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| CHRISTOPHER A. DOHERTY, Mayor of the City of Scranton,<br><br>Petitioner<br><br>v.<br><br>JANET EVANS, Scranton City Councilwoman, FRANK JOYCE, Scranton City Councilman, PATRICK ROGAN, Scranton City Councilman, JOHN LOSCOMBE, Scranton City Councilman, all in their Official Capacities,<br><br>and<br><br>SCRANTON CITY COUNCIL,<br><br>Respondents | IN THE COURT OF COMMON PLEAS<br><br>OF LACKAWANNA COUNTY<br><br>EQUITY NO. 2010-EQ-1758 |

**RESPONDENT'S BRIEF TO PETITIONER'S**
**REQUEST FOR PRELIMINARY INJUNCTION**

## I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

File of the Council No. 12-2010 an Ordinance, as amended, was adopted on February 23, 2010 by a vote of 4 to 1 and was vetoed by Christopher A. Doherty, Mayor of the City of Scranton (hereinafter the "Petitioner") on March 4, 2010. The Petitioner's vetoing of Ordinance 12-2010 was overridden on March 9, 2010 by the four (4) Scranton City Council Members who are the Respondents in this action. Ordinance No. 12-2010, amended File of Council No. 97-2009 an Ordinance "Appropriating Funds for the Expenses of the City Government for the Period Commencing the First of January, 2010 to and including December 31, 2010 by the Adoption of the

General City Operating Budget for the Year 2010". Ordinance No. 12-2010 reduced estimated expenditures in the Budget from $77,865,746 to $77,170,760 for a net reduction of $694,986 as set forth in Attachment 1 to Ordinance No. 12-2010.

On March 10, 2010, the Petitioner filed a Petition for Special Relief pursuant to Pa. R.C.P. 1531 seeking a Temporary Restraining Order until a hearing could be held on a Preliminary Injunction. On March 10, 2010, The Honorable Robert A. Mazzoni issued a TEMPORARY STAY of the enactment of Ordinance No. 12-2010 and issued a Rule Returnable to the Petition on March 16, 2010 at 9:00 A.M. with a hearing, if necessary.

On March 16, 2010, Respondent's filed their Answer and New Matter to the Petition and Rule and Hearings were held on March 16, 26, 29 and 30, 2010, with settlement negotiations being conducted on March 17 and 18, 2010. One joint exhibit was admitted, Petitioner's 17 exhibits were admitted and Respondent's 14 exhibits were admitted.

## II. ISSUE

Has the Petitioner met his burden of proof and all of the six (6) requirements necessary for the issuance of a Preliminary Injunction since the activity sought to be restrained is not actionable and there is no immediate and irreparable injury?

Suggested Answer: No.

## III. ARGUMENT

File of the Council No. 12-2010 an Ordinance, as amended, (the "Amendment") was adopted on February 23, 2010 by a vote of 4 to 1 (Exhibit P-4) and was vetoed by the Petitioner on March 4, 2010. The Petitioner's vetoing of the Amendment was overridden on March 9, 2010 by the four

(4) Scranton City Council Members who are the Respondents in this action (hereinafter the "Respondents" or "Council"). In order to override the Mayor's veto of an ordinance, "An extraordinary majority of Council shall be necessary to override the mayor's veto." is required by Section 501 of the Home Rule Charter (Exhibit P-8). The Amendment, Exhibit P-4, was legally and lawfully adopted which amended File of Council No. 97-2009 an Ordinance "Appropriating Funds for the Expenses of the City Government for the Period Commencing the First of January, 2010 to and including December 31, 2010 by the Adoption of the General City Operating Budget for the Year 2010", (the "Budget"). The Amendment reduced estimated expenditures in the Budget from $77,865,746 to $77,170,760 for a net reduction of $694,986, (Ex P-4) as set forth in Attachment 1 (Ex P-5) to the Amendment which Increased Appropriations for Departmental Expenditures by $104,116 (Ex P-5, p1), Decreased Appropriations For Departmental Expenditures by $415,203.60 (Ex P-5, p 2) by Decreasing Appropriations From Non Departmental Expenditures by $85,000 (Ex P-5, p3) by Re-Instituting, Creating and Increasing Certain Positions by $364,643.38 (Ex P-5, p4) by Eliminating Certain Positions, Decreasing Salaries of Certain Positions by $663,541.73 for a net total of $694,986 and in Reducing Various Revenue Items by $694,986 (Ex P-5, p6) to result in a balanced budget. The net reduction of $694,986 by the Amendment to the Budgets Estimated Expenditures of $77,865,746 is a reduction of .0089254% or less than 1%.

The Amendment eliminated 13 positions, one of which was vacant and 2 of which were newly created and 4 OECD positions, 1 of which was newly created, which are paid by the City but reimbursed by Federal Funds. In addition, 14 positions had salary reductions which was determined by taking each position's salary in the 2001 budget as adjusted by a 7.5% increase which was the

same amount that the City's firemen and policemen received as a salary increase from 2001 to 2010. (Testimony of Frank Joyce and Janet Evans). The Amendment reinstated 4 positions in the traffic department of DPW, which the Mayor had eliminated in the Budget, and 4 positions in the Single Tax Office which the Mayor had also eliminated in the Budget, created a Rental Registration position in LIPS and made a part-time animal control position to a full-time position and increased the salary of 8 employees by 7.5% from the positions salary in the 2001 Budget.

On March 10, 2010, the Petitioner filed a Petition for Special Relief pursuant to Pa. R.C.P. 1531 seeking a Temporary Restraining Order until a hearing could be held on a Preliminary Injunction. The Petition alleged that the Amendment was contrary to the provisions of the City's Home Rule Charter and failed to comply with the required procedures for passage of any legislation and that it would cause immediate and irreparable harm to the residents of the City of Scranton. On March 10, 2010, The Honorable Robert A. Mazzoni issued a TEMPORARY STAY of the enactment of the Amendment and issued a Rule Returnable to the Petition on March 16, 2010 at 9:00 A.M. with a hearing, if necessary. The Respondents filed their Answer and New Matter to the Petition stating that the Petitioner's allegation that the Ordinance violated the City's Home Rule Charter and failed to comply with the required procedures for passage of any legislation were merely bald conclusions of law since the Petitioner did not cite any specific sections of the Home Rule Charter or case law to support his position. To the contrary, the Respondents averred that the Home Rule Charter, Sections 502(1) and (9), fully supported Council's position to adopt the Amendment to the Budget.

While it appears that the issue in this case is probably a case of first impression, it is

submitted that the Pennsylvania Commonwealth Court's decision in *Reed, Mayor of Harrisburg v. Harrisburg City Council*, 927 A.2d 698 (Commw. Ct. 2007) supports the Respondents' position that the Preliminary Injunction must be denied and the Temporary Stay Order dissolved so that the Amendment can be implemented. The Commonwealth Court reversed the trial court's preliminary injunctions against enforcement of Harrisburg Ordinance 36-2006 and the prohibition of Council's appointments to Harrisburg Authority Board from acting as members of the Board, since it was not clear whether the ordinance violated any enabling statutes or whether the mayor has the right to the injunctive relief requested. "Suffice it is to say that the law is well settled in this Commonwealth that an ordinance is presumed to be valid and that a heavy burden rests upon those who seek to prove that it is unconstitutional." *Reed,* infra at 706 (citing *Nutter v. Dougherty*, 921 A.2d 44 (Pa. Cmwlth. 2007).

Since the Amendment is presumed valid, the Petitioner has the burden of proof to meet all of the requirements necessary to obtain a Preliminary Injunction to prevent the enactment of the Amendment. The Pennsylvania Supreme Court outlined the essential pre-requisites required before a preliminary injunction may issue as follows:

> First, a party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. ...Second, the party must show that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings. ...Third, the party must show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct. ...Fourth, the party seeking an injunction must show that the activity it seeks to restrain its actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on

> the merits. ...Fifth, the party must show that the injunction it seeks is reasonably suited to abate the offending activity. ...Sixth and finally, the party seeking an injunction must show that a preliminary injunction will not adversely affect the public interest.

*Id.* at 702-703 (citing *Summit Towne Centre, Inc. v. Shoe Snow of Rocky Mount, Inc.*, 573 Pa. 637, 646-647, 828 A.2d 995, 1001 (2003)).

Furthermore, the Supreme Court has held that "For a preliminary injunction to issue, every one of these prerequisites must be established; if the Petitioner fails to establish any one of them, there is no need to address the others." *Reed*, supra (citing *County of Allegheny v. Commonwealth*, 518 Pa. 556, 560, 544 A.2d 1305, 1307 (1988)). It is respectively submitted that the Petitioner, in the present case, at the hearing did not provide sufficient evidence to meet any of the six (6) requirements, all of which are necessary for the issuance of a preliminary injunction. The Respondents argue that the Amendment was legally and lawfully adopted in accordance with Article 502(1) and (9) of the Charter and that there is no immediate and irreparable harm in terminating 13 positions, 1 of which was vacant and 2 of which were newly created since none of the employees whose positions were terminated were entitled to their employment by a legislative or contractual nature, but were at will employees of the City of Scranton (the "City").

The issue as to whether a person employed by the government whose position is terminated has a legal basis for an injunction because it is irreparable harm has been decided by the Pennsylvania Supreme Court in *Novak v. Commonwealth of Pennsylvania, et al.,* 514 Pa. 190, 523 A.2d 318 (1987) which held that the furloughing of state employees is not irreparable harm for the issuance of an injunction. What the Petitioner has attempted to do in this litigation is to utilize the termination of employment of 13 employees which include 1 vacant position and 2 newly created positions and 4 OECD positions, one of which was a newly created position, as a basis of saying the

public health and welfare of the residents of the City will be adversely affected which is therefore an immediate and irreparable harm to the public. However, this argument is really an issue which begs the question, since for this Honorable Court to accept the Petitioner's argument would prevent and prohibit the legislative branch of government to adopt the Amendment in accordance with the requirements of the Home Rule Charter, Exhibit P-8, to economize by reducing the number of employees employed by the government and to have their work redistributed to other employees. The Petitioner himself recognized this principal when he was a councilman of the City and Mayor Elect by stating the same at the public meeting of Council held December 14, 2001, when adopting the Ordinance to adopt the budget for 2002 when he stated, "Mr. President, since I was the main architect of this plan and since I ran for the Mayor's Office starting a year ago...I ran on a platform of fiscal responsibility... employee accountability. Cuts we made here aren't done to hurt anybody. They're done because as the Mayor of the City you have to look at the bottom line and you also have to look at every person who works here. And you have to see what they do. You have to ask yourself...are they performing at their best? Or can we perform with less? In my opinion and as the next Mayor of this City I believe they can. I believe the City can work with less people and I will push for that." Exhibit R-12, p. 16. At the Council meeting held December 21, 2001, the Petitioner stated in response to a question from Mrs. Kay Garvey regarding the elimination of 14 clerical union positions in the 2002 budget, "It was a budget and we felt those positions we could live without." and when questioned by Mrs. Garvey "You never met with anybody from the clerical union, am I correct?" the Petitioner's reply was "correct". (Exhibit "R-13", p. 2).

Council, pursuant to the Home Rule Charter, Section 502, has the authority by Ordinance to:

"(1) adopt or amend an Administrative Code or establish, alter or abolish any City Department, office or agency" and "(9) amend or repeal any Ordinance previously adopted unless proposed by initiative or referendum." While the Petitioner, during trial, made extensive reference to Article IX, Budget and Fiscal Matters of the Home Rule Charter, Ex P-8, this section provides the procedure and substantive requirements for the adoption of the City's annual operating budget. It is evident that Council could, on its own initiative amend the previous year's budget as it did with the Amendment, since the people of the City of Scranton, when they adopted the Home Rule Charter, give Council the ability in Section 502(9) of the Home Rule Charter, Exhibit P-8, to "Amend or repeal any Ordinance previously adopted unless proposed by initiative and referendum." (Exhibit P-8, Section 502(9). Since the Budget was Ordinance, File of Council No. 97-2009, the Council had the legal right and power to amend the Budget in accordance with Section 502(9) of the Home Rule Charter, Exhibit P-8, since it, the Budget, was not proposed by initiative and referendum. If Council could not amend the Budget as adopted by an Ordinance in the future, the limitation on Council's power to amend the Budget after adoption pursuant to Article IX would have been stated in Section 502(9), supra., along with initiative and referendum, which it was not. Therefore, since the only limitation on Council's ability to amend or repeal an ordinance is one adopted by initiative and referendum, Council's enactment of the Amendment by overriding the Petitioner's veto was within the authority conferred by Section 502(9) of the Home Rule Charter.

The Petitioner has attempted to present a legal red herring by asserting that the Respondent's have attempted to usurp the executive functions of the Mayor as established in Section 609 of the Home Rule Code (Exhibit P-10) applicable to the Mayor's powers, duties and authority by adopting

the Amendment since the Amendment eliminates positions, creates positions and increases and decreases salaries. Pursuant to Section 502(1) of the Home Rule Charter, Exhibit P-8, the Council has the authority to "(1) adopt or amend the Administrative Code or establish, alter or abolish any City department, office or agency." This is precisely what the Amendment did, it altered the organization and line and staff structure of the City's Departments of Public Works, Law, Licenses, Inspections and Permits and Administration by eliminating positions, consolidating positions and creating positions and uniformly adopting salaries by increases and reductions. These actions by Respondents are within Council's inherent power, under Section 502(1) of the Home Rule Charter and has nothing to do with the Mayor's executive power to administer these departments on a day to day basis. Since there is no time limitation on Council's power to adopt ordinances under Section 502(1) and (9), or to adopt an amendment to a previously adopted Ordinance, the Amendment was legally and lawfully adopted pursuant to Section 502 of the Home Rule Charter, Exhibit P-8, and the laws of the Commonwealth of Pennsylvania.

The Pennsylvania Supreme Court in *Novak v. Commonwealth of Pennsylvania, et al.*, 514 Pa. 190, 523 A.2d 318 (1987) vacated the Order of the Commonwealth Court which granted a preliminary injunction against the Department of Revenue from furloughing lottery representatives finding that irrevocable harm resulted if an injunction would not issue.

The Court in *Novak* stated, " It is established in this Commonwealth that employment with the government is not a matter to which one has a per se right, and, if an employee is entitled to employment, the source of the entitlement must normally be legislative or contractual in nature." *Id.* at 193, 523 A.2d at 319-320 (citing *Commonwealth, Office of Administration v. Orage*, 511 Pa.

528, 531, 515 A.2d 852, 853 (1986)). Furthermore, the Court stated, ". . . it is recognized that governmental agencies have a strong interest in preserving their management prerogatives to streamline the function of their departments for the sake of promoting efficiency." *Novak*, supra. The Pennsylvania Supreme Court discussed the issue of furloughing government employees in *Commonwealth, Department of State v. Stecher,* 506 Pa. 203, 484 A.2d 755 (1984). In that case, the Court held:

> Decisions as to what tasks should be performed, and by whom, are particularly within the realm of an agency's management officials. If an agency seeks to accomplish its mission in a more efficient manner, by redistributing work among its employees, it is pursuing a commendable administrative objectives. It can be said that, almost as a general rule, governmental institutions claim to be understaffed, and rare indeed is the agency that admits to having an excess of employees. Governmental agencies so easily become myopic as to their purposes, losing sight of the goal of adequately serving the pubic at the lowest possible cost to the taxpayers.
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> It is a managerial prerogative to reallocate work to enhance operational efficiency and to effect cost savings. To limit management's power in this area would be to draft a blueprint for an ever-expanding bureaucracy, which naturally will tend to fuel institutional growth and taint the very purpose of our government. Government exists to serve the people, and should be manned by the fewest number of employees who can accomplish the task of serving the citizenry in the most efficient and least costly manner possible.
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> *Id.* at 210-211, 484 A.2d at 758-759.

The Supreme Court in *Novak* went on to state that after considering their decisions in the above cited cases, when deciding whether a preliminary injunction should be issued, the Court, must undertake, ". . . with due regard for the fact that there is no per se right to governmental employment, as well as for the fact that there is a strong public interest in preserving management's prerogative to achieve efficiency in governmental operations." *Novak*, 514 Pa. at 195, 523 A.2d at 320.

Furthermore, in *Novak*, the Supreme Court agreed with the Department of Revenue, in that, the issuance of the injunction, "constituted an unwarranted interference with management of the Pennsylvania State Lottery." *Id.* at 196. It is evident that the management of the City of Scranton is vested in the Governing Body which is defined in Section 201 of the Home Rule Charter as "The Mayor and Council jointly shall be the governing body of Scranton City Government", Exhibit P-8, and that "The powers of the City Government shall be divided among the executive and legislative branches of the City Government." *Id.* at Section 202. The checks and balances is that the Mayor can veto any ordinance adopted by Council but that to override the Mayor's veto, Section 501 of the Home Rule Charter, Exhibit P-8, requires an extraordinary majority of Council, i.e. 4 out of 5 Council members voting to override the Mayor's veto. Thus, the Petitioner's allegations in his Petition that the Ordinance, i.e. the Amendment, violated the Home Rule Charter and failed to comply with the required procedures for passage of any legislation which was devoid of any references to the Home Rule Charter or enabling statutes is without basis in law or fact.

While it has previously been stated that the issue in this case is probably a case of first impression, it was proven at trial that the Amendment was not the first time that action has been taken to amend the City's Budget after it has been adopted. Notwithstanding the fact that budgets have been amended after adoption which created positions, deleted positions and made adjustments to revenue and expenses, this is the first time that amendments to the budget, after adoption, have been challenged.

When the Petitioner was a councilman and chairman of the Finance Committee, the Council of the City of Scranton adopted File of Council No. 97-2000 which amended Ordinance No. 77,

2000 - the City's 2001 Budget (Exhibit R-4). As stated in the Fourth WHEREAS Clause of Exhibit R-4 "There are various revenue and expense items contained within the adopted 2001 budget which do not accurately reflect either revenues and expenses...." and the Fifth WHEREAS Clause states "Scranton City Council was desirous of amending the 2001 General City Operating Budget so that the Budget becomes balanced....". The 2001 Budget was amended by Scranton City Council by a vote of 3-2 and signed by the Mayor amending the budget which had already been adopted for the year 2001, Ordinance No. 97-2000. In fact, in comparing Ordinance No. 97-2000, Exhibit R-4, with the Amendment, Exhibit P-4, it is evident that Exhibit R-4, unlike Exhibit P-4, does not specify which appropriations are increased or decreased or the amount of the increases or decreases in the estimated budget expenditures or revenues for the year 2001. However, it is evident from the testimony and Ordinance No. 97-2000, Exhibit R-4, that substantial adjustments were made to the 2001 Budget which had already been adopted.

In addition to Exhibit R-4, in June of 2002, Ordinance No. 34-2002 amended Ordinance No. 13-2002, the 2002 Budget, by reinstating two (2) watchman's positions and transferring $46,524.75 to pay for salaries.

During the year 2003 there was a total of six (6) Ordinances passed which amended the City's 2003 Budget, Ordinance No. 90-2002, as follows:

Ordinance No. 121-2003, Exhibit R-6, which was passed by Council on February 10, 2003 and created five (5) new positions at a cost of $140,260.07;

Ordinance No. 122-2003, Exhibit R-7, passed by Council on March 3, 2003, which made transfers to provide the salaries for the five (5) new positions at a cost of $140,260.07;

Ordinance No. 125-2003, Exhibit R-8, passed by Council on March 3, 2003, which added two (2) new positions and deleted a Deputy Chief of Police from the Department of Public Safety;

Ordinance No. 126-2003, Exhibit R-9, which made transfers to provide salaries for the two (2) positions created by Ordinance No. 125-2003, Exhibit R-8, at a cost of $71,783.62;

Ordinance No. 139-2003, Exhibit R-10, passed by Council on March 24, 2003, which created two (2) positions in OECD; and

Ordinance No. 140-2003, which funded the two (2) OECD positions at a cost of $56,953.70.

These Amendments to the 2003 Budget created 9 new positions and eliminated 1 position and established salaries for a total of $268,996.76 by 6 separate Ordinances whereas the Amendment made all of the changes in one Ordinance.

The only difference with the Budget Amendments established by Exhibit R-4 through R-11 made to the City's Budget for the years 2001, 2002 and 2003 and the Amendment, Exhibit P-4, is that the Amendment adopted by Respondents over the Petitioner's veto is being challenged by the Petitioner, Mayor of the City of Scranton, when, in fact, the Petitioner, in the past as a Councilman and Finance Chairman, was involved in amending the City's 2001 Budget which had already been adopted and was involved as Councilman in amending the 2002 Budget which had been adopted and as Mayor approved 6 Ordinances amending the 2003 Budget. It is evident that once the Budget had been adopted for the following fiscal year pursuant to Article IX of the Home Rule Charter, Exhibit P-8, that it can be amended and that the Respondent's action in drafting the Ordinance, Exhibit P-8,

and adopting the Amendment over the Petitioner's veto has been done by past Council and Mayors without objection until now.

The Petitioner provided testimony and Exhibits from various witnesses most of whom were Department heads except for the Petitioner, as the Mayor of the City, and Attorney Eugene Hickey, an Assistant City Solicitor, to attempt to establish that the Amendment would effect the health, safety and welfare of the public. The Mayor admitted under cross examination that over the past two (2) years he has not filled three (3) vacant positions in the police department nor 11 vacant positions in the fire department which have a direct effect on the safety and welfare of the public. The Mayor admitted that the revenue and expenditures in the Budget for 2010, Exhibit P-3, were virtually the same as the 2009 Budget notwithstanding the fact that we are still in the Recession of 2008 and local unemployment is near 10%.

The Court must take judicial notice of the fact that during the last two (2) years, due to the economic conditions and the recession of 2008 that private and public employers locally, statewide and nationally, have made reductions in their operating budgets and reduction in their employees. These factors were emphasized in the testimony of Mrs. Evans and Mr. Frank Joyce as to why the Amendment was necessary. While 13 City positions were deleted, 1 which was vacant and 2 which were new positions and 4 OECD positions were eliminated one of which was a new position, the Amendment restored 8 positions which the Mayor eliminated in the Budget - 4 in the traffic division and 4 in the Single Tax Office. The net of 10 positions eliminated were managerial or supervisory position whose duties can be assumed by other City employees in the Departments. These positions which had been eliminated have nothing to do with public safety but are at will employees in

managerial or supervisory positions. Clearly what is more important to the health, welfare and safety of the public, the filling of the 3 vacant police positions, the filling of 11 vacant fireman positions, the 8 vacant police positions in the OECD Neighborhood Police Patrol which currently only employs 2 policemen and the reinstatement of 4 traffic maintenance men or an information technician in the IT Department and supervisors in the Department of Public Works?

Linda B. Aebli, Executive Director of the Office of Economic and Community Development ("OECD") testified that she received an email from Respondent, Patrick Rogan, on February 10, 2010 (Ex P-11) regarding job descriptions of 4 OECD positions and if the positions were eliminated would the remaining employees be able to absorb their duties. Ms. Aebli made written response with a 4 page letter dated February 11, 2010 with 7 pages of attachments. (Ex P-6). OECD has a staff of 12 and the Amendment eliminated 4 positions, 1 of which was newly created in the Budget, thereby reducing the OECD staff to 9 positions. While OECD is funded by federal funds from the Community Development Block Grant Program, only a certain percentage of the federal funding can be used for administration expenses, i.e. salaries, etc. (the "Admin Expenses"). Any monies not used for Admin Expenses can be used for applicable project funding. Ms. Aebli testified that the reduction in staff could result in an audit finding that OECD might not have sufficient staff. While this testimony was speculative, on cross examination Ms. Aebli admitted that if such an audit finding was made by HUD, that before the report was issued there would be an exit conference to discuss the proposed audit findings regarding staff or if included in the Final Audit Report that the appeal process could take years. Ms. Aebli admitted on cross examination that if such an audit finding were made, she would request the governing body, Mayor and Council, to increase the OECD staff. As

was stated by Mayor Doherty in his testimony as a Councilman and Mayor Elect at the December 14, 2001 council meeting regarding the adoption of the 2002 City Budget, "I believe that the City can work with less people and I will push for that." (Exhibit R-12, p. 16). The Pennsylvania Supreme Court stated, "It is a managerial prerogative to reallocate work to enhance operation efficiency and to effect cost savings. To limit management's power in this area would be to draft a blueprint for never-expanding bureaucracy, which naturally will tend to fuel institutional growth and taint the very purpose of our government. Government exists to serve the people, and should be managed by the fewest number of employees who can accomplish the task of certain citizenry in the most efficient and least costly manner possible." *Stecher,* supra at 210-211. This reduction, as with all reduction of personnel, is within Council's authority under Section 502(1) of the Home Rule Charter, Exhibit P-8, which states: "(1) To adopt or amend an Administrative Code or establish, alter or abolish any City Department, office or agency." See *Reed, Novak* and *Stecher Decisions,* supra.

Frank Swietnicky, Director of Information Technology, gave exhausting testimony regarding the City's Department of Information Technology, which the Mayor in the 2010 Budget had eliminated a part-time position reducing the staff from 3½ employees to 3. The Amendment eliminates 1 full time position thereby reducing the department from 3 employees to 2. This reduction is fully within Council's authority under Section 502(1) and (9) of the Home Rule Charter, Exhibit P-8, and See *Reed, Novak* and *Stecher Decisions*, supra.

Jeffery Brazil, Director of the Department of Public Works ("DPW") testified regarding the reduction of supervisory staff in his Department, one of which was the Director of Parks and Recreation whose duties he would assume. On cross examination Mr. Brazil testified that George

Parker, P.E., his predecessor as Director of DPW was a professional engineer and acted in the dual capacities of Director of DPW and as the City Engineer. Mr. Brazil admitted that he is not a professional engineer and therefore he would not assume the duties as City Engineer but he received the same salary as Mr. Parker as Director of DPW which included the duties as City Engineer. Not having Mr. Parker's duties as City Engineer and functioning as the Director of DPW, pursuant to the Amendment he would assume the duties of the Director of Parks and Recreation which had been eliminated and which is within the DPW and over which he has responsibility as the Director of DPW. This reduction and consolidation of duties is fully in Council's authority under Sections 501(1) and (9) of the Home Rule Charter, Exhibit P-8, and the *Reed, Novak* and *Stecher* Decisions, supra.

Attorney Eugene Hickey, Assistant City Solicitor, testified regarding the Amendment's effect on the Law Department on in-house staff and outside legal counsel. While Attorney Hickey gave extensive testimony regarding the legal services provided by the Law Department to the City, on cross examination he admitted that he had no demonstrative evidence to support his testimony such as time records, statistics regarding the number of cases defended or prosecuted by the Law Department in State or Federal Court, the number of hearings attended or the assignment of the work load or of all the matters testified to regarding the City, how many are defended by insurance counsel or outside counsel. On cross examination he admitted that the workman's comp cases he referred to in his direct testimony as being the responsibility of the Law Department are defended by Attorney Nealon who is outside counsel. Attorney Hickey admitted that the Assistant City Solicitor's position being eliminated by the Amendment is his position. This reduction is fully within Council's

authority under Section 502(1) and (9) of the Home Rule Charter, Exhibit P-8 and See *Reed, Novak* and *Stecher Decisions*, supra.

Mr. Stewart Renda, Business Administrator of the City of Scranton, admitted on cross examination that he is not a certified public accountant and had no prior experience as a business administrator. The Amendment reduces 1 full-time position in the Business Administrator's office and reduces Mr. Renda's salary from $85,000 to $53,461.51 which is a reduction of $32,538.49. Mrs. Evans testified that the former business administrator was Attorney Brian Nixon who was both an attorney and a CPA and that this salary was established because of Attorney Nixon's qualifications. However, since Mr. Renda is neither an attorney or CPA the reduction in salary was calculated by using the salary established for the Business Administrator prior to Attorney Nixon as the base salary and increasing same by 7.5% which was the increase for the City's firemen and policemen from 2001 to 2010. This reduction in staff and in Mr. Renda's salary is fully within Council's authority under Sections 502(1) and (9) of the Home Rule Charter, Exhibit P-8 and *Reed, Novak* and *Stecher Decisions*, supra.

The Respondent's testimony as presented by Council persons Janet Evans, Frank Joyce and John Loscombe testified that the Amendment was adopted pursuant to the Section 502(1) and (9) of the Home Rule Charter, Exhibit P-8. Both Mrs. Evans and Mr. Joyce testified regarding how the reductions were made as set forth on Attachment 1, Exhibit P-5, which was attached to the Amendment, Exhibit P-4, as part of the legislation and the formula utilized in order to determine the salary adjustments which was utilizing the salaries in the 2001 City Budget and increasing same by 7.5% which is the amount of increase received by the City's police and firemen and then making the

adjustments upward or downward accordingly. Mr. Loscombe testified that as Chairman of the Council's Committee on Public Safety that he had a meeting with the 4 Traffic Department Employees whose positions were eliminated in the 2010 Budget but the 4 positions were to be reinstated by the Amendment and would be beneficial to the health, safety and welfare of the citizens of Scranton. He further testified that since there were no reductions in the ranks of the police, firemen and DPW workers by the Amendment and since Mayor Doherty had not filled the 3 police position in the Budget and the 11 firemen positions in the Budget that the Amendment reduction in personnel, which were management or supervisory, did not effect public safety.

The Petitioner has not met his burden of proof to meet all of the 6 prerequisites required to obtain a preliminary injunction to prevent the enactment of the Amendment as set forth in *Reed*, supra at 702-703 and set forth verbatim at page 5 of this Brief. The Petitioner has not by clear and convincing evidence proven:

(1) Irreparable harm that cannot be compensated in damages since the termination of any employee is not irreparable harm, see *Novak*, supra;

(2) That greater injury would result from refusing an injunction than granting it since the Amendment was legally and lawfully adopted pursuant to Sections 501, 502(1) and (9) of the Home Rule Charter and while some employees are terminated, the traffic department, which is a matter of public safety, has been reestablished and 4 positions in the Single Tax Office were reestablished and the refusing of the injunction provides efficiency in government and reduction of departmental and non-departmental expenditures all of which complies with *Reed, Novak* and *Stecher Decisions*, supra;

(3) Will restore parties to the status quo prior to the alleged wrongful conduct since there was no proven wrongful conduct by the Respondents in adopting the Amendment and pursuant to law the Amendment is presumed valid and was adopted in accordance with the Home Rule Charter;

(4) That activity sought to be restrained is actionable, relief is clear, wrong is

manifest and the Petitioner must show that he is likely to prevail on the merits on the permanent injunction which was not proven by the Petitioner since the activity sought to be restrained is not actionable since the Amendment was lawfully adopted pursuant to the Home Rule Charter over the Mayor's veto;

(5) That injunction sought is reasonably suited to abate the offending activity was not proven by the Petitioner at trial but was refuted by the Respondents. The Amendment as adopted was properly adopted pursuant to the Home Rule Charter and was legally and lawfully adopted;

(6) That the preliminary injunction will not adversely effect the public interest which in this case would effect the public interest since it would maintain managerial and supervisory personnel over the reinstatement of the 4 employees at the Traffic Department and 4 employees in the Single Tax Office who are necessary for the collection of tax revenue and not reduce departmental and non-departmental expenditures.

## CONCLUSION

Pursuant to the above cited case law and testimony taken at the Hearings on this matter, it is evident that Petitioner has not met the burden of proof necessary for issuance of a preliminary injunction and therefore, Petitioner's Request for Preliminary Injunction must be denied.

HUGHES, NICHOLLS & O'HARA

By: _____
W. BOYD HUGHES, ESQUIRE
Solicitor for City Council

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| CHRISTOPHER A. DOHERTY, Mayor of the City of Scranton, | : | IN THE COURT OF COMMON PLEAS |
| | : | OF LACKAWANNA COUNTY |
| Petitioner | : | |
| v. | : | |
| | : | EQUITY NO. 2010-EQ-1758 |
| JANET EVANS, Scranton City Councilwoman, FRANK JOYCE, Scranton City Councilman, PATRICK ROGAN, Scranton City Councilman, JOHN LOSCOMBE, Scranton City Councilman, all in their Official Capacities, | : | |
| and | : | |
| SCRANTON CITY COUNCIL, | : | |
| Respondents | : | |

CERTIFICATE OF SERVICE

I, W. BOYD HUGHES, ESQUIRE, hereby certify that I have served a true and correct copy of the Respondent's Brief to Petitioner's Request for Preliminary Injunction in the above-captioned matter on Mary Theresa Patterson, Esquire, Solicitor for the City of Scranton, City Hall, 340 N. Washington Avenue, Scranton, PA 18503, by First Class Mail, postage prepaid on the 16th day of April, 2010.

HUGHES, NICHOLLS & O'HARA

By: _____

W. BOYD HUGHES, ESQUIRE
1421 E. Drinker Street
Dunmore, PA 18512
Attorney I.D. # 08275
(570) 344-7171

Dated: April 16, 2010

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HUGHES, NICHOLLS & O'HARA
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1421 E. Drinker Street
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| | : | |
| and | : | |
| | : | |
| SCRANTON CITY COUNCIL, | : | |
| | : | |
| Respondents | : | |

**RESPONDENT'S BRIEF TO PETITIONER'S REQUEST FOR PRELIMINARY INJUNCTION**

## I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

File of the Council No. 12-2010 an Ordinance, as amended, was adopted on February 23, 2010 by a vote of 4 to 1 and was vetoed by Christopher A. Doherty, Mayor of the City of Scranton (hereinafter the "Petitioner") on March 4, 2010. The Petitioner's vetoing of Ordinance 12-2010 was