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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

H.W. Funderburk, Jr., Administrative Law Judge

Appellate Case No. 2018-001325

William Ray Ward, #91566 Respondent,

v.

South Carolina Department of Corrections Appellant.

RECORD ON APPEAL

Lake E. Summers
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
(803) 254-3300 – Office
(803) 254-0309 – Fax
summers@mtsolvlawfirm.com – E-mail
Counsel for the Appellant

Julius H. Hines, Esquire
K&L Gates LLP
134 Meeting Street, Suite 500
Charleston, South Carolina 29401
(843) 579-5660 – Office
(843) 579-5601 – Fax
julius.hines@klgates.com – E-mail
Counsel for the Respondent

INDEX
Record on Appeal

Item	Page
Ward's "Motion to Resolve Appeal Adversely to [SCDC], or, in the Alternative, for a Briefing Schedule" to the South Carolina Administrative Law Court ["ALC"] dated January 25, 2016	1
Ward's "Brief in Support of Appeal" to the ALC dated January 27, 2016	17
"Order for Complete Record" issued February 11, 2016 by the ALC	21
"Motion to Supplement the Record" filed by SCDC with the ALC on February 17, 2016	23
Ward's Step 1 Grievance dated June 19, 2007	26
SCDC's Response, dated May 7, 2012, to Ward's Step 1 Grievance	27
Ward's Step 2 Grievance Appeal dated June 25, 2012	34
SCDC's Reply, dated October 14, 2015, of Ward's Step 2 Grievance Appeal	34
Ward's Notice of Appeal to the ALC filed October 18, 2015	46
Ward's "Brief in Support of Appeal" to the ALC dated March 8, 2016	48
SCDC's Brief to the ALC filed April 11, 2016	59
"Order of Abeyance" issued July 13, 2016 by the ALC	147
"Order Lifting Abeyance" issued June 15, 2017 by the ALC	149
Ward's "Supplemental Brief in Support of Appeal" to the ALC dated July 5, 2017	151
SCDC's "Supplemental Brief" to the ALC filed August 1, 2017	161
"Final Order" issued June 20, 2018 by the ALC	172
SCDC's Notice of Appeal filed July 18, 2018 with the South Carolina Court of Appeals	188
Certificate of Counsel	191

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

William Ray Ward (#091566),	)	
	)	
Appellant,	)	Docket No. 15C-0560
v.	)	
	)	MOTION TO RESOLVE APPEAL
South Carolina Department of	)	ADVERSELY TO RESPONDENT, OR,
Corrections,	)	IN THE ALTERNATIVE,
	)	FOR A BRIEFING SCHEDULE
Respondent.	)	
	)	

TO: David Tatarsky, General Counsel for South Carolina Department of Corrections

Pursuant to Rule 62 of the South Carolina Rules of Procedure for the Administrative Law Court ("ALC Rules"), Appellant William Ray Ward ("Mr. Ward"), by and through his undersigned counsel, respectfully moves this Court to resolve the pending appeal adversely to Respondent, South Carolina Department of Corrections ("SCDC"), based on Respondent's failure to file a complete record with the Court as required by the ALC Rules. In the alternative, Mr. Ward requests that this Court, pursuant to its authority under ALC Rule 60(A), issue a briefing schedule to commence upon Respondent's filing of a complete record. Mr. Ward bases this Motion on the following grounds:

The instant case falls under the "Special Appeals Rules" set forth in Section V of the ALC Rules. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Under Rule 62 of the Special Appeals Rules, upon motion of any party, an Administrative Law Judge may resolve the appeal adversely to the offending party for failure to comply with any of the procedural rules for appeals. In the instant case, SCDC has failed to comply with Rules 58 and 59 of the ALC Rules. Under Rule 59, the agency must file the complete case record with the Court within seventy (70) days of the date the case is assigned to an Administrative Law Judge (date of assignment). As prescribed by ALC Rule 58, the record must include all

documents filed; all evidence received or considered; a statement of matters judicially noticed; all proffers of proof of excluded evidence; the final order or decision which is subject to administrative review; and any transcript taken of the testimony during the proceeding. Although SCDC filed a record with the Court within the seventy-day timeline, the record is incomplete.

As submitted by SCDC, the record consists of Mr. Ward's Notice of Appeal (Ex A), his Step 1 Inmate Grievance Form (Ex B), and his Step 2 Inmate Grievance Form (Ex C). This record is clearly incomplete under the requirements of ALC Rule 58, as it contains no indication of the agency's final order or disposition of Mr. Ward's Grievance at either procedural level. Rather, the Step 2 Grievance Form merely states "see attachments" in the portion reserved for the official's final decision and reason, but no such attachments are included in the record.

Furthermore, SCDC omitted any record of its disposition of Mr. Ward's Step 1 Grievance. (Ex D). It appears that SCDC's denial of Mr. Ward's Step 2 Grievance was based on the same grounds as its denial of Ward's Step 1 Grievance. If so, SCDC obviously reviewed and relied upon its Step 1 Grievance Response in making its final decision on the Step 2 Grievance. Given that ALC Rule 58 requires the agency to include all "documents filed" and "evidence reviewed" in the record of the contested case, SCDC should have included the Step 1 Grievance Response in the case record. Its absence leaves the record devoid of any rationale for SCDC's action in this matter.

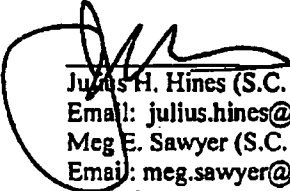
Additionally, SCDC appears to have relied upon various evidentiary materials in its denial of Mr. Ward's Grievance. Its denial of Mr. Ward's Step 1 Grievance (omitted from the record but attached to this motion as Exhibit D) cites the holdings in several South Carolina administrative decisions, as well as national minimum wage information. Although these materials constitute evidence pursuant to ALC Rule 58, SCDC has again failed to

include them in the record. According to ALC Rule 62, Mr. Ward's relief for the opposing party's failure to comply with the procedural rules is for his appeal to be resolved adversely to the offending party. Mr. Ward therefore requests that this Court resolve this appeal adversely to SCDC based on its failure to comply with ALC Rules 58 and 59.

In the alternative, Mr. Ward requests that this Court, pursuant to its authority under Rules 59 and 60(A), order a new briefing schedule to commence upon SCDC's filing of the complete record. Given the obvious omissions from the current record, Mr. Ward is unable to submit a proper brief in support of his position as required under Rule 60. He therefore asks this Court to extend the time for filing the record under Rule 59, order SCDC to file a complete record, and issue a new briefing schedule that affords Mr. Ward his allotted twenty (20) days to submit a brief based on the full record.

WHEREFORE, Mr. Ward prays that this Court:

- a. Resolve the appeal in Mr. Ward's favor by directing SCDC to grant him the relief requested in his Grievance;
- b. In the alternative, order a briefing schedule to commence upon SCDC's filing of a complete record with the Court;
- c. For any other relief this Court deems just and proper.



Julius H. Hines (S.C. ID No. 065472)
Email: julius.hines@klgates.com
Meg E. Sawyer (S.C. ID No. 102362)
Email: meg.sawyer@klgates.com
K&L Gates LLP
134 Meeting Street, Suite 500
Charleston, SC 29401
Phone: (843) 579-5600
Fax: (843) 579-5601

ATTORNEYS FOR WILLIAM RAY WARD

EXHIBIT B

Date: 5-30-12

JUN 05 2012

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 2

INMATE NAME: William Ray Ward
 SCDC NUMBER: 091566 JUN 08 2012
 INSTITUTION: Perry
 HOUSING UNIT: Q1 B-106 INMATE GRIEVANCE
 WORK ASSIGNMENT: Vest Washer MAY 29 2012

Office Use Only
 Grievance No. ECT-1212-07
 Code: General my
 Policy _____
 Disc. Hear. _____
 Class. _____
 Date Received 5/29/12
 IGC Initials SW

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

It took Five Years For this grievance to be answered. SCDC still owes monies to grievant, and step 2. answers are totally untrue. Therefore, I appeal the entire decision in step 1, and reclaim all issues in my grievance.

~~William Ray Ward 5-25-12~~
~~Signature~~

William Ray Ward 5-25-12
 Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your complaint. See attachments.

You may appeal this decision under the Administrative Procedures Act. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

[Signature] 10/14/15
 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.

William Ward 10-15-15
 Grievant Signature Date

[Signature] 10-15-15
 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.

Part 1

EXHIBIT C
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: William Ray Ward

SCDC NUMBER: 091566

INSTITUTION: Perry

HOUSING UNIT: Q4 B-223

WORK ASSIGNMENT: Dorm Worker
5-15-12 PM

Office Use Only
Grievance No. 100986-07
Code: General MY
Policy _____
Disc. Hear. _____
Class. _____

Date Received JUN 25 2007
IGC Initials WRC

7/3/07

STATE GRIEVANCE (Include documentation, and date of incident; if SCDC Policy, indicate which policy) GA-01-12.
South Carolina Department of Corrections is in violation of wages earned by me while working for private sector ESCOD AND INSILCO AT EVANS. SCDOC HAVE WITHHELD LEGALLY ALL THESE WAGES. I grieve all wages owed to me by SCDC. Under Supreme Court Opinion No. 26328 Filed May 7, 2007 through case No. 01-CP-40-3409, under S.C. Code ANN. 4-3-40(A) SCDOC is in violation of statute and Article 4 of the Order. Therefore, SCDC OWES ME BACK WAGES OF \$1.92 For every single hour that I worked at EVANS for 13 years, along with the 320 hours training wage under the Wicker case, 360 S.C. at 424 2 S.E.2d at 57. Along with immediate access to monies held in Escrow by SCDC from an inmate serving a sentence of life without parole S.C. Code ANN. 4-3-40 (B)(2). Training wage statute 24-3-430 (D). All wages owed to me by SCDOC, plus proper interest on these monies.

ACTION REQUESTED: THAT I be paid \$1.92 For every hour I ever worked For ESCOD/INSILCO For a total of 13 years. THAT I be paid For training hours that was paid by SCDC less than prevailing wage of 320 hours. Along with the immediate access of Long Term Savings held in Escrow by SCDOC. Plus proper interest on these monies.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Through case of Thomas Torrence et al. v. SCDOC and The State of South Carolina. Supreme Court Opinion No. 26328 Filed May 7, 2007, and Wicker case, 360 S.C. at 424, 602 S.E.2d at 57, and S.C. Code ANN. 24-3-40 (B)(2)

William Ray Ward 6-19-07
Grievant Signature Date

ACTION TAKEN BY IGC:

Forwarded to Evans 7/18/07 per instructions from Atty Lake Summers.

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

SCDC 10-5 (Rev November 1997)

WRC 5/25/12
IGC Signature Date

NA
Grievant Signature Date

WARDEN'S DECISION AND REASON:

"See Attached"

Mark R. Gatten 5-15-12
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.

William Ward 5-25-12
Grievant Signature Date

Ms. Patricia Miller 5/15/12
IGC Signature Date

Served by:
Shirley 5/25/12

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.

EXHIBIT D

8:12-cv-01480-MGL-JDA Date Filed 10/26/12 Entry Number 37-1 Page 3 of 9

Step 1 Grievance Response
May 7, 2012

Name	SCDC #	Grievance #	Project
Ward, William Roy	091566	ECI-1212-07	Evans CI/ESCOD

I have reviewed your Step 1 grievance bearing your signature and dated June 19, 2007. The responsible SCDC official provided your Step 1 with the following designation: ECI-1212-07.

In your Step 1 designated as ECI-1212-07, you stated that SCDC "is in violation of wages" you earned "while working for private sector ESCOD and INSILCO" at Evans Correction Institution. You asserted that SCDC has "withheld illegally all these wages."

You further asserted in your Step 1 that, regarding the rate at which it paid you for your prison industries labor, SCDC is in violation of S.C. Code Ann. Section 24-3-40(A) and an opinion filed by the South Carolina Supreme Court on May 7, 2007. You provided an opinion number of "26328," and you provided what appears to be a civil action number related to this case of "01-CP-40-3409." Toward the end of your Step 1, you provided the following name for this case: Thomas Torrence, et al., v. S.C. Dep't of Corr. and the State of South Carolina. You specifically asserted that SCDC is also in violation of footnote 4 of the Supreme Court's May 7, 2007 opinion.

You then claimed that SCDC owes you "back wages of \$1.92 for every single hour that I worked at Evans for 13 years, along with the 320 hours training wage." You invoked the South Carolina Supreme Court's decision in Wicker v. S.C. Dep't of Corr. to support your claim, and you provided the following reference to this decision: "360 S.C. at 424, 602 S.E.2d at 57." You also invoked what you call the "training wage statute," S.C. Code Ann. Section 24-3-430(D) to support your claim.

By your Step 1, you also demanded "immediate access to monies held in escrow by SCDC from an inmate serving a sentence of life without parole," and you invoked S.C. Code Ann. Section 24-3-40(B)(2) to support your demand.

Finally, you requested the following action in your Step 1: "That I be paid \$1.92 for every hour I ever worked for ESCOD/INSILCO for a total of 13 years, that I be paid for [training] hours that I was paid by SCDC less than the prevailing wage [for] 320 hours, along with the immediate access to long [term] savings held in escrow by [SCDC]. Plus proper interest on these monies."

Your prison industries participation and pay records were reviewed by the responsible officials at SCDC Headquarters in Columbia. These records confirm that you voluntarily participated in the prison industries project operated by SCDC at Evans in which ESCOD, and later INSILCO, participated as the private industry sponsor before SCDC ended its policy of paying inmates a "training wage" for their initial 320 hours of labor. SCDC ended its policy of paying a "training wage" on July 1, 1999.

These pay records reflect that SCDC began paying you on or about June 30, 1995 for the labor you voluntarily provided in the project at Evans, and they reflect that SCDC remitted its final payment to you on or about November 14, 2003.

Step 1 Grievance Response
May 7, 2012

Name	SCDC #	Grievance #	Project
Ward, William Ray	091566	ECI-1212-07	Evans CI/ESCOD

After carefully considering the arguments you made justifying the action you request, I deny the claims from your above referenced Step 1 grievance.

Two (2) decisions issued by the South Carolina Supreme Court in 2004 apply to the claims you presented in your Step 1: Adkins v. S.C. Dep't of Corr. and Wicker v. S.C. Dep't of Corr. Both of these cases discussed S.C. Code Ann. § 24-3-40, § 24-3-310, *et seq.* and, specifically, § 24-3-430(D). The South Carolina Supreme Court issued these decisions on August 23, 2004. You specifically mentioned Wicker in your Step 1.

Adkins and Wicker recognized that inmates possessed a pre-existing right to file administrative grievances concerning their prison industries pay. Under Wicker, such grievances must be filed, processed, and determined in accordance with the provisions of the agency's Inmate Grievance System Policy.

In Torrence, the case you mentioned in your Step 1 and the case in which you personally participated as one of the lead plaintiffs, the South Carolina Supreme Court issued another decision which applies to your claims. In Torrence, the South Carolina Supreme Court again acknowledged that inmates could file grievances in accordance with the agency's Inmate Grievance System Policy by which they could challenge their prison industries pay.

SCDC has published editions of its Inmate Grievance System Policy for nearly 20 years if not longer. Starting in the mid-1990s, SCDC's Inmate Grievance System Policy consisted of two (2) parts: Policy Number PS-10.01 and Policy Number PS-10.01 (OP). § 14(a) of Policy Number PS-10.01 (OP) required that inmates submit their Step 1 grievance forms "within seven (7) days of the alleged incident." Exceptions to the deadline appeared in § 14(g) and § 15 of the policy.

On October 1, 1997, SCDC issued new editions of Policy Numbers PS-10.01 and PS-10.01 (OP). In the October 1, 1997 edition of Policy Number PS-10.01 (OP), SCDC changed § 14(a) to require that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Again, exceptions to this deadline appeared in § 14(g) and § 15 of the policy.

On January 30, 1998, SCDC issued a new edition of its Inmate Grievance System Policy, and, just as before, the policy consisted of two (2) parts. However, SCDC re-designated these two (2) parts as Policy Number GA-01.12 and Policy Number GA-01.12 (OP). § 14(a) of Policy Number GA-01.12 (OP) required that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Once again, exceptions to this deadline appeared in § 14(g) and § 15 of the policy.

The agency consolidated Policy Numbers GA-01.12 and GA-01.12 (OP) into a single policy when it issued a new edition of Policy Number GA-01.12 on April 1, 2000, and the 15-day filing deadline appeared in this edition of the policy as well as every edition issued since April 1, 2000.

I conclude, after reviewing your Step 1 in light of Adkins, Wicker, Torrence, the seven (7) day filing deadline in § 14(a) of the mid-1990s version of Policy Number PS-10.01 (OP), the 15-day

Step 1 Grievance Response
May 7, 2012

Name	SCDC #	Grievance #	Project
Ward, William Ray	091566	ECI-1212-07	Evans C/ESCOD

filing deadline from ¶ 14(a) of the October 1, 1997 edition of Policy Number PS-10.01 (OP), as well as the exceptions to these deadlines from ¶ 14(g) and ¶ 15 of these editions, that you did not submit your Step 1 grievance within either seven (7) days or even 15 days of the incident upon which you anchored the claims you presented in your Step 1, namely the date upon which SCDC both first began paying you for your prison industries labor and began applying statutorily mandated deductions to your pay pursuant to S.C. Code Ann. Section 24-3-40.

The grievance filing deadline established in every edition of the agency's Inmate Grievance System Policy applied and continues to apply to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the deadline applies to your grievance.

Moreover, you filed your Step 1 nearly 12 years after you began participating in the prison industries project operated by SCDC at Evans in which ESCOD participated as the private industry sponsor and approximately 3 1/2 years after you concluded your participation in this project. For that matter, you filed your Step 1 over 2 1/4 years after the South Carolina Supreme Court issued its decisions in Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under the agency's Inmate Grievance System Policy.

The fact that you first sought relief by participating in a class action lawsuit filed in circuit court instead of filing a grievance by which you challenged the rate at which SCDC both paid you for your prison industries labor and applied statutorily mandated deductions to your pay does not change the deadline(s) from the agency's Inmate Grievance System Policy. As stated above, you were one of the lead plaintiffs in Torrence, and your attorneys filed their amended declaratory judgment complaint on your behalf on November 5, 2001. Obviously, you knew even before your attorneys filed the lawsuit on your behalf that you wanted to challenge the rate at which SCDC had been paying you for your prison industries labor.

In making this determination, I rely on the following decisions from the South Carolina Administrative Law Court ("ALC"): Cramer, #251406, v. S.C. Dep't of Corr., Docket No. 08-ALJ-04-00577-AP; Daughtry, #250139, v. S.C. Dep't of Corr., Docket No. 04-ALJ-00783-AP; Grant, #81314, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-750-AP; Grimmett, Jr., #102226, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00757-AP; Larrimore, #238126, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00470-AP; Manigault, #280550, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00756-AP; McLemore, #127966, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00023-AP; Pipkin, #283616, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00733-AP; Pritchett, #260687, v. S.C. Dep't of Corr., Docket No. 07-ALJ-04-690-AP; Sapp, #218694, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00732-AP; Sumter, #242379, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00749-AP; Smiley, #262734, v. S.C. Dep't of Corr., Docket No. 08-ALJ-04-00571-AP; Williams, #187203, v. S.C. Dep't of Corr., Docket No. 06-ALJ-04-622-AP; and Wright, #200123, v. S.C. Dep't of Corr., 2006 WL 1430140 (ALJD 2006).

I also rely upon the following decisions issued by the ALC since March 1, 2012: Ackerman, #266928, et al., v. S.C. Dep't of Corr., Docket Nos. 07-ALJ-04-00444-AP, et seq.; Arnold,

Step 1 Grievance Response
May 7, 2012

Name	SCDC #	Grievance #	Project
Ward, William Ray	091566	ECI-1212-07	Evans CI/ESCOD

#238375, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00200-AP; Bridgeman, #130350, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00610-AP; Gibson, #241326, v. S.C. Dep't of Corr., Docket No. 10-ALJ-04-00007-AP; Jones, #130817, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-0506-AP; Keim, #277284, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-0519-AP; and Lampley, #97724, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00489-AP.

Additionally, in light of the chronology associated with the filing of your Step 1, I find that your claim is barred by the doctrine of laches.

To the extent that you claim in your Step 1 grievance that you were required to file a grievance, I conclude that neither the opinions in Adkins or Wicker nor the decision in Torrence ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1. These opinions simply recognized your pre-existing right to file grievances presenting prison industries pay claims if you desired.

To the extent that you claim in your Step 1 that you worked for or were otherwise "employed" by ESCOD or INSILCO, I conclude that you never "worked" for nor were you ever "employed" by either ESCOD or INSILCO. I also conclude that neither Adkins nor Wicker declared that you or inmates in your position were "employed" by SCDC, ESCOD, INSILCO or, for that matter, any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's decision 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 private industry sponsors like ESCOD.

Therefore, to the extent you use the terms "worked for," "employee," "employed," or "employment" within your Step 1 grievance to describe your participation, 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 Evans.

Additionally, I deny your claim that you are entitled to any relief under Section 24-3-430(D), the so-called "prevailing wage" provision. Specifically, as the prison industries project in which you participated at Evans was a project for which SCDC received certification under the federal government's Prison Industries Enhancement Certification Program ("PIECP"), I conclude that the provisions of Section 24-3-410(B)(7) - not Section 24-3-430(D) - applied to the rate of pay SCDC was required to remit to you under Section 24-3-40(A) for the labor you voluntarily provided to this project. In making this conclusion, I rely upon the decision issued by the circuit court in Adkins, which concluded that inmates who participated in an identically certified SCDC prison industries project did not possess a viable claim for back wages or higher wages under the provisions of Section 24-3-430(D).

Even if you have a viable claim for relief under § 24-3-430(D), I conclude that SCDC paid you the proper rate of pay for the labor you voluntarily provided to the federally certified prison

Step 1 Grievance Response
May 7, 2012

Name	SCDC #	Grievance #	Project
Ward, William Ray	091566	ECI-1212-07	Evans CI/ESCOD

industries project it operates at Evans. In making this conclusion, I rely upon the guidelines established by the federal government, specifically the United States Department of Justice's Bureau of Justice Administration [known as "BJA"]. BJA published the guidelines applicable to the PIECP in the Federal Register, specifically 64 FR 17000. Within these guidelines, BJA declared that the rate at which inmates are paid for the labor they voluntarily provide to PIECP projects, like the project in which you participated at Evans CI, cannot be set below the federal minimum wage.

Your prison industries pay records reflect that, after you completed the first 320 hours of your prison industries labor for which SCDC paid you "training wages," SCDC began paying you an hourly rate of at least \$4.25 beginning June 30, 1995. Beginning on or about November 1, 1996, SCDC began paying you an hourly rate of at least \$5.25 per hour until your participation in the project concluded on or about November 14, 2003.

The federal minimum wage was \$4.25 from April 1, 1991 to September 30, 1996. The federal minimum wage increased to \$4.75 per hour on October 1, 1996 and it stayed at this rate until August 31, 1997. The federal minimum wage increased to \$5.15 per hour effective September 1, 1997, and it remained at that rate until July 23, 2007.

Thus, with the exception of the period of time SCDC paid you "training wages" and possibly the first half of October 1996, SCDC paid you at least the federal minimum wage for the labor you voluntarily provided to the prison industries project it operates at Evans.

Again, however, I find that you did not timely file your grievance in which you demanded any back pay allegedly owed to you by SCDC including any back pay associated with the period of time SCDC paid you a "training wage."

I also conclude that SCDC does not owe you \$1.92 or any other amount for every labor hour you voluntarily provided to the federally certified prison industries project operated by SCDC at Evans. Under the contracts struck between SCDC and ESCOD and/or INSILCO, SCDC legitimately charges ESCOD and/or INSILCO an hourly rate for "overhead cost" in addition to the hourly rate SCDC pays inmates in accordance with both state and federal law.

The circuit court in Adkins concluded that SCDC's practice of invoicing private industry sponsors, like ESCOD and INSILCO, such an hourly "overhead cost" was accepted by BJA, the federal agency responsible for certification of both the prison industries project at issue in Adkins and the prison industries project at issue in the instant case.

SCDC's assessment of this "overhead cost" does not violate any applicable South Carolina statute, because the assessment of this cost allows SCDC to comply with a variety of the applicable prison industries statutes, including § 24-3-400. These statutes, including § 24-3-400, either directly or indirectly compel SCDC to collect an hourly "overhead cost" or "administrative charge" from private industry sponsors, like ESCOD and INSILCO, so that it may cover the

Step 1 Grievance Response
May 7, 2012

Name	SCDC #	Grievance #	Project
Ward, William Ray	091566	ECI-1212-07	Evans CI/ESCOD

expenses it incurs as a consequence of operating the project in which you voluntarily participated at Evans.

Furthermore, I find that your claim of being entitled to complete and immediate access to your escrowed wages pursuant to § 24-3-40(B)(2) is without merit. Section 24-3-40(A)(5) requires SCDC to deduct 10% of an inmates wages and hold them "in an interest bearing escrow account for the benefit of the prisoner." Section 24-3-40(B) directs SCDC to "return a prisoner's wages held in escrow pursuant to [§ 24-3-40(A)]" only when an inmate leaves SCDC's custody. When an inmate is serving a life sentence, Section 24-3-40(B)(2) provides the inmate with "the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice." This provision directs SCDC to distribute these escrowed monies only upon the inmate's death, and not prior to that event. Nothing in any provision of Section 24-3-40(B) authorizes an inmate to have complete and immediate access to any of these monies while still lawfully held in SCDC's custody. Any other interpretation would conflict with the remaining provisions of Section 24-3-40(B).

To the extent that you claim that SCDC is denying you interest on your escrowed wages, I find this claim is also without merit. SCDC complies with Section 24-3-40(A)(5) by depositing the interest you have earned on your monies held in escrow into your account every month. Each pay period you receive an account statement showing the amount of interest deposited into your account.

To the extent you claim SCDC has unconstitutionally denied you of your property interest in these wages without due process of law, I deny your claim. Under Wicker, you and other inmates in your position may exercise your due process rights and litigate your pay disputes with SCDC through SCDC's inmate grievance system. Therefore, SCDC has not denied you due process of law and the filing deadline from the editions of the agency's Inmate Grievance System Policy applies to your claim.

Finally, to the extent that you demand "interest" in your grievance, no decision of the South Carolina Supreme Court nor any provision of any edition of the Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, or for that matter, costs or attorneys' fees in connection with SCDC's review and processing of your grievance.

Therefore, for all of the above stated reasons, I deny the claims you articulated your Step 1 grievance designated as ECI-1212-07 in their entirety.

EXHIBIT A
STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

William Ray Ward #091566

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. -ALI-04-
GRIEVANCE NO.: 0986-07

CCI 1212-07

Notice is hereby given that William Ray Ward does hereby appeal the final decision of the South Carolina Department of Corrections dated 10-14-15 and received on 10-15-15, 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)):

This grievance has been held by Attorney for SCDC for eight years, which was a violation of Appellants due process. Holding grievance for eight years prejudiced my case. I expect to collect my training pay from SCDC due to the Wicker Case, 36A S.C. at 424. Also, due to footnote 4 in case Thomas Torrence et al. v. SCDC Supreme Court Opinion No. 2632R Filed May 7, 2007 - I should be paid by SCDC \$1.92 for every hour I worked in the Private Sector at Evans Prison. I should also recover my long term savings held in Escrow illegally, due to having to sign a new contract, changing access to my long term savings - to no access. Appellant signed under duress. I'm appealing SCDC decision.

William Ray Ward

Appellant's Name

Perry, Car. Inst. 438 Oaklawn Rd

Mailing Address

Pelzer, S.C. 29669

City, State, Zip Code

William Ray Ward

Signed

10-16-15

Dated

FILED

OCT 16 2015

10-16

CERTIFICATE OF SERVICE

I hereby certify that William Ward (your name), on the 16 day of October, 2015, in Pelzer (city),

South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States

Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: David Tatarsky, South Carolina Department of Corrections.

Address: 4444 Broad River Road, Post Box 21787

City, State, Zip Code: Columbia, S.C. 29221

SC ADMIN. LAW COURT

Print your name Sign your name
(See reverse side for instructions)

William Ray Ward

William Ray Ward

Instructions for filing an appeal of the final agency decision from the South Carolina Department of Corrections: . . .

- 1) You must complete the Notice of Appeal on the reverse side of these instructions and mail it to the Administrative Law Court at the following address:

**Clerk's Office
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201**

A copy of the Notice of Appeal must also be forwarded to the Office of General Counsel at the Department of Corrections.

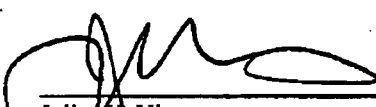
- 2) In order for your case to be processed by the ALC, a copy of the final decision from the Department of Corrections must be attached to the Notice of Appeal.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

William Ray Ward (#091566),	)	
	)	
Appellant,	)	Docket No. 15C-0560
v.	)	
	)	
South Carolina Department of	)	CERTIFICATE OF SERVICE
Corrections,	)	
	)	
Respondent.	)	
	)	

I hereby certify that I am the attorney for the Appellant in the above-captioned matter and that on the 25th day of January, 2016, in Charleston, South Carolina, I served a copy of the foregoing Motion to Resolve Appeal Adversely to Respondent, or, in the Alternative, For a Briefing Schedule, on the following person by depositing the same in the United States Mail, postage paid, and addressed as follows:

David Tatarsky
South Carolina Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, SC 29221



Julius H. Hines
Email: julius.hines@klgates.com
K&L Gates LLP
134 Meeting Street, Suite 500
Charleston, SC 29401
Phone: (843) 579-5600
Fax: (843) 579-5601

Charleston, South Carolina
January 25, 2016

William Ray Ward (#091566),
Appellant,
v.
South Carolina Department of
Corrections,
Respondent.

Pursuant to Rule 60 of the South Carolina Rules of Procedure for the Administrative Law Court ("ALC Rules"), Appellant William Ray Ward ("Mr. Ward"), by and through his undersigned counsel, respectfully submits this Brief in support of his appeal of Respondent, South Carolina Department of Corrections' ("SCDC") final denial of his Grievance, #ECI-1212-07.¹

Whether SCDC erred in denying Mr. Ward's Grievance for back wages owed to Mr. Ward for his work in the Prison Industries Project at Evans Correctional Institution?

Mr. Ward participated in the Prison Industries Project (the "Project") operated by SCDC at Evans Correctional Institution for thirteen (13) years. Mr. Ward was assigned to the Wire Harness Assembly facility, where he worked for private sector companies ESCOD and INSILCO. The Project is federally certified and operates under various state statutes. See, e.g., S.C. Code Ann. §§ 24-3-40, 24-3-315, 24-3-430.

17

During Mr. Ward's mandatory three-hundred and twenty (320) hours of training for the project, he earned less than the prevailing wage as required by S.C. Code § 24-3-430(D). Moreover, following the completion of his training, SCDC withheld \$1.92 per hour from Mr. Ward's paychecks and, once again, paid him less than the prevailing wage in violation of South Carolina law. In response to these violations, Mr. Ward filed his Step 1 Grievance with the agency on June 25, 2007. SCDC denied his Step 1 Grievance on May 25, 2012. Mr. Ward then filed his Step 2 Grievance on May 29, 2012. SCDC denied his Step 2 Grievance on October 15, 2015. Mr. Ward filed his Notice of Appeal with this Court on October 16, 2015.

ARGUMENT

I. The Record Presents No Basis for SCDC's Ruling.

As evidenced by this Court's decision in *Motts v. SCDOC*, No. 06-ALJ-04-00221-AP, an Administrative Law Judge may reverse or modify an agency's decision if it is clearly erroneous, arbitrary, or affected by an error of law. In determining whether the agency's decision is arbitrary, "the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board." *Superintendent, Massachusetts Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 445, 105 S. Ct. 2768, 2769 (1985).

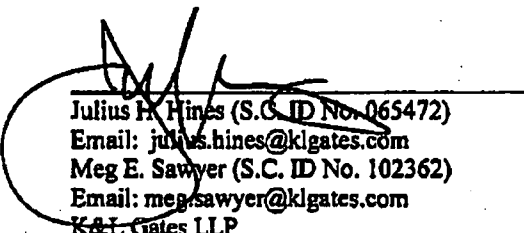
In the instant case, SCDC filed a record with the Court consisting entirely of Mr. Ward's Notice of Appeal, his Step 1 Inmate Grievance Form, and his Step 2 Inmate Grievance Form. The record contains no indication of the agency's final order or the reasons underlying its disposition of Mr. Ward's grievances at either procedural level. Simply put, there is no evidence in the record supporting the agency's action on Ward's grievances. The record shows only that Ward's grievances were denied with no consideration of their grounds, no weighing of any evidence for or against those grievances, and no explanation of the basis for SCDC's action. If the record in fact consists of the papers filed by SCDC, then

SCDC's denials of Ward's grievances was plainly arbitrary. Accordingly, Mr. Ward requests that this Court resolve this appeal in his favor.

CONCLUSION

WHEREFORE, Mr. Ward prays that this Court:

- a. Resolve the appeal in Mr. Ward's favor by directing SCDC to grant him the relief requested in his Grievance; and
- b. For any other relief this Court deems just and proper.



Julius H. Hines (S.C. ID No. 065472)

Email: julius.hines@klgates.com

Meg E. Sawyer (S.C. ID No. 102362)

Email: meg.sawyer@klgates.com

K&L Gates LLP

134 Meeting Street, Suite 500

Charleston, SC 29401

Phone: (843) 579-5600

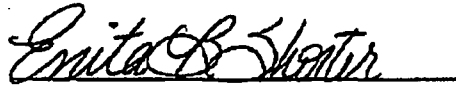
Fax: (843) 579-5601

ATTORNEYS FOR WILLIAM RAY WARD

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of January, 2016, in Charleston, South Carolina, I served a copy of the forgoing Appellant's Brief In Support Of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution, and addressed as follows:

David Tatarsky
South Carolina Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, SC 29221


Enita B. Shorter
Legal Assistant

Charleston, South Carolina
January 27, 2016

RECEIVED

FEB 16 2016

GENERAL COUNSEL

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

William Ray Ward, #91566,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

) Docket No. 15-ALJ-04-0560-AP
)
) Grievance No.: ECI 1212-07
)

ORDER FOR COMPLETE RECORD

FILED

FEB 11 2016

SC ADMIN. LAW COURT

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the Motion to Resolve Appeal Adversely to Respondent, or, in the Alternative, for a Briefing Schedule filed January 25, 2016, by William Ray Ward ("Appellant"), an inmate in the custody of the South Carolina Department of Corrections ("SCDC").

Appellant argues that the record SCDC filed with the Court is incomplete. Appellant notes that the record served on him by SCDC does not include either the Step 1 Grievance Response or the Step 2 Appeal Reply. SCDC has not filed a response to Appellant's Motion.

The Record filed with the Court does include the Step 1 Grievance Response and the Step 2 Appeal Reply, but it is missing the second page of the Step 1 Grievance. This Court will not resolve the appeal in Appellant's favor because this appears to be a compilation error affecting all parties. However, this Court will order SCDC to file a complete record, including everything required under ALC Rule 58, and serve the complete record on Appellant. It is therefore,

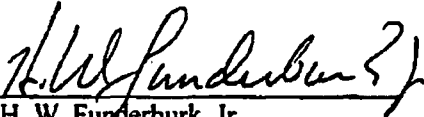
ORDERED that Appellant's Motion to Resolve Appeal Adversely to Respondent is **DENIED**.

AND IT IS FURTHER ORDERED that SCDC shall have ten (10) days from the date of this Order to file and serve the complete record in this appeal. Appellant shall have twenty (20) days from the date the Record is submitted to file a brief. SCDC shall have twenty (20) days from the

date Appellant submits his brief to file a brief. Any reply brief shall be due within ten days of the date SCDC's brief is filed.

AND IT IS SO ORDERED.

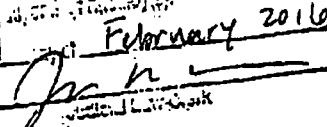
Columbia, South Carolina
February 11, 2016


H. W. Funderburk, Jr.
Administrative Law Judge

FILED

FEB 11 2016

SC ADMIN. LAW COURT

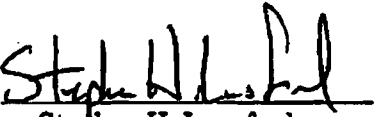
CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date
delivered a true and correct copy of the foregoing to all
parties to the case and to the court.
Signed, dated and attested at
Columbia, South Carolina
this 11th day of February 2016
BY 
J. H. Funderburk
Administrative Law Clerk

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

William Ray Ward, #91566,	)	Docket No.: 15-ALJ-04-0560-AP
	)	<u>[Grievance No.: ECI 1212-07]</u>
Appellant,	)	
	)	<i>Hon. H.W. Funderburk, Jr.</i>
v.	)	
	)	
South Carolina Department of Corrections,	)	RESPONDENT'S MOTION TO
	)	SUPPLEMENT THE RECORD
Respondent.	)	
	)	

Respondent, by and through the undersigned attorney, respectfully requests to supplement the record. Specifically, Respondent was informed that the record the Appellant's counsel had received was incomplete. Respondent spoke to the Appellant's attorney on February 12, 2016 and discussed the discover issue. Respondent then immediately scanned and emailed the Appellant's attorney, Meg Sawyer, the Step One and Step 2 with their respective responses. Both parties agreed that the case law respondent relied on was clearly cited in the responses and did not need to be included in discovery. Respondent respectfully requests to supplement the record filed in this matter with the attached documents.

Respectfully Submitted,

BY: 
Stephen H. Lunsford
Staff Attorney
S.C. Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-1940

Columbia, South Carolina
February 17, 2016

William Ray Ward, #91566,

Certificate of Service

Docket# 15-ALJ-04-0560-AP

Respondent.

**Meg Sawyer
K & L Gates LLP
134 Meeting Street
Suite 500
Charleston, South Carolina 29401**

Cheron Hess
Administrative Assistant
Office of General Counsel
South Carolina Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, South Carolina 29221-1787
(803) 896-3922

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0
EOI-1212-07

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: WILLIAM RAY WARDSCDC NUMBER: 091566INSTITUTION: PerryHOUSING UNIT: Q4 B-223WORK ASSIGNMENT: Dorm Worker

Office Use Only
Grievance No. 091566-07
Code: General 41V
Policy _____
Disc. Hear. _____
Class. _____
Date Received JUN 25 2007
IGC Initials 7/3/07

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) GA-01-12:
South CAROLINA DEPARTMENT OF CORRECTIONS IS IN VIOLATION OF WAGES EARNED BY ME WHILE WORKING FOR PRIVATE SECTOR ESCROW AND INSILCO AT EVANS. SCDOC HAVE WITHHELD ILLEGALLY ALL THESE WAGES. I GRIEVE ALL WAGES OWED TO ME BY SCDC, UNDER SUPREME COURT OPINION NO. 26328 FILED MAY 7, 2007 THROUGH CASE NO. 01-CP-40-3409, UNDER S.C. CODE ANN. 24-3-40 (A) SCDOC IS IN VIOLATION OF STATUTE AND ARTICLE 4 OF THE ORDER. THEREFORE, SCDC OWES ME BACK WAGES OF \$1.92 FOR EVERY SINGLE HOUR THAT I WORKED AT EVANS FOR 13 YEARS, ALONG WITH THE 320 HOURS TRAINING WAGE UNDER THE WICKER CASE, 360 S.C. AT 424, 302 S.E.2D AT 57. ALONG WITH IMMEDIATE ACCESS TO MONIES HELD IN ESCROW BY SCDC FROM AN INMATE SERVING A SENTENCE OF LIFE WITHOUT PAROLE S.C. CODE ANN. 24-3-40 (B)(2). TRAINING WAGE STATUTE 24-3-430 (D). ALL WAGES OWED TO ME BY SCDOC, PLUS PROPER INTEREST ON THESE MONIES.

ACTION REQUESTED: THAT I BE PAID \$1.92 FOR EVERY HOUR I EVER WORKED FOR ESCROW/INSILCO FOR A TOTAL OF 13 YEARS. THAT I BE PAID FOR TRAINING HOURS THAT I WAS PAID BY SCDC LESS THAN PREVAILING WAGE OF 320 HOURS. ALONG WITH THE IMMEDIATE ACCESS OF LONG TERM SAVINGS HELD IN ESCROW BY SCDOC. PLUS PROPER INTEREST ON THESE MONIES.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Through CASE OF Thomas Torrence, et al. v. SCDOC AND THE STATE OF SOUTH CAROLINA. SUPREME COURT OPINION NO. 26328 FILED MAY 7, 2007, AND WICKER CASE, 360 S.C. AT 424, 302 S.E.2D AT 57, AND S.C. CODE ANN. 24-3-40 (B)(2).

William Ray Ward 6-19-07
Grievant Signature Date

ACTION TAKEN BY IGC.

Forwarded to Evans 7/18/07 per instructions from Atty Lake Summers.

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

NA 5/25/12
IGC Signature Date
NA
Grievant Signature Date

WARDEN'S DECISION AND REASON:

"See Attached"

[Signature] 5/15/12
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.

William Ward 5-25-12
Grievant Signature Date

W. B. [Signature] 5/19/12
IGC Signature Date

Served by:
[Signature] 5/25/12

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.

Step 1 Grievance Response
May 7, 2012

Name	SCDC #	Grievance #	Project
Ward, William Ray	091566	ECI-1212-07	Evans CI/ESCOD

I have reviewed your Step 1 grievance bearing your signature and dated June 19, 2007. The responsible SCDC official provided your Step 1 with the following designation: ECI-1212-07.

In your Step 1 designated as ECI-1212-07, you stated that SCDC "is in violation of wages" you earned "while working for private sector ESCOD and INSILCO" at Evans Correction Institution. You asserted that SCDC has "withheld illegally all these wages."

You further asserted in your Step 1 that, regarding the rate at which it paid you for your prison industries labor, SCDC is in violation of S.C. Code Ann. Section 24-3-40(A) and an opinion filed by the South Carolina Supreme Court on May 7, 2007. You provided an opinion number of "26328," and you provided what appears to be a civil action number related to this case of "01-CP-40-3409." Toward the end of your Step 1, you provided the following name for this case: Thomas Torrence, et al., v. S.C. Dep't of Corr. and the State of South Carolina. You specifically asserted that SCDC is also in violation of footnote 4 of the Supreme Court's May 7, 2007 opinion.

You then claimed that SCDC owes you "back wages of \$1.92 for every single hour that I worked at Evans for 13 years, along with the 320 hours training wage." You invoked the South Carolina Supreme Court's decision in Wicker v. S.C. Dep't of Corr. to support your claim, and you provided the following reference to this decision: "360 S.C. at 424, 602 S.E.2d at 57." You also invoked what you call the "training wage statute," S.C. Code Ann. Section 24-3-430(D) to support your claim.

By your Step 1, you also demanded "immediate access to monies held in escrow by SCDC from an inmate serving a sentence of life without parole," and you invoked S.C. Code Ann. Section 24-3-40(B)(2) to support your demand.

Finally, you requested the following action in your Step 1: "That I be paid \$1.92 for every hour I ever worked for ESCOD/INSILCO for a total of 13 years, that I be paid for [training] hours that I was paid by SCDC less than the prevailing wage [for] 320 hours, along with the immediate access to long [term] savings held in escrow by [SCDC]. Plus proper interest on these monies."

Your prison industries participation and pay records were reviewed by the responsible officials at SCDC Headquarters in Columbia. These records confirm that you voluntarily participated in the prison industries project operated by SCDC at Evans in which ESCOD, and later INSILCO, participated as the private industry sponsor before SCDC ended its policy of paying inmates a "training wage" for their initial 320 hours of labor. SCDC ended its policy of paying a "training wage" on July 1, 1999.

These pay records reflect that SCDC began paying you on or about June 30, 1995 for the labor you voluntarily provided in the project at Evans, and they reflect that SCDC remitted its final payment to you on or about November 14, 2003.

Step 1 Grievance Response
May 7, 2012

Name	SCDC #	Grievance #	Project
Ward, William Ray	091566	ECI-1212-07	Evans C/ESCOD

After carefully considering the arguments you made justifying the action you request, I deny the claims from your above referenced Step 1 grievance.

Two (2) decisions issued by the South Carolina Supreme Court in 2004 apply to the claims you presented in your Step 1: Adkins v. S.C. Dep't of Corr. and Wicker v. S.C. Dep't of Corr. Both of these cases discussed S.C. Code Ann. § 24-3-40, § 24-3-310, *et seq.* and, specifically, § 24-3-430(D). The South Carolina Supreme Court issued these decisions on August 23, 2004. You specifically mentioned Wicker in your Step 1.

Adkins and Wicker recognized that inmates possessed a pre-existing right to file administrative grievances concerning their prison industries pay. Under Wicker, such grievances must be filed, processed, and determined in accordance with the provisions of the agency's Inmate Grievance System Policy.

In Torrence, the case you mentioned in your Step 1 and the case in which you personally participated as one of the lead plaintiffs, the South Carolina Supreme Court issued another decision which applies to your claims. In Torrence, the South Carolina Supreme Court again acknowledged that inmates could file grievances in accordance with the agency's Inmate Grievance System Policy by which they could challenge their prison industries pay.

SCDC has published editions of its Inmate Grievance System Policy for nearly 20 years if not longer. Starting in the mid-1990s, SCDC's Inmate Grievance System Policy consisted of two (2) parts: Policy Number PS-10.01 and Policy Number PS-10.01 (OP). ¶ 14(a) of Policy Number PS-10.01 (OP) required that inmates submit their Step 1 grievance forms "within seven (7) days of the alleged incident." Exceptions to the deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

On October 1, 1997, SCDC issued new editions of Policy Numbers PS-10.01 and PS-10.01 (OP). In the October 1, 1997 edition of Policy Number PS-10.01 (OP), SCDC changed ¶ 14(a) to require that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Again, exceptions to this deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

On January 30, 1998, SCDC issued a new edition of its Inmate Grievance System Policy, and, just as before, the policy consisted of two (2) parts. However, SCDC re-designated these two (2) parts as Policy Number GA-01.12 and Policy Number GA-01.12 (OP). ¶ 14(a) of Policy Number GA-01.12 (OP) required that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Once again, exceptions to this deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

The agency consolidated Policy Numbers GA-01.12 and GA-01.12 (OP) into a single policy when it issued a new edition of Policy Number GA-01.12 on April 1, 2000, and the 15-day filing deadline appeared in this edition of the policy as well as every edition issued since April 1, 2000.

I conclude, after reviewing your Step 1 in light of Adkins, Wicker, Torrence, the seven (7) day filing deadline in ¶ 14(a) of the mid-1990s version of Policy Number PS-10.01 (OP), the 15-day

Step 1 Grievance Response
May 7, 2012

Name	SCDC #	Grievance #	Project
Ward, William Ray	091366	ECI-1212-07	Evans C1/ESCOD

filing deadline from ¶ 14(a) of the October 1, 1997 edition of Policy Number PS-10.01 (OP), as well as the exceptions to these deadlines from ¶ 14(g) and ¶ 15 of these editions, that you did not submit your Step 1 grievance within either seven (7) days or even 15 days of the incident upon which you anchored the claims you presented in your Step 1, namely the date upon which SCDC both first began paying you for your prison industries labor and began applying statutorily mandated deductions to your pay pursuant to S.C. Code Ann. Section 24-3-40.

The grievance filing deadline established in every edition of the agency's Inmate Grievance System Policy applied and continues to apply to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the deadline applies to your grievance.

Moreover, you filed your Step 1 nearly 12 years after you began participating in the prison industries project operated by SCDC at Evans in which ESCOD participated as the private industry sponsor and approximately 3 1/4 years after you concluded your participation in this project. For that matter, you filed your Step 1 over 2 1/2 years after the South Carolina Supreme Court issued its decisions in Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under the agency's Inmate Grievance System Policy.

The fact that you first sought relief by participating in a class action lawsuit filed in circuit court instead of filing a grievance by which you challenged the rate at which SCDC both paid you for your prison industries labor and applied statutorily mandated deductions to your pay does not change the deadline(s) from the agency's Inmate Grievance System Policy. As stated above, you were one of the lead plaintiffs in Torrence, and your attorneys filed their amended declaratory judgment complaint on your behalf on November 5, 2001. Obviously, you knew even before your attorneys filed the lawsuit on your behalf that you wanted to challenge the rate at which SCDC had been paying you for your prison industries labor.

In making this determination, I rely on the following decisions from the South Carolina Administrative Law Court ("ALC"): Cramer, #251406, v. S.C. Dep't of Corr., Docket No. 08-ALJ-04-00577-AP; Daughtry, #250139, v. S.C. Dep't of Corr., Docket No. 04-ALJ-00783-AP; Grant, #81314, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-750-AP; Grimmett, Jr., #102226, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00757-AP; Larrimore, #238126, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00470-AP; Manigault, #280550, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00756-AP; McLemore, #127966, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00023-AP; Pipkin, #283616, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00733-AP; Pritchett, #260687, v. S.C. Dep't of Corr., Docket No. 07-ALJ-04-690-AP; Sapp, #218694, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00732-AP; Sumter, #242379, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00749-AP; Smiley, #262734, v. S.C. Dep't of Corr., Docket No. 08-ALJ-04-00571-AP; Williams, #187203, v. S.C. Dep't of Corr., Docket No. 06-ALJ-04-622-AP; and Wright, #200123, v. S.C. Dep't of Corr., 2006 WL 1430140 (ALJD 2006).

I also rely upon the following decisions issued by the ALC since March 1, 2012: Ackerman, #266928, et al., v. S.C. Dep't of Corr., Docket Nos. 07-ALJ-04-00444-AP, et seq.; Arnold,

Step I Grievance Response
May 7, 2012

Name	SCDC #	Grievance #	Project
Ward, William Ray	091566	EC1-1212-07	Evans C/ESCOD

#238375, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00200-AP; Bridgeman, #130350, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00610-AP; Gibson, #241326, v. S.C. Dep't of Corr., Docket No. 10-ALJ-04-00007-AP; Jones, #130817, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-0506-AP; Keitt, #277284, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-0519-AP; and Lampley, #97724, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00489-AP.

Additionally, in light of the chronology associated with the filing of your Step I, I find that your claim is barred by the doctrine of laches.

To the extent that you claim in your Step I grievance that you were required to file a grievance, I conclude that neither the opinions in Adkins or Wicker nor the decision in Torrence ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step I. These opinions simply recognized your pre-existing right to file grievances presenting prison industries pay claims if you desired.

To the extent that you claim in your Step I that you worked for or were otherwise "employed" by ESCOD or INSILCO, I conclude that you never "worked" for nor were you ever "employed" by either ESCOD or INSILCO. I also conclude that neither Adkins nor Wicker declared that you or inmates in your position were "employed" by SCDC, ESCOD, INSILCO or, for that matter, any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's decision 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 private industry sponsors like ESCOD.

Therefore, to the extent you use the terms "worked for," "employee," "employed," or "employment" within your Step I grievance to describe your participation, 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 Evans.

Additionally, I deny your claim that you are entitled to any relief under Section 24-3-430(D), the so-called "prevailing wage" provision. Specifically, as the prison industries project in which you participated at Evans was a project for which SCDC received certification under the federal government's Prison Industries Enhancement Certification Program ("PIECP"), I conclude that the provisions of Section 24-3-410(B)(7) – not Section 24-3-430(D) – applied to the rate of pay SCDC was required to remit to you under Section 24-3-40(A) for the labor you voluntarily provided to this project. In making this conclusion, I rely upon the decision issued by the circuit court in Adkins, which concluded that inmates who participated in an identically certified SCDC prison industries project did not possess a viable claim for back wages or higher wages under the provisions of Section 24-3-430(D).

Even if you have a viable claim for relief under § 24-3-430(D), I conclude that SCDC paid you the proper rate of pay for the labor you voluntarily provided to the federally certified prison

Step 1 Grievance Response
May 7, 2012

Name	SCDC #	Grievance #	Project
Ward, William Ray	091566	ECI-1212-07	Evans CI/ESCOD

industries project it operates at Evans. In making this conclusion, I rely upon the guidelines established by the federal government, specifically the United States Department of Justice's Bureau of Justice Administration [known as "BJA"]. BJA published the guidelines applicable to the PIECP in the Federal Register, specifically 64 FR 17000. Within these guidelines, BJA declared that the rate at which inmates are paid for the labor they voluntarily provide to PIECP projects, like the project in which you participated at Evans CI, cannot be set below the federal minimum wage.

Your prison industries pay records reflect that, after you completed the first 320 hours of your prison industries labor for which SCDC paid you "training wages," SCDC began paying you an hourly rate of at least \$4.25 beginning June 30, 1995. Beginning on or about November 1, 1996, SCDC began paying you an hourly rate of at least \$5.25 per hour until your participation in the project concluded on or about November 14, 2003.

The federal minimum wage was \$4.25 from April 1, 1991 to September 30, 1996. The federal minimum wage increased to \$4.75 per hour on October 1, 1996 and it stayed at this rate until August 31, 1997. The federal minimum wage increased to \$5.15 per hour effective September 1, 1997, and it remained at that rate until July 23, 2007.

Thus, with the exception of the period of time SCDC paid you "training wages" and possibly the first half of October 1996, SCDC paid you at least the federal minimum wage for the labor you voluntarily provided to the prison industries project it operates at Evans.

Again, however, I find that you did not timely file your grievance in which you demanded any back pay allegedly owed to you by SCDC including any back pay associated with the period of time SCDC paid you a "training wage."

I also conclude that SCDC does not owe you \$1.92 or any other amount for every labor hour you voluntarily provided to the federally certified prison industries project operated by SCDC at Evans. Under the contracts struck between SCDC and ESCOD and/or INSILCO, SCDC legitimately charges ESCOD and/or INSILCO an hourly rate for "overhead cost" in addition to the hourly rate SCDC pays inmates in accordance with both state and federal law.

The circuit court in Adkins concluded that SCDC's practice of invoicing private industry sponsors, like ESCOD and INSILCO, such an hourly "overhead cost" was accepted by BJA, the federal agency responsible for certification of both the prison industries project at issue in Adkins and the prison industries project at issue in the instant case.

SCDC's assessment of this "overhead cost" does not violate any applicable South Carolina statute, because the assessment of this cost allows SCDC to comply with a variety of the applicable prison industries statutes, including § 24-3-400. These statutes, including § 24-3-400, either directly or indirectly compel SCDC to collect an hourly "overhead cost" or "administrative charge" from private industry sponsors, like ESCOD and INSILCO, so that it may cover the

Step 1 Grievance Response
May 7, 2012

Name	SCDC #	Grievance #	Project
Ward, William Ray	091366	EC1-1212-07	Evans CI/ESCOD

expenses it incurs as a consequence of operating the project in which you voluntarily participated at Evans.

Furthermore, I find that your claim of being entitled to complete and immediate access to your escrowed wages pursuant to § 24-3-40(B)(2) is without merit. Section 24-3-40(A)(5) requires SCDC to deduct 10% of an inmates wages and hold them "in an interest bearing escrow account for the benefit of the prisoner." Section 24-3-40(B) directs SCDC to "return a prisoner's wages held in escrow pursuant to [§ 24-3-40(A)]" only when an inmate leaves SCDC's custody. When an inmate is serving a life sentence, Section 24-3-40(B)(2) provides the inmate with "the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice." This provision directs SCDC to distribute these escrowed monies only upon the inmate's death, and not prior to that event. Nothing in any provision of Section 24-3-40(B) authorizes an inmate to have complete and immediate access to any of these monies while still lawfully held in SCDC's custody. Any other interpretation would conflict with the remaining provisions of Section 24-3-40(B).

To the extent that you claim that SCDC is denying you interest on your escrowed wages, I find this claim is also without merit. SCDC complies with Section 24-3-40(A)(5) by depositing the interest you have earned on your monies held in escrow into your account every month. Each pay period you receive an account statement showing the amount of interest deposited into your account.

To the extent you claim SCDC has unconstitutionally denied you of your property interest in these wages without due process of law, I deny your claim. Under Wicker, you and other inmates in your position may exercise your due process rights and litigate your pay disputes with SCDC through SCDC's inmate grievance system. Therefore, SCDC has not denied you due process of law and the filing deadline from the editions of the agency's Inmate Grievance System Policy applies to your claim.

Finally, to the extent that you demand "interest" in your grievance, no decision of the South Carolina Supreme Court nor any provision of any edition of the Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, or for that matter, costs or attorneys' fees in connection with SCDC's review and processing of your grievance.

Therefore, for all of the above stated reasons, I deny the claims you articulated your Step 1 grievance designated as EC1-1212-07 in their entirety.

JUN 05 2012

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORMWe: 5-30-12
560

INMATE NAME: William Ray Ward
 SCDC NUMBER: 091566
 INSTITUTION: Perry
 HOUSING UNIT: Q1 B-106
 WORK ASSIGNMENT: Vest Washer

Office Use Only
 Grievance No. ECI-1212-07
 Code: General my
 Policy _____
 Disc. Hear. _____
 Class. _____
 Date Received 5-29-12
 IGC Initials SW

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

It took Five Years For this grievance to be answered. SCDC still owes monies to grievant, and step 1. answers are totally untrue. Therefore, I appeal the entire decision in step 1, and re-claim all issues in my grievance.

~~Signature of William Ray Ward~~
~~to South Carolina Department of Corrections~~

William Ray Ward 5-25-12
 Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your complaint. See attachments.

You may appeal this decision under the Administrative Procedures Act. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

[Signature] 10/14/15
 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.

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.

Step 2 Appeal Reply

Name	SCDC #	Grievance #	Project
Ward, William Ray	091566	ECI-1212-07	Evans CI/ESCOD

I have reviewed your Step 2 grievance appeal dated May 25, 2012, and I have also reviewed your Step 1 grievance, and the warden's response to your Step 1. By this reply, I concur with the entirety of the warden's response to your Step 1, and I deny your Step 2.

In your Step 2, you asserted that SCDC still owes monies to you and that the response you received to your Step 1 grievance was "totally untrue." Accordingly, you appealed the "entire decision" associated with your Step 1 grievance, and you reiterated all of the issues and arguments you presented in your Step 1.

By way of review, you stated in your Step 1 that SCDC "is in violation of wages" you earned "while working for private sector ESCOD and INSILCO" at Evans Correction Institution. You asserted that SCDC has "withheld illegally all these wages."

You further asserted in your Step 1 that, regarding the rate at which it paid you for your prison industries labor, SCDC is in violation of S.C. Code Ann. Section 24-3-40(A) and an opinion filed by the South Carolina Supreme Court on May 7, 2007. You provided an opinion number of "26328," and you provided what appears to be a civil action number related to this case of "01-CP-40-3409." Toward the end of your Step 1, you provided the following name for this case: Thomas Torrence, et al., v. S.C. Dep't of Corr. and the State of South Carolina. You specifically asserted that SCDC is also in violation of footnote 4 of the Supreme Court's May 7, 2007 opinion.

You then claimed that SCDC owes you "back wages of \$1.92 for every single hour that I worked at Evans for 13 years, along with the 320 hours training wage." You invoked the South Carolina Supreme Court's decision in Wicker v. S.C. Dep't of Corr. to support your claim, and you provided the following reference to this decision: "360 S.C. at 424, 602 S.E.2d at 57." You also invoked what you call the "training wage statute," S.C. Code Ann. Section 24-3-430(D) to support your claim.

By your Step 1, you also demanded "immediate access to monies held in escrow by SCDC from an inmate serving a sentence of life without parole," and you invoked S.C. Code Ann. Section 24-3-40(B)(2) to support your demand.

Finally, you requested the following action in your Step 1: "That I be paid \$1.92 for every hour I ever worked for ESCOD/INSILCO for a total of 13 years, that I be paid for [training] hours that I was paid by SCDC less than the prevailing wage [for] 320 hours, along with the immediate access to long [term] savings held in escrow by [SCDC]. Plus proper interest on these monies."

Again, after carefully considering all of the arguments you presented in your Step 2, I deny your Step 2.

As the warden stated in his response to your Step 1, your PI participation and pay records were reviewed by the responsible officials at SCDC Headquarters in Columbia. These records confirm that you voluntarily participated in the prison industries project operated by SCDC at Evans in which ESCOD, and later INSILCO, participated as the private industry sponsor before

Step 2 Appeal Reply

Name	SCDC #	Grievance #	Project
Ward, William Ray	091566	ECI-1212-07	Evans CI/ESCOD

SCDC stopped paying inmates a "training wage" for their initial 320 hours of labor. SCDC stopped a "training wage" altogether on July 1, 1999.

As stated by the warden in his response, your PI participation and pay records also reflect that SCDC began paying you on or about June 30, 1995 for the labor you voluntarily provided in the project at Evans, and they reflect that SCDC remitted its final payment to you on or about November 14, 2003.

As the warden correctly stated in his response, two (2) decisions issued by the South Carolina Supreme Court, Adkins and Wicker, apply to the back pay claims you presented in your Step 1. Both of these cases discussed S.C. Code Ann. § 24-3-40, § 24-3-310, *et seq.*, and, specifically, § 24-3-430(D). Our Supreme Court issued these decisions on August 23, 2004.

I agree with the warden that Adkins and Wicker recognized that inmates, like you, possessed a pre-existing right to file administrative grievances with SCDC concerning their PI pay. Wicker specifically recognized that such grievances must be filed, processed, and determined in accordance with the provisions of the agency's Inmate Grievance System Policy. Thus, to the extent that you asserted in your Step 2 that the warden erred in rephrasing the holdings of Adkins and Wicker, I find that your assertion has no merit. Instead, Wicker merely recognized our Supreme Court's prior decision in Al-Shabazz which concluded that inmates are entitled to procedural due process when a liberty or property interest is at stake. Accordingly, the Wicker Court acknowledged that, pursuant to Al-Shabazz, inmates receive procedural due process under SCDC's internal grievance system and the opportunity to have SCDC's decision regarding any such grievance reviewed by the South Carolina Administrative Law Court ["ALC"].

As recognized by the warden in his response, the Torrence decision also applies to the claims from your Step 1. Again, Torrence is the case you mentioned in your Step 1 and Step 2 and is the case in which you personally participated as one of the lead plaintiffs. The Torrence Court recognized that, under Wicker, inmates could file Step 1s by which they could challenge their PI pay under the agency's Inmate Grievance System Policy.

To the extent that you claim in your Step 1 grievance that you were required to file a grievance, I conclude that neither the opinions in Adkins or Wicker nor the decision in Torrence ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1. These opinions simply recognized your pre-existing right to file grievances presenting prison industries pay claims if you desired.

As accurately explained by the warden in his response, SCDC has published editions of its Inmate Grievance System Policy for at least 20 years, if not longer. As he also accurately explained, the edition of the policy that applied when you began participating in the project at Evans was the May 1, 1996 edition of the policy designated as PS-10.01 (OP). Specifically, ¶ 14(a) of Policy Number PS-10.01 (OP) required that inmates submit their Step 1 grievance forms "within seven (7) days of the alleged incident." Exceptions to the deadline appeared in ¶ 14(g) and ¶ 15 of this edition of the policy.

Step 2 Appeal Reply

Name	SCDC #	Grievance #	Project
Ward, William Ray	091566	ECI-1212-07	Evans CI/ESCOD

As the warden further explained, SCDC issued new editions of Policy Numbers PS-10.01 and PS-10.01 (OP) on October 1, 1997. The warden indicated in his response that the agency issued new editions of these policies on October 1, 2007, but his reference to "2007" was a typographical error. In the October 1, 1997 edition of Policy Number PS-10.01 (OP), SCDC changed ¶ 14(a) to require that inmates submit their Step 1 forms "within 15 days of the alleged incident." Again, exceptions to this deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

On January 30, 1998, SCDC issued a new edition of the applicable policy, and, just as before, the policy consisted of two (2) parts. However, SCDC re-designated these two (2) parts as Policy Number GA-01.12 and Policy Number GA-01.12 (OP). ¶ 14(a) of Policy Number GA-01.12 (OP) required that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Once again, exceptions to this deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

Again, as accurately explained by the warden, the agency consolidated Policy Numbers GA-01.12 and GA-01.12 (OP) into a single policy when it issued a new edition of Policy Number GA-01.12 on April 1, 2000, and the 15-day filing deadline appeared in this edition as well as every edition issued since April 1, 2000.

Like the warden, I conclude, after reviewing your Step 1 in light of Adkins, Wicker, Torrence, Al-Shabazz, and the policy provisions discussed above, that you did not submit your Step 1 within either seven (7) days or even 15 days of the incident upon which you anchored your PI pay claims, namely the date upon which SCDC both first began paying you for your PI labor and first began applying the statutorily mandated deductions to your pay.

I fully concur with the warden's determination that the grievance filing deadline established in every edition of the relevant policy applied and continues to apply to nearly every aspect of inmate activity, and no special exception exists when it comes to PI pay disputes. Consequentially, the deadline applied to your Step 1.

Moreover, as the warden accurately chronicled in his response, you filed your Step 1 nearly 12 years after you began participating in the prison industries project operated by SCDC at Evans in which ESCOD participated as the private industry sponsor and approximately 3 ½ years after you concluded your participation in this project. For that matter, you filed your Step 1 over 2 ½ years after the South Carolina Supreme Court issued its decisions in Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under the agency's Inmate Grievance System Policy.

I also fully concur with the warden's determination that the fact that you first sought relief by participating in a class action lawsuit filed in circuit court instead of filing a Step 1 by which you challenged the rate at which SCDC both paid you for your PI labor and applied statutorily mandated deductions to your pay does not change the filing deadline(s) from the relevant agency policy. You served as one of the lead plaintiffs in Torrence, and your attorneys filed their amended declaratory judgment complaint on your behalf on November 5, 2001. Obviously, you knew before your attorneys filed the complaint that you wanted to challenge the rate at which SCDC had been paying you for your PI labor.

Step 2 Appeal Reply

Name	SCDC #	Grievance #	Project
Ward, William Ray	091566	ECI-1212-07	Evans CI/ESCOD

Moreover, the filing of your class action lawsuit in circuit court did not toll the deadline(s) by which you were required to file your Step 1. The ALC squarely addressed this issue in the decision it issued in Ackerman, #266928, et al., v. S.C. Dep't of Corr., Docket Nos. 07-ALJ-04-00444-AP, et seq. Thus, in denying your Step 2, I concur with the warden's reliance on all of the decisions issued by the ALC that he listed in his response to your Step 1, including Ackerman.

In denying your Step 2, I have also considered the following decision issued by the ALC: Ferola, #291941, v. S.C. Dep't of Corr., Docket No. 12-ALJ-04-0567-AP. I have further considered the decision issued by the South Carolina Court of Appeals in Patterson v. S.C. Dep't of Corr., 2010-UP-292 (S.C. Ct. App. May 27, 2010) ("[SCDC] denied Patterson's grievance based on [¶ 13.1], which states an inmate must file a grievance within fifteen days of the alleged incident. ... Patterson should have filed his grievance within fifteen days of December 6, 2004, when he originally discovered that [SCDC] lost his inmate property.").

Finally, in denying your Step 2, I have considered the decision issued by the South Carolina Supreme Court in Okeru v. S.C. Dep't of Corr., Memo. Opinion No. 2012-MO-042 (S.C. Oct. 24, 2012) ("This is a direct appeal from an order of the [ALC] dismissing the appeal from [the Department's] denial of Appellant's inmate grievance based on his failure to comply with the relevant statute of limitations set forth in the Department's internal policy. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: [Al-Shabazz] (approving [the Department's] internal procedures for discipline and grievances, which specify a fifteen-day time limit for filing for grievances)."). I note that Inmate Okeru participated in the same project at Evans as you, and, like you, Inmate Okeru a plaintiff in the original class action lawsuit in Torrence.

I also note that the Ackerman case concerned the prison industries pay claims raised by approximately 200 inmates who participated in the prison industries project operated by SCDC at Lieber Correctional Institution. In Ackerman, the ALC determined that only one (1) of these inmates filed his Step 1 within the applicable filing period established by the agency's inmate grievance system policy. Consequentially, the ALC affirmed the agency's decision to deny all of the prison industries back pay claims presented in every one of the 196 other inmates administrative grievance, because, like you, they did not timely file their Step 1 grievance.

Additionally, in light of the chronology associated with your filing of your Step 1, I concur with the warden's determination that your claims are barred by the doctrine of laches. I also find no merit in any assertion that you diligently pursued your PI pay claims, because you filed a class action lawsuit in circuit court and then prosecuted the lawsuit to our Supreme Court. Filing your class action lawsuit in circuit court did not and does not excuse you from diligently pursuing your PI pay claims via SCDC's inmate grievance system policy.

Also, I concur with the warden's denial of your claim for relief under § 24-3-430(D), the so-called "prevailing wage" provision. Specifically, as the PI project in which you participated at Evans was a project for which SCDC received certification under the federal government's Prison Industries Enhancement Certification Program ["PIECP"], I conclude that the provisions of § 24-3-410(B)(7) rather than the provisions of § 24-3-430(D) applied to the rate of pay SCDC

Step 2 Appeal Reply

Name	SCDC #	Grievance #	Project
Ward, William Ray	091566	ECI-1212-07	Evans CI/ESCOD

was required to remit to you by operation of § 24-3-40(A). I concur with the warden's reliance upon the decision issued by the circuit court in Adkins in making this determination. The circuit court in Adkins concluded that inmates who participated in an identically certified PI project did not possess a viable claim for back wages or higher wages under the provisions of § 24-3-430(D). Instead, the circuit court in Adkins concluded that the provisions of § 24-3-410(B)(7) applied. To the extent that you claim that the Supreme Court's decision in Torrence found that § 24-3-430(D) is applicable to your case, I find your claim is without merit.

Even if you have a viable claim for relief under § 24-3-430(D), I concur with the warden's conclusion that that SCDC remitted to you the proper rate of pay for the labor you voluntarily provided to the federally certified PI project operated at Evans. In making this conclusion, I concur with the warden's reliance upon the guidelines established by the federal government, specifically the United States Department of Justice's Bureau of Justice Administration [known as "BJA"]. BJA published the guidelines applicable to the PIECP in the Federal Register, specifically 64 FR 17000. Within these guidelines, BJA declared that the rate at which inmates are paid for the labor they voluntarily provide to PIECP projects, like the project in which you participated at Evans, cannot be set below the federal minimum wage. Except for the period of time it paid you a "training wage," SCDC paid you at least the federal minimum wage for your labor. Again, I concur with the warden's determination that you did not timely file your Step 1 in which you demanded any back pay allegedly owed to you by SCDC including any back pay associated with the period of time SCDC paid you a "training wage."

I concur with the warden's determination that SCDC does not owe you \$1.92 or any other amount for every labor hour you voluntarily provided to the federally certified PI project operated by SCDC at Evans. Again, ESCOD was and remains the private industry sponsor for the PI project operated at Evans. Under the contracts struck between SCDC and ESCOD, SCDC legitimately charges ESCOD an hourly rate for "overhead cost" in addition to the hourly rate SCDC pays inmates in accordance with both state and federal law. Neither 18 USC § 1761(c), 64 FR 17000, § 24-3-315, nor the decisions in Adkins and Torrence contradict this reality. The "overhead cost" SCDC charges ESCOD is simply not a part of your inmate pay and it is not deducted from your inmate pay.

Furthermore, I note that the circuit court in Adkins concluded that SCDC's practice of invoicing a private industry sponsor, like ESCOD, such an hourly "overhead cost" was accepted by BJA, the federal agency responsible for certifying both the PI project at issue in Adkins and the PI project operated at Evans.

As the warden accurately explained in his response, SCDC's assessment of this "overhead cost" does not violate any applicable South Carolina statute, because the assessment of this cost allows the agency to comply with the various applicable PI statutes, including § 24-3-400. These statutes, including § 24-3-400, either directly or indirectly compel SCDC to collect an hourly "overhead cost" or "administrative charge" from private industry sponsors so that the agency may cover the expenses it incurs as a consequence of operating these projects.

Step 2 Appeal Reply

Name	SCDC #	Grievance #	Project
Ward, William Ray	091566	ECI-1212-07	Evans CI/ESCOD

Regarding your claim of being entitled to complete and immediate access to your escrowed monies pursuant to § 24-3-40(B)(2), I concur with the warden's determination that your claim has no merit. Section 24-3-40(A)(5) requires SCDC to deduct 10% of an inmates wages and hold them "in an interest bearing escrow account for the benefit of the prisoner." Section 24-3-40(B) directs SCDC to "return a prisoner's wages held in escrow pursuant to [§ 24-3-40(A)]" only when an inmate leaves SCDC's custody. When an inmate is serving a life sentence, § 24-3-40(B)(2) provides the inmate with "the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice." This provision directs SCDC to distribute these escrowed monies only upon the inmate's death, and not prior to that event. Nothing in any provision of § 24-3-40(B) authorizes an inmate to have complete and immediate access to any of these monies while still lawfully held in SCDC's custody. Any other interpretation would conflict with the remaining provisions of § 24-3-40(B).

Therefore, I concur with the warden's determination that no provision of § 24-3-40 requires inmates to have complete and immediate access to any of these monies while they are still lawfully held in SCDC's custody.

To the extent that you claimed in your Step 2 that SCDC has unconstitutionally denied you of your property interest in these monies without due process of law, I deny your claim. As recognized by our Supreme Court in Torrence, Wicker, and Al-Shabazz, SCDC's inmate grievance system complies with minimum due process requirements. As also recognized in Wicker, you and other inmates in your position may exercise your pre-existing due process rights and litigate your PI pay disputes with SCDC through SCDC's Inmate Grievance System Policy. Therefore, SCDC has not denied you due process of law, and the filing deadline from the various editions of the agency's policy applies to the PI pay claims you articulated in your Step 1.

Finally, to the extent that you demanded "interest" in your Step 1, no decision of the South Carolina Supreme Court nor any provision of any edition of the Inmate Grievance System Policy entitles you or any other inmate to any pre-judgment or post-judgment interest, or for that matter, costs or attorneys' fees in connection with SCDC's processing and consideration of your grievance.

Therefore, for all of the above stated reasons, I concur with the entirety of the warden's response to your Step 1, and accordingly, I deny your Step 2 in its entirety.

CONFIDENTIAL

**GRIEVANCE NOTES
CRT SCREENS
ETC...**

Page 1 of 1

Ann Hallman

From: Ann Hallman
Sent: Friday, May 25, 2012 8:52 AM
To: Suzanne McClendon
Cc: Angela Hardin; Jimmy Simmons
Subject: INMATE WILLIAM WARD #91566
Suzanne:

Elaine sent ECI-1212-07 on May 15, 2012 to be served. Once you serve the warden's response I need a copy e-mailed to me showing he signed. Ann

Ann Hallman
Branch Chief
Inmate Grievance Branch
SC Department of Corrections
Post Office Box 21787
4444 Broad River Road
Columbia, SC 29221-1787
Telephone: 803-896-1473
Fax: 803-896-9488

Ward, William 091566, Grievance ECI 1212-07, forwarded to Mr. Knowlin.

have reviewed your complaint. See attachments.

You may appeal this decision under the Administrative Procedures Act. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

Approved *JK* 9/15/16

OK *JD*
TH

10:43:18 Wednesday, November 04, 2015

GRFI100D SCDC OFFENDER MANAGEMENT SYSTEM 11/04/15
OMGRIEFA INMATE GRIEVANCE APPLICATION C052640
SCDC #: 091566 INQUIRE
WARD, WILLIAM RAY RACE/SEX: WM AGE: 59 CURR LOC: PERRY
PROJ MAXOUT: 99/99/99 PROJ PAROLE: 00/00/00 CURR CUST: MI3

GRIEV LOC: 0531 ECI GRIEV NUM: 1212-07 GRIEV TYPE.: G GENERAL GRIE
GRIEV ISSUE.....: MY MONEY DATE OCCURRED...: 06/19/06
GRIEV AGAINST.....: WS WORK SUPERVISOR DATE FILED.....: 06/19/07
DESIGNEE RECD.....: 07/25/07 IGC INITIAL: ER IGC RECEIVED....: 07/25/07
TEXT/REQUESTED ACTION: I/M GRIEVING NOT BEING PAID THE PREVAILING WAGE IN ACCOR
DANCE WITH THE CODE OF LAW FOR 320 HOURS WHILE WORKING AT ECI PI. FWD TO LAKE SU
MMERS. RECEIVED GRIEVANCE FOR WARDEN'S SIGNATURE ON 5/15/12, FORWARDED TO LIEBE
R CI ON 5/15/12 TO BE SERVED ON I/M. ERM **STEP 2 DUE 05/30/12, CO 06/05/12

:END

---INSTITUTION-----|---CENTRAL OFFICE---|
ACTION DUE DATE.: 09/03/07 DUE DT: 07/29/12
ACTION DATE.....: 05/25/12 ACTION: 10/14/15
HOW RESOLVED.....: FORMAL CURR LEVEL: CENTRAL OFFICE
INMATE RESPONSE.: APPL FINAL DISP: 02 GRIEVANCE DENIED
APPEAL RECEIVED.: 05/30/12 CREATE BY: GARVIN DATE: 07/25/07
FINAL DISP SERVED: 10/15/15 UPDATED BY: POWE DATE: 10/26/15
GRIEVANCE INFORMATION DISPLAYED FOR INQUIRY ONLY...
PFKEY PF3:ADD PF4:MOD PF6:AUDIT PF8:NEXT PF10:MENU

01B-0106-3

EXHIBIT A
STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

William Ray Ward #091526

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. 15-ALJ-04
GRIEVANCE NO.: 0986-07

ECI 1212-07

Notice is hereby given that William Ray Ward does hereby appeal the final decision of the South Carolina Department of Corrections dated 10-14-15 and received on 10-15-15, 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)):

This grievance has been held by Attorney for SCDC for eight years. Which was a violation of Appellant's due process. Holding grievance for eight years prejudiced my case. I expect to collect my training pay from SCDC due to the Wicker Case, 360 S.C. at 424. Also, due to fact note 4 in case Thomas Torrence et al. v. SCDC Supreme Court Opinion No. 2632R Filed May 7, 2007 - I should be paid by SCDC \$1.92 for every hour I worked in the Private Sector at Evans Prison. I should also recover my long terms savings held in Escrow illegally, due to having to sign a new contract, changing access to my long terms savings - to no access. Appellant signed under duress. The appealing SCDC decision.

William Ray Ward
Appellant's Name

William Ray Ward
Signed

Perry, Cor. Inst. 430 Oaklawn Rd
Mailing Address

Pelzer, S.C. 29669

10-16-15
Dated

FILED

OCT-18 2015

City, State, Zip Code

CERTIFICATE OF SERVICE

SC ADMIN. LAW COURT

I hereby certify that William Ward (your name), on the 16 day of October, 2015, in Pelzer (city),

South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States

Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: David Tartarsky, South Carolina Department of Corrections.

Address: 4444 Broad River Road, Post Box 21787

City, State, Zip Code: Columbia, S.C. 29221

Print your name Sign your name
(See reverse side for instructions)

William Ray Ward

William Ray Ward

Instructions for filing an appeal of the final agency decision from the South Carolina Department of Corrections: . . .

- 1) You must complete the Notice of Appeal on the reverse side of these instructions and mail it to the Administrative Law Court at the following address:

**Clerk's Office
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201**

A copy of the Notice of Appeal must also be forwarded to the Office of General Counsel at the Department of Corrections.

- 2) In order for your case to be processed by the ALC, a copy of the final decision from the Department of Corrections must be attached to the Notice of Appeal.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

William Ray Ward (#091566),

Appellant,

v.

South Carolina Department of
Corrections,

Respondent.

Docket No. 15C-0560

**APPELLANT'S BRIEF
IN SUPPORT OF APPEAL**

Julius H. Hines
Meg E. Sawyer
K&L Gates LLP
134 Meeting Street, Suite 500
Charleston, SC 29401
(843) 579-5600
julius.hines@klgates.com
meg.sawyer@klgates.com

ATTORNEYS FOR APPELLANT

Stephen H. Lunsford
South Carolina Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, SC 29221
(803) 896-8508
LunsfordStephen@doc.sc.gov

ATTORNEY FOR RESPONDENT

RECEIVED

MAR 10 2016

GENERAL COUNSEL

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

William Ray Ward (#091566),	)	
	)	
Appellant,	)	Docket No. 15C-0560
v.	)	
	)	
South Carolina Department of	)	APPELLANT'S BRIEF
Corrections,	)	IN SUPPORT OF APPEAL
	)	
Respondent.	)	
	)	
	)	

TO: Stephen H. Lunsford, Staff Attorney for S.C. Department of Corrections

Pursuant to Rule 60 of the South Carolina Rules of Procedure for the Administrative Law Court ("ALC Rules"), Appellant William Ray Ward ("Mr. Ward"), by and through his undersigned counsel, respectfully submits this Brief in support of his appeal of Respondent, South Carolina Department of Corrections' ("SCDC") final denial of his grievance, #ECI-1212-07.

STATEMENT OF ISSUES ON APPEAL

Whether SCDC erred in denying Mr. Ward's grievance for back wages owed to Mr. Ward for his work in the Prison Industries Project at Evans Correctional Institution?

STATEMENT OF THE CASE

Mr. Ward participated in the Prison Industries Project (the "Project") operated by SCDC at Evans Correctional Institution for thirteen (13) years. (Step 1 Grievance). Mr. Ward worked at the Wire Harness Assembly facility for private sector company ESCOD, and later INSILCO. (Step 1 Grievance Response, p. 1). The Prison Industries Project is federally certified and operates under various state statutes, including S.C. Code Ann. § 24-3-430, also known as the "prevailing wage statute," which mandates that all inmates participating in the

Project earn at least "the prevailing wage for work of a similar nature in the private sector."

S.C. Code Ann. § 24-3-430(D); *see also* S.C. Code Ann. §§ 24-3-40, 24-3-315.

As required by the Project, Mr. Ward completed three-hundred and twenty (320) hours of training. (Step 1 Grievance Response, p. 5). During these training hours, SCDC paid Mr. Ward less than \$1.00 per hour, a rate which clearly fell below the prevailing wage for work of a similar nature at that time. (Step 1 Grievance). Beginning on June 30, 1995, following the completion of Mr. Ward's training, SCDC paid Mr. Ward \$4.25 per hour for his work in the Project, a rate which also failed to meet the prevailing wage standard. (Step 1 Grievance). Finally, on November 1, 1996, SCDC raised Mr. Ward's rate to \$5.25 per hour. (Step 1 Grievance Response, p. 5). Unsurprisingly, Mr. Ward's hourly rate still fell below the prevailing wage standard. (Step 1 Grievance). Moreover, SCDC withheld \$1.92 per hour from Mr. Ward's wages for the entirety of his work with the Project. (Step 1 Grievance). Mr. Ward continued to receive this inadequate pay until he concluded his participation in the Project on November 14, 2003. (Step 1 Grievance Response, p. 5).

In response to these violations, Mr. Ward participated in a class action lawsuit against SCDC, *Torrence v. South Carolina Dep't of Corr.*, 373 S.C. 586, 646 S.E.2d 866 (2007), in which several classes of plaintiffs (including prisoners who worked for INSILICO) sought a declaration of various rights under South Carolina's prison industries statutes. Specifically, the plaintiffs alleged that SCDC had violated the prevailing wage requirement pursuant to S.C. Code Ann. § 24-3-430. *Torrence*, 373 S.C. at 590, 646 S.E.2d at 867. While *Torrence* was pending in the lower court, the South Carolina Supreme Court decided *Adkins v. South Carolina Dep't of Corr.*, 360 S.C. 413, 602 S.E.2d 51 (2004), and *Wicker v. South Carolina Dep't of Corrections*, 360 S.C. 421, 602 S.E.2d 56 (2004). In both *Adkins* and *Wicker*, the court found that although prisoners do not have a private cause of action under S.C. Code Ann. § 24-3-430, they do have the right to challenge SCDC's failure to pay adequate wages

by filing a grievance in accordance with SCDC's internal grievance procedures. *Adkins*, 360 S.C. at 418–19, 602 S.E.2d at 55–56; *Wicker*, 360 S.C. at 423–24, 602 S.E.2d at 57.

Based on the holdings in *Atkins* and *Wicker*, the Supreme Court of South Carolina held that the inmates in *Torrence* could not maintain their claims for declaratory judgment in the circuit court, but could pursue those claims through SCDC's grievance process. *Torrence*, 373 S.C. at 595, 646 S.E.2d at 870. Accordingly, Mr. Ward filed his Step 1 Grievance with the agency on June 25, 2007. (Step 1 Grievance). SCDC denied his Step 1 Grievance on May 25, 2012. (Step 1 Grievance Response). Mr. Ward then filed his Step 2 Grievance on May 29, 2012. (Step 2 Grievance). SCDC denied his Step 2 Grievance on October 15, 2015. (Step 2 Appeal Reply). Mr. Ward filed his Notice of Appeal with this Court on October 16, 2015.

ARGUMENT

I. SCDC Erred in Denying Mr. Ward's Grievance for Back Wages Owed to Mr. Ward for His Work in the Prison Industries Project.

According to SCDC's Step 1 Grievance Response and Step 2 Appeal Reply, the agency denied Mr. Ward's grievance for several reasons. First, SCDC claims that Mr. Ward failed to file a timely grievance pursuant to the agency's internal grievance policies. (Step 1 Grievance Response, p. 3). Next, SCDC argues that even if Mr. Ward's grievance is timely, S.C. Code Ann. § 24-3-430(D) does not apply to Mr. Ward's claims for back wages; rather, § 24-3-410(B)(7) governs Mr. Ward's payment under the Projects. (Step 1 Grievance Response, p. 4). Finally, SCDC concludes that even if § 24-3-430(D) does apply to Mr. Ward's wages, SCDC paid Mr. Ward adequate compensation under South Carolina law. (Step 1 Grievance Response, pp. 5–6).

SCDC's denial of Mr. Ward's grievance is flawed for multiple reasons. (1) Mr. Ward filed a timely grievance under the doctrine of equitable tolling; (2) S.C. Code Ann. § 24-3-430(D) applies to Mr. Ward's wages under the Project; (3) SCDC failed to pay Mr. Ward the

prevailing wage in accordance with § 24-3-430(D) during his work in the Project; and (4) SCDC was not entitled to collect \$1.92 per hour from Mr. Ward's wages. Accordingly, this Court should resolve the appeal in Mr. Ward's favor and award Mr. Ward back wages owed from his participation in the Project.

a. Mr. Ward Filed a Timely Grievance.

SCDC's primary argument is that Mr. Ward failed to file a timely grievance pursuant to SCDC Policy Number PS-10.01(OP), ¶ 14(a), which states that an inmate must file a step 1 grievance within either seven (7) or fifteen (15) days of the alleged incident.¹ (Step 1 Grievance Response, pp. 2-3). SCDC seems to interpret this policy to mean that Mr. Ward should have filed his grievance with the agency on "the date upon which SCDC [] first began paying [him] for [his] prison industries labor" (Step 1 Grievance Response, p. 3). However, the South Carolina Administrative Law Court dismissed this interpretation in *Calvin Byrd, #257319 vs. SCDOC*, No. 07-ALJ-04-00410-AP (Oct. 10, 2007), stating that the policy should be read "so as to find that an inmate has timely filed a prevailing wage grievance if he filed during the course or term of employment or within fifteen days of the completion of a term of employment, regardless of when he initially began employment with the prison industries program." *Id.*

Granted, Mr. Ward did not file his grievance during the course of his employment; rather, he filed it over three (3) years after his employment concluded. (Step 1 Grievance Response, p. 3). Contrary to SCDC's implications, however, Mr. Ward did not sit idly for three years before filing his grievance. Rather, he pursued his grievance by filing a complaint with the circuit court as a lead plaintiff in a class action challenging SCDC's unfair wages in

¹ SCDC references two editions of Policy Number PS-10.01(OP) in effect during Mr. Ward's employment: (1) the mid-1990s version, which included a seven-day (7) deadline, and (2) the updated October 1, 1997 version, which included a fifteen-day (15) deadline. The current deadline is fifteen (15) days.

the Project. Indeed, Mr. Ward filed his claim in *Torrence* on November 5, 2001, *during the course of his employment* in the Project. (Step 1 Grievance Response, p. 3).

Although SCDC conveniently disregards this fact in the agency's responses, the plaintiffs in *Torrence* raised a *novel issue*—whether they had a private right of action under § 24-3-430(D). *Torrence*, 373 S.C. at 590, 646 S.E.2d at 868 (noting that the case involved “novel issues”). When Mr. Ward filed his complaint in November 2001, it was undecided as to whether inmates could resolve these wage issues through the judicial system. Therefore, in keeping with the spirit of this Court's interpretation in *Byrd*, Mr. Ward sought to address his grievance during the course of his employment, but did so by filing an action with the circuit court, a conceivable avenue of relief at the time.

Based on the decisions in *Adkins* and *Wicker*, the Supreme Court of South Carolina decided *Torrence* on May 7, 2007, concluding that, although the inmates could not maintain their action in the circuit court, “we *direct* the DOC to afford them due process via the internal grievance system.” *Torrence*, 373 S.C. at 595, 646 S.E.2d at 870 (emphasis added). Rehearing was then denied on July 19, 2007. Logically, pursuant to the court's mandate and SCDC's fifteen-day (15) filing rule, Mr. Ward had until August 3, 2007 to file a step 1 grievance with the agency, fifteen (15) days after the rehearing in *Torrence* was denied and the case finally concluded. Accordingly, Mr. Ward filed on June 19, 2007. (Step 1 Grievance).

It is well established that “[t]he equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that *relief will be granted when*, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other. Equitable tolling may be applied where it is justified under all the circumstances.” *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 115–17, 687 S.E.2d 29, 32–33 (2009). Even SCDC seems to

acknowledge that the outcome of the aforementioned prison industries cases could provide a reason to adjust Mr. Ward's grievance deadline. (Step 1 Grievance Response, p. 3). Indeed, all of the relevant conditions for equitable tolling are present in the instant case: (1) SCDC had adequate notice of Mr. Ward's claims, as is apparent through *Torrence*; (2) SCDC will not suffer any prejudice from Mr. Ward's filing in 2007; and (3) Mr. Ward acted both diligently and reasonably by filing his complaint with the circuit court during the course of his employment, and subsequently submitting his Step 1 Grievance within fifteen (15) days of the conclusion of that case. See *Aikens v. Ingram*, 524 F. App'x 873, 884 (4th Cir. 2013) (finding that equitable tolling was operational during the period that Aikens's Rule 60(b) motion was being considered by the district court). Moreover, the Supreme Court of South Carolina "direct[ed] DOC" to afford the inmates in *Torrence* due process through the internal grievance system. *Torrence*, 373 S.C. at 595, 646 S.E.2d at 870. If SCDC bars Mr. Ward's grievance based on "untimely filing" as a result of his first pursuing a novel claim in the circuit court, Mr. Ward will suffer a gross wrong and be denied his right to pursue his grievance through SCDC's internal system, a right confirmed and mandated in *Adkins*, *Wicker*, and *Torrence*. Thus, SCDC erred in concluding that Mr. Ward filed an untimely grievance.

b. The Prevailing Wage Statute, S.C. Code § 24-3-430(D), Applies to Mr. Ward's Work in the Project.

SCDC claims that even if Mr. Ward filed a timely grievance, his claims are not viable because S.C. Code Ann. § 24-3-430(D) does not apply to the instant case. It seems SCDC has misinterpreted *Adkins* and *Wicker* as holding that inmates do not have a right under § 24-3-430(D), and that § 24-3-410(B)(7) is the applicable statute for such claims. (Step 1 Grievance Response, p. 4, Step 2 Appeal Reply, p. 5). SCDC is mistaken. First, neither the court in *Adkins* nor *Wicker* concluded that § 24-3-410(B)(7) applies to inmates' prevailing wage claims. Second, all of the relevant precedent confirms that, although inmates do not

have a private right of action under § 24-3-420(D), the statute affords inmates a right to earn the prevailing wage for their work within the project, which may be enforced through the grievance process. For example, in *Torrence*, the court made clear that “inmates working in the Prison Industries Program have a cognizable, state-created interest in having the DOC pay them accordingly” pursuant to § 24-3-430(D). *Id.* at 592–95, 646 S.E.2d at 869–70. Under *Adkins* and *Wicker*, the South Carolina Supreme Court determined that inmates may enforce their rights under § 24-3-430(D) through SCDC’s internal grievance procedure. *Adkins*, 360 S.C. at 418–19, 602 S.E.2d at 54–55; *Wicker*, 360 S.C. at 424–25, 602 S.E.2d at 57–58. The South Carolina Administrative Law Court has also confirmed that S.C. Code Ann. § 24-3-430(D) governs “the payment of prevailing wage to an inmate participating in the prison industries program.” *Byrd*, No. 07-ALJ-04-00410-AP. There is no question that § 24-3-430(D) applies to Mr. Ward’s claims.

c. SCDC Did Not Pay Mr. Ward the Proper Rate for His Labor in the Project.

SCDC contends that, even if S.C. Code Ann. § 23-4-430(D) applies to Mr. Ward’s grievance, SCDC gave Mr. Ward the “proper rate of pay” for his work in the Project. (Step 2 Appeal Reply, pg. 5). SCDC bases this assertion on the fact that Mr. Ward received payment equal to the federal minimum wage in effect at that time. (Step 1 Grievance Response, p. 5). This argument fails for two reasons. First, SCDC paid Mr. Ward below minimum wage on two occasions; as SCDC admits in its Step 1 Grievance Response, Mr. Ward received below minimum wage during his three-hundred and twenty (320) hours of training, as well as during the month of October in 1996. (Step 1 Grievance Response, p. 5). More importantly, § 24-3-430(D) requires that SCDC pay the *prevailing* wage, not the federal minimum wage; “there is simply nothing in the statutory scheme authorizing the DOC to pay [an inmate] a training wage less than the prevailing wage.” *Wicker*, 360 S.C. at 425, 602 S.E.2d at 58 (2004); see *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (noting that it is

well established 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"). Therefore, SCDC was required to pay Mr. Ward the *prevailing* wage for his work in the Project. As evidenced by the readily available information regarding the prevailing wage for wire harness assembly at the time of Mr. Ward's employment, SCDC should have paid Mr. Ward approximately \$8.00–\$13.00 per hour throughout the course of his participation in the prison industries program.² Unfortunately, the most Mr. Ward received for his work in the Project was \$5.25 per hour, a rate far below the prevailing wage required by § 23-4-430(D). As a result, SCDC owes Mr. Ward back wages from his participation in the Project to compensate for the difference between the wages Mr. Ward received and the prevailing wage in South Carolina in effect at that time.

d. SCDC Was Not Entitled to Deduct \$1.92 Per Hour From Mr. Ward's Wages.

In addition to SCDC's failure to pay Mr. Ward the prevailing wage for his work as required by law, SCDC also withheld \$1.92 per hour from Mr. Ward's compensation for "overhead" costs. (Step 1 Grievance). SCDC claims that South Carolina law "compel[s]" SCDC to collect an hourly overhead cost from private industry sponsors. (Step 1 Grievance Response, p. 5). However, the court in *Torrence*, referencing the \$1.92 deduction by SCDC, noted that if the agency "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, [SCDC] would be in violation of the plain language of the statute which directs it to disburse the money based on the gross wages." *Torrence*, 373 S.C. at 594 n.4, 646 S.E.2d at 870. The

² Given that SCDC's responses fail to provide any evidence supporting the claim that Mr. Ward received the federal minimum wage during his work in the Project, Appellant assumes that SCDC would agree that general information regarding minimum and prevailing wage is readily available to the public. The information relied on by Appellant in this Brief is from a wage survey conducted by the U.S. Bureau of Labor and Statistics. In 1997, the prevailing wage in South Carolina for wire harness assemblers was \$8.82 per hour. By 2003, the rate was \$13.63 per hour.

only support SCDC provides with respect to its \$1.92 deduction is the threadbare assertion that the agency required "overhead costs" for the program. However, there is no explanation or discussion that breaks down those costs, or demonstrates that SCDC did in fact disburse the money based on gross wages. Without more, the agency fails to adequately rebut this issue, and as a result, SCDC should compensate Mr. Ward for the hourly deductions from his paycheck.

CONCLUSION

WHEREFORE, Mr. Ward prays that this Court:

- a. Resolve the appeal in Mr. Ward's favor by directing SCDC to grant him the relief requested in his Grievance; and
- b. For any other relief this Court deems just and proper.



Julius H. Hines (S.C. ID No. 065472)

Email: julius.hines@klgates.com

Meg E. Sawyer (S.C. ID No. 102362)

Email: meg.sawyer@klgates.com

K&L Gates LLP

134 Meeting Street, Suite 500

Charleston, SC 29401

Phone: (843) 579-5600

Fax: (843) 579-5601

ATTORNEYS FOR WILLIAM RAY WARD

March 8, 2016

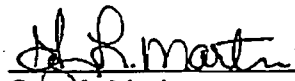
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of March, 2016, in Charleston, South Carolina, I served a copy of the forgoing Appellant's Brief In Support Of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution, and addressed as follows:

Stephen H. Lunsford
South Carolina Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, SC 29221

cc: David Tatarsky
South Carolina Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, SC 29221



Gwyn L. Martin
Legal Assistant

Charleston, South Carolina
March 8, 2016

The Honorable H.W. Funderburk, Jr., Administrative Law Judge

Respondent.

RESPONDENT'S BRIEF

Outside Counsel for the Respondent

SC ADMIN. LAW COURT

In accordance with Administrative Law Court ["ALC"] Rule of Procedure 60, the Respondent, the South Carolina Department of Corrections ["SCDC"], by and through its undersigned outside counsel, hereby respectfully submits its brief in the instant case.

STATEMENT OF ISSUE ON APPEAL

In his March 8, 2016 brief, the Appellant, William Ray Ward, identified the sole issue on appeal as "[w]hether SCDC erred in denying [his] grievance for back wages owed to [him] for his work in the Prison Industries Project at Evans Correctional Institution." (Brief, p. 1).

STANDARD OF REVIEW

The Court's jurisdiction to hear the instant matter derives from *Al-Shabazz v. State*, 527 S.E.2d 742 (S.C. 2000), *Adkins, et al., 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).

The instant matter is before the Court on Ward's appeal of a final decision issued by SCDC pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2010) of the Administrative Procedures Act ["APA"]. Ward challenges SCDC's denial of the wage claims he presented in the grievance, designated as ECI-1212-07, he filed under the provisions of SCDC Policy Number GA-01.12. SCDC determined that Ward's claims were both time barred and without merit.

Under the APA, this Court sits in an appellate capacity rather than as an independent finder of fact. *See also Al-Shabazz*, 527 S.E.2d at 754. Pursuant to § 1-23-380(4), this Court's review in inmate grievance appeals is limited to the record presented. *See also* § 1-23-600(E). Under § 1-23-380(5), the standard of review applicable to Ward's instant appeal is as follows:

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.

STATEMENT OF THE CASE

One assertion Ward offered in his statement of the case and repeated throughout his brief is simply incorrect. At the outset of his statement (Brief, p. 1), Ward asserted that he “worked ... for private sector company ESCOD, and later INSILCO. (Step 1 Grievance Response, p. 1).” Ward reiterated the same assertion later in his statement (Brief, p. 2):

In response to these violations, [Ward] participated in a class action lawsuit against SCDC, [*Torrence v. S.C. Dep’t of Corr.*, 646 S.E.2d 866 (S.C. 2007)],¹ in which several classes of plaintiffs (including prisoners who worked for INSILCO) sought a declaration of various rights under South Carolina’s prison industries statutes. Specifically, the plaintiffs alleged that SCDC had violated the prevailing wage requirement pursuant to [§ 24-3-430]. [*Torrence*, 646 S.E.2d at 867]. [emphasis supplied].

S.C. Const. Art. XII, § 2 provides that “[t]he General Assembly shall establish institutions for the confinement of all persons convicted of such crimes as may be designated by law, and shall provide for the custody, maintenance, health, welfare, education, and rehabilitation of the inmates.”

Under § 24-3-27(B), every inmate, while committed to SCDC’s custody, must “must be kept at some useful employment suited to his age and capacity and which may tend to promote the best interest of the citizens of this State.”

¹ The named inmate appellants in *Torrence* were “Thomas J. Torrence and William Ray Ward, on behalf of themselves and all others similarly situated.” 646 S.E.2d at 866.

Inmates have no control over whether they may continue participating in prison industries projects, because SCDC may reassign them to other institutions at any time irrespective of their job assignments. *See Skipper v. S.C. Dep't of Corr.*, 633 S.E.2d 910, 913 (S.C. Ct. App. 2006).²

In *Watson v. Graves*, 909 F.2d 1549, n. 7 (5th Cir. 1990), the Fifth Circuit Court of Appeals recognized that "when a prisoner is sentenced to labor as part of his sentence, his labor belongs to the prison and is at the disposal of the prison officials." In *Bennett v. Frank*, 395 F.3d 409, 410 (7th Cir. 2005), the Seventh Circuit Court of Appeals distinguished *Watson* when it explained wages for prisoner labor under the Fair Labor Standards Act ["FLSA"]:

People are not imprisoned for the purpose of enabling them to earn a living. The prison pays for their keep. If it puts them to work, it is to offset some of the cost of keeping them, or to keep them out of mischief, or to ease their transition to the world outside, or to equip them with skills and habits that will make them less likely to return to crime outside. None of these goals is compatible with federal regulation of their wages and hours. The reason the FLSA contains no express exception for prisoners is probably that the idea was too outlandish to occur to anyone when the legislation was under consideration by Congress.

... Both public agencies and private firms have employees. **But prisoners are not employees.**

We have no quarrel with [*Watson*] or *Carter v. Dutchess Community College*, 735 F.2d 8 (2d Cir.1984), which hold that the FLSA applies to prisoners working for private companies under work-release programs. **Those prisoners weren't working as prison labor, but as free laborers in transition to their expected discharge from the prison. Unlike our plaintiffs. [emphasis supplied].**

In *S.C. Dep't of Corr. v. Cartrette*, 694 S.E.2d 18, 23 (S.C. Ct. App. 2010), our Court of Appeals relied upon § 24-3-40(A) and *Williams v S.C. Dep't. of Corr.*, 641 S.E.2d 885, 887 (S.C. 2007) when it ruled that an inmate was not a private industry sponsor's employee.³

² Ward and Skipper participated in the same project at Evans. *See Skipper*, 633 S.E.2d at 911, 913, and 915.

³ The dissent in *Cartrette* quoted the first paragraph from *Bennett*. 694 S.E.2d at 24. In *Williams*, 641 S.E.2d at 886, n. 3, our Supreme Court reiterated its finding from *Adkins* "that § 24-3-430(F) provides that an inmate is not

All of the above-quoted authorities flatly contradict Ward's assertion that he worked for or was otherwise "employed" by ESCOD/INSILCO. Ward voluntarily participated in the project at Evans, because he was required to keep "at some useful employment" as part of his sentence. Ward did not enjoy any kind of "employee-employer" relationship with ESCOD/INSILCO, because he was, at all times, committed to, confined by, and in the custody and control of SCDC. SCDC otherwise concurs with the chronology of events Ward presented in his statement.

ARGUMENT

SCDC rebuts Ward's (4) supporting arguments slightly out of order. SCDC begins with Ward's first argument, and it then addresses his third, second, and fourth arguments.

I. WARD DID NOT TIMELY FILE HIS GRIEVANCE

In his first supporting argument (Brief, pp. 4 – 6), Ward asserted that he timely filed his Step 1, and he invoked equitable tolling in an effort to avoid Policy GA-01.12's filing deadline.

Ward did not invoke equitable tolling in his Step 1, Step 2, or in his Notice of Appeal, and, accordingly, he may not do for the first time in his instant appeal. *See Wilder Corp. v. Wilke*, 497 S.E.2d 731, 733 (S.C. 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 trial judge to be preserved for appellate review."). *See also Critcher v. Rhodes*, -- S.E.2d --, 2015 WL 4757067 *1 (S.C. Ct. App. Aug. 12, 2015) (applying axiom from *Wilder Corp.* to equitable tolling claim). Despite this defect, SCDC analyzes Ward's invocation of the doctrine immediately below.

A. BACKGROUND AND PROCEDURAL HISTORY

As the record reflects and as he admitted (Step 1 Response, p. 1 and Brief, p. 2), Ward concluded his participation in the project on or about November 14, 2013. In its response to his

considered an 'employee' of the State and therefore no cause of action could be maintained against [SCDC] under the Payment of Wages Act." *See Adkins*, 602 S.E.2d at 55, n. 7.

Step 1, SCDC stated that it began paying Ward for his labor "on or about June 30, 1995." (Step 1 Response, p. 1). However, in both his Step 1 and his brief (Step 1, p. 1 and Brief, p. 1), Ward stated that participated in the project for 13 years, and, therefore, Ward claimed to have started in 2000.⁴ The record confirms Ward's assertions that his dated his Step 1 on June 19, 2007 and that SCDC received his Step 1 on June 25, 2007. (Step 1, p. 1 and Brief, p. 3).

In its responses to his Step 1 and Step 2, SCDC ruled that Ward did not comply with the filing deadlines from Policy Numbers PS-10.01 (OP) and GA-01.12. (Step 1 Response, pp. 2 – 3 and Step 2 Reply, pp. 2 – 3). The operative paragraphs of the edition(s) of Policy GA-01.12 in effect in 2000 when he claimed to have started in the project,⁵ when he stopped participating in the project in 2003, and when he filed his Step 1 in 2007, and all required Ward to file his Step 1 grievance within fifteen days of the alleged incident upon which he grounded his claim.

As he claimed in both his Step 1 and Step 2 that it failed to pay him the correct wage, SCDC determined that Ward should have filed his Step 1 within fifteen days of the date upon which he claimed that it first failed to pay him the correct wage. SCDC, therefore, denied Ward's grievance, because he filed it too late. (Step 1 Response, p. 3 and Step 2 Response, p. 3).

B. WARD'S FIRST SUPPORTING ARGUMENT

Ward asserted in his brief, however, that the ALC, by its ruling in *Byrd v. S.C. Dep't of Corr.*, 2007 WL 3208700 (S.C. ALJ Div. Oct. 10, 2007), "dismissed" SCDC's interpretation of the filing deadline. According to Ward, the ALC in *Byrd* interpreted the deadline "so as to find

⁴ The difference between its records and Ward's assertion caused SCDC to review its inmate grievance system policy going back to the 1990s in its Step 1 response. (Step 1 Response, p. 2). See also Ward's Brief, p. 4, n. 1.

⁵ For the sake of expedience, SCDC's analysis of Ward's argument is predicated upon Ward's assertion that he started in the project in 2000. However, in its Step 1 reply, SCDC asserted that Ward filed his Step 1 "nearly 12 years after" he started in the project in 1995. (Step 1 Response, p. 1). Since its records reflect that it first starting paying him in 1995, SCDC still respectfully asserts that Ward confronted a seven-day filing deadline per ¶ 14(a) of Policy PS-10.01 (OP). (Step 1 Response, p. 2). The fifteen-day filing deadline became effective October 1, 1997, and it remains effective. As a seven-day filing deadline wrecks his carefully crafted equitable tolling argument, Ward's motive for claiming that he started in 2000, years after the fifteen-day deadline became effective, is obvious.

that an inmate has timely filed a prevailing wage grievance if he filed during the course or term of employment or within fifteen days of the completion of a term of employment, regardless of when he initially began employment with the prison industries program.⁶ (Brief, p. 4)

Ward admitted in his brief that he “did not file his grievance during the course of his employment; rather, he filed it over three (3) years after his employment concluded.” (Brief, p. 4). Ward then argued that despite failing to comply with the standard established in *Byrd*, he nonetheless timely filed his grievance under the doctrine of equitable tolling. In so arguing, Ward exhibited some logical sleight of hand by asserting that “he pursued his grievance by filing a complaint with the circuit court as a lead plaintiff in a class action challenging SCDC’s unfair wages in the” in the project at Evans and that he “filed his claim in *Torrence* on November 5, 2001, during the course of his” participation in the project at Evans. (Brief, pp. 4 – 5).

Notwithstanding the reality that he purportedly “pursued his grievance” without actually filing a Step 1, Ward continued his sleight of hand as follows (Brief, p. 5).

... the plaintiffs in *Torrence* raised a *novel issue* – whether they had a private right of action under § 24-3-430(D). [*Torrence*, 646 S.E.2d at 868] (noting that the case involved “novel issues”). When [Ward] filed his complaint in November 2001, it was undecided as to whether inmates could resolve these wage issues through the judicial system. Therefore, in keeping with the spirit of this Court’s interpretation in *Byrd*, [Ward] sought to address his grievance during the course of his employment, but did so by filing an action with the circuit court, a conceivable avenue of relief at the time.

Based on the decisions in *Adkins* and *Wicker*, the Supreme Court of South Carolina decided *Torrence* on May 7, 2007, concluding that, although the inmates could not maintain their action in the circuit court, “we *direct* [SCDC] to afford them due process via the internal grievance system.”

⁶ The ALC ruled prior to *Byrd* that under Policy GA-01.12, an inmate “was required to file a grievance within 15 days of [SCDC’s] failure to pay him the wages owed” and that there was “no indication or argument, whatsoever, that [Wright] filed a grievance within 15 days of the alleged underpayment.” See *Wright v. S.C. Dep’t of Corr.*, 2006 WL 1430140, *3 (S.C. ALJ Div. Apr. 28, 2006). SCDC cited *Wright* in its Step 1 response. (Step 1 Response, p. 3). SCDC’s interpretation of the deadline comports with *Wright*, and *Byrd* did not overrule or even mention *Wright*.

[*Torrence*, 646 S.E.2d at 870] (emphasis added). Rehearing was then denied on July 19, 2007. Logically, pursuant to the court's mandate and SCDC's fifteen-day (15) filing rule, [Ward] had until August 3, 2007 to file a step 1 grievance with the agency, fifteen (15) days after the rehearing in *Torrence* was denied and the case finally concluded. Accordingly, [Ward] filed on June 19, 2007. (Step 1 Grievance).

Ward then explicitly invoked the doctrine of equitable tolling by quoting from *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 687 S.E.2d 29, 32 – 33 (S.C. 2009) and citing *Aikens v. Ingram*, 524 F.App'x 873, 884 (4th Cir. 2013). (Brief, pp. 5 – 6).

C. OUR SUPREME COURT'S DECISION IN *Okera*

Before deconstructing Ward's flawed argument, SCDC respectfully urges this Court to consider a compelling memorandum opinion issued by our Supreme Court in *Okera v. S.C. Dep't of Corr.*, -- S.E.2d --, 2012 WL 10907962 (No. 2012-MO-042) (S.C. 2012).

Okera and Ward participated in the identical project operated by SCDC at Evans.⁷ Okera and Ward were both members of the same class of prisoners in *Torrence*,⁸ and, therefore, they both were subject to the chronology of *Torrence* described by Ward in his brief.

Like Ward, Okera also filed a grievance with SCDC in which he claimed that SCDC did not pay him the correct wages for his labor. As it did to Ward's grievance, SCDC applied the fifteen-day filing deadline to Okera's grievance, and it denied Okera's grievance.

⁷ The project operated by SCDC at Evans, in which both Ward and Okera participated, was certified by the United States Department of Justice's Bureau of Justice Assistance ["BJA"] under BJA's Prison Industries Enhancement Certification Program ["PIECP"]. See *Torrence*, 646 S.E.2d at 867.

⁸ Okera is also known as Michael Burns, and his SCDC identification number is 228442. By a letter dated May 30, 2007, counsel for the prisoner class advised Okera of the ruling in *Torrence*. SCDC respectfully submits a copy of the letter as Exhibit A in support of its instant brief. The letter to Okera appeared in the record considered by the ALC, and it appeared in the record considered by our Supreme Court when it accepted Okera's appeal on direct review. See note 9 immediately below. At the bottom of the letter's first page, counsel stated as follows: "Right after the Wicker decision we indicated to the named parties that they should file a Wicker type claim and to tell everyone else to do so also. I hope that you received this information and did so." [emphasis supplied]. As explained in note 1 above, Ward was one of the named parties in *Torrence*. Thus, it appears that counsel advised Ward, like Okera, to file a grievance soon after *Wicker*'s release in 2004.

Okerá appealed to the ALC, and the ALC affirmed SCDC's decision. Okerá then appealed to our Court of Appeals, but our Supreme Court accepted his appeal on direct review.⁹ In its per curiam opinion, our Supreme Court affirmed the ALC's ruling as follows:

This is a direct appeal from an order of the [ALC] dismissing the appeal from [SCDC's] denial of [Okerá's] inmate grievance based on his failure to comply with the relevant statute of limitations set forth in [Policy GA-01.12]. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: [*Al-Shabazz*] (approving [SCDC's] internal procedures for discipline and grievances, which specify a fifteen-day time limit for filing for grievances). [emphasis supplied].

The following passage from our Supreme Court's decision in *Toth v. Square D Co.*, 377 S.E.2d 584, 586 – 87 (S.C. 1989), impacts SCDC's analysis and argument on this point:

Finally, we point out that this Court has already given retroactive effect to the [*Small v. Springs Industries, Inc.*, 357 S.E.2d 452 (S.C. 1987)] decision through our holding in *Francisco v. Black River Electric Cooperative*, Mem. Op. 87-MO-325 (S.C. filed July 27, 1987). ... Although we recognize that *Francisco* is a memorandum opinion without precedential value (footnote omitted), it nonetheless indicates that we have already implicitly allowed retroactive application of *Small*. By our holding today, we explicitly hold that *Small* is to be retroactively applied to causes of action arising prior to the date it was filed. [emphasis supplied].

⁹ On the first page of its June 29, 2009 order, the ALC ruled against Okerá and affirmed SCDC's denial of his grievance as follows:

This matter was remanded to [SCDC] on July 17, 2008 to determine if [Okerá] filed his grievance in the instant matter while he was employed under the prison industries program or within fifteen days of the time he completed, terminated, or cease employment under the prison industries program. The Record on Appeal was supplemented on December 29, 2008. In the record, it appears [Okerá] failed to file his step one grievance [until] six years after his last day of work in the prison industries. Therefore, [Okerá's] Appeal was untimely.

Based on the Record on Appeal, this appeal must be dismissed because [Okerá] failed to file his grievance in the instant matter while he was employed under the prison industries program, or within fifteen days of the time he completed, terminated, or ceased employment under the prison industries program. [emphasis supplied].

The above-quoted interpretation of the fifteen-day filing deadline articulated by the ALC in *Okerá* is identical or nearly identical to the interpretation from *Byrd* as discussed by Ward in his brief. SCDC respectfully submits copies of the ALC's July 17, 2008 and June 29, 2009 orders in *Okerá* as Exhibit B in support of its instant brief.

Therefore, by its memorandum opinion in *Oker*, our Supreme Court, under *Toth*, has implicitly affirmed the application of the fifteen-day filing deadline to a grievance in a posture identical to that of Ward's grievance, and SCDC respectfully urges this Court to do the same.

D. THE STANDARDS ASSOCIATED WITH EQUITABLE TOLLING

Returning to the sleight of hand he exhibited in his first supporting argument, Ward must confront the reality that he misapprehended *Hooper* and, for that matter, *Aikens*.

Our Court of Appeals has declined to apply the doctrine of equitable tolling from *Hooper* in several recent unpublished opinions. See *Teal v. Hickman-Tedder*, -- S.E.2d --, 2015 WL 9393946, *1 (S.C. Ct. App. Dec. 23, 2015) ("... we conclude equitable tolling would not be proper in this case: See [*Hooper*, 687 S.E.2d at 32] ("Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it."); [*Id.*, 687 S.E.2d at 33] ("Equitable tolling may be applied where it is justified under all the circumstances. We agree, however, that equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use."); [*Id.*] ("The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong *at the hands of the other*." [emphasis by Court]).

See also *Campbell v. Guignard*, -- S.E.2d --, 2015 WL 3819059, *1 (S.C. Ct. App. June 17, 2015) (quoting *Hooper*, 687 S.E.2d at 33); and *Griffis v. Cherry Hill Estates, LLC*, -- S.E.2d --, 2015 WL 1517412, *3 (S.C. Ct. App. Apr. 1, 2015) (quoting *Hooper*, 687 S.E.2d at 33).

Likewise, our federal courts have declined to apply the doctrine as established in *Hooper*. For example, in *Holmes v. Marion School Dist. One*, 2011 WL 4591647, *1 (D.S.C. Sept. 30, 2011), the federal court offered the following applicable analysis:

Additionally, the Court has carefully considered the plaintiffs' argument that the doctrine of equitable tolling applies to this case and their citation to *[Hooper]* in support. However, the Court finds that equitable tolling does not apply here and that *Hooper* is inapposite to the facts here because *Hooper* involved the question of whether equitable tolling should apply in limited circumstances such as when a defendant fails to properly list its registered agent for service with the South Carolina Secretary of State, as required by state law. *[Hooper, 687 S.E.2d at 32 – 34]*. The South Carolina Supreme Court noted equitable tolling "should be used sparingly." *Id.* at 33. [emphasis supplied].

The federal court in *Wellin v. Wellin*, 2014 WL 234216, *4, (D.S.C. Jan. 22, 2014), offered a more robust analysis when it considered both *Hooper* and *Magnolia North Property Owners' Ass'n, Inc. v. Heritage Communities, Inc.*, 725 S.E.2d 112 (S.C. Ct. App. 2012):

In South Carolina, equitable tolling "is a doctrine that should be used sparingly and only when the interests of justice compel its use." *[Hooper, 687 S.E.2d at 33]*. It is generally applied only where the defendant's actions hinder the plaintiff's discovery of or ability to pursue the claim. *[Hooper, 687 S.E.2d at 33 – 34]*; see also *[Magnolia North]* (tolling the statute of limitations for a homeowners association to file claims against the developer for the time that the developer controlled the homeowners association). "Equitable tolling does not [, however,] require a showing that the defendant has made a misrepresentation to the plaintiff." *[Magnolia North, 725 S.E.2d at 125]*.¹⁰ [emphasis supplied].

Ward also invoked *Aikens*, an unpublished decision by the Fourth Circuit. The *Aikens* court examined North Carolina precedent interpreting equitable tolling, because the controversy occurred there. It also considered precedent from a myriad of jurisdictions. While it cited *Hooper*, the *Aikens* court only did so as it examined instances where "courts have employed equitable tolling 'in a variety of contexts and have developed differing parameters for its application.'" 524 Fed.Appx. at 880. Importantly, the *Aikens* court omitted any reference to *Hooper's* admonition that the doctrine "should be used sparingly." 687 S.E.2d at 33.

¹⁰ Our Supreme Court granted certiorari in *Magnolia North* on June 26, 2014, but it subsequently dismissed the writ as improvidently granted. 777 S.E.2d 831, 832 (S.C. 2015).

Ward asserted that "all of the relevant conditions for equitable tolling are present in the instant case: (1) SCDC had adequate notice of [his] claims, as is apparent through *Torrence*; (2) SCDC will not suffer any prejudice from [his 2007 Step 1]; and (3) [he] acted both diligently and reasonably by filing his complaint with the circuit court during the course of his employment, and subsequently submitting his Step 1 Grievance within fifteen (15) days of the conclusion of that case." (Brief, p. 6). In so asserting, Ward relied not upon *Hooper* but upon *Aikens*, 524 Fed.Appx. at 880. The template for Ward's above-quoted three (3) part assertion does not exist in *Hooper*. Instead, Ward derived the template from the Fourth Circuit's application of precedent from jurisdictions other than South Carolina to the operative facts in *Aikens*.¹¹

E. EQUITABLE TOLLING DOES NOT APPLY

This Court should not apply equitable tolling in order to rescue Ward's Step 1 from the fifteen-day deadline, as SCDC did nothing whatsoever to hinder Ward's discovery of his wage claims or his ability to pursue his claims. Ward did not allege in his Step 1, Step 2, Notice of Appeal, or, for that matter, in his first supporting argument that SCDC did so.

Contrary to his assertion that he "acted both diligently and reasonably," Ward failed to file his Step 1 under any interpretation of the fifteen-day deadline from *Wright*, *Byrd*, or *Okeru*. Contrary to his assertion that it was undecided whether he could prosecute his wage claims

¹¹ In *Aikens*, 524 Fed.Appx. at 880, the Fourth Circuit also observed as follows:

At times, both the Supreme Court of the United States and our Court have referred to "equitable tolling" when describing "equitable estoppel." See [*Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990)] (observing that "[w]e have allowed equitable tolling in situations ... where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass"). [citation omitted].

In *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005), the United States Supreme Court relied on *Irwin* when it observed that, generally, "a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way. See, e.g., [*Irwin*, 498 U.S. 89 at 96]." [emphasis supplied].

through an action in circuit court, Ward confronted numerous instances in which he received notice that he needed to file a grievance under Policy GA-01.12 in order to prosecute his claims.

On August 13, 2001, the ALC ruled that Inmate Bennie Wicker properly raised his prison industries wage claims in a grievance he filed under Policy GA-01.12. *See Wicker v. S.C. Dep't of Corr.*, 2001 WL 1005574 (S.C. ALJ Div. Aug. 13, 2001). As discussed below, the circuit court in *Adkins* ruled that inmates did not have a private right of action under § 24-3-430(D), § 24-3-40, or any of the other applicable statutes by an order filed October 2, 2001. Our Supreme Court issued both *Adkins* and *Wicker* on August 23, 2004, and, soon afterwards, counsel for the inmate plaintiffs in *Torrence* notified the named parties, of which Ward was one, that they should file a grievance in which they raised their wage claims.¹²

If he couldn't discern from these milestones that he urgently needed to file a Step 1, the circuit court's dismissal of *Torrence* on May 31, 2005 surely alerted Ward of the need to do so.¹³

In *Pace v. DiGuglielmo*,¹⁴ 544 U.S. 408, 418 (2005), the United States Supreme Court observed that "[u]nder long-established principles, petitioner's lack of diligence precludes equity's operation. See [*Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990)]; *McQuiddy v. Ware*, 20 Wall. 14, 19, 22 L.Ed. 311 (1874) ('Equity always refuses to interfere where there has been gross laches in the prosecution of rights')."

Nothing, and certainly no action of any kind by SCDC, prevented or hindered Ward from filing his Step 1 before late June 2007. As observed in *Pace*, a decision very close in kinship to *Hooper*, Ward should not have equity interfere with his dilatory prosecution of his grievance.

¹² See note 8 above.

¹³ The civil action number for *Torrence* was 2001-CP-40-03409, and its circuit court history is available on Richland County's Public Index. SCDC respectfully submits a copy of the history as Exhibit C in support of its instant brief.

¹⁴ See note 11 above.

II. SCDC PAID WARD AT A LAWFUL HOURLY RATE FOR HIS LABOR

A. WARD'S THIRD SUPPORTING ARGUMENT

Ward opened his third supporting argument as follows (Brief, p. 7):

SCDC contends that, even if [§ 24-3-430(D)] applies to [Ward's] grievance, SCDC gave [Ward] the "proper rate of pay" for his work in the Project. (Step 2 Appeal Reply, pg. 5). SCDC bases this assertion on the fact that [Ward] received payment equal to the federal minimum wage in effect at that time. (Step 1 Grievance Response, p. 5).

Ward argued that SCDC's contention failed, and his main reason consisted of his assertion that § 24-3-430(D) required SCDC to pay him "the prevailing wage, not the federal minimum wage" for his labor. (Brief, p. 7). Ward invoked *Wicker*, 602 S.E.2d at 58, and *Hodges v. Rainey*, 533 S.E.2d 578, 581 (S.C. 2000) to support his assertion. (Brief, p. 7).

Ward concluded his third supporting argument by asserting that SCDC paid him at most \$5.25 per hour for his labor, "a rate far below the prevailing wage required by § 24-3-430(D)," and, consequentially, he argued that SCDC owes him "back wages from his participation in the Project to compensate for the difference between the wages Ward received and the prevailing wage in South Carolina in effect at that time."¹⁵ (Brief, p. 8).

Ward asserted that based upon "the readily available information regarding the prevailing wage for wire harness assembly at the time of [his] employment, SCDC should have paid [him] approximately \$8.00-\$13.00 per hour" for his labor. (Brief, p. 8). Ward supported his proposed \$8 to \$13 per hour wage range as follows (Brief, p. 8, n. 2):

Given that SCDC's responses fail to provide any evidence supporting the claim that [Ward] received the federal minimum wage during his work in the Project, [Ward] assumes that SCDC would agree that general information regarding minimum and prevailing wage is readily available to the public. The information relied on by [Ward] in this Brief is from a wage survey conducted by the U.S. Bureau of Labor and Statistics. In

¹⁵ As explained below, the "prevailing wage" for prison labor has never been, contrary to Ward's assertion, quantified by state law, state precedent, federal law, federal regulation or precedent from federal courts.

1997, the prevailing wage in South Carolina for wire harness assemblers was \$8.82 per hour. By 2003, the rate was \$13.63 per hour.

B. WARD'S THIRD SUPPORTING ARGUMENT IS DEFECTIVE

SCDC cannot agree to Ward's proposition, because the exact federal regulation which controls the project in which he participated contradicts it. See PIECP Guideline, Federal Register, Vol. 64, No. 66, April 7, 1999, p. 17009 – 10, ¶ (B). [64 FR 17000, *et seq.*].

Aside from this reality, Ward did not provide any documents or print-outs as supporting exhibits to verify his above-quoted "prevailing wage" figures. Thus, neither SCDC nor, more importantly, this Court may determine the exact source or sources for Ward's figures. Moreover, Ward did not offer either his purported "prevailing wage" figures or any documentation to verify such figures in or with his Step 1, his Step 2, or his Notice of Appeal.

As he did not argue that he was entitled to between \$8 and \$13 per hour in either his Step 1, his Step 2, or his Notice of Appeal, Ward may not articulate this argument for the very first time in his brief. See *Wilder Corp.*, *supra*. Accordingly, this Court should not consider Ward's "prevailing wage" figures or the argument he derived from these figures.

To the extent that this Court considers his third argument, SCDC respectfully submits it paid Ward at a lawful hourly rate for his labor.

1. Rulings by Our Supreme Court in *Adkins*.

Like Ward, the inmates in *Adkins* participated in a federal certified PIECP project operated by SCDC under the identical statutes and federal regulations, albeit at another institution.¹⁶ The *Adkins* Court, 602 S.E.2d at n. 6, recognized this reality:

The trial court relied upon federal cases interpreting the Ashurst-Sumners Act, 18 U.S.C. § 1761, to support its findings that the prevailing wage statute does not give rise to a private cause of action in inmates. In light of our holding, we need not address federal case law. However, we

¹⁶ See note 7 above.

note the trial court's ruling is supported by the caselaw. See *Harker v. State Use Industries*, 990 F.2d 131 (4th Cir.), cert. denied [510 U.S. 886, (1993)];¹⁷ *McMaster v. Minnesota*, 819 F.Supp. 1429 (D.Minn. 1993).¹⁸ [emphasis supplied].

In affirming in result the circuit court's decision in *Adkins*, our Supreme Court ruled that the overall purpose of our state's prison industries statutes "is to prevent unfair competition, and to aid society and the public in general," and, therefore, it could not "conclude that the statutes in question were enacted for the special benefit of inmates." 602 S.E.2d at 54.

2. Rulings by the Circuit Court in *Adkins*.

Obviously, the *Adkins* court considered not only the record generated during the trial conducted by the circuit court, but the circuit court's order.¹⁹

The inmates in *Adkins*, similar to Ward in his statement of the case, asserted that they became "employees" when they participated in a PIECP project operated by SCDC. The circuit court in *Adkins* found that the project in which they participated "is and has been since its inception certified by the United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (BJA) pursuant to the BJA's Prison Industry Enhancement Certification Program (PIECP)" and that "[t]he PIECP is codified at [18 U.S.C. § 1761(c)]."²⁰

However, the circuit court in *Adkins* ruled that the inmates had not been and were not then employees of the private industry sponsor. It also ruled that they had not been "transformed

¹⁷ In *Harker*, 990 F.2d at 135 – 36, the Fourth Circuit held that the FLSA, including the federal minimum wage and its overtime provisions, simply does not apply to "work done by inmates behind prison walls for any type of prison-operated industry or for the prison itself." [emphasis supplied and other citations omitted].

¹⁸ In *McMaster*, inmates in a Minnesota prison industries project invoked both the FLSA and the Ashurst-Sumners Act and demanded "minimum or prevailing wages for work performed in prison industries." 819 F.Supp. at 1433. The *McMaster* Court rejected the inmates' demand for minimum wage by ruling that "the relationship between the [inmates] and the state is not an employment relationship, but a custodial relationship to which the FLSA does not apply." [emphasis supplied]. *Id.*, 819 F.Supp. at 1438 (citing *Harker*, 990 F.2d at 132 – 33).

¹⁹ SCDC respectfully submits a copy of the circuit court's order in *Adkins*, filed October 30, 2002, in Exhibit D in support of its instant brief ["*Adkins* Order"].

²⁰ See the *Adkins* Order, p. 5 and p. 5, n. 13 – 14. See also notes 7 and 16 above.

from inmates into ... employees simply because" they participated in a project in which the private industry sponsor also participated and that they did not "enjoy the same benefits and protections as non-inmate employees enjoy in the regular, non-institutional workforce."²¹

3. No statute or precedent quantifies the "prevailing wage."

18 U.S.C. § 1761(C)(2) provides that inmates participating in PIECP projects must receive "wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work was performed." S.C. Code Ann. § 24-3-315 is nearly identical, as it provides that inmates participating in projects operated by SCDC under the federal PIECP program must receive "rates of pay" that "are not less than those paid and provided for work of a similar nature in the locality in which the work is performed."

The term "prevailing wage" doesn't even appear in either of the above-quoted statutes, but it appears in § 24-3-430(D), which provides that "[n] inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector." [emphasis supplied]. The term is not quantified elsewhere in § 24-3-430 or, for that matter, §§ 24-3-40 or 24-3-310, *et seq.*

Contrary to Ward's assertion and proposition, therefore, these statutes have never and do not currently quantify that "prevailing wage," and, likewise, no state precedent or federal precedent has ever done so.

4. Circuit court in *Adkins* addressed the "prevailing wage."

The circuit court in *Adkins* confronted the same reality, but, unlike Ward, it recognized the legitimate method by which SCDC fashioned the gross hourly wage it remitted to inmates who voluntarily participated in its PIECP projects:

²¹ *Id.*, pp. 5 – 7. In *Williams* and *Cartrette*, *supra*, our appellate courts later reached the same conclusion.

The evidence introduced by the parties at trial showed that South Carolina Employment Security Commission (ESC), the state agency responsible for collecting and publishing wage data for non-institutional businesses throughout South Carolina, reviewed and approved the permanent \$5.15 per hour wage SCDC pays the Plaintiffs for their [prison industries] labor.²²

On July 27, 2000, Director [Tony Ellis] wrote Mr. Ted Gladden, ESC's Assistant Director for Labor Market Information, and asked him to review the hourly wage rate for the DOI project in which the Plaintiffs participate. Director Ellis clearly stated that SCDC pays the Plaintiffs \$5.15 per hour. On August 4, 2000, Mr. Gladden responded to Director Ellis' inquiry by providing Director Ellis with a range of wages articulated as follows: "Low" = \$6.05, "Mean" = \$7.48, and "High" = \$8.29.

Ms. Rebecca Eleazer resolved any confusion surrounding the meaning of Mr. Gladden's August 4, 2000 response. The Plaintiffs called Ms. Eleazer, an ESC representative, during *their* case-in-chief, because she actually prepared Mr. Gladden's response. Ms. Eleazer clarified and explained Mr. Gladden's response.

Critically, however, the "floor" for the wage range described by Ms. Eleazer is the federal minimum wage of \$5.15 per hour, the rate alleged by the Plaintiffs in their first cause of action to be below the "prevailing wage" for work of a similar nature.

According to Ms. Eleazer, no business surveyed by her agency reported an hourly wage below the federal minimum wage of \$5.15 per hour. Therefore, the \$5.15 hourly wage SCDC pays the Plaintiffs for their [prison industries] labor at Tyger River falls within ESC's wage range as recited by Mr. Gladden in his August 4, 2000 letter to Director Ellis.²³ [emphasis supplied].

The circuit court in *Adkins* also acknowledged that "Ms. Eleazer emphasized her agency does not recognize or even use the term 'prevailing wage' in compiling or publishing its wage

²² The review conducted by ESC conformed to 64 FR 17009 – 10, ¶ (B). See p. 14 above. Again, SCDC asserts that the method by which Ward determined the "prevailing wage" of \$8 to \$13 per hour purportedly applicable to his labor is flatly contradicted by the precisely applicable federal regulation. (Brief, p. 8, n. 2).

²³ See the *Adkins* Order, pp. 26 – 27. Our Supreme Court could have addressed this holding in *Adkins*, but it instead ruled that no private cause of action existed under prison industries statutes. Thus, the circuit court's finding remains viable, and it constitutes the law of the case in *Adkins* on this issue.

data,” and, therefore, the inmates introduced no evidence to support their allegation that the prevailing wage for their labor ranged from \$9 to \$14 per hour.²⁴

5. Ward’s wage conformed to the applicable laws and regulations.

As established by the above-quoted passages from the circuit court’s order in *Adkins*, SCDC conformed to the wage data collected and published by the ESC when it paid Ward an hourly rate of \$5.25 for his labor, a rate which was \$0.10 above the federal minimum wage.

Accordingly, Ward’s third supporting argument is fundamentally defective, SCDC respectfully urges this Court to affirm its denial of Ward’s wage claims.

III. SECTION 24-3-410(B)(7) APPLIED TO WARD’S LABOR

A. WARD’S SECOND SUPPORTING ARGUMENT

Ward opened his second supporting argument as follows (Brief, p. 6):

SCDC claims that even if [Ward] filed a timely grievance, his claims are not viable because [§ 24-3-430(D)] does not apply to the instant case. It seems SCDC has misinterpreted *Adkins* and *Wicker* as holding that inmates do not have a right under § 24-3-430(D), and that § 24-3-410(B)(7) is the applicable statute for such claims. (Step 1 Grievance Response, p. 4, Step 2 Appeal Reply, p. 5).

Ward asserted that “SCDC was mistaken,” and the first ground upon which he asserted SCDC was mistaken was that “neither the court in *Adkins* or *Wicker* concluded that § 24-3-410(B)(7) applies to inmates’ prevailing wage claims.” (Brief, p. 6). Ward continued by stated that “[u]nder *Adkins* and *Wicker*, the South Carolina Supreme Court determined that inmates may enforce their rights under § 24-3-430(D) through [Policy Number GA-01.12].” [citations omitted]. (Brief, p. 7). Finally, Ward invoked *Byrd* for the proposition that the ALC has

²⁴ See the *Adkins* Order, pp. 26 – 28. The circuit court in *Torrence* never conducted a trial in the class action brought by the inmate plaintiffs, one of the lead plaintiffs being Ward. Instead, the circuit court in *Torrence*, after the Supreme Court affirmed in result the circuit court’s rulings in *Adkins* and affirmed the ALC in *Wicker*, granted SCDC’s motion for summary judgment on May 31, 2005. See note 13 above. Therefore, the circuit court’s trial in *Adkins* is the only instance in which evidence purportedly supporting such claims has been heard and adjudicated.

confirmed that § 24-3-430(D) "governs 'the payment of prevailing wage to an inmate participating in the prison industries program.'" (Brief, p. 7).

B. WARD'S THIRD SUPPORTING ARGUMENT IS DEFECTIVE

Further analysis of § 24-3-430 and § 18 U.S.C. § 1761, as well as the relevant federal regulations, reveals the defective nature of Ward's argument.

1. Section 24-3-430.

By its enactment of § 24-3-430, our General Assembly enabled SCDC to establish and operate such a "federal certified private sector/prison industries program." Echoing the Ashurst-Sumners Act (18 U.S.C. § 1761), § 24-3-430(A) allows SCDC to "establish a program involving the use of inmate labor ... in private industry for the manufacturing and processing of goods, wares, or merchandise ... or another business or commercial enterprise considered by the director to enhance the general welfare of South Carolina." Section 24-3-430(G) specifically references federally certified projects administered by BJA by declaring that "[n]o inmate who participates in a project designated by the Director of [BJA] pursuant to Public Law 90-351 is eligible for unemployment compensation upon termination from the program."

As first examined above, our General Assembly assimilated the key provisions of Ashurst-Sumners, specifically 18 U.S.C.A. § 1761(c)(2) and (c)(4), by enacting the following subsections to § 24-3-430, which are the head waters of our state's "prevailing wage" statutes:

- (C) An inmate may participate in the program established pursuant to this section only on a voluntary basis and only after he has been informed of the conditions of his employment.
- (D) No inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector.
- (E) Inmate participation in the program may not result in the displacement of employed workers in the State of South Carolina and may not impair existing contracts for services.

2. The Ashurst-Sumners Act, 18 U.S.C. § 1761.

The first component of Ashurst-Sumners, 18 U.S.C.A. § 1761(a), criminalized the transportation in interstate commerce of "any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners," and, again, our General Assembly assimilated this standard in § 24-3-410(A). Another component of Ashurst-Sumners, 18 U.S.C. § 1761(c), provided an exception to the criminal penalties established by § 1761(a) for such items that are "manufactured, produced, or mined by convicts or prisoners" who:

- (1) are participating in--one of not more than 50 non-Federal prison work pilot projects designated by the Director of the Bureau of Justice Assistance;
- (2) have, in connection with such work, received wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work was performed,²⁵ except that such wages may be subject to deductions which shall not, in the aggregate, exceed 80 per centum of gross wages, and shall be limited as follows:²⁶
 - (A) taxes (Federal, State, local);
 - (B) reasonable charges for room and board, as determined by regulations issued by the chief State correctional officer, in the case of a State prisoner;
 - (C) allocations for support of family pursuant to State statute, court order, or agreement by the offender;
 - (D) contributions to any fund established by law to compensate the victims of crime of not more than 20 per centum but not less than 5 per centum of gross wages;
- (4) have participated in such employment voluntarily and have agreed in advance to the specific deductions made from gross wages pursuant to this section, and all other financial arrangements as a result of participation in such employment.

Our legislature assimilated the standards of § 1761(c)(2) and (c)(4) into §§ 24-3-430(C) and (D). However, as discussed above, § 1761(c)(2) does not include the term "prevailing wage."

²⁵ See S.C. Code Ann. § 24-3-315.

²⁶ See S.C. Code Ann. § 24-3-40(A).

3. 64 FR 17000, *et seq.*

The BJA, as acknowledged by the circuit court in *Adkins* and as recognized by § 1761(c)(1), is the arm of the federal government which coordinates with state correctional authorities, such as SCDC, to establish, certify, and monitor PIECP projects, such as the project in which Ward participated at Evans.

BJA acts through federal regulation, specifically 64 FR 17000, *et seq.* The effective date of the current version of 64 FR 17000 is April 7, 1999.

As stated by BJA, 64 FR 17007, the PIECP serves four (4) purposes, and, to affect these purposes, BJA articulated the following definitions applicable to PIECP projects:

Minimum wage refers to the Federal minimum wage which is the lowest possible wage that can be paid to private sector employees under the [FLSA]. [emphasis supplied].

BJA, 64 FR 17007, articulated the following additional applicable definition:

Prevailing wage is a wage rate which is not less than that paid for work of a similar nature in the locality in which the work is to be performed, 18 U.S.C. 1761(c)(2). [emphasis supplied].

BJA, 64 FR 17009 – 10, also addressed wages for inmates in PIECP projects:

PIECP inmate workers must receive wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work is to be performed. ... Toward this end, the following requirements are applicable:

...
(B) Prevailing wage verification must be obtained by the appropriate state agency which determines wage rates (usually the Department of Economic Security).²⁷

...
(G) The PIECP prevailing wage [cannot] be set below the Federal minimum wage, as defined in the [FLSA]. Payment of the Federal minimum wage, however, does not automatically achieve compliance with the prevailing wage requirement *unless* the prevailing wage for the comparable private sector industries is, in fact, the Federal minimum wage. [emphasis supplied].

²⁷ See note 22 above. See also p. 14 above.

The logic and analysis reflected by the circuit court's ruling in *Adkins*, namely that SCDC conformed to the wage data collected and published by the ESC when it paid the inmates an hourly rate equal to the federal minimum wage, tracks with 64 FR 170009 – 10, ¶(G).²⁸

4. Section 24-3-410(B)(7).

Critically, the circuit court in *Adkins* rejected the inmates' contention that § 24-3-430(D) even applied to their "prevailing wage" demand, and it ruled instead that § 24-3-410 and, specifically, § 24-3-410(B)(7) governed the inmates hourly wage "in the federally certified PIECP project operated by [SCDC], in conjunction with Standard Plywoods, at Tyger River."

As recognized by the circuit court in *Adkins*, § 24-3-410(B)(7) must be read in conjunction with the rest of § 24-3-410, and, specifically, § 24-3-410(A).²⁹

- (A) It is unlawful to sell or offer for sale on the open market of this State articles or projects manufactured or produced wholly or in part by inmates in this or another state.
- (B) The provisions of this section do not apply to:
 - (7) products sold intrastate or interstate produced by inmates of [SCDC] employed in a *federally certified private sector/prison industries program* if the *inmate workers participate voluntarily, receive comparable wages, and the work does not displace employed workers.* ... The Department of Labor shall develop guidelines to determine if the work displaces employed workers. [italicized and underlined emphasis supplied by the circuit court].

The circuit court in *Adkins* concluded that § 24-3-410(B)(7) "precisely addresses activity in the [SCDC's] project in which the [inmates] participate, which is a 'federal certified private sector/prison industries program.'" It then ruled that the inmates' "demand for the 'prevailing wage' is unsupported by the precisely applicable statutory authority," as § 24-3-410(B)(7) only

²⁸ See note 23 above.

²⁹ See the *Adkins* Order, pp. 18 – 19.

provides that they "should receive comparable wages and not the 'prevailing wage' for their [prison industries] labor." Finally, it ruled that the hourly wage that SCDC paid the inmates after they the first 320 hours of their labor, "i.e. the federal minimum wage of \$5.15 per hour, conforms to both the 'comparable wage' standard from [§ 24-3-410(B)(7)] and the 'prevailing wage' standard from [§ 24-3-430(D)] under the guidelines published by the [ESC]."³⁰

5. Ward's gross wage conformed to § 24-3-410(B)(7).

As established by the above-quoted passages from the circuit court's order in *Adkins*, SCDC properly declared that § 24-3-410(B)(7) applied to the wage it paid Ward for his labor.

Accordingly, Ward's second supporting argument is defective, SCDC respectfully urges this Court to affirm its denial of Ward's wage claims.

IV. WARD'S GROSS WAGE EQUALED ONLY \$5.25 PER HOUR

A. WARD'S FOURTH SUPPORTING ARGUMENT

Ward opened his fourth and final supporting argument by asserting that "SCDC also withheld \$1.92 per hour from [his] compensation for 'overhead' costs. (Step 1 Grievance)," and he continued as argument as follows (Brief, p. 8):

SCDC claims that South Carolina law "compel[s]" [it] to collect an hourly overhead cost from private industry sponsors. (Step 1 Grievance Response, p. 5). However, the court in *Torrence*, referencing the \$1.92 deduction by SCDC, noted that if the agency "removes any of the money remitted by the private industry sponsor and then disburses the percentages listed in [§ 24-3-40] based on the lower rate, [SCDC] would be in violation of the plain language of the statute which directs it to disburse the money based on the gross wages." [*Torrence*, 646 S.E.2d at 870, n. 4].

Ward then concluded his argument as follows (Brief, pp. 8 – 9):

The only support SCDC provides with respect to its \$1.92 deduction is the threadbare assertion that [it] required "overhead costs" for the program. However, there is no explanation or discussion that breaks down those

³⁰ See the *Adkins* Order, pp. 20 – 21.

costs, or demonstrates that SCDC did in fact disburse the money based on gross wages. Without more, the agency fails to adequately rebut this issue,³¹ and as a result, SCDC should compensate [Ward] for the hourly deductions from his paycheck.

B. WARD'S FOURTH SUPPORTING ARGUMENT IS DEFECTIVE

In the first of the two (2) above-quoted passages from his fourth argument, Ward failed to accurately quote the relevant language from *Torrence*, 646 S.E.2d at 870, n. 4.

The relevant language, in its entirety, reads as follows:

..., *if appellants prove true* their allegation that [SCDC] removes any of the money remitted by the private industry sponsor and then disburses the percentages listed in [§ 24-3-40] based on the lower rate, [SCDC] 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).* [italicized emphasis supplied; bold emphasis supplied by the Court].

Ward has not proven true his allegation that it removed \$1.92 per hour from his gross wages, because his Ward's gross wage never included the \$1.92 per hour figure as he claimed.

1. The contract between SCDC and ESCOD.

On or about March 3, 2001, SCDC entered into a 5-year contract with ESCOD to engage in PIECP project at Evans.³² SCDC and ESCOD were the only parties to the contract, and its expressly stated purpose was "to fulfill the intent of [§ 24-3-310]."³³

Section 3.3, entitled "Mutual Duties of the Parties," provided as follows:³⁴

1. Hourly Rate: Contractor and SCDC agree to an hourly rate determined as follows:

Prevailing Wage (See Appendix D) \$5.25

³¹ SCDC respectfully submits that Ward, as the appellant, bears the burden of demonstrating that sufficient grounds exist upon which this Court should reverse or modify SCDC's final decision under § 1-23-380(5).

³² SCDC respectfully submits its contract with ESCOD as Exhibit E in support of its instant brief. ["Contract"]. The copy submitted as Exhibit E served as a deposition exhibit during the litigation of *Torrence* in circuit court.

³³ See Contract, p. 1.

³⁴ See Contract, pp. 7 – 8.

Prorata Social Security	.40
Prorata Workers' Compensation Premium	.20
<u>SCDC Surplus Fund Amount</u>	<u>1.32</u>
Hourly Rate charged to Contract	\$7.17

At no time during this agreement will inmates be paid less than the prevailing wage as set forth in Appendix D. The prevailing wage rate is to be established annually by the S.C. Employment Security Commission.³⁵

SCDC and the Contractor will negotiate the "SCDC Surplus Fund Amount" annually.

Apart from the lawful gross wage of \$5.25, the parties lawfully and properly negotiated, as reflected by § 3.3, that ESCOD pay SCDC for both SCDC's pro rata Social Security withholdings (\$0.40 per inmate labor hour) and its pro rata Workers' Compensation premiums (\$0.20 per inmate labor hour). Likewise, the parties lawfully negotiated that ESCOD pay SCDC an additional \$1.32 per inmate labor hour towards the "SCDC Surplus Fund Amount."

2. The \$1.92 figure is the total of three (3) other figures.

The three (3) figures discussed above total \$1.92 (e.g. \$1.32 + \$0.40 + \$0.20), and they were legitimately and lawfully not included in Ward's gross wage of \$5.25 per hour.

Just as in its contract with ESCOD, the contract at issue in *Adkins* reflected that SCDC also charged the private industry sponsor \$1.32 per inmate labor hour in addition to the inmates' gross wage, and the circuit court in *Adkins* addressed the \$1.32 charge as follows:³⁶

In the course of advising BJA of [SCDC's] training wage policy and schedule, [former Division of Industries Director Tony Ellis] also advised BJA of [SCDC's] \$1.32 per hour overhead charge. BJA did not object to this \$1.32 per hour overhead charge, and the [inmates] did not introduce any evidence indicating such a charge for overhead violated any applicable state or federal law. [emphasis supplied].

³⁵ See notes 22 and 27 above. See also p. 14 above.

³⁶ See *Adkins* Order, p. 16.

18 U.S.C. § 1761(c)(3) states that inmates may not be “deprived of the right to participate in benefits made available by the Federal or State Government to other individuals on the basis of their employment,” and Ward’s participation in our nation’s Social Security system qualifies as such a benefit.³⁷ Thus, by charging ESCOD the rate of \$0.40 per hour for pro rata “Social Security Withholding Payment,” SCDC complied with the operative federal requirement.

Section 1761(c)(3) also explicitly mentions “workmen’s compensation” as one of the benefits it contemplates, and, critically, S.C. Code Ann. § 42-1-480 articulates the workers’ compensation provisions applicable to inmates in our state. Thus, by charging ESCOD the rate of \$0.20 per hour for pro rata “Workers’ Compensation Premium,” SCDC again complied with both the applicable federal and state laws.

3. The \$1.92 figure conforms to the applicable statutes.

Section 24-3-190, which is entitled “Appropriation of balances for Penitentiary,” states that the “balance in the hands of [SCDC] at the close of any year, together with all other amounts received or to be received from the hire of convicts or from any other source during the current fiscal year, are appropriated for the support of the penitentiary.”

Section 24-3-310 provides that SCDC must “utilize the labor of inmates for self-maintenance and for reimbursing this State for expenses incurred by reason of their crimes and imprisonment,” and it conforms to § 24-1-20, which is entitled “Declaration of policy” and which establishes that SCDC must be managed in a “manner consistent with the operation of a modern prison system, and with a view of making the system self-sustaining.”

Ultimately, § 24-3-400 explicitly contemplates the manner in which SCDC must cover the expenses it incurs in the course of operating its prison industries program:

³⁷ See also BJA Program Brief, <https://www.ncjrs.gov/html/bja/piccp/bja-prison-industr.html>.

All monies collected by the [SCDC] from the sale or disposition of articles and products manufactured or produced by convict labor, in accordance with the provisions of this article, must be forthwith deposited with the State Treasurer to be kept and maintained as a special revolving account designated 'Prison Industries Account,' and the monies so collected and deposited must be used solely for the purchase of manufacturing supplies, equipment, machinery, and buildings used to carry out the purposes of this article, as well as for the payment of the necessary personnel in charge, and to otherwise defray the necessary expenses incident thereto ... When, in the opinion of [SCDC's Director], the Prison Industries Account has reached a sum in excess of the requirements of this article, the excess must be used by [SCDC] for operating expenses and permanent improvements to the state prison system, subject to the approval of the State Budget and Control Board. [emphasis supplied].

Without charging ESCOD \$1.92 per hour above the lawful gross wage of \$5.25 per hour, SCDC would be unable to comply with the provisions of § 24-3-400, as § 24-3-40 sets aside no monies for SCDC by which it may defray the expenses associated with the operation of its prison industries program.³⁸ If it recalculated the inmate wage structure in the manner advocated by Ward, then SCDC would undoubtedly incur a deficiency by continuing to operate its prison industries program, and such a contingency would animate § 11-9-220 which makes it "unlawful for any department, institution, commission or board of the State government or officer or agent of the State government authorized to make contracts or draw appropriations to contract indebtedness in excess of the amount specifically provided in the annual appropriations act."

4. Ward failed to prove true his allegation about the \$1.92 figure.

As illustrated above, Ward did not prove true, as required by *Torrence*, 646 S.E.2d at 870, n. 4, his allegation that SCDC removed any monies from his gross wage remitted by ESCOD before SCDC assessed § 24-3-40(A)'s deductions, because his gross wage did not include the \$1.92 per hour figure. Thus, Ward's fourth supporting argument is defective, and SCDC respectfully urges this Court to affirm its denial of Ward's wage claims.

³⁸ Section 24-3-40(A)(3) mandates that SCDC must withhold 25% of an inmate's gross wages only to "defray the cost of the prisoner's room and board" and only if the inmate possesses no child support obligations.

V. WARD'S CLAIM FOR IMMEDIATE ACCESS TO ANY MONIES DEDUCTED FROM HIS GROSS WAGES AND HELD IN ESCROW UNDER § 24-3-40(A)(5)

In the section of his Step 1 form labeled "STATE GRIEVANCE," Ward raised the above-quoted claim by demanding "immediate access to monies held in escrow by SCDC from an inmate service a sentence of life without parole," and he cited § 24-3-40(B)(2).

In the section of his Step 1 form labeled "ACTION REQUESTED," Ward again demanded "immediate access of long [term] savings held in escrow by" SCDC. In the section of his Step 2 form labeled "INMATE'S REASON FOR APPEAL," Ward reasserted all of the claims from his Step 1, including, obviously, his demand for immediate access to the monies held in escrow by SCDC in accordance with § 24-3-40(B)(2).³⁹

In his Notice of Appeal, Ward identified the following additional ground: "I should also recover my long [term] savings held in escrow illegally, due to having to sign a new contract, changing access to my long term savings – to no access, [I] signed under duress."

However, Ward provided no supporting argument whatsoever in his brief concerning this issue. For that matter, Ward failed to even utter "immediate access," "held in escrow," "escrow," § 24-3-40(B)(2), or § 24-3-40(A)(5) anywhere in his brief. Consequentially, SCDC's denial of Ward's claim on this issue constitutes the law of the case. *See Burton v. County of Abbeville*, 440 S.E.2d 396, 398 (S.C. Ct. App. 1994) ("Burton never mentions or challenges this ruling in her brief, and, therefore, it is the law of this case.") [citations omitted]. *See also State v. Fripp*, 721 S.E.2d 465, 468 (S.C. Ct. App. 2012) (citing *Burton*).

³⁹ Section 24-3-40(B)(2) provides that an inmate serving life in prison "shall be given the option of having" his wages held in escrow by SCDC in accordance with § 24-3-40(A)(5) "included in his estate or distributed to the persons or entitles of his choice." Section 24-3-40(A)(5) required SCDC to deduct ten percent of an inmate's gross wages and hold said monies "in an interest bearing escrow account for the benefit of the prisoner."

CONCLUSION

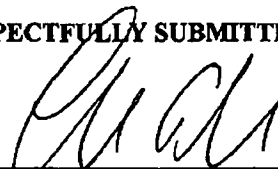
SCDC respectfully asserts that Ward's arguments do not satisfy any of the requirements from § 1-23-380(5)(a)-(f) by which this Court may reverse SCDC's final decision.

More specifically, as he is not entitled to equitable tolling, all of the wage claims Ward presented in his Step 1 were time-barred. Should the Court apply equitable tolling to rescue his Step 1, it should still find that SCDC properly denied Ward's wage claims.

Under either contingency, SCDC respectfully urges this Court to, for all of the foregoing reasons, affirm the final decision by which SCDC denied Ward's grievance.

However, to the extent that it determines that it needs additional materials to fully consider and adjudicate the issues presently before it, SCDC respectfully urges this Court to, under § 1-23-380(5), remand this matter so that the parties may supplement the Record.

RESPECTFULLY SUBMITTED,



Lake E. Summers
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@mtsollawfirm.com

Outside Counsel for the Respondent

Columbia, South Carolina
April 11, 2016

HELEN T. MCFADDEN, ESQ.

P.O. BOX 1114

Kingstree, South Carolina 29556

Telephone
843-355-5200Facsimile
843-355-7658

May 30, 2007

Michael Burns # 228442
Lee Correctional Institution
990 Wiscacky Hwy.
Bishopville, SC 29010

Dear Mr. Burns,

You are one of the class of prisoners who was represented in the action *Torrence v. S. C. D. C.* who has written to me individually. This case, like all of the others before it, was treated in the circuit courts with a determination to give prisoners nothing. The circuit court granted the motion for summary judgment against the prisoners and the two other classes we joined with it—mothers of the children of prisoners and victims who would receive money from the prisoner funds. After the summary judgment we took the appeal to the South Carolina Supreme Court. The Court ruled in this case on May 7, 2007, holding that the prisoners did not have a right to pursue this matter in circuit court, but that the right outlined in *Wicker* was available to them. The text below is a quote from the opinion.

Appellants claim that despite the holdings of *Adkins* and *Wicker*, the Prisoner Subclass should be able to proceed in circuit court in the posture of a declaratory judgment action. We disagree. The clear rule emerging from the *Adkins* and *Wicker* cases is this: inmates working in the Prison Industries Program have a cognizable, state-created interest in having the DOC pay them according to the statutory scheme governing the Program, but they do not have a private right of action; instead, the DOC's internal grievance procedure, with recourse to the Administrative Law Court, is the appropriate way to have a prisoner's wage claim adjudicated. Therefore, the trial court correctly applied *Adkins* and *Wicker* to the Prisoner Subclass. To hold otherwise would contravene our precedent on these issues by allowing inmates access to the circuit court merely by styling their cases as declaratory judgment actions.

The Court went on to say that this was the only route available to the mother class and the victim class also.

SCDC has asked for reconsideration of the opinion, seeking to have the Court overturn *Wicker* in essence. We don't think there is much likelihood of a change of the opinion in a rehearing. Right after the *Wicker* decision we indicated to the named parties that they should file a *Wicker* type claim and to tell everyone else to do so also. I hope that you received this information and did so.

EXHIBIT C

SCDC

SUPPLEMENTAL RECORD ON APPEAL

52

SCDC's Brief

Exhibit A

Page 2
May 30, 2007

The lawyers who have worked on this matter believe that you have not been treated fairly in the payment of the wages. However, the underlying reason for the loss is the effect on the state budget, not solely the consideration of the law and a determination that it is correctly applied. We had joined the claims of mothers and victims to try to persuade the Court that not only were prisoners being poorly treated, that the real beneficiaries of the statute were not receiving the benefits outlined by the legislative action. This was not sufficiently persuasive.

I send my sincere regrets that this case did not result in a favorable verdict..

With regards,

Sincerely,



Helen T. McFadden, Esq.

EXHIBIT C cont.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Michael Burns aka Jafa D.B. Okers
#228442,

Appellant,

vs.

South Carolina Department of
Corrections,

Respondent.

FINAL ORDER

**DOCKET NO. 06-ALJ-04-00173-AP
GRIEVANCE NO: ECI 2007-05**

The Honorable Carolyn C. Matthews
July 17, 2008

In the above-captioned matter, Appellant Williams appeals the decision of Respondent South Carolina Department of Corrections ("Department") to deny his grievance concerning payment of prevailing wages and overtime pay. He argues that he is owed back wages that he argues is owed to him for work performed in the Prison Industries private sector program ("prison industries program"). Appellant's challenge is contained within his Steps 1 and 2 Inmate Grievance Form, submitted July 11, 2005, and January 22, 2005, respectively, and identified as grievance number ECI 2007-05. In response to Appellant's grievance, the Department contends that Appellant failed to file a grievance within fifteen (15) days of the occurrence of the alleged grievance, in accordance with SCDC Policy Number QA-01.12, § 13.1. Therefore, by final agency decision dated January 13, 2006, the Department denied Appellant's grievance. Appellant now appeals that denial before this Court. Based upon the record in this appeal, I affirm the Department's decision.

DISCUSSION

This appeal is before this Court pursuant to *Al-Shabazz v. State*, 338 S.C. 334, 577 S.E.2d 742 (2000), *Sullivan v. South Carolina Department of Corrections*, 355 S.C. 437, 586 S.E.2d 124 (2003), and *Slonek v. South Carolina Department of Corrections*, 361 S.C. 327, 605 S.E.2d 506 (2004). In this matter, Appellant complains that he was not paid the prevailing wage for work performed in the private sector program, as mandated by S.C. Code Ann. § 24-3-430 (Supp. 2005). Specifically, Section 24-3-430(D) clearly provides that "No inmate participating

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JUL 17 2008

SC ADMIN. LAW COURT

SCDC

SUPPLEMENTAL RECORD ON APPEAL

SCDC's Brief

Exhibit B

in the [prison industries] program may earn less than the prevailing wage for work of similar nature in the private sector." *Id.* The Supreme Court of South Carolina has unequivocally held in *Wicker v. South Carolina Dep't of Corrections*, 360 S.C. 421, 602 S.E.2d 56 (2004) that: (1) an inmate is entitled to file a grievance when not being paid the prevailing wage; (2) the ALC has jurisdiction to review the Department's failure to pay the prevailing wage; and, (3) an inmate is entitled to be paid the prevailing wage while working in the private sector program. *Id.* at 421, 602 S.E.2d at 56.

In addition to the requirement that an inmate must file a grievance within fifteen days of an alleged incident, SCDC Policy Number GA-01-12, paragraph 13.1 states that "[i]nmates will only be allowed to submit one grievance per incident or circumstance." Applying this policy provision to the instant matter would lead to an absurd result for this tribunal to find that an inmate must file a separate grievance for each day of work performed or for each pay period. A more logical result would be to interpret the policy so as to find that an inmate has timely filed a prevailing wage grievance if he filed during the course or term of employment or within fifteen days of the completion of a term of employment, regardless of when he initially began employment with the prison industries program. That is, as long as an inmate filed during the term of employment or within fifteen days of the cessation of a term or period of employment, such inmate has satisfied the filing provision of SCDC Policy Number GA-01.12, § 13.1.

Aside from the Department's assertion concerning the filing period for an inmate grievance, this tribunal is confounded that the Department would still make the kinds of arguments it has made in the instant case concerning the inmate's claim of entitlement to the prevailing wage. In *Wicker*, the Court stated that while the inmate has no claim for civil damages¹, an inmate may challenge the wages he is being paid through the Department's grievance procedure, particularly where there is a statute mandating payment of the prevailing wage. *Wicker*, 360 S.C. at 423, 602 S.E.2d at 57.² Further, there is nothing in the statutory scheme, as set out in Chapter 3 of Title 24 of the South Carolina Code of Laws, authorizing the

¹ In *Wicker v. South Carolina Dep't of Corrections*, 360 S.C. 413, 602 S.E.2d 51 (2004), the Supreme Court specifically held that the Department's "failure to pay a certain wage simply does not constitute a tort so as to be cognizable under the Tort Claims Act." *Id.* at 34.

² It is worth noting that the Court in *Wicker* did not set the prevailing wage for all inmates. *Wicker*, 360 S.C. 421, 602 S.E.2d 56 (2004). Rather, the court determined the prevailing wage in the private sector, at that time, and for the work performed by the individual inmate in *Wicker*. *Id.* This five dollars and twenty-five cents (\$5.25) figure established in *Wicker* was the prevailing wage for that inmate, and it is not necessarily the prevailing wage in the instant case.

Department to pay an inmate less than the prevailing wage. *Id.* at 425, 602 S.E.2d at 58; S.C. Code Ann. §§ 24-3-310 to -430 (Supp. 2005). Rather, Section 24-3-430 mandates the payment of the prevailing wage to an inmate participating in the prison industries program. S.C. Code Ann. § 24-3-430 (Supp. 2005).

In its appellate brief, the Department states Appellant began his participation in the Prison Industries project located at Evans Correctional Institution on or about June 25, 1997. Based upon this extended period of time, the Department argues that Appellant failed to timely file his grievance.³ However, although the Department indicates the time period Appellant began work with the prison industries program, the Department fails to state the day Appellant ceased working with the prison industries.

In addition to the requirement that an inmate must file a grievance within fifteen days of an alleged incident, SCDC Policy Number OA-01-12, paragraph 13.1 also states that "[i]nmates will only be allowed to submit one grievance per incident or circumstance." In applying this policy provision to the instant matter, it would lead to an absurd result for this tribunal to find that an inmate must file a grievance for each day of work performed or for each pay period. A more logical result would be to interpret the policy so as to find that an inmate has timely filed a prevailing wage grievance if he filed during the course or term of employment or within fifteen days of the completion of a term of employment, regardless of when he initially began employment with the prison industries program. That is, as long as an inmate filed during the term of employment or within fifteen days of the cessation of a term or period of employment, such inmate has satisfied the filing provision of SCDC Policy Number OA-01-12, paragraph 13.1.

In *Wicker*, the Court stated that while the inmate has no claim for civil damages⁴, an

³ While the Department does not specifically cite its policy, SCDC Policy Number OA-01-12, paragraph 13.1, in its appellate brief the Warden informed Appellant in his Step One and Two Grievance Forms that his grievance was denied based upon Appellant's failure to file his grievance within the deadline mandated by SCDC Policy Number OA-01-12, § 13.1. The two-year statute of limitations in S.C. Code Ann. § 15-75-100 does not apply to administrative matters. Section 15-75-100 provides that except as to persons under disability, claims for damages under the South Carolina Tort Claims Act must be filed "within two years after the loss was or should have been discovered." Claims brought before the ALC for failure to pay wages in accordance with S.C. Code Ann. § 24-3-430 (Supp. 2005) are not brought pursuant to the Tort Claims Act. In fact, in *Adkins v. South Carolina Dept. of Corrections*, 260 S.C. 411, 602 S.E.2d 31 (2004), the Supreme Court specifically held that the Department's "failure to pay a certain wage simply does not constitute a tort so as to be cognizable under the Tort Claims Act." *Id.* at 34.

⁴ Accordingly, the two-year statute of limitations in S.C. Code Ann. § 15-75-100 does not apply to administrative matters. Section 15-75-100 provides that except as to persons under disability, claims for damages under the South Carolina Tort Claims Act must be filed "within two years after the loss was or should have been discovered."

inmate may challenge the wages he is being paid through the Department's grievance procedures, particularly where there is a statute mandating payment of the prevailing wage. *Wicker*, 360 S.C. at 423, 602 S.E.2d at 57.² Further, there is nothing in the statutory scheme, as set out in Chapter 3 of Title 24 of the South Carolina Code of Laws, authorizing the Department to pay an inmate less than the prevailing wage. *Id.*, at 425, 602 S.E.2d at 58; S.C. Code Ann. §§ 24-3-310 to -430 (Supp. 2005). Rather, Section 24-3-430 mandates the payment of the prevailing wage to an inmate participating in the prison industries program. S.C. Code Ann. § 24-3-430 (Supp. 2005).

ORDER

For the reasons set forth above,

IT IS HEREBY ORDERED that the Department shall determine if Appellant filed his grievance in the instant matter while he was employed under the prison industries program relating to the instant matter, or if Appellant filed his grievance within fifteen days of the time he completed, terminated, or ceased employment under the prison industries program. The Department's decision to deny Appellant's grievance must be affirmed if it is determined that Appellant did not file within the fifteen-day time period, as stated above.

IT IS FURTHER ORDERED that if the Department finds that Appellant satisfied this time limit requirement, as stated above, the Department's decision to deny Appellant's grievance must be reversed.

IT IS FURTHER ORDERED that if the Appellant filed a grievance while employed in the term of employment which is the subject of this case, or within fifteen (15) days of the completion, termination, or cessation of employment under the prison industries program, the Department shall pay the prevailing wage to the Appellant for work performed in the prison

However, cases brought before the ALC for failure to pay wages in accordance with S.C. Code Ann. § 24-3-430 (Supp. 2005) are not brought pursuant to the Tort Claims Act. In fact, in *Adkins v. South Carolina Dept. of Corrections*, 360 S.C. 413, 602 S.E.2d 51 (2004), the Supreme Court specifically held that the Department's "failure to pay a certain wage simply does not constitute a tort so as to be cognizable under the Tort Claims Act." *Id.* at 54. It is worth noting that the Court in *Wicker* did not set the prevailing wage for all inmates. *Wicker*, 360 S.C. 421, 602 S.E.2d 56 (2004). Rather, the court determined the prevailing wage in the private sector, at that time, and for the work performed by the individual inmate in *Wicker*. *Id.* This five dollars and twenty-five cents (\$5.25) figure established in *Wicker* was the prevailing wage for that inmate, and it is not necessarily the prevailing wage in the instant case.

industries program, as set forth below.

- 1) The Department shall determine the dates the inmate in the instant matter started and completed his participation in the prison industries program operated by the Department;
- 2) The Department shall determine the prevailing wage in the private sector for the work the inmate performed during his participation in the prison industries program on the date Appellant started participating in the prison industries program and any change in the rate during his participation until the completion of the project at issue;
- 3) The Department shall determine the total hours worked by the Appellant in the prison on the project at issue and the prevailing wage for each hour of work completed by Appellant; and,
- 4) The Department shall pay the Appellant the difference in the wages actually paid and the prevailing wages that should have been paid for each hour, or fraction of an hour, worked by the Appellant, subject to any statutorily allowed deductions.⁴

AND IT IS SO ORDERED.

July 17, 2008
Columbia, SC

Carolyn C. Matthews
Carolyn C. Matthews
Administrative Law Judge

[Signature]
The Clerk of Court
JUL 22 2008

⁴ It is noteworthy that S.C. Code Ann. § 24-3-40(d) (Supp. 2005) does not require that the inmate receive all of the earned wages. In fact, Section 24-3-40 provides for the disposition of money earned by a prisoner who is allowed to work at paid employment. S.C. Code Ann. § 24-3-40 (Supp. 2005).

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT****GENERAL COUNSEL**

Ja Ja D.B. Ozers #223442

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 09-ALJ-04-00897-AP

**FINAL ORDER
GRIEVANCE NO: ECI 2007-05**

June 23, 2009

This matter was remanded to the Department on July 17, 2008 to determine if the Appellant filed his grievance in the instant matter while he was employed under the prison industries program or within fifteen days of the time he completed, terminated, or ceased employment under the prison industries program. The Record on Appeal was supplemented on December 29, 2008. In the record, it appears that Appellant failed to file his step one grievance six years after his last day of work in the prison industries. Therefore, Appellant's Appeal was untimely.

Based on the Record on Appeal, this appeal must be dismissed because Appellant failed to file his grievance in the instant matter while he was employed under the prison industries program, or within fifteen days of the time he completed, terminated, or ceased employment under the prison industries program.

The Supreme Court of South Carolina has unequivocally held in Wicker v. South Carolina Dep't of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) that: (1) an inmate is entitled to file a grievance when not being paid the prevailing wage; (2) the ALC has jurisdiction to review the Department's failure to pay the prevailing wage; and, (3) an inmate is entitled to be paid the prevailing wage while working in the private sector program. Id. at 421, 602 S.E.2d at 56.

In addition to the requirement that an inmate must file a grievance within fifteen days of an alleged incident, SCDC Policy Number GA-01-12, paragraph 13.1 states that "[i]nmates will only be allowed to submit one grievance per incident or circumstance."

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JUN 29 2009

SC ADMIN. LAW COURT

SCDC

SUPPLEMENTAL RECORD ON APPEAL

59

SCDC's Brief

Exhibit B

8

06/29/2009

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ORDER

IT IS THEREFORE ORDERED that this matter is dismissed.
AND IT IS SO ORDERED.

Carolyn C. Matthews
Carolyn C. Matthews
Administrative Law Judge

June 29, 2009
Columbia, South Carolina

STATE OF SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
The State of South Carolina, by and through the undersigned, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the files and records of the Department of Corrections.
Witness my hand and the seal of the Department of Corrections at Columbia, South Carolina, this 29th day of June, 2009.

Administrative Law Judge



Richland County 5th Judicial Circuit Public Index



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 [Online Payments](#) |
 [Public Index](#) |
 [City of Columbia Municipal Ct](#) |
 [S.C. Judicial Department](#) |
 [Summary Ct Dockets](#)

Switch View

THOMAS J TORRENCE VS. S C DEPARTMENT OF CORRECTIONS

Case Number:	01CP4003409	Court Agency:	Richland County Common Pleas	Filed Date:	08/16/2001
Case Type:	Common Pleas	Case Sub Type:	Special-Comp/Oth 699	File Type:	Non-Jury
Status:	Disposed	Assigned Judge:			
Disposition:	Withdrawn or Settled by Parties	Disposition Date:	07/07/2003	Disposition Judge:	Clerk Of Court C P, G'S, And Family Court
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials						
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Torrence, Thomas J	Certificate Of Service	Filing		08/01/2007-11:35		
Torrence, Thomas J	Motion/Stay Of The Matter With Consent Of Defendant	Motion		08/01/2007-11:34	08/01/2007-11:34	
Torrence, Thomas J	Remittitur Supreme Court AFFIRMED IN RESULT	Order		07/20/2007-11:28		
Hubbard, Henry Jr	Notice Of Appeal	Action		07/21/2005-13:12		
Hubbard, Henry Jr	Form Order motn to reconsider denied/ non-prisoner pits have	Order		07/08/2005-11:05		
Torrence, Thomas J	Memorandum Supporting Of Reconsideration	Filing		06/30/2005-16:20		
Hubbard, Henry Jr	Motion/Reconsider	Motion		06/08/2005-12:33	07/19/2005-12:33	
Torrence, Thomas J	Order dismissing entire second amended declaratory judgment	Order		05/31/2005-13:49		
Torrence, Thomas J	Form order motion to dismiss granted,	Order		05/09/2005-10:23		

<http://www5.sccgov.us/SCJDWEB/PublicIndex/CaseDetails.aspx?County=40&CourtAgenc...> 4/11/2016

	Normal order to follow				
Torrence, Thomas J	MOTION TO DISMISS OR SUMMARY JUDGMENT	Event		03/08/2003-09:30	07/07/2003-09:31
Torrence, Thomas J	MOTION NOTICE MAILED	Event		02/24/2003-00:00	
Torrence, Thomas J	CERTIFICATE OF MAILING JD	Filing		02/14/2003-00:00	
Torrence, Thomas J	RENEWED MOTION TO DISMISS SECOND AMENDED DECLARATORY JUDGMENT	Event		02/14/2003-00:00	
Torrence, Thomas J	MEMORANDUM IN SUPPORT OF RENEWED MOTION JD	Filing		02/14/2003-00:00	
Torrence, Thomas J	MOTION AND ORDER INFORMATION FORM AND COVER SHEET JD	Filing		02/14/2003-00:00	
Torrence, Thomas J	ROSTER MEETING	Filing		07/14/2003-09:00	07/07/2003-09:01
Torrence, Thomas J	DISMISSAL OF THE STATE OF SOUTH CAROLINA BY ATTYS	Order		07/07/2003-00:00	
Torrence, Thomas J	CERTIFICATE OF SERVICE	Filing		07/07/2003-00:00	
Torrence, Thomas J	NOTICE TO ATTORNEY OF ROSTER MEETING	Filing		06/24/2003-00:00	
Torrence, Thomas J	ROSTER MEETING	Filing		05/05/2003-10:00	05/08/2003-10:01
Torrence, Thomas J	NOTICE TO ATTORNEY OF ROSTER MEETING	Filing		04/08/2003-00:00	
Torrence, Thomas J	ROSTER MEETING	Filing		01/27/2003-09:30	07/07/2003-09:31
Torrence, Thomas J	NOTICE TO ATTORNEY OF ROSTER MEETING	Filing		12/20/2002-00:00	
Torrence, Thomas J	ANSWER OF SCDC TO SECOND AMENDED COMPLAINT	Filing		12/19/2002-00:00	
Torrence, Thomas J	ORDER DENYING MOTION TO DISMISS J/KINARD	Order		11/25/2002-00:00	
Torrence, Thomas J	FORM ORDER HEARD, FORMAL ORDERS FROM LEWIS AND SUMMERS J/KIN	Order		10/15/2002-00:00	
Torrence, Thomas J	MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO DISMISS	Filing		10/15/2002-00:00	
Torrence, Thomas J	MOTIONS TO DISMISS & CLASS CERTIFICATION	Event		10/14/2002-15:30	10/15/2002-15:31

<http://www5.sco.gov.us/SCJDWEB/PublicIndex/CaseDetails.aspx?County=40&CourtAgency=40> 4/11/2016

Torrence, Thomas J	MOTION NOTICE MAILED	Event		09/19/2002-00:00	
Torrence, Thomas J	CERTIFICATE OF SERVICE	Filing		08/20/2002-00:00	
Torrence, Thomas J	AMENDED MOTION FOR CLASS CERTIFICATION	Event		08/20/2002-00:00	
Torrence, Thomas J	CERTIFICATE OF SERVICE	Filing		07/29/2002-00:00	
Torrence, Thomas J	MOTION TO DISMISS SECOND AMENDED COMPLAINT	Motion		07/29/2002-00:00	07/07/2003-00:00
Torrence, Thomas J	CONSENT ORDER EXTENDING TIME TO FILE BY AUGUST 2 ANSWER TO S	Order		07/10/2002-00:00	
Torrence, Thomas J	MOTION TO DISMISS	Motion		06/26/2002-00:00	07/07/2003-00:00
Torrence, Thomas J	CERTIFICATE OF SERVICE	Filing		06/26/2002-00:00	
Torrence, Thomas J	CERTIFICATE OF SERVICE	Filing		06/11/2002-00:00	
Torrence, Thomas J	SECOND AMENDED COMPLAINT	Filing		06/11/2002-00:00	
Torrence, Thomas J	MOTION TO AMEND AND DISMISS	Event		05/24/2002-09:30	05/23/2002-09:31
Torrence, Thomas J	CONSENT ORDER TO FILE SECOND AMENDED COMPLAINT WITHIN 20 DAY	Order		05/23/2002-00:00	
Torrence, Thomas J	MOTION NOTICE MAILED	Event		04/23/2002-00:00	
Torrence, Thomas J	MOTION TO DISMISS	Event		03/14/2002-14:00	02/25/2002-14:01
Torrence, Thomas J	MOTION TO DISMISS	Event		03/12/2002-14:00	03/05/2002-14:01
Torrence, Thomas J	CONTINUANCE NOTICE MAILED	Filing		03/08/2002-00:00	
Torrence, Thomas J	SECOND AMENDED COMPLAINT	Filing		03/04/2002-00:00	
Torrence, Thomas J	CERTIFICATE OF SERVICE	Filing		03/04/2002-00:00	
Torrence, Thomas J	MOTION FOR CLASS CERTIFICATION	Event		03/04/2002-00:00	
Torrence, Thomas J	CERTIFICATE OF SERVICE	Filing		03/04/2002-00:00	
Torrence, Thomas J	AMEND MOTION AMENDED COMPLAINT	Motion		03/04/2002-00:00	07/07/2003-00:00
Torrence, Thomas J	A LETTER FROM HELEN T MCFADDEN	Filing		02/25/2002-00:00	
Torrence, Thomas J	NOTICE OF NEW DATE & TIME FOR HEARING	Event		02/25/2002-00:00	
Torrence, Thomas J	MOTION NOTICE MAILED	Event		02/06/2002-00:00	
Torrence, Thomas J	CONSENT ORDER OF DISMISSAL AS TO BUDGET AND	Order		01/14/2002-00:00	

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Public Index Search

Page 4 of 4

	CONTROL BOARD J/				
Torrence, Thomas J	MOTION TO DISMISS	Motion		12/06/2001- 00:00	07/07/2003- 00:00
Torrence, Thomas J	CERTIFICATE OF SERVICE	Filing		12/06/2001- 00:00	
Torrence, Thomas J	CERTIFICATE OF SERVICE	Filing		12/04/2001- 00:00	
Torrence, Thomas J	MOTION TO DISMISS	Motion		12/04/2001- 00:00	07/07/2003- 00:00
Torrence, Thomas J	AFFIDAVIT OF SERVICE ON STATE OF SOUTH CAROLINA	Filing		11/09/2001- 00:00	
Torrence, Thomas J	SUMMONS & AMENDED COMPLAINT	Filing		11/05/2001- 00:00	
Torrence, Thomas J	CERTIFICATE OF SERVICE	Filing		11/05/2001- 00:00	
Torrence, Thomas J	CERTIFICATE OF SERVICE	Filing		10/05/2001- 00:00	
Torrence, Thomas J	ANSWER OF SOUTH CAROLINA BUDGET & CONTROL BOARD	Filing		10/05/2001- 00:00	
Torrence, Thomas J	ANSWER OF SOUTH CAROLINA DEPARTMENT OF CORRECTIONS	Filing		10/04/2001- 00:00	
Torrence, Thomas J	CERTIFICATE OF SERVICE	Filing		10/04/2001- 00:00	
Torrence, Thomas J	MOTION FOR PRELIMINARY INJUNCTION	Event		08/16/2001- 00:00	
Torrence, Thomas J	CASE FILED	Filing		08/16/2001- 00:00	
Torrence, Thomas J	SUMMONS AND COMPLAINT	Filing		08/16/2001- 00:00	

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SCDC's Brief

Exhibit C

4

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Richard Adkins, et al.,)

Plaintiffs,)

-versus-)

South Carolina Department
of Corrections,)

Defendant.)

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C/A No. 00-CP-40-4761

JUDGMENT FOR THE
DEFENDANT

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BARBARA A. SCOTT
C.C.C. & G.S.

Pursuant to this Court's scheduling order filed June 25, 2002, the parties tried this case before this Court alone on August 8 and 9, 2002.¹ Pursuant to the same scheduling order, this Court conducted the trial of this case in the parole hearing room located at South Carolina Department of Corrections (SCDC's) Broad River Road Correctional Facility.²

2/12 After thoroughly reviewing the evidence introduced by the parties, the applicable statutes, and the applicable precedent, this Court FINDS in favor of SCDC on both the Plaintiffs' first and second causes of action. As the Plaintiffs' last three (3) causes of action were dismissed pursuant to SCDC's summary judgment motion, this Court ENTERS judgment in favor of SCDC.

¹ By order filed April 30, 2002, the Honorable G. Thomas Cooper, Jr., Chief Judge for Administrative Purposes for the Court of Common Pleas for Fifth Judicial Circuit, denied the Plaintiffs' motion for a jury trial.

² This unique trial location permitted a maximum number of Plaintiffs to appear and observe the trial proceedings while ensuring the security of the Court, its staff, counsel, witnesses and observers. The Court extends its thanks and compliments to Warden William White and his entire staff for their professionalism and courtesy.

I. SUMMARY OF THE PLAINTIFFS' TWO (2) SURVIVING CAUSES OF ACTION

The Plaintiffs' Complaint originally alleged five distinct causes of action. However, the Honorable Clifton Newman, by his order filed March 2, 2002, dismissed the Plaintiffs' last three causes of action pursuant to SCDC's motion for summary judgment.

The Plaintiffs, metaphorically speaking, raised the umbrella of the South Carolina Tort Claims Act, South Carolina Code Section 15-78-10, *et seq.*, over their entire Complaint and, specifically, their first two causes of action.³

Each of the 83 Plaintiffs are or were incarcerated within SCDC. The Plaintiffs currently participate or at one time participated in a SCDC Division of Industries (DOI) project established under the authority of South Carolina Code Section 24-3-310 (Lawyers Coop. 1976), *et seq.*

SCDC, in conjunction with a private industry, Standard Plywoods, Inc., of Clinton, South Carolina, operates the DOI project in which the Plaintiffs participate or at one time participated within the confinement facility now known as Tyger River Correctional Institution. The products manufactured inside Tyger River at the Standard Plywoods production facility carry the "Anderson Hardwood Floors" brand name.

The Plaintiffs' first cause of action alleged that SCDC violated the "plain and ordinary meaning" of Section 24-3-430(D). According to the Plaintiffs, SCDC violated Section 24-3-430(D) by failing to pay the Plaintiffs an hourly wage equal to the "prevailing wage for work of similar nature in the private sector."⁴ The Plaintiffs specifically alleged SCDC's former policy

³ Plaintiffs' Complaint, paragraph 1, page 1.

⁴ *Id.*, paragraph 8, page 4.

⁵ *Id.*

of paying each Plaintiff a "training wage" of \$0.25 per hour and then \$0.75 per hour when the Plaintiffs first began participating in this DOI project violated Section 24-3-430(D).⁶

The Plaintiffs also specifically alleged SCDC's permanent hourly wage of \$5.15 (the national minimum wage established under the Fair Labor Standards Act) violates Section 24-3-430(D), because the "prevailing wage" for "work of a similar nature performed by employees in the private sector of industry not confined in custody of SCDC ranges from \$9.00 per hour to \$14.00 per hour."⁷ The Plaintiffs further alleged an unnamed former SCDC director exercised his discretion in a grossly negligent manner by entering into contracts with private industry, in this case Standard Plywoods, that resulted in wages being paid to the Plaintiffs "in violation of the 'prevailing wage' provision of" Section 24-3-430.⁸

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The Plaintiffs' *second* cause of action alleged SCDC was "unjustly enriched"⁹ by receiving "payment of \$2.07 for each hour worked by Plaintiffs, ('man-hour') while Plaintiffs were paid at 'training wages' rates" as alleged in the Plaintiffs' *first* cause of action.¹⁰

II. SUMMARY OF TRIAL PROCEEDINGS

In accordance with this Court's June 25, 2002 scheduling order and by agreement of the parties, the following Plaintiffs, all of whom were incarcerated within SCDC on the dates of trial, attended and observed the entire proceedings: Richard Adkins, Christopher Brown, Donnie Clark, John Cosby, Robert Elmore, Anthony Frazier, Floyd Hamilton, David Harig, James

⁶ Id., paragraph 6.

⁷ Id., paragraphs 6 and 7, pages 3 and 4.

⁸ Id., paragraph 9, page 4.

⁹ Id., paragraph 13, page 6.

¹⁰ Id., paragraph 12, page 5.

Heatherly, Andrew Kelly, Christopher Smith, Leroy Sullivan, Albert Todd, and Frank Weathers.¹¹

The following Plaintiffs testified during their case-in-chief: Richard Adkins, Christopher Brown, John Costy, Floyd Hamilton, David Harig, James Heatherly, Andrew Kelly, Leroy Sullivan, Albert Todd, and Frank Weathers. The Plaintiffs elicited testimony from the following additional witnesses during their case-in-chief: Gary Wallace, Standard Plywoods, Inc.; Brian Boggs, Standard Plywoods, Inc.; Rebecca Eleazer, South Carolina Employment Security Commission (ESC); John Carson, SCDC DOI; and Tony Ellis, Director, SCDC DOI. The Defendant called Sam McClary, also of the South Carolina ESC, as its sole witness during its case-in-chief.

Neither party offered any rebuttal witnesses.

III. FINDINGS OF FACT

Jan 4 Each of the Plaintiffs voluntarily executed participation agreements with SCDC under which the terms of their activities within this DOI project, including the withholding of certain percentages of their gross wages pursuant to Section 24-3-40, were precisely defined. Each of the Plaintiffs also completed SCDC DOI employment applications.

DOI Director Tony Ellis defined the different types of prison industries projects enabled under Section 24-3-310, *et seq.* Prison industries projects under this section include traditional projects where goods are manufactured solely for use by state agencies, service oriented projects where no goods are manufactured or produced (i.e. packing gloves into boxes for shipment), and

¹¹ Plaintiffs' counsel anticipated that Plaintiffs David Raines and Douglas Titus, who were paroled after the Plaintiffs' filed their action, would attend the trial and observe the trial proceedings. SCDC authorities cleared Plaintiffs Raines and Titus to attend the trial. However, neither Plaintiff Raines nor Plaintiff Titus presented themselves to SCDC security officials for entry into the courtroom on the morning of August 8, 2002 or at any time during the trial.

projects certified for operation under the federal government's Prison Industry Enhancement Program.

Director Ellis also confirmed SCDC's former training wage policy existed in the manner alleged by the Plaintiffs' Complaint until July 1, 1999, and he confirmed SCDC DOI currently pays the Plaintiffs an hourly wage of \$5.15 for their labor.¹²

Again, the Plaintiffs participate or at one time participated in an SCDC DOI project whereby they worked at a facility operated by Standard Plywoods. Standard Plywoods contracted with SCDC to construct and operate manufacturing plants within the confines of two SCDC confinement facilities: Cross Anchor C.I. and Dutchman C.I. SCDC later consolidated Cross Anchor and Dutchman to form Tyger River C.I. Standard Plywoods' manufacturing plant is located at what is now known as Tyger River.

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5 The DOI project involving Standard Plywoods at Tyger River is and has been since its inception certified by the United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (BJA) pursuant to BJA's Prison Industry Enhancement Certification Program (PIECP).¹³ The PIECP is codified at 18 U.S.C. Section 1761(c).¹⁴

This Court specifically finds the Plaintiffs have not been and are not currently employees of Standard Plywoods. SCDC paid and pays each of the Plaintiffs' wages.¹⁵ None of the

¹² See notes 6 and, *supra*.

¹³ PIECP Guidelines from Federal Register, Vol. 50, No. 61, March 29, 1985 (Plaintiffs' Exhibit 2) and Vol. 64, No. 66, April 7, 1999. (Plaintiffs' Exhibit 1).

¹⁴ PIECP Guideline, Federal Register, Vol. 64, No. 66, April 7, 1999, p. 17000, Section I, entitled "Introduction: Program Purposes and Objectives." (Plaintiffs' Exhibit 1)

¹⁵ Plaintiff Adkins' SCDC earnings statements clearly reflect that SCDC and only SCDC paid Plaintiff Adkins' wages. (Defendant's Exhibits 7 and 8) This Court finds Plaintiff Adkins' earnings statements accurately represent the format of each Plaintiff's SCDC earnings statement.

Plaintiffs individually executed a single agreement of any kind with Standard Plywoods. Again, the Plaintiffs voluntarily executed participation agreements and employment applications with SCDC.¹⁶

SCDC tabulates the total number of labor hours worked by the Plaintiffs in a given pay period, and SCDC then invoices Standard Plywoods for the total number of labor hours. Standard Plywoods simply remits payment to SCDC for the amount invoiced by SCDC. SCDC, in turn, pays the Plaintiffs their wages subject to the provisions of Section 24-3-40.

The Plaintiffs have not been transformed from inmates into Standard Plywoods employees simply because they participate in an SCDC DOI project in which Standard Plywoods also participates. Each of the Plaintiffs who testified affirmed their status as inmates lawfully confined within an SCDC correctional facility. This Court clearly recognized the Plaintiffs were and remain inmates.

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6 John Carson, an SCDC employee who supervises the Plaintiffs' work and conduct in the DOI-Standard Plywoods project at Tyger River, confirmed the Plaintiffs perform their DOI labor exclusively within the confines of Tyger River. Mr. Carson also confirmed that, as inmates, the Plaintiffs must work while confined and that, if the Plaintiffs didn't work in the DOI-Standard Plywoods project at Tyger River, they would work in some other capacity at Tyger River and receive no wages for their work. The Plaintiffs, as inmates, most assuredly cannot leave the DOI program and apply for a job in the regular employment market. Mr. Carson also confirmed SCDC exercises total control over the Plaintiffs' movement and conduct 24 hours a day, seven days a week.

¹⁶ See Defendant's Exhibits 1 and 2.

Gary Wallace,¹⁷ a Standard Plywoods supervisor, and Brian Boggs, a Standard Plywoods executive, emphasized the distinction between inmates, like the Plaintiffs, and employees at Standard Plywoods' Clinton, South Carolina plant. These distinctions include the wide breadth of job tasks performed by Clinton employees as compared to the narrow breadth of job tasks performed by the Plaintiffs at Tyger River, the freedom of movement enjoyed by Clinton employees versus the persistent restrictions imposed upon the Plaintiffs at Tyger River, and the high level of security imposed upon the Plaintiffs and the tools they use during the production process at Tyger River compared to the open environment enjoyed by Standard Plywoods' Clinton employees.

Accordingly, this Court finds the Plaintiffs do not enjoy the same benefits and protections as non-inmate employees enjoy in the regular, non-institutional workforce. This distinction is critical to the Court's rulings in favor of SCDC on the Plaintiffs' two surviving causes of action.

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IV. THE COURT'S RULINGS

This Court first details its ruling regarding the Plaintiffs' second cause of action.

A. THE COURT'S RULING IN SCDC'S FAVOR REGARDING THE PLAINTIFFS' SECOND CAUSE OF ACTION

This Court finds that the Plaintiffs failed to prove by a preponderance of the evidence SCDC was "unjustly enriched" by receiving "payment of \$2.07 for each hour worked by Plaintiffs, ('man-hour'), while Plaintiffs were paid at 'training wages' rates."

1. SCDC CORRECTLY INTERPRETED THE PLAINTIFFS' "UNJUST ENRICHMENT" ALLEGATION AS AN ALLEGATION THAT IT EXPLOITED THE PLAINTIFFS BY PAYING THEM TRAINING WAGES

¹⁷ Mr. Wallace is a former inmate and participant in the DOI-Standard Plywoods project at Tyger River whom Standard Plywoods hired upon his parole.

In their second cause of action, the Plaintiffs alleged "the excessive payment provided by the industries to Defendant SCDC during Plaintiffs' periods of work at 'training wages' rates was given in exchange for labor obtained by the industries at less than minimum wage, *at a rate less than allowed by law*, and that the purpose and result of such arrangement was to *unjustly enrich Defendant SCDC at the expense of Plaintiffs' labors.*"¹⁸ (emphasis added)

The Plaintiffs use of the phrase "*at a rate less than allowed by law*" echoes an allegation initially stated in their first cause of action; specifically, "no statute in South Carolina Code of Laws provides that a person may be paid less than minimum wage under the label or guise of a 'training wage.'"¹⁹

SCDC correctly interpreted the Plaintiffs' second cause of action as alleging SCDC exploited the Plaintiffs by paying the Plaintiffs a graduated introductory training wage (\$0.25 per hour then \$0.75 per hour). This Court, however, specifically finds SCDC has not exploited the Plaintiffs at any time since the inception of the DOI federally certified project in which they participate.

The Plaintiffs' exploitation allegation fails in the face of BJA's endorsement of DOI's discontinued training wage policy as well as binding precedent that declares the Plaintiffs, as inmates and not employees, are not entitled to the federal minimum wage established under the Fair Labor Standards Act (FLSA).

2. SCDC CLEARLY STATED ITS TRAINING WAGE POLICY IN THE CONTRACTS IT EXECUTED WITH STANDARD PLYWOODS

¹⁸ Plaintiffs' Complaint, paragraph 12.

¹⁹ *Id.*, paragraph 6.

In the first contract between SCDC and Standard Plywoods, dated October 3, 1996, SCDC clearly stated its training wage policy:

1. Training of Inmate Employees: The Contractor shall provide a maximum training period of 320 hours per inmate hired initial training after assuming work within the prison industries facility. ... *During the second 160 hours training, the contractor shall pay \$1.32 per hour, plus \$1.32 per hour overhead for each inmate. ...*²⁰ (emphasis added)

In the second contract between SCDC and Standard Plywoods, Inc., dated January 9, 1998, SCDC again clearly stated its training wage policy:

1. Training of Inmate Employees: The Contractor shall provide a maximum training period of 320 hours per inmate hired initial training after assuming work within the prison industries facility. ... *During the second 160 hours training, the contractor shall pay \$1.32 per hour, plus \$1.32 per hour overhead for each inmate. After 320 hours training, the contractor will pay \$7.06 per hour, per inmate.*²¹ (emphasis added)

3. THE PLAINTIFFS' UNJUST ENRICHMENT ALLEGATION TARGETS SCDC'S \$1.32 PER HOUR OVERHEAD CHARGE

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The Plaintiffs specifically target the \$1.32 per hour overhead fee SCDC charged and continues to charge Standard Plywoods by alleging "Defendant SCDC received payment of \$2.07 for each hour worked by Plaintiffs, ("man-hour") while Plaintiffs were paid at 'training wages' rate."²²

²⁰ October 3, 1996 agreement between SCDC and Standard Plywoods, Inc., paragraph 3.1(1), p. 5. (Plaintiffs' Exhibit 10) This contract contemplated the establishment of a production facility at Cross Anchor C.I. As the parties stipulated at trial, SCDC consolidated Cross Anchor C.I. with Dutchman C.I. Institution to form Tyger River.

²¹ January 9, 1998 agreement between SCDC and Standard Plywoods, Inc., paragraph 3.1(1), p. 4. (Plaintiffs' Exhibit 11) This contract contemplated the establishment of a production facility at Dutchman C.I. Again, as the parties stipulated at trial, SCDC consolidated Cross Anchor C.I. with its Dutchman C.I. to form Tyger River.

²² Id., paragraph 12.

The \$2.07 figure used by the Plaintiffs in their second cause of action simply reflects the sum of two figures, one of which is SCDC's \$1.32 "overhead" charge. If one simply adds the \$0.75 per inmate hour "training wage" the Plaintiffs received during their second 160-hour training period to the \$1.32 per hour "overhead" charge SCDC assessed Standard Plywoods, the resulting sum is \$2.07 per hour ($\$0.75 + \$1.32 = \$2.07$). The Plaintiffs, therefore, effectively alleged that SCDC unjustly enriched itself by collecting from Standard Plywoods its \$1.32 per hour "overhead" charge.

4. DOI DIRECTOR TONY ELLIS CONSULTED WITH BJA, THE FEDERAL AGENCY RESPONSIBLE FOR CERTIFYING THIS PARTICULAR PIECP PROJECT, REGARDING DOI'S TRAINING WAGE POLICY AND SCHEDULE

This Court finds no "unjust enrichment" occurred as the DOI training wage policy resulted from the legitimate exercise of discretion by DOI Director Tony Ellis.

As the evidence demonstrated, Director Ellis based DOI's former training wage policy upon his interpretation of the applicable provisions of the Federal Register. Specifically, Director Ellis relied upon the following provisions from the March 29, 1985 version of the Federal Register:

*BJA's position is that the Federal minimum wage must be a floor for all program wage payments, since the Fair Labor Standards Act sets the Federal minimum wage as a floor for any training which results in its products being sold. The single exception to this rule, then, is pre-entry or vestibule training for new workers subject to the regulations and requirements set by State Fair Labor Standards, or Federal Fair Labor Standards legislation and procedures.*²³ (emphasis added)

²³ PIECP Guideline, Federal Register, Vol. 50, No. 61, March 29, 1985, p. 12662, "Section 3. Compensated Training. Response" (Plaintiffs' Exhibit 2).

Director Ellis developed DOI's training wage policy in reliance on this language, and Director Ellis advised a BJA representative of the precise training wage schedule he developed in a letter dated April 2, 1992. The pertinent language from Director Ellis' letter read as follows:

This is to confirm our telephone conversation yesterday concerning the training period and wages for our PIE projects. As I related to you, P.I. factors in a 90 day training period for each inmate that allows them to reach the production standards specified by the contractor. ... As I related, P.I. pays inmate wages during the first month. *During the second month, P.I. charges the contractor \$1.32 per hour for overhead and pays the inmate \$.75 per hour. During the final training month, P.I. charges \$1.32 per hour and \$.95 per hour. ... As we discussed, P.I. will continue this procedure.*²⁴ (emphasis added)

The Plaintiffs introduced no evidence demonstrating anyone from BJA ever objected to Director Ellis' training wage policy and schedule as he articulated them in his April 2, 1992 letter. On the contrary, the evidence clearly demonstrates BJA officials advised Director Ellis he could continue his training wage policy. Specifically, Mr. Thomas Albrecht, Chief, Corrections Branch for BJA, advised Director Ellis in a December 31, 1997 letter that "[t]he training wage issue remains open on the understanding that you will continue current practices until the new BJA Program Guideline is published."²⁵ (emphasis added)

Eventually, BJA published a new program Guideline in the Federal Register, Vol. 64, No. 66, effective April 7, 1999.²⁶ BJA's new program Guideline clearly addressed the question

²⁴ April 29, 1992 letter from Director Ellis to Ms. Louis Lucas, Special Programs Manager, Bureau of Justice Assistance. (Plaintiffs' Exhibit 23) As the evidence revealed, DOI discontinued the last phase of its training wage schedule, where it paid inmates \$0.95 per labor hour for a third 160-hour period, by the time SCDC contracted with Standard Plywoods to begin the DOI project at what is now known as Tyger River C.I.

²⁵ December 31, 1997 letter to Director Ellis from Thomas F. Albrecht, Chief, Corrections Branch, Bureau of Justice Assistance. (Plaintiffs' Exhibit 22)

²⁶ Plaintiffs' Exhibit 1.

raised in 1992 by Director Ellis regarding DOI's training wage policy, the Guideline no longer authorized such a policy. Further, BJA's new program Guideline provided "existing participants will have until April 7, 2000 to achieve compliance with all of the new requirements set forth in this Guideline."²⁷

Director Ellis, however, accelerated DOI's compliance with the new BJA Guideline as evidenced by his June 21, 1999 letter to Mr. Don Finkell, President, Standard Plywoods, Inc.²⁸ Instead of waiting until April 7, 2000 to comply with the new BJA Guidelines, Director Ellis ended DOI's training wage policy effective July 1, 1999.²⁹

5. SCDC IS IMMUNE FROM LIABILITY, BY OPERATION OF SECTION 15-78-60(5), FOR ANY LOSSES THE PLAINTIFFS PURPORTEDLY SUSTAINED UNDER THE TRAINING WAGE POLICY, BECAUSE DIRECTOR ELLIS EXERCISED HIS DISCRETION WITH DUE CARE

Director Ellis, by advising BJA of DOI's training wage policy in 1992 and discussing DOI's training wage policy with BJA in 1997, did not exercise his discretion as DOI director in a grossly negligent manner when he developed and implemented DOI's training wage policy.

A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing. (citation omitted) Gross negligence involves a conscious failure to exercise due care. (citation omitted) *Jackson v. SCDC*, 301 S.C. 125, 390 S.E.2d 467, 468 (1989).

²⁷ PIBCP Guideline, Federal Register, Vol. 64, No. 66, April 7, 1999, p. 17000, "EFFECTIVE DATE" (Plaintiffs Exhibit 1)

²⁸ June 21, 1999 letter from Director Ellis to Mr. Finkell. (Plaintiffs' Exhibit 20)

²⁹ *Id.*

Director Ellis' interaction with BJA clearly evidences he was not at all indifferent to the consequences of his conduct and he afforded not just slight care but great care to his development of DOI's training wage policy.

[Section 15-78-60(5) of the Tort Claims Act] provides for immunity from liability for losses resulting from '... the exercise of discretion or judgment by the governmental entity or employee....'... Section 15-78-60(25) provides an exception to immunity where the governmental entity exercises its responsibility or duty in a grossly negligent manner. Section 15-78-60(5) must be read in light of this exception. *If discretion is exercised in a grossly negligent manner, the exception to the normal rule of immunity applies. Jackson, 390 S.E.2d at 469. (emphasis added)*

As Director Ellis clearly did not exercise his discretion in a grossly negligent manner in implementing the training wage policy of which the Plaintiffs complain, SCDC is immune from liability by operation of Section 15-78-60(5) even if the Plaintiffs legitimately sustained losses under the former training wage policy. As the Plaintiffs' second cause of action, not to mention the Plaintiffs' entire Complaint, is sounded under the South Carolina Tort Claims Act, the Court rules in SCDC's favor.

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13 Moreover, as developed below, the Plaintiffs did not sustain any losses as a result of DOI's former training wage policy, because the wages the Plaintiffs received under the training wage policy did not violate federal or state law.

6. ACCORDING TO THE FOURTH CIRCUIT COURT OF APPEALS, INMATES ARE NOT ENTITLED TO THE FEDERAL MINIMUM WAGE

This Court concludes, based upon the ruling of the Fourth Circuit Court of Appeals in *Harber v. State Use Industries*, 990 F.2d 131 (1994), that the Plaintiffs are not entitled to the protections afforded non-inmate workers under the Fair Labor Standards Act, 29 U.S.C Section 201 - 219, specifically the federal minimum wage.

The United States District Court for the District of South Carolina recently followed the *Harker* decision. United States Magistrate Judge Bristow Marchant, in his May 20, 2002 Report and Recommendation in *Sims v. Magla Products, LLC*, No. 3:02-676-19BD (D.S.C. 2002),³⁰ summarized the facts underlying *Harker* in the following manner:

In *Harker*, the Fourth Circuit Court of Appeals held that the FLSA did not apply to prison inmates working in a prison workshop located within a penal facility. In that case, an inmate (*Harker*) incarcerated by the Maryland Department of Corrections worked in a prison print shop run by State Use Industries of Maryland (SUI). ... *Harker* did not receive the federal minimum wage, but was instead paid a lower wage determined by the Maryland Department of Corrections.
Sims, p. 5.

Judge Marchant then quoted *Harker* in the following manner:

While the Maryland program may not have involved a private company, as does the prison industries program in South Carolina, the Fourth Circuit nevertheless specifically found in *Harker* that the FLSA does not cover inmates because inmates do not meet the general criteria for which the FLSA was enacted (such as that they are not part of a free labor market and do not need a minimum wage in order to ensure their welfare and standard of living), and that in any event *the FLSA simply does not apply to "work done by inmates behind prison walls for any type of prison-operated industry or for the prison itself."* *Harker*, 990 F.2d at 133, 135 (emphasis added and other citations omitted)
Sims, p. 6. (emphasis added)

The Fourth Circuit provided the following analysis in *Harker* that also applies to the Plaintiffs' present action:

SUI and the inmates also have not made the "bargained-for exchange of labor" for mutual economic gain that occurs in a true employer-employee relationship. (citations omitted) They do not deal at arms' length; the inmates enroll in SUI programs solely at the prerogative of the DOC, which both initiates the programs and allows the inmates to participate. Because the inmates are involuntarily incarcerated, the DOC wields virtually absolute control over them to a degree simply not found in the free labor situation of true employment. (citation omitted) Inmates may

³⁰ United States District Judge Dennis Shedd accepted Judge Marchant's Report and Recommendation without revision or comment by his order dated July 1, 2002.

voluntarily apply for SUI positions, but they certainly are not free to walk off the job site and look for other work. When a shift ends, inmates do not leave DOC supervision, but rather proceed to the next part of their regimented day. *SUI and Harker do not enjoy the employer-employee relationship contemplated in the Act, but instead have a custodial relationship to which the Act's mandates do not apply.* Further, the FLSA does not cover these inmates because the statute itself states that Congress passed minimum wage standards in order to maintain a "standard of living necessary for health, efficiency, and general well-being of workers." (citing 29 U.S.C. Section 202(a)) While incarcerated, inmates have no such needs because the DOC provides them with the food, shelter, and clothing that employees would have to purchase in a true employment situation. So long as the DOC provides for these needs, Harker can have no credible claim that inmates need a minimum wage to ensure their welfare and standard of living. (citations omitted) *Harker*, 990 F.2d at 133. (emphasis added)

The conditions and limitations on the Plaintiffs' labor in the present action are identical to the conditions and limitations on the inmates' labor described in *Harker*. Again, nothing associated with the Plaintiffs' participation in this DOI program transformed the Plaintiffs from inmates into employees.³¹ The Plaintiffs, just like the complaining inmates in *Harker* and *Sims*, "are not part of a free labor market and do not need a minimum wage in order to ensure their welfare and standard of living." Clearly, the Plaintiffs, just like the inmates in *Harker* and *Sims*, are not entitled to the federal minimum wage.

7. SCDC DID NOT VIOLATE ANY LAWS, UNJUSTLY ENRICH ITSELF, OR EXPLOIT THE PLAINTIFFS UNDER ITS FORMER TRAINING WAGE POLICY

³¹ This conclusion also conforms to precedent established in *Gordon v. SCDC, et al.*, No. 99-CP-40-3675, by the Honorable James R. Barber, III, Circuit Court Judge for the Fifth Judicial Circuit, in his September 7, 2001 Order Granting SCDC's Motion for Summary Judgment, p. 7. ("The Plaintiffs here did not individually negotiate and execute contracts with a private sector employer; they executed agreements with [SCDC] to participate in the Prison Industries program. Therefore, none of the Plaintiffs, as Prison Industries participants, were 'able to acquire all the rights and liabilities of a private employee.'")

The Plaintiffs' inability under *Harker* to claim the federal minimum wage for their DOI labor completely and fatally undermines the Plaintiffs' second cause of action. This Court cannot sustain the Plaintiffs' allegation that "no statute in South Carolina Code of Laws provides that a person may be paid less than the minimum wage under the label or guise of a 'training wage'" under the holding and logic of *Harker*.³¹ Thus, SCDC legitimately paid the Plaintiffs wages below the federal minimum wage under its training wage policy.

Indeed, in 1992, Director Ellis advised BJA, the federal agency responsible for the certification of the very type of project in which the Plaintiffs' participated, of SCDC's former training wage policy. A BJA representative advised Director Ellis in 1997 the training wage policy could continue until a new BJA Guideline was published. Once the new BJA Guideline was published in 1999, Director Ellis ended DOI's training wage policy and schedule in compliance with the new Guideline.

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16 In the course of advising BJA of DOI's training wage policy and schedule, Director Ellis also advised BJA of DOI's \$1.32 per hour overhead charge.³² BJA did not object to this \$1.32 per hour overhead charge, and the Plaintiffs did not introduce any evidence indicating such a charge for overhead violated any applicable state or federal law.

Consequently, the Plaintiffs failed to prove by a preponderance of the evidence that SCDC was "unjustly enriched" by invoicing and receiving from Standard Plywoods \$2.07 per labor hour during the second 160-hour phase of SCDC's former training wage schedule. In fact,

³¹ See note 17, *supra*. The South Carolina legislature has not enacted its own statute mandating the payment of a minimum wage to employees working in this state. Instead, the legislature enacted Section 41-3-80, which is entitled "Enforcement of the Fair Labor Standards Act of 1938." It provides that South Carolina's "Division of Labor may assist and cooperate ... in the enforcement within this State of the Fair Labor Standards Act of 1938 ..."

³² See note 22, *supra*.

this Court finds the Plaintiffs introduced no evidence to support their "unjust enrichment" allegation and their implied allegation that SCDC exploited them under its discontinued training wage policy. Accordingly, this Court finds for SCDC on the Plaintiffs' second cause of action.

B. THE COURT'S RULING IN SCDC'S FAVOR REGARDING THE PLAINTIFFS' FIRST CAUSE OF ACTION

This Court also finds for SCDC regarding the Plaintiffs' first cause of action. This Court concludes the Plaintiffs' demand for the "prevailing wage" is based upon a statute that does not specifically apply to the DOI program in which the Plaintiffs participate. This Court also concludes the Plaintiffs are not entitled to a private right of action by which to demand higher wages for their DOI labor under any applicable South Carolina prison industries statute. Finally, this Court concludes the evidence introduced during trial clearly demonstrated the permanent hourly wage SCDC pays the Plaintiffs for their DOI labor conforms to the applicable guidance from the South Carolina Employment Security Commission (ESC).

8-17 The above conclusions are supported by the underlying fact that, as acknowledged by both parties, the DOI project in which all of the Plaintiffs participated was and remains properly certified by BJA under the federal government's PIRCP.

1. THE PLAINTIFFS INVOKE SECTION 24-3-430(D) AS THE BASIS FOR THEIR DEMAND FOR HIGHER WAGES, HOWEVER, SECTION 24-3-410(B)(7) SPECIFICALLY APPLIES TO THE PLAINTIFFS' DEMAND

The Plaintiffs alleged in their Complaint that, "[d]uring the course of [their] employment, Plaintiffs' wages were paid directly to Defendant SCDC as provided for by S.C. Code Ann.

Section 24-3-40 and 24-3-430.³⁴ The Plaintiffs then recite the following language from Section

³⁴ Plaintiffs' Complaint, paragraph 4. The Court, however, previously concluded the Plaintiffs are inmates and not Standard Plywoods employees. Accordingly, their DOI activities have not constituted and do not currently constitute "employment."

24-3-430(D): "no inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector."³⁵

The Plaintiffs alleged that, by paying the Plaintiffs a permanent wage of \$5.15 per hour, SCDC violated and continues to violate the provisions of Section 24-3-430.³⁶ The Plaintiffs also alleged the "[v]iolation of the plain and ordinary meaning of S.C. Code Ann. Section 24-3-430(a)(b)(d) which prohibits compensation to Plaintiffs at a rate of less than the prevailing wage for work of similar nature in the private sector constitutes gross negligence."³⁷

The Plaintiffs' entire first cause of action hinges upon the term "prevailing wage" from Section 24-3-430(D). This Court concludes, however, that Section 24-3-430, and specifically Section 24-3-430(D), is not the applicable statute under which the Plaintiffs' demand for higher wages should be considered. Instead, as urged by SCDC, Section 24-3-410(B)(7) specifically

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³⁵ Id., paragraph 6.

³⁶ Paragraph 3.3(1), pages 6 - 7, of the January 9, 1998 contract between SCDC and Standard Plywoods reads as follows:

1. Inmate Pay: Contractor and SCDC agree to a "minimum inmate wage" determined as follows:

Minimum Wage (See Appendix D)	\$5.15
+	
Prorata Social Security Withholding Payment	.39
+	
Prorata Social Security Withholding Payment	.20
+	
<u>SCDC Surplus Fund Amount</u>	<u>1.32</u>
MINIMUM INMATE WAGE (For Non-Export Production)	\$7.06

This paragraph also stated "[t]he prevailing wage rate for inmate labor (for non-export production) is to be established annually by the S.C. Employment Security Commission." (Plaintiffs' Exhibit 11)

³⁷ Id., paragraph 8.

governs the Plaintiff's hourly wage in the federally certified PIECP project operated by DOI, in conjunction with Standard Plywoods, at Tyger River.

Section 24-3-410(B)(7) must be read in conjunction with the rest of Section 24-3-410, specifically Section 24-3-410(A). Read together, Section 24-3-410(A) and (B)(7) provide as follows:

- (A) It is unlawful to sell or offer for sale on the open market of this State articles or products manufactured or produced wholly or in part by inmates in this or another state.
- (B) The provisions of this section do not apply to:
 - (7) products sold intrastate or interstate produced by inmates of the Department of Corrections employed in a *federally certified private sector/prison industries program* if the *inmate workers participate voluntarily, receive comparable wages, and the work does not displace employed workers.* ... The Department of Labor shall develop guidelines to determine if the work displaces employed workers. (emphasis added)

Section 24-3-430(D), by contrast, does not specifically reference "a federally certified private sector/prison industries program." Just as Section 24-3-410(B)(7) must be considered with the rest of Section 24-3-410, Section 24-3-430(D) must be considered with the rest of Section 24-3-430.

Sections 24-3-430(C), (D), and (E), as shown below, echo the structure of Section 24-3-410(B)(7) regarding inmates' voluntary participation, wages, and displacement of employed workers in prison industries projects:

- (C) An inmate may participate in the program established pursuant to this section only on a voluntary basis and only after he has been informed of the conditions of his employment.
- (D) No inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector.
- (E) Inmate participation in the program may not result in the displacement of employed workers in the State of South Carolina and may not impair existing contracts for services.

Again, Section 24-3-430(D) uses the phrase "prevailing wage." Critically, however, nothing in Section 24-3-430 specifically connects the provisions of this section and its subsections to "a federally certified private sector/prison industries program."²⁸

Accordingly, this Court concludes, while Section 24-3-430 covers all prison industries activity (i.e. traditional projects, service projects, and PIECP certified projects), Section 24-3-410(B)(7) precisely addresses activity in the DOI project in which the Plaintiffs participate, which is "a federally certified private sector/prison industries program." "Sections which are part of the same general statutory law of the state should be construed together and each given effect if it can be done by any reasonable construction." *Father v. South Carolina Department of Social Services*, 345 S.C. 57, 545 S.E.2d 523, 527 (n. 13) (Cl. App. 2001), quoting *Glover v. Sula Constr. Co.*, 318 S.C. 465, 458 S.E.2d 535, 537 (1995).

Thus, the Plaintiffs' demand for the "prevailing wage" is unsupported by the precisely applicable statutory authority, as Section 24-3-410(B)(7) only provides the Plaintiffs should receive comparable wages and not the "prevailing wage" for their DOI labor.

However, as explained below, this Court finds neither Section 24-3-410(B)(7) nor Section 24-3-430(D) provides the Plaintiffs a private right of action by which to demand any wage let alone the "prevailing wage." Therefore, the Plaintiffs may not invoke either Section 24-3-410(B)(7) or Section 24-3-430(D) in an effort to receive higher wages for their DOI labor.

Moreover, this Court also concludes the permanent hourly wage SCDC pays the Plaintiffs, i.e. the federal minimum wage of \$5.15 per hour, conforms to both the "comparable

²⁸ Section 24-3-430(G) makes only an oblique reference to a federally certified PIECP project. This section provides "[n]o inmate who participates in a project designated by the Director of the Bureau of Justice Assistance (BJA) pursuant to Public Law 90-351 is eligible for unemployment compensation upon termination from the program."

wage" standard from Section 24-3-410(B)(7) and the "prevailing wage" standard from Section 24-3-430(D) under the guidelines published by the South Carolina Employment Security Commission (ESC).

2. SECTIONS 24-3-430(D) AND 24-3-410(B)(7), LIKE ALL SOUTH CAROLINA PRISON INDUSTRIES STATUTES, ARE CRIMINAL STATUTES

As discussed above, the statute that precisely applies to the Plaintiffs' demand for higher wages is not Section 24-3-430(D) but Section 24-3-410(B)(7).

Section 24-3-410 is a criminal statute; therefore, Section 24-3-410(B)(7) criminalizes the intrastate or interstate sale of products produced by inmates, such as the Plaintiffs, who participate in "a federally certified private sector/prison industries program" *unless* "the inmate workers participate voluntarily, receive comparable wages, and the work does not displace employed workers."

Section 24-3-410(C) articulates the criminal penalties for violating Section 24-3-410:

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A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than two hundred nor more than five thousand dollars or imprisoned for not less than three months nor more than one year, or both.

However, Section 24-3-430 and all of the other South Carolina prison industries statutes, by operation of Section 24-3-420, are also a criminal statutes. Section 24-3-420 provides the following:

Any person who wilfully violates any of the provisions of this article *other than Section 24-3-410* shall be guilty of a misdemeanor and, upon conviction, shall be confined in jail not less than ten days nor more than one year, or fined not less than ten dollars nor more than five hundred dollars, or both, in the discretion of the court. (emphasis added)

3. THIS COURT APPLIES *McMASTER V. STATE OF MINNESOTA* IN REJECTING THE PLAINTIFFS' DEMAND FOR HIGHER WAGES

As the parties stipulated and as this Court has noted throughout this order, the DOI project in which the Plaintiffs participated was federally certified by BJA under its PIECP Guideline. BJA's PIECP Guideline is anchored upon 18 U.S.C. Section 1761(e),³⁹ a provision of the Ashurst-Sumners Act, 18 U.S.C. Section 1761 - 62.

Federal courts have, on several occasions, been called upon to interpret the Ashurst-Sumners Act in actions filed by inmates who invoked both the FLSA and the Ashurst-Sumners Act as the basis for their demand for higher wages for their prison industry labor. The leading case from the federal courts, and the case relied upon by SCDC in its defense of the Plaintiffs' first cause of action, is *McMaster v. State of Minnesota*, 819 F.Supp. 1429 (D. Minn. 1993), affirmed 30 F.2d 976 (8th Cir. 1994). In *McMaster*, the plaintiffs, inmates who participated in the Minnesota Department of Corrections prison industries program, invoked both the FLSA and the Ashurst-Sumners Act as the basis for demanding "minimum or prevailing wages for work performed in prison industries." *Id.*, 819 F.Supp. at 1433.

The *McMaster* court rejected the inmates' demand for minimum wage for their prison industries labor under the FLSA. The *McMaster* court found "the relationship between the [inmates] and the state is not an employment relationship, but a custodial relationship to which the FLSA does not apply." *Id.*, 819 F.Supp. at 1438, citing *Harker*.⁴⁰

The *McMaster* court then analyzed the inmates' demand for the prevailing wage under the Ashurst-Sumners Act. It found the Ashurst-Sumners Act, just like all South Carolina

³⁹ See note 5, *supra*.

⁴⁰ The *McMaster* court repeatedly cited the Fourth Circuit's decision in *Harker* in its opinion. *McMaster*, 819 F.Supp. at 1436 - 1439. This Court also relies upon *Harker* in finding for SCDC on the Plaintiffs' second cause of action. See Section IV(A), *supra*.

prison industries statutes, is a criminal statute. The Ashurst-Sumners Act "criminalizes the transportation of prison-made goods in commerce." *McMaster*, 819 F.Supp. at 1438.

The *McMaster* court concluded the purpose of the Ashurst-Sumners Act was to ensure fair competition between private industries that participate in prison industries programs and private industries that do not participate in prison industries programs. *McMaster*, 819 F.Supp. at 1438 - 1439. Specifically, *McMaster* found

The Ashurst-Sumners Act contains an exemption allowing the interstate transportation of goods produced under the Bureau of Justice's Private Sector/Prison Industry Enhancement Certification Program [P.I.E.C.P.], provided that the inmates who produced the goods were paid the prevailing local rate for their work. (citing 18 U.S.C. 1761(e)) The prevailing wage requirement insures that the availability of prison-made goods will not hamper fair competition. (again citing *Harker*) *McMaster*, 819 F.Supp. at 1439. (emphasis added)

The *McMaster* court also analyzed the legislative history surrounding the enactment of 18

U.S.C. 1761. *Id.*, 819 F.Supp at 1440 - 1441.

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In short, the legislative history cited by the plaintiffs indicates that the primary purpose of the prevailing wage provision [from 18 U.S.C. 1761(e)] was to benefit society in general by eliminating unfair competition, reducing the direct and indirect costs of incarceration, and enhancing rehabilitation efforts. The prevailing wage provision may also benefit prisoners such as plaintiffs, but the fact that a statute has the subsidiary purpose of benefiting a given class of persons does not establish that it creates enforceable rights in their favor. (citing *Cort v. Ash*, 422 U.S. 66, 80 - 81 (1975)) *McMaster*, 819 F.Supp. at 1441. (emphasis added)

Thus, the *McMaster* court concluded the plaintiffs in that case, Minnesota inmates participating in a Minnesota Department of Corrections prison industries program, were not entitled to the prevailing wage despite the apparently plain language of 18 U.S.C. 1761(e).

4. SECTIONS 24-3-430(D) AND 24-3-410(B)(7) DO NOT PROVIDE A PRIVATE RIGHT OF ACTION BY WHICH THE PLAINTIFFS MAY DEMAND HIGHER WAGES FOR THEIR DOI LABOR

SCDC urged this Court to apply *McMaster's* logic and holding to the present action, and this Court concludes *McMaster's* logic and holding applies. This Court finds federal courts in this state have followed *McMaster's* logic and holding.⁴¹ Further, this Court concludes under precedent established by our Court of Appeals, the Plaintiffs in the present case do not have a private right of action by which to demand either comparable wages or the prevailing wage for their DOI labor.

In *Watson v. Sellers*, 299 S.C. 426, 385 S.E.2d 369 (Ct. App. 1989), our Court of Appeals harmonized *Cort v. Ash*, 422 U.S. 66 (1975), cited in *McMaster*, with *Rayfield v. S.C. Department of Corrections*, 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988). The issue presented in *Watson*, which led to the Court of Appeals harmonizing *Cort* and *Rayfield*, was whether a statute that did not expressly provide a private right of action impliedly provided a private right of action to a complaining party. After reciting the test fashioned by the United States Supreme Court in *Cort*, the Court of Appeals recited South Carolina authority on this subject:

In order to show that the defendant owes him a duty of care arising from a statute, the plaintiff must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered, and (2) that he is a member of the class of persons the statute is intended to protect. (citing *Rayfield*, 374 S.E.2d at 914) ... we see no inconsistency with the test of *Cort v. Ash*. *Watson*, 385 S.E.2d at 373.

This Court concludes the Plaintiffs did not satisfy the *Watson* test. Clearly, neither Section 24-3-430(D), the statute the Plaintiffs invoke in their Complaint, nor Section 24-3-

⁴¹ See *Smith v. Evans*, No. CA-95-317-6-OAK, p. 4 (D.S.C. 1996), affirmed 106 F.3d 392 (4th Cir. 1997 in an unpublished opinion) ("As the Court in *McMaster* stated, "Congress' purpose in enacting the Ashurst-Sumners Act was to protect private business, not to protect the inmate worker. Sections 1761-62 embody Congressional interest in free labor and were designed to protect private business from competition from goods produced with inexpensive convict labor," quoting the 8th Circuit's opinion affirming the district court's ruling in *McMaster*, 30 F.2d 976, 981.)

410(B)(7), the precisely applicable statute, expressly provides inmates a private right of action by which to demand either the prevailing wage or comparable wages for their DOI labor.⁴³

Therefore, the Plaintiffs effectively seek this Court to find these statutes impliedly provide them a private right of action.

However, the Plaintiffs failed to prove by a preponderance of the evidence that the essential purpose of Section 24-3-430(D) is to protect them from receiving an hourly wage for their DOI labor that was or is below the "prevailing wage" for similar work. Additionally, the Plaintiffs failed to prove by a preponderance of the evidence that they are members of the class of persons either Section 24-3-430(D) or Section 24-410(B)(7) were intended to protect.

As the Plaintiffs introduced into the record no legislative history regarding the enactment of Section 24-3-430(D) or any other South Carolina prison industries statute, this Court applies the legislative history surrounding the enactment of 18 U.S.C. Section 1761 to the Plaintiffs' demand for higher wages. As *McMaster* concluded, Congress enacted 18 U.S.C. Section 1761 to address the potential perils of unfair competition between private industries that participate in prison industries programs and private business that do not participate in prison industries programs. Again, 18 U.S.C. Section 1761 is a criminal statute just as Sections 24-3-430(D), 24-3-410(B)(7), and all of the South Carolina prison industries statutes are criminal statutes. By analogy, therefore, the South Carolina legislature enacted both Sections 24-3-430(D) and 24-3-

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⁴³ By contrast, the Fair Labor Standards Act expressly provides for a private right of action. See 29 U.S.C. Section 216(b) which provides, in pertinent part, "[a]n action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated."

410(B)(7) to address, at the state level, the potential perils of unfair competition addressed at the federal level by 18 U.S.C. Section 1761.

Accordingly, this Court concludes the Plaintiffs do not possess a private right of action by which to demand a higher wage for their DOI labor under Sections 24-3-430(D), 24-3-410(B)(7), or any other South Carolina prison industries statute. Consequentially, this Court finds for SCDC on the Plaintiffs' first cause of action.

Moreover, as discussed below, this Court concludes that SCDC pays the Plaintiffs an acceptable hourly wage for their DOI labor even under the parameters of Sections 24-3-430(D) and 24-3-410(B)(7).

5. ACCORDING TO THE SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION, SCDC PAYS THE PLAINTIFFS AN ACCEPTABLE HOURLY WAGE FOR THEIR DOI LABOR

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The evidence introduced by the parties at trial showed that the South Carolina Employment Security Commission (ESC), the state agency responsible for collecting and publishing wage data for non-institutional businesses throughout South Carolina, reviewed and approved the permanent \$5.15 per hour wage SCDC pays the Plaintiffs for their DOI labor.

On July 27, 2000, Director Ellis wrote Mr. Ted Gladden, ESC's Assistant Director for Labor Market Information, and asked him to review the hourly wage rate for the DOI project in which the Plaintiffs participate.⁴³ Director Ellis clearly stated SCDC pays the Plaintiffs \$5.15 per hour. On August 4, 2000, Mr. Gladden responded to Director Ellis' inquiry by providing Director Ellis with a range of wages articulated as follows: "Low" = \$5.05, "Mean" = \$7.48, and "High" = \$8.29.⁴⁴

⁴³ July 27, 2000 letter from Director Ellis to Mr. Gladden. (Defendant's Exhibit 14)

⁴⁴ August 4, 2000 letter from Mr. Gladden to Director Ellis. (Defendant's Exhibit 15)

Ms. Rebecca Eleazer resolved any confusion surrounding the meaning of Mr. Gladden's August 4, 2000 response. The Plaintiffs called Ms. Eleazer, an ESC representative, during *their* case-in-chief, because she actually prepared Mr. Gladden's response. Ms. Eleazer clarified and explained Mr. Gladden's response.

According to Ms. Eleazer, the designations "Low, Mean, and High" simply reflect percentile designations. The designation "Low" corresponds to the 25th percentile, the designation "Mean" corresponds to the 50th percentile, and the designation "High" corresponds to the 75th percentile. In other words, 25% of the non-institutional businesses surveyed by the ESC reported an hourly wage at or below \$6.05, 50% of the non-institutional businesses surveyed by the ESC reported an hourly wage at or below \$7.48, and 75% of the non-institutional business surveyed by the ESC reported an hourly wage at or below \$8.29.

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27 Critically, however, the "floor" for the wage range described by Ms. Eleazer is the federal minimum wage of \$5.15 per hour, the rate alleged by the Plaintiffs in their first cause of action to be below the "prevailing wage" for work of a similar nature. With this critical information, the wage range provided by Mr. Gladden's August 4, 2000 letter may be further refined as follows: 25% of the non-institutional businesses surveyed by the ESC reported an hourly wage from \$6.05 down to \$5.15, 50% of the non-institutional businesses surveyed by the ESC reported an hourly wage from \$7.48 down to \$5.15, and 75% of the non-institutional business surveyed by the ESC reported an hourly wage from \$8.29 down to \$5.15.

According to Ms. Eleazer, no business surveyed by her agency reported an hourly wage below the federal minimum wage of \$5.15 per hour. Therefore, the \$5.15 hourly wage SCDC pays the Plaintiffs for their DOI labor at Tyger River falls within ESC's wage range as recited by Mr. Gladden in his August 4, 2000 letter to Director Billa.

Ms. Eleazer emphasized her agency does not recognize or even use the term "prevailing wage" in compiling or publishing its wage data. Thus, no evidence introduced by the Plaintiffs supported their allegation the prevailing wage for work performed by the Plaintiffs in the DOI project with Standard Plywoods ranges between \$9 and \$14 per hour.⁴⁵

As the evidence clearly demonstrated at trial, the Plaintiffs' permanent hourly wage of \$5.15 falls within the ESC's established wage range, as it equals the federal minimum wage. Thus, SCDC pays the Plaintiffs an acceptable hourly wage for their DOI labor.

6. BJA, THE FEDERAL AGENCY RESPONSIBLE FOR CERTIFYING THE DOI PROJECT IN WHICH THE PLAINTIFFS PARTICIPATE, KNOWS OF AND APPROVES OF THE \$5.15 HOURLY WAGE SCDC PAYS THE PLAINTIFFS

Just as he advised and sought review from the ESC of the \$5.15 hourly wage SCDC pays the Plaintiffs, Director Ellis advised BJA of DOI's payment of the federal minimum wage to the Plaintiffs. Director Ellis also advised BJA of his dialogue with the ESC regarding ESC's review of the Plaintiffs' permanent wage of \$5.15 per hour. This information is best reflected in an August 10, 2001 letter to Director Ellis from Mr. Robert T. Watkins, Program Manager, PIECP, BJA.⁴⁶

On July 27, 2000, you requested wage ranges for all of your PIECP CACs and received wage ranges in [an ESC] letter dated August 8, 2000.⁴⁷ That letter provided you with low, mean, and high wages for each job category you requested. In each case the "low" wage was above the Federal Minimum Wage (FMW). However, when you requested further clarification, by telephone from [the ESC], it was explained to you verbally that each of those numbers itself represented a range and the

⁴⁵ The evidence clearly demonstrated Standard Plywoods' Clinton employees, who perform a wider breadth of job tasks than the Plaintiffs, receive hourly wages well below the \$9 and \$14 per hour range the Plaintiffs alleged is the range of the prevailing wage for similar work. See Defendant's Exhibit 12.

⁴⁶ Plaintiffs' Exhibit 24.

⁴⁷ The ESC letter referenced by Mr. Watkins was actually dated August 4, 2000. See note 42, *supra*.

bottom of the "low" range in each case with the FMW. Based upon this information, you determined that the FMW was an acceptable wage in each of the six CACs that you operate.⁴⁸ ... BJA agrees that as long as the wage is at or above the "low" end of the scale, as determined by (the ESC), it will be considered as having met PIERP compliance criteria. (emphasis added by Mr. Watkins).⁴⁹

As discussed immediately above, the \$5.15 hourly wage SCDC pays the Plaintiffs is clearly "at or above the 'low' end" of the ESC's scale. Thus, BJA, the federal agency responsible for certifying the DOI PIERP project in which the Plaintiffs participate, approved the permanent \$5.15 hourly wage SCDC currently pays the Plaintiffs. Therefore, according to BJA, SCDC pays the Plaintiffs an acceptable hourly wage for their DOI labor. Consequentially, this Court finds for SCDC on the Plaintiffs' first cause of action.

7. **EVEN IF THE PLAINTIFFS HAD SUSTAINED LOSSES AS A RESULT OF RECEIVING THE MINIMUM WAGE OF \$5.15 PER HOUR FOR THEIR DOI LABOR, SCDC WOULD BE IMMUNE FROM LIABILITY BY OPERATION OF SECTION 15-78-60(5)**

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Finally, the Plaintiffs alleged in their first cause of action an unnamed former SCDC director exercised his discretion in a grossly negligent manner by entering into contracts with private industry that resulted in the Plaintiffs receiving wages "in violation of the 'prevailing wage' provision of" Section 24-3-430.⁵⁰ The Plaintiffs further alleged the "violation of the plain and ordinary meaning of S.C. Code Ann. Section 24-3-430(a)(b)(d) which prohibits compensation to Plaintiffs at a rate of less than the prevailing wage for work of similar nature in the private sector constitutes gross negligence."⁵¹ Both allegations fail for the same reasons.

⁴⁸ The DOI project at Tyger River in which the Plaintiffs participate or participated is one of the six CACs referenced by Mr. Watkins.

⁴⁹ August 10, 2001 letter to Director Ellis from Mr. Watkins, p. 2. (Plaintiffs' Exhibit 24)

⁵⁰ See note 7, *supra*.

⁵¹ See note 34, *supra*.

Director Ellis, as demonstrated above, submitted the \$5.15 per hour wage the Plaintiffs currently receive for review by both the South Carolina ESC and BJA. The \$5.15 hourly wage the Plaintiffs receive from SCDC falls within ESC's published range for similar work. As a result of the wage's conformity with ESC guidelines, BJA also approved the \$5.15 hourly wage SCDC pays the Plaintiffs for their DOI labor. Director Ellis' submission of the Plaintiffs' hourly wage for review by both ESC and BJA clearly demonstrates that Director Ellis afforded not just slight care but great care in determining the Plaintiffs' hourly wage. Accordingly, such great care means that Director Ellis did not act in a grossly negligent manner in determining the hourly wage the Plaintiffs currently receive. Thus, SCDC is immune from liability by operation of Section 15-78-60(5) even if the Plaintiffs had legitimately sustained losses as a result of receiving only the federal minimum wage of \$5.15 per hour for their DOI labor. See *Jackson v. SCDC*, 390 S.E.2d at 468 - 469.²²

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30 As Section 24-3-430(B) provides, in part, that "[SCDC's] director may enter into contracts necessary to implement this program," the former director who entered into the contract with Standard Plywoods which provided that the Plaintiffs would receive an hourly wage of \$5.15 did not enter into the contract "in a grossly negligent manner," because both ESC and BJA deemed this wage as acceptable. Again, SCDC is immune from liability by operation of Section 15-78-60(5) even if the Plaintiffs had legitimately sustained losses. See *Jackson*, *supra*.

However, the Plaintiffs sustained no such losses as they are not entitled to a private right of action by which to demand higher wages, and the \$5.15 hourly wage they receive is

²² Also see analysis on pages 12 and 13, *supra*.

acceptable according to ESC and BJA. Accordingly, this Court finds for SCDC on the Plaintiffs' first cause of action.

V. CONCLUSION

For the reasons articulated above, this Court **FINDS** for SCDC on the Plaintiffs' first and second causes of action.

As the Plaintiffs' final three (3) causes of action did not survive SCDC's motion for summary judgment, this Court **ENTERS** judgment for SCDC in this action. **IT IS SO ORDERED.**

J. M. Strickland
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Joseph M. Strickland
JOSEPH M. STRICKLAND
Special Circuit Court Judge
Fifth Judicial Circuit

Columbia, South Carolina
October 30, 2002

FORM 4

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

Richard Adkins, et al.

PLAINTIFF(S)

JUDGMENT IN A CIVIL CASE

CASE NO. 00 -CP-40- 4761

S.C. Dept. of Corrections

DEFENDANT(S)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☒ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

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

Dated at _____, South Carolina, this _____ day of _____, 20____.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this 31 day of Oct, 2008 to attorneys of record or to parties (when appearing pro se) as follows:

Harry L. Davis, Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

Vinton Lide
Lake Summers

ATTORNEY(S) FOR THE DEFENDANT(S)

Barbara C. Scott
CLERK OF COURT

SCRCP APP-24

SCRCP FORM 4 (Revised 5/03)

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

AGREEMENT

THE AGREEMENT is entered into this 3rd day of MARCH, 2001, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent R. Dodge Frederick, Interim Director and Insilco Technologies, ITS Global Division, (hereinafter referred to as "Contractor") by its duly authorize agent Philip Pitman, Vice President, Operations.

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,

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

WHEREAS, the Contractor intends to engage in the business of assembling wire harnesses at the Evans Correctional Institution (hereinafter referred to as "ECI"); 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:

SCDC shall provide a Prison Industries building located at Evans Correctional Institution of approximately 25,000 square feet and will refer necessary inmates to the Contractor for potential employment.

ARTICLE 2 Conditions of Occupancy of the Industry Facility:

2.1 General:

The Contractor shall not have the right to sublease, assign, transfer, or enter into any other agreement regarding the occupancy herein granted without the expressed written consent of SCDC.

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2.1 The Duties of the Contractor:

1. Maintenance: The Contractor 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, the contractor shall be responsible for the routine maintenance of its equipment and that furnished by SCDC for contractor's production use.

2. Insurance: The contractor shall maintain insurance coverage for its equipment, supplies and material located in the prison industries building against casualty occurrences. Further the contractor shall maintain liability insurance coverage on itself, its agents, servants and employees in an amount no less than \$100,000 per person per claim, \$600,000 aggregate. The Contractor shall also maintain Workers Compensation insurance on its employees in accordance with the laws of the State of South Carolina. The contractor shall deliver to SCDC a duly authenticated certificate evidencing such insurance upon executing this agreement and upon each insurance renewal date.

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

4. Tools, Equipment and Supplies: The Contractor 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 Contractor may be removed upon termination of the agreement.

5. Building Modification: The Contractor shall not make any alterations or improvements to the Prison Industry building without prior written approval of SCDC which shall not be unreasonably withheld. Any such improvements or equipment permanently installed or affixed shall become the property of SCDC. All equipment provided and installed by the contractor will remain the property of the Contractor and may be removed by the contractor at any time during the terms of this agreement or within ninety (90) days of termination.

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6. Waiver of Subrogation: SCDC shall not be liable for any damages to the contractor's equipment, supplies and material located in the prison industries building caused by casualty occurrence, it being understood that the Contractor shall 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 the Contractor or the Contractor's employees or agents, shall be at the Contractor's 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 real or personal property or loss suffered by the business or occupation of the Contractor arising from any acts or occurrences whatsoever except where the damage or loss is due to the malicious destruction of equipment caused by inmates (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. Payment for Occupancy: The Contractor shall pay a fixed monthly amount of One (\$1.00) Dollar for occupancy of the premises herein above described.

9. Condition of Property: Upon termination of this agreement, the Contractor will surrender the buildings, equipment and fixtures belonging to SCDC in the same condition it received it, normal wear and tear and casualty excepted.

10. Hazardous Waste: No hazardous waste shall be generated in the Prison Industries building by the Contractor. Contractor will be responsible for any other waste generated at anytime during this agreement.

2.2 The Duties of SCDC:

1. Premises to be Occupied: SCDC shall provide approximately 25,000 square feet in the industry building at ECI. The occupancy of this area should be consistent with the terms of this agreement regarding work authorized and hours. SCDC will maintain its facility

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and fixtures in good condition throughout term of contract.

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

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

Termination Remedy: If this contract is terminated by SCDC pursuant to Section 4.7 Termination subsections 7b, c, f, g, h, i or k, the Contractor shall be liable to SCDC for cost of inmate wages, civilian supervision and utilities incurred up to termination.

ARTICLE 3 Conditions Related to Employment of Inmates:

3.0 General:

SCDC shall provide referrals and the Contractor shall employ a minimum of 60 inmates full time (i.e., 7.5 hour work day). Provided however, if during the term of this agreement inmate employment falls below 60 inmates for more than thirty (30) consecutive days, SCDC can terminate this agreement.

3.1 Duties of Contractor:

The Contractor shall provide to SCDC job descriptions and personnel procedures. From the pool of pre-screened potential inmate employees, the Contractor shall then select those inmates workers that they wish to hire; provided that at all times herein, the contractor shall adhere to SCDC's nondiscrimination provisions as set forth in the general terms and conditions of this agreement. The Contractor shall have the same authority to hire, fire, promote or suspend as it would in the normal course of business practices except as set forth in the nondiscrimination provisions referenced herein above and within limits established by SCDC.

1. Training of Inmate Employees: The Contractor will assume all cost of its trainers and technical staff. During the course of this agreement, should there be a product change made by the Contractor, the expense of any

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additional training required will be borne solely by the Contractor.

2. Scope of Work: Prison Industry inmates under the direct and total supervision of SCDC will assemble wire harnesses according to engineering design and manufacturing specifications developed and provided by the Contractor. It will be the sole responsibility of the Contractor 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 operations.

3. Raw Materials: The Contractor shall provide all raw materials and component parts for assembly. 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 the Contractor or its employees or agents, shall be at the sole risk of Contractor 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 1.1.7 contained herein above. The Contractor will provide management and production supervision for all phases of the assembly work. SCDC will allow Contractor's trucks, common carrier and others transporting raw materials, equipment and finished products to and from ECI reasonable access during normal business hours subject to the Department's security requirements in Section 3.1.4.

4. Security: The Contractor 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: The Contractor 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. Payments for Inmate Services: SCDC will invoice the Contractor on a bimonthly basis for inmate labor. The Contractor will pay all sums due and owing within fifteen days of receipt of invoice. Payments shall be made to

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S.C. Department of Corrections, Division of Industries account.

7. Specifications: The Contractor will assume the responsibility to provide specifications for any modification to the SCI Prison Industries building along with production equipment to be acquired.

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

9. Supervisory Staff: The Contractor shall employ sufficient civilian supervisors to ensure that there is at least one (1) civilian supervisor on each production shift. Contractor's staff shall abide by all SCDC Policies and Procedures. Contractor understands and agrees that SCDC shall have the discretion to remove any agent or employee from the institution in the event of a violation of any of SCDC's policies and procedures with regard to the institution. Upon agreement of both parties the civilian employees of SCDC may be used as supervisory staff and then cost invoiced to the Contractor according to an agreed upon formula.

10. Worker Displacement - Contractor agrees that its non-inmate employees, as well as, other non-inmate workers who perform work of a similar nature in the same locality will not be displaced by the agreement.

1.2 Duties of SCDC:

1. Inmate Laborers: SCDC will provide a stable and available work force of inmates.

2. Screening of Potential Inmate Laborers: SCDC will pre-screen inmates for interview by the Contractor according to the job descriptions submitted.

3. Holidays: The inmates employed in the project will observe holidays as described in Appendix B attached hereto and incorporated herein. If the contractor works on a holiday, the inmate worker will have the option to either work or observe the holiday.

4. Inmate Workers Security: SCDC shall be responsible for the security of the inmate labor force. However, any overtime hours required by the contractor which results in security staff overtime will require that the cost be

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charged to the contractor.

5. Training of Contractor's Staff: SCDC shall train the Contractor's civilian staff in security matters.

1.3 Mutual Duties of the Parties:

1. Hourly Rate: Contractor and SCDC agree to an hourly rate determined as follows:

Prevailing Wage (See Appendix D)	\$5.25
Prorata Social Security Withholding Payment	.40
Prorata Workers' Compensation Premium	.20
<u>SCDC Surplus Fund Amount</u>	<u>1.32</u>
Hourly Rate charged to Contract	\$7.17

At no time during this agreement will inmates be paid less than the prevailing wage as set forth in Appendix D. The prevailing wage rate for inmate labor is to be established annually by the S. C. Employment Security Commission. Upon receipt of the annual wage rate, SCDC will notify the Contractor in writing and adjust its charge accordingly. In the event the prevailing wage, prorata social security withholding payments, or prorata Workers' Compensation premium increase during the term of this agreement, Contractor agrees to increase the prevailing inmate wage on a dollar for dollar basis, immediately upon the effective date of such increase.

SCDC and the Contractor will negotiate the "SCDC Surplus Fund Amount" annually.

[Contractor agrees to list in Appendix C each production job under this Agreement with the base wage to be paid hereunder.]

The Contractor 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 the Contractor.

Pursuant to Federal guidelines, inmates working in excess of forty (40) hours per week shall be paid overtime at one and a half times the rate of the prevailing wage.

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The SCDC Surplus Fund amount will not be charged one and a half times on overtime hours.

2. Federal Program Compliance: The Contractor and SCDC agree to follow the requirements the United States Department of Justice's "Private Sector/Prison Industries Enhancements Certificate" program as provided by Sections 609 B(6) and 609 K of the Justice Assistance Act of 1984, Pub. Law 98-173, Title II, Chapter VI, Section 609 B(6) amends Section 819 of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, as amended and Section 609 K amends 18 U.S.C. 178 e as outlined in Appendix D.

3. Compliance with Convict Labor Laws: The Contractor 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 change preventing interstate shipments of goods produced under this agreement, Contract shall terminate without penalty under this contract.

ARTICLE 4 General Terms and Conditions:

4.1 General:

The Contractor, his/her 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. The contractor will not hold himself/herself 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.

1. Period of Performance: The term of this Agreement shall be for five (5) years commencing on the date of the execution of this Agreement.

2. Hold Harmless: The Contractor 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 the Contractor's employees or agents.

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except where such liability claim is due to negligence of the State of South Carolina, SCDC or employees or agents thereof, arising out of the performance of this contract. The contractor 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. The Contractor 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 Contractor.

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

R. Dodge Frederick, Interim Director
South Carolina Department of Corrections
4444 Broad River Road
P. O. Box 21787
Columbia, South Carolina 29221-1787

to the Contractor as follows:

Philip Pitman
Vice President Operations
Insilco Technologies, ITG Global Div.
2801 Slater Road, Suite 120
Morrisville, N.C. 27560-9437

4. Non-Discrimination in Employment: The Contractor shall not discriminate against any employee inmate worker or applicant for employment because of race, color, sex, religion, national origin, creed, marital status, age, or the presence of any sensory mental or physical handicap.

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

6. Records, Documents and Reports: The Contractor 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

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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. The Contractor 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 delegate, designee by writing shall have the expressed, implied, or apparent authority to alter, modify or waive any clause or condition in this contract. Furthermore, any alterations, amendment or modification or waiver of any clause or condition of this contract 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. If Contractor fails to reimburse the State for a minimum number of inmates for a period of thirty (30) consecutive days subject of Article 3;
- d. If Section 24-3-310 of the Code of Laws of the State of South Carolina, 1976, as amended, is materially changed, altered, amended, or repealed so as to abrogate this legislation charged with establishing business relationships with private enterprise;
- e. If federal, state, or local laws change to prevent the shipment of goods produced under this Agreement;
- f. If Contractor 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 Contractor performs any intentional act which damages the reputation or property of SCDC;
- h. If Contractor 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 Contractor's corporation is dissolved voluntarily or involuntarily;
- i. Failure of Contractor to pay promptly any inmate wages due hereunder for a period of fifteen (15) days after

10

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- written notice from SCDC to contractor of such default;
- j. At the end of any fiscal year (June 30) after the commencement date of this Contract 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; and
 - k. Immediately in the event that the safety or security of the institution, its personnel or inmates is jeopardized.
- Upon termination of the contract the Contractor shall have ninety (90) days to vacate the facilities of SCDC.

8. 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 part.

9. Governing Law: This contract 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.

10. 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 provision of this contract 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.

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

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

Witness

Judge J. Dease
Miss Roberts

Witness

Juan P. Carr
B. Barker

R. Dodge Frederick
R. Dodge Frederick,
Interim Director
APPROVED AS TO FORM
South Carolina Department of Corrections

DATE: 4/22/73

Philip Pitman
Philip Pitman
Vice President Operations
Insilco Technologies,
ITG Global Div.

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THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

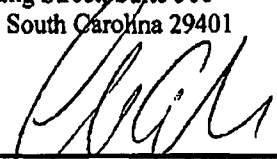
The Honorable H.W. Funderburk, Jr., Administrative Law Judge

William Ray Ward, # 091566,	)	Docket No. 15-ALJ-04-0560-AP
	)	Grievance No. ECI-1212-07
Appellant,	)	
	)	
vs.	)	RESPONDENT'S BRIEF
	)	
South Carolina Department of Corrections,	)	
	)	<u>CERTIFICATE OF SERVICE</u>
Respondent.	)	

I certify that I have served the Respondent'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:

Julius H. Hines, Esquire
Meg E. Sawyer, Esquire
K&L Gates LLP
134 Meeting Street, Suite 500
Charleston, South Carolina 29401

April 11, 2016


LAKE E. SUMMERS

FILED

APR 11 2016

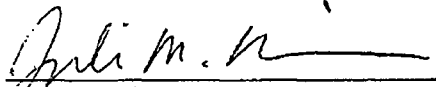
CERTIFICATE OF SERVICE

I, Julia M. Miller, 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).

Julius H. Hines, Esquire
Meg E. Sawyer, Esquire
K&L Gates LLP
134 Meeting Street, Suite 500
Charleston, South Carolina 29401

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

July 13, 2016.
Columbia, S.C.


Julia M. Miller
Judicial Law Clerk

FILED

JUL 13 2016

SC ADMIN. LAW COURT

LAW OFFICES

JUL 15 2016

MALONE, THOMPSON
SUMMERS & OTT, LLC

LAW OFFICES

JUN 16 2017

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

MALONE, THOMPSON
SUMMERS & OTT, LLC

William Ray Ward, #91566,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

) Docket No. 15-ALJ-04-0560-AP
)
) Grievance No.: ECI 1212-07
)

ORDER LIFTING ABEYANCE

JUN 15 2017

SC ADMIN. LAW COURT

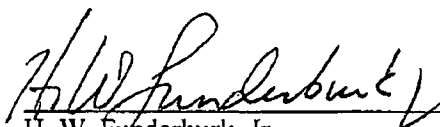
This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the Notice of Appeal filed by William Ray Ward ("Appellant"), an inmate in the custody of the South Carolina Department of Corrections ("SCDC").

A case that controlled some of the issues here, *Ackerman v. S.C. Dep't of Corr.*, 415 S.C. 412, 782 S.E.2d 757 (Ct. App. 2016), *cert. denied* (May 31, 2017), has reached final dispositions. Therefore, this Court will lift its Order of Abeyance in this case. The Record and briefs of the parties have already been filed in this case. However, the Court asks the parties to file supplemental briefs for any issues that remain, including whether Appellant is entitled to relief under S.C. Code Ann. § 24-3-420(D); what deductions from Appellant's pay were allowed during the time he was employed in the Prison Industries Program; and whether Appellant is entitled to immediately withdraw his escrowed monies pursuant to S.C. Code Ann. § 24-3-40(B)(2). The Court will grant Appellant until July 5, 2017, to supplement his brief to address the issues remaining after *Ackerman* if he chooses. Respondent shall have until July 25, 2017, to file and serve its supplemental brief if it chooses. Any reply brief is due by August 4, 2017. It is therefore,

ORDERED that the Order of Abeyance in this case is **LIFTED**.

AND IT IS SO ORDERED.

Columbia, South Carolina
June 15, 2017


H. W. Funderburk, Jr.
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Christopher P. Whitehead, 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).

Julius H. Hines, Esquire
Meg E. Sawyer, Esquire
K&L Gates LLP
134 Meeting Street, Suite 500
Charleston, South Carolina 29401

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

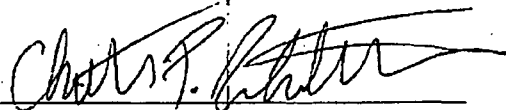
Barton Jon Vincent, Esquire
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
4444 Broad River Road
Columbia, South Carolina 29221

LAW OFFICES

JUN 16 2017

**MALONE, THOMPSON
SUMMERS & OTT, LLC**

June 15, 2017
Columbia, South Carolina



Christopher P. Whitehead
Judicial Staff Counsel

FILED

JUN 15 2017

ALC Docket No. 15-AJ-04-0560-AP Order Lifting Abeyance

SC ADMIN. LAW COURT

LAW OFFICES

JUL 10 2017

MALONE, THOMPSON
SUMMERS & OTT, LLC

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

William Ray Ward (#091566),

Appellant,

v.

South Carolina Department of
Corrections,

Respondent.

Docket No. 15C-0560

**APPELLANT'S
SUPPLEMENTAL BRIEF
IN SUPPORT OF APPEAL**

Pursuant to the Order Lifting Abeyance, dated June 15, 2017, Appellant William Ray Ward ("Mr. Ward"), by and through his undersigned counsel, respectfully submits this Supplemental Brief in support of his appeal of Respondent, South Carolina Department of Corrections' ("SCDC") final denial of his Grievance, #ECI-1212-07.

STATEMENT OF ISSUES ON APPEAL

- a. Whether Mr. Ward is entitled to relief under S.C. Code Ann. § 24-3-420(D);
- b. Whether SCDC properly deducted certain monies from Mr. Ward's wages during his employment in the Prison Industries Project (the "Project"); and
- c. Whether Mr. Ward is entitled to immediately withdraw his escrowed monies pursuant to S.C. Code Ann. § 24-3-40(B)(2)?

STATEMENT OF THE CASE

Mr. Ward hereby incorporates by reference his statement of the case as submitted in Appellant's Brief in Support of Appeal, filed with this Court on March 8, 2016. On July 13, 2016, the South Carolina Administrative Law Court ("ALC") ordered that this case be held in abeyance pending the final disposition of *Ackerman v. South Carolina Department of*

Corrections, 415 S.C. 412, 782 S.E.2d 757 (2016), a case controlling some of the legal issues involved in Mr. Ward's appeal. The ALC lifted the abeyance on June 15, 2017, and requested supplemental briefs from both parties in light of the final disposition of *Ackerman* (Order Lifting Abeyance attached hereto as Exhibit A).

ARGUMENT

I. Mr. Ward Filed a Timely Grievance Invoking S.C. Code § 24-3-430(D).

In *Ackerman v. South Carolina Department of Corrections*, the South Carolina Court of Appeals addressed a collection of grievances analogous to that filed by Mr. Ward. Specifically, a group of inmates participating in the Prison Industries Project operated by SCDC appealed the ALC's decision to uphold SCDC's denial of their grievances, which raised violations of S.C. Code § 24-3-430(D) (the "Prevailing Wage Statute") for failure to pay the prevailing hourly wage for the inmates' work in the project. 415 S.C. at 413, 782 S.E.2d at 757-58. The Court of Appeals reversed the ALC's decision to uphold SCDC's denial of the grievances and held that grievances for violation of the Prevailing Wage Statute are not subject to the fifteen-day filing deadline set forth by SCDC's Policy GA-01.12. *Id.* at 421, 782 S.E.2d at 762. The court remanded the case so that the ALC could consider the inmates' grievances on the merits. *Id.*

The holding in *Ackerman* is dispositive with respect to several issues in Mr. Ward's appeal. First and foremost, Mr. Ward's claims are properly governed by the Prevailing Wage Statute. Second, Mr. Ward's grievance is not subject to the fifteen-day filing deadline and, thus, his grievance was timely filed with SCDC. As a result, SCDC's arguments to the contrary fail as a matter of law and Mr. Ward's Grievance must be decided on the merits.

II. Mr. Ward Is Entitled to Back Wages for His Work in the Prison Industries Project.

As stated in *Ackerman*, SCDC was required to pay inmates participating in the Prison Industries Project the *prevailing wage* for work of similar nature in the private sector until July 1, 2001, when the legislature enacted a budget proviso permitting SCDC to negotiate for and pay inmates less than the prevailing wage for service work. *Ackerman*, 415 S.C. at 415, 782 S.E.2d at 758. SCDC admits, however, that it paid Mr. Ward federal minimum wage, rather than prevailing wage, for the entirety of his employment in the Project, which began in June 1995 and ended in November 2003. (Step 1 Grievance Response, p. 5.) In fact, SCDC admits that it actually paid Mr. Ward below the federal minimum wage during Mr. Ward's 320 hours of training as well as the month of October 1996. (Step 1 Grievance Response, p. 5.) By paying Mr. Ward the federal minimum wage – and occasionally, below federal minimum wage – SCDC set Mr. Ward's hourly rate well below the prevailing rate for similar service work¹ and owes Mr. Ward back wages for the delta between those amounts.

Thus, in keeping with the holding in *Ackerman*, the proper relief in this case is to reverse and remand SCDC's denial of Mr. Ward's Grievance with the instruction that SCDC reimburse Mr. Ward for the difference between the minimum wage he earned and the prevailing wage he should have earned, from the beginning of his employment in 1995 until the enactment of the budget proviso in July 1, 2001, multiplied by the number of hours worked during that time period. SCDC presumably has access to Mr. Ward's hours in the Project and can easily calculate this reimbursement.

¹ Information on hourly prevailing wage is readily available online to the general public through the Bureau of Labor and Statistics. Indeed, Mr. Ward filed the relevant prevailing wage information for his employment in the Project in relation to a lawsuit against Lake E. Summers involving SCDC's administration of the prison grievance program, Civil Action No. 8:12-cv-01480-DCN, PACER Entry No. 83-3 (attached hereto as Exhibit B).

Even if this Court somehow concludes that federal minimum wage is sufficient for Mr. Ward's work in the Project, Mr. Ward hereby reiterates his argument that, at the very least, SCDC must reimburse him for his 320 hours of training and the month of October 1996, during which he received less than minimum wage as admitted by SCDC. (Step 1 Grievance Response, p. 5.)

III. SCDC Must Disburse Mr. Ward's Back Wages in Compliance with South Carolina Law.

SCDC argues that while it collected \$1.92 for each hour Mr. Ward worked in the Project, the fee was part of the total hourly rate charged to the private industry sponsor for overhead costs and certain withholdings. (Respondent's Brief, pp. 24-26.) To the extent SCDC treated the \$1.92 as a separate charge to the Project's sponsor, rather than a deduction from Mr. Ward's gross wages, Mr. Ward acknowledges that SCDC was within its rights to do so. Assuming, however, that SCDC has provided this Court with an accurate reflection of its treatment of Mr. Ward's wages, the \$1.92 fee should not impact the calculation and payment of back wages owed to Mr. Ward discussed above, as SCDC has already received \$1.92 for each hour worked per its contract with the private sponsor.²

Finally, with respect to Mr. Ward's access to the back wages owed from his employment with the Project, Mr. Ward states that the distribution must comply with S.C. Code Ann. § 24-3-40, *as amended by* 2017 South Carolina Laws Act 96 (S.289), which requires that certain percentages of Mr. Ward's wages be made available to him during incarceration for the purchase of incidentals. In regards to whether Mr. Ward is entitled to access monies held in his escrow account, Mr. Ward refers the ALC to *Cramer v. S.C. Dep't of Corr.*, No. 2014-002172, 2016 WL

² To the extent Mr. Ward's back wages are subject to any additional tax withholdings, SCDC is presumably able to calculate the amount of such withholdings and apply them to Mr. Ward's back wages in compliance with state and federal law. Mr. Ward reserves the right, should he disagree with the calculation of such withholdings, to file a separate grievance in relation thereto.

4125880, at *1 (S.C. Ct. App. Aug. 3, 2016), which involves a very similar grievance filed by an inmate serving a life sentence, who argues, among other things, that keeping the money he earned through the Prison Industries Project in escrow until his death deprives him of a liberty interest. *Id.* The Court of Appeals reversed the denial of Mr. Cramer's grievance as a result of the decision in *Ackerman*, and remanded the grievance back to the ALC for consideration on the merits. If the Administrative Law Judge assigned to *Cramer* ultimately determines that prohibiting an inmate's access to money earned during the Project and held in his trust account violates a liberty interest, the same decision should be applied to Mr. Ward, who is also serving a life sentence.

CONCLUSION

WHEREFORE, Mr. Ward prays that this Court:

- a. Resolve the appeal in Mr. Ward's favor by reversing SCDC's denial of Mr. Ward's Grievance;
- b. Order that SCDC reimburse Mr. Ward for the difference between the wage he earned during his employment with the Project and the prevailing wage he should have earned from the start of his employment until July 1, 2001; and
- c. For any other relief this Court deems just and proper.



Julius H. Hines (S.C. ID No. 065472)
Email: julius.hines@klgates.com
Meg E. Sawyer (S.C. ID No. 102362)
Email: meg.sawyer@klgates.com
K&L Gates LLP
134 Meeting Street, Suite 500
Charleston, SC 29401
Phone: (843) 579-5600
Fax: (843) 579-5601

ATTORNEYS FOR WILLIAM RAY WARD

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

William Ray Ward, #91566,
Appellant,

vs.

South Carolina Department of Corrections,
Respondent.

Docket No. 15-ALJ-04-0560-AP
Grievance No.: ECI 1212-07

ORDER LIFTING ABEYANCE

JUN 15 2000

SC ADMIN. LAW COURT

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ORDERED that the Order of Abeyance in this case is **LIFTED**.

AND IT IS SO ORDERED.

Columbia, South Carolina
June 15, 2017

H. W. Funderburk, Jr.
H. W. Funderburk, Jr.
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Christopher P. Whitehead, 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).

Julius H. Hines, Esquire
Meg E. Sawyer, Esquire
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Post Office Box 21787
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June 15, 2017
Columbia, South Carolina


Christopher P. Whitehead
Judicial Staff Counsel

JUN 15 2017

ALC Docket No. 15-AJ-04-0560-AP Order Lifting Abeyance

SC ADMIN. LAW COURT

**OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES
SOUTH CAROLINA STATEWIDE
By Specified Year**

YEAR	OCC CODE	OCCUPATIONAL TITLE	AREA EMPLOYMENT	WAGE ESTIMATES			
				Non-Metropolitan		South Carolina	
				MEAN		MEAN	
				HOURLY	ANNUAL	HOURLY	ANNUAL
WIRE HARNESS ASSEMBLERS							
51-2022 Electrical and Electronic Equipment Assemblers							
Assemble or modify electrical or electronic equipment, such as computers, test equipment telemetering systems, electric motors, and batteries.							
1997	93114#*	Electrical and Electronic Equipment Assemblers	1,960	N/A	N/A	\$8.82	\$18,340.0
1998	93114#*	Electrical and Electronic Equipment Assemblers	2,210	N/A	N/A	\$9.92	\$20,620.0
1999	51-2022	Electrical and Electronic Equipment Assemblers	**	N/A	N/A	\$11.78	\$24,510.0
2000	51-2022	Electrical and Electronic Equipment Assemblers	2,850	N/A	N/A	\$11.29	\$23,470.0
2001	51-2022	Electrical and Electronic Equipment Assemblers	2,720	N/A	N/A	\$12.60	\$26,200.0
2002	51-2022	Electrical and Electronic Equipment Assemblers	2,350	N/A	N/A	\$12.85	\$26,720.0
2003	51-2022	Electrical and Electronic Equipment Assemblers	2,720	N/A	N/A	\$13.63	\$28,340.0
51-2092 Team Assemblers							
Work as part of a team having responsibility for assembling an entire product or component of a product. Team assemblers can perform all tasks							
1997	93105#*	Team Assemblers	3,300	N/A	N/A	\$ 10.40	\$ 21,620.0
1998	93105#*	Team Assemblers	1,890	N/A	N/A	\$ 11.43	\$ 23,770.0
1999	51-2092*	Team Assemblers	23,240	N/A	N/A	\$ 11.66	\$ 24,260.0
2000	51-2092*	Team Assemblers	26,670	N/A	N/A	\$ 12.69	\$ 26,390.0
2001	51-2092*	Team Assemblers	24,380	N/A	N/A	\$ 13.07	\$ 27,190.0
2002	51-2092*	Team Assemblers	25,480	N/A	N/A	\$ 13.31	\$ 27,680.0
2003	51-2092*	Team Assemblers	25,540	N/A	N/A	\$ 13.05	\$ 27,150.0

SOURCE: The Bureau of Labor Statistics
http://www.bls.gov/oes/current/oes_sc.htm

NOTES:

N/A - DATA UNAVAILABLE FOR PER DEE NON-METROPOLITAN AREA UNTIL 2006.

EXHIBIT B

**OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES
SOUTH CAROLINA STATEWIDE
By Specified Year**

YEAR	OCC CODE	OCCUPATIONAL TITLE	AREA EMPLOYMENT	WAGE ESTIMATES			
				Non-Metropolitan		South Carolina	
				MEAN		MEAN	
				HOURLY	ANNUAL	HOURLY	ANNUAL
WIRE HARNESS ASSEMBLERS							
51-2022 Electrical and Electronic Equipment Assemblers							
Assemble or modify electrical or electronic equipment, such as computers, test equipment, telemetering systems, electric motors, and batteries.							
1997	931140*	Electrical and Electronic Equipment Assemblers	1,960	N/A	N/A	\$8.63	\$18,540.00
1998	931140*	Electrical and Electronic Equipment Assemblers	2,210	N/A	N/A	\$9.92	\$20,610.00
1999	51-2022	Electrical and Electronic Equipment Assemblers	**	N/A	N/A	\$11.78	\$24,510.00
2000	51-2022	Electrical and Electronic Equipment Assemblers	2,850	N/A	N/A	\$11.29	\$23,470.00
2001	51-2022	Electrical and Electronic Equipment Assemblers	2,720	N/A	N/A	\$11.60	\$24,000.00
2002	51-2022	Electrical and Electronic Equipment Assemblers	2,850	N/A	N/A	\$12.85	\$26,710.00
2003	51-2022	Electrical and Electronic Equipment Assemblers	2,720	N/A	N/A	\$13.63	\$28,540.00
51-2092 Team Assemblers							
Work as part of a team having responsibility for assembling an entire product or component of a product. Team assemblers can perform all tasks.							
1997	931058*	Team Assemblers	1,500	N/A	N/A	\$ 10.40	\$ 21,620.00
1998	931058*	Team Assemblers	1,590	N/A	N/A	\$ 11.43	\$ 23,770.00
1999	51-2092*	Team Assemblers	23,240	N/A	N/A	\$ 11.66	\$ 24,260.00
2000	51-2092*	Team Assemblers	25,670	N/A	N/A	\$ 12.69	\$ 26,590.00
2001	51-2092*	Team Assemblers	24,580	N/A	N/A	\$ 13.07	\$ 27,190.00
2002	51-2092*	Team Assemblers	25,480	N/A	N/A	\$ 13.31	\$ 27,880.00
2003	51-2092*	Team Assemblers	25,540	N/A	N/A	\$ 13.05	\$ 27,350.00

SOURCE: The Bureau of Labor Statistics
http://www.bls.gov/oes/current/oes_sc.htm

NOTES:

NA - DATA UNAVAILABLE FOR FEE DES NON-METROPOLITAN AREA UNTIL 1999.

** - Data not available.

* - Dictionary of Occupational Titles codes

* - South Carolina Statistics data provided for the Non-Metropolitan Statistical Area, FEE DES NON-METROPOLITAN STATISTICAL AREA did not become a statistical area until 2000. (Included Charleston, Columbia, Greenville, and Marion counties. Summerville is the county seat of Marion county.)

National employment data by industry are available for 1993 through 1998. These data consist of industry-based employment estimates by 2-digit and 3-digit SIC industry, with each industry surveyed once every three years. These data contain no wage estimates or data on metropolitan area employment data. In addition, because not all industries are available in each year, it is not possible to calculate total national employment for a given occupation by summing across industries. As a result, the 1993-1998 estimates are useful mainly to show cross-sectional employment patterns for specific industries during this period. No OES data are available for 1990 or before 1993.

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of July, 2017, in Charleston, South Carolina, I served a copy of the forgoing Appellant's Supplemental Brief In Support Of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution, and addressed as follows:

Stephen H. Lunsford
South Carolina Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, SC 29221
Lunsford.Stephen@doc.sc.gov

LAW OFFICES

JUL 10 2017

MALONE, THOMPSON
SUMMERS & OTT, LLC


Gwynn L. Martin
Legal Assistant

Charleston, South Carolina
July 5, 2017

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

The Honorable H.W. Funderburk, Jr., Administrative Law Judge

William Ray Ward, # 091566,	)	Docket No. 15-ALJ-04-0560-AP
	)	Grievance No. ECI-1212-07
Appellant,	)	
	)	
vs.	)	RESPONDENT'S
	)	SUPPLEMENTAL BRIEF
South Carolina Department of Corrections,	)	
	)	
<u>Respondent.</u>	)	

In accordance with the Court's June 15, 2017 and July 26, 2017 orders, the Respondent, the South Carolina Department of Corrections ["SCDC"], respectfully submits its supplemental brief in the above-captioned appeal.

STATEMENT OF ISSUES IDENTIFIED BY THE COURT'S JUNE 15, 2017 ORDER

In its June 15, 2017 Order Lifting Abeyance, the Court acknowledged the following:

A case that controlled some of the issues here, [*Ackerman, et al., v. S.C. Dep't of Corr.*, 782 S.E.2d 757 (S.C. Ct. App. 2016), *cert. denied* (May 31, 2017)], has reached final dispositions. Therefore, this Court will lift its Order of Abeyance in this case. The Record and briefs of the parties have already been filed in this case.

The Court then requested "the parties to file supplemental briefs for any issues that remain, including whether [Ward] is entitled to relief under S.C. Code Ann. § [24-3-430(D)]; what deductions from [Ward's] pay were allowed during the time he was employed in the Prison Industries Program; and whether [Ward] is entitled to immediately withdraw his escrowed monies pursuant to S.C. Code Ann. § 24-3-40(B)(2)."

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SC ADMIN LAW COURT

In his July 5, 2017 supplemental brief,¹ Ward addressed only the three (3) issues the Court identified in its June 15, 2017 order. SCDC respectfully submits, however, that the Court did not limit the parties to just the three (3) issues it identified in its order, and SCDC addresses other issues relevant to the disposition of the instant matter in its instant supplemental brief.

STANDARD OF REVIEW

Ward did not articulate the standard of review applicable to his instant appeal in any of the briefs he has filed with the Court to date.

SCDC, however, articulated the applicable standard of review in its April 11, 2016 brief,² and it respectfully incorporates by reference the same into its instant supplemental brief.

STATEMENT OF THE CASE

SCDC respectfully concurs with the chronology Ward presented in the statement of the case he provided in his July 5, 2017 supplemental brief.

ARGUMENT

I. WARD DID NOT WORK FOR ESCOD OR INSILCO

Ward asserted in his March 8, 2016 brief that he worked for or was otherwise employed by both ESCOD and INSILSO, the two (2) private sector companies involved in the prison industries project SCDC operated at Evans Correctional Institution ["Evans"].

Ward obliquely reiterated this assertion in his July 5, 2017 supplemental brief when he asked if "SCDC properly deducted certain monies from [his] wage during his employment in the Prison Industries Project (the 'Project')." [emphasis supplied]. (Suppl. Brief, p. 1).

¹ While he served his July 5, 2017 supplemental brief upon Stephen H. Lunsford, Esquire, SCDC's Deputy General Counsel, Ward did not serve it upon SCDC's undersigned outside counsel. SCDC's undersigned outside counsel received a copy of Ward's supplemental brief via e-mail from SCDC's Office of General Counsel on July 10, 2017.

² See SCDC's April 11, 2016 Brief, pp. 1 – 2.

The Court seemingly uttered the same assertion in its June 15, 2017 order when it asked “what deductions from [Ward’s] pay were allowed during the time he was employed in the Prison Industries Program.” [emphasis supplied].

As it did in its April 11, 2016 brief,³ SCDC respectfully asserts that contrary to any claim that he worked for or was otherwise employed by ESCOD or INSILCO, Ward voluntarily participated in the prison industries project SCDC operated at Evans, because he was required to keep “at some useful employment” as part of his sentence under S.C. Code Ann. § 24-3-27(B). See also *Watson v. Graves*, 909 F.2d 1549, n. 7 (5th Cir. 1990). SCDC also respectfully asserts that Ward did not enjoy any kind of “employee-employer” relationship with ESCOD or INSILCO, because he was committed to, confined by, and in the custody and control of SCDC while he voluntarily participated in the project. See *S.C. Dep’t of Corr. v. Cartrette*, 694 S.E.2d 18, 23 (S.C. Ct. App. 2010); *Williams v S.C. Dep’t. of Corr.*, 641 S.E.2d 885, 887 (S.C. 2007); and *Bennett v. Frank*, 395 F.3d 409, 410 (7th Cir. 2005).

As an important aside, the prison industries project in which Ward participated at Evans differed from the prison industries project under review in both *Ackerman, et al., v. S.C. Dep’t of Corr.*, 782 S.E.2d 757 (S.C. Ct. App. 2016), *cert. denied* (May 31, 2017), and *Gatewood v. S.C. Dep’t of Corr.*, 785 S.E.2d 600 (S.C. Ct. App. 2016), *cert. denied* (May 31, 2017).⁴

As reflected in *Torrence, et al., v. S.C. Dep’t of Corr.*, 646 S.E.2d 866, 867 (S.C. 2007),⁵ the project operated by SCDC at Evans in which Ward voluntarily participated was certified by the United States Department of Justice’s Bureau of Justice Assistance [“BJA”] under BJA’s Prison Industries Enhancement Certification Program [“PIECP”].

³ See SCDC’s April 11, 2016 Brief, pp. 2 – 4.

⁴ The Court did not mention *Gatewood* in either its July 13, 2016 Order of Abeyance or its June 15, 2017 order.

⁵ See SCDC’s April 11, 2016 Brief, p. 7, n. 7.

The project operated by SCDC in which the group of current and former inmates in *Ackerman* voluntarily participated consisted of a prison industries service project that was not certified by BJA under its PIECP. See *Ackerman*, 782 S.E.2d at 757 – 58. The inmate in *Gatewood* participated in the same service project as the current and former inmates in *Ackerman*. See *Gatewood*, 785 S.E.2d at 603 – 04.

As illustrated in below, Ward misapprehended the ruling by our Court of Appeals in *Ackerman* by applying it to his prison industries pay claims.

II. WARD DID NOT ASSERT THAT HIS PRISON INDUSTRIES PAY CLAIMS CONSTITUTED A CHALLENGE AGAINST SCDC POLICY OR PROCEDURE

In the first argument from his July 5, 2017 supplemental brief, Ward asserted as follows regarding our Court of Appeals' 2016 decision in *Ackerman* (Supp. Brief, p. 2):

The holding in *Ackerman* is dispositive with respect to several issues in [Ward's] appeal. First and foremost, [Ward's] claims are properly governed by [§ 24-3-430(D)]. Second, [Ward's] grievance is not subject to the fifteen-day filing deadline and, thus, his grievance was timely filed with SCDC. As a result, SCDC's arguments to the contrary fail as a matter of law and [Ward's] Grievance must be decided on the merits.

Obviously, SCDC must abide by *Ackerman*. SCDC respectfully asserts, however, that a key fact distinguishes the arguments asserted by the current and former inmates in *Ackerman* as to whether the fifteen-day filing deadline from Policy GA-01.12 applied to the grievances in which they articulated prison industries pay claims and the arguments asserted by Ward as to whether the same deadline applied to his grievance.

The current and former inmates in *Ackerman* argued that the pay claims in the grievances they filed under Policy GA-01.12 constituted challenges to SCDC "policies/procedures," and, as such, the fifteen-day filing deadline did not apply to their grievances. *Ackerman*, 782 S.E.2d at 760 – 61. The Court of Appeals agreed with their argument. *Id.*, 782 S.E.2d at 761.

A review of Ward's Step 1, Step 2, Notice of Appeal, and filings to date with the Court reveal that he asserted no such argument. As he did not raise or otherwise preserve any argument that the prison industries pay claim he articulated in his grievance challenged SCDC "policies/procedures," SCDC respectfully asserts that Ward may not avail himself of the holding by our Court of Appeals in *Ackerman*.

Should the Court not recognize the above-noted distinction, SCDC respectfully addresses the arguments Ward offered in his July 5, 2017 supplemental brief concerning his claims.

III. S.C. CODE ANN. § 24-3-410(B)(7) APPLIES TO WARD'S CLAIMS

As illustrated above in Section II, Ward asserted in his first argument that § 24-3-430(D) (i.e. the "prevailing wage statute") properly governed his prison industries pay claims. (Suppl. Brief, p. 2). In the second argument, Ward asserted as follows (Suppl. Brief, p. 3):

As stated in *Ackerman*, SCDC was required to pay inmates participating in the Prison Industries Project the *prevailing wage* for work of similar nature in the private sector until July 1, 2001, when the legislature enacted a budget proviso permitting SCDC to negotiate for and pay inmates less than the prevailing wage for service work. [*Ackerman*, 782 S.E.2d at 758]. SCDC admits, however, that it paid [Ward the] federal minimum wage, rather than prevailing wage, for the entirety of his employment in the Project, which began in June 1995 and ended in November 2003. (Step 1 Grievance Response, p. 5.) In fact, SCDC admits that it actually paid Mr. Ward below the federal minimum wage during [Ward's] 320 hours of training as well as the month of October 1996. (Step 1 Grievance Response, p. 5.) By paying [Ward] the federal minimum wage – and occasionally, below federal minimum wage – SCDC set [Ward's] hourly rate well below the prevailing rate for similar service work and owes [Ward] back wages for the delta between those amounts.⁶

⁶ Again, Ward did not perform "service work" while he participated in the federally certified PIECP project at Evans. In the footnote associated with this passage, Ward asserted that "[i]nformation on hourly prevailing wage is readily available online to the general public through the Bureau of Labor and Statistics," and he included with his supplemental brief a table published by the U.S. Department of Labor's Bureau of Labor Statistics published the table. As SCDC explained on page 14 of its April 11, 2016 brief, the federal regulation which controlled the PIECP project in which Ward participated explicitly states that "[p]revailing wage verification must be obtained by the appropriate state agency which determines wage rates (usually the Department of Economic Security)." [emphasis supplied]. See PIECP Guideline, Federal Register, Vol. 64, No. 66, April 7, 1999, p. 17010; ¶(B). SCDC respectfully asserts that data from the U.S. Department of Labor's Bureau of Labor Statistics does not conform to the above-quoted requirement. The circuit court in *Adkins* provided an accounting of the evidence elicited from a

By the first sentence of the above-quoted paragraph, Ward misinterpreted the Court of Appeals' ruling in *Ackerman*. As explained above, the prison industries project at issue in *Ackerman* and, for that matter, *Gatewood* consisted of a service project or service work project. See *Ackerman*, 782 S.E.2d at 757, and *Gatewood*, 785 S.E.2d at 603 – 05. Again, as explained above, our Supreme Court in *Torrence*, 646 S.E.2d at 867, recognized that Ward participated in a federally certified PIECP project operated by SCDC at Evans.

Thus, Ward's assertion that the annual budget provisos enacted by our legislature beginning in 2001 applied to the federally certified PIECP project operated by SCDC at Evans, and, by extension, the hourly rate at which SCDC paid Ward, is incorrect.

In the second sentence from the above-quoted paragraph, Ward also incorrectly asserted that SCDC admit to paying him only the federal minimum wage for his labor. SCDC accurately accounted for the federal minimum wage on page 5 of its response to Ward's Step 1:

Your prison industries pay records reflect that, after you completed the first 320 hours of your prison industries labor for which SCDC paid you "training wages," SCDC began paying you an hourly rate of at least \$4.25 beginning June 30, 1995. Beginning on or about November 1, 1996, SCDC began paying you an hourly rate of least \$5.25 per hour until your participation in the project concluded on or about November 14, 2003.

The federal minimum wage was \$4.25 from April 1, 1991 to September 30, 1996. The federal minimum wage increased to \$4.75 per hour on October 1, 1996 and it stayed at this rate until August 31, 1997. The federal minimum wage increased to \$5.15 per hour effective September 1, 1997, and it remained at that rate until July 23, 2007.

Thus, with the exception of the period of time SCDC paid you "training wages" and possibly the first half of October 1996, SCDC paid you at least the federal minimum wage for the labor you voluntarily provided to the prison industries project it [operated] at Evans.

South Carolina Employment Security Commission representative concerning the "prevailing wage" during the trial it conducted. See Exhibit D to SCDC's April 11, 2016 Brief, pp. 26 – 28.

By paying him at least \$5.25 per hour from on or about November 1, 1996 until his participation in the project at Evans ended, SCDC paid Ward *above* the federal minimum wage.

Regarding the fourth sentence from the above-quoted paragraph, SCDC again asserts, as it did in its April 11, 2016 brief,⁷ that by paying him at or above the federal minimum wage for all but the first 320 hours of his prison industries labor, conformed to the “comparable wage” standard from § 24-3-410(B)(7). In its April 11, 2016 brief, SCDC invoked the circuit court’s order in *Adkins* by which the circuit court ruled that the provisions of § 24-3-410(B)(7) precisely applied to Ward’s prison industries pay claims.⁸

The rulings by our Court of Appeals in *Ackerman* and, for that matter, *Gatewood* concerning the precisely applicable statutes and budget provisos do not resolve or even address whether § 24-3-410(B)(7) applied to the hourly rate at which SCDC paid inmates, like Ward, who participated in PIECP projects.

Therefore, SCDC denies that it owes any back pay to Ward associated with the labor he provided *after* his first 320 hours of labor. However, regarding the third sentence from the above-quoted paragraph, SCDC acknowledges that the “training wages” it paid Ward during the first 320 hours of his labor did not conform to § 24-3-410(B)(7) or § 24-3-430(D).

If the Court rejects the argument SCDC articulated above in Section I, SCDC asserts that this Court should remand the calculation of the back pay to which Ward is entitled for the first 320 hours of the labor he provided to the PIECP project at Evans. Ward offered the same assessment in the second paragraph from below-quoted passage from his second argument (Suppl. Brief, pp. 3 – 4):

⁷ See SCDC’s April 11, 2016 Brief, p. 23. SCDC also respectfully asserts that under the circuit court’s ruling in *Adkins*, the hourly rate it paid Ward after he completed his first 320 hours of labor conformed to the “prevailing wage” standard from § 24-3-430(D). *Id.*

⁸ *Id.*, pp. 18 – 23.

Thus, in keeping with the holding in *Ackerman*, the proper relief in this case is to reverse and remand SCDC's denial of [Ward's] Grievance with the instruction that SCDC reimburse [Ward] for the difference between the minimum wage he earned and the prevailing wage he should have earned, from the beginning of his employment in 1995 until the enactment of the budget proviso in July 1, 2001, multiplied by the number of hours worked during that time period. SCDC presumably has access to [Ward's] hours in the Project and can easily calculate this reimbursement.

Even if this Court somehow concludes that federal minimum wage is sufficient for [Ward's] work in the Project, [Ward] hereby reiterates his argument that, at the very least, SCDC must reimburse him for his 320 hours of training and the month of October 1996, during which he received less than minimum wage as admitted by SCDC. (Step 1 Grievance Response, p. 5.)

With respect to the first paragraph of the above-quoted passage, Ward again incorrectly asserted that the annual budget provisos our legislature enacted starting in 2001 applied to the federally certified PIECP project it operated at Evans in which he participated.

Should this Court reject SCDC's assertion that the hourly rate at which it paid Ward for the labor he provided to the project SCDC operated at Evans conformed to § 24-3-410(B)(7) and/or § 24-3-430(D), SCDC respectfully urges the Court to, as permitted under § 1-23-380(5), "remand the case for further proceedings." Specifically, the Court, under § 1-23-380(5), should direct SCDC to determine the hourly rate at which ESCOD and/or INSILCO paid non-inmate workers who performed job tasks similar to the job tasks performed by Ward at Evans. Such evidence would avoid the prospect of the Court embracing an hourly rate of pay for Ward higher than the hourly rate of pay ESCOD and/or INSILCO paid its non-inmate workers.

IV. SCDC PROPERLY APPLIED THE DEDUCTIONS FROM S.C. CODE ANN. § 24-3-40(A)(1) – (A)(6) TO WARD'S GROSS PRISON INDUSTRIES PAY

In his third argument, Ward stated as follows (Suppl. Brief, p. 4):

SCDC argues that while it collected \$1.92 for each hour [Ward] worked in the Project, the fee was part of the total hourly rate charged to the private industry sponsor for overhead costs and certain withholdings.

(Respondent's Brief, pp. 24 – 26.) To the extent SCDC treated the \$1.92 as a separate charge to the Project's sponsor, rather than a deduction from [Ward's] gross wages, [Ward] acknowledges that SCDC was within its rights to do so. Assuming, however, that SCDC has provided this Court with an accurate reflection of its treatment of [Ward's] wages, the \$1.92 fee should not impact the calculation and payment of back wages owed to [Ward] discussed above, as SCDC has already received \$1.92 for each hour worked per its contract with the private sponsor.⁹

Finally, with respect to [Ward's] access to the back wages owed from his employment with the Project, [Ward] states that the distribution must comply with S.C. Code Ann. § 24-3-40, *as amended by 2017 South Carolina Laws Act 96 (S.289)*, which requires that certain percentages of [Ward's] wages be made available to him during incarceration for the purchase of incidentals. [emphasis supplied].

SCDC reiterates that it did not include the \$1.92 per hour figure in Ward's \$5.25 per hour gross wage,¹⁰ and it concurs with Ward's acknowledgment the SCDC "was within its rights" to separately charge the project's sponsor \$1.92 per inmate labor hour. SCDC also reiterates that it applied the deductions from § 24-3-40(A)(1) through (A)(6) to Ward's gross pay.

V. WARD MAY NOT IMMEDIATELY WITHDRAW THE MONIES SCDC DEDUCTED FROM HIS GROSS WAGES BY OPERATION OF § 24-3-40(A)(5)

In the third and final argument (Suppl. Brief, pp. 4 – 5), Ward invoked an unpublished decision by our Court of Appeals styled as *Cramer v. S.C. Dep't of Corr.*, 2016 WL 4125880, *1 (S.C. Ct. App. Aug. 3, 2016). Ward stated that our Court of Appeals reversed SCDC's denial of Cramer's grievance in light of *Ackerman*, and it remanded back to the ALC Cramer's claim for immediate access to monies SCDC deducted from his gross prison industries wages and held in an interest-bearing escrow account for his benefit by operation of § 24-3-40(A)(5).

Contrary to Ward's representation, however, *Cramer* is not on remand before the ALC. Instead, SCDC filed a petition for writ of certiorari with our Supreme Court in *Cramer* on

⁹ SCDC concurs with Ward's statements in the footnote associated with this passage. (Supp. Brief, p. 4, n. 2).

¹⁰ See SCDC's April 11, 2016 Brief, pp. 24 – 25.

January 9, 2017, and, as of the Advance Sheet published by the South Carolina Judicial Department on July 26, 2017, SCDC's petition for writ of certiorari remains pending.

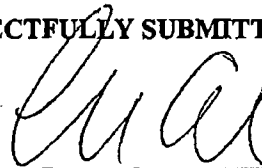
Thus, Ward's invocation of *Cramer* rings hollow, and, along with its earlier argument,¹¹ SCDC respectfully asserts that a plain reading of § 24-3-40(B)(2), along with §§ 24-3-40(B)(1) and (B)(3), clearly reflects that Ward, who is serving a life sentence, may not immediately withdraw the monies held in escrow for his benefit under § 24-3-40(A)(5). Instead, under § 24-3-40(B)(2), only Ward's estate may withdraw and distribute the monies upon his natural death.

CONCLUSION

SCDC respectfully asserts that Ward's arguments do not satisfy any of the requirements from § 1-23-380(5)(a)–(f) by which this Court may or should reverse SCDC's final decision.

To the extent that it considers reversing any part of SCDC's final decision, SCDC respectfully urges the Court to limit such action to SCDC's denial of any back pay due Ward for the first 320 hours of his labor during which SCDC paid him "training wages."¹²

RESPECTFULLY SUBMITTED,



Lake E. Summers
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

Outside Counsel for the Respondent

Columbia, South Carolina
August 1, 2017

¹¹ See SCDC's April 11, 2016 Brief, p. 28.

¹² See Ward's July 5, 2017 Supplemental Brief, p. 3 and p. 4, note 2.

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

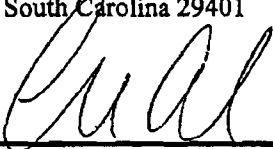
The Honorable H.W. Funderburk, Jr., Administrative Law Judge

William Ray Ward, # 091566,	)	Docket No. 15-ALJ-04-0560-AP
	)	Grievance No. ECI-1212-07
Appellant,	)	
	)	
vs.	)	RESPONDENT'S
	)	SUPPLEMENTAL BRIEF
South Carolina Department of Corrections,	)	
	)	<u>CERTIFICATE OF SERVICE</u>
Respondent.	)	

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

Julius H. Hines, Esquire
Meg E. Sawyer, Esquire
K&L Gates LLP
134 Meeting Street, Suite 500
Charleston, South Carolina 29401

August 1, 2017


LAKE E. SUMMERS

FILED

AUG 01 2017

SC ADMIN LAW COURT

LAW OFFICES

JUN 21 2018

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

MALONE, THOMPSON
SUMMERS & OTT, LLC

William Ray Ward, #91566,

) Docket No. 15-ALJ-04-0560-AP

) Grievance No.: ECI 1212-07

) Appellant,

) vs.

) FINAL ORDER

) South Carolina Department of Corrections,

) Respondent

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by William Ray Ward (Appellant), an inmate in the custody of the South Carolina Department of Corrections (SCDC or Respondent). Appellant challenges the hourly rate billed by SCDC for labor that Appellant performed.

FACTS/PROCEDURAL BACKGROUND

Appellant participated in a federally certified project assembling wire harnesses (Project) at Evans Correctional Institution for thirteen (13) years.¹ The Project complied with federal guidelines and operated under state statutes codified at S.C. Code Ann. § 24-3-310 et seq. (1989, as amended). S.C. Code Ann. §§ 24-3-40 and 24-3-430 are directly at issue in this case.²

Appellant completed 320 hours of training for which he was paid less than \$1.00 an hour. After completing training, beginning on June 30, 1995, Appellant was paid \$4.25 an hour. On November 1, 1996, his wages were increased to \$5.25 an hour. This rate of pay continued until Appellant's participation in the Project ended on November 14, 2003.

¹ The "record" in this appeal includes the Appellant's grievances and Respondent's rulings on these grievances. In addition, Respondent has submitted other documents as supplemental material in its original brief. These documents, including the agreement between SCDC and INSILCO executed on March 3, 2001, have not been properly included in the record to be reviewed by the Court. Likewise, wage surveys from the Bureau of Labor Statistics attached to Appellant's Supplemental Brief cannot be considered.

² This project was not a service project exempted from the prevailing wage requirement by annual budget provisions and finally by S.C. Code Ann. § 24-1-295 (effective August 1, 2007).

FILED

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SC ADMIN. LAW COURT

Appellant had previously sought relief through a class action suit against SCDC in circuit court. In *Torrence v. S.C. Dep't of Corr.*, 373 S.C. 586, 646 S.E.2d 866 (2007) (a case in which Appellant participated) the South Carolina Supreme Court held that inmates could not, through a declaratory judgment action, bring an action in circuit court against SCDC. See also *Adkins v. S.C. Dep't of Corr.*, 360 S.C. 413, 602 S.E.2d 51 (2004); *Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (Inmates have no private right of action but can seek relief through the inmate grievance system.).

The *Torrence* decision was issued May 7, 2007. On June 25, 2007, while a petition for rehearing in *Torrence* was pending, Appellant filed a Step 1 Grievance, claiming that he was owed back wages of \$1.92 for each hour worked during his participation in the Project and for the amounts below the prevailing wage that he was paid for 320 "training hours."³ He also demanded immediate access to wages held in escrow by SCDC. The grievance was denied on May 25, 2012. Appellant filed a Step 2 Grievance on May 29, 2012, renewing the same claims. SCDC denied the Step 2 Grievance on October 14, 2015. Appellant filed his appeal to the ALC on October 16, 2015, in which he again renewed his claims. On January 4, 2016, Respondent filed the Record on Appeal. Appellant filed his initial brief on January 27, 2016. after filing on January 25, 2016, a Motion to Resolve Appeal Adversely to Respondent, or, in the Alternative, for a Briefing Schedule. On February 11, 2016, the Court issued an Order for Complete Record. On February 17, 2016, Respondent filed a Motion to Supplement Record, which the Court granted on February 26, 2016.

Appellant then filed an amended initial brief on March 8, 2016. On March 24, 2016, Respondent filed a Motion for Extension of Deadline to File Its Brief. On April 11, 2016, Respondent filed its initial brief. On April 21, 2016, Appellant filed a reply brief.

On July 13, 2016, the Court issued an Order of Abeyance because two issues controlling in the instant case were also at issue in two cases pending on petitions for writs of certiorari to the South Carolina Court of Appeals: *Gatewood v. S.C. Dep't of Corr.*, 416 S.C. 304, 785 S.E. 2d 60 (2016), *cert. denied* (May 30, 2017) and *Ackerman, et al. v. S.C. Dep't of Corr.*, 415 S.C. 412, 782 S.E.2d 757 (Ct. App. 2016), *cert. denied* (May 30, 2017). After the Supreme Court issued its orders denying certiorari in *Gatewood* and *Ackerman*, this Court issued an Order Lifting Abeyance on

³ In its brief, Respondent also refers to training wages for the first 320 hours of Appellant's labor, but there is nothing in the record to establish what rate of pay was paid for training other than Appellant's claim that, based on *Torrence*, was improperly removed from his gross wages.

June 15, 2017, allowing the parties to file supplemental briefs. On July 5, 2017, Appellant filed his supplemental brief. On July 24, 2017, Respondent filed a Motion for Extension of Deadline to File Its Supplemental Brief, which the Court granted. On August 1, 2017, Respondent filed its supplemental brief. Finally, on August 10, 2017, Appellant filed his reply brief to Respondent's supplemental brief.

As an appendix to its brief, Respondent presented an itemized table included in a portion of a contract between SCDC and a private contractor. In the agreement, the referenced subsection defines "Inmate Pay" as follows:

Contractor and SCDC agree to an "hourly rate" determined as follows:

Prevailing Wage Rate (See Appendix D [Not included])	\$ 5.25
+	
Prorata Social Security Withholding Payment	.40
+	
Prorata Workers' Compensation Premium	.20
+	
<u>SCDC/Prison Industries Administrative Cost</u>	<u>1.32</u>
 HOURLY RATE CHARGED TO CONTRACTOR	 \$ 7.17

At no time during this agreement will inmates be paid less than the prevailing wage as set forth in Appendix D.⁴

~~The agreement was to be annually adjusted to conform to any changes in the "prevailing wage" as determined by the South Carolina Employment Security Commission.~~

ISSUES ON APPEAL

- I. Whether Appellant was entitled to the prevailing hourly wage rate for his labor during the Project.
- II. Whether Social Security withholding payments, SCDC Surplus Fund Amount, and Workers' Compensation premiums, collectively, were required to be included in Appellant's gross wages for purposes of the calculations mandated in S.C. Code Ann. § 24-3-40(A).
- III. Whether Appellant is entitled to immediate access to monies escrowed

⁴ This information was not included in the Record on Appeal, nor was it provided to Appellant prior to service of the Respondent's brief. Furthermore, Appendix D referenced in the pay schedule (which presumably provides a basis for the prevailing wage) was neither included in the Record on Appeal nor in Respondent's brief. See also note 1 above.

pursuant to S.C. Code Ann. § 24-3-40(A)(5) and (B)(2).

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 (2000); *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2017) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380(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. 2017).

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." *Id.* 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, capricious, or affected by an error of law or abuse of discretion. § 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).

DISCUSSION

I. Whether Appellant was entitled to the prevailing hourly wage rate for his labor during the Project.

In his Step 1 Grievance, Appellant alleges that he is owed back wages earned during his participation in the Project for all hours, including 320 "training hours," for which he was paid less than the prevailing wage for such work and for monies unlawfully withheld from or not included in his wages. He also demanded immediate access to wages held in escrow by SCDC. He asserts that these claims are supported by *Torrence, supra*.⁵ In his Step 2 Grievance, Appellant asserts that he is appealing the issues raised in his Step 1 Grievance. His appeal realleges the issues raised in his Step 1 and Step 2 Grievances. In his initial brief, Appellant argues that his grievance was timely filed under the doctrine of equitable tolling, that SCDC did not pay him the prevailing wage in accordance with S.C. Code § 24-3-430(D), and thus owes him back wages in the amount of the difference between the wages he received and the prevailing wage in effect at the time, and that SCDC was not entitled to deduct \$1.92 per hour from the wages he earned working on the Project.

In his supplemental brief, Appellant reasserts that the prevailing wage requirement of Section 24-3-430(D) applies to all his work under the Project, that he was owed back wages based on being ~~paid below the prevailing wage rate, that his grievance was timely through the doctrine of equitable~~ tolling, and that the deduction was improper. However, Appellant also adds that he was entitled to immediate access to the funds held in his escrow account and refers to an unpublished South Carolina Court of Appeals opinion, *Cramer v. S.C. Dep't of Corr.*, No. 2014-002172, 2016 WL 4125580, at *1 (S.C. Ct. App. Aug. 3, 2016), to support his position.

Respondent argues that equitable tolling does not apply in this case, and that Appellant otherwise failed to meet the 15-day deadline to file his Step 1 Grievance. Therefore, Respondent argues that Appellant's claims are time-barred. It also argues that S.C. Code Ann. § 24-3-410(B)(7) (2007)

⁵ Appellant cites the case name for *Torrence*, as well as the correct opinion number (26328) and filing date, to support his position that Respondent had violated S.C. Code Ann. §§ 24-3-40 and 24-3-430(D). The Court will therefore consider this authority as support for Appellant's appeal.

applies to the wages paid to Appellant after the training period.⁶ It further argues that the hourly rate paid to Appellant for the work performed in the Project operated at the prison conformed to the provisions of this section or of S.C. Code Ann. § 24-3-430(D). SCDC asserts that by paying Appellant “at or above the federal minimum wage” it paid Appellant an hourly rate that satisfied either statute.⁷ Finally, Respondent contends that based on a plain reading of Section 24-3-40(B)(1)-(3), an inmate like Appellant, who is serving a life sentence, cannot immediately withdraw funds held in escrow under Section 24-3-40(A)(5). Rather, under Section 24-3-40(A)(5), that money can only be withdrawn by his estate and distributed upon his natural death. It also points out that Appellant’s reliance on *Cramer* is misguided because that case is not on remand before the ALC, and a petition for a writ of certiorari to the Court of Appeals is still pending in that case.⁸

Issue Preservation

At the outset, the Court must address Respondent’s contention that Appellant failed to preserve his claims by failing to timely file his Step 1 Grievance. Respondent asserts that equitable tolling does not apply in this case, and that Appellants’ claims are time-barred for untimely filing his Step 1 Grievance. I disagree.

Appellant is required to exhaust his administrative remedies before appealing to this Court, unless an exception exists to excuse the failure to do so. *See Hyde v. S.C. Dep’t of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582, 583 (1994) (“The general rule is that administrative remedies must be exhausted absent circumstances supporting an exception to application of the general rule.”); *Brown v. James*, 389 S.C. 41, 48, 697 S.E.2d 604, 608 (Ct. App. 2010) (“The doctrine of exhaustion of administrative remedies requires that where a remedy before an administrative

⁶ Respondent concedes in its supplemental brief that the “training wages” Appellant received for the first 320 hours he worked “did not conform to § 24-3-410(B)(7) or § 24-3-430(D).”

⁷ This hourly rate, the “gross” pay, must include the SCDC “surplus fund” paid by the private sector entities to SCDC. *See Torrence*, 373 S.C. at 590, 646 S.E.2d at 867 and the discussion below.

⁸ The *Cramer* case to which Appellant cites in his briefs has no precedential value, as it is unpublished, and the court in that case never addressed the issue of whether an inmate has a state-created liberty or property interest in immediate access to funds held in his or her escrow account. Moreover, the petition for writ of certiorari in that case has since been denied by our Supreme Court. However, though the case is currently before the ALC on remand, ALC orders have no binding effect on other ALC orders. Nevertheless, Appellant does not argue this issue but instead, in his supplemental reply brief, states that he “reserves the right to file a subsequent grievance requesting access to any monies earned by him during his participation in the Project and held in escrow.”

agency is provided, relief must be sought by exhausting this remedy before the courts will act.”). The administrative remedies provided for inmates pursuant to the Department’s Inmate Grievance Policy are Step 1 and Step 2 grievances. *See also Al-Shabazz*, 338 S.C. at 376, 527 S.E.2d at 754 (2000) (citing *Kiawah Resort Assocs. v. S.C. Tax Comm’n*, 318 S.C. 502, 505, 458 S.E.2d 542, 544 (1995) (“[I]ssues or arguments that were not raised to or ruled on by [an administrative agency] ordinarily are not preserved for review.”)). Further, issues raised but not argued in Appellant’s briefs have also been waived and are not properly before the ALC. *Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006) (“An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court”) (citations omitted).

In this case, Respondent did not deny either the Step 1 Grievance or the Step 2 Grievance on the ground that either was time-barred.⁹ Moreover, in *Torrence*, the Supreme Court directed SCDC to provide “due process via the internal grievance system.” *Torrence*, 373 S.C. 586 at 595, 646 S.E.2d 866 at 870. To limit that remedy to the grievance system’s 15-day filing deadline at this stage would make the Court’s 2007 order a nullity. Subsequently, in *Ackerman*, *supra*, the Court of Appeals held that the characterization of a wage grievance as an incident subject to the 15-day filing deadline “was arbitrary and capricious,” and that the wage challenges “logically [fall] within [challenges to] policies and procedures as contemplated in [the inmate grievance system].” *Id.* at 421, 782 S.E.2d at 761. This decision has the effect of identifying a wage complaint as not subject to a “time bar.” Therefore, the Court finds that claims in Appellant’s Step 1 and Step 2 Grievances are not time-barred.

Moreover, even if the 15-day deadline governed in this case, equitable tolling would apply. In *Hooper v. Ebenezer Sr. Servs. And Rehab. Ctr.*, our Supreme Court noted that “[e]quitable tolling is judicially created; it stems from the judiciary’s inherent power to formulate rules of procedure where justice demands it” (citation omitted). 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009). The Court went on to provide a list of circumstances illustrating where equitable tolling has been applied, though it also pointed out that these circumstances “do not constitute an exclusive list of circumstances that justify the application of equitable tolling[,] since the doctrine is “flexible and adaptable to particular exigencies so that relief will be granted” to avoid a party’s “suffer[ing] a gross wrong.” *Id.* at 116-17, 687 S.E.2d at 33. One of these circumstances is where “a party has

⁹ Interestingly, Respondent took over three (3) years to issue a decision on Appellant’s timely-filed Step 2 Grievance.

more than one legal remedy available[.]" in which case the statute of limitations is tolled while the party pursues one of the possible remedies." *Id.* at 116, 687 S.E.2d at 33 (citation omitted). The Court observed that "equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use. *Id.* at 116, 687 S.E.2d at 33. But it "serves to ameliorate the harsh results that sometimes flow from a strict, literalistic application of administrative time limits." *Id.* At 116, 687 S.E.2d at 33. Additionally, our federal courts have noted that the "relevant conditions for equitable tolling [are] notice, lack of prejudice, and diligent and reasonable action[.]" See *Aikens v. Ingram*, 524 F. App'x 873, 884 (4th Cir. 2013).

In this case, Respondent argues that the Appellant should have filed his Step 1 Grievance after the issuance of *Adkins* and *Wicker* on August 23, 2004, or certainly after the dismissal of *Torrence* on May 31, 2005. However, Appellant was a plaintiff and later appellant in *Torrence*, which arose following *Adkins* and *Wicker*, and the case was appealed after its 2005 dismissal. *Torrence* was still on appeal and was not concluded in the S.C. Supreme Court until July 2007, after which Appellant diligently and reasonably filed his Step 1 Grievance within 15 days. Moreover, SCDC was aware of Appellant's claims through *Torrence* and was not prejudiced by his filing his grievance in 2007. Therefore, the Court finds that even if the 15-day deadline applies in this case, equitable tolling would also apply, and thus Appellant's claims would not be time-barred.

Prevailing Wage Rate

The Court now turns to the issue of whether Appellant was entitled to the prevailing hourly wage rate for his labor during the Project.

Appellant argues that he should be reimbursed for the difference in what he was paid and the prevailing wage rate for all wages earned, including the "training wages" he received for the first 320 hours worked. Respondent first argues that Appellant never asserted that he was challenging SCDC's "policies/procedures," so *Ackerman* does not apply. Alternatively, Respondent argues that *Ackerman* and *Gatewood*, and the prevailing wage statute – Section 24-3-430(D), do not apply because the prison industries project at issue was not a service project or service work project, but rather a federally certified PIECP project operated by the prison. Therefore, Respondent argues that Section 24-3-410(B)(7) applied and that "comparable wage" under that provision was satisfied because Appellant was paid at or above the federal minimum wage.

As an initial matter, Respondent concedes that the "training wages" paid to appellant for his first

320 hours of labor did not comply with the controlling statutes, S.C. Code Ann. §§ 24-3-410(B)(7) and 24-3-430(D) (Supp. 1995),¹⁰ but it denies that Appellant is owed any back pay for labor provided after the first 320 hours. This portion of Respondent's decision is REVERSED and REMANDED. Respondent shall calculate back pay owed for the training wages based on a wage rate that is not less than the Federal minimum wage and is not less than that paid for work of a similar nature in the locality in which the work was performed at the time during which it was performed.

The Court now turns to the wages paid to Appellant after the training period.

The Prison Industries Program is authorized and operated pursuant to federal and state laws. Federal law, 18 U.S.C. § 1761(a) (2011), limits the transportation in interstate commerce of goods, wares, or merchandise manufactured or produced wholly or in part by convicts or prisoners. Exceptions are established in 18 U.S.C. 1761 (c) for projects designated by the Director of the Bureau of Justice Assistance. Those exceptions require "wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work was performed" but allow deductions not to exceed eighty percent (80%) of the gross wages, to include federal and state taxes, reasonable charges for room and board, family support (according to court order or state statute), and contributions to a fund for victim compensation. Further, the federal law allows inmates to have benefits such as Workers' Compensation but specifically disqualifies them from receiving unemployment compensation while incarcerated.

The Department of Justice issued a final Prison Industry Enhancement Certification Program Guideline in which it reiterates the statutory requirement that "inmate workers must receive wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work is to be performed." 64 Fed. Reg. 17009 (April 7, 1999) (Guideline). After voicing its concern to protect "the private sector labor force and business from unfair competition that could otherwise stem from the flow of low-cost, prisoner-made goods into the marketplace, it states that "participants must, therefore, implement the prevailing wage requirements under like conditions experienced by private sector competition." *Id.* In determining the appropriate inmate wage, no "other cost variables [may] be taken into consideration [including any] ... unique expenses

¹⁰ These provisions remain the same in the current code.

incurred as a result of undertaking production within the prison environment.” *Id.* at 17010. This prevailing wage, as it is referred to here, must be verified by the appropriate state agency which determines wage rates using a “non-inmate wage scale which will not result in the displacement of non-inmate workers performing similar work in the relevant locality.” *Id.* The “prevailing wage cannot be set below the Federal minimum wage”; however, [p]ayment of the Federal minimum wage ... does not automatically achieve compliance with the prevailing wage requirement unless the prevailing wage for the comparable private sector industries is, in fact, the Federal minimum wage.” *Id.* The Guideline also requires the payment of overtime because that requirement would be imposed on private sector competition.

South Carolina enacted statutes to comply with federal law. For example, S.C. Code Ann. § 24-3-315 echoes the federal conditions:

The director must determine prior to using inmate labor in a prison industry project that it will not displace employed workers, that the locality does not have a surplus of available labor for the skills, crafts, or trades that would utilize inmate labor, and *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* (emphasis added).

Likewise, S.C. Code Ann. § 24-3-430 (D) provides that “[n]o inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector.”¹¹ These state and federal requirements embrace both training and post-training wages. S.C. Code Ann. §

24-3-410(B)(7) (2007) also requires inmates to be paid “comparable wages.” SCDC asserts that by paying Appellant “at or above the federal minimum wage” it paid Appellant an hourly rate that satisfied the statute. The Court disagrees. The federal rules provide that the prevailing wage cannot be below the federal minimum wage, but that paying the federal minimum wage “does not automatically achieve compliance with the prevailing wage requirement.” Guideline at 17010.

The purpose of these programs is to employ inmates without creating an economic advantage either to the private sector entity or to favor inmate labor by providing a supply of labor cheaper than that which could be furnished by the law-abiding citizens of South Carolina. Accordingly, the Court agrees with Respondent that the matter should be remanded for further proceedings to determine the prevailing wage for the labor furnished and/or what the private sector entities

¹¹ These statutes were amended during the period in question in this case, but the amendments do not affect the resolution of the issues before this Court.

(ESCOD and INSILCO) paid non-inmate workers for the same or substantially similar tasks performed in South Carolina during the period he worked on the Project. This portion of Respondent's decision is also REVERSED and REMANDED. Respondent shall calculate back pay owed based on a wage rate that is not less than the Federal minimum wage and is not less than that paid for work of a similar nature in the locality in which the work was performed during the period during which it was performed. These back wages shall be calculated not only for the first 320 hours (i.e., training period) that Appellant worked, but for all of the hours Appellant worked on the Project.

II. Whether Social Security withholding payments, SCDC Surplus Fund Amount, and Workers' Compensation premiums, collectively, were required to be included in Appellant's gross wages for purposes of the calculation mandated in S.C. Code Ann. § 24-3-40(A).

Appellant contends that for every hour he worked his gross pay was reduced by an improper redirection of part of his pay to SCDC. Respondent argues that the items charged to the private company in addition to Appellant's gross hourly wages was lawful and that charging those items in addition to inmates' gross wages was necessary to defray the expenses associated with the operation of its prison industries program.

The federal rules require that inmates be paid a wage that cannot be set below the Federal minimum wage, and that the Federal minimum wage does not automatically achieve compliance with the prevailing wage requirement. Inmates must be paid wages not less than the Federal minimum and not less than wages paid for work of a similar nature in the locality in which the work was performed. See Guideline at 17010.

S.C. Code Ann. § 24-3-40(A) provides for specific deductions from the gross wages of an inmate authorized to work in a community or in a prison industry program. These deductions are as follows:

The Director of the Department of Corrections, or the local detention or correctional facility manager, if applicable, shall deduct the following amounts from the gross wages of the prisoner:

(1) If restitution to a particular victim or victims has been ordered by the court, then twenty percent must be used to fulfill the restitution obligation. If a restitution payment schedule has been ordered by the court pursuant to Section 17-25-322, the twenty percent must be applied to the scheduled payments. If restitution to a particular victim or victims has been ordered but a payment schedule has not been

specified by the court, the director shall impose a payment schedule of equal monthly payments and use twenty percent to meet the payment schedule so imposed.

(2) 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:

*

*

*

(b) if the prisoner is employed in a prison industry program, ten percent must be directed to the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund for use in training, program development, victim compensation, and general administrative support pursuant to Section 16-3-1410 and ten percent must be retained by the department to support services provided by the department to victims of the incarcerated population.

(3) Thirty-five percent must be used to pay the prisoner's child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the guardian of the child or children or to appropriate clerks of court, in the case of court ordered child support, for application toward payment of child support obligations, whichever is appropriate. If there are no child support obligations, then twenty-five percent must be used by the Department of Corrections to defray the cost of the prisoner's room and board. Furthermore, if there are no child support obligations, then ten percent must be made available to the inmate during his incarceration for the purchase of incidentals pursuant to subsection (4). This is in addition to the ten percent used for the same purpose in subsection (4).

(4) Ten percent must be available to the inmate during his incarceration for the purchase of incidentals. Any monies made available to the inmate for the purchase of incidentals also may be distributed to the person or persons of the inmate's choice.

(5) Ten percent must be held in an interest bearing [sic] escrow account for the benefit of the prisoner.

(6) The remaining balance must be used to pay federal and state taxes required by law. Any monies not used to satisfy federal and state taxes must be made available to the inmate for the purchase of incidentals pursuant to subsection (4).

The agreement between SCDC and the private sector entity (Contractor) establishes an hourly rate that includes a wage, Social Security withholding, a Workers' Compensation premium, and a "SCDC Surplus Fund Amount." Appellant contends that all these items are part of his hourly gross wage and should be part of the back pay owed. The Supreme Court referred to this sum as a diversion from the hourly rate paid for inmate labor and stated:

[I]f [appellants Torrence and Ward] prove true their allegation that [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, [SCDC] 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).

Torrence, 373 S.C. at 594 n.4, 646 S.E.2d at 870 n.4.

The items set out in the contract as the hourly rate charged to the private sector business for the inmate labor furnished by SCDC are “the gross wages of the prisoner,” as the South Carolina Supreme Court indicated in *Torrence*. These gross wages must be disbursed as provided in § 24-3-40(A). Not to do so is an error of law, a “violation of the plain language of the statute which directs [SCDC] to disburse the money based on the gross wages.” *See Torrence*, 373 S.C. at 594 n.4, 646 S.E.2d at 870 n.4.

An Administrative Law Judge may reverse or modify an agency’s decision if that decision is not supported by substantial evidence on the whole record or is affected by an error of law. In this case, much of the evidence relied on by Respondent (for example the contract and proof of the actual wages paid during Appellant’s work for the project, as well as how much was deducted from Appellant’s wages) was not properly in the record. Also, Respondent takes the position that the additional itemized expenses totaling \$1.92 were not “lawfully” part of Appellant’s gross wages, a position that is contrary to our Supreme Court’s note in *Torrence* and is thus an error of law.¹² Thus, this portion of Respondent’s decision is REVERSED and REMANDED. Respondent shall classify the entire contract amount as the hourly gross wage for the purpose of determining not only whether the wage meets the prevailing wage requirement but also for the purpose of ~~calculating deductions and distribution of Appellant’s pay as set forth in § 24-3-40(A). *See*~~
Torrence, 373 S.C. at 594 n.4, 646 S.E.2d at 870 n.4.

III. Whether Appellant is entitled to immediate access to monies escrowed pursuant to S.C. Code Ann. § 24-3-40(B)(2).

Finally, Appellant, who is serving a life sentence, contends that he is entitled to immediate access

¹² In addition to addressing the issues raised by Appellant, Respondent contends that SCDC is required by law to make the prison system self-sustaining. *See* S.C. Code Ann. § 24-3-20. Specifically, Respondent cites S.C. Code Ann. § 24-3-190, which provides among other things that “amounts received or to be received from the hire of convicts or from any other source during the current fiscal year [must be] appropriated for the support of the penitentiary.” (Respondent also cites S.C. Code Ann. § 24-3-400, but this section deals with proceeds from the sale of articles and products manufactured or produced by convict labor, not payments for the labor itself.). Respondent concludes that recalculating the wage structure as argued by Appellant would create a deficiency in the prison industries program. This argument is outside of the scope of this appeal. The Court notes, however, that if creating a program that would make prisons self-sustaining, while not favoring prison industries over non-inmate labor furnished by law-abiding citizens, were the goal, then the token \$1.00 a month for occupancy of public property for private use could have been increased to rent at market value.

to the portion of his gross wages held in an interest-bearing escrow account as set aside by § 24-3-40(A)(5). Appellant argues that keeping the wages held in escrow until his death deprives him of a liberty interest.

Section 24-3-40(B) provides, in pertinent part, for return of the inmate's wages held in escrow as follows:

- (2) A prisoner serving life in prison or sentenced to death shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice.

"Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and given effect, if it can be done by any reasonable construction." *Georgia-Carolina Bail Bonds, Inc. v. Cty. of Aiken*, 354 S.C. 18, 24, 579 S.E.2d 334, 337 (Ct. App. 2003).

Reading S.C. Code Ann. § 24-3-40 as a whole clearly indicates that the section contemplates distribution of the escrowed funds at the end of SCDC's custody of an inmate, that is at the inmate's release with or without community supervision (Section 24-3-40(B)(1), (3)), or at death. An inmate serving a life sentence or sentenced to death should not have access to escrowed funds sooner than an inmate who is to be released. It is also possible that an inmate may have his sentence commuted, he may be pardoned, or he may be released for some other reason. Should these escrowed funds be disposed of earlier, then the purpose of the statute would be frustrated. For these reasons, Respondent's decision on this issue is **AFFIRMED**.

Conclusion

SCDC's failures to demonstrate that it paid Appellant the prevailing wage rate and to include the Social Security withholding, Workers' Compensation premium, and SCDC Surplus Fund Amount in the gross wages prior to making deductions thereto were errors of law. Accordingly, the parts of Respondent's decision dealing with the prevailing wage rate and gross wages are **REVERSED** and **REMANDED**. Respondent must demonstrate that Appellant was paid prevailing wage rate for the type of labor he provided at the time and in the area that he provided it, pursuant to Sections 24-3-410(B)(7) and -430(D). SCDC must also classify the entire contract amount as the hourly gross wages and calculate deductions and distributions from Appellant's pay as set forth in Section 24-3-40(A). If the contractual wage rate was also used to pay the inmate while training for the work, then this amount must also be included in the recalculation. Finally, the part of Respondent's

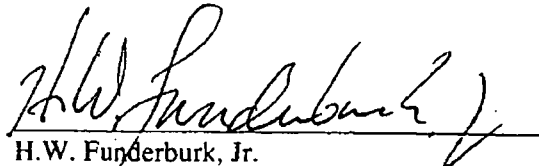
decision dealing with Appellant's immediate access to funds in his escrow account is **AFFIRMED**. Appellant is not entitled to immediate access to funds in his escrow account.

ORDER

IT IS THEREFORE ORDERED that those parts of SCDC's decision dealing with Appellant's prison industry wages, including training wages, and their disposition are **REVERSED and REMANDED** for proceedings consistent with this Order. As to the escrowed funds, the decision of the SCDC is **AFFIRMED**.

AND IT IS SO ORDERED.

June 20, 2018
Columbia, South Carolina


H.W. Funderburk, Jr.
Administrative Law Judge

FILED

JUN 20 2018

SC ADMIN. LAW COURT

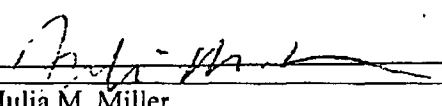
CERTIFICATE OF SERVICE

I, Julia M. Miller, 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).

Meg E. Sawyer, Esquire
K&L Gates LLP
134 Meeting Street, Suite 500
Charleston, South Carolina 29401

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

June 20, 2018
Columbia, South Carolina


Julia M. Miller
Judicial Law Clerk

FILED

JUN 20 2018

SC ADMIN. LAW COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

H.W. Funderburk, Jr., Administrative Law Judge

Administrative Law Court Docket No. 15-ALJ-04-0560-AP

William Ray Ward, #91566 Respondent,

v.

South Carolina Department of Corrections Appellant.

NOTICE OF APPEAL

In accordance with South Carolina Appellate Court Rule 203 and the provisions of S.C. Code Ann. § 1-23-610(A)(1), the South Carolina Department of Corrections ["the Department"] appeals the June 20, 2018 Final Order issued by the Honorable H.W. Funderburk, Jr., Administrative Law Judge.

The Department's undersigned counsel received written notice of the entry of Judge Funderburk's June 20, 2018 Final Order on June 21, 2018.

By his June 20, 2018 Final Order, Judge Funderburk affirmed in part and reversed in part the final decision issued by the Department in an administrative grievance filed by the Respondent.

For clarity's sake, the Department does not appeal the rulings by which Judge Funderburk affirmed its final decision regarding the Respondent's administrative grievance.

Instead, the Department appeals the following ruling(s) from Judge Funderburk's June 20, 2018 order:

The items set out in the contract as the hourly rate charged to the private sector business for the inmate labor furnished by [the Department] are 'the gross wages of the prisoner,' as indicated in [*Torrence v. S.C. Dep't of Corr.*, 646 S.E.2d 866, 870, n. 4 (S.C. 2007)]. These gross wages must be disbursed as provided in [S.C. Code Ann. § 24-3-40(A)]. Not to do so in an error of law, a "violation of the plain language of the statute which directs [the Department] to disburse the money based on the gross wages." [*Torrence*, 646 S.E.2d at 870, n. 4]. See Order, p. 12.

[The Department] takes the position that the additional itemized expenses totaling \$1.92 were not "lawfully" part of [Ward's] gross wages, a position that is contrary to [*Torrence*, 646 S.E.2d at 870, n. 4] and is thus an error of law. Thus, this portion of [the Department's] decision is **REVERSED** and **REMANDED**. [The Department] shall classify the entire contract amount as the hourly gross wage for the purpose of determining not only whether the wage meets the prevailing wage requirement but also for the purpose of calculating deductions and distribution of [Ward's] pay as set forth in § 24-3-40(A). See [*Torrence*, 646 S.E.2d at 870, n. 4]. [footnote omitted and emphasis supplied by ALJ]. See Order, p. 13.

[The Department's] failures to demonstrate that it paid [Ward] the prevailing wage rate and to include the Social Security withholding, Workers' Compensation premium, and SCDC Surplus Fund Amount in the gross wages prior to making deductions thereto were errors of law. Accordingly, the parts of [the Department's] decision dealing with the prevailing wage rate and gross wages are **REVERSED** and **REMANDED**. [The Department] must demonstrate that [Ward] was paid prevailing wage rate for the type of labor he provided at the time and in the area that he provided it, pursuant to [S.C. Code Ann. §§ 24-3-410(B)(7) and 24-3-430(D)]. [The Department] must also classify the entire contract amount as the hourly gross wages and calculate deductions and distributions from [Hatton's] pay as set forth in [§ 24-3-40(A)]. If the contractual wage rate was also used to pay the inmate while training for the work, then this amount must also be included in the recalculation. [emphasis supplied by ALJ]. See Order, p. 14.

July 18, 2018

RESPECTFULLY SUBMITTED:



Lake E. Summers

Malone, Thompson, Summers & Ott LLC

339 Heyward Street, Suite 200

Columbia, South Carolina 29201

(803) 254-3300

Outside Counsel for Appellant

South Carolina Department of Corrections

Respondent's Counsel:

Julius H. Hines, Esquire

Meg E. Sawyer, Esquire

K&L Gates LLP

134 Meeting Street, Suite 500

Charleston, South Carolina 29401

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

H.W. Funderburk, Jr., Administrative Law Judge

Appellate Case No. 2018-001325

William Ray Ward, #91566 Respondent,

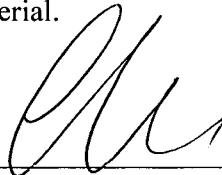
v.

South Carolina Department of Corrections Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that, in conformity with the provisions of South Carolina Appellate Court Rule 210(g), the Record on Appeal contains all material proposed to be included by either of the parties and not any other material.

March 5, 2019



Lake E. Summers
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

Counsel for the Appellant

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