

**[J-84-2010][OAJC - McCaffery, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 11 MAP 2010
	:	
Appellee	:	
	:	Appeal from the Order of the
	:	Commonwealth Court at No. 105 CD 2009
v.	:	dated 7/28/09 reconsideration dated
	:	9/18/09 amending order affirming in part
	:	and vacating in part the Interest Arbitration
	:	Award between the parties dated
PENNSYLVANIA STATE TROOPERS	:	December 24, 2008
ASSOCIATION,	:	
	:	
Appellant	:	ARGUED: October 20, 2010

DISSENTING OPINION

MR. JUSTICE SAYLOR

DECIDED: April 28, 2011

The lead opinion appears to recognize that, in providing for “creditable leaves of absence” under the Retirement Code -- subject to the proviso that the Commonwealth is to compensate an employee on leave for union service “as if he were in full-time active service,” 71 Pa.C.S. §5302(b)(2) -- the General Assembly’s intent was to preserve the ongoing accrual of retirement benefits for employees. See Opinion Announcing the Judgment of the Court, slip op. at 17-18. Nevertheless, according to the lead opinion, an Act 111 arbitrator has the legal authority to disregard the statute’s manifest retirement-related design and require the Commonwealth to tender to an on-leave employee more than the statutorily authorized payments, thus decoupling the payment scheme from its foundation. See id. at 10, 18. The lead Justices posit that there is no

harm, because the Commonwealth obtains reimbursement from the union, and any adverse impact on the retirement system may be corrected on some later occasion and in some different forum. See id. at 18.

The difficulty, however, is that, to the degree Act 111 arbitrators disturb the statutory compensation scheme, they create an untenable administrative burden on the Commonwealth and the retirement system. In this regard, in order to comply with their statutory duties, the Commonwealth employer and the retirement system must create a dual tracking system to account for both payments actually made by the Commonwealth and as-if-in-full-time-active-service components. Controversy over the appropriate administration of such a system -- which certainly was not contemplated by the Legislature in prescribing as-if-in-full-time-active-service payment in the first instance -- is bound to yield uncertainty and litigation.

My comments on the consequences of the lead opinion's approach are responsive to the pronouncement that there is no harm, which the lead Justices offer to bolster their decision divorcing a statutory rate-of-pay provision from its roots in the pension context. My remarks are not based on some "helpful desire to ease the burdens of the Commonwealth's accountants," as the lead opinion suggests. Opinion Announcing the Judgment of the Court, slip op. at 18-19 n.13. In my view, the maintenance of an integrated scheme of compensation and retirement accrual is compelled by the enabling statute, i.e., the Retirement Code. I also remain of the belief that the lead Justices underestimate the degree of ongoing uncertainty, controversy, and expense attending their decision to sanction a decoupling of the rate of pay tendered by a governmental employer to employees on leave for union service from the statutory foundation.

Additionally, I differ with the lead's position that the matter of wages for such on-leave state employees is "exclusively reserved by the General Assembly for Act 111 arbitrators." See id. To the contrary, the Legislature itself expressly indicated in the Retirement Code (which serves as the sole statutory basis for payment of government employees on leave for union service in the first instance) that such personnel were to be compensated by the government "as if [the employee] were in full-time active service." 71 Pa.C.S. §5302(b)(2). Moreover, the Legislature specifically limited the authority of arbitrators in the Retirement Code arena. See id. §5955 (providing, inter alia, that "no collective bargaining agreement nor any arbitration award . . . shall be construed to change any of the provisions herein").

I fully appreciate that Commonwealth employees on leave for union service often undertake additional duties and responsibilities, warranting higher compensation from the bargaining unit. The Association has not explained, however, why additional compensation, commensurate with the non-governmental work performed, cannot be afforded outside the parameters of a defined scheme of compensation from the Commonwealth tailored for retirement purposes.

Mr. Chief Justice Castille joins this Dissenting Opinion.