March 10, 2013

Government Administration and Elections Committee

Public Hearing Testimony on S.B. No. 382 (RAISED) AN ACT CONCERNING THE OVERPAYMENT OF BENEFITS TO RETIRED STATE EMPLOYEES.

To whom it may concern:

You are never going to get a two year statute of limitations. The retirement commission protects only the highest paid retirees. Just recently they have taken away retirements that are over 17 years old. They are amending retirements that are over 10 yrs old. They are nothing but the St of CT's version of the Mob.

I have brought to Mr. Ackert's attention numerous and blantant violations of existing St Statutes previously. Who is going to enforce this new statute if it does get implemented? The Legislature? What a pharse. My suggestion is to put Sen. Gugliemo in charge of all complaints. You are ignoring all the violation issues I have already brought to your attention with a "end around play"?

They have caused me to lose everything, my marriage, my family, everything. I am only among the many. Below please find my still unaddressed appeal letter submitted to the MOB in 2009 and Mr. Ackert some time ago. We have met and spoke about these issues before. I do not think your office has read it yet. You can use any information I previously provided.

I will not be able to testify, the short notice makes it impossible even though I have no confidence or trust in Korrupticut. You realize that the MOB aka ret. board has been meeting on this issue with the AG and has hire outside legal help. Your hearing will go nowhere because the truth will not be allowed to be heard or printed, the real issues will not be allowed to come forward.

George Brey

The appeal letter follows:

December 14, 2009
Retirement Commission
c/o Retirement Services Division
55 Elm Street
Hartford, CT 06106
RE: Waiver Denial Appeal:
Dear Commission:

I first ask for reconsideration of my waiver request in part or whole by a hearing in front of the full Commission (option 2 given by Commission). The Commission's decision was made in error and was unreasonable and contrary to law. The choices the Commission offers me (Pay the entire amount, pay $1155.83 a month, or request a waiver, left me financially with only one choice: Request a waiver. The other two (2) options you offered me are financially impossible for me. I feel the Commission's denial was in violation of Chapter 54, State Statute 5-166(c), in haste, retaliatory, and discriminatory.

I am a known "whistle-blower". In the past Senator Guglielmo and I went to the AG's office to show them the improprieties of the Lost Portfolio Transaction (LPT) which involved DAS, the office of the State Treasurer, OPM, and indirectly the "Commission" itself. The first thing the AG's office asked me (in the presence of Sen. Guglielmo) was "how much I wanted to settle my workers' compensation cases".

In this LPT endeavor I've dealt with at least one of your current Commission members, possibly a relative of another, and sent information requests, F.O.I. complaints to DAS, OPM, The State Comptroller, and The State Treasurer. This LPT transaction indirectly affected the Retirement Division.

What DAS or anyone else didn't know is that I was encouraged by the AG's office to continue. I feel without a doubt this is retribution and retaliation. The Commission is well aware of who I am. The Commission posting on the internet, via your website, our personnel tax information (the Commission made us submit and is confidential information) is only further proof. This release of private information is barred by State Statute.

If reconsideration of my waiver request in part or whole cannot be considered at this time, I request a postponement and rescheduling in this appeal/ hearing or reconsideration due to the fact the overpayment amount is in question i.e. "The final amount or total of overpayment has not been decided." The correct and/or final total of retirement overpayment amount will not come forth until <u>after</u> the Workers' Compensation Commission(er) makes rulings on which section(s) I should have been paid (ex; chapter 568, 5-142a, 31-308(a), or Perm. Total/ Osterlund case) and the amounts. This final determination process will begin sometime in mid-March 2010 when a formal W.C. hearing is to be scheduled. Ms. Helen Kemp and Mr. Jeffrey Bieber attended a meeting on December 10, 2009, as well as my wife, my workers compensation attorney, Mr. Hine and workers compensation Commissioner, Mr. Doyle, where, at that time an agreement was made as to postpone your request to the workers compensation commissioner to place a lien against my workers compensation benefits until the correct overpayment has been determined (or if there even is an overpayment of retirement benefits). I also request the opportunity to submit an updated financial affidavit at this time as six months would have passed since I last submitted one on 9/24/09 and my financial situation has changed since then.

Anticipating a denial or any consideration I continue:

Historically, the Commission promulgated the regulations of Connecticut General Statute 5-166c in 1987. The Commission did so in accordance with the provisions of Chapter 54, filing a notice of intent to adopt the regulation and the proposed text was published in the Connecticut Law Journal (per Chapter 54) on July 28, 1987. The proposed regulation subsequently took effect on December 21, 1987, and is now incorporated into the compiled Regulations of Connecticut State Agencies section 5-156c-1. This regulation, which remains in effect, remains unchanged from 1987.

The Connecticut General Statute 5-156c "gives power to" and directs the Retirement Commission to adopt regulations to carry out the provisions of the statute. The Retirement Commission has no power or authority to "ADD TO" or change existing State Statue, or the intent of 5-166c without following the provisions of Chapter 54. The Retirement Commission has combined statutes and chose what to "use" "offer "or "allow" those who are receiving retirement benefits and are accused of an 'overpayment" through no fault of their own. The Commission, by virtue of ignoring state statutes, violating labor laws, has established procedures beyond their statutory authority endowing themselves with powers that are greater than any debtor's court in America enjoys not even deadbeat parents.

The Retirement Commission has ignored the provisions of Chapter 54, unilaterally changing the meaning and intent of State Statute Sec. 5-156c (SERS) and 7-439h. (CMERS). The Retirement Commission has through a document (given to me by the Commission) titled "REGULATION

AND OVERPAYMENT SUBCOMMITTEE ADDITONAL PROCEDURES" dated May 21, 2009 (copy attached) combined two (2) state statutes (5-166c and 7-439h). Said document states in part: **"The waiver of overpayment appeal process for the Connecticut Municipal Employee System (CMERS) should be identical in the one for SERS.**

In fact per the Connecticut General Statute Sec. 7-439h (CMERS) and Connecticut Gendered Statute 5-156c (SERS) are by Legislative design and intent two (2) different and separate statutes unique of each other. This document titled "REGULATION AND OVERPAYMENT SUBCOMMITTEE ADDITONAL PROCEDURES" is not signed, numbered, dated, nor was it ever submitted or published in the Connecticut Law Journal per Chapter 54.

Statute 5-166c must be interpreted so as to give effect to the legislative intent expressed by its plain language. Vaillancourt v. New Britain Machine/Litton, 224 Conn. 382, 390, 618 A.2d 1340, 1344 (1993); All Brand Importers, Inc. v. Department of Liquor Control, 213 Conn. 184, 194-95, 567 A.2d 1156, 1162-63 (1989

SERC, as an administrative agency, is bound by the statutory provisions that govern its operations. See Stern v. Medical Examining Bd., 208 Conn. 492, 498, 545 A.2d 1080, 1083 (1988); Castro v. Viera, 207 Conn. 420, 428, 541 A.2d 1216, 1220 (1988). Furthermore, the retirement statutes themselves specifically place this obligation on the Commission. "In conducting the business of the [retirement] system, ... the retirement commission shall act ... (3) in accordance with the provisions of the general statutes...." Conn.Gen.Stat. § 5-155a(c).

The Commission's fiduciary duties with respect to the system do not, in any way, extend its powers beyond their statutory limits. Section 5-155a(c)(2) of the Connecticut General Statutes does require SERC to act "in accordance with strict fiduciary standards and responsibilities." However, this language cannot be interpreted to supersede the obligation to adhere to applicable statutory provisions, which is codified in subsection (c)(3) of section 5-155a. Since these two subsections are part of the same statutory enactment, they are required to be read together to create a consistent whole. See Gifford v. Freedom of Information Comm'n, 227 Conn. 641, 658,--A.2d--(1993); Board of Education v. State Bd. of Labor Relations, 217 Conn. 110, 116, 584 A.2d 1172, 1175 (1991). Therefore, section 5-155a(c)(2) must be interpreted in a manner that complies with the mandate of subsection (c)(3) to act within statutory limits. The State Employees' Retirement Commission may not ignore statutory mandates that govern the administration of the State Employees' Retirement System in order to resolve a contested claim. Neither the Commission's fiduciary responsibilities, nor any power to compromise disputed claims creates such authority.

I retired through Tier I SERS. The Retirement Commission is ignoring the provisions of 5-166(c) substituting the SMERS provisions and treating my spouse's income as it was mine (per CMERS). In SERS 5-156c the "recipient" is the object and "target" of the overpayment and the responsibility of the repayment.

The Commission has ruled my W.C. attorney should have known that I could not receive 100% rate (5-142a) and retirement at the same time. I did not know that. My attorney did not know that and I sent you proof of that in my first appeal. In addition I informed the Commission I had called the Retirement Division prior to my 10/07/07 knee replacement (in which I was switching from one form of W.C. benefit to 100%) and I was informed by the Retirement Division: "What did the W.C. Commissioner tell you? I responded "He told me since I had a regular retirement I could receive both". The Retirement Commission then said "Well, you are all right then". But the Commission decided to rule my attorney should have known so I should have known and ignore the fact the advice I was given from the Commission.

In addition, I informed the commission that the state's 3rd party administrator GAB Robins was present at this hearing and several others afterwards; during the time I was receiving both 100% and retirement and was well aware of this fact. By the state's own contract (relevant pages attached) with GAB Robins this would make them liable for any overpayment. Specifically GAB has the obligation per contract to maintain regular contact with the State to advise of changes in medical/ work status on a timely basis. The Commission putting the burden on me is the equivalent of a passenger in a car getting a ticket for speeding. I have never received any correspondence from the State or the State's agents that informed me that an overpayment may occur if certain benefits are received from worker's compensation.

I realize that waivers have been granted in cases where the individual has been sent many letters.(with the Commissions argument that the individual therefore should have reasonable have known). Hence, in order for me to have reasonably known, a letter should have been sent by the State. The excuse that I went "out on comp" after retirement should not have any effect as to the obligation the State, or its agent, had to inform me of possibly offset or overpayment of my benefits prior to one and one half years later. What is reasonable depends on a variety of considerations and circumstances. As the Commission states I should have reasonably know, I find that if the system already had specific, clearly articulated procedures that if I followed would have prevented the error, would have been reasonable. The Commission does not.

The Commission has also chosen to impeach my integrity by writing a statement indicating that I submitted someone else's grocery receipts, and deduced (as Sherlock Holmes would) that the numbers of the cards were different so.. this shows deceit."Secured cash receipts to use them to advance our claims" is totally false! Why would someone gather grocery receipts from other people? Who thinks of these things? Well in fact the numbers of the cards both belong to my wife and myself and other family members and other card numbers on said receipts were the "store master cards" the cards the store cashier uses when the customer like me doesn't have his/her card with them so the customer can obtain the "sale" price of an item. I have requested our payment histories of the grocery stores I go to as well as the pharmacy, to show that this is the case. I am surprised that no one on the Commission has not had the experience of not having their card, to receive discounts, and used "the store card". Maybe the discounts are not that important to some individuals but to a family that is trying to make ends meet such as mine, it's extremely important. If I had submitted cash receipts without the discount card would the Commission made such a ridiculous conclusion? The Commission should deduce that the bank statements have very little grocery store withdrawals, I don't have a credit card, cash withdrawals are made from my bank account, and I use that money to pay for groceries, gas, car insurance, rent, cable, oil heat, and many other expenses necessary for a family to live. Even the federal government has living expense standards, that I suggest the Commission review, and for the Commission to "not look at the financial information to determine hardship" but go ahead and "look at the financial information submitted" is not appropriate. I believe I went above and beyond the information needed by the Commission by providing receipts ..as well as the corresponding bill or bill stub that clearly indicates the expense was incurred and paid by me.

The Commission has also not chosen to accept the fact I pay rent of $900.00 per month because I pay via postal

Money Order. Is this not legal in Connecticut? I see many people in the post office buying and using these instruments. The reason I do this is because my landlord of some twenty (20) years requested this method years ago. I do not own a home. Does the Commission truly believe that my family and I live rent free? Also, I do owe my landlord back rent, however wouldn't the fact that an individual owes 20,000 regardless of the reason still prove a negative impact on their financial situation?

The Commission has also made the determination that any money dispensed from an ATM is "discretionary money" i.e. not used for necessary daily living expenses. Example: Is it not cost effective to purchase gas with cash to receive discounts these days (especially if You don't have a credit card). Do you expect the attendant to issue you a receipt with your name and address on it? Would the attendant have to ask you for I.D.? Have you ever pressed the "receipt yes" button on the gas pump and submitted this receipt for tax purposes or reimbursement? Did the reimbursing party ever discount your credibility based on the receipt? Did you ever pick up a receipt on the ground or garbage and claim them for your own? I never did. The Commission also made erroneous assumptions based upon withdrawals from the CT casino. Just because a

withdrawal is made at specific ATM location, does not mean that amount of money is spent at or around the vicinity of which the ATM is located. As I stated, I do not have a credit card. The assumptions made by the Commission in order to try to prove that I could possibly have a different financial situation than I stated are ludicrous.

The Commission states the bank deposits do not dovetail with payroll is also completely false. The Commission has erroneously assumed again, that the 1600 deposited (800+800) was from my wife's payroll check when in fact it was my workers comp check. Again, if the Commission appropriately reviewed the facts and information submitted, without haste and discrimination you would find that the deposits do "dovetail" and the Commission would not falsely imply improprieties.

In my letter dated October 31, 2009 to the Commission, I requested the Commission provide me with information as to how the Commission arrived at the bank statement amount of $4,947.00 the Commission says I have, and the monthly expenses of $3,272.00 the Commission says I have. I did not receive this requested information. I did submit a notarized financial affidavit that indicates the actual amounts, not what the Commission arbitrarily made up. I also requested the Commission provide me with information as to how the amount of repayment of $1,155.83 was calculated. I did not receive this requested information. (It couldn't have been based on any financial information provided by me.) Also, I find it impossible that another individual that is seeking a waiver of overpayment of retirement benefits has the exact same amount of monthly expenses, to the exact dollar, (as determined by the commission), as me! Why has the Commission requested a financial affidavit be completed on a week expenses basis then continue to discuss financial information in monthly or annual amounts? Why does the Commission order a repayment of a specific amount to some individuals without regard to home equity, dependents, or percent of amount owed? Particularly in cases where "the third prong was not reached".

The Commission has never, at any time; given me an opportunity to sit down with them and workout a reasonable repayment schedule or plan as statutes indicate. The Commission, by only offering their repayment schedule and their threats of what will happen if I don't accept is akin to "strong-arming" if not blackmail itself. These tactics are surely not the intent of the Legislature or statute. Determinations made by the Commission such as I have mentioned above are not reasonable, change the intent of the statue, and are basically absurd and draconian in nature.

The Commission's only *offer* did not provide any statutory information so as a SERS retiree (also a member of the public) who has been charged with an "overpayment" could understand the Commission's authority and could mount a proper response. To date, the Commission continues to ignore requests for information from my attorney, my original request, while a letter to the comptroller from Sen. Guglielmo, also remains ignored.

I personally went to the Commission on Elm St.in Hartford in early November to obtain a copy of the "REGULATIONS" so I could use the information in this appeal. I was told by a Mr.Bieber that the only copy was in his supervisors office "locked-up", and he would "put it an envelope and send it to me asking me is my address the same".

On December 10th, I had a W.C. hearing (Mr. Bieber was present) and when the hearing was over I asked about not receiving a copy of the "regulations". He and Ms.Kemp said they would make sure we would receive them (in front of my attorney). My wife called the next day and spoke with Mr. Bieber, requesting that she can pick them up sometime that day, he was extremely rude and offensive and told her he didn't know where they were, that the request to pick them up "would be extremely disruptive" and "you can't come in to pick them up, they have to be mailed" and that "your husband's case won't be for awhile" suggesting that we don't need them. After speaking with Mary Lynch, my wife eventually went to 55 Elm St. to pick them up. She was provided with three (3) pieces of paper one (1) blank and (1) with the

Conn.Agencies Regs and (1) with the additional procedures (copies attached). Seems the Commission is determined to be a very a clandestine operation.
Determinations made by the Commission such as I have mentioned above are not reasonable, change the intent of the statute(s), and are basically absurd and draconian in nature. I was overpaid by the Commission through no fault of my own, and I could not reasonably have been expected to detect the error. My attorney was not aware. Neither was the Workers' Commissioner, however, the state's 3rd party administrator, knew this was in fact barred by statute. I ask the Commission to waive any repayment because it will cause severe hardship. My financial situation has even changed since last financial affidavit was submitted (additional expenses) and I will bring proof at the appeal hearing..
The Retirement Commission has adopted regulations notin accordance with the provisions of chapter 54 nor State Statute establishing criteria for the waiver of repayment. As proof, my denial of waiver in whole or in part and the information further provide.
The fact that I could not reasonably have been expected to detect the error; and I was not "at fault," that is, did not directly or indirectly falsify any information which led to the making, authorizing, or approval off overpayment(s).

The current repayment plan (garnishment) by the Commission of my retirement pay will reduce my income from all sources to a level that would cause hardship and would not, therefore, in good conscience and in equity, permit the repayment of the overpayment. This garnishment is not reasonable.

As I previously stated I retired as a Tier I member of The State Employees Retirement System (SERS). Unlike CMERS, wages, hours, and conditions of employment must be collectively bargained. The State Board of Labor Relations has determined that pension benefits are conditions of employment. The current SERS retirement plan was established in 1997 under a 20-year agreement between the state and the State Employee Bargaining Coalition and a unilateral garnishment of my pension violates State of Connecticut/s collective bargaining laws and/or is a breach of contract.

Chapter 54 states the Retirement Commission shall not in any manner conflict or be inconsistent with any provision of an applicable current collective bargaining agreement in effect between any state employer and the unions representing employees. This unilateral garnishment of my pension does conflict and is inconsistent with the bargaining unit I retired from. In the **CORRECTIONS[NP-4] BARGAINING UNIT CONTRACT *BETWEEN*STATE OF CONNECTICUT *AND* COUNCIL 4 of theAMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES** EFFECTIVE: JULY 1, 2008 EXPIRING: JUNE 30, 2011. On page 36, **ARTICLE 17 titled "COMPENSATION"please note Section 8. Overpayments:**
"When the employer determines that an employee has been overpaid, it shall notify the employee of this fact and the reasons thereof. The employer shall arrange to recover such overpayment from the employee over the same period of time in which the employee was overpaid unless the employer and employee agree to some other arrangements. In the event the employee contests whether he/she was actually overpaid the employer shall not institute refund procedures until completion of the grievance/arbitration appeal process."
To further show the Commission and the Retirement Division is going outside statutory bounds; The Commission considered modifying a SERS retiree's overpayment by reducing her monthly repayment from $1500 per month to $538.00 not for reasons of financial hardship but rather to resolve all issues regarding the overpayment. This is specifically barred by statute (copy of AG's opinion attached).
Sincerely,

Cc: Senator Gugliemo
Attorney General Blumenthal
Attorney Ralph Russo
Nancy Wyman, State Comptroller
Attachments: Copies as noted

STATE OF CONNECTICUT

Auditors' Report
State Comptroller - State Retirement Funds
For the Fiscal Years Ended June 30, 1996 and 1997

Codification of amendments to the State Employees Retirement System:
Criteria:
Amendments to the Pension Plan that have been administratively implemented by the Retirement Commission need to be codified to the General Statutes.

Condition:
The Retirement Commission has amended the State Employees Retirement Plan to comply with the Internal Revenue Services (IRS) regulations 401 and 415. This amendment was required to keep the tax-favored status of the plan. Although, this amendment was appropriate, the Retirement Commission needs to formalize their actions by submitting legislation to codify this change to the Pension Plan.

Effect:
Changes to the State Employees Retirement System have been implemented and the members of the plan have not been informed of these changes. Members effected by this change may over contribute to the retirement system and expect a greater benefit upon retirement.

Cause:
It appears that this amendment to the Pension Plan was thought to be so obscure, that none of the current members would be effected by this change to the plan.

Recommendation:
The Retirement and Benefit Services Division should submit statutory language to the Legislative Commissioner's Office of the General Assembly to codify the changes to the State Employees' Retirement System, that have been administratively enacted by the Retirement Commission. (See Recommendation 2.)

Agency Response:
"Under a collective bargaining agreement known as SEBAC V the parties thereto, state management and a coalition of its employee unions, imposed upon themselves the obligation to codify the plan provisions of the State Employees' Retirement System (SERS); presumably, this obligation includes plan revisions made by the Commission. The Division's responsibility in this area is limited to issuing Summary Plan Descriptions to SERS members, which it intends to do by July 1999. Nevertheless, the Division will contact the parties to SEBAC V and offer its assistance in the codification process."