

DUNMORE BOROUGH DEPARTMENT OF PUBLIC WORKS PENSION PLAN

LACKAWANNA COUNTY

COMPLIANCE AUDIT REPORT

FOR THE PERIOD

JANUARY 1, 2007, TO DECEMBER 31, 2008



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ABBREVIATION

ERISA - Employee Retirement Income Security Act

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 Dunmore Borough Department of Public Works 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.

As further described in the Letter from the Auditor General included in this report, the borough's nonuniformed union employees participate in the United Food and Commercial Workers Pension Plan. The Dunmore Borough Department of Public Works Pension Plan is locally controlled by the provisions of a resolution dated December 29, 1986. The plan is also affected by the provisions of collective bargaining agreements between the borough and its Department of Public Works employees. Active members are not required to contribute to the plan. The municipality is required to contribute \$131.13 per month per member, effective July 1, 2006.



The Honorable Mayor and Borough Council
Dunmore Borough
Lackawanna County
Dunmore, PA 18512

We have conducted a compliance audit of the Dunmore Borough Department of Public Works Pension Plan for the period January 1, 2007, to December 31, 2008. 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 findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings 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 borough's nonuniformed union employees participate in the United Food and Commercial Workers Pension Plan, a Taft-Hartley Act collectively bargained, jointly trustee, multi-employer pension plan, which is governed primarily by the Federal Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides for substantial federal government oversight of the operating and reporting practices of employee benefit plans subject to its provisions. Accordingly, the scope of our audit was restricted to the activities of the Dunmore Borough Department of Public Works Pension Plan and did not extend to the activities of the multi-employer pension plan.

Borough officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the Dunmore Borough Department of Public Works 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 borough's internal controls as they relate to the borough'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, the Dunmore Borough Department of Public Works 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 findings further discussed later in this report:

- Finding No. 1 – Partial Compliance With Prior Audit Recommendation – Incorrect Data On Certification Form AG 385 Resulting In An Overpayment Of State Aid
- Finding No. 2 – Incorrect Data On Certification Form AG 385 Resulting In An Underpayment Of State Aid
- Finding No. 3 – Failure To Appoint A Chief Administrative Officer

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 Dunmore Borough and, where appropriate, their responses have been included in the report.

February 19, 2010

JACK WAGNER
Auditor General

DUNMORE BOROUGH DEPARTMENT OF PUBLIC WORKS PENSION PLAN
STATUS OF PRIOR FINDING

Partial Compliance With Prior Audit Recommendation

· Incorrect Data On Certification Form AG 385 Resulting In An Overpayment Of State Aid

The borough reimbursed \$9,104 to the Commonwealth for the overpayment of state aid; however, plan officials failed to calculate and pay the required interest due to the Commonwealth as further discussed in the Findings and Recommendations section of this report.

DUNMORE BOROUGH DEPARTMENT OF PUBLIC WORKS PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – Partial Compliance With Prior Audit Recommendation – Incorrect Data On Certification Form AG 385 Resulting In An Overpayment Of State Aid

Condition: As disclosed in the prior audit report, the borough certified 1 ineligible Department of Public Works (DPW) employee (1 unit) in 2005 and certified 2 ineligible DPW employees (2 units) in 2006 on Certification Form AG 385 resulting in an overpayment of state aid amounting to \$9,104. It was recommended that the total excess state aid be returned to the Commonwealth, with interest compounded annually from the date of receipt to the date of repayment, at a rate earned by the pension plan.

During the current audit period, the borough reimbursed \$9,104 to the Commonwealth; however, the borough failed to calculate and reimburse the interest due.

Criteria: The case of Peyton v. Margiotti, 398 Pa. 86, (1959), states that a person has the right to collect interest of money which is unlawfully withheld from him. When interest is not expressly provided for... it is due... from the date of withholding. Id. at 94.

Cause: Borough officials failed to establish adequate internal control procedures to ensure full compliance with the prior audit recommendation.

Effect: The pension plan retained the interest earned on the state aid overpayment.

Recommendation: We again recommend that the interest due on the state aid overpayments received in 2005 and 2006, compounded annually from date of receipt to date of repayment, at a rate earned by the pension plan, be reimbursed to the Commonwealth. A check should be made payable to: Commonwealth of Pennsylvania and mailed to: Department of the Auditor General, Municipal Pension & Fire Relief Programs Unit, 11 Stanwix Street, Suite 1450, Pittsburgh, PA 15222. A copy of the interest calculation must be submitted along with evidence of payment.

Management's Response: Municipal officials will respond to the finding upon receipt of the audit report.

Finding No. 2 – Incorrect Data On Certification Form AG 385 Resulting In An Underpayment Of State Aid

Condition: The borough failed to certify 1 eligible Department of Public Works (DPW) employee (1 unit) in 2009 on Certification Form AG 385.

DUNMORE BOROUGH DEPARTMENT OF PUBLIC WORKS PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

Criteria: Pursuant to Act 205, at Section 402(e)(2), an employee who has been employed on a full-time basis for at least six consecutive months and has been participating in a pension plan during the certification year is eligible for certification.

Cause: Plan officials did not certify an employee who was on Workers Compensation during 2008. The borough made contributions to the pension plan for this employee during 2008.

Effect: The data submitted on this certification form is used, in part, to calculate the state aid due to the municipality for distribution to its pension plans. Because the borough’s state aid allocation was based on unit value, the borough received an underpayment of state aid of \$3,128 as identified below:

<u>Units</u> <u>Understated</u>	<u>Unit</u> <u>Value</u>	<u>State Aid</u> <u>Underpayment</u>
1	\$ 3,128	\$ 3,128

Although the borough will be reimbursed for the underpayment of state aid due to the borough’s certification error, the full amount of the 2009 state aid allocation was not available to be deposited timely and therefore was not available to pay operating expenses or for investment.

Recommendation: We recommend that, in the future, plan officials comply with the instructions that accompany Certification Form AG 385 to assist them in accurately reporting the required pension plan data.

Management’s Response: Municipal officials will respond to the finding upon receipt of the audit report.

Finding No. 3 – Failure To Appoint A Chief Administrative Officer

Condition: Municipal officials did not appoint a chief administrative officer (CAO) for the pension plan by ordinance, resolution or by a motion recorded in the minutes of a council meeting.

Criteria: Section 102 of Act 205 defines the CAO as “The person who has primary responsibility for the execution of the administrative affairs of the municipality in the case of the municipality, or of the pension plan in the case of the pension plan, or the designee of that person.”

DUNMORE BOROUGH DEPARTMENT OF PUBLIC WORKS PENSION PLAN
FINDINGS AND RECOMMENDATIONS

Finding No. 3 – (Continued)

Municipal officials may appoint two CAOs - one for the pension plan and one for the municipality or appoint one person to fill both positions. Act 205 identifies specific duties for each position, as follows:

CAO of the Municipality

- Supervise and direct the preparation of actuarial reports (Section 201(d));
- Certify and file actuarial valuation reports with the Public Employee Retirement Commission (Section 201(b)); and
- Make actuarial report information available to plan members (Section 201(e)).

CAO of the Pension Plan

- Annually, determine and submit to the governing body of the municipality the financial requirements of the pension plan and minimum municipal obligation (Section 302(b), Section 302(c), Section 303(b), Section 303(c) and Section 304); and
- Provide the governing body of the municipality with a cost estimate of the effect of any proposed benefit plan modification (Section 305(a)).

Cause: Plan officials were unaware of the need to appoint a CAO for the pension plan in accordance with Act 205 provisions.

Effect: The failure to formally appoint a CAO could result in important filing deadlines being overlooked, state aid being adversely affected and delayed and investment opportunities being lost.

Recommendation: Because of the significance of the CAO's responsibilities to the municipality and pension plan, we recommend that the CAO be formally appointed by ordinance, resolution or motion recorded in the minutes of a council meeting. Such ordinance, resolution or motion should detail the CAO's responsibilities and be filed with other plan documents.

Management's Response: Municipal officials will respond to the finding upon receipt of the audit report.

DUNMORE BOROUGH DEPARTMENT OF PUBLIC WORKS PENSION PLAN
SUPPLEMENTARY INFORMATION
(UNAUDITED)

SCHEDULE OF STATE AID
AND EMPLOYER CONTRIBUTIONS

Year Ended December 31	State Aid Deposited	Employer Contributions
2003	None	\$ 54,853
2004	None	60,575
2005	None	54,567
2006	None	39,036
2007	None	31,471
2008	None	32,638

DUNMORE BOROUGH DEPARTMENT OF PUBLIC WORKS PENSION PLAN
COMMENT

On March 31, 2009, the actuary of the United Food and Commercial Workers Pension Fund of Northeastern Pennsylvania ("Fund") certified to the U.S. Department of the Treasury, and also to the Board of Trustees of the Fund, that the Fund is in critical status for the plan year beginning January 1, 2009.

The Fund is considered to be in critical status because it has funding or liquidity problems, or both. More specifically, the Fund's actuary determined that the plan has an accumulated funding percentage for the current plan year of 65% or less; the sum of the plan's normal cost and interest on the unfunded benefits for the current plan year exceeds the present value of all expected contributions for the year; the present value of vested benefits of inactive participants is greater than the present value of vested benefits of active participants; and the plan was in critical status last year.

The law requires that all contributing employers pay to the Fund a surcharge to help correct the Fund's financial situation. The amount of the surcharge is equal to a percentage of the amount an employer is otherwise required to contribute to the Fund under the applicable collective bargaining agreement. Consequently, it has been determined that the borough is required to make 80 quarterly payments of \$16,520. The borough began making its required quarterly payments of \$16,520 on March 31, 2009.

DUNMORE BOROUGH DEPARTMENT OF PUBLIC WORKS PENSION PLAN
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Edward G. Rendell
Governor
Commonwealth of Pennsylvania

Dunmore Borough Department of Public Works Pension Plan
Lackawanna County
400 South Blakely Street
Dunmore, PA 18512

The Honorable Patrick W. Loughney	Mayor
Mr. Timothy Burke	Council President
Ms. Denise Muraca	Treasurer

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.