



State of Connecticut

SENATOR JOHN MCKINNEY

SENATE MINORITY LEADER

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September 30, 2011

The Honorable Dannel P. Malloy
Governor, State of Connecticut
Executive Chambers
State Capitol
Hartford, CT 06106

Dear Governor Malloy:

I am writing to express my surprise and frustration upon learning that non-union employees will be receiving their full Oct 2011 longevity payments. It was my understanding that the terms and conditions of the SEBAC agreement with regard to longevity payments would be applied to all non-union employees, including the forfeiture of the Oct 2011 longevity payments.

As you have stated in the past, longevity payments are a luxury the state simply cannot afford. In fact, during your campaign for Governor you supported scaling back longevity payments, especially for highly paid executive level employees. Yet, we now learn that another round of excessive and unaffordable payments to already highly paid employees will be sent out the door at a time when the state can least afford it and while union employees will be getting no such payment.

I am calling on you to exercise your executive authority and stop this practice. While you have repeatedly stated that you would support legislation reforming the longevity system, the reality is that you already have the authority to make significant reductions in longevity pay.

As a legal matter, I believe you have full authority and discretion to cut longevity payments to non-union employees. Section 5-213 of the general statutes calls for semiannual longevity payments to be made to each non-union state employee who has 10 or more years of service. However, the statute requires only a minimum basic payment of between \$75 and \$300. Any payment in excess of these minimums is at the discretion of the executive branch pursuant to a Department of Administrative Services schedule. Thus, the statute creates no expectation on behalf of state employees beyond the minimum payment and gives authority to the executive branch, through DAS, to determine whether higher payments should be made and, if so, how much.

This interpretation is bolstered by the fact that when the legislature intends to guarantee a specific percentage of salary as longevity, it does so plainly. Certain officials, such as judges, family support magistrates, workers compensation commissioners and state's attorneys are guaranteed in statute a specific percentage of their salary as longevity. (See C.G.S. Sections 51-47, 51-287a, 46b-233, and 31-277). However, for rank and file employees of the Judicial Department and Division of Criminal Justice, the authority to establish a schedule for longevity payments is granted to the Judges of the Supreme Court and the Chief States Attorney respectively, just as the authority to set the amount of longevity payments for non-union employees is granted to DAS in Section 5-213.

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According to press reports, your administration is afraid that a legal challenge may ensue if you unilaterally cut or eliminate longevity payments to non-union employees. I strongly disagree with the proposition that non-union employees have some kind of constitutionally protected vested property right to longevity payments. I am asking you to exercise the authority vested in you under our statutes and constitution and stop these excessive October longevity payments from being issued. My office stands ready to support you and lend any assistance necessary should this action be challenged in a court of law.

Your administration cites the state Supreme Court's ruling in *Longley v. State Employees retirement System*, 284 Conn.149 (2007) as the bases for its fear that a court of law would find any reduction in longevity pay to be an unconstitutional taking of property. I believe this is a gross misinterpretation of *Longley* and strongly disagree with the proposition that non-union employees have a constitutionally protected property interest in their inflated longevity payments. The court in *Longley* said nothing about longevity payments constituting a constitutionally protected property interest. Instead, it involved a simple matter of statutory construction. The issue was whether retirees can include their last pro-rated longevity payment in their "base salary" for purposes of calculating their pensions. Because the statutes define "base salary" as average "covered earnings" and included longevity payments in the definition of "covered earnings," the simple answer was yes.

Applying this same method of statutory construction to Section 5-213, it is clear that the executive branch has the authority and discretion to decide whether to award longevity payments to non-union employees above the statutory minimum and if so, by how much. I am unaware of any controlling legal authority that states otherwise. If you are aware of any such authority, I would be happy to review it.

This issue has become all the more important in light of Public Act 11-01, the biennial budget put forth by your administration and passed by the Democratic majority in the legislature. Pursuant to section 11 of that Act not only does the executive branch have authority to set the longevity schedule for all non-union executive branch employees, but the Judicial and Legislative Departments must apply a comparable schedule to their own employees. Thus, any independent authority the Legislative and Judicial branches may have had to cut or eliminate longevity pay, appears to have been abdicated to your office.

In light of the above, I am once again asking you to use your executive authority to correct what is abhorrently bad budgetary and public policy and, at a minimum, call for all longevity payments to non-union employees to be reduced to the statutory minimum.

Sincerely,



JOHN MCKINNEY
State Senator – 28th District

cc: Senate President Pro Tempore, Donald E. Williams, Jr.
Senate Majority Leader, Martin Looney
Speaker of the House of Representatives, Christopher G. Donovan
House Minority Leader, Lawrence Cafero