

LIMITED PROCEDURES ENGAGEMENT

Dupont Borough Police Pension Plan Luzerne County, Pennsylvania For the Period January 1, 2016 to December 31, 2019

April 2020



Commonwealth of Pennsylvania
Department of the Auditor General

Eugene A. DePasquale • Auditor General



Commonwealth of Pennsylvania
Department of the Auditor General
Harrisburg, PA 17120-0018
Facebook: Pennsylvania Auditor General
Twitter: @PAAuditorGen
www.PaAuditor.gov

EUGENE A. DePASQUALE
AUDITOR GENERAL

The Honorable Mayor and Borough Council
Dupont Borough
Luzerne County
Dupont, PA 18641

We conducted a Limited Procedures Engagement (LPE) of the Dupont Borough Police Pension Plan for the period January 1, 2016 to December 31, 2019 to determine its compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies. We also evaluated compliance with some requirements subsequent to that period when possible. The LPE was conducted pursuant to authority derived from Section 402(j) of the Municipal Pension Plan Funding Standard and Recovery Act (P.L. 1005, No. 205, as amended, 53 P.S. § 895.101 et seq.) but was not conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. 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. We believe that the evidence obtained provides a reasonable basis to support our LPE results.

Our LPE was limited to determining the following:

- Whether municipal officials took appropriate corrective action to address the finding contained in our prior LPE Report, by inquiring of plan officials and evaluating supporting documentation provided by officials evidencing that the suggested corrective action has been appropriately taken.
- Whether state aid was properly determined and deposited in accordance with Act 205 requirements by verifying the annual deposit date of state aid and determining whether deposits were made within 30 days of receipt for all years within the engagement period.
- Whether annual employer contributions were calculated and deposited in accordance with the plan's governing document and applicable laws and regulations by examining the municipality's calculation of the plan's annual financial requirements and minimum municipal obligation (MMO) and comparing these calculated amounts to amounts actually budgeted and deposited into the pension plan as evidenced by supporting documentation.

- Whether the January 1, 2015, January 1, 2017 and January 1, 2019 actuarial valuation reports were prepared and submitted by March 31, 2016, 2018 and 2020, respectively, in accordance with Act 205 and whether selected information provided on these reports is accurate, complete, and in accordance with plan provisions to ensure compliance for participation in the state aid program by comparing selected information to supporting source documentation.

Based on the results of our procedures performed during our LPE, nothing came to our attention indicating that the Dupont Borough Police Pension Plan was not being 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 Engagement Recommendation -
Unauthorized Pension Benefit

The finding contained in this LPE report repeats a condition that was cited in our previous engagement report that has not been corrected by borough officials. We are concerned by the borough's failure to correct this previously reported finding and strongly encourage timely implementation of the recommendation noted in this report.

Our determination to perform a LPE for this engagement period does not preclude the Department from conducting an audit in accordance with *Government Auditing Standards* of the pension plan in subsequent periods. The borough should continue to maintain documentation related to this pension plan.

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

The contents of this report were discussed with officials of Dupont Borough and, where appropriate, their responses have been included in this report. We would like to thank borough officials for the cooperation extended to us during the conduct of this LPE.

March 26, 2020



EUGENE A. DEPASQUALE
Auditor General

CONTENTS

| | <u>Page</u> |
|---|-------------|
| Status of Prior Finding | 1 |
| Finding and Recommendation: | |
| Finding - Noncompliance With Prior Engagement Recommendation - Unauthorized Pension Benefit..... | 2 |
| Supplementary Information | 6 |
| Report Distribution List | 10 |

DUPONT BOROUGH POLICE PENSION PLAN
STATUS OF PRIOR FINDING

Noncompliance With Prior LPE Report Recommendation

Dupont Borough has not complied with the prior LPE report recommendation concerning the following as further discussed in the Finding and Recommendation section of this report:

- Unauthorized Pension Benefit

DUPONT BOROUGH POLICE PENSION PLAN
FINDING AND RECOMMENDATION

Finding - Noncompliance With Prior Engagement Recommendation - Unauthorized Pension Benefit

Condition: As disclosed in the prior report, plan officials granted an unauthorized normal retirement benefit (*\$2,995 monthly*) to a police officer who retired on December 1, 2011, at age 64 with 22 years of service, based on 75 percent of his final average salary. Dupont Borough maintains a pension plan governed by the provisions of Act 600, as amended. Act 600 requires a minimum of 25 years of service in order to be eligible for a normal retirement benefit, based upon 50 percent of the member's final average salary. Therefore, the retiree was only entitled to a vested pension benefit commencing on October 2, 2014 in the amount of \$1,757 per month. Moreover, during the prior engagement period, the retiree died; and subsequently, the retiree's surviving spouse began receiving a monthly benefit in the amount of \$1,498 per month, based on 50 percent of the excess monthly pension benefit the retired police officer was receiving. However, the surviving spouse was only entitled to a monthly benefit in the amount of \$878, which represents 50 percent of the vested pension benefit the retired police officer was entitled to receive. This unauthorized benefit was granted through an amendment to the plan's governing document and the collective bargaining agreement between the borough and its last active police officer.

Section 1 of Ordinance No. 1213-02 of 2011, states:

The terms of the Collective Bargaining Agreement with the Dupont Borough Police effective from January 1, 2008 through December 31, 2012 as it applies to pension and retirement are hereby amended to increase the pension benefit for qualified retiring officers to seventy-five percent (75%) of their final average salary with a minimum of twenty-two (22) years' service.

In addition, the collective bargaining agreement at the Pension and Retirement Section states, in part:

An increase in pension benefits to 75% of final average salary.

Criteria: As previously disclosed, Section 3 of Act 600 states, in part:

Each ordinance or resolution establishing a police pension fund shall prescribe a minimum period of total service in the aggregate of twenty-five years in the same borough...

DUPONT BOROUGH POLICE PENSION PLAN
FINDING AND RECOMMENDATION

Finding- (Continued)

In addition, Section 5(c) of Act 600 states, in part:

Monthly pension or retirement benefits other than length of service increments shall be computed at one-half the monthly average salary of such member during not more than the last sixty nor less than the last thirty-six months of employment.

The plan's governing document at Section 12 of Ordinance No. 89-01-07 of 1989 states, in part:

Should a police officer, before completing superannuation retirement age and service requirements but after having completed twelve (12) years of total service, for any reason cease to be employed as a full-time police officer by the municipality in whose pension fund he has been a member, he shall be entitled to vest his retirement benefits...Upon reaching the date which would have been his superannuation retirement date if he had continued to be employed as a full-time police officer, he shall be paid a partial superannuation retirement allowance determined by applying the percentage his years of service bears to the continued to work (sic) until his superannuation retirement date to the gross pension, using however the monthly average salary during the appropriate period prior to his termination of employment.

Furthermore, the collective bargaining agreement, at Article 21, states:

Nothing in this agreement shall be construed to require either of the parties to act contrary to any state or federal law. In the event such conditions arise, it is agreed that this agreement shall be deemed to be modified to the extent necessary to comply with such laws, all other provisions of the agreement shall continue in full force and effect.

In addition, although the establishment of police pension plans pursuant to Act 600 provisions is only mandatory for regional plans and for municipalities with three or more full-time police officers, other municipalities may elect to establish their police pension plans pursuant to Act 600 provisions.

Cause: As disclosed in the prior report, the borough failed to ensure that the plan benefit amendments and subsequent benefit determination were in compliance with Act 600 provisions. In addition, municipal officials believed that the pension benefit paid to the retiree was provided through a Compromised Settlement Agreement and Resolution which established the pension benefit. Moreover, because officials disagree with the Department's position as presented in the Management Response below, the borough failed to enact procedures to ensure compliance with the department's prior recommendation.

DUPONT BOROUGH POLICE PENSION PLAN
FINDING AND RECOMMENDATION

Finding - (Continued)

Effect: The plan paid excess pension benefits to the retiree in the amount of \$2,995 per month, from December 1, 2011 to October 1, 2014, the member's superannuation retirement date, which totaled approximately \$101,834, and \$1,238 per month from October 2, 2014 to the member's date of death, which totaled approximately \$8,666. Further, the plan continues to pay excess pension benefits to the member's beneficiary, in the amount of \$619 per month, which have totaled approximately \$35,291 from the date of the member's death through completion of the current engagement.

Providing unauthorized pension benefits increases the plan's pension costs and reduces the amount of funds available for investment purposes or for the payment of authorized benefits or administrative expenses. Since the borough did not receive state aid for this pension plan during the current engagement period, it did not receive allocations attributable to the excess pension benefits provided. However, the increased costs to the pension plan as a result of the excess pension benefits could result in the receipt of excess state aid in the future and increase the municipal contributions necessary to fund the plan in accordance with Act 205 funding standards.

Recommendation: We again, recommend that municipal officials adjust the beneficiary's pension benefit prospectively to be in accordance with the vesting provisions contained in the plan's governing document and Act 600. 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 excess benefits on the borough's future state aid allocations and submit this information to the Department. If it is determined the excess benefits had an impact on the borough's future state aid allocations after the submission of this information, the plan's actuary would then be required to contact the Department to verify the overpayment of state aid received. Plan officials would then be required to reimburse the overpayment to the Commonwealth.

Management's Response: Contrary to the response contained in the prior report, municipal officials disagreed with the recommendation and along with their solicitor provided the following response:

In response to the recent findings of your audit of the Dupont Pension Fund and specifically the payments being made to the Widow (*Auditor's Note: individual's name was removed for reporting purposes*), I believe we have provided you with a copy of the Compromised Settlement Agreement and Resolution which established the current payment.

Without reviewing the facts behind the Chief's retirement in writing, I believe you have received an oral explanation of the circumstances which made the Chief's immediate retirement necessary and in the interest of public safety. The monies paid to the Chief's Widow are agreeable to the council and I'm sure will be subject to legal action by her legal counsel in the event they are stopped. The current balance in the police pension far exceeds

DUPONT BOROUGH POLICE PENSION PLAN
FINDING AND RECOMMENDATION

Finding - (Continued)

any anticipated future payment requirements and the Borough has made no contribution in years due to that fact. The fund generates more income than is paid out under the settlement which is a further reason why the Borough has no objection to complying with its agreement.

Auditor's Conclusion: Although the borough cites that the former individual's "immediate retirement" was deemed "necessary and in the interest of public safety" and that "the monies paid to the widower were agreeable to borough council" and "the current balance in the police pension far exceeds any anticipated future payment requirements", Act 600 does not specifically authorize the granting of such an excess benefit under the act as written. And while the municipality reached a separate agreement, the terms do not comport with Act 600 and the Department cannot ignore statutory authority in favor of a private agreement between self-interested parties. Therefore, based on the criteria cited above, the finding remains as stated. Compliance will be evaluated during our next plan engagement.

DUPONT BOROUGH POLICE 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, 2015, is as follows:

| | (1) | (2) | (3) | (4) |
|--------------------------------|--|--|--|----------------------------|
| 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) |
| 01-01-15 | \$ 906,074 | \$ 377,491 | \$ (528,583) | 240.0% |
| 01-01-17 | 835,528 | 202,558 | (632,970) | 412.5% |
| 01-01-19 | 850,772 | 206,636 | (644,136) | 411.7% |

DUPONT BOROUGH POLICE 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.

DUPONT BOROUGH POLICE PENSION PLAN
SUPPLEMENTARY INFORMATION
(UNAUDITED)

SCHEDULE OF CONTRIBUTIONS FROM EMPLOYER
AND OTHER CONTRIBUTING ENTITIES

| Year Ended December 31 | Annual Required Contribution | Percentage Contributed |
|------------------------|------------------------------|------------------------|
| 2014 | None | N/A |
| 2015 | None | N/A |
| 2016 | None | N/A |
| 2017 | None | N/A |
| 2018 | None | N/A |
| 2019 | None | N/A |

DUPONT BOROUGH POLICE PENSION PLAN
SUPPLEMENTARY INFORMATION
NOTES TO SUPPLEMENTARY SCHEDULES
(UNAUDITED)

The information presented in the 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, 2019 |
| Actuarial cost method | Entry age normal |
| Amortization method | N/A |
| Remaining amortization period | N/A |
| Asset valuation method | Fair value |
| Actuarial assumptions: | |
| Investment rate of return | 7.0% |
| Projected salary increases | 5.0% |
| Cost-of-living adjustments | 3.0% per year postretirement |

DUPONT BOROUGH POLICE PENSION PLAN
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom W. Wolf
Governor
Commonwealth of Pennsylvania

The Honorable Daniel Lello
Mayor

Mr. Stanley Knick, Jr.
Council President

Ms. Patricia McDonald
Borough Manager

This report is a matter of public record and is available online at www.PaAuditor.gov. Media questions about the report can be directed to the Pennsylvania Department of the Auditor General, Office of Communications, 229 Finance Building, Harrisburg, PA 17120; via email to: news@PaAuditor.gov.