

**TESTIMONY OF DANIEL LIVINGSTON, LIVINGSTON, ADLER, PULDA, MEIKLEJOHN  
& KELLY, PC  
REGARDING HOUSE BILLS 5149, 5209, 5750, AND 5754  
BEFORE THE APPROPRIATIONS COMMITTEE  
MARCH 26, 2021**

Representative Walker, Senator Osten, and members of the Appropriations Committee:

I submit this testimony today as the Chief Negotiator for SEBAC, the State Employees Bargaining Agent Coalition. On behalf of Connecticut's 45,000 state employee union members, we strongly oppose House Bills 5149, 5209, 5750, and 5754 which seek to take overtime out of pension calculations. These types of bills have been submitted repeatedly over a number of years and are always defeated for good policy reasons which I will discuss below. But before I discuss the general reasons, I must note the particularly poor timing of this effort, the intended impact of which is to lower the retirement income of blue-collar workers. We are in the middle of a pandemic which has made clear that, as a state, we expect the most out of those whom we often pay the least; we know that we are getting through this pandemic in large part due to the tremendous risk, and too often tragic cost, to frontline workers and their families, and that the workers and communities most likely to be affected are predominately black and brown. Because in our state workforce, as in our society as a whole, black and brown workers are more concentrated in blue-collar jobs than white workers are, these overtime bills aim their pernicious effects more at black and brown workers than at white, and more at workers of all colors who faced the tremendous risks of working on-site during the pandemic than those who could work remotely or, at very least, more distanced from the public and co-workers. For these reasons alone, we would urge the Committee to summarily reject these bills, and indeed we would urge the proponents to withdraw them. They are beyond tone deaf to the possibility, in fact the necessity, of making positive change for working families and for communities of color in this historic moment. And they send a message of disrespect to precisely those who deserve our respect the most.

And, of course, they remain wrong-headed for all the reasons they have always been wrong-headed. Connecticut's defined benefit plan, like all defined benefit plans, is an employer's way to encourage long service from its employees, thus increasing average skill levels, decreasing turnover costs, and improving services. It does that by – often, as in Connecticut, along with a contribution from employees – taking some of the money the employer would otherwise pay those workers in wages and investing it instead in a pension fund. And since the benefits in defined benefit plans are geared to reward long service workers, such a plan provides strong encouragement for a skilled and dedicated workforce to remain in state service. Thus, it is an essential part of making sure that our State has the quality, educated, workforce its people need. But a pension plan fulfills its purpose because employees trust the employer's promise, the employer's word. While these bills are, to say the least, short on specifics, they clearly send the clear message

that the State's word means nothing, and employees rely upon the State's promise of a pension at their own peril. Such an unreliable system inherently fails to fulfill its public purpose of encouraging dedicated and long-term service to the people of this State. And just as bad, it subjects the State to huge financial liability while disrespecting collective bargaining of fully half of Connecticut's hard-working employees.

### **(1) Breaking the State's Word *and* Subjecting the State to Huge Liability**

These bills, by their terms, exclude overtime from the pension calculations for anyone retiring after their effective date. This means that people who worked for years relying on a promise to base their pensions on their actual earnings will suddenly have that pension reduced, effectively, and retroactively to the date they were hired. They worked for years and part of the payment for that work was the State's pension promise. Indeed, that promise was even embodied in contract. By seeking to retroactively change the value of that promise, the State simultaneously damages itself - by dis-incentivizing employees to come to and remain with the State, damages workers, and subjects itself to huge liability.

Why huge liability? Two equally powerful reasons. First, courts have found that contractually promised pension benefits cannot be changed except by mutual agreement. These bills though unilaterally change the value of benefits earned under the State's existing contract with SEBAC. Even if they were modified to take effect only after the current contract ends in 2027, it would not matter. The change impacts benefits earned during the contract. This alone could subject the State to hundreds of millions of dollars in liability. But there's more.

What will the State do with all the pension contributions the plan took in from employees -- who for years have paid from 2%, to now as much as 8%, contributions on their overtime earnings? The sole reason such contributions have been and are being collected is that overtime counts towards pension. Will the State refund this money, plus interest, to all employees who have earned overtime? Perhaps extending back over 30 years or more? How many hundreds of millions of dollars will the State return? Or will a court have to make it do that?

### **(2) Removing Overtime from Pensions is Bad Policy**

Our pension plan covers around 45,000 workers, a little less than half of whom are white-collar professionals, and about half of whom are blue-collar, hourly workers. White-collar, professional workers tend to get paid more in part because they don't get overtime calculated into their salary. Rather, when you become a supervisor or you become a professional employee, you get an increase -- and part of the reason you get that increase is because you know that if you do work more than 40 hours, and you are pulled away from your family, it is not going to give you extra dollars in your paycheck. Blue-collar workers, on the other hand, don't get that salary increase. They work hourly

-- and if they are pulled away from their families for extra work, they get paid overtime. And so, if you were now to say overtime doesn't count towards their pension, you are essentially discriminating against these blue-collar workers; instead favoring professional workers whose salary already includes money in lieu of overtime.

The reality is that so removing overtime from pensions has no effect on managers and professionals. Instead, it cuts retirement benefits for snowplow drivers who spend 30 years away from their families to keep our roads clear. And retirement benefits for nurses and CNAs who pay double day care bills because they spend a career of constant forced overtime caring for the developmentally disabled and the mentally ill. It would cut retirement benefits for corrections officers who are held over almost every week of their working lives because there aren't enough co-workers to relieve them so they can go home to their families. And also, for first responders who can't just go home at the end of shift because their job is to run toward the dangers that the rest of us run away from – even at inconvenient times. Some may prefer to protect retirement security only for those with graduate degrees whose salaries reflect the extra work they are forced to give in tough times, and to ignore the hourly workers who show the same dedication but have only the overtime to reflect the toll it takes on them and their families. But that just wouldn't be right. And our State should not be part of it.

We know the excuse for these bills is so-called “pension spiking.” But let's take a step back first. Pension spiking stories get a lot of press, but there is almost no such spiking that actually occurs in our plan. We adopted new anti-spiking rules in 2011 that are just starting to take effect. But even before that, of the 2000 or more state workers who retire every year, it was less than a handful that raised this issue. That's because overtime is assigned by management. Most people couldn't “spike” their earnings even if they wanted to. But we agree it's something that shouldn't happen, and we believe the updated anti-spiking rules that are just coming into effect from the 2011 changes will prevent even those few cases of spiking that have been occurring. And with Tier 4, the new plan adopted in 2017, spiking is outright impossible. These bills are more than just a supposed solution looking for a problem. It is a supposed solution which is unprincipled, unfair, bad public policy, and – because it would subject the State to hundreds of millions of dollars in liability – irresponsible.

And of course, removing overtime disrespects collective bargaining. What salary is pensionable, and how it effects benefits, is a subject of collective bargaining for state employees, just as it would be for union workers in the municipal or private sector. One of our nation's greatest leaders, a man who almost 50 years ago, was assassinated while in Memphis defending the collective bargaining rights of public employees, Dr. Martin Luther King told us this:

History is a great teacher. Now everyone knows that the labor movement did not diminish the strength of the nation but enlarged it. By raising the living standards of millions, labor miraculously created a market for industry and lifted

the whole nation to undreamed of levels of production. Those who attack labor forget these simple truths, but history remembers them. [...]

These bills are but one part of what has become a sad tradition of dozens, or even hundreds, of attacks in the general assembly each year on collective bargaining in our state, public sector and private. These attacks forget not just the decades of history by which organized labor helped build and defend the middle class, but history as recent as 2017, when state employees alone provided more than 30% of the money needed to balance the budget and through SEBAC 2017 will save over \$25 billion over 20 years. Just another of those simple truths that those who attack organized labor forget, but history remembers.

These bills are bad for the heroes who have risked the most in the pandemic, a dishonor to the State's word, a risk of hundreds of millions in state liability, and a disservice to the public employees and the public they serve. The Coalition respectfully urges their rejection.