IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-241

Filed 7 November 2023

Wake County, No. 21 CVS 11380

ETHAN C. ALBERT, BRYAN C. BRACEY, BRYAN A. BRINKLEY, VINCENT R. DEBONIS, ERIC R. EMSER, JERRY D. FAULK, ERIC J. GIBNEY, MICHAEL R. HALDEMAN, THOMAS D. HOGAN, BRENT A. HOWARD, TERRY R. JACKSON, JR., KELLY A. KINNEY, JAY E. KRUEGER, SEAN M. MARTIN, TOMIE R. MATTHEWS, DAVID D. MCDONALD, DAVID V. MEAD, MICHAEL A. MOLLERE, PETER MORRISON, ZEKE A. MORSE, SHAWN R. MURRAY, JESUS M. ORTIZ RIOS, JUSTIN PATTON, MARK QUAGLIARELLO, MATTHEW J. REEVES, PETER ROWLAND, JOHN R. SHEA, ISSA O. SMITH, KEVIN M. SMITHEY, STEPHEN B. SNOWDEN, JEFFERY B. STROUD, KYLE A. THOMPSON, SHAWN T. THOMPSON, DANIEL C. TWIDDY, MATTHEW P. VANANTWERP, THOMAS W. WEBB, III, AND MATTHEW R. WIGGER, various Raleigh Police Officers, Petitioners-Appellants,

v.

CITY OF RALEIGH, Respondent-Appellee.

Appeal by petitioners from order entered 7 September 2022 by Judge Stephan R. Futrell in Superior Court, Wake County. Heard in the Court of Appeals 4 October 2023.

*Jackson Lewis, P.C., by Ann H. Smith and Jason V. Federmack, for respondent-appellee.*

*Hemmings & Stevens, P.L.L.C., by Kelly A. Stevens, for petitioners-appellants.*

ARROWOOD, Judge.

Thirty-seven police officers with the Raleigh Police Department ("petitioners") appeal from an order entered by the trial court in favor of the City of Raleigh ("respondent"). For the following reasons, we affirm.

## I. Background

Between May and July 2017, petitioners made oral and written grievances requesting back-pay for times they alleged they performed "stand-by duty" in accordance with Standard Procedure 300-7 ("300-7").

300-7, adopted in 1985, is Raleigh's stand-by pay policy for all city departments and divisions. 300-7 states, "It shall be the policy of the City of Raleigh to compensate designated personnel for being on stand-by duty[.]" The policy defines stand-by duty as "the time that an employee is required to be in contact with the Emergency Communications Center during the time period from the end of his/her normal workday to the beginning of the next workday."

To "compensat[e] . . . employees required to perform normal stand-by duty[,]" 300-7 provides a four-step procedure:

> 6.1 The City Manager must approve all departmental requests for stand-by duty. This will be a "one-time" approval and will remain in effect until the approved work procedure is changed.
>
> 6.2 The Department Head shall make the assignments for stand-by duty. Stand-by duty shall normally be assigned on a weekly basis.
>
> 6.3 Every employee on stand-by duty shall remain in contact with the Emergency Communications

> Center by use of a pager. The employee shall be ready to make immediate response to a call upon notification by the Emergency Communications Center.
>
> 6.4 Employees other than division heads, department heads, and employees above Pay Grade 35 who are assigned to stand-by duty shall be paid for eight (8) hours at their normal hourly rate of pay for each week of such duty.

Raleigh Police Department's Operating Instruction 1104-3 ("1104-3") was adopted in 1989 and applies to all personnel within the police department. 1104-3, in pertinent part, states:

> Recall or Standby: All sworn officers are subject to recall or standby duty. Other employees are subject to recall or standby if specified as part of their job function.
>
> When placed on such duty, those employees will hold themselves in readiness at all times and report to a specified location immediately if required. The rate of compensation will be that specified by City policy (refer to City SOP 300-5, 6, and 7).

Although the instruction has been revised since its promulgation, the "Recall or Standby" section stated above has not changed. The most recent version became effective in 2014 and was prepared by Chief of Police Cassandra Deck-Brown ("Chief Deck-Brown") and approved by City Manager Ruffin Hall.

At the time the grievances were filed, petitioners worked for either the department's Selective Enforcement Unit ("SEU") or Homicide Unit ("Homicide"). None of petitioners were division heads, department heads, or employees above Pay

Grade 35.

According to city payroll records, only four units in the department received stand-by compensation before 1 July 2018: Evidence, Animal Control, Internal Affairs, and Detective Sergeant. In March 2017, an evidence specialist for the department—who was on stand-by duty and receiving stand-by pay—failed to respond for several hours to an attempt to recall the specialist to store evidence. An investigation into the incident was conducted and resulted in the specialist's stand-by pay being garnished for their failure to respond while on stand-by duty.

Captain Timothy Tomczak ("Captain Tomczak") summarized the results of the investigation in an inter-office memo. The memo stated that the Evidence and Animal Control Units had instituted a policy related to callback time, which was not in compliance with departmental policy. Captain Tomczak further stated, "As a reminder, [Evidence and Animal Control Units] already receive eight (8) hours of Standby pay for each week they are available for Callback." Captain Tomczak's memo was sent to Deputy Chief Joseph Perry ("Deputy Chief Perry") and Major Robert Council.

On 4 May 2017, Deputy Chief Perry sent an inter-office memo reiterating the findings in Captain Tomczak's memo to all division commanders. Deputy Chief Perry also stated, "As a reminder, these employees should receive eight (8) hours of standby pay for each week they are available for call back[;]" however, unlike Captain Tomczak's memo, this statement was not limited to the Evidence and Animal Control

Units. The memo was eventually circulated to SEU and Homicide, which resulted in the filing of petitioners' July 2017 grievances, alleging respondent was violating 300-7.

In response to the grievances, Assistant Human Resources Director Sharnell Jones ("Assistant Director Jones") sent letters to the officers in November 2017, denying them stand-by pay because their review found no "evidence to show that [their] stand by duty assignments ha[d] been assigned by the Chief of Police or approved by the City Manager in the manner required by the Council-approved SOP 300-7 policy." Assistant Director Jones's letter further stated that Deputy Chief Perry's 4 May 2017 memo "did not intend to approve compensation for stand by duty for SEU or other units not already receiving stand by compensation under SOP 300-7" and that Deputy Chief Perry did "not have the discretion to award [such] compensation."

Petitioners appealed Assistant Director Jones's decision to the City Manager's office, and on 13 March 2018, Assistant City Manager Marchell Adams-David denied petitioners' appeal. Petitioners then appealed to the Civil Service Commission ("Commission"), which acts as an appeal board to hear appeals of city employees under the Raleigh Civil Service Act.

In April 2018, Chief Deck-Brown reviewed the department's status relating to stand-by duty and sent a memo to all departmental personnel, updating the department's stand-by pay list. The memo stated, "In accordance with . . . 300-7, this

review was necessary due to the organizational restructure and the various deployment needs of the department. Historically, the department has only had (4) units on stand-by status . . . . With review and approval from both the City Manager's Office and the HR department, I have elected to include" four additional units, including SEU and Homicide. The new list took effect on 1 July 2018. Chief Deck-Brown testified that the change was based on shifts in incident numbers, needs, and demands placed on the organization. Other units in the department that remained working on-call schedules were not added to the list.

Commission hearings took place on 19–20 December 2019, 28 February 2020, and 16 April 2021. At the hearings, petitioners argued that they had been "performing standby duty but were not receiving the pay mandated by 300-7 for these duties[.]" Several petitioners testified that while assigned to SEU and homicide, they performed stand-by duty. For example, Lieutenant Brent Howard ("Lieutenant Howard") testified that when he was assigned to SEU, the unit had three teams: a day team, night team, and weekend team. According to Lieutenant Howard, some of the teams were "always on call[.]"

Moreover, petitioners argued that 1104-3, which was signed by Chief Deck-Brown and the City Manager in 2014, approved their stand-by pay status in accordance with 300-7 because it stated: (1) "all sworn officers are subject to recall or stand by duty" and (2) "when placed on such duty the employees will hold themselves in readiness" and "compensation will be that specified in" 300-7.

Respondent argued that SEU and Homicide's status of being "subject to recall or standby duty" under 1104-03 has nothing to do with the designation for stand-by duty and pay under 300-7. Specifically, respondent argued that 300-7 required a more "stringent and involved" process because of its budgetary impact, and petitioners failed to prove that the "specific designation approval process required by 300-7 ha[d] occurred." According to respondent, only four units were approved for such pay before 1 July 2018—none of which were SEU or Homicide.

Evidence at the hearing indicated there was a difference in availability and disciplinary measures between the four units receiving stand-by duty compensation before 1 July 2018 and SEU and Homicide. Captain Tomzcak testified that the evidence specialist who was punished was the only employee on call with access to the department's evidence room and that not even the police chief could "get into th[at] room." With respect to the animal control unit, the department paid only one person to be on call "for very specific needs[.]" Likewise, only one officer who was an internal affairs sergeant and one who was a detective sergeant were on call at a time. Conversely, in the SEU, a minimum of seven officers were needed to be on stand-by at a time, and if that minimum is met, other officers scheduled to be on stand-by did not necessarily need to come in and could thus take the time off.

Regarding disciplinary measures, Captain Tomzcak testified that "[t]he only time [he was] aware of punishment" for failing to report when on call was "when someone was on paid standby." Additionally, Chief Deck-Brown testified that, to her

knowledge, the department had never disciplined an officer—who was not designated for stand-by pay compensation—for failing to report when called. Further, Captain Tomzcak testified if SEU and Homicide were on call and one of the officers "[didn't] come in, . . . there's no punishment for that."

Other evidence at the hearing established that, under departmental instruction 1101-02, all Raleigh police officers are "responsible for being familiar with . . . city standard operating procedures [and] departmental operating instructions," such as 300-7 and 1104-3. Some petitioners, who were supervisors, received payroll training involving stand-by pay designations. Captain Tomczak, who provided the training, testified that his instruction included details about the stand-by pay process and that, although the pay is available for officers on stand-by, specific approval is first required. When asked by members from SEU and Homicide whether they were entitled to such pay during these trainings, Captain Tomczak testified that he told them "they had not been approved."

Approximately six years after 1104-3 was first adopted, police attorney Dawn Bryant ("Bryant") reviewed Raleigh's stand-by policy with senior officers in the department during a 1995 management retreat.[1] Specifically, the training—detailed via a memo generated by Bryant in 1995—states that the "City Manager must approve" stand-by pay while the "Department Head will make assignments[.]"

[1] According to testimony, SEU and Homicide were performing on-call schedules in 1995 while not receiving stand-by pay.

Further, Captain Tomzcak testified that in 2006, he founded the Crash Reconstruction Unit ("CRU"), which investigated serious traffic accidents and operated primarily on an on-call schedule. He stated that he requested "two or three times that CRU . . . be allowed to receive standby pay because they were on standby." According to Captain Tomzcak, each request was denied.[2] Captain Tomzcak testified that an SEU supervisor Lieutenant Amstutz also requested stand-by pay on at least one occasion; however, Lieutenant Amstutz's request was also denied.

On 26 July 2021, the Commission filed its Final Decision, which concluded that respondent did not violate 300-7 and that petitioners had "not met their burden of proving by a greater weight of the evidence that the denial of Stand-By Pay under SOP 300-7 was unjustified." Petitioners filed a Petition for Judicial Review on 26 August 2021, and the matter was heard in the Superior Court, Wake County on 22 August 2022. On 7 September 2022, the trial court entered an order affirming the Commission's Final Decision, which made the following relevant conclusions of law:

> 11. On review of the whole record of the Commission, there was substantial evidence to support the Findings of Fact and Conclusions of Law in the Commission's Final Decision.
>
> 12. On review of the whole record, the Commission's Final Decision was not arbitrary or capricious or an abuse of discretion.
>
> 13. [Respondent] did not violate City policies relating to

[2] Although Captain Tomzcak testified that he requested CRU receive stand-by pay through a senior officer, Major Stacy Deans, it is unclear who denied the requests.

Petitioners' suspension, layoff, removal, promotion, forfeiture of pay, or loss of time.

14. The City Manager did not violate City policy when he or she exercised his or her discretion to interpret the City's policy and then acted on that interpretation.

15. [Respondent] did not violate SOP 300-07 when it did not pay Petitioners stand-by pay for those times that Petitioners were assigned to and performed on call or stand-by duty.

16. [Respondent] did not violate SOP 300-07 by designating and approving some positions in the City's Police Department, but not Petitioners, for stand-by duty in the time period before July 1, 2018.

17. [Respondent] did not violate SOP 300-07 by assigning Petitioners to be on call or on stand-by duty and not paying them stand-by pay.

18. Petitioners did not carry their burden of proving that the City violated SOP 300-07 by failing to designate and approve Petitioners for stand-by pay in the period before July 1, 2018.

19. [Respondent] did not violate Petitioners' rights under Art. I, Section 1 of the North Carolina Constitution to the "enjoyment of the fruits of their own labor."

20. [Respondent] did not violate Petitioners' rights to equal protection under the law.

From this order, petitioners timely appealed on 29 September 2022.

## II. Discussion

On appeal, petitioners contend that the trial court erred in concluding that

respondent did not violate its stand-by pay policy, 300-7. Specifically, petitioners contend that the trial court's interpretation of 300-7 was improper. Petitioners also contend that the trial court erred by stating findings and conclusions not supported by substantial evidence; committing reversible errors of law; and violating petitioners' constitutional rights to (1) the fruits of their own labor and (2) equal protection. We address each argument in turn.

A. Standard of Review

"When the trial court exercises judicial review over an agency's final decision, it acts in the capacity of an appellate court." *N.C. Dep't of Env't & Natural Res. v. Carroll*, 358 N.C. 649, 662 (2004) (citations omitted). Under N.C.G.S. § 150B-51, the reviewing court "may affirm the decision or remand the case for further proceedings." § 150B-51(b) (2022). "It may also reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the findings, inferences, conclusions, or decisions" (1) violate constitutional provisions; (2) go beyond the agency's statutory authority or jurisdiction; (3) are made upon unlawful procedure; or (4) are affected by other error of law. § 150B-51(b)(1)–(4).

If a petitioner alleges any one of these four were violated, the reviewing court must use the de novo standard of review. N.C.G.S. § 150-51(c). However, if petitioners allege they were prejudiced because the findings, inferences, conclusions, or decisions are "[u]nsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted[ ] or [a]rbitrary,

capricious, or an abuse of discretion[,]" the reviewing court must use the whole record standard of review. § 150B-51(b)(5)–(6), (c).

"When this [c]ourt reviews appeals from superior court either affirming or reversing the decision of an administrative agency, our scope of review is twofold, and is limited to determining: (1) whether the superior court applied the appropriate standard of review and, if so, (2) whether the superior court properly applied this standard." *Mayo v. N.C. State Univ.*, 168 N.C. App. 503, 507 (2005) (citation omitted). However, if the standard of review used by the superior court cannot be determined, "this court's obligation to review a superior court order for errors of law can be accomplished by addressing the dispositive issues before the agency and the superior court." *Id.* (cleaned up).

B. Interpretation of 300-7

Petitioners first contend that the trial court erred by failing to properly interpret 300-7 in accordance with its plain language. We review this issue de novo.

The City of Raleigh is a municipal corporation. *Glenn v. City of Raleigh*, 246 N.C. 469, 470 (1957); *Raleigh Cemetery Ass'n v. City of Raleigh*, 235 N.C. 509, 509 (1952); *see also* N.C.G.S. § 120-163–70 (describing the procedural requirements and review process for proposed cities seeking incorporation).

"A municipal corporation is dual in character and exercises two classes of powers—governmental and proprietary. It has a twofold existence—one as a governmental agency, the other as a private corporation." *Millar v. Town of Wilson*,

222 N.C. 340, 341 (1942); *see also Lee v. Poston*, 233 N.C. 546, 548 (1951) ("A municipal corporation may be defined with terseness as a subordinate agency created by the State to assist in the civil government of the territory and people embraced within its limits." (citations omitted)).

"Generally, an agency's interpretation of its own policies is accorded some deference unless that interpretation is clearly inconsistent with the plain language of the policies." *Frampton v. Univ. of N. Carolina*, 241 N.C. App. 401, 411 (2015) (citing *Pamlico Marine Co. v. N.C. Dep't of Natural Res.*, 80 N.C. App. 201, 206 (1986); *Morrell v. Flaherty*, 338 N.C. 230, 237–38 (1994)); *see also Britt v. N. Carolina Sheriffs' Educ. & Training Standards Comm'n*, 348 N.C. 573, 576 (1998) ("[T]he interpretation of a regulation by an agency created to administer that regulation is traditionally accorded some deference by appellate courts.").

Here, 300-7 states, "It shall be the policy of the City of Raleigh to compensate designated personnel for being on stand-by duty as herein defined." To be designated for such pay, 300-7 first requires that "[t]he City Manager must approve all departmental requests for stand-by duty." Thus, initial designation for stand-by pay involves two steps: (1) the department head—here, the Chief of Raleigh Police Department—must first request the designation and then (2) the City Manager must approve the request.

Petitioners contend that 1104-3 satisfies both steps "on the face of it." Specifically, 1104-3 provides, "All sworn officers are subject to recall or standby duty"

and "[w]hen placed on such duty, those employees will hold themselves in readiness at all times and report to a specified location immediately if required. The rate of compensation will be that specified by City Policy" 300-7. Thus, because 1104-3 was prepared by the police chief and approved by the City Manager, petitioners assert 1104-3 properly designated them under 300-7, entitling them to stand-by pay. We disagree.

A close reading of 300-7 and 1104-3 supports respondent's interpretation and implementation of the policy. Specifically, although 1104-3 was prepared by the department head and approved by the City Manager, it fails to designate any police units—let alone SEU and Homicide—for compensation as required by 300-7.

Additionally, the plain language of the policies suggests that the city acted in accordance with the policies. First, 1104-3 states all officers are "subject to" stand-by duty. In *Duganier v. Carolina Mountain Bakery*, this court defined "subject to" as "dependent or conditional upon" the occurrence of something else. 179 N.C. App. 184, 189 (2006) (quoting The New Oxford Am. Dictionary 1685 (2d ed. 2005)). Based on this definition, the plain language suggests that all sworn officers may be required to complete standby duties *if the duties are assigned to them*. The language does not plainly state that all officers will be assigned to stand-by pay; it merely alerts "sworn officers" about the prospect of being placed on such duty. It is thus not contrary to the policy for respondents to refrain from paying officers for stand-by duty.

The subsequent paragraph in 1104-3 further strengthens respondent's interpretation by again using conditional language. Specifically, 1104-3 provides, "When placed on such duty, those employees will hold themselves in readiness at all times[,]" putting officers on notice that they are *authorized* to perform the duty, but not specifically *designating* them to perform such duty. Respondent's interpretation of 1104-3 in that it did not designate SEU and Homicide for stand-by duty compensation under 300-7 is thus a reasonable one.

There is also evidence that designation of stand-by duty compensation under 300-7 requires a more detailed and specific process than what 1104-3 entailed. For instance, Captain Tomzcak previously provided payroll training to supervisors—including members of SEU and Homicide—where 300-7 was reviewed in detail. When asked by members from SEU and Homicide during the training whether they should receive stand-by pay because of their on-call schedules, Captain Tomzcak testified that he told them no "because they had not been approved." Captain Tomzcak communicated to them that stand-by pay is reserved for units that are both (1) "put on call" and (2) "have been approved" by the City Manager to receive it. Documented training regarding 300-7's stand-by pay procedure was also provided to senior officers during a 1995 management retreat.

Further, Captain Tomzcak testified that when commanding the CRU—which operated a stand-by duty schedule—he and an SEU supervisor had requested that their units receive stand-by pay under 300-7, but the requests were denied. Because

the trainings and requests above occurred after 1104-3 was first adopted in 1989, this evidence supports respondent's interpretation of the policies.

Assuming a "more specific approval" for stand-by pay was required, petitioners argue in the alternative that respondent still violated 300-7 by "not first obtaining that approval from the City manager before requiring SEU and Homicide to perform the duties without pay." Specifically, petitioners argue that under 300-7, the City Manager does not "have the discretion to exclude other classes of city employees" while paying others when both were operating on stand-by schedules. Although petitioners raise a potentially valid issue of equity, we disagree that a violation occurred.

Respondent argues that only four specific units were designated for stand-by duty compensation under 300-7 before 1 July 2018, but respondent presents no evidence those units were ever designated other than pointing to payroll records showing receipt of stand-by duty compensation. Although petitioners also failed to point to any sufficient designation under 300-7, a question remains as to whether respondent's implementation of the policy through the years was fair. *But see Soles v. City of Raleigh Civ. Serv. Comm'n*, 345 N.C. 443, 447 (1997) (explaining that Raleigh's Standard Procedure 300-14, another one of respondent's personnel policies, was "not intended to restrict management options" partly because personnel policies are not legislative mandates).

Nonetheless, petitioners' alternative argument fails under respondent's reasonable interpretation of the policy. Evidence exists that petitioners had been working on-call schedules while not receiving pay for the duty, yet they presented no evidence that their units were designated for stand-by duty compensation or that their schedules constituted approval under 300-7.

Petitioners seem to believe that any completion of stand-by duty without compensation is a violation of 300-7. But, as discussed above, this is not the case, and such violations would have occurred only if respondent withheld compensation after first designating petitioners. However, because petitioners' units were never designated, and 1104-3 does not constitute designation, respondent was not mandated to pay them.

C. Substantial Evidence

Petitioners also contend that the evidence is insufficient to support the trial court's determination that the city did not violate its policy. Petitioners allege that this denial of pay was arbitrary, capricious, and an abuse of discretion. We review this issue under the whole record test. N.C.G.S. § 150B-51(b)(5)–(6), (c).

The whole record test requires the court to "examine all competent evidence . . . in order to determine whether the agency decision is supported by 'substantial evidence.' " *Amanini v. N.C. Dep't of Hum. Res., N.C. Special Care Ctr.*, 114 N.C. App. 668, 674 (1994) (citation omitted). Substantial evidence is "that which a reasonable mind would consider sufficient to support a particular conclusion" and

"must be more than a scintilla or just a permissible inference." *Id.* (citations omitted).

Considering the whole record, respondent produced information showing the existence of a specific process to receive stand-by pay and that petitioners had not been designated via this process. First, respondent provided payroll records to show Evidence, Animal Control, Internal Affairs, and Detective Sergeants who completed stand-by duties were compensated. As noted above, we take issue with respondent's failure to produce any documentation showing the process by which those units were designated, and this evidence alone would be insufficient to support a finding in favor of respondent.

Despite the lack of understanding in the record as to how and when the four units received approval for stand-by duty compensation, the whole record contains evidence of a specific process units were required to undergo to receive it. Testimony and documentation showed that supervisors of various units, including some petitioners, received payroll training that explained specific approval is required for stand-by pay. Additionally, Captain Tomczak testified that he requested compensation for CRU members operating on stand-by on multiple occasions, and each time, the request was denied. He further stated that SEU Lieutenant Amstutz also requested and was denied stand-by pay for the unit.

Considering the record as a whole, there is more than a scintilla supporting the existence of a designation and approval process to receive paid stand-by duty that petitioners did not go through. Accordingly, the decision below was supported by

substantial evidence, and it was not arbitrary, capricious, or an abuse of discretion to deny stand-by pay to SEU and Homicide.

D. Errors of Law

Petitioners also argue that the trial court made several reversible errors of law. We disagree. "An error of law, as that term is used in N.C. Gen. Stat. § 150B-51(b)(4), exists if a conclusion of law entered by the administrative agency is not supported by the findings of fact entered by the agency or if the conclusion of law does not support the decision of the agency." *Brooks v. Ansco & Ass'n*, 114 N.C. App. 711, 717 (1994). Further, "[t]he standard of review for an appellate court upon an appeal from an order of the superior court affirming or reversing an administrative agency decision is the same standard of review as that employed by the superior court." *Dorsey v. Univ. of N. Carolina-Wilmington*, 122 N.C. App 58, 62–63 (1996) (citing *In re Appeal of Ramseur*, 120 N.C. App. 521 (1995)).

Many of petitioners' assignments of error go back to the interpretation of the policies, which, as discussed above, leads to the conclusion that the trial court did not err. Moreover, as discussed above, the trial court's conclusions of law are well supported by its findings of fact. Accordingly, the trial could did not make reversible errors of law.

E. Constitutional Claims

Petitioners contend the administrative decision denying their pay for stand-by duty violates their rights to enjoy the fruits of their labor and to equal protection of

the laws under the North Carolina Constitution. We review constitutional claims regarding administrative decisions de novo. N.C.G.S. § 150B-51(b)(1), (c).

1. Fruits of Labor

Article I, Section I of the North Carolina Constitution states that all persons have "certain inalienable rights," including "the enjoyment of the fruits of their own labor." N.C. Const. art. I, § 1. To properly state a claim under this right, a public employee

> must show that no other state law remedy is available and plead facts establishing three elements: (1) a clear, established rule or policy existed regarding the employment promotional process that furthered a legitimate governmental interest; (2) the employer violated that policy; and (3) the plaintiff was injured as a result of that violation.

*Tully v. City of Wilmington*, 370 N.C. 527, 537 (2018).

"[T]o be considered adequate in redressing a constitutional wrong, a plaintiff must have at least the opportunity to enter the courthouse doors and present his claim." *Craig ex rel. Craig v. New Hanover Cnty. Bd. of Educ.*, 363 N.C. 334, 339–40 (2009). Additionally, "an adequate remedy must provide the possibility of relief under the circumstances." *Id.* at 340, 678 S.E.2d at 355.

Here, petitioners fail to allege that no other state law remedy is available to them. In fact, petitioners used the grievance process and court system in pursuit of back pay for their stand-by duty, and they have not alleged that relief is impossible

through this process. Thus, petitioners cannot meet the test to state a constitutional claim for relief under Article I, Section I.

2. Equal Protection

Petitioners next contend the policy treats two classes of employees differently in violation of the equal protection clause. Article I, Section 19 of the North Carolina Constitution provides that "[n]o person shall be denied the equal protection of the laws[.]" N.C. Const. art. I, § 19. "To establish an equal protection violation, petitioner must identify a class of similarly situated persons who are treated dissimilarly." *Yan-Min Wang v. UNC-CH Sch. of Med.*, 216 N.C. App. 185, 204, 716 S.E.2d 646, 659 (2011) (cleaned up). In addressing an equal protection argument, this court must "first identify the classes involved and determine whether they are similarly situated." *Id.* (citation and internal quotation marks omitted).

Petitioners allege that SEU and Homicide are classes similarly situated to the positions designated for stand-by pay. We disagree. One distinction between the Evidence and Animal Control units and SEU and Homicide is the availability of individuals to respond. The evidence specialist punished for failure to report on stand-by duty was the only individual on call with access to the evidence room—the Chief of Police could not even access the room. Similarly, when the Animal Control unit is on stand-by, there is only one individual on call who can respond to that particular need. What is more, only one individual who is an internal affairs sergeant and one who is a detective sergeant are on call at a time. In contrast, a minimum of

seven officers from SEU are scheduled to be on call at a time, and if the minimum number are on call, other officers scheduled to be on stand-by could take off.

Additionally, the classes of employees differ in the distinct disciplinary measures for failure to respond while on stand-by duty. Captain Tomczak testified that those units on paid stand-by received punishment when they did not come in when called. As discussed above, in 2017, the department disciplined an evidence specialist who did not answer a call to come in by garnishing their stand-by wages. While one SEU officer testified that he never missed a call out because he "knew there would be consequences[,]" Chief Deck-Brown testified that to her knowledge, the department had never disciplined anyone on non-paid stand-by for failure to come in when called. Additionally, Captain Tomczak stated that when SEU and Homicide were on stand-by, "[i]f [they did not] come in, . . . there's no punishment for that." Thus, there were key differences in the on-call readiness and availability of these positions to respond as well as the consequences if they failed to respond that renders them differently situated for purposes of the equal protection clause.

Even assuming *arguendo* that the two classes of employees identified by petitioners are similarly situated, respondent had a rational basis for treating them differently. When government action "does not burden a fundamental right or peculiarly disadvantage a suspect class, we typically apply rational basis review[.]" *Cmty. Success Initiative v. Moore*, 384 N.C. 194, 230 (2023) (citing *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 181 (2004)).

Government action survives rational basis review "so long as the classification at issue bears some rational relationship to a conceivable legitimate interest of the government." *Id.* (cleaned up); *see also Rhyne.*, 358 N.C. at 180–81 ("Rational basis review is satisfied so long as there is a plausible policy reason for the classification, the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker, and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational." (internal quotation marks omitted)).

Here, respondent cites maintaining fiscal responsibility as a basis for distinguishing between paid stand-by and unpaid stand-by duty. Respondent is charged with operating all aspects of governance, including paying its employees and keeping a balanced budget. Certainly, specifically designating and approving only certain positions for stand-by pay allows respondent to compensate these positions within the scope of its fiscal responsibilities, and this process is rationally related to their interest in maintaining a balanced budget. Therefore, respondent did not violate petitioners' equal protection rights in distinguishing between groups of employees that receive stand-by pay.

## III. Conclusion

For all the foregoing reasons, we affirm the trial court's order.

AFFIRMED.

Judges DILLON and STADING concur.

Report per Rule 30(e).