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Observers say Scranton asset seizure/sale by unions probably unlikely

By **JIM LOCKWOOD**

Staff Writer

Scranton's police and fire unions may have received judgments to seize city assets to collect a \$21 million arbitration award, but some experts think such confiscations are unlikely to occur.

That's because if the unions were to seize tax proceeds or bank accounts, the city then may not be able to make payrolls of those very same employees.

"You could cut your nose off to spite your face doing that," said Raymond Wendolowski Sr., an employment and commercial litigation attorney in Wilkes-Barre and solicitor for the Wilkes-Barre Area School District.

The unions on Monday received judgments in Lackawanna County Court against the city for the overdue \$21 million that the city owes the unions from a landmark 2011 state Supreme Court arbitration ruling.

The money was due in July, but the city is still seeking borrowing or selling an asset to honor the bill. However, the judgments mean the unions now can seize city assets and

sell them to collect what is owed. Unions' attorney Thomas Jennings said he did not want to seize assets, but would not rule out the possibility.

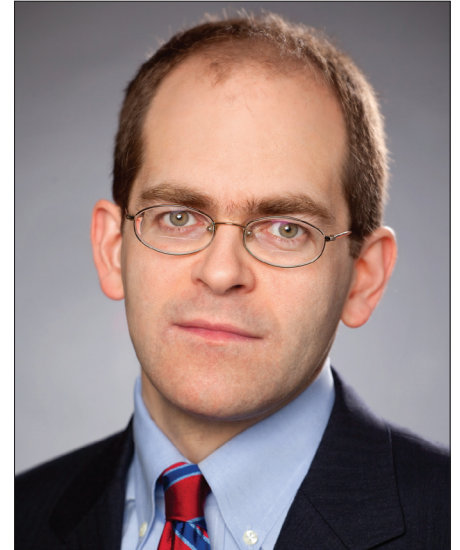
However, such moves also may be unlikely because seizing and liquidating assets would not necessarily be quick or easy propositions, said Philadelphia lawyer Jonathan Hugg, who specializes in municipal law. For example, city assets actually may not be solely owned by the city, parks may have deed restrictions or be held in trusts, and buildings and vehicles may be owned by subsidiary entities or nonprofits, he said.

"It's not as straightforward as it sounds," Mr. Hugg said. "You can't levy what the city doesn't own."

A debtor also may pursue legal avenues to try to tie up, stall or thwart a creditor's takeover of assets, Mr. Hugg said.

At the very least, the judgments are procedural legal steps to preserve union rights to collect the awards due to them, experts said.

"They (the unions) are in a unique spot. They did what they're supposed to do," in seeking the judgment,



Clark Hill attorney **Jonathan W. Hugg**

Mr. Hugg said. "It's nice they have a judgment, but I'm not sure what it does for them. In many ways, it's symbolic. They're not going to sell City Hall. They're not going to sell any fire trucks."

However, if the judgments have no immediate effect, they could be a factor if the city were to file for bankruptcy protection, Mr. Hugg said. In that scenario, the judgments would put the unions in line to collect the award behind secured creditors but ahead of other creditors.

"In this situation, having a judgment is possibly just the beginning of the drama," Mr. Hugg said.

Judgments against municipalities are not uncommon, but typically are smaller and arise from lawsuits or disputed or unpaid bills. In one recent notable case, developers received a \$20 million federal

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judgment against Westfall Township in Pike County. That judgment far exceeded tiny Westfall's budget and forced that township to become the first municipality in the state to seek federal bankruptcy protection. That judgment was eventually reduced in a settlement to \$6 million.

fire union and \$10.5 million for the police union, and agreed to them.

Once the city obtains the \$21 million, either through private placement bonds or an asset sale, the judgments would allow the unions to move quickly to collect the award, thereby pre-empting any potential

was consensual and in good faith. It is not adversarial."

Mr. Wendolowski added, "I think the unions and city are going to have to partner through this because the outcome could be disastrous for both of them and for the taxpayers."

The judgment does not affect the city's budget or Act 47 recovery plan, which takes into account that the city must pay the court award, Mr. Cross said. The judgment also does not affect the city's ability to obtain the borrowing, as the bond firm has been well aware of the situation, he said.

The unions also probably could not seize the Scranton Sewer Authority, because it is an independent entity not owned by the city, Mr. Cross said. The city has been considering a sale of the sewer authority to raise cash, but the authority would have to agree to divest itself and allow for a sale, officials have said.

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The Scranton situation is different from typical judgments - and possibly unique - in that it involves city employees receiving a judgment for a large sum of money from their employer - the city, said Rick Schuettler, executive director of the Pennsylvania Municipal League.

"I've not heard of a judgment of this nature or this magnitude," Mr. Schuettler said. "You're sort of in unprecedented territory here."

The city did not contest the judgments of \$10.4 million for the

mayor/council moves to divert the proceeds to plug the city's large budget deficit, said Gerald Cross, executive director of the city's Act 47 coordinator, Pennsylvania Economy League.

"The fact that it's consensual is important here," Mr. Cross said. "I believe the consensual judgment protects city employees so that proceeds from borrowing are used as promised for the intended purpose (to pay the arbitration award) and not to draw down the city's deficit. It

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