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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

ON CERTIFIED QUESTION
from the United States District Court
for the District of South Carolina

The Honorable Mary Geiger Lewis
Case No. 3:22-cv-03898-MGL

Appellate Case No. 2024-0001240

William M. Luce, on behalf of himself and all
similarly situated natural persons,

Plaintiff,

v.

Lexington County Health Services District, Inc.,
Brian D. Smith in both his official and individual
capacity, and Lynn Coggins in both her official
and individual capacity,

Defendants.

**AMICUS CURIAE'S RETURN TO PLAINTIFF'S
PETITION FOR REHEARING**

As requested by the Court, the South Carolina Public Employee Benefit Authority (“PEBA”) hereby submits a return to the petition for rehearing filed by Plaintiff on August 19, 2025. Because the Court did not overlook or misapprehend any argument of the parties, and because the Court’s decision is consistent with existing law and does not raise any practical concerns for PEBA, the petition should be denied.

BACKGROUND

On August 6, 2025, this Court issued a well-reasoned decision answering a certified question submitted by the United States District Court for the District of South Carolina. In a unanimous decision, the Court held that certain shift-differential and other pay (“Wages in Controversy”) received by Plaintiff William M. Luce—a Lexington County Health Services District employee participating in the South Carolina Retirement System (“SCRS”)—constituted “earnable compensation” as defined by subsection 9-1-10(8)(a) of the South Carolina Code. The Court also held that because the Wages in Controversy constituted “earnable compensation,” Plaintiff’s employer was required, per statute, to deduct a percentage of this compensation to be remitted to the SCRS. *See* S.C. Code Ann. § 9-1-1020.

On August 19, 2025, Plaintiff filed a petition for rehearing, asking the Court to reconsider or withdraw its decision. Pet. at 7. On August 26, 2025, this Court sent a letter requesting that opposing counsel and counsel for amicus curiae file a return to the petition within 10 days. Accordingly, PEBA hereby submits this return.

DISCUSSION

1. The Court did not overlook or misapprehend any argument of the parties.

The petition for rehearing should be denied because the Court thoroughly considered the arguments of the parties.

The Court correctly determined that the “Wages in Controversy,” which are a defined term specific to this case, constituted “earnable compensation” because they reflected payments given for “full normal working time” grounded in the concepts of ordinariness, normality, and recurrence. In doing so, the Court correctly recognized that the Wages in Controversy stood in stark contrast to ad hoc, irregular, or after-the-fact payments, such as bonuses, severance payments,

or other “special payments,” that would not meet the requirements for regularity and normality and would not be considered “earnable compensation” as intended by the General Assembly. Further, the Court appropriately looked beyond the labels assigned to various payments made by Plaintiff’s employer and conducted a fact-intensive review into the actual substance of Plaintiff’s compensation.

Moreover, the Court’s decision is consistent with how PEBA understands and has interpreted the term “earnable compensation.” To be sure, the statutes governing what constitutes “earnable compensation” for the purposes of the SCRS reflect broader concepts, rather than prescriptive terminology, to account for the varying compensation practices needed across these 800 employers and their thousands of employees. Taken as a whole, however, these statutes define “earnable compensation” as a member’s regular, normal rate of pay for performing his or her work.

Because the Court thoroughly considered the arguments of the parties and accurately applied the law to the facts of this case, the petition for rehearing should be denied.

2. The statute regarding overtime pay does not apply.

In deciding that the Wages in Controversy constitute earnable compensation, the Court properly determined that section 9-1-10(8)(b) regarding overtime pay does not apply.

In footnote 1 of the opinion, the Court stated: “The parties agree in their Joint Stipulation of Facts that Luce is exempt from the Fair Labor Standard Act’s . . . overtime payment requirement” and therefore the statute regarding overtime pay “is not at issue in this case.” Because the parties agreed that the Wages in Controversy were not overtime payments, the Court correctly determined that the 2012 amendment to subsection 9-1-10(8), providing that earnable compensation no longer included “any overtime pay not mandated by the employer,” was not at issue in this case. S.C. Code Ann. § 9-1-10(8)(b).

Because the parties agreed that Plaintiff was a salaried employee who was not entitled to overtime pay, the Court's decision does not run afoul of section 9-1-10(8)(b) as Plaintiff contends.

3. The Court narrowly answered the question presented.

Finally, the Court's decision does not, as Plaintiff contends, "invite[] a flood of claims against employers and SCRS by members who work for those employers." Pet. at 3. The Court's decision is narrowly focused on the Wages in Controversy, which are unique to Plaintiff's situation and the facts of this case. The Court did not, as Plaintiff suggests, conclude that all pay for all hours worked constitutes earnable compensation in all situations. Instead, the Court said that the *Wages in Controversy* "are all pay for hours worked," and therefore "[the Wages in Controversy] constitute 'earnable compensation' within the meaning of § 9-1-10(8)."

Because the Court narrowly answered the question presented and did not say anything to open the floodgates to future claims, the petition should be denied.

CONCLUSION

Accordingly, because the Court's decision is sound and consistent with existing law, the petition for rehearing should be denied.

Respectfully submitted,

s/Tina Cundari

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