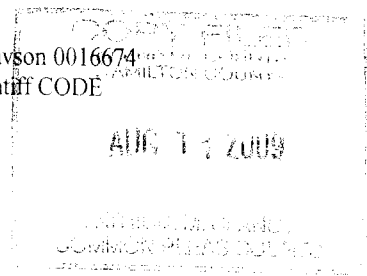


William M. Gustavson 0016674
Attorney for Plaintiff CODE



COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

QUEEN CITY LODGE NO. 69
FRATERNAL ORDER OF POLICE
1900 Central Parkway
Cincinnati, OH 45214,

Case No. **AC907695**
Judge

And

CINCINNATI ORGANIZED AND
DEDICATED EMPLOYEES
1011 West Eighth Street
Cincinnati, OH 45203,

COMPLAINT FOR
DECLARATORY JUDGMENT,
TEMPORARY RESTRAINING
ORDER, PRELIMINARY AND
PERMANENT JUDGMENT

Plaintiffs,

v.

CITY OF CINCINNATI, OHIO
c/o John Curp, City Solicitor
Room 214 City Hall
801 Plum Street
Cincinnati, OH 45202,

Defendant.

* * * * *

1. The Plaintiff Queen City Lodge No. 69, Fraternal Order of Police ("FOP") is the collective bargaining representative of police officers of the City of Cincinnati. As the collective bargaining representative, the FOP has the responsibility and interest to assert the claims asserted herein on behalf of the members of the FOP to seek compliance by the City of Cincinnati with the requirements of the Ohio Revised Code.

2. The Plaintiff Cincinnati Organized and Dedicated Employees (“CODE”) is the collective bargaining representative of certain Division O employees of the City of Cincinnati who do not have supervisory or management positions within Division O as defined by Ohio law, and as agreed by the City of Cincinnati. As the collective bargaining representative, CODE has the responsibility and interest to assert the claims asserted herein on behalf of the members of CODE to seek compliance by the City of Cincinnati with the requirements of the Ohio Revised Code.

3. The Defendant City of Cincinnati (“City”) is an Ohio municipal corporation. The City is required by the laws of the State of Ohio to comply with the terms of the Ohio Revised Code in any decision concerning the abolishment of positions in the classified service and in the decision to lay-off City employee members of the FOP and CODE.

4. On or about April 29, 2009, the City and the FOP entered into a collective bargaining agreement concerning the wages and benefits of City employee members of the FOP.

5. On or about August 6, 2008, the City and CODE entered into a collective bargaining agreement concerning the wages and benefits of City employee members of CODE.

6. Almost immediately after entering into the collective bargaining agreement with the FOP, the City began to complain of a “projected” budget deficit.

7. Using the claim of a projected budget deficit, the City began to ask its unions to agree to contract concessions to alleviate the claimed projected budget deficit. The contract concessions demanded by the City included, but were not limited to, FOP and CODE members agreeing to give up contractually negotiated paid holidays, which the City called “cost savings days” to try to hide their intent to “union bust” as discussed below. According to the threats by the City, if the FOP and CODE did not agree to give up contractually negotiated paid holidays,

accept “cost savings days.” the City would need to layoff City employees, including, but not limited to, City employee members of the FOP and CODE.

8. On or about July 17, 2009, the City began to claim that it would have a \$28 million dollar deficit in the 2009 budget. Attached hereto as Exhibit 1 is a letter from city manager Milton Dohoney, Jr., to CODE, and Exhibit 2 is a virtually identical letter to the FOP, demanding contract concessions from CODE and the FOP to reduce the number of employee layoffs based on a claim by Milton Dohoney, Jr., that “our deficit for 2009 has grown from \$20 million to \$28 million.”

9. In a special session of the Council of the City on July 27, 2009, an employee of the City Income Tax Division of the Finance Department testified that no employee layoffs in the City were necessary because there were a large volume of income tax documents to be opened and monies deposited, but that there were not enough employees in the Income Tax Division to open and deposit income tax receipts.

10. Throughout this time of claimed budget deficits, the FOP and CODE have repeatedly requested documentation of a budget deficit. Although the documents are public records, the City has obstructed and continues to obstruct the FOP and CODE from reviewing actual budget documents to determine if a budget deficit actually existed.

11. In the City’s monthly report to the Finance Committee of the City Council, dated August 3, 2009, attached as Exhibit 3, the City claimed that its actual revenues, through the month ending June 30, 2009, were below projected revenues by \$13.1 million dollars. Although the City stated in the report that “Updated projections show that general fund revenues **may be down** as much as \$28 million for 2009” (Emphasis added), the report contained no financial

records or documentation that would support any claim of a budget deficit in excess of the stated \$13.1 million.

12. Although the report to the Finance Committee, Exhibit 3, claimed a budget deficit through the end of June, the latest month for which information was available, of \$13.1 million, the report, on page 5, also shows an “unappropriated surplus” of \$12.656 million. The term “unappropriated surplus” is used by the City to designate excess funds in its accounts that may be used for any purpose, without restriction. The term “unappropriated surplus” is distinguished from, and not a part of, the City’s “Working Capital Reserve Fund,” also known as the City’s “rainy day fund,” which is an additional amount of excess funds kept by the City to ensure that the City’s bond rating is not affected. The unappropriated surplus is not a part of, and is in addition to, the City’s Working Capital Reserve Fund.

13. On August 5, 2009, city manager Milton Dohoney, Jr., sent a memo to the Mayor and Members of Council. A copy of this memo is attached as Exhibit 4. In this memo, the city manager claimed that 319 employees’ positions of the City were eliminated. In addition, the report claimed that the city had \$9 million in reserves, presumably in “unappropriated surplus” and not in the Working Capital Reserve Fund, with no explanation of what happened to the other \$3.656 million that had been in the unappropriated surplus in his memo dated August 3, 2009, two days before.

14. In the August 5, 2009, memo, the city manager indicated his intent to eliminate 138 police officer members of the FOP and 19 CODE employees by layoff due to lack of funds.

15. Ohio Revised Code Section 124.37, in relevant part, states as follows:

“When it becomes necessary in a police . . . department, through lack of . . . funds . . . to reduce the force in such department, the youngest employee in point of service shall be first laid off.”

16. Ohio Revised Code Section 124.321 (B)(1), in relevant part states as follows:
“Employees may be laid off as a result of a lack of funds within an appointing authority.”

17. Although state law allows a municipality to layoff employees for “lack of funds,” the Ohio Supreme Court has made it clear that there must be a good faith lack of funds of the municipality before a layoff of the employees is permitted.

18. After the August 5, 2009, memo of the city manager announcing layoffs, the city manager, mayor and city council set a public meeting for August 6, 2009, to purportedly allow employees and citizens to participate in a public discussion of the proposed layoffs. Prior to that meeting, certain members of city council scripted questions and some answers to “spoon-feed” the City administration, including stage directions, to quell debate and to further the City’s desire to “union bust” by seeking contract concessions from the FOP and CODE. A copy of the script, including stage directions, is attached as Exhibit 5.

19. Throughout the process of dealing with the City on a claimed budget deficit, the FOP and CODE have repeatedly asked for documentation from the City to show whether a true budget deficit existed. Despite repeated requests, and despite the fact that the budget records are public records, the City has refused, and continues to refuse, to show the FOP and CODE any records that would demonstrate a true budget deficit.

20. The August 3, 2009, report from the city manager to the Finance Committee, Exhibit 3, with claimed actual amounts of revenue and excess unappropriated surplus versus expenses, did not show a \$28 million deficit, did not show a \$13 million deficit, as repeatedly claimed by the City to the media and its citizens, but rather showed a \$440,000 budget deficit through the end of June 2009, the latest date for which actual figures were available. If the numbers shown in the August 3, 2009, report from the city manager to the Finance Committee

were true and accurate, there is no “lack of funds” that would allow, under R.C. 124.37, R.C. 124.321, and applicable Supreme Court of Ohio precedent for any member of the FOP or CODE to be the subject to layoff.

21. The conduct of the City in claiming budget deficits in excess of 10 million dollars when it had actual knowledge that no such budget deficits existed was a direct attempt to “union bust” by seeking concessions from the FOP and CODE in contravention of their collectively bargained contracts. Further, the proposed layoffs of in excess of 100 members of the FOP and CODE, when no legal “lack of funds” exists, is union busting in itself and a punishment to the FOP, CODE and their members for not agreeing to the union busting activities of the City.

22. As further evidence of the union busting intent of the City, the city managers memo of August 5, 2009, details the elimination of unfunded, unfilled positions in the bargaining units of the FOP and CODE. The actions of the City in elimination of unfunded, unfilled positions in the bargaining units of the FOP and CODE is for the specific purpose of reducing the membership and future membership of the FOP and CODE, and serves no purpose in the City’s claimed need to layoff employees because of a claimed lack of funds.

CLAIM I DECLARATORY JUDGMENT

23. Although the City claims a lack of funds and a need to layoff members of the FOP and CODE, the City has refused and continues to refuse to provide any income and expense records to show a good faith lack of funds to justify the City’s claimed need for layoffs.

24. The City’s August 3, 2009, memo from the city manager, Exhibit 3, clearly shows that the City’s most recent financial report reflects sufficient funds to maintain the employment of the FOP and CODE employees which the City claims are subject to layoff.

25. There is a dispute between the FOP and CODE on the one hand, and the City on the other, whether there exists a lack of funds to justify the need for layoffs of the 138 members of the FOP and the 19 members of CODE slated for layoff.

26. The FOP and CODE request a declaratory judgment that the City does not have a lack of funds sufficient under law to layoff the 138 members of the FOP and the 19 members of CODE currently slated for layoff on or about September 6, 2009.

COUNT II
TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT
INJUNCTION

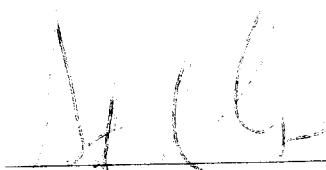
27. The Plaintiffs hereby incorporate by reference the allegations of paragraphs 1 through 26 as a part of this Claim II.

28. The FOP, CODE and their members do not have an adequate remedy at law and are about to suffer immediate, irreparable harm to themselves, and to the citizens of the City if the City is allowed to end their employment by layoff.

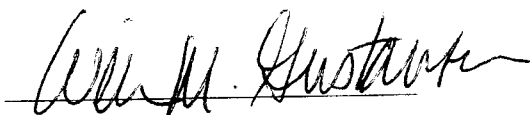
29. The FOP and CODE request a temporary restraining order, preliminary injunction and permanent injunctions prohibiting the City from implementing its plan to layoff 138 police officer members of the FOP and 19 members of CODE on the basis of lack of funds.

Wherefore, the FOP and CODE request a declaratory judgment that there is no lack of funds of the City that would justify the City to layoff the 138 police officer members of the FOP slated for layoff and the 19 members of CODE slated for layoff, request a temporary restraining order, preliminary and permanent injunction against the City to prohibit the City's plan to layoff said employees, request costs, attorneys' fees and all further relief to which the Plaintiffs are entitled.

Respectfully Submitted,



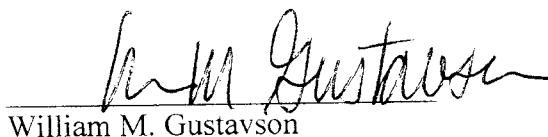
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NOTICE OF HEARING

Please take notice that the Plaintiffs' request for a temporary restraining order will be heard on August 11, 2009, at 11:30 a.m. before the Honorable Robert C. Winkler, Courtroom 320, Hamilton County Courthouse, 1000 Main Street, Cincinnati, Ohio 45202.



William M. Gustavson