



# Employees' Retirement System of Rhode Island

## Employees' Retirement System of Rhode Island -- Retirement Board Meeting

<b>Schedule</b>	Wednesday, March 14, 2018, 09:00 AM — 11:30 AM EDT
<b>Venue</b>	50 Service Avenue, Warwick, Rhode Island, 2nd Floor Conference Room
<b>Description</b>	Monthly Retirement Board Meeting
<b>Notes for Participants</b>	<p>Parking is available in front of our building. Additional parking is available in the parking lot as you pass through the gate which will open using your identification. You can enter either by the back parking lot entrance to come up the stairs to the 2nd floor or you can walk around to the main entrance which is in the front of the building to enter.</p> <p>If you are unable to attend the March meeting, please contact Frank at 462-7610 or Roxanne at 462-7608.</p>

Enclosed is the record of the Disability Application and other relevant materials for Julie Furgasso. It is important to remember that Disability Applications are not subject to open records and therefore must be kept confidential.

To ensure the privacy and confidentiality of the applicant's information, please do not display, provide or discuss any of the Disability Applications outside of the Board Meeting.

**Organizer** Frank J. Karpinski

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# Employees' Retirement System of Rhode Island

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# Employees' Retirement System of Rhode Island



Posted Agenda



**EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND**  
**RETIREMENT BOARD MONTHLY MEETING**

**Wednesday, March 14, 2018**  
**9:00 a.m.**  
**2<sup>nd</sup> Floor Conference Room**  
**50 Service Avenue, Warwick, RI**

- I. Chairperson Call to Order
- II. Approval of the Draft Meeting Minutes of the January 17, 2018 Retirement Board Meeting
- III. Chairperson's Report
  - Quarterly Update on the Investment Portfolio and Defined Contribution Update as of December 31, 2017 by CIO Alec Stais
- IV. Executive Director's Report
- V. Administrative Decisions
  - Disability Appeal – *Julie Furgasso vs. ERSRI*
  - Administrative Appeal – *Russell J. Krackowski vs. ERSRI*
- VI. Approval of the January and February Pensions as Presented by ERSRI
- VII. Legal Counsel Report
- VIII. Committee Reports
  - Disability Subcommittee – (See Attachments I and II)*
  - Joint Governance and Member Services Subcommittees*
    - Recommendation and consideration of draft regulation prepared by board counsel relating to enforcing restrictions on post-retirement employment, and eliminating ongoing efforts to circumvent those restrictions.
  - Governance Subcommittee*
    - Review and Consideration of Executive Director Evaluation and Process
  - Administration Subcommittee*
    - Consideration of 2018 Policy Premium on Cyber Insurance
- IX. Adjournment

## **Attachment I**

### **Disability Applications and Hearings on Friday, February 9, 2018**

- \* Daniel Cook
- \* Laurie Littlefield
- \* Stephen Boulton
- \* Albert Campanini
- \* Linda Cameron
- \* Patrick Luther
- \* Laurie Testone
- \* Belinda Aldrich
- \*\* Francis Mansi, Jr.
- \*\* Rosemary Pari

\*Votes by the full Board on these applications will be limited to approvals made by the Disability Subcommittee at their February 9, 2018 meeting.

\*\*Recommendations on these denied applications or decisions reversing prior denials were approved by the Disability Subcommittee at their February 9, 2018 meeting.

## **Attachment II**

### **Disability Applications and Hearings on Friday, March 9, 2018**

- \* Kellie Wallace
- \* Andrew Butler
- \* Peter Gesualdi
- \* Joyce Garrett
- \* Donald Cyr
- \* Walter Schmeller, III
- \* Sandra Canto Murray
- \* Kerry Etienne
- \* Karen Breene
- \* Edward Crawley
- \*\* Daniel Cook
- \*\* Laurie Littlefield
- \*\* Belinda Aldrich

\*Votes by the full Board on these applications will be limited to approvals made by the Disability Subcommittee at their March 9, 2018 meeting

\*\*Votes by the full Board on these denied applications, and on decisions reversing prior denials are subject to approval of the decisions by the Disability Subcommittee at their March 9, 2018 meeting



# Employees' Retirement System of Rhode Island



## 1. Chairperson Call to Order

Presented by Treasurer Seth Magaziner

# Employees' Retirement System of Rhode Island



## 2. Approval of the Draft Meeting Minutes of the January 17, 2018 Retirement Board Meeting

For Vote

Presented by Treasurer Seth Magaziner



**Employees' Retirement Board of Rhode Island**  
**Monthly Meeting Minutes**  
**Wednesday, January 17, 2018**  
**10:00 a.m.**  
**2<sup>nd</sup> Floor Conference Room, 50 Service Avenue**

The Monthly Meeting of the Retirement Board was called to order at 10:00 a.m., Wednesday, January 17, 2018 in the 2<sup>nd</sup> Floor Conference Room, 50 Service Avenue, Warwick, RI.

## **I. Roll Call of Members**

The following members were present at roll call: General Treasurer Seth Magaziner; Roger P. Boudreau; Mark A. Carruolo; Mr. Brian M. Daniels; Mark A. Dingley, Esq., designee for Michael DiBiase; Paul L. Dion, Ph.D.; Thomas M. Lambert; John P. Maguire; Claire M. Newell; Marcia B. Reback; Jean Rondeau and Dr. Laura Shawhughes.

Also in attendance: Frank J. Karpinski, ERSRI Executive Director; Attorney Michael P. Robinson, Board Counsel.

Members absent were: Marianne F. Monte; Thomas A. Mullaney; Michael DiBiase and Vice Chair William B. Finelli.

Recognizing a quorum, Treasurer Magaziner called the meeting to order.

## **II. Approval of Minutes**

On a motion duly made by Jean Rondeau and seconded by Claire Newell it was unanimously

**VOTED: To approve the minutes of the December 22, 2017 meeting of the Retirement Board of the Employees' Retirement System of the State of Rhode Island.**

## **III. Chairman's Report**

Treasurer Magaziner apprised the Board that he had no report.

## **IV. Executive Director's Report**

Director Karpinski apprised the Board that 1099's were mailed to retirees, and they are also available online.

Director Karpinski apprised the Board that the iPads are in and are in the process of being configured and he will be sending out emails pertaining to training sessions in the hopes of having them up and running next month.

Regarding the ERS Report of Contributions, Director Karpinski said East Greenwich School Department, Learning Community Charter, West Bay Collaborative, and Hope Valley Wyoming are now current.

**Review of Cyber Security Policies at TIAA, Shawn Swartout, Director, Cyber Investigations, Laurence E. Brown, Senior Director, Investment Strategist and David Iden, Relationship Manager**

David Iden, Relationship Manager, introduced Mr. Shawn Swartout, from TIAA to present the Cyber Security Policies to help inform about the controls and steps that TIAA makes in connection with Cyber Security to mitigate security threats.

Mr. Swartout provided an overview of TIAA's efforts to anticipate and mitigate security risks.

Mr. Boudreau commented on the origins of this presentation and the recent Equifax security incident, and noted his feeling that it is the obligation of fiduciaries to question vendors to assure best security practices for the safety of the system's members.

**V. Administrative Decisions**

*None this month*

**VI. Approval of the December Pensions as Presented by ERSRI**

On a motion by Roger P. Boudreau and seconded by Claire M. Newell, it was unanimously **VOTED: To approve the December Pensions as presented.**

**VII. Committee Reports**

**Disability Subcommittee:**

Dr. Shawhughes noted that the Disability Subcommittee had discussed concerns about not delaying the processing of pensions in light of the Board moving to less frequent meetings.

The General Treasurer noted that the Board meeting schedule should not impact the processing of disability pension approvals.

The Disability Subcommittee recommended the following actions on disability applications as a result of its January 5, 2018 meeting for approval by the full Board.

<b>Name</b>	<b>Membership Group</b>	<b>Type</b>	<b>Action</b>
1. Willie Robinson	Laborer	Accidental	Approved
2. Georgia Duncan	State	Accidental	Approved
3. Brian Sullivan	State	Ordinary	Approved
4. Kevin Murray	Teacher	Ordinary	Approved
5. Brian Stanley	Municipal	Ordinary	Approved

**Decisions from prior meeting for vote**

6. Cynthia Meeks	Teacher	Accidental	Denied
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On a motion by Dr. Shawhughes and seconded by Jean Rondeau it was unanimously

**VOTED: To approve the recommendation of the Disability Subcommittee meeting of January 5, 2018 on items 2 and 3.**

Ms. Claire M. Newell recused herself from items 2 and 3.

On a motion by Dr. Shawhughes and seconded by Roger P. Boudreau it was unanimously

**VOTED: To approve the recommendation of the Disability Subcommittee meeting of January 5, 2018 on item 1.**

Mr. Thomas M. Lambert recused himself from item 1.

On a motion by Dr. Shawhughes and seconded by Roger P. Boudreau it was unanimously

**VOTED: To approve the recommendation of the Disability Subcommittee meeting of January 5, 2018 on item 4.**

Mr. Thomas M. Lambert recused himself on item 4.

Mr. John P. Maguire recused himself on item 4.

On a motion by Dr. Shawhughes and seconded by Ms. Marcia B. Reback it was unanimously

**VOTED: To approve the recommendation of the Disability Subcommittee meeting of January 5, 2018 on item 5.**

On a motion by Dr. Shawhughes and seconded by Mr. Roger P. Boudreau it was unanimously

**VOTED: To approve the recommendation of the Disability Subcommittee meeting of January 5, 2018 on item 6.**

John P. Maguire recused himself on item 6.

Ms. Marcia B. Reback abstained on item 6.

#### **Governance Subcommittee:**

Mr. Maguire spoke about the Joint meeting of the Governance and the Member Services subcommittee's, and discussions related to reporting of substitute teacher post retirement employment. Director Karpinski believes that most systems will be in compliance and will be able to provide the system with the required information on a going forward basis.

Mr. Maguire also noted that there were final revisions made to the Executive Director's Draft Evaluation and Process following Subcommittee discussion. The Subcommittee unanimously voted to recommend to the full board its approval, which will be presented prior to the March meeting for the Board's review.

Ms. Reback stated that they also discussed issues regarding the effective date of retirement for teachers who retire at the end of the school year, and that the Subcommittees are seeking information from the actuary and tax attorney with respect to the impact of a potential regulation change.

### **VIII. Legal Counsel Report.**

Attorney Robinson apprised the Board that he had no specific report this month.

## **IX. Adjournment**

There being no other business to come before the Board, on a motion by Roger P. Boudreau and seconded by Marcia B. Reback, the meeting adjourned at 10:54 a.m.

Respectfully submitted,

**Frank J. Karpinski**

Executive Director

DRAFT

# Employees' Retirement System of Rhode Island



## 3. Chairperson's Report

For Report

Presented by Treasurer Seth Magaziner

# Employees' Retirement System of Rhode Island



## 3.1. Quarterly Update on the Investment Portfolio and Defined Contribution Update as of December 31, 2017

For Report

Presented by Alec Stais



# Employees' Retirement System of Rhode Island



## 4. Executive Director's Report

Presented by Frank J. Karpinski

# Employees' Retirement System of Rhode Island



## 5. Administrative Decisions

## RESTRICTED PAGE

You have no permission to view pages 15 to 915.

# Employees' Retirement System of Rhode Island



## 5.2. Administrative Appeal – Russell J. Krackowski vs. ERSRI

Presented by Michael P. Robinson



# Employees' Retirement System of Rhode Island

ERSRI Board:

February 2, 2018

Seth Magaziner  
General Treasurer  
Chair

Mr. Russell J. Kraczkowski

William B. Finelli  
Vice Chair

[REDACTED]  
Chepachect, RI 02814

Roger P. Boudreau

RE: *Notice of Full Board Hearing*  
*Russell J. Kraczkowski v. Employees' Retirement System of Rhode Island*

Mark A. Carruolo

Dear Mr. Kraczkowski:

Brian M. Daniels

Please be advised that the decision of the Employees' Retirement System of Rhode Island to deny your request has been upheld by the Hearing Officer. In accordance with Regulation 1.4 of the Rules and Regulations of the Employees' Retirement System of Rhode Island entitled Rules of Practice and Procedure for Hearings in Contested Cases, this recommendation will be presented to the full Retirement Board for approval or denial at the March 14, 2018 Retirement Board Meeting. You have the right to appear before the Retirement Board and make oral argument in support of or in opposition to the Hearing Officer's decision. The Retirement Board meeting will begin at 9:00 a.m., and your hearing is scheduled for:

Michael DiBiase

Paul L. Dion

Thomas M. Lambert

John P. Maguire

Marianne F. Monte

Thomas A. Mullaney

Claire M. Newell

Marcia B. Reback

Jean Rondeau

Laura Shawhughes

DATE:

Wednesday, March 14, 2018

TIME:

9:30 a.m.

LOCATION:

2<sup>nd</sup> Floor Conference Room

50 Service Avenue

Warwick, Rhode Island 02886

A party wishing to file a brief or make exceptions must submit 15 copies to the Retirement System, Attention: Roxanne Donoyan no later than 10 days prior to the date of the Retirement Board meeting.

If you are unable to attend this meeting, please notify me at 462-7608 as soon as possible. Should the meeting be rescheduled, we will notify you of the new date and time of the meeting.

Sincerely,

*Roxanne Donoyan*  
Roxanne Donoyan

cc: Michael P. Robinson, Esq.

Enclosure: Employees' Retirement System of Rhode Island Rules & Regulations, Regulation 1.4

## 1.4 Rules of Practice and Procedure for Hearings in Contested Cases

### A. Introduction

1. These Rules of Practice and Procedure are promulgated pursuant to R.I. General Laws Section 36-8-3. The Rules shall be in effect during any hearing on a contested case before the Retirement Board or its duly authorized representatives.

### B. Definitions

1. The definitions set forth in R.I. General Laws Sections 36-8-1, 45-21-2, 45-21.2-2 and 16-16-1, and as further set forth in Regulations promulgated by the Retirement Board, are specifically incorporated by reference herein.
  - a. "Contested case" means a matter for which a member requests a hearing because he or she is aggrieved by an administrative action other than a Disability decision. The term shall apply to hearings conducted before Hearing Officers, and thereafter in proceedings before the full Retirement Board.
  - b. "Party" means any member, beneficiary, Retirement System, or such other person or organization deemed by the Hearing Officer to have standing.
  - c. "Hearing Officer" means an individual appointed by the Retirement Board to hear and decide a contested case.

### C. Request for Hearing and Appearance

1. Any member aggrieved by an administrative action other than a Disability decision, may request a hearing of such grievance. Upon such request, the matter will be deemed a contested case. The procedure for Disability decisions and appeals therefrom shall be governed by the procedures set forth in Section 1.9, Rules Pertaining to the Application to Receive an Ordinary or Accidental Disability Pension.
2. Such request shall be in writing and shall be sent to the Retirement Board within sixty (60) days of the date of a letter from the Executive Director or Assistant Executive Director constituting a formal administrative denial.
3. A request for hearing shall be signed by the member and shall contain the following information:
  - a. Name of member;
  - b. Date and nature of decision being contested;

- c. A clear statement of the objection to the decision which must include the reasons the member feels he or she is entitled to relief; and
  - d. A concise statement of the relief sought.
4. Requests for hearing should be sent to the Retirement Board at 50 Service Avenue, 2<sup>nd</sup> Floor, Warwick, RI 02886-1021.
  5. Failure to strictly comply with the procedures outlined in this Section shall be grounds to deny any request for a hearing.

D. Contested Cases – Notice of Hearing

1. Upon receipt of a request for hearing in matters other than Disability decisions and appeals therefrom, the Retirement Board or its designee shall appoint a Hearing Officer. The appointed Hearing Officer shall hear the matter, find facts and offer conclusions of law to the Retirement Board. The decision of a Hearing Officer shall be subject to approval by the full Retirement Board. The Retirement System's action shall not be deemed final until such time as the Hearing Officer's recommendation has been voted upon by the Retirement Board.
2. Within forty-five (45) days after receipt by the Retirement Board of a request for hearing, the Retirement Board shall give notice that the matter has been assigned to a Hearing Officer for consideration.
3. In any contested case, all parties shall be afforded an opportunity to be heard after reasonable notice.
4. The notice described in subsection (2), above, shall include:
  - a. A statement of the time, place, and nature of the hearing;
  - b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
  - c. A reference to the particular sections of the statutes and rules involved;
  - d. The name, official title and mailing address of the Hearing Officer, if any;
  - e. A statement of the issues involved and, to the extent known, of the matters asserted by the parties; and
  - f. A statement that a party who fails to attend or participate in the hearing may be held to be in default and have his or her appeal dismissed.

5. The notice may include any other matters the Hearing Officer or the Retirement Board considers desirable to expedite the proceedings.

**E. Contested Cases – Hearings in General**

1. All parties shall be afforded an opportunity to respond and present evidence and argument on all issues involved.
2. Members must appear at hearings either personally, or by appearance of legal counsel. Members may represent themselves or be represented by legal counsel at their own expense. Consistent with RIGL §11-27-2 entitled, "Practice of law", any person accompanying the member who is not a lawyer (certified member of the bar of the State of Rhode Island) cannot represent the member in the hearing.
3. Continuances and postponements may be granted by the Hearing Officer or the Retirement Board at their discretion.
4. Disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.
5. Should the Hearing Officer or Retirement Board determine that written memoranda are required, the member will be notified by the Hearing Officer or the Retirement Board of the need to file a written document which discusses the issues of the case. Memoranda of law may always be offered in support of arguments offered by the member or the representative of the retirement systems.
6. The Executive Director may, when he or she deems appropriate, retain independent legal counsel to prosecute any contested case.
7. A recording of each hearing shall be made. Any party may request a transcript or copy of the tape at their own expense.

**F. Contested Cases - Conduct of Hearings before Hearing Officers**

1. Hearings shall be conducted by the Hearing Officer who shall have authority to examine witnesses, to rule on motions, and to rule upon the admissibility of evidence.
2. The Hearing shall be convened by the Hearing Officer. Appearances shall be noted and any motions or preliminary matters shall be taken up. Each party shall have the opportunity to present its case generally on an issue by issue basis, by calling and examining witnesses and introducing written evidence.
3. The Member shall first present his or her case followed by presentation of the Retirement System's case.



4. The Hearing Officer shall have the authority to continue or recess any hearing and to keep the record open for the submission of additional evidence.
5. If for any reason a Hearing Officer cannot continue on a case, another Hearing Officer will be appointed who will become familiar with the record and perform any function remaining to be performed without the necessity of repeating any previous proceedings in the case.
6. Each party shall have the opportunity to examine witnesses and cross-examine opposing witnesses on any matter relevant to the issues in the case.
7. Any objections to testimony or evidence and the basis for the objection shall be made at the time the testimony or evidence is offered.
8. The Hearing Officer may question any party or any witness for the purpose of clarifying their understanding or to clarify the record.
9. The scope of hearing shall be limited to those matters specifically outlined in the request for hearing.
10. Written evidence will be marked for identification. If the original is not readily available, written evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original.
11. Findings of fact shall be based solely on the evidence and matters officially noticed.
12. If a member fails to attend or participate in the hearing as requested, the Hearing Officer may default such member and dismiss his or her appeal with prejudice.

**G. Contested Cases – Record of Proceedings before Hearing Officers**

1. The record in a contested case shall include:
  - a. All pleadings, motions, intermediate rulings;
  - b. Evidence received or considered;
  - c. A statement of matters officially noticed;
  - d. Questions and offers of proof and rulings thereon;
  - e. Proposed findings and exceptions;

- f. Any decision, opinion, or report by the Hearing Officer at the hearing; and
- g. All staff memoranda or data submitted to the Hearing Officer in connection with their consideration of the case.

H. Ex Parte Communications (Communications by one party)

- 1. There shall be no communications between the Hearing Officer and either a member, the Retirement System or the Retirement Board, or any of their representatives regarding any issue of fact or law in a case, without notice and opportunity for all parties to participate. There shall be no written communications by any party that are not transmitted at the same time to all parties.

I. Rules of Evidence in Contested Cases:

- 1. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the superior courts of this state shall be followed. Evidence not usually admitted under the rules of evidence for civil cases may be admitted where it is shown that such evidence is necessary to ascertain facts not capable of being proved otherwise. The Hearing Officer and the Retirement Board shall give effect to the rules of privilege (such as attorney/client privilege) recognized by law. Objections to evidence may be made and shall be noted in the record. Any part of the evidence may be received in written form when a hearing needs to be expedited and the interests of the parties will not be hurt substantially.

J. Final Decision and Member Right of Appeal

- 1. Within twenty-five (25) days after receipt of the Hearing Officer's recommendation, a copy thereof shall be served upon all parties to the proceeding and each party shall be notified of the time and place when the matter shall be considered by the Retirement Board. Each party to the proceeding shall be given the right to make exceptions, to file briefs and to make oral arguments before the Retirement Board. No additional evidence will be considered by the Retirement Board once the Hearing Officer has issued a recommendation. A party wishing to file a brief or make exceptions to the recommendation of the Hearing Officer shall be required to submit the same to the Executive Director not later than ten (10) days prior to the date when the Retirement Board is scheduled to hear and act upon the recommendation of the Hearing Officer. The aggrieved party and his or her representative shall have the right to appear before the Retirement Board and make oral argument at the time of such hearing. No new testimony will be taken, or evidence considered at this time. Consistent with RIGL §11-27-2 entitled, "Practice of law" any person accompanying the member who is not a lawyer (certified member of the bar of the State of Rhode Island), cannot represent the member before the Retirement Board. After consideration of

the decision of the Hearing Officer and such other argument as shall be presented by any party to the proceeding, the Retirement Board shall vote on the recommendation of the Hearing Officer.

2. In the event of a tie vote of a quorum present and voting on a contested matter, the matter will automatically be placed on the agenda of the next Retirement Board meeting.

In the event of a tie vote of a quorum present and voting on a contested matter rescheduled from a prior meeting, the Retirement Board may vote to postpone and re-consider the matter at a subsequent hearing, when a larger number of voting members may be present. If no such vote to postpone and re-consider is taken, or if a vote to postpone and re-consider the matter at a later date fails, the underlying action appealed from will be deemed affirmed

#### K. Requests for Rehearing

1. A request for rehearing which is submitted prior to the issuance of the Hearing Officer's recommendation should be made in writing. The request must detail the substance of any additional evidence to be offered, and the reason for the failure of the party to offer it at the prior proceedings.
2. A rehearing will be denied if the evidence does not bear on any issue in contest in the original proceedings, will not likely affect the final recommendation, or if the request appears to be merely for purposes of delaying a final decision. A second request for rehearing after the granting or denial of a prior request for rehearing will not be permitted.

### 1.5 Rules of Elections to Employees Retirement Board

#### 1.5.1 Regular Elections

##### A. Date of Election.

1. Regular elections will be held in the January preceding the expiration of the elected members' term of office.

##### B. Notice of Election.

1. A notice of intent to hold elections to seat members of the state employees, teacher, municipal employee and retiree groups shall be sent by regular mail to each member of the system by September 15th of the year preceding the election. Additional notices will be made available for posting in various state and municipal agencies, schools, and related public offices. Each such mailing shall be made to the last known address of the member, as provided by the member's employer or the member's data file at the retirement system.

##### C. Eligibility to Vote and Candidacy.

STATE OF RHODE ISLAND  
PROVIDENCE, SC

EMPLOYEES RETIREMENT  
SYSTEM OF RHODE ISLAND

Appeal of:

Russell J. Kraczkowski  
Appellant-Petitioner  
(Group Life Insurance, Interest on Adjustment Payments)

Vs.

Employees Retirement System of Rhode Island,  
Appellee – Respondent – ERSRI

**DECISION**

Appearances

For Petitioner:

Russell J. Kraczkowski  
Pro Se

For Respondent:

Michael Robinson, Esq.  
Shechtman, Halperin, Savage LLP  
1080 Main Street  
Pawtucket, RI 02860

Hearing Officer:

Charles M. Koutsogiane, Esq.  
One Grove Avenue  
East Providence, RI 02914

**TRAVEL OF THE CASE**  
**AND**  
**STATEMENT OF FACTS**

Russell J. Kraczkowski ("Petitioner") is appealing the August 15, 2017 letter decision (Jt.Ex.15) of the Employees Retirement System of Rhode Island ("Respondent" and/or "ERSRI") denying, in part, his assertions (i) that due to ERSRI's negligence he had not been enrolled in the state's group life insurance program, post retirement; (ii) that he was entitled to interest on adjustment pension payments made as a result of a 1998 salary adjustment, as well as for interest from 2000 salary adjustments that were later refunded to him in 2013; and (iii) that he was entitled to retirement benefit adjustments relating to his 1997 outside earnings. The 1997 earnings were eventually agreed to at the hearing and are being addressed by the parties.

This matter was brought pursuant to and in accordance with the statutory requirements set forth in R.I.G.L. §36-8-3 as well as Regulation Four, Rules of Practice and Procedure for Hearing and a hearing on the merits was conducted on September 28, 2017 at the offices of the Employees Retirement System of Rhode Island, 50 Service Avenue, Warwick, Rhode Island. Petitioner appeared Pro Se. Gayle Mambro-Martin, Deputy General Counsel for ERSRI, testified on behalf of the agency. Documents were admitted into evidence as part of the official record and are made a part hereof; they are indexed in the separate September 28, 2017 exhibit-binder prepared by Allied Court Reporters.

ERSRI submitted a Post-Hearing Memorandum dated December 4, 2017. Petitioner declined the opportunity to submit a response Post-Hearing Memorandum, preferring to rest on the testimony and exhibits he introduced at the September 28, 2017 hearing.

**GROUP LIFE INSURANCE:** The pertinent facts of this case are mostly agreed upon. Petitioner retired from the Department of Corrections (“DOC”) on an accidental disability pension in 1994. (Tr19: 9-21) He testified on direct that for the first time in February 2017 he learned that he had not been enrolled in the state’s group life insurance program with Aetna Insurance (\$10,000). (Tr11:15-22) He thought that he had been signed up when he processed his retirement package with DOC in 1994. (Tr16: 6-14)

When Petitioner discovered the omission he contacted Aetna directly and they informed him that he did not have the group life insurance. (Tr16; 15-25)(Jt. Ex.10) Petitioner alleged that when he brought this to the attention of DOC in 2017 it was their contention that: “the blame goes back to the Pension System, that they didn’t do their job. They’re saying they dropped, this agency dropped the ball.” (Tr17: 2-8) (Jt. Ex.12) Neither DOC nor Aetna representatives testified at the hearing to support Petitioner’s claims.

Petitioner further testified that due to the nature of his disability retirement there would have been a waiver of any insurance premium and therefore his monthly pension check stubs would not have shown any deductions for the premiums, in contrast with standard deductions taken for taxes, healthcare, etc. In short, he would not have had notice that he had not been enrolled. (Tr14: 5-22)(Tr15: 1-6) He explained that when he retired he never received a followup letter or other kind of notification one way or the other. (Tr16: 6-12).

He argued that because he executed a disability retirement application with DOC ERSRI counselors had the followup obligation to make sure that his retirement package was complete, inclusive of properly processed group life insurance coverage. He stated: “Now if they went over my package, knew I was on accidental disability, they should have – an alarm should have went

(sic) off here because I should have in the form letter that wasn't filled out, that would have informed me to go someplace else to apply for the disability waiver of premium and that was never in there. So that's the reason they couldn't find it, and then that basically explains that." (Tr13: 1-25; Tr14: 1-3)

In that same vein Petitioner argued that it should have been standard operating procedure in 1994 for ERSRI to provide information to any employee who was retiring on an accidental disability pension how to elect group life insurance, and to also include a waiver of premium form. (Tr25:4-25) Petitioner reiterated that because he relied on DOC's representations in 1994 that he would be getting a \$10,000 life insurance policy he took no steps during all the years thereafter to verify with ERSRI or Aetna that life insurance coverage was actually in effect: "Why should I, when it was this department's responsibility to send me a letter to notify me where to go to follow that up." (Tr26: 9-14, 15-25)

On cross examination Petitioner again admitted that when he was preparing his accidental disability retirement package in 1994 he did not sign any application for life insurance enrollment and he did not complete any application for a premium waiver regarding a life insurance policy. (Tr19:22-25)(Tr20: 2-5) "I never came anywhere. I never left the Department of Corrections. The only thing I signed with the Department of Corrections was my termination paper. That's the only thing I ever signed. The package came here. I never went to the Retirement Board. I never went to Promenade Street. All I did was sign a piece of paper that's in here. This is the only piece of paper I ever signed." (Tr20: 5-13).

On further cross-examination Petitioner again admitted multiple times that he only consulted with and signed his Disability Retirement Application with his employer, DOC. (Jt.

Exh 1) (Tr20: 14-25) (Tr22: 1-17) (Tr21: 24-25) He steadfastly challenged ERSRI's enquiry as to why he never completed an application for life insurance, "The answer is that they were never afforded to me. Not that I didn't complete them, I never got them." (Tr21 10-25).

Although he said he had absolutely no interaction with ERSRI Petitioner still argued that the agency remained at fault because: "I had faith in like what was going on, that they were going to process things correctly....my faith in the system was that everything was going to be like presented to me, and like led along the line, because that wasn't my job." (Tr23: 19-25), (Tr241-5), (Tr23: 16-18)

On rebuttal Gayle Mambro-Martin, ERSRI's Deputy General Counsel, testified that Petitioner's ERSRI's retirement file did not contain any application for group life insurance. (Tr28: 19-22). ERSRI had also previously informed Petitioner to this effect by letter dated August 15, 2017. (Jt. Ex 15) She described the general process for retiring and what documents are made available to all retirees, including a prospective disability retiree (Tr29: 4-25) (Tr30: 1-7). She explained that prospective retirees who do come to ERSRI headquarters receive a one on one meeting with counselors and a detailed explanation as to their entitled benefits. She testified that as to the insurance waiver form: "there is no form for that that we give. We tell people, even today, contact—you should contact, just like the letter said, either the insurance company directly, as you may qualify for a waiver...The disability retiree needs to complete the form and submit it directly to Aetna, Aetna will then send a letter of acceptance or not, because not everyone qualifies." (Tr32: 11-25) She further stated: "As far as I know, it's not prepared by the Retirement System and we don't see that." (Tr33: 3-9)

**INTEREST:** After Petitioner retired in 1994 he engaged in post disability retirement



employment. In June 1998 ERSRI informed him that his retirement benefits would be adjusted because his total 1997 compensation exceeded the amount he would have received had he continued employment at the rate of compensation for the job classification he had at the time of his retirement from DOC. (Jt. Ex 2) ERSRI's actions were mandated pursuant to the requirements of RIGL 36-10-7.\*

In May 2000 ERSRI made another adjustment to Petitioner's pension benefits with respect to his 1999 income, again based upon earnings information received from DOC (Jt. Ex 3, 11) ERSRI advised Petitioner that it was adjusting his pension benefits for 6 months due to the alleged overpayments. Petitioner maintained that it was adjusted for 8 months. (Jt. Ex. 14)

In December 2000 DOC provided ERSRI with corrected information to the effect that Petitioner's contractual salary would have in fact been higher than what DOC previously reported; this was due to arbitration that had taken place between the State of Rhode Island and the union representing the correctional officers and this effectively increased Petitioner's pay as if he was still employed with DOC. (Tr47: 7-15)(Jt Ex 5) ERSRI notified Petitioner by letter that it was unaware that the reimbursement payment had not been made to him. (Jt. Exh 15) It was not until January 2013 that ERSRI was notified by DOC as to the correction in Petitioner's contractual salary and reimbursement was made to Petitioner, without interest. (Jt Ex 8)

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\*RIGL 36-10-7, entitled **Retirement of disability beneficiaries – Reduction of benefit – Reinstatement to active service**, provides in pertinent part: “.....Should the beneficiary be engaged in a gainful occupation...the retirement board shall adjust and from time to time readjust, the amount of his or her disability benefit to an amount which shall not exceed the rate of benefit upon which he or she was originally retired, and which, when added to the amount then earnable by him or her, shall not exceed his or her rate of annual compensation currently for the classification that the disability annuitant held prior to retirement...”

Petitioner argued that ERSRI was obligated to pay him interest on the 2000 monies that were eventually paid to him. (Tr45: 6-11) He indicated that he was unaware that there were any errors in the reduction of his retirement until 2013 (Tr45:1-25) Moreover, he stated that he was under the impression that the union was handling any adjustments. (Tr46: 18-25) He admitted that he did not take any personal initiative to communicate with ERSRI between the years 2000 -2013 to determine if he was due a refund. (Tr50: 15-20)(Tr51:1-23) The witness did agree that once ERSRI received the corrected information from DOC the agency promptly paid him the refund for 2000 and that the only open issue that remained was his contention that interest was also owed to him. (Tr51: 11-22)

Lastly, Petitioner's assertion that he also entitled to an adjustment relating to his 1997 earnings has been rendered moot. He acknowledged at the hearing that ERSRI now had the updated data from DOC and that based on that corrected information ERSRI was recalculating whether or not the withholding of his pension funds in 1998 was correct. (Tr52: 12-25) (Tr53: 1-5)(Jt Ex 17)

FINDINGS OF FACT

1. Petitioner worked as a Correctional Officer Steward at the Department of Corrections ("DOC") from March 28, 1976 to December 15, 1994. (Jt Ex 14).
2. Petitioner executed his Disability Retirement Application June 20, 1994. (Jt. Ex 1)
3. Petitioner did not execute any group life insurance form or any premium waiver form at the time of his December 15, 1994 retirement, or thereafter.
4. Petitioner's disability retirement was effective December 15, 1994. (Jt. Ex14)
5. Had he been working at DOC as of 1997 Petitioner's salary would have been \$42,115. (Jt Ex 14)
6. Had he been working at DOC as of 1999 Peitioner's salary would have been \$46131. (Jt. Ex14)
7. On/about June 25, 1998 ERSRI advised Petitioner that his 1998 pension would be reduced due to his reported 1997 outside earnings. (Jt. Ex 2)
8. On/about May 25, 2000 ERSRI advised Petitioner that his 2000 pension would be reduced due to his reported 1999 outside earnings. (Jt Ex 3)
9. On/about December 28, 2000 aDOC advised ERSRI that Petitioner's salary would have been \$46,131 as of the date of the letter. (Jt. Ex 5)
10. On/about January 3, 2013 DOC advised ERSRI that Petitioner's salary would have been \$46,131 as of the date of the letter. (Jt. Ex 8)
11. On/about February 23, 2017 ERSRI advised Petitioner that there were no applicable Rhode Island statutes that allowed for the payment of interest on the refund of pension funds paid to him (Jt Ex 9)
12. On/about April 4, 2017 Aetna advised Petitioner that there was no group life insurance in force for him. (Jt Ex 10)
13. ERSRI received written confirmation from DOC on/about January-February 2013 confirming Peitioner's 1999 salary and based on that ERSRI refunded pension funds to Petitioner.

## CONCLUSION AND ORDER

Rhode Island Supreme Court cases have long recognized that ERSRI is charged with the administration and operational mandate to oversee the state retirement system (R.I.G.L. §36-8-3) (Perrotti v. Salaam, 657 A.2d 1045 (RI 1995); Iselin v. Retirement Board of the Employees Retirement System, 93 A 2d 1045 (RI 2008). Rhode Island Superior Court cases have similarly stated held that ERSRI is the state agency entrusted with very broad powers of administration and responsibilities for the regulation of the state retirement system. Barry Holland v. Employees Retirement System of Rhode Island, (Super. Ct. Rescript Jan.21, 2011, CA #09-0231)

To that end, it has been frequently stated that “deference will be accorded to an administrative agency when it interprets a statute whose administration and enforcement have been entrusted to the agency . . . even when the agency’s interpretation is not the only permissible interpretation that could be applied.” Defenders of Animals Inc. v. Department of Environmental management, 553 A.2d 541, 543 (RI 1989); Martone v. Johnston school Committee, 824 A.2d 426 (RI 2004). Deference is accorded a state agency especially when a statute is unambiguous and expresses a clear and sensible meaning. Wayne Distributing Co. v. Rhode Island Commission for Human Rights, 673 A. 2d 457 (RI 1996) In essence, Rhode Island courts have applied a basic, plain and a so-called common sense standard when reviewing how agencies interpret and enforce statutes. Planned Management Corp. v. Robert, 966 A 2d 117 (RI 2009)

**GROUP LIFE INSURANCE** In the present case Petitioner claimed that he is entitled to group life insurance coverage. His testimony on that issue was very earnest, honest and sincere. He was steadfast in his position throughout the hearing. His testimony has been described in

detail in the Travel of the Case and Statement of Facts and need not be repeated here.

Based on the record, however, it is difficult to conclude how ERSRI has legal culpability as Petitioner's own testimony supports a contrary finding. The witness repeatedly admitted: (i) that he never completed any application for group insurance when he retired with DOC, (ii) that he never completed any premium waiver form when he retired with DOC, (iii) that he worked exclusively with DOC and relied upon the representations they allegedly made to him, (iv) that he never visited ERSRI headquarters for pre or post retirement consultations; (v) that he never reached out to Aetna until 2017, even taking into account that he thought that he had the life insurance in place, (vi) that he never did any other followup on this issue from the time of his 1994 retirement until 2017, and (vii) that he relied on the "system" to take care of everything.

ERSRI Deputy Counsel Mambro-Martin indicated that the agency is only a de minimus intermediate with respect to the election of group life insurance by a retiree; the agency does not make the determination as to which retirees elect to voluntarily apply for the insurance and it does not provide or process forms. Her testimony indicated that if a retiree decides to elect coverage it is done by the retiree with his/her employer and with Aetna Insurance, not with ERSRI. Petitioner stated that he never filled out these forms with either party at retirement. And he did not exercise even some modest level of self-initiative post retirement to ensure that he had the insurance in place.

It is therefore difficult to conceive how administrative error reasonably can be attributed to ERSRI on this particular issue.

In the final analysis, based on the evidence, and Petitioner's testimony, no actionable recovery appears to be affordable to Petitioner.

**INTEREST** Petitioner testified, in reliance on RIGL 36-10-33\*\* that he is entitled to interest on the delayed refunded pension benefits. (Tr54:2-55) (Jt. Ex.7) He argued at the conclusion of the hearing that RIGL 36-10-33 was indeed applicable as he felt that some ERSRI personnel intentionally mishandled his file with regard to the pension refunds and that the statute was meant to be applied to any individual, not simply a member or beneficiary. (Tr55: 11-20)(Tr56: 22-25)(Tr57: 1-5, 18-25)(Tr59:1-14) ERSRI argued that Petitioner's reliance on that statute was manifestly incorrect. (Tr61: 21-25)(Tr62:1-14)

Petitioner also maintained that ERSRI representatives were unable to show him any Rhode Island statutes that clearly showed that interest could not be awarded on the refunds. (Tr56: 6-19) Conversely, ERSRI argued that pursuant to RIGL 36-10-8\*\*\* refunds of contributions are paid back to members without interest. (See Post Hearing Memorandum)

It is well established that when construing a statute one must consider the entire statute as a whole. State v. Flores, 714 A 2<sup>nd</sup> 581 (RI 1998) A careful reading of RIGL 36-10-33 supports the merits of ERSRI's argument. The statute does not afford Petitioner the remedy he asserts.

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\*\*RIGL 36-10-33, **Penalty for fraudulent claim or statement** provides: "Every person who knowingly or willfully makes, presents or in anyway procures the making or presentation of any false or fraudulent affidavit or affirmation concerning any claim for pensionor payment thereof, shall, in every case, forfeit a sum not exceeding ten thousand dollars (\$10,000), in addition to repayment of any and all money received from the retirement system because of a false or fraudulent claim or statement, with interest, at the rate of twelve percent (12%) per annum, to be sued and recovered by and in the name of the retirement board of the retirement system, and when recovered, paid over to and thereupon become a part of the funds of the retirement system."

\*\*\*RIGL 36-10-8, **Refund of contributions – Repayment and restoration of credits**. Provides in part: "A member who withdraws from service or ceases to be a member for any reason other than death or retirement shall be paid on demand a refund consisting of the accumulated contributions standing to his or her credit in his or her individual account, without interest..."

The legislation clearly imposes penalties against someone who makes a fraudulent statement or a false affirmation with respect to a claim for a pension or payment. That would normally be a member, a retiree or someone authorized to act on behalf of that class of applicants. It is a recovery mechanism to be used for the benefit of the retirement system, not against it. The statute states that recovery actions are to be taken in the name of the retirement board. The legislation was not enacted as a sanction against the agency for its day to day processing functions. Here, under Rhode Island law the agency's interpretation is entitled to deference as it is not clearly wrong.

ERSRI looks to RIGL 36-10-8; it was amended from time to time over the years. At one time the statute mandated the crediting of interest to individual accounts. The General Assembly, however, changed that mandate many years back. In its present form the amended statute did away with the payment of interest. Simply stated, a reading of that statute indicates that ERSRI has no statutory authority to award interest on Petitioner's refunds.

Parenthetically, ERSRI pointed out at the hearing and in its Post-hearing Memorandum that pursuant to RIGL 16-16-31 a teacher withdrawing from service prior to retirement is entitled to a refund of his/her contributions without interest, and that only pursuant to RIGL 16-16-25 to 16-16-38 is payment of interest awarded to a teacher electing to receive a lump sum payment equal to his/her contributions to the teachers survivors benefit fund in lieu of of survivors benefits. These statutes are of course inapposite to Petitioner's former employment, but they are presented for contrast. There appears to be no other general statutes pertaining to the state retirement system that mandate or permissively allow the payment of interest to Petitioner.

Upon a careful review of the record ERSRI's interpretation and enforcement of the statutes

raised at the hearing, to wit, RIGL 36-10-33 and RIGL 36-10-8, does not appear to be clearly erroneous within the permissible standards of review available to this Hearing Officer. The statutes are not ambiguous and this Hearing Officer does not find ERSRI's interpretation and enforcement to be unauthorized. See, Pawtucket Power Associates v. City of Pawtucket, 622 A 2d 452 (RI 1993) It bears repeating that the law requires deference to ERSRI's interpretation of the applicable statutes unless manifestly wrong.

As noted earlier, Petitioner's testimony on all the issues was honest and sincere. He made a very earnest effort presenting evidence at the hearing on the group life insurance. But under administrative law standards Petitioner has the burden to prove his case and he has not met that standard. The combination of the collective testimony and the hard evidence suggests that under the circumstances Petitioner exercised almost no initiative to verify that he had group life insurance and he placed undue but passive reliance on the system to keep him informed.

While the return of the pension funds was irksome to Petitioner - as he had to help coordinate and correct information between DOC and ERSRI in order to receive the pension refund - the payment of interest is not legally actionable in this case as there is no law within the purview of the state retirement system that allows ERSRI to pay it.

Accordingly, after careful review of the testimony and exhibits, as well as the applicable standard of review available to this Hearing Officer, ERSRI's determination denying Petitioner's claims is hereby affirmed, but acknowledging that Petitioner and ERSRI are jointly addressing the issue relating to his 1997 earnings and the pension funds withheld in 1998.

It is so ordered.

Signature and Certification of Service on Next Page



Date: January 13 2018

By: Charles M Koutsogiane

Charles M. Koutsogiane, Esq  
Hearing Officer

CERTIFICATION OF SERVICE

I hereby certify that on the 13<sup>th</sup> day of January, 2018, a true copy of the within Decision was mailed to the following individuals: Frank Karpinski, Executive Director, Employees Retirement System of Rhode Island, 50 Service Drive, Warwick,, RI 02886, Russell J. Kraczkowski, [REDACTED], Chepachet, RI 02814; and Michael Robinson, Esq., c/o Shechtman Halperin, Savage LLP, 1080 Main Street, Pawtucket, RI 02860.

Charles M Koutsogiane  
Charles M. Koutsogiane, Esq.

Employees Retirement System of Rhode Island  
 40 Fountain Street, Providence, Rhode Island 02903-1854  
 Telephone: (401) 277-2203 / TDD 521-8980

Disability Retirement Application

Section One: Please read information on previous page before completing this application.

Name <i>Russell J. Krackowski</i>	Date of Application <i>6-20-94</i>
Street Address [REDACTED]	Date of Retirement
City, State, Zip Code <i>Chepachet RI 02814</i>	Telephone Number

Section Two: Retirement Information and Type of Retirement

Please check:  State Employee     Municipal     Teacher

Social Security Number: [REDACTED]    Years of Service: *18*

Please check:  Ordinary Disability     Accidental Disability

Please state the medical reason which is the cause of your application for disability.

[REDACTED]

Section Three: Employee Status

Present Title: *Correctional Officer Steward*

Place of Employment: *Maximum Security*

Section Four: Employment History as a Public Employee. Your employment history should be listed chronologically beginning with original employment as a public employee.

State Agency, City, Town, School District, Authority	From	To	Full-Time

JT Exh # 1

**Section Four: Purchase credit.** Please list any purchases you have on file with our system.

Type of Purchase	From m/d/y	To m/d/y	Amount Paid	Date of Purchase

**Section Five: Average Salary.**

If you are applying for Ordinary Disability, please report 3 highest consecutive years salary or last 3 years salary, whichever is greater. If you are applying for Accidental Disability, please report your yearly compensation as of the date of your injury.

Year	Salary
19__	
19__	
19__	

**Section Six: Worker's Compensation.**

Are you currently receiving Worker's Compensation benefits?

YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Weekly Amount 463.13	
Starting Date 1-9-94	

If yes, please indicate the amount and starting date of such payments. Please understand that your disability payments will be offset by the amount of your worker's compensation.

**Section Seven: Beneficiary Information.** Accidental Disability recipients may choose to receive benefits under either Option One or Option Two. Ordinary Disability recipients may not. All retirees are entitled to receive a one-time death benefit.

Name of Beneficiary [REDACTED]	Date of Birth [REDACTED]	Social Security # [REDACTED]
Address [REDACTED]	Relationship to Member [REDACTED]	

**Section Eight: Statement and Signature by Member**

I, the undersigned, certify that I understand my rights and benefits as a member of the Employees Retirement System of Rhode Island. I hereby make known my intention to apply for disability retirement as of the date indicated on this application.

Signature [Handwritten Signature] Date 6-20-90



# Employees Retirement System of Rhode Island

Joann E. Flaminio, Executive Director

68 Fenwick Street  
Providence, RI  
02803-3634 June 25, 1998

Tel: (401) 277-2203

TDD: (401) 531-8988

Fax: (401) 277-2428

E-mail:

erms@treasury.state.ri.us

Web Site:

www.state.ri.us/

treasury.ri.us

Mr. Russell J. Krazzkowski

Chapshot, RI 02814

RE: [REDACTED]

Dear M. Krazzkowski:

In accordance with Rhode Island General Law 36-10-17, Reexamination of disability beneficiaries-Reduction of benefit-Reinstatement to active service which reads, in part,

*Should the beneficiary be engaged in a gainful occupation or should he be offered service as a result of the placing of his or her name on a list of candidates, the retirement board shall adjust, and, from time to time readjust, the amount of his or her disability benefit to an amount which shall not exceed the rate of benefit upon which he or she was originally retired, and which, when added to the amount then earnable by him or her, shall not exceed his or her rate of annual compensation currently for the classification that the disability held prior to retirement.*

Your monthly pension benefit will be reduced by \$571.62. Your new gross monthly pension benefit from the Employees' Retirement System of Rhode Island will be \$1,806.54 effective June 1, 1998.

This reduction is based upon the fact that your 1997 outside earnings (\$20, 286.78 plus your 1997 retirement benefit (\$25, 376.64) exceeded the annual amount your position would currently be paying (\$38, 804.00) by \$6, 859.42..

If you have any questions or require additional information, please do not hesitate to contact me at (401) 222-2203 ext. 220.

Sincerely,

Diane S. Bourne  
Assistant Director - Member Services

JT Exh # 2

SCHEDULE 600  
 CLASSIFIED ANNUAL SALARIES  
 Effective July 6, 1997

1040

	1 0-6 Months	2 7-18 Months	3 19-30 Months	4 31-42 Months	5 43-54 Months	6 55-66 Months	7 67-78 Months	8 79-90 Months	9 91-102 Months	10 103-114 Months	11 115-126 Months	12 127-138 Months	13 139-150 Months	14 151-162 Months	15 163-174 Months
621	27379	28330	28988	29717	30675	32046	32746	33559	33910	34141	34491	35628	37117	37977	38835
624	30837	31983	32829	34314	34431	35745	36444	37258	37607	37840	38189	39504	41167	42115	43064
626	33040	34241	35196	36860	36977	38417	39116	39931	40280	40513	40863	42303	44095	45108	46118
630	38010	39533	40799	42896	43014	44758	45455	46271	46620	46853	47203	48945	51038	52199	53362
651	36802	38078	39727	40632	43159	45156	45953	46647	47365	48057	48882	49546	52023	53262	54500
655	45582	46859	47898	48963	49973	51250	52261	53246	53858	54471	55055	55615	58395	59785	61177



# Employees Retirement System of Rhode Island

Joann E. Flaminio, Executive Director

40 Fountain Street  
Providence, RI  
02903-7854

May 25, 2000

Tel: (401) 222-2203

TDD: (401) 521-8980

Fax: (401) 222-2430

Mr. Russell J. Kraczkowski

E-mail:  
ersri@treasury.state.ri.us

Chapachet, RI 02814

Web Site:  
www.state.ri.us/  
treas/ersri.htm

RE:

Dear Mr. Kraczkowski:

Based upon the information provided in the Continuing Statement of Disability - calendar year 1998 and by the Department of Corrections, we have determined that the earned income from your employment with the Water Cruisers of Rhode Island plus the accidental disability benefit paid to you exceed the amount you would currently be earning if you had continued to be employed as a correctional officer.

Effective with the May, 2000 pension check your monthly benefit will be reduced by \$612.47 through December 31, 2000. Effective January 1, 2001 your monthly benefit will be restored to the full amount.

If you have any questions or require additional information, please contact Salvatore Lombardi at 401.222.2203 ext. 228.

Sincerely,

Diane S. Bourne  
Assistant Director - Member Services

cc: S. Lombardi

JT EXL # 3



# Employees Retirement System of Rhode Island

## CONTINUING STATEMENT OF DISABILITY CALENDAR YEAR 2000

**ERSRI Board:**

Paul J. Tavares  
General Treasurer  
Chairman

William B. Finelli  
Vice Chairman

Ponzi A. Angelone

Daniel L. Beardley

Michael R. Boyes

Leslie E. Clark

Rep. Gordon D. Fox

John P. Maguire

John A. Marginson

Stephea McAllister

Sandra Murphy Crowe

Michael O'Keefe

Linda C. Riendeau

Michael E. Reis

Sen. John M. Roney

**DISABILITY-PERSONNEL INFORMATION**

*Russell Kruczkowski*

*Correctional Officer / Steward State of RI / ACF*

*Correctional Officer / Steward State of RI / ACF*

*Correctional Officer / Steward State of RI / ACF*

*Correctional Officer / Steward State of RI / ACF*

**EXPLANATION OF INFORMATION**

If there is any statement that does not apply to your situation, enter "not applicable". Return the completed form, with a current medical report from your doctor, within 30 days to the Employees Retirement System of Rhode Island, 40 Fountain St., Providence RI 02903.

1. LIST MEDICAL CONDITION(S) FOR WHICH YOU ARE RECEIVING DISABILITY BENEFITS

[Redacted]

2. HAVE YOU BEEN EXAMINED BY A DOCTOR IN THE PAST YEAR?  YES  NO

COMPLETE THE FOLLOWING AND ATTACH MEDICAL REPORT

NAME OF DOCTOR: *DR [Redacted]* DATE OF EXAMINATION: *12/14/00*

EXPLAIN PRESENT MEDICAL CONDITION:  
*Regular schedule Oct Nov 4 per week*

CRSRI-7/2004

JT Exh # 4

**EMPLOYMENT INFORMATION**

TO BE COMPLETED BY THE DISABILITY PENSIONER. PLEASE ANSWER ALL STATEMENTS COMPLETELY.

Each year, as a disability pensioner, you are required by law to report any outside earnings to the Employees Retirement System. Please check the space provided below if you have any outside earnings. If you are not currently earning, also indicate the Retirement System.

HAVE YOU WORKED FOR ANY OTHER EMPLOYER SINCE YOU BECAME A DISABILITY PENSIONER?  YES  NO

EMPLOYER: Water Cruises & RT, LLC JOB TITLE: \_\_\_\_\_

EMPLOYER ADDRESS: 175 Main Street Pawt RI 02860 GROSS EARNINGS: 12,573.05

ARE YOU CURRENTLY EMPLOYED BY ANY OTHER EMPLOYER?  YES  NO

ARE YOU CURRENTLY RECEIVING ANY OTHER PENSION OR RETIREMENT BENEFIT?  YES  NO

**NOTARIZATION**

I, the undersigned, certify under penalty of law that the information provided herein is true and correct to the best of my knowledge. I certify that I am still disabled and eligible to continue collecting a disability pension from the Employees Retirement System of Rhode Island.

Signature: Kenneth J. Kogutski Date: 5/1/01

**NOTARIZATION**

State of \_\_\_\_\_ County of \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_, 2001 appeared before me the aforementioned applicant, to me personally known and known to be the individual described in and who executed the foregoing instrument, and he (or she) duly acknowledges to me that he (or she) executed the same and that the statements contained herein were true to the best of his (or her) knowledge or belief.

My commission expires: \_\_\_\_\_

Notary Public: \_\_\_\_\_

**If you have questions about completing this form, contact Sal Lombardi at the Employees Retirement System of Rhode Island (401) 222-2203 X-229.**





STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
ERSRI  
RECEIVED 12/28/00 2:56

Department of Corrections  
OFFICE OF HUMAN RESOURCES  
59 Howard Avenue  
Providence, RI 02920  
(401) 462-3250  
TDD# (401) 462-5180

December 28, 2000

Mr. Salvatore Lombardi  
Employees Retirement System  
40 Fountain Street  
Providence, RI 02903

RE: Russell Kraczkowski  
SS# [REDACTED]

Dear Mr. Lombardi:

Mr. Russell Kraczkowski was employed with the Department of Corrections as a Correctional Officer Steward from March 28, 1976 to December 15, 1994. He retired (disability) effective December 15, 1994. If Mr. Kraczkowski were working today, his annual salary would be \$46,131.00.

If you have any questions, feel free to call me at 462-5120.

Sincerely,

Christine Marchetti  
Employee Relations Officer

c:\chris\disretir

c: employee

JT Exh # 5

a Control number		Copy C For EMPLOYER'S RECORDS (See Notice to Employer on back of Copy 'F') or OMB No. 1545-0047 Copy 1 to be Filed With Employee's State, City or Local Income Tax Return				
b Employer identification number		1 Wages, tips, other compensation	2 Federal income tax withheld			
c Employer's name, address, and ZIP code		3 Social security wages	4 Social security tax withheld			
WATER CRUISES OF RI, LLC 175 MAIN STREET PAWTUCKET, RI 02860		5 Medicare wages and tips	6 Medicare tax withheld			
		7 Social security tips	8 Allocated tips			
		9 Advance EIC payment	10 Dependent care benefits			
d Employer's social security number		11 Nonqualified plans	12 Benefits included in box 1			
e Employer's name, address, and ZIP code		13 See instructions for box 13	14 Other			
RUSSELL KRACZKOWSKI [REDACTED] CHEPACHET, RI 02814		15 Statutory employee	16 Recipient	17 Foreign plan	18 Local tax	19 Deferral designation
		16 State Employer's state I.D. no.	17 State wages, tips, etc.	18 State income tax	19 Locally source	20 Local wages, tips, etc.
RI [REDACTED]		12573.05	245.33			

Form **W-2 Wage and Tax Statement 2000**

Department of the Treasury—Internal Revenue Service  
This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

*Where is the Money you owe me - please calculate and make adjustments soon.*

*Thank You  
R. Kraczkowski*

JT Exh # 6



2013 Certification

Advisory

Please be advised that Rhode Island General Laws § 36-10-33 reads "Every person who knowingly or willfully makes, presents, or in any way procures the making or presentation of any false or fraudulent affidavit or affirmation concerning any claim for pension or payment thereof, shall, in every case, forfeit a sum not exceeding ten thousand dollars (\$10,000), in addition to the repayment of any and all money received from the retirement system because of a false or fraudulent claim or statement, with interest, at the rate of twelve percent (12%) per annum, to be sued and recovered by and in the name of the retirement board of the retirement system, and when recovered, paid over to and thereupon become a part of the funds of the retirement system."

Certification To be completed by the Member (due by December 31, 2013)

I, the undersigned, certify under penalty of law that, to the best of my knowledge, all the information I have provided in my 2013 Continuing Disability Statement is accurate and complete and I remain unable to be gainfully employed in the position I held prior to my retirement because of a disability.

Member's Signature: Russell Kragowski Date: 4-16-13

Member's Name (Print) Russell Kragowski

Notarization

State of Rhode Island County of Providence

On this 16 day of April, 2013, before me, the undersigned notary public, personally appeared the above named member personally known to the notary or proved to the notary through satisfactory evidence of identification to be the person whose name is signed above, and acknowledged to the notary that he or she signed it voluntarily for its stated purpose.

My Commission Expires: 8/31/2013

Notary Public Signature: Jacqueline Coughlin

Notary ID Number: \_\_\_\_\_

2013 APR 18 PM 12: 07  
ERSRI

JT Exh # 7



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Corrections  
OFFICE OF HUMAN RESOURCES  
39 Howard Avenue  
Cranston, RI 02920  
(401) 462-3250  
TDD# (401) 462-5180

January 3, 2013

Ms. Diane Bourne  
Employees Retirement System  
40 Fountain Street  
Providence, RI 02903

RE: RUSSELL J. KRACZKOWSKI  
SS# [REDACTED]

Dear Ms. Bourne:

Mr. Russell J. Kraczkowski was employed with the Department of Corrections as a Correctional Officer Steward and retired effective December 15, 1994. Mr. Kraczkowski's annual salary as of July 4, 1999 if he were working as of that date would have been \$46131.00.

If you have any questions, feel free to call me at 462-5119.

Sincerely,

*Jane M. Ryan*

Jane M. Ryan  
Human Resources Analyst I

c:\jane\disretir

c: employee

JT Exh # 5

Schedule 600  
Classified Annual Salaries  
Effective July 4, 1999

603 21452-21781-22035-22586-23137-23908-24269-24632-25001-25376-25756-26142-26534-26932-27335  
604 21527-21823-22078-22629-23181-23954-24313-24678-25048-25423-25805-26191-26585-26985-27389  
605 21823-22078-22331-22889-23446-24229-24591-24962-25336-25715-26102-26492-26890-27293-27702  
606 22078-22331-22585-23149-23716-24506-24874-25246-25626-26011-26401-26797-27198-27607-28020  
607 22331-22628-22924-23499-24070-24874-25246-25626-26011-26401-26795-27198-27607-28020-28440  
608 22628-22946-23266-23845-24429-25243-25622-26005-26397-26792-27193-27603-28016-28436-28863  
609 22946-23285-23602-24192-24781-25608-25992-26380-26778-27179-27587-28000-28422-28845-29280  
610 23285-23647-23986-24584-25186-26024-26414-26812-27212-27621-28036-28456-28882-29316-29757  
611 23647-24069-24448-25058-25671-26526-26926-27327-27737-28155-28576-29006-29440-29880-30332  
612 24069-24523-24919-25542-26164-27037-27442-27853-28272-28695-29126-29564-30006-30456-30913  
613 24536-25002-25426-26062-26698-27587-28000-28422-28849-29281-29718-30165-30616-31076-31544  
614 25002-25553-25973-26624-27272-28181-28603-29034-29469-29909-30359-30814-31278-31746-32223  
615 25553-26103-26567-27233-27895-28827-29259-29697-30144-30597-31055-31520-31994-32473-32960  
616 26103-26656-27118-27797-28474-29423-29864-30312-30766-31227-31698-32172-32654-33145-33643  
617 26656-27217-27758-28451-29144-30116-30568-31027-31490-31963-32443-32930-33423-33924-34434  
618 27217-27792-28587-29300-30015-31016-31482-31953-32433-32919-33413-33914-34423-34940-35463  
619 27792-28597-29419-30153-30889-31918-32395-32883-33374-33877-34385-34899-35423-35957-36493  
620 28597-29354-30472-31232-31996-33061-33557-34060-34573-35089-35615-36152-36693-37244-37802  
621 29329-30348-31053-31833-32860-34329-35078-35950-36325-36573-36947-38166-39761-40682-41601  
622 30201-31129-32488-33100-34115-35251-35779-36317-36859-37413-37973-38543-39123-39709-40305  
623 31129-32090-33752-34596-35440-36622-37169-37728-38294-38869-39451-40043-40644-41254-41871  
624 33033-34261-35167-36758-36883-38291-39040-39912-40285-40535-40909-42318-44099-45115-46131  
625 34336-35361-36443-37354-38264-39541-40133-40737-41346-41966-42596-43236-43884-44541-45210  
626 35393-36679-37703-39485-39610-41154-41902-42776-43149-43399-43773-45316-47235-48321-49403  
627 36806-37951-39488-40476-41461-42845-43487-44139-44802-45473-46156-46849-47551-48264-48989  
628 38127-39395-41021-42047-43073-44508-45177-45854-46543-47239-47949-48668-49398-50139-50890  
629 39523-40851-42555-43619-44683-46173-46865-47569-48283-49005-49741-50488-51244-52012-52793  
630 40717-42349-43705-45951-46077-47946-48693-49566-49941-50190-50565-52431-54673-55917-57163  
631 42120-43804-45559-47379-49275-51245-52013-52794-53587-54391-55206-56035-56873-57728-58592  
632 43648-45393-47209-49097-51062-53104-53901-54707-55530-56363-57207-58066-58936-59822-60718  
633 45332-47143-49029-50991-53032-55153-55980-56818-57669-58536-59412-60305-61210-62127-63059  
634 47201-49091-51053-53098-55220-57427-58291-59165-60052-60952-61866-62794-63735-64694-65661  
635 49259-51230-53279-55411-57627-59930-60829-61742-62669-63607-64561-65532-66513-67512-68524  
636 51404-53563-55707-57935-60253-62662-63602-64556-65527-66508-67506-68519-69546-70588-71648  
637 53411-55790-58256-60826-62334-63372-64326-65307-66307-67326-68364-69422-70500-71598-72706  
638 55422-57991-60657-63429-65307-66345-67345-68374-69432-70510-71608-72726-73864-75022-76200  
639 57433-60202-63074-66046-68124-69262-70340-71458-72606-73784-75002-76250-77528-78826-80144



# Employees' Retirement System of Rhode Island

*ERSRI Board:*

Seth Magaziner  
General Treasurer  
Chair

William B. Finelli  
Vice Chair

Roger P. Boudreau

Mark A. Carruolo

Brian M. Daniels

Michael DiBiase

Paul L. Dion

Thomas M. Lambert

John P. Maguire

Marianne F. Monte

Thomas A. Mullaney

Claire M. Newell

Marcia B. Reback

Jean Rondcau

Laura Shawhughes

Frank J. Karpinski  
Executive Director

February 23, 2017

Mr. Russell Krackowski

~~XXXXXXXXXX~~  
Chepachet, RI 02814

RE: ERSRI pension

Dear Mr. Krackowski:

This is in response to your recent inquiry regarding the payment of interest on the reimbursement of pension funds paid to you.

There is no provision in Rhode Island General Law to pay interest other than in the refund of Teachers Survivors Benefits, RIGL 16-16-31. The only other references to payment with or without interest can be found in RIGL's 36-10-8 and 16-16-32 which specifically address the refund of contributions, without interest.

Copies of referenced statutes are enclosed.

Sincerely,

Diane S. Bourne  
Assistance Executive Director

enclosure

JT Exh # 9





# Employees' Retirement System of Rhode Island

ERSRI Board:

May 17, 2017

Seth Magaziner  
General Treasurer  
Chair

Russell Kraczkowski

William B. Finelli  
Vice Chair

~~████████████████████~~  
Chepachet, RI 02814

Roger P. Boudreau

Dear Mr. Kraczkowski:

Mark A. Carruolo

We write in response to your recent request to be paid interest on monies that were paid to you by the Employees' Retirement System of Rhode Island in January 2013 and your request to set up a meeting with our legal counsel.

Brian M. Daniels

Michael DiBiase

Briefly, you retired on a disability retirement in 1994 and thereafter participated in post disability retirement employment. By law, if you earn more money than you would had you still been employed, the Employees' Retirement System of Rhode Island (ERSRI) is required to adjust and readjust your pension benefit. In an effort to determine whether any adjustments to your pension benefit were required, in May 2000 ERSRI contacted your former employer for the amount you would have earned in 1999. Your employer provided the amount of your contractual salary. Since your outside earnings when added to your pension benefit exceeded your contractual salary amount, in May 2000 we notified you that your pension benefit would be adjusted for 6 months. No interest was owed from you to ERSRI for overpayments made to you from the Trust.

Paul L. Dion

Thomas M. Lambert

John P. Maguire

Marianne F. Monte

Thomas A. Mullaney

Claire M. Newell

Marcia B. Reback

Jean Rondeau

Laura Shawhughes

Subsequently, in December 2000 our office was notified that your contractual salary would have been higher than what was previously reported by your employer. Inadvertently, no adjustment was processed to your account and we were unaware that payment had not been made to you. In fact, no contact was made with ERSRI between the years 2000 through 2013 regarding the status of your refund by you or your employer, and as you know once ERSRI was notified by your former employer in January 2013 of the correction to your salary information, payment was promptly made to you.

Frank J. Karpinski  
Executive Director

Regarding your request for interest, there are no laws which authorize the Retirement Board to pay interest. Additionally, the Retirement Board has no statutory authority to provide equitable remedy.

Sincerely,

Frank J. Karpinski  
Executive Director

JT ExL  
# 11



June 18, 2017

Russell Kraczkowski

~~████████████████████~~  
Chepachet, RI 02814

**RE: Request for Decision on Missing Insurance Policy Documents**

To Whom It My Concern,

This letter is to notify the agency, Employees' Retirement System of Rhode Island (ERSRI), that they never properly filed paperwork for the Rhode Island state retiree named above, Russell Kraczkowski, back in 1994.

Mr. Kraczkowski brought this issue to the attention of Gayle (Albro) Martin on June 7, 2017. His research for the last 6 months with Etna Insurance company, Department of Corrections Human Resources, and the RI State Employee Benefits all confirmed that there was paperwork missing that should have been generated by ERSRI. The blame by each aforementioned group each time said that ERSRI was the agency in charge of that paperwork, and they clearly never filed it. All groups contacted responding back to Mr. Kraczkowski informing him that the responsibility of that paperwork, and thus the resulting missing paperwork, falls to ERSRI. Thus, Mr. Kraczkowski is requesting a decision to reconcile this issue immediately. Documentation from Etna Insurance Company is attached for your convenience.

2017 JUN 19 AM 10:18

ERSRI

JT Ex # 12

June 18, 2017

Russell Kraczkowski

~~████████████████████~~  
Chepachet, RI 02814

**RE: Request for Refund of 1997/1998 Adjustment**

To Whom It My Concern,

This letter is to notify the agency, Employees' Retirement System of Rhode Island (ERSRI), that the Rhode Island state retiree named above, Russell Kraczkowski, on June 8, 2017 discovered that there is money that was never refunded to him from the 1997/1998 salary adjustment. He is requesting reimbursement of this refund and interest to be paid immediately. Proof of the 1997 600 series salary adjustment is attached for your convenience.

JT Exh #13

2017 JUN 19 AM 10:18

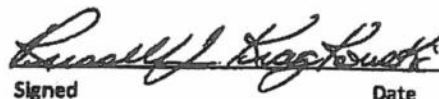
ERSRI



- 1) To clarify my request, I am seeking the interest for money not paid to myself at the appropriate time, for two separate instances. In first found money that was owed for 12 years and now the second money owed to me after 17 years. The latter for which I only discovered on 6-9-17 after receiving my records from your agency, Employees' Retirement System of Rhode Island (ERSRI).
- 2) In your first paragraph you state the law for why the money was taken from me. I had already previously understood why the money had been originally withheld in the year 2000, so this did not address the question I was asking: Why had the money not been subsequently paid out to me after the withholding period ended? And should not I receive interest due to that error?
- 3) You state in May of 2000 that my pension benefit would be adjusted for 6 months. This is incorrect, it was 8 months.
- 4) In the same paragraph you state that no interest was owed from me to ERSRI for overpayment? But there was no overpayment to me? This again was not the issue at hand as I did not violate any laws to justify interest to be paid from me (please see RI General Law 36-10-33).
- 5) Regarding the second paragraph: A letter from the Department of Corrections Human Resource dated December 28, 2000 was sent to your agency, ERSRI. Subsequently, no correction was made by your agency. Following this, a second letter, hand written from me, attached to my W2 form in 2001 was submitted requesting your agency for the money adjustment that I was owed. My letter was ignored as well; resulting in no correction even though I had reached out. This all is contrary to your statement of paragraph two which you inaccurately portray that I never attempted to subsequently obtain the money owed to me.
- 6) This ordeal to conduct research, run around to multiple agencies to get documents that are already had, discover errors of others, and fill out more and more paperwork has been infuriating and laborious. Do you really think it is the responsibility of me or the Department of Corrections to conduct oversight and the work of your agency?
- 7) In 2013, after finding some paperwork at my home, I contacted Diane Bourne and other persons at ERSRI and informed them that I might be owed money. Diane Bourne requested that I prove this. Thus, I personally had to go to the Department of Corrections and have Jane Ryan submit a letter proving my belief that funds were owed to me for 13 years. I do not understand why I was made to acquire proof when there was already proof in my file, which the ERSRI agency already possessed. Please see "Notice from DOC 2000" and "Personal request 2001".
- 8) In 2013, after I informed Diane Bourne, I met her in person and asked what about the interest on the money that was owed to me. She stated the state was not liable for interest. I then asked Diane Bourne what they did with my money for 13 years; she responded "I went shopping with it". I was so taken aback to this response that I just walked away.
- 9) Update in January of 2017: I was at ERSRI updating my beneficiaries. When I was there, I spoke with Diane Bourne and requested a copy of the laws that exempt the state from paying interest

on money withheld from a person. She responded in writing on February 23, 2017. Regarding the laws she references, all laws she referred to were dealing with contributions.

- 10) I received your (ERSRI's) response letter on May 17, 2017 and then requested a meeting with ERSRI Legal Counsel. After several phone calls I met with Gayle (Albro) Martin on June 8, 2017. She was very receptive and professional. Upon completion of our meeting she told me she would copy my file and I could pick up my file in person on June 9, 2017.
- 11) Upon reading my file I was astounded to find that the information I was asked to seek out was already had on file in the agency, making my prior efforts to obtain "proof" pointless.
- 12) Additionally, I discovered a letter from Diane Bourne dated June 25, 1998 which issued an adjustment from my pension because of my 1997 earnings in the amount of \$6,859.42. While this adjustment was accurate during 1998, subsequent arbitration by the state in 2000 warranted that amount to be altered. It had not been altered, nor the money refunded to me. This discovery marked another instance of money not returned to me. This money from 1997 is still owed to me, as is its interest.
- 13) In 2013, when I had brought to the agency's attention the adjustment in 2000 for which I was still owed money, I was not aware of the 1998 adjustment that was not corrected and refunded. How could top people at ERSRI not be aware that the contract agreement award settled and signed in June 30, 2000 effected 1996, 1997, 1998, 1999, 2000, and evidently they still are?
- 14) I have again gone in person to the Department of Corrections Human Resources and acquired a copy of the 600 series for classified annual salaries for 1997 from Jane Ryan.
- 15) Now a sum of \$4,260.00 owed for 17 years with interest.
- 16) Any correction to my salary that was finally made in 2013, on the two prior instances, was made because of my diligence.
- 17) Your words used in your letter of "inadvertently" and "unaware" do not excuse you and your agency from this gross injustice that I feel was willfully, knowingly, repeatedly done by withholding my money.
- 18) Your closing statement that there are no laws for you and the people or agency involved for responding to such an injustice done to myself are defined in the law your agency mailed to me every year with my disclosure. Your staff is guilty of many of the requirements to violate this law. The only difference is I received the award. Please see RI General Law 36-10-33.

 6-18-2017  
Signed Date



# Employees' Retirement System of Rhode Island

*ERSRI Board:*

August 15, 2017

Seth Magaziner  
General Treasurer  
Chair

Russell Krackowski

[REDACTED]  
Chepachet, RI 02814

William B. Finelli  
Vice Chair

Dear Mr. Krackowski:

Roger P. Boudreau

We write in response to your letters of June 18, 2017. Each letter is addressed below individually. Please be advised that we have found no substantiation for the claims you have made against the Employees' Retirement System of Rhode Island (ERSRI): that any documents were "missing", that ERSRI neglected to appropriately process your pension adjustments or that ERSRI acted willfully or knowingly in its actions with respect to your pension.

Mark A. Carruolo

Brian M. Daniels

ERSRI reviews all claims made by and documents provided by its members in support of their asserted issues. We have reviewed the information you provided.

Paul L. Dion  
Thomas M. Lambert

John P. Maguire

## Request for Decision on Missing Insurance Policy Documents

Marianne F. Monte

In light of the representations and allegations included in your correspondence, we would like to take this time to explain how members enroll in the State's group life insurance underwritten by AETNA and what is on file regarding your retirement benefits and application.

Thomas A. Mullaney

Claire M. Newel

Marcia B. Reback

It is standard procedure that to enroll in the State's group life insurance policy members submit a specific enrollment form that is part of the information packet and forms provided to members at the time of retirement.

Jean Rondeau

Laura Shawhughes

Subsequent to receiving your retirement documents and forms that you submitted to ERSRI, and upon approval of your accidental disability application, your pension was processed by a counselor and audited as is standard procedure. A review of your file shows that on June 20, 1994, you submitted your retirement documents to our office and that no group life insurance enrollment form was received in your packet. We were unable to locate an insurance form in your file.

Frank J. Karpinski  
Executive Director

In addition, and more importantly, you have continued to receive your pension checks since 1994 and you made no inquiry to our office until 2017 regarding the group life insurance benefit. Moreover, your pension check stubs clearly would have noted deductions such as taxes, healthcare and other deductions, and you would have been on notice that no deductions were being taken for group life insurance. Any further communications regarding group life insurance should be directed to AETNA life insurance.

Request for Hearing regarding your claim for interest on money you assert you are owed related to a 1998 salary adjustment, and your claim for interest from the 2000 salary adjustment that was refunded in 2013

JT Exh  
# 15

With respect to your request for interest, we reiterate the information as provided in our letters to you dated May 17, 2017 and February 23, 2017 attached hereto.

Regarding the adjustment for your overearnings, the Rhode Island General Laws (ERSRI) provide no provisions to pay interest. Please be advised that ERSRI did not willfully, knowingly or repeatedly withhold your money. It was merely an inadvertent error. Once we became aware, your money was immediately refunded.

We are unclear regarding your allegations that ERSRI somehow violated RIGL §36-10-33. That law addresses the penalty for fraudulent claims or statement made by members and their beneficiaries with respect to their claims to a pension or payment of their pension, and does not apply to mistakes or oversights made by ERSRI.

#### **Request for Refund of 1997/1998 Adjustment**

With respect to your 1997 outside earnings, based on the information provided to our office from your employer in 1998 regarding your employment in 1997 and the amount of money you would have earned in 1997 had you still been working, the determination was made that you had over earned by \$6,859.42. No corrected or updated information had ever been provided by your former employer regarding the amount you would have earned in 1997.

On August 10, 2017 we reached out to the Human Resources office of your former employer who has confirmed that the information they provided in 1998 is correct: your salary would have been \$38,804.00. Therefore, no adjustment will be made to your pension benefit.

Any questions regarding this confirmation should be directed to the HR office of your former employer.

#### **Conclusion**

A review of your file indicates that ERSRI did not act willfully and knowingly with respect to any actions regarding your retirement.

This letter constitutes official notification of an administrative denial. Pursuant to the Rules and Regulations of the Employees' Retirement System of Rhode Island, Regulation No. 1.4 entitled Rules of Practice and Procedure for Hearings in Contested Cases, Section C., any member aggrieved by an administrative action may request a hearing before the Retirement Board. Upon such request, the matter will be deemed a contested case. Such request shall be in writing and shall be sent to the Retirement Board, 50 Service Avenue, 2nd Floor, Warwick, RI 02886, Attention: Frank J. Karpinski, Executive Director, within 60 days of date of the letter from the Executive Director or Assistant Executive Director constituting a formal administrative denial. A request for hearing shall be signed by the member and shall contain the name of the member; date and nature of decision to be contested; a clear statement of the objection to the decision which must include the reasons the member feels

he or she is entitled to relief; and a concise statement of the relief sought. Failure to strictly comply with the procedures outlined above shall be grounds to deny a request for a hearing.

A hearing officer has been assigned to your case and the information has been provided in the attached letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank J. Karpinski". The signature is written in a cursive style with a large, sweeping initial "F".

Frank J. Karpinski  
Executive Director

Enclosures





# Employees' Retirement System of Rhode Island

ERSRI Board:

Seth Magaziner  
General Treasurer  
Chair

William B. Finelli  
Vice Chair

Roger P. Boudreau

Mark A. Carruolo

Brian M. Daniels

Michael DiBiasc

Paul L. Dion

Thomas M. Lambert

John P. Maguire

Marianne F. Monte

Thomas A. Mullaney

Claire M. Newell

Marcia B. Reback

Jean Rondeau

Laura Shawhughes

Frank J. Karpinski  
Executive Director

August 15, 2017

Mr. Russell Kraczkowski  
[REDACTED]  
Chepacket, RI 02814

Dear Mr. Kraczkowski:

RE: Request for a Hearing – Russell Kraczkowski

In accordance with Rhode Island General Laws §36-8-3 and the Rules of Practice and Procedures for Hearings, your request for a hearing has been assigned to:

HEARING OFFICER: Charles M. Koutsogiane, Esq.  
Phone: (401) 434-2800

LOCATION: Employees' Retirement System  
50 Service Avenue, 2<sup>nd</sup> Floor  
Warwick, RI 02886-1021

You should contact the hearing officer to arrange a mutually convenient time to hold the hearing.

You may represent yourself at this Hearing or your case may be presented by a lawyer. Consistent with Rhode Island General Law §11-27-2, entitled "Practice of law" defined, any person accompanying you who is not a lawyer cannot present your case to the Hearing Officer.

Should you have any additional questions, please don't hesitate to contact me at (401) 462-7608.

Sincerely,  
*Roxanne Donoyan*  
Roxanne Donoyan  
Assistant to the Executive Director

DATE RECEIVED BY SHS

8/17/17

ccs: Michael P. Robinson, Esq. ✓  
Charles M. Koutsogiane, Esq.

Enclosure: ERSRI Regulation No. 4 – Rules of Practice and Procedure for Hearings

JT Exh  
# 16

**Gayle Mambro-Martin**

**From:** Ryan, Jane (DOC) <Jane.Ryan@doc.ri.gov>  
**Sent:** Monday, September 18, 2017 11:00 AM  
**To:** Gayle Mambro-Martin  
**Subject:** RE: [EXTERNAL] : FW: Russell Kraczkowski - Salary Information  
**Attachments:** VERIFYING EMPLOYMENT-Kraczkowski.doc

Here you go.

Jane

**From:** Gayle Mambro-Martin [mailto:Gayle.Mambro-Martin@ersri.org]  
**Sent:** Monday, September 18, 2017 10:42 AM  
**To:** Ryan, Jane (DOC) <Jane.Ryan@doc.ri.gov>  
**Subject:** RE: [EXTERNAL] : FW: Russell Kraczkowski - Salary Information

Jane,

Thank you for providing this updated information.

Can you address the 1999 calendar year as requested in my email:

Again in the year 2000, our office received his W-2 for the 1999 calendar year which showed that he was employed that year by a private company and earned wages.

Our office received information from the DOC in the year 2000 and again in 2013 that the amount he would have earned for the 1999 calendar year had he been employed that year with the DOC was \$46,131.00.

After speaking with you about this information which was previously provided to our office by you, you indicated that you would like to review your files to confirm that this information is correct. Therefore, we are asking that you please provide the amount of the salary that Mr. Kraczkowski would have earned for the 1999 calendar year had he still been employed that year.

Thank you for your timely responses.

Gayle

Gayle C. Mambro-Martin  
Deputy General Counsel  
Employees' Retirement System of Rhode Island  
50 Service Avenue  
Warwick, RI 02886  
Phone: 401.462.7616  
Fax: 401.462.7691

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**From:** Ryan, Jane (DOC) [mailto:Jane.Ryan@doc.ri.gov]  
**Sent:** Monday, September 18, 2017 10:11 AM  
**To:** Gayle Mambro-Martin <Gayle.Mambro-Martin@ersri.org>  
**Subject:** RE: [EXTERNAL] : FW: Russell Kraczkowski - Salary Information

JH EX # 17

Good Morning Gayle-

Can you please review this letter. I hope this is what you are looking for. I will need to send a copy to Russell as well  
Jane

**From:** Gayle Mambro-Martin [<mailto:Gayle.Mambro-Martin@ersri.org>]  
**Sent:** Friday, September 15, 2017 5:04 PM  
**To:** Ryan, Jane (DOC) <[Jane.Ryan@doc.ri.gov](mailto:Jane.Ryan@doc.ri.gov)>  
**Subject:** [EXTERNAL] : FW: Russell Kraczkowski - Salary Information

Hi Jane,  
Can you please provide us with a status regarding the below request. Thank you.  
Gayle

Gayle C. Mambro-Martin  
Deputy General Counsel  
Employees' Retirement System of Rhode Island  
50 Service Avenue  
Warwick, RI 02886  
Phone: 401.462.7616  
Fax: 401.462.7691

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**From:** Gayle Mambro-Martin  
**Sent:** Thursday, August 31, 2017 1:14 PM  
**To:** Jane Ryan (DOC) <[Jane.Ryan@doc.ri.gov](mailto:Jane.Ryan@doc.ri.gov)>  
**Subject:** FW: Russell Kraczkowski - Salary Information

Good Afternoon Jane,  
Just want to confirm that you have received the below email. I understand that you needed some time to complete your research.  
Thank you.

Gayle C. Mambro-Martin  
Deputy General Counsel  
Employees' Retirement System of Rhode Island  
50 Service Avenue  
Warwick, RI 02886  
Phone: 401.462.7616  
Fax: 401.462.7691

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From: Gayle Mambro-Martin  
Sent: Tuesday, August 22, 2017 11:30 AM  
To: Jane Ryan (DOC) <Jane.Ryan@doc.ri.gov>  
Subject: Russell Kraczkowski - Salary Information

Good Morning Jane,

Per our conversation last week, I am making a request for information regarding the above matter. Mr. Kraczkowski retired on a disability retirement on December 16, 1994.

By law, each year the retirement system needs to be provided with information from the retiree: (1) W-2 and (2) medical. By law, should the disability retiree's wages from outside earnings when added to their disability pension exceed the amount they would have earned had they remained employed, the pension benefit will be adjusted or suspended.

In 1998 our office received his W-2 for the 1997 calendar year which showed that he was employed in 1997 by a private company and earned wages.

Our office then reached out to his former employer, the DOC and asked how much he would have earned for the 1997 calendar year had he still been employed that year.

The DOC indicated that had he been employed for the 1997 calendar year he would have earned \$38,804.00.

After speaking with you and Mr. Kraczkowski, our office learned that while that information was accurate at the time it was provided to our office, there were subsequent adjustments to the pay steps that would have affected Mr. Kraczkowski for that year had he remained employed. Therefore, we are asking that you please provide the amount of the salary that Mr. Kraczkowski would have earned for the 1997 calendar year had he still been employed that year.

Again in the year 2000, our office received his W-2 for the 1999 calendar year which showed that he was employed that year by a private company and earned wages.

Our office received information from the DOC in the year 2000 and again in 2013 that the amount he would have earned for the 1999 calendar year had he been employed that year with the DOC was \$46,131.00.

After speaking with you about this information which was previously provided to our office by you, you indicated that you would like to review your files to confirm that this information is correct. Therefore, we are asking that you please provide the amount of the salary that Mr. Kraczkowski would have earned for the 1999 calendar year had he still been employed that year.

Thank you for your timely responses.

Gayle

Gayle C. Mambro-Martin  
Deputy General Counsel  
Employees' Retirement System of Rhode Island  
50 Service Avenue  
Warwick, RI 02886  
Phone: 401.462.7616  
Fax: 401.462.7691

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Corrections  
OFFICE OF HUMAN RESOURCES

39 Howard Avenue  
Cranston, RI 02920  
(401) 462-3250  
TDD# (401) 462-5180

September 18, 2017

Gayle C. Mambro-Martin  
Deputy General Counsel  
Employees' Retirement System of Rhode Island  
50 Service Avenue  
Warwick, RI 02886

RE: Russell J. Kraczkowski  
SS# [REDACTED]

Dear Ms. Mambro-Martin:

Mr. Russell J. Kraczkowski was employed with the Department of Corrections as a Correctional Officer Steward from March 28, 1976 to December 15, 1994. His disability retirement was effective December 15, 1994. If Mr. Kraczkowski were working as of 1997 his salary would have been \$42,115.00. If he had been working in 1999 his salary would have been \$46,131.

I hope this information is helpful in meeting with your needs. Should you require anything further, you may contact me at 462-5119. Thank you.

Sincerely,

*Jane M. Ryan*

Jane M. Ryan  
Human Resources Analyst  
RIDOC Office of Human Resources

/jmr  
cc: File



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Corrections  
OFFICE OF HUMAN RESOURCES  
39 Howard Avenue  
Cranston, RI 02920  
(401) 462-3250  
TDD# (401) 462-5180

September 18, 2017

Gayle C. Mambro-Martin  
Deputy General Counsel  
Employees' Retirement System of Rhode Island  
50 Service Avenue  
Warwick, RI 02886

RE: Russell J. Kraczkowski  
SS# [REDACTED]

Dear Ms. Mambro-Martin:

Mr. Russell J. Kraczkowski was employed with the Department of Corrections as a Correctional Officer Steward from March 28, 1976 to December 15, 1994. His disability retirement was effective December 15, 1994. If Mr. Kraczkowski were working as of 1997 his salary would have been \$42,115.00.

I hope this information is helpful in meeting with your needs. Should you require anything further, you may contact me at 462-5119. Thank you.

Sincerely,

*Jane M. Ryan*

Jane M. Ryan  
Human Resources Analyst  
RIDOC Office of Human Resources

/jmr  
cc: File

Pet Exh # 1



# Employees' Retirement System of Rhode Island

A

ERSRI Board:

August 15, 2017

Seth Magaziner  
General Treasurer  
Chair

Russell Kraczkowski

~~XXXXXXXXXXXXXXXXXXXX~~  
Chepachet, RI 02814

William B. Finelli  
Vice Chair

Dear Mr. Kraczkowski:

Roger P. Boudreau

We write in response to your letters of June 18, 2017. Each letter is addressed below individually. Please be advised that we have found no substantiation for the claims you have made against the Employees' Retirement System of Rhode Island (ERSRI): that any documents were "missing", that ERSRI neglected to appropriately process your pension adjustments or that ERSRI acted willfully or knowingly in its actions with respect to your pension.

Mark A. Carruolo

Brian M. Daniels

ERSRI reviews all claims made by and documents provided by its members in support of their asserted issues. We have reviewed the information you provided.

Paul L. Dion

Thomas M. Lambert

John P. Maguire

## Request for Decision on Missing Insurance Policy Documents

Marianne F. Monte

In light of the representations and allegations included in your correspondence, we would like to take this time to explain how members enroll in the State's group life insurance underwritten by AETNA and what is on file regarding your retirement benefits and application.

Thomas A. Mullaney

Claire M. Newel

Marcia B. Reback

Jean Rondeau

It is standard procedure that to enroll in the State's group life insurance policy members submit a specific enrollment form that is part of the information packet and forms provided to members at the time of retirement.

Laura Shawhughes

Subsequent to receiving your retirement documents and forms that you submitted to ERSRI, and upon approval of your accidental disability application, your pension was processed by a counselor and audited as is standard procedure. A review of your file shows that on June 20, 1994, you submitted your retirement documents to our office and that no group life insurance enrollment form was received in your packet. We were unable to locate an insurance form in your file.

Frank J. Karpinski  
Executive Director

In addition, and more importantly, you have continued to receive your pension checks since 1994 and you made no inquiry to our office until 2017 regarding the group life insurance benefit. Moreover, your pension check stubs clearly would have noted deductions such as taxes, healthcare and other deductions, and you would have been on notice that no deductions were being taken for group life insurance. Any further communications regarding group life insurance should be directed to AETNA life insurance.

Request for Hearing regarding your claim for interest on money you assert you are owed related to a 1998 salary adjustment, and your claim for interest from the 2000 salary adjustment that was refunded in 2013



15

With respect to your request for interest, we reiterate the information as provided in our letters to you dated May 17, 2017 and February 23, 2017 attached hereto.

Regarding the adjustment for your overearnings, the Rhode Island General Laws (ERSRI) provide no provisions to pay interest. Please be advised that ERSRI did not willfully, knowingly or repeatedly withhold your money. It was merely an inadvertent error. Once we became aware, your money was immediately refunded.

We are unclear regarding your allegations that ERSRI somehow violated RIGL §36-10-33. That law addresses the penalty for fraudulent claims or statement made by members and their beneficiaries with respect to their claims to a pension or payment of their pension, and does not apply to mistakes or oversights made by ERSRI.

**Request for Refund of 1997/1998 Adjustment**

Sept 18 Resolved Amount

With respect to your 1997 outside earnings, based on the information provided to our office from your employer in 1998 regarding your employment in 1997 and the amount of money you would have earned in 1997 had you still been working, the determination was made that you had over earned by \$6,859.42. No corrected or updated information had ever been provided by your former employer regarding the amount you would have earned in 1997.

On August 10, 2017 we reached out to the Human Resources office of your former employer who has confirmed that the information they provided in 1998 is correct: your salary would have been \$38,804.00. Therefore, no adjustment will be made to your pension benefit.

Any questions regarding this confirmation should be directed to the HR office of your former employer.

**Conclusion**

A review of your file indicates that ERSRI did not act willfully and knowingly with respect to any actions regarding your retirement.

This letter constitutes official notification of an administrative denial. Pursuant to the Rules and Regulations of the Employees' Retirement System of Rhode Island, Regulation No. 1.4 entitled Rules of Practice and Procedure for Hearings in Contested Cases, Section C., any member aggrieved by an administrative action may request a hearing before the Retirement Board. Upon such request, the matter will be deemed a contested case. Such request shall be in writing and shall be sent to the Retirement Board, 50 Service Avenue, 2nd Floor, Warwick, RI 02886, Attention: Frank J. Karpinski, Executive Director, within 60 days of date of the letter from the Executive Director or Assistant Executive Director constituting a formal administrative denial. A request for hearing shall be signed by the member and shall contain the name of the member; date and nature of decision to be contested; a clear statement of the objection to the decision which must include the reasons the member feels

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he or she is entitled to relief; and a concise statement of the relief sought. Failure to strictly comply with the procedures outlined above shall be grounds to deny a request for a hearing.

A hearing officer has been assigned to your case and the information has been provided in the attached letter.

Sincerely,



Frank J. Karpinski  
Executive Director

Enclosures

**aetna**<sup>SM</sup>

PO Box 14549  
Lexington, KY 40512-4549

**Aetna Life Insurance Company**  
Life Beneficiary Management and  
Claim Eligibility Services  
Phone: 1-888-584-2983  
Fax: 1-800-238-6239

April 4, 2017

Russell Kraczkowski

~~████████████████████~~  
Chepachet, RI 02814

**RE: Russell Kraczkowski**  
**Company: State of Rhode Island**  
**Group policy number: 0657293**

Dear Mr. Kraczkowski:

We have received your inquiry on life insurance coverage.

We have contacted the employer, **State of Rhode Island**, and they have informed us that there is no coverage with Aetna in force for you.

The employer, **State of Rhode Island**, should be able to answer questions about coverage for you. Aetna will be able to assist you if you have any additional questions. Call us at **1-888-584-2983** between **8 a.m. and 7 p.m. ET**. If you call after these hours, you may leave a message and we will return your call as soon as possible.

Sincerely,

Beneficiary Management Services  
Aetna Life Insurance

E

June 18, 2017

Russell Kraczkowski  
[REDACTED]  
Chepachet, RI 02814

**RE: Request for Decision on Missing Insurance Policy Documents**

To Whom It My Concern,

This letter is to notify the agency, Employees' Retirement System of Rhode Island (ERSRI), that they never properly filed paperwork for the Rhode Island state retiree named above, Russell Kraczkowski, back in 1994.

Mr. Kraczkowski brought this issue to the attention of Gayle (Albro) Martin on June 7, 2017. His research for the last 6 months with Etna Insurance company, Department of Corrections Human Resources, and the RI State Employee Benefits all confirmed that there was paperwork missing that should have been generated by ERSRI. The blame by each aforementioned group each time said that ERSRI was the agency in charge of that paperwork, and they clearly never filed it. All groups contacted responding back to Mr. Kraczkowski informing him that the responsibility of that paperwork, and thus the resulting missing paperwork, falls to ERSRI. Thus, Mr. Kraczkowski is requesting a decision to reconcile this issue immediately. Documentation from Etna Insurance Company is attached for your convenience.



Complete all applicable items on this form; incomplete and unsigned forms will be returned. For additional information, see instructions at the end.

Please print clearly in black ink.

Section 1 - Member information

Form fields for member information: First and middle names (RUSSELL J), Last name (KRACZKOWSKI), Date of birth, Social Security number, and Membership status (Member/Retiree).

Section 2 - Beneficiary designation for other benefits

To name an OAP beneficiary, you must be an active member with at least ten years of contributory service on or before June 30, 2012 or at least five years of contributory service on or after July 1, 2012.

Person as a beneficiary

Form fields for the first beneficiary: Name, Address, City, State, Zip code, Telephone, Relationship, Social Security number, Date of birth, and Benefit type.

Form fields for the second beneficiary: Name, Address, City, State, Zip code, Telephone, Relationship, Social Security number, Date of birth, and Benefit type.



2017 FEB 22 AM 10: 55

BENEFICIARY DESIGNATION

Section 4 - Member/retiree authorization (signature must be notarized)

I, the undersigned, certify that I have read and that I understand the information regarding beneficiary designation available to me as a member or retiree of the Employees' Retirement System of Rhode Island.

Member/retiree signature

Date of signature

Notarization of member's/retiree's signature (required)

RI State

Hunt County

Subscribed and sworn to (or affirmed) before me on the 22nd day of February, 2017

Notary public signature

Notary name (print)

(SEAL)

Date of Commission expiration

Notary phone number (area code and number)

Please forward this completed form, dated and signed, to the following address:

Employees' Retirement System of Rhode Island
50 Service Avenue 2nd Floor
Warwick, RI 02886-1021
Office: (401) 462-7600 | Fax: (401) 462-7691
Email: ersri@ersri.org | Web site: www.ersri.org



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

EMPLOYEES' RETIREMENT SYSTEM

40 Fountain Street - 1st Floor  
Providence, RI 02903-1854  
Tel. (401) 277-2203 (T.D.D. available)  
1-800-752-8088 (In-state toll free)

NANCY J. MAYER  
General Treasurer

December 15, 1994

Mr. Russell J. Kraczkowski

[REDACTED]  
Chepachet, RI 02814

RE: Retirement Board Meeting of December 14, 1994

Dear Mr. Kraczkowski:

We are pleased to inform you that the Retirement Board has voted to approve your application for an accidental disability pension.

As soon as you notify your department of your termination and they forward the termination form to us, your pension will be processed.

Be sure to notify this office of any address changes as your pension checks will not be forwarded.

Please contact Diane Bourne at (401) 277-2203 for additional information or any questions you may have.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joann E. Flaminio".

Joann E. Flaminio  
Executive Director

JEF:dsb



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Corrections  
OFFICE OF HUMAN RESOURCES  
35 Howard Avenue  
Cranston, RI 02920

December 27, 1994

Ms. Diane Bourne  
Employees' Retirement System  
40 Fountain St., 1st Floor  
Providence, RI 02903

RE: RUSSELL J. KRACZKOWSKI  
SS: [REDACTED]

Dear Ms. Bourne:

Mr. Russell Kraczkowski has been employed with the Department of Corrections as a Correctional Officer and has taken a disability retirement effective December 15, 1994.

Mr. Kraczkowski's current salary, if he were working, would be \$36,956.00

If you have any questions, feel free to call me at 464-3250.

Sincerely,

*Christine Marchetti*

Christine Marchetti  
Personnel Aide

disretir

cc: employee

91 10 11 10-117 000



Employees Retirement System of Rhode Island  
 40 Fountain Street  
 Providence, Rhode Island 02903-1854  
 Telephone: (401) 277-2203 / TDD 521-8980  
 In-State Toll Free: 1-800-752-8088

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**Option Selection Form**

Please be aware that the figures shown here are estimates only and have been prepared at your request in order to help you determine which option you wish to receive upon retirement. Your final pension amount may vary slightly as it will be computed after verification of your Final Average Salary.

Name: <i>Russell Kruczowski</i>	Social Security Number: [REDACTED]	Phone Number: [REDACTED]
Three-Year Average Salary: <i>35,000.00</i>	Retirement Date:	
Years of Service: <i>Accidental Disability</i>	Birthdate: [REDACTED]	

Option Selection. Please check one.		Retiree	Beneficiary upon your death
<input checked="" type="checkbox"/>	Service Retirement Allowance	<i>23,333.45</i> <i>1,444.45</i>	ZERO
<input type="checkbox"/>	Option One	<i>18,900.09</i>	<i>Same amount</i>
<input type="checkbox"/>	Option Two	<i>1575.00</i> <i>20,706.27</i>	<i>1575.00</i>
<input type="checkbox"/>	SRA Plus (Social Security Option) Retirement Allowance until age 62 (Reduction at age 62)  Retirement Allowance at age 62	<i>81%</i> <i>1720.00</i>	<i>1/2 the amount</i> <i>865.28</i>  ZERO

**Statement and Signature By Member**

I, the undersigned, certify that I understand my rights and benefits as a member of the Employees Retirement System of Rhode Island. I understand that should I elect to receive my retirement allowance under either the Service Retirement Allowance (Maximum Plan) or the Social Security Option that upon my death, the pension benefit will cease and my beneficiary will be entitled to a one-time death benefit only.

Further, I understand that should I choose to receive my retirement allowance under Option One or Option Two that I have the right to change my retirement option provided that I have not divorced my beneficiary at the time of the election. I understand that I may elect to change my option one time only.

Member Signature *Russell Kruczowski* DATE *6-20-94*

**TERMINATION ACTION**

**RECEIVED**  
 JAN 18 1995

TEMP.	VACATION
PROB.	CHIEF
PERM.	ROSTER
UNCL.	STATUS CARD
NON COMP.	POS. NO. CARD
APPT.	
LIM.	

ROUTING: SEND ALL COPIES EXCEPT COPY G TO OFFICE OF PERSONNEL ADMINISTRATION.  
 SEE REVERSE SIDE FOR COMPLETE INSTRUCTIONS.

SEQ. 1	ACTION T72	EFF. DATE 12-15-94	DATE PREP. 12-21-94	S.S. NO.	LAST NAME Krackowski	FIRST NAME Russell	INT. J
STREET ADDRESS		CITY OR TOWN Chepachet		STATE R.I.	ZIP 02814	EMPLOYEE TERMINATED: <input checked="" type="checkbox"/> GOOD STANDING <input type="checkbox"/> NOT IN GOOD STANDING	LAST DAY OF CREDITED SERVICE 01/22/94
APPROP. ACCT. NO. 137011200	POS. NO. 00500	PAY ACCT. 01	CLASS CODE 02561200	CLASS TITLE Corr Officer Steward		WORK WEEK CODE F	DEPARTMENT Corrections
DIVISION Institutions/Operations		SECTION ACI		UNIT	JOB 1		
REASON CODE 7 G	REASON FOR ACTION Disability Retirement		POSITION TO BE: <input checked="" type="checkbox"/> FILLED <input type="checkbox"/> LEFT VACANT <input type="checkbox"/> ABOLISHED		DISCHARGED IN CURRENT PAY PERIOD VACATION: -0- SICK LEAVE: -0-	NO. HOURS DUE UPON TERMINATION VACATION: 76.2 SICK LEAVE: 28.7	
SIGNATURE OF EMPLOYEE <i>Russell Krackowski</i>				APPROVED BY PERSONNEL ADMINISTRATOR			
I hereby approve this termination and certify, that this employee is receiving full pay for vacation and sick leave to which he became entitled under Personnel Rules.  <i>Bryan Stein</i>				In all cases of dismissal, lay-off, suspension, mandatory retirement, or involuntary retirement, fill in below: I certify that this employee was given written notice of this action on DATE December 21, 1994			
SIGNATURE OF APPOINTING AUTHORITY				TITLE Human Resources Coordinator			

**INSTRUCTIONS TO EMPLOYEE**

**APPEALS:** Any person with provisional, probationary or permanent status, who has been demoted, suspended, laid off or dismissed, may within thirty (30) calendar days of the mailing of such action, appeal in writing to the Personnel Appeal Board for a review or public hearing.

**REEMPLOYMENT:** (1) Any classified employee having FULL CIVIL SERVICE STATUS, who RESIGNS in good standing, may have his name placed on the appropriate reemployment list provided that he submits a written request for such action within 3 years of the date of his resignation. His name will remain on the list for 3 years from the effective date of his termination.  
 (2) Any classified employee who RESIGNS while serving a PROBATIONARY period may have his name reinstated on the original employee list from which he was appointed, provided that said list is still in existence and that he submits a letter requesting such action.  
 (3) Any classified employee having FULL CIVIL SERVICE STATUS who is LAID OFF will automatically have his name placed on the appropriate reemployment list.  
 (4) Any classified employee who is LAID OFF while serving a PROBATIONARY PERIOD will automatically have his name reinstated on the list from which he was appointed, providing the list is still in existence.

**VACATION LEAVE CREDITS:** An employee is entitled to receive full pay upon termination for each hour of vacation to which he became entitled but did not use.

**TO MEMBERS OF THE EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF RHODE ISLAND.**  
 Your signature on these termination sheets DOES NOT enable you to withdraw your retirement contributions. In order to obtain your retirement money, you must sign a withdrawal application or forms provided by the Retirement System, 40 Fountain Street, Providence, RI 02903. You will not receive your money for at least 30 days after receiving your last pay check.

THIS TERMINATION IS SUBJECT TO CORRECTION AND APPROVAL BY THE DIVISION OF PERSONNEL ADMINISTRATION.

**COPY D - RETIREMENT**

WTK  
Sluggen  
**aetna**<sup>SM</sup>

7  
PO Box 14549  
Lexington, KY 40512-4549

**Aetna Life Insurance Company**  
Life Beneficiary Management and  
Claim Eligibility Services  
Phone: 1-888-584-2983  
Fax: 1-800-238-6239

April 4, 2017

Russell Kraczkowski

Chepachet, RI 02814

**RE: Russell Kraczkowski**  
**Company: State of Rhode Island**  
**Group policy number: 0657293**

Dear Mr. Kraczkowski:

We have received your inquiry on life insurance coverage.

We have contacted the employer, **State of Rhode Island**, and they have informed us that there is no coverage with Aetna in force for you.

The employer, **State of Rhode Island**, should be able to answer questions about coverage for you. Aetna will be able to assist you if you have any additional questions. Call us at **1-888-584-2983** between **8 a.m. and 7 p.m. ET**. If you call after these hours, you may leave a message and we will return your call as soon as possible.

Sincerely,

Beneficiary Management Services  
Aetna Life Insurance

401-222-3160

Employee Benefits

Jayle

Mambo-Martini

401-462-7616

Legal  
ENSR



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

EMPLOYEES' RETIREMENT SYSTEM  
198 Dyer Street  
Providence, R. I. 02903  
ANTHONY J. SOLOMON, Chairman  
General Treasurer

July 14, 1982

Mr. Russell Kraczkowski

Warwick, Rhode Island 02886

Dear Mr. Kraczkowski:

I regret to inform you that your application for Accidental Disability was denied by the Retirement Board at its meeting held on July 14, 1982 for the following reason.

Medical evaluation does not substantiate disability claim.

Should you wish to appeal this decision you may request in writing a hearing before the Board and submitting your reasons for appeal. You may have an attorney or other assistance with you at such hearing.

Sincerely yours,

Joseph G. Iannelli  
Executive Director

JGI:rv

10



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

EMPLOYEES' RETIREMENT SYSTEM

198 Dyer Street

Providence, R. I. 02903

ANTHONY J. SOLOMON, Chairman  
General Treasurer

11

Dear Member:

In reference to your State Pension, please contact the Rhode Island Division of Personnel, Employee Benefit Section, 289 Promenade Street, Providence, Rhode Island 02908 - Telephone 277-3160 to determine if you are eligible for a waiver of Group Life Premiums.

This procedure is to your advantage as a Disability Pensioner.

Very truly yours,

A handwritten signature in cursive script that reads "Joseph G. Iannelli".

Joseph G. Iannelli  
Executive Director

JGI:eg

Pet exh # 3

# Summary of Coverage

**Employer:** State of Rhode Island

**Group Policy:** GP-657293

**SOC:** 1A

**Issue Date:** June 4, 2015

**Effective Date:** July 1, 2015

The benefits shown in this Summary of Coverage are available for you.

This Summary of Coverage may be an electronic version of the Summary of Coverage on file with your Employer and Aetna Life Insurance Company. In case of any discrepancy between an electronic version and the printed copy which is part of the group insurance contract issued by Aetna Life Insurance Company, or in case of any legal action, the terms set forth in such group insurance contract will prevail. To obtain a printed copy of this Summary of Coverage, please contact your Employer.

## Eligibility

### Employees

You are in an Eligible Class if you are an active, retired and regular full-time or part-time employee working at least 20 hours or more per week of an Employer participating in this Plan.

Your Eligibility Date, if you are then in an Eligible Class, is the Effective Date of this Plan. Otherwise, it is the date you commence active work for your Employer or, if later, the date you enter the Eligible Class.

You can remain in an Eligible Class as a retired employee if when you terminate active employee status you have:

- 1.) reached age 60 or over with no minimum length of service,
- 2.) reached age 60 or under and completed a minimum of 28 years of service years of service with your Employer, and
- 3.) are disabled at any age with 10 or more years of service and eligible for pension.

You may continue your Life Insurance and Health Expense Coverage and any coverage you have for your dependents. Your Life Insurance will be subject to any reduction set forth below.

If you retired before the Effective Date of this Plan, you are also in an Eligible Class. You must follow the Enrollment Procedure. You may have Life Insurance and Health Expense Coverage for you and your dependents. Your Life Insurance will be subject to any reduction set forth below.

Pet # 2 (1 of 2)

Life, Supplemental Life and AD&PL

# Life Insurance

9

This Plan will pay as a Life Insurance benefit the amount of Life Insurance in force for you if you die from any cause while insured. You name your beneficiary. You may change your choice at any time.

## A Permanent and Total Disability Feature

If you are not able to work due to disease or injury, your insurance may be extended if Aetna determines you are permanently and totally disabled. If a determination of permanent and total disability is made, you will not have to make any further contributions for your coverage and no premium payments will be required from your Employer.

You are permanently and totally disabled only if disease or injury stops you from working at:

- your own job; or
- any other job for pay or profit;

and it must continue to stop you from working at any reasonable job.

A "reasonable job" is any job for pay or profit which you are, or may reasonably become, fitted for by education, training, or experience.

You must meet all of the following to be eligible:

- Your Life Insurance must be in force when you cease work due to disease or injury.
- You must be under age 60 when you cease active work.
- You must be absent from work for at least 9 consecutive months without interruption.

Aetna must receive you written notice of a claim for this extension at its Home Office within 12 months from the date you cease active work or within 12 months after you have used any accrued vacation or sick time, whichever is later. If written notice is not received within that time frame, you will not be eligible. Upon receipt of your written notice, Aetna may require you to furnish proof of your permanent and total disability before approving your claim. If proof is required, you must furnish all proof when requested. Aetna also has the right to examine you at its expense before approving your claim.

This extended insurance will be the amount you were insured for on the date your total disability began. If a Reduction Rule for Life Insurance extended due to the Permanent and Total Disability is in effect on the date you become so disabled, this extended insurance:

- will be reduced when you reach the age or ages set forth in the Age Reduction Rule; and
- will be further reduced in accordance with the Retirement Reduction rule when your Employer determines you have retired.

0420

This extension period will cease on the first to occur of:

- The date Aetna sends you a request at your last address shown on Aetna's records:

For an exam, if you do not go for the exam within 31 days of that date.

For proof that you are still permanently and totally disabled, if proof is not given within 31 days of that date.

- The date you are well enough to work in any reasonable job.
- The date you start to work in any job for pay or profit.

After insurance has been extended continuously for 2 years, Aetna will not request an exam or proof more often than once in a 12 month period.

Pat # 2 (2 of 2)



A

UPDATE.

This is The 4TH in Person

Trip To HUMAN Resources.

AND Her Research IRONICALLY

MATCH my OWN.

1976 To 1997 = 21 YRS

21 YRS = 252 MONTHS

252 Month = Step 14 on Schedule 600

Classified Annual Salaries

~~Effective~~ July 6 1997

Effective 2000 Retro BACK TO 1997

Step 14 is 42,115.00

old salary 1997 38,804.00

3,311.00

is owed To me From 1998

19 years To Resolve This.



# Employees Retirement System of Rhode Island

Joann E. Flaminio, Executive Director

40 Fountain Street  
Providence, RI  
02903-1854 June 25, 1998

Tel: (401) 277-2263

TDD: (401) 521-8980

Fax: (401) 277-2430

E-mail:  
ersri@treasury.state.ri.us

Web Site:  
www.state.ri.us/  
treas/ersri.htm

Mr. Russell J. Kraczkowski  
[REDACTED]  
Chepachet, RI 02814

RE: 039 34 3213

Dear M. Kraczkowski:

In accordance with Rhode Island General Law 36-10-17. Reexamination of disability beneficiaries-Reduction of benefit-Reinstatement to active service which reads, in part,

*Should the beneficiary be engaged in a gainful occupation or should he be offered service as a result of the placing of his or her name on a list of candidates, the retirement board shall adjust, and, from time to time readjust, the amount of his or her disability benefit to an amount which shall not exceed the rate of benefit upon which he or she was originally retired, and which, when added to the amount then earnable by him or her, shall not exceed his or her rate of annual compensation currently for the classification that the disability held prior to retirement.*

your monthly pension benefit will be reduced by \$571.62. Your new gross monthly pension benefit from the Employees' Retirement System of Rhode Island will be \$1,606.54 effective June 1, 1998.

This reduction is based upon the fact that your 1997 outside earnings (\$20, 286.78 plus your 1997 retirement benefit (\$25, 376.64) exceeded the annual amount your position would currently be paying (\$38, 804.00) by \$6, 859.42..

If you have any questions or require additional information, please do not hesitate to contact me at (401) 222-2203 ext. 220.

Sincerely,

Diane S. Bourne  
Assistant Director - Member Services



SCHEDULE 600  
**CLASSIFIED ANNUAL SALARIES**  
 Effective July 6, 1997

1040

	1 0-6 Months	2 7-18 Months	3 19-30 Months	4 31-42 Months	5 43-54 Months	6 55-66 Months	7 67-78 Months	8 79-90 Months	9 91-102 Months	10 103-114 Months	11 115-126 Months	12 127-180 Months	13 181-240 Months	14 241-264 Months	15 265+ Months
21	27379	28330	28988	29717	30675	32046	32746	33559	33910	34141	34491	35628	37117	37977	38835
24	30837	31983	32829	34314	34431	35745	36444	37258	37607	37840	38189	39504	41167	42115	43064
26	33040	34241	35196	36860	36977	38417	39116	39931	40280	40513	40863	42303	44095	45108	46118
30	38010	39533	40799	42896	43014	44758	45455	46271	46620	46853	47203	48945	51038	52199	53362
51	36802	38078	39727	40632	43159	45156	45953	46647	47365	48057	48882	49546	52023	53262	54500
55	45582	46859	47898	48963	49973	51250	52261	53246	53858	54471	55055	55615	58395	59785	61177

3

- 4
- 10) I received your (ERSRI's) response letter on May 17, 2017 and then requested a meeting with ERSRI Legal Counsel. After several phone calls I meet with Gayle (Albro) Martin on June 8, 2017. She was very receptive and professional. Upon completion of our meeting she told me she would copy my file and I could pick up my file in person on June 9, 2017.
  - 11) Upon reading my file I was astounded to find that the information I was asked to seek out was already had on file in the agency, making my prior efforts to obtain "proof" pointless.
  - 12) Additionally, I discovered a letter from Diane Bourne dated June 25, 1998 which issued an adjustment from my pension because of my 1997 earnings in the amount of \$6,859.42. While this adjustment was accurate during 1998, subsequent arbitration by the state in 2000 warranted that amount to be altered. It had not been altered, nor the money refunded to me. This discovery marked another instance of money not returned to me. This money from 1997 is still owed to me, as is its interest.
  - 13) In 2013, when I had brought to the agency's attention the adjustment in 2000 for which I was still owed money, I was not aware of the 1998 adjustment that was not corrected and refunded. How could top people at ERSRI not be aware that the contract agreement award settled and signed in June 30, 2000 effected 1996, 1997, 1998, 1999, 2000, and evidently they still are?
  - 14) I have again gone in person to the Department of Corrections Human Resources and acquired a copy of the 600 series for classified annual salaries for 1997 from Jane Ryan.
  - 15) Now a sum of \$██████.00 owed for 17 years with interest.
  - 16) Any correction to my salary that was finally made in 2013, on the two prior instances, was made because of my diligence.
  - 17) Your words used in your letter of "inadvertently" and "unaware" do not excuse you and your agency from this gross injustice that I feel was willfully, knowingly, repeatedly done by withholding my money.
  - 18) Your closing statement that there are no laws for you and the people or agency involved for responding to such an injustice done to myself are defined in the law your agency mailed to me every year with my disclosure. Your staff is guilty of many of the requirements to violate this law. The only difference is I received the award. Please see RI General Law 36-10-33.

---

Signed

Date

5

With respect to your request for interest, we reiterate the information as provided in our letters to you dated May 17, 2017 and February 23, 2017 attached hereto.

Regarding the adjustment for your overearnings, the Rhode Island General Laws (ERSRI) provide no provisions to pay interest. Please be advised that ERSRI did not willfully, knowingly or repeatedly withhold your money. It was merely an inadvertent error. Once we became aware, your money was immediately refunded.

We are unclear regarding your allegations that ERSRI somehow violated RIGL §36-10-33. That law addresses the penalty for fraudulent claims or statement made by members and their beneficiaries with respect to their claims to a pension or payment of their pension, and does not apply to mistakes or oversights made by ERSRI.

#### **Request for Refund of 1997/1998 Adjustment**

With respect to your 1997 outside earnings, based on the information provided to our office from your employer in 1998 regarding your employment in 1997 and the amount of money you would have earned in 1997 had you still been working, the determination was made that you had over earned by \$6,859.42. No corrected or updated information had ever been provided by your former employer regarding the amount you would have earned in 1997.

On August 10, 2017 we reached out to the Human Resources office of your former employer who has confirmed that the information they provided in 1998 is correct: your salary would have been \$38,804.00. Therefore, no adjustment will be made to your pension benefit.

Any questions regarding this confirmation should be directed to the HR office of your former employer.

#### **Conclusion**

A review of your file indicates that ERSRI did not act willfully and knowingly with respect to any actions regarding your retirement.

This letter constitutes official notification of an administrative denial. Pursuant to the Rules and Regulations of the Employees' Retirement System of Rhode Island, Regulation No. 1.4 entitled Rules of Practice and Procedure for Hearings in Contested Cases, Section C., any member aggrieved by an administrative action may request a hearing before the Retirement Board. Upon such request, the matter will be deemed a contested case. Such request shall be in writing and shall be sent to the Retirement Board, 50 Service Avenue, 2nd Floor, Warwick, RI 02886, Attention: Frank J. Karpinski, Executive Director, within 60 days of date of the letter from the Executive Director or Assistant Executive Director constituting a formal administrative denial. A request for hearing shall be signed by the member and shall contain the name of the member; date and nature of decision to be contested; a clear statement of the objection to the decision which must include the reasons the member feels

I would like to request on this date 9-28 2017  
That any money returned to Russell  
Kraczkowski be done as not to effect my yearly  
Amount.

Thank you

**EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF RHODE ISLAND**

**RUSSELL J. KRACZKOWSKI** : **In re:**  
 : **Proceeding before Hearing**  
 v. : **Officer Charles M. Koutsogiane, Esquire**  
 :  
**EMPLOYEES' RETIREMENT** :  
**SYSTEM OF THE STATE** :  
**OF RHODE ISLAND** :

**POST-HEARING MEMORANDUM OF LAW OF THE EMPLOYEES'  
RETIREMENT SYSTEM OF THE STATE OF RHODE ISLAND**

**INTRODUCTION**

Now comes the Employees' Retirement System of the State of Rhode Island (the "Retirement System" or "ERSRI"), and hereby submits this post-hearing memorandum of law in support of the administrative determination of the Executive Director, Frank J. Karpinski, made in an August 15, 2017 letter to Russell J. Kraczkowski ("Kraczkowski").

**BACKGROUND**

The facts of this matter are largely not in dispute. Mr. Kraczkowski was retired on an accidental disability pension in 1994. Tr. 19: 9 – 21.<sup>1</sup> At that time, Mr. Kraczkowski did not complete an application for life insurance enrollment. Tr. 19: 22 – 20: 13. Mr. Kraczkowski did not visit the offices of the Retirement System at the time of his retirement, but rather received and executed documents related to his retirement at the offices of his employer, the Department of Corrections. Tr. 21: 24 – 22: 6; Tr. 23: 5 – 18.

In June of 1998, Assistant Director - Member Services, Diane S. Bourne wrote to Mr. Kraczkowski indicating that because of his post-retirement employment in 1997 his retirement benefits for 1998 would be adjusted pursuant to R.I.G.L. § 36-10-17, as a result of his total

---

<sup>1</sup> The reference to Tr. 19: 9 – 21 is to page 19, lines 9 through 21 of the transcript of the Hearing held on September 28, 2017. Subsequent references to the transcript will be in similar form.



compensation in 1997 having exceeded the amount he would have received if he had continued at his rate of annual compensation for the classification he held prior to retirement. Tr., Joint Exhibit 2.

Similarly, in May 2000 the Retirement System made an adjustment to Mr. Kraczkowski's pension payments based upon his income for 1999. Tr. Joint Exhibit 11. Subsequently, in December of 2000 the Retirement System was notified that Mr. Kraczkowski's contractual salary for 2000 would have been higher than what had previously been reported. *Id.* Inadvertently no adjustment was made at that time. *Id.* When the Retirement System was informed in January 2013 of the correction of Mr. Kraczkowski's salary information by his former employer, payment of the differential was promptly made. *Id.*

#### ARGUMENT

**A. It was not the responsibility of the Retirement System to enroll Mr. Kraczkowski in the State's group life insurance program.**

Mr. Kraczkowski acknowledged that he did not go to the Retirement System to process his retirement paperwork, and worked solely through his employer. Tr. 21: 24 – 22: 6; Tr. 23: 5 – 18. He acknowledged that he did not complete an application for life insurance enrollment. Tr. 19: 22 – 20: 13. He has failed to introduce any facts or legal theory that the Retirement System is responsible for his having failed to apply for life insurance at the time of his retirement. As testified to by Attorney Mambro-Martin, no application for group life insurance appeared in Ms. Kraczkowski's file, suggesting that he had opted not to apply. Tr. 28: 19-22; Tr. 31: 3-14. The Retirement System does not control or provide group life insurance, which is underwritten by a private insurance carrier. The Retirement System merely acts as a conduit for receipt of the administrative forms by which a member would opt to apply for such coverage. As there is no evidence that Mr. Kraczkowski ever applied, as he was not required to do so, there is

no administrative error that can be attributed to, or corrected by ERSRI, and Mr. Kraczkowski should direct his insurance-related inquiries to AETNA life insurance.

**B. Mr. Kraczkowski is not entitled to interest on adjustment payments made as a result of a 1998 salary adjustment.**

As noted by Assistance Executive Director Diane S. Bourne in her February 23, 2017 letter to Mr. Kraczkowski, there is no statutory basis for the payment of interest to him by the Retirement System. Tr., Joint Exhibit 9. More specifically, there are only three references to payments other than benefits by the Retirement System to a retiree. The General Assembly provided for refunds on contributions, without interest, to members withdrawing from service or otherwise ceasing to be a member other than by reason of death or retirement. R.I.G.L. § 36-10-8. Similarly, a teacher "withdrawing from service prior to retirement shall be entitled to a refund equal to the total amount contributed by him or her to the teachers' survivors benefit fund, without interest." R.I.G.L. § 16-16-31. It is only in the case of a teacher member electing to receive a lump sum payment equal to his or her contributions to the teachers' survivors benefit fund in lieu of the survivors benefits provided in §§ 16-16-25 -- 16-16-38, that a payment *with interest* is authorized. R.I.G.L. § 16-16-32 (emphasis added). As none of these statutes relate to the factual situation presented by Mr. Kraczkowski, and as there is no other statutory authority whatsoever for the Retirement System to pay interest to Mr. Kraczkowski, his administrative claim should be rejected.

The Retirement System further wishes to note that R.I.G.L. § 36-10-33, which provides:

Every person who knowingly or willfully makes, presents, or in anyway procures the making or presentation of any false or fraudulent affidavit or affirmation concerning any claim for pension or payment thereof, shall, in every case, forfeit a sum not exceeding ten thousand dollars (\$ 10,000), in addition to the repayment of any and all money received from the retirement system because of a false or fraudulent claim or statement, with interest, at the rate of twelve percent (12%) per annum, to be sued and

recovered by and in the name of the retirement board of the retirement system, and when recovered, paid over to and thereupon become a part of the funds of the retirement system.

has no relevance whatsoever to the matter at hand. This section relates to the recovery by *the Retirement System* of sums improperly obtained from the Retirement System in connection with any claim for pension or payment thereof, by false or fraudulent affidavits or affirmations. This section has no bearing on Mr. Kraczkowski's claim of entitlement to interest on a payment *from* the Retirement System, which has no basis in statute or any other source of law.

**C. Whether Mr. Kraczkowski is entitled to an adjustment related to his 1997 outside earnings will be determined in due course.**

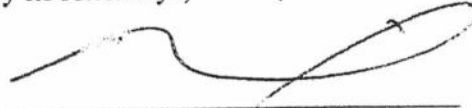
Mr. Kraczkowski's claim that he is entitled to an adjustment related to his 1997 earnings is no longer in dispute, as he acknowledges that the Retirement System will recalculate whether or not the withholding of funds from his pension in 1998 was accurate based upon updated information from Mr. Kraczkowski's employer. Tr. 52: 12 – 25. Accordingly, this issue is no longer in dispute.

**CONCLUSION**

For all of the reasons set forth above, ERSRI requests that the August 15, 2017 determination of its Executive Director be affirmed, and that the Hearing Officer so recommend to the Retirement Board.

THE EMPLOYEES' RETIREMENT  
SYSTEM OF THE STATE  
OF RHODE ISLAND

By its Attorneys,



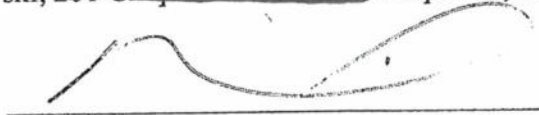
---

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John H. McCann, # 2947  
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(401) 272-1403 Facsimile  
[mrobinson@shslawfirm.com](mailto:mrobinson@shslawfirm.com)  
[jmccann@shslawfirm.com](mailto:jmccann@shslawfirm.com)

Dated: December 4, 2017

**CERTIFICATION**

I hereby certify that on this 4<sup>th</sup> day of December 2017 I mailed a true and accurate copy of the within Post-Hearing Memorandum of Law of the Employees' Retirement System of the State of Rhode Island to Russel J. Kraczkowski, [REDACTED] Chepachet, RI 02814, by first class mail, postage prepaid.



**In The Matter Of:**  
*Employees Retirement System Hearing*

---

*Russel J. Krackowski vs. ERSRI*  
*September 28, 2017*

---

**ALLIED**

COURT REPORTERS, INC.  
*and*



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*Min-U-Script® with Word Index*

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 8  
 9  
 10  
 11  
 12 ERSRI  
 13 50 SERVICE AVENUE  
 14 WARWICK, RI 02886  
 15 SEPTEMBER 28, 2017  
 16 11:30 A.M.  
 17  
 18 BEFORE: HEARING OFFICER CHARLES M.  
 19 KOUTSOGLIANE, ESQUIRE  
 20  
 21 APPEARANCES:  
 22 FOR ERSRI:  
 23 SCHECHTMAN, HALPERIN & SAVAGE, LLP  
 24 BY: MICHAEL P. ROBINSON, ESQUIRE  
 25 -and-  
 GAYLE MAMBRO-MARTIN, DEPUTY GENERAL COUNSEL, ERSRI  
 FOR THE PETITIONER:  
 RUSSELL KRACZKOWSKI, PRO SE

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 12 EXHIBIT 13 LETTER DATED JUNE 18, 2017, FROM MR. 5  
 13 KRACZKOWSKI TIME STAMPED 10:18 A.M.  
 (1 PG.)  
 14 EXHIBIT 14 LETTER DATED JUNE 18, 2017, FROM MR. 5  
 15 KRACZKOWSKI TIME STAMPED 10:17 A.M.  
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 17 EXECUTIVE DIRECTOR OF THE RETIREMENT  
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 8 WELL AS THE INTEREST RELATING TO  
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 9  
 10  
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 14  
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1 (HEARING COMMENCED AT 12:28 P.M.)  
 2 (JOINT EXHIBITS 1-17 MARKED IN FULL)  
 3 (PETITIONER'S EXHIBIT 1 MARKED IN FULL)  
 4 HEARING OFFICER KOUTSOGLIANE: Let's  
 5 identify the parties who are at the table today.  
 6 MR. KRACZKOWSKI: Russell  
 7 Kraczkowski.  
 8 MR. ROBINSON: Michael Robinson,  
 9 counsel for the Employees' Retirement System.  
 10 Present with me is Gayle Mabro-Martin, internal  
 11 legal counsel for the Retirement System.  
 12 HEARING OFFICER KOUTSOGLIANE: The  
 13 parties have agreed to the admission or the  
 14 submission of some joint exhibits, so I'll have  
 15 you, Mr. Robinson, identify those documents,  
 16 please.  
 17 MR. ROBINSON: Sure. Thank you, Mr.  
 18 Hearing Officer. The parties have identified 17  
 19 separate joint exhibits, and the Retirement System  
 20 is not objecting to one Petitioner's exhibit  
 21 coming in. Those documents, the joint exhibits  
 22 first, Number 1 is a disability retirement  
 23 application dated June 20, 1994. Joint Exhibit 2  
 24 is a letter from Diane Bourne, the Assistant  
 25 Director of Member Services, to Mr. Kraczkowski,

1 Joint 11 is a letter from the Executive Director,  
 2 Frank Karpinski, of the Retirement System to Mr.  
 3 Kraczkowski, dated May 17 of 2017. Joint  
 4 Exhibit 12 is a letter dated June 18, 2017, from  
 5 Mr. Kraczkowski, that's date stamped 10:18 A.M.  
 6 Joint Exhibit 13 is a second letter, dated  
 7 June 18th of 2017, from Mr. Kraczkowski. The  
 8 regarding line references request for refund of  
 9 1997/1998 adjustment. Joint Exhibit 14 is also a  
 10 letter dated June 18, 2017, from Mr. Kraczkowski.  
 11 The regarding line is request for hearing. Joint  
 12 Exhibit 15 is a letter to Mr. Kraczkowski from the  
 13 Executive Director of the Retirement System dated  
 14 August 15th of 2017, constituting a final  
 15 administrative denial of his, Mr. Kraczkowski's,  
 16 claim. Joint Exhibit 16 is a letter dated  
 17 August 15th of 2017, assigning Hearing Officer  
 18 Koutsogiane to hear and resolve this matter.  
 19 Joint Exhibit 17 is an e-mail string dated  
 20 December 18, 2017, with some attachments. The  
 21 first date of the e-mail string is -- on the first  
 22 page, rather -- is September 18th of 2017 at  
 23 11 A.M. Separately there is a folder that has  
 24 been marked with various documents inside, and  
 25 that folder has been reviewed and may be admitted

1 dated June 25, 1998. The next is a letter -- I  
 2 apologize for butchering your name, it's  
 3 Kraczkowski?  
 4 MR. KRACZKOWSKI: Yeah, that's fine.  
 5 MR. ROBINSON: Okay, good. A letter  
 6 from Diane Bourne to Mr. Kraczkowski dated  
 7 May 25th of 2000.  
 8 HEARING OFFICER KOUTSOGLIANE: That's  
 9 Number 3?  
 10 MR. ROBINSON: That's Number 3.  
 11 Joint 4 is a continuing statement of disability  
 12 form for the calendar year 2000. Joint 5 is a  
 13 letter from Christine Marchetti, the Employee  
 14 Relations Officer at the Department of  
 15 Corrections, to Mr. Salvatore Lombardi. Joint 6  
 16 is a document containing a photocopy of a W-2 form  
 17 for the year 2000. Joint 7 is a document entitled  
 18 Continuing Statement of Disability, Page 5 of 5.  
 19 Joint 8 is a letter from Jane Ryan, Human  
 20 Resources, Analyst I, at the Department of  
 21 Corrections, to Ms. Diane Bourne. It's dated  
 22 January 3rd of 2013. Joint Exhibit 9 is a letter  
 23 from Diane Bourne to Mr. Kraczkowski, dated  
 24 February 23, 2017. Joint 10 is a letter from  
 25 Aetna dated April 4th of 2017 to Mr. Kraczkowski.

1 without objection from the Retirement System as  
 2 Petitioner's Number 1.  
 3 HEARING OFFICER KOUTSOGLIANE: So now  
 4 there are also two documents that you have, sir,  
 5 regarding Petitioner's Number 1 that you need to  
 6 address.  
 7 MR. KRACZKOWSKI: Oh, these here,  
 8 okay. I think these are relevant to my case.  
 9 They were sent to me by Aetna Life Insurance, and  
 10 they explain how the disability -- the accidental  
 11 disability, like back when I was hurt. It  
 12 explained what the procedure would have been in  
 13 order to obtain that, because it's special for an  
 14 accidental disability. There is no premium for  
 15 the state or myself. It's a waiver of premium.  
 16 That was never addressed back in 1994.  
 17 HEARING OFFICER KOUTSOGLIANE: Are  
 18 there two pages, two documents?  
 19 MR. KRACZKOWSKI: Well, it's a cover  
 20 letter. You know, it says it is because -- like  
 21 the rules of the State of the Rhode Island, you  
 22 know, that's how that's written. And then like  
 23 the second page is all the procedures that you go  
 24 through; all the things if you don't do, you don't  
 25 get it; all the things you have to do to get it;

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1 and that was never --  
 2 HEARING OFFICER KOUTSOGLIANE: These  
 3 were prepared by whom?  
 4 MR. KRACZKOWSKI: This was by Aetna.  
 5 This is a whole folder from Aetna showing their  
 6 whole policy on it. If it was a regular  
 7 disability, there's a different procedure. On  
 8 accidental disability, there's this procedure.  
 9 HEARING OFFICER KOUTSOGLIANE: Okay.  
 10 MR. ROBINSON: I would oppose this,  
 11 Mr. Hearing Officer, not so much on authentication  
 12 grounds, but rather on relevancy grounds. A  
 13 review of the document appears to indicate that it  
 14 addresses features of various types of coverage  
 15 that are or may be available from Aetna. But the  
 16 threshold issue that's before you is whether or  
 17 not Mr. Kraczkowski was properly enrolled in  
 18 coverage in the first place, and so I don't see  
 19 that a summary of available types of coverage,  
 20 it's not dated, I don't see that this advances the  
 21 issue that's before you.  
 22 HEARING OFFICER KOUTSOGLIANE: Well,  
 23 thank you very much. I'm going to overrule the  
 24 objection, and accept these documents, and give it  
 25 the value and the weight that it deserves, so

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1 these will be part of the yellow packet, which is  
 2 Petitioner's Number 1.  
 3 MR. ROBINSON: Why not just mark it  
 4 for clarity as 2, maybe that would be the easiest  
 5 thing to do.  
 6 HEARING OFFICER KOUTSOGLIANE: I'll do  
 7 it as Petitioner's 1 and 2.  
 8 MR. ROBINSON: I think it's one  
 9 document.  
 10 HEARING OFFICER KOUTSOGLIANE: It is  
 11 one document, but because he has it marked as 8  
 12 and 9 at the top, are these two?  
 13 MR. KRACZKOWSKI: All my documents  
 14 are marked so I can refer to them, but the cover  
 15 letter was just to put that, so that clarifies  
 16 like where that came from.  
 17 HEARING OFFICER KOUTSOGLIANE: I'll  
 18 make this Petitioner's Number 2, consisting of two  
 19 pages.  
 20 MR. ROBINSON: I think that's fine.  
 21 (PETITIONER'S EXHIBIT 2 MARKED IN FULL)  
 22 (OFF THE RECORD)  
 23 RUSSELL KRACZKOWSKI (SWORN)  
 24 HEARING OFFICER KOUTSOGLIANE: State  
 25 your name for the record.

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1 THE WITNESS: Russell Kraczkowski.  
 2 HEARING OFFICER KOUTSOGLIANE: Okay,  
 3 make your presentation, sir.  
 4 MR. KRACZKOWSKI: What I put together  
 5 are the packages. Like A, B are just references  
 6 to what I'm going to explain. Briefly --  
 7 HEARING OFFICER KOUTSOGLIANE: Just  
 8 for points of clarity, I apologize for  
 9 interrupting, but for the record, just for points  
 10 of clarity, we are talking now about the insurance  
 11 coverage issue?  
 12 MR. KRACZKOWSKI: Right.  
 13 HEARING OFFICER KOUTSOGLIANE: Thank  
 14 you.  
 15 MR. KRACZKOWSKI: How this all  
 16 started was back in February, I came here for one  
 17 simple reason, is my father-in-law passed away,  
 18 and I wanted to update my, like beneficiary  
 19 package. That's why the beneficiary pack is Page  
 20 1. That's just to prove -- it's like time dated  
 21 February 22nd. So that was my reason, you know,  
 22 main reason like for coming here.  
 23 HEARING OFFICER KOUTSOGLIANE: Again,  
 24 I apologize, you're referring to your Petitioner's  
 25 Packet Number 1?

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1 MR. KRACZKOWSKI: Right.  
 2 HEARING OFFICER KOUTSOGLIANE: Okay,  
 3 thank you.  
 4 MR. KRACZKOWSKI: So like Page 1 and  
 5 2 are the papers, you know, I filled them out, and  
 6 like Patricia Johnston at the front desk notarized  
 7 them. And when I was done this, I asked about the  
 8 insurance part of it, and that's when it came up,  
 9 you have to call Aetna. Page 3 --  
 10 HEARING OFFICER KOUTSOGLIANE: You're  
 11 referring again to Page 3 of Petitioner's Number  
 12 1, just for the record.  
 13 MR. KRACZKOWSKI: Yes. Everything  
 14 that has green on it --  
 15 HEARING OFFICER KOUTSOGLIANE: I  
 16 understand. Again, those colors won't show up on  
 17 the transcript.  
 18 MR. KRACZKOWSKI: These are just  
 19 pages that they've all been presented before about  
 20 my documentation of my application to the  
 21 Retirement Board has been approved, Diane Bourne's  
 22 letter from Christine Marchetti stating what I  
 23 would have made back in 1994, and my form like I  
 24 had filed and signed back then.  
 25 Page 6 was a documentation of a 1994, like,



1 determination of my retirement. I would like to  
 2 refer to like the letter from Mr. Karpinski, and  
 3 he states -- that's like letter A, and that's also  
 4 been submitted. He says that it's standard  
 5 procedure to enroll -- like the same thing we went  
 6 over before and stuff -- in the insurance  
 7 policies, as an information packet that is  
 8 provided to members at the time of retirement.  
 9 Back in 1994 I think things were a little  
 10 different. All the papers that you saw here that  
 11 I signed, that was it that I signed from the  
 12 Department of Corrections. It states on here that  
 13 my package was submitted and gone over by a  
 14 counselor, and it was all standard procedure, that  
 15 was supposed to be like done.  
 16 The accidental disability file, that  
 17 counselor that went through that, I don't know who  
 18 it was at the time, the only records I have of  
 19 people are Diane Bourne and Salvatore Lombardi.  
 20 Now, if they went over my package, knew I was on  
 21 accidental disability, they should have -- an  
 22 alarm should have went off that there's something  
 23 missing out of here because I should have had in  
 24 there the form letter that wasn't filled out, that  
 25 would have informed me to go someplace else to

1 MR. KRACZKOWSKI: I'm saying that if  
 2 it was properly filled out back in 1994 through  
 3 Aetna Insurance on their accidental disability,  
 4 that there would have been a waiver of premium for  
 5 a \$10,000 policy that neither I or the state would  
 6 have had to pay for.  
 7 The letter that was at the end that was from  
 8 the department back in 1982, both Gail and myself  
 9 pulled this out of the file the first time I came  
 10 here, and it reads, "I regret to inform you your  
 11 accidental disability pension was denied." Okay,  
 12 you know, it was denied. Like back then it was  
 13 Joseph Iannelli, he was the Executive Director.  
 14 The second letter that we looked at, that was  
 15 dated June 14, 1984. The second letter, after  
 16 finding this one, it comes to me that this was a  
 17 form letter that was in my file, because there's  
 18 no date on it. You know, it's not addressed to  
 19 anybody. This was what Joseph Iannelli had in  
 20 there just in case it would have been approved, he  
 21 would have sent this out to me, and this would  
 22 have advised me to go to Division of Personnel,  
 23 Employee Benefits. It gave me the address,  
 24 Promenade Street, Providence, Rhode Island, the  
 25 telephone number, to determine if you are eligible

1 apply for the disability waiver of premium, and  
 2 that was never in there. So that's the reason  
 3 they couldn't find it, and then that basically  
 4 explains that.  
 5 Like down the bottom they put, "In addition,  
 6 and more importantly, you have continued to  
 7 receive your pension checks since 1994, and you  
 8 made no inquiry to our office until 2017 regarding  
 9 the group life insurance benefit. Moreover, your  
 10 pension check stubs clearly would have noted  
 11 deductions as taxes, healthcare and other  
 12 deductions, and you would have been on notice that  
 13 no deductions were being taken for group life  
 14 insurance." I don't know like -- I have my stubs  
 15 with me, but how do you explain how they put on  
 16 there if there was a waiver of premium, and nobody  
 17 had to pay, how does that show up on my stubs? So  
 18 that whole statement is like, you know, pretty  
 19 useless. You know, I have some stubs here if you  
 20 want to make reference to them, of what I have  
 21 like every year, and there was never anything on  
 22 there, and there never would be.  
 23 HEARING OFFICER KOUTSOGLIANE: Are you  
 24 saying that there was a waiver of premium with  
 25 respect to you?

1 for a waiver of group life premium.  
 2 Now, if I would have retired back in, you  
 3 know, in 1982, there wouldn't have been a problem,  
 4 because being proficient, he would have sent this  
 5 out to me, and that would have been taken care of.  
 6 In 1994, when I retired, I never got such a  
 7 letter. There was never anything. There was a  
 8 mention at the Department of Corrections that  
 9 there would be a \$10,000 life insurance policy,  
 10 and, you know, that was it. That wasn't -- you  
 11 know, I was under the impression that that would  
 12 be taken care of, and I was under the impression  
 13 that that would be taken care of for the last --  
 14 since 2017, when I looked for it on February 22nd.  
 15 It was like eight weeks with Aetna, seven or  
 16 eight different people promising that they would  
 17 send me out a letter within seven or eight days.  
 18 Seven or eight days would go by, I'd call them  
 19 back. After the fourth time, I wanted to know if  
 20 they wanted me to come down there to straighten  
 21 this out. I didn't have to go down there. They  
 22 sent me an encrypted e-mail, and then that letter  
 23 that's in here from Aetna that says, We have  
 24 contacted the State of Rhode Island and they have  
 25 informed us that there is no coverage with Aetna

1 in force for you.  
 2 And that's what led me on to the Department  
 3 of Corrections with Jane Ryan. She sent me  
 4 downtown to talk to Mike Slagger, and he explained  
 5 it very well, and his conclusion and Jane Ryan's  
 6 conclusion, was the blame goes back to the Pension  
 7 System, that they didn't do their job. They're  
 8 saying they dropped, this agency dropped the ball.  
 9 HEARING OFFICER KOUTSOGIANE:  
 10 Anything further on that issue?  
 11 MR. KRACZKOWSKI: I think that pretty  
 12 much covers it. You know, I can't think of  
 13 anything else to like put out there, because that  
 14 pretty much explains itself.  
 15 HEARING OFFICER KOUTSOGIANE: Okay,  
 16 thank you. Do you have any questions for this  
 17 witness?  
 18 MR. ROBINSON: I do have a couple of  
 19 questions for you, Mr. Kraczkowski.  
 20 EXAMINATION BY MR. ROBINSON  
 21 Q. So is it your testimony, sir, that you first  
 22 raised this issue of insurance in 2017 when you  
 23 came in to complete a beneficiary designation  
 24 change?  
 25 A. Right, just in case I died.

1 Q. But your belief during the time period between  
 2 your date of retirement and 2017 --  
 3 A. Yeah, absolutely.  
 4 Q. Let me finish my question, so she can take down  
 5 everything we're saying between us. It was your  
 6 belief between 1994 and 2017 that the insurance  
 7 was in effect?  
 8 A. Yes.  
 9 Q. You retired for a brief period of time in 1982; is  
 10 that correct?  
 11 A. No, I didn't retire, because my disability was  
 12 denied. 1984 right here (indicating). Oh, it was  
 13 1982, "I regret to inform you your application for  
 14 accidental disability was denied by the Retirement  
 15 Board."  
 16 Q. And then it was subsequently approved in 1994?  
 17 A. No, this is a different issue. I was hurt back  
 18 then. They denied it. I went back to work for 12  
 19 years, and I got hurt again, and then after that  
 20 injury, they approved the 1994 disability. Two  
 21 separate issues.  
 22 Q. As we sit here today, did you or did you not  
 23 complete an application for life insurance  
 24 enrollment in 1994 when you came in to retire with  
 25 the accidental disability pension?

1 Q. Unfortunately, it's going to be inevitable for all  
 2 of us.  
 3 A. Well, I didn't want my kids to have to go  
 4 through what I'm going through.  
 5 Q. Was it your belief between 1994, when you retired,  
 6 and 2017, that life insurance was in effect?  
 7 A. Absolutely.  
 8 Q. So what caused you to raise the issue in 2017?  
 9 A. After I filled this out (indicating), I asked  
 10 like Patricia Johnson, What about the life  
 11 insurance policy? Because she told me that on my  
 12 pension, on my accidental disability pension, when  
 13 I pass away, there's \$4,000 from my pension that  
 14 goes to my family. I asked about the life  
 15 insurance. And she says, Call Aetna, and she gave  
 16 me the number, and that's what started this whole  
 17 thing.  
 18 Q. And that's the first time you became aware that  
 19 there was an issue or potential issue with your  
 20 coverage through Aetna?  
 21 A. Well, after five weeks, when they finally  
 22 answered me with that letter that says they  
 23 contacted the state and said there was nothing.  
 24 That's kind of like a foolish letter, when, you  
 25 know, they're the ones that could answer that.

1 A. No, I did not.  
 2 Q. Did you, or did you not, in 1994, when you came in  
 3 to retire, complete an application for a premium  
 4 waiver regarding a life insurance policy?  
 5 A. I never came anywhere. I never left the  
 6 Department of Corrections. The only thing I  
 7 signed with the Department of Corrections was my  
 8 termination paper. That's the only thing I ever  
 9 signed. The package came here. I never went to  
 10 the Retirement Board. I never went to Promenade  
 11 Street. All I did was sign a piece of paper  
 12 that's in here. This is the only piece of paper I  
 13 ever signed (indicating).  
 14 Q. You're showing me a termination notice from the  
 15 Office of Personnel Administration and an option  
 16 selection form dated June 20, 1994?  
 17 A. Yes.  
 18 Q. I'm going to show you what was marked as Joint  
 19 Exhibit Number 1, and ask you if you've seen that  
 20 document before?  
 21 A. It has my signature on it, but what I don't  
 22 know is whether I overlooked that in my file,  
 23 otherwise, I would have put it in there.  
 24 Q. Well, it's entitled a Disability Retirement  
 25 Application; correct?

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1 A. Yeah.  
 2 Q. So you understand that is an application to  
 3 retire; correct?  
 4 A. Pretty much.  
 5 Q. And you did, in fact, apply to retire in 1994;  
 6 correct?  
 7 A. Right.  
 8 Q. And you, in fact, did retire in 1994; correct?  
 9 A. That's correct.  
 10 Q. As we sit here today, can you say whether or not  
 11 you completed either an application for life  
 12 insurance at the time you applied to retire or an  
 13 application to waive the premium for such life  
 14 insurance?  
 15 A. It was never afforded to me.  
 16 Q. So is the answer, no, you did not complete them in  
 17 1994?  
 18 A. The answer is that they were never afforded to  
 19 me. Not that I didn't complete them, I never got  
 20 them.  
 21 Q. Well, if you never got them, you couldn't complete  
 22 them; right?  
 23 A. That's right.  
 24 Q. Where did you receive this retirement application?  
 25 A. The only place that I was was the Department of

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1 Corrections in the personnel room through  
 2 Christine Marchetti. The only person I ever dealt  
 3 with was Christine Marchetti.  
 4 Q. And you never came to the Retirement System to  
 5 complete this document, Joint Exhibit 1?  
 6 A. Not that I recall.  
 7 Q. So is it your testimony that you never received  
 8 any documents at the Retirement System, because  
 9 you never went to the Retirement System?  
 10 A. I don't even know where the Retirement System  
 11 was back then.  
 12 Q. Then what is it, sir, that you're alleging the  
 13 Retirement System did or did not do wrong?  
 14 A. They did not send me a letter comparable to the  
 15 one that Joseph Iannelli had back then to inform  
 16 me to go down to Promenade Street and apply for  
 17 it, to see if I was eligible for it.  
 18 Q. Is it your testimony that you received all of the  
 19 relevant retirement documents from your employer  
 20 and not from the Retirement System?  
 21 A. Could you say that again.  
 22 Q. Is it your testimony here that all of these  
 23 relevant retirement documents that we've looked  
 24 at, you received from your employer and not from  
 25 the Retirement System?

Page 23

1 A. I don't really understand what that means.  
 2 Q. Well, we just talked about Joint Exhibit 1, your  
 3 disability retirement application; correct?  
 4 A. Yes.  
 5 Q. And you testified, unless I'm mistaken, that you  
 6 didn't go down to the Retirement System offices to  
 7 submit any of these documents?  
 8 A. That's right, I didn't.  
 9 Q. You did it all at your employer's office; correct?  
 10 A. Yeah.  
 11 Q. And you didn't receive any documents directly from  
 12 the Retirement System; correct?  
 13 A. No, I did not. There was no so-called package,  
 14 like they said. There was no standard procedure,  
 15 like I said. Nobody went over them, like I said.  
 16 Q. Because you had no interaction with the Retirement  
 17 System at all; am I correct?  
 18 A. None whatsoever.  
 19 Q. So why is it your position that the Retirement  
 20 System failed to give you some relevant document,  
 21 when all of the relevant documents you received  
 22 related to your retirement you received from your  
 23 employer?  
 24 A. It's not -- back then, you know, I had faith in  
 25 like what was going on, that they were going to

Page 24

1 process things like correctly. I had just gone  
 2 through a back operation, and my faith in the  
 3 system was that everything was going to be like  
 4 presented to me, and like led along the line,  
 5 because this wasn't my job. My job wasn't pension  
 6 system or personnel. My job was custody and  
 7 control.  
 8 Q. So I just want to be clear, though. You had no  
 9 interaction at all with the Retirement System  
 10 regarding your paperwork to retire, but yet you're  
 11 alleging here today that it was the Retirement  
 12 System's fault for not giving you some relevant  
 13 document, is that the thrust of the argument here?  
 14 A. I'm not sure where you're leading with this.  
 15 Are you saying it was my fault because I didn't  
 16 like go through this?  
 17 Q. What I'm suggesting is that, as I understand your  
 18 testimony, you received all of the relevant  
 19 documents related to retirement from your  
 20 employer?  
 21 A. I received those two documents, that's it,  
 22 period.  
 23 Q. From your employer; correct?  
 24 A. I would imagine so. It was like, you know, it  
 25 was 1994, it wasn't yesterday.

Page 25

1 Q. You were quite clear that you never came to the  
 2 Retirement System offices at all for any purpose?  
 3 A. Not that I recall.  
 4 Q. So if the information related to your retirement  
 5 was received from your employer, what is it that  
 6 the Retirement System did wrong with regard to the  
 7 provision of documents?  
 8 A. I thought I made that clear, referring to that  
 9 form letter, that I should have received that in  
 10 1994.  
 11 Q. Is this what you're talking about (indicating)?  
 12 A. No, that's my denial. The form letter was the  
 13 one that was blank with no date on it. Hold on  
 14 one second, let me find it. Right here, I'm  
 15 referring to this (indicating). This is what  
 16 should have been standard procedure, as they call  
 17 it, and that should have been sent out to me in  
 18 1994. That wasn't just in there because, you  
 19 know, it was in there. It was in there because if  
 20 you got an accidental disability pension, this  
 21 department would forward that letter to you, so it  
 22 would give you knowledge that you could get a  
 23 waiver of premium form and go down there and get  
 24 it after you submit your paperwork.  
 25 Q. Did you ask your employer about the life insurance

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1 policy?  
 2 A. They told me that there was a \$10,000 life  
 3 insurance policy.  
 4 Q. And they told you that when you went to retire?  
 5 A. When I walked out of there, when I signed the  
 6 piece of paper. It wasn't a very happy moment  
 7 when I signed the paper, and like walked out of  
 8 there, and that was it.  
 9 Q. Your employer told you in 1994 that you had a life  
 10 insurance policy in effect?  
 11 A. I remember them saying something about a  
 12 \$10,000 life insurance policy.  
 13 Q. What did they tell you?  
 14 A. That I would also be getting that.  
 15 Q. Did you take any steps to follow up to see whether  
 16 or not such a policy was in place?  
 17 A. Why should I?  
 18 Q. Perhaps to verify whether such a policy was in  
 19 place.  
 20 A. Why should I, when it was this department's  
 21 responsibility to send me a letter to notify me  
 22 where to go to follow that up.  
 23 Q. My one last question is, why do you say it's this  
 24 department's responsibility to do anything in  
 25 regards to a life insurance policy?

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1 A. Why are you saying it's my responsibility to do  
 2 anything for that?  
 3 Q. I don't have to answer.  
 4 A. That wasn't my job. You know, this  
 5 department's job is to do that.  
 6 MR. ROBINSON: I don't have any other  
 7 questions of the applicant on this issue.  
 8 HEARING OFFICER KOUTSOGLIANE: All  
 9 right, so we're all set on the insurance coverage  
 10 issue?  
 11 MR. ROBINSON: I would like to  
 12 present some testimony on that.  
 13 HEARING OFFICER KOUTSOGLIANE: Okay.  
 14 MR. ROBINSON: Can I have Ms.  
 15 Mambro-Martin sworn in.  
 16 GAYLE MAMBRO-MARTIN (SWORN)  
 17 HEARING OFFICER KOUTSOGLIANE: Could  
 18 you state your name for the record, please.  
 19 THE WITNESS: Gayle Mambro-Martin.  
 20 EXAMINATION BY MR. ROBINSON  
 21 Q. Miss Mambro-Martin, what is your title and job  
 22 duties here at the Retirement System?  
 23 A. I'm deputy general counsel for the Employees'  
 24 Retirement System of Rhode Island, and I have  
 25 numerous job duties, anything legal. I, at one

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1 point, oversaw the whole disability process, but I  
 2 handle administrative matters, I handle qualified  
 3 domestic relations orders.  
 4 Q. Are you familiar with Mr. Kraczkowski's file here  
 5 at the Retirement System?  
 6 A. Yes.  
 7 Q. And are you familiar with the claims that he's  
 8 raised that have given rise to this hearing?  
 9 A. Yes.  
 10 Q. And more specifically, are you familiar with the  
 11 issues he has raised regarding his eligibility or  
 12 entitlement to a group life insurance policy?  
 13 A. Yes.  
 14 Q. And have you had an opportunity to conduct a  
 15 thorough review of all of the documents related to  
 16 Mr. Kraczkowski that are here at the Retirement  
 17 System?  
 18 A. Yes.  
 19 Q. And are there any documents in his file that  
 20 relate to or constitute an application for group  
 21 life insurance?  
 22 A. No.  
 23 Q. Can you explain for the hearing officer what the  
 24 process is typically for someone applying to  
 25 retire, specifically as it relates to applying to

1 continue a life insurance policy in effect?  
 2 MS. MAMBRO-MARTIN: Just generally?  
 3 MR. ROBINSON: Uh-huh.  
 4 A. When a person asks to retire, they receive a  
 5 packet, which includes an application for  
 6 retirement, an option selection form, information  
 7 regarding healthcare, life insurance coverage,  
 8 beneficiary forms. I'm trying to think of what  
 9 else is in the packet, and that's for their  
 10 completion and submission to our office.  
 11 HEARING OFFICER KOUTSOGIANE: May I  
 12 ask a question. To your knowledge, would these  
 13 same forms have been available in 1994?  
 14 MS. MAMBRO-MARTIN: It's my  
 15 understanding that it's always been the case that  
 16 the person wishing to retire receives a packet of  
 17 information to assist them with retirement,  
 18 including an application and the other documents,  
 19 forms that I mentioned.  
 20 Q. And would that include, in 1994, an application  
 21 for continuation of life insurance or for life  
 22 insurance?  
 23 A. Yes. I can picture what it looks like now. I  
 24 don't know what it looked like then, but it says  
 25 group life at the top, and also whether you want

1 file?  
 2 A. No.  
 3 Q. And based on the fact that those documents were  
 4 not in the file, were you able to reach any  
 5 conclusions about what may or may not have  
 6 happened with regard to his retirement?  
 7 A. If we don't have the forms in the file, we  
 8 assume that they just were not completed and sent  
 9 in at the option of the retiree.  
 10 Q. Is the retiree mandated to fill out an application  
 11 for group life insurance?  
 12 A. No.  
 13 Q. Is it voluntary?  
 14 A. Voluntary.  
 15 MR. ROBINSON: I don't have anything  
 16 else.  
 17 HEARING OFFICER KOUTSOGIANE: I do.  
 18 With respect to those forms that you are referring  
 19 to, if the applicant fills them out at the agency  
 20 level, does the applicant get copies?  
 21 MS. MAMBRO-MARTIN: If they want  
 22 them. We don't routinely make copies of  
 23 everything. To my knowledge, I don't know back  
 24 then, if they ask, we will make copies for them.  
 25 HEARING OFFICER KOUTSOGIANE: Do you

1 to continue it or not.  
 2 Q. Now, that procedure that you described would have  
 3 been in effect, and is in effect, for someone that  
 4 comes physically to the Retirement System's  
 5 offices in order to submit a retirement  
 6 application; is that correct?  
 7 A. I don't know how it was then, but now you can  
 8 ask that the forms be mailed to you.  
 9 Q. Do you know whether or not in 1994 people were  
 10 able to fill out -- members seeking to retire were  
 11 able to fill out retirement applications and other  
 12 related documents at their employer, as opposed to  
 13 physically coming to the Retirement System?  
 14 A. I'm not aware that that was ever the case.  
 15 Typically, the only dealings that we would have  
 16 with the employer, once someone retired, is that  
 17 we receive the termination, and we receive  
 18 information on their salary so that we can  
 19 calculate the pension.  
 20 Q. And was there an application for group life  
 21 insurance in Mr. Kraczkowski's file when you  
 22 reviewed it?  
 23 A. No.  
 24 Q. And was there an application for waiver of premium  
 25 for group life insurance when you reviewed the

1 have any questions of this witness?  
 2 MR. KRACZKOWSKI: Yeah. That's  
 3 pretty much what was stated on your letter. It  
 4 was standard procedure now, but referring back to  
 5 the other form, on today's modern day, if somebody  
 6 comes here on an accidental disability, and they  
 7 get a packet, do they get a waiver of premium  
 8 package in there, or do they get a letter, just  
 9 like the other one, to go downtown to apply for  
 10 it? That's still in effect; right?  
 11 MS. MAMBRO-MARTIN: So what happens  
 12 is -- back then, I'm not a hundred percent sure  
 13 about the disability retirees, but I do know for  
 14 retirees, you did get a one-on-one consult, where  
 15 you could ask questions. Regarding the waiver,  
 16 there is no form for that that we give. We tell  
 17 people, even today, contact -- you should contact,  
 18 just like the letter said, either the insurance  
 19 company directly, as you may qualify for a waiver.  
 20 It's my understanding from speaking with the  
 21 Office of Employee Benefits that that is a form.  
 22 The disability retiree needs to complete the form  
 23 and submit it directly to Aetna. Aetna will then  
 24 send a letter of acceptance or not, because not  
 25 everyone qualifies.

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1 HEARING OFFICER KOUTSOGLIANE: Is that  
2 a form prepared by Aetna?  
3 MS. MAMBRO-MARTIN: As far as I know.  
4 It's not prepared by the Retirement System, and we  
5 don't see that.  
6 HEARING OFFICER KOUTSOGLIANE: But  
7 it's produced by Aetna?  
8 MS. MAMBRO-MARTIN: It's either Aetna  
9 or the State of Rhode Island.  
10 HEARING OFFICER KOUTSOGLIANE: Okay,  
11 thank you.  
12 MR. KRACZKOWSKI: It also says in  
13 your letter that each is processed by a counselor  
14 and audited. So back then, is the person that  
15 processed it and audited it -- and I'm assuming it  
16 was Salvatore Lombardi, because he was my person,  
17 his name is on everything, like the investigator,  
18 the overlooker, the counselor, whatever, I would  
19 imagine that him or Diane Bourne or both have some  
20 kind of like, yeah, this person is going to  
21 retire. Evidently, they overlooked that, and I'm  
22 sure that Mr. Lombardi knew how this worked  
23 because he, himself, is an accidental disability  
24 pensioner from another agency, so he would know  
25 how this works.

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1 HEARING OFFICER KOUTSOGLIANE: Do you  
2 have any other questions for this particular  
3 witness?  
4 MR. KRACZKOWSKI: No.  
5 MR. ROBINSON: I'm all set.  
6 HEARING OFFICER KOUTSOGLIANE: Okay,  
7 so I guess what we're left with now is to address  
8 and resolve the, or at least address for now the  
9 issues relative to the interest.  
10 MR. KRACZKOWSKI: We can go to the  
11 one that --  
12 (WITNESS PERUSING DOCUMENTS)  
13 HEARING OFFICER KOUTSOGLIANE: Because  
14 aren't they essentially the same issue? I mean, I  
15 recognize the dollar amounts are different, but  
16 the issue is the state taking funds from you,  
17 subsequently determining a payback to you, and  
18 you're looking for the interest earned on the  
19 money that has been paid back to you and/or will  
20 be paid back to you; is that a fair statement?  
21 We're looking at the interest?  
22 MR. KRACZKOWSKI: Yeah, that's a fair  
23 statement. If you want to take time like to read  
24 my, you know, my rebuttal on that first letter, it  
25 was introduced as evidence in regards to this.

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1 I'll show you. This part here (indicating).  
2 MR. ROBINSON: Is that the same as  
3 Joint Exhibit 14?  
4 MR. KRACZKOWSKI: Yes, same thing.  
5 That refers to how I found it.  
6 MR. ROBINSON: Okay.  
7 MR. KRACZKOWSKI: When Gayle handed  
8 over my records, I was unaware of this, and I  
9 found it. This is pretty interesting. And what  
10 we didn't touch on at first, when this package  
11 came out and stuff, is all this came about was  
12 because of an arbitration award. The Department  
13 of Corrections went back five years, from 1996 up  
14 until 2000, they won an arbitration for back pay  
15 with raises for each year. Some years were  
16 four percent, some years were more, some were  
17 less.  
18 HEARING OFFICER KOUTSOGLIANE: This  
19 would be for the correctional officers?  
20 MR. KRACZKOWSKI: Right.  
21 HEARING OFFICER KOUTSOGLIANE: Or  
22 employees down there?  
23 MR. KRACZKOWSKI: Right.  
24 HEARING OFFICER KOUTSOGLIANE:  
25 Inclusive of you?

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1 MR. KRACZKOWSKI: Right. This is why  
2 this happened. This is why the whole thing  
3 happened, like where they took money, and I had no  
4 problem with them taking money. I followed all  
5 the rules like every single year. I submitted my,  
6 like how much I made, and they took the money.  
7 And when the arbitration was done, I remember  
8 having conversations with a Mr. Cunha. Is anybody  
9 familiar with him? He was legal counsel back  
10 then.  
11 As far as like my whole argument of the  
12 thing, they were very well aware that this was in  
13 the making. I even brought up the issue of the  
14 deductions made on my statement. It was like, you  
15 know, it was out of my pension every month,  
16 they're taking half of my pension for health  
17 benefits, would that be considered part of my  
18 package that I was getting if I was working there?  
19 And he says something about, well, that's a gray  
20 area, and that was the end of that conversation,  
21 and we went on.  
22 I was unaware in 2000, when I wrote that  
23 handwritten letter to Mr. Lombardi that, you owe  
24 me money, that's just the way I talk, and he never  
25 got back to me on that. This department was very

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1 well aware of that arbitration award. Not because  
 2 of me, but because of that affects everything.  
 3 That affects anybody that retired from the  
 4 Department of Corrections. That would produce why  
 5 their pension would be higher. Diane Bourne's  
 6 name was on there, like the assistant director,  
 7 she would be very well aware of it. It was  
 8 retroactive back to 1996, and I have like those  
 9 documents in here, and I have a copy of what year  
 10 like the registration came -- the arbitration, I'm  
 11 sorry. It's basically the same thing.  
 12 Some of the letters that I have in here, you  
 13 know, are handwritten, that I sat down with Jane  
 14 Ryan eight weeks ago, and broke it down how is --  
 15 that she would break it down, because I felt bad,  
 16 I didn't pressure Jane, and I still haven't  
 17 pressured her, because she's so stressed out that  
 18 she doesn't even answer anybody's phone calls.  
 19 Like, this was my breakdown, it comes out  
 20 to -- I'm pretty sure it's the same as her  
 21 breakdown. And subsequently we went over the same  
 22 -- like, for 1999, just to make sure that that was  
 23 correct after two people doing that. I haven't  
 24 really gotten into like the whole thing and stuff  
 25 as far as like do you want to look at this package

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1 A phone call was made by someone here, and  
 2 talked to Jane Ryan; and by that phone call, like  
 3 the letter came out that I was denied for getting  
 4 that, because on June something -- you know, it  
 5 was like August something, they talked to the  
 6 Department of Corrections, and they confirmed that  
 7 I would have been making thirty-eight thousand  
 8 whatever dollars back then.  
 9 I immediately went down to the Department of  
 10 Corrections. I asked Jane, I said, Jane, can I  
 11 have a copy of what you sent the Pension System,  
 12 and she goes, I didn't send them anything. I  
 13 said, It was a phone call that did this? She  
 14 goes, Yeah. I said, Well, it's wrong. She goes,  
 15 I don't have time to do that. Within two weeks  
 16 she promised to, like, go through it. Three weeks  
 17 went by. I had to then go down there, and I sat  
 18 there with her and we went over this, and she said  
 19 that she would get a hold of the department and  
 20 send that in, and that happened a week and a half  
 21 ago. So that was another two-month procedure.  
 22 I don't know whether, you know, like if  
 23 that's what they do, that they want -- if this  
 24 department wanted confirmation from, you know, if  
 25 they're waiting for confirmation on something.

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1 to make sure there's nothing in here that --  
 2 MR. ROBINSON: It's your case, sir,  
 3 whatever you'd like.  
 4 MR. KRACZKOWSKI: My folder goes,  
 5 Page 1 is the statement of the letter. Do you  
 6 want a copy?  
 7 MR. ROBINSON: Is this something  
 8 different than what has already been introduced?  
 9 MR. KRACZKOWSKI: Yeah. That's got  
 10 to do with Aetna. This has to do with the package  
 11 of the 1978 -- I mean, 1997, '98 payment.  
 12 (DOCUMENT HANDED TO COUNSEL)  
 13 MR. KRACZKOWSKI: It was like Diane  
 14 describes like how the whole thing works, like  
 15 what I was making at the time, how much money I  
 16 went over. She did a good job on that one. As  
 17 time went on, that was it.  
 18 When I became aware of this in June, it was  
 19 June 10th that I got the records from this  
 20 department, I actually went to Jane, got a copy of  
 21 the schedule 600 series, attached this letter to  
 22 it. It even states like for your convenience,  
 23 like the letter is attached, so they could figure  
 24 out how much money that they owed me on the  
 25 difference.

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1 Like, Jane Ryan is the only one that can say,  
 2 yeah, that's what the 600 series means. And I  
 3 started in 1976, and my breakdown is pretty easy.  
 4 That took me -- you know, it's not that long, but  
 5 because my records are in archives or not around  
 6 anymore, you know, I guess it takes longer, but  
 7 we're still waiting on this one.  
 8 If you read, you know, it was like Page 4, I  
 9 explain it in detail, the letter to Diane Bourne,  
 10 it's all highlighted.  
 11 HEARING OFFICER KOUTSOGLIANE: Are you  
 12 looking to submit this as Petitioner's Exhibit  
 13 Number 3?  
 14 MR. KRACZKOWSKI: 3? Yeah, okay. 3  
 15 is fine.  
 16 MR. ROBINSON: I don't have any  
 17 objection.  
 18 HEARING OFFICER KOUTSOGLIANE: Then  
 19 Petitioner's Exhibit Number 3 will be the second  
 20 yellow packet, if you will, relative to the issue  
 21 of the request for refund adjustments, as well as  
 22 the interest relating to that.  
 23 (PETITIONER'S EXHIBIT 3 MARKED FOR IDENTIFICATION)  
 24 MR. KRACZKOWSKI: One of my big  
 25 arguments with this, and I stated it in this

1 letter, is I have to do all this. I don't feel  
 2 like this was my job. And it's only by accident,  
 3 in 2013, that I came upon and found out that the  
 4 arbitration had gone through, and that I was  
 5 actually owed money, and that whole procedure has  
 6 been like in the back of my mind all this time.  
 7 And that came up on February 22nd, when I was  
 8 here waiting to sign my beneficiary package over,  
 9 because I was standing in the same place, and this  
 10 is documented in there, too, that I requested to  
 11 speak to Diane Bourne, because back in 2013 they  
 12 handled the whole thing, like she handled the  
 13 whole thing. Andrew Macaruso, or something  
 14 similar to that, was the attorney. That whole  
 15 thing took, I think, 15 days. It was, you know,  
 16 from the time I got the letter from Jane Ryan --  
 17 you know, I'm jumping ahead a little bit here, but  
 18 that whole thing, it took like 15 days. I signed  
 19 a piece of paper, or whatever, and like, you know,  
 20 it was in my -- you know, if it was paid back. I  
 21 didn't see any records in my records of payment  
 22 for that, any like decisions of that. Like, you  
 23 know, that wouldn't be in there. There's nothing  
 24 in my record of how much they paid me, when they  
 25 paid me. I was just wondering like why that isn't

1 things.  
 2 (WITNESS PERUSING DOCUMENT)  
 3 MR. KRACZKOWSKI: Yeah, that's pretty  
 4 much it. That covers pretty much what that is.  
 5 HEARING OFFICER KOUTSOGLIANE: Thank  
 6 you. Do you have any questions of this witness?  
 7 MR. ROBINSON: Just a few.  
 8 RUSSELL KRACZKOWSKI  
 9 EXAMINATION BY MR. ROBINSON  
 10 Q. Mr. Kraczkowski, this document that is identified  
 11 as A, inside the folder that has been marked as  
 12 Petitioner's 3, that's a document that you  
 13 prepared?  
 14 A. Yeah.  
 15 Q. That's your handwriting?  
 16 A. Yup, that's my handwriting.  
 17 Q. Those are your calculations?  
 18 A. Yeah.  
 19 Q. On the last page, there's a typewritten note that  
 20 reads, "I would like to request on this date  
 21 9/28/17 that any money returned to Russell  
 22 Kraczkowski be done as not to effect (sic) my  
 23 yearly amount."  
 24 A. Right.  
 25 Q. Did you author that?

1 there. So like to this date, like can they prove  
 2 that they even paid me?  
 3 HEARING OFFICER KOUTSOGLIANE: I'm  
 4 referring back to your Petitioner's Exhibit Number  
 5 3, are there any additional copies of that, sir?  
 6 I have to give this one to the stenographer.  
 7 MR. KRACZKOWSKI: Yes, you can have  
 8 this one here (indicating).  
 9 HEARING OFFICER KOUTSOGLIANE: Again,  
 10 I don't want to rush you. Are you done with your  
 11 presentation relative to this issue?  
 12 MR. KRACZKOWSKI: Yeah, because I  
 13 have another one inside here. Yeah, it's like,  
 14 basically, you know, all the things that are in  
 15 here, and I highlighted like what I feel are  
 16 important.  
 17 HEARING OFFICER KOUTSOGLIANE: Okay.  
 18 MR. KRACZKOWSKI: You know, that was  
 19 one of my questions, like, you know, why I  
 20 couldn't find that, like in my folder. That's  
 21 missing. Let me just check my note here for one  
 22 second.  
 23 HEARING OFFICER KOUTSOGLIANE: Sure.  
 24 MR. KRACZKOWSKI: I had to make all  
 25 my things with yellow, so I can refer to different

1 A. That would start the whole like thing all over  
 2 again.  
 3 Q. So you wrote that document?  
 4 A. Yeah. If you want me to sign it, I'll sign it.  
 5 Q. No, I'm just trying to clarify in my own mind what  
 6 these documents are. You agree that the  
 7 Retirement System withheld \$4,899.76 from you  
 8 between May and December of 2000; correct?  
 9 A. Yeah.  
 10 Q. We don't dispute that?  
 11 A. No.  
 12 Q. I'm showing you what was marked Joint Exhibit  
 13 Number 6, with your handwriting on it.  
 14 A. Yup.  
 15 Q. What is that document?  
 16 A. That is part of the proof that I had to prove  
 17 to Salvatore Lombardi how much I made in the year  
 18 2000.  
 19 Q. So this is a copy of your 2000 W-2; correct?  
 20 A. Right.  
 21 Q. And it has some handwriting on it?  
 22 A. Right.  
 23 Q. Which is yours; correct?  
 24 A. Yes. Just to bring to Mr. Lombardi's  
 25 attention, like my letter says, where's my money,



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1 you owe me.  
 2 Q. When did you give that to Mr. Lombardi?  
 3 A. It was mailed to this department.  
 4 Q. When?  
 5 A. Back in 2000.  
 6 Q. Between 2000 and 2013, what steps did you take to  
 7 communicate with the Retirement System about the  
 8 fact that your salary in 1999 was higher than it  
 9 had originally been reported to the Retirement  
 10 System?  
 11 A. None, because I was unaware of it.  
 12 Q. So you didn't know that there were any errors in  
 13 the Retirement System's reduction of your pension  
 14 benefit until 2013?  
 15 A. Right.  
 16 Q. Then what are you talking about in this Joint  
 17 Exhibit 6 in 2000, where you're saying, where's my  
 18 money, what is that referring to? If you didn't  
 19 know that there was --  
 20 A. No, no, it is -- this is the statement for,  
 21 like, the year 2000. So when I wrote this, I was  
 22 under the assumption that he owed me money. I  
 23 didn't know how much. I knew there was something  
 24 going on and stuff, right. Again, my faith in  
 25 this department, and Mr. Lombardi, was that they

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1 were going to take care of it. So, on the other  
 2 hand, if this department says they were unaware of  
 3 the mistake, and when they found the mistake, it  
 4 was inadvertently overlooked, it wasn't  
 5 inadvertently overlooked. It was like twice they  
 6 were -- you know, it was like twice it came from  
 7 Christine Marchetti like back in 2000, that my pay  
 8 would have been higher, and that was requested by  
 9 Salvatore Lombardi. So he's looking to like,  
 10 is -- like, maybe because of, you know, he's like  
 11 whatever, but all this is, from the time they took  
 12 the money, one month later that arbitration was  
 13 signed. Eight months go by of them taking money  
 14 from me. On the eighth month Salvatore Lombardi  
 15 requests a letter from Christine Marchetti that  
 16 proves on the last month that I'm paying that  
 17 amount, that that was wrong.  
 18 The next step was -- and, you know, and I  
 19 wasn't aware of this. I had no idea that that  
 20 letter was there. I didn't get the letter from  
 21 Christine Marchetti. I was under the assumption  
 22 that the union was doing something. You know, I  
 23 had other things to do. You know, I had three  
 24 kids to raise back then. I didn't have time, you  
 25 know, to like monitor like what the thing was

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1 going on with the union. There was no internet  
 2 going on.  
 3 So when this wasn't answered, and I kept  
 4 every year like sending my letters in and stuff, I  
 5 just thought it was I was wrong. Maybe they  
 6 didn't owe me money.  
 7 Q. You're referring, I assume, to some arbitration  
 8 that took place between your labor union when you  
 9 were an active correctional officer?  
 10 A. I wasn't active. I was retired when this took  
 11 part.  
 12 Q. But I assume the arbitration you're referring to  
 13 is some arbitration between the union that  
 14 represents active correctional officers --  
 15 A. Right.  
 16 Q. -- and the state; is that fair?  
 17 A. And the State of Rhode Island, yeah.  
 18 Q. It didn't involve the Retirement System; correct?  
 19 A. Of course it did.  
 20 Q. Oh, is it your position that the Retirement System  
 21 was a party to some arbitration?  
 22 A. When that arbitration is done, it affects the  
 23 payment of pensioners that have retired like  
 24 during that system. Every department is notified  
 25 of our percentage rate that each year that that

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1 person would have been making if they retired.  
 2 Q. Right, so we agree that it's the employer's  
 3 responsibility to report information --  
 4 A. It's not --  
 5 Q. Let me finish my question before you respond. Do  
 6 we agree that it's the employer's responsibility  
 7 to furnish income information to the Retirement  
 8 System?  
 9 A. Income information?  
 10 Q. Yes.  
 11 A. We're talking about an arbitration award.  
 12 Q. Well, you've told me that there was an arbitration  
 13 in 2000, between the union that governs active  
 14 correctional officers, and the State of Rhode  
 15 Island; correct?  
 16 A. Yes.  
 17 Q. And my suggestion is that, is it -- let me  
 18 rephrase that. Is it your testimony that the  
 19 Retirement System was a party to that arbitration?  
 20 A. No, not a party to it, but they should have  
 21 been notified after that was done, after that was  
 22 completed.  
 23 Q. And that's my next question, which is that we  
 24 agree, don't we, that it's the employer's  
 25 responsibility to communicate with the Retirement

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1 System as to what people are making, salaries?  
 2 A. It's the state's responsibility.  
 3 Q. That's the employer?  
 4 A. Right.  
 5 Q. Right. So between 2000 and 2013, what evidence do  
 6 you have that information was communicated to the  
 7 Retirement System that in 1999 your income should  
 8 have been reported as higher than it was initially  
 9 reported?  
 10 A. I don't really understand that, because in --  
 11 Q. You understand my question?  
 12 A. Right.  
 13 MR. ROBINSON: Okay.  
 14 A. In 2013, Andrew was drilling me on if -- there  
 15 were records that were missing, and that's all  
 16 like in my file. There were records that were  
 17 missing. He wanted me to submit other different  
 18 things. And during that, somehow I became aware  
 19 of there might have been some mistake, like back  
 20 then.  
 21 I was unaware that anything was in my file  
 22 that had already previously been submitted to them  
 23 that they knew this. When I spoke with Diane  
 24 Bourne, and told her that I feel, you know, that  
 25 there is like a discrepancy on the amount, that I

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1 A. That's correct.  
 2 Q. And you're aware, as we sit here today, that as of  
 3 2013, the Retirement System was provided with  
 4 information that there was an error and that the  
 5 Retirement System corrected it; correct?  
 6 A. I provided that, yes.  
 7 Q. Well, they also received a letter from your  
 8 employer in 2013; correct?  
 9 A. I had to go get that. I had to hand deliver  
 10 that here.  
 11 Q. That's not my question. You're aware that the  
 12 Retirement System received a letter in January or  
 13 February of 2013 essentially indicating that your  
 14 salary in 1999 was higher than initially reported?  
 15 A. That's correct.  
 16 Q. And based on that, the Retirement System refunded  
 17 you the money; correct?  
 18 A. Yes, they did.  
 19 Q. So the only real issue that we're fighting about  
 20 here today is whether or not you're entitled to  
 21 interest on that money; is that correct?  
 22 A. Basically.  
 23 Q. One more question. Is there a dispute, Mr.  
 24 Kraczkowski, in your mind at this point as to how  
 25 much you believe you're entitled to with regard to

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1 have some kind of reimbursement coming, she made  
 2 me go to Jane Ryan and get the exact same thing  
 3 that Christine Marchetti had, and submit that to  
 4 her. I had to do that. Like, they didn't call up  
 5 and ask her, like, submit the 600 series. I had  
 6 to go do this. And then when I submitted that,  
 7 that's when they paid the whole thing.  
 8 Q. My question is very narrow. What evidence do you  
 9 have that you, or anybody else, communicated  
 10 information to the Retirement System between 2000  
 11 and 2013 about what your income was in 1999?  
 12 A. I didn't submit anything.  
 13 Q. You didn't make any efforts to contact the  
 14 Retirement System; agreed?  
 15 A. Why would I do that?  
 16 Q. That's not my question. My question is, you  
 17 didn't take any steps to communicate with the  
 18 Retirement System between 2000 and 2013 about  
 19 whether or not you were due a refund; correct?  
 20 A. That's correct.  
 21 Q. And you're not aware, you don't have any  
 22 documentation to suggestion that the Retirement  
 23 System was advised, from any other source between  
 24 2000 and 2013, that there was a problem; is that  
 25 correct?

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1 the 1997 earnings? In other words, you're aware  
 2 that the Retirement System has received new  
 3 information from your employer, and that they're  
 4 going to be making a determination; correct?  
 5 A. Right.  
 6 Q. You don't have an issue with that at this point?  
 7 A. I just briefly glanced over this. I don't have  
 8 an issue with it.  
 9 (WITNESS PERUSING DOCUMENT)  
 10 A. I thought that this copy that you gave me  
 11 was -- had reference to how much that they owe me.  
 12 Q. You're looking at Joint Exhibit Number 17, and if  
 13 you look at the second to the last page, there's a  
 14 letter from Jane Ryan indicating that if you were  
 15 working as of 1997, your salary would have been  
 16 \$42,115.  
 17 A. Okay, yeah. That's the same thing I have on my  
 18 handwritten page.  
 19 Q. And you agree with that number?  
 20 A. Yes, I do.  
 21 Q. And you understand the Retirement System is going  
 22 to recalculate whether or not the withholding of  
 23 funds from your pension in 1998 was accurate based  
 24 on this updated information?  
 25 A. Yeah. Did Jane submit them a copy of the 600

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1 series, like I did originally?  
 2 Q. That I'm not aware of, but I can tell you that the  
 3 Retirement System will be recalculating based on  
 4 this updated information.  
 5 A. Yeah.  
 6 MR. ROBINSON: I don't have any other  
 7 questions.  
 8 MR. KRACZKOWSKI: Can I ask a  
 9 question? Whoever is recalculating that, why  
 10 aren't they the one that calculated it in the  
 11 first place? They don't believe Jane Ryan? Or is  
 12 it standard procedure? I don't know.  
 13 MS. MABRO-MARTIN: Do you want that  
 14 answered?  
 15 MR. ROBINSON: No.  
 16 HEARING OFFICER KOUTSOGLIANE: Are we  
 17 all set, both sides?  
 18 MR. ROBINSON: I don't have further  
 19 questions.  
 20 HEARING OFFICER KOUTSOGLIANE: You had  
 21 mentioned earlier in the day that you had wanted  
 22 to do a post-hearing memorandum.  
 23 MR. ROBINSON: Just on the legal  
 24 issue of whether or not the Retirement System is  
 25 responsible for the payment of interest on any

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1 funds due a member.  
 2 MR. KRACZKOWSKI: I have one more  
 3 issue. You quoted that, like my reference to like  
 4 the law that I had to sign every year, like  
 5 10-16-33. On your letter back to me, which is  
 6 August 15th, I request a hearing regarding claims  
 7 of interest. You state that, "Regarding the  
 8 adjustment for your overearnings, the Rhode Island  
 9 General Laws (ERSRI) provide no provision to pay  
 10 interest." Okay. "Please be advised ERSRI did  
 11 not willingly, knowingly, or repeatedly withhold  
 12 your money. It was merely an inadvertent error."  
 13 Then it goes on to, "We are unclear regarding  
 14 your allegations that ERSRI somehow violated  
 15 36-10-33. That law addresses the penalty for  
 16 fraudulent claims or statement made by members and  
 17 beneficiaries." 36-10-33 does not state that.  
 18 36-10-33 does not refer to members or  
 19 beneficiaries.  
 20 36-10-33, on my continuing statement of  
 21 disability that I had to sign every year, and get  
 22 notarized, reads, Please be advised the Rhode  
 23 Island General Law 36-10-33 is every person. The  
 24 first words is every person. Every person does  
 25 not mean members or beneficiaries. Persons shall

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1 mean any business, individual, organization, or  
 2 group of individuals. Why, like why, like in your  
 3 letter you change the wording like to members? I  
 4 have no idea why they did that, because that's not  
 5 what it says. Any person, meaning that if they  
 6 didn't do their job, if they did it on purpose, to  
 7 like either like not pay me and overlooked it; and  
 8 it comes right out to say that like there's no  
 9 provision that makes this department liable for  
 10 anything.  
 11 Where I'm going with this, okay, is the  
 12 people that handled this whole case, from the  
 13 insurance, the 1997 to like 1999, I believe it was  
 14 overlooked on purpose. You know, I have like what  
 15 I feel is like proof to that. You know, I don't  
 16 know what -- do you want to go through like the  
 17 file that I have? I feel that Diane Bourne, in  
 18 one of my letters in there that you'll read it,  
 19 that like Diane Bourne actually made the statement  
 20 to me in 2013, when I picked up or I signed a  
 21 form, I asked her, it's in the letter, it is  
 22 documented, and Gayle knows this and stuff, I  
 23 asked her, I says, Is there any interest? She  
 24 said, No, the state doesn't pay interest. I said,  
 25 Well, what did you do with my money? She

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1 repeated, I went shopping with it. That might  
 2 have been funny to her at the time, but it wasn't  
 3 to me. And it's probably like one of the reasons  
 4 I'm here, because that stuck in the back of my  
 5 head all this time.  
 6 And when I was, in February, when I was  
 7 changing my beneficiary, that's why I reopened it  
 8 and asked her personally that I would like to see  
 9 in writing where it says that the state is not  
 10 responsible to pay interest. And you introduced  
 11 that letter earlier from her. There's two  
 12 statutes that she submitted in there that have  
 13 nothing to do with the Department of Corrections  
 14 or -- you know, they have something to do with  
 15 teachers and bus drivers or whatever. And that's  
 16 when I asked her, and that's actually dated  
 17 February 23rd, you know, like the day after, and  
 18 it actually took her like probably like a month to  
 19 do this. And I requested to have a meeting with  
 20 Gayle, and that didn't take place until June, and  
 21 that's another part of the whole thing.  
 22 And I told Gayle back then that I felt that  
 23 this was maliciously done, and that there were,  
 24 like in my opinion, things done on purpose, which,  
 25 you know, it's a hard thing to prove. You know,

1 it's not -- I'm not saying this lightly -- that I  
 2 believe that Mr. Lombardi overlooked things on  
 3 purpose, and that, probably unaware of it, but  
 4 Diane Bourne just went along with the whole thing.  
 5 Why she made that crack, I have no idea.  
 6 If I can go further with this, all the things  
 7 we've been over, Mr. Lombardi was actually the  
 8 president of union for this place, so he was very  
 9 well aware of what procedures go on with the  
 10 unions; how the contracts, you know, are like  
 11 handed down to other people. He's very -- you  
 12 know, from day one I was always leery of Mr.  
 13 Lombardi from his past dealings as a police  
 14 officer, as an undercover agent, and I believe  
 15 that he has this whole animosity towards myself  
 16 and my family and other people, and there's a very  
 17 good reason for that.  
 18 On some of the documents that I found on the  
 19 internet when Mr. Lombardi retired, he retired  
 20 when Gina Raimondo came on board, and he actually  
 21 like puts out there that there's no  
 22 accountability. He did things and then he forgot  
 23 about them. You know, it's nothing that I made  
 24 up. It's just like documented there. So he  
 25 actually knew that there was no -- like, no

1 what he thought, and that's how he felt, you know,  
 2 that's good. I'm sorry he's not here today to  
 3 answer this. That is why I pursued like the whole  
 4 thing of 36-10-33, because it says any persons,  
 5 and this meant Sal, me, you. It doesn't mean  
 6 member or beneficiary. That if he violated any of  
 7 those laws, the same as if I violated any of those  
 8 laws, I would be held responsible for it and have  
 9 to pay it back to the Retirement Board with  
 10 interest for all the years that I had done  
 11 something wrong. And I feel if that's a good  
 12 enough law for me, it's a good enough law for this  
 13 department, or anybody in it. You can't have it  
 14 one sided.  
 15 From the way that this is written, you'd like  
 16 it to be one sided because you're saying members  
 17 and beneficiaries. You're changing it. You can't  
 18 change it. Person's definition is like from your  
 19 own definitions, right from the Retirement Board.  
 20 And that's pretty much, you know, in a nutshell of  
 21 what my whole case is about.  
 22 And if that's not the case, if Mr. Lombardi  
 23 was like just true to his job, and did what he was  
 24 supposed to do, there are so many mistakes here,  
 25 the \$10,000 life insurance policy; the -- I don't

1 repercussions for him. Like everything was messed  
 2 up. There's no records, like the records were  
 3 sloppy. Gina Raimondo's comments were it's  
 4 actually sloppy. He was glad that she was on  
 5 board to replace him, and he retired.  
 6 My own dealings with Mr. Lombardi were during  
 7 testimony on a court case that he was involved  
 8 with, myself and other correctional officers and  
 9 police officers would sit behind the person that  
 10 was on trial in support of that person while like  
 11 the lawyer back then was questioning them and  
 12 like, you know, whatever. So, you know, we spent  
 13 many days in court at a jury trial sitting there.  
 14 So from the day one when I retired, Mr. Lombardi  
 15 knew me very well. That person that was on trial  
 16 who was found not guilty, and was set up by Mr.  
 17 Lombardi as an undercover agent for the Warwick  
 18 Police Department, was my brother, and that's why  
 19 I feel that there was like some kind of like a  
 20 little bit of animosity towards like everything.  
 21 And it states that Salvatore would go in like  
 22 people's backyards. He disbelieved anybody  
 23 because everybody was lying. Like the only way he  
 24 could do his job was by going out in the field and  
 25 spying on them, which is like, you know, if that's

1 know what it comes out to, like \$3,311, the 4899  
 2 or 998, that \$17,000 in mistakes that were against  
 3 me. So \$17,000, that's quite a substantial amount  
 4 that a person making a mistake is like, or the  
 5 department is making a mistake, isn't liable for.  
 6 That's like -- stealing is like not just taking it  
 7 and like going to spend it or going shopping with  
 8 it. Stealing is if you deprive somebody of it.  
 9 If you take it and you hold onto it, you don't  
 10 give it back to them, that's the same thing as  
 11 stealing. There's rules for me, but there's no  
 12 rules for this department, that's unbelievable.  
 13 And that's all, like, you know, going through my  
 14 statements, like in there, I touch all over those  
 15 things. If it wasn't Sal's fault, then there's  
 16 something wrong with this whole department.  
 17 There's something wrong going back -- he states in  
 18 a Channel 10 like interview when he retired, that  
 19 he withheld like half a million, you know, like,  
 20 it was hundreds of thousands of dollars like from  
 21 people. So if he wrongfully did that, if this  
 22 department didn't go back like from arbitration  
 23 stuff, and they made mistakes for every single  
 24 retiree, then that's wrong, and it's every single  
 25 retiree that's out there. I don't care whether

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1 they're owed \$17 for 17 years. It's their  
 2 responsibility to call this place up and say,  
 3 like, you know, I think you owe me \$17. Well,  
 4 you've got to prove it. Or I think you owe me  
 5 \$17,000, and I've got to prove it.  
 6 Ironically, like the interest on this comes  
 7 to over \$50,000. That's what I would have had to  
 8 pay if I was the one that was wrong, plus another  
 9 \$10,000 fine. So upwards of \$70,000 I would have  
 10 been responsible for. That's why I pursued this  
 11 whole thing. That's why I spent eight months  
 12 doing this. Not because -- I don't even want the  
 13 money. I'll donate it to whoever, but it's just  
 14 the principle that there's rules for you, there  
 15 has to be rules for me, there has to be rules.  
 16 HEARING OFFICER KOUTSOGLIANE: All  
 17 set?  
 18 MR. KRACZKOWSKI: Yes.  
 19 HEARING OFFICER KOUTSOGLIANE: Thank  
 20 you, sir. All set?  
 21 MR. ROBINSON: The vast majority of  
 22 that I'm not intending to respond to. I will only  
 23 note our position regarding the applicability of  
 24 36-10-33. The statute is designed to, and the  
 25 intent of the statute is to provide an avenue for

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1 between the member, his employer, and the  
 2 insurance carrier.  
 3 Quite simply, at the end of the day, there's  
 4 nothing the Retirement System can do if  
 5 Mr. Kraczkowski did not complete the necessary  
 6 application. The evidence is that the Retirement  
 7 System provides them as a standard part of its  
 8 practice. Mr. Kraczkowski himself testified that  
 9 he never even came to the Retirement System, that  
 10 the forms that he completed were at his employer.  
 11 There's been no evidence indicating that the  
 12 Retirement System did anything wrong at all with  
 13 regard to the provision of life insurance.  
 14 And on the only other remaining issue in this  
 15 case, you've heard Mr. Kraczkowski indicate that  
 16 there is no dispute at this point as to the 1998  
 17 pension adjustment, because the Retirement System  
 18 is going to be calculating that based on  
 19 information very recently provided by the  
 20 employer.  
 21 As to the 2000 adjudication, you've heard  
 22 nothing from Mr. Kraczkowski indicating that he  
 23 challenges the calculation of the incorrect  
 24 withholding. The sole issue is his entitlement to  
 25 interest, and we would request an opportunity to

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1 the Retirement Board to recoup monies from anyone  
 2 claiming a pension or payment thereof. The only  
 3 individuals that can claim a pension or a benefit  
 4 thereof are a member or a beneficiary, and the  
 5 statute vests authority in the Retirement System  
 6 to sue and recover, in its own name, judgment with  
 7 interest in the event someone makes a false or  
 8 fraudulent affidavit or affirmation, again,  
 9 concerning any claim for pension or payment  
 10 thereof. The only people that can make such a  
 11 claim would be a member or beneficiary. This  
 12 statute vests authority in the Retirement System,  
 13 not a member, for purposes of bringing a  
 14 counteraction.  
 15 On the life insurance issue, I think the  
 16 evidence is quite clear that Mr. Kraczkowski's  
 17 file does not include the necessary applications  
 18 for a group life insurance policy, or for a waiver  
 19 of premium thereof. The burden ultimately is on  
 20 the member to complete his or her retirement  
 21 applications. The retirement system, just as I  
 22 indicated earlier on, and as Ms.  
 23 Mambro-Martin testified, that it does not make  
 24 determinations regarding eligibility for group  
 25 life insurance determinations. Those are made

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1 brief that to you. I think 30 days would be  
 2 reasonable to submit a post-hearing memo on that  
 3 sole legal issue.  
 4 HEARING OFFICER KOUTSOGLIANE: Fair  
 5 enough. Again, I think you said about 30 days?  
 6 MR. ROBINSON: Yes.  
 7 HEARING OFFICER KOUTSOGLIANE: Do you  
 8 feel a need to submit any memo from your side?  
 9 Again, we're talking about a legal issue, sir, not  
 10 the facts. You've made a very comprehensive  
 11 presentation, both verbally, as well as by way of  
 12 documentation, so I'm really looking for any legal  
 13 issues, which is what Mr. Robinson would be doing  
 14 as well.  
 15 MR. KRACZKOWSKI: All right, like  
 16 even though we both referred to like the legality  
 17 of 10-36-33, am I saying it right?  
 18 MR. ROBINSON: Yeah, it's --  
 19 MR. KRACZKOWSKI: All right, how you  
 20 keep on interpreting that that only applies to  
 21 employees or beneficiaries?  
 22 HEARING OFFICER KOUTSOGLIANE: I'm not  
 23 looking for -- I'm asking you whether or not you  
 24 want to submit a memo, sir?  
 25 MR. KRACZKOWSKI: A memo meaning?

1 HEARING OFFICER KOUTSOGLIANE: On the  
 2 law. In my phone conversations with you before we  
 3 began this process, I asked you whether or not you  
 4 were going to do this on your own, pro se. We  
 5 clarified that again this morning, and, again, the  
 6 issue is one of legality, whether the law, the  
 7 interpretation of this particular statute --  
 8 MR. KRACZKOWSKI: Okay.  
 9 HEARING OFFICER KOUTSOGLIANE: Or  
 10 other statutes or case law, the combination of all  
 11 of that addresses the issue of whether or not you  
 12 feel --  
 13 MR. KRACZKOWSKI: Well, I understand.  
 14 HEARING OFFICER KOUTSOGLIANE: I'm  
 15 just trying to give you some clarification.  
 16 MR. KRACZKOWSKI: Okay. I don't have  
 17 anything.  
 18 HEARING OFFICER KOUTSOGLIANE: It  
 19 doesn't have to be today. He's doing it in 30  
 20 days.  
 21 MR. KRACZKOWSKI: Yeah.  
 22 HEARING OFFICER KOUTSOGLIANE: Do you  
 23 feel a need to, after that, a week or two weeks,  
 24 do you need any time to respond to his memo?  
 25 MR. KRACZKOWSKI: I think everything

1 THE REPORTER: Who gets a copy of the  
 2 transcript?  
 3 MR. KRACZKOWSKI: It goes to the  
 4 Retirement System, and the Retirement System will  
 5 make it available.  
 6 THE REPORTER: Okay.  
 7 HEARING OFFICER KOUTSOGLIANE: Thank  
 8 you.  
 9 (PROCEEDINGS CONCLUDED AT 1:57 P.M.)

1 that's been submitted to you, like if you read  
 2 that, that's sufficient for what I have.  
 3 HEARING OFFICER KOUTSOGLIANE: Again,  
 4 we're talking about, the memo is going to really  
 5 essentially address the law. He may make some  
 6 peripheral references to the facts, but we're  
 7 talking about the law, meaning case law  
 8 interpretation of that particular statute, whether  
 9 it's being interpreted by the Superior Court, the  
 10 Supreme Court.  
 11 MR. KRACZKOWSKI: Okay, I understand  
 12 what you mean.  
 13 HEARING OFFICER KOUTSOGLIANE: Do you  
 14 feel the need, once he submits that, that you want  
 15 time to respond? I'm giving it to you if you wish  
 16 it.  
 17 MR. KRACZKOWSKI: No. No.  
 18 HEARING OFFICER KOUTSOGLIANE: Okay, I  
 19 think we're all set.  
 20 MR. ROBINSON: Just for  
 21 clarification, Mr. Hearing Officer, I know I asked  
 22 for 30 days, but I would like to revise that to be  
 23 30 days from receipt of the transcript?  
 24 HEARING OFFICER KOUTSOGLIANE: Okay,  
 25 fair enough. Thank you.

1 CERTIFICATE  
 2 I, Jane M. Poore, hereby certify that the  
 3 foregoing is a true, accurate, and complete  
 4 transcript of my notes taken at the above entitled  
 5 hearing.  
 6 IN WITNESS WHEREOF I have hereunto set my  
 7 hand this 15th day of October, 2017.

*Jane M. Poore*  
*Nicholas Poore*

14 JANE M. POORE, NOTARY PUBLIC/RPR  
 My commission expires 9/11/21

20 DATE: September 28, 2017  
 21 IN RE: Russell J. Kraczkowski  
 22 vs. Employees' Retirement System of Rhode Island  
 23  
 24  
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# Employees' Retirement System of Rhode Island

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August 15, 2017

Mr. Russell Kraczkowski  
[REDACTED]

Chepacket, RI 02814

Dear Mr. Kraczkowski:

RE: Request for a Hearing – Russell Kraczkowski

In accordance with Rhode Island General Laws §36-8-3 and the Rules of Practice and Procedures for Hearings, your request for a hearing has been assigned to:

HEARING OFFICER: Charles M. Koutsogiane, Esq.  
Phone: (401) 434-2800


LOCATION: Employees' Retirement System  
50 Service Avenue, 2<sup>nd</sup> Floor  
Warwick, RI 02886-1021

You should contact the hearing officer to arrange a mutually convenient time to hold the hearing.

You may represent yourself at this Hearing or your case may be presented by a lawyer. Consistent with Rhode Island General Law §11-27-2, entitled "*Practice of law*" defined, any person accompanying you who is not a lawyer cannot present your case to the Hearing Officer.

Should you have any additional questions, please don't hesitate to contact me at (401) 462-7608.

Sincerely,

  
Roxanne Donoyan  
Assistant to the Executive Director

ccs: Michael P. Robinson, Esq.  
Charles M. Koutsogiane, Esq.

Enclosure: ERSRI Regulation No. 4 – Rules of Practice and Procedure for Hearings



## 1.4 Rules of Practice and Procedure for Hearings in Contested Cases

### A. Introduction

1. These Rules of Practice and Procedure are promulgated pursuant to R.I. General Laws Section 36-8-3. The Rules shall be in effect during any hearing on a contested case before the Retirement Board or its duly authorized representatives.

### B. Definitions

1. The definitions set forth in R.I. General Laws Sections 36-8-1, 45-21-2, 45-21.2-2 and 16-16-1, and as further set forth in Regulations promulgated by the Retirement Board, are specifically incorporated by reference herein.
  - a. "Contested case" means a matter for which a member requests a hearing because he or she is aggrieved by an administrative action other than a Disability decision. The term shall apply to hearings conducted before Hearing Officers, and thereafter in proceedings before the full Retirement Board.
  - b. "Party" means any member, beneficiary, Retirement System, or such other person or organization deemed by the Hearing Officer to have standing.
  - c. "Hearing Officer" means an individual appointed by the Retirement Board to hear and decide a contested case.

### C. Request for Hearing and Appearance

1. Any member aggrieved by an administrative action other than a Disability decision, may request a hearing of such grievance. Upon such request, the matter will be deemed a contested case. The procedure for Disability decisions and appeals therefrom shall be governed by the procedures set forth in Section 1.9, Rules Pertaining to the Application to Receive an Ordinary or Accidental Disability Pension.
2. Such request shall be in writing and shall be sent to the Retirement Board within sixty (60) days of the date of a letter from the Executive Director or Assistant Executive Director constituting a formal administrative denial.
3. A request for hearing shall be signed by the member and shall contain the following information:
  - a. Name of member;
  - b. Date and nature of decision being contested;

- c. A clear statement of the objection to the decision which must include the reasons the member feels he or she is entitled to relief; and
  - d. A concise statement of the relief sought.
- 4. Requests for hearing should be sent to the Retirement Board at 50 Service Avenue, 2<sup>nd</sup> Floor, Warwick, RI 02886-1021.
  - 5. Failure to strictly comply with the procedures outlined in this Section shall be grounds to deny any request for a hearing.

D. Contested Cases – Notice of Hearing

- 1. Upon receipt of a request for hearing in matters other than Disability decisions and appeals therefrom, the Retirement Board or its designee shall appoint a Hearing Officer. The appointed Hearing Officer shall hear the matter, find facts and offer conclusions of law to the Retirement Board. The decision of a Hearing Officer shall be subject to approval by the full Retirement Board. The Retirement System's action shall not be deemed final until such time as the Hearing Officer's recommendation has been voted upon by the Retirement Board.
- 2. Within forty-five (45) days after receipt by the Retirement Board of a request for hearing, the Retirement Board shall give notice that the matter has been assigned to a Hearing Officer for consideration.
- 3. In any contested case, all parties shall be afforded an opportunity to be heard after reasonable notice.
- 4. The notice described in subsection (2), above, shall include:
  - a. A statement of the time, place, and nature of the hearing;
  - b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
  - c. A reference to the particular sections of the statutes and rules involved;
  - d. The name, official title and mailing address of the Hearing Officer, if any;
  - e. A statement of the issues involved and, to the extent known, of the matters asserted by the parties; and
  - f. A statement that a party who fails to attend or participate in the hearing may be held to be in default and have his or her appeal dismissed.

5. The notice may include any other matters the Hearing Officer or the Retirement Board considers desirable to expedite the proceedings.

E. Contested Cases – Hearings in General

1. All parties shall be afforded an opportunity to respond and present evidence and argument on all issues involved.
2. Members must appear at hearings either personally, or by appearance of legal counsel. Members may represent themselves or be represented by legal counsel at their own expense. Consistent with RIGL §11-27-2 entitled, "Practice of law", any person accompanying the member who is not a lawyer (certified member of the bar of the State of Rhode Island) cannot represent the member in the hearing.
3. Continuances and postponements may be granted by the Hearing Officer or the Retirement Board at their discretion.
4. Disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.
5. Should the Hearing Officer or Retirement Board determine that written memoranda are required, the member will be notified by the Hearing Officer or the Retirement Board of the need to file a written document which discusses the issues of the case. Memoranda of law may always be offered in support of arguments offered by the member or the representative of the retirement systems.
6. The Executive Director may, when he or she deems appropriate, retain independent legal counsel to prosecute any contested case.
7. A recording of each hearing shall be made. Any party may request a transcript or copy of the tape at their own expense.

F. Contested Cases - Conduct of Hearings before Hearing Officers

1. Hearings shall be conducted by the Hearing Officer who shall have authority to examine witnesses, to rule on motions, and to rule upon the admissibility of evidence.
2. The Hearing shall be convened by the Hearing Officer. Appearances shall be noted and any motions or preliminary matters shall be taken up. Each party shall have the opportunity to present its case generally on an issue by issue basis, by calling and examining witnesses and introducing written evidence.
3. The Member shall first present his or her case followed by presentation of the Retirement System's case.

4. The Hearing Officer shall have the authority to continue or recess any hearing and to keep the record open for the submission of additional evidence.
5. If for any reason a Hearing Officer cannot continue on a case, another Hearing Officer will be appointed who will become familiar with the record and perform any function remaining to be performed without the necessity of repeating any previous proceedings in the case.
6. Each party shall have the opportunity to examine witnesses and cross-examine opposing witnesses on any matter relevant to the issues in the case.
7. Any objections to testimony or evidence and the basis for the objection shall be made at the time the testimony or evidence is offered.
8. The Hearing Officer may question any party or any witness for the purpose of clarifying their understanding or to clarify the record.
9. The scope of hearing shall be limited to those matters specifically outlined in the request for hearing.
10. Written evidence will be marked for identification. If the original is not readily available, written evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original.
11. Findings of fact shall be based solely on the evidence and matters officially noticed.
12. If a member fails to attend or participate in the hearing as requested, the Hearing Officer may default such member and dismiss his or her appeal with prejudice.

G. Contested Cases – Record of Proceedings before Hearing Officers

1. The record in a contested case shall include:
  - a. All pleadings, motions, intermediate rulings;
  - b. Evidence received or considered;
  - c. A statement of matters officially noticed;
  - d. Questions and offers of proof and rulings thereon;
  - e. Proposed findings and exceptions;

- f. Any decision, opinion, or report by the Hearing Officer at the hearing; and
  - g. All staff memoranda or data submitted to the Hearing Officer in connection with their consideration of the case.
- H. Ex Parte Communications (Communications by one party)
  - 1. There shall be no communications between the Hearing Officer and either a member, the Retirement System or the Retirement Board, or any of their representatives regarding any issue of fact or law in a case, without notice and opportunity for all parties to participate. There shall be no written communications by any party that are not transmitted at the same time to all parties.
- I. Rules of Evidence in Contested Cases:
  - 1. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the superior courts of this state shall be followed. Evidence not usually admitted under the rules of evidence for civil cases may be admitted where it is shown that such evidence is necessary to ascertain facts not capable of being proved otherwise. The Hearing Officer and the Retirement Board shall give effect to the rules of privilege (such as attorney/client privilege) recognized by law. Objections to evidence may be made and shall be noted in the record. Any part of the evidence may be received in written form when a hearing needs to be expedited and the interests of the parties will not be hurt substantially.
- J. Final Decision and Member Right of Appeal
  - 1. Within twenty-five (25) days after receipt of the Hearing Officer's recommendation, a copy thereof shall be served upon all parties to the proceeding and each party shall be notified of the time and place when the matter shall be considered by the Retirement Board. Each party to the proceeding shall be given the right to make exceptions, to file briefs and to make oral arguments before the Retirement Board. No additional evidence will be considered by the Retirement Board once the Hearing Officer has issued a recommendation. A party wishing to file a brief or make exceptions to the recommendation of the Hearing Officer shall be required to submit the same to the Executive Director not later than ten (10) days prior to the date when the Retirement Board is scheduled to hear and act upon the recommendation of the Hearing Officer. The aggrieved party and his or her representative shall have the right to appear before the Retirement Board and make oral argument at the time of such hearing. No new testimony will be taken, or evidence considered at this time. Consistent with RIGL §11-27-2 entitled, "Practice of law" any person accompanying the member who is not a lawyer (certified member of the bar of the State of Rhode Island), cannot represent the member before the Retirement Board. After consideration of

the decision of the Hearing Officer and such other argument as shall be presented by any party to the proceeding, the Retirement Board shall vote on the recommendation of the Hearing Officer.

2. In the event of a tie vote of a quorum present and voting on a contested matter, the matter will automatically be placed on the agenda of the next Retirement Board meeting.

In the event of a tie vote of a quorum present and voting on a contested matter rescheduled from a prior meeting, the Retirement Board may vote to postpone and re-consider the matter at a subsequent hearing, when a larger number of voting members may be present. If no such vote to postpone and re-consider is taken, or if a vote to postpone and re-consider the matter at a later date fails, the underlying action appealed from will be deemed affirmed

#### K. Requests for Rehearing

1. A request for rehearing which is submitted prior to the issuance of the Hearing Officer's recommendation should be made in writing. The request must detail the substance of any additional evidence to be offered, and the reason for the failure of the party to offer it at the prior proceedings.
2. A rehearing will be denied if the evidence does not bear on any issue in contest in the original proceedings, will not likely affect the final recommendation, or if the request appears to be merely for purposes of delaying a final decision. A second request for rehearing after the granting or denial of a prior request for rehearing will not be permitted.

### 1.5 Rules of Elections to Employees Retirement Board

#### 1.5.1 Regular Elections

##### A. Date of Election.

1. Regular elections will be held in the January preceding the expiration of the elected members' term of office.

##### B. Notice of Election.

1. A notice of intent to hold elections to seat members of the state employees, teacher, municipal employee and retiree groups shall be sent by regular mail to each member of the system by September 15th of the year preceding the election. Additional notices will be made available for posting in various state and municipal agencies, schools, and related public offices. Each such mailing shall be made to the last known address of the member, as provided by the member's employer or the member's data file at the retirement system.

##### C. Eligibility to Vote and Candidacy.