

CITY OF WILKES-BARRE FIREMEN'S RELIEF PENSION PLAN

LUZERNE COUNTY

COMPLIANCE AUDIT REPORT

FOR THE PERIOD

JANUARY 1, 2009, TO DECEMBER 31, 2010



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BACKGROUND

On December 18, 1984, the Pennsylvania Legislature adopted the Municipal Pension Plan Funding Standard and Recovery Act (P.L. 1005, No. 205, as amended, 53 P.S. § 895.101 et seq.). The act established mandatory actuarial reporting and funding requirements and a uniform basis for the distribution of state aid to Pennsylvania's public pension plans. Section 402(j) of Act 205 specifically requires the Auditor General, as deemed necessary, to make an audit of every municipality which receives general municipal pension system State aid and of every municipal pension plan and fund in which general municipal pension system State aid is deposited.

Pension plan aid is provided from a 2 percent foreign casualty insurance premium tax, a portion of the foreign fire insurance tax designated for paid firefighters and any investment income earned on the collection of these taxes. Generally, municipal pension plans established prior to December 18, 1984, are eligible for state aid. For municipal pension plans established after that date, the sponsoring municipality must fund the plan for three plan years before it becomes eligible for state aid. In accordance with Act 205, a municipality's annual state aid allocation cannot exceed its actual pension costs.

In addition to Act 205, the City of Wilkes-Barre Firemen's Relief Pension Plan is also governed by implementing regulations adopted by the Public Employee Retirement Commission published at Title 16, Part IV of the Pennsylvania Code and applicable provisions of various other state statutes including, but not limited to, the following:

Act 177 - General Local Government Code, Act of December 19, 1996 (P.L. 1178, No. 177), as amended, 53 Pa.C.S. § 101 et seq.

Act 317 - The Third Class City Code, Act of June 23, 1931 (P.L. 932, No. 317), as amended, 53 P.S. § 35101 et seq.

The City of Wilkes-Barre Firemen's Relief Pension Plan is a single-employer defined benefit pension plan locally controlled by the provisions of File of Council No. 25 of 1976, as amended. The plan covers firefighters who were hired after July 8, 1976. The plan is also affected by the provisions of collective bargaining agreements between the city and its firefighters.



The Honorable Mayor and City Council
City of Wilkes-Barre
Luzerne County
Wilkes-Barre, PA 18711

We have conducted a compliance audit of the City of Wilkes-Barre Firemen's Relief Pension Plan for the period January 1, 2009, to December 31, 2010. The audit was conducted pursuant to authority derived from Section 402(j) of Act 205 and in accordance with *Government Auditing Standards* applicable to performance audits issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our finding and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objectives.

The objectives of the audit were:

1. To determine if municipal officials took appropriate corrective action to address the finding contained in our prior audit report; and
2. To determine if the pension plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies.

Our audit was limited to the areas related to the objectives identified above. The City of Wilkes-Barre contracted with an independent certified public accounting firm for annual audits of the City of Wilkes-Barre Firemen's Relief Pension Plan's financial statements which are available at the city's offices. Those financial statements were not audited by us and, accordingly, we express no opinion or other form of assurance on them.

City officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the City of Wilkes-Barre Firemen's Relief Pension Plan is administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies. In conducting our audit, we obtained an understanding of the city's internal controls as they relate to the city's compliance with those requirements and that we considered to be significant within the context of our audit objectives, and assessed whether those significant controls were properly designed and implemented. Additionally, we tested transactions, assessed official actions, performed analytical procedures and interviewed selected officials to the extent necessary to satisfy the audit objectives.

The results of our tests indicated that, in all significant respects, City of Wilkes-Barre Firemen's Relief Pension Plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies, except as noted in the following finding further discussed later in this report:

Finding – Noncompliance With Prior Audit Recommendation – Plan Provisions Inconsistent With The Third Class City Code

The accompanying supplementary information is presented for purposes of additional analysis. We did not audit the information and, accordingly, express no form of assurance on it.

The contents of this report were discussed with officials of the City of Wilkes-Barre and, where appropriate, their responses have been included in the report.

December 13, 2011

JACK WAGNER
Auditor General

CITY OF WILKES-BARRE FIREMEN'S RELIEF PENSION PLAN
STATUS OF PRIOR FINDING

Noncompliance With Prior Audit Recommendation

The City of Wilkes-Barre has not complied with the prior audit recommendations concerning the following as further discussed in the Finding and Recommendation section of this report:

- Plan Provisions Inconsistent With The Third Class City Code

CITY OF WILKES-BARRE FIREMEN’S RELIEF PENSION PLAN
FINDING AND RECOMMENDATION

Finding – Noncompliance With Prior Audit Recommendation – Plan Provisions Inconsistent With The Third Class City Code

Condition: As disclosed in the prior audit report, the city adopted a home rule charter pursuant to the Home Rule Charter and Optional Plans Law, 53 Pa. C.S. § 2901 et seq. (previously 53 P.S. § 1-101 et seq.) and provided benefits to its firefighters inconsistent with the Third Class City Code. The city continues to provide these benefits to its firefighters inconsistent with the Third Class City Code, as follows:

<u>Benefits</u>	<u>Plan Governing Document</u>	<u>Third Class City Code</u>
Basis of pension	Average monthly compensation for the firefighter’s final year average salary.	Monthly salary or the highest average annual salary which was received during any 5 years of service preceding retirement, whichever is the higher. (§4322)
Definitions	Monthly compensation – basic monthly compensation plus longevity payments, acting officer’s pay, EMT bonuses, overtime pay, night shift differential, educational incentive payments, holiday pay and annual buyback of sick leave.	Salary - the fixed amount of compensation paid at regular, periodic intervals by the city to the member and from which pension contributions have been deducted; this is interpreted to exclude buybacks of leave earned outside of the pension computation period. (§4328)
Service increment contribution	Not provided by ordinance, although members do make contributions to fund this benefit.	A sum not to exceed \$1 per month, payable only until the employee reaches age 65 (§4322(b)(2)).
Nonservice-related disability benefit	If the member has served at least 5 years, the member receives an immediate monthly benefit based on the number of years of service.	Not authorized

CITY OF WILKES-BARRE FIREMEN'S RELIEF PENSION PLAN
FINDING AND RECOMMENDATION

Finding – (Continued)

<u>Benefits</u>	<u>Plan Governing Document</u>	<u>Third Class City Code</u>
Service increment	1.25% of final year average salary multiplied by the number of years of service in excess of 20 years, not to exceed the following: Effective January 1, 1997: 75%; Effective June 29, 1999: 70%.	1/40th (2.5%) of pension benefit multiplied by the number of whole years in excess of 20 years, not to exceed \$100 per month. No credit for service after the employee is 65 years old. (§4322(b)(1)) After the effective date of this clause, the city may agree to make service increment payments in excess of the one hundred dollars (\$100) per month as long as such payments do not exceed five hundred dollars (\$500) per month, and in computing such service increment, no employment after age sixty-five years shall be included: Provided, that any agreement to provide an increase in service increment payments shall include a proportionate increase in the amount each contributor shall pay into the retirement fund under clause (2), not to exceed five dollars (\$5) per month (§4322(b)(6))
Survivor's benefit for children of retirees	The guardian of any minor children of the retiree receives the pension benefit the retiree was receiving if the retiree's spouse is deceased or remarried.	Not authorized

CITY OF WILKES-BARRE FIREMEN'S RELIEF PENSION PLAN
FINDING AND RECOMMENDATION

Finding – (Continued)

<u>Benefits</u>	<u>Plan Governing Document</u>	<u>Third Class City Code</u>
Type of discharge required for nonintervening military service credit	Honorable or general discharge	No requirement
Purchase of nonintervening military service credit	Does not require the member to pay interest on the equivalent of the city's contributions.	Requires the payment of the equivalent of the city's contributions, plus interest. (§4321)
Years of service required for vested benefits	10 years	12 years (§4320.1(a))
Commencement of vested benefits	At age 50	Date which would have been the member's retirement date had he continued full-time employment with the fire department. (§4320.1(b))
Vested portion of base retirement benefits	A fraction, as follows: the number of full years of service completed divided by 20.	The percentage that the years of service actually rendered bears to the years of service which would have been rendered had the member continued to be employed by the department until the minimum retirement date. (§4320.1(b)(2))
Members' contribution disposition for terminating nonvested, nonretiring members	Participant elects whether to leave contributions in the firemen's pension relief fund or to have them refunded.	Members' contributions must be refunded to the member. (§4327)

CITY OF WILKES-BARRE FIREMEN'S RELIEF PENSION PLAN
FINDING AND RECOMMENDATION

Finding – (Continued)

<u>Benefits</u>	<u>Plan Governing Document</u>	<u>Third Class City Code</u>
Vesting conditions	None provided	The vesting member must file a written notice of intent to vest, at least 30 days prior to termination, which includes the member's intended termination date, and the member must be in good standing on the date of notice. The board must indicate on the notice to vest the basis for calculating the vested benefit. (4320.1(a))
Basis for calculating the vested benefit	Average monthly compensation for the firefighter's final year average salary prior to retirement or termination of employment.	Rate of the monthly pay of the member as of the date of the notice to vest or the highest average annual salary which the member received during any 5 years of service preceding the date, whichever is the higher. (§4320.1(a)(5))
Interest on refunds of members' contributions	5 percent	Not authorized (§4327)
Time limit on buyback of prior service time	Buyback must be elected in writing within 6 months of rehire and must be completed within 24 months of the written election.	No time limit provided (§4327)
Credit for periods of termination	Upon rehire, employees may buy back the time between employment periods.	Not authorized

CITY OF WILKES-BARRE FIREMEN’S RELIEF PENSION PLAN
FINDING AND RECOMMENDATION

Finding – (Continued)

<u>Benefits</u>	<u>Plan Governing Document</u>	<u>Third Class City Code</u>
Early retirement	Participants with 20 years of service may retire before the age of 50 with a pension reduced by 4% for each year such participant’s age is short of age 50.	Not authorized
Composition of pension board	5 members, as follows: the mayor, the city controller, the director of human resources, and 2 pension plan participants elected by the plan members.	7 members, as follows: the mayor, the city controller, the director of accounts and finance, the chief of the bureau of fire, ex officio, the director of the department having charge of the fire department, or in cities where the mayor is also the director of the department having charge of the fire department, then the director of public safety, and 2 members of the fire department chosen by the fire department members. (§4320)

Criteria: On January 24, 2001, the Commonwealth Court of Pennsylvania issued its opinion in *Municipality of Monroeville v. Monroeville Police Department Wage Policy Committee*. Therein, the court held that Section 2962(c)(5) of the Home Rule Charter and Optional Plans Law, 53 Pa. C.S. § 2962(c)(5), “clearly precludes home rule municipalities from providing pension benefits different from those prescribed in general law including Act 600.” The court’s holding was in accord with the position taken by this Department since at least January 1995.

Cause: City officials are unable to amend the plan’s governing ordinances to comply with the Third Class City Code due to the fact that pension benefits are a mandatory subject of collective bargaining. The city attempted to amend these benefits through the collective bargaining process; however, the city has been unsuccessful in doing so and has been ordered by the Pennsylvania Labor Relations Board to have the benefits continue as they are currently prescribed in the city’s governing ordinances. The current collective bargaining agreement covers the period January 1, 2004, through December 31, 2010.

CITY OF WILKES-BARRE FIREMEN'S RELIEF PENSION PLAN
FINDING AND RECOMMENDATION

Finding – (Continued)

Effect: The provision of unauthorized benefits increases the plan's pension costs and reduces the amount of funds available for investment purposes or the payment of authorized benefits or administrative expenses. Since the city received its state aid allocations based on unit value during the current audit period, it did not receive any excess state aid allocations attributable to unauthorized pension benefits provided. However, the provision of unauthorized pension benefits could result in the receipt of excess state aid in the future and could increase the municipal contributions necessary to fund the plan in accordance with Act 205 funding standards.

Recommendation: We again recommend that the city restrict pension benefits to those authorized by the Third Class City Code for all employees who began full-time employment on or after January 24, 2001 (the date Monroeville was issued) upon the renewal, extension, or renegotiation of the collective bargaining agreement. To the extent that the city is not in compliance with the Third Class City Code and/or is contractually obligated to provide benefits in excess of those authorized by the Third Class City Code to employees who began employment on or after January 24, 2001, the excess benefits must be reflected in the Act 205 actuarial valuation reports for the plan and funded in accordance with Act 205 funding standards. Furthermore, such benefits will be deemed ineligible for funding with state pension aid. In such case, the plan's actuary may be required to determine the impact, if any, of the unauthorized benefits on the city's future state aid allocations and submit this information to the department.

Management's Response: City officials agreed with the finding without exception.

Auditor's Conclusion: This finding repeats a condition that was cited in our previous two audit reports that has not been corrected by city officials. A written response was requested regarding the city's intended action relative to this issue, however, no response was received. We are concerned by the city's failure to correct this previously reported audit finding and strongly encourage timely implementation of the recommendation noted in this audit report.

CITY OF WILKES-BARRE FIREMEN'S RELIEF PENSION PLAN
 SUPPLEMENTARY INFORMATION
 (UNAUDITED)

SCHEDULE OF FUNDING PROGRESS

Historical trend information about the plan is presented herewith as supplementary information. It is intended to help users assess the plan's funding status on a going-concern basis, assess progress made in accumulating assets to pay benefits when due, and make comparisons with other state and local government retirement systems.

The actuarial information is required by Act 205 biennially. The historical information, beginning as of January 1, 2005, is as follows:

	(1)	(2)	(3)	(4)	(5)	(6)
Actuarial Valuation Date	Actuarial Value of Assets (a)	Actuarial Accrued Liability (AAL) - Entry Age (b)	Unfunded (Assets in Excess of) Actuarial Accrued Liability (b) - (a)	Funded Ratio (a)/(b)	Covered Payroll (c)	Unfunded (Assets in Excess of) Actuarial Accrued Liability as a % of Payroll [(b-a)/(c)]
01-01-05	\$ 13,500,620	\$ 10,995,917	\$ (2,504,703)	122.8%	\$ 3,711,030	(67.5%)
01-01-07	16,299,826	13,360,403	(2,939,423)	122.0%	4,039,889	(72.8%)
01-01-09	16,405,936	16,625,406	219,470	98.7%	4,354,561	5.0%

Note: The market value of the plan's assets at 01-01-09 has been adjusted to reflect the smoothing of gains and/or losses subject to 130 percent of the market value of assets. This method will lower contributions in years of less than expected returns and increase contributions in years of greater than expected returns. The net effect over long periods of time is to have less variance in contribution levels from year to year.

CITY OF WILKES-BARRE FIREMEN'S RELIEF PENSION PLAN
SUPPLEMENTARY INFORMATION
(UNAUDITED)

The comparability of trend information is affected by changes in actuarial assumptions, benefit provisions, actuarial funding methods, accounting policies, and other changes. Those changes usually affect trends in contribution requirements and in ratios that use the actuarial accrued liability as a factor.

Analysis of the dollar amount of the actuarial value of assets, actuarial accrued liability, and unfunded (assets in excess of) actuarial accrued liability in isolation can be misleading. Expressing the actuarial value of assets as a percentage of the actuarial accrued liability (Column 4) provides one indication of the plan's funding status on a going-concern basis. Analysis of this percentage, over time, indicates whether the system is becoming financially stronger or weaker. Generally, the greater this percentage, the stronger the plan.

Trends in unfunded (assets in excess of) actuarial accrued liability and annual covered payroll are both affected by inflation. Expressing the unfunded (assets in excess of) actuarial accrued liability as a percentage of annual covered payroll (Column 6) approximately adjusts for the effects of inflation and aids analysis of the plan's progress made in accumulating sufficient assets to pay benefits when due. Generally, where there is an unfunded actuarial accrued liability, the smaller this percentage, the stronger the plan. However, when assets are in excess of the actuarial accrued liability, the higher the bracketed percentage, the stronger the plan.

CITY OF WILKES-BARRE FIREMEN'S RELIEF PENSION PLAN
SUPPLEMENTARY INFORMATION
(UNAUDITED)

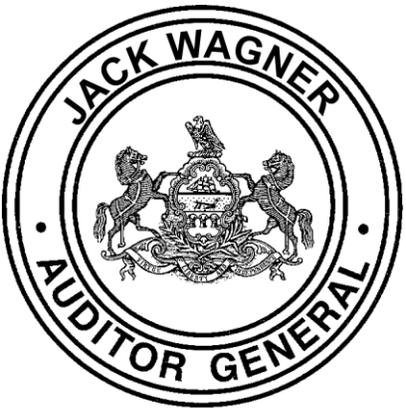
SCHEDULE OF CONTRIBUTIONS FROM EMPLOYER
AND OTHER CONTRIBUTING ENTITIES

Year Ended December 31	Annual Required Contribution	Percentage Contributed
2005	\$ 287,872	100.0%
2006	321,674	100.0%
2007	110,308	100.0%
2008	69,212	100.0%
2009	119,125	100.0%
2010	158,622	100.0%

CITY OF WILKES-BARRE FIREMEN'S RELIEF PENSION PLAN
SUPPLEMENTARY INFORMATION
NOTES TO SUPPLEMENTARY SCHEDULES
(UNAUDITED)

The information presented in the required supplementary schedules was determined as part of the actuarial valuation at the date indicated. Additional information as of the latest actuarial valuation date follows:

Actuarial valuation date	January 1, 2009
Actuarial cost method	Entry age normal
Amortization method	Level dollar
Remaining amortization period	20 years
Asset valuation method	Plan assets are valued using the method described in Section 210 of Act 205, as amended, subject to a ceiling of 130% of the market value of assets.
Actuarial assumptions:	
Investment rate of return	8.5% compounded annually
Projected salary increases	5.5% compounded annually
Cost-of-living adjustments	None assumed



CITY OF WILKES-BARRE FIREMEN'S RELIEF PENSION PLAN
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom Corbett
Governor
Commonwealth of Pennsylvania

City of Wilkes-Barre Firemen's Relief Pension Plan
Luzerne County
40 East Market Street
Wilkes-Barre, PA 18711

The Honorable Thomas M. Leighton	Mayor
Ms. Kathy Kane	Council Chairperson
Mr. James Ryan	City Clerk
Mr. Bernard Mengerlinghausen	City Controller
Ms. Laura Brace	City Pension Coordinator

This report is a matter of public record. Copies of this report may be obtained from the Pennsylvania Department of the Auditor General, Office of Communications, Room 318 Finance Building, Harrisburg, PA 17120. If you have any questions regarding this report or any other matter, you may contact the Department of the Auditor General by accessing our website at www.auditorgen.state.pa.us.