

**COURT REVERSES ARBITRATOR'S DECISION THAT  
ALLOWED OFFICER'S LUMP SUM FOR UNUSED VACATION  
TO BE INCLUDED IN PENSION CALCULATION**

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In Shippensburg Police Association v. Borough of Shippensburg, 968 A.2d 246 (Pa. Commw. 2009), the Commonwealth Court reviewed an arbitrator's award that required the inclusion of unused vacation time (lump sum) in calculating a police officer's pension benefit. After notifying the Borough of his intent to retire, Officer Davis asked that his pension calculation include the lump sum payment he was to receive for unused vacation days. The Borough refused to deduct pension contributions for the lump sum and rejected the officer's request. Davis filed a grievance. An arbitrator reviewed the collective bargaining agreement and the police pension plan and concluded that the language required that "all earnings" during the computation period be included in the pension benefit calculation. The Borough appealed unsuccessfully to the Court of Common Pleas. The trial court expressed serious doubts about the arbitrator's decision but ultimately affirmed it due to the limited scope of review.

The Commonwealth Court reversed, holding that the arbitration award would require the Borough to commit an illegal act. Specifically, the Court agreed with the Borough's argument that the award requires a modification of the pension plan without proof of its actuarial soundness in violation of Act 205. Section 305 of the Act requires a cost estimate of the effect of a proposed benefit plan modification prior to its adoption. The cost estimate must be accurate and disclose the "impact" of the proposed modification as it relates to future financial requirements and the municipality's minimum obligation. The Court reviewed one of its prior decisions and summarized its holding as follows: "a grievance arbitrator who awards a modification of a police pension plan in the absence of an Act 205 cost estimate requires an illegal act."

In rejecting the union's position that the award did not modify the plan, the Commonwealth Court focused on the critical fact that for the last 25 years the police pension plan did not include unused vacation pay when calculating benefits. As such, the arbitrator's award clearly modified the plan and "unsettled the Borough's once predictable pension liability." Because there was no cost estimate to quantify the change and its financial impact, as required by Act 205, the arbitrator exceeded his authority. This decision appropriately focuses on the importance of following Act 205 and serves as reminder that these requirements must be met whenever a plan modification is sought.