

19061

THE STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

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MAY 03 2011

The Honorable Carolyn C Matthews, Administrative Law Judge

SC Court of Appeals

Case No 2009-ALJ-30-0103-AP

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 3 of 8

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

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

1 Q Now, they don't have certain benefits They
2 don't accrue certain leave and so forth as
3 temporaries So their day to day costs appear
4 to be less than they would have been had they
5 stayed as permanent employees Is that fair?

6 A Absolutely, because you're not paying fringes

7 Q Okay Now, if they are qualified to retire,
8 however, they qualify to retain health
9 insurance through the South Carolina Retirement
10 System, is that correct?

11 A Under the retiree program, yes, they could do
12 that

13 Q Okay And you in fact did that, did you not?

14 A I did

15 Q Okay So these folks are receiving retirement
16 checks They have access to health insurance
17 And then and there's a break in service,
18 correct?

19 A Yes, it is

20 Q Has to be according to law, right?

21 A Yes, that's correct

22 Q And a break in service means you're no longer
23 employed with that agency, correct?

24 A That is correct

25 Q But what your agency chose to do, if I hear you

1 correctly, is guarantee to those folks even
2 though it was within a RIF period that if you
3 so elect, you will return to us in a temporary
4 capacity?

5 A They signed an agreement form that specifically
6 stated the agreement for them to come back to
7 work, that is correct

8 Q But your agency wasn't obligated to offer them
9 that guarantee, was it?

10 A As a part of the retirement opportunity, yes
11 We were obligated to do that

12 Q But you created the retirement opportunity
13 You already testified to that

14 A That's correct, we did

15 Q Okay You didn't go to OHR You didn't go to
16 the Retirement System You did it yourself

17 A Absolutely

18 Q So you created the rules here, right?

19 A We did

20 Q Okay And you weren't obligated in this RIF
21 period to tell those folks who elected to leave
22 and separate from employment with the agency
23 that they had the contractual right to return
24 You weren't obligated to do that, were you?

25 A No, sir, but we wouldn't have offered the

1 program if we couldn't have done that

2 Q But again, that was your choice within the
3 agency?

4 A That's correct

5 Q And even in the institution of this reduction
6 in force, you did not first eliminate
7 probationary employees, did you?

8 A We had actually laid off temporary employees
9 I believe it was in we actually laid off
10 temporary employees in 2001 We laid off
11 probationary employees in 2001 We offered the
12 retirement incentive in 2001 And I mean
13 that's just the steps we took in efforts to try
14 to continue to save dollars within the agency

15 Q Okay And and for the record, Ms
16 Thrailkill, I don't think you've heard me
17 challenge the need to save money at all in this
18 proceeding I'm not that's not a part of
19 our case

20 A I understand

21 Q But let's look, because normally you do, before
22 you're going through a reduction in force you
23 look at are there probationary people out
24 there

25 **MR SUMMERS** I'm going to object, sir

1 Q Do you not?

2 MR SUMMERS We're using the term normally
3 Normally as compared to what? I don't know if
4 there's a

5 MR CORNING Yes If you want to put it

6 Q Well, you've already testified that prior to
7 this reduction in force you looked at
8 probationary folks, correct?

9 A We did And I think if you look at the listing
10 that you have under Tab 7 at the end of the
11 report

12 Q All right

13 A there is a list of employees, or it says
14 positions to eliminate to be eliminated,
15 not subject to RIF policy

16 Q Right

17 A And there is one, two, three, four, there's
18 four probationary employees listed in that
19 list

20 Q Right I mean even if you look at the list
21 let's look at page 192 of the record It's in
22 the same tab, Tab Number 7 It's the third
23 page in, or actually the fourth page in You
24 see that you're talking about in that
25 particular regard that long list of

1 administrative specialists You see that?

2 A Yes, sir

3 Q You start on one page and you've got Ms Floyd
4 there who's identified for RIF on page one,
5 substance abuse services division

6 A Yes, sir

7 Q And then you go down and you see total
8 positions to be eliminated, one That's on the
9 next page You see that?

10 A It's categorized by groupings, yes, sir

11 Q All right And we're talking about the same
12 thing

13 MR SUMMERS Can we mention what page we're on just
14

15 MR NICKLES Yeah, 192

16 MR SUMMERS Okay

17 MR NICKLES Top of 192

18 Q That's the carryover from page 191, isn't it?

19 A Yes, sir That's the AA50s

20 Q Right And you see that even though Ms Floyd
21 over there was designated for RIF, you've got
22 the last listing Loretta Hodge P What does P
23 mean?

24 A Probationary

25 Q Okay Because Ms Hodge had only been hired in

1 September of '02

2 A That's her RIF service date

3 Q Okay So even when you were doing this RIF,
4 you still retained probationary employees, and
5 they were subject to bump perhaps by service
6 date, but they hadn't been eliminated before
7 the RIF was implemented, correct?

8 A No, sir

9 Q Well, Ms Hodge was sure probationary, wasn't
10 she?

11 A Yes, sir

12 Q And she was on the RIF list, right?

13 A She was

14 Q Okay So she wasn't eliminated before there
15 was a RIF, correct?

16 A No, she wasn't I mean I

17 Q Okay

18 A I guess the Director could speculate as to why
19 we didn't do lay offs of probationaries again

20 Q Okay And if you see, like on page 193, you
21 see at the bottom of that page you've got a
22 probationary employee You've got Ms Lisa
23 Tucker who was also not designated for RIF but
24 subject to bump Do you see that?

25 A I do

1 Q Okay Now, let's go over to page 200

2 A Could could could I just point out
3 something, if we could, if we go back to the
4 AA75s starting on 192 and then carrying over to
5 193 That's area one She was the only
6 probationary employee in that class for area
7 one

8 Q Okay

9 A To me, that's kind of significant

10 Q Well, I think we have to let the panel decide
11 what's significant You just testify

12 A Right

13 Q Okay Let's look at page 200, please Now,
14 these are by as you said, there's
15 there's two criteria here, right, competitive
16 area and title that we're dealing with, right?

17 A Yes, sir

18 Q And the agency designated both, correct?

19 A That is correct

20 Q They designated the geographic area in which
21 you're going to compete and the other
22 individuals against whom you're going to
23 compete, correct?

24 A That's correct

25 Q If you look near the bottom of this page,

1 you'll see a listing of academic program
2 managers

3 A Yes, sir

4 Q And it looks like they were actually the
5 superintendent of education One, two, three,
6 four, five academic program managers and a
7 principal in that particular group Do you see
8 that?

9 A Yes, sir

10 Q So that's one of the areas in which you lumped
11 folks of different titles together for
12 competition, correct?

13 A Yes, sir

14 Q All right Now, Wendell Blanton was the
15 Superintendent of Education, correct?

16 A That's correct

17 Q Do you know whether by law the district has to
18 have a Superintendent of Education?

19 A I can't answer that question, sir

20 Q If it's required by law, certainly can't
21 eliminate that position, can you?

22 A If it's by law, I would say no

23 Q Okay So let's assume by law you can't
24 eliminate Mr Blanton because he's
25 Superintendent Then we go down and we've got

1 Delores LaBrue I believe Ms LaBrue came back
2 shortly after the RIF, right?

3 A She, if I recall correctly, she was on extended
4 military leave

5 Q Okay You've got Carolyn M Smith That's
6 Carolyn McIver Smith, correct?

7 A Yes, sir

8 Q You heard her testify earlier in this
9 proceeding?

10 A I did

11 Q You've got Hoyt Sharpe That's a name we've
12 heard some in the proceeding, correct?

13 A Yes, sir

14 Q You've got Kathy Jackson, you see that?

15 A Yes, sir

16 Q And you've got Tommy Wicker, you see that?

17 A I do

18 Q And then you've got William Vinson, the
19 principal down there Now, all these people
20 were grouped together by the agency, correct?

21 A That's correct

22 Q And you see that Ms LaBrue's RIF service date
23 was 8/28/1970?

24 A Yes, sir

25 Q And you see Ms Smith's was 2/10/1990?

1 A Yes, sir

2 Q And you see that Mr Sharpe's was 11/16/92?

3 A It's 1/16, I believe

4 Q 1/16/92 Ms Jackson's was 6/5/92, and Mr
5 Wicker's was 5/6/02 You see that?

6 A Yes, sir

7 Q But you're eliminating three positions Mr
8 Blanton is the Superintendent, and then Mr
9 Sharpe, Ms Jackson and Mr is it Mr or
10 Ms Wicker?

11 A I'm not sure if she was married or not It's
12 a it's a female

13 Q It's a female, Ms I'll call her Ms Wicker
14 They all have hire dates or service dates that
15 were after Ms LaBrue, Ms Smith and Mr
16 Vinson, correct?

17 A Yes, sir

18 Q But because of the fact that these folks were
19 moved, and that's the decision that the
20 Executive Director makes, correct?

21 A I think it was explained in the R3 within the
22 RIF plan as to why

23 Q But that's his decision, correct?

24 A Yes, sir

25 Q He removed those three folks So the people

1 who actually lost their positions were Ms
2 LaBrue, Ms Smith and Mr Vinson

3 A That's correct

4 Q Correct?

5 A That's correct

6 Q Okay We heard Mr Near on Friday, and you
7 were present for his testimony

8 A Yes, sir

9 Q Did you help Mr Near at all in drawing those
10 geographic areas?

11 A No, I did not

12 Q Did you have any substantive role in the
13 selection of individuals for RIF?

14 A I did not

15 Q There was one other person I wanted to or
16 maybe two other people I wanted to ask you
17 about on page 785, and that's in Tab Number 9
18 in front of you, please, ma'am

19 A Okay

20 Q We see that and if I've already asked you
21 this, please tell me Ms Patricia A
22 Williams, do you see her?

23 A I do

24 Q According to this, she has a hire date of
25 February 9, 2004, at Leath Correctional

1 Institution That was one of the RIF'd
2 institutions, correct?

3 A I believe so

4 Q Okay And if I remember correctly, Leath and
5 McCormick lost all of their certified staff,
6 did they not? They were in area ten, and we
7 can look at that if you'd like Area ten is at
8 page 204 in Tab Number 7

9 A It appears so, yes, sir

10 Q Okay So page 204, Tab Number 7, all the
11 certified teachers at Leath were eliminated
12 And then on February 9, 2004, you have Patricia
13 A Williams employed in an unclassified
14 temporary classroom teacher position at Leath
15 Correctional Institution Do you see that on
16 page 785?

17 A I do, but if the report is for any hires after
18 June 2 of '03, again I would go back and say if
19 she was hired prior to June 2 of '03, there
20 could be another employment record And as
21 we've said before, temporary employees that
22 come to work, each calendar year are required
23 to take a 15 calendar day break in service and
24 then return back to work

25 Q Well, we already know that all the classified

1 classroom teacher positions at Leath were
2 eliminated, correct?

3 A I understand that, in the RIF

4 Q And then Ms Williams was re-upped on February
5 24, '05, and March 13, '06

6 A She could have very well returned to the
7 position that she had been in all along That
8 is correct

9 Q Thank you very much, Ms Thrailkill I
10 appreciate you responding to my questions

11 A You're welcome

12 **MR SUMMERS** Very brief re-direct

13 **MS THRAILKILL - RE-DIRECT EXAMINATION BY MR**
14 **SUMMERS**

15 Q Ms Thrailkill, you talked in terms let's
16 go to Tab 7 And you recall the question by
17 Mr Nickles about the material or information
18 that appears at the bottom of page 200? Let
19 the record reflect that we're turning our
20 attention there

21 A 200, yes, sir

22 Q And Mr Nickles asked you or directed questions
23 towards you about Mr Sharpe You recall that?

24 A Yes, sir

25 Q Ms Jackson?

1 A Yes, sir

2 Q And I believe Ms Wicker?

3 A That's correct

4 Q And in that second column from the left there
5 is an alphanumeric two character designation

6 A Or three, that's correct

7 Q And you talked about and again, let's just
8 go ahead and go through the record to the very
9 last page of Tab 7 as Mr Nickles has
10 assembled, page 206 of the record

11 A Yes, sir

12 Q And you see the initials PTG and below that
13 there's a line that I believe begins with the
14 characters R1-R5 Do you see that, ma'am?

15 A That is correct

16 Q What does that say there?

17 A It says R1-R5-not retained due to necessary
18 qualifications, see Section 5 of RIF plan

19 Q Okay Well let's go ahead and turn to the RIF
20 plan Mr Nickles did not include this in his
21 materials for the panel, but it's at page
22 the RIF plan starts, or at least one copy of
23 it, at page 173

24 A Okay

25 Q And we'll go ahead and go from page 173 into

1 page 175

2 A Yes, sir

3 Q And if you go down to the bottom of 175,
4 there's a paragraph that begins in some cases

5 A Yes, sir

6 Q Do you see that, ma'am?

7 A I do

8 Q Could you read that, please?

9 A In some cases, in accordance with Section 6 9
10 of the Department's approved RIF policy,
11 employees with a higher RIF service date were
12 retained over the employees with a lower RIF
13 service date in the same generic state job
14 classifications or job classification series
15 due to the necessary qualifications of the
16 position or their higher pay level within the
17 pay band (Code R on listing of employees to be
18 laid off) The specific reasons in each of
19 these cases are as follows

20 Q And let's read if you skip over to the next
21 page, there's R3

22 A Yes, sir

23 Q It's on page 176

24 A Yes, sir

25 Q And again, the three individuals that Mr

1 Nickles discussed with you have the
2 alphanumeric designation of R3, correct?

3 A Yes, sir

4 Q Okay And read for the panel what appears
5 there at the paragraph that begins R3, then the
6 parenthetical area 01

7 A Okay UE07 academic program managers (2) with
8 a lower RIF service date did not possess a
9 principal's or superintendent's certification
10 required for either of the two central office
11 academic program managers who had a higher RIF
12 service date In addition, the UB07, which is
13 in parenthesis, principal in the same
14 competitive area was not eligible to upward
15 bump his supervisor who is an academic program
16 manager

17 Q Okay Could you the word I came up with
18 was decipher that Can you analyze those three
19 folks in comparison to that what that
20 paragraph means?

21 A It's saying that it's saying that Delores
22 LaBrue, Carolyn Smith and Dan Vinson did not
23 possess the necessary qualifications to bump
24 Hoyt Sharpe, Kathy Jackson and Tommy Wicker
25 even though they were in the state same

1 state classification

2 Q And again, this is back on page 200, Tab
3 7

4 A I'm sorry, yes, 200 in Tab 7 And of course it
5 also speculated it indicated that they
6 couldn't go upwards to get additional
7 compensation because of those qualifications

8 Q Well, ma'am, thank you for explaining that I
9 wanted the panel to be cognizant of that I
10 have no further questions for you

11 **MR MCCLARY** Thank you Any questions? Herb?

12 **MR COOPER** I have one question If we go to Tab 3
13 I'm going to pull it up It's the policy
14 If you go down to 2 3

15 A Yes, sir

16 **MR COOPER** on page 181

17 A Yes, sir

18 **MR COOPER** Whenever a RIF is in effect, no
19 additional new hires, internal promotions or
20 reassignments in a vacant positions in the
21 competitive area Would you explain what your
22 understanding of that is? What what does
23 that mean?

24 A Well, most of state rules and regulations
25 do not apply to temporary employees At SCDC

1 we don't have policies necessary for temporary
2 employees, other than the fact they do have to
3 apply corrective action policy and procedures
4 As far as this is concerned and again, my
5 speculation is it was not intended to put temps
6 in there because they're not subject to the RIF
7 or any recall rights for the RIF

8 **MR COOPER** Now, what do you what does that
9 mean? It doesn't say anything about
10 temporaries in there

11 A No, it doesn't

12 **MR COOPER** Okay What does what does that
13 mean, though?

14 A I would say new hires to FTE positions I mean

15
16 **MR NICKLES** I object She's not reading the
17 document

18 **MR SUMMERS** It's responsive to the question

19 **MR CORNING** Well, he's asking what to her
20 understanding, counsel I mean it may or may
21 not be

22 **MR NICKLES** She's offering an opinion She hasn't
23 been qualified as an expert

24 **MR CORNING** Well, I understand that, but that was
25 the question that he asked If you object to

1 her answering the question, he can't ask the
2 question, counsel Mr

3 **MR MCCLARY** Committee member

4 **MR CORNING** Committee member

5 **MR NICKLES** Proceed, proceed I think it was a
6 good question

7 A Are you saying answer it?

8 **MR CORNING** No, don't answer it

9 A No, don't answer it, okay

10 **MR NICKLES** No I mean I I'll withdraw my
11 objection Certainly if the committee member
12 wants to elicit information, that's certainly
13 I'm not going to stand in the way

14 **MR COOPER** I think I understood what you were
15 getting at Thank you

16 A You're welcome

17 **MR COOPER** I have no further questions

18 **MR MCCLARY** No further questions

19 **MR SUMMERS** I would say request excusal, but Ms
20 Thrailkill will be here for the rest of the
21 proceeding So

22 **MR MCCLARY** We'll break until

23 **MR NICKLES** Ms Jones is here if you want to do her
24 before

25 **MR CORNING** No

1 **MR NICKLES** or you want to wait That's fine
2 **MR SUMMERS** I think we have a very vigorous
3 negative from our committee attorney
4 **MR MCCLARY** I know she traveled a long way
5 **MR CORNING** Unless unless we're going to start
6 Mr Ozmint an hour after she
7 **MR SUMMERS** No, sir He's he's got a firm
8 time, 2 00 o'clock
9 **MR CORNING** Well, that's the problem, counsel
10 Normally, I would say go ahead, but since Mr
11 Ozmint has a firm time
12 **MR NICKLES** I understand
13 **MR CORNING** it'll create a problem
14 **MR SUMMERS** We appreciate the indulgence of Mr
15 Nickles
16 **MR CORNING** Could I see counsel for just one
17 second? I just want to understand something
18 **(Off the record)**
19 **MR MCCLARY** Good evening I trust everybody had a
20 good lunch
21 **MR SUMMERS** Yes, sir
22 **MR MCCLARY** Okay, just a little preliminary here
23 Witnesses are asked not to discuss this case
24 either before or after testifying until they're
25 excused A matter is still considered to be

1 pending before the committee during the time
2 involved in the request for consideration of
3 the committee decision or until the time has
4 passed for the appeal to the Administrative Law
5 Judge The only time the case is to be
6 discussed is during the formal hearing
7 proceeding You want to go ahead and read the
8 oath?

9 **MR COOPER** Yes Would you please stand? State
10 your name

11 **MR OZMINT** Jon Ozmint

12 **MR COOPER** Would you please raise your right hand?
13 Do you excuse me Do you swear or affirm
14 that the testimony you will give today is the
15 whole truth and nothing but the truth?

16 **MR OZMINT** I do

17 **MS KUDELKA** I don't know if I need to do this, but
18 I want to just go ahead and put it on the
19 record that I did formerly work with Mr Ozmint
20 probably about ten years ago And I don't know
21 that we have spoken since, but I just wanted to
22 put it on the record that we did work at the
23 same agency

24 **MR NICKLES** We don't have any qualms about that at
25 all

1 **MR CORNING** And although I'm not on the panel, I
2 you know, I'd also like to place on the
3 record that I worked with Mr Ozmint at the
4 Attorney General's Office prior to his leaving
5 to take his current position

6 **MR NICKLES** Once again, we have no reason for
7 concern

8 **MR SUMMERS** Very well

9 **MR MCCLARY** Mr Summers?

10 **MR SUMMERS** Mr Chairman, subject to your
11 discretion

12 **MR OZMINT - DIRECT EXAMINATION BY MR SUMMERS**

13 Q Good afternoon, sir

14 A Good afternoon

15 Q I know this will be stating the obvious, but
16 just speak up just as loud as you can As you
17 know, sir, these proceedings are recorded, and
18 we want to make sure that those comments,
19 everything that's said is recorded and kept in
20 the record You've already stated your name,
21 but nonetheless, please introduce yourself to
22 the panel and tell the panel what you do and
23 how long you've been doing it

24 A Jon Ozmint I'm the Director of the Department
25 of Corrections I've been there six years come

1 January

2 Q And tell the panel what you did prior to coming
3 to the Department of Corrections as Director

4 A I was the working working backwards, I
5 was in private practice for a little over two
6 years with the law firm of Murphy & Grantland
7 Before that I was the Deputy Attorney General,
8 chief prosecutor for the State Grand Jury for
9 about five years Before that I was General
10 Counsel for the Department of Labor, Licensing
11 & Regulations Before that I was Assistant
12 Solicitor in Anderson, South Carolina, the
13 Tenth Judicial Circuit, and before that I was
14 on active duty with the United States Navy

15 Q And if you could, briefly provide the panel
16 with your educational background, sir

17 A Bachelor of Arts in English from the Citadel
18 and a J D from the University of Alabama

19 Q Thank you, sir You talked about assuming your
20 current duties in January of 2003?

21 A Yes, sir

22 Q Do you recall, if you can, the precise date you
23 assumed your duties?

24 A Well, I think the inauguration date is the date
25 of the is the date you get your commission

1 It's the date of your commission as an agency
2 head or as a cabinet agency head I think that
3 was January 15th I know it was early in
4 January

5 Q Thank you, sir

6 A Of of '03

7 Q Of '03, very well If you could, describe for
8 the panel what you confronted when it came to
9 your agency's fiscal status and budgetary
10 status when you assumed your duties in mid
11 January or early January of 2003

12 A Funny things happen in election cycles The
13 agency had run a deficit two or three years
14 prior to that '03 budget cycle, the budget
15 cycle that would end July 1 of '03 And during
16 the course of the of the gubernatorial
17 campaign and the deficit had been reported,
18 or the anticipated deficit at the Department of
19 Corrections was reported as about a nine, ten
20 million dollar deficit, if I remember what I
21 read in the paper and what I was told when I
22 was doing my due diligence when during the
23 period of time between the time I was asked
24 whether I would take this position and the
25 period of time and the day I said yes, I'll

do it Well, when all the smoke cleared and I sat down with our financial people in the agency, it was going to be more than a forty million dollar deficit The problem with that is, the state really does have money in the general emergency fund, which is where our deficit when we run a deficit, the money actually has to come from somewhere, and it comes from the state emergency fund And so we were getting, both through the media and otherwise, and directly from Budget & Control Board staff and Senate staff and House staff when the session started a lot of pressure to reduce that deficit We had to take some action to control the drain that we were going to put on because this was this had been going on for a couple of years, at least one, and I want to say two And everybody kind of knew that that downturn, that actual decrease the fact that the state was was actually taking in less revenue in a given year than it had taken in in the year before was going to continue That this was kind of similar to the situation we're in now We I guess this year we are in the first year of

an actual decrease now with with the last round of budget cuts having less revenue coming in in this fiscal year than we did last fiscal year We had three years in a row of that back then And so budget writers were telling us, sending the message and telling us very clearly we needed to we needed to do something to control this And we need to do it quick We didn't want a deficit of over thirty million dollars I said forty before It was going to be over thirty So my forty number that I mentioned earlier was mistaken The deficit was projected when we got there at about thirty-five million dollars We ended up turning in that year about a twenty-nine million dollar deficit Part of the way we got there was this, was the reduction in force that affected but we tried to do it in a way that would affect the the things that we absolutely have to do

Q And let me interrupt you right there

A as little as possible

Q I appreciate that, sir And we'll get into that in just a moment And just to turn back the clock a little bit before you assumed your

1 directorship When you assumed your
2 directorship, did you become aware of any
3 actions or measures the agency undertook to try
4 to address the fiscal concerns you just
5 described?

6 A The agency had drawn down 1,600 employees
7 There had been a small RIF earlier, but they
8 had drawn down by they had offered some
9 early retirement incentive, actually paying
10 money out, in the early years They had drawn
11 down by attrition, you know, a freeze on
12 positions Our biggest problem was created by
13 the fact that we had drawn down operational
14 staff inside institutions to dangerously low
15 levels Out of 1,600 employees that had been
16 cut, we were down a hundred or so security
17 staff

18 Q And that concerned you?

19 A Yes

20 Q Obviously

21 A Yes, it concerned me It also concerned me
22 that, you know, that you're drawing down from
23 if you're drawing down security staff,
24 you're drawing down from the most basic I
25 mean you have to prioritize what you do in

1 corrections At the absolute top of the totem
2 pole in everybody's mind is security While
3 everybody is security in the Department of
4 Corrections, everybody that you have inside
5 your fence line is contributes to the
6 safety of that institution, you know,
7 headquarters and more marginal Ask me, I
8 I don't think we have any marginal functions
9 But you ask the guy on the street and he'll
10 tell you I'd rather have the security officer
11 in the in the building than somebody else
12 And the reality is, we were at that point where
13 we were staffing housing units, and we're still
14 at this point, with one officer And you can't
15 cut your security anymore, your operational
16 staff anymore, when you get to that low And
17 so there had been some draw downs, but I I
18 didn't, you know I I felt like any
19 further draw downs needed to to recognize
20 a hierarchy of priorities, of things that we
21 absolutely have to do that the U S
22 Constitution and courts in interpreting the
23 U S Constitution have said we absolutely have
24 to do

25 Q And what are those, sir?

1 A I mean you have to provide security As much
2 as I think it's disproportionately costly, you
3 have to provide medical care You have to
4 provide food and clothing And so and
5 and we're at the point in our agency where you
6 absolutely should provide education, but you
7 don't have to There's no U S Supreme Court
8 decision that says that prison systems have to
9 be in the business of educating There are
10 some other things that you don't have to do
11 You don't have to provide a canteen, for
12 example You can cut the canteen Well, when
13 you cut the canteens, you're cutting two to
14 three million dollars worth of revenue The
15 canteen pays for itself It doesn't every
16 every dollar of the canteen comes from the
17 canteen, all the employees for all the
18 salaries for the employees, the benefits for
19 the employees is one hundred percent self
20 funded We don't have to provide a canteen,
21 but I mean you get nothing out of cutting it
22 other than you've cut your own throat because
23 you lose two to three million dollars in
24 revenues Same thing with prison industries
25 So there are some things that other things

1 that you don't have to do, but in terms of
2 expenditures and saving millions of dollars,
3 saving the big dollars, we looked You know,
4 we we tried to draft a RIF plan that
5 that looked and reflected that reality And
6 again, in a state that spent less money on the
7 margins and more money on core government, we
8 never would have been in that position

9 Q So when you came in you identified the
10 hierarchy of priorities you just talked about
11 Then in light of the fiscal, we'll call them
12 concerns, you identified, sir, what decision or
13 decisions did you make regarding your work
14 force at that point?

15 A Well, we knew we were going to do another RIF
16 We knew we had to get the budget deficit down
17 to \$130 million dollars That was it seems
18 an arbitrary number, but it wasn't arbitrary to
19 the budget writers that ultimately we answer
20 to In other words, if you don't get it down
21 to that, we're going to take it out of your
22 hide next year anyway So

23 Q And that would be by way of appropriations and
24

25 A Yeah So that's what we did And we tried to

1 do it in a way that that kept as many
2 people as possible working inside the fences of
3 those prisons

4 Q Now, sir, if you could, there's a bound volume
5 in front of you right there And if you could,
6 turn to Tab 3, and I'm going to have Mr
7 Cooper, sir, as you see over to your left, he's
8 going to put the first page designated in
9 the top right corner as page 180 of the record
10 And it's on the screen right now, sir, in case
11 you want to refer to it there

12 A Okay

13 Q Let's go ahead and start with the panel Do
14 you recognize this document?

15 A It's the it's our reduction in force policy
16 that we're required to have under HR laws, I
17 believe

18 Q And what's the date of it, sir?

19 A March 14, 2003

20 Q Okay And in the bottom right corner of page
21 180, there's a stamp And it's up on the
22 screen now Do you see that, sir?

23 A Uh-huh (affirmative response)

24 Q Could you read that for the panel?

25 A It's approved by the Office of Human Resources,

1 meaning the Budget & Control Board Office of
2 Human Resources, which has to approve all HR
3 policies in the state in accordance with state
4 law

5 Q And now again, sir, this will seem like an
6 obvious question, but did the process by which
7 this policy was revised or drafted begin and
8 end on March 14, 2003?

9 A No

10 Q Describe for the panel how that process moved,
11 who was involved in the process by which this
12 product was created

13 A Well, there's there's in the case of HR
14 policies, it's a little bit more approval
15 process than others In the case of any policy
16 in the Department, the folks who either want
17 the change to the policy or need to create an
18 existing policy or delete an existing policy
19 work that through the chain of command in their
20 division, and they propose draft language And
21 then it works its way through all the other
22 divisions because whatever you do is going to
23 affect everybody else And then, obviously,
24 this was an HR intensive policy So HR was
25 probably originating shock for the changes and

1 but it by my point is, it goes through
2 legal It goes through operations It goes
3 through that way everybody in the agency
4 gets the chance to look at it and see how it's
5 going to affect, you know And then eventually
6 it it comes to me for signature or for my
7 suggestions That happens internally with
8 regard to any policy change Because it's an
9 HR policy, it also at some point and probably
10 and if I recall, more than one point in
11 this process, it went to state HR as well
12 They have to approve all HR policies like that
13 State law requires that And in this case, we
14 and other agencies knew RIFs were very real
15 possibilities, you know We weren't the only
16 agency RIF'ing people, forced to RIF people at
17 the time We we get the blame, but we
18 don't write the budget that causes it I know
19 HHS I believe HHS or DHS, they did a very
20 large RIF about the same time we did ours And
21 some other agencies have done smaller RIFs I
22 don't know that anybody did one as big as we
23 had to do here

24 Q And, sir, let me turn your attention There's
25 another it's a bigger three ring binder

1 right there ahead of you

2 A I see it

3 Q Yes, sir Go to page 179, if you will And I
4 appreciate you doing that, sir, and let the
5 record reflect that Mr Cooper has put that
6 particular image of page 179 on the screen Do
7 you recognize this letter, sir?

8 A Yes

9 Q And it's

10 A I've probably seen it before, or I've certainly
11 whether I've seen the letter before or not,
12 I really don't know I can tell you that
13 before I signed the policy, I knew that it had
14 been approved by state OHR

15 Q And is this does this letter reflect

16 A That's what that letter does

17 Q approval?

18 A Yeah

19 Q And you see the words revised reduction in
20 force policy?

21 A Yes

22 Q Is that the process you were talking about
23 going through and

24 A Uh-huh (affirmative response)

25 Q working the

1 A Yes, it is Yes, it is

2 Q Now, there's been much testimony about the
3 Palmetto Unified School District and the
4 Division of Education within your agency
5 First of all, how many divisions do you have at
6 your agency, the best you can recall?

7 A We have we went from fourteen to eight
8 division directors as part of this RIF, which
9 means we took some divisions that had been at
10 the executive division level, and we moved them
11 under other executive level divisions as part
12 of this RIF We eliminated those six positions,
13 including I've never operated with a chief
14 of staff since I've been at the Department of
15 Corrections It may seem like nothing to you,
16 but it's 5,600 employees and it's been a very
17 difficult decision to maintain that even after,
18 you know, the supposed state budget was turning
19 around Part of that was this RIF And so we
20 I've lost my thought the question

21 Q I was going to direct you to page 468

22 A 468, all right Your previous question,
23 though, what was it?

24 Q The question with respect to working the
25 process of the letter and ultimately you talked

1 about the reorganization and
2 A Yeah Here's here's my point You asked
3 about the number of divisions And I've argued
4 with my executive staff, and I've argued with
5 everybody in the agency I think it's crazy to
6 continue to call I think we should have
7 divisions go to I'm a Navy guy If you go
8 to the Navy model, divisions and departments
9 I don't care which it is The higher is the
10 division or the department It doesn't matter
11 to me But what we have, we have divisions at
12 the executive level And then underneath we'll
13 have things, organizations that are called
14 divisions as well And I think we ought to
15 call those divisions something else so that we
16 know that those entities fall within an
17 executive level division The problem for us
18 is you're talking about printing costs,
19 sump costs, and so we just hadn't eaten the,
20 you know we just hadn't tackled that yet,
21 but so you determine divisions in the
22 Department of Corrections Our Division of
23 Education is not an executive level division
24 It falls within the division of programs and
25 services And perhaps sometime in the past,

1 the division of prison industries in another
2 classic example of that It falls under the
3 control of the division of programs and
4 services So you've got division directors who
5 are on my executive level staff and answer to
6 me And you've also got but you've got
7 more division directors who are one or even two
8 levels down, and they're still called division
9 directors Like I said, I think they should be
10 called something else, but we just haven't
11 fought that battle yet because it costs I
12 mean we can win the battle, but it costs money,
13 and we just can't spend money on it right now

14 Q And let me direct you more specifically to the
15 document at 468, sir It's in a bound volume

16 A Yeah

17 Q And could you describe for the panel what that
18 is?

19 A I think this is an internal memo This is an
20 internal memo that went out to employees It
21 was a you know, we there was a press
22 release that went out And then there was an
23 internal memo And there were probably some
24 other messages that went out prior to this
25 letting everybody this is everybody knew

1 this was coming, but making sure everybody knew
2 this was coming

3 Q And if you could, sir, turn the page, and
4 you'll see I've used the term wiring
5 diagram, the organizational chart at the bottom
6 half

7 A Yes

8 Q And was this along the line of what you were
9 talking about a moment ago as far as the
10 division and structure, the executive
11 structure?

12 A Yes

13 Q Now, you mentioned a press release a moment
14 ago There's again that bound notebook that's
15 in front of you

16 A Yes

17 Q If you go to forgive me for one second
18 because I'm working my way through it Go to
19 Tab 6, if you would

20 A Uh-huh (affirmative response)

21 Q And that's

22 A Yes

23 Q Let the record reflect that's page 580, and let
24 Mr Cooper catch up on the screen Do you
25 recognize that, sir?

1 A Yes

2 Q And again, for the panel, tell the panel what
3 that document is

4 A I think this is the document that went out as
5 as a press release concerning what we were
6 doing I mean we were getting constant
7 inquiries from the media about our deficit and
8 about what position you know, what the RIF
9 was going to look like And this was an answer
10 to that

11 Q Thank you And we're going to turn our
12 attention I apologize for flipping you back
13 and forth through this If you could go in the
14 bound volume the three thing binder, I'm
15 sorry, to page 173

16 A Yes

17 Q And do you recognize this, sir? And the
18 document runs, for the record, from 173 down to
19 page 178

20 A I recognize my signature I don't know if this
21 is the document announcing after they had
22 approved or announcing and asking for the
23 budget the HR division of the of the
24 Budget & Control Board's approval

25 Q And if you could, sir, if you read on page 173

1 you'll see the salutation of Mr Wilkins And
2 again, for the record who's Mr Wilkins?

3 A He's the Director of State HR

4 Q And if you could just read that, or if that
5 refreshes your memory, the first paragraph

6 A Yeah This is we're submitting our plan,
7 which we've actually this is the formal
8 letter whereby we submit our plan that we have
9 worked up with the staff of Mr Wilkins You
10 don't just blindly put your plan together
11 independent of these guys over here You work
12 with them in putting your plan together When
13 you get it formalized and you know, quote,
14 unquote, it's going to be approved, then you
15 put put it in writing and send it over
16 here That I I do know that that
17 is what happened here John Near and some
18 others, probably Pat Thraillkill and some
19 others, were working with the state HR division
20 and making sure that we saved as much money as
21 possible, eliminated as few people as possible,
22 but also eliminated layer after layer, you
23 know, within state law making making sure
24 that that bumping rights were consistent
25 with state law but but also making sure

1 that we weren't eliminating the effectiveness
2 of the RIF by having everybody that got RIF'd
3 bump into another position If you do that,
4 then you've done a RIF but you've saved no
5 money And, ultimately, what we had to do was
6 shave millions off of our deficit

7 Q Now, let me interrupt the chronology for just
8 a moment We're going to go back to the bound
9 volume in front of you again, sir, at Tab 11

10 A Yes

11 Q Take a look at that, sir

12 A Uh-huh (affirmative response)

13 Q And I asked you a moment ago about the Palmetto
14 Unified School District First and foremost,
15 who is in charge of the Palmetto Unified School
16 District?

17 A Well, ultimately, I'm in charge of it because
18 I fund it, but the school district has we
19 have what we call a Superintendent of Education
20 who heads up our school district And there is
21 a school board, as well, that to make a
22 school district you have to have a school
23 board And in order to draw education funding,
24 you have to have a school district So the
25 school district exists so that the Department

1 of Education can take advantage of certain
2 limited federal and state funding that is
3 available to education on a matching basis
4 That's why the Department of Corrections has a
5 school district

6 Q But it's within your structure?

7 A It falls I can tell you this The the
8 money comes from the Department of Corrections
9 to operate the school district There's no
10 board that can levy taxes or raise millage
11 rates, those kind of things

12 Q Now, let's look at this document here, it's
13 page 1100 in the record And at least with the
14 indulgence of counsel and the panel, I'll walk
15 you through the preliminaries It's addressed
16 to you?

17 A Uh-huh (affirmative response)

18 Q And

19 A Yes

20 Q there's a through line there Do you see
21 that?

22 A Yes This is again the director the then
23 director of programs and services before this
24 reorganization, the school district fell within
25 and does still fall within underneath the

1 division of programs and services in our
2 organization

3 Q And you see the name Wendell Blanton?

4 A Yes

5 Q Okay And you see the subject budget issues?

6 A Uh-huh (affirmative response)

7 Q And it's dated March 18th of 2003?

8 A Yes

9 Q And if you could, read the second paragraph,
10 sir

11 A Out loud?

12 Q Yes, sir, for the for the panel

13 A Due to the severity of the budget crisis, I
14 understand from media reports that the
15 elimination of all educational programming is a
16 possibility If this is necessary, input from
17 the Division of Education is a mute point It
18 should say moot point However, please
19 consider the carefully the items outlined
20 in the attached facts sheet I am sure that
21 you know there will be difficult security,
22 political and legal ramifications with this
23 course of action

24 Q In the decision making process you undertook
25 regarding this reduction in force, did you

1 include in the planning process Mr Blanton?

2 A Yeah This was I mean I can you what this
3 was

4 Q Please do

5 A It was just a CYA memo from Wendell Blanton
6 I took it as such I was a little offended by
7 the tone of that paragraph, but quite frankly,
8 Mr Blanton's not paid to operate the
9 Department within budget or even close to being
10 within budget These these decisions have,
11 you know so so I didn't I didn't
12 take offense at at at this, but again,
13 it was a it was a memo to cover his behind
14 to make sure that he had done what somebody had
15 asked him to do in terms of protecting
16 protecting his people from the RIF
17 Unfortunately, all of those people in the
18 entire Department were my responsibility And
19 there was no way to protect them from a
20 reduction as they had been protected in the
21 past

22 Q Now, let's talk about the Palmetto Unified
23 School District Board of Trustees Are you
24 familiar with that particular body?

25 A I know it exists It exists pursuant to state

1 law I appoint, I think, most of the members
2 And like I said, they they can make
3 recommendations, but under state law, I'm the
4 no money can be spent in the Department
5 that I don't approve

6 Q And very quickly, sir, with your indulgence, if
7 you could go to Tab 19

8 A Uh-huh (affirmative response)

9 Q And if you could, turn to page 832, designation
10 in the top right corner, page 832

11 A Yes, sir

12 Q And you would agree that's a printout of our
13 Code Section 24-25-40?

14 A Yes, sir

15 Q And it's entitled trustees of school district
16 appointment in terms of vacancies?

17 A Yes

18 Q And what's what you were referring to a moment
19 ago about the composition of the board?

20 A You can't have a school district without a
21 school board So when they created the
22 Palmetto Unified School District, I think they
23 had to create a school board and a
24 superintendent's position because in order to
25 draw certain federal funds and certain state

1 funds, those funds have to run through a school
2 district

3 Q Are you familiar in any detail with the
4 formulas or the the types of funding that
5 the district

6 A I just saw them as a 60/40 match and too much
7 of it is tied to you know, there's just
8 some real problems You don't want to get me
9 started talking about that There's some real
10 problems with education funding, but most of
11 the time, education funding comes as a match
12 So that I so the Department of Corrections
13 had to spend money out of its operational
14 budget and match and and put up 60
15 percent And then if you do that, then you
16 draw "X" percentage match for that And
17 and much of that is based on a per student
18 draw, based on the number of students you have
19 in that classroom and number of students you
20 have in that district So in and again, in
21 order for those those those funds can
22 only funnel through a school district So with
23 the law the legislature decided to create
24 a school district

25 Q Now, let's step back for just a moment, and

1 we'll get out of the documents here Were you
2 familiar at all, or are you familiar with a
3 a lawsuit that resulted in teachers being paid
4 higher salaries or higher wages?

5 A It didn't occur on it happened before I got
6 there, but yeah I learned of that lawsuit,
7 yes

8 Q And what was your understanding of the impact
9 of that lawsuit?

10 A Well, what it did is is, you know, you had
11 state employees within the Department who had
12 not been given cost of living increases for
13 years during this budget downturn And and
14 because of that, the previous administration
15 decided that we, you know they weren't
16 going to that obviously, if you don't
17 have the money, you don't have the money So
18 they didn't give raises to anybody That
19 included teachers, and teachers sued over that
20 and and eventually won because the raises
21 for teachers, the court ruled, were automatic
22 under statute Well my problem with that is,
23 and in the previous administrations, any
24 director in our shoes problem with that is if
25 you don't fund us to give those teachers the

1 pay raise, how it's going to come out of
2 somewhere We can't print money We've got a
3 print shop, but they don't let us print
4 currency And we got some guys that could
5 probably print some good currency And it's
6 going to come out of somewhere And I think
7 that was their position That was the Hodges
8 administration position It's certainly not
9 ours But we have since then, even when other
10 state employees don't get those raises, and the
11 other employees within that same institution
12 It just creates a real disparity when, you
13 know, the wardens and the associate wardens and
14 the majors and the lieutenants and the captains
15 and the officers don't get a raise but the
16 the teachers do Because those folks know that
17 that raise that went to pay that teacher's
18 increased salary came out of their high, you
19 know They're going to the equipment, the
20 training, the staffing levels within those
21 institutions are going to suffer because of
22 that It was, I think, my opinion, an
23 unintended consequence of creating the school
24 district to draw that funding So, you know,
25 in the long run you can make the good argument

1 that we draw more than that raise cost us
2 because we have a school district But the
3 remember the money that we draw can only be
4 used for certain things, whereas, that money
5 that I'm drawing to give that that I'm
6 using to give that raise, I can use that for
7 bricks and mortar I could use that for body
8 arms I can use that for anything I can use
9 that for food for inmates, God forbid So it's
10 not a apples to apples switch, but it
11 that's that's the case I think you're
12 referring to, and I think we've complied with
13 that order since then

14 Q Now, did you take action in this RIF? Did you
15 direct the structure of this RIF to retaliate
16 against teachers or anyone as a consequence of
17 their involvement in this lawsuit?

18 A That's that's one of those things that
19 you're looking at, how you make a case, you
20 you look for some fact that exists, and you say
21 well, it must have been because of this You
22 know, we did we did this RIF because we had
23 to cut six million dollars, more than that, I
24 think it was And we did it not just through
25 this RIF I mean we cut our budget by a

1 variety of sometimes painful decisions, and
2 this was certainly one of those painful
3 decisions But the only thing that we the
4 only motivation for it was to preserve as many
5 bodies as we could and to and to conduct
6 our RIF in a manner that reflected what we had
7 to do, our our our order of priorities
8 and things that we have to do to scale down
9 even within things that we have to do Because
10 we have to provide some educational services,
11 not by constitutional mandate but by state law
12 So we couldn't just eliminate educational
13 services completely because for some young
14 offenders, by law, they have to have access to
15 educational services But what trumps state
16 law, the Constitution, and the federal courts
17 tell us what the Constitution says about what
18 we provide So we had to make some very
19 difficult, difficult choices In fact, that
20 same choice was pending before the legislature
21 when they came back a few weeks ago If you
22 want us to shave \$34 million dollars off our
23 budget, you have to give you have to pass
24 a statute that relieves us of the statutory
25 provision to provide educational services even

1 to young offenders, which is stupid It would
2 be a dumb thing for you to do And even if you
3 did it, we can't it won't save us \$34
4 million dollars But you have to, you know
5 you have to change some items of state law in
6 order to keep us in compliance with federal
7 law, feeding, clothing, providing health care
8 and protecting inmates from from each
9 other Those are things that the courts say we
10 have to do And so we we we drafted
11 the RIF plan, quite frankly, to keep to
12 make sure headquarters felt an equal that
13 headquarters bore its burden in this process
14 And and as I've looked back, I do remember
15 this As I looked back at the draw down that
16 had occurred, we we felt like headquarters
17 and education had been largely exempt, and we
18 didn't think that was right We didn't think
19 that was fair, for the highest paid employees
20 in the organization to be protected while 800
21 of the lowest paid worker bees had been laid
22 off And I and I and when I say 800,
23 I'm talking about just correctional officers
24 and security staff, the folks out there, you
25 know, keeping our prisons safe, doing the

1 you know, the folks you call on in an
2 emergency Those were the motivating factors
3 behind how we did this, is is preserving as
4 many bodies as possible and saving as much
5 money as possible for the bodies that were
6 eliminated And then doing it in a way that

7 I mean you just had all these balancing
8 factors, and there was no perfect way to do it
9 We did it the best way we saw clear at the
10 time

11 Q Then I'm going to go into some of the details
12 or some of the terms There's been testimony
13 of the term turnover Did you find that your
14 turnover rates were higher for your
15 correctional officer positions than say another
16 position?

17 A Oh, no no turnover in education, no
18 turnover in headquarters positions virtually
19 When I got there I can tell you when I
20 walked in the door it was 75 percent two year
21 turnover and 30 36 percent six month
22 turnover of correctional officers This is
23 what that did For every CO we hired, and at
24 that time we were hiring about 120 a month
25 For every three we hired, we were losing more

1 than one in six months, and 75 percent of them
2 we knew 75 percent of them weren't going to
3 stay for two years I mean we were just
4 bleeding So so so when you've got
5 that kind of turnover, to turn around and cut
6 800 security positions as your way of balancing
7 the budget or as your way of reducing your
8 spending, we didn't think that was the right
9 direction to go And we certainly didn't think
10 it was the right direction to do that further,
11 and so we didn't

12 Q And let me ask you a specific question This
13 goes along the line, sir, of some earlier
14 questions I've asked you Do you recall
15 telling one of your employees that if that
16 teachers had sued to get higher pay or higher
17 to get a raise, and that that was wrong?
18 Do you recall ever having a conversation with
19 any of your employees about that?

20 A No I mean I I will tell you that with
21 at least with lawyers and probably with
22 executive staff, you know, that when that
23 when that decision when I get briefed
24 on that case and the progress of that case,
25 clearly, you know, whether you know,

1 sometimes people don't like you and you know
2 Sometimes people like you and you think
3 they like you and they don't I mean whether
4 or not people within the school district
5 understood it or not, I had employees come to
6 me and say it's just not right with teachers
7 getting raises and we're not But that's just
8 walking around institutions I never concurred
9 with that with anybody, but I can tell you that
10 that was the general feeling And, you know,
11 within one organization, if you've got special
12 status I mean I think people across state
13 government probably who read the newspaper
14 probably felt the same way a couple of weeks
15 ago when many of us learned for the first time
16 that House staff members had gotten a two
17 percent raise that nobody else got for the last
18 year Gee, well that's in our jobs, you know,
19 and living on one percent That creates some
20 and and so within the closed
21 environment of the prison system, trust me,
22 when somebody gets a raise, everybody else
23 knows about it But I never you know, our
24 lawyers kept me informed about that case and
25 and I knew state law I knew that the

1 I knew that the legislature had passed some
2 laws that said raises were mandatory for
3 teachers and and I always viewed that as an
4 unintended consequence of creating a school
5 district that we have been forced to live with
6 So, I I I never voiced an opinion that
7 because they did this, that they were wrong
8 Listen, people people sue in our society
9 That's the way, whether you like it or not,
10 people sue

11 Q And let me start winding up here, at least
12 direct testimony, sir If you could, in the
13 bound volume in front of you, if you could turn
14 to Tab 4, and let's start with page 188 In a
15 moment, I'm going to direct your reference to
16 page 189

17 A Okay

18 Q And if you could, we'll start with page 188,
19 sir Strike that Let me start with page 189

20 A All right

21 Q Thank you, Mr Cooper I appreciate the
22 indulgence Have you seen this before, sir?

23 A Yes

24 Q Okay Tell the panel what this document is

25 A This this is what I remember If you go to

1 reduced bumping rights, you you have to do
2 so in accordance with state HR laws, and you
3 have to get HR division over here to approve
4 geographic regions beyond which people can't
5 bump And that's what we were our goal was
6 my instructions to John Near were, look, we
7 need to minimize let me put it this way
8 We need to maximize the savings I mean
9 independent of whether or not a 30 year
10 employee bumps out somebody with 23 years, or
11 whether you think that's fair, the bottom line
12 is if that happens, it absolutely drives up
13 your costs, okay If if the most expensive
14 employees get to stay and you wind up reducing
15 only the least expensive employees, just do
16 away with the whole fundamental fairness aspect
17 that somebody who's not vested in the
18 retirement system doesn't get a chance to be
19 vested That really wasn't our concern Our
20 concern was it was the concern of some
21 But what my my concern was, you know, I
22 can't have a nine million dollar reduction in
23 force that only saves me two million dollars
24 because it's going to come out of our hide next
25 year, and it's going to be more difficult to

1 deal with next year It's going to come out of
2 our hide right now because we have to make up
3 that difference by laying off security staff
4 We're going to have two RIFs instead of one
5 So we wanted to minimize the bumping John
6 Near, if I remember, and this was a long time
7 ago, but I do remember John Near coming back
8 and saying this is what we recommend and
9 and and HR agrees with us, and this is the
10 way we should draw the regions And and
11 this was so this is how the regions were
12 were drawn in order, again, to make sure
13 that if we did a RIF plan that saved that
14 that reduced nine million dollars worth of
15 employee costs, that we didn't wind up at the
16 end of the process having saved only two
17 million dollars in employee costs That
18 that that's why these regions that's
19 what this RIF plan was intended to do

20 Q You talked about two RIFs Could you have done
21 two RIFs within this reduction in force? In
22 other words, one for educators and then one for
23 other SCDC personnel?

24 A No I mean you you can't I don't I
25 don't know that that's true That just

1 wouldn't have been logical

2 Q Tell the panel why you why you felt that
3 way

4 A We were one Department, one, and then timing
5 We're trying to get some impact in this in
6 this fiscal year, some immediate impact And
7 and so our retirement plan and this and a
8 host of other things were intended to give some
9 impact in the current fiscal year We were
10 coming up upon the end of that fiscal year, but
11 also to give us maximum bang for the buck, one
12 percent bang for the buck for the next fiscal
13 year which was starting on July 1st of '03 It
14 was just it was a but if you're in
15 state government, the timing, I mean it was a
16 perfect storm in our agency, you know Storms
17 everybody felt it It was but there
18 were degrees of pain, and and we if you
19 look back at that period of time, no other
20 agency lost a higher percentage of
21 percentage of its workforce than the Department
22 of Corrections No other agency lost a greater
23 percentage of its budget than the Department of
24 Corrections, I mean So there are degrees of
25 pain within state government Some agencies

1 fare well in tough fare better in tough
2 times than we do And I understand I think
3 everybody that works in Corrections understands
4 why our constituency doesn't have much of a
5 voice and none of them vote And so we we
6 we were hurting We still are

7 Q Well, very well, sir I appreciate you
8 answering my questions Ultimately, as you can
9 anticipate and as you know, Mr Nickles will
10 ask some questions and we'll go from there

11 **MR OZMINT - CROSS EXAMINATION BY MR NICKLES**

12 Q Mr Ozmint, we've met, I think, on one prior
13 occasion

14 A Yes, sir

15 Q If you could turn a little bit toward me

16 A Okay

17 Q I don't want you to look away from the
18 committee, obviously, but you know the drill
19 One thing that we talked about last time if
20 you'd turn over to Tab Number 5 It's the one
21 after the circles are drawn

22 A Okay

23 Q And you may remember we talked about this
24 letter that Chris Poor sent you after you sent
25 the plan over to him with the circles and so

1 forth And I asked you to look at the last
2 paragraph on the first page It starts out
3 based on the information you submitted, it
4 appears the plan is procedurally correct You
5 see that?

6 A Uh-huh (affirmative response)

7 Q Then it goes down in the last part, our
8 approval does not include the determination of
9 geographic locations in the competitive areas,
10 the competitive classes, competitive class
11 series, bumping rights, positions to be
12 eliminated or any exceptions included in the
13 plan since these are solely the responsibility
14 of SCDC management Do you see that?

15 A Uh-huh (affirmative response)

16 Q So when Chris sent this thing back to you, he
17 said we've got it It's procedurally correct,
18 but these substantive elements, we're not going
19 to give our stamp of approval That's your
20 responsibility That's what he's telling you,
21 isn't he?

22 A First of all, he's telling John Near

23 Q Sure

24 A All I can tell you is this If I don't
25 know that I saw this If I had seen this, I

1 would have viewed it the same way as I viewed
2 the Wendell Blanton memo before

3 Q The CYA?

4 A Pretty much That's probably a my guess
5 would my guess, looking at it now and
6 looking at it if I had seen it then, would be
7 this is standard language for Human Resources
8 to protect their six o'clock I don't
9 listen, I don't expect people to take
10 responsibility for anything they don't have to
11 take responsibility for And my my
12 experience has taught me people generally
13 don't But I can tell you this absolutely
14 Those geographic regions and this plan, HR was
15 involved in it from day one I unless John
16 Near was absolutely dishonest with me, and I
17 have no reason to suspect that, they were
18 involved with every aspect of this plan from
19 day one because we we did not want to be
20 down here with a hundred and I think the
21 whole RIF I mean ya'll ya'll think
22 education is the only thing affected This
23 thing was twice that big We don't want to be
24 down here 155 times We didn't want to violate
25 any of their rules and procedures We wanted

1 this plan to be right and approved up front,
2 and every aspect of it was So, if they sent
3 a letter like this, again, as I think I told
4 you before, I it's like an insurance
5 company that sends a reservation of rights
6 letter You expect to get it, but you also
7 expect that what happened in this case would
8 happen, which is when people filed grievances
9 The employee grievance operation here, this HR
10 shop here at the Budget & Control Board,
11 initially denied those and said they're not
12 grievable because this plan was this was
13 part of a RIF, and RIFs aren't grievable

14 Q And Judge Cooper overturned that?

15 A Right I understand that But I mean I'm just
16 telling you if you want to know whether they
17 believed that the RIF wasn't grievable, look at
18 the decision they made

19 Q When when you put this thing together or
20 you you had it put together Is that more
21 fair?

22 A Yeah A group of people had it put together
23 And I told you before when it comes to laying
24 people off, only the person who's ultimately
25 responsible is going to make that happen I

1 mean you just can't expect like (inaudible)
2 like Wendell You can't expect Wendell to
3 you can't say, Wendell, I want you to give me
4 a plan where your division, you know, loses 75
5 employees You're not going to get it from
6 those lower level managers So I take
7 responsibility for the fact that this had to be
8 done, and I said you you know, we're going
9 to reach this number of employees But a team
10 of people then, under that compulsion, put this
11 together Nobody did it voluntarily

12 Q When you were going through the process

13 A Yeah

14 Q ultimately, as you said, there were 148
15 positions designated to be eliminated, correct?

16 A I think if if that's what the paper work
17 shows

18 Q That's what the records shows

19 A Yes That's what I'm saying, if that's I
20 was thinking 153 for some reason I don't know
21 why I was thinking that

22 Q And any time I use a number, you know, I'm not
23 going to ask you to verify if it's correct We
24 can just for the panel I'm not trying to
25 trick you or anything

1 A Right

2 Q And Mr Blanton has said that as many as 87 of
3 those were in the education division The
4 records are before the committee, and they can
5 count the numbers if they want to, but it looks
6 like that's pretty close When you were going
7 through the process, did you personally sit
8 down with a list and say, okay, I know I've got
9 McCormick and Leath over here I want to
10 eliminate all the education programs in those
11 two institutions, or I've got Allendale down
12 here I know I've got some education going on
13 down there I want to eliminate the education
14 program down there That's ultimately what
15 happened What I'm curious about, and I think
16 what the panel would like to hear is did you
17 make a conscious decision on an institution by
18 institution basis to eliminate those positions?

19 A Now, one of the things no We we
20 we knew the outcome, what the outcome was going
21 to be, but we had to protect mandatory
22 education services And and we had to have
23 a school district that at the end reflected
24 some some efficiency that we didn't think
25 we had in the beginning I mean certainly when

1 you had a principal supervising two or three
2 teachers and a guidance counselor, I mean you
3 don't have that on the street anywhere in South
4 Carolina You don't have that kind of
5 overhead, that kind of fixed overhead anywhere
6 And we had that So we tried to eliminate as
7 much administrative overhead as possible, while
8 preserving instructors And then how those
9 instructors how that was done, we didn't go
10 institution by institution, but we did have to
11 decide where we were going to educate young
12 offenders, for example

13 Q Right

14 A And and and that meant that those
15 places were going to have if those places
16 were going to have enough teaching resources,
17 teachers to handle young offenders, then it was
18 going to mean by definition that the
19 consequence was going to be you were going to
20 lose educators at other locations We didn't
21 pick and choose those locations

22 Q Let's look at Tab 19 I know you've already
23 looked at it a little bit And the pages in
24 here generally speak about the Palmetto Unified
25 School District Were you familiar with that

1 district before you came on as the Executive
2 Director?

3 A I don't think so

4 Q But you had been at Labor, Licensing You've
5 been at the Attorney General's Office You've
6 been in private practice You're a licensed
7 attorney You've kept your license active
8 You know how to read a statute

9 A Yes

10 Q Okay And you know generally that in reading
11 a statute what our Supreme Court says, at
12 least, as you can read the plain language It
13 should be evident to somebody reading the
14 statute what it means Is that fair?

15 A That's part of the way you read a statute You
16 also read the statutes consistently with other
17 statutes

18 Q Correct All right Look at page 829, please
19 It should be about the second or third page in
20 And this is designated purpose here The
21 history, as it goes back to 1981, and that's
22 approximately 20 years before you came to the
23 Department, correct?

24 A Uh-huh (affirmative response) Yes, sir

25 Q And you see there's been no amendment to it

1 since that period of time according to this
2 legislative history that's beneath it, right?

3 A According to this, yes, sir

4 Q And we see that on the bottom it's stamped SCDC
5 document So we hope that SCDC put the most
6 recent version of the statute in there You
7 see that at the bottom of the page?

8 A That's more of a comment than a question

9 Q Fair Second sentence of this statute, the
10 establishment of this district shall insure
11 that education programs are available to all
12 inmates with less than a high school diploma or
13 its equivalent, and that various vocational
14 training programs made available to selected
15 inmates with the necessary aptitude and desire
16 So, this statute itself doesn't say educational
17 programs available to inmates 21 years or
18 younger with less than a high school diploma,
19 does it?

20 A No, sir

21 Q Okay But that is where the funding comes,
22 correct, the EFA funding?

23 A Well, EFA funding Actually, there's some
24 there's some vocational funding that comes
25 through the school district for people over 21

1 for any inmates And there's some adult
2 education money that comes regardless of age
3 Q And EIA funding is based on enrollment
4 population, is it not?
5 A I think it is
6 Q So, for most school districts, Palmetto Unified
7 included, one of the ways that you get money is
8 by having enrollment levels, right?
9 A Yes
10 Q So when we talk about maximizing return, one
11 thing you could try to do is see get as
12 many people in the program as is feasible with
13 the resources available to you?
14 A Well, yeah, and we've actually done that I
15 commented on that, but one of the things that
16 we looked at was class sizes and number of
17 teachers we had per inmate We continue to
18 look at that, you know We we we
19 worked very hard If you if you knew
20 I don't know if you've known this, but in the
21 three years following this RIF, we did more
22 GEDs, which basically at that point we're
23 spending about half of what we were spending on
24 education before And for three years running,
25 by maximizing the number of students we had in

1 class and by holding teachers accountable for
2 having a full classroom, we had more GEDs than
3 we ever had in the history of the agency So
4 what you mean what that means to tax payers
5 is your cost per GED for an inmate was cut in
6 half, more than cut in half And even though
7 we haven't set five years of new records, we
8 are still today, and every single year since
9 then, we've handed out more GEDs More inmates
10 have earned their GEDs than earned their GEDs
11 when we had twice as many teachers It's not
12 always just keeping a teacher in a job that
13 indicates if listen folks and the same
14 is true for vocational programs now And it
15 took us about two, three years to get the
16 vocational programs back up and running But
17 our goal from the beginning was to have at
18 least two vocational programs at every single
19 prison And I looked personally at the types
20 of vocational programs we have I mean, quite
21 frankly, a computer programming vocational
22 program for inmates I mean are we going to
23 hire how many of those folks do you think
24 got hired as as computer programmers or in
25 the IT shops of businesses and agencies or

1 out there? Nobody And we looked at the type
2 of and it might make somebody real feel
3 real good to have that type of vocational
4 program, but it's not going to get an inmate a
5 job So even in our women's prisons now, we
6 have trades being taught, brick laying,
7 welding, carpentry Because if you can do
8 that, you can get a job People might not hire
9 you to work with their payroll on their IT
10 system, but they will you've got a better
11 chance as a former as a former convict of
12 being hired with a trade So we we didn't
13 just do this and say we're just going to leave
14 this where it is We had a plan from the very
15 beginning We wanted to reinstitute an
16 educational system in the Department of
17 Corrections that was more affordable So a lot
18 of those vocational programs right now, they're
19 they're they're taught by part-time
20 instructors, or the outside school districts
21 are sending people in to teach those inmates
22 They draw that adult education funding per
23 inmate that we otherwise could draw, but I
24 don't have the sump cost of the teacher and all
25 the salary and benefits that go go with

1 that of an employee and all the salary and
2 benefits that go with that So I my point
3 is this If the goal was to educate to
4 give inmates a GED, which is about, you know
5 with the average sentence being two to
6 fours years in the Department of Corrections,
7 if you that that is an excellent
8 measure of success We're having more success
9 since the RIF than we ever had before, ever, in
10 terms of GED certificates completed And over
11 the last two years, the same can be said of
12 vocational certificates, vocational
13 completions So we what we tried to do
14 with what we had left was to maximize what the
15 tax payers actually got for the \$14 million
16 dollars before the RIF that they were spending
17 on education in the Department of Corrections
18 Now they're spending about \$8 million, but
19 they're getting more outcomes, more product
20 than they were getting before the RIF And I
21 mean I don't think that's irrelevant In other
22 words, what I want you to understand is we're
23 fighting like crazy for inmate education at the
24 Department of Corrections And we fight like
25 crazy from day one But what we couldn't do

1 back in 2001 was cut another 800 I mean in
2 order to cut in order to save the amount of
3 money we saved with this RIF, we would have had
4 to cut another 300 security officers, 300
5 uniformed law enforcement officers, 300 fewer
6 inside our prisons to save the same amount of
7 money that we saved with this RIF And we just
8 we I'm sorry We couldn't do that It
9 didn't have anything to do with personality
10 It didn't have anything to do with not liking
11 this group or that group It had to do with
12 saving the amount of money that the General
13 Assembly was requiring that we save And the
14 only reason we've avoided it this time is
15 because we told them right up front We had a
16 like him or not, we've had a governor who's
17 been willing to look at them and say the only
18 way you're going to cut Corrections this time
19 is to start releasing inmates, and that scared
20 the devil the devilment out of them up
21 there And so we've been able to save
22 education programs this time around by saying
23 if you cut education completely from the
24 Department of Corrections, you're going to have
25 huge, huge problems on your hands inside the

1 Department And they're not willing to take
2 that risk when you put it in writing for them
3 So I don't I just I just want you to
4 understand, Mr Nickles Nobody in the State
5 of South Carolina has lost more sleep over
6 trying to find a way to educate inmates We're
7 not talking this certainly isn't it's
8 not about teachers It's about inmates getting
9 a chance to succeed And so don't this
10 wasn't about anything other than doing
11 something that was never should have been
12 necessary, but the lawmakers I know you
13 can't sue the General Assembly, but that's
14 really who your problem is with It's really
15 not with me

16 Q Well, since I don't have the General Assembly
17 in front of me, let me ask you a few questions

18 A All right

19 Q I want to make sure that I heard you correctly
20 That at the time that you came in, you had done
21 some due diligence as would be expected of
22 someone considering a cabinet post You were
23 aware that there were going to be some
24 financial challenges in this job You also
25 came aware very soon in the process that the

educational component of the Department of Corrections that's at the Palmetto Unified School District was one of the most expensive per capita components of the Department, per employee components of the Department Is that fair?

A The average salaries for teachers and guidance counselors exceeded the average salary of wardens and associate wardens who were responsible for literally thousands of lives

Q I mean in your press release that you issued on April 1st

A I think we made that point

Q It's in there, right?

A Yes

Q I mean you don't make any excuses about it You say this functional area is one of the most expensive functions in this agency

A Yes

Q And then you compare them to other areas, and you say, for example, that the guidance counselors and the principals and the teachers make more than the wardens and the associate wardens

A Yes

1 Q And you a little bit further than that and say
2 that they have responsibilities for over
3 hundreds of lives and 24/7 essentially

4 A Right

5 Q So what I get out of this, correct me if I'm
6 wrong, is you had a perception at least that
7 compared to the value of these other employees,
8 teachers were being overpaid

9 A No You're dead wrong on that

10 Q And so were wardens underpaid?

11 A From everybody if you compared our
12 absent not not my opinion If you do
13 a comparison across the southeast, you'll find
14 our the average teacher salary in the
15 southeast, right now we're about two or three
16 percent above the southeastern average If you
17 do a comparison of wardens and other
18 correctional employees all the way down from
19 from division directors all the way down
20 the rung, all the way down the chain of command
21 to correctional officers, you'll find we're
22 below the southeastern average And in some
23 places that gap goes like this, and in some
24 places it goes like this But but again,
25 it was not that I thought anybody was overpaid

1 It was the fact that I didn't have the money to
2 pay all the people I had In other words, your
3 what we were trying to do is to is to
4 make people understand in that in that
5 press release that you're relying on, to make
6 people understand, including our own people,
7 but certainly outsiders, that we were
8 eliminating as few people as possible in in
9 the most marginal it's not marginal It's
10 not marginal I mean the most marginal thing
11 that was left that we do in the Department of
12 Corrections I mean you the Department of
13 Corrections in other states do a lot of things
14 that we don't even do We had already
15 eliminated halfway houses and and job
16 placement programs and and transition
17 assistance programs that other corrections
18 systems prison systems do We were down to
19 where really all we had left that was not
20 constitutionally mandated was education

21 Q And that was mandated by the General Assembly?

22 A And that and then there's a law on
23 educating certain employees

24 Q Well, all employees all all inmates

25 A Mr Nickles, that that that is so

1 deceptive because you and everybody in here
2 knows that before this cut, we didn't come
3 anywhere close to providing educational
4 opportunities for all 25,000 inmates No where
5 close In fact, we're providing more
6 educational opportunity now if you look at
7 outcome In fact, we've we've got more
8 GEDs now than we were back then We have never
9 this agency listen, I think California,
10 they've got a classroom for every inmate
11 They've got a seat in a classroom for every
12 inmate in their system Of course, they spend
13 about \$50,000 per year per inmate In our
14 system we have never had that, and it is it
15 would be wrong to imply that because of this
16 statute, that this statute indicates that we're
17 supposed to provide an opportunity for every
18 inmate Not only has that never been possible
19 in terms of funding and staffing, but it would
20 be a stupid requirement to have Because,
21 quite frankly, the inmates that we have in SMU
22 or MUS, for example, who are there because
23 every time we let them out they try to hurt
24 somebody, it would be brain dead stupid to have
25 a statute that required us to try to put that

1 kid in a classroom and educate them So that
2 that that suggestion is really
3 misleading That statute can't possibly mean,
4 and it has never meant, and there's not a
5 single teacher in the history of the Department
6 of Corrections who will tell you that we have
7 ever had a classroom space for every single
8 inmate in the Department of Corrections We
9 haven't even been close to that We're closer
10 to it now than we were before the cut but only
11 because we've done some I mean only because
12 we've worked real, real hard at it, quite
13 frankly I mean how else do you get the same
14 how do you get more GEDs out of 50 percent
15 fewer staff than to work real hard at it So
16 we we've we're doing more now than we
17 were then, and we were in compliance with the
18 statute then We're in compliance with the
19 statute now The statute has never my
20 goodness, to do that, 25,000 students and you
21 have to have enough teachers to go individual
22 to SMU cells and provide each one of those guys
23 who are violent with instruction across the
24 you know, through the glass You're talking
25 about a two probably \$150, \$200 million

1 dollar proposition right there

2 Q Let me ask you a little bit about bumping I
3 know that's something you're not a big fan of,
4 is that right?

5 A You know, I don't know that I have a thought
6 about bumping I do think that when you do a
7 RIF, what drives RIFs are budgets

8 Q All right

9 A And when you do a RIF, at least when we did
10 this one, your goal has to be your to
11 come up with the safest in our business,
12 the safest way to do it and to make that
13 monetary number And so the problem with
14 bumping is it allows the more expensive it
15 would be like a business going out and saying,
16 you know, the market right now all my
17 competitors are paying their basic laborers in
18 this business \$7 an hour But what I'm going
19 to do to make more money than my competitors,
20 I'm going to go out and pay all my laborers \$10
21 an hour and hire just as many as my competitor
22 That's what a RIF does It forces that's
23 what bumping does It forces the state to keep
24 the most expensive employee as opposed to the
25 least expensive employee, and both employees

1 are going to wind up doing the same thing And
2 so I I bumping rights are we have
3 bumping rights in this state My only goal was
4 to look, we've we've got to save some
5 dollars here And that's what drove this
6 thing

7 Q Okay Now, even recently, I believe, you've
8 made some suggestions about how the state could
9 save save money I mean you remember being
10 at a budget conference that the governor called
11 even in October of this year?

12 MR SUMMERS I'm going to object At this point I'm
13 going to object, sir I think we're getting
14 into areas that aren't part of this record in
15 this case I'm not sure I'm trying to pre-
16 empt so that we don't hear

17 MR CORNING Do we need to go outside and discuss
18 this, counsel?

19 MR NICKLES I don't think it's going to be
20 controversial

21 MR CORNING I mean

22 MR SUMMERS No I just would like to know where
23 we're going so I can at least react properly

24 MR CORNING Well, the question I have, is this
25 something you want to do out of the presence of

1 the panel?

2 MR NICKLES I'll be happy to

3 MR SUMMERS That'd be that's fine

4 MR NICKLES Let's take about five minutes

5 MR CORNING Once the cow's out of the barn it's a
6 little late to put it back in

7 MR SUMMERS That's my concern

8 MR NICKLES Okay Do you want to take five
9 minutes?

10 MR CORNING Whatever the chairman's pleasure

11 MR NICKLES Whatever the panel wants to do

12 MR CORNING Chairman?

13 MR MCCLARY Five is good

14 MR SUMMERS Five is good Then we'll

15 MR MCCLARY Yes

16 (Off the record)

17 Q Director Ozmint, before we had the little
18 break, we were talking about seniority and some
19 of your concerns that bumping kind of defeats
20 the purpose of a reduction in force because you
21 may have to keep people who make higher pay and
22 getting rid of people who make less money to do
23 the same job Is that part of your concern?

24 A You drive up your bumping forces you to
25 to drive up your personnel costs which eats

1 into the savings of a of a RIF

2 Q And I was I was asking you whether you
3 attended a budget summit There were about 60
4 agencies It was called by Governor Sanford
5 back in the early part of October I believe
6 you you did attend that

7 A I did attend that

8 Q And there were other people there I mean Fred
9 Carter was there Representative Bingham was
10 there People were asked to make suggestions
11 on how to save money

12 A Right

13 Q And you volunteered, I believe, by saying
14 something, and please correct me if this is not
15 accurate, to the effect that agencies should be
16 allowed to target which jobs they eliminate
17 rather than going strictly by seniority

18 A That's I basically made the same point
19 there that I just mentioned

20 Q Okay

21 A But but I didn't volunteer for a lot of
22 things but I didn't volunteer there I was

23 Q You were called upon?

24 A I was called upon

25 Q Okay Well, as a military man, I understand

1 that there are volunteers and volunteers

2 A And I would so yes I was volunteered in
3 the military sense of the term

4 Q All right, thank you And you looked at the
5 the circles on that map And I heard your
6 testimony earlier that I mean the
7 Department of Corrections is one statewide
8 agency, correct?

9 A Yes

10 Q I mean you have one Executive Director, that's
11 you

12 A One Director, yes

13 Q It's got one education division, and that's
14 pretty much composed of the Palmetto Unified
15 School District

16 A Well, we have we have other functions that
17 provide educational services for inmates, and
18 then we have the school district as well

19 Q I mean you outsource some of the educational
20 services through contracts with local school
21 districts, for example?

22 A If you call that outsourcing, but yes When
23 you're talking about an institution that's out
24 in the middle of no where, it's it's a cost
25 effective way to do it We lose something in

1 that model, too We do lose a modicum of
2 control We have, for example, found that
3 districts work You know, we provide them with
4 you know, we've got 25 guys that are
5 eligible for an adult education class and we
6 prepare them for a GED, for example, and
7 and it's in a place where we don't have any
8 school any full time teachers

9 Q Right

10 A That district already has a sump cost in full
11 time teachers, okay They're they're going
12 to pay those teachers no matter what That
13 teacher's salary is already paid Now, it's
14 cost effective for us to say to that district
15 you can give that teacher a supplement by
16 having that teacher come in, and that teacher
17 can make some extra money by coming into our
18 prison in the afternoon or at night and teach
19 this block of 25 And if you do that, and if
20 it's adults, for example, then you you draw
21 "X" dollars of adult education money for those
22 25 students Obviously, that that
23 those dollars aren't sufficient to pay the
24 salary for a year for that teacher So that's
25 a cost effective method for us to get those

1 to get a to provide an educational
2 opportunity for those 25 inmates at that
3 institution, but we do lose some control over
4 that And we have to it creates a lot of
5 work, more probably, for our district personnel
6 because what that school district doesn't have
7 any skin in is how many GEDs what kind of
8 actual success those inmates have, the outcome
9 As long as that teacher shows up and we've got
10 25 students in the class, then they get their
11 money And so they can go in and do a sorry
12 job or a great job And so we've had to
13 closely monitor that, but I think the results
14 speak for themselves We have had those horror
15 stories where, you know, teachers were just
16 going through the motions or students weren't
17 even coming to class and they were still
18 drawing the money, marking them down as present
19 and drawing the money But you know what? We
20 had that before the RIF That that kind of
21 that kind of that exists in anyone I
22 mean if people are going to be honest with or
23 not So it's but yeah, we've we've
24 there are that's a less expense it's
25 not really outsourcing I mean it's still the

1 government doing it We've had companies come
2 to us with outsourcing ideas, and none of them
3 have looked very good to me

4 Q So you'd see it more as a joint venture than
5 outsourcing?

6 A It's a joint venture between us and the school
7 district

8 Q All right But that's you don't have the
9 same control over those individuals as you do
10 over the certified teachers

11 A In a way, we have more control

12 Q who you have more control over?

13 A Because we can just tell that school district
14 in a way it's been in a way I've
15 just told you a way it's been not as good But
16 in a way we have more control because we can
17 look at that school district and say send
18 another teacher and it's done, because they're
19 not going to let that money walk out the door
20 Whereas, if it had been one of our teachers,
21 we'd have to go through the corrective action
22 process That's not why we're doing this,
23 ya'll We're doing this because we've got
24 25,000 inmates, and we have prisons where we
25 don't have full time teachers We can't afford

1 to keep full time teachers, and this is a way
2 for us to get educational opportunities for
3 those inmates This isn't about the teachers
4 It's not about me It's about ultimately,
5 it's about, in that case, a prison with, you
6 know, maybe a thousand inmates in it and some
7 of them are ready and willing to participate
8 and make themselves better And my job is to
9 find some way to to make that happen And
10 that's a way to make that happen

11 Q When you look at that map that you sent over to
12 HR, the one with the circles on it you looked
13 at earlier

14 A Yeah

15 Q That was drawn for purposes of this RIF That
16 doesn't have any operational value, does it?

17 A I I I really can't answer that I know
18 that as a result of the RIF, for example, in
19 in in places where we had two or three
20 teachers, or four or five teachers, and a
21 guidance counselor, a principal, an
22 administrative assistant for the principal, an
23 administrative assistant for the guidance
24 counselor, which is driving your per student
25 educational costs through the roof Can you

1 imagine if every school in South Carolina had
2 one principal for four or five teachers? And
3 after this was over, the district was
4 reorganized so that you would have a principal,
5 and that principal is responsible for a you
6 know, what we believed to be a fair number of
7 teachers, but not three or four So instead of
8 being the principal for one school in one
9 prison, they might be the principal for one
10 school in several prisons And so there are
11 some regional responsibilities now Our
12 principals are no longer principals per per
13 prison It was a great gig if you could get
14 it, but our principals are now principals for
15 regions where they all share a a fair
16 number of the supervisory responsibility
17 for a fair number of teachers, a fair number of
18 staff and a fair number of students

19 Q But to be candid with the committee, those
20 eleven circles do not represent operational
21 units within

22 A I don't think so

23 Q within the Palmetto Unified School
24 District?

25 A I don't because we don't have eleven I

1 can tell you we don't have eleven principals
2 anymore

3 Q Okay, all right Now, Mr Summers alluded to
4 some testimony earlier about some conversation
5 that you reportedly had with a worker And
6 what I'd like for you to do, if you would,
7 first you did do some walk arounds the
8 institutions during April after you came on
9 board, right?

10 A I walked I've walked an institution every
11 week since I've been here with the exception of
12 I had a bad heel for a while, but on average it
13 would still be I'm out in an institution every
14 week, not not because of this

15 Q I understand

16 A But I was out

17 Q But I mean that's sort of part of what you do,
18 is you want to be visible to the folks in the
19 field, correct?

20 A I want to see what's going on in our prisons to
21 the extent that I can

22 Q And when you're out there walking through or
23 walking around, from time to time you talk to
24 the employees, don't you?

25 A Yes

1 Q Okay And I'm not expecting you to remember
2 every conversation you had with every employee
3 for the last five years There is an employee,
4 a former employee, and it's page number 786 of
5 the big volumes that you have in front of you,
6 who has submitted an affidavit And I just
7 wanted you to look at it and answer some
8 questions for me, please First off, have you
9 ever seen this affidavit before?

10 A I don't think so

11 Q Take your time to look at it

12 A I don't think I've seen it

13 Q All right Well, let's walk through it

14 A Okay

15 Q This is a fellow named Max Randolph who used to
16 be a vocational teacher at Tyger River

17 A Uh-huh (affirmative response)

18 Q Of course Tyger River is misspelled on this
19 affidavit I think it's T-Y, isn't it

20 A Yes

21 Q instead of T-I-G-E-R? Mr Randolph said
22 that on April 11th at approximately 1 30, he
23 met you at he said during a walk through at
24 Tyger River And he said he spoke with you at
25 the time regarding the cuts and the closings in

1 the school district And that a guy named Mr
2 Williams was present at the time Do you have
3 any recollection of that at all?

4 A Absolutely not

5 Q This fellow said that he told you and he's
6 a I mean he's a vocational teacher He's
7 not a road scholar He's sitting out there
8 outside the vocational area I told the
9 Director cuts and closings were not required
10 It could be handled through attrition Do you
11 remember anybody during any of your walk
12 throughs commenting about that?

13 A I remember a lot of people thinking that they
14 knew I people people made
15 statements to me like if you cut out you
16 know, if you cut out free postage for inmates,
17 it would balance the budget And and so
18 and if somebody told me that these kind of
19 things could be done through attrition, I would
20 think you're not a road scholar, and you have
21 absolutely no idea what you're talking about
22 That's what I would have thought

23 Q Wouldn't have said anything to him?

24 A But I would have listened and said, you know,
25 we are still attriting, but the idea that we

1 I mean if you had said that for it's
2 kind of like the people anyway, if he had
3 said that to me, I I would have been as
4 polite as I possibly could

5 Q Well, here's what he said that you told him
6 Said you said the cuts and closings
7 that with a budget of about \$300 million, you
8 could afford education, but with \$250 million
9 you couldn't That's what he remembers you
10 telling him

11 A Well, he he's he's not telling the
12 truth

13 Q Okay

14 A Because 300 and 200 he what I'm reading
15 here is responded that with a budget of \$300
16 million he could afford education, but with
17 \$250 million he could not Those numbers
18 really aren't relevant to where we were in
19 April of 2003 And they're not relevant to
20 what we could afford I mean we were still
21 affording education So I in other words,
22 we were still going to spend \$8 million dollars
23 even after the RIF on education I

24 Q So you deny that?

25 A Yeah, I didn't say that

1 Q Okay Next he says Director Ozmint stated that
2 the teachers sued the Department to get a raise
3 and that was wrong

4 A I might if he you're talking about a
5 guy who asked me some questions, and obviously
6 I I never said whether they were wrong or
7 not I talked to counsel and lawyers, and I am
8 a lawyer I don't, you know I haven't
9 I have thoughts about that, but people suing in
10 our society, it it happens And and so
11 I didn't tell this guy or anybody else outside
12 of maybe my executive staff that that
13 that, you know, we felt like that was a
14 negative or a positive Certainly not not
15 that it was wrong

16 Q Now, he has also said that you indicated that
17 teachers got a raise and correctional officers
18 didn't and that was wrong

19 A If he raised that topic, it very what I
20 what I might have said is it creates a real
21 inequity for one group one group of people
22 inside an organization to get a raise and
23 others not, which is what I've said I've said
24 that here today, and I've said that from day
25 one I can easily understand how Mr Randolph

1 would take that to say that once I made if
2 I made that statement in response to his
3 questions or if I even made the statement that,
4 you know, I get a lot of complaints from non
5 teachers who says who say it's not right
6 for you guys to get raises when they're not
7 when they're actually losing money in the form
8 of raising health care costs and which is
9 what I used to hear a lot from from
10 correctional officers Our most junior people
11 is that, you know, my pay's actually been cut
12 because I'm paying more for health insurance
13 and more for benefits, and they're not giving
14 me a raise If I shared that information with
15 Mr Randolph, this might be what he heard, but
16 I can tell you I didn't say what he's got
17 written down

18 Q Okay Based upon the way that you conducted
19 yourself, trying to respond to folks who were
20 obviously upset and concerned about losing
21 their jobs, I mean you do conceded that you
22 could have had some kind of exchange with Mr
23 Randolph where ya'll talked about these things?

24 A I could have had some kind of exchange with Mr
25 Randolph It could not have included look,

1 this affidavit is is dated 13 September
2 2006

3 Q Right

4 A All right So I mean somebody has asked Mr
5 Randolph to make up an not make up, but,
6 you know, can you give you know, can you
7 remember whether or not the Director ever said
8 this to you, and so this thing wasn't done, you
9 know, contemporaneously with the thing This
10 thing, this affidavit was created because one
11 of his friends probably talked to him and said
12 we need some help with this and did you have a
13 conversation with the Director And they can
14 go back and check the computers as to the days
15 I was at Tyger River So they find a day I was
16 at Tyger River, and all the guy's got to do is
17 say, yeah, I talked I talked to the
18 Director before Maybe it was this day when he
19 was at Tyger River because I wasn't there after
20 such and such a day Now listen to me You
21 asked the question

22 Q I'm perfectly happy to listen to you

23 A And and so what I want you to understand is
24 what's in here is not what I said What
25 because because what I said about the

1 situation with raises and not raises was very
2 limited, which is it creates an inequity in any
3 organization So if Mr Randolph was there by
4 himself or with a group of people, if I was in
5 the education part of the the education
6 building, for example, at Tyger River and this
7 group of teachers gathered around, then I would
8 have said the same thing very carefully then
9 that I've said here today Whether he
10 remembered three years later that that I
11 said these words specifically

12 Q I don't think he's

13 A he's he is mistaken

14 Q He's not purporting to put quotes around those
15 things He's trying to report his recollection
16 of the substance of an exchange So your
17 recollection is you did do walk throughs You
18 did talk to people Sometimes, particularly
19 because this RIF had been announced, folks
20 either came up to you and they asked you about
21 it

22 A Oh, they did

23 Q or complained about it, right?

24 A But you have to understand in terms of whose
25 recollection what I know for what I

1 know is that wrong, those kind of things, you
2 know, I had been counseled just stay out of
3 that

4 Q Okay

5 A Whether or not it's fair for one group of
6 people to get a raise or not Listen, that was
7 all the talk in the agency Mr Randolph
8 didn't need me to say that, but I may have
9 confirmed it for him when he when he asked

10 Q And you've already testified that, you know,
11 there was no secret that at least a certain
12 group of the of the agency thought that
13 teachers were taking, I think you said,
14 something out of their hide, taking, you know,
15 food off their table

16 A They didn't think that I mean the fact of the
17 matter is people in the agency knew that that
18 money had to come from somewhere It's not
19 it's not that's not theory I mean that's
20 that's financial you've got so many
21 dollars to spend If you have to take dollars
22 here and give them devote them to and
23 those pay raises for teachers weren't that
24 costly, but they were money that could have
25 been spent somewhere else Everybody in the

1 agency knows that And it's helpful that
2 people know that, quite frankly It helps with
3 stewardship

4 Q Those are all the questions I have

5 MR SUMMERS I have no follow up for you, sir, but
6 the panel may have some questions

7 MR MCCLARY Any questions? Herb?

8 MR COOPER I've got one You said that out
9 I'll use the term outsourcing I know you used
10 a different term It was very effective for
11 your organization because the GED rates got
12 increased, et cetera, et cetera Why don't you
13 do that why didn't you take the position to
14 do that more instead of just stopped where you
15 stopped?

16 A We didn't stop Tell me what you're under the
17 impression that we did or when we did it

18 MR COOPER Well, you didn't RIF deep enough to

19 A Oh, why

20 MR COOPER Why didn't you

21 A Because

22 MR COOPER RIF more teachers if it's effective?

23 A One, because there is a statutory mandate
24 that's different with regard to 21 year olds
25 And I don't know if it's 21 or 18, but young

1 offenders, when they come in, there is a state
2 law that requires you to educate those folks
3 Now, in those what we do with those inmates
4 is we put them all in in one of several
5 locations So in those locations I don't have
6 to worry about empty classrooms,
7 student/teacher ratios All of those young
8 offenders are at one place And we
9 consolidated When we did this RIF part of
10 what we did is we consolidated those young
11 offenders at fewer locations, fewer prisons
12 So we have, like at Turbeville, for example, or
13 at Tyger River, we have all of our youthful
14 offenders located at certain prisons And at
15 those prisons, we we have teachers, full
16 time teachers, because those teachers are going
17 to get used for that three hours of instruction
18 in the morning and three hours of instruction
19 in the afternoon, which is what our teachers
20 that's that's the work schedule
21 Because we're going to have plenty of students
22 mandatorily to put into that classroom It
23 it may out of those teaching resources, we
24 get we're getting pretty good bang for the
25 buck I mean I I submit that under our new

1 philosophy we're getting better, but it's not
2 just the teachers' fault that we've got
3 it's not just the teachers that have made that
4 system better And it's not just the teachers'
5 fault that we weren't doing better before in
6 terms of the number of GEDs What we've done
7 is we've we've forced our operational
8 people to work closely with those with the
9 teachers to make sure those classrooms are
10 full Take a student take an institution
11 that doesn't have a young offender population
12 And so just got a whole bunch of what we call
13 general population, straight time or 85 percent
14 inmates, those those two categories
15 They're not required to be in class and and
16 and so therefore and they can't earn
17 most of them can't earn any time off their
18 sentence by being in class At that
19 institution we might have had before the RIF a
20 full time complement of teachers, and they may
21 have five or six inmates in their class So
22 with that in that in that instance,
23 it's more cost effective for the state as a
24 whole to have an outside person come in where
25 that school district already has that sump cost

1 in the teacher And then all all that's
2 charged extra to to the state is the money
3 for GED education that's drawn down on a per
4 capita basis for those students and then paid
5 to that outside school district And, quite
6 frankly, it was a model We learned from
7 ourselves It was being done even before I got
8 there at a place like Wateree, at prisons, for
9 example, that were far out and and and
10 we had never had a whole bunch of teaching
11 assets, or those teaching assets were devoted
12 solely to youthful offenders And there was
13 nobody there teaching straight adult offenders
14 So we would even before this RIF, we would
15 partner with that school district to have that
16 school district send in that teacher And then
17 they would draw those adult education dollars
18 So we we've just done more of that since
19 the RIF out of necessity than we did before the
20 RIF But but a lot of it has to do with,
21 you know, making sure that classroom is full
22 and that you're getting the maximum bang for
23 your buck for for for the teacher that
24 you have deployed And if you're not going to
25 have 25 students in that classroom, then it

1 might make more sense to have somebody come in
2 from the outside and just do it on a part-time
3 basis to pick up some extra money We've got
4 wardens in our institutions who do that for
5 school districts, come back at night He was
6 an associate warden, now he is a warden, Warden
7 Palmer now, and he he for years came back
8 to his own prison where he was the warden, and
9 he taught an adult education class at night
10 And he was paid by the school district for
11 doing that Clearly cost effective for us, and
12 even cost effective for the school district

13 **MR COOPER** Thank you, that's all

14 **MS ELMORE** If I could, to kind of piggy back on
15 that So I understand you to say before the
16 RIF there's a possibility that you had a
17 principal, a guidance counselor and maybe a few
18 teachers

19 A Oh, support staff for only a few teachers Not
20 a possibility We had it

21 **MS ELMORE** What about for the inmate numbers? How
22 did it

23 A It was equally as skewed in terms of the number
24 of inmates that you were actually getting I
25 mean you look at the number of inmates who were

1 actually getting a GED or getting a vocational
2 certificate

3 **MS ELMORE** So do you feel

4 A And a lot of that wasn't anybody's fault It
5 was it was the fault of management and not
6 this wasn't all because we reduced numbers
7 It was also because after we reduced a numbers,
8 along with everybody in the agency, we said
9 you're going to be accountable for the numbers
10 that you produce I mean look, do the math on
11 900 our record number of GEDs now is 1,100
12 And that was the highest number That was the
13 record number of GEDs in the history of the
14 agency, as was 900 two years before that
15 Divide that by eight million And even if you
16 added in the the vocational certificates
17 that we got that that that inmates
18 earned during that same period of time, this is
19 still an expensive proposition, isn't it? I
20 mean if you do the so what we're looking at
21 is, you know, the method to get the most bang
22 for the buck When when I came in, and I
23 still get this, on these school district report
24 cards They would come to me and brag to me
25 about the number of hours that an inmate was in

1 class And they would measure it on how many
2 class how many hours of instruction they
3 had That was something our school district is
4 measured on I remember thinking about my dad,
5 you know, working a mom and pop drug store all
6 his life and wondered if he really cared about
7 how many hours of instruction that inmate got,
8 or is what he really care about whether or not
9 that inmate got the GED Did he leave there
10 with something that made him better than when
11 he came in? And so what we've tried to do is
12 to make sure that everything we do in education
13 it's not aimed at, you know, punching a
14 ticket, checking off a box and saying, you
15 know, we had 27 hours of face to face
16 instruction with this inmate I could care
17 less I don't care if it's two hours of face
18 to face instruction Did you get him to the
19 point where he could get his GED? Did you get
20 him to the point where he could take a
21 certificate to an employer when he got outside
22 and say, look, I might not be a brick mason yet
23 but I know how to lay a brick and I can help
24 you And that's been our goal And and
25 was that a change from when I got there? It's

1 been a big change, but I think it's been a
2 successful change And I think the numbers
3 prove that We would have made that change
4 whether we did the RIF or not We were going
5 we were going to make sure we we
6 were going to make sure that we were making
7 some effort to give these kids something, these
8 inmates something when they left our system,
9 not just I went to class every day I was at the
10 Department of Corrections They did that
11 before they got locked up They just didn't
12 accomplish anything when they were in class
13 And so we don't we don't pay much attention
14 to all that other stuff anymore I I hold
15 my district people accountable for the number
16 of GEDs and the number of vocational
17 certificates that we have at the end of the
18 year

19 **MS ELMORE** Thank you

20 **MR MCCLARY** Any follow up? Thank you, sir

21 **MR SUMMERS** Obviously, I would request an excusal
22 of the Director

23 A Thank ya'll

24 **MR NICKLES** No objections This should be a
25 relatively short witness if the panel would

1 like to proceed or if you want to take a break
2 **MR MCCLARY** Lynn, do you need to go?
3 **MS HUTTO** Let's go ahead, if she's going to be
4 brief
5 **MR MCCLARY** You've got to get to the bank by 5 00?
6 **MS HUTTO** If she's going to be brief, we can go
7 ahead
8 **MR NICKLES** I'll be very brief
9 **MR MCCLARY** Okay
10 **MR NICKLES** Would you stand up and face the panel
11 member here? He's going to swear you in, this
12 gentleman down here on the end
13 **MR COOPER** Would you please state your name?
14 **MS JONES** My name is Etta Jane Jones
15 **MR COOPER** Etta, E-T-T-A, Jane Jones Ms Jones,
16 would you please raise your right hand? Do you
17 swear or affirm that the testimony you will
18 give today is the whole truth and nothing but
19 the truth?
20 **MS JONES** Yes, I do
21 **MR COOPER** You can sit down
22 **MR CORNING** Ms Jones, if you wouldn't mind, if you
23 could speak up because I mean we're being
24 recorded
25 **MS JONES** Oh, okay

1 MR CORNING and it's it was hard for me to
2 hear you and I'm only ten feet away or so

3 MS JONES Okay, I'm sorry

4 MR MCCLARY And, Ms Jones, I'm going to read
5 something to you real briefly here It's the
6 abbreviated version The only time the case is
7 to be discussed is during the formal hearing
8 procedure A matter is still considered to be
9 pending before the committee during the time
10 involved in the request for consideration of
11 the committee's decision or until the time has
12 passed for an appeal to the Administrative Law
13 Court The only time the case is to be
14 discussed is during the formal hearing
15 procedure So don't discuss it outside of the
16 hearing

17 **MS JONES - DIRECT EXAMINATION BY MR NICKLES**

18 Q State your full name and home address, please

19 A Okay My full name is Etta Jane Jones My
20 address is 2313 Ruby Drive, Augusta, Georgia
21 30906

22 Q Ms Jones, are you employed?

23 A Yes, I am

24 Q Where are you employed?

25 A I'm employed with the McDuffie County School

1 District at Thompson High School

2 Q What do you do there?

3 A I'm the guidance counselor, one of them

4 Q Did you ever work at the McCormick Correctional
5 facility?

6 A Yes, I did

7 Q When did you work there?

8 A 1990 until 2003

9 Q What did you do there?

10 A I was the guidance counselor

11 Q Did you fill any other functions?

12 A Yes We didn't have a principal, so I was
13 given the title of acting principal for the
14 last six years there

15 Q All right What was your total time in service
16 at the State of South Carolina?

17 A I think it was 15 years, because I had worked
18 somewhere

19 Q Okay How long consecutively did you work at
20 McCormick?

21 A From 1990 until 2003, 13 years

22 Q All right Did you work at any other prison
23 facilities?

24 A Yes It was the Aiken Youth Corrections
25 Center

1 Q Okay What did you do there?

2 A Guidance counselor

3 Q What happened on June 1st of 2003?

4 A June 1, 2003, I was relieved of my duties and
5 with the Department of Corrections

6 Q Okay Was that because of a reduction in
7 force?

8 A Yes

9 Q Was there anyone that you could bump in your
10 area?

11 A No, I don't think so, but I'm not sure what the
12 area was now But I I don't think so

13 Q There is in front of you a small notebook that
14 has tabs in it, and it's sort of hidden under
15 this big one

16 MR SUMMERS I'll lift this one away

17 MR NICKLES Okay

18 MR SUMMERS There you go, ma'am You've got two
19 attorneys working for you right now

20 Q If you look at Tab 4, page 188, there is a
21 listing of areas If you look down to number
22 ten, is McCormick Correctional Institution in
23 that area?

24 A Yes

25 Q And what is the other correctional institution?

1 A Leath

2 Q All right Do you know whether any educational
3 programs continued at Leath?

4 A I do not believe they did

5 Q Okay Did you have any meetings with Mr John
6 Near or anyone else from the Department
7 concerning the reduction in force?

8 A Yes We met with, I think, John Near Met
9 with John Near

10 Q And was that before June 1st?

11 A Yes

12 Q What, if anything, did Mr Near say to you?

13 A He said that I could apply for a job as a
14 correctional officer

15 Q Did you have any experience as a correctional
16 officer?

17 A No

18 Q About how long did your meeting with Mr Near
19 last?

20 A Just a few minutes

21 Q Looking on the map that is the second page in
22 that document, page 189, you see circles drawn
23 on the map?

24 A Yes

25 Q Okay And what circle is McCormick in?

1 A Circle ten

2 Q Okay What circle is Aiken in?

3 A Nine

4 Q Okay And you had worked in both of those
5 counties for the Department of Corrections?

6 A Yes

7 Q And both as guidance counselor?

8 A Yes

9 Q Did anyone ever tell you you couldn't drive
10 more than 35 miles to a job at the Department
11 of Corrections?

12 A No

13 Q Would you have been willing to relocate if it
14 could have continued your employment with the
15 Department of Corrections?

16 A Yes

17 Q Answer any questions that Mr Summers or
18 members of the panel may have

19 **MR SUMMERS** Ma'am, I don't have any questions for
20 you I used to work in McCormick, and I worked
21 for the solicitor's office So I've been by
22 the facility, and it's very nice to meet you

23 A Yes

24 **MR SUMMERS** The panel members may have some
25 questions for you

1 **MR MCCLARY** Herb? No, ma'am Thank you

2 **MR NICKLES** Thank you very much And we thank you

3 for traveling all the way here to be with us

4 As the panel is aware, the record, I suppose,

5 will remain open We're going to have

6 **MR CORNING** Yes

7 **MR NICKLES** a de bene esse deposition on

8 Wednesday And are we to reconvene on Monday,

9 the 17th?

10 **MR MCCLARY** Any conflicts?

11 **MS ELMORE** Sandra, are you going to send out an

12 email? Can you send out an email?

13 **MS HUTTO** What time?

14 **MR NICKLES** Will it be at 9 00 o'clock in the

15 morning?

16 **MR MCCLARY** Let's try

17 **MS KUDELKA** That's fine with me

18 **MR NICKLES** At this location?

19 **MS KUDELKA** I have a question, Roland and Sandra

20 The testimony that you're going to take on

21 Wednesday

22 **MR NICKLES** Correct

23 **MS KUDELKA** Are you guys going to work to get it so

24 that we can access it?

25 **MR CORNING** Well, we'd like we'd like to get it

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MS KUDELKA On the monitor

MR CORNING preferably so that the committee can review it prior to the Monday In fact, the documents that we've talked about, counsel, it would be very helpful if the committee could review them rather than having to see them for the first time Now, there may be questions based on that, but at least it'd be helpful if they could see them prior to next week

MR SUMMERS Certainly With your indulgence, Mr Chairman, Mr Corning, we had talked about insuring that we have the precise scope of we've already got the again, the EPMS documents, I think, locked in, that request I just wanted to make sure that we had the precise scope of the other requests so that we could be responsive, hopefully, and again, Ms Thrailkill will be doing the heavy lifting, if not all the lifting on this We could have those documents to

MR CORNING As I understand it, the prime area was people who were RIF'd in this RIF that were hired back in basically ended up in teaching positions Number one, what was the

1 job description before that they were hired
2 into, what was their job description before,
3 what was the job description that they were
4 hired into

5 **MR MCCLARY** And also the job postings

6 **MR CORNING** And

7 **MS KUDELKA** Position descriptions

8 **MR CORNING** job postings, how were they posted

9 **MR SUMMERS** And with the panel's indulgence, Mr
10 Nickles' indulgence, sir, and your indulgence,
11 I want to insure I'm not going to presume
12 to be subject matter expert here If it's okay
13 with ya'll, Ms Thrailkill, do you understand
14 the request?

15 **MS THRAILKILL** No, not totally, I don't I'm
16 sorry

17 **MR CORNING** People that came back to the Department
18 that were RIF'd

19 **MS THRAILKILL** Are you saying the 20 grievants or
20 everybody?

21 **MR CORNING** Not every grievant The ones that came
22 back to work for the Department

23 **MR MCCLARY** Just the ones that came back

24 **MR CORNING** Those people

25 **MR SUMMERS** Of those 20

1 MR CORNING Whatever position they came back in

2 MS THRAILKILL So of the 20, their PDs at the time
3 they left and the the jobs they held since
4 they came back to work?

5 MS KUDELKA The PDs

6 MR CORNING Of the PDs the ones who left and
7 came back in some position, whether it be as
8 teaching or as whatever, those people, what was
9 their job description previously, what was the
10 new job description for the job that they ended
11 up ultimately going into and how was it posted
12 So it might be six It might four It might
13 be I don't I haven't been keeping track
14 of the numbers

15 MR NICKLES Did the panel also want to look at any
16 evaluative materials after the people came back
17 as well?

18 MR CORNING They haven't asked

19 MS KUDELKA The EPMS

20 MR NICKLES The EPMS

21 MR CORNING Why don't we ask for the EPMS of
22 everybody before everybody all

23 MR NICKLES Before and after?

24 MR MCCLARY Uh-huh (affirmative response)

25 MR CORNING Pardon?

1 MR NICKLES Before and after

2 MR SUMMERS No It was only one the only
3 request so far

4 MR CORNING Well, we have I don't know if we
5 need the EPMS after if we have the description
6 of the job and and unless the panel
7 wants it I don't see any need for it unless
8 the panel wants the EPMS after if you have the
9 job description after

10 MS KUDELKA It was my understanding that we wanted
11 the EPMS

12 MR CORNING Before

13 MS KUDELKA of the same of the same
14 employees, the ones

15 MR CORNING We had asked for the EPMS of all the
16 employees of the RIF

17 MS KUDELKA All of them, okay All right, I'm
18 sorry

19 MR SUMMERS That was before?

20 MR CORNING Before

21 MR MCCLARY Let me make sure Lesia's my
22 understanding from Lesia You want do we
23 want the EPMS of those employees who came back
24 to work as well?

25 MR CORNING Well, we could get it I mean if

1 that's no problem, we could

2 **MS KUDELKA** That's that's what I would like to
3 see, the EPMS, yeah

4 **MR MCCLARY** For those employees who came back, only
5 the ones who came back

6 **MR CORNING** Same thing on the job posting

7 **MS THRAILKILL** Okay Now, the EPMSs that I
8 understood we needed was 1999 to 2003

9 **MR SUMMERS** That was the ones we had talked about
10 Friday

11 **MS THRAILKILL** And Mr Nickles said

12 **MR CORNING** No, no, no The EPMSs

13 **MS KUDELKA** No, the last EPMSs

14 **MR CORNING** All we wanted was the last year before
15 the RIF for all 20 employees We don't need
16 them for more than one year And then for
17 those who came back

18 **MS KUDELKA** Right

19 **MR CORNING** they want the job description they
20 were in, the job description that they were
21 that they ultimately came back into, whether it
22 be as a correctional officer or whatever, and
23 what their the EPMS would be useful because
24 that'll show what their maybe their
25 description of their duties should be in the

1 EPMS when they came back and the notice,
2 however they were listed when they opened the
3 job and posted the job opening
4 **MS THRAILKILL** Most current EPMS if they're still
5 employed, if they're still employed?
6 **MR CORNING** Well, yeah, but I mean the one
7 **MS KUDELKA** Yeah, that's fine
8 **MR CORNING** the one most closely to the RIF
9 would probably be the most relevant, but
10 **MR MCCLARY** Well, I think I think we're asking
11 for two EPMSs on the employees that came back
12 **MR CORNING** Yes She knows that
13 **MR MCCLARY** So we do want the most recent one for
14 the most current one now Then we want the
15 one that's most recent to their
16 **MR NICKLES** Well, I mean
17 **MS KUDELKA** Where they were
18 **MR NICKLES** For example, Ms McClanahan had two
19 positions And you remember her testimony was
20 that her last position as a lieutenant
21 **MR CORNING** After she came back?
22 **MR NICKLES** as a lieutenant/trainer was actually
23 the same job that she had beforehand I think
24 the EPMS or the lack thereof would be of
25 interest to the committee

1 MR CORNING Well, if you could do that I mean I
2 don't think there are that many of them So
3 just all the PMSS subsequent to their coming
4 back

5 MS THRAILKILL Okay, okay

6 MR SUMMERS The hesitancy is just to insure the

7 MR CORNING EPMS, EPMS

8 MR SUMMERS The hesitancy is to be sure that we get
9 what you want in a timely fashion

10 MS KUDELKA And then the position descriptions for
11 those new jobs they came into

12 MR CORNING Now you know why Policy Management
13 Systems changed their name

14 MR SUMMERS And, ma'am, you said the position
15 descriptions?

16 MS KUDELKA No, not the position descriptions, The
17 job announcement

18 MR CORNING This is before

19 MS KUDELKA Oh, I'm sorry

20 MR CORNING We've already gone through this

21 MS KUDELKA Right

22 MR CORNING We want for everybody that left and
23 came back, we want

24 MS KUDELKA Right

25 MR CORNING the job description We want the

1 job description before We want the job
2 description after they came back, and we want
3 the notice that was listed when they took the
4 job Then we also want all the EPMSs for the
5 year before the RIF for all all the
6 employees And we want the EPMSs for those
7 employees who came back for all the years after
8 they came back That's only two or three

9 **MS THRAILKILL** That's (inaudible) yes

10 **MR SUMMERS** Okay

11 **MR NICKLES** Lake, there's lots of reference to
12 these documents during the testimony Do you
13 object to having them marked and introduced?

14 **MR SUMMERS** Aren't they still in they're in the
15 record, correct?

16 **MR NICKLES** Everything's in the record I just
17 it would be helpful for purposes of clarity

18 **MR SUMMERS** I may have been mistaken

19 **MR NICKLES** They haven't been marked yet

20 **MR SUMMERS** Okay, sure Yeah, that's fine As far
21 as the tabs and all and the reference to

22 **MR NICKLES** Right, right

23 **MR SUMMERS** Exhibit One's already in One was
24 already in

25 **MS KUDELKA** When we come back on Monday they're

1 going to give their closing arguments and then
2 you can start your deliberations

3 **MR NICKLES** You were right I was not as
4 thoughtless as I thought I was

5 **MR CORNING** And, Lesia, if we need Ms Kudelka,
6 if we need anymore, we can we can ask
7 Monday

8 **MS KUDELKA** Right, but Sandra was asking about the
9 video that's going to be taken Wednesday Are
10 we going to be able to get it up on our website
11 for us to access?

12 **MR CORNING** Well, how soon can we get it, counsel?

13 **MR NICKLES** I should have it, you know, no later
14 than Thursday So I'll convey it to you as
15 soon as I have it

16 **MR CORNING** Ms Brabham

17 **MR NICKLES** I expect

18 **MR CORNING** how long does it take to get it up
19 on their site?

20 **MR NICKLES** We'll probably just bring them up on
21 CDs

22 **MR SUMMERS** That would make the most sense

23 **MS BRABHAM** It won't take long, just

24 **MR NICKLES** We'll just burn them over to CDs, and
25 then we'll have one

1 **MS BRABHAM** You know, get the IT person as soon as
2 they can
3 **MS KUDELKA** You can do that, but we also have a
4 website for us
5 **MR NICKLES** Okay
6 **MS KUDELKA** And they've been posting everything
7 there, and we can just go access it
8 **MR CORNING** Yeah, it's easier It's probably
9 easier And then you can introduce it Monday
10 But if you could just get it to them to post
11 **MS KUDELKA** To Sandra and then she'll get it
12 posted How about that?
13 **MR NICKLES** Okay
14 **MR CORNING** We'll mark it Monday whenever it comes
15 **MR NICKLES** I'll have it hand delivered to you
16 **MR SUMMERS** One last thing
17 **MR NICKLES** And you'll be over at your office over
18 at the Tower, right?
19 **MR SUMMERS** It may have been me in error I don't
20 know, sir, Mr Chairman, if you did it one
21 time I recall someone asking perhaps for an
22 accounting of all those involved in the Abraham
23 lawsuit and the impact, if any, by the RIF
24 Was I
25 **MR MCCLARY** I mentioned it one time

1 **MR SUMMERS** Yeah We're trying to be responsive to
2 that if that's still desired We can work
3 that, too

4 **MR MCCLARY** Did we want to know I know there
5 were several witnesses that I asked that
6 question of

7 **MR SUMMERS** And I think you mentioned it at one
8 point

9 **MR MCCLARY** Was it yeah Was there anyone
10 involved in the Abraham lawsuit that was not
11 affected by the RIF

12 **MR SUMMERS** We've been working on an accounting of
13 those individuals involved in the Abraham suit
14 that of course was not with the panel or was
15 not amongst the items the panel

16 **MS HUTTO** It was

17 **MR MCCLARY** Yeah, I think it was

18 **MS HUTTO** It was

19 **MR MCCLARY** Yeah Okay, I'd like it

20 **MR SUMMERS** Very well And that's fine I just
21 wanted to make sure that we weren't making Miss
22 Pat's job that (inaudible) and then she has to
23 deal with me

24 **MS KUDELKA** And then after we hear closing
25 testimony, we're going to go ahead and start

1 deliberating?

2 **MR MCCLARY** I would think so, yes

3 **MS KUDELKA** Okay, all right, great

4 **MR MCCLARY** Unless they take a couple of days

5 **MR SUMMERS** Oh, heavens, no With your indulgence,
6 we will try to get these materials collected
7 up Is Friday morning feasible so they can
8 look at it?

9 **MS THRAILKILL** (Inaudible) the best I can

10 **MR SUMMERS** We'll make every effort to get them
11 submitted

12 **MS KUDELKA** Those documents will need to be put up,
13 too

14 **MR SUMMERS** Yeah We'll try to get them Friday
15 Obviously, get them

16 **MS KUDELKA** Get them to Sandra

17 **MR SUMMERS** Yes

18 **MS KUDELKA** And she'll get them she'll figure
19 they'll figure out how to

20 **MS BRABHAM** Do you want those in the library, too?

21 **MS KUDELKA** Well, or else somebody's going to have
22 to get us copies of them

23 **MR CORNING** If they can be scanned, it'd be easier
24 to do it

25 **MS KUDELKA** Go ahead and fax it to all of us

1 **MR SUMMERS** I can bring them to you in a scanned
2 format

3 **MR CORNING** No We might have somebody might
4 have some questions about them Monday,
5 obviously, but

6 **MS KUDELKA** If you guys could scan them for Sandra,
7 that would be awesome

8 **MS BRABHAM** Could you have that on a CD?

9 **MR SUMMERS** I will make every humanly effort
10 possible

11 **MR CORNING** You may have to have a witness here who
12 can explain them probably from your end,
13 counsel

14 **MR SUMMERS** And I think we'll be (inaudible)

15 **MR CORNING** Okay

16 **MR SUMMERS** And maybe if it's not Ms Thrailkill,
17 we'll certainly

18 **MR CORNING** Well, whoever, I mean, is the
19 appropriate person

20 **MR NICKLES** All right Thank you all very much

21 **MR MCCLARY** Thank ya'll very much

22 **MR NICKLES** I appreciate your attention

23 (There being no further testimony, the hearing was
24 adjourned)

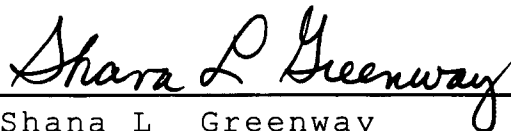
25

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 Eighty (280) 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,)
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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 17, 2008
DAY 5

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** Okay, this is the fifth day of the
2 hearing of the appeal of reduction in force
3 instituted by Bell, et al , against South
4 Carolina Department of Corrections being held
5 in Columbia, South Carolina this 17th day of
6 November 2008 A recording is being made of
7 the hearing For the record, my name is Karl
8 McClary, Department of Motor Vehicles And
9 other members of the State Employee Grievance
10 Committee present are Herb Cooper, Department
11 of Transportation, Glynnis Elmore, Department
12 of Mental Health, Lynn Hutto, SLED, Lesia
13 Kudelka, Department of Labor, Licensing and
14 Regulation The committee attorney the
15 committee attorney is Roland Roland
16 Corning, Attorney General's Office The
17 appellant is represented by Attorney Allen
18 Nickles The employing agency is represented
19 by Attorney Lake Summers Assisting the
20 committee is Sandra Brabham, Office of Human
21 Resources Before closing the hearing, the
22 presiding officer will allow both parties to
23 present a brief summary of the closing
24 statement if if they so desire The
25 appellant will have an option of closing first

1 or last The appellant, the agency witnesses
2 or anyone else related to the case are not
3 are not to discuss the case with any member of
4 the State Employee Grievance Committee before,
5 during or after the hearing until the final
6 decision is reached The only time the case is
7 to be discussed is during the formal hearing
8 procedure A matter is still considered to be
9 pending before the committee during the time
10 involved in the request for consideration of
11 the committee decision or until the time has
12 passed for an appeal to the Administrative Law
13 Court The only time the case is to be
14 discussed is during the formal hearing
15 procedure After this appeal, the committee
16 will report its finding and decision in writing
17 to the employee and the employing agency within
18 twenty calendar days of the conclusion of the
19 hearing The decision shall be final in terms
20 of administrative review The hearing remains
21 in executive session I

22 MR SUMMERS Yes, sir

23 MR MCCLARY know we were in the agency's case
24 when we last

25 MR SUMMERS That's correct With your indulgence,

1 Mr Chairman, Mr Corning, counsel have
2 consulted with one another this morning We
3 have concluded that phase of our presentation
4 As the panel is no doubt aware, we took the
5 video taped deposition of a witness introduced
6 by the appellants That'd be Mr Charlie
7 Williams Mr Nickles and Ms Guffey and I
8 spoke this morning, and we agreed, subject to
9 ya'll's discretion, that perhaps it'd be the
10 appropriate time now to go ahead and view or
11 present that video tape of that particular
12 event, and then we can move onto other matters
13 which may well involve the testimony of both
14 folks from the appellant's side, as well as the
15 agency's side That's what we would like to
16 submit for ya'll's consideration first this
17 morning

18 MR MCCLARY Does anyone oppose that? Okay, that's
19 fine

20 MR SUMMERS Thank you, sir And I believe is
21 the disc the DVD up there? I see the copy
22 on the table I am not at all familiar with
23 the method by which it will be placed into the
24 computer, but perhaps Mr Cooper can do it, and
25 there we go

(Video Deposition of Charlie Williams Played)

MR NICKLES Mr Chairman, that concludes the appellant's case in chief I do think we have a couple of issues on documentary matters that would be addressed by way of reply or recall

MR SUMMERS And we may want to talk about those with Mr Corning first just to avoid any missteps or any

MR CORNING Well, one thing we're going to need to do, counsel, I mean, in case we're going to put somebody on the on the witness stand and possibly ask questions, and we're going to need to get the documents introduced for the panel to look at And they're going to need 15, 20 minutes, maybe half an hour to look at the documents because they're not going to be able to sit here, look at that stack of documents that I tried to pull down yesterday and ask all the questions they may need to ask without reviewing the documents

MR SUMMERS I understand

MR NICKLES I think that that there are only about four or five documents in controversy Most of it was made available to the panel

MR CORNING Well, I'm talking about the others

1 Well, if they've had a chance to look at them
2 I mean I don't know when they went up, counsel,
3 but I mean I was out part of Friday afternoon,
4 and I didn't see them until yesterday
5 afternoon

6 **MR NICKLES** Whatever the pleasure of the of the
7 committee is on that

8 **MR CORNING** So I don't know whether the panel had a
9 chance to see them Friday or not because they
10 they have other jobs, too

11 **MR SUMMERS** Well aware of that, yes, sir

12 **MS KUDELKA** Mr Chairman, now might be the
13 appropriate time I think I'd like to make a
14 motion that we get advice from our legal
15 counsel before we discuss this further

16 **MR MCCLARY** Any seconds?

17 **MR COOPER** Before we before we get a second,
18 can I ask one question, as I'm new at this? Do
19 I need to introduce this as a into
20 something before we

21 **MR NICKLES** We have the original for you

22 **MR COOPER** I've got I've got something right
23 here, okay So that needs to be introduced?

24 **MR NICKLES** Yes, sir That's the original
25 deposition

1 MR COOPER I'm sorry, Lesia

2 MS KUDELKA No, that's fine

3 MR COOPER I just didn't want to get any further

4 I second the motion

5 MR MCCLARY All in favor?

6 MS ELMORE Aye

7 MS HUTTO Aye

8 MR MCCLARY Aye All oppose?

9 MR CORNING Without objection, counsel?

10 MR SUMMERS Without objection

11 MR NICKLES No objection

12 MR MCCLARY We're going to take a few minutes

13 Let's call it a few minutes, and we'll come to

14 you when we're ready

15 MR NICKLES Very good

16 (Off the record)

17 MR CORNING While we were off the record and I met

18 with the attorneys privately to discuss some

19 evidence issues that were raised and discussed

20 some of the panel's concerns about

21 documentations of documents There's been some

22 agreements reached, but the panel has I've

23 asked the attorneys to have someone both

24 can perhaps someone from the Department of

25 Corrections and Mr Nickles is going to get

1 some try to attempt to get someone from the
2 Department of Education to seek on the
3 certification issue so that the panel has a
4 clear understanding of the hopefully a
5 clear understanding of the certification issue
6 And someone the panel would like to hear
7 someone possibly from OHR who would be able to
8 possibly testify on some of the issues about
9 things that deal with some documents, which I
10 don't want to talk about right here today, that
11 Mr Nickles would like to introduce And so we
12 need a witness from OHR It may or may not be
13 Mr Wilkins It may be some other person, but
14 some appropriate person to testify on that
15 issue And there's some other documents that
16 the panel has pretty much come to an agreement
17 on, or else it'll come in at the next hearing
18 I say panel Attorneys have come to an
19 agreement on, but there's some they won't
20 come in until we come back And Ms Thrailkill
21 will testify at that time on any questions the
22 panel has That'll give the panel more time to
23 review all these documents that they have
24 There'll be a few more, Ms Kudelka, that will
25 be coming in that we discussed, you know, that

1 you had had asked about and others that'll
2 be coming in with the witness at the next time
3 we meet So the panel and the attorneys and
4 the witnesses that are obtained will have to
5 agree on a date for this next hearing
6 hearing date We'll have to have including
7 what's the agreement with respect to Mr
8 Bell?

9 **MR NICKLES** I think that we've entered an agreement
10 that Mr Bell was here to authenticate a
11 document There's going to be no objection to
12 the authenticity of that document

13 **MR CORNING** All right

14 **MR NICKLES** It's a document that was in Mr Bell's
15 possession The Department has purged its file
16 so that the original no longer exists There's
17 some annotations on that document that we have
18 stipulated are of no relevance to this panel
19 And we will do our best to eradicate those
20 annotations so, as best we can, to duplicate
21 the document in its original form so that Mr
22 Bell would no longer be necessary to testify

23 **MR CORNING** So Mr so Mr Bell, you won't be
24 required to come back at the next hearing

25 **MR NICKLES** The stipulation is Mr Bell is the

1 source of delivering this document for review
2 by the panel And he would have testified as
3 to that and

4 MR CORNING Well we'll get that on the record at
5 the time

6 MR SUMMERS As well as our objection to it

7 MR CORNING And whether there will be objections

8 MR NICKLES Correct

9 MR SUMMERS Thank you, Mr Nickles

10 MR CORNING And I guess, Mr Mr Chairman, I
11 guess that will conclude the hearing for today
12 until we can get witnesses and get the dates
13 for the next meeting

14 MR MCCLARY Okay I should have been paying closer
15 attention, but documents that we currently have
16

17 MR CORNING You will be getting additional documents
18 when when they come in, and they will come
19 in through witnesses, but you'll have a chance
20 to at least review all the documents you have
21 now so you'll be because we didn't get much
22 notice on the current documents

23 MR MCCLARY Okay

24 MR CORNING And I've asked for the additional
25 documents, including the one Ms Kudelka

1 specifically asked for, and, you know, its
2 availability or because there have been
3 some objections about various documents, but if
4 we're going to have some witnesses here, and
5 there may still be objections, but they will be
6 probably be available I can't until
7 I see what happens at the next meeting, but
8 they'll probably you'll have answers to
9 your questions

10 MR MCCLARY For for the record

11 MR NICKLES And as to those documents that have
12 been placed before you, those are without
13 objection And I understand that those will be
14 marked as committee exhibits

15 MR CORNING Committee exhibit, yes, that's correct
16 All those documents that you got through Ms
17 Brabham will be a committee exhibit

18 MR MCCLARY Okay For the record, can can we
19 state what documents we should be expecting
20 now, the ones that you said you've already
21 asked for? Can we put those on record?

22 MR CORNING Well, some of

23 MR NICKLES Well, to speak as to some might

24 MR CORNING Yeah I don't think I've got to rule
25 I think we need to wait

1 MR SUMMERS Our preference would be, I think, both
2 Mr Corning's

3 MR CORNING I think we're going to we're going
4 to wait

5 MR SUMMERS And let that lie and let the attorneys
6 get those things prepared so that

7 MR CORNING We need we need because there's
8 going to be there may still be some
9 objections on some of these documents, and we
10 need to get it on the record But we ought to
11 at least have the proper witnesses here on some
12 of these things to so that I can make a
13 ruling and any objections can be made

14 MR MCCLARY I guess what I what I was trying to
15 get at, I do not want to know if those
16 documents can be introduced or not It's just
17 that it's clear that what the the panel is
18 asking for

19 MR CORNING It's clear

20 MR NICKLES If you want to state it for the record,
21 Mr Chairman, I mean that might might be
22 helpful

23 MR MCCLARY That's that's what I'd like to hear
24 to make sure that all of Lesia's and and
25 everybody else's request at least has been put

1 on the record of what we're asking for And if
2 there are any objections, please put that out

3 **MR SUMMERS** Well, what we'd like to do, very
4 respectfully I may be getting ahead of Mr
5 Nickles and Ms Guffey Certainly we have no
6 problem at all, Mr Chairman, with ya'll
7 publishing what ya'll want

8 **MR MCCLARY** Right, right

9 **MR SUMMERS** We would like to at least at least
10 from our perspective, have an opportunity to
11 absorb what you all want before we state
12 whatever objections may or may not be there
13 We have an understanding what as to what
14 ya'll want, and we can preserve that
15 opportunity for the next time that we meet
16 should there be a problem We still need to
17 figure out precisely what they're going to look
18 like There could be some evidentiary issues
19 that we can't anticipate right now So that's
20 being a lawyer, that's why I'm asking for
21 the opportunity to pursue that later

22 **MR MCCLARY** And and if we're asking for
23 something that that we shouldn't have, we
24 we understand that completely

25 **MR SUMMERS** That's to Mr Corning's discretion

1 MR CORNING It's not it's not that you
2 shouldn't have it It may not be admissible
3
4 MR MCCLARY Right
5 MR CORNING over objection
6 MR MCCLARY Right
7 MR CORNING And you can't read into that If
8 if Mr Nickles objects to a document or Mr
9 MR SUMMERS Summers
10 MR CORNING Summers, Lake Summers
11 MR SUMMERS I had to say it over the weekend
12 MR CORNING If Mr Summers objects to as many
13 times as you've introduced yourself, Mr
14 Summers, I apologize
15 MR SUMMERS That's quite all right That's why I
16 still do it sometimes
17 MR CORNING The but the panel should not read
18 it anything into
19 MR MCCLARY Right
20 MR CORNING a document you don't get one way or
21 the other in terms of your determination of the
22 ultimate issue in the case because there may be
23 legal reasons why it's not proper to introduce
24 it that have nothing to do with well, they
25 have there's a reason for the objection,

1 but there it might not have anything to do
2 with why you're not getting it It's

3 MR MCCLARY No

4 MR CORNING We don't want the panel reading into
5 any of this that there's some attempt from
6 either counsel, Mr Nickles or Mr Summers, to
7 hide anything from the panel

8 MR MCCLARY We understand completely We put out a
9 Christmas list each year to dad, but we don't
10 always get them It's not because he doesn't
11 love us He has good reason for not giving it
12 to us What we wanted was would you

13 MS KUDELKA Do you want me to stay?

14 MR MCCLARY If you don't mind, please

15 MS KUDELKA All right, and help me Make sure I
16 remember Just the same thing that Sandra had
17 sent out, right?

18 MR MCCLARY Uh-huh (affirmative response)

19 MS KUDELKA Just go over everything, not what's
20 missing?

21 MR MCCLARY Right, just go over the whole list

22 MS KUDELKA Okay We wanted the position
23 descriptions of any of the 20, or however many
24 it was, any of the

25 MR NICKLES Appellants?

1 MS KUDELKA Appellants, yes, right That's right
2 That were hired back in any capacity

3 MR NICKLES May I ask for a clarification?

4 MS KUDELKA Sure Their most current

5 MR NICKLES Some some there's been some
6 confusion about what the term hired back might
7 mean

8 MS KUDELKA Okay

9 MR NICKLES Some of these individuals had no break
10 in service, but they were assigned other
11 duties Some of them were had break in
12 service and returned to duty Some of them had
13 more than one position following their
14 separation or the effect of reduction in force
15 Do you want, as best as the Department can, to
16 simply track those individuals who have
17 returned in one way or another to the
18 Department?

19 MS KUDELKA Yeah That's why I said in any
20 capacity

21 MR SUMMERS And again, Mr Nickles accurately
22 articulated the I guess the nomenclature
23 disconnect When we hear hired back, as Mr
24 Nickles indicated, some of the 20 remained with
25 us

1 MR MCCLARY Right

2 MR SUMMERS remained with the Department They
3 bumped into a different position from what they
4 had been in

5 MS KUDELKA Okay

6 MR SUMMERS before the effective date of the
7 RIF So we're just trying to make sure

8 MR MCCLARY That would not be a hire back That
9 person never left

10 MR SUMMERS Correct

11 MR MCCLARY And I think what our what we were
12 asking for here, if they were RIF'd and went
13 into a different position, we would we'd
14 want to see that

15 MR SUMMERS Fair enough

16 MR MCCLARY If they never left

17 MR CORNING But you're not talking about the ones
18 that bumped As I understood Ms Kudelka, if
19 they have a two week break and they come back,
20 she wants that

21 MR MCCLARY No That's that's not what I'm
22 understanding If they were RIF'd and they
23 they they left and came back into a
24 lieutenant's position, that's to say
25 lieutenant's position, that is a person that

1 never left They just bumped into another
2 position

3 MR SUMMERS Correct

4 MR MCCLARY We want to see that one as well Am I

5

6 MR CORNING Yes

7 MR MCCLARY Is that what the panel

8 MR CORNING Yes

9 MR SUMMERS And that would comport, I believe, with
10 what Mr Nickles indicated

11 MS KUDELKA What he said

12 MR SUMMERS as well as our understanding

13 MR CORNING Yes

14 MR NICKLES Right

15 MR SUMMERS And and this is obviously Ms
16 Thrailkill's the nomenclature for her is
17 very important

18 MS KUDELKA Okay

19 MR SUMMERS as it is for all of us and for you

20 MS KUDELKA That's fine

21 MR SUMMERS We're just trying to make sure we

22 MR MCCLARY And thank you for helping us with all
23 this

24 MS KUDELKA Yes

25 MR SUMMERS That's quite all right

- 1 MS KUDELKA So that would be the the last
2 position description held prior to the RIF, and
3 then the position description for whatever
4 position they went into, whether they all
5 the stipulations that you made, whether they
6 left and came back or whether they continued
7 but did something differently Does that make
8 sense?
- 9 MR NICKLES Okay, yes That's understandable
- 10 MS KUDELKA Okay And then we asked for the EPMSs,
11 the last EPMS of all was it all 20 or just
12 the ones that were
- 13 MR MCCLARY I think we we originally asked for
14 all
- 15 MS KUDELKA All 20
- 16 MR MCCLARY We asked for all 20
- 17 MS KUDELKA Ever how many appellants
- 18 MR SUMMERS And I believe that's what that's
19 what we looked at on Friday
- 20 MR NICKLES The the EPMSs that were provided to
21 you, I understand, are those that were most
22 recent prior to the reduction in force
- 23 MR MCCLARY Correct, right
- 24 MR NICKLES There are no EPMSs that have been
25 provided to you for any individuals who

1 continued in any capacity after

2 MS KUDELKA After the RIF

3 MR NICKLES June 1, 2003 Do you wish to have
4 those?

5 MR CORNING Yes

6 MS KUDELKA Yes

7 MR CORNING I think they do want the EPMSs for the
8 ones that continued in any capacity, the same
9 as for job description

10 MR SUMMERS And do you want the EPMS, I guess
11 looking for the time frame, for when they came
12 the period the first year they came
13 back

14 MR CORNING Yes, when they

15 MR SUMMERS or the first year they continued
16 and the different positions?

17 MR CORNING Yes That

18 MS KUDELKA Right

19 MR CORNING You're not looking for how they were
20 rated You're looking for

21 MR SUMMERS Right

22 MS KUDELKA So it would be the one that they were
23 currently the most recent one prior to them
24 being RIF'd and then the one that they when
25 they came back, the EPMS they were given

1 MR CORNING Closest in time to the RIF

2 MS KUDELKA Closest, yes

3 MR NICKLES Keeping in mind that Ms McClanahan and
4 Ms Glenn both testified that they had more
5 than one position with the Department following
6 the RIF Do you want the EPMSs for any of
7 those positions they occupied?

8 MS KUDELKA Any positions they occupied

9 MR NICKLES Okay

10 MS KUDELKA And then I know we had asked for any
11 job posting, but I believe you guys had
12 mentioned that those postings only have for
13 like two years out Is that right? We got
14 one

15 MR SUMMERS They're retained no I guess going
16 back two years in time Is that correct, Pat?
17 I don't want to make

18 MS THRAILKILL Current, two years prior

19 MR SUMMERS Two years prior

20 MS KUDELKA Okay

21 MR SUMMERS So we can replicate those

22 MS KUDELKA Those are the only job postings you
23 would have, would be within the last two years
24 that you would still have on record?

25 MR CORNING And, counsel, once she goes back on the

1 stand, could you get that on the record, please

2

3 MR SUMMERS Sure

4 MR CORNING because I mean with her
5 testifying

6 MR SUMMERS I will insure that's clearly stated on
7 the record

8 MS KUDELKA Those are

9 MR CORNING Well, I mean maybe it's stipulated, but
10 I mean if it's not, I want her to testify

11 MR SUMMERS Sure

12 MS KUDELKA Does that mean they're destroyed, no
13 longer exist or they are somewhere else or

14 MS THRAILKILL We destroy the original copies

15 MR SUMMERS Right

16 MS KUDELKA So you would still have a copy then?

17 MS THRAILKILL No

18 MR NICKLES Is it maintained in the computer bank
19 somehow?

20 MS THRAILKILL We do have an automated vacancy
21 announcement system, but it will not show the
22 detail that's on an original posting

23 MR SUMMERS So it's not a complete it does not
24 replicate completely the data on the original
25 posting?

1 MR MCCLARY Do you know what information it would
2 have on it? Do you know?

3 MS KUDELKA OHR would wouldn't they maintain it
4 through their computer system, job postings?
5 Because when they put it up, it looks just like
6

7 MS THRAILKILL Well that's am I okay to talk?

8 MR SUMMERS Sure, at this point, please

9 MS THRAILKILL The announcements that are here are
10 are internet postings, okay

11 MR SUMMERS You're talking about this one right
12 here

13 MS KUDELKA For your

14 MR SUMMERS This one, right?

15 MS KUDELKA I mean for Department of Corrections
16

17 MS THRAILKILL This this is

18 MR SUMMERS That's the only one that's in right
19 now

20 MS THRAILKILL Okay This this one here is
21 actually an SCDC posting?

22 MR SUMMERS Don't know

23 MS THRAILKILL Okay We have our own postings, and
24 it's called an automated vacancy announcement
25 system And they go into that system, and they

1 key in the job duties and responsibilities It
2 picks up the statement on qualifications, and
3 there's an approval process that it has to go
4 And then it's automatically posted to our
5 mainframe system, but we have to go to OHR's
6 website to do any internet postings So this
7 is SCDC This is what I don't have prior to
8 2005 Now, I could go into our ABS System and
9 key in a position number It will define the
10 job duties, but it won't list the state minimum
11 if I do screen prints of each step that we have
12 to go through

13 MS KUDELKA What do you think?

14 MS ELMORE We wanted to look at the job duties So
15 if it reflects the job duties, I think that
16 will be okay

17 MS KUDELKA Yeah

18 MS ELMORE That'd be okay, don't you think?

19 MS KUDELKA Yeah

20 MS THRAILKILL So you want it from our system if
21 it's

22 MS KUDELKA If it's there

23 MR SUMMERS Whatever we can get that's available
24 from the system as Ms Thrailkill described

25 MS THRAILKILL So would you clarify exactly what

1 postings I'm looking for?

2 MR SUMMERS Sure That'll be the next step I
3 would I'm anticipating, ma'am, that just as
4 we have done for the position descriptions and
5 the EPMSSs, you and we're focusing on the
6 folks who remain with us

7 MS KUDELKA Right

8 MR SUMMERS and after June 1st?

9 MS KUDELKA Right, that were a part of the RIF

10 MR SUMMERS Correct

11 MS KUDELKA Either remained or came back or
12 whatever

13 MR SUMMERS Correct You want the job postings for
14 the positions into which

15 MS KUDELKA They went

16 MR SUMMERS they filled?

17 MS KUDELKA Their initial time that they came back

18 MR SUMMERS After June 1, 2003?

19 MS KUDELKA Right

20 MR SUMMERS Does that make sense?

21 MS THRAILKILL Yeah And they do realize a bump is
22 not posted?

23 MR SUMMERS Well, Ms Thrailkill just brought to my
24 attention a bump

25 MS THRAILKILL You're not going to have a job

1 posting

2 MR SUMMERS You won't have a job posting for a
3 bump

4 MS HUTTO Yeah We we understand that, but if
5 you posted any jobs, any of those jobs that the
6 RIF'd individuals filled am I right?

7 MS KUDELKA Uh-huh (affirmative response)

8 MR CORNING When you say a

9 MS HUTTO Then we want those

10 MR CORNING When you say a bump, Ms Thrailkil,
11 are you talking about if they bumped into a
12 teacher position?

13 MS THRAILKILL No

14 MS KUDELKA Any position

15 MS THRAILKILL When you go through a reduction in
16 force and you have the individual meeting with
17 the person who's being affected, they have the
18 opportunity to bump into a position they're
19 qualified for, okay, meaning there's no
20 posting

21 MR CORNING I think they want all of that, as I
22 understand it Is that correct?

23 MS HUTTO Yeah We we understand that, but
24 there were some employees that were recalled,
25 if I'm not mistaken

1 MS THRAILKILL Yes

2 MS HUTTO Okay

3 MS THRAILKILL Now, if they're recalled, there's not

4 a posting either because you go to your recall

5 and make a vacancy offering to that person

6 that's eligible for recall You don't post the

7 announcement

8 MS HUTTO Okay But do you have that vacancy offer

9 for recalled employees?

10 MS THRAILKILL When you say vacancy and it's not

11 posted, I guess I'm confused It's an offer

12 MS HUTTO Okay, I'm sorry You just said the way

13 you handled those recalled employees, you go in

14 and you do what?

15 MS THRAILKILL Those positions aren't posted

16 MS HUTTO You said you

17 MS THRAILKILL You have to offer it to the person

18 that's eligible for recall You don't ever

19 announce it

20 MS HUTTO Do you do that in writing?

21 MS THRAILKILL I'm sorry?

22 MS HUTTO Do you do that in writing?

23 MS THRAILKILL To the individual?

24 MS HUTTO Yes

25 MS THRAILKILL I think we call them by phone, and

1 then we would give some type of something in
2 writing I'll have to clarify that with our
3 recruiting office to be sure

4 **MS HUTTO** Does it does it outline to them what
5 their job will be when they come back to work?

6 **MS THRAILKILL** I want to think it would, but
7 but I would again, I'd have to check our
8 recruiting office

9 **MS HUTTO** I think that's what we're looking for

10 **MS THRAILKILL** Okay

11 **MS HUTTO** What what was the what do they
12 get

13 **MS THRAILKILL** What did they get

14 **MR SUMMERS** What information

15 **MS HUTTO** What was the understanding knowing that
16 they would perform certain duties, what
17 document was used?

18 **MS THRAILKILL** So what document did the RIF'd
19 person get

20 **MR SUMMERS** Upon recall

21 **MS THRAILKILL** upon recall is what you're
22 saying?

23 **MS HUTTO** Exactly, to describe their duties I'm
24 sorry, that took a little bit to get out

25 **MS THRAILKILL** Meaning a letter or anything of that

1 nature is what you're saying?

2 MS HUTTO Anything that outlined the duties, yes

3 MR MCCLARY I think one of the other things that we
4 were asking for, and I don't know if we're done
5 with that area, but one of the things that I
6 think was mentioned earlier on in the hearing,
7 how many employees that were a part of the
8 lawsuit

9 MS KUDELKA Originally

10 MR MCCLARY the original lawsuit were RIF'd
11 were RIF'd, and how many of the parties that
12 were a part of the lawsuit remained on the job
13 or was not affected by the RIF, if you if
14 you follow what I'm saying

15 MR SUMMERS A break down from the plaintiffs in the
16 Abraham lawsuit as to how they were affected,
17 if at all, by the reduction in force effective
18 June 1, 2003

19 MR MCCLARY Yes I like the way he put it a lot
20 better

21 MR SUMMERS Every now and then, as my former boss,
22 Solicitor Myers, used to say, Lake, even a
23 blind hog can (inaudible) every once in a
24 while

25 MR MCCLARY And if and if you could, please

1 I should maybe it could give some leg room
2 to get out of it Could you provide us with
3 the names of the people who who were
4 affected by the lawsuit that were RIF'd, not
5 only the number but the names, I guess, is what
6 we're asking

7 **MR SUMMERS** I understand

8 **MR MCCLARY** Anything else?

9 **MS THRAILKILL** Is he going to need anything else
10 prior to (inaudible)

11 **MR SUMMERS** Well (inaudible) They can hear you
12 just like I can

13 **MS THRAILKILL** I'm sorry Do when you
14 you're talking about the the lawsuit
15 individuals, do you want to see everybody but
16 let's just say they ceased employment prior to
17 the RIF? Do you want those? So we're saying
18

19 **MR SUMMERS** Or at least an accounting of that
20 particular event to get you a fuller picture as
21 to what was going on?

22 **MR NICKLES** There there may be individuals who
23 left prior to the RIF

24 **MR MCCLARY** Right

25 **MR NICKLES** There may be individuals who were

1 bumped or bumped others

2 MR MCCLARY Uh-huh (affirmative response)

3 MR NICKLES as a result of the RIF There may
4 be individuals who were separated as a result
5 of the RIF That's the type of information
6 that you want How were these individuals
7 affected, if at all

8 MR MCCLARY If at all

9 MR SUMMERS If at all

10 MR NICKLES by the RIF

11 MR MCCLARY By the RIF

12 MR NICKLES whether bumping, separated,
13 whatever?

14 MR MCCLARY Right

15 MS THRAILKILL Okay But if they ceased employment
16 prior to

17 MR MCCLARY Before the RIF

18 MS THRAILKILL June 1st you don't need those
19 individuals, right?

20 MR NICKLES Well, they need the names of them

21 MR SUMMERS We need to account for their

22 MR MCCLARY Right

23 MR SUMMERS for that event

24 MR MCCLARY If we had, let's just say, one hundred
25 people sued

- 1 MS HUTTO The status of each one of them
- 2 MR MCCLARY ten of those people left before the
- 3 RIF ever took place So that'd put us down to
- 4 ninety people left
- 5 MR SUMMERS So break them down statistically and by
- 6 name that way as well
- 7 MR MCCLARY If we could
- 8 MR NICKLES And for convenience sake, I happen to
- 9 know this The Court of Appeals decision
- 10 MR SUMMERS Lists them all
- 11 MR NICKLES lists them all
- 12 MR SUMMERS That would be on page 819 of Committee
- 13 Exhibit One And I believe they're
- 14 alphabetical, are they not?
- 15 MR NICKLES They're alphabetically listed
- 16 MR SUMMERS So that will be familiar to you when
- 17 you see the product or products we present to
- 18 you That will be the baseline we use
- 19 MR MCCLARY Any other questions? The FAQ do
- 20 you want to go ahead and tell them about that
- 21 or
- 22 MS KUDELKA Do they still want that?
- 23 MR MCCLARY We still want that
- 24 MS KUDELKA I think they
- 25 MR NICKLES And that's one of the issues that

1 MR CORNING That's one of the issues So just
2 don't they they understand that
3 MR MCCLARY We want it, but we know we might not
4 get it
5 MR CORNING No We're going to deal with that when
6 we come back
7 MR NICKLES Okay
8 MS BRABHAM And Committee Exhibit Number Two, we'll
9 do that now for the record, for the two that
10 you already have
11 MR CORNING The documents that came in today to
12 admit them is mark them as Committee
13 Exhibit is it the second two?
14 MR COOPER I have no committee exhibits so far
15 MR CORNING I thought we had one
16 MR MCCLARY Well, Committee Exhibit the big
17 book would have been One
18 MR CORNING Yeah The big book is One
19 MR MCCLARY So this will be Committee Exhibit
20 Number Two
21 MR COOPER Committee Exhibit Two Where
22 Sandra, where am I listing that on this sheet?
23 This has no place for committee exhibits
24 MS BRABHAM Just write it in and I'll just
25 write it in in pencil and

1 MS KUDELKA Karl, can I just make sure one thing is
2 is clear, too, on the documents that we
3 want? It would be helpful for the job
4 descriptions if it has a name Because like
5 this one job description we have, it's a job
6 description, but we don't know who filled

7 MS HUTTO An announcement, an announcement

8 MS KUDELKA Announcement, I'm sorry Job yeah,
9 job announcement Like we don't know who in
10 the agency filled that position We just know
11 that it's

12 MR CORNING There there is a reason for that
13 that has to do with the same thing that
14 that'll be all clear on when we come back

15 MS KUDELKA All right

16 MR NICKLES And to the extent

17 MS THRAILKILL So we don't need anything

18 MR NICKLES To the extent, ladies and gentlemen,
19 that

20 MR CORNING No

21 MR NICKLES that we have the opportunity to
22 meet and to review and to stipulate as to any
23 items before we return, it might expedite the
24 next day

25 MR MCCLARY Okay

1 MR NICKLES of the proceeding

2 MR SUMMERS Obviously, the attorneys will continue
3 to work as we did last week to try to get these
4 materials to you in the most expeditious manner
5 possible, depending, of course, on the
6 scheduling of the next hearing We'll work
7 backwards from there for the next part of the
8 hearing

9 MR MCCLARY I, like a lot of you, were probably
10 anticipating this might be the last day and
11 didn't bring my calendar with me And I don't
12 know what date when the next day's going to
13 be So how do we propose

14 MR NICKLES Should Ms should Ms Brabham
15 circulate

16 MR CORNING Well, we have some other witnesses

17 MR NICKLES some dates?

18 MR CORNING So I don't think it's going to be
19 possible until we find out these witnesses that
20 they're going to bring, what dates they might
21 be available I think we're going to have to
22 do it kind of a little bit like we've done
23 in the past That everybody Sandra's going
24 to have to throw some dates out there where the
25 room is available, and then we'll try to see

1 one that fits everybody

2 MS BRABHAM Do you want to do that now?

3 MR CORNING If we to the degree we can, but
4 we've got witnesses coming who may not be able
5 to be available on some date If everybody
6 picks a date today, they may not be available
7 that date

8 MS KUDELKA Do you want to just tell us what days
9 it's available just so we know that?

10 MR SUMMERS Have that in mind, and we can

11 MS KUDELKA Yeah

12 MR SUMMERS perhaps work towards that

13 MS BRABHAM Well I'm sure this month is out if
14 we've got to get other witnesses Is that
15 correct?

16 MR SUMMERS Ma'am, we have the rest of this week
17 and next week's a short week with the
18 Thanksgiving holiday

19 MS BRABHAM Right

20 MR SUMMERS So

21 MS KUDELKA I know next week's not an option for
22 me I don't know about you guys

23 MR MCCLARY I I can't even

24 MS BRABHAM Well this week we have tomorrow and
25 Friday, next week Monday

1 MR SUMMERS Monday the which, ma'am, the 24th?
2 MS BRABHAM So that would be I'm sure tomorrow
3 would not be an option, right?
4 MR MCCLARY No
5 MS BRABHAM Friday, the 21st
6 MS KUDELKA That's not an option for me
7 MS BRABHAM Monday, the 24th
8 MR CORNING She said she's out all next week
9 MS KUDELKA All next week
10 MS BRABHAM The whole next week you're out, okay
11 Friday, December the 5th
12 MR COOPER That's good
13 MS BRABHAM Monday, the 8th, Thursday and Friday,
14 the 11th and 12th, Monday, the 15th
15 MR MCCLARY Monday, the this is December?
16 MS BRABHAM And Thursday and Friday, the 18th and
17 19th
18 MR MCCLARY The 15th and the 19th You said 15th
19 and 19th
20 MR CORNING I don't know if I'm available on the
21 19th
22 MS BRABHAM Of December, is that what you needed?
23 MR MCCLARY No, the 15th The 15th is
24 MR SUMMERS The 15th is a Monday
25 MS BRABHAM The 15th and 18th and 19th Do ya'll

1 need more than one day?

2 MS KUDELKA We have to do it day by day

3 MR CORNING Well, we don't we don't need
4 another day because if there's an extra day,
5 the day would be just for deliberation, and we
6 wouldn't have to have necessarily have this
7 room Hopefully, it can be done in one day,
8 but if not

9 MR MCCLARY And really, this is all kind of
10 premature because we have to find out what the
11 other people

12 MR SUMMERS Correct

13 MR MCCLARY witnesses can but the 15th
14 seems like a window that a lot of us might be
15 available for Is that what I'm hearing?

16 MS KUDELKA I think so I don't have my calendar,
17 but I think so

18 MR MCCLARY Right

19 MS HUTTO I am

20 MR SUMMERS Were we anticipating activity associated
21 with the document introduction, witness
22 appearance that may well take up a day?

23 MR CORNING Well that's my point We just don't
24 and then there'd be a day that would be
25 deliberation

1 MR NICKLES To the extent that any documents can be
2 identified and agreed to, if we could present
3 those to Ms Brabham and she can post them to
4 the committee members prior to the return, I
5 think that would be an efficient use of time

6 MR SUMMERS Sure

7 MR NICKLES Now, there may be some that we do have
8 some disagreement about and, you know

9 MR CORNING I don't anticipate the documents you
10 disagree about taking that much witness time

11 MR NICKLES I wouldn't think so

12 MR CORNING So the

13 MR SUMMERS Then we've got education the
14 certification

15 MR CORNING The certification issue, which hopefully
16 won't take

17 MR SUMMERS Too much time

18 MR CORNING a long time and

19 MR SUMMERS OHR

20 MR CORNING OHR, which I don't know about that
21 one I mean it's hopefully, it won't take
22 that much time, but I can't say

23 MR SUMMERS Why don't we work towards the 15th?

24 MR CORNING The goal would be to get it done in one
25 day

1 **MR NICKLES** I can understand that and heartily
2 agree

3 **MR MCCLARY** Well that's I guess we'll be
4 hearing from you, Sandra, the 15th Who will
5 notify her of the witnesses, when when the
6 witnesses are available?

7 **MR SUMMERS** Mr Nickles and I, and Ms Guffey and I
8 will all coordinate, and when Ms Brabham gets
9 the word, whether it's from me or Mr Nickles
10 or Ms Guffey

11 **MS BRABHAM** Now the 15th I mean what am I
12 when you say you get the word from me, I mean
13 the 15th is

14 **MR SUMMERS** Well hold that date I would think we
15 hold that day open as a target date, for lack
16 of a better term Mr Nickles, Ms Guffey and
17 I will work to insure that the witnesses would
18 be available on that date If we can't work it
19 out the 15th, then we'll phone call, email,
20 semaphore, carrier pigeon, whatever, to work
21 another date amongst the dates that you've
22 outlined for us So there'll be some phone
23 calls and emails or both and both

24 **MR CORNING** Maybe it would be helpful if the panel
25 members would of the dates if you could

1 send out the available dates, then the panel
2 members can do what they usually do and say I'm
3 not available on this date So if we have to
4 flex, we at least know what dates all the panel
5 members are available

6 **MS ELMORE** The closer we get into December, then
7 that leaves us a day still to have to
8 deliberate

9 **MR CORNING** Well, yeah, but that is to say that
10 wouldn't necessarily have to be in in this
11 room As long as we had recording and

12 **MS BRABHAM** Well I believe the whole week of the
13 15th is this room is available The only
14 reason I didn't say the 16th and 17th is I have
15 to have advanced mediation training, but I
16 don't necessarily it doesn't necessarily
17 have to be in this room So we've got that
18 whole week of the 15th to work with

19 **MR MCCLARY** I'd really like to do two days back to
20 back if we can get two days

21 **MR CORNING** It'd be good if we could get it done,
22 particularly after they've made closing
23 argument I mean it'd be very helpful if they
24 can deliberate within at least a day of doing
25 closing arguments

1 **MR MCCLARY** 11th and 12th
2 **MS KUDELKA** I can't do 11 and 12
3 **MR MCCLARY** Okay
4 **MR NICKLES** 15 and 16 are a possibility?
5 **MS ELMORE** 15 and 16 are fine
6 **MR SUMMERS** 15 and 16?
7 **MS KUDELKA** It looks like I didn't take my
8 calendar
9 **MS BRABHAM** The whole week of the 15th is
10 available
11 **MS KUDELKA** Do we want to consider starting earlier
12 to try to get
13 **MR CORNING** I don't think it's going to be
14 necessary from what they're telling me And I
15 have a difficult time getting here before 9 00
16 o'clock in the morning If you want to go til
17 8 00 o'clock at night, I'm good to go We can
18 go til midnight, if you want
19 **MR MCCLARY** I'm better that way, too I have to
20 drop my son off in the morning
21 **MS KUDELKA** Okay, that's fine
22 **MR SUMMERS** I'm not unfamiliar with those
23 obligations either
24 **MR CORNING** I'd much rather prefer working at night
25 than

1 MR CORNING early
2 MR NICKLES So are we in recess then until
3 MR MCCLARY We are
4 MR NICKLES we adjourn?
5 MR MCCLARY Thank ya'll
6 MR CORNING Thank you, gentlemen
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 Forty-Three (43) 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 DECEMBER 15, 2008
DAY 6

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** Okay, this is the sixth day of the
2 hearing of the appeal of reduction in force
3 instituted by Bell, et al , against South
4 Carolina Department of Corrections being held
5 in Columbia, South Carolina this 15th day of
6 December 2008 A record is being made of the
7 hearing For the record, my name is Karl
8 McClary, Department of Motor Vehicles And
9 other members of the State Employee Grievance
10 Committee present are Herb Cooper, Department
11 of Transportation, Glynnis Elmore, Department
12 of Mental Health, Lynn Hutto, SLED, Lesia
13 Kudelka, Department of Labor, Licensing &
14 Regulations The committee attorney is Roland
15 Corning, Attorney General's Office Appellant
16 is represented by attorney Allen Nickles The
17 employing agency is represented by attorney
18 Lake Summers Assisting the committee is
19 Sandra Brabham, Office of Human Resources
20 Each side will be given the opportunity at the
21 appropriate time to ask questions of a witness
22 The presiding officer, any member of the
23 committee or the committee attorney may direct
24 questions to any party or witness at any time
25 during the proceeding Before closing the

1 hearing, the presiding officer will allow both
2 parties to present a brief summary or closing
3 statement if they so desire The appellant
4 will have the option of closing first or last
5 I wish to point out that only testimony or
6 evidence pertinent to the grounds on which the
7 appeal is based, or pertinent to the charge on
8 which the agency action is based will be
9 allowed Testimony or evidence which is
10 repetitive or cumulative will not be permitted
11 Are there any questions by any parties

12 **MR NICKLES** No questions

13 **MR SUMMERS** No questions

14 **MR MCCLARY** Do we have any witnesses this morning?

15 **MR NICKLES** Yes, sir In response to the
16 committee's request, we've arranged for Mr Len
17 Richardson, the Director of the Office of
18 Finance from the State Department of Education
19 to be present this morning We also understand
20 Ms Heather Pope from the Office of Human
21 Resources is available to testify this morning
22 Ms Thrailkill is available to identify
23 documents And I believe that Mr Randy Regan
24 is available should the panel wish to ask him
25 questions, and he's the current Superintendent

1 of the Palmetto Unified School District

2 **MR MCCLARY** Are all those witnesses outside right
3 now?

4 **MR NICKLES** Ms Pope is not here She is on call

5 **MR MCCLARY** The other two are?

6 **MR SUMMERS** Correct

7 **MR MCCLARY** Could we bring them in just for a
8 moment?

9 **MR NICKLES** Certainly

10 **MR MCCLARY** We'll read the warning to them

11 **MR SUMMERS** Just go ahead and stand to be sworn I
12 think Mr Richardson is going to come in as
13 well The panel chairman will have some
14 comments for both you and Mr Richardson

15 **MR NICKLES** Just stand here, please

16 **MR MCCLARY** Good morning, sirs

17 **MR RICHARDSON** Good morning

18 **MR REAGAN** Good morning

19 **MR MCCLARY** Witnesses are asked not to discuss this
20 case either before the witnesses are asked
21 not to discuss this case either before or after
22 testifying until they are excused This is not
23 intended to preclude the parties from entering
24 into discussions with their respective
25 witnesses Does any witness not understand

1 this?

2 **MR RICHARDSON** I understand

3 **MR REAGAN** I understand

4 **MR MCCLARY** Witnesses are to remain available after
5 testifying until they're excused by the
6 presiding officer After the opening
7 statement, witnesses may not remain in the
8 hearing room except when called to testify
9 Witnesses will be asked to testify under oath
10 At this time, the Secretary will determine
11 which witnesses on the parties' list are
12 present and administer the oath to all those
13 witnesses Do you have their names, Herb?

14 **MR COOPER** I'm going to ask them that

15 **MR MCCLARY** Okay

16 **MR COOPER** Would you please state your name?

17 **MR RICHARDSON** It's Len Richardson

18 **MR COOPER** Len?

19 **MR RICHARDSON** L-E-N

20 **MR COOPER** And, sir, your name?

21 **MR REAGAN** Randy Reagan

22 **MR COOPER** Would you please spell Reagan?

23 **MR REAGAN** Reagan's R-E-A-G-A-N

24 **MR COOPER** Would you please your right hand? Do
25 you swear or affirm that the testimony you will

1 give today is the whole truth and nothing but
2 the truth?

3 **MR REAGAN** I do

4 **MR RICHARDSON** Yes

5 **MR MCCLARY** Thank you The appellant, the agency,
6 witness or anyone else related to the case are
7 not to discuss this case with any member of the
8 State Employee Grievance Committee before,
9 during or after the hearing until the final
10 decision is reached The only time the case is
11 to be discussed is during the formal hearing
12 procedure A matter is still considered to be
13 pending before the committee during the time
14 involved, and the request for reconsideration
15 of the committee decision or until the time has
16 passed for the appeal to the Administrative Law
17 Court The only time the case is to be
18 discussed is during the formal hearing
19 procedure After hearing this appeal, the
20 committee will report its finding and decision
21 in writing to the employee and the employing
22 agency within twenty calendar days of the
23 conclusion of the hearing The decision shall
24 be final in terms of administrative review
25 Thank you Will one of these witnesses be

1 testifying first?

2 **MR NICKLES** Yes We'd ask that that Mr
3 Richardson be allowed to testify first since
4 he's coming in on his day off

5 **MR MCCLARY** Okay

6 **MR NICKLES** As an accommodation to him, we would
7 make that request

8 **MR SUMMERS** And we would agree, based upon his
9 schedule, obviously

10 **MR MCCLARY** Okay

11 **MR CORNING** That's fine, but I need to talk to the
12 panel so we'll have to excuse everybody

13 **MR MCCLARY** Okay

14 **MR CORNING** before we get started

15 **MR MCCLARY** Okay

16 **MR CORNING** For about five minutes, ten minutes

17 **MR MCCLARY** We we need to take up a few little
18 administrative matters So give us about ten
19 probably

20 **MR CORNING** Well, it may not take five I mean I
21 don't know if

22 **MR MCCLARY** Just give us a few minutes

23 **MR CORNING** the panel has questions or
24 procedural things we need to discuss

25 **MR NICKLES** All right, thank you

(Off the record)

MR CORNING Good morning While we were off just for a while we were off having discussions, the with the panel about some of the issues, one of the things depending on how just for the attorneys' notice, one of the things, depending on how early we finish with all the witnesses today, if we do, the question's going to be, assuming there's a break, would the attorneys be prepared to make closing argument today, assuming there's time? I mean that's that's an issue The panel also is of the opinion, and we'll have to do this later, that we the panel is of the opinion that they may need two days of decision making And they're going to want time to review all the documents after they hear closing argument So they're probably the position's probably going to be we're going to look for two days in January, back to back days, that they can deliberate just

MR NICKLES Would would the panel benefit from proposed findings of fact and conclusions of law?

MR CORNING Well, that's you know, that

1 I've you know, I've talked to both counsel
2 about suggesting proposed instructions, and
3 that would be obviously, it ought to come
4 to me

5 **MR NICKLES** One of the things, ladies and
6 gentlemen, that would be an impediment to
7 closing today is that we we do have some
8 very specific charges that we would like to be
9 presented I think that those charges should
10 be exchanged, you know, and there should be an
11 opportunity to both counsel to to address
12 any questions that we have about that

13 **MR CORNING** And we agree I mean that that's
14 I mean we talked about this We I've
15 informed them that we had a telephone
16 conference and

17 **MR NICKLES** Right

18 **MR CORNING** And I've asked both counsel to suggest
19 instructions because I have a group I normally
20 give, but this case is very different than
21 anything the panel that I've seen with the
22 panel and that they suggest instructions, which
23 I may or may not accept on either or both
24 sides, but I've asked them to do it And if
25 they're not prepared to and that should be

1 done before the closing argument

2 **MR NICKLES** Right

3 **MR CORNING** because I normally tell the
4 attorneys which instructions I intend to give
5 That allows them the chance to object if I
6 don't give a certain instruction before the
7 panel meets So I guess what we're

8 **MR NICKLES** Mr Chairman, we're prepared to present
9 those proposed instructions, you know, today

10 **MR CORNING** Well the problem is then we won't
11 necessarily have a chance as to the panel So
12 it's going to you know, what I'm hearing
13 basically is if you present the instructions
14 today, we're still not going to do closing
15 argument probably until at least Thursday
16 morning

17 **MR NICKLES** I think it would be difficult

18 **MR SUMMERS** I think it would be most beyond
19 difficult, given that particular chronology,
20 and I

21 **MR CORNING** No That's my that's my reaction
22 I had forgotten that we had discussed the
23 the jury I don't mean the jury, the panel,
24 you know, with instructions to give to the
25 panel So

1 **MR SUMMERS** And, ultimately, there may be some
2 events today that impact possibly what those
3 instructions and proposed materials could
4 could read I guess we could target getting
5 those to Roland tomorrow at some point, and
6 then we can work from there

7 **MR NICKLES** Yeah, whenever it's convenient We
8 have what we hope to be our proposed
9 instructions ready to present And we'll
10 exchange those whenever is most convenient

11 **MR CORNING** Well, the sooner the better because
12 you know, so that we have plenty of time
13 tomorrow and Wednesday if we have to discuss it
14 and coordinate all our schedules to be able to
15 discuss it

16 **MR NICKLES** Okay

17 **MR CORNING** The other question that's been raised
18 by the committee, and I guess Ms Thrailkill
19 would be the one to answer the question Is
20 we've so many documents have been
21 submitted, that the panel has asked the
22 question today, for example, on the five people
23 that came back to work, whether it was the same
24 position or not I mean that's an issue But,
25 you know, with the five people that came back

1 to work later, do have you submitted EPMSS
2 for the period after their return? Do we have
3 five EPMSS for whoever came back? And that's
4 like whenever they came back I don't remember
5 the years Some of them came back at different
6 times

7 **MR MCCLARY** And PDs

8 **MR CORNING** And do you have the yeah I'm
9 getting there And do you have the position
10 descriptions for those five people?

11 **MR SUMMERS** What we have Ms Thraillkill and
12 myself worked pretty diligently since we last
13 met They've been shown to Mr Nickles and Ms
14 Guffey We think we have documents that will
15 be responsive to those questions

16 **MR CORNING** Well, if there are any that are missing
17 and you just then they need to know which
18 ones so they're not searching

19 **MR SUMMERS** (Inaudible)

20 **MR CORNING** Yeah If there are any that you
21 couldn't, for whatever reason, they're missing,
22 just, you know, they the panel wants to
23 know which ones so they're not searching for
24 documents that aren't there

25 **MR SUMMERS** I have a bound volume Obviously,

1 there may I don't know if there'll be any
2 objections If there whatever they might
3 be, I've got a bound volume like this for you,
4 Mr Corning, and for all members of the panel

5 **MR CORNING** Okay

6 **MR SUMMERS** And the intent is for Ms Thraillkill to
7 walk us through the materials in here that we
8 hope to be precisely responsive or as precisely
9 as can be responsive

10 **MR CORNING** All right

11 **MR SUMMERS** to the request ya'll made at the
12 last hearing

13 **MR NICKLES** And what I've told Mr Summers this
14 morning is that I will not raise an objection
15 as to the authenticity of any of these
16 documents I do have some reservations about
17 the weight that should be applied to some of
18 the documents But we'll be happy to address
19 those on a page by page basis, and we're
20 prepared to do that

21 **MR CORNING** All right

22 **MR NICKLES** And he has he, Mr Summers, and Ms
23 Thraillkill have been diligent, I believe, in
24 attempting to identify where there are gaps in
25 the record and have stated that in their

1 package so that we can observe that where there
2 is not a position description or an EPMS and
3 they can offer whatever explanation, and we can
4 raise whatever questions we might have
5 concerning those absences

6 **MR CORNING** The other the other issue is since
7 the witnesses are really committee witnesses,
8 I've informed them that both sides will be able
9 to question them, however you want to question
10 them, like it's a cross examination
11 Initially, we're going to the Chairman is
12 going to ask the people to state their name,
13 what they do, how long they've been there, what
14 their job description is so the panel has an
15 understanding of who they're talking to And
16 then the panel will ask their questions first,
17 and then attorneys will have a chance to ask
18 any questions that result from that And then
19 the panel, presumably, may have some additional
20 discussion, but that's kind of my the way
21 I envision it being handled Because, as I
22 say, this is very unusual in terms of the whole
23 matter

24 **MR NICKLES** Okay

25 **MR SUMMERS** And, Mr Nickles and Ms Guffey, I

1 think that dovetails what the understanding
2 we all reached during the teleconference Mr
3 Corning conducted Thursday morning

4 **MR NICKLES** Well, you know, as we discussed
5 earlier, both parties have presented their
6 cases, and the panel have some questions that
7 it would like to have answered, and we're here
8 to facilitate that So that anything that we
9 can do to bring to the panel information that
10 is of interest, then we're happy to do that in
11 whatever format you want to do that

12 **MR CORNING** The panel I mean the way that you
13 can suggest it in the instructions and/or, you
14 know, Thursday, but but basically, the
15 panel is going to have to make the ultimate
16 determination of how much weight they're going
17 to give to different documents

18 **MR NICKLES** And certainly they will receive an
19 instruction on

20 **MR CORNING** Yes I assume with the instructions
21 that will handle a lot of that, as opposed to
22 I'm a little reluctant to go document by
23 document with every document here today If
24 there's a common thread, maybe we ought to ask
25 it as one question rather than every single

1 page Now, if there are documents you object
2 to, I understand That's not a

3 **MR NICKLES** I don't think that I'm going to be a
4 obstruction to getting this information to the
5 panel

6 **MR CORNING** Oh, no I'm not suggesting you are,
7 but I'm just trying to expedite as much as
8 possible

9 **MR SUMMERS** And with respect to those documents, as
10 counsel has discussed earlier, once we get
11 through the first person amongst the seven
12 people for whom we have documents in this
13 packet, I think the pattern will be
14 established And I think it will be relatively
15 easy to follow, and then it should expedite
16 itself as we go through

17 **MR CORNING** Okay

18 **MR MCCLARY** Mr Richardson, could you please state
19 your name for the record, please?

20 **MR RICHARDSON** It's Len Richardson

21 **MR MCCLARY** Where are you currently employed?

22 **MR RICHARDSON** South Carolina Department of
23 Education

24 **MR MCCLARY** How long have you been with the South
25 Carolina Department of Education?

1 MR RICHARDSON Approximately eight years

2 MR MCCLARY What is your position there at the
3 South Carolina Department of Education?

4 MR RICHARDSON I am the Director of the Office of
5 Finance

6 MR MCCLARY And what do you do there in the office
7 as the Director of the Office of Finance? Just
8 give us a little bit of about what your
9 your job duties are

10 MR RICHARDSON Well, our office obviously does
11 does a great deal We we make payments to
12 school districts We obviously run payroll,
13 accounts payable, accounts receivable And
14 about a year ago, I was able to absorb the
15 the auditing functions of the agency also in
16 the Office of Finance

17 MS HUTTO Excuse me, you said auditing?

18 MR RICHARDSON Yes

19 MR MCCLARY Have how long has well, has
20 there been any changes in what you do there at
21 the Department of Education since 2003?

22 MR RICHARDSON Changes

23 MR MCCLARY Is the job function basically the same
24 as it was?

25 MR RICHARDSON It's basically the same, except

1 like I mentioned We had we had an actual
2 an office of school district auditing
3 which, when the director retired, I took over
4 those functions So that's the only change
5 that's been made in my job description

6 **MR MCCLARY** Okay I think the committee has a
7 couple of questions

8 **MS KUDELKA** I have a question dealing with the pay
9 for certified teachers And I know from
10 earlier testimony, and I know you were not
11 here It talked about there is a pay scale
12 based on years of experience, education and all
13 those things But my question is if you have
14 a certified teacher working in a position and
15 the certified teacher was paid based on that
16 scale, and that certified teacher leaves that
17 position and goes into a different position
18 that's not classified as a teaching position
19 but still teaches, by state law would they have
20 to be paid on that scale, certified teacher
21 scale?

22 **MR RICHARDSON** What do you mean they're moved into
23 a different position but still teach? They're
24 still basically doing the the job functions
25 of the teacher?

1 **MS KUDELKA** Yeah If they're basically doing the
2 same job that that teacher was doing before,
3 but they were RIF'd, brought back into a
4 different position but do the same job Would
5 they still be required by state law to be paid
6 on the scale?

7 **MR RICHARDSON** If that particular district wants
8 to receive funding for the the students
9 that that they're serving

10 **MS KUDELKA** Okay, that answers my question I
11 don't know if the committee has any follow up

12 **MR MCCLARY** Did you audit the Palmetto Unified
13 School District as well?

14 **MR RICHARDSON** The last audit, and it's not closed
15 yet either, was done for fiscal year 2005, I
16 believe

17 **MR MCCLARY** Okay You said something about in
18 response to Lesia's question, if that district
19 wanted to continue to receive funds, then if
20 they hired someone back, they'd have to pay
21 them

22 **MR RICHARDSON** What I meant by that was, if you've
23 got a teacher of a teacher of record

24 **MR MCCLARY** Uh-huh (affirmative response)

25 **MR RICHARDSON** If they were a teacher of record

1 for those students, then they must be paid in
2 accordance with the minimum salary schedule, at
3 least

4 **MR MCCLARY** Okay

5 **MR RICHARDSON** based on experience and
6 credentials If for some reason and we
7 have this quite often around the state You
8 can have an uncertified teacher in a classroom
9 that's the teacher of record Then that
10 district would lose the funding that those
11 kids, those students would actually generate
12 for that district So that's what I meant by
13 that

14 **MS HUTTO** So you can actually have an uncertified
15 teacher in a position teaching, and the only
16 difference would be the funding?

17 **MR RICHARDSON** Well, that's a big difference, but
18 yes, that happens With the teacher shortage
19 that you read about, that happens frequently
20 around the state And that's a big source of
21 (inaudible) for our auditing team

22 **MR MCCLARY** Do you do you know if the Palmetto
23 School District lost any funding as a result of
24 the of the RIF in 2003?

25 **MR RICHARDSON** I'm not aware of any

1 **MS HUTTO** And when you say you're not aware of any,
2 were you familiar with their audit at that
3 time?

4 **MR RICHARDSON** Like I mentioned, the last audit
5 that was done was the 2005 fiscal year, and I
6 think prior to that was ten or eleven years
7 prior to that So I'm not I don't know of
8 anything that went on between those two periods
9 of time

10 **MR CORNING** When you say the last audit, clarify,
11 the last audit of the Unified School
12 Palmetto Unified School District?

13 **MR RICHARDSON** Yes, sir The audit the audit
14 done by our compliance audit team at the
15 Department of Education

16 **MR CORNING** On on this prison

17 **MR RICHARDSON** On the education

18 **MR CORNING** Okay

19 **MR RICHARDSON** Right

20 **MR CORNING** You're not talking agency wide, you're
21 talking about one

22 **MR RICHARDSON** We just focused on education, yes

23 **MR CORNING** No, I mean the one district The
24 question I had based on her question, to
25 clarify for the panel when you say the audit

1 Are you talking about the audit of the
2 whatever the district was called, the Palmetto
3 Unified School District within the prison? Are
4 you talking about a general audit overall?

5 **MR RICHARDSON** No, sir, just of the Palmetto
6 Unified School District

7 **MR CORNING** Okay, that answers the question

8 **MS HUTTO** So you all don't have a certain period of
9 time that you audit, or you go in and audit for
10 specific reasons, or how do you all perform the
11 how do you all determine when you will
12 audit?

13 **MR RICHARDSON** Okay Well, several years ago we
14 we actually had a schedule where every
15 district in the state was audited every three
16 years Budget cuts started coming along They
17 switched to a and this was prior to my
18 time They switched to a risk based system,
19 and there's a number of flags which would
20 require us to go in and and audit a school
21 district And, obviously, if we go in and
22 audit a school district and have significant
23 findings, we'll be back to follow up in years,
24 you know, years after that We don't have a
25 certain schedule any longer

1 **MS HUTTO** So if I understand you correctly, you
2 said it was about an eleven year period between
3 the time you audited and

4 **MR RICHARDSON** Don't quote me on that, but it was
5 it was a long period of time before
6 between audits

7 **MR MCCLARY** Any other questions from the panel?

8 **MR CORNING** Do you want to go first, counsel?

9 **MR NICKLES** Sure, I'll be happy to

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

11 **MR NICKLES** Mr Richardson, in your position in
12 reviewing the financial operations of school
13 districts, do you from time to time have to
14 review and apply the regulations of the South
15 Carolina Department of Education?

16 **MR RICHARDSON** Yes, sir

17 **MR NICKLES** I'm going to hand you a regulation of
18 the Department and ask if you recognize this
19 document

20 **MR RICHARDSON** Yes

21 **MR NICKLES** Okay And is this a regulation of the
22 South Carolina Department of Education?

23 **MR RICHARDSON** Yes

24 **MR NICKLES** And does it relate to requirements for
25 teacher education and certification?

1 MR RICHARDSON Yes

2 MR NICKLES Okay Have you had an opportunity to
3 review it, Mr Summers?

4 MR SUMMERS I have

5 MR NICKLES Do you have any objection?

6 MR SUMMERS No, I do not

7 MR NICKLES Okay I'd like to have this marked and
8 distributed, please

9 (Appellant's Exhibit Number Nine was marked for
10 identification purposes)

11 MR NICKLES Now, Mr Richardson, this states that
12 the title of the regulation is persons required
13 to hold a teaching certificate Do you see
14 that?

15 MR RICHARDSON Yes, sir

16 MR NICKLES It indicates each individual employee
17 in an instructional classroom teaching position
18 who serves in a position designed or in support
19 of instructional program in any public school
20 of this state must hold an appropriate South
21 Carolina teaching credential Do you see that?

22 MR RICHARDSON Yes

23 MR NICKLES Is that your understanding of the
24 requirement of the State Department of
25 Education?

1 MR RICHARDSON Yes

2 MR NICKLES You mentioned earlier in response to
3 questions from the panel that because of a
4 teaching shortage, there may be from time to
5 time people who are not certified in a
6 particular area of teaching in the state Is
7 that your understanding?

8 MR RICHARDSON That's correct

9 MR NICKLES Okay But where there are individuals
10 available who are certified, is it your
11 understanding it's the obligation of the school
12 districts to employ certified staff?

13 MR RICHARDSON Yes

14 MR NICKLES And in the last line of this it says
15 individuals, employees, trade and industrial
16 teachers are required to meet all general
17 certification requirements except where
18 specified otherwise So do you understand that
19 also if you're teaching in the trades or
20 vocational, you should have certified staff if
21 they are available?

22 MR RICHARDSON Yes

23 MR NICKLES I'm handing you a provision of the
24 South Carolina Code of Laws relating to the
25 qualifications of teachers Do you from time

1 to time in your capacity at the Department of
2 Education have to make reference to the Code of
3 Laws of South Carolina?

4 **MR RICHARDSON** Yes

5 **MR NICKLES** And in the supervision of audits, do
6 you sometimes have to see whether or not those
7 Codes of Laws are being adhered to?

8 **MR RICHARDSON** Yes

9 **MR NICKLES** Are you generally familiar with the
10 provision of the Code that I've handed to you?

11 **MR RICHARDSON** Yes

12 **MR NICKLES** Mr Summers, do you have any
13 objections?

14 **MR SUMMERS** I do not

15 **MR NICKLES** Okay Have that marked, please

16 (Appellant's Exhibit Number Ten marked for
17 identification purposes)

18 **MR SUMMERS** And for the record, Mr Cooper, would
19 this would this be Grievant's Exhibit
20 Number

21 **MR COOPER** I've got Appellant's Exhibit

22 **MR NICKLES** Appellant's Exhibit And that number
23 would be what, Ten?

24 **MR COOPER** Ten

25 **MR SUMMERS** Ten and the previous one would be

1 Number Nine

2 MR COOPER Correct

3 MR SUMMERS Thank you

4 MR NICKLES Thank you Now, I'm handing you this
5 document You've had the opportunity to review
6 Code Section 59-25-20, have you not?

7 MR RICHARDSON Yes, sir

8 MR NICKLES Okay And this document says no board
9 of school's trustees shall hereafter employ
10 any teacher who does not have a certificate to
11 teach in the free public schools of the state
12 Do you see that?

13 MR RICHARDSON Yes

14 MR NICKLES And is it your understanding it is the
15 obligation of school teachers to employ from
16 certified staff where available?

17 MR RICHARDSON Yes

18 MR NICKLES We have a hearing notebook that has
19 tabs in it, Mr Richardson And I'm going to
20 invite you to look at Tab 19, page 837 of the
21 record This has to do specifically with the
22 Palmetto Unified School District Now you said
23 that your office is in the process of auditing
24 that district presently, is that correct?

25 MR RICHARDSON Yes, sir

1 **MR NICKLES** Okay And if you look at this Section
2 24-25-70 and you go down to Subsection 7, do
3 you see that?

4 **MR RICHARDSON** 24-25-80?

5 **MR NICKLES** 70, I think It's 835 of the record,
6 excuse me If you would please display that,
7 Mr Cooper Do you see that?

8 **MR RICHARDSON** Yes

9 **MR NICKLES** And so now we're looking at 24-25-
10 70(7) It says that, among other things, there
11 shall be established a twelve month school
12 program and teachers pay schedule based on the
13 state and average supplement pay scales Is
14 that your understanding of what the pay scale
15 for certified staff at the Palmetto Unified
16 School District is?

17 **MR RICHARDSON** Yes

18 **MR NICKLES** Okay And is that the scale to which
19 your staff would audit that district?

20 **MR RICHARDSON** Yes

21 **MR NICKLES** With the panel's indulgence, I'll ask
22 a question Whether or not you want the answer
23 to this is yours, and I'll give before you
24 answer, give Mr Summers the opportunity to
25 object, if you would

1 MR RICHARDSON Okay

2 MR NICKLES Are you aware in the current audit
3 whether there are any exceptions or issues at
4 the Palmetto Unified School District with
5 regard to compliance with the teachers pay
6 schedule for certified staff in that district?

7 MR SUMMERS I will object to that I think we have
8 a current audit that's not yet complete I
9 think the data perhaps could be viewed at this
10 point as incomplete I think we may have gone
11 beyond the scope of what the panel's
12 questioning covered And, ultimately, as well,
13 I'm not sure how a response to that question or
14 the question itself bears on the issues and the
15 environment in which the reduction in force was
16 made in 2003 So I would object on those
17 grounds

18 MR CORNING I'm going to sustain the objection,
19 counsel

20 MR NICKLES Very good With the understanding that
21 other testimony will be limited to current
22 conditions, I accept that that ruling

23 MR CORNING Since the audit hasn't been completed,
24 unless we're going to go into every single
25 section of the audit, it would be extremely

1 difficult

2 **MR NICKLES** Let me ask it in a different way Mr
3 Richardson, in terms of your audit

4 **MR CORNING** Just a second, counsel Because the
5 the other question is maybe I should
6 talk to counsel Let me could I see both
7 counsel?

8 **MR NICKLES** Sure

9 (Off the record)

10 **MR NICKLES** Back on the record Mr Richardson, in
11 the course of audit reviews of school
12 districts, has there been occasion where it has
13 been observed that there are certified
14 individuals who are either retirees or
15 characterized as temporary who are providing
16 instruction in school districts?

17 **MR SUMMERS** I'm going to note my objection for the
18 record I would object on the grounds of
19 relevance We're talking about school
20 districts generically I think we have
21 certainly the focus for the panel of this
22 particular school district

23 **MR CORNING** Well, with with with the
24 understanding that we're not saying that
25 anything has been found with respect to the

1 we're talking in general, counsel?

2 **MR NICKLES** I'm talking in general unless Mr
3 Summers would like for me to direct it to the
4 Palmetto Unified School District

5 **MR CORNING** Well, since the audit hasn't been
6 completed, I've already ruled on that
7 objection But if you I mean Mr
8 Summers?

9 **MR SUMMERS** I would agree with that assessment I
10 mean we're talking as I understand, the
11 audit

12 **MR CORNING** But if you want I will allow him
13

14 **MR NICKLES** I'm asking in general terms

15 **MR CORNING** I will allow the general question with
16 the panel's understanding that we're talking
17 not suggesting one way or the other that
18 this has been the case in the Palmetto Unified
19 School District

20 **MR NICKLES** Do you understand the question?

21 **MR RICHARDSON** Would you repeat it?

22 **MR NICKLES** Sure At any time during the course
23 of audit reviews, has it been observed that
24 they're either certified individuals, retired
25 or working in temporary designations who are

1 providing instruction in the public school
2 districts of South Carolina?

3 **MR RICHARDSON** Yes Like in a long term
4 substitute situation?

5 **MR NICKLES** Yes, sir

6 **MR RICHARDSON** Yes

7 **MR NICKLES** Okay Or an individual who is retired
8 under the state's retirement system and
9 providing instruction in a certified position?

10 **MR RICHARDSON** Yes

11 **MR NICKLES** Okay And in those circumstances,
12 according to the operations of your audits and
13 your reviews, are those individuals to be
14 compensated on whatever the certified pay
15 scales are for those districts?

16 **MR SUMMERS** I'm going to renew my objection for the
17 record at this point with the ultimate question
18 being asked on the grounds of relevance

19 **MR CORNING** Well, I understand

20 **MR SUMMERS** Subject to your ruling

21 **MR CORNING** I understand the relevance, counsel
22 I'm going to allow it as a I understand the
23 relevance And it's without the suggestion
24 that it necessarily applies to the Palmetto
25 Unified School District It's just a general

1 question and general answer I'll allow you to
2 ask the question, counsel

3 **MR RICHARDSON** There is the requirement that if
4 the teacher of record is retired, that they
5 also be paid in accordance with the state
6 salary schedule

7 **MR NICKLES** Okay, thank you Those are all the
8 questions I have at this time Answer any
9 questions that Mr Summers or the committee may
10 have

11 **MR SUMMERS** Good morning, sir

12 **MR RICHARDSON** Good morning

13 **MR SUMMERS** My name is Lake Summers I represent
14 the agency in this matter I'm going to ask
15 some questions, and hopefully I will not take
16 too much more of your time Is there a
17 difference with respect to certified teachers
18 who teach pupils under the age of 21 and their
19 compensation versus the teachers, certified
20 teachers who teach pupils who are over the age
21 of 21, adult education, in the way that they're
22 compensated?

23 **MR NICKLES** You can answer the question

24 **MR RICHARDSON** Yes, there is

25 **MR SUMMERS** Tell the panel what the difference is

1 and how that affects their pay

2 **MR RICHARDSON** Any anyone serving kids 21 and
3 under in a typical classroom are are
4 required to be paid in accordance with the
5 salary schedule based on years of experience
6 and credentials In a situation where you have
7 students over the age of 21, they're classified
8 as adult education teachers, and there is no
9 requirement on their pay

10 **MR SUMMERS** So there

11 **MR RICHARDSON** There is

12 **MR SUMMERS** Go ahead, I'm sorry I didn't mean to
13 interrupt you

14 **MR RICHARDSON** There's a certification requirement
15 but not a pay requirement

16 **MR SUMMERS** So there's a certification requirement
17 but not a pay requirement?

18 **MR RICHARDSON** Correct

19 **MR SUMMERS** And when you speak of the pay
20 requirement, that's the teacher pay scale?

21 **MR RICHARDSON** Yes

22 **MR SUMMERS** Now, if a certified teacher is
23 occupying a non-teaching position and they're
24 not performing instructional duties, is there a
25 requirement, irrespective of the age, or would

1 you have an age component to it? Is there a
2 requirement that that certified teacher be paid
3 on the teacher pay scale, again if that
4 teacher's not filling a job position where
5 teaching is required?

6 **MR RICHARDSON** There is no requirement for that
7 pay

8 **MR SUMMERS** Sir, thank you very much for answering
9 my questions

10 **MR NICKLES** Are there any further questions from
11 the committee?

12 **MS HUTTO** I wanted to ask about librarians Are
13 there any requirements as far as certifications
14 on librarians?

15 **MR RICHARDSON** Yes, and they're treated the same
16 as teachers

17 **MS HUTTO** Okay, thank you

18 **MR MCCLARY** Any other questions? Does anyone have
19 any reasons as to why Mr Richardson cannot be
20 excused for the day?

21 **MR NICKLES** We would ask that he be excused

22 **MR MCCLARY** Thanks

23 **MR SUMMERS** And we have agreed

24 **MR MCCLARY** Thank you, sir

25 **MR SUMMERS** Thank you

1 MR NICKLES Thank you

2 MR MCCLARY Thank you for coming

3 MR NICKLES We appreciate it

4 MR MCCLARY Dr Reagan, could you please state
5 your name for the record, please?

6 MR REAGAN Randy Reagan

7 MR MCCLARY Mr Reagan, where are you currently
8 employed?

9 MR REAGAN I am the Superintendent of Palmetto
10 Unified School District within SCDC

11 MR MCCLARY Okay And how long have you been in
12 that position?

13 MR REAGAN About a year and a half It'll
14 2007, June 19th was when I was hired

15 MR MCCLARY Okay

16 MR REAGAN So about a year and a half

17 MR MCCLARY How long have you been with the
18 Department of Corrections?

19 MR REAGAN That that same amount of time

20 MR MCCLARY The same amount of time?

21 MR REAGAN Yes, sir

22 MR MCCLARY Do you know if your current position
23 the job functions that you perform now at
24 the Department of Corrections in the Palmetto
25 Unified School District, are they the same as

1 they were in 2003?

2 **MR REAGAN** I I would think the same
3 requirements for a superintendent since 1981,
4 actually, until now would be the same, yes,
5 sir I don't think they've changed since the
6 inception of our district in 1981

7 **MR MCCLARY** Okay Are there some questions? Does
8 anyone have any specific question for this
9 witness?

10 **MR NICKLES** No questions from us unless it's in
11 response to questions from Mr Summers

12 **MR SUMMERS** I want to make sure I understand We
13 had Dr Reagan here for any questions for the
14 panel

15 **MR CORNING** Yes

16 **MR SUMMERS** And it would appear that the panel

17 **MR CORNING** Apparently, the panel is satisfied

18 **MR MCCLARY** Understatement

19 **MR SUMMERS** Based upon that, I would not have any
20 questions for Dr Reagan

21 **MR MCCLARY** Okay

22 **MR NICKLES** We would

23 **MR SUMMERS** I apologize

24 **MR NICKLES** We would not object to him being
25 excused then

1 **MR REAGAN** You are kind people Thank you
2 **MR MCCLARY** I apologize for bringing you down
3 **MR REAGAN** That's quite all right
4 **MR SUMMERS** That could have been an outcome, and we
5 talked about that particular issue So if the
6 panel has no questions, then obviously I'm not
7 going to follow on with questions that have
8 not been asked
9 **MR MCCLARY** Thank you, sir
10 **MR REAGAN** Thank you very much, appreciate it
11 **MR MCCLARY** Sorry for the inconvenience
12 **MR REAGAN** Not a problem
13 **MR MCCLARY** It's a pleasure meeting, though
14 **MR REAGAN** Good to have met ya'll, too Take
15 care
16 **MR MCCLARY** Have a good day, sir
17 **MR REAGAN** Yes, sir
18 **MR SUMMERS** Thank you for coming in
19 **MR NICKLES** Do you wish to review the documents
20 through
21 **MR SUMMERS** We have Ms Thrailkill available
22 **MR NICKLES** Ms Thrailkill
23 **MR SUMMERS** Very quick point We've been going
24 it's about 10 30 I don't know if any of the
25 panel members require a comfort break at any

1 time or took some time off I see our
2 committee attorney has raised his hand

3 **MR MCCLARY** He doesn't count

4 **MR SUMMERS** Let the record reflect I did not say
5 that in any way, shape or form Mr Nickles,
6 I guess the next question would be
7 logistically We have Ms Thraillkill here We
8 have the representative who's been designated
9 by OHR I'll I'll open it up this way
10 Does the panel require or request that the
11 person who has been designated from OHR to
12 appear before you all for questioning?

13 **MR MCCLARY** I think so, yes I think

14 **MS KUDELKA** Yes

15 **MR MCCLARY** we would want that person I think
16 we're going to have to call him, her

17 **MR NICKLES** Her

18 **MR MCCLARY** Her to so and I think, from
19 what I understand, Ms Thraillkill, your
20 testimony is probably going to take some time

21 **MR SUMMERS** It may very well take some time, but
22 hopefully not too much

23 **MR MCCLARY** Yeah So we we will indulge the
24 committee's attorney We'll take about ten
25 minutes

1 **MR NICKLES** All right And and would you like
2 to have Ms Pope come over now, or would you
3 like to

4 **MR SUMMERS** A particular time?

5 **MR MCCLARY** How long do you anticipate Ms
6 Thraillkill's?

7 **MR SUMMERS** I would think Ms Thraillkill, and she
8 can certainly, as the panel knows, speak her
9 mind, half an hour to 45 minutes would be
10 enough to go through the documents

11 **MS THRAILKILL** Well it just depends if they've got
12 questions, too

13 **MR SUMMERS** Correct, correct

14 **MR MCCLARY** I think maybe we have her here about
15 11 30 What time do ya'll want to break?

16 **MR CORNING** You might say 11 15

17 **MS KUDELKA** 11 15 just to be

18 **MR MCCLARY** 11 15 If we could, have her here
19 about 11 15

20 **MS KUDELKA** Before we take a break, I don't know if
21 this appropriate, but could we get the
22 documents for those of us who aren't taking a
23 break and we can go ahead and start looking
24 through them?

25 **MR SUMMERS** Sure I can distribute the packets

1 now

2 **MS KUDELKA** Thank you

3 **MR NICKLES** And with the understanding that we will
4 have some observations concerning the
5 documents I said earlier that we don't object
6 to the or challenge the authenticity as we

7
8 **MR CORNING** Okay

9 **MR NICKLES** we understand that these are
10 documents derived from the records of the
11 Department of Corrections And there's some
12 explanatory information in there that will be
13 provided to you

14 **MR MCCLARY** Thank you, sir

15 **MR COOPER** Roland, does this need to be marked?

16 **MR CORNING** Yes

17 **MR SUMMERS** On the cover I have it already at least
18 in blank as a committee exhibit

19 **MR CORNING** Committee exhibit, yeah

20 **MR SUMMERS** I one more for ya'll

21 **MR CORNING** Since the committee has requested it,
22 it'll be marked as Committee Eight

23 **MR SUMMERS** I just set it up that way And you all
24 have the same

25 (Off the record)

1 **MR MCCLARY** Ms Thrailkill, I think you've already
2 testified before the committee So we have
3 your information, and we know what position you
4 hold I think what you're going to try and
5 help us with for the record is try and help us
6 clear up or understand the documents that the
7 committee has requested reference the employee
8 performance measuring system and the position
9 descriptions So

10 **MR CORNING** Mr Summers, do you want to kind of
11 help assist the panel by maybe in this case
12 you

13 **MR SUMMERS** I can give an overview of what we're
14 about to look at

15 **MR CORNING** And and if it assists her in
16 answering the questions, with the understanding
17 that Mr Nickles, of course, will be able to
18 object or to question her also, it might be
19 helpful for the panel

20 **MR SUMMERS** I will do so, and obviously, Mr
21 Nickles, subject to whatever objections or
22 observations

23 **MR NICKLES** I think it might be easier for all of
24 us As Ms Thrailkill goes through these
25 documents, they are arranged in groups If she

1 addresses, you know, those groups one by one so
2 that let's say, for example, we have
3 something from Ms McClanahan or Mr Bell, I
4 could ask my questions relating to those
5 individuals at the time that those documents
6 are before you rather than going through the
7 entire set and then going through it all again

8 **MR CORNING** That's a good idea

9 **MR NICKLES** Is that acceptable to the committee?

10 **MR SUMMERS** And I think that would make sense with
11 the flow of what we're going to do

12 **MR CORNING** That's that's a good idea, counsel

13 **MR NICKLES** Okay, we'll do that

14 **MR SUMMERS** And with Mr Nickles' and Ms Guffey's
15 indulgence, Mr Corning, yours, as well as the
16 panel, I'll provide an overview of the
17 materials in the bound volumes that are before
18 the panel And Ms Thraillkill will go through
19 and obviously fill in the details when we go
20 through the documents At the conclusion of
21 the last session on November 17th, counsel, Ms
22 Thraillkill, Mr Corning and the panel engaged
23 in an exchange about the precise nature of the
24 panel's request for additional documents
25 There were four areas that were identified, for

1 lack of a better term There were requests for
2 position descriptions for particular
3 individuals after the effective date of the
4 RIF There were requests for EPMS
5 documentation, again for particular individuals
6 named in just a moment, and that'll dovetail
7 with what Mr Nickles said, again for the
8 period of time after the reduction in force
9 effective date of June 1, 2003 There were
10 also requests for job postings, whatever
11 records the Department might have regarding job
12 postings for particular individuals after the
13 effective date of the RIF And then there was
14 a last request with respect to an accounting of
15 the litigants in the Abraham lawsuit and how,
16 if at all, the reduction in force impacted
17 them So those were that's the framework
18 upon which these documents are being offered in
19 response to those four areas The bound volume
20 in front of you, as Mr Nickles indicates,
21 they're broken down into seven sections for
22 seven different individuals The first six are
23 individuals who elected to bump into vacant
24 positions as a consequence of the reduction in
25 force And those six people were Ms Bratton,

1 Ms Fritts, Ms Glenn, Ms Martin, Ms McCabe
2 and Ms McClanahan Those documents are
3 arranged in alphabetical order, and there are
4 dividing dividers, if you will If you go,
5 for example, to page 7, the bottom right
6 corner, each page numbered, and it runs through
7 page 258 If you go to the bottom of page
8 I'm sorry, to page 7, you'll see a break
9 We'll call it a break sheet or a header sheet
10 for the section dealing with Ms Bratton And
11 there's a sheet like that for each of the other
12 five individuals I named At the towards
13 the back of this bound volume, if you go to
14 page 244, for example, that's the seventh
15 person for whom documents were included, and
16 that's Mr Bell And Mr Bell, we considered
17 to be distinct from the first six in that he
18 did not elect to fill a position as a
19 consequence of the reduction in force He left
20 the agency but then later was hired back So
21 we just put him at the end in our presentation
22 of this material And what you will see for
23 each person identified, up to and including Mr
24 Bell, there are EPMSS when available, position
25 descriptions as they were found and discovered

1 and accounted for by Ms Thrailkill, as well as
2 any job postings that were responsive to the
3 questions the panel asked for those particular
4 individuals So as we go through, you might
5 not see a job posting, for example, for Ms
6 Bratton Ms Bratton elected to bump into a
7 certified teaching position, and she never left
8 the agency Her employment continued up to and
9 through the effective date of the reduction in
10 force, and as Ms Thrailkill will talk about,
11 all the way into the summer of this year So
12 that's how the documents are broken down
13 Again, let the record reflect that I
14 transmitted these documents to Mr Nickles and
15 Ms Guffey They've had a chance to review
16 them, and obviously Mr Nickles and Ms Guffey
17 are prepared to inject what their observations
18 or objections as they see fit as we go through
19 these Ms Thrailkill, as you can see, has
20 resumed the witness chair She is the
21 custodian at the Department of Corrections, and
22 she's the person responsible for maintaining
23 and then collecting and assembling these
24 documents Did I miss anything, Ms
25 Thrailkill?

1 **MS THRAILKILL** I don't think so

2 **MR SUMMERS** Okay And finally, let the record
3 reflect I handed up a separate, stapled,
4 shorter, much shorter compilation of documents
5 This separate, shorter compilation of documents
6 are documents intended to be responsive to the
7 panel's question about the litigants from the
8 Abraham lawsuit and how, if at all, the
9 reduction in force impacted them And we can
10 get into those after we get through the the
11 bigger bound one So that would be the
12 overview Ms Thrailkill, let's start it this
13 way If you could, turn to page 2 of the bound
14 volume And again, Mr Cooper, have we
15 assigned a number?

16 **MR COOPER** Committee Exhibit Three is the book

17 **MR SUMMERS** Okay

18 **MR COOPER** Committee Exhibit Four is your Abraham
19 data

20 **MR SUMMERS** Thank you, sir So, Ms Thrailkill,
21 let's go to what's been identified now as
22 Committee Exhibit Number Three And if you
23 could, let's talk to the panel about the
24 documents that appear at pages 2 through 6

25 **MS THRAILKILL** Okay What you have in front of you

1 is a listing of reason codes that we use at the
2 Department of Corrections for various actions
3 What will be primary of ya'll's interest will
4 be on page 5 and 6, codes 45, which is RIF
5 reinstatement, 46, which is RIF recall, 47,
6 which is RIF demotion, and 48, which is RIF
7 reassignment

8 **MR SUMMERS** And those are the numeric codes that
9 you'll talk about in some of those documents

10 **MS THRAILKILL** Associated with the documents, that's
11 correct

12 **MR SUMMERS** Now, let's go ahead and go to page 7

13 **MS THRAILKILL** Page 7 is the beginning of the
14 documents for Linda Bratton Page 8 is
15 actually a salary history screen from the SCDC
16 personnel system that reflects all salary
17 transactions of the individual since June 2nd
18 of 2003 If you will go down the effective
19 date line, this is our means of preparing for
20 you the information that you've asked for as it
21 relates to position descriptions also If you
22 look at the date of 6/2/02, that is the line of
23 history that would reflect that Ms Bratton
24 held under class code UB02, and she occupied
25 slot 1, and that would be the PD that you would

1 be looking for for the position that she held
2 prior to the reduction in force If you go to
3 6/2/03, you have a reason code 48 Reason code
4 48, again, stands for RIF reassignment So
5 based on the reduction in force, Ms Bratton
6 was reassigned to UB02, slot 12, and you would
7 be looking for a position description
8 associated with that particular slot for the
9 position that she went into As you go up the
10 salary history all the way up to 6/2/08, if you
11 look at the job class and slot, she continued
12 to hold that position until actually when she
13 ceased employment Page

14 **MR SUMMERS** Let's go to and it's some of
15 the pages were printed out in landscape So on
16 page 9, a number appears in the top right
17 corner, which would be the bottom right corner
18 if you're looking at that particular page

19 **MS THRAILKILL** The next page is the position
20 description for Ms Bratton as a UB02, slot 1
21 So that was the position that she held prior to
22 the reduction in force If you look at the top
23 right hand corner, you'll see an old it has
24 it's actually a sticker It has her name
25 on it and then a number of 103309 It says old

1 N04UB13, slot 1, new N04UB02, slot 1 State
2 government went through restructure in 2002 for
3 unclassified titles, and they actually reduced
4 the number of classifications that were being
5 utilized So she actually changed from UB0
6 UB13, slot 1, to UB02, slot 1 So slot 1 is
7 the position description for her

8 **MR SUMMERS** And that restructuring you talked about,
9 ma'am, that was independent of the reduction in
10 force?

11 **MS THRAILKILL** Absolutely That was done by the
12 State of South Carolina

13 **MR SUMMERS** Okay And page 10?

14 **MS THRAILKILL** Page 10 will be the second page of
15 that position description which gives you your
16 job purpose, job functions It is supervisory
17 responsibilities the individual had that
18 occupied this position

19 **MR SUMMERS** And let's go to page 11 And just to
20 prepare you, Ms Thrailkill, Mr Nickles or Ms
21 Guffey may have some comments or matters to
22 bring up to the panel's attention as you go
23 through this particular document and documents
24 like that But tell the panel what appears at
25 page 11

1 **MS THRAILKILL** Page 11, if you'll look at salary
2 history, on June 2, 2003, Ms Bratton was
3 reassigned to UB02, slot 12
4 **MR SUMMERS** And that's the salary history from page
5 8, correct?
6 **MS THRAILKILL** That's correct That position
7 description on page
8 **MR CORNING** Counsel counsel, am I missing
9 something on page 11?
10 **MS HUTTO** It doesn't have a name on it
11 **MR CORNING** It doesn't have a name
12 **MR SUMMERS** Correct
13 **MR CORNING** That's what's throwing me
14 **MR SUMMERS** And that's what ultimately Mr Nickles
15 will talk about
16 **MS THRAILKILL** Your position descriptions do not
17 have to have the person's name on them I mean
18 the State Office of Human Resources states that
19 as long as the position description actually
20 reflects the job duties and responsibilities,
21 it does not have to have the incumbent's name
22 on it So Ms Bratton bumped into UB02, slot
23 12
24 **MR CORNING** Okay
25 **MR SUMMERS** And that alphanumeric code is in the

1 top right corner of page eleven UB020012, is
2 that correct, Ms Thrailkil1?
3 **MS THRAILKILL** That's correct
4 **MS KUDELKA** May I ask for clarification? Are you
5 saying she bumped Jacqueline Farr?
6 **MS THRAILKILL** That is correct
7 **MS KUDELKA** Okay
8 **MS THRAILKILL** Into that position Now I can't say
9 for sure Jackie Farr was the one that was in
10 that job
11 **MS KUDELKA** Right, but she moved into Jackie's
12 **MS THRAILKILL** We would have to look at the master
13 plan to determine that
14 **MS KUDELKA** Okay
15 **MS THRAILKILL** She moved into Jackie's
16 **MS HUTTO** But Jackie had occupied that position at
17 one time?
18 **MS THRAILKILL** That is correct That is correct
19 **MR SUMMERS** And, Mr Nickles, whatever
20 **MR NICKLES** Well, what I'd like to do is just
21 reserve my questions on an employee by employee
22 basis rather than page by page basis
23 **MR SUMMERS** That's fine
24 **MR NICKLES** if that's acceptable to the
25 committee But whenever you've completed your

1 review of Ms Bratton's, I have a couple of
2 questions

3 **MR SUMMERS** Sure And tell us tell the panel
4 what page 12 is

5 **MS THRAILKILL** Page 12 again is the second page of
6 the position description that outlines the job
7 purpose of that position, the job duties and
8 responsibilities and any supervisory
9 responsibilities that may be related to that
10 position

11 **MR SUMMERS** And then if you could, let's just go on
12 to page 13

13 **MS THRAILKILL** Page 13 is going to be a history as
14 it relates to review information for Ms
15 Bratton If you look on June 2, '03, if you go
16 across the screen, it indicates that she was
17 reviewed in June 2 of '03 She was holding a
18 class of UB02, and to the right hand side you
19 have a performance and it says ER That stands
20 for exceeds requirements She was full time,
21 and she was actively employed And then you
22 have a history all the way up through June 8th
23 of 2008 Following page 13 will be the
24 evaluation for Ms Bratton that was done the
25 year of the reduction in force The from and

1 to date on that evaluation is April 1, 2002, to
2 March 30th of 2003

3 **MR SUMMERS** And let the record reflect that the
4 review that Ms Thrailkil is speaking of runs
5 from page 14 to page 21 in the bound volume
6 And further, let the record reflect that this
7 particular review, this EPMS, was already
8 provided to the panel in Committee Exhibit
9 Number Two Those materials were, I think,
10 turned over on November 17th, but for the sake
11 of a chronology and for the sake of a complete
12 review of the applicable materials, we included
13 this EPMS in the bound volume so you could
14 track chronologically from that EPMS to the
15 next one So, ma'am, let's go ahead and talk
16 about page

17 **MS THRAILKILL** The dates

18 **MR SUMMERS** Go ahead

19 **MS THRAILKILL** on your review information screen
20 versus the date on the actual evaluation may
21 not necessarily match because the educators
22 were evaluated normally about April of each
23 year in preparation of the fiscal year upcoming
24 because they're awarded increases based on
25 State Department of Education as of June 2 of

2003 But the evaluation's date does not necessarily correspond with the review date that's in your review information screen On page 22 does begin the review for the period, though, of April of '03 to March of '04, and that runs through page 29 If you'll look at page 29, the signature dates of Ms Bratton in May of '04 So that would be for the year ending June 2 of '04

MR SUMMERS And, Ms Thrailkill, let's talk about the next page This is the first time I'm encountering a page formatted the way it appears on page 30 So please tell the panel what that page is intended to represent

MS THRAILKILL Page 30 is to indicate for the review period of April of '04 to March of '05 We were unable to find an evaluation in the file for her, although if you'll look at the actual review information screen that lists the reviews, it would indicate she did have a review, and it was substantially exceeds

MR SUMMERS And that's on page 13, correct?

MS THRAILKILL That's correct

MR SUMMERS Moving past page 30 into page 31

MS THRAILKILL 31 is going to be for the review

1 period of April of '05 to May of '06 That
2 runs pages 31 through 38

3 **MR SUMMERS** And if you could look at page 38,
4 ma'am As you did before, are there dates that
5 appear on the bottom of page 38?

6 **MS THRAILKILL** That's correct, and signatures

7 **MR SUMMERS** And the date there on page 38?

8 **MS THRAILKILL** April She signed her evaluation on
9 April 13, 2006

10 **MR SUMMERS** Yes, ma'am And let's go to page 39

11 **MS THRAILKILL** Page 39 would be for the review
12 period of April of '06 to March of March of
13 '07 It runs pages 39 through 46, and the
14 dates on page 46 indicate that she reviewed
15 June of 2007 Beginning on page 47 would be
16 the review period of April of '07 to March of
17 '08, and that runs through page 54 And it is
18 noted on page 54 that apparently a planning
19 stage was not conducted correctly for Ms
20 Bratton, but they did do the evaluation And
21 she signed that evaluation on May 23rd of 2008

22 **MR SUMMERS** And, ma'am, if you could, tell the
23 panel what appears at page 55

24 **MS THRAILKILL** Page 55 is actually an inquiry
25 screen from our payroll personnel system If

1 you'll look at the top right hand corner just
2 under the date that says 12/1/08, you see a
3 date of June 30th of 2008, a status of T, which
4 means she's no longer employed, and she ceased
5 employment on June 30th of 2008 The reason
6 code 710 stands that she means that she
7 retired

8 **MR SUMMERS** And before we turn it over to Mr
9 Nickles, very quickly, the document that
10 appears on page 55, as well as the document
11 review that appears on page 13, as well as the
12 salary that appears on page 8, did you generate
13 those same three sheets for each of the other
14 six folks who have documents in this bound
15 volume?

16 **MS THRAILKILL** I did

17 **MR SUMMERS** And let the record reflect the next
18 page in the volume would be page 56, which
19 would be the break page indicating that the
20 next set of documents relates to Ms Fritts,
21 but subject to Mr Nickles' request earlier, I
22 would venture to say that we've completed Ms
23 Thrailkill's review of the documents relating
24 to Ms Bratton And whatever questions Mr
25 Nickles may have would be appropriate, at least

1 in our view, at this time

2 **MR NICKLES** Thank you very much Ms Thrailkill, I
3 would like for you to look at page 12 of the
4 materials, please Actually, page let's
5 flip to page 14 of the materials This
6 indicates that at the time that this particular
7 EPMS was performed, Ms Bratton held the
8 position title classification of education
9 coordinator Do you see that?

10 **MS THRAILKILL** That's an internal title, yes, sir

11 **MR NICKLES** Okay And if you turn then to page
12 and that was for her evaluation through March
13 30, 2003, correct?

14 **MS THRAILKILL** That's correct

15 **MR NICKLES** If you turn to page 22 of the
16 materials, this is the EPMS for the period
17 April 1 through 2003, through March 31,
18 2004 Do you see that?

19 **MS THRAILKILL** Yes, sir

20 **MR NICKLES** And the classification title there is
21 classroom teacher Do you see that?

22 **MS THRAILKILL** That's an internal title

23 **MR NICKLES** So her internal title changed after the
24 reduction in force, correct?

25 **MS THRAILKILL** It would appear based on the

1 evaluation, that's correct

2 **MR NICKLES** Okay Well, let's look at page 8 of
3 the materials to the annual salary for Ms
4 Bratton And if we look at this throughout her
5 employment, she was on the teachers' salary
6 schedule, was she not?

7 **MS THRAILKILL** That's correct

8 **MR NICKLES** Okay Is there a letter or number on
9 this document that indicates that she's on the
10 teachers' salary schedule?

11 **MS THRAILKILL** No, there's not

12 **MR NICKLES** Okay But we do know that just from
13 her employment history, correct?

14 **MS THRAILKILL** That's correct

15 **MR NICKLES** All right Now, if we look at the line
16 for salary, six lines from the bottom, and that
17 relates to the effective date of 6/2/03 That
18 was her 6/2/02, I'm sorry That was her
19 salary on that date, is that correct?

20 **MS THRAILKILL** You have a base salary and then a
21 column for additional benefits, and then a
22 total annual salary

23 **MR NICKLES** All right Those additional benefits
24 were amounts she was being paid for the
25 educator coordinator position, correct?

1 **MS THRAILKILL** She was considered to be a lead
2 teacher
3 **MR NICKLES** All right And is the answer yes, she
4 was being paid that as education coordinator?
5 **MS THRAILKILL** As a lead teacher, yes, sir
6 **MR NICKLES** All right And we see that that
7 stopped with the reduction in force Do you
8 see that?
9 **MS THRAILKILL** That's correct
10 **MR NICKLES** Okay So that her annual salary for
11 the period beginning, I guess, 6/2/03 moved
12 down from \$59,314 to \$57,062, correct?
13 **MS THRAILKILL** Her annual salary did, that's
14 correct Her base was not affected
15 **MR NICKLES** All right But what went in her
16 pocketbook was affected, was it not?
17 **MS THRAILKILL** That's correct
18 **MR NICKLES** Okay As a result of the reduction in
19 force?
20 **MS THRAILKILL** That's correct
21 **MR NICKLES** All right And that continues to hold
22 a zero of additional benefits from the date of
23 the reduction in force until her departure from
24 the Department, correct?
25 **MS THRAILKILL** That's correct

1 **MR NICKLES** All right Now, if we look at page 29
2 of the record here, that is the signature page
3 of her evaluation for the period following her
4 movement as a result of the RIF, correct?

5 **MS THRAILKILL** Yes, sir

6 **MR NICKLES** Okay And we have a planning stage,
7 correct?

8 **MS THRAILKILL** The document that you have here
9 would be the planning stage and the evaluation

10 **MR NICKLES** Right I mean it's filled out at two
11 different times, is it not?

12 **MS THRAILKILL** That's correct

13 **MR NICKLES** All right And isn't that the way that
14 it's usually done, that you have a planning
15 stage and an evaluation stage?

16 **MS THRAILKILL** That is correct

17 **MR NICKLES** Okay So she got this planning stage
18 sometime in September of 2003?

19 **MS THRAILKILL** That's correct

20 **MR NICKLES** And then she was ultimately evaluated
21 in May of 2004?

22 **MS THRAILKILL** That's correct

23 **MR NICKLES** We look at page 55 of this particular
24 record, and we see that the information
25 provided to us includes that she was a

1 certified teacher, correct?

2 **MS THRAILKILL** That's correct

3 **MR NICKLES** And her location of employment was
4 Tyger River, correct?

5 **MS THRAILKILL** That's correct

6 **MR NICKLES** So that as a result of the reduction in
7 force as to Ms Bratton, she no longer
8 continued to receive her supplement, you say as
9 a lead teacher, correct?

10 **MS THRAILKILL** That is correct

11 **MR NICKLES** And she bumped into the position that
12 was formerly held by Ms Farr, I believe, is
13 that correct?

14 **MS THRAILKILL** She bumped into UB02, slot 12 I
15 would I would have to look further to
16 determine if it was Jackie Farr

17 **MR NICKLES** Well, that's the person who signed the
18 previous position description, correct?

19 **MS THRAILKILL** That's who signed the PD on file,
20 that's correct

21 **MR NICKLES** All right And normally, you would
22 expect the person who is occupying a position
23 to have signed a position description for that
24 position, would you not?

25 **MS THRAILKILL** No

1 **MR NICKLES** You would not normally expect that to
2 happen?

3 **MS THRAILKILL** No, sir, because the as long as
4 the position description accurately reflects
5 the job duties of the position, the incumbent
6 does not necessarily have to sign the position
7 description

8 **MR NICKLES** But you don't have any evidence that
9 this position description was ever actually
10 delivered to Ms Bratton, do you?

11 **MS THRAILKILL** Just a second On the evaluation on
12 page 54, she signed it It says my signature
13 indicates that I have discussed the planning
14 stage and position description with my
15 supervisor, not that I necessarily agree

16 **MR NICKLES** Okay, all right So you would rely
17 upon her signature there to say at least she's
18 looked at a position description?

19 **MS THRAILKILL** Yes, sir

20 **MR NICKLES** Okay Those are all the questions I
21 have in reference to Ms Bratton

22 **MR SUMMERS** Thank you, sir Based upon Mr Nickles
23 concluding his questions regarding the
24 documents for Ms Bratton, ma'am, let's go
25 ahead and go to page 56

1 **MS THRAILKILL** 56 is Ruth Fritts?

2 **MR SUMMERS** Yes, ma'am And again, just for the
3 sake of the panel's edification, the documents
4 that are arranged for Ms Fritts and the rest
5 of the other folks are in the same format, the
6 same sequence as what we just went through with
7 Ms Bratton, correct?

8 **MS THRAILKILL** That's correct

9 **MR SUMMERS** Okay Please tell the panel what's on
10 page 57

11 **MS THRAILKILL** Page 57, again, is the salary
12 history for Ruth Fritts from the payroll
13 personnel system with the Department of
14 Corrections If you go to the second line,
15 which is June 2 of 2002, that indicates that
16 she occupied a job class of UB02 The slot was
17 0015

18 **MR SUMMERS** And if you could, let's go to page 58

19 **MS THRAILKILL** 58, if you look at the top right
20 hand corner, it does have Ms Fritts' name on
21 it She occupied position number 0376677, and
22 the position description is UB02, slot 15,
23 which corresponds with the position she held
24 prior to the reduction in force

25 **MR SUMMERS** And does 59 page 59 relate to that

1 first page you just talked about?

2 **MS THRAILKILL** It's page 2 It's it's actually
3 a front and back form It's page 2 of the
4 position description which outlines the job
5 purpose and the duties for the position that
6 she held

7 **MR SUMMERS** And let's go to page 60, ma'am Tell
8 the panel what that document reflects

9 **MS THRAILKILL** Page 60 I'm sorry, which page?

10 **MR SUMMERS** I'm sorry, page 60

11 **MS THRAILKILL** Yeah, page 60

12 **MR SUMMERS** Yes, ma'am

13 **MS THRAILKILL** It indicates that we were unable to
14 find a position description for which the
15 position Ms Fritts bumped into on June 2,
16 2003 She was a RIF reassign on June 2 of '03
17 into job class JD30, slot 0111, with a salary
18 reduction to \$26,909

19 **MR SUMMERS** And let's go ahead and turn to page 61
20 And what go ahead, sir

21 **MR CORNING** Counsel, just so we can procedurally
22 get this If the panel has specific questions
23 as you're going through

24 **MR SUMMERS** Sure

25 **MR CORNING** do you think it would be more

1 convenient to have them ask them at the time?

2 **MR SUMMERS** It would be my assessment that it would
3 be If there are questions that come up with
4 a particular document, if the panel has a
5 question, I think it might easier for them
6 instead of

7 **MR CORNING** Rather than trying to recall later

8 **MR SUMMERS** Correct

9 **MR CORNING** which ones you had questions on
10 because this is a massive amount of material

11 **MR SUMMERS** I would I think certainly Ms
12 Thrailkill nodded affirmatively that would be
13 easier for her So I'll go certainly by what
14 she's assessed as being easier

15 **MR CORNING** For example, I mean I don't they
16 you know, I assume well I can't make an
17 assumption in this case What does on page
18 57 which you were discussing, what does JD
19 mean?

20 **MS THRAILKILL** I'm sorry I'm sorry JD30 stands
21 for correctional officer

22 **MR CORNING** That's what they would I think it
23 would be helpful to the panel if you would
24 if there's a change in the position, what
25 so they understand what it is

1 MR SUMMERS I understand

2 MR MCCLARY And I've I've got a very simple,
3 yet stupid question What are some of the
4 reasons why you would not be able to find some
5 of these documents? I see here it says unable
6 to locate the position descriptions What
7 what would some of those reasons be as to maybe
8 why these weren't were unable to be
9 located?

10 MS THRAILKILL They could either be misfiled
11 Something may have occurred to that position
12 since the reduction in force It could have
13 been reclassified as something differently than
14 what it than it was at the time It's the
15 line of history The agency lost over a
16 thousand positions We may have destroyed
17 those position descriptions once if they
18 became vacated Sometimes we have difficulty
19 getting people to do position descriptions as
20 timely an accurately as they should, just a
21 variety of reasons

22 MR MCCLARY Okay, thank you

23 MS HUTTO You said Ms Fritts bumped into the JD30?

24 MS THRAILKILL Yes, on June 2 of 2003

25 MS HUTTO Okay

1 **MS THRAILKILL** And we were unable to find a
2 position description for the position that she
3 bumped into Page 61 goes on to the review
4 information for Ms Fritts

5 **MR SUMMERS** And, Ms Thrailkil, let me stop you
6 real quick Would there be why wasn't
7 there another position description that we
8 needed to that would apply to Ms Fritts
9 after June 2nd of 2003 into the next year?

10 **MS THRAILKILL** Ms Fritts ceased employment, and
11 we'll see the date that corresponds with that
12 once we get to the last once we get to the
13 last page

14 **MR SUMMERS** Thank you, ma'am

15 **MS HUTTO** You said she ceased employment?

16 **MS THRAILKILL** That's correct

17 **MR SUMMERS** Now let's go to page 61, I guess, back
18 on track, subject to any questions from the
19 panel

20 **MS THRAILKILL** 61 is the review information from
21 the payroll personnel system If you look at
22 6/2/02, that is the time frame which she was
23 reviewed prior to reduction in force If you
24 go to 62 it begins on 62, runs through 69,
25 and that would be for the review period ending

1 June May of '03 So that's actually just
2 before reduction in force that that evaluation
3 was completed on her

4 **MR SUMMERS** And that's the material the
5 information that's reflected at page 69?

6 **MS THRAILKILL** That is correct And with her going
7 into the correctional officer position on June
8 2 of '03, she would have come up for review in
9 December of '03, six months after going into
10 that position, but if you look on page 70, Ms
11 Fritts ceased employment on August 3, 2003
12 The status is a T So, therefore, an
13 evaluation would not be completed because she
14 left before the evaluation was due

15 **MR COOPER** It's my understanding she served as a
16 correctional officer?

17 **MS THRAILKILL** Up until the time of

18 **MR COOPER** Up until the time that she was
19 terminated?

20 **MS THRAILKILL** That she left employment, that's
21 correct

22 **MS HUTTO** The code 001, what that indicates why
23 she left?

24 **MS THRAILKILL** Yes, as personal

25 **MR SUMMERS** And let the record reflect that that

1 particular numerical code that Ms Hutto
2 identified appears at the top right corner, I
3 believe, of page 70

4 **MS THRAILKILL** That's correct

5 **MR SUMMERS** And there's a the word status
6 appears followed by the letter T

7 **MS THRAILKILL** Which means they're terminated

8 **MR SUMMERS** Then there's the three digit code 001
9 that Ms Hutto referenced, and then that
10 appears below the date Ms Thrailkill
11 referenced as the last date of employment for
12 Ms Fritts, I believe, which was August 3,
13 2003

14 **MS THRAILKILL** That's correct

15 **MS KUDELKA** Does terminated mean she left, or
16 terminated in

17 **MS THRAILKILL** That's a generic term that we use
18 for anybody who leaves

19 **MS KUDELKA** Okay I just wanted to be sure

20 **MS HUTTO** Separated

21 **MS KUDELKA** Okay, okay

22 **MR SUMMERS** Ma'am, as the panel can see, and Ms
23 Thrailkill, as you can see, the next page, page
24 71 begins the documents regarding Ms Glenn
25 So at this time, Mr Nickles, obviously you

1 might have some questions about the materials
2 that Ms Thraillkill just covered

3 **MR NICKLES** Yes Ms Thraillkill, looking at page
4 57, you will see on the annual salary line
5 which is the far right hand side of that page
6 Do you see that?

7 **MS THRAILKILL** I do

8 **MR MCCLARY** I'm sorry, Mr Nickles, what page are
9 you

10 **MR NICKLES** It is page 57 of the record

11 **MR MCCLARY** 57

12 **MR NICKLES** This provides a salary history from
13 July 1, 1993, to June 2, 2003, is that correct?

14 **MS THRAILKILL** That's correct

15 **MR NICKLES** So the initial salary that Ms Fritts
16 received was \$42,488 back in 1993, correct?

17 **MS THRAILKILL** That was her salary on July 1st of
18 '93, that's correct

19 **MR NICKLES** All right And you'll see that there
20 was a significant increase in 1999 to 2000 from
21 \$61,000 to \$68,000 Do you see that?

22 **MS THRAILKILL** Yes, sir

23 **MR NICKLES** Is that the period of time in which the
24 salary schedule implemented through the lawsuit
25 was put into place?

1 **MS THRAILKILL** We did back pay for the Abraham
2 lawsuit in 2001

3 **MR NICKLES** Okay But the back pay is not included
4 on this particular

5 **MS THRAILKILL** No, it's not

6 **MR NICKLES** This is salary only?

7 **MS THRAILKILL** That is correct And we would
8 actually go back and correct salary history to
9 reflect what the salary should have been

10 **MR NICKLES** All right So the salary increased
11 during that 2000 period from 61 to 68 some odd
12 thousand dollars, correct?

13 **MS THRAILKILL** The \$61,123 to \$68,217 would have
14 been the general increase educators were
15 eligible for that particular fiscal year

16 **MR NICKLES** Okay And then she ultimately was
17 receiving \$71,219 for her services, correct?

18 **MS THRAILKILL** That's correct

19 **MR NICKLES** She was a certified teacher, correct?

20 **MS THRAILKILL** That's correct

21 **MR NICKLES** And that was her salary based upon the
22 certified teacher pay schedule, correct?

23 **MS THRAILKILL** That's correct

24 **MR NICKLES** And then her pay annual salary
25 following the reduction in force was \$26,909

1 Do you see that?

2 **MS THRAILKILL** That's correct

3 **MR NICKLES** Okay And that would have been the
4 reduction from the certified teacher pay
5 schedule to the correctional officer pay, is
6 that correct?

7 **MS THRAILKILL** That's correct

8 **MR NICKLES** And you have indicated that on page 61
9 the band level history Do you see that in the
10 fourth column?

11 **MS THRAILKILL** 61?

12 **MR NICKLES** Page 61

13 **MS THRAILKILL** Uh-huh (affirmative response)

14 **MR NICKLES** It was back in the 90s, 9007 That was
15 in she was a certified teacher at that
16 time?

17 **MS THRAILKILL** Yes, sir Actually, if you go back
18 to the salary history screen, if you're looking
19 for the the job class coding change, on
20 page 57, on July 1st of 1996 is when her class
21 code changed from 9007 to UB13 And then on
22 May 23, 2002, that's when state government went
23 under restructure, and it was changed to UB02

24 **MR NICKLES** Okay And that was something that was
25 more form than substance, correct? I mean it

1 it was a change that didn't affect what she
2 did on a day to day basis?

3 **MS THRAILKILL** No, it did not

4 **MR NICKLES** It was a record keeping change?

5 **MS THRAILKILL** That is correct

6 **MR NICKLES** Okay And the UB letters during those
7 years, she was on the teacher pay schedule?

8 **MS THRAILKILL** That's correct

9 **MR NICKLES** And the JD30 is when she was reduced to
10 the \$26,909, is that correct?

11 **MS THRAILKILL** She was a correctional officer,
12 that's correct

13 **MR NICKLES** All right And I believe your
14 testimony is that you did a diligent search for
15 a position description, and you could find none
16 relating to Ms Fritts, correct?

17 **MS THRAILKILL** For the correctional officer
18 position?

19 **MR NICKLES** Yes, ma'am

20 **MS THRAILKILL** That is correct

21 **MR NICKLES** Okay Those are all the questions I
22 have relating to Ms Fritts

23 **MR SUMMERS** And with Mr Nickles' indulgence, Mr
24 Corning's indulgence, any questions from the
25 panel regarding documents concerning Ms Fritts

1 that Ms Thrailkill just talked about?

2 **MS HUTTO** I wanted to get some clarification on the
3 salary Go back to page 57 The \$61,123 and
4 the \$68,217

5 **MS THRAILKILL** Uh-huh (affirmative response)

6 **MS HUTTO** And you said that was just a general
7 increase for teachers?

8 **MS THRAILKILL** That is correct

9 **MS HUTTO** Thank you

10 **MS THRAILKILL** You're welcome

11 **MR MCCLARY** Any other questions?

12 **MR COOPER** When you when when a person goes
13 from a different position and they were in
14 this position for a couple of months before
15 they left the agency, I thought planning
16 stages, correct me if I'm wrong, were done
17 immediately when they go in the other position

18 **MS THRAILKILL** Planning stages should be done within
19 60 days from the date the individual goes into
20 a new position It does not always occur

21 **MR COOPER** So she was but she left after 60
22 days?

23 **MS THRAILKILL** She left in August of '03 She went
24 into the CO position on June 2nd So she was
25 in the position right at two months

1 **MR COOPER** Okay, all right And no no planning
2 stage was done either for her?

3 **MS THRAILKILL** I could not find a planning stage,
4 no, sir

5 **MR COOPER** You couldn't find a planning stage, or
6 you could not find the PD, either one?

7 **MS THRAILKILL** That is correct

8 **MR SUMMERS** Hearing no more questions from any of
9 our panel members, we're going to move on to
10 page 71, which is the document reflecting the
11 beginning of the section regarding Ms Glenn
12 Ms Thrailkill, if you could, tell us what's on
13 page 72

14 **MS THRAILKILL** Page 72 is going to be the salary
15 history screen for Nancy B Glenn If you'll
16 look on the line of June 2 of '03, she was a
17 RIF reassignment from UB02, which is a
18 certified teacher, to a JD30, which is a
19 correctional officer She was occupying UB02,
20 slot 0047, and she was reassigned to JD30, slot
21 2637 And if you go up two more lines to the
22 date of March 17th of 2005, she promoted back
23 into a certified teacher position, UB02, slot
24 0075 It was treated as a promotion because it
25 was beyond the recall period

1 **MR SUMMERS** The recall period for the reduction in
2 force?

3 **MS THRAILKILL** That is correct The recall period
4 is only for one year So that would have been
5 June 2 of '03, through June 1st of 2004 You
6 go up two more lines to 9/17/06, she then
7 actually was a reassignment from UB02, slot 75,
8 to UB02, slot 4, her position wise If you go
9 to page 73, that would be the position
10 description that Ms Glenn occupied prior to
11 the reduction in force, the UB02, slot 47 74
12 would be page 2 which outlined the job purpose,
13 the job duties and supervisory
14 responsibilities And she signed that PD on
15 May 24th of 2000

16 **MR SUMMERS** And, ma'am, let me stop you right
17 there Just for the record, this position
18 description that Ms Glenn that has Ms
19 Glenn's name on it, the one that Ms Thrailkill
20 just described, was included in Committee
21 Exhibit Number Two, but again, we included it
22 in this volume to make sense chronologically so
23 that you could get a better picture, a fuller
24 picture of the chronology associated with Ms
25 Glenn

1 **MR MCCLARY** Thank you

2 **MS THRAILKILL** On June 2nd of 2003, she was
3 reassigned to JD30, slot 2637 Page 75 is that
4 position description for a correctional
5 officer That was what she reassigned to her
6 It does not have her name on it, but
7 correctional officer PDs are generic,
8 standardized statewide A name is not required
9 as long as the position description actually
10 reflects the job duties and responsibilities
11 Page 76 would be the second page of that
12 position description that outlines the job
13 purpose for her as a correctional officer, her
14 job duties and responsibilities and various is
15 comments on that page

16 **MR SUMMERS** And let's talk about page 77, ma'am

17 **MS HUTTO** Can I ask you a question?

18 **MR SUMMERS** Subject to any questions, yes, ma'am

19 **MS HUTTO** You said that the job description for the
20 correctional officers are standardized

21 **MS THRAILKILL** Statewide

22 **MS HUTTO** agency wide So if we see one in
23 here that may not have been in for the others,
24 can we assume it's the same job description?

25 **MS THRAILKILL** You probably could, yeah, because it

1 is it is there is a generic position
2 description We have C01, C02s

3 **MS HUTTO** So as long as this is the

4 **MS THRAILKILL** JD30

5 **MS HUTTO** Yeah

6 **MS THRAILKILL** That is correct

7 **MS HUTTO** Thank you

8 **MR SUMMERS** And again, subject to any questions the
9 panel might have, let's go ahead and talk about
10 the document that appears at page 77

11 **MS THRAILKILL** Page 77 is your position description
12 for UB02, slot 75 That is the position that
13 Ms Glenn promoted into on March 17, 2005
14 Page 78 will be page 2 of that position
15 description

16 **MR SUMMERS** And that particular change or
17 transaction, ma'am, that appears on 72 in the
18 salary history that you talked about?

19 **MS THRAILKILL** That is correct, on 3/17/05

20 **MR SUMMERS** And again, let's talk about the next
21 documents

22 **MS THRAILKILL** Page I lost my page Here it
23 is It's page 79 It is the position
24 description for UB02, slot 4 That is the
25 position that Ms Glenn reassigned to on

1 September 17th of 2006 Page 80 will be page
2 2 of that position description

3 **MR SUMMERS** And again, subject to any questions the
4 panel might have, let's talk about what appears
5 at page 81

6 **MS THRAILKILL** 81 is the review information from
7 our personnel system for Nancy Glenn Page 82
8 is going to be the review information for the
9 period of April 2, 2002, to March of '03

10 **MR SUMMERS** And that runs through page 89?

11 **MS THRAILKILL** That is correct It would
12 correspond to the June 2, '02, date on the
13 review information screen

14 **MR SUMMERS** And again, let the record reflect that
15 this particular EPMS that Ms Thraillkill
16 referenced that runs from page 82 through page
17 89 was included in Committee Exhibit Number Two
18 on November 17th

19 **MS THRAILKILL** Actually, that's going to correspond
20 with the just before reduction in force
21 would be June of '03

22 **MR SUMMERS** And, Ms Thraillkill, if you're ready to
23 move on to page 90

24 **MS THRAILKILL** Page 90, Ms Glenn was reassigned to
25 a correctional officer position, JD30, on June

1 2 of '03 So that would change her review date
2 to December 2nd of '03 On page 90 you will
3 see a an EPMS for the review period of
4 it says 12/2/02 to 12/2/03, but it'd actually
5 be June 2 of '03 since that's the date she went
6 into the CO position And that runs 90 through
7 97

8 **MR SUMMERS** That's pages 90 through 97?

9 **MS THRAILKILL** That is correct And again, it
10 on 97 indicates that the planning stage was not
11 done timely It was the evaluation was
12 done in October of 2003, however

13 **MR SUMMERS** And you're referencing the information
14 reflected at the bottom of page 97?

15 **MS THRAILKILL** That is correct Page 98 is
16 actually for the period of June of December
17 of '02 to December of '04 This is from our
18 system, mainframe system If you will note, it
19 says review type 01, review date 12/2/04,
20 rating MR, meets requirement, weighted average
21 50 That would indicate that an evaluation
22 was not done, and she was considered a presumed
23 meets When an evaluation is not done on an
24 employee, they are considered to be presumed
25 meets by the State of South Carolina

1 **MR COOPER** Wait, we're getting behind here When
2 does that what EPMS was that for?
3 **MS THRAILKILL** 12/2/04
4 **MR COOPER** Well, she had an EPMS when she first
5 went in from a librarian to a correctional
6 officer, and that was on page 91, in that area
7 **MS THRAILKILL** That was for a six month period
8 That would be from June 2 of '03, to December
9 of '03 Then it rolls one year So 12/2 of
10 '03 to 12/2/04 is your next review period
11 **MR COOPER** So she did not have a review when she
12 was a correctional officer for that entire
13 year?
14 **MS THRAILKILL** No, she did She had one at the end
15 of six months That's the period
16 **MR COOPER** That was
17 **MS THRAILKILL** 12 that was for the period
18 of 6/2 The evaluation on page 90 has a date
19 of 12/2/02, but it really should say 6/2/03 to
20 12/2/03 because that's why she was when she
21 was CO for six months
22 **MR COOPER** But from 12/2 of '03 to the next year,
23 there was none performed? Is that what you
24 just said?
25 **MS THRAILKILL** No For the period of excuse

1 me I'm getting confused myself All right
2 The evaluation on page 90 through 97 indicates
3 the review for her six months as a correctional
4 officer

5 **MR SUMMERS** That'd be her first six months?

6 **MS THRAILKILL** from 6 6/2/03 to 12/2/03
7 For the period of 12/2/03 to 12/2/04 there is
8 no evaluation, and she was presumed as meets

9 **MR COOPER** That's why I yeah So there was
10 none for the following year?

11 **MS THRAILKILL** That is correct That's correct

12 **MR COOPER** And if I understand you correctly, on
13 page 91 those were all her job duties that she
14 was rated on for the first six months?

15 **MS THRAILKILL** That would be correct

16 **MR COOPER** And these are all standardized
17 correctional officers' job duties?

18 **MS THRAILKILL** EPMSs are actually standardized for
19 the correctional officers also

20 **MR COOPER** Is there anything in here about she
21 she worked as a librarian?

22 **MS THRAILKILL** If you look at duty one, it says
23 supervises inmate living quarters, work areas
24 and transit Number two says conduct security
25 checks

1 **MR COOPER** On page 91

2 **MS THRAILKILL** That's what it

3 **MR COOPER** Oh, excuse me

4 **MS THRAILKILL** Number there's nothing listed

5 specifically to a librarian

6 **MR COOPER** I'm asking that question because she

7 testified that she immediately went back to

8 work as a librarian if I remember correctly

9 **MR CORNING** On page 4 there is I mean 4

10 page 92, number 8, is that it?

11 **MR NICKLES** No It's also on page 91

12 **MS HUTTO** Actual performance

13 **MR NICKLES** number one, actual performance

14 **MS HUTTO** Actual performance

15 **MR NICKLES** Provides daily supervision of inmates in

16 the library

17 **MS THRAILKILL** But that's what a correctional

18 officer does is provide supervision of inmates

19 That doesn't say that she's got librarian

20 duties

21 **MR NICKLES** I don't believe you were asked a

22 question

23 **MR COOPER** Can you give me a minute and let me read

24 this

25 **MS THRAILKILL** Sure, absolutely

1 MR COOPER before I ask the next question

2 MS THRAILKILL Actually, under job duty one and
3 actual performance it says CO Glenn has made a
4 wonderful transition from librarian to officer

5 MR COOPER Yeah, I saw that

6 MR NICKLES Is that all it says, Ms Thrailkill?

7 MS THRAILKILL Also, she performs daily supervision
8 of inmates in the library, assists operations
9 with processing inmates in and out, to include
10 providing security for the law library and
11 other transportation needs

12 MS HUTTO What about page 92, number 8?

13 MS THRAILKILL 92, number 8, job duty, performs
14 other library hobby I think it's hobby
15 craft but it says bobby craft and related
16 duties as required It says process books and
17 magazines in and out to include maintaining an
18 inventory of all books and hobby craft
19 materials CO Glenn has adapted and responded
20 well to the additional responsibilities

21 MR COOPER So, basically, I interpret this as 15
22 percent of her time would be performing other
23 library related duties as required, is that
24 correct?

25 MS THRAILKILL Are you referencing number 8?

1 MR COOPER Yeah
2 MS THRAILKILL Yes
3 MR COOPER I'm almost done
4 MS THRAILKILL That's fine
5 MR SUMMERS And that was number 8 on page 92?
6 MS HUTTO Yes
7 MS THRAILKILL That's correct
8 MR SUMMERS Let me make sure the record was clear
9 on that
10 MR MCCLARY And now I know you said that most of
11 the PDs are fairly generic We couldn't say
12 the same for the EPMSs?
13 MS THRAILKILL Not from reading this, no
14 MR MCCLARY Okay
15 MR COOPER And then there was no other EPMS for the
16 following
17 MS THRAILKILL After the all right, 12/2/04 was
18 presumed meets And then Ms Glenn promoted
19 back to an educator on March 17th of '05 So
20 her next review would have been been '06
21 I mean, actually, she would have she would
22 have got an education pay increase in March of
23 '05 And if you look at the evaluation for the
24 period that says September 17th of '05, to
25 March 31, '06, which is pages 99 through 106,

1 there is a signature date of July 29th of '05
2 which would indicate that that would be for the
3 '05 rating period

4 **MR COOPER** That's all I have I understand it now

5 **MR MCCLARY** Okay

6 **MR COOPER** Thank you

7 **MS THRAILKILL** You're welcome

8 **MR SUMMERS** And so, Ms Thrailkill, you took us up
9 through page 106

10 **MS THRAILKILL** Right

11 **MR SUMMERS** And subject to any questions from the
12 panel, talk about, please, what starts at page
13 107

14 **MS THRAILKILL** 107 is an evaluation that's dated
15 September 17th of '05 It says through
16 September of '06, runs pages 107 through 114
17 The signatures on page 114 indicate that's the
18 review for the period ending of '06 Beginning
19 on page 115, there's an evaluation for the
20 period that states April 1st of 2006, to March
21 31 of 2007 It's pages 115 through 122 with
22 signatures dated April 11 of '07, which would
23 indicate that's for the review ending of '07
24 Page 123, we were unable to locate an
25 evaluation for the period of April of '07 to

1 March of '08 And, of course, '09 is not here
2 as of yet Page 124, the panel had asked for
3 copies of job postings The job posting you
4 would have been looking for was the position
5 that she went into on March 17th of '05, which
6 was UB02, certified teacher slot 0075 Due to
7 retention, we do not have that announcement
8 available

9 **MR SUMMERS** When you say due to retention

10 **MS THRAILKILL** We retain current year and two years
11 prior Since it was announced in '05, we do
12 not have '05 announcements

13 **MR SUMMERS** And if you could, tell the panel,
14 please, what's on page 125

15 **MS THRAILKILL** Page 125, on September the 17th of
16 2006, in the history line it's indicated that
17 she reassigned from UB02, slot 75, to UB04
18 UB02, slot 4 This position on page 125 is the
19 position that she applied for, was selected for
20 and reassigned into that position on September
21 the 17th of 2006

22 **MR SUMMERS** And subject to any questions from the
23 panel, let's talk about what's on page 126

24 **MS THRAILKILL** 126 is an announcement that has an
25 opening date of November 7th of 2006 and a

1 closing date of November the 17th of 2006 The
2 position was located at Camille Graham
3 Correctional Institution Ms Glenn applied
4 for that position She was screened out
5 because she was less than six months in the
6 teaching position that she had went into on
7 September the 17th of 2006 If you look

8 **MR SUMMERS** When you say when you say screened
9 out, tell the panel what you mean by that

10 **MS THRAILKILL** If you look on page 127

11 **MR SUMMERS** Okay

12 **MS THRAILKILL** there was a total of four
13 applicants for that position And she was
14 screened out for an interview because she was
15 within six months of being selected for the
16 teacher position on 9/17/06 If you'll note on
17 the bottom of the page of 127, it says cancel,
18 re-announce The selecting official chose to
19 let me back up real quick On page 128,
20 this is a profile for Ms Glenn when she
21 applied for that position at Camille Graham and
22 was screened out Again, if you look at the
23 top right hand corner, it says S24 That means
24 she was screened out for interview for the
25 position Going back to page 127, as I

1 indicated, it's indicated cancel, re-announce
2 The selecting official chose to re-announce the
3 position on page 130 This is the same
4 position again I'm able to identify that by
5 looking at the SCDC position number You have
6 a opening date of 12/21/06, closing date of 1/5
7 of 2007, internal title classroom teacher If
8 you go to the right, it says SCDC position
9 number 011328 And again, that's at Camille
10 Graham And if you reference back to 126, that
11 is the same position number If you look at
12 page 131, that is a screen print for our
13 applicant referral system And you'll see that
14 Nancy Glenn once again, she did apply for
15 that position She is it's alphabetically
16 So Nancy Glenn is the fifth person down 132
17 is a document from the selecting official
18 addressed to Connie Riley, who is our branch
19 chief for recruiting and employment He
20 requested a waiver for the screen out of Nancy
21 Glenn because she was in trial status until
22 March of '07 It states I'm requesting
23 approval to waive the automatic screen out of
24 an employee who is in trial period status due
25 to a lateral position movement Mrs Nancy

1 Glenn is currently considered to be in trial
2 status until March 16, 2007 However, she has
3 not actually been able to make a physical move
4 to the new position due to staffing issues and
5 needs of the institution division Mrs Glenn
6 has applied for the library position at Camille
7 Graham, and I would like to provide her with
8 the opportunity to be considered as a candidate
9 for the library job for these reasons The
10 library position is a difficult job to fill
11 I would like to have as large an applicant pool
12 as possible Mrs Glenn has the qualifications
13 needed for the job Mrs Glenn has experience
14 in working with inmates Technically, she has
15 not yet been promoted to the library position
16 she was hired for at Trenton as mentioned
17 above Page 33 again is a listing of the
18 applicants for the position

19 **MR SUMMERS** And that's page 133?

20 **MS THRAILKILL** 133

21 **MR SUMMERS** That's okay

22 **MS THRAILKILL** Nancy Glenn is listed again There
23 was an initial S24 on there, and we changed it
24 to a 15 so that she could be interviewed for
25 the position 134 is the applicant's

1 **MR CORNING** Would you back up there and and you
2 may have answered this before, but what is the
3 15, 16 and

4 **MS THRAILKILL** If you look at page 134, there's a
5 listing of

6 **MR CORNING** Oh, okay

7 **MS THRAILKILL** the screening codes That's the
8 meaning of those codes It's on page 133 And
9 you'll note on 133, though, it says the S24 was
10 whited out on Nancy Glenn because she was
11 afforded an interview based on the selecting
12 official asking for a waiver On page 134 you
13 have a listing of those codes And also on the
14 bottom of the page is the individuals who
15 actually were selecting officials for those
16 positions That was Geraldine Abraham, Kathy
17 Small and Jackie Denning And then on page 135
18 shows that Ms Glenn continues employment and
19 is actively employed Other status A, top
20 right hand corner

21 **MR SUMMERS** And that's on page 135?

22 **MS THRAILKILL** 135

23 **MR COOPER** One other question I had Back to that
24 first six month EPMS It went from June
25 through December?

1 MS THRAILKILL That's correct

2 MR COOPER But I note she signed it in October Is
3 that normal?

4 MS THRAILKILL It could be signed, I think it's up
5 to 90 days prior to the actual review date

6 MR COOPER So that really only gave her a couple of
7 months Is that normal to I mean the EPMS

8
9 MS THRAILKILL It wasn't very efficient of the
10 rating official I can say that

11 MR COOPER Am I correct in having seen that on page
12 97?

13 MS THRAILKILL Let me get back there 97 says that
14 she signed it on October 31st of 2003 She's
15 a 1 85, which is exceeds That would be for
16 the period of June 2 up to the date of
17 signature, which would be October 31st So
18 that was done right at maybe 45 days before her
19 actual review date

20 MR COOPER Okay That's nothing unusual about
21 that?

22 MS THRAILKILL No, that's not I mean it it
23 can be done It can be done in advance

24 MR COOPER Okay

25 MR SUMMERS Subject to any questions or points from

the panel, I believe we've gone through the documents that were provided regarding Ms Glenn that are responsive to the panel's requests At this point, Mr Nickles would be

MR NICKLES Yeah, I have some questions Thank you Mr Cooper, could I have the appellant's exhibits, please? Ms Thrailkill, you have indicated that the records show that Ms Glenn was assigned correctional officer duties effective June 2, 2003, correct?

MS THRAILKILL That's correct

MR NICKLES Okay I'm handing you Exhibit Number Two It's a memorandum from Bevelyn Dreher, administrative captain of Stevenson Correctional Institution Do you see that?

MS THRAILKILL I do

MR NICKLES Subject to shift assignment, and it's addressed to Ms Nancy Glenn Do you see that?

MS THRAILKILL I do

MR NICKLES The date is May 30, 2003 Do you see that?

MS THRAILKILL I do

MR NICKLES And it says this is to advise you that effective June 2, 2003, you will be assigned to

1 SCI What is SCI?

2 **MS THRAILKILL** It stands for Stevenson Correctional
3 Institution

4 **MR NICKLES** Operations as the librarian Your work
5 schedule will be 11 00 a m to 7 00 p m
6 You'll also be required to perform other duties
7 as needed Signed by Ms Dreher, correct?

8 **MS THRAILKILL** That's correct

9 **MR NICKLES** And it is copied to the acting warden
10 Who is Major Marsh?

11 **MS THRAILKILL** He was the major at Stevenson at
12 that time

13 **MR NICKLES** And Captain Cox?

14 **MS THRAILKILL** Would be the captain at Stevenson

15 **MR NICKLES** And Sergeant Rogers?

16 **MS THRAILKILL** Would be a sergeant at Stevenson

17 **MR NICKLES** And personnel file?

18 **MS THRAILKILL** That would be her personnel file at
19 the work location

20 **MR NICKLES** Okay Looking at page 72 of the
21 record, we see that Ms Glenn's first salary
22 level was at \$39,697 Do you see that?

23 **MS THRAILKILL** On June 2, 1999

24 **MR NICKLES** Yes, ma'am And then it progressed,
25 and we see that she went in 2000 and 2001

1 there was an increase from \$44,235 to \$47,083

2 Do you see that?

3 **MS THRAILKILL** I do

4 **MR NICKLES** And then that was the same salary level
5 for the next year, correct?

6 **MS THRAILKILL** Well, the next one is actually the
7 restructure There's no that's not an
8 increase

9 **MR NICKLES** Okay That's no change then?

10 **MS THRAILKILL** That's correct

11 **MR NICKLES** And then the next year it increased
12 \$48,168?

13 **MS THRAILKILL** That's correct

14 **MR NICKLES** And that was her salary at the time of
15 the reduction in force?

16 **MS THRAILKILL** That would be correct

17 **MR NICKLES** When she was assigned to the
18 correctional officer position, her compensation
19 annual salary was then \$26,909, correct?

20 **MS THRAILKILL** That's correct

21 **MR NICKLES** And effective June 2, 2004, she
22 continued to occupy that position on that date,
23 correct?

24 **MS THRAILKILL** She did, and that June 2004 date is
25 the general increase that was given to all

1 state employees

2 **MR NICKLES** Okay And that's \$27,716?

3 **MS THRAILKILL** That's correct

4 **MR NICKLES** Then she returned to the teacher salary
5 schedule for the next report there, correct?

6 **MS THRAILKILL** On March 17th of '05

7 **MR NICKLES** Okay And that was \$50,577, and that
8 was her position on the teacher pay schedule,
9 correct?

10 **MS THRAILKILL** When she went back in the position
11 on 3/17/05, she would have been paid based on
12 her education, certification and years of
13 experience

14 **MR NICKLES** And she was occupying a classroom
15 teaching position at that time, correct?

16 **MS THRAILKILL** Certified teacher, that's correct

17 **MR NICKLES** All right And she previously had
18 served as the librarian, but she was certified
19 in that position as well, correct?

20 **MS THRAILKILL** The classification would be the same
21 Her internal title may have been librarian and
22 called for librarian certification

23 **MR NICKLES** But she was a certified media
24 specialist which is a fancy word for librarian,
25 correct?

1 MS THRAILKILL That's correct

2 MR NICKLES And she was paid according to the
3 teacher salary schedule for that position?

4 MS THRAILKILL That's correct

5 MR NICKLES And for the remainder of her employment
6 with the Department of Corrections, she's been
7 on the teacher salary schedule, correct?

8 MS THRAILKILL That's correct

9 MR NICKLES Even though she has moved from a direct
10 instructional position back into a librarian
11 position?

12 MS THRAILKILL I'm not sure if today's position is
13 librarian or not I'd have to if the PD
14 does not specifically say librarian, I would
15 not be able to know if she's a librarian or
16 not

17 MR NICKLES And to be fair to you, Ms Thrailkill,
18 you said that the memo that went to Ms Glenn,
19 according to the record, may not have gone to
20 the Department of Corrections general personnel
21 file?

22 MS THRAILKILL It would have gone employee
23 personnel files are maintained at the work
24 location where they physically work at

25 MR NICKLES And in that case, she was told by the

1 folks at that work location what her duties
2 were to be?

3 **MS THRAILKILL** It would appear based on that memo
4 that they did that

5 **MR NICKLES** Okay Now, as Mr Cooper observed, on
6 page 91 of the record, there is some reference
7 to supervising inmates in the library on a
8 daily basis Do you see that?

9 **MS THRAILKILL** Which number is that? Number 1?

10 **MR NICKLES** Yes, ma'am, the actual performance on a
11

12 **MS THRAILKILL** Uh-huh (affirmative response)

13 **MR NICKLES** It says provides daily supervisions of
14 the inmates in the library Do you see that?

15 **MS THRAILKILL** I do

16 **MR NICKLES** Okay Now, that is not something that
17 every correctional officer at that particular
18 location would do, correct?

19 **MS THRAILKILL** They provide daily supervision to
20 inmates, but there's different posts and
21 different assignments

22 **MR NICKLES** Okay You wouldn't expect every
23 correctional officer to be in the library daily
24 supervising the inmates' use of the library,
25 would you?

1 MS THRAILKILL Not all COs, no, sir

2 MR NICKLES You wouldn't expect all the correctional
3 officers to maintain an inventory of all books
4 either, would you?

5 MS THRAILKILL Not all the correctional officers,
6 no, sir

7 MR NICKLES So, while there may be some generic
8 language on what the assigned job duties are
9 for correctional officers, in their actual
10 performance they may more accurately reflect
11 what those individuals do on a daily basis
12 Would that be fair?

13 MS THRAILKILL Say that again, I'm sorry

14 MR NICKLES Yes, ma'am There there are
15 criteria for there are duties and criteria
16 for each of the positions, correct?

17 MS THRAILKILL That is correct

18 MR NICKLES And your testimony earlier was that's
19 more or less generic If I'm a correctional
20 officer, there are certain things I'm expected
21 to do

22 MS THRAILKILL The majority of correctional officer
23 duties are standardized, that's correct

24 MR NICKLES But the actual performance may vary
25 based upon the assignment that you have,

1 correct?

2 **MS THRAILKILL** That's true That's true

3 **MR NICKLES** And if I received a memo telling me
4 that my actual assignment was going to be serve
5 as librarian, even though my title was
6 correctional officer, that may more accurately
7 reflect what I did on a day to day basis?

8 **MR SUMMERS** I'm going to object to that question
9 It's calling for speculation

10 **MR NICKLES** Okay

11 **MR CORNING** I'm going to sustain the objection,
12 counsel

13 **MR NICKLES** Fine And you were present during Ms
14 Glenn's testimony, were you not?

15 **MS THRAILKILL** I was

16 **MR NICKLES** And you heard her say that her
17 assignment, actual duties, didn't change
18 although her title changed Do you remember
19 that?

20 **MS THRAILKILL** I do recall that

21 **MR NICKLES** You don't have any first hand knowledge
22 to dispute what her actual performance or
23 duties were during this period of time, do you?

24 **MR SUMMERS** I'm going to object, sir Pitting the
25 witness's testimony previously with this

1 witness's testimony

2 **MR CORNING** What's your question, counsel?

3 **MR NICKLES** My question was that she doesn't have
4 anything to dispute

5 **MR CORNING** Well, you're you you are
6 pitting you you know, I guess you
7 could rephrase the question

8 **MR NICKLES** All right, I'll rephrase it You don't
9 have any record, do you, that shows on a daily
10 basis what Ms Glenn did while she was assigned
11 as a correctional officer?

12 **MS THRAILKILL** Only the position description and
13 evaluation that's in the file

14 **MR NICKLES** Okay , And if the evaluation says that
15 on a daily basis she supervised inmates in the
16 library, you would tend to rely upon that,
17 wouldn't you?

18 **MS THRAILKILL** Supervise the inmates, that's
19 correct

20 **MR NICKLES** As a result in the reduction in force,
21 did Ms Glenn experience a break in service
22 with the Department?

23 **MS THRAILKILL** No, she did not

24 **MR NICKLES** Thank you

25 **MR MCCLARY** Ms I'm sorry

1 **MR SUMMERS** No I have no questions, subject to
2 yours, sir

3 **MR MCCLARY** I keep butchering your name, but do you
4 know what age group there was at the Stevenson
5 Correctional Institute?

6 **MS THRAILKILL** You mean inmate wise?

7 **MR MCCLARY** Inmates, yes

8 **MS THRAILKILL** No, I'm sorry, I don't

9 **MR MCCLARY** Any other questions? Just measuring
10 here, I think we're about 50 percent through

11 **MR SUMMERS** We are, sir

12 **MR MCCLARY** Can we have five minutes and let us
13 decide, you know, what direction we're going to
14 go here?

15 **MR NICKLES** Absolutely

16 **MR SUMMERS** Certainly

17 **MR MCCLARY** Okay, thank you

18 (Off the record)

19 **MR CORNING** While you were out, the panel has
20 has decided that as far as the documents that
21 have been presented today, they have no further
22 questions They feel they can understand them
23 without any additional questions or answers
24 So we're through with Ms Thrailkill

25 **MR SUMMERS** Would the panel like to have any

1 explanation

2 **MR CORNING** No We've already I've asked that
3 as part of the questions

4 **MR SUMMERS** Very well

5 **MS THRAILKILL** Am I dismissed?

6 **MR CORNING** Yes

7 **MR SUMMERS** You can you can move all the way
8 back over here, and thank you

9 **MR MCCLARY** Would you please bring the next witness
10 in for us? Good evening, how are you?

11 **MS POPE** Hey, how are you?

12 **MR MCCLARY** I'm not quite sure Just real quick,
13 I'm going to read through this real quickly,
14 and then I'll ask you a couple more questions

15 **MR CORNING** Mr Nickles and counsel, the gentleman
16 sitting over there is counsel with OHR in case
17 anyone has any questions

18 **MR MCCLARY** Yes

19 **MR NICKLES** Understood I I believe the
20 witness would need to be sworn

21 **MR MCCLARY** Right We're going to read her
22 something here and then swear her

23 **MR SUMMERS** And for the record, the gentleman's
24 name, the attorney?

25 **MR MCFARLAND** I'm Derrick McFarland I'm Assistant

1 General Counsel

2 **MR SUMMERS** I know Derrick I just wanted to make
3 sure it was how are you, sir?

4 **MR MCFARLAND** Good, how are you doing?

5 **MR SUMMERS** Good

6 **MR MCCLARY** The witness is asked not to discuss
7 this case either before or after testifying
8 until you are excused This is not

9 **MR CORNING** Thank you, counsel

10 **MR SUMMERS** Oh, you're welcome

11 **MR MCCLARY** This is not intended to preclude the
12 parties from entering into discussions with
13 their respective witnesses Does any witness
14 does this witness not understand this?

15 **MS POPE** Yes

16 **MR MCCLARY** You're asked you are to remain
17 available after testifying until you are
18 excused by the presiding officer After the
19 opening statement, which we've already done,
20 you may not remain in the room except when
21 called to testify I'm trying to make this
22 singular instead of plural You will be asked
23 to testify under oath At this time, the
24 Secretary will determine which witnesses on the
25 parties' list are present And now you can

1 administer the oath to her, Herb

2 **MR COOPER** Would you please stand? Please state
3 your name

4 **MS POPE** Heather Pope

5 **MR COOPER** Ms Pope, do you swear excuse me
6 Please raise your right hand

7 **MS POPE** Sure

8 **MR COOPER** Do you swear or affirm that the
9 testimony you will give today is the whole
10 truth and nothing but the truth?

11 **MS POPE** Yes

12 **MR COOPER** You may sit down

13 **MR MCCLARY** One other thing, I would ask you not to
14 have any not to discuss this with any
15 members of the committee until the final
16 decision is reached And it's still considered
17 still to be considered until after its
18 any time for appeal, that time has passed So
19 just don't discuss it with anyone, okay?

20 **MS POPE** Okay

21 **MR MCCLARY** All right For the record, would you
22 please tell us, your name again, please?

23 **MS POPE** Sure, Heather Pope

24 **MR MCCLARY** Pope?

25 **MS POPE** Pope

1 **MR MCCLARY** Ms Pope, where do you where are
2 you currently employed?
3 **MS POPE** With the Office of Human Resources
4 **MR MCCLARY** And what's your position there?
5 **MS POPE** I'm a managing partner with OHR
6 **MR MCCLARY** Okay, thank you, ma'am Lesia, did you
7 have a question? Do you have questions?
8 **MS HUTTO** I'm (inaudible) What what we're
9 trying to determine, Heather, is the when
10 an employee and please ya'll correct me if
11 I'm wrong When an employee has been RIF'd, I
12 think there were there was the question on
13 your website about whether or not a person
14 could be hired into a temporary a temporary
15 employee could be hired to replace a RIF'd
16 employee Can you give us some direction or
17 expound on that for us?
18 **MS POPE** Okay Can you be a little bit more
19 specific about what your question is about
20 that?
21 **MR MCCLARY** I think what we're trying to this
22 has been very confusing to us
23 **MR CORNING** There's language on the
24 **MR MCCLARY** Yes On your frequently asked
25 questions

1 MS HUTTO Questions

2 MR MCCLARY it says when a RIF takes place, can
3 any of those positions during the recall
4 period, can any of those positions be filled
5 with a part-time or a temporary employee? And
6 what we were trying to do is find and you
7 might want to object to my questions, Roland
8 I don't know Is there any case law that
9 that supports

10 MR CORNING No Just no Just she's not
11 the proper person to ask about case law You
12 just ask her the question about the site and
13 that issue

14 MR MCCLARY What is your interpretation of what
15 is your interpretation of when a position is
16 RIF'd and replacing or performing those job
17 duties? And hopefully I don't I don't
18 know if we're clear or not, but do you
19 understand what I'm trying to get it?

20 MS POPE I do When a position is RIF'd, it can
21 a position can be RIF'd for a number of
22 reasons But whatever that reason is, the
23 thought process is through that RIF plan, that
24 position, that function's eliminated So OHR
25 did include that as one of our frequently asked

1 questions, could an agency fill a position that
2 had been eliminated through a RIF with a
3 temporary employee And our interpretation of
4 that has been no The thought is that that
5 position was no longer needed, and therefore,
6 that'd be contradictory to fill it with a temp

7 **MR MCCLARY** Does that answer our question? I don't
8 think so Does that answer your question?

9 **MR COOPER** I didn't have a question

10 **MR MCCLARY** Oh, okay I I think if if we
11 do away with a teacher's position, can that job
12 function be performed by another employee,
13 another full time employee?

14 **MS POPE** Specifically about the teacher, I can't
15 necessarily address That would be more of the
16 agency

17 **MR MCCLARY** Right, right

18 **MS POPE** But in a RIF an employee a position
19 that's RIF'd, those duties are generally
20 either they go away, that they've decided we're
21 going to get out of this business totally You
22 may merge departments through a reorganization
23 where you have somebody else maybe assume those
24 duties, or they're divided up among other
25 people, or they just decide that we don't have

1 enough work going on They may have a work
2 shortage We've quit doing this function
3 There's not enough work there for us to need
4 this position

5 **MR MCCLARY** So if the function is there, then you
6 should recall? Am I leading the witness?

7 **MS POPE** Typically, the thought is if you need it
8 if you decide within that year period that
9 you needed that job, then you would address
10 that through recall You would re-establish
11 that position and bring those employees
12 affected back in in verse order.

13 **MR MCCLARY** Any follow up?

14 **MR COOPER** I've got well let me follow up on
15 that So you said that during a RIF, the
16 duties would be completely eliminated, or if
17 you reorganized a little bit, some of the other
18 people in the other offices could assume some
19 of those duties

20 **MS POPE** It kind of depends on what the reason for
21 the RIF is There are a number of reasons an
22 agency

23 **MR COOPER** Well if that's the case where where
24 they're being assumed by other people, that's
25 acceptable, correct? Is that what you just

1 said?

2 **MS POPE** The thought is with a RIF that that job
3 does not exist in its same format as prior to
4 the RIF Either you divide that job up, other
5 people assume those duties If you were to re-
6 establish that job with its same functions, it
7 would be something that an employee would be
8 recalled to within that year

9 **MR COOPER** All right But you said it could be
10 broken up and other people could be doing it,
11 too So that's an acceptable alternative?

12 **MS POPE** If an agency were to downsize, if they had
13 five people and they decided we only need four,
14 then some of that work could be assumed by
15 those four

16 **MR COOPER** And that's acceptable?

17 **MS POPE** Yes

18 **MR COOPER** All right And and let's say as
19 that was occurring and those four decided they
20 couldn't quite handle it, they needed a little
21 bit of extra help, is it acceptable to hire a
22 temporary to help them?

23 **MS POPE** We have historically said no, that it's
24 not acceptable to hire a temporary to do a job
25 that was eliminated through a RIF

1 **MR COOPER** Well not the entire job but part of that
2 job?

3 **MS POPE** That to my knowledge, that's been our
4 stance

5 **MR COOPER** Okay

6 **MR MCCLARY** Any questions?

7 **MR NICKLES** I have a few Ms Pope, I believe you
8 were asked, or someone in your agency was asked
9 to look into your records to determine when
10 frequently asked questions relating to
11 reduction in force were made available to
12 agencies, their human resource directors and
13 their attorneys, is that correct?

14 **MS POPE** Correct

15 **MR NICKLES** I'm handing you a document and ask if
16 you recognize it

17 **MS POPE** I do

18 **MR NICKLES** When

19 **MR SUMMERS** I'm going to object on this line of
20 questioning I think you've, number one, gone
21 beyond the scope of what the panel has asked
22 And I don't think the particular issue that Mr
23 Nickles is inquiring about is now it's my
24 understanding I could be wrong, subject to
25 your ruling

1 MR CORNING Counsel, if all he's going to do I
2 don't know how many questions you need to
3 introduce, counsel Is that that original

4 MR NICKLES No, sir

5 MR CORNING Let me see it

6 MR NICKLES I'm just trying to get information for
7 the committee

8 MR SUMMERS As long as it's relevant

9 MR CORNING And what is your I'm I'm not
10 sure I understand what the relevance of this
11 is, counsel

12 MR NICKLES The question was raised earlier whether
13 or not answers to frequently asked questions
14 regarding reduction in force were available to
15 agencies before June 2, 2003 This establishes
16 a date of November 5

17 MR SUMMERS Well, that isn't testifying as to what
18 the document is So the panel can

19 MR CORNING Do you have

20 MR SUMMERS I would submit that the witness has
21 already testified regarding the substance of
22 OHR's position in this matter I don't know if

23
24 MR CORNING Well, I mean I guess the next question
25 then, counsel, if we don't if we get away

1 from the document, the panel may be when
2 did this position if she knows, when was
3 did it was it first taken?

4 **MR SUMMERS** If she knows, I'm certainly happy for
5 her to

6 **MR CORNING** If she knows

7 **MR NICKLES** To the best of your knowledge, prior to
8 June 1, 2003, was the position you earlier
9 articulated to the committee the position of
10 the Office of Human Resources?

11 **MS POPE** Yes, it was, to my knowledge

12 **MR NICKLES** Okay

13 **MR CORNING** Counsel counsel, did that answer
14 your question? Do you have any problem with
15 that, counsel?

16 **MR SUMMERS** Not with that particular question
17 answered, no, sir

18 **MR NICKLES** And do you continue to object to the
19 document itself?

20 **MR SUMMERS** Yes

21 **MR CORNING** Well, have you seen the document? Has
22 he seen the document?

23 **MR NICKLES** It's before him

24 **MR SUMMERS** Yeah

25 **MR CORNING** Okay, all right

1 MR NICKLES I would like to I'd like to submit
2 the document and have a ruling on the
3 objection

4 MR CORNING I'm going to allow the document in on
5 its for what it's worth, counsel

6 MR SUMMERS Very well

7 MR NICKLES This will be Appellant's Exhibit Number
8 Eleven, I believe Is that correct?

9 MR COOPER Yes

10 MR CORNING Obviously, there's no

11 MR SUMMERS And, Mr Cooper, is this Appellant's
12 Exhibit Number Eleven?

13 MR COOPER Yes, it is

14 MR NICKLES I believe that to be correct

15 (Appellant's Exhibit Number Eleven was marked for
16 identification purposes)

17 MR NICKLES Now, having reviewed Appellant's
18 Exhibit Number Eleven, Ms Pope, are you
19 familiar with the entry that's on the Office of
20 Human Resources website in responding to the
21 question can an agency hire a temporary
22 employee to replace an employee affected by a
23 RIF to perform the functions of a position
24 eliminated by a RIF?

25 MS POPE Yes

1 **MR SUMMERS** Sir, I'm going to object again I
2 think we're getting in now to some matters of
3 authentication or the providence of whether

4 **MR CORNING** Well, we're also getting into some
5 legal questions as posed I'll accept the
6 information on the site, counsel, on its
7 here's what's on the site I will accept it on
8 the basis of this is when Ms Pope apparently
9 put the site up and that that's been their
10 position

11 **MR NICKLES** Correct

12 **MR CORNING** Beyond that, what question do you have?

13 **MR NICKLES** I just want it to be clear what the
14 the articulated position of the agency was

15 **MR CORNING** Well, didn't we allow that

16 **MR NICKLES** and it's on the website

17 **MR CORNING** Oh, did we allow in the part of the
18 website? I can't recall

19 **MR NICKLES** That's what I'm handing the witness
20 now

21 **MR SUMMERS** And my objection is she's already
22 stated what the position of OHR is

23 **MR CORNING** No I'm going to I'm going to
24 allow this document in, counsel, on her saying
25 it's what's currently on the website

1 MR SUMMERS Currently on the website?

2 MR CORNING Currently on the website

3 MR NICKLES Yes

4 MR SUMMERS Okay And this would be Appellant's
5 Exhibit Number Twelve

6 (Appellant's Exhibit Number Twelve was marked for
7 identification purposes)

8 MR NICKLES Okay Ms Pope, looking at Appellant's
9 Exhibit Number Twelve, and that is the
10 document, do you recognize that language?

11 MS POPE Yes

12 MR NICKLES And does that language currently appear
13 on the agency's website?

14 MS POPE Yes, it does

15 MR NICKLES Are you aware of any other response to
16 this question ever being provided on the
17 agency's website?

18 MS POPE Not to my knowledge

19 MR NICKLES Okay To the best of your
20 understanding, has this been the only response
21 provided by OHR to the articulated question?

22 MS POPE As I understand it, yes

23 MR NICKLES Thank you Those are all the questions
24 I have at this time

25 MR MCCLARY Mr Summers?

1 **MR SUMMERS** I have no questions for this witness
2 **MR MCCLARY** You're excused, ma'am Thank you very
3 much
4 **MR NICKLES** Thank you, ma'am
5 **MS POPE** Would ya'll like me just to leave this?
6 **MR NICKLES** Yes, you can leave it We ask that
7 this witness be excused
8 **MR MCCLARY** Thank you
9 **MR SUMMERS** We would agree
10 **MR MCCLARY** Any other questions or any other
11 documents or anything that we need to
12 **MR SUMMERS** We do have one housekeeping matter
13 between counsel that we can bring to the
14 committee's attention subject to if you're
15 ready for it
16 **MR MCCLARY** I'm ready
17 **MR SUMMERS** Ms Guffey, Mr Nickles, this goes
18 along the lines of the let the record
19 reflect that during Mr Near's testimony last
20 month on November 7th, counsel entered into a
21 stipulation that was, I think, borne or
22 generated as some correspondence between Mr
23 Nickles and the attorney who first represented
24 the agency in this litigation
25 **MR NICKLES** Actually, it was Ms Guffey and the

1 former counsel for the agency

2 **MR SUMMERS** What we wanted to do and the intent of
3 this particular material is to simply, we'll
4 call it modify the stipulation, or give it in
5 its full context What we've done and what the
6 counsel have agreed to now is to submit to the
7 panel whether it's, I guess, a committee
8 exhibit or whatever format we wish to classify
9 it, all the correspondence between Ms Guffey
10 and ultimately myself regarding the material
11 that appears at on Committee Exhibit Number
12 One, page 780 through 785 There's a
13 spreadsheet, and it's Tab 9 in the material
14 that Mr Nickles put to the panel Tab 9 in
15 Mr Nickles' materials, but it's still from
16 Committee Exhibit Number One, page 780 through
17 785 And this correspondence would be a an
18 attempt to put that spreadsheet and how it was
19 generated in context of the correspondence
20 between counsel

21 **MR CORNING** Counsel, since you're providing it, it
22 probably would be more appropriate to put it in
23 as an agency exhibit

24 **MR SUMMERS** Very well Any objection to that, Mr
25 Nickles?

- 1 **MR NICKLES** No, with the further clarification that
2 what we are looking at, ladies and gentlemen,
3 is only question number 5 in Ms Guffey's
4 August 30, 2004, response and essentially, Mr
5 Summers' response description to number 5 which
6 is on the fourth page of his letter So there
7 was a question, please present the following
8 information, and Mr Summers then said this is
9 the way I choose to describe actually, what
10 Mr Near described to Mr Summers Mr Near is
11 not before us This is what he provided to Mr
12 Summers as his description of those lists of
13 employees
14 **MR SUMMERS** What appears at Tab 9 in the hearing
15 notebook that Mr Nickles presented to ya'll
16 **MR NICKLES** Just so that there's no question about
17 what was asked for and what was provided
18 **MR SUMMERS** This would be the document right here
19 or series of documents all stapled together
20 There are three letters
21 **MR NICKLES** What number would that be?
22 **MR CORNING** Do you have copies for everyone?
23 **MR SUMMERS** Sure do
24 **MR COOPER** This would be Number One
25 **MR SUMMERS** Yes, sir

1 **MR CORNING** It's agency
2 **MR NICKLES** Agency Number One
3 **MR SUMMERS** Agency Number One
4 **MR CORNING** Oh, it's part of Number One?
5 **MR SUMMERS** No, no
6 **MR MCCLARY** No
7 **MR SUMMERS** Agency Number One
8 **MR MCCLARY** It's the first Number One
9 **MR CORNING** Okay
10 **(Agency Exhibit Number One was marked for**
11 **identification purposes)**
12 **MR SUMMERS** Heretofore, we have not submitted
13 anything in an hour and a half of testimony
14 And let the record reflect that Mr Guffey
15 Mr Nickles and Ms Guffey have copies as well,
16 and I provided copies prior to the hearing
17 today
18 **MR MCCLARY** Okay We're going to look through all
19 the materials provided And I think we're
20 going to finish up today, and we're going to
21 start back on Thursday morning at 9 00 o'clock
22 **MR SUMMERS** Yes, sir
23 **MR MCCLARY** And we'll be prepared at that time to
24 hear closing arguments
25 **MR CORNING** And meanwhile, I I understand

1 counsel will be submitting to me various

2 **MR SUMMERS** Proposals

3 **MR CORNING** proposals and documents as possible
4 instructions for the panel and that sort of
5 thing

6 **MR NICKLES** That's correct

7 **MR SUMMERS** And then we will exchange with one
8 another obviously and show them to you

9 **MR CORNING** Yes, that's but if we could take
10 care of that tomorrow or Wednesday, at least by
11 Wednesday

12 **MR SUMMERS** Certainly

13 **MR CORNING** so we don't otherwise, we'll
14 have to start a little later because it may
15 take a little while on Thursday if we don't get
16 that taken care of before we get here

17 **MR NICKLES** What I would suggest is the way that we
18 normally do this at trial, and that we would
19 try to do this before you know, outside the
20 presence of the jury

21 **MR CORNING** Well that's what I'm saying And I'll
22 just

23 **MR NICKLES** and and have your rulings on
24 them, and we can, if necessary, you know, state
25 our exceptions to those rulings outside the

1 presence of the committee so that the record's
2 maintained

3 **MR CORNING** And I'm then I'm going to do we
4 need to go I guess we could you know,
5 we go off maybe we need to start about
6 9 15 How long do you anticipate it taking,
7 counsel?

8 **MR NICKLES** I think we'll know a lot more after we
9 exchange the and we want to have a pre-
10 conference with you anyway So it might be

11 **MR CORNING** No, I'm not talking about for me I
12 mean what time would you suggest if if we
13 were they were planning to start at 9 00,
14 and you want to get these exceptions on the
15 record We're going to have to have Ms
16 Brabham

17 **MR NICKLES** I don't think it'll take over ten
18 minutes for us to

19 **MR CORNING** All right Then maybe the panel should
20 come at 9 00 Well, somebody's going to have
21 to open, I guess, get it on back on the
22 record So I guess they'll come and then you
23 guys will get a 15 minute break

24 **MR NICKLES** Okay And we may have no disagreement
25 That would be rare, but it's possible

1 MR SUMMERS I agree with that, the entirety of that
2 particular statement So but I think we'll
3 be sufficiently close where it will not take
4 too entirely long to resolve them and have them
5 ready for ya'll and to proceed first thing
6 Thursday morning

7 MR MCCLARY Thank ya'll very much

8 MR NICKLES Thank you very much

9 MR MCCLARY We look forward to seeing you on
10 Thursday

11 (There being no further testimony, the hearing was
12 adjourned)

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

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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 DECEMBER 18, 2008
DAY 7

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 seventh day
2 of the hearing of the appeal of reduction in
3 force instituted by Bell, et al , against South
4 Carolina Department of Corrections being held
5 in Columbia, South Carolina this 18th day of
6 December 2008 A record is being made of the
7 hearing For the record, my name is Karl
8 McClary, Department of Motor Vehicles And
9 other members of the State Employee Grievance
10 Committee present are Herb Cooper, Department
11 of Transportation, Glynnis Elmore, Department
12 of Mental Health, Lynn Hutto, SLED, Lesia
13 Kudelka, Department of Labor, Licensing &
14 Regulations The committee attorney is Roland
15 Corning, Attorney General's Office Appellant
16 is being represented by attorney Allen Nickles
17 The employee the employing agency is
18 represented by attorney Lake Summers
19 Assisting the committee is Sandra Brabham,
20 Office of Human Resources After this appeal,
21 the committee will report its finding and
22 decision in writing to the employee and the
23 employing agency within twenty calendar days of
24 the conclusion of the hearing The decision
25 shall be final in terms of administrative

1 review

2 **MR CORNING** I have discussed with counsel and Mr
3 Chairman since we're not meeting to the
4 panel is not meeting to deliberate until a
5 couple of days in January, that we hold
6 have closing arguments today, and I will wait
7 and present instructions They are both
8 we're discussing proposed instructions and
9 questions for the panel to hopefully make it
10 easier for the panel in this complicated
11 hearing to narrow the issues, and that will be
12 presented, including at the next hearing
13 So we won't end the hearing today to go into
14 separate session as we normally would We
15 would then I would, you know, read the
16 proposed instructions as I normally do, but
17 rather than reading them before closing
18 argument, I'll read them the day that you
19 deliberate

20 **MR MCCLARY** I think that's fine It'll be fresh in
21 our minds during those days of deliberation,
22 day or days of deliberation

23 **MR CORNING** Do we have a date yet?

24 **MR MCCLARY** I don't think we have decided on a date
25 yet

1 MS KUDELKA I've got my calendar here
2 MR CORNING Go ahead, I'm sorry
3 MR SUMMERS Obviously, that coordination can take
4 place either here later day, now if the panel
5 so decides, but
6 MR MCCLARY While we're
7 MR SUMMERS Everyone
8 MR MCCLARY Has everyone brought their calendars
9 with them?
10 MS KUDELKA I've got mine
11 MR MCCLARY First week of January?
12 MS HUTTO First week of January is not a good
13 week
14 MR MCCLARY First week of January is not a good
15 week is what I'm hearing from Ms Hutto
16 MR SUMMERS That's not necessarily bad news for me
17 I'm supposed to be in trial that week on
18 another matter So that's not horrible
19 MS KUDELKA Do you want to tell us
20 MR MCCLARY Do we have dates
21 MS KUDELKA I'm sorry
22 MR MCCLARY of other hearings? That's all
23 right Sandra?
24 MS BRABHAM I have several hearings next month
25 MR MCCLARY Some no dates that

1 MS BRABHAM No dates
2 MR MCCLARY that you normally request from us?
3 MS BRABHAM No dates would be 6, 7, 13, 14, 15, 20,
4 27, 28 and 29
5 MR MCCLARY Say again 6, 7, 13, 14
6 MS KUDELKA Pretty much the month
7 MR NICKLES Those are unavailable?
8 MS BRABHAM 15, 20, 27, 28 and 29
9 MR CORNING Are those no dates for them and yes
10 dates for me?
11 MR MCCLARY January's not looking very good, is it?
12 MS BRABHAM No
13 MS KUDELKA Unless we do it 21, 22, 23
14 MS BRABHAM We've got the 8th, 9th and 10th
15 MR MCCLARY 22 21, 22 and 23, 10th, 9th I'm
16 sorry 9th, 10th
17 MR CORNING 8th
18 MS HUTTO Is that January or February?
19 MS BRABHAM 8th, 9th and 10th
20 MR MCCLARY 8th, 9th and 10th
21 MS HUTTO January or February?
22 MR MCCLARY This is all January
23 MS HUTTO No, the 10th is Saturday
24 MR NICKLES The 10th is a Saturday
25 MR SUMMERS 10th is a Saturday

1 **MR NICKLES** 8th and 9th is a Thursday and Friday
2 **MS HUTTO** That's not going to work
3 **MS BRABHAM** The 10th is Saturday, I'm sorry
4 **MR SUMMERS** I'm supposed to be at Fort Jackson on
5
6 **MR MCCLARY** So the 21st, 22nd and 23rd
7 **MS HUTTO** That's good
8 **MS KUDELKA** That week's good for me
9 **MR MCCLARY** I'll be able to tell you on the next
10 on our break I'll make a call or two and
11 I'll be able tell you about my calendar I
12 think it's probably going to be okay, though
13 Herb?
14 **MR COOPER** The 9th I know I can't
15 **MR MCCLARY** Okay So the 21st, 22nd and 23rd
16 probably we won't promise anything
17 **MS KUDELKA** Should we
18 **MR MCCLARY** Two of those three days hopefully
19 **MS KUDELKA** Mr Chairman, should we go ahead just
20 to be safe and put aside all three of those
21 days? Hopefully, it's just going to be two,
22 but just go ahead and have a third one set
23 aside for this room
24 **MR MCCLARY** Yes Can we I think this is going
25 to be okay with my calendar as well So

1 but I'll let you know for sure after the break
2 **MS HUTTO** Which days?
3 **MR MCCLARY** 21, 22, 23 Those aren't Saturdays
4 **MR SUMMERS** That would be I see Mr Nickles has
5 his much more sophisticated calendaring device
6 than mine, but good for me
7 **MR NICKLES** I'm okay We would only need to be
8 present for the first day, correct?
9 **MR SUMMERS** That would be my
10 **MR CORNING** The first the first part of the
11 first day while we're going over the
12 instructions and things At that point you can
13
14 **MR NICKLES** Actually, on the 21st I have a I
15 have a hearing on that date It's been
16 scheduled for some months
17 **MR MCCLARY** So we're down to the 22nd and 23rd?
18 **MR NICKLES** 22nd and 23rd I'm okay the 22nd and
19 23rd
20 **MR MCCLARY** Hopefully, that should give us
21 hopefully, that should give us enough time I
22 like Lesia's idea with the thought of having
23 three days, but we only have two available
24 **MS HUTTO** Let's start the 22nd
25 **MS KUDELKA** Yeah, let's maybe we could save the

1 26th date just to be safe

2 **MR MCCLARY** Okay

3 **MS KUDELKA** It's a Monday but

4 **MR MCCLARY** Okay 'I think this morning we're going
5 to hear closing arguments from both sides
6 Please correct me if I'm wrong, but I think Mr
7 Nickles will have the option of going first or
8 last

9 **MR NICKLES** I will defer to Mr Summers, and I will
10 go last

11 **MR SUMMERS** Not unexpected at all

12 **MR MCCLARY** Whenever you're ready, sir

13 **MR SUMMERS** Yes, sir Mr Chairman, Mr Corning,
14 everyone, first and foremost, you'll see a
15 slide presentation that I have on the screen
16 My intent is not to simply repeat what's on the
17 slide but just have it as a guide for you all
18 to review, to see as I'm going through and
19 making my closing presentation As Mr Nickles
20 indicated, he's going to follow me So this is
21 my last opportunity to talk to you all I
22 don't think there is any disagreement between
23 myself, Ms Guffey and Mr Nickles when it
24 comes to our gratitude for the attention with
25 which you all have paid to this matter It is

1 not out of anyone's notice that today is a week
2 from Christmas Many things have been going
3 on We know it's been an imposition on ya'll's
4 schedule, on ya'll's workplace So again, I
5 don't think I'll be speaking out of school when
6 I extend Mr Nickles' thanks, Ms Guffey's
7 thanks, as well as mine and everyone here at my
8 table With that being said, one more little
9 housekeeping matter I'll bring to ya'll's
10 attention I've put yet another notebook for
11 your attention up there this morning And I
12 will be talking about it with some specificity
13 in some instances as I go through my closing
14 presentation What this notebook is intended
15 to be is a, if you will, a companion or
16 excuse me, a comparison to the hearing notebook
17 that Mr Nickles presented back on the first
18 day of testimony So we'll talk about that
19 And there's a chronology that appears on the
20 first four pages That's a chronology that we
21 would respectfully submit is a more
22 comprehensive chronology than the chronology
23 that Mr Nickles offered up that appears at
24 page 1273 of Committee Exhibit Number One, as
25 well as Tab Number 1 of this hearing notebook

1 But again, I'll talk about that in some more
2 detail The title of the first slide that you
3 see is situational awareness By virtue of my
4 military background, sometimes I find myself
5 slipping into military speak Situational
6 awareness is a cumbersome Army term that has
7 been used to simply say what's going on around
8 you, what's been going on around you, what do
9 we have to look forward to As we indicated,
10 Mr Chairman, or as you indicated, this is the
11 seventh day of the proceeding We've had five
12 days of live testimony By my count, 27
13 witnesses, including folks this week, appear
14 before you all We had one witness, as I'm
15 sure you all recall, who appeared by videotaped
16 deposition It's safe to say that you have
17 about 1,500 pages of documents in front of
18 ya'll right now And all of this material
19 represents activity going back not just to 2003
20 but from you heard testimony from John
21 Davis who used to be the director of
22 administration at SCDC before he retired about
23 events that occurred, cost cutting measures
24 that the agency undertook before the reduction
25 in force was implemented in 2003 You've got

1 the Abraham lawsuit That opinion came down in
2 2000 And, of course, we've got the enactment
3 of the particular sections of our Code dealing
4 with the Palmetto Unified School District
5 within the Department of Corrections That's
6 going back to 1981 Safe to say a lot of
7 material covering a lot of time has come before
8 you So my job this morning is, to the extent
9 that I humanly can, try to distill that into
10 matters and into an understanding as we see the
11 evidence to show Obviously, what I say is not
12 evidence I'm an advocate I'm an attorney
13 As Mr Nickles would, I'm sure, acknowledge, as
14 Ms Guffey, I'm sure, would acknowledge, we
15 want to be accurate, but we're not the
16 authorities When it comes to this matter, you
17 all are the authorities What you heard
18 counts So keep that in mind as we move
19 forward through this closing presentation And
20 there's a slide or a bullet point in there
21 about the interactions between attorneys
22 witnesses and attorneys, I'll talk about more
23 on that in a second, and the interaction
24 between attorneys I have a great deal of
25 respect for Mr Nickles I have a great deal

)

1 of respect for Ms Guffey They're
2 professionals This has not been, I think, a
3 contentious matter between the attorneys other
4 than the fact that there's a lot of contention
5 about the manner in which this reduction in
6 force was planned, the way it was implemented,
7 and for that matter, what the motive of this
8 reduction in force was going back to 2003 And
9 Ms Thrailkill, again, as she has done so often
10 throughout this entire proceeding, is now
11 advancing the slide for me with an injured
12 thumb, I might add So I wanted to make that
13 for the record Where was I going to start in
14 the midst of these seven days of proceedings?
15 I thought it'd be appropriate to start with
16 what Mr Nickles how Mr Nickles concluded
17 his opening statement on November 5th He
18 stated that he was going to demonstrate, or the
19 appellants were going to demonstrate that the
20 purpose of the reduction in force was to
21 eliminate highly paid educators, and that the
22 motive for the reduction in force was
23 retaliation against educators for the Abraham
24 lawsuit It's also been called, as you know,
25 the teacher pay lawsuit Then at the

1 conclusion, at the same point of his opening
2 statement back on November 5th, Mr Nickles
3 talked about deviations on a variety of levels
4 Deviations from policy, deviations from what
5 you would expect from a reduction in force He
6 talked about the case ending with the eleven
7 circles, which the correct nomenclature, we
8 respectfully submit, those eleven circles
9 Mr Nickles has used the term bubbles,
10 imaginary areas, what have you They are the
11 competitive areas That's what those
12 geographic areas are They talked Mr
13 Nickles talked further about our failure to
14 consult with the Palmetto Unified School
15 District Board of Trustees before implementing
16 the RIF And he talked about Mr Near, who is
17 the former Human Resources Director for our
18 agency, about his failure to review the
19 applicable laws when formulating the RIF plan
20 That is how Mr Nickles, if you will, from our
21 perspective structured the presentation of his
22 case and on the case behalf on behalf of
23 the appellants Now, ultimately, we put before
24 you this particular slide And we submit that
25 that would state the standards you all must

1 apply And we respectfully submit that that
2 provision of the Code, 8-17-340(e)(2), states
3 that the panel may not alter or overrule the
4 agency's decision to deny an individual
5 appellant's grievance, and I'll talk more about
6 that in just a second, unless an individual
7 appellant establishes that the agency's
8 decision, SCDC's decision, was one or more of
9 the following and prejudiced substantial rights
10 of the individual appellant And you have six
11 factors listed there One thing that we submit
12 very respectfully to you all is that this is
13 not, for lack of a better term, a class
14 grievance This is a this has been a
15 consolidated hearing Twenty appellants
16 represented by Mr Nickles and Ms Guffey
17 consolidated their materials and were brought
18 forward before you all for this particular
19 matter It's not a class grievance It's not
20 an up and down, if you will, for one vote meets
21 means all You have twenty, potentially
22 twenty individual decisions to make Now
23 there's going to be some exceptions to that,
24 and we'll talk more about that as we go
25 through But if you will, think of a pyramid,

1 the shape of a pyramid At the very top you
2 would have Mr Nickles' claim that there was
3 retaliation That the reason why this RIF was
4 implemented and the manner in which it was
5 undertaken was in retaliation for educators
6 filing the teacher pay lawsuit, the Abraham
7 lawsuit Well, very respectfully, it would
8 seem that if Mr Nickles and Ms Guffey have
9 persuaded you, have established that there was
10 retaliation, you don't need to go any further,
11 even if we had crossed every T and dotted every
12 I, which we submit we did in our plan That
13 motive alone may very well would be enough for
14 you to invalidate this reduction in force
15 Now, certainly we do not concede that in any
16 way, shape or form, and we feel that the
17 evidence does not in any way, shape or form
18 establish that But if you think of that
19 pyramid, the retaliation claim would be at the
20 top No need to go down any further However,
21 again, we submit that that retaliation claim
22 was not established So you go down to the
23 next level, and you talk about deviations from
24 the norm That would be in the middle of the
25 pyramid, deviations from the norm or failure to

1 follow statutory law Again, we submit we had
2 no such failure We respectfully submit that
3 what Mr Nickles and Ms Guffey, and how they
4 interpret the statutes, doesn't apply We
5 respectfully submit that there's no authority
6 to interpret the statute in the manner that Mr
7 Nickles would advocate, in the manner that Ms
8 Guffey would advocate That, we would submit,
9 would be the middle of this pyramid And at
10 the bottom of the pyramid, the widest part, the
11 base, we've got twenty individual claims So,
12 ultimately, we submit, that if you get down to
13 that bottom twenty, the very base of that
14 pyramid, you have to make individual decisions
15 And we'll talk more about that as we go
16 through And again, at the top again, I
17 have a great deal of respect for Mr Nickles,
18 but just because he says something is so
19 doesn't make it so And I'm sure he would tell
20 you the same thing about me He's not an
21 authority He's not the authority Again, he
22 and Ms Guffey are advocates for the appellants
23 just as I'm an advocate for the agency So
24 keep those distinctions in mind During his
25 opening statement, Mr Nickles used the phrase

1 turtles on fence posts He used it quite
2 frequently, talked about anomalies along the
3 way Well ultimately, we submit that there are
4 turtles on fence posts in abundance in their
5 case, and we'll talk more about that in just a
6 few moments We have the distinction between
7 allegations and evidence Allegations are,
8 well, what are we accused to have done, what do
9 the appellants collectively and individually
10 say happened to them? First is what does the
11 evidence show, what does the testimony show,
12 what do the documents show Those distinctions
13 are critical You will hear some discussion,
14 if not further today, then when you all
15 reconvene about the types of evidence There's
16 direct evidence, circumstantial evidence
17 Direct evidence, you can see it, you can hear
18 it, touch, smell it Circumstantial, you'll
19 see a point up there about a wet sidewalk in
20 the morning, and it may be a bit cliché, but
21 circumstantial evidence would be this If you
22 go to bed at night and you look outside and
23 your driveway is dry, the road's dry, your
24 vehicle's dry, everything outside is dry and
25 you fall asleep and you wake up the next

1 morning and everything is wet, everything One
2 could safely infer from the moisture you find
3 outside in the morning that it rained
4 overnight You didn't see it rain You slept
5 through it You didn't hear it You didn't
6 sense it But when you woke up in the morning,
7 you could infer that it rained overnight That
8 would be an example or a way to portray
9 circumstantial evidence Now you see the
10 phrase name dropping in here Obviously, the
11 twenty folks who are appellants in this matter
12 came forward and they testified And on
13 various instances they talked about, well this
14 person filled this job, this person filled that
15 job We term that name dropping The names
16 who were mentioned are frequently, if not
17 constantly, throughout the documents that are
18 before you And we'll talk about some of those
19 folks as we go through I also want to talk
20 about leading questions versus open ended
21 questions The manner in which, for example,
22 Mr Nickles would ask the appellants when he
23 was conducting their direct examination, were
24 you employed by the Palmetto Unified School
25 District Now, a leading question in our

1 opinion or our assessment would be itself that
2 type of leading question or that very question
3 It would be a turtle on a fence post It begs
4 the answer, were you employed by the Palmetto
5 Unified School District If you compare that
6 to how Ms Guffey on occasion would ask
7 questions of the appellants, by whom were you
8 employed, why feed the answer to them? Why not
9 just ask them who employed you? And invariably

10 I won't say invariably There were a few
11 exceptions But when asked by whom were you
12 employed, more than a few of the appellants
13 admitted we were employed by the Department of

14 I was employed by the Department of
15 Corrections Now, ultimately, we consider that
16 to be a key distinction and an important fact
17 in this case Who employed these appellants?
18 And we'll get into that as we go forward And
19 again, I'll remind you the appellants, we
20 submit very respectfully, well they bear the
21 burden of proof in this matter That's not to
22 mean that we're supposed to be or we're going
23 to be inaccurate We're not hiding anything
24 We're not dodging from anything But keep in
25 mind who must establish and what they must

1 establish It's the appellants They made the
2 claims about retaliation They made the claims
3 about failure to follow statutes and deviations
4 from the norm or what you would expect in a
5 RIF They bear the burden of proof in this
6 matter And again, a little bit more points
7 for consideration or situational awareness
8 This week we got submitted to you about 258,
9 260 additional pages that you all wanted to
10 see Additional witnesses came in And we
11 bring that to your attention simply to say this
12 is a complicated matter Both sides are
13 entitled to a full hearing Both sides are
14 entitled to use what defenses they see fit to
15 use During his opening statement, Mr Nickles
16 talked about the agency being dragged kicking
17 and screaming at some points, court orders
18 having to be issued This process has taken a
19 long time When we began on November 5th, we
20 had scheduled hearing dates for the 5th, 6th,
21 7th and then the 10th Well, we've gone to
22 November 17th We went to December 15th, and
23 we're here today on December 18th These
24 things take time We've not tried to hide
25 anything throughout the entirety of this

1 process We may not have been as responsive as
2 Mr Nickles would have liked We may not have
3 been responsive as you all would have liked us
4 to be on certain matters, but we have complied
5 to the very best of our ability And the
6 agency complied with the statutes and
7 regulations that applied back in 2003 So I
8 want to bring those points to your attention
9 And finally, on more points for consideration,
10 simply don't check your common sense at the
11 door There's a term up there, agenda driven
12 logic Ultimately, when you assess the
13 credibility of witnesses, when you assessed
14 or when you come to assess testimony from not
15 just the appellants but from the folks you
16 called this week, from the folks we brought to
17 the stand, who, if anyone, has an agenda, who,
18 if anyone, is so passionate about their
19 position that perhaps they check their common
20 sense at the door And you'll see a bullet up
21 there about lightning versus a lightning bug
22 I'm going to use that came from Mark Twain
23 He said the difference between the right word
24 and the wrong word is the difference between
25 lightning and a lightning bug Huge

1 difference Precision is important in this
2 matter Inartful use of words, you will hear
3 testimony or you heard testimony, and there
4 are documents in the record about a retirement
5 opportunity versus a retirement incentive
6 Those terms have significance The differences
7 are significant It's not simply an inartful
8 misuse of a word Those terms have
9 significance Now, if you look at the
10 chronology that Mr Nickles provided that
11 appears on page 1273, and it's in tab at
12 the very first tab of this notebook, he
13 provided a chronology And I'm not going to go
14 through and belabor every point, but
15 ultimately, when you look at Mr Nickles'
16 chronology and you look at the chronology
17 provided for you in the first four pages of the
18 materials I submitted today, well Mr Nickles
19 missed a few things He didn't have the events
20 that occurred or the documents from March 14th
21 of 2003 That was the letter that Mr Near
22 sent to OHR He didn't have a memorandum from
23 to Director Ozmint from Mr Blanton, the
24 Superintendent of the Palmetto Unified School
25 District, that was dated March the 18th of

1 2003 I've included that at Tab 4 in the
2 materials that I've submitted to you this
3 morning on behalf of the agency Now, he does
4 have an entry on page 1270 1273 of the
5 record of the RIF plan being approved Before
6 I move off of this notebook to some degree,
7 what I've done with respect is at page or
8 Tab 5 of the notebook is assembled the entire
9 reduction in force plan When you go through
10 Committee Exhibit Number One, and you go
11 through the hearing notebook that Mr Nickles
12 submitted, at no point had anyone put before
13 you all the entirety of the RIF plan with all
14 the documents that were there So, very
15 respectfully, we we submit that the
16 entirety of the RIF plan for the very time
17 anywhere appears at Tab 5 of the notebook I've
18 submitted to you this morning And as the
19 table of contents reflects in the very first
20 page, it was the letter the RIF plan was
21 announced in the letter from Director Ozmint to
22 Mr Wilkins at OHR, and there were four
23 enclosures All four enclosures appear along
24 with the letter that Director Ozmint sent to
25 Mr Wilkins That is the RIF plan That is

critically important When you take a look at the entirety of the RIF plan with the enclosures, tumblers may very well begin to click, and certain events will become more refined in their focus for your consideration So that's why, if nothing else, we submit that this notebook is important And again, the chronology that Mr Nickles provided isn't inaccurate necessarily, but it does complete or present the full picture And we submit that you all obviously need to look at the full picture So if you go back to slide number 8, you've got the theory of the appellants' collective cases advanced by testimony of the twenty appellants and by the gentleman who testified via videotape That was Charlie Williams Now, let's talk for a moment You see those bullet points By whom were these folks employed? Was it the Palmetto Unified School District? Was it Department of Corrections? Keep in mind there's a statute It's in your materials, and I'll talk about it in just a moment, 24-25-90 We submit very respectfully that that statute establishes the reality that the twenty appellants, and for

1 that matter, Mr Williams, were employed by the
2 Department of Corrections There was no
3 separate structure, if you will, no separate
4 entity that employed these folks Was there
5 any testimony from a Palmetto Unified School
6 District payroll supervisor? How about anybody
7 from the human resources department for the
8 Palmetto Unified School District? They don't
9 exist Ms Thraillkill remains with the agency
10 She's the Deputy Director of the Division of
11 Human Resources for SCDC SCDC's HR Division
12 was the entity that was responsible for
13 processing and maintaining the employment
14 records for these folks The long and the
15 short of it is, as the reality reflected by
16 the folks in the right hand column, SCDC
17 employed these folks, bottom line They were
18 SCDC employees Did we have any testimony from
19 Department of Education representatives
20 regarding the unified nature of the district on
21 the statewide scope? How about folks from OHR
22 about normal RIF practices and procedures?
23 Yes, there was testimony about temporary
24 employees, and we'll get to that more in
25 more detail But Mr Nickles said there were

1 deviations from what you would normally expect
2 in a RIF Well, deviations from what? How do
3 you establish a norm? We would submit to you
4 that that's not been established We would
5 submit to you further that the plan that
6 appears in its entirety at Tab 5 of the
7 notebook I submitted this morning represents a
8 legitimate and valid reduction in force plan
9 without any retaliatory motive Now again, I
10 talked a moment ago about the provisions of 24-
11 25-90 Now, as an aside, I'm pretty confident
12 Mr Nickles will talk about the provision of
13 the Code entitled it's numbered 59-25-20,
14 and it reads that no and it's not on the
15 slide But this, I'll call it competing or
16 other statute, states that no board of trustees
17 shall employ any teacher who has not had a
18 certificate to teach in the free public schools
19 of this state Well again, the Palmetto
20 Unified School District was not and is not like
21 a traditional school district you would find,
22 say, for Lexington County or Berkeley County
23 It is within the Department of Corrections
24 The superintendent, as indicated by the slide
25 in the statute, and all other educational

1 personnel, all other educational personnel
2 shall be employed, supervised and terminated
3 according to the South Carolina Department of
4 Corrections personnel policies and procedures
5 That's what happened here When Mr Nickles
6 talks about, well, there was no involvement
7 from the board of trustees First and
8 foremost, on Tab 4 of the notebook I submitted
9 this morning you see the superintendent of the
10 board sending communication to Mr Ozmint about
11 the reduction in force So there's involvement
12 by the superintendent, but there's no statute,
13 no regulation that says the board of trustees
14 makes the decision about educational personnel
15 in the Palmetto Unified School District They
16 are SCDC employees first, last and always In
17 this next slide is text or language taken from
18 the Abraham decision Again, according to the
19 theory brought forth to you all by Mr Nickles
20 and Ms Guffey, the true motive behind this
21 reduction in force was to retaliate against
22 educators because they filed this lawsuit And
23 as a consequence of the lawsuit, teacher pay
24 was increased Well, what does this lawsuit,
25 by the way, say about the Palmetto Unified

1 School District? I'm not going to belabor this
2 point by reading the entirety of what's on the
3 slide, but look at the last sentence that's in
4 bold type Legislature further required that
5 teachers hired to work in PUSD Number 1 be
6 employed, supervised and terminated according
7 to the policies and procedures of SCDC So
8 we're not the first ones making this point If
9 you go further within the opinion and
10 again, as Mr Nickles and Ms Guffey would
11 agree, it's properly in the record at this
12 point The court said employees are all
13 current or former educators working as teachers
14 in the South Carolina correctional system The
15 Court of Appeals further observed the District,
16 as part of the Department of Corrections,
17 clearly has no tax base from which to generate
18 revenue Ultimately, we bring that point to
19 bear to show it's not a traditional school
20 district It's not like other school
21 districts During a few questions that Mr
22 Nickles asked some of the appellants, and for
23 that matter, some of the agency current and
24 former employees, you heard him say well it's
25 just like another school district No, it's

1 not The superintendent doesn't make decisions
2 about hiring and firing if there's a reduction
3 in force, as we saw here The director, the
4 agency head makes the decisions about what
5 positions will be eliminated, so, ultimately,
6 the statutory provisions of 24-25-90 And
7 that's not to say we're ignoring the other
8 parts of the of that section, 24-25-10, 20,
9 30, et cetera But when it comes to the point
10 as to what entity employed the appellants, SCDC
11 did You've heard testimony from, among
12 various people, Gerri Miro, from John Davis,
13 from Director Ozmint, from Ms Thrailkill, from
14 Mr Near that the Palmetto Unified School
15 District is also SCDC's Division of Education
16 Now, when we met last in November on November
17 17th, we submitted to you, pursuant to your
18 request, the EPMSS of all twenty of the
19 appellants When you have the opportunity to
20 look at them during your deliberations, see if
21 they have anything in there where these folks
22 were employed by Palmetto Unified School
23 District Is there any nomenclature on these
24 documents reflecting that these evaluations
25 were done on the Palmetto Unified School

1 District letterhead It all says Department of
2 Corrections I have a bullet up there about a
3 reality check Who is Felicia Poston? You
4 look through some of these materials, and
5 you'll see a reference to Felicia Poston and
6 ultimately if I can find the correct tab,
7 and I will in just a moment Ms Poston's name
8 came up during a couple of folks' testimony,
9 specifically Ms Near I'm sorry, Ms Miro's
10 And Ms Miro talked about Ms Poston working
11 for her She was an SCDC employee She was in
12 the budget division, but she would help and
13 assist folks in the Division of Education And
14 towards that end I think I had it at the
15 wrong tab If you look at Tab 14 in the
16 materials I submitted this morning, page 1103
17 in the record, it's a memorandum to Wendell
18 Blanton from Felicia Poston and the subject is
19 education funds And also on there you see a
20 note to Ms Miro from Mr Blanton We submit
21 that this document, as well as others, reflects
22 the reality that the Palmetto Unified School
23 District was and is SCDC's Division of
24 Education, and that when it came to payroll,
25 when it came to human resources transactions,

1 SCDC was and is conducting those transactions
2 We would submit very respectfully that that
3 reflects the reality that these folks again
4 were SCDC employees And, therefore, the
5 manner in which the RIF was structured was
6 legitimate and proper Again, I'm not talking
7 about the motive That's another discussion in
8 a few moments I'll undertake, but the manner in
9 which the RIF was undertaken was proper And
10 we have again a slide here about Mr Near and
11 Ms Thraillkill Going over the points I made
12 a moment ago, no separate human resource
13 divisions for the entity called the Palmetto
14 Unified School District, no separate payroll
15 division for that entity Everything that
16 needed to be done when it came to human
17 relations, when it came to human resources,
18 when it came to those transactions went through
19 Ms Thraillkill's office, and it still does
20 And I had mentioned Ms Miro's name a moment
21 ago We very respectfully submit that she was
22 a critical witness in this case She has
23 supervised the Division of Education, also
24 known as the Palmetto Unified School District,
25 since early April 2003, since the

1 reorganization that was undertaken at the same
2 time as the reduction in force She succeeded
3 Judy Anderson when she was reassigned And Ms
4 Miro said that she was not demoted Don't
5 forget when you go through your deliberations
6 the observations that Ms Miro lent to the
7 realities of the statute 24-25-70 Also keep
8 in mind Ms Miro's tenure as a warden at
9 Allendale for seven years where she was a
10 direct supervisor of educators and the
11 principal And she used the term one family,
12 we're all one family SCDC is the family And
13 she also testified that during her tenure as
14 warden at Allendale, she had terminated an
15 educator Again, going to the point that these
16 folks, the twenty appellants, as well as other
17 personnel in the Palmetto Unified School
18 District were SCDC employees Another reality
19 check presented by Mr Near Again, he was the
20 Director of the Human Resources Division for
21 SCDC He talked about the early discussions
22 concerning the reduction in force with Director
23 Ozmint And he talked about his efforts that
24 he undertook to revise the existing policy that
25 SCDC had on its books He talked about the

1 coordination with officials at OHR And again,
2 if you go to Tab 5 in the notebook I submitted
3 this morning, the spreadsheet that appears
4 which identifies the position and provides
5 names of those who are identified whose
6 positions were identified in the reduction in
7 force Recall what Mr Near testified to
8 There was close coordination with officials
9 from OHR, and that the format of this
10 particular document and the manner in which
11 these folks were accounted for came from
12 discussions, if not suggestions, from folks at
13 OHR Mr Near, we submit, testified that he
14 would not perhaps have done it this way but for
15 the interaction he undertook with the officials
16 at OHR So when it comes to the validity of
17 the RIF, when it comes to the way the RIF was
18 formatted, when it comes to that matter to the
19 implementation and designation of the
20 competitive areas, they're legitimate We
21 respectfully submit to you that the evidence
22 shows that those designations, those geographic
23 areas were legitimate Again, they're not
24 circles They're not bubbles They're
25 competitive areas Mr Near talked about the

1 thought process in designating those
2 competitive areas Why not statewide bumping?
3 Well to Mr Near, a human resources
4 professional, someone who spent his entire
5 career in that field, didn't make any sense
6 He talked about the concept of the 30 mile
7 rule, not wanting to move people involuntarily
8 further than 30 miles Mr Near was charged
9 with taking the Director's intent and
10 eliminating or identifying the positions for
11 elimination under the core mission of SCDC as
12 Director Ozmint talked about, as John Davis
13 talked about And security being primary in
14 that assessment And he structured the RIF
15 with that intent and in coordination with
16 officials from the Office of Human Resources
17 His testimony of that was clear So we again
18 submit that the evidence is clear that the
19 reduction in force was its concept, its
20 structure, its architecture, and that its
21 implementation was valid and legitimate Now
22 let's talk about the twenty appellants before
23 you They're all named up there Again, this
24 is not a class grievance, we respectfully
25 submit to you It's a consolidated grievance

1 So if you think about that pyramid I was
2 speaking of a moment ago, we're now getting
3 towards the base We've talked or I've talked
4 with you about kind of the middle of the
5 pyramid, whether or not we followed statutes,
6 whether or not regulations were followed when
7 it came to the structure and architecture of
8 the RIF We'll talk more in a moment about
9 retaliation, about the top of the pyramid, but
10 right now we're at the bottom That bottom one
11 would be these twenty appellants And again,
12 they're all named there We'll go to another
13 reality check before we get into some of the
14 details associated with these twenty
15 appellants Again, we've heard talk about
16 statewide bumping rights With all due
17 respect, there's not a statute that that
18 compels statewide bumping rights How would
19 that be managed? It's not mandated or
20 contemplated And I used the term Mr Nickles'
21 twisted interpretation, a bit flowery, perhaps
22 No disrespect at all to Mr Nickles But
23 ultimately, when you talk about the statewide
24 unified nature of the Palmetto Unified School
25 District, it applies to the statewide entity

known as the Department of Corrections We
very respectfully submit that there was no
evidence or proof that statewide bumping rights
existed or should have existed And,
ultimately, if you take the position advocating
by Mr Nickles and Ms Guffey to the next
logical step, are they advocating that the RIF
should have been done in two different ways?
One set of rules for the educators, including
the twenty appellants, and then another set of
rules for the folks who weren't educators How
do you manage that? How does that happen?
Especially when we submit very respectfully it
was not required by any statute How do you
have two sets of rules for people who are all
SCDC employees? That is why the RIF was
structured the way it was structured And
competitive areas were afforded and bumping
rights were afforded to everyone in the RIF,
not just the educators, but the other SCDC
employees, other SCDC employees So when
you're thinking of the twenty appellants, one
way to think of it would be 13, 6 and 1, and
it's not the record of an NFL football team
this season It's 13, 6 and 1 I went to West

1 Virginia University, but even I know 13, 6 and
2 1 add up to 20 Thirteen of the appellants who
3 are identified all of whom were identified
4 in the reduction in force, these thirteen folks
5 did not elect to bump into an available
6 position within their properly designated
7 competitive area, and ultimately, their
8 employment with SCDC ended on June 1st of 2003,
9 those thirteen on the left hand side If you
10 go to the right hand column, you've got six who
11 bumped Ms Bratton, Ms Fritts, you've got
12 Ms Glenn, Ms Martin, Ms McCabe and Ms
13 McClanahan, they bumped There was no break in
14 their service They didn't leave and they were
15 not brought back The documents that we
16 submitted to you on Monday, the additional
17 pages that Ms Thrailkill provided on the
18 salary history and the review history, there
19 was no break for these six folks So to the
20 extent that you find yourselves possibly
21 talking about well who was brought back, we
22 submit to you one was brought back One was
23 rehired, and he's here today That's Mr Bell
24 So when you think of these twenty folks as far
25 as this reduction in force goes, think of 13,

1 6 and 1 And we'll talk about the six and one
2 here in just a moment Again, they are the
3 six, they bumped They bumped in accordance
4 with the plan into vacant positions available
5 within their competitive area Let's not
6 forget, very respectfully, one important point,
7 recall rights extended within the competitive
8 area And Ms McCabe fits that profile, if you
9 will, and we'll talk about her in just a
10 moment So when you're if you had the
11 chance to get recalled, which you did, it was
12 not going to be statewide Why? There's no
13 statewide bumping rights Nothing authorizes
14 it So, ultimately, think about that when we
15 get to Ms McCabe And again, the next slide,
16 I want to make the point that none were
17 rehired We're not talking about Mr Bell
18 And they all elected to bump into those vacant
19 positions or into a vacant position in their
20 competitive area Next slide talking about Ms
21 Bratton She bumped from a certified teacher
22 position at Perry into a certified teacher
23 position at Tyger River Think for a moment,
24 if you will, where is the retaliation for her
25 in her instance? How does the retaliatory

1 motive advocated by Mr Nickles and Ms Guffey
2 how does that filter down to Ms Bratton?
3 She bumped into an available certified teaching
4 position in her competitive area Now that
5 move affected another appellant, Ms Farr, who
6 elected not to bump, but it was within the
7 architecture, the valid architecture of the RIF
8 plan Now, ultimately, Ms Bratton remained
9 with the agency until June of this year
10 Again, not rehired, not brought back Where's
11 the legitimate evidence of retaliation or an
12 unlawful RIF procedure? When it comes to Ms
13 Bratton's instance, we respectfully submit that
14 there's no such evidence, that there was
15 nothing established in her particular instance
16 about retaliation And, ultimately, she did
17 bump into a certified teacher position Let's
18 talk about Ms Fritts next She's the second
19 of the six She elected to bump into what was
20 available to her in her geographic area which
21 was a correctional officer position Again,
22 that move was effective, as we know, June 1st
23 of 2003 She left SCDC in August of 2003
24 Where's the evidence of retaliation when it
25 comes to her or unlawful RIF procedure? We

1 will acknowledge that according to the theory
2 advocated by Mr Nickles and Ms Guffey, she
3 would have gone statewide She would have had
4 statewide bumping rights under their theory
5 However, that's a theory It's not a theory,
6 we respectfully submit, that's supported by any
7 statute or any regulation The unified nature,
8 the purported unified nature of a Palmetto
9 Unified School District, we submit, did not
10 mean does not mean that they weren't SCDC
11 employees The statute says they were And
12 when Mr Near and Director Ozmint and the other
13 responsible officials came up with this plan,
14 they moved accordingly But again, where is
15 the retaliation? Now, let's talk about Ms
16 Glenn She's the third of the six who bumped
17 And again, she elected to bump from her
18 position as a librarian to a correctional
19 officer position In the materials we
20 submitted Monday, we produced for you the EPMS
21 for her during the first six months after the
22 effective date of the RIF And there's a
23 comment in there about the excellent transition
24 she had made from librarian to correctional
25 officer And Ms Glenn signed that EPMS, as

1 the document showed, on October 31st of 2003
2 Now, she had she testified about doing the
3 same job before the RIF and then after the RIF
4 She had the memo that she produced Well
5 there's going to be, we would respectfully
6 submit, some inconsistency in her testimony
7 between that and what the EPMS shows She
8 signed the EPMS She had a chance to review
9 it, and it states what? She was doing a job as
10 a correctional officer Yes, she had duties in
11 the library But when Ms Pope came and talked
12 on Monday, in response to a question from a
13 panel member, she talked about, well, in a RIF,
14 the employees who are still there may have to
15 assume different duties that were already
16 there A reduction in force is just that
17 You're reducing your work force The folks who
18 are left behind have to perhaps assume more
19 duties That is the nature of the business,
20 the nature of the reality And, ultimately,
21 the EPMS we produced for the six months for Ms
22 Glenn's tenure after the RIF shows, we
23 respectfully submit, that she was acting as a
24 correctional officer The evidence also shows
25 that Ms Glenn was promoted back to a teacher

1 position in March of 2005 The term promoted
2 has significance She wasn't rehired back
3 She was promoted She was serving as a
4 correctional officer She applied for that
5 position She was hired, therefore, promoted
6 from that correctional officer position to a
7 certified teacher position And then there was
8 another position for which she applied in 2006
9 And the documents we showed you on Monday runs
10 through the chronology and the events
11 associated with that particular transaction
12 Geraldine Abraham and Jackie Benning are two of
13 the three folks whose name come to mind as to
14 who reviewed Ms Glenn for that position And,
15 ultimately, we bring this to your attention,
16 the provisions of 8-17-320(17), that the
17 failure to be selected for a promotion is not
18 an adverse employment action that can be
19 considered as a grievance or appeal That
20 doesn't mean in any way, shape or form that Ms
21 Glenn or any of the other appellants don't
22 genuinely feel the way they feel This is not
23 meant to de-legitimize their passion This is
24 not meant to de-legitimize the genuine impact
25 that these events and this RIF decision had on

1 Ms Glenn and the other 19 folks here You saw
2 Mr Near get emotional about it Mr Near took
3 it upon himself, to the extent that he could,
4 to talk to everyone affected in this reduction
5 in force This was not a heartless, calculated
6 decision borne of retaliation It was an event
7 undertaken because of the budget realities as
8 assessed by the Director when he assumed office
9 in early 2003 No one took any pleasure from
10 doing this And I think Mr Near's testimony
11 bears that out with great validity And again,
12 when it comes back to Ms Glenn, she's still
13 with SCDC She's still employed by SCDC So
14 again, where's the evidence of retaliation?
15 Where is the unlawful RIF procedure? We very
16 respectfully submit that it's not been
17 established Next we'll talk about Geneva
18 Martin She's the fourth of the six people who
19 bumped Like Ms Fritts, she bumped into an
20 available correctional officer position She
21 left SCDC some six months later I think we
22 can all recall her testimony She was very
23 animated and very legitimate and genuine in her
24 recollections about what she was doing, but she
25 bumped into a position that was available to

her in her geographic area She still was employed with SCDC after the RIF And again, where is the evidence of retaliation or the unlawful RIF procedure? Again, the RIF architecture does not comport with what Mr Nickles and Ms Guffey advocate to you Does that mean it flies in the face of the law or regulations? We submit that it does not I mentioned Mary McCabe's name a few moments ago Again, she elected to bump into a vacant correctional officer position in her geographic area, her competitive area But she was recalled almost one month to the day after the effective date of the RIF, recalled Again, a precise term of art She had recall rights Those recall rights were extended to her She came back and she's been employed with us ever since And again, she testified about having to do more with less Again, this is a reduction in force we're talking about You're shrinking the workforce because of budgetary concerns, legitimate budgetary concerns Folks, unfortunately, have to do more with less Last, we'll talk about the sixth of the six people who bumped, Ms McClanahan Again,

1 she elected to bump into a correctional officer
2 position She moved to the headquarters in a
3 correctional officer position in 2004 And we
4 provided information, or I guess EPMSs for her,
5 in the materials from Monday as well She left
6 SCDC in 2005 for a job at DJJ When it comes
7 to Ms McClanahan, like the other five I've
8 talked about, and for that matter, everyone
9 else who's an appellant, where is the evidence
10 of retaliation? Where is the unlawful or
11 illegitimate RIF procedure being applied to
12 her? Finally, we'll talk about Mr Bell He's
13 the one in the 13-6-1 formula I put to you He
14 was rehired, if you will, a straight rehire as
15 that term is used and understood Not a
16 recall, not a promotion, he was rehired, and
17 that was in early 2006, well after the recall
18 period ended Again, where is the evidence of
19 retaliation? Where is the unlawful procedure?
20 Now we'll talk more about retaliation in a
21 minute Now we're going to talk very with
22 some precision about the purported hiring or
23 use of temporary employees, obviously, an issue
24 of some significance There was testimony
25 provided by Ms Pope on Monday concerning the

1 frequently asked question And it's up the
2 question and answer are up on the screen
3 Ultimately, we first submit to you that there's
4 no evidence that we hired temporary employees
5 to fill positions of educators, of these twenty
6 appellants, when they had been eliminated or
7 identified for elimination We submit the
8 evidence is not there There's the spreadsheet
9 that appears at page 780 through 785 of the
10 of the materials, and it's also at Tab 9 of Mr
11 Nickles' pre-hearing notebook And we will
12 talk more about that spreadsheet in just a
13 moment But again, recall what Ms Pope talked
14 about, about folks who are not affected by the
15 RIF having to perhaps cover down and assume
16 some of the duties and some of the functions of
17 the positions that had been eliminated pursuant
18 to a reduction in force We submit when you
19 have that type of architecture, when you're
20 reducing the force, that's going to happen
21 Now, let's talk about this spreadsheet that
22 appears at page 780 through 785 First and
23 foremost, there was a stipulation that was
24 entered during Mr Near's testimony about what
25 exactly this spreadsheet shows Now on Monday

1 we, if you will, modified that stipulation We
2 provided the full context of that stipulation
3 And the correspondence that came in, I believe
4 it's Appellant's Exhibit Number One, has the
5 has the nomenclature or has the request
6 that Mr Nickles and Ms Guffey submitted
7 versus the way Mr Near restated it We submit
8 to you there's a pretty important difference
9 between the two First and foremost, when Mr
10 Nickles was going through and asking Mr Near,
11 okay, well the hire date, isn't that what's
12 shown in the far left hand column And Mr
13 Near said no, and Ms Thrailkill said, for that
14 matter, no That's not what it is It's the
15 effective date The reason why that
16 spreadsheet appears in the format that it does
17 is because of the way the attorneys worked
18 through that discovery request The
19 correspondence reflects that Mr Near took
20 what Mr Nickles and Ms Guffey submitted as a
21 request and he restated it He refined it into
22 the format that you see there in the narrative,
23 and again it's in Appellant's Exhibit Number
24 One And, ultimately, that is what you see
25 reflected on the spreadsheet that appears from

1 pages 780 through 785 A complete list of all
2 employees hired, reclassified, promoted,
3 demoted or transferred June 1, 2003, and after
4 who were assigned responsibilities that were
5 performed by certified educators as of June 1,
6 2003, sorted the way it was sorted Now,
7 ultimately, you can look through this
8 spreadsheet and see that intent and see how the
9 product matches up with what Mr Near restated
10 For example, you see Mr Blanton's name on the
11 spreadsheet, page 780, very first page Mr
12 Blanton's name appears three times There's an
13 effective date for Mr Blanton of, going from
14 bottom to top, 12/1/03, 12/6/04, 12/5/05 And
15 the job classification in the column next to
16 Mr Blanton's name is 9999 as temporary
17 employee Now, the evidence has never shown
18 that we hired Mr Blanton during the effective
19 date of the RIF He was already the
20 superintendent of SCDC So when Mr Nickles
21 says that it shows hire dates for temporary
22 employees who were used to fill positions
23 identified for elimination in the RIF, that's
24 Mr Nickles' interpretation of this material
25 He's entitled to it, and he'll certainly talk

1 about it But we submit look at the
2 spreadsheet in the manner it was drafted and
3 the information it truly reflects Mr
4 Blanton, again, was already employed as the
5 superintendent Did he take advantage of the
6 retirement opportunity? Ms Thrailkill has
7 been on that retirement opportunity So think
8 about that when you look at this spreadsheet
9 Given the fact that I've been going for around
10 an hour, I'm not going to go through on each
11 instance in this spreadsheet, but Mr Blanton
12 certainly jumped out on the very first page
13 So keep that in mind when you go through and
14 you assess whether or not there's really any
15 evidence specifically provided by this
16 spreadsheet that we hired temporary employees
17 to fill positions that had been identified for
18 elimination And again, we didn't do that
19 Now, we're going to go back to the top of the
20 pyramid at this point We're going to talk
21 about retaliation because, again, at the top of
22 that pyramid that I've discussed, if you get to
23 the retaliation point and you determine that
24 there was a retaliatory motive, everything
25 below that pyramid doesn't really need to come

1 into play So, according to the theory
2 advocated by Mr Nickles and Ms Guffey, the
3 reduction in force was motivated by retaliation
4 for the Abraham lawsuit Now we submitted in
5 the guise of Committee Exhibit Number Four two
6 spreadsheets providing an analysis of what
7 happened to those folks who were litigants in
8 that case There are 125 total The first
9 spreadsheet we submitted to you had them simply
10 listed in alphabetical order That way you can
11 take the names on that first spreadsheet and
12 just look at the opinion, and you can account
13 for them The second spreadsheet has them
14 broken down by a column entitled termination
15 date That's not termination in the context of
16 being removed for cause or anything like that
17 That is when their employment with the agency
18 ended So if you look at that sheet and you go
19 by the termination dates, those who are still
20 left of that 125 who were subject to the RIF
21 totaled only 69 And of that 69, if you go
22 further through that column entitled
23 termination or effective termination date, I
24 believe, you'll see that 18 of those 69 were
25 still with SCDC this year and are still with us

1 or are still with us now So is there was
2 going to be retaliation, wouldn't those folks
3 have been at the top of the list? But at the
4 same time, Mr Nickles and Ms Guffey say well
5 it wasn't these educators in particular It
6 was educators overall Okay Still, why are
7 these folks who are still there at SCDC who
8 only left this year? For example, Ms Bratton
9 How where is the evidence of retaliation
10 when it comes down to them? Keep that in mind
11 for your deliberations because we submit to you
12 that there's no legitimate evidence, no
13 sufficient evidence to establish a retaliatory
14 motive in this instance Now we get to
15 statements purportedly made by Director Ozmint
16 as heard and witnessed by both Mr Randolph and
17 Mr Williams And if you recall, Mr Randolph
18 was the very first witness, the very first
19 appellant to testify back on November 5th
20 Again, Mr Williams is the gentleman who
21 appeared by videotaped testimony And then of
22 course Director Ozmint testified So I put, to
23 the extent that I could, summaries of their
24 testimony and of their recollections here for
25 your review And again, use your own

1 recollections I'm not a source of evidence
2 I'm an advocate I'm bringing this information
3 to your attention Mr Randolph testified at
4 the hearing that Director Ozmint said to him in
5 an exchange that Mr Randolph brought up and
6 initiated about, the reduction in force that Mr
7 Ozmint said we sued, meaning teachers, and got
8 a pay raise Officers did not get a pay raise
9 That was not right Now look at what Mr
10 Williams recalled He recalls Director Ozmint
11 saying maybe if ya'll hadn't sued, you still
12 might have your jobs, putting a very sharp
13 point on it Then you have Mr Randolph
14 talking about the notes he brought to the
15 hearing And Ozmint saying Director Ozmint
16 saying he wouldn't have sued because it was
17 wrong Go further down with Mr Randolph He
18 submitted an affidavit back in November I'm
19 sorry, September of '06 And in that affidavit
20 it's in the record According to that
21 affidavit, Director Ozmint stated with a budget
22 of \$300 million he could afford education, but
23 with a budget of \$250 million he could not
24 Well does that match up with what Mr Randolph
25 testified to in front of ya'll last month? It

1 doesn't match up exactly at all, does it?
2 Further, go with what Mr Williams recalls
3 Talked about the first bullet point Mr
4 Williams also recalled that Director Ozmint
5 indicated that if it hadn't been for the
6 lawsuit, we might not well, you know, there
7 wouldn't be no cut in the education Do they
8 have they testified consistently about what
9 they heard Director Ozmint say on this
10 occasion? Also recall that Mr Williams talked
11 about how Mr Randolph, at the time this
12 conversation occurred, got heated up, that Mr
13 Randolph took it personally And Mr Williams,
14 I think credibly said, well, he was being
15 affected by the RIF Is there an agenda there?
16 Is there too much to ask for there to be
17 consistency between their recollections? We're
18 not talking lock, step, precise consistency,
19 but there are significant, we present to you,
20 differences between what they recall Look at
21 Director Ozmint What does he recall? First
22 of all, he doesn't recall have a specific
23 recollection about that conversation He
24 doesn't recall mentioning the lawsuit He
25 didn't certainly from his recollection link the

lawsuit to the reduction in force He would have been polite, but he stated he would have told them then, as he testified before you all, about the true rationale for the reduction in force, cutting money from the budget He also testified about identifying critical areas in the course of implementing the reduction in force and how the Division of Education was not, in his view as the agency head, the a critical area Further, recall what he testified and recall the evidence presented to you This reduction in force did not eradicate the Division of Education It's still in operation So keep that in mind as well We go to the next line again with Mr Randolph going back to this conversation He was the first appellant to testify Let's talk about the notes Mr Randolph said, well, the notes I have here today, I didn't write them down that day It was sometime within a week of the event What did Mr Williams recall about those notes? Mr Williams testified that he saw Mr Randolph have a notebook and take it out and write down notes on the spot Mr Randolph, the person who wrote the notes down,

1 doesn't remember it that way Now, there are
2 going to be inconsistencies here that we submit
3 to you negate the legitimacy of this evidence
4 Therefore, we would submit to you that if
5 you're going to you simply can't rely on
6 the testimony of Mr Randolph, and for that
7 matter, Mr Williams, that it credibly
8 establishes a retaliatory motive behind this
9 RIF Let's talk more about retaliation Paula
10 Woodlief came in and testified She talked
11 about overhearing Mr Near at some kind of
12 hearing I believe it was a grievance hearing
13 in April or May of 2004 before the recall
14 period ended Ms Woodlief recalled hearing
15 Mr Near tell Associate Warden Dunlap that
16 funds were available to bring teachers back,
17 but we weren't won't start until June 1,
18 2004, after recall rights were over Now, is
19 that precisely accurate? You heard what Mr
20 Near testified to He couldn't recall making
21 the comment And from his assessment, that
22 comment makes no sense about the budgetary
23 constraints and the way the recall period was
24 being worked His testimony was I wouldn't
25 have said something like that because it may

1 it makes no sense So here you have Mr
2 Near How do you deny something that you can't
3 even recall making? And let's look again at
4 Ms Woodlief When she was asked both on
5 questioning from Mr Nickles and by me, she
6 stuck to her guns, for lack of a better term
7 She stated emphatically I was employed by PUSD
8 What's the reality where the statutes reflect
9 how do things actually work in the real world
10 When she talked about her service, it was 16
11 years with the District, not 16 years with
12 Department of Corrections Again, that is not
13 meant to say that her feelings and her passion
14 is illegitimate at all Just like Mr
15 Randolph, according to Mr Williams, got heated
16 up during Mr Randolph's conversation with
17 Director Ozmint back in 2003 These are real
18 folks who are going through a traumatic event
19 of losing their job But keep that in mind
20 when you assess their recollections Keep that
21 in mind when you assess their credibility, and
22 particularly when you're looking at the
23 retaliation allegation That's a very strong
24 allegation Mr Nickles and Ms Guffey, on
25 behalf of their twenty appellants, have said

1 the Director and others went after these folks
2 But let's look at the reality Look at John
3 Davis What did he testify to about the cost
4 cutting efforts undertaken by SCDC well before
5 the RIF? Two years of cuts, they closed down
6 institutions He mentioned Givens Correctional
7 Institution Well that was an institution
8 where Mr Cobb had worked They were selling
9 timber They had hiring freezes They talked
10 about attrition versus you can't force
11 people to retire You can't force people to
12 leave And that, ultimately, education folks
13 did not turn over as much as, say, correctional
14 officers So those were factors they had to
15 consider Again, from Mr Davis' perspective,
16 Palmetto Unified School District and the
17 Division of Education were one in the same He
18 also talked about hits taken in the reduction
19 in force by his old division, division of
20 internal audits He had lost eight out of ten
21 positions Was there any was there any
22 retaliation there? What's the motive there,
23 other than to save money His recollection
24 about Abraham or that he doesn't recall it
25 being discussed or a factor And again, he

1 echoed what the Director said about the
2 identification of the critical positions in the
3 agency in association with formatting the
4 reduction in force You've got three,
5 incarceration and safety, health care and
6 you've got care and feeding of them, of the
7 inmates Unfortunately, education is not one
8 of those critical areas It's not mandated
9 that the Department of Corrections educate
10 It's certainly a laudable goal, and it's still
11 going on, but it's not required You have to
12 keep them incarcerated You have to supervise
13 them with safety If the inmates are hungry,
14 obviously you have to feed them If the
15 inmates injure themselves, you have to take
16 care of them Those are your three critical
17 areas So when it came down to the true motive
18 behind the reduction in force, what did
19 Director Ozmint talk about? He wanted to stop
20 the agency from bleeding money And instead of
21 actually facing a projected deficit of \$9 to
22 \$10 million dollars, he was looking at a \$35
23 million dollar deficit, a \$35 million dollar
24 deficit when he took office And he set the
25 hierarchy of priorities when being confronted

1 with the necessity to conduct this reduction in
2 force And Director Ozmint said we weren't
3 going to eliminate security positions And he
4 said education positions had not been
5 identified before So he had to balance these
6 competing interests, and that's ultimately what
7 he did And so, ultimately, Mr Near crafted
8 the RIF plan, again matching up the Director's
9 intent, the Director's identification of the
10 core areas versus his what OHR requires and
11 what state law requires And remember that the
12 budget, according to Dr I'm sorry,
13 Director Ozmint, that drives a reduction in
14 force In the end, you have to assess all the
15 evidence that came before you and think of that
16 pyramid again Where is the evidence of
17 retaliation at the top? If you get to the
18 retaliation point and you determine that there
19 has not that a retaliatory motive has not
20 been sufficiently established, you've got to
21 work your way down that pyramid Look at the
22 statutes Look at the regulations Consider
23 the testimony from the agency officials, as
24 well as the appellants Nothing mandates
25 statewide bumping rights, for example So we

1 submit to you in the middle of that pyramid
2 you're going to have to go further down to the
3 base of the pyramid because the RIF
4 architecture, the manner it was conducted were
5 legitimate Then at the base look at each of
6 the twenty individual claims and assess them
7 accordingly Again, thank you very much for
8 your patience over these days Thank you for
9 putting up with me for the past hour, plus
10 That concludes my presentation at this time

11 **MR MCCLARY** Thank you, sir Can we take a

12 (Off the record)

13 **MR MCCLARY** Mr Nickles, we are ready to proceed
14 whenever you're ready, sir

15 **MR NICKLES** Thank you very much As Mr Summers
16 said, Dona and I are grateful for your time and
17 attention Even God rested on the seventh day
18 where we are today We are here with Mr Bell,
19 who is representing each of his colleagues
20 today As we mentioned at the very beginning
21 of this proceeding, it's not practical for all
22 twenty folks to be here in front of you on each
23 occasion, and Mr Bell has volunteered to
24 represent their interests So when you see Mr
25 Bell, you're looking at all of his colleagues

1 here today, and they are here in spirit We
2 have a burden in this case, a burden which we
3 accept, and that's a burden to show by the
4 preponderance of the evidence that there has
5 been a defect in this retaliation policy, or
6 that it was motivated by punitive or
7 retaliation idealists, essentially by the
8 Executive Director of the Department of
9 Corrections Now, I say that intentionally
10 because if we show you in Mr Summers' terms
11 that this RIF was not built according to plan,
12 that it was architecturally designed to do one
13 thing and ultimately was built in a very
14 different way, then that's all we need to show
15 you If we show you that there was retaliation
16 or some punitive motive involved in the
17 identification of the educator positions in
18 this case, then that's all we need to show you
19 because the punitive nature, the retaliation,
20 in and of itself, was a wrong that requires a
21 remedy So keep in mind that there are two
22 paths to the same destination here And we
23 will urge you, of course, that both paths have
24 been trod Now let's look at the statute that
25 governs your deliberations in this case, and

1 that statute is Code Section 8-17-340 You're
2 all familiar with it You've applied it on
3 other occasions Ordinarily, the issue before
4 you might be did some employee do something
5 wrong Is there evidence that the employee
6 actually did what the employing agency alleges
7 to have been done? We start from a different
8 point in this case because it's conceded that
9 none of these employees did anything wrong
10 The focus instead is on the employing agency
11 So the question is, was SCDC's implementation
12 of its reduction in force policy in violation
13 of constitutional or statutory provisions
14 That's one question If you answer that
15 question in the affirmative, the appellants
16 prevail Was SCDC's decision in excess of the
17 agency's statutory authority? That's a second
18 question that's presented to you under your
19 statute If the answer is in the affirmative,
20 the appellants prevail Was SCDC's decision
21 made upon unlawful procedure? The third
22 question presented to you If that answer is
23 in the affirmative, then the appellants
24 prevail Was the SCDC's decision affected by
25 other error of law? If that answer is in the

1 affirmative, the appellants prevail Was the
2 SCDC's decision clearly erroneous in review of
3 reliable, probative and substantial evidence in
4 the whole record, not part, the whole record?
5 If that answer is in the affirmative, the
6 appellants prevail Was the SCDC's decision
7 arbitrary and capricious, or characterized by
8 an abuse of discretion or clearly unwarranted
9 exercise of discretion? If the answer to any
10 of those questions is in the affirmative, then
11 the appellants prevail And then ultimately,
12 was the identification and isolation of
13 educator positions through the implementation
14 of this reduction in force motivated by
15 retaliation for protected conduct? If the
16 answer to that question is in the affirmative,
17 then the appellants prevail So we need to
18 look at all the evidence in the context of
19 those questions And looking at all the
20 evidence in this case is, of course, a
21 challenge We do, however, have some
22 guidelines that have been provided to us by the
23 courts Before this hearing was convened,
24 there was a decision in Abraham versus Palmetto
25 Unified School District That's at pages 819

1 through 826 of the record It's before you
2 Now, among the things that that opinion
3 provides, and I encourage you each to read it
4 in its entirety, are that the district is a
5 special statewide district within the
6 Department of Corrections It is to enhance
7 the quality and the scope of inmate education
8 It requires a twelve month school program with
9 teachers pay schedule based on state and
10 average pay scales Now, it was suggested that
11 the educators in the Palmetto Unified School
12 District are merely routine employees of the
13 Department of Corrections We know that is not
14 accurate They are different in numerous
15 respects At Tab 19 of the materials that were
16 provided to you, we have what the parties have
17 stipulated are the laws that created and govern
18 the Palmetto Unified School District beginning
19 in 1981 and continuing until today Now, one
20 of the things that that group of statutes
21 provides, and these statutes have to be read,
22 as Mr Summers has suggested, accurately in
23 their entirety You can't cherry pick these
24 things You have to apply them as one 24-25-
25 30, page 830 of the record, it says academic

1 and vocational training provided by the
2 Palmetto Unified School District Number 1 shall
3 meet standards prescribed by the State Board of
4 Education for academic and vocational programs
5 of these schools Well, why is that important?
6 As we'll talk about a little later, it's
7 important because the State Department of
8 Education, through its regulations, requires
9 instruction to be provided by certified
10 teachers And we know through the testimony in
11 the records that you received that that was not
12 observed, at least immediately following the
13 reduction in force We know it from individual
14 appellant testimony We know it from the
15 records presented and that we'll review that
16 that wasn't observed Now, who are the
17 appellants here? They are folks who taught in
18 the vocational school and who taught under the
19 teacher pay schedule and who were allowed to
20 receive their pay on the statewide pay schedule
21 as a result of the Abraham case They are
22 certified teachers who received pay schedules
23 as a result of the Abraham case They are
24 administrators who received pay schedules as a
25 result of the Abraham case There are many

1 forms of discrimination and retaliation in this
2 world easily recognized by age, race, sex,
3 things that are protected that our government
4 has determined that are protected by law In
5 this case, the individuals before you have been
6 protected by the General Assembly in their
7 compensation, and that protection has been
8 affirmed by the Court of Appeals They are a
9 unique category within the Department of
10 Corrections Their pay is determined not by
11 the Executive Director Their pay is
12 determined by the General Assembly Their pay
13 is determined by the statewide average that the
14 Department is compelled to pay And as you
15 read the Abraham decision, you will see that in
16 that case, the Department said whoa, wait a
17 minute We don't have tax authority We're
18 different from other school districts We
19 can't raise our own money And what the Court
20 of Appeals said in that case was too bad,
21 because we're not going to second guess the
22 wisdom or the folly of the General Assembly in
23 creating this designated group of educators
24 That's what the law says and you have to follow
25 it, even if you think it's foolish, even if you

1 think it's too costly That's the law We all
2 know the law can be changed, but there's a
3 process for that And until such time that law
4 is changed, you're obligated to follow it So
5 we get guidance from the Abraham decision that
6 there is one district, that there is one pay
7 schedule for all teachers That's for this
8 unique group of protected individuals You
9 heard Mr Richardson say that ordinarily if you
10 teach adult ed, that you don't get paid for it
11 That question doesn't exist in the Palmetto
12 Unified School District

13 **MR SUMMERS** I'm going to regretfully object to that
14 particular characterization as a legal
15 conclusion I wanted to make that clear for
16 the record Obviously, I hated to interrupt
17 but

18 **MR NICKLES** All right I understand the reason
19 that you did that But I am suggesting to you,
20 ladies and gentlemen, that what we are faced
21 with in this case, as we are faced with in a
22 lot of our life decisions, is following rules
23 that maybe we don't agree with because they're
24 the rules And that's something that I
25 suggest, if you listened carefully to the

1 Executive Director's testimony, you would
2 conclude that he disagrees You listened to
3 his testimony tentatively You observed him as
4 he testified He heard him talk about those
5 folks who can sue for anything You heard him
6 talk about the educators' pay being taken out
7 of the high of the correctional officers You
8 heard him say in response to questions about
9 well what did you say to Mr Randolph, and he
10 said well I can't remember, but those folks,
11 and you remember, he pointed over his shoulder
12 to counsel table Those folks would not have
13 let me say anything like that Those folks
14 weren't there at the time So we have a
15 problem in this case that was faced by Mr
16 Ozmint when he became the Executive Director
17 There was a statute and there was a lawsuit
18 that says that teachers have to be paid at a
19 certain level He thought they were being
20 overpaid in comparison to other employees in
21 the Department And he's entitled to that
22 opinion It's obvious that he thought that was
23 the case, but he couldn't lower their pay He
24 doesn't have control over the pay schedule So
25 what can he do? He can eliminate their

positions And how can he make sure that he eliminates the positions of the higher paid educators? By confining them to these areas that we've all seen in a way that's not consistent with his policy, which is important We know in this case that it was a struggle to get here We know that these twenty individuals had to go all the way to the Court of Appeals to get here, and we're grateful that we're here now and have the opportunity for you to consider their case We have some guidance from Judge Cooper at page 907 of the record He has found that there are facts that tend to show inconsistencies, but he's not made findings on those facts because he says that's your job You, by law, are required to make those findings He sent it back to you, and ultimately, the Court of Appeals sent it back to you to make these maybe unpleasant and certainly difficult decisions There's a lot of testimony, ladies and gentlemen, from the witnesses for the Department about the financial challenges that were presented in 2003 Certainly, Mr Davis focused on that You heard Mr Ozmint's testimony concerning

1 that And there were financial challenges in
2 2003 just like there are financial challenges
3 today We can't ignore that But even though
4 when you're faced with financial challenges,
5 you may be tempted to ignore or to bend the
6 law That is not permissible Laws exist to
7 restrain conduct in tough times That's why
8 they're there They tell us what we have to do
9 when we don't want to do it, and we're all
10 required to follow those laws Those rights
11 can be created by policy They can be created
12 by regulation They can be created by statute
13 They can be created by Constitution You heard
14 the testimony of Director Ozmint that he had to
15 cut costs That was his charge when he was
16 named the Executive Director, and he came in
17 with an intent of doing that There's nothing
18 wrong with cutting costs Every responsible
19 manager has to cut costs They have to do it
20 within the framework of the law You have
21 deposition testimony before you You have the
22 deposition testimony of Mr Ozmint, Mr Near,
23 Mr Blanton and Mr Williams That deposition
24 testimony is entitled to the same weight as any
25 other testimony presented to you in this

1 proceeding It's not to be elevated It's not
2 to be discounted You are to consider it
3 Now, in Mr Ozmint's 2006 deposition, he talked
4 about the silliness of the bumping rule
5 That's page 1228 of the record, the silliness
6 of the bumping rule He talked about how he
7 fought tooth and nail against it He talked
8 about how it makes no sense to bump a lower
9 paid employee with a higher paid employee
10 That testimony was very revealing because it
11 shows you that Mr Ozmint's thinking is not
12 about Cal Bell or Ms McCabe or anybody else by
13 name He's talking about employees He's
14 looking at this in an olympian fashion He's
15 the Executive Director looking down on these
16 people as employees and saying I'm going to
17 keep the cheap ones and I'm going to get rid of
18 the ones that are expensive, even though the
19 reason they're expensive may be that they are
20 senior employees who have earned their way to
21 their positions You heard his testimony here
22 He readily admitted that he selected the
23 positions for RIF Now, there was some
24 inconsistency in Mr Near's recollection and
25 Mr Ozmint's recollection of what happened

1 next Mr Near said, well, I created these
2 areas, competitive areas, in order to provide
3 folks an opportunity to compete to stay I
4 suggest to you, that that's not a credible
5 response The, more credible response was
6 offered by Director Ozmint when he said I
7 instructed Near to maximize savings and
8 minimize bumping That is his testimony You
9 have it before you You can listen to it He
10 testified that he wanted one hundred percent
11 bang for the buck in the 03-04 fiscal year He
12 admitted that these geographic areas, call them
13 what you'd like, circles, bubbles, competitive
14 areas, they existed only for the RIF and to
15 reduce bumping That was their purpose You
16 heard his testimony He readily acknowledged,
17 not embarrassed about it at all, that this year
18 he recommended the elimination of seniority for
19 all state employees That you ought to be able
20 to keep the cheap ones and get rid of the
21 expensive ones That that would be an
22 appropriate budgetary measure It's
23 effectively what he did in the 2003 RIF by
24 targeting educators because he couldn't control
25 their pay, because it's controlled by law

1 Now, we know that temporaries and part-time
2 folks were retained We know they were hired
3 after the recall, and we know this was a bottom
4 line decision by Director Ozmint Three things
5 in this hearing that I ask you to recall as to
6 go into your deliberations Director Ozmint
7 admitted that he must follow the RIF policy in
8 implementing it, that he must follow law, and
9 then Ms Thraillkill, who I think gave us the
10 key to this proceeding She said something
11 that was very important, wrote it down I ask
12 you to listen to her testimony She said to an
13 HR person, wording means a whole lot To an HR
14 person, wording means a whole lot She did
15 that to chastise me, not in an unfriendly way,
16 for using the term incentive rather than
17 opportunity But it opened my eyes to what
18 we're talking about here You heard Mr
19 Summers talk about the architecture of this
20 RIF You didn't hear him talk much about the
21 policy itself So what I'd like to do is
22 invite you to look at it with me, and it
23 doesn't matter whether you look at his handout
24 or mine, but in mine it the policy is at
25 Tab 3, pages 180 through 187 And in Mr

1 Summers', it is at Tab 3, the same pages, 180
2 through 187

3 **MR SUMMERS** I'm sorry, sir, it's at Tab 5

4 **MR NICKLES** Tab 5, excuse me, 180 to 187 They say
5 exactly the same thing But let's look at what
6 Mr Ozmint has admitted is something he has to
7 follow, the policy And at the very beginning,
8 it says in Section 1 1, page 181, that the
9 agency director or designee is authorized to
10 approve any positions to be abolished and to
11 approve the competitive areas within which
12 employees subject to lay off will be able to
13 exercise their rights under this
14 policy/procedure That's where the DOC wants
15 you to stop reading, but that's not where it
16 stops Where it stops is note, competitive
17 area may be agency wide, in this case it's a
18 statewide agency, a department You've heard
19 them, the agency, say that the Palmetto Unified
20 School District was actually a department, a
21 division It's in the Division of Education
22 So it could be that It could have been a
23 Division of Education Of course, that's also
24 statewide Or a more restricted geographical
25 area where the staff is separately organized

1 and clearly distinguishable from the staff in
2 other areas Now, so if there is going to be
3 a reduction in force according to this
4 architecture, if you're using this as your
5 foundation to build your reduction in force,
6 then you have to say it's going to be agency
7 wide or a department, or if I'm going to do it
8 in a more restricted fashion, the staff have to
9 be separately organized and clearly
10 distinguishable from the staff in other areas
11 We know that that's not satisfied We heard
12 that from Ms Miro She is the director of the
13 division Are there any differences in the way
14 that teachers teach in one geographic area?
15 No, no, there's not Are they separately
16 organized? No, they're not We heard Mr
17 Cobb, who's taught in various capacities and
18 various areas Are the staff separately
19 organized? No Are they clearly
20 distinguishable? No Did we hear anybody say
21 that the class the staff was separately
22 organized and clearly distinguishable in these
23 various geographic areas that were created?
24 No There's a reason they're not They it
25 is a special statewide unified school district

1 by law and by operation So, did the
2 Department of Corrections follow its RIF
3 policy? No, it did not And as a result,
4 every one of the people that appear before you
5 today was deprived a right That right is to
6 compete against others for continued
7 employment And the deprivation of that right
8 supports a remedy So that's not the only part
9 of the architecture that was not followed It
10 says in Section 2 3, for example, on the same
11 page, whenever a RIF is in effect and we know
12 and we'll see that a RIF is in effect from the
13 day it's implemented to its anniversary date
14 because we know that when someone is separated
15 by a RIF, they're a covered employee for the
16 next twelve months And the materials that I
17 provided to you in the Tab A, it is the Code of
18 Laws of South Carolina, the regulations,
19 Chapter 19 of the Budget & Control Board,
20 Regulation 19-700 that gives you the
21 definitions of various words And we all know
22 that words are important in HR So what does
23 it say about break in service, for example? It
24 says break in service is an interruption in
25 continuous state service It tells you when an

1 employee's state service is interrupted And
2 among those things when the employee separates
3 from state service and is paid for unused
4 annual leave, or and it's the handout I
5 just provided to you, the statutes and
6 regulations Or when one moves from one state
7 agency to another, not within fifteen days, or
8 separates from state service as a result of
9 reduction in force and is not recalled to the
10 original position or reinstated in state
11 government within twelve months of the
12 effective date of the separation, or
13 significantly for us, (6), moves from a full
14 time equivalent position to a temporary,
15 temporary grant or time limited position So
16 these folks who are before you with Mr Bell
17 were covered employees, suffered no break in
18 service until the anniversary date of their
19 separation from employment Now, why would
20 that be significant? Well, you'll see in the
21 list of employees by position and date,
22 assigned responsibilities performed by
23 certified educators, and the source is pages
24 780 to 785, the same information Mr Summers
25 was making reference to I encourage you to

1 read the stipulation in its entirety But
2 let's look at what this tells us happened in
3 the period immediately following the reduction
4 in force You see the first section that I
5 have there is education bumps Now, I did that
6 because there was some question that Mr Near
7 raised Everybody would say they bumped after
8 the fact Well, if you look at Tab 7 of my
9 original notebook, you will see the bumping
10 opportunities that were provided in the in
11 the RIF And you look at the actual bumps
12 Practically everyone who could bump into an
13 education position did it And, of course, as
14 Mr Summers noted, there's a good reason for
15 that These were good jobs People didn't
16 leave these jobs voluntarily So when someone
17 says yeah, I would have moved to keep my job,
18 you can believe them These were good jobs
19 Look at the second category, and these are as
20 identified in those pages, and I ask you to
21 cross check I've tried to be as accurate as
22 I can This is a summary from evidence This
23 is not evidence We look at the permanent
24 hires, and it's been however you
25 characterize this, whether you use Mr Near's

1 language or use the question that we presented
2 to him, these are all actions that took place
3 following the RIF These folks filled things
4 that were vacated by the RIF So whether you
5 call it an assignment, a demotion, a transfer,
6 a reassignment, a hire, whatever you want to
7 call it, these are people filling positions,
8 performing duties that were performed by
9 certified educators prior to the RIF And I
10 ask you to go back and listen carefully to Ms
11 Poor's testimony about what that means But
12 you'll see that there were more than twenty
13 hires into positions formerly filled by
14 certified educators following the RIF You may
15 recall Ms Thrailkill's sort of immediate
16 reaction when she looked at this She said it
17 can't be right because those are correctional
18 officers They wouldn't be doing instructional
19 duties Well, we know now through the
20 testimony of the appellants that in fact those
21 were doing instructional work even though they
22 were paid as or assigned to be correctional
23 officers But most interesting for our
24 purposes, I think, is to look at number 3, the
25 temporary employees, and these are designated,

1 as you have heard, by that 999 number Look at
2 all these folks' here And Wendell Blanton is
3 is one of those that's on there, as are,
4 you know, several other classroom teachers, a
5 vocational teacher, a library assistant There
6 are lots of positions in lots of places there
7 Why does that matter? Well, because of the
8 promotional excuse me, retirement
9 opportunity that was offered You remember
10 when Ms Thrailkill said to me that's not a
11 retirement incentive That has to be approved
12 by OHR This is a retirement opportunity that
13 we can do internally Remember that testimony
14 Well, we look at what was actually done in that
15 retirement opportunity We look at pages 1106
16 to 1116 of the record And what happens is, if
17 you look at page 1106, this was July 16, 2003
18 This was immediately after the reduction in
19 force And it says that if you accept this
20 opportunity, a couple of things are going to
21 happen One is, you're going to have a break
22 in service, oops Once you have that break in
23 service, you don't have any rights We're
24 going to wink wink, nod nod, rehire you at 75
25 percent of your pay, but they can't guarantee

1 that Why? Because state law doesn't allow
2 it But here's the other operative issue
3 When they offered these retirement
4 opportunities during the recall period, every
5 one of those positions became vacant And,
6 according to Ms Poor, and according to the
7 frequently asked questions, if somebody has
8 been separated by a RIF, you can't rehire these
9 folks without going first to them and saying,
10 oh, by the way, we've got this position that's
11 been vacated Can't do it But that's what
12 they did So they preferred these groups of
13 employees during the recall period over the
14 people who were covered by state law and
15 regulation and had rights to come back to work
16 They preferred them Why? Because it was
17 cheaper, because it was cheaper And if we pay
18 attention to the words, and we pay attention to
19 the law, and we pay attention to the
20 regulations, we see that this was improper,
21 that it violated recall rights, and it
22 adversely affected the people who are before
23 you here today So it wasn't a retirement
24 incentive that was sanctioned by the Office of
25 Human Resources It was a retirement

1 opportunity done within the Department of
2 Corrections that resulted in breaks in service,
3 that resulted in the hiring of temporaries
4 during a recall period According to my
5 calculations, more than twenty we've only
6 got twenty here, folks More than twenty folks
7 during the recall period took advantage of
8 that, including classroom teachers, certified
9 teachers, the superintendent Those folks were
10 entitled to their rights to recall It can't
11 be circumvented by slight of hand here It
12 can't be circumvented by this internal
13 retirement opportunity which requires a break
14 in service, and therefore, those folks aren't
15 entitled to come back to work even if they are
16 cheaper These folks are entitled to their
17 rights Let's look at not just regulation 19-
18 700 which has the definitions By the way,
19 let's do look at that it says teachers It
20 defines teachers Who are teachers?
21 Individuals employed in instructional positions
22 for which certification is required And you
23 remember Cal Bell here You remember seeing
24 the position that he was hired into called
25 program coordinator, internal vocational

1 instructor for which certification is required
2 That's a teacher according to the words used by
3 OHR Look at a temporary employee who is a
4 full or part-time employee who does not occupy
5 an FTE, whose employment is not to exceed one
6 year, oops, and who is not a covered employee
7 You've heard testimony that folks have been
8 hired as temporaries, one of our appellants,
9 for four years with no break You look at
10 these lists You look at those lists And
11 you'll see that some of those folks were
12 temporaries for years, years There is a
13 where it talks about continuous service and
14 breaks in service in regulation 19 719 01, Tab
15 B It says continuous state service The
16 general rule is service within one or more
17 agencies without a break We're all familiar
18 with that Then it has anything else is a
19 break in service except It has a list of
20 exceptions If you look on the second page,
21 number 4, exception number 4, it's not a break
22 in service If you separate from service as a
23 result of reduction in force and not recalled
24 to the original position or reinstated within
25 twelve months of the effective date of the

1 separation So you're covered for twelve
2 months You continue to have rights for twelve
3 months But if you're a temporary, if you take
4 a payout, as these folks in the retirement
5 opportunity did, you have a break in service
6 You're out of there You have the opportunity,
7 according to this, to come back Couldn't
8 guarantee it Look at the language Words are
9 important in OHR Look at what they say to
10 them, and then look at what they do And
11 that's the disconnect in this case, ladies and
12 gentlemen, what they say and what they do We
13 can listen to what they say We can observe
14 what they do And as the triers of fact, it's
15 up to you to decide which is more credible,
16 what I say or what I do What did Mr Ozmint
17 say? He said, well, I don't really remember
18 much about my conversation, and I couldn't even
19 remember if it was, you know, Randolph or
20 anybody else There's a there's an old
21 saying that Elvis doesn't remember everybody he
22 meets, but everybody remembers Elvis That's
23 like when Mr Williams was talking about in his
24 video deposition a guileless individual, if
25 ever there was one You saw him He said, oh,

1 the big man's coming Everybody pays attention
2 when the big guy comes Well, they paid
3 attention He said they walked in, Mr Ozmint
4 and his Mr Lloyd Said they walked in and
5 naturally everybody, especially the teachers,
6 was real concerned about this RIF thing And
7 we were told when he comes through, if you have
8 any questions, ask him So he came through,
9 introduced himself and Mr Lloyd And Mr
10 Randolph and I was asking some questions And
11 Mr Poole there, at some point he walked off
12 and he went back to his area because it didn't
13 concern him And so he introduced himself
14 his self, and we introduced ourselves and so
15 forth And I ask you to reflect on his
16 testimony They was talking somehow or
17 another, and the lawsuit was brought out and
18 Mr Ozmint brought it up and said that maybe if
19 ya'll hadn't sued, you might still have your
20 jobs Mr Ozmint was using his hands like
21 this Do you remember Mr Ozmint's testimony?
22 He used his hands like this when he was talking
23 about I've got to take money from over here
24 I can't take it from over here I've got to do
25 this Charlie Williams, five years plus later,

1 remembers Mr Ozmint talking with his hands
2 exactly like he did here in front of you
3 Think about those things when you're thinking
4 about credibility in this case Think about
5 Charlie Williams disabled and retired Think
6 about him saying I don't have no dog in this
7 fight I mean I just need to do my civic duty
8 I just need to know that when I go home I told
9 the truth When you're thinking about whether
10 people have agendas, when you're thinking about
11 where the people have incentives to do color
12 the law or the testimony in one way or another,
13 by all means when I'm talking to you take into
14 account that these folks are my clients, and
15 I'm advocating for them Charlie Williams
16 wasn't advocating for anybody Charlie
17 Williams was doing his civic duty And is his
18 recollection exactly the same as Mr
19 Randolph's? I would be disappointed if it was
20 There's no scripting going on here You would
21 be suspicious, I believe, if Mr Williams and
22 Mr Randolph, after this passing of time, had
23 exactly the same recollection, but boy, did
24 they hear the same thing And what does that
25 mean? It means in a environment in which he is

1 not guarded by others, in which he is the big
2 boss, in which he is challenged by someone who
3 is merely a replaceable vocational instructor,
4 he told the truth Little did he think that
5 five years later he would be held accountable
6 for it Now, did he go down the list? Did he
7 even read the Abraham decision? I doubt that
8 seriously But he knew who brought it,
9 teachers, educators They had the audacity to
10 sue the Department to force the Department to
11 pay them according to the law, and he couldn't
12 change that So how do you remedy it if you
13 can't change it under the law? Say, well, I
14 know I've got these highly paid ones over here
15 in Leath and McCormick I've got this Rance
16 Cobb guy who's been here for 33 years, got a
17 Ph D He's making more than my wardens Out
18 I know these people here Look at the degrees,
19 and we'll talk about that a little bit, of some
20 of the people who were terminated We've got
21 three people with Ph D 's Is it coincidental
22 that there are three people with Ph D 's who
23 had nobody to compete against? Those circles
24 were awfully conveniently drawn And if you
25 believe Mr Ozmint's testimony that he

1 instructed Mr Near to maximize savings and
2 minimize bumping, he did it intentionally
3 Now, Mr Near's recollection is slightly
4 different and not surprisingly so Mr Near
5 also, somewhat tearfully, testified that he met
6 for two hours on an average with the people who
7 were affected by the RIF You know if he had
8 done that, it would have taken him from the day
9 the RIF was announced to the day that it was
10 implemented, without travel time, without
11 taking time for lunch to meet with all those
12 folks Do the math Two hours times 148
13 people He didn't do that We know he didn't
14 do that, but his memory led him to believe that
15 he did that He wasn't intentionally trying to
16 deceive you He just believes himself to be a
17 good guy, and he may well be a good guy, but
18 his testimony wasn't accurate about that He
19 admitted it Oh, well, maybe it was only 15
20 minutes or so Well, maybe Think about that
21 when you're thinking about credibility Now,
22 listen to Mr Ozmint's testimony He testified
23 that employees knew that teacher raises came
24 out of their hide Employees knew that teacher
25 raises came out of their hide That employees

1 complained to him it was not right for teachers
2 to get raises while others did not He then
3 said in response to a question that he never
4 voiced an opinion that it was wrong He didn't
5 say he didn't believe it was wrong He said he
6 never voiced an opinion that it wasn't wrong
7 And he admitted he talked to a lot of employees
8 through a lot of walk throughs He said he had
9 to be careful talking about the RIF He had
10 been counseled, pointing to counsel table, not
11 to offer an opinion about the lawsuit So,
12 what does that tell us? It tells us that the
13 lawsuit was discussed How could he be
14 counseled not to offer an opinion about it
15 during the RIF if it wasn't on the table? He
16 had been counseled not to offer an opinion
17 about the lawsuit when he talked about the RIF
18 Now, I can't tell somebody not to talk about
19 something if it's not something that I'm
20 thinking about That's his testimony He also
21 said that he never talked to anyone outside his
22 executive staff regarding his opinion of the
23 lawsuit But his opinion's obvious If Mr
24 Williams is to be believed, if Mr Ozmint's
25 testimony is to be believed, and it's certainly

1 consistent with his conduct And when you're
2 looking at why people did things, if you wish
3 to engage in the retaliation aspect of this
4 case, and that's a tough thing for anybody to
5 do Try to figure out why somebody did
6 something If you have to look not only at
7 what they say but what they do Why, for
8 example, would this fellow who just came in as
9 the Executive Director, he's there less than
10 two months, why would he take this measure to
11 significantly impact the delivery of education
12 in the Department without having meaningful
13 discussion with his superintendent, without
14 having some consultation with his board, a
15 board that not only he appoints but the State
16 Superintendent of Education appoints There
17 are nine members of that board, four Executive
18 Director, four State Superintendent, one
19 governor Why would you not consult them? You
20 are new to the job You've never had any
21 involvement in public education at all other
22 than to be the recipient of it Never been an
23 administrator of a public education program
24 Why do you not seek out those people who've
25 been around for a while? Now, deposition

1 testimony Mr Blanton did not appear before
2 you He was the Superintendent at the time of
3 the reduction in force His testimony at page
4 1160 of the record says there was one district
5 Education was the same throughout SCDC Page
6 1163, there are no geographic regions or
7 divisions in education, no geographic
8 divisions He said it again at page 1164 He
9 admitted that you have to maintain the teacher
10 pay scale for all the teachers in the district
11 Then at page 1171 he says I was not involved in
12 the RIF decision decision making until just
13 before the announcement Then he used the term
14 very late And after he had heard about the
15 education cuts through the newspaper Said he
16 read about it in the paper And here's the new
17 Executive Director coming on board and the
18 Superintendent of Education reads about the RIF
19 in his area in the paper Page 1173 and 1174
20 of the record, he says my involvement was a
21 very brief meeting, 10 to 15 minutes, and the
22 Executive Director did not participate Now,
23 why would you not engage the superintendent?
24 Why would not engage the board? Because you've
25 made up your mind, because your interests lie

1 elsewhere I have cited to you those
2 provisions of the statutes that describe what
3 the duties and the responsibilities of the
4 board and the superintendent are, and I invite
5 you to read those yourself I heard one
6 phrase, I think during Mr Near's testimony,
7 that there was like a store front of the
8 Division of Education I challenge you to find
9 in the statute where it says anything about
10 Division of Education at the State Department
11 of at the State at the Department of
12 Corrections It doesn't say anything about it
13 The thing that's set up is the Palmetto Unified
14 School District, and it does have a board, and
15 it does have a superintendent and they do have
16 legislatively established duties and
17 responsibilities, and they are to consult with
18 the Executive Director He blows that off
19 They're just not important I think one point
20 of the witnesses said they kind of help them
21 with the legislature, kind of funding raising
22 type That's not what the statute says So
23 when you're looking at all of these things,
24 what do you find at the end of the day? Well,
25 you find what I called in my opening as as

1 Mr Summers reminded me, anomalies, turtles on
2 fence posts Mr Near testified, page 1189 of
3 the record, that it was very common to address
4 temporary and part-time and probationary issues
5 before the RIF In this case, however, we see
6 in the actual RIF plan that they they had
7 probationary people who were scheduled to stay
8 while they were RIF'ing other folks It's in
9 the list We saw it We know they kept
10 temporaries They admitted it It's in the
11 record All those temporary folks some of
12 the education was being provided only by
13 temporary, so called pink slip employees And
14 then we know they offered this retirement
15 opportunity and converted a bunch of folks into
16 temporaries when they should have been
17 recalling the folks who had involuntarily lost
18 their jobs Not voluntarily left,
19 involuntarily lost their jobs through the RIF
20 Mr Near admitted, page 1189 of the record,
21 that the Department retained probationary,
22 part-time and temporary employees while veteran
23 certified educators were RIF'd He also said
24 it costs less and it makes a good it's a
25 good business decision to do that Let's

1 contrast what happened before and after Mr
2 Ozmint arrived as the Executive Director in
3 this agency You remember Mr Near's testimony
4 about what happened when they closed CCI here,
5 Central Correctional Institution here in
6 Richland County They had a lot of people who
7 worked there, and a lot of people were being
8 displaced And what did they do? They didn't
9 draw an imaginary bubble around CCI and say
10 have a good life They allowed those folks to
11 go anywhere else in the state that they wanted
12 to go and they could fill a position Now, did
13 they say, oh, because we can't compel you to
14 move more than 30 miles, we're not going to
15 allow you to move more than 30 miles? No, they
16 didn't say that That's not the way they
17 operated And how do we know they didn't
18 operate that way? Well, Ms Miro, now the
19 Director of the Education Division, among other
20 things, we heard her story of advancement
21 through the agency We heard how she drove 47
22 miles one way when she was the warden at
23 Allendale We heard how she drives 47 miles
24 one day, every day today to work at Broad River
25 Road There's no 30 mile cut off, never has

1 been That's an attempt to justify something
2 that is completely inconsistent with the past
3 practice and the current practice of this
4 agency You heard the testimony that people
5 live in North Carolina and Georgia and commute
6 to work Does it surprise you that people
7 don't want to live next door to a prison? It
8 doesn't surprise you, does it? People do
9 commute to these jobs It is routine that
10 people commute to these jobs We have Mr Cobb
11 who worked in more than one area We have Mr
12 Williams You may remember he lived in
13 Greenwood That's area number 10, but he
14 worked at Tyger River over in area number 11
15 This is an agency in which it is ludicrous to
16 suggest that it is a benefit to employees to
17 limit their competition for jobs And I
18 suggest to you that you consider that when
19 you're weighing Mr Near's credibility That
20 is both inconsistent with the past practice of
21 this agency It is inconsistent with the
22 operation of this agency, and it's contrary to
23 common sense to do that We know that RIF'd
24 employees were assigned to do the same jobs
25 they did before they were RIF'd at a loss of

1 pay I mean Ms Glenn testified to that Not
2 only did she testify to it, she has a
3 memorandum telling her that's what she's going
4 to do That memorandum didn't go to Ms
5 Thrailkill It didn't go to HR central It
6 was there where Ms Glenn worked It was
7 telling her what she was doing it, and she did
8 it They just cut her pay about 60 percent to
9 do the same job You heard Ms McClanahan
10 testify, the horticulture teacher Look at the
11 records that were presented Even in the
12 record that you have that was recently
13 presented with Ms McClanahan, you will note
14 that when she was a lieutenant, what was she
15 being evaluated on? Teaching horticulture
16 She was employed as a certified instructor with
17 a different name in order to pay her less, in
18 order to avoid the teacher pay schedule that's
19 required by law Mr Bell, similarly, returns
20 to work, has to be certified, has to go to all
21 certification requirements, has to go to in-
22 services, paid as a program coordinator to do
23 instructional services Meanwhile, Larry
24 Yarborough, brother-in-law of the assistant
25 warden, is hired to do the same job as Mr

1 Bell Never taught a day in his life He's
2 paid on the teacher pay schedule Is there
3 consistency there? Mr Near was questioned
4 about that incident with Mr Bell's application
5 for the vocational teacher position It's at
6 page 1202 to 1222 of the record I think it's
7 something you might want to look at He admits
8 that Mr Yarborough was not certified at the
9 time that he was hired He was going to make
10 over \$40,000, much more than Mr Bell was
11 making doing the same job Mr Bell had ten
12 years of experience and service doing that job
13 In fact, he had already done it at that same
14 location And you'll see, page 1207, there's
15 an admission that Mr Bell's score was changed
16 on the application scoring sheet I guess the
17 defense is that it was nepotism and not
18 retaliation Neither one is much of an excuse
19 I said at the beginning of this hearing that I
20 was going to present witnesses to offer
21 testimony that would indicate that educators
22 were targeted for separation based on the pay
23 scales set by law I suggest to you that the
24 record supports that I indicated that this
25 RIF, this was developed in a way that divided

1 a unified statewide school district I think
2 the record supports that I indicated that the
3 people involved in the RIF, Mr Near, Mr
4 Ozmint, Mr Davis, did not involve or consult
5 or otherwise have the board involved in the
6 RIF They admit that I indicated the
7 geographical division was created solely for
8 purposes of the RIF That's been admitted I
9 indicated that it violated the bumping rights
10 of educators They violated their own policy
11 I stated that RIF'd employees were replaced by
12 lower paid non-certified staff or rehired into
13 former jobs with new titles and lower pay The
14 evidence shows that I stated that RIF'd
15 employees were replaced by temporary hires
16 The evidence shows that I indicated that
17 temporary and part-time employees were retained
18 in favor of those who were RIF'd The evidence
19 shows that So today, Mr Bell and the other
20 appellants in this case ask you for only one
21 thing, and only you can provide it and that is
22 justice At the time of the separation, Mr
23 Bell had 13 years plus of consecutive service
24 He was willing to move, but he couldn't because
25 the geographic areas that you have to determine

1 were they supportable under the plan That is,
2 do they represent areas where staff are
3 separately organized and clearly
4 distinguishable from other areas? Did those
5 areas keep Mr Bell from bumping? Yes He was
6 re-employed, as Mr Summers pointed out, but
7 not under the teacher pay scale He applied
8 for a vocational instruction position at Perry
9 The applicant evaluation was changed Look at
10 Mr Near's testimony He admits that it was
11 changed The brother-in-law of the assistant
12 warden was hired without any prior teaching
13 experience, and both are required to maintain
14 certificates Both are required to teach in
15 the same fashion One's paid on the teacher
16 pay scale, not Mr Bell Look at the records
17 that were provided to you by the Department of
18 Corrections in response to your request With
19 reference to Mr Bell, no salary history, no
20 EPMS, no job description The only posting
21 that you have is the one that we provided, and
22 it sets forth the requirement of certification
23 for the position Ms Bernard, Ms Othella
24 Bernard, likewise had more than 13 years of
25 experience at the time of the RIF In addition

1 to that 13 years, she had worked four years
2 consecutively without a break in service as a
3 pink slip temporary employee She didn't get
4 credit for that, but she was in area 11, as was
5 Mr Bell, and she could not bump She retired
6 Katherine Bowyer who had approximately 12 years
7 in service She was at Leath, a vocational
8 teacher in area 10 All the programs in area
9 10 closed, the programs at Leath and McCormick
10 But you may recall that Ms Bowyer testified
11 that Shirley Johnson was hired as a part-time
12 to teach her former computer classes at Leath
13 They hired a part-time to come in Linda
14 Bratton had more than 21 years of service at
15 the time of the RIF She was a certified
16 teacher at Perry in area 11 She's the one
17 that was the education coordinator You
18 remember looking at her materials She bumped
19 into a classroom teaching position held by Ms
20 Farr As a result of that, she lost pay She
21 testified that the duties that she held as
22 education coordinator were assigned to
23 correctional officers, and she gave you the
24 names of those officers as they filled that
25 position They were Watkins, Buehlar and

1 Najar Ann Bridges had a little short of 20
2 years of service as a guidance counselor at
3 Leath Area 10, all the education programs
4 eliminated She also had other certification
5 and could have bumped teachers in other areas,
6 as well as guidance counselors Rance Cobb had
7 more than 33 years of service at the time of
8 the RIF He was the principal at Leath, a
9 Ph D He had served in other areas of the
10 state, had other certifications Could have
11 bumped not only every other principal in the
12 district, but most of the other teachers, but
13 because of the elimination of all opportunity
14 in that area, he lost his job Jenny Croxton
15 had slightly over 17 years She was a teacher
16 at Manning She testified that she had
17 seniority over two other certified teachers,
18 Rose Ruger and Talmadge Smith Both of them
19 were removed from the RIF She also had no
20 opportunity to bump outside the area Bernetha
21 Culbreath was there for over 13 years She was
22 a certified teacher at Leath Once again,
23 that's in area 10 But she testified she would
24 have moved and she could have bumped Yvette
25 Lakin and Patricia Hudson outside her area

1 Although she created the literacy program at
2 Leath, Patricia Williams, pink slip temporary,
3 was retained and continued the program with a
4 correctional officer William Dreyer was 21
5 years as a certified teacher at McCormick in
6 area 10 No where to go He could have bumped
7 Ray Dorn at Trenton Ray Dorn performed
8 exactly the same duties as Mr Dreyer
9 Jacqueline Farr was a teacher for almost 11
10 years at the time of the RIF at Tyger River in
11 area 11 You may recall that Ms Farr
12 testified about correctional officers
13 approaching her about her pay, telling her they
14 could not get a pay increase because the
15 Department had to pay these teachers That
16 came from somewhere, ladies and gentlemen
17 Correctional officers didn't make that up
18 They were hearing that from somewhere Ruth
19 Fritts was a teacher at Leath in area 10, holds
20 a Ph D Couldn't bump She accepted a
21 correctional officer position to retain
22 insurance benefits She knew of four people
23 outside her area that she could have bumped,
24 Yvette Lakin, Patricia Hudson, Julie Bounds and
25 Kathy Jackson You may recall that in the

1 materials provided to you by the Department
2 there was no position description for
3 correctional officer issued to Ms Fritts
4 Nancy Glenn, 13 years with the Department at
5 the time of the RIF There were four
6 librarians that she could have bumped outside
7 the area Steve Gratzner, Billy Holliday, Donna
8 Deadmont and Mary McCabe You heard her
9 testify that she accepted a correctional
10 officer position, but was told before hand in
11 the memorandum that's our Exhibit Number Two of
12 May 30, 2003, that she would be performing her
13 library duties She later applied for another
14 position She was told you have to make
15 your judgments on on what the records show
16 She was told that she didn't get the job
17 because she was probationary even though she
18 had been there for 13 more than 13 years
19 You'll notice that her correctional officer
20 position description is not signed You'll
21 notice also that the EPMS shows librarian
22 duties on a daily basis Ms Etta Jane Jones
23 was had almost 19 years of service at the
24 time of the RIF as a guidance counselor She
25 had actually worked in another area She had

1 worked in area number 9 She couldn't even go
2 back to her former area All these folks were
3 willing to relocate Geneva Martin, she was
4 very animated I agree with Mr Summers She
5 accepted a correctional officer position
6 because she had to have health insurance and
7 worked for six months You'll notice that in
8 the materials provided in response to your
9 request, there's no correctional officer
10 position description for Ms Martin Ms
11 McCabe had more than 10 years of service She
12 was a librarian at Perry Her position was
13 eliminated The same duties, she testified,
14 were assigned to a correctional officer after
15 she left She was recalled one month later as
16 a librarian at Tyger River, but she could have
17 bumped Billy Holliday and had no break in
18 service She lost a month of pay She was one
19 of the lucky ones She also observed, and you
20 may remember this, that Jane Mailloux, -A-I-L-
21 L-O-U-X, was hired just after the RIF period
22 was over It's in the materials, you'll see
23 it She was hired just after the RIF period
24 expired She had less seniority than folks who
25 are before you Beverly McClanahan was with

1 the Department for about 15 1/2 years at the
2 time of the RIF She taught horticulture She
3 accepted a correctional officer position and
4 continued to provide horticulture services
5 She was promoted to lieutenant but taught
6 horticulture full time as a lieutenant, not on
7 the teacher pay scale And the records
8 provided to you show that the correctional
9 officer position was unsigned It's page 217
10 There's no position description for
11 correctional officer at 218 Position
12 description for lieutenant/vocational education
13 trainer, that's a mouthful, is unsigned
14 There's no EPMS for June 2, '03 to 12/2/03, but
15 there's an EPMS for 7/4 8/7/04 It's page
16 231 to 238 of the record And guess what it
17 shows? She was a teacher not paid on the
18 teacher pay scale Max Randolph you've heard
19 a lot about He did say that he could not take
20 a correctional officer pay He couldn't live
21 on a correctional officer pay You have to
22 judge for yourself what you believe about his
23 testimony and his encounter with Director
24 Ozmint It's clear that Mr Randolph's
25 information resulting from that meeting

1 impressed him enough to write it down And he
2 felt the Director admitted retaliating against
3 him and others You make your own judgments as
4 to whether or not his impression was correct
5 Carolyn McIver Smith was an academic program
6 manager in area 1, and Dr Smith owns a
7 holds Ph D She wasn't offered the opportunity
8 to bump two other administrators even though
9 she had more longevity than both She was not
10 allowed to bump certified teachers within her
11 area even though she had certificates to teach
12 She said that Mr Near promised her that'd she
13 be the very first one called back The call
14 never came She also testified about someone
15 putting a printout out of her salary on her
16 desk You remember that That attitudes
17 towards her changed once it was known the
18 amount of money that she was making Maggie
19 Williams had service of more than 11 1/2 years
20 She testified about providing education to
21 inmates in lock down Couldn't bump and she
22 had to go Paula Woodlief was there for almost
23 19 years She had a certificate in English,
24 but she was employed as an education
25 coordinator They didn't let her bump into a

1 classroom position It's funny they let them
2 bump down into correctional officer positions
3 but not in not from education coordinator
4 down to a classroom teaching position You
5 remember she testified about volunteering in
6 the summers to teach She rejected a part-time
7 position And she testified about what she
8 heard Mr Near and the associate warden talk
9 about, that new teachers would be hired Look
10 at the list There were some new teachers
11 hired right after the period for the recall
12 expired Now, you and only you can decide this
13 case This is not a situation where you have
14 the luxury of saying, well, let somebody else
15 handle it And it's not a situation where you
16 can even exercise say I wouldn't have done
17 it that way, or I would have done it that way
18 You have to hold both parties to the law They
19 stand equally in front of you And even if
20 there may be room for disagreement about
21 whether or not it is intelligent to require all
22 teachers in the Palmetto Unified School
23 District at the Department of Corrections to be
24 paid on a particular pay scale, even though the
25 Department doesn't have a tax basis, even

1 though you might agree that that is counter-
2 intuitive That's the law Even if you may
3 agree with the concept that, gee, statewide
4 bumping doesn't make sense to me It would be
5 awkward or, you know, hard to handle You have
6 to determine whether or not this agency
7 followed its own policy and whether it has been
8 able to demonstrate to you that those
9 geographic areas contain staff separately
10 organized and clearly distinguishable from the
11 staff in other areas

12 **MR SUMMERS** I'm going to object once again
13 (inaudible) for burden shifting

14 **MR NICKLES** Well, I'll tell you what, I'll accept
15 the burden although I think it's theirs I'll
16 accept the burden to show you that those are
17 not separately organized, and those are not
18 clearly distinguishable because they've
19 admitted it They've admitted it They have
20 to provide those separated from employment with
21 not only their bumping rights but their recall
22 rights In the material that I provided to
23 you, there is Code Section 8-11-185, which
24 says, in part, that an agency seeking to fill
25 a vacancy or a new position must obtain

1 information from the Office of Human Resources
2 reduction in force applicant pool provided to
3 the office pursuant to this law The agency
4 shall provide priority consideration to
5 employees terminated due to reduction in force
6 for any vacancy or new position in the same
7 classification, classification series or
8 position category held at the time of lay off
9 An agency is prohibited from filling the
10 position if the agency does not first seek to
11 fill the position from among these qualified
12 employees provided by the Office of Human
13 Resources Now, we've seen earlier that the
14 term position, because words are important in
15 Human Resources, is defined Position, those
16 duties and responsibilities constituting a
17 single job There are different definitions
18 for temporary, part-time, probationary and so
19 forth So I ask you, ladies and gentlemen,
20 because words are important in HR that you
21 apply the words of this plan, this policy You
22 apply the words of these regulations You
23 apply the words of these laws as they are
24 written And if you do so, I suggest to you
25 that the conclusion you will reach is whether

1 motivated by any ill will or not, the
2 architecture of this plan is different from its
3 implementation. That they built a building
4 different from what the foundation said it
5 should have been built on. And for that
6 reason, this RIF cannot stand as to these
7 appellants, and they are entitled to receive
8 relief from you. They're entitled to a
9 reinstatement of their employment, subject to
10 the changed circumstances of their conditions
11 following the RIF. We acknowledge that. We
12 can't turn back the clock five years. We wish
13 we had been before you earlier, but they are
14 entitled to the relief that's available through
15 your prophecies. We thank you for your
16 attention, as does Mr. Summers. We ask you for
17 no favors. We ask only that you do justice to
18 both parties who are before you today. Thank
19 you very much.

20 **MR MCCLARY** Thank you, sir. I guess we'll meet
21 again on the 22nd, 23rd and possibly 26th. I
22 think those are the dates we proposed earlier.
23 And can the committee meet just one moment with
24 our attorney just a few minutes before we
25 leave?

1 MR CORNING If that's your desire, Mr Chairman

2 MR SUMMERS Mr Chairman, would you prefer us to
3 step out now?

4 MR MCCLARY Yes We'll we'll hang out

5 MR SUMMERS We're clearing our stuff now

6 MR MCCLARY Are you gentlemen available the 22nd?

7 MR NICKLES Yes

8 MR MCCLARY We're adjourning until the 22nd, sir

9 MR SUMMERS Very well, good Thank you very much

10 (There being no further testimony, the hearing was
11 adjourned)

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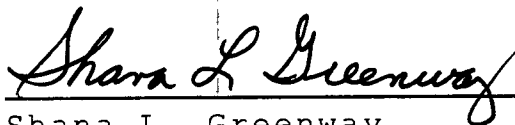
25

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 One Hundred Eleven (111) 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 JANUARY 22, 2009
DAY 8

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 CORNING** I don't have the information to read
2 in Do we

3 **MS BRABHAM** We don't have anything for
4 deliberations, so you can just give the date

5 **MR CORNING** Okay, the 22nd

6 **UNIDENTIFIED MALE** We're not in deliberations

7 **MR CORNING** This is the continuation of Bell, et
8 al, versus SCDC The date is January 22,
9 2009, and it's approximately 9 25 in the
10 morning I have with me counsel for the
11 grievants and counsel for the agency And the
12 purpose of opening the record prior to the
13 panel arriving is to receive get any
14 objections on the record record as to
15 instructions to the panel and other matters
16 which may not be put before the panel today
17 when they arrive Who wants to start? Mr
18 Nickles, do you want to start?

19 **MR NICKLES** I'll start

20 **MR CORNING** Mr Summers

21 **MR NICKLES** This is Al Nickles for the grievants,
22 Bell and others Speaking to the charges to
23 the committee, there was a telephone conference
24 held on January 21 in which both parties had
25 the opportunity to address with Mr Corning

1 their proposed charges to the committee Mr
2 Corning at that time made certain preliminary
3 rulings And at this time I'd like to offer my
4 objections and exceptions to those rulings As
5 to the charges to be presented to the committee
6 under charge number 1, I have an objection to
7 the extent that two words in that charge are
8 underlined, the words unless and and I would
9 ask that the charge be read as a single charge
10 without any emphasis as to any particular word
11 so that I do have an objection to any emphasis
12 that might be placed on any

13 **MR CORNING** There there will be none

14 **MR NICKLES** Okay, thank you As to charge number
15 10, my only objection is that this charge which
16 references the Holman versus Clemson University
17 case addresses a prima facie case of
18 retaliation That is a construct that is
19 utilized in Title 7 and other federal civil
20 rights proceedings It's my position that the
21 Demien case which was decided in this state
22 under this state's human resources law is the
23 more accurate representation of what
24 constitutes retaliation or unlawful motive in a
25 proceeding such as this So my exception is

the importation of Title 7 construct into this proceeding As to the charges presented by the grievants, charge number 13, which relates to the manner in which teachers are paid, has been stricken I understand that Mr Corning believes that this is a instruction that is unnecessary We take exception on the basis that our argument's been presented that the grievants were selected for separation from employment because of the levels of their pay So that is our exception as to or objection as to the striking of that particular instruction Instructions 14 and 16 have also been stricken as redundant to instructions previously agreed to And I have no exception as to those rulings Thank you

MR SUMMERS Yes, good morning for the record Again, my name is Lake Summers And following on what the appellant counsel has provided, I'm going to go through and note my exceptions and objections for the record I've handed to you, sir, this morning I guess we'll call it a pure copy of the original 18 requests for instruction that the agency had submitted Those were considered by you, as Mr Nickles

1 indicated, in a teleconference you conducted
2 yesterday Just for accountability's sake, if
3 nothing else, of the 18 that were submitted,
4 subject to the objections by Mr Nickles, in
5 one form or another the following of the 18 are
6 going to be read in some part or perhaps in
7 in its entirety to the panel That would be
8 our request for instruction number 1, number 4,
9 the very first paragraph of our request for
10 instruction number 5, our request for
11 instructions number 9, 10, 11, our request for
12 instructions 13, 14 and 15, the first two
13 paragraphs of our request for instruction
14 number 16 and our request for instruction
15 number 18 Regarding the those requests
16 that were disallowed, for lack of a better
17 term, by you, sir, instruction number 2 was the
18 definition from the Code regarding grievants
19 Request for instruction number 3 was the
20 definition of the term appeal from the Code
21 You felt you expressed in your ruling that
22 those were not necessary So they were not
23 allowed by you to come in Regarding request
24 for instruction number 5, the last paragraph,
25 again you felt that that was had been

1 addressed and perhaps not applicable to the
2 situation in which we find ourselves in light
3 of Judge Cooper's ruling And then we had
4 request for instruction 6, 7 and 8 Those
5 6 and 7 were definitions of number 6 was
6 consideration of reduction in forces
7 reductions in force by the State Human
8 Resources Director from 8-17-340(a) Number 7
9 was the definition of promotion as provided in
10 8-17-320(17) Request for instruction number 8
11 was a definition or an explanation of a
12 what was called the 30 mile rule That was
13 taken from 8-17-320(13) Number 12 was an
14 extract or a sentence from the Abraham
15 litigation regarding tax base as part of the
16 analysis that the Court of Appeals conducted in
17 regard to the Abraham case You did not allow
18 that to come in And then the last three
19 paragraphs of request number 16, they were
20 paragraphs from the Holman case Again, part
21 of that request for instruction is coming in,
22 the first two paragraphs, with some
23 modification And then request for instruction
24 number 17 with respect to temporal proximity,
25 that was disallowed So we would except to

1 those decisions as to the ones I just listed a
2 moment ago With respect to the grievants'
3 proposed instructions, give me just a moment to
4 catch up We had objected to the final
5 paragraph of the grievants' proposed charge
6 number 1 And subject to your review of that
7 objection, Mr Nickles has modified that in a
8 manner that you found satisfactory We
9 objected to request number 13, and again,
10 that's going to be, subject to your ruling,
11 deleted And you we objected to request
12 number 16 And again, as Mr Nickles
13 indicated, that is being deleted in favor of
14 our request number 1 I believe I've accounted
15 for them all as precisely as possible And
16 just for the record, what I submitted to you
17 this morning, sir, was a, for lack of a better
18 term, a narrative that reflected your decisions
19 and the agreements by counsel as to the charges
20 that would be read by you to the panel It's
21 a nine page document The first four pages
22 reflect the decisions that you made yesterday
23 regarding the agency's requests for
24 instruction, subject to modifications as you
25 directed And then from pages five through

1 nine, those pages there are the grievants'
2 proposed charges with subject or reflecting
3 your decisions and the modifications you
4 elected to make and agreed by counsel So that
5 is the document that you have in front of you
6 that totals nine pages

7 **MR NICKLES** And

8 **MR SUMMERS** subject to anything Mr Nickles may
9 say

10 **MR NICKLES** And I concur that the document handed
11 up, to the best of my knowledge, accurately
12 portrays what your rulings were during the
13 telephone conference of January 21, 2009

14 **MR CORNING** And, Mr Summers, as I understand it,
15 the while this does reflect the deleted
16 instructions by the grievants' counsel, are
17 your instructions that were deleted just left
18 out?

19 **MR SUMMERS** Correct, correct I just left those
20 out

21 **MR CORNING** Okay Just so I'm understanding what
22 I'm reading

23 **MR SUMMERS** Correct

24 **MR CORNING** All right

25 **MR NICKLES** Okay

1 MR CORNING Thank you

2 MR NICKLES Thank you

3 (Off the record)

4 MR MCCLARY I think there was some business taken
5 care of outside of our presence, the
6 committee's presence this morning I guess as
7 a result, we'll

8 MR CORNING Correct These panel members, I
9 have had discussions with both counsel, both by
10 telephone and here again this morning, and
11 these are the instructions that I am giving the
12 panel sometime in the next, hopefully hour or
13 so, you will get a photocopy so it will be
14 easier for you It's a lot of instructions
15 And if you have any questions, you can ask me,
16 but you'll have something in front of you to at
17 least look at while you're discussing and
18 you know, because I know it's going to be tough
19 just to remember this many, but right here
20 they here they are One, under the
21 applicable provisions of South Carolina law,
22 each appellant bears the burden of proof in
23 their individual appeals pending before the
24 panel The panel may not alter or overrule
25 SCDC's decision to deny an individual

1 applicant's grievance unless an individual
2 applicant establishes that SCDC's decision was
3 one or more of the following, and prejudices
4 the substantial rights of the individual
5 appellant (a) SCDC's decision was in violation
6 of constitutional or statutory provisions, (b)
7 SCDC's decision was in excess of the agency's
8 statutory authority, (c) SCDC's decision was
9 made upon unlawful procedure, (d) SCDC's
10 decision was affected by other error of law,
11 (e) SCDC's decision was clearly erroneous in
12 view of the reliable probative and substantial
13 evidence on the whole record, or (f) SCDC's
14 decision was arbitrary or capricious or
15 characterized by abuse of discretion, or
16 clearly unwarranted exercise of discretion An
17 action is clearly erroneous when, although
18 there is evidence to support it, the reviewing
19 authority, after considering the entire record,
20 is left with definite and firm conviction that
21 a mistake has been committed An action or
22 decision is arbitrary or capricious if it
23 without rational basis, it is based alone on
24 one's will and not upon any course of reasoning
25 and exercise of judgment, if it is made at

1 pleasure without adequate determining
2 principles, or if it is governed by no fixed
3 rules or standards Under South Carolina law,
4 a reduction in force is the determination made
5 by an agency head to eliminate one or more
6 filled positions in one or more organizational
7 units within the agency due to budgetary
8 limitations, shortage of work or organizational
9 changes A covered employee may file a
10 grievance or appeal concerning the following
11 adverse employment actions termination,
12 suspension, involuntary reassignments and
13 demotions Our General Assembly established a
14 special statewide unified school district
15 within the South Carolina Department of
16 Corrections to be known as the Palmetto Unified
17 School District Number 1 Our General Assembly
18 provided that the superintendent of the
19 Palmetto Unified School District and all other
20 educational personnel shall be employed,
21 supervised and terminated according to the
22 South Carolina Department of Corrections
23 personnel policies and procedures In the
24 Abraham lawsuit, the Court of Appeals stated
25 the following In 1981, the General Assembly

1 established a special statewide unified school
2 district within the Department of Corrections
3 known as Palmetto Unified School District
4 Number 1 The district was designed to,
5 "enhance the quality and scope" of inmate
6 education with an eye toward reintegrated
7 offenders into the community, operates under
8 the control of a board of trustees supervised
9 by the Department of Corrections In
10 establishing the district, the legislature
11 specifically provided for a "twelve month
12 school program with teachers pay schedule based
13 on the state average school supplement pay
14 scales " The legislature further required that
15 teachers hired to work in the district "be
16 employed, supervised and terminated" according
17 to the policies and procedures of the
18 Department of Corrections In the Abraham
19 lawsuit, the Court of Appeals stated that the
20 educators in that case were "all current or
21 former educators working as teachers in" SCDC
22 A single statute must be examined within the
23 context of its entire relevant section In
24 construing a statute, the primary goal is to
25 ascertain and effectuate the intent of the

1 legislature Each provision, therefore, should
2 be given a reasonable construction consistent
3 with the policy purpose and policy of the
4 entire section A primary rule of statutory
5 interpretation is that words must be given
6 their plain and ordinary meaning without resort
7 to a subtle or forced construction which limits
8 or expands the statute's operation Thus, when
9 a statute contains both contains clear and
10 unambiguous terms, this court must apply those
11 terms according to their literal meaning In
12 construing the statute, the terms used therein
13 must be taken in their ordinary and popular
14 meaning To establish a prima facie case of
15 retaliation, each appellant must show that, (1)
16 he or she engaged in protected activity or was
17 perceived to have engaged in protected
18 activity, (2) SCDC took adverse employment
19 action against him or her, and (3) causal
20 connection existed between the protected
21 activity and the adverse action In order to
22 establish the requisite causal connection, each
23 appellant must proffer evidence which
24 establishes that he or she would not have been
25 terminated but for the protected activity The

1 ultimate question regarding each appellant's
2 retaliation claim is whether SCDC intentionally
3 retaliated against them because of the Abraham
4 lawsuit Should you find that the rationale
5 for the reduction in force articulated by the
6 witnesses presented by SCDC as unpersuasive or
7 even obviously contrived, that does not mean
8 that each appellant's retaliation claim is
9 correct or valid In other words, it is not
10 enough to disbelieve the witnesses offered by
11 SCDC The panel must believe the explanation
12 of retaliation offered by these appellants
13 Two kinds of evidence are recognized by the
14 law, direct evidence and circumstantial
15 evidence These two kinds of evidence apply to
16 the parties alike, and both are equally good in
17 the law if they meet the test of the law On
18 a particular factual point, there may be direct
19 evidence, circumstantial evidence or a
20 combination of these kinds of evidence Facts
21 in issue may be proved either by direct
22 evidence or by indirect evidence, otherwise
23 called circumstantial evidence It is direct
24 evidence if it proves a fact without an
25 inference and which in itself, if true,

conclusively establishes that fact By direct evidence of a fact it is meant the statements of persons who have perceived its existence by means of their senses, or the production of a thing before the court, itself before the court Direct evidence is the testimony of a person who claims to have actual knowledge of a fact It is evidence based on actual knowledge and proves the fact without inference or presumption It is when a witness can be called to testify to the precise fact that is the subject of the issue on trial Direct evidence immediately establishes the main fact to be proved It is essentially evidence you can see, observe or hear with your senses Circumstantial evidence does not tend to immediately prove a fact in issue However, it does give rise to a legal inference that such a fact does exist That means the proof of a chain of facts of circumstances indicating the existence of a fact It is circumstantial evidence if it proves a fact from which an inference of the existence of another fact may be drawn In other words, you may infer that a particular event occurred based on proof of

1 circumstances warranting such an inference
2 Circumstantial evidence immediately establishes
3 secondary facts from which the main fact may be
4 inferred and is typically characterized by
5 inference or presumption It is not something
6 that one observes but from facts one can draw
7 a conclusion By circumstantial evidence of a
8 fact is meant the proof of some other fact or
9 facts from which, taken either singly or
10 collectively, the existence of a particular
11 fact in question may be inferred as the
12 necessary and probable consequence
13 Circumstantial evidence is evidence which,
14 without going directly to prove the existence
15 of a fact, gives rise to a logical inference
16 that such a fact does exist Inferences drawn
17 from physical facts may be as strong as direct
18 evidence Such inferences amount to
19 circumstantial evidence, and when established,
20 are as competent to prove a fact Where
21 circumstantial evidence is relied upon, it is
22 incumbent upon the party presenting it to show
23 the existence of such circumstances as would
24 justify the inference that a particular event
25 occurred and not leave the question to mere

speculation or conjecture. Additionally, where circumstantial evidence is relied upon, the facts and circumstances shown should be reckoned with in the light of ordinary experience, and such conclusions deduced from such evidence as common sense dictates. If the circumstances are proved to your satisfaction, you may infer a fact from those circumstances, but the circumstances must lead to the conclusion with reasonable certainty. Circumstantial evidence is just as competent or capable of proving a fact in issue as is direct evidence. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. The proof as to circumstantial evidence is sufficient if shown by the preponderance of the evidence with the greater weight of the evidence. Both types of evidence are accepted as reasonable means of proof, and each is respected for such convincing force as it may carry. In a

proceeding such as this, proof of circumstances warranting a given inference is sufficient because proof of a certainty is not required, and every other reasonable conclusion need not be excluded But the circumstances established, if any, in the minds of the panel must have sufficient probative force to produce a reasonable and probable conclusion and not a mere conjecture The conclusion reached must, in the minds of the panel must be in the minds of the panel the most probable and reasonable one So if there are several reasonable inferences that may be drawn from all the circumstances and the evidence, it is for you to say which is established by the greater weight of the evidence During this hearing, you have received testimony by way of deposition of witnesses taken outside of the hearing room That witness may or may not appear personally before you The deposition was taken in the manner prescribed by law, and you will consider the testimony from that deposition just as if the witness were here upon the stand testifying You take this deposition testimony in connection with all

1 other testimony, and you assess the credibility
2 of that witness from anything that is in the
3 record that will aid you in doing so You
4 consider that deposition evidence along with
5 the testimony of the witnesses who have
6 appeared in person, and you determine from all
7 the evidence in the case whether the witness is
8 present or by deposition or whether by exhibits
9 in the case, what the truth of this controversy
10 is according to the facts as you find them to
11 be and then apply the law as I give it to you
12 As fact finders you have broad discretion in
13 determining the credibility or believability of
14 witnesses It is not unusual for a case to
15 have contradictory evidence and inconsistent
16 testimony from a witness It is for you to
17 decide what part of the witness's testimony, if
18 any, is to be believed and what part, if any,
19 is to be disbelieved An employment action
20 that is punitive denotes an improper
21 consideration in the decision making process
22 Improper considerations make reductions in
23 force grievable In making your deliberations,
24 you must determine if improper consideration
25 has affected the challenged reduction in force

1 When an employment action serves as a pretext
2 that is something to conceal its true purpose
3 or object to punish, then it is punitive
4 Property interest in employment can be created
5 by state law, policy or regulation An agency
6 of government cannot deprive an employee of a
7 property interest without due process of the
8 law, and each person is entitled to equal
9 protection of the law An agency cannot
10 deprive an employee of a property interest
11 unless by motive, procedure prescribed by the
12 General Assembly An employing agency may not
13 disregard procedural legislation to remove,
14 demote or otherwise deprive an employee of his
15 salary or position The right to hold specific
16 employment and the right to follow a chosen
17 profession free from unreasonable government
18 interference comes within the liberty and
19 property interest protected by the Due Process
20 Clause The Palmetto Unified School District
21 was designed to enhance the quality and scope
22 of inmate education with an eye toward
23 reintegrating offenders in the community and
24 operates as a controlled board of trustees
25 supervised by the Department of Corrections

1 You are to disregard any testimony that
2 purports to identify the intent of the
3 legislature in enacting any statute I believe
4 that covers it

5 **MR NICKLES** That's an accurate reading of the
6 charge

7 **MR SUMMERS** That is correct

8 **MR MCCLARY** Thank you Now the committee will
9 separate to receive advice from counsel and to
10 deliberate on the case of Bell, et al , against
11 the South Carolina Department of Corrections
12 And no decision no votes will be taken
13 while we're in executive session

14 **MR NICKLES** Thank you very much

15 **MR SUMMERS** Thank you all very much

16 **(There being no further testimony, the hearing was**
17 **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 Twenty-One (21) 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 JANUARY 29, 2009
DAY 10

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 tenth day of the hearing of
2 the appeal of Bell, et al , versus the South
3 Carolina Department of Corrections on this 29th
4 day of January 2009 This hearing remains in
5 executive session

6 (Off the record)

7 **MR MCCLARY** Okay From the committee, are there
8 any further discussions? I'll say again are
9 there I'm sorry?

10 **MS KUDELKA** No I was going to say I make a motion
11 that we

12 **MR MCCLARY** Well, I was

13 **MS KUDELKA** Oh, I'm sorry

14 **MR MCCLARY** Okay Are there any further
15 discussions or are there any motions?

16 **MS KUDELKA** Mr Chairman, I make a motion that we
17 come out of executive session

18 **MR MCCLARY** Are there any seconds?

19 **MS HUTTO** I second

20 **MR MCCLARY** Okay All in favor?

21 **MS KUDELKA** Aye

22 **MS HUTTO** Aye

23 **MR MCCLARY** Aye All opposed? I guess we're out
24 of executive session executive session
25 then I just wanted to let both sides know

1 that while we were in executive session no
2 votes were taken Okay, are there any motions
3 at this time that the committee would like to
4 entertain?

5 **MR COOPER** Mr Chairman, I move that the committee
6 find that the grievants failed to prove that
7 the education staff of SCDC was selected for
8 the RIF on June 1, 2003, in retaliation for the
9 Abraham teacher lawsuit

10 **MR MCCLARY** Are there any seconds?

11 **MS HUTTO** Second

12 **MR MCCLARY** All in favor?

13 **MS HUTTO** Aye

14 **MS KUDELKA** Aye

15 **MR COOPER** Aye

16 **MS ELMORE** Aye

17 **MR MCCLARY** Aye Can I have a show of hands,
18 please? Okay, it's unanimous Are there any
19 other motions?

20 **MR COOPER** Mr Chairman, I move that the committee
21 find that the Palmetto Unified School District
22 was a division of the SCDC and did not operate
23 as a separate entity

24 **MR MCCLARY** All in favor, a show of hands, please?

25 **MR COOPER** We need a second

1 **MR MCCLARY** I'm sorry, is there a second?

2 **MS KUDELKA** I make a second

3 **MR MCCLARY** Okay All in favor?

4 **MS KUDELKA** Aye

5 **MS HUTTO** Aye

6 **MS ELMORE** Aye

7 **MR COOPER** Aye

8 **MR MCCLARY** Aye Show of hands, please It's

9 unanimous, five to zero Are there any other

10 motions?

11 **MS BRABHAM** Karl, be sure to say the vote

12 **MR MCCLARY** Okay, okay Do you need me to repeat

13 it?

14 **MS BRABHAM** Yes

15 **MR MCCLARY** Okay For the first motion it was five

16 to zero For the second motion it was five to

17 zero Are there any other motions?

18 **MR COOPER** Mr Chairman, I move that the committee

19 find that the SCDC and/or its Director did not

20 violate state law by failing to involve the

21 Superintendent and/or the Board of Trustees of

22 the PUSD Number 1 in the planning and

23 development of the June 2003 SCDC reduction in

24 force plan that affected education employees

25 **MR MCCLARY** Are there any seconds?

1 MS HUTTO I second
2 MR MCCLARY All in favor?
3 MS HUTTO Aye
4 MS ELMORE Aye
5 MS KUDELKA Aye
6 MR COOPER Aye
7 MR MCCLARY Aye All opposed? Five to zero
8 Lynn, I didn't see your hand Did you have
9 MS HUTTO I'm sorry
10 MR MCCLARY Five to zero in favor Are there any
11 other motions?
12 MR COOPER Mr Chairman, I move that the committee
13 find that SCDC's and/or its directors' division
14 of SCDC into eleven competitive geographic
15 regions for the purpose of the 2003 reduction
16 in force did not violate state law, and that
17 the competitive areas were not drawn for
18 retaliatory reasons
19 MR MCCLARY Do I hear a second?
20 MS HUTTO I second
21 MR MCCLARY All in favor?
22 MS HUTTO Aye
23 MR COOPER Aye
24 MS KUDELKA Aye
25 MS ELMORE Aye

1 MR MCCLARY Aye All opposed? Five in favor, zero
2 oppose Are there any other motions?

3 MR COOPER Mr Chairman, I move that the committee
4 find that the selection of educator positions
5 for separation by RIF was not due to the state
6 law that requires teachers to be paid based on
7 the average teacher pay scale

8 MR MCCLARY Are there any seconds?

9 MS KUDELKA I second the motion

10 MR MCCLARY All in favor?

11 MS HUTTO Aye

12 MS KUDELKA Aye

13 MS ELMORE Aye

14 MR COOPER Aye

15 MR MCCLARY Aye All opposed? No oppose Five
16 favor, zero oppose Are there any other
17 motions?

18 MR COOPER Mr Chairman, I move that the committee
19 find that the educator positions were not
20 selected for separation based on the perception
21 that educator positions were overpaid or any
22 other retaliatory reasons

23 MR MCCLARY Is there a second?

24 MS HUTTO I second

25 MR MCCLARY All in favor?

1 MR COOPER Aye

2 MS ELMORE Aye

3 MS KUDELKA Aye

4 MS HUTTO Aye

5 MR MCCLARY Aye All those opposed? Five in
6 favor, zero oppose Are there any other
7 motions?

8 MR COOPER Mr Chairman, I move that the committee
9 find that the grievants failed to establish the
10 state law afforded them with statewide bumping
11 rights or bumping rights that were any
12 different than the other 61 SCDC employees
13 employees subjected to the 2003 reduction in
14 force

15 MR MCCLARY Are there any seconds?

16 MS HUTTO Second

17 MR MCCLARY All those in favor?

18 MS KUDELKA Aye

19 MS HUTTO Aye

20 MR COOPER Aye

21 MS ELMORE Aye

22 MR MCCLARY Aye All those opposed? Five in
23 favor, zero oppose Are there any other
24 motions?

25 MR COOPER Mr Chairman, I move that the committee

1 find that the SCDC had a right to divide the
2 agency into eleven competitive geographical
3 areas in accordance with its 2003 RIF plan, and
4 that it did not violate the state law

5 **MR MCCLARY** Any seconds?

6 **MS HUTTO** Second

7 **MR MCCLARY** All those in favor?

8 **MS KUDELKA** Aye

9 **MS HUTTO** Aye

10 **MS ELMORE** Aye

11 **MR COOPER** Aye

12 **MR MCCLARY** Aye All those who oppose? Five in
13 favor, zero oppose Are there any other
14 motions?

15 **MR COOPER** Mr Chairman, I move that the committee
16 find that SCDC did not treat the grievants in
17 any unequal fashion by not being afforded the
18 opportunity for recall to temporary positions
19 when employees who retired during the period
20 August 2003 to October 1, 2003, as participants
21 in the retirement opportunity

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

23 **MS KUDELKA** I second

24 **MR MCCLARY** All those in favor?

25 **MR COOPER** Aye

1 MS HUTTO Aye
2 MS KUDELKA Aye
3 MS ELMORE Aye
4 MR MCCLARY All those opposed? Aye Four in
5 favor, one oppose Are there any other
6 motions?
7 MR COOPER Mr Chairman, I move that the committee
8 finds that the grievants failed to establish
9 that SCDC violated their own RIF policy
10 MR MCCLARY Are there any seconds?
11 MS HUTTO I second
12 MR MCCLARY All those in favor?
13 MS HUTTO Aye
14 MS KUDELKA Aye
15 MS ELMORE Aye
16 MR MCCLARY Aye All those opposed? Five in
17 favor, zero oppose Are there any other
18 motions? Hearing no other motions, the final
19 decision will be written within twenty days and
20 will be sent to you in writing within twenty
21 days Thank ya'll very much
22 MS GUFFEY Thank you
23 MR SUMMERS Thank you
24 (There being no further testimony, the hearing was
25 concluded)

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 Nine (9) 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

OPENING STATEMENT FOR EACH GRIEVANCE COMMITTEE HEARING

(The following statement is read by the Presiding Officer as the "Opening Statement" to start appeal hearings before the State Employee Grievance Committee)

THIS IS THE FIRST DAY OF THE HEARING OF THE APPEAL OF Reduction-in-Force INSTITUTED BY THE FOLLOWING

James "Cal" Bell ✓ ET al
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 L Williams ✓
✓ Paula Woodhief ✓

AGAINST South Carolina Department of Corrections BEING HELD IN COLUMBIA, SOUTH CAROLINA, THIS 5th DAY OF November 2008 A record is being made of the hearing

For the record, my name is Karl McClary – Department of Motor Vehicles and other members of the State Employee Grievance Committee present are

Herb Cooper – Department of Transportation

Glenise Elmore – Department of Mental Health

Lynn Hutto – SLED

Lesia Kudelka – Department of Labor, Licensing, and Regulations

The Committee Attorney is Roland Corning – Attorney General's Office

State Employee Grievance and Appeals Regulation 19-718 07 (E) (7) provides that each party shall provide to the secretary a list of representatives and witnesses at the beginning of the hearing At this time, the secretary will accept representatives and witness lists from both parties

Appellant is represented by Attorney Allen Nickles

The Employing Agency is represented by Attorney Lake Summers

Your attention is called to the fact that this hearing will be conducted as informally as is compatible with an equitable presentation of both sides of the case and in compliance with the Administrative Procedures Act. I am the presiding officer of this Committee and it is my duty to take whatever action is necessary to insure an equitable, orderly, and expeditious hearing.

We will be bound by the rules of evidence. The Committee Attorney shall determine the order and relevance of the testimony and the appearance of witnesses, and shall rule on all motions and objections.

The Office of Human Resources has furnished to the members of the Committee a copy of records, reports, and documentation of the earlier proceedings on the grievance. These documents were provided to the Office of Human Resources by the agency and the appellant. These documents will be considered by the Committee as the record on appeal during this hearing and, according to § 8-17-350 of the State Employee Grievance Procedure Act, will now be marked into evidence as Committee Exhibit 1.

The appellant and the agency may, if they so desire, make an opening statement before the presentation of their cases. Then, the appellant may call and examine witnesses from the appellant list of witnesses.

After the appellant has finished, the agency may present its case.

Each side will be given the opportunity at the appropriate time to ask questions of a witness. The presiding officer, any member of the Committee, or the Committee Attorney may direct questions to any party or witness at any time during the proceedings.

Before closing the hearing, the presiding officer will allow both parties to present a brief summary or closing statement if they so desire. The appellant will have the option of closing first or last.

I wish to point out that only testimony and evidence pertinent to the grounds on which the appeal is based or pertinent to the charges on which the agency's action is based will

be allowed Testimony or evidence which is repetitive or cumulative will not be permitted

Are there any questions by either party?

Witnesses are asked not to discuss this case either before or after testifying until they are excused This is not intended to preclude the parties from entering into discussion with their respective witnesses Does any witness not understand this? Witnesses are to remain available after testifying until they are excused by the presiding officer After the opening statement, witnesses may not remain in the hearing room except when called to testify Witnesses will be asked to testify under oath At this time, the secretary will determine which witnesses on the parties' list are present and administer the oath to all those witnesses

The appellant, the agency, witnesses, or anyone else related to the case are not to discuss the case with any member of the State Employee Grievance Committee before, during, or after the hearing until the final decision is reached The only time the case is to be discussed is during the formal hearing procedures A matter is still considered to be pending before the Committee during the time involved in a request for reconsideration of a Committee's decision or until the time has passed for an appeal to the Administrative Law Court The only time the case is to be discussed is during the formal hearing procedures

After hearing this appeal, the Committee will report its finding and decision in writing to the employee and the employing agency within twenty calendar days of the conclusion of the hearing The decision shall be final in terms of administrative review

Assisting the Committee is Sandra Brabham – Office of Human Resources

The requirement that written public notice of the time, date, place, and agenda for this hearing has been met

✓ AS PERMITTED BY THE FREEDOM OF INFORMATION ACT, THE APPELLANT
✓ HAS REQUESTED THAT THIS HEARING BE CONDUCTED IN OPEN SESSION

(After the Vote - excuse all but the two parties involved and other authorized persons)

OPENING STATEMENT FOR EACH GRIEVANCE COMMITTEE HEARING

(The following statement is read by the Presiding Officer as the "Opening Statement" to start appeal hearings before the State Employee Grievance Committee)

THIS IS THE SECOND DAY OF THE HEARING OF THE APPEAL OF Reduction-in-Force INSTITUTED BY Bell et al AGAINST South Carolina Department of Corrections BEING HELD IN COLUMBIA, SOUTH CAROLINA, THIS 6TH DAY OF November 2008

A record is being made of the hearing

For the record, my name is Karl McClary – Department of Motor Vehicles and other members of the State Employee Grievance Committee present are

Herb Cooper – Department of Transportation

Glenise Elmore- Department of Mental Health

Lynn Hutto – SLED

Lesia Kudelka – Department of Labor, Licensing, and Regulations

The Committee Attorney is Roland Corning – Attorney General's Office

Appellant is represented by Attorney Allen Nickles

The Employing Agency is represented by Attorney Lake Summers

Assisting the Committee is Sandra Brabham – Office of Human Resources

Each side will be given the opportunity at the appropriate time to ask questions of a witness. The presiding officer, any member of the Committee, or the Committee Attorney may direct questions to any party or witness at any time during the proceedings.

Before closing the hearing, the presiding officer will allow both parties to present a brief summary or closing statement if they so desire. The appellant will have the option of closing first or last.

I wish to point out that only testimony and evidence pertinent to the grounds on which the appeal is based or pertinent to the charges on which the agency's action is based will be allowed. Testimony or evidence which is repetitive or cumulative will not be permitted.

Are there any questions by either party?

Witnesses are asked not to discuss this case either before or after testifying until they are excused. This is not intended to preclude the parties from entering into discussion with their respective witnesses. Does any witness not understand this? Witnesses are to remain available after testifying until they are excused by the presiding officer. After the opening statement, witnesses may not remain in the hearing room except when called to testify. Witnesses will be asked to testify under oath. At this time, the secretary will determine which witnesses on the parties' list are present and administer the oath to all those witnesses.

The appellant, the agency, witnesses, or anyone else related to the case are not to discuss the case with any member of the State Employee Grievance Committee before, during, or after the hearing until the final decision is reached. The only time the case is to be discussed is during the formal hearing procedures. A matter is still considered to be pending before the Committee during the time involved in a request for reconsideration of a Committee's decision or until the time has passed for an appeal to the Administrative Law Court. The only time the case is to be discussed is during the formal hearing procedures.

After hearing this appeal, the Committee will report its finding and decision in writing to the employee and the employing agency within twenty calendar days of the conclusion of the hearing. The decision shall be final in terms of administrative review.

This hearing remains in executive session.

OPENING STATEMENT FOR EACH GRIEVANCE COMMITTEE HEARING

(The following statement is read by the Presiding Officer as the "Opening Statement" to start appeal hearings before the State Employee Grievance Committee).

THIS IS THE THIRD DAY OF THE HEARING OF THE APPEAL OF Reduction-in-Force INSTITUTED BY Bell et al AGAINST South Carolina Department of Corrections BEING HELD IN COLUMBIA, SOUTH CAROLINA, THIS 7TH DAY OF November 2008

A record is being made of the hearing

For the record, my name is Karl McClary – Department of Motor Vehicles and other members of the State Employee Grievance Committee present are

Herb Cooper – Department of Transportation

Glenise Elmore- Department of Mental Health

Lynn Hutto – SLED

Lesia Kudelka – Department of Labor, Licensing, and Regulations

The Committee Attorney is Roland Corning – Attorney General's Office

Appellant is represented by Attorney Allen Nickles

The Employing Agency is represented by Attorney Lake Summers

Assisting the Committee is Sandra Brabham – Office of Human Resources

Each side will be given the opportunity at the appropriate time to ask questions of a witness. The presiding officer, any member of the Committee, or the Committee Attorney may direct questions to any party or witness at any time during the proceedings.

Before closing the hearing, the presiding officer will allow both parties to present a brief summary or closing statement if they so desire. The appellant will have the option of closing first or last.

I wish to point out that only testimony and evidence pertinent to the grounds on which the appeal is based or pertinent to the charges on which the agency's action is based will be allowed. Testimony or evidence which is repetitive or cumulative will not be permitted.

Are there any questions by either party?

HCRD

Witnesses are asked not to discuss this case either before or after testifying until they are excused. This is not intended to preclude the parties from entering into discussion with their respective witnesses. Does any witness not understand this? Witnesses are to remain available after testifying until they are excused by the presiding officer. After the opening statement, witnesses may not remain in the hearing room except when called to testify. Witnesses will be asked to testify under oath. At this time, the secretary will determine which witnesses on the parties' list are present and administer the oath to all those witnesses.

The appellant, the agency, witnesses, or anyone else related to the case are not to discuss the case with any member of the State Employee Grievance Committee before, during, or after the hearing until the final decision is reached. The only time the case is to be discussed is during the formal hearing procedures. A matter is still considered to be pending before the Committee during the time involved in a request for reconsideration of a Committee's decision or until the time has passed for an appeal to the Administrative Law Court. The only time the case is to be discussed is during the formal hearing procedures.

After hearing this appeal, the Committee will report its finding and decision in writing to the employee and the employing agency within twenty calendar days of the conclusion of the hearing. The decision shall be final in terms of administrative review.

This hearing remains in executive session.

OPENING STATEMENT FOR EACH GRIEVANCE COMMITTEE HEARING

(The following statement is read by the Presiding Officer as the "Opening Statement" to start appeal hearings before the State Employee Grievance Committee)

THIS IS THE FOURTH DAY OF THE HEARING OF THE APPEAL OF Reduction-in-Force INSTITUTED BY Bell et al AGAINST South Carolina Department of Corrections BEING HELD IN COLUMBIA, SOUTH CAROLINA, THIS 10TH DAY OF November 2008

A record is being made of the hearing

For the record, my name is Karl McClary – Department of Motor Vehicles and other members of the State Employee Grievance Committee present are

Herb Cooper – Department of Transportation

Glenise Elmore- Department of Mental Health

Lynn Hutto – SLED

Lesia Kudelka – Department of Labor, Licensing, and Regulations

The Committee Attorney is Roland Corning – Attorney General's Office

Appellant is represented by Attorney Allen Nickles

The Employing Agency is represented by Attorney Lake Summers

Assisting the Committee is Sandra Brabham – Office of Human Resources

Each side will be given the opportunity at the appropriate time to ask questions of a witness. The presiding officer, any member of the Committee, or the Committee Attorney may direct questions to any party or witness at any time during the proceedings.

Before closing the hearing, the presiding officer will allow both parties to present a brief summary or closing statement if they so desire. The appellant will have the option of closing first or last.

I wish to point out that only testimony and evidence pertinent to the grounds on which the appeal is based or pertinent to the charges on which the agency's action is based will be allowed. Testimony or evidence which is repetitive or cumulative will not be permitted.

Are there any questions by either party?

Witnesses are asked not to discuss this case either before or after testifying until they are excused. This is not intended to preclude the parties from entering into discussion with their respective witnesses. Does any witness not understand this? Witnesses are to remain available after testifying until they are excused by the presiding officer. After the opening statement, witnesses may not remain in the hearing room except when called to testify. Witnesses will be asked to testify under oath. At this time, the secretary will determine which witnesses on the parties' list are present and administer the oath to all those witnesses.

The appellant, the agency, witnesses, or anyone else related to the case are not to discuss the case with any member of the State Employee Grievance Committee before, during, or after the hearing until the final decision is reached. The only time the case is to be discussed is during the formal hearing procedures. A matter is still considered to be pending before the Committee during the time involved in a request for reconsideration of a Committee's decision or until the time has passed for an appeal to the Administrative Law Court. The only time the case is to be discussed is during the formal hearing procedures.

After hearing this appeal, the Committee will report its finding and decision in writing to the employee and the employing agency within twenty calendar days of the conclusion of the hearing. The decision shall be final in terms of administrative review.

This hearing remains in executive session.

OPENING STATEMENT FOR EACH GRIEVANCE COMMITTEE HEARING

(The following statement is read by the Presiding Officer as the "Opening Statement" to start appeal hearings before the State Employee Grievance Committee)

THIS IS THE FIFTH DAY OF THE HEARING OF THE APPEAL OF Reduction-in-Force INSTITUTED BY Bell et al AGAINST South Carolina Department of Corrections BEING HELD IN COLUMBIA, SOUTH CAROLINA, THIS 17TH DAY OF November 2008

A record is being made of the hearing

For the record, my name is Karl McClary – Department of Motor Vehicles and other members of the State Employee Grievance Committee present are

Herb Cooper – Department of Transportation

Glenise Elmore- Department of Mental Health

Lynn Hutto – SLED

Lesia Kudelka – Department of Labor, Licensing, and Regulations

The Committee Attorney is Roland Corning – Attorney General's Office

Appellant is represented by Attorney Allen Nickles

The Employing Agency is represented by Attorney Lake Summers

Assisting the Committee is Sandra Brabham – Office of Human Resources

Before closing the hearing, the presiding officer will allow both parties to present a brief summary or closing statement if they so desire. The appellant will have the option of closing first or last.

The appellant, the agency, witnesses, or anyone else related to the case are not to discuss the case with any member of the State Employee Grievance Committee before, during, or after the hearing until the final decision is reached. The only time the case is to be discussed is during the formal hearing procedures. A matter is still considered to be pending before the Committee during the time involved in a request for reconsideration of a Committee's decision or until the time has passed for an appeal to the Administrative

Law Court The only time the case is to be discussed is during the formal hearing procedures

After hearing this appeal, the Committee will report its finding and decision in writing to the employee and the employing agency within twenty calendar days of the conclusion of the hearing The decision shall be final in terms of administrative review

This hearing remains in executive session

OPENING STATEMENT FOR EACH GRIEVANCE COMMITTEE HEARING

(The following statement is read by the Presiding Officer as the "Opening Statement" to start appeal hearings before the State Employee Grievance Committee)

THIS IS THE SIXTH DAY OF THE HEARING OF THE APPEAL OF Reduction-in-Force INSTITUTED BY Bell et al AGAINST South Carolina Department of Corrections BEING HELD IN COLUMBIA, SOUTH CAROLINA, THIS 15TH DAY OF December 2008

A record is being made of the hearing

For the record, my name is Karl McClary – Department of Motor Vehicles and other members of the State Employee Grievance Committee present are

Herb Cooper – Department of Transportation

Glenise Elmore- Department of Mental Health

Lynn Hutto – SLED

Lesia Kudelka – Department of Labor, Licensing, and Regulations

The Committee Attorney is Roland Corning – Attorney General's Office

Appellant is represented by Attorney Allen Nickles

The Employing Agency is represented by Attorney Lake Summers

Assisting the Committee is Sandra Brabham – Office of Human Resources

Each side will be given the opportunity at the appropriate time to ask questions of a witness. The presiding officer, any member of the Committee, or the Committee Attorney may direct questions to any party or witness at any time during the proceedings.

Before closing the hearing, the presiding officer will allow both parties to present a brief summary or closing statement if they so desire. The appellant will have the option of closing first or last.

I wish to point out that only testimony and evidence pertinent to the grounds on which the appeal is based or pertinent to the charges on which the agency's action is based will be allowed. Testimony or evidence which is repetitive or cumulative will not be permitted.

Are there any questions by either party?

Witnesses are asked not to discuss this case either before or after testifying until they are excused. This is not intended to preclude the parties from entering into discussion with their respective witnesses. Does any witness not understand this? Witnesses are to remain available after testifying until they are excused by the presiding officer. After the opening statement, witnesses may not remain in the hearing room except when called to testify. Witnesses will be asked to testify under oath. At this time, the secretary will determine which witnesses on the parties' list are present and administer the oath to all those witnesses.

The appellant, the agency, witnesses, or anyone else related to the case are not to discuss the case with any member of the State Employee Grievance Committee before, during, or after the hearing until the final decision is reached. The only time the case is to be discussed is during the formal hearing procedures. A matter is still considered to be pending before the Committee during the time involved in a request for reconsideration of a Committee's decision or until the time has passed for an appeal to the Administrative Law Court. The only time the case is to be discussed is during the formal hearing procedures.

After hearing this appeal, the Committee will report its finding and decision in writing to the employee and the employing agency within twenty calendar days of the conclusion of the hearing. The decision shall be final in terms of administrative review.

This hearing remains in executive session.

OPENING STATEMENT FOR EACH GRIEVANCE COMMITTEE HEARING

(The following statement is read by the Presiding Officer as the "Opening Statement" to start appeal hearings before the State Employee Grievance Committee)

THIS IS THE SEVENTH DAY OF THE HEARING OF THE APPEAL OF Reduction-in-Force INSTITUTED BY Bell et al AGAINST South Carolina Department of Corrections BEING HELD IN COLUMBIA, SOUTH CAROLINA, THIS 18TH DAY OF December 2008

A record is being made of the hearing

For the record, my name is Karl McClary – Department of Motor Vehicles and other members of the State Employee Grievance Committee present are

Herb Cooper – Department of Transportation

Glenise Elmore- Department of Mental Health

Lynn Hutto – SLED

Lesia Kudelka – Department of Labor, Licensing, and Regulations

The Committee Attorney is Roland Corning – Attorney General's Office

Appellant is represented by Attorney Allen Nickles

The Employing Agency is represented by Attorney Lake Summers

Assisting the Committee is Sandra Brabham – Office of Human Resources

Each side will be given the opportunity at the appropriate time to ask questions of a witness. The presiding officer, any member of the Committee, or the Committee Attorney may direct questions to any party or witness at any time during the proceedings.

Before closing the hearing, the presiding officer will allow both parties to present a brief summary or closing statement if they so desire. The appellant will have the option of closing first or last.

I wish to point out that only testimony and evidence pertinent to the grounds on which the appeal is based or pertinent to the charges on which the agency's action is based will be allowed. Testimony or evidence which is repetitive or cumulative will not be permitted.

Are there any questions by either party?

Witnesses are asked not to discuss this case either before or after testifying until they are excused. This is not intended to preclude the parties from entering into discussion with their respective witnesses. Does any witness not understand this? Witnesses are to remain available after testifying until they are excused by the presiding officer. After the opening statement, witnesses may not remain in the hearing room except when called to testify. Witnesses will be asked to testify under oath. At this time, the secretary will determine which witnesses on the parties' list are present and administer the oath to all those witnesses.

The appellant, the agency, witnesses, or anyone else related to the case are not to discuss the case with any member of the State Employee Grievance Committee before, during, or after the hearing until the final decision is reached. The only time the case is to be discussed is during the formal hearing procedures. A matter is still considered to be pending before the Committee during the time involved in a request for reconsideration of a Committee's decision or until the time has passed for an appeal to the Administrative Law Court. The only time the case is to be discussed is during the formal hearing procedures.

After hearing this appeal, the Committee will report its finding and decision in writing to the employee and the employing agency within twenty calendar days of the conclusion of the hearing. The decision shall be final in terms of administrative review.

This hearing remains in executive session.

OPENING STATEMENT

THIS IS THE TENTH DAY OF THE HEARING OF THE APPEAL OF BELL
ET AL V THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ON THIS
29TH DAY OF JANUARY 2009

THIS HEARING REMAINS IN EXECUTIVE SESSION

EXHIBIT SHEET

December 15 & 18, 2008

November 17, 2008

Date of Hearing

Appellant

Agency

Disciplinary Action

November 5, 6, 7 & 10, 2008

Bill et al

Dept of Corrections

Reduction-in-force

Chairperson

Secretary

Committee Attorney

Wendy McClary

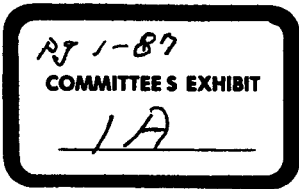
Wendy Cooper

Roland Corning

EXHIBITS AND EXHIBIT NUMBERS				DESCRIPTION/IDENTIFYING INFORMATION
COMMITTEE EXHIBIT 1				Pages 1 to 1274
AGENCY EXHIBITS		APPELLANT EXHIBITS		
Introduced	For Identification Only	Introduced	For Identification Only	
		#1 11/5		11/5/05 Bell - #12 v SCDC Deposition Excerpts
		#2 11/5		5/30/03 memo - shift assignment
				To Nancy Glenn from Evonne Duchon
		#3 11/10		PUSD website page (contact info)
		#4 11/10		SCDC website page (PUSD overview)
		#5 11/10		PUSD Education Program Services Sheet
		#6 11/10		SCDC website page (PUSD) (Trustees)
		#7 11/10		Bell et al v SCDC Hearing Notebook
		#8 11/17		Deposition of Charles Williams
		#9 12/15		Requirements for Teacher Education & Cert. Program
		#10 12/15		Requirements of Teachers
		#11 12/15		FAPS
		#12 12/15		Question - Can an agency hire
#1 12/15/2008				Lettered Request for Info

1453

11/5/2008 3 books
 #2 11/10/08
 #3 12/15/08 Submission of documents by SCDC - satisfaction re: report by Beck 1
 #4 12/15/08



South Carolina Budget and Control Board
Office of Human Resources

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State Employee Grievance Procedure
State Appeal Form

TO APPEAL THE DECISION OF THE AGENCY CONCERNING A GRIEVANCE UNDER THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT TO THE STATE HUMAN RESOURCES DIRECTOR, THE EMPLOYEE AND/OR REPRESENTATIVE INITIATING THE APPEAL MUST COMPLETE THIS FORM AND RETURN IT TO THE STATE OFFICE OF HUMAN RESOURCES

Employee's Name James Cal Bell

Job Classification Educator

Agency Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	407 Bell Road	
City	Donalds	
State	SC	
Zip Code	29638	
E-mail Address		
Telephone	Area Code	Number
Home	864	456 3202
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

4 What date did the employee receive the final decision? see attached

5 If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency's internal grievance procedure?

1454

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position

See attached

Please specify the relief that the employee is seeking by this appeal

See attached

Additional documents may be submitted by e-mail to the following address -- grievance@ohr.sc.gov -- or by mailing the documents to Office of Human Resources, 1201 Main Street, Suite 800, Columbia, SC 29201

Form GC101 Revised 07/01/2005

Submit Appeal

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.



South Carolina Budget and Control Board Office of Human Resources

State Employee Grievance Procedure State Appeal Form

TO APPEAL THE DECISION OF THE AGENCY CONCERNING A GRIEVANCE UNDER THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT TO THE STATE HUMAN RESOURCES DIRECTOR, THE EMPLOYEE AND/OR REPRESENTATIVE INITIATING THE APPEAL MUST COMPLETE THIS FORM AND RETURN IT TO THE STATE OFFICE OF HUMAN RESOURCES

Employee s Name Othella Bernard

Job Classification Educator

Agency Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	7028 Greenpond Road	
City	Gray Court	
State	SC	
Zip Code	29645	
E-mail Address		
Telephone	Area Code	Number
Home	864	575-3039
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

4 What date did the employee receive the final decision? see attached

5 If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency s internal grievance procedure?

1456

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position ⊕

See attached

Please specify the relief that the employee is seeking by this appeal ⊕

See attached

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Office of Human ResourcesSearch OHR**State Employee Grievance Procedure
State Appeal Form**

TO APPEAL THE DECISION OF THE AGENCY CONCERNING A GRIEVANCE UNDER THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT TO THE STATE HUMAN RESOURCES DIRECTOR, THE EMPLOYEE AND/OR REPRESENTATIVE INITIATING THE APPEAL MUST COMPLETE THIS FORM AND RETURN IT TO THE STATE OFFICE OF HUMAN RESOURCES

Employee's Name Katherina Bower**Job Classification** Educator**Agency** Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	3523 Ridge Road	
City	Greenwood	
State	SC	
Zip Code	29649	
E mail Address		
Telephone	Area Code	Number
Home	864	374-7918
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

4 What date did the employee receive the final decision? see attached

5 If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency's internal grievance procedure?

1458

APPEAL

) Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position

See attached

Please specify the relief that the employee is seeking by this appeal

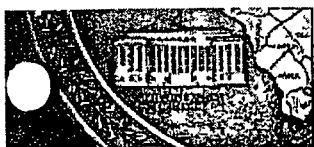
See attached

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SC Budget and Control Board Office of Human Resources

State Employee Grievance Procedure State Appeal Form

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Employee s Name Linda M W Bratton

Job Classification Educator

Agency Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	108 Tollgate Court	
City	Simpsonville	
State	SC	
Zip Code	29681	
E-mail Address		
Telephone	Area Code	Number
Home	864	967-4860
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

4 What date did the employee receive the final decision? see attached

5 If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency s internal grievance procedure?

1460

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position

See attached

Please specify the relief that the employee is seeking by this appeal

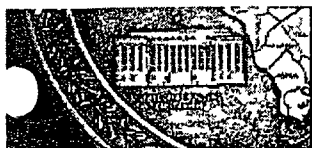
See attached

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South Carolina Budget and Control Board Office of Human Resources

State Employee Grievance Procedure State Appeal Form

TO APPEAL THE DECISION OF THE AGENCY CONCERNING A GRIEVANCE UNDER THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT TO THE STATE HUMAN RESOURCES DIRECTOR, THE EMPLOYEE AND/OR REPRESENTATIVE INITIATING THE APPEAL MUST COMPLETE THIS FORM AND RETURN IT TO THE STATE OFFICE OF HUMAN RESOURCES

Employee s Name Ann T Bridges

Job Classification Educator

Agency Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	212 Hampton Avenue	
City	Clinton	
State	SC	
Zip Code	29325	
E-mail Address		
Telephone	Area Code	Number
Home	864	833-5875
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

4 What date did the employee receive the final decision? see attached

5 If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency s internal grievance procedure?

1462

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position

See attached

Please specify the relief that the employee is seeking by this appeal

See attached

Additional documents may be submitted by e-mail to the following address -- grievance@ohr.sc.gov -- or by mailing the documents to Office of Human Resources, 1201 Main Street, Suite 800, Columbia, SC 29201

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Employee s Name Rance Cobb**Job Classification** Educator**Agency** Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	211 harvest Lane	
City	Greenwood	
State	SC	
Zip Code	29649	
E-mail Address		
Telephone	Area Code	Number
Home	864	223-5772
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

4 What date did the employee receive the final decision? see attached

5 If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency s internal grievance procedure?

1464

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position

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Employee s Name Jeannie B Croxton

Job Classification Educator

Agency Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	325 Circle Drive	
City	Travelers Rest	
State	SC	
Zip Code	29690	
E-mail Address		
Telephone	Area Code	Number
Home	803	787 0726
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

4 What date did the employee receive the final decision? see attached

5 If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency s internal grievance procedure?

1466

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position

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Employee's Name Bernetha L Culbreath

Job Classification Educator

Agency Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	820 Carter Road	
City	Ninety Six	
State	SC	
Zip Code	29666	
E-mail Address		
Telephone	Area Code	Number
Home	864	543-5338
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

4 What date did the employee receive the final decision? see attached

5 If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency's internal grievance procedure?

1468

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position

See attached

Please specify the relief that the employee is seeking by this appeal

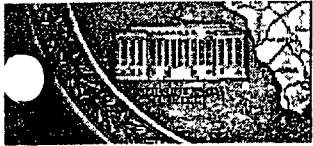
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Employee's Name William K Dreyer**Job Classification** Educator**Agency** Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	1600 East Laurel Avenue	
City	Greenwood	
State	SC	
Zip Code	29649	
E-mail Address		
Telephone	Area Code	Number
Home	864	223 4308
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

4 What date did the employee receive the final decision? see attached

5 If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency's internal grievance procedure?

1470

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position

See attached

Please specify the relief that the employee is seeking by this appeal

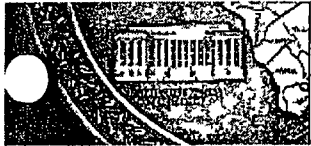
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Employee's Name Jacqueline D Farr

Job Classification Educator

Agency Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	151 Lumis Avenue	
City	Spartanburg	
State	SC	
Zip Code	29304	
E mail Address		
Telephone	Area Code	Number
Home	864	582 8627
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

4 What date did the employee receive the final decision? see attached

5 If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency's internal grievance procedure?

1472

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position

See attached

Please specify the relief that the employee is seeking by this appeal

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Employee s Name Ruth Fritts

Job Classification Educator

Agency Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	1968 Marsh Oak Lane	
City	Seabrook	
State	SC	
Zip Code	29455	
E-mail Address		
Telephone	Area Code	Number
Home	864	356 3907
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

4 What date did the employee receive the final decision? see attached

5 If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency s internal grievance procedure?

1474

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position

See attached

Please specify the relief that the employee is seeking by this appeal

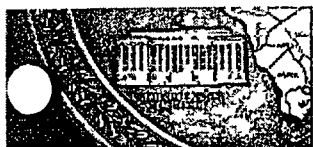
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Employee's Name Nancy Glenn

Job Classification Educator

Agency Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	617 Riverwalk Way	
City	Irmo	
State	SC	
Zip Code	29063	
E-mail Address		
Telephone	Area Code	Number
Home	803	749 9124
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

4 What date did the employee receive the final decision? see attached

5 If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency's internal grievance procedure?

1476

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position

See attached

Please specify the relief that the employee is seeking by this appeal

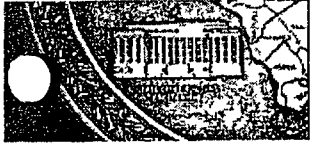
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Employee's Name Etta Jane Jones

Job Classification Educator

Agency Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	2313 Ruby Drive	
City	Augusta	
State	GA	
Zip Code	30906	
E-mail Address		
Telephone	Area Code	Number
Home	706	798-8142
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

4 What date did the employee receive the final decision? see attached

5 If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency's internal grievance procedure?

1478

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position

See attached

Please specify the relief that the employee is seeking by this appeal

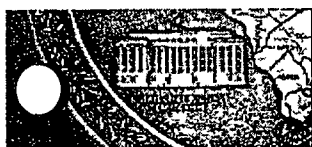
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Employee's Name Geneva Martin

Job Classification Educator

Agency Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	2218 Gadsden Street	
City	Columbia	
State	SC	
Zip Code	29201	
E-mail Address		
Telephone	Area Code	Number
Home	803	446-9775
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

4 What date did the employee receive the final decision? see attached

5 If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency's internal grievance procedure?

1480

7/23/2008

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position

See attached

Please specify the relief that the employee is seeking by this appeal

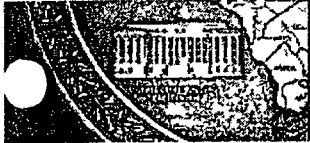
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Employee s Name Mary H McCabe

Job Classification Educator

Agency Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	105 Marseille Drive	
City	Simpsonville	
State	SC	
Zip Code	29680	
E-mail Address		
Telephone	Area Code	Number
Home	864	243-9799
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

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5 If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency s internal grievance procedure?

1482

APPEAL

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See attached

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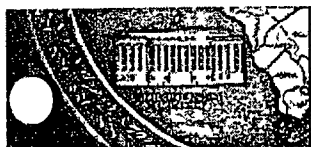
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Employee's Name Beverly McClanahan

Job Classification Educator

Agency Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	3110 Montcrest Road	
City	Columbia	
State	SC	
Zip Code	29210	
E-mail Address		
Telephone	Area Code	Number
Home	803	772 1834
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

4 What date did the employee receive the final decision? see attached

5 If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency's internal grievance procedure?

1484

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position ⊕

See attached

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See attached

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Employee's Name Max D Randolph

Job Classification Educator

Agency Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	388 Island Creek Road	
City	Cowpens	
State	SC	
Zip Code	29330	
E-mail Address		
Telephone	Area Code	Number
Home	864	461 2583
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

4 What date did the employee receive the final decision? see attached

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1486

APPEAL

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See attached

Please specify the relief that the employee is seeking by this appeal

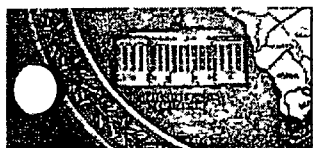
See attached

Additional documents may be submitted by e-mail to the following address -- grievance@ohr.sc.gov -- or by mailing the documents to Office of Human Resources, 1201 Main Street, Suite 800, Columbia, SC 29201

Form GC101 Revised 07/01/2005

Submit Appeal

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SC Budget and Control Board Office of Human Resources

State Employee Grievance Procedure State Appeal Form

TO APPEAL THE DECISION OF THE AGENCY CONCERNING A GRIEVANCE UNDER THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT TO THE STATE HUMAN RESOURCES DIRECTOR, THE EMPLOYEE AND/OR REPRESENTATIVE INITIATING THE APPEAL MUST COMPLETE THIS FORM AND RETURN IT TO THE STATE OFFICE OF HUMAN RESOURCES

Employee s Name Carolyn McIver Smith

Job Classification Educator

Agency Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	321 Spring Point Drive	
City	Columbia	
State	SC	
Zip Code	29229	
E mail Address		
Telephone	Area Code	Number
Home	803	699-9020
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

4 What date did the employee receive the final decision? see attached

5 If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency s internal grievance procedure?

1488

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position

See attached

Please specify the relief that the employee is seeking by this appeal

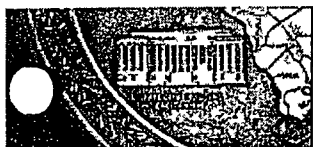
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3 C Budget and Control Board Office of Human Resources

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Employee's Name Maggie L Williams

Job Classification Educator

Agency Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	1561 Georgetown Drive	
City	Lakeland	
State	FL	
Zip Code	33811	
E-mail Address		
Telephone	Area Code	Number
Home		
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

4 What date did the employee receive the final decision? see attached

5 If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency's internal grievance procedure?

1490

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position

See attached

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See attached

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South Carolina Budget and Control Board Office of Human Resources

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Employee s Name Paula Woodlief

Job Classification Educator

Agency Palmetto Unified School District/SC Department of Corrections

Home Address		
Street	2233 Flint Hill Road	
City	Camden	
State	SC	
Zip Code	29020	
E-mail Address		
Telephone	Area Code	Number
Home	803	425-8332
Office		
Cell		

1 Has the employee completed twelve (12) months of satisfactory service with the state? ☒ Yes ☐ No

2 What disciplinary action taken against the employee is being appealed?
Reduction in Force

3 Has the employee received a final decision from the agency? ☒ Yes ☐ No

4 What date did the employee receive the final decision? see attached

5 If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency s internal grievance procedure?

1492

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Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position

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See attached

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GERGEL, NICKLES & SOLOMON, P A
ATTORNEYS AT LAW

Post Office Box 1866
Columbia South Carolina 29202 1866

Richard Mark Gergel
W Allen Nickles III
Carl L Solomon
Dona L Guffey
Dwayne T Mazyck

1519 Richland Street
Telephone (803) 779 8080
Facsimile (803) 256 1816
www.gnsllaw.com

July 23, 2008

Samuel L Wilkins, Esquire
State Budget and Control Board
Office of Human Resources
1201 Main Street, Suite 1000
Columbia, South Carolina 29201



RE 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 L Williams, Paula Woodlief

Dear Sam

This matter has been remanded for a State Employee Grievance Committee Hearing by Judge G Thomas Cooper, Jr and the South Carolina Court of Appeals (Copies of these Orders are enclosed) Pursuant to Terry Baggett's letter dated June 4, 2008, the South Carolina Department of Corrections ("SCDC") grievants referenced above requested an opportunity to proceed at the SCDC Agency level The SCDC did not respond to the request and has not addressed the substantive issues presented by the grievants in direct contravention of the directives of your office, the Circuit Court and the Court of Appeals Because forty-five days have passed without action by the SCDC, the grievants hereby request an appeal through your office as provided by the State Employee Grievance Procedure Act

By way of background, each grievant submitted an initial request for appeal by letter dated June 20, 2003 Copies of these materials, an updated appeal form on behalf of each grievant and our initial letter of transmittal dated June 20, 2003 are enclosed By way of relief, each grievant seeks reinstatement to their former position, back pay, lost benefits, interest and any other relief available under the State Employee Grievance Procedure Act The grievants assert that their separations/removals/transfers/demotions were in violation of their rights as employees and cannot be supported by the challenged reduction in force The grievants assert that the SCDC employed others to perform their duties under different titles The grievants also preserve the material issues of fact identified in the attached correspondence of June 20, 2003 and Judge Cooper's Order of January 8, 2007

) Mr Sam Wilkins
July 23, 2008
Page two

In view of the numerous, lengthy delays occasioned by the acts and omissions of the SCDC, it is our hope that, with the assistance of your office, this matter can be scheduled for an expeditious resolution I look forward to hearing from you

Sincerely,

A handwritten signature in black ink, appearing to be 'W. Allen Nickles, III'. The signature is stylized with a large, looped 'W' and a long, sweeping horizontal line extending to the right.

W Allen Nickles, III

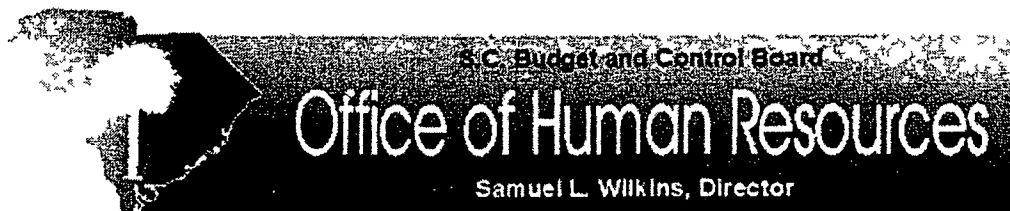
WAN/pfb

Enclosures

cc Terry Baggott (via facsimile, w/out enclosures)

Lake Eric Summers, Esquire (via facsimile, w/out enclosures)

File # 03-156



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EMPLOYEE S NAME James "Cal" Bell

JOB CLASSIFICATION Educator

AGENCY Palmetto Unified School District/S.C. Department of Corrections

HOME ADDRESS _____

Street 407 Bell Road City Donalds

State SC Zip Code 29638

TELEPHONE 864.456.3202
Home Office

1 Has the employee completed twelve (12) months of satisfactory service with the state? yes

2 What disciplinary action taken against the employee is being appealed? Reduction in Force

3 Has the employee received a final decision from the agency? yes

4 What date did the employee receive the final decision? June 17, 2003

5 If the employee has not received a final decision from the agency what date did the employee initiate the grievance within the agency's internal grievance procedure? _____

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position (continue on additional pages if necessary)

See attached

Please specify the relief that the employee is seeking by this appeal (continue on additional pages if necessary)

See attached

Signature

Dona Guffey

Date

June 20, 2003

Employee or Representative

White Copy - Return to State Human Resources Director
Yellow Copy - Keep for your file

Office of Human Resources
1201 Main Street Suite 1000
Columbia South Carolina 29201

Form GC101-Revised 10/01/96