

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Judge

Lower Court Case No. 2009AL3000103  
Appellate Case No. 2010-170246

**RECEIVED**

MAY 21 2012

**S.C. Supreme 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. 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 FOR COSTS**

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**I. SCDC’S RETURN TO THE APPELLANTS’ MOTION FOR COSTS**

Under the authority of South Carolina Appellate Court Rules [“SCACR”] 222(d), 242(j)(4), and 240(e), the Respondent, the South Carolina Department of Corrections [“SCDC”], respectfully submits its instant return in opposition to the “MOTION FOR COSTS” filed by the Appellants in the instant matter.<sup>1</sup>

**II. RELEVANT CHRONOLOGY**

**A. THE APPELLANTS’ STATEMENT OF ISSUES ON APPEAL TO THE COURT OF APPEALS**

On or about August 24, 2010, the Appellants filed their Notice of Appeal with the Court of Appeals, and, by doing so, they appeal an order issued August 6, 2010 by the Administrative Law Court [“ALC”]. The ALC’s August 6, 2010 order affirmed the Final Decision [“Decision”] issued on February 18, 2009 by the State Employee Grievance Committee [“Committee”]. By its Decision, the Committee denied the collective appeal filed by the Appellants in which they challenged their removal from their respective positions of employment as a result of a reduction-in-force [“RIF”] implemented by the agency effective June 1, 2003.

In early May 2011, the Appellants filed their “Final Brief” with our Court of Appeals. Within their “Final Brief,” the Appellants presented the following four (4) issues within their “Statement of Issues on Appeal:<sup>2</sup>”

1. Whether the ALC failed to enforce the plain language of the RIF policy;
2. Whether the trial court erred in concluding the ALC failed to enforce controlling legislation;

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<sup>1</sup> The Appellants dated their motion May 10, 2012, and SCDC’s undersigned counsel received the Appellants’ motion on May 11, 2012.

<sup>2</sup> See the Appellants’ “Final Brief,” p. iv.

3. Whether the trial court erred in concluding the ALC failed to enforce Appellants' constitutional rights; and
4. Whether the ALC failed to enforce Appellants' rights as "Covered Employees" following the RIF.

SCDC filed its Final Brief with the Court of Appeals on May 9, 2011.

**B. THIS COURT'S APRIL 11, 2012 ORDER AFFIRMED IN PART, REVERSED IN PART, AND REMANDED THE INSTANT MATTER BACK TO THE STATE EMPLOYEE GRIEVANCE COMMITTEE**

By an order dated October 4, 2011, this Court, pursuant to SCACR 204(b), certified the Appellants' appeal from the Court of Appeals.

On April 11, 2012, this Court issued an opinion by which it affirmed in part, reversed in part, and remanded the instant matter back to the Committee.<sup>3</sup>

As SCDC did not file a petition for rehearing, this Court issued the Remittitur on April 30, 2012.

**III. APPLICABLE RULES**

**A. APPLICABLE PROVISIONS OF SCACR 242**

SCACR 242 is entitled "CERTIORARI TO THE COURT OF APPEALS," and SCACR 242(j) is entitled "Costs When a Writ of Certiorari Has Been Granted." SCACR 242(j)(1), which is entitled "*To Whom Awarded*," states as follows:

Unless otherwise ordered by the Supreme Court or agreed to by the parties, costs shall be assessed against the appellant if the decision of the Supreme Court has the effect of affirming the judgment of the lower court or tribunal which was reviewed by the Court of Appeals. When the decision of the Supreme Court has the effect of reversing the judgment of the lower court or tribunal which was on appeal, costs shall be assessed against the respondent before the Court of Appeals. **When the decision of the Supreme Court has the effect of affirming or reversing in part or vacating the judgment of the lower court or tribunal which was on**

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<sup>3</sup> The opinion issued by the Supreme Court which is the subject of the Appellants' instant motion for costs is cited as *Bell, et. al v. S.C. Dep't of Corr.*, No. 27114, 2012 WL 1194443 (S.C. 2012).

**appeal, costs shall be allowed only as ordered by the Supreme Court.** [emphasis supplied].

SCACR 242(j)(2), entitled "*Costs Allowed*," states as follows:

The party entitled to recover costs may recover all those costs specified in Rule 222(b), to include the attorney's fee provided by that rule. Additionally, the party may, to the extent the party actually incurred these costs, recover: (1) the filing fee paid under Rule 242(c); (2) the cost of printing the Appendix under Rule 242(e) and (i); and (3) the cost of printing the party's brief(s) under Rule 242(i). The party may also recover an additional attorney's fee in an amount which shall be set by order of the Supreme Court. The allowance of additional costs will generally not be allowed except in the most extraordinary circumstances.

Thus, SCACR 242(j)(2) authorizes this Court to award both the costs acknowledged therein as well as the costs acknowledged within SCACR 222(b).

SCACR 242(j)(4), entitled "*Motion for Costs*," states as follows:

A party desiring costs to be taxed shall, within fifteen (15) days of the issuance of the remittitur, serve and file a motion requesting that costs be assessed under this Rule. The motion shall comply with Rule 240. If costs are being sought under (2) above, the motion shall be accompanied by a sworn, itemized statement of costs incurred in the form prescribed in the Appendix to these rules. Any return or reply to the motion shall be served and filed in the manner provided by Rule 240. The return may oppose the request for costs or seek a reduction of the amount of costs to be awarded. The remittitur shall not be stayed by the filing of a motion for costs.

## **B. APPLICABLE PROVISIONS OF SCACR 222**

SCACR 222 is entitled "COSTS ON APPEAL." SCACR 222(a), which entitled "To Whom Allowed," states as follows:

Unless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed. When a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise. **When an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court.** [emphasis supplied].

SCACR 222(b), entitled "Costs Allowed," provides as follows:

The party entitled to recover costs under this rule may, to the extent the party actually incurred these costs, recover the following: (1) the filing fee paid under Rule 203(d); (2) the cost of the court reporter's transcript; (3) premiums paid for costs of supersedeas bonds or other bonds obtained to preserve rights pending appeal; (4) the cost of printing the Record on Appeal under Rule 209; and (5) the cost of printing the party's final brief(s) under Rule 210. In addition, the party shall be entitled to recover an attorney's fee in an amount which shall be set by order of the Supreme Court. The allowance of additional costs will generally not be allowed except in the most extraordinary of circumstances.

SCACR 222(d), entitled "Motion for Costs," states as follows:

A party desiring costs to be taxed shall, within fifteen (15) days of the issuance of the remittitur, serve and file a motion requesting that costs be assessed under this Rule. The motion shall comply with Rule 240. If costs are being sought under (b) above, the motion shall be accompanied by a sworn, itemized statement of costs incurred in the form prescribed in the Appendix to these rules. Any return or reply to the motion shall be served and filed in the manner provided by Rule 240. The return may oppose the request for costs or seek a reduction of the amount of costs to be awarded. The remittitur shall not be stayed by the filing of a motion for costs.

SCACR 222(e), entitled "Taxation," states as follows:

Costs on appeal shall be taxed only in the appellate court. If costs are taxed, they shall become part of the judgment of the appellate court and shall be added to the remittitur. If a petition for a writ of certiorari is sought under Rule 242, the Court of Appeals shall tax costs only in those cases in which the petition for a writ of certiorari is denied. In all cases in which a writ of certiorari is granted, costs shall be awarded in the manner provided by Rule 242(j).

#### IV. EXAMINATION OF THE APPELLANTS' MAY 10, 2012 MOTION FOR COSTS

By their instant motion, the Appellants moved this Court, pursuant to SCACR 222(b),<sup>4</sup> to award them costs associated with their appeal of the ALC's order to the Court of Appeals, which was ultimately certified for review and reviewed by this Court.<sup>5</sup>

Specifically, the Appellants argued as follows:<sup>6</sup>

Appellants move pursuant to Rule 222(b) SCACR for reimbursement of costs and fees in the above matter, filed April 12, 2012 and remitted April 30, 2012. This motion is supported by the reversal of the case based upon the violation of statutory law precluding Appellants from exercising their priority right to recall following separation from employment due to reduction in force. The Court further found that [SCDC] violated state law, as confirmed in the Opinion. Abraham v. Palmetto Unified Sch. Dist. No. 1, 343 S.C. 36, 538 S.E.2d 656 (Ct. App. 2000). For these reasons, this matter has been remanded to the [Committee] for the limited purpose of determining appropriate relief for the individual Appellants.

It is respectfully submitted that the Order issued by this Court provides substantial and material relief to the Appellants in a manner that justifies the award of fees and costs.

In an attachment to their motion, the Appellants identified the following costs they sought this Court to tax against SCDC pursuant to SCACR 222:<sup>7</sup>

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<sup>4</sup> SCDC respectfully submits that since this Court, pursuant to SCACR 204(b), certified the Appellants' appeal from the Court of Appeals, the Appellants motion for costs is proper under SCACR 242(j), not SCACR 222. However, SCDC also respectfully recognizes that, as reflected above, the content of SCACR 242(j) and SCACR 222 are substantially identical.

<sup>5</sup> See Section II(B) above regarding this Court's certification of the instant matter which was pending before the Court of Appeals.

<sup>6</sup> See the Appellants' "MOTION FOR COSTS," pp. 1 – 2.

<sup>7</sup> See the Appellants' "MOTION FOR COSTS," pp. 3 – 4. SCDC only reproduced the first four (4) columns of the "ITEMIZED STATEMENT OF COSTS" submitted by the Appellants. Likewise, SCDC only reproduced the portion of the "ITEMIZED STATEMENT OF COSTS" which lists "COSTS TAXABLE UNDER 222, SCACR."

COSTS TAXABLE UNDER 222, SCACR	NO. OF PAGES	RATE	REQUESTED
Cost of Printing or Copying Final Brief	612 36 17	0.142 0.15 2.00	86.90 5.40 34.00 8.84 (tax) <b>Total 135.14</b>
Cost of Printing or Copying Final Reply Brief	N/A		
Cost of Printing or Copying Record on Appeal	61,438 272 68 17 17 34	.098 0.15 3.80 2.00 3.50 4.25	6,020.92 40.80 258.40 34.00 59.50 144.50 459.07 (tax) <b>Total: 7,017.19</b>
Filing Fee Paid Under Rule 203(d), SCACR			100.00
Cost of Court Reporter's Transcript			195.00
Attorney's Fee Provided by Rule 222(b), SCACR			1,000.00
Other (specify and explain):			
		TOTAL	\$8,447.33

**V. ARGUMENT IN OPPOSITION TO THE APPELLANTS' MOTION FOR COSTS**

**A. THE APPELLANTS DO NOT QUALIFY AS PREVAILING PARTIES TO WHOM COSTS ARE AUTOMATICALLY AWARDED UNDER EITHER SCACR 242(j)(1) OR SCACR 222(a)**

As stated above, SCACR 242(j)(1) authorizes this Court to award costs to prevailing parties in appeals it hears as well as those heard by the Court of Appeals. Specifically, SCACR 242(j) provides that, "[u]nless otherwise ordered by the Supreme Court or agreed to by the parties, **costs shall be assessed against the appellant** if the decision of the Supreme Court has the effect of affirming the judgment of the lower court or tribunal which was reviewed by the Court of Appeals. When the decision of the Supreme Court has the effect of reversing the

judgment of the lower court or tribunal which was on appeal, **costs shall be assessed against the respondent** before the Court of Appeals.” [emphasis supplied]. More importantly, SCACR 242(j) provides that, “[w]hen the decision of the Supreme Court has the effect of affirming or reversing in part or vacating the judgment of the lower court or tribunal which was on appeal, **costs shall be allowed only as ordered by the Supreme Court.**” [emphasis supplied].

Similarly, SCACR 222(a) provides, that “[u]nless otherwise ordered by the appellate court or agreed by the parties, **costs shall be taxed against the appellant** when the appeal is dismissed or judgment on appeal is affirmed. When a judgment is reversed, **costs shall be taxed against the respondent.**” [emphasis supplied]. SCACR 222(a) also provides that, “[w]hen an appeal is affirmed or reversed in part or is vacated, **costs shall be allowed only as ordered by the appellate court.**” [emphasis supplied].

In other words, the taxation of costs is mandatory when the decision reached by the appellate court is entirely in favor of one party or another, *unless* the reviewing court orders otherwise or the parties agree otherwise. On the other hand, when the appellate court’s decision affirms in part, reverses in part, or vacates the lower court’s decision, costs shall be taxed *only* pursuant to the discretion of the reviewing court.

Again, in the opinion it issued April 11, 2012, this Court, affirmed in part, reversed in part and remanded the instant matter back to the Committee.<sup>8</sup> Thus, the Appellants were not the prevailing party on all matters before this Court, and, accordingly, this Court may deny the Appellants’ motion for costs in its entirety.

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<sup>8</sup> See *Bell*, 2012 WL, at \*10.

**B. THIS COURT SHOULD DENY THE APPELLANTS' MOTION FOR COSTS IN ITS ENTIRETY**

In light of the analysis provided immediately above, SCDC respectfully moves this Court to deny the Appellants' motion for costs in its entirety.

In considering the Appellants' appeal, this Court reduced the Appellants' arguments into three (3) distinct categories, namely their arguments regarding the creation of the RIF, the implementation of the RIF, and the effectuation of the RIF.<sup>9</sup>

In keeping with this format, this Court issued the following three (3) rulings at the conclusion of the opinion it issued on April 11, 2012:<sup>10</sup>

**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. [emphasis supplied].

Clearly, the Court's first ruling entirely favored SCDC. Moreover, SCDC respectfully submits that the Appellants devoted a significant portion of arguments they articulated in their brief toward challenging SCDC's creation of the RIF's eleven (11) competitive areas, SCDC's decision to include the Appellants and all other certified educators in the RIF, as well as SCDC's decision not to consult the superintendent of the Palmetto Unified School District or its board as

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<sup>9</sup> *Id.*, \*4.

<sup>10</sup> *Id.*, \*10.

the agency formulated its RIF plan. For that matter, SCDC respectfully submits that Appellants' counsel devoted the majority of his time during oral argument toward addressing these issues.

Again, this Court affirmed the ALC's decision which upheld the manner and method by which SCDC formulated its RIF policy and RIF plan as well as the substance of both its RIF policy and RIF plan. Accordingly, SCDC respectfully urges this Court to deny the Appellants' motion for costs in its entirety.

**C. EVEN IF IT AWARDS COSTS TO THE APPELLANTS, THIS COURT SHOULD STILL REDUCE THE AMOUNT OF COSTS IT TAXES AGAINST SCDC FROM THE AMOUNT DEMANDED BY THE APPELLANTS**

If it decides against denying the Appellants' motion for costs in its entirety, SCDC respectfully moves this Court reduce the amount of costs it taxes against SCDC from the amount demanded by the Appellants.

SCDC so moves in light of the reality that this Court affirmed a significant portion of the decision issued in favor of SCDC by the ALC and, by extension, a significant portion of the Decision issued in favor of SCDC by the Committee. As illustrated above, the portion of these two (2) decisions affirmed by this Court consisted of the Committee's determination, as later affirmed by the ALC, that the RIF policy and RIF plan formulated by SCDC conformed to the applicable provisions of our state's constitution, the applicable statutes enacted by our General Assembly, the applicable precedent issued by our state's appellate courts, and the applicable provisions of our state's regulatory code.

The Appellants efforts before both the Committee and the ALC were almost entirely consumed by their claims that various SCDC officials violated numerous provisions of our state's constitution, nearly all of the provisions found within S.C. Code Ann. §§ 24-25-10, *et. seq.*, and other applicable statutes, various decisions by our state's appellate courts, and

numerous state regulations by the manner and method by which it devised its RIF policy and RIF plan in 2003.

As one of their bedrock claims before the Committee, the Appellants asserted that, as certified educators, they should not have been subject to the 2003 RIF. To support this claim, many of the individual Appellants claimed during their testimony before the Committee that they had never been employed by SCDC. Instead, they insisted that they had been at all times employed by the Palmetto Unified School District.

Moreover, the focus of the Appellants' entire presentation to the Committee consisted of their overarching claim that agency officials formulated and executed the 2003 RIF as a means by which to retaliate against certified educators for an earlier lawsuit which resulted in an increase in their annual salaries.

As recognized by this Court in its April 11, 2012 opinion,<sup>11</sup> the Decision rendered by the Committee reflected the true focus of the Appellants' efforts:

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 lawsuit<sup>12</sup> 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

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<sup>11</sup> See *Bell*, 2012 WL, \*3.

<sup>12</sup> In the footnote related to this passage, *Bell*, 2012 WL, n. 16, this Court made the following reference:

*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).

“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 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. [emphasis supplied].**

As this Court also acknowledged in its opinion,<sup>13</sup> the ALC affirmed the entirety of the Decision issued by the Committee:

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.”

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<sup>13</sup> See *Bell*, 2012 WL, \*3.

Thus, by agreeing “with the ALC that there were no procedural or statutory violations committed by the SCDC in creating the RIF,<sup>14</sup>” this Court effectively validated three (3) of the five (5) findings articulated by the Committee in its Decision.

Consequently, this Court should reduce the amount of costs it could tax against SCDC by approximately one half of the amount demanded by the Appellants to reflect the reality that this Court, even in light of the components of its April 11, 2012 opinion which reversed both the ALC and the Committee, still rejected the Appellants’ persistent assertions that SCDC fashioned its RIF policy and RIF plan in an unlawful, retaliatory, and illegitimate manner.

## **VI. CONCLUSION**

For the reasons articulated above, SCDC respectfully urges this Court to deny the Appellants’ “MOTION FOR COSTS” in its entirety.

Alternatively, SCDC respectfully urges this Court to reduce the amount of costs it taxes against SCDC from the amount demanded by the Appellants in light of the reality that this Court affirmed a substantial portion of the decision issued in favor of SCDC by the ALC and, by extension, a substantial portion of the Decision issued in favor of SCDC by the Committee.

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<sup>14</sup> See *Bell*, 2012 WL, \*6.

RESPECTFULLY SUBMITTED,



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Counsel for Respondent

Columbia, South Carolina  
May 21, 2012

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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John D. McLeod, Judge

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**PROOF OF SERVICE**

I certify that I have served **RESPONDENT SCDC'S RETURN TO THE  
APPELLANTS' MOTION FOR COSTS** on counsel for the above named Appellants by  
mailing a copy of it him at the following address:

W. Allen Nickles, III  
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\_\_\_\_\_  
Lake E. Summers

May 21, 2012