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THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

The Honorable Carolyn C Matthews, Administrative Law Judge

Case No 2009-ALJ-30-0103-AP

RECEIVED
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SC Court of Appeals

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 Woodhief,

Appellants,

vs

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

Respondents

RECORD ON APPEAL
Volume 1 of 8

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**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 Woodhief,
Appellants

v

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

RECORD ON APPEAL

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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,
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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

NOTICE OF ASSIGNMENT
(Appeal)

DOCKET NO 09-ALJ-30-0103-AP

NOTICE IS GIVEN that a notice of appeal seeking review of agency action was filed on March 10, 2009 In accordance with S C Code Ann § 1-23-570 (Supp 2008), the **Honorable Carolyn C Matthews**, Administrative Law Judge, has been assigned to preside in this appeal The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550

Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scale.net

The parties are directed to the relevant provisions of the Rules of Procedure for deadlines for perfecting the appeal and briefing the issues on appeal

This the twelfth day of March, 2009

Marvin F Kittrell
Chief Administrative Law Judge

By

Jana E Shealy, Clerk
Edgar A Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

FILED

MAR 12 2009

0005

SC ADMIN LAW COURT

**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)

**SECOND MOTION FOR
ENLARGEMENT OF TIME**

DOCKET NO 09-ALJ-30-0103-AP

FILED

MAY 29 2009

SC ADMIN LAW COURT

To Honorable Marvin F Kittrell, Chief Administrative Law Judge

Pursuant to the Rules of Procedure for the Administrative Court, the South Carolina Office of Human Resources respectfully moves for an enlargement of time in which to file a Record on Appeal in the captioned matter, and in support thereof state as follows

- 1 The Undersigned's Motion For Enlargement of Time of April 24, 2009 was granted, making the Record on Appeal due April 27, 2009
- 2 We have been informed that the review process for the transcript is ongoing and almost complete Inclusion of the transcript is necessary for the Record on Appeal, therefore, OHR and undersigned counsel respectfully request an enlargement of time in which to file the Record on Appeal
- 3 OHR requests a thirty (30) day extension, making the Record on Appeal due on June 26, 2009

WHEREFORE, The South Carolina Office of Human Resources respectfully request a thirty (30) day enlargement of time until June 26, 2009 in which to file the Record on Appeal

FILED

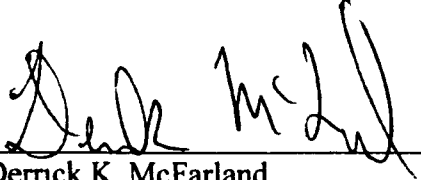
JUN 01 2009

SC ADMIN LAW COURT

GRANTED


John D. McLeod, 6-1-09
SC Administrative Law Judge Date

0006



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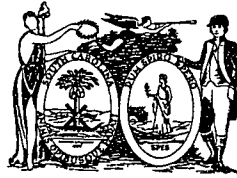
May 27, 2009

STATE OF SOUTH CAROLINA
State Budget and Control Board
OFFICE OF HUMAN RESOURCES

MARK SANFORD CHAIRMAN
GOVERNOR

CONVERSE A. CHEETISHI CPA
STATE TREASURER

RICHARD ECKSTROM CPA
COMPTROLLER GENERAL



HUGH K. LEATHERMAN SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

DANIEL T. COOLER
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EXECUTIVE DIRECTOR

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SAMUEL L. WILKINS
DIRECTOR

February 18, 2009

CERTIFIED MAIL

Mr. W. Allen Nickles, III
Attorney at Law
Post Office Box 1866
Columbia, South Carolina 29202-1866

Dear Mr. Nickles:

In accordance with the State Employee Grievance Procedure Act, you are hereby advised of the final decision on the appeal of James Bell et al. against the South Carolina Department of Corrections to the State Employee Grievance Committee. Pursuant to the Act, within twenty calendar days of the conclusion of the hearing, the State Employee Grievance Committee shall render its decision on the appeal. The Committee's decision is enclosed for your file.

Please advise us if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Samuel L. Wilkins".

Samuel L. Wilkins
Director

Enclosure

c Mr. Jon Ozmint
Mr. Karl McClary
Ms. Romi Robinson

6068

State Employee Grievance Committee

FINAL DECISION

APPELLANTS' NAMES

AND

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

AGENCY

South Carolina Department of Corrections

DATES OF HEARING

November 5, 6, 7, 10, and 17, 2008, December 15, and 18, 2008, and January 22, 26, and 29, 2009

NATURE OF CASE

Reduction-in-Force

DEFINITIONS

Section 8-17-320(7) of S C Code of Laws defines a **covered employee** in part 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 "

The definitions below are provided in the South Carolina Department of Corrections' Reduction in Force Policy approved by the State Office of Human Resources on March 14, 2003 (Committee Exhibit # 1, pp 508 – 515)

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

Competitive Area refers to a common geographic or organizational area in which employees will be considered for reduction-in-force procedures including transfers, reassignments, and/or bumping which is determined and approved by the Agency Director

0009

Competitive Class refers to classifications (job class, pay band, pay level) designated to compete in a reduction-in-force

Lay Off refers to the actual termination of employment from the Agency because of reduced funding, change in workload, or reorganization

Recall refers to the reinstatement of an employee who is in lay-off status within one (1) year of the effective date of the lay off

Reduction-in-force (RIF) refers to the reduction or abolishing of positions because of reduced funding, change in workload, or reorganization

Temporary Employee refers to a full-time or part-time employee who does not occupy a [Full Time Equivalent (FTE)] position, whose employment is not to exceed one year, and who is not a covered employee

BACKGROUND

The Palmetto Unified School District (PUSD) was established by the Legislature in 1981 via South Carolina Code of Laws § 24-25-10, *et seq* to provide educational opportunities for inmates of the South Carolina Department of Corrections (SCDC). As a sanctioned school district, the PUSD must meet standards set by the South Carolina Department of Education (SCDE), it also has its own superintendent and school board that are responsible for operating the district “under the supervision of the State Department of Corrections.” 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 South Carolina Department of Corrections’ personnel policies and procedures.”

The PUSD operates nine high schools that serve students between the ages of 17 and 21 years old. These schools are located at the Camille Graham, Lee, MacDougall, Ridgeland, Stevenson, Tyger River, Trenton, Turbeville, and Wateree institutions located throughout the state. Students are provided instruction so that they may obtain a high school diploma or a GED. In addition, inmates older than 21 years old may 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 and social skills to help them secure gainful employment upon their release.

Educators employed by the PUSD filed a complaint in 1995 seeking compensation similar to that afforded to other teachers throughout the state. The complaint resulted in a lawsuit, *Abraham et al v Palmetto Unified School District No. 1*, which was eventually brought before the South Carolina Court of Appeals. In September of 2000, the Court of Appeals determined that teachers in the PUSD are entitled to the same compensation standards and guidelines as those afforded to teachers employed by other school districts, therefore, salaries were adjusted and back pay was awarded accordingly.

In 2003, faced with budget cuts as well as an ongoing budget deficit, SCDC presented a Reduction-in-Force (RIF) plan to the State Office of Human Resources (OHR). This RIF plan was approved for procedural correctness by OHR by letter dated March 28, 2003, and SCDC announced the RIF to employees on April 1, 2003. The RIF plan affected management and administrative support staff in headquarters, management and administration in support programs, and educational personnel and educational support staff. 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). Appellants were "covered employees" at the time their positions were eliminated as the result of a RIF implemented effective June 1, 2003 (Committee Exhibit #1, pp 219-428). Appellants timely submitted grievances of their separation from employment in keeping with SCDC policies and state laws (Committee Exhibit #1, pp 1-39, 264-267). Appellants' grievances were denied by SCDC on June 16, 2003, stating in part that, "the plan and policy were consistently and properly applied."

Subsequent to exhausting administrative remedies under SCDC's grievance policy, Appellants filed an appeal with the State Human Resources Director. On January 9, 2004, the appeal was denied under the provisions of the State Employee Grievance Procedure Act, which states in part that, in order for a RIF to be grievable or appealable, the employee must raise a "material issue of fact that the agency inconsistently or improperly applied its reduction in force policy or plan." By letter dated February 2, 2004, Appellants requested a reconsideration of the State Human Resources Director's decision. Following a response from SCDC to Appellants' request for reconsideration, the State Human Resources Director upheld his original decision of January 9, 2004. On April 6, 2004, Appellants filed suit in the Court of Common Pleas for Richland County, South Carolina challenging the denial of their appeal (Committee Exhibit #1, pp 548-558). By Order dated January 8, 2007, the Honorable G. Thomas Cooper, Jr., determined that the plaintiffs were entitled to a hearing before the State Employee Grievance Committee to determine whether or not SCDC "inconsistently or improperly applied its reduction in force policy or plan." Specifically, Judge Cooper opined "there exist disputed issues of material fact which entitle Plaintiffs to a hearing before the State Employee Grievance Committee" (Committee Exhibit 1, pp 561-564). On February 12, 2007, SCDC appealed Judge Cooper's remand order to the South Carolina Court of Appeals (Committee Exhibit #1, pp 904-912). On May 14, 2008, the South Carolina Court of Appeals dismissed SCDC's appeal (Committee Exhibit #1, pp 570-571). By letter dated June 4, 2008, OHR directed SCDC to effectuate the intent of Judge Cooper's Order and the Opinion of the South Carolina Court of Appeals by remanding the matter for processing in accordance with the agency's grievance policy since Appellants had not had an opportunity to complete SCDC's internal grievance process (Committee Exhibit #1, pp 572-573). By letter dated July 23, 2008, Appellants appealed to the State Human Resources Director "[b]ecause forty-five days [had] passed without action by the SCDC" (Committee Exhibit #1, pp 929-930).

FINDINGS AND RECOMMENDATIONS

Based on documentary evidence and testimony presented at the hearing of *Bell et al v the South Carolina Department of Corrections* held in Columbia, South Carolina on November 5, 6, 7, 10, and 17, 2008, December 15, and 18, 2008, and January 22, 26, and 29, 2009, the State Employee Grievance Committee finds

FINDINGS OF FACT

- 1 SCDC's RIF plan was approved by OHR for procedural correctness SCDC was notified of this approval via letter from OHR dated March 28, 2003 The approval letter from OHR stated that the 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" It further stated that those determinations are "solely the responsibility of SCDC management" (Committee Exhibit #1, pp 473-474)
- 2 SCDC's Executive Director, Mr Jon E Ozmint, testified at the hearing before the Committee that he identified the positions for separation pursuant to the RIF policy He then instructed the SCDC Director of Human Resources, Mr John Near, to determine "competitive areas" in a way to minimize employee bumping and maximize savings
- 3 SCDC divided the entire agency, not just the PUSD, into 11 competitive areas by geographical region as part of its 2003 RIF plan (Committee Exhibit #1, pp 188-189) Mr Ozmint further testified that these geographical regions existed only for the purpose of the RIF and were designed to reduce "bumping "
- 4 Appellants contend 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 Consequently, the determination of the competitive areas by SCDC divided the unified PUSD and are, therefore, arbitrary The result deprived veteran employees bumping rights due to the arbitrary nature of placing only one or a limited number of educational institutions in the competitive areas which eliminated opportunities for employees affected by the RIF to compete for positions Moreover, employees with less experience and inferior qualifications were retained in favor of more senior employees
- 5 Appellants also contend that the designation of educational institutions within the competitive areas of the RIF plan is arbitrary and capricious since a number of institutions appear to fall outside the designated competitive areas
- 6 Appellants further contend the RIF plan failed to take into account experience and credentials such as degrees, certificates, and positions held, which are uniformly applied in the field of education In addition, individuals and positions were arbitrarily protected or removed from consideration for separation for reasons unrelated to the RIF

- 7 Appellants contend 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
- 8 Ms Gerri Miro, Director of SCDC's Education Division which includes the PUSD, testified that there is only one school district in SCDC and that it is not divided geographically. The PUSD has one superintendent and educators are held to the same standards regardless of location
- 9 In a deposition for the Court of Common Pleas dated December 20, 2005, Mr Wendell Blanton, Superintendent of the PUSD, corroborated Ms Miro's testimony. Mr Blanton stated that he was not involved in the development of the RIF plan. Further, he stated that he had one meeting that lasted approximately 15 minutes with administrators after positions subject to the RIF were identified and the geographical regions (competitive areas) were created. (Committee Exhibit #1, pp 729-733, 742)
- 10 Records maintained by SCDC establish that certified educators with less continuous state service than Appellants retained employment following the effective date of the RIF. This retention was the a result of either 1) employees were not in the same designated competitive areas and competitive classes, or 2) because they had principal or superintendent certifications that employees with longer state service dates did not possess. (Committee Exhibit #1, pp 191-206)
- 11 The recall period for the RIF under review was June 1, 2003, through May 31, 2004. During this period, SCDC implemented a "Retirement Opportunity" as a further cost savings measure which allowed all eligible full-time employees to retire then return to work in a "temporary capacity" at 75% of their former salaries. The "Retirement Opportunity" was announced on July 10, 2003, and available to eligible employees through October 1, 2003. Like other temporary employees, however, those who participated in the retirement opportunity would be paid on an hourly rate, would not receive any paid leave, and would not be eligible for benefits such as health insurance. (Committee Exhibit #1, pp 1106-1121)
- 12 Employees who participated in the "Retirement Opportunity" retired from SCDC and were separated from their jobs for 15 days. Appellants contend that SCDC rehired those employees into temporary positions that should have been offered to them during the RIF recall period. As such, Appellants contend this action is an improper application of SCDC's RIF policy.
- 13 Appellants also contend that SCDC did not comply with the requirement of Section 7.5 of its RIF policy which states that "probationary, temporary (**pink slip**), or temporary grant employees will not have recall **or reinstatement** rights."
- 14 According to SCDC records and Ms Patricia Thrailkill, SCDC's Assistant Director of Human Resources, temporary employees, including those who participated in the "Retirement Opportunity," performed services formerly provided by full-time certified educators whose positions were eliminated because of the RIF. Also, other employees in full-time equivalent positions that were not affected by the RIF were assigned duties

formerly provided by these full-time certified educators (Committee Exhibit #1, pp 780-785)

- 15 Ms Heather Pope, a managing partner for OHR, testified that prior to June 1, 2003, answers to frequently asked questions (FAQs) about RIF guidelines were posted on OHR's website and available to all agencies and their human resources offices. The following question and answer appeared on the OHR website during the time of the RIF

Q Can an agency hire a temporary employee to replace an employee affected by a RIF or to perform the functions of a position 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 (Appellants' Exhibit #11 and #12)

- 16 Three Appellants, Ms Nancy Glenn, Ms Mary McCabe, and Ms Beverly McClanahan testified that, after the announcement of the RIF, they were offered and accepted lower salaried positions as correctional officers but still performed their former education duties (Committee Exhibit #1, pp 769 and 1260)

- 17 Appellants contend that SCDC, through the RIF plan, arbitrarily and capriciously retaliated against SCDC educators who took legal action (*Abraham et al v Palmetto Unified School District No 1*) to compel SCDC to provide compensation in accordance with law. Further, members of SCDC management, including the Executive Director, identified that educators in the PUSD were paid at a higher rate than some wardens and used this as justification for eliminating educator positions

- 18 Both SCDC and Appellants concede that other SCDC employees commented about the unfairness of teacher pay raises in light of other budget cutbacks following the *Abraham* decision. Mr Ozmint testified that, while he did visit many facilities and speak with many employees, he was counseled not to comment or offer an opinion about teacher pay and he believes he followed that advice. Several Appellants, however, dispute that assertion and testified that Mr Ozmint stated that the RIF might not have been necessary if the teachers had not previously sued for higher wages. A lawsuit, Appellants contend, Mr Ozmint said was wrong

- 19 Mr Ozmint testified that the budget difficulties experienced by SCDC were compounded by the payment of back pay and increased salaries as a result of the *Abraham et al v Palmetto Unified School District No 1* lawsuit. He denied, however, that the 2003 RIF was in any way retaliation against educators because of that lawsuit. Mr Ozmint asserted that other areas were subject to the RIF, not all educators involved with the earlier lawsuit were terminated, and other areas were reduced during a previous RIF in 2003. He felt that, while all cuts forced SCDC to eliminate valuable services and programs, his greatest responsibility and top priority was to secure inmates and meet their basic needs such as food, shelter, clothing, and any necessary medical care as required by federal law. Due to

budgetary constraints beyond his control, he believed SCDC was forced to choose between those essential functions and the education of inmates

- 20 Mr. Ozmint also testified that, despite the RIF and the elimination of a substantial number of educator positions, an increased number of inmates were able to obtain GEDs

STATEMENT OF POLICY AND CONCLUSIONS OF LAW

The State Employee Grievance Procedure Act [Grievance Act] creates the Grievance Committee as a quasi-judicial review body that conducts hearings of certain specified state employee grievance appeals S C Code Ann § 8-17-340 (1976) In addition the Grievance Act provides

(E) The committee may sustain, reject, or modify a grievance hearing decision of an agency as follows

- (1) In cases involving actual or threatened abuse, neglect, or exploitation, to include those terms as they may be defined in § 43-35-10 or 20-7-490, of a patient, client, or inmate by an employee, the agency's decision must be given greater deference and may not be altered or overruled by the committee, unless the covered employee establishes that
 - (a) The agency's finding that the covered employee abused, neglected, or exploited or threatened to abuse, neglect, or exploit a patient, client, or inmate is clearly erroneous in view of reliable, probative, and substantial evidence,
 - (b) The agency's disciplinary action was not within its established personnel policies, procedures, and regulations, or
 - (c) The agency's action was arbitrary and capricious
- (2) In all other cases, the committee may not alter or overrule an agency's decision, unless the covered employee establishes that the agency's decision is one or more of the following and prejudices substantial rights of the covered employee
 - (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 discretion or clearly unwarranted exercise of discretion

S C Code Ann § 8-17-340(E) This case is governed by § 8-17-340(E)(2)

Employment actions as a result of a RIF are not grievable or appealable unless there exists a material issue of fact that the agency improperly or inconsistently applied its RIF policy or plan. The Committee finds there is insufficient evidence to support Appellants' allegations that the RIF policy or plan was improperly or inconsistently implemented. In addition, the Committee finds 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 that resulted in the increase of educators' salaries. 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. The Committee finds SCDC followed proper protocol and did not violate any policies, procedures, or statutes.

Specifically, the Committee finds that

- 1 Educators were not unfairly targeted for termination in retaliation for an earlier lawsuit regarding wages. 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 management that educators were overpaid. The 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.
- 2 The development of the competitive areas did not violate SCDC's RIF policy, nor were they drawn to retaliate against or punish SCDC educators. 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.
- 3 SCDC management was not obligated by statute or policy to consult the PUSD School Board or obtain its approval before implementing the RIF. While good business relations may, in the opinion of some, dictate that 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 not 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 South Carolina Department of Corrections' personnel policies and procedures ”

- 4 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 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,” 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
- 5 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

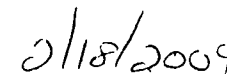
DECISION

The Committee finds that Appellants failed to establish that SCDC's implementation of its RIF plan was improper, inconsistent, or inappropriate under the requirements of SC Code of Laws § 8-17-340(E)(2) Furthermore, it did not violate any internal policies or procedures or any guidelines established by the State Office of Human Resources Therefore, the Committee finds in favor of the agency and denies the relief sought by Appellants

For the Committee


Karl McCarty/HMMC

Date



STATE OF SOUTH CAROLINA
State Budget and Control Board
DIVISION OF BUDGET AND ANALYSES
OFFICE OF HUMAN RESOURCES

MARK SANFORD CHAIRMAN
GOVERNOR

GRADY L. PATTERSON JR.
STATE TREASURER

RICHARD ECKSTROM
COMPTROLLER GENERAL

HUGH K. LEATHERMAN SR.
CHAIRMAN SENATE FINANCE COMMITTEE

ROBERT W. HARRELL, JR.
CHAIRMAN WAYS AND MEANS COMMITTEE

FRANK W. FUSCO
EXECUTIVE DIRECTOR

1201 MAIN STREET SUITE 1000
COLUMBIA, SOUTH CAROLINA 29201
(803) 737 0900

SAMUEL L. WILKINS
DIRECTOR

January 9, 2004

CERTIFIED MAIL

Ms. Dona L. Guffey
Gergel, Nickles & Solomon, P.A.
Attorneys at Law
Post Office Box 1866
Columbia, South Carolina 29202-1866

Re James 'Cal' Bell v. S.C. Department of Corrections (SCDC)

Dear Ms. Guffey:

This letter is in response to Mr. Bell's appeal to the State Human Resources Director. Based on information provided by both parties, a review of the appeal has been conducted. As a result of this review, the appeal must be denied because Mr. Bell's contentions regarding SCDC's Reduction in Force (RIF) do not constitute a material issue of fact concerning an improper or inconsistent application of the agency's RIF policy or plan.

Section 8-17-350 of the S.C. Code of Laws of 1976, as amended, states in part: "When an appeal is filed, the State Human Resources Director shall assemble all records, reports, and documentation of the earlier proceedings on the grievance and review the case to ascertain that there has been full compliance with established grievance policies, procedures, and regulations within the agency involved and shall determine whether or not the action is grievable to the committee or a mediator-arbitrator." Section 8-17-330 of the Code of Laws is specific as to those employment actions that are considered grievable or appealable.

Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states in part: "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 an agency inconsistently or improperly applied its reduction in force policy or plan."

The record presented by both parties reflects the following information:

1. as a result of a RIF due to budgetary reductions, Mr. Bell's position at SCDC as Vocational Teacher (UB04) with the Palmetto Unified School District (PUSD) was eliminated effective close of business on June 1, 2003,
2. Mr. Bell filed a grievance with SCDC on June 12, 2003, regarding the elimination of his position as a result of the June 1, 2003 RIF,

- 3 SCDC's Employee Relations Chief, Ms Robin Gracien, denied Mr Bell's grievance by letter dated June 16, 2003, stating that, "the plan and policy were consistently and properly applied. Therefore, the grievance must be denied",
- 4 in his grievance, Mr Bell contends, in part, that, "the Department of Corrections did not involve the District's Board in the reduction in force",
- 5 SCDC contends that, "Department and State policy provide that the authority to implement a Reduction in Force belongs to the Agency Director." Further, SCDC contends, "[a]lthough not a requirement of policy, the Superintendent of the PUSD, who is a member of the District Board, was informed prior to the effective date of the Reduction in Force of the decision by the Agency Director to implement a Reduction in Force",
- 6 Mr Bell also contends that, educators were singled out for reduction in force in an arbitrary and capricious fashion",
- 7 SCDC does not agree with Mr Bell's assertion that educators were arbitrarily or capriciously singled out for RIF. Rather, SCDC asserts that the RIF was implemented due to "insufficient operating funds and reorganization within the Agency," and that educators were not singled out arbitrarily and capriciously,
- 8 further, Mr Bell contends, "[t]he restriction on 'bumping rights' to designated areas within the Palmetto Unified School District is arbitrary, capricious and adversely effects[sic] veteran educators and educators holding advanced degrees",
- 9 he also contends, "all educators were grouped under generic terms for purposes of reduction in force. Such grouping is arbitrary, capricious and fails to recognize relevant criteria such as areas of certification, advanced training, degrees held and other employment qualifications",
- 10 SCDC contends that, "SCDC Policy ADM-11 05, Reduction in Force, states that the Agency Director is authorized to approve any position(s) to be abolished and to approve the competitive areas in which each employee subject to a lay off will be able to exercise their rights ,
- 11 in addition, Mr Bell contends that, the reduction in force plan is being exercised arbitrarily and capriciously to retaliate against a class of employees (educators) who petitioned the government, through legal action, to compel the Department to provide compensation in accordance with law",
- 12 SCDC contends that, "the basis for the Reduction in Force plan was to reduce expenditures because of reduced funding by the General Assembly and not to retaliate against a class of employees",
- 13 Mr Bell further contends that, "individuals and/or positions were arbitrarily protected or removed from consideration for separation for reasons unrelated to RIF criteria,
- 14 SCDC maintains that it is the Department's position that throughout the RIF process, it retains the right to make management decisions regarding the administration of agency resources, and
- 15 Mr Bell timely filed an appeal to the State Human Resources Director which was hand-delivered on June 20, 2003

As to Mr Bell's contention that SCDC did not involve the District's Board in the RIF, SCDC's RIF Policy ADM-11 05 (1 2) provides that, "The Agency Director or designee is authorized to approve any position(s) to be abolished and to approve the competitive areas within which employees subject to a lay off will be able to exercise their rights under this policy/procedure. In addition, S C Code of Laws Section 24-25-90, regarding the PUSD, states that, "[t]he superintendent of the district and all other educational personnel shall be employed, supervised, and terminated according to the South Carolina Department of Corrections' personnel policies and procedures." As such,

Ms Dona L Guffey
January 9, 2004
Page Three

the Agency Director was not required to involve the District's Board in the RIF. Therefore, this contention does not raise a material issue of fact as to the improper or inconsistent application of SCDC's RIF policy or plan.

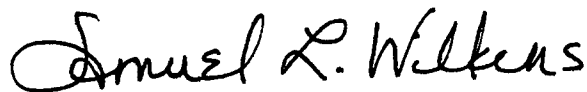
Mr. Bell also contends that SCDC's RIF was arbitrary and capricious because (1) educators were singled out for RIF, (2) the restriction on bumping rights to designated areas within the PUSD adversely impacted veteran educators and those educators with advanced degrees, (3) educators were grouped under generic terms for RIF purposes, (4) the RIF was used to "retaliate against a class of employees (educators) who petitioned the government, through legal action, to compel the Department to provide compensation in accordance with law", and (5) individuals and/or positions were protected or removed from consideration for separation for reasons unrelated to RIF criteria. It appears from the record that SCDC developed its RIF Plan because of reduced funding by the General Assembly. As provided by SCDC's RIF Policy ADM-11 05 (1 2), "[t]he Agency Director or designee is authorized to approve any position(s) to be abolished and to approve the competitive areas within which employees subject to a lay off will be able to exercise their rights under this policy/procedure." The Agency Director has the prerogative to make management decisions in determining the positions to be eliminated in a RIF. SCDC's stated reasons for the RIF were insufficient operating funds and reorganization. Further, SCDC's RIF Plan indicates that many non-educator positions were also affected by the RIF, contrary to Mr. Bell's contention that educators were arbitrarily and capriciously singled out for RIF. Therefore, Mr. Bell's contentions do not raise a material issue of fact as to the improper or inconsistent application of SCDC's RIF policy or plan.

Because the issues Mr. Bell presents do not raise a material issue of fact as to the improper or inconsistent application of SCDC's RIF policy or plan, the State Human Resources Director has determined that his appeal must be denied and SCDC's decision under its internal grievance plan must be upheld.

While the issues raised in Mr. Bell's appeal do not constitute a grievance or an appeal, this decision does not address whether any other legal remedy is available to consider the issues he raises.

This letter concludes the processing of Mr. Bell's appeal.

Sincerely,



Samuel L. Wilkins
Director

c Mr. Jon Ozmint
Ms. Robin Gracien

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February 2, 2004

Via Facsimile (737-0968) & U S Mail

Sam Wilkins, Esquire
Director, State Office of Human Resources
Grievance and Mediation Services
1201 Main Street Suite 1000
Columbia, South Carolina 29201

RE James "Cal" Bell, Othella Bernard, Katherine 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 L Williams, Paula Woodhcf

Dear Sam

As you are aware, this firm represents the above named individuals who were separated from employment as educators with Palmetto Unified School District No 1 effective June 1, 2003 as a result of a reduction in force implemented by the South Carolina Department of Corrections. By letter dated January 9, 2004, you indicated that the issues raised by these individuals "do not constitute a grievance or an appeal" subject to review by the State Employee Grievance Committee. This correspondence constitutes a request for reconsideration of this decision. It is my understanding based upon communication from Ms Debbie Clark of your staff and the South Carolina Administrative Procedures Act that this request for reconsideration tolls the period for any petition for judicial review arising out of the decision contained in your letter of January 9, 2004.

This request for reconsideration is based upon the following factors

- 1 The South Carolina Constitution in Article I, § 22 provides, in part, that "No person shall be bound by a judicial or quasi judicial decision of an administrative agency affecting private rights except on due notice and opportunity to be heard."
- 2 The decision of January 9, 2004 was taken without affording the individuals affected an opportunity to present sworn testimony or to cross-examine parties responsible for terminating their employment.

Sam Wilkins, Esquire
February 2, 2004
Page two

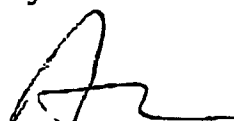
- 3 Throughout the administrative process, SCDOC refused or failed to provide the individuals affected by the reduction in force access to information relevant to their claims. This information includes, but is not limited to, the Department's refusal to provide documents that indicate the movement of personnel immediately prior to notification of the reduction in force, and information relating to retirement incentives or other accommodations offered both during and after the reduction in force.
- 4 Neither the SCDOC nor the January 9, 2004 letter provide any legal justification for the violation of law in the reduction in force by failure to treat educators employed in the District in a "unified" fashion. Instead, the SCDOC arbitrarily divided the legislatively established "special statewide unified school district" into geographic regions which resulted in the inability of educators to compete for positions based upon their service and qualifications.
- 5 Neither the SCDOC nor the January 9, 2004 letter offer any justification for the elimination of educational programs to inmates and severely restricting access to the availability of educational programs in a manner which is contrary to the expressed public policy of this State. (See, State of the State Address, Governor Mark Sanford, January 21, 2004 wherein the Governor "instructed" the Director of SCDOC to make participation in education programs mandatory for appropriate inmates and to deprive privileges to inmates who do not participate in educational programs. The Governor stated "it is crazy to continue sending folks out of a criminal justice system with no better educational leg to stand on and expect good results.")
- 6 In denying the affected individuals an opportunity to be heard, the January 9, 2004 letter shields the SCDOC Director from examination regarding comments that educators employed by the Department were disloyal in enforcing their rights to lawful compensation. It is respectfully submitted that both the circumstances surrounding the reduction in force, exemptions to the reduction in force and the Director's comments will demonstrate to the Grievance Committee that the Department ignored the "unified" standing of the District in order to separate senior educators from employment.

Sam Wilkins, Esquire
February 2, 2004
Page three

- 7 The contention that administrative policy allows the Agency Director or designee to take actions in reduction in force without the involvement of the District's Board is contrary to law which assigns primary responsibility for the administrative functions of the District, including determining the physical facilities needed to carry out all educational programs to the Board and which delegates to the Director the limited role of "consent and concurrence" S C Code Ann § 25-24-70 Clearly, any administrative policy contrary to law is void and any action pursuant to such a policy is *ultra vires*

For the reasons outlined above, each of the affected individuals request that the decision contained in your letter of January 9, 2004 be reconsidered and that a hearing be scheduled on all issues raised in the grievances presented to your Agency Should you have any questions concerning this matter, please contact me

Sincerely


W Allen Nickles, III

WAN/pfb
cc Ms Robin M Gracien
File #03-156

STATE OF SOUTH CAROLINA
State Budget and Control Board
DIVISION OF BUDGET AND ANALYSES
OFFICE OF HUMAN RESOURCES

MARK SANFORD CHAIRMAN
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CHAIRMAN SENATE FINANCE COMMITTEE

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CHAIRMAN WAYS AND MEANS COMMITTEE

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(803) 737 0900

SAMUEL L. WILKINS
DIRECTOR
March 22, 2004

CERTIFIED MAIL

Mr. W. Allen Nickles III
Attorney at Law
Post Office Box 1866
Columbia, South Carolina 29202-1866

Re James Bell, Othella Bernard, Katherina Bowyer, Linda Bratton, Ann Bridges, Rance Cobb, Jeannie Croxton, Bernetha Culbreath, William Dreyer, Jacqueline Farr, Ruth Fritts, Nancy Glenn, Etta Jane Jones, Geneva Martin, Mary McCabe, Beverly McClanahan, Max Randolph, Carolyn Smith, Maggie Williams and Paula Woodlief v. S.C. Department of Corrections (SCDC)

Dear Mr. Nickles:

The State Human Resources Director has received your request for reconsideration, on behalf of the above referenced appellants, dated February 2, 2004, and SCDC's response dated February 25, 2004, to your request for reconsideration. Based upon a review of your request and SCDC's response, it has been determined that the request should be denied.

Section 19-718.05 (E) of the State Human Resources Regulations states "If the State Human Resources Director determines that the appeal is untimely or fails to comply with the requirements of the Act, he will notify the covered employee or his representative that the appeal is denied and no further action will be taken concerning the appeal. As a result of the State Human Resources Director's decision, the covered employee may request reconsideration within 30 calendar days from notification of the decision."

In your letter of February 2, 2004, you contend the following:

- 1) the South Carolina Constitution in Article I, § 22 provides, in part, that "No person shall be bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and opportunity to be heard",
- 2) the decision of the State Human Resources Director on January 9, 2004, was taken without affording the individuals affected an opportunity to present sworn testimony or to cross-examine parties responsible for terminating their employment,
- 3) throughout the administrative process, SCDC refused or failed to provide the individuals affected by the reduction in force (RIF) access to information relevant to their claims. This information includes, but is not limited to, the Department's refusal to provide documents that indicate the movement of personnel immediately prior to notification of the RIF and information relating to retirement incentives or other accommodations offered both during and after the RIF,

- 4) neither SCDC nor the January 9, 2004 letter provide any legal justification for the violation of law in the RIF by failure to treat educators employed in the District in a "unified" fashion. Instead, SCDC arbitrarily divided the legislatively established "special statewide unified school district" into geographic regions which resulted in the inability of educators to compete for positions based upon their service and qualifications,
- 5) neither SCDC nor the January 9, 2004 letter offer any justification for the elimination of educational programs to inmates and severely restricting access to the availability of educational programs in a manner which is contrary to the expressed public policy of the State. Governor Mark Sanford's State of the State Address on January 21, 2004, "instructed" the Director of SCDC to make participation in education programs mandatory for appropriate inmates and to deprive privileges to inmates who do not participate in educational programs. The Governor states "it is crazy to continue sending folks out of a criminal justice system with no better educational leg to stand on and expect good results",
- 6) in denying the affected individuals an opportunity to be heard, the January 9, 2004 letter shields the SCDC Director from examination regarding comments that educators employed by the Department were disloyal in enforcing their rights to lawful compensation. It is respectfully submitted that both the circumstances surrounding the RIF, exemptions to the RIF, and the Director's comments will demonstrate to the Grievance Committee that SCDC ignored the "unified" standing of the District in order to separate senior educators from employment, and
- 7) the contention that administrative policy allows SCDC's Director or designee to take actions in a RIF without the involvement of the District's Board is contrary to law which assigns primary responsibility for the administrative functions of the District, including determining the physical facilities needed to carry out all educational programs to the District's Board and which delegates to SCDC's Director the limited role of "consent and concurrence." S.C. Code Ann. §25-24-70 [sic]. Clearly, any administrative policy contrary to law is void and any action pursuant to such a policy is *ultra vires*.

In SCDC's response letter of February 25, 2004, it contends the following

- 1) these cases do not contain issues that are grievable before the State Employee Grievance Committee,
- 2) the jurisdiction of the State Employee Grievance Committee is limited regarding a RIF (S.C. Code Ann. §8-17-330 and State Human Resources Regulations 19-718.04(A)),
- 3) the February 2, 2004 request for reconsideration letter does not raise any information that has not been previously raised as to whether SCDC improperly or inconsistently applied its RIF policy or plan,
- 4) it has not refused or failed to provide information regarding this matter, rather, it has submitted all relevant information regarding the application of the RIF policy and plan,
- 5) all other materials requested by the attorneys representing the individuals in the above referenced appeals, are not relevant for the determination of whether there exists a material issue of fact regarding the application of the RIF policy or plan,
- 6) it complied with S.C. Code of Laws §24-25-90 and its RIF policy when it developed its RIF plan,
- 7) it made difficult decisions regarding the use of financial resources and determined that positions in many areas, including educational services, would have to be eliminated in order to meet its financial obligations,

- 8) Governor Sanford's State of the State Address, in which he outlined a plan for educating inmates, cannot be a basis for reconsidering the RIF plan that was effective June 1, 2003 Governor Sanford's "instructions" had not been given to SCDC's Director Jon Ozmint at the time that the RIF plan at issue was developed, and
- 9) Governor Sanford also requested in this Address that \$2.5 million dollars be given to SCDC to fund this initiative. If SCDC receives this money, it will make hiring decisions in accordance with the recall rights in its RIF policy and plan.

As to your first contention regarding the provisions of Article I, §22 of the State Constitution, each of the individuals in the above referenced appeals was provided an opportunity to raise a material issue of fact concerning SCDC's inconsistent or improper application of its RIF policy or plan. Section 8-17-330 states in part that "[a] reduction in force is an adverse employment action considered as a grievance only if the agency, or 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." Section 8-17-330 also states in part "[a] covered employee has the right to appeal to the State Human Resources Director an adverse employment action involving the issues specified in this section." Based on the information provided by each of these individuals, they failed to establish that a material issue of fact existed concerning the impropriety or inconsistency of the RIF policy or plan. Consequently, these individuals were given notice and opportunity to be heard concerning the threshold issue of subject matter jurisdiction which was initially before me for decision. Because they did not establish that the Committee has subject matter jurisdiction, they were not entitled to any additional due process.

As to your second contention, §8-17-350 states in part that "the State Human Resources Director shall determine whether or not the action is grievable to the committee or a mediator-arbitrator." Since the issues raised were not considered to be appealable, the appeals were not forwarded to the State Employee Grievance Committee for a hearing. Any cross-examination or sworn testimony would not be appropriate in determining jurisdictional requirements and would only be allowed during a hearing before the Committee.

Regarding your third contention, these individuals failed to demonstrate that the information they contend SCDC refused or failed to provide is relevant to their argument that SCDC improperly or inconsistently applied its RIF policy or plan. Therefore, this contention lacks merit.

As to your fourth contention, the Agency Director or designee is authorized in accordance with SCDC's RIF policy "to approve any position(s) to be abolished and to approve the competitive area." Also, SCDC's RIF policy provides that "the 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 [Emphasis in original]." In addition, SCDC's RIF policy defines competitive area as "a common geographical or organizational area in which employees will be considered for reduction-in-force procedures including transfers, reassignments, and/or bumping which is determined and approved by the Agency Director." The Agency Director or his designee, therefore, has the discretion of developing the RIF plan and defining the competitive area. In addition, SCDC's RIF policy allows for the competitive area to be defined as a specific geographical area. Section 24-25-90 of the S.C. Code of Laws states "The superintendent of the district and all other educational personnel shall be employed, supervised, and terminated according to the South Carolina Department of Corrections' personnel policies and procedures." In accordance with SCDC's RIF policy, the competitive areas were defined in specific geographical areas.

Mr W Allen Nickles, III
March 22, 2004
Page Four

around the state and included both educator and non-educator positions. Any competition for positions would occur within the competitive area since SCDC's RIF policy does not provide for competition outside of the competitive area. Nothing in the cited statute nor SCDC's RIF policy requires that these educators be treated in a "unified" fashion.

In your fifth contention, you argue that neither SCDC nor my January 9, 2004 letter offer any justification for the elimination of educational programs to inmates. The reason provided by SCDC in its June 2003 RIF plan, and stated in my January 9, 2004 letter, indicates the need to eliminate both educational and non-educational positions because of budgetary reasons. In addition, in your fifth contention you cite Governor Sanford's State of the State Address in which he mentions the educational programs of SCDC inmates. The Governor's State of the State Address occurred twelve days after my January 9, 2004 letter and approximately eight months after the effective date of the RIF. You have failed to demonstrate a nexus between the State of the State Address and the improper or inconsistent application of SCDC's RIF policy or plan.

As to your sixth contention, you have also failed to demonstrate a nexus between any comments made by SCDC's Director and the improper or inconsistent application of SCDC's RIF policy or plan.

Concerning your seventh contention, while §24-25-70 of the Code of Laws authorizes the school board, 'with the consent and concurrence of the Director of the Department of Corrections,' to perform administrative functions for the Palmetto Unified School District, this statute must also be read together with §24-25-90. In reading both of these sections together, employees of the Palmetto Unified School District are also subject to SCDC's personnel policies and procedures, specifically with regard to termination. As provided in SCDC's RIF policy, the Agency Director has the ability to determine when and how to eliminate positions.

In our sole determination of whether or not subject matter jurisdiction exists for these appeals, the allegations you have presented do not raise a material issue of fact concerning the improper or inconsistent application of SCDC's RIF policy or plan. While the information contained in your letter of February 2, 2004, has been reviewed, I uphold my final decision of January 9, 2004, on the above referenced appeals.

Sincerely,



Samuel L. Wilkins
Director

c Mr Jon Ozmint
Ms Deborah Drucker Deutschmann

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SENDER

- Complete items 1 and/or 2 for additional services
- Complete items 3, 4a, and 4b
- Print your name and address on the reverse of this form so that we can return this card to you
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- Write *Return Receipt Requested* on the mailpiece below the article number
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Re SCDC Reconsideration

I also wish to receive the following services (for an extra fee)

- 1 ☐ Addressee's Address
- 2 ☐ Restricted Delivery

Consult postmaster for fee

3 Article Addressed to

*MR W ALLEN NICKLES
ATTORNEY AT LAW
PO BOX 1866
COLUMBIA, SC 29202-1866*

4a Article Number

7099 2400 001 1866 3220

4b Service Type

- ☐ Registered
- ☐ Express Mail
- ☐ Return Receipt for Merchandise
- ☒ Certified
- ☐ Insured
- ☐ COD

7 Date of Delivery

*MAR 24 2001
COLUMBIA, SC 29201*

5 Received By (Print Name)

8 Addressee's Address (Only if requested and fee is paid)

6 Signature (Addressee or Agent)

X P. [Signature]

PS Form 3811, December 1994

102595-98 B-0229

Domestic Return Receipt

Thank you for using Return Receipt Service

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Article Sent To:

*Re SCDC Reconsideration PO Box 1866
Columbia, SC 29202-1866*

Postage \$

Certified Fee

Return Receipt Fee (Endorsement Required)

Restricted Delivery Fee (Endorsement Required)

Total Postage & Fees \$

Postmark Here

Name (Please Print Clearly) (to be completed by mailer)

Street Apt No or PO Box No

City State ZIP+4

PS Form 3800, July 1995

See Reverse for Instructions

GERGEL, NICKLES & SOLOMON, P.A.
ATTORNEYS AT LAW

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April 6, 2004

Via Hand Delivery

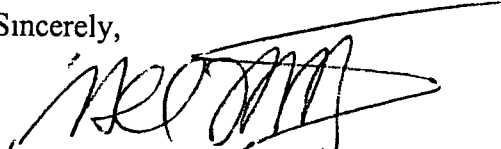
The Hon. Barbara A. Scott
Richland County Clerk of Court
P.O. Box 192
Columbia, South Carolina 29202

**RE James "Call" Bell, et al v SC Department of Corrections and Palmetto Unified
School District No. 1**

Dear Ms. Scott:

Enclosed please find the original and copies of Plaintiffs' Summons, Petition for Judicial Review and Complaint in the above-referenced matter. Please file the original and return the extra, clocked-in copies, with the bearer. A check in the amount of \$100.00 is also enclosed for your filing fee. Thank you for your assistance in this matter.

Sincerely,



W. Allen Nickles, III

WAN/pfb

Enclosures

cc Hon. Henry McMaster, Attorney General (via Certified Mail)

Sam Wilkins, Esquire, Director, State Office of Human Resources (via Certified Mail)
File #03-156



0029

STATE OF SOUTH CAROLINA)

COUNTY OF Richland)

IN THE COURT OF COMMON PLEAS

Timothy "Tim" Bell, et al Plaintiff(s))

vs)

CIVIL ACTION COVERSHEET

4 - CP - 410 -

SC Department of Corrections
+ Palmetto High School Det Defendant(s))

(Please Print)

Submitted By W Allen Nickles, III

Address Post Office Box 1546
Palmetto SC 29120

SC Bar # 4226

Telephone # 803 719 8080

Fax # 803 252 1511

Other

E-mail WAllenNickles@agnslew.com

NOTE The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check one box below)

- ☐ JURY TRIAL demanded in complaint
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules
☒ This case is exempt from ADR (certificate attached)

NATURE OF ACTION
(Check One Box Below)

- Contracts**
☐ Construction (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Wrongful Breach (140)
☐ Other (199)

- Torts Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other Malpractice (299)

- Torts - Personal Injury**
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Other (399)

- Real Property**
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Other (499)

- Inmate Petitions**
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

- Judgments/Settlements**
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)**
☐ Other (799)

- Administrative Law/Relief**
☐ Driver License Reinstatement (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899)

- Appeals**
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☒ Other (999)

- Special/Complex /Other**
☐ Environmental (600)
☐ Automobile Arb (610)
☐ Medical (620)
☐ Other (699)

** Check only if Summons & Complaint to follow in 20 days

Submitting Party Signature

W Allen Nickles, III

Date

4/6/04

Note Frivolous civil proceedings may be subject to sanctions pursuant to SCRCR Rule 11 and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

C/A NO 04-CP-40-_____

James "Cal" Bell, Othella Bernard,)
Katherina Bower, 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 Woodhief,)

Plaintiffs,)

vs)

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

Defendants)

CERTIFICATE OF EXEMPTION
FROM ADR

I certify that this action is exempt from ADR because

XX this action is appellate in nature

GERGEL, NICKLES & SOLOMON, P A

By W Allen Nickles III

W Allen Nickles, III

Dona L Guffey

1519 Richland Street

Post Office Box 1866

Columbia, South Carolina 29202-1866

(803) 779-8080

By Carl Z Solomon

April 6, 2004
Columbia, South Carolina

Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

C/A NO 04-CP-40-_____

James "Cal" Bell, Othella Bernard,)
Katherina Bower, Linda M W Bratton,)
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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 Woodhief,)

Plaintiffs,)

vs)

SUMMONS

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

Defendants)

TO THE DEFENDANTS ABOVE NAMED

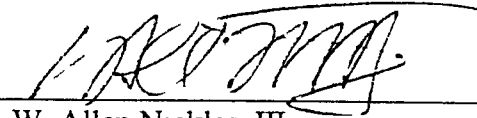
YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon subscribers at their offices at 1519 Richland Street, Post Office Box 1866, Columbia, South Carolina 29202-1866, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

NOTICE If you fail to appear and defend, judgment by default will be rendered against you for the relief demanded in the Complaint.

SIGNATURE PAGE FOLLOWS

GERGEL, NICKLES & SOLOMON, P A

By



W Allen Nickles, III
Dona L Guffey
1519 Richland Street
Post Office Box 1866
Columbia, South Carolina 29202-1866
(803) 779-8080

April 6, 2004
Columbia, South Carolina

Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A NO 04-CP-40-_____

James "Cal" Bell, Othella Bernard,
Katherina Bower, Linda M W Bratton,
Ann T Bridges, Rance C Cobb, Jeannie
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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 Woodhief,

Plaintiffs,

vs

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

Defendants

PETITION FOR JUDICIAL REVIEW
AND COMPLAINT

Plaintiffs, complaining of the Defendant, show unto the Court as follows

PARTIES

1 Plaintiffs are educators employed by the Defendants

2 The Defendant, South Carolina Department of Corrections (SCDOC) is an agency
of the State of South Carolina and is subject to suit in its own name

3 The Defendant, Palmetto Unified School District No 1 (District) is a special state
wide unified school district within the SCDOC pursuant to S C Code Ann § 24-25-10 et seq

4 The District is under the control and management of a Board of Trustees which is
responsible for operation of the District under the supervision of the SCDOC S C Code Ann § 24-
25-40

5 With the “consent and concurrence” of the Director of the SCDOC, the District’s Board has the statutory mandate to “operate as executory agent for the schools under its jurisdiction” and to perform designated administrative functions including the establishment of academic programs, determining physical facilities needed to carry out all education programs and presenting an annual educational budget to the SCDOC for submission to the General Assembly S C Code Ann § 24-25-70

PROCEDURAL BACKGROUND

6 On or about April 4, 2003, Plaintiffs received notice of separation from employment due to reduction in force effective June 1, 2003

7 On or about June 12, 2003, Plaintiffs timely filed grievance actions challenging their separation from employment due to reduction in force

8 On or about June 16, 2003, SCDOC issued a decision denying Plaintiffs’ grievances

9 On or about June 20, 2003, Plaintiffs timely filed grievance appeals to the Office of Human Resources of the South Carolina Budget and Control Board

10 On or about January 9, 2004, the Director of the Office of Human Resources issued a letter denying Plaintiffs’ appeals

11 On or about February 2, 2004, Plaintiffs timely served a request for reconsideration of the January 9, 2004 determination by the Office of Human Resources

12 On or about March 22, 2004, the Director of the Office of Human Resources issued a letter denying Plaintiffs’ request for reconsideration

13 This petition for judicial review and complaint is submitted within thirty (30) days of receiving the final determination from the Office of Human Resources pursuant to South Carolina Code Ann § 8-17-350

JURISDICTION

14 Plaintiffs have exhausted all administrative remedies available within the SCDOC and under the State Employee Grievance Procedure Act S C Code Ann § 8-17-310 et seq

15 Plaintiffs are entitled by law and constitution to judicial review of an administrative decision adversely affecting their continuing employment See, S C Constitution, Article I, §§ 3, 22, S C Code Ann §§ 8-17-340, 350

16 The denial of Plaintiffs' appeal by the Office of Human Resources was taken without affording Plaintiffs the opportunity to present sworn testimony or to cross-examine those parties responsible for terminating their employment

17 Upon information and belief, the action taken by the Office of Human Resources in this matter is in violation of constitutional or statutory provisions, affected by error of law, clearly erroneous in view of reliable, probative and substantial evidence on the record available for review and constitutes an abuse of discretion See, S C Code Ann § 1-23-380(A)(6)

18 Throughout the administrative grievance process, SCDOC refused or failed to provide Plaintiffs access to information relevant to their claims that the SCDOC violated law in implementing the reduction in force which resulted in their separation from employment Accordingly, Plaintiffs hereby apply to the Court for leave to present additional evidence for consideration in this matter See, S C Code Ann § 1-23-380(A)(3) This additional evidence is necessary to enable the reviewing court to determine whether the determination of the Office of Human Resources is factually and legally supportable

ISSUES FOR REVIEW

19 It is respectfully submitted that upon review of an adequate record, the evidence in this case will show

- a The Defendants violated law in failing to involve the District's Board in the decision to eliminate educational programs at certain of its correctional facilities,
- b The Defendants violated law in failing to treat the educators employed in the District in a "unified" fashion. Instead, Defendants unlawfully and arbitrarily divided the legislatively established "special statewide unified school district" into geographic regions which resulted in the inability of educators to compete for positions based upon their service and qualifications.
- c The Defendants retaliated against the Plaintiffs for filing suit in order to enforce their rights to appropriate compensation under law. Upon information and belief, the evidence will show that a disproportionate number of educators employed in the District were separated from employment as a result of reduction in force.
- d The Defendants acted in an arbitrary and capricious fashion in eliminating and severely restricting the availability of educational programs to inmates in a manner which is contrary to public policy.
- e The Defendants acted in an arbitrary and capricious fashion in assigning education related responsibilities to individuals without proper certification and qualifications to provide such services.

RELIEF REQUESTED

- 20 For the reasons set forth above, Plaintiffs respectfully request the following relief:
- a An order declaring Plaintiffs' right to a hearing before the State Employee Grievance Committee regarding their separation from employment due to

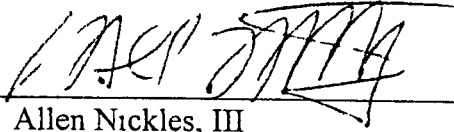
reduction in force,

- b An order declaring the Defendants' reduction in force to be in violation of South Carolina Code Ann § 24-25-10, et seq in the following particulars
 - 1 Failing to observe the statewide unified nature of the Palmetto Unified School District by dividing the District into geographic areas for purposes of reduction in force,
 - 2 Failing to involve the District's Board of Trustees in implementation of the reduction in force,
 - 3 Failing to afford Plaintiffs statewide "bumping rights" for retention of employment in the reduction in force,
 - 4 Failing to establish proper service and performance credits for determining retention of employment in the reduction in force,
 - 5 Assigning education related responsibilities to individuals without proper certification and qualifications to provide such services
- c An order reinstating the Plaintiffs to employment, with full back pay and benefits, pending the institution of a legally valid reduction in force, if necessary,
- d An order permitting the Plaintiffs to present additional evidence for consideration in this matter,
- e An award of attorney fees and costs,
- f Such other and further relief as the Court may deem just and proper

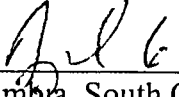
*****SIGNATURE PAGE FOLLOWS*****

GERGEL, NICKLES & SOLOMON, P A

By


W Allen Nickles, III
Dona L Guffey
1519 Richland Street
Post Office Box 1866
Columbia, South Carolina 29202-1866
(803) 779-8080

Attorneys for Plaintiffs

, 2004
Columbia, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO 04-CP-40-1761

SC Dept of Corr
etal

James C. Bell
etal

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE

☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered

☐ **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered

☐ **ACTION DISMISSED** (CHECK REASON) ☐ Rule 12(b) SCRPC, ☐ Rule 41(a) SCRPC (Vol Nonsuit) ☐ Rule 43(k) SCRPC (Settled) ☐ Other _____

☐ **ACTION STRICKEN** (CHECK REASON) ☐ Rule 40(j) SCRPC, ☐ Bankruptcy, ☐ Binding arbitration subject to right to restore to confirm vacate or modify arbitration award ☐ Other _____

IT IS ORDERED AND ADJUDGED ☒ See attached order ☐ Statement of Judgment by the Court

Dated at Cala South Carolina this 10th day of Jan, 2007

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class this 10 day of Jan, 2007 to attorney of record or to parties (when appearing pro se) as follows

W Nickles
D. Guffey

ATTORNEY(S) FOR THE PLAINTIFF(S)

S Justice
L. Summers

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

CLERK OF COURT

0040

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

C/A NO 04-CP-40-1761

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 Woodhief,)

Plaintiffs,)

vs)

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

Defendants)

ORDER

PROCEDURAL HISTORY

Plaintiffs are certified educators formerly employed in full-time instructional or administrative positions in the Palmetto Unified School District ("District") This school district was created by statute to serve inmates in the South Carolina Department of Corrections ("SCDC" or "Department") S C Code § 24-25-10, et seq Plaintiffs were each removed from their positions as the result of a reduction in force implemented effective June 1, 2003 Plaintiffs exhausted all administrative remedies afforded to them and seek judicial review for reinstatement to their former positions of employment

Plaintiffs filed a Petition for Judicial Review and Complaint on April 6, 2004 By this Petition, Plaintiffs seek an order remanding their grievance appeals to the Office of Human



Resources ("OHR") to be heard by the South Carolina State Employees Grievance Committee pursuant to S C Code Annotated § 1-23-380(A)(6) Plaintiffs filed a Motion for Discovery on November 19, 2004 In an Order dated May 2, 2005, this Court granted Plaintiffs' motion as to all requested interrogatory responses, requests for production of documents, and depositions Defendant's Motion for Reconsideration was denied on September 8, 2005

LEGAL ANALYSIS

An employee has a right of appeal from the final decision of an agency employee grievance procedure to the State Human Resources Director S C Code Ann § 8-17-330 Under this section (titled Agency employee grievance plans, procedures, appeals), an employee may file a grievance or an appeal concerning an adverse employment action, such as termination This section states that "a reduction in force is an adverse employment action considered as a grievance only if the agency, or as an appeal only 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 " Id The State Human Resources Director then forwards only those employee appeals regarding reductions in force to the State Employee Grievance Committee which have been determined to (1) have a material issue of fact regarding inconsistent or improper application of the agency's reduction in force plan or policy, and (2) meet the jurisdictional requirements S C Code Ann § 8-17-340

In this case, the Plaintiffs never received a hearing before the Grievance Committee because the State Human Resources Director determined their complaint was not grievable This is a final decision from which Plaintiffs can appeal Demian v South Carolina Health and Human Services Finance Com'n, 297 S C 1, 374 S E 2d 510 (Ct App 1988) An appeal to the



circuit court from a final decision of the State Human Resources Director determining that an appeal is not grievable is governed by the Administrative Procedures Act, under S C Code Ann § 1-23-310 through 400, Code of Laws of South Carolina, 1976, as amended Id

Under the Administrative Procedures Act, a party who has exhausted all administration remedies within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this article S C Code Ann § 1-23-380 The court may affirm the decision of the agency or remand the case for further proceedings S C Code Ann § 1-23-380(A)(6) The ultimate question faced by the Court is, whether are not, there is a material issue of fact that the Department of Corrections inconsistently or improperly applied its reduction in force policy or plan

This Court finds there is sufficient evidence that a material issue of fact exists in the Department of Corrections implementation of its June 1, 2003 reduction in force plan Specifically, the Plaintiffs have raised several concerns that present material issues of fact, such as

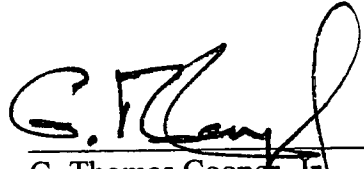
- 1 the South Carolina Department of Correction's division of unified school district,
- 2 the lack of participation by the School District and its Board of Trustees in the process,
- 3 the fact that of the 148 positions eliminated in the reduction in force, 84 were from the Division of Education,
- 4 the assertion that Plaintiffs' selection for reduction in force was in retaliation for enforcing their right to be paid in compliance with state law under a separate law suit, and

5 the fact that the Department of Corrections retained probationary employees, grant employees and "pink slip" temporary employees in favor of educators, which is in contrary to the Department's procedure used in the 2001 reduction in force, where at-will employees were eliminated and those positions were filled by permanent employees

CONCLUSION

For the reasons stated above, there exist disputed issues of material fact which entitle Plaintiffs to a hearing before the State Employee Grievance Committee. Therefore, Plaintiffs' request for remand is GRANTED, and the Office of Human Resources is directed to reinstate the grievance for a hearing before the State Employee Grievance Committee.

AND IT IS SO ORDERED



G. Thomas Cooper, Jr.
Judge, Fifth Judicial Circuit

Columbia, South Carolina
January 8, 2007



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
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

May 14, 2008

Lake Eric Summers, Esquire
Malone Thompson Summers & OH, LLC
339 Heyward St
Columbia, SC 29201

W. Allen Nickles, III, Esquire
Dona L. Guffey, Esquire
Gergel, Nickles & Solomon, PA
P O Box 1866
Columbia, SC 29202

Re Bell, James "Cal" v. SCDC

Dear Counsel

Enclosed is the opinion of the Court of Appeals in this case.

Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for Richland County after fifteen (15) days, exclusive of the date of filing of this opinion.

No extension for a petition for rehearing will be granted except in the most extraordinary circumstances and, except in the rarest cases, with seven days' notice.

Sincerely,


Renee S. Johnson
Administrative Specialist

KAR/rj

LAW OFFICES

MAY 15 2008

MALONE THOMPSON
SUMMERS & OTT, LLC

0045

THIS OPINION HAS NO PRECEDENTIAL VALUE IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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, Respondents,

Y

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

Defendants,

**Of Whom South Carolina
Department of Corrections is
the**

Appellant

Appeal From Richland County
Gordon G Cooper, Circuit Court Judge

Unpublished Opinion No 2008-UP-257
Submitted May 1, 2008 – Filed May 14, 2008

APPEAL DISMISSED

Lake Eric Summers and Malone Thompson
Summers, both of Columbia, for Appellant

W Allen Nickles, III, and Dona L Guffey, both of
Columbia, for Respondents

PER CURIAM South Carolina Department of Corrections appeals the circuit court's order directing the Office of Human Resources to reinstate a grievance for a hearing before the State Employee Grievance Committee. We dismiss¹ pursuant to Rule 220(b), SCACR, and the following authorities: Leviner v Sonoco Prods Co, 339 S C 492, 494, 530 S E 2d 127, 128 (2000), Montjoy v Asten-Hill Dryer Fabrics, 316 S C 52, 52, 446 S E 2d 618, 618 (1994), Owens v Canal Wood Corp, 281 S C 491, 492, 316 S E 2d 385, 385 (1984), Hunt v Whitt, 279 S C 343, 343, 306 S E 2d 621, 622 (1983) (all finding a circuit court order remanding a case for additional proceedings before an administrative agency is not directly appealable).

APPEAL DISMISSED

HEARN, C J , and SHORT and KONDUROS, JJ , concur

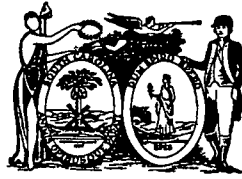
¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
State Budget and Control Board
OFFICE OF HUMAN RESOURCES

MARK SANFORD CHAIRMAN
GOVERNOR

CONVERSE A. CHELLIS III CPA
STATE TREASURER

RICHARD ECKSTROM CPA
COMPTROLLER GENERAL



HUGH K. LEATHFRMAN SR.
CHAIRMAN SENATE FINANCE COMMITTEE

DANIEL T. COOPER
CHAIRMAN WAYS AND MEANS COMMITTEE

FRANK W. FUSCO
EXECUTIVE DIRECTOR

1201 MAIN STREET SUITE 800
COLUMBIA SOUTH CAROLINA 29201
(803) 737 0900

SAMUEL L. WILKINS
DIRECTOR

June 4, 2008

CERTIFIED MAIL

Mr. W. Allen Nickles, III
Attorney at Law
Post Office Box 1866
Columbia, South Carolina 29202

Ms. Robin N. Gracien, Chief
Employee Relations Branch
Division of Human Resources
S.C. Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221-1787

Re James "Cal" Bell, et al v South Carolina Department of Corrections (SCDC)

Dear Mr. Nickles and Ms. Gracien:

On May 20, 2008, this office received a copy of The South Carolina Court of Appeals opinion dated May 14, 2008, dismissing SCDC's appeal of Judge Gordon G. Cooper's Order issued on January 10, 2007. Judge Cooper's Order states, in part, that "there exist disputed issues of material fact which entitle Plaintiff's to a hearing before the State Employee Grievance Committee" and "the Office of Human Resources is directed to reinstate the grievance for a hearing before the State Employee Grievance Committee."

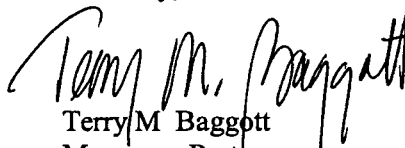
Section 8-17-340 (A) of the S.C. Code of Laws of 1976, as amended, states in part "There is created the State Employee Grievance Committee constituted and appointed to serve as an administrative hearing body for state employee appeals." Section 8-17-320 (2) defines appeal as "the request by a covered employee to the State Human Resources Director for review of an agency's final decision concerning a grievance." In addition, State Human Resources Regulation 19-718.05 (F) provides "If the State Human Resources Director determines that additional action by the agency is necessary and appropriate, he may remand the appeal to the agency."

Mr W Allen Nickles, III
Ms Robin N Gracien, Chief
June 4, 2008
Page Two

Since the grievants have not had an opportunity to complete SCDC's internal grievance process, additional action by the agency is necessary to establish a record and decision, concerning the grievance, for review by the State Employee Grievance Committee. Therefore, to effectuate the intent of Judge Cooper's Order and the opinion of the South Carolina Court of Appeals, the State Human Resources Director remands this matter to SCDC for processing according to its grievance policy. In addition, since Judge Cooper's Order has established that material issues of fact exist regarding the application of SCDC's Reduction in Force policy in this case, SCDC must address the substantive issues regarding the grievance.

If SCDC's final decisions are unfavorable to the grievants, or SCDC fails to make a decision within 45 calendar days of receipt of this remand, the grievants may institute an appeal to the State Human Resources Director within the time frames set forth in the State Employee Grievance Procedure Act and a hearing will be scheduled before the State Employee Grievance Committee in accordance with Judge Cooper's Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry M. Baggott", with a long horizontal line extending to the right.

Terry M Baggott
Managing Partner
Alternative Dispute Resolution Program

Enclosure

STATE OF SOUTH CAROLINA
OFFICE OF HUMAN RESOURCES
STATE EMPLOYEE GRIEVANCE COMMITTEE

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)

TRANSCRIPT OF APPEAL HEARING
BEFORE THE SOUTH CAROLINA
EMPLOYEE GRIEVANCE COMMITTEE

HELD ON NOVEMBER 5, 2008
DAY 1

W ALLEN NICKLES, III, ESQUIRE
DONA L GUFFEY, ESQUIRE
ATTORNEYS FOR THE APPELLANTS

LAKE E SUMMERS, ESQUIRE
ATTORNEY FOR THE RESPONDENTS

ROLAND S CORNING, ESQUIRE
ATTORNEY FOR THE COMMITTEE

KARL MCCLARY, COMMITTEE CHAIR

1 **MR MCCLARY** Good morning This is the first day of
2 the hearing of the appeal of reduction in force
3 instituted by the following James "Cal" Bell,
4 Othella Bernard, Katherina Bowyer, Linda M W
5 Bratton, Ann T Bridges, Rance C Cobb, Jeannie
6 B Croxton, Bernetha L Culbreath, William K
7 Dreyer, and if I mispronounce these names, I'm
8 sorry, Jacqueline D Farr, Ruth Fritts, Nancy
9 Glenn, Etta Jane Jones, Geneva M Martin, Mary
10 H McCabe, Beverly McClanahan, Max D Randolph,
11 Carolyn McIver Smith, Maggie L Williams and
12 Paula Woodlief, against the South Carolina
13 Department of Corrections being held in
14 Columbia, South Carolina this 5th day of
15 November 2008 A record is being made of the
16 hearing For the record, my name is Karl
17 McClary I'm with the Department of Motor
18 Vehicles And other members of the State
19 Employee Grievance Committee present are Herb
20 Cooper Herb is with the Department of
21 Transportation Glynnis Elmore with the
22 Department of Health Department of Mental
23 Health, I'm sorry, Lynn Hutto with SLED, Lesia
24 Kudelka, Department of Labor, Licensing and
25 Regulation The committee attorney is Roland

1 Corning of the Attorney General's Office
2 State Employee Grievance and Appeal Regulation
3 19-718 07 provides that each party shall
4 provide to the secretary a list of
5 representatives and witnesses at the beginning
6 of the hearing At this time the secretary
7 will accept representatives and witness lists
8 from both parties Thank you The appellant
9 is represented by Attorney Allen Nickles

10 **MR NICKLES** Yes

11 **MR MCCLARY** The employing agency is represented by
12 Attorney Lake Summers

13 **MR SUMMERS** Yes, sir, good morning

14 **MR MCCLARY** Before I go any further, and I'm going
15 to check mine as well, but could we please turn
16 our phones on vibrate or turn them off, please
17 Give me a minute to make sure I didn't give
18 directions that didn't apply to myself here
19 Your attention is called to the fact that this
20 hearing will be conducted as informally as
21 compatible with the equitable presentation of
22 both sides and the case and in compliance with
23 the Administrative Procedures Act I am the
24 proceeding officer of this committee officer
25 of this committee, and it is my duty to take

1 whatever action is necessary to insure an
2 equitable, orderly and expeditious hearing We
3 will be bound by Rules of Evidence The
4 committee attorney shall determine the order
5 and relevance of the testimony and the
6 appearance of witnesses and shall rule on all
7 motions and objections The Office of Human
8 Resources has furnished to the members of the
9 committee a copy of the records, reports and
10 documentations of the earlier proceedings on
11 the grievance These documents were provided
12 to the Office of Human Resources by the agency
13 and the appellant These documents will be
14 considered by the committee as the record on
15 appeal during the hearing, and according to 8-
16 17-350 of the State Employee Grievance
17 Procedure Act, will now be marked into evidence
18 as Committee Exhibit One

19 **(Committee Exhibit Number One was marked for**
20 **identification purposes)**

21 **MR MCCLARY** The appellant and the agency may, if
22 they so desire, make an opening statement
23 before the presentation of their case Then
24 the appellant may call and examine witnesses
25 from the appellant's list of witnesses After

1 the appellant has finished, the agency may
2 present its case Each side will be given an
3 opportunity at the appropriate time to ask
4 questions of the witnesses The presiding
5 officer, any member of the committee or the
6 committee attorney may direct questions to any
7 party or witness at any time during the
8 proceeding Before closing of hearing, the
9 presiding officer will allow both parties to
10 present a brief summary or closing statement if
11 they so desire The appellant will have an
12 option to close first or last I wish to point
13 out that only testimony and evidence pertinent
14 to the grounds on which the appeal is based or
15 pertinent to the charges on which the agency's
16 action is based will be allowed Testimony or
17 evidence which is repetitive, cumulative will
18 not be permitted Are there any questions by
19 either party?

20 **MR NICKLES** No questions

21 **MR SUMMERS** None from this side, sir

22 **MR MCCLARY** Thank you Witnesses are not
23 witnesses are asked not to discuss

24 **MR CORNING** Do you want to get the witnesses in
25 here?

1 **MR MCCLARY** Okay

2 **MR CORNING** How many of the witnesses are here,
3 counsel?

4 **MS GUFFEY** About twelve, all of today's

5 **MR NICKLES** I think we have all that are going
6 to testify today are present And as we
7 discussed earlier, because of the numbers, it
8 looks like it's going to take more than one day
9 for our witnesses to present their testimony
10 So we tried to schedule them in a way that'll
11 be convenient and understandable both to you
12 and not too burdensome to them So at least
13 all of those that are scheduled to testify
14 today are present I'll be happy to bring them
15 in to hear

16 **MR CORNING** Well, I think that's where Sandra has
17 gone

18 **MR NICKLES** And Mr

19 **MR CORNING** We can well, so that we can swear
20 all the witnesses in

21 **MR NICKLES** And Mr Cobb, who's sitting as
22 representative, is also one of the grievants
23 and a witness We can have people come in and
24 just spread

25 **MR CORNING** Just have them come on in and maybe

1 **MR NICKLES** I don't think anybody will object if
2 you stand slightly in front of them

3 **MR MCCLARY** Witnesses are asked not to discuss the
4 case either before or after testifying until
5 they are excused This is not intended to
6 preclude the parties from entering into
7 discussion with their respective witnesses
8 Does any witness not understand this?
9 Witnesses are to remain available after
10 testifying until they are excused by the
11 presiding officer After the opening
12 statements, witnesses may not remain in the
13 hearing room except when called to testify
14 Witnesses will be asked to testify under oath
15 At this time the secretary will determine which
16 which witnesses on the parties' lists are
17 present and administer the oath to all those
18 witnesses

19 **MR COOPER** All right If you'll just

20 **MR MCCLARY** say here

21 **MR COOPER** state your name No This
22 these are out of order Let me state the names
23 and just let me know if you're here

24 **MR MCCLARY** All right

25 **MR COOPER** Max Randolph?

1 MR RANDOLPH Here
2 MR COOPER Charlie Williams? Bernetha Culbreath?
3 James Cal Bell?
4 MR BELL Here
5 MR COOPER Othella Bernard?
6 MS BERNARD Here
7 MR COOPER Nancy Glenn?
8 MS GLENN Here
9 MR COOPER Mary McCabe?
10 MS MCCABE Here
11 MR COOPER Jacqueline Farr?
12 MS FARR Here
13 MR COOPER Linda Bratton?
14 MS BRATTON Here
15 MR COOPER Rance Cobb?
16 MR COBB Here
17 MR COOPER Ann Bridges?
18 MS BRIDGES Here
19 MR COOPER Katherina Bowyer?
20 MS BOWYER Here
21 MR COOPER Did I miss any? The ones here I've
22 listed What's your name?
23 MS FRITTS I gave my deposition early, Ruth
24 Fritts, because I was scheduled for jury duty
25 this week

1 **MR NICKLES** Ms Fritts may be called today We
2 we were fortunate to have her because of her
3 she's going to be called in January in
4
5 **MS GUFFEY** The 17th
6 **MR NICKLES** The 17th rather than this week
7 **MR COOPER** Okay, Ruth Fitts
8 **MS FRITTS** Fritts, F-R-I-T-T-S
9 **MR COOPER** F-R-I
10 **MS FRITTS** T-T-S
11 **MR COOPER** T-T-S Okay So we're missing
12 Charlie Williams?
13 **MR NICKLES** Mr Williams is ill We got word this
14 morning that he's ill and unavailable
15 **MR COOPER** And that completes your list that you
16
17 **MR NICKLES** For, today
18 **MR COOPER** presented me for today?
19 **MR NICKLES** Correct
20 **MR COOPER** Okay Would all witnesses to testify
21 please raise your right hand? Do you swear or
22 affirm that the testimony you will give today
23 is the whole truth and nothing but the truth?
24 **WITNESSES** (Affirmative responses)
25 **MR MCCLARY** The appellant, the agency witness or

1 anyone related to the case are not to discuss
2 the case with any member of the State Employee
3 Grievance Committee before, during or after the
4 hearing until the final decision is reached
5 The only time the case is to be discussed is
6 during the formal hearing procedure A matter
7 is still considered to be pending before the
8 committee during the time involved, and a
9 request for reconsideration of the committee's
10 decision or until the time has passed for an
11 appeal to the Administrative Law Court The
12 only time the case is to be discussed is during
13 the formal hearing procedure After hearing
14 this appeal, the committee will report its
15 finding and decision in writing to the employee
16 and to the employing agency within twenty
17 calendar days of the conclusion of the hearing
18 The decision shall be final in terms of
19 administrative review Assisting the committee
20 is Sandra Brabham, Office of Human Resources
21 The requirement that written public notice of
22 the time, date, place and agenda for this
23 hearing has been met As permitted by the
24 Freedom of Information Act, the appellant has
25 requested that the hearing be conducted in open

1 session I'm sorry?

2 **MS BRABHAM** I don't believe that I don't
3 believe that occurred

4 **MR NICKLES** No, that did not occur

5 **MR MCCLARY** That did not occur?

6 **MR NICKLES** No

7 **MR MCCLARY** Okay So that did not occur, for the
8 microphone that's listening to us here Do I
9 hear a motion to go into executive session?

10 **MR COOPER** Mr Chairman, I move that this committee
11 go into executive session to hear the appeal of
12 reduction in force

13 **MR MCCLARY** Is there a second?

14 **MR COOPER** instituted

15 **MR MCCLARY** Okay, I'm sorry

16 **MR COOPER** instituted by Bell, et al , against
17 the Department of Corrections and also to
18 receive any necessary legal advice from the
19 committee attorney

20 **MR MCCLARY** Lynn?

21 **MS HUTTO** I second that motion

22 **MR MCCLARY** All in favor?

23 **MS KUDELKA** Aye

24 **MS ELMORE** Aye

25 **MR MCCLARY** Aye

1 MR COOPER Aye

2 MR MCCLARY All opposed? All witnesses are
3 excused but the two parties involved and the
4 other authorized persons So anyone who's
5 authorized to stay I think Mr

6 MR NICKLES Mr Cobb

7 MR MCCLARY Mr Cobb is sitting in All other
8 witnesses are excused

9 MR NICKLES Okay, thank you very much Thank you,
10 folks

11 MR MCCLARY We're the committee is now ready to
12 hear opening testimony It's a little
13 different there, isn't it?

14 MR NICKLES It's a little different, Mr Chairman
15 Thank you very much My name is Al Nickles
16 I'm here with Dona Guffey of my firm, Gergel,
17 Nickles & Solomon You've met Mr Cobb who is
18 here today as a representative of his
19 colleagues, all of whom are appellants in this
20 proceeding We are here today representing
21 twenty educators who lost their jobs as a
22 result of reduction in force back on June 1,
23 2003 It has not gone unnoticed that there is
24 a substantial record in this case What we
25 have attempted to do is to bring some of that

1 record to your attention in a way that I hope
2 will be helpful to you I have presented to
3 counsel for the Department, to Mr Corning and
4 to each of you two notebooks that are before
5 you One is labeled Bell, et al , versus SCDC
6 hearing notebook and has twenty tabs And I'll
7 be making reference to that during the course
8 of my opening remarks to you The second
9 notebook are excerpts from depositions that
10 were taken earlier in this case of the
11 Executive Director, John E Ozmint, John Near,
12 then the Human Resources Director, and Wendell
13 Blanton, the Superintendent of the Palmetto
14 Unified School District at the time of the
15 reduction in force That is also before you,
16 and I'll be making some reference to those
17 materials as well Mr Summers, the counsel
18 for the Department, has very kindly stipulated
19 that two pages only that are a part of this
20 record that had not been previously identified
21 can be presented to you and considered That
22 is at Tab 7 of your hearing notebook, and it is
23 the best that I could do to summarize the
24 several pages of records that follow And I'm
25 sure that if I have made a mistake in that, Mr

1 Summers will bring it to your attention I
2 will also assure you it was not intentional
3 The other two items that you have before you,
4 and I know it's a little unusual in this
5 proceeding, are two cases that precede this
6 case One is by way of background, and that is
7 the Abraham, and then a long laundry list of
8 people, versus Palmetto Unified School
9 District This is a Court of Appeals decision
10 back in December of 2000 The second is a
11 discovery order that was issued in this case by
12 Judge G Thomas Cooper, Jr , in the Circuit
13 Court in Richland County back in May of 2005
14 I'll be making reference to those also during
15 the course of my opening remarks I want to
16 outline for you what I believe the evidence
17 will show in this case And I want to invite
18 you to follow me in this line of reasoning As
19 you will read in the orders that precede this
20 case, we are here because we fought to be here
21 We were initially denied a hearing by this
22 group, and we were fought at every level up to
23 the Court of Appeals by the Department of
24 Corrections It has taken us five years to
25 come here and we are grateful And I am

grateful to my clients for their tenacity We believe that the evidence will show that back in 2003 the educators in the Department of Corrections and that are employed in the Palmetto Unified School District, we'll describe that in a little more detail, were targeted for reduction in force because of their rate of pay and because they had gone to the Court of Appeals in 2000 to compel the Department to pay them in a manner required by law That is one of our arguments here, that is, there was an intentional targeting of these individuals Now, that argument, as Judge Cooper has found already, means that even if the RIF was done procedurally correctly, it cannot be applied as to these individuals because retaliation in and of itself is unlawful So we are going to present testimony, and we ask you to keep an open mind throughout this proceeding, not only for our witnesses, but for Mr Summers' witnesses and make your conclusions at the end of the day as to whether or not there's evidence that these educators were singled out and targeted for a reduction in force We think the evidence will

1 show that by way of a number of what one of my
2 partners calls anomalies, that is, unusual
3 circumstances He describes these as turtles
4 on fence posts Says if you're walking down a
5 country lane and you see a turtle on a fence
6 post, that's unusual If you see two turtles
7 on a fence post, you can bet somebody's been
8 picking up turtles and putting them on the
9 fence posts In cases like this, we are not
10 looking for Mr Near, Mr Blanton, Mr Ozmint
11 or any other witness from the Department of
12 Corrections to admit that they targeted these
13 individuals, but we're going to suggest to you
14 that the circumstances will lead you in your
15 common sense to that conclusion One of the
16 elements of that is that we will show that this
17 statewide school district, and it's statewide
18 by law The General Assembly specifically
19 adopted it, enacted it as statewide and unified
20 as is its title, Palmetto Unified School
21 District, was divided into eleven areas for the
22 first, last and only time for purpose of this
23 RIF Now, that division was done without
24 involvement or consultation with the district's
25 board Now, you will hear testimony and

argument that the district's board is really not required to participate in this because all employees of the Department, including those in the Palmetto Unified School District, are employees of the Department itself That's what the law says It does say that, but that's not all it says and we'll take a look We presume that the General Assembly, when it does something, does something for a purpose In this case, it created a statewide unified school district It created a board It gave those board members delegated authority And it said it shall consult and confer with the executive director It shall act with his concurrence Well, when you don't have the opportunity to participate, you can hardly have concurrence And we will bring that up during the course of the hearing The evidence will show that this unified school district was essentially dismantled for purposes of this RIF, and that as a result of this RIF, the unified school district disappeared That several of the areas in which this district was divided lost all teachers paid for by the state, every one They were left only with

folks from the county, in ancillary programs and part-time individuals and with so-called pink slip, temporary and part-time individuals That's another anomaly in this case, another turtle on the fence post You will see that in conducting this RIF, it was done in a pretty rapid fire process We remember that Mark Sanford was elected Governor in November in 2002 He was sworn in on January 14th of 2003 Jon Ozmint was appointed to be the Executive Director of the Department of Corrections in January 2003 This reduction in force, without consulting the board of the Palmetto Unified School District, and you'll hear testimony, without even looking at the law that created and governs that board was then the victim of a RIF within two months And the unified school district that existed before Mr Ozmint came no longer existed And the individuals who had been its most veteran teachers and administrators were gone, and there's a reason for that Now, these geographic areas, these eleven circles that you'll see in the record here that don't exist on any county lines, don't exist on any maps, never existed before

1 this RIF, had one valuable result for the
2 Department of Corrections It meant that you
3 could only compete for positions within your
4 imaginary circle so that even if you had been
5 with the Department, for example, like Mr
6 Cobb, for thirty years and there was a teacher
7 in another circle doing the same job that you
8 were doing who had been here much less time,
9 you couldn't bump that individual Even if you
10 wanted to move, even if that was within
11 convenient commuting distance to you, you
12 couldn't do it because your imaginary circle
13 confined your rights And those rights were
14 non-existent for many teachers We'll see that
15 in the record We'll also see that after the
16 RIF, individuals who were veteran certified
17 teachers were replaced They were replaced by
18 non-certified individuals making less money,
19 doing the same job Even some of these folks
20 who were RIF'd were brought back at
21 correctional officer pay to do the very job
22 that they did before Now, there's a provision
23 that you'll hear about It says you're not
24 supposed to bring a temporary in to do the job
25 that was held by somebody who was RIF'd But

1 you will see evidence that that was done
2 repeatedly In fact, there's evidence produced
3 by the Department after much kicking and
4 screaming and gnashing of teeth and orders from
5 the court and depositions that in fact shows
6 that, that shows that folks who were teaching
7 were brought in as temporaries That's not
8 right Even the Department's own policies say
9 temporary means you work less than a year
10 Most folks are familiar with that You'll see
11 their own records, people getting multiple year
12 temporary appointments to do these things
13 We're not talking about a couple I think
14 there are like 26 in the records that we'll
15 present to you That's no accident That's a
16 lot of turtles, folks Now, I want to bring
17 you sort of to where we are, and a bit of
18 background is helpful And I don't want to
19 burden you with too much detail, but if you
20 would look at Tab 19 of the hearing notebook,
21 you'll see that there are documents from the
22 record And these begin you see at the
23 top, that's the number of the page in your
24 record that these pages represent And the
25 first thing shows you that in 1981 the General

1 Assembly established something called the
2 Palmetto Unified School District And what did
3 they say it was, a special statewide unified
4 school district within the Department of
5 Corrections So, it's special, it's statewide
6 and it's unified Important concepts in this
7 hearing You will see at the next page, 829,
8 that there is a legislative purpose for this
9 district And that purpose is to ensure that
10 education programs are available to all inmates
11 with less than a high school diploma or its
12 equivalent That's one of the things it
13 requires And that vocational training
14 programs are available to selected inmates with
15 aptitude and desire So there are two parallel
16 purposes here Let's get all the inmates, if
17 they can, up to the high school equivalency,
18 and if they have the desire and the aptitude,
19 let's give them some vocational training
20 That's what the General Assembly told the
21 Palmetto Unified School District and the
22 Department of Corrections to do on a statewide
23 basis You'll see the next page, page 30, that
24 says that this Department shall meet all
25 academic and vocational requirements by the

1 South Carolina Department of Education So
2 it's not self contained completely There are
3 outside evaluators of this The next page
4 you'll see, 831, is that there'll be certain
5 funds made available outside the designated
6 appropriations of the Department of Corrections
7 for this educational process, including EFA
8 funds, Educational Finance Act funds There
9 are also federal funds, and the records will
10 show that that was also received and utilized
11 by the Department You will see at the next
12 page, 832, that the General Assembly set up
13 trustees, appointed had terms of their
14 appointment and their vacancies The next page
15 says once you're appointed, you can only be
16 removed for good cause, and that's by the
17 director, but he has to give good cause The
18 next page just describes how the elections take
19 place The next page, 835, is interesting
20 because this is a directive from the General
21 Assembly, and this is to the school board that
22 they have created and they are expecting to
23 administer this district And you look at the
24 very first paragraph of this statute, and it
25 says with the consent and the concurrence of

1 the director of the Department of Corrections
2 Now, that's important because this statute was
3 amended It used to be it was not the
4 executive director You know, this went to a
5 cabinet agency So this was ratified, brought
6 in and said, okay, even though we have a
7 cabinet agency, he still only operates this
8 district with consent and concurrence He's
9 not the initiator of things And it says the
10 board, the school board shall operate It
11 doesn't say may or could or might It says
12 shall operate as the executory agency of the
13 school district Now, where the General
14 Assembly says something like shall, it means
15 you've got to do it and, you know, that's the
16 law And among the things it's going to do is
17 establish the goals for the operation,
18 establish academic programs, establish
19 vocational and trade programs And number
20 seven is important It says establish what, a
21 twelve month school program and teacher's pay
22 schedule based on the state and average school
23 supplement pay scales That's their job, not
24 the executive director's job If you look at
25 page 837, there are certain duties given to the

1 district superintendent, budgetary duties, for
2 example, making sure that there's a separate
3 budget and there's funds available to run the
4 district And then you look at the last page
5 here, page 838, and this is the one that the
6 Department wants you to remember and forget
7 everything else This says that the
8 superintendent of the district and all other
9 educational program personnel shall be
10 employed, supervised and terminated according
11 to the Department of Corrections personnel
12 policy and procedures That's what it said
13 They are employed by the Department We have
14 no problem whatsoever with that It's just
15 that you can't forget everything that preceded
16 this particular statute as the Department would
17 like you to do Now, as I pointed out to you,
18 back in 1981 the General Assembly said that one
19 of the things that had to be done was a twelve
20 month school program and teachers' pay schedule
21 based on state and average school supplement
22 pay scales Well, for many, many years
23 teachers in the district weren't paid on that
24 level They tried to work it out with the
25 Department, it didn't work out They brought

1 a lawsuit against the Department That is the
2 Abraham case that you have in front of you
3 This case went through trial It went to the
4 Court of Appeals The Court of Appeals issued
5 an order , I happen to represent all the
6 individuals in this case And in that there
7 are a couple of things that are important that
8 the Court of Appeals decided And one of those
9 is it ratified that the General Assembly
10 established a, and they use this, quote,
11 special statewide unified school district
12 within the Department of Corrections, and it
13 required a twelve month school program with
14 teachers' pay schedules based on the state and
15 average school supplement Now, on that basis
16 the court found, among other things, and I'll
17 tell you I wasn't completely satisfied with
18 this decision, but they found, among other
19 things, that the Department had not been paying
20 the teachers according to a statewide average
21 Now, the rationale for that was the plain
22 language of the statute and the fact that the
23 court found that this district operates on a
24 statewide basis And since it operates on a
25 statewide basis, those teachers should be paid

1 on a statewide basis, one pay scale for the
2 unified district based on the average pay for
3 all teachers of the state That's what the
4 Court of Appeals found And there was argument
5 by the Department of Corrections that, well, we
6 don't get the money and this, that and the
7 other The Court of Appeals said we don't
8 care The law is what the law is, and that's
9 what you have to do After this decision was
10 issued, all those folks whose names you see,
11 and there's a whole laundry list, I think there
12 are about 120 something of them, reached an
13 agreement with the Department of Corrections as
14 to back pay And everyone in the Department
15 then got a pay increase, and that was in 2001,
16 2001 You will hear testimony that this was
17 not a popular development within the Department
18 of Corrections That the teachers who were now
19 being paid according to law for the first time
20 in 20 years were criticized by the non-
21 educational staff Wardens made comments that
22 teachers are overpaid Correctional officers
23 made comments that teachers are overpaid,
24 undeserved pay, and the teachers were only
25 receiving what the law they didn't make up

these pay schedules what the law provided
They came under increasing criticism and
scrutiny after this decision was handed down
Then, as I said, in November 2002, Mr Sanford
was elected In 2003, Mr Ozmint was
appointed The evidence will show that Mr
Ozmint agreed with the criticism of teacher
pay He came into the Department, and he
circulated around and made his meet and greet
with the various locations And you'll hear
testimony from Mr Randolph, for example, that
Mr Ozmint said to him, when Mr Randolph said
why couldn't you do this some other way, why do
you have to get rid of all these teachers in
April of 2003, Mr Ozmint said teachers get
paid too much Teachers sued the agency and
that was wrong That's what Mr Randolph will
tell you that Mr Ozmint said to him And I
ask you to judge Mr Randolph's credibility
when he presents that evidence to you But I
think it kind of explains a lot, as you will
see I'd like for you to look, if you would,
at Tab 3 of the pre-hearing notebook And in
this, this is the SCDC reduction in force
policy and procedure that was implemented by

1 Mr Ozmint for the purpose of this reduction in
2 force You will see that it supersedes a
3 policy that it implemented only back in July of
4 2001 So this is a new policy And he came on
5 in January, remember This was issued in March
6 of 2003 So this was very high on his list of
7 priorities And you will see that there are
8 certain features to this For example, one of
9 the things on page 181, Section 1 1, talks
10 about the agency director as designee is
11 authorized to approve any positions to be
12 abolished and approve competitive areas within
13 which the employees are subject to layoff or
14 will be able to exercise their rights under the
15 policy and procedure There's a note here It
16 says the competitive area may be agency wide,
17 which is the norm, may be a department, which
18 is allowed, says may be or, and this is where
19 we are right here today, or a more restricted
20 geographical area But it doesn't end there,
21 does it? It says where the staff is separately
22 organized and clearly distinguishable from the
23 staff of other areas These eleven imaginary
24 circles don't meet that qualification, ladies
25 and gentlemen And you will hear testimony to

1 that effect That deviation alone means that
2 this reduction in force was unlawful,
3 unsupportable and the employee should win
4 181, Section 1 1, there was no separately
5 organized, clearly distinguishable staff in
6 these areas It notes at page 183 this is
7 all approved by OHR You see on the same day
8 it's issued, stamped approved 3/14/03 5 5,
9 probationary employees will not have any rights
10 under RIF procedures at any time in the twelve
11 month period You see that You can see that
12 under 7 5 on page 185, probationary and it
13 uses also the word temporary or pink slip A
14 temporary grant employee will not have recall
15 or reinstatement rights They may, however,
16 apply for rehire through regular agency policy
17 and procedure Well, what the records will
18 show that are produced by the Department is a
19 couple of things These temporary pink slip
20 and temporary grant employees were in fact
21 exempted from the RIF We all know that they
22 have no rights to be before you, for example
23 They don't have any grievance rights
24 Nevertheless, they were shielded from the RIF
25 by the Department of Corrections There's a

1 reason for that They cost less They cost
2 less So rather than eliminate part-time
3 temporary grant types of services for
4 education, what the Department did is say we'll
5 focus on these veteran state employees and
6 we'll get, in Mr Ozmint's terms, more bang for
7 the buck Eliminating Mr Cobb, for example,
8 who's been there for 30 years and has an
9 advanced degree and was a principal, get rid of
10 him I save a heck of a lot more money than I
11 do if I get rid of a couple of these temporary
12 folks, and that's what happened So even
13 though they have no rights, even though they
14 are not protected by law, these folks were
15 protected by the Department And then you'll
16 see on page 187 here, it says temporary
17 employee refers to full time or part-time
18 employee who does not occupy an FTE position
19 Then it says whose employment is not to exceed
20 one year and who is not a covered employee
21 Well, you will see at Tab 9, for example, the
22 Department ultimately was compelled to give us
23 a list of temporary and temporary grant
24 employees during the period of time and
25 following the RIF And what this list will

show you is that there are numbers of occasions, and according to my count during the recall period of June 1, 2003, to May 31, 2004, a one year recall period, you do look through here even though it's done alphabetically and not chronologically, there were, according to my count, 33 educators hired on temporary bases, 33 21 of those at facilities that were RIF'd 21 at facilities that were RIF'd They replaced permanent state employees with temporary folks You'll also see that during the period of time they provided us information, that was June 1, 2003, to December 31, 2004, there were about 53 temp positions in education during that period of time We're not talking about the multiple appointments We're talking about separate, individual people If you look at the multiple appointments, that is temporary folks who are supposed to be no more than a year, what they're doing is signing them up year to year, or signing them up for a little less than a year, then a little more than a year on multiple times, add up to more than a year That's a gain here, 26 times in this record

1 So, there's some more turtles out there
2 There's some more deviation There's some more
3 anomalies that we're dealing with If you look
4 at Tab 4 of the materials, you'll see that
5 these are the competitive areas that were
6 created for the purpose of this reduction in
7 force, and at page 189 are the imaginary
8 circles Some of them even go up in North
9 Carolina, down into Georgia, out into the
10 Atlantic Ocean Now they're imaginary circles
11 that don't exist for any reason other than this
12 reduction in force except if you look over to
13 Tab Number 7 And you will see that the third
14 page to the end is a list of employees
15 affecting by reduction in force provided to us
16 several years into this litigation by order of
17 the court And this list is summarized in the
18 first two pages

19 **MR MCCLARY** And this is page 191?

20 **MR NICKLES** 191 and follows, yes And what I've
21 tried to do, and as I said, if I did it
22 incorrectly, please forgive me I tried to do
23 this as accurately as I could I took the
24 areas that were identified where there were
25 actual RIFs There are a couple of them in

1 which there were none But area one is the
2 biggie That's the central headquarters area
3 And you'll see that in that area, according to
4 my count, there were 17 certified teachers, 15
5 subject to RIF, 10 positions eliminated, 5
6 bumping opportunities for vocational, 10
7 vocational teachers, 9 subject to RIF, eight
8 eliminated, 1 bumping opportunity And the
9 interesting thing about area one is the first
10 several pages of this 191 and follows You'll
11 see that, for example, this RIF was advertised
12 as having the biggest impact at headquarters
13 The first couple of pages or page and a quarter
14 is at headquarters administrative specialist
15 II There must be well there are a bunch
16 I didn't count them, but they're a bunch More
17 than a page It looks like more than 30 of
18 them One of those was eliminated Look at
19 administrative assistant That goes on for a
20 page and three-quarters Four of those folks
21 If you look at physical technicians, two of
22 those Look at auditors, two of those The
23 poor audit managers got axed You'll look at
24 administrative manager One of those, program
25 coordinators go on forever, 11 of those

1 Program managers, one and so forth You have
2 to go a good distance Human services
3 specialist on page 198, one of those Human
4 services coordinator, several, three of those
5 We have to go down to page 200 and we see
6 vocational teachers, six of them eliminated,
7 one of them R4, means shielded from RIF So
8 it's really just one person who was outside the
9 RIF without being manipulated outside and that
10 was Gerald Ritchie The guidance counselors,
11 you've got you've got the numbers are
12 a little funny because one means RIF'd and the
13 other says subject to RIF So two were subject
14 to RIF, one position eliminated And then that
15 area one goes all the way to page 201, and then
16 you pick up area two and so forth And for
17 area two, for example, that's Wateree and Lee
18 Eight vocational teachers, seven subject to
19 RIF, three positions, bumping opportunities
20 zero Area four, this is the circle we're
21 talking about Evans was in that All the
22 positions eliminated These folks didn't have
23 you could have been there for 50 years
24 You couldn't bump anybody who was hired the day
25 before in another area, no bumping rights

1 Kershaw, area five, no bumping Lieber and
2 MacDougall, you see that there was one bumping
3 opportunity for certified, none for vocational
4 Area seven, Allendale, you're out of luck, no
5 bumping Leath and McCormick, Mr Cobb here
6 was principal of Leath, been there for 30
7 years Couldn't bump folks who had been there
8 half that time because they eliminated both the
9 facilities in that circle, imaginary circle
10 Tyger River, and Perry, you'll see that there
11 were three bumping opportunities for certified
12 teachers and one for vocational teachers This
13 document that was produced in the litigation
14 ultimately in response to the order that I've
15 handed to you by Judge Cooper showed exactly
16 what happened as a result of those imaginary
17 circles You'll see at Tab 13 that this
18 process started back in June of 2003 with the
19 same folks, the same 20 people And the
20 reasons that they thought at that time there
21 were problems and the relief they sought back
22 in 2003 We want our jobs back That's what
23 we want Now, their appeal was denied It was
24 denied at the agency level, Department of
25 Corrections It was denied by OHR, said we

1 didn't have any facts to show that there were
2 problems We didn't have any facts because we
3 didn't have any discovery The Department
4 couldn't give us any So we appealed it They
5 appealed it It went to Judge Cooper Judge
6 Cooper said in this order that you have before
7 you, this was back in 2005, that yes, the
8 plaintiffs are entitled to discovery because if
9 positions were protected, that's a problem If
10 positions were created or filled before or
11 after the reduction in force, that's a problem
12 If non-certified employees were assigned to
13 positions previously held by educators, that's
14 a problem If the positions were reclassified
15 or transferred before or after the reduction in
16 force, that's a problem So he ordered the
17 reduction the Department of Corrections to
18 produce documents and to make administrators
19 available for deposition The Department of
20 Corrections challenged that order Judge
21 Cooper said no, I wasn't kidding You've got
22 to do it And certain materials were provided
23 Then there were depositions You'll see in
24 those depositions Mr Near admitted that there
25 were documents or information that was

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1 available that wasn't produced, and ultimately
2 we got it and that's what you're looking at
3 Now, once we got the information we went back
4 to Judge Cooper, and Judge Cooper issued an
5 order that's at Tab 16 of the materials in
6 front of you And that is in January of 2007
7 And in it he finds that Mr Cobb and 19 other
8 folks who are here or will be here are entitled
9 to a hearing about the division of this unified
10 school district, about the lack of
11 participation of the board, about the fact that
12 148 positions were eliminated And according
13 to Mr Blanton, the superintendent, 84 were in
14 the division of education About the assertion
15 that the reduction in force selection of
16 educators was retaliation for enforcing their
17 rights to be paid and the fact that the
18 Department of Corrections retained probationary
19 employees, grant employees, pink slip and
20 temporary employees in favor of educators
21 Now, pretty clear order Department of
22 Corrections appealed that to the Court of
23 Appeals The Court of Appeals dismissed that
24 appeal and sent us back to OHR Simple enough
25 OHR tells the Department of Corrections, well,

1 now we've got this order It's been remanded
2 We got it from Judge Cooper We got it from
3 the Court of Appeals You guys, you know, get
4 busy, let's go through the process The
5 Department of Corrections doesn't do anything
6 Doesn't hear from them, doesn't respond to
7 them, and we're here today more than five years
8 later asking you to hear from these folks and
9 asking you to make a decision based only on the
10 evidence that's presented to you We're not
11 asking for any favors We're asking you to
12 listen carefully, study the witnesses, hear
13 what they have to say, look at the documents
14 We believe this record will show you two
15 things, either of which entitle Mr Cobb and
16 his colleagues to relief One, it was done for
17 the purpose of eliminating veteran, highly paid
18 educators If that's the case, we need go no
19 further Two, if you choose not to look at
20 motive, look at what in fact happened Are
21 there deviations from their own policy? Are
22 there deviations from what you would ordinarily
23 look to for reduction in force? We believe
24 that the case is over with the imaginary
25 circles, that the imaginary circles were

created for the whether it's for the purpose, the result was to dismantle a unified statewide school district in a way that was created only for the reduction in force and doesn't have any underlying educational justification Their failure to consult the board, I think is illustrative Failure to look at the law by Mr Near who was instrumental in putting this together was illustrative And we think that at the end of the day, you will conclude that, yes, these folks should have had their rights observed, they were not, and that they're entitled to relief Thank you very much for your time

MR MCCLARY Thank you Opening statement from the agency?

MR SUMMERS Yes, sir

MR MCCLARY Whenever you're ready, sir

MR SUMMERS Thank you very much Good morning, my name is Lake Summers Seated at the table with me to my right and left is Pat Thrailkill She's with the Department of Corrections, Division of Human Resources And to my left, your right, is Bart Vincent Bart is Deputy General Counsel at the Department of

1 Corrections What I wanted to do is I provided
2 you a handout, and counsel has seen the
3 handout I've also got some materials on the
4 screen that represent our assessment of the
5 operative statutes that are here at issue today
6 in this matter Also, by way of a housekeeping
7 matter, in the handout you'll see at the very
8 top, at least on the first slide, you'll see my
9 name You'll see the name of Katherine
10 Phillips Katherine or Katie is an associate
11 with our firm Tomorrow Mr Vincent will be
12 detained with other duties, and Ms Phillips
13 will be seated in his stead So when you see
14 her tomorrow, that's why she's here
15 Obviously, I'm following Mr Nickles'
16 presentation Without any understatement and
17 without trying to praise him unnecessarily, Mr
18 Nickles is a skilled attorney He has a vast
19 knowledge of this case and a vast knowledge of
20 these issues But with all due respect to Mr
21 Nickles, and for that matter Ms Guffey, that
22 is they're not the sole authority in this
23 matter, nor are they the authority at all in
24 this matter You who sit here on the panel
25 ultimately will be the authority as to what you

1 hear, what you see and what assessments you
2 make based upon those events Let me first
3 start by saying that no one from the Department
4 of Corrections was or is happy that this RIF
5 had to take place back in 2003 It was not an
6 event that was greeted with any enthusiasm It
7 was not an event that was greeted with any type
8 of joy Quite the contrary The staff, the
9 director, Director Ozmint, from whom you'll
10 hear testimony, made efforts to the extent that
11 they humanly could to avoid this particular
12 outcome, to avoid this RIF The second bullet
13 on the first page of my handout talks about
14 actions by the agency to save money, cut costs
15 and reduce the workforce before the 2003 RIF
16 And you'll hear testimony not just from
17 Director Ozmint but also from other SCDC
18 officials, current and former, to include John
19 Near, who's the former director of the division
20 of Human Resources, John Davis, who's the
21 former chief of administration for the agency
22 You will hear them testify about efforts that
23 the agency undertook before Director Ozmint
24 came into his directorship in January of 2003
25 So again, we understand why the grievants are

1 so passionate in their position We understand
2 that there were significant impacts However,
3 the agency, specifically Director Ozmint and
4 his staff, were tasked with the duties of
5 maintaining fiscal responsibility They were
6 tasked with facing a budget crisis And
7 ultimately, decisions had to be made, tough
8 decisions Now, you've heard Mr Nickles when
9 he was summarizing his opening statement
10 effectively state out two positions, two
11 decision points for the panel, for you One is
12 that he submits that the purpose of the
13 reduction in force in 2003 was retaliatory in
14 nature That it was to eliminate highly paid
15 educators, that that was the motive Well,
16 ladies and gentlemen, we're confident that the
17 testimony and evidence presented to you will
18 demonstrate that was not the motive You heard
19 Mr Nickles talk about the case of Abraham, and
20 I'll get into that in just a few minutes But
21 ultimately, again, the evidence will show that
22 the existence of that case, the actions taken
23 by the educators in bringing that lawsuit did
24 not prompt Director Ozmint or any other member
25 of the staff to move forward with the RIF in a

1 retaliatory fashion And I'm going to go again
2 to page one Each page on the handout I've
3 given you has a number in the bottom left hand
4 corner So I've talked about efforts that SCDC
5 made to save money, to cut costs and reduce the
6 workforce before the RIF I want to give you
7 a little bit of a procedural history to perhaps
8 distinguish what Mr Nickles provided to you,
9 not that it was at all inaccurate, but from our
10 perspective The RIF occurred and became
11 effective June 1st of 2003 These twenty
12 grievants filed grievances with SCDC SCDC
13 determined that they had not they were not
14 possessed of a grievable issue and denied those
15 grievances The grievance, through Mr Nickles
16 and Ms Guffey, appealed to Office of Human
17 Resources The Office of Human Resources made
18 the same decision It affirmed the agency's
19 decision Then at that point, getting into
20 2003 and 2004, Mr Nickles and Ms Guffey filed
21 a motion in Circuit or a matter in Circuit
22 Court And under that particular activity,
23 that litigation, Mr Nickles and Ms Guffey
24 sought the court's approval or order to begin
25 a discovery process And as Mr Nickles said,

1 with a bit of distinction, I believe he said he
2 fought along the way, we resisted along the way
3 or words to that effect Certainly, there are
4 legal defenses that are available Certainly,
5 there are legal mechanisms that are available
6 not just to his grievants, his clients, but to
7 the agency as well And those were events that
8 took their due course and took months
9 sometimes, sometimes years And yes, there
10 were times when the court determined we were
11 not in compliance, but we came into compliance
12 with those orders So, ultimately, in December
13 of 2006, the Circuit Court heard, and there's
14 more than enough material, I believe, in the
15 record about that particular chronology, but
16 the Circuit Court Judge Cooper heard argument
17 from both Mr Nickles and myself about his,
18 what's called a petition for judicial review
19 That particular hearing in December of 2006 led
20 to the order that Mr Nickles reviewed with you
21 at Tab 16 in these materials Judge Cooper
22 issued an order on January 10th, or it was
23 filed stamped January 10th of 2007 And again,
24 as Mr Nickles indicated, we did appeal that
25 order But with all due respect again to Mr

1 Nickles, he as he is a good advocate, a
2 very skilled advocate, perhaps tried to infer
3 some kind of bad intent, some kind of
4 unwillingness to do what was necessary
5 Ultimately, again, legal positions were staked
6 out by both sides which prompted an appeal to
7 the Court of Appeals And that appeal wound
8 its way through the process, and ultimately
9 that goes to Tab 17 That appeal that was
10 taken after Judge Cooper's January 2007 order
11 resulted in an order from the Court of Appeals
12 that came down May 14th of this year And
13 again, that is the normal course of litigation
14 at times, frustrating though it may be for Mr
15 Nickles' and Ms Guffey's twenty clients, the
16 twenty grievants that are before you,
17 frustrating as it can be for us And by virtue
18 of the order of dismissal, that brings us
19 ultimately to why we're here today, why this
20 matter is before you for consideration And I
21 think it goes without saying, as is reflected
22 in the next bullet on the first page of my
23 handout, that there's a fundamental dispute or
24 series of disputes regarding the interpretation
25 of events and facts, and for that matter, as

1 well as the interpretation of the applicable
2 laws And I'll get into that in just a moment,
3 but first and foremost, on the last bullet on
4 the first page, I wanted to bring this point to
5 bear Mr Nickles and Ms Guffey, and for that
6 matter the grievants, we respectfully submit,
7 would like this panel to view the Palmetto
8 Unified School District, that's what the
9 initials PUSD stand for, Palmetto Unified
10 School District, as a separate entity, if you
11 will, an entity unto itself within SCDC Well,
12 the reality is quite different from our
13 perspective, and that's what we submit to you
14 for your consideration The reality is, as
15 reflected by this last bullet, the Palmetto
16 Unified School District Number 1 is also SCDC's
17 division of education You'll hear testimony
18 and read deposition testimony from former
19 Superintendent Blanton that he wore two hats
20 He was the superintendent of the Palmetto
21 Unified School District Number 1, but he was
22 also wore the same hat, the other title as
23 the division director of SCDC's division of
24 education That distinction does make a
25 difference And without jumping completely

ahead, if you go to the very last page of your handout, page nine, and there is there at page nine Mr Nickles alluded to this It's what we feel to be a tremendously distinguishing aspect of this case It's the existence of this particular paragraph or this particular Code Section, 24-25-90 And it very simply says the superintendent of the Palmetto Unified School District and other personnel is entitled to be employed according to Department of Corrections policies And the second bullet is verbatim what the statute says The superintendent of the district and all other educational personnel shall be employed, shall be As Mr Nickles said, that's mandatory when the legislature uses the term shall be Shall be employed, supervised and terminated according to the South Carolina Department of Corrections personnel policies and procedures So, ultimately, we'll skip back to page two of the handout and go through very quickly what Mr Nickles staked out And we submit there are three pillars, three grounds for his for the appeal That we violated the statutes, and we'll talk about those statutes here in

1 just a moment, beginning with 24-25-10 That's
2 the first section Let the record reflect the
3 committee attorney was making sure we can move
4 the slides forward, and I do have a remote
5 control which I think hopefully will not be too
6 dangerous in my hands today, but thank you,
7 sir So first we contend, I think as Mr
8 Nickles talked about, and this is going to be
9 on page two of your actual hard copy handout,
10 that the agency violated the statutes regarding
11 Palmetto Unified School District The second
12 component, we respectfully submit, that Mr
13 Nickles and Ms Guffey would have you review,
14 and you heard him talk about deviations from
15 the norm, and it's in the statement of grounds
16 on appeal That the agency deviated from
17 normal RIF practices and normal RIF procedures
18 And then third, as Mr Nickles led off with,
19 that the agency targeted the grievants in a
20 retaliatory manner because the grievants sued
21 the agency over their wages in the lawsuit that
22 appears in the materials It's the Abraham
23 lawsuit, and that appears at 819 through 826
24 The handout that Mr Nickles was referring to,
25 again the hard copy of the Abraham case, was

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1 included in, if you'll forgive me, the mountain
2 of documents that ya'll have to go through, but
3 that appears at page 819 through 826 And
4 again, if you move on to page three very
5 quickly, I'm not going to read the slide to you
6 verbatim, but I'll highlight a few points If
7 you look at the first bullet, Mr Nickles and
8 Ms Guffey contend that we established eleven
9 geographic units, and that by doing so, we
10 acted in contravention of the statutes creating
11 the Palmetto Unified School District And
12 you'll see language there in italics about the
13 special statewide unified district, the
14 statewide nature of the district If you move
15 on to page four, and again you'll see at the
16 top of the slide a reference to the page in the
17 record, page 1242, which is part of the
18 statement of grounds on appeal provided by Mr
19 Nickles and Ms Guffey You'll see words like
20 single entity The district operates as a
21 single entity, and that the person you'll
22 see the second bullet The person responsible
23 for creating the geographic divisions, those
24 purported eleven imaginary circles, failed to
25 consider the statutes which applied You'll

1 see again in the next bullet that the division
2 of those those eleven imaginary circles, if
3 Mr Nickles if I can recall his
4 nomenclature correctly, that it was
5 inconsistent with the statutory nature of the
6 district Ultimately, ladies and gentlemen,
7 what this comes down to, and I'm going to stop
8 review of the hard copy there, is who is going
9 to determine how these cuts are made Mr
10 Nickles and Ms Guffey, for example, when they
11 reviewed with you what appears here in the
12 materials they provided, their notebook, the
13 applicable statutes which is at Tab 19, Mr
14 Nickles went through and reviewed them I'm
15 going to turn specifically to 24-25-70, and
16 that's at page 835 Mr Nickles read through
17 that particular section and talked about what
18 functions are enumerated in the eight
19 subparagraphs there at page 835 in the
20 materials under the provisions of 24-25-70
21 And it's on the screen right now, at least what
22 we would like you to consider when it comes to
23 that particular statute And it's entitled
24 powers and duties of the school board And it
25 provides that the school board, the district

1 school board, shall operate as an executory
2 agent for the schools under its jurisdiction
3 and shall perform eight specifically enumerated
4 administrative functions However, the first
5 sentence is critical And I think Mr Nickles
6 brought this into sharp relief this morning
7 The first sentence, as you can read up on the
8 screen and at page 835, says with the consent
9 and concurrence of the director of the
10 Department of Corrections, the board of the
11 school district shall operate as an executory
12 agent Very respectfully, from this vantage
13 point, it sounded as if Mr Nickles and Ms
14 Guffey were saying, well, it was working the
15 other way around, or it should have worked the
16 other way around It was the board driving the
17 train The board was in charge of doing these
18 things Ultimately, if you read it as we
19 submit it to be read, the board has to come to
20 the director The board has to come to the
21 director's consent and concurrence That's the
22 reality The director runs the show And the
23 director and his staff had to make decisions
24 that, frankly, no one wanted to make, but when
25 faced with, as you will hear in testimony,

1 budget crisis of varying degrees preceding
2 Director Ozmint's position or ascension into
3 his position in January 2003, these hard
4 decisions had to be made So again, when you
5 go the last page of your handout, back to page
6 nine, that's why we feel and that's why page
7 nine has verbatim that particular provision,
8 24-25-90 The grievants, as with the
9 superintendent and all other educational
10 personnel, shall be employed, supervised and
11 terminated pursuant to Department of
12 Corrections personnel policies and procedures
13 Now, ultimately, we submit to you that or
14 contrary to what Mr Nickles submitted to you
15 he, I believe, said that we only want to
16 view or have you review 24-25-90 and let our
17 discussion begin and end with that statute
18 But, ultimately, as you can see from 24-25-70,
19 we view that particular statute as having an
20 impact as to how the realities existed then and
21 now between the director, his staff and the
22 division of education, also known as the
23 Palmetto Unified School District of which the
24 twenty grievants were educators And you've
25 got 24-25-80, and as you can see there, you

1 have seven enumerated duties of the
2 superintendent But unlike what we looked at
3 before, 24-25-80 is remarkable for what it
4 doesn't say No component of 24-25-80, and
5 again, that's going to be in Tab 19 for the
6 record 24-25-80 appears as page 837 at Tab
7 19 No component of that statute provides that
8 the district superintendent shall control the
9 employment, the supervision or termination of
10 any educator employed by the agency, by the
11 agency That's the key When the grievants
12 come forward, you will hear testimony from
13 them And we're going to ask questions about,
14 well, what interaction did you have with PUSD,
15 was there a Palmetto Unified School District
16 division of human resources Ultimately, you
17 will hear testimony that, not just perhaps from
18 them but from Director Ozmint, from Mr Near,
19 from Mr Davis, that the South Carolina
20 Department of Corrections Division of Human
21 Resources controlled all aspects of their
22 employment because they're agency employees
23 We respectfully submit that what Mr Nickles
24 would have you do and what Ms Guffey would
25 have you do is to view the Palmetto Unified

1 School District as a traditional standalone
2 school district And, therefore, when you hear
3 terms from Mr Nickles and Ms Guffey as
4 deviations from the norm, and you heard him
5 talk about turtles on the fence post, that
6 these anomalies existed, we respectfully submit
7 that if you try to view the Palmetto Unified
8 School District as a traditional standalone
9 school district, there may be some resonance to
10 that, maybe, at best But the reality is, it's
11 not a traditional standalone school district
12 The grievants, like the rest of the educators,
13 were SCDC employees So when you when Mr
14 Nickles talks about the geographic regions were
15 drawn in such a way as to disadvantage the
16 educators, don't forget there were 148 total
17 people subject to this RIF There were folks
18 above and beyond educators in this RIF It was
19 all done in a way to manage SCDC's workforce in
20 its totality, not as Mr Nickles would urge,
21 not as Ms Guffey would urge, to focus
22 exclusively on the Palmetto Unified School
23 District I think one logical extension of
24 what Mr Nickles would advocate would be that
25 perhaps there should have been if there

1 should have been a RIF, that there should have
2 been a separate RIF specifically dealing with
3 Palmetto Unified School District personnel
4 Ultimately, there's no authority in the
5 statutes for that There's no authority in the
6 statutes for their interpretation of what the
7 director the superintendent should have
8 done about the board None of that is
9 specifically stated within the statutes that
10 appear at Tab 19 in the notebook that Mr
11 Nickles provided to you So again, read the
12 law, listen to the testimony, as we know you
13 will And in the end, we feel comfortable and
14 confident that you will come to the
15 determination that these grievances should be
16 denied Thank you in advance for all your
17 efforts today I know there's been some
18 homework assignments, for lack of a better
19 term, with the mountain of documents that come
20 forward to you And on behalf of Mr Nickles
21 and Ms Guffey, I'm sure we're very
22 appreciative that you took the time to look at
23 that And again, keep in mind both sides of
24 the story We'll call it the Paul Harvey, the
25 rest of the story The entirety of the story

1 did not come from Mr Nickles this morning
2 There is the rest of the story, and we're very
3 confident that you'll patiently get through the
4 evidence, get through the documents and view
5 everything in its totality Thank ya'll very
6 much

7 **MR CORNING** Before we proceed, I'd like to get on
8 the record that Mr Summers had subpoenaed
9 certain documents which I have ruled are
10 irrelevant to the procedure that's before this
11 committee, although it may at a later time turn
12 out to be relevant if there are procedures or
13 events beyond the decision that's ultimately
14 made by this committee And I think the
15 documents have been submitted So they're in
16 the record what was sought I've also
17 mentioned to both counsel that when subpoenas
18 are issued by the committee or OHR, that the
19 committee has no power to enforce subpoenas
20 So that if they are not complied with, it is
21 purely up to counsel to go to the appropriate
22 authorities and get those subpoenas enforced
23 Does that cover it, counsel?

24 **MR SUMMERS** It does, sir

25 **MR NICKLES** Yes, sir

1 **MS HUTTO** At this time I'd like to make a motion
2 that we excuse all of the panel in order that
3 we receive advice from counsel

4 **MR NICKLES** Very good

5 **MR MCCLARY** Do I hear a second?

6 **MR COOPER** Second

7 **(Off the record)**

8 **MR NICKLES** Members of the panel, one of the
9 opportunities that we have as the moving party
10 here is to present as a part of our case in
11 chief testimony that's been previously taken in
12 this case of administrators of the Department
13 of Corrections What I have done is provided
14 to you each a notebook that has a table of
15 contents with portions of the depositions of
16 these individuals As the first aspect of our
17 case in chief, what I would like to do is to
18 present this information and simply invite your
19 attention to certain aspects of their
20 testimony Now, in so doing, we understand
21 that these individuals may be called in their
22 entirety by Mr Summers, and they would be
23 subject to questions both by Mr Summers and
24 myself and by you at that point in time So
25 this is a preliminary presentation of certain

1 information to you that I present at this point
2 in time

3 **MR CORNING** Without objection, counsel?

4 **MR NICKLES** No objections?

5 **MR SUMMERS** That's correct, sir They're all
6 these materials, as Mr Nickles indicated, were
7 already in the record He's just extracted
8 them out, much like his other notebook

9 **MR CORNING** We'll make this Grievant Exhibit One

10 **MR NICKLES** Grievant Exhibit One, yes, sir

11 (Grievant Exhibit Number One was marked for
12 identification purposes)

13 **MR NICKLES** Now, if you would turn to what has been
14 identified as Grievant Exhibit One, I would
15 like to invite you to look first at Tab Number
16 1 You will see this is the deposition of John
17 E Ozmint that was taken on June 21, 2006 On
18 page 1224

19 **MR CORNING** I'm sorry, counsel

20 **MR NICKLES** Certainly At page 1224, you'll see
21 that Mr Ozmint at that time was the Executive
22 Director of the Department and had been
23 appointed in January of 2003 At page 1225,
24 you will see that Mr Ozmint identified that
25 the total expenditures for the Department had

1 ranged over \$300 million dollars for each of
2 the years 2000 through 2005 That's at line 17
3 through 25 of that page carrying over to page
4 1226, line 2 You'll see also on page 1226,
5 lines 18 through 22, Mr Ozmint acknowledges
6 that, in his terms, a small percentage of the
7 overall budget in comparison to most agencies
8 is in federal dollars, but those federal funds
9 also are supplemented by EFA, Education Related
10 Funds, for the education program If you look
11 at page 1228, lines 1 through 5, Mr Ozmint is
12 testifying regarding the probationary
13 employees, and that those employees do not have
14 rights of other employees, but he notes,
15 volunteers the reality is they cost you a whole
16 lot less, speaking to probationary employees
17 Also on that page, lines 15 through 25,
18 responding to a question regarding the
19 reduction in force, Mr Ozmint stated that he
20 later learned because of the silliness of the
21 bumping rule, that correctional officers could
22 be bumped He said I fought against that tooth
23 and nail, but under my understanding that was
24 under certain circumstances we could
25 actually wind up bumping a lower cost security

1 person for a higher cost certified person,
2 which again, in state government, may make all
3 the sense in the world, but it makes no sense
4 to me I think that's what ended up happening
5 Page 1229, Mr Ozmint's responding to a
6 question, lines 16 through 22, did it concern
7 you that when you went through this process
8 that some of the educational institutions the
9 only state funded instructors left were pink
10 slip employees? Answer, it did, but on the
11 other hand, they were more we got more
12 value for the dollar from those pink slip
13 employees On page 854, this is the also
14 page 39 at the very bottom, line 25, do you
15 remember informing an employee of your
16 department that one of the reasons that
17 educators were cut is because they were paid
18 too much and another was that they were
19 disloyal because they had sued the agency to
20 increase their pay The first answer is yeah,
21 then no I never made any, ellipses, I never
22 made either of those statements in the way that
23 you characterized them I, ellipses, I made
24 public statements that were precisely why we
25 chose to cut where we were I asked a follow

up question, lines 20 through 24, that teachers had gotten a raise and security had not gotten one, that you would not have sued the agency to get more money because it was wrong. On the following page, answer, that didn't have anything to do, ellipses, I never made that statement. I certainly never attributed the cuts to anything that, ellipses, to any lawsuit or decision to sue. And then he says at lines 17 through 25 onto the next page, I don't think that had anything to do, ellipses, that it had nothing to do with the decision to RIF. I imagine that kind of policy decision, ellipses, well, that kind of policy decision does have an impact on how much bang you get for your buck. In other words, for making cuts in the most efficient manner possible so that you get, ellipses, so that you keep as many people as you can, accomplish the missions that the agency absolutely has to accomplish and save as much money as possible, which was a parameter of, ellipses, you know, that was the dynamic we were trying to accomplish. That was, ellipses, that was the goal we were trying to accomplish in making these RIFs. So I guess those raises

1 might have worked to the teachers' disadvantage
2 in the sense that it made, ellipses, it meant
3 that by cutting, ellipses, by RIF'ing one
4 teacher, you're basically saving two
5 correctional officers So in that respect, end
6 of answer On page 1230, beginning at line 20,
7 so in its examination of your submission, the
8 Office of Human Resources specifically excluded
9 any review or approval of the geographic areas
10 and other things identified therein, is that
11 fair Answer, beginning line 25, it is fair to
12 say they were, in classic OHR fashion, were
13 unwilling to take the responsibility for that,
14 ellipses, that they insist on sending them
15 you sending them, ellipses, much of what they
16 insist on you sending them, but they, ellipses,
17 they don't want to take ownership Question,
18 they essentially say it is your answer, it
19 this is your baby Question, all right,
20 thank you, volunteered answer, and I get quite
21 a lot of that from OHR That was the Executive
22 Director on January excuse me, June 21,
23 2006 The next are portions of the deposition
24 of John Near taken on the same day, June 21,
25 2006 As you see at page 1176, lines 3 through

1 5, he had been the Director of Human Resources
2 at that time for 13 to 14 years I asked a
3 question concerning bumping He says to my
4 knowledge, every employer in every agency has
5 the ability to determine those areas in which
6 bumping can occur Question, those are not
7 matters subject to purview of the Office of
8 Human Resources and Budget & Control Board
9 Answer, I believe that's correct I believe
10 all they do is review it for the correctness of
11 the policy you're enforcing Page 1178, lines
12 6 through 8, question to Mr Near, have you had
13 any experience being an administrator in the
14 public school system in South Carolina
15 Answer, no Question, what was your role, if
16 any, in the administration of the Palmetto
17 Unified School System within the Department of
18 Corrections Well, I had no responsibility for
19 administration of the Palmetto Unified School
20 District On page 1179, Mr Near, I'm going to
21 hand you a package of documents that have been
22 marked Exhibit Number One This is a printout
23 of Chapter 24 of a chapter of Title 24 of
24 South Carolina Code which relates to the
25 Palmetto Unified School District Let me ask

1 you first have you at any time had the
2 opportunity to review these statutory
3 materials No, sir You have not? You have
4 or have not? No, sir Would it be fair to say
5 that at least in your participation in the
6 reduction in force which affected the Palmetto
7 Unified School District you did not consult
8 this code of law? I was not aware of this code
9 of law, no Question at 1182, lines 15 through
10 20, so as I understand your testimony, one of
11 the purposes of geographic areas is to address
12 bumping, is that fair? It's to enable
13 employees to be able to move within the area
14 and possibly retain their position 1183,
15 question, well, what's not to agree with, let's
16 go over this one more time Let's make sure we
17 understand each other Let's assume this law
18 says there's a statewide school district
19 Let's assume that between the two of us Will
20 you do that? Okay Mr Summers says he's not
21 going to object to premise We have a single
22 statewide school district There's a reduction
23 in force at the single statewide school
24 district Let's assume that to be the case,
25 okay You have to answer Okay, yes Same

1 objection Now, unless a school district is
2 somehow divided up artificially, then I have
3 the right to bump into any other school in
4 which there is a position in which I have
5 seniority Would that be fair? Answer, if
6 you're dividing the state into a single
7 geographic area, you would have reduction in
8 force You'd want to have the ability to bump
9 within one geographic area Then yes, an
10 individual can bump within that area Page
11 1185, lines 15 through 19 Who created the
12 competitive areas for reduction in force?
13 Answer, I would say that I probably would be
14 the one who created the competitive areas for
15 the reduction in force On page 1186, lines 12
16 through 21, did you consider certification
17 issues in creating the competitive areas? No,
18 sir Were you aware that certified teachers
19 were being eliminated while non-certified staff
20 were being retained in instructional positions?
21 As far as which positions were which
22 positions were eliminated, again the agency
23 director was the one who identified the
24 positions to be eliminated Page 1187,
25 beginning at line 7, do you know why pink slip

1 employees would be retained over permanent
2 employees? Answer, well, if you're talking
3 about specific instances, I do not know I
4 guess from an, ellipses, from a business
5 standpoint, obviously pink slip or temporary
6 employees and individuals who are paid by the
7 hour, does not earn benefits, and obviously the
8 cost would be would be less At the bottom
9 of page 1187, carrying over to 1188, line 25,
10 isn't it ordinarily the case in your business,
11 Mr Near, that before reduction in force is
12 implemented, temporary, part-time and
13 probationary employees are examined for
14 elimination? Answer, I would say that's
15 certainly very common, and the agency did that
16 At page same page, line 16, if an
17 individual who was a temporary employee and who
18 was their employment continued, it was
19 because, number one, those individuals had no
20 rights under reduction in force, and that would
21 be an agency decision to retain them or not
22 It would also be I would also think that
23 since they're temporary in nature, the agency
24 would have the ability to eliminate these
25 positions at any time or reduce their hours

1 I think it would, in a lot of cases, would
2 probably be a good business decision On page
3 1191, lines 12 through 17, well I want to get
4 back to this geographic area because I believe
5 there's a misunderstanding in your testimony
6 The geographic area confined bumping rights for
7 individuals to those particular areas, did it
8 not? That's correct Page 1192, lines 21
9 through 25 and onto 1193, only those positions
10 I can look to to bump into or within the
11 geographic area in which my job designated,
12 correct? Yes, and to be recalled to that
13 geographic area Question, and the only people
14 that I can bump are those people in my
15 competitive area? Answer, in your geographic
16 area, yes Question, so I have two
17 confinements I have, one, the competitive
18 area which I've been assigned, and secondly,
19 the geographic area in which I'm assigned, is
20 that fair? Yes Page 1194, lines 11 through
21 20, question, as far as I understand your
22 testimony, the agency director selected the
23 positions for elimination, is that correct?
24 That would be correct And you created the
25 geographic areas, is that correct? I would

1 create the geographic areas, ellipses,
2 certainly for his approval He's the approving
3 authority of, ellipses, the reduction in force,
4 yes Page 1196, lines 9 through 13, pink slip
5 is a term that goes way back many years if
6 someone was hired on a temporary basis I
7 think originally, probably 30 years ago, they
8 were hired on a form that was pink On line
9 19 through 23, the fact of the matter is that
10 you have pink slip employees who worked many,
11 many years for the department, isn't that true?
12 That's very possible, yes Page 1198, lines 2
13 through 13, if the purpose of the reduction in
14 force was to save money and only four percent,
15 let's assume, of the budget came from the
16 Palmetto Unified School District, why was more
17 than 50 percent of the cut in that school
18 district? Objection to the form Answer,
19 again, I don't know Question, you didn't play
20 any role in analyzing those budget issues?
21 Answer, I didn't identify the budget issues or
22 identify the positions, no Question at the
23 bottom of the page, as agency as Director
24 of Human Resources, you want to make sure that
25 at least employment decisions are done fairly

1 and equitably, is that fair? Yes Question,
2 if there was a consideration that teachers
3 should be eliminated because they successfully
4 sued the agency to get more money, that would
5 not be fair, would it? Object to the form It
6 doesn't sound fair, not the way you put it On
7 page 1222, the last page, line 14 through 20,
8 it's the responsibility of the Department of
9 Corrections to develop the reduction in force
10 plan, carry it out and certainly be responsible
11 for it I would think so, yes And to be
12 responsible for whatever consequences may
13 derive from that process I would think so,
14 yes Tab 3 is Wendell Blanton You will see
15 at page 1158 at the time he was a
16 Superintendent of Education of the Palmetto
17 Unified School District and had been in that
18 position since 1999 Mr Blanton retired
19 retired and was rehired under the Department of
20 Corrections special program for that purpose
21 If you look at 1160, beginning at line 15,
22 let's talk about the school district How many
23 school districts do you supervise? Answer, how
24 many districts? Question, yes, sir One
25 One? Answer, Palmetto Unified School District

1 And what does that encompass It encompasses
2 education in the Department of Corrections At
3 page 1162, question, all right, now the school
4 district encompasses all the Department of
5 Corrections exclusive of DJJ as its own entity
6 within the state? Answer, well yes, of course,
7 I mean to say there's a division within the
8 nine high school programs and adult ed and
9 other programs, right, and we do so Question,
10 but not geographically? Answer, not
11 geographically

12 **MR MCCLARY** I'm sorry, sir, I missed that one

13 **MR NICKLES** That is page 1163

14 **MR MCCLARY** 1163

15 **MR NICKLES** If you go down to page line 6
16 through but not geographically Answer, not
17 geographically, and I mean, you know, there's
18 a difference in the scope of the programs in
19 terms of available resources, in terms of
20 things, kinds of things, you know The
21 question's always been is this school district
22 just those high school programs to the extent
23 it's a district, you know, include adult ed
24 Okay Those programs at the same place, at the
25 same time can have the high school programs

1 Yes, okay 1164 at the top, okay, are there
2 any geographical regions that are segregated
3 under your purview Answer, no As I have
4 more limited responsibility over adult ed
5 communities that's provided through contractual
6 services I didn't have authority over those
7 programs I have programs funded under agency
8 (inaudible) Question at the bottom, how many
9 times does your board meet? Answer, four times
10 a year by law each quarter Question at the
11 top of 1165, and who's on the board? The board
12 is appointed All the members of our board are
13 appointed Four of them are appointed by the
14 director of the agency, by the commissioner,
15 and then the official title becomes Director of
16 the Department of Corrections And that's Mr
17 Ozmint? That's Mr Ozmint Okay And his
18 predecessors, of course? Right Before the
19 board members are appointed by the State
20 Department of Education, at that time Inez
21 Tennenbaum, or predecessors, and one of the
22 board members is appointed by the governor So
23 there are nine board members We do have nine
24 board members On 1186, line 22 through 24,
25 what does the board do? Okay, the board was

1 created by legislation 1170, lines 11 through
2 17, are there any State Department of Education
3 requirements for ya'll to maintain teachers'
4 salary scale? Yes, it was created by law
5 It's a part of the law Of course, that's what
6 the law the wording of the actual how it
7 was being defined, the heart of the lawsuit
8 On 1171 beginning at line 8, okay, let me ask
9 you this Were you consulted by HR or whoever
10 was generating the RIF? Were you consulted
11 regarding the RIF prior to it being
12 implemented? Answer, I was not involved, and
13 in fact, I felt I needed to be involved And
14 I expressed that to my supervisor at the very
15 end I did have some involvement in the
16 reduction in force probably in March before the
17 announcement was made I guess it was made the
18 1st of April Question, April Fool's Day?
19 Answer, yes So my involvement came very late
20 and it was after I heard that perhaps all of
21 education was going to be cut If you'll look
22 at page 1172, beginning at line 17, okay, when
23 did you say you got wind of the RIF? Answer,
24 well, I mean, you know, we all read it in the
25 newspapers The whole agency was concerned

) 1 about our budget budget shortfalls So I
2 can't say when it actually started, but I think
3 we began to hear there was something coming and
4 it was coming, you know, in early April And
5 I didn't know the specifics except I was
6 hearing that the division of education would be
7 heavily involved, and perhaps we would lose all
8 our staff And so at that point I felt it was
9 judicial to get involved and try to save as
10 much as I could Question, and what I'm
11 hearing from you is that no one came to you
12 You went to your supervisor Answer, well, I'm
13 not going to say she didn't come to me She
14 discussed, and she was very supportive and
15 wanted to be helpful, and she was concerned
16 And so, you know, we had some discussions about
17 my not being involved I expressed to her I
18 felt like somebody from our department that
19 knew the district operation needed to be
20 involved She communicated that up, and it
21 resulted in my getting involved at the very
22 end Question, and who did you relay your
23 advice to? Answer, I relayed it to the
24 director, the chief of staff at the time,
25 Richard Stroker, of course, who ultimately,

1 after meeting with him very briefly, very
2 briefly as I recall, I'm saying, you know, 10
3 or 15 minutes, I expressed my concern what was
4 going on And, you know, they did share with
5 me that a reduction in force was coming and it
6 would heavily involve education Thank you
7 Our first witness to be called is Mr Randolph

8 **MR RANDOLPH - DIRECT EXAMINATION BY MR NICKLES**

9 Q Come around and have a seat, please, sir Mr
10 Randolph, you understand that you are under
11 oath, is that correct?

12 A Yes, sir

13 Q Would you state your full name and address,
14 please?

15 A Max D Randolph, 388 Ilo Creek Road, Cowpens,
16 South Carolina 29330

17 Q Mr Randolph, did you work for the Palmetto
18 Unified School District, the Department of
19 Corrections, before June 1, 2003?

20 A Yes, sir

21 Q In what position?

22 A As a brick masonry teacher

23 Q How long did you work as a brick masonry
24 teacher?

25 A 14 years

- 1 Q Was that all at the Department of Corrections?
- 2 A All at one institution, yes, sir
- 3 Q What institution was that?
- 4 A I started out at Dutchman, it became Tyger
- 5 River
- 6 Q Okay And what part of the state is that
- 7 located in?
- 8 A It's in Spartanburg County on the lower end of
- 9 upstate of South Carolina, lower end of
- 10 Spartanburg County
- 11 Q Are you certified by the State Department of
- 12 Education?
- 13 A Yes, sir
- 14 Q In what areas?
- 15 A In masonry
- 16 Q How long have you been certified?
- 17 A 20 years now almost
- 18 Q While you were employed with the Department of
- 19 Corrections, were you ever evaluated?
- 20 A Always
- 21 Q And what were the results of those evaluations?
- 22 A Always I had all of my evaluations
- 23 exceeded I think exceeded expectations
- 24 Q Were you ever given any reason to lose your job
- 25 other than through a reduction in force?

1 A No, sir

2 Q Did you perform any other responsibilities,
3 like the writing of any curriculums or anything
4 like that?

5 A Yes, sir I wrote, compiled and needed to
6 the curriculum that the Department of
7 Corrections is still using today in the masonry
8 masonry program

9 Q Okay Is that in use in the Department of
10 Corrections as far as you know?

11 A Yes, sir, still today

12 Q Is it limited to your former facility?

13 A No

14 Q Is it used throughout the state?

15 A Statewide

16 Q Now, in addition to where you worked, were
17 there masonry programs elsewhere?

18 A Yes, sir We had eight programs originally
19 Four were RIF'd and now I think we only have
20 four

21 Q Okay Where were some of those masonry
22 programs?

23 A Tyger River, of course, Northside in
24 Spartanburg County, Perry over in Greenville
25 County, Kirkland I think Kirkland was moved

1 We had MacDougall, Turbeville There was eight
2 of them
3 Q Okay, all right And the same curriculum in
4 each?
5 A Each one, yes, sir
6 Q Did you receive notice of a reduction in force
7 in April of 2003?
8 A Yes, sir
9 Q What was your reaction to that, if any?
10 A Somewhat surprised, I guess, to some extent
11 Rumors had been flying somewhat as to the
12 possibility I guess that's very
13 apprehensive, you know, in the beginning
14 Q All right Did you have occasion to have a
15 conversation with Executive Director Ozmint
16 about the reduction in force?
17 A Yes, sir
18 Q When did that take place?
19 A That was, I think, was in March, if my memory's
20 right, of '03
21 Q Could it have been April?
22 A April possibly, somewhere in that time frame
23 Q Did you did you make any notes about your
24 meeting with Mr Ozmint?
25 A I did

1 Q Did you make those near the time of your
2 meeting?

3 A Yes, sir

4 Q Did you make them in your own handwriting?

5 A I did

6 Q I'm going to ask you if you recognize
7 something, please

8 A Yes, sir

9 Q Let's give Mr Summers an opportunity to take
10 a look at it Is the document that I've handed
11 to you something that you prepared close to
12 April 11, 2003?

13 A Yes, sir, this is it

14 Q Why did you write something down around that
15 date?

16 A Because of what was said, and in the
17 conversation that in the at that
18 particular point in time, I really don't know
19 as far as why I did, but other than the fact I
20 thought possibility of some, you know that
21 I may, you know, seek an attorney or something
22 at that time and may need these notes That
23 was my purpose

24 Q But you prepared this on your own?

25 A I did

1 Q Did you have anybody help you with it?

2 A No, sir

3 Q And you recognize your handwriting?

4 A Absolutely

5 **MR NICKLES** Mr Summers, do you have any objection?

6 **MR SUMMERS** Let the record reflect first and
7 foremost this is the first time I've seen the
8 document And I would have an objection based,
9 number one, upon that It has not been
10 disclosed before the proceeding Number two,
11 ultimately, I don't know if we have an original
12 or simply a photocopy

13 A I have the original

14 Q You have the original in your possession?

15 A In it's in my notes

16 **MR NICKLES** All right Would you like for him to
17 obtain the original?

18 **MR SUMMERS** If that's possible

19 **MR NICKLES** May he be excused to obtain the
20 original of this document?

21 **MR CORNING** Yes

22 **MR NICKLES** In response to the preliminary
23 objection, I'd like to point out there's never
24 been any discovery initiated by the Department
25 in this matter whatsoever There's never been

1 any request for documents of the grievants in
2 any respect

3 A Give me just a minute to find it here

4 **MR CORNING** Counsel, just so I can understand, are
5 you showing this to him to refresh his
6 recollection for his testimony?

7 **MR NICKLES** I am

8 **MR SUMMERS** And my objection obviously was I think
9 we've accomplished that task I don't know if
10 there's an effort to introduce

11 **MR CORNING** Well that's what I'm not sure on

12 **MR NICKLES** Okay

13 **MR CORNING** whether there's an effort to
14 introduce the document and

15 **MR SUMMERS** Certainly it can be used to refresh his
16 recollection, but I'm going to object, and
17 obviously I have what purports to be the
18 original from Mr Nickles, but I would
19 certainly object to the introduction of the
20 document

21 **MR NICKLES** Okay

22 Q Well let's continue with your testimony, Mr
23 Randolph Let me ask you do you recall an
24 occasion in which you were in the presence of
25 the Executive Director and there was some

1 exchange concerning the reduction in force?

2 A Yes, sir

3 Q Okay And what do you remember about that?

4 A Just exactly as it was stated in this But he
5 came it was my the first I never
6 met the guy when after he was named, you
7 know, director of

8 Q Where did it take place?

9 A This happened in the back of the masonry shop
10 We have a roll up door at the back of the shop,
11 and of course it was it was a fairly warm
12 day They had the back door open, and if it
13 was cold, you could close it, but kept
14 anyhow, he came in and came through the
15 carpentry shop And then as he came through
16 of course the masonry shop and the
17 carpentry shop was connected together He came
18 through and Mr Williams was with him They
19 came across and we met at the back door of the
20 masonry shop And Mr Poole, the heating and
21 air conditioning teacher, he joined He walked
22 over in the conversation or overheard some
23 conversation a little later, but that was my
24 first meeting with Mr Ozmint

25 Q Okay Did you make any suggest to him

1 suggestions to him about an alternative to the
2 reduction in force?

3 A Yes, sir, I did I told him he could move them
4 with attrition, he didn't have to do this
5 That was the words that I I used

6 Q Okay Did he respond to you in any way?

7 A He did He said his words was he could not
8 force people to retire

9 Q Okay Did he talk to you at all about the
10 budget?

11 A He said yes, sir He said with a \$300
12 million dollar budget, I think it was, that he
13 could not I mean he could he could run
14 education, but with a \$250 million dollar
15 budget he couldn't

16 Q Okay Did he say anything about the teacher
17 pay lawsuit?

18 A He did He said his words was that we sued
19 the Department of Corrections and we got a pay
20 raise He said his officers did not get a pay
21 raise and that was not right

22 Q Did you respond to that in any way?

23 A Yes, sir, I did I told him my words was
24 I told him I'd worked for myself for 16
25 years prior to my beginning teaching, and my

1 experience with the Internal Revenue I
2 mentioned the South Carolina Department of
3 Revenue If I owed them 50 cents, then I said
4 no, 51 cents, I said I would have to pay it
5 because state law says that I would have to pay
6 it I says the only reason that we as teachers
7 we sued was to make the Department of
8 Corrections pay us what the law said we were
9 supposed to be paid That was the only reason
10 we sued, not for a pay raise

11 Q Was this a scheduled meeting that you had with
12 him?

13 A No, sir

14 Q Were ya'll sitting down like in a conference
15 room or anything?

16 A No, sir We were standing up

17 Q And is this you said this is the first time
18 you had met him?

19 A Yes, sir

20 Q Why does this stick in your mind?

21 A Well, I guess when it kind of like the old
22 adage or somewhat to, you know, you can you
23 can mess with anything except my wife or my
24 money and, you know, I guess that's the reason
25 it sticks so much That involved my wife as

1 well as my money, so

2 Q When you ultimately found out that your job was
3 on the line, were you aware of any other jobs
4 in the district where people had less seniority
5 than you

6 A Yes, sir

7 Q were given masonry instructions?

8 A Yes, sir I knew that I was the third at that
9 particular time as far as seniority Yes, sir

10 Q Okay So, would you have been able if it was
11 statewide that they approach this

12 A I would have been

13 Q to try and get on somewhere else?

14 A Yes, sir I would have been working in
15 Charleston right now

16 Q Would you have picked up and moved?

17 A I'd have moved I'd have been there Monday
18 morning I worked construction all my life
19 I mean it'd make no difference You've got to
20 go where it's at, and that's what I would have
21 done

22 Q Did you have the opportunity to bump anybody in
23 your area?

24 A No, sir

25 Q If you had moved to Charleston or anywhere else

1 where there was a masonry program, would your
2 job duties have been any different?

3 A No, would have been the same

4 Q You feel confident you could have performed
5 those duties?

6 A Absolutely

7 Q After the RIF were you offered any opportunity
8 to stay at the Department?

9 A I was offered a officer's job in a lieutenant
10 slot up at at Northside

11 Q Okay What would you have been doing in that
12 position?

13 A The same thing that I was doing at Tyger River
14 at a much reduced rate of pay

15 Q Okay So you wouldn't have gotten your
16 certified rate of pay for that job?

17 A No, sir No, sir, wouldn't have been any It
18 was a lieutenant's slot is what was offered

19 Q And as far as you know, was that that job
20 continued to be offered by the Department?

21 A As far as I think it was and they they
22 later hired another guy to come in, I think,
23 part-time, I understood I don't know whether
24 they still have it or not

25 Q Okay But the only job that you were offered

1 was to do the same duties at less pay, is that
2 correct?

3 A That's right

4 Q Okay

5 A Right And Northside was the only place that
6 I was offered I guess because it was within
7 the circle or whatever they (inaudible)

8 Q All right Now, Mr Randolph, you mentioned a
9 Mr Williams who was also present Was that
10 Charlie Williams?

11 A Yes, sir

12 Q Okay

13 A He was the carpentry teacher

14 Q And he wasn't RIF'd, was he?

15 A No, sir

16 Q To the best of your knowledge, did Mr Williams
17 hear what you and Mr Ozmint said to one
18 another?

19 A Absolutely

20 Q As a part of your duties in the teaching of
21 masonry, did you have to maintain your
22 certificate?

23 A Absolutely

24 Q Did you have to take additional educational
25 programs to do that?

1 A Yes, sir And in the beginning when I started
2 in '89, I as I said, I had worked for
3 myself for 16 years, but anyway, in order to
4 obtain the job I had to be certified with the
5 State Department of Education or eligible for
6 within one year of a teacher's certificate I
7 had to meet the criteria to to be able to
8 obtain I had a one year provisional
9 teaching certificate, but after that, then I
10 had to meet the criteria in order to keep my
11 certificate

12 Q And is that a requirement that you had
13 throughout your employment with them?

14 A That was throughout, the same

15 Q Do you know if a lieutenant has to have a
16 certificate to do his job?

17 A I do not know

18 Q Certainly doesn't have to have a teaching
19 certificate, does he?

20 A No, not to my knowledge, no

21 Q Okay Answer any questions that Mr Summers or
22 the committee may have, please, sir

23 **MR RANDOLPH - CROSS EXAMINATION BY MR SUMMERS**

24 Q That's me over here, sir

25 A Oh, okay

1 Q Good morning

2 A Morning

3 Q It's still morning For your information, my
4 name is Lake Summers, and I represent the
5 Department in this matter Let me ask you some
6 questions based upon what Mr Nickles just
7 asked you First of all, are you comfortable?

8 A Yes, sir

9 Q When did you start working for SCDC?

10 A July 10, 1989

11 Q And what were your duties?

12 A As a masonry teacher

13 Q Now, when Mr Nickles asked you questions off
14 the bat, he talked about you being employed by
15 the Palmetto Unified School District

16 A That's right

17 Q Well, I guess my question is are you were
18 you employed by the Palmetto Unified School
19 District or the South Carolina Department of
20 Corrections?

21 A Where I was employed was I had to meet the
22 criteria of everything that the State
23 Department required me

24 Q And let me interrupt you for just a moment
25 The State Department of what, sir?

- 1 A State Department of Education, I'm sorry
- 2 Q All right Did you have an interview with the
- 3 State Department of Education?
- 4 A I had an interview with Palmetto Unified School
- 5 District and I was hired
- 6 Q Hired by whom, sir?
- 7 A By the principal
- 8 Q Okay Where?
- 9 A At Tyger River or the old Dutchman
- 10 Q So when you did the hiring process, you talked
- 11 to the principal there at Dutchman, correct?
- 12 A Yes, sir
- 13 Q Okay
- 14 A And the assistant superintendent at that time
- 15 from headquarters in Columbia of the Palmetto
- 16 Unified School District headquarters office
- 17 Q And who was that at that time, sir?
- 18 A Siegfried, Dr Hayward Siegfried
- 19 Q Were there they were employees of the South
- 20 Carolina Department of Corrections, correct?
- 21 A My under my understanding it was Palmetto
- 22 Unified School District
- 23 Q Where did you get the understanding from, sir?
- 24 A Sir?
- 25 Q Where did you get that understanding from?

1 A Every every everything that we had, all
2 of our paper work we had At that particular
3 time we had two annual conferences, Palmetto
4 Unified School District, and the criteria It
5 was mandatory that we attend those conferences

6 Q For what purpose?

7 A For the purpose of in-service training And I
8 did not I don't have any with me I still
9 have some at home, the note pads, Palmetto
10 Unified School District, the letterhead from
11 the conference

12 Q From the in-service?

13 A From the in-service, yes, sir

14 Q But when you got hired, what did your paper
15 work say?

16 A Without looking, I'll be honest with you, I'm
17 not sure

18 Q Could it have said South Carolina Department of
19 Corrections?

20 A It may have I'm not positive without I
21 could look and see

22 Q That's okay We'll keep going through it,
23 whatever you feel comfortable doing right now,
24 but let's continue with my questions Were you
25 ever employed under any kind of contract?

1 A I was a full time state employee

2 Q Okay And, for example, when you did you
3 ever take annual leave?

4 A Yes, sir

5 Q Did you submit your annual leave requests to
6 the Palmetto Unified School District Human
7 Resources Department?

8 A I submitted my annual leave or my annual leave
9 and sick leave requests to my principal

10 Q And then where would it go from there?

11 A I'm not I don't know I did not follow it
12 up I really don't know

13 Q So to your knowledge, did the Palmetto Unified
14 School District have a Human Resources Division
15 like South Carolina Department of Corrections
16 Human Resources Division?

17 A To my knowledge, not Huh-uh (negative
18 response)

19 Q Your accounting and payroll, was there a
20 separate Palmetto Unified School District
21 accounting and payroll division?

22 A We had a payroll, and I'm sure I don't know
23 about payroll, but I know we had a secretary at
24 headquarters that was in charge of payroll and
25 reported our time, and I guess it was

1 forwarded I don't know

2 Q Now, I'm going to ask a question I don't mean
3 to make it make it uncomfortable I'm
4 taking you've never been disciplined or had any
5 trouble in the workplace at all?

6 A To my knowledge, I've never had any problem at
7 all, no, sir

8 Q Did you have any problems with folks who worked
9 underneath you at any time?

10 A No, sir

11 Q Okay And again, I want to go back to your
12 question or your response to payroll How did
13 you get paid? How often did you get paid?

14 A Once a month

15 Q Okay

16 A No, back up, once every two weeks I'm sorry

17 Q Okay

18 A I get go ahead

19 Q Yes, sir When you first started, was that in
20 the form of an electronic payment, or did that
21 come by way of a paycheck?

22 A Came by paycheck, I think

23 Q And later on did it come electronically?

24 A Yes, sir

25 Q And were you paid by the Department of

1 Corrections or the Palmetto Unified School
2 District?

3 A If I remember right, I'm thinking it was
4 Department of Corrections when it went to
5 on the direct deposit, I think I believe
6 that's right

7 Q Now, you talked about interaction you had with
8 Director Ozmint

9 A Yes, sir

10 Q Forgive me, I just knocked over a folder I'm
11 not going to worry about that right now I'm
12 going to come up with your permission, and I'm
13 going to go to the record at page 786 Let me
14 get that set up Now, when Mr Nickles asked
15 you questions, you talked about a conversation
16 that you had with the Director, correct?

17 A Yes, sir

18 Q And you said that in response to some of your
19 questions or one particular question that you
20 the Director said the teachers sued and got
21 a pay raise?

22 A Yes, sir

23 Q And that officers did not get a pay raise?

24 A Right, that's what he said

25 Q And that was not right?

1 A That's what he said

2 Q That is your recollection of what was said?

3 A Absolutely

4 Q Okay And you're firm on he said officers did
5 not get a pay raise?

6 A Absolutely

7 Q I'm going to show you page 786, okay And for
8 that matter, I'm going to show you page 787
9 Do you recognize these?

10 **MR CORNING** Can we take a break for a minute?
11 We're having some electrical problems

12 **MR SUMMERS** Sure, not a problem at all How long
13 do we need?

14 **MR CORNING** No, just long enough to try to collect
15 what you're asking him about

16 **MR SUMMERS** Okay

17 (Off the record)

18 Q Page 786 and page 787, is that correct?

19 A Yes, sir

20 Q Do you recognize them?

21 A Yes, sir

22 Q Please tell the panel what that is

23 A That's an affidavit that I did

24 Q Okay And if for a moment you could turn to
25 page 787, the next page Can you scroll down,

1 sir? Okay, that'd be fine right there, sir
2 And you see it on the screen, correct?

3 A Yes, sir

4 Q And you see it in front of you?

5 A Yes, sir

6 Q You see your signature on that page?

7 A Yes, sir

8 Q That is your signature?

9 A Absolutely

10 Q And you'll see below your signature there's
11 some printed language Do you see that, sir?

12 A The where the notary

13 Q Yes, sir

14 A Yes, sir

15 Q Okay It says sworn to and subscribed before
16 me this 13th day of September 2006 Is that
17 correct?

18 A Yes, sir

19 Q So that reflects when you signed this document?

20 A Yes, sir

21 Q Now, let's go back to page 786 Thank you,
22 sir So you by virtue of what I just read
23 from page 787, you swore to the accuracy of
24 this document, correct?

25 A Absolutely, same thing as what what we had

1 Q Yes, sir We'll get one step at a time

2 A Okay

3 Q Okay Let's go here to number four that's in
4 front of you, too Item number four reads, and
5 with your indulgence I'll read it to you
6 Director Ozmint also stated that the teachers
7 sued the South Carolina Department of
8 Corrections to get a raise, which he said was
9 wrong That's what it reads right there, is
10 that correct?

11 A Yes, sir

12 Q But what you testified to a moment ago was that
13 Director Ozmint said that teachers paid I'm
14 sorry, teachers sued, got a pay raise
15 Further, the Director said the officers did not
16 get a pay raise Then the Director concluded,
17 to the best of your recollection here today,
18 that that was not right

19 **MR NICKLES** I'm going to object to the form
20 That's an inaccurate accounting of his
21 testimony

22 **MR SUMMERS** I'll leave that to the panel, subject
23 to your response

24 **MR CORNING** Counsel, I'm going to allow it

25 **MR NICKLES** Okay

1 **MR CORNING** The panel heard what they heard

2 **MR NICKLES** Right

3 Q So

4 **MR CORNING** He is on cross examination

5 **MR NICKLES** Fine

6 Q At number four there on the screen and in front
7 of you, do you see that, sir? Where does it
8 say the officers did not get a pay raise?

9 A I probably failed to put it in there, I guess

10 Q But you swore to its accuracy on September 13,
11 2006?

12 A Yes, sir That was three years, I think, or
13 thereabouts after the fact that I did this

14 Q Three years after the fact?

15 A At some point, yes, sir

16 Q Over three years?

17 A Uh-huh (affirmative response)

18 Q And we're now at

19 **MR CORNING** If you'd try to answer verbally, yes or
20 no

21 **MR SUMMERS** Yes, sir, I'm sorry

22 **MR CORNING** because the, you know

23 A Yes

24 Q We'll try again, my apologies, okay So when
25 you swore to this document on September 13th of

1 2006, that was almost three and a half years
2 after the fact, is that correct?

3 A Some point, yes, sir

4 Q And now we're at November 5, 2008 We're
5 coming up well over five and a half years

6 A Yes, sir

7 Q Now, the notes that Mr Nickles showed to you
8 to help you remember things, at the top it says
9 April 11, 2003?

10 A Uh-huh (affirmative response)

11 Q Is that correct?

12 A Yes, sir Yes, sir, I'm sorry

13 Q That's okay

14 A I hunted my paper work I did not find it at
15 the time when I did this I did not throw any
16 of my paper work away I still have all of it,
17 but it was in the basement of my house And I
18 had stored it and I had to hunt it I finally
19 found it

20 Q When did you find it, sir?

21 A It was back with this

22 Q I'm sorry, sir I misunderstood you

23 A I'm not sure exactly when I found it, but it
24 was I know it was after I did this, yes,
25 sir Because I I wanted to go back and see

1 if I had drawn it back somewhat as to what it
2 was

3 Q Now, sir, if you could scroll to the top
4 Okay And you've seen on the screen

5 A Yes, sir

6 Q at the top of this document, correct?

7 A Yes, sir

8 Q And that has your name in the caption, correct?

9 A Yes, sir

10 Q And that was in preparation to go to court,
11 correct?

12 A Yes, sir

13 Q So again, you swore and subscribed and
14 subscribed to the accuracy of this document to
15 submit it to court?

16 A It is accurate

17 Q Okay, sir But you would agree that it's
18 missing some information?

19 A Yes, sir

20 Q Now, let me move back into some other areas
21 that we talked about, and I'll try to move this
22 along for you I appreciate your patience
23 here You were at Dutchman?

24 A I was at Dutchman which later became Tyger
25 River, yes, sir

1 Q Did you have a Human Resources coordinator or
2 person to go talk to at Dutchman and Tyger
3 River?

4 A Not at the institution, no, sir

5 Q How did that work then?

6 A I'm not sure I'm following you

7 Q You did not have a Human Resources coordinator
8 or person at the institution, correct?

9 A Not to my knowledge, no As far as you mean
10 like in Human Resources here in Columbia?

11 Q Correct And Human Resources in Columbia is
12 under what umbrella? Is it under SCDC?

13 A To my knowledge, I could not tell you

14 Q Now, if you had questions about your paycheck,
15 who did you call?

16 A I would call headquarters

17 Q Where?

18 A In Columbia

19 Q Would that be for the South Carolina Department
20 of Corrections?

21 A They Mr Ms Murrell Brigman was the
22 secretary at the headquarters in the education

23 Q But you said a moment ago you would talk to
24 somebody in Columbia Is that the person that
25 you're talking to?

1 A That's the person I would call

2 Q And he was payroll?

3 A She was

4 Q She was payroll?

5 A She she handled it, yes

6 Q Okay And do you know where where she went
7 to handle her questions?

8 A No, sir

9 Q And earlier some questions I asked you talked
10 about getting paid and documents and you said
11 South Carolina Department of Corrections?

12 A Yes, sir

13 Q Thank you, sir Those are all the questions I
14 have for you right now Mr Nickles and Ms
15 Guffey may have some

16 **MR RANDOLPH - RE-DIRECT EXAMINATION BY MR NICKLES**

17 Q I have a couple of questions for you, Mr
18 Randolph You've been asked questions about
19 this affidavit you signed back in, I guess,
20 November of 2006

21 A Uh-huh (affirmative response)

22 Q Is that yes?

23 A Yes, sir

24 **MR SUMMERS** It would be September I'm not sure
25

1 MR NICKLES September 2006

2 A Yes, sir

3 Q And is it your testimony that that was before
4 you found the document that refreshed your
5 recollection?

6 A Yes, sir

7 Q Were you trying to lie to anybody when you
8 signed that affidavit?

9 A No, sir I have no reason to lie to nobody

10 Q When you found that piece of paper in your
11 basement, I believe

12 A Uh-huh (affirmative response)

13 Q Is that yes?

14 A Yes, sir, I'm sorry

15 Q Did it bring back this incident more clearly to
16 you?

17 A Absolutely

18 Q Did it help you remember what actually happened
19 on that day?

20 A A lot of it, yes

21 Q Would it be helpful to you to look at that
22 document and make sure that it is an accurate
23 representation of your recollection close to
24 the time of the incident?

25 A Absolutely

1 Q Please look at it, sir

2 A I have and this is exactly what I wrote down
3 And as I stated, Mr Williams was in attendance
4 as well, and exactly what I wrote down here is
5 exactly what our discussion was

6 Q Okay And in this you said we had sued SCDC
7 We had got a raise and security had not gotten
8 one And he, Mr Ozmint, would not have sued
9 because it was wrong Is that your
10 recollection of what he said to you?

11 A That's exactly what he said, yes, sir

12 Q Okay Now, I believe that

13 **MR NICKLES** I'd like to offer this document This
14 witness's credibility is attempting to be
15 impeached by his recollection because he has
16 testified this is accurate recollection of what
17 transpired on that date I'd like to offer it
18 for that purpose

19 **MR SUMMERS** I'm going to renew my objection First
20 of all, it has not been disclosed I
21 understand what Mr Nickles' response to it
22 was Above and beyond that, Mr Randolph
23 cannot and has not been able to recall for you,
24 sir, or for the panel when exactly he made this
25 statement or these notes It's not sworn

1 There's no markings on it to indicate when it
2 was made I'm not casting any aspersions at
3 all on Mr Randolph in any way I'm simply
4 saying for the sake of authenticity and for the
5 sake of verifiability, there's no date upon
6 which Mr Randolph reflected when he jotted
7 this down As a consequence, I think there's
8 some question as to its providence for that
9 particular matter And again, it had not been
10 disclosed previously So I'm going to renew my
11 objection, sir, very respectfully

12 **MR NICKLES** All those objections go to the weight
13 and not to the admissibility of the document

14 **MR CORNING** All right I agree that it goes to the
15 weight What is since we're hearing the
16 testimony of the witness on the stand, counsel,
17 what's the purpose of the introduction of the
18 document of his notes?

19 **MR NICKLES** He's attempting to impeach him through
20 an affidavit after the fact that he says he did
21 not have access to this document

22 **MR CORNING** Well, I still ask the same question
23 Since the testimony is on the record that he
24 didn't have access to the document, why are we
25 putting the document in the record since he's

1 testified to what the document says?

2 **MR NICKLES** He's testified that it was the accurate
3 representation of his recollection in time much
4 closer to the incident itself I think it has
5 some relevance and it should be available to
6 the panel

7 **MR CORNING** Are we introducing it to the as to
8 the truth of what's in this statement or

9 **MR NICKLES** I'm introducing it as to his
10 recollection at the time

11 **MR SUMMERS** I would submit very respectfully, sir,
12 that based upon the discussion that you and Mr
13 Nickles have undertaken, I think it may be,
14 again from our perspective, an effort by Mr
15 Nickles to bolster the witness's testimony As
16 you, sir, have already indicated accurately,
17 he's testified to its contents

18 **MR CORNING** Counsel, I'm going to deny it

19 **MR NICKLES** Okay

20 **MR CORNING** I mean he's testified to what it says
21 There will be a record of the testimony If he
22 wants to read what he wrote down, that portion
23 of it, fine I mean he can read, you know,
24 what he I thought you had already been
25 through it, but if he wants to read exactly

1 what he wrote down on that as to that
2 particular statement and

3 Q Let me ask you a question, Mr Randolph Did
4 you make a record to help you remember your
5 exchange with Mr Ozmint close to the date of
6 the incident, April 11, 2003?

7 A Yes, sir

8 Q And did you attempt to, as accurately as you
9 could at that time, record what transpired?

10 A I did

11 Q Would you please read that, sir?

12 A Okay This is the original where I wrote it
13 down And on April 11, 2003, at approximately
14 1 30 p m , new Director Ozmint I put
15 I've got it in brackets that an attorney This
16 was what I had been told, that he was an
17 attorney, that came to Tyger River Correctional
18 Institute for my first meeting since he became
19 Director of the Corrections Joining in the
20 conversation, Mr Ozmint and Mr Williams were
21 in outside the back of my shop, that's the
22 roll up door, as I stated earlier, in the
23 masonry shop, about the cuts and closing some
24 schools within SCDC I said to Mr Ozmint that
25 they could not did not have to do this

1 His reply was what would you do, okay I said
2 it could be could have been done with
3 attrition or retirement He said he could not
4 make anyone retire He said with a budget of
5 \$300 million dollars, he couldn't afford
6 education, but with a budget of \$250 million
7 dollars, he could not afford, and the fact that
8 we had sued SCDC, we had got a pay raise, had
9 got a raise and security had not gotten one
10 And he, Mr Ozmint, would not have sued because
11 it was wrong I said we did not sue for a
12 raise We only sued because the law said this
13 was the way we were to be paid And I worked
14 for myself for 16 years and if the South
15 Carolina Department of Revenue said I owed them
16 one dollar, no, 50 cents, or 51 cents, they
17 would make me pay it And we only forced SCDC
18 to pay what the law said we were to be paid
19 That's the entirety of reading it correct

20 Q And was that your best recollection at that
21 time?

22 A It was, absolutely

23 Q Mr Randolph, you mention in this incident with
24 Mr Ozmint that you talked about pay Were you
25 paid differently from correctional officers?

1 A Yes, sir

2 Q Were you on a teacher pay schedule?

3 A Teacher pay scale, yes, sir

4 Q And was that unique to the Palmetto Unified
5 School District?

6 A Every teacher had to be certified, be it
7 academic or technology area That was the
8 requirements in order to proceed to procure the
9 job

10 Q Okay I don't have any other questions at this
11 time

12 MR MCCLARY Thank you Do any of the panel members

13
14 MR SUMMERS Very, very briefly very just
15 one very brief question, with your indulgence

16 MR MCCLARY Okay

17 MR SUMMERS It just hit me a second ago

18 MR RANDOLPH - RE-CROSS EXAMINATION BY MR SUMMERS

19 Q Sir, with respect to the notes you just read

20
21 A Uh-huh (affirmative response)

22 Q Again, yes?

23 A Yes, sir, I'm sorry

24 Q Mr Nickles said asked you did you write
25 this down close to the date of the incident

1 Do you recall him asking you that question?

2 A Yes, sir

3 Q Well, the best you can recall, when did you
4 write this down?

5 A When did I write this down?

6 Q Yes, sir

7 A This was in April

8 Q Yes, sir But when did you actually write

9 A Sometime it was it was within the next
10 week

11 Q The next week?

12 A Yes, sir

13 Q So that still would have been in '03, correct?

14 A Oh, yes

15 Q And did you give the document to anybody?

16 A No, sir

17 Q Thank you very much No further questions

18 **MR MCCLARY** Any of the panel members have
19 questions?

20 **MS KUDELKA** I have one question Was that the only
21 conversation that you had with Mr Ozmint was
22 that one time?

23 A One one conversation was it

24 **MS KUDELKA** Okay

25 A That's the only time I had ever met him or saw

1 him, yes

2 **MS KUDELKA** Okay And then you said Mr Williams
3 was present Was anybody else present or were
4 people around at the time?

5 A Mike Poole, who was the heating and air
6 teacher, he was present, and he and Mr
7 Williams, Mr Charlie Williams, yes

8 **MS KUDELKA** And Mr Williams, what did he do?

9 A He's the he was the carpentry teacher

10 **MS KUDELKA** Carpentry teacher

11 **MR MCCLARY** Anyone else? Herb?

12 **MR COOPER** Mr Randolph, you stated that you were
13 offered a job as a lieutenant, as a
14 correctional officer?

15 A In no, in a lieutenant's slot to to
16 teach masonry at Northside

17 **MR COOPER** Okay So you would not have been a
18 correctional officer?

19 A No, sir

20 **MR COOPER** You were just offered another position
21 to do the exact same job?

22 A To do the exact same job at at the
23 lieutenant's pay slot, yes, sir

24 **MR COOPER** Which was approximately how much less
25 than you what you were currently being

1 what you were

2 A Somewhere the best I guess somewhere in
3 the vicinity of \$20,000 I'm not positive of
4 that but close to it

5 **MR COOPER** \$20,000 less than you were being paid?

6 A Yes, sir

7 **MR COOPER** And it was to do the exact same duties?

8 A The same thing

9 **MR COOPER** And that was specified?

10 A Yes, sir, the same thing

11 **MR COOPER** At the same that was the same
12 position? No, that was at Northside

13 A At Northside

14 **MR COOPER** Which was how much further away than
15 Tyger River?

16 A Actually, it was closer to home, to where I
17 lived- I actually live in Cherokee County
18 which is was 35 miles from Tyger River
19 And it was only 20 miles to Northside from
20 home

21 **MR MCCLARY** But how far was it from the location of
22 the facility where you worked, the institution
23 where you worked?

24 A From Dutchman?

25 **MR MCCLARY** Right

1 A 15 miles, 15, 18 miles

2 **MR MCCLARY** Would it have been inside of the
3 the circle of the

4 A Yes, the limited

5 **MR MCCLARY** Right

6 A But that program was shut down See, that's
7 the guy that bumped me out He had 17 years
8 and I had 14 So they shut his program down so
9 they and so he's the one that bumped me
10 They later brought that program back with
11 they hired a mason to come and teach the job,
12 and he didn't follow through with his
13 certification

14 **MR COOPER** Say that again They offered the job at
15 the Tyger River?

16 A They had no, at Northside They hired
17 I don't remember his name right off, but

18 **MR COOPER** But they never hired someone back at
19 Tyger River?

20 A No The guy was at Northside bumped me out at
21 Tyger River

22 **MR COOPER** Okay

23 A He's the one he moved from Northside to
24 Tyger River

25 **MR COOPER** Okay

1 A See, they shut the program down initially at
2 Northside, as well as that they shut Perry
3 down So they

4 **MR COOPER** The program would have continued had you
5 elected to take the position as a lieutenant?

6 A Yes

7 **MR COOPER** The program would have continued

8 A Yes

9 **MR COOPER** at Northside?

10 A Yes I was offered that by Mr John Near, as
11 well as the warden's secretary called me from
12 Northside Anyway and that Mr Moody would
13 love to have Mooney would love to have
14 he was the warden at Northside and would love
15 to have me come there and teach the masonry

16 **MR COOPER** When you did not elect to take that
17 position, was that position filled by anyone
18 else?

19 A Not at that time, no, sir

20 **MR COOPER** Did the other that answered my
21 questions Thank you

22 **MS KUDELKA** I have one follow up After you got
23 the pay bump after the lawsuit, what was your
24 pay increase about from what you were making to
25 what they bumped you to?

1 A What I don't really remember as far as the
2 total pay The problem was of course, in
3 the lawsuit, you may or may not be aware of,
4 but the problem was we were not we were
5 supposed to be paid an average of the state
6 supplement of every school district in the
7 state, okay, which we were not being paid We
8 never received the supplement And I really
9 don't remember, something like 15 maybe
10 \$1,500, \$1,500 or \$2,000 a year I'm

11 **MS KUDELKA** Okay Around that

12 A Some I'm I'm thinking

13 **MS KUDELKA** \$1,000, somewhere between \$1,000 and
14 \$2,000, maybe more, a year?

15 A I'm thinking somewhere, yes

16 **MS KUDELKA** Okay And then the job they offered
17 you was going to actually you were going to
18 be paid about \$20,000 less?

19 A Yes

20 **MS KUDELKA** Okay, thank you

21 A Thank you

22 **MR COOPER** Mr Randolph, did the person who bumped
23 you out at Tyger, did he have to take a
24 reduction in pay?

25 A No, sir

1 MR COOPER He he came over with his same pay?

2 A His same pay

3 MR COOPER Okay And his pay was higher than yours

4

5 A Yes, sir

6 MR COOPER because he had three more years

7 A Right

8 MR COOPER worth of seniority?

9 A Yes, sir He would have the three years of
10 each step increase that we, you know three
11 years of experience would have got

12 MS HUTTO Mr Randolph, were those offers to take
13 the other job formalized, or were they I
14 heard you say somebody made a phone call

15 A Uh-huh (affirmative response)

16 MS HUTTO Did you ever get any kind of formalized
17 offer in terms of in writing?

18 A I'm not sure I think I'd have I could
19 look through some of this, but I'm thinking
20 that was in it was Mr John Near I'm not
21 positive of that Other than with him and the
22 conversation at the with the secretary at
23 Northside and several times the conversation
24 with Mr Hoyt Sharpe, was mentioned when you
25 coming back, I need you at Northside That was

1 it We had lunch several times for various
2 reasons, and he would call me or I'd call him
3 and we would meet up some usually in
4 Clinton or somewhere in if he was coming
5 this way, we would do lunch and did that
6 several times, yes And that was that's
7 when these offers but nothing to my
8 knowledge in writing

9 **MS HUTTO** What about what about your refusal of
10 the offer? Did you refuse your offer in
11 writing?

12 **A** Yes, I did I and I think I have some of
13 that Well I know I have it here, and I'm not
14 sure what yes, my separation with Mr John
15 Near and the

16 **MS HUTTO** And I'm specifically talking about whether
17 or not once they made you a verbal offer or
18 what not, did you in turn in writing tell them
19 no, I do not want the offer of

20 **A** If my memory is correct, we had a had a
21 form that I refused somewhere and

22 **MR SUMMERS** May it please the panel, I believe
23 there's material in the record

24 **MS HUTTO** Okay

25 **MR SUMMERS** Maybe it's in the material

1 MS HUTTO Then yeah Then we don't need to
2 belabor that

3 MR SUMMERS Yes

4 A It probably is

5 MR SUMMERS That's between that's up to your
6 lawyers, sir I understand what you're doing

7 A Okay

8 MS HUTTO And that's I'm satisfied with that

9 MS ELMORE Sir, how much time passed from when you
10 were bumped by the Northside employee? How
11 much time passed before they called you and
12 said well we're re-opening Northside, we would
13 like you to come work there?

14 A I was offered this before the secretary
15 called me before I ever left, before the RIF
16 was ever finalized, yes I was she called
17 me at at Dutchman or at Tyger River

18 MS ELMORE Northside was already closed when they
19 called you?

20 A No, no Because to my knowledge, it wasn't
21 closed til he moved from there I don't know
22 what day he followed me I did not follow up
23 on that as far as I know my last day was in
24 June And so I'm just assuming he came in the
25 next day or the next week I don't know

1 **MS ELMORE** Okay

2 A But I was offered the position because
3 everybody knew it was going to be closed And
4 Donna, Donna Edens, okay, was the secretary at
5 Northside And she's the one that called me
6 And Mr Mooney, who was the warden, would love
7 to have me come and teach masonry So and,
8 of course, that I have a I don't know
9 exactly where, but anyway, I'll find it

10 **MS ELMORE** It was going to be closed because the
11 Northside teacher was going to take your job?

12 A Right

13 **MS ELMORE** Okay

14 **MR COOPER** Did you question that at all? They're
15 eliminating one program, but then they're
16 starting right back up Is that what your
17 question was?

18 **MS ELMORE** I'm trying to figure out why the guy at
19 Northside was moved to Tyger

20 A Because he had 17 years and I had only 14

21 **MS ELMORE** But they didn't want to close the
22 program So why not leave him there?

23 A Well, they did not want to pay me my teacher's
24 pay They wanted to put me in a lieutenant's
25 pay slot to come and teach masonry, do the same

1 thing that I I was going to take a 20
2 roughly a \$20,000 pay cut

3 **MS ELMORE** The Northside the Northside
4 instructor, was he in a lieutenant's slot while
5 he was there at Northside?

6 A No, no At that time he was still being paid
7 by his teacher's certificate

8 **MS ELMORE** So they changed it after he left?

9 A No Oh, yeah, because that's what I was
10 offered, yes

11 **MR NICKLES** Look at page 385 in the record Mr
12 Randolph, would you look at the screen, please?

13 A Oh, I'm sorry Yes

14 **MR SUMMERS** At the bottom

15 **MS KUDELKA** Scroll it down

16 **MR SUMMERS** The material at the bottom

17 **MR NICKLES** Do you recognize that, Mr Randolph?

18 A Yes, sir

19 **MR NICKLES** Did you receive any documents in
20 addition to that concerning the position at
21 Northside?

22 A Not in writing, no, sir

23 **MR NICKLES** Okay

24 A Other than just what I mentioned, it was, you
25 know, verbal

1 **MR NICKLES** Okay Is that what you're referring to
2 where it says correctional officer position?

3 A Yes, sir I have that somewhere I don't know
4 that you have that

5 **MR NICKLES** That's already in the record, sir You
6 don't need to look for that

7 A Okay

8 **MR MCCLARY** Anymore questions? Is there would
9 we want to retain this witness or can he be
10 excused?

11 **MR SUMMERS** It would seem to me that we would not
12 need at all Mr Randolph to sit here the
13 remainder of the four days at all My thought
14 would be there might some need for either Mr
15 Nickles or myself to recall him and to put him
16 on some kind of ability to be telephonically
17 recalled, subject to the committee attorney's
18 discretion, but there's no need for him to sit
19 here

20 **MR NICKLES** Mr Randolph, if we needed to talk with
21 you again, could you be available by telephone?

22 A Yes, sir

23 **MR NICKLES** Okay

24 **MR SUMMERS** That'd be fine

25 **MR NICKLES** With that

1 A Any any time
2 MR NICKLES With that understanding, we would ask
3 that he be excused
4 MR MCCLARY Thank you, Mr Randolph, for your
5 testimony You're excused
6 MR NICKLES Thank you, sir I appreciate it
7 A Thank ya'll
8 MR NICKLES Our next witness was to have been
9 MR CORNING Just one just one second, counsel
10 MR MCCLARY Do ya'll want to take lunch now or
11 ya'll want to
12 MS ELMORE I mean I'll go along with whatever ya'll
13 want to do
14 MR MCCLARY What does Lesia want to do?
15 MS KUDELKA It doesn't matter I'm fine either
16 way
17 MR CORNING Do you want to take lunch now or do you
18 want to wait?
19 MR COOPER I don't care, whatever ya'll want to do
20 MS ELMORE What time is it? It's 12 30
21 MR MCCLARY 12 30
22 MS ELMORE We might as well
23 MR MCCLARY Let's take lunch, let's let's take
24 an hour for lunch and be back at 1 30
25 MR NICKLES And let me just let me just say,

1 Mr Chairman, our next witness was to have been
2 Mr Williams He is incapacitated He will be
3 available by telephone tomorrow We've asked,
4 and I believe we were going to have the
5 capability to have him examined by telephone
6 tomorrow Thank you

7 MR MCCLARY 1 35, 1 35 will be fine on the advice
8 of my counsel

9 (Off the record)

10 MR MCCLARY Ms

11 MS GUFFEY Guffey

12 MR MCCLARY Ms Guffey?

13 MS GUFFEY Guffey, yes, sir

14 MR MCCLARY I guess you'll be

15 MS GUFFEY I'm going to be asking questions of the
16 next few witnesses

17 MR MCCLARY All right, are you ready?

18 MS GUFFEY Yes, sir We call Bernetha Culbreath to
19 the witness stand

20 MR COOPER Would you repeat that, please?

21 MS GUFFEY Her name is Bernetha Culbreath

22 MR COOPER Thank you

23 MS CULBREATH - DIRECT EXAMINATION BY MS GUFFEY

24 Q Ms Culbreath, if you would, state your name
25 and address for the record, please

1 A My name is Bernetha Culbreath I live at 820
2 Carter Road, Ninety Six, South Carolina
3 Q Okay And tell me are you currently employed?
4 A I am
5 Q Okay Are you currently employed with the
6 Department of Corrections?
7 A I am not
8 Q Were you employed with the Department of
9 Corrections prior to June 1, 2003?
10 A Yes, I was
11 Q Okay What position did you hold at that time?
12 A I was a teacher and the literacy coordinator
13 Q At what institution?
14 A At Leath Correctional in Greenwood
15 Q Okay And what were the responsibilities of
16 that position?
17 A As a classroom teacher, I taught the inmates
18 who scored at a level of K through 4 on the
19 the tests that we use to test their levels As
20 the literacy coordinator, I coordinated a
21 program for those same types of students in the
22 evenings because they were not able to attend
23 school during the day because they worked
24 Q And how long were you in that position?
25 A Just over ten years

1 Q And is that your entire time with the
2 Department of Corrections?

3 A Yes

4 Q And during the time that you were employed with
5 the Department of Corrections, what type of
6 evaluations did you receive?

7 A My evaluations were always very good

8 Q Okay And did you hold any certifications for
9 this position?

10 A My certification is I have a Master's Degree in
11 Elementary Ed

12 Q At the time of the reduction in force, June 1,
13 2003, what happened or what effect did that
14 have on you?

15 A As an employee of the South Carolina Department
16 of Corrections, I had always believed that that
17 would be the job that I would keep and retire
18 from So that when I lost that position, it
19 kind of threw me for a loop

20 Q All right And you were RIF'd, is that
21 correct?

22 A Yes

23 Q Did you have any place to bump within your
24 geographic area that they drew?

25 A There was no one for me to bump I was offered

1 a position as a correctional officer because
2 there was no one for me to bump That was the
3 only thing that was available to me

4 Q And did you take that position?

5 A I did not

6 Q Were there any positions that you knew of that
7 you could have bumped statewide?

8 A We had we always held a large meeting in
9 Columbia, so you got to see who the new people
10 were in the in the district And there
11 were at least a couple of teachers that I knew
12 that had come into the Department after me who
13 were able to hold onto their positions

14 Q Okay And were you doing the same type of
15 position at the time of the RIF that these
16 people continued to do?

17 A They were they were classroom teachers, and
18 I don't know specifically if they held the same
19 position as the K through 4 teacher that I did

20 Q But to your knowledge, there were people with
21 less seniority

22 A Yes

23 Q retained?

24 A Yes

25 Q If there were these positions to bump

1 statewide, would you have been willing to
2 to commute or relocate for those positions?

3 A Definitely, because I live within an hour's
4 drive of Columbia There are lots of
5 institutions here I live within an hour's
6 drive of the Spartanburg/Greenville area So
7 commuting was nothing something that would have
8 been a problem for me

9 Q And do you know if your position continued
10 under a different title after you left because
11 of the RIF?

12 A As I know, the classroom positions were never
13 filled, but the literacy coordinator position,
14 in that position I created a program for the
15 nighttime inmates And there had not been a
16 program in place before that And I worked
17 with the local literacy literacy council to
18 get that in place And after I lost my job,
19 that continued, but it continued using a person
20 who was a pink slip employee, and they used an
21 officer to oversee when she was doing her job

22 Q And what duties did that officer have in
23 overseeing?

24 A It is my understanding that she basically
25 served as guidance counselor type, principal

1 position because she was the the go to
2 person for that particular pink slip employee

3 Q And do you know if that correctional officer
4 had any certification in education?

5 A I don't know for sure, but I would guess that
6 there was no certification

7 Q Okay And by pink slip, you mean a temporary
8 employee?

9 A Yes

10 Q Do you know of any individuals that were either
11 protected from the RIF or otherwise treated
12 special at the time of the RIF?

13 A I do know that some employees were able to keep
14 their positions depending on their geographical
15 area It seemed that those people were mostly
16 in the Columbia area To name specifics,
17 there's an employee, Kathy Jackson, I think was
18 able to hold onto her position, Geraldine
19 Abraham And I don't know why they were
20 allowed to, you know, hold onto their jobs but

21
22 Q So you're not aware of their seniority or their

23
24 A No, I don't I don't know what the specifics
25 are

1 Q Okay During the recall period from June 1,
2 2003, or June 2, 2003, to June of 2004, were
3 you ever contacted by the Palmetto School
4 District?

5 A Never

6 Q All right Please answer any questions Mr
7 Summers or the committee may have

8 **MR SUMMERS** Thank you Thank you, Ms Guffey

9 **MS CULBREATH - CROSS EXAMINATION BY MR SUMMERS**

10 Q Good afternoon, ma'am My name is Lake
11 Summers I represent the agency in this
12 particular hearing And, number one, thank you
13 for answering questions Please bear with me
14 I'm going to try to ask as few questions as I
15 can to make this efficient The last question
16 or series of questions that Ms Guffey asked
17 you I believe involved whether or not you were
18 contacted by the Palmetto Unified School
19 District during the recall period, correct?

20 A Correct

21 Q And you recall that you had not been?

22 A Never, and I've not changed addresses I'm at
23 the same address

24 Q Had you been contacted by anybody from the
25 Department of Corrections?

1 A I have not been contacted by the Department of
2 Corrections since I was let go from the
3 Department of Corrections

4 Q Okay So you were a Department of Corrections
5 employee?

6 A Yes I was employed by the Department of
7 Corrections

8 Q In questioning from Ms Guffey, I think in the
9 first part of the questioning you talked about
10 positions that were available statewide And
11 I think you focused on classroom teachers Is
12 that an accurate recollection? You said there
13 may have been some classroom teachers who
14 stayed on after the RIF with less seniority?

15 A There were two teachers that I'm aware of that
16 were both in the Columbia area

17 Q Were those the two that you referenced later
18 on, Ms Jackson and Ms

19 A No Those were two different teachers

20 Q Okay Who were they, ma'am, the best of your
21 recollection?

22 A One, her name was Yvette Lakin, I believe She
23 was at I believe she was at Broad River
24 And Patricia Hudson, who was at the Camille
25 Graham Women's Center

1 Q And your recollection is that Ms Lakin and the
2 other person whose I can't read my own
3 handwriting at this point, writing in the
4 margins That those two people had, is that
5 correct, less seniority?

6 A Yes

7 Q And how do you know?

8 A Because I stated earlier that at our district
9 wide meetings whenever there are new employees,
10 they're always asked to stand, and they were
11 introduced to the group And being that I had
12 been at previous meetings, I knew that they
13 were not you know, had not been there
14 before me

15 Q Do you recall when this particular meeting
16 occurred in relation to

17 A Not right off hand It's been several years

18 Q And then you talked in terms of the work that
19 you did with the local literacy council

20 A Yes

21 Q And you recall that question and answer from
22 Ms Guffey, correct? You recall talking about
23 that with her?

24 A Yes

25 Q And you said it was your understanding that

1 that particular activity continued with the
2 pink slip employees, is that correct?

3 A Yes

4 Q And do you recall the name of the person?

5 A Patricia Williams

6 Q And again, how were you aware or how did you
7 become aware that Ms Williams was a pink slip
8 employee?

9 A Because we were friends

10 Q And how long had ya'll been friends?

11 A Wow, we were friends prior to her becoming a
12 pink slip employee at the Department of
13 Corrections, and we've been friends since So
14 I would say eight to ten years

15 Q And then Ms Guffey talked to asked you
16 questions about whether or not you were aware
17 of anybody that had been protected from the
18 reduction in force or treated special, correct?

19 A Yes, but I don't know the specifics I just
20 know that there were some people and and
21 from the Columbia area who kept working And
22 I don't know the reasons They may have
23 they worked within the Department of
24 Corrections in the educational field, but I
25 don't know specifically what their job duties

1 were

2 Q But within the Department of Corrections in the
3 educational field?

4 A Yes

5 Q Ma'am, when you were, I guess, encountering the
6 reduction in force, did you have any meetings
7 with individuals from the Department of
8 Corrections Human Resources Office?

9 A Yes, I did

10 Q Describe for the panel what you can recall
11 about those meetings

12 A I met with John Near And basically, the
13 individual meeting that I had with Mr Near
14 involved him describing the reduction in force,
15 what my rights were as a person who was going
16 to be one of the people in the RIF which
17 involved whether or not I would want to return
18 if the positions were made available again,
19 which I did say that I did want to return
20 Then he was I was told that I could either
21 since there was no one I could bump, that
22 I could take a lay-off or I could take a
23 correctional officer's position, which I
24 declined because if I took that position, then
25 it would limit me trying to find a new job So

1 I declined to take that position because I
2 needed a better job

3 Q Yes, ma'am ' And the information you just
4 relayed to the panel, that was the information
5 that Mr Near provided you in the meeting that
6 you recall having with him, correct?

7 A He gave me my options

8 Q And this was a one on one meeting?

9 A There was another person present, but I don't
10 remember ' and it was a male, but I don't
11 remember who he was

12 Q But you're confident that Mr Near was one of
13 the two people?

14 A Mr Near was definitely one of the people In
15 fact, Mr Near was the person that I made most
16 of my comments to

17 Q Well, ma'am, I have no further questions for
18 you Thank you for answering my questions

19 MS GUFFEY I have no other questions

20 MR MCCLARY Does the panel members have any?

21 MS KUDELKA I have one question

22 MR MCCLARY Okay

23 MS KUDELKA When you left the agency, the salary
24 you were making at that time, had it increased
25 following the lawsuit that the agency that

1 was filed against the agency?

2 A I'm not sure I understand

3 **MS KUDELKA** Understand what I'm asking, I'm sorry
4 I didn't say that exactly right I guess the
5 question is whether or not you were part of
6 that original lawsuit

7 A Was I a part of the first

8 **MS KUDELKA** The first lawsuit about being paid

9 A Yes, I was

10 **MS KUDELKA** Okay So after the it was ruled in
11 favor of the employees, did your salary go up?

12 A My salary went up according to the South
13 Carolina teacher pay scale

14 **MS KUDELKA** Okay And do you know how much
15 about how much it went up?

16 A I cannot tell you exactly how much it went up
17 It was a a long time ago

18 **MS KUDELKA** Okay And then the correctional job
19 that you were offered, do you know what that
20 how much

21 A The officer's pay?

22 **MS KUDELKA** Versus what you were making, what was
23 the difference, about?

24 A Probably \$25,000 to \$30,000

25 **MS KUDELKA** Would have been less then?

1 A Yes

2 MS KUDELKA Okay, that's all Thank you

3 MR MCCLARY Yes

4 MR COOPER I have a few questions You said there
5 were some teachers who had less seniority than
6 you who kept their jobs Do you know off hand
7 if they participated in the lawsuit?

8 A I think the lawsuit was already in motion
9 before those people came on board I'm almost
10 certain because I do not recall seeing either
11 name on the lawsuit

12 MR COOPER Okay Another question, when you were
13 RIF'd you said a friend of yours who was a pink
14 slip employee came in and and took over
15 your duties?

16 A As the literacy coordinator in the night
17 program

18 MR COOPER Okay Did that you had other
19 duties, though, besides just that?

20 A Yes I was a classroom teacher in addition to
21 being the literacy coordinator

22 MR COOPER Okay Was the classroom teacher, the
23 part that you left there, was any temporary
24 employee in that position?

25 A No They just kind of shifted the the same

1 the program to that literacy program It

2 all kind of fell into one pot at that time

3 **MR COOPER** And the pink slip employee performed

4 A Yes

5 **MR COOPER** everything you were doing before?

6 A Yes

7 **MR COOPER** Both of those duties?

8 A And and performed that, it's my

9 understanding, up until this past summer

10 **MR COOPER** And what happened then?

11 A She left She left the Department She left

12 **MR COOPER** How much less you may know this

13 since you knew her was her salary compared

14 to yours?

15 A I do not I don't know the answer to that

16 **MR COOPER** You do not know what she was making as a

17 temporary?

18 A No

19 **MR COOPER** Thank you

20 **MR MCCLARY** Anything further? Ms Culbreath, thank

21 you very much

22 **MR NICKLES** We would ask that Ms Culbreath be

23 excused with the understanding that she may be

24 called by telephone if necessary

25 **MR SUMMERS** No objections, sir

1 MR MCCLARY Ms Culbreath, you are excused

2 A Thank you

3 MR SUMMERS Thank you, ma'am

4 MS GUFFEY Mr Chair Mr Chair, we call our
5 next witness, Ruth Fritts

6 MR MCCLARY Ruth Fritts Could you tell your name
7 for us?

8 MS FRITTS F-R-I-T-T-S

9 MR MCCLARY Okay, thank you

10 MS FRITTS - DIRECT EXAMINATION BY MS GUFFEY

11 Q Ms Fritts, if you would, state your name and
12 address for the record, please

13 A Ruth Fritts, 1968 Marsh Oak Lane, Johns Island,
14 South Carolina

15 Q Ms Fritts, are you currently employed?

16 A I am

17 Q At the time at the time of the RIF, June 1,
18 2003, and before, were you employed by the
19 Department of Corrections?

20 A I had been employed by the Department of
21 Corrections for approximately 12 years at that
22 time

23 Q And what was your position?

24 A I was a classroom teacher, ABE/GED teacher at
25 Leath Correctional Institution

1 Q And for the panel, would you tell them what the
2 ABE and the GED stands for?

3 A Adult Basic Ed and General Equivalency Diploma
4 So, essentially, we were trying to prepare our
5 students for the GED high school equivalency
6 diploma

7 Q And how long had you been in the position at
8 Leath?

9 A Since October of '91

10 Q And is that the beginning of your time with the
11 Department?

12 A Yes, it is

13 Q Are you certified by the State of South
14 Carolina?

15 A Yes I am certified, yes

16 Q What areas?

17 A I'm certified in middle school language arts,
18 K through 12 reading and physical education

19 Q And during the time of your employment with
20 Leath, the Department of Corrections, what were
21 your evaluations like?

22 A I believe they were exceeds and substantially
23 exceeds The last two were exceeds, I believe

24 Q And what effect did the RIF have on your
25 position?

- 1 A On my position, could you explain that? Like
2 the position that I held or my
3 Q Yes Were you subject to the RIF?
4 A I was subject to the RIF, yes
5 Q Okay And were there any positions for you to
6 bump in the geographic areas that they had
7 confined ya'll to?
8 A I was in a geographic area that had been drawn
9 up so that Leath and McCormick were in the
10 Leath and Greenwood and McCormick were in the
11 same bumping area, but there was no one to bump
12 because both schools were closed So I
13 essentially had no bumping rights even though
14 I stressed to Mr Near, Human Resources
15 Director, that I would be willing to relocate
16 anywhere within the state
17 Q And when did you tell Mr Near that?
18 A I told him that, I believe, on at least two
19 occasions, but I do recall one where I had my
20 final exit interview, and I I emphasized
21 that with him And he informed me that the
22 victims of the RIF would be would receive
23 priority for any state positions or any other
24 positions that would come open within the
25 Department of Corrections And I gave him my

1 new address and phone number, but I was never
2 contacted

3 Q All right Did you apply for any positions
4 either with the Department or with any other
5 state agencies?

6 A I put my resume on line with the statewide
7 teacher recruitment service So I I
8 applied essentially statewide, and then I
9 applied I sent resumes to certain select
10 schools in areas where I would prefer to be
11 And then I I applied for various positions
12 with Voc Rehab, DJJ, a position at the Yorktown
13 Maritime Institute, a position with emergency
14 training emergency personnel So I
15 probably applied for 20 state jobs because I
16 didn't want to lose my insurance benefits

17 Q And did you receive any response from any of
18 those positions?

19 A There may have been one that acknowledged
20 receiving my application, but I did not receive
21 any any other response

22 Q Okay And you didn't receive a recall during
23 the time period back to

24 A No

25 Q Was that no?

1 A No

2 Q Okay And immediately following the RIF, were
3 you offered a correctional officer position?

4 A We had, as I understand it, three options
5 Some people could retire Some people could go
6 on furlough, and others could accept
7 correctional officer positions And because I
8 did not I came down and spoke with Ms
9 Copeland at the insurance division, and she
10 explained to me that I would my last five
11 years of employment would have to be continuous
12 permanent full time or I would be subject to
13 losing my insurance benefits So I elected to
14 become a correctional officer until I could
15 find further employment

16 Q And did you serve as a correctional officer?

17 A I did I came down and took the physical
18 fitness training and passed that I was issued
19 a uniform and all that, and I served in that
20 excuse me, served in that capacity for a
21 short time until I secured employment with the
22 Berkeley County School District

23 Q Tell me were there any individuals that you
24 knew of with less seniority than you had that
25 were retained?

1 A There were, I believe, three individuals, and
2 I don't know their hire dates, but from their
3 introduction when we had our general teacher
4 meetings, new employees were introduced I
5 believe there were three individuals that I
6 know of

7 Q That had the same position that you had?

8 A With less seniority

9 Q Okay And if you had been able to bump outside
10 of the drawn geographic area, would you have
11 been able to bump anyone within the state?

12 A I had emphasized to Mr Near that I was willing
13 to relocate and and I couldn't understand
14 why people who were willing to relocate weren't
15 allowed to bump statewide And Mr Near said
16 that he had drawn up the the bumping
17 districts so that no one would have to drive
18 farther than 60 miles one way, but I currently
19 am driving 75 miles one way and have been doing
20 so since I left the Department

21 Q Was there anyone that you actually knew of that
22 you could have bumped statewide?

23 A I believe there are three individuals, although
24 I don't know their exact hire dates I would
25 not have I would not be privy to that

1 information ,

2 Q Do you remember any of their names?

3 A I do

4 Q Okay Tell me those, please

5 A Yvette, Y-V-E-T-T-E, Lakin, L-A-K-I-N, at
6 Women's Center, Patricia Hudson at Women's
7 Center, which I would really have preferred to
8 do because I had been working with female
9 incarcerated females So that would have
10 probably been an easy transition And I
11 believe Jewell Bounds, J-E-W-E-L-L, Bounds, B-
12 O-U-N-D-S, at Lee Correctional came after I
13 did

14 Q And that was Lee Correctional?

15 A Lee, L-E-E, in Lee County

16 Q Okay

17 A And then Kathy Jackson was hired at the
18 district office, and I believe she had similar
19 certification qualifications She came along
20 after I was hired with the Department

21 Q So you believe you have had more seniority
22 than Kathy Jackson?

23 A Yes

24 Q And would have been qualified for anything that
25 she would have gotten?

1 A I believe so She had a a district
2 position, but since I did hold a Doctorate and
3 my degree is in adult and continuing ed, I
4 think I would have qualified for that

5 Q Do you know if your position continued after
6 the RIF, your teaching duties at Leath, were
7 they continued after the reduction in force?

8 A When we became officers, at least at my
9 institution, we were not allowed to have any
10 position that was in any way related to
11 education So I was not allowed to work in the
12 education building However, I believe that a
13 Ms Patricia Williams continued in some
14 capacity She had been a pink slip person, and
15 she, I believe, taught some classes in the
16 education department after I left

17 Q Ms Fritts, how is your certification
18 maintained?

19 A There are various things that teachers must do
20 We have certain options One is GBE, goal
21 based evaluation, and the other is well, we
22 can take courses Basically, it involves
23 taking courses, essentially what most people
24 call CEUs in most fields, continuing education
25 units, but we must renew our certificate every

1 five years And

2 Q And is that excuse me

3 A And I have maintained that

4 Q Okay And is that a requirement at the time
5 you were working for Leath? Was that a
6 requirement for you?

7 A That was a requirement of the Palmetto Unified
8 School District, as with all school districts
9 in the state Palmetto being one of at the
10 time, I believe one of 92 school districts in
11 the state

12 Q Tell me how you were paid prior to the
13 reduction in force, what scale

14 A We had the base teachers' pay scale for the
15 state with a supplement added because we were
16 a statewide school district Most school
17 districts offer what they call supplements in
18 addition to the base teacher pay scale And so
19 our school district being a statewide school
20 district, we took the averages of the various
21 supplements within the state and pro-rated it
22 for the teachers

23 Q And so you were paid on a separate teachers'
24 scale, not the regular state pay band, is that
25 correct?

1 A We were not in any classified we didn't
2 have the classified pay bands that most state
3 employees had

4 Q And were you a member or were you a plaintiff
5 in the Abraham lawsuit regarding pay?

6 A Yes, I was

7 Q At the conclusion of the lawsuit, did you
8 receive any increase in pay?

9 A I did

10 Q Do you remember what that amount was?

11 A No

12 Q Okay Did you receive any back pay as a result
13 of that lawsuit?

14 A I believe I did

15 Q Okay Do you remember what that was?

16 A The amount?

17 Q Yeah, yes, ma'am

18 A I'm thinking perhaps it maybe something
19 like \$18,000 That number jumps in my head
20 I could be wrong

21 Q But that was for multiple years of

22 A Right, several years

23 Q of not having the correct pay?

24 A Yes

25 Q Okay

1 A Because that was several years without having
2 the supplement

3 Q Okay Thank you, ma'am You can answer any
4 questions Mr Summers or the committee has

5 **MS FRITTS - CROSS EXAMINATION BY MR SUMMERS**

6 Q We'll start with me, ma'am

7 A Okay

8 Q Good to see you Again, my name is Lake
9 Summers I represent the agency You
10 mentioned a few names in the course of
11 answering questions that Ms Guffey posed to
12 you And I want to make sure I have them
13 written down correctly, make sure the record
14 has them entered correctly You mentioned
15 Yvette Lakin, is that correct?

16 A Correct

17 Q And Patricia Hudson?

18 A Correct

19 Q And you testified that they worked at the
20 Women's Center?

21 A Yes

22 Q Do you recall what, to the best of your
23 knowledge, what they did at the Women's Center?

24 A I believe they were ABE/GED teachers, and they
25 may have moved to other institutions in the

1 complex there, but I believe they came to
2 Women's Center after I was employed with the
3 Department

4 Q And when you say you believe, did you do any
5 checking, did you talk to anybody about the
6 information you just testified to about Ms
7 Lakin's status and Ms Hudson's status?

8 A I really would have had no way of knowing other
9 than they were introduced as new employees when
10 we had our general staff meetings about once a
11 year, once or twice a year But they were
12 introduced, and they did teach at Women's
13 Center, and we did meet for teacher
14 conferences

15 Q And you mentioned also Jewell Bounds?

16 A Jewell Bounds at Lee County

17 Q Lee County

18 A Or Lee Correctional, whatever the official name
19 is

20 Q And then you mentioned Kathy Jackson as well?

21 A Kathy Jackson was at the district office

22 Q When you say district office, if you could,
23 explain to the panel what you mean by district
24 office

25 A The district's the school district office

1 at Department of Corrections headquarters on
2 Broad River Road

3 Q And you also mentioned Patricia Williams?

4 A Patricia Williams was a pink slip employee at
5 Leath Correctional where I was employed And
6 I believe, although I was no longer there, that
7 she continued working in the education
8 department in a similar capacity to what I had
9 done

10 Q And your the basis of that belief would be
11 what, ma'am?

12 A Information from Ms Culbreath, Mr Cobb and
13 Mr Box

14 Q You mentioned Ms Culbreath

15 A Bernetha Culbreath

16 Q Yes, ma'am Mr Cobb, who has been in the
17 room, but is I don't believe is in the room
18 right now

19 A A former principal He's probably having
20 lunch

21 Q Okay And you mentioned one more name?

22 A Frank Box was a teacher at Leath who chose to
23 stay on in a grant position

24 Q And again, I'm just trying to make sure I have
25 everything down

1 A Uh-huh (affirmative response)

2 Q There is a record being made, as you know, and
3 I may have missed it When it comes to Ms
4 Bounds, you said Lee County or Lee Correctional
5 Institution What did she do there?

6 A She was a teacher

7 Q And again with Ms Jackson at the district
8 office Do you know anything more specific
9 about her duties at the district office?

10 A No, not really I believe she had a similar
11 certification, but I'm not sure of her duties,
12 Director of Adult Ed or something I don't
13 know the title

14 Q And again, the basis of that belief would be?

15 A Well, I was employed by the Department of
16 Corrections, and she was introduced as a new
17 personnel member at the district headquarters
18 office after I was employed I mean I I
19 didn't keep records on this because I didn't
20 anticipate what was going to happen, but

21 Q Yes, ma'am

22 A I recall new people who were introduced

23 Q And these were at various meetings that you
24 would attend?

25 A Yes, at Department headquarters in the training

1 training area

2 Q Give me just one moment, ma'am, to double check
3 a few things

4 A Sure

5 Q Ma'am, thank you very much I appreciate your
6 indulgence in letting me check through my
7 notes I appreciate your time, depending on
8 what those folks up there may have for you

9 A Sorry

10 **MR MCCLARY** Does anyone have any questions?

11 **MS ELMORE** I do I have a question about you
12 said the school district office

13 A Yes, ma'am

14 **MS ELMORE** Where is that located?

15 A It was located at Broad River at the Department
16 of Corrections complex I believe it's 4444
17 Broad River Road And in the headquarters
18 building there was a suite of offices that
19 housed the Education Department We had a
20 superintendent, and I believe we had we had
21 assistant superintendents who were over
22 vocational and various functions there

23 **MS ELMORE** So upon your employment with them, you
24 say you were you were employed, would you
25 say, under Department of Corrections or you

1 gained employment with

2 A I was employed by the Palmetto Unified School
3 District, which I guess was a say a
4 subsidiary of the Department of Corrections
5 So in a sense, we were Department of
6 Corrections of Corrections employees, but
7 we were we were a little bit unique in our
8 the way we were paid and and we didn't
9 fit into that classification system But I
10 believe our evaluation process was similar,
11 although we did have other evaluations that
12 were something called ADEPT, which is a type of
13 teacher evaluation that is done in the public
14 schools So it was one of the 92 school
15 districts in South Carolina

16 **MS ELMORE** And, obviously, it was subject to
17 whatever funds Corrections got or didn't get,
18 would you say? Your employment

19 A I don't know how the funding was allocated

20 **MS ELMORE** Okay

21 A I would assume they would have received some
22 state funds just like any other school
23 district, but the allocation I would I do
24 not know

25 **MS ELMORE** Okay

1 MS KUDELKA I have one question

2 A Yes, ma'am

3 MS KUDELKA Your position that you took after you
4 lost your job

5 A Uh-huh (affirmative response)

6 MS KUDELKA what was the difference in salary,
7 about how much?

8 A I believe it was about approximately \$13,000

9 MS KUDELKA Less or more?

10 A Less

11 MS KUDELKA Okay

12 MR NICKLES I think

13 A Excuse me

14 MR NICKLES I think she's mentioned I think
15 she's speaking to the correctional officer
16 position

17 MS KUDELKA Yeah, she was one of

18 A Okay, I'm sorry The correctional officer
19 position was about \$50,000 less

20 MS KUDELKA Okay

21 MS HUTTO You said 50 or 15?

22 A 50, 5-0, so that when I left the employment of
23 the Department of Corrections, my annual leave
24 was paid at the correctional officer rate
25 rather than the teacher rate, that 45 day leave

1 thing that we have

2 **MS KUDELKA** That's all I have

3 **MR COOPER** When to your personal knowledge,
4 when you were at Leath teaching were you aware
5 of any pink slip employees also teaching?

6 A Ms Patricia Williams was one

7 **MR COOPER** When you were teaching there?

8 A Yes, sir

9 **MR COOPER** So she was sort of into this Palmetto
10 Unified School District thing as well?

11 A Because she was a pink slip, she didn't fall
12 under I think she was actually a retired
13 teacher who was working part-time in a pink
14 slip position And I to my knowledge, she
15 was the only one who was retained once our
16 school was disbanded

17 **MR COOPER** She was the only pink slip teacher you
18 knew about in your facility?

19 A To my knowledge, yes

20 **MR COOPER** To your knowledge

21 A Unless someone worked someone may have
22 worked in the vocational area but not in the
23 classroom educational area because we did have
24 a vocational unit separate in the prison
25 industries So there may have been pink slip

1 people who worked in that position

2 **MR COOPER** Were all pink slip people certified that
3 you're aware of?

4 A I I can't answer that I'm sorry

5 **MR COOPER** Okay

6 **MR MCCLARY** I've got one, maybe two questions To
7 your knowledge, were there any employees who
8 were involved in the lawsuit that was not
9 RIF'd?

10 A I can't recall any

11 **MR MCCLARY** And just to your knowledge, were there
12 any employees

13 A I may perhaps Ms Bounds, because I believe
14 her school I believe that that the
15 education program continued at her school which
16 was Lee Correctional That's the only one I
17 can think of at this at this

18 **MR MCCLARY** Who wasn't part of the lawsuit and

19 A I believe, yes

20 **MR MCCLARY** and she was not RIF'd?

21 A No

22 **MR MCCLARY** Do you know if there were any employees
23 who were not a part of the lawsuit that were
24 RIF'd?

25 A I can't recall any unless it would have been

1 someone who had been hired after the lawsuit,
2 but I don't I know of no specific names
3 **MR MCCLARY** Okay, thank you, ma'am Any any
4 other questions?

5 **MS KUDELKA** No

6 **MR MCCLARY** Is there any other reason is there
7 any reason to hold this witness over, or can
8 she be excused?

9 **MS GUFFEY** We ask that she be excused with the
10 stipulation she be available by telephone
11 should that be necessary

12 **MR MCCLARY** Mr

13 **MR SUMMERS** No reason not to excuse her

14 **MR MCCLARY** Okay

15 **MR SUMMERS** Thank you very much, sir

16 **MR MCCLARY** Thank you, you're excused, ma'am We
17 call Linda Bratton to the witness stand

18 **MS BRATTON - DIRECT EXAMINATION BY MS GUFFEY**

19 Q Ms Bratton, if you would, please state your
20 name and address for the record, please

21 A Linda M W Bratton, 108 Tall Gate Court,
22 Simpsonville, South Carolina

23 Q And tell me are you currently employed?

24 A No

25 Q What are you doing?

1 A I am retired

2 Q Okay, I'm envious What position did you hold
3 prior to June 1, 2003, with the State
4 Department of Corrections?

5 A I was an education coordinator

6 Q At what institution?

7 A At Perry Correctional Institution

8 Q Okay And what does an education coordinator
9 do?

10 A An education coordinator basically does the
11 same thing, as the principal would do but
12 without the certification

13 Q But you do have certification?

14 A I have certification, yes

15 Q With the State of South Carolina?

16 A Yes

17 Q In what areas?

18 A Special education, learning disabilities

19 Q Now, during your time let's find out how
20 long that was How long were you with the
21 Department? How many years were you with the
22 Department?

23 A Before retiring?

24 Q Yes, ma'am

25 A 24 years

1 Q Okay And during that time period, what kind
2 of evaluations did you receive?

3 A Always an excellent evaluation

4 Q Okay And were you subject to the reduction in
5 force in June 2003?

6 A Yes

7 Q What happened?

8 A I was moved from Perry Correctional Institution
9 to Tyger River Correctional Institution from an
10 education coordinator to a classroom teacher

11 Q Okay And was there a reduction in pay in that
12 position?

13 A Yes, it was

14 Q Okay And did you bump anyone?

15 A Yes

16 Q Who did you bump?

17 A Jacqueline Farr

18 Q Okay Now, what were your duties at Tyger
19 River?

20 A Well, when I first went to Tyger River, I
21 worked with the adult basic education students
22 and some EFA students who were troubled
23 students After I had been there for about a
24 year, then I started working with EFA students
25 and some adult students

1 Q Okay Now, please tell us what EFA student
2 who the EFA students are

3 A They're men that are under 21 years of age, or
4 21 years and under

5 Q And why does that matter? Why do you call them
6 EFA students? What does EFA stand for?

7 A I can't remember

8 **MR NICKLES** That's fine

9 Q That's fine But the students under 21, did
10 you get money from the state specifically for
11 those students?

12 A Yes

13 Q Okay And would that have been different
14 monies than those in the adult programs?

15 A Yes

16 Q All right You bumped into Tyger River Were
17 there any other areas, any other positions that
18 you could have bumped into?

19 A No

20 Q Do you know of anyone with less seniority than
21 you had who was retained during this time
22 period?

23 A Not at my institution

24 Q Okay Do you know of anyone who was protected
25 from the reduction in force or treated

1 specially?

2 A No

3 Q Do you know if at your position at Perry that
4 was eliminated, do you know if anyone continued
5 that position under a different title, or did
6 your duties go on by somebody else at Perry?

7 A The duties went on by someone, by a
8 correctional officer

9 Q Okay So a correctional officer replaced you?

10 A Yes

11 Q As the education coordinator?

12 A Yes

13 Q And I believe it was your testimony that the
14 education coordinator functioned as the
15 principal of the school?

16 A Yes, like a principal

17 Q Do you know if the correctional officer that
18 replaced you at Perry had any education
19 background or certification?

20 A No

21 Q Is that no

22 A No

23 Q That was a bad question on my part

24 A The person did not have certification

25 Q Okay Do you know who that was?

1 A I remember the last names

2 Q Okay

3 A The first correctional officer was Watkins It
4 was Watkins

5 Q Okay

6 A The second correctional officer was Conrad
7 Buehlar

8 Q Okay

9 A And the third was his last name is Najar

10 Q Najar?

11 A Uh-huh (affirmative response)

12 Q Okay And to your knowledge, do any of those
13 three consecutive correctional officers have
14 any education or certification?

15 A No, they did not

16 Q Were there any administrators, education
17 coordinator, principal, administrative type
18 positions available for someone with less
19 seniority than you anywhere in the state at
20 that time?

21 A Not that I could have bumped into

22 Q And not just in your geographical area that was
23 drawn, but statewide was there anyone that you
24 had more seniority over that was in an
25 administrative position?

1 A I don't recall It was just possibly

2 Q Did you ever receive any, for lack of a better
3 term, flack or grief for the pay that teachers
4 received?

5 A No

6 Q Were you a member of the Abraham lawsuit, the
7 lawsuit regarding pay?

8 A Yes

9 Q I have no other questions If you'd please
10 answer any Mr Summers or the panel may have

11 **MS BRATTON - CROSS EXAMINATION BY MR SUMMERS**

12 Q Good afternoon, ma'am I am Mr Summers My
13 name is Lake Summers We'll start with me
14 before the folks of the panel may have some
15 questions for you I will try to be as brief
16 as possible Thank you for bearing with me in
17 advance Your position at Perry was education
18 coordinator?

19 A Yes

20 Q Under questioning from Ms Guffey you, I think,
21 described it as being like a principal

22 A Yes, but without the certification

23 Q Without the certification So I guess my
24 question then is did you have certification as
25 a principal?

1 A No

2 Q And you may have asked or answered these
3 questions I apologize My notes aren't
4 necessarily the best written ones So I'm
5 going to have to go back and review them again
6 What certifications did you hold back January,
7 February, March of 2003?

8 A Special education, learning disabilities

9 Q And how long had you been certified in that
10 capacity?

11 A Since about 1987, '88

12 Q And under questioning from Ms Guffey, you said
13 that there were three correctional officers who
14 filled your position, to the best of your
15 knowledge

16 A Yes

17 Q Is that correct?

18 A Yes, that's correct

19 Q And I think for my own edification because my
20 notes are not very good, I apologize Could
21 you provide the name of the first person, the
22 first officer that you can recall?

23 A Watkins

24 Q Do you know the first name?

25 A No

1 Q Second correctional officer?

2 A Buehlar, first name Conrad

3 Q Okay That's Buehlar?

4 A B-U-E-H-L-A-R

5 Q Okay And if you can, the third

6 A I only know the last name, Najar, N-A-J-A-R

7 Q Give me one second, ma'am I'm just checking
8 over my notes to make sure I'm being thorough
9 I'm sure that the folks on the panel may have
10 some questions Again, ma'am, thank you for
11 indulging me I appreciate you being patient
12 The folks up on the

13 **MS GUFFEY** I have one follow up

14 **MR MCCLARY** Ms Guffey has more

15 **MR SUMMERS** Go right ahead

16 **MS GUFFEY** I have one follow up

17 **MS BRATTON - RE-DIRECT EXAMINATION BY MS GUFFEY**

18 Q Ms Bratton, was a principal certification
19 required to hold the position of education
20 coordinator?

21 A Not that I'm aware of

22 Q Was a teacher's certification required for that
23 position?

24 A As far as I know, yes

25 Q Okay, thank you

1 **MR MCCLARY** Any questions from the committee?

2 **MS KUDELKA** I have the same one I've asked each
3 time What was the difference in pay from what
4 you were making at the time that you bumped and
5 moved to another to the other facility,
6 about?

7 **A** Approximately \$200 a pay period

8 **MS KUDELKA** Okay So that's like \$400 a month,
9 \$4,800 \$5,000 less, you think

10 **A** Approximately

11 **MS KUDELKA** a year? Okay

12 **MS HUTTO** I just want to clarify You said when
13 you moved from Perry to Tyger

14 **A** Tyger River

15 **MS HUTTO** Tyger River?

16 **A** Uh-huh (affirmative response)

17 **MS HUTTO** And when you moved to Tyger River, you
18 actually moved as a classroom teacher?

19 **A** Yes, into a classroom teacher position

20 **MS HUTTO** Into a classroom teacher's position?

21 **A** Yes

22 **MS HUTTO** And you bumped another employee?

23 **A** Yes

24 **MS HUTTO** Okay, I just wanted to clarify that

25 **MR MCCLARY** I'm going to ask you may, you may

1 not know, but I'll ask my question as well Do
2 you do you know of any employees that were
3 a part of the original lawsuit and you were
4 a part of the original lawsuit?

5 A Right

6 **MR MCCLARY** Do you know of any employees who were a
7 part of the original lawsuit that were not
8 RIF'd?

9 A That lawsuit was

10 **MR MCCLARY** That's okay if you don't know I mean
11 that's fine

12 A Yes, I do

13 **MR MCCLARY** Okay

14 A Some certain institutions

15 **MR MCCLARY** Okay

16 A One that comes to mind is Abraham, Geraldine
17 Abraham

18 **MR MCCLARY** Geraldine

19 A was a part of the original that was not in
20 the RIF

21 **MR MCCLARY** And to reverse that question just a
22 little bit, do you know of any employees that
23 were not a part of the lawsuit that did
24 that were affected by the RIF?

25 A I'm sure there were, yes

1 MR MCCLARY Can you think of any?

2 A I cannot think of any

3 MR MCCLARY All right Any reason to hold her

4 MS GUFFEY We'd ask we'd ask that this witness
5 be dismissed with the idea that she could be
6 recalled by telephone

7 MR SUMMERS I would agree with that and, ma'am,
8 thank you for your testimony

9 A Thank you

10 MR MCCLARY Thank you very much

11 MR SUMMERS Mr Nickles, would it be possible for a
12 five minute coffee break at this point?

13 MR NICKLES Sure, sure That's fine Do you want
14 to take a brief break?

15 MR SUMMERS Yes, sir, subject to the folks up
16 there

17 MR NICKLES I guess that's yes

18 MR SUMMERS I would take it the actions of the
19 panel members as being yes, that would be fine

20 (Off the record)

21 MR MCCLARY All right, whenever you're ready, sir

22 MR NICKLES Back on the record We call Ms
23 Jacqueline Farr as our next witness Ms Farr
24 is seated at the witness table

25 MS FARR - DIRECT EXAMINATION BY MR NICKLES

1 Q State your full name and home address, please,
2 ma'am

3 A Jacqueline Douglas Farr, 151 Loomis Avenue in
4 Spartanburg, South Carolina

5 Q Ms Farr, did you formerly work in the Palmetto
6 Unified School District?

7 A Yes

8 Q How long did you work in that district?

9 A From March 1995 until June 1, 2003

10 Q What happened on June 1, 2003?

11 A We were booted out of our jobs

12 Q Where were you located before June 1, 2003?

13 A I was at in the elementary school I had
14 just moved back here

15 Q At the time of the RIF, where were you assigned
16 to teach, what institution?

17 A It was, at that time, Dutchman Correctional
18 Institution It later merged with Cross Anchor
19 and became Tyger River

20 Q Okay That's in the upstate, is it not?

21 A Yes, it is

22 Q And did you work your entire teaching career in
23 the district at that particular location?

24 A Yes

25 Q Okay What were your specific duties as a

1 teacher while you were with the Palmetto
2 Unified School District?

3 A I taught EFA students I taught adult
4 education, the GED program I counseled I
5 tested, whatever needed to be done basically

6 Q Would it be fair to say then your students went
7 from under the age of 21 on up to almost senior
8 citizens?

9 A That's correct, from 17 to senior citizens

10 Q Okay Did you find it rewarding work?

11 A Yes, I did

12 Q When the RIF was announced, I believe it was
13 back in April of 2003 Is that about correct?

14 A That's when it was announced

15 Q Okay Did you have any opportunities between
16 the time it was announced in April and the time
17 that you were separated in June to try to find
18 other jobs at the Department other than in your
19 particular immediate locale?

20 A No, I didn't It sort of jumped up and slapped
21 us in the face

22 Q Now, before this reduction in force took place,
23 were you part of a lawsuit that was brought to
24 compel the adoption of a statewide teacher pay
25 schedule?

1 A Yes

2 Q Were there a bunch of other people involved in
3 that?

4 A Quite a few, yes

5 Q Did you get a back pay amount at the end of
6 that process?

7 A Yes, I did

8 Q Okay And did you get an increase in your pay
9 as a result of that also?

10 A I don't remember I'm sorry

11 Q Do you remember if all teachers after the
12 lawsuit and after the pay was set, did all
13 teachers benefit from that, not just the people
14 who were plaintiffs?

15 A Yes I believe it was a class action

16 Q Okay So you didn't have to be a name on a
17 piece of paper to get an increase in your pay,
18 did you?

19 A No

20 Q Okay Did you ever hear anybody complaining
21 about the level of teacher pay there in the
22 district?

23 A Other staff members, not not education

24 Q Teachers weren't complaining, but other people
25 were complaining about it?

1 A No Other people were very upset

2 Q In what respect?

3 A I never quite understood why someone who, let's
4 say, maybe didn't finish high school because at
5 that time we had some like that, would complain
6 about the pay that a college graduate, a
7 Master's Degree I never could understand
8 how they could complain because they didn't
9 make as much as someone who had taken the time,
10 the money and the energy to get their Master's
11 plus

12 Q But did you hear this complaint from
13 correctional officers, for example?

14 A Those were mainly the people who complained,
15 but then there were other people also

16 Q For example?

17 A In classification Classification was a
18 department that placed inmates in various jobs
19 at the institution Explained to them how much
20 bonus credit they would get, the different
21 things that would help them get out earlier

22 Q Okay Was there ever, before this reduction in
23 force was implemented, any retirement incentive
24 or anything like that offered to you to bridge
25 you to retirement?

1 A No

2 Q All right Would you have been interested in
3 something like that?

4 A Yes, that would have helped

5 Q Did you retire after the RIF?

6 A Yes I had to buy two months, but I I was
7 able to do that so I at least didn't have to
8 worry about benefits

9 Q Were you aware that the Department of
10 Corrections offered a retirement program after
11 the RIF took place?

12 A If they did, nobody told me

13 Q Nobody told you?

14 A No

15 Q Okay If you had been able to retire and
16 receive retirement pay, could you have returned
17 to work making a little bit less than you were
18 making at the time?

19 A I'm sorry, I don't understand

20 Q If you had retired and were receiving your
21 retirement compensation, could you have
22 continued to work making a little bit less than
23 you were making at the time of the RIF?

24 A Yes, I would

25 Q That's something that may have interested you?

1 A Yes I did not think I was ready to sit at
2 home

3 Q Didn't have that opportunity, though, did you?

4 A No

5 Q When you were working with the the school
6 district there, was there a superintendent?

7 A Yes

8 Q Was there a principal?

9 A Yes

10 Q Were there students?

11 A Yes

12 Q Were there teachers?

13 A Yes

14 Q Did it look and feel and operate like a school
15 district to you?

16 A Yes, it did

17 Q When you had to take a day off, for example,
18 would you ask the principal for the day off?

19 A Yes That's who I reported to

20 Q Did you have to go all the way from where you
21 were down to Columbia to get a day off?

22 A No

23 Q When you were sick, who would approve your sick
24 leave, it'd be there at the school?

25 A Right, that's correct

1 Q Generally through the principal's office?

2 A Yes And we called in just like you would in
3 a public school

4 Q To let them know if you could be there?

5 A Right

6 Q Sometimes would they try to get a substitute or
7 somebody to fill in for you if you weren't
8 going to be there?

9 A Not while I was there We didn't have
10 substitutes

11 Q Okay So ya'll pretty much had to do it
12 yourselves?

13 A Uh-huh (affirmative response)

14 Q Okay Did you have many visits from the
15 Executive Director of the Department of
16 Corrections down there in your school?

17 A No I don't when I started there, a new
18 director came in at the same time, I think the
19 same month

20 Q Okay

21 A And although he came to the institution, he
22 didn't come in the education building

23 Q Well, of course, nobody from the headquarters
24 evaluated you, did they?

25 A No, not from headquarters

- 1 Q Okay And as a teacher, you had to maintain
2 your certificate, is that correct?
- 3 A That's correct We had to be certified
- 4 Q Okay Did you have to be evaluated in keeping
5 with Department of Education standards?
- 6 A Yes We were evaluated
- 7 Q Okay And under Department of Education
8 standards, a teacher can only be evaluated by
9 someone who is certified, isn't that correct?
- 10 A That's correct
- 11 Q Okay You don't think the Executive Director
12 of the Department of Corrections was ever a
13 certified teacher?
- 14 A Not not when I got there
- 15 Q Okay
- 16 A Mr Moore was not
- 17 Q How about the Human Resources Director, Mr
18 Near, do you know if he was ever a certified
19 teacher?
- 20 A No, I don't
- 21 Q Okay Your principal was?
- 22 A Yes
- 23 Q And that's who you dealt with on a day to day
24 basis?
- 25 A That's correct

1 Q And we talked a little bit about your pay
2 That was based on a teacher pay scale, right?

3 A That's correct, through the Department of
4 Education That's why we had to be certified

5 Q All right Did any of the correctional
6 officers ever tell you why they objected to
7 your pay level?

8 A Yes, quite a few people, in fact One of the
9 main people in classification brought it up
10 several times I tried to explain to them
11 They had been told this is what they told
12 me They had been told that they couldn't get
13 a raise because SCDC had to pay the teachers'
14 salaries

15 Q You don't know whether that's true or not, do
16 you?

17 A No, it wasn't true

18 Q Okay But that's just what people told you

19 A That's what they told me

20 Q their belief was?

21 A And that's what they had been told They said
22 they had been told they couldn't get a raise,
23 especially the officers, because SCDC had to
24 pay the teachers' salaries And I tried to
25 explain to them that wasn't true, but

1 Q You didn't convince them, apparently?

2 A No, no

3 Q Answer any questions that Mr Summers or
4 members of the committee may have, please

5 **MS FARR - CROSS EXAMINATION BY MR SUMMERS**

6 Q Ma'am, I'm Mr Summers I'm over here

7 A I'm sorry

8 Q That's quite all right Good afternoon

9 A Good afternoon

10 Q My name is Lake Summers I represent the
11 agency

12 A Hi, Jackie Farr

13 Q Yes, ma'am, nice to meet you Let me ask you
14 some questions based upon what you and Mr
15 Nickles just talked about

16 A Okay

17 Q The last part of the questioning from Mr
18 Nickles had to deal with comments made to you
19 by other Department of Corrections employees,
20 correct?

21 A Yes

22 Q And these folks worked in classification?

23 A One person, well, a couple from classification
24 Most of them were officers

25 Q Okay And when you say officers, correctional

1 officers?

2 A Correctional officers, I'm sorry

3 Q Okay And this is at Tyger River?

4 A Yes It started off as Dutchman

5 Q And again, you've explained what classification
6 folks did or do I don't know if I got it all
7 down What do you what is your
8 understanding as to what correctional officers
9 who work in classification do on a day to day
10 basis?

11 A Correctional officers didn't work in
12 classification They the people who were
13 in classification were hired for
14 classification There would be an officer
15 stationed in the building That department,
16 classification, came was in the medical
17 building So an officer was there, but
18 officers did not work in classification

19 Q And the folks who did work in classification,
20 would they make complaints that you were
21 talking to Mr Nickles about?

22 A Two people

23 Q And do you know their names?

24 A The rest yes

25 Q Who were they, ma'am?

1 A Mr Ron Jamison He was I don't know
2 whether he was considered in charge I'm not
3 sure But at first I thought he was joking,
4 you know, with his complaints I really
5 thought he was joking, but he was he was
6 very serious He could not understand why we
7 were paid a salary that they didn't get

8 Q Do you have any memory as to when he first
9 started saying these things to you?

10 A I'm I'm not exactly sure when, but it may
11 have been maybe two years before RIF He found
12 out somehow there was a website or some place
13 that he could go and look up the salaries of
14 the SCDC, I guess, of anybody in SCDC

15 Q So anybody in SCDC, including educators?

16 A Yes, and he did And he was just very upset at
17 some of the salaries

18 Q Under some other questions from Mr Nickles,
19 Mr Nickles asked you if it looked and felt
20 like a regular school district

21 A Yes

22 Q You recall that question?

23 A Yes

24 Q Okay Now, did the students look like regular
25 students?

1 A When I first got there, yes I can't remember
2 exactly when uniforms the inmates were
3 required to wear uniforms, but when I first got
4 there, they wore regular clothes

5 Q And when was that?

6 A I started in March of 1995

7 Q So after March of 1995, at some point uniforms
8 became required?

9 A At some point I'm I'm speculating, but
10 I'd say maybe two or three years after that,
11 and that could very well be wrong, but that's
12 what it seems like because they wore clothes
13 for quite a while I mean, of course, they
14 wore clothes

15 Q Yes, ma'am

16 A Uniforms

17 Q Yes, ma'am Yes, ma'am Now, this is at Tyger
18 River again you started in March of '95?

19 A Right

20 Q If I'm not mistaken, are there two components,
21 two parts of Tyger River?

22 A Yes, they merged Cross Anchor was one
23 institution, and Dutchman was the other And
24 Dutchman was a little larger Then they became
25 Tyger River, upper yard and lower yard

1 Q Yes, ma'am, Now, the students that you are
2 talking about, they were inmates, correct?

3 A Right

4 Q And could they roam freely around the
5 institution?

6 A At that time, yes

7 Q Okay And that has changed?

8 A That has that started changing before I
9 left, and it became a little more strict as the
10 years moved on And there there were
11 there were stages of the yard that they could
12 not venture past unless they were escorted by
13 an officer But it was not like that at all
14 when I first when I first got there

15 Q So this goes with the trend of things becoming
16 the term is more strict

17 A Yes

18 Q as time went by?

19 A Uh-huh (affirmative response)

20 Q And the upper yard you spoke of and the lower
21 yard, and I'm going to use the term secured, do
22 they have a perimeter around each of them?

23 A Now, Cross Anchor was we were a medium end
24 Dutchman was a medium end There are two
25 wires, wire fences I mean two wire fences

1 around Dutchman Cross Anchor at one time
2 didn't have any And it was my understanding,
3 I'm not positive about that, but it's my
4 understanding there were complaints from some
5 of the people in the town, Enoree So they put
6 a wire fence, one wire fence, but they were
7 they were not medium end

8 Q When you say medium end, is that the type of
9 classification for the institution?

10 A For the institution, that's correct I mean we
11 had murderers at Dutchman

12 Q Well, ma'am, thank you for your testimony

13 A Okay

14 Q I don't have anymore questions, but the members
15 of the panel, as well as Mr Nickles, might
16 have some follow up for you

17 A Okay

18 **MR MCCLARY** Mr Nickles, any follow up?

19 **MR NICKLES** No

20 **MR MCCLARY** Okay, committee?

21 **MS KUDELKA** I have the one question, and that is
22 after the lawsuit, did you get a pay increase?

23 A That's what I cannot remember that to save
24 my life I had not been there very long

25 **MS KUDELKA** Okay

1 A So my salary, what I got as reimbursement, if
2 you want to call it that, was not very large at
3 all, but I I just cannot remember

4 MS KUDELKA That's fine

5 A If I did, it was not extremely significant

6 MS KUDELKA Okay

7 A Okay

8 MS KUDELKA That's fine

9 MR NICKLES Thank you very much

10 A Okay

11 MR MCCLARY Any need to retain?

12 MR NICKLES No We would ask that she be excused

13 MR SUMMERS She may be excused, yes Thank you,
14 ma'am

15 MR MCCLARY Thank you, ma'am

16 A Thank you

17 MR NICKLES I'll walk you back

18 A Okay, thank you I can't start off real fast

19 MR NICKLES I know

20 MS GUFFEY All right Mr Mr Chair, we call
21 Othella Bernard to the stand

22 MR MCCLARY Okay How are you doing?

23 MS BERNARD Good, how are you?

24 MR MCCLARY Good

25 MS BERNARD - DIRECT EXAMINATION BY MS GUFFEY

1 Q All right, Ms Bernard, if you would, please
2 state your name and address for the record

3 A Othella Bernard, 7028 Green Pond Road, Gray
4 Court, South Carolina

5 Q And, Ms Bernard, were you employed with the
6 Department of Corrections at before June 1,
7 2003?

8 A Yes, I was

9 Q Okay And what was your position?

10 A I was a classroom teacher

11 Q And what institution was that?

12 A Perry Correctional

13 Q Okay And how long had you been in that
14 position?

15 A I was at Perry for eleven eleven years and
16 two months

17 Q And were you with the Department of Corrections
18 prior to that eleven years?

19 A Yes I taught at Givens Youth Center as a pink
20 slip person for four years

21 Q Okay Tell me how that worked What's a pink
22 slip?

23 A You're paid by the hour, 37 1/2 hours per week
24 You have no other benefits

25 Q And you did that for four years in a row?

1 A Yes, I did

2 Q At which institution?

3 A Givens Youth Center in Simpsonville, South
4 Carolina

5 Q And did you have to, as a pink slip person,
6 have to take a break?

7 A I did not

8 Q Okay So it was continuous employment?

9 A Yes, it was

10 Q Okay And did they let you count that with
11 your seniority at the time of the reduction in
12 force?

13 A No, they did not

14 Q Okay At the time that you were a classroom
15 teacher at Perry, were you evaluated?

16 A Yes, I was

17 Q What kind of evaluations did you receive?

18 A I always got very good evaluations

19 Q Okay And who did those evaluations?

20 A The principal And then I'm sure people from
21 Columbia, the main office, came down to go over
22 those, too

23 Q Okay And when you say people in the main
24 office, who would you be talking about?

25 A The superintendent

1 Q Okay People from Palmetto Unified School
2 District?

3 A Yes, yes

4 Q Okay So the superintendent did evaluations?

5 A I'm sure he had part of it, but the principal
6 did the first evaluation

7 Q Okay And who else might come from Columbia to
8 do evaluations?

9 A Oh, gosh, I know they're also approved or
10 signed off by the associate warden, too, at the
11 institution

12 Q Okay And that is an evaluation process that's
13 done with the State Department of Education
14 I mean the South Carolina Department of
15 Education?

16 A I'm sure it is

17 Q Were you required to maintain certification
18 while holding this position?

19 A Yes, I did

20 Q Okay At the time of the reduction in force,
21 what happened to you?

22 A I was given the choice of accepting a job as an
23 officer or retiring, and I chose retirement

24 Q Okay Were there any were there any
25 positions offered to you that were pink slip

1 that you could have gone into?

2 A Not at that time

3 Q Was there any offer made?

4 A No, no

5 Q And was there any position to bump into in your
6 circle?

7 A Not that I was aware of, no

8 Q And were you ever contacted regarding any
9 position for recall?

10 A No, I was not

11 Q Were you ever contacted for any position that
12 was a pink slip or a grant position?

13 A No, I was not

14 Q Okay After the reduction in force, was your
15 position or your program continued?

16 A The education building was open It was run by
17 an officer, and inmates ran the classrooms

18 Q Okay, back that one up Who ran classrooms?

19 A The inmates were running the program

20 Q Okay Now tell us what program they're
21 running

22 A Reading, math, language arts

23 Q Okay So more educated inmates were running
24 the program for less educated inmates?

25 A Correct Those with GEDs or high school

1 diplomas served as teachers' aides and they
2 carried on the program They were also doing
3 CLN

4 Q What is CLN?

5 A Correctional Learning Network

6 Q Was that by television?

7 A I'm not sure

8 Q Okay

9 A I think part of it was supposed to be I'm not
10 really familiar with it

11 Q Okay

12 A But they carried on that program

13 Q Okay And tell me a little bit about that
14 program and what you know about it

15 A I don't know I really don't know I wasn't
16 involved in it

17 Q Now now, the inmates were running the
18 school with an officer, a correctional officer?

19 A Yes

20 Q Do you remember if that correctional officer
21 had any education or certification?

22 A I don't know

23 Q Okay Do you know do you have any idea who
24 the officer was who was running the program?

25 A Yes, I do

1 Q Who was that?

2 A Buehlar, Officer Buehlar

3 Q Okay What was Mr or Officer Buehlar's
4 position prior to coming over and running the

5

6 A I don't know

7 Q Do you know if he had regular correctional
8 officer duties?

9 A I'm sure he did, yes, before he came in the
10 school, he did

11 Q Okay And to your knowledge, was he a
12 certified teacher?

13 A I don't know

14 Q Okay And was there anyone hired after the
15 reduction in force to continue this program
16 after after Correctional Officer Buehlar?

17 A Greenville County supplied a lady to teach
18 computer

19 Q Okay Who was who was that?

20 A Mrs Beaver

21 Q Okay

22 A She was in the building

23 Q Okay And do you know if she was a certified
24 teacher?

25 A I don't know

1 Q And do you know if she had a full time
2 position?

3 A No, she was pink slip

4 Q And do you know if she took that position prior
5 to June 1, 2003, or was it after June 1st?

6 A I'm not really sure about that

7 Q Would she have started prior to ya'll leaving
8 or after?

9 A Probably after

10 Q What was your plan if the reduction in force
11 had not taken place? What was your plan for
12 your future with the Department of Corrections?

13 A I was going to continue

14 **MR SUMMERS** Your Honor Your Honor Mr
15 Committee Chair, I'm going to object at this
16 point I think this may go beyond the the
17 ruling that you mentioned earlier this morning

18 **MR NICKLES** For a very limited purpose, two
19 questions will clarify this

20 **MR CORNING** Repeat the question

21 **MS GUFFEY** The question was what was your plan if
22 the reduction in force had not taken place?

23 **MR CORNING** And what's what Mr Nickles,
24 what's your

25 **MR NICKLES** I I think that there if she

1 answers the question, it'll be evident

2 **MS GUFFEY** We're not going for a specific answer, I
3 guess is what we're trying to say, Mr Corning

4 **MR CORNING** All right, I'll allow it, just to a
5 limited extent

6 **MR NICKLES** Yeah, limited

7 **MS GUFFEY** Yes, just

8 A I was going to continue to work as long as I
9 could

10 Q Okay, thank you, ma'am All right I believe,
11 Ms Bernard, those are all the questions I have
12 for you If you'd let Mr Summers ask and then
13 the panel ,

14 **MS BERNARD - CROSS EXAMINATION BY MR SUMMERS**

15 Q Yes, ma'am, good afternoon My name is Lake
16 Summers

17 A Nice to meet you

18 Q Yes, ma'am, nice to meet you I appreciate you
19 bearing with me I wanted to clear up a couple
20 of things Hopefully, this will go very
21 quickly I wanted to insure that the record
22 was clear Did you have a meeting with John
23 Near?

24 A Yes, we did

25 Q And was it an individual meeting with Mr Near?

1 A No I did not have an individual meeting

2 Q Please tell the panel the circumstances, as
3 best you can recall them, when you met with Mr
4 Near and how how that worked

5 A There was a group meeting with all the
6 teachers, and he told us explained the
7 circumstances and, you know, gave us two
8 options

9 Q And those options were what, ma'am?

10 A Retirement or go continue as an officer

11 Q As a correctional officer?

12 A For me, yeah, retirement, as a correctional
13 officer

14 Q So you all met as a group?

15 A Yes, we did

16 Q But then he was able to get you individual
17 information about your situation?

18 A I can't remember I'm sure he did

19 Q Okay And going back through, you talked about
20 a Greenville County supplied a teacher

21 A Yes

22 Q Did I hear that correctly?

23 A Uh-huh (affirmative response)

24 Q And if you can, just say yes or no answer using
25 words so the court reporter or the

1 transcription machine can hear you
2 A The person was paid by Greenville County
3 Q Okay, paid by Greenville County
4 A Uh-huh (affirmative response)
5 Q Because I heard the term pink slip in
6 association with that position
7 A When I refer to pink slip, it's not a full time
8 position with benefits You're just paid an
9 hourly wage
10 Q And that hourly wage, as you understand it, was
11 not paid by the Department of Corrections?
12 A Not that I'm aware of, no
13 Q But by Greenville County?
14 A Yes
15 Q Do you recall the name of that person?
16 A Mrs Beaver
17 Q And again, first name?
18 A I don't remember
19 Q And let me ask you a few questions about
20 evaluations Ms Guffey asked you some
21 questions, if you recall, about evaluations
22 A Yes
23 Q You said you were there were folks involved
24 in the evaluations process Was the principal
25 involved?

1 A Yes

2 Q And you talked about the superintendent?

3 A Well, I'm sure the superintendent had to look
4 at the evaluations and sign off on them

5 Q And then you talked about the associate warden?

6 A The associate warden was always involved His
7 signature was on the evaluations

8 Q Okay And are there and forgive me for
9 being ignorant about it I'm still learning
10 things as we go through this process Are
11 there different types of evaluations that
12 educators such as yourself were subject to?
13 Was there one kind of evaluation for the
14 Department of Education and another for
15 Department of Corrections?

16 A I really don't know that I don't know what
17 the Department of Education used I don't
18 know

19 Q Okay So the best the best of your
20 recollection and understanding, the evaluations
21 you were getting were within the Department of
22 Corrections?

23 A Yes

24 Q Give me a second while I check the rest of my
25 notes I apologize for the delay Ma'am,

1 thank you again Ms Guffey may have some
2 questions, and members of the panel may have
3 questions

4 **MS BERNARD - RE-DIRECT EXAMINATION BY MS GUFFEY**

5 Q I have one follow up Ms Bernard, when you
6 were evaluated, was it an instrument
7 specifically for teachers that was administered
8 by your principal?

9 A Repeat that

10 Q Okay, bad question When you were being
11 evaluated, were you evaluated on teacher
12 skills? Was it specific to teachers?

13 A A lot of it was, yes And you also had your
14 plans for how you could improve

15 Q That's all

16 **MR MCCLARY** Thank you Committee, any questions?

17 **MS KUDELKA** I have one for clarification You
18 mentioned in the beginning that you were a pink
19 slip employee for four years

20 A Yes

21 **MS KUDELKA** But then you became

22 A I had to apply for that position

23 **MS KUDELKA** Okay And then you became a

24 A Yes

25 **MS KUDELKA** full time

1 A Exactly

2 MS KUDELKA And how many years were you full time?

3 A Eleven years and two months

4 MS KUDELKA Okay, I've got it Thank you

5 A Uh-huh (affirmative response)

6 MR MCCLARY Any reason to retain?

7 MS GUFFEY We ask that she be able to be dismissed?

8 MR SUMMERS I would agree

9 MS GUFFEY Okay

10 MR SUMMERS Yes, ma'am

11 MR MCCLARY Thank you, ma'am

12 MS GUFFEY Mr Chair, we're calling Mary McCabe to
13 the stand

14 MS MCCABE H1

15 MR MCCLARY Hello

16 MS MCCABE - DIRECT EXAMINATION BY MS GUFFEY

17 Q Ms McCabe, if you would, state your name and
18 address for the record, please

19 A Mary McCabe, 105 Marsay Drive, Simpsonville,
20 South Carolina 29680

21 Q I see you're getting mail Ms McCabe, were
22 you employed with the Department of Corrections
23 at the time of the reduction in force?

24 A Yes, I was

25 Q And this was back in 2003, correct?

1 A Yes

2 Q What position did you hold at the time of that
3 reduction?

4 A Library and media specialist in the education
5 department

6 Q At what institution?

7 A At Perry Correctional

8 Q Okay And were you evaluated during that time
9 that you were in that position?

10 A You mean the yearly evaluations?

11 Q Yes, ma'am

12 A We had to be evaluated once a year, yes

13 Q Okay And were those evaluations internal or
14 were they a part of the Department of
15 Education's requirement that educators are
16 evaluated?

17 A You mean was it required by the South Carolina
18 Department of Corrections?

19 Q Was it yes We'll take that, yes

20 A It was, yes

21 Q Okay Were you ever evaluated based on your
22 version of media specialist ADEPT evaluation or
23 the Department of Education, South Carolina
24 Department of Education?

25 A I'm not sure I understand that question

1 Q Were you evaluated on the duties as a librarian
2 or media specialist?

3 A Yes, I was

4 Q Okay On those specific skills?

5 A Exactly, yes

6 Q Okay, all right And did you have to be
7 certified for this position?

8 A Yes, through the State Department of Education

9 Q Okay And so you are currently certified in
10 the State of South Carolina?

11 A Yes, I am

12 Q What areas?

13 A Elementary education and media specialist

14 Q Okay And going back to those evaluations,
15 what were your grades, or what was your outcome
16 on your evaluations?

17 A They varied from year to year, but starting the
18 second year I was evaluated, I think they
19 called it above above meeting one
20 of them is below meeting, and then one of them
21 is meeting expectations, and then the next one
22 is above expectations And I was always above
23 or superior

24 Q Okay Tell me what happened at the time of the
25 reduction in force to you specifically

1 A I was told that by John Near that I
2 that we were all losing our jobs, and I
3 specifically was losing my job at Perry as the
4 media specialist And he asked me if I was
5 willing to take a security officer position,
6 and I told him yes, because I didn't want to
7 lose my insurance and other benefits

8 Q Okay And so you did take a correctional
9 officer position after June 1st, is that
10 correct?

11 A Yes, ma'am, I did

12 Q Okay Did you go through the training?

13 A No I never went through any officer training

14 Q Okay What were your duties?

15 A I was still the library media specialist

16 Q So during the time that you were receiving
17 correction pay, you were still performing your
18 duties as the media specialist?

19 A Yes, I certainly was

20 Q How much did your what was the difference
21 in pay for what you were getting as media
22 specialist to correctional officer?

23 A It was it was a bit in excess of \$2,100 per
24 that month

25 Q Okay So you were only a correctional officer

1 for one month?

2 A Uh-huh (affirmative response)

3 Q Okay And at during that time, it was how
4 much of a reduction for that month?

5 A \$2,100 and some odd I think it was \$37 I
6 can't remember the exact amount

7 Q Was that a large decrease?

8 A Yes

9 Q Tell me after that one month as correctional
10 officer, what happened then?

11 A I received I received a letter in the mail,
12 a certified certified letter stating that
13 I was called back as a correction asking me
14 if I would sign this paper agreeing to be
15 called back into a position of librarian/media
16 specialist, but I had to change and go to
17 another institution And, of course, I agreed
18 to do that

19 Q Was that with the understanding that you would
20 be paid on the teacher pay scale?

21 A Yes, ma'am, yes

22 Q All right And so what institution did you go
23 to?

24 A Tyger River Correctional

25 Q And your position was?

1 A Media specialist/librarian

2 Q Okay And is that one one library or
3 multiple libraries?

4 A I had to take on the job of two librarians that
5 had just been well, one of them had been
6 RIF'd, and one of them the one that I took
7 her job, replaced her, she had just retired
8 So I took on the positions of two librarians at
9 my same salary

10 Q And was that approximately the 1st of August or
11 the 1st of July?

12 A It was like the second day of July 2003

13 Q And one person had been RIF'd and one had just
14 retired, and you took both positions?

15 A Correct

16 Q Did you receive double pay?

17 A No, no, ma'am

18 Q Any increase in pay?

19 A No, no increase in pay I still had to keep my
20 same teacher scale pay

21 Q Okay Now, during the reduction in force and
22 the time that you were meeting with Mr Near
23 and told you could have a correctional officer
24 position, was there anyone that you could have
25 bumped in those geographic circles they drew?

1 A No, no I was only one there that was
2 qualified with the the longevity I was
3 the only one in that region that had the most
4 service There was another man there in the
5 library on the lower yard there at Tyger River
6 who wanted that job, of course, and he didn't
7 have the longevity that I had, time the
8 time in service

9 Q The job that you were recalled to?

10 A Yes

11 Q Okay Now, if you had been able to bump based
12 on your seniority anywhere in the state, would
13 there have been anyone that you could have
14 bumped?

15 A Yes

16 Q Who would that have been?

17 A A gentleman named Billy Holliday

18 Q Okay And where was he?

19 A I'm not sure which institution he was at, but
20 it was out of my geographical region

21 Q Okay How long have you been with the
22 Department?

23 A I've been there since January 30, 1995

24 Q Do you know of anyone who received any special
25 treatment regarding the reduction in force?

1 A There was a lady who came to our institution,
2 Tyger River, after right after the
3 reduction in force was after that year was
4 up who was just placed in a title and job,
5 teaching job, who had less seniority than other
6 teachers who had been RIF'd

7 Q Was that person a part of the reduction in
8 force?

9 A Yes, she was

10 Q What was her name?

11 A Her her name was Jane Mailloux

12 Q And it's your understanding she was placed
13 after the recall period in a position at your
14 former institution?

15 A No, at my present institution, Tyger River

16 Q Okay Do you know how long that title one
17 position had been vacant?

18 A It was created for her because there was
19 another title one teacher there already And
20 then they created another title one position
21 there

22 Q So is it my understanding that there could
23 potentially have been other RIF teachers called
24 back to that position but she was placed in it
25 with less seniority?

1 A Exactly You're exactly right There were
2 I can think of two or three

3 Q Okay Do you know

4 A In that geographical region

5 Q In that geographical region?

6 A Uh-huh (affirmative response)

7 Q Who would those people be?

8 A I can think of one, is Ms Othella Bernard, and
9 I believe Ms Jacqueline Farr I know Ms
10 Jacqueline Farr had more experience and
11 longevity than did Ms Mailloux There's
12 probably more that I'm unaware of

13 Q Okay Do you just a second That's all
14 the questions I have for you, Mr McCabe

15 A Okay

16 Q If you'll answer any questions Mr Summers or
17 the panel has

18 A Okay

19 **MS MCCABE - CROSS EXAMINATION BY MR SUMMERS**

20 Q I'm Mr Summers Good afternoon, ma'am I
21 appreciate you bearing with me I'm going to
22 ask you a few questions You talked about
23 and I may not have spelled it correctly, but I
24 believe the first name is Jane

25 A Mailloux

1 Q Okay

2 A M I think it's M-A-I-L-L-O-U-X It's
3 French

4 Q And your recollection is that and you
5 testified that a position was created for her?

6 A That's that's what my memory is telling me

7 Q Okay And could you tell the panel or testify
8 as to what how you based your memory? What
9 information did you receive or from who you
10 received the information to have that belief?

11 A Well, there was only when I got to Tyger
12 River, there was only one title one teacher
13 there And then three, four, five months later
14 there were two And I don't ever remember
15 there being another title one teacher there

16 Q Okay And so your testimony was it was created
17 for her?

18 A That's all that I can gather I don't know any
19 I don't know anything else to surmise but
20 that

21 Q Did you have any conversations with anybody

22 A No

23 Q in Human Resources?

24 A No, no I never I never discussed that
25 with anyone

1 Q So you never discussed your conclusion and how
2 you got to that conclusion with anybody?

3 A No

4 Q And you talked about you mentioned the name
5 Billy Holliday

6 A Uh-huh (affirmative response)

7 Q Could you go through again just what was
8 his seniority, as best you recall? Where did
9 he fit into the picture?

10 A He had less less years in with SCDC than I
11 have I think he had maybe two or three years
12 less at SCDC than I did So I could have
13 bumped him, but

14 Q But he was

15 A he was in a different region

16 Q Okay I mean if you don't know the region,
17 that's fine But where, to the best of your
18 knowledge, did Mr and you may not know
19 Where did Mr Holliday work or Ms Holliday?
20 I'm sorry

21 A Mr Holliday

22 Q Okay

23 A Where did he work

24 Q Yes, ma'am

25 A at the time? He was either at Turbeville

1 or I can't remember It's in the lower
2 part of the state, though It was not in the
3 Appalachian region

4 Q And Appalachian Appalachian region, is that
5 a region within SCDC?

6 A That's in the upper part, yeah That's in the
7 upper part of the state We call it
8 Appalachian region now I can't remember if it
9 was called that in 2003 or not

10 Q Okay And you talked about having accepted a
11 position as a correctional officer for a short
12 period of time, correct?

13 A Yes, yes

14 Q And that was you accepted that position, I
15 guess, when you were given your options by Mr
16 Near, is that correct?

17 A Yes, yes

18 Q And then you testified that you still served as
19 the media specialist even after you had
20 accepted, I guess, begun serving in the
21 correctional officer position, correct?

22 A Yes I never went through the training, nor
23 did I ever wear a correctional officer uniform
24 My my warden there at Perry told me that he
25 wanted me to stay in the library as the media

1 specialist

2 Q And who was your warden there?

3 A Mr Bazell

4 Q So Warden Bazell?

5 A Warden Bazell is his name

6 Q Were you in the process of getting scheduled to
7 take the training at any point at this time?

8 A Well, I would I would have gone through the
9 training, I guess, if I hadn't been recalled
10 through the RIF If I hadn't been recalled, I
11 would have been forced to go through the
12 training

13 Q Did you have a start date at that point?

14 A No I don't remember that I did I could
15 have, but I don't recall that I did You mean
16 a start date

17 Q For the training

18 A for the training?

19 Q Yes, ma'am

20 A I don't remember a start date

21 Q And then you got recalled, and you said you got
22 a letter in the mail?

23 A Yes

24 Q That you got a certified letter?

25 A Certified letter And they may have called me

1 on the telephone, too, to tell me to expect
2 this And I believe they told me on the
3 telephone that I had to sign it if I was
4 willing to accept it and send it back by a
5 certain date, and that's what I did I sent it
6 back to them also by certified mail

7 Q Yes, ma'am When you say sent it back to them,
8 do you recall where you sent the letter?

9 A I believe it was Human Resources or to SCDC

10 Q Give me just a moment ma'am, just checking
11 through my notes I appreciate your patience

12 A Okay

13 Q Ma'am, I can't think of anything else I very
14 much appreciate your patience

15 A Okay, you're welcome

16 Q Ms Guffey may have something else

17 **MS GUFFEY** I have nothing

18 **MR SUMMERS** The panel may have something for you

19 **MS GUFFEY** I have nothing further

20 A Okay

21 **MS GUFFEY** Wait until they ask

22 A Okay

23 **MR MCCLARY** Do you have does anyone on the
24 committee have any questions?

25 **MS HUTTO** I just want to ask you talked about

1 the regions, being separated into regions And
2 I think you said you've been there since
3 January 30, 1995

4 A Uh-huh (affirmative response)

5 **MS HUTTO** And later on you said that now you called
6 it the Appalachian region Is there a
7 difference in how the regions are set up now
8 and how they were when you first started?

9 A I believe they are, but I can't specifically
10 tell you how they were set up before because I
11 don't remember

12 **MS HUTTO** But they they were

13 A I believe those regions were changed right
14 before the RIF, but I can't swear to that So
15 I I don't

16 **MS HUTTO** But was what your understanding of the
17 regions? When you talk about regions, is that
18 the Department of Corrections region or is it
19 the

20 A No It's the Department of Corrections
21 regions

22 **MS HUTTO** Oh

23 A And the reason I'm so fresh on Appalachian
24 region is I have to be a regional librarian now
25 also, in addition to those two libraries I have

1 to be in charge of I have to be in charge of
2 that region because I'm the only like certified
3 librarian in the Appalachian region And I
4 have to order for the other libraries within
5 that region, and that's why I'm familiar with
6 the Appalachian region because I see it in
7 front of me a lot

8 **MS HUTTO** But when you started, did they have a
9 structure that called for the regional you
10 know, the regionalization of the area that you
11 work in or the agency?

12 **A** We just didn't put as much emphasis on it at
13 the time because we had so many more personnel
14 then We had a certified librarian in every
15 school in every education building So we
16 weren't responsible for a specific region and
17 those duties within it

18 **MS HUTTO** Thank you

19 **MR MCCLARY** Do you have a question?

20 **MS GUFFEY** Can I just follow up to Ms Hutto's
21 questions so that it doesn't go further down
22 the road?

23 **MS MCCABE - RE-DIRECT EXAMINATION BY MS GUFFEY**

24 **Q** How many of those institutions are you now
25 overseeing?

1 A Eight

2 Q Okay

3 A Counting my two that I have to be there
4 physically

5 Q So six additional?

6 A for every day I have six other ones that
7 I'm responsible for answering their questions
8 and ordering materials, books, all the all
9 that agenda for them

10 Q Is that coverage way more than the geographic
11 circles that were done? Would that those
12 number of institutions cover more areas than
13 the geographical areas that were for bumping
14 rights back in 2003?

15 A I believe so, because I now have Lee I have
16 McCormick I have the two Livesays, Livesay A
17 and Livesay B I have two more, Perry, and one
18 more, Catawba

19 Q Thank you I'm sorry, Mr Cooper

20 **MR COOPER** You took all my time

21 **MS GUFFEY** Oh, no

22 **MR COOPER** Ms McCabe, you said you left Perry to
23 go to Tyger at the same salary and took two
24 positions over Did you mean the same salary
25 as your previous librarian salary or the salary

1 as a correctional officer?

2 A The previous librarian salary

3 **MR COOPER** Okay

4 A that I was making with the state, you know,
5 with under the state

6 **MR COOPER** Okay So your salary decreased, then it
7 increased

8 A Correct, correct

9 **MR COOPER** about a month later? The other
10 person that one person retired at Tyger and
11 one person was RIF'd Did you bump that RIF'd
12 person? Is that how they were bumped?

13 A I didn't have to bump him He would have liked
14 to bump me because he wanted the job, I was
15 told, but I had more seniority within SCDC than
16 he had So I was the first one to be offered
17 that position, and of course I took it because
18 I had to have a job

19 **MR COOPER** Did Perry fill your other media/librarian
20 position after you left Perry?

21 A Perry Correctional, they put a they put an
22 officer in the education building And they
23 called him they gave him some title I
24 don't know if was lead teacher, but he had
25 no He didn't have any education experience

1 He just had to run the education building, and
2 he let the inmate clerks run the library So
3 no, there was no one physically in the library
4 as a staff member to operate it running on a
5 daily basis

6 **MR COOPER** Thank you

7 A Uh-huh (affirmative response)

8 **MR CORNING** Could you try to answer or no, you
9 know, when you're asked a question because
10 they're recording it

11 A Okay

12 **MR CORNING** I mean the panel can see what your
13 answer is, but the machine can't

14 **MR NICKLES** Are there any other questions for this
15 witness?

16 **MS GUFFEY** And we ask that this witness be
17 dismissed

18 **MR SUMMERS** And we agree

19 **MR MCCLARY** Thank you, ma'am

20 **MS BRIDGES - DIRECT EXAMINATION BY MR NICKLES**

21 Q State your name and address, please

22 A Ann Bridges, 212 Hampton Avenue, Clinton, South
23 Carolina

24 Q Ms Bridges, you remember you're under oath
25 from this morning, correct?

- 1 A Yes, sir
- 2 Q Ms Bridges, were you formerly employed with
- 3 the Palmetto Unified School District?
- 4 A Yes
- 5 Q In what capacity?
- 6 A I was a guidance counselor at Leath
- 7 Correctional Institution in Greenwood
- 8 Q How long were you there?
- 9 A I was in Greenwood from 1991 to 2003 and
- 10 previously at Givens from 1984 until I
- 11 transferred to Greenwood
- 12 Q Okay What did you do at Givens?
- 13 A Same thing I started out as the part-time
- 14 English and part-time counselor, part-time
- 15 librarian, part-time counselor, and it
- 16 eventually evolved into full time counseling
- 17 Q Okay So you have taught English at the
- 18 Palmetto Unified School District, correct?
- 19 A Yes
- 20 Q You've also been a guidance counselor?
- 21 A Yes
- 22 Q You've also been a media specialist?
- 23 A Yes
- 24 Q And what other areas have you taught in?
- 25 A Adult education math

1 Q Adult education math, okay When you were
2 separated by reduction in force, were you given
3 the opportunity to move anyone who might have
4 been teaching English, been a guidance
5 counselor, been a math teacher or an adult
6 education teacher?

7 A No

8 Q Were you limited to your current position, that
9 is, guidance counselor, in terms of whether or
10 not you could bump anyone?

11 A No I wasn't given the option to bump at all

12 Q Okay Was there anywhere for you to go at
13 Leath?

14 A The option the option I had was McCormick,
15 and they closed the education department at
16 McCormick

17 Q Okay So if we look at the map that was done
18 by Mr Near did you ever see that map?

19 A I think I did initially 189 is

20 Q Right

21 A is McCormick

22 Q Let me find my copy Here we are I'm going
23 to ask you to look at page 189, please, of the
24 record, and I will show you what that is It's
25 at Tab 4 of your handbook You were if we

1 look at the page before that, 188

2 A Yes, sir

3 Q your position was at Leath, L-E-A-T-H, is
4 that correct?

5 A Correct, yes

6 Q That's in it's area number ten Do you see
7 that?

8 A Yes

9 Q And you say McCormick was also in there?

10 A Yes

11 Q Were there any other institutions in there?

12 A No

13 Q Had you ever been told that you were in area
14 number ten before this RIF occurred?

15 A No

16 Q Had you ever heard of area number ten before
17 this RIF occurred?

18 A No, I had not

19 Q Okay Now, Greenwood's there kind of in the
20 middle of the I guess southern, western
21 part of the state, is that right?

22 A Yes

23 Q Got Edgefield County near there You've got
24 Greenville and Spartanburg pretty near

25 A Yes

1 Q there, right?

2 A Yes

3 Q Were you given a chance to drive up to
4 Greenville, Spartanburg or down into Edgefield,
5 Aiken or anything like that?

6 A No, sir

7 Q Were you told essentially you're out of luck
8 because the only two institutions in area ten
9 are closed?

10 A Yes

11 Q Okay

12 **MR SUMMERS** My fault for not being quick enough
13 Go right ahead

14 **MR NICKLES** Okay

15 Q Did you have any meetings with anybody about
16 the reduction in force? Did you meet with Mr
17 Near or anybody like that?

18 A Yes, yes

19 Q Did he tell you that you'd lost your job?

20 A He told me that I did not have a job as a
21 counselor That I could, if there was an
22 opening, take one there as an officer

23 Q Had you ever been a correctional officer
24 before?

25 A No, sir

1 Q But you had been an English teacher, adult math
2 and media specialist?

3 A Yes, I had

4 Q Did you take the correctional officer position?

5 A Did I take the correctional what?

6 Q Officer position

7 A No, I did not

8 Q Okay Ms Bridges, were you ready to leave the
9 the world of education on June 1, 2003?

10 A No, sir, I was not

11 Q Would you have left employment with the
12 Palmetto Unified School District in the absence
13 of this reduction in force?

14 A No, sir, I would not

15 Q Answer any questions that Mr Summers over here
16 may have or the members of the committee may
17 have

18 **MS BRIDGES - CROSS EXAMINATION BY MR SUMMERS**

19 Q I'm Mr Summers Good afternoon, ma'am

20 A Hi

21 Q I'll try to be as brief as I can Bear with
22 me Mr Nickles, toward the end of his
23 questioning of you, asked you if you would have
24 left your employment with the Palmetto Unified
25 School District absent the reduction in force

1 Do you recall that question?

2 A Yes

3 Q Now, I'm going to ask the question in an open
4 way By whom were you employed?

5 A South Carolina Department of Corrections

6 Q And when you mentioned the name John Near

7 A Yes

8 Q Do you recall what his position was?

9 A Human Resources

10 Q And that would be for which agency, ma'am?

11 A South Carolina Department of Corrections

12 Q And Mr Nickles talked about and walked you
13 through this map of our state and the eleven
14 geographic areas on page 189, correct?

15 A Yes

16 Q And did you and Mr Near talk about any of
17 these geographic areas during your meeting?

18 A No, no

19 Q So describe for the panel the best you can
20 recall what your meeting with Mr Near was
21 like Let me start it this way Did you meet
22 individually with Mr Near?

23 A Yes, and there was another lady present, but I
24 don't remember who she was

25 Q And describe again, describe as best you

1 can what happened at that meeting What did
2 Mr Near say?

3 A I can remember talking about that there would
4 be no job, that I could take the correctional
5 officer position if I if there was one
6 open And he gave me a certain number of days,
7 which I don't remember, to make up my mind

8 Q Where did that meeting occur, ma'am?

9 A In, I believe, the captain's office at Leath

10 Q And was that your only interaction with Mr
11 Near?

12 A Yes

13 Q Did you ever interact with any of the folks
14 from the Department of or Division of Human
15 Resources?

16 A None other than the lady that was present with
17 him on that day

18 Q Well ma'am, those are all the questions I have
19 for you I thank you for bearing with me Mr
20 Nickles may have some more follow up The
21 folks on the panel might have some

22 **MR NICKLES** I have no further questions for this
23 witness

24 **MR MCCLARY** That's all

25 **MR NICKLES** Thank you very much

1 MR MCCLARY May she be excused as well?

2 MR NICKLES We would ask that she be

3 MR SUMMERS And we would agree

4 MR MCCLARY Thank you, ma'am

5 A Thank you

6 MS GUFFEY We call Katherina Bower Bowyer,
7 excuse me

8 MS BOWYER - DIRECT EXAMINATION BY MS GUFFEY

9 Q Ms Bowyer, please state your name and address
10 for the record, please

11 A My name is Katherina Bowyer I'm from
12 Greenwood, South Carolina, 206 Law Avenue

13 MS HUTTO Excuse me, could you repeat your last
14 name again?

15 A Bowyer

16 MS HUTTO Bowyer?

17 A Yes

18 MS HUTTO Okay, thank you

19 Q And prior to June 1, 2003, were you employed
20 with the Department of Corrections?

21 A Yes, I was

22 Q And how many years had you been with the
23 Department of Corrections?

24 A Approximately 11 years

25 Q Okay And what institution were you working?

1 A Leath Women's Correctional

2 Q And what was your position?

3 A I was the office skills, technology, computer
4 technology

5 **MR MCCLARY** Could you say it one more time?

6 Q I think you're going to need to speak up a
7 little bit

8 A Office I'm sorry, office skills, computer
9 technology

10 Q Just pretend they're students

11 A Okay

12 Q That'll make it a little bit easier, and they
13 can hear you And what were your duties at
14 that in that position?

15 A My duties were to prepare girls, young ladies
16 to go into the job market I gave them skills
17 in computer and office skills And we had
18 working relationships with several companies
19 like MCI and Fuji where they would go in
20 afterwards and we found other jobs for them

21 Q And did you have to have certification to
22 maintain your position?

23 A Yes

24 Q Okay What were you certified in?

25 A I I was certified in business education

1 this is several certifications My
2 certification is in business education and
3 computers, anything in the business education
4 field, basically office skills And I'm also
5 certified in administration and supervision

6 Q Okay And during your time with Leath, were
7 you evaluated?

8 A Yes, I was

9 Q And what were the result of those evaluations?

10 A All that I can remember were good

11 Q Okay At the time of the reduction in force,
12 was there any place for you to bump within your
13 geographic area?

14 A No

15 Q Why not?

16 A In my area, the only place was McCormick, and
17 they did not have anything there And

18 Q Were they closing that school as well?

19 A Yes And all the surrounding areas that I know
20 of close to me, they were closing the schools

21 Q Was there any position statewide for which you
22 would have had seniority and would have been
23 the same type of position that you had
24 previously?

25 A No, because they were closing most of the

1 schools And the other schools did not have
2 anything open

3 Q Was there any person that you know that had
4 less seniority than you that was retained or
5 called back prior to you?

6 A Not that I know, except I know at Leath that
7 they called a young lady in to teach computers
8 that I had she did her practice teaching
9 under me

10 Q And was that at Leath?

11 A Yes

12 Q So they basically, your position was to
13 teach computers You were RIF'd What time
14 period was she called back in to teach
15 computer?

16 A I don't know exactly how long, but it was not
17 long after we left that I heard that she was
18 there

19 Q Okay And that she was teaching some computer
20 classes, is that your understanding?

21 A Computer classes

22 Q Do you know if she had received a full time
23 position or she was there temporary?

24 A Temporary or as part-time I'm not sure which

25 Q But not in a full time

1 A Not in a full time

2 Q If there had been any place to bump either in
3 your region excuse me, your area or your
4 or the state, would you have been willing
5 to to do so?

6 A Yes

7 Q Were you contacted during the recall period?

8 A No, I wasn't

9 Q Did you apply for other jobs within the
10 Department?

11 A At the time there were no other jobs for me to
12 apply for We looked basically, and I can't
13 remember exactly what we looked at, but at the
14 time we found nothing

15 Q Those are all the questions I have If you'd
16 answer any questions Mr Summers, who is right
17 over there, has

18 A Okay

19 **MS BRIDGES - CROSS EXAMINATION BY MR SUMMERS**

20 Q Good afternoon, ma'am

21 A How are you doing?

22 Q As Ms Guffey said, I'm Lake Summers I
23 represent the agency I'm going to ask you a
24 few questions

25 A Yes, sir

1 Q And when I'm done, Ms Guffey may ask a few,
2 and then the panel folks, panel members might
3 ask a few So just bear with me I'll try to
4 get through this as quickly as possible

5 A Okay

6 Q Ms Guffey was asking you questions about a
7 young lady

8 A Yes

9 Q who got a position at Leath, is that
10 correct?

11 A Yes

12 Q And I couldn't tell in my with my bad
13 writing Was it Lee or Leath?

14 A Leath

15 Q Okay And do you know this young lady?

16 A Shirley Johnson

17 Q And I believe you testified that she had been
18 a student of yours or

19 A She did her practice teaching under me

20 Q Practice teaching?

21 A Uh-huh (affirmative response)

22 Q Okay Do you recall when she did her practice
23 teaching under you?

24 A No, because at the time I was at the high
25 school I don't remember the exact year I'm

1 sorry

2 Q Oh, that's quite all right And you testified
3 that you had heard that she had come on and to
4 do some computer teaching?

5 A Computer teaching, yes

6 Q When did you hear that Ms Johnson had come on
7 to perform those duties?

8 A I cannot remember the exact time, but I know
9 that it was not long after we left

10 Q And, ma'am, from whom did you hear that?

11 A I talked to Ms Johnson

12 Q Okay So directly from Ms Johnson?

13 A Uh-huh (affirmative response)

14 Q Did you run into her somewhere?

15 A Yes

16 Q Okay Do you recall how long she stayed there?
17 Is she still there?

18 A No, she's not I don't think she's still
19 there And I don't know how long she stayed

20 Q And it was your understanding from this
21 conversation with Ms Johnson that she had been
22 brought on by the Department of Corrections as
23 a part-time employee?

24 A I yes I know it wasn't full time

25 Q Okay Ma'am, I can't think of any other

1 questions

2 A Okay

3 Q And as it is late in the day and it's been a
4 long day, I'll move right along So Ms Guffey
5 may have some, and the members of our panel may
6 have some questions

7 MS GUFFEY I have no further questions

8 MR MCCLARY Committee? Herb?

9 MR COOPER No

10 MR MCCLARY Thank you, ma'am

11 MS GUFFEY We ask that she be dismissed

12 MR SUMMERS And we agree Thank you, ma'am

13 MR MCCLARY Thank you

14 MR NICKLES This will be our last scheduled witness
15 of the day I know that disappoints you to no
16 end

17 MR MCCLARY I thought this was going to be four
18 days straight I didn't know we were going to
19 be able to go home

20 MR NICKLES Have a seat, please, ma'am

21 MS GLENN - DIRECT EXAMINATION BY MR NICKLES

22 Q State your full name and address for me,
23 please

24 A Nancy B Glenn, 617 Riverwalk Way, Irmo, South
25 Carolina

1 Q Ms Glenn, are you employed?

2 A I am

3 Q Where are you employed?

4 A Trenton Correctional Institution

5 Q In what capacity?

6 A I'm the librarian and a classroom teacher

7 Q Now, were you employed by or with the Palmetto
8 Unified School District before June 1, 2003?

9 A Yes, I was

10 Q How long had you been employed with the
11 district at that time?

12 A Almost 11 years

13 Q What was your position at that time?

14 A I was a librarian

15 Q Okay Has that been the only position you've
16 held within the Department of Corrections?

17 A Up to now?

18 Q Yes, ma'am

19 A I've been a librarian I've been a classroom
20 teacher, and I've been an officer

21 Q Okay When were you a classroom teacher?

22 A I accepted a job as classroom teacher at
23 Trenton about three and a half years ago And
24 I was in the classroom for two years

25 Q Okay

1 A And then I I've been in the classroom also
2 since July 1st again

3 Q All right Tell me your areas of
4 certification, please

5 A Library, science and social studies

6 Q Does your social studies certification permit
7 you to teach academic courses within the
8 Palmetto Unified School District?

9 A Well, I taught English, and I'm teaching math
10 now

11 Q Okay Even though you don't happen to hold
12 certificates in those areas?

13 A I'm not certified in either area, but

14 Q But you are a certified teacher?

15 A Yes

16 Q Do you know whether the Department of
17 Corrections lists you as a certified teacher
18 when they make their reports to the Department
19 of Education?

20 A I think they do

21 Q Even though you're not teaching in those areas?

22 A I no, I don't know

23 Q Okay Were you teaching at the time of what
24 has been labeled the teacher pay suit in the
25 school district?

1 A I was

2 Q Were you a participant in that litigation?

3 A I was

4 Q Did you receive any financial benefit from that
5 litigation?

6 A We got back pay and increased pay

7 Q Okay During the course of your employment
8 before June 1, 2003, did you ever hear any
9 negative statements about the level of teacher
10 pay?

11 A There was always an undercurrent of tension
12 between officers and teachers as far as the pay
13 scale went Nobody was ever obvious to me or
14 mean to me or in my face about it all, but we
15 just it was just sort of there

16 Q Something you could perceive?

17 A Yes, yes

18 Q How were you affected by the reduction in force
19 that occurred on June 1, 2003?

20 A I lost my position as a librarian

21 **MS ELMORE** Excuse me Can you speak up? Speak up
22 a little

23 **MS KUDELKA** Yes

24 **MS ELMORE** Thank you

25 **MS KUDELKA** So the microphone can pick you up

1 A Sorry

2 **MS KUDELKA** That's all right

3 A I lost my position as librarian at that time

4 Q Okay And was there anywhere for you to bump
5 any other librarian?

6 A Not in my region

7 Q Where were you?

8 A I was in the Broad River complex region

9 Q Okay And Broad River is there in the general
10 vicinity of headquarters, is that right?

11 A Yes

12 Q So were all librarian positions eliminated
13 within that area?

14 A Broad River's was not, and Manning's was not

15 Q Okay Did you have less seniority than the
16 people occupying those positions?

17 A I did

18 Q Did you have more seniority than individuals
19 occupying any other librarian positions in the
20 district?

21 A Yes, four other librarians No In the
22 district?

23 Q In the

24 A State?

25 Q state

1 A Four other librarians in the state had less
2 time with the Department than I did

3 Q Okay Now, do you remember who those were?

4 A Steve Grotzer

5 Q Where was he?

6 A He was at MacDougall

7 Q Okay

8 A Billy Holliday was at Turbeville or Wateree
9 I'm not sure which place He's been at both
10 I'm not sure where he was at that point

11 Q Okay

12 A Donna Deadmont was at Trenton, and Mary McCabe
13 was at she was actually RIF'd from Perry,
14 but she was recalled to Tyger River almost
15 immediately So

16 Q Now, did did all the people that you named
17 continue to do library work to the best of your
18 knowledge after the reduction in force?

19 A They did

20 Q What did you do after the reduction in force?

21 A I accepted a job as a corrections officer at
22 Stevenson

23 Q As a corrections officer?

24 A Yes, at Stevenson

25 Q Did you wear a uniform?

1 A I did

2 Q Did you carry a gun?

3 A I did

4 Q What were your duties as the correctional
5 officer?

6 A I was assigned to the library and other duties
7 as assigned

8 Q Okay What were the duties you performed in
9 the library?

10 A All the things I had already done as librarian
11 I checked out checked out books, kept a
12 collection, ordered books, whatever needed to
13 be done in the library

14 Q Did it seem like you were doing very much the
15 same activities as before?

16 A It did, with some some additional duties as
17 officer

18 Q Okay Did you get extra pay for doing your
19 former duties and those additional duties?

20 A I did not

21 Q Did you get paid the same amount you had been
22 paid for doing the library duties?

23 A I did not

24 Q About how much was the difference in pay that
25 you received after the RIF as opposed to the

1 day before?

2 A It was something more than half, but it was
3 significantly lower

4 Q All right Did you receive a memorandum
5 concerning your shift assignment?

6 A I did

7 Q I'm going to hand you a document I've already
8 handed it to Mr Summers I ask if you
9 recognize that document

10 A This this was my first assignment as
11 officer

12 Q And tell me the date on this is May 30,
13 2003?

14 A Right

15 Q It's signed by Yvonne Dreher And what does it
16 inform you you'll be doing?

17 A That as of June 2, 2003, I would be assigned to
18 SCI Operations as the librarian

19 Q Okay And what was your work schedule to be?

20 A 11 00 to 7 00 p m

21 Q Okay

22 **MR NICKLES** Lake, do you have any objection to
23 this document?

24 **MR SUMMERS** None

25 **MR NICKLES** Okay Have it marked, please, Mr

1 Secretary, and I have copies I think that
2 will be our Number Two

3 MS GUFFEY Two

4 MR NICKLES Is that correct?

5 MR CORNING Correct

6 MR NICKLES Copies for members of the committee

7 (Grievant Exhibit Number Two was marked for
8 identification purposes)

9 Q This document came to you in advance of the
10 effective date of the reduction in force, is
11 that correct, Ms Glenn?

12 A I'm I don't remember exactly when I
13 received it, but it would have been right about
14 that time of when I took that position

15 Q Right And the reduction in force was
16 effective June 1 This tells you what you're
17 going to be doing the next day, is that
18 correct?

19 A Yes

20 Q Okay And what is CSI Operations?

21 A Stevenson Correctional is

22 Q SCI, I'm sorry

23 A Stevenson Correctional and Operations is just
24 the area that processes inmates in and out,
25 keeps counts correct, paper work

1 Q Where was the library located?

2 A It was in a separate building that also housed
3 a classroom

4 Q Were you familiar with that building?

5 A Yes

6 Q Had you worked in that building before?

7 A Yes

8 Q Had you worked in that building as a librarian?

9 A Yes

10 Q Was that the building you worked in immediately
11 before the RIF?

12 A Yes

13 Q And was it the building you worked in
14 immediately after the RIF?

15 A Yes

16 Q At one-half the pay, correct?

17 A Roughly

18 Q Did you subsequently apply for any positions as
19 an educator?

20 A I did I applied for the position of English
21 teacher at Trenton

22 Q Okay Did you apply for a position at Graham?

23 A I did

24 Q Did you get that job?

25 A I did not

- 1 Q Okay What position were you holding when you
2 applied for the job at Graham?
- 3 A I was I was a classroom teacher, but on
4 paper I was a librarian at Trenton
- 5 Q Were you considered for the Graham position?
- 6 A Not the first time it was posted
- 7 Q Were you given a reason?
- 8 A I had not completed my six months probationary
9 period as a librarian at Trenton
- 10 Q Let me get this straight How had long you
11 worked for the Department of Corrections at the
12 time?
- 13 A At the time I applied the first time?
- 14 Q Yes, ma'am
- 15 A About 13 years
- 16 Q Okay And they told you you couldn't even be
17 considered for that job because you were in a
18 probationary position?
- 19 A That's right
- 20 Q Are you still upset about that?
- 21 A I am
- 22 Q Was somebody actually hired for that position?
- 23 A Not at that time
- 24 Q Okay Who told you that you couldn't apply for
25 the job?

1 A Recruiting told me, and then I talked to Mr
2 Burns, who was acting superintendent, and he
3 said I couldn't

4 Q Okay And you were in a probationary position
5 because you had been separated by reduction in
6 force, is that correct?

7 A No I was in a probationary period because
8 they had moved me from classroom teacher to
9 librarian, but it was only on paper I was
10 still actually in the classroom

11 Q Okay So in your view, you were doing the same
12 duties, they just labeled it differently?

13 A Right You can't lateral within six months

14 Q Okay And that label is what kept you from
15 being considered for the other position?

16 A Right

17 Q Regardless of what the reality was?

18 A That's right

19 Q When you initially went through the reduction
20 in force, did you have the opportunity to speak
21 with Mr Near or anyone representing the
22 Department of Corrections?

23 A I spoke with Mr Near

24 Q Did you have a personnel file at the Department
25 of Corrections?

1 A I'm sure I did

2 Q Okay Would your certificate have been in that
3 file?

4 A I'm sure it would have

5 Q Would that certificate have shown that you also
6 were qualified to teach, in addition to
7 providing library services?

8 A I would assume so

9 Q Okay Did Mr Near suggest to you that you
10 might be able to bump someone in a teaching
11 position as opposed to a library position?

12 A He did not

13 Q When you were doing your job as a librarian,
14 who was the person that acted as your
15 supervisor?

16 A The principal

17 Q And did you have regular interactions with the
18 principal?

19 A Yes, the principal or the lead teacher wherever
20 I was, yes

21 Q Okay Did you have regular interactions with
22 the central administrative staff of the
23 Department of Corrections?

24 A I did

25 Q In what respect?

1 A I I went to headquarters a good bit when I
2 worked at Kirkland and Broad River and
3 Stevenson to pick up papers or movies or pet
4 food when we used to have pet therapy I
5 I went up to headquarters to deal with general
6 counsel when I was copying or MSU and lock-up
7 inmates, questions being answered I I
8 spent time at headquarters frequently

9 Q Did any of those people supervise you on a
10 regular basis or sign your evaluations?

11 A My principal signed signed my evaluations,
12 but I took directions from the superintendent
13 as well as the principal

14 Q Okay Do you consider yourself an educator?

15 A I do

16 Q Have you performed training outside of the
17 Department of Corrections to maintain your
18 certificate?

19 A I have

20 Q And is maintaining your certificate necessary
21 for you to be compensated on the teacher pay
22 schedule for the Palmetto Unified School
23 District?

24 A It is

25 Q Okay Do you know if correctional officers who

1 perform duties as librarians in other areas,
2 are they required to maintain certificates?

3 A I don't think they are

4 Q Do you know whether they're paid on the teacher
5 pay schedule?

6 A They are not

7 Q Sort of like what happened to you after the
8 RIF?

9 A Yes

10 Q I don't have any other questions at this time

11 **MS GLENN - CROSS EXAMINATION BY MR SUMMERS**

12 Q Ma'am, my name is Lake Summers I represent
13 the agency in this matter I know it's late in
14 the day I understand that there is still
15 emotion associated with these events So I'll
16 be as brief as I can I appreciate your
17 patience Do you recall, ma'am, when you
18 applied for the position that you were speaking
19 of at Camille Graham?

20 A It was it would have been maybe two years
21 ago

22 Q Two years ago from now?

23 A It was right around December Carol died in
24 October It would have been about December or
25 January of I think it was two years ago to

1 the best of my knowledge

2 Q And you talked in terms Mr Nickles asked
3 you if you considered yourself to be an
4 educator

5 A I am

6 Q But in answering questions from Mr Nickles,
7 you indicated that you would have interactions
8 with the staff at the Department of
9 Corrections That you had had interactions
10 with the Department of Corrections staff as Mr
11 Nickles indicated Do you recall talking about
12 going up to headquarters and general counsel?

13 A Yes

14 Q Okay And you described meeting Mr Near

15 A Yes

16 Q Was that a one on one meeting?

17 A It was

18 Q Do you recall the circumstances when that
19 occurred and where that occurred?

20 A It was right after the RIF was announced, and
21 they called everybody up to headquarters to
22 discuss their situation And I was in his
23 office He offered me the job of corrections
24 officer

25 Q When you say their situation, what did what

1 do you mean by their situation?

2 A I I think everybody who was involved in the
3 RIF went up individually to discuss their
4 options, each person's options

5 Q And this is with Mr Near?

6 A I think so

7 Q And do you recall what position Mr Near held?

8 A He was Director of Human Resources, or I don't
9 know exactly what his title was

10 Q And that was for the Department of Corrections?

11 A Yes

12 Q So each person, as you can recall, affected by
13 the reduction in force went and talked to the
14 Director of SCDC's Division of Human Resources?

15 A I think they had the opportunity to

16 Q Yes, ma'am And again, forgive me, I'm just
17 going through my notes to make sure I can get
18 through this efficiently You talked in terms
19 of or testified that your job duties after
20 the effective date of the reduction in force
21 were in many ways the same as they were before
22 the effective date of the reduction in force,
23 correct?

24 A Yes

25 Q Okay And you had the memorandum indicating

1 you don't recall when you got the
2 memorandum?

3 A I don't

4 Q Did the person who gave you the memorandum,
5 whose signature appears there, did that person
6 have a conversation with you or sit down with
7 you and describe to you what was going to
8 happen or what the expectations were before
9 that memorandum was generated?

10 A I don't I don't think so I mean I knew her
11 because I was already working at Stevenson So
12 I think I think she just I know she
13 gave it to me in her office I do remember
14 going to her office and her giving that to me,
15 but I don't remember discussing in detail any
16 duties

17 Q You don't remember discussing any detail in
18 any detail the duties aside from what's on that
19 memorandum?

20 A Right She she knew that I knew how to be
21 a librarian, so

22 Q And had you at that point undertaken any kind
23 of training to be a correctional officer?

24 A I had

25 Q When did you do that?

1 A Oh, no, not not by June I went to I
2 went to basic training later on that summer
3 I think in August I went through basic training
4 to be an officer

5 Q And you completed that?

6 A Yes, I did

7 Q Now, let me go back to some questions that Mr
8 Nickles asked you early on Mr Nickles asked
9 you whether or not you had encountered any
10 negative statements about the difference in pay
11 or salary between educators and other
12 Department of Corrections personnel Do you
13 recall those questions?

14 A I do

15 Q And you used the word undercurrent Do you
16 recall using that word?

17 A Yes

18 Q And you testified that no one had, to your
19 recollection, had said anything mean to you?

20 A Right

21 Q And that no one had said anything obvious to
22 you?

23 A Right

24 Q But nonetheless, your testimony was that you
25 perceived this undercurrent? Is that first

1 of all, was that your testimony?

2 A Yes

3 Q Okay And I guess my question would be what
4 were there any statements at all by anybody
5 you can identify that led to this perception?

6 A I think when I joined the Department as a
7 librarian, other teachers probably said things
8 like don't be waving your paycheck around on
9 pay day because there is jealousy or tension or
10 whatever It was just one of those things you
11 just sort of heard about It wasn't but
12 nobody no officers said anything to me

13 Q So your recollection is that other teachers,
14 when you first joined, advised you to act or
15 not act in a certain way because of what was
16 perceived jealousies or

17 A I think so That's my recollection

18 Q Well, ma'am, I thank you for answering my
19 questions I don't have any other questions
20 for you Mr Nickles may If he does not,
21 members of the panel might

22 **MR NICKLES** I don't have any further questions for
23 Ms Glenn

24 **MS KUDELKA** I have one question

25 A Okay

1 **MS KUDELKA** When you mentioned the acting
2 superintendent that you had at that time
3 had told you I guess it's Mr Byrd Was
4 Mr Byrd the acting superintendent?

5 A Mr Burns

6 **MS KUDELKA** Ms Burns?

7 A Mr Burns

8 **MS KUDELKA** Mr Burns, okay And he was the acting
9 superintendent What had happened to the
10 superintendent, do you know?

11 A I think Mr Blanton had retired

12 **MS KUDELKA** Retired

13 A or he yeah I think he

14 **MS KUDELKA** Was that during the RIF that he did
15 that?

16 A No

17 **MS KUDELKA** No

18 A This was after, but I think he was he had
19 retired, and Mr Burns was taking his place but
20 didn't become the superintendent, but he was at
21 the time in that position

22 **MS KUDELKA** Okay That's my only question Thank
23 you

24 **MR COOPER** I have a quick one This memo when you
25 were assigned very similar duties, if not the

1 exact same duties as a librarian, plus
2 additional duties as a correctional officer,
3 did you raise any objection to anybody,
4 something to the effect of, hey, I'm doing the
5 same job but with half the pay?

6 A I did not

7 **MR COOPER** You just accepted the the new
8 assignments?

9 A I did I didn't think I had a choice

10 **MR COOPER** Okay

11 **MS HUTTO** I want to ask how long did you serve as a
12 I'm sorry How long did you serve as a
13 correctional officer?

14 A About a year and three-quarters maybe, a little
15 less than two years

16 **MS HUTTO** What was the circumstances that caused
17 you to go from a correctional officer to now a
18 classroom teacher?

19 A Well I saw a position posted on the board as
20 English teacher at Trenton So I just decided
21 to apply And I applied and I was chosen for
22 that position, but that was a year and that
23 was a year and a half after the RIF or longer

24 **MS HUTTO** I'm sorry, I'm a little bit confused now
25 Now which position were you saying that you

1 were told you could not either apply for or
2 could not be considered for?

3 A That was the position of librarian at Camille
4 Graham

5 **MS HUTTO** Okay, okay

6 A That was after later

7 **MS HUTTO** Okay, thank you

8 **MR NICKLES** I have one point of clarification, if I
9 might

10 **MS GLENN - RE-DIRECT EXAMINATION BY MR NICKLES**

11 Q Ms Glenn, you were asked if you objected to
12 this new assignment You did file a grievance
13 concerning the reduction in force, did you not?

14 A Well, yes

15 Q And you were seeking to be re-employed as a
16 librarian, were you not?

17 A Well, yes

18 Q Okay, thank you

19 A But I did not complain to

20 Q You took legal measures?

21 A Right

22 Q Okay

23 **MR MCCLARY** Ms Glenn, when you went from being the
24 librarian and you went to being a correctional
25 officer and was given this memo, was there a

1 PD, a position description, I should say? Was
2 there ever a position description outlining
3 what your new duties would be?

4 A I don't think so

5 MR MCCLARY Okay

6 A Not that I recall

7 MR MCCLARY Thank you

8 MS KUDELKA Then I guess a follow up question would
9 be was there ever an EPMS for this particular
10 position done, planning stage and then
11 eventually

12 MS ELMORE Evaluation

13 MS KUDELKA evaluation?

14 A I had that all the years I was a librarian, and
15 I've had it since as a classroom teacher
16 librarian I don't remember that sort of an
17 evaluation as an officer There may have been
18 one I just don't remember it

19 MS KUDELKA Okay

20 MR MCCLARY Thank you, Ms Glenn

21 MR NICKLES Thank you We would ask that Ms Glenn
22 be excused as well

23 MR SUMMERS We would agree

24 MR NICKLES Thank you very much

25 MR MCCLARY Thank you You are excused Do you

1 want to break for supper and then be back at
2 6 00?

3 **MS KUDELKA** Let's just keep going

4 **MR MCCLARY** Okay

5 **MR CORNING** Is there a quarrel with anyone?

6 **MR SUMMERS** And refreshments at any time

7 **MS KUDELKA** Is it appropriate for us to kind of ask
8 what tomorrow's going to be like when they
9 return

10 **MR MCCLARY** That's fine

11 **MS KUDELKA** as far as how many

12 **MR MCCLARY** Roland?

13 **MR CORNING** Why don't we wait until counsel gets
14 back

15 **MS KUDELKA** Right

16 **MR CORNING** I don't know who his witnesses are
17 going to be

18 **MR SUMMERS** I'm in the same boat you are, ma'am
19 I'm waiting to see

20 **MS KUDELKA** Okay, where we are

21 **MR SUMMERS** where we're going

22 **MR CORNING** How many witnesses did we cover today?
23 Is anybody keeping a count?

24 **MR SUMMERS** I believe we covered ten

25 **MS BRABHAM** Ten

1 MR CORNING It's probably going to be like today if
2 we're doing about ten

3 MR SUMMERS There are twenty total grievants

4 MR MCCLARY They've got twenty?

5 MR SUMMERS Correct

6 MR MCCLARY And then how many do you have?

7 MR SUMMERS Right now

8 MR CORNING I think Monday

9 MR SUMMERS Monday's going to be a realistic
10 alternative or course of outcome as far as six
11 maybe, give or take

12 MR CORNING Of course, any any time it goes
13 over three days, the attorneys have to buy the
14 panel members and the attorney for the panel a
15 nice dinner

16 MR SUMMERS That's always an incentive then to move
17 very quickly, not that we would not want to
18 have dinner with ya'll Incomes are what
19 incomes are these days We can all have dinner
20 and

21 MR CORNING Well, from her I would accept that I
22 understand, counsel

23 MR SUMMERS It's always over it's always the
24 overhead, sir It's always the overhead I
25 hear sometimes the same thing My responses

1 are

2 **MR NICKLES** We have additional witnesses that we
3 would like to call tomorrow by telephone and to
4 offer their live testimony We hope that we'll
5 be able to complete our presentation tomorrow
6 I don't know any reason why we should not, if
7 we are as efficient as we were today

8 **MS KUDELKA** How many do you have? Is it ten more?

9 **MR NICKLES** Let's see, you can count them up

10 **MS GUFFEY** One, two, three, four, five, six, seven,
11 eight, nine, ten, including the telephone, and
12 and we still have Ms Jones outstanding, so
13 ten

14 **MR NICKLES** And we we have one who submitted an
15 affidavit but is unavailable due to some
16 unforeseen responsibilities in her job now in
17 the State of Georgia And Lake was very kind
18 to say that we'll try to work that out either
19 by having her testify by telephone, presenting
20 some sort of deposition de bene esse to you, if
21 that need be, or simply relying exclusively on
22 her affidavit

23 **MR SUMMERS** We'll fashion some kind of resolution,
24 figure out the most efficient way to do it
25 within to protect everybody's interests on

1 both sides_

2 **MR NICKLES** So, what's the pleasure of the
3 committee as to tomorrow?

4 **MR MCCLARY** I would like to start again at 9 00
5 o'clock unless someone else has some issues
6 I've got to drop my little boy off So 9 00
7 o'clock is a good time for me to get here

8 **MR NICKLES** Okay

9 **MR SUMMERS** Fine, more than understood that

10 **MR NICKLES** Certainly suits

11 **MS KUDELKA** Should we go ahead and put on the
12 record with them about Friday and that we have
13

14 **MR MCCLARY** I think it's been mentioned to them
15 kind of off record, but 3 30 we're going to try
16 and close out around 3 30 on Friday We have
17 one of the committee members that has a
18 commitment that they need to attend to

19 **MR NICKLES** Sure, certainly

20 **MR SUMMERS** More than understandable, and again,
21 with the flexibility of having Monday, I think
22 the rate at which we're going through the
23 witnesses and the progress we can make
24 tomorrow, I think that should be no problem
25 whatsoever

1 **MR NICKLES** And what I would ask the indulgence of
2 the committee is to the extent that it looks
3 like we finish a little early even with our
4 witnesses, I know that you might want to have
5 some continuity with your case and start it on
6 Friday morning instead of

7 **MR SUMMERS** That was one thought

8 **MR NICKLES** starting at 4 00 o'clock on
9 Thursday afternoon And we certainly have no
10 objection to that if that happens to be the
11 case

12 **MR SUMMERS** Obviously, it's up to ya'll's
13 discretion, but certainly if we get to a point
14 after lunch tomorrow or mid afternoon and
15 they're lining up, number one, I would think it
16 might be instead of launching off into our
17 case and getting into some detailed matters mid
18 afternoon tomorrow might be a little bit less
19 than desired Start fresh Friday morning And
20 also, too, Mr Nickles, if there are folks,
21 whether it's Mr Williams or Ms Jones,
22 telephonically whose availability doesn't work
23 out for tomorrow, I'm willing to interrupt our
24 particular presentation at the appropriate time
25 to let those folks come in and make them

1 available for the panel

2 **MR MCCLARY** I would say, just speaking for myself,
3 I hate to burn a lot of daylight, but I
4 understand your point, too You don't want to
5 get started and

6 **MR SUMMERS** To the extent that you already indulge
7 us, I'd be very appreciative And certainly,
8 if not, we'll move on and keep driving on

9 **MR MCCLARY** We'll work with you

10 **MR SUMMERS** Thank you very much

11 **MR MCCLARY** I think it said something about
12 (inaudible)

13 **MR SUMMERS** Very well

14 **MS KUDELKA** Do you anticipate that Friday you can
15 wrap up your witnesses?

16 **MR SUMMERS** I would like to think so, ma'am I
17 don't know I'd like to think, at the very
18 least, to get to the bulk of them There might
19 be one that would I'm not sure precisely
20 what Director Ozmint's schedule is on Friday
21 I'm very confident that the forecast on Monday
22 is wide open right now And I think I
23 would anticipate that Director Ozmint will take
24 some time Mr Near will take some time I
25 can't assure you that we will We'll make

1 every effort to do so If not, we would only
2 have a limited number of witnesses at most
3 first thing Monday morning to get through

4 **MS KUDELKA** Okay Because we'd still have closings
5 and deliberations So we don't want

6 **MR CORNING** I assure you we we will be here on
7 Monday

8 **MS KUDELKA** Oh, yeah, I know we will be Monday I
9 just don't want us to go past Monday if we can
10 continue to to move tomorrow

11 **MR MCCLARY** Right

12 **MR CORNING** Right My inclination

13 **MS KUDELKA** And if we're done at 2 00 o'clock, then
14 we can leave

15 **MR CORNING** now and the panel will have to
16 decide this, but my inclination with the panel
17 is to after the testimony is completed and
18 the argument is completed, perhaps and
19 depending on how much time we have to
20 deliberate, you've got 1,200 pages And it
21 might be helpful for the panel for the
22 panel to have some time to go back, and we've
23 done this before, and review some of the
24 documentation rather than trying to rush
25 through a decision in the middle of the

1 afternoon because this is a much more complex
2 case than a lot of the panels hear So we

3 **MR NICKLES** It's been more than five years We can
4 wait a little bit longer

5 **MR CORNING** Well, we're not but I mean we might
6 want to reschedule the panel getting together
7 just to deliberate at a date, you know, close
8 but not not

9 **MR NICKLES** And I've been involved in those
10 proceedings before and certainly don't have any
11 objection to it

12 **MR SUMMERS** Nor do I Whatever makes sense and is
13 most efficient, we'll certainly work around
14 that

15 **MR CORNING** Because that'll give them time to
16 review the testimony in which how long will
17 it take, Sandra, to get the testimony on the
18 accessible on the machine?

19 **MS BRABHAM** Not long at all I mean

20 **MR CORNING** So the panel will have access pretty
21 shortly, and they can pull it up on their
22 computer and listen to the testimony of any
23 witnesses they want to rehear And that's
24 another reason I think it might be helpful to
25 perhaps in a case this complex and with

1 this much evidence

2 **MR SUMMERS** I think that's very wise If it helps
3 the panel, it helps us, sir We're all for it
4 Thank you

5 **MR MCCLARY** Thank ya'll very much

6 **MR NICKLES** Thank you

7 **(There being no further testimony, the hearing was**
8 **adjourned)**

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CERTIFICATE

This is to certify that the transcript of the appeal hearing in the matter of James "Cal" Bell, et al , versus South Carolina Department of Corrections, et al consisting of Two Hundred Sixty-One (261) pages, is a true and correct transcript of CDs transcribed by me to the best of my ability without the benefit of being present at the proceeding

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel, nor do I have any interest, financial or otherwise, in the outcome of same

IN WITNESS WHEREOF I have hereunto set my hand and seal this 19th day of April 2009



Shana L Greenway
Notary Public for South Carolina
My Commission Expires 11/29/2009

STATE OF SOUTH CAROLINA
OFFICE OF HUMAN RESOURCES
STATE EMPLOYEE GRIEVANCE COMMITTEE

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)

TRANSCRIPT OF APPEAL HEARING
BEFORE THE SOUTH CAROLINA
EMPLOYEE GRIEVANCE COMMITTEE

HELD ON NOVEMBER 6, 2008
DAY 2

W ALLEN NICKLES, III, ESQUIRE
DONA L GUFFEY, ESQUIRE
ATTORNEYS FOR THE APPELLANTS

LAKE E SUMMERS, ESQUIRE
ATTORNEY FOR THE RESPONDENTS

ROLAND S CORNING, ESQUIRE
ATTORNEY FOR THE COMMITTEE

KARL MCCLARY, COMMITTEE CHAIR

1 **MR MCCLARY** This is the second day of the hearing
2 of the appeal of reduction in force instituted
3 by Bell, et al , against the South Carolina
4 Department of Corrections being held in
5 Columbia, South Carolina this 6th day of
6 November 2008 A record is being made of the
7 hearing For the record, my name is Karl
8 McClary I'm with the Department of Motor
9 Vehicles And other members of the State
10 Grievance Committee present are Herb Cooper,
11 Glynnis Elmore, Lynn Hutto, Lesia Kudelka The
12 committee attorney is Roland Corning, Attorney
13 General's Office Appellant is represented by
14 attorney Allen Nickles The employee agency
15 the employing agency is represented by
16 attorney Lake Summers Assisting the committee
17 is Sandra Brabham, Office of Human Resources
18 Each side will be given the opportunity at the
19 appropriate time to ask questions of witnesses
20 The presiding officer, any members of the
21 committee or committee attorneys may direct
22 questions to any party or witness at any time
23 in the proceeding Before closing the hearing,
24 the presiding officer will allow both parties
25 to present a brief summary of closing

1 statements if they so desire Appellant will
2 have an option of closing first or last I
3 wish to point out that only testimony and
4 evidence pertinent to the grounds on which the
5 appeal is based, or pertinent to the charge on
6 which the agency action is based will be
7 allowed Testimony or evidence which is
8 repetitive or cumulative will not be permitted
9 Are there any questions by either party?

10 **MR NICKLES** No questions

11 **MR SUMMERS** None at this time, sir

12 **MR CORNING** I'd like to put on the record that I've
13 discussed with counsel and Charlie Williams,
14 one of the witnesses, is going to be he's
15 ill He's not able to be here for the panel to
16 see He's going to be deposed next Wednesday
17 at 11 00 a m , and there will be a camera
18 present so the panel will ultimately be able to
19 see the questioning, the questions and answers
20 on video And that's been agreed by the
21 parties

22 **MR SUMMERS** Thank you, sir

23 **MR CORNING** And if anybody's available at 11 00
24 o'clock next well, we probably need them
25 all or we need none They'd all have to be

1 available

2 **MR SUMMERS** Yes, sir I think that's the
3 (inaudible)

4 **MR CORNING** So if you're all available, then we
5 could get together for 30 minutes, then or
6 whatever it's going to take and listen to the
7 witness in case you have any questions if you
8 choose to do so If not, it's going to be
9 without you'll just have to rely on the
10 attorneys' questions of the witness

11 **MR MCCLARY** Witnesses are not are asked not to
12 discuss this case either before or after
13 testifying until they are excused This is not
14 intended to preclude the parties from entering
15 into discussion with their respective
16 witnesses Does any witness not understand
17 this? Is there any other witnesses today that
18 have not been sworn in?

19 **MS GUFFEY** Yes

20 **MR NICKLES** Yes Let's bring those in

21 **MR MCCLARY** Swear the witnesses in now, all of them
22 at one time?

23 **MR CORNING** Yeah, if they're here

24 **MR MCCLARY** Just come around front here, please
25 How are you doing?

1 UNIDENTIFIED FEMALE Good morning

2 MR SUMMERS Ma'am, could you come on right in here?

3 UNIDENTIFIED FEMALE Okay

4 MR NICKLES If you'd stand up also, please

5 UNIDENTIFIED FEMALE Okay

6 MR MCCLARY I'm going to read you a little
7 instructions and then he's going to

8 MR SUMMERS Mr McClary is the board

9 MR MCCLARY I'm going to issue just a little
10 instruction Good morning to everybody

11 WITNESSES Good morning

12 MR MCCLARY And then Herb is going to issue oath of
13 oath to the witnesses Okay Witnesses
14 are asked not to discuss this case either
15 before or after testifying until they are
16 excused This is not intended to preclude the
17 parties from entering into discussion with
18 their respective witness Does any witness not
19 understand this? Witnesses are to remain
20 available after testifying until they are
21 excused by the presiding officer After the
22 opening statements statements, witnesses
23 may not remain in the hearing room except when
24 called to testify Witness witnesses will
25 be asked to testify under oath At this time,

1 the secretary will determine which witnesses
2 are parties listed are present and
3 administer the oath to all those witnesses
4 Herb, you understood that?

5 **MR COOPER** Let's have the roll calls If you can
6 just go down it, I can check your name off

7 **MS WOODLIEF** Paula Woodlief

8 **MS SMITH** Carolyn McIver Smith

9 **MS MCCLANAHAN** Beverly McClanahan

10 **MR DREYER** William Dreyer

11 **MS WILLIAMS** Maggie L Williams

12 **MS CROXTON** Jeannie Croxton

13 **MS MARTIN** Geneva Martin

14 **MR COOPER** I'm missing one Do we need to discuss
15 that now or just

16 **MR CORNING** But that one wasn't was that Mr
17 Williams?

18 **MS GUFFEY** Jones, Jones, Ms Jones We've not

19 **MR COOPER** Etta, Etta Jones?

20 **MS GUFFEY** Etta Jones

21 **MR NICKLES** Ms Jones has been unavailable, and we
22 we have discussions about how that'll be
23 addressed

24 **MR COOPER** Please raise your right hand Do you
25 swear or affirm that the testimony you will

1 give today is the whole truth and nothing but
2 the truth?

3 **WITNESSES** (Affirmative responses)

4 **MR COOPER** Are we still in executive session?

5 **MR CORNING** Yes You might want to read that again
6 about the witnesses and discussion

7 **MR MCCLARY** The Appellant, the agency witnesses or
8 anyone else related to the case are not to
9 discuss the case with any member of the State
10 Grievance Committee before, during or after the
11 hearing until the final decision is reached
12 The only time the case is to be discussed is
13 during the formal hearing procedure The
14 matter is still considered to be pending before
15 the committee during the time involved, and a
16 request for a reconsideration of a committee
17 decision or until the time has passed for the
18 appeal to the Administrative Law Court The
19 only time the case is to be discussed is during
20 the formal hearing procedure After after
21 hearing this appeal, the committee will report
22 its finding and decision in writing to the
23 employee and the employing agency within twenty
24 calendar days of the conclusion of the hearing
25 The decision shall be final in terms of

1 administrative review The hearing remains in
2 executive executive session So ya'll can
3 be excused except for the one who's going to
4

5 **MR NICKLES** That's Ms Woodlief

6 **MR MCCLARY** Okay, thank you

7 **MR NICKLES** We'll be with you as soon as we can

8 **MR CORNING** Counsel, is Mr Williams your witness?

9 **MR NICKLES** He is

10 **MR CORNING** Well, when you get the video deposition
11 back, would it be do we want to make it a
12 committee exhibit or one of yours, grievant
13 exhibit number whatever it happens to be when
14

15 **MR NICKLES** It'll be a grievant exhibit

16 **MR SUMMERS** I would think it would be a grievant
17 exhibit

18 **MR CORNING** All right We'll just have to keep
19 that in mind at the end, and we'll add it as a
20 grievant exhibit after We don't even know how
21 many there are going to be yet

22 **MR NICKLES** There are a couple of other
23 housekeeping items you probably want to discuss
24 as well related to that

25 **MR CORNING** Okay

1 **MR SUMMERS** And, sir, with your indulgence, maybe
2 I'm just missing all my notes Mr Bell I
3 know Mr Cobb was here yesterday We talked
4 about Ms Jones and Ms Woodlief Are they
5 I guess Bell, Cobb and Woodlief, will they be
6 coming today?

7 **MS GUFFEY** Woodlief's right here

8 **MR NICKLES** Ms Woodlief is right in front of you

9 **MR SUMMERS** Ma'am, I'm sorry

10 **MR NICKLES** Mr Bell and Mr Cobb will be here

11 **MR SUMMERS** Okay, very well, thank you And, Ms
12 Woodlief, good to see you this morning

13 **MS WOODLIEF** Thank you

14 **MR MCCLARY** Ready whenever you are, sir

15 **MR NICKLES** Thank you

16 **MS WOODLIEF - DIRECT EXAMINATION BY MR NICKLES**

17 Q Please state your name and home address

18 A Paula Woodlief, 2233 Flint Hill Road, Camden,
19 South Carolina

20 Q Ms Woodlief, where are you employed?

21 A I work for Sumter County School District Two at
22 Brewington Academy

23 Q Okay And there was a reason you were called
24 early this morning, is that right?

25 A Yeah I really am under contract, and I need

1 to be in my classroom as much as possible

2 Q Are you receiving a merit?

3 A Yeah, and I have a banquet tonight because I am
4 teacher of the year at my school

5 Q Congratulations

6 A Thank you

7 Q Were you employed by the Palmetto Unified
8 School District before January 1, 2003? Excuse
9 me, June 1, 2003 I always get that wrong

10 A Yes, I was

11 Q Okay And what were you doing for the district
12 before June 1, 2003?

13 A I was education coordinator at Kershaw
14 Correctional Institution

15 Q What does an education coordinator do?

16 A In the particular position I was in, I was over
17 all the school functions and also helped out
18 with various duties for the institution,
19 whatever the warden needed me to do Other
20 than the school, I was responsible for the day
21 to day school operations, you know, overseeing
22 adult ed programs, literacy and GED classes
23 I ran three vocational classes, supervised
24 those I also had several grant programs and
25 did various other tasks that were assigned to

1 me by the institution

2 Q How long were you in that position?

3 A I went to Kershaw Correctional Institution in
4 September of 1997

5 Q Did you work in any other positions or any
6 other institutions while in this Palmetto
7 Unified School District?

8 A Yes, sir From approximately March 1997 until
9 I went to Kershaw, I worked at Stevenson
10 Correctional Institution I was sent there to
11 open the Shock Probation educational program
12 when they moved Shock Probation from Wateree
13 Prior to that, from September 16, 1988, until
14 sometime in March, I worked at Broad River
15 Correctional Institution as a teacher and as
16 education coordinator at various times when we
17 would be without a principal Prior to that,
18 from 19 November 3, 1986, to September 16,
19 1988, I was a teacher at Manning Correctional
20 Institution

21 Q Okay Now, I'm going to ask you to look at a
22 page of this record I believe it is page 189
23 If I could have that on the screen, please
24 And in the material in front of you, Ms
25 Woodlief, that's in Tab 4

1 A I can

2 Q Yes, you can look at that page also

3 A My vision isn't that good

4 Q It's kind of sideways

5 A Yes

6 Q on the on the screen

7 **MR SUMMERS** That would his sideways, yes, sir

8 Q Do you have that in front of you?

9 A Yes, sir

10 Q All right Well let's talk about these
11 institutions in terms of where they are
12 physically located in South Carolina

13 A Uh-huh (affirmative response)

14 Q You've said Kershaw is where you worked most
15 recently, is that correct?

16 A Yes, sir

17 Q And if you look at these circles that are drawn
18 on the map, what area is that in?

19 A Five

20 Q Number five?

21 A Yes, sir

22 Q Okay And go through the other institutions
23 and point out where they're located

24 A All the other institutions, Stevenson, Manning
25 and Broad River are in area one

- 1 Q Okay And you worked in both of those?
- 2 A Yes I worked in areas one and five
- 3 Q Did you realize you were working in circle
- 4 number one or circle number five when you were
- 5 actually employed?
- 6 A We didn't have those circles
- 7 Q Okay Have you ever seen these circles before
- 8 the reduction in force?
- 9 A No, sir I saw it the day, you know, they laid
- 10 us off But prior to that, we did not have
- 11 these circles
- 12 Q Okay So before you were laid off, nobody ever
- 13 told you you were working in circle number
- 14 five?
- 15 A No, sir
- 16 Q Or before that, circle number one?
- 17 A No, sir We had different regions before that,
- 18 but they weren't they were just for the
- 19 wardens Like they had regional director kind
- 20 of things, but it had nothing to do with
- 21 Palmetto Unified School District We were all
- 22 one school district within the state
- 23 Q Okay
- 24 A We didn't have school district regions
- 25 Q Okay Where what certifications did you

1 hold or do you currently hold?

2 A I'm certified in secondary English I hold a
3 Master's Degree in education

4 Q And you are currently teaching in the public
5 school systems?

6 A Yes, sir

7 Q What opportunities, if any, were you given to
8 retain employment after the reduction in force?

9 A Mr Near expressed that the only thing I could
10 be was just a regular first line officer that
11 made, I think, somewhere in the neighborhood of
12 \$25,000 a year, just and stated that I had
13 no security experience

14 Q Okay

15 A Because then that's why I had to go back to
16 be trained, which I'd already been through
17 training

18 Q Had you ever participated in the training of
19 educators in the school district?

20 A The training of educators?

21 Q Yes

22 A Oh, yes, yes When I was at Broad River
23 Correctional Institution, we were a relatively
24 well staffed school And so they the
25 expansion of SCDC began after Broad River, and

1 they opened several other institutions They
2 opened Allendale, Lee, Turbeville, Evans and
3 there might have been one other institution
4 they opened But during that time period, they
5 sent all the new teachers that were going to
6 those new institutions to our school for me to
7 train and show them how to run a classroom

8 Q All right At that time you were in Richland
9 County?

10 A Yeah

11 Q Okay And there was central training for the
12 teachers who were dispersed throughout the
13 state?

14 A Yeah They would come to Columbia and spend a
15 week with me in my classroom

16 Q So there weren't separate training facilities
17 for circles number six, seven, eight, nine, two
18 or three, those types of things?

19 A We didn't have any of those circles

20 Q Okay Did some of the folks that you helped
21 train as teachers retain their positions after
22 the reduction in force?

23 A Yeah, but I don't remember specifically Some
24 of the Lee teachers I know did, and the
25 Turbeville teachers would have retained their

1 their positions because those institutions
2 didn't have the reduction in force

3 Q Okay So as of June 1, 2003, how many years of
4 service did you have with the district?

5 A Sixteen

6 Q Do you feel confident that there were teachers
7 retained after June 1, 2003, who had less years
8 of experience than you?

9 A Oh, yes

10 Q Were you offered the opportunity to take any of
11 those teaching positions, any other locations
12 in the state?

13 A No, sir

14 Q Were you employed with the district at the time
15 of the lawsuit brought to enforce the statewide
16 pay schedule?

17 A Yes, sir

18 Q Did you participate in that?

19 A Yes, sir

20 Q Have you personally experienced any reactions
21 to the level of teacher pay while employed in
22 the district?

23 A Quite frequently

24 Q In what respect?

25 A The first time I experienced it was well,

1 initially, when I was hired, we can go back to
2 the day I was hired, I was told not to discuss
3 my pay with anyone in the Department of
4 Corrections because I was paid fully on the
5 teacher pay scale I was the first Master's
6 Degree, fully certified teacher that they had
7 hired I was hired shortly after the new law
8 that created the pay scales, the Education
9 Finance Act And I was told then don't ever
10 discuss your salary And then shortly after
11 that, I remember a time at Broad River
12 Correctional Institution they gave out some
13 state bonus checks And if you made so much
14 money, you got one check And if you made
15 another amount, you got a smaller check The
16 more you made, the smaller your little bonus
17 check I believe it was in the neighborhood of
18 \$200 or something And an officer asked me did
19 you get your bonus check I did not know there
20 was a difference in them I said sure She
21 said how much was it, and I told her And she
22 said you make more than \$50,000 a year, and I
23 was like, well, you know I didn't really
24 respond to her Well then that created a lot
25 of strife at Broad River even way back then

1 where employees would always make comments
2 about you make too much And then it really
3 wasn't that bad until I got to Kershaw And
4 quite frequently, I would go into the associate
5 warden's office, Stan Burns, and we would sit
6 around and talk about different issues I had
7 a lot of responsibility outside the school that
8 they expected me to do And he told me on
9 several occasions, well, you're not worth what
10 you make, you make too much money And I was
11 like, well I would always ask him why, and
12 he would be like, well, one thing was women and
13 the other thing was teachers just shouldn't
14 make that much money, and ya'll don't do any
15 work to make that much money, and just a lot of
16 negative comments And then at another point
17 in time, they put out the list of people that
18 made more than \$50,000 a year in the state
19 And our major, Derwin Neasman, made sure that
20 it was public knowledge He took a copy of it
21 and he showed it just about to everyone at the
22 institution that showed that I made more money
23 than most of the people working there, although
24 I have a Master's Degree and I had the
25 experience It was still an issue for them

1 that I made more money, and that they didn't
2 think teachers were worth that much money

3 Q Now, you said that you were only offered an
4 entry level correctional officer position?

5 A Yes, sir

6 Q And did you accept that?

7 A No, sir I couldn't work for \$25,000 a year
8 with my, you know, my lifestyle, my bills, my
9 mortgage and my income That was more than
10 half of what I was making, or less than half of
11 what I was making

12 Q Did you did you have any involvement with
13 the Department after the reduction in force?

14 A Yes, sir One of my jobs at the prison before
15 I was laid off was I was a post assault
16 information and resource officer

17 Q What does that mean?

18 A PAIR, that means if there's an assault on an
19 employee, I would go to the institution and
20 provide whatever services they needed as a
21 counselor, or I've even taken employees to the
22 hospital I would be sent to take them to the
23 doctor, make sure they had their medications
24 And the ultimate goal was to get them back on
25 the job by having a liaison, and so I I was

1 on call 24/7 for that position And,
2 therefore, my number and all that was in the
3 control room We were laid off June 1st In
4 July I received a call, and I know I've
5 documented it with you, but I don't remember
6 the officer's name off the top of my head And
7 this officer was very insistent They had had
8 an assault on an employee and she insisted I
9 come to the institution And I told her that
10 I was sorry, but I could not come out there
11 It was a liability for me to try to go in and
12 be a counselor when I was no longer under kind
13 of employment with the Department of
14 Corrections That I, you know, I couldn't come
15 out there And she basically begged me to come
16 to take care of this injured employee And I
17 I told her what procedures to go through
18 I told her, you know, you need to call the
19 acting on call official, but she was very
20 insistent And I had to disappoint her because
21 I felt like it was not in my best interest from
22 a liability point of view to go out there and
23 assist someone

24 Q Did you do any volunteer work?

25 A Yes, sir They asked me to come back for, I

1 believe, that summer and the following summer
2 I did go teach impact crime classes

3 Q Were you paid for that?

4 A No, sir

5 Q Were you offered any pink slip positions?

6 A Yes, sir In 2004, David Dunlap asked me if I
7 wanted to come back and be a pink slip paid by
8 Lancaster County Adult Education, and I would
9 work like 12 00 to 3 00, which would only be
10 part-time And, of course, that wasn't full
11 time employment I couldn't do that Plus, I
12 had a contract with Sumter County School
13 District Two by then

14 Q Before this particular proceeding, have you
15 participated in any grievance matters involving
16 the Department of Corrections?

17 **MR SUMMERS** I'm going to object to that particular
18 question regarding the relevance of it to these
19 proceedings

20 **MR NICKLES** And it will be apparent to the
21 committee

22 **MR CORNING** What's the question?

23 **MR NICKLES** Had she participated in any grievance
24 proceedings other than this particular matter
25 as a witness

1 MR CORNING I think I need to talk to counsel
2 outside the presence of the witness

3 MR NICKLES All right

4 (Off the record)

5 MR CORNING I'm going to allow the question

6 MR NICKLES Thank you

7 MR CORNING Your objection is overruled

8 MR NICKLES Thank you

9 Q Ms Woodlief, I don't want you to talk about
10 any names of any individual participants in the
11 in a grievance

12 A Okay

13 Q But were you, after your separation from
14 employment with the district, involved as a
15 witness in a grievance proceeding?

16 A Yes, sir

17 Q Was Mr Near also at that particular
18 proceeding?

19 A Yes, sir

20 Q Did you hear Mr Near say anything relating to
21 the employment of teachers and the reduction in
22 force?

23 A Yes, sir

24 Q What did you hear him say?

25 A He told another individual I was sitting

1 beside him He told another individual that
2 the funds were available to rehire the
3 teachers However, they were not going to
4 start announcing positions and rehiring
5 teachers until after June 1st when our recall
6 rights were over

7 Q Okay And that would have been after June 1,
8 2004, then, is that correct?

9 A Yeah

10 Q And was the particular proceeding you were
11 involved in between June 1, 2003, and June 1,
12 2004?

13 A Yeah I want to say it was around March

14 Q Okay Thank you Answer any questions that
15 Mr Summers or members of the committee may
16 have

17 **MS WOODLIEF - CROSS EXAMINATION BY MR SUMMERS**

18 Q Ma'am, we'll start with me My name is Lake
19 Summers As Mr Nickles just indicated, I
20 represent the agency in this matter I have a
21 few questions for you, obviously Once I'm
22 done, Mr Nickles may have some follow up
23 questions, and ultimately, the folks on the
24 panel may have some questions So that's how
25 it's going to go

- 1 A I'm familiar with the proceeding
- 2 Q Ma'am? You're familiar
- 3 A I'm familiar with it
- 4 Q Okay, very well Obviously, let's talk about
- 5 the last item you were testifying before the
- 6 panel about, this conversation that you or
- 7 this statement from Mr Near
- 8 A Uh-huh (affirmative response)
- 9 Q You recall testifying about that?
- 10 A Uh-huh (affirmative response)
- 11 Q And it was your recollection that that
- 12 particular event occurred in March of 2004?
- 13 A Somewhere in that neighborhood I could I
- 14 have I can figure out the right date if I
- 15 had my notes that ya'll wouldn't let me bring
- 16 in here
- 17 Q Well, we'll talk about that in just a second
- 18 Did you tell anybody about this conversation?
- 19 Don't tell me who, but did you tell anybody
- 20 about what you overheard from Mr Near?
- 21 A Yes
- 22 Q Did you tell your lawyer about it?
- 23 A Yes
- 24 Q Did you ever sit down and execute an affidavit
- 25 about this particular event?

1 A I wrote a letter to my lawyer

2 Q Wrote a letter to your lawyer Do you recall

3

4 **MR NICKLES** I'm going to object You know, this is
5 getting into attorney-client communication, Mr
6 Summers

7 **MR SUMMERS** Ultimately, it's the committee attorney
8 the objection has been

9 **MR NICKLES** I object This is this is
10 privileged

11 **MR SUMMERS** I'm not going into the contents, just
12 when the letter was written

13 **MR CORNING** I will let her say when she wrote the
14 letter, counsel

15 **MR NICKLES** Fine

16 Q Ma'am, when did you write this letter, best of
17 your recollection?

18 A Immediately afterwards

19 Q So that would have been March of '04?

20 A I'm not sure of the exact date

21 Q Okay

22 A It could have been in April I mean it's six
23 years ago

24 Q And let's talk more about Mr Near When you
25 had did you ever talk to Mr Near that day

1 on that event when you heard him make the
2 comment?

3 A I was sitting beside him Of course we spoke
4 I mean we just spoke as if I was sitting
5 like we've spoken here, hey, how are you
6 doing, but we Mr Near and I did not engage
7 in any conversations like anything about
8 Corrections We didn't we didn't Mr
9 Near and I had no conversations about
10 Corrections He you know, I was like how
11 are you doing He said how are you doing
12 That was about the extent of our conversation,
13 but he knew I was sitting beside him

14 Q Now, you had did you interact with Mr Near
15 before the effective date of the RIF when it
16 came to your options as far as bumping rights?

17 A In what way do you mean did I interact with Mr
18 Near?

19 Q Did you meet with him?

20 A Did I meet with Mr Near? He had a meeting
21 with everyone

22 Q Where when did that occur?

23 A They informed us in March Sometime in April
24 he came out to the institution and met with
25 every employee

1 Q So when you say he met with every employee, was
2 it a group meeting or

3 A No, individual

4 Q Met with you individually then?

5 A Yes

6 Q And again for the panel, describe for the panel
7 what the substance of that conversation was
8 What did he tell you?

9 A He informed me that I had no security
10 experience and that I could be an officer, just
11 a regular blue shirt officer, first line, no
12 experience, started out at the bottom

13 Q Now, did you later you said you had already
14 had some experience Did you take training
15 previously as a correctional officer?

16 A I went through I never went through the new
17 police academy I went through the old police
18 I went through the police academy that was
19 not SCDC's I went to the Columbia Police
20 Academy down there past where SCDC is when my
21 training occurred So I did a week of that
22 when I was initially employed And then all
23 the open hand self defense, all the other
24 classes we were required to take throughout,
25 yearly classes that were documented I was

1 never certified, however, I would be put in
2 charge of inmate searches, and there would be
3 no other officer in there except for cadet
4 officers And I would search inmate property
5 I would be I was given access to any key in
6 the prison, which, you know, you have to be
7 certified to hold certain keys I had a master
8 key to the entire prison at Kershaw that I
9 kept So if if I didn't have some kind of
10 security experience, they wouldn't have let me
11 have a master key Plus, I walked I walked
12 lockup unassisted And when I worked at Broad
13 River Correctional Institution, I'm the only
14 female that ever worked death row as a teacher,
15 and I worked on there for six years with no
16 officers

17 Q And you talked about hand to hand and some
18 other training that you went

19 A Open hand self defense, how to that's not
20 that's to keep someone from attacking you,
21 and if you're being attacked, how to get away

22 Q Yes, ma'am And where did you get that
23 training?

24 A In the Department of Corrections at at the
25 institution Every year we had to take that

1 Q And those are part of your duties?

2 A Yes, sir We were required to be to have
3 that class

4 Q And that was required why?

5 A Why?

6 Q Yes, ma'am

7 A By by the accreditation

8 Q And the accreditation for?

9 A The prison, American ACA Accreditation

10 Q And the reason I'm asking these questions may
11 seem rather obvious, but you recall Mr Nickles
12 asking you you were employed by the
13 Palmetto Unified School District, do you recall
14 that question?

15 A Yes

16 Q And your response was?

17 A Yes

18 Q Well, it sounds like you were employed by the
19 Department of Corrections

20 A It was a dual employment situation We were
21 employed, and I was hired by Palmetto Unified
22 School District I was hired by Quay Roseman
23 and Myrtle Marshall I was hired actually by
24 people I was never interviewed by anyone from
25 the Department of Corrections that wasn't

1 associated with the school district

2 Q But they let me interrupt you right there
3 They were associated with the school district,
4 meaning they were employed by the Department of
5 Corrections in the Division of Education?

6 MR NICKLES Object to the form

7 MR SUMMERS It's cross examination

8 MR CORNING I'll give you some latitude, counsel,
9 but you're you're starting to testify

10 MR NICKLES I believe so

11 MR CORNING in the way you're phrasing the
12 question

13 A I didn't understand what he said anyway

14 Q You said you were you didn't I'll reask
15 the series of questions The you talked
16 about associate there were folks that you
17 interacted with when you were hired from the
18 Palmetto Unified School District, but they were
19 associated with the Department of Corrections,
20 correct? Is that how you phrased it? I'm just
21 trying to make sure I understood what you said

22 A Okay, one more time You've got me confused
23 now

24 Q I don't mean to

25 A All right, all right This is we were a

1 school district We live in a community When
2 I am in Sumter County teaching, I am a school
3 teacher for that school

4 Q Well, ma'am, let me interrupt you there

5 A but I'm part of the community I'm part of
6 the community at the prison, okay

7 Q Now, John Near was the Director of SCDC's Human
8 Resources Division, correct?

9 A Yes

10 Q So when it came time for the RIF discussion,
11 you had a discussion with him?

12 A Yes

13 Q Okay Did you have any was there a
14 Palmetto Unified School District division of
15 human resources?

16 A No, but we did our own when we hired
17 people, we would submit the position because I
18 actually did hiring We would submit the
19 position to Human Resources We would get a
20 packet back, and we did the interviewing and
21 the hiring

22 Q But you would submit the packet to SCDC's
23 Division of

24 A SCDC's Division of Human Resources, because we
25 were under dual employment

1 Q Dual employment, did you ever have an
2 employment contract of any type?

3 A No We didn't have any kind of contracts We
4 we worked for Palmetto Unified School
5 District who was a part operating within South
6 Carolina Department of Corrections

7 Q And that's your understanding of how that
8 relationship between these two entities worked?

9 A Yes I worked for the school district first

10 Q First?

11 A Yes, and Corrections second

12 Q Okay So my confusion is when it came time for
13 the RIF, who from the school district first
14 came down and talked to you?

15 A No one talked to us

16 Q So then it was SCDC representatives who came
17 down and talked to you?

18 A Yes

19 Q Now, you mentioned when you were first hired
20 that you were told not to talk to anyone in
21 Department of Corrections regarding your
22 salary

23 A Yes

24 Q Who told you that?

25 A The principal

1 Q The principal?

2 A Uh-huh (affirmative response)

3 Q And do you recall the principal's name?

4 A Myrtle Marshall

5 Q And she specifically said to you don't talk to
6 anybody about your salary?

7 A Yes

8 Q Did she tell you why?

9 A Yes

10 Q Please tell the panel why she said that

11 A I made more money than anybody else

12 Q Did anybody in the Division of Human Resources
13 for the Department of Corrections ever tell you
14 not to talk about your salary?

15 A That was in 1986 No, because Palmetto Unified
16 School District hired me, and those were the
17 only people that I had conversations with about
18 salary I was hired by the school district

19 Q Who did you get paid by?

20 A The State of South Carolina

21 Q Did the money come from the Palmetto Unified
22 School District or through the Department of
23 Corrections?

24 A The money came from the EFA funds that were
25 given to the Department of Corrections for the

1 Palmetto Unified School District, and my code
2 on my check was different because I was paid
3 straight from EFA funds And I remember that
4 specifically because they often lost my check
5 because it wasn't coded as an institutional
6 check It was coded as an educational check

7 Q And so who would lose your check, ma'am?

8 A Payroll, trying to figure out where I was
9 located

10 Q And that's SCDC payroll?

11 A Yes, sir

12 Q Ma'am, those are all the questions I have for
13 you, subject to Mr Nickles and the panel

14 **MS WOODLIEF - RE-DIRECT EXAMINATION BY MR NICKLES**

15 Q I just have a couple of follow up questions
16 Ms Woodlief, to your knowledge, are there
17 funds directed specifically to the Palmetto
18 Unified School District that are not for use in
19 any other fashion by the Department of
20 Corrections?

21 A Yes

22 Q And you said EFA Is that Education Finance
23 Act funds?

24 A Yes

25 Q Are those, to your knowledge, restricted by law

1 to use in educational programs?

2 A Yes

3 Q Do you know, whether there are other specific
4 federal funds directed exclusively to education
5 not available to any other correctional aspect

6

7 A Yes

8 Q of the Department of Corrections?

9 A I oversaw budget at Kershaw, and I oversaw
10 budgets for a period of time at Broad River
11 Correctional Institution I oversaw Carl
12 Perkins Funds which fund vocational programs,
13 and you can't spend institutional money The
14 institution quite frequently asked me well can
15 she get some of that vocational money and buy
16 us this or buy us that, and I said no, it's for
17 vocational programs only Then you had the EFA
18 funds which were the Educational Finance Act
19 funds which primarily were used for salary
20 And I had five different budget pockets that I
21 could access and look into to see where they
22 were going And then I had the EIA funds

23 Q And what are the EIA what does that stand
24 for?

25 A Educational Improvement Act, I believe, was

1 what EIA stood for And those funds were used
2 primarily for things like supplies and books
3 and materials And it was very specific how we
4 could spend those funds They couldn't be
5 spent on institutional things because we we
6 had to be a part of the institution Being
7 inside a prison is like being in a community,
8 and you all participate together And quite
9 frequently I would be asked, well we
10 especially at Kershaw I opened that school
11 I bought every stick of furniture and every
12 poster that hung on the wall And so the whole
13 institution was opening And quite frequently
14 I discussed with the associate warden, well
15 this is in ya'll's budget and this is in my
16 budget, and this can't go out to the prison
17 yard because this is for school It's got to
18 be in my building I was asked, you know,
19 several times to purchase extra things, you
20 know, TVs, VCRs, those kind of things and, you
21 know, of course we couldn't Those funds were
22 specific for education

23 Q Now, Mr Summers also asked you if anyone other
24 than Mr Near or his staff dealt with you
25 concerning the reduction in force You

1 remember those questions?

2 A Yeah

3 Q Okay Apart from the reduction in force, did
4 you have daily or regular interactions with the
5 headquarters Human Resource Office?

6 A No The only time I really had no, just
7 the only time I had that was with when
8 he laid us off I never I knew he was, but
9 even when I hired I never talked to them I
10 talked to Palmetto Unified School District I
11 submitted my paper work to Kathy Jackson I
12 never worked through anyone else to hire
13 someone except for them or had any
14 conversations about employment except Palmetto
15 Unified until he came and told me I didn't have
16 a job

17 Q What position did Ms Jackson hold?

18 A She was academic coordinator, I think

19 Q Something having to do with education?

20 A Yeah She was an assistant to Wendell Blanton
21 that was over academics, and she did all
22 she would process all the paper work when we
23 had a position for hiring

24 Q And Wendell Blanton was the superintendent?

25 A Yes, sir

1 Q Okay Those are all the questions I have at
2 this time

3 **MS KUDELKA** I have a couple of things The money
4 that was in your budget that you talked about,
5 if you did not spend that money at the end of
6 a year or a time frame, what would happen to
7 it? Did it go back to I don't know where
8 it came from, federal funds or the state

9 A I don't really know because I knew how much I
10 had It was such a little amount I made sure
11 I bought whatever I could

12 **MS KUDELKA** Spent it all?

13 A I spent it

14 **MS KUDELKA** Okay

15 A I wasn't sending anything back

16 **MS KUDELKA** Okay And I have one other question,
17 and I don't know if you'll be able to answer
18 it So before you answer, make sure they don't
19 have an objection You mentioned about
20 overhearing the conversation Mr Near had with
21 someone Can you tell us who that someone was,
22 and if you can't, can you tell us like what
23 position they held? No objection, I guess

24 A He was talking to Associate Warden David Dunlap
25 from Kershaw Correctional Institution, and we

1 were all there for somebody else's grievance
2 which I won't name

3 **MS KUDELKA** Okay, okay And the associate warden,
4 I'm sorry, what was the name?

5 A David Dunlap He's now the warden, and he's
6 the one that would ask me to come back to the
7 prison to volunteer and talked to him several
8 times until he left Kershaw

9 **MS KUDELKA** Okay That's all I have Thank you

10 **MS ELMORE** Going back to when you said you do hires
11 when you bring people in, you said you would
12 give the hire packet to the Department of
13 Corrections or to the school district once

14 A The hire pack, I we would request a
15 position from okay Kathy Jackson would
16 initiate the positions, and she would send me
17 the packet with all the people, the applicants'
18 names and all the forms because there were
19 you know, you have to do all the screening
20 And and she would often come down and do
21 the interviews with me

22 **MS ELMORE** Now where was she?

23 A She was at she was Palmetto Unified School
24 District

25 **MS ELMORE** Okay

1 A At headquarters at our district office She
2 worked in there So she would come help me
3 interview and do the because you have to
4 have three people, you know, on a panel when
5 you do an interview

6 MS ELMORE Who issued where did the positions
7 come from, the Department of Corrections? Were
8 they their positions given to your school?

9 A No, no

10 MS ELMORE Your school has a website where they
11 advertise?

12 A My my Department of Corrections
13 advertise the site the positions for us,
14 but these were EFA positions because I was an
15 EFA school at Kershaw when we initially opened
16 It wasn't until the last few months we
17 converted to a Level II prison at the end of
18 2002, I think Right before we were laid off
19 we had switched over, but prior to that we were
20 an EFA school the whole time So those were
21 straight EFA fund funded positions

22 MS ELMORE You said the Department of Corrections
23 received EFA funds to pay the teachers with?

24 A Yeah

25 MS ELMORE Did you have any idea that the funds

1 were running low or the reason for the RIF,
2 possibly the funds were running out?

3 A Well I I couldn't understand why that the
4 funds could run low because it's based on your
5 enrollment I don't do you I don't
6 know if I'm quite sure on how teachers how
7 we get that funding, but it's based on your
8 enrollment And you get so much money per
9 student And at the time, I think it was
10 around \$2,200 a student So you generate that
11 by enrolling people that were under the age of
12 21 into school So as long as I kept I
13 could have up to a hundred students in my
14 school And you're getting \$2,200 for each
15 student That's \$220,000 But if you did the
16 math, you could see that we generated our own
17 funds, and that was what confused me because my
18 enrollment from the EFA funding is based
19 it's based on per student how you're paid So
20 I couldn't understand why it would and that
21 was where our salaries came from, was EFA
22 funding So I couldn't understand why that
23 would have had an effect until, of course, at
24 Kershaw Then they moved the EFA students to
25 another institution, but we still got adult ed

1 funding, and you're paid by student And I, at
2 any given time, had 250 students enrolled in my
3 programs And you got money paid for having
4 the vocational students enrolled, and I had
5 grants from the United Way I had best program
6 of the year for a pre-release program and have
7 a nice brick from United Way to show it So I
8 had generated my own grant funds to run my
9 school So I I mean I generated the funds
10 We knew you you have to do a count that
11 your average daily attendance and turn in
12 reports And then from those reports, they're
13 sent into the Department of Education, and
14 you're paid per student for who's in your
15 classroom

16 **MS ELMORE** Thank you That's all I have

17 **MS HUTTO** In conjunction with that question, did
18 you know what the per cost what the cost
19 was per student to actually educate the
20 student? I know you say you got \$2,200, but
21 were you privileged to know what that cost was?

22 A No They didn't really ever break it down I
23 just knew how much we would generate because it
24 it was a big deal to make sure we had our
25 records accurate and our attendance accurate so

1 that those students would get we could get
2 funding for them

3 **MS ELMORE** I have another question You talked
4 about a dual employment situation Did you
5 receive two checks, or did you only receive one
6 check?

7 A I just received one and felt I was an employee
8 of Palmetto Unified School District, but I
9 worked at Kershaw which is like working in a
10 big city, you know, and you're part of your
11 community So

12 **MS ELMORE** Okay Herb, do you have any questions?

13 **MR COOPER** For my information, all eight positions
14 in education at Kershaw were eliminated?

15 A Yes

16 **MR COOPER** What happened to the programs? Did
17 did they continue or were they just completely
18 stopped after you left?

19 A They put a I had actually hired a little
20 officer that had wasn't a certified teacher
21 but had a Bachelor's Degree to work at night
22 school because they had some adult ed classes
23 that you didn't have to be certified And they
24 put him in charge of education

25 **MR COOPER** So all the programs continued under him?

1 A When I was volunteering out there, they were
2 still having classes, but they had changed the
3 criteria that we were held under for allowing
4 the inmates to come to class I mean our
5 criteria was pretty strict They had to be
6 it was based on release dates, and they had to
7 be enrolled in school to go take the GED and
8 different things And they had changed that
9 They just had kind of an open door thing where
10 people just came in, and they didn't have the
11 record keeping, I don't think, that we had
12 They weren't held as responsible It was my
13 that was my impression from really talking
14 to the inmate clerks that once worked for me

15 MR COOPER Thank you

16 MR MCCLARY I have no questions

17 MR SUMMERS May I follow up with one question with
18 your indulgence?

19 MR MCCLARY Yes, go ahead

20 MS WOODLIEF - RE-CROSS EXAMINATION BY MR SUMMERS

21 Q On a question from Mr Cooper, you said you had
22 hired you had hired an officer? Do you

23 A Yes I hired a pink slip officer through
24 for the county position to work two nights a
25 week teaching adult ed classes And after the

1 RIF, at the RIF, I was asked for some input by
2 the acting associate warden I mean the acting
3 warden and the associate warden, and they had
4 decided they were going to put that officer in
5 education, and he would just run a team of
6 inmates teaching

7 Q So you hired a correctional officer?

8 A Just for a part-time position It was not for
9 it was it was a dual It was pink
10 slip It was with Lancaster County It wasn't
11 through Jimbo Howie ran Lancaster County
12 Adult Ed and he would call me and say he would
13 fund, you know He funded like 15 positions
14 for me, one and a half positions through county
15 funds that primarily were just part-time
16 positions And so I had hired this little
17 officer to teach two night school classes a
18 week because, you know, I had advertised that
19 we were looking for a night school teacher
20 And he had he had a Bachelor's Degree

21 Q Where did you who did the advertising for
22 that position?

23 A I want to say we put up a little we must
24 I don't remember exactly I I think we
25 must have done a flier on the bulletin board or

1 something

2 Q Did you have to coordinate this with the Human
3 Resources Division up at SCDC?

4 A No

5 Q All on your own?

6 A Yes Well, with Jim, with Lancaster County
7 Adult Ed

8 Q Okay Thank you, ma'am

9 MR NICKLES No further questions

10 MR MCCLARY May she be excused?

11 MR NICKLES We would ask that she excused

12 MR SUMMERS No objection

13 MR NICKLES Thank you very much I appreciate it

14 MS CROXTON - DIRECT EXAMINATION BY MR NICKLES

15 Q State your name and address for me, please

16 A Jeannie Croxton, 325 Circle Drive, Travelers
17 Rest, South Carolina 29690

18 Q Ms Croxton, you are an appellant in this case,
19 is that correct?

20 A Yes, sir

21 Q And have been since 2003, is that correct?

22 A Yes, sir

23 Q Were you employed in the Palmetto Unified
24 School District before June 1, 2003?

25 A Yes, sir

1 **MR SUMMERS** I'm going to object to the form of the
2 question I think it's suggesting the answer
3 I think that's one of the issues I've let it
4 go for sometime

5 **MR CORNING** Then you need to

6 **MR NICKLES** Okay

7 **MR CORNING** Leading the witness I mean I
8 understand the objection, counsel It's
9 sustained Do you want to rephrase the
10 question, counsel?

11 Q Where were you employed before June 1, 2003?

12 A South Carolina Department of Corrections at
13 Manning Correctional Institution

14 Q I'm glad we cleared that up How long were you
15 employed by them?

16 A 15 years

17 Q In what positions?

18 A I was a certified professional educator

19 Q In what areas do you hold certificates, if any?

20 A Secondary education, English, French and speech
21 pathology

22 Q Are those all with the South Carolina
23 Department of Corrections with the South
24 Carolina Department of Education?

25 A Yes, sir

1 Q Did you have to maintain those certificates
2 while employed in the Palmetto Unified School
3 District?

4 A Absolutely, yes, sir

5 Q What type of activities would you have to do to
6 maintain your certificate?

7 A We were required by state law to get six
8 semester hours every five years

9 Q Did you do that?

10 A Yes, I did

11 Q Did anything happen effective June 1, 2003,
12 that impacted your employment?

13 A Yes, sir I was laid off due to the reduction
14 in force

15 Q How did that first come to your attention?

16 A I believe it was sometime around March we
17 received a memorandum from Mr Ozmint that
18 there would be a reduction in force that would
19 be affecting us, as well as some other
20 departments throughout the Department of
21 Corrections Divisions throughout the
22 Department, I guess I should say

23 Q All right Did anybody come and talk to you
24 about the reduction in force?

25 A Our warden did

1 Q Did anyone from the Department of Corrections
2 headquarters talk to you about the reduction in
3 force?

4 A As it got down to toward the end, John Near
5 John Near We were called to we were
6 supposed to be called in order of seniority as
7 to who would be retained and who would
8 would be bumped or subject to the RIF

9 Q Okay Did you have a meeting yourself with Mr
10 Near?

11 A I did

12 Q Did he provide you any information concerning
13 your employment opportunities after June 1,
14 2003?

15 A He said at that time that all the teacher
16 positions were filled and that I that the
17 positions available were correctional officer
18 or nurse

19 Q Have you ever done any nursing?

20 A Never

21 Q Okay Have you ever served as a correctional
22 officer?

23 A No, sir

24 Q There is a map on the wall here, and it also is
25 at Tab Number 4 of this little book in front of

1 you Would you point out on the map where your
2 facility was located?

3 A Richland County, tab circle number one

4 Q Circle number one, okay Now, did Mr Near
5 indicate whether or not you could go into any
6 of these other circles or gaps between circles
7 on this map?

8 A I don't recall that being discussed

9 Q Okay At the time of the reduction in force,
10 how much service did you have in the school
11 district?

12 A In the Department of Corrections school
13 district?

14 Q Yes

15 A I had 15, 15 years' service

16 Q Do you believe that you could have performed
17 the same duties you were performing at other
18 facilities?

19 A Yes

20 Q Okay Were you offered the opportunity perform
21 those duties at any other facility?

22 A No

23 Q Do you know whether or not there were teachers
24 who were employed after you who kept their jobs
25 after June 1, 2003?

1 A Yes

2 Q Do you know what the word bump means?

3 A I believe that means that if you have more
4 seniority than another employee, that you can
5 move into that slot

6 Q Okay Did you have any poor evaluations while
7 you were working in the district?

8 A No, I didn't, no They were all good

9 Q Did you have any reason to believe that you
10 would not have been eligible to bump less
11 senior employees in the absence of these
12 circles?

13 A No

14 Q Do you know of any particular individuals who
15 you believe you would have had more seniority
16 points to bump out of positions?

17 A Yes Would you like those names?

18 Q Please

19 A Rose Ruger

20 Q Where was Ms Ruger?

21 A She was working in the same institution as I
22 was, which was Manning

23 Q Okay And why weren't you eligible to bump Ms
24 Ruger?

25 A I have no idea

1 Q Okay Anyone else?

2 A Talmadge Smith also worked at my institution

3 Q Okay And do you believe that you had more
4 seniority than Mr Smith?

5 A I am not certain about that, but I believe
6 but I'm older than he is, and I was told that
7 in the order that the order that we were
8 called to talk with Mr Near was in order of
9 seniority And I was called to talk to Mr
10 Near prior to Mr Talmadge Smith being called
11 to talk to Mr Near And I and I noticed
12 that he had a list, and I noticed that
13 Talmadge's name was next on the list I said,
14 oh, dear, my poor friend Talmadge is going to
15 be out of a job Well guess what? Talmadge
16 got a job and I didn't

17 Q Really?

18 A Yes

19 Q As an educator?

20 A As an educator, yes, sir

21 Q In that same area?

22 A In that same area So Rose Ruger and Talmadge
23 Smith both got jobs in the same area,
24 geographical area

25 Q All right This is Mr Lake Summers over here

1 representing the district and the Department of
2 Corrections, and these are the committee
3 members They may have some questions for you

4 **MS CROXTON - CROSS EXAMINATION BY MR SUMMERS**

5 Q Good morning, ma'am

6 A Good morning

7 Q As Mr Nickles said, I am Lake Summers Nice
8 to see you

9 A Nice to see you

10 Q Just a few questions for you

11 A Uh-huh (affirmative response)

12 Q Do you recall did you have an individual
13 meeting with Mr Near?

14 A I did

15 Q And where did that occur?

16 A It occurred let's see, it was in the
17 headquarters building, SCDC headquarters
18 building

19 Q So it was not at your facility?

20 A No

21 Q You traveled from your facility up there?

22 A Yes

23 Q Did you meet with was there anybody else in
24 the room with you

25 A No

1 Q other than Mr Near?

2 A No

3 Q And that's the building of their headquarters
4 on Broad River Road?

5 A Yes, sir

6 Q And during your conversation with Mr Near did
7 you talk about Ms Ruger's status?

8 A No, we did not We did not talk about anyone's
9 status but mine I can't you know, I can't
10 recall It's been five years I can't recall
11 what if we discussed personnel, but I did
12 see a list of names that were in front of him

13 Q Did he show you the list of names?

14 A I don't know if he intentionally showed them to
15 me or they you know, the table was about
16 this big and it was in the middle between us
17 I don't recall if he pointed it out or I just
18 happened to observe that it was there It's
19 been five years, hard to remember details

20 Q I'm taking from the fact that you didn't talk
21 about Ms Ruger, you didn't talk about Mr
22 Smith's situation to Mr Near?

23 A No, I did not

24 Q Did you ever wind up talking to Mr Smith about
25 him staying on?

1 A Yeah, we were friends We worked in the same
2 institution He says, hey, I'm going to
3 whatever institution it was, and I'm going to
4 be doing such and such a job So it was not
5 you know, it was like after after it
6 was all done, then he and I and Ms Ruger
7 said, hey, I'm going over here to Women's
8 Center, and Mr Smith told me he was going to
9 whatever institution it was because we were all
10 co-workers in the same building

11 Q Yes, ma'am Did you ever ask Mr Smith about
12 his seniority?

13 A No, I didn't

14 Q Did you ever ask Ms Ruger about her seniority?

15 A No, I didn't That was just kind of common
16 knowledge that she had not been with the
17 Department very long because Mr Smith and I
18 were both employed by the Department when Ms
19 Ruger came to work there And she was a good
20 bit younger than we are

21 Q And you and Mr Smith are about the same age?

22 A I think he's younger than I am I really don't
23 know his age, but I believe he's younger You
24 know, you don't ask everybody those questions

25 Q I understand I'm asking you this morning,

1 ma'am

2 A Right, okay

3 Q Well ma'am, those are all the questions I have
4 for you, subject to any questions Mr Nickles
5 may have for you again or the members of the
6 panel

7 MR NICKLES I don't have any other questions at
8 this time

9 MS KUDELKA I have a question

10 MR MCCLARY Okay

11 MS KUDELKA Were you part of the initial lawsuit
12 for teacher pay?

13 A Yes

14 MS KUDELKA Do you know, and you may not, but do
15 you know if Rose Ruger or Talmadge Smith were
16 part of that?

17 A I don't believe they were

18 MS KUDELKA That's the only question I have

19 MS ELMORE I have one quick one Did anyone from
20 the school district tell you guys that they're
21 going to be reducing the number of teachers?

22 A We received a memorandum that was read to us by
23 our warden that this was going to happen

24 MS ELMORE So the school district never said, you
25 know, we've got to cut teachers?

1 A No This came down from from Mr Ozmint's
2 office
3 **MS ELMORE** That's all I have
4 **MR MCCLARY** Lynn?
5 **MS HUTTO** I'd like to ask you you talked about
6 Rose Ruger and Talmadge Smith being moved to
7 other facilities Did they by some chance
8 mention to you what jobs they were going to do?
9 A They were going to be teachers
10 **MS HUTTO** Okay, thank you
11 **MR MCCLARY** Herb?
12 **MR COOPER** Did every teacher employed by the
13 Palmetto or could associate with the Palmetto
14
15 A School district
16 **MR COOPER** Unified School District have to be
17 certified to teach?
18 A Yes
19 **MR COOPER** That was a requirement, everyone had to
20 be certified?
21 A As far as I know, it's state law As far as my
22 understanding, that everybody has to be
23 certified
24 **MR COOPER** And to your knowledge, did that Palmetto
25 Unified School District continue after you

1 left?

2 A I really don't know

3 MR COOPER Thank you

4 MR NICKLES We would ask that Ms Croxton be
5 excused

6 MR SUMMERS No objection

7 MR MCCLARY You're excused, ma'am

8 MR NICKLES Thank you very much

9 MR MCCLARY Thank you

10 MR BELL - DIRECT EXAMINATION BY MR NICKLES

11 Q Please state your name and address, please

12 A James Calhoun Bell, 407 Bell Road, Donalds,
13 South Carolina 29638

14 Q Mr Bell, are you generally known as Cal Bell?

15 A Most people refer to me as Cal Bell, yes, sir

16 MR SUMMERS Mr Nickles, just a point of
17 housekeeping, I don't know if Mr Bell was
18 present when folks were sworn in earlier this
19 morning

20 MR NICKLES He was present yesterday

21 MS GUFFEY He was here yesterday He was sworn in

22 MR CORNING He was sworn in yesterday

23 MR SUMMERS I just wanted to double check

24 Q Do you understand that you're under oath, Mr
25 Bell?

1 A Yes, sir, I do

2 Q Okay Tell me where were you employed before
3 June 1, 2003?

4 A At Perry Correctional Institution I was a
5 vocational carpentry teacher

6 Q Okay Were you a certified vocational
7 carpentry teacher?

8 A Yes, sir, I was

9 Q How long had you been a certified vocational
10 carpentry teacher?

11 A Since 1977

12 MR MCCLARY I'm sorry, what year was that?

13 A I became initially certified in 1977

14 MR MCCLARY Okay

15 A I can't do math off the top of my head

16 Q When were you first employed, if at all, in the
17 Palmetto Unified School District?

18 MR SUMMERS I'm going to object as to the form of
19 the question

20 MR CORNING Sustained

21 Q Did you become employed at the Palmetto Unified
22 School District?

23 MR SUMMERS I renew my objection

24 MR CORNING Sustained

25 MR NICKLES I

1 MR CORNING Just ask him who he was employed by,
2 counsel, and we'll avoid the objections

3 MR NICKLES That's not an objectionable question
4 That's

5 MR CORNING Well he can ask that

6 MR NICKLES Yes It's not an objectionable question

7 MR CORNING No, that's all right That's all
8 right Go ahead

9 Q Were you employed with the Palmetto Unified
10 School District?

11 A Yes

12 Q When were you first employed by them?

13 A In 1992

14 Q Okay In what capacity?

15 A Vocational teacher

16 Q At what location?

17 A At that time it was called Tyger Dutchman
18 Correctional Institution It is now called
19 Tyger River

20 Q Okay How long were you in that location?

21 A Until February of 1996, four years

22 Q What happened then?

23 A A job opening came available for a carpentry
24 position at Perry Correctional Institution, and
25 I applied and requested a transfer

1 Q You will see on the board here that there's a
2 map of South Carolina There's the same map at
3 page 189 of the record I've shown to you
4 Where in that map was Perry Correctional
5 Institution?

6 A That's indicated by the small number one in the
7 southern part of Greenville County

8 Q Okay And where in that map is Tyger River?

9 A That's indicated by the small three in
10 Spartanburg County

11 Q Were you told at any time that your facility
12 was located in a particular numbered region of
13 the state?

14 A No, sir

15 Q Okay At any time before the reduction in
16 force, were you told that you were employed in
17 a particular circle of the state as you see it
18 on this map?

19 A Repeat the question, please

20 Q Any time before the reduction in force were you
21 informed that you were employed in a particular
22 circle as you see on this map?

23 A No, sir

24 Q What were your duties at Dutchman, later Tyger
25 River?

1 A I developed typical vocational teachers'
2 responsibilities I developed curriculum I
3 evaluated students I developed tasks that
4 those students would perform in order to
5 develop skills that they would need to become
6 a carpenter I maintained the shop, maintained
7 the equipment in that shop and ordered
8 materials

9 Q Were your duties any different at Perry?

10 A No, sir

11 Q Did you have the opportunity while you were
12 employed in the Palmetto Unified School
13 District to interact with other vocational
14 certified carpentry instructors?

15 A Yes, sir

16 Q Do you know whether or not their duties were
17 similar or different from yours?

18 A We had the same duties We developed
19 curriculum together

20 Q Okay To the best of your knowledge, did the
21 geographic location in the state of the
22 facility in which these services were provided
23 have any bearing on the nature of the services?

24 A No, sir

25 Q Were there any certified carpentry instructors

1 who continued employment in the Palmetto
2 Unified School District after June 1, 2003, if
3 you know?

4 A Yes, sir

5 Q Okay Were any of those employed after you
6 were employed in the district?

7 A Yes, sir

8 Q So would you have had more seniority than those
9 individuals?

10 A Yes, sir

11 Q Were you given the opportunity to bump or
12 displace those individuals?

13 A No, sir

14 Q Did you have any meeting with anyone at the
15 Department of Corrections concerning your
16 employment opportunities after June 1, 2003?

17 A Yes, sir

18 Q Who did you meet with?

19 A I met with Hoyt Sharpe

20 Q Okay Did you have any meeting with John Near?

21 A After 2003?

22 Q No, during the reduction in force period

23 A Yes, sir He came to Perry

24 Q Okay And did you meet with him in a one on
25 one situation?

1 A Can I get verification?

2 Q Yes, sir

3 A Mr Near met with us as a group and on the one
4 on one situation there was a gentleman there,
5 but I do not remember if it was Mr Near or
6 not

7 Q Okay So there may have been may have been
8 someone with or in addition to Mr Near?

9 A It could have been, sir I do not remember the
10 gentleman's name

11 Q Did anyone explain to you what your employment
12 opportunities would be after the reduction in
13 force?

14 A Yes, sir

15 Q And what were you told?

16 A The group meeting that Mr Near conducted along
17 with another gentleman at Perry informed us
18 that we the bumping informed us about
19 our recall rights And he also informed us
20 that we would be given some priority if a job
21 came open at a later date

22 Q Okay If you had had the opportunity to compete
23 with employees for positions outside of your
24 circle, would you have been willing to do that?

25 A Yes, sir

1 Q Did you have the opportunity to continue with
2 employment in any capacity related to the
3 Department of Corrections after June 1, 2003?

4 A Yes, sir

5 Q And what was that?

6 A I was rehired 2005 to teach carpentry at Perry
7 Correctional Institution

8 Q How did that come to your attention?

9 A Mr Hoyt Sharpe called me at my home one
10 afternoon

11 Q Okay And who was Mr Sharpe?

12 A Mr Sharpe was the assistant superintendent and
13 the director of vocational education for
14 Palmetto Unified

15 Q Did what did if you recall, what did
16 Mr Sharpe indicate to you?

17 A We actually met and at a barbecue place in
18 Clinton and we talked about the position that
19 was being offered at Perry Correctional, and we
20 also discussed the potential position that
21 would be available at Tyger River Correctional

22 Q Now, Perry is somewhere you had worked before,
23 correct?

24 A Yes, sir

25 Q As a certified vocational teacher?

1 A Yes, sir

2 Q Was that the position being offered to you?

3 A The the position notice indicated that the
4 main title for that position will be a Program
5 Coordinator I, but it had an internal title of
6 a vocational teacher

7 Q Okay If you could, pull up page 1076, please,
8 and it'll be on your screen here, Mr Bell
9 All right And looking at that screen, and I
10 know it's a little distant from you, you see
11 about slightly less than halfway down there is
12 a Bell, James C Do you see that?

13 A Yes, sir

14 Q Is that your name?

15 A Yes, sir

16 Q It has an effective date January 17, '06?

17 A Yes, sir

18 Q And has Program Coordinator I, Program
19 Coordinator I, Band Level 5, Level B, Perry
20 Correctional Institution, do you see that?

21 A Yes, sir

22 Q Is that the position that you were offered by
23 Mr Sharpe?

24 A Yes, sir

25 Q Did you accept that position?

) 1 A I applied for it, sir

2 Q Okay Were you ultimately offered the
3 position?

4 A Yes, sir

5 Q Okay Were you interviewed for the position?

6 A Yes, sir

7 Q Who interviewed you?

8 A Mr Sharpe and Warden Bazell

9 Q Now, what were the duties of this position?

10 A It was your typical vocational carpentry
11 duties, the same duties that I had prior to the
12 RIF in '03

13 Q Were you paid as a certified educator for this
14 position?

15 A No, sir

16 Q What was your level of pay for this position?

17 A Monetary amount?

18 Q Just generally, yes, sir

19 A In the upper \$30,000's, sir

20 Q How did that compare to what you were paid as
21 a certified vocational teacher?

22 A That was again, can I give a monetary
23 amount?

24 Q Yes, sir

25 A That was approximately \$13,000 less than I was

1 making in June of '03

2 Q Okay And explain to me again were there any
3 differences in the job duties between the
4 Program Coordinator I and the certified
5 vocational teacher?

6 A No, sir, same location, same shop, same office

7 Q Okay Did you apply for any other positions in
8 the district?

9 A Yes, sir The Tyger River position came open
10 about a month later, and I applied for that

11 Q Okay And if you would, pull up, please, page
12 748 of the record

13 A Say it again, please

14 Q 748 This is a little hard to see, Mr Bell
15 Let me

16 **MR COOPER** I can make it bigger

17 Q This is an applicant referral report Do you
18 see that at the top?

19 A Yes, sir

20 Q For vocational teacher at Tyger River
21 Correctional Institution?

22 A Yes, sir

23 Q And is that your name?

24 A Yes, sir

25 Q It has employment history at the bottom, do you

1 see that?

2 A Yes, sir

3 Q I guess this is in reverse chronological, most
4 recent being first Perry Correctional
5 Institution Program Coordinator, is that the
6 position you were holding at the time?

7 A Yes, sir

8 Q Okay But then it has some positions in the
9 school districts where you were teaching
10 building and carpentry, do you see that?

11 A Yes, sir

12 Q Are those accurate?

13 A Yes, sir

14 Q And then Perry Correctional Institution,
15 vocational teacher, is that correct? Were you
16 a vocational teacher from 9/19/92 to 8 it
17 says 8/1/03

18 A The only thing incorrect there is that for the
19 first four years from '82 to '96 I was a
20 vocational teacher at Dutchman Correctional
21 Institution,

22 Q Okay

23 A But it was all

24 Q It was all the same?

25 A Yes

- 1 Q Okay And then you have Tyger River
2 Institution, vocational teacher for three
3 years, do you see that?
- 4 A Yes, sir Those dates are incorrect
- 5 Q The dates are incorrect, but the the
6 positions held are correct?
- 7 A Yes, sir
- 8 Q And did you go through a application process
9 for this position?
- 10 A Yes, sir
- 11 Q Were you interviewed for this position?
- 12 A Yes, sir
- 13 Q How many people, if you recall, participated in
14 the interview?
- 15 A There were interviewers there
- 16 Q Okay Where did the interviews take place?
- 17 A The office at Tyger River, sir
- 18 Q Did you get this position?
- 19 A No, sir
- 20 Q Do you know who did?
- 21 A Yes, sir
- 22 Q Who was that?
- 23 A A gentleman named Larry Yarborough
- 24 Q Yarborough?
- 25 A Yarborough, yes, sir

- 1 Q Okay When you applied for this position, did
2 you have a certificate?
- 3 A Yes, sir
- 4 Q Do you know whether Mr Yarborough had a
5 certificate to teach?
- 6 A I don't know if he had a certificate Yes
7 No, sir, he did not have a certificate May I
8 clarify?
- 9 Q Sure
- 10 A He had a temporary certificate
- 11 Q Okay Let's look at at page 757 of the
12 record, and that's Mr Larry Yarborough
13 According to the Department of Corrections,
14 that's Mr Larry Yarborough's applicant report,
15 do you see that?
- 16 A Yes, sir
- 17 Q Do you see his employment history?
- 18 A Yes, sir
- 19 Q Union County Sheriff's Department?
- 20 A Yes, sir
- 21 Q City of Union?
- 22 A Yes, sir
- 23 Q Torrington and Buffalo Mills, do you see that?
- 24 A Yes, sir
- 25 Q Do you see any teaching experience on that?

1 A No, sir

2 Q Do you see any experience with the Department
3 of Corrections on there?

4 A No, sir

5 Q Let me ask you, please, to take a look at page
6 750 of this record And if you could scroll
7 down, please, to the lower portion of that

8 **MR SUMMERS** I'm going to have an objection about
9 this particular testimony I'm not sure if the
10 witness is going to be able to lay a requisite
11 foundation about the material that appears on
12 this form

13 **MR NICKLES** Well

14 **MR CORNING** I'm not sure what your objection is,
15 counsel

16 **MR NICKLES** This is already in in evidence It
17 was produced by the Department of Corrections
18

19 **MR CORNING** The form is in evidence

20 **MR SUMMERS** I understand

21 **MR NICKLES** in response to discovery

22 **MR SUMMERS** I understand

23 **MR CORNING** That form's in already in evidence
24 What's your question, counsel?

25 Q My question is have you had a chance to look at

1 this document before?

2 A Yes, sir

3 Q Okay Now, did you notice anything curious
4 about the numbers that are entered in the
5 scores here?

6 A Yes, sir

7 Q Let's look at flexibility, for example Does
8 that appear did it appear to be changed to
9 you?

10 MR SUMMERS I'm going to object as to the
11 conclusory or speculative answer

12 MR CORNING I don't even know if we have the
13 original, counsel I mean that's

14 MR NICKLES I have testimony from Mr Near
15 admitting that it was changed, but I mean if
16 that's the

17 MR CORNING Well, I mean if Mr Near's going to

18 MR SUMMERS I object to that particular editorial
19 comment, but

20 MR NICKLES Okay I'm asking this witness his
21 personal observation of this document If his
22 personal observations are not of interest to
23 the panel, then we will move on, but I think it
24 is of interest

25 MR SUMMERS Well, respectfully, it's not it's

1 not a matter of interest It's a matter of
2 what's proper under the rules

3 **MR CORNING** Well, I'm I'm going to sustain the
4 objection, counsel I don't know You don't
5 even have the original document Does it
6 appear to be? I mean we could put a hundred
7 people up there and you might come up with a
8 hundred different answers I'm not sure it's
9 relevant whether he thinks it's been changed or
10 not

11 **MR NICKLES** All right

12 **MR CORNING** So I'm going to rule it out on
13 relevance, if nothing else

14 Q Were you hired for this position?

15 A No, sir

16 Q Based upon the information provided by Mr
17 Yarborough, did he have the experience you had?

18 A No

19 **MR SUMMERS** I'm going to object, Your Honor I'm
20 going to object, Mr Corning, based upon,
21 again, speculation, perhaps facts either not in
22 evidence

23 **MR CORNING** What's the question, counsel? I didn't
24 get the question

25 **MR NICKLES** I think based upon the information

1 submitted by Mr Yarborough

2 **MR CORNING** No, I I understand What's your
3 question?

4 **MR NICKLES** Did he have the teaching experience
5 that you had?

6 **MR CORNING** I'll allow him to answer that question,
7 counsel

8 Q Did he have the teaching experience that you
9 had?

10 A No, sir

11 Q Look at page 764 of the record, please If you
12 could rotate that for me, please This is a
13 document from the Department of Education, if
14 you look at the very top Do you see that, Mr
15 Bell?

16 A Yes, sir

17 Q Now, if you scroll down, please, is this
18 document a teaching certificate?

19 A No, sir

20 Q And this was issued to, according to the date
21 at the top, would you scroll up, please, on
22 March 13, 2006?

23 A Yes, sir, I see that

24 Q Okay

25 **MR SUMMERS** I'm going to object for the sake of the

1 record He can testify it appears to be
2 issued Whether or not he has the requisite
3 knowledge to testify that it was actually
4 issued at or around that time

5 Q Well, let's see Can you you went to
6 public school in South Carolina, Mr Bell?

7 A Yes, sir

8 Q Do you know how to read?

9 A Yes, sir

10 Q Can you read the underlined part of that
11 document there that says this document is not
12 a teaching certificate?

13 A Yes, sir

14 **MR SUMMERS** And, ultimately, my objection was to

15
16 **MR CORNING** Yes, the certificate, saying I think it
17 had more to do with the date it was issued
18 counsel, not what's

19 **MR SUMMERS** Not what's on the form We know what's
20 on the form

21 **MR CORNING** Not what's on the form

22 **MR NICKLES** Okay

23 Q Well you didn't personally receive this So
24 you don't know if the Department of Education
25 made up that date or not We're not offering

1 it for that, do you understand that?

2 A Yes, sir

3 Q Okay How much carpentry training did you
4 have, Mr Bell?

5 A Rephrase

6 Q Yeah What type of carpentry training did you
7 have as part of your training to be a certified
8 carpentry instructor?

9 A Can I explain how

10 Q Yes, sir

11 A vocational teachers become vocational
12 teachers?

13 Q Yes, sir

14 A Everybody knows how a school teacher becomes a
15 school teacher They go to college They take
16 educational courses And once they get their
17 degree, they do the work they have to do to
18 become a teacher In the vocational trade
19 areas, the problem is to find the experienced
20 people that can perform these tasks, the laying
21 brick or doing carpentry or welding

22 Q Yes, sir

23 A And those people do not go to college to learn
24 those skills They work in the industry to do
25 that What happens is, after if you think

1 you might want to become a teacher, a
2 vocational teacher, you will apply information
3 to the Department of Education listing all of
4 your experiences in that particular profession
5 Then they determine if you have the proper
6 experiences, and you will get a temporary
7 teaching certificate After you receive the
8 temporary teaching certificate, you will have
9 to perform a couple of tests, a written test
10 and skill level test, along with taking some
11 courses that trains you to be a teacher

12 Q Okay

13 A Many vocational teachers do not have college
14 degrees So you have to find people that can
15 perform those tasks

16 Q In 2006, had you obtained a certificate to
17 teach?

18 A Yes, sir

19 Q Had you performed the requisite additional
20 studies to maintain your certificate?

21 A Yes, sir

22 Q Had you also been employed with the Department
23 of Corrections as a certified teacher?

24 A Yes, sir

25 Q Let's look at page 766, please And let's

1 scroll it says at the top of that February
2 6, 2006 Do you see that?

3 A Yes, sir

4 Q Scroll down to the bottom, please There's a
5 fax post it there Do you see that?

6 A Yes, sir

7 Q It says original 2/2/06 Do you see that?

8 A Yes, sir

9 Q So, if we go back to page number 764 and you go
10 to the top of that page, that date appears to
11 be after the application, does it not?

12 A Yes, sir Can I correct something I said
13 earlier?

14 Q Yes, sir Yes, sir

15 A You asked me earlier did Mr Yarborough have a
16 certificate at the time of our interview

17 Q Yes, sir

18 A And I said that he had a temporary, but I was
19 not aware that that was the date the temporary
20 was issued when I made that statement So I
21 was incorrect

22 Q All right Your interview was before that
23 date, is that correct?

24 A Yes, sir

25 Q All right And if you look at page 768,

1 please, this is a letter which purports to be
2 March 20, 2006, to Mr Yarborough informing him
3 of his employment as a vocational teacher at
4 Tyger River Correctional Institution Do you
5 see that?

6 A Yes, sir

7 Q His salary, according to this letter, was
8 \$40,282 Do you see that?

9 A Yes, sir

10 Q What were you making in your position at Perry
11 at that time?

12 A My salary at that time was approximately
13 \$37,000, \$38,000

14 Q Making less than this?

15 A Yes, sir

16 Q Now, if you had been certified if you had
17 been employed in this position with your years
18 of experience as a certified teacher, would
19 your salary have been higher?

20 A Yes, sir

21 Q Okay If we look at page 764, please, it says
22 in handwriting Master's with zero years of
23 experience, \$40,284 Do you see that?

24 A Yes, sir

25 Q That's the same amount that's on the other page

1 informing him of his salary, correct?

2 A Yes, sir

3 Q How many years of experience would you have
4 had?

5 A At that time, sir let me count backwards
6 I had 16 years experience

7 Q And tell the panel how salaries are computed if
8 you're a certified vocational teacher in the
9 Palmetto Unified School District

10 A I believe they're the same as any school
11 district Your salary is based on your
12 education level and and is based upon your
13 years of experience And each year you work
14 you will step up into the next pay grade, which
15 is that year's experience, and if the
16 legislatures give any raises to teachers, then
17 the whole pay grade the whole system gets
18 a pay increase

19 Q Okay And it seems that Mr Yarborough was
20 awarded a Master's level with zero years of
21 experience Do you see that?

22 A Yes, sir

23 Q Let's scroll to page 757, please And if we
24 could rotate that, please Can we all stand on
25 our heads and look at this?

1 MR SUMMERS It was rotated, let the record reflect

2 MS KUDELKA Just rotate the screen

3 MR CORNING No, no, no That's

4 MR COOPER Go around twice either way

5 MR CORNING There you go

6 MR NICKLES There we go Just move the screen over
7 just a bit the other way There we go

8 Q According to this, the records from the
9 Department of Corrections, Mr Yarborough
10 listed as his educational history Union High
11 School diploma Do you see that?

12 A Yes, sir

13 Q So he did not have a B A Degree?

14 A No, sir

15 Q Or a Master's Degree?

16 A No, sir It doesn't indicate that

17 Q All right But he was given credit, I guess,
18 based on experience

19 A Yes, sir

20 Q for a Master's Degree? When you were last
21 employed with the Department, what level of
22 certificate were you given credit for?

23 A I have I have a Master's Degree, sir

24 Q Okay So you would have been employed at that
25 time at a Master's plus 16

1 A Yes, sir

2 Q as opposed to a Master's plus zero, is that
3 correct?

4 A That is correct, sir

5 Q Okay Did you have any follow ups with anybody
6 concerning your application for employment for
7 this certified position in at Tyger River?

8 A I received a rejection letter

9 Q Okay No explanation as to why you did not
10 receive this position?

11 A No, sir

12 Q Do you remain employed with the Palmetto
13 Unified School District?

14 A Yes, sir

15 Q In what capacity?

16 A Vocational , carpentry teacher at Perry
17 Correctional Institution, sir

18 Q Now, what is your label that they give you in
19 terms of what you do for a living? Are you a
20 certified carpentry teacher?

21 A Yes, sir I'm required to have a
22 certification

23 Q Are you paid on the certified pay scale?

24 A No, sir

25 Q They call you a Program Coordinator still?

1 A (Inaudible)

2 Q What what how are you listed, to the
3 best of your knowledge, in the employment
4 records of the Department of Corrections, do
5 you know?

6 A My letter that I received telling me that I had
7 been selected for the position at Perry
8 congratulates me for being selected as a
9 vocational teacher, sir

10 Q Okay But that's not how you're paid?

11 A No, sir

12 Q While you were with the district in a certified
13 teacher position and being paid for that, did
14 you have to attend in-service programs?

15 A Yes, sir

16 Q Do you have to attend those now?

17 A Yes, sir

18 Q As a Program Coordinator or whatever it is?

19 A Yes, sir

20 Q How were your evaluations when you worked at
21 at the Department before the RIF?

22 A I always received an exceeds, sir I don't
23 remember exactly

24 Q Okay How has your performance been since you
25 returned?

1 A I have not received an evaluation, sir

2 Q You haven't Have you received any document
3 with a description of your position and duties?

4 A No, sir

5 Q Nothing that says at the top of the page you
6 are a Program Coordinator so and so and these
7 are the duties that you have to perform?

8 A No, sir

9 Q How do you know what to do every day when you
10 go to work?

11 A I've been doing it for a long time, sir

12 Q And you've been back since when?

13 A I was rehired in January of 2006, sir

14 Q Okay More than two years ago?

15 A Almost three

16 Q And no evaluations during that period of time?

17 A No, sir

18 Q Okay Answer any questions that Mr Summers
19 over here or the members of the committee may
20 have

21 **MR BELL - CROSS EXAMINATION BY MR SUMMERS**

22 A How are you doing, sir?

23 Q Good Good morning, sir My name is Lake
24 Summers As Mr Nickles said, I'll be asking
25 you some questions If we could, sir Mr

1 Cooper, could you get back to 7 page 768?
2 And let the record reflect that we're going to
3 have to rotate it That's fine, sir, right
4 there You've seen this document before
5 obviously in your questioning by Mr Nickles

6 A Yes, sir

7 Q I'll ask you a few questions about the names
8 that appear on here, first and foremost, and at
9 the top what's the letterhead read?

10 A Department of Corrections, sir

11 Q And, obviously, the names on the right hand
12 side at the top?

13 A Sir, it's our governor and our director

14 Q And the if you go down to the second, we'll
15 call it paragraph, but second line of the
16 letter, it reads your effective date of
17 employment will be coordinated by June
18 Henderson Do you read that, sir?

19 A Yes, sir, that's correct

20 Q Who's June Henderson?

21 A I can only speculate I do not know June
22 Henderson

23 Q Okay And there's some Ms Henderson's
24 name appears at the bottom There's two other
25 names at the bottom in the cc, left hand

1 corner Do you see that?

2 A Yes, sir

3 Q And one name you mentioned before, that was Mr
4 Sharpe?

5 A Yes, sir

6 Q Mr Sharpe passed away not long ago?

7 A Yes, sir, unfortunately

8 Q Yes, sir Do you recognize the name at the
9 bottom, Mr Perry, Kelvin Perry?

10 A They're employees at that location, sir I do
11 not know those people

12 Q And the location would be Tyger River?

13 A Yes, sir, correct

14 Q Now, if you could, Mr Cooper, could you go

15 **MR NICKLES** Well I'm sorry

16 Q to page 865, and if you could scroll down
17 just a bit more Let the record reflect that
18 Mr Cooper is preparing the document on the
19 screen for me to ask Mr Bell a question And
20 I'm sorry, go up just a bit, a bit more Thank
21 you, right there If you could, read for the
22 panel that says there's a printed name that
23 says from Can you read that, sir?

24 A That's Mr Perry

25 Q That's Kelvin Perry?

- 1 A Yes, sir
- 2 Q Can you read what name is written into the
3 block labeled two?
- 4 A Vocational teacher, sir, it appears
- 5 Q Okay I'm talking about top right, right
6 across the right hand side from Mr Perry's
7 name
- 8 A Oh, that's Mr Near
- 9 Q And that's John Near?
- 10 A Yes, sir
- 11 Q We'll talk about him in just a moment Is Mr
12 Yarborough's name on this form?
- 13 A Yes, sir
- 14 Q And where you see Mr Yarborough's name first,
15 what what's immediately below his printed
16 name?
- 17 A Decision and institution, Tyger River C I
- 18 Q And what's there's a remarks comment
19 What's it read there? If you need me to open
20 up the books for you, I will Let the record
21 reflect Mr Cooper is trying to zoom in And
22 if you can't read it, you can't read it
- 23 A Sir, I don't remarks, brother's I
24 brother's all I get at the beginning
- 25 Q Okay

- 1 A And then something of facility
- 2 Q All right You see there's another printed
- 3 block below that, immediately below that?
- 4 A I see where it says employee relation
- 5 Q Okay You see employee relation or employee
- 6 relative, just for the sake of
- 7 A Employee relative, I'm sorry
- 8 Q Okay And there's a name in there?
- 9 A Mr Lloyd, sir
- 10 Q Okay And there's a position?
- 11 A Associate warden at Tyger River
- 12 Q Okay Thank you, sir, for going through that
- 13 with me
- 14 A Okay
- 15 Q Now, again, Mr Cooper, let's go back to page
- 16 748 We're almost there There we go Can
- 17 you recall looking at this document when Mr
- 18 Nickles was asking you questions?
- 19 A Yes, sir
- 20 Q And and I'm looking through my notes, and
- 21 I and forgive me for not being able to keep
- 22 up at times with my pen But under questioning
- 23 from Mr Nickles, you talked about having a
- 24 credit for a Master's, is that correct?
- 25 A Yes, sir

1 Q Master's Degree, okay Now, on this is
2 your applicant referral report, correct?

3 A Yes, sir

4 Q And this says educational history Do you see
5 that, sir?

6 A Yes, sir

7 Q It says institution, Ware Shoals, type, high
8 school

9 A Yes, sir

10 Q And over on the right, far right hand side, it
11 says diploma?

12 A Yes, sir

13 Q Okay And again, forgive me if I missed the
14 intricacy of the details of it You have a
15 high school diploma?

16 A Yes, sir

17 Q Okay But you talked about having a Master's,
18 credit for a Master's?

19 A Again, I'd like to explain

20 Q That's why I'm asking the question, sir

21 A All right Vocational teachers are evaluated
22 upon their years of experience performing the
23 job that they're required A welder would be
24 evaluated on his years of welding, a carpentry
25 on carpentry, and a brick mason on brick

1 masonry The number of years that you work at
2 that trade is calculated in determining your
3 educational certificate and the level of that
4 certificate If you only have a very few short
5 years, you would have just a B A certificate
6 or B S , but if you have, you know, eight or
7 nine or ten, I don't know the exact number, you
8 would be awarded a certificate at a Master's
9 Degree level That's so that you can be fit
10 into the educational system the way they, you
11 know I get a vocational teacher with a
12 Master's Degree level would be paid at the same
13 position as an English teacher with a Master's
14 Degree level

15 Q And that's on is that the Department of
16 Education who makes that assessment?

17 A Yes, sir

18 Q Okay Now, if you could, Mr Cooper, again go
19 back to 764 just to clarify Thank you, sir
20 And just for the sake of the record, you've
21 looked at this document before when we were
22 talking to Mr Nickles, correct?

23 A Yes, sir

24 Q And this appears it's dated we don't
25 know whether it was issued on that date, is

1 March 13, 2006 That's the date that appears
2 on the document, correct?

3 A Yes, sir

4 Q And it's addressed to Mr Yarborough?

5 A Yes, sir

6 Q And it's from the South Carolina Department of
7 Education to Mr Yarborough?

8 A Yes, sir

9 Q Okay So based upon what you were just telling
10 the panel a moment ago about the process
11 through which or by which the Department of
12 Education evaluated you and your experience,
13 does it look like the Department of Education
14 did a similar evaluation of Mr Yarborough?

15 A Yes, sir They looked at his may I say
16 something? They looked at his years

17 Q Sure

18 A in the area of carpentry, and they
19 evaluated that he documented that he'd had
20 enough experience in that area to qualify at a
21 certificate at a Master's Degree level

22 Q Would anybody from the Department of
23 Corrections have anything to do with that
24 process by the Department of Education?

25 A No, sir

1 Q So that was independent of anybody at the
2 Department of Corrections?

3 A Yes, sir

4 Q Thank you for clarifying this for me I
5 appreciate it

6 A Yes, sir

7 Q And bear with me as I go back I may not have
8 too many more questions for you Mr Nickles
9 asked you some questions about I believe what's
10 in front of you right there

11 A Yes, sir

12 Q It's the committee's notebook And let me make
13 sure the record follows me so I'm not that
14 is the map that we've been talking about of our
15 state with eleven numbered geographic areas or
16 competitive areas, correct?

17 A Yes, sir

18 Q Now, you talked before about regions earlier in
19 your testimony with Mr Nickles, regions in the
20 Department of Corrections, is that do you
21 remember talking about that?

22 A Yes, sir

23 Q Okay The region describe for the panel
24 and for me, for that matter, when you're
25 talking in terms of regions, what is your

1 recollection or knowledge about regions within
2 the Department of Corrections?

3 A To me the circle indicates a geographical
4 region

5 Q Are there other designated regions or
6 recognized regions to your knowledge within the
7 Department of Corrections that you're more
8 familiar with?

9 A As far as the State of South Carolina

10 Q Have you heard the term Appalachian region?

11 A Yes, sir We're going back a few years

12 Q Okay Talk about let's go back a few
13 years Let's talk about that

14 A Can I give a little

15 Q Yes, sir, please

16 A I worked for the Department, and it doesn't
17 show in my record, but I was originally hired
18 with the Department of Corrections in 1979 as
19 a vocational teacher at a small converted chain
20 gang camp called Greenwood Correctional
21 Institution And at that time, the Department
22 of Corrections was divided into three
23 geographical regions

24 Q Do you recall their names?

25 A Appalachian, Central and Coastal I think the

1 Columbia area was referred to as the Central

2 Q And thank you for we've heard some
3 information about that, but thank you for
4 now you said you started the Department of
5 Corrections back in 1979?

6 A That was my first employment, yes, sir

7 Q But it was not you said a moment ago it was
8 not reflected in your record?

9 A Some reason when they did that, they did not
10 pick up that part from my application, sir

11 Q Okay Now, you said when Mr Nickles was first
12 asking you questions that you were employed by
13 the Palmetto Unified School District Do you
14 recall saying that?

15 A Yes, sir

16 Q And these will seem like basic questions
17 We'll go through them anyway Who paid you or
18 who pays you now? Let's start there

19 A I get a state pay check, sir

20 Q Okay Does the state pay check or the stub say
21 Palmetto Unified School District?

22 A No, sir

23 Q Did it ever say Palmetto Unified School
24 District?

25 A No, sir

1 Q And when you say you were employed by the
2 Palmetto Unified School District, were you
3 given a different set of policies or procedures
4 other than those for the Department of
5 Corrections?

6 A Explain

7 Q Well, did you to your understanding, did
8 you still have to follow SCDC's policies and
9 procedures in your employment when you first
10 started, I believe, it was at Perry?

11 A Yes, sir

12 Q So you had to follow SCDC's policies and
13 procedures?

14 A Yes, sir

15 Q And let's talk about Mr Near Well, first of
16 all, did that ever change at any time while you
17 were employed?

18 A No, sir

19 Q So the entirety of your employment you had to
20 follow SCDC's policies and procedures?

21 A Yes, sir

22 Q And you mentioned the name earlier in some of
23 the documents John Near Do you recall talking
24 about Mr Near?

25 A Yes, sir

1 Q Do you know his position?

2 A His exact position, no, sir He's can I
3 continue to

4 Q Sure, go ahead

5 A I believe he's the head of personnel for the
6 Department, but I'm not positive on that fact

7 Q When you say the Department, the Department of
8 Corrections?

9 A Department of Corrections, yes, sir

10 Q So your testimony under questioning from Mr
11 Nickles was that he met with a group of
12 including you and some fellow SCDC employees
13 after this RIF was announced?

14 A Yes, sir

15 Q And where did that meeting occur?

16 A That meeting occurred at Perry, sir

17 Q And if you can, please tell the panel what was
18 discussed at that meeting to the best of your
19 recollection

20 A The meeting was just going over the principles
21 of the reduction in force, what we could
22 expect, our right to be recalled They
23 provided us with a packet of documents
24 preparing us for our for our eventually
25 unemployment I think he met in every region

1 with with the people that were affected

2 Q And I can't recall, and forgive me Did he
3 meet with you individually at any point?

4 A As I indicated before, I did meet individually
5 with an SCDC person, but I do not recall that
6 person's name I don't remember if it was Mr
7 Near or some other individual

8 Q Well, sir, thank you for being patient and
9 following these documents with me I
10 appreciate your answers Mr Nickles may have
11 some follow up, then the panel

12 **MR BELL - RE-DIRECT EXAMINATION BY MR NICKLES**

13 Q Just a very few Mr Bell, the Palmetto
14 Unified School District was created in 1981
15 according to the statutes

16 **MR SUMMERS** Sir, I'm I'm going to object I'm
17 going to put it on the record

18 **MR NICKLES** It's already in the record I have
19 it's part of the question

20 **MR SUMMERS** Well, certainly I'm going to object as
21 to the form of the question I would
22 respectfully

23 **MR CORNING** Just rephrase your question, counsel

24 Q Assuming, Mr Bell, that the Palmetto Unified
25 School District was created by the General

1 Assembly in 1981, since that date are you aware
2 of any geographic divisions in the educational
3 program within the Department of Corrections?

4 A No, sir

5 Q To the best of your knowledge, has it always
6 been administered in a unified fashion?

7 A Yes, sir

8 Q And in terms of what Mr Yarborough does for a
9 living and what you do for a living, are you
10 aware of any differences in the job
11 responsibilities the two of you have?

12 A No, sir

13 Q Okay Did you feel that you were qualified for
14 the position of vocational teacher at Tyger
15 River?

16 A Yes, sir Can I make a statement?

17 Q Yes, sir

18 A That's the position I held from 1992 to 2006

19 Q All right Thank you Those are

20 A I misstated, from 1992 to 1996

21 Q Very good Let the record reflect

22 **MR SUMMERS** Thank you for correcting it With the
23 panel's indulgence, one question

24 **MR BELL - RE-CROSS EXAMINATION BY MR SUMMERS**

25 Q Mr Nickles asked you the question to your

1 and he asked to your knowledge, has the
2 Palmetto Unified School District always been
3 managed or operated in a unified fashion Do
4 you recall him asking that question?

5 A Yes, sir

6 Q Tell the panel what in your in your mind
7 unified fashion means

8 A Our home office is at the headquarters
9 building That's where our superintendent and
10 our associate superintendents are at When I
11 purchase material, I send my requisitions to my
12 director of vocational education which is at
13 the headquarters buildings They disburse the
14 funds that I use to run my programs If I have
15 any educational related questions, I contact
16 the educational people at the headquarters
17 building which are my superintendents and
18 vocational ed people and so forth They
19 provide the pencils and paper that I use

20 Q And where is this headquarters building
21 located?

22 A Broad River Road, sir

23 Q And is that the headquarters complex for all of
24 SCDC?

25 A Yes, sir

1 Q Thank you very much No further questions

2 MR MCCLARY Any questions from the panel?

3 MS KUDELKA I have one

4 MR MCCLARY Yes

5 MS KUDELKA Were you part of the original lawsuit
6 for the pay for teachers?

7 A Yes, sir Yes, ma'am

8 MS KUDELKA Okay That's all I have

9 MS ELMORE The superintendent of the school
10 district, did he or she ever let you guys know
11 what was going on with reduction in force of
12 the teachers?

13 A I'm sorry, I didn't I don't hear well

14 MS ELMORE The superintendent of the school
15 district, did they ever talk to you about the
16 jobs job cuts or RIFs?

17 A Prior to the cuts, no, sir no, ma'am We
18 never nobody ever discussed from education
19 Nobody ever discussed the RIF with me prior to
20 the RIF

21 MS ELMORE So you were employed by the school
22 district They found you and hired you, and
23 you'd be working with the Department of
24 Corrections under their rules and regulations?

25 A That's correct, ma'am

1 **MS ELMORE** But you're saying to me it's the
2 Department of Corrections employees who let you
3 know that you were going to be RIF'd?

4 **A** Yes, ma'am The warden at that institution
5 did The warden at Perry Correctional informed
6 me on April 1st, actually on April Fool's Day,
7 that we would be removed from our positions
8 now

9 **MS ELMORE** And the superintendent said nothing?

10 **A** No, ma'am

11 **MS ELMORE** Okay

12 **MR NICKLES** Thank you very much We'd ask that

13 **MS HUTTO** Hold on one second

14 **MR NICKLES** Oh, additional questions

15 **MS HUTTO** I'm sorry, I wanted to clarify something
16 You were you spoke about returning to work
17 as a Program Coordinator I, but performed the
18 job as a voc teacher?

19 **A** Yes, ma'am

20 **MS HUTTO** When that did you respond to an
21 advertisement for that job?

22 **A** No, ma'am Mr Hoyt Sharpe called me at my
23 home

24 **MS HUTTO** Okay But I notice you said is this
25 the one that you said you applied for, though?

1 A May I explain?

2 **MS HUTTO** Yes

3 A Mr Hoyt Sharpe called me and told me that this
4 was what was happening, that we were going to
5 that they were in the process of refilling
6 some of the positions that had been vacated and
7 asked me would I be interested in talking with
8 him about the position at Perry Correctional
9 Institution We met about a week later and had
10 lunch and talked about the position at Perry
11 And we also discussed the upcoming position at
12 Tyger River

13 **MS HUTTO** Okay When you accepted the position as
14 Program Coordinator, were you aware that it was
15 going to come back and you were going to
16 come back and perform the same duties as a voc
17 teacher?

18 A Yes, sir Mr Sharpe explained that the
19 Department was wanting to fill the positions,
20 but they did not want them to be under the
21 teacher pay scale, ma'am

22 **MS HUTTO** And you so you knew the salary was
23 going to be the \$13,000 less?

24 A Yes, ma'am I knew approximately what the
25 salary would be, ma'am

1 MS HUTTO Okay, thank you

2 MR MCCLARY Do you know what the I think the
3 external position description or title, state
4 title, was a Coordinator I position, Program
5 Coordinator

6 A Program Coordinator I position

7 MR MCCLARY position And then the internal
8 title was a vocational instructor, is that
9 right?

10 A Yes, sir That's what was on the notice for
11 employment

12 MR MCCLARY Do you know what the state title was
13 called before you were impacted by the
14 reduction in force? Do you know what your
15 your title was called? Do you know if it was
16 a Program Coordinator I position at that time
17 or

18 A I think my can I verify something?

19 MR MCCLARY Yes

20 A The position at Tyger River, that state title
21 is listed as a vocational teacher

22 MR MCCLARY Okay

23 A The position at Perry, the state title was
24 listed as a Program Coordinator I with an
25 internal title as a vocational teacher I had

1 never seen that internal part on a job
2 description before

3 **MR MCCLARY** Okay

4 **MS HUTTO** I'm sorry, one other question Was that
5 Program Coordinator position, was that a pink
6 slip position?

7 A No, sir That no, ma'am That was a full
8 time position

9 **MS HUTTO** Okay

10 **MR MCCLARY** Herb, do you have any questions?

11 **MR COOPER** You've not had a performance evaluation
12 in over two years Have you raised any
13 objection to anybody about that?

14 A Can I speak freely?

15 **MR COOPER** Absolutely

16 **MR MCCLARY** Yes

17 A Okay I find it odd because prior to '03 we
18 had them yearly And at Perry, for some
19 reason, that task has not been done since I
20 returned And I maybe it's just an
21 institutional matter that has not been kept up
22 with is what I'm speculating

23 **MR COOPER** I know it's not you don't have to
24 You can just you can come as a meets or
25 something My question is so you never raised

1 any objection to that to the superintendent
2 with the Palmetto Unified School District here
3 in Columbia?

4 A About not having an evaluation

5 **MR COOPER** Correct

6 A in two years? No, sir

7 **MR COOPER** Okay Did you raise any objection to
8 the superintendent here in Columbia about
9 performing the same duties that you had before
10 and about Mr Yarborough's position and and
11 difference in pay? Did you raise any objection
12 besides being part of this lawsuit

13 A I had a discussion with the assistant
14 superintendent, Mr Burns, which is the let
15 me which is the gentleman that is over the
16 the vocational ed part of the Palmetto
17 Unified School District at this time

18 **MR COOPER** You had a conversation with him?

19 A Yes, sir, I did

20 **MR COOPER** And what was the result of that?

21 A He indicated that he was in agreement That he
22 personally felt like it was some inequities
23 there, but he did not foresee that that was
24 going to change any time in the foreseeable
25 future The school district has divided itself

1 into two groups, the EFA and the adult ed part
2 of it

3 **MR COOPER** What do you mean by divided itself?
4 It's two different things now?

5 A As far as funding, they're looking at it at two
6 different areas

7 **MR COOPER** Well you didn't take your objection,
8 besides being part of this suit, any further to
9 inequity that you foresee in pay to the
10 superintendents here at the Palmetto here in
11 Columbia?

12 A No, sir I have not pursued that issue I'm
13 not the only person that's in that particular
14 situation And I did have not pursued that
15 at this time

16 **MR COOPER** Thank you

17 **MS KUDELKA** I have a question to follow up on
18 on that You said the funds have been split
19 out Do you know what funds you're being paid
20 with?

21 A I'm a vocational teacher, ma'am I'm not into
22 the how the system is funded

23 **MS KUDELKA** All right

24 A I understand that a lot of federal funds are
25 used in the vocational ed area, but I'm not an

1 expert in that area

2 **MS KUDELKA** Okay And this is may not be a
3 question you can answer either, but who
4 determines what your state title can be or is?
5 Is that the superintendent, or is it Department
6 of Corrections?

7 A I believe I'm not sure, ma'am

8 **MS KUDELKA** Okay, that's fine

9 A I don't know if it's done by the State
10 Department or who does it

11 **MS KUDELKA** Okay, all right I don't have any
12 questions

13 **MR CORNING** I have I have a question Are you
14 currently certified?

15 A Yes, sir

16 **MR CORNING** Are you required in your current
17 position, not your past position Are you
18 required in your current position to be
19 certified, and if so, who requires it?

20 A The Palmetto Unified requires me to be
21 certified, sir

22 **MR CORNING** Currently?

23 A Currently, sir, yes, sir I have to maintain
24 my certificate They provide me with the
25 the way we're maintaining our certificates at

) 1 this moment it's changed in the last few
2 years Several years ago all we did was we had
3 to get courses and the Department of Education
4 certified that we took six hours of college
5 credits within that five year period Now we
6 have a book that we keep up with a points
7 system The Palmetto Unified School District
8 has supplied me with a book to keep up with my
9 points system, and they have a person at the
10 headquarters area in the Palmetto Unified that
11 is in charge of maintaining teachers'
12 certification So I report to her if I intend
13 to take a course that would benefit me in that
14 matter

15 **MR CORNING** Thank you

16 **MS KUDELKA** All right, I have one more then
17 following up on that because I'm a little
18 confused So you're a certified teacher, and
19 you have to be a certified teacher, but you're
20 no longer there's no requirement any longer
21 that they pay you as a certified teacher?

22 **A** You're absolutely correct, ma'am

23 **MS KUDELKA** Okay And was and I guess this is
24 okay to ask Roland will stop me if it's not
25 But the original lawsuit that you filed, was

1 that because you were not being paid as a
2 certified teacher at the rate that teachers
3 were being paid statewide?

4 A I in a yes, ma'am

5 **MS KUDELKA** Because you weren't you weren't
6 being paid

7 A The original lawsuit and again, if I say
8 something, let me know The law required that
9 we be paid according to the teacher pay scale,
10 plus any state, county supplements, an average
11 of those supplements And I understand the
12 agency was not paying us the average of those
13 supplements

14 **MS KUDELKA** Okay Now, to your knowledge let
15 me think this through To your knowledge, has
16 that law changed? Has that requirement changed
17 that you be paid based on whatever that level

18
19 **MR CORNING** Ms Kudelka, I don't think he's the
20 proper person to answer this question

21 **MS KUDELKA** Okay, okay

22 **MR SUMMERS** I would agree

23 **MS KUDELKA** Thank you

24 **MS HUTTO** I'm going to go back, I'm sorry I don't
25 want to beat this to death, but you talked

1 about the Master's with the years of
2 experience

3 A Yes, ma'am

4 **MS HUTTO** I just want to clarify You're currently
5 not being paid according to your credentials as
6 a teacher with a Master's plus the 16?

7 A Currently 19 years, ma'am And no, sir no,
8 ma'am, I am not being paid according to the
9 teacher pay schedule, according to my
10 certificate

11 **MS HUTTO** Because you're

12 A level and years of experience

13 **MS HUTTO** Because you're a Program Coordinator/Voc
14 Teacher?

15 A Yes, ma'am

16 **MR CORNING** That goes back to my question Are you
17 required as a Program Coordinator/Teacher to be
18 paid to, you know I mean as far as you
19 know, I mean, are you required to have your
20 certificate?

21 A Yes, sir

22 **MR CORNING** Are you going to lose your job as
23 as a Program Coordinator if you don't keep your
24 certificate up, if you know?

25 A Yes, sir I will lose my job And, in fact,

1 the my assistant teacher at Perry
2 Correctional Institution, the masonry teacher,
3 has just now completed his They call it
4 direct training And the assistant
5 superintendent will be down Monday to sit in on
6 his program and observe his teaching And this
7 takes about three years in order to to go
8 through that process And he will then receive
9 his certificate Yes, sir, we are most
10 definitely required to have teaching
11 certificates

12 **MR MCCLARY** Do you know if he had a time period
13 that if he had not completed that

14 A The answer to that, sir, is five years

15 **MR MCCLARY** Okay

16 A You must be completed your stuff at the time
17 that your certificate would have expired So
18 there's a time, five year time limit Teachers

19 I don't know any in the Department of
20 Corrections, but there are several that's in
21 the at the school district level that I
22 know have lost their job because they were not
23 able to to do that within that time period

24 **MR MCCLARY** And do you know that the brick
25 mason that's that works with you there, do

1 you know if he

2 A That's Nick Campbell

3 **MR MCCLARY** is in the same position that you
4 are?

5 A Yes, sir He's in the same position that I am
6 He's started out like Mr Yarborough did They
7 evaluated his years of laying brick They
8 awarded him a level of educational experience,
9 and then he had to perform a practical exam, a
10 written exam And then he had to take the
11 course work that is required by the Department
12 of Education And the last task that must be
13 done before he gets his certificate is that the
14 assistant superintendent has to observe his
15 teaching and his class, and that's going to
16 happen on Monday

17 **MR MCCLARY** But what I was asking, and I think you
18 may have answered, but I want to make sure
19 He's in a Program Coordinator I position, as
20 well?

21 A Yes, sir, he is

22 **MR MCCLARY** Okay

23 **MR COOPER** Let me let me follow up If you
24 never received any EPMS or planning stage since
25 you've had your position, how do you know if

1 you'll lose your job as a Program Coordinator
2 if you did not retain your certification? How
3 do you know that?

4 A That's a good question I just we were
5 hired as a Program Coordinator, and I'm just
6 assuming that was accomplished

7 **MR COOPER** On your

8 for paper purposes, and I'm assuming that

9 **MR COOPER** On your application on the job
10 description does it say that was a mandatory
11 requirement, certification?

12 A Yes, sir

13 **MR COOPER** You can remember that?

14 A I'm almost sure of that I'm not you asked
15 me to recollect from memory, but I'm almost
16 sure it says it at the bottom

17 **MR COOPER** Okay And it sounds like since you're
18 being sent back for additional training that
19 the superintendent here in Columbia at the
20 Palmetto Unified School is aware that you are
21 a Program Coordinator

22 A Yes, sir

23 **MR COOPER** So they're aware of these differences?

24 A Yes, sir, very much so He's addressed it at
25 some of our in-services before

1 **MR MCCLARY** How has he addressed it?

2 A Questions were asked to him at some of our in-
3 services by some of the people that are in the
4 same position I am about the inequity in the
5 pay And he's indicated at this time there
6 were no funds available to correct that

7 **MS HUTTO** Did the question ever come up from any of
8 those folks whether or not they would lose
9 their positions if they were not if they
10 didn't maintain their certification?

11 A No, ma'am I have no knowledge of anyone I'm
12 assuming that that title has only been out for
13 three years so they would have two more years
14 in order to to do that I don't know the
15 answer to that, ma'am

16 **MS HUTTO** Okay

17 **MR MCCLARY** Thank you very much

18 A Okay

19 **MR NICKLES** We'd ask that Mr Bell be excused

20 **MR MCCLARY** Thank you, Mr Bell

21 **MR SUMMERS** We agree

22 **MS GUFFEY** We present Ms Carolyn McIver Smith as
23 our next witness

24 **MS SMITH - DIRECT EXAMINATION BY MS GUFFEY**

25 Q Ms Smith, would you state your full name and

1 address for the record, please?

2 A Carolyn McIver Smith, 321 Spring Point Drive,
3 Columbia, South Carolina 29229

4 Q Thank you, ma'am Now, Ms Smith, were you
5 ever employed with Palmetto Unified School
6 District?

7 A Yes, I was

8 **MR SUMMERS** I'm going to object as to the form of
9 the question, sir

10 Q Are you a grievant in this matter, Ms McIver
11 Smith? Are you a grievant today in front of
12 this panel?

13 A Yes, I am

14 Q And as a grievant, what agency, state agency
15 were you employed with when you filed this
16 grievance?

17 A The South Carolina Department of Corrections

18 Q And were you a teacher in that Department?

19 A I was considered an administrator

20 Q Okay Were you working within the Palmetto
21 Unified School District?

22 A Yes, I was

23 Q Okay And what was your position?

24 A My position was academic program manager

25 Q And what institution was that?

- 1 A Wait a minute, I'm sorry, academic program
2 supervisor
- 3 Q Okay, all right And what institution was
4 that?
- 5 A Kirkland Reception & Evaluation Center
- 6 Q Okay Now, were how long were you in that
7 position as supervisor, academic program
8 supervisor?
- 9 A I don't remember, but I had the title of
10 education program supervisor the entire time I
11 was employed with the South Carolina Department
12 of Corrections
- 13 Q And how long would that have been?
- 14 A Approximately 11 years
- 15 Q So your total time with the Palmetto Unified,
16 Department of Corrections, was 11 years?
- 17 A Approximately
- 18 Q Okay, all right Now, tell me what your duties
19 were as academic or education program
20 supervisor
- 21 A I worked with inmates up to 21 years of age
22 counseling them into the education program,
23 made reports for the central office, was
24 representative on the special education
25 committee basically

1 Q And when you say you submitted reports to the
2 central office, who did you submit those
3 reports to?

4 A To the education supervisor, Ms Kathy Jackson

5 Q Okay And where was she?

6 A Headquarters

7 Q Okay And she was an education supervisor?

8 A Correct

9 Q Okay Now, tell me what your education
10 background is Tell me what degrees you hold

11 A I have a Bachelor's Degree, a Master's Degree,
12 a Specialist of Education Degree and a
13 Doctorate of Philosophy Degree

14 Q And what are those in?

15 A Education

16 Q Okay And do you hold certification in the
17 State of South Carolina?

18 A Yes, I do

19 Q What areas are you certified in?

20 A Elementary education, guidance and counseling
21 for secondary

22 Q Okay

23 A And it has 31 years of experience on my
24 certificate

25 Q Okay So you have a total of 31 teaching years

1 experience according to the State of South
2 Carolina?

3 A According to the State of South Carolina, yes

4 Q All right Now, tell me what happened to you
5 in the spring of 2003

6 A I was summonsed to the warden's office and at
7 that time was notified that I would be RIF'd
8 from my position

9 Q Okay And were you offered any other
10 positions?

11 A Not at that particular time

12 Q Okay Were you to your knowledge, were you
13 qualified to bump someone else within the
14 geographic circles provided?

15 A To my knowledge, yes

16 Q And who would have that been?

17 A Ms Kathy Jackson

18 Q Okay And what was Ms Kathy Jackson's
19 position?

20 A She was I don't know the term, supervisor
21 of education from headquarters

22 Q So she worked in the district office, is that
23 correct?

24 A She worked in the district office

25 Q But you had the same or more seniority than she

1 did?

2 A Correct

3 Q All right Would it would it have been
4 more seniority?

5 A More seniority and more education

6 Q Okay So both in credentials and in seniority,
7 time with the Department?

8 A Right, and overall experience

9 Q You have in front of you the geographic areas
10 that were drawn I think it's page 189, Mr
11 Cooper What all right And it's also up
12 on that screen if it's easier to see What
13 area was Kirkland in of those circles?

14 A Ten, Richland County

15 Q Okay And that's in circle one that's
16 handwritten, is that correct?

17 A Circle one?

18 Q Yes, ma'am You see there are eleven circles?

19 A Oh, circle one, yes, Richland County

20 Q Okay

21 A Okay

22 Q All right Now, was Kathy Jackson's position
23 within that circle as well?

24 A Correct

25 Q Okay So she was within your geographic area?

1 A That's correct

2 Q Were you given any reason why Ms Jackson was
3 retained even though she had less seniority or
4 credentials?

5 A No, I was not

6 Q Okay Would there have been any other
7 positions as administrator that you would have
8 been able to bump if you had been able to bump
9 in any of these circles throughout the state?

10 A Normally, I was an assessment coordinator, and
11 that position continued, but I was never
12 offered the opportunity to work in that area

13 Q So you had previous experience as

14 **MR SUMMERS** Ms Guffey, may I interrupt for just a
15 moment? I'm not trying to be difficult or
16 anything Ma'am, if you could just speak up
17 just a bit more, at least for me, that would be
18 helpful

19 **MR CORNING** And try to face maybe if you could
20 try to face the Chairman when you talk instead
21 of looking at counsel That may be part of the
22 problem He may not be able to hear you when
23 you turn your head so much

24 A Okay

25 **MR SUMMERS** Thank you, ma'am

1 A Sorry

2 Q Okay All right And they're trying to make
3 sure the microphones catch it all

4 A Okay

5 Q And my question was, you were previously an
6 assessment coordinator within the Department?

7 A Within the Department, yes, within education

8 Q And to your knowledge, there was a position
9 available for assessment coordinator at the
10 time of the reduction?

11 A There were a position as assessment
12 coordinator There was a position fulfilling
13 the responsibilities of an assessment
14 coordinator

15 Q Do you know what the title was for that
16 position if they were doing the assessment
17 coordinator, what was that title?

18 A No, because it was removed from education

19 Q Okay And placed in what area?

20 A To my knowledge, records

21 Q Okay Now, tell me did anyone continue in your
22 job under a different title after the reduction
23 in force?

24 A After I left Corrections, I really didn't
25 communicate with anybody on the staff, per se

1 So I can't verify whether anybody took the
2 position or the responsibilities The few
3 people outside of Corrections, I heard but I
4 can't verify

5 Q Okay During the time that you were working at
6 Kirkland, did you ever have anyone express
7 concern about the teachers' rate of pay?

8 A Yes

9 Q Tell me about that

10 A I've heard from staff, correctional officers
11 And one morning I entered my office to find the
12 salary schedule on my desk And they had
13 placed an asterisk beside my name, whomever
14 left it I had no idea So it was open, which
15 means the inmates, anybody could have read it

16 Q And and as you say, you don't know who left
17 that for you?

18 A No, I don't I'm not even sure they left it
19 for me, but it was left on my desk

20 Q Okay Were there any specific incidents with
21 any correctional officers or staff that come to
22 mind regarding this pay issue?

23 A Not really I just heard it in passing and
24 noticed attitudes changed

25 Q Attitudes changed when?

1 A When the salary schedule was placed on my desk
2 So, apparently others read it, and attitudes
3 changed towards me

4 Q Okay And what kind of and what was your
5 pay, Ms Smith?

6 A When I left it was eighty-one thousand, just
7 approximately, nine hundred two or three
8 dollars

9 Q Okay Now, when you say attitudes changed, how
10 could you tell they had changed?

11 A Well I knew how I was treated before that
12 information was made public within Kirkland

13 Q And how was that before? What kind of
14 treatment did you receive before this knowledge
15 of your salary came out?

16 A Oh, I received positive positive I
17 thought I felt, you know, I was well liked,
18 well respected because I did my job And after
19 that information was made public, it appeared
20 that the staff was envious of me

21 Q And that was from your regular interactions
22 with them?

23 A From my regular interactions, yes

24 Q Okay, all right Do you know of anyone who was
25 not subject to the RIF or had any special

1 protection during the RIF that you know of?

2 A Personally, no, because I did not know other
3 staff people outside of education to the degree
4 that other staff people did So personally,
5 no

6 Q Ms Smith, do you know of any persons that the
7 Department retained after the RIF that had your
8 same qualifications, the Ph D , the Master's,
9 the degrees and certifications in elementary
10 education and like that?

11 A The Department came

12 Q Anyone after you left, anyone with like
13 credentials

14 A Would you repeat that question again, please?

15 Q Okay Is there anyone that you are aware of
16 who was retained after the RIF that had
17 qualifications such as your degrees, your
18 elementary certifications, your Master's, your
19 Ph D in education, anyone retained that had
20 similar degrees to your knowledge?

21 A I am unaware of anybody who with a Ph D
22 other than myself There may have been a
23 couple of people with the E D D but not the
24 Ph D

25 Q All right Was there anyone with inferior

1 credentials, those with less than a Ph D or
2 the multiple degrees or certifications that
3 were retained to your knowledge?

4 A Yes There were guidance counselors, and I am
5 certified in guidance

6 Q And you were not offered any position in
7 guidance that was available?

8 A Not offered any position in guidance

9 Q Ms Smith, were you paid extra for that Ph D ?

10 A I was paid according to the South Carolina
11 Department of Education So many years of
12 experience, so many degrees, you make "X"
13 amount of dollars

14 Q Okay And is is the way that schedule
15 works is the higher your degree, the higher the
16 money?

17 A Correct

18 Q Thank you I have no other questions If you
19 would, answer, Ms Smith Mr Summers is
20 going to ask a couple of questions and maybe
21 the panel as well

22 A Okay

23 **MR SUMMERS** Thank you, Ms Guffey

24 **MS SMITH - CROSS EXAMINATION BY MR SUMMERS**

25 Q Good afternoon, ma'am

1 A Good afternoon, sir

2 Q Yes, ma'am Thank you again for speaking up
3 I apologize for interrupting you before

4 A No problem, sir

5 Q As Ms Guffey indicated, my name is Lake
6 Summers I represent the agency in this
7 hearing

8 A Okay

9 Q And if you can while you're answering my
10 questions just project your voice as loud as
11 you can And if you need to, you can certainly
12 address the panel as opposed to me in your
13 responses if that helps you at all

14 A Okay

15 Q In some of the final questions that Ms Guffey
16 asked you, you all talked about the pay
17 schedule pursuant or issued by the Department
18 of Education Do you recall talking about
19 that?

20 A Yes

21 Q Okay Is that a pay scale that's published by
22 the Department of Education for educators? Is
23 that what you were referring to?

24 A That's my interpretation of it, yes

25 Q And I'm not trying to put any words in your

1 mouth Is it a is it a document? How is
2 it available, how do you know, how do you see
3 it?

4 A There were times that I didn't see it because
5 I did not deal with the budget The
6 information came from the superintendent
7 exactly what my salary would be by the years

8 Q And the superintendent was who?

9 A Wendell Blanton

10 Q And

11 A When I left

12 Q Yes, ma'am

13 A It was also Dr James Archie

14 Q And Dr Archie was before Mr Blanton?

15 A Correct

16 Q Now, you Ms Guffey asked you questions
17 about whether there were positions available as
18 a guidance counselor Do you recall talking
19 about that?

20 A Correct

21 Q And you know do you know John Near?

22 A Yes

23 Q Okay Please tell the panel who John Near is,
24 to the best of your understanding

25 A To the best of my understanding, he was

1 director of personnel

2 Q And that was for what agency, ma'am?

3 A The Department of Corrections

4 Q And did you meet with Mr Near at any point
5 after the reduction in force was announced?

6 A After it was announced, yes, I did

7 Q Please tell the panel about that meeting Let
8 me start off where did that meeting occur?

9 A At the headquarters building in Mr Near's
10 office

11 Q Do you recall when it occurred?

12 A No, I don't That was over five years ago

13 Q Yes, ma'am And tell the panel what you recall
14 from that meeting What did Mr Near say to
15 you?

16 A Mr Near mentioned that I would be RIF'd, and
17 the only positions available was correctional
18 officers' positions Should positions become
19 available after the RIF, I would be the first
20 notified and hired

21 Q Did Mr Near talk to you about a recall period?

22 A Yes

23 Q And can you describe for the panel what you
24 recall Mr Near's information concerning the
25 recall period?

1 A That was what I the statement that I made
2 During the recall period, that I would be the
3 first one hired, but as far as a duration of
4 time, I don't recall

5 Q Don't recall that part?

6 A No, I don't

7 Q Yes, ma'am

8 A I just know it never came

9 Q Yes, ma'am, I understand You mentioned Ms
10 Kathy Jackson's name Do you recall talking
11 about Ms Jackson?

12 A Yes, I do

13 Q And you were you testified about her
14 seniority, her status relevant or in relation
15 to yours Do you recall talking about that?

16 A Yes

17 Q How do you know the information about Ms
18 Jackson's status?

19 A I spoke with Ms Jackson

20 Q And when did you speak to Ms Jackson?

21 A During the time the information was published
22 about the RIF

23 Q How many times do you recall speaking to her,
24 ma'am?

25 A Only once

1 Q Do you recall where that occurred?

2 A I don't recall

3 Q And you mentioned in some testimony from Ms
4 Guffey that there's a central office You used
5 that term central office Do you recall using
6 the term central office?

7 A Right

8 Q Is that at the headquarters building?

9 A That's at the headquarters It's referred to
10 as headquarters, as well as the central office

11 Q And is that the same building where Mr Near's
12 office is located?

13 A That's the same When they refer to central
14 office, we're referring to education, and Mr
15 Near's office, headquarters

16 Q Okay And again, I'm not trying to be
17 difficult Is that in the same physical
18 structure?

19 A In the same physical structure

20 Q Yes, ma'am, thank you You testified under
21 questioning from Ms Guffey that there was some
22 a change in attitude after an event that
23 you described for Ms Guffey Do you recall
24 talking about that?

25 A Yes, I do

1 Q And you talked about some information being
2 left on your desk Do you recall talking about
3 that?

4 A Yes, I do

5 Q And you said it was a salary schedule with some
6 kind of marking or asterisk beside your name?

7 A Yes It was the salary schedule that's
8 published, I do believe, by the Budget &
9 Control Board for state employees whose salary
10 exceeded \$49,999 a year, which is public
11 information It was that salary schedule

12 Q Yes, ma'am Thank you for clearing that up
13 And let me check my notes very quickly, ma'am,
14 to make sure I'm not missing anything I
15 appreciate your patience Ma'am, that would be
16 all the questions I have for you at this time
17 Ms Guffey may have some follow up, and of
18 course members of our panel may have some
19 follow up

20 **MS GUFFEY** I have no follow up, so answer any
21 questions the panel may have

22 **MS KUDELKA** I have one question

23 **MR MCCLARY** Okay

24 **MS KUDELKA** You said that you had spoken with Ms
25 Jackson?

1 A Right

2 **MS KUDELKA** All right What can you tell me
3 about that conversation, what you guys talked
4 about?

5 A Basically, I asked about were there any
6 positions that I will be able to fulfill during
7 the RIF because the RIF list had come out, and
8 my name was not in it And I was inquiring
9 about a about whether anything was
10 available because I really wanted to retain my
11 job with the Department

12 **MS KUDELKA** Did and maybe I missed something,
13 but you mentioned that you knew that she
14 that you could fulfill her job and that she had
15 less amount of time, correct?

16 A Correct

17 **MS KUDELKA** How did you know that? How did you
18 know that she had less time?

19 A Well, one thing, when she came to the
20 Department I was there

21 **MS KUDELKA** Okay, thank you

22 A You're welcome

23 **MS ELMORE** I want to ask a question Can you kind
24 of explain to us the relationship in terms of
25 the hierarchy between Ms Jackson and your

1 position and where where you fell in
2 conjunction to where she is in terms
3 because you said she was the education
4 coordinator Did I get that right?

5 A Right Well it started with the
6 superintendent

7 **MS ELMORE** Uh-huh (affirmative response)

8 A And then Ms Jackson's position and then my
9 position within the facilities at Kirkland I
10 reported to Ms Jackson, in other words

11 **MS ELMORE** Okay That's

12 A She was my supervisor As a matter of fact, I
13 had a dual supervisor I reported to Ms
14 Jackson, as well as the young man who was at R
15 & E

16 **MS ELMORE** And that was because?

17 A Because I was housed there

18 **MS ELMORE** Okay, I understand

19 A And I needed, you know, somebody to refer

20 **MS ELMORE** Right

21 A report to

22 **MS ELMORE** Okay, thank you

23 **MR MCCLARY** Herb? Thank you, ma'am

24 **MS GUFFEY** All right We ask that Ms Ms
25 Smith be dismissed

1 MR MCCLARY Thank you, Ms Smith

2 MR SUMMERS And we agree Thank you, ma'am

3 A Thank you

4 MS WILLIAMS - DIRECT EXAMINATION BY MR NICKLES

5 Q State your name and address for me, please

6 A Maggie L Williams, 1561 Georgetown Drive,
7 Lakeland, Florida

8 Q Okay Ms Williams, at any point in time were
9 you employed in the Palmetto Unified School
10 District?

11 A Yes

12 MR SUMMERS For the record, ma'am, I'm for the
13 record I renew my objection that's subject to
14 your ruling

15 MR CORNING Just rephrase it like you did earlier,
16 counsel

17 MR NICKLES I mean

18 MR CORNING I understand the objection, counsel I
19 mean, you know, you'll get a chance to cross
20 Let's just move on

21 MR SUMMERS Oh, I understand that I'm just

22 MR NICKLES This is this is absurd

23 Q Tell me have you ever been employed teaching
24 anywhere in the State of South Carolina?

25 A Yes

1 Q Where were you last employed teaching in the
2 State of South Carolina?

3 A At the Camille Griffin Graham Institute

4 Q All right And how long were you there?

5 A I was there for five years

6 Q Okay What position did you teach?

7 A Well, I taught life skills, English for GED and
8 the youth program I was also the advisor for
9 the victims impact I was assistant librarian
10 after our main librarian was fired And then
11 I was also working with the lockup students
12 I had to go down and teach lockup in the
13 afternoon

14 Q Did you have any certifications from the State
15 of South Carolina

16 A Yes

17 Q Board of Education?

18 A I am certified in English and in business

19 Q Did you work at any positions within the State
20 of South Carolina other than at the Camille
21 Graham?

22 A Yes I worked at Wateree

23 Q Okay How long did you work at Wateree?

24 A Five years as an English teacher

25 Q And what levels of instruction did you offer at

1 Wateree?

2 A Basic English through GED English, and I also
3 worked with the youth program

4 Q Where is Wateree located?

5 A Outside of Camden, South Carolina

6 Q And Camille Graham is located where?

7 A Off Broad River Road in Columbia

8 Q We've got a map of the State of South Carolina
9 with some circles drawn on it Do you see
10 that?

11 A Yes

12 Q Now, you said that Camille Graham is at the
13 Broad River Campus, is that correct?

14 A Yes

15 Q What county is that in?

16 A That's Richland I mean Lexington County

17 Q Okay And Wateree is in what county?

18 A It was in Camden

19 Q Okay

20 A Okay, Wateree, I think, would be Sumter,
21 between Sumter and Kershaw, I believe

22 Q Look at look at page 188 for me, please
23 And that's the page that precedes

24 A Okay, okay

25 Q this That's a list of those circles that

1 we saw on the other page

2 A Okay

3 Q So we're talking about Camille Graham Was
4 that within the Broad River Road Complex? Look
5 at competitive area number one

6 A Number one, yes

7 Q Okay If we look down at Wateree, is that in
8 what's listed as number two?

9 A In two, yes

10 Q Did you work in both of those areas?

11 A Yes

12 Q Did you work in any other areas identified on
13 this map

14 A No

15 Q or on this list?

16 A No

17 Q Okay Did the services you provided as a
18 teacher differ from one location to another?

19 A No, not really because I was the only thing
20 when I went to Camille Griffin Graham, I had to
21 go to lockup, and I didn't have to do that at
22 Wateree And I didn't do any library work at
23 Wateree

24 Q Did your certificate requirements change when
25 you moved from one location to another?

1 A No

2 Q Did the way that you were paid change when you
3 moved from one location to another?

4 A No

5 Q Did your superintendent change when you moved
6 from one location to another?

7 A No

8 Q Now, on June 1, 2003, did anything happen that
9 affected your employment?

10 A Yes, I was bumped

11 Q And when you say bumped what do you mean?

12 A Well, evidently, they had they were reduce
13 reducing the staff And because I didn't
14 have as much seniority as somebody else, I was
15 let go

16 Q Okay Were you given the opportunity to
17 compete with people back in area number two
18 where you formerly worked?

19 A No

20 Q Were you given the opportunity to compete with
21 anybody in any other area of the state than the
22 central office area?

23 A No

24 Q Do you feel that you could have performed your
25 duties in other areas of the state?

1 A Sure, as long as it was, you know, in my field
2 Q Okay Did the to the best of your
3 knowledge, were there educational services
4 continuing to be provided to inmates after June
5 1, 2003?

6 A Yes

7 Q Okay And would those include services to
8 folks who were seeking their GED?

9 A Yes

10 Q Okay And would English be one of the required
11 subjects for those who are completing their
12 GED?

13 A Yes, very much so

14 Q And that is the area in which you instructed,
15 is that correct?

16 A That's right

17 Q Before you heard of this reduction in force,
18 had anybody ever told you you were working in
19 circle number one or circle number two?

20 A No I had never heard of it

21 Q Have you ever heard of those circles at all
22 before the reduction in force?

23 A No

24 Q When you were paid was it based on your
25 certificate?

1 A Yes

2 Q And your service?

3 A Yes

4 Q Okay

5 A And years of experience in teaching

6 Q Years of experience, okay Did you have any
7 teaching experience outside of working with
8 inmates?

9 A Yes

10 Q Okay And was the manner in which you were
11 paid for those experiences similar to the
12 manner in which you were paid instructing
13 inmates?

14 A It's based on years experience and my
15 certificate, yes

16 Q And when you worked in teaching individuals
17 other than inmates, did you have a
18 superintendent?

19 A Yes

20 Q Was the administration similar to that when you
21 as when you were providing instruction to
22 inmates?

23 A Yes

24 Q Did you consider yourself an educator while you
25 were providing these instructional services?

1 A Very much so

2 Q Okay Did you attempt to fulfill your
3 professional requirements in terms of
4 maintaining your certificate?

5 A Yes

6 Q Did you understand that to be a requirement of
7 your job?

8 A Yes

9 Q Apart from being bumped in circle number one,
10 did anybody give you any other reason for your
11 termination from employment?

12 A No

13 Q Okay Any time while you were employed
14 educating inmates, anybody tell you you were
15 doing a bad job?

16 A No

17 Q Did you receive evaluations from time to time?

18 A Yes

19 Q And were you evaluated based on your
20 instructional services?

21 A Yes

22 Q When you were providing instruction to an
23 inmate did you attempt to be as professional as
24 you were providing instructions to non inmates?

25 A Yes

1 Q Did you ever receive any commendations or
2 recognitions while you were employed providing
3 education to inmates?

4 A Yes

5 Q And who would have provided that commendation
6 to you?

7 A Well my immediate supervisor and the
8 superintendent

9 Q Okay Who was the superintendent?

10 A Wendell Blanton

11 Q And who was your immediate supervisor?

12 A Geraldine Abraham

13 Q Were you appreciative of the commendation?

14 A Yes I was recognized as teacher of the year
15 in October of 2002

16 Q Did you humbly believe it was deserved?

17 A Oh, yes

18 Q Okay Thank you I don't have any other
19 questions at this time

20 **MS WILLIAMS - CROSS EXAMINATION BY MR SUMMERS**

21 Q Good afternoon, ma'am

22 A Hi, how are you doing?

23 Q Fine, ma'am How are you?

24 A I'm fine

25 Q I trust you're comfortable

1 A Yes

2 Q My name is Lake Summers

3 A How are you doing, Mr Summers?

4 Q I'm fine, ma'am I'm representing the agency
5 in this matter I have a few questions to ask
6 you based upon what you and Mr Nickles just
7 talked about

8 A Yes

9 Q Okay Just speak up as loud as you can

10 A Okay Am I not talking loud enough?

11 Q No, no I just wanted to make sure because
12 we're trying to record we're recording
13 these proceedings

14 A Okay

15 Q So that's why I'm asking In questioning from
16 Mr Nickles, you said that as a part of this
17 reduction in force you were bumped, is that
18 correct?

19 A That's right

20 Q Okay Now, do you recognize the name John
21 Near?

22 A Yes

23 Q Tell the panel who John Near is

24 A He's the man who informed me that I was being
25 replaced

1 Q Yes, ma'am And do you know did you ever
2 meet with him?

3 A Yes

4 Q Okay Tell the panel where you met with him

5 A I met with him when I was called down to the
6 headquarters

7 Q Okay And that's headquarters for the
8 Department of Corrections on

9 A Yes, on Broad River

10 Q Yes, ma'am And if you can recall, please tell
11 the panel what you recall as best you can from
12 that meeting I know it's been some time

13 A I can't remember all the details All I know,
14 when I went in, you know, he told me that I was
15 on the list to be relieved And I asked him,
16 you know, was there anything that I could do
17 He said no, we don't have and we're
18 offering you a job of, what, a correctional
19 officer And that wasn't what I went to the
20 Department for I went to teach, and I loved
21 teaching That's all I've done all my life,
22 you know

23 Q Yes, ma'am And so being a correctional
24 officer was not what you went to the Department
25 of Corrections to do?

1 A No I was hired as an English teacher because
2 I had to have English certification

3 Q Yes, ma'am

4 A for my position

5 Q If you'll give me, ma'am, I'm just double
6 checking a few pieces of information before I
7 finish questioning you because after that I
8 really don't have a chance to talk to you
9 again

10 A Okay

11 Q So that's all I'm doing right now So just
12 bear with me You mentioned the name
13 Geraldine, is it Abraham?

14 A Yes

15 Q Okay Who was Ms Abraham again?

16 A She was the immediate supervisor

17 Q Okay Now where did she work, at the same
18 facility?

19 A At Camille Griffin Graham

20 Q And how long had she been there to the best of
21 your knowledge?

22 A I don't know She was there when I got there,
23 so I don't know

24 Q Well, ma'am, thank you very much for answering
25 my questions I don't have any further Mr

1 Nickles may have some, and if Mr Nickles
2 doesn't, the panel might have some

3 A Okay

4 MR NICKLES I have no further questions for this
5 witness

6 MR MCCLARY No further questions then

7 MR NICKLES Thank you We would ask

8 A Thank you

9 MR NICKLES that Ms Williams be excused

10 MR SUMMERS And we would agree

11 A Thank you

12 MR MCCLARY You're excused, ma'am

13 MR SUMMERS Thank you again, ma'am

14 MR NICKLES Thank you very much Do you want to do
15 another witness, or do you want to take a break
16 now?

17 MS KUDELKA Actually, I was going to make a motion
18 that the panel get some legal advice from
19 Roland at this point, if the panel agrees with
20 that

21 MR MCCLARY Do we have a second? Do I have a
22 second?

23 MS HUTTO I second that motion

24 MR MCCLARY All in favor?

25 COMMITTEE MEMBERS Aye

1 **MR MCCLARY** All opposed? We're going to we're
2 going to get some advice from legal counsel
3 right now And why don't if ya'll want to
4 go ahead and go to lunch and be back at, can we
5 say, 1 45?

6 **MR NICKLES** 1 45?

7 **MR MCCLARY** That'll give us fifteen minutes for
8 advice, and then we can take an hour for lunch

9 **MR NICKLES** 2 00 o'clock or 1 45?

10 **MR MCCLARY** So you want to say 2 00 o'clock?

11 **MR CORNING** 2 00 would be better for me

12 **MR MCCLARY** 2 00 o'clock, be back at 2 00 o'clock

13 **MR NICKLES** Very good

14 **MR SUMMERS** 2 00 o'clock is fine Thank you

15 **MR NICKLES** And and we should be able to
16 conclude our presentation with the exceptions
17 we've talked about within the time frame left
18 for the remainder of the day

19 **MR SUMMERS** And to let you know, sir, we're
20 prepared to start off tomorrow morning with our
21 case, assuming that Mr Nickles' prediction
22 comes true, which it should

23 **MR NICKLES** Okay, thank you

24 **(Off the record)**

25 **MR SUMMERS** First of all, good afternoon, welcome

1 back from lunch I have a request I'm not
2 sure if it's going to be logistically feasible
3 Director Ozmint is going to be the first
4 witness for us tomorrow morning, assuming that
5 we finish this afternoon I'm trying to get a
6 good block of time for him I just was
7 informed not long ago that he has a
8 teleconference beginning at 11 00 o'clock that
9 he just, I've been told, cannot get out of So
10 we were going to start at 9 00 I asked
11 Roland, because I didn't know, and he wasn't
12 sure at all So I'm asking the committee if
13 it's possible, number one, if it's desirable,
14 to start at 8 30 I talked to Mr Nickles
15 about the length of time, a two hour window or
16 so I think that would be sufficient
17 Obviously, he would have questions for the
18 Director You all might have questions for the
19 Director So first and foremost, a two hour
20 window, sir, in your estimation, I guess,
21 collectively being desirable, and if so, can we
22 start at 8 30 tomorrow morning?

23 **MR MCCLARY** Any problems from anyone?

24 **MS KUDELKA** I can't start at 8 30

25 **MR SUMMERS** Okay

1 MS KUDELKA And I also if we're not done, I
2 would hate
3 MR SUMMERS That's
4 MS KUDELKA for him not to be able to leave
5 Can
6 MR SUMMERS We're working on alternatives right now
7 to
8 MR CORNING What about what about starting him
9 first thing in the afternoon?
10 MR SUMMERS I'm working on that, every alternative
11 I can think of I am
12 MS KUDELKA I am certainly fine with that, Roland
13 The only problem is, remember, I have
14 MR CORNING Oh, we stop at 3 00
15 MS KUDELKA I have to be out of here and we
16 MR CORNING Maybe we can go to lunch earlier and be
17 back earlier and
18 MS KUDELKA That'd be fine, yeah
19 MR CORNING still get him
20 MS KUDELKA We could do an early early lunch
21 and then do the afternoon
22 MR SUMMERS I'll see what we can do He's got that
23 teleconference at 11 00 I'll see if he's
24 available
25 MS THRAILKILL He didn't answer

1 **MR SUMMERS** Okay, we'll find out We have calls
2 in Jerry Seinfeld would say, things are in
3 the works, as we go through this So thank you
4 for your indulgence, and we'll keep you all
5 updated on that And if that just doesn't
6 work, we'll adjust and we'll have other folks
7 ready to go tomorrow morning

8 **MR MCCLARY** Okay

9 **MR NICKLES** Are we ready?

10 **MR SUMMERS** Counsel's ready

11 **MR NICKLES** All right

12 **MR DREYER - DIRECT EXAMINATION BY MR NICKLES**

13 Q State your name and address for me, please

14 A My name is Bill Dreyer, 1600 East Laurel
15 Avenue, Greenwood, South Carolina

16 Q Mr Dreyer, are you one of the grievants in
17 this case?

18 A Yes, sir, I am

19 Q Where were you employed before June 1, 2003?

20 A McCormick Correctional Institution

21 Q What was your job at McCormick?

22 A Classroom teacher

23 Q How long had you been at that facility?

24 A At the facility, I had been there since 1987,
25 May of 1987

1 Q Had you worked at any other facilities than
2 McCormick?

3 A Yes, sir, I have I've worked at Aiken Youth
4 Correction Center

5 Q When did you work there?

6 A From 30 April of 1984

7 Q Okay

8 A through May of 1987

9 Q What was your job there?

10 A Classroom teacher

11 **MR SUMMERS** Ma'am?

12 **MS HUTTO** Excuse me, I didn't get where you said
13 you last the facility name

14 A The last facility I worked at was McCormick
15 Correctional Institution

16 **MS HUTTO** And then you said later on before that
17 you worked

18 A Before that I worked at Aiken Youth
19 Correctional Center

20 **MS HUTTO** Aiken, okay Thank you, sir

21 Q Have you worked at any other facilities than
22 those two?

23 A No, sir

24 Q And is that your entire work history providing
25 education instruction to inmates?

1 A That's correct

2 Q Okay Do you hold any certifications through
3 the State Department of Education?

4 A I have a teaching certificate, yes

5 Q Okay Does it designate any areas in which
6 you're certified?

7 A I'm certified in social studies secondary

8 Q And tell me what classes during the course of
9 your career teaching inmates have you provided
10 instruction

11 A Most of the whole time it was GED

12 Q Okay Now, GED is what?

13 A General Education Development It's the
14 individuals who drop out of high school who are
15 given a second chance, and they can be taught
16 through various means on their own or they can
17 be taught in a classroom like we had at
18 McCormick and also Aiken where we teach these
19 individuals Basically, English and math are
20 the two major subjects, and of course you have
21 social studies, science and reading

22 Q Okay And is the objective to provide them the
23 equivalency of a high school education?

24 A That's correct

25 Q And that was your function throughout your

1 service, is that correct?

2 A That's correct

3 Q Were you affected by a reduction in force that
4 occurred on June 1, 2003?

5 A Yes, sir

6 Q How were you affected by that reduction in
7 force?

8 A Financially

9 Q Did you get to continue working?

10 A Not after June 1 or June 2nd

11 Q Okay Were you given the opportunity compete
12 for other positions that may have remained in
13 effect in the teaching inmates?

14 A No, sir

15 Q Now, in McCormick, if you will look at page 188
16 of the record, do you see McCormick listed?

17 A Yes, I do

18 Q And what area is McCormick listed in?

19 A Area ten

20 Q Is there any other facility in that area?

21 A Leath Correctional Institution

22 Q Were there any education programs retained at
23 Leath that you could have provided services
24 through?

25 A No, sir

- 1 Q So were all the education programs available in
2 those two institutions eliminated?
- 3 A That's correct
- 4 Q You also worked at Aiken in the past, is that
5 correct?
- 6 A Aiken Youth, right
- 7 Q Okay
- 8 A Which later became Trenton
- 9 Q All right And looking on this list, where
10 would Trenton have been located?
- 11 A That's area nine
- 12 Q Okay That's kind of adjacent to that area
13 number ten, isn't it?
- 14 A Yes, sir
- 15 Q Did you do the same functions at Aiken that you
16 did in McCormick?
- 17 A Yes, I did
- 18 Q Was there any material difference in what you
19 were expected to do in providing education to
20 inmates in those two institutions?
- 21 A The only difference was with the younger
22 individuals At Aiken Youth Correctional
23 Center, we had to take a specific role And
24 then later on at McCormick, we had to do the
25 same thing but not at first

1 Q Okay Had to maintain the same certificate to
2 do those things?

3 A Exactly, exactly

4 Q Were you pretty much evaluated in the same
5 fashion at those two different institutions?

6 A Yes, we were

7 Q Now, apart from seeing that particular page
8 turn to the next page Well, the page you have
9 in front of you is 189 Do you see that?

10 A Right

11 Q Do you see the circles on that page?

12 A Right

13 Q Before the reduction in force, had you ever
14 seen circles like that to address units within
15 the Department of Corrections?

16 A No, I have not This is the first time I've
17 seen it

18 Q Okay Were you ever told before the reduction
19 in force that you were working in something
20 called area number ten?

21 A No

22 Q Didn't wear a shirt with ten on it or anything
23 like that?

24 A No

25 Q Okay If you had had the opportunity to

1 compete for positions outside of that circle,
2 do you know if there were individuals with less
3 seniority than you who retained their jobs?

4 A Yes, sir, there were

5 Q Do you know the names of any of those
6 individuals?

7 A Yes, I do

8 Q And to the best of your recollection, who might
9 that be?

10 A There was a gentleman who worked at Trenton
11 His name was Ray Dorn I taught with Ray,
12 actually at McCormick, and he worked there for
13 about two years and then he went down to
14 Trenton, but Ray Dorn is the individual in
15 question

16 Q Let me make sure I understand this He worked
17 in both McCormick and Trenton?

18 A Yeah He worked at at McCormick
19 Correctional Institution I think it was about
20 maybe a year and a half

21 Q Okay So from time to time, did teachers move
22 from one facility to another?

23 A No, not not well, for the most part,
24 no I mean you could, you know You could get
25 transferred before that to another institution

1 Q Okay

2 A But no

3 Q Was he a teacher at McCormick?

4 A Yes, he was

5 Q And was he a teacher at Trenton?

6 A Yes, he was

7 Q And your testimony is that he did not have as
8 much service as you did?

9 A He did not have as much SCDC service No, he
10 did not

11 Q Okay Continuous state service? Continuous
12 service for SCDC?

13 A No, he did not

14 Q Okay Were you employed and providing
15 instruction to inmates at the time of the
16 lawsuit over teacher pay?

17 A Yes, I was

18 Q Were you involved in that lawsuit?

19 A Yes, I was

20 Q And as a result of that, did it have any impact
21 on your pay?

22 A In what respect?

23 Q Did it increase your pay somewhat?

24 A We received a settlement, yes

25 Q Okay Ever hear any comments from other

C468

1 employees about the level of teacher pay?

2 A All the time

3 Q What do you mean by that?

4 A Well, in SCDC you have you have programs
5 and you have operations And I've been told
6 several times by different individuals at
7 McCormick that we were there only because we
8 by law, basically, and they didn't really
9 think too much of us I was even told by the
10 associate warden at McCormick Correctional
11 Institution at the time, he said we don't
12 really need you people down here You don't do
13 anything

14 Q Do you remember the name of that associate
15 warden?

16 A Yes, I do

17 Q And what name is that?

18 A Coley Rushton,

19 **MR MCCLARY** Could you say that name again, please?

20 A Coley Rushton

21 Q And do you remember about how long ago or how
22 long before this RIF you heard Mr Rushton say
23 that?

24 A It was between principals At the time, I
25 believe Mr Bass, Horace Bass, had left I'm

1 trying to think It was 1995, I believe

2 Q So some time ago?

3 A Right

4 Q Attitudes ever change at McCormick?

5 A Yeah

6 Q And, of course, now there is no education
7 program at McCormick, is there?

8 A As far as I know

9 Q Okay Did you have any meetings with Mr John
10 Near or anyone else from the SCDC headquarters
11 about the reduction in force?

12 A No, I did not

13 Q Mr Near didn't call you in for a one on one
14 meeting or anything like that?

15 A Yes, he did, but that was not at the
16 headquarters

17 Q Okay Where did that take place?

18 A It was at Leath Correctional Institution

19 Q Okay And to the best of your recollection,
20 what transpired in that meeting?

21 A Mr Near offered me a position

22 Q What position was that?

23 A Correctional officer

24 Q Had you ever been a correctional officer
25 before?

1 A No, sir

2 Q Had you ever done anything other than teach in
3 the institution?

4 A No, sir

5 Q What were your duties going to be as
6 correctional officer?

7 A He didn't specify or I mean it was just
8 he just said' correctional officer And I
9 I was kind of thrown back by it

10 Q Okay Did you accept that?

11 A No, I did not

12 Q Did Mr Near talk to you at all about bumping
13 opportunities or recall opportunities?

14 A No, he did not

15 Q If your recall opportunities were limited to
16 the bubble that was number ten

17 A Right

18 Q would you have had any opportunity to
19 recall during the subsequent year?

20 A Sir, in area ten there wasn't wasn't any at
21 all because both Leath and McCormick
22 educational staff were RIF'd

23 Q So the recall was sort of a hollow opportunity,
24 wasn't it?

25 A Major, right

1 Q Okay As you did your work instructing
2 inmates, who was the person that you dealt with
3 directly as your supervisor?

4 A Jane Jones

5 Q Who was that? What position did she

6 A She was educational coordinator

7 Q Okay And is that someone that was also within
8 the education area of the Department?

9 A Right

10 Q Okay Did you have much dealings with Mr Near
11 or his crowd up in Columbia?

12 A Not at all

13 Q Not before the RIF?

14 A Not at all

15 Q Okay Did you get paychecks while you were
16 working?

17 A Yes, I did

18 Q Were they from the State Comptroller General?

19 A State Treasurer, right

20 Q State Treasurer?

21 A Right

22 Q Okay So you got a State of South Carolina
23 check?

24 A That's correct

25 Q Okay Now, do you know whether parts of the

1 money in that check or all of the check money
2 was attributable to specific funds? Did any of
3 that come to your attention?

4 A No, it did not

5 Q Okay You just worked for a paycheck and did
6 your best?

7 A That's correct

8 Q Apart from the reduction in force, were you
9 ever given any reason why your services were no
10 longer needed?

11 A No, I was not

12 Q Thank you This is Mr Lake Summers over here
13 who represents the Department and the
14 District He may have some questions, and then
15 these folks here on the committee may have some
16 questions for you

17 **MR DREYER - CROSS EXAMINATION BY MR SUMMERS**

18 Q Again, good afternoon

19 A Good afternoon

20 Q Just a few questions I'll try to be brief
21 I appreciate your indulging me

22 A Okay

23 Q Under questioning from Mr Nickles you were
24 you testified that you did not have an
25 opportunity to continue with the Department of

1 Corrections Do you recall talking about that
2 with Mr Nickles when it came to the RIF?

3 A I didn't say I did not have an opportunity to
4 continue with the Department, no

5 Q Okay

6 A As a teacher, I did not

7 Q Okay So as a teacher you did not have an
8 opportunity to continue?

9 A That's correct

10 Q In a teaching position?

11 A Right

12 Q But as you testified, you had a meeting with
13 Mr Near And again, that occurred at Leath?

14 A Leath Correctional Institution

15 Q And at that meeting, you testified that Mr
16 Near offered you a position as a correctional
17 officer?

18 A That's correct

19 Q And you declined that?

20 A That's correct

21 Q Now, there was some discussion that you had
22 with Mr Nickles about evaluations and the
23 process by which you were evaluated Do you
24 recall talking about that?

25 A Right

1 Q How often were you evaluated?

2 A Once a year

3 Q Okay Was that on a I guess the form's
4 called EPMS?

5 A Right

6 Q And do you happen to know what and again,
7 this is (inaudible) I can't testify So do
8 you know what the initials EPMS stand for? And
9 if you don't, that's okay

10 A I can take an educated guess, but right at this
11 point, no

12 Q I understand Thank you for trying, though
13 Let's talk about Mr Dorn Do you recall
14 talking to Mr Nickles about Mr Dorn?

15 A Right

16 Q And your testimony was that he was someone who
17 had less seniority than you who was retained
18 after the RIF Is that what you testified to?

19 A Not specifically He was he had gotten a
20 job down at at Leath I'm sorry, Trenton
21 Correctional Institution

22 Q Okay

23 A I don't know if that was before or after the
24 RIF I think it was afterwards

25 Q And again, I'm trying to make sure I understand

1 and for the panel Certainly the panel will
2 have a chance to ask you questions, too How
3 did you know and it may have been just
4 through personal interaction How did you know
5 about Mr Dorn's time in service with SCDC?

6 A Well, I was hired back in 1984 And Mr Dorn
7 worked at McCormick for about a year and a
8 half

9 Q And do you recall

10 A So he just had obviously, he had less with
11 SCDC than I did

12 Q And again, when do you recall him working at
13 McCormick?

14 A I believe it was 1995, if I'm not mistaken I
15 could be wrong on that I'm just

16 Q And Mr Nickles was asking you a question about
17 your paycheck

18 A Yes

19 Q If you ever had a problem with your pay, would
20 you go up to SCDC payroll and talk to them
21 about it?

22 A I'd probably talk to my supervisor first, my
23 immediate supervisor

24 Q And ultimately, would it be going through SCDC
25 pay the payroll

- 1 A I don't know I never had a problem with it
2 So
3 Q Okay Well I'm glad you didn't have a problem
4 with it
5 A Thank you
6 Q And you talked about the difference between
7 programs and operations
8 A Right
9 Q And when you said programs, describe for the
10 panel what you meant by programs
11 A Programs basically is educational, medical,
12 social work programs, psychiatric, that sort of
13 thing
14 Q And how about operations?
15 A Operations is security
16 Q Well, sir, thank you for answering all my
17 questions I appreciate it very much Mr
18 Nickles may have some more If not, the panel
19 may have some
20 **MR MCCLARY** Mr Nickles?
21 **MR NICKLES** No questions
22 **MR MCCLARY** Thank you
23 **MR NICKLES** Thank you very much We'd ask that Mr
24 Dreyer be excused
25 **MR SUMMERS** We would agree

MS MCCLANAHAN - DIRECT EXAMINATION BY MR NICKLES

1 Q State your name and address for me, please

2 A Beverly McClanahan, 3110 Montcrest Road,
3 Columbia, South Carolina 29210
4

5 Q Are you a grievant in this case?

6 A Yes, I am

7 Q Have you ever been employed as a teacher of
8 inmates?

9 A Yes, I have

10 Q When were you last employed in that capacity?

11 A Let me make sure I get my dates straight June
12 of 2005, I left to go to the Department of
13 Juvenile Justice

14 Q Okay Were you employed on June 1, 2003?

15 A Yes, I was

16 Q Okay Where were you employed prior to that
17 date?

18 A With Department of Corrections teaching
19 vocational horticulture at Broad River
20 Correctional Institution

21 Q Broad River is where the central headquarters
22 are, is that correct?

23 A That's correct

24 Q Okay And who did you teach horticulture to?

25 A I taught the inmates at Broad River that had

1 either received a GED or were in an educational
2 program trying to obtain their GED We had
3 that stipulation

4 Q So it would overlap those in the program and
5 those who had completed or obtained it
6 otherwise?

7 A Yes

8 Q Okay, all right Now, what were the nature of
9 your duties in providing this instruction?

10 A Well, first, had to assess the inmates to be
11 sure that they had the mental capacity to take
12 the program because vocational horticulture
13 requires some smarts So there's some book
14 work to go along with that So we had to
15 determine that Had to keep up with State
16 Department regulations as far as keeping
17 records, pre tests, post tests Had a
18 competency guideline set by the State
19 Department of Education that we had to fulfill,
20 keeping them busy and supervising them We did
21 a lot of work growing We had greenhouses We
22 grew our own plants We had plant sales, and
23 we sold the plants to employees and the we
24 kept the grounds up in certain areas of the
25 institution Kept up with the tools because we

1 had a lot of tools and kept up with the toxic,
2 caustic chemicals Those were the basics

3 Q How long did you have that position?

4 A During the time of the RIF, I was terminated

5 Q How long before the RIF did you have that job?

6 A Sort of I think I started with them in
7 2000 I had been an employee with Department
8 of Corrections since 1990

9 Q What did you do when you first went to DOC?

10 A I was went to Central Correctional
11 Institution, CCI, and did horticulture there
12 for their program Did not teach, was not part
13 of the education system at that time It was
14 horticulture/ground maintenance services and
15 worked with the inmates keeping up CCI

16 Q Okay How long were you there?

17 A I was there about six months and then was asked
18 to go to Broad River Correctional Institute
19 They had an opening there, a very similar
20 position, and so I kept up the grounds and did
21 did the work there

22 Q Okay How long did you do that?

23 A Until I went into teaching They recruited me
24 and asked me, and I did have a teacher's
25 certificate So

1 Q Who recruited you?

2 A Hoyt Sharpe, who was director of the CAT,
3 Career and Technology, and the principal at
4 Broad River Correctional Institution

5 Q And what did they ask you to do?

6 A They wanted to know if I'd come and teach at
7 Department for the Department of
8 Corrections at Broad River And they wanted to
9 open up a horticulture program They did not
10 have one at that time And so we looked into
11 what I needed to do in order to do that

12 Q What were some of the things you needed to do?

13 A When I graduated, which was a long time ago,
14 from college, the National Teachers Exam, I
15 took one in biology and chemistry, but at the
16 time, to become a horticulturist, you had to
17 there was no horticulturist exam and there
18 still is not one But they said you need to
19 take the general services I mean general
20 science exam And I said, whoa, that's been
21 thirty something years ago, but I I studied
22 and I took it and I passed And so then I
23 needed a few credits in horticulture because my
24 biology degree, I had a lot of plant sciences
25 So I went back to Clemson and got that,

1 obtained that and then ended up getting more
2 education

3 Q Did the Department of Corrections pay for your
4 education at Clemson?

5 A No, sir, they did not

6 Q You had to do that yourself?

7 A I do that myself and took annual leave to do it
8 also

9 Q And you did that in order to qualify for this
10 position, is that correct?

11 A That is correct Now, they gave me a probation
12 the State Department of Education gave me
13 18 months to to come up with a
14 certification in horticulture, and which I met
15 that

16 Q Okay Was it your understanding if you didn't
17 meet all these qualifications during the
18 deadline, that you would be let go?

19 A Pretty much that's what they said, or we'll
20 see, but basically they said, yes, you need to
21 do that

22 Q Did your pay change when you went from being,
23 I don't want to say groundskeeper, but someone
24 who was the groundskeeper to a horticulture
25 teacher?

1 A Work with the

2 Q Did your pay change?

3 A Yes, it did

4 Q Did it change for the better?

5 A It quite significantly changed for the better

6 Q About how much would the increase in pay have
7 been between when you were keeping grounds and
8 the time you were teaching horticulture?

9 A I think my numbers were maybe about \$32,000
10 when I was keeping the grounds And I went up
11 to forty something, probably on the upper end
12 of forty something when I came on the teacher
13 pay scale

14 Q And at the time of the RIF, what was your
15 salary?

16 A Just under \$52,000

17 Q Okay Now, during the course of the
18 instruction you provided in horticulture, were
19 you evaluated?

20 A Yes, I was

21 Q Okay Were you evaluated differently than
22 in terms of what they were looking for than
23 when you had been a groundskeeper?

24 A Well, there were a different set of
25 evaluations, but basically alike I had an

1 EPMS and I had they looked different

2 Q Okay

3 A Yes

4 Q Did who was the person evaluating you as a
5 horticulture instructor?

6 A Hoyt Sharpe and Bobby Kinard

7 Q Okay Mr Sharpe, you've already said, was in
8 the education area, correct?

9 A Yes

10 Q What area was Mr Kinard in?

11 A He was the principal at Broad River

12 Q So they were both in the education area?

13 A Yes, they were

14 Q Okay And among other things, did they try to
15 evaluate your effectiveness in providing
16 instruction to the inmates?

17 A Yes, they did

18 Q Do you know whether this horticulture program
19 was a part of the defined minimum program for
20 the school district?

21 A I that I I've never heard of

22 Q Okay So once you got your additional
23 credentials, got your certification, you
24 continued to work in this instructional area,
25 correct?

1 A That's correct, yes

2 Q And that ended June 1, 2003?

3 A Correct

4 Q What happened next?

5 A Met with John Near, who was director of
6 personnel up at the so-called headquarters
7 building And he told us we had three choices
8 You could either go into medical You could go
9 into the cafeteria, or you could be a
10 correctional officer That those were my
11 only choices

12 Q Okay Did you select any of those?

13 A I did I I chose to be a correctional
14 officer because I

15 Q Okay Did that change your compensation in any
16 way?

17 A Quite dramatically, down to \$23,000 a year,
18 roughly

19 Q So less than half of what you were making as a
20 teacher?

21 A Correct

22 Q What were your duties as a correctional
23 officer?

24 A Mainly just keeping an eye on the inmates I
25 did lots of things actually I would walk the

1 perimeter with a shotgun We we had to go
2 back and get police officer's certification,
3 which I had had previously when I had to do the
4 grounds because that that we had to be
5 police officer certified, and I had that
6 However, they wanted me to go back and do that
7 again in order to be a Correctional Officer II,
8 I believe, was the position So I did that
9 through four or five weeks of basic training
10 and passed that and then went And so a lot of
11 times they would use me to keep up the grounds
12 if that was needed For instance, if we had a
13 at that time we would have we had death
14 row there And sometimes we would have a case
15 where it was time to get rid of the inmate, so
16 they wanted the grounds beautiful They would
17 call me out to go back and do that When we
18 had accreditation, they would call upon me to
19 get the grounds and the records because that
20 was quite a critical part of accreditation,
21 being sure tools and chemicals were taken care
22 of So they would be sure that I would go back
23 and get everything in order to do that But I
24 probably did every job a correctional officer
25 normally does

1 Q At some point did your duties change?

2 A Yes, they did I chose to go one of my
3 friends in the horticulture division asked me
4 if I would come work at headquarters
5 horticulture and be a correctional officer
6 there They thought they had a slot over there
7 for me, and I did that for in June of 2004
8 to August of 2004 And then in August 2004,
9 the education department asked us to come back
10 and teach vocational horticulture but as a
11 lieutenant, and we were called vocational
12 trainers And

13 Q Did you do that?

14 A I did that

15 Q Were you paid as a certified horticulturist for
16 that position?

17 A I was paid a little more than a correctional
18 officer I think it was \$32,000 that I was
19 paid I believe that was the amount, but it
20 wasn't on the teachers' pay It was on a
21 lieutenant's pay

22 Q How were your duties as vocational trainer
23 compared to your duties that you previously had
24 as a certified horticulture teacher?

25 A They were exactly the same The EPMS was

1 exactly identical

2 Q At \$20,000 a year less?

3 A Correct

4 Q Did you teach students?

5 A Yes, I did, taught the inmates

6 Q Did you have a curriculum or any standards that
7 you had to use

8 A Yes

9 Q to judge their competence?

10 A We did There is the vocational
11 horticulture program has a competency list that
12 you go down and check off We had textbooks
13 They had work books

14 Q Familiar to you from your prior work as a
15 certified teacher?

16 A Yeah, exactly the same thing

17 Q Okay

18 A In the same location and everything

19 Q Who did you report to in that position?

20 A That was also I went to Broad River
21 Correctional Institute, reported to the
22 principal, who was Bobby Kinard, and

23 Q Did he do your evaluations?

24 A I honestly Hoyt Sharpe did my evaluations
25 And somewhere in there Bobby Kinard left and

1 retired And so Hoyt Sharpe mainly did my
2 evaluations

3 Q And what area was Mr Sharpe in?

4 A He was deputy director, I believe, might have
5 been his title, but he was in charge of all the
6 vocational programs throughout the state at the
7 Department of Corrections then

8 Q Okay

9 A Plus he did some other things, but I'm not sure
10 of what those were

11 Q All right So how long were you in that
12 position?

13 A That started in August of 2004 And then in
14 June of 2005 I went to Department of Juvenile
15 Justice to teach for them, horticulture and
16 science

17 Q In a certified capacity?

18 A In a certified capacity and on the state
19 teachers' pay, which was a big difference So

20

21 Q Okay Were you involved in any way in what's
22 been called the teacher pay suit?

23 A No, sir, I was not

24 Q Were you there when that suit was going on?

25 A I was an employee but not in not in

1 education at that time I was groundskeeper,
2 horticulturist position at that time I had
3 heard about it but wasn't involved in it

4 Q Did you ever hear any statements of concern or
5 criticism about the level of teacher pay at the
6 Department of Corrections?

7 A A lot

8 Q Explain what you mean by that

9 A A lot of people just didn't like that we made
10 more money They were jealous They would
11 like to get the money that we made Now, some
12 people were glad we got that money because that
13 meant that they got more money The principal
14 always had to make a dollar more than we did,
15 and the wardens had to make probably a dollar
16 more than we did or the principal So the
17 warden sort of liked it and sort of didn't like
18 it But I always pretty much got along with
19 all of them So, you know you know, but
20 you'd always hear I'd like to get that
21 teachers' pay

22 Q Okay

23 A And to be honest, frankly, to some of the
24 Department of Corrections employees, we did
25 make a lot of money compared to what some of

1 them do, you know

2 Q As you experienced?

3 A Yes, yes, as I experienced, yes

4 Q I don't have any other questions at this time
5 of this witness

6 **MS MCCLANAHAN - CROSS EXAMINATION BY MR SUMMERS**

7 Q Good afternoon, ma'am

8 A Hey, how are you?

9 Q Fine, ma'am My name is Lake Summers I
10 represent the agency in this matter I'm only
11 going to have a couple of questions for you

12 A All right

13 Q Just to let you know what's coming up next, Mr
14 Nickles may or may not have questions based
15 upon what I'm asking you And the folks on the
16 panel might have some questions

17 A Okay

18 Q based upon what the lawyers have done
19 today

20 A Okay

21 Q First of all, thank you for answering Mr
22 Nickles' questions very patiently I'll try to
23 make sure I ask good questions for you Really
24 what I wanted to focus on and just clarify, Mr
25 Nickles was asking you questions about how your

1 EPMS changed, if it changed, between the time
2 I guess the time before you became
3 certified in vocational horticulture Do you
4 recall that conversation with Mr Nickles? And
5 if you can, answer audibly yes or no so the
6 audio system do you recall that
7 conversation?

8 A Yes, I do

9 Q Okay And you said they looked different, the
10 EPMS's looked different Do you recall telling
11 Mr Nickles that?

12 A Yeah, when I was doing the grounds maintenance

13 Q Yes, ma'am

14 A Is that when you're referring to?

15 Q Yes, ma'am

16 A Yes, yes

17 Q And I just wanted when you said they looked
18 different

19 A The job duties looked different

20 Q Okay

21 A The job duties looked different My job
22 responsibilities were different There wasn't
23 anything in there about teaching inmates even
24 though we taught them every day doing that job

25 Q Right

1 A I wasn't paid as a teacher to do that job It
2 was hands on

3 Q And so the narrative parts, the job description
4 parts looked different and were phrased
5 differently between the two, or are we talking
6 a different form? That's I just want to
7 make sure

8 A Not a different form

9 Q Okay

10 A Just just the descriptions of the job
11 duties themselves looked looked different

12 Q Ma'am, thank you for answering my questions
13 That's all I have

14 A Okay

15 **MR NICKLES** No further questions

16 **MR MCCLARY** Anybody? Herb?

17 **MR COOPER** Verify one thing You initially were an
18 instructor teaching horticulture at the Broad
19 River facility, is that what you said? And
20 then was it the same facility when you were a
21 vocational trainer paid as a lieutenant, what
22 were they the same facilities?

23 A Same facility, same facility, same classroom,
24 same place

25 **MR COOPER** Okay

1 A Same inmates

2 **MR COOPER** I knew you had made some moves in there,
3 okay So

4 A Yes, yes I I left Broad River Correctional
5 Institution for a little period of time to go
6 work for headquarters ground maintenance in
7 between the two teaching jobs, if that makes
8 sense

9 **MR COOPER** Okay You were taught at Broad
10 River teaching horticulture and then you were
11

12 A Went back

13 **MR COOPER** Went back there as a lieutenant and
14 vocational trainer to that same facility?

15 A Same facility, same classroom

16 **MR COOPER** Same everything?

17 A Same everything

18 **MR COOPER** Thank you

19 **MR MCCLARY** I have one question

20 A Yes, sir

21 **MR MCCLARY** And don't give me the crazy eye when I
22 ask you this question Why when you were being
23 paid at, I think, around fifty something
24 thousand, and then you were offered a job as a
25 lieutenant I think I got my facts right

1 Why did you accept that job at a lower pay?

2 A Well, when I during the RIF I was at
3 \$52,000

4 **MR MCCLARY** Okay

5 A Okay And then I was offered the position
6 after during the RIF My only choice was
7 to be correctional officer or either leave the
8 agency And I honestly just wanted a little
9 bit of time in there to figure out, because
10 this just came out of the clear We

11 **MR MCCLARY** Right

12 A We had no idea I got called up to the
13 associate warden's office, and we didn't have
14 a clue as to what was getting ready to happen
15 And then we went in very innocently and found
16 out that that we were going to be
17 terminated that day and or shortly And so
18 I took the correctional officer position at
19 around \$23,000 just to sort of let me figure
20 out what I wanted to do And I didn't want to
21 jeopardize all the time I had in state
22 government and police retirement I just
23 wanted to figure that out And then I went
24 back to the lieutenant's job after those
25 periods of correctional officer And Hoyt

1 Sharpe, who was the in charge of career and
2 technology and the associate superintendent at
3 the time, said we hope some day to get ya'll
4 back on the state teachers pay We really hope
5 to go this is a start I know it wasn't
6 what you were making, but it's more than what
7 you're making now, and we'd love to have you
8 come back And and I really enjoyed
9 teaching I love teaching And I see guys
10 out I saw one a couple of months ago in
11 Walmart Miss Mack, Miss Mack, you know, I've
12 got my own business now and I'm doing well and,
13 you know, I run into that all the time And
14 that's rewarding if you can turn a couple
15 around And now I work with the girls over at
16 Willow Lane, and that's that's hard work
17 there

18 **MR MCCLARY** Thank you, ma'am I appreciate it

19 A You're welcome

20 **MR NICKLES** We would ask that Ms McClanahan be
21 excused

22 **MR SUMMERS** And we would agree

23 **MR MCCLARY** Thank you Thank you for your time

24 **MR NICKLES** Thank you

25 A Thank ya'll very much for your time

1 MR NICKLES Thank you

2 MR SUMMERS I received a page We're calling the
3 Director's office about his schedule I don't
4 want to interrupt It shouldn't take too long
5 to return the call

6 MR NICKLES We'll take a

7 MS GUFFEY That's fine

8 MR NICKLES We don't have an objection

9 MS GUFFEY Yes

10 MR MCCLARY Do you want to take ten minutes?

11 MR SUMMERS That'd be great, sir Thank you

12 (Off the record)

13 MS GUFFEY All right, Mr Chairman, are you ready?

14 MR MCCLARY I'm ready

15 MS GUFFEY Okay

16 MS MARTIN - DIRECT EXAMINATION BY MS GUFFEY

17 Q Ms Martin, please state your full name and
18 address for the record, please

19 A Geneva Cockrell Martin, 2218 Gadsden Street,
20 Columbia, South Carolina 29164 no, 2
21 let's see now, what is that zip code? 20

22 MR CORNING Downtown?

23 MS GUFFEY That'd be okay

24 A Downtown

25 MR CORNING 201

1 A 201, thank you very much, 201

2 **MR SUMMERS** That's literally answer the mail

3 **MR MCCLARY** You don't write yourself often

4 Q All right, Ms Martin Where were you employed
5 during the first half of 2003?

6 A Broad River Correctional Institution

7 Q Okay And are you a grievant in this matter?

8 A Yes

9 Q Now, what were you doing at Broad River, what
10 was your job?

11 A I was hired to teach English in the GED program
12 there at Broad River

13 Q Okay And do you have a certificate to teach?

14 A Oh, yes, Master's Degree

15 Q Okay And do you have certification in
16 English?

17 A I have it in English and in middle school
18 certification

19 Q And how long were you in the position at Broad
20 River?

21 A Almost six years Oh, in teaching position, I
22 guess five

23 Q And what were you doing oh, okay And what
24 else were you doing? What else did you do?

25 A At Broad River?

1 Q Yes

2 A When the RIF came, I took the only thing
3 offered me, which was that of an officer

4 Q Okay A correctional officer position?

5 A Correctional officer, yes

6 Q Had you ever held a position like that before?

7 A Never

8 Q And what did you have to do to get that
9 position?

10 A Well, when Mr Near gave me my options, that
11 was the only option and I accepted it

12 Q Why did you accept it?

13 A Because I needed the insurance

14 Q Okay And did you have to go through the
15 training?

16 A Oh, yes

17 Q Tell me about that

18 A It was hell on earth, I mean just to be
19 perfectly honest with you I was the nation's
20 best couch potato, which is no problem if
21 you're an English teacher But when they told
22 me that I'd go through the training, I knew
23 that I was in trouble So I began working out,
24 which was like walking down to the coroner
25 And then they said that we were allowed to go