UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 06 January 2023

ALJ NO.: 2022-SCA-00003

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR,
Plaintiff,

v.

SOMERSET COUNTY, as operator of SOMERSET COUNTY JAIL,
Respondent.

ORDER GRANTING ADMINISTRATOR'S MOTION FOR PARTIAL SUMMARY DECISION, DENYING RESPONDENT'S MOTION FOR DECISION ON THE RECORD, AND SETTING STATUS CONFERENCE

This matter arises under the Contract Work Hours and Safety Standards Act ("CWHSSA" or "Act"), as amended, 40 U.S.C. § 3701 *et seq.* and the implementing regulations at 29 C.F.R. Part 5. The Administrator, Wage and Hour Division ("Administrator" or "Plaintiff") alleges Somerset County, as operator of Somerset County Jail ("Somerset" or "Respondent") violated the CWHSSA by failing to pay its Correctional Officers an overtime premium under a contract with the United States Marshal's Service to provide housing, safekeeping and subsistence to federal inmates.

On August 16, 2022, I held a preliminary pre-trial conference call with the parties, and pursuant to the conference call, I issued an Order on August 24, 2022, setting deadlines for the filing of dispositive motions. *See Order Setting Deadlines* (Aug. 24, 2022). The parties subsequently requested an extension of the deadlines, which I granted on September 6, 2022. *See Email Order Granting Jt. Mot. For Ext.* (Sept. 6, 2022).

On September 9, 2022, the parties filed a Joint Statement of Agreed Facts ("JSAF"), attaching Joint Exhibits ("JX") 1-3; the Administrator filed a Motion for Partial Summary Decision ("MPSD"); and Respondent filed a Motion for Decision on the Record ("MDOR"). On September 30, 2022, Respondent filed an Opposition to the Administrator's Motion for Partial Summary Decision ("Resp. Opp.") with attached Exhibits ("RX") A-C; and the Administrator filed a Response to Respondent's Motion for Decision on the Record ("Admin. Resp."), attaching Exhibits ("AX") A-C. On October 14, 2022, Respondent filed a Reply in Support of its Motion for Judgment on the Record ("Resp. Reply"); and the Administrator filed a Reply to Respondent's Opposition to Administrator's Motion for Partial Summary Decision ("Admin. Reply").

The two primary legal issues presented in the parties' dispositive motions are: (1) whether the CWHSSA applies to the contract at issue in this case; and (2) whether Respondent violated the CWHSSA by not paying overtime wages to its correctional officers for hours worked exceeding 40 hours in a workweek. For the reasons discussed below, the Administrator's Motion for Partial Summary Decision is **GRANTED,** and Respondent's Motion for Decision on the Record is **DENIED**.

I. AGREED FACTS

The parties stipulated to the following facts as they pertain to their respective dispositive motions:

1. Somerset County, a political subdivision of the State of Maine, is located in Northwestern Maine. Somerset County operates the Somerset County Jail, located at 131 E. Madison Road, Madison, Maine 04950;

2. During the period of time from March 3, 2017, to March 2, 2019 (the "Applicable Period"), Respondent contracted with the United States Marshals Service (the "U.S. Marshals") to provide, among other things, housing, safekeeping, and subsistence of male and female detainees being held for pretrial on charges for federal offenses, post-conviction, and for Immigration and Customs Enforcement ("Federal Inmates");

3. A true and correct copy of this contract between Somerset County and the U.S. Marshals, as modified in 2015 (the "Contract"), is located in JX-1. The Contract does not contain a clause referencing the CWHSSA;

4. Somerset County Jail also houses inmates related to state offenses ("State Inmates"). The State Inmates and Federal Inmates (collectively, the "Inmates") in Somerset County Jail are housed together and are not segregated based on their status as State Inmates or Federal Inmates;

5. Respondent employs and has employed correctional officers who work with the Inmates. During the Applicable Period, Somerset County Jail employed 65 people as correctional officers ("Correctional Officers") whose wage payments are at issue in this case;

6. Respondent employs the same employees to perform duties to fulfill the obligations under the Contract and to perform duties for the care and custody of Inmates not subject to the Contract. Respondent does not track hours worked performing tasks subject to the Contract with the U.S. Marshals;

7. The 65 employees referred to in the Complaint are Correctional Officers;

8. The job duties of Respondent's Correctional Officers include those outlined in the job description of a correctional officer, a true and correct copy of which is located in JX-2, including, among other things, escorting Inmates within the facility, ensuring Inmates follow required behavior standards by supervising recreation, visiting, dining, education, work programs, treatment, social services, and other activities. Correctional Officers are also responsible for supervising the cleaning and disinfecting of Inmate quarters, and the Correctional Officers provide necessary linens and supplies. Correctional Officers also ensure the safety of staff and Inmates by performing searches of Inmates, rooms, and the entire facility to prevent use of prohibited materials and seize any contraband. Correctional Officers further organize, sort, transport, deliver, and collect mail. Correctional Officers also frequently come into contact with Inmates and must possess physical dexterity to employ necessary and lawful non-deadly physical force to address Inmate resistance;

9. During the Applicable Period, Somerset County, and the Teamsters Local Union No. 340 ("the Union") executed a Collective Bargaining Agreement, which covered the Correctional Officers at issue here. A true and correct copy of the applicable Collective Bargaining Agreement is located in JX-3;

10. During the Applicable Period, at least some of Respondent's Correctional Officers performed work on the Contract and also worked more than 40 hours in a workweek;

11. During the Applicable Period, Respondent did not compensate at least some Correctional Officers who had performed work on the Contract at wage rates

of not less than one and one half-times the basic rates at which they were employed for each hour worked over 40 hours in a workweek;

12. Pursuant to the Contract, Respondent received the following cumulative amounts from the U.S. Marshals for housing the Federal Inmates:

    - $1,020,870.00 (fiscal year ("FY") ending 6/30/2016)
    - $841,140.00 (FY ending 6/30/2017)
    - $555,120.00 (FY 2018 through 2/28/2018);

13. Pursuant to a previous iteration of the Contract, Respondent received the following cumulative amounts from the U.S. Marshal for housing the Federal Inmates:

    - $193,793.00 (FY 2010)
    - $213,557.00 (FY 2011)
    - $542,430.00 (FY 2012)
    - $323,162.00 or more (FY 2013);

14. Plaintiff investigated Somerset County under CWHSSA and the Fair Labor Standards Act ("FSLA") for a period of time that covered the Applicable Period. With respect to the FLSA portion of this investigation, the Wage and Hour Division applied Section 7(k) of the FLSA, 29 U.S.C. § 207(k), to those individuals who worked exclusively as correctional officers and determined that Respondent owed FLSA overtime back wages to certain of those officers for failing to include shift differential premium payments in the employees' "regular rates" of pay for FLSA overtime purposes; and

15. The total amount of FLSA overtime back wages computed by Plaintiff and paid by Somerset County as a result of the FLSA portion of the investigation was less than $4,000.00.

See JSAF. I adopt the parties' stipulated facts as findings herein.

II. STANDARD OF REVIEW

A motion for summary decision under the Act is governed by the regulations found at 29 C.F.R. § 18.72. Pursuant to section 18.72, any party may "move for summary decision, identifying each claim or defense – or the part of each claim or defense – on which summary decision is

sought." 29 C.F.R. § 18.72(a).[1] Summary decision may be entered "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law." *Id.* A fact is material and precludes a grant of summary decision if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or a defense asserted by the parties. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

In determining whether there is a genuine issue for trial, the court must view all the evidence and factual inferences in the light most favorable to the non-moving party. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 249 (1986). If the non-moving party produces enough evidence to create a genuine issue of material fact, it defeats the motion for summary decision. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). However, if the non-moving party fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial, there is no genuine issue of material fact, and the moving party is entitled to summary decision. *Id.* at 322-23. The nonmoving party must go beyond the pleadings, by either his or her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, to establish that there is a genuine issue for trial. *Id.* at 324.

III. ANALYSIS

A. Applicability of the CWHSSA

The CWHSSA applies to any contract with the federal government exceeding $100,000 in value and requiring or involving "the employment of laborers or mechanics." 40 U.S.C. §§ 3701(b)(1)(B), (b)(2), (b)(3)(A)(iii); 29 C.F.R. § 5.5(b). Respondent challenges the applicability of the CWHSSA to the Contract at issue on three grounds: (1) The regulation at 29 C.F.R § 5.2(h) exempts Respondent from coverage based on its status as a state or municipal government using its own employees to perform work under the Contract; (2) the monetary threshold for contracts under the CWHSSA was not met; and (3) the Correctional Officers employed to perform work

[1] Respondent fashioned its dispositive motion as a "Motion for Decision on the Record" pursuant to 29 C.F.R. § 18.70(d), which states: "When the parties agree that an evidentiary hearing is not needed, they may move for a decision based on stipulations of fact or a stipulated record." MDOR at 1, 4. The Parties have not agreed that an evidentiary hearing is unnecessary; in fact, the Administrator filed a Motion for *Partial* Summary Decision, acknowledging that if her motion is granted, a trial would still be necessary on the remaining issue of overtime back wages owed. MPSD at 2; Admin. Resp. at 2-4. Respondent's motion will therefore be treated as a motion for summary decision and considered under the standard of review for such motions.

under the Contract are not "laborers or mechanics" within the meaning of the Act. Each argument will be addressed in turn below.

1. Exemption from the CWHSSA Coverage under 29 C.F.R. § 5.2(h)

Respondent argues that state and local governments that use their own employees to perform work on federal contracts are expressly excluded from the definition of "contractor," under the CWHSSA, citing to 29 C.F.R. § 5.2(h) and the Wage and Hour Division ("WHD") Field Operations Handbook ("FOH") as supporting authority. MDOR at 8-10.

The regulations at 29 C.F.R. Part 5 cover the "administration and enforcement of the labor standard provisions" of multiple federal statutes, including the CWHSSA. 29 C.F.R. § 5.1. Section 5.2(h) states:

> The term *contract* means any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in § 5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor *under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees.* However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards.

29 C.F.R. § 5.2(h) (emphasis added).

Respondent also cites to Section 15b06 of the FOH,[2] as follows:

> In some instances a government agency (or a state or political subdivision thereof using federal money) may perform *construction work* under what is generally known as *force account*. In essence, this is a do-it-yourself type of construction – the governmental agency receiving the grant decides not to contract out the work but actually performs it in-house with its own employees. Such work is not generally subject to DBRA/CWHSSA because governmental agencies and states or their political subdivisions are not considered contractors or subcontractors within the meaning of the DBA. However, any part of the work not done under force account but contracted out is subject to DBRA/CWHSSA in the usual manner.

FOH § 15b06 (emphasis added).

[2] A copy of the FOH can be found on the OALJ website: Field Operations Handbook | U.S. Department of Labor (dol.gov).

The Administrator disputes that Respondent's use of its own public employees removes it from coverage under the CWHSSA. Admin. Resp. at 13-15. In support of her position, the Administrator asserts that while the CWHSSA provides exceptions for certain types of contracts, these exemptions do not include state or municipal governments using their own employees. *See* 40 U.S.C. § 3701(b)(3). The Administrator further argues that Section 5.2(h), relied on by Respondent, only applies to "statutes providing loans, grants, or other Federal assistance," and the CWHSSA does not fall under this category. Lastly, the Administrator cites to a different section of the FOH, Section 15h01, which states:

> In some cases, a state or political subdivision will obtain a government contract and undertake to perform it with state or municipal employees. *The CWHSSA does not contain an exemption for contracts performed by state or municipal employees*. *Thus, the CWHSSA will apply to non-construction contracts with states or political subdivisions in the same manner as it applies to contracts with private employers*, in the absence of administrative action under section 105 of the act varying such application. See FOH 15b06 for the application of CWHSSA to force account construction work (i.e., work performed in-house with federal funds by employees of a government agency or a state or political subdivision thereof).

FOH § 15h01 (emphasis added).

I adopt the Administrator's position and find that there is no blanket exemption under the CWHSSA for state governments employing their own employees. Section 5.2(h) is inapplicable because the Contract in this matter is not a contract "where construction is performed."[3] 29 C.F.R. § 5.2(h). Similarly, Respondent's citation to Section 15b06 of the FOH is inapplicable as it applies to governmental entities performing "force account" construction work with grant funds. In contrast, the Administrator's citation to Section 15h01 of the FOH is directly on point, which states: "CWHSSA does not contain an exemption for contracts performed by state or municipal

[3] To the extent that Respondent is arguing that Section 5.2(h) should be read as including non-construction contracts, its argument is difficult to follow. MDOR at 9; Resp. Reply at 10. The CWHSSA is not limited to contracts involving construction projects and applies to any contract with the federal government involving the use of laborers and mechanics. As acknowledged by Respondent, the title of 29 C.F.R. Part 5 specifically references non-construction contracts under the CWHSSA: "Part 5 - Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the [CWHSSA])." Respondent does not provide any coherent reason for why Section 5.2(h) should apply to both non-construction and construction contracts under the CWHSSA, despite the regulation's plain language limiting the provision to construction work.

employees. *Thus, the CWHSSA will apply to non-construction contracts with states or political subdivisions*." (emphasis added). Section 15h01 further distinguishes FOH 15b06, cited by Respondent, as limited to "force account construction work (i.e., work performed in-house with federal funds by employees of a government agency or a state or political subdivision thereof)." While the FOH is not binding authority, it can act as persuasive guidance. *See Weeks Marine, Inc.*, ARB No. 2017-0076, ALJ No. 2009-DBA-00006 (ARB Mar. 10, 2020). Section 15h01 of the FOH is consistent with the CWHSSA statute and implementing regulations, which are silent as to any exception for non-construction work performed by state and local governments employing their own employees.[4] Accordingly, Respondent is not exempt from coverage under Section 5.2(h).

2. Monetary Threshold under the CWHSSA

To trigger the provisions of the CWHSSA, a contract with the federal government must exceeds $100,000.00 in value. 40 U.S.C. § 3701(b)(1)(B), (b)(3)(A)(iii). For those contracts incorporating the Federal Acquisition Regulations (the "FAR"), such as the Contract in this case, the monetary threshold is higher, requiring a contract value exceeding $150,000.00. 48 C.F.R. §§ 22.305(a), 52.222-4; JX-1.

The parties stipulated that Somerset received the following amounts from the federal government for the boarding of federal detainees under the Contract: (1) $1,020,870.00 (fiscal year ending 6/30/2016); (2) $841,140.00 (fiscal year ending 6/30/2017); and (3) $555,120.00 (fiscal year 2018 through 2/28/2018). JSAF at 3. The parties further stipulated that under a "previous iteration of the Contract, Respondent received the following cumulative amounts from the U.S. Marshal for housing the Federal Inmates: $193,793.00 (FY 2010); $213,557.00 (FY 2011); $542,430.00 (FY 2012); and $323,162.00 or more (FY 2013)." *Id.* at 4.

The Administrator argues that based on the above stipulations, "it is undisputed that the annual amounts received by Somerset under the Contract exceed $150,000.00 for the years at issue in this case." MPSD at 7. Respondent maintains, however, that the threshold was not met because the Contract was for a specific per diem rate, $90.00 per Inmate per day, without a guaranteed

[4] Similarly, the case cited by Respondent, *United States v. City of Palmer, Alaska*, No. 15-35236 (9th Cir. Aug. 12, 2016), involved a state agency performing construction work under a force account pursuant to the Davis-Bacon Act, and it is therefore not analogous to the case at hand.

minimum or maximum value, and therefore it was impossible to determine at the time the contract was executed that the monetary threshold would be met. MDOR at 10-11. Respondent further argues that it would be improper and impractical to look backwards at the actual amounts paid under the Contract to determine whether the CWHSSA applied. Resp. Opp. at 11. The Administrator counters, stating that based on the amounts received under the preceding contract, which well exceeded $150,000.00 for fiscal years 2010 through 2013, there was a "reasonable expectation" that the value of the Contract would exceed the monetary threshold, and this reasonable expectation is sufficient to trigger application of the CWHSSA. Admin. Resp. at 15-16.

In support of her "reasonable expectation" argument, the Administrator cites to *United States Biscuit Co. v. Wirtz*, 359 F.2d 206 (D.C. Cir. 1965), which involved a federal contract under the Walsh-Healey Public Contracts Act ("Walsh-Healey Act"). In *Wirtz*, the contractor entered into an agreement with the federal government wherein it offered to sell its products to the government at list price or at any lower price that it may offer to other purchasers; the contract did not include a maximum or minimum value or otherwise obligate the federal government to make any purchases under the contract. *Id.* at 208. The contractor argued that the agreement was not covered under the Walsh-Healey Act in part because it did not exceed the $10,000.00 monetary threshold. *Id.* The D.C. Circuit disagreed and held that the monetary threshold was met. *Id.* at 210-11.

In reaching its holding, the D.C. Circuit stated: "It seems clear that at the time the Agreement was signed, the parties must have anticipated that the total amount of the supplies to be furnished would be excess of $10,000.00, and subsequent events more than justified their expectation." *Id.* at 210. The Court referenced the broad scope of the agreement, which covered all military installations in the U.S. as well as some abroad; the large number of items that might be purchased under the contract; and the fact that over $250,000.00 worth of goods was sold from one branch alone within the first two years of the agreement. *Id.* at 209. The Court stated: "Given these facts, most of which were known at the time the Agreement was signed, it is apparent that both parties to the contract must have contemplated that large scale Government procurements would be made under the Agreement," and "such [large scale] purchases actually occurred." *Id.*

at 209-210. The Court stated that the parties' agreement "created a continuing commercial relationship of a sizeable, but indefinite, amount" and to conclude that such an agreement was not covered by the Walsh-Healey Act would be contrary to the purpose of the Act to "control all large-scale purchases by the Government which might adversely affect labor conditions." *Id.* at 210.

The *Wirtz* decision is instructive in this case. I find that at the time the parties executed the Contract, they anticipated that the value of the contract would well exceed $150,000.00 based on the total amounts spent under the prior iteration of the contract. JSAF at 4. The actual amounts paid under the current Contract confirm its large scale, as the amounts were far in excess $150,000.00, even on a yearly basis. To narrowly construe the CHWSSA as applying only to those contracts with a *contractual* obligation exceeding the monetary threshold, as opposed to the *actual value* in effectuating the contract, would frustrate the purpose of the CWHSSA to ensure overtime wages are paid uniformly under federal contracts and subcontracts. *See Amaya v. Power Design, Inc.*, 833 F.3d 440 (4th Cir. 2016) (*citing* S. Rep. No. 87-1722, at 1-2 (1962), *as reprinted in* 1962 U.S.C.C.A.C. 2121, 2121-22)).[5]

Respondent does not address the case law cited by the Administrator, nor does it cite to any contrary case law supporting its position. Instead, Respondent argues that it would not be feasible to look backward and "recalculate" overtime wages on work performed up to the $100,000.00 threshold, but this misconstrues the Administrator's argument. MDOR at 12; Resp. Opp. at 11. The Administrator is not suggesting that overtime payments be applied retroactively once the threshold is met, but rather asserts that Respondent should have paid overtime wages consistent with the CWHSSA from the commencement of the work under the Contract, as the

[5] The Administrator also cites to two cases arising under the Service Contract Act ("SCA"), which further support her position that actual amounts, as opposed to obligated amounts, under a contract may be considered when determining whether the monetary threshold has been met. Admin. Resp. at 17-18; *United States Dept. of the Air Force v. Administrator, Wage and Hour Division*, ARB Case Nos. 2021-0071/2022-0001 (ARB Feb. 28, 2022) (finding that post-award data to determine coverage under the SCA was appropriate and consistent with the purpose of the Act to prevent the unfair depression of wages); *Ober United Travel Agency, Inc. v. U.S. Dept. of Labor*, 135 F.3d 822, 825 & n.2 (D.C. Cir. 1998) (rejecting argument that the phrase "in excess of $2,500" in the SCA requires an obligation under the contract in excess of $2,500.00, and holding there is nothing "in the SCA which requires that the value of the contract be measured by a party's *obligated* expenditures, as opposed to actual revenues or actual expenditures.") (emphasis in original).

parties reasonably understood at the time the Contract was executed that value of the Contract would exceed the threshold amount of $150,000.00.

Lastly, Respondent maintains that the Contract at issue is not covered by the Act because it did not include a clause incorporating the CWHSSA, despite the requirement in 29 C.F.R. § 5.5(b) that any contract in excess of $100,000.00, and subject to the CWHSSA, contain specific clauses pertaining to overtime requirements and violations of such requirements under the CWHSSA. 29 C.F.R. § 5.5(b); *see also* 48 C.F.R. §§ 22.305; 52.222-4 (requiring similar clauses incorporating the CWHSSA into contracts governed by the FAR and exceeding $150,000.00). MDOR at 11, 13. The regulations, however, do not address the consequences, if any, when a CWHSSA-covered contract fails to contain the required clauses.

The FOH does, however, address this situation. Section 15g02 states: "The failure to incorporate the CWHSSA stipulations, as set forth in 29 CFR 5.5(b) and 48 CFR 22.305, into a contract does not preclude CWHSSA coverage." FOH § 15g02; *see also* FOH § 14b06(f); *Weeks Marine, Inc.*, ARB No. 2017-0076 (citing to FOH as persuasive authority). The Administrator also cites to an October 26, 1964, letter from the Solicitor of Labor Charles Donahue to Rep. Wright Patman stating that the CWHSSA is "self-executing," to demonstrate that this interpretation of the regulations is long-standing. Admin. Response at 18, n.7 & AX-C. The Secretary's interpretation does not conflict with the statute and regulations, which are silent as to the effects of not including a CWHSSA clause in a contract, and is consistent with the purpose of the Act, to ensure overtime wages are protected. *See Amaya*, 833 F.3d 440. Accordingly, I find that the failure to incorporate the CWHSSA into the Contract does not preclude enforcement under the Act, as the CWHSSA is self-executing.

3. Definition of "Guard" under the CWHSSA

As previously stated, the CWHSSA applies to any contract with the federal government over $100,000.00 in value "that may require or involve the employment of laborers or mechanics." 40 U.S.C. §§ 3701(b)(1)(B), (b)(2). The statute covers laborers or mechanics "employed by a contractor or subcontractor in the performance of any part of the work under the contract— (A) including watchmen, guards, and workers performing services in connection with dredging or rock excavation in any river or harbor of the United States, a territory, or the District of Columbia." §

3701(b)(2). The regulation at 29 C.F.R § 5.2(m) expands on the definition of laborers or mechanics as follows:

> The term *laborer* or *mechanic* includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term *laborer* or *mechanic includes . . . in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards*. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity . . . are not deemed to be laborers or mechanics . . . .

29 C.F.R. § 5.2(m) (emphasis in original and added); *see also* 29 C.F.R. § 4.181(b)(1) (stating "[g]uards, watchmen, and many other classes of service employees are laborers or mechanics within the meaning of [the CWHSSA]").

Respondent refutes that its Correctional Officers who performed work under the Contract constitute "laborers and mechanics" within the meaning of the CWHSSA. First, Respondent contends that the inclusion of "guards" under the definition of "laborers and mechanics" is limited to guards "performing services in connection with dredging or rock excavation." Resp. Opp. at 6-7. Relying on the "series-qualifier" canon of statutory construction,[6] Respondent maintains that the qualifying phrase "performing services in connection with dredging or rock excavation in any river or harbor of the Unites States, a territory, or the District of Columbia" in Section 3701(b)(2) applies to all three preceding terms – "watchmen," "guards" and "workers." Resp. Opp. at 6-7.

The Administrator conversely argues that to read the statute as suggested by Respondent would render the terms "watchmen" and "guards" superfluous, as the term "workers" would cover all types of positions, including watchman and guards. Admin. Reply at 2-3 (*citing Corley v. United States*, 556 U.S. 303, 314 (2009)). The Administrator further points to the Secretary's interpretation of this statutory provision in 29 C.F.R. § 5.2(m) and § 4.181(b)(1), which state that "laborers or mechanics" include "watchmen and guards," without qualification. *Id.* at 4.

[6] The series-qualifier canon states that "'[w]hen there is a straightforward, parallel construction that involves all nouns or verbs in a series,' a modifier at the end of the list 'normally applies to the entire series.'" *Facebook Inc. v. Duguid*, 141 S. Ct. 113, 1169 (2021).

I find the Supreme Court's decision in *Lockhart v. U.S.*, 136 S. Ct. 958 (2016) analogous to the instant case. In *Lockhart*, the Supreme Court interpreted a criminal sentencing statute that included a list of terms followed by a limiting clause. The statute at issue was 18 U.S.C. § 2252(b)(2), which states that a 10-year mandatory minimum sentence enhancement is triggered by, *inter alia*, prior state convictions for crimes "relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward." The Court applied the "rule of the last antecedent," which states that "a limiting clause or phrase … should ordinarily be read as modifying only the noun or phrase that immediately follows." *Id.* at 351. The Court rejected the petitioner's argument that the series-qualifier canon should apply because attaching the limiting phrase "involving a minor or ward" to all three preceding items would "risk running headlong into the rule against superfluity by transforming a list of separate predicates into a set of synonyms describing the same predicate." *Id.* (*citing Bailey v. United States*, 516 U.S. 137, 146, (1995) ("We assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning")).

As with the statute at issue in *Lockhart*, use of the series-qualifier rule in this matter would have a similar result – applying the qualifying phrase "performing services in connection with dredging or rock excavation in any river or harbor" to "watchmen, guards and workers", rendering "watchmen" and "guards" superfluous. Instead, following Supreme Court precedent, I find that the rule of the last antecedent applies, and the limiting clause addressing dredging and rock excavation only applies to the last term "workers." This conclusion is consistent with the Secretary's interpretation of the statute in 29 C.F.R. § 5.2(m) and § 4.181(b)(1), which applies the CWHSSA to watchmen and guards generally, and is consistent with the purpose of the Act to ensure overtime wages are paid to workers. *Reich v. John Alden Life Ins. Co.*, 126 F.3d 1, 8 (1st Cir. 1997) ("The regulations, promulgated pursuant to an express delegation of legislative authority, are to be given controlling weigh unless found to be arbitrary, capricious, or contrary to the statute."); *Amaya*, 833 F.3d 440.

Next, the parties dispute whether Respondent's Correctional Officers fall under the definition of "guards." The statute and implementing regulations do not define "guards," and

interpretation of this term under the CWHSSA appears to be one of first impression.[7] When a word is not defined in a statute, it shall be construed in accordance with its common or ordinary meaning. *Taniguchi v. Kan Pac. Saipan, Ltd*., 566 U.S. 560, 566 (2012) ("Because those words are words of common usage, we are confident that judges . . . can determine whether a condition meets that standard based on the particular facts of the cases. . . ."); *Community for Creative Nonviolence v. Reid*, 490 U.S. 730, 739 (1989); *Escondido Mutual Water v. LaJolla*, 466 U.S. 765, 772 (1984) ("It should be generally assumed that Congress expresses its purposes through the ordinary meaning of the words it uses . . . .").

The Merriam-Webster dictionary broadly defines "guard" as "one assigned to protect or oversee another."[8] The Oxford-Learner Dictionary defines "guard" as "a person, such as a soldier, a police officer or a *prison officer*, who protects a place or people, *or prevents prisoners from escaping*" and includes "prison/border guards" as an example.[9] The Collins Dictionary similarly defines guard as "someone such as a soldier, police officer, or *prison officer* who is guarding a particular place or person."[10] The Cambridge Dictionary states that a guard is "a person or group of people whose job is to protect a person, place, or thing from danger or attack, *or to prevent a person such as a criminal from escaping*" and lists "prison guards" as an example.[11] Lastly, the Google Dictionary defines guard as "a person who keeps watch, especially a soldier or other person formally assigned to protect a person or to control access to a place" and gives "a prison warder" as an example in North American usage.[12] In addition, the

[7] While Respondent cited to one decision under the Eight Hour Laws (the predecessor to the CWHSSA), the case is not analogous as it addressed the position of a foreman/supervisor "directing mechanical labor of the prisoners," and not that of a correctional officer. Resp. Opp. at 10. The cases cited by the Administrator for the proposition that the CWHSSA has been applied to similar security-type work, are also of minimal value because in those cases, the parties did not dispute that the positions were covered by the Act, and there was no analysis of the term "guards" or the broader term "laborers and mechanics" under the CHWSSA. MPSD at 8.

[8] *See* Guard Definition & Meaning - Merriam-Webster.

[9] *See* Guard Definition | Oxford Advanced Learner's Dictionary at OxfordLearnersDictionaries.com (emphasis added).

[10] *See* Guard definition and meaning | Collins English Dictionary (collinsdictionary.com) (emphasis added).

[11] *See* GUARD | English meaning - Cambridge Dictionary (emphasis added).

[12] *See* define guard - Search (bing.com).

description of the position "Correctional Officers and Jailers," Code 33-3012.00, in the Department of Labor's Occupational Information Network ("O*Net") includes the job duty of "*guard[ing]* inmates in penal or rehabilitative institutions."[13]

Based on the foregoing, I find that the plain meaning of "guard," applying its common usage, includes correctional officers. Several of the dictionaries cited explicitly include "prison officers" in the definition of guards. Moreover, the stipulated duties of Respondent's Correctional Officers fall under the broader definition of guards as protecting or overseeing a person or a place and preventing prisoners/criminals from escaping. Respondent's Correctional Officers "escort inmates within the facility and ensure that the inmates follow required behavioral standards by supervising recreation, visiting, dining, education, work programs, treatment, social services, and other activities." JSAF at 2-3. The Correctional Officers also "ensure the safety of staff and inmates by performing searches of inmates, rooms and the entire facility to prevent use of prohibited materials and seize any contraband." *Id.* The Correctional Officers frequently interact with Inmates and "must possess physical dexterity to employ necessary and lawful non-deadly physical force to address inmate resistance." *Id.*

Respondent has not provided any additional evidence that would conflict with or differ from the stipulated duties or otherwise preclude a finding that the Correctional Officers are "guards" based on the undisputed facts and as a matter of law.[14] Accordingly, I find that Respondent's Correctional Officers who performed work under the Contract fall within the definition of "guards" and come within the purview of the CWHHSA.

B. Whether Somerset Violated the CWHSSA

Having established that the CWHSSA applies to the Contract in this case, I turn to whether Respondent violated the Act based on the parties' stipulated facts and as a matter of law.

[13] *See* O*NET OnLine (onetonline.org) (emphasis added).

[14] Because I find that Respondent's Correctional Officers are "guards," within the meaning of the Act, I need not discuss the Administrator's alternative argument that correctional officers are "laborers and mechanics" on the basis that their duties are "physical or manual" in nature. Resp. Opp. at 8-9; Admin. Reply at 5-8. Similarly, there is no need for further evidentiary development, as argued by Respondent, to determine whether the job duties are primarily physical and manual versus mental and managerial. Resp. Opp. 4-5, 11-12.

Under the CWHSSA, federal contractors are required to pay their laborers and mechanics time-and-a-half overtime rates for all hours worked in excess of forty hours per week. *See* 40 U.S.C. § 3702(a); 29 C.F.R. § 5.5(b)(1). The statute states:

> The wages of every laborer and mechanic employed by any contractor or subcontractor in the performance of work on a contract [covered by the CWHSSA] shall be computed on the basis of a *standard workweek of 40 hours*. Work in excess of the *standard workweek* is permitted subject to this section. For each workweek in which the laborer or mechanic is so employed, wages include compensation, at a rate not less than one and one-half times *the basic rate of pay*, for all hours worked in excess of *40 hours in the workweek*.

40 U.S.C. § 3702(a) (emphasis added); *see also* 29 C.F.R. § 5.5(b). If a federal contractor violates Section 3702(a), it is liable "to the affected employee for the employee's unpaid wages" and to the federal government "for liquidated damages as provided in the contract." § 3702(b)(2).

The parties stipulated that "Respondent did not compensate at least some Correctional Officers who had performed work on the Contract at wage rates of not less than one and one half-times the basic rates at which they were employed for each hour worked over 40 hours in a workweek." JSAF at 3. Respondent nonetheless argues that it did not violate the CWHSSA because it paid its Correctional Officers overtime in accordance with Section 7(k) of the Federal Labor Standards Act ("FLSA"), 29 U.S.C. § 207(k),[15] which is "expressly permitted" under 29 C.F.R. §§ 5.15(c)(1) and 4.181(b)(2) to satisfy its overtime obligations under the CWHSSA. Resp. Opp. at 3. The Administrator disagrees, asserting that Sections 5.15(c)(1) and 4.181(b)(2) cited by Respondent do not import Section 7 of the FLSA in its entirety into the CWHSSA, and instead only permits the "basic rate of pay" under the CWHSSA to be computed in the same manner as the "regular rate" under Section 7 of the FLSA. Admin. Resp. at 5-6. Respondent concedes that it is "reasonable" to interpret Section 5.15(c)(1) as incorporating only the computation of the "regular rate" under Section 7 when viewing the regulation in isolation, but asserts when this regulation is read in conjunction with Section 4.181(b)(2), which states more generally that "overtime pay" is calculated "in the same manner as under the [FLSA]," it becomes "apparent"

[15] Section 7(k) of the FLSA permits public agencies to calculate overtime for employees "engaged in law enforcement activities (including security personnel in correctional institutions)," based on a "work period" longer than a standard workweek. 29 U.S.C. § 207(k).

that the entirety of Section 7 may be applied in determining overtime wages under the CWHSSA. Resp. Reply at 3.

> The regulation at issue, Section 5.15(c), titled "*Tolerances,"* states –
>
> (1) The *'basic rate of pay'* under [the CWHSSA] may be computed as an hourly *equivalent to the rate* on which time-and-one-half overtime compensation may be *computed and paid under section 7 of the Fair Labor Standards Act* of 1938, as amended (29 U.S.C. 207), as interpreted in part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

29 C.F.R. § 5.15(c)(1) (emphasis added). Section 4.181(b)(2), in turn, states: "Regulations concerning [the CWHSSA] are contained in 29 CFR part 5 which permit overtime pay to be computed in the same manner as under the Fair Labor Standards Act." 29 C.F.R. § 4.181(b)(2).

I find the weight Respondent allocates to Section 4.181(b)(2) is misplaced. The regulations found at 29 C.F.R. Part 4, Subpart C, represent the implementing regulations for the McNamara O'Hara Service Contract Act, and not the CWHSSA. The specific regulation cited, Section 4.181, is titled "Overtime pay provisions of other Acts" and subsection (b) represents a generalized summary of the CWHSSA and refers the reader to 29 C.F.R. Part 5 for the relevant CWHSSA regulations. Based on the context of this regulation, I find it to be informational in nature, and defers to the controlling regulations in Part 5 of Title 29. Section 5.15(c)(1), which is the controlling regulation, states that only the computation of the "regular rate of pay" under Section 7 is incorporated into the CWHSSA. I find the plain language of the controlling regulation for the CWHSSA found in Part 5 is entitled to more weight over a more generalized and broad summary of the Act found in Part 4, which otherwise addresses a separate statute.[16] *See Davis v. Michigan*

[16] Respondent's assertion that both Parts 4 & 5 of Title 29 were "enacted as part of the same rulemaking" is incorrect. Resp. Reply at 4. Part 5 was amended in 1962 to reflect the enactment of the CHWSSA and was further amended in 1963 to include the regulation at issue, Section 5.15(c) (then Section 5.12a(c)). 27 Fed. Reg. 10119 (Oct. 16, 1962); 28 Fed. Reg. 546 (Jan. 22, 1963). In comparison, Subpart C of Part 4, which contains Section 4.181, was first promulgated in 1968. 33 Fed. Reg. 9880 (July 10, 1968). Regardless of the timing of the promulgation of these two regulations, Respondent does not explain why Part 4, which is not the controlling regulation, should be given more weight over the plain language in Section 5.15(c)(1).

Dept. of the Treasury, 489 U.S. 803, 809 (1989) (holding that "the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.").[17]

Applying the plain language in Section 5.15(c)(1), I find that only the provisions of Section 7 of the FLSA addressing computation of the "regular rate of pay" are incorporated into the CWHSSA. *See Masters v. Maryland Management Co.*, 493 F.2d 1329, 1333 (4th Cir.1974) ("29 CFR 4.15(c)(1) and (2) make clear that 'basic rate' as used in the [CHWSSA] is synonymous with "regular rate" under the [FLSA].") This reading of Section 5.15(c)(1) is consistent with the overall structure of Section 5.15(c). Immediately following Section 5.15(c)(1), the regulation at Section 5.15(c)(2) states:

> Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the [FLSA] and § 778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the "regular rate" under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the "basic rate" under the [CWHSSA].

29 C.F.R. § 5.15(c)(2). Additionally, the reference in Section 5.15(c)(1) to 29 C.F.R. Part 778 is consistent with the plain meaning of the regulation. Section 5.15(c)(1) states that the "basic rate of pay" may be computed the same way as "the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the [FLSA], *as interpreted in part 778 of this title*." (emphasis added). Looking to the Part 778 regulations, 20 C.F.R. § 778.2 states: "This part 778 does not deal with the . . . *various specific exemptions provided in the [FLSA]*" and regulations "relating to . . . specific exemptions may be found in other parts of this chapter." Accordingly, Section 5.15(c)(1) does not incorporate all the provisions of Section 7 and is limited to those portions addressing computation of hourly rates.

The Secretary has consistently interpreted Section 5.15(c)(1) as not incorporating the entirety of Section 7 of the FLSA. Admin. Resp. at 8. The Administrator provides two letters representing the Secretary's position that Section 7(k) of the FLSA is not incorporated into the

[17] Even considering the language in Section 4.181(b)(2), it is not as clear-cut as suggested by Respondent. Section 4.181(b)(2) does not state that all provisions of Section 7 of the FLSA, including certain exemptions, are applicable under the CWHSSA, but instead generally states that "overtime pay" is computed "in the same manner" as under the FLSA. The term "overtime pay" is vague, resulting in ambiguity. When considered in conjunction with Section 5.15(c)(1), however, a reasonable interpretation is that "overtime pay" is synonymous with "basic rate of pay."

CWHSSA. *See* Admin. Resp. AX-A (Assistant Adm'r Ltr. To Mr. Robert Dausy (Mar. 17, 1981)) ("the exemption in section 7(k) of the FLSA does not apply under the CWHSSA");[18] Admin. Resp. AX-B (Wage & Hour Div. Ltr. To Jean Seibert Stucky at 1-2 (June 29, 2017)) ("In contrast to CWHSSA's requirement of overtime pay for all hours worked in excess of forty in a workweek, section 7(k) of the FLSA permits a public employer of firefighters to pay overtime based on a 'work period' that may be from 7 consecutive days to 28 consecutive days . . . ."). I further find the FOH at Section 15k07 to be relevant. This section states:

> An employee may perform work in a workweek within the scope of an FLSA overtime exemption and also perform work covered by the CWHSSA. In such cases, during any such workweek in which the employee works more than 40 hours per week on contract work subject to CWHSSA, the employee must be paid additional half-time overtime for all such contract hours in excess of 40 per week. However, during any such workweek in which the employee does not work more than 40 hours on contract work subject to CWHSSA, an otherwise applicable FLSA overtime exemption will not be defeated.

FOH § 15k07. This section acknowledges that there may be situations where work comes within the CWHSSA overtime requirements and also qualifies for an exemption in the FLSA, and states that in this scenario, the worker must still be paid overtime for hours in excess of 40 hours in a workweek under the CWHSSA, notwithstanding the FLSA exemption.

This understanding of the interrelationship between the two statutes addressed in FOH § 1507 is consistent with case law cited by the parties. Respondent cited to three cases which it avers supports its finding that "an employer who complies with Section 7 of the FLSA for purposes of calculating overtime compensation has satisfied the requirements of CWHSSA." *See* MDOR 6-7 (*citing Masters v. Md. Mgmt. Co.*, 493 F.2d 1329, 1332-33 (4th Cir. 1974); *Mersnick v. USProtect Corp.*, No. 06-3993, 2006 WL 3734396 (N.D. Cal., Dec. 18, 2006); *Amaya v. Power Design, Inc.*, 833 F.3d 440, 441 (4th Cir. 2016)). The cases cited, however, do not stand for the principle asserted by Respondent, and in fact aid the Administrator's position.[19] These cases held

[18] Respondent wrongly states that this 1981, letter is irrelevant because it pre-dates the promulgation of Section 5.15(c)(1). Resp. Reply at 6. Section 5.15(c)(1) was added to Part 5 in 1963, and not 1982 as suggested by Respondent. *See* 28 Fed. Reg. 546 (Jan. 22, 1963).

[19] These cases acknowledge that the computation of the "basic rate of pay" under the CWHSSA is synonymous with the "regular rate" under the FLSA, consistent with my reading of Section 5.15(c)(1), and do not, as suggested by Respondent, state more generally that all overtime calculations are the same under both the CWHSSA and the FLSA.

that the CWHSSA and FLSA are "mutually supplemental" and the provisions of both statutes "may apply so far as they are not in conflict." *See Masters*, 493 F.2d at 1332-33; *Mersnick*, 2006 WL 3734396, at *3; *Amaya*, 833 F.3d at 444-45.

The above cases also cite to the Supreme Court decision *Powell v. U.S. Cartridge Co.*, 339 U.S. 497, 519-20 (1950). In *Powell*, the Court rejected the argument that the FLSA and the Walsh-Healey Act are mutually exclusive, stating that overlapping statutes can supplement each other so long as complying with one statute does not make it "impossible" to "comply with the other." *Id.* The Court determined that the respondents had not demonstrated "the impossibility of determining, in each instance, the respective wage requirements under each Act and then applying the higher requirement as satisfying both." *Id.* at 519. Applying *Powell* to the case at hand, the CWHSSA, which requires overtime to be based on a standard 40-hour workweek is more protective than the Section 7(k) exemption found in the FLSA, which permits overtime to be based on a longer work-period, and therefore Respondent should have applied the CWHSSA requirements, which would have satisfied the minimum requirements under both statutes. Doing so would not result in a conflict with, or violation of the FLSA; rather, as argued by the Administrator, "Respondent simply would not be able to take advantage of the longer time period under Section 7(k) of the FLSA." Admin. Resp. at 12.[20]

Based on the considerations discussed above, I find that the plain language of Section 5.15(c)(1) only incorporates those provisions of Section 7 of the FLSA addressing computation of the "regular rate of pay," and does not incorporate Section 7 wholesale, including Section 7(k). This reading of Section 5.15(c) is supported by contextual cues in the regulations, as well as the

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See, e.g., *Masters*, 493 F.2d at 1333 ("29 CFR 4.15(c)(1) and (2) make clear that 'basic rate' as used in the [CHWSSA] is synonymous with "regular rate" under the [FLSA]."); *Mersnick*, 2006 WL 373496 ("In *Masters*, the Fourth Circuit found that the SCA and the CWHSSA did not conflict with the FLSA as to the computation of basic or regular rate and overtime compensation.").

[20] I find FOH §§ 15k08 and 15k09, addressed in the parties' briefs, do not aid either party as to the issue of whether the entirety of Section 7 of the FLSA is incorporated into Section 5.15(c)(1). Admin. Resp. at 9; Resp. Reply at 8. FOH § 15k08 states that Section 7(f) of the FLSA may be applied to employees subject to the CWHSSA "provided that the employee is paid in compliance with the overtime provisions of CWHSSA." FOH § 15k09 permits the use of the fluctuating workweek under the FLSA provided, *inter alia*, that "additional half-time overtime is paid for hours of work in excess of 40 per week." I find these statements are consistent with the principle that the two acts are "mutually supplemental", and both may be applied so long as they do not contravene one another.

Secretary's historical interpretation of the regulation. Moreover, case law has confirmed that the FLSA and CHWSSA are "mutually supplemental" and both statutes may apply so long as complying with one statute does not make it "impossible" to comply with the other. As stated above, Respondent's compliance with Section 5.15(c)(1) does not prevent compliance with the FLSA. Accordingly, Respondent's argument that it did not violate the CWHSSA because it complied with Section 7(k) of the FLSA must fail.

Respondent argues that there remains an outstanding issue for trial as to the "allocation of the [Correctional Officer's] total hours worked in support of housing all inmates in the facility and hours spent performing *solely* contract work in housing federal inmates." MDOR at 13, n.2 (emphasis in original). Respondent claims that the Administrator "has not provided any proof at all of how much work performed by the correctional officers in this case was *contract work*" and disputes that all hours worked constituted Contract work hours. MDOR at 13, n.2; Resp. Reply at 11.

Section 3702(a) of the CWHSSA states that overtime wages should be applied to "every laborer and mechanic employed by any contractor or subcontractor *in the performance of work on a [covered] contract.*" 40 U.S.C. § 3702(a) (emphasis added). Section 3702(b)(1) similarly states that contractors or subcontractors "shall not require or permit any laborer or mechanic, *in any workweek in which the laborer or mechanic is employed on that [contract] work*, to work more than 40 hours in that workweek" unless overtime wages are paid. § 3702(b)(1) (emphasis added).

The parties stipulated that State Inmates and Federal Inmates are "housed together and are not segregated based on their status as State Inmates or Federal Inmates" and Respondent employs "the same employees to perform duties to fulfill the obligations under the Contract and to perform duties for the care and custody of inmates not subject to the Contract." JSAF at 2. It is also undisputed that Respondent does not track hours worked performing tasks subject to the Contract with the U.S. Marshals. *Id.* Because Federal Inmates are combined with State Inmates for all purposes, and Correctional Officers are tasked with the care and custody of all Inmates, I find that it would be impossible to separate hours worked under the Contract versus non-Contract work, because the Contract work and non-Contract work are one in the same. This is consistent with the fact that Respondent does not track hours worked solely under the Contract. Therefore, based on

the parties' stipulated facts, I find that for purposes of the CHWSSA, all hours worked by Respondent's Correctional Officers constitute work under the Contract, subject to the overtime provisions of the CHWSSA.

Respondent does not present any additional evidence suggesting that its Correctional Officers' work hours can be separated by Contract work versus non-Contract work, and therefore, it has not raised a genuine issue of material fact as to this issue. Nor has Respondent cited to any authority to support its theory that work hours must be "solely" for work performed under the Contract. This is not required by Sections 3702(a) and (b)(1), and to read such a requirement into the statute would defeat the purpose of the Act by allowing contractors to avoid the requirements of the CHWSSA by simply assigning employees tasks unrelated to the contract work simultaneously with the contract work.

My finding that all hours worked by the Correctional Officers are subject to the overtime requirements of the CHWSSA, coupled with the parties' stipulation that "Respondent did not compensate at least some of the Correctional Officers who had performed work on the Contract at wage rates of not less than one and one half-times the basic rates at which they were employed for each hour worked over 40 hours in a workweek," establishes as a matter of law that Respondent violated the overtime provisions of the CWHSSA.

C. Conclusion

In accordance with my above findings that the CWHSSA applies to the Contract in this case and Respondent violated the Act's overtime provisions, the Administrator's Motion for Partial Summary Decision is granted, and Respondent's Motion for Decision on the Record is denied. The only remaining issue for hearing is "the amount of overtime back wages Somerset owes to its correctional officers." MPSD at 2; Admin. Reply at 12; 40 U.S.C. § 3702(b)(2).

ORDER

It is hereby **ORDERED** that the Administrator's Motion for Partial Summary Decision is **GRANTED,** and Respondent's Motion for Decision on the Record is **DENIED**.

A status conference will be held on **Monday, January 30, 2023, at 1:00 PM Eastern Time** to determine a path forward on the sole remaining issue of the amount of back wages owed under the Act. If the time and date for the telephonic status conference is not possible, the parties

should confer and be prepared to advise the presiding judge of three mutually agreeable dates and times for the telephonic status conference. On the date and time of the scheduled telephonic status conference, the parties shall call into the conference bridge at the following telephone number: **1-866-793-8613**. When prompted to enter a passcode, the parties shall enter the following passcode: **37239812**.

SO ORDERED.

Digitally signed by JONATHAN CALIANOS
DN: CN=JONATHAN CALIANOS, OU=ADMINISTRATIVE LAW JUDGE, O=US DOL Office of Administrative Law Judges, L=Washington, S=DC, C=US
Location: Boston MA

JONATHAN C. CALIANOS
Administrative Law Judge

Boston, Massachusetts

SERVICE SHEET

Case Name: **In_re_Somerset_County_Jail_**

Case Number: **2022SCA00003**

Document Title: **ORDER GRANTING ADMINISTRATOR'S MOTION FOR PARTIAL SUMMARY DECISION, DENYING RESPONDENT'S MOTION**

I hereby certify that a copy of the above-referenced document was sent to the following this 6th day of January, 2023:

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