

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Administrative Law Judge
Dock. No. 07-ALJ-04-00517-AP

SC SUPREME COURT

Opinion No. 5389 (S.C. Ct. App. filed March 9, 2016)
App. Case No. 2016-001221

Fred Gatewood, #289775..... Respondent/Petitioner

v.

South Carolina Department of Corrections..... Petitioner/Respondent

APPENDIX

Lake E. Summers
Malone, Thompson, Summers & Ott, LLC
339 Heyward Street, Suite 200
Columbia, SC 29201
(803) 254-3300
summers@mtsolfirm.com
Counsel for Petitioner/Respondent

Douglas H. Westbrook
23 Broad Street
Charleston, SC 29401
(843) 853-9600
Douglas.h.westbrook@gmail.com
Counsel for Respondent/Petitioner

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Chief Administrative Law Judge

Docket No. 07-ALJ-04-00517-AP

Fred Gatewood..... Appellant,

v.

South Carolina Department of Corrections..... Respondent.

Appellate Case No. 2014-001199

RECORD ON APPEAL

Douglas H. Westbrook
23 Broad St.
Charleston, SC 29401
(843) 853-9600
Attorney for Appellant

Lake E. Summers
Katherine A. Phillips
Malone, Thompson, Summers & Ott, LLC
339 Heyward St.
Suite 200
Columbia, SC 29201
(803) 254-3300
Attorneys for Respondent

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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	)	through 0867-AP
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	)	
Respondent.	)	
	)	

ORDER

On May 6, 2011, the South Carolina Department of Correction (SCDC) filed and served the 1st Supplemental Record on Appeal in the above-captioned consolidated matter in accordance with this Court's Order issued March 10, 2011. Appellants thereafter moved to include additional materials in the 1st Supplemental Record on Appeal on May 6, 2011. On July 8, 2011, this Court conducted a teleconference with counsel for the parties concerning the Appellants' Motion to Supplement the Contents of the 1st Supplemental Record on Appeal dated May 23, 2011. Douglas H. Westbrook, Esquire, appeared on behalf of the Appellants, and Lake E. Summers, Esquire, and Katherine A. Phillips, Esquire, appeared on behalf of the Respondent, SCDC.

For the reasons articulated below and with the caveats also articulated below, this Court rules in favor of SCDC regarding the Appellants' motion.

FILED

August 5, 2011

FORMAT OF APPELLANTS' MOTION AND SCDC'S RESPONSE

Given the breadth of issues animated by the Appellants' motion and given the amount of materials the Appellants submitted in support of their motion,¹ this Court, during the teleconference in this matter permitted SCDC's counsel to present its response to the myriad of issues and arguments raised by the Appellants in their motion in an alternative format, namely an itemized discussion and refutation of the Appellants' points.

Ultimately, the response filed and served by SCDC on June 17, 2011 consisted of three (3) sections, each of which was comprised of tables and charts reflecting the agency's itemized arguments in opposition to the issues and arguments presented by the Appellants in their motion dated May 23, 2011.² Adopting the format fashioned by SCDC in its response to the Appellants' motion, this Court hereby rules as follows:

COURT'S RULINGS IN FAVOR OF SCDC

This Court hereby rules in SCDC's favor on the following issues articulated by the Appellants:

¹ Appellants' motion, entitled "Appellants' Motion to Supplement Record and Extend Filing Date of Appellants' Brief," consisted of seven (7) pages and 18 enumerated paragraphs. In support of their motion, Appellants submitted three (3) exhibits, entitled "Exhibit 1", "Exhibit 2," and "Exhibit 3." "Exhibit 1" consisted of a 33-page spreadsheet offered by the Appellants as an alternative or supplemental spreadsheet to the spreadsheet that SCDC provided at "Tab A" in the first of five (5) volumes of the 1st Supplemental Record on Appeal. The bottom right corner of each page in the 1st Supplemental Record on Appeal, which totaled 3,911 pages, reflected the following stamp: "Ackerman 5-6-11." This stamp reflects the date upon which SCDC's counsel filed and served the 1st Supplemental Record on Appeal, May 6, 2011. The spreadsheet prepared by SCDC which appeared at "Tab A" in the first volume of the 1st Supplemental Record on Appeal totaled 30 pages, and, therefore, reflected the following stamps: "Ackerman 5-6-11 1" through "Ackerman 5-6-11 30." "Exhibit 2" consisted of a 22-page document reflecting 52 enumerated paragraphs, in which the Appellants provided their arguments for adding specific documents to the 1st Supplemental Record on Appeal. The Appellants also provided samples of the documents they proposed to add to the 1st Supplemental Record on Appeal. "Exhibit 3" consisted of a 17-page spreadsheet in which the Appellants purported to account for each item provided within the 1st Supplemental Record on Appeal for each inmate. "Exhibit 3" also identified documents which the Appellants contended should have been included or, for that matter, excluded from the 1st Supplemental Record on Appeal. Accompanying "Exhibit 3" were four (4) pages of "notes" prepared by Appellants' counsel in support of the arguments articulated within the exhibit.

² SCDC's response to the Appellants' motion totaled 52 pages. The first two (2) pages of SCDC's response consisted of an accounting of the chronology relevant to the Appellants' motion. The remainder of SCDC's response was divided into three (3) tabbed sections. The first tabbed section, pp. 3 – 17, consisted of SCDC's response to arguments articulated in the Appellants' seven (7) page motion and the materials identified in their "Exhibit 1." The second tabbed section, pp. 18 – 45, consisted of SCDC's response to the arguments and materials which appeared in Appellants' "Exhibit 2." The third tabbed section, pp. 46 – 52, consisted of SCDC's response to the arguments and materials which appeared in Appellants' "Exhibit 3." In making the ruling upon the issues presented by Appellants' motion, I have extensively reviewed and relied upon SCDC's responses to that motion. Therefore, those responses are hereby adopted as supporting reasons for the issues this Court has determined to deny.

Section I of Appellants' Brief

Page # from SCDC's Response	Page # from Appellants' Motion	Paragraph # from Appellants' Motion	Appellants' Position	The Court's Ruling
4	2	4	SCDC is judicially estopped from denying a Step 1 filing date of September 22, 2004 for all inmates who filed a Certificate of Service form on September 22, 2004 and September 30, 2004. Appellants propose Exhibit 1 as an alternative or supplement to SCDC's spreadsheet entitled "Ackerman 5-6-11."	DENIED as Appellants' invocation of judicial estoppel does not conform to applicable ALC rules or precedent
5	2	5	Appellants' Exhibit 1 and SCDC's spreadsheet entitled "Ackerman 5-6-11" differ on "last pay dates." Exhibit F contains "gaps" in pay dates that indicate separate periods of work. The separate periods of work in Exhibit F would not exist if the pay dates were inadvertently or deliberately deleted.	DENIED as unfounded
6	2 – 3	6	A comparison of Exhibit F with other sources of information maintained by SCDC indicate that SCDC may have deleted pay records. For example, Exhibit F data for inmate Bogan does not include pay data for eight (8) pay periods.	DENIED as unfounded
7	3	7	Exhibit F last pay dates are disputed by other SCDC records, as shown in Appellants' Exhibit 1. For example, Inmate Baylor.	DENIED as not yet ripe for review
8	3	8	Exhibit F is "questionable" as a sole source of complete work dates and thus is questionable for last pay dates.	DENIED as not yet ripe for review

Page # from SCDC's Response	Page # from Appellants' Motion	Paragraph # from Appellants' Motion	Appellants' Position	The Court's Ruling
9	3	9	Appellants' Exhibit 1 "Suggested Start/Stop Dates" are a compilation of the most complete work dates from the six (6) sources of information maintained by SCDC, and therefore, should be used in place of SCDC's Ackerman 5-6-11 Exhibit F (3/28/11) PI Pay Dates. The last date in Appellants' "Suggested Start/Stop Dates" column provides a good approximation of an inmate's last pay date.	DENIED as not yet ripe for review
11	4	11	On April 19, 2007, Appellants' counsel filed 189 Amendments/Exhibits A, C, F, H with SCDC pursuant to an in court agreement in which SCDC agreed to file these documents and consider them on the merits. Ackerman 5-6-11 is missing amendment dates for inmates H. Baker, Benninger, Brewer, Deveaux, Etheredge, Evans, Hood, Pressley, Prioleau, and L. Richardson. SCDC should update Ackerman 5-6-11 to reflect that these inmates filed Amendments on April 19, 2007.	DENIED as to inmates Baker, Brewer, Deveaux, Etheredge, Evans, Pressley, Prioleau, & Richardson <i>See below regarding Benninger & Hood</i>
12	4	12	Many Appellants filed Amendments directly with SCDC, and not through Appellants' counsel. Ackerman 5-6-11 is missing Amendment dates for the following inmates: Busques, Butler, Carter, Clark, Hare, Murphy, Scott, and Simmons. SCDC should update Ackerman 5-6-11 with Amendment dates based on the	DENIED as to inmates Busques, Carter, Hare, Murphy, Scott, & Simmons <i>See below regarding Butler & Clark</i>

Page # from SCDC's Response	Page # from Appellants' Motion	Paragraph # from Appellants' Motion	Appellants' Position	The Court's Ruling
			Certificates of Service for these inmates.	
13	4	13	SCDC should agree to substitute signed amendments in Appellants counsel's possession for unsigned amendments already in the record on appeal.	DENIED

Section II of Appellants' Brief, entitled "Other Record Documents"

Page # from SCDC's Response	Page # from Appellants' Motion	Paragraph # from Appellants' Motion	Appellants' Position	The Court's Ruling
14	4 – 5	14	Add page two (2) of inmate D. Williams's Step 1 grievance to Tab D at page 334 of the record on appeal.	DENIED
14	5	14	Add Certificates of Service currently within Appellants counsel's possession to Tab E of the record on appeal.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
14	5	15	Add the documents identified by the Appellants with an asterisk, "**", within "Exhibit 2" to the record on appeal.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
14	5	16	Include Appellants' "Exhibit 3" in the record on appeal.	DENIED as materials do not qualify for inclusion under applicable ALC rules

Page # from SCDC's Response	Page # from Appellants ' Motion	Paragraph # from Appellants' Motion	Appellants' Position	The Court's Ruling
14	5 – 6	17	Exclude "newer" Step 1 responses from the record on appeal.	DENIED
15	6	18	Appellants request an additional thirty days after the ALC rules on their motion to expand the record on appeal and they receive SCDC's supplemental record on appeal to file their brief.	DENIED per Scheduling Order provided below
16	6	(a)	Add Exhibit 1 to the record on appeal.	DENIED but see Declaration provided below
16	6	(b)	Add signed amendments currently in Appellants counsel's possession to the record on appeal.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
16	6	(c)	Add page 2 of the Step 1 and Step 2 forms that are currently missing from the record on appeal.	DENIED
16	6	(d)	Add Certificates of Service currently in Appellants counsel's possession to the record on appeal.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision

Page # from SCDC's Response	Page # from Appellants ' Motion	Paragraph # from Appellants' Motion	Appellants' Position	The Court's Ruling
16	7	(e)	Add Exhibit 2 and the documents identified within Exhibit 2 to the record on appeal.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
16	7	(f)	Add Exhibit 3 and the documents identified within Exhibit 3 as "DINRA" to the record on appeal.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
17	7	(f)	Exclude documents identified as "DIRE" within Appellants' Exhibit 3 from the record on appeal.	DENIED
17	7	(g)	Exclude the "new" version of SCDC's response to the inmates' Step 1 grievances.	DENIED
17	7	(h)	Extend deadline for inmates to file brief.	DENIED <i>but see Scheduling Order provided below</i>

Appellants' Exhibit 2 and the Documents Identified within Exhibit 2

Page # from SCDC's Response	Page # from Appellants' Exhibit 2	Document # from Appellants' Exhibit 2	Appellants' Position & Document(s) Identified by Appellants for Inclusion in the Record on Appeal	The Court's Ruling
20	1 – 8	1 – 7	Appellants contend these documents are substantially in the record on appeal and have not specifically requested that SCDC supplement the record on appeal with any additional documents.	No ruling required from the court
21	8	8	August 8, 2008 spreadsheet generated by SCDC and entitled "Lieber PI Back Wage Grievances – ALC Tracking (Westbrook)"	DENIED
22 – 23	8	9	Expand the record on appeal to include Earned Work Credit Assignment History forms pursuant to ALC Rule 58A ("intermediate ruling"), ALC Rule 58B ("evidence received or considered"), and SC Rule of Evidence 801(d)(2) (admission by party opponent).	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision

Page # from SCDC's Response	Page # from Appellants' Exhibit 2	Document # from Appellants' Exhibit 2	Appellants' Position & Document(s) Identified by Appellants for Inclusion in the Record on Appeal	The Court's Ruling
24	9	10	Expand the record on appeal to include Inmate Job/School Assignment (1954) forms pursuant to ALC Rule 58A ("intermediate ruling"), ALC Rule 58B ("evidence received or considered"), and SC Rule of Evidence 801(d)(2) (admission by party opponent)	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
25	9	11(a)	August 20, 2008 letter from SCDC's counsel to Appellants' counsel regarding "accounting of documents [SCDC] provided to [Appellants] before the hearing conducted by Judge Williams . . . on August 11, 2008 regarding Exhibit C of [Appellants'] July 23, 2008 motion.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
26	9	11 (b) – 11(h)	Appellants contend these documents are substantially in the record on appeal and have not specifically requested that SCDC supplement the record on appeal with any additional documents.	No ruling required from the court

Page # from SCDC's Response	Page # from Appellants' Exhibit 2	Document # from Appellants' Exhibit 2	Appellants' Position & Document(s) Identified by Appellants for Inclusion in the Record on Appeal	The Court's Ruling
27	9	11(i) – 11(s)	Expand the record on appeal to include a August 8, 2008 Spreadsheet generated by SCDC to verify Step 1 filing dates for inmates T. Butler, T. Carter, R. Elliott, N. Lambrose, A. Lee, T. Miles, R. Pressley, F. Prioleau, V. Simpson, J. Wells, and T. Wilson, pursuant to ALC Rule 58A ("intermediate ruling"), ALC Rule 58B ("evidence received or considered"), and SC Rule of Evidence 801(d)(2) (admission by party opponent).	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
28	12	12	January 29, 2002 class action complaint filed by inmate Darrell Williams in the Court of Common Pleas in <u>Williams v. SCDC</u> , No. 2002-CP-18-134.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
29	12	13	July 1, 2002 class action complaint filed by inmate Darrell Williams in the Court of Common Pleas in <u>Williams v. SCDC</u> , No. 2002-CP-18-134.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
29	12	14	February 12, 2003 class action complaint filed by Appellants counsel in the Court of Common Pleas in <u>Williams v. SCDC</u> , No. 2002-CP-18-134.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision

Page # from SCDC's Response	Page # from Appellants' Exhibit 2	Document # from Appellants' Exhibit 2	Appellants' Position & Document(s) Identified by Appellants for Inclusion in the Record on Appeal	The Court's Ruling
29	12 – 13	15	September 9, 2004 remittiturs issued by the SC Supreme Court and filed in circuit court in <u>Adkins</u> and <u>Wicker</u>	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
30	13 – 14	16(a) – 16(c)	Judge Goodstein's June 23, 2005 order, pages 8 – 9, 12 – 14, in <u>Williams v.</u> <u>SCDC</u> , No. 2002-CP-18- 134.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
31	14 – 15	17 – 18	Appellants contend these documents are substantially in the record on appeal and have not specifically requested that SCDC supplement the record on appeal with any additional documents.	No ruling required from the court
31	15	19 – 20	Appellants' May 25, 2005 and May 26, 2005 notices of appeal to the SC Court of Appeals of Judge Goodstein's dismissal of their class action complaint in <u>Williams v. SCDC</u> , No. 2002-CP-18-134.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
32	15 – 16	21	June 7, 2005 letter from SCDC's counsel to Appellants' counsel.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision

Page # from SCDC's Response	Page # from Appellants' Exhibit 2	Document # from Appellants' Exhibit 2	Appellants' Position & Document(s) Identified by Appellants for Inclusion in the Record on Appeal	The Court's Ruling
33	16	22	March 22, 2007 remittitur issued by SC Supreme Court dismissing the class action appeal in <u>Williams v. SCDC</u> , No. 2002-CP-18-134.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
34	16	23	Expand the record on appeal to include the transcript from the April 19, 2007 hearing before Judge Williams in <u>In re Inmate Grievances of Gene Richardson v. SCDC</u> , No. 2002-CP-18-134, pursuant to ALC Rule 58A ("intermediate ruling"), ALC Rule 58C (Judicial notice of documents in other court's files), and ALC Rule 58F (transcript taken).	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
35	16	24	April 20, 2007 form 4 order issued by Judge Williams in <u>In re Inmate grievances of G. Richardson v. SCDC</u> , No. 2002-CP-18-134.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
36	17 – 18	25(a) – (c)	Appellants contend these documents are substantially in the record on appeal and have not specifically requested that SCDC supplement the record on appeal with any additional documents.	No ruling required from the court

Page # from SCDC's Response	Page # from Appellants' Exhibit 2	Document # from Appellants' Exhibit 2	Appellants' Position & Document(s) Identified by Appellants for Inclusion in the Record on Appeal	The Court's Ruling
36	18	26	November 7, 2008 e-mail from SCDC about SCDC posting a "notice flier" in all prisons, and a December 8, 2008 facsimile from SCDC's counsel to Appellants' counsel which includes the November 7, 2008 e-mail.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
37	18 – 19	27(a) – (b)	Excerpts from SCDC's May 23, 2006 brief to the SC Court of Appeals in <u>Williams v SCDC</u> , No. 2002-CP-18-134.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
38	19	28	Judge Goodstein October 29, 2004 letter to the parties in which Judge Goodstein granted SCDC's motion for summary judgment and requested that SCDC prepare a draft order in <u>Williams v. SCDC</u> , No. 2002-CP-18-134.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
39	19 – 20	29	Appellants' October 13, 2004 motion to the circuit court for an order under SCRCP 23 in <u>Williams v SCDC</u> , No. 2002-CP-18-134.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
40	20	30	April 25, 2007 letter from Appellants' counsel to SCDC's counsel.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision.

Page # from SCDC's Response	Page # from Appellants' Exhibit 2	Document # from Appellants' Exhibit 2	Appellants' Position & Document(s) Identified by Appellants for Inclusion in the Record on Appeal	The Court's Ruling
40	20	31	June 4, 2007 letter from Appellants' counsel to SCDC's counsel.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
41	21	32	November 23, 2007 letter from Appellants' counsel to SCDC's counsel.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
41	21	33	December 18, 2007 letter from Appellants' counsel to SCDC's counsel.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
42	21	33	December 18, 2007 letter from Appellants' counsel to SCDC's counsel.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
42	21	34	January 25, 2008 letter from Appellants' counsel to SCDC's counsel.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision

Page # from SCDC's Response	Page # from Appellants' Exhibit 2	Document # from Appellants' Exhibit 2	Appellants' Position & Document(s) Identified by Appellants for Inclusion in the Record on Appeal	The Court's Ruling
42	21	35	May 21, 2008 letter from Appellants' counsel to SCDC's counsel.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
43	21	36 – 48	Certificates of Service for the following 13 inmates: J. Bogan, M. Busques, R. Butler, K. Carter, S. Clark, W. Hare, W. Jordan, D. Lyles, L. Mack, A. Murphy, R. Simmons, S. Simmons, and J. Scott.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
44	21	49	Substitute forty-two signed amendments currently in Appellants counsel's possession for unsigned amendments already included in the record on appeal.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
45	22	51	Second page of all Step 1 and Step 2's not currently included in the record on appeal.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
45	22	52	Blank Step 1 and Step 2 forms.	DENIED Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision

Appellants' Exhibit 3 and the Content Associated with Exhibit 3

Page # from SCDC's Response	Acronym identified by Appellants	Appellants' Position	The Court's Ruling
47	DCR = Document Correctly in the Record (second page of Step 1 and Step 2 forms missing)	Appellants have no objection to the inclusion of the documents they identified as "DCR" in Exhibit 3 within the record on appeal. In addition, Appellants request that SCDC supplement the record on appeal with the second page of the Step 1 and Step 2 forms that are not already included in the record on appeal.	No ruling required by the Court as to inclusion of documents to which Appellants have no objection. Appellants' request that SCDC supplement the Record in the manner advocated is DENIED. Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
48	DCR? = Document Correctly in Record (exclude SCDC's second Step 1 response)	SCDC provided two Step 1 responses to some inmates. Appellants' request that the second Step 1 response be excluded from the record on appeal.	DENIED
49	DIRE = Document Incorrectly in Record, to be Excluded	Exclude Step 1 and Step 2 responses identified by Appellants as "DIRE" within Exhibit 3 because the inmates never received these Step 1 and Step 2 responses, and therefore, these responses are not an "intermediate ruling" or "final decision" pursuant to ALC Rule 58A.	DENIED
50	DNE = Document Not Locatable by SCDC	The documents identified with by Appellants as "DNL" within Exhibit 3 exist and should be included in the record on appeal. However, these documents are not provided in the record on appeal and therefore, SCDC must not have been able locate them.	DENIED as not yet ripe for review

Page # from SCDC's Response	Acronym identified by Appellants	Appellants' Position	The Court's Ruling
51	DINRA = Document Incorrectly Not in Record, to be Added	SCDC should supplement the record on appeal with documents identified by Appellants as "DINRA" in Exhibit 3 because they were incorrectly excluded from the record on appeal. Appellants also request permission to substitute signed amendments in Appellants counsel's possession with unsigned amendments already included in the record on appeal.	See below for Court's order(s) in light of SCDC's agreement & Appellants' request to substitute signed amendments for unsigned amendments is DENIED . Under applicable ALC rules the record does not consist of materials not filed with or considered by SCDC in reaching its decision
52	DANE = Document Apparently Never Existed	Documents identified by Appellants as "DANE" within Exhibit 3 never existed.	DENIED as not yet ripe for review

RULINGS GRANTING THE RELIEF SOUGHT BY THE APPELLANTS

Again adopting the format fashioned by SCDC in its response to the Appellants' motion, this Court hereby grants the relief sought the Appellants on the following issues,:

Section I of Appellants' Brief

Page # from SCDC's Response	Page # from Appellants' Motion	Paragraph # from Appellants' Motion	Appellants' Position	Based upon its Agreement, the Court Orders SCDC to take the Action Described Below
10	4	10	SCDC should update the spreadsheet entitled "Ackerman 5-6-11," column entitled "Relevant Issues in Appellants' Brief" with updated issue numbers relevant to Appellants' brief.	Update "Ackerman 5-6-11," pp. 1 – 30, for inmates <u>Brewer</u> , <u>Curtis</u> , <u>Daniels</u> , <u>Davis</u> & <u>Simmons</u>

11	4	11	On April 19, 2007, Appellants' counsel filed 189 Amendments/Exhibits A, C, F, H with SCDC pursuant to an in court agreement in which SCDC agreed to file these documents and consider them on the merits. Ackerman 5-6-11 is missing amendment dates for inmates H. Baker, Benninger, Brewer, Deveaux, Etheredge, Evans, Hood, Pressley, Prioleau, and L. Richardson. SCDC should update Ackerman 5-6-11 to reflect that these inmates filed Amendments on April 19, 2007.	Update "Ackerman 5-6-11," pp. 1 – 30" to "Amdmnt Undtd/Unsgnd (4/19/07)" for inmates <u>Benninger & Hood only</u>
12	4	12	Many Appellants filed Amendments directly with SCDC, and not through Appellants' counsel. Ackerman 5-6-11 is missing Amendment dates for the following inmates: Busques, Butler, Carter, Clark, Hare, Murphy, Scott, and Simmons. SCDC should update Ackerman 5-6-11 with Amendment dates based on the Certificates of Service for these inmates.	Update "Ackerman 5-6-11," pp. 1 – 30, for inmates <u>Butler & Clark only</u>

Appellants' Exhibit 2 and the Documents Identified within Exhibit 2

Page # from SCDC's Response	Page # from Appellants' Exhibit 2	Document # from Appellants' Exhibit 2	Document Identified by Appellants' for Inclusion in the Record on Appeal	Based upon its Agreement, the Court Orders SCDC to take the Action Described Below
44	21	50	September 22, 2004 Step 1 Certificate of Service. Document already in record, but bottom of page is cut off.	Substitute the 9/22/04 Certificate of Service

				["Ackerman 5-6-11," p. 877] with another copy that does not have the bottom of the page cut off (if SCDC can locate a copy of the Certificate of Service that does not have the bottom of the page cut off)

Appellants' Exhibit 3 and the Content Associated with Exhibit 3

Page # from SCDC's Response	Acronym identified by Appellants	Appellants Position	The Court orders SCDC to take the action described below
51	DIRNA = Document Incorrectly Not in Record, to be Added	SCDC should supplement the record on appeal with documents identified by Appellants as "DINRA" in Exhibit 3 because they were incorrectly excluded from the record on appeal. Appellants also request permission to substitute signed amendments in Appellants counsel's possession with unsigned amendments already included in the record on appeal.	Review materials in its possession for any items identified by Appellants as inadvertently omitted from the Record and submit those materials with 10 days from the date of this Order.

SUBMISSION OF RELEVANT SUPPORTING MATERIALS

Notwithstanding this Court's rulings in SCDC's favor on the individual issues identified above, Appellants may make any argument they deems relevant and dispositive in their principle brief on the merits. Likewise, Appellants may submit supporting materials which they also deem relevant and dispositive in support of their principle brief on the merits, including the document identified as "Exhibit 1" by Appellants' counsel in his May 23, 2011 motion. In addition, Appellant may urge the Court to include any such materials in the Record on Appeal as this

litigation moves forward into subsequent levels of review as envisioned by the orders issued by the Court on April 14, 2010, November 23, 2011, and March 10, 2011.

After it considers argument from SCDC in opposition to any proposal(s) from Appellants' counsel to include such supplemental materials in the Record on Appeal, this Court will issue any and all necessary orders by which it will adjudicate such dispute(s) between the parties and determine the contents of the Record on Appeal in this matter.

SCHEDULING ORDER COVERING SUBSTANTIVE BRIEFING

With the issues articulated by Appellants in their Motion to Supplement the Contents of the 1st Supplemental Record on Appeal dated May 23, 2011 resolved by the above rulings, this Court recognizes that substantive briefing by the parties must now resume. Accordingly, this Court, under the schedule set forth below, hereby directs the parties to brief the issues associated with the second level of review in the instant appeal as indicated by the orders issued April 14, 2010 and March 10, 2011. As stated in the order it issued March 10, 2011, "[t]he next issue to be addressed by this Court is the timeliness of each Appellant's grievance filing under DOC Policy GA-01.12.³"

IT IS HEREBY ORDERED that no later than thirty (30) days from the date of this order, the Department shall provide written verification to this Court and Appellants' counsel that it has taken the action ordered by the Court within the tables that appear on pages 13 and 14 above. 17-19

IT IS FURTHERMORE ORDERED that the Appellants' Brief concerning the timeliness of each Appellant's grievance filing under DOC Policy GA-01.12 shall be filed no later than thirty (30) days from the date the above ordered verification is filed with the Court. The Appellants' Brief shall be limited to no more than thirty (30) pages.

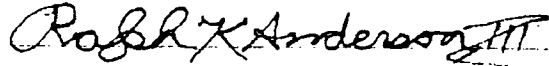
IT IS FURTHERMORE ORDERED that the Department's Brief in response to the Appellants' Brief concerning the timeliness of each Appellant's grievance filing under DOC Policy GA-01.12 shall be filed within thirty (30) days of receipt of the Appellant's Brief. The Department's Brief shall also be limited to no more than thirty (30) pages.

~~**IT IS FINALLY ORDERED**~~ that, if the Appellants wish to file a Reply to the Department's Brief, the Appellant's Reply Brief shall be filed within ten (10) days of receipt of

³ See this Court's March 10, 2011 Order, pp. 9 – 10.

Respondent's Brief and Appellant's Reply Brief shall be limited to no more than fifteen (15) pages.

AND IT IS SO ORDERED.

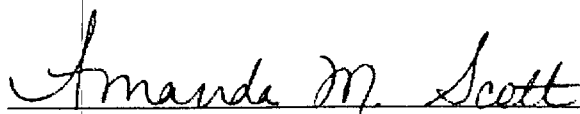


Ralph King Anderson, III
Chief Administrative Law Judge

August 5, 2011
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Amanda M. Scott, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Amanda M. Scott
Judicial Law Clerk

August 5, 2011
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Fred Gatewood, #289775,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 07-ALJ-04-0517-AP

ORDER

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Motion to Supplement Record filed by Fred Gateway (Appellant), an inmate incarcerated with the Department of Corrections (Department or SCDC).

FACTS

Appellant is an inmate housed with the Department who had participated in the prison industries project at Lieber Correctional Institution. He filed a grievance with SCDC claiming entitlement to back pay as well as a higher hourly pay for labor he provided in the prison industry project. The Court conducted a consolidated review of SCDC's denial of administrative grievances filed by 197 inmates captioned *Ackerman*, #266928, *et al.*, v. *South Carolina Department of Corrections*, Docket Nos. 07-ALJ-04-00444 et seq. This Court found in orders dated March 2, 2012 and March 16, 2012 that Appellant filed a timely grievance and ordered briefing of the matter. On March 29, 2012, Appellant filed his Notice of Appeal of the Prior Orders of this Court. This case was included in the caption of the Notice of Appeal in the *Ackerman* cases pending before the South Carolina Court of Appeals. However, on August 26, 2013, the South Carolina Court of Appeals remitted this case to the ALC for a determination. On September 17, Appellant filed a Motion to Supplement Record.

By Order dated October 7, 2013, the Court remanded the matter for the Department to make further findings. However, the parties asserted that further findings of fact were not necessary to determine the issue before the ALC, and therefore the Court rescinded its Order of Remand. The Department requested an extension of time in which to respond to Appellant's Motion to Supplement Record, specifically until October 21, 2013. The Department timely filed

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FILED

November 12, 2013

SC ADMIN. LAW COURT

its Response to the Appellant's Motion to Supplement Record. The Court held a conference call with the parties on October 29, 2013.

DISCUSSION

As an initial matter, during the conference call the Court held on October 29, 2013, the parties agreed that the issue on appeal is whether Appellant was entitled to a gross pay rate of \$4.00 per hour for the work that he performed while working in the Department's Prison Industries Program. It was also determined and agreed that the matter before this Court is an appeal, not a contested case, and as such, this Court cannot make new findings of fact. Rule 58(D) of the South Carolina Administrative Law Court Rules (SCALCR) begins with the phrase "[w]here applicable, the record **of the contested case** shall consist of" (emphasis added). Because Appellant, in Section II(A), (B), (C), and (E) of his Motion, seeks to supplement the Record on Appeal with documents that were not received or considered in the administrative hearing before the Department, the Court must deny Appellant's Motion to Supplement Record with respect to these sections of his Motion.

Furthermore, Appellant argues in Section II(C) of the Motion that page 12 of Appendix 1 attached to Appellant's Level 2 Brief should be included in the Record on Appeal.¹ Previously, Appellant filed a motion to include the same material found in "Exhibit 1" in the Record on Appeal; but the Court denied the inclusion of Exhibit 1 in its August 5, 2011 Order. In that same Order, the Court nevertheless allowed Appellant to submit this exhibit in support of his Brief, which Appellant did in the form of Appendix 1 and notes. The Court also allowed Appellant to present his argument in subsequent levels of review as appropriate.

Appellant now argues that because the Court allowed Appellant to "proffer" Appendix 1 in support his Brief, this converted Appendix 1 into a proffer of proof of excluded evidence under Rule 58(D), SCALCR and therefore should be part of the Record on Appeal. Rule 58(D), SCALCR states that "[w]here applicable, the record of the contested case shall consist of: (D) [a]ll proffers of proof of excluded evidence." Appellant misconstrues this rule. The rule does not permit the inclusion into the Record on Appeal proffers of excluded evidence to supplement the Record in a prior stage of an appeal. Rather, it allows inclusion of proffers of proof of evidence excluded in the contested case heard below. Here, the Court allowed Appellant to

¹ Two pages of notes are attached to Appendix 1, p. 12. Thus, Appellant presumably wishes those two pages of notes to be included in the Record on Appeal as well.

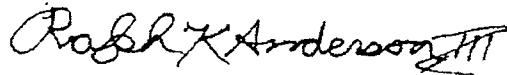
attach Appendix 1 to his Brief, but this was merely to support his argument and was not a proffer of proof of excluded evidence in the contested case. The Court had already denied Exhibit 1's inclusion in the Record on Appeal before Appendix 1 was attached to Appellant's Brief.

With respect to the documents listed in the remaining portion of Appellant's Motion, Section II(D)(1)-(5), the Department does not object to their inclusion in the Record on Appeal. However, as the Department correctly points out, there is no need to add these documents into the Record because they already appear in the Record. Appellant's appeal was one of 197 appeals that were consolidated in *Ackerman*, and his appeal is the only one of those that was not dismissed. Each of the documents that Appellant seeks to add to the Record is in the 1st Supplemental Record on Appeal from *Ackerman*. Appellant even cites to the corresponding pages in the 1st Supplemental Record on Appeal where the documents listed in Section II(D)(1)-(5) appear. Appellant also states in his Motion that these documents "from the 1st Supplemental Record on Appeal are already in the record, and are being designated herein only out of an abundance of caution. On September 16, 2013, SCDC consented to inclusion of these documents." Because the parties agree that these documents are already in the Record on Appeal, there is no need to add them to the Record. Therefore, I deny Appellant's Motion to Supplement Record as moot with respect to those documents listed in Section II(D)(1)-(5) of Appellant's Motion.

ORDER

IT IS THEREFORE ORDERED that Appellant's Motion to Supplement Record is **DENIED**.

AND IT IS SO ORDERED.



Ralph K. Anderson, III
Chief Administrative Law Judge

November 12, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair

E. Harvin Belser Fair
Judicial Law Clerk

November 12, 2013
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Fred Gatewood, #289775,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 07-ALJ-04-0517-AP

ORDER

This matter comes before the South Carolina Administrative Law Court (ALC or Court) in its "Level Three" phase pursuant to the appeal of Fred Gateway (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or SCDC). Appellant challenges the hourly wage rate used by the Department for labor that Appellant performed between 2004 and 2009.

FACTS/PROCEDURAL BACKGROUND

Appellant is an inmate housed with the Department who had participated in the prison industries project at Lieber Correctional Institution (LCI). He filed Step 1 and Step 2 grievances with SCDC claiming entitlement to back pay as well as a higher hourly pay for labor he provided in the prison industry project. SCDC denied both of Appellant's grievances. The Court conducted a consolidated review of SCDC's denial of administrative grievances filed by 197 inmates captioned *Ackerman*, #266928, *et al.*, v. *South Carolina Department of Corrections*, Docket Nos. 07-ALJ-04-00444 et seq. This Court found in orders dated March 2, 2012 and March 16, 2012 that Appellant filed a timely grievance and ordered briefing of the matter. On March 29, 2012, Appellant filed his Notice of Appeal of the Prior Orders of this Court. This case was included in the caption of the Notice of Appeal in the *Ackerman* cases pending before the South Carolina Court of Appeals. On August 26, 2013, the South Carolina Court of Appeals remitted this case to the ALC for a determination. On September 17, Appellant filed a Motion to Supplement Record.

By Order dated October 7, 2013, the Court remanded the matter for the Department to make further findings. However, the parties asserted that the findings of fact were already part

of the record, and therefore the Court rescinded its Order of Remand. The Department requested an extension of time in which to respond to Appellant's Motion to Supplement Record, specifically until October 21, 2013. The Department timely filed its Response to the Appellant's Motion to Supplement Record. In an order dated November 12, 2013, this Court denied Appellant's Motion to Supplement Record. On February 19, 2014, Appellant filed his Appellant's Brief. On March 24, 2014, the Department filed a motion requesting a 14-day extension of time during which to file its brief. The Court granted this motion on March 26, 2014. On April 7, 2014, the Department filed its Respondent's Brief. On April 14, 2014, Appellant filed a Motion for Extension, requesting an extension until April 23, 2014 in order to file a reply brief. The Court granted this motion on April 14, 2014. Finally, on April 17, 2014, Appellant filed a Reply Brief.

ISSUES ON APPEAL

1. Was Appellant entitled to a \$4.00-per-hour wage rate for his labor provided to LCI based on the 2001 budget proviso and succeeding enactments, and on the 1998 service work contract between SCDC and Williams Technologies, Inc.?
2. Was Appellant entitled to overtime pay for his labor?
3. Is Appellant entitled to pre- and post-judgment interest on his back pay?
4. Is Appellant entitled to costs and attorney's fees?
5. Should SCDC be enjoined from further wage violations?¹

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Adkins v. S.C. Dep't of Corr.*, 360 S.C. 413, 602 S.E.2d 51 (2004) and *Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004), wherein the Court held that an inmate's claim that he was paid less than the prevailing wage for work performed in the Prison Industries program, in violation of a statute mandating payment of the prevailing wage, implicated a state-created property interest and was therefore reviewable by the ALC. Furthermore, when reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity: *Al-Shabazz v. State*, 338 S.C. 354, 377; 527 S.E.2d 742, 754

¹ In his Appellant's Brief, Appellant included an additional issue stated as follows: "Should SCDC be ordered to process grievances for workers in the program whether or not they personally filed a grievance?" However, the instant case does not involve the grievances of other workers in the program or persons in the program who never filed grievances. Therefore, the Court does not consider this an issue and does not include it in the text above.

(2000); *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2013) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380(A)(5) states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2013).

Consequently, an Administrative Law Judge may not substitute his judgment for that of an agency “as to the weight of the evidence on questions of fact.” Section 1-23-380(5). Furthermore, an Administrative Law Judge may not reverse or modify an agency’s decision unless the Record reflects that substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence, arbitrary, or affected by an error of law. § 1-23-380(5); *see also Marietta Garage, Inc. v. S.C. Dep’t of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep’t of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998). “‘Substantial evidence’ is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.” *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (quoting *Law v. Richland Cnty. Sch. Dist. No. 1*, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978)). Accordingly, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

DISCUSSION

1. Was Appellant entitled to a gross wage rate of \$4.00 per hour for the labor that he performed between 2004 and 2009?

From the outset, it appears that neither party disputes the fact that Appellant performed work between 2004 and 2009 in a prison industries service project operated by the Department at LCI in which Williams Technologies, Inc. (WTI) was the private sponsor. There also appears to be no dispute that SCDC and WTI entered into a service work contract in 1998 (Contract), and that the rate negotiated in the Contract for the inmate's labor was for \$4.00 per hour. It further appears that the parties do not dispute that Appellant did not receive \$4.00 per hour for the labor that he performed. However, the question before this Court is whether Appellant was entitled to be paid at a gross wage rate of \$4.00 per hour for his labor.

Appellant argues that Appellant was entitled to a gross wage rate of \$4.00 per hour for his labor based on the 2001 budget proviso and succeeding enactments allowing SCDC to negotiate the wages to be paid for inmate labor, and on the Contract between SCDC and WTI.² Looking first at the 2001 General Assembly budget proviso,³ it states in pertinent part:

The department may negotiate the wage to be paid for the inmate labor provided under prison industry service work contracts, and such wages may be less than the prevailing wage for work of similar nature in the private sector.

The General Assembly enacted similar budget provisos each year until it enacted S.C. Code Ann. § 24-1-295, effective August 1, 2007.⁴ The first part of S.C. Code Ann. § 24-1-295 (2009)⁵ provides:

² Clearly, the prevailing wage statutes were not "enacted for the special benefit of Inmates." *Adkins v. S.C. Dep't of Corr.*, 360 S.C. 413, 418, 602 S.E.2d 51, 54 (2004). Moreover, in this case, the purpose of the Contract, which approved the inmate labor with WIT, was "to fulfill the intent of Section 24-3-310." S.C. Code Ann. § 24-3-310(2), in setting forth the "Declaration of Intent" for prison industries, provides that the intent of the prison industries provisions is, in part, to "utilize the labor of inmates for **self-maintenance** and for reimbursing this State for expenses incurred by reason of their crimes and imprisonment." (emphasis added). Appellant has made no challenge that the pay he received violated any agreement between him and the Department or that the Department failed to do a proper accounting of its expenses to insure the program was self-maintaining. Rather, both parties address the Contract provisions as determining the distribution of the inmate wages. Therefore, the Court addresses the arguments from that perspective.

³ Statutes at Large, No. 66, § 37.31, eff. July 2001.

⁴ Both parties agree that a similar budget proviso was passed each year between fiscal years 2001 and 2007, culminating in the codification of Section 24-1-295.

⁵ The language of this statute did not change between the effective date of its enactment and 2009, the final year in which Appellant worked in the prison industries service project at LCI.

The Director of the Department of Corrections may enter into contracts with private sector entities that allow inmate labor to be provided for prison industry service work and export work that involves exportation of products. The use of inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. Pursuant to this section, service work is defined as any work that includes repair, replacement of original manufactured items, packaging, sorting, recycling, labeling, or similar work that is not original equipment manufacturing. The department may negotiate the wage to be paid for inmate labor provided under prison industry service work contracts and export work contracts, and these wages may be less than the prevailing wage for work of a similar nature in the private sector.

The statute then lists a series of mandatory deductions “from the gross earnings of . . . inmates engaged in prison industry service work,” and these deductions are “in addition to any other required deductions.”⁶

Section 3.3(1) of the Contract provides:

Williams agrees to **pay SCDC \$4.00 per hour per inmate for work performed SCDC shall be responsible to pay inmate workers, cover security costs and P.I overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. . . .**

(emphasis added).⁷ Section 3.2(4) of the Contract states: “At its expense, the Department shall be responsible for the security of the inmate labor force and the security of [WTI’s] employees and agents.” Section 3.3(1), though, explains that the inmate labor rate of \$4.00 per hour per

⁶ There also exists, pursuant to Section 24-3-40, which does not apply in this case, statutory instruction as to how inmate wages are to be handled for inmate labor in prison industry programs involving the private sector that, unlike those services covered by Section 24-1-295, involve “the manufacturing and processing of goods, wares, or merchandise or the provision of services or another business or commercial enterprise considered by the director to enhance the general welfare of South Carolina.” See also S.C. Code Ann. 24-3-430(A) (2007). In *Williams v. S.C. Dep’t of Corr.*, 372 S.C. 255, 259, 641 S.E.2d 885, 887 (2007), the Court pointed out that “the legislature has specifically mandated [via Section 24-3-40] how inmate wages for prison industry labor are to be handled.” The Court also emphasized the last phrase of Section 24-3-40(A), which says that the private employer “shall pay the prisoner’s wages directly to the Department of Corrections.” *Id.* The Court added that “[t]his section also includes specific **deductions from inmate wages** that are to be made by the Director of DOC, including restitution to victims, payment to the State Office of Victim Assistance, child support, and state and federal taxes. . . .” (emphasis added). *Id.* Thus, even had Section 24-3-40 applied to the service work program in this case, the gross wages paid to the Department by a private employer for inmate labor would still have to sustain deductions prior to the Department’s payments to the inmates.

⁷ The Department in its Respondent’s Brief argues that Appellant has no standing to Petition the Court to interpret the terms of the Contract against the Department because Appellant was neither party to the Contract, a third-party beneficiary, or an intended beneficiary of the Contract. However, the Court rejects this argument, finding that Appellant does have standing. Though the amount of wages Appellant was to receive is in dispute, and though Appellant cannot bring an action against WTI (see *Williams, supra*), Appellant has a state-created property interest in the wages that he earned, the amount of which was governed by the terms of the Contract. If Appellant had no standing to challenge the wage terms in the Contract, then he would have no basis on which to exercise his right to file a grievance challenging the amount of wages he was to receive pursuant to the Contract; and the holdings in *Adkins* and *Wicker* would thus be turned on their heads.

inmate that WTI pays to the Department does encompass payment for the Department's overhead. Specifically, Subsection 1 describes the circumstances under which the Department and WTI may agree to increase the \$4.00 per hour rate:

Thirty (30) days prior to each anniversary date of this agreement, [the Department] and [WTI] may negotiate an **increase in the per hour rate** paid by [WTI] to [the Department]. . . . It is the intent of the parties that **such increase shall only reflect [the Department's] increased cost of prison overhead.**

(emphasis added). Along with the Contract was a "bullet sheet," which summarized the contract's key points. Entitled "Williams Technology Transmission Service Contract," it states the following: "Wage Rate: \$4.00 per hour/per inmate - \$.35/hr base for inmates." Under the Contract, the Department would pay inmates a minimum of \$.35 per hour, subject to potential longevity pay increases and "bonus pay." Also, according to a March 12, 2002 memorandum from the project's plant manager, Henry Middleton, to the inmate workers participating in the program, the inmates were "further advised that the MAXIMUM pay allowance is \$1.00/hr, regardless of your longevity status. In addition to the [bonus rates and base rates] above, your overtime pay is applied at a rate of {[Base Rate]+[1/2 Base Rate]} only. Your [Bonus Rate] pay will not be applied to your overtime hours."

"It is well-established that '[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.'" *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.* at 536, 725 S.E.2d at 695. "It is only when applying the words literally leads to a result so patently absurd that the General Assembly could not have intended it that we look beyond the statute's plain language. *Id.* 397 S.C. at 536, S.E.2d at 695-96 (citing *Cabiness v. Town of James Island*, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011)).

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Madden v. Bent Palm Invs., LLC*, 386 S.C. 459, 464, 688 S.E.2d 597, 600 (Ct. App. 2010) (quoting *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009)). The Court "must first look at the language of the contract to determine the intentions of the parties." *C.A.N. Enters., Inc. v. S.C. Health Human Servs. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). "Contract interpretation

begins with the plain language of the agreement.” *Stevenson Aviation, Inc. v. DynCorp Intern. LLC*, --- S.E.2d ---, 2014 WL 1233859, at *5 (S.C. S.Ct. March 26, 2014). “The language alone will determine the contract’s force where such language is unambiguous; however, where the language is subject to multiple interpretations, the fact finder must determine the parties’ intentions from the evidence presented.” *Madden*, 386 S.C. at 464-65, 688 S.E.2d at 600. “A party may not create an ambiguity by reading a single sentence or clause, but rather the contract and the language used must be considered as a whole.” *Id.* Finally, “[c]ommon sense and good faith are the leading touchstones of construction of the provisions of a contract; where one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language employed, would make it reasonable, fair and just, the latter construction must prevail.” *C.A.N. Enters.*, 296 S.C. at 377, 373 S.E.2d at 586.

Appellant argues in his Appellant’s Brief and again in his Reply Brief that “expenses for security, overhead, and health, safety, and welfare are not allowable deductions from an inmate’s gross wages under § 24-3-40.” To support this claim, Appellant, in his Reply Brief, quotes the following footnote from *Torrence, et al. v. S.C. Dep’t of Corr., et al.*:

Furthermore, if appellants prove true their allegation that the DOC removes any of the money remitted by the private industry sponsor and then disburses the percentages listed in section 24-3-40 based on the **lower** rate, the DOC would be in violation of the plain language of the statute which directs it to disburse the money based on the **gross wages**. See § 24-3-40(A).

373 S.C. 586, 594 n.4, 646 S.E.2d 866, 870 n.4 (2007) (emphasis of “lower” in original; emphasis added to “gross wages” by Appellant).⁸

As discussed in footnote 6, *supra*, the Court disagrees that Section 24-3-40 applies in this case, because the contract at issue in this case was a service work contract, and deductions

⁸ In its Motion to Strike Argument from the Appellant’s Reply Brief, the Department argues that the Court should strike all of the arguments that Appellant made in his Reply Brief regarding *Torrence*, because Appellant only mentioned *Torrence* in the Conclusion section of his Appellant’s Brief without making the arguments in a discussion of *Torrence* that he made in his Reply Brief. First, Respondent arguably raised arguments in its brief, specifically on pp. 11-12, as to what was included in deductions pursuant to the contract, which could have given rise to the need for an elaboration on *Torrence* in response. But the Court need not address whether the Appellant’s discussion of *Torrence* was appropriate, because the Court is free to use any law that would be helpful in addressing this case, and would have applied the same analysis of Section 24-3-295 regardless of the “*Torrence* rule.” The Court therefore denies Appellant’s Motion to Strike Argument from Appellant’s Reply Brief.

Appellant also alternatively moved in its Motion to Strike that if the Court were to deny its Motion to Strike, that it grant the Department an opportunity to prepare and file a sur-reply to address the argument that Appellant raised for the first time in his Reply Brief. However, the Court is sufficiently informed of the arguments and therefore does not see the need to consider further arguments on the issue.

from wages resulting from service work provided to private industries by inmates is governed by Section 24-1-295, not Section 24-3-40. However, the Court agrees that the principle from *Torrence* would equally apply to the statutorily required deductions pursuant to Section 24-1-295, because the deductions pursuant thereto must also be “deduct[ed] . . . from the gross earnings of the inmates . . .” The Court also agrees with Appellant that the gross amount of the wages paid to the Department for his labor was \$4.00 per hour. However, the Court finds that based on the terms of the Contract, security costs and overhead, including costs for health, safety, and welfare, constituted “other required deductions” pursuant to Section 24-1-295.

In this case, both the applicable statutory and contractual provisions are unambiguous,⁹ and there is substantial evidence to support the Department’s decision. The Department negotiated with WTI for an amount of \$4.00 per hour per inmate **to SCDC for inmate labor** (not **to the inmates**, but **for their labor** and **to SCDC**) with SCDC having the exclusive responsibility of handling payroll deductions and payment of wages to the inmate workers. See Section 24-1-295; *Cf. Williams*, 372 S.C. at 259, 641 S.E.2d at 887. Moreover, SCDC was required by the terms of the Contract, specifically under Section 3.3, “to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety, and welfare of the inmates, taxes or other payroll deduction. . . .”¹⁰ Indeed, Section 3.3 allows for increases to the per-hour wage rate based on increases to the cost of prison overhead, thus reasonably implying that the per-hour wage rate takes into account a deduction for the cost of overhead. And again, “overhead” “includ[es] any costs for health, safety and welfare of the inmates . . .”¹¹ Therefore, I conclude that security costs and overhead were contractually required deductions that had to be

⁹ Appellant, in his Reply Brief, specifically mentioned that he did not take issue with the fact that Section 24-1-295 and the budget proviso are clear and unambiguous. He likewise stated that terms of the 1998 contract were “clear and unambiguous.”

¹⁰ In his Reply Brief, Appellant argues that expenses for security are not an allowable deduction from an inmate’s gross wages under Section 24-3-40 and are instead to be paid by the Department “at its expense” pursuant to Section 3.2(4) of the Contract. However, as the Court has already discussed, Section 24-3-40 does not apply in this case. Moreover, Appellant did not raise this specific argument concerning Section 3.2(4) in his Appellant’s Brief. Therefore, the Court will not consider this argument. See *Hunter v. Staples*, 335 S.C. 93, 103, 515 S.E.2d 261, 267 (Ct. App.1999) (finding that appellant was precluded from asserting an argument for the first time in its reply brief), *cited in Jones ex rel. Jones v. Enter. Leasing Co., Se.*, 383 S.C. 259, 269 n.6, 678 S.E.2d 819, 824 n.6 (Ct. App. 2009).

¹¹ Appellant seems to argue in his Reply Brief that because SCDC is “responsible” for paying security costs and overhead pursuant to Sections 3.2(4) and 3.3(1) of the Contract, that these are both out-of-pocket expenses for the Department. However, under this theory, the Department would also have to pay the inmate workers out of pocket instead of out of the inmates’ gross incomes, since the Department is also “responsible to pay inmate workers” pursuant to Section 3.3(1) of the Contract. (emphasis added). This would be an absurd interpretation.

taken from the Appellant's gross wages; and those gross wages had to be calculated at a rate of \$4.00 per hour.

Furthermore, "in addition to [these] required deductions[.]" Section § 24-1-295 sets forth additional deductions that the Department must make in handling the wages paid to it for the inmates' labor. These deductions, aside from residual amounts payable towards taxes or incidentals, are in the form of percentages, and these deductions (where applicable) must be taken from "the gross earnings of the inmates engaged in prison industry service work." The only minimum rate of pay guaranteed to be paid directly to Appellant (after contractual and statutory deductions) was the contractual base rate of \$.35 per hour plus potential longevity pay increases and bonus pay, with a maximum allowable pay of \$1.00 per hour. And at least 10% of the gross amount of Appellant's earnings (\$4.00 times the number of hours worked) must be available to Appellant during his incarceration for incidentals and 10% must be held in an interest-bearing escrow account for his benefit, pursuant to Section 24-1-295(4) and (5). Also, pursuant to subsection (6), Appellant would receive any funds remaining after all deductions, including state and federal taxes owed, are taken, and these funds would have to be used to purchase incidentals pursuant to Section 24-1-295(4). Therefore, Appellant was never entitled to actually receive \$4.00 per hour for his labor, though that is the rate by which his gross wages were to be calculated for purposes of Section 24-1-295.

Remaining Issues on Appeal

Overtime Pay

Appellant argues that he is entitled to overtime pay. However, this issue was not included in Appellant's Step 1 and Step 2 Grievances and is therefore not preserved for appellate review.¹² See *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [factfinder] to be preserved for appellate review.").

¹² Appellant did not raise this issue until he filed his Notice of Appeal with this Court on June 5, 2007. In his Reply Brief, Appellant notes that "SCDC denied overtime in its step 1 and step 2 decisions." However, in its denials of both Appellant's Step 1 and Step 2 grievances, SCDC merely stated that "to the extent" that Appellant demanded overtime wages, his request was denied. However, there was no extent to which Appellant demanded overtime wages in his Step 1 and Step 2 Grievances, as he had not raised that issue in either grievance.

Pre-judgment and Post-judgment Interest/Costs and Attorney's Fees

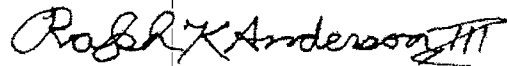
Appellant argues that he is entitled to pre-judgment and post-judgment interest on the back pay owed him, at an interest rate of 8.34 %. Appellant also argues that he is entitled to costs and attorney's fees. However, in light of the Court's ruling in this matter, Appellant is not entitled to pre-judgment or post-judgment interest on any back pay, and is also not entitled to any costs or attorney's fees.

Injunction against Further Wage Violations

Appellant argues that the Department should be enjoined against further wage violations. However, this is an appeal involving whether the Department properly denied Appellant the wages he seeks; it is not an injunction action. In fact, Appellant never raised the issue of an injunction in his Step 1 and 2 grievances or Notice of Appeal. *See Wilder Corp., supra*. Therefore, the Court will not entertain Appellant's injunction request.

ORDER

IT IS THEREFORE ORDERED that the Department's decision is **AFFIRMED**.
AND IT IS SO ORDERED.

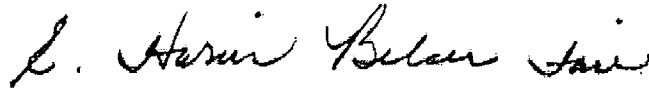


Ralph K. Anderson, III
Chief Administrative Law Judge

April 29, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



E. Harvin Belser Fair
Judicial Law Clerk

April 29, 2014
Columbia, South Carolina

2/M J. Daterwood, #289775

LC10871-64

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, et al., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430; they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was \$8.40 to \$10.97 per hour in 1999, \$9.74 to \$11.79 per hour in 2000, and \$10.10 to \$12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of \$4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

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To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

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As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated October 16, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on September 28, 2004 and that, as of the date of this response, you are still participating in this project.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

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Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over 15 days after you first started participating in the project located at Lieber. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your Step 1 grievance or your Step 2 appeal.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made in your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "inmate/employee" within your appeal and grievance to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

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Ackerman 5-6-11 1983

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was \$8.40 to \$10.97 per hour in 1999, \$9.74 to \$11.79 per hour in 2000, and \$10.10 to \$12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of \$4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

To the extent that you demand overtime wages in your appeal or grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your appeal and grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal or grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURTFred Gatewood, #289775

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. 07 -ALJ-04-_____

GRIEVANCE NO.: _____

Notice is hereby given that Fred Gatewood does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-22-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy.
8. Appellant claims pre/post judgment interest, costs and attorney fees.

Fred Gatewood

Appellant's Name

Lieber C.I.P.O. Box 205

Mailing Address

Ridgeville, SC 29472

City, State, Zip Code

none

Telephone Number

Signed

Dated

Douglas H. Westbrook

23 Broad St.

Chas, SC 29401

(843) 853-9600

Attorney for Appellant

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Fred Gatewood INMATE GRIEVANCE FORMindividually, and on STEP 1
behalf of all inmate employees (IE's)INMATE NAME: listed on attached Exh. A *SCDC NUMBER: 287775INSTITUTION: LCIHOUSING UNIT: Cooper B-25 ✓WORK ASSIGNMENT: PF-2

Office Use Only

Grievance No. Lieber 0871-02/Code: General NY

Policy _____

Disc. Hear. _____

Class. _____

Date Received: OCT 18 2004IGC Initials LC11/2/04

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was \$8.40 to \$10.97 for 1999, \$9.74 to \$11.59 for 2000, and \$10.10 to \$12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of \$4.00 per hour (Statutes at Large, No. 66, 337.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under \$1.00 per hour. Exhibits document a \$.35 per hour base pay rate, maximum pay of \$1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of \$4 per hour, the names and employment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate for 1999 to July 2001; and at \$4 per hour for July 2001 to present, and in the future; all as determined from Exhibits A-H; and the time cards, pay stubs, and other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, costs and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's have verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Williams et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certified a class action representing the class identified in Exh. A. On August 23, 200 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and Fred Gatewood 10-16-04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response

- ☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

2333

J. Carr 11/28/04
IGC Signature Date

W.A.
Grievant Signature Date

WARDEN'S DECISION AND REASON:

See Attachment.

APBurt Oct. 28, 04
Warden Signature Date

- ☐ I accept the Warden's decision and consider the matter closed.
☒ I do not accept the Warden's decision and wish to appeal.

Fred Gutierrez 11-204
Grievant Signature Date

J. C. Jones 11-204
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

2334

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

11-7-04

INMATE NAME: Fred Gatewood
SCDC NUMBER: 229775 / NOV 04 2004
INSTITUTION: Lieber
HOUSING UNIT: Cooper B 25
WORK ASSIGNMENT: P.O.I. 2

Office Use Only
Grievance No. CU 0871-04
Code: General mt
Policy _____
Disc. Hear. _____
Class. _____
Date Received NOV 08 2004
IGC Initials _____

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins & Wicker do require payment of prevailing wages. Grievants were employed by WTI, and S.C.D.C. was WTI's "Agent" in paying our wages. Adkins & Wicker further allow this issue of payment of wages under S.C. Code 24-3-430 to be grieved, pursuant to S.C.D.C.'s grievance Procedure. Grievant Incorporates by Reference all exhibits attached to grievance filed by Darrell Williams and Attorney Douglas Westbrook on 9-22-04

Fred Gatewood 11-02-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

[Signature] 5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Frederick Gatewood 5-22-07 [Signature] 5-22-07
Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

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2344

289775

AMENDMENT TO GRIEVANCE OF FRED GATEWOOD, #~~unknown~~

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was \$8.40/\$10.97 for 1999, \$9.74/\$11.59 for 2000, and \$10.10/\$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference). * Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of \$4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about \$1/hour, and usually less. Exhibits document a \$.35 per hour base rate (Exh. B,D,E); maximum of \$1/hour (Exh. E); the 9-30-98 contract specifying a \$4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for _____ hours in 1999 at \$9.68 per hour; _____ hours in 2000 at \$10.66 per hour; _____ hours in 1-1-01 to 6-30-01 at \$11.08 per hour; and _____ hours* in 7-1-01 to present at \$4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Fred Gatewood
(Grievant Signature)

2-3-06
(Date)

* Attached are Exh. C, 0081,0086; H, 1-3. Grievant not listed in Exh A
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as "LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be \$ 1,200,000 Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.

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A:SCDC FINAL CONTRACT.doc
August 17, 1998



A - 0081
June 2004

00021

2338

Ackerman 5-6-11 1975

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC \$4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:

Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner

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August 17, 1998



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A - 0086
June 2004

00026

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To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term "prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

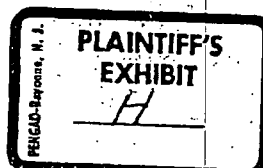
The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston - North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of \$11.44 in 1999, \$12.62 in 2000, and \$13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of \$10.49 in 1999, \$10.56 in 2000, and \$10.88 in 2001 for the Charleston - North Charleston Metropolitan Area. The average of these two Sub-Categories is \$10.97 for 1999, \$11.59 for 2000, and \$12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of \$9.53 in 1999, \$11.21 in 2000, and \$10.45 in 2001. The Production Occupations Sub-Category of "Helpers--Production Workers" had mean hourly wages of \$7.61 in 1999, \$8.27 in 2000, and \$9.09 in 2001. The average of these two "Helpers" Sub Categories is \$8.40 for 1999, \$9.74 for 2000, and \$10.10 for 2001.

These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is \$10.97 - \$8.40 for 1999, \$11.59 - \$9.74 for 2000, and \$12.06 - \$10.10 for 2001.

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RESUME-3/03
Dr. Joseph J. Benich

FAMILY STATUS

Wife - Roberta; two children - Kiersten and J.J.

EDUCATION

- 9/68 - 6/72 Doctor of Business Administration
 Majors: Production Management and Marketing
 Kent State University, Kent, Ohio
- 1/66 - 5/68 Masters of Business Administration
 Majors: Economics and Marketing
 Case Western Reserve University, Cleveland, Ohio
- 9/65 - 1/66 Western Reserve University, Cleveland, Ohio
 Major: Law
- 9/61 - 6/65 Bachelor of Science in Chemical Engineering
 Case Institute of Technology, Cleveland, Ohio

ACADEMIC EXPERIENCE

- 9/93 - 2003 Professor of Business Administration
 College of Charleston, Charleston, South Carolina
- 9/78 - 8/93 Associate Professor of Business Administration
 College of Charleston, Charleston, South Carolina
- 9/76 - 9/78 Associate Professor and Chair of the Business Administration & Economics
 Department
 College of Charleston, Charleston, South Carolina
- 9/72 - 9/76 Assistant Professor and Chair of the Business Administration & Economics
 Department
 College of Charleston, Charleston, South Carolina
- 9/69 - 6/72 Full-time Instructor, Economics Department
 Kent State University, Kent, Ohio
- 1/69 - 6/69 Teaching Fellow, Statistics
 Kent State University
- 9/68 - 12/68 Graduate Assistant
 Kent State University

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NON-ACADEMIC EXPERIENCE

- 6/74 - Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts
- 7/78 - Manager of Summertime Properties, Charleston, South Carolina
- 6/73 - Business Consulting, J. Benich and Associates, Charleston, South Carolina
- 1/68 - 11/72 Business Advisor to Director of American Screw Products, Warrensville, Ohio
- 1/68 - 10/68 Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio
- 1/66 - 9/67 Industrial Market Research, Harshaw Chemical, Cleveland, Ohio
- 19/65 - 1/66 Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school)
- 6/65 - 9/65 Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development).

PUBLICATIONS

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, *Clinical Cardiology*, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, *North American Society of Pacing and Electrophysiology*, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", *For The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

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2342

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURTFred Gatewood, #289775

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. 07 -ALJ-04-_____

GRIEVANCE NO.: _____

Notice is hereby given that Fred Gatewood does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-22-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy.
8. Appellant claims pre/post judgment interest, costs and attorney fees.

Fred Gatewood

Appellant's Name

Lieber C.I.

P.O. Box 205

Mailing Address

Ridgeville, SC 29472

City, State, Zip Code

none

Telephone Number

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Signed

Dated

Douglas H. Westbrook
23 Broad St.

Chas, SC 29401

(843) 853-9600

Attorney for Appellant

2348

STATE OF SOUTH CAROLINA) IN THE ADMINISTRATIVE LAW COURT
FRED GATEWOOD, #289775)
Grievant/Appellant,)
vs.) CERTIFICATE OF SERVICE
SOUTH CAROLINA DEPARTMENT OF)
CORRECTIONS,)
Respondent/Appellee.)

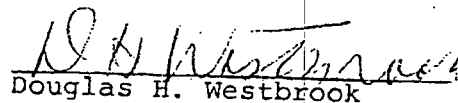
I certify that on the 5th day of June, 2007,
I mailed by first class postage Appellant's Notice of Appeal,
and final decision, to the following:

(1) The original and one copy were mailed for filing with
the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel
of record for SCDC, to:

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


Douglas H. Westbrook

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Inmate #	First Name	Middle Name	Last Name	Suffix	Pay Date	Pay Rate	Hours	Pay Amount
191274	JERMAINE		GARRIETT		2/6/2006	0.50	17.5	8.75
191274	JERMAINE		GARRIETT		2/20/2006	0.50	33.4	16.70
191274	JERMAINE		GARRIETT		3/6/2006	0.50	28.21	14.10
191274	JERMAINE		GARRIETT		3/20/2006	0.50	32.15	16.07
191274	JERMAINE		GARRIETT		4/3/2006	0.50	43.13	21.56
191274	JERMAINE		GARRIETT		4/17/2006	0.50	37.93	18.96
191274	JERMAINE		GARRIETT		5/1/2006	0.50	37.9	18.95
191274	JERMAINE		GARRIETT		5/15/2006	0.50	56.6	28.30
191274	JERMAINE		GARRIETT		5/29/2006	0.50	60.78	30.39
191274	JERMAINE		GARRIETT		6/12/2006	0.50	17.02	8.51
191274	JERMAINE		GARRIETT		6/26/2006	0.50	57.02	28.51
191274	JERMAINE		GARRIETT		7/10/2006	0.50	44.36	22.18
191274	JERMAINE		GARRIETT		7/24/2006	0.50	4.84	2.42
289775	FREDRICK	LEROY	GATEWOOD		10/18/2004	0.50	38.75	19.37
289775	FREDRICK	LEROY	GATEWOOD		11/1/2004	0.50	57.29	28.64
289775	FREDRICK	LEROY	GATEWOOD		11/15/2004	0.50	23.23	11.61
289775	FREDRICK	LEROY	GATEWOOD		11/29/2004	0.50	55.07	27.53
289775	FREDRICK	LEROY	GATEWOOD		12/13/2004	0.50	40.73	20.36
289775	FREDRICK	LEROY	GATEWOOD		12/27/2004	0.50	70.41	35.20
289775	FREDRICK	LEROY	GATEWOOD		1/10/2005	0.50	2.99	1.49
289775	FREDRICK	LEROY	GATEWOOD		1/24/2005	0.50	22.84	11.42
289775	FREDRICK	LEROY	GATEWOOD		2/7/2005	0.50	78.7	39.35
289775	FREDRICK	LEROY	GATEWOOD		2/21/2005	0.50	59.92	29.96
289775	FREDRICK	LEROY	GATEWOOD		3/7/2005	0.50	62	31.00
289775	FREDRICK	LEROY	GATEWOOD		3/21/2005	0.50	60.22	30.11
289775	FREDRICK	LEROY	GATEWOOD		4/4/2005	0.50	59.24	29.62
289775	FREDRICK	LEROY	GATEWOOD		4/18/2005	0.50	75.95	37.97
289775	FREDRICK	LEROY	GATEWOOD		5/2/2005	0.50	25.3	12.65
289775	FREDRICK	LEROY	GATEWOOD		5/16/2005	0.50	87.72	43.86
289775	FREDRICK	LEROY	GATEWOOD		5/30/2005	0.50	52.5	26.25
289775	FREDRICK	LEROY	GATEWOOD		6/13/2005	0.50	3.5	1.75
289775	FREDRICK	LEROY	GATEWOOD		6/27/2005	0.50	80.3	40.15
289775	FREDRICK	LEROY	GATEWOOD		7/11/2005	0.50	90.6	45.30
289775	FREDRICK	LEROY	GATEWOOD		7/25/2005	0.50	83.43	41.71
289775	FREDRICK	LEROY	GATEWOOD		8/8/2005	0.50	32.28	16.14
289775	FREDRICK	LEROY	GATEWOOD		8/22/2005	0.50	98.13	49.06
289775	FREDRICK	LEROY	GATEWOOD		9/5/2005	0.50	45.56	22.78
289775	FREDRICK	LEROY	GATEWOOD		9/19/2005	0.50	92.3	46.15
289775	FREDRICK	LEROY	GATEWOOD		10/3/2005	0.50	105.57	52.78
289775	FREDRICK	LEROY	GATEWOOD		10/17/2005	0.50	102.6	51.30
289775	FREDRICK	LEROY	GATEWOOD		10/31/2005	0.50	99.99	49.99
289775	FREDRICK	LEROY	GATEWOOD		11/14/2005	0.50	84.61	42.30
289775	FREDRICK	LEROY	GATEWOOD		11/28/2005	0.50	69.9	34.95
289775	FREDRICK	LEROY	GATEWOOD		12/12/2005	0.50	108.41	54.20
289775	FREDRICK	LEROY	GATEWOOD		12/26/2005	0.50	103.28	51.64
289775	FREDRICK	LEROY	GATEWOOD		1/9/2006	0.50	53.92	26.96
289775	FREDRICK	LEROY	GATEWOOD		1/23/2006	0.50	71.43	35.71
289775	FREDRICK	LEROY	GATEWOOD		2/6/2006	0.50	71.4	35.70
289775	FREDRICK	LEROY	GATEWOOD		2/20/2006	0.50	102.65	51.32
289775	FREDRICK	LEROY	GATEWOOD		3/6/2006	0.50	103.58	51.79
289775	FREDRICK	LEROY	GATEWOOD		3/20/2006	0.50	51.94	25.97
289775	FREDRICK	LEROY	GATEWOOD		4/3/2006	0.50	87.2	43.60
289775	FREDRICK	LEROY	GATEWOOD		4/17/2006	0.50	116.28	58.14
289775	FREDRICK	LEROY	GATEWOOD		5/1/2006	0.50	84.75	42.37
289775	FREDRICK	LEROY	GATEWOOD		5/15/2006	0.50	118.65	59.32
289775	FREDRICK	LEROY	GATEWOOD		5/29/2006	0.50	89.34	44.67
289775	FREDRICK	LEROY	GATEWOOD		6/12/2006	0.50	92.57	46.28

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Inmate #	First Name	Middle Name	Last Name	Suffix	Pay Date	Pay Rate	Hours	Pay Amount
289775	FREDRICK	LEROY	GATEWOOD		6/26/2006	0.50	110.61	55.30
289775	FREDRICK	LEROY	GATEWOOD		7/10/2006	0.50	88.92	44.46
289775	FREDRICK	LEROY	GATEWOOD		7/24/2006	0.50	127.97	63.98
289775	FREDRICK	LEROY	GATEWOOD		8/7/2006	0.50	73.15	36.57
289775	FREDRICK	LEROY	GATEWOOD		8/21/2006	0.50	53.2	26.60
289775	FREDRICK	LEROY	GATEWOOD		9/4/2006	0.50	64.6	32.30
289775	FREDRICK	LEROY	GATEWOOD		9/18/2006	0.50	74.1	37.05
289775	FREDRICK	LEROY	GATEWOOD		10/2/2006	0.50	136.55	68.27
289775	FREDRICK	LEROY	GATEWOOD		10/16/2006	0.50	147.75	73.87
289775	FREDRICK	LEROY	GATEWOOD		10/30/2006	0.50	85.86	42.93
289775	FREDRICK	LEROY	GATEWOOD		11/13/2006	0.50	82.54	41.27
289775	FREDRICK	LEROY	GATEWOOD		11/27/2006	0.50	71.6	35.80
289775	FREDRICK	LEROY	GATEWOOD		12/11/2006	0.50	60.56	30.28
289775	FREDRICK	LEROY	GATEWOOD		12/25/2006	0.50	124.29	62.14
289775	FREDRICK	LEROY	GATEWOOD		1/8/2007	0.50	29.5	14.75
289775	FREDRICK	LEROY	GATEWOOD		1/22/2007	0.50	63.84	31.92
289775	FREDRICK	LEROY	GATEWOOD		2/5/2007	0.50	129.04	64.52
289775	FREDRICK	LEROY	GATEWOOD		2/19/2007	0.50	82.06	41.03
289775	FREDRICK	LEROY	GATEWOOD		3/5/2007	0.50	123.61	61.80
289775	FREDRICK	LEROY	GATEWOOD		3/19/2007	0.50	80.1	40.05
289775	FREDRICK	LEROY	GATEWOOD		4/2/2007	0.50	54.94	27.47
289775	FREDRICK	LEROY	GATEWOOD		4/16/2007	0.50	90.34	45.17
289775	FREDRICK	LEROY	GATEWOOD		4/30/2007	0.50	141.96	70.98
289775	FREDRICK	LEROY	GATEWOOD		5/14/2007	0.50	139.85	69.92
289775	FREDRICK	LEROY	GATEWOOD		5/28/2007	0.50	112.62	56.31
289775	FREDRICK	LEROY	GATEWOOD		6/11/2007	0.50	45.27	22.63
289775	FREDRICK	LEROY	GATEWOOD		6/25/2007	0.50	130.41	65.20
289775	FREDRICK	LEROY	GATEWOOD		7/9/2007	0.50	122.96	61.48
289775	FREDRICK	LEROY	GATEWOOD		7/23/2007	0.50	90.64	45.32
289775	FREDRICK	LEROY	GATEWOOD		8/6/2007	0.50	102.64	51.32
289775	FREDRICK	LEROY	GATEWOOD		8/20/2007	0.50	104.84	52.42
289775	FREDRICK	LEROY	GATEWOOD		9/3/2007	0.50	20.97	10.48
289775	FREDRICK	LEROY	GATEWOOD		9/17/2007	0.50	40.46	20.23
289775	FREDRICK	LEROY	GATEWOOD		10/1/2007	0.50	17.5	8.75
289775	FREDRICK	LEROY	GATEWOOD		11/12/2007	0.50	102.02	51.01
289775	FREDRICK	LEROY	GATEWOOD		11/26/2007	0.50	139.68	69.84
289775	FREDRICK	LEROY	GATEWOOD		12/10/2007	0.50	119.34	59.67
289775	FREDRICK	LEROY	GATEWOOD		12/24/2007	0.50	138.79	69.39
289775	FREDRICK	LEROY	GATEWOOD		1/7/2008	0.50	24.95	12.47
289775	FREDRICK	LEROY	GATEWOOD		1/21/2008	0.50	188.19	94.09
289775	FREDRICK	LEROY	GATEWOOD		2/4/2008	0.50	113.78	56.89
289775	FREDRICK	LEROY	GATEWOOD		2/18/2008	0.50	160.65	80.32
289775	FREDRICK	LEROY	GATEWOOD		3/3/2008	0.50	108.32	54.16
289775	FREDRICK	LEROY	GATEWOOD		3/17/2008	0.50	119.66	59.83
289775	FREDRICK	LEROY	GATEWOOD		3/31/2008	0.50	163.95	81.97
289775	FREDRICK	LEROY	GATEWOOD		4/14/2008	0.50	112.86	56.43
289775	FREDRICK	LEROY	GATEWOOD		4/28/2008	0.50	83.41	41.70
289775	FREDRICK	LEROY	GATEWOOD		5/12/2008	0.50	133.82	66.91
289775	FREDRICK	LEROY	GATEWOOD		5/26/2008	0.50	57.5	28.75
289775	FREDRICK	LEROY	GATEWOOD		6/9/2008	0.50	81.93	40.96
289775	FREDRICK	LEROY	GATEWOOD		6/23/2008	0.50	103.36	51.68
289775	FREDRICK	LEROY	GATEWOOD		7/7/2008	0.50	32.42	16.21
289775	FREDRICK	LEROY	GATEWOOD		8/4/2008	0.50	6.65	3.32
289775	FREDRICK	LEROY	GATEWOOD		8/18/2008	0.50	49.65	24.82
289775	FREDRICK	LEROY	GATEWOOD		9/1/2008	0.50	36.48	18.24
289775	FREDRICK	LEROY	GATEWOOD		3/2/2009	0.50	103.91	51.95
289775	FREDRICK	LEROY	GATEWOOD		3/16/2009	0.50	130.41	65.20

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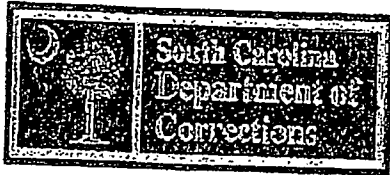
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Inmate #	First Name	Middle Name	Last Name	Suffix	Pay Date	Pay Rate	Hours	Pay Amount
289775	FREDRICK	LEROY	GATEWOOD		3/30/2009	0.50	33.33	16.66
289775	FREDRICK	LEROY	GATEWOOD		4/13/2009	0.50	13.71	6.85
208922	JAMIE		GAYMON		1/1/2001	0.50	29.45	14.72
208922	JAMIE		GAYMON		1/15/2001	0.50	64.18	32.09
208922	JAMIE		GAYMON		1/29/2001	0.50	68.12	34.06
208922	JAMIE		GAYMON		2/12/2001	0.50	74.37	37.18
208922	JAMIE		GAYMON		2/26/2001	0.50	79.58	39.79
208922	JAMIE		GAYMON		3/12/2001	0.50	88.22	44.11
208922	JAMIE		GAYMON		3/26/2001	0.50	48.72	24.36
208922	JAMIE		GAYMON		4/9/2001	0.50	94.12	47.06
208922	JAMIE		GAYMON		4/23/2001	0.50	83.39	41.69
208922	JAMIE		GAYMON		5/7/2001	0.50	115.28	57.64
208922	JAMIE		GAYMON		5/21/2001	0.50	111.74	55.87
208922	JAMIE		GAYMON		6/4/2001	0.50	69	34.50
208922	JAMIE		GAYMON		6/18/2001	0.50	82.19	41.09
208922	JAMIE		GAYMON		7/2/2001	0.50	127.22	63.61
208922	JAMIE		GAYMON		7/16/2001	0.50	143.06	71.53
208922	JAMIE		GAYMON		7/30/2001	0.50	54.26	27.13
208922	JAMIE		GAYMON		8/13/2001	0.50	112.62	56.31
208922	JAMIE		GAYMON		8/27/2001	0.50	110.55	55.27
208922	JAMIE		GAYMON		9/10/2001	0.50	128.71	64.35
208922	JAMIE		GAYMON		9/24/2001	0.50	171.47	85.73
208922	JAMIE		GAYMON		10/8/2001	0.50	166.42	83.21
208922	JAMIE		GAYMON		10/22/2001	0.50	118.78	59.39
208922	JAMIE		GAYMON		11/5/2001	0.50	157.68	78.84
208922	JAMIE		GAYMON		11/19/2001	0.50	168.08	84.04
208922	JAMIE		GAYMON		12/3/2001	0.50	106.81	53.40
208922	JAMIE		GAYMON		12/17/2001	0.50	199.08	99.54
208922	JAMIE		GAYMON		12/31/2001	0.50	68.69	34.34
208922	JAMIE		GAYMON		4/22/2002	0.50	46.54	23.27
208922	JAMIE		GAYMON		5/6/2002	0.50	33.18	16.59
208922	JAMIE		GAYMON		5/20/2002	0.50	60	30.00
208922	JAMIE		GAYMON		6/3/2002	0.50	60	30.00
208922	JAMIE		GAYMON		6/17/2002	0.50	68.52	34.26
208922	JAMIE		GAYMON		7/1/2002	0.50	81.84	40.92
208922	JAMIE		GAYMON		7/15/2002	0.50	62.16	31.08
208922	JAMIE		GAYMON		7/29/2002	0.50	66	33.00
208922	JAMIE		GAYMON		8/12/2002	0.50	72.76	36.38
208922	JAMIE		GAYMON		8/26/2002	0.50	66.1	33.05
208922	JAMIE		GAYMON		9/9/2002	0.50	71.92	35.96
208922	JAMIE		GAYMON		9/23/2002	0.50	67.22	33.61
208922	JAMIE		GAYMON		10/7/2002	0.50	93.12	46.56
208922	JAMIE		GAYMON		10/21/2002	0.50	102.63	51.31
208922	JAMIE		GAYMON		11/4/2002	0.50	97.31	48.65
208922	JAMIE		GAYMON		1/27/2003	0.50	7.5	3.75
183851	REGINALD		GEDDIS		3/27/2000	0.35	51.86	18.15
183851	REGINALD		GEDDIS		4/10/2000	0.35	75	26.25
183851	REGINALD		GEDDIS		4/24/2000	0.35	75	26.25
183851	REGINALD		GEDDIS		4/24/2000	0.55	20.08	11.04
183851	REGINALD		GEDDIS		5/8/2000	0.55	17.87	9.82
183851	REGINALD		GEDDIS		5/8/2000	0.35	75	26.25
183851	REGINALD		GEDDIS		5/22/2000	0.25	7.5	1.87
183851	REGINALD		GEDDIS		5/22/2000	0.55	26.73	14.70
183851	REGINALD		GEDDIS		5/22/2000	0.50	67.5	33.75
183851	REGINALD		GEDDIS		6/5/2000	0.50	67.5	33.75
183851	REGINALD		GEDDIS		6/5/2000	0.55	16.23	8.92
183851	REGINALD		GEDDIS		6/19/2000	0.50	75	37.50

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	Name	SCDC #	ALC Docket #	Grievance #	Step 1 Grievance File Date	Relevant Issues in Appellants' Brief	Start Date per SCDC Grievance Response(s)	End Date per SCDC Grievance Response(s)	EXHIBIT F (03/28/11) PI Pay Start Date	EXHIBIT F (03/28/11) PI Pay Last Date	NOTES	Date Released from SCDC
68	Gamble, Maxie	254413	08-ALJ-04-00995-IJ	LCI-0655-04 + Amdmnt undtd/unsgnd (4/19/07)	09/22/04	1 - 8	01/06/00	12/12/02	01/17/00	12/30/02		N/A
69	Garrett, Robert	291096	08-ALJ-04-00979-IJ	LCI-0753-04 + Amdmnt undtd/unsgnd (4/19/07)	09/30/04	1 - 8	02/10/04	08/08/05	07/14/03	08/11/03		N/A
									03/22/04	08/22/05		
70	Garriett, Jermaine	191274	07-ALJ-04-0516-AP	LCI-0782-04 + Amdmnt (2/13/06)	09/30/04	1 - 8	12/03/03	12/27/03	07/28/03	08/11/03		N/A
									12/15/03	03/08/04		
									06/14/04	12/13/04		
									02/06/06	07/24/06		
71	Gatewood, Fred	289775	07-ALJ-04-0517-AP	LCI-0871-04 + Amdmnt (2/3/06)	10/18/04	1 - 2; 4 - 6 & 8	09/28/04	Active	10/18/04	09/01/08		N/A
									03/02/09	04/13/09		
72	Gaymon, Jammie	208922	07-ALJ-04-0557-AP	LCI-0601-04 + Amdmnt undtd/unsgnd (4/19/07)	09/22/04	1 - 7	03/15/02	12/12/02	01/01/01	12/31/01		N/A
									04/22/02	01/27/03		
73	Geddis, Reginald	183851	08-ALJ-04-00980-IJ	LCI-0676-04 + Amdmnt undtd/unsgnd (4/19/07)	09/22/04	1 - 8	03/15/00	06/26/03	03/27/00	06/30/03		N/A
74	Gilbert, Marvin	273934	08-ALJ-04-01026-IJ	LCI-0732-04	09/30/04	1 - 3 & 5 - 7			08/11/03	03/08/04		11/05/04



SCDC POLICY/PROCEDURE

NUMBER: GA-01.12

TITLE: INMATE GRIEVANCE SYSTEM

ISSUE DATE: NOVEMBER 1, 2004

RESPONSIBLE AUTHORITY: OFFICE OF GENERAL COUNSEL

OPERATIONS MANUAL: GENERAL ADMINISTRATION

SUPERSEDES: GA-01.12 (August 1, 2002)

RELEVANT SCDC FORMS/SUPPLIES: 10-5, 10-5(a), 19-11

ACA/CAC STANDARDS: 4-ACRS-4C-01, 4-ACRS-6B-03, 4-ACRS-6C-03, 3-4236, 3-4271, 3-4288, 3-4331

STATE/FEDERAL STATUTES: Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 (Pub.L. 96-247, May 23, 1980, 94 Stat. 349)

PURPOSE: To establish guidelines for the development and implementation of an inmate grievance system whereby inmates may seek formal review of complaints relative to disciplinary hearing appeals, classification appeals, Department policies/procedures, directives, or conditions which directly affect an inmate.

POLICY STATEMENT: The South Carolina Department of Corrections advocates timely and efficient resolution of complaints and grievances brought to the attention of administrators by inmates. To this end, the Department will develop, administer, and implement an inmate grievance system accessible to all inmates regardless of their custody level, classification, disciplinary status, disabilities, or other administrative or legislative matter(s) affecting inmates. (4-ACRS-6B-03, 3-4271)

At a minimum, the grievance system will be designed to provide inmates with a mechanism by which they may seek formal review of their complaints; provide a vehicle for internal solutions at the level having most direct contact with the inmate; and provide a means for management review of staff decisions and policies/procedures that may be the source of a complaint. Notification of this policy/procedure will be made in compliance with the Civil Rights of Institutionalized Persons Act.

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SPECIFIC PROCEDURES:

1. RESPONSIBILITIES/APPLICABILITY:

1.1 The Office of General Counsel will manage an Inmate Grievance Branch responsible for the development, management, and implementation of a system-wide inmate grievance system.

1.2 The Inmate Grievance Branch will be responsible for developing written procedures designed to address the management and use of the inmate grievance system. The procedures will, at a minimum, address staff and inmate responsibilities relative to the inmate grievance system; limitation requirements for inmates found abusing or misusing the grievance system; definitions of grievable and non-grievable actions; documentation requirements; evaluative mechanisms for ensuring the efficiency and effectiveness of the inmate grievance system; steps in the grievance process; emergency grievance procedures; and confidentiality requirements. Suggestions or problems may be submitted by staff and inmates to the Chief, Inmate Grievance Branch, at any time. Inmates will utilize a "Request to Staff Member," SCDC Form 19-11, for this purpose.

1.3 The inmate grievance system will be available for use by all inmates regardless of their custody level, classification, disciplinary status, disability, or any other administrative or legislative action that may affect any inmate incarcerated in a facility of the South Carolina Department of Corrections. Every inmate assigned to a South Carolina Department of Corrections (SCDC) institution is eligible to utilize the grievance system as set forth in this policy/procedure. Staff assistance will be provided to non-English speaking inmates, inmates unable to read and write, and disabled inmates in order to ensure their access to the grievance system. (4-ACRS-4C-01, 4-ACRS-6B-03, 3-4271, 3-4331)

2. ORIENTATION:

2.1 Upon arrival at any SCDC Reception and Evaluation Center, inmates will be provided an explanation of the SCDC inmate grievance process during new admission orientation. Arrangements will be made through the Inmate Grievance Branch to provide non-English speaking, disabled, and illiterate inmates with this information in a language or mode that they can comprehend. An inmate may also submit an SCDC Form 19-11, "Request to Staff Member," to the IGC at his/her institution concerning any questions about the grievance process. (4-ACRS-4C-01, 4-ACRS-6B-03, 3-4271, 3-4331)

2.2 Each SCDC institution will also include in its inmate orientation an oral explanation of how the grievance procedure operates. Wardens may contact the Inmate Grievance Branch to obtain assistance in locating qualified individuals to explain the procedure to non-English speaking, disabled, or illiterate inmates.

2.3 As a part of the Department orientation program, all newly hired employees will receive written and/or oral explanations of the Department's grievance policy/procedure by a representative of the Inmate

Grievance Branch.

3. REPRISALS: No inmate will be subjected to reprisal, retaliation, harassment, or disciplinary action for filing a grievance or participating in the resolution of a grievance. The grievance procedure will be used by any inmate who is alleging reprisals of this nature. Allegations of reprisal may also be investigated by the Chief/designee, Inmate Grievance Branch, if deemed necessary.

4. CONFIDENTIALITY:

4.1 To the extent possible, all documentation pertaining to inmate grievances will be considered confidential and will not be included as part of an inmate's institutional or central record. Statements made by, or information received from, a grievant or other affected inmate relating to a grievance will not be used to initiate internal disciplinary action against an inmate(s). Grievance forms and accompanying documents will be treated as confidential. However, disciplinary hearing appeals and classification appeals will be included in each affected inmate's institutional record and central record. Incident or policy/procedure grievances or complaints will not be placed in either inmate record.

4.2 If an inmate files a grievance that pertains to a loss of property or loss of money as a result of legitimate transactions, a reference may be included in his/her institutional record and central record as to how the matter was resolved. However, this reference will not give any indication that a grievance was filed.

4.3 If it becomes necessary to document any other circumstances or actions which are related to a grievance, a reference may be included in the institutional record and central record; however, it must not give any indication that a grievance was filed.

5. INSTITUTIONAL INMATE GRIEVANCE COORDINATOR:

5.1 A *non-uniformed* employee at each SCDC institution will be designated as the Institutional Inmate Grievance Coordinator. Coordinators will make certain that all inmates at that institution have access to the grievance procedure regardless of any disciplinary, classification, disabilities, or other administrative decision concerning them. The Institutional Coordinator will receive grievances from inmates and will investigate, resolve, and/or recommend disposition.

5.2 *The Inmate Grievance Branch Administrator will be primarily responsible for the preparation of the planning stage and evaluation forms but s/he will consult with the Warden/designee and ensure that the Warden/designee has the opportunity to review and provide additional information for the planning stage and evaluation forms. Both forms will be signed by the Inmate Grievance Branch Administrator and the Warden/designee. The planning stage and the evaluation form will not be discussed with the affected employee until all required signatures are obtained. The Inmate Grievance Branch Administrator will ensure that appraisals are completed and processed within proper time limits.*

6. MISUSE/ABUSE OF THE GRIEVANCE SYSTEM/LIMITATION:

6.1 Inmates found to be misusing or abusing the inmate grievance system may be subjected to limitation. Exceptions will be made for four (4) types of grievances, which will not be counted against the total(s) if limitation is imposed: disciplinary hearing appeals, classification issues, emergencies, and criminal activity.

6.2 *Misuse or abuse of the inmate grievance system may be, but are not limited to, grievances intended to harass another person; the repeated submission of frivolous grievances; and/or the repeated submission of grievances or "Requests to Staff Members," about an issue(s) previously addressed by staff members in written responses.*

6.3 Procedures: The following procedures will be used for recommending limitations:

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6.3.1 The Warden, or *designee* appointed by the Warden, will meet with the inmate to discuss the perceived abuse of the grievance procedure and try to resolve the issue. The Warden may request assistance from the Grievance Administrator, Inmate Grievance Branch, in evaluating the situation. Documentation will be submitted in memo form and will include reason(s) supporting this belief, type(s) of abuse, and volume of grievances. This documentation will include what efforts institutional personnel have made to address the situation and what has led them to believe that use of the grievance procedure has been inappropriate. The request will be forwarded to the Chief/designee, Inmate Grievance Branch, for review and necessary action.

6.3.2 The Chief/designee, Inmate Grievance Branch, will review the institutional request and may consult with the General Counsel concerning appropriate action. If limiting action is approved, the Chief/designee, Inmate Grievance Branch, will notify the inmate in writing of the action, the reasons for the action, and the duration. Copies of this letter will be forwarded to the Warden. The inmate may appeal this decision in writing to the General Counsel within five (5) days of his/her receipt of notification.

7. GRIEVABLE ISSUES: The following issues will be considered grievable:

- ✓ 7.1 Department policies/procedures, directives, or conditions which directly affect an inmate;
- 7.2 Actions of a staff member toward an inmate;
- 7.3 Actions of an inmate against another inmate;
- 7.4 Inmate property complaints;
- 7.5 Disciplinary Hearing actions to appeal a conviction following an innocent plea, or to appeal any guilty verdict due to alleged technicalities or misinterpretation of evidence, or to appeal a sentence when the sanction imposed was allegedly not proportionate to the rules violation; (4-ACRS-6C-03, 3-4236)
- 7.6 Any classification decision that directly affects an inmate's custody level; and (3-4288)
- 7.7 Calculation of sentence-related credits.

8. NON-GRIEVABLE ISSUES: The following items are considered non-grievable issues:

8.1 Classification issues, as follow:

8.1.1 Institutional and security assignments made at Reception and Evaluation Centers;

8.1.2 Institutional job assignments, except where there may be extenuating medical circumstances involved; and

8.1.3 Cell, dormitory, or cubicle assignments made within an institution;

8.2 Administrative transfers which occur due to needed movement for bedspace availability or security-related matters and which do not result in a custody reduction;

8.3 The disposition of any Department disciplinary proceeding (Disciplinary Hearing, Administrative Hearing) which resulted from a guilty plea by the inmate, or if the inmate accepted Informal or Administrative Resolution, unless the sanction imposed was excessive in relationship to the rule violation; and

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8.4 Any issue outside of the control of the Department:

8.4.1 State and federal court decisions;

8.4.2 State and federal laws and regulations;

8.4.3 Parole Board decisions; and

8.4.4 Any other matters outside the control of the SCDC.

9. **QUESTIONABLE ISSUES:** In those cases where a question may arise as to whether an item is grievable, the Institutional Inmate Grievance Coordinator will confer with the Chief, Inmate Grievance Branch, who will make that determination. The Institutional Inmate Grievance Coordinator will advise the inmate in writing as to the decision of the Chief, Inmate Grievance Branch. This decision will be final.

10. **REMEDIES:** All SCDC personnel responsible for responding to an inmate grievance will afford each successful grievant a meaningful remedy to the extent that their respective positions, authority, and resources allow. Remedies may include, but are not limited to, the following:

10.1 **Restitution:** Restoration of property by substituting a *state-like* item. This will normally occur instead of any monetary reimbursement.

10.2 **Monetary:** A fair value will be given for items lost or destroyed when willful negligence is proven. (See SCDC policies/procedures regarding inmate property.)

10.3 **Changes in policies/procedures, rules, or practices.**

10.4 **Correction of records.**

10.5 **Other remedies, as appropriate.** For example, employee discipline, inmate referral to outside sources, etc.

NOTE: The Warden's decision to grant restitution/monetary reimbursement will not require additional approval to have state-like items issued or deposits made to the grievant's E.H. Cooper Account so long as the amount of reimbursement is within the monetary limits of SCDC Policy/Procedure OP-22.03, "Authorized Inmate Property and Disposition of Unauthorized Property."

11. **RESPONSES:** Each grievance will be answered in writing at each level of decision using the applicable SCDC Form (either Form 10-5 or 10-5a) *and will be served by the Inmate Grievance Coordinator to the inmate personally.* *Exceptions to this procedure will be required to be approved by the Chief, Inmate Grievance Branch.* The response will state the reasons for the decision reached and inform the grievant of his/her rights of appeal. Time limits at each step in the procedure are contained herein; but in all instances, grievances will be processed from initiation to final disposition within 105 days except when the Chief/designee, Inmate Grievance Branch, specifically agrees to a request for an extension. If an extension is granted, the *Inmate Grievance Coordinator will notify the inmate in writing.* (NOTE: The maximum extension that may be given is 75 days. Under no circumstances will the grievance process exceed 180 days.) (See also Procedures #13 and #14.)

12. **RECORDS:** Records regarding the filing and disposition of grievances will be maintained at each institution in a manner determined by the Institutional Inmate Grievance Coordinator and approved by the Chief, Inmate Grievance Branch *or designee.* All grievances will be maintained for at least seven (7) years following their final disposition. Staff participating in the disposition of a grievance will have access to records essential to its resolution. Records pertaining to grievances will not be available to individuals *who*

make recommendations or decisions about parole or other decisions that are not related to the grievance process. Once a grievance has been closed, it should not be reviewed or referred to unless necessary to accomplish legitimate data gathering or other grievance related objectives or for accreditation documentation with only the inmate's name blackened out as appropriate. Should any questions arise as to who should be allowed access to any such record, they will be referred to the Chief, Inmate Grievance Branch, for resolution.

13. STEPS IN THE GRIEVANCE PROCESS:

13.1 Inmates must make an effort to informally resolve a grievance by either submitting a Request to Staff Member Form or by discussing their complaint with the appropriate supervisor/staff. However, in certain cases, informal resolution may not be appropriate or possible (e.g., when the matter concerns staff not working at the institution, or when the matter involves allegations of criminal activity). An informal resolution is not necessary when appealing a disciplinary conviction or a custody reduction. If informal resolution is not possible, the grievant will complete Form 10-5, Step 1, which is located in common areas, i.e., living areas, libraries, etc. and will submit the Form to an employee designated by the Warden (not the Inmate Grievance Coordinator) within 15 days of the alleged incident. An inmate will submit a grievance within the time frames established in the policy. (NOTE: Allegations involving sexual conduct between inmates and staff constitute criminal activity. When an inmate alleges that sexual activity/conduct has occurred between an inmate(s) and a staff member(s), that grievance must be processed as criminal activity.) See Procedure 15., below, for more information on processing a grievance alleging criminal activity. Requests for disciplinary action against staff members will not be addressed through the inmate grievance process. (4-ACRS-6C-03, 3-4236)

(The only exceptions are listed at Procedure(s) #13.7 and 14.) The grievance form should contain information about how and when attempts were made to resolve the problem informally, a brief statement of the circumstances of the grievance, why the grievant believes s/he is entitled to relief, and a brief statement of the action(s) requested for which relief may be available through the grievance procedure. No inmate (except the grievant, if s/he requests it) and no employee (other than those specified in this policy/procedure) will be given a copy of a grievance.

13.2 All grievances will be numbered and entered into the automated system (regardless of whether the issue is grievable or non-grievable) within nine (9) working days by an employee designated by the Warden (not the Inmate Grievance Coordinator). The employee designated by the Warden will give the grievances to the Inmate Grievance Coordinator after the grievance has been entered into the automated system. Upon receipt of a grievance, the Institutional Inmate Grievance Coordinator will attempt to resolve the matter informally by whatever means are appropriate and/or practical. This may include interviewing affected employees and inmates (only exceptions are emergency grievances or appeals of disciplinary hearings results) or scheduling appropriate mediation between involved parties. If the problem cannot be resolved by this informal method, the Institutional Inmate Grievance Coordinator will conduct a complete investigation into the situation and will make recommendations to the Warden concerning disposition of the matter. No employee involved or addressed in a grievance will be assigned to conduct any investigation regarding the same. If the Inmate Grievance Coordinator determines that the grievance will not be processed, the IGC will note this on the SCDC Form 10-5, Step 1, under "Action Taken by the IGC," maintain the original for the inmate grievance file, enter "non-grievable" into the automated system, and return a copy of the SCDC Form 10-5, Step 1, to the inmate.

13.3 The Warden will respond to the grievant in writing (in the space provided on SCDC Form 10-5, Step 1), indicating in detail the rationale for the decision rendered and any recommended remedies. The grievant will also be informed of his/her rights to appeal to the next level. The Warden will respond to the grievant no later than 40 days from the initial filing of the grievance (with the exception of a disciplinary hearing appeal, which will be responded to within 30 days). The response will be served by the Institutional Inmate Grievance Coordinator to the grievant, and the grievant will sign and date the response acknowledging

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receipt.

13.4 Appeals to the Responsible Official: If the grievant is not satisfied with the decision of the Warden, the grievant may next appeal to the Division Director of Operations for final resolution of the grievance. Matters under the administrative jurisdiction of the Department Director and which do not come within the scope of authority/responsibility of the Division Director of Operations may be appealed to the appropriate Office Director or Division Director for final review of the grievance. All reviews and/or appeals of any inmate grievance will be allowed automatically without interference from any Department personnel. (4-ACRS-6B-03, 4-ACRS-6C-03, 3-4271, 3-4236)

13.5 Appeal Process: The grievant may appeal by completing the SCDC Form 10-5a, Step 2, and submitting this form, as well as the completed copies of Step 1, to the Institutional Inmate Grievance Coordinator within five (5) *calendar* days of the receipt of the response by the grievant. The Institutional Inmate Grievance Coordinator will forward the *original Step 2, copies of the Step 1 grievance, and copies of necessary documentation* to the Inmate Grievance Branch *within five (5) calendar days*. The Inmate Grievance Branch will *confirm receipt of the appeal, conduct any further investigation necessary, prepare a report, and present all available information to the responsible official.* The responsible official will render the *final decision* on the grievance within 60 days from the date that the Institutional Inmate Grievance Coordinator received the appeal of the Warden's decision. The responsible official's decision will be returned to the Institutional Inmate Grievance Coordinator. The Institutional Inmate Grievance Coordinator will then *serve* the response to the grievant *within five (5) working days* and have him/her *sign and date* it acknowledging receipt. *The response of the responsible official will be the Department's final response* in the matter. Any action required to implement the Department's final response will require no additional signatures/approval. The Department's final response implies the Department Director's approval.

13.5 Time Limits: If, at the institutional level, the response to the grievance exceeds the established time limits, the grievance will automatically proceed to the next level of appeal. The only exception will be when the Inmate Grievance Branch grants a continuance for a specific period of time.

13.6 Administrative Law Judge Division: There are five (5) grievance issues that an inmate may appeal to the South Carolina Administrative Law Judge Division. If an inmate wishes to appeal to the South Carolina Administrative Law Judge Division, s/he may only appeal final Department decisions on the following five (5) issues:

13.6.1 if the inmate's accrued good time has been taken as a result of a disciplinary hearing;

13.6.2 the calculation of a sentence;

13.6.3 the calculation of sentence related credits;

13.6.4 custody determinations that may be grieved under this policy/procedure; or

13.6.5 Allegations of deprivations that would rise to the level of constitutional violations. Where harm or injury is alleged, it must be more than a minor harm or minor injury.

13.7 If the grievance is not about one of these five (5) issues, the Department's final response will end the grievance process.

13.8 As a part of the Department's final answer to a grievance, the inmate will be notified that any further appeal on these five (5) issues must be initiated within 30 days after receipt of the Department's final answer. This appeal must be contained on South Carolina Administrative Law Judge Division "Notice of Appeal" that will be attached to the Department's final answer and must be sent to the Administrative Law Judge Division. Instructions regarding completion of the form, and information indicating where the form must be

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sent, will also be provided to the inmate.

13.9 Exceptions to the 15 day time limit requirement will be made for grievances concerning policies/procedures. Exceptions may also be made for incident grievances by the Chief/designee, Inmate Grievance Branch, provided that documented reasonable cause can be demonstrated as to why the original time frame was not met, e.g., inmate physically unable to initiate grievance due to hospitalization, court appearance, etc. The waiver must be requested by the grievant.

14. EMERGENCY PROCEDURES:

14.1 An emergency will encompass, but is not limited to, situations, actions, or conditions in which any person's health, safety, or welfare is threatened or in serious danger. It is the responsibility of the grievant to demonstrate the factors creating the substantial risk of personal injury or other serious and irreparable harm. It is the responsibility of the Chief/designee, Inmate Grievance Branch, to determine if a substantial risk of serious harm is present and warrants the grievance being processed as an "emergency."

14.2 Once it is determined that the grievance is an emergency, it will be forwarded immediately to the Warden if resolution of the issue(s) is within the Warden's capability to provide. The Warden will conduct whatever investigation is deemed necessary and will respond to the inmate within no more than seven (7) days after receipt of the emergency grievance. If an emergency grievance involves the safety of an inmate, the Warden will take immediate steps to implement the appropriate precautions or temporary actions without waiting for an investigation to be conducted.

14.3 If a grievance is determined to be an emergency grievance which is not within the Warden's capability to resolve, it will be *faxed* without substantive review immediately to the Chief/designee, Inmate Grievance Branch, for review and further forwarding to the responsible official. The responsible official will conduct an investigation and will respond to the inmate within seven (7) days of receipt of the grievance. The response will be *faxed by the Chief, Inmate Grievance Branch*, to the Institutional Inmate Grievance Coordinator, who will deliver the response to the inmate and have him/her sign it acknowledging receipt.

14.4 If the grievance is determined not to be an emergency, it will be *faxed* to the Institutional Inmate Grievance Coordinator, *who will note in his/her response that the grievance was not deemed to be an emergency, and the grievance will then be routinely processed through the system as if it were a normal grievance.*

15. **GRIEVANCES ALLEGING CRIMINAL ACTIVITY:** Any grievance which alleges criminal activity will be referred immediately to the Chief/designee, Inmate Grievance Branch. *The Inmate Grievance Coordinator will note on the grievance tracking CRT screen that the grievance has been forwarded to the Inmate Grievance Branch for possible investigation by the Division of Investigations and the date on which the grievance was forwarded.* The Chief/designee, Inmate Grievance Branch, will consult with the Division of Investigations to determine if a criminal investigation would be appropriate. If deemed appropriate, the grievance will be forwarded to the Division of Investigations, to be handled in accordance with applicable SCDC policies/procedures. If it is determined that a criminal investigation is not required, the grievance will be processed in accordance with the procedures contained herein.

16. **ABANDONMENT OF A GRIEVANCE:** A grievance will be considered to be abandoned in the following cases:

16.1 The inmate refuses to sign the grievance form at any level of the process; or

16.2 The inmate refuses to actively participate in the resolution process if the inmate's participation is deemed vital to the process.

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16.3 *The inmate refuses to follow through with the IGC's recommendations within five (5) days after the return of the inmate's unprocessed grievance.*

17. **MONITORING, EVALUATION, COMPLAINTS:** The Inmate Grievance Branch will serve as monitor to ensure compliance with this policy/procedure. *An audit checklist will be conducted by the assigned Inmate Grievance Administrator for each of their respective institutions on an annual basis.* The Chief/designee, Inmate Grievance Branch, will arrange for technical assistance in training and coordinating activities related to the inmate grievance procedure at each institution, at the Central Office, and the Training Academy.

17.1 In order to provide continuing evaluation of this policy/procedure, the Division of Resource and Information Management will provide monthly reports to the Chief, Inmate Grievance Branch. The format of the reports will be determined by the Chief, Inmate Grievance Branch.

17.2 *Each Inmate Grievance Coordinator will be required to submit to their assigned Inmate Grievance Administrator a monthly report summarizing the number and types of grievances which have been received at their institution during the month. This report will be due by the 5th of each month to the Inmate Grievance Branch Administrator. Prior to submitting the report, the Inmate Grievance Coordinator will ensure their Warden has reviewed the information contained therein.*

17.3 A complaint concerning the performance of any Institutional Inmate Grievance Coordinator may be referred by the grievant to the Chief, Inmate Grievance Branch.

18. **PROCEDURES FOR INMATES RELEASED/TRANSFERRED:**

18.1 If an inmate is released from the custody of the SCDC and has an open grievance, the grievance will be terminated.

18.2 If a grievant is transferred from one SCDC institution to another while a grievance is in progress, the Institutional Inmate Grievance Coordinator at the losing institution will forward the inmate's grievance file via confidential, inter-departmental mail to the Institutional Inmate Grievance Coordinator at the gaining institution within five (5) days of the inmate's transfer.

18.3 All grievances that are transferred from one institution to another will retain their original grievance numbers. For clarification and reference purposes, the Institutional Inmate Grievance Coordinator at the gaining institution will add the three (3) or four (4) letter institutional prefix in parentheses at the end of the original grievance number when referring to the grievance in future correspondence, appeals, etc.

18.4 If a grievant is transferred while the grievance is in the "Informal Resolution" stage, then the grievance will be forwarded to the next level in the procedure. The grievance will be referred to the Warden of the losing institution.

18.5 When an inmate is transferred and wishes to file an incident grievance involving the losing institution, the Institutional Inmate Grievance Coordinator at the gaining institution will forward the completed original grievance form to the Institutional Inmate Grievance Coordinator at the losing institution within five (5) working days and the grievance will be responded to by the Warden of the losing institution.

18.6 Upon receipt of the grievance, the Institutional Inmate Grievance Coordinator at the losing institution will date stamp the grievance and process it as a routine grievance.

18.7 If the grievance cannot be informally resolved, the Warden's response from the losing institution will be forwarded to the Institutional Inmate Grievance Coordinator at the gaining institution.

18.8 If the grievant is not satisfied with the decision of the Warden, the original grievance and pertinent materials will be treated as an appeal and will be forwarded by the Institutional Inmate Grievance Coordinator at the gaining institution to the Inmate Grievance Branch for review, decision, and a written response to the grievant.

18.9 Any condition not referenced above will be referred to the Chief, Inmate Grievance Branch, for resolution.

19. DEFINITIONS:

CRIPA refers to the Civil Rights of Institutionalized Persons Act.

Criminal Activity refers to any illegal activity to include sexual misconduct, staff assaults, transfer of drugs/contraband, etc.

Days refers to calendar days, unless otherwise stated.

Emergency Grievance refers to any complaint which, if handled according to the regular time limits required by the inmate grievance system, would subject an inmate to substantial risk of personal injury or to other serious and irreparable harm.

Grievance refers to a formal complaint limited to matters affecting the complaining inmate and to matters that the Department has the authority to remedy.

Limitation refers to a sanction imposed on a grievant found to be abusing or misusing the inmate grievance system. Inmates subjected to a limitation may still utilize the grievance system for processing other legitimate grievances that do not relate to the matter(s) for which the limitation was imposed. Exceptions may be made to a limitation pursuant to Department policy/procedure.

Misuse/Abuse of the Grievance System refers to the repetitive filing of grievances on the same matter; filing of grievances that contain vulgar, indecent, or offensively insulting language; filing of grievances that agitate, harass, disrupt, or irritate by petty provocation or are not designed to lead to any practical result; and filing of grievances by grievants who knowingly make false statements to SCDC personnel for the purpose of harming another person.

State-like refers to any item which can be purchased in the institution canteen or is issued by the commissary.

SIGNATURE ON FILE

Jon E. Ozmint, Director

ORIGINAL SIGNED COPY MAINTAINED IN THE DIVISION OF POLICY DEVELOPMENT.

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Williams Technology
Transmissions
Service Contract

Contact: Kelly Turley
Williams Technology
P. O. Box 1548
211 Farmington Road
Summerville, SC 29444-1548
(803) 875-0150
Fax (803) 875-7170
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Contract Info: September 10, 1998 through September 30, 2003
10-year contract

Plant Location: Liebert Correctional Institution
Plant Manager: Jack Stande 896-3922
PI Representative: John Carullo

Requirements/Specifications:

- Square Feet: 45,000 square feet
- # of inmates: 13 inmate minimum
- Wage Rate: \$4.00 per hour per inmate - \$3.50/hr base for inmates
- Utilities: Williams pays utilities - own meter
- Monthly Rent: No rent - they own the building
- Annual Renewal: 30 days prior to contract date
- Insurance Certif.: \$300,000, \$600,000 - required - exp 8/1/01
- Supervisory Cost: Williams will provide one civilian staff and we charge them back
- Security Cost: SCDC, minimum 3,2,4

NOTE: June 30* Annually - 90 Day notification to Tony Ellis for Contract
Renegotiations - Review inmate wages and SCDC overhead
June 1, 2001 Notification - Certificate of Insurance Renewal -
expires August 1, 2001

(Contract - Williams bullet sheet)



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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

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THE AGREEMENT is entered into this 30th day of September 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

✓ WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as "LCI"); and,

WHEREAS, this agreement is made in the best interest of the State of South Carolina;

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

✓ In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building"), SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be \$ 1,200,000. Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.

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ARTICLE 2 Conditions of Occupancy of the Industry Facility:

2.0 Environmental:

Williams shall not cause or permit any hazardous substances to be used, stored, generated, or disposed of on or in the premises by Williams, its agents, employees, contractors or invitees, without first obtaining SCDC's written consent. SCDC represents that the premises are substantially free of any known contamination at the commencement of this Agreement, and agrees to the extent permitted by law to indemnify and hold Williams harmless from any damages or claims relating to contamination present on the premises prior to the commencement of this Agreement. If the premises become contaminated in any manner for which Williams is responsible during the term of this Agreement, Williams shall indemnify and hold SCDC harmless from any damages or claims arising during or as a result of Williams' occupancy of the premises and arising as a result of such contamination by Williams. SCDC acknowledges that it has consented to the presence of transmission fluids and oils on the premises.

2.1 The Duties of Williams:

1. Maintenance: Williams shall keep the occupied area clean, neat and tidy, and shall report any damage to the Building structure or material fixtures or unsafe conditions to the appropriate institutional authority. Further, Williams shall be responsible for all maintenance to the Building.

2. Insurance: Williams shall maintain insurance coverage for the Building, and for its equipment, supplies and material located in the Building and related premises against casualty occurrences. Further Williams shall maintain liability insurance coverage on itself, its agents, servants and employees in an amount no less than \$300,000 per person per claim, \$600,000 aggregate. Such Insurance coverage shall name the South Carolina Department of Corrections as an insured. Williams shall also maintain Workers Compensation insurance on its employees (which shall not include the prison inmates or other employees of SCDC or the State of South Carolina) in accordance with the laws of the State of South Carolina. Williams shall deliver to SCDC a duly authenticated certificate evidencing such insurance upon executing this agreement and upon each insurance renewal date.

3. Telephone Service: Williams may, with prior approval of SCDC, which will not be unreasonably withheld, install telephones and/or computer lines in the Building, which must be secured at all times in accordance with SCDC guidelines. The cost of installation and maintenance of such telephones will be at Williams's sole expense.

4. Tools, Equipment and Supplies: Williams shall be responsible for providing all necessary tools, equipment, and/or supplies which may be necessary for the performance of the work herein contemplated. Such tools and equipment supplied by Williams may be removed by Williams upon termination of the agreement.

5. Building Modification: Williams shall provide SCDC building plans and specifications, to include equipment installation within six weeks of the

execution of this agreement. Williams shall not make any alterations or improvements to the Building other than those outlined herein above without prior written approval of SCDC which shall not be unreasonably withheld.

6. Waiver of Subrogation: Williams shall be liable for any damages to the Building, and for damages to its equipment, supplies and material located in the Building caused by casualty occurrence, it being understood that Williams shall repair such damages and look to its insurer for reimbursement and shall obtain from its insurer waiver of subrogation rights against SCDC.

7. Loss of Property: All personal property, inventory, equipment, improvements and/or fixtures or other property of any kind or description whatsoever, installed or brought into the area by Williams or Williams' employees or agents (the "Equipment"), shall be at the Williams' sole risk and neither the State of South Carolina, SCDC or any employee or agent thereof, shall be liable for any damage done to or loss of such property or Equipment or loss suffered by the business or occupation of Williams arising from any acts or occurrences whatsoever except where the damage or loss is due to the malicious destruction of Equipment caused by inmates or employees of the State of South Carolina (as reasonably determined by the SCDC). If SCDC is held liable, the loss or damage shall be limited to replacement cost or to the repair cost of damaged or destroyed property whichever is less. Consequential or punitive damages shall not be recoverable.

8. Condition of Property: Upon termination of this agreement, Williams shall remove its Equipment and vacate the premises; or negotiate a new agreement between SCDC and Williams to continue operation of the facility. Williams and SCDC may negotiate a new lease and continue operations. However should the agreement not continue at the end of this lease, SCDC shall take possession of the building.

9. Hazardous Waste: Any hazardous waste generated in the Building by Williams shall be disposed of promptly by Williams at its sole expense according to federal and state regulations.

2.2

1. Premises to be Occupied: SCDC shall provide space for an up to 45,000 sq. ft. Building and related area at LCI. The occupancy of this area should be consistent with the terms of this agreement regarding work authorized and hours. Williams will maintain the facility and fixtures in good condition throughout the term of Agreement.

2. Utilities: SCDC shall provide water, electricity, propane or natural gas, and trash removal services and pass through actual cost to Williams for its use of the Building or allow Williams to install at its own cost separate meters for calculating payment.

3. Insurance: Williams will maintain insurance coverage on the Building and its property therein as required by the laws of the State of South Carolina.

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4. Supervisory Staff: SCDC shall provide one (1) civilian supervisor to coordinate all activities between SCDC and Williams. Williams shall provide sufficient civilian staff for supervision of work products on each shift. SCDC will provide supervisors satisfactory to Williams and the actual cost of supervision shall be passed through each pay period by SCDC to Williams. Payment of such services shall be paid within fifteen (15) days from receipt of invoice.

ARTICLE 3 Conditions Related to Inmates:

3.0 General:

Williams agrees to provide sufficient work in the facility for SCDC to employ a minimum of 75 inmates working 7.5 hours daily, five days per week. Overtime can be worked if sufficient notice is given to SCDC. Williams and SCDC shall agree upon a schedule of workers to be hired by SCDC such that a minimum of 75 inmates are working 7.5 hours daily, five days per week within six months of the first inmate hiring. SCDC will provide inmate labor upon adequate notice by Williams up to a maximum of 300 inmates. Overall staffing will be agreed upon by both SCDC and Williams. If Williams requests overtime, Williams shall pay for such additional hours at the standard hourly rate and shall bear additional costs of security and supervision, if any, for such overtime.

3.1 Duties of Williams:

Williams shall provide to SCDC job descriptions and personnel procedures. Williams reserves the right to have SCDC remove and replace inmate workers based on job performance, so long as its actions conform with nondiscrimination provisions referenced herein.

1. Training of Inmates: Williams shall be responsible for training of inmates in the disassembly and/or remanufacturing of its product lines and activities related thereto.

2. Scope of Work: Prison Industry inmates under the general oversight of SCDC will disassemble and/or remanufacture Williams' product lines according to engineering design and manufacturing specifications developed and provided by Williams, with Williams providing work product quality supervision, as set forth in Paragraph 2.2(4). It will be the sole responsibility of Williams to provide a quality control manual for these operations and to ensure compliance with the terms provided therein. The requirements contained within the quality control manual must be submitted in writing to Prison Industries for review for institutional safety and security prior to beginning of the assembly operations.

3. Raw Materials: Williams shall provide all raw materials and component parts for work. All raw materials, personal property, inventory, machinery, equipment and improvements and/or fixtures or other property of any kind or description whatsoever installed or brought into the prison buildings by Williams or its employees or agents, shall be at the sole risk of Williams and neither the State of South Carolina or SCDC or its employees and agents thereof, shall be liable for any damage or loss suffered except as provided in Section 2.1.7 contained herein above.

4. Security: Williams understands and specifically agrees that its deliveries, shipments and employees are subject to search before entering or leaving the premises of SCDC.

5. Compliance With Rules and Regulations: Williams agrees that it and its employees must comply with all policies and procedures of SCDC and all applicable federal, state, and local laws, ordinances, regulations and accreditation standards.

6. Payment for Inmate Services: SCDC will invoice Williams on a bimonthly basis for inmate labor. Williams will pay all sums due and owing within fifteen days of receipt of invoice. Payments shall be made to S.C. Department of Corrections, Division of Prison Industries account.

7. Specifications: Williams will assume the responsibility to provide specifications to the Building along with the specifications and layout of production equipment.

8. Training of Williams' Staff: Williams shall make its civilian staff available for training in security concerns by SCDC's training staff.

3.2 Duties of SCDC:

1. Inmate Laborers: SCDC will use its best efforts to provide a stable and available work force of inmates, which shall fulfill Williams's reasonable manpower requests.

2. Screening of Potential Inmate Laborers: Subject to Section 3.1, SCDC will pre-screen, interview and select inmates according to the job descriptions submitted, which shall specify performance criteria for each job.

3. Holidays: The inmates participating in the project will observe holidays as described in Appendix A attached hereto and incorporated herein.

4. Security: At its expense, SCDC shall be responsible for the security of the inmate labor force and the security of Williams's employees and agents.

5. Training of Williams' Staff: SCDC shall train Williams' civilian staff in institutional operational matters.

6. Management and Supervision: SCDC will provide management and supervision of the inmates for all phases of the work.

7. Access.

(a) For maintenance purposes. SCDC will provide access to the premises at reasonable times for maintenance by Williams.

(b) For material handling purposes. SCDC shall provide security clearance and transport (at Williams' request) for trailers bringing raw materials and goods in and out of the premises in a timely fashion. SCDC will allow Williams' trucks, common carrier/and others transporting raw materials, equipment and finished products

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to and from ICI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC \$4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:

Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner

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725

Williams - Lieber

9/30/98 → 9/30/08

increase \$2.00 to give inmates a pay increase

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

DL
w/ 00026

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC \$4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:

Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner

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whatsoever and for any purpose whatsoever. None of the above will hold themselves out or claim to be an officer or employee of Williams by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of Williams, including but not limited to, worker's compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

1. Period of Performance: The term of this Agreement shall be for ten (10) years commencing on the date of the execution of this Agreement. Two years prior to the end of the term, on Williams' request, SCDC and Williams shall make good faith efforts to negotiate an agreement to continue Williams's use of the premises. In addition, SCDC grants to Williams a right of first refusal to match any bona fide third party offer as to the use of the premises after the termination of this Agreement.

2. Hold Harmless: Williams agrees to protect, defend and hold harmless the State of South Carolina, SCDC or its employees or agents thereof, from any liability or claim for damage, including injury to Williams' employees or agents, except where such liability claim is due to the sole negligence or the intentional acts of the State of South Carolina, SCDC or employees (including inmates) or agents thereof, arising out of the performance of this Agreement. Williams further agrees to protect, defend and hold harmless the State of South Carolina, SCDC or any employees or agents thereof, for any product liability claims relating to the products produced or services rendered under this contract. Williams expressly understands that SCDC or its employees or agents thereof, is not a guarantor of the work performed by the inmate workers referred by SCDC. Inmates shall not be considered employees of Williams.

To the fullest extent permitted by law, the State of South Carolina and SCDC agree to protect, defend and hold harmless Williams, its directors, officers, employees and agents from any liability or claim for damage, including injury to employees or agents of the State of South Carolina or SCDC, or the inmates at LCI, except where such liability claim is due to the sole negligence or the intentional acts of Williams or employees or agents thereof, arising out of the performance of this Agreement, including but not limited to claims for workers compensation or other compensation related to such injury. For all purposes, inmates shall be considered to be employees of SCDC. Should Williams be held liable for Workers Compensation as to the inmates and should SCDC or the state of South Carolina be unable to fulfill its obligations under this paragraph, Williams shall have the right to immediately re-negotiate the labor costs set forth in Paragraph 3.3.1 of this Agreement, to reflect the change in Williams' costs.

3. Notices: All notices regarding the terms of this Agreement, including terminations, amendments and disputes shall be sent by certified mail to SCDC as follows:

Michael W. Moore, Director
South Carolina Department of Corrections
4444 Broad River Road
P. O. Box 21787
Columbia, South Carolina 29221-1787

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to Williams as follows:

Williams Technologies
P. O. Box 1548
211 Farmington Road
Summerville, SC 29484-1548
ATTN: Jeffrey W. Anderson, President

Copy: The W.W. Williams Company
835 West Goodale Boulevard
Columbus, Ohio 43212
ATTN: Jean A. Patrick, Executive Vice President

4. Non-Discrimination in Employment: Neither SCDC nor Williams shall discriminate against any inmate worker or applicant because of race, color, sex, religion, national origin, creed, marital status, age, or the presence of any sensory mental or physical handicap, which does not impair the inmate's or applicant's ability to perform the duties of his job, with or without reasonable accommodation or pose a danger to himself or others.

5. Noncompliance with Nondiscrimination Requirements: In the event Williams fails to comply with the discrimination laws, the Agreement may be rescinded, canceled or terminated in whole or in part, and Williams may be declared ineligible for further contracts from SCDC. Williams shall, however, be given a reasonable time in which to cure the noncompliance.

6. Records, Documents and Reports: Williams shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect cost of any nature expended in the performance of this agreement. These records shall be subject at all reasonable times for inspection, review or audit by SCDC personnel or other personnel duly authorized by SCDC, the office of the State Auditor and Federal Officials so authorized by law, rules regulations or contract such audit shall be at the expense of the auditing agency. Williams shall retain all books, records, documents and other materials relevant to this agreement for ten (10) years and the authorities described herein above shall have full access to and the right to examine any of said materials during the extended period.

Only the Director of SCDC or his delegated designee by writing shall have the expressed, implied, or apparent authority to alter, modify or waive any clause or condition in this Agreement. Furthermore, any alterations, amendment or modification or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by the Director.

7. Termination: It is understood and agreed that this Agreement shall terminate:

- a. Upon the written, mutual, agreement of the parties;
- b. Upon the material breach or default of any provision of this Agreement by either party, provided thirty (30) days written notice of the breach is given to the breaching party by the non-breaching party and the breaching party fails to cure within the thirty (30) days:
- c. (1) If Williams fails to employ a minimum of 75 inmates for a period of period of thirty (30) consecutive days; or

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- (ii) if SCDC fails to provide a minimum of 75 inmates for a period of thirty (30) consecutive days;
- d. If Section 24-3-310 of the Code of Laws of the State of South Carolina, 1976, as amended, or the interpretation thereof is materially changed, altered, amended, or repealed so as to abrogate this legislation charged with establishing business relationships with private industry;
 - e. If federal, state, or local laws or the interpretation of such laws (including any provision of Chapter 24 of the Code of Laws of the State of South Carolina) change to prevent the shipment of goods produced under this Agreement or change so that there is a material alteration in the terms of this Agreement;
 - f. If Williams becomes bankrupt and such is not cured within sixty (60) days, insolvent, or makes an assignment for the benefit of creditors, or becomes subject to the administration of its assets in any kind of voluntary or involuntary creditors proceedings;
 - g. If Williams performs any intentional act which damages the reputation or property of SCDC and Williams does not cure such damage within thirty days of notice thereof;
 - h. If Williams loses its corporate charter in its state of incorporation or loses the authority to transact business in the State of South Carolina pursuant to mandate by the Secretary of State of South Carolina, or if Williams' corporation is dissolved voluntarily or involuntarily and Williams does not cure such defect within thirty days of notice thereof;
 - i. Failure of Williams to pay promptly to SCDC any inmate wages due or supervision pass through costs hereunder for a period of fifteen (15) days after written notice from SCDC to Williams of such default; or
 - j. At the end of any fiscal year (June 30) after the commencement date of this Agreement when sufficient appropriations, revenues, income, grants, or other funding from whatever source are not available to SCDC to carry on the purpose of program of SCDC, this sufficiency of funds to be solely determined by the State Budget and Control Board;

Upon early termination of the Agreement due to SCDC's breach or default, change in the law or an insufficiency of State funding for this Agreement, Williams shall have one hundred eighty (180) days to cease operations and vacate the premises. Upon early termination of the Agreement due to Williams' breach or default, Williams shall have one hundred and eighty (180) days to cease operations and vacate the premises. In the event of an early termination of this Agreement for any reason whatsoever, SCDC's obligation to provide a work force and Williams' obligation to provide and pay for work for a minimum number of inmates shall cease as of the date of cessation of operations. Upon any such termination, the parties will cooperate to effect the purposes of Sections 2.1.8, 3.1.6 and 3.3.1.

In the event of any termination of this Agreement under Sections 4.0.7(c)(ii), (d), (e), or (j) above or Section 4.0.9, prior to the end of the ten (10) year term of this Agreement, SCDC hereby agrees

on behalf of the State of South Carolina to pay to Williams the remaining value of the Building, on an equal monthly basis beginning as of the month following Williams' vacation of the premises through the end of the ten (10) year term. The monthly payment amount shall equal the cost of the Building, as documented by Williams per Article 1, above, divided by 120 (the number of months of the term of this Agreement).

8. Immediate Suspension. This Agreement shall be suspended immediately in the event that the safety or security of the institution, its personnel or inmates is jeopardized by Williams, its agents or employees, and shall remain inoperative until such time as the condition no longer exists.

9. Government compliance. SCDC warrants that it complies with all federal, state and local laws, Executive Orders, rules, regulations and ordinances which may be applicable to the performance of its obligations under this Agreement, including but not limited to Chapter 24 of the Code of Laws of the State of South Carolina (including federal certification of the private sector/prison industries program), the Fair Labor Standards Act, regulations of the U.S. Department of Labor and equal opportunity clauses applicable to government contracts, and will provide certification of such compliance if requested. If for any reason SCDC is not in compliance, Williams may terminate this Agreement, cease operations and vacate the premises in accordance with the final paragraph of Section 4.1.7, above.

10. Force Majeure: Neither party shall be liable nor deemed to be in default for any delay or failure in performance under this Agreement or otherwise for an interruption of service or employment deemed resulting from civil or military authority, from acts of God, riots, war, or any similar or dissimilar cause beyond reasonable control of either party.

11. Governing Law: This Agreement shall be governed by the laws of the State of South Carolina and venue shall be located in the County of Richland, State of South Carolina.

12. Severability: If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are to be declared to be severable.

13. All Writings Contained Herein: This agreement contains all the terms and conditions agreed upon by the parties, no other understandings oral or otherwise, regarding the subject matter of this agreement shall be deemed binding.

14. Successors and Assigns: The provisions hereof will inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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IN WITNESS WHEREOF the parties have executed this Agreement on the first written herein above.

Witness

Sam D. Kelly
John A. [unclear]

Michael W. Moore, Director

James H. [unclear]
Robert C. Rhodes

William S. Williams
William S. Williams, Chairman
Williams Technologies, Inc.

APPROVED

South Carolina Department of Corrections
GENERAL COUNSEL

DATE: 9-8-98 HL [unclear]

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WILLIAMS TECHNOLOGIES INC.

P.O.C. Mr. George Laflamme

Bonus Pay / Programs

Performance Bonus: \$.25 per hour

This bonus must be earned during each two (2) week pay period. This bonus may be denied if the inmate employee fails to meet the following criteria.

1. Successfully completed the 90-day probationary period.
2. Absenteeism: An inmate does not exceed 7.5 hours of unauthorized absenteeism during the pay period.
3. The inmate employee has no written disciplinary action during the pay period.
4. The inmate employee meets production standards for his assigned work area.

Leadman Bonus: \$.10 per hour

This bonus must be earned during each two (2) week pay period. This bonus may be denied if the inmate employee fails to meet the following criteria.

1. Production standards are met for his assigned work area(s).
2. His work area(s) are maintained in a clean and orderly fashion.
3. Qualify for the performance bonus.

Overtime:

Overtime is paid at the rate of time and a half of the inmate employee's hourly base rate. It is a combination of two factors; starting base pay (\$.35/hr) and longevity pay. Performance and leadman bonuses are not paid during overtime hours. Overtime pay is only paid after an inmate has completed his required straight time hours for the pay period.



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Example:

This example is for an inmate employee who has completed all training and production opportunities in his first 12 months.

Base Rate:	\$.35		
12 mos. Longevity	+ \$.25		
Total Base Rate	\$.60 per hour	→	Overtime Rate
Performance Bonus	+ \$.25		\$.60
	\$.85 per hour		+ \$.30
Leadman Bonus:	+ \$.10		\$.90 per hr.
	\$.95 per hour		

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THIS IS A CODE THAT REFLECTS HOW YOUR PAY HAS CHANGED
 ACCORDING TO HOW LONG YOU HAVE BEEN EMPLOYED:
 E = EVALUATION PERIOD (1ST 45 DAYS)
 B = YOU ARE NOW ELIGIBLE FOR A \$1.15 PERFORMANCE BONUS. MORE
 THAN 45 DAYS, POSITIVE EVALUATION.
 L15 = LONGEVITY BASE RATE INCREASE OF \$1.15 AFTER SIX
 MONTHS EMPLOYMENT.
 L25 = AFTER ONE YEAR OF EMPLOYMENT AN ADDITIONAL
 LONGEVITY INCREASE OF \$1.10.
 L30, L35, L40... = ADDITIONAL LONGEVITY INCREASES OF \$0.05 FOR EVERY
 ADDITIONAL YEAR YOU ARE EMPLOYED.

IS THE MINIMUM RATE THAT YOU WILL
 EVER RECEIVE. YOUR BASE RATE CAN
 ONLY GO UP IF YOU RECEIVE
 LONGEVITY INCREASES.

THIS IS A \$1.10 BONUS APPLIED TO ALL
 LEADMEN WHO PERFORM THEIR
 LEADMAN DUTIES SATISFACTORILY.
 THIS BONUS APPLIES ONLY TO
 REGULAR HOURS.

THIS BONUS APPLIES TO HOURS
 WORKED ON SATURDAYS AND
 HOLIDAYS, AT WILLIAMS TECH'S
 DISCRETION.

THE NUMBER OF HOURS YOU WORKED
 TOWARD THE NUMBER OF HOURS
 EXPECTED OF YOU BEFORE YOU
 COULD RECEIVE ANY OVERTIME.

THE NUMBER OF HOURS YOU WORKED IN
 EXCESS OF THE NUMBER OF REGULAR
 HOURS EXPECTED OF YOU.

THE NUMBER OF HOURS YOU WORKED
 FOR WHICH YOU WILL RECEIVE AN
 ADDITIONAL \$.25 (WT BONUS).

THE NUMBER OF DAYS AN EMPLOYEE
 FROM MACDOUGALL TRAVELED TO
 JESSE TO WORK.

SMITH, JOHN
123456

PAY DAY: 6/24/00

PAY LEVEL: B

BASE RATE: \$0.35

PERFORMANCE BONUS: \$0.15

LEADMAN BONUS: \$0.00

WT BONUS: \$0.25

TOTAL HOURS:

110.00 HRS

REGULAR:

75.00 HRS x \$0.50 RATE = \$37.50 PAY

OVERTIME:

35.00 HRS x \$0.55 RATE = \$19.25 PAY

WT BONUS:

15.00 HRS x \$0.25 RATE = \$3.75 PAY

TRAVEL:

10 DYS x \$0.70 RATE = \$7.00 PAY

TOTAL PAY: \$67.50

IF YOU HAVE A PAY PROBLEM STATE IT ON THE BACK
 OF THIS STUB AND TURN IT IN TO THE CLERK

YOU WILL LOSE THIS BONUS IF YOU
 MISS MORE THAN SEVEN WORKING
 HOURS, RECEIVE ANY TYPE OF
 DISCIPLINARY SUSPENSION, OR IF
 ONE OF YOUR SUPERVISORS RULES
 THAT YOUR PERFORMANCE HAS BEEN
 UNSATISFACTORY. THIS BONUS IS
 APPLIED ONLY TO REGULAR HOURS.

EQUALS YOUR BASE RATE, PLUS
 YOUR PERFORMANCE BONUS (IF NOT
 LOST), PLUS LEADMAN BONUS (IF IT
 APPLIES TO YOU).

EQUALS YOUR BASE RATE TIMES 1.5
 BOUNDED UP TO THE NEAREST
 NICKEL.

IS THE RATE BONUS SET BY WT FOR
 DAYS WHEN WORK IS VOLUNTARY.

IS THE RATE MACDOUGALL INMATES
 ARE PAID PER DAY THEY TRAVEL TO
 WORK.

A-0017
 June 2004

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
LIEBER CORRECTIONAL INSTITUTION
PRISON INDUSTRIES
MEMORANDUM**

TO: All P.L-2 Workers

FROM: Henry Middleton, Plant Manager

SUBJECT: Longevity Pay Scales

Date: March 12, 2002

Please be advised that your pay level longevity scheme is as follows:

Days Worked	Base Rate	Bonus Rate	Total Pay ~~of~~	Pay Code
0 to 45	\$0.35	\$0.00	\$0.35/55	E
46 to 90	0.35	0.15	0.50/55	B15
91 to 180	0.35	0.25	0.60/55	B25
181 to 365	0.50	0.25	0.75/75	L15
1yr to 2yrs	0.60	0.25	0.85/90	L25
2yrs to 3yrs	0.65	0.25	0.90/100	L30
3yrs to 4yrs	0.70	0.25	0.95/105	L35
4yrs to 5yrs	0.75	0.25	1.00/115	L40

You are further advised that the MAXIMUM pay allowance is \$1.00/hr, regardless of your longevity status. In addition to the above, your overtime pay is applied at a rate of {[Base Rate]+[1/2 Base Rate]} only. Your [Bonus Rate] pay will not be applied to your overtime hrs.


Henry Middleton



A - 0312
June 2004

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0078

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STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Francis Ackerman, #266928,	)	Dock. Nos. 07-ALJ-04-00444 through 00449-AP
et al.,	)	Dock. Nos. 07-ALJ-04-00500 through 00548-AP
	)	0549-IJ, 0550 through 07-00559-AP
	)	Dock. Nos. 07-ALJ-04-00623 through 00632-AP
Appellants,	)	Dock. Nos. 07-ALJ-04-00671 through 00677-AP
	)	Dock. Nos. 07-ALJ-04-00691, 0752, 0826, 0856
vs.	)	through 0868-AP
	)	Dock. Nos. 07-ALJ-04-00869 through 00872-AP
	)	Dock. Nos. 07-ALJ-04-00444, 0876, 0885
South Carolina Department	)	Dock. Nos. 08-ALJ-04-00141 through 00149-AP
of Corrections,	)	Dock. Nos. 08-ALJ-04-00169 through 00171-AP,
	)	0192-AP
	)	Dock. Nos. 08-ALJ-04-00966 through 01022-IJ
Respondent.	)	Dock. Nos. 08-ALJ-04-01023 through 01045-IJ
	)	Dock. No. 09-ALJ-04-00304-IJ
	)	
	)	APPELLANTS' MOTION TO SUPPLEMENT RECORD AND
	)	EXTEND FILING DATE OF APPELLANTS' BRIEF

COMES NOW, the Appellants by counsel who respectfully move this Court to supplement the record for this Level Two appeal and extend filing date for their opening brief.

1. Pursuant to the Court's order of March 10, 2011, as amended on March 16, 23 and April 19, 2011, SCDC filed the supplemental record on appeal for Level Two briefing on May 6, 2011. Inmates' counsel received the supplemental record on May 9, 2011. Accordingly, inmates' Level Two brief is now due on June 8, 2011.

2. As currently filed, the supplemental record consists of five volumes, the first volume containing the spreadsheet requested by the Court; updated Exhibit F to Darrell Williams' September 22, 2004 grievance; the 2002 and 2004 SCDC grievance policies; Darrell Williams' September 22, 2004 grievance and

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exhibits A - H; and various certificates of service for grievances. Volumes 2 - 5 of the record consist of appellants' grievance step 1's, 2's, SCDC responses, Amendments/Exhibits to grievances, and notices of appeal and related certificates of service.

3. Upon review of the record, inmates believe it is not sufficient to brief the issues they will raise in this Level Two brief. Therefore, inmates request that the record be supplemented as follows.

I. The Spreadsheet

4. The great majority of spreadsheet file dates are taken from two certificates of service dated September 22 and 30, 2004 (R, 877-880). Inmates will contend in their brief that SCDC is judicially estopped to deny the September 22, 2004 date for all filings on these dates. In part for this reason, inmates propose attached Exhibit 1 as an alternative or supplement to the spreadsheet. In Exhibit 1, the September 30, 2004 file dates are represented as "9-22-04 or 9-30-04" to identify those filings subject to the Court's ruling on the estoppel issue.

5. Exhibit 1 also differs with the spreadsheet on last pay dates. Spreadsheet dates are based on "Exhibit F" records. When Exhibit F was produced during the class action litigation, client information indicated it may contain missing pay dates. In fact, for many inmates Exhibit F has occasional gaps, or apparent time lapses, between certain pay periods. These gaps appear to indicate separate periods of work in some cases. Obviously, this would not be true if the gaps were inadvertent or deliberate deletions of pay dates.

6. A comparison of Exhibit F with other SCDC records indicates that some kind

Francis Ackerman, #266928,)
et al.,)

vs.

Respondent.

Dock. Nos. 07-ALJ-04-00444 through 00449-AP
 Dock. Nos. 07-ALJ-04-00500 through 00548-AP,
 0549-IJ, 0550 through 07-00559-AP
 Dock. Nos. 07-ALJ-04-00623 through 00632-AP
 Dock. Nos. 07-ALJ-04-00671 through 00677-AP
 Dock. Nos. 07-ALJ-04-00691, 0752, 0826, 0856
 through 0868-AP
 Dock. Nos. 07-ALJ-04-00869 through 00872-AP
 Dock. Nos. 07-ALJ-04-00444, 0876, 0885
 Dock. Nos. 08-ALJ-04-00141 through 00149-AP
 Dock. Nos. 08-ALJ-04-00169 through 00171-AP,
 0192-AP
 Dock. Nos. 08-ALJ-04-00966 through 01022-IJ
 Dock. Nos. 08-ALJ-04-01023 through 01045-IJ
 Dock. No. 09-ALJ-04-00304-IJ

Appellants Francis Ackerman, et al. (inmates) respectfully submit their principal brief for the Level Two stage of this appeal.*

1. Do inmates' grievances concern policies/procedures under §13.9 of SCDC's grievance policy because of the grievances' express language and substance, Adkins/Wicker, and notices of appeal, and was there a time limit to file under §13.9?

2. Was there reasonable cause under §13.9 not to file within the original time frame because, assuming inmates had grievance and appeal rights before Adkins/Wicker, they were effectively barred from exercising those rights, and was there a time limit to file under §13.9 after Adkins/Wicker?

3. Did SCDC's application of §13.1 violate due process because it cut off

* The Court has instructed the parties to brief this appeal in three levels. Level Two shall consist of only the timeliness issues of step 1 grievances.

inmates' claims before they accrued and denied inmates a meaningful opportunity to file grievances before the bar took effect?

4. Did SCDC waive §13.1 because §13.9 and step 1 instructions were inconsistent with an intention to rely on §13.1, SCDC did not raise §13.1 until the step 2 appeal, and SCDC considered grievances on the merits before invoking §13.1?

5. Was SCDC estopped to raise §13.1 under principles of equitable estoppel?

6. Did inmates comply with §13.1 because it was tolled by their class action and they filed grievances no later than 15 days after the class action remittitur filing date or within 45 days of notice posting under the 2005 court order?

7. Did §13.1 require filing within 15 days after Adkins/Wicker, and if not, did inmates still comply with §13.1 because it was tolled while inmates were effectively barred from exercising any grievance and appeal rights they may have had before Adkins/Wicker, and after those decisions recognized such rights inmates filed their grievances within 15 days after the Adkins/Wicker remittitur filing date?

8. Did §13.1 require filing within 15 days after initial employment, and if not, did inmates still comply with §13.1 by filing during or within 15 days of a term of employment?

STATEMENT OF THE CASE*

This case involves 197 inmate grievances for prevailing wages under S.C. Code §24-3-430(D). Appellants are inmates and former inmates who worked in the Lieber/Williams Technologies (WTI) work program at various times between 1998 and present.**

* The Statement of the Case contains a concise, uncontested history of the proceeding necessary to an understanding of this Level Two brief (ALC Rule 60 B(2)). For Level Three, additional history may be stated.

** Work and grievance file dates are in Appendix 1 to this brief which inmates respectfully request to be included in the record on appeal (Order of Aug. 5, 2011, 19).

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Fred Gatewood, #289775,)
Appellant,)
vs.)
South Carolina Department)
of Corrections,)
Respondent.)
_____)

Dock. No. 07-ALJ-04-00517-AP

APPELLANT FRED GATEWOOD'S
MOTION TO SUPPLEMENT RECORD

COMES NOW, Appellant Fred Gatewood by counsel, who respectfully moves this Court to supplement the record for this Level Three appeal, as follows:

I. INTRODUCTION

Pursuant to this Court's order of March 10, 2011, as amended on March 16, 23 and April 19, 2011, the Department of Corrections (SCDC) filed the 1st Supplemental Record on Appeal for Level Two briefing on May 6, 2011.*

On July 8, 2011, this Court stated the record would remain open in case it needed to be supplemented as the appeal progressed.

On August 5, 2011, this Court issued an order, pp. 19-20, stating inmates could request the Court to include materials in the record as the case moved forward into subsequent levels of review.

On June 19, 2012, this Court issued an order dismissing Gatewood's Administrative Law Court (ALC) appeal for lack of jurisdiction.

On July 18, 2012, Gatewood filed notice of appeal in the Court of Appeals from this Court's June 19, 2012 order.

* The 1st Supplemental Record on Appeal was in the consolidated appeal of Francis Ackerman, #266928, et al. v. SCDC Dock. No. 07-ALJ-04-00444, etc., which includes Gatewood's appeal.

On March 2, 2013, the Court of Appeals dismissed Gatewood's appeal to that Court because the underlying order was not a final order of the ALC.

On July 5, 2013, the Court of Appeals denied Gatewood's petition for rehearing and stated, "(B)ecause Gatewood no longer has an appeal pending in this court, the Administrative Law Court has jurisdiction to proceed on the merits of Gatewood's case" (July 5, 2013 order, footnote 1).

II. GATEWOOD'S CURRENT MOTION

Upon review of the ALC 1st Supplemental Record on Appeal, Gatewood believes it may not be sufficient to brief his grievance on the merits. Gatewood respectfully requests that the record be supplemented as follows:

A. Gatewood's Pay Stubs and Time Cards

In the related class action, SCDC stated that its June 2004 spreadsheets (R, 376-860)* "pay rate" and "hours" entries are not accurate after July 2000. And further, inmates' pay stubs and time cards must be consulted for that information. "Pay amount" entries were said to be accurate throughout (SCDC Sept. 1, 2004 response 3(g) to inmates' Fourth Request for Admissions in Darrell Williams, et al. v. SCDC, et al. 2002-CP-18-134 (Dorchester County), attached hereto).

The June 2004 spreadsheets are the same document as original Exhibit F, which was attached (with Exhibits A-E and G-H) to inmate Darrell Williams' September 22, 2004 step 1 grievance (R, 333-873). Original Exhibit F was later updated to March 28, 2011 (R, 31-312).

* "R" refers to the 1st Supplemental Record on Appeal in the ALC.

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Updated Exhibit F apparently continues the same pattern of inaccurate "pay rate" and "hours" entries as appeared in original Exhibit F. Updated Exhibit F also deletes class action inmates who are not appellants in this grievance appeal. Finally, unlike original Exhibit F, updated Exhibit F contains Gatewood's pay information since he started work after original Exhibit F was compiled. There is a roughly 90 day period in 2011 Gatewood believes he worked which is not reflected on updated Exhibit F.

For these reasons, Gatewood's pay stubs and time cards will probably be needed to accurately calculate his back pay. Further, because Gatewood's "pay amount" entries on updated Exhibit F are apparently accurate, SCDC most likely consulted Gatewood's pay stubs and time cards to calculate his pay. This conclusion is based on SCDC's class action admission that "pay amount" entries were accurate but pay stubs and time cards had to be consulted for accurate "pay rate" and "hours" information.

Gatewood contends that in these circumstances, SCDC probably considered Gatewood's pay stubs and time cards when it paid him. As a result, these documents should be appropriate for inclusion in the record under ALC Rule 58B as evidence "received or considered" by SCDC.

Appellants attempted to obtain pay information in the class action. SCDC did not release pay stubs and time cards, but allowed counsel to view them at Lieber on July 20, 2004 in SCDC employee Jack Staudt's custody. Gatewood respectfully requests the Court to order SCDC to produce his pay stubs and time cards for this appeal record.

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B. Gatewood's Work Dates and Pay Dates for 90 Days in 2011

All Gatewood's work dates and pay dates are needed to accurately calculate his back pay. This includes the 90 days in 2011 Gatewood believes he worked but is not reflected on updated Exhibit F.

Presumably, Gatewood would have been paid at least in part for these 90 days. In calculating Gatewood's pay, SCDC would have had to consider his work dates and pay dates for this period. Therefore, SCDC would have considered this information under ALC Rule 58B, and it should be appropriate for inclusion in the ALC record. Gatewood contends the circumstances support this conclusion.

Gatewood respectfully requests the Court to order SCDC to produce this information for the appeal record.

C. Appendix 1, Page 12, to Level Two Brief

In their May 23, 2011 motion to supplement record, inmates requested that "Exhibit 1" be added to the record as an alternative or supplement to SCDC's spreadsheet (May 23, 2011 motion, pp. 2, 6). Both Exhibit 1 and SCDC's spreadsheet contained grievance file dates and work dates for each inmate, including Gatewood, from various SCDC document sources. See Record spreadsheet, pp. 1-30.

In its August 5, 2011 order, this Court denied inmates' request to add Exhibit 1 to the record. Instead, the Court allowed inmates to submit Exhibit 1 in support of their brief and urge the Court to include it in the record in subsequent levels of review (August 5, 2011 order, pp. 6, 19-20).

In compliance with the Court's order, inmates attached "Appendix 1", pp. 1-33 and notes, to their Level 2 brief filed on September 13, 2011. In the brief, inmates proffered this document for inclusion in the ALC record (Sept. 13, 2011 brief, page 2 footnote). Appendix 1 is substantially the same document as Exhibit 1 except for changes not material to the present discussion.

Gatewood contends that Appendix 1, page 12, should be added to the ALC record because: (1) Inmates proffered Exhibit 1 and Appendix 1 for inclusion in the record and, at least with respect to Exhibit 1, the request was denied. ALC Rule 58D includes in the record, "... (A)11 proffers of proof of excluded evidence"; (2) The Court's August 5, 2011 order invited inmates to request inclusion of Exhibit 1 in Level 3 briefing; (3) Appendix 1 is already an attachment to inmates' Level 2 brief; (4) Appendix 1, page 12, contains Gatewood's file dates and work dates from various SCDC sources which are relevant to calculating back pay, an issue for Level 3 briefing.*

D. Documents in the 1st Supplemental Record on Appeal

The following pages from the 1st Supplemental Record on Appeal are already in the record, and are being designated herein only out of an abundance of caution. On September 16, 2013, SCDC consented to inclusion of these documents.

1. SCDC Spreadsheet Pertaining to Gatewood (R, 11)

This document contains Gatewood's start and stop work dates and grievance file dates, and is relevant to calculating back pay. In addition to being in the record already, this Court's March 10, 2011 order, p. 10, requested SCDC to supplement the record with this spreadsheet.

* Attached to Appendix 1, p. 12 are two pages of notes.

2. Exhibit F Updated to March 28, 2011 (R, 123-125)

This document contains Gatewood's pay dates, pay rates, work hours and pay amounts up to March 28, 2011. It is relevant to calculating back pay for the periods stated. See discussion of Exhibit F at page 2 above, particularly the possible inaccuracies of pay rate and hours information therein.

In addition to being in the record already, SCDC's final decision for Gatewood states SCDC reviewed Gatewood's "prison industries participation and pay records" (R, 1982). Updated Exhibit F is entitled, "Williams Tech/Caterpillar Lieber CI SCDC PI Project #351", and contains the entries listed above for Gatewood (R, 123-125). Thus, SCDC may well have received and considered Gatewood's Exhibit F, at least in part, in issuing its final decision.* This consideration would make Exhibit F appropriate for record inclusion under ALC Rule 58B. Gatewood contends the record supports these conclusions.

3. Williams Technology Transmission Service Contract Bullet Sheet (R, 359); Sept. 30, 1998 SCDC/WTI Contract (R, 360-371); Bonus Pay/Programs Memo (R, 372-374); Pay Scales Memorandum, March 12, 2002 (R, 375)

These documents contain, among other things, the \$4/hour negotiated wage rate (R, 359, 365); \$.35/hour base wage rate (R, 359, 373-375); statutory basis for program in §24-3-310 (R, 360); 7.5 hour workday five days per week and allowance for overtime work (R, 363, 372-374); and maximum pay of \$1/hour (R, 375). This information is relevant to calculating back pay and entitlement to the negotiated wage rate under the budget proviso to §24-3-430 in 2001.

* SCDC's class action admission stated Exhibit F "pay amount" entries were accurate, and did not state that "pay date" entries were not accurate.

In addition to being in the record already, Gatewood's step 1, Amendment to grievance and step 2 all incorporate by reference these documents which are Exhibits B-E to Darrell Williams' September 22, 2004 step 1 (R, 359-375, 1970, 1974, 1980). The step 1 and Amendment to grievance also cite and discuss information taken from these documents (R, 359-375, 1970, 1974). Finally, Gatewood's Amendment attaches two pages from Exhibit C to Williams' step 1, the 1998 contract (R, 1975-1976).

Gatewood contends that, because he incorporated by reference these documents in his pleadings, and attached parts of Exhibit C to his Amendment, the documents or information therein became part of his pleadings under ALC Rule 58A, and thus includable in the record (SCRCP 10(c) and ALC Rule 68).*

In addition, Gatewood's final decision states SCDC reviewed all documents submitted with Gatewood's step 1 (R, 1982). Therefore, because these documents were incorporated by reference in Gatewood's step 1, Gatewood contends they should be deemed received and considered by SCDC under ALC Rule 58B, and thus includable in the ALC record.

4. Job Description (R, 863-864)

This document contains the job description for this work for Gatewood and others, as revised on August 15, 2003.

In addition to being in the record already, Gatewood's step 1, Amendment

* Statements in a pleading may be adopted by reference in another pleading. A copy of any other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading (SCRCP 10(c)).

and step 2 all incorporate by reference this document which is Exhibit G to Darrell Williams' September 22, 2004 step 1 (R, 863-864, 1970, 1974, 1980). The step 1 and Amendment also discuss work of a similar nature in the private sector in the context of "prevailing wages", and cite the Exhibit G job description and Exhibit H prevailing wages opinion for this type of work (R, 863-864, 1970, 1974).

Gatewood contends that, because he incorporated by reference the job description document in his pleadings, the document or information therein became a part of his pleadings under ALC Rule 58A, and thus includable in the ALC record (SCRCP 10(c) and ALC Rule 68).

In addition, Gatewood's final decision states SCDC reviewed all documents submitted with Gatewood's step 1 (R, 1982). Therefore, because the job description document was incorporated by reference in Gatewood's step 1, Gatewood contends it should be deemed received and considered by SCDC under ALC Rule 58B, and thus includable in the ALC record.

5. Gatewood's step 1, SCDC response, Amendment/Exhibits C & H, step 2, SCDC final decision, and notice of appeal to ALC with certificate of service (R, 1970-1986)

These documents show Gatewood properly filed his grievance steps and appeal to the ALC from SCDC's final decision denying his grievance. They also show Gatewood's participation in the program, relevant portions of the 1998 contract and other information.

Gatewood contends his step 1, Amendment/Exhibits, step 2 and notice of appeal are pleadings, and thus within ALC Rule 58A and includable in the record.

Gatewood further contends SCDC's step 1 response is an intermediate ruling within ALC Rule 58A and includable in the record. Finally, Gatewood contends SCDC's final decision is a final decision which is subject to administrative review under ALC Rule 58E, and thus includable in the record.

**E. January 25, 2000 Jack Staudt to P.I. Supervisors Memorandum;
and Inmate Pay Program & Inmate Employment Agreement**

These documents contain the base rate of \$.35 per hour for all inmates, overtime pay calculation procedures and other information. They are relevant to calculating back pay for those who worked over 75 hours per pay period.

Gatewood contends these documents are includable in the ALC record as they are inconsistent with SCDC's final decision denial of overtime pay to Gatewood (R, 1984). They also evidence a base wage rate of \$.35 per hour as alleged in Gatewood's pleadings (R, 1970, 1974).

III. CONCLUSION

For the reasons stated, Gatewood respectfully requests the Court to grant his motion to supplement record with the documents described herein.

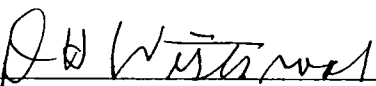
Gatewood offers all documents described herein for admission into the record, and attaches with this motion copies of the following documents which counsel has in his possession: Appendix 1, page 12, to inmates' Level Two brief;* SCDC spreadsheet, R, 11; Exhibit F, R, 123-125; Williams Technology Transmission Service Contract Bullet Sheet, R, 359; Sept. 30, 1998 SCDC/WTI Contract, R, 360-371; Bonus Pay/Programs Memo, R, 372-374; Pay Scales Memorandum, March 12, 2002, R, 375; Job Description, R, 863-864; Gatewood's step 1, SCDC response,

* Appendix 1, p. 12 includes two pages of notes, also attached.

Amendment/Exhibits C & H, step 2, SCDC final decision, and notice of appeal to ALC with certificate of service, R, 1970-1986; and January 25, 2000 Jack Staudt to P.I. Supervisors Memorandum, and Inmate Pay Program & Inmate Employment Agreement; all totaling 47 pages. This total does not include Gatewood's pay stubs, time cards, and work dates and pay dates for the 90 days in 2011, which are also proffered for admission into the record but are not in counsel's possession at this time.

During a phone conversation on September 16, 2013, SCDC's counsel consented to inclusion in the record of all documents in Section IID above, which are already in the record at pp. 11, 123-125, 359-375, 863-864, and 1970-1986.

Respectfully submitted,

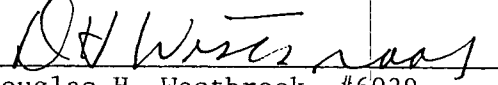

Douglas H. Westbrook, #6039
23 Broad St.
Charleston, SC 29401
(843) 853-9600
Attorney for Appellant
Fred Gatewood

Certificate of Service

I certify that on the 17th day of September 2013, I mailed by first class mail the original and one copy of Appellant Fred Gatewood's Motion to Supplement Record, with 53 pages of attachments, 47 pages of which are documents proffered for inclusion in the ALC record, as follows:

The Honorable Ralph K. Anderson, III
Chief Administrative Law Judge
S.C. Administrative Law Court
Edgar A. Brown Building, Ste. 224
1205 Pendleton St.
Columbia, SC 29201
(original)

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



Douglas H. Westbrook, #6039

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Name	Exhibit A ¹ Hired And Released Dates	Exhibit F ² Pay Dates	Fin. Dec. ³ Start/Stop Dates	O. Geathers ⁴ Start/Stop Dates	EWG's ⁵ Start/Stop Dates	19-54's ⁶	Step 1 ⁷ File Date	Step 2 ⁸ File Date	Suggested ⁹ Start/Stop Dates
Maxie Gamble 254413	1-6-00/12-12-02	1-17-00/12-30-02	-	1-6-00/12-12-02	<u>3-3-99/5-3-01</u> <u>5-4-01/3-11-04</u> <u>4-16-04/3-29-06</u>	at 3-3-99	9-22-04 1-8		(3-3-99/5-3-01 5-4-01/3-11-04 4-16-04/3-29-06) ¹
Robert Garrett 291096	3-10-04/6-24-04	<u>7-14-03/8-11-03</u> <u>3-22-04/8-22-05</u>	-	<u>2-10-04/8-8-05</u>	7-2-03/7-25-03 3-30-04/8-7-05	-	9-30-04 1-6, 8		7-14-03/8-11-03 2-10-04/8-8-05
Jermaine Garriett 191274	12-3-03/12-27-03 6-11-04/6-24-04	<u>7-28-03/8-11-03</u> <u>12-15-03/3-8-04</u> <u>6-14-04/12-13-04</u> <u>2-6-06/7-24-06</u>	12-3-03/12-27-03	12-3-03/12-27-03	7-19-03/7-25-03 1-14-04/2-27-04 <u>6-3-04/12-10-04</u> 2-2-06/7-10-06	-	9-30-04 1-6, 8		7-28-03/8-11-03 12-15-03/3-8-04 6-3-04/12-10-04 2-6-06/7-24-06
Jammie Gaymon 208922	<u>3-15-02/12-12-02</u>	1-1-01/12-31-01 (4-22-02/11-4-02 <u>1-27-03/1-27-03</u>)	<u>3-15-02/12-12-02</u>	<u>3-15-02/12-12-02</u>	<u>10-20-00/12-25-01</u> 4-11-02/10-31-02	-	9-22-04 1-7		10-20-00/12-25-01 3-15-02/12-12-02 1-27-03/1-27-03) ¹⁰
Fred Gatewood 289775	-	10-18-04/9-1-08 3-2-09/4-13-09	<u>9-28-04/present</u>	<u>9-28-04/present</u>	9-27-04/4-20-05 4-21-05/8-31-05 9-1-05/present	at 9-23-04	10-16-04 1-2, 4-6, 8		9-28-04/present
Reginald Geddis 183851	<u>3-15-00/6-26-03</u>	3-27-00/6-30-03	-	<u>3-15-00/6-26-03</u>	<u>3-15-00/6-26-03</u> <u>7-5-05/present</u>	-	9-22-04 1-8		3-15-00/6-26-03 7-5-05/present
Marvin Gilbert 273934	<u>8-7-03/3-10-04</u>	8-11-03/3-8-04	-	-	7-24-03/3-4-04 3-5-04/3-10-04	-	9-30-04 1-6		8-7-03/3-10-04

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

Fred Gatewood, # 289775,	)	Docket No. 07-ALJ-04-0517-AP
	)	
Appellant,	)	
	)	
vs.	)	THE DEPARTMENT'S RESPONSE TO THE APPELLANT'S "MOTION TO SUPPLEMENT RECORD"
	)	
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	

The Respondent, the South Carolina Department of Corrections ["the Department"], by and through its undersigned outside counsel, hereby respectfully responds to the Appellant's "Motion to Supplement Record."

Along with his "Motion to Supplement Record" dated September 17, 2013, the Appellant included 53 pages of documents,¹ and he proposed that either materials described by some of the documents be included in the Record in the instant matter or that the documents themselves be included in the Record in the instant matter.

As discussed immediately below in Section I of its response, the majority of the materials identified by the Appellant for inclusion in the Record already appear in the Record associated with this case, and, accordingly, the Respondent respectfully submits that the Court may consider these materials as the parties litigate the Appellant's instant appeal.

¹ The Respondent's undersigned counsel respectfully includes these 53 pages, reflecting sequential numbering in the top right corner of each page, with its instant response.

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As discussed further below in Sections II, III, IV and V of its instant response, however, the Respondent opposes the addition of the remaining materials identified by the Appellant to the Record in the instant matter.

I. Sections II(D)(1) – (5) of the Appellant’s “Motion to Supplement” – Documents Included in the “1st Supplemental Record on Appeal” in *Ackerman*

As acknowledged by the Appellant, the Respondent respectfully observes that the materials discussed in Sections II(D)(1) – (5) of his motion and listed immediately below already appear in the 1st Supplemental Record on Appeal filed by the Respondent with the ALC on May 6, 2011 in the consolidated matter previously considered by this Court and styled as *Ackerman*, #266928, *et al.*, v. S.C. Dep’t of Corr., ALC Docket No. 07-ALJ-04-00444, *et seq.* As the Court is well aware, the Appellant’s instant appeal was one (1) of the 197 appeals which comprised the consolidated matter styled as *Ackerman*.

Accordingly, the Respondent respectfully submits that, as they already appear in the 1st Supplemental Record on Appeal submitted in *Ackerman* and the Appellant’s instant appeal comprised one (1) of the 197 appeals considered in *Ackerman*, no need exists by which the following documents should be “added” to the Record in the instant matter:

Section of the Appellant’s “Motion to Supplement”	Pages from Documents filed by the Appellant in support of his “Motion to Supplement” ²
Section II(D)(1), p. 5	10
Section II(D)(2), p. 6	11 – 13
Section II(D)(3), pp. 6 – 7	14 – 30
Section II(D)(4), pp. 7 – 8	31 – 32
Section II(D)(5), pp. 8 – 9	33 – 49

² See note 1 above.

II. Section II(A) of the Appellant's Motion: "Gatewood's Pay Stubs and Time Cards"

In this section of his motion,³ the Appellant moved the Court to compel the Respondent to produce and include in the Record the pay stubs and time cards associated with his voluntary participation in the prison industries project operated by the Respondent at Lieber Correctional Institution. The Appellant asserted as follows:

In the related class action, [the Respondent] stated that its June 2004 spreadsheets [1st Supplemental Record on Appeal, pp. 376 – 860] "pay rate" and "hours" are not accurate after July 2000. And further, inmates' pay stubs and time cards must be consulted for that information. "Pay amount" entries were said to be accurate throughout (parenthetical reference explained in footnote below).⁴

For these reasons, [the Appellant's] pay stubs and time cards **will probably be needed to accurately calculate his back pay**. Further, because [the Appellant's] "pay amount" entries on updated Exhibit F are apparently accurate, [the Respondent] most likely consulted [the Appellant's] pay stubs and time cards to calculate his pay. This conclusion is based on [the Respondent's] class action admission that "pay amount" entries were accurate but pay stubs and time cards had to be consulted for accurate "pay rate" and "hours" information. [emphasis supplied].

The Respondent's undersigned counsel respectfully submits that the Appellant's counsel does not clearly or cogently articulate the relevance of the materials he described in this section of the Appellant's motion to the claims articulated by the Appellant in his Step 1 and Step 2 grievance forms as well as any amendments. Moreover, the Appellant's counsel contends only that the materials he confusingly discusses in this section of his motion "will probably be needed to accurately calculate his back pay."

At this point in the litigation of the "Level 3" phase of the instant appeal, no determination has been made by this Court that the Respondent owes any back pay to the

³ See Appellant's Motion, pp. 2 – 3 and Documents filed in Support of Appellant's Motion, pp. 1 – 6.

⁴ See pp. 3 – 4 of the Documents filed by the Appellant in Support of his Motion.

Appellant. Thus, the Respondent respectfully objects to having to produce any material identified or described by the Appellant in this section of his motion so that it may be included in the Record associated with the instant matter.

Ultimately, the Respondent's undersigned counsel respectfully submits that the first questions for consideration by the Court are whether the claims articulated by the Appellant in his Step 1 and Step 2 grievance forms, as well as any amendments, are sustainable.

In the amendment to his grievance,⁵ the Appellant demanded the following relief:

[Appellant] requests back wages owed for ... hours in 1999 at \$9.68 per hour; ... hours in 2000 at \$10.66 per hour; ... hours in 1-1-01 to 6-30-01 at \$11.08 per hour; and ... hours in **7-1-01 to present at \$4 per hour**; less wages paid, § 24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorneys fees. [emphasis supplied].

In his Step 1 grievance form,⁶ the Appellant essentially demanded the identical relief:

That [Appellant] be paid back wages at the prevailing wage rate for 1999 to July 2001; **and at \$4 per hour for July 2001 to present**, and in the future. [emphasis supplied].

However, as reflected by the Record,⁷ the Appellant did not begin receiving pay from the Respondent for the labor he voluntarily provided to the prison industries project the Respondent operated at Lieber until October 18, 2004.

Therefore, the Appellant's claims for back pay associated with the "prevailing wage rate" from 1999 to October 18, 2004 are simply not sustainable. Instead, the first issue confronted by this Court is, at least as respectfully submitted by the Respondent, whether the Appellant has

⁵ See the Documents filed in Support of Appellant's Motion, p. 37 (1st Supplemental Record on Appeal, p. 1974).

⁶ See the Documents filed in Support of Appellant's Motion, p. 33 (1st Supplemental Record on Appeal, p. 1970).

⁷ See the Documents filed in Support of Appellant's Motion, p. 10 (1st Supplemental Record on Appeal, p. 11).

articulated a viable claim that the Respondent should have paid him the rate of \$4.00 for every hour of labor he voluntarily provided to the prison industries project in question.

Unless and until it determines that his above-articulated claim is viable, the Appellant has no viable claim for any back pay. Accordingly, unless and until it determines that the Appellant possesses a viable claim for any back pay, this Court should deny the Appellant's motion to add the materials he describes in Section II(A) and, for that matter Sections II(B) and II(E), of his instant motion to the Record in this matter.

III. Section II (B) of the Appellant's Motion: "Gatewood's Work Dates and Pay Dates for 90 Days in 2011"

In this section of his motion,⁸ the Appellant moves the Court to include in the Record for his instant appeal the following material:

All [the Appellant's] work dates and pay dates are needed to accurately calculate his back pay. This includes the 90 days in 2011 [the Appellant] believes he worked but is not reflected on updated Exhibit F.

Again, the Respondent's undersigned counsel respectfully submits that the Appellant's counsel does not clearly or cogently articulate the relevance of the materials he described in this section of the Appellant's motion to the claims articulated by the Appellant in his Step 1 and Step 2 grievance forms as well as any amendments.

Moreover, at this point in the litigation of the "Level 3" phase of the instant appeal, no determination has been made by this Court that the Respondent owes any back pay to the Appellant. Thus, the Respondent again respectfully objects to having to produce any material identified or described by the Appellant in this section of his motion so that it may be included in the Record associated with the instant matter.

⁸ See Appellant's Motion, p. 4. The Appellant apparently did not file any documents associated with the materials he discussed in this section of his motion.

IV. Section II(C) of the Appellant's Motion: "Appendix 1, Page 12, to Level 2 Brief"

In this section of his motion,⁹ the Appellant moves the Court to include in the Record for his instant appeal material that his counsel unsuccessfully attempted to have included in the Record in *Ackerman*, namely a page from "Appendix 1" which the Appellant's counsel filed in support of the Appellants' "Level 2" brief in *Ackerman*.

The Respondent respectfully opposes the Appellant's motion to include this material in the Record for the instant matter for the same reasons the Respondent successfully opposed the efforts by Appellants' counsel to include it in the Record in *Ackerman*. Succinctly stated, this material, especially the two (2) pages of notes which accompany "Appendix 1,"¹⁰ constitute nothing more than additional argument by the Appellant's counsel.

Just as he did in *Ackerman*, the Appellant's counsel, if so allowed by this Court, may file "Appendix 1" and its two (2) pages of notes in support of any brief he files in this matter on behalf of the Appellant. However, this material simply should not, at any point in the litigation of the Appellant's instant appeal, be deemed appropriate for inclusion in the Record associated with the instant matter.

V. Section II(E) of the Appellant's Motion: "January 25, 2000 Jack Staudt to P.I. Supervisors Memorandum; and Inmate Pay Program & Inmate Employment Agreement"

In this section of his motion, the Appellant moves the Court to include in the Record for his instant appeal four (4) documents which, according to him, do the following:¹¹

... contain the base rate of \$.35 per hour for all inmates, overtime pay calculation procedures and other information. They are relevant to

⁹ See Appellant's Motion, pp. 4 – 5 and Documents filed in Support of Appellant's Motion, pp. 7 – 9.

¹⁰ See the footnotes appearing at the bottom of pages 5 and 9 of the Appellant's Motion.

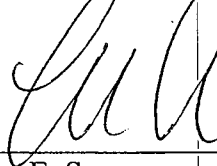
¹¹ See Appellant's Motion, p. 9 and Documents filed in Support of Appellant's Motion, pp. 50 – 53.

calculating back pay for those [inmates] who worked over 75 hours per pay period.

[The Appellant] contends these documents are includable in the [instant record] as they are inconsistent with SCDC's final decision denial of overtime pay to [him] [1st Supplemental Record on Appeal filed May 6, 2011, p. 1984]. They also evidence a base wage rate of \$.35 per hour as alleged in [Appellant's Step 1 and Step 2 grievance forms] [1st Supplemental Record on Appeal filed May 6, 2011, pp. 1970 and 1974].

As stated above, no determination has been made by this Court at this point in the litigation of the "Level 3" phase of the instant appeal that the Respondent owes any back pay to the Appellant. Accordingly, the Respondent respectfully objects to the inclusion of the materials identified by the Appellant in this section of his motion in the Record associated with the instant matter.

RESPECTFULLY SUBMITTED,



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

Counsel for the Department

Columbia, South Carolina
October 21, 2013

///

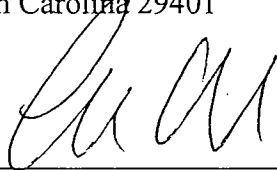
**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

Fred Gatewood, # 289775,	)	Docket No. 07-ALJ-04-0517-AP
	)	
Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
South Carolina Department of Corrections,	)	
	)	
_____ Respondent.	)	

I certify that I have served a copy of **THE DEPARTMENT'S RESPONSE TO THE APPELLANT'S "MOTION TO SUPPLEMENT RECORD"** in the above-captioned matter on the Appellant by mailing a copy of it to his counsel, first class postage pre-paid, at the following address:

Douglas H. Westbrook, Esquire
Attorney at Law
23 Broad Street
Charleston, South Carolina 29401



October 21, 2013

Lake E. Summers

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Fred Gatewood, #289775,)
)
Appellant,)
)
vs.)
)
South Carolina Department)
of Corrections,)
)
Respondent.)
_____)

Dock. No. 07-ALJ-04-00517-AP

BRIEF OF APPELLANT

Appellant Fred Gatewood respectfully submits his principal brief for the Level Three stage of this appeal.

STATEMENT OF ISSUES ON APPEAL*

1. Was Gatewood entitled to a \$4.00 per hour wage rate for his labor based on the 2001 budget proviso and succeeding enactments allowing SCDC to negotiate the wage to be paid for inmate labor, and the 1998 service work contract between SCDC and Williams Technologies in which Williams agreed to pay SCDC \$4.00 per hour per inmate for work performed?
2. Was Gatewood entitled to overtime pay for his labor?
3. Was Gatewood entitled to pre and post judgment interest on his back pay?
4. Was Gatewood entitled to costs and attorney fees?
5. Should SCDC be ordered to process grievance for all workers in the program whether or not they personally filed a grievance?
6. Should SCDC be enjoined from further wage violations?

STATEMENT OF THE CASE

This appeal involves inmate Fred Gatewood's grievance for past due wages under

* Gatewood respectfully submits issues 2-4 as fairly and reasonably reviewable along with the pay rate, and issues 2-6 within the scope of Level 3 merits review.

South Carolina law. Gatewood is an inmate who worked in the Lieber/Williams Technologies (WTI) work program between 2004 and at least 2009.* When Gatewood worked, S.C. Code §24-3-430(D), the "prevailing wage" statute, had been amended to allow SCDC to pay inmates a negotiated wage which could be less than the prevailing wage (Statutes at Large, No. 66, §37.31, effective July 2001). Similar budget provisos were passed until 2007 (Darrell Williams, Class Representative, et al. v. SCDC, et al. 641 S.E. 2d 885, n. 2 (S.C., 2007)). In 2007, §24-1-295 was passed and contained language that was very similar to the previous budget provisos.

On August 23, 2004, the Supreme Court issued decisions in Adkins, et al. v. SCDC 360 S.C. 413, 602 S.E. 2d 51 (S.C., 2004) and Wicker v. SCDC 360 S.C. 421, 602 S.E. 2d 56 (S.C., 2004), holding inmates could file prevailing wage grievances and appeal to the Administrative Law Court (ALC).

On September 27, 2004, Gatewood retained undersigned counsel to file grievance. On or about October 18, 2004, Gatewood filed his step 1 grievance with SCDC (R, 1970). On April 19, 2007, Gatewood through counsel filed his Amendment/Exhibits to grievance with SCDC (R, 1974-1979). On May 22, 2007, SCDC issued its final decision denying Gatewood's grievance as untimely filed and also on the merits (R, 1983-1984). On June 5, 2007, counsel filed Gatewood's appeal in the ALC (R, 1986). Some 196 other inmates followed this same process. These appeals were consolidated in the ALC under the caption, Francis Ackerman, #266928, et al. v. SCDC Dock. No. 07-ALJ-04-00444-AP, etc.

* Gatewood's work and grievance file dates are in Appendix 1, p. 12, to the Level 2 brief which he requests be included in the record (Order of August 5, 2011, p. 19). They are also in the record at pp. 11, 123-125, 1970. These records show Gatewood's pay dates from October 18, 2004 to September 1, 2008 and March 2 to April 13, 2009. Gatewood contends he worked again for over 90 days in 2011. "Record" refers to the 1st Supplemental Record on Appeal filed May 6, 2011.

In the ALC, after briefing and receiving the Court's decision for Level One, counsel briefed the Level Two issue of timeliness of Gatewood's and others' grievances. On March 2 and 16, 2012, the ALC issued its decision that Gatewood's grievance was timely filed and should be briefed on the merits (March 2, 2012 order, 27; March 16, 2012 amended order, 23). All others were held untimely filed.

On March 29, 2012, all inmates filed Notice of Appeal in the Court of Appeals of the ALC's March 2 and 16 orders. This appeal was captioned Francis Ackerman, #266928, et al. v. SCDC Appellate Case No. 2012-210588.

On April 16, Gatewood filed his merits brief in the ALC as ordered.

On June 19, the ALC issued its order that it had no jurisdiction to continue with Gatewood's merits briefing.

On July 18, Gatewood filed Notice of Appeal in the Court of Appeals of the ALC's June 19 order.

On July 23, the Court of Appeals remanded the appeal in Francis Ackerman, #266928, et al. v. SCDC to the ALC to issue its Second Amended Order. On July 26, the ALC issued and filed its Second Amended Order. This order is basically identical to the March 2 order except for footnotes and minor additions to the caption. It also ordered the parties to merits brief Gatewood's grievance.

On August 22, inmates filed Notice of Appeal in the Court of Appeals in Francis Ackerman, #266928, et al. v. SCDC of the ALC's March 10, 2011 order and July 26, 2012 Second Amended Order. Gatewood did not appeal the portion of the Second Amended Order that he timely filed his grievance and the parties were to brief his grievance on the merits.

On August 24, Gatewood re-filed his merits brief with the ALC. On September 5, the ALC returned the brief unfiled because the matter had been appealed to the

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Court of Appeals and was no longer pending in the ALC.

On March 26, 2013, the Court of Appeals dismissed Gatewood's appeal to that Court. On April 4, Gatewood filed a Petition for Rehearing of the dismissal.

On July 5, the Court of Appeals denied Gatewood's Petition for Rehearing.

On August 26, the Court of Appeals remitted Gatewood's case to the ALC.

On October 29 in a teleconference with counsel, the ALC ruled it could proceed with merits briefing on the issue of Gatewood's entitlement to a \$4.00 per hour wage. However, the ALC stated it could not consider back wage calculations for Gatewood, and indicated such calculations would probably have to be made by SCDC on remand which, if Gatewood were unsatisfied, could be re-appealed to the ALC. *

ARGUMENT

1. Gatewood was entitled to a \$4.00 per hour wage rate for his labor based on the 2001 budget proviso and succeeding enactments allowing SCDC to negotiate the wage to be paid for inmate labor, and the 1998 service work contract between SCDC and Williams Technologies in which Williams agreed to pay SCDC \$4.00 per hour per inmate for work performed.

For the standard of review, the ALC may not substitute its judgment for that of SCDC as to the weight of the evidence on questions of fact. The ALC may reverse or modify SCDC's decision if Gatewood's substantial rights have been prejudiced

* On November 12, 2013, the ALC issued an order denying Gatewood's September 17, 2013 Motion to Supplement Record. On January 23, 2014, the ALC issued a briefing order that Gatewood's brief would be due within 30 days of the order. Based on the October 29 teleconference, this merits brief will not cover back wage calculations. Gatewood understands he may re-appeal the issue of back wage calculations if, after any remand on that issue, he is not satisfied with SCDC's calculations. Gatewood also understands that his September 17, 2013 Motion to Supplement Record in the ALC may be renewed if and when there is a later re-appeal to the ALC following any remand to SCDC on the issue of back wage calculations.

because SCDC's findings or decisions are in violation of statutory provisions; affected by other error of law; clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion (S.C. Code §1-23-380(5)).

Preliminarily, the record shows, and SCDC does not dispute, that Gatewood worked in the work program in question and was not paid \$4.00 per hour for his labor. Gatewood pleaded his employment in the work program in his step 1 grievance, Amendment to grievance, and in his step 2 appeal (R, 1970, ¶1; 1974, ¶1; 1980, ¶1). In response, SCDC admitted Gatewood's employment in its step 1 response and step 2 final decision (R, 1972, ¶1; 1982, ¶2).

Moreover, in his step 1 and Amendment, Gatewood pleaded entitlement to the \$4.00 per hour negotiated wage provided in Statutes at Large, No. 66, §37.31, effective July 1, 2001 (R, 1970, ¶1; 1974, ¶1). In response, SCDC denied this entitlement in its step 1 response and step 2 final decision (R, 1972, ¶1, 7-8; 1984, ¶1-3).

Finally, the record contains inmates' job description for this work (R, 863-864).

In 2001, a General Assembly budget proviso (Statutes at Large, No. 66, §37.31, effective July 2001) provided as follows, in relevant part:

The department may **negotiate the wage** to be paid for inmate labor provided under **prison industry service work contracts**, and **such wages** may be less than the prevailing wage for work of similar nature in the private sector.

Similar enactments have been passed^{*} and remain the law down to the present (S.C.

* Act 289 of 2002; Act 91 of 2003; Act 248 of 2004; Act 115 of 2005; Act 397 of 2006; Act 117 of 2007.

Code §24-1-295; Darrell Williams, Class Representative, et al. v. SCDC, et al.
641 S.E. 2d 885, n. 2 (S.C., 2007)).

The record contains the 1998 prison industries service work contract between SCDC and Williams Technologies for this work program (R, 360-371). The contract states, in relevant part (R, 365, 1976):

Williams agrees to pay SCDC \$4.00 per hour per inmate for work performed.. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead..

Gatewood contends that under South Carolina law, SCDC was required to pay him "such wages" of \$4.00 per hour since that is the wage negotiated with WTI, and thus required by the budget proviso and succeeding enactments.

In Gatewood's step 1 grievance, he stated in relevant part (R, 1970):

Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of \$4.00 per hour (Statutes at Large, No. 66, §37.31, eff. July 1, 2001); Exh. B,C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under \$1.00 per hour. Exhibits document a \$.35 per hour base rate, the September 30, 1998 WTI/Lieber contract specifying a wage of \$4 per hour..

The step 1 further requested back wages to be paid at \$4 per hour from July 2001 and after (R, 1970).

In SCDC's step 1 response, SCDC denied Gatewood's request for payment of the negotiated wage of \$4.00 per hour (R, 1972, ¶1, 7-8).

In Gatewood's Amendment to grievance filed in 2007, he made very similar allegations to those contained in his step 1 quoted above (R, 1974).

In its step 2 final decision for Gatewood, SCDC again denied Gatewood's request for payment of the negotiated wage of \$4.00 per hour (R, 1984, ¶1-3).

Gatewood submits that SCDC's denial of the \$4.00 per hour negotiated wage prejudiced his substantial rights because it violated the July 2001 budget proviso

and succeeding similar enactments requiring payment of the negotiated wage; was clearly erroneous in view of the substantial evidence of the negotiated wage of \$4.00 per hour per the 1998 contract with WTI; and was, in view of that contract, arbitrary and capricious and characterized by an abuse of discretion and clearly unwarranted exercise of discretion.

2. Gatewood was entitled to overtime pay for his labor.

SCDC denies owing overtime pay to Gatewood (R, 1972, ¶9; 1984, ¶4). Gatewood contends overtime pay is required in these circumstances and should be enforced for all overtime (hours above his normal shift hours) he worked (SCDC v. Cartrette 694 S.E. 2d 18, 20-22 (S.C. App., 2010) and SCDC v. Tomlin 694 S.E. 2d 25, 27-29 (S.C. App., 2010)(holding inmates are entitled to overtime pay under §24-3-430(D)).

Moreover, overtime is provided for in the 1998 contract with WTI (R, 363, ¶3.0). And, time and a half overtime is specified in other wage memos in the record (R, 372-375). Gatewood contends he should be paid overtime at time and a half for those hours he worked in excess of his normal shift hours.

Gatewood submits that SCDC's denial of overtime pay prejudiced his substantial rights because it was affected by other error of law as explained in SCDC v. Cartrette and SCDC v. Tomlin; was clearly erroneous in view of the substantial evidence of overtime payable under the 1998 contract and pertinent wage memos; and was arbitrary and capricious and characterized by abuse of discretion and clearly unwarranted exercise of discretion.

3. Gatewood was entitled to pre and post judgment interest.

Gatewood requested pre and post judgement interest in his step 1 and Amendment to grievance ("interest") (R, 1970, ¶2; 1974). SCDC denied this request in its step 1 response and step 2 final decision (R, 1973, ¶2; 1984, ¶6).

Gatewood contends that pre and post judgment interest are payable on back pay owed at 8 3/4% pursuant to S.C. Code §34-31-20 (Future Group II v. Nations Bank 478 S.E. 2d 45, 51 (S.C., 1996)(prejudgment interest allowed on obligations to pay money from time payment is demandable if the sum is certain or capable of being reduced to certainty); and 45C Am Jur 2d (2002), Job Discrim., §§2607, 2631, 2634-2635).

Gatewood submits that SCDC's denial of pre and post judgment interest prejudiced his substantial rights because it violated §34-31-20; was affected by other error of law as explained in Future Group II v. Nations Bank; was clearly erroneous in view of the substantial evidence of wages under \$1.00 per hour (R, 372-375) when statute mandated wages were four times that amount; and was arbitrary and capricious and characterized by abuse of discretion and a clearly unwarranted exercise of discretion.

4. Gatewood was entitled to costs and attorney fees.

Gatewood requested costs and attorney fees in his step 1 and Amendment (R, 1970, ¶2; 1974, ¶2). SCDC denied this request in its step 1 response and step 2 final decision (R, 1973, ¶2; 1984, ¶6). Gatewood contends that, if the ALC agrees he is entitled to the \$4.00 per hour wage, an award of costs and attorney fees is appropriate under the September 27, 2004 fee contract he signed with counsel.* The contract provides for a one third contingent fee (40% if an appeal is taken) or, in appropriate circumstances, a request of the Court to require the State to pay the fee pursuant to S.C. Code §15-77-300.

If a contingent fee is requested, it would probably be 40% of the recovery since an appeal (although not on the merits) has already been taken to the Court

* Fee contract will be provided to the Court if necessary.

of Appeals on Gatewood's grievance, and another may follow. The fee contract deducts the applicable percentage from the gross amount recovered, before costs and, if approved by the Court, any statutory deductions are made.

As stated, a fee award may also be requested under §15-77-300. An award of attorney fees may be made to a prevailing party contesting state action, to be taxed as court costs against the appropriate agency if the agency acted without substantial justification in pressing its claim against the party and there are no special circumstances that would make the award unjust (S.C. Code §15-77-300(A)). The ALC has already held that Gatewood timely filed his grievance (7-26-12 ALC Second Amended Order, 27). Gatewood contends that, if the ALC finds he is entitled to the \$4.00 per hour wage, he will have prevailed on the merits of his grievance (Douan v. Charleston County Council 645 S.E. 2d 241, 243 (S.C., 2007) (Prevailing party is party who successfully prosecutes an action by prevailing on the main issue and in whose favor the decision is rendered or judgment is reached, the key factor being the degree of success obtained by the party seeking attorney fees)).

Gatewood further contends that SCDC acted without substantial justification in pressing its claim. An agency action supported by substantial justification is one which has a reasonable basis in law **and fact** (McDowell v. DSS 304 S.C. 539, 542 (S.C., 1991)). A court looks to the agency's litigation position and whether it is reasonable in law and fact (Id.).

Gatewood's Exhibit F notes an initial pay date of October 18, 2004 (R, 123).*

* SCDC has stated Exhibit F hours and rates entries are not accurate after July 2000 and pay stubs and time cards must be consulted for this information. SCDC has not indicated pay date entries are incorrect.

In addition, Gatewood's step 1 has an SCDC-received date of October 18, 2004 (R, 1970). Notwithstanding these facts, SCDC in its 2007 step 2 final decision for Gatewood stated he did **not** file his grievance within 15 days of when SCDC first paid him (R, 1983, ¶3). Moreover, in 2011 SCDC continued to press its claim before the ALC that all appellants - which includes Gatewood - did **not** file within 15 days of their first pay check (SCDC ALC brief of Nov. 30, 2011, pp. 11,13,29). The ALC ruled against SCDC on this point as to Gatewood and held he had filed his grievance within 15 days of first being paid (7-26-12 Second Amended Order, 27). Thus, Gatewood contends SCDC acted without substantial justification in pressing its claim that Gatewood had not filed within 15 days of first being paid by SCDC.

Finally, Gatewood contends there are no special circumstances that would make an attorney fee award unjust.

Gatewood contends that case law supports his request to apply for costs and attorney fees at this juncture. In McDowell v. DSS 304 S.C. 539, 543, 405 S.E. 2d 830 (S.C., 1991), plaintiff sought judicial review in Circuit Court under the APA of a DSS decision denying food stamps. The Supreme Court held plaintiff was entitled to attorney fees for the action for judicial review in Circuit Court because it was a "civil action" under §15-77-300 entitling a prevailing party to attorney fees for those services. The Court also held plaintiff was entitled to attorney fees under §15-77-300 for the litigation and appeal seeking to secure such fees (304 S.C. at 544).

Moreover, in Getzen v. Law Offices 475 S.E. 2d 743, 746-747 (S.C., 1996), the Supreme Court held that, under an attorney/client contract, the attorney was entitled to fees and costs incurred in collecting amounts due from his client, and

the trial court should have allowed the attorney an opportunity to submit application for fees and costs incurred in an action to collect unpaid fees and costs.

Gatewood contends that, pursuant to McDowell and Getzen, a favorable ruling on this appeal would entitle him to petition the ALC, as the judicial review court, for attorney fees and costs for services in the ALC for Gatewood. Therefore, if a favorable ruling is to be issued, Gatewood respectfully requests the opportunity to petition the ALC for attorney fees and costs so that any award for these services and items may be included in the ALC's order on the merits before any remand to SCDC.

Gatewood submits that SCDC's denial of costs and attorney fees prejudiced his substantial rights because it violated S.C. Code §15-77-300; was affected by other error of law as explained in McDowell v. DSS; was clearly erroneous in view of the substantial evidence that Gatewood filed his grievance the same day he was first paid by SCDC and SCDC continued to press its claim that he did not; and was arbitrary and capricious and characterized by abuse of discretion and a clearly unwarranted exercise of discretion.

5. SCDC should be directed to process grievance for all workers in the work program whether or not they personally filed a grievance.

Gatewood respectfully requests an order for SCDC to process grievance for all workers in the program whether or not they personally filed. Gatewood's October 2004 grievance was filed individually and on behalf of all persons who worked in the program (R, 1970). Further, SCDC's final decision for Gatewood discussed and denied his request for "class" grievance treatment of his grievance (R, 1984).

"Class" treatment is not provided for in the ALC rules. However, Gatewood submits it is needed for this case, and resort to SCRCP 23 would be appropriate to

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resolve this matter for all inmates under ALC Rule 68.

6. SCDC should be enjoined from further wage violations.

Finally, Gatewood respectfully requests injunctive relief against any future wage violations by SCDC.

CONCLUSION

In conclusion, Gatewood submits the record supports reversal of SCDC's decisions on the issues discussed herein. If the Court agrees that Gatewood was entitled to a \$4.00 wage rate, Gatewood respectfully requests remand to SCDC to do the following:

1. Calculate Gatewood's back wages at \$4.00 per hour, less any deductions under §24-3-40(A) applicable to Gatewood, from his gross \$4.00 wage (Torrence v. SCDC 646 S.E. 2d 866, 868 (S.C., 2007); §24-3-40). No deduction should be made from Gatewood's gross wages unless expressly authorized by §24-3-40. Any ambiguity should be construed in Gatewood's favor (45C Am Jur 2d (2002), Job Discrim., §2607).
2. Calculate any overtime Gatewood worked (hours beyond his normal shift) at the rate of \$6.00 per hour.
3. Calculate pre and post judgment interest on back wages at 8 3/4% per annum, from the date wages were due to the present.
4. Calculate the sum of 1-3 above and deduct the amounts paid to Gatewood already, for the net back wages due to Gatewood.
5. Costs and attorney fees should be paid to Gatewood's counsel in the amount set by the ALC's order to be issued.
6. SCDC shall forward a written accounting of SCDC's findings and back wage calculations to Gatewood and both parties' counsel within 30 days of remand date,

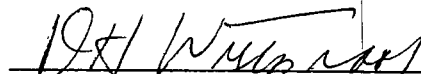
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SCDC to include a copy of the record(s) relied upon to calculate back wages due. The record(s) to accompany SCDC's written accounting to Gatewood and counsel shall include, but not be limited to, records containing pay dates, work dates, hours worked, overtime hours worked, rate(s) of pay paid, amounts paid, and any deductions applicable to Gatewood under S.C. Code §24-3-40(A).

7. If Gatewood does not appeal SCDC's calculations and findings to the ALC within 30 days after receipt thereof, SCDC shall make payment to Gatewood and his counsel, per SCDC's calculations and the ALC order, within 90 days of the ALC remand; and at the same time forward a written itemized statement of any and all payments made to Gatewood and counsel.

8. Prior to any remand to SCDC, Gatewood respectfully requests the opportunity to petition the ALC for attorney fees and costs so that any award for these services and items may be included in the ALC's order on the merits.

Respectfully submitted,

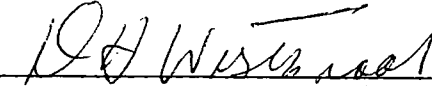


Douglas H. Westbrook, #6039
23 Broad St.
Charleston, SC 29401
(843) 853-9600
(843) 577-2241 - Fax
douglas.h.westbrook@gmail.com
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on the ^{19th} ~~20th~~ day of February, 2014, I mailed by first class mail a copy of the Level Three brief of Appellant Fred Gatewood to counsel of record for Respondent S.C. Department of Corrections, as follows:

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



Douglas H. Westbrook, #6039

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

Fred Gatewood, # 289775,	)	Docket No. 07-ALJ-04-0517-AP
	)	
Appellant,	)	
	)	
vs.	)	THE RESPONDENT'S BRIEF
	)	
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	

The Respondent, the South Carolina Department of Corrections ["the Department"], by and through its undersigned counsel, respectfully submits its brief in the "Level Three" phase of the instant matter.

STATEMENT OF ISSUES ON APPEAL

In accordance with the six (6) issues on appeal identified by the Appellant, Inmate Fred Gatewood, in his brief,¹ the Department respectfully acknowledges that the Appellant submitted the following issues for review by this Court in the "Level Three" phase of the instant matter:

1. Was the Appellant entitled to a \$4.00 per hour wage rate for his labor based on the 2001 budget proviso and succeeding enactments allowing the Department to negotiate the wage to be paid for inmate labor, and the 1998 service work contract between the Department and Williams Technologies ["WTI"] in which WTI agreed to pay the Department \$4.00 per hour per inmate for work performed?
2. Was the Appellant entitled to overtime pay for his labor?
3. Is the Appellant entitled to pre-judgment and/or post-judgment interest on his back pay?
4. Is the Appellant entitled to costs and attorney fees?

¹ See the Appellant's Brief dated February 19, 2014, p. 1.

5. Should this Court order the Department to “process grievance[s] for all workers in the program whether or not they personally filed a grievance?”
6. Should this Court enjoin the Department from “further wage violations?”

STATEMENT OF THE CASE

As he stated at the outset of his “Statement of the Case,”² this matter concerns the appeal by the Appellant of a final decision issued by the Department by which it denied various claims concerning the hourly wage the Department paid to the Appellant while the Appellant voluntarily participated in a prison industries service project operated by the Department at Lieber Correctional Institution [“Lieber”] in which Williams Technologies, Inc., and now Caterpillar, Inc., participates as the private industry sponsor.

As he chronicled in his “Statement of the Case,”³ the Appellant first raised these various claims by filing a Step 1 administrative grievance under the provisions of the Department’s Inmate Grievance System Policy, designated as SCDC Policy Number GA-01.12. Upon the Department’s denial of his Step 1 grievance, the Appellant, as contemplated by Policy GA-01.12, filed a Step 2 appeal. Upon the Department’s denial of his Step 2 appeal, which represented the Department’s final decision, the Appellant, by the Notice of Appeal dated May 30, 2007 and signed by his counsel (Ackerman 5-6-11, pp. 1985 – 86), appealed the Department’s decision to this Court.

This Court consolidated the Appellant’s instant appeal with approximately 200 appeals filed by the Appellant’s undersigned counsel on behalf of other current and former inmates who, like the Appellant, asserted various claims concerning the hourly wage the Department paid to them while they voluntarily participated in the prison industries service project operated by the

² *Id.*, pp. 1 – 2.

³ *Id.*, p. 2.

Department at Lieber. See *Francis Ackerman*, #266928, *et al.*, v. *S.C. Dep't of Corr.*, ALC Docket Nos. 07-ALJ-04-00444-AP, *et seq.*

As this Court is well aware and as the Appellant chronicled in his "Statement of the Case,"⁴ this Court issued its final order in *Ackerman*, which it styled as its "Second Amended Order," on July 26, 2012, and, by its order, this Court determined that while the Appellant had timely filed his Step 1 grievance, all of the other current and former inmates in *Ackerman* did not timely file their respective Step 1 grievances. The current and former inmates in *Ackerman* whom this Court determined had not timely filed their Step 1 grievances appealed this Court's July 26, 2012 "Second Amended Order," to our Court of Appeals, and, as of the date of the Department's instant brief, their appeal is still pending.⁵

Ultimately, this Court retained jurisdiction to determine the issue(s) associated with the "Level Three" phase of the Appellant's instant case, namely whether, as he argues in his brief in support of the first issue on appeal he identified therein,⁶ the Appellant was entitled to a \$4.00 per hour wage rate for his labor based on the 2001 budget proviso and succeeding enactments allowing the Department to negotiate the wage to be paid for inmate labor, and the 1998 service work contract between the Department and WTI in which WTI agreed to pay the Department \$4.00 per hour per inmate for work performed.

In his Step 1 grievance dated October 16, 2004 (*Ackerman* 5-16-11 1970), the Appellant, like his fellow current and former inmates in *Ackerman*, asserted that he was entitled to back pay and a higher hourly rate of pay for the labor he voluntarily provided to the prison industries

⁴ *Id.*, p. 3.

⁵ As accurately recounted by the Appellant in his "Statement of the Case," the appellate court case number for *Ackerman* is 2012-210588. *Id.*

⁶ *Id.*, p. 1 and pp. 4 – 7.

project operated at Lieber. Specifically, the Appellant asserted that he was entitled to the so-called “prevailing wage” pursuant to S.C. Code Ann. § 24-3-430(D). Section 24-3-430 is entitled “[i]nmate labor in private industry authorized; requirements and conditions.” In its entirety, it provides as follows:

No inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector.

The Appellant asserted in his Step 1 grievance that, under the provisions of § 24-3-430, the proper hourly rate of pay for his labor ranged between \$8.40 and \$12.06 per hour. (Ackerman 5-16-11 1970). In the amendment to his grievance which he signed on February 3, 2006 (Ackerman 5-16-11 1974), the Appellant articulated the following claim which more closely resembles the first issue on appeal he presented in his brief:

Since July 2001, WTI/Lieber were required to pay [the Appellant] the negotiated wage of \$4/hour (Stat. at Large, No. 66, § 37.31; Exh. B, C). In fact, [the Department’s] policy was to pay a maximum of about \$1/hour, and usually less. Exhibits document a \$.35 per hour base rate (Exh. B,D,E); maximum of \$1/hour (Ex. E); the 9-30-98 contract specifying a \$4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for [the Appellant] (Exh. F.)

In his “Statement of the Case,”⁷ the Appellant stated that he voluntarily provided labor to the prison industries service project at Lieber “between 2004 and at least 2009.” Thus, any notion that, under § 24-3-430, the Department should have paid the Appellant an hourly rate of between \$8.40 and \$12.06 for his prison industries labor is, by the Appellant’s implicit admission, not viable. Regarding the statutory provisions which controlled the rate at which the Department paid him for the labor he provided to the prison industries service project at Lieber, the Appellant, in his “Statement of the Case,”⁸ stated as follows:

⁷ *Id.*, p. 2.

⁸ *Id.*

When [the Appellant] worked, S.C. Code § 24-3-430(D), the “prevailing wage” statute, had been amended to allow [the Department] to pay inmates a negotiated wage which could be less than the prevailing wage (Statutes at Large, No. 66, § 37.31, effective July 1, 2001). Similar budget provisos were passed until 2007 (Darrell Williams, Class Representative, et al. v. SCDC, et al., 641 S.E.2d 885, n. 2 (S.C., 2007)). In 2007, § 24-1-295 was passed and contained language that was very similar to the previous budget provisos.

However, the Appellant lacks a fundamental understanding of the origins of the applicable budget proviso, the relationship between the budget provisos, their eventual codification in § 24-1-295, and § 24-3-430(D), the types of projects to which the provisos and § 24-1-295 applied and continue to apply, and, critically, the parties to whom the term “negotiated wage” actually applied under the provisos and § 24-1-295. As demonstrated below, the Appellant’s inability to grasp the plain meaning of the budget proviso and § 24-1-295 fatally undermines his assertion, as well as his supporting analysis, that he was entitled to an hourly rate of \$4.00 for the labor he voluntarily provided to the prison industries service project at Lieber.

ARGUMENT

- I. **THE APPELLANT WAS NOT ENTITLED TO AN HOURLY RATE OF \$4.00 FOR THE LABOR HE VOLUNTARILY PROVIDED TO THE PRISON INDSTURIES SERVICE PROJECT OPERATED AT LIEBER**
 - A. **NEITHER THE BUDGET PROVISOS NOR S.C. CODE ANN. § 24-1-295 ENTITLED THE APPELLANT TO \$4.00 PER HOUR FOR HIS VOLUNTARY PARTICIPATION IN THE PRISON INDUSTRIES SERVICE PROJECT AT LIEBER**

As the Appellant acknowledges in his brief, the South Carolina General Assembly, starting in 2001, enacted a budget proviso applicable only to prison industries *service* projects operated by the Department, such as the service project it operated at Lieber in which WTI originally participated, and now Caterpillar, Inc. currently participates as the private industry sponsor. In its entirety, the first proviso, which became effective July 1, 2001, stated as follows:

37.31. (CORR: Prison Industry Service Contracts) The Director of the Department of Corrections may enter into contracts with private sector entities that would allow for inmate labor to be provided for prison industry **service** work. The use of such inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. **Service** work is defined as any work such as repair, replacement of original manufactured items, packaging, sorting, labeling, or similar work that is **not** original equipment manufacturing. **The department may negotiate the wage to be paid for inmate labor provided under prison industry service work contracts, and such wages may be less than the prevailing wage for work of a similar nature in the private sector.** [emphasis supplied].

2001 – 2002 General Appropriations Bill, H. 3687, Section 37 – No. 4 – [SCDC] (June 21, 2001).

Contrary to the description provided by the Appellant in his “Statement of the Case,” the above-quoted proviso did not amend § 24-3-430 in any fashion whatsoever. The proviso represented an enactment by the legislature to address only prison industries *service* projects, and, accordingly, the rate(s) at which the Department paid inmates who voluntarily participated in Prison Industries Enhancement Certification [“PIECP”] projects it operated at various other facilities, under the provisions of § 24-3-315, § 24-3-410, and, of course, § 24-3-430, were not impacted at all by the General Assembly’s enactment of the 2001 budget proviso.⁹

The General Assembly enacted similar, if not identical budget provisos each year until it enacted S.C. Code Ann. § 24-1-295, effective August 1, 2007.¹⁰ See Prison Industries Act, Act No. 68, 117th Session (June 18, 2007). In relevant part, § 24-1-295 provides as follows:

The Director of [the Department] may enter into contracts with private sector entities that allow inmate labor to be provided for prison industry **service** work and export work that involves exportation of products. The

⁹ The types of projects operated by the Department in *Adkins v. S.C. Dep’t of Corr.*, 602 S.E.2d 51 (S.C. 2004) and *Wicker v. S.C. Dep’t of Corr.*, 602 S.E.2d 56 (S.C. 2004) differed from the service project operated by the Department at Lieber, and, therefore, the budget proviso discussed above did not and does not apply to the hourly rates of pay associated with these projects.

¹⁰ The Department respectfully submits copies of the budget provisos enacted from 2001 to 2007 as the sole exhibit in support of its instant brief.

use of inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. Pursuant to this section, **service** work is defined as any work that includes repair, replacement of original manufactured items, packaging, sorting, recycling, labeling, or similar work that **is not** original equipment manufacturing. The department may negotiate the wage to be paid for inmate labor provided under prison industry **service** work contracts and export work contracts, **and these wages may be less than the prevailing wage for work of a similar nature in the private sector.** [emphasis supplied].

“The cardinal rule of statutory construction is for the Court to ascertain and effectuate the intent of the legislature.” *Wade v. Berkeley Cnty.*, 559 S.E.2d 586, 588 (S.C. 2002). The first question a court must consider is whether the statute’s meaning is “clear on its face.” *Id.* “If a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.” *Id.* (quoting *Paschal v. State Election Comm’n*, 454 S.E.2d 890, 892 (S.C. 1995)). See also *Ward v. West Oil Co., Inc.*, 692 S.E.2d 516, 519 (S.C. 2010) (same). “The text of the statute is considered the best evidence of the legislative intent.” *Wigfall v. Tideland Utilities, Inc.*, 580 S.E.2d 100, 105 (S.C. 2003). If a statute’s language is ambiguous, the court must construe the terms of the statute. *Wade*, 559 S.E.2d at 588. Furthermore, “the court should not consider the particular clause being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law.” *State v. Prince*, 517 S.E.2d 229, 232 (S.C. Ct. App. 1999).

The language of the applicable budget provisos, which the General Assembly ultimately codified in § 24-1-295, is clear and unambiguous: the Department may “negotiate the wage to be paid for inmate labor under prison industry **service** work contracts... and these wages may be less than the prevailing wage.” [emphasis supplied]. The Appellant does not dispute this clear and unambiguous language.

Absolutely nothing in either the budget provisos or § 24-1-295 mandate any specific wage or wage range that the Department must pay inmates, including the Appellant, who voluntarily participate in prison industries *service* projects, such as the project operated at Lieber.

The General Assembly set neither a floor nor a ceiling for the hourly inmate labor rate that the Department may negotiate with the private industry sponsor in all such prison industry *service* work contracts. As shown further below, the hourly rate of pay that the Department pays individual inmates for the labor they voluntarily provide to such service projects *was included* in the hourly inmate labor rate that the Department negotiated with WTI in the 1998 contract.

Consequently, the Appellant's claim that the budget provisos and/or the provisions of § 24-1-295 required the Department to pay him \$4.00 per hour for the labor he voluntarily provided to the service project operated at Lieber is completely unsupported by the clear and unambiguous text of the budget provisos and § 24-1-295. Stated plainly, just because the hourly inmate labor rate that the Department charged WTI for effectively 'leasing the inmates' labor equaled \$4.00, which is less than the rather purported "prevailing wage" of between \$8.40 and \$12.06 that the Appellant and his cohorts outlandishly claimed in their Step 1 grievances, does not mean that the Department was required to pay the individual inmates who voluntarily participated in the service project at Lieber at the rate of \$4.00 per hour.

B. THE CONTRACT'S TERMS DEFEAT THE APPELLANT'S ASSERTION THAT HE WAS ENTITLED TO THE SO-CALLED "NEGOTIATED WAGE" OF \$4.00 PER HOUR

In addition to the budget proviso and § 24-1-295, the Appellant relies upon the 1998 contract between WTI and the Department, [hereinafter "the Contract"] to support his claim that he was entitled to the so-called "negotiated wage" of \$4.00 per hour during the entire time he voluntarily participated in the prison industries service project at Lieber.

However, the Department respectfully submits that the clear and unambiguous terms of the Contract defeat the Appellant's assertion that he was entitled to the so-called "negotiated wage" of \$4.00 for his labor.

1. **The Parties to the 1998 Contract**

On or about September 30, 1998, the Department entered into a 10-year contract with WTI to establish the prison industries service project at Lieber. (Ackerman 5-6-11, pp. 359 – 74). The Contract clearly identifies the parties as follows (Ackerman 5-6-11, p. 360):

THE AGREEMENT is entered into this 30th day of September, 1998 , by and between the **South Carolina Department of Corrections** (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and **Williams Technologies, Inc.**, (hereinafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman. [emphasis supplied].

2. **The Purpose of the 1998 Contract**

The Contract's purpose was "to fulfill the intent of Section 24-3-310.¹¹" (Ackerman 5-6-11, p. 360). Section 24-3-310, entitled "Declaration of Intent," provides as follows:

Since the means now provided for the employment of convict labor is inadequate to furnish a sufficient number of convicts with employment it is the intent of this article to:

- (1) further provide more adequate, regular, and suitable employment for the convicts of this State; consistent with proper penal purposes;
- (2) further utilize the labor of convicts for self-maintenance and for reimbursing this State for expenses incurred by reason of their crimes and imprisonment;
- (3) effect the requisitioning and disbursement of prison products directly through established state authorities with no possibility of private profits therefrom; and

¹¹ The General Assembly amended § 24-3-310 effective June 11, 2010. The amendment appears only to have substituted the term "convict" with the term "inmate." See Local Detention Facility Mutual Aid and Assistance Act, Act No. 237 (2010).

(4) provide prison industry projects designed to place inmates in a realistic working and training environment in which they are able to acquire marketable skills and to make financial payments for restitution to their victims, for support of their families, and for the support of themselves in the institution.

3. The Contract's "Bullet Sheet"

Along with the Contract itself, the Record reflects a "bullet sheet" which summarizes the Contract's key points.¹² Entitled "Williams Technology Transmissions Service Contract" (Ackerman 5-6-11, p. 359), it states the following "Wage Rate:" "\$4.00 per hour/per inmate - \$.35/hr base for inmates."

Thus, this "bullet sheet," combined with Subsection 6 of Section 3.1 of the Contract (Ackerman 5-6-11, p. 364), clearly reflects that the Department invoiced WTI at the rate of \$4.00 per inmate labor hour and, critically, that the Department paid the inmates who voluntarily participated in the service project at Lieber at the base rate of \$0.35 per hour. Again, absolutely nothing in the budget provisos or in § 24-1-295 prohibited the Department from negotiating these terms with WTI regarding the operation of the service project at Lieber.

4. Section 3.2 of the Contract

Section 3.2 is entitled "Duties of SCDC," and, in relevant part, Section 3.2 provides as follows (Ackerman 5-6-11, p. 364):

1. Inmate Laborers: [The Department] will use its best efforts to provide a stable and available work force of inmates, which shall fulfill [WTI's] reasonable manpower requests.
2. Screening of Potential Inmate Laborers: Subject to Section 3.1,¹³ [the Department] will pre-screen, interview and select inmates according to the job descriptions submitted, which shall specify performance criteria for each job.

...

¹² The term "bullet sheet" appears in the bottom left corner of the document. (Ackerman 5-6-11, p. 359).

¹³ Section 3.1 sets forth WTI's duties with respect to the Contract. (Ackerman 5-6-11, pp. 363 – 64).

4. Security: **At its expense**, the Department shall be responsible for the security of the inmate labor force and the security of [WTI's] employees and agents.

5. Training of [WTI's] Staff: [The Department] shall train [WTI's] civilian staff in institutional operational matters.

6. Management and Supervision: SCDC will provide management and supervision of the inmates for all phases of the work. [emphasis supplied].

5. Section 3.3 of the Contract

Section 3.3 is entitled "Mutual Duties of the Parties," and, in relevant part, it provides as follows (Ackerman 5-6-11, p. 365):

1. Payment for Services: [WTI] agrees to pay [the Department] **\$4.00 per hour per inmate** for work performed including training hours and hours in excess of the inmate's normal shift. **[The Department] shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction.** No compensation will be paid for time not worked.

Thirty (30) days prior to each anniversary date of this agreement, [the Department] and [WTI] may negotiate an increase in the per hour rate paid by [WTI] to [the Department]. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. **It is the intent of the parties that such increase shall only reflect [the Department's] increased cost of prison overhead.**

[WTI] and [the Department] may mutually agree upon a bonus plan for inmates based on productivity and quality control, such bonuses will be paid in its entirety by [WTI] to [the Department] for distribution to inmates. [emphasis supplied].

Thus, Section 3.3 clearly and unequivocally confirms that the Department invoiced WTI at the rate of \$4.00 per inmate labor hour and that, out of the \$4.00 per inmate labor hour rate at which it invoiced WTI, the Department was obligated to pay not only the hourly wages of the inmates who voluntarily participated in the project but also security costs and overhead, which included any costs associated with the health, safety and welfare of the inmates who voluntarily

participated in the project. Out of the \$4.00 per inmate labor hour at which the Department invoiced WTI, the Department was also obligated to cover any taxes or other payroll deductions associated with the inmates' labor.

Again, absolutely nothing in the budget provisos or in § 24-1-295 prohibited the Department from negotiating these terms with WTI regarding the operation of the service project at Lieber. Section 3.3 clearly demonstrates, again, that just because the hourly inmate labor rate that the Department charged WTI for effectively leasing the inmates' labor equaled \$4.00, which is less than the rather purported "prevailing wage" of between \$8.40 and \$12.06 that the Appellant and his cohorts outlandishly claimed in their Step 1 grievances, does not mean that the Department was required to pay the individual inmates who voluntarily participated in the service project at Lieber at the rate of \$4.00 per hour.

C. THE APPELLANT LACKS STANDING TO PETITION THE COURT TO INTERPRET OR ENFORCE THE CONTRACT BETWEEN WTI AND THE DEPARTMENT, BECAUSE THE APPELLANT WAS NEITHER A PARTY TO THE CONTRACT NOR A THIRD PARTY BENEFICIARY OR AN INTENDED BENEFICIARY OF THE CONTRACT

The Department respectfully submits the Appellant was not a party to the Contract and that the only parties to the Contract between WTI and the Department were, rather obviously, WTI and the Department. (Ackerman 5-6-11, p. 360). Furthermore, the Department also respectfully submits that the Appellant is not a third party beneficiary or an intended beneficiary of the Contract.

In South Carolina, persons who are not in privity of contract may not bring an action to enforce the terms of the contract. Rather, only actual parties to the contract and intended third party beneficiaries may bring an action to enforce or interpret the contract. *R.J. Griffin & Co. v. Beach Club II Homeowners Ass'n*, 384 F.3d 157 (4th Cir. 2004); 30 S.C. Jur. Contracts § 68;

17B C.J.S. Contracts § 836. "A third-party beneficiary is a party that the contracting parties intend to directly benefit." *Touchberry v. City of Florence*, 367 S.E.2d 149, 150 (S.C. 1988).

In *Helms Realty, Inc. v. Gibson-Wall Co.*, our Supreme Court considered whether a real estate broker was an intended third party beneficiary to a contract for the sale of real estate between a buyer and seller. 611 S.E.2d 485, 488 (S.C. 2005). Ultimately, the Court held that no evidence existed for the Court to conclude that the buyer and seller (i.e. the parties to the contract) intended for the contract to benefit the broker. Instead, any benefit or commission expected by the broker was "merely incidental" to the sales contract. *Id.*

Similarly, the Court of Appeals in *Windsor Green Owners Ass'n, Inc. v. Allied Signal, Inc.*, determined that a home owners association was not the third party beneficiary to a contract between a condominium owner and the tenant who agreed to pay the owner for any property damaged caused by the tenant, even though the tenant had the right to use the common areas. 605 S.E.2d 750, 754 (S.C. Ct. App. 2004). The court further determined that "under this rationale, a homeowners' association could directly hold a tenant contractually responsible for assessments, association dues, or any other expenses even though the parties did not intend this result by virtue of entering into a rental agreement." *Id.*

As demonstrated by the sections of the Contract examined above, the Appellant was clearly never a party to the Contract between WTI and the Department. (Ackerman 5-6-11, pp. 360 – 71).

Furthermore, like the broker in *Helms* and the homeowners association in *Windsor Green*, the Appellant was not a third party beneficiary or an intended beneficiary to the Contract between the Department and WTI. None of the budget provisos, § 24-1-295, or the Contract were enacted to specifically benefit the Appellant. *See Adkins v. S.C. Dep't of Corr.*, 602 S.E.2d

51, 54 (S.C. 2004) (holding that the prevailing wage statutes were not enacted for the special benefits of inmates) and *Williams v. S.C. Dep't of Corr.*, 641 S.E.2d 885, 888 (S.C. 2007) (citing *Adkins*).

As explained above and revisited below, the Department contracted with WTI to establish and operate a prison industries service project at Lieber to fulfill the intent of § 24-3-310. (Ackerman 5-6-11, pp. 360 and 369). Under the Contract, the Department was required to provide a minimum of 75 inmate laborers, and WTI was required to pay the Department a flat rate of \$4.00 for every hour of labor performed by an inmate. The Department was solely responsible for paying inmates for their labor, paying for overhead, taxes, and other expenses from the flat rate of \$4.00 per inmate labor hour remitted by WTI. (Ackerman 5-6-11, pp. 363 – 64). See *Williams*, 641 S.E.2d at 887 (“Clearly, by contract and by statute, [the Department] is the only entity responsible for the payment of inmate wages.”).¹⁴ Moreover, the Appellant was not incarcerated within the Department until on or about December 31, 2002, over four years after the Department and WTI entered into the Contract.

Consequently, the Appellant was not a party, a third-party beneficiary, or an intended beneficiary to the Contract between the Department and WTI. Thus, the Appellant has no standing by which to petition this Court, through his instant appeal, to interpret the Contract in the manner he advocates or enforce the Contract against the Department in the manner in which he interprets it.

¹⁴ The prison industries service project at issue in *Williams* is the identical project at issue here. For that matter, former inmate Darrell Williams, the lead plaintiff in *Williams*, is one of the inmates whose appeal was consolidated into the *Ackerman* case.

D. EVEN IF THE APPELLANT POSSESSES THE REQUISITE STANDING BY WHICH TO PETITION THIS COURT TO INTERPRET AND ENFORCE THE CONTRACT, THE CLEAR AND UNAMBIGUOUS TERMS OF THE CONTRACT DID NOT REQUIRE THE DEPARTMENT TO PAY THE APPELLANT \$4.00 PER HOUR FOR THE LABOR HE VOLUNTARILY PERFORMED IN THE SERVICE PROJECT OPERATED AT LIEBER

The Department respectfully submits that even if the Appellant possesses the requisite standing by which to petition this Court, through his instant appeal, to interpret and/or enforce the Contract against the Department, the clear and unambiguous terms of the Contract do not require the Department to pay the Appellant \$4.00 per hour for the labor he voluntarily performed in the service project operated at Lieber.

1. Applicable Legal Standard for Interpreting the Contract

“The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language.” *Madden v. Bent Palm Investments, LLC*, 688 S.E.2d 597, 600 (S.C. Ct. App. 2010) (quoting *McGill v. Moore*, 672 S.E.2d 571, 574 (S.C. 2009)). The court “must first look at the language of the contract to determine the intentions of the parties.” *C.A.N. Enterprises, Inc. v. S. Carolina Health & Human Servs. Fin. Comm'n*, 373 S.E.2d 584, 586 (S.C. 1988). The contract must be construed as a whole. *Madden*, 688 S.E.2d at 600. If the contract’s language is unambiguous, the language alone will determine the terms of the contract. If, however, the contract’s language is ambiguous, the court must determine the intention of the parties based on the evidence presented. “A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation.” *Id.* “Once the court decides the language is ambiguous, evidence may be admitted to show the intent

of the parties.¹⁵” *Wallace v. Day*, 700 S.E.2d 446, 449 (S.C. Ct. App. 2010) (quoting *S.C. Dep’t of Natural Res. v. Town of McClellanville*, 550 S.E.2d 299, 303 (S.C.2001)).

“Common sense and good faith are the leading touchstones of construction of the provisions of a contract; where one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language employed, would make it reasonable, fair and just, the latter construction must prevail.” *C.A.N. Enterprises, Inc.*, 373 S.E.2d at 586 (citing *Farr v. Duke Power Co.*, 218 S.E.2d 431, 434 (S.C. 1975)).

2. Application of the Applicable Legal Standard to the Contract

As reflected above, the clear and unambiguous terms of Section 3.2 of the Contract require the Department to screen potential inmates, to provide security for the inmates and WTI employees, to train WTI’s staff, and to provide management and supervision of the inmates for all phases of work. (Ackerman 5-6-11, pp. 364 – 65).

Section 3.3, subsection 1 of the Contract, which is entitled “Payment for Services,” is also clear and unambiguous. (Ackerman 5-6-11, p. 365). Specifically, this section required WTI to pay the Department a flat rate of \$4.00 per inmate labor hour, from which the Department was required to pay the inmates voluntarily participating in the project, *as well as* cover security costs, cover the Department’s overhead attributable to prison industries, including applicable taxes and payroll deductions, and cover the costs associated with the health, welfare and safety of the inmates participating in the project.

Thus, the contract is clear that WTI pays the Department \$4.00 per inmate labor hour to cover *all* expenses associated with operating the service project at Lieber, including the inmates’ hourly rate of pay. Absolutely no provision of the Contract states, implies, or otherwise suggests

¹⁵ Again, the Appellant was not a party to the contract between WTI and the Department. Consequently, the Appellant cannot produce any evidence of the intent of the “parties.”

that WTI and the Department agreed that the Department would pay inmates at the rate of \$4.00 per hour. Accordingly, the Contract language is clear, and this Court may not infer another meaning from the language in the Contract. *Madden*, 688 S.E.2d at 600.

Moreover, common sense dictates that the Department would not have, in light of the overhead expenses identified in Subsection 1 of Section 3.3 the Contract, entered into a contract with WTI by which it would invoice WTI at a flat rate of \$4.00 per inmate labor hour and then have to pay the inmates who voluntarily performed labor in the service project at the rate of \$4.00 per hour. By doing so, the Department would have sacrificed the means by which it would be able to cover the various costs associated with operating the service project at Lieber identified in Subsection 1 of Section 3.3.

Likewise, common sense dictates that the Department would not have entered into a contract with WTI without an expectation that it would receive reimbursement for its overhead expenses. *See C.A.N. Enterprises, Inc.*, 373 S.E.2d at 586. Subsection 1 of Section 3.3 of the Contract clearly explains that the \$4.00 per inmate labor hour rate WTI pays to the Department encompasses payment for the Department's overhead. Specifically, Subsection 1 describes the circumstances under which the Department and WTI may agree to increase the \$4.00 per inmate labor hour rate paid by WTI to the Department. Again, the relevant provision provides as follows:

Thirty (30) days prior to each anniversary date of this agreement, [the Department] and [WTI] may negotiate an increase in the per hour rate paid by [WTI] to [the Department]. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. ~~It is the intent of the parties that such increase shall only reflect [the Department's] increased cost of prison overhead.~~ [emphasis supplied].

The clear and unambiguous language of this provision states that any agreed upon increase in the \$4.00 per inmate labor hour rate will “only reflect [the Department’s] increased cost of prison overhead.”

Thus, by these terms, the \$4.00 per inmate labor hour rate is the amount that WTI pays to the Department and is meant to offset the Department’s overhead costs, and any agreed upon increase in the hourly inmate labor rate would reflect an increase in the Department’s overhead costs and would not benefit the inmates participating in the project. Again, absolutely no provision or language in the Contract reflects that the \$4.00 per hour rate was the rate at which the Department and WTI agreed that the Department would pay the inmates participating in the project, including the Appellant, for their labor.

In addition, Subsection 1 of Section 3.3 also states that WTI and the Department may agree upon “a bonus plan” for inmates, and the particulars of such a plan are reflected in the WTI “Bonus Pay/Programs” materials which appear in the Record. (Ackerman 5-6-11, pp. 372 – 75). The example provided in these materials expressly states that the “Base Rate” for inmate pay was “\$.35” per hour and not the \$4.00 per hour rate asserted by the Appellant in his administrative grievance and in the brief he filed with this Court. (Ackerman 5-6-11, p. 373).

Furthermore, the sample pay card included within these materials clearly defines the \$0.35 per hour “base rate” paid to an inmate participating in the project as follows (Ackerman 5-6-11, p. 374):

[\$0.35 per hour] is the minimum rate that you will ever receive. Your base rate can only go up if you receive longevity increases.

Obviously, this language is consistent with the language from the “bullet sheet,”¹⁶ which provided that the applicable wage rate is “\$4.00 per hour/per inmate - \$.35/hr base for inmates.” (Ackerman 5-6-11, p. 359).

The Contract’s provisions clearly, unambiguously, and repeatedly state that the inmates’ “base pay” rate is \$0.35 per hour and not \$4.00 per hour. Under the Contract, the Department would pay inmates a minimum of \$0.35 per hour, subject to potential longevity pay increases or “bonus pay.” The Department, therefore, paid a “base pay” rate of \$0.35 per hour to inmates who participate in the service project at Lieber, and the \$0.35 per hour paid to the inmate by the Department comes out of the \$4.00 per inmate labor hour that WTI remits to the Department under the terms of the Contract. (Ackerman 5-6-11, pp. 359, 373 – 75).

Even if its terms were somehow ambiguous, this Court must look to the Contract to determine the intent of the parties (i.e. WTI and the Department and not the Appellant). As explained above, the parties’ intent, under Subsection 1 of Section 3.3. was that the \$4.00 flat inmate labor hour rate at which WTI paid to the Department encompasses the hourly rate at which the Department would pay the inmates for their labor (i.e. the “base rate” discussed above), *as well as* security costs, the Department’s prison industries overhead, including any costs associated with the health, welfare and safety of the inmates participating in the project, applicable taxes and payroll deductions. (Ackerman 5-16-11 365). Absolutely no evidence exists to suggest any other intent of the parties related to the rate of pay for the inmates, including the Appellant, who participated in the prison industries project.

Therefore, the Department respectfully urges this Court to reject the Appellant’s assertion that he was entitled to a \$4.00 per hour wage rate for the labor he voluntarily provided to the prison industries service project operated at Lieber based upon the budget provisos enacted

¹⁶ See note 12 above.

beginning in 2001, the subsequent enactment of § 24-1-295, and the 1998 contract struck between the Department and WTI.

II. SCDC RESPECTFULLY SUBMITS THAT IT IS PREMATURE TO DETERMINE WHETHER THE APPELLANT IS ENTITLED TO OVERTIME

Any determination by this Court as to whether the Appellant was entitled to any overtime pay is not yet ripe for adjudication, and, as respectfully submitted by the Department, it will not be ripe for adjudication until this Court resolves the first issue on appeal.

As explained above, the rate the Department was required to pay the Appellant was not \$4.00 per hour. As also explained above and as reflected in a March 12, 2002 memorandum from the project's Plant Manager to all inmates participating in the project, the subject of which was designated as "Longevity Pay Scales," the Department agreed to pay inmates a minimum "base rate" of \$0.35 per hour, subject to longevity pay increases and bonus pay in certain circumstances. (Ackerman 5-16-11 375). This same memorandum also stated as follows:

You are further advised that the MAXIMUM pay allowance is \$1.00/hr, regardless of your longevity status. In addition to the above, your overtime pay is applied at a rate of {[Base Rate]+[1/2 Base Rate]} only. Your [Bonus Rate] pay will not be applied to your overtime hours.

Thus, it appears from this memorandum and provisions within the Contract that inmates could perform overtime labor. (Ackerman 5-16-11 363). However, the only pay records for the Appellant which currently appear in the Record consist of a spreadsheet print-out, and the only columns of data included on the print-out are columns designated "Pay Date," "Pay Rate," "Hours, and "Pay Amount." (Ackerman 5-16-11 123 – 125). For every "Pay Date" increment reflected on the print-out, a "Pay Rate" of \$0.50 per labor hour appears.

No clarifying data appears within the column labeled "Pay Rate" which would indicate whether the \$0.50 figure represents the Appellant's "base rate" or his "base rate" plus a bonus

rate and/or overtime rate. Thus, it appears that the Department paid the Appellant an hourly rate which exceeded the "base rate" of \$0.35 per hour for every hour of labor he performed, and the Appellant has not, at any point in this litigation, argued that the Department failed to pay him for any labor he performed. Consequently, even if the court were to find that the Appellant was not properly paid for his overtime hours, the Appellant would be owed the half-time rate for only the labor hours he performed in excess of a forty-hour workweek.

Furthermore, the "Pay Date" increments which appear on the print-out occur every two (2) weeks, and, therefore, it appears that the number of labor hours which appear in the column designated as "Hours" reflect the aggregate number of labor hours performed by the Appellant during a two-week pay period. (Ackerman 5-16-11 123 – 125).

Accordingly, the Department respectfully submits that the parties and the Court cannot determine the amount of labor hours performed by the Appellant during a single work week when the column designated as "Hours" reflects a cumulative total of the labor hours the Appellant performed over a two-week period.

In light of these realities, the Department respectfully submits that, once the Court rules on the first issue presented by the Appellant in his brief, the Court will likely have to remand this matter back to the Department so that the Department, to the extent possible, may supplement the record with documents which accurately reflect the number of hours the Appellant worked during each work week, the "base rate" at which the Department paid the Appellant for the labor he performed, and whether the Appellant's "Pay Rate" included any bonus or overtime pay.

III. THE APPELLANT'S PURPORTED ENTITLEMENT TO PRE-JUDGMENT AND/OR AND POST-JUDGMENT INTEREST ON ANY BACK PAY IS NOT YET RIPE FOR ADJUDICATION

Any determination by this Court as to whether the Appellant is entitled to pre-judgment and/or and post-judgment interest on any back pay is not yet ripe for adjudication, and, as respectfully submitted by the Department, it will not be ripe for adjudication *unless and until* this Court resolves the first issue on appeal in the Appellant's favor.

To the extent necessary, the Department respectfully submits, in order to preserve its position regarding this issue, that the Appellant is not entitled, under any applicable statute, precedent, or theory, to any pre-judgment and/or and post-judgment interest on any back pay that he may receive as a result of his appeal. *See Future Grp., II v. Nationsbank*, 478 S.E.2d 45, 51 (S.C. 1996).

IV. THE APPELLANT'S PURPORTED ENTITLEMENT TO COSTS AND ATTORNEYS FEES IS NOT YET RIPE FOR ADJUDICATION

Any determination by this Court as to whether the Appellant is entitled to costs and attorneys fees is not yet ripe for adjudication, and, as respectfully submitted by the Department, it will not be ripe for adjudication *unless and until* this Court resolves the first issue on appeal in the Appellant's favor.

However, to the extent necessary, the Department respectfully submits, in order to preserve its position regarding this issue, that the Appellant is not entitled, under any applicable statute, precedent, or theory, to any costs and attorneys fees attributable to his prosecution of his instant appeal. *See Layman v. State*, 658 S.E.2d 320, 331 (S.C. 2008).

V. THIS COURT SHOULD NOT CONSIDER WHETHER THE DEPARTMENT SHOULD "BE ORDERED TO PROCESS GRIEVANCE[S] FOR ALL WORKERS IN THE PROGRAM WHETHER OR NOT THEY PERSONALLY FILED A GRIEVANCE"

In his brief, the Appellant argued as follows in support of his fifth issue on appeal:¹⁷

[The Appellant] respectfully requests an order for [the Department] to process [grievances] for all workers in the program whether or not they personally filed. [The Appellant's] October 2004 grievance was filed individually and on behalf of all persons who worked in the program (R, 1970). Further, [the Department's] final decision for [the Appellant] discussed and denied his request for "class" grievance treatment of his grievance (R, 1984). **"Class" treatment is not provided for in the ALC rules.**¹⁸ However, [the Appellant] submits it is needed for this case, and resort to SCRCP 23 would be appropriate to resolve this matter for all inmates under ALC Rule 68. [emphasis supplied].

This Court should not consider whether the Department "should be ordered to process [grievances] for all [inmates who voluntarily participate in the prison industries service project at Lieber] whether or not they personally filed a grievance," because, contrary to the Appellant's assertion,¹⁹ this issue is not at all within the scope of the Court's "Level Three" phase review of his instant appeal.

¹⁷ See the Appellant's Brief, pp. 11 – 12.

¹⁸ The Department's undersigned counsel respectfully submits that current and former inmates who participated and continue to participate in the prison industries service project at Lieber have, largely through the efforts of the Appellant's counsel, engaged in continuous litigation for over a decade with the Department, largely through its undersigned counsel, concerning the issues at the heart of the Appellant's instant appeal as well as *Ackerman*. The parties originally began litigation over these issues in the class action originally filed in late 2002 or early 2003 by the Appellant's counsel in circuit court and styled as *Darrell Williams, et al. v. S.C. Dep't of Corr.* Our Supreme Court ultimately affirmed the circuit court's decision to dismiss the class action suit filed by the Appellant's counsel at summary judgment by its opinion in *Williams*. See note 14 above. The various courts of our state have, on several occasions, rejected efforts by the Appellant's counsel to bestow, under the provisions of South Carolina Rule of Civil Procedure 23, "class grievance" status the administrative grievance originally filed by former inmate Darrell Williams. In fact, this Court, rather than declaring that the administrative grievance filed by the Appellant's counsel on behalf of former inmate Darrell Williams constituted a "class grievance" under SCRCP 23, instead consolidated the appeals filed by the Appellant's counsel on behalf of Mr. Williams, the Appellant, and approximately 198 other current and former inmates into the matter styled as *Ackerman*. Thus, the argument offered by Appellant's counsel in support of the fifth issue on appeal presented in the Appellant's brief represents only the latest effort to have this Court or, for that matter, any court grant him relief under SCRCP 23.

¹⁹ *Id.*, p. 1, footnote designated by a single asterisk.

Administrative Law Court ["ALC"] Rule of Procedure 59 required the Appellant to file a Notice of Appeal by which he challenged the Department's denial of his Step 2 appeal, a denial which constituted the Department's final decision regarding the prison industries pay claims the Appellant articulated in his Step 1 grievance, his Step 2 appeal, and all allied filings.

The Appellant's Notice of Appeal, dated May 30, 2007 and bearing the signature of Appellant's counsel (Ackerman 5-6-11, p. 1985), identified the following eight (8) grounds associated with the Appellant's instant appeal:

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy § 13.9.
2. Appellant had reasonable cause under § 13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying § 13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked [overtime] he is entitled to it under SCDC policy.
8. Appellant claims pre/post judgment interest, costs and attorney fees.

Despite acknowledging that the Department, in the final decision by which it denied his Step 2 appeal, rejected "his request for 'class' grievance treatment of his grievance," the Appellant did not identify the denial of his request for such treatment, and his associated invocation of SCRCF 23, as one of the eight (8) issues presented in his May 30, 2007 Notice of Appeal to this Court. For that matter, the Appellant did not the fifth issue on appeal presented in his brief in any of the filings submitted to this Court during the litigation of *Ackerman*.

Accordingly, this Court should not consider the fifth issue on appeal presented in the Appellant's brief, and it should strike this issue from consideration in any further litigation associated with the instant appeal.

VI. THIS COURT SHOULD NOT CONSIDER WHETHER THE DEPARTMENT "SHOULD BE ENJOINED FROM FURTHER WAGE VIOLATIONS"

This Court should not consider whether the Department "should be enjoined from further wage violations," because, contrary to the Appellant's assertion,²⁰ this issue is not at all within the scope of the Court's "Level Three" phase review of his instant appeal.

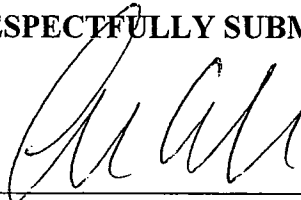
Moreover, the Appellant did not, as required by ALC Rule of Procedure 59, identify this issue as one of the issues on appeal within his May 30, 2007 Notice of Appeal to this Court or in any of the filings submitted to this Court during the litigation of *Ackerman*. (Ackerman 5-16-11 1985).

Finally, no decision by this Court in either the Appellant's instant appeal or in *Ackerman* articulated a finding of fact or conclusion of law that the Department has committed any so-called "wage violations."

Accordingly, this Court should not consider the sixth issue on appeal presented in the Appellant's brief, and it should strike this issue from consideration in any further litigation associated with the instant appeal.

²⁰ *Id.*, p. 1, footnote designated by a single asterisk.

RESPECTFULLY SUBMITTED,



Lake E. Summers

Katherine A. Phillips

Malone, Thompson, Summers & Ott LLC

339 Heyward Street, Suite 200

Columbia, South Carolina 29201

Office: (803) 254-3300

Fax: (803) 254-0309

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

Counsel for the Department

Columbia, South Carolina
April 7, 2014

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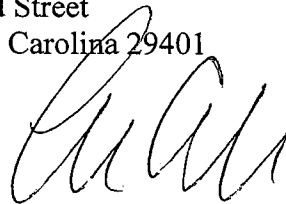
**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

Fred Gatewood, # 289775,	)	Docket No. 07-ALJ-04-0517-AP
	)	
Appellant,	)	
	)	
vs.	)	THE RESPONDENT'S BRIEF
	)	
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	<u>CERTIFICATE OF SERVICE</u>

I certify that I have served a copy of **THE RESPONDENT'S BRIEF** in the above-captioned matter on the Appellant by mailing a copy of it to his counsel, first class postage pre-paid, at the following address:

Douglas H. Westbrook, Esquire
Attorney at Law
23 Broad Street
Charleston, South Carolina 29401



April 7, 2014

Lake E. Summers

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STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Fred Gatewood, #289775,)
)
 Appellant,)
)
vs.)
)
South Carolina Department)
of Corrections,)
)
 Respondent.)

)

Dock. No. 07-ALJ-04-00517-AP

REPLY BRIEF OF APPELLANT

Appellant Fred Gatewood respectfully submits his reply brief for the Level Three stage of this appeal.

STATEMENT OF THE CASE

SCDC states Gatewood, in his step 1 grievance, asserted that under §24-3-430, the proper hourly rate of pay for his labor ranged between \$8.40 and \$12.06 per hour (SCDC brief, 4). Gatewood's step 1 and Amendment were forms drafted by undersigned counsel to cover all inmates' work from 1999 to "present". Both forms clearly state the "prevailing wage" was required to be paid for work performed from 1999 to July 2001, and since July 2001, the "negotiated wage" of \$4.00 per hour (R, 1970, 1974). Moreover, Gatewood's initial brief states he began work in October 2004 and is entitled to the \$4.00 per hour negotiated wage rate under the budget proviso (Gatewood initial brief, 2, n. 1, 4-7).

SCDC states Gatewood lacks a fundamental understanding of the origins of the budget proviso and other aspects of the proviso (SCDC brief, 5). Gatewood respectfully contends these comments are argumentative, do not concern "a concise history of the proceedings", and should be disregarded (ALC Rule 60B(2)).

ARGUMENT

1. Gatewood was entitled to a \$4.00 per hour wage rate for his labor based on the 2001 budget proviso and succeeding enactments allowing SCDC to negotiate the wage to be paid for inmate labor, and the 1998 service work contract between SCDC and Williams Technologies in which Williams agreed to pay SCDC \$4.00 per hour per inmate for work performed.

SCDC contends that nothing in the budget provisos or S.C. Code §24-1-295 mandates a specific wage or wage range that SCDC must pay Gatewood (SCDC brief, 8). The budget proviso (Statutes at Large, No. 66, §37.31, eff. July 2001) allowed SCDC to:

..negotiate the **wage** to be paid for inmate **labor** provided under prison industry service work contracts, and such **wages** may be less than the prevailing wage for work of a similar nature in the private sector.

Substantially the same language is found in §24-1-295.

First, it is the inmate "wage" that is negotiated, not wages plus overhead. Second, that wage is "paid" for the inmate's "labor", not labor plus overhead. These realities were acknowledged in Williams, et al. v. SCDC, et al. 641 S.E. 2d 885, 886, n. 2 (S.C., 2007), where the Supreme Court stated:

Inmates concede that DOC was authorized to negotiate **wages** for inmate **labor** at less than the prevailing wage pursuant to budget provisos passed by the General Assembly for fiscal years 2001-2002 and 2002-2003. There are similar provisions in each budget passed to the present.

Third, SCDC contends the proviso and §24-1-295 are clear and unambiguous (SCDC brief, 7), and Gatewood does not take issue with that. "If a statute's language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning" (Wicker v. SCDC 602 S.E. 2d 56, 58 (S.C., 2004), quoting Hodges v. Rainey 341 S.C. 79, 85, 533 S.E. 2d 578, 581 (S.C., 2000)).

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Gatewood submits that, while these provisions did not mandate a specific wage amount, they did mandate SCDC could negotiate with private industry the inmate wage SCDC was to pay for labor in a service work program.

SCDC contends that just because the "hourly inmate labor rate" it charged WTI for "effectively leasing" inmates' labor equaled \$4.00, does not mean it was required to pay inmates that rate (SCDC brief, 8). Gatewood respectfully disagrees. The prevailing wage statute, §24-3-430, applies to service work programs like the one here, and allowed SCDC to enter into contracts to implement the program (§24-3-430(A)(B)). Moreover, the earnings of an inmate working in paid employment under §24-3-430 must be paid directly to SCDC and applied as provided in §24-3-40 (§24-3-430(H)).

In 1998, SCDC contracted with WTI to set up this service work program (R, 371). Section 3.1.6 of the contract states in relevant part (R, 364):

6. Payment for Inmate Services: SCDC will invoice Williams on a bimonthly basis for inmate **labor**.

A key provision is §3.3.1 which provides in part (R, 365):

1. Payment for Services: Williams agrees to pay SCDC **\$4.00** per hour per inmate for **work performed** including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction..

From the above provisions of the contract, it seems apparent that the \$4.00 per hour payment by WTI was for "labor" or "work performed". SCDC was responsible to pay, in addition to inmate wages, security, overhead, health, safety and welfare of inmates, taxes and other payroll deductions. However, expenses for security, overhead, and health, safety and welfare are not allowable deductions from an in-

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mate's gross wages under §24-3-40. However, SCDC is clearly responsible for making these payments. The contract is also clear that SCDC is responsible, "at its expense", for security of inmates and WTI personnel (§3.2.4 of contract; R, 364). The parties had the option to pass through utility costs to WTI or allow WTI to install its own meters, and the cost of SCDC supervisors was to be passed through to WTI (§§2.2.2, 2.2.4; R, 362-363).

In Torrence, et al. v. SCDC, et al. 646 S.E. 2d 866, 867 (S.C., 2007), inmates alleged (1) SCDC's prison industries partner, Insilco, paid SCDC \$7.17 per hour for their labor but SCDC paid inmates only \$5.25 per hour; and (2) SCDC improperly diverted \$1.92 from the \$7.17 and deposited it into an SCDC "surplus fund". Inmates sought a declaratory judgment against SCDC for violating §24-3-430 and §24-3-40.

The Supreme Court cited §24-3-430(H) and discussed the statutorily required disposition of prisoner wages in §24-3-40(A)(1)(3)(4)(5)(6) covering victim restitution, child support, inmate purchases, money held for inmates' benefit, and taxes (646 S.E. 2d at 868-869). At 646 S.E. 2d 870, n. 4, the Court stated:

Furthermore, if appellants prove true their allegation that the DOC removes any of the money remitted by the private industry sponsor and then disburses the percentages listed in section 24-3-40 based on the **lower** (emphasis in original) rate, the DOC would be in violation of the plain language of the statute which directs it to disburse money based on the **gross wages**. See §24-3-40(A).

Earlier, the Court had noted in its opinion upholding dismissal of inmates' class action in these proceedings (Williams, et al. v. SCDC, et al. 641 S.E. 2d 885, 887 (S.C., 2007)):

The contract provides that WTI will pay DOC a flat rate of \$4.00 per hour per inmate and the DOC is responsible to pay inmate workers and handle payroll deductions. Of even greater significance is the fact that the legislature has specifically mandated how inmate wages

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for prison industry labor are to be handled. Section 24-3-40 (Supp. 2005) provides:

Disposition of wages of prisoner allowed to work at paid employment. (emphasis in original)

(A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment..in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections. (emphasis in original)

This section also includes specific deductions from inmate wages that are to be made by the Director of DOC, including restitution to victims, payment to the State Office of Victim Assistance, child support, and state and federal taxes..

Here, statutes allowed SCDC to contract with WTI to set up the work program, and mandated how inmate wages were to be paid to SCDC and disbursed (§24-3-430 (A)(B)(H), §24-3-40). SCDC contracted with WTI to pay SCDC \$4.00 per hour per inmate for "labor" and "work performed" (R, 364-365). Effective July 1, 2001, the budget proviso allowed SCDC to "negotiate the wage to be paid for inmate labor". Per the 1998 contract, that wage was \$4.00 per hour. Gatewood submits the \$4.00 per hour negotiated wage was the gross wage required to be paid to him as of July 1, 2001. And further, only those statutory deductions specified in §24-3-40 were allowed to be taken out from Gatewood's gross wages of \$4.00 per hour (Torrence).

SCDC contends the bullet sheet preceding the contract (R, 359) combined with subsection 6 of §3.1 of the contract (R, 364), reflects that SCDC invoiced WTI at \$4.00 per hour and paid inmates a \$.35 per hour base rate (SCDC brief, 10). Gatewood contends the bullet sheet entry of "Wage rate: \$4.00 per hour/per inmate" (R, 359) supports Gatewood's contention that \$4.00 per hour is the negotiated wage rate allowed in the budget proviso after July 1, 2001. Moreover, subsection 6

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of §3.1 states in part, "SCDC will invoice Williams on a bimonthly basis for inmate **labor**" (R, 364), which Gatewood contends further supports his contention.

SCDC notes that in §3.2 of the contract, SCDC is to pay for security "at its expense" (SCDC brief, 11). SCDC then takes the seemingly contradictory position that security costs and other matters were to come out of the \$4.00 per hour invoiced rate (SCDC brief, 11).

SCDC contends §3.3 of the contract confirms that SCDC invoiced WTI at the rate of \$4.00 per inmate labor hour and that, out of the \$4.00, SCDC was "obligated" to pay hourly wages of inmates, and security costs and overhead, which included costs for health, safety and welfare of inmates, taxes and other payroll deductions (SCDC brief, 11-12). Gatewood contends taking out any of these expenses not listed in §24-3-40 violated that statute and Torrence.

SCDC contends Gatewood lacks standing to ask the Court to interpret or enforce the contract between SCDC and WTI because Gatewood was not a party to the contract or a third party or intended beneficiary of the contract (SCDC brief, 12). Gatewood's primary contention is this is not a contract enforcement action, but an appeal of SCDC's denial of his wage grievance from 2004.

Standing is a "party's right to make a legal claim or seek judicial enforcement of a duty or right" (Black's Law Dictionary, 9th edition, p. 1536). In Adkins, et al. v. SCDC 602 S.E. 2d 51, 55 (S.C., 2004), the Supreme Court held that, while inmates had no private civil cause of action, they could "file an inmate grievance to protest DOC's failure to pay wages in accordance with the mandatory statutory provisions". Wicker v. SCDC 602 S.E. 2d 56, 58, n. 1 (S.C., 2004) held that SCDC's "failure to pay in accordance with the statutes is reviewable by the ALJ".

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Gatewood contends Adkins and Wicker provide all the standing needed to make this claim. Further, because the purpose of the grievance is to protest SCDC's failure to pay wages in accord with the mandatory statutes, that brings into question the negotiated wage of \$4.00 per hour permitted in the proviso and §24-1-295, and also the 1998 contract wherein the \$4.00 wage rate was negotiated.

SCDC contends that even if Gatewood has standing, the contract terms did not require SCDC to pay Gatewood \$4.00 per hour for his labor (SCDC brief, 15). The cardinal rule of contract interpretation is to ascertain and give effect to the parties' intentions as determined by the contract language (Alexander's Land Co., LLC v. M & M & K Corp. 390 S.C. 582, 703 S.E. 2d 207, 215 (S.C., 2010)). If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect (Schulmeyer v. State Farm Fire and Cas. 353 S.C. 491, 579 S.E. 2d 132, 134 (S.C., 2003)). Generally, if the terms of a contract are clear and unambiguous, a court must enforce the contract according to its terms regardless of its wisdom or folly (Southern Atlantic Financial Services, Inc. v. Middleton 356 S.C. 444, 590 S.E. 2d 27, 29 (2003)).

A meaning cannot be given to a contract other than that expressed, hence, words cannot be read into a contract which impart an intent wholly unexpressed when the contract was executed (Park Regency, LLC v. R & D Development of the Carolinas, LLC 402 S.C. 401, 741 S.E. 2d 528, 534 (S.C. App., 2012)). A court is without authority to consider the parties' secret intentions, and thus words cannot be read into a contract to impart an intent unexpressed when the contract was executed (Matsell v. Crowfield Plantation Comm. Serv. Ass'n, Inc. 393 S.C. 65, 710 S.E. 2d 90, 93 (S.C. App., 2011)).

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When a party does not argue that contract provisions are ambiguous, there is no need for the court to look beyond the four corners of the contract to discern the parties' intentions (Sherlock Holmes Pub., Inc. v. City of Columbia 389 S.C. 77, 697 S.E. 2d 619, 622 (S.C. App., 2010)). The parties to a contract may not circumvent the requirements of a statute by redefining its plain and unambiguous terms (Richland Horiz. Prop. Regime Homeowners Assoc., Inc. v. Sky Green Holdings, Inc. 392 S.C. 194, 708 S.E. 2d 225, 227 (S.C. App., 2011)). If a contract provision contravenes an applicable statute, that provision is invalid and the statute prevails (Wilkinson ex rel Wilkinson v. Palmetto State Transp. Co. 371 S.C. 365, 638 S.E. 2d 109, 116 (S.C. App., 2006)).

SCDC contends the terms in §3.3 of the contract are clear and unambiguous, and required WTI to pay SCDC a flat rate of \$4.00 per inmate labor hour, from which SCDC was required to pay inmates, as well as cover security costs, overhead for prison industries, including applicable taxes and payroll deductions, and costs associated with the health, welfare and safety of inmates participating in the project (SCDC brief, 16). Gatewood respectfully disagrees.

Sections 3.1.6 and 3.3.1 are quoted in part at page 3 herein. The first sentence in §3.3.1 clearly states, "Williams agrees to pay SCDC \$4.00 per hour per inmate **for work performed..**" (R, 365). The second sentence states, "**SCDC shall be responsible** to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction.." (Id). SCDC reads into the contract that Williams pays \$4.00 per hour, "from which" SCDC pays inmates, overhead, etc. The clear and unambiguous

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language of the contract states WTI is invoiced and pays for "labor" or "work performed" (§§3.1.6, 3.3.1; R, 364-365), and SCDC is "responsible" for paying security costs and overhead (§§3.2.4, 3.3.1; R, 364-365).

Gatewood contends the clear and unambiguous language should be followed to determine the contract's force and effect, and SCDC's attempt to read into it language that is not expressed should be rejected (Alexander's Land Co., LLC; Schulmeyer; Southern Atlantic Financial Services, Inc.; Park Regency, LLC; Matsell). Gatewood further contends SCDC's interpretation that project overhead and expenses come out of the \$4.00 per hour negotiated wage rate would violate §24-3-40, §24-3-430(H), and Torrence's rule that only deductions in §24-3-40 may be taken out from gross wages, not some reduced rate after funds have been diverted for other purposes. Moreover, even if the second sentence in §3.3.1 of the contract expressly stated as SCDC interprets it, Gatewood contends that sentence would be invalid as violative of §24-3-40 and Torrence and the statute would prevail (Wilkinson ex rel Wilkinson).

SCDC contends common sense dictates it would not have contracted to invoice WTI the flat rate of \$4.00 per inmate labor hour and then have to pay inmates the \$4.00 per hour, thus sacrificing the means to pay costs and overhead (SCDC brief, 17). The parties contend the contract is plain and unambiguous. Thus, Gatewood contends the contract terms should be followed regardless of its wisdom or folly (Southern Atlantic Financial Services, Inc.).

SCDC cites the provision in §3.3.1 that SCDC and WTI can negotiate an increase in the per hour rate paid and the intent of the parties was that such increase should only reflect SCDC's increased cost of prison overhead (SCDC brief, 17).

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By these terms, SCDC contends the \$4.00 rate is the amount WTI pays SCDC "and is meant to offset the Department's overhead costs.." (SCDC brief, 18). Gatewood respectfully refers the Court to the response to this point at pp. 8-9 herein.

SCDC cites the base rate of \$.35 per hour reflected in the record which "comes out" of the \$4.00 per inmate labor hour (SCDC brief, 19). Gatewood notes the \$.35 per hour base rate appears alongside the "\$4.00 per hour/per inmate" entry on the "bullet sheet" (R, 359), but not in the **contract** itself. Judging from its language, the bullet sheet appears to be an SCDC-written memo separate and apart from the contract ("No rent - they own the building"; "Williams will provide one civilian staff and we charge them back") (R, 359).

Again, Gatewood contends that paying Gatewood and others a \$.35 rate after non - §24-3-40 deductions have been deducted from the \$4.00 per hour negotiated wage would violate §24-3-40 and Torrence.

SCDC contends that, even if the contract is ambiguous, the Court should look to the contract to determine the intent of the parties, and that intent, based on subsection 1 of §3.3, was the \$4.00 flat rate "encompasses" the inmates' hourly base rate of \$.35 per hour, costs and overhead (SCDC brief, 19). Gatewood first contends the contract is not ambiguous. Section 3.3.1 states WTI pays the \$4.00 per hour "for work performed" (R, 365). Second, §3.3.1 states SCDC "shall be responsible" for costs and overhead, and does not state that these items come out of the \$4.00 per hour. Third, SCDC's interpretation would violate §24-3-40 and Torrence, as discussed herein at pp. 4-6, 9.

Gatewood submits he is entitled to a gross wage of \$4.00 per hour, less only those statutory deductions permitted in S.C. Code §24-3-40.

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2. Gatewood was entitled to overtime pay for his labor.

SCDC concedes that, based on a record memorandum and the contract, "inmates could perform overtime labor". However, SCDC contends Gatewood's entitlement to overtime pay is not yet ripe for adjudication until this Court resolves the first issue (SCDC brief, 20). SCDC states Gatewood's pay records ("Exhibit F") reflect a "pay rate" of \$.50 per hour, but no clarifying data appears to indicate if the \$.50 figure represents Gatewood's base rate or base rate plus a bonus rate and/or overtime rate (SCDC brief, 20-21). Gatewood notes SCDC denied overtime in its step 1 and step 2 decisions (R, 1972, 1984). Thus, Gatewood contends we may safely assume the \$.50 rate did not include overtime pay. Gatewood further suggests that, even with any ambiguities in SCDC pay records, they should be resolved against SCDC and back pay equal to the maximum amount which could have been earned but for SCDC's underpayments, is appropriate (45C Am Jur 2d (2002), Job Discrim., §2607).

SCDC contends that even if the Court finds Gatewood was not properly paid for overtime, he would be owed the "half - time rate" for only the labor hours worked in excess of a 40 hour workweek (SCDC brief, 21). Gatewood contends the record shows overtime is payable at time and a half the hourly base rate for hours worked after an inmate has completed his required straight time hours for the "pay period" (R, 372-373, 375). See also, decisions in SCDC v. Cartrette 694 S.E. 2d 18,20-22 (S.C. App., 2010) and SCDC v. Tomlin 694 S.E. 2d 25, 27-29 (S.C. App., 2010), holding inmates were entitled to time and a half pay for overtime worked. Also, as reflected in record memoranda and Gatewood's Exhibit F, the "pay period" is every two weeks (R, 123-125, 372). Gatewood's Exhibit F shows he worked over 75 hours during many pay periods (R, 123-125). See footnote in initial brief, p. 9.

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In the contract, inmates were expected to work 7.5 hours per day, 5 days a week, for a total of 75 hours every two weeks (\$3.0; R, 363). An example in the record shows 110 total hours worked, with 75 regular hours and 35 overtime hours (R, 374).

Gatewood agrees back wage and overtime calculations are not at issue now. However, Gatewood does seek the Court's ruling, which he contends is ripe for adjudication, that time and a half overtime pay at \$6.00 per overtime hour should be paid to him for any and all hours he worked in excess of his 75 regular hours worked per pay period of two weeks.

3. Gatewood was entitled to pre and post judgment interest.

SCDC contends this issue is not ripe for adjudication unless and until the Court resolves the first issue in Gatewood's favor (SCDC brief, 22). Gatewood contends either or both of issues one and two may result in back wages owed, and thus imposition of pre and post judgment interest on those amounts. Gatewood further notes that calculating interest would be a logical part of calculating back wages on any remand to SCDC.

Gatewood submits this issue is ripe for adjudication if the Court finds he is entitled to either or both the \$4.00 per hour gross wage and overtime pay at time and a half, or \$6.00 per hour.

4. Gatewood was entitled to costs and attorney fees.

SCDC contends this issue is not ripe for adjudication unless and until the Court resolves the first issue in Gatewood's favor (SCDC brief, 22). Gatewood contends either or both of issues one and two may result in back wages owed, and thus imposition of an award of costs and attorney fees.

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Gatewood submits this issue is ripe for adjudication if the Court finds he is entitled to either or both the \$4.00 per hour gross wage and overtime pay at time and a half, or \$6.00 per hour.

5. SCDC should be directed to process grievance for all workers in the work program whether or not they personally filed a grievance.

SCDC contends this issue is not within the scope of Level Three review (SCDC brief, 23). Gatewood contends that since we are in the third and final level of review, and the two previous levels were restricted to certain legal issues, Level Three is the only level in which this issue can be considered.

SCDC contends Gatewood did not identify this issue in his notice of appeal to the ALC of May 30, 2007 (SCDC brief, 24; R, 1985). The notice of appeal asks the inmate to provide a "...general statement of the grounds for appeal" (R, 1985). Gatewood listed eight grounds, but not this issue 5. By listing multiple grounds for review, Gatewood contends he went over and above the requirement to provide a "general" statement. Moreover, S.C. Code §1-23-380, which is referenced in the form, says nothing about having to list the grounds for review.

ALC Rule 59 governs the content of the notice of appeal. That rule states in part, as follows:

The notice shall be on the form prescribed by the Court pursuant to Rule 57 and shall contain the following information:

B. a brief factual basis for each expressly and specifically asserted constitutional violation;

Gatewood contends this requirement would not apply to this issue 5. No other substantive ground for review is mentioned in Rule 59.

SCDC contends the Court should not consider this issue and should strike it from consideration (SCDC brief, 25). Gatewood contends he set forth this issue

in his Statement of Issues as required in ALC Rule 60B(1) (Gatewood initial brief, 1). Gatewood submits that he has raised this issue with the Court in the manner provided, and that should be sufficient for the Court to consider it.

6. SCDC should be enjoined from further wage violations.

SCDC contends this issue is not within the scope of Level Three review (SCDC brief, 25). Gatewood respectfully reiterates his comments under issue 5 on this point.

SCDC contends Gatewood did not identify this issue in his May 30, 2007 notice of appeal as required by ALC Rule of Procedure 59 (SCDC brief, 25). Gatewood respectfully reiterates his comments under issue 5 on this point.

SCDC contends this Court has not concluded SCDC has committed a "wage violation" (SCDC brief, 25). Gatewood contends this is what the Court will determine in this level of review.

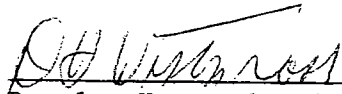
SCDC contends the Court should not consider this issue and should strike it from consideration (SCDC brief, 25). Gatewood respectfully reiterates his comments under issue 5 on this point.

CONCLUSION

Gatewood respectfully requests the Court to grant the relief summarized at pp. 12-13 of his initial brief. In addition, as discussed in issues 3 and 4 herein, a finding of applicability of the \$4.00 wage rate and/or the \$6.00 overtime rate may result in back wages due. Gatewood respectfully requests remand to SCDC to make these calculations, along with pre and post judgment interest, if either one or both of these findings are made by the Court.

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Respectfully submitted,

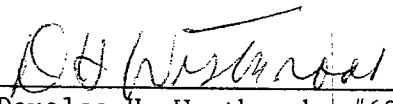
A handwritten signature in dark ink, appearing to read "DH Westbrook", is written over a horizontal line.

Douglas H. Westbrook, #6039
23 Broad St.
Charleston, SC 29401
(843) 853-9600
(843) 577-2241 - Fax
douglas.h.westbrook@gmail.com
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on the 17th day of April, 2014, I mailed by first class mail a copy of the Level Three reply brief of Appellant Fred Gatewood to counsel of record for Respondent S.C. Department of Corrections, as follows:

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



Douglas H. Westbrook, #6039

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

Fred Gatewood, # 289775,	)	Docket No. 07-ALJ-04-0517-AP
	)	
Appellant,	)	
	)	
vs.	)	MOTION TO STRIKE ARGUMENT
	)	FROM THE APPELLANT'S
	)	REPLY BRIEF
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	

The Respondent, the South Carolina Department of Corrections [“the Department”], by and through its undersigned counsel, respectfully moves this Court to strike an argument articulated by the Appellant within his Reply Brief dated April 17, 2014.¹

Specifically, the Respondent moves this Court to strike all argument articulated by the Appellant in his Reply Brief in which he relies upon the decision issued by our Supreme Court in *Torrence v. S.C. Dep't. of Corr.*, 646 S.E.2d 866 (S.C. 2007). As persuasively demonstrated below, the Respondent so moves, because the Appellant failed to articulate any argument in his Brief dated February 19, 2014 in which he discussed or explained his reliance upon any holding or ruling from *Torrence*.

Should this Court deny its instant motion to strike, the Respondent alternatively moves this Court to grant it an opportunity to prepare and file a sur-reply within which it may address the argument articulated for the first time by the Appellant in his Reply Brief which is the subject of the Respondent's instant motion.

¹ The Department's undersigned counsel received the Appellant's Reply Brief on Monday, April 21, 2014.

I. **THE APPELLANT'S RELIANCE UPON AND REFERENCES TO *Torrence* IN HIS REPLY BRIEF**

In his Reply Brief, the Appellant, for the very first time, discussed the decision in *Torrence*, and he offered the following assessment of the decision:²

In *Torrence, et al. v. SCDC, et al.* 646 S.E. 2d 866, 867 (S.C., 2007), inmates alleged (1) SCDC's prison industries partner, Insilco, paid SCDC \$7.17 per hour for their labor but SCDC paid inmates only \$5.25 per hour; and (2) SCDC improperly diverted \$1.92 from the \$7.17 and deposited it into an SCDC "surplus fund". Inmates sought a declaratory judgment against SCDC for violating § 24-3-430 and § 24-3-40. The Supreme Court cited § 24-3-430(H) and discussed the statutorily required disposition of prisoner wages in § 24-3-40(A)(1)(3)(4)(5)(6) covering victim restitution, child support, inmate purchases, money held for inmates' benefit, and taxes (646 S.E. 2d at 868-869). At 646 S.E. 2d 870, n. 4, the Court stated:

Furthermore, if appellants prove true their allegation that the DOC removes any of the money remitted by the private industry sponsor and then disburses the percentages listed in section 24-3-40 based on the **lower** (emphasis in original) rate, the DOC would be in violation of the plain language of the statute which directs it to disburse money based on the **gross wages**. See § 24-3-40(A).

The Appellant then invoked and discussed another decision by our Supreme Court, *Williams, et al. v. S.C. Dep't of Corr., et al.*, 641 S.E.2d 885 (S.C. 2007), as follows:³

Earlier, the Court had noted in its opinion upholding dismissal of inmates' class action in these proceedings (*Williams, et al. v. SCDC, et al.* 641 S.E. 2d 885, 887 (S.C., 2007):

The contract provides that WTI will pay DOC a flat rate of \$4.00 per hour per inmate and the DOC is responsible to pay inmate workers and handle payroll deductions. Of even greater significance is the fact that the legislature has specifically mandated how inmate wages for prison industry labor are to be handled. Section 24-3-40 (Supp. 2005) provides:

~~Disposition of wages of prisoner allowed to work at paid employment.~~ (emphasis in original)

² See the Appellant's Reply Brief, p. 4.

³ *Id.*, pp. 4 – 5.

(A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment .. in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's **wages** directly to the Department of Corrections.
(emphasis in original)

This section also includes specific deductions from inmate **wages** that are to be made by the Director of DOC, including restitution to victims, payment to the State Office of Victim Assistance, child support, and state and federal taxes ..

The Appellant presented argument in his February 19, 2014 Brief in which he discussed and explained his reliance upon holdings and rulings from *Williams*. However, aside from merely citing *Torrence* in the first enumerated paragraph in the section of his Brief entitled "Conclusion,"⁴ the Appellant did not otherwise reference or cite *Torrence* anywhere in his Brief. Moreover and critically, the Appellant did not offer any substantive argument in which he discussed or explained his reliance upon any ruling from *Torrence* within the section of his February 19, 2014 Brief entitled "Conclusion" or, for that matter, anywhere else in his Brief.

The Appellant clearly and explicitly relied upon *Torrence* in articulating the following substantive argument in his Reply Brief, an argument he omitted from his Brief:⁵

Here, statutes allowed SCDC to contract with WTI to set up the work program, and mandated how inmate wages were to be paid to SCDC and disbursed (§ 24-3-430(A)(B)(H), § 24-3-40). SCDC contracted with WTI to pay SCDC \$4.00 per hour per inmate for "labor" and "work performed" (R, 364-365). Effective July 1, 2001, the budget proviso allowed SCDC to "negotiate the wage to be paid for inmate labor". Per the 1998 contract, that wage was \$4.00 per hour. **Gatewood submits the \$4.00 per hour negotiated wage was the gross wage required to be paid to him as of July 1, 2001. And further, only those statutory deductions specified in § 24-3-40 were allowed to be taken out from Gatewood's gross wages of \$4.00 per hour (*Torrence*). [emphasis supplied].**

⁴ See the Appellant's February 19, 2014 Brief, p. 12.

⁵ See the Appellant's April 17, 2014 Reply Brief, p. 5.

The Appellant subsequently invoked *Torrence* several times in the remainder of his Reply Brief, the length of which exceeded the length of his Brief:

Gatewood contends taking out any of these expenses not listed in § 24-3-40 **violated that statute and Torrence**.⁶ [emphasis supplied].

...
Gatewood further contends SCDC's interpretation that project overhead and expenses come out of the \$4.00 per hour negotiated wage rate would **violate § 24-3-40, § 24-3-430(H), and Torrence's rule** that only deductions in § 24-3-40 may be taken out from gross wages, not some reduced rate after funds have been diverted for other purposes. Moreover, even if the second sentence in § 3.3.1 of the contract expressly stated as SCDC interprets it, Gatewood contends that sentence would be invalid **as violative of § 24-3-40 and Torrence** and the statute would prevail (*Wilkinson ex rel Wilkinson*).⁷ [emphasis supplied].

...
Again, Gatewood contends that paying Gatewood and others a \$.35 rate after non - § 24-3-40 deductions have been deducted from the \$4.00 per hour negotiated wage would **violate § 24-3-40 and Torrence**.⁸ [emphasis supplied]

SCDC contends that, even if the contract is ambiguous, the Court should look to the contract to determine the intent of the parties, and that intent, based on subsection 1 of § 3.3, was the \$4.00 flat rate "encompasses" the inmates' hourly base rate of \$.35 per hour, costs and overhead (SCDC brief, 19). Gatewood first contends the contract is not ambiguous. Section 3.3.1 states WTI pays the \$4.00 per hour "for work performed" (R, 365). Second, § 3.3.1 states SCDC "shall be responsible" for costs and overhead, and does not state that these items come out of the \$4.00 per hour. Third, SCDC's interpretation **would violate § 24-3-40 and Torrence**, as discussed herein at pp. 4-6, 9.⁹ [emphasis supplied].

Suffice it to say that the Appellant made no such arguments or even similar arguments within his February 19, 2014 Brief, and, specifically, the Appellant did not utter the term "Torrence's rule" anywhere in his Brief.

⁶ *Id.*, p. 6.

⁷ *Id.*, p. 9.

⁸ *Id.*, p. 10.

⁹ *Id.*

II. COMPARISON BETWEEN THE CITATION TO *Torrence* MADE BY THE APPELLANT IN HIS BRIEF TO THE CITATION TO *Torrence* THE APPELLANT MADE IN HIS REPLY BRIEF

As explained in the preceding section,¹⁰ the Appellant referenced *Torrence* only once in his February 19, 2014 Brief, and he did so within the section of his Brief entitled "Conclusion." More precisely, the Appellant merely cited to *Torrence* within the section of his Brief entitled "Conclusion," and, in doing so, he offered the following pinpoint citation: "*Torrence v. SCDC* 646 S.E. 2d 866, **868** (S.C., 2007)." [emphasis supplied].

However, within his Reply Brief, the Appellant offered three (3) additional pinpoint citations to *Torrence*:¹¹

In *Torrence, et al. v. SCDC, et al.* 646 S.E.2d 866, **867** (S.C., 2007), inmates alleged (1) SCDC's prison industries partner, Insilco, paid SCDC \$7.17 per hour for their labor but SCDC paid inmates only \$5.25 per hour; and (2) SCDC improperly diverted \$1.92 from the \$7.17 and deposited it into an SCDC "surplus fund". Inmates sought a declaratory judgment against SCDC for violating § 24-3-430 and § 24-3-40. The Supreme Court cited § 24-3-430(H) and discussed the statutorily required disposition of prisoner wages in § 24-3-40(A)(1)(3)(4)(5)(6) covering victim restitution, child support, inmate purchases, money held for inmates' benefit, and taxes (646 S.E. 2d at 868-**869**). At 646 S.E. 2d **870, n. 4**, the Court stated:

Furthermore, if appellants prove true their allegation that the DOC removes any of the money remitted by the private industry sponsor and then disburses the percentages listed in section 24-3-40 based on the **lower** (emphasis in original) rate, the DOC would be in violation of the plain language of the statute which directs it to disburse money based on the **gross wages**. See § 24-3-40(A). [bold italicized emphasis supplied].

For the sake of clarity, the Appellant cited to only one (1) page from *Torrence* in his Brief (i.e. page 868 from the Southeastern 2nd Reporter), while he cited to three (3) additional

¹⁰ See note 4 above.

¹¹ See note 2 above.

pages from *Torrence*, one of which encompassed a rather crucial footnote, in his Reply Brief (i.e. pages 867, 869, and note 4 from page 870 from the Southeastern 2nd Reporter).

III. APPLICABLE LEGAL STANDARD

In *Brooke Waddle v. S.C. Dep't of Health & Human Services*, 2013 WL 5676953, *5 (ALC Docket No. 13-ALJ-08-0267-AP) (SCALJD October 11, 2013), this Court observed the following:

"[A]n argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief." *Simmons v. SC STRONG*, 402 S.C. 166, 173 n. 2, 739 S.E.2d 631, 635 n. 2 (Ct. App. 2013) (citing *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct. App. 2001). [emphasis supplied].

Likewise, in *Lister v. NationsBank of Delaware, N.A.*, 494 S.E.2d 449, 460 (S.C. Ct. App. 1997), our Court of Appeals ruled as follows:

In its reply brief, Avis avers for the first time that due process would require no punitive damages be awarded because the event occurred in Aruba. **However, an appellant may not use the reply brief to argue issues not argued in the appellant's initial brief.** Rule 207(b)(1)(B), SCACR; Rule 210(b), SCACR; *Sloan Constr. Co. v. South Carolina Bd. of Health and Envtl. Control*, 285 S.C. 523, 331 S.E.2d 345 (1985); *State v. Wakefield*, 323 S.C. 189, 473 S.E.2d 831 (Ct.App.1996). *See also* 4 C.J.S. *Appeal and Error* § 619 (1993) ("**A point raised for the first time in the reply brief will not be considered by the appellate court.**"). Consequently, we need not address this issue. [emphasis supplied].

The United States District Court for the District of South Carolina, in *Goodman v. Cartledge*, 2008 WL 4458159, *11 (D.S.C. September 20, 2008), also observed as follows:

Petitioner cannot present the State with a **constantly moving target** as to what claims or issues he is or is not contesting; and his reference to these issues in his reply brief were therefore not sufficient to exhaust these claims. *See State v. Wakefield*, 323 S.C. 189, 473 S.E.2d 831, 832 (S.C.Ct.App.1996). **[no new arguments or issue may be made or raised in a reply brief]**; see generally, *Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 439 S.E.2d 283, 285 n. 3 (S.C.Ct.App.1993). **Therefore, Respondent argues that these issues are now procedurally barred from consideration by this Court, and the undersigned agrees. Cf.**

Joseph, 184 F.3d at 328; *Townes*, 68 F.3d at 846; *Mallory*, 27 F.3d at 995.
[emphasis supplied].

IV. THIS COURT SHOULD STRIKE ALL ARGUMENT OFFERED BY THE APPELLANT IN HIS REPLY BRIEF IN WHICH HE RELIES UPON *Torrence*

The Department respectfully submits that by referencing three (3) additional pages from *Torrence* in his Reply Brief and by also invoking the so-called “Torrence’s rule” in his Reply Brief, the Appellant clearly offered new argument and made new points in his Reply Brief that he did not offer in his Brief. As such, the Department submits that the entirety of the Appellant’s argument from his Reply brief in which he relied upon *Torrence*, encompassed by the passages quoted above in Section I, is procedurally barred, and this Court should strike all such argument and each of the passages quoted above in Section I from the Appellant’s Reply Brief.

The Department anticipates that the Appellant will, in any reply he may file to the instant motion, argue that he preserved his ability to make any argument referencing *Torrence* in his Reply Brief by having made a single reference to *Torrence* within the “Conclusion” to his Brief. The folly of such an argument is clearly illustrated in Section II above, as the Appellant cited to three (3) additional pages from the *Torrence* decision in his Reply Brief that he did not cite in his Brief. Moreover, as clearly illustrated in Section I above, the Appellant presented new argument and new points in his Reply Brief anchored upon passages and, critically, a footnote from *Torrence* that he did not make, raise, or otherwise animate in his Brief.

As he cited to *Torrence* in the first enumerated paragraph of the “Conclusion” to his Brief, the Appellant could have presented in his Brief the argument and points concerning *Torrence* that he saved for his Reply Brief. Had the Appellant presented his argument and points concerning *Torrence* in his Brief rather than saving them for his Reply Brief, the Department would have had the opportunity to both address the Appellant’s argument and points concerning

Torrence and distinguish both the purportedly applicable rulings from *Torrence* and the factual basis upon which the *Torrence* Court issued such purportedly applicable rulings. In short, the tactic employed by the Appellant in his Reply Brief is the type of tactic to which the cases examined above in Section IV should apply.

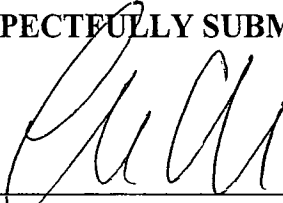
Accordingly, this Court should strike all such argument from the Appellant's Reply Brief, and it should not consider any such argument in adjudicating the instant appeal.

V. CONCLUSION

For the foregoing reasons, this Court should grant the relief respectfully demanded by the Department in its instant motion.

Alternatively, should this Court decline to strike all argument offered by the Appellant in his Reply Brief in which he relied upon *Torrence*, the Department respectfully moves the Court to afford it the opportunity to prepare and file a sur-reply within which it may address the new argument concerning *Torrence* and the new points reliant upon *Torrence* that the Appellant offered in his Reply Brief.

RESPECTFULLY SUBMITTED,



Lake E. Summers

Katherine A. Phillips

Malone, Thompson, Summers & Ott LLC

339 Heyward Street, Suite 200

Columbia, South Carolina 29201

Office: (803) 254-3300

Fax: (803) 254-0309

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

Counsel for the Department

Columbia, South Carolina
April 23, 2014

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

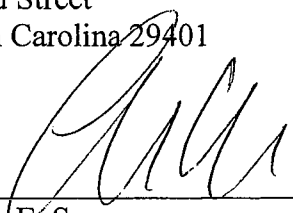
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

Fred Gatewood, # 289775,	)	Docket No. 07-ALJ-04-0517-AP
	)	
Appellant,	)	
	)	
vs.	)	MOTION TO STRIKE ARGUMENT
	)	FROM THE APPELLANT'S
	)	REPLY BRIEF
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	<u>CERTIFICATE OF SERVICE</u>

I certify that I have served a copy of **the Respondent's Motion to Strike Argument from the Appellant's Reply Brief** in the above-captioned matter on the Appellant by mailing a copy of it to his counsel, first class postage pre-paid, at the following address:

Douglas H. Westbrook, Esquire
Attorney at Law
23 Broad Street
Charleston, South Carolina 29401

April 23, 2014



Lake E. Summers

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
Darrell Williams, Class Representative,	)	C.A. No. 02-CP-18-134
et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	DEFENDANT SCDC'S
	)	RESPONSES TO THE PLAINTIFFS'
South Carolina Department of	)	<u>FOURTH</u> REQUEST FOR
Corrections and Williams Technologies,	)	ADMISSIONS
Inc.,	)	
	)	
Defendants.	)	
	)	

TO: THE PLAINTIFFS AND THEIR ATTORNEY, DOUGLAS H. WESTBROOK,
ESQUIRE:

The Defendant, the South Carolina Department of Corrections ("SCDC"), by and through its undersigned attorneys and pursuant to South Carolina Rule of Civil Procedure 34, provides the following responses to the Plaintiffs' Fourth Request for Admissions.

1. To SCDC, the following documents (which were part of the July 1, 2004 discovery installment produced by SCDC and numbered A-0001/A-1754; or produced for inspection at Lieber C.I. on July 20, 2004); were made at or about the time of the matters recorded therein; or from information transmitted by, a person with knowledge of those matters; kept in the course of regularly conducted business activity of SCDC; and it was the regular practice of that business activity to make those records: A-0001/A-0039; A-0081/A-0093; A-0477/A-0753; A-0754/A-0769; A-0821-A-0859; A-0860/A-0945; A-1431/A-1620; A-1736/A-1750; A-0022/A-0023; A-1753/A-1754; and all those pay records, pay stubs, time cards, and personnel records disclosed to Plaintiffs' counsel at Lieber on July 20, 2004, and covering the entire period of the work program at issue from 1999 to present.

Response: Admitted.

2. To SCDC, those records produced in the July 1, 2004 discovery installment and numbered A-0001/A-1754; and those records (pay stubs, time cards, pay records, personnel records) produced to Plaintiffs' counsel at Lieber on July 20, 2004; are genuine and authentic records of SCDC.

Response: Admitted.

3. The following requests pertain to those documents produced in the July 1, 2004 discovery installment and numbered A-0001/A-1754:

(a) Documents numbered A-0081/A-0093 is a copy of the signed contract between SCDC and WTI establishing the service work program at issue.

Response: Admitted.

(b) Documents numbered A-0477/A-0753 are SCDC generated billing memoranda, work orders, and invoices to WTI for inmate labor associated with the prison industries project at issue for May 31, 1999 through June 1, 2004.

Response: Admitted.

(c) Documents numbered A-0754/A-0769 is an SCDC generated Accounts Receivable Transaction Report dated June 15, 2004 associated with the prison industries project at issue reflecting transactions from July 31, 1999 through June 1, 2004.

Response: Admitted.

(d) Documents numbered A-0775/A-0798 is an SCDC generated roster dated June 24, 2004 of all inmates who participate or at one time participated in the prison industries project at issue. This roster is the best source by which class membership may be determined in this action.

Response: Admitted.

(e) Document numbered A-0799/A-0816 is an SCDC generated roster of current status and/or whereabouts of past and present inmate participants in the prison industries project at issue.

Response: Admitted.

(f) Documents numbered A-0821/A-0859 and A-0860-A-0945 are SCDC pay records for pay periods May 28, 2004/June 10, 2004, and time cards, pay stubs, and pay entry rosters. SCDC has such records for all pay periods from 1999 to present, which were shown to the Plaintiffs' counsel on July 20, 2004 at Lieber C.I. These records are kept in the care and custody of Mr. Jack Staudt of SCDC.

Response: Admitted.

(g) Documents numbered A-0946/A-1430 are SCDC "spreadsheets" reflecting the earnings per pay period for all inmate participants in the prison industries program at issue from the inception of the project through June 2004. All entries are accurate up to July 2000. After July 2000, the "pay rate" and "hours" entries are not accurate, and the inmates' pay stubs and time cards have to be consulted for this information. The "pay amount" entries are accurate throughout. The underlying data for these "spreadsheets" are the inmates' pay stubs and time cards, which were made and kept in the normal course of business at SCDC.

Response: SCDC admits that the documents referenced in this request for admission accurately reflect the "earnings per pay period for inmate participants in the prison industries program at issue from the inception of the project through" July 2000 to the extent possible

based upon the documents currently available to SCDC. SCDC admits the remainder of this request for admission.

(h) Documents numbered A-1431/A-1620 are forms entitled, "SCDC-Prison Industries Inmate Agreement," executed by all inmate participants in the prison industries project at issue on or about June 30, 2003. All inmate participants were required to sign these agreements or lose their jobs.

Response: SCDC admits the first sentence of this request for admission; however, SCDC denies the second sentence of this request for admission as stated by the plaintiffs.

(i) Documents numbered A-1621/A-1735 are SCDC "spreadsheets" reflecting the withholdings per pay period for all inmate participants in the prison industries project at issue from July 1, 2003 through May 1, 2004. These withholdings conform to the legislation in Proviso 37.23, 2003/2004 Appropriations Bill 3749, eff. July 1, 2003.

Response: Admitted.

(j) Documents numbered A-1736/A-1750 are two new policy memoranda entitled Inmate Payroll Documentation (effective June 2, 2004), and Personnel Files, Inmate Workers (effective June 7, 2004).

Response: Admitted.

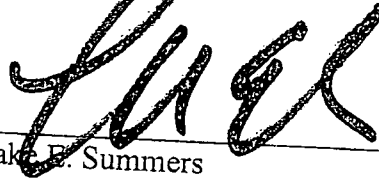
(k) Documents numbered A-1751/A-1752 is an SCDC document listing the total number and types of prison industries projects currently operated by SCDC within its system.

Response: Admitted.

(l) Documents numbered A-1753/A-1754 and A-0022/A-0023, are SCDC documents prepared by WTI regarding job descriptions for the prison industries project at issue.

Response: SCDC admits that the documents referenced by this request for admission are documents prepared by WTI during the course of this litigation at SCDC's request. Otherwise, SCDC denies this request for admission.

Respectfully submitted,



Lake E. Summers
Malone & Thompson, LLC
1527 Blanding Street
Columbia, South Carolina 29201
(803) 254-3300

ATTORNEYS FOR DEFENDANT SCDC

Columbia, South Carolina
September 1, 2004

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Chief Administrative Law Judge

Docket No. 07-ALJ-04-00517-AP

Fred Gatewood, #289775..... Appellant,

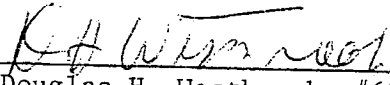
v.

South Carolina Department of Corrections..... Respondent.

NOTICE OF APPEAL

Fred Gatewood appeals the orders of The Honorable Ralph K. Anderson, III dated November 12, 2013;* and April 29, 2014. Appellant received copies of these orders on or about November 14, 2013; and on May 1, 2014; respectively.

June 2, 2014.



Douglas H. Westbrook, #6039
23 Broad St.
Charleston, SC 29401
(843) 853-9600
Attorney for Appellant

* The ALC's November 12, 2013 order denied Gatewood's September 17, 2013 Motion to Supplement the Record. Gatewood contends this order was not a final decision of the ALC, and hence not appealable (S.C. Code §14-8-200(a) (Court of Appeals has jurisdiction over a "final decision" of an administrative law judge); S.C. Code §1-23-610(A)(1) (Judicial review may only be sought from a final decision of the ALC: Charlotte-Mecklenburg Hosp. Auth. v. SCDHEC 692 S.E. 2d 894-895 (S.C., 2010)). However, Gatewood attempts to appeal the order out of an abundance of caution, and in anticipation of the issue being raised by SCDC as occurred in the related case of Francis Ackerman, #266928, et al. v. SCDC Appellate Case No. 2012-210588 (SCDC Initial Brief of Nov. 27, 2013, p. 7, n. 9; SCDC Motion to Strike of Nov. 27, 2013, p. 6; Appellants' Reply Brief of Jan. 7, 2014, p. 1; Appellants' Response of Feb. 7, 2014, pp. 28-29, to SCDC's Nov. 27, 2013 Motion to Strike; SCDC Motion to Strike of Feb. 10, 2014, p. 7; and Appellants' Response of March 11, 2014, p. 30, to SCDC's Feb. 10, 2014 Motion to Strike).

Other Counsel of Record:

Lake Summers, Esquire
Katherine Phillips, Esquire
Malone, Thompson, Summers & Ott, LLC
339 Heyward St., Ste. 200.
Columbia, SC 29201
(803) 254-3300
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Chief Administrative Law Judge

Docket No. 07-ALJ-04-00517-AP

Fred Gatewood, #289775..... Appellant,

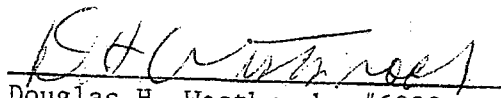
v.

South Carolina Department of Corrections..... Respondent.

PROOF OF SERVICE

I certify that I have served Appellant's Notice of Appeal and the Administrative Law Court's orders of November 12, 2013 and April 29, 2014 on The Honorable Ralph K. Anderson, III and the S.C. Department of Corrections, by depositing copies of these documents in the U.S. Mail, first class postage prepaid, on June 2, 2014, addressed to: The Honorable Ralph K. Anderson, III, Chief Administrative Law Judge, S.C. Administrative Law Court, Edgar A. Brown Bldg, Ste. 224, 1205 Pendleton St., Columbia, SC 29201; and Lake Summers, Esq. and Katherine Phillips, Esq., Malone, Thompson, Summers & Ott, LLC, 339 Heyward St., Ste. 200, Columbia, SC 29201, attorneys of record for Respondent S.C. Department of Corrections.

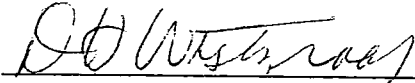
June 2, 2014.


Douglas H. Westbrook, #6039
23 Broad St.
Charleston, SC 29401
(843) 853-9600

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

A handwritten signature in cursive script, appearing to read "D. H. Westbrook", is written over a horizontal line.

Douglas H. Westbrook, #6039
23 Broad St.
Charleston, SC 29401
(843) 853-9600
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Chief Administrative Law Judge

Docket No. 07-ALJ-04-00517-AP

Fred Gatewood..... Appellant,

v.

South Carolina Department of Corrections..... Respondent.

Appellate Case No. 2014-001199

BRIEF OF APPELLANT

Douglas H. Westbrook, #6039
23 Broad St.
Charleston, SC 29401
(843) 853-9600
Attorney for Appellant

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STATEMENT OF ISSUES ON APPEAL

1. Did the ALC err in denying Gatewood's Motion to Supplement Record for section II(A)(C) of the motion because the documents proposed in those subsections had been received or considered by SCDC, or proffered but excluded, pursuant to ALC Rules 58B and D?
2. Did the ALC err in holding §24-1-295 governed deductions from Gatewood's gross wages because §24-3-40 was the governing statute?
3. Did the ALC err in holding §24-1-295 governed deductions from Gatewood's gross wages because §24-1-295 does not apply retroactively to Gatewood's pre-August 1, 2007 work?
4. Did the ALC err in applying §24-1-295 to Gatewood's pre-August 1, 2007 work because it violated due process?
5. Did the ALC err in applying §24-1-295 to Gatewood's pre-August 1, 2007 work because it impaired the obligations of contracts?
6. Did the ALC err in holding, pursuant to §24-1-295, that security and overhead were "other required deductions" in the 1998 contract because the clear and unambiguous terms of the contract indicate these costs were to be paid by SCDC at its expense?
7. Did the ALC err in ruling that overtime was not preserved for review because it was preserved, SCDC waived the issue preservation argument, the ALC raised the issue sua sponte, and Gatewood was entitled to overtime on the merits?
8. Did the ALC err in not granting Gatewood's request for pre and post

judgment interest, and to petition for costs and attorney fees, because this ruling was based on the ALC's erroneous ruling that SCDC could deduct security and overhead costs from Gatewood's \$4.00 per hour gross wage under §24-1-295?

9. Did the ALC err in declining to consider the issue of whether SCDC should have to process grievance for all workers even if they had not personally filed because this was a stated issue in Gatewood's appeal and the ALC did not state it was manifestly without merit?

10. Did the ALC err in declining to enjoin SCDC from further wage violations because such ruling was appropriate in these circumstances?

STATEMENT OF THE CASE

This appeal involves inmate Fred Gatewood's grievance for past due wages under South Carolina law. Gatewood worked in the Lieber/Williams Technologies (WTI) work program between 2004 and at least 2009. When Gatewood worked, S.C. Code §24-3-430(D), the "prevailing wage" statute, had been replaced by a budget proviso which allowed SCDC to pay inmates a negotiated wage which could be less than the prevailing wage (Statutes at Large, No. 66, §37.31, effective July 2001). Similar budget provisos were passed until 2007 (Darrell Williams, Class Representative, et al. v. SCDC, et al. 641 S.E. 2d 885, 886, n. 2 (S.C., 2007)). In 2007, §24-1-295 was passed and contained language that was very similar to the previous budget provisos.

In 2002-2003, Gatewood and other inmates filed a class action in Circuit Court for back wages earned in the program (Darrell Williams, #219730, et al. v. SCDC, et al. Case No. 02-CP-18-134 (Dorchester County, 2002)).

On August 23, 2004, the Supreme Court issued decisions in Adkins, et al. v. SCDC 360 S.C. 413, 602 S.E. 2d 51 (S.C., 2004) and Wicker v. SCDC 360 S.C. 421, 602 S.E. 2d 56 (S.C., 2004). These decisions held that inmates could file prevailing wage grievances and appeal to the Administrative Law Court.

On September 27, 2004, Gatewood retained undersigned counsel to file grievance. On or about October 18, 2004, Gatewood filed his step 1 grievance with SCDC (R. p. 46). On October 28, 2004, SCDC issued its step 1 response, which was received by Gatewood on November 2, 2004 (R. p. 40). On February 3, 2006 and/or April 19, 2007, Gatewood filed his Amendment/Exhibits to grievance with SCDC (R. p. 50). On May 14, 2007, SCDC issued its step 2 final decision, which was received by Gatewood on May 22, 2007 (R. p. 42). Both SCDC decisions denied the grievance as untimely and also on the merits.

On June 5, 2007, counsel filed Gatewood's appeal in the ALC (R. p. 56). Some 196 other inmates followed this same process. These appeals were consolidated in the ALC under the caption, Francis Ackerman, #266928, et al. v. SCDC Dock. No. 07-ALJ-04-00444, etc.

The ALC ordered the consolidated appeal to be briefed in three levels. After briefing and receiving the ALC's decision for Level One, counsel briefed the Level Two issue of timeliness of Gatewood's and others' grievances. On March 2 and 16, 2012, the ALC issued its decision that Gatewood's grievance was timely filed and should be briefed on the merits. All others were held untimely filed.

On March 29, 2012, all inmates filed Notice of Appeal in the Court of

Appeals of the ALC's March 2 and 16 orders, and a previous order. This appeal was captioned, Francis Ackerman, #266928, et al. v. SCDC Appellate Case No. 2012-210588.

On April 16, 2012, Gatewood filed his merits brief in the ALC as ordered. On June 19, 2012, the ALC issued its order that it had no jurisdiction to continue with Gatewood's merits briefing. On July 18, 2012, Gatewood filed Notice of Appeal in the Court of Appeals of the ALC's June 19 order.

On July 23, 2012, the Court of Appeals remanded the appeal in Francis Ackerman, #266928, et al. v. SCDC to the ALC to issue its Second Amended Order. On July 26, 2012, the ALC issued and filed its Second Amended Order. This order also directed the parties to merits brief Gatewood's grievance.

On August 22, 2012, inmates filed Notice of Appeal in the Court of Appeals in Francis Ackerman, #266928, et al. v. SCDC of the ALC's July 26 Second Amended Order, and a previous order. Gatewood did not appeal the portion of the Second Amended Order that he timely filed his grievance and the parties were to brief his grievance on the merits.

On August 24, 2012, Gatewood re-filed his merits brief with the ALC. On September 5, 2012, the ALC returned the brief unfiled because the matter had been appealed to the Court of Appeals and was no longer pending in the ALC.

On March 26, 2013, the Court of Appeals dismissed Gatewood's appeal to that Court.* On April 4, 2013, Gatewood filed a Petition for Rehearing of the dismissal. On July 5, 2013, the Court of Appeals denied the petition.

On August 26, 2013, the Court of Appeals remitted Gatewood's case to the

* This appeal was Appellate Case No. 2012-212574 filed on July 18, 2012.

ALC. On September 17, 2013, Gatewood filed his Motion to Supplement the Record in the ALC (R. p. 93). On October 21, 2013, SCDC filed its response to Gatewood's Motion to Supplement the Record (R. p. 105).

On October 29, 2013, in a teleconference with counsel, the ALC ruled it could proceed with merits briefing (Level Three) on the issue of Gatewood's entitlement to a \$4.00 per hour wage. However, the ALC stated it could not consider back wage calculations for Gatewood, and indicated such calculations would probably have to be made by SCDC on remand, which, if Gatewood were unsatisfied, could be re-appealed to the ALC.

On November 12, 2013, the ALC issued an order denying Gatewood's September 17, 2013 Motion to Supplement the Record (R. p. 25).

On February 19, 2014, Gatewood filed his Level Three brief in the ALC (R. p. 113). On April 7, 2014, SCDC filed its responsive brief (R. p. 127). On April 17, 2014, Gatewood filed his reply brief (R. p. 154).

On April 23, 2014, SCDC filed its Motion to Strike Argument From Appellant's Reply Brief (R. p. 170).

On April 29, 2014, the ALC issued its order affirming SCDC's denial of Gatewood's grievance (R. p. 29).

The amount involved on appeal has not been determined. In Gatewood's ALC brief, he requested a remand to SCDC to calculate his back wages at a gross wage rate of \$4.00 per hour (R. p. 124).

ARGUMENT

1. The ALC erred in denying Gatewood's Motion to Supplement the Record for section II(A)(C) of the motion because the documents proposed in those subsections had been received or considered by SCDC, or proffered but excluded, pursuant to ALC Rules 58B and D.

The standard of review is as follows. Review must be confined to the record. The appellate court may not substitute its judgment for that of the ALC as to weight of the evidence on questions of fact. The Court of Appeals may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the appellant have been prejudiced because the ALC's finding, conclusion, or decision is: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion (S.C. Code §1-23-610(B)).

The proposed documents in Gatewood's motion, section II(A)(C), were Gatewood's pay stubs and time cards (A); and Appendix 1, page 12, to Gatewood's ALC Level Two brief (C) (R. p. 104).^{*} Counsel does not have the documents in section II(A).

^{*} Gatewood's work and grievance file dates are designated for the record in Appendix 1, p. 12; R. p. 104; SCDC's spreadsheet, p. 11; R. p. 61; and updated "Exhibit F", pp. 123-125; R. pp. 58-60. These records show Gatewood's pay dates to be at least October 18, 2004 to September 1, 2008, and March 2 to April 13, 2009. Gatewood contends he worked again for 90 days in 2011. Appendix 1, p. 12, SCDC's Sept. 6, 2011 spreadsheet, p. 11, and updated "Exhibit F", pp. 123-125, were filed in or proposed for the ALC record in Francis Ackerman, #266928, et al. v. SCDC Dock. No. 07-ALJ-04-00444, etc.

In its order, the ALC stated (R. p. 26):

As an initial matter, during the conference call the Court held on October 29, 2013..(I)t was also determined and agreed that the matter before this Court is an appeal, not a contested case, and as such, this Court cannot make new findings of fact. Rule 58(D) of the South Carolina Administrative Law Court Rules (SCALCR) begins with the phrase "(w)here applicable, the record of the **contested case** (emphasis in original) shall consist of.." Because Appellant, in Section II(A)(B)(C) and (E) of his Motion, seeks to supplement the Record on Appeal with documents that were not received or considered in the administrative hearing before the Department, the Court must deny Appellant's Motion to Supplement Record with respect to these sections of his Motion.

Respectfully, undersigned neither recalls, nor do call notes indicate, that "contested case" was mentioned on October 29. Also, it was not mentioned in the Motion to Supplement or SCDC's response.

Gatewood contends the ALC appeal was a "contested case" under the ALC rules. And further, the proposed documents had been considered by SCDC under Rule 58B or proffered but excluded under Rule 58D, and thus properly includable in the ALC record.

ALC Rule 2E defines "contested case" as follows:

Contested Case is defined in Section 1-23-505. It is a case for which a hearing is conducted pursuant to Article 3, Chapter 23 of Title 1, the South Carolina Administrative Procedures Act, and includes hearings conducted by the Administrative Law Court pursuant to Section 1-23-600(A), hearings **required by due process** under the South Carolina or United States Constitutions, or as **otherwise provided by law**.

Moreover, in Wicker v. SCDC 360 S.C. 421, 424-425, 602 S.E. 2d 56, 58, n. 1, the Supreme Court stated:

We find the state's statutory mandate that inmates be paid the prevailing wage creates such an interest, which may not be denied without **due process**. Piatt v. McDougall, supra.

Accordingly, in this **very limited circumstance**¹ (emphasis in original), we hold the DOC's failure to pay in accordance with the statutes is reviewable by the ALJ.

¹We note that our holding today is extremely limited and is not to be viewed as **expanding the jurisdiction of the ALJD** in any other circumstance.

Finally, ALC Rule 58 reads, in part:

Where applicable, the record of the **contested case** shall consist of:

..

B. All evidence received or considered;

..

D. All proffers of proof of excluded evidence;

An SCDC admission from inmates' class action states that, after July 2000, pay rate and hours information on SCDC spreadsheets is not accurate, and pay stubs and time cards must be consulted for that information (R. pp. 182-183).

Gatewood filed his step 1 on or about October 18, 2004 (R. p. 46). His step 2 is stamp-dated November 4, 2004 (R. p. 48). SCDC responses were received on November 2, 2004 (R. p. 47), and May 22, 2007 (R. p. 48). Thus, Gatewood's administrative hearing spanned the period 2004-2007. Gatewood contends SCDC must have consulted his pay stubs and time cards to pay him during this period since they were the only accurate documents available. This conclusion is supported by Gatewood's final decision which states that his "participation and pay records were reviewed" before SCDC's final decision (R. p. 42).

Gatewood contends the above evidence indicates that SCDC most probably considered his pay stubs and time cards during pendency of his administrative hearing. As a result, these documents should fall within Rule 58B.

Gatewood's ALC appeal was required by due process (Wicker). For that reason, Gatewood contends the ALC appeal was a "contested case" under Rules 2E and 58, and Rule 58D should cover proffers made to the ALC.

Inmates proffered Exhibit 1 and Appendix 1 for inclusion in the ALC record (R. pp. 90, 92). At least regarding Exhibit 1, the request was denied (R. p. 8). And, Gatewood repeated the proffer (R. pp. 96-97). This motion was also denied (R. p. 26).

Gatewood contends that, since Appendix 1, p. 12, has been proffered and excluded by the ALC, it should have come in the ALC record under Rule 58D.

Gatewood submits that the ALC ruling excluding the above documents prejudiced his substantive rights because it was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record (pay stubs and time cards); and was affected by other error of law (pay stubs and time cards, and Appendix 1, p. 12)(S.C. Code §1-23-610(B)(d)(e)).

2. The ALC erred in holding §24-1-295 governed deductions from Gatewood's gross wages because §24-3-40 was the governing statute.

In the ALC, the primary issue for decision was whether Gatewood was entitled to a \$4.00 per hour gross wage (R. p. 32). The ALC agreed that Gatewood was so entitled (R. p. 36). However, the ALC held that, based on the contract terms between SCDC and Williams Technologies (WTI), security costs and overhead, including health, safety, and welfare, constituted "other required deductions" under §24-1-295 that were

deductible from the \$4.00 wage (R. p. 36).

Initially, Gatewood contends the ALC erred in raising this issue which was not briefed by the parties (State v. Austin 409 S.E. 2d 811 (SC App, 1991).

On the merits, Gatewood contends that §24-3-40, not §24-1-295, governed deductions from wages, and deductions for security and overhead, including health, safety and welfare, were not allowable under §24-3-40. In 1995, the legislature enacted §24-3-430 as part of Article 3 of Chapter 24 of the Code. Subsections (A)(B) and (H) of §24-3-430 read, in part:

(A) The Director of the Department of Corrections may establish a program involving the use of inmate labor..in private industry for the manufacturing and processing of goods..**or the provision of services..**

(B) The director may enter into contracts necessary to implement this program..

..

(H) The earnings of an inmate authorized to work at paid employment pursuant to this section must be paid directly to the Department of Corrections and applied as provided under **Section 24-3-40.**

In 1995, Section 24-3-40 read, in part:

(A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 or **in a prison industry program provided under Article 3 of this chapter** shall pay the prisoner's wages directly to the Department of Corrections.

The Director of the Department of Corrections shall deduct the following amounts from the **gross wages** of the prisoner.

Section 24-3-40(A) then lists specific allowable deductions for restitution/victim assistance; child support/room and board/prisoner purchases of incidentals; benefit of prisoner; and taxes. There is no catch-all for "other required deductions", and no listed deduction for security, overhead, or health, safety and welfare of inmates.

In 1998, SCDC and WTI signed a contract to set up this work program.

On page one, the second clause states (R. p. 73):

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of **Section 24-3-310 Code of Laws of South Carolina, 1976** as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein;

The contract states that it "shall terminate" (R. p. 81) if Section 24-3-310 or any provision of Chapter 24 of the Code is materially changed or repealed (R. p. 82). SCDC also warrants that it complies with Chapter 24 (R. p. 83). Finally, a "bullet sheet" preceding the contract is entitled, "Williams Technology Transmissions Service Contract" (R. p. 72).

In Darrell Williams, Class Repr., et al. v. SCDC, et al. 641 S.E. 2d 885 (S.C., Feb. 26, 2007), the Supreme Court affirmed the Circuit Court's dismissal of inmates' class action. The class action concerned the same work program as the present case. In Williams, 641 S.E. 2d at 887, the Court stated how inmates are paid and deductions made from wages:

The contract provides that WTI will pay DOC a flat rate of \$4.00 per hour per inmate and the DOC is responsible to pay inmate workers and handle payroll deductions. **Of even greater significance is the fact that the legislature has specifically mandated how inmate wages for prison industry labor are to be handled. Section 24-3-40 (Supp. 2005) provides:**

Disposition of wages of prisoner allowed to work at paid employment. (emphasis in original)

(A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment..in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections. (Emphasis in original)

This section also includes **specific deductions** from inmate wages that are to be made by the Director of DOC, including restitution to victims, payment to the State Office of Victim Assistance, child support, and state and federal taxes..

In Torrence, et al. v. SCDC, et al. 646 S.E. 2d 866, 867 (S.C., May 7, 2007), inmates alleged (1) SCDC's prison industries partner, Insilco, paid SCDC \$7.17 per hour for their labor but SCDC paid inmates only \$5.25 per hour; and (2) SCDC improperly diverted \$1.92 from the \$7.17 and deposited it into an SCDC "surplus fund". Inmates sought a declaratory judgment against SCDC for violating §24-3-430 and §24-3-40. At 646 S.E. 2d 868-869, the Court stated:

The Legislature specifically authorized inmate labor in private industry via S.C. Code Ann. section 24-3-430... Moreover, section 24-3-430(H) expressly directs that "(t)he earnings of an inmate authorized to work at paid employment pursuant to this section **must be paid directly to the (DOC) and applied as provided under Section 24-3-40**" (Emphasis in original)

Section 24-3-40 governs the disposition of prisoner wages and provides in pertinent part:

(A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment..in a prison industry program..shall pay the prisoner's wages directly to the (DOC).

The Director of the Department of Corrections shall deduct the following amounts from the gross wages of the prisoner:

The Court then summarized the listed deductions in §24-3-40(A) for restitution, child support, inmate purchase of incidentals, benefit of prisoner, and taxes. At 646 S.E. 2d 870, n. 4, the Court stated that if appellants proved their allegation that SCDC diverted funds and disbursed to inmates based on the lower rate, it would be a violation of the statutory requirement to disburse from gross wages.

In 2007, the General Assembly enacted §24-1-295, effective August 1, 2007. Section 24-1-295 states, in pertinent part:

The Director of the Department of Corrections may enter into contracts with private sector entities that allow inmate labor to be provided for **prison industry service work** and export work that involves exportation of products..However, the Director of the Department of Corrections shall deduct the following from the gross earnings of the inmates engaged in prison industry **service work** in addition to any **other required deductions**:

Section 24-1-295 then lists specified deductions for restitution/victim's compensation fund (1)(2); child support/room and board/purchase of incidentals (3); purchase of incidentals (4); benefit of prisoner (5); and taxes (6).

Gatewood contends that §24-3-40, not §24-1-295, governs deductions from gross wages. First, the contract seeks to fulfill the purposes of §24-3-310 (R. p. 73). Section 24-3-310 is the "Declaration of Intent" section of Article 3, entitled "Prison Industries", and was in effect when this contract was signed. The contract also relies on compliance with Chapter 24 of the Code, of which §24-3-430 is part (R. p. 82).

Second, §24-3-430(H) incorporates and requires compliance with §24-3-40. Section 24-3-40 has no catch-all for "other required deductions", and no listed deductions for security and overhead. Third, in Williams and Torrence, the Supreme Court clearly stated that deductions from inmate wages are governed by §24-3-40(A). Williams involved the same work program as the present case.

Fourth, §24-1-295 was not effective until August 1, 2007. However, Gatewood started work almost three years prior to August 1, 2007. Thus, §24-1-295 could only apply to Gatewood's work, if at all, after August 1, 2007. See issues 3-5. Gatewood's work dates are in "Exhibit F", R. pp. 58-60.

The ALC stated §24-3-40 does not apply because it covers private sector programs that, unlike those services covered by §24-1-295, involve manufacturing and processing of goods **or the provision of services** or other enterprise considered to enhance the general welfare (R. p. 33). The ALC concluded that §24-3-40 does not apply because this was a **service work contract** and deductions from wages for service work are governed by §24-1-295, not §24-3-40 (R. p. 35).

Thus, the ALC acknowledges that §24-3-40 covered programs involving the "provision of services", but inexplicably held that §24-3-40 did not apply because this was a "service work contract". Gatewood contends that the two are one and the same. Gatewood agrees this was a service work program. However, Gatewood contends the ALC's conclusion is contrary to (1) §24-3-40's* express application to the "provision of services", and (2) Williams' application of §24-3-40 to this specific work program, and Torrence's similar rulings.

The ALC stated that, even if §24-3-40 applies, Gatewood's gross wages would still sustain the deductions listed therein (R. p. 33). Gatewood agrees, however, the deductions could not be for security, overhead, and health, safety, and welfare. These are the costs cited by the ALC as a basis to invoke the "other required deductions" clause in §24-1-295. Gatewood contends these costs are not authorized deductions in §24-3-40, and would also violate the rulings in Williams and Torrence.

Gatewood submits the ALC's conclusion that §24-1-295 governed Gatewood's

* By way of §24-3-430(A)(H).

deductions prejudiced his substantive rights because it violates the statutes in §§24-3-430(A)(H), 24-3-40(A), and effective date in §24-1-295; is affected by other error of law as set forth in Williams and Torrence; and is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, including the contract and Gatewood's work records (S.C. Code §1-23-610(B)(a)(d)(e)).

3. The ALC erred in holding §24-1-295 governed deductions from Gatewood's gross wages because §24-1-295 does not apply retroactively to Gatewood's pre-August 1, 2007 work.

The ALC applied §24-1-295's "other required deductions" clause to Gatewood's claim (R. p. 36). This application included Gatewood's work from 2004 to August 1, 2007, the effective date of §24-1-295. Gatewood contends this was an improper retroactive application of the statute and is thus ineffective. See Gatewood's work dates (R. pp. 58-60).

In State v. Brown 402 S.C. 119, 740 S.E. 2d 493, 496 (S.C., 2013), the Supreme Court held that a statute is not to be applied retroactively unless that result is so clearly compelled as to leave no room for doubt. See also Edwards v. SLED 395 S.C. 571, 720 S.E. 2d 462, 466 (S.C., 2011)(Absent specific provision or clear legislative intent to the contrary, statutes are to be construed prospectively rather than retroactively unless statute is remedial or procedural); S.C. Department of Revenue v. Rosemary Coin Machines, Inc. 339 S.C. 25, 528 S.E. 2d 416, 418 (S.C., 2000)(There is a presumption that statutes are considered prospectively rather than retroactively in their operation unless there is a specific provision or clear legislative intent to the contrary); Carolina Power & Light Co. v. Pageland 321 S.C. 538, 471 S.E.

2d 137, 140 (S.C., 1996); Carolina Chemicals, Inc. v. SCDHEC 290 S.C. 498, 351 S.E. 2d 575, 578-579 (S.C. App., 1986).

Here, Gatewood contends the ALC improperly applied §24-1-295 retroactively to Gatewood's work from 2004 to August 1, 2007, and this application was contrary to the principles stated in the above decisions.

Gatewood submits the ALC's application of §24-1-295 to his pre-August 1, 2007 work prejudiced his substantive rights because it violated the effective date provision in §24-1-295; was affected by other error of law as declared in the above decisions; and was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, including Gatewood's work dates (S.C. Code §1-23-610(B)(a)(d)(e)).

4. The ALC erred in applying §24-1-295 to Gatewood's pre-August 1, 2007 work because it violated due process.

The ALC applied §24-1-295's "other required deductions" clause to Gatewood's claim, which included Gatewood's work from 2004 to August 1, 2007, the effective date of §24-1-295 (R. p. 36). Gatewood contends this application divested him of his right to wages which had vested when the wages were earned, and thus violated due process as set forth in the United States Constitution, Amendment 14, and South Carolina Constitution, §3. See Gatewood's work dates (R. pp. 58-60).

The South Carolina Constitution, §3, states, "...nor shall any person be deprived of life, liberty, or property without due process of law." A similar provision is found in the United States Constitution, Amendment 14.

The term, "vested rights", is defined as follows in Black's Law Dictionary, Fifth Edition, p. 1402:

In constitutional law, rights which have so completely and definitely accrued to or settled in a person that they are not subject to be defeated or canceled by the act of any other private person, and which it is right and equitable that the government should recognize and protect, as being lawful in themselves, and settled according to the then current rules of law, and of which the individual could not be deprived arbitrarily without injustice, or of which he could not justly be deprived otherwise than by the established methods of procedure and for the public welfare. **Such interests as cannot be interfered with by retrospective laws;** interests which it is proper for state to recognize and protect and of which individual cannot be deprived arbitrarily without injustice.

"Divest" means to deprive; to take away; to withdraw; and is usually spoken of an authority, power, property, or title, as in an estate being divested (Black's Law Dictionary, Revised Fourth Edition, page 538).

In Russo v. Sutton 310 S.C. 200, 422 S.E. 2d 750, 753, n. 5 (S.C., 1992), the Supreme Court noted that the legislature cannot create a statute which applies retroactively to divest vested rights. See also First Presbyterian Church of York v. York Depository 203 S.C. 410, 27 S.E. 2d 573, 579 (S.C., 1943) (Though a statute may be retroactive for certain purposes, a retroactive provision which affects vested interests in property is invalid); Degenhart v. Burriess 360 S.C. 497, 502, 662 S.E. 2d 96 (S.C. App., 2004) (Legislature cannot create a statute which applies retroactively to divest vested rights); Dunham v. Davis 91 S.E. 2d 716, 718 (S.C., 1956) (Even a curative or validating statute which is necessarily retroactive in effect is subject to the constitutional limitation that a party cannot be deprived of property without due

process of law).

Under the ALC order, the application of §24-1-295 enables SCDC to deduct from Gatewood's wages expenses for security and overhead, including costs for health, safety, and welfare, as "other required deductions" under the statute and SCDC/WTI contract. These expenses were not deductible under §24-3-40, which was in effect when Gatewood worked from 2004 to August 1, 2007, the effective date of §24-1-295. Thus, Gatewood's pay is less when §24-1-295 is applied than it would be if §24-3-40 applied. Gatewood contends that §24-1-295 works a deprivation, or taking, of his wages, the right to which vested when he earned such wages before §24-1-295 became law. This taking, in turn, results in a violation of due process under the above constitutional provisions and case decisions.

Gatewood submits that the ALC's application of §24-1-295 to his pre-August 1, 2007 work prejudiced his substantive rights because it violated due process in the United States Constitution, Amendment 14 and South Carolina Constitution, §3; was affected by other error of law as declared in the above cases; and was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, including Gatewood's work dates (S.C. Code §1-23-610(B)(a)(d)(e)).

5. The ALC erred in applying §24-1-295 to Gatewood's pre-August 1, 2007 work because it impaired the obligations of contracts.

The ALC applied §24-1-295's "other required deductions" clause to Gatewood's claim, which included Gatewood's work from 2004 to August 1, 2007, the effective date of §24-1-295 (R. p. 36).

Gatewood contends that this application impaired the obligations of contracts, and thus violates South Carolina Constitution, §4.*

The South Carolina Constitution, §4, states, "(N)o..law impairing the obligation of contracts..shall be passed.." In Bartley v. Bartley Logging Co. 359 S.E. 2d 55, 56-57 (S.C., 1987), the Supreme Court held that an amendment to the workers compensation law allowing paraplegics to receive workers compensation benefits for life could not be retroactively applied without impairing contractual rights.

In Wolper v. City Council of City of Charleston 336 S.E. 2d 871, 873-876 (S.C., 1985), plaintiff challenged the constitutionality of a city ordinance authorizing a tax increment financing plan for redevelopment of waterfront property. Plaintiff argued the rights of general bondholders were impaired by the redevelopment bonds because the increased revenue diverted for repayment of redevelopment bonds would have been available for retirement of the general obligation bonds. The Supreme Court disagreed, holding the same tax base was available for retirement of general obligation bonds during the redevelopment project as was available before the redevelopment bonds were issued.

In S.C. Juris. (1993), vol. 19, Const. Law, §107, it is noted that the passage of a statute that substantially deprives bondholders of any rights to which they were entitled under laws in force at the time of issuance of such bonds, violates the contract clause of the Constitution.

Finally, in Tindale v. Byars 59 S.E. 2d 337, 340 (S.C., 1950), plaintiff

* See Gatewood's work dates (R. pp. 58-60).

challenged, as an impairment of contracts, a statute purporting to disaffirm a prior statute causing the county to assume the debt of former school districts. The Supreme Court held there was no impairment of contracts, since there was no difference to the bondholders in the liability of the county as such and the consolidated school district.

The common thread through the above authorities is a change in the law causing increased cost, deprivation of rights, loss of revenue, or change in liability of contracting parties. Here, the ALC's application of §24-1-295 added "other required deductions" to the list of statutory allowable deductions from Gatewood's gross wages. The ALC held that this addition included SCDC expenses for security and overhead, and health, safety, and welfare of inmates. None of these were permissible deductions under prior law in §24-3-40(A). The impact of the ALC ruling on the contract was considerable.

Under the 1998 contract, security costs were payable by SCDC "at its expense" (R. p. 77). With the ALC ruling, security can be deducted from the \$4.00 per hour which WTI pays. Also under the contract, WTI paid SCDC \$4.00 per hour for "work performed" (R. p. 78). With the ruling by the ALC, the \$4.00 payment covers work **plus security and overhead, including health, safety, and welfare of inmates.** The end result is a substantial reduction in SCDC's liability under the contract, and a corresponding reduction in Gatewood's pay. This is because the new deductions under §24-1-295 are paid from Gatewood's \$4.00 gross wage instead of from SCDC's own resources.

For the above reasons, Gatewood contends the ALC's application of §24-1-295 to his pre-August 1, 2007 work substantially impaired the obligations of contracts in violation of South Carolina Constitution §4, and the case decisions discussed herein.

Gatewood submits that the ALC's application of §24-1-295 prejudiced his substantive rights because it substantially impaired the obligations of the 1998 contract, pursuant to §4 of the constitution; was affected by other error of law as declared in the above cases; and was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, including the 1998 contract and Gatewood's work dates in the record (S.C. Code §1-23-610(B)(a)(d)(e)).

- 6. The ALC erred in holding, pursuant to §24-1-295, that security and overhead were "other required deductions" in the contract because the clear and unambiguous terms of the contract indicate that these costs were to be paid by SCDC at its expense.**

The ALC held that, pursuant to §24-1-295, security costs and overhead, including costs for health, safety, and welfare, constituted "other required deductions" in the 1998 contract (R. p. 36). Gatewood contends the clear and unambiguous terms of the contract indicate that these items were to be paid by SCDC at its own expense, and not from the \$4.00 gross wage WTI paid to SCDC.

The cardinal rule of contract interpretation is to ascertain and give effect to the parties' intentions as determined by the contract language (Alexander's Land Co., LLC v. M & M & K Corp. 390 S.C. 582, 703 S.E. 2d 207, 215 (S.C., 2010)). If the contract's language is clear and unambiguous, the

language alone determines the contract's force and effect (Schulmeyer v. State Farm Fire and Cas. 353 S.C. 491, 579 S.E. 2d 132, 134 (S.C., 2003)). Generally, if the terms of a contract are clear and unambiguous, a court must enforce the contract according to its terms regardless of its wisdom or folly (Southern Atlantic Financial Services, Inc. v. Middleton 356 S.C. 444, 590 S.E. 2d 27, 29 (2003)).

A meaning cannot be given to a contract other than that expressed, hence, words cannot be read into a contract which impart an intent wholly unexpressed when the contract was executed (Park Regency, LLC v. R & D Development of the Carolinas, LLC 402 S.C. 401, 741 S.E. 2d 528, 534 (S.C. App., 2012)). A court is without authority to consider the parties' secret intentions, and thus words cannot be read into a contract to impart an intent unexpressed when the contract was executed (Matsell v. Crowfield Plantation Comm. Serv. Ass'n, Inc. 393 S.C. 65, 710 S.E. 2d 90, 93 (S.C., App., 2011)).

When a party does not argue that contract provisions are ambiguous, there is no need for the court to look beyond the four corners of the contract to discern the parties' intentions (Sherlock Holmes Pub., Inc. v. City of Columbia 389 S.C. 77, 697 S.E. 2d 619, 622 (S.C. App., 2010)). The parties to a contract may not circumvent the requirements of a statute by redefining its plain and unambiguous terms (Richland Horiz. Prop. Regime Homeowners Assoc., Inc. v. Sky Green Holdings, Inc. 392 S.C. 194, 708 S.E. 2d 225, 227 (S.C. App., 2011)). If a contract provision contravenes an applicable statute, that provision is invalid and the statute prevails (Wilkinson ex rel Wilkinson v. Palmetto State Trans. Co. 371 S.C. 365, 638 S.E. 2d 109, 116 (SC App, 2006)).

In 1998, SCDC contracted with WTI to set up this work program (R. p. 84).

The contract states, in pertinent part:

6. Payment for Inmate Services: SCDC will invoice Williams on a bimonthly basis for **inmate labor**..

..

4. Security: **At its expense**, SCDC shall be responsible for the security of the inmate labor force and the security of Williams' employees and agents.

..

1. Payment for Services: Williams agrees to pay SCDC \$4.00 per hour per inmate **for work performed**, including training hours and hours in excess of the inmate's normal shift. **SCDC shall be responsible to pay** inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction..

..

i. Failure of Williams to pay promptly to SCDC any **inmate wages** due or supervision pass through costs hereunder for a period of fifteen (15) days after written notice from SCDC to Williams of such default;

(R. p. 77; R. p. 77; R. p. 78; R. p. 82).

Thus, under the contract, SCDC invoices WTI for "inmate labor". WTI, in turn, pays SCDC \$4.00 per hour per inmate for "work performed". And, the contract is terminated (R. p. 81) if WTI fails to pay SCDC promptly for "inmate wages". The contract does not say that WTI is invoiced for, or that it pays SCDC, for labor and security/overhead.

Concerning security, the contract says SCDC is responsible for security "(A)t its expense". As for security and overhead, SCDC "shall be responsible" to cover security costs and overhead.

From the above, Gatewood contends the contract is clear that SCDC pays for security at its own expense, not out of the \$4.00 per hour WTI pays for wages. The contract is also clear that the \$4.00 is for "labor", "work", or

"wages", and no other expense. It follows that the \$4.00 payment does not encompass security and overhead. Finally, the contract is clear in what it does not say, that security and overhead are encompassed within the \$4.00. Gatewood contends that the clear and unambiguous terms of the contract are that security and overhead are paid by SCDC at its own expense, and not out of the \$4.00 payment WTI paid for wages.

The ALC stated it would not consider Gatewood's argument that §3.2.4 of the contract applied so that security costs are not deductible under §24-3-40, because Gatewood did not raise this specific argument in his ALC opening brief (R. p. 36). Gatewood contends that he did substantially raise this argument to preserve it for review.

A party need not use the precise name of a legal doctrine to preserve it for review, so long as the **argument** has been preserved on that ground (Herron v. Century Buick 719 S.E. 2d 640, 642 (S.C., 2011)).

In the Conclusion to his ALC brief, Gatewood requested a remand to SCDC to calculate back wages at a \$4.00 per hour gross wage. Gatewood stated that deductions should be taken out from his \$4.00 gross wage under §24-3-40, citing Torrence. Gatewood specifically stated that, "(N)o deduction should be made from Gatewood's gross wages unless expressly authorized by §24-3-40" (R. pp. 124-125). Neither §24-3-40 nor Torrence allows security or overhead expenses as a deduction. Thus, Gatewood contends that his ALC brief substantially raised the argument that security costs are not deductible under §24-3-40, and the issue was preserved for ALC review.

If this Court does not believe security costs were adequately raised, Gatewood contends that he properly discussed it in reply to new argument in SCDC's brief. In J. Toal, Appellate Practice in South Carolina, Second Edition, page 215, it states, "(A)s the name suggests, the purpose of the reply brief is to reply to any **new argument** the respondent may have set forth in his brief". See also, State v. Wakefield 473 S.E. 2d 831, 832 (S.C. App., 1996)(Since the State addressed, in its brief, the denial of defendant's Motion for Directed Verdict, the Court of Appeals would consider the merits of the issue even though defendant did not raise it in his opening brief, but only in his reply brief).

In SCDC's ALC responsive brief, it stated (R. p. 137):

4. Security: **At its expense**, the Department shall be responsible for the security of the inmate labor force and the security of (WTI's) employees and agents. (Emphasis in original)

..

5. Section 3.3 of the Contract (Emphasis in original)

Section 3.3 is entitled "Mutual Duties of the Parties," and, in relevant part, it provides as follows (Ackerman 5-6-11, p. 365):

1. Payment for Services: (WTI) agrees to pay (the Department) **\$4.00 per hour per inmate** for work performed including training hours and hours in excess of the inmate's normal shift. (The Department) shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked..

..

Thus, Section 3.3 clearly and unequivocally confirms that the Department invoiced WTI at the rate of \$4.00 per inmate labor hour and that, out of the \$4.00 per inmate labor hour rate at which it invoiced WTI, the Department was obligated to pay not only the hourly wages of the inmates who voluntarily participated in the project but also security costs and overhead, which included any costs associated with the health, safety and welfare of the inmates..

In response, Gatewood stated in his reply brief (R. p. 159):

SCDC notes that in §3.2 of the contract, SCDC is to pay for security "at its expense" (SCDC brief, 11). SCDC then takes the seemingly contradictory position that security costs and other matters were to come out of the \$4.00 per hour invoiced rate (SCDC brief, 11).

SCDC contends §3.3 of the contract confirms that SCDC invoiced WTI at the rate of \$4.00 per inmate labor hour and that, out of the \$4.00, SCDC was "obligated" to pay hourly wages of inmates, and security costs and overhead, which included costs for health, safety and welfare of inmates, taxes and other payroll deductions (SCDC brief, 11-12). Gatewood contends taking out any of these expenses not listed in §24-3-40 violated that statute and Torrence.

Elsewhere in his reply brief, Gatewood discussed §3.2.4 of the contract at pp. 4, 9, and deductions from gross wages at pp. 3-6, 8-10 (R. pp. 156-159, 161-163).

On April 23, 2014, SCDC filed a Motion to Strike Argument From The Appellant's Reply Brief concerning Gatewood's reliance on Torrence (R. p. 170).

In its order, the ALC commented on SCDC's Motion to Strike as follows (R. p. 35):

First, Respondent arguably raised arguments in its brief, specifically on pp. 11-12, as to what was included in deductions pursuant to the contract, which could have given rise to the need for an elaboration on Torrence in response.

Gatewood contends that the above ALC brief excerpts, and the ALC's comments, demonstrate that SCDC raised and discussed §3.2.4 in its responsive brief, entitling Gatewood to respond in his reply brief.

The ALC cites §3.3.1 of the contract (R. p. 36) which:

..allows for increases to the per-hour **wage** rate based on increases to the cost of prison overhead, thus reasonably **implying** that the per-hour **wage** rate **takes into account** a deduction for the cost of overhead.

First, Gatewood notes that the ALC recognized the per-hour rate was for wages, not wages plus expenses. The ALC also recognized that the contract is clear and unambiguous (R. p. 36). Therefore, the language alone determines the contract's force and effect, and a court must enforce the contract according to its terms regardless of its wisdom or folly (Schulmeyer v. State Farm Fire and Cas. and Southern Atlantic Financial Services, Inc. v. Middleton).

The terms of the 1998 contract state the \$4.00 payment is for work or wages, not wages plus overhead. Moreover, the terms do not state that the wage rate "takes into account" a deduction for overhead. A meaning cannot be read into a contract which imparts an intent wholly unexpressed therein (Park Regency, LLC v. R & D Development of the Carolinas, LLC). Gatewood contends the ALC ruling is contrary to these principles by "implying" a meaning that is unexpressed, namely that the \$4.00 wage rate "takes into account" a deduction for overhead.

The ALC states Gatewood seems to argue in his reply brief that, because SCDC is responsible to pay security costs and overhead pursuant to §§3.2.4 and 3.3.1, these are out of pocket expenses for SCDC, but under that theory, SCDC would also have to pay inmates out of pocket instead of from gross wages since SCDC is also responsible to pay inmates under §3.3.1, and that would be an absurd interpretation (R. p. 36).

Gatewood contends the contract should be enforced according to its expressed terms. And further, the source of funds for inmates' pay is the \$4.00 WTI payment since it is "for work performed" (R. p. 78). The contract is also clear that SCDC pays for security "at its expense", and thus not out of the \$4.00 payment (R. p. 77). For overhead, the contract does not state the source of funds, but only that SCDC is to "cover" it. See §3.3.1, R. p. 78. Gatewood contends that, because the \$4.00 payment is expressly stated "for work performed", that excludes overhead and other expenses.

Gatewood submits that the ALC's holding, pursuant to §24-1-295, that security and overhead were "other required deductions" in the contract prejudiced his substantive rights because it was affected by other error of law as declared in the cases discussed herein; and was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, including the 1998 contract (S.C. Code §1-23-610(B)(d)(e)).

- 7. The ALC erred in ruling that overtime was not preserved for review because it was preserved, SCDC waived the issue preservation argument, the ALC raised the issue sua sponte, and Gatewood was entitled to overtime on the merits.**

The ALC ruled that Gatewood did not raise overtime in his step 1 and 2 grievances and the issue was not preserved for review (R. p. 37). Gatewood contends that overtime was preserved, SCDC waived the issue preservation argument, the ALC raised issue preservation sua sponte, and Gatewood was entitled to overtime on the merits.

In J. Toal, Appellate Practice in South Carolina, Second Edition, p. 59, the article cites with approval Kiawah Resort Ass'n v. S.C. Tax Commission 318 S.C. 502, 458 S.E. 2d 542, 544 (S.C., 1995) (Issues not raised to or ruled upon by administrative agency will not be addressed on appeal by Circuit Court or Supreme Court). The opinion in that case says, "raised to and ruled upon". A similar rule is stated in 73A C.J.S. (2004), Pub. Adm. Law and Procedure, §471.

And in vol. 5, Am Jur 2d (2007), Appellate Review, §514, it states:

§514. Waiver of Issues Not Argued. An appellate court will generally not consider issues that have not been briefed.

(citing, Comm. v. Spatz 18 A 3d 244, 323 (S.Ct. Penn., 2011) (Simple sentence in defendant's brief regarding failure to raise under relaxed waiver doctrine issue of direct appellate counsel's failure to raise jury instructions issue, did not constitute a developed or intelligible argument and thus, the issue was waived on appeal from denial of post-conviction relief).

And finally, in J. Toal, Appellate Practice in South Carolina, Second Edition, p. 55, it states the following principle with approval from State v. Austin 306 S.C. 9, 19, 409 S.E. 2d 811, 817 (S.C. App., 1991):

Appellate courts in this State, like well behaved children, do not speak unless spoken to and do not answer questions they are not asked.

Here, it is correct that Gatewood did not raise overtime in his grievances. However, SCDC raised and denied overtime to the extent Gatewood had demanded it, in its step 1 (R. p. 40) and step 2 (R. p. 44) decisions.

Moreover, Gatewood raised overtime in his ALC Notice of Appeal (R. p. 56). And, Gatewood briefed overtime on the merits (R. p. 119). In its brief, SCDC conceded inmates could perform overtime, but argued overtime was not ripe for review (R. p. 146). SCDC did not raise or brief issue preservation (R. pp. 146-147).

Gatewood contends overtime was preserved for review by the ALC because SCDC raised and denied overtime in its decisions. Although Gatewood had not demanded overtime in his grievances, the fact that SCDC raised and denied it should be sufficient to preserve the issue for review (J. Toal, Appellate Practice in South Carolina, Second Edition, p. 59; 73A C.J.S. (2004), Pub. Adm. Law and Proc., §471).

Gatewood further contends that, in the ALC, SCDC waived issue preservation by failing to argue it in its brief (vol. 5, Am Jur 2d (2007), Appellate Review, §514; Comm. v. Spatz). Gatewood also contends the ALC erred in raising issue preservation sua sponte (J. Toal, Appellate Practice in South Carolina, Second Edition, p. 55).

Finally, Gatewood contends he was entitled to overtime on the merits. In SCDC v. Cartrette 694 S.E. 2d 18, 20-22 (S.C. App., 2010) and SCDC v. Tomlin 694 S.E. 2d 25, 27-29 (S.C. App., 2010), the Court of Appeals held that inmates are entitled to overtime pay under §24-3-430(D).

SCDC did not argue that Gatewood was not entitled to overtime for hours worked in excess of his normal shift. SCDC argued the issue was not ripe

for adjudication until the ALC ruled on the \$4.00 per hour wage (R. p. 146). This, the ALC did, as discussed in issue 2 herein. Gatewood contends that, if this Court rules the issue was preserved, and also rules that §24-1-295 did not apply to any part of Gatewood's work (issues 2-6), the Court should also rule that Gatewood is entitled to overtime for any and all hours worked in excess of his normal shift (SCDC v. Cartrette and SCDC v. Tomlin).

Gatewood submits that the ALC's ruling that overtime was not preserved for review prejudiced his substantive rights because it was affected by other error of law, as discussed in the authorities cited herein; and was clearly erroneous in view of the relevant, probative, and substantial evidence on the whole record summarized herein (S.C. Code §1-23-610(B)(d)(e)).

- 8. The ALC erred in not granting Gatewood's request for pre and post-judgment interest, and to petition the ALC for costs and attorney fees, because this ruling was based on the ALC's erroneous ruling that SCDC could deduct security and overhead costs from Gatewood's \$4.00 gross wage under §24-1-295.**

The ALC agreed with Gatewood on the primary issue of entitlement to a \$4.00 per hour gross wage (R. p. 36). However, the ALC further held that §24-1-295 applied to allow SCDC to deduct security and overhead expenses from the \$4.00 wage (Id). The ALC held that, in light of its ruling, Gatewood was not entitled to interest, costs and attorney fees (R. p. 38).

If this Court believes the ALC erred in applying §24-1-295, Gatewood contends he would be the prevailing party on the primary issue and thus

entitled to petition the ALC for costs and attorney fees. He would also be entitled to pre and post judgment interest on any back wages due.

Gatewood signed a fee contract with counsel in which counsel would be paid a percentage of any recovery, or S.C. Code §15-77-300(A) would apply in appropriate circumstances. That statute allows an award of attorney fees to a prevailing party contesting state action if the defendant agency acted without substantial justification in pressing its claim and there are no special circumstances making an award unjust.

Moreover, in McDowell v. DSS 304 S.C. 539, 543, 405 S.E. 2d 830, 833 (S.C., 1991), the Supreme Court held that a plaintiff who petitions for judicial review in Circuit Court of a DSS decision is entitled to attorney fees because it is a "civil action" under §15-77-300.

Here, in his grievance Gatewood requested pre and post judgment interest, costs and attorney fees (R. p. 46). SCDC denied these requests in its initial response (R. p. 41) and final decision (R. p. 44). SCDC also denied the wage rate Gatewood had requested (Id).

In the ALC, SCDC denied that Gatewood was entitled to the \$4.00 per hour gross wage (R. p. 131). Also, SCDC contended that security and overhead expenses were encompassed within the \$4.00 wage (R. p. 145).

Gatewood contends that, but for the ALC's ruling that §24-1-295 applies, Gatewood would have received a favorable decision. Therefore, if this Court reverses the ALC order under one or more of issues 2-6, Gatewood contends he

is the prevailing party, entitling him to petition for costs and attorney fees in the ALC (Douan v. Charleston County Council 645 S.E. 2d 241, 243 (S.C., 2007)) (Prevailing party is party who successfully prosecutes an action by prevailing on the main issue and in whose favor the decision is rendered, the key factor being the degree of success obtained by the party seeking attorney fees). Gatewood also contends he would be entitled to pre and post-judgment interest on any back pay due.

If this Court reverses the ALC for its ruling pursuant to §24-1-295, Gatewood submits the ALC's ruling that he was not entitled to pre and post-judgment interest, costs and attorney fees, prejudiced his substantive rights because it violates S.C. Code §15-77-300; and was affected by other error of law as discussed in McDowell and Douan (S.C. Code §1-23-610(B)(a)(d)).

9. **The ALC erred in declining to consider the issue of whether SCDC should have to process grievance for all workers even if they had not personally filed because this was a stated issue in Gatewood's appeal and the ALC did not state that it was manifestly without merit.**

In its order, the ALC held that, because this case "...does not involve the grievances of other workers in the program...who never filed grievances" the ALC would not consider this issue (R. p. 30). Gatewood contends that he raised this issue in the ALC in his Statement of Issues on Appeal (R. p. 113), and argued it in his brief (R. p. 123). Furthermore, the ALC did not state that the issue was manifestly without merit (R. p. 30). Therefore, Gatewood contends the ALC should have considered the issue.

ALC Rule 60B(1), Statements of the Issues on Appeal, states in part, "(O)rdinarily, no point will be considered that is not set forth in the statement of issues on appeal". Moreover, ALC Rule 65 states that:

The Administrative Law Judge may affirm any ruling, order or judgment upon any ground(s) appearing in the Record and need not address a point which is manifestly without merit.

Here, because Gatewood named this issue in his Statement of Issues on Appeal, argued it, and the ALC did not find it to be manifestly without merit, Gatewood contends the ALC erred in declining to address it.

Gatewood submits that the ALC's refusal to address this issue prejudiced his substantive rights because it was made upon unlawful procedure; and was affected by other error of law in the ALC rules cited herein (S.C. Code §1-23-610(B)(c)(d)).

10. The ALC erred in declining to enjoin SCDC from further wage violations because such ruling was appropriate in the circumstances.

The ALC held that this is a wage appeal and not an injunction action, and Gatewood never raised this issue in his step 1 or 2 or notice of appeal to the ALC (R. p. 38). Gatewood contends that injunctive relief is appropriate and should have been granted.

In S.C. Code §1-13-90(d)(9), it states that in complaints asserting violations of §1-13-80, unlawful employment practices, the court may enjoin the respondent employer from engaging in such practices. By analogy to the rule in §1-13-90, Gatewood contends the ALC should have enjoined SCDC from future violations as part of its relief to Gatewood.

Gatewood submits that the ALC's refusal to enjoin SCDC prejudiced his substantive rights because it was affected by other error of law (S.C. Code §1-23-610(B)(d)).

CONCLUSION

In conclusion, Gatewood respectfully requests this Court to reverse the ALC order and hold as follows:

1. The documents Gatewood proposed for the ALC record as described in section II(A)(C) of his Motion to Supplement are to be included in the ALC record.
2. Section 24-3-40 governs deductions from Gatewood's wages, not §24-1-295.
3. Section 24-1-295 does not govern deductions from Gatewood's wages up to August 1, 2007 because §24-1-295 cannot apply retroactively to pre-August 1, 2007 work.
4. Section 24-1-295 does not govern deductions from Gatewood's wages up to August 1, 2007 because it would divest Gatewood of his previously vested right to wages, and thus violate due process.
5. Section 24-1-295 does not govern deductions from Gatewood's wages up to August 1, 2007 because it would impair the obligations of contracts, in violation of South Carolina Constitution, §4.
6. Section 24-1-295's "other required deductions" clause did not apply because the clear and unambiguous terms of the contract indicate that security and overhead were to be paid by SCDC at its expense.

7. The issue of overtime compensation was preserved for ALC review and Gatewood was entitled to overtime pay if earned.

8. Gatewood's ALC request for pre and post-judgment interest, and to petition for costs and attorney fees, should have been granted.

9. The ALC should have considered the issue of whether SCDC must process grievance for all workers.

10. The ALC should have enjoined SCDC from further wage violations as part of its relief to Gatewood.

11. Gatewood respectfully requests a remand to the ALC to:

(a) include in the record those documents listed in Gatewood's Motion to Supplement Record II(A)(C);

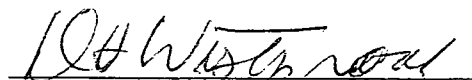
(b) allow Gatewood to petition for costs and attorney fees;

(c) consider the issue of SCDC having to process grievance for all workers;

(d) enjoin SCDC from future wage violations;

(e) remand to SCDC to calculate Gatewood's back wages at \$4.00 per hour, less any deductions applicable to Gatewood under §24-3-40(A); calculate any overtime pay earned at \$6.00 per hour; calculate pre and post-judgment interest at 8 3/4%; and pay these amounts, plus costs and attorney fees as directed by the ALC; all as set forth in Gatewood's ALC brief, pp. 12-13.

Respectfully submitted,



Douglas H. Westbrook, #6039

23 Broad St.

Charleston, SC 29401

(843) 853-9600

Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Trial Court Case No. 07-ALJ-04-0517-AP
Appellate Case No. 2014-001199

Fred Gatewood, #289775, ... Appellant,

v.

South Carolina Department of Corrections, ... Respondent.

RESPONDENT SCDC'S BRIEF

Lake E. Summers (SC Bar No. 64146)
Katherine Phillips (SC Bar No. 77840)
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
Office: (803) 254-3300
Fax: (803)-254-0309
E-mail: summers@mtsolaflrm.com
phillips@mtsolaflrm.com

Counsel for Respondent SCDC

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STATEMENT OF ISSUES ON APPEAL

The Respondent, the South Carolina Department of Corrections ["SCDC"], respectfully submits the following Statement of Issues on Appeal:

1. Did the ALC err in denying the Appellant's Motion to Supplement the Record on Appeal with materials the Appellant identified in Sections II(A) and II(C) of his motion to the ALC?
2. Did the ALC err in holding that S.C. Code § 24-1-295, not § 24-3-40, applies to prison industries service projects?
3. Did the ALC apply § 24-1-295 retroactively to the pay the Appellant received before August 2007?
4. Did the ALC err in holding that the Appellant was never entitled to receive \$4.00 per hour for the labor he provided to the prison industries service project?
5. Did the ALC err in holding that the Appellant was not entitled to overtime pay?
6. Did the ALC err in holding the Appellant was not entitled to pre-judgment and post-judgment interests, costs, and attorney's fees?
7. Did the ALC err in holding that the Appellant's appeal of SCDC's denial of his grievances did not involve other inmates?
8. Did the ALC err in holding that the Appellant's appeal of SCDC's denial of his grievances was not an injunction action?

STATEMENT OF THE CASE

This matter concerns the appeal by the Appellant of two final orders issued by the South Carolina Administrative Law Court ["ALC"]. The ALC's November 12, 2013 Order denied the Appellant's Motion to Supplement the Record on Appeal. (R. pp. 25 – 28). The ALC's April 29,

2014 Order affirmed SCDC's denial of the Appellant's grievances, which articulated various claims concerning the hourly wage SCDC paid to the Appellant while he voluntarily participated in a prison industries service project operated by SCDC at Lieber Correctional Institution ["Lieber"] in which Williams Technologies, Inc. ["WTI"], and now Caterpillar, Inc., participates as the private industry sponsor. (R. pp. 29 – 39).

The Appellant first raised some of these claims by filing a Step 1 administrative grievance with SCDC (R. p. 46) under the provisions of SCDC's Inmate Grievance System Policy, designated as SCDC Policy Number GA-01.12. (R. pp. 62 – 71). Upon SCDC's denial of his Step 1 grievance, the Appellant, as contemplated by Policy GA-01.12, filed a Step 2 appeal. Upon SCDC's denial of his Step 2 appeal (R. p. 48), which represented SCDC's final decision, the Appellant, by the Notice of Appeal dated May 30, 2007 and signed by his counsel (R. pp. 56 – 57), appealed SCDC's decision to the ALC.

The ALC consolidated the Appellant's instant appeal with approximately 200 appeals filed by the Appellant's undersigned counsel on behalf of other current and former inmates who, like the Appellant, asserted various claims concerning the hourly wage SCDC paid to them while they voluntarily participated in the prison industries *service* project operated by SCDC at Lieber.

The ALC issued its final order in Ackerman, which it styled as its "Second Amended Order," on July 26, 2012, and, by its Order, the ALC determined that while the Appellant had timely filed his Step 1 grievance, all of the other current and former inmates in Ackerman did not timely file their respective Step 1 grievances. The current and former inmates in Ackerman,

appealed the ALC's order to this Court, and, as of the date of SCDC's instant brief, their appeal is still pending.¹

Ultimately, the ALC retained jurisdiction to determine the issue(s) associated with the "Level Three" phase of the Appellant's case, namely whether, the Appellant was entitled to a \$4.00 per hour wage rate for his labor based on the 2001 budget proviso and succeeding enactments allowing SCDC to negotiate the wage to be paid for inmate labor, and the 1998 *service* work contract between SCDC and WTI (hereinafter "Contract"), in which WTI agreed to pay SCDC \$4.00 per hour per inmate for work performed. (R. pp. 29 – 39).

In his Step 1 grievance dated October 16, 2004 (R. p. 46), the Appellant, like his fellow current and former inmates in Ackerman, asserted that he was entitled to back pay and a higher hourly rate of pay for the labor he voluntarily provided to the prison industries project operated at Lieber. Specifically, the Appellant asserted that he was entitled to the so-called "prevailing wage" pursuant to S.C. Code Ann. § 24-3-430(D). Section 24-3-430 is entitled "[i]nmate labor in private industry authorized; requirements and conditions." In its entirety, it provides as follows:

No inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector.

The Appellant asserted in his Step 1 grievance that, under the provisions of § 24-3-430, the proper hourly rate of pay for his labor ranged between \$8.40 and \$12.06 per hour. (R. p. 46). In the amendment to his grievance which he signed on February 3, 2006 (R. p. 50), the Appellant articulated the following claim which more closely resembles the main issue on appeal he presented in his brief:

¹ As accurately recounted by the Appellant in his "Statement of the Case," the appellate court case number for Ackerman is 2012-210588. (R. p. 115).

Since July 2001, WTI/Lieber were required to pay [the Appellant] the negotiated wage of \$4/hour (Stat. at Large, No. 66, § 37.31; Exh. B, C). In fact, [SCDC's] policy was to pay a maximum of about \$1/hour, and usually less. Exhibits document a \$.35 per hour base rate (Exh. B,D,E); maximum of \$1/hour (Ex. E); the 9-30-98 contract specifying a \$4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for [the Appellant] (Exh. F.)

In his "Statement of the Case,"² the Appellant stated that he voluntarily provided labor to the prison industries service project at Lieber "between 2004 and at least 2009." Thus, any notion that, under § 24-3-430, SCDC should have paid the Appellant an hourly rate of between \$8.40 and \$12.06 for his prison industries labor is, by the Appellant's implicit admission, not viable. Regarding the statutory provisions which controlled the rate at which SCDC paid him for the labor he provided to the prison industries service project at Lieber, the Appellant, in his "Statement of the Case,"³ stated as follows:

When [the Appellant] worked, S.C. Code § 24-3-430(D), the "prevailing wage" statute, had been replaced by a budget proviso which allowed SCDC to pay inmates a negotiated wage which could be less than the prevailing wage (Statutes at Large, No. 66, § 37.31, effective July 2001). Similar budget provisos were passed until 2007 (Darrell Williams, Class Representative, et al. v. SCDC, et al., 641 S.E.2d 885, 886 n. 2 (S.C., 2007)). In 2007, § 24-1-295 was passed and contained language that was very similar to the previous budget provisos.

However, the Appellant lacks a fundamental understanding of the origins of the applicable budget proviso, the relationship between the budget provisos, their eventual codification in § 24-1-295, and § 24-3-430(D), the types of projects to which the provisos and § 24-1-295 applied and continue to apply, and, critically, the parties to whom the term "negotiated wage" actually applied under the provisos and § 24-1-295. As demonstrated below, the Appellant's inability to grasp the plain meaning of the budget proviso and § 24-1-295 fatally

² Appellant's Brief, Argument 1, p. 2.

³ Id.

undermines his assertion, as well as his supporting analysis, that he was entitled to an hourly rate of \$4.00 for the labor he voluntarily provided to the prison industries service project at Lieber.

STANDARD OF REVIEW

ALC Rule of Procedure 65 states that “[j]udicial review of any decision of the [ALC] shall be as provided in S.C. Code Ann. § 1-23-610 (2005) (as amended).” See also S.C. Dep’t of Corr. v. Mitchell, 659 S.E.2d 233, 234 (S.C. Ct. App. 2008) (“Section 1-23-610 ... sets forth the standard of review when the court of appeals is sitting in review of a decision by the ALC on an appeal from an administrative agency.”).

Thus, the provisions of § 1-23-610, specifically § 1-23-610(B), establish the standard of review applicable to this Court’s consideration of the Appellant’s challenge of the ALC’s Orders.

In its entirety, § 1-23-610(B) reads as follows:

The review of the administrative law judge’s order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact.⁴ The court of appeals may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if substantial rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

⁴ See generally, Mitchell, 659 S.E.2d at 235 (The ALC must apply the standard articulated in § 1-23-380(5) when reviewing, on appeal, an administrative agency’s decision.). SCDC also respectfully submits that the standards of review set forth in §§ 1-23-380(5) and 1-23-610(B) are identical if not nearly identical.

Pursuant to § 1-23-610(B), this Court “may reverse or modify the [ALC’s] decision **only if** [the Appellant proves his] substantive rights [have] been prejudiced because the decision is clearly erroneous in light of the reliable and substantial evidence on the whole record, arbitrary or otherwise characterized by an abuse of discretion, or affected by other error of law.” Mitchell, 659 S.E.2d at 234 [emphasis supplied] (reversing the ALC’s order because the “order [was] devoid of any finding of evidence adduced by [the Appellant] warranting the ALC’s reversal of the Department.”). Moreover, the Appellant must “distinctly and specifically direct the court’s attention to the errors or abuses allegedly committed by the [ALC]. [The Appellant] must include all that is necessary to enable [this Court] to decide whether the [ALC] made an erroneous or unsubstantiated ruling. A mere expression of dissatisfaction with the ruling is not sufficient.”⁵ Al-Shabazz v. State, 527 S.E.2d 742, 755 (S.C. 2000) (citations omitted).

Critically, the Appellant has the burden of proving convincingly that the ALC’s decision to uphold SCDC’s decision is unsupported by substantial evidence. Mitchell, 659 S.E.2d at 235. Substantial evidence is relevant evidence “when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the ALC arrived at in justifying its decision.” S.C. Coastal Conservation League v. S.C. Dep’t of Health & Envtl. Control, 669 S.E.2d 899, 905 (S.C. Ct. App. 2008).

The Appellant also has the burden of proving the ALC’s decision is arbitrary and otherwise characterized by an abuse of discretion. Mitchell, 659 S.E.2d at 234. A decision is arbitrary if no rational basis for the conclusion exists, or when it is based on one’s will and not upon any course of reasoning and exercise of judgment. A decision may also be arbitrary if it is

⁵ In 2006, the General Assembly amended the Administrative Procedures Act so that a party must appeal a decision of the ALC, in which the ALC considered an appeal of an administrative agency’s decision, to this Court rather than the circuit court.

made at pleasure without adequate determining principles or is governed by no fixed rules or standards. Converse Power Corp. v. S.C. Dep't of Health & Envtl. Control, 564 S.E.2d 341, 345 (S.C. Ct. App. 2002). An “abuse of discretion occurs when the judge’s ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the judge is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case.” Ex parte Capital U-Drive-It, Inc., 630 S.E.2d 464, 467 (S.C. 2006).

ARGUMENT

I. THE ALC CORRECTLY DENIED THE APPELLANT’S MOTION TO SUPPLEMENT THE RECORD ON APPEAL

The Appellant contends that the ALC erred by “denying [his] Motion to Supplement the Record for sections [II(A) and II(C)]⁶ of the motion.”⁷

In its November 12, 2013 Order, the ALC ruled that the issue before the court was “whether the Appellant was entitled to a gross pay rate of \$4.00 per hour” during the time he participated in the prison industries service project at SCDC. The ALC further determined that ALC Rule 58(D) applied to the Appellant’s appeal of SCDC’s denial of his grievance. (R. p. 26). The ALC concluded that the Appellant misconstrued ALC Rule 58(D) because the “Record on

⁶ The ALC’s November 12, 2013 Order denied the Appellant’s Motion to Supplement the Record with the materials he identified in Sections II(A), (B), (C), and (E) of his Motion. (R. p. 26). The Appellant only contends that the ALC erred by denying his motion to include the material identified in Sections II(A) and II(C) of his motion. Accordingly, SCDC respectfully submits that the Appellant has not challenged the ALC’s denial of his motion to supplement the record with the material he identified in Sections II(B) and (E).

⁷ Appellant’s Brief, Argument 1, pp. 6 – 9.

Appeal” discussed in Rule 58(D) consists of the record considered by SCDC not the ALC during briefing by the parties. *Compare to ALC Rule 36.* (R. pp. 25 – 28).

The Appellant has the burden to prove that the ALC’s exclusion of materials from the Record on Appeal affected the ALC’s ruling and prejudiced the Appellant. Snyder's Auto World, Inc. v. George Coleman Motor Co., 434 S.E.2d 310, 312 (S.C. Ct. App. 1993) (“The burden is on the appellant to show not only error, but also prejudice.”). The Appellant’s arguments are nothing other than his disagreement with the ALC’s interpretation of ALC Rule 58, and conjecture that “SCDC must have” and “probably” considered these materials when it denied the Appellant’s Step 1 and Step 2 grievances.⁸ Accordingly, SCDC respectfully submits that the Appellant has articulated nothing other than a “mere expression of dissatisfaction with the ruling,” which is insufficient Al-Shabazz, 527 S.E.2d at 755

The Appellant described the materials that he identified in Section II(A) of his motion, as “pay stubs and time cards.”⁹ The materials the Appellant sought to include by Section II(C) of his motion consisted of additional arguments by the Appellant in support of the “Level 2” brief in Ackerman and in support of his “Level 3” brief to the ALC. The Appellant does not attempt to explain how the ALC’s denial of his Motion to Supplement the Record on Appeal with these materials affected the ALC’s ultimate decision that the Appellant was not entitled by contract or statute to receive the \$4.00 per hour negotiated wage. Judy v. Judy, 682 S.E.2d 836, 842 (S.C. Ct. App. 2009) (“Generally, appellate courts will not set aside judgments due to insubstantial errors not affecting the result.”); Jamison v. Ford Motor Co., 644 S.E.2d 755, 761 (S.C. Ct. App. 2007) (“To warrant reversal based on the admission or exclusion of evidence, the complaining

⁸ Appellant’s Brief, Argument 1, pp. 6 – 9.

⁹ Id., p. 8.

party must prove both the error of the ruling and the resulting prejudice.”). Accordingly, even if the ALC erred by denying the Appellant’s motion to supplement the Record on Appeal before the ALC, the ALC’s ruling is harmless error. Judy, 682 S.E.2d at 842 (“Error is harmless where it could not reasonably have affected the result of the trial.”).

Therefore, this Court should affirm the ALC’s November 12, 2013 Order which denied the Appellant’s Motion to Supplement the Record on Appeal with materials he identified in Sections II(A) and II(C) of his motion. Alternatively, this Court should find that any error by the ALC in denying the Appellant’s motion to supplement the record was harmless.

II. THE ALC CORRECTLY DETERMINED THAT S.C. CODE § 24-1-295, NOT § 24-3-40, APPLIED TO THE LABOR THE APPELLANT VOLUNTARILY PROVIDED TO THE PRISON INDUSTRIES SERVICE PROJECT OPERATED AT LIEBER

As acknowledged by the Appellant in his brief, the South Carolina General Assembly, starting in 2001, enacted a budget proviso applicable only to prison industries *service* projects operated by SCDC, such as the service project it operated at Lieber in which WTI originally participated, and now Caterpillar, Inc. participates as the private industry sponsor. In its entirety, the first proviso, which became effective July 1, 2001, stated as follows:

37.31. (CORR: Prison Industry Service Contracts) The Director of the Department of Corrections may enter into contracts with private sector entities that would allow for inmate labor to be provided for prison industry service work. The use of such inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. **Service** work is defined as any work such as repair, replacement of original manufactured items, packaging, sorting, labeling, or similar work that is **not** original equipment manufacturing. **The department may negotiate the wage to be paid for inmate labor provided under prison industry service work contracts, and such wages may be less than the prevailing wage for work of a similar nature in the private sector. [emphasis supplied].**

2001 – 2002 General Appropriations Bill, H. 3687, Section 37 – No. 4 – [SCDC] (June 21, 2001).

Contrary to the description provided by the Appellant in his “Statement of the Case,” the above-quoted proviso did not amend § 24-3-430 in any fashion whatsoever.¹⁰ The proviso represented an enactment by the legislature to address only prison industries *service* projects, and, accordingly, the rate(s) at which SCDC paid inmates who voluntarily participated in Prison Industries Enhancement Certification [“PIECP”] projects it operated at various other facilities, under the provisions of § 24-3-315, § 24-3-410, and, of course, § 24-3-430, were not impacted at all by the General Assembly’s enactment of the 2001 budget proviso.¹¹

The General Assembly enacted similar, if not identical, budget provisos each year until it enacted S.C. Code Ann. § 24-1-295, effective August 1, 2007. *See* Prison Industries Act, Act No. 68, 117th Session (June 18, 2007). In relevant part, § 24-1-295 provides as follows:

The Director of [SCDC] may enter into contracts with private sector entities that allow inmate labor to be provided for prison industry **service** work and export work that involves exportation of products. The use of inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. Pursuant to this section, **service** work is defined as any work that includes repair, replacement of original manufactured items, packaging, sorting, recycling, labeling, or similar work that **is not** original equipment manufacturing. The department may negotiate the wage to be paid for inmate labor provided under prison industry **service** work contracts and export work contracts, **and these wages may be less than the prevailing wage for work of a similar nature in the private sector.** However, the Director of the Department of Corrections shall deduct the following from the gross earnings of the inmates engaged in prison industry service work in addition to any other required deductions: [emphasis supplied].

¹⁰ See R. p. 114.

¹¹ The types of projects operated by SCDC in Adkins v. S.C. Dep’t of Corr., 602 S.E.2d 51 (S.C. 2004) and Wicker v. S.C. Dep’t of Corr., 602 S.E.2d 56 (S.C. 2004) differed from the service project operated by SCDC at Lieber, and, therefore, the budget proviso discussed above did not and does not apply to the hourly rates of pay associated with these projects.

“The cardinal rule of statutory construction is for the Court to ascertain and effectuate the intent of the legislature.” Wade v. Berkeley Cnty., 559 S.E.2d 586, 588 (S.C. 2002). The first question a court must consider is whether the statute’s meaning is “clear on its face.” Id. “If a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.” Id. (quoting Paschal v. State Election Comm’n, 454 S.E.2d 890, 892 (S.C. 1995)). See also Ward v. West Oil Co., Inc., 692 S.E.2d 516, 519 (S.C. 2010) (same). “The text of the statute is considered the best evidence of the legislative intent.” Wigfall v. Tideland Utilities, Inc., 580 S.E.2d 100, 105 (S.C. 2003). If a statute’s language is ambiguous, the court must construe the terms of the statute. Wade, 559 S.E.2d at 588. Furthermore, “the court should not consider the particular clause being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law.” State v. Prince, 517 S.E.2d 229, 232 (S.C. Ct. App. 1999).

The language of the applicable budget provisos, which the General Assembly ultimately codified in § 24-1-295, is clear and unambiguous: SCDC may “negotiate the wage to be paid for inmate labor under prison industry *service* work contracts ... and these wages may be less than the prevailing wage.” [emphasis supplied]. The Appellant does not dispute this clear and unambiguous language.

Absolutely nothing in either the budget provisos nor § 24-1-295 mandate any specific wage or wage range that SCDC must pay inmates, including the Appellant, who voluntarily participate in prison industries *service* projects, such as the project operated at Lieber.

The General Assembly set neither a floor nor a ceiling for the hourly inmate labor rate that SCDC may negotiate with the private industry sponsor in all such prison industry *service*

work contracts. As shown further below, the hourly rate of pay that SCDC pays individual inmates for the labor they voluntarily provide to such service projects *was included* in the hourly inmate labor rate that SCDC negotiated with WTI in the 1998 Contract.

Consequently, the Appellant's claim that the budget provisos and/or the provisions of § 24-1-295 required SCDC to pay him \$4.00 per hour for the labor he voluntarily provided to the service project operated at Lieber is completely unsupported by the clear and unambiguous text of the budget provisos and § 24-1-295. Stated plainly, just because the hourly inmate labor rate that SCDC charged WTI for effectively leasing the inmates' labor equaled \$4.00, which is less than the rather purported "prevailing wage" of between \$8.40 and \$12.06 that the Appellant and his cohorts outlandishly claimed in their Step 1 grievances, does not mean that SCDC was required to pay the individual inmates who voluntarily participated in the service project at Lieber at the rate of \$4.00 per hour.

The Appellant further contends that our Supreme Court in Torrence, et al. v. SCDC, et al., 646 S.E.2d 866 (S.C. 2007) and Darrell Williams, Class Representative, et al. v. SCDC, et al., 641 S.E.2d 885, n. 2 (S.C., 2007) held that all deductions from inmate wages are governed by § 24-3-40.¹² In his argument, however, the Appellant fails to accept that the prison industries project at issue in Torrence was a PIECP project, not a service project, as explained above. As accurately explained by the ALC in its April 29, 2014 Order, § 24-3-40 does not apply to this case because § 24-3-40 applies to PIECP projects, not service projects. Section 24-1-295, not § 24-3-40 applies, to *service* projects, like the one the Appellant participated in at Lieber. (R. p. 33 n. 6).

¹² See R. pp. 123 – 124.

Moreover, the sole issue in Williams was whether the inmates could maintain a private right of action under the South Carolina Payment of Wages Act. Williams, 641 S.E.2d at 886. Ultimately, the court held that inmates could not. Id. at 888. The court cited § 24-3-40 as evidence of the legislature's intent as to the entity responsible for paying inmate wages. The Williams Court did not consider whether § 24-3-40 applied to service projects. Id. at 887. Moreover, Williams did not discuss or distinguish between PIECP projects and service projects.

Critically, the legislature had not enacted § 24-1-295 when our Supreme Court issued its decisions in Torrence and Williams. More importantly, if § 24-3-40 applies to inmates wages in service projects *and* PIECP projects, as advocated by the Appellant, then § 24-1-295 would have absolutely no meaning. Such an absurd result is contrary to the cardinal rules of statutory construction, which is to ascertain and effectuate the intent of the legislature. Grier v. AMISUB OF S.C., Inc., 725 S.E.2d 693, 695 (S.C. 2012).

Accordingly, this Court should affirm the ALC's ruling that § 24-1-295, not § 24-3-40, applies to service projects, such as the project in which the Appellant participated in at Lieber.

III. THE ALC DID NOT APPLY § 24-1-295 RETROACTIVELY TO THE APPELLANT'S PRE-AUGUST 2007 WORK

The Appellant contends that the ALC erred by holding that § 24-1-295 governed deductions from the Appellant's pre-August 2007 work,¹³ and by purportedly doing so, the ALC violated the Appellant's due process rights¹⁴ and violated the South Carolina Constitution by "impair[ing] the obligation of contracts."¹⁵

¹³ Appellant's Brief, Argument 3, pp. 15 – 16.

¹⁴ Id., Argument 4, pp. 16 – 18.

¹⁵ Id., Argument 5, pp. 18 – 21. SCDC respectfully responds to Appellant's arguments 3 – 5 collectively. See also Section IV below.

SCDC respectfully submits that the Appellant did not raise these arguments before the ALC and the ALC did not rule on these arguments in its April 29, 2014 Order. Accordingly, the Appellant did not preserve these arguments for appellate review and this Court should dismiss the Appellant's arguments 3 – 5 in their entirety. Doe v. Roe, 631 S.E.2d 317, 330 (S.C. Ct. App. 2006) (“An issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.”).

Even if the Appellant preserved these arguments for appellate review, the ALC did not apply § 24-1-295 retroactively to the labor the Appellant voluntarily provided to the prison industries service project before § 24-1-295 was enacted in August 2007.

Before § 24-1-295 was enacted in August 2007, no statute mandated SCDC to deduct monies from an inmate's wages that he received due to his voluntary participation in the prison industries service project. However, before the legislature enacted § 24-1-295, SCDC entered into the 1998 Contract with WTI, which required SCDC to deduct security and overhead expenses from the \$4.00 negotiated wage it invoiced the private industry sponsor. The ALC recognized this distinction. Specifically, the ALC observed that “SCDC was required by the terms of the 1998 Contract, specifically under Section 3.3, ‘to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety, and welfare of the inmates, taxes or other payroll deduction...’” (R. p. 36). Thus, the ALC concluded that “security costs and overhead were contractually required deductions,” before § 24-1-295 was enacted. (R. p. 36).

Accordingly, the ALC did not apply § 24-1-295 retroactively to the Appellant's Pre-August 2007 labor, and this Court should affirm the ALC's ruling that SCDC was required by contract, not statute, to deduct security and overhead costs from the wage SCDC negotiated with WTI before § 24-1-295 was enacted. Moreover, because the ALC did not apply § 24-1-295

retroactively to the Appellant's wages before August 2007, this Court should conclude that the ALC's Order did not violate the Appellant's due process rights or violate the South Carolina's Constitution related to obligation of contracts.

IV. THE ALC CORRECTLY DETERMINED THAT THE APPELLANT WAS NEVER ENTITLED TO RECEIVE \$4.00 PER HOUR FOR THE LABOR HE VOLUNTARILY PROVIDED TO THE PRISON INDUSTRIES SERVICE PROJECT

The Appellant contends that the ALC erred by concluding that SCDC was contractually required to deduct security and overhead costs and those deductions were "other required deductions" under § 24-1-295. (R. pp. 32 – 37). The Appellant contends that, pursuant to the 1998 Contract, security and overhead costs were "at SCDC's expense."¹⁶

SCDC respectfully submits that the clear and unambiguous terms of the 1998 Contract required SCDC to deduct security and overhead expenses from the \$4.00 negotiated wage it invoiced the private industry sponsor, before and after § 24-1-295 was enacted and irrespective of the other required deductions language from § 24-1-295.

A. Applicable Provisions of the 1998 Contract

1. The Parties to the 1998 Contract

On or about September 30, 1998, SCDC entered into a 10-year contract with WTI to establish the prison industries service project at Lieber. (R. pp. 72 – 87). The Contract clearly identifies the parties as follows (R. p. 73):

THE AGREEMENT is entered into this 30th day of September, 1998 , by and between the **South Carolina Department of Corrections** (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and **Williams Technologies, Inc.**, (hereinafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman. [emphasis supplied].

¹⁶ Appellant's Brief, Argument 6, pp. 21 – 28. See also Id., Argument 5, pp. 18 – 21. SCDC respectfully responds to Appellant's arguments 5 and 6 collectively.

2. The Purpose of the 1998 Contract

The Contract's purpose was "to fulfill the intent of Section 24-3-310.¹⁷" (R. p. 73).

Section 24-3-310, entitled "Declaration of Intent," provides as follows:

Since the means now provided for the employment of convict labor is inadequate to furnish a sufficient number of convicts with employment it is the intent of this article to:

- (1) further provide more adequate, regular, and suitable employment for the convicts of this State, consistent with proper penal purposes;
- (2) further utilize the labor of convicts for self-maintenance and for reimbursing this State for expenses incurred by reason of their crimes and imprisonment;
- (3) effect the requisitioning and disbursement of prison products directly through established state authorities with no possibility of private profits therefrom; and
- (4) provide prison industry projects designed to place inmates in a realistic working and training environment in which they are able to acquire marketable skills and to make financial payments for restitution to their victims, for support of their families, and for the support of themselves in the institution.

3. The Contract's "Bullet Sheet"

Along with the Contract itself, the Record reflects a "bullet sheet" which summarizes the Contract's key points.¹⁸ Entitled "Williams Technology Transmissions Service Contract" (R. p. 72), it states the following "Wage Rate:" "\$4.00 per hour/per inmate - \$.35/hr base for inmates."

¹⁷ The General Assembly amended § 24-3-310 effective June 11, 2010. The amendment appears only to have substituted the term "convict" with the term "inmate." See Local Detention Facility Mutual Aid and Assistance Act, Act No. 237 (2010).

¹⁸ The term "bullet sheet" appears in the bottom left corner of the document. (R. p. 72).

4. Section 3.2 of the Contract

Section 3.2 is entitled "Duties of SCDC," and, in relevant part, Section 3.2 provides as follows (R. p. 77):

1. Inmate Laborers: [SCDC] will use its best efforts to provide a stable and available work force of inmates, which shall fulfill [WTI's] reasonable manpower requests.
2. Screening of Potential Inmate Laborers: Subject to Section 3.1,¹⁹ [SCDC] will pre-screen, interview and select inmates according to the job descriptions submitted, which shall specify performance criteria for each job.
4. Security: **At its expense**, the Department shall be responsible for the security of the inmate labor force and the security of [WTI's] employees and agents.
5. Training of [WTI's] Staff: [SCDC] shall train [WTI's] civilian staff in institutional operational matters.
6. Management and Supervision: SCDC will provide management and supervision of the inmates for all phases of the work. [emphasis supplied].

5. Section 3.3 of the Contract

Section 3.3 is entitled "Mutual Duties of the Parties," and, in relevant part, it provides as follows (R. p. 78):

1. Payment for Services: [WTI] agrees to pay [SCDC] **\$4.00 per hour per inmate** for work performed including training hours and hours in excess of the inmate's normal shift. **[SCDC] shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction.** No compensation will be paid for time not worked.

Thirty (30) days prior to each anniversary date of this agreement, [SCDC] and [WTI] may negotiate an increase in the per hour rate paid by [WTI] to [SCDC]. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. **It is the intent of the parties**

¹⁹ Section 3.1 sets forth WTI's duties with respect to the Contract. (R. pp. 76 – 77).

that such increase shall only reflect [SCDC's] increased cost of prison overhead.

[WTI] and [SCDC] may mutually agree upon a bonus plan for inmates based on productivity and quality control, such bonuses will be paid in its entirety by [WTI] to [SCDC] for distribution to inmates. [emphasis supplied].

B. Applicable Legal Standard for Interpreting the Contract

“The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties’ intentions as determined by the contract language.” Madden v. Bent Palm Investments, LLC, 688 S.E.2d 597, 600 (S.C. Ct. App. 2010) (quoting McGill v. Moore, 672 S.E.2d 571, 574 (S.C. 2009)). The court “must first look at the language of the contract to determine the intentions of the parties.” C.A.N. Enters, Inc. v. S. Carolina Health & Human Servs. Fin. Comm’n, 373 S.E.2d 584, 586 (S.C. 1988). The contract must be construed as a whole. Madden, 688 S.E.2d at 600. If the contract’s language is unambiguous, the language alone will determine the terms of the contract. If, however, the contract’s language is ambiguous, the court must determine the intention of the parties based on the evidence presented. “A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation.” *Id.* “Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties.”²⁰ Wallace v. Day, 700 S.E.2d 446, 449 (S.C. Ct. App. 2010) (quoting S.C. Dep’t of Natural Res. v. Town of McClellanville, 550 S.E.2d 299, 303 (S.C.2001)).

²⁰ SCDC respectfully submits that the Appellant was not a party to the contract between WTI and SCDC. Consequently, the Appellant cannot produce any evidence of the intent of the “parties.” Compare Touchberry v. City of Florence, 367 S.E.2d 149, 150 (S.C. 1988) (“A third-party beneficiary is a party that the contracting parties intend to directly benefit.”) with Adkins v. S.C. Dep’t of Corr., 602 S.E.2d 51, 54 (S.C. 2004) (holding that the prevailing wage statutes were not enacted for the special benefits of inmates) and Williams v. S.C. Dep’t of Corr., 641 S.E.2d 885, 888 (S.C. 2007) (citing Adkins).

“Common sense and good faith are the leading touchstones of construction of the provisions of a contract; where one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language employed, would make it reasonable, fair and just, the latter construction must prevail.” C.A.N. Enterps., 373 S.E.2d at 586 (citing Farr v. Duke Power Co., 218 S.E.2d 431, 434 (S.C. 1975)).

C. Application of the Applicable Legal Standard to the Contract

As reflected above, the clear and unambiguous terms of Section 3.2 of the Contract require SCDC to screen potential inmates, to provide security for the inmates and WTI employees, to train WTI’s staff, and to provide management and supervision of the inmates for all phases of work. (R. pp. 77 – 78).

Section 3.3, subsection 1 of the Contract, which is entitled “Payment for Services,” is also clear and unambiguous. (R. p. 78). Specifically, this section required WTI to pay SCDC a flat rate of \$4.00 per inmate labor hour, from which SCDC was required to pay the inmates voluntarily participating in the project, *as well as* cover security costs, cover SCDC’s overhead attributable to prison industries, including applicable taxes and payroll deductions, and cover the costs associated with the health, welfare and safety of the inmates participating in the project. The ALC agreed that SCDC was contractually obligated to pay these expenses out of the \$4.00 per hour wage that SCDC negotiated with the private industry sponsor. (R. p. 36).

Furthermore, the Contract’s “bullet sheet,” combined with Subsection 6 of Section 3.1 of the Contract (R. p. 77), clearly reflects that SCDC invoiced WTI at the rate of \$4.00 per inmate labor hour and, critically, that SCDC paid the inmates who voluntarily participated in the service project at Lieber at the base rate of \$0.35 per hour. Again, absolutely nothing in the budget

provisos or in § 24-1-295 prohibited SCDC from negotiating these terms with WTI regarding the operation of the service project at Lieber.

Thus, the Contract is clear that WTI pays SCDC \$4.00 per inmate labor hour to cover *all* expenses associated with operating the service project at Lieber, including the inmates' hourly rate of pay. Absolutely no provision of the Contract states, implies, or otherwise suggests that WTI and SCDC agreed that SCDC would pay inmates at the rate of \$4.00 per hour. Accordingly, the Contract language is clear, and this Court may not infer another meaning from the language in the Contract. Madden, 688 S.E.2d at 600. (See R. p. 36).

Moreover, common sense dictates that SCDC would not have, in light of the overhead expenses identified in Subsection 1 of Section 3.3 the Contract, entered into a contract with WTI by which it would invoice WTI at a flat rate of \$4.00 per inmate labor hour and then have to pay the inmates who voluntarily performed labor in the service project at the rate of \$4.00 per hour. By doing so, SCDC would have sacrificed the means by which it would be able to cover the various costs associated with operating the service project at Lieber identified in Subsection 1 of Section 3.3, as well as § 24-1-295. (See R. pp. 36 – 37).

Likewise, common sense dictates that SCDC would not have entered into a contract with WTI without an expectation that it would receive reimbursement for its overhead expenses. See C.A.N. Enters., 373 S.E.2d at 586. Subsection 1 of Section 3.3 of the Contract clearly explains that the \$4.00 per inmate labor hour rate WTI pays to SCDC encompasses payment for SCDC's overhead. Specifically, Subsection 1 describes the circumstances under which SCDC's and WTI may agree to increase the \$4.00 per inmate labor hour rate paid by WTI to SCDC. Again, the relevant provision provides as follows:

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Thirty (30) days prior to each anniversary date of this agreement, [SCDC] and [WTI] may negotiate an increase in the per hour rate paid by [WTI] to [SCDC]. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect [SCDC's] increased cost of prison overhead. [emphasis supplied].

The clear and unambiguous language of this provision states that any agreed upon increase in the \$4.00 per inmate labor hour rate will “only reflect [SCDC’s] increased cost of prison overhead” and does not reflect or envision a change in the base or gross rate earned by inmates.

Thus, by these terms, the \$4.00 per inmate labor hour rate is the amount that WTI pays to SCDC and is meant to offset SCDC’s overhead costs, and any agreed upon increase in the hourly inmate labor rate would reflect an increase in SCDC’s overhead costs and would not benefit the inmates participating in the project. Again, absolutely no provision or language in the Contract reflects that the \$4.00 per hour rate was the rate at which SCDC and WTI agreed that SCDC would pay the inmates participating in the project, including the Appellant, for their labor. (See R. p. 37). Furthermore, absolutely no provision or language in the Contract reflects that the \$4.00 per hour rate was the Appellant’s base or gross wage.

In addition, Subsection 1 of Section 3.3 also states that WTI and the Department may agree upon “a bonus plan” for inmates, and the particulars of such a plan are reflected in the WTI “Bonus Pay/Programs” materials which appear in the Record. (R. pp. 85 – 88). The example provided in these materials expressly states that the “Base Rate” for inmate pay was “\$.35²¹” per hour and not the \$4.00 per hour rate asserted by the Appellant in his administrative grievance and in the brief he filed with this Court. (R. p. 86).

²¹ SCDC respectfully submits that the \$0.35/hr base rate constitutes the Appellant’s gross rate of pay.

Furthermore, the sample pay card included within these materials clearly defines the \$0.35 per hour "base rate" paid to an inmate participating in the project as follows (R. p. 87):

[\$0.35 per hour] is the minimum rate that you will ever receive. Your base rate can only go up if you receive longevity increases.

Obviously, this language is consistent with the language from the "bullet sheet," which provided that the applicable wage rate is "\$4.00 per hour/per inmate - \$.35/hr base for inmates." (R. p. 72). Inmates, including the Appellant, were aware that their base or gross rate of pay was \$0.35 per hour.

The Contract's provisions clearly, unambiguously, and repeatedly state that the inmates' "base pay" rate is \$0.35 per hour and not \$4.00 per hour. Under the Contract, SCDC would pay inmates a minimum of \$0.35 per hour, subject to potential longevity pay increases or "bonus pay." SCDC, therefore, paid a "base pay" rate of \$0.35 per hour to inmates who participate in the service project at Lieber, and the \$0.35 per hour paid to the inmate by SCDC comes out of the \$4.00 per inmate labor hour that WTI remits to SCDC under the terms of the Contract. (R. pp. 72, 86 – 88). The remaining balance clearly and intentionally covers SCDC's overhead and security costs.

Even if its terms were somehow ambiguous, this Court must look to the Contract to determine the intent of the parties (i.e. WTI and SCDC and not the Appellant). As explained above, the parties' intent, under Subsection 1 of Section 3.3. was that the \$4.00 flat inmate labor hour rate at which WTI paid to SCDC encompasses the hourly rate at which SCDC would pay the inmates for their labor (i.e. the "base rate" discussed above), *as well as* security costs, SCDC's prison industries overhead, including any costs associated with the health, welfare and safety of the inmates participating in the project, applicable taxes and payroll deductions. (R. p.

78). Absolutely no evidence exists to suggest any other intent of the parties related to the rate of pay for the inmates, including the Appellant, who participated in the prison industries project.

Again, absolutely nothing in the budget provisos nor in § 24-1-295 prohibited SCDC from negotiating these terms with WTI regarding the operation of the service project at Lieber. Section 3.3 clearly demonstrates, again, that just because the hourly inmate labor rate that SCDC charged WTI for effectively leasing the inmates' labor equaled \$4.00, which is less than the rather purported "prevailing wage" of between \$8.40 and \$12.06 that the Appellant and his cohorts outlandishly claimed in their Step 1 grievances, does not mean that SCDC was required to pay the individual inmates who voluntarily participated in the service project at Lieber at the rate of \$4.00 per hour. (See R. p. 37).

Furthermore, in 1998 when SCDC entered into the contract with WTI, neither the budget provisos nor § 24-1-295 were enacted. In the absence of statutorily required deductions, SCDC entered into a contract with WTI which contractually required SCDC to deduct certain expenses from the \$4.00 per hour rate it negotiated with WTI. As essentially argued by the Appellant, § 24-1-295 cannot apply to the 1998 Contract because it violates the contract clause from the South Carolina Constitution.²² Mibbs, Inc. v. S.C. Dep't of Revenue, 524 S.E.2d 626, 629 (S.C. 1999) ("[T]here is no impairment for purposes of a Contract Clause analysis where the statute does not affect a pre-existing contract between private parties."). SCDC's obligations pursuant to the 1998 Contract with WTI did not change when the legislature enacted the budget provisos or § 24-1-295. Kirven v. Cent. States Health & Life Co., of Omaha, 760 S.E.2d 794, 799 (S.C. 2014) (holding that recently enacted statute cannot apply to "contracts entered into prior to the statute's

²² Appellant's Brief, Argument 5, pp. 18 – 21.

effective date because such an application would violate the Contract Clause of the state and federal constitutions.”).

The terms of the contract also fulfills the legislature’s pre-existing “declaration of intent” for prison industries programs to “utilize the labor of inmates for self-maintenance and for reimbursing this State for expenses incurred by reason of their crimes and imprisonment.” § 24-3-310 (1987 as amended). SCDC respectfully submits that this Court cannot reconcile the legislative mandate for SCDC to “utilize the labor of inmates for self-maintenance and reimbursing this State for expenses incurred by reason of their crimes and imprisonment,” with the Appellant’s argument that SCDC is prohibited from deducting overhead costs and security costs, as required by the contract, from the amount SCDC invoiced WTI for inmate labor. Clearly, security costs and overhead costs are “expenses incurred” because of the inmate’s imprisonment and ensure this project is “self-maint[aining].” Section 24-3-310.

Finally, the Appellant’s argument is primarily derived from a single transitional phrase in one provision of the 1998 Contract: “at its expense.”²³ Section 3.2(4) (R. pp. 76 – 77). “The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties’ intentions as determined by the contract language.” Madden, 688 S.E.2d at 600. (R. p. 34). “A party may not create an ambiguity by reading a single sentence or clause, but rather the contract and the language used must be considered as a whole.” Madden, 688 S.E.2d at 600. (R. p. 35). “[W]here one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language employed, would make it reasonable, fair and just, the latter construction must prevail.” C.A.N. Enters., 373 S.E.2d at 586. (R. p. 35). Accordingly, this Court cannot read the phrase “at its expense” in isolation. Instead, this Court

²³ Appellant’s Brief, pp. 21, 23, and 28.

must read contract provisions 3.2(4) and 3.3(1) together. Collectively, these contract provisions clearly and unambiguously require SCDC to pay the inmate's hourly wage (i.e. \$0.35), *and* security and overhead costs from the \$4.00 per hour negotiated wage.

Alternatively, SCDC respectfully submits for argument purposes only and in order to preserve its position regarding this issue, that it paid security, overhead, and other related costs "at its expense" after those expenses were reimbursed by WTI pursuant to the 1998 Contract.

Therefore, SCDC respectfully urges this Court to affirm the portion of the ALC's ruling that held SCDC was contractually required to deduct security and overhead costs from the \$4.00 per hour wage it negotiated with WTI, and reject the Appellant's assertion that he was entitled to a \$4.00 per hour wage rate for the labor he voluntarily provided to the prison industries service project operated at Lieber. See Rule 220(c), SCACR.

V. THE ALC CORRECTLY RULED THAT THE APPELLANT IS NOT ENTITLED TO OVERTIME PAY

A. The ALC correctly ruled that the Appellant did not preserve the issue of whether the Appellant is entitled to overtime pay for appellate review

The Appellant contends that the ALC erred by ruling that "overtime was not presented for review because it was not preserved."²⁴ The Appellant admits that he "did not raise overtime in his grievances" and that he raised overtime as an issue for the first time in his notice of appeal to the ALC.²⁵ Despite this reality, the Appellant contends that SCDC, when it denied the Appellant's Step 1 and Step 2 grievances, preserved overtime as an issue.

As correctly observed by the ALC, SCDC did not raise or preserve overtime as an appellant issue. (R. p. 37). Rather, SCDC merely stated in its denial of the Appellant's Step 1

²⁴ Appellant's Brief, Argument 7, pp. 28 – 31.

²⁵ Appellant's Brief, pp. 29 – 30.

and Step 2 grievance that, “to the extent” the Appellant demanded overtime wages, his request was denied. (R. pp. 37 n. 12, 40, 44). As pointed out by the Appellant, SCDC did not address the merits of the Appellant’s overtime claim in his appeal to the ALC.

Irrespective of whether SCDC raised issue preservation within their brief to the ALC, the Appellant admitted that he did not demand overtime wages in Step 1 or Step 2 grievance. Thus, there was no extent to which SCDC could consider the Appellants’ overtime wages. “It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [fact finder] to be preserved for appellate review.” Wilder Corp. v. Wilke, 497 S.E.2d 731, 733 (S.C. 1998).

Accordingly, this Court should affirm the ALC’s decision that the Appellant did not preserve the issue of overtime pay for appellate review.

B. Alternatively, SCDC respectfully submits that it is premature for the Court to determine whether the Appellant is entitled to overtime pay

Any determination by this Court as to whether the Appellant was entitled to any overtime pay is not yet ripe for adjudication and it will not be ripe for adjudication unless and until this Court reverses the ALC’s ruling that the Appellant is not entitled to the \$4.00 per hour negotiated wage.

As explained above, the rate the Department was required to pay the Appellant was not the \$4.00 per hour negotiated wage. As also explained above and as reflected in a March 12, 2002 memorandum from the project’s Plant Manager to all inmates participating in the project, the subject of which was designated as “Longevity Pay Scales,” the Department agreed to pay inmates a minimum “base rate” of \$0.35 per hour, subject to longevity pay increases and bonus pay in certain circumstances. (R. p. 88). This same memorandum also stated as follows:

You are further advised that the MAXIMUM pay allowance is \$1.00/hr, regardless of your longevity status. In addition to the above, your overtime pay is applied at a rate of {[Base Rate]+[1/2 Base Rate]} only. Your [Bonus Rate] pay will not be applied to your overtime hours.

Thus, it appears from this memorandum and provisions within the Contract that inmates could perform overtime labor. (R. p. 76). However, the only pay records for the Appellant which currently appear in the Record consist of a spreadsheet print-out, and the only columns of data included on the print-out are columns designated "Pay Date," "Pay Rate," "Hours, and "Pay Amount." (R. pp. 58 – 60). For every "Pay Date" increment reflected on the print-out, a "Pay Rate" of \$0.50 per labor hour appears.

No clarifying data appears within the column labeled "Pay Rate" which would indicate whether the \$0.50 figure represents the Appellant's "base rate" or his "base rate" plus a bonus rate and/or overtime rate. Thus, it appears that SCDC paid the Appellant an hourly rate which exceeded the "base rate" of \$0.35 per hour for every hour of labor he performed, and the Appellant has not, at any point in this litigation, argued that SCDC failed to pay him for any labor he performed. Consequently, even if this Court were to find that the Appellant was not properly paid for his overtime hours, the Appellant would be owed the half-time rate for only the labor hours he performed in excess of a forty-hour workweek.

Furthermore, the "Pay Date" increments which appear on the print-out occur every two (2) weeks, and, therefore, it appears that the number of labor hours which appear in the column designated as "Hours" reflect the aggregate number of labor hours performed by the Appellant during a two-week pay period. (R. pp. 58 – 60).

Accordingly, SCDC respectfully submits that the parties and the Court cannot determine the amount of labor hours performed by the Appellant during a single work week when the

column designated as “Hours” reflects a cumulative total of the labor hours the Appellant performed over a two-week period.

In the event this Court concludes that the Appellant preserved the issue of overtime for appellate review, SCDC respectfully submits that, once the Court rules on the remaining issue presented by the Appellant in his brief, the Court will likely have to remand this matter back to ALC, to remand the matter back to SCDC, so that SCDC, to the extent possible, may supplement the record with documents which accurately reflect the number of hours the Appellant worked during each work week, the “base rate” at which SCDC paid the Appellant for the labor he performed, and whether the Appellant’s “Pay Rate” included any bonus or overtime pay.

VI. THE ALC CORRECTLY RULED THAT THE APPELLANT WAS NOT ENTITLED TO PRE-JUDGMENT AND POST-JUDGMENT INTEREST, COSTS AND ATTORNEY’S FEES

The Appellant contends that the ALC erred in not granting the Appellant’s request for pre-judgment and post-judgment interest, costs and attorney’s fees because the ALC erred when it determined that § 24-1-295 applied to the Appellant’s wages.²⁶

As explained above, the ALC correctly ruled that § 24-1-295 applied to the Appellant’s wages, that SCDC was bound by § 24-1-295 and its 1998 Contract with WTI to make deductions from the \$4.00 per hour negotiated rate, and, ultimately, that the Appellant was not entitled to a negotiated wage of \$4.00 per hour. The ALC correctly determined that the Appellant was not entitled to any additional monies at all.

If this Court affirms the ALC’s rulings, then this Court should also find that the Appellant was not entitled to pre-judgment and post-judgment interest, costs or attorney’s fees.

²⁶ Appellant’s Brief, Argument 8, pp. 31 – 33.

Alternatively, any determination by this Court as to whether the Appellant is entitled to pre-judgment and/or and post-judgment interest on any back pay is not yet ripe for adjudication and, as respectfully submitted by the SCDC, it will not be ripe for adjudication *unless and until* this Court resolves the wage issue on appeal in the Appellant's favor..

To the extent necessary, the SCDC respectfully submits, in order to preserve its position regarding this issue, that the Appellant is not entitled, under any applicable statute, precedent, or theory, to any pre-judgment and/or and post-judgment interest on any back pay that he may receive as a result of his appeal. See Future Grp., II v. Nationsbank, 478 S.E.2d 45, 51 (S.C. 1996). Furthermore, SCDC respectfully submits, in order to preserve its position regarding this issue, that the Appellant is not entitled, under any applicable statute, precedent, or theory, to any costs and attorneys fees attributable to his prosecution of his instant appeal. See Layman v. State, 658 S.E.2d 320, 331 (S.C. 2008).

VII. THE ALC CORRECTLY RULED THAT THE APPELLANT'S APPEAL OF SCDC'S DENIAL OF HIS GRIEVANCES DID NOT INVOLVE THE GRIEVANCES OF OTHER INMATES OR OTHER PERSONS WHO DID NOT FILE GRIEVANCES

The Appellant contends that the ALC erred "in declining to consider the issue of whether SCDC should have to process grievance[s] for all workers even if they had not personally filed" a grievance.

The ALC did not consider this issue because "the instant case does not involve the grievances of other workers in the program or persons in the program who never filed grievances." (R. p. 30 n.1).

The Appellant's Notice of Appeal to the ALC, dated May 30, 2007 and bearing the signature of Appellant's counsel (R. p. 56), identified the eight (8) grounds associated with the Appellant's instant appeal. Critically, the Appellant did not include this argument as a ground for

appeal. Appellant's arguments in his appellate brief to the ALC related to this ground to do not correct his defective Notice of Appeal.²⁷

Even if the Appellant included this ground in his Notice of Appeal, the ALC correctly determined that the Appellant's appeal did not involve grievances of other workers or persons who never filed a grievance. The ALC was not required to "address a point which is manifestly without merit," and the ALC was not required to identify each and every point that was manifestly without merit. ALC Rule 65. Moreover, the ALC could affirm SCDC's denial of the Appellant's grievance "upon *any* ground(s) appearing in the Record." ALC Rule 65 (emphasis supplied).

Accordingly, this Court should affirm the ALC's decision to not consider this issue because the Appellant's appeal involved SCDC's denial of *his* Step 1 and Step 2 grievances. (R. p. 30 n.1). This Court should also strike this issue from consideration in any further litigation associated with the instant appeal.

VIII. THE ALC CORRECTLY RULED THAT THE APPELLANT'S APPEAL OF SCDC'S DENIAL OF HIS GRIEVANCE WAS NOT AN INJUNCTION ACTION AND APPELLANT DID NOT PRESERVE THE ISSUE OF INJUNCTION FOR APPELLATE REVIEW

The Appellant contends the ALC erred by "declining to enjoin SCDC from further wage violations."²⁸

The Appellant, however, did not raise the issue of injunction within his Step 1 or Step 2 grievance to SCDC and the Appellant did not include the issue of injunction in his Notice of Appeal to the ALC. See Wilder, 497 S.E.2d at 733 ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [fact finder] to be

²⁷ Appellants' Brief, Argument 9, pp. 33 – 34.

²⁸ Appellant's brief, Argument 10, pp. 34 – 35.

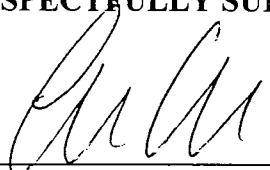
preserved for appellate review.”). Accordingly, this Court should affirm the ALC’s ruling that the Appellant failed to preserve this issue for appellate review. (R. p. 38).

CONCLUSION

Therefore, pursuant to the applicable legal standard articulated above, SCDC respectfully urges this Court to affirm the ALC’s November 12, 2013 and April 29, 2014 Orders for the reasons explained above.

RESPECTFULLY SUBMITTED,

BY:



Lake E. Summers (SC Bar No. 64146)
Katherine Phillips (SC Bar No. 77840)
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
Office: (803) 254-3300
Fax: (803)-254-0309
E-mail: summers@mtsolvlawfirm.com
phillips@mtsolvlawfirm.com

Counsel for Respondent SCDC

Columbia, South Carolina
December 22, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Trial Court Case No. 07-ALJ-04-0517-AP
Appellate Case No. 2014-001199

Fred Gatewood, #289775, ... Appellant,

v.

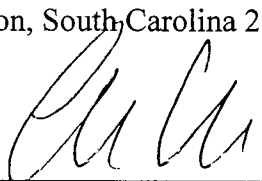
South Carolina Department of Corrections, ... Respondent.

PROOF OF SERVICE

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

Douglas H. Westbrook, Esquire
Attorney at Law
23 Broad Street
Charleston, South Carolina 29401

December 22, 2014



LAKE E. SUMMERS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Chief Administrative Law Judge

Docket No. 07-ALJ-04-00517-AP

Fred Gatewood..... Appellant,

v.

South Carolina Department of Corrections..... Respondent.

Appellate Case No. 2014-001199

REPLY BRIEF OF APPELLANT

Douglas H. Westbrook, #6039
23 Broad St.
Charleston, SC 29401
(843) 853-9600
Attorney for Appellant

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STATEMENT OF ISSUES ON APPEAL

The Department of Corrections (SCDC) modifies the Statement of Issues made by Appellant (Gatewood) in his initial brief (Gatewood's brief, 1-2; SCDC brief, 1). This reply brief will address SCDC's points under the issue number and in the order presented in Gatewood's brief.

STATEMENT OF THE CASE

SCDC states the ALC's November 12, 2013 order denying Gatewood's Motion to Supplement was a "final order" (SCDC brief, 1). As explained in Gatewood's notice of appeal filed on June 2, 2014, Gatewood contends the order was not a final, appealable order, but appeal was nevertheless attempted for reasons stated therein (R. p. 185).

SCDC states Gatewood's grievance claimed entitlement to the prevailing wage under §24-3-430(D) (SCDC brief, 3). Gatewood's grievance and Amendment were forms counsel drafted for large numbers of inmates who worked at different times. The forms claimed the prevailing wage rate from 1999 to 2001 under §24-3-430, and the negotiated wage of \$4 per hour after July 2001 under the budget provisos (R. pp. 46, 50). Gatewood worked after July 2001. Thus, in the ALC Gatewood contended he was entitled to the \$4 per hour negotiated wage rate, not the prevailing wage (R. p. 116).

SCDC states Gatewood lacks understanding of the budget provisos, statutes, projects and parties, which undermines his claim to the \$4 wage rate (SCDC brief, 4-5). Gatewood contends this statement is argumentative, contributes nothing to a "concise history of the proceedings", and should be disregarded

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by the Court (SCACR 208(b)(1)(C)(2)).

STANDARD OF REVIEW

SCDC states this Court may reverse the ALC only if the ALC decision falls within §1-23-610(B)(d)(e)(f) grounds (SCDC brief, 5-6). Gatewood contends §1-23-610(B)(a)(b)(c) grounds may also apply in a given situation.

SCDC states Gatewood must prove the ALC decision is unsupported by substantial evidence, and is arbitrary and otherwise characterized by abuse of discretion (SCDC brief, 6). Gatewood contends §1-23-610(B)(a)-(f) is phrased in the disjunctive, and thus any one ground is sufficient.

ARGUMENT

1. The ALC erred in denying Gatewood's Motion to Supplement the Record for section II(A)(C) of the motion because the documents proposed in those subsections had been received or considered by SCDC, or proffered but excluded, pursuant to ALC Rules 58B and D.

SCDC contends Gatewood has shown no prejudice from the ALC's denial of his motion (SCDC brief, 8). Gatewood noted in his initial brief, p. 5, the ALC's statement that it would not consider back wage calculations, which SCDC would probably have to make on remand. Such calculations would require knowledge of Gatewood's work dates, hours and wages paid. However, pay rate and hours entries on SCDC spreadsheets have been said to be inaccurate after July 2000 and inmates' pay stubs and time cards must be considered for that information (R. pp. 182-183).

Appendix 1, page 12, is a spreadsheet with Gatewood's start/stop work dates derived from various SCDC sources (R. p. 104). Gatewood's initial

brief, p. 5, also notes his ALC brief requested a remand to SCDC to calculate his back wages at a gross wage rate of \$4 per hour. We are currently in Level 3 merits briefing in the ALC. There is no Level 4. Level 3 is the correct and only time for the ALC to order wage calculations and guidelines for SCDC on remand. Moreover, SCDC will need Gatewood's pay stubs and time cards in the record to make those calculations. Thus, Gatewood contends these records are relevant and necessary to calculate back wages and he is prejudiced if they are not produced.

Gatewood notes SCDC did not respond to his arguments that SCDC considered his pay stubs and time cards during pendency of his administrative hearing under ALC Rule 58B; and that Gatewood's ALC appeal was a "contested case" and he proffered Appendix 1 for the ALC record under Rule 58D (Gatewood brief, 7-9). For that reason, Gatewood contends SCDC's failure to respond can amount to a conclusion that the ALC ruled incorrectly (First Union Nat. Bank v. FCVS Comm. 469 S.E. 2d 613, 617 (S.C. App., 1996)).

2. The ALC erred in holding §24-1-295 governed deductions from Gatewood's gross wages because §24-3-40 was the governing statute.

SCDC states the ALC correctly determined that §24-1-295, not §24-3-40, applied to Gatewood's work (SCDC brief, 9). However, this contradicts SCDC's later position that §24-1-295 cannot apply (SCDC brief, 23).

SCDC states nothing in the budget provisos or §24-1-295 mandates a specific wage or wage range (SCDC brief, 11). The budget proviso (Statutes at Large, No. 66, §37.31, eff. July 2001) allowed SCDC to:

..negotiate the **wage** to be paid for inmate **labor** provided under prison industry work **contracts**, and such **wages** may be less than the prevailing wage..

Substantially the same language is found in §24-1-295.

Section 3.3.1 of the 1998 contract provided, "..Williams agrees to pay SCDC **\$4.00 per hour** per inmate for **work performed..**" (R. p. 78). Gatewood contends that, while these provisions in the proviso did not mandate a specific wage, the proviso coupled with the contract mandated a \$4 per hour gross wage, which was for "work" or "labor" and nothing else.

SCDC contends that just because the hourly labor rate was \$4 does not mean it was required to pay inmates \$4 (SCDC brief, 12). However, §24-3-430(A)(B) applies to service work programs like the one here, and allowed SCDC to enter into contracts to implement the program. Moreover, earnings from work in the program must be paid directly to SCDC and applied as provided in §24-3-40 (§24-3-430(H)).

Section 3.1.6 of the contract states, "6. Payment for Inmate Services: SCDC will invoice Williams on a bimonthly basis for inmate **labor**" (R. p. 77). In addition, §3.3.1 (R. p. 78) provides:

1. Payment for Services: ..SCDC shall be responsible to pay inmate workers, **cover security costs and P.I. overhead**, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction..

Finally, §3.2.4 states, "4. Security: **At its expense**, SCDC shall be responsible for the security of the inmate labor force and the security of Williams' employees and agents" (R. p. 77).

From the above, it seems apparent the \$4.00 payment was for "labor", not

labor plus security and overhead. Security is paid by SCDC "at its expense", and SCDC is responsible to "cover" security and overhead.

SCDC states the ALC accurately explained that §24-3-40 applies to PIECP projects, not service projects. SCDC also states §24-1-295, not §24-3-40, applies to service projects like the one here (SCDC brief, 12; R. p. 33). However, the ALC's explanation, discussed in Gatewood's initial brief, p. 14, did not mention "PIECP" projects. PIECP projects are federally certified by the Department of Justice under 18 U.S.C. §1761(c).

First, Gatewood contends SCDC provided no authority for its conclusory argument that §24-3-40 applies to PIECP but not service projects, and this Court should not consider it (S.C. Dept. of Probation, Parole & Pardon Serv. v. Reynolds 343 S.C. 465, 540 S. E. 2d 480 (S.C. App., 2000)).

Gatewood contends §24-3-40 does apply to service projects. Section 24-3-40 applies to prisoners "...in a prison industry program provided under **Article 3**" of chapter 24 (§24-3-40(A)). "Article 3" means the "Prison Industries" section which includes **§§24-3-310 to 24-3-430**. Section 24-3-430(A) states SCDC may establish a program using inmate labor in private industry for "the provision of **services**". And, §24-3-430(H) requires that inmate earnings "pursuant to this section" be paid to SCDC and "applied as provided under **Section 24-3-40**".

Title 18 U.S.C. §1761(c) excepts from the normal prohibition on transporting goods in commerce made by prisoners (§1761(a)), where the prisoner is employed in one of the federally certified projects. S.C. Code §24-3-410 has a prohibition similar to 18 U.S.C. §1761(a), and in §24-3-410(B)(7) an exception for prisoner made goods in a "**federally certified private sector/prison industry**

program". Thus, because §24-3-40 applies to Article 3 projects and projects in §24-3-410(B)(7) fall under Article 3, then §24-3-40 may also apply to §24-3-410(B)(7) projects.

Finally, while §24-1-295 covers "service work", it could only apply to Gatewood after August 1, 2007 (issues 3-5) or not at all (issue 6).

SCDC states that Williams cited §24-3-40 as evidence of the legislature's intent as to the entity responsible for paying inmate wages (SCDC brief, 13). However, as Williams stated, "(0)f even greater significance.." was that the legislature mandated **how** wages were to be handled and deductions made under §24-3-40 (Darrell Williams, Class Rep., et al. v. SCDC, et al. 641 S.E. 2d 885, 887 (S.C., 2007)).

SCDC states Williams did not consider whether §24-3-40 applied to service projects (SCDC brief, 13). However, Williams did decide that the Payment of Wages Act, §41-10-10, et seq., was concerned with the payment of wages and is directed to the entity responsible for payment. This was because the 1998 contract provides a \$4 flat rate per inmate and SCDC is responsible to pay inmate workers and handle deductions. And, §24-3-40 mandated the employer to pay inmate wages to SCDC which makes specific deductions provided in §24-3-40 (Williams, 641 S.E. 2d at 887).

SCDC states if §24-3-40 applies to service and PIECP projects, then §24-1-295 has no meaning (SCDC brief, 13). Section 24-1-295 apparently broadened coverage in the provisos to include "export work". It also allows "any other required deductions", in its catch-all phrase, to be deducted from gross wages. Gatewood contends §24-1-295 has plenty of meaning, as shown by the ALC's application of the statute in this case, incorrect though it was.

Finally, Gatewood notes SCDC did not respond to his argument that §24-1-295 cannot apply to Gatewood's pre-August 1, 2007 work because that was the effective date of the statute (Gatewood brief, 13).

3. The ALC erred in holding §24-1-295 governed deductions from Gatewood's gross wages because §24-1-295 does not apply retroactively to Gatewood's pre-August 1, 2007 work.

SCDC contends issues 3-5 (retroactive application, due process, and impairment of contracts) are not preserved for review because Gatewood did not raise them in the ALC nor did it rule on them (SCDC brief, 13-14). Obviously, Gatewood did not raise §24-1-295 as the authority for Gatewood's deductions since §24-3-40 was the governing statute and the ALC raised §24-1-295 on its own without briefing or prompting by the parties (R. p. 35).

In the ALC, the parties briefed the budget proviso and §24-1-295 in context of SCDC's ability to negotiate a wage and Gatewood's entitlement to it (R. pp. 116, 132). Gatewood also briefed SCDC's obligation on remand to make only deductions authorized in §24-3-40 and Torrence (R. p. 124). The ALC ruled §24-3-40 did not apply to Gatewood's deductions, but §24-1-295 did (R. pp. 35-37).

A party need not use the exact name of a legal doctrine to preserve it for review, but it must be clear the argument has been made on that ground (J. Toal, Appellate Practice in South Carolina, Second Edition, pp. 57-59). Here, the issue is the correct statutory basis for wage deductions. Gatewood

contends he adequately raised the issue in the ALC. Finally, Gatewood contends it would be unreasonable to require him to raise a statute which was not even effective until almost three years after he started work, and where the Supreme Court has strongly indicated in Williams and Torrence that §24-3-40 is the governing statute anyway.

Finally, the ALC's decision applying §24-1-295 is part of the ALC's Level 3 final decision denying Gatewood's grievance on the merits. Gatewood contends that entire decision was a final, appealable order, and any finding that the part of the order regarding §24-1-295 was not preserved in issues 3-5 would deny Gatewood his right to appeal (§§1-23-610(A)(1), 14-18-200(a), and Charlotte-Mecklenburg Hosp. Auth. v. SCDHEC 692 S.E. 2d 894-895 (S.C., 2010)).

SCDC contends the ALC did not apply §24-1-295 retroactively because before 2007, no statute, but the 1998 contract, required that security and overhead be deducted from Gatewood's \$4.00 negotiated wage. SCDC also stated the ALC concluded that security and overhead were contractually required deductions before §24-1-295 was enacted (SCDC brief, 14). Gatewood respectfully refers the Court to his initial brief, pp. 10-14 (§24-3-40 governed) and pp. 21-24, 26-28 (contract).

In addition, Gatewood notes the ALC's express language applying §24-1-295 to Gatewood's deductions (R. pp. 35-36):

As discussed in footnote 6, supra, the Court disagrees that Section 24-3-40 applies in this case, because the contract at issue in this case was a service work contract, and deductions from wages resulting from service work provided to private industries by inmates is governed by Section 24-1-295, not Section 24-3-40.

..

However, the Court finds that based on the terms of the Contract, security costs and overhead, including costs for health, safety, and welfare, constituted "other required deductions" pursuant to Section 24-1-295.

The ALC made numerous other references to its reliance on §24-1-295 in its order at pages 7-9.

Gatewood submits the above quote is clear and dispositive that the ALC retroactively applied §24-1-295's "other required deductions" clause as its basis for deducting security and overhead from Gatewood's \$4 gross wage. For that reason, the ALC's order also violated Gatewood's due process rights, as discussed in issue 4, and impaired the obligations of the 1998 contract, as discussed in issue 5.

4. The ALC erred in applying §24-1-295 to Gatewood's pre-August 1, 2007 work because it violated due process.

SCDC responds to issue 4 in SCDC's brief issue 3, page 15. Gatewood has addressed SCDC's points regarding due process in issue 3 above. Otherwise, Gatewood respectfully refers the Court to his initial brief, pp. 16-18.

5. The ALC erred in applying §24-1-295 to Gatewood's pre-August 1, 2007 work because it impaired the obligations of contracts.

SCDC responds to issue 5 in SCDC's brief issue 3, page 15. Gatewood has addressed SCDC's points regarding impairment of contracts in issue 3 above. In addition, Gatewood notes SCDC's apparent admission elsewhere in its brief that, "(A)s essentially argued by the Appellant, §24-1-295 cannot apply to the 1998 Contract because it violates the contract clause from the South Carolina Constitution" (SCDC brief, 23). However, this statement is to be contrasted with SCDC's statements at pp. 9, 12, and 13 that §24-1-295 does apply to Gatewood's work and this Court should affirm the ALC's ruling to

that effect. Otherwise, Gatewood respectfully refers the Court to his initial brief, pp. 18-21.

6. The ALC erred in holding, pursuant to §24-1-295, that security and overhead were "other required deductions" in the contract because the clear and unambiguous terms of the contract indicate that these costs were to be paid by SCDC at its expense.

SCDC responds to issue 6 in SCDC's brief issue 4, pp. 15-25. SCDC contends the ALC correctly determined that Gatewood was never entitled to receive \$4 per hour (SCDC brief, 15). The ALC stated the question for decision was whether Gatewood "...was entitled to be paid at a gross wage rate of \$4.00 per hour for his labor" (R. p. 32). The ALC responded, "(T)he Court agrees with Appellant that the gross amount of the wages paid to the Department for his labor was \$4.00 per hour" (R. p. 36).

SCDC contends the 1998 contract required SCDC to deduct security/overhead from the \$4 negotiated wage before and after §24-1-295 was enacted, and irrespective of the "other required deductions" clause in §24-1-295 (SCDC brief, 15). In support, SCDC refers to §3.3.1 of the contract which required WTI (Williams) to pay SCDC a flat rate of \$4 per inmate hour, **from which** SCDC was required to pay inmates **as well as** cover security costs, overhead, etc. (SCDC brief, 19). This point is addressed in Gatewood's initial brief, pp. 21-24, and the within brief, pp. 4, 11-13.

SCDC states the ALC agreed that SCDC was contractually obligated to pay these expenses out of the \$4 per hour wage (SCDC brief, 19; R. p. 36). However, SCDC states only part of the ALC's finding, which is at page 8 of the order (R. p. 36):

However, the Court finds that based on the terms of the Contract, security costs and overhead, including costs for health, safety, and welfare, constituted "other required deductions" pursuant to Section 24-1-295.

SCDC states the contract's "bullet sheet", along with §3.1.6, reflects that SCDC invoiced WTI at \$4 per hour and SCDC paid inmates a base rate of \$.35 per hour (SCDC brief, 19 and 21). Gatewood contends the bullet sheet entry of "Wage rate: \$4.00 per hour/per inmate" (R. p. 72) supports Gatewood's contention that the \$4 gross wage rate is correct.

SCDC states no provision in the contract states WTI and SCDC agreed SCDC would pay inmates at the rate of \$4 per hour for labor (SCDC brief, 20-21). This matter is addressed in Gatewood's initial brief, pp. 21-24.

SCDC contends that common sense dictates SCDC would not have, in light of contract §3.3.1, contracted to invoice WTI at a flat rate of \$4 per hour and then have to pay inmates at that rate without reimbursement (SCDC brief, 20-21). The parties agree the contract is plain and unambiguous. Thus, Gatewood contends the contract terms should be followed regardless of its wisdom or folly (Southern Atlantic Financial Services, Inc. v. Middleton 356 S.C. 444, 590 S.E. 2d 27, 29 (2003)).

SCDC contends contract §3.3.1 clearly explains the \$4 per hour rate "encompasses payment for SCDC's overhead" (SCDC brief, 20). As quoted on page 21 of SCDC's brief, §3.3.1 states that any negotiated increase in the per hour rate "...shall reflect (SCDC's) increased cost of **prison** overhead". SCDC contends this allows them to deduct "overhead" from the \$4 per hour (SCDC brief, 21). Gatewood contends this depends on what is meant by the

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term "overhead".

The contract's purpose was to fulfill the Article 3 Declaration of Intent in §24-3-310 (R. p. 73). Section 24-3-310(2) states the intent, in part, is to utilize convict labor "...for reimbursing this State for expenses incurred by reason of their crimes and imprisonment". Section 24-3-40(A)(3) allowed a deduction of 25% to defray cost of the "prisoner's room and board" assuming no child custody obligations. Gatewood contends, in light of the above history, that §3.3.1 was drafted with §24-3-40 in mind to reimburse the State for room and board.

SCDC contends that, by §3.3.1, the \$4 per hour is "meant to offset" SCDC's overhead costs (SCDC brief, 21). If, by this, SCDC means expenses beyond room and board allowed in §24-3-40(A)(3), Gatewood contends SCDC is reading into the contract a meaning that is not expressed. Otherwise, Gatewood respectfully refers the Court to his initial brief, pp. 21-24, 26-28.

SCDC contends certain "bonus plan" materials state a base rate of \$.35 per hour, which is consistent with the "bullet sheet" (SCDC brief, 19, 21-22). However, as held by the ALC, the gross wage rate is \$4 per hour, not \$.35 (R. p. 37).

SCDC states, even if the contract was ambiguous, the intent of the parties under §3.3.1 was that the \$4 flat rate would include security and overhead (SCDC brief, 22). Gatewood contends the contract was not ambiguous. Moreover, as discussed above, it is just as plausible that the parties meant to reimburse the State for room and board. Also, even if the intent was as SCDC

says, Gatewood contends those expenses beyond room and board would violate §24-3-40(A) and the decisions in Williams and Torrence.^{*} Finally, Gatewood notes that since SCDC is a probable drafter or co-drafter of the contract, any ambiguity must be construed against it (Mathis v. Brown & Brown of South Carolina, Inc. 698 S.E. 2d 773, 778 (S.C., 2010)).

SCDC contends this Court cannot reconcile the statutory intent in §24-3-310 with Gatewood's argument against making these deductions for overhead and security. This point is partially addressed in the discussion of §3.3.1 above, page 11.

In addition, Gatewood notes this Court responded to a similar argument in SCDC v. Cartrette 694 S.E. 2d 18, 22, note 6 (S.C. App., 2010). The Court stated the purpose of §24-3-310 harmonizes with the legislature's mandate that, by statute, 70% or more of inmate pay is diverted for room and board and other matters, citing §24-3-40 (2007). Further, the Court stated that increased pay, including overtime, ultimately benefits SCDC by increasing the funds available to relieve the burden of inmates' housing and care, and other matters.

SCDC states Gatewood's argument is primarily derived from the "at its expense" provision in §3.2.4 of the contract (SCDC brief, 24). However, the primary sections are §3.1.6 (R. p. 77) and §3.3.1 (R. p. 78).

SCDC states that it paid overhead and security and other related costs "at its expense" after those expenses were reimbursed by WTI (SCDC brief, 25). However, if WTI ultimately paid these costs, Gatewood contends it would be violative of §24-3-40, Williams, and Torrence.

^{*} If a contract term violates a statute, the term is invalid and the statute prevails (Wilkinson ex rel Wilkinson v. Palmetto State Trans. Co. 371 S.C. 365, 638 S.E. 2d 109, 116 (S.C. App., 2006)).

Finally, SCDC asks the Court to (1) affirm the portion of the ALC's ruling that held SCDC was contractually required to deduct security and overhead costs from the \$4 per hour wage; and (2) reject Appellant's assertion that he was entitled to a \$4 per hour wage rate for the labor he provided (SCDC brief, 25). First, the ALC did not hold as SCDC states. The ALC found that, "...based on the terms of the contract, security costs and overhead, including costs for health, safety, and welfare, constituted 'other required deductions' pursuant to Section 24-1-295" (R. p. 36). Gatewood contends this is the ruling before the Court.

Second, Gatewood did not contest the ALC's ruling that Gatewood was entitled to the \$4 per hour gross wage rate (R. p. 37). Also, SCDC did not cross-appeal the ruling (SCACR 203(c)). Finally, Gatewood notes that SCDC asks this Court to reject the \$4 wage rate, when SCDC's brief contends that security and overhead were to be deducted from "the \$4.00 per hour rate it negotiated with WTI" (SCDC brief, 23). Gatewood contends that in these circumstances the ALC's ruling agreeing with Gatewood's entitlement to the \$4 wage rate is the law of the case.

- 7. The ALC erred in ruling that overtime was not preserved for review because it was preserved, SCDC waived the issue preservation argument, the ALC raised the issue sua sponte, and Gatewood was entitled to overtime on the merits.**

SCDC responds to issue 7 in SCDC's brief issue 5, pp. 25-28. SCDC contends this Court should affirm the ALC decision that Gatewood did not preserve overtime for review (SCDC brief, 26). First, Gatewood contends he did not have to expressly raise overtime in these circumstances. In SCDC v. Cartrette 694 S.E. 2d 18, 21-23 (S.C. App., 2010), this Court held that Sections 24-3-315

and 24-3-430(D) "...compel the Department to ensure inmate workers who are employed under those sections receive the same pay rates and employment conditions..." as non-inmates. And further, these statutes supported Cartrette's argument for overtime pay. Although Cartrette was limited to the program in which Cartrette was employed (694 S.E. 2d at 21, note 5), Gatewood contends it was not a memorandum opinion without precedential value (SCACR 220).

Gatewood's step 1 and Amendment to grievance alleged entitlement to the prevailing wage under §24-3-430, and to the \$4 rate under the budget proviso after July 2001 (R. pp. 46, 50). Gatewood contends that under Cartrette, his right to overtime is statutorily "ensured" under §24-3-430. Thus, the allegation of wage entitlement under the statute in his grievance should be sufficient for issue preservation purposes.

Even if Gatewood had to expressly raise overtime, he contends the allegations were sufficient. SCDC's brief notes that its grievance decisions stated "to the extent" Gatewood had demanded overtime wages the request was denied and thus there was no extent to which SCDC could consider his overtime wages (SCDC brief, 26). Gatewood's step 1 requested back wages at the prevailing wage rate from 1999 to July 2001, and at the \$4 rate from July 2001 to present, "...all as determined from Exhibits A-H..." These exhibits were incorporated by reference from Darrell Williams' grievance (R. pp. 46, 50). Exhibit C is the 1998 contract which allows overtime to be worked in this program (R. p. 76). Exhibits D-E are memos allowing overtime to be worked at time and a half the base wage rate (R. pp. 85, 88). Gatewood contends these incorporated exhibits adequately raised overtime.

SCDC states it did not address the merits of Gatewood's overtime claim in the ALC (SCDC brief, 26). However, in SCDC's ALC brief it acknowledged from file memos and the contract that "inmates could perform overtime labor" (SCDC ALC brief, 20).^{*} Also, in its brief to this Court, SCDC concedes the same point (SCDC brief, 27). Gatewood contends the issue is resolved by SCDC's admission to both courts. As a result, Gatewood respectfully contends that this Court should find that he is entitled to overtime pay for time worked in excess of his normal shift.

- 8. The ALC erred in not granting Gatewood's request for pre and post-judgment interest, and to petition the ALC for costs and attorney fees, because this ruling was based on the ALC's erroneous ruling that SCDC could deduct security and overhead costs from Gatewood's \$4.00 gross wage under §24-1-295.**

SCDC responds to issue 8 in SCDC's brief issue 6, pp. 28-29. SCDC states the ALC correctly ruled that §24-1-295 applied to Gatewood's wages, SCDC was bound by §24-1-295 and its 1998 contract, and Gatewood was not entitled to the \$4 wage (SCDC brief, 28). This statement seems to contradict earlier statements that §24-1-295 did not apply to Gatewood's work (SCDC brief, 23).

- 9. The ALC erred in declining to consider the issue of whether SCDC should have to process grievance for all workers even if they had not personally filed because this was a stated issue in Gatewood's appeal and the ALC did not state that it was manifestly without merit.**

SCDC responds to issue 9 in SCDC's brief issue 7, pp. 29-30. SCDC states the ALC did not consider this issue because this case does not involve other workers' grievances (SCDC brief, 29). However, as argued in Gatewood's ALC brief, p. 11, and referenced in Gatewood's initial brief to this Court, p. 33, Gatewood's step 1 was filed "individually, and on behalf of all inmate

^{*} SCDC ALC brief, R. p. 146.

employees (IE's) listed on attached Exh. A" (R. p. 46). Moreover, SCDC grievance decisions denied "class" grievance status to the grievance (R. pp. 41, 44). Thus, Gatewood's grievance requested that it be a grievance for all workers in the program.

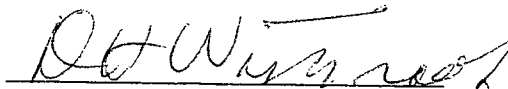
10. The ALC erred in declining to enjoin SCDC from further wage violations because such ruling was appropriate in the circumstances.

SCDC responds to issue 10 in SCDC's brief issue 8, pp. 30-31. Gatewood respectfully refers the Court to his comments in his initial brief, pp. 34-35.

CONCLUSION

Gatewood respectfully requests reversal of the ALC order; rulings on each issue as summarized in Gatewood's initial brief, pp. 35-36, based on the applicable standard of review in that brief on pp. 6, 9, 14-16, 18, 21, 28, 31, 33-35; and remand to the ALC and SCDC as stated on page 36.

Respectfully submitted,



Douglas H. Westbrook, #6039
23 Broad St.
Charleston, SC 29401
(843) 853-9600
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Fred Gatewood, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2014-001199

Appeal From The Administrative Law Court
Ralph King Anderson, III, Administrative Law Judge

Opinion No. 5389
Heard November 2, 2015 – Filed March 9, 2016

**AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED**

Douglas H. Westbrook, of Charleston, for Appellant.

Lake Eric Summers, of Malone Thompson Summers &
Ott, LLC, of Columbia, for Respondent.

GEATHERS, J.: Appellant (Inmate), an inmate participating in a Prison Industries service project operated by Respondent South Carolina Department of Corrections (SCDC), challenges an order of the South Carolina Administrative Law Court (ALC) upholding SCDC's denial of Inmate's wage-related grievance.¹

¹ Inmate's case was one of 197 consolidated appeals from SCDC's denial of wage-related grievances. In *Ackerman v. S.C. Dep't of Corr.*, 07-ALJ-04-0517-AP, the ALC affirmed the denial of 196 of the grievances on the ground that they were not

Inmate argues the ALC erred in denying his motion to supplement the record. Inmate also argues the ALC erred in applying section 24-1-295 of the South Carolina Code (Supp. 2015) to determine the deductions from his gross wages. We affirm in part, reverse in part, and remand.

FACTS/PROCEDURAL HISTORY

In 1995, our legislature enacted section 24-3-430 of the South Carolina Code (2007) to authorize the expansion of the Prison Industries program into the private sector. This expansion allowed qualified private entities to use inmate labor but required the wages for participating inmates to be no less than "the prevailing wage for work of [a] similar nature in the private sector." Act No. 7, 1995 S.C. Acts 78. Section 24-3-430 became effective on July 1, 1995. *Id.* at 102. Subsequently, on September 30, 1998, SCDC entered into a contract with Williams Technologies, Inc. (WTI) for the employment of SCDC inmates on the premises of Lieber Correctional Institution (Lieber) in WTI's business of "disassembly and/or remanufacturing of its product lines at [Lieber]." The cover page for the contract document is entitled "Williams Technology Transmissions Service Contract."

The contract's "Scope of Work" provision states, in pertinent part, "Prison Industry inmates under the general oversight of SCDC will disassemble and/or remanufacture [WTI's] product lines according to engineering design and manufacturing specifications developed and provided by [WTI]" The contract also provides, "For all purposes, inmates shall be considered to be employees of SCDC." With regard to payment for services, the contract requires WTI to pay SCDC "\$4.00 per hour per inmate for work performed[,] including training hours and hours in excess of the inmate's normal shift."

The payment provision further states,

SCDC shall be responsible to pay inmate workers, *cover security costs and [Prison Industries] overhead,*

timely filed with SCDC and ordered Gatewood's appeal to be briefed on the merits. This court reversed the ALC's order affirming the denial of the other 196 grievances and remanded the case for consideration of these grievances on the merits. *Ackerman v. S.C. Dep't of Corr.*, Op. No. 5379 (S.C. Ct. App. filed February 10, 2016) (Shearouse Adv. Sh. No. 6 at 24).

including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. . . .

Thirty (30) days prior to each anniversary date of this agreement, SCDC and [WTI] may negotiate an increase in the per hour rate paid by [WTI] to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. *It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.*

[WTI] and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by [WTI] to SCDC for distribution to inmates.

(emphases added). The contract's cover page highlights the contract's "Requirements/Specifications," which include "Wage Rate: \$4.00 per hour/per inmate; \$.35/[hour] base for inmates." Also, the contract's terms concerning "Bonus Pay/Programs" indicate that the "starting base pay" for participating inmates is \$0.35 per hour.

On July 20, 2001, the legislature enacted the first of a series of yearly budget provisos, effective for the fiscal year beginning July 1, permitting SCDC to pay participating inmates less than the prevailing wage for "service work":²

The Director of [SCDC] may enter into contracts with private sector entities that would allow for inmate labor to be provided for prison industry service work. The use of such inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. Service work is defined as any work such as repair, replacement of original manufactured items, packaging, sorting, labeling, or

² The 2001–2002 budget was enacted on July 20, 2001, for the fiscal year beginning July 1, 2001.

similar work that is not original equipment manufacturing. *The department may negotiate the wage to be paid for inmate labor provided under prison industry service work contracts, and such wages may be less than the prevailing wage for work of a similar nature in the private sector.*

H. 3687, Appropriation Bill 2001–2002, Part IB § 37.31 (Act No. 66, 2001 S.C. Acts 738) (emphasis added). The legislature enacted identical, or nearly identical, provisos for each following fiscal year until the 2007–2008 fiscal year, and on August 1, 2007, section 24-1-295 of the South Carolina Code, which codified the language in the provisos, became effective.³ See S.C. Code Ann. § 24-1-295 (Supp. 2015) ("[SCDC] may negotiate the wage to be paid for inmate labor provided under prison industry service work contracts and export work contracts, and these wages may be less than the prevailing wage for work of a similar nature in the private sector."). This legislation also established mandatory deductions from the "gross earnings of the inmates engaged in prison industry service work in addition to any other required deductions." *Id.*

Inmate began working under the WTI contract in 2004—he received his first paycheck on October 18, 2004, and he filed his "Step 1" Inmate Grievance Form with SCDC on this same date. In his grievance, Inmate requested the negotiated wage of \$4.00 per hour. SCDC's Inmate Grievance System Policy, designated as Policy GA-01.12, provides for formal review of inmate complaints in two steps. A Step 1 grievance is evaluated by the prison's Warden, and any appeal from the

³ H. 4878, Appropriation Bill 2002–2003, Part IB § 37.25 (Act No. 289, 2002 S.C. Acts 3145); H. 3749, Appropriation Bill 2003–2004, Part IB § 37.23 (Act No. 91, 2003 S.C. Acts 1437); H. 4925, Appropriation Bill 2004–2005, Part IB § 37.23 (Act No. 248, 2004 S.C. Acts 2574); H. 3716, Appropriation Bill 2005–2006, Part IB § 37.22 (Act No. 115, 2005 S.C. Acts 1324); H. 4810, Appropriation Bill 2006–2007, Part IB § 37.22 (2006 Act No. 397); Act No. 68, 2007 S.C. Acts 288. The legislature sustained the Governor's veto of H. 3620, Appropriation Bill 2007–2008, Part IB § 37.21, the stated reason for the veto being, "the language is no longer necessary after I signed S. 182, the Prison Industries legislation. This proviso conflicts with the statutory changes and is unneeded." Therefore, from July 1, 2007 to August 1, 2007, there existed no authorization for SCDC to pay participating inmates below the prevailing wage. We address the import of this anomaly in section II of the Law/Analysis portion of this opinion.

Warden's decision to the "responsible official," is designated as "Step 2." The responsible official must render a decision on the appeal within sixty days, and this decision constitutes SCDC's final response in the matter.

On October 28, 2004, Lieber's Warden denied Inmate's Step 1 grievance. On November 8, 2004, Inmate filed his Step 2 Inmate Grievance Form, challenging SCDC's denial of the requested relief. On May 14, 2007, SCDC issued a final decision on Inmate's Step 2 grievance, basing its denial of relief on both the merits and the fifteen-day filing deadline set forth in paragraph 13.1 of Policy GA-01.12.⁴ Inmate then appealed SCDC's decision to the ALC.

According to SCDC, Inmate received his last paycheck on April 13, 2009, during the pendency of his appeal to the ALC. On April 29, 2014, the ALC upheld SCDC's denial of Inmate's grievance on the ground that the deductions taken by SCDC from Inmate's gross wages were proper. This appeal followed.

ISSUES ON APPEAL

1. Did the ALC err in denying Inmate's motion to supplement the record?
2. Did the ALC err in applying section 24-1-295 of the South Carolina Code (Supp. 2015) rather than section 24-3-40 of the South Carolina Code (2007) to determine the deductions from Inmate's gross wages?⁵
3. Did the ALC err in holding that security and overhead constituted "other required deductions" for purposes of section 24-1-295?
4. Does section 24-1-295 apply retroactively to Inmate's pre-August 1, 2007 work?⁶

⁴ Paragraph 13.1 states, in pertinent part: "If informal resolution is not possible, the grievant will complete Form 10-5, Step 1 . . . and will submit the Form to *an employee designated by the Warden* . . . within 15 days of the alleged incident. *An inmate will submit a grievance within the time frames established in the policy.*"

⁵ Section 24-3-40 was amended in 2010; however, in no event would that amendment apply to Inmate because his last day of record working under the WTI contract was April 13, 2009.

⁶ We combine this issue with the due process issue listed in Inmate's brief. In light of our analysis of the due process issue, we need not reach the issue concerning the

5. Did the ALC err in holding that the issue of overtime was not preserved for review?
6. Did the ALC err in denying Inmate's request for pre-judgment interest, post-judgment interest, costs, and attorney's fees?
7. Did the ALC err in declining to consider whether SCDC should process grievances for all inmates participating "in the program"?
8. Did the ALC err in declining to enjoin SCDC from further wage violations?

STANDARD OF REVIEW

Section 1-23-610(B) of the South Carolina Code (Supp. 2015) sets forth the standard of review when this court is sitting in review of a decision by the ALC on an appeal from an administrative agency. Here, there are no factual disputes. Rather, the issues on review involve questions of law. Therefore, our review of the ALC's decision is governed by item (d) of section 1-23-610(B), which allows this court to reverse the ALC's decision if it is affected by an error of law.

LAW/ANALYSIS

I. Motion to Supplement

Inmate argues the ALC erred in denying his motion to supplement the record of the grievance proceedings before SCDC. We hold any error in denying the motion was harmless because Inmate's sole issue before the ALC was whether he was entitled to a wage of \$4.00 per hour, a question of law not requiring review of Inmate's pay stubs and time cards, and Inmate's issues on appeal to this court are likewise issues of law. *See Judy v. Judy*, 384 S.C. 634, 646, 682 S.E.2d 836, 842 (Ct. App. 2009) ("Error is harmless where it could not reasonably have affected the result of the trial."); *id.* ("Generally, appellate courts will not set aside judgments due to insubstantial errors not affecting the result.").

impairment of contractual obligations. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address the remaining issues on appeal when resolution of a prior issue is dispositive).

II. Deductions

Inmate asserts the ALC erred in applying section 24-1-295 of the South Carolina Code (Supp. 2015) to determine the deductions from his gross wages earned prior to August 1, 2007 because (1) the parties did not raise this issue in their briefs and (2) section 24-3-40 rather than section 24-1-295 applies to determine deductions from his gross wages earned prior to August 1, 2007. We agree with Inmate that section 24-3-40 governs deductions from his gross wages earned prior to August 1, 2007, but only as to the month of July 2007.

As to Inmate's assertion that the parties did not raise the issue of deductions before the ALC, we note that in his "Level Three Brief," Inmate requested the ALC to calculate his back wages at "\$4.00 per hour, less any deductions under [section] 24-3-40(A) applicable to [Inmate] No deduction should be made from [Inmate's] gross wages unless expressly authorized by [section] 24-3-40. Any ambiguity should be construed in [Inmate's] favor." In its brief, SCDC argued that deductions for overhead and security costs were authorized by the WTI contract. In reply, Inmate argued that SCDC's overhead and other expenses were "not allowable deductions from an inmate's gross wages under [section] 24-3-40." Therefore, the parties clearly raised the issue of deductions in their briefs before the ALC, and the ALC properly addressed the deductions required by statute and by the WTI contract.

As to which statute determines the deductions to be taken from participating inmates' gross wages, the ALC concluded that section 24-3-40 does not apply "because the [WTI contract] was a service work contract, and deductions from wages resulting from service work provided to private industries by inmates is governed by [s]ection 24-1-295, not [s]ection 24-3-40." In evaluating this conclusion, we begin with a chronology of the legislation concerning deductions from an inmate's "gross wages," a/k/a "gross earnings."

In 2004, when Inmate began working under the WTI contract, two separate legislative enactments concerning deductions were in place: (1) section 24-3-40 and (2) the budget proviso concerning "Prison Industry service work" accompanying the appropriation bill for fiscal year 2004-05. Section 24-3-40(A) states, "Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 *or in a prison industry program provided under Article 3 of this chapter* shall pay the

prisoner's wages directly to [SCDC]." (emphasis added). The provisions in Article 3 of Chapter 3, in particular, S.C. Code Ann. § 24-3-430 (2007), created the Prison Industries program and established program standards. Further, section 24-3-40 requires SCDC to deduct the following amounts from the gross wages of an inmate: Twenty percent for court-ordered restitution or the State Office of Victim Assistance; thirty-five percent for any child support obligations; ten percent for the inmate's "purchase of incidentals"; ten percent for an escrow account "for the benefit of the prisoner"; and the "remaining balance" for federal and state taxes.

On the other hand, the proviso for fiscal year 2004–05 states, in pertinent part:

[T]he Director of [SCDC] shall deduct the following from the gross earnings of the inmates engaged in Prison Industry service work. (1) If *restitution* to a particular victim or victims has been *court ordered*[,] . . . then *twenty percent (20%)* must be used to fulfill the restitution obligation. If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied, then the ten percent (10%) [sic] must be applied to the South Carolina Victims' Compensation Fund. (2) *Ten percent (10%)* must be retained by the Department of Corrections to defray the *cost of the inmate's room and board*.

H. 4925, Appropriation Bill 2004–2005, Part IB § 37.23 (Act No. 248, 2004 S.C. Acts 2574) (emphases added).

Identical provisos accompanied the appropriation bills for fiscal years 2005–06, 2006–07, and 2007–08.⁷ However, curiously, the legislature sustained the Governor's veto of the proviso for the 2007–08 fiscal year. *See supra* n.3. The Governor's stated reason for the veto was "the language is no longer necessary after I signed S. 182, the Prison Industries legislation. This proviso conflicts with

⁷ See H. 3716, Appropriation Bill 2005–2006, Part IB § 37.22 (Act No. 115, 2005 S.C. Acts 1324); H. 4810, Appropriation Bill 2006–2007, Part IB § 37.22 (2006 Act No. 397); Act No. 68, 2007 S.C. Acts 288; H. 3620, Appropriation Bill 2007–2008, Part IB § 37.21.

the statutory changes and is unneeded." The referenced legislation, S. 182, added section 24-1-295 to the South Carolina Code to codify the language in the provisos authorizing service work contracts and payment below the prevailing wage. The Governor signed the legislation adding section 24-1-295 to the Code on June 13, 2007, but it did not become effective until August 1, 2007. Therefore, there existed no authorization for SCDC to enter into service work contracts or to pay inmates below the prevailing wage from July 1, 2007 to July 31, 2007. *See* S.C. Const. art. IV, § 21 (granting the Governor the power to veto "one or more of the items or sections contained in any bill appropriating money" and still approve of the residue); *Amisub of S.C., Inc. v. S.C. Dep't of Health & Envtl. Control*, 407 S.C. 583, 593, 757 S.E.2d 408, 414 (2014) ("The Governor's line item veto is a negative power to void a distinct item."); *id.* at 595, 757 S.E.2d at 415 ("[T]he line item veto power is intended to be a negative power, the power to nullify, or at least suspend, legislative intent."); *S.C. Coin Operators Ass'n v. Beasley*, 320 S.C. 183, 187, 464 S.E.2d 103, 105 (1995) ("[T]he constitutional provisions [that] apply to bills appropriating money apply to the entire appropriations act."). Critically, this gap also left a void in deductions specific to service work contracts.

The Governor's veto message indicates he was apparently unaware that section 24-1-295 became effective on August 1, rather than July 1, 2007, or that a gap in the authorization of the program would be created. However, this court may not consider the Governor's veto message and its effect on the legislature's subsequent action in determining legislative intent. *See Amisub*, 407 S.C. at 600, 757 S.E.2d at 417 (stating the Governor's veto message does not have the force of law because it is neither a legislative act nor an Executive Order and that to hold otherwise "would violate the separation of powers doctrine by altering the allocation of powers granted to the three branches of government by our state's constitution").

Accordingly, section 24-3-40 governed deductions from the gross earnings of inmates from July 1, 2007 until section 24-1-295 became effective on August 1, 2007. Section 24-1-295 requires the identical deductions required by section 24-3-40 but adds the language "in addition to any other required deductions," i.e., "The Director of [SCDC] shall deduct the following from the gross earnings of the inmates engaged in prison industry service work *in addition to any other required deductions*" ⁸ S.C. Code Ann. § 24-1-295 (Supp. 2015) (emphasis added).

⁸ There exists an unsettled question as to the meaning of the term "gross wages," as used in section 24-3-40, and the term "gross earnings," as used in section 24-1-295.

In sum, the appropriation bills for the fiscal years 2004–05, 2005–06, and 2006–07 governed deductions from Inmate's gross earnings until the month of July 2007; during July 2007, section 24-3-40 governed deductions from the prevailing wage that should have comprised Inmate's gross earnings for that month. Therefore, SCDC was not entitled to deduct security costs and overhead for July 2007. Finally, section 24-1-295 governed the deductions from Inmate's gross earnings from August 1, 2007 through April 13, 2009, the date Inmate received his last paycheck.

III. Other Required Deductions

Although not raised as a separate issue in this appeal, before the ALC, the parties differed on whether the "gross wages," a/k/a "gross earnings," established by the WTI contract are represented by the rate of \$4.00 "per hour per inmate," which WTI agreed to pay to SCDC for "work performed." Neither the term "gross wages" nor the term "gross earnings" is defined in Title 24 of the South Carolina Code. Inmate argued that the \$4.00 rate represents gross wages, while SCDC argued that the rate of \$0.35 indicated on the contract's "bullet sheet" represents gross wages. The ALC found the \$4.00 rate to be Inmate's gross wages. While SCDC argues on page 21 of its brief before this court that the rate of \$0.35 represents gross wages, it conceded in oral argument that the ALC's finding on Inmate's gross wages should be affirmed.

Our supreme court addressed the term "gross wages," as used in section 24-3-40, in *Torrence v. S.C. Dep't of Corr.*, 373 S.C. 586, 646 S.E.2d 866 (2007). In *Torrence*, the plaintiffs alleged that the private industry sponsor paid SCDC \$7.17 per hour for inmate labor and SCDC improperly diverted \$1.92 from this amount and deposited it into an agency "Surplus Fund" before paying the plaintiffs \$5.25 per hour. 373 S.C. at 590, 646 S.E.2d at 867. The court stated in dictum, "[I]f appellants prove true their allegation that the SCDC removes any of the money remitted by the private industry sponsor and then disburses the percentages listed in section 24-3-40 based on the lower rate, the SCDC would be in violation of the plain language of the statute which directs it to disburse the money based on the gross wages." 373 S.C. at 594 n.4, 646 S.E.2d at 870 n.4. Therefore, the court viewed the amount paid by the industry sponsor to SCDC as the gross wages.

Inmate asserts that the ALC erred in concluding that security costs and overhead constituted "other required deductions" for purposes of section 24-1-295. We disagree.

All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. The Court should give words their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose.

State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (citations omitted).

The ALC concluded SCDC's security costs and Prison Industries overhead constituted "other required deductions" for purposes of section 24-1-295 because they were built into the \$4.00 per hour rate WTI agreed to pay to SCDC for inmate labor. We agree. The contract's payment provision states, in pertinent part, "Thirty (30) days prior to each anniversary date of this agreement, SCDC and [WTI] may negotiate an increase in the per hour rate paid by [WTI] to SCDC. . . . *It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.*" (emphasis added).

Further, the application of the language "other required deductions" from section 24-1-295 to the WTI contract is reasonable because it is consistent with: (1) the statute's opening provision allowing SCDC to "*enter into contracts* with private sector entities that allow inmate labor to be provided for prison industry service work" (emphasis added); (2) its subsequent provision stating that SCDC may "*negotiate* the wage to be paid for inmate labor provided under prison industry service work *contracts*" (emphases added); and (3) the legislative intent

underlying the creation of the Prison Industries program.⁹ These provisions necessarily imply that SCDC has the flexibility to determine the amount it will charge the industry sponsor to compensate SCDC for inmate labor and any other costs SCDC must incur to make this work available for eligible inmates. See *Sweat*, 386 S.C. at 350, 688 S.E.2d at 575 ("All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." (quoting *Broadhurst v. City of Myrtle Beach Election Comm'n*, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000))); *id.* ("A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." (quoting *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992))).

Based on the foregoing, the ALC did not err in concluding that security and overhead expenses constitute "other required deductions" for purposes of section 24-1-295.

IV. Retroactive Application

Inmate maintains the ALC's retroactive application of section 24-1-295 to his wages earned prior to the effective date of section 24-1-295, August 1, 2007;

⁹ See S.C. Code Ann. § 24-3-310 (2007) ("Since the means now provided for the employment of [prison] labor is inadequate to furnish a sufficient number of [inmates] with employment, it is the intent of this article to: (1) further provide more adequate, regular, and suitable employment for the [inmates] of this State, consistent with proper penal purposes; (2) further utilize the labor of [inmates] for self-maintenance and for reimbursing this State for expenses incurred by reason of their crimes and imprisonment; (3) effect the requisitioning and disbursement of prison products directly through established state authorities with no possibility of private profits; and (4) provide prison industry projects designed to place inmates in a realistic working and training environment in which they are able to acquire marketable skills and to make financial payments for restitution to their victims, for support of their families, and for the support of themselves in the institution."); *State v. Prince*, 335 S.C. 466, 472, 517 S.E.2d 229, 232 (Ct. App. 1999) ("[T]he court should not consider the particular clause being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law.").

violates his right to due process of law.¹⁰ Inmate argues the statute's addition of "other required deductions" to the deductions previously required by section 24-3-40 reduced his net wages beginning on August 1, 2007, and applying this result retroactively would divest him of his right to certain wages that vested when they were earned prior to August 1, 2007. We agree.

Preservation

SCDC contends Inmate did not preserve the question of retroactivity for review because he did not raise it before the ALC. However, the ALC's conclusion that section 24-1-295 applies to Inmate's gross earnings implies section 24-1-295 operates retroactively, given that Inmate began working for the WTI project almost three years before section 24-1-295 became law. Further, the question of whether section 24-3-40 or section 24-1-295 applies to Inmate's gross wages fairly encompasses the question of whether 24-1-295 applies retroactively to the wages earned before the statute's effective date. Therefore, it is proper to address the issue on the merits.¹¹

SCDC also argues Inmate did not raise his due process argument before the ALC, and, therefore, it is not preserved for review. We disagree. The question of whether applying a statute retroactively violates due process is fairly subsumed within the question of whether the statute in fact operates retroactively. In other words, the very standard for determining whether a statute operates retroactively

¹⁰ Amend. XIV, § 1, U.S. Const.; S.C. Const. Art. I, § 3. As a second ground for his argument that section 24-1-295 cannot operate retroactively, Inmate maintains retroactive operation of the statute would impair the obligations of the WTI contract. Because we agree with Inmate's first ground, we need not reach his second ground. *See Futch*, 335 S.C. at 613, 518 S.E.2d at 598 (holding an appellate court need not address the remaining issues on appeal when resolution of a prior issue is dispositive).

¹¹ SCDC also contends the ALC did not apply section 24-1-295 retroactively to Inmate's wages earned prior to August 1, 2007, but rather concluded that security costs and overhead were contractually required deductions before section 24-1-295 was enacted. However, in its order, the ALC expressly stated that the deductions required by the WTI contract "constituted 'other required deductions' pursuant to [s]ection 24-1-295." The ALC further stated "Appellant was never entitled to actually receive \$4.00 per hour for his labor, though that is the rate by which his gross wages were to be calculated for purposes of section 24-1-295."

requires analyzing its potential to divest or limit a vested right. *See Dunham v. Davis*, 229 S.C. 29, 35, 91 S.E.2d 716, 718 (1956) (holding retroactive application of a statute relaxing the stringency of a tax sale procedure to respondents, whose rights in certain real property vested prior to the statute's enactment "would be clearly unconstitutional as depriving them of property without due process of law"); *see also Edwards v. State Law Enft Div.*, 395 S.C. 571, 579, 720 S.E.2d 462, 466 (2011) ("[A]bsent a specific provision or clear legislative intent to the contrary, statutes are to be construed prospectively rather than retroactively, unless the statute is remedial or procedural in nature."); *Se. Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC*, 394 S.C. 97, 106, 713 S.E.2d 650, 655 (Ct. App. 2011) ("A statute is remedial where it creates new remedies for existing rights unless it violates a contractual obligation, creates a new right, or divests a vested right."); *Edwards*, 395 S.C. at 580, 720 S.E.2d at 467 ("[A] statute that limits a right is generally not procedural.").

Merits

Section 24-1-295 authorizes SCDC to "enter into contracts with private sector entities that allow inmate labor to be provided for prison industry service work and export work." The statute further authorizes SCDC to negotiate the wage to be paid for inmate labor at less than the prevailing wage and requires SCDC to deduct specified amounts from an inmate's gross earnings, "in addition to any other required deductions," for the following purposes: twenty percent for victim restitution;¹² thirty-five percent for the inmate's child support obligations, if any; ten percent for an inmate's purchase of incidentals; ten percent for an interest-bearing escrow account for the inmate's benefit; and the remaining balance for any federal or state taxes.¹³ These specified amounts are identical to those required by section 24-3-40.

"[A]bsent a specific provision or clear legislative intent to the contrary, statutes are to be construed prospectively rather than retroactively, *unless* the statute is remedial or procedural in nature." *Edwards*, 395 S.C. at 579, 720 S.E.2d

¹² In the event there exists no court-ordered restitution or this obligation has already been satisfied, the twenty percent is required to be paid to the South Carolina Victim's Compensation Fund. S.C. Code Ann. § 24-1-295(2) (Supp. 2015).

¹³ Any funds not used to pay these taxes "must be made available to the inmate for the purchase of incidentals." S.C. Code Ann. § 24-1-295(6) (Supp. 2015).

at 466 (emphasis added). Therefore, it is necessary to determine whether the statute in question is remedial or procedural in evaluating the ALC's retroactive application of section 24-1-295 to Inmate's wages earned prior to August 1, 2007.

"A statute is remedial where it creates new remedies for existing rights *unless* it violates a contractual obligation, creates a new right, or *divests a vested right*." *Se. Site Prep*, 394 S.C. at 106, 713 S.E.2d at 655 (emphases added). On the other hand, "a 'procedural' law sets out a mode of procedure for a court to follow, or 'prescribes a method of enforcing rights.'" *Edwards*, 395 S.C. at 580, 720 S.E.2d at 466 (quoting Black's Law Dictionary 1083 (1979)). However, "a statute that limits a right is generally not procedural." *Id.* at 580, 720 S.E.2d at 467. These standards for remedial and procedural statutes dovetail with Inmate's argument that retroactive application of section 24-1-295 violates due process by divesting his vested right to earn a certain net wage prior to the effective date of section 24-1-295. To evaluate this argument, we first examine Inmate's right to wages, then determine how the implementation of section 24-1-295 should have affected his net wages.

Prior to August 1, 2007, Inmate had a right to wages pursuant to (1) the budget provisos for fiscal years 2004–05, 2005–06, and 2006–07 and (2) as to July 2007, section 24-3-430(D) and section 24-3-315 of the South Carolina Code (2007). *See* H. 4925, Appropriation Bill 2004–2005, Part IB § 37.23 (Act No. 248, 2004 S.C. Acts 2574) (authorizing SCDC to negotiate the wage to be paid for inmate labor and requiring SCDC to deduct certain amounts from a participating inmate's gross wages, thus, implying a right to compensation); H. 3716, Appropriation Bill 2005–2006, Part IB § 37.22 (Act No. 115, 2005 S.C. Acts 1324) (same); H. 4810, Appropriation Bill 2006–2007, Part IB § 37.22 (2006 Act No. 397) (same); S.C. Code Ann. § 24-3-315 (2007) ("The director must determine prior to using inmate labor in a prison industry project that . . . the rates of pay and other conditions of employment are not less than those paid and provided for work of similar nature in the locality in which the work is performed."); S.C. Code Ann. § 24-3-430(D) (2007) ("No inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector."); *Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 424, 602 S.E.2d 56, 57 (2004) ("[W]here . . . the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law."). Further, Inmate's right to a certain wage became vested as soon as he earned that wage. *Cf. Bales v. Aughtry*, 302 S.C. 262, 264, 395 S.E.2d 177, 179 (1990) ("Leave benefits

are part of compensation earned for services rendered and the right to receive that compensation vests once the services are rendered.").

Prior to the effective date of section 24-1-295, the appropriation bills for the fiscal years 2004–05, 2005–06, and 2006–07 governed deductions from Inmate's gross earnings until the month of July 2007; during July 2007, section 24-3-40 governed deductions from Inmate's gross earnings. When section 24-1-295 became effective, the "other required deductions" language supplemented those deductions already required by section 24-3-40. In other words, section 24-3-40 does not accommodate "any other required deductions." Unlike section 24-1-295, section 24-3-40 does not add such a catch-all phrase to the specifically enumerated deductions. Further, section 24-3-40 requires SCDC to use the balance remaining after all other listed deductions are taken to pay federal and state taxes, which reduces the participating inmate's tax debts. Therefore, the increase in deductions authorized by section 24-1-295 beginning on August 1, 2007, theoretically resulted in less net income to Inmate.¹⁴

Applying this increase in deductions retroactively to gross wages earned during July 2007 would divest Inmate's vested right to a higher net wage for that month, i.e., his gross wages less only those deductions authorized by section 24-3-40, and, therefore, would violate his due process rights.¹⁵ See *Dunham*, 229 S.C. at 35, 91 S.E.2d at 718 (holding retroactive application of a statute relaxing the stringency of a tax sale procedure to respondents, whose rights in certain real property vested prior to the statute's enactment "would be clearly unconstitutional as depriving them of property without due process of law"); cf. *Wicker*, 360 S.C. at 424, 602 S.E.2d at 57 ("[W]here . . . the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law."). Accordingly, section 24-1-295 is neither remedial nor procedural and operates prospectively only.

¹⁴ We use the word "theoretically" because it is likely that SCDC was already taking deductions for security costs and overhead from Inmate's gross wages.

¹⁵ Likewise, applying section 24-1-295 retroactively to Inmate's gross wages earned prior to July 2007, when the provisos for fiscal years 2004–05, 2005–06, and 2006–07 would otherwise govern deductions, would violate due process to the extent that imposing the deductions authorized by section 24-1-295 would reduce Inmate's net wages from what they would have been as a result of taking the deductions allowed by the provisos.

Based on the foregoing, we reverse the ALC's retroactive application of section 24-1-295 to Inmate's gross wages earned prior to August 1, 2007.

V. Overtime

Inmate contends the ALC erred in concluding that the issue of overtime pay was not preserved for its review. We disagree.

The ALC noted that Inmate did not request overtime pay in his Step 1 Inmate Grievance Form or his Step 2 form. The ALC also disagreed with Inmate's assertion that SCDC itself raised the issue in its Step 1 and Step 2 responses, referencing the following language from those responses: "*To the extent* that you demand overtime wages in your appeal or grievance, I conclude that neither *Adkins* nor *Wicker* . . . require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance." (emphasis added).¹⁶ The ALC concluded that Inmate did not raise this issue in his grievance forms, and, therefore, "there was no extent to which [Inmate] demanded overtime wages"

An issue that is not raised to an administrative agency is not preserved for appellate review by the ALC. *Cf. Kiawah Resort Assocs. v. S.C. Tax Comm'n*, 318 S.C. 502, 505, 458 S.E.2d 542, 544 (1995) ("In reviewing a final decision of an administrative agency under [S.C. Code Ann.] § 1-23-380, the circuit court essentially sits as an appellate court to review alleged errors committed by the agency. As such, the circuit court, like this [c]ourt, has a limited scope of review, and cannot ordinarily consider issues that were not raised to and ruled on by the administrative agency." (citations omitted)). Even if the issue has been addressed by the agency, it is not preserved if the appellant did not raise it. *Cf. Wierszewski v. Tokarick*, 308 S.C. 441, 444 n.2, 418 S.E.2d 557, 559 n.2 (Ct. App. 1992) ("An issue is not preserved for appeal merely because the trial court mentions it."). In *Wierszewski*, the family court judge "suggested at the hearing that attorney's fees might be authorized under" a certain statute. *Id.* This court declined to address the point "because it was not raised in the petition or addressed in the order." *Id.*

Here, while the issue of overtime was addressed in SCDC's written determination, rather than merely in a hearing, the weight of authority concerning

¹⁶ See *Wicker*, 360 S.C. 421, 602 S.E.2d 56 (2004); *Adkins v. S.C. Dep't of Corr.*, 360 S.C. 413, 602 S.E.2d 51 (2004).

issue preservation requires an appellant to initiate consideration of the issue. *See, e.g., S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) ("[I]t is a litigant's duty to bring to the court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error."); *id.* at 301–02, 641 S.E.2d at 907 ("There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised *by the appellant*, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." (emphasis added) (quoting Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002))); *Mize v. Blue Ridge Ry. Co.*, 219 S.C. 119, 129–30, 64 S.E.2d 253, 258 (1951) (holding the trial court's discussion of a question in ruling on a directed verdict motion did not "have the effect of enlarging the grounds" on which the appellant made the motion); *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S.C. 372, 381–82, 597 S.E.2d 181, 186 (Ct. App. 2004) (stating that the issue raised on appeal was raised to the trial court by the respondent, not by the appellant, and, therefore, the issue was not preserved for appellate review).

Based on the foregoing, the ALC properly declined to address the merits of Inmate's argument concerning overtime pay.

VI. Interest, Costs, and Attorney's Fees

Inmate argues if he is the prevailing party, he is entitled to petition the ALC for costs and attorney's fees as well as pre- and post-judgment interest on any back wages due. Because we reverse the ALC's conclusion that section 24-1-295 applies to Inmate's gross earnings prior to August 1, 2007, we remand the issue of Inmate's entitlement to costs, attorney's fees, pre-judgment interest, and post-judgment interest to the ALC for reconsideration in light of this opinion.

VII. Processing Grievances for All Participating Inmates

Inmate argues the ALC erred in declining to consider the issue of whether SCDC should be ordered to process grievances for other inmates participating "in the program" who did not file their own grievances. We disagree.

ALC Rules 51 through 66 govern "Special Appeals," i.e., "matters heard on appeal from final decisions pursuant to *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000)." ALC Rule 51. Specifically, ALC Rule 65 states, in pertinent part: "The Administrative Law Judge may affirm any ruling, order or judgment

upon any ground(s) appearing in the Record and need not address a point which is manifestly without merit."

Appearing immediately after the text of Rule 65 are the following notes. While not having authoritative value, they are instructive: "Rule 65 incorporates the portion of Rule 220, SCACR, which allows the judge to affirm upon any ground appearing in the Record and *to decline to address points which are without merit*. Motions for reconsideration are not allowed." (emphasis added).

Inmate implies that the ALC could not rely on Rule 65 unless it expressly stated in its order that the issue was manifestly without merit. However, there is no indication in the ALC rules that an opinion must specifically state that an appellant's point is "manifestly without merit" in order to avoid addressing the point. Here, the ALC implicitly found the issue in question to be manifestly without merit, and we agree with that assessment. *See* Rule 220(b)(2), SCACR ("The Court of Appeals need not address a point which is manifestly without merit."); ALC Rule 65 ("The Administrative Law Judge . . . need not address a point which is manifestly without merit.").

Based on the foregoing, the ALC did not err in declining to address the issue in question.

VIII. Injunction

Finally, Inmate asserts the ALC erred in declining to entertain his request for an injunction against SCDC's future wage violations. We disagree and affirm the ALC on this issue. *See* Rule 220(b)(2), SCACR ("The Court of Appeals need not address a point which is manifestly without merit.").

CONCLUSION

Accordingly, we reverse the ALC's conclusion that section 24-1-295 applies retroactively to Inmate's gross wages earned prior to August 1, 2007. We remand the issue of Inmate's entitlement to costs, attorney's fees, pre-judgment interest, and post-judgment interest to the ALC for reconsideration in light of this opinion. We affirm the ALC as to all other issues of this appeal.

AFFIRMED IN PART, REVERSED IN PART, and REMANDED.

SHORT and MCDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Chief Administrative Law Judge

Docket No. 07-ALJ-04-00517-AP

Fred Gatewood..... Appellant,

v.

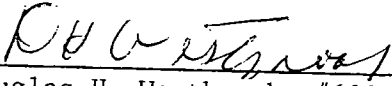
South Carolina Department of Corrections..... Respondent.

Appellate Case No. 2014-001199

PETITION FOR REHEARING OF APPELLANT

COMES NOW, Appellant Fred Gatewood by counsel, who respectfully submits his Petition for Rehearing of the Court's opinion filed March 9, 2016 (SCACR 221(a)). Gatewood contends the Court overlooked certain points in Section I of its opinion (Gatewood issue 1, Motion to Supplement); Section II (Gatewood issues 2 and 6, deductions and "other required deductions"); Section III (Gatewood issue 6, security and overhead as "other required deductions"); Section V (Gatewood issue 7, overtime); Section VII (Gatewood issue 9, processing grievance for all inmate-workers); and Section VIII (Gatewood issue 10, injunctive relief); as more particularly described in the attached Memorandum.

Respectfully submitted,


Douglas H. Westbrook, #6039
23 Broad St.
Charleston, SC 29401
(843) 853-9600
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Chief Administrative Law Judge

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South Carolina Department of Corrections..... Respondent.

Appellate Case No. 2014-001199

MEMORANDUM IN SUPPORT OF
APPELLANT'S PETITION FOR REHEARING

COMES NOW, Appellant Fred Gatewood by counsel, who submits his Memorandum in support of the Petition for Rehearing pursuant to SCACR 221(a) and 240(c).

1. Regarding Section I of the Court's opinion (Gatewood issue 1, Motion to Supplement), the Court held any error in denying the motion was harmless. Gatewood contends the Court overlooked the points that he has appealed from ALC Level 3 merits briefing; Level 3 is the only opportunity to add Gatewood's pay stubs and time cards to the record before wage calculations; these records are needed to make accurate calculations; and this causes prejudice to Gatewood if the records are not added to the record (Gatewood brief, 8; reply brief, 2-3).

1a. Regarding Section II (Gatewood issues 2 and 6, deductions and "other required deductions" under §24-1-295), the Court stated §24-1-295 governed Gatewood's deductions from August 1, 2007 to April 13, 2009. Gatewood contends the Court overlooked those points summarized in paragraph 2 on pages 3-4 of this Memorandum (Gatewood brief, 21-24, 27-28; reply brief, 6, 11-14).

2. Regarding Section III (Gatewood issue 6, security and overhead as "other required deductions" under §24-1-295), the Court agreed with the ALC that security and prison industries overhead were "other required deductions" under §24-1-295 because they were built into the \$4 per hour rate WTI paid for inmate labor. In support, the Court cited §3.3.1 of the contract ("It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead"); and two provisions in §24-1-295, and the legislative intent statement in §24-3-310. The Court stated these provisions necessarily imply that SCDC has flexibility to determine the amount it will charge the industry sponsor for inmate labor and any other costs SCDC must incur for the program. Gatewood contends the Court overlooked the following points:

(a) The express terms of the 1998 contract state that SCDC invoices WTI for "inmate labor"; SCDC is responsible for security "at its expense"; and SCDC "...shall be responsible to..cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates.." Thus, under the contract terms deductions for security and P.I. overhead are not required, or allowed, to be taken out of the \$4 per hour gross wage. Moreover, the express terms do not state that security and P.I. overhead are built into the \$4 wage rate (Gatewood brief, 21-24, 27-28).

(b) A meaning cannot be read into a contract which imparts an intent wholly unexpressed therein (Gatewood brief, 27).

(c) Section 3.3.1 of the contract (allowing the parties to negotiate an increase in the hourly pay rate) is to reflect "SCDC's increased costs of

prison overhead", not "prison industries overhead" (Gatewood reply brief, 11-12).

(d) Section 3.3.1 was drafted with §24-3-40 in mind to reimburse the State for inmate's room and board (Gatewood reply brief, 12).

(e) The main issue in §24-1-295's "other required deductions" clause is whether security and prison industries overhead are required deductions from the \$4 wage pursuant to the 1998 contract (Gatewood brief, 21, 23-24, 27-28; reply brief, 14).

(f) Section 24-3-310(2) speaks of reimbursing the State for inmates' "crimes and imprisonment", which more closely describes the deduction for room and board allowed under §24-3-40 (Gatewood reply brief, 11-12).

(g) Under §24-1-295, SCDC may negotiate the wage for inmate labor, not SCDC's deductions from that wage. See Court's opinion, Section III.

(h) Since SCDC is a drafter of the contract, any ambiguity must be construed against it (Gatewood reply brief, 13).

3. Regarding Section V (Gatewood issue 7, overtime), the Court held Gatewood did not raise overtime with SCDC at the agency level, and the ALC properly ruled overtime was not preserved for review. Gatewood contends the Court overlooked the following points:

(a) In the ALC, Gatewood briefed overtime on the merits; SCDC admitted inmates could perform overtime labor; SCDC waived issue preservation by failing to argue it in its brief; and the ALC erred in raising issue preservation on its own (Gatewood brief, 30).

(b) Under SCDC v. Cartrette 694 S.E. 2d 18, 21-23 (S.C. App., 2010),

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Gatewood's right to overtime is ensured under §24-3-430. And, his step 1 and Amendment allegations of entitlement to prevailing wages under §24-3-430, and to the \$4 rate after July 2001, were sufficient for issue preservation purposes (Gatewood reply brief, 14-15).

(c) In Gatewood's reply to SCDC's argument that there was no extent to which SCDC could consider overtime (SCDC brief, 26), Gatewood noted that his step 1 requested back wages, as determined by Exhibits A-H, which were incorporated by reference from Darrell Williams' grievance, and Exhibits C-E allowed overtime at time and a half pay to be worked, and these exhibits adequately raised overtime (Gatewood reply brief, 15).

(d) SCDC admitted in this Court that inmates could perform overtime labor (SCDC brief, 27), which admission should resolve the issue preservation issue (Gatewood brief, 30; reply brief, 16).

4. Regarding Section VII (Gatewood issue 9, processing grievance for all inmate-workers), the Court agreed with the ALC that this issue was manifestly without merit, and this conclusion did not have to be stated in the ALC order. Gatewood contends the Court overlooked the following points:

(a) Gatewood's step 1 was filed individually and on behalf of all inmate-workers.

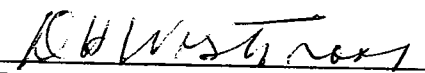
(b) Gatewood's grievance requested that it be a grievance for all workers in the program.

(c) SCDC's grievance decision denied "class" grievance status to the grievance.

(d) Gatewood named this issue in his ALC Statement of Issues and argued it (Gatewood brief, 34; reply brief, 16-17).

5. Regarding Section VIII (Gatewood issue 10, injunctive relief), the Court affirmed the ALC decision declining to entertain Gatewood's request for an injunction. Gatewood contends the Court overlooked the point that §1-13-90, by analogy, supports enjoining SCDC from further unlawful practices (Gatewood brief, 34).

Respectfully submitted,


Douglas H. Westbrook, #6039
23 Broad St.
Charleston, SC 29401
(843) 853-9600
Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Chief Administrative Law Judge

Docket No. 07-ALJ-04-00517-AP

Fred Gatewood..... Appellant,

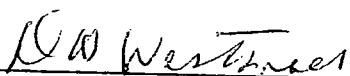
v.

South Carolina Department of Corrections..... Respondent.

Appellate Case No. 2014-001199

PROOF OF SERVICE

I certify that I have served the Appellant's Petition for Rehearing and Memorandum in Support on the S.C. Department of Corrections by depositing a copy of these documents in the U.S. Mail, postage prepaid, on March 19, 2016, addressed to its attorney of record, Lake Summers, Esquire, of Malone, Thompson, Summers & Ott, LLC, 339 Heyward St., Ste. 200, Columbia, SC 29201.



Douglas H. Westbrook, #6039
23 Broad St.
Charleston, SC 29401
(843) 853-9600
Attorney for Appellant

The South Carolina Court of Appeals

Fred Gatewood, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2014-001199

ORDER

Both Appellant (Inmate) and Respondent (SCDC) have filed petitions for rehearing. After careful consideration of both petitions, the Court is unable to discover any material fact or principle of law that has been either overlooked or disregarded, and, hence, there is no basis for granting a rehearing. Accordingly, the petitions are denied. However, we take this opportunity to address SCDC's misapprehension of our March 9, 2016 opinion.

SCDC argues the questions of whether section 24-1-295 of the South Carolina Code (Supp. 2015) operates retroactively and whether the statute's retroactive application violates due process are not preserved. However, beginning with his Step 1 grievance, Inmate has claimed that he was entitled to \$4.00 per hour. This claim logically encompasses the questions of what amount constituted Inmate's "gross wage" and which deductions were permitted to be taken from gross wages. Both parties addressed deductions from gross wages in their briefs before the ALC, and the ALC's conclusion that section 24-1-295 governed deductions directly addressed these arguments. As we stated in our opinion, the question of whether section 24-1-295 applied to Inmate's wages necessarily included the question of whether the statute applied retroactively to the wages Inmate earned prior to the statute's effective date, August 1, 2007. Further, this question necessarily included the question of whether the statute's retroactive application would divest Inmate of a vested right, thereby depriving him of due process. Therefore, Inmate adequately preserved the questions of whether section 24-1-295 operates retroactively and whether the statute's retroactive application violates due process. In any event,

"where the question of preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation." *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 333, 730 S.E.2d 282, 287 (2012), Toal, J., dissenting.

In contrast, the question of Inmate's entitlement to any overtime wages is a separate question and is not encompassed by the evaluation of the proper amount of Inmate's regular wages. Therefore, contrary to SCDC's assertion, our conclusion that the ALC properly found the question of overtime wages unpreserved is consistent with our conclusion that Inmate adequately preserved the issues of whether section 24-1-295 operates retroactively and whether the statute's retroactive application violates due process.

Paul G. Short, Jr. J.

John D. Deane J.

James P. McConnell J.

Columbia, South Carolina

FILED

cc:

Douglas H. Westbrook, Esquire
Lake Eric Summers, Esquire
The Honorable Ralph King Anderson, III

June 2, 2016

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appendix includes the documents specified in SCACR 242(e).

June 30, 2016

Date


Douglas H. Westbrook, #6039
23 Broad St.
Charleston, SC 29401
(843) 853-9600
Attorney for Petitioner