

SUPREME COURT OF PENNSYLVANIA

Commonwealth v. Pennsylvania State Troopers Ass'n, 611 Pa. 56

23 A.3d 966 (Pa. 2011) · Decided April 28, 2011

SUMMARY

The Pennsylvania Supreme Court reviewed whether an Act 111 interest arbitration award could require the Commonwealth to pay state troopers on union leave compensation designated by their union. The Court held that the award did not violate the State Employees' Retirement Code because the relevant statutory provision addressed retirement rights and did not establish a ceiling on union-leave salaries. The Court reversed the Commonwealth Court's invalidation of the union-leave provision.

OPINION

MCCAFFERY, J.

OPINION ANNOUNCING THE JUDGMENT OF THE COURT Justice McCaffery. Appellant, the Pennsylvania State Troopers Association, appeals from that portion of the opinion and order of the Commonwealth Court invalidating a provision of an Act 111 interest arbitration award concerning the pay Pennsylvania State Troopers are to receive while on “union leave.” Concluding that the Commonwealth Court erred in its determination that this provision violates statutory law, we reverse the Commonwealth Court.

Appellant and Appellee, the Commonwealth of Pennsylvania (“Commonwealth”), were parties to a collective bargaining agreement (“CBA”) pertaining to the working conditions of Appellant’s members, which expired on June 30, 2008. When Appellant and the Commonwealth reached an impasse in their negotiations for a successor CBA, Appellant requested the appointment of a board of arbitration pursuant to Section 4(a) of Act 111, 43 P.S. § 217.4(a).² After a hearing, the Act 111*968 interest arbitration panel selected to resolve the impasse entered an award concerning several issues.

With respect to the issue of union leave, Article 30 of the award contained the following language: Upon written request by [Appellant], Union officers shall be released from duty. Union officers released from duty pursuant to State law shall be paid by the Commonwealth at the amount designated by [Appellant’s] Board of Directors, not to exceed the rate of the highest ranking member of the bargaining unit with appropriate longevity.

Any amount paid by the Commonwealth, including the cost of all benefits, shall be reimbursed by [Appellant] to the Commonwealth in accordance with law. Petition for Review of an Act 111

Interest Arbitration Award, filed by the Commonwealth in the Commonwealth Court on January 22, 2009, at 2.3 The Commonwealth petitioned the Commonwealth Court to review this and one other provision of the interest arbitration award pursuant to Section 768(b) of the Judicial Code, 42 Pa.C.S. § 763(b).⁴ Thereafter, a divided panel of the Commonwealth Court vacated the union leave provision of the award.

Commonwealth v. Pennsylvania State Troopers Ass'n, 979 A.2d 442, 447 (Pa.Cmwlt.2009).⁵ In coming to its determination, the Commonwealth Court first addressed its relevant scope of review. Act 111 explicitly prohibits any appeal of Act 111 arbitration awards. 43 P.S. § 217.7.

However, we have long held that limited judicial review of Act 111 arbitration awards is permitted under the confines of the narrow certiorari scope of review. See *Pennsylvania State Police v. Pennsylvania State Troopers' Ass'n* ("Betancourt"), 540 Pa. 66, 656 A.2d 83, 89-90 (1995). "[T]he narrow certiorari scope of review limits courts to reviewing questions concerning: (1) the jurisdiction of the arbitrators; (2) the regularity of the proceedings; (3) an excess in exercise of the arbitrator's powers; and (4) deprivation of constitutional rights." *Id.* Thus, the initial question for any court asked to review an Act 111 arbitration award is whether the issue or issues raised on appeal fall or falls under any of the four prongs of such circumscribed scope of review.

In this case, the Commonwealth Court concluded that the third prong of narrow certiorari, namely, the limits of the power or authority of the Act 111 arbitration panel, was implicated. An arbitration panel exceeds the limits of its powers when its award orders an "illegal act." *City of Pittsburgh v. Fraternal Order of Police, Fort Pitt Lodge No. 1*, 595 Pa. 47, 938 A.2d 225, 230 (2007).

The Commonwealth argued below, as it does here, that the union leave provision of the award violated Section 5302(b)(2) of the State Employees' Retirement Code ("SERC"), 71 Pa.C.S. § 5302(b)(2), and, in so doing, required the Commonwealth to perform an illegal act. Section 5302 determines what constitutes "credited state service" for computing retirement benefits for state employees.

71 Pa.C.S. § 5302. Section 5302(b)(2), the section at issue here, concerns "creditable leaves of absence," and gives service credit to state employees on paid leave for service as officers of collective bargaining organizations under Act 111 or other public employee laws. Section 5302(b)(2), however, contains a series of provisos that limit in some manner the creditable leaves of absence recognized by this section.

Relevantly, Section 5302(b)(2) states: Provided,... that the employer shall fully compensate the member, including, but not limited to, salary, wages, pension and retirement contributions and benefits, other benefits and seniority, as if he were in full-time active service; and that the Statewide employee organization shall fully reimburse the employer for all expenses and costs of such paid leave....

71 Pa.C.S. § 5302(b)(2) (emphasis added). The Commonwealth Court agreed with the Commonwealth's argument that Section 5302(b)(2) obligated the Commonwealth to pay a trooper on union leave only the compensation that the trooper would receive "as if he were in full-time active service." Thus, because the union leave provision directed the Commonwealth to pay an amount of compensation likely to be higher than the active-service salary of the trooper on union leave, the court determined that the award would force the Commonwealth to violate a statutory requirement.

The Commonwealth Court wholly based its conclusion on its holding and analysis in *Kirsch v. Public School Employees' Retirement Board*, 929 A.2d 663 (Pa.Cmwlth. 2007) ("Kirsch I"), *aff'd*, 603 Pa. 439, 985 A.2d 671 (2009) ("Kirsch II").⁶ In *Kirsch I*, school employees on union leave received greater compensation than they would have received had they remained in their positions in the school district.

For purposes of the employees' retirement benefits, the school district had traditionally reported to the Public School Employees Retirement System ("PSERS") only the compensation the union-leave employees would have earned had they remained in their pre-union-leave positions in the school district.

However, a CBA was entered into by the school district and the union that required the school district to report to PSERS the actual, higher wages received by union-leave employees, not the wages they would have received had they simply remained in their school district jobs. When the union-leave employees retired, they sought pensions based on their union salaries.

PSERS opposed what it deemed to be a quest for inflated pension benefits. The union-leave employees filed grievances with the Public School Employees' Retirement Board ("Board"), but did not prevail. The Board's decision was based on language in Section 8102 of the Public School Employees' Retirement Code ("PSERC"), 24 Pa.C.S. § 8102, which defined "Leave for service with a collective bargaining organization" in a manner similar to the description set forth in Section 5302(b)(2) of SERC of "creditable leaves of absence" from state service.

Relevantly, Section 8102 of PSERC provides "that the employer shall fully compensate the member including, but not limited to, salary, wages, pension and retirement contributions and benefits, other benefits and seniority, as if he were in full-time active service." 24 Pa.C.S. § 8102.

The Board determined that this language meant that retirement credit is authorized only for the salary paid "as if" the member were in full-time service to the school district and not for any salary paid in excess of that amount.

On appeal, the Commonwealth Court affirmed, adopting the Board's reasoning. *Kirsch I*, *supra* at 669. In the instant case, the Commonwealth Court applied its rationale in *Kirsch I* to its interpretation of Section 5802(b)(2) of SERC.

The court held: Similarly, the words “compensate as if he were in full-time service” in section 5302(b)(2) of the SERC mean that the Commonwealth must pay troopers on “union leave” at the salary level commensurate with their regular positions. Kirsch [/].

Because the “union leave” provision here requires that the Commonwealth pay a different amount, ie., whatever [Appellant] designates, the provision requires that the Commonwealth violate section 5302(b) of the SERC. *Pennsylvania State Troopers Ass’n*, supra at 445 (footnotes omitted). Judge Pellegrini dissented on this issue, concluding that the majority’s reliance on Kirsch I was inapt.

Judge Pellegrini stated: What the majority misperceives is that we are not being asked to review a Retirement Board decision as to what pension credit a police officer receives for the time he or she was “released for duty” when that police officer retires. At that time, the police officer can present evidence that the amount he or she received under the disputed arbitration provision is comparable to what he or she would receive “as if” he or she remained on full-time service when such things as overtime and extra-duty time are taken into consideration.

The Retirement Board would then make a decision, which could be appealed subject to the normal administrative agency scope of review. Until that occurs, that issue is not before us. As to the issue before us — whether a board of arbitration can enter an interest arbitration award requiring the Commonwealth to pay a different amount of compensation other than the base amount of salary the union officer would receive — is determined by whether that requires the Commonwealth to do something that it could not do voluntarily.

Other than the Retirement Code provisions, over which the Retirement Board has sole jurisdiction, the Commonwealth cites no provision, nor can I imagine one, that precludes it from voluntarily entering into an agreement requiring it to pay a police officer released from duty an amount different than its base rate, especially when it is at no cost to the Commonwealth.

Because the Commonwealth could agree to the union leave provision voluntarily, there is no basis to vacate the award. *Pennsylvania State Troopers Ass’n*, supra at 448 (footnote omitted) (Pellegrini, J., concurring and dissenting). This Court accepted review on the following issue, as rephrased by this Court for clarity: Did the Commonwealth Court err when it invalidated the wage provisions of an Act 111 interest arbitration award based upon a holding that the provisions violated the State Employees Retirement Code, 71 Pa.C.S. § 5302(b)(2)?

Commonwealth v. Pennsylvania State Troopers Ass’n, 605 Pa. 410, 990 A.2d 1146 (2010) (per curiam). As previously noted, our scope of review is extremely circumscribed. Arbitration awards issued pursuant to Act 111 are final and binding on the parties, with “no appeal” permitted to any court. 43 P.S. § 217.7. Act 111’s requirement of “sure and swift” resolution of labor disputes regarding fire fighters and police officers, where the labor rights of such employees are not to be

subject to protracted litigation, is an important legislative counterbalance to the circumstance that such employees are prohibited by law from striking.

Betancourt, *supra* at 89-90; *City of Philadelphia v. FOP, Lodge No. 5*, 564 Pa. 290, 768 A.2d 291, 294 (2001). However, Act 111 arbitration awards are nonetheless subject to judicial review in the nature of narrow certiorari. *Id.* Such review, albeit highly constricted, allows for a balancing of the critical legislative goal of shielding arbitration awards from judicial modification and interference, with the recognition that the legislature did not grant arbitrators unlimited powers.

See *FOP, Lodge No. 5*, *supra* at 296. The Commonwealth Court correctly determined that if judicial review is permissible in the instant case, it is authorized only under the third prong of narrow certiorari, concerning the limits of the power or authority of the Act 111 arbitration panel. With respect to this prong, we have held: Our definition of what constitutes an excess of an arbitrator's powers is far from expansive.

Essentially, if the acts the arbitrator mandates the employer to perform are legal and relate to the terms and conditions of employment, then the arbitrator did not exceed her authority.... Finally, we have stressed that a mere error of law will not support a finding that the arbitrator exceeded her powers. *FOP, Lodge No. 5*, *supra* at 296-97 (citations and quotation marks omitted). "This third prong does not provide a portal to unlimited review of an Act 111 arbitration award." *City of Pittsburgh v. Fraternal Order of Police, Fort Pitt Lodge No. 1*, 595 Pa. 47, 938 A.2d 225, 230 (2007).

With respect to our determination that the excess of authority prong prohibits an Act 111 arbitration award from "mandating] that an illegal act be carried out," we have held that the award "may only require a public employer to do that which the employer could do voluntarily." *Betancourt*, *supra* at 90; *Fort Pitt Lodge No. 1*, *supra* at 230.7 The narrow issue before this Court is whether the disputed arbitration award provision requires the Commonwealth to perform an illegal act by directing the Commonwealth to pay wages for state troopers on union leave in amounts contrary to statute, namely Section 5302(b)(2) of the SERC.

Because of the significant legislative policy goals behind the "no appeal" mandate of Act 111 and our concomitant narrowly constricted scope of review in Act 111 cases, we must discern that the disputed arbitration award *972 provision violated Section 5302(b)(2) before such provision will be invalidated. Our standard of review for this issue is plenary. See *Town of McCandless v. McCandless Police Officers Ass'n*, 587 Pa. 525, 901 A.2d 991, 1000 (2006) ("Generally speaking, a plenary standard of review should govern the preliminary determination of whether the issue involved implicates one of the four areas of inquiry encompassed by narrow certiorari, thus allowing for non-deferential review — -unless, of course, that preliminary determination itself depended to some extent upon arbitral fact-finding or a construction of the relevant CBA.").

Preliminarily, we must determine what this case is and is not about, as the parties have starkly different ideas on this matter. Appellant emphasizes that this case is simply about whether an Act 111 interest arbitration panel has the authority to enter an award regarding the salaries that state troopers on union leave shall receive commensurate for their additional duties.

Appellant emphasizes that this case is about present-day working conditions, not about future events that concern issues not ripe for disposition. Appellant cites *Fort Pitt Lodge No. 1*, supra at 233 (holding that the possible future application and interpretation of an arbitration award has “no place in our analysis of whether the arbitrators committed an illegal act....”).

The Commonwealth, on the other hand, argues that the “compensation” language of Section 5302(b)(2) is “not severable” from the retirement benefit implications of such salaries. See Commonwealth’s Brief at 7-8. Indeed, the Commonwealth’s argument before this Court focuses almost exclusively on the Commonwealth’s concern that the affected employees will artificially enhance their retirement benefits if they draw union salaries greater than their state service salaries.

See *id.* at 9-16 and 17-18. We agree with Appellant, however, that this case is solely about whether the arbitration panel had the authority to enter its award regarding union-leave pay. This case is not about how the award will one day be interpreted by the agency charged with administering the SERC based on a record that will be created and arguments that will be made for that possible administrative proceeding.⁸ This is a case falling under Act 111.

Section 1 of Act 111 provides in relevant part: Policemen or firemen employed by a political subdivision of the Commonwealth or by the Commonwealth shall,... have the right to bargain collectively with their public employers concerning the terms and conditions of their employment, including compensation, hours, working conditions, retirement, pensions and other benefits, and shall have the right to an adjustment or settlement of their grievances or disputes in accordance with the terms of this act.

43 P.S. § 217.1 (emphasis added). The disputed provision of the arbitration award in this case addresses union leave and the amount of compensation that state troopers shall receive while on union leave. The Commonwealth does not argue that such matters are not proper subjects for collective bargaining and interest arbitration under Section 1 of Act 111. Rather, the Commonwealth effectively argues that Act 111 is “trumped” by Section 5302(b)(2) *973 of the SERC with respect to the level of compensation to be paid its unionized members serving additional duties with a union.

In fact, the SERC does partially repeal Act 111. Section 5955 of the SERC provides in relevant part: § 5955. Construction of part Regardless of any other provision of law, pension rights of State employees shall be determined solely by this part or any amendment thereto, and no collective

bargaining agreement nor any arbitration award between the Commonwealth and its employees or their collective bargaining representatives shall be construed to change any of the provisions herein, to require the board to administer pension or retirement benefits not set forth in this part, or otherwise require action by any other government body pertaining to pension or retirement benefits or rights of State employees.

Notwithstanding the foregoing, any pension or retirement benefits or rights previously so established by or as a result of an arbitration award shall remain in effect after the expiration of the current collective bargaining agreement between the State employees so affected and the Commonwealth. 71 Pa.C.S. § 5955 (emphasis added). By its terms, this partial repealer of Act 111 is concerned overwhelmingly — perhaps exclusively — with employee pension and retirement rights, not the salary of union-leave employees.

The “part” mentioned in Section 5955, which we emphasized for convenience of reference, pertains to “Part XXV” of Title 71, entitled “Retirement for State Employees and Officers,” which the General Assembly also determined “shall be known and may be cited as the” SERC. 71 Pa.C.S. § 5101. Section 5802(b)(2) of the SERC is found in a chapter of this Part concerning “Membership, Credited Service, Classes of Service, and Eligibility for Benefits.” As previously noted, Section 5802(b)(2) is also a subsection of a provision addressing “credited state service.” 71 Pa.C.S. § 5302.

In turn, “credited service” is relevantly defined as “state or creditable nonstate service for which the required contributions have been made... or for which salary deductions or lump sum payments have been agreed upon in writing.” 71 Pa.C.S. § 5102. Unmistakably, the SERC, including Section 5302 and its subsection (b)(2), is intended to address the pension rights and obligations of state employees.

It does not purport to address the pre-retirement concern of the level or amount of employee salaries. As indicated supra, that concern rests with Act 111, with respect to the category of state employees represented by Appellant herein. Does Section 5302(b)(2) nonetheless, as argued by the Commonwealth and determined by the Commonwealth Court majority, place an actual ceiling on what an employee may receive in salary or compensation while on union leave, irrespective of pension rights and obligations?

Section 5302(b) addresses “creditable leaves of absence” for purposes of determining “credited state service.” See generally 71 Pa. C.S. § 5302. Subsection (b)(2) gives service credit to, in relevant part: (2) An active member on paid leave granted by an employer for purposes of serving as an elected full-time officer for a Statewide employee organization which is a collective bargaining representative under the act of June 24, 1968 (P.L.

237, No. Ill), referred to as the Policemen and Firemen Collective Bargaining Act [and, also, as Act 111], or the act of July 23, 1970 (P.L. 563, No. 195), known as the Public Employee Relations Act...: Provided, That for elected full-time officers such leave shall *974not be for more than three consecutive terms of the same office...; that the employer shall fully compensate the member, including, but not limited to, salary, wages, pension and retirement contributions and benefits, other benefits and seniority, as if he were in full-,time active service; and that the Statewide employee organization shall fully reimburse the employer for all expenses and costs of such paid leave, including, but not limited to, contributions and payment in accordance with sections 5501, 5505.1 and 5507,' if the employee organization either directly pays, or reimburses the Commonwealth or other employer for, contributions made in accordance with section 5507.

71 Pa.C.S. § 5302(b)(2)' (emphasis added). In *Kirsch II*, we interpreted proviso language of Section 8102 of the PSERC that closely tracks the proviso language set forth in Section 5302(b)(2) of the SERC relevant to the instant case.⁹ We stated that the PSERC Section 8102 proviso reference to “fully compensate the member... as if he were in full-time active service” was not merely a condition precedent for credited service while on union leave.

We opined that this language imposed some actual conditions on the union service itself.¹⁰ *Kirsch II*, *supra* at 675. However, this conclusion is not dispositive of the issue now before this Court. First, there are critical differences between *Kirsch II* and the instant case. *Kirsch II* did not involve the issue of whether public school employees on union leave should be paid in line with their school employee salaries.

It was accepted, in *Kirsch II* that such employees are simply paid more while on union leave, commensurate with their union duties. The only issues in *Kirsch II* were whether the employees should receive credit for these higher salaries for purposes of computing their retirement pension benefits, and whether the higher union salaries artificially enhanced or inflated their retirement benefits.

See *id.* at 672. *Kirsch II* arose from an appeal from a decision of the Public School Employees' Retirement Board interpreting its mandate under the *975PSERC. Significantly, it did not arise from an appeal of an interest arbitration award under Act 111 or the Public Employee Relations Act¹¹ that set the salaries of employees on union leave. *Kirsch II* dealt with post-employment retirement matters, not the salary requirements of present employees, which are at issue in the instant case.

Thus, *Kirsch II* did not concern itself with the unique question of the authority of an Act 111 interest arbitration panel to enter an award concerning union-leave employee salaries, an authority that patently exists under Section 1 of Act 111. Further, although *Kirsch II* did opine that proviso language in PSERC Section 8102 sets conditions on union service, *Kirsch II* did not define the full limit of what those conditions were, which was not the issue then before the Court.

Therefore, we do not read Kirsch II as compelling the conclusion that the relevant proviso language of Section 5302(b)(2) of the SERC establishes a legislative ceiling on what state troopers on union leave may receive as salary. Again, the instant case does not involve the calculation of pensions but the essential authority of an Act 111 interest arbitration panel to set salaries.

More instructive is *Pinto v. State Civil Service Commission*, 590 Pa. 311, 912 A.2d 787 (2006), wherein we interpreted Section 5302 of the SERC in the context of whether a state corrections officer, while on union leave, was subject to the prohibition against political activity imposed by Section 905.2 of the Civil Service Act.¹² In concluding that such employee was exempt from this prohibition, we took note of the “plain language of SERC § 5302,” which anticipated “leave, full-time employment, and an outside source of compensation.” *Pinto*, supra at 795.

We further noted that this “plain language” reflected the General Assembly’s understanding that the employee on union duty leaves a civil service post for a non-civil-service post, freeing that employee from certain constraints imposed upon state civil service employees. *Id.* We determined: On balance, we find it difficult to imagine that the legislature intended to free a member of the classified service to take a temporary leave to serve as an elected officer of an employee organization but did not intend him to be free to serve as a spokesman for that organization unfettered by the [Civil Service Act] § 905b political activity prohibition.

Section 5302 of SERC bespeaks the legislature’s intention that members of the civil service be free to pursue terms of employment as elected officers of labor unions without sacrificing tenure for purposes of retirement benefits, which above all suggests an intention not to discourage members from pursuing such employment.

To permit someone to take such a position but impose a limitation on his speech broad enough to compel him to look over his shoulder and second-guess virtually every public act or statement he makes in that capacity would be absurd and would disserve the manifest intent of the legislature. *Pinto*, supra at 797 (emphasis added). Clearly, the proviso language of Section 5302(b)(2) was not intended to penalize employees for serving with unions by depriving them of the benefits of their state service while so serving. -In fact, it was intended not to discourage union duty.

Because *Pinto* interprets Section 5302 as a *976protective force for relevant state employees on union leave, not as a limiting force, it would be anomalous to interpret Section 5302(b)(2) as intentionally or effectively restricting an Act 111 interest arbitration panel from awarding a union salary higher than the salary the employee would have received “as if” the employee had not elected to perform union duty.

Pursuant to *Pinto*, a reasonable interpretation of the disputed proviso language of Section 5302(b)(2) is that it is simply meant to not deprive the employee on union leave of the many applicable forms of remuneration of his or her state service. When we apply relevant principles of statutory

construction, we arrive at the same result. “The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly.

Every statute shall be construed, if possible, to give effect to all its provisions.” 1 Pa.C.S. § 1921(a). “In giving effect to the words of the legislature, we should not interpret statutory words in isolation, but must read them with reference to the context in which they appear.” *Mishoe v. Erie Insurance Co.*, 573 Pa. 267, 824 A.2d 1153, 1155 (2003) (quoting *O’Rourke v. Department of Corrections*, 566 Pa. 161, 778 A.2d 1194, 1201 (2001)).

To the extent the proviso language stating “the employer shall fully compensate the member... as if he were in full-time active service” may be read as a limitation on the power of interest arbitration panels to set salaries commensurate with union duties rather than with the duties of state service, then the language is ambiguous as it may be read in another manner as well.

Words of a statute are ambiguous when there are at least two reasonable interpretations of the text under review. *Delaware County v. First Union Corp.*, 605 Pa. 547, 992 A.2d 112, 118 (2010); *Barasch v. Pennsylvania Public Utility Comm’n*, 516 Pa. 142, 532 A.2d 325, 332 (1987).

The Statutory Construction Act of 1972 provides that “among other” statutory construction factors that may be applied to resolve ambiguities, “the intention of the General Assembly may be ascertained by considering”: (1) The occasion and necessity for the statute.

(2) The circumstances under which it was enacted. (3) The mischief to be remedied. (4) The object to be attained. (5) The former law, if any, including other statutes upon the same or similar subjects. (6) The consequences of a particular interpretation.

(7) The contemporaneous legislative history. (8) Legislative and administrative interpretations of such statute. 1 Pa.C.S. § 1921(c). Moreover, “[t]he title and preamble of a statute may be considered in the construction thereof... [and] headings prefixed to titles, parts, articles, chapters, sections and other divisions of a statute shall not be considered to control but may be used to aid in the construction thereof.” 1 Pa.C.S. § 1924.

Applying the above relevant principles of statutory construction to Section 5302(b)(2), one simply returns to the ineluctable, indeed obvious, conclusion that the General Assembly, in enacting this section and the SERC as a whole, was singularly concerned with establishing rights and duties regarding retirement benefits, and the administration of the retirement system.

This is simply the extent of the concern of the SERC and its component *977parts. See discussion *supra*. It is not in the least evident that the General Assembly was concerned with placing a ceiling on what an interest arbitration panel might award as salary to employees serving on union duty.

Moreover, focusing on the principle of statutory construction regarding “the consequences of a particular interpretation,” we are unable to avoid another plain and pertinent fact. The

Commonwealth is simply not harmed by the arbitration award provision allowing for salaries for employees on union leave to be set higher than those salaries the employees would have received had they not elected union duty.

The award provides, as does Section 5302(b)(2), that the Commonwealth shall be reimbursed for the amount it compensates the employees while on union leave, whether the employees are paid their regular state salaries or whether the employees are paid on the level of a potentate.

Accordingly, we hold that because the arbitration award provision regarding salary of State Troopers on union leave does not violate Section 5302(b)(2) of the SERC, such provision does not require the Commonwealth to perform an illegal act, or one that it may not voluntarily undertake.

Accordingly, the provision is within the authority of the interest arbitration panel to award. As such, the arbitration award provision is beyond any court's scope of review.¹³ The order of the Commonwealth Court is reversed to the extent that it is contrary to this decision, and this matter is remanded for treatment consistent with our determination. Jurisdiction relinquished.

Justices BAER and TODD join the Opinion Announcing the Judgment of the Court. Justice ORIE MELVIN concurs in the result. Chief Justice CASTILLE files a dissenting opinion in which Justice EAKIN joins. Justice SAYLOR files a dissenting opinion in which Chief Justice CASTILLE joins.. Act of June 24, 1968, P.L. 237, as amended, 43 P.S. §§ 217.1-217.10. Act 111 expressly gives police and fire fighters the right of collective bargaining concerning working conditions and the swift and final resolution of disputes by non-appealable arbitration..

Section 4(a) relevantly provides: *968If in any case of a dispute between a public employer and its policemen or firemen em-ployesf] the collective bargaining process reaches an impasse and stalemate... with the result that said employers and employees are unable to effect a settlement, then either party to the dispute, after written notice to the other party containing specifications of the issue or issues in dispute, may request the appointment of a board of arbitration.

43 P.S. § 217.4(a)..The relevant interest arbitration award, dated December 24, 2008, is not contained in the official record. However, there is no articulated dispute between the parties regarding the accuracy of the language of Article 30 of the award.. Section 763(b) relevantly provides that "The Commonwealth Court shall have exclusive jurisdiction of all petitions for review of an award of arbitrators appointed in conformity with statute to arbitrate a dispute between the Commonwealth and an employee of the Commonwealth." 42 Pa.C.S. § 763(b)..

The court affirmed the provision not at issue before us.. At the time of the Commonwealth Court's decision in the instant case, this Court had not yet issued its decision in *Kirsch v. Public School Employees' Retirement Board*, 603 Pa. 439, 985 A.2d 671 (2009) ("*Kirsch II*"), affirming, under our own rationale, the Commonwealth Court.. This Court has recently held that the excess of authority prong invalidates Act 111 interest arbitration awards that "unduly infringe" upon the

public employer's essential "managerial responsibilities." *City of Philadelphia v. International Ass'n of Firefighters, Local 22*, 606 Pa. 447, 999 A.2d 555, 571 (2010); *Borough of Ellwood City v. Pennsylvania Labor Relations Board*, 606 Pa. 356, 998 A.2d 589, 600 (2010).

However, no argument has been raised in this case regarding whether the Commonwealth's essential managerial responsibilities have been "unduly infringed" upon.. It is instructive to note that the Commonwealth did not join as an indispensable party the State Employees' Retirement Board, the independent administrative board, having the powers and privileges of a corporation, which is the body actually charged with the administration of the State Employees' Retirement System.

See 71 Pa.C.S. §§ 5901-05.. Section 8102 of the PSERS defines "[l]eave for service with a collective bargaining organization" as: Paid leave granted to an active member by an employer for purposes of working full time for or serving full time as an officer of a Statewide employee organization or a local collective bargaining representative... Provided... the employer shall fully compensate the member, including, but not limited to, salary, wages, pension and retirement contributions and benefits, other benefits and seniority, as if he were in full-time active service; and that the employee organization shall fully reimburse the employer for such salary, wages, pension and retirement contributions and benefits and other benefits and seniority.

24 Pa.C.S. § 8102 (emphasis added).. We stated as follows: While the definition of "leave for service with a collective bargaining organization", controls whether an employee should receive credit for years on leave, the definition provides more than just an index of requirements to be satisfied in order for an employee to receive retirement credit. It also provides a detailed list of what forms of compensation must be paid by both the employer and the collective bargaining organization.

Considering the detail on this point provided by the General Assembly, it is clear the definition concerns not only whether an employee qualifies for leave, but also the amount of compensation and retirement credit to be received while serving outside the regular position on approved leave.

The Commonwealth Court did not err by considering the "leave for service with a collective bargaining organization" definition in determining the amount of approved leave compensation to be included in appellants' retirement calculations. *Kirsch II*, supra at 675.. Act of July 23, 1970, P.L. 563, as amended, 43P.S. §§ 1101.101-1101.2301.. Act of August 5, 1941, P.L.

752, as amended, 71 P.S. § 741.905b.. In his dissenting opinion, Justice Saylor articulates a different interpretation of Section 5302(b)(2), which, respectfully, we find unpersuasive. Justice Saylor opines that our interpretation would create "an untenable administrative burden on the Commonwealth," a charge that is wholly unsupported by any evidence of record and not advanced by the Commonwealth itself.

Indeed, we believe that the Commonwealth is fully capable of addressing what would appear to be a simple accounting matter, as it has shown itself capable of handling the myriad accounting issues imposed by the complex requirements of the federal and state tax codes.

As almost anyone who receives a paycheck from the Pennsylvania Treasury has observed, the Commonwealth's accountants are fully capable of reporting an employee's income for one purpose in a manner that is different from that used for another purpose and, at the same time, closely tracking an employee's retirement status. More critically, a helpful desire to ease the burdens of the Commonwealth's accountants concerning at most a handful of people each year is not grounds for the judiciary to exercise power in an area— state trooper wages — exclusively reserved by the General Assembly for Act 111 arbitrators.

We believe that more must be shown to establish that the arbitration award has violated Section 5302(b).