

The Supreme Court of South Carolina

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April 30, 2012

The Honorable Jana Shealy
Clerk, South Carolina Administrative Law Court
1205 Pendleton Street
Columbia, SC 29201

REMITTITUR

Re: Bell, James v. SCDC & Palmetto Unified
Lower Court Case No. 2009AL3000103
Appellate Case No. 2010-170246

Dear Ms. Shealy:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

cc: Katherine Anne Phillips
W. Allen Nickles, III
Lake Eric Summers

THE STATE OF SOUTH CAROLINA
In The Supreme Court

James "Cal" Bell, Othella
Bernard, Katherina Bower,
Linda M. W. Bratton, Ann T.
Bridges, Richard M. Cobb, as
Personal Representative of the
Estate of Rance C. Cobb,
Jeannie B. Croxton, Bernetha
L. Culbreath, William K.
Dreyer, Jacqueline D. Farr,
Ruth Fritts, Nancy Glenn, Etta
Jane Jones, Geneva M. Martin,
Mary H. McCabe, Beverly
McClanahan, Max D.
Randolph, Carolyn McIver
Smith, Maggie G. Williams,
and Paula Woodlief, Appellants,

v.

South Carolina Department of
Corrections and Palmetto
Unified School District No. 1, Respondents.

Appeal From Richland County
John McLeod, Administrative Law Court Judge

Opinion No. 27114
Heard January 25, 2012 – Filed April 11, 2012

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

W. Allen Nickles, III, of Columbia, for Appellants.

Lake E. Summers and Katherine Phillips, of Malone, Thompson,
Summers & Ott, of Columbia, for Respondents.

JUSTICE BEATTY: Appellants, who are current and former certified educators employed by the South Carolina Department of Corrections ("SCDC") in the Palmetto Unified School District ("PUSD"), collectively appeal the Administrative Law Court's ("ALC's") order affirming the State Employee Grievance Committee's decision denying Appellants' grievances regarding the SCDC's Reduction-in-Force ("RIF"),¹ which was implemented on June 1, 2003.

On appeal, Appellants contend the ALC erred in failing to enforce: (1) the plain language of the RIF policy; (2) the controlling legislation applicable to the PUSD and the RIF policy; (3) Appellants' constitutional rights with respect to employment; and (4) Appellants' rights as "covered employees" with respect to the RIF policy. Based on these alleged errors, Appellants assert they are entitled to reinstatement to employment as well as back pay and benefits. We affirm in part, reverse in part, and remand.

I.

In 1981, the South Carolina Legislature established a "special statewide unified school district" within the SCDC known as the Palmetto Unified School District No. 1.² The PUSD was designed to "enhance the quality and

¹ "'Reduction in force' means a determination made by an agency head to eliminate one or more filled positions in one or more organizational units within the agency due to budgetary limitations, shortage of work, or organizational changes." S.C. Code Ann. § 8-17-320(21) (Supp. 2011).

² S.C. Code Ann. § 24-25-10 (2007).

scope" of inmate education with a goal of reintegrating offenders into the community.³ The PUSD operates nine high schools, which are located in correctional institutions throughout the state, serving students between the ages of 17 and 21 years old. In addition, the PUSD offers inmates older than 21 the opportunity to receive adult education if they wish to pursue their GED while incarcerated. The PUSD also oversees a vocational program that offers 53 vocational and career technology classes designed to furnish inmates with basic technical skills to aid them in securing gainful employment upon their release.

As a sanctioned school district, the PUSD must meet standards set by the State Board of Education.⁴ The PUSD has its own superintendent and school board⁵ that are responsible for operating the PUSD "under the supervision of the State Department of Corrections."⁶ By statute, "[t]he superintendent of the district [PUSD] and all other educational personnel shall be employed, supervised, and terminated according to the South Carolina Department of Corrections' personnel policies and procedures."⁷

In January 2003, Jon Ozmint was appointed as the Executive Director of the SCDC. Faced with budget cuts and an ongoing budget deficit, Ozmint presented Reduction-in-Force policy ADM-11.05 dated March 14, 2003, to the State Office of Human Resources (OHR) for its approval.⁸ The policy

³ Id. § 24-25-20.

⁴ Id. § 24-25-30.

⁵ Id. § 24-25-70.

⁶ Id. § 24-25-40.

⁷ Id. § 24-25-90.

⁸ See 23A S.C. Code Ann. Regs. 19-719.04 (Supp. 2010) (outlining state agency RIF policies and procedures). We note that this section was amended by State Register Volume 34, Issue Number 5, which became effective on

outlined the procedures to be utilized in effectuating the RIF plan and the employees' respective rights.

As part of the plan, the SCDC was divided into "competitive areas,"⁹ which were delineated by eleven circular regions throughout the state that included "entire groups of institutions and divisions within a reasonable geographic area to accommodate the realistic opportunity for staff relocation, . . . recall and reinstatement." Under the RIF policy, a "covered state employee"¹⁰ whose position was eliminated as a result of the RIF was permitted to "bump"¹¹ another "employee with the lowest RIF Service Date in the same job classification and pay band with the same or lower pay level." A "covered employee," however, could only exercise this right within his or her designated competitive area.¹²

May 28, 2010. In the interest of clarity, we have cited to the version in effect prior to the amendment unless otherwise noted.

⁹ According to the RIF policy, a "competitive area may be agency wide, a department, or a more restricted geographical area where the staff is separately organized and clearly distinguishable from the staff in other areas."

¹⁰ A "covered employee" is defined as "a full-time or part-time employee occupying a part or all of an established full-time equivalent (FTE) position who has completed the probationary period and has a 'meets' or higher overall rating on the employee's performance evaluation and who has grievance rights." S.C. Code Ann. § 8-17-320(7) (Supp. 2011). This definition does not include "employees in positions such as temporary, temporary grant, or time-limited employees who do not have grievance rights." Id.

¹¹ "'Bumping' refers to the action taken when an employee subject to lay off is placed in a vacant position or displaces ('bumps') another employee in the same or another job classification and/or location."

¹² See 23A S.C. Code Ann. Regs. 19-719.04(B)(2)(b) (Supp. 2010) ("Competitive area(s) shall be determined by the agency according to critical

Additionally, the RIF policy provided for "Recall and Reinstatement Rights of Employees."¹³ Specifically, the policy provided in pertinent part:

When a vacancy occurs in an employee's competitive area which is (1) in the **same job class**, pay band, pay level **or lower**, and **functionally similar** as the position held prior to the lay off, downward bumping, or reassignment and (2) within a reasonable geographic distance (30 mile radius) of the work location of the employee, then the eligible employee will be offered the vacancy provided s/he meets the minimum training and experience qualifications.

In his letter addressed to the Director of the OHR, Ozmint stated that he had made the decision to eliminate "148 non-security" positions from headquarters management and administrative support staff, non-essential inmate support programs, and certified education and support staff.

On March 28, 2003, the OHR approved the RIF plan after determining the plan was "procedurally correct." The OHR, however, clarified that its approval did not "include the determination of the geographic locations in the competitive areas, competitive classes, competitive class series, bumping rights, the positions to be eliminated, or any exceptions included in the plan, since these are solely the responsibility of SCDC management."

The SCDC notified its employees of the RIF on April 1, 2003. On June 1, 2003, the day the RIF plan went into effect, 148 employment positions were eliminated from the SCDC. The PUSD lost 84 positions, which included Appellants and represented 56.75% of the RIF.

needs. Any covered employee affected by a reduction in force shall have bumping rights within a competitive area(s).").

¹³ See 23A S.C. Code Ann. Regs. 19-719.04(B)(4)(a) (Supp. 2010) ("Any covered employee affected by a reduction in force shall retain covered status and recall rights for a period of one year from the date of separation.").

On July 16, 2003, Ozmint notified SCDC employees of a "Retirement Opportunity" that had been established to further reduce costs. Under this plan, the SCDC would permit employees to retire from the agency between August 1 and October 1, 2003. Once retired, the employee was required to "experience a 15 calendar-day break in service" and then could be rehired in their present position but in a temporary capacity. A temporary employee¹⁴ did not receive benefits other than "retiree benefits" and was paid for hours actually worked.

Appellants, who were certified educators with the PUSD and "covered employees," timely filed grievances with the SCDC regarding their separation from employment as a consequence of the RIF.¹⁵ The SCDC denied each of the grievances without a hearing. Subsequently, each of the Appellants appealed the SCDC's denial of their grievances to the State Human Resources Director. After Appellants received the final, unfavorable decision of the State Human Resources Director, Appellants filed a consolidated complaint and petition for judicial review in the circuit court.

After several procedural hearings and rulings involving discovery, a circuit court judge found that material issues of fact existed regarding Appellants' contention that the SCDC inconsistently or improperly applied its RIF policy and plan in 2003. As a result, the judge remanded the matter to the OHR for disposition by hearing before the State Employee Grievance Committee ("Committee").

¹⁴ A "temporary employee" is defined as "a full-time or part-time employee who does not occupy an FTE (Full-Time Equivalent) position, whose employment is not to exceed one year, and who is not a covered employee." S.C. Code Ann. § 8-17-320(25) (Supp. 2011).

¹⁵ See S.C. Code Ann. § 8-17-330 (Supp. 2011) ("A reduction in force is an adverse employment action considered as a grievance only if the agency, or as an appeal if the State Human Resources Director, determines that there is a material issue of fact that the agency inconsistently or improperly applied its reduction in force policy or plan.").

Following ten days of hearings, the Committee issued its final decision denying Appellants' request for relief and upholding the June 1, 2003 RIF plan as implemented by the SCDC. The Committee found there was "insufficient evidence to support Appellants' allegations that the RIF policy or plan was improperly or inconsistently implemented." Additionally, the Committee concluded there was "no credible evidence presented that the elimination of educator positions in the PUSD was motivated by a desire for retaliation for an earlier lawsuit¹⁶ that resulted in the increase of educators' salaries." Instead, the Committee found the RIF plan was developed to "maximize[] savings while retaining as many employees as possible in essential areas." The Committee noted that "[t]he education program was one area where significant cost-saving opportunities existed" as opposed to such areas as "security, housing, clothing, food, and healthcare" where further budgetary cuts could not be "tolerated."

In reaching its conclusion, the Committee found the SCDC "followed proper protocol and did not violate any policies, procedures, or statutes." Specifically, the Committee found that: (1) educators were not unfairly targeted for termination or terminated based on a belief by other employees or members of management that educators were "overpaid" but, rather, as the result of "cost-saving principles" due to the high salaries of most educators as compared to other personnel; (2) the development of the competitive areas did not violate the RIF policy as the manner in which these areas are designated is left to the discretion of the Executive Director of the SCDC and neither state law nor the RIF policy required the PUSD to be treated as a single, competitive area to afford agency-wide bumping rights; (3) the SCDC management was not obligated by statute or policy to consult with the PUSD School Board or obtain its approval before implementing the RIF as the PUSD is not a separate entity but exists as a unit under the purview of the SCDC; (4) the retirement opportunity offered by the SCDC after the RIF was designed to further reduce operating costs by permitting employees to retire from their full-time positions and return to their positions in a temporary

¹⁶ See Abraham v. Palmetto Unified Sch. Dist. No. 1, 343 S.C. 36, 538 S.E.2d 656 (Ct. App. 2000) (holding that Appellants, who were employed as PUSD teachers, were entitled to a salary supplement based on the statewide school district average in addition to the state mandatory minimum salary).

capacity, a position for which recall rights were inapplicable; and (5) the hiring of temporary employees before the RIF and the retention of certain temporary employees after the RIF did not violate the approved RIF policy as these positions were less costly than full-time positions given that the positions were hourly and without benefits.

Appellants appealed the Committee's final decision to the ALC. Following a hearing, the ALC affirmed the Committee's decision. In a detailed order, the ALC denied each of Appellants' claims by reiterating and elaborating on the Committee's conclusions of law. Additionally, the ALC rejected Appellants' supplemental argument regarding an alleged equal protection violation. Specifically, the ALC found the SCDC had a rational basis "by which to both implement its RIF through the establishment of 11 competitive areas and to offer its retirement opportunity to those employees unaffected by the RIF who were retirement eligible."

Appellants appealed the ALC's final decision to the Court of Appeals. This Court certified the appeal from the Court of Appeals pursuant to Rule 204(b) of the South Carolina Appellate Court Rules.

II.

A.

The Administrative Procedures Act establishes this Court's standard of review for cases decided by the ALC and is set forth in section 1-23-610(B) of the South Carolina Code, which provides:

The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals 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 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;
- (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.

S.C. Code Ann. § 1-23-610(B) (Supp. 2011).

B.

In challenging the legitimacy of the RIF policy and plan, Appellants raise multiple arguments through the presentation of factual issues, RIF policy provisions, statutory law, and constitutional law. Rather than address these points separately, we find the most logical approach to analyzing these arguments is to categorize the issues into Appellants' claims regarding the creation, implementation, and effectuation of the RIF.

C.

Because the PUSD is statutorily defined as a "unified," statewide school district, Appellants contend the PUSD should not have been included in the RIF as it is a separate entity of the SCDC. In the alternative, Appellants claim the PUSD's Superintendent and Board should have been consulted and actively involved in the creation of the RIF policy and plan. In support of this claim, Appellants direct this Court's attention to Superintendent Wendell Blanton's testimony wherein he stated that he only heard about the RIF plan shortly before it was implemented.

In addition to these procedural challenges, Appellants assert the SCDC, via Ozmint and John Near,¹⁷ exceeded its authority in dividing the agency

¹⁷ John Near, who served as the Director of the Department's Division of Human Resources in 2003, drafted the RIF policy and prepared the RIF plan, including the identification of the competitive areas.

into eleven competitive areas as these geographic regions were arbitrarily drawn solely for the purpose of eliminating "bumping" rights for senior PUSD employees. Appellants claim these geographic regions had "no bearing on administration or delivery of educational services" and ultimately deprived Appellants of the opportunity to compete for vacant positions throughout the state rather than only in their limited geographic region, which encompassed a thirty-mile radius.

As will be discussed, we conclude the ALC properly affirmed the Committee's decision regarding the SCDC's creation of the RIF policy and resultant plan.

1.

Although section 24-25-40 of the South Carolina Code authorizes the Superintendent and the Board to operate the PUSD, they do not operate independently as this code section also states that this division is "under the supervision of the State Department of Corrections." Furthermore, as previously identified, section 24-25-90 of the South Carolina Code specifically includes the PUSD and all other educational personnel within the SCDC and subjects them to the agency's personnel policies and procedures regarding employment and termination.

In addition to this legislative mandate, there is evidence in the record that the PUSD operates and is viewed as a functional subsidiary of the SCDC. John Near testified regarding the organizational structure of the SCDC. Near stated the SCDC has twenty divisions, which include the Education Division. Geraldine Miro, the Deputy Director for the SCDC's Programs and Services, classified the PUSD as a component of the Division of Education within the SCDC. Additionally, Wendell Blanton the PUSD's Superintendent testified that the PUSD "encompasses education in the Department of Corrections." He added that he not only reported to the PUSD Board but also to Miro. He also admitted that the PUSD, unlike a regular school board, had "limited power." Finally, several witnesses testified that the PUSD does not have its own finance office, payroll department, or human resource office as these are centrally located and operated in the SCDC's headquarters in Columbia.

Because the PUSD exists as merely a division under the purview of the SCDC's Executive Director and not as a separate entity, it was properly included in the RIF. By the same reasoning, there is no statutory authority to support Appellants' position that its Superintendent or Board should have been consulted and involved in the creation of the RIF policy and plan.

2.

As the record reflects, all divisions of the SCDC were included in and affected to some extent by the RIF. Like the other divisions, the PUSD was subject to the authority of Ozmint. In this capacity, Ozmint was authorized with broad discretion to create an RIF policy and plan to reduce costs within the SCDC. As recognized by the OHR's approval of the RIF policy, Ozmint legitimately identified the education division as being less essential compared to those divisions involving security, housing, clothing, food, and healthcare. Although a disproportionate number of PUSD positions were eliminated as compared to other divisions, we agree with the ALC that Ozmint did not exceed his authority by creating the eleven competitive areas to effectuate the RIF plan.

According to the applicable regulations, the SCDC is specifically authorized to determine the "competitive areas" according to the "critical needs" of the agency. 23A S.C. Code Ann. Regs. 19-719.04(B)(2)(b) (Supp. 2010). Furthermore, contrary to Appellants' assertions, the geographic limitation of a thirty-mile radius is specifically provided for in paragraph 7.2 of the RIF Policy and appears to be validly derived from section 8-17-320 definitional provisions and the OHR's regulatory provision 19-700, which defines an "involuntary reassignment" as "the movement of an employee's principal place of employment in excess of thirty miles from the prior work station at the initiative of the agency." See S.C. Code Ann. § 8-17-320(13) (Supp. 2011) (defining "involuntary reassignment" of an agency employee); 23A S.C. Code Ann. Regs. 19-700 (Supp. 2010) (same).

Moreover, each competitive area included at least one correctional institution and, in turn, at least one school. Because each correctional institution has its own organizational structure, we reject Appellants'

contention that the designation of the eleven areas violated the terms of the RIF policy as the staff within each correctional institution and school are "separately organized and clearly distinguishable from the staff in other areas."

There is also evidence in the record that the eleven geographic areas were reasonable based on financial and employee "bumping" considerations. Near, who was directed by Ozmint to create the competitive areas, testified he and his staff developed these areas based on the threshold understanding that an involuntary reassignment of an agency employee is limited to a thirty-mile radius. Near claimed the creation of the geographic areas was the best option to provide eliminated SCDC employees with the "biggest opportunity to bump" in a confined area so that they would not have to relocate to another area of the state. Ozmint also testified the regions were drawn to minimize bumping which, in turn, would result in cost savings. Jon Davis, the Director of Audits for the SCDC, testified the areas were allocated in such a way that "when the RIF took place, it would be a reasonable area for people to bump into and they wouldn't have such a huge commute to have to go all the way across the state." Davis compared the small geographic area to that of a "normal school district."

Based on the foregoing, we agree with the ALC that there were no procedural or statutory violations committed by the SCDC in creating the RIF. The RIF policy and plan complied with the requisite administrative and legislative provisions and was approved by the OHR as "procedurally correct" prior to its implementation.

In view of our decision, the question becomes whether the SCDC properly implemented the RIF plan.

D.

Appellants contend the SCDC's method of reassigning employees to temporary positions and rehiring retirees in a temporary capacity to provide educational services violated the provisions of the RIF policy. Based on the SCDC's utilization of temporary employees before and after the RIF, Appellants assert their rights as "covered employees" were violated given

they were precluded from being "recalled" into positions that were filled by temporary employees or briefly vacated when employees retired. Additionally, those Appellants who retained employment with the SCDC after the RIF assert they received a correctional officer's pay, which was "significantly below the statutory teacher pay schedule" despite performing essentially the same educational duties as they did prior to the RIF.

1.

We find Appellants are correct in their assessment of the SCDC's utilization of temporary employees.

There is no dispute that Appellants were "covered employees" at the time the SCDC implemented the RIF on June 1, 2003. As "covered employees," Appellants were entitled to be recalled for a period of one year (June 1, 2003 through May 31, 2004) if a position for which they were eligible became vacant. 23A S.C. Code Ann. Regs. 19-719.04(B)(4)(a) (Supp. 2010).

As the record reflects, several employees retired pursuant to the SCDC's "Retirement Opportunity" on July 16, 2003 and were then rehired by the SCDC in a temporary capacity. Although the SCDC was statutorily authorized to rehire these retirees, this optional decision should not have nullified Appellants' recall rights.

Once retired, the SCDC employees were required to "experience a 15 calendar-day break in service" and could be rehired in their present positions but in a temporary capacity. Because these employees experienced a "break in service"¹⁸ when they retired, their positions became vacant. Furthermore, at the point of their retirement, these employees lost any "right" to re-

¹⁸ Regulation 19-700 defines a "break in service" as "an interruption of continuous State service" and identifies six scenarios that satisfy this definition. 23A S.C. Code Ann. Regs. 19-700 (Supp. 2010). Subsection six of this regulation delineates a move "from a full-time (FTE) position to a temporary, temporary grant, or time-limited position" as constituting a "break in service." Id.

employment as this decision is within the discretion of the SCDC. See S.C. Code Ann. § 9-11-90(4)(a) (Supp. 2011) (outlining retirement provisions for PORS and stating, in part, that "[a] retired member of the system who has been retired for at least fifteen consecutive calendar days may be hired and return to employment covered by this system or any system provided in this title without affecting the monthly retirement allowance he is receiving from this system"); Ahrens v. State, 392 S.C. 340, 709 S.E.2d 54 (2011) (noting textual similarities between SCRS (section 9-1-1790) and PORS statutes and recognizing that an employee's decision to return to work after retiring was optional, as was an employer's decision to re-hire that employee).

In contrast, Appellants had statutory and policy priority over the retirees to be recalled into the vacant position. See S.C. Code Ann. § 8-11-185(C) (Supp. 2011) ("An agency seeking to fill a vacancy or a new position must obtain information from the Office of Human Resources' reduction in force applicant pool provided to the office pursuant to subsection (A). An agency shall provide priority consideration to employees terminated due to a reduction in force for any vacancy or new position in the same classification, classification series, or position category held at the time of layoff. An agency is prohibited from filling the position if the agency does not first seek to fill the position from among these qualified employees provided by the Office of Human Resources.").

Thus, Appellants were entitled to be recalled for the vacant positions. By implementing the "Retirement Opportunity" and immediately "recasting" the vacant positions as temporary positions, the SCDC deprived Appellants of their recall rights. Furthermore, there is evidence in the record that some of the rehired retirees were retained for more than one year in clear violation of the statutory definition of a "temporary employee," which in essence converted the temporary position to a Full-Time Equivalent (FTE) position.

Based on the foregoing, we conclude the ALC erred as a matter of law in analyzing the temporary employee issue. Accordingly, we reverse this portion of the ALC's order.

2.

The record reflects that four Appellants were retained as employees after the RIF, but were classified and paid as correctional officers rather than certified educators despite performing nearly identical duties as those assigned before the RIF.

James Bell testified that, prior to the RIF, he was employed as a vocational carpentry teacher at Perry Correctional Institution. He received his certification for vocational carpentry in 1977 and was first employed with the PUSD beginning in 1992. Bell lost this position due to the RIF, but was rehired in January 2006 to teach carpentry at the same location. Although he performed the same duties as before the RIF, Bell testified that he received approximately \$13,000 less than he was making in June 2003.

Nancy Glenn testified she was employed as a librarian for approximately eleven years prior to the RIF. After the RIF, Glenn lost her position but accepted a job as a correctional officer. According to Glenn, she performed the same librarian duties in the new position with "some additional duties as officer." She further stated that she worked in the same building before and after the RIF. Glenn, however, received approximately "one-half" her previous salary. Glenn served in this position for almost two years before being hired as classroom teacher and librarian at Trenton Correctional Institution.

Mary McCabe testified that she was employed as a library/media specialist in the education department located at Perry Correctional Institution prior to the RIF. After the RIF, McCabe accepted a position as a correctional officer in order to avoid losing her insurance and other state employee benefits. McCabe did not go through officer training and still performed her duties as the library/media specialist. McCabe testified that she received a \$2,100 reduction in pay. One month later, McCabe was offered the option of being called back into the position of library/media specialist on the condition that she would be transferred to the Tyger River Correctional Institution. McCabe accepted the offer with the understanding that she would be paid according to the teachers' pay schedule. Although McCabe was responsible for two libraries, she testified that her pay did not

increase but remained at the "same teacher scale pay" in the amount equal to her salary before the RIF.

Beverly McClanahan testified that prior to the RIF she was employed to teach vocational horticulture at Broad River Correctional Institution. After the RIF, McClanahan accepted a position as a correctional officer with a \$23,000 reduction in pay. In August 2004, McClanahan was asked to "come back and teach vocational horticulture but as a lieutenant." In this position, which was entitled "vocational trainer," McClanahan performed duties that "were exactly the same" as those that she had done prior to the RIF. In June 2005, McClanahan accepted a position at the Department of Juvenile Justice to teach horticulture and science. In this position, McClanahan was compensated according to the teachers' pay schedule.

In view of this evidence, we find the SCDC effectively circumvented the Court of Appeals' decision in Abraham as the affected Appellants were certified educators performing educational duties; thus, they were entitled to a salary that was commensurate with the teachers' pay schedule as established in Abraham. See Abraham v. Palmetto Unified Sch. Dist. No. 1, 343 S.C. 36, 49, 538 S.E.2d 656, 663 (Ct. App. 2000) (interpreting section 24-25-70(7) of the South Carolina Code and concluding that "the plain language of 'teachers' pay schedule based on the state and average school supplement pay scales' means that, in addition to the state mandatory minimum, [the PUSD] Employees are entitled to additional compensation equal to the mathematical average of all salary supplements paid by school districts across the state").

Our decision is guided by our recent opinion in Grimsley v. South Carolina Law Enforcement Division, 396 S.C. 276, 721 S.E.2d 423 (2012). In Grimsley, Appellants were rehired employees of the South Carolina Law Enforcement Division ("SLED") and members of the Police Officers Retirement System. As part of this process, SLED required Appellants to sign a form, which provided that Appellants "will have a reduction of 13.6% in [their] salary to cover the amount it will cost SLED to pay the employer portion of retirement." Id. at 279, 721 S.E.2d at 425. Appellants brought a takings claim on the ground this provision was contrary to section 9-11-90(4)(b) of the South Carolina Code, which assigns the responsibility for the employer portion of retirement to the employer. Id. We agreed with

Appellants, finding their "takings claim [was] predicated on their entitlement to retain the percentage of their salary--13.6%--that was used to pay the employer portion of the retirement contributions." Id. at 285, 721 S.E.2d at 428. Accordingly, we concluded that section 9-11-90 provided a basis for Appellants to assert a cognizable property interest rooted in state law that was sufficient to survive Respondent's motion to dismiss. Id.

Similar to the employees' statutory right in Grimsley, Appellants as "covered employees" were statutorily entitled to be recalled to vacant positions for a period of one year following the RIF. Furthermore, those employees who were retained after the RIF and performed the same educational duties were entitled to a salary based on the teachers' pay schedule established in Abraham. The SCDC could not, through an internal policy, deprive Appellants of these interests rooted in state law.¹⁹

¹⁹ As previously noted, the Regulations regarding RIFs were amended and became effective of May 28, 2010. Of import is a provision that states,

When a covered employee is assigned lower level responsibilities or demoted as a result of a reduction in force implemented due to budgetary reductions, the employee's salary may be reduced on the effective date of the reduction in force. The agency head or his designee, at his discretion, may reduce the employee's salary to a salary either between 0%–15% below the employee's current salary or between the employee's current salary and the midpoint of the lower pay band. In exercising this discretion, the agency head or his designee may use the option which results in the greatest cost savings.

1 S.C. Code Ann. Regs. 19-719.04(A)(5) (2011). We find this provision is inapplicable in the instant case as: (1) it post-dates the June 2003 RIF; and (2) the affected Appellants were not assigned lower level responsibilities but, rather, performed nearly identical duties to those assigned prior to the RIF.

E.

Finally, Appellants contend the RIF deprived them of the constitutionally protected right to continuing employment in violation of due process of law and the equal protection of laws. Specifically, Appellants explain that "[a]s 'covered employees,' [they] enjoyed the right to retain employment unless removed for cause or by proper reduction in force."

As previously discussed, we find Appellants were arbitrarily and capriciously denied a right to employment pursuant to their recall rights and a property interest as to their compensation established in Abraham. Thus, our decision to reverse the ALC with respect to the temporary employee issue and the salary issue is determinative that Appellants' substantive due process rights were violated.

We decline to address Appellants' remaining constitutional arguments as a decision would be inconsequential given our prior rulings. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues when disposition of a prior issue is dispositive); see also Arnal v. Fraser, 371 S.C. 512, 523, 641 S.E.2d 419, 424 (2007) ("It is our firm policy to decline to rule on constitutional issues unless such a ruling is required.").

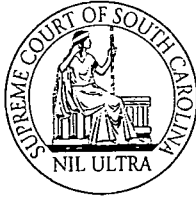
III.

Based on the foregoing, we find the SCDC properly created the RIF policy and submitted it to the OHR for approval. Because the OHR deemed the RIF "procedurally correct," the ALC correctly affirmed the Committee's decision regarding the inclusion of the PUSD in the RIF and the designation of the eleven competitive areas. We, however, conclude that the SCDC violated statutory law in precluding Appellants from exercising their priority right to recall as to the positions vacated by the retirees. Because the "Retirement Opportunity" offered by the SCDC required a fifteen-day break in service before rehiring, we find that "window" constituted a vacancy for which Appellants should have been offered the opportunity for employment. In a related issue, we find the SCDC violated the Abraham decision by

retaining certified educators after the RIF but paying them as correctional officers as they were entitled to be compensated commensurate with the teachers' pay schedule. Accordingly, we affirm in part, reverse in part, and remand this case to the Committee to determine the appropriate relief.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

**TOAL, C.J., PLEICONES, KITTREDGE and HEARN, JJ.,
concur.**



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 17, 2012

W. Allen Nickles, III, Esquire
Nickles Law Firm, LLC
1519 Richland St.
Columbia, SC 29201

Lake E. Summers, Esquire
Katherine Phillips, Esquire
Malone, Thompson, Summers & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

Re: Bell, James v. SCDC & Palmetto Unified

Dear Counsel:

The record in the above case has been reviewed and the time allotment for oral argument for this case is as follows:

Appellants	15 minutes
Respondents	15 minutes
Appellants in Reply	5 minutes

This case is scheduled for hearing on Wednesday, January 25, 2012 at 9:30 a.m.

Very truly yours,

Daniel E. Shearouse, Clerk

By Debbie M. Upthorpe
Administrative Assistant

DES/dmh



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

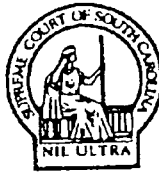
P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: W. Allen Nickles, III, Esquire
From: Daniel E. Shearouse
Date: November 10, 2011
RE: January Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the January 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of January 10, 11, 24, 25 and 26. Please notify this office in writing prior to November 18, 2011 as to any scheduling conflicts for the January term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Bell, James v. SCDC & Palmetto Unified



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Lake E. Summers, Esquire
Katherine Phillips, Esquire
From: Daniel E. Shearouse
Date: November 10, 2011
RE: January Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the January 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of January 10, 11, 24, 25 and 26. Please notify this office in writing prior to November 18, 2011 as to any scheduling conflicts for the January term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Bell, James v. SCDC & Palmetto Unified

The Supreme Court of South Carolina

James "Cal" Bell, Othella
Bernard, Katerina Bower,
Linda M.W. Bratton, Ann T.
Bridges, Richard M. Cobb as
Personal Representative of the
estate of Rance C. Cobb,
Jeannie B. Croxton, Bernetha
L, Culbreath, William K.
Dreyer, Jacqueline D. Farr,
Ruth Fritts, Nancy Glenn, Etta
Jane Jones, Geneva M. Martin,
Mary H. McCabe, Beverly
McClanahan, Max D.
Randolph, Carolyn McIver
Smith, Maggie G. Williams and
Paula Woodlief, Appellants,

v.

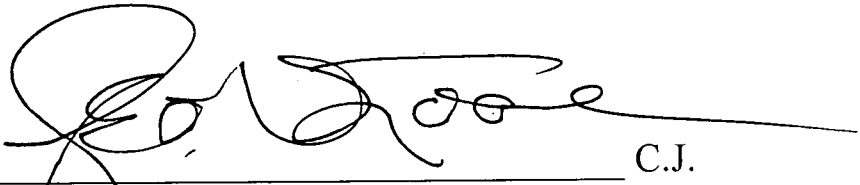
South Carolina Department of
Corrections and Palmetto
Unified School District No. 1, Respondents.

The Honorable John McLeod
Richland County
Trial Court Case No. 2009-AL-30-00103

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this appeal is hereby certified for review by the South Carolina Supreme Court. Upon receipt of this order, the Court of Appeals is hereby directed to forward the case file, all records and briefs and any exhibits on file to this Court.

IT IS SO ORDERED.



FOR THE COURT C.J.

Columbia, South Carolina

October 4, 2011

cc: W. Allen Nickles, III, Esquire
Eric Lake Summers, Esquire
The Honorable Tanya Gee

NICKLES LAW FIRM, LLC
- ATTORNEYS AT LAW -
1519 Richland Street
Columbia, South Carolina 29201

W. Allen Nickles, III
Certified Circuit Court Mediator

Telephone: (803) 779-8080
Facsimile: (803) 256-1816
Email: wanickles@nickleslaw.com

June 20, 2011

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**RE: James "Cal" Bell, et al. v. South Carolina Department of Corrections and
Palmetto Unified School District No. 1
Docket No.: 09-ALJ-30-0103-AP
Tracking No.: 2010170246**

**Robert L. Knight v. Charles P. Austin, Sr., et al.
Docket No.: 2008-CP-40-6316
Tracking No.: 2010169266**

**Kirby L. Bishop, et al. v. City of Columbia
Docket No.: 2009-CP-40-5680
Tracking No.: 2010176227**

RECEIVED
JUN 21 2011
SC Court of Appeals

Dear Ms. Gee:

The purpose of this letter is to inform the Court that Nickles & Solomon, LLC has been dissolved and the name of the firm has been changed to **Nickles Law Firm, LLC**. Please remove Carl L. Solomon from any correspondence or communication relating to the above litigation. All other contact information remains unchanged. Thank you for your attention to this matter.

Sincerely,



W. Allen Nickles, III

WAN/pfb
File #11-011

NICKLES & SOLOMON, LLC

- ATTORNEYS AT LAW -

Post Office Box 1866
Columbia, South Carolina 29202 - 1866

W. Allen Nickles, III
Carl L. Solomon

1519 Richland Street
Telephone: (803) 779-8080
Facsimile: (803) 256-1816

May 3, 2011

Via Hand Delivery

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
MAY 03 2011
SC Court of Appeals

**RE: James "Cal" Bell, et al. v. South Carolina Department of Corrections and
Palmetto Unified School District No. 1; Docket No.: 09-ALJ-30-0103-AP;
Tracking No.: 2010170246**

Dear Ms. Gee:

Enclosed please find the following:

1. Original unbound Record on Appeal plus 16 additional copies;
2. Original unbound Appellants' Final Brief plus 16 additional copies;
3. Certificate of Service plus one additional copy;
4. Certificate of compliance with Rule 211(b) plus one additional copy.

Please have someone contact this office when the additional copy of the Record has been clocked in and we will pick it up.

Thank you for your assistance and cooperation in this matter.

Sincerely,


W. Allen Nickles, III

WAN/pfb
Enclosure
cc: Lake E. Summers, Esquire
File #03-156

NICKLES & SOLOMON, LLC

- ATTORNEYS AT LAW -

Post Office Box 1866
Columbia, South Carolina 29202 - 1866

W. Allen Nickles, III
Carl L. Solomon

1519 Richland Street
Telephone: (803) 779-8080
Facsimile: (803) 256-1816

March 31, 2011

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**RE: James "Cal" Bell, et al. v. South Carolina Department of Corrections and
Palmetto Unified School District No. 1; Docket No.: 09-ALJ-30-0103-AP;
Tracking No.: 2010170246**

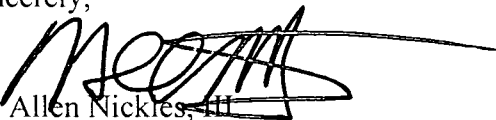
Dear Ms. Gee:

By Order of March 21, 2011, the Court directed that the entire Record before the Administrative Law Court be included in the Record on Appeal in the above matter. The Administrative Law Court record is comprised of 3399 pages, currently front and back in seven (7) volumes. It would appear that the most efficient manner of producing this record is to maintain the Administrative Law Court materials, intact, and to supplement the additional materials designated by the parties for review by the Court on appeal. These materials would begin at page number 3400 and following.

I am enclosing a draft Index that shows the proposed order for presenting the Record to the Court (page numbers following 3400 would be designated in the final Index and Record). I would appreciate your approval of this approach. Lake Summers, counsel for Respondent, has offered his consent to this proposal.

I look forward to hearing from you.

Sincerely,


W. Allen Nickles, III

WAN/pfb
Enclosure
cc: Lake E. Summers, Esquire
File #03-156

RECEIVED

APR 04 2011

SC Court of Appeals

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Letter of Samuel L. Wilkins dated January 9, 2004	18
Letter of W. Allen Nickles, III dated February 2, 2004.....	21
Letter of Samuel L. Wilkins dated March 22, 2004	24
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Order dated January 10, 2007	41
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Committee's Exhibit 1C, numbered 678-1274	2131
Committee's Exhibit 2	2729
Committee's Exhibit 3, Book 1, numbered 1-258	2901
Committee's Exhibit 4, Book 2, numbered 1-9	3161
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Appellant's Exhibit 2	3251
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Appellant's Exhibit 12	3391
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APR 04 2011

SC Court of Appeals

Order of the ALC Denying the Appeal Filed by Appellants and Affirming the Final Decision Issued by the State Employee Grievance Committee in Favor of the South Carolina Department of Corrections issued August 6, 2010	3400
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Brief of Respondents filed October 7, 2009	
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(except for the first paragraph appearing at the top of the sixth and final page of the supplemental brief and the entirety of the supporting material identified as Attachment 1)	
Respondents' Supplemental Brief filed November 17, 2009	
Transcript of Administrative Hearing conducted by the ALC dated October 28, 2009	
Notice of Re-assignment issued by the ALC on May 21, 2009	
Appellants' Notice of Appeal to the SC Court of Appeals filed August 24, 2010	
Letter of Appellants to the ALC dated November 18, 2009	
Order requiring submission of entire ALC record dated March 21, 2011	
Certificate of Counsel	



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

April 1, 2011

W. Allen Nickles, III, Esquire
The Solomon Law Group
1519 Richland St.
Columbia, SC 29201

Re: Bell, James v. SCDC & Palmetto Unified
Case Tracking #: 2010170246

Dear Mr. Nickles:

Thank you for your thoughtful consideration of assembling the Record on Appeal. I approve the approach you suggest in your correspondence dated March 31, 2011.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc: Christopher D. Florian, Esquire
Eric Lake Summers, Esquire

NICKLES & SOLOMON, LLC

- ATTORNEYS AT LAW -

Post Office Box 1866
Columbia, South Carolina 29202 - 1866

W. Allen Nickles, III
Carl L. Solomon

1519 Richland Street
Telephone: (803) 779-8080
Facsimile: (803) 256-1816

March 31, 2011

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MAR 31 2011

SC Court of Appeals

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**RE: James "Cal" Bell, et al. v. South Carolina Department of Corrections and
Palmetto Unified School District No. 1; Docket No.: 09-ALJ-30-0103-AP;
Tracking No.: 2010170246**

Dear Ms. Gee:

By Order of March 21, 2011, the Court directed that the entire Record before the Administrative Law Court be included in the Record on Appeal in the above matter. The Administrative Law Court record is comprised of 3399 pages, currently front and back in seven (7) volumes. It would appear that the most efficient manner of producing this record is to maintain the Administrative Law Court materials, intact, and to supplement the additional materials designated by the parties for review by the Court on appeal. These materials would begin at page number 3400 and following.

I am enclosing a draft Index that shows the proposed order for presenting the Record to the Court (page numbers following 3400 would be designated in the final Index and Record). I would appreciate your approval of this approach. Lake Summers, counsel for Respondent, has offered his consent to this proposal.

I look forward to hearing from you.

Sincerely,



W. Allen Nickles, III

WAN/pfb

Enclosure

cc: Lake E. Summers, Esquire

File #03-156

INDEX

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(except for the first paragraph appearing at the top of the sixth and final page of the supplemental brief and the entirety of the supporting material identified as Attachment 1)	
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Order requiring submission of entire ALC record dated March 21, 2011	
Certificate of Counsel	

The South Carolina Court of Appeals

James "Cal" Bell, Othella Bernard,
Katerina Bower, Linda M.W. Bratton,
Ann T. Bridges, Richard M. Cobb as
Personal Representative of the estate of
Rance C. Cobb, Jeannie B. Croxton,
Bernetha L. Culbreath, William K.
Dreyer, Jacqueline D. Farr, Ruth Fritts,
Nancy Glenn, Etta Jane Jones, Geneva
M. Martin, Mary H. McCabe, Beverly
McClanahan, Max D. Randolph,
Carolyn McIver Smith, Maggie G.
Williams and Paula Woodlief, Appellants,

v.

S.C. Department of Corrections and
Palmetto Unified School District No. 1, Respondents.

The Honorable John McLeod
Richland County
Trial Court Case No. 2009-AL-30-00103

ORDER

Appellants move to strike Respondents' designation of matter to be included in the record on appeal or in the alternative, to pay costs to produce the entire record considered by the administrative law court. The entire record considered by the administrative law court is 3,999 pages.

Rule 210(c), SCACR, places the burden of paying for the record on appeal on the Appellant. Accordingly, Appellants' motion must be denied. Nothing in this motion prevents Appellants from moving pursuant to Rule 222(c), SCACR, after the appeal is determined.

AND IT IS SO ORDERED.

Jasper W. Curreton A.J.

Columbia, South Carolina

cc: W. Allen Nickles, III, Esquire
Christopher D. Florian, Esquire
Eric Lake Summers, Esquire

FILED
3/21/11



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
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COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 21, 2011

W. Allen Nickles, III, Esquire
The Solomon Law Group
1519 Richland St.
Columbia, SC 29201

Re: Bell, James v. SCDC & Palmetto Unified
Case Tracking #: 2010170246

Dear Mr. Nickles:

Enclosed is a copy of an Order of the Court regarding the above case.

All parties are advised the Record on Appeal must be served and proof of service filed no more than thirty days from the date of this letter.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc: Christopher D. Florian, Esquire
Eric Lake Summers, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
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www.sccourts.org

January 14, 2011

Eric Lake Summers, Esquire
Malone, Thompson, Summers
& Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

Re: Bell, James v. SCDC & Palmetto Unified
Case Tracking #: 2010170246

Dear Mr. Summers:

The following Order has been endorsed on your "Respondent SCDC's Motion to File It's Return to the Appellants' 'Motion to Strike Respondents' Designation of Matter to be Included in the Record on Appeal or In the Alternative to Compel Respondents to Pay Costs Required to Produce Entire Record Below' Out of Time" in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

January 14, 2011 ."

Please be advised Appellants' Return has been received and accepted as filed. Appellant may serve and file a Reply to Respondents' Return no more than seven days from the date of this letter.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc: W. Allen Nickles, III, Esquire
Christopher D. Florian, Esquire

RECEIVED

DEC 31 2010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Judge

Docket No. 09-ALJ-30-0103-AP

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M.W. Bratton,
Ann T. Bridges, Richard M. Cobb as Personal Representative of the Estate of
Rance C. Cobb, Jeannie B. Croxton, Bernetha L. Culbreath, William K.
Dreyer, Jacqueline D. Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Geneva
M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph,
Carolyn McIver Smith, Maggie W. Williams and Paula Woodlief, ... Appellants,

v.

South Carolina Department of Corrections and Palmetto Unified School
District No. 1, ... Respondents.

**RESPONDENT SCDC'S RETURN TO THE APPELLANTS'
"MOTION TO STRIKE RESPONDENTS' DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL
OR IN THE ALTERNATIVE TO COMPEL RESPONDENTS TO PAY COSTS
REQUIRED TO PRODUCE ENTIRE RECORD BELOW"**

Lake E. Summers
Katherine Phillips
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
Office: (803) 254-3300
Fax: (803)-254-0309
E-mail: summers@mtsolvlawfirm.com
phillips@mtsolvlawfirm.com

Counsel for Respondent SCDC

I. SCDC'S RETURN TO THE APPELLANTS' MOTION

Under the authority of South Carolina Appellate Court Rule ["SCACR"] 240(e), Respondent South Carolina Department of Corrections ["SCDC"], by and through its undersigned counsel and on behalf of its Division of Education, also known as the Palmetto Unified School District No. 1, respectfully submits its return in opposition to the "Motion to Strike [SCDC's] Designation of Matter to be Included in the Record on Appeal or, in the Alternative, to Compel [SCDC] to Pay Costs Required to Produce Entire Record Below" filed by the Appellants with this Court on December 15, 2010.

II. OPERATIVE PARAGRAPHS OF THE APPELLANTS' MOTION

The Appellants articulated the following operative paragraphs in their motion:¹

On December 10, 2010, [SCDC] filed [its] initial brief and a designation of matter that does not identify with specificity the pages from the record presented to the Administrative Law Court relied upon in [its] brief. Instead, [SCDC] designate[s] "the entirety of the Record on Appeal considered by the Administrative Law Court ["ALC"] ... (ALC ROA pp. 1 – 3399) ..." **in addition to other items not challenged here.**² A copy of the designation filed by [SCDC] is provided as Appendix B.

[SCDC's] initial brief, including an appendix, contains only 208 page references of the 3399 pages of the record before the ALC. A list of pages referenced in [SCDC's] initial brief is provided as Appendix C.³

Appellants respectfully submit that the record before this Court should be confined to those materials cited in the briefs of the parties, including the

¹ See the Appellants' Motion, p. 2.

² SCDC designated 11 other items for inclusion in the Record on Appeal to this Court. See Appendix B to the Appellants' Motion, pp. 1 – 2. The Appellants did not target these items in their motion to strike.

³ The list of pages provided by the Appellants in Appendix C does not represent the entirety of the pages referenced by SCDC in its initial brief. In addition to the pages identified by the Appellants in Appendix C, SCDC referenced the following pages from the record considered by the ALC in its initial brief:

ALC ROA pp. 251 – 52	ALC ROA p. 1392	ALC ROA pp. 2554 – 57	ALC ROA p. 2704
ALC ROA p. 820	ALC ROA p. 1394	ALC ROA pp. 2625 – 28	

entirety of any designated pleadings, decision and orders,⁴ and those pages required by [SCACR] 210(c) to identify witness testimony. In the alternative, Appellants request that [SCDC] be compelled to reimburse Appellants for costs incurred in reproducing the seven volume, 3399 page, record before the ALC. [emphasis supplied].

III. APPLICABLE RULES

SCACR 208 is entitled “Initial Briefs,” and SCACR 208(b)(4) provides that a party’s initial brief “shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see (SCACR) 210(c)] **to support the salient facts alleged.**” [emphasis supplied].

SCACR 209(a) provides that “[a]t the same time a party serves his initial brief(s) under [SCACR] 208, ... he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal.” In its entirety, SCACR 209(b) further provides as follows:

The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See (SCACR) 210(c)]. **A party shall not include any matter in his Designation which is not relevant to the appeal.** [emphasis supplied].

SCACR 210(c) provides, in relevant part, as follows:

⁴ Within its August 6, 2010 order, the ALC referenced the following pages from the record it considered:

ALC ROA pp. 8 – 17	ALC ROA pp. 732 – 48	ALC ROA pp. 2115 – 18
ALC ROA pp. 29 – 39	ALC ROA pp. 854 – 55	ALC ROA pp. 2272 – 79
ALC ROA pp. 40 – 49	ALC ROA pp. 866 – 70	ALC ROA p. 2281
ALC ROA pp. 256 – 57	ALC ROA p. 971	ALC ROA p. 2285
ALC ROA p. 261	ALC ROA p. 1253	ALC ROA pp. 2320 – 57
ALC ROA pp. 468 – 69	ALC ROA pp. 1424 – 25	ALC ROA p. 2338
ALC ROA pp. 700 – 06	ALC ROA pp. 1454 – 92	ALC ROA pp. 2695 – 99
ALC ROA p. 715	ALC ROA pp. 1694 – 99	ALC ROA pp. 50 – 1453
ALC ROA p. 726 – 35	ALC ROA pp. 2112 – 13	

The Appellants failed to include any of these passages within the designation of matter they submitted to this Court.

The Record on Appeal shall include all matter designated to be included by any party under [SCACR] 209 and shall comply with the requirements of [SCACR] 267. **The Record shall not, however, include matter which was not presented to the lower court or tribunal.** [emphasis supplied].

Finally, SCACR 210(h) provides that, except as contemplated by SCACR 212 and SCACR 208(b)(1)(C) and (2), “the appellate court will not consider any fact which does not appear in the Record on Appeal.”

IV. SCDC’S RETURN TO THE APPELLANTS’ MOTION TO STRIKE

A. ARGUMENT IN OPPOSITION TO THE APPELLANTS’ MOTION

As accurately stated by the Appellants, SCDC included the entirety of the record considered by the ALC in the Designation of Matter to be Included in the Record on Appeal it filed with this Court on December 10, 2010.⁵

Obviously, SCDC recognizes the logistical and, as they discussed towards the end of their motion, financial burden placed upon the Appellants by designating the entirety of the record considered by the ALC for inclusion in the Record on Appeal before this Court. SCDC also recognizes the reality that, by having designated the entirety to the record considered by the ALC for inclusion in the Record on Appeal before this Court, this Court must process and, of course, consider the contents of a Record on Appeal which would exceed the nearly 3,400 page record considered by the ALC.⁶

However, given the panoramic breadth of factual disputes and legal issues animated by the Appellants within their initial brief, SCDC properly identified the entirety of the record considered by the ALC within its designation of matter, and, therefore, the Appellants should

⁵ As the Appellants attempted to detail in Appendix C of their motion, SCDC obviously provided specific references to the record considered by the ALC within the brief and supporting appendix it filed with this Court on December 10, 2010. In note 3 above, SCDC included references to the record which appeared in its brief and supporting appendix which the Appellants omitted from Appendix C.

⁶ See note 2 above.

include the entirety of the record considered by the ALC in the Record on Appeal they must submit to this Court. Accordingly, this Court should deny the Appellants' motion to strike.

The Appellants did not argue that SCDC, by including the entirety of the record considered by the ALC in its designation of matter, included any matter which was not relevant to their appeal. Instead, the Appellants only argued that the Record on Appeal to this Court "should be confined to those materials cited in the briefs of the parties, including the entirety of any designated pleadings, decision and orders, and those pages required by [SCACR] 210(c) to identify witness testimony." SCDC respectfully submits, however, that confining the Record on Appeal to this Court in the manner advocated by the Appellants is simply not practical given the array of disputes and issues animated by the Appellants in their initial brief.

The Appellants clearly challenged the entirety of the ALC's August 6, 2010 order in their initial brief by asserting as follows:⁷

The ALC order identifies three general holdings in affirming the final decision of the State Grievance Committee: (1) that SCDC did not violate the RIF policy, state law, controlling regulations, or the constitution by including Appellants and other certified educators in the RIF; (2) that SCDC did not violate RIF policy, state law, controlling regulations, or the constitution by creating eleven geographic areas for purposes of implementing the RIF; and (3) that SCDC did not violate RIF policy, state law, controlling regulations, or the constitution by retaining and hiring

⁷ See the Appellants Initial Brief, pp. 2 – 3. SCDC, in footnote 7 of its initial brief, recognized the following:

The ALC determined that the Appellants "did not identify distinct issues on appeal within their principle brief," and it determined that their legal arguments "identified instances in which [SCDC's] decisions and actions (1) purportedly violated provisions of [SCDC's] own RIF policy, (2) purportedly violated state statutes, (3) purportedly violated provisions of our state's constitution, and (4) purportedly deprived the Appellants of rights apparently secured to them by [SCDC's] own RIF policy, state law, and state regulation." (ALC Order, pp. 8 – 9).

While the Appellants better identified distinct issues on appeal in their initial brief to this Court, SCDC respectfully maintains that the Appellants' initial brief reflects many of the same flaws in format and structure that appeared within their brief to the ALC.

temporary employees before and after the RIF.⁸

For the following reasons, each of these holdings represents a misapplication of controlling policy, regulation, law, and constitutional guarantees.

By challenging the ALC's ruling which affirmed the final decision issued by the State Employee Grievance Committee in SCDC's favor, the Appellants are, by extension, renewing their challenge of the Committee's final decision. Thus, contrary to the Appellants' desire to confine the Record on Appeal to this Court to only "those materials cited in the briefs of the parties," this Court should have the entirety of the record considered by the ALC at its disposal in order to properly assess the arguments articulated by the parties in their respective filings.

Is so urging this Court to deny the Appellants' motion to strike, SCDC respectfully reminds this Court that the Appellants relied upon 25 paragraphs of purportedly uncontested "facts" as the foundation of their initial brief. SCDC offered the following relevant observations and argument concerning the Appellants' 25 paragraphs of purported "facts" in its initial brief:⁹

[T]he analysis conducted by the Appellants is built upon a foundation of 25 enumerated paragraphs of purportedly "uncontested facts" which simply do not conform to the dispositive facts considered and determined by the Committee and then adopted by the ALC. As the Appellants didn't even acknowledge that their 25 enumerated paragraphs of facts deviate from the dispositive facts determined by the Committee and adopted by the ALC, they made no effort to argue or demonstrate to this Court, aside from a litany of conclusory statements, that either the Committee or the ALC rendered factual conclusions that are not supported by the substantial evidence in the record. Instead, their purported "facts" represent an "alternate reality" upon which the Appellants illegitimately contend that the ALC erred by affirming the Committee's Decision.

⁸ In the footnote associated with this paragraph, the Appellants referenced page 9 of the ALC's August 6, 2010 order, and, by also referencing page 42 of the ALC's order, they asserted that "[a]ll issues raised by Appellants before the ALC are preserved for review by this Court." [emphasis supplied]. See Appellants' Initial Brief, p. 3, n. 2.

⁹ See SCDC's Initial Brief, pp. 4 – 5.

Due to space limitations imposed by the applicable rules of this Court, SCDC simply could not contradict or negate every purported “fact” offered by the Appellants within their initial brief.¹⁰ Ultimately, SCDC offers the following rhetorical question: how can this Court determine whether, as argued by SCDC in its initial brief, the vast majority of the purported “facts” identified by the Appellants in their initial brief do not conform to the actual facts reflected in the record considered by the ALC unless the entirety of the record considered by the ALC is before this Court? *See Forner v. Butler*, 460 S.E.2d 425 (S.C. Ct. App. 1995) (The only matter that should not appear in the appellate record are those items a party believes are not relevant to the appeal.)

Therefore, SCDC respectfully argues in opposition to the Appellants’ motion that the entirety of the record considered by the ALC represents relevant material which SCDC properly included within its designation of matter, and, consequentially, SCDC respectfully urges this Court to deny the Appellants’ motion to strike.

B. SCDC’S RESPONSE TO THE APPELLANTS’ ALTERNATIVE MOTION

As an alternative to striking the entire record considered by the ALC from SCDC’s designation of matter, the Appellants requested “that [SCDC] be compelled to reimburse Appellants for costs incurred in reproducing the seven volume, 3399 page, record before the ALC.” SCDC respectfully observes that, pursuant to SCACR 210, the Appellants, as the moving party, are responsible for assembling and reproducing the Record on Appeal considered by this Court. Thus, if this Court, after considering SCDC’s instant return in opposition to the Appellants’ motion to strike, determines that SCDC properly included the entirety of the record

¹⁰ SCDC prepared a separate analysis of key paragraphs from the Appellants’ “STATEMENT OF FACTS,” the section of the Appellants’ initial brief in which they presented their 25 paragraphs of purportedly uncontested “facts.” In its analysis, SCDC compared the paragraph under examination with the the relevant and, in many instances, contradictory material within the record considered by the ALC. This analysis appeared as the sole appendix to SCDC’s initial brief.

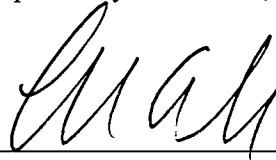
considered by the ALC in its designation of mater, SCDC simply asks that the provisions of SCACR 210 apply to the Appellants' obligations regarding the Record on Appeal.

However, as SCDC respectfully argued above that this Court should have at its disposal the entirety of the record considered by the ALC as it considers the panoramic breadth of factual disputes and legal issues animated by the Appellants in their brief, SCDC will accept any alternative fashioned by this Court regarding the costs associated with reproducing the entirety of the record considered by the ALC.

V. CONCLUSION

For the foregoing reasons, SCDC respectfully urges this Court to deny the Appellants' motion to strike.

Respectfully submitted,



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Fax: (803) 254-0309
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phillips@mtsolvlawfirm.com

Counsel for Respondent SCDC

Columbia, South Carolina
December 31, 2010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Judge

Docket No. 09-ALJ-30-0103-AP

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M.W. Bratton,
Ann T. Bridges, Richard M. Cobb as Personal Representative of the Estate of
Rance C. Cobb, Jeannie B. Croxton, Bernetha L. Culbreath, William K.
Dreyer, Jacqueline D. Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Geneva
M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph,
Carolyn McIver Smith, Maggie W. Williams and Paula Woodlief, ... Appellants,

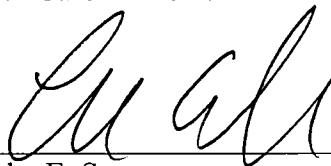
v.

South Carolina Department of Corrections and Palmetto Unified School
District No. 1, ... Respondents.

PROOF OF SERVICE

I certify that I have served **RESPONDENT SCDC'S RETURN TO THE APPELLANTS' "MOTION TO STRIKE RESPONDENTS' DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL OR IN THE ALTERNATIVE TO COMPEL RESPONDENTS TO PAY COSTS REQUIRED TO PRODUCE ENTIRE RECORD BELOW"** on the above named Appellants by depositing a copy of it in the United States Mail, First Class Postage Pre-Paid, to their counsel addressed as follows:

W. Allen Nickles, III, Esquire
Nickles & Solomon, LLC
1519 Richland Street
Columbia, South Carolina 29201



December 31, 2010

Lake E. Summers

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Judge

Docket No. 09-ALJ-30-0103-AP

RECEIVED

DEC 29 2010

SC Court of Appeals

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M.W. Bratton,
Ann T. Bridges, Richard M. Cobb as Personal Representative of the Estate of
Rance C. Cobb, Jeannie B. Croxton, Bernetha L. Culbreath, William K.
Dreyer, Jacqueline D. Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Geneva
M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph,
Carolyn McIver Smith, Maggie W. Williams and Paula Woodlief, ...

Appellants,

v.

South Carolina Department of Corrections and Palmetto Unified School
District No. 1, ...

Respondents.

**RESPONDENT SCDC'S MOTION TO FILE ITS RETURN TO THE APPELLANTS'
"MOTION TO STRIKE RESPONDENTS' DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL
OR IN THE ALTERNATIVE TO COMPEL RESPONDENTS TO PAY COSTS
REQUIRED TO PRODUCE ENTIRE RECORD BELOW"
OUT OF TIME**

Respondent South Carolina Department of Corrections ["SCDC"], by and through its undersigned counsel and on behalf of its Division of Education, also known as the Palmetto Unified School District No. 1, hereby move this Court for an Order granting a two (2) day extension of time by which to file and serve its return to the above-referenced motion.

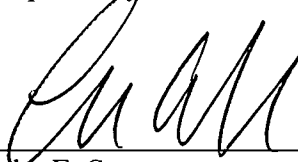
SCDC's undersigned counsel received the Appellants' above-referenced motion on December 15, 2010. Ordinarily, SCDC's return would have been due Monday, December 27, 2010, but, in light of the holiday schedule observed by the Court, SCDC's return is due today, Wednesday, December 29, 2010.

SCDC's undersigned counsel, by virtue of personal obligations associated the holiday season, now respectfully move this Court for an extension of the above-referenced deadline. Specifically, SCDC's undersigned counsel respectfully moves this Court to extend the deadline by which SCDC's return is due from today, Wednesday, December 29, 2010 until Friday, December 31, 2010.

SCDC's undersigned counsel communicated their intent to file the instant motion to Appellants' counsel, W. Allen Nickles, III, Esquire by e-mail on Tuesday, December 28, 2010, and, by reply e-mail transmitted the same day, Mr. Nickles consented to the extension requested within the instant motion.

Thus, Should the Court grant this motion, SCDC's return would be due no later than Friday, December 31, 2010.

Respectfully submitted:



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Katherine Phillips

Malone, Thompson, Summers & Ott LLC

339 Heyward Street, Suite 200

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Fax: (803)-254-0309

E-mail: summers@mtsolvlawfirm.com

phillips@mtsolvlawfirm.com

Counsel for Respondent SCDC

Other Counsel of Record:

W. Allen Nickles, III, Esquire

Nickles & Solomon, LLC

1519 Richland Street

Columbia, South Carolina 29201

(803) 779-8080

Counsel for the Appellants

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
(Clerk) (Deputy Clerk)

FILED

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Judge

Docket No. 09-ALJ-30-0103-AP

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DEC 29 2010

SC Court of Appeals

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M.W. Bratton,
Ann T. Bridges, Richard M. Cobb as Personal Representative of the Estate of
Rance C. Cobb, Jeannie B. Croxton, Bernetha L. Culbreath, William K.
Dreyer, Jacqueline D. Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Geneva
M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph,
Carolyn McIver Smith, Maggie W. Williams and Paula Woodlief, ...

Appellants,

v.

South Carolina Department of Corrections and Palmetto Unified School
District No. 1, ...

Respondents.

PROOF OF SERVICE

I certify that I have served **RESPONDENT SCDC'S MOTION TO FILE ITS RETURN TO THE APPELLANTS' "MOTION TO STRIKE RESPONDENTS' DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL OR IN THE ALTERNATIVE TO COMPEL RESPONDENTS TO PAY COSTS REQUIRED TO PRODUCE ENTIRE RECORD BELOW" OUT OF TIME** on the above named Appellants by depositing a copy of it in the United States Mail, First Class Postage Pre-Paid, to their counsel addressed as follows:

W. Allen Nickles, III, Esquire
Nickles & Solomon, LLC
1519 Richland Street
Columbia, South Carolina 29201



Lake E. Summers

December 29, 2010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
Administrative Law Court

John D. McLeod, Judge

Docket No.: 09-ALJ-30-0103-AP

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SC Court of Appeals

OK # 5362
\$ 25

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M.W. Bratton, Ann T. Bridges, Richard M. Cobb as Personal Representative of the Estate of Rance C. Cobb, Jeannie B. Croxton, Bernetha L. Culbreath, William K. Dreyer, Jacqueline D. Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Geneva M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph, Carolyn McIver Smith, Maggie G. Williams and Paula Woodlief,..... Appellants.

v.

South Carolina Department of Corrections and Palmetto Unified School District No. 1
..... Respondents.

MOTION TO STRIKE RESPONDENTS'
DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL
OR IN THE ALTERNATIVE TO COMPEL RESPONDENTS
TO PAY COSTS REQUIRED TO PRODUCE ENTIRE RECORD BELOW

Appellants are educators removed from their positions of employment with the Respondents as a result of a reduction in force implemented on June 1, 2003. Appellants exhausted available administrative remedies, presented an appeal to the Administrative Law Court and timely filed this appeal. On September 21, 2010, Appellants filed their initial brief and designated materials relevant for review of their appeal in keeping with Rule 210 SCACR. A copy of the designation filed by Appellants is provided as Appendix A.

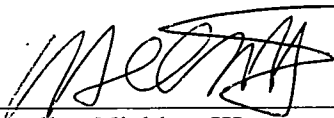
On December 10, 2010, Respondents filed their initial brief and a designation of matter that does not identify with specificity the pages from the record presented to the Administrative Law Court relied upon in their brief. Instead, Respondents designate "the entirety of the Record on Appeal considered by the Administrative Law Court ["ALC"]. . . (ALC ROA pp. 1-3399). . ." in addition to other items not challenged here. A copy of the designation filed by Respondents is provided as Appendix B.

Respondents' initial brief, including an appendix, contains only 208 page references of the 3399 pages of the record before the ALC. A list of pages referenced in Respondents' initial brief is provided as Appendix C.

Appellants respectfully submit that the record before this Court should be confined to those materials cited in the briefs of the parties, including the entirety of any designated pleadings, decisions and orders, and those pages required by Rule 210(c) to identify witness testimony. In the alternative, Appellants request that Respondents be compelled to reimburse Appellants for costs incurred in reproducing the seven volume, 3399 page, record before the ALC.

Appellants certify that an effort was made to resolve this matter prior to the filing of this motion.

NICKLES & SOLOMON, LLC

BY: 

W. Allen Nickles, III
1519 Richland Street
Columbia, South Carolina 29201
(803)779-8080

Attorneys for Appellants

December 15, 2010
Columbia, South Carolina

APPENDIX A

RECEIVED
SEP 21 2010
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
Administrative Law Court

John D. McLeod, Judge

Docket No.: 09-ALJ-30-0103-AP

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v.

South Carolina Department of Corrections and Palmetto Unified School District No. 1
..... Respondents.

APPELLANTS' DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. From the Record on Appeal of the Administrative Law Court:

ROA pp. 11-14

ROA pp. 172-75; 178-79; 186-88; 192-93

ROA pp. 205-06; 208-09; 247-48; 275-76; 278-86; 281-82

ROA pp. 361-62; 377-78; 389-90

ROA pp. 483-88

ROA pp. 509-15; 525-28

ROA pp. 621-23

ROA pp. 723-25

ROA pp. 818-21; 823-24; 863-65

ROA pp. 900-01; 913-17; 920-22; 995-1001

ROA pp. 1038-39; 1045-46; 1052; 1054-56; 1072; 1077-1080; 1085-87;
1095-96

ROA pp. 1163-67

ROA pp. 1279-80

ROA pp. 1634; 1638; 1640; 1653-59

ROA pp. 1926-59; 1934-35

ROA pp. 2114; 2233-38; 2361; 2403-17; 2554-57; 2560-72; 2614; 2617-
18; 2625-28; 2635; 2682; 2700-01; 2704; 2706; 2709-10; 2713-
16; 2718-19; 2720-22; 2725; 2792; 2972; 2991-92

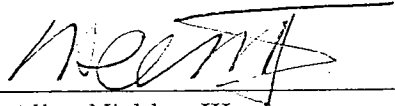
ROA pp. 3068; 3114; 3119; 3131-39; 3142; 3145; 3157-59; 3251; 3254-
58; 3301-08; 3355-56; 3390-91; 3396-98

2. Final Decision of the State Grievance Committee dated February 18, 2009
3. Appendix A to Appellants' Brief to the ALC dated July 16, 2009
4. Order of the Administrative Law Court dated August 6, 2010
5. Notice of Appeal dated August 24, 2010

I certify that this designation contains no matter which is irrelevant to this appeal.

NICKLES & SOLOMON, LLC

BY: _____


W. Allen Nickles, III
1519 Richland Street
Columbia, South Carolina 29201
(803)779-8080

Attorneys for Appellants

September 21, 2010
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
Administrative Law Court

John D. McLeod, Judge

Docket No.: 09-ALJ-30-0103-AP

RECEIVED
SEP 21 2010
SC Court of Appeals

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M.W. Bratton, Ann T. Bridges, Richard M. Cobb as Personal Representative of the Estate of Rance C. Cobb, Jeannie B. Croxton, Bernetha L. Culbreath, William K. Dreyer, Jacqueline D. Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Geneva M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph, Carolyn McIver Smith, Maggie G. Williams and Paula Woodlief,..... Appellants.

v.

South Carolina Department of Corrections and Palmetto Unified School District No. 1
..... Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served Appellants' Designation of Matter to be Included in the Record on Appeal by hand delivery, as follows:

Eric Lake Summers, Esquire
Malone, Thompson, Summers & Ott, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201

This st 21 day of September, 2010.

NICKLES & SOLOMON, LLC


W. Allen Nickles, III
1519 Richland Street
Columbia, South Carolina 29201
(803)779-8080

Columbia, South Carolina

Attorneys for Appellants

APPENDIX B

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Judge

Docket No. 09-ALJ-30-0103-AP

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M.W. Bratton,
Ann T. Bridges, Richard M. Cobb as Personal Representative of the Estate of
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M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph,
Carolyn McIver Smith, Maggie W. Williams and Paula Woodlief, ... Appellants,

v.

South Carolina Department of Corrections and Palmetto Unified School
District No. 1, ... Respondents.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

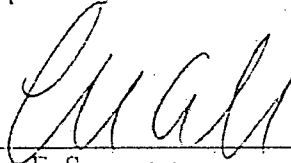
The Respondent, the South Carolina Department of Corrections ["SCDC"], by and through its undersigned counsel and on behalf of its Division of Education, also known as the Palmetto Unified School District No. 1 ["PUSD"], respectfully proposes the following matter to be included in the Record on Appeal in the instant case:

1. The entirety of the Record on Appeal considered by the Administrative Law Court ["ALC"], Case No. 09-ALJ-30-0103-AP (ALC ROA pp. 1 – 3399), which includes the following:
 - 1.1 The Final Decision issued by the State Employee Grievance Committee ["Committee"] on February 18, 2009 (ALC ROA, pp. 8 – 17).
2. Appellants' Notice of Appeal dated March 10, 2009 to the ALC regarding the Committee's February 18, 2009 Final Decision.
3. Notice of Assignment issued by the ALC (Judge Matthews) on March 12, 2009.

4. Notice of Re-assignment issued by the ALC (Judge McLeod) on May 21, 2009.
5. Appellants' Brief (including supporting material identified as "Appendix A") dated July 16, 2009.
6. Brief (including supporting material identified as "Appendix A") of Respondent SCDC and of its Division of Education, also known as [the PUSD], dated and filed October 7, 2009.
7. Transcript of Administrative Hearing Conducted by the ALC (Judge McLeod) on October 28, 2009;
8. Appellants' Supplemental Brief (*except for the first paragraph appearing at the top of the sixth and final page of the supplemental brief and the entirety of the supporting material identified as "Attachment 1"*) dated November 17, 2009.
9. Supplemental Brief of Respondent SCDC and of its Division of Education, also known as [the PUSD], dated and filed November 17, 2009.
10. Letter from Appellants to the ALC dated November 18, 2009 (and supporting materials) in response to the Supplemental Brief of Respondent SCDC and of its Division of Education, also known as [the PUSD], dated and filed November 17, 2009.
11. Substituted Order of the ALC Denying the Appeal filed by the Appellants and Affirming the Final Decision issued by the Committee in favor of Respondent SCDC issued August 6, 2010.
12. Notice of Appeal filed by the Appellants with this Court dated August 24, 2010.

Counsel certifies that this designation contains no matter which is irrelevant to this appeal.

Respectfully submitted:



December 10, 2010

Lake E. Summers
Katherine Phillips
Malone, Thompson, Summers & Ott LLC
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Fax: (803)-254-0309
E-mail: summers@mtsolvlawfirm.com
phillips@mtsolvlawfirm.com

Counsel for Respondent SCDC

Counsel for the Appellants:
W. Allen Nickles, III
NICKLES & SOLOMON, LLC
1519 Richland Street
Columbia, South Carolina 29201
(803) 779-8080

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

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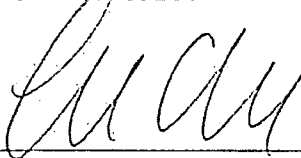
South Carolina Department of Corrections and Palmetto Unified School
District No. 1, ... Respondents.

PROOF OF SERVICE

I certify that I have served a copy of Respondent SCDC's Designation of Matter to be
Included in the Record on Appeal on the above named Appellants by mailing a copy of it to
their counsel, first class postage pre-paid, at the following address:

W. Allen Nickles, III
NICKLES & SOLOMON, LLC
1519 Richland Street
Columbia, South Carolina 29201

December 10, 2010



Lake E. Summers

APPENDIX C

Respondents' reference to the Record on Appeal of the Administrative Law Court contained in their initial brief to this Court:

ROA pp. 1; 3-6; 8-20; 79

ROA pp. 172-75; 178-79; 186-88; 192-93; 197

ROA pp. 205-06; 208-09; 213; 248-50; 253-54; 273-76; 281-82

ROA pp. 361-62

ROA pp. 467; 475-76; 486

ROA pp. 541-42

ROA pp. 723-25

ROA pp. 816-17; 821-21; 848-49

ROA pp. 973-74; 978-79; 985-86; 993

ROA pp. 1038-39; 1045-46; 1052; 1054-1096

ROA pp. 1188

ROA pp. 1277; 1279

ROA pp. 1364; 1395-96

ROA pp. 1400

ROA pp. 1626-32; 1633-59

ROA pp. 1926-27; 1934-35; 1953-59

ROA pp. 2233-38; 2403-17; 2560; 2567-68; 2635; 2682; 2696; 2709-10;
2714-15; 2718

ROA pp. 3251; 3263; 3301-02; 3390-91; 3396; 3398

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
Administrative Law Court

John D. McLeod, Judge

RECEIVED

DEC 15 2010

Docket No.: 09-ALJ-30-0103-AP

SC Court of Appeals

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M.W. Bratton, Ann T. Bridges, Richard M. Cobb as Personal Representative of the Estate of Rance C. Cobb, Jeannie B. Croxton, Bernetha L. Culbreath, William K. Dreyer, Jacqueline D. Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Geneva M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph, Carolyn McIver Smith, Maggie G. Williams and Paula Woodlief,..... Appellants.

v.

South Carolina Department of Corrections and Palmetto Unified School District No. 1
..... Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served Appellants' Motion to Strike Designation of Matter or in the Alternative to Compel Respondents to Pay Costs Required to Produce the Entire Record Below by hand delivery, as follows:

Lake E. Summers, Esquire
Malone, Thompson, Summers & Ott, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201

This 15th day of December, 2010.

NICKLES & SOLOMON, LLC



W. Allen Nickles, III
1519 Richland Street
Columbia, South Carolina 29201
(803)779-8080

Columbia, South Carolina

Attorneys for Appellants

NICKLES & SOLOMON, LLC

- ATTORNEYS AT LAW -

Post Office Box 1866
Columbia, South Carolina 29202 - 1866

W. Allen Nickles, III
Carl L. Solomon

1519 Richland Street
Telephone: (803) 779-8080
Facsimile: (803) 256-1816

December 15, 2010

Via Hand Delivery

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
DEC 15 2010
SC Court of Appeals

**RE: James "Cal" Bell, et al. v. South Carolina Department of Corrections and
Palmetto Unified School District No. 1; Docket No.: 09-ALJ-30-0103-AP;
Tracking No.: 2010170246**

Dear Ms. Gee:

Enclosed for filing, please find Appellants' Motion to Strike Designation of Matter or in the Alternative to Compel Respondents to Pay Costs Required to Produce the Entire Record Below in the above-referenced matter along with a check in the amount of \$25.00 for the filing fee. Please file the originals and return the extra, clocked-in copies with the bearer.

Thank you for your assistance in this matter.

Sincerely,



W. Allen Nickles, III

WAN/pfb
Enclosures
cc: Lake E. Summers, Esquire
File #03-156

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DEC 10 2010
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Judge

Docket No. 09-ALJ-30-0103-AP

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M.W. Braun,
Ann T. Bridges, Richard M. Cobb as Personal Representative of the Estate of
Rance C. Cobb, Jeannie B. Croxton, Bernetha L. Culbreath, William
Dreyer, Jacqueline D. Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Gen
M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randol
Carolyn McIver Smith, Maggie W. Williams and Paula Woodlief, ... Appellants,

v.

South Carolina Department of Corrections and Palmetto Unified School
District No. 1, ... Respondents.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Respondent, the South Carolina Department of Corrections ["SCD"]
through its undersigned counsel and on behalf of its Division of Education, also k and
Palmetto Unified School District No. 1 ["PUSD"], respectfully proposes the following the
be included in the Record on Appeal in the instant case: to

1. The entirety of the Record on Appeal considered by the Administrative Law
["ALC"], Case No. 09-ALJ-30-0103-AP (ALC ROA pp. 1 - 3399), which includes the
following:
 - 1.1 The Final Decision issued by the State Employee Grievance Committee
["Committee"] on February 18, 2009 (ALC ROA, pp. 8 - 17).
2. Appellants' Notice of Appeal dated March 10, 2009 to the ALC regarding the
Committee's February 18, 2009 Final Decision.
3. Notice of Assignment issued by the ALC (Judge Matthews) on March 12, 2009.

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DEC 31 2010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Judge

Docket No. 09-ALJ-30-0103-AP

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M.W. Bratton,
Ann T. Bridges, Richard M. Cobb as Personal Representative of the Estate of
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Dreyer, Jacqueline D. Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Geneva
M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph,
Carolyn McIver Smith, Maggie W. Williams and Paula Woodlief, ... Appellants,

v.

South Carolina Department of Corrections and Palmetto Unified School
District No. 1, ... Respondents.

**RESPONDENT SCDC'S RETURN TO THE APPELLANTS'
"MOTION TO STRIKE RESPONDENTS' DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL
OR IN THE ALTERNATIVE TO COMPEL RESPONDENTS TO PAY COSTS
REQUIRED TO PRODUCE ENTIRE RECORD BELOW"**

Lake E. Summers
Katherine Phillips
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
Office: (803) 254-3300
Fax: (803)-254-0309
E-mail: summers@mtsolfawfirm.com
phillips@mtsolfawfirm.com

Counsel for Respondent SCDC

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DEC 10 2010

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Judge

Docket No. 09-ALJ-30-0103-AP

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M.W. Bratton,
Ann T. Bridges, Richard M. Cobb as Personal Representative of the Estate of
Rance C. Cobb, Jeannie B. Croxton, Bernetha L. Culbreath, William K.
Dreyer, Jacqueline D. Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Geneva
M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph,
Carolyn McIver Smith, Maggie W. Williams and Paula Woodlief, ... Appellants,

v.

South Carolina Department of Corrections and Palmetto Unified School
District No. 1, ... Respondents.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Respondent, the South Carolina Department of Corrections ["SCDC"], by and through its undersigned counsel and on behalf of its Division of Education, also known as the Palmetto Unified School District No. 1 ["PUSD"], respectfully proposes the following matter to be included in the Record on Appeal in the instant case:

1. The entirety of the Record on Appeal considered by the Administrative Law Court ["ALC"], Case No. 09-ALJ-30-0103-AP (ALC ROA pp. 1 – 3399), which includes the following:
 - 1.1 The Final Decision issued by the State Employee Grievance Committee ["Committee"] on February 18, 2009 (ALC ROA, pp. 8 – 17).
2. Appellants' Notice of Appeal dated March 10, 2009 to the ALC regarding the Committee's February 18, 2009 Final Decision.
3. Notice of Assignment issued by the ALC (Judge Matthews) on March 12, 2009.

4. Notice of Re-assignment issued by the ALC (Judge McLeod) on May 21, 2009.
5. Appellants' Brief (including supporting material identified as "Appendix A") dated July 16, 2009.
6. Brief (including supporting material identified as "Appendix A") of Respondent SCDC and of its Division of Education, also known as [the PUSD], dated and filed October 7, 2009.
7. Transcript of Administrative Hearing Conducted by the ALC (Judge McLeod) on October 28, 2009;
8. Appellants' Supplemental Brief (*except for the first paragraph appearing at the top of the sixth and final page of the supplemental brief and the entirety of the supporting material identified as "Attachment 1"*) dated November 17, 2009.
9. Supplemental Brief of Respondent SCDC and of its Division of Education, also known as [the PUSD], dated and filed November 17, 2009.
10. Letter from Appellants to the ALC dated November 18, 2009 (and supporting materials) in response to the Supplemental Brief of Respondent SCDC and of its Division of Education, also known as [the PUSD], dated and filed November 17, 2009.
11. Substituted Order of the ALC Denying the Appeal filed by the Appellants and Affirming the Final Decision issued by the Committee in favor of Respondent SCDC issued August 6, 2010.
12. Notice of Appeal filed by the Appellants with this Court dated August 24, 2010.

Counsel certifies that this designation contains no matter which is irrelevant to this appeal.

Respectfully submitted:



December 10, 2010

Lake E. Summers

Katherine Phillips

Malone, Thompson, Summers & Ott LLC

339 Heyward Street, Suite 200

Columbia, South Carolina 29201

Office: (803) 254-3300

Fax: (803)-254-0309

E-mail: summers@mtsolfawfirm.com
phillips@mtsolfawfirm.com

Counsel for Respondent SCDC

Counsel for the Appellants:

W. Allen Nickles, III

NICKLES & SOLOMON, LLC

1519 Richland Street

Columbia, South Carolina 29201

(803) 779-8080

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Judge

Docket No. 09-ALJ-30-0103-AP

RECEIVED
DEC 10 2010
SC Court of Appeals

James "Cal" Bell, Othella Bernard, Katherine Bowyer, Linda M.W. Bratton,
Ann T. Bridges, Richard M. Cobb as Personal Representative of the Estate of
Rance C. Cobb, Jeannie B. Croxton, Bernetha L. Culbreath, William K.
Dreyer, Jacqueline D. Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Geneva
M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph,
Carolyn McIver Smith, Maggie W. Williams and Paula Woodlief, ...

Appellants,

v.

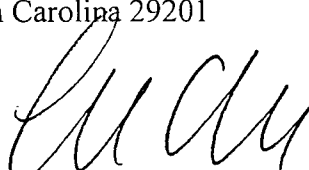
South Carolina Department of Corrections and Palmetto Unified School
District No. 1, ...

Respondents.

PROOF OF SERVICE

I certify that I have served a copy of **Respondent SCDC's Designation of Matter to be Included in the Record on Appeal** on the above named Appellants by mailing a copy of it to their counsel, first class postage pre-paid, at the following address:

W. Allen Nickles, III
NICKLES & SOLOMON, LLC
1519 Richland Street
Columbia, South Carolina 29201



December 10, 2010

Lake E. Summers

RECEIVED
DEC 10 2010
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Judge

Docket No. 09-ALJ-30-0103-AP

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M.W. Bratton,
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M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph,
Carolyn McIver Smith, Maggie W. Williams and Paula Woodlief, ... Appellants,

v.

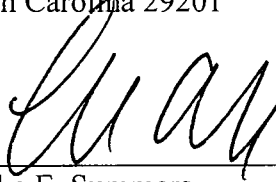
South Carolina Department of Corrections and Palmetto Unified School
District No. 1, ... Respondents.

PROOF OF SERVICE

I certify that I have served a copy of **Respondent SCDC's Initial Brief** on the above
named Appellants by mailing a copy of it to their counsel, first class postage pre-paid, at the
following address:

W. Allen Nickles, III
NICKLES & SOLOMON, LLC
1519 Richland Street
Columbia, South Carolina 29201

December 10, 2010


Lake E. Summers



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 27, 2010

Eric Lake Summers, Esquire
Malone, Thompson, Summers
& Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

Re: Bell, James v. SCDC & Palmetto Unified
Case Tracking #: 2010170246

Dear Mr. Summers:

The following Order has been endorsed on "Respondent SCDC's Motion to File its Initial Brief and Designation of matter to be Included in the Record on Appeal Out of Time" in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

October 27, 2010."

Please be advised the Respondents' Initial Brief and Designation of Matter must be served and filed on or before November 22, 2010.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc: W. Allen Nickles, III, Esquire
Christopher D. Florian, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Judge

Docket No. 09-ALJ-30-0103-AP

RECEIVED

OCT 21 2010

SC Court of Appeals

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M.W. Bratton, Ann T. Bridges, Richard M. Cobb as Personal Representative of the Estate of Rance C. Cobb, Jeannie B. Croxton, Bernetha L. Culbreath, William K. Dréyer, Jacqueline D. Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Geneva M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph, Carolyn McIver Smith, Maggie W. Williams and Paula Woodlief, ...

Appellants,

v.

South Carolina Department of Corrections and Palmetto Unified School District No. 1, ...

Respondents.

**RESPONDENT SCDC'S MOTION TO FILE ITS INITIAL BRIEF AND
DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL
OUT OF TIME**

Respondent South Carolina Department of Corrections ["SCDC"], by and through its undersigned counsel and on behalf of its Division of Education, also known as the Palmetto Unified School District No. 1, hereby moves this Court for an Order granting a 30-day extension of time by which to file its Initial Brief and Designation of Matter to be Included in the Record on Appeal in this case.

SCDC's undersigned counsel received the Appellants' Initial Brief and Designation of Matter on September 21, 2010, and, consequentially, SCDC's Initial Brief and Designation of Matter are due today, October 21, 2010.

SCDC so moves, because its undersigned counsel has been involved in other matters before the various courts in our state during the past 30 days.

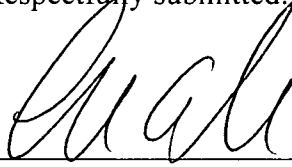
11-22-10

SCDC's undersigned counsel communicated their intent to file the instant motion to Respondent's counsel by e-mail on October 19, 2010, and, by reply e-mail transmitted the same day, the Appellants' counsel, W. Allen Nickles, III, Esquire, consented to the extension requested within the instant motion.

This is SCDC's first request for an extension of the deadline by which it must file its Initial Brief and Designation of Matter in the above-captioned matter.

Should the Court grant this motion, SCDC's Initial Brief and Designation of Matter would be due no later than Monday, November 22, 2010.

Respectfully submitted:



October 21, 2010

Lake E. Summers
Katherine Phillips
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
Office: (803) 254-3300
Fax: (803)-254-0309
E-mail: summers@mtsolfawfirm.com
phillips@mtsolfawfirm.com

Counsel for Respondent SCDC

Other Counsel of Record:

W. Allen Nickles, III, Esquire
Nickles & Solomon, LLC
1519 Richland Street
Columbia, South Carolina 29201
(803) 779-8080
Counsel for the Appellants

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
(Clerk) (Deputy Clerk)

FILED

Warter 10/27/10

UNCLASSIFIED

SECRET

100-443887-1
 100-443887-2
 100-443887-3

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Judge

Docket No. 09-ALJ-30-0103-AP

RECEIVED
OCT 21 2010
SC Court of Appeals

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M.W. Bratton,
Ann T. Bridges, Richard M. Cobb as Personal Representative of the Estate of
Rance C. Cobb, Jeannie B. Croxton, Bernetha L. Culbreath, William K.
Dreyer, Jacqueline D. Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Geneva
M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph,
Carolyn McIver Smith, Maggie W. Williams and Paula Woodlief, ...

Appellants,

v.

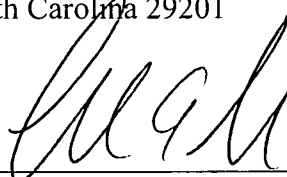
South Carolina Department of Corrections and Palmetto Unified School
District No. 1, ...

Respondents.

PROOF OF SERVICE

I certify that I have served Respondent SCDC's **Motion to File Its Initial Brief and Designation of Matter to be Included in the Record on Appeal Out of Time** on the above named Appellants by depositing a copy of it in the United States Mail, First Class Postage Pre-Paid, to their counsel addressed as follows:

W. Allen Nickles, III, Esquire
Nickles & Solomon, LLC
1519 Richland Street
Columbia, South Carolina 29201



Lake E. Summers

October 21, 2010

NICKLES & SOLOMON, LLC

- ATTORNEYS AT LAW -

Post Office Box 1866
Columbia, South Carolina 29202 - 1866

W. Allen Nickles, III
Carl L. Solomon

1519 Richland Street
Telephone: (803) 779-8080
Facsimile: (803) 256-1816

October 13, 2010

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OCT 15 2010

SC Court of Appeals

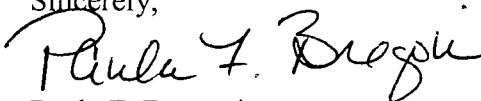
The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**RE: James "Cal" Bell, et al. v. South Carolina Department of Corrections and
Palmetto Unified School District No. 1; Docket No.: 09-ALJ-30-0103-AP;
Tracking No.: 2010170246**

Dear Ms. Gee:

Pursuant to my telephone conversation with Emily today, enclosed please find a copy of an Order to Change Caption from the Administrative Law Court dated May 26, 2009 in the above-referenced matter.

Sincerely,



Paula F. Bregovi
Legal Assistant to W. Allen Nickles, III

WAN/pfb
Enclosure
cc: Lake Eric Summers
File #: 03-156

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James "Cal" Bell, Othella Bernard,)
Katherina Bowyer, Linda M. W.)
Bratton, Ann T. Bridges, Richard M.)
Cobb as personal representative of the)
Estate of Rance C. Cobb, Jeannie B.)
Croxtton, Bernetha L. Culbreath,)
William K. Dreyer, Jacqueline D. Farr,)
Ruth Fritts, Nancy Glenn, Etta Jane)
Jones, Geneva M. Martin, Mary H.)
McCabe, Beverly McClanahan, Max D.)
Randolph, Carolyn McIver Smith,)
Maggie G. Williams and Paula)
Woodlief,)

Appellants,)

vs.)

South Carolina Department of)
Corrections and Palmetto Unified)
School District No. 1,)

Respondents.)

Docket No. 09-ALJ-30-0103

RECEIVED

OCT 15 2010

SC Court of Appeals

ORDER TO CHANGE CAPTION

FILED

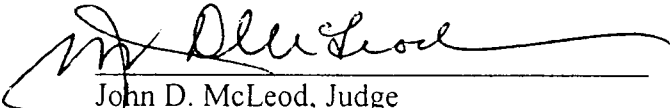
MAY 26 2009

SC ADMIN. LAW COURT

This matter comes before the Administrative Law Court (ALC or Court) by notice of appeal from Appellants filed on March 10, 2009. On May 26, 2009, the Court signed the Consent Order Substituting Richard M. Cobb, As Personal Representative of the Estate of Rance C. Cobb, As Appellant.

IT IS HEREBY ORDERED that the caption be amended as shown above.

May 26, 2009
Columbia, SC


John D. McLeod, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 26 day of May, 2009
By: 
Judicial Law Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James "Cal" Bell, Othella Bernard,)
Katherina Bowyer, Linda M. W. Bratton,)
Ann T. Bridges, Rance C. Cobb, Jeannie)
B. Croxton, Bernetha L. Culbreath,)
William K. Dreyer, Jacqueline D. Farr,)
Ruth Fritts, Nancy Glenn, Etta Jane)
Jones, Geneva M. Martin, Mary H.)
McCabe, Beverly McClanahan, Max)
D. Randolph, Carolyn McIver Smith,)
Maggie G. Williams and Paula Woodlief,)

Appellants,

vs.

South Carolina Department of)
Corrections and Palmetto Unified)
School District No. 1,)

Respondents.

DOCKET NO. 09-ALJ-30-0103-AP

CONSENT ORDER SUBSTITUTING
RICHARD M. COBB, AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF RANCE C. COBB, AS APPELLANT

Upon motion of Appellants and consent of Respondents, Richard M. Cobb, as Personal Representative of the Estate of Rance C. Cobb, is hereby substituted as Appellant in this action. A copy of the Certificate of Appointment designating Richard M. Cobb as Personal Representative of the Estate of Rance C. Cobb is attached as Exhibit 1.

WE SO MOVE:


W. Allen Nickles, III, for Appellants

WE CONSENT:


Lake Eric Summers, for Respondents

FILED

MAY 15 2009

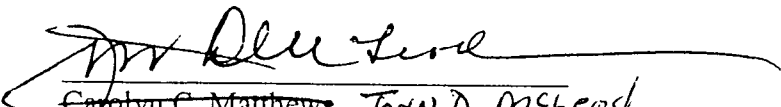
SC ADMIN. LAW COURT

FILED

MAY 26 2009

SC ADMIN. LAW COURT

AND IT IS SO ORDERED.


~~Carolyn C. Matthews~~ JOHN D. McLeod
Administrative Law Judge

May 26th, 2009.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 26 day of May, 2009

By Anthony R. Goldman
Judicial Law Clerk



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 11, 2010

W. Allen Nickles, III, Esquire
The Solomon Law Group
1519 Richland St.
Columbia, SC 29201

Re: Bell, James v. SCDC & Palmetto Unified
Case Tracking #: 2010170246

Dear Mr. Nickles:

We have received your correspondence showing that you and opposing counsel agree that the caption on the Appellants' Initial Brief and Notice of Appeal is correct.

Please be reminded that the Court's letter of October 4, 2010, requested a copy of an order issued in the lower court or a copy of the summons and complaint having the complete caption in this matter. Please provide a copy of at least one of these documents within ten days of the date of this letter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

TAG/ec

cc: Christopher D. Florian, Esquire
Eric Lake Summers, Esquire

NICKLES & SOLOMON, LLC

- ATTORNEYS AT LAW -

Post Office Box 1866
Columbia, South Carolina 29202 - 1866

W. Allen Nickles, III
Carl L. Solomon

1519 Richland Street
Telephone: (803) 779-8080
Facsimile: (803) 256-1816

October 6, 2010

RECEIVED

OCT 07 2010

SC Court of Appeals

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

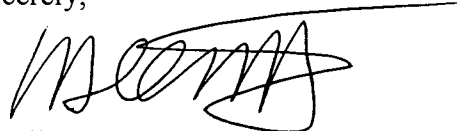
**RE: James "Cal" Bell, et al. v. South Carolina Department of Corrections and
Palmetto Unified School District No. 1; Docket No.: 09-ALJ-30-0103-AP;
Tracking No.: 2010170246**

Dear Ms. Gee:

Enclosed please find verification that the caption provided on the Notice of Appeal and Appellants' Initial Brief is correct. As reflected on the enclosed correspondence, Mr. Summers, counsel for the Respondent, has kindly confirm the accuracy of the caption.

Should you have further questions, please contact me.

Sincerely,



W. Allen Nickles, III

WAN/pfb

Enclosure

cc: Lake Eric Summers

File #: 03-156

NICKLES & SOLOMON, LLC
- ATTORNEYS AT LAW -
Post Office Box 1866
Columbia, South Carolina 29202 - 1866

W. Allen Nickles, III
Carl L. Solomon

RECEIVED

OCT 07 2010

SC Court of Appeals

1519 Richland Street
Telephone: (803) 779-8080
Facsimile: (803) 256-8116

October 5, 2010

Eric Lake Summers, Esquire
Malone, Thompson, Summers & Ott, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201

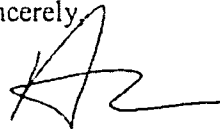
RE: James "Cal" Bell, et al. v. South Carolina Department of Corrections and
Palmetto Unified School District No. 1
Docket No.: 09-ALJ-30-0103-AP

Dear Lake:

Please verify by signing at the space below that the attached copy of Appellants' Initial Brief cover sheet contains the names of all Appellants and Respondents in the prior proceeding before the Administrative Law Court and correctly identifies the parties to this appeal before the South Carolina Court of Appeals.

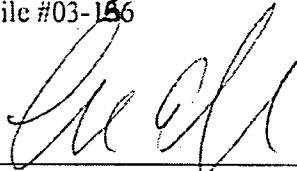
I appreciate your cooperation in this matter.

Sincerely,



W. Allen Nickles, III

WAN/pfb
Enclosure
File #03-156



~~Eric Lake Summers~~
LAK E L R I C S U M M E R S

OCTOBER 5, 2010



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 4, 2010

W. Allen Nickles, III, Esquire
The Solomon Law Group
1519 Richland St.
Columbia, SC 29201

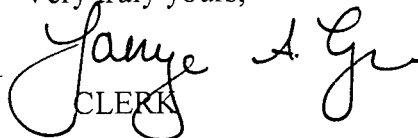
Re: Bell, James v. SCDC & Palmetto Unified
Case Tracking #: 2010170246

Dear Mr. Nickles:

We have received the Appellants' Initial Brief and Designation of Matter in the above case on appeal. However, as of this date, we still have not received from you verification of the complete case caption in this matter, pursuant to our letter of August 30, 2010.

Please provide a copy of an order issued in the lower court, or a copy of the summons and complaint, showing the complete case caption in this matter. This information must be received in this office within ten days of the date of this letter.

Very truly yours,


CLERK

TAG/ec

cc: Christopher D. Florian, Esquire
Eric Lake Summers, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
Administrative Law Court

John D. McLeod, Judge

Docket No.: 09-ALJ-30-0103-AP

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M.W. Bratton, Ann T. Bridges, Richard M. Cobb as Personal Representative of the Estate of Rance C. Cobb, Jeannie B. Croxton, Bernetha L. Culbreath, William K. Dreyer, Jacqueline D. Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Geneva M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph, Carolyn McIver Smith, Maggie G. Williams and Paula Woodlief,..... Appellants.

v.

South Carolina Department of Corrections and Palmetto Unified School District No. 1
..... Respondents.

APPELLANTS' DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. From the Record on Appeal of the Administrative Law Court:

ROA pp. 11-14

ROA pp. 172-75; 178-79; 186-88; 192-93

ROA pp. 205-06; 208-09; 247-48; 275-76; 278-86; 281-82

ROA pp. 361-62; 377-78; 389-90

ROA pp. 483-88

ROA pp. 509-15; 525-28

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ROA pp. 621-23

ROA pp. 723-25

ROA pp. 818-21; 823-24; 863-65

ROA pp. 900-01; 913-17; 920-22; 995-1001

ROA pp. 1038-39; 1045-46; 1052; 1054-56; 1072; 1077-1080; 1085-87;
1095-96

ROA pp. 1163-67

ROA pp. 1279-80

ROA pp. 1634; 1638; 1640; 1653-59

ROA pp. 1926-59; 1934-35

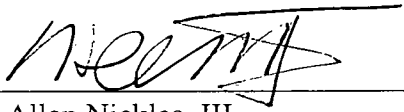
ROA pp. 2114; 2233-38; 2361; 2403-17; 2554-57; 2560-72; 2614; 2617-
18; 2625-28; 2635; 2682; 2700-01; 2704; 2706; 2709-10; 2713-
16; 2718-19; 2720-22; 2725; 2792; 2972; 2991-92

ROA pp. 3068; 3114; 3119; 3131-39; 3142; 3145; 3157-59; 3251; 3254-
58; 3301-08; 3355-56; 3390-91; 3396-98

2. Final Decision of the State Grievance Committee dated February 18, 2009
3. Appendix A to Appellants' Brief to the ALC dated July 16, 2009
4. Order of the Administrative Law Court dated August 6, 2010
5. Notice of Appeal dated August 24, 2010

I certify that this designation contains no matter which is irrelevant to this appeal.

NICKLES & SOLOMON, LLC

BY: 
W. Allen Nickles, III
1519 Richland Street
Columbia, South Carolina 29201
(803)779-8080

Attorneys for Appellants

September 21, 2010
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
Administrative Law Court

John D. McLeod, Judge

Docket No.: 09-ALJ-30-0103-AP

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M.W. Bratton, Ann T. Bridges, Richard M. Cobb as Personal Representative of the Estate of Rance C. Cobb, Jeannie B. Croxton, Bernetha L. Culbreath, William K. Dreyer, Jacqueline D. Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Geneva M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph, Carolyn McIver Smith, Maggie G. Williams and Paula Woodlief, ... Appellants.

v.

South Carolina Department of Corrections and Palmetto Unified School District No. 1
..... Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served Appellants' Designation of Matter to be Included in the Record on Appeal by hand delivery, as follows:

Eric Lake Summers, Esquire
Malone, Thompson, Summers & Ott, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201

This st 21 day of September, 2010.

NICKLES & SOLOMON, LLC


W. Allen Nickles, III
1519 Richland Street
Columbia, South Carolina 29201
(803)779-8080

Columbia, South Carolina

Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA
Administrative Law Court

SC Court of Appeals

John D. McLeod, Judge

Docket No.: 09-ALJ-30-0103-AP

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M.W. Bratton, Ann T. Bridges, Richard M. Cobb as Personal Representative of the Estate of Rance C. Cobb, Jeannie B. Croxton, Bernetha L. Culbreath, William K. Dreyer, Jacqueline D. Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Geneva M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph, Carolyn McIver Smith, Maggie G. Williams and Paula Woodlief,..... Appellants.

v.

South Carolina Department of Corrections and Palmetto Unified School District No. 1
..... Respondents.

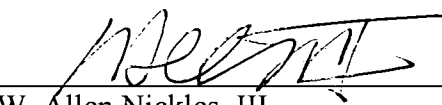
CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served Appellants' Initial Brief by hand delivery, as follows:

Eric Lake Summers, Esquire
Malone, Thompson, Summers & Ott, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201

This 21st day of September, 2010.

NICKLES & SOLOMON, LLC



W. Allen Nickles, III
1519 Richland Street
Columbia, South Carolina 29201
(803)779-8080

Columbia, South Carolina

Attorneys for Appellants

NICKLES & SOLOMON, LLC

- ATTORNEYS AT LAW -

Post Office Box 1866
Columbia, South Carolina 29202 - 1866

W. Allen Nickles, III
Carl L. Solomon

1519 Richland Street
Telephone: (803) 779-8080
Facsimile: (803) 256-1816

September 21, 2010

Via Hand Delivery

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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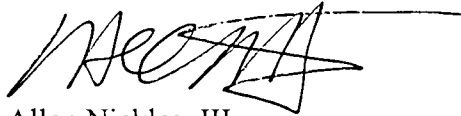
SC Court of Appeals

**RE: James "Cal" Bell, et al. v. South Carolina Department of Corrections and
Palmetto Unified School District No. 1; Docket No.: 09-ALJ-30-0103-AP;
Tracking No.: 2010170246**

Dear Ms. Gee:

Enclosed for filing, please find Appellants' Initial Brief, Certificate of Service, and Designation of Matter to be Included in the Record on Appeal in the above-referenced matter. Please file the originals and return the extra, clocked-in copies with the bearer. Thank you for your assistance in this matter.

Sincerely,



W. Allen Nickles, III

WAN/pfb
Enclosures
cc: Eric Lake Summers, Esquire
File #03-156



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 30, 2010

W. Allen Nickles, III, Esquire
The Solomon Law Group
1519 Richland St.
Columbia, SC 29201

Re: Bell, James v. SCDC & Palmetto Unified
Case Tracking #: 2010170246

Dear Mr. Nickles:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

The Court has noticed that there is some discrepancy in the caption. Where it would appear you have listed all of the Appellants, the underlying Order in the lower Court did not. Please provide a pleading with the complete caption in this matter to this office within ten (10) days of the date of this letter.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the

transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,

T. Claire Allen, Deputy

Tanya A. Gee
CLERK

TAG/khh

cc: Christopher D. Florian, Esquire
Eric Lake Summers, Esquire
The Honorable Jana E. Shealy



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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www.sccourts.org

August 30, 2010

W. Allen Nickles, III, Esquire
The Solomon Law Group
1519 Richland St.
Columbia, SC 29201

Re: Bell, James v. SCDC & Palmetto Unified
Case Tracking #: 2010170246

Dear Mr. Nickles:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/khh

cc: Christopher D. Florian, Esquire
Eric Lake Summers, Esquire
The Honorable Jana E. Shealy

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
Administrative Law Court

John D. McLeod, Judge

Docket No.: 09-ALJ-30-0103-AP

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M.W. Bratton, Ann T. Bridges, Richard M. Cobb as Personal Representative of the Estate of Rance C. Cobb, Jeannie B. Croxton, Bernetha L. Culbreath, William K. Dreyer, Jacqueline D. Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Geneva M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph, Carolyn McIver Smith, Maggie G. Williams and Paula Woodlief,..... Appellants.

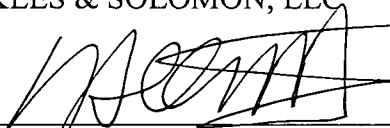
v.

South Carolina Department of Corrections and Palmetto Unified School District No. 1
..... Respondents.

NOTICE OF APPEAL

The above-named Appellants hereby appeal the Order of the Honorable John D. McLeod issued and filed on August 6, 2010. Appellants received this Order on August 9, 2010. A copy of this Notice is being provided to the Clerk of the South Carolina Administrative Law Court and other counsel.

NICKLES & SOLOMON, LLC


W. Allen Nickles, III
1519 Richland Street
Columbia, South Carolina 29201
(803)779-8080

Attorneys for Appellants

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AUG 24 2010
SC Court of Appeals

Other counsel of Record:

Eric Lake Summers, Esquire
Malone, Thompson, Summers & Ott, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
(803) 254-3300

Attorneys for Respondents

Columbia, South Carolina
August 24, 2010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
Administrative Law Court

John D. McLeod, Judge

Docket No.: 09-ALJ-30-0103-AP

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M.W. Bratton, Ann T. Bridges, Richard M. Cobb as Personal Representative of the Estate of Rance C. Cobb, Jeannie B. Croxton, Bernetha L. Culbreath, William K. Dreyer, Jacqueline D. Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Geneva M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph, Carolyn McIver Smith, Maggie G. Williams and Paula Woodlief,..... Appellants.

v.

South Carolina Department of Corrections and Palmetto Unified School District No. 1
..... Respondents.

PROOF OF SERVICE

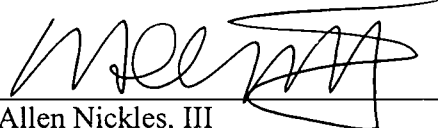
The undersigned hereby certifies that he has served the foregoing Notice of Appeal, by depositing same in the United States Mail, postage prepaid and addressed as follows:

Eric Lake Summers, Esquire
Malone, Thompson, Summers & Ott, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201

The undersigned further certifies that he has filed a copy of the foregoing Notice of Appeal with the Administrative Law Court.

This 24th day of August, 2010.

NICKLES & SOLOMON, LLC



W. Allen Nickles, III
1519 Richland Street
Columbia, South Carolina 29201
(803) 779-8080
Columbia, South Carolina

Attorney for Appellants

NICKLES & SOLOMON, LLC

- ATTORNEYS AT LAW -

Post Office Box 1866
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W. Allen Nickles, III
Carl L. Solomon

1519 Richland Street
Telephone: (803) 779-8080
Facsimile: (803) 256-1816

August 24, 2010

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AUG 24 2010

SC Court of Appeals

Via Hand Delivery

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**RE: James "Cal" Bell, et al. v. South Carolina Department of Corrections and
Palmetto Unified School District No. 1
Docket No.: 09-ALJ-30-0103-AP**

Dear Ms. Gee:

Enclosed for filing is an original and copies of a Notice of Appeal in the above-referenced matter, together with the Proof of Service. Please file the original and return the clocked-in copies with the bearer. The filing fee of \$100.00 is also enclosed.

Should you have any questions concerning the materials provided, please contact me.

Sincerely,



W. Allen Nickles, III

WAN/pfb
Enclosures
cc: Eric Lake Summers, Esquire
File #03-156

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James "Cal" Bell, Othella Bernard, Katherina
Bower, Linda M.W. Bratton, Ann T. Bridges,
Richard M. Cobb as Personal Representative of
the Estate of Rance C. Cobb, Jeannie B. Croxton,
et al.,

Appellants,

vs.

S.C. Department of Corrections and Palmetto
Unified School District No. 1,

Respondents.

Docket No. 09-ALJ-30-0103-AP

**ORDER OF THE COURT
DENYING THE APPEAL FILED
BY THE APPELLANTS AND
AFFIRMING THE FINAL
DECISION ISSUED BY
THE STATE EMPLOYEE
GRIEVANCE COMMITTEE
IN FAVOR OF THE SOUTH
CAROLINA DEPARTMENT OF
CORRECTIONS**

FILED

AUG 06 2010

I. SYNOPSIS OF THE COURT'S ORDER

SC ADMIN. LAW COURT

The Appellants in the above captioned matter filed a consolidated appeal with this Court in which they challenged the Final Decision ["Decision"] issued by the State Employee Grievance Committee ["Committee"] on February 18, 2009. The Appellants, 20 in all,¹ are current and former certified educators who are currently employed or were at one time employed by the South Carolina Department of Corrections ["the Department"] within its Division of Education, also known as the Palmetto Unified School District No. 1 ["PUSD"].

The Appellants argued to this Court "that the Final Decision issued by the [Committee] dated February 18, 2009 must be reversed and Appellants awarded reinstatement to employment with back pay and benefits."²

¹ In addition to the seven (7) Appellants whose names appear in the case caption, the following 13 individuals are Appellants in the instant matter: Bernetha L. Culbreath, William K. Dreyer, Jacqueline D. Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Geneva M. Martin, Mary H. McCabe, Beverly McClanahan, Max D. Randolph, Carolyn McIver Smith, Maggie G. Williams, and Paula Woodlief.

² See Appellants' July 16, 2009 Principle Brief, p. 1.

By its Decision, the Committee denied the Appellants' collective appeal of the Department's decisions denying each of the grievances filed by the Appellants. In their respective individual grievances, all of which were identical in format and substance, the Appellants challenged their separation from employment as a consequence of a reduction-in-force ["RIF"] implemented by the Department effective June 1, 2003.³ Thus, by its Decision, the Committee rejected the various challenges to the Department's June 1, 2003 RIF collectively presented by the Appellants, and, consequentially, the Committee affirmed the Department's denial of each of the Appellants' grievances.

Based upon the record on appeal submitted to the Court by the State Office of Human Resources ["OHR"], the principle briefs filed by counsel, the points articulated by counsel during oral argument, the supplemental materials filed by counsel after oral argument, and the applicable law and regulations, the Court **DENIES** the collective appeal filed by the Appellants and **AFFIRMS** the Decision issued by the Committee in the Department's favor.

³ For the sake of clarity, the Court observes that the Department implemented its June 1, 2003 RIF through two (2) items: a RIF policy developed by the Department's Division of Human Resources and a RIF plan. Executive Director Jon Ozmint presented the Department's RIF plan in the form of a March 28, 2003 letter to State Human Resources Director Samuel L. Wilkins. (R. pp. 1626 – 31). As reflected by the last page of Director Ozmint's March 28, 2003 letter to Mr. Wilkins, Director Ozmint included four (4) attachments to the RIF plan detailed in his letter. First, Director Ozmint included a copy of the Department's RIF policy, issued March 14, 2003, designated as Policy Number ADM-11.05 (R. pp. 1633 – 40) and a March 14, 2003 letter addressed to the Director of the Department's Division of Human Resources, John Near, from Chris Byrd, OHR's Assistant Director, in which Mr. Byrd advised Mr. Near that OHR had approved Policy Number 11.05. (R. p. 1632). Second, Director Ozmint attached materials identified as "Listing of Competitive Areas, Areas Map, and Competitive Job Classifications & Classification Series." (R. pp. 1641 – 43). Third, Director Ozmint attached a "Listing of Positions being eliminated and Employees eligible for Bumping in Each Competitive Area." (R. pp. 1644 - 59). Fourth, Director Ozmint attached a "Sample Letter – Notification of Reduction-In-Force," a model letter by which the Department would notify employees whose positions were identified for elimination of their potential lay-off. (R. pp. 1953 – 59). On March 28, 2003, Christopher Poore, an OHR Human Resources Consultant, acknowledged OHR's receipt and review of SCDC's RIF plan, which included the Department's RIF policy, as submitted by Director Ozmint. (R. pp. 1926 – 27). The Department provided the Court with a compilation of these documents in the sequence described above in support of its principle brief. See the Department's October 7, 2009 Principle Brief, Exhibit A.

II. PROCEDURAL HISTORY

A. GRIEVANCES FILED BY THE 20 APPELLANTS, THE DEPARTMENT'S DENIAL OF THE GRIEVANCES, AND THE DECISION BY THE STATE HUMAN RESOURCES DIRECTOR TO AFFIRM THE DEPARTMENT'S DENIAL OF THE GRIEVANCES

On or about June 13, 2003, each of the 20 Appellants timely submitted grievances with the Department regarding their separation from employment as a consequence of a RIF implemented by the Department effective June 1, 2003, and, by their grievances, each of the 20 Appellants challenged the RIF. The Department's responsible officials denied each of the 20 grievances by determining that no material issue of fact existed regarding the purported inconsistent or improper application of the Department's RIF plan or policy. Accordingly, the Department did not conduct hearings regarding any of the Appellants' grievances.

Each of the 20 Appellants appealed the Department's denial of their grievances to the State Human Resources Director, and the State Human Resources Director affirmed the Department's denial of these grievances. Each of the 20 Appellants moved the State Human Resources Director to reconsider his decision, and the State Human Resources Director denied the Appellants' respective motions for reconsideration.

B. CONSOLIDATED COMPLAINT AND PETITION FOR JUDICIAL REVIEW FILED IN CIRCUIT COURT BY THE 20 APPELLANTS

Subsequent to the final decisions issued by the State Human Resources Director, the Appellants filed a consolidated complaint and petition for judicial review in the circuit court, specifically the Court of Common Pleas for Richland County. (R. pp. 29 – 39). The circuit court, pursuant to Ross v. Med. Univ. of S.C., 453 S.E.2d 880 (S.C. 1995), directed the Department to provide responses to the Appellants' discovery requests and to make agency

officials available for deposition. (R. pp. 2112 – 18). In accordance with the circuit court's directive, Appellants' counsel deposed agency officials in December 2005 and June 2006.

The circuit court heard argument regarding the Appellants' consolidated Petition for Judicial Review on December 11, 2006 (R. pp. 2320 - 2357) and, by order issued January 10, 2007 (R. pp. 40 – 44), it ruled that material issues of fact existed regarding the Appellants' contention that the Department inconsistently or improperly applied its RIF policy and plan in 2003. Consequentially, the circuit court remanded this matter back to OHR for disposition by hearing before the Committee.

C. THE DEPARTMENT'S APPEAL OF THE CIRCUIT COURT'S ORDER TO THE COURT OF APPEALS

The Department appealed the circuit court's January 10, 2007 order to the Court of Appeals, and, by order issued May 14, 2008, the Court of Appeals dismissed the Department's appeal. (R. pp. 45 – 47). By dismissing the Department's appeal, the Court of Appeals animated the circuit court's order which remanded this matter back to OHR for disposition by hearing before the Committee.

D. REMAND OF APPELLANTS' GRIEVANCES BACK TO OHR, THE COMMITTEE'S CONSOLIDATED HEARING REGARDING THE APPELLANTS' CLAIMS, AND THE COMMITTEE'S ADJUDICATION OF THE APPELLANTS' CLAIMS

By letter dated June 4, 2008, OHR directed the Department to process each of the Appellants' original 2003 grievances in accordance with its grievance policy within 45 days. (R. pp. 48 – 49). On July 23, 2008, after the Department did not meet the 45 day deadline established by OHR in its June 4, 2008 letter, the Appellants timely submitted this matter to OHR for disposition in accordance with the circuit court's January 10, 2007 order.

OHR, in October 2008, detailed the adjudication of the Appellants' collective appeal to the Committee and, by their October 14, 2008 "Statement of Grounds on Appeal," the Appellants articulated their precise collective and individual challenges to the Department's 2003 RIF. (R. pp. 2695 – 99).

The Committee, after conducting hearing proceedings on November 5, 6, 7, 10, and 17, 2008; December 15 and 18, 2008; and January 22, 26, and 29, 2009 (R. pp. 50 – 1453), issued its Final Decision in this matter on February 18, 2009. (R. pp. 8 – 17). By its Final Decision, the Committee denied the relief demanded by the Appellants in their appeal and upheld the RIF implemented by the Department effective June 1, 2003.

E. THE APPELLANTS' APPEAL OF THE COMMITTEE'S FINAL DECISION TO THIS COURT

The Appellants timely filed their collective Notice of Appeal with the Administrative Law Court ["ALC"] on March 10, 2009, and this Court assumed jurisdiction of this appeal by an order dated and filed May 21, 2009. OHR filed the Record on Appeal on June 24, 2009.

The Appellants filed their principle brief on July 17, 2009, and the Department filed its principle brief on October 7, 2009. The Appellants did not file a reply brief.

This Court, by notice dated October 19, 2009, scheduled oral argument for October 28, 2009, and the Court entertained oral argument as scheduled. W. Allen Nickles, Jr., Esquire, and Dona Guffey, Esquire, appeared on behalf of the Appellants, and Lake E. Summers, Esquire, appeared on behalf of the Department.⁴

⁴ Mr. Nickles and Ms. Guffey have represented each of the 20 Appellants since the inception of this matter. Mr. Summers has represented the Department since May 2006. The Court extends its compliments to counsel for their respective competence, scholarship, industry, and decorum.

At the conclusion of oral argument, the Court directed the parties to file supplemental materials, and the parties filed their respective supplemental briefs – in the format prescribed by the Court during the oral argument – on November 17, 2009.

By letter filed on November 18, 2009, the Appellants rebutted any assertion advanced by the Department in its supplemental brief that the Appellants had “waived” any equal protection claim during the argument they articulated to the circuit court on December 11, 2006 when the circuit court considered the Appellants’ petition for judicial review.⁵

On November 19, 2009, the Department filed its objection to the entirety of the materials designated as “Attachment 1,” which the Appellants submitted in support of their supplemental brief, as well as the portion of the Appellants’ supplemental brief associated with the materials designated as “Attachment 1.” Along with its objection to “Attachment 1” and the portions of the Appellants’ supplemental brief associated with “Attachment 1,” the Department concurrently moved to strike these materials and the allied portions from the Appellants’ supplemental brief. On November 20, 2009, the Appellants filed their memorandum in opposition to the Department’s objections to and motion to strike “Attachment 1.”⁶

III. APPLICABLE LEGAL STANDARD

The Appellants’ appeal from the Committee’s February 18, 2009 Final Decision is before this Court pursuant to S.C. Code Ann. §§ 1-23-600(D) and 8-17-340(F). Accordingly, this Court sits in an appellate capacity under the Administrative Procedures Act rather than as an independent finder of fact.

⁵ The Court provides its decision regarding this issue in Section V(A) below.

⁶ The Court provides its decision regarding this issue in Section V(B) below.

Thus, the provisions of S.C. Code Ann. § 1-23-380(5) govern the circumstances in which an appellate body, such as this Court, may reverse or modify an agency decision, such as the Committee's Final Decision. In its entirety, § 1-23-380(5) reads as follows:

The court may not substitute its judgment for the judgment of the [Committee] as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court 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 [Committee];
- (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.

Additionally, this Court must not only review the manner in which the Committee applied the controlling legal principles, but it must also determine if the factual determinations made by the Committee meet the substantial evidence standard.

Under this standard, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters v. S.C. Land Res. Conversation Comm'n, 467 S.E.2d 913, 917 (S.C. 1996). In applying the substantial evidence rule, the factual findings of an administrative agency are presumed to be correct. Rodney v. Michelin Tire Co., 466 S.E.2d 357, 359 (S.C. 1996). The agency's decision will not be set aside simply because reasonable minds may differ on the judgment. Lark v. Bi-Lo, Inc., 276 S.E.2d 304, 307 (S.C. 1981). Accordingly, the fact that the record, when considered as a whole, presents the possibility of drawing two (2) inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. Waters,

467 S.E.2d at 917; Grant v. S.C. Coastal Council, 461 S.E.2d 388, 391 (S.C. 1995). In determining whether an agency's decision is supported by substantial evidence, the reviewing court "need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the administrative agency reached." DuRant v. S.C. Dep't of Health & Envtl. Control, 604 S.E.2d 704, 706 (S.C. Ct. App. 2004).

An "abuse of discretion occurs when the judge's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the judge is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case." Ex parte Capital U-Drive-It, Inc., 630 S.E.2d 464, 467 (S.C. 2006). Additionally, a decision is arbitrary if no rational basis for the conclusion exists, or when it is based on one's will and not upon any course of reasoning and exercise of judgment. A decision may also be arbitrary if it is made at pleasure without adequate determining principles or is governed by no fixed rules or standards. Converse Power Corp. v. S.C. Dep't of Health & Envtl. Control, 564 S.E.2d 341 (S.C. Ct. App. 2002).

IV. ANALYSIS OF THE ISSUES ON APPEAL IDENTIFIED BY THIS COURT AFTER ITS REVIEW OF THE APPELLANTS' PRINCIPLE BRIEF

A. ISSUES ON APPEAL AND SUPPORTING ARGUMENTS FROM THE APPELLANTS' PRINCIPLE BRIEF

The Appellants did not identify distinct issues on appeal within their principle brief. Instead, the Appellants challenged the Committee's Decision by providing 27 enumerated paragraphs from which they contended that the "record as a whole demonstrates that the Department deviated from controlling policy and law in the challenged RIF."⁷

⁷ See Appellants' July 17, 2009 Principle Brief, p. 3.

This Court distilled the following three (3) distinct issues on appeal from the 27 paragraphs enumerated by the Appellants within their principle brief:

1. **The Department violated its own RIF policy, state law and regulations controlling RIFs, and our state's constitution by including the Appellants and other certified educators it employed in the RIF it implemented effective June 1, 2003;⁸**
2. **The Department violated its own RIF policy, state law and regulations controlling RIFs, and our state's constitution by its decision to divide the entire agency into 11 competitive areas, the key decision by which it implemented its RIF effective June 1, 2003;⁹ and**
3. **The Department violated its own RIF policy, state law and regulations controlling RIFs, and our state's constitution in the manner by which it retained and hired temporary employees before and after the RIF it implemented effective June 1, 2003, as well as in the manner by which it retained employees who accepted the retirement opportunity it offered during the RIF recall period.¹⁰**

In support of these three (3) distinct issues on appeal, the Appellants provided a series of overlapping legal arguments divided into four (4) sections. These legal arguments identified instances in which the Department's decisions and actions (1) purportedly violated provisions of the Department's own RIF policy,¹¹ (2) purportedly violated state statutes,¹² (3) purportedly violated provisions of our state's constitution,¹³ and (4) purportedly deprived the Appellants of rights apparently secured to them by the Department's own RIF policy, state law, and state regulation.¹⁴

⁸ Id., pp. 3 – 5, paras. 1 – 9.

⁹ Id., pp. 5 – 8, paras. 10 – 18.

¹⁰ Id., pp. 8 – 11, paras. 19 – 27.

¹¹ Id., pp. 14 – 18.

¹² Id., pp. 19 – 23.

¹³ Id., pp. 23 – 24.

¹⁴ Id., pp. 24 – 26.

B. THE DEPARTMENT'S ARGUMENTS IN RESPONSE

In response to the arguments offered by the Appellants, the Department argued within its principle brief that there was sufficient evidence before the Committee to allow reasonable minds to arrive at the findings rendered by the Committee in its adjudication of the Appellants' collective appeal. The Department further argued that the Committee's conclusions of law reflected the proper application of controlling legal principles, particularly in light of the reality that the interpretation and application of the applicable regulations, statutes, and precedent constituted matters of first impression before any judicial or quasi-judicial body.

C. ANALYSIS

As demonstrated below, this Court agrees with arguments presented by the Department in response to the Appellants' principle brief.

- 1. The Department did not violate its own RIF policy, state law or regulations controlling RIFs, or our state's constitution by including the Appellants and other certified educators it employed in the RIF implemented effective June 1, 2003.**

In support of the first issue on appeal distilled by the Court from the 27 enumerated paragraphs provided by the Appellants in their principle brief, the Appellants effectively argued that the Department should have excluded them, and the other certified educators it employed, from the RIF it implemented effective June 1, 2003.

The Appellants presented the following description of the PUSD:

The [PUSD] is a single, statewide school district created by the General Assembly and administered by SCDC. (S.C. Code Ann. § 24-25-10, ROA p. 2281). All educators in the District must be employed, supervised and terminated according to SCDC policies and procedures. (S.C. Code Ann. § 24-25-90, ROA p. 2291).¹⁵

¹⁵ See Appellants' Principle Brief, pp. 3 – 4, para. 1. In its Finding of Fact No. 4, the Committee acknowledged that the Appellants contended "that during the development and administration of the RIF plan the PUSD was not treated as a single 'unified' school district as required by law." (R. p. 12).



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The Appellants continued their description as follows:

The [PUSD] has one Board and one Superintendent. (S.C. Code Ann. §§ 24-25-40 through 90, ROA pp. 2285-2291). All educators are held to the same standards and there are no geographic regions within the [PUSD]. (ROA pp. 513-515, 525-528, 863-865, 913, 2614).¹⁶

The Appellants then presented a chronology of events beginning with Director Ozmint's appointment as the Department's Executive Director in January 2003 and his decision to construct and implement a RIF.¹⁷ As acknowledged by the Appellants, the Department submitted a new RIF policy to OHR, which OHR approved on March 14, 2003.¹⁸ (R. pp. 1633 – 40). On March 28, 2003, the Department submitted its RIF plan to OHR, which described the process by which the Department would implement the RIF.¹⁹ (R. pp. 1626 – 59, 1953 – 59, 1926 – 27).

The Appellants then observed that Director Ozmint identified the positions which would be subject to separation pursuant to the Department's RIF plan and that, of the 148 positions designated for separation pursuant to the plan, "approximately" 84 were certified educators.²⁰ Finally, the Appellants observed the following:

Higher paid educators were eliminated to get the most "bang for the buck." (ROA pp. 1038-1039, 1054-1056, 1072, 1079-1080, 2682). Appellants and SCDC witnesses testified that other SCDC employees complained about the "unfairness" of statutorily required educator pay raises. (Final Decision Findings of Fact No. 18, ROA p. 14). Director

¹⁶ See Appellants' Principle Brief, p. 4, para. 3.

¹⁷ Id., p. 4, para. 5.

¹⁸ Id.

¹⁹ Id., p. 4, para. 6. While the Appellants focused on Director Ozmint's role, the record clearly reflects that John Near, who in 2003 served as the Director of the Department's Division of Human Resources, drafted the Department's RIF policy and prepared its RIF plan. Further, Mr. Near testified that OHR representatives worked with him and provided input into the final version of the Department's RIF policy (R. pp. 700 – 06), and Mr. Near testified that OHR representatives provided specific input into the final version of the RIF plan. (R. pp. 732 – 48).

²⁰ Id., p. 5, paras. 7 – 8.

Ozmint testified that these raises were “taken out of the hide” of other employees. (ROA pp. 1045-1046; see also ROA pp. 1052, 1095-1096).²¹

In the four (4) sections of their supporting legal argument, the Appellants challenged the legitimacy of the Department’s decisions and actions which identified their certified educator positions for elimination. In the section addressing the Department’s purported violations of applicable statutes, the Appellants argued that the Department violated § 24-25-40 by “conduct[ing] the RIF without conferring with the [PUSD] Board of Trustees or considering the laws creating and governing the [PUSD].”²² In the section addressing the Department’s purported violations of our state’s constitution, the Appellants argued that their separation from employment deprived them of property interests secured to them by Article I, § 3,²³ and they also argued that their separation from employment affected their liberty interests to pursue their chosen profession in violation of Article I, § 22.²⁴

²¹ Id., p. 5, paragraph 9. While the Appellants did not claim in their principle brief that the Department retaliated against them in the manner by which it constructed and implemented its 2003 RIF, this passage from their principle brief hints at such a claim. In its Finding of Fact No. 17, the Committee recognized that the Appellants contended “that SCDC, through the RIF plan, arbitrarily and capriciously retaliated against SCDC educators who took legal action [Abraham v. PUSD No. 1 & S.C. Dep’t of Corr., 538 S.E.2d 656 (S.C. Ct App. 2000)] to compel SCDC to provide compensation in accordance with law.” (R. p. 14). As explained in Section IV(D) below, however, this Court concludes that the Appellants abandoned their retaliation claim in their appeal.

²² Id., p. 22, Section IV. In its Finding of Fact No. 7, the Committee acknowledged the identical argument offered by the Appellants, namely that they contended “the PUSD School Board was not involved in development of the RIF plan as required by law and the district superintendent was merely informed of the action.” (R. p. 13).

²³ Id., p. 24, Section I(a). The Appellants also cited Brown v. S.C. State Bd. of Educ., 391 S.E.2d 866 (S.C. 1990), in support of this argument. This Court concludes that Brown is inapplicable to this case, as our Supreme Court in Brown found that S.C. Code Reg. 43-59 (Supp. 1989), a regulation which allowed state officials to withdraw a teacher’s certification without notice and an opportunity to be heard, was unconstitutional. In short, the facts in Brown are entirely different from the facts here, because no action undertaken by the Department in formulating or implementing its 2003 RIF deprived any of the Appellants their teaching credentials.

²⁴ Id., p. 24, Section II. The Appellants cited Brown, as well as Johnson v. Spartanburg County Sch. Dist. No 7, 444 S.E.2d 501 (S.C. 1994), in support of this argument. This Court concludes that Johnson is inapplicable to this matter, as the issues on appeal in Johnson concerned the non-renewal of a teacher’s employment contract and the interpretation of the Teacher Employment and Dismissal Act. No action undertaken by the Department in formulating or implementing its 2003 RIF resulted in the non-renewal of a teacher’s employment contract. The Appellants also invoked § 24-25-90 in support of this argument. In its Finding of Fact No. 6 (R. p. 12), the Committee acknowledged that the Appellants contended that “the RIF plan failed to take into account experience

However, the Appellants offered these identical or nearly identical arguments to the Committee, and this Court concludes that the Committee, by applying and interpreting the applicable law, properly denied the Appellants' appeal of the Department's decision to deny their grievances.

The Appellants' argument that the Department violated § 24-25-40 by "conduct[ing] the RIF without conferring with the [PUSD] Board of Trustees or considering the laws creating and governing the [PUSD],²⁵" reflects nothing other than their own interpretation of this statutory provision. Likewise, by stating that the PUSD "is a single, statewide school district created by the General Assembly and administered by" the Department,²⁶ the Appellants offered nothing more than their own interpretation of § 24-25-10.

The testimony offered by the Appellants and the Department's management officials, specifically Ms. Gerri Miro, along with the plain and ordinary meaning of the provisions of § 24-24-10, *et seq.*, and, specifically § 24-25-90, contradict the notion that the Department merely "administers" the PUSD. Ms. Miro has, since early 2003, served as Deputy Director for the Department's Programs and Services, and, in this position, she has been and remains responsible for the Department's Division of Education. (R. pp. 468 – 69 and 854 – 55). When asked to describe the relationship between the Department's Division of Education and the PUSD, Ms. Miro testified as follows:

and credentials such as degrees, certificates, and positions held, which are uniformly applied in the field of education."

²⁵ See note 22 above.

²⁶ See note 15 above.

There really isn't any difference. It's ... it's a part of that division. It's an educational component that was mandated by law that is a part of the Division of Education to provide services, educational opportunities for our inmates, education and vocational opportunities for our inmates. (R. p. 864).

During her testimony, Ms. Miro negated the Appellants' persistent contention that the PUSD somehow stood apart from the Department's Division of Education or from the Department itself as a separate and distinct entity. (R. pp. 863 – 70).

Thus, this Court concludes that the Committee properly recognized the realities of the relationship amongst and between the Appellants, the PUSD, and the Department as follows:

SCDC management was not obligated by statute or policy to consult with the PUSD School Board or obtain its approval before implementing the RIF. While good business relations may, in the opinion of some, dictate the feedback from management of affected areas be solicited, it is not required. The PUSD exists as a unit under the purview of the SCDC Executive Director, not as a separate entity; and, therefore, it is not afforded any special rights or treatment no afforded to other divisions within the agency. Further, § 24-25-90 of the South Carolina Code of Laws states: "[t]he superintendent of the district [PUSD] and all other educational personnel shall be employed, supervised, and terminated according to [the Department's] personnel policies and procedures. (Committee Conclusion of Law No. 3, R. pp. 16 – 17).

The Appellants overlooked the reality that the Department's 2003 RIF affected all of its divisions, not just the PUSD, which constitutes the Department's Division of Education. However, the Committee observed the following (R. p. 11):

The positions of 148 SCDC employees were eliminated effective June 1, 2003. Of those 148 positions, 84 (56.75%) were PUSD positions including Appellants in this appeal who were certified educators employed by SCDC in the PUSD. (Committee Exhibit #1, pp. 1 – 39).

Thus, 64 of the 148 positions, or 43.25%, eliminated under the RIF implemented by the Department effective June 1, 2003 were non-District positions. This fact reinforces the reality

that the Appellants, like all other employees of the Department, were properly subject to the RIF implemented by the Department effective June 1, 2003.

This reality is again reinforced by an examination of the definitions of “Employee” and “Employing Agency” from the applicable state regulations. An “employee,” as defined by S.C. Regulation § 19-700, is “any person in the service of an agency who receives compensation from the agency and where the agency has the right to control and direct the employee in how the work is performed.” An “employing agency,” as defined by the same regulation, is “the agency having primary control over the services of the employee.” This Court concludes that the Committee properly harmonized the Department’s primacy, as the “employing agency,” over its “employees,” including the Appellants, within the context of a RIF driven by the need to address budgetary pressure:

SCDC’s RIF plan was, by design, based on budgetary pressure to reduce costs. As such, it is reasonable for SCDC to develop a plan that maximized savings while retaining as many employees as possible in essential areas. In SCDC’s efforts to reduce budget deficits, a hierarchy of priorities was identified and programs were evaluated for ways to reduce costs while still providing essential services. The education program was one area where significant cost-saving opportunities existed. Other areas, such as security, housing, clothing, food, and healthcare, in developing and implementing the RIF plan, were deemed to be areas where further cuts could not be tolerated. (Conclusions of Law, R. p. 16).

Thus, this Court concludes that the Committee properly determined that the Department legitimately and lawfully included the Appellants and other certified educators it employed in its June 1, 2003 RIF plan:

Additionally, the selection of education employee’s positions for inclusion in the RIF was not the result of a belief by other employees or members of [SCDC] management that educators were overpaid. This high number of educators involved in the RIF was the result of basic cost-saving principles to maximize savings and retain as many employees as possible due to the high salaries of most educators compared to other personnel. (Conclusion of Law No. 1, R. p. 16).

2. The Department did not violate its own RIF policy, state law or regulations controlling RIFs, or our state's constitution by dividing itself into 11 competitive areas for the purposes of implementing its RIF effective June 1, 2003.

In support of the second issue on appeal the Court distilled from the 27 enumerated paragraphs provided by the Appellants in their principle brief, the Appellants argued that the Department violated its own RIF policy, state law and regulations, and our state's constitution by dividing the agency into 11 competitive areas, the key decision by which it implemented its RIF effective June 1, 2003.

The Appellants presented their chronology of the events which resulted in the designation of these competitive areas. As recounted by the Appellants, Director Ozmint instructed the former Director of the Department's Division of Human Resources, John Near, "to draw 'competitive areas' in a way to minimize employee bumping and maximize savings."²⁷ Mr. Near, upon receiving these instructions, "created [11] geographic regions within SCDC for purposes of the RIF," regions which, according to the Appellants, "were not restricted to areas where staff was separately organized or clearly distinguishable from the staff in other areas."²⁸ According to the Appellants, "Director Ozmint admitted that the geographic regions existed only for the purpose of the RIF and to reduce bumping."²⁹

²⁷ See Appellants' Principle Brief, p. 5, para. 10. In an associated footnote, the Appellants observed that, before Director Ozmint's tenure began, "SCDC had experienced the closing of the Central Correctional Institution (CCI) in Richland County." *Id.*, p. 5, n. 2. As recounted by the Appellants, "[r]ather than restrict employment opportunities geographically, SCDC permitted all affected employees to obtain positions at other facilities," and, "[a]s a result, employees interested in maintaining employment with SCDC found positions." *Id.* However, as described by Mr. Near, the Court finds that the circumstances which allowed the agency to place SCDC employees affected by the closure of CCI differed dramatically from the circumstances which compelled SCDC to conduct its 2003 RIF. (R. pp. 723 – 35).

²⁸ See Appellants' Principle Brief, p. 5, para. 11.

²⁹ *Id.*, p. 5, para. 12.

After providing their accounting of the impact of the RIF upon certified educator positions at various institutions operated by the Department,³⁰ the Appellants then invoked portions of the testimony provided to the Committee by Ms. Miro and the deposition testimony provided by former District Superintendent Wendell Blanton in an attempt to support their contention that the Department improperly established 11 competitive areas in the course of implementing its 2003 RIF.³¹

In the four (4) sections of their supporting legal argument, the Appellants challenged the legitimacy of the Department's decisions and actions which resulted in the establishment of the 11 competitive areas it used to implement its RIF effective June 1, 2003. In the section addressing the Department's purported violations of its own RIF policy, the Appellants invoked paragraph 1.1 of the March 14, 2003 edition of Policy Number ADM-11.05 and then provided six (6) succinct points and a narrative which argued that the Department violated its own RIF policy by establishing 11 competitive areas within its RIF plan.³² In the section addressing the Department's purported violations of applicable statutes, the Appellants argued that the Department violated § 24-25-10 by establishing 11 competitive areas within its RIF plan as these areas "arbitrarily divided 'the special statewide unified school district',³³" and, consequentially, the RIF resulted in the reduction of "[PUSD] educational services to designated facilities that do

³⁰ Id., pp. 5 – 6, paras. 13 - 14. Later, the Appellants stated each of them "would have been willing to perform services outside the geographic region created for the RIF in order to retain employment," and they provided examples of various Appellants who "obtained employment outside the geographic region from which they were separated." Id., pp. 7 – 8, para. 18. While it is uncontested that various Appellants found work outside of the geographic region from which they were separated, this Court concludes that such facts are not and were not relevant to whether the Department complied with its own RIF policy, state law and regulations, and our state's constitution by its decision to divide the agency into 11 competitive areas as part of its agency-wide RIF plan effective June 1, 2003. Moreover, this Court concludes that such facts have no bearing on the legitimate fiscal crisis confronted by SCDC in early 2003 as recognized by the Committee in its Final Decision. (R. p. 16).

³¹ See Appellants' Brief, pp. 6 – 7, paras. 15 – 16.

³² Id., pp. 14 – 16, Section I.

³³ Id., pp. 20 – 21, Section I.

not operate on a 'statewide' basis.³⁴ The Appellants also argued that the Department violated § 24-25-90 by establishing 11 competitive areas within its RIF plan.³⁵

However, the Appellants offered these identical or nearly identical arguments to the Committee, and this Court concludes that the Committee, by applying and interpreting the applicable law,³⁶ properly denied the Appellants' appeal of the Department's decision to deny their grievances. For example, the Appellants, in arguing to this Court that the Department violated § 24-25-10 and § 25-25-90 by establishing 11 competitive areas within its RIF plan, simply offer nothing other than their own interpretation of these statutory provisions.³⁷

Furthermore, the Appellants argued the following:

There is no commuting limit for employees of SCDC. (ROA pp. 621-623). Ms. Miro, for example, has commuted forty-seven miles one way each day for her duties as Warden of Allendale Correctional Institution and as a [Division] Director of SCDC. SCDC staff often live far from their places of employment, including out of state. There is no requirement that an employee live close to his or her place of work and employees often choose to commute and advance in their service to SCDC. (ROA pp. 527-528).³⁸

In raising this argument, the Appellants assailed Mr. Near's decision that an employee's bumping rights under the 2003 RIF would be limited to a reasonable geographic radius of 30 miles.³⁹ Mr. Near's decision clearly manifested itself within the March 14, 2003 RIF policy Mr. Near and his staff developed, specifically within paragraph 7.2 of Policy Number ADM-11.05:

³⁴ Id., p. 21.

³⁵ Id., p. 22, Section V.

³⁶ See the Committee's Findings of Fact Nos. 1 – 9. (R. pp. 12 – 13).

³⁷ The Appellants offered the same arguments to the Committee as reflected by the Committee's Findings of Fact Nos. 4 and 5 (R. p. 12).

³⁸ See Appellants' Principle Brief, p. 7, paragraph 17.

³⁹ Mr. Near testified regarding his understanding that "[t]he state has a rule that talks about you can't involuntarily move people more than ... I think it's around thirty miles or to a nearest facility." (R. p. 715).

When a vacancy occurs in an employee's competitive area which is (1) in the *same job class*, pay band, pay level or *lower* and *functionally similar* as the position held prior to the lay off, downward bumping, or reassignment and (2) within a reasonable geographic distance (30 mile radius) of the work location of the employee, then the eligible employee will be offered the vacancy provided s/he meets the minimum training and experience qualifications. The position must be accepted in writing by the employee within two (2) working days of the offer or s/he waives any future recall rights. (R. p. 1638). [emphasis supplied in policy].

Director Ozmint echoed this concept in his March 28, 2003 letter to OHR Director Wilkins when he described the competitive areas and competitive job classification series encompassed by the RIF plan:

The positions to be eliminated in this [RIF] plan are located across the state of South Carolina. Competitive areas have been designated to include entire groups of institutions and divisions within a reasonable geographic area to accommodate the realistic opportunity for staff relocation, and hopefully, recall and reinstatement. In addition, by expanding the number of locations, adverse impact may be minimized on specific groups of employees. (R. p. 1627).

In assailing the Department's decision regarding the establishment of 11 competitive areas and the geographic limitations they represent, the Appellants overlooked the definition of "involuntary reassignment" provided in S.C. Regulation § 19-700:

INVOLUNTARY REASSIGNMENT – the movement of an employee's principal place of employment in excess of 30 miles from the prior workstation at the initiative of the agency.

Thus, contrary to the Appellants' arguments, this Court concludes that the 11 competitive areas and the geographic limitations they represent were reasonably derived from our state code of regulations.

By way of a final example, the Appellants offered a description of Ms. Miro as the "Director of the SCDC Education Division that includes the [PUSD]."⁴⁰ However, this description is misleading, as, according to Ms. Miro's testimony, the PUSD and the

⁴⁰ See Appellants' Principle Brief, p. 6, para. 15.

Department's Division of Education are one and the same under the Department's organizational structure. Ultimately, just as they did before the Committee, the Appellants overlooked the reality that the RIF undertaken by the Department in 2003 affected all of the Department's divisions, not just the PUSD, which constitutes the Department's Division of Education. In light of these realities, this Court concludes that the Committee properly determined that the Department legitimately and lawfully established the 11 competitive areas it used to implement its RIF effective June 1, 2003:

The development of the competitive areas did not violate SCDC's RIF policy, nor were they drawn to retaliate against or punish SCDC educators.⁴¹ Such groupings are specifically allowed in SCDC's RIF policy and, as reflected in the RIF policy, the manner in which the competitive areas are designated is left to the discretion of the Executive Director of SCDC. As such, the Committee finds that the geographical competitive areas were allowable under SCDC's RIF policy and their determination was left to the discretion of the Executive Director. Further, the Committee finds that neither state law nor SCDC's RIF policy required the PUSD to be treated as a single competitive area in the event of a RIF or that employees be afforded agency-wide bumping rights. In addition, the PUSD employees were not singled out because SCDC was divided into 11 competitive areas which also limited the bumping rights of employees not affiliated with the PUSD. (Conclusion of Law No. 2, R. p. 16).

3. The Department did not violate its own RIF policy, state law or regulations, or our state's constitution by its decisions to retain and hire temporary employees before and after the RIF it implemented effective June 1, 2003 and to retain employees who accepted the retirement opportunity it offered during the RIF recall period.

In support of the third issue on appeal the Court distilled from the 27 enumerated paragraphs provided by the Appellants in their principle brief, the Appellants argued that the Department violated its own RIF policy, state law and regulations, and our state's constitution by retaining and hiring temporary employees before and after the RIF it implemented effective June

⁴¹ Again, as explained in Section IV(D) below, this Court concludes that the Appellants abandoned their retaliation claim in their appeal. See also note 21 above.

1, 2003 and by retaining employees who accepted the retirement opportunity after the RIF it implemented effective June 1, 2003.

The Appellants provided a list of certified educators with less service than the Appellants who SCDC retained after the RIF.⁴² They also stated that some Appellants testified, purportedly without contradiction, that they had been “replaced by part-time, less experienced or temporary staff” and that “[t]emporary employees and part-time employees were retained and hired during the RIF recall period.”⁴³ They then referenced Ms. Heather Pope, a managing partner of OHR, who “testified that the following question and answer appeared on the OHR website during the RIF period under review:”

Q. Can an agency hire a temporary employee to replace an employee affected by a RIF or to perform the functions of a person eliminated by a RIF?

A. An agency may not hire a temporary employee to perform the duties of an employee affected by a RIF. If these duties are to be performed within one year of the effective date of the RIF the agency should reestablish the position and implement its recall procedure.⁴⁴

The Appellants next discussed two (2) “retirement opportunities” purportedly implemented by the Department during the RIF recall period, which commenced on the RIF’s effective date of June 1, 2003 and concluded on May 31, 2004.⁴⁵ According to the Appellants,

⁴² See Appellant’s Principle Brief, pp. 8 – 9, para. 19.

⁴³ *Id.*, pp. 9 - 10, paras. 20 – 21.

⁴⁴ *Id.*, p. 10, para. 22. The Appellants later argued that, by purportedly ignoring the guidance provided by this question and answer from OHR’s website, the Department violated a “right” allegedly secured to them under South Carolina precedent, namely that “[a]n employing agency may not disregard procedural legislation to remove, demote, or otherwise deprive an employee of his salary or position.” See Appellants’ Principle Brief, p. 26, Section II(b). This Court concludes that no such “right” exists under South Carolina precedent. Moreover, this Court concludes that the Committee properly determined that the Department “did not violate any internal policies or procedures or any guidelines established by [OHR].” (R. p. 17).

⁴⁵ *Id.*, p. 10, para. 23. According to the Appellants, the Department implemented the two (2) “retirement opportunities” on July 18, 2003 and March 25, 2004. However, this Court’s review of the record reveals that the Department implemented only one (1) retirement opportunity during the RIF recall period which ran from June 1,

these “retirement opportunities” allowed full-time employees to retire and return to work in “temporary” capacities at 75% of their former salaries.⁴⁶

The Appellants then provided their assessment of the regulatory authority purportedly applicable to the “retirement opportunities” the Department implemented during the RIF recall period. According to the Appellants, S.C. Regulation §§ 19-700 and 19-719.01 support the proposition that “a public employee who retires experiences a ‘break in service.’⁴⁷” The Appellants then cited S.C. Code Ann. § 9-1-1790 for the proposition that the retirees who accepted the “retirement opportunities” offered by the Department during the recall period “lose any enforceable right to re-employment” and for the proposition that a “retiree must leave active employment for a minimum of 15 days.⁴⁸” The Appellants then stated the following:

During the recall period of June 1, 2003 – May, 31, 2004, SCDC employed [23] individuals in temporary positions to perform services formerly provided by full-time, certified educators. During the same period, SCDC assigned responsibilities formerly performed by full-time, certified educators to 19 individuals as non-certified staff.⁴⁹

2003 to May 31, 2004. This Court’s review of the record also reveals that the retirement opportunity purportedly offered by the Department on March 25, 2004 was not a retirement opportunity at all. Instead, on March 25, 2004, the Department issued a memorandum which announced a retirement opportunity with effective dates between June 18 and July 1, 2004, clearly after the conclusion of the RIF recall period on May 31, 2004. (R. p. 2572). Ms. Patricia Thrailkill, the Assistant Director of the Department’s Division of Human Resources, testified that the retirement opportunity discussed in the agency’s March 25, 2004 memorandum constituted “the same type of opportunity but offered in a different fiscal year.” (R. p. 971).

⁴⁶ Id.

⁴⁷ Id., pp. 10 – 11, para. 24.

⁴⁸ Id.

⁴⁹ Id., p. 11, para. 25.

In an associated footnote, the Appellants argued that Appendix A to their principle brief established “that there were twice as many new permanent and temporary education employment actions during the recall period as the number of Appellants separated by RIF.”⁵⁰

The Appellants then asserted the following parameters associated with “temporary employee” status:

By regulation, a “temporary employee” cannot exceed one year of employment. Additionally, a “temporary position” cannot be in place for more than one year. S.C. Regulations R. 19-700. During the recall period, SCDC employed individuals as “temporary employees” and re-employed individuals in “temporary positions.”⁵¹

In the four (4) sections of their supporting legal argument, the Appellants presented various challenges to the Department’s decision to retain and hire temporary employees before and after the June 1, 2003 RIF and to retain employees who accepted the only retirement opportunity it offered during the RIF recall period. In the section addressing the Department’s purported violations of its own RIF policy, the Appellants argued that the Department violated paragraph 2.3 of Policy Number ADM-11.05 by employing “individuals in temporary positions and permanent positions during the recall period without notifying RIF’ed employees,” and by offering “retiring employees return to employment after a ‘break in service’ during the recall period without notifying RIF’ed employees.”⁵² The Appellants further argued that the Department violated paragraphs 7.1, 7.5, and 11 of Policy Number ADM-11.05 in the manner by which it retained and managed its pool of temporary employees during the RIF’s recall period.⁵³

⁵⁰ Id., p. 11, n. 3.

⁵¹ Id., p. 11, para. 26.

⁵² Id., p. 17, Section II(i).

⁵³ Id., p. 18, Sections III, IV, and V.

In the section addressing the Department's purported violations of applicable statutes, the Appellants argued that the Department violated S.C. Code Ann. § 24-25-70(7) by employing "non-certified instructional staff" and "former certified instructional staff in non-certified positions to perform their former duties," and by offering "instruction through individuals hired in non-certified positions."⁵⁴ The Appellants also argued that the Department violated S.C. Code Ann. § 24-25-90 and its own RIF policy when it purportedly "hired temporary employees to replace educators separated by RIF and allowed individuals who voluntarily separated for purposes of retirement to return to temporary positions in favor of employees separated by RIF."⁵⁵ The Appellants further argued that the Department violated S.C. Code Ann. § 8-11-185 by guaranteeing "re-employment at lower pay to employees who chose to 'retire,'" because, "[b]y law, these employees experienced a 'break in service' and were not entitled to preference over RIF'd employees who retained 'covered employee' status during the recall period."⁵⁶ Finally, in the section addressing the Department's purported violations of our state's

⁵⁴ *Id.*, p. 21, Section III. The Appellants referenced the post-RIF duties assigned by the Department to Appellants Nancy Glenn, Mary McCabe, and Beverly McClanahan. Earlier in their principle brief, the Appellants stated that Ms. Glenn, Ms. McCabe, and Ms. McClanahan "each testified that after the RIF, they performed their former education duties while being paid as security officers," that "SCDC did not have signed position descriptions for" them, and that "Ms. Glenn received a memorandum before the [effective date of] the RIF that she would continue her library services in her new position." *Id.*, p. 11, para. 27. However, this Court's review of the record yields the conclusion that the Appellants did not provide a complete narrative of the post-RIF duties fulfilled by these three (3) Appellants. For example, the Appellants neglected to mention that the EPMS issued to Ms. Glenn covering the period of time immediately after the RIF's effective date of June 1, 2003 clearly stated that Ms. Glenn had "made a wonderful transition from librarian to [correctional] officer." (R. pp. 1253 and 2991). Finally, the Appellants invoked the post-RIF duties the Department assigned to Appellants Glenn, McCabe, McClanahan, and James "Cal" Bell, to argue that the Department violated a "right" to particular compensation allegedly secured to them under the South Carolina Court of Appeals' decision in Abraham v. PUSD No. 1 & S.C. Dep't of Corr., 538 S.E.2d 656 (S.C. Ct App. 2000). (See Appellants' Principle Brief, p. 25, Section I(b)). However, this Court again concludes that no such "right" legitimately exists under Abraham, and the Committee properly considered these facts when it ruled in the Department's favor.

⁵⁵ See Appellants' Principle Brief, p. 22, Section V.

⁵⁶ *Id.*, p. 22 – 23, Section VI(b). In Section VI(a), the Appellants argued that the Department "filled vacancies following the RIF without providing priority consideration to RIF'ed educators." However, this Court's review of the record reveals that the Department recalled Ms. McCabe back to a certified educator position approximately one (1) month after she had accepted a correctional officer position. (R. pp. 248 – 49, 256 – 57, and 261).

constitution, the Appellants argued that SCDC violated Article I, § 3 of our state's constitution, because, during the RIF's recall period, it "allowed employees choosing to retire to return following a 'break in service' without allowing the Appellants the opportunity to recall."⁵⁷

However, the Appellants offered these identical or at least very similar arguments to the Committee, and this Court concludes that the Committee, by correctly interpreting the applicable law and regulations, properly denied the Appellants' appeal of the Department's decision to deny their grievances. Just as they did to the Committee, this Court concludes that the Appellants offered nothing more than their own interpretation of the Department's RIF provisions, state statutes and regulations, our state's constitution, and precedent from our state's courts.

In assailing the Department's decision to implement the retirement opportunity during the RIF recall period and in assailing its management of personnel decisions associated with the implementation of this opportunity, the Appellants invoked the definition of "temporary employee" provided in S.C. Regulation § 19-700. However, neither S.C. Regulation § 19-700 nor § 19-719.01 include the following relevant terms: "retired," "retiree," "retirement," "active service," or "return to active service." Thus, the provisions of these regulations are not precisely applicable to retirees who return to active service, such as the employees who accepted the only retirement opportunity implemented by the Department during the RIF recall period.

Instead, an examination of the statutes that apply to state retirees who return to state employment undermine the Appellants' arguments on these issues. This critical distinction perhaps is best understood by an examination of § 9-1-1790 which is entitled "Amount which may be earned upon return to covered employment." Section 9-1-1790(A) provides as follows:

⁵⁷ Id., p. 24, Section I(b).

A retired member of the system who has been retired for at least fifteen consecutive calendar days may be hired and return to employment covered by this system or any other system provided in this title without affecting the monthly retirement allowance he is receiving from the system. If the employment continues for at least forty-eight consecutive months, the provisions of Section 9-1-1590 apply. If a retired member of the system returns to employment covered by this system or any other system provided in this title sooner than fifteen days after retirement, the member's retirement allowance is suspended while the member remains employed by the participating employer. If an employer fails to notify the system of the engagement of a retired member to perform services, the employer shall reimburse the system for all benefits wrongly paid to the retired member.

Obviously, § 9-1-1790(A) references § 9-1-1590 which is entitled "Effect of restoring beneficiaries to active service," and, by the term "beneficiaries," this statute refers to state *retiree* beneficiaries. The third paragraph of § 9-1-1590 provides as follows:

Should any other beneficiary who has been restored to active employment continue in service for a period of forty-eight consecutive months and his annual compensation be equal to or greater than seventy-five percent of his average final compensation at retirement, then he may elect to cease his retirement allowance and become a contributing member again and void his election of an optional benefit. ... Any such beneficiary may request the board to allow him to repay to the System all monies received by him as benefits during any periods subsequent to the date of his reentry into active service and make a contribution equal to the amount he would have contributed had he been a member during the period of his restoration to active service prior to his again becoming a member, together with the interest which would have been credited to the contributions on account of such period of restoration up to the date such contribution is made. ... In no event shall the retirement allowance payable upon subsequent retirement be less than the amount of his allowance previously payable plus any increases which would have been payable under Section 9-1-1810 had he not been restored to service.

The second and third cross references at the conclusion of § 9-1-1590 read as follows:

Application of this section to retired member whose return to covered employment continues for at least 48 consecutive months, see §§ 9-1-1790, 9-11-90.

Provision allowing retired members of the State Retirement System to return to work and earn certain amounts without having their monthly retirement allowance affected, see §§ 9-1-1790, 9-11-90.

Section 9-11-90 is entitled "Effect of restoring beneficiary to service; retirement after return to service," and § 9-11-90(3) provides as follows:

Should any other beneficiary who has been restored to active employment continue in service for a period of forty-eight consecutive months and his annual compensation be equal to or greater than seventy-five percent of his average final compensation at retirement, then he may elect to cease his retirement allowance and become a contributing member again and void his election of an optional benefit. ... In no event must the retirement allowance payable upon subsequent retirement be less than the amount of his allowance previously payable plus any increases which would have been payable under Section 9-11-310 had he not been restored to service.

Section 9-11-90(4)(a) then provides as follows:

Notwithstanding the provisions of subsections (1) and (2) of this section, a retired member of the system who has been retired for at least fifteen consecutive calendar days may be hired and return to employment covered by this system or any system provided in this title without affecting the monthly retirement allowance he is receiving from this system. If the employment continues for at least forty-eight consecutive months, the provisions of Section 9-11-90(3) apply. If a retired member of the system returns to employment covered by the South Carolina Police Officers Retirement System or any other system provided in this title sooner than fifteen consecutive calendar days after retirement, the member's retirement allowance is suspended while the member remains employed by a participating employer of any of these systems. If an employer fails to notify the system of the engagement of a retired member to perform services, the employer shall reimburse the system for all benefits wrongly paid to the retired member.

Thus, § 9-1-1790(A) clearly authorizes an agency, such as the Department, to hire a state retiree back to employment without the retiree incurring a suspension of his or her monthly retirement allowance so long as the state retiree has been "*retired* for at least fifteen consecutive calendar days." Section 9-1-1790(A) still authorizes an agency, such as the Department, to hire back a state retiree to employment even if the state retiree has not been retired for at least fifteen

consecutive calendar days, but, in such circumstances, the retiree will incur an suspension of his or her monthly retirement allowance for as long as the retiree remains employed.

The Appellants persistently assailed the Department's decision to retain and hire temporary employees before and after its June 1, 2003 RIF and to retain employees who accepted the retirement opportunity it offered during the RIF recall period.⁵⁸ However, § 9-1-1790 does not use term "break in service;" instead, it addresses a state *retiree* who has been *retired* for at least 15 consecutive calendar days. Moreover, § 9-1-1790 does not explicitly or even impliedly declare, as argued by the Appellants, that retirees who take advantage of "retirement opportunities" lose any enforceable right to re-employment. Like § 9-1-1790, § 9-1-1590 and § 9-11-90 also apply precisely to state retirees, like those retirees who accepted the only retirement opportunity the Department offered during the recall period.

The Appellants anchored their arguments on provisions of our state regulations and statutes that do not precisely apply to the retirement opportunity in question, and they did not consider that a RIF presents an employee with the prospect if not the reality of involuntary separation from their employment while a retirement opportunity presents a retirement eligible employee only with the prospect of a 15 consecutive calendar day period of retirement before the he or she may return to their job without an interruption of their retirement allowance. Thus, in light of these realities, this Court concludes that the Committee properly determined as follows:

The retirement opportunity offered by SCDC after the RIF plan was implemented as a separate action designed to further reduce operating costs. Employees who elected to participate in this opportunity were removed from their full-time equivalent positions and placed into temporary positions. Recall rights are not applicable in the case of temporary positions; therefore, employees affected by the RIF were not provided recall rights in relation to these jobs. The SCDC employees who took part in the retirement opportunity were not offered new positions; rather, it was a way for them to retain their current positions, in a

⁵⁸ See Appellants' Principle Brief, pp. 16 – 17, Section II(e); p. 18, Sections III and V; and p. 24, Section I.

temporary capacity while significantly reducing SCDC costs by reducing salaries and eliminating the cost of benefits for these employees. SCDC was not obligated to offer the positions to Appellants under the RIF policy's recall procedures because they were temporary positions. In addition, Mr. Ozmint's cover letter to OHR that was submitted along with the RIF plan stated that "[t]emporary positions, particularly in the area of educational instruction to inmates, may be developed and made available to affected employees by the Reduction-in-Force;⁵⁹" this language indicates that this is a possibility, not a promise. Additionally, the formal RIF plan did not address, nor would it have addressed, the subject of temporary positions in terms of the recall rights for employees affected by the RIF. (Conclusion of Law # 4, R. p. 17).

This Court also concludes that the Committee also properly determined the following:

The retention of certain temporary and temporary grant employees did not violate the approved RIF policy. While these types of positions are often the first to be eliminated prior to enacting a RIF, there is no specific requirement in SCDC's RIF policy that made this action mandatory. Since these employees do not have benefits and other extraneous costs to the agency like full time equivalent employees do, electing to keep these positions as opposed to full-time equivalent positions was one way to further maximize savings to the agency, which is in line with the stated purpose of the RIF. (Conclusion of Law # 5, R. p. 17).

D. THE APPELLANTS' RETALIATION CLAIM

As explained above in Section IV(A), the Appellants did not identify distinct issues on appeal within their principle brief, and, consequentially, this Court distilled three (3) distinct issues on appeal from the 27 paragraphs the Appellants enumerated within their principle brief. As also explained above in Section IV(A), the Appellants provided a series of overlapping legal arguments divided into four (4) sections in support of the three (3) distinct issues on appeal identified by the Court.

However, as demonstrated by the Department, these three (3) distinct issues on appeal and the four (4) sections of supporting legal argument deviate from the grounds for appeal

⁵⁹ As explained in note 3 above, Director Ozmint's "cover letter to OHR" consisted of his March 28, 2003 letter to OHR Director Wilkins within which Director Ozmint presented SCDC's RIF plan. (R. pp. 1626 – 31). The Appellants did not address this specific conclusion rendered by the Committee in any of the materials they submitted in support of their appeal.

presented by the Appellants to the Committee.⁶⁰ The Appellants articulated a number of arguments to the Committee regarding the purported retaliatory motive behind the Department's 2003 RIF policy and plan (R. pp. 2695 – 99).

Thus, the Department argued to this Court that the purported retaliatory motive held by the Department and, specifically, Director Ozmint against the Appellants constituted an essential component of the Appellants' appeal to the Committee, and the Department further argued that the Committee recognized this reality in its Decision. (R. p. 14).

This Court agrees with the Department, and, accordingly, it finds that the Appellants, for tactical reasons articulated by the Appellants' counsel,⁶¹ did not appeal the Committee's finding that "there was no credible evidence presented that the elimination of educator positions in PUSD was motivated by a desire for retaliation for an earlier lawsuit that resulted in the increase of educators' salaries." (R. p. 16). Notwithstanding this finding, the Court need not, in light of its rulings concerning the dispositive issues at the heart of this matter, rule on the Department's

⁶⁰ In a document dated October 14, 2008 and entitled "GROUNDS FOR APPEAL FORM" (R. pp. 2694 – 99), the Appellants framed three (3) overarching grounds for their collective appeal of the Department's denial of their grievances to the Committee. First, the Department, by its 2003 RIF policy and through its 2003 RIF plan, purportedly violated the statutes which created and control the PUSD. Second, the Department, by its 2003 RIF policy and through its 2003 RIF plan, purportedly deviated from "normal" RIF practices and procedures. Third, the Department, by its 2003 RIF policy and through its 2003 RIF plan, purportedly targeted the Appellants in a retaliatory manner because they had successfully engaged in litigation, Abraham v. PUSD No. 1 & S.C. Dep't of Corr., 538 S.E.2d 656 (S.C. Ct App. 2000), against the Department regarding their compensation. (R. pp. 2272 – 79).

⁶¹ The Court notes the following statement from Appellants' counsel during oral argument conducted by the Court on October 28, 2009:

Now, do we believe ... certainly, does Mr. Randolph, Mr. Bell, and Ms. Martin, do they believe that they were victims of retaliation? Absolutely. Do we believe that we proved that? Absolutely. But we have purposely removed that from the equation here on this appeal because we have other grounds that reach the same destination.

The Department submitted a transcript of the entire October 28, 2009 hearing as an exhibit in support of its supplemental brief. See the Department's Supplemental Brief, Exhibit B. See also Transcript of October 28, 2009 Oral Argument, p. 12, lines 12 – 19.

contention that the Appellants did not pursue their retaliation claim or consider the precedent invoked by the Department in support of its contention.⁶²

V. ANALYSIS OF ISSUES RAISED BY APPELLANTS DURING ORAL ARGUMENT AND IN MATERIALS SUBMITTED BY THE PARTIES AFTER ORAL ARGUMENT

A. THE APPELLANTS DID NOT ARTICULATE A VIABLE EQUAL PROTECTION CLAIM IN THEIR INSTANT APPEAL

As chronicled in Section II(E) above, the Appellants, by letter filed with the Court on November 18, 2009, rebutted the contention advanced by the Department in its supplemental brief that the Appellants had “waived” any equal protection claim during the argument articulated by Appellants’ counsel to the circuit court on December 11, 2006 when the circuit court considered the Appellants’ Petition for Judicial Review.

1. During oral argument, the Appellants emphasized and expanded upon the equal protection claim they only sparingly articulated in their principle brief.

During their presentation to this Court on October 28, 2009, the Appellants emphasized and expanded upon an argument they only sparingly articulated within their principle brief, namely that the Department, by the manner in which it formulated and implemented its RIF effective June 1, 2003⁶³ and by the manner in which it implemented the retirement opportunity it offered during the RIF recall period, had deprived them, under Littlefield v. S.C. Forestry Comm’n, 523 S.E.2d 781, 783 (S.C. 2000), of “the equal protection guarantees of [South Carolina’s] Constitution.”⁶⁴

⁶² See Jones v. Leagan, 681 S.E.2d 6, 15 (S.C. Ct. App. 2009) (citing Jinks v. Richland County, 585 S.E.2d 281, 283, n. 3 (S.C. 2003)).

⁶³ See notes 23 and 24 above.

⁶⁴ See Appellants’ Principle Brief, pp. 23 – 24. These are the only pages from the Appellants’ principle brief in which the term “equal protection” appears. Regarding the manner by which the Department implemented its retirement opportunity during the RIF recall period, the Appellants argued as follows:

Appellants' counsel initially discussed the Appellants' equal protection argument with the Court during the October 28, 2009 oral argument, and, in doing so, referenced Littlefield:

COUNSEL: Equal protection comes into this, Your Honor, and I'll say a little bit about the equal protection issue. Equal protection, as you know, in the public sector means that those who are similarly [situated] must be treated similarly. What we have here ...

THE COURT: There has to be an intent, though, doesn't it?

COUNSEL: No, sir, not with equal protection. There's no motive required to show a violation of equal protection. You can look at the equal protection case. I believe it is Littlefield.

THE COURT: Excuse me one second. Go ahead, sir.

COUNSEL: Okay. You can look at Littlefield, for example, and in that case what happened was there was a treatment of people who were separated for reasons other than retirement, differently from people who retired, in terms of obtaining a vested benefit. And what the Court said was that difference was a violation of equal protection. They didn't have to go and say these people were being intentionally mean to folks. Just that their conduct resulted in a treatment of similarly situation individuals in a desperate [sic] fashion. You know, a classic equal protection case is, you know, if you have someone who is in one position and you have another in the same position and you just arbitrarily pick that person for some disadvantageous reasons, you can violate equal protection.⁶⁵

Appellants' counsel later connected the retirement opportunity offered by the Department to its retirement eligible employees during the RIF recall period to an equal protection claim purportedly held by the Appellants:

THE COURT: Information related to the temporary ...

COUNSEL: Correct, Your Honor. Required break in service and earnings limitation. This is what [retirement eligible employees] have to sign understanding that they are going to get [the retirement opportunity]. ... This was an artifice used by [the Department] as a money saving effort and, while that may be well and good in the absence of [a RIF], it's not allowed where you have people out there that you have involuntarily

During the recall period following the RIF, SCDC allowed employees choosing to retire to return following a "break in service" without allowing the Appellants the opportunity to recall. Appellants were "covered employees" entitled to full protection of the law during their recall period. Accordingly, the preferential treatment afforded to employees returning after voluntary separation during this period deprived Appellants of their rights as "covered employees" and constituted a violation of equal protection guaranteed by Article I, § 3 [of the South Carolina Constitution]. *Id.*, p. 24.

⁶⁵ See Transcript of October 28, 2009 Oral Argument, pp. 20 – 23.

separated who want to come back to work for you in whatever capacity, and you're instead giving preferential treatment to individuals who are not covered employees. Thus, the equal protection argument, Your Honor. So there is a lot of curiosity in this particular [RIF] that doesn't require that we penetrate the motivations of the executive director of [the Department]. ... Because during the recall period, number one, they made a promise to my clients and everybody else who was separated that you'll get a change at those positions. They didn't have to make that promise because the law required them to and they didn't do it, and they didn't do it to save money.⁶⁶

2. The Appellants more precisely articulated their equal protection claim within their supplemental brief.

In their supplemental brief, the Appellants reiterated their reliance upon Littlefield by arguing as follows:

Where the General Assembly has established a classification that protects a designated group of citizens (here, the protected class of "covered employees" during a RIF recall period), failure to afford rights established by the General Assembly violates constitutionally protected equal protection and due process guarantees. Proof of motive is not required to protect a legislatively established right. See [Littlefield].⁶⁷

The Appellants then further addressed their equal protection argument as follows:

Motive is a factor where the equal protection clause is used to challenge a classification established by law. In that case, it must be demonstrated that the government intended to violate an established right in making or enforcing the classification. See, Seabrook v. Knox, 369 S.C. 191, 631 S.E.2d 907, 912 (2006) (challenge to a zoning designation). Here, Appellants seek to enforce rather than challenge their rights as members of a protected class, covered employees separated from employment by RIF. By virtue of their covered employee status, Appellants are entitled to protections guaranteed by law that are not available to individuals who are not "covered" due to probationary or temporary employment, or who experience a "break in service" due to termination for cause or voluntary separation from employment. The General Assembly's legitimate interest in protecting individuals who lose permanent state employment through no fault of their own establishes substantial, enforceable rights protected

⁶⁶ See Transcript of October 28, 2009 Oral Argument, pp. 33 – 36.

⁶⁷ See Appellants' Supplemental Brief, pp. 3 – 4.

by the due process and equal protection clauses of the South Carolina Constitution. See, S.C. Const. art. I, §§ 3 and 22.⁶⁸

3. The Department devoted the majority of its supplemental brief to the expanded equal protection argument articulated by the Appellants during oral argument.

The majority of the Department's supplemental brief consisted of its response to the Appellants' equal protection argument, and the Department began its supplemental brief by contending that the Appellants, during their presentation to the circuit court on December 11, 2006, had "explicitly denied" that their challenge of the RIF "animated an equal protection claim" to the circuit court.⁶⁹ (R. p. 2338, lines 9 – 13).

The Appellants' November 18, 2009 letter specifically assailed the Department's contention that they had "waived" or otherwise abandoned their equal protection claim.

4. While they did not "waive" their equal protection claim during the hearing conducted by the circuit court, the Appellants misapprehended Littlefield in the analysis they provided to this Court.

Regarding the equal protection claim emphasized by the Appellants during oral argument before the Court on October 28, 2009 and articulated by the Appellants within their principle and supplemental briefs, this Court concludes, after considering the transcript of the entire hearing conducted by the circuit court on December 11, 2006 (R. pp. 2320 – 57), as well as the parties'

⁶⁸ Id., p. 5.

⁶⁹ See the Department's Supplemental Brief, pp. 1 – 2. Within its supplemental brief, the Department also accurately cited passages from the argument entertained by the circuit court on December 11, 2006 since the transcript of the circuit court's December 11, 2006 hearing had been included by OHR in Committee Exhibit #1 and submitted to the Committee. (R. pp. 2320 – 57). See also the Department's Supplemental Brief, p. 2, n. 2 and 3. The Department further observed in its supplemental brief that the Appellants did not explicitly identify or otherwise articulate an equal protection argument in their statement of grounds on appeal to the Committee. (R. pp. 2694 – 99). However, this Court observes that the Committee Attorney, during the proceedings on January 22, 2009, included an equal protection component in the charge he presented to the Committee, and this Court further observes that neither party objected to any component of the charge presented to the Committee. (R. p. 1424 – 25).

arguments, that the Appellants did not “waive” their equal protection claim during the proceedings before the circuit court.

However, this Court observes that the Appellants’ arguments to both the circuit court and this Court concerning their equal protection claim reflected a misunderstanding of the components of such a claim on their behalf. The Appellants’ misunderstanding of an equal protection claim manifested itself in their analysis of Littlefield.

For example, the Appellants completely omitted any discussion of whether the Littlefield Court determined or even considered whether a “rational basis” existed for the state’s application of the statute at issue, S.C. Code Ann. § 8-11-620. Ultimately, the Littlefield Court, 523 S.E.2d at 783, after conducting a proper equal protection analysis, determined that no rational basis existed to support the manner in which state officials applied this statute.

Moreover, the Appellants failed to address or even acknowledge the concepts of “rational basis” and “strict scrutiny,” concepts which are fundamental to a proper equal protection analysis. See Sylvia Dev. Corp. v. Calvert County, Md., 48 F.3d 810, 818 – 21 (4th Cir. 1995). As an aside, our Supreme Court recognized the Fourth Circuit’s holding in Sylvia Dev. Corp. within its decision in Seabrook v. Knox, 631 S.E.2d 907, 912 (S.C. 2006) (“To establish an equal protection violation, plaintiffs must demonstrate they were intentionally and purposely subjected to treatment different from other similarly situated. Sylvia Dev. Corp., 48 F.3d at 818.” (citation omitted)). Obviously, the Appellants overlooked this component of Seabrook when they relied upon the decision in their supplemental brief.

Thus, contrary to the flawed understanding of equal protection evidenced by the Appellants, “the essential command of the Equal Protection Clause has always been that the classification of persons [to] which a law applies must be ‘reasonable, not arbitrary, and must

rest upon some ground of difference having a fair and substantial relation to the object of the legislation.” Sylvia Dev. Corp., 48 F.3d at 818. (quoting Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920)). Finally, as recognized by our Court of Appeals in Town of Iva ex rel. Zoning Admin. v. Holley, 649 S.E.2d 108, 111 (S.C. Ct. App. 2007), “[e]ven assuming [governmental entity] is not enforcing [an] ordinance equally, the fact that there is some unequal treatment does not necessary rise to the level of a constitutional equal protection violation. (citation omitted).”

5. The Appellants failed to articulate a viable equal protection claim in their instant appeal to this Court.

Therefore, this Court concludes that, under the authority discussed above, as well as our Court of Appeals’ recent decision in Harbit v. City of Charleston, 675 S.E.2d 776 (S.C. Ct. App. 2009), the Appellants failed to articulate a viable equal protection claim to this Court during their instant appeal of the Committee’s Final Decision.

In Harbit, 675 S.E.2d at 782 – 783, our Court of Appeals articulated the following standards associated with a viable equal protection claim:

Under the Equal Protection Clause of the Fourteenth Amendment, a state may not “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1; *see* S.C. Const. art. I, § 3 (“The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.”). This clause requires that “the states apply each law, within its scope, equally to persons similarly situated, and that any differences of application must be justified by the law’s purpose.” Sylvia Dev. Corp., 48 F.3d at 818. It does not prohibit different treatment of people in different circumstances under the law. [Town of Iva ex rel. Zoning Admin., 374 S.C. at 541, 649 S.E.2d 110.] Instead, “the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.” *Id.* In a case such as this, the rational basis standard, rather than strict scrutiny, applies because the

classification at issue does not affect a fundamental right and does not draw upon inherently suspect distinctions such as race, religion, or alienage. [*Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 428 – 29, 593 S.E.2d 462, 469 (2004)].

Further, one seeking to show discriminatory enforcement in violation of the Equal Protection Clause must demonstrate arbitrary and purposeful discrimination in the administration of the law being enforced. *See State v. Solomon*, 245 S.C. 550, 574, 141 S.E.2d 818, 831 (1965). "[E]ven assuming [a governmental entity] is not enforcing [an] ordinance equally, the fact that there is some unequal treatment does not necessarily rise to the level of a constitutional equal protection violation." *Denene, Inc. v. City of Charleston*, 359 S.C. 85, 96, 596 S.E.2d 917, 922 (2004).

Consequently, because the record does not indicate that Harbit was the subject of purposeful, invidious discrimination, the circuit court did not err in granting summary judgment on his equal protection claim. *See Sylvia Dev. Corp.*, 48 F.3d at 825 (internal citations omitted) ("While an equal protection claim must be rooted in an allegation of unequal treatment for similarly situated individuals, a showing of such disparate treatment, even if the product of erroneous or illegal state action, is not enough by itself to state a constitutional claim.").

Despite the efforts by the Appellants to excise this component of an equal protection analysis from the instant case, no evidence exists, as required under Harbit, that the Department, either in the manner by which it implemented the RIF or in the manner or timing of the retirement opportunity it offered during the recall period, arbitrarily and purposefully discriminated against the Appellants or any other employee.

As the Court recognized above in Section IV(D), the Appellants did not pursue the retaliation claim they raised to the Committee. Additionally, Appellants' counsel conceded to the Court during oral argument that the Appellants had "decided not to address any motivational issues in this appeal."⁷⁰ Finally, the Committee found, in its first "Conclusion of Law," that the Appellants, certified educators employed by the Department, "were not unfairly targeted for termination in retaliation for an earlier lawsuit regarding wages." (R. p. 16).

⁷⁰ See Transcript of October 28, 2009 Oral Argument, p. 6.

Thus, as established under Harbit, even if the Appellants' equal protection claim is legitimately rooted in an allegation of unequal treatment of the Appellants as opposed to the employees who availed themselves of the retirement opportunity offered during the recall period, a showing of such disparate treatment, even if it was the product of erroneous or illegal action by the Department, is not enough by itself to state a constitutional claim.

Even if the equal protection analysis is limited in the manner urged by the Appellants under their flawed interpretation of Littlefield, neither the manner by which the Department implemented its RIF nor its retirement opportunity animated a legitimate equal protection claim. In his argument to the Court,⁷¹ Appellants' counsel focused on a paragraph from Director Ozmint's March 28, 2003 letter to Mr. Wilkins, the State Human Resources Director. This paragraph read, in its entirety, as follows: "Temporary positions, particularly in the area of educational instruction to inmates, may be developed and made available to affected employees by the [RIF]." (R. p. 1630).

According to Appellants' counsel, this paragraph represented a "promise" that, if temporary positions were made available as a result of the RIF, then the Department would offer these temporary positions to employees involuntarily separated by the RIF, such as the Appellants. Thus, when retirement eligible employees availed themselves of the retirement opportunity implemented by the Department during the recall period, their positions became "temporary positions" into which former employees involuntarily separated by the RIF had priority to fill. However, the plain wording of this paragraph indicates that no such "promise" was created by this paragraph (i.e. "may" vs. "must").⁷²

⁷¹ See Transcript of October 28, 2009 Oral Argument, pp. 14 – 15 and 24.

⁷² The Committee recognized this distinction by concluding that the language from this paragraph "indicates that this is a possibility, not a promise." See the Committee's Final Decision, Conclusion of Law # 4. (R. p. 17).

Moreover, former employees involuntarily separated by the RIF, such as the Appellants, were not identically situated to the retirement eligible employees to whom the Department offered the “retirement opportunity.” As recognized by Harbit, the Equal Protection Clause “does not prohibit different treatment of people in different circumstances under the law.”

In their brief, the Appellants identified S.C. Code Ann. § 24-25-90 and § 8-17-330 as the statutes purportedly applied by the Department in an unequal and arbitrary fashion in the architecture and implementation of its RIF.⁷³ Even if the Department somehow unequally or arbitrarily applied by these statutes in formulating or implementing its RIF, a conclusion which the Court has not made and does not make here, the retirement opportunity implemented by the Department during the recall period fell under the provisions of an entirely different set of statutes, namely § 9-1-1790, 9-1-1590, and 9-11-90.⁷⁴

Thus, as reflected at various points by the Committee in its Final Decision, the Court concludes that the Department had a rational basis by which to both implement its RIF through the establishment of 11 competitive areas and to offer its retirement opportunity to those employees unaffected by the RIF who were retirement eligible.⁷⁵ Accordingly, the Court further concludes that the Appellants have failed to provide a sufficient basis upon which this Court may reverse or modify the Committee’s Final Decision under the provisions of § 1-23-380(5).

⁷³ See Appellants’ Principle Brief, p. 23. During oral argument, Appellants’ counsel also argued that a “Frequently Asked Question” posted by OHR on its website should have the effect of a regulation or even a statute. See Transcript of October 28, 2009 Oral Argument, pp. 25 – 26. However, the Committee properly determined that it “did not violate any internal policies or procedures or any guidelines established by [OHR].” (R. p. 17). *See also* note 44 above.

⁷⁴ See Section IV(C)(3) above.

⁷⁵ See the Committee’s Final Decision, Conclusions of Law # 4 and # 5. (R. pp. 16 – 17).

B. THE MATERIALS CONSTITUTING “ATTACHMENT 1” TO THE APPELLANTS’ SUPPLEMENTAL BRIEF REPRESENTED NEW FACTS NOT CONSIDERED BY THE COMMITTEE, AND, THEREFORE, THIS COURT GRANTS THE DEPARTMENT’S MOTION TO STRIKE “ATTACHMENT 1” AND THE PORTIONS OF THE APPELLANTS’ BRIEF RELATED TO “ATTACHMENT 1”

As chronicled in Section II(E) above, the Appellants submitted materials designated as “Attachment 1” in support of the supplemental brief they filed with the Court on November 17, 2009. On November 19, 2009, the Department filed its objection to the entirety of the materials designated by the Appellants as “Attachment 1” as well the portions of the Appellant’s supplemental brief related to the materials designated as “Attachment 1.”⁷⁶

The Department moved to strike these materials under the provisions of ALC Rule of Procedure 46. This rule, which is entitled “POWERS OF ADMINISTRATIVE LAW JUDGE,” explicitly authorizes this Court, albeit within the context of contested cases, to “hear and rule on objections and motions” and to “strike from the record objectionable evidence.”

The Department anchored its objections to these materials upon the provisions of S.C. Code § 1-23-380(4) (Supp. 2009) and ALC Rule of Procedure 36(G). Section 1-23-380 is entitled “Judicial review upon exhaustion of administrative remedies,” and the first sentence of § 1-23-380(4) provides that the review conducted by this Court “must be confined to the record.” ALC Rule of Procedure 36 is entitled “RECORD ON APPEAL,” and Rule 36(G), which is entitled “Review Limited to Record,” provides that this Court “will not *consider* any fact which does not appear in the record.” The last sentence of the 2009 Revised Notes for Rule 36 further

⁷⁶ A total of three (3) documents comprised “Attachment 1.” The first two (2) documents of “Attachment 1” consisted of standard 8 ½ by 11 inch pieces of paper while the third document consisted of what appears to be two (2) 8 ½ by 11 inch pieces of paper attached to one another by adhesive tape. The first document in “Attachment 1” was entitled “Legend and List of Websites Used,” while the second and third documents appeared to be spreadsheets which reflected information purportedly relevant to the case under review. The second document was entitled “Locations for Distances for ‘All Broad River Road Complex Institutions and Divisions,’” and the third document was entitled “Distance between Reduction-In-Force-Competitive Areas and Locations.” See the Department’s November 19, 2010 Objection and Motion, pp. 2 – 3.

provides that this Court's review "is limited to those facts appearing in the record." Additionally, as noted by the Department, South Carolina Appellate Court Rule ["SCACR"] 212(b), which this Court may apply in accordance with ALC Rule of Procedure 68, provides that "with the written consent of all attorneys of record, a party may supplement the Record on Appeal at any time before argument commences," but, "[w]ithout such consent or after argument commences, a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so."

After reviewing "Attachment 1" and the related portions of the Appellants' supplement brief, this Court finds that the materials which comprised "Attachment 1" clearly represented and incorporated new facts which were not considered by the Committee in rendering its February 18, 2009 Final Decision. This Court also finds that the Appellants made no effort to properly supplement the Record on Appeal in accordance with SCACR 212(b). Thus, having reviewed the Department's motion, the Appellants' memorandum in opposition to the Department's motion, and the authority cited by the Appellants within their memorandum, Stanley v. Kaufman, 171 S.E. 32 (S.C. 1933), this Court concludes that the documents which comprise "Attachment 1" are objectionable. Consequentially, this Court **GRANTS** the Department's motion to strike "Attachment 1" as well as the portions of the Appellants' supplemental brief related to "Attachment 1."

Alternatively, even if the materials which comprise "Attachment 1" and the portions of the Appellants' supplement brief related to "Attachment 1" are not objectionable, this Court nonetheless concludes that the data reflected in these materials is not relevant to its review of the Committee's February 18, 2009 Final Decision, and, accordingly, the Appellants have failed to

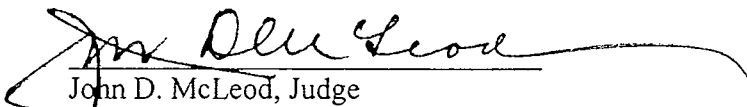
provide a sufficient basis upon which this Court may reverse or modify the Committee's Final Decision under the provisions of § 1-23-380(5).

VI. ORDER OF THE COURT AFFIRMING THE DECISION OF THE STATE EMPLOYEE GRIEVANCE COMMITTEE

Thus, for all of the foregoing reasons, this Court determines that the administrative findings, inferences, conclusions and decisions rendered by the State Employee Grievance Committee in its February 18, 2009 Final Decision did not prejudice the Appellants' substantial rights, and this Court further determines that the Appellants' arguments do not provide a sufficient basis by which it may reverse or modify any aspect of the Committee's February 18, 2009 Final Decision under the provisions of § 1-23-380(5).

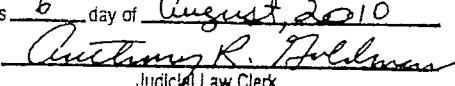
Accordingly, this Court denies the Appellants' instant appeal and denies the relief demanded by the Appellants in their principle brief, in their argument to this Court, and in their supplemental brief. Therefore, **IT IS HEREBY ORDERED** that the Final Decision of the State Employee Grievance Committee issued February 18, 2009 is **AFFIRMED**.⁷⁷

AND IT IS SO ORDERED.


John D. McLeod, Judge
South Carolina Administrative Law Court

August 6, 2010
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 6 day of August, 2010
By: 
Judicial Law Clerk

⁷⁷ This Court issued its original order in this matter on June 2, 2010. The Appellants subsequently filed a motion for reconsideration on June 7, 2010, and the Department filed its memorandum in opposition to the Appellants' motion on June 16, 2010. This Court conducted a hearing regarding the Appellants' motion on July 14, 2010. This Court hereby grants in part and denies in part the Appellants' motion for reconsideration, and, accordingly, it withdraws the order it previously issued June 2, 2010 and substitutes this order in its place.