

the Administrative Code of 1929, 71 P.S. §101, et seq., with a principle place of business at 207 Finance Building, Harrisburg, Harrisburg, PA 17120.

JURISDICTION

3. Jurisdiction in this matter is properly situate in the original jurisdiction of the Commonwealth Court pursuant to 42 Pa.C.S. §761.

CLASS ALLEGATIONS

4. The named Petitioner is an individual who, within the applicable period of limitations prior to the commencement of this action, was and is employed by the Commonwealth of Pennsylvania.

5. Petitioner brings this case as a Class Action pursuant to Pa.R.C.P. Nos. 1701-16 (2008), on behalf of a Class consisting of: all full-time employees of the Commonwealth of Pennsylvania coming under the jurisdiction of the Governor of the Commonwealth hired before June 30, 2008, and subject to the Retired Employees Health Program (REHP).

6. Petitioner believes that there are approximately 70,000 other employees in this category, both organized and managerial. The true number of potential Class members is readily available to the Respondents.

7. Petitioner anticipates that the size of the Class will be numerous and that joinder of all members will be impractical.

8. Common questions of law and fact exist as to all Class members and predominate over any questions solely affecting individual Class members. Among the questions of law and fact common to Petitioner and the Class are:

- a. Whether the Commonwealth's increase in the amount of state service from fifteen (15) to twenty (20) years to be eligible for paid post-retirement health insurance coverage under the REHP is an unconstitutional diminishment of a retirement benefit in violation of Article I, Section 17, of the Pennsylvania Constitution.
- b. Whether the rights, privileges and immunities conferred by Article I, Section 17 of the Pennsylvania Constitution are individual or collective in nature and whether the same may be waived through the collective bargaining process.
- c. The nature and extent of class-wide injury and the measure of damages for the injury.

9. Petitioner's claims are typical of the claims of the Class members because Petitioner is a regular full-time salaried executive branch employee of the Commonwealth of Pennsylvania hired prior to July 1, 2008, who is subject to the Retired Employees Health Program (REHP).

10. Petitioner will fairly and adequately protect the interests of the Class members.

11. Class action treatment will provide fair and efficient method for adjudication of the controversy. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would entail. The parties will

not encounter any difficulties in the management of this class action that would preclude its maintenance as a class action and the Class is readily identifiable from the Respondents' records.

12. Prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Respondents.

13. A class action is the best method to proceed since the amounts at stake for many of the Class members vary and individual claims are not great enough to enable them to maintain separate suits against Respondents.

14. Without a class action, Respondents will likely retain the benefit of their wrongdoing and will continue a course of action, which will result in further damages to Petitioner and the Class.

FACTS

15. Pinto is currently employed as a full-time salaried Corrections Officer of the Commonwealth of Pennsylvania, presently classified under the Commonwealth of Pennsylvania Job Specification No. 47220. The position held by Petitioner is technical public safety and law enforcement work in state correctional institutions.

16. Pinto was hired as a full-time salaried employee in the above referenced classification in January, 1986, and has served continuously in a full-time salaried capacity since that time.

17. As of the date of Petitioner's hire, the Commonwealth of Pennsylvania maintained a retirement system designated the Retired Employees Health Program (REHP), applicable to Petitioner which provided post-retirement health insurance coverage as a retirement benefit to which employees would be entitled upon reaching the eligibility requirements set forth in the Plan.

18. As of the date Petitioner was hired by the Commonwealth of Pennsylvania, the REHP retirement system was governed by Commonwealth of Pennsylvania Management Directive 530.24. Pursuant to Commonwealth of Pennsylvania Management Directive 530.24, as it existed when Petitioner was hired, eligibility for fully-paid post-retirement health benefits was established at "Retirement at or after superannuation age with at least 15 years of credited service in the State and/or Public School Employees' Retirement Systems".

19. The REHP retirement benefits conferred by the Commonwealth and described by Commonwealth of Pennsylvania Management Directive 530.24, are applicable to all full-time salaried executive branch employees of the Commonwealth of Pennsylvania, unionized, unrepresented and managerial, with the exception of sworn members of the Pennsylvania State Police force.

20. A management directive is one legally recognized instrument by which the Governor manages executive branch agencies and employees under his control. In 1972, the Governor's Office, under authority of Article IV of the Pennsylvania Constitution, established the "Directives Management System." *See* 4 Pa.Code §§ 1.1-1.5. The system was designed "to provide comprehensive statements of policy and procedure on matters that affect agencies and

employees under the Governor's jurisdiction.” 4 Pa.Code § 1.1. Management directives “announce detailed policies, programs, responsibilities, and procedures that are relatively permanent” and are “signed by the Governor, Lieutenant Governor, Secretary of the Budget, Secretary of Administration, or the head of any department or independent board, commission or council under the Governor's jurisdiction.” 4 Pa.Code § 1.2(2). Management Directives are administered by Respondent.

21. Management Directive 530.24 was signed by the Secretary of Administration, who is obligated under 4 Pa. Code §§ 1.1-1.5 to enforce its provisions.

22. When Petitioner was hired, he became part of the H-1 bargaining unit recognized by the Commonwealth of Pennsylvania under Act 195. The Bargaining unit into which Petitioner was added was represented at the time by the Association of Federal, State, County and Municipal Employees (AFSCME).

23. Eligibility for the REHP retirement system established by the Commonwealth of Pennsylvania Management Directive 530.24, was confirmed in the collective bargaining agreement between the Commonwealth and the AFSCME under which Petitioner became employed. The collective bargaining agreement at issue, as it existed, provided that:

The employer shall continue to pay the entire cost of coverage for annuitants who retire...at or after superannuation age with at least fifteen (15) years of credited service in the State and/or public school retirement systems.

A copy of the excerpt of said Collective Bargaining Agreement is attached hereto as Exhibit “A”.

24. Participation in the Commonwealth Retired Employee Health Program is a retirement benefit to which the Petitioner became entitled under the terms of Commonwealth of Pennsylvania Management Directive 530.24, and the collective bargaining agreement under which he was hired.

25. Participation in the Commonwealth Retired Employee Health Program under the terms set forth in Commonwealth of Pennsylvania Management Directive 530.24, and the collective bargaining agreement under which he was hired, constituted a promise of deferred compensation for services rendered by Petitioner from his date of hire.

26. From his date of hire, Petitioner performed services which were to be compensated for, in part, by eligibility to receive fully paid retirement health insurance under the REHP upon retirement at superannuation age and 15 years of service.

27. The collective bargaining agreement between the Pennsylvania State Corrections Officers Association (as the successor bargaining representative of the H-1 bargaining unit to AFSCME) and the Commonwealth for the period July 1, 2005, through June 30, 2008, was resolved through Act 195 interest arbitration. In an interest arbitration award dated January 31, 2006, (a copy of which is attached here as Exhibit "B"), a Board of Arbitration granted a Commonwealth proposal to increase eligibility requirements for receipt of retirement health insurance under the REHP from 15 years of credited state service to 20 years of credited state service effective July 1, 2008.

28. Effective July 1, 2008, Petitioner's eligibility requirement for receipt of paid post-retirement health insurance coverage from the Commonwealth of Pennsylvania increased from 15 years of credited state service to 20 years of credited state service, even though Petitioner had rendered service for several years under the promise of eligibility after 15 years of service.

29. Effective July 1, 2008, the retirement health insurance benefit to which Petitioner was entitled was diminished without his consent.

COUNT I

ACTION IN MANDAMUS

30. Retiree medical benefits are in the nature of deferred compensation under Pennsylvania law. *Fairview Township v. Fairview Township Police Association*, 795 A.2d 463, 470-471 (Pa. Cmwlth. 2002), *aff'd per curiam* 576 Pa/ 226, 839 A.2d 183 (2003).

31. As a form of deferred compensation, retiree medical benefits are a constitutionally protected individual right, as "the fruit of the tree which he has planted, which he has nurtured with his continuous loyal service and watered with the sweat of his years of dedicated work." *Newport Twp. v. Margalis*, 532 A.2d 1263, 1265-66 (1987).

32. Pursuant to Article I, Section 17 of the Pennsylvania Constitution, Petitioner's right to retirement medical benefits became fixed upon hire, which provided for eligibility upon reaching superannuation age and 15 years of credited service.

33. No Act 195 interest arbitration award can operate to diminish Plaintiff's right to receive retiree medical benefits upon reaching superannuation age and 15 years of credited service.

34. Based upon the forgoing, Respondent has a mandatory, non-discretionary duty to provide Petitioner with fully paid retiree medical benefits under the same terms as those under which the Petitioner rendered services to the Respondent, i.e., upon reaching superannuation age and 15 years of credited service.

35. Petitioner has a corresponding right to receipt of retiree health benefits upon reaching superannuation age and 15 years of credited service.

36. Other than the action herein, Petitioner has no forum in which to assert the individual constitutional rights due him under the Pennsylvania Constitution, and to seek an adequate remedy.

WHEREFORE, Petitioner seeks a writ of mandamus compelling the Commonwealth of Pennsylvania, Office of Administration, to confer entitlement to retirement medical benefits in accordance with the Retired Employees Health Program, to Petitioner upon retirement after reaching superannuation age and at least fifteen (15) years of credited service with the State Employees Retirement System.

COUNT II

ACTION FOR DECLARATORY JUDGMENT PURSUANT TO

42 Pa. C.S. §§7531-7541

37. Through this Count, Petitioner seeks a declaration as to his rights, status and legal relations relative to the Respondent, and seeks to compel Respondent to affirmative action, which would validate those rights, status and legal relations.

38. Other than the action set forth herein, Petitioner has no remedy at law adequate to enforce his rights in this matter.

WHEREFORE, Petitioners seek Judgment in accordance with the provisions of 42 Pa. C.S. §§7531-7541, declaring that:

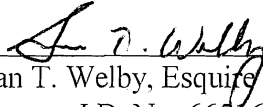
(a) The Commonwealth of Pennsylvania, Office of Administration is legally obligated to confer entitlement to retirement medical benefits in accordance with the Retired Employees Health Program, to Petitioner upon retirement after reaching superannuation age and at least fifteen (15) years of credited service with the State Employees Retirement System.

(b) Petitioner further seeks any other such relief, which may be deemed just, necessary, or proper, including, but not limited to, an appropriate award of attorney's fees incurred in connection with this action.

Respectfully submitted:

LIGHTMAN WELBY STOLTENBERG &
CAPUTO

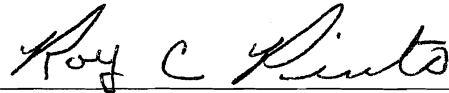
By: _____


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Attorneys for Petitioner

Date: October 15, 2008

VERIFICATION

I verify that the statements made in the forgoing PETITION FOR REVIEW are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

A handwritten signature in cursive script that reads "Roy C. Pinto". The signature is written in black ink and is positioned above a horizontal line.

Roy C. Pinto

Date: October 15, 2008

CERTIFICATE OF SERVICE

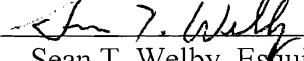
I hereby certify that a copy of the foregoing **Petition For Review In The Nature Of A Complaint In Mandamus And For Declaratory Judgment** was served upon the person(s) and in the manner indicated below, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure, by depositing same in the United States mail, with first class postage, prepaid, from Harrisburg, Pennsylvania, as follows:

Thomas W. Corbett, Jr., Attorney General
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The Hon. Naomi Wyatt
Secretary of Administration
Office of Administration
207 Finance Building
Harrisburg, Pennsylvania 17120
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LIGHTMAN, WELBY, STOLTENBERG and
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By: 
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