	17.37	36,130

MEAN_P RSE	H_PCT1 0	H_PCT 25	H_MEDIAN	H_PCT75	H_PCT90	A_PCT10	A_PCT25	A_MEDIAN	A_PCT75	A_PCT90	ANNUAL	HOUR-LY
1.1	8.32	9.28	10.91	13.02	15.63	17,310	19,300	22,700	27,080	32,500		
0.8	8.72	10.46	13.21	16.07	19.07	18,140	21,760	27,470	33,420	39,670		
0.8	10.67	13.26	16.91	22.20	28.00	22,180	27,580	35,170	46,180	58,240		
1.6	10.45	12.61	14.70	17.77	20.86	21,740	26,240	30,580	36,960	43,400		
2.6	9.04	10.66	14.26	17.74	20.55	18,810	22,170	29,660	36,890	42,740		
6.8	8.83	10.27	12.63	16.89	21.21	18,380	21,360	26,280	35,130	44,110		
1.3	11.71	13.93	17.95	23.35	28.95	24,360	28,980	37,350	48,570	60,210		
2.4	11.78	13.51	16.03	19.75	25.77	24,510	28,100	33,340	41,090	53,590		

May 2018 OES Estimates

AREA	ST	STATE	OCC_CODE	OCC_TITLE	GROUP	TOT_EMP	EMP_PRSE	JOBS_1000	LOC QUOT	H_MEAN	A_MEAN	
				Janitors and Cleaners, Except								
45	SC	SC	37-2011	Maids and Housekeeping Cleaners	detailed	31980	2.5	15.505	1.04	11.23	23370	
45	SC	SC	43-9061	Office Clerks, General	detailed	33310	2.1	16.154	0.79	13.37	27810	
				Maintenance and Repair Workers,								
45	SC	SC	49-9071	General	detailed	27750	2.1	13.457	1.41	17.72	36850	
				Sawing Machine Setters,								
45	SC	SC	51-7041	Operators, and Tenders, Wood	detailed	1330	12.3	0.643	1.78	14.06	29240	
				Woodworking Machine Setters,								
				Operators, and Tenders, Except								
45	SC	SC	51-7042	Sawing	detailed	1450	12.8	0.705	1.29	14.12	29360	
				Grinding and Polishing Workers,								
45	SC	SC	51-9022	Hand	detailed	500	9	0.242	1.16	13.45	27970	
				Inspectors, Testers, Sorters,								
45	SC	SC	51-9061	Samplers, and Weighers	detailed	12750	3.5	6.184	1.61	18.8	39110	
				Industrial Truck and Tractor								
45	SC	SC	53-7051	Operators	detailed	7670	5	3.721	0.89	16.74	34820	
MEI			H_PCT2									
PRSE	H_PCT10	5	H_MEDIAN	H_PCT75	H_PCT90	A_PCT10	A_PCT25	A_MEDIAN	A_PCT75	A_PCT90	ANNUAL	HOURLY
1.1	8.13	8.93	10.48	12.75	15.26	16920	18570	21800	26520	31740		
0.8	8.51	10.11	12.9	15.71	18.86	17710	21030	26820	32680	39230		
0.8	10.4	13.02	16.65	21.77	27.33	21630	27090	34630	45280	56850		
1.3	9.89	11.35	13.45	16.06	18.85	20560	23610	27980	33410	39200		
0.5	8.6	9.93	13.11	17.5	21.77	17880	20640	27270	36400	45290		
7	8.5	9.87	12.42	16.39	19.64	17680	20540	25820	34090	40860		
1.3	11.04	13.77	17.67	22.95	28.61	22970	28650	36740	47730	59510		
2.4	11.3	13.17	15.5	19.04	24.22	23510	27390	32240	39600	50370		

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: <u>BOBBY L. WATSON</u>	OFFICE USE ONLY
SCDC NUMBER: <u>277427</u>	Grievance No. _____
INSTITUTION: <u>TYRCI</u>	Code: General _____
HOUSING UNIT: <u>U-7-225</u>	Policy _____
WORK ASSIGNMENT: <u>PRISON INDUSTRIES</u>	Disc. Hear. _____
	Class. _____
	PREA _____
	Date Received _____
	IGC Initials _____

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

I FILED A REQUEST WITH MARY NATIONS, PRISON INDUSTRIES MANAGER REGARDING BEING PAID THE PREVAILING WAGE. I ASK THAT IT BE NOTED THAT I DID THIS WITHIN THE (15) DAYS REQUIRED UNDER POLICY ADM 15.13.

I AM NOT GETTING PAID THE WAGES DUE UNDER 24-3-430(D) AND OTHER SOUTH CAROLINA STATUTES REGARDING PREVAILING WAGES.

THIS UNDERPAYMENT OF WAGES IS A VIOLATION OF TITLE 41 CHAPTER 10 OF THE SOUTH CAROLINA CODE OF LAWS.

Bobby Leonidas Watson 11-29-23
Grievant Signature Date

ACTION REQUESTED: THAT MY WAGES PAST, PRESENT, AND FUTURE BE RAISED TO THE PREVAILING WAGE AND THAT THE DEPARTMENT OF LABOR BE NOTIFIED AND AN INVESTIGATION BE OPENED.

ACTION TAKEN BY IGC: ☐ PROCESSED ☐ UNPROCESSED ☐ OTHER

IGC Signature

Date

(CONTINUE ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

[This area contains faint, illegible text, likely bleed-through from the reverse side of the page.]

Warden Signature

Date

☐ I accept the Warden's decision and consider the matter closed.

☐ I do not accept the Warden's decision and wish to appeal.

Grievant Signature

Date

IGC Signature

Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: STAFF NAME: <u>Ms. Nations</u>		STAFF TITLE: <u>P.I. Manager</u>	DATE: <u>11-27-23</u>
INMATE NAME: <u>Bobby Watson</u>		SCDC #: <u>277427</u>	
INSTITUTION: <u>Tyger River C.I.</u>	DORM/SIDE/BED: <u>47B 225</u>	HOUSING TYPE: ☐ RHU ☐ R&E ☐ INFIRMARY ☐ SSR ☐ DEATH ROW ☐ ASSISTED LIVING UNIT (ALU) ☒ IWA	
REASON FOR PAPER REQUEST: ☐ PREA ☐ MEDICAL ☐ MENTAL HEALTH ☐ DENTAL ☐ MEDICAL COPAY ☐ MEDICAL RECORDS ☒ KIOSK INACCESSIBLE (EXPLAIN): <u>P.I. 3</u>			

YOU MUST USE THE KIOSK IF YOUR PAPER REQUEST DOES NOT MEET ANY OF THE CRITERIA ABOVE.

This Request is Pursuant S.C. CODE OF LAW 24-3-430(D). Prevailing Wage and Back Pay without reprisal is my Request. I Notice this Error ON My Pay date 11-17-23. This Request is Pursuant to S.C. Code of LAW 24-3-430(D). And I Also Request that my current Wage be raised to the Prevailing Wage. S.C. Code of LAW 24-3-430(D).

Bobby Leander Watson #277427

Bobby Leander Watson #277427

DISPOSITION BY STAFF MEMBER:

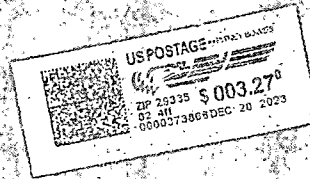
I have not received an official ruling on how this matter will be handled. When I receive notification of the procedures that will be followed, I will notify all affected parties. Until I receive that notification, wages will remain as they are.

DATE: 11-27-23

STAFF SIGNATURE:

M. Nations

BOBBY WATSON #277427/UMB225
Tiger River Correctional Institution
200 PRISON ROAD
ENDREE S.C. 29335



Received
DEC 26 2023
Tiger River Mailroom

RECEIVED
DEC 27 2023
SC Court of Appeals

Received
DEC 26 2023
Tiger River Mailroom

SOUTH CAROLINA COURT OF APPEALS
180 SENATE ST.
COLUMBIA S.C. 29201

