

**MINUTES OF THE  
MANAGEMENT ADVISORY COUNCIL  
February 15, 2006**

**Visit the MAC website at [ct.gov/MAC](http://ct.gov/MAC)**

Joe Amend, MAC Chair, called the meeting to order at 9:05 a.m.

**Approval of Minutes**

The minutes of the January 18, 2006 meeting were adopted unanimously.

**Treasurer's Report**

Peter Bucknall reported that the balance in the Treasury remains at \$2,402.81 as of January 31, 2006. The Treasurer's report was accepted.

**Committee Reports**

Credentials. Elise Kremer reported for Ellen Carter, Credentials Chair, on the following agency election results:

**Department of Environmental Protection**

Representative: Angella Levy  
Alternate: Denise Ruzicka

**Department of Mental Retardation**

Representative: Jadwiga Gocłowski  
Alternate: Pennlope Davis

**Old Business**

Speakers and Logistics. The Commissioner of Administrative Services, Linda Yelmini, will be the guest speaker for the March meeting. The State Librarian, Kendall Wiggin, will speak at the May meeting. There was a suggestion from a MAC guest, Susan Mazzoccoli, that we invite the Victim Advocate, Dr. James Papillo. Members expressed interest in doing so. Elise will follow up with Susan on this.

Meeting with Administration Officials. Further discussion has been put on hold due to the budget process. In regards to the salary compression issue, Joe Amend reported on an article in the Hartford Courant about State Police lieutenants and captains who are trying to organize a union for reasons which include salary compression. It was suggested that this matter could be discussed with Secretary Genuario highlight the issue. A discussion ensued regarding any historical data on salary compression that may be available, and it was determined that the latest review of the issue was done about two years ago.

Since collective bargaining classes continue to be re-evaluated under the SCOPE agreement, and managerial classes are not, this contributes to the compression problem. Salary compression is making it difficult to bring talented collective bargaining employees into management and to recruit appropriately qualified individuals from outside state service into critical positions.

There was a suggestion to re-establish the Quality Control Committee, which was comprised of legislators, private sector members and OPM and DAS representatives. The purpose would be to build some consensus of these problems and appropriate remedies. This suggestion was raised in a previous meeting with Secretary Genuario.

Managers Day. A committee meeting was held on January 25, 2006. The decision was made to hold the event on Friday, October 6, 2006 at the Aqua Turf Club in Southington. This is subject to change to Friday, September 29, 2006, if Coach Jim Calhoun is available on that date. Potential themes discussed were Economic Development, Transportation, Jobs and the State of the State. Any other suggestions are welcome and will be considered. There is a list of potential speakers who would be consistent with these themes. Another idea for the event is to provide inexpensive "take-away items, such as mugs or leather-bound notebooks, that would be a memento of the day. The Distinguished Managerial Awards process could be a vehicle to get the word out sooner and allow a lengthy time for response. As information becomes available, it can be put on the website as well as in the meeting minutes.

Web Site. Anne MacLeod reported that meeting notices and minutes for 2005 are all published. The page for the 2006 meeting notices and minutes was published, along with the meeting notices for the January and February 2006 meetings. Meetings through the month of May have been added to the calendar. The July 2002 Survey report is now available via the Surveys page. A draft format for Issues Briefs was submitted to the Executive Committee for review prior to releasing it to the general membership for review. Four sites have been linked to the Management Resources and Best Practices page:

Council of State Governments (Innovations Award Program)

Free Management Library (Extensive collections of management reference material, covering 75 topics)

Government Performance Project (publishes "Grading the States")

Stateline.Org (publishes "State of the States" report and background briefs on complex issues now under debate, such as No Child Left Behind and Medicaid)

Communications Committee. Tom Crafa reported that a program to install drop-down menus for the Bulletin Board has been obtained.

Legislative Committee. Abbie Wotkyns reported that there is a bill being introduced regarding Tier I retirees. The bill would provide that retirees who reach age 65 and are not yet entitled to social security benefits would not be subject to the reduction in pension benefits currently in place for Tier I members. The bill takes into consideration that the age

for eligibility for social security benefits has been raised.

There was discussion concerning the recent Appellate Court ruling in Donald M. Longley et al. v. State Employees Retirement Commission. The plaintiffs had filed suit against the Commission pursuant to a dispute regarding calculation of the highest three years of salary for pension benefits. The ruling on behalf of the plaintiffs specifies that accrued vacation payout be included in the salary calculation. The state has taken an appeal of the ruling. It would be at the discretion of the State Supreme Court whether to hear the appeal.

### **New Business**

State Library. Bonnie Delaney disseminated information on i-Conn.org, Connecticut's Digital Library.

Legislative Proposal by Association of Managerial Employees in Connecticut State Service (AMECSS). Dick Edmonds had hoped to attend the meeting to discuss a legislative proposal by AMECSS concerning retirement benefits. Due to a scheduling conflict, he was unable to attend but forwarded copies of the proposal. Briefly, the proposal would entitle the surviving spouse of a state employee who dies prior to retirement to receive the full benefit to which the employee would have been entitled, as opposed to the current fifty percent of the benefit. There was discussion of inviting the president of AMECSS to attend MAC meetings as a guest or to be a guest speaker at an upcoming MAC meeting.

### **Adjournment**

The meeting was adjourned at 11:10 a.m. The next MAC meeting will be held on Wednesday, March 15, 2006 at 9:00 a.m. in Conference Room B at the Department of Transportation.

The list of those in attendance at the February 15, 2006 meeting, the Appellate Court ruling, and the AMECSS legislative proposal are attached and are hereby made a part of these minutes.

Respectfully Submitted,

Mark Polzella  
MAC Secretary  
MAC Representative for the  
Department of Labor

**MAC ATTENDANCE ROSTER**  
**February 15, 2006**

<u>DEPARTMENT</u>	<u>NAME</u>	<u>REP/ALT/GUEST</u>
Administrative Services	Abbie Wotkyns	R
Children and Families	Gary Zera	R
Corrections	Donald Currey	R
Economic and Community Development	Sheila Hummel	R
Human Rights and Opportunities	Epifanio Carrasquillo	R
Information Technology	Anne MacLeod	R
Insurance	Allan Elstein	R
Labor	Mark Polzella	Secretary
Mental Retardation	Jadwiga Gocłowski	R
Mental Retardation	Penny Davis	A
Motor Vehicles	Joseph Lembo	R
Policy and Management	Joe Amend	Chair
Policy and Management	Brian West	Guest
Public Health	Elise Kremer	Vice-Chair
Public Utility Control	Vivian McWatt	R
Public Works	Jerry Glassman	R
Revenue Services	Tom Crafa	R
Social Services	Peter Bucknall	Treasurer
State Library	Bonnie Delaney	R
Transportation	Wanda Seldon	R
Veterans' Affairs	Nancy Buturuga	R

## **An Act Concerning Retirement Benefit Options for Spouses of Certain Deceased State Employees.**

Introduced by AMECSS (Association of Managerial Employees in Connecticut State Service) 2/06

**Sec. 5-165a. Benefit payable if member dies prior to retirement.** (a) If a member who is continuing to accrue state service or who is on a leave authorized by the state, or otherwise granted pursuant to the terms of the appropriate collective bargaining agreement, dies after July 1, 1982, and (1) after completion of the age and service requirements for retirement under section 5-162, 5-163a, 5-173 or 5-188, or (2) completing twenty-five years of service, his spouse, provided they have been lawfully married for at least the twelve months preceding his death, shall elect to receive retirement benefits under subdivision (2) or (3) of subsection (a) of section 5-165, and shall receive an income in an amount equal to the benefit that the member would have been entitled to if he had retired the day he died and had his benefit been paid under the option that the spouse elected [shall receive a lifetime income in an amount equal to fifty per cent of the average of the retirement income that the member would have been entitled to if he had retired the day he died had his benefits been paid under the option specified in subdivision (4) of subsection (a) of section 5-165 and the retirement income that the member would have been entitled to if he had retired the day he died and had his benefit been paid under the option specified in subdivision (1) of said subsection.] The first payment shall be made as of the first day of the month coincident with or, otherwise, next following his date of death. If such member was not eligible to retire at the time of his death, such benefit shall be calculated as if he had reached age fifty-five, but based on his service and final average earnings at his date of death.

(b) If a member who has terminated with at least twenty-five years of service or retired pursuant to section 5-162, 5-163a, 5-173 or 5-188, but whose benefits in either event are not yet being paid, dies prior to the commencing date of his benefits, his spouse, provided they have been lawfully married for at least the twelve months preceding his death, shall elect to receive retirement benefits under subdivision (2) or (3) of subsection (a) of section 5-165, and shall receive an income in an amount equal to the benefit that the member would have been entitled to if he had retired the day he died and had his benefit been paid under the option that the spouse elected [shall receive a lifetime income equal to fifty per cent of the average of the retirement income that the member would have been entitled to if his benefits had commenced the date he died had his benefit been paid under the option specified in said subdivision (4) and the retirement income that the member would have been entitled to with such benefits being paid under the option specified in said subdivision (1).] If such member was not eligible to retire at the time of his death, such benefit shall be calculated as if he had reached age fifty-five. The first payment shall be made as of the first day of the month coincident with or, otherwise, next following his date of death.

(c) If a member who has completed the age and service requirements for retirement under section 5-162, 5-163a, 5-173 or 5-188, and who has elected to receive his retirement benefits under subdivision (2) or (3) of subsection (a) of section 5-165, dies prior to the effective date of commencement of benefits but within ninety days after he first elects to receive his retirement benefits under subdivision (2) or (3) of said subsection (a), then his beneficiary or contingent annuitant shall receive an income in an amount equal to the benefit that would have been payable to the survivor had the member retired the day he died and had his benefit been paid under the option he had elected at the time of his death. This subsection shall not apply after ninety days after the date the member first elects to receive his benefit under subdivision (2) or (3) of subsection (a) of section 5-165. In the event that income payments to a surviving beneficiary or contingent annuitant are payable under this subsection, such payments shall be in lieu of payments under subsections (a) and (b) of this section.

Appellate Court of Connecticut.

**Donald M. LONGLEY** et al.

v.

**STATE EMPLOYEES RETIREMENT COMMISSION.**

No. 26186.

Argued Sept. 27, 2005.

Decided Dec. 27, 2005.

**Background:** **State** retirees who disagreed with the **state employees retirement commission's** compensation formula filed a petition for a declaratory ruling, challenging the **commission's** formula and requesting recalculation of their benefits. The Superior Court, Judicial District of New Britain, Beach, J., dismissed these administrative appeals, and retirees appealed.

**Holding:** The Appellate Court, Peters, J., held that, as matter of apparent first impression, retirees had a statutory right to factor accrued vacation time into their retirement income.

Reversed and remanded with direction.

West Headnotes



[1] [KeyCite Notes](#)

☞ [361](#) Statutes

☞ [361VI](#) Construction and Operation

☞ [361VI\(A\)](#) General Rules of Construction

☞ [361k213](#) Extrinsic Aids to Construction

☞ [361k219](#) Executive Construction

☞ [361k219\(1\)](#) k. In General. [Most Cited Cases](#)

Ordinarily, appellate court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes.



[2] [KeyCite Notes](#)

☞ [15A](#) Administrative Law and Procedure

☞ [15AV](#) Judicial Review of Administrative Decisions

☞ [15AV\(E\)](#) Particular Questions, Review of

☞ [15Ak796](#) k. Law Questions in General. [Most Cited Cases](#)

Cases that present pure questions of law invoke a broader standard of review than is ordinarily involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion.



[3] [KeyCite Notes](#)

☞ [15A](#) Administrative Law and Procedure

☞ [15AV](#) Judicial Review of Administrative Decisions

☞ [15AV\(E\)](#) Particular Questions, Review of

☞ [15Ak796](#) k. Law Questions in General. [Most Cited Cases](#)

When a state agency's determination of a question of law has not previously been subject to judicial scrutiny, the agency is not entitled to special deference.

[\[4\] KeyCite Notes](#)



- ↳ [361 Statutes](#)
- ↳ [361VI Construction and Operation](#)
- ↳ [361VI\(A\) General Rules of Construction](#)
- ↳ [361k213 Extrinsic Aids to Construction](#)
- ↳ [361k219 Executive Construction](#)
- ↳ [361k219\(9\) Particular \*\*State\*\* Statutes](#)
- ↳ [361k219\(9.1\) k. In General. \[Most Cited Cases\]\(#\)](#)

The construction and application of statutes governing **retirement** income for **retired state employees** presented issues of law not heretofore considered by the courts, and under these circumstances, **retired state employees** were entitled to plenary review of the claims they raised at trial, which challenged the **state employees retirement commission's** formula and requested recalculation of their benefits. [C.G.S.A. §§ 5-154\(h\), 5-162\(b\)](#).

[\[5\] KeyCite Notes](#)



- ↳ [361 Statutes](#)
- ↳ [361VI Construction and Operation](#)
- ↳ [361VI\(A\) General Rules of Construction](#)
- ↳ [361k174 k. In General. \[Most Cited Cases\]\(#\)](#)

When interpreting statute, courts look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter.

[\[6\] KeyCite Notes](#)



- ↳ [360States](#)
- ↳ [360II Government and Officers](#)
- ↳ [360k56 Compensation of Officers, Agents and \*\*Employees\*\*](#)
- ↳ [360k64.1 \*\*Retirement\*\* and Incidental Benefits](#)
- ↳ [360k64.1\(3\) k. Right to Benefits, and Amount. \[Most Cited Cases\]\(#\)](#)

Section of **State Employees Retirement** Act defining term "**state** service" was relevant to the calculation of "years of **state** service" as set forth in another section of the Act providing that **retirement** income for which a member is eligible shall be determined from his **retirement** date, "years of **state** service" and "base salary"; however, section defining "**state** service" was not relevant to the calculation of "base salary." [C.G.S.A. §§ 5-154\(m\), 5-162\(a\)](#).

[\[7\] KeyCite Notes](#)



- ↳ [360States](#)
- ↳ [360II Government and Officers](#)
- ↳ [360k56 Compensation of Officers, Agents and \*\*Employees\*\*](#)
- ↳ [360k64.1 \*\*Retirement\*\* and Incidental Benefits](#)
- ↳ [360k64.1\(3\) k. Right to Benefits, and Amount. \[Most Cited Cases\]\(#\)](#)

**Retired state employees** had a statutory right to receive credit for accrued vacation time by a direct payment and by additions to their service time, and they also had a statutory right to factor accrued vacation time into their **retirement** income. [C.G.S.A. § 5-162](#).

**\*\*905**

(Cite as: 92 Conn.App. 712, 887 A.2d 904, **\*\*905**)

**Donald M. Longley**, pro se, with whom was Richard K. Greenberg, pro se, the appellants (plaintiffs). [Richard D. O'Connor](#), with whom, on the brief, was [Glenn A. Duhl](#), Hartford, for the appellee (defendant).

[LAVERY](#), C.J., and GRUENDEL and PETERS, Js.

PETERS, J.

**\*713**

(Cite as: 92 Conn.App. 712, **\*713**, 887 A.2d 904, **\*\*905**)

This is a case of statutory interpretation. In a series of interlocking statutes, our legislature has recognized that, at the time of their retirement from state service, state employees are entitled to compensation for accrued, unused vacation time and to longevity payments. In this case, we must decide in what manner the legislature intended these entitlements to be reflected in retirement income.

**\*714**

(Cite as: 92 Conn.App. 712, **\*714**, 887 A.2d 904, **\*\*905**)

[General Statutes § 5-162\(a\)](#), a portion of the State Employees Retirement Act (act), provides that “[t]he retirement income for which a member is eligible shall be determined from his retirement date, years of state service and base salary …” As defined by [General Statutes § 5-162\(b\)\(2\)](#), “base salary” is the average annual salary received by a retiree for his three highest-paid years of state service.<sup>FN1</sup> Annual salary is defined by [General Statutes § 5-154\(h\)](#) as any payment for state service, including longevity payments and payments for accrued vacation time.<sup>FN2</sup> “[S]tate service’ includes a period equivalent to accrued vacation time for which payment is made under section 5-252.” [General Statutes § 5-154\(m\)\(6\)](#).<sup>FN3</sup>

FN1. [General Statutes § 5-162](#) provides in relevant part: “(a) The retirement income for which a member is eligible shall be determined from his retirement date, years of state service and base salary …”

“(b) As used in this section … (2) … ‘base salary’ means the average covered earnings received by a member for his three highest-paid years of state service … and ‘covered earnings’ means the annual salary, as defined in [subsection \(h\) of section 5-154](#), received by a member in a year, limited by one hundred thirty per cent of the average of the two previous years’ covered earnings…”

FN2. [General Statutes § 5-154\(h\)](#) provides in relevant part: “ ‘Salary’ means (1) any payment, including longevity payments and payments for accrued vacation time under section 5-252, for **state** service made from a payroll submitted to the Comptroller …”

FN3. [General Statutes § 5-154\(m\)](#) provides in relevant part: “ ‘**State** service’ is service with the **state**, either appointive or elective, for which a salary is paid, subject to the following rules … (6) ‘**state** service’ includes a period equivalent to accrued vacation time for which payment is made under section 5-252 …”

The issue in this case is whether, in the calculation of **retirement** income, accrued vacation time and longevity payments should be counted as additions to “**state** service” or as additions to “base salary.” The trial court agreed with the defendant **state employees retirement commission (commission)**



that they should be deemed to be additions to **state** service. We disagree. Accordingly, we reverse the judgment of the trial court.

**\*715**

\_\_\_\_\_(Cite as: 92 Conn.App. 712, \*715, 887 A.2d 904, \*\*905)\_\_\_\_\_

The record reveals the following undisputed facts and procedural history. Pursuant to the 2003 Early **Retirement** Incentive Program; Public Acts 2003, No. 03-02; the plaintiffs, former assistant attorneys general Richard K. Greenberg and **Donald M. Longley, retired** from active employment with the **state** on June 1, 2003. Each **retired** as a vested Tier I, Plan B member of the **state employees\*\*906**

\_\_\_\_\_(Cite as: 92 Conn.App. 712, \*715, 887 A.2d 904, \*\*906)\_\_\_\_\_

**retirement** system. Accordingly, the act and related statutes govern the calculation of their **retirement** benefits.

Pursuant to [§ 5-162](#), a retiree's income, for **retirement** purposes, is determined by his average covered earnings for his three highest paid years of **state** service. The plaintiffs' three highest paid years of **state** service were June 1, 2000, through May 31, 2001; June 1, 2001, through May 31, 2002; and June 1, 2002, through May 31, 2003.<sup>FN4</sup>

[FN4](#). These twelve month periods coincide with the last three years of each plaintiff's actual service with the state.

During each of these years, the plaintiffs received two longevity payments and, subsequent to retirement, each plaintiff also received payment for his accrued but unused vacation time and a final prorated longevity payment.<sup>FN5</sup> When they retired, their accrued vacation time also was recognized for a second purpose, as state service, in addition to their actual state service of more than thirty years.<sup>FN6</sup> See [General Statutes § 5-154\(m\)\(6\)](#).

[FN5](#). Longevity payments and payments for accrued vacation are authorized by the State Personnel Act, [General Statutes § 5-193](#) et seq. Specifically, [General Statutes § 5-213\(b\)](#) provides in relevant part that "semiannual longevity lump-sum payments shall be made on the last regular pay day in April and October of each year, except that a retired employee shall receive, in the month immediately following retirement, a prorated payment based on the proportion of the six-month period served prior to the effective date of his retirement." [General Statutes § 5-252](#) provides in relevant part that "[a]ny state employee leaving state service shall receive a lump sum payment for accrued vacation time...."

[FN6](#). By virtue of the early retirement program, each plaintiff also was credited with an additional three years of service time.

**\*716**

\_\_\_\_\_(Cite as: 92 Conn.App. 712, \*716, 887 A.2d 904, \*\*906)\_\_\_\_\_

In their pension applications, the plaintiffs asked for their base salaries to be calculated by including their longevity payments and their payments for accrued vacation time as part of their regular salary for their final year of state service. They recognized that this salary calculation might be subject to reduction if it resulted in an annual salary of more than 130 percent of the average of their two previous years' covered earnings. See [General Statutes § 5-162\(b\)\(2\)](#). Apart from such a reduction, however, they maintained that their base salary should be calculated by including the vacation and longevity payments in their annual salary during the last year of state employment.

The commission denied the plaintiffs' prayers for relief. It assigned dispositive meaning to the temporal constraints imposed by [§§ 5-162](#) and [5-154](#). In particular, it noted that "base salary ... is the average salary received for the three highest-paid years of state service" and that subsection (n) of [General Statutes § 5-154](#) defines a year of state service as twelve consecutive months.<sup>FN7</sup> According to the commission, a lump sum payment for accrued vacation time cannot be factored into the final year's salary directly, as the plaintiffs contend. To do so would impermissibly add *time* to the calculation of a retiree's three highest paid years of state service because, under [§ 5-154\(m\)](#), state service is defined as

including “accrued vacation time” and under [§ 5-154\(n\)](#) a year of state service can include only twelve calendar months.

[FN7. General Statutes § 5-154\(n\)](#) provides in relevant part: “ ‘Year of state service’ means any period of twelve consecutive calendar months of state service, but no month shall be counted in more than one such year ....”

The commission took the position, therefore, that compliance with the applicable statutory mandates requires recalculation of a retiree's final three years of service. **\*\*907**

\_\_\_\_\_(Cite as: 92 Conn.App. 712, \*716, 887 A.2d 904, \*\*907)\_\_\_\_\_

This recalculation involves adding the number **\*717**

\_\_\_\_\_(Cite as: 92 Conn.App. 712, \*717, 887 A.2d 904, \*\*907)\_\_\_\_\_

of months of service to which a retiree is entitled by virtue of his accrued vacation time to the final year of his state employment, at his then prevailing salary, and subtracting the same number of months of service at the beginning of the three year period of state employment, presumably at a lower salary. In the view of the commission, this methodology gives the plaintiffs the benefit of credit for their accrued vacation time and longevity without impairing the underlying time constraints that it views as embedded in the structure of the retirement program.

Because the plaintiffs disagreed with the commission's compensation formula, each of them filed a petition for a declaratory ruling challenging the commission's formula and requesting recalculation of his benefits.<sup>[FN8](#)</sup> The trial court dismissed these administrative appeals. The plaintiffs then filed the present appeal with this court.

[FN8.](#) For the purposes of this appeal, the separate petitions for declaratory ruling filed by each plaintiff, and the separate declaratory rulings issued to each plaintiff are identical.

In their appeal to this court, the plaintiffs seek plenary review of the declaratory ruling issued by the commission and upheld by the trial court. In their view, the trial court (1) improperly deferred to the commission's declaratory ruling and (2) improperly affirmed the commission's calculation of their “base salary.” The proper construction of [§ 5-162](#) raises a novel question of law on which the existing precedents give little guidance. We are persuaded, however, that the plaintiffs should prevail, and, therefore, we reverse the judgment of the trial court.




I

## STANDARD OF REVIEW

The first issue in this appeal is whether the trial court applied the proper standard of review in its analysis of **\*718**

\_\_\_\_\_(Cite as: 92 Conn.App. 712, \*718, 887 A.2d 904, \*\*907)\_\_\_\_\_

the commission's declaratory ruling. The parties agree that, because there was no evidentiary dispute, the petitions for a declaratory ruling raise pure questions of law. The parties also agree that the legal question with which the commission was presented has not been previously examined by a court. The plaintiffs claim, however, that the trial court, instead of reviewing these legal issues de novo, improperly afforded deference to the commission's conclusions of law. In dismissing the plaintiffs' appeal, the trial court relied not only on its own interpretation of the act, but also on the unanimity of the commission's interpretation and its long-standing and consistent application of that interpretation. We agree with the plaintiffs that the court should have examined the issues independently.

[1]  [2]  [3]  Judicial review of an administrative agency's action is governed by the Uniform Administrative Procedure Act, [General Statutes § 4-166](#) et seq. See [General Statutes § 4-183\(j\)](#).<sup>[FN9](#)</sup>  
“Ordinarily, **\*\*908**

(Cite as: 92 Conn.App. 712, \*718, 887 A.2d 904, \*\*908)

this court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes... Cases that present pure questions of law, however, invoke a broader standard of review than is ordinarily involved in deciding \*719

(Cite as: 92 Conn.App. 712, \*719, 887 A.2d 904, \*\*908)

whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion... Furthermore, when a state agency's determination of a question of law has not previously been subject to judicial scrutiny ... the agency is not entitled to special deference." (Internal quotation marks omitted.) [MacDermid, Inc. v. Dept. of Environmental Protection, 257 Conn. 128, 137, 778 A.2d 7 \(2001\)](#).

[FN9. General Statutes § 4-183\(j\)](#) provides: "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings. For purposes of this section, a remand is a final judgment."



[4] Concededly, the construction and application of [§§ 5-162\(b\)](#) and [5-154\(h\)](#) present issues of law not heretofore considered by the courts. Under these circumstances, the plaintiffs are entitled to plenary review of the claims they raised at trial. See, e.g., [Szewczyk v. Dept. of Social Services, 275 Conn. 464, 474, 881 A.2d 259 \(2005\)](#).

## II

### CONSTRUCTION OF [GENERAL STATUTES §§ 5-162](#) and [5-154](#)

Under [§ 5-162\(a\)](#), retirement income is determined by "years of state service" and "base salary." The principal issue in this case is whether, subject only to the 130 percent salary cap imposed by [§ 5-162\(b\)](#), the full dollar value of accrued vacation and final longevity payments received by a potential retiree should be added to "salary" received in the final year of state service for the purpose of calculating "base salary."



[5] When interpreting a statute, we look first to its text to ascertain whether its meaning is plain. See [General Statutes § 1-2z](#).<sup>FN10</sup> Although the parties would construe \*720

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[§ 5-162](#) differently, each maintains that the retirement pension act is clear and unambiguous. We find the web of statutory references and cross-references that inform the calculation of retirement pensions more problematic. To decide whether the commission's pension formula violates the statutory scheme of the act, "we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case. ... In seeking to determine that meaning, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter." (Internal quotation marks omitted.) [Lombardo's Ravioli Kitchen, Inc. v. Ryan, 268 Conn. 222, 230-31, 842 A.2d 1089 \(2004\)](#).

[FN10. General Statutes § 1-2z](#) provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

The trial court agreed with the commission that, although accrued vacation time and longevity payments are "salary," these payments cannot be added *directly* to the plaintiffs' annual salary for their final year of state service. In the commission's view, to do so would "add time" to that year **\*\*909**

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(Cite as: 92 Conn.App. 712, \*720, 887 A.2d 904, \*\*909)

beyond the twelve month limitation imposed by [§ 5-154\(n\)](#). This argument is premised on the applicability of [§ 5-154\(m\)\(6\)](#), which provides that "'state service' includes a *period* equivalent to accrued vacation time for which payment is made under [section 5-252](#)...." (Emphasis added.) The commission argues that this additional "period" cannot simply be added at the end of a retiree's state service without running afoul of [§ 5-154\(n\)](#), which defines "year of state service" to mean "any period of twelve consecutive calendar months of state service, *but no month shall be counted in more than one year*...." (Emphasis added).

Accordingly, the commission has adopted a formula, which the court endorsed, that adjusted each plaintiff's **\*721**

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(Cite as: 92 Conn.App. 712, \*721, 887 A.2d 904, \*\*909)

three highest paid years of state service to include the payment for and the temporal equivalent of his accrued vacation time and longevity payments and to subtract the same number of months and prior salary from the first of the last three years of his state service. Ordinarily, this formula is beneficial to retirees because it substitutes salary at the highest rate for salary at the third highest rate. The court not only agreed with the logic of the commission's position but stated additional reasons for dismissal of the plaintiffs' appeal. It noted that the commission's decision was unanimous with respect to the present appeals and reflected a statutory interpretation of long standing. Finally, it doubted that the legislature would have intended to reward the failure to use vacation time with a substantial addition to a retirement pension.



[6] The plaintiffs read the statutes differently. In their view, [§ 5-154\(m\)](#) is relevant to the calculation of "years of state service" in [§ 5-162\(a\)](#), but not to the calculation of "base salary." We agree. We find it significant that [§ 5-162\(b\)](#), which defines the operative terms of "base salary," does not include a cross reference to [§ 5-154\(m\)](#). It is also significant that, while the commission and the trial court take the view that accrued vacation payments and longevity payments should be treated alike, [§ 5-154\(m\)](#) does not refer to longevity payments.<sup>FN11</sup> [Section 5-154\(m\)](#) cannot, therefore, be dispositive.

[FN11](#). At oral argument before the trial court, counsel for the commission made clear that the commission's treatment of the vacation and longevity payments was identical, stating "at the outset, let me make an observation on the issue of longevity payments and on the issue of vacation payment. There is no substantive difference in the analysis made for longevity payment. The same analysis [is] made for vacation."

The only other statutory basis relied on by the **commission** for its formulaic attribution of service equivalents to the payments received by the plaintiffs is the **\*722**

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reference to **state** service in the statutory definition of salary. Pursuant to [§ 5-154\(h\)](#), "salary" is "any payment, including longevity payments and payments for accrued vacation time ... *for state service*...." (Emphasis added.) According to the **commission**, this "plain language ... demonstrates that **state** service includes longevity payments ...." We are not persuaded. The **commission's** interpretation results in the definition of salary subsuming and rendering superfluous the explicit definition of **state** service, provided by the legislature, in [§ 5-154\(m\)\(6\)](#).

The flaw in the **commission's** analysis is, however, more basic. The **commission** seems to take the position that, because [§ 5-154\(m\)](#) permits a retiree to use accrued vacation time to extend the length of

his **state** service, accrued vacation time cannot be used for anything else. That is not what the statute says. Indeed, the **\*\*910**

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**commission** does not deny that the plaintiffs in this case properly received both monetary payments and service credits as compensation for their unused vacation time. Similarly, subject to the 130 percent cap **stated** in [§ 5-162\(b\)](#), the plaintiffs are entitled to have their accrued vacation time factored into their **retirement** income.

We are equally unpersuaded by the trial court's reliance on the **commission's** rulings in this case because they reflect a unanimous policy of long standing.

Although the **commission** is persuaded that its calculation of **retirement** income properly reflects accrued vacation time while simultaneously "ensur[ing] that [only] the three highest paid years of **state** service are captured and averaged," at best, its reading of the governing statutory provisions is highly technical. The adoption of a **commission** policy that depends on a reading of a statute that is hypertechnical would better have been manifested by promulgating a regulation that **\*723**

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would have given notice to potential retirees of the **commission's** view of unused vacation time. With notice, the **commission** might have been asked, for example, to consider the significance of the fact that, for those **state employees** who receive no raises during their three highest paid years, the **commission's** policy would have provided no benefit under [§ 5-154\(h\)](#) for vacation time accruals.



[7] The decision of the **commission** and the judgment of the trial court reflect concern with the propriety of a public policy that encourages a **state employee** to accrue significant periods of unused vacation time. As previously noted, each of the plaintiffs has a statutory right to receive credit for such accrued vacation time by a direct payment and by additions to their service time. As we construe [§ 5-162](#), they also have a statutory right to factor accrued vacation time into their retirement income.

Perhaps the legislature should rethink this policy. It is not in our province to do so.

The judgment is reversed and the case is remanded with direction to remand the matter to the commission for recalculation of the plaintiffs' retirement income.

In this opinion the other judges concurred.

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