THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III Administrative Law Court Judge

Appellate Case No. 2020-001689
Case No. 2020ALJ300064AP

South Carolina Technical College System .....Appellant,

v.

Carla Jackson and South Carolina Department of Administration,.....Respondents,

Of whom, Carla Jackson is the .....Respondent.

RESPONDENT'S INITIAL BRIEF

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STATEMENT OF THE CASE

Respondent, Carla Jackson ("Ms. Jackson" and "Respondent"), is entitled to the relief granted by the State Employee Grievance Committee ("the Committee") and upheld on appeal by the Administrative Law Court ("ALC"). Appellant South Carolina Technical College System ("Appellant") is the state agency over Denmark Technical College ("the College") from which Ms. Jackson grieved her termination through the State Employee Grievance Procedures. The hearing of Ms. Jackson's grievance before the Committee spanned four days on November 28, 2017, February 1-2, 2018, and March 2, 2018.

The Committee found that Ms. Jackson established that the College's decision prejudiced her substantial rights and met one or more of the elements contained in S.C. Code Ann. § 8-17-340(E)(2). The Final Decision of the Committee was issued on March 22, 2018.

After the Final Decision of the Committee, the College filed a Motion for Reconsideration to the Committee. The College and Ms. Jackson filed documents in support of their respective positions and the Committee, having fully heard those positions, denied the College's Motion for Reconsideration.

The College appealed on August 31, 2018 and argued that Ms. Jackson was not entitled to state employee grievance rights. By Order issued on June 25, 2018, the Court remanded the case "for the Board to determine whether Jackson was an Interim Dean at the time of her termination (uncovered employee) or whether Jackson was also functioning in a covered FTE position." The parties and the South Carolina Department of Administration sought clarification from the Court to confirm that the Board referred to in the remand Order was the State Employee Grievance Committee. The ALC confirmed that the State Employee Grievance Committee was the body that needed to make the determination on remand. Thereafter, on February 3, 2020, the State Employee

Grievance Committee issued its decision that Ms. Jackson was functioning in the covered full-time FTE position, Administrative Coordinator I, at the time of termination from the SCTCS.

Thus, the Committee's decision remained in Ms. Jackson's favor. Appellant thereafter initiated an additional notice of appeal of the Committee's decision to the Administrative Law Court on March 9, 2020. Appellant and Respondent briefed the issues raised by Appellant in its second appeal. The ALC entered an Order upholding the decision of the Committee and granting relief to Respondent on September 23, 2020. On October 5, 2020, Appellant filed a Motion for Reconsideration. The parties briefed the repetitive arguments raised by Appellant in the Motion for Reconsideration. The ALC thereafter entered an Amended Final Order, once again upholding the decision of the Committee and granting relief to Respondent.

Appellant has now appealed the decision of the ALC to this Court. Appellant's arguments, as discussed below, have now been decided in Respondent's favor on many occasions. Many of Appellant's arguments have either not been properly preserved, or, Appellant has admitted at various times through its executives and legal counsel to be meritless. Respondent requests that this Court find in Respondent's favor and grant Respondent the relief she is entitled to in the timeliest manner possible.

STATEMENT OF FACTS[1]

Ms. Jackson began her employment with Appellant on January 4, 2011, upon hire as an Administrative Coordinator to assist Appellant's then President, Dr. Joann Boyd-Scotland ("President Boyd-Scotland"). [2020 Appeal R. p. 6]. On October 1, 2013, Respondent submitted a "Request for Professional Development Assistance" to President Boyd-Scotland following her acceptance to American InterContinental University Online ("AIUO") on September 29, 2013, which was approved by Tarshura Mack (Mack), Title III Director, and President Boyd-Scotland. [Id.]. In March of 2015, Respondent received her Master's Degree in Business Administration from AIUO. [Id.]. Between February 1, 2015, and October 3, 2016, Respondent was asked to take on several additional duties, including administrative and instructional responsibilities, and received salary increases accordingly. [2020 Appeal R. pp. 6-8]. Specifically, on October 3, 2016, then interim Vice President of Academic Affairs, Tia Wright-Richards, submitted a request that Respondent begin acting as Interim Dean of the Business, Computers and Related Technologies Department as evidenced by the "DTC Departmental Request for Personnel/Action Form." [2020 Appeal R. pp. 7-8].

Following an investigation and a suspension beginning February 15, 2017, Respondent received a termination letter dated May 11, 2017 informing her that her employment had been terminated as of the date her suspension began for various alleged violations of "rules, regulations and written policies." [2020 Appeal R. p. 8]. Appellant accused Respondent of using the President's Stamp on her own personnel records and that she violated policies with her receipt of

[1] Respondent craves reference to the Findings of Fact in the Final Decisions of the State Employee Grievance Committee issued on March 22, 2018 and February 3, 2020. [2020 Appeal R. pp. 6-14; R. pp. 37-43].

tuition assistance. [2020 Appeal R. p. 621]. Both grounds were proven false during the hearing before the Committee. [2020 Appeal R. pp. 6-14].

Current and former employees of Appellant, including President McIntyre and Dr. Lamin Drammeh (Dr. Drammeh), testified to the contrary of such allegations. [2020 Appeal R. pp. 7-9]. Specifically, President McIntyre and Dr. Drammeh testified that Respondent's master's degree was relevant to her position, that the reimbursement she received was a normal amount for tuition assistance, and that Respondent would have been unable to authorize her own pay raises because of the internal structure in place for such salary increases. [Id.]. President McIntyre further testified that he had authorized all of Respondent's pay increases. [2020 Appeal R. p. 9]. Further, Appellant was in receipt of Respondent's transcript from AIUO and AIUO's fee schedule for the program in which Respondent was enrolled, which informed Appellant of the two transfer credits Respondent had from Springfield College and that the reported cost of the program may vary depending on the presence of such credits. [2020 Appeal R. p. 10].

Given the totality of the circumstances presented and the evidence provided, the Committee found that Appellant's decision to terminate Respondent is unsupported and granted Ms. Jackson the relief permitted by the State Employee Grievance Procedure Act. [2020 Appeal R. pp. 13-14].

STANDARD OF REVIEW

In an appeal from an ALC decision, the Administrative Procedures Act provides the appropriate standard of review. *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control,* 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014) citing S.C. Code Ann. § 1–23–610(B). The appellate court confines its analysis of an ALC decision to whether it is:

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

Id. In determining whether the ALC's decision was supported by substantial evidence, the appellate court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion as the ALC. *Id.* citing *Hill v. S.C. Dep't of Health & Envtl. Control,* 389 S.C. 1, 9–10, 698 S.E.2d 612, 617 (2010). However, the Court may reverse the decision of the ALC where it is in violation of a statutory provision or it is affected by an error of law. *Id*. citing *Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue,* 399 S.C. 313, 316, 731 S.E.2d 869, 870–71 (2012).

ARGUMENT

1. The Administrative Law Court had the authority to remand the case to the Committee for a factual determination of Respondent's position at the time of her termination.

The ALC was well within its authority to remand for determination a factual question to the Committee. Appellants argument on this issue misapplies the law of *Chew v. Newsome Chevrolet, Inc.* S.C. 315 102, 431 S.E.2d 631 (Ct. App. 1993). *Chew* is not comparable to this case. *Id. Chew* was a case in which a circuit court judge wrongfully sent to a jury a question of subject matter jurisdiction. *Id.* Specifically, the circuit court in *Chew* asked the jury whether or not the Workers Compensation Commission had jurisdiction over the claim of an injured worker. *Id.* The situation of this case is materially different. The ALC did not put the question of jurisdiction in front of a jury. Instead, the ALC remanded to a quasi-judicial body, the Committee, for the determination of a question of fact. It is well established in South Carolina that the ALC may remand to the Committee, or similar bodies, for determination of factual issues. *See, e.g.*, *Deerfield Plantation Phase II B Property Owners Ass'n v. S.C. Dep't of Health and Env't Control*, 414 S.C. 170, 174, 777 S.E.2d 817, 819 (S.C. 2015); *Charlotte-Mecklenburg Hosp. Authority v. S.C. Dep't of Health and Env't Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (S.C. 2010); *Forman v. S.C. Dep't of Labor*, 419 S.C. 64, 69, 796 S.E.2d 138, 141 (Ct. App. 2016).

2. The Administrative Law Court applied the proper standard of review.

The substantial evidence standard was appropriately applied by the ALC to this case. Appellant is an agency under the Administrative Procedures Act, S.C. Code Ann. § 1-23-10 *et seq*. ("APA"); therefore, the APA's standard of review governs this appeal. S.C. Code Ann. § 1-23-380, S.C. Code Ann. § 1-23--600(D); and S.C. Code Ann. § 8-17-340. "The scope of judicial review in . . . cases arising from the final decision of state agencies is governed by section 1-

23-380 of the South Carolina Code." *Trowell v. S.C. Dep't of Pub. Safety*, 384 S.C. 232, 235, 681 S.E.2d 893, 895 (Ct. App. 2009). Section 1-23-380(5) provides:

> 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). "Unless there is a compelling reason to the contrary, appellate courts 'defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations.'" *Chapman v. S.C. Dep't of Soc. Servs.,* 420 S.C. 184, 188, 801 S.E.2d 401, 403 (Ct. App. 2017) quoting *Kiawah Dev. Partners, II*, 411 S.C. at 34, 766 S.E.2d at 718.

The party challenging an agency decision has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. *Waters v. S.C. Land Rs. Conservation Comm'n*, 467 S.E. 219, 467 S.E.2d 913 (1996). Substantial evidence is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion as the agency. *Friends of the Earth v. Pub. Serv. Comm'n of S.C*., 387 S.C. 360, 692 S.E.2d 910 (2010). When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney v. Michelin Tire* Co., 320 S.C. 515, 466 S.E.2d 357 (1996).

Appellant mistakenly cites to *Hernandez-Zuniga v. Tickle* and *Wilkinson v. Palmetto State Transp. Co.* in support of an argument that the *de novo* standard should have been applied. *Hernandez-Zuniga v. Tickle,* 374 S.C. 235, 646 S.E.2d 691 (Ct. App. 2007); *Wilkinson v. Palmetto State Transp. Co.* 382 S.C. 295, 676 S.E.2d 700 (2009). Neither case is comparable. Both cases deal exclusively with a jurisdictional question concerning eligibility under the Workers' Compensation Act. *Id.* Indeed, research on the application of the *de novo* standard on such issues reveal that the standard has only been applied in workers' compensation cases. *See also, Cooke v. Palmetto Health Alliance,* 367 S.C. 167, 624 S.E.2d 439 (Ct. App. 2005); *Porter v. Labor Dep't,* 372 S.C. 560, 643 S.E.2d 96 (Ct. App. 2007); and *Edens v. Bellini,* 359 S.C. 433, 597 S.E.2d 863 (Ct. App. 2004). This is not a workers' compensation case, and the law of workers' compensation does not apply here.

The fact that ALC applied the correct standard is revealed most tellingly by Appellant's own admission. In both appeals filed by Appellant to the ALC, Appellant specifically requested the substantial evidence standard be applied. (Appellant's 2-1-19 Brief, pp. 14-15); (Appellant's July 17, 2020 Brief, pp. 10-11). If anything, Appellant should now be judicially estopped from now asserting that the wrong standard was applied, when such an assertion is directly contradictory to the position Appellant previously took before the ALC.

3. Under either standard of review, the evidence shows Respondent was an employee covered by the State Employee Grievance Procedure Act.

Whether the substantial evidence standard or the preponderance standard is applied, the result is the same: Respondent was an employee covered by the State Employee Grievance Procedure Act. The State HR Director properly forwarded Respondent's appeal of her termination to the State Employee Grievance Committee because Respondent was an employee covered by the State Employee Grievance Procedure Act. [See 4-8-19 SCDA Brief]. Thereafter, the Committee

reaffirmed that decision on February 3, 2020, and made the factual finding that Respondent was an employee covered by the State Employee Grievance Procedure Act.

For every single grievance hearing,[2] the position was undisputed that that Respondent satisfied the definition of 'employee' within the meaning of the State Employee Grievance Procedure. Such an interpretation is consistent with the statutory authority and reasonable interpretation S.C. Code Ann. 8-17-370. Furthermore, Appellant cannot argue that Respondent was not entitled to grievance rights when its own legal counsel acknowledged that Respondent was an Administrative Coordinator at the administrative hearing. [2020 Appeal R. p. 242]. Appellant's legal counsel stated, "[i]n fact, the sole purpose that we are here today is the administrative coordinator's position is the only part that's covered." [Id.]. In making a final decision on the grievance, the DSHR considered all facts, evidence, and testimonies of both the Respondent and Appellant and the Committee's Final Decision granting Ms. Jackson relief should be upheld.

Appellant points to the State OHR Appeal Form as the key argument to assert that Respondent was solely an Interim Dean of Business at the time of termination. [See Appellant's Brief, pp. 18-21]. As discussed below, the State OHR Appeal Form is a generic form and not dispositive on the position an employee is in at the time of the adverse employment action. The form merely asks for job classification, not state job title/position number. Furthermore, Respondent's personnel records were not available to her upon her suspension and termination.

Ms. Jackson was continuously keyed as an Administrative Coordinator (state title/classification) since hire in 2011. All other duties Ms. Jackson performed were supplemental,

[2] The suspension and grievance hearings before the College President, State Technical System President, and the State Employee Grievance Committee.

not a replacement position. The College's own letters and personnel actions forms support the factual finding of the State OHR[3] and the State Employee Grievance Committee. Ms. Jackson was never hired as a Dean and her state position/title never changed. Respondent has failed to show any College documents or HR forms that prove otherwise. Instead, they grasp at straws wanting to use the State OHR appeal form, which is not a DTC official form for personnel records or changes.

Moreover, upon suspension and termination, Dr. Hall, in his official capacity as the President of the College, issued Ms. Jackson two letters that unequivocally prove Ms. Jackson has State Employee Grievance rights. The first is on February 14, 2017, Ms. Jackson received a letter from Dr. Hall, the Interim President of the College, stating that the supplemental pay Ms. Jackson was receiving was suspended. [2020 Appeal R. p. 834]. Following the suspension of her supplemental pay, Ms. Jackson filed a complaint with the South Carolina Department of Labor, Licensing and Regulation on February 15, 2017. Later that day, Ms. Jackson was instructed to come to Dr. Hall's office where she was given a letter informing her that she was suspended without pay. [2020 Appeal R. p. 666]. Therefore, as of February 15, 2017 and continuing until her termination, Ms. Jackson was in no other role and serving in no interim capacities.

Upon the suspension of her supplemental pay on February 14, 2017, Ms. Jackson was to receive her annualized salary solely limited to her Administrative Coordinator position, her covered FTE position, in which she was classified throughout the entirety of her employment with the College. [2020 Appeal R. p. 834]. Dr. Hall specifically wrote, "…You will continue to receive

[3] The procedural requirements have to be satisfied before the State OHR even refers the appeal to the State Employee Grievance Committee.

your annualized base pay for the state position to which you were hired." [*Id.*]. Ms. Jackson was suspended without pay from February 15, 2017 until her termination on May 11, 2017.

The second key piece of evidence is the termination letter dated May 11, 2017. [2020 Appeal R. p. 621]. The termination of employment uses the phrase "in your role as Administrative Coordinator I" in the second paragraph of the termination notice and it expressly informs Ms. Jackson of her grievance rights to appeal. [*Id.*].

In addition, when following through the grievance process, repetitively over the next several months, every official document issued by Respondent's officials reiterated Ms. Jackson's grievance appeal rights and steps to take to appeal under that State Employee Grievance Procedures Act. Many of these letters were generated by the State Tech System President, Dr. Tim Hardee, as well as the Vice President of HR, Kandy Peacock, and Charles Boykin, Respondent's legal counsel. [See i.e. R. pp. 624, 627, 628, and 633]. There can be no justification, though Appellant continuously tries to argue otherwise, to change the fact that every executive official at the highest level of the both the College and State Tech system affirmed that Ms. Jackson is a covered state employee with grievance rights.

Following the several step grievance appeal process, the State Human Resources Director correctly determined that Respondent was a covered employee under the State Employee Grievance Procedure Act. The College unnecessarily splits its arguments into several subcategories for the same single issue of whether Ms. Jackson was a covered employee entitled to a State Employee Grievance Hearing and again seeks to impermissibly relitigate the same issue.

The State Human Resources Director, pursuant to S.C. Code Ann. § 8-17-340(A), forwarded Respondent's appeal of her termination to the State Employee Grievance Committee for a hearing after determining that the jurisdictional requirements of the South Carolina Grievance

Procedure Acthad been met. [2020 Appeal R. pp. 827-829]. Respondent, whose position is supported by the South Carolina Department of Administration, argues that the Director's determination that Respondent was an employee covered by the State Employee Grievance Procedure Act was correct and not clearly erroneous as Appellant suggests.

The South Carolina Grievance Procedure Act provides grievance rights to covered state employees absent certain exemptions, none of which are applicable to Respondent, including the exemption for academic administrators at four-year, post-secondary educational institutions. S.C. Code Ann. § 8-17-370(10). Ms. Jackson was continuously, up to her termination, classified as an Administrative Coordinator. The documents in the Record support that finding. [*See*, for example, 2020 Appeal R. p. 38 (Respondent's position listing on the Grievance Committee's Final Decision]. For example, by letter dated February 1, 2015, the President of the College notified Ms. Jackson of her continued employment status as Administrative Coordinator, by unambiguously writing "[p]lease be informed that you will continue in the state position of, Administrative Coordinator to the President but, will have additional duties attached as of, February 1, 2015. Your immediate supervisor will remain Dr. Leonard McIntyre; you will remain at your current salary, position, and classification, but, you will assume additional duties as Assistant to the Area Commissioners…" and Plaintiff received a "temporary salary supplement." [2020 Appeal R. p. 695].

The State Human Resources Director properly forwarded Respondent's appeal of her termination to the State Employee Grievance Committee, because the Respondent was a covered employee by the State Employee Grievance Procedure Act. The Respondent was hired by the College on January 4, 2011 as the Administrative Coordinator, her official state employee job classification. The Respondent became a covered state employee with grievance rights after one

year of service, on January 4, 2012. The Respondent has assumed additional duties and roles during her tenure, such as adjunct teacher and interim dean while always maintaining her state job classification as an Administrative Coordinator. The Respondent was never hired permanently or ever reclassified to any of these positions that Appellant allegedly claims; she was only given a temporary supplement to assume appointed duties on an interim basis.

It is pivotal to consider that Appellant has failed to provide any Human Resource documentation or other written evidence to validate that the Respondent had a state job classification change or that she assumed a permanent, and no longer interim, position as dean. Further, the Appellant failed to provide any official or signed position description showing that Respondent had a state position change during her employment. The Appellant has failed to point to such evidence, because none exists. In fact, all documents within the Record before the Court verify that the Respondent maintained her current state positions/classification as a covered state employee while assuming temporary additional duties.

A logical conclusion from the witness testimony at the Hearing is that it is a standard practice of the State Technical College System, if someone assumes additional duties or interim roles; they would maintain their current state position until someone is hired permanently or reclassified into that vacant position. The employee serving in that interim role would receive a temporary supplement for additional duties during that time period. [See i.e. 2020 Appeal R. p. 695]. The Respondent was never keyed as a dean, because she was never in that role, she was simply performing additional duties on a temporary basis while maintaining her state Administrative Coordinator position. [See. i.e. 2020 Appeal R. p. 697 ("temporary faculty member"); R. p. 701 ("Interim Dean of Transitional Services…you will remain at your current

salary and in your current position/classification…")]. The Appellant has failed to identify any documentation to show otherwise.

The Respondent followed the grievance process according to SCBTE Policy 8-6-100, SCBTE Procedure 8-6-100-1. [2020 Appeal R. pp. 609-670]. Moreover, prior to determining whether the jurisdictional requirements were met, the State Human Resources Director requested all information surrounding the Respondent's termination, to include policies and steps used for the grievance process. [2020 Appeal R. pp. 603, 604]. The Appellant complied and had no objections.

The Appellant has failed to preserve their position that the Respondent allegedly did not have grievance rights or rather the State Human Resources Director erred when it was determined that the Respondent met the jurisdictional requirement to appeal or grieve the actions taken. In fact, the Appellant initiated, corresponded, confirmed, and continued to guide the Respondent throughout the grievance process. It is preposterous now for the Appellant to continue to make such claims to this Court and the issue remains unpreserved for appeal. [2020 Appeal R. pp. 228 – 575 (hearing transcript)].

Respondent was always keyed and classified as an Administrative Coordinator and she only held the dean roles on an interim basis. Supporting such a conclusion is Ms. Jackson's notification of such interim role on September 21, 2016. [2020 Appeal R. p. 853]. The letter from the College President states in pertinent part:

> Please be informed that you are being **appointed Interim** Dean of Business, Computers, and Related Technologies (BRCT) effective October 1, 2016, **until a permanent Dean of BCRT is hired** to provide leadership for the department.
>
> Your immediate supervisor will remain Mrs. Tia Wright-Richards, Interim Vice President for Academic Affairs. ***You will remain at your current salary and in your current position/classification***, but will assumed additional duties of Interim Dean of BCRT. You will continue to receive a ***temporary* salary adjustment**…

[2020 Appeal R. p. 853(emphasis added)]. Similar language is found in the 2015 letter, stating "you will remain at your current salary and in your current position/classification… and receive a temporary salary adjustment…for the duration of your interim appointment… When interviews are being held to fill the Dean of Transitional Services, please know that you are eligible to apply and be interviewed for the position." [2020 Appeal R. p. 701]. Ms. Jackson was not permanently hired for any dean position. Ms. Jackson was never in any other position/classification than an Administrative Coordinator and individuals in such positions are entitled to State Employee Grievance rights. Respondent was not reassigned; she was just given additional duties on a temporary basis. [2020 Appeal R. pp. 701, 853].

The College's last "DTC Departmental Request for Personnel/Payroll Action Form" listed Ms. Jackson as a "Executive Coordinator" synonymous with "Administrative Coordinator" with the Position Number "103363". [2020 Appeal R. p. 835]. This personnel action form validates that Respondent was still classified ***only*** in her current state position the day prior to the suspension on February 15, 2017. [2020 Appeal R. p. 835]. The Interim President of the College, Dr. Hall, signed the top of this document on February 14, 2017 identifying Ms. Jackson's Current Position "Executive Coordinator" and her New Position as "Executive Coordinator" so Ms. Jackson's position was indisputably a covered position when she was suspended on February 15, 2017 and terminated on May 11, 2017. [Id.].

Dr. McIntrye was the College President during the time frame of the events that the College alleged were the basis of Ms. Jackson's termination (tuition reimbursement and use of the President's stamp). Dr. McIntyre testified before the Committee and stated, "When a person receives a new position as interim, they maintain the old position on record until such time that they are appointed full time and permanent to that new area position. In other words, if something

were to happen that I would no longer want her to serve as interim then she has the right to go back to her permanent position. That's why the language is there about the current position classification." [2020 Appeal R. p. 407].

Furthermore, Dr. Hall, the Interim President after Dr, McIntyre, sent a letter to Ms. Jackson on February 14, 2017. [2020 Appeal R. p. 834]. It shows that Dr. Hall suspended Ms. Jackson's supplement pay[4] for the additional interim duties she was performing one day prior to placing her on an unpaid administrative suspension. [2020 Appeal R. pp. 834, 666]. The letter from the head of the College expressly states, "You will continue to receive your annualized base pay for the state position to which you were hired." [2020 Appeal R. p. 834]. Thus, by Appellant's very own words, documents, and actions, it acknowledged that Respondent was in a state employee position with grievance rights.

There can be no clearer evidence for relevancy to this issue than the termination letter; therein, Appellant validated Respondent had rights to grieve the actions taken and the termination letter also states Ms. Jackson's classified position, listed in the second paragraph as "Administrative Coordinator I." [2020 Appeal R. p. 621]. Thereafter, the termination letter specifically states, "you have the right to grieve this action should you desire." [Id.].

At all steps throughout her grievance, the College acknowledged that Ms. Jackson was an employee covered by the State Employee Grievance Procedure Act. At no less than eight separate days of grievance hearings - suspension grievances, termination grievances, and then State

[4] Ms. Jackson received a temporary 15% salary adjustment to assume the additional duties of Interim Dean from $48,327 to $55,576, an amount that was consistent with other College employees performing additional duties in supplement to their current position. [See i.e. R. p. 870 (Lamin Drammeh received an additional $15,000 for his temporary Director duties that were interim in addition to his Vice President duties)].

Employee Grievance Hearing dates - the College continuously acknowledged that Ms. Jackson was a covered employee.

Dr. Hall, the College's Interim President, confirmed that Respondent had grievance rights in the First Step Grievance Letter. Ms. Jackson's first step grievance hearing was held on June 5, 2017. [2020 Appeal R. p. 633]. Thereafter, on June 6, 2017, Dr. Hall issued his letter upholding Ms. Jackson's termination and within that letter Dr. Hall stated, "In accordance with the State Board for Technical and Comprehensive Education Policy No. 8-6-100, Grievance Appeal Procures and accompanying Procedure No. 8-6-100.1 Grievances, your client may grieve my decision to Dr. Tim Hardee…" [2020 Appeal R. p. 633].

Likewise, Dr. Hardee, SCTC System President, confirmed Respondent had grievance rights and copied Charles Boykins, legal counsel and Kandy Peacock, VP/Chief of HR on such correspondence. [2020 Appeal R. p. 624]. Dr. Hardee's Step Two Grievance decision stated in part, "This is the final agency decisions regarding this matter. **Ms. Jackson now has the right to appeal to the State Employee Grievance Committee** by writing to Ms. Kim Aydlette, Director, South Carolina Department of Administration, Division of State Human Resources." [Id.](emphasis added).

The College cannot argue that Ms. Jackson was not entitled to grievance rights when the College's own legal counsel acknowledged that Ms. Jackson was an Administrative Coordinator at the hearing. [2020 Appeal R. p. 242]. The College's legal counsel stated, "In fact, the sole purpose that we are here today is the administrative coordinator's position is the only part that's covered." [Id.].

Thus, there can be no clearer evidence that Ms. Jackson was a covered employee then those described above, in summary: (1) the words of its own legal counsel, (2) all of the personnel

documentation preceding Ms. Jackson's termination that continuously classified Ms. Jackson as a covered employee, (3) at all stages in the grievance proceeding the College acknowledged that Ms. Jackson was a covered employee as an Administrative Coordinator, and (4) the College's Personnel/Payroll Action Forms memorializing it classified Ms. Jackson as a covered employee. It is beyond the pale of equity for the College now argues that Ms. Jackson is not a covered employee by the State Employee Grievance Procedure Act.

Respondent's state job classification reflected that she was an Administrative Coordinator at the time of her termination, not an academic dean; therefore, she was a covered employee. Accordingly, the Committee had subject matter jurisdiction, pursuant to S.C. Code § 8-17-340, to adjudicate Respondent's grievance, because she was a covered employee. The Committee's decision to reverse Respondent's termination was within its statutory authority, it upheld the issue again on remand, and it should be upheld.

4. The Administrative Law Court was correct in finding that Respondent was not limited by the representations in her Grievance Appeal Form. Further, Appellant's position is hypocritical as Appellant asserts it is not similarly bound by its response to Respondent's Grievance Appeal Form.

Appellant argues that Respondent was bound by her identification as an "Interim Dean" on her Grievance Appeal Form. This argument is based upon the Administrative Law Court's instruction on remand, which is as follows:

> Parties are judicially bound by their pleadings. The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his or her pleadings, and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the case. A "pleading" includes any required form used to initiate an appeal or other proceeding that constitutes a contested case under the Administrative Procedures Act, including the State Employee Grievance Procedure State Appeal Form.

Appellant cites to *Fisher v. S.C. Dep't of Health & Env't Control*; however, the facts of *Fisher* are not analogous to the case at hand. *Fisher v. S.C. Dep't of Health & Env't Control*, 309 S.C. 10, 419 S.E.2d 794 (Ct. App. 1992). In *Fisher*, the employee at issue admitted that she had probationary status when she filed for a grievance hearing. *Id.* The only dispositive issue before the *Fisher* Court was whether a probationary employee was entitled to a grievance hearing. *Id.* There is no such debate in this case. All parties have continued to agree that if Respondent was an Administrative Coordinator at the time her termination, she was entitled to a grievance hearing.

Appellant also cites to *Towles v. United Healthcare Corp.* in support of its position. Again, the facts of *Towles* are not analogous. *Towles v. United Healthcare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999). In *Towles*, the plaintiff attempted to contradict a fact alleged in his complaint related to who his employer was, with an after-the-fact affidavit. The *Towles* court dealt with this issue in the first footnote. The dispositive issue in *Towles* was whether the plaintiff was compelled to arbitrate by way of an employee handbook.

Even if Respondent was bound to her Grievance Appeal Form, such a situation would not resolve this case in Appellant's favor. Respondent's Grievance Appeal Form is correct, her job duties assigned at that time were those of the *Interim* Dean. That is a factual allegation of Respondent's day-to-day work, not a legal conclusion as to whether she was covered employee. As the ALC correctly noted, "substance prevails over form and a party is not bound by admissions or averments of legal conclusions in his or her pleadings." 71 C.J.S. *Pleading* § 89. The facts of this case, as discussed above, overwhelmingly demonstrate that Appellant itself acknowledged the fact that Respondent's placement into the Interim Dean position was temporary. Appellant has repeatedly acknowledged through its management and counsel that Respondent continued to be classified as an Administrative Coordinator, a position entitled to grievance rights.

Furthermore, as acknowledged by the ALC, Appellant's position on this issue is hypocritical. If Respondent was to be strictly bound to her Grievance Appeal Form, so to would Appellant need to be strictly bound to their response to the Grievance Appeal Form. Appellant stated in its response, "Through our review it was determined that Ms. Jackson's state classification title is Administrative Coordinator I." Similar to every step of this re-hashing of the same issues, Appellant continues to argue that it should not be taken at its word, and its own executive-level employees should not be trusted, when they repeatedly admit that Respondent is a covered employee. Such arguments are disingenuous, hypocritical, and should be disregarded by this Court.

5. Appellant has not properly preserved the issues raised in its 2018 Appeal.

When Appellant appealed the decision of the Committee's determination on remand, it failed to raise the merits of the Committee's decision that Respondent was wrongfully terminated as an issue for appeal. It is the practice of this jurisdiction that a Court does not retain jurisdiction after a remand unless jurisdiction is specifically reserved. *See, Leviner v. Sonoco Prod. Co.,* 339 S.C. 492, 494, 530 S.E.2d 127, 128 (2000) ("Under Rule 59(e), SCRCP, the trial judge has only ten days from entry of judgment to alter or amend an earlier order on his own initiative absent a 'reservation' of jurisdiction in the form order."). No such reservation took place in this case.

Appellant mistakenly cites to *Bobo v. Marshane Corp.* 302 S.C. 86, 88, 394 S.E.2d 2, 4 (Ct. App. 1990). *Bobo* is not persuasive in this case. *Id.* As the ALC identified, *Bobo* was a factually distinct case dealing with application of workers' compensation law. This is not a workers' compensation case, and there is no other precedent in South Carolina for a court retaining jurisdiction after a remand.

Appellant claims to have made a motion to consolidate the two appeals. As the ALC points out, however, "[Appellant] never made a formal motion to consolidate the case." Appellant points to one sentence in its notice of appeal as evidence of a motion to consolidate. One sentence in a document, which was not a motion, cannot constitute a motion upon which the ALC may rule. Appellant did not timely follow up on its one-sentence request. Appellant claims that it did not know whether to raise the issues from the 2018 appeal in this case. As the ALC notes:

> If [Appellant] was not sure what issues it needed to raise again, if any, it would seem prudent to have raised any and all possible issues, or filed a formal motion, rather than to have relied on a one-sentence request in a Notice of Appeal. To the extent [Appellant] was prejudiced, the prejudice resulted from its own actions, or rather, inactions.

[December 1, 2020 ALC Order p. 8].

Appellant also points to the fact that, in the alternative to a motion to consolidate, it requested (again with only one sentence) to treat the appeals as already consolidated, and to file a supplemental brief. [Appellant's Brief, pp. 21-24]. The ALC identifies,

> Regardless, in SCTCS's Notice of Appeal, as part of its explanation of its Motion, SCTCS asked that it be allowed to submit a supplemental brief "on the issues identified herein." The issues SCTCS identified were the issues it wanted to raise with regard to the Committee's decision on Remand, which it then proceeded to raise in its Appellant's Brief filed on July 27, 2020. Therefore, SCTCS was not prejudiced by this Court's failure to rule on its Motion because SCTCS raised the issues it sought permission to raise in a supplemental brief in its Appellant's Brief and those issues were thoroughly considered by this Court and ruled upon in its September 2020 order.

[December 1, 2020 ALC Order p. 9].

In sum, Appellant has been heard on these issues on numerous occasions. At every step, Appellant's position has failed because the evidence does not support it. Furthermore, Appellant has failed to preserve the additional issues raised in its 2018 appeal to the ALC. Appellant should not be allowed what would now be an eighth bite at the apple.

6. The Committee's decision passes all permissible scrutiny under S.C. Code Ann. § 1-23-380(5).

Assuming, without conceding, that Appellant may properly argue the merits of the Committee's underlying determination the Plaintiff was wrongfully terminated, the Committee's decision is supported by substantial evidence in the record. The evidence has continuously shown that Ms. Jackson was a state employee with grievance rights and the College prejudiced Ms. Jackson's substantial rights and that she met one or more of the required elements for the reversal of the College's termination of her employment.

Ms. Jackson was an employee of the College from January of 2011 until her termination on May 11, 2017. During Ms. Jackson's employment at the College, she served as the Administrative Coordinator in the President's Office, and on a short-term basis as the Interim Dean of Transitional Studies/ Distance Education and Interim Dean of Business, Computer, and Related Technologies. Ms. Jackson also taught courses as an Adjunct Professor, and she also performed the duties of Executive Assistance to the College Board.

Ms. Jackson appealed her termination pursuant to S.C. Code Ann § 8-17-340(E)(2)(a), (b), (c), (d), (e), and (f) as the facts and circumstances leading to Ms. Jackson's termination are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in the view of the reliable, probative and substantial evidence on the whole record; and arbitrary and capricious and characterized by an abuse of discretion and clearly an unwarranted exercise of discretion. As reflected by the Findings of Fact in the Final Decision, the Committee heard from several witnesses and reviewed a series of documents supplied by Ms. Jackson and the College in support of their respective arguments.

At the State Employee Grievance Hearing, Ms. Jackson argued that the facts and circumstances leading to her termination are in violation of constitutional or statutory provisions. Ms. Jackson argued that she was denied due process on the basis that the agency failed to provide Ms. Jackson any notice for the grounds of a suspension that they termed an "investigatory suspension". [2020 Appeal R. 666]. Ms. Jackson was never given grounds for such "investigatory suspension" in writing. Ms. Jackson's suspension letter simply said that Ms. Jackson was placed on an investigatory suspension without pay effective immediately for allegations surrounding her alleged involvement in improper conduct with regard to college operations. [Id.]. Yet, Ms. Jackson received no explanation beyond that vague phrase alleging "involvement in improper conduct with regard to college operations". [Id.]. The total lack of information given to Ms. Jackson deprived Ms. Jackson of an opportunity to defend herself and to rebut the allegations of "involvement in improper conduct with regard to college operations". [Id.].

Ms. Jackson participated in every grievance meeting in which she was given an opportunity to attend. [*See* 2020 Appeal R. pp. 599-670]. The College deliberately manipulated Ms. Jackson's suspension and grievance process by: failing to provide her with the specific charges made against her; failing to allow her to confront her witnesses and accusers; by pre-judging her grievance; and by failing to allow her a fair and impartial avenue of redress, including the finders of fact who were not themselves tainted in the process. [*Id.*].

Ms. Jackson was terminated from employment for "willful violation of rules, regulations and written policies, which constitute conduct unbecoming a state employee." [2020 Appeal R. p. 621]. Ms. Jackson argued that such grounds are unfounded, and Ms. Jackson was not given documentation supporting the accusations against her. [See 2020 Appeal R. pp. 228-575]. Ms. Jackson did not violate any rules, regulations, or written policies. [Id.].

The first alleged ground for Ms. Jackson's termination relates to tuition reimbursement she received. [2020 Appeal R. p. 621]. Ms. Jackson proved that her receipt of tuition reimbursement payments years ago was proper, was approved, and the documentation reflects her completion of her application, degree, and reimbursement with approval of the required necessary approvers. [*See* 2020 Appeal R. pp. 865-867; 2020 Appeal R. pp. 869-911]. That the College argues that such matters were grounds to terminate her employment is ridiculous, and Ms. Jackson proved such matters through the testimony of the witnesses and the documentation presented to the Committee. [See 2020 Appeal R. pp. 6-14; see also 2020 Appeal R. pp. 228-575]. Ms. Jackson expressly articulated that she applied for tuition reimbursement and was granted tuition reimbursement. [2020 Appeal R. pp. 442-507].

Ms. Jackson was an employee of the College when she applied for and received tuition reimbursement, and Ms. Jackson's education was directly related to her employment with the College as clearly evidenced by her positions as an Interim Dean of the College since October 2015, as an adjunct instructor for multiple years, and continuously as Administrative Coordinator. Ms. Jackson's receipt of reimbursements was proper and was for the completion of her degree as required for reimbursement. [Id.]. The documents reviewed during the hearing clearly show that the documentation and numbers line up and support the conclusion that Ms. Jackson did nothing wrong. [Id.]. Ms. Jackson did nothing wrong in such actions to apply for and to receive tuition reimbursement as Ms. Jackson applied for and was approved for tuition reimbursement by the following department heads: Director of Grants/Contracts, VP of Finance, and the College Presidents. [Id.; see also 2020 Appeal R. pp. 6-14].

Ms. Jackson proved to the Committee that the second alleged ground to terminate her is equally preposterous. [Id.]. The second claim in Ms. Jackson's termination notice stated, "in your

role as Administrative Coordinator I (to the President), you received pay increases, which were approved using the President's stamp, but had no supporting documentation. Your conduct in this matter violated all reasonable controls in our system and, I believe, violated the South Carolina Ethics Act which prohibits a public employee from using his/her position for personal gain." [2020 Appeal R. p. 621]. Ms. Jackson confirmed at the hearing, as she had previously done at her suspension grievance hearing, when asked about the President's stamp, Ms. Jackson expressly denied that she ever used the President's stamp on any of her own personnel documents. This was confirmed by the President of the College during his testimony at the hearing. [2020 Appeal R. pp. 376-413].

The Committee heard for themselves that Ms. Jackson was paid for duties that she performed, that she was actually underpaid for such duties in that paying her to do an Interim role was cheaper for the College than hiring a permanent Dean at a higher salary, and that all pay adjustments for additional duties given to Ms. Jackson were properly approved by the supervisors above Ms. Jackson. [2020 Appeal R. p. 382]. Ms. Jackson had no part in paying herself. [See i.e. 2020 Appeal R. pp. 382-384].

Ms. Jackson expressly informed College representatives that the President's stamp is used by each of the recent sitting Presidents of Denmark Technical College and is used for high volume documentation and at the express instruction of the sitting President. [2020 Appeal R. pp. 297-314]. Ms. Jackson expressly informed the Agency representatives that she used the President's stamp at the instruction of the former President of Denmark Technical College and the stamp was never used on her own documentation. [Id.]. Ms. Jackson never used the stamp for personal gain. [Id.; see also 2020 Appeal R. pp. 451-454]. Further, Ms. Jackson testified, and the evidence showed, that she did not receive a pay increase; she received supplemental pay when she performed

additional duties. Any and all supplements in Ms. Jackson's pay were expressly authorized by the supervisory chain above Ms. Jackson and by Human Resources.

The College's arguments fail, and the Committee properly determined that Ms. Jackson was wrongfully terminated. [2020 Appeal R. pp. 6-14]. Ms. Jackson did not claim that a stamp was never used on her own documents. [2020 Appeal R. p. 452]. In fact, Ms. Jackson testified that "she" never used a stamp on her own documents. [Id.]. Ms. Jackson would have no personal knowledge of anyone else's actions with regard to the stamp. [Id.]. The issue of whether or not a stamp was used to approve Ms. Jackson's supplemental pay is moot as Dr. McIntyre, the College President at the time, testified at the hearing that he authorized and approved all of Ms. Jackson's personnel documents and pay. [2020 Appeal R. pp. 376-413]. Dr. McIntyre testified that he used the stamp on documents. [Id.]. Dr. McIntyre testified that he did not have any written procedure in place for the use of the stamp. [Id.]. The College failed to prove or show that there is a policy or procedure that requires, enforces, or dictates how presidents or administrators use a signature stamp. [2020 Appeal R. pp. 6-14]. The stamp was clearly a common practice by the College Presidents and to question the use of a hand-written signature or a stamped signature on an approved document is unlawfully punitive to Ms. Jackson's employment when there is incontrovertible evidence that Ms. Jackson's supplemental pay was approved by supervisors, not approved by herself, and was received for duties performed.

The College accused Ms. Jackson of allegedly improperly receiving tuition reimbursement and allegedly stamping her own pay increases documentation. [2020 Appeal R. p. 621]. Both accusations factually date back several years and are untimely grounds to terminate Ms. Jackson and such allegations were wholeheartedly denied and the evidence supported Ms. Jackson's

account that she had done nothing wrong in receiving supervisory approved tuition reimbursement and supervisory approved supplemental pay.

Ms. Jackson's suspension that culminated in her termination was her first such reprimand and Ms. Jackson showed that the action taken against her violated the Agency's progressive discipline policy. [2020 Appeal R. p. 463].

The Committee heard testimony from Mr. Williams, the former Board Chair. [2020 Appeal R. pp. 326-372]. Mr. Williams testified that he asked and requested for Dr. Hall, the Interim College President and Ms. Jackson's supervisor at the time, to provide the Board with evidence to substantiate the decision to take disciplinary actions against Ms. Jackson. [Id.]. Mr. Williams also testified that Dr. Hall could not produce any evidence supporting the action taken against Ms. Jackson and Dr. Hall indicated to Mr. Williams that he did not have any evidence against Ms. Jackson. [Id.]. Mr. Williams testified that Dr. Hall stated that he was following the instructions of SCBTE President, Dr. Hardee. [Id.]. The College's own rebuttal witness to Mr. Williams' testimony, Ms. Bright, also testified that she did not know why the action was taken against Ms. Jackson. [2020 Appeal R. pp. 526-532].

The Committee did not even hear from the decision maker, Dr. Hall, the Interim President of Denmark Technical College. Dr. Hall was only at the College campus for about 10 days prior to him suspending Ms. Jackson. Comparatively, the Committee did hear from Dr. McIntyre, the President of Denmark Technical College during the timeframe relevant to the College's allegations against Ms. Jackson. Dr. McIntyre affirmed to the Committee that these grounds the College brought against Ms. Jackson are baseless.

Oddly, the College seemingly admitted to a violation of State Board policies and procedure in its Motion for Reconsideration prior to this appeal; which further shows that Ms. Jackson is not

at fault for the things charged as a basis for her termination. [See 2020 Appeal R. pp. 45-55]. If the College has a different interpretation of the policies and procedures enforced by SCBTE, then it is the SCBTE's duty and responsibility to ensure that the College Administrators are carrying them out properly. The employees cannot supersede the President's decisions, nor can Ms. Jackson be held accountable for the Administrators' error, if any.

Moreover, the College's Motion for Reconsideration argued that there was weakness in practices established by Dr. McIntyre, Mr. Williams, and also Dr. Boyd-Scotland, who worked at the College for at least 17 years with the same practices; yet, the SCBTE never addressed any such alleged violations. [See 2020 Appeal R. pp. 45-55]. The Motion for Reconsideration seemed an attempt to throw the previous College Administrations[5] proverbially 'under the bus' to somehow show that its egregious conduct toward Ms. Jackson is somehow merited in fact, which it is not. [Id.]. The evidence before the Committee showed that the College's own witness at the hearing, Jamie Wise, also received tuition assistance using the same process as Ms. Jackson and she was still employed with the College. [2020 Appeal R. pp. 539-563].

The Committee did not err in its decision as the College was on notice about Ms. Jackson's transfer courses. Ms. Jackson's application and program of study clearly included and identified

[5] Appellant's arguments, both previously and remand related, imply that failures sourced from the administrations of both prior College Presidents, Dr. Joann Boyd-Scotland and Dr. Leonard McIntyre. Dr. McIntyre testified at the hearing and expressly informed the Committee that both grounds cited as a basis for Ms. Jackson's termination were meritless. Ms. Jackson did not pay herself raises and she legitimately received tuition reimbursement. The tuition reimbursement approval sourced even earlier, from Dr. Boyd-Scotland's administration of the College. Dr. Boyd-Scotland has passed away, so she could not be called to testify at the hearing; however, the documentation in the record evidences her signature of approval of Ms. Jackson's tuition reimbursement and all of the witnesses with personal knowledge about that topic confirmed to the Committee that Ms. Jackson was approved for tuition reimbursement and hers was the only tuition reimbursement facing scrutiny by the College (comparatively Jamie Wise was not receiving such scrutiny).

the courses she would complete. Therefore, the College was made aware of and approved Ms. Jackson's completed courses.

Ms. Jackson used tuition assistance for a program that was related to her position, per Dr. McIntyre and Dr. Drammeh's testimonies; both of whom were in the supervisory chain above Ms. Jackson. Ms. Jackson's tuition assistance application included the details of her job positions and rationale for applying. Ms. Jackson's application was approved by Teresa Mack, the Director of Grants and Contracts and the College President, Dr. Boyd-Scotland, who also supervised Ms. Jackson.

The College has argued that Ms. Jackson knowingly, willfully, and intentionally applied for and received 100% reimbursement when the policy only allows 85% maximum. In fact, the Title III Funds policy (page 2, section 6) indicates otherwise. It states "[s]hould employee elect the more costly courses, he/she will need to negotiate an agreement or contract for the Title III Program to defray no less than 75% and no more than 85% of the total cost of courses." Ms. Jackson's courses costs were comparable to other institutions and/or enrolled in exact institutions other employees attended and received tuition reimbursement, such as Jamie Wise. Seemingly, like the College's other arguments, Appellant is making an argument that has no basis.

No evidence was shown that the College has ever been cited or rebuked for violating or misinterpreting its tuition assistance polices. Yet, out of all employees that received tuitions assistance under these common practices, seemingly only one, Respondent, has been accused of violating the tuition assistance policies and procedures. This, yet again, reinforces that targeted and arbitrary nature of the College's actions toward Ms. Jackson. The Committee properly found that the College's decision prejudiced Ms. Jackson's substantial rights and met one or more of the elements contained in S.C. Code Ann. § 8-17-340(E)(2). [2020 Appeal R. pp. 6-14].

7. Appellant's arguments based on the *Ultra Vires* doctrine are not persuasive in this case.

As noted by Appellant's previous Brief on this matter, "…no reported South Carolina cases appear to address *ultra vires* acts in the context of public grievances…". [2020 Appeal, Appellant's Brief, p. 20]. South Carolina jurisprudence does not apply the *ultra vires* acts in the context Appellant seeks to apply it to this case. Westlaw research on the subject indicates that the majority of cases in South Carolina involving *ultra vires* acts relate to property and business law. A recent example from the Supreme Court of South Carolina is *Fisher v. Shipyard Vill. Council of Co-Owners, Inc.,* 415 S.C. 256, 781 S.E.2d 903 (2016). The underlying dispute in *Fisher* involved the repair of faulty windows and sliding glass doors in a condominium development. *Fisher*, 415 S.C. at 261, 781 S.E.2d at 906. Fifty co-owners of units in the development appealed the Court of Appeals' decision reversing the trial court's finding that the business judgment rule does not apply to the conduct of the Board of Directors of the Council, and the trial court's decision granting Petitioners partial summary judgment on the issue of breach of the Board's duty to investigate. *Id*.

The Supreme Court in *Fisher* held that: (1) the existence of the master deed, the bylaws, and the Horizontal Property Act did not preclude the application of business judgment rule; (2) alleged *ultra vires* acts did not preclude assertion of business judgment rule related to other intra vires acts; and (3) genuine issue of material fact existed regarding whether the council breached a duty to investigate claims related to windows and doors. *Id*. In the legal analysis section of the *Fisher* decision, the Supreme Court held that a corporation may exercise only those powers granted to it by law, its charter or articles of incorporation, and any bylaws made pursuant thereto. *Id. citing Seabrook Island Prop. Owners Ass'n v. Pelzer,* 292 S.C. 343, 347, 356 S.E.2d 411, 414 (Ct. App. 1987) (citing *Lovering v. Seabrook Island Prop. Owners Ass'n,* 289 S.C. 77, 344 S.E.2d 862 (Ct.App.1986), *aff'd as modified,* 291 S.C. 201, 352 S.E.2d 707 (1987). A corporation's actions

taken within the scope of the powers granted it are considered *intra vires* acts; acts beyond the scope of its powers, however, are *ultra vires* acts. *See Id.* The business judgment rule applies to *intra vires* acts of the corporation, but not to *ultra vires* acts. *Id.* In other words, while the business judgment rule protects a corporation's exercise of its best judgment when deciding between viable options in a given business-related situation, the business judgment rule is not a cloak that protects a corporation from a violation of its own bylaws. Comparing the identification of *ultra vires* action in *Fisher* to the case at hand, the *ultra vires* acts argument made by Appellant are not applicable here, as the context of the law is different and the State Employee Grievance Committee acted within the scope of its power under the State Employee Grievance Procedure Act.

As discussed above and in the South Carolina Department of Administration's Motion to Intervene and Memorandum in Support of Position, S.C. Code Ann. § 8-17-340(A) provides that the State Human Resources Director shall forward to the State Employee Grievance Committee for a hearing all appeals which meet jurisdictional requirements. In a letter dated August 8, 2017 concerning Respondent's state grievance appeal, the South Carolina Department of Administration stated that the State Human Resources Director determined jurisdictional requirements had been met under the State Employee Grievance Procedure Act. [R. p. 656-658]. Both the South Carolina Department of Administration and Respondent submit that the State Human Resources Director properly found the Respondent's appeal of her termination met the necessary criteria for her grievance to proceed to the State Employee Grievance Committee.

The arguments in support of that position are twofold, (1) Respondent was an Administrative Coordinator, and (2) Respondent does not satisfy the definition for any of the exemptions from the State Employee Grievance Procedure Act. Respondent extensively addressed both arguments above, but will further expound upon the statutory interpretation of the definition

of ‘employee’ that Appellant asks the Court to make. “Questions of statutory interpretation are questions of law.” *S.C. Dep't of Motor Vehicles v. Dover*, 423 S.C. 153, 160–61, 813 S.E.2d 532, 536 (Ct. App. 2018) quoting *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016). “The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.” *Id. quoting Centex Int'l, Inc. v. S.C. Dep't of Revenue*, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013) (quoting *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)). “[W]e must follow the plain and unambiguous language in a statute and have ‘no right to impose another meaning.’ ” *Id. quoting Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535-36, 725 S.E.2d 693, 695 (2012) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). “[T]he deference doctrine… provides that when[n] an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts, including the ALC, will defer to the agency’s interpretation absent compelling reasons.” *Id*. quoting *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014). “We defer to an agency interpretation unless it is ‘arbitrary, capricious, or manifestly contrary to the statute.’” *Id.* (internal citations omitted).

Here, the State Human Resources Director and the Appellant, for all of the grievance hearings, agreed that Respondent satisfied the definition of ‘employee’ within the meaning of the State Employee Grievance Procedure. Such an interpretation is consistent with the statutory authority and reasonable interpretation S.C. Code Ann. 8-17-370. In making a final decision on Respondent’s grievance, the Committee considered all facts, evidence and testimonies of both the Respondent and Appellant. The Committee’s Final Decision, and the ALC’s Amended Final Order, each granting Respondent relief, should be upheld.

CONCLUSION

The Administrative Law Court has, at all junctures of Appellant's ongoing attempts to stall Respondent's receipt of the relief she is owed, proceeded in a correct manner, applying the law accurately to this case. Even assuming Appellant's arguments as to the remand, the standard of review, and the waiver of the issues raised by Appellant in the 2018 appeal, are all correct; the facts of this case are inescapable. At every junction of this litigation, every decision-maker has rightly concluded that the record shows Respondent was a covered employee State Employee Grievance Procedure Act, and that Appellant's termination of Respondent prejudiced Respondent's substantial rights and met one or more of the elements contained in S.C. Code Ann. § 8-17-340(E)(2). For the reasons discussed above and in the record before the Court, Respondent Carla Jackson respectfully asks this Honorable Court to Affirm the holdings of the State Employee Grievance Committee, as affirmed by the Administrative Law Court, and instruct Appellant to give Ms. Jackson the relief she is entitled to in the timeliest manner possible.

Respectfully Submitted,

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April 21, 2021

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Apr 21 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III Administrative Law Court Judge

Appellate Case No. 2020-001689
Case No. 2020ALJ300064AP

South Carolina Technical College System .....Appellant,

v.

Carla Jackson and South Carolina Department of Administration,
Of whom, Carla Jackson is the .....Respondent.

CERTIFICATION OF COUNSEL

I, the undersigned attorney of Cromer Babb Porter & Hicks, LLC, certify that Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal comply with Rule 211(b), SCACR.

CROMER BABB PORTER & HICKS, LLC

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PROOF OF SERVICE

I do hereby certify that, on April 21, 2021, I served the Respondent's Initial Brief, Designation of Matter to be Included in the Record on Appeal, and Certification of Counsel by electronic mail to Appellant's attorneys of record, at the following addresses:

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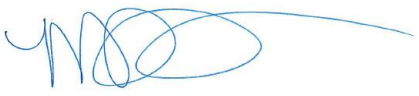

Marcie W. Leaphart
Litigation Paralegal

April 21, 2021
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April 21, 2021

Via Electronic Mail
Hon. Jenny Abbott Kitchings
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Re: South Carolina Technical College System v. Carla Jackson
Appellate Case No.: 2020-001689

Dear Ms. Kitchings:

Enclosed for filing please find the Respondent's Initial Brief, Respondent's Designation of Matter to be Included in the Record on Appeal, Respondent's Certification of Counsel, and a Proof of Service.

Should you have any questions or concerns, please contact us.

With highest regards, I am

Sincerely,

Marcie W. Leaphart
Litigation Paralegal

/mwl
Enclosures

cc: Andrew F. Lindemann, Esquire
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