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March 26, 2014

**Via E-Mail Only**

Richard E. Brittain, Jr.  
152 Boak Avenue, Lot 78  
Hughesville, PA 17737

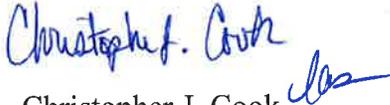
Re: Richard E. Brittain, Jr. v. Commonwealth of Pennsylvania,  
Governor's Office of Administration  
Docket No. 105 MAP 2012

Dear Richard:

Enclosed you will find the Supreme Court's decision in our case. The Court has affirmed, without decision or discussion, the original decision of Judge Oler of the Commonwealth Court. This unfavorable decision concludes this matter.

Should you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

  
Christopher J. Cook

CJC/las

Enclosure

cc: PSCOA (w/encl. – via e-mail only)  
Gary M. Lightman, Esquire (w/encl. – via e-mail only)  
Eric C. Stoltenberg, Esquire (w/encl. – via e-mail only)

IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT

RICHARD E. BRITTAIN,

: No. 105 MAP 2012

Appellant

v.

COMMONWEALTH OF PENNSYLVANIA,  
GOVERNOR'S OFFICE OF  
ADMINISTRATION,

Appellee

ORDER

PER CURIAM

DECIDED: March 26, 2014

AND NOW, this 26<sup>th</sup> day of March, 2014, the order of the Commonwealth Court  
is AFFIRMED.

Judgment Entered 3/26/2014

  
CHIEF CLERK

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

RICHARD E. BRITTAIN,	:	
	:	
Petitioner	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	No. M.D. 2008
COMMONWEALTH OF	:	
PENNSYLVANIA, GOVERNOR'S	:	
OFFICE OF ADMINISTRATION,	:	
	:	
Respondent	:	

**NOTICE TO PLEAD**

TO RESPONDENT:

You are hereby notified to file a written response to the enclosed Pleading within twenty (20) days from service hereof or a judgment may be entered against you.

LIGHTMAN, WELBY, STOLTENBERG and  
CAPUTO

By: \_\_\_\_\_

Sean T. Welby, Esquire  
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**Counsel for Petitioner**

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

RICHARD E. BRITTAIN,	:	
	:	
Petitioner	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	No. M.D. 2008
COMMONWEALTH OF	:	
PENNSYLVANIA, GOVERNOR'S	:	
OFFICE OF ADMINISTRATION,	:	
	:	
Respondent	:	

**AMENDED PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT  
IN MANDAMUS AND FOR DECLARATORY JUDGMENT**

AND NOW, comes the Petitioner, by and through his attorneys, Lightman, Welby, Stoltenberg and Caputo, with the following Amended Petition for Review in the Nature of a Complaint in Mandamus and for Declaratory Judgment and, in support thereof, avers as follows:

**PARTIES**

1. Petitioner, Richard E. Brittain is an adult citizen and resident of the Commonwealth of Pennsylvania, presently residing at 152 Boak Avenue 78, Hughesville, 17737.
2. Respondent, Commonwealth of Pennsylvania, Governor's Office of Administration, is an executive agency of the Commonwealth of Pennsylvania, organized and existing pursuant to

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.

### **FACTS**

4. Petitioner retired as a state employee under the jurisdiction of the Governor's Office of Administration on June 24, 2011. At the time of his retirement, Petitioner had completed 15.081 years of service in the State Employees Retirement System (SERS) with 15.081 years of creditable state service. Petitioner performed his state service as a Pennsylvania Corrections Officer. This is technical public safety and law enforcement work in state correctional institutions, Commonwealth Job Specification No. 47220.

5. Petitioner was hired by the Commonwealth on August 26, 1996.

6. 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.

7. 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”.

8. 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.

9. 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.

10. 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.

11. 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).

12. 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".

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

14. 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.

15. 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.

16. 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.

17. 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.

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

## **COUNT I**

### **ACTION IN MANDAMUS**

19. 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).

20. 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).

21. 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.

22. 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.

23. 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.

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

25. 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**

26. 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.

27. A case and controversy exists as Petition retired from state service with fifteen (15) years of credited service and was denied continuing health care benefits pursuant to REHP as was promised to him upon hire.

28. 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