**Summary of SC98252, *Thomas Hootselle Jr., et al., individually and on behalf of all others similarly situated, and Missouri Corrections Officers Association v. Missouri Department of Corrections***

Appeal from the Cole County circuit court, Judge Patricia S. Joyce
Argued and submitted April 22, 2020; opinion issued June 1, 2021

**Attorneys:** The department was represented by State Solicitor D. John Sauer, Julie Marie Blake and Mary L. Reitz of the attorney general's office in Jefferson City, (573) 751-3321. The officers were represented by Gary K. Burger Jr. of Burger Law LLC in St. Louis, (314) 542-2222; Michael J. Flannery of Cuneo Gilbert & Laduca LLP in St. Louis, (314) 226-1015; and Fernando Bermudez of Bermudez Law STL LLC, (314) 339-3082.

*This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** The department of corrections appeals from a judgment awarding a class of corrections officers damages and postjudgment interest for breach of contract pertaining to payment for the time spent performing preshift and postshift activities. In a 6-0 decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri affirms in part and vacates in part the circuit court's judgment and remands (sends back) the case. The corrections officers can maintain a private cause of action for breach of contract against the department, and the circuit court did not err in refusing to decertify the class. The corrections officers' motion for partial summary judgment (judgment on the court filings, without a trial) demonstrated, as a matter of law, that the retrieval of keys and radios and the supervision of inmates while walking to and from the corrections officers' daily posts are compensable; however, the undisputed material facts do not establish the chronological order of all preshift and postshift activities so as to permit a determination of which other preshift and postshift activities are compensable under the continuous workday rule. The circuit court, therefore, erred in concluding all preshift and postshift activities were compensable pursuant to the summary judgment record. Accordingly, the circuit court's judgment is affirmed to the extent it finds the retrieval of keys and radios and the supervision of inmates while walking to and from the corrections officers' daily posts are compensable; in all other respects, the judgment is vacated, and the case is remanded.

**Facts:** Thomas Hootselle, on behalf of a proposed class of approximately 14,000 corrections officers from 21 correctional facilities, and a corrections officers association sued the department of corrections for allegedly failing to pay the corrections officers under the federal fair labor standards act (FLSA) for certain preshift and postshift activities. The department's procedure manual and labor agreements the department executed with the corrections officers' association generally state the department will comply with the FLSA. In addition to activities during their eight-hour shifts, the corrections officers engage in preshift and postshift activities, including passing through security features, logging their arrival at and departure from the prison, reporting to a central post and supervisor for daily assignments, picking up and returning equipment such as keys and radios, walking to their duty posts and, for certain officers, inventorying weapons, ammunition and equipment and passing pertinent information from one shift to another. During shift changes, all officers also are expected to remain alert and respond in emergencies such as

inmate fights or assaults on staff. Although the department typically does not pay corrections officers for preshift or postshift activities, officers are entitled to overtime pay for the time spent responding to emergency incidents. After the circuit court certified the class, the corrections officers moved for partial summary judgment. The circuit court granted their motion as to the department's liability, holding the corrections officers' preshift and postshift activities are compensable under the FSLA and limiting the trial to damages. Following trial, the jury awarded the officers more than $113.7 million in damages plus postjudgment interest. The circuit court entered judgment accordingly, further ordering the department to pay overtime for preshift and postshift activities and to implement a new timekeeping system to track such activities. The department appeals.

**AFFIRMED IN PART; VACATED IN PART; REMANDED.**

**Court en banc holds:** (1) The corrections officers can maintain a private cause of action for breach of contract against the state even though the contract incorporates obligations imposed by the FLSA. Because the state waives sovereign immunity when it enters into an express contract, breach of contract claims may be maintained against the state to enforce such a contract even when it incorporates statutory obligations. Therefore, the corrections officers' breach of contract counts seeking to enforce against the state an express contract with terms incorporating FLSA obligations do not circumvent the FLSA and do not implicate the state's sovereign immunity.

(2) The circuit court did not abuse its discretion in overruling the department's motion to decertify the class. Predominance does not demand that every single issue in the case be common to all the class members but only that substantial common issues predominate over the individual issues. Common questions of law or fact may be overriding, despite the fact the suit also entails numerous individual questions. As the circuit court found, common issues of whether preshift and postshift activities performed by the corrections officers are compensable under the FSLA and the contract and whether the department's failure to pay for such activities constitutes a breach of contract predominate and will be decided using common evidence. Additionally, because decertification would create the need for thousands of mini-trials that would decide identical issues, the superiority requirement is also satisfied.

(3) The undisputed facts set forth in the corrections officers' motion for summary judgment are insufficient to support the portion of the circuit court's judgment finding all preshift and postshift activities are compensable under the FSLA. The corrections officers' motion demonstrated, as a matter of law, that the retrieval of keys and radios and the supervision of inmates while walking to and from the corrections officers' daily posts are integral and indispensable to their work as correction officers and, therefore, are compensable. Under the continuous workday rule, all preshift and postshift activities after the first and before the last principal activity of either retrieving or returning keys and radios or supervising inmates are also compensable. The motion's undisputed material facts, however, do not establish the chronological order of the preshift and postshift activities to permit a determination of which other preshift and postshift activities are compensable under the continuous workday rule. Accordingly, the circuit court erred in determining that all preshift and postshift activities are compensable and in awarding damages and other relief based on that determination.