July 2015

Power of Municipal Corporations to Lay Off Employees, Atwood v. Judge

Warren R. Ross

Power of Municipal Corporations to Lay Off Employees

Atwood v. Judge, 63 Ohio App. 2d 94, 409 N.E.2d 1022 (1977)

I. INTRODUCTION

AT A TIME when the future of the American economy appears bleak, and the necessity to curtail vital urban services becomes commonplace in our cities, the significance of the decision rendered by the Ohio Court of Appeals for Columbiana County in *Atwood v. Judge*[1] deserves to be noted. The tension between the public interest in maintaining vital services within the community and the state mandate[2] that a city operate within its budget is not satisfactorily resolved by the court.

In late May, 1976, the Director of Public Service-Safety of East Liverpool, Ohio, Mr. Judge, informed several members of the city's police and fire fighting departments that they were to be laid off effective June 1, due to the lack of funds to pay their salaries. The mayor ordered the lay-offs after being informed of the city's financial condition by the city auditor. On June 1, plaintiffs (all the personnel who were to be laid off, two citizen taxpayers and several policemen and fire fighters who were unaffected by the lay-off decision) filed a "complaint for a temporary and permanent injunction [against the director] and the trial court granted a temporary restraining order."[3] After the defendant's motion to dismiss was overruled, the court conducted several hearings on plaintiff's request for a permanent injunction that would prevent defendant from either carrying out the contemplated lay-offs or failing to pay all policemen and fire fighters their wages, pursuant to the provisions of the contract entered into by the city with the fire fighter's and policemen's unions in April, 1976.[4] This injunction was granted by the court in July, 1976.

Plaintiff's trial brief included the argument that there were, in fact, sufficient funds with which to pay the salaries of all safety department employees.[5] Although it was not stated at trial, the fact that the city could enter into a new contract with the safety department employees' unions in April that called for more money to be paid out in salaries, and then, in May, decide to lay off members of those unions for lack of funds to pay those salaries, indicates a serious deficiency in municipal planning.

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[1] 63 Ohio App. 2d 94, 409 N.E.2d 1022 (1977).
[2] OHIO REV. CODE ANN. § 5705.39 (Page 1980).
[3] 63 Ohio App. 2d at 95, 409 N.E.2d at 1025.
[4] *Id.* at 97, 409 N.E.2d at 1026.
[5] *Id.* at 106, 409 N.E.2d at 1031.

The trial court found that the director had usurped the power of the city council by changing the number of police and fire personnel,[6] a number which was set by statute at the time.[7] The court found that the defendant's action "constituted a gross abuse of discretion"[8] which was not substantiated by the facts of the city's financial condition in 1976. The court also noted that the lay-offs "would have dangerously injured the health, safety and welfare of the residents of the city of East Liverpool."[9] The defendant, the Director of Public Service-Safety, appealed from the judgment of the Court of Common Pleas.

II. BACKGROUND - THE METHOD BY WHICH OHIO MUNICIPALITIES ALLOCATE AND SPEND MONEY.

The preparation of a municipal tax budget, and its relationship to the annual appropriation ordinance of a city, is something that needs to be appreciated before one can begin to understand the situation in *Atwood*.

When formulating a budget for the coming fiscal year,[10] each supervisor of a municipal department is required by law[11] to present to the mayor, near the end of the current fiscal year, an estimate of the necessary operating expenses of his department. Such an estimate should include a contingency sum for all necessary improvements. Along with approximate future costs, the estimate should include a designation of which municipal funds (general or special) that department expects to use to pay for those costs. In specifying which funds or accounts are to fund his department, each municipal supervisor is required to state an approximate amount of revenue expected to flow into those accounts. For example, in East Liverpool, there were probably certain funds designated "public safety" funds and certain taxes earmarked for those funds.

The mayor will pass those estimates and recommendations to the taxing authority of the city (the city council).[12] After conducting hearings on a new proposed budget, they will formalize that proposal and submit it to the county auditor[13] who will determine the appropriate tax rates necessary to keep the revenue coming into the city's treasury at the minimal level necessary to meet the operational expenditure demands of the city.[14]

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[6] *Id.* at 96, 409 N.E.2d at 1025.
[7] *Id.* at 96, 104, 409 N.E.2d at 1025, 1030.
[8] *Id.* at 96, 409 N.E.2d at 1025.
[9] *Id.*
[10] This information was drawn in part from I J. CROWLEY, OHIO MUNICIPAL LAW ¶ 19.52-19.69 (2d ed. 1975).
[11] OHIO REV. CODE ANN. § 5705.28 (Page 1980).
[12] OHIO MUNICIPAL LAW, *supra* note 10, at ¶ 19.52.
[13] OHIO REV. CODE ANN. § 5705.30 (Page 1980).
[14] OHIO REV. CODE ANN. § 5705.34 (Page 1980).

The county budget commission will rubber-stamp the auditor's recommendations to this effect and send it back to city council.[15]

After passing the tax rates the county auditor has recommended, the city council will then return them to him for final approval.[16] The auditor will use these tax rates to produce his "official certificate of estimated resources,"[17] which is his official estimate of what the city's tax revenues will be for the next year, based on the tax rates and the existing taxable assets within the city. When the council receives the certificate from the auditor, it will revise its first budget and pass the annual appropriation ordinance which allows distribution of the tax revenues into the appropriate municipal department.[18]

At the close of the fiscal year, the city auditor will account for any surplus balance left in the city accounts and send a statement to the county auditor,[19] who will prepare, for the county budget commission's approval, an "amended official certificate of estimated resources,"[20] to be sent back to city council.

The most important part of this budget-making process comes at the end, insofar as any city council is concerned and, especially, insofar as the *Atwood* decision touches upon this process. Appropriations authorized by a city council cannot "exceed the total of the estimated revenue available for expenditures therefrom;"[21] that is, the city cannot plan to spend more in a department than the amount available to that department from its designated accounts as indicated in the amended official certificate of estimated resources. Furthermore, the appropriations ordinance of city council is only legally valid after it has been sent to the county auditor to certify that it is within the limits of the amended official certificate.[22] To a very real extent, a municipality in Ohio is bound to follow for the course of a year a piece of paper which was developed several months prior to that year.

III. THE CASE ON APPEAL AND A PRELIMINARY CRITIQUE

After reiterating the facts of the case, the *Atwood* court observed, "We raised the question as to whether the issues in the case were moot, because the evidence was directed at the financial condition of the city of East Liverpool for the year 1976 which is now past history . . . ."[23] The

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[15] *Id.*
[16] *Id.*
[17] OHIO REV. CODE ANN. § 5705.35 (Page 1980).
[18] OHIO REV. CODE ANN. § 5705.38 (Page 1980).
[19] OHIO REV. CODE ANN. § 5705.36 (Page 1980).
[20] *Id.*
[21] OHIO REV. CODE ANN. § 5705.39 (Page 1980).
[22] *Id.*
[23] 63 Ohio App. 2d at 100, 409 N.E.2d at 1028.

court determined that the central issues of the trial court's adjudication of the case involved the amount of city funds available in 1976 to meet the safety department's payroll. Since those revenues have been appropriated and spent, the question does seem to be moot. The majority of the court believed, however, that there was a need for them to hear the case on appeal because, "the injunction granted is a permanent one that continues beyond the year 1976."[24] The dissent found the mootness of the question to be adequate reason not to overturn the trial court's issuance of the injunction, at least to the extent that the injunction related "to the time and events of the instant case."[25]

There were three major issues on appeal: (1) whether the court had jurisdiction over appellees who had not exhausted their administrative remedies; (2) whether the appellant's discretionary powers as Director of Public Service-Safety included the power to lay-off employees; (3) whether he had abused such powers.

Turning to the first question, the court stated that those appellees who were directly affected by the lay-off decision did not have standing to sue, because they had not first pursued their appeal to the East Liverpool Civil Service Commission.[26] In contrast, since the other appellees did not have such access to an appeal, the court held "that they had no adequate remedy at law and that the trial court properly took jurisdiction of this case."[27] In

The court cited *Haught v. Dayton*[28] which limited suits by laid-off civil service employees to those employees who have first taken their cause of action to the local Civil Service Commission [hereinafter cited as C.S.C.]. In light of the problem which prompted the discharge of the employees in East Liverpool, the use of such a forum in *Atwood* seems inappropriate. Assuming that they had appealed to the C.S.C., the C.S.C. could conceivably have ordered their reinstatement.[29] Such an action on the part of the C.S.C. could, at best, be described as an abstract gesture, since, in the words of one writer, commenting on the power of non-legislative bodies to order the legislative expenditure of money, they "can neither levy a tax nor appropriate funds from the public treasury."[30] If the C.S.C. were to order the reinstatement of

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[24] *Id.*

[25] 63 Ohio App. 2d at 112, 409 N.E.2d at 1034.

[26] 63 Ohio App. 2d at 100, 409 N.E.2d at 1028. For an excellent summary of this area of the law, *see* Comment, *Judicial Review of Zoning Administration*, 22 CLEVE. ST. L. REV. 338 (1973).

[27] *Id.* at 101, 409 N.E.2d at 1028.

[28] 34 Ohio St. 2d 32, 295 N.E.2d 404 (1973).

[29] OHIO REV. CODE ANN. § 124.34 (Page 1978).

[30] Mountain, *The Role of Judicial Activism: Neither Sword Nor Purse?*, 10 SETON HALL L. REV. 6 (1979) at 9.

the employees/appellees, that action would not solve the problem of how those employees were going to be paid.

In the determination of whether the Director of Public Service-Safety possessed the discretion to lay off city employees in times of insufficient funds, both the trial and appeals courts analyzed *Gannon v. Perk*,[31] the principal case in Ohio on this point.

In *Gannon*, the administrators of the city of Cleveland, faced with a similar financial situation, announced the lay-off of city police and fire department personnel. In a suit brought by the policemen's and fire fighter's unions to prevent such lay-offs, the Ohio Supreme Court, on appeal, found justification for the lay-offs in the fact that there was a lack of funds available to pay the employees: "Lack of funds induced when projected income falls below anticipated expenses is a legitimate basis for laying off civil service employees, including safety personnel, so long as such lay-offs are made in conformity with law."[32]

The trial court rejected the applicability of *Gannon* to *Atwood*.[33] The appeals court reversed,[34] relying on *State v. Munson*,[35] another case quoted at length in *Gannon*.

In *Munson*, the Cleveland Commissioner of Auditorium and Stadium in the Department of Public Properties was laid off. The former commissioner brought suit to regain his position by requesting a writ of mandamus from the Ohio Supreme Court. That Court denied his writ, finding that it had not been "made to appear that a clear legal right [of relator's] . . . exists."[36]

Munson can be distinguished from both *Gannon* and *Atwood* by pointing out one of that court's key underlying assumptions: "[w]e look in vain for any averments in the petition which would warrant the conclusion therein stated that the position [job] held by the relator is being abolished or that such result is contemplated by the respondent."[37] The *Munson* court, in rendering its decision in favor of the city of Cleveland, assumed that at some point in the future money would become available to rehire the laid-off employee. By making this assumption, the court reinforced its argument that the employee has not been removed, since 'removal' implies a permanent condition. It is somewhat doubtful that most courts adjudicating

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[31] 46 Ohio St. 2d 301, 348 N.E.2d 342 (1976).
[32] *Id.* at 313, 348 N.E.2d at 349.
[33] 63 Ohio App. 2d at 102, 348 N.E.2d at 1029.
[34] *Id.*
[35] 141 Ohio St. 319, 48 N.E.2d 109 (1943).
[36] *Id.* at 326, 48 N.E.2d at 113.
[37] *Id.* at 324, 48 N.E.2d at 113.

the claim of a laid-off employee could presume that the money would eventually become available to rehire the former employee.[38]

After determining that the *Gannon* holding was binding upon *Atwood,* the majority focused on the issue of whether the lay-offs were made in "conformity with law."[39] As the *Gannon* court stated, "the power to lay off municipal employees must repose within the sound discretion of the mayor of the city . . . to be exercised in accordance with the law."[40] In the case of East Liverpool, because the mayor's authority had been delegated to appellant the question became whether appellant had acted within his discretion when he ordered the lay-offs.

Gannon may be compared to *Atwood* in two important respects. The *Gannon* court stated that the difference between a civil action for an injunction and a suit for a declaratory judgment is crucial in determining the justiciability of the case before them.[41] It noted that plaintiffs' action against the city was for a declaratory judgment, rather than for an injunction.[42] In *Atwood,* the suit was for an injunction, rather than a declaratory judgment.[43] However, this distinction does not appear to be a relevant factor in either case.

In both cases, plaintiffs asked the court to second-guess the executive and legislative branches of the local municipal governments in their act of weighing the financial alternatives and service expenditures for their cities. Plaintiffs, in each case, pointed out alternative sources of funds that the city could utilize to pay those employees who were to be laid off. In *Gannon,* plaintiffs referred to the fact that there was a substantial number of temporary city employees on the payroll, allegedly in violation of the city charter, who were to be retained while police and fire fighting personnel were to be discharged for lack of funds.[44] Plaintiffs asked the court to order the city to lay off those temporary employees in lieu of the police and fire fighting personnel.[45] Had the court taken this action, the majority, in effect, would have set the priorities for hiring and firing of city employees. In *Atwood,*[46] the plaintiffs pointed to a surplus of funds that was apparently available to the city and not earmarked for any particular purpose, which

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[38] *See generally* Shalala & Bellamy, *A State Saves a City: The New York Case,* 1976 DUKE L.J. 1119 (1976) and Mulcahy, *Ability to Pay: The Public Employee Dilemma,* 31 ARB. J. 90 (1976).

[39] 46 Ohio St. 2d at 313, 348 N.E.2d at 349.

[40] *Id.*

[41] *Id.* at 306-310, 348 N.E.2d at 346-348.

[42] *Id.* at 309, 348 N.E.2d at 347.

[43] 63 Ohio App. 2d at 95, 409 N.E.2d at 1025.

[44] 46 Ohio St. 2d at 310-312, 348 N.E.2d at 348-349.

[45] *Id.* at 311, 348 N.E.2d at 349.

[46] 63 Ohio App. 2d at 106, 409 N.E.2d at 1031.

could have been used to pay the salaries of those personnel who were to be laid off. They asked the court to compel the city to allocate its money in a specific way. In neither case was the court willing to second-guess the legislative and executive branches of the city when the situation involved a municipal official's decision that appeared to be within the discretion of that official.

Drawing from the precedent of *Gannon*, the *Atwood* court found that the lay-offs had been "made in conformity with law."[47] This was despite the fact that there were East Liverpool ordinances that explicitly set the number of police and fire fighting personnel to be hired.[48] The public safety director had, according to the court, an overriding interest in keeping his expenditures within the legislated appropriations ordinance.[49]

The *Atwood* majority chose to ignore a dictum from *Gannon* that would seem to distinguish that case on the matter of making lay-offs in conformity with law. The Ohio Supreme Court in *Gannon* stated that if it could be established that the lay-offs in question would endanger the public welfare, then such a fact must be weighed by the court in considering "the legality of the lay offs."[50] The dissent in *Atwood* pointed to this dictum as support for its position that the trial court's judgment should be overturned only insofar as it granted a permanent injunction.[51] It is interesting to note that the majority perceived the lay-offs as quite possibly endangering the city,[52] but refused to accept that possibility as relevant to its adjudication of the case.

The case law in Ohio relating to the duty of a public safety director to keep his expenditures within the budget despite the existence of an ordinance by city council fixing the number of safety employees dates back to 1904. In *Osborne v. City of Columbus*,[53] the plaintiff was a member of the Columbus fire department who had been laid off due to a lack of city funds. He appealed to the C.S.C. who ordered his reinstatement. The city, refusing to comply, appealed to the Court of Common Pleas, where plaintiff's claim was rejected. The court, in its discussion of the duty of the public safety director, noted "[I]n other words while the city council had fixed the number of firemen . . . it did not in fact provide the funds from which

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[47] 63 Ohio App. 2d at 103, 409 N.E.2d at 1029 citing Gannon v. Perk, 46 Ohio St. 2d 301, 313, 348 N.E.2d 342, 349 (1976).

[48] 63 Ohio App. 2d at 96, 409 N.E.2d at 1025.

[49] *Id.* at 103, 409 N.E.2d at 1029.

[50] 46 Ohio St. 2d at 314, 348 N.E.2d at 350.

[51] 63 Ohio App. 2d at 111, 409 N.E.2d at 1034.

[52] *Id.* at 110, 409 N.E.2d at 1033.

[53] 3 Ohio N.P. (N.S.) 1, 15 Ohio Dec. 561 (1904); aff'd mem. 75 Ohio St. 588, 80 N.E. 1130 (1906).

the director could pay them . . . . It seems to me that if these averments . . . be established . . . the plaintiff cannot recover."[54] The legitimacy of the director's action was rebuttably presumed by the court, given the fact of city council's seemingly irreconcilable enactments.

Curtis v. State,[55] which was decided in 1923, is also relevant on this point. In the Ohio Supreme Court, appellant, the safety director of Canton, appealed from a judgment in favor of Catherine Morgan, a former 'police matron' for the city, who had been laid off because of insufficient funds allocated to the safety department. The court upheld the appellant's right to lay off Mrs. Morgan, reversing the court of appeals decision. In its unanimous opinion, the court said, "It is clearly the duty of the safety department to keep its expenditures within the revenues and the appropriations, because money cannot legally be borrowed to defray current expenses."[56] Although these cases were not cited, the *Atwood* majority clearly adopted this theory in formulating its opinion.

The question of what priority to follow in laying off public employees, a central concern in *Gannon*,[57] is to be left entirely to the discretion of the mayor, according to the *Atwood* court. Due to the lack of any enactment in this area by the East Liverpool City Council, the court found that the appellant was within his statutory powers[58] in making the decision to lay off the city employees.[59] The court noted that "city council can subsequently change such administrative decisions by amending the appropriation ordinance by changing the priorities for laying off employees . . ."[60] This statement intimated that the appellee's only remedy was to petition the city council to pass a statute that would explicitly set lay-off priorities. The court did not consider the fact that such a remedy would take considerably more time than obtaining a temporary restraining order from the local court.

The *Atwood* majority clearly rejected the trial court's finding that the decision by appellant was a "gross abuse of discretion"[61] and in "excess of his powers and duties,"[62] principally because of trial testimony that showed ". . . if spending continued at the same level that it existed at the

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[54] *Id.* at 5, 15 Ohio Dec. at 564.
[55] 108 Ohio St. 292, 140 N.E. 522 (1923).
[56] *Id.* at 302, 140 N.E. at 525.
[57] 46 Ohio St. 2d at 313, 348 N.E.2d at 350.
[58] OHIO REV. CODE ANN. § 737.02 (Page 1976).
[59] 63 Ohio App. 2d at 103, 409 N.E.2d at 1030.
[60] *Id.*
[61] 63 Ohio App. 2d at 96, 409 N.E.2d at 1025.
[62] *Id.*

time the lay-offs were made the amounts appropriated for both firemen and policemen would be insufficient to pay their projected salary requirements."[63] Since such an occurrence would have been in direct violation of state statute,[64] the court felt that an adequate basis for appellant's action had been established. In this regard, the court stated that the appellant could validly take into account only two factors, "the amended official certificate of estimated resources and the appropriations of Council,"[65] in making his decision to lay off.[66]

By adopting this rationale, the court effectively precluded the possibility of reviewing the evidence of the city's fiscal condition that appellees had presented at trial. Appellees had produced data which showed that the tax revenue flowing into the accounts designated for the salaries of police and fire fighter was greater than the figure listed on the amended official certificate of estimate and that there existed surpluses in other city accounts which could have been transferred to the safety department accounts.[67]

In confronting appellees' evidence on the first point, the court considered the role of the city auditor in the municipal financing procedure.[68] By statute, it is the auditor's duty to inform the county budget commission and the county auditor of such additional revenue, when and if it comes into city accounts.[69] The court was unwilling to find that appellant could have considered the existence of such additional tax revenue, since before that possibility it was necessary to have the surplus certified to the county budget commission. It does, however, suggest that it could have considered the liability of the city auditor for dereliction of duty, but the auditor was not a party to the action.[70]

The court used a similar approach when it considered appellee's evidence as to the existence of surpluses in other city funds capable of transfer to the public safety fund. The court held that this did not give rise to a responsibility on the part of appellant to have decided any differently than he did because "the proper forum to whose attention... this matter [should have been brought] was Council who had the authority to amend the appropriation ordinance by transferring funds."[71] It is apparent, then, that the

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[63] 63 Ohio App. 2d at 106, 409 N.E.2d at 1031.
[64] OHIO REV. CODE ANN. § 5705.39 (Page 1980).
[65] 63 Ohio App. 2d at 109, 409 N.E.2d at 1033.
[66] *Id.*
[67] 63 Ohio App. 2d at 106, 409 N.E.2d at 1031.
[68] *Id.* at 107, 108, 409 N.E.2d at 1032.
[69] OHIO REV. CODE ANN. § 5705.36 (Page 1980).
[70] 63 Ohio App. 2d at 108, 409 N.E.2d at 1032.
[71] *Id.*

court's insistence upon the fact that appellant could consider only the amended official certificate of official resources and the city's annual appropriations ordinance rendered the introduction of evidence of other surplus funds meaningless.

Such an insistence coincides with the view of the court in *Curtis v. State,* "there was a possibility that other revenues might have drifted into the general fund, and that a transfer could have been made. . . . [T]he courts could [not] control the action of the city council in the matter of transfer of funds."[72]

The majority opinion puts the priority question[73] in another light when it characterized it as "political in nature."[74] They found that "a difference of opinion or judgment is not sufficient to allow a court to interfere with such a decision";[75] that is, the decision of "which employees to lay off and what services to curtail."[76] The only option left to the appellees for expressing their dissatisfaction with the decision is pursuing the removal of those officials responsible through voter recall.[77]

Throughout its opinion, the majority shares the view of the United States Supreme Court that to "bring about conflict with two coordinate branches [of government]"[78] whereby the judiciary could be characterized as "providing 'government by injunction',"[79] is undesirable and should be avoided at all costs. In refusing to shed its judicial light on a "political decision," the majority has chosen not to decide "which of many competing social interests are more valuable and worthy of protection."[80] In this regard, it is worth noting again that while the majority agreed with the trial court that the impact of the lay-offs in East Liverpool would be adverse,[81] it refused to protect that social interest. By placing appellees' claim in the category of "political question,"[82] the court followed an established judicial doctrine of avoiding the adjudication of controversial governmental decisions.

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[72] 108 Ohio St. 308, 140 N.E. 527.

[73] 46 Ohio St. 2d at 311, 348 N.E.2d at 349.

[74] 63 Ohio App. 2d at 110, 409 N.E.2d at 1033.

[75] *Id.*

[76] *Id.*

[77] *Id.*, referring to OHIO REV. CODE ANN. § 705.92 (Page 1976).

[78] Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208, 222 (1974); referred to in Note, *Standing and the Propriety of Judicial Intervention: Reviving a Traditional Approach?,* 52 NOTRE DAME LAW, 944, 955 (1977).

[79] 418 U.S. at 222.

[80] 52 NOTRE DAME LAW. 944, 955 (1977).

[81] 63 Ohio App. 2d at 110, 409 N.E.2d at 1033.

[82] *See generally,* Scharpf, *Judicial Review and the Political Question: A Functional Analysis,* 75 YALE L.J. 517 (1966).

Despite a recognition of the mootness of the central issue of the case, the majority chose to render a decision in *Atwood*. Ostensibly, this is because the injunction against the lay-offs extended indefinitely into the future. This is not a valid concern as the trial court would have had continued jurisdiction in dealing with the permanent injunction[83] and could have changed it at "any time on proof of a change of conditions."[84] Presumably, the permanent injunction could have been challenged in any subsequent year in the trial court by the appellant, if the appellate court had sustained the finding of the trial court. To successfully challenge the injunction, appellant would have been required to prove a change in the conditions of East Liverpool such that the lay-offs would no longer "adversely affect . . . the inhabitants"[85] and that the city did not have sufficient funds with which to keep all of its safety forces employed. The majority, in *Atwood*, either ignored established Ohio law in this regard or was not aware of it when rendering its opinion. It can only be inferred from the decision that the majority was not so much concerned with the fact that the trial court's injunction was permanent, but, instead, with the court's very power to issue such an injunction.

IV. A FINAL CRITICISM

The *Atwood* case is worthy of note not so much for what it says, but for what it omits. One of these omissions is the fact that the lay-offs in question involved a rather substantial percentage of the city's safety forces - roughly 20% of both the police and fire departments. This is never discussed in the opinion. Such a fact clearly differentiates *Atwood* from all the other Ohio cases concerned with public employee lay-offs. In no other case is the number of employees to be laid off nearly as extensive as in *Atwood*.[86] No city should be permitted to lose a fifth of its safety personnel to forced lay-offs; such a fact seems grounds for a finding that appellant did in fact commit a plain disregard of duty. Without a doubt, it substantiates the trial court's finding that the lay-offs "would have dangerously injured the health, safety and welfare of the City of East Liverpool."[87] This finding served as the basis for the issuance of the injunction by the trial court. On appeal, though, the issue of whether this constituted an adequate basis at law for the rendering of an injunction was completely side-stepped.

In Ohio, there are adequate legal grounds for injunctive relief if it

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[83] 29 O. JUR. 2d *Injunctions*, § 201 (1958).

[84] *Id.* at 430.

[85] 63 Ohio App. 2d at 110, 409 N.E.2d at 1033.

[86] In *Gannon*, the number of personnel to be laid off was roughly ten percent of all employees, Akron Beacon Journal, November 22, 1974, at A-10, col. 1.

[87] 63 Ohio App. 2d at 96, 409 N.E.2d at 1025.

would serve to thwart "irreparable injury or mischief."[88] An action that would have "dangerously injured the health, safety and welfare of the residents of the city of East Liverpool"[89] could be said to fall in the category of "irreparable injury." The majority in *Atwood* avoided this interpretation, despite the fact that the various alternative courses of action it suggested to appellees as adequate remedies are time-consuming, and would tend to heighten the possibility of "dangerous injury" to the public welfare. The majority's omission in this area is based on its interest in avoiding conflict between two coordinate branches of government.

It becomes clear from a careful reading of *Atwood* that there can be a lack of coherent action on the part of the executive and legislative branches of municipal government in regard to efficient utilization of funds. Every city's inhabitants have a viable right to adequate police and fire protection. If that right is violated by the absence of intragovernmental coordination in allocating available funds, then the public welfare has been damaged in a very real sense, perhaps irreparably. The danger that the *Atwood* majority fails to acknowledge is that if the courts do not step in to correctly allocate such funds, it may be too late by the time the legislative and executive processes of municipal government are employed.

WARREN ROSS

[88] 29 O. JUR. 2d *Injunctions*, § 33 (1958).

[89] 63 Ohio App. 2d at 96, 409 N.E.2d at 1025.