

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Crystal M. Rookard, Administrative Law Judge

Appellate Case No. 2025-002433
ALC Case No. 25-ALJ-04-0275-AP

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SC Court of Appeals

Bernard Bagley, #175851,

Appellant,

v.

South Carolina Department
of Corrections,

Respondent.

REPLY BRIEF OF APPELLANT

Bernard Bagley
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MEMORANDUM OF LAW

In support of Appellant's entitlement to prevailing wages for Private-Sector Prison Industries Employment from 1991 to 1995.

COUNTER-REPLY STATEMENT OF THE ISSUE ON APPEAL

WHETHER AN INMATE WHO WORKED IN A PRIVATE-SECTOR PRISON INDUSTRIES PROGRAM AT EVANS CORRECTIONAL INSTITUTION BETWEEN 1991-1995 IS LEGALLY ENTITLED TO RECEIVE PREVAILING WAGES UNDER FEDERAL AND STATE LAW, AND WHETHER THE FAILURE TO PAY SUCH WAGES CONSTITUTES A STATUTORY AND CONSTITUTIONAL VIOLATION REQUIRING RETROACTIVE MONETARY RELIEF?

STANDARD OF REVIEW

S.C. Code Ann. §1-23-610(B) provides the applicable of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because of the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (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.

COUNTER-REPLY ARGUMENT

Short answer, NO; to the Respondent's argument! Yes, to the Counter-Reply Statement of the Issue on Appeal, because both Federal Law under 18 U.S.C. 1761(C), et seq., and South Carolina Code Title §24-3-430(D)(2019), independently mandate that inmates labored in private sector prison industries be paid not less than the prevailing wage for similar work in the locality.

The South Carolina Supreme Court has confirmed that inmates in this program are entitled to prevailing wages, and failure to pay those wages gives rise to retroactive recovery. SEE: Torrence v. SCDC, 433 S.C. 633, 861 S.E.2d 36 (8/3/22, cert. denied).

In addition, Governing law, i.e. Federal Law, PIECP requires prevailing wages. The Prison Industry Enhancement Certification Program (PIECP), enacted under 18 U.S.C. 1761(C), provides:

Inmates working for private sector industries shall be paid wages not less than those paid for similar work in the locality.

The Federal regulatory framework requires: Wages must reflect local prevailing wage rates work must be for private sector production. The program must be formally certified. These requirements were in full force during the 1991 through 1995 in the State of South Carolina Evans Correctional Institution Escod Private Sector Prison Industry.

South Carolina statutory law framework (independently) requires prevailing wages. S.C. Code Ann. §24-3-430(D)(2019), mandates:

"No inmate participating in the program may gain less than the prevailing work for work of a similar nature in the locality."

This statute applied to all private-sector prison industries programs operated by SCDC, including those of Evans Correctional Institution.

Controlling South Carolina case law, the Supreme Court in Torrence held:

The statute requires payment of prevailing wages, inmates are not limited to minimum wage claims for unpaid prevailing wages are legally cognizable.

Furthermore, earlier litigation involving Evans Correctional Institution's private sector industries program (wire-harness manufacturing for a private company) confirms that the program operated under the statutory framework requiring prevailing wages in 1991-1995. (SEE: ROA P. 31 of 114, Pay ID 00236, and 00237), (a training wage settlement of GRV.ECI-10, Bagley v. SCDC).

Appellant's Counter-Reply Argument to Evans Correctional Institution (ECI) during November 1991 to April 1995, ECI operated a private sector prison industries program involving production labor for a private company. The certified program fell squarely within PIECP type "certified" private sector employment, labor, or work performed by inmates, and South Carolina's statutory prevailing wage scheme.

Therefore, Appellant avers that any inmate working in that program are legally entitled to prevailing wages as a matter of law. Again, SEE ROA, p. 31 of 114, Pay ID 00236, and 00237).

SCDC statutory violation is based on failure to pay prevailing wages constitutes a direct violation of 18 U.S.C. 1761(C), and S.C. Code §24-3-430(D)(2019). These statutes impose mandatory, not discretionary wage obligations. Respondent had no problem paying Appellant training wages under §24-3-430(D), in 2017? ROA p. 31 of 114 support the same.

In addition, Appellant asserts a due process violation property interest on the basis that the statutory entitlement to prevailing wages creates a protected property interest under the 5th Amendment and 14th Amendment of the U.S. Constitution.

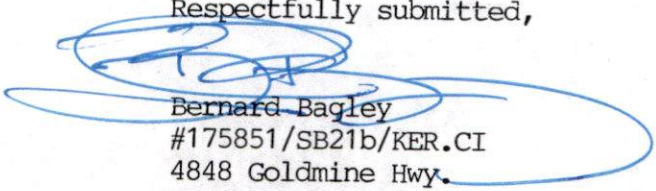
Also, once the State establishes a statutory entitlement and places the inmate in qualifying labor or work, the inmate has a legitimate claim of entitlement to those wages. However, failure to pay those wages constitutes deprivation of property without due process of law, in which the Respondent would like the Court to conspire with. Appellant contends that the unlawful wage suppression and constructive taking where the State or its contractor pays below prevailing wage, the difference between actual wages paid and prevailing wage required constitutes unlawfully withheld compensation. This is equivalent to unlawful withholding of earned wages unjust enrichment by the State or private contractor.

For the most part, Appellant avers retroactive relief is required because the Courts' have constantly recognized that prevailing wage statutes are remedial in nature violations support retroactive recovery of unpaid wages, because the ROA supports his contentions when the Respondent paid him for the training hours labor he performed from 1991 to 1995 at ECI.

CONCLUSION

WHEREFORE, the Appellant is entitled to: backpay equal to the difference between wages paid and prevailing wages; statutory interest under §34-31-20(B), S.C. Code; and declaratory relief establishing any anticipated defenses and rebuttal, program not covered by PIECP, even if Federal PIECP certification is disputed, South Carolina State law independently required prevailing wages, in which the entitlement does not depend solely on federal certification (SEE: ROA p. 31 of 114 Pay ID 00236 and 00237), under §24-3-430(D) at that time. Also, deductions reduce the wages while lawful deductions may only after the gross prevailing wage is calculated under the provisions of §24-3-40(A)(1)-(6), and (B)(2). For the foregoing reasons, Appellant respectfully asks this Court to grant his appeal and reverse and remand for the ALC with directives to restore his backpay wages from 1991 to 1995.

Respectfully submitted,


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February 17, 2026

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