

salary authority of the Secretary of Budget & Management are to be compensated for overtime “in accordance with the federal Fair Labor Standards Act”). As Jones points out, Maryland’s own State Higher Education Labor Relations Board has recognized a claim very similar to his own (under state labor law). *See Bowie State v. Maryland Classified Employees Assoc., Inc.*, S.H.E.L.R.B. Case No. 2001-12/01, Opinion No. 13 (Oct. 7, 2002).

Nevertheless, Congress has not validly abrogated state Eleventh Amendment immunity with respect to the FLSA, so a state employee may pursue a claim under the Act only if the state has waived immunity with respect to such claims. *See Abril v. Com. of Virginia*, 145 F.3d 182, 189 (4th Cir. 1998). This court’s previous conclusion that Md. Code Ann., Cts. & Jud. Proc., § 5-519, waived BCCC’s Eleventh Amendment immunity to a limited extent was, apparently, incorrect. The defendants now point to § 16-509 of the Education Article which exempts BCCC from the liability statute governing the state’s other community colleges, § 16-607, upon which § 5-519 relies. Because BCCC is a state institution of higher education, Md. Code Ann., Educ., § 16-503(b), and no other statute appears to waive its Eleventh Amendment immunity with respect to FLSA claims, this court does not have jurisdiction over BCCC with regard to the FLSA. *See Palotai v. Univ. of Md. College Park*, 959 F. Supp. 714, 718-19 (D. Md. 1997). Accordingly, Jones’s remaining claim must be dismissed. *See Suarez Corp. Indus. v. McGraw*, 125 F.3d 222, 227 (4th Cir. 1997) (“[A] court ought to consider the issue of Eleventh Amendment immunity at any time, even *sua sponte*.”) A separate order follows.

11/16/12
Date

/s/
Catherine C. Blake
United States District Judge