THE STATE OF SOUTH CAROLINA

In The Supreme Court

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S.C. SUPREME COURT

CERTIFIED QUESTION

FROM THE UNITED STATES DISTRICT COURT, DISTRICT OF SOUTH CAROLINA

Mary Geiger Lewis, United States District Judge

Appellate Case No. 2024-001240

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 capacities; and Lynn Coggins, in both her official and individual capacities, Defendants.

DEFENDANTS' RETURN TO PETITION FOR REHEARING

Consistent with the plain language of the relevant South Carolina retirement statutes and recognized principles of statutory interpretation, this Court's August 6, 2025 opinion correctly determined that the "Wages in Controversy" of Plaintiff William M. Luce and "similarly-situated salaried healthcare workers" are "earnable compensation" as contemplated by the S.C. Retirement System Act and are, therefore, subject to mandatory deductions under S.C. Code Ann. § 9-1-1020. [Opinion, pp. 2, 6] In his petition for rehearing, Luce argues that the Court is misguided in its conclusions, but he erroneously introduces arguments concerning hourly, rather than salaried,

employees. Because Luce has offered no arguments that call into question the soundness of the Court's well-reasoned opinion, the petition should be denied.

1. The Irrelevance of S.C. Code Ann. § 9-1-10(8)(b) to the Certified Question

The most glaring flaw in Luce's petition for rehearing is that he ignores the fact that the Court's opinion concerned the interpretation of S.C. Code Ann. § 9-1-1020 as related to salaried, exempt, rather than hourly, non-exempt employees. [Opinion, p. 3 n.1 ("Luce is exempt from the Fair Labor Standards Act's (FLSA's) overtime payment requirements …."); *id*., p. 2 ("LMC paid Luce and *similarly-situated salaried* healthcare workers more per hour for certain undesirable shifts ….") (emphasis added); *id*. ("The parties refer to the holiday, weekend, shift-differential, on-call, call-back, and premium pay received by Luce and *similarly-situated salaried* healthcare workers as the 'Wages in Controversy.'") (emphasis added)]. There is no dispute that Luce was a salaried, exempt employee. [R. p. 50] By contrast, Luce's petition focuses on hourly, non-exempt employees, who are eligible to receive overtime pay. [Petition, pp. 3, 6]

Highlighting Luce's misdirected focus, in his petition for rehearing, he asserts that the Court's opinion "overlooks S.C. Code Ann. § 9-1-10(8)(b)[1] entirely." [Petition, p. 2] Of course, Luce is mistaken. The Court's opinion not only quotes section 9-1-10(8)(b) but correctly determines that it is "not at issue in this case." [Opinion, p. 3 n.1] Therefore, contrary to Luce's false assertion that the Court "overlook[ed]" section 9-1-10(8)(b), the Court did consider it and determined it to be irrelevant to the resolution of the certified question.

Moreover, Luce's assertion that through section 9-1-10(8)(b), the General Assembly was "***excluding*** pay for ***extra*** hours worked" from the definition of "earnable compensation," [Petition,

[1] S.C. Code Ann. § 9-1-10(8)(b) provides: "For work performed by a member after December 31, 2012, earnable compensation does not include any overtime pay not mandated by the employer."

p. 3 (emphasis in original)], would not be relevant for Luce given his status as an exempt employee. There are no "extra hours worked" for exempt employees. If employees fall under the professional (or other FLSA exemptions), they are "exempt from the FLSA's maximum hours provisions." *Murray v. Stuckey's, Inc.*, 50 F.3d 564, 570 (8th Cir. 1995). Therefore, exempt employees can be required by their employer to work as long as needed to get the job done, so the notion of "extra hours worked" is foreign to the context of exempt employees. Even if a mythical forty-hour limit applied to exempt employees—it does not—Luce's position would still rest on a faulty footing because differential pay for the Wages in Controversy often related to the Luce's scheduled shifts, rather than to "extra" hours he worked. For example, if he had worked just three twelve-hour shifts in a week, but those shifts happened to be overnight, or if he had worked a holiday as part of his regular shifts, he would have received a differential pay for the overnight or holiday work but would not have worked any extra hours. Regardless of how Luce's argument is sliced, it is lacking.

2. False Analogy to Overtime

Perhaps cognizant that his earlier argument about S.C. Code Ann. § 9-1-10(8)(b) and overtime is irrelevant, Luce presents as a backup the position that the Wages in Controversy "are analogous to 'overtime' payments for non-exempt employees." [Petition, p. 4] This argument is similarly defective for several reasons.

First, Luce's argument fails because section 9-1-10(8)(b) does not exclude all overtime from earnable compensable but only "overtime pay not mandated by the employer." In other words, the statute seeks to prevent employees from artificially spiking their salaries (and, thus, their retirement benefits) by working overtime that is unnecessary and not mandated by the employer. By contrast, there is nothing in the record suggesting that any of the Wages in

Controversy were for unnecessary work or were part of a wage-spiking strategy. Luce's effort at analogy is not based on facts in the record.

Second, the Wages in Controversy are part of an employee's "full normal working time." One example will suffice. If Luce had been working as a nurse anesthetist on a surgery on a regular shift, but as may happen, the surgery took longer than expected and extended into the next shift, Luce would have received a shift differential for the surgery going long. Any rational observer would judge that Luce was carrying out his normal work throughout the surgery, including in the latter part, which moved into the next shift. Under Luce's argument, this additional time would not be earnable compensation. There is nothing in the statute that suggests this was the intent of the legislature.

Third, Luce erroneously suggests that in its opinion, the Court erred by "concentrating on an isolated word," specifically, the term "full." [Petition, pp. 5-6] A more careful reading of the opinion reveals otherwise. Rather than improperly concentrating on one word, the Court carried out a thorough analysis by considering the definition of "earnable compensation" under section 9-1-10(8) [Opinion, pp. 3-4], examining section 9-1-1020 [Opinion, pp. 3, 5], looking to the principles governing the construction of retirement statutes as a whole [*id*., pp. 4-5], taking into account other statutory provisions [*id*., p. 5], and weighing the meaning of the relevant terms by "the company they keep." [*id*., p. 6] Luce's accusation that the Court's opinion was myopic is simply unfounded.

3. Lack of Merit or Support for Luce's Fiscal Soundness Argument

Luce also asserts that the exclusion of Wages in Controversy from earnable compensation protects the fiscal soundness of the Retirement System. [Petition, pp. 2-3] The current argument

offers no more support than Luce presented in his earlier briefs, which the Court found unpersuasive. As LMC has discussed previously, the public policy of maintaining the fiscal soundness of the Retirement System militates against excluding Wages in Controversy from compensability. [Final Brief of Defendants, pp. 16-19; *see* Amicus Curiae Brief, p. 11 (explaining that acceptance of Luce's argument "would require PEBA to recalculate, and reduce, the retirement benefit for members ….")] The Retirement System requires working retirees to pay into the system but not accrue additional service credit. S.C. Code Ann. § 9-1-1790(C); *Ahrens v. State*, 392 S.C. 340, 345, 709 S.E.2d 54, 57 (2011). Thus, the Retirement System depends, in part, on working retirees contributing to it but not getting additional retirement benefits. That includes Luce. But Luce argues that it would conduce to the Retirement System's fiscal soundness for it to *not receive* his 9% contribution of his over $207,000 in Wages in Controversy over four years and additionally *not receive* his employer's nearly 18% contribution on these same funds. Given this case is a putative class action, Luce wants the Retirement System to also *not receive* the contributions of other working retirees who are similarly situated. If adopted, Luce's argument could deal a financial blow to the Retirement System and will not support its fiscal soundness. Because eliminating the contributions of working retirees would undermine the Retirement System, Luce's fiscal soundness argument should be rejected again.

4. Unfounded Flood of Litigation Fear

In further support of his petition, Luce asserts that the Court's opinion will invite "a flood of claims against employers and SCRS by members." [Petition, p. 3] Luce's argument is unavailing given that the Court's "all pay for hours worked" standard is consistent with the Retirement System's longstanding position, known to employers and employees statewide. [*See* Amicus Curiae Brief, pp. 7-10; Amicus Curiae's Return to Plaintiff's Petition for Rehearing, p. 3

("[T]he Court's decision is consistent with how PEBA understands and has interpreted the term 'earnable compensation.'")]. Inasmuch as employers and employees have relied on this guidance that is consistent with the standard set out in this Court's opinion, there will not be a change in direction. By contrast, if Luce's position were adopted, then a slew of new claims could emerge because it would constitute a radical shift in the interpretation of section 9-1-1020. PEBA explained in its *amicus curiae* brief that accepting Luce's argument—for example, that shift differential pay does not constitute earnable compensation—would upset traditional understanding and practice and "would require PEBA to recalculate, and reduce, the retirement benefit for members who had such pay included in the calculation of their average final compensation, which … could cause an unexpected financial hardship for those retirees." [Amicus Curiae Brief, p. 11] The surest path to a flood of litigation would be through adoption of Luce's position.

CONCLUSION

The Court issued an opinion grounded in sound principles of statutory construction and reflecting a deep appreciation of how the South Carolina retirement statutes operate—as a tightly woven tapestry of provisions designed to support a fair and fiscally sound system for current and future state retirees. As a working retiree whose retirement contributions no longer increased his benefits, Luce, understandably, did not like making contributions from his Wages in Controversy—which made up some 20% of his nearly quarter million dollar annual salary. [*See* Final Brief of Defendants, pp. 4-5, 17] So, he has conjured various imaginative arguments in an effort to escape that obligation. The Court's opinion clarifying earnable compensation allows the Retirement System to maintain its integrity and balance. Because Luce's petition offers no persuasive rationale for the Court to choose another course, his invitation for rehearing should be declined.

Respectfully submitted,

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