

# SPECIAL REPORT

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## City of Scranton Non-Uniformed Pension Plan Lackawanna County, Pennsylvania

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Commonwealth of Pennsylvania  
Department of the Auditor General

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## EXECUTIVE SUMMARY

This special report by the Department of the Auditor General (Department) focuses on the City of Scranton's pension plan for its non-uniformed employees (the Plan) for the purpose of reviewing activities surrounding a retirement incentive (double-pension payments) offered in 2002 and 2007.

Twenty-five employees retired during 2002, 19 of them on December 31, 2002. Fifteen of these retirees would begin receiving double-pension payments in August 2003, and ten more in October 2003. They were all paid retroactively to January 1, 2003. Then in 2007, ten more retirees began receiving the double-pension payments, bringing the total number of double-pension benefit recipients to 35.

The Department's review of the transactions surrounding the doubling of pension payments has revealed a disregard for the applicable laws governing pension plans by the officials charged with fiduciary responsibility for the Plan—the Mayor, City Council, and the Pension Board.

- ❖ We found no authorization or city ordinance to support any double-pension payments to City of Scranton employees who retired in either 2002 or 2007.
- ❖ Among the 25 double-pension benefit retirees from 2002 were the immediate past mayor of the City, a former member of City Council, the wife of the Pension Board president, and the secretary of the Pension Board.
- ❖ After the last retirements in 2002, four ordinances were adopted in February, July, and September of 2003, none of which included the authorization for the double-pension benefits, but all of which belatedly addressed the 2002 retirements.
- ❖ Neither the Pension Board nor City Council appropriately documented any consideration of the financial impact of the retroactively applied double-pension benefits.

- ❖ A 2006 court case resulted in the Pension Board offering additional employees the opportunity to retire under the double-pension incentive granted in 2002.
- ❖ The general public wanted to know exactly what the incentive was and how much it was going to cost, and no City leaders discussed specific information with the public when they had ample opportunities to do so. There was limited discussion before each of the votes to adopt the four ordinances. Even then, City leaders were not sufficiently forthcoming. They never disclosed the retirees would be receiving double pensions.

## BACKGROUND

As has been reported in our most recent audit, the Plan was only 23 percent funded as of January 2013 and is classified as severely distressed.<sup>1</sup> The 2002 retirement incentive was initiated as a result of the Mayor and City Council's attempts to address the budget and the City's distress recovery plan.<sup>2</sup> This incentive and how it was implemented is of concern not only because of the dire financial condition of the Plan, but also because of the failure of responsible Plan officials to provide appropriate fiscal oversight of this incentive.

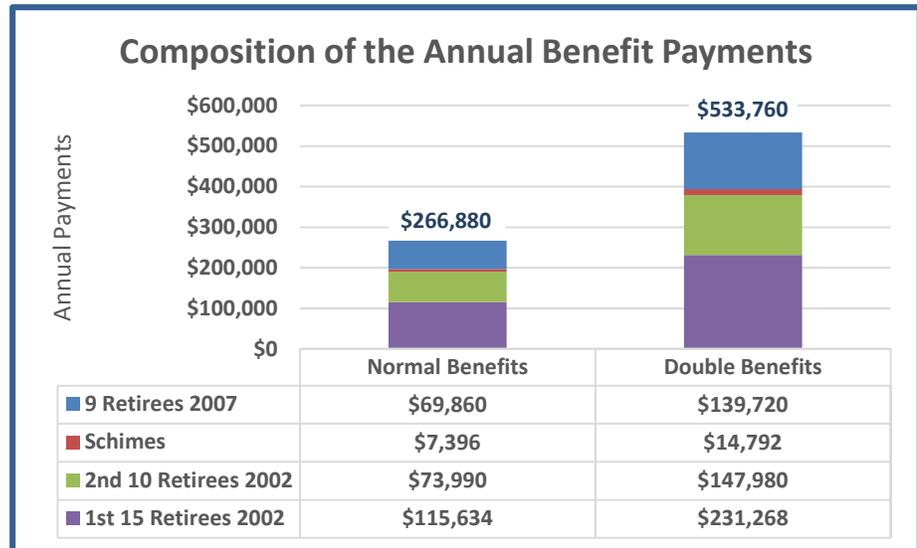
The 2002 retirement incentive provides double-pension payments to 35 retirees and has affected the health of the Plan, as illustrated in the chart below. The total additional annual cost of the double benefits for these 35 retirees is \$266,880, which represents almost 25% of the \$1,076,140 annual benefit payments paid to all beneficiaries of the Plan as of January 1, 2013, according to the Department's audit report on Scranton's Aggregate Pension Fund, dated August 2014.<sup>3</sup>

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<sup>1</sup> The distress provisions are contained in Chapter 6 of Act 205. 53 P.S. §§ 895.601 *et seq.* Classification is based on the City's aggregate funding status of its Police, Fire, and Non-Uniformed pension plans.

<sup>2</sup> City Council meeting minutes of November 25, 2002 and December 9, 2002 address the recovery plan, elimination of jobs, retirements, and possible incentives.

<sup>3</sup> Calculations are based on the 2013 Plan Consultant's pension roster, used by the Department in its recent audit of the City of Scranton's Aggregate Pension Fund.



The Department reviewed plan documents, correspondence, ordinances, legal documents, and meeting minutes of the Pension Board and City Council, in order to determine whether benefit provisions were properly authorized by officials of the City of Scranton (City) and whether retirees who received the incentive were eligible to receive those benefits. We also reviewed cassette tape-recordings of City Council meetings for which minutes were unavailable. The cassette tape labeled May 12, 2003 was mislabeled, so we were unable to review a recording or hard-copy of minutes for that meeting date.<sup>4</sup>

The following state and local laws and agreements govern procedures for the funding, reporting, authorization and payment of benefits for the Plan and its members:

- Act 205, the Municipal Pension Plan Funding Standard and Recovery Act, requires cost studies prior to implementation of plan benefit modifications.
- Act 400, the Second Class A Cities Pension Act, prohibits an employee from receiving a pension payment that would “exceed the amount authorized by ordinance of the second class city.”

<sup>4</sup> The Department was notified of the existence of the cassette tapes on May 28, 2015. They were reviewed for the 2003 City Council meetings of May 5, June 2 and 26, and July 7, 10, and 28.

- Chapter 99 of the Code of the City of Scranton addresses the pension fund of the non-uniformed employees. It also prescribes the composition of the Pension Board to include the Mayor, City Controller, President of City Council, and two employees chosen by the employees who contribute to the fund.
- Provisions of collective bargaining agreements between the City of Scranton and its non-uniformed employees also affect the Plan through formal adoption of ordinances related to these provisions.

Benefit modification amendments should follow the sequence of procedures in the timeline below:

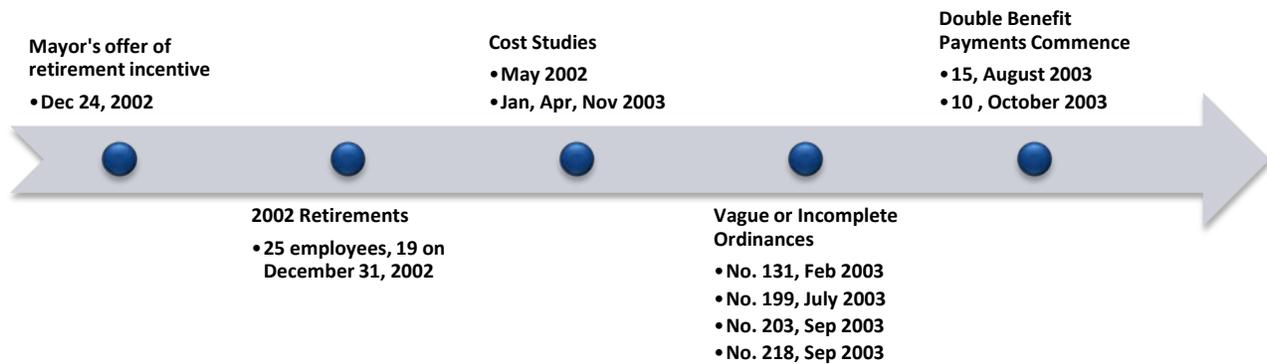


When any modification to pension benefits is considered, §305 of Act 205 requires a cost study must first be initiated by plan officials to determine the effect of the proposed benefit on the Plan. Plan officials must then review the cost study to determine its impact on the Plan prior to making any benefit changes.

After the cost study has been completed and reviewed by Plan officials, a determination can be made about whether or not the Plan modification should be implemented. City Council must then authorize the previously studied plan modification through the adoption of an ordinance, which is then submitted to the Mayor for approval. The resulting ordinance must specify the modification, including eligibility requirements for potential beneficiaries and the benefits to be paid.

Once these procedures have been completed, the Pension Board must then review and approve each individual retiree seeking the benefit to confirm his or her eligibility. Only after all of these steps have been accomplished should the new benefits be paid to the retirees.

The sequence of events in the City of Scranton related to the 2002 retirements did not follow the procedures required to ensure compliance with the presiding laws governing the Plan. The timeline below offers a brief summary of the events that transpired, which are discussed in more detail in the next section.



## THE 2002 RETIREMENTS

In 2002, 25 employees retired, 19 of them on December 31, 2002, the last day of eligibility for the retirement incentive. Fifteen of these retirees would begin receiving double-pension benefit payments in August 2003, and ten more in October 2003. They were all paid retroactively to January 1, 2003.

The details and chronology of events described in this section demonstrate the following:

1. A May 2002 cost study did not evaluate the scenario that was actually implemented by the City for the 2002 retirements, nor does it appear to have been reviewed or discussed by the Pension Board or City Council.
2. A retirement incentive offer was apparently made in December 2002 prior to a review of an appropriate cost study and prior to the adoption of an ordinance authorizing such an incentive.
3. Other cost studies were conducted after the apparent offer and after the retirements, and none of these appear to have been reviewed or discussed by the Pension Board or City Council.

4. Four ordinances related to the 2002 retirements were passed in 2003, however, none of these ordinances authorized doubling of benefits.
5. The only documents referencing the retirees who were eligible to receive the double-pension benefits were two letters from the Pension Board secretary (a recipient of the double-pension benefit herself) to the Plan Consultant. There is no record of the Pension Board authorizing her to initiate the increases.

### Pre-Incentive Benefit Provisions



The Plan as it existed in 2002 designated an employee as eligible to receive a normal retirement benefit at age 55 with 15 years of service and a total of 20 years of contributions. An employee could purchase up to an additional ten years of service credit to reach the 31-year maximum, provided he or she had 21 years of service with the City.<sup>5</sup> The cost of purchasing additional years of service credit was \$24 for each month required to reach the 31-year service maximum.

### Initial Discussion of Double Pensions



According to our review of available documentation, a doubling of pension benefits for future retirees was discussed per the Pension Board minutes as early as March 27, 2002. The proposed increases would have doubled benefits as follows:

<b>Eligibility: Age 55 +</b>	<b>Normal Benefit:</b>	<b>Doubled Benefit:</b>
<b>20 Years</b>	\$600/month	\$1200/month
<b>21 – 30 Years</b>	\$650/month	\$1300/month
<b>31 Years or more</b>	\$700/month	\$1400/month

In this March 27, 2002 meeting, three items were noted related to the double-pension benefits:

1. The Board approved the pension application of the immediate past mayor. He would become one of the 25 2002 double-pension benefit recipients. His doubling was approved as part of the second group of ten retirees approved by City Council Ordinance 203, adopted in September 2003.

<sup>5</sup> Maximum amounts are based on a straight life annuity of 75% of the average monthly pay based on the final five years of employment, but not to exceed the Plan limits. Employees could also purchase military service time and time employed by CETA and OECD (federal programs), and the Scranton Redevelopment Authority.

2. The president of the Pension Board requested an actuarial cost study to determine the effect of proposed benefit increases for employees hired prior to July 1, 1987.<sup>6</sup>
3. The president said, “It is over 9 years since we had an increase in the pension benefits...the Fire, Police, as well as the Dept. of Public Works have had several increases since 1993. I am purposing (sic) an increase of \$1200, \$1300, \$1400...The same rules will apply.” The president stated later on, “We are increasing it to double the original amount...”

### May 2002 Cost Study



The requested cost study dated May 6, 2002 by Beyer-Barber Company addressed two benefit modification scenarios, both of them doubling payments as specified in the chart above. **However, neither defined the retirement incentive scenario that was eventually implemented by the City for the 2002 retirees. Furthermore, there is no evidence this cost study was ever presented to or reviewed and analyzed by the Pension Board.**

Another mention of an “increase” in benefits is noted in the December 11, 2002 Pension Board meeting minutes, however no mention is made about actually doubling the pension benefits. These Pension Board minutes also referred to an actuarial cost study as being completed, but the minutes failed to indicate which report was being referred to. Again, there is no evidence the Pension Board actually reviewed a cost study to determine the impact on the Plan of a benefit increase.

Two days earlier on December 9, 2002 at a City Council meeting, the City Council vice-president also discussed the incentive when he said, “I just want to say that I spoke to the Mayor this afternoon regarding some further incentives which employees may want to consider for retirement.” Although there was no further discussion at this meeting about the specific terms of the incentive, this statement indicates that City Council should have been aware of the terms of a potential incentive.<sup>7</sup>

<sup>6</sup> Members hired prior to July 1, 1987 were part of a different benefit structure from those hired after that date in the Non-Uniformed Pension Plan.

<sup>7</sup> City of Scranton. City Council meeting minutes of December 9, 2002.

**Mayor's Offer**  
**December 24, 2002**



While an actual copy of a retirement incentive offer was never made available for review, court records indicate on December 24, 2002, the Mayor offered a retirement incentive to certain employees who retired by December 31, 2002.<sup>8</sup> An excerpt of the Mayor's offer is cited in a Memorandum Opinion issued in 2006 by the Commonwealth Court of Pennsylvania. It refers to an offer to employees who had provided at least 25 years of service, but were less than the normally required 55 years of age:

A one-time offer to any employee who currently has 25 yrs. or more of service to the City, but is less than 55 years of age will be offered the opportunity to retiree (sic) by December 31, 2002 with healthcare benefits.<sup>9</sup>

Without being provided the opportunity to review the document itself, however, we do not know whether or not such a document exists and whether it addressed the doubling of pension payments. We also do not know if this offer was made to any employees other than those eligible as described above.

**This incentive offer appears to have been made before the Pension Board and City Council had received or reviewed an independent cost study related to the specific incentive offered, therefore, preventing each of these governing bodies from evaluating the potential short-term or long-term impact of the incentive on the Plan, prior to implementation.**

An inter-office memo dated December 30, 2002, which attempted to "clarify and revise the original proposal" identified two groups of retirees as being eligible for the incentive for unspecified increases: those eligible under the normal retirement provisions and those eligible under the 25-year retirement window that waived the age requirement. This memo also mentioned an unspecified "increase" for the first group and a "one-time offer" for the second group.<sup>10</sup>

<sup>8</sup> In Re: Appeal of Joseph L. Schimes from the Decision of City of Scranton Non-Uniform Pension Board, No. 2031-CV-2004, Lackawanna Court of Common Pleas.

<sup>9</sup> City of Scranton Non-Uniform Pension Board v. Schimes, 912 A.2d 929 (Pa. Cmwlth. 2006); 2006 WL 3864719.

<sup>10</sup> Lisa A. Moran to Nancy Krake. December 30, 2002. "Clarification."

## The Retirements



On December 31, 2002, 19 employees retired, bringing the total number of 2002 retirees to 25. The employees who retired on December 31, 2002 included the wife of the president of the Pension Board, who received a disability retirement, which was approved at a December 4, 2002 meeting. A review of those minutes indicated the president abstained from the vote to award her the disability retirement.

A review of the Pension Board minutes for 2002 and 2003 revealed the following about the pension applications for the 25 retirees:

- Sixteen of the 2002 retirees' pension applications were reviewed and approved prior to December 31, 2002.
- Nine of the 2002 retirees' pension applications were reviewed and approved in 2003 after they retired, as follows:
  - Two in January 2003
  - Three in February 2003
  - Three in March 2003
  - One in July 2003<sup>11</sup>

During the meetings when these applications were reviewed and approved, however, there were no approvals of double-pension benefits for any of these employees. This fact was also noted by the current Pension Board solicitor at a January 28, 2015 meeting when he stated he reviewed the board minutes and "there was no reference of the board for votes on double pension."

On January 3, 2003, the Mayor and the Union entered into an agreement (MOU/CBA) authorizing the contribution of \$90,000 towards pension benefits for members who were hired prior to 1987 and retired during 2002. In addition, the MOU included a one-time offer to any employee who had 25 years or more of service to the city, but was less than 55 years of age and retired by December 31, 2002.

**This would appear to indicate an incentive may have been intended for two groups of employees who retired by December 31, 2002: those who met the Plan's normal retirement provisions and those who met the provisions of the new retirement window eliminating the age requirement for those who served at**

<sup>11</sup> Employee's application originally appeared on the Board's April 2003 agenda, but did not get reviewed according to the April 2003 minutes.

**least 25 years. The provisions related to the two groups of employees were later codified through the adoption of Ordinance 199 of July 2003.<sup>12</sup>**

**Cost Study  
January 2003**



An actuarial cost study prepared by Beyer-Barber Company, dated January 23, 2003, referred to a “pending plan ordinance amendment effective 01/01/03” with a pension increase of double the normal benefit amount for members hired prior to July 1, 1987—it did not limit the scenario to members who retired during 2002. It also included a second scenario of members eligible under the retirement window eliminating the age requirement for those who had a minimum 25 years of service and who retired by December 31, 2002. The doubling of pension benefits, however, was not specified in the cost study for this particular group of retirees, but a Beyer-Barber Company memorandum, dated February 26, 2003, noted the doubling of benefits was factored into the actuarial calculations for this group of retirees, as well.

We found no evidence of the plan ordinance amendment—referred to in the cost study—specifying the double-pension payment increase. In addition, we found no evidence or record of any discussion of this cost study by either the Pension Board or City Council.

**Ordinance 131  
February 2003**



On February 24, 2003, Ordinance 131 was adopted by City Council, authorizing the provision of the MOU/CBA eliminating the minimum-age requirement for members who had worked for the City for 25 years or more and who retired by December 31, 2002.

**It did not refer to the members who were eligible to retire under the normal provisions of the Plan. Furthermore, the ordinance did not authorize any doubling of pension benefits or any other increased pension benefit amounts to be paid.**

During the passage of Ordinance 131, City Council failed to discuss the details of the retirement incentive with the public when a member of the general public actually raised questions about it on three separate occasions—at its 2003 meetings of February 10, February 24, and March 10.<sup>13</sup>

<sup>12</sup> As mentioned earlier, doubling of pension benefits was discussed in the March 27, 2002 Pension Board meeting. It was also discussed at a January 22, 2003 meeting when reference was made to a newspaper article citing first-tier benefits of \$1200/month. It should also be noted that post-retirement healthcare benefits are funded through the City and are not an expense of the pension plan.

<sup>13</sup> City of Scranton. Minute Book: Jan 6, 2003 to Sept. 29, 2003.

On February 10, 2003, a member of the public asked about hiring of new people and retirements: “Would it be possible for me to find out just how many people that we have hired...and how many people we have laid off or retired...in the past year?” A member of City Council then directed the city clerk to provide the information, and the clerk responded he would do so, after first stating that it is difficult because there is a “bumping process going on now.”<sup>14</sup>

### Citizen's Question About Incentive



The same member of the public then asked again on February 24, just before the vote to adopt Ordinance 131:

Citizen: I just have a question. What exactly is the Early Retirement Benefit? What is it? Is it a dollar amount? Is it a ...what is it? Or is it just the fact that they can retire with their full benefits?

Council Member 1: These are the people who retired with their full benefits.

Citizen: They retired with their full benefits but...was there another dollar amount attached to that?

Council Member 2: These are the folks that are in Non-Uniform Pension...that it was a special, special provision which allowed them...with 25 years of experience, with the City...but being less than 55 to retire with full benefits which is the maximum payment in that...non-uniform pension. I'm not sure what the dollar amount is.

Citizen: But you're not answering my question.

Council Member 2: Oh...I'm sorry.

Citizen: Is there a dollar figure attached to this that says...these people are going to get their full benefits and ...and \$10,000?

Solicitor: No [Citizen].

Council Member 2: No. No one time payment.

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<sup>14</sup> Ibid. P. 16-17.

At this point in time, City Council should have been aware of the incentive arrangements, yet it failed to disclose, when it had the opportunity to do so on the record, the retirees would be receiving double-pension payments. It then voted unanimously to adopt Ordinance 131, which was then signed by the Mayor. Again, the ordinance did not specify any doubling of pension benefit payments.<sup>15</sup>

This same member of the public asked again for information about the retirements at City Council's March 10, 2003 meeting, but no specific details of the retirements or the incentive were discussed.<sup>16</sup>

The City Council minutes provide it had approved the minutes of the Pension Board in 2002 and 2003, including those minutes of March 27, 2002 where doubling of benefits was discussed, as well as the minutes of June and August 2002, where invoices from the actuary were approved for payment. Furthermore, the January 22, 2003 Pension Board minutes note that a citizen mentioned a newspaper story referring to first-tier benefits increasing to \$1200/month, which constituted a doubling of the normal benefit for that tier. **It appears City Council, therefore, would have been aware of the intent to double the pension benefits, particularly since both the Mayor and the President of City Council were members of the Pension Board.**<sup>17</sup>

#### Actuary Memorandum



Further evidence that City leaders were aware of the intent to double benefits exists in an internal memorandum of Beyer-Barber Company, the Plan's actuary at the time, dated February 26, 2003. It refers to City employees who retired by December 31, 2002 and expected to receive \$1,200-\$1,400 monthly pensions retroactively "upon amendment of the plan."

It also addresses eight members who qualified under a window program whose benefit improvement equated to a doubling of the normal benefit, the cost of which was estimated to be approximately \$90,000 per year. It goes on to express concern about the Mayor only offering to pay an additional \$90,000 total to improve the benefits. **This memo not only refers to the doubling, but also reflects the**

<sup>15</sup> Ibid. P. 48.

<sup>16</sup> Ibid. P. 65.

<sup>17</sup> Chapter 99 of the Code of the City of Scranton, §99-13 Composition of Board.

**actuary’s concern about the City’s understanding of the cost to fund the doubling.<sup>18</sup>**

**Cost Study  
April 2003**



A cost study dated April 11, 2003 included “City Administration employees” in addition to other plan members. This study, which also doubled benefits for city administration employees, did not address the specific groups of employees who retired in 2002. A memorandum from the actuary dated April 22, 2003 also stated several people had already retired and were awaiting retroactive adjustments at “double the retirement benefit rate.”<sup>19</sup> The April 23, 2003 Pension Board minutes document discussions with the public about the pension increase and also refer to those retirees who qualified under the 25-year retirement window, however, the cost was not discussed.

At a May 28, 2003 meeting, the Pension Board discussed the retirement incentive further. It appears from our review of these minutes that the Board was acknowledging the increase in benefits was not yet codified. It was noted by the Board’s president, however, that the Mayor and the Union had negotiated the increase, which equated to the doubling of pension benefits.

It is important to note that hard copies of City Council minutes for seven of their meetings in May, June, and July 2003 were not available for review. The City, however, provided cassette tapes from those meetings, and we listened to the tapes for those meetings, with the exception of the May 12, 2003 meeting. One of the tapes mislabeled as May 12, 2003 was actually a tape of the February 24, 2003 meeting, and therefore no record of the May 12 meeting exists. We did review the agenda for the May 12 meeting and noted there were no items on it related to the Non-Uniformed Pension. We do not know, however, if a member of the general public asked any questions about it or if any discussion ensued at that meeting.<sup>20</sup>

<sup>18</sup> Bill Hildebrandt to John Steinman and Randee Sekol. February 26, 2003. “Benefit Improvements to the Pension Plan.”

<sup>19</sup> Bill Hildebrandt to Randee Sekol. April 22, 2003. “Actuarial Valuation Study Delivery.”

<sup>20</sup> The City notified the Auditor General of the existence of the tapes on May 28, 2015.

**Ordinance 199****July 2003**

On July 28, 2003, Ordinance 199 was adopted by City Council. Prior to the unanimous vote, a citizen asked how much the city was contributing to the pension for the incentive. Someone responded he thought it was \$95,000, but wasn't sure. Then someone said it was \$90,000 and \$30,000, respectively. There was no discussion about whether this would be a one-time contribution or an annual one.<sup>21</sup>

This ordinance retroactively addressed two groups of 2002 retirees:

- Those eligible under the normal plan provisions.
- Those eligible under the retirement window waiving the age requirement if they had 25 years of service.

The ordinance, pursuant to the MOU/CBA, authorized a \$90,000 contribution to be made toward the pensions of the employees who retired in 2002 and had been hired prior to 1987, and another \$30,000 for the employees who qualified for the one-time retirement window as set forth in Ordinance 131. **Once again, Ordinance 199, like Ordinance 131, did not authorize the doubling of pension benefits for any of the 2002 retirees.**

Two days later, on July 31, 2003, the Pension Board secretary sent a letter informing the Plan Consultant, Thomas J. Anderson and Associates, of the increase in pension payments to 15 of the 2002 retirees—including the Pension Board secretary herself. There was no record of the Pension Board authorizing her to initiate this increase.

A letter from the Plan Consultant to Provident Mutual, the Plan custodian, increased the monthly benefits of the same 15 retirees and provided for a retroactive lump sum payment. The August 27, 2003 Pension Board meeting minutes stated the \$90,000 payment from the City would be used to provide the retroactive payments to the retirees.

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<sup>21</sup> Cassette tape dated July 28, 2003. Respondents may have been city council members or the solicitor.

**Ordinance 203**  
**September 2003**



Ordinance 203 was adopted on September 15, 2003. This is the first ordinance to refer to any pension increase, albeit unspecified, and indicated the increase applied to all employees hired prior to 1987 who retired between January 1, 2002 and December 31, 2002. In addition, the ordinance also clarified that members of the Department of Public Works (DPW) bargaining unit and non-union employees of the City who contributed to the clerical pension were also eligible for the “increased” retirement benefit (emphasis added). This new group of ten additional retirees included the immediate past mayor of the City and a former member of City Council.<sup>22</sup>

**Ordinance 218**  
**September 2003**



Two weeks later on September 29, 2003, City Council passed a fourth ordinance related to the retirement incentive, Ordinance 218, which simply amended Ordinance 203 to provide a technical correction to the name of the Plan itself. Like Ordinance 203, it did not define the pension increase.

At this meeting, a City Council member, after stating “some folks have asked me questions,” asked the City Council solicitor for clarification about the legislation (referring to Ordinance 203), “that specifically dealt with four, five, or six people that retired early as it related to the impending implementation of the Recovery Plan?” The solicitor replied, “Correct.”<sup>23</sup> In fact, after the passage of Ordinances 203 and 218 in September, the number of additional retirees who would begin receiving double-pension payments was 10, four of them qualifying for the early retirement incentive (because they had 25 years of service) and six of them retiring under the normal retirement provisions.

**While Ordinance 218 provided a technical correction of Ordinance 203 and offered yet another opportunity for City Council to clarify exactly what the retirement incentive was and who was eligible for it, Council again failed to provide any information about the details of the incentive. In the end, not one of the four ordinances authorized the double-pension payments to retirees, and City Council minutes for 2002 and 2003 provided no evidence of discussion or review of cost studies prior to the adoption of Ordinances 131, 199, 203, and 218.**

<sup>22</sup> City of Scranton. City Council Minutes. September 15, 2003.

<sup>23</sup> City of Scranton. City Council Minutes. September 29, 2003.

**Cost Study****November 2003**

In October 2003, the Pension Board secretary requested a cost study of the increase in the monthly pensions of the additional ten members—a sequence of events that again failed to comply with §305 of Act 205. In this case, a letter from the board secretary directing the Plan Consultant to retroactively increase the pension amounts of the ten members listed was sent approximately one month before the completion and review of a cost study. Again, there was no record of the Pension Board authorizing her to initiate this increase. The cost study was not completed until November 2003, after the benefits had been ordered and payments had begun.<sup>24</sup>

**Actuary Notes**

Notes received from the actuary, which are undated but refer to the November 20, 2003 cost study and all of the prior cost studies related to the City from 2001-2003, contain the following statement:

It seems as though people retired assuming that their pensions would be doubled even though the improvements were not adopted. As a result, it seems that the Administration/Board attempted to arrive at some middle ground, the provisions of which may have never actually been studied precisely.<sup>25</sup>

These notes also reiterated concerns expressed by the actuary about the Mayor misunderstanding the cost to fund the doubling. The notes provide more evidence that City leaders were intending to double the benefits, yet no ordinance authorized the doubling of benefits.

The chart below summarizes the three categories of 2002 retirees, which were covered by Ordinances 131, 199, 203, and 218.<sup>26</sup> These 25 retirees began receiving double-pension payments in 2003 totaling \$31,604 per month, instead of \$15,802 per month as specified in the Plan.<sup>27</sup> The cost of the double-pension payments, beyond the normal pension benefit, adds an additional \$189,624 each year.<sup>28</sup>

<sup>24</sup> Board letter to Thomas J. Anderson and Associates was dated 10/16/2003. The actuarial study was completed on 11/20/2003.

<sup>25</sup> The notes accompanied the two internal memoranda that were received from the actuary by the Department and which have already been cited in this report.

<sup>26</sup> Seven of the 16 employees eligible for normal retirement also had at least 25 years of service.

<sup>27</sup> Data obtained from the pension rosters prepared by the Plan Consultant.

<sup>28</sup> Not adjusted for any possible changes in individual pension status.

2002 Retirees	Category
16	Eligible for normal retirement
8	Eligible for 25-year retirement window
1	Disability Retirement

In summary, based on the documentary evidence supplied to us regarding the 2002 retirements:

- The City did not review and approve appropriate cost studies prior to adopting ordinances modifying its non-uniformed pension plan.
- While evidence exists that city leaders intended to offer a retirement incentive for 2002 retirees, City Council did not discuss the doubling of benefits at its meetings in 2002 and 2003—even when it had opportunities to do so—and did not authorize it in any of the four ordinances it passed in 2003.
- This lack of a specific authorization of the doubling was further referenced in the February 25, 2015 Pension Board meeting minutes by its current solicitor, who said, in answer to a citizen’s question about Ordinance 131, “The only written reference to double pensions that I have seen is in the opinion of Judge Cottone out of the Schimes case.”
- Concerns about the City’s understanding of the cost of doubling the benefits were noted by the Plan’s Actuary and expressed to City leaders by at least one member of the general public.

## THE 2007 RETIREMENTS

### 2006 Court Case



The foregoing double-pension payment scenario with its significant associated costs was not the only impact of the 2002 retirement incentive. In 2006, the Commonwealth Court issued a decision (in an unpublished opinion) affirming a Lackawanna Court of Common Pleas decision determining Joseph Schimes, a former City employee who terminated employment on December 31, 2002, had been improperly denied the opportunity to retire by purchasing additional years of future service in order to qualify for retirement on December 31, 2002.<sup>29</sup> The decision was based in part on a provision in a prior collective bargaining agreement, which allowed members to purchase 10 years of future service time if they had achieved a minimum 21 years of service.

It is important to note that the Court in 2006 did not specifically speak to the City's authorization of the doubling of benefits, but rather to the plaintiff's eligibility for the retirement incentive that was offered to the other 2002 retirees. The Pension Board decided not to challenge the Commonwealth Court's decision, and Mr. Schimes was awarded the double-pension benefit. He was also paid \$67,000 retroactively to 2003.

### 2007 Offer to More Employees



According to the minutes of a January 24, 2007 Pension Board meeting, the Board, with the guidance of its solicitor, determined other City employees were also qualified to receive the incentive package based on the Schimes decision. At a special meeting held on January 29, 2007, a letter signed by the Board's solicitor was read to the Board recommending the incentive payments to the extended group. The Pension Board then offered the incentive to those employees that it deemed to qualify.

According to the current Pension Board solicitor, part of the rationale for extending the offer in 2007 was to avoid future litigation. An excerpt of the offer letter follows:

Circumstances have determined that you qualify to retire under the one-time offer which was available at the end of the 2002 calendar year. While you have

<sup>29</sup> City of Scranton Non-Uniform Pension Board v. Schimes, 912 A.2d 929 (Pa. Cmwlth. 2006); 2006 WL 3864719.

continued to be employed by the City of Scranton since December 31, 2002, if you choose to retire now, your retirement would be treated as if you had retired by December 31, 2002. That retirement date would entitle you to healthcare benefits as provided to other retirees at that time.

Eight employees took advantage of the City's 2007 offer. The current solicitor for the Pension Board presented his analysis of each of the 2007 retiree's eligibility at a February 25, 2015 meeting. This analysis indicated the current solicitor concurred with the 2007 solicitor's response to the court case:

Based on all that I have just described, it is my opinion and it is my recommendation to the Board that what occurred in 2007 was a correct response to the circumstances that the Board and the City faced following the Joseph Schimes litigation.

**One additional employee who retired in 2007 was improperly awarded the double-pension payments, but nonetheless continues to receive it.**

She was ineligible because:

1. She had only provided 18 years of service in 2002, and
2. She was a library employee and not entitled to the double-pension benefit according to the four previously discussed 2003 ordinances addressing eligibility.<sup>30</sup>

These nine employees retired in 2007 and received the same double-pension benefits as the 2002 retirees and Mr. Schimes. The original monthly benefits payments for this additional group of ten retirees, including Mr. Schimes, would have been \$6,438, but was now doubled to \$12,876 monthly. The annual cost to the Plan of this additional group of double-pension payments, beyond the normal pension benefit, is \$77,256.<sup>31</sup>

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<sup>30</sup> An August 30, 2007 letter from Thomas J. Anderson & Associates, the Plan Consultant, to Beyer Barber Company, the actuary, refers to a request from the City for a retirement calculation for this retiree and notes that she was retiring under the "Joseph Schimes Court Award."

<sup>31</sup> Data obtained from the pension rosters prepared by the Plan Consultant. Numbers subject to rounding.

While a cost study may not have been required to analyze the financial impact on the Plan of offering more employees the opportunity to receive the double-pension benefits, there was also no evidence of the Pension Board discussing the impact of this increased obligation on the Plan. A cost study would have provided City leaders with the opportunity to evaluate the projected cost of offering the double-pension incentive to the 2007 retirees.

## CONCLUSION

The City of Scranton failed to properly analyze, document, and implement the retirement benefit incentive offered to its non-uniformed employees who retired in 2002 and subsequently in 2007. The normal benefit payments for these retirees would have been \$266,880 annually, but the doubling increased the annual payments to \$533,760.

More specifically, the Department of the Auditor General found the following:

- ❖ The City did not obtain and review a cost study of the actual plan benefit modification scenario that it provided to the 2002 retirees, when it should have done so prior to the retirement incentive offer, prior to the 2002 retirements, and prior to the ordinances modifying the plan benefits. Therefore, Plan officials failed to comply with Act 205 by not properly and timely evaluating the cost and long-term effects of the retirement incentive on the Plan.
- ❖ The City failed to authorize the doubling of pension benefits for the 2002 retirees. While it appears the City intended to offer a retirement incentive, the doubling of pension benefits was not approved in any of the four ordinances related to the 2002 retirees, as required by Act 400.

- ❖ Based on a 2006 Commonwealth Court decision and on the subsequent advice of its solicitor, the Pension Board offered additional employees an opportunity to retire in 2007 and to receive the double-pension benefits paid to the 2002 retirees. It did so without first considering the impact of this additional cost on the Plan.
- ❖ In 2007, a retired library employee was improperly awarded the double-pension benefit payments, despite being ineligible for the benefit, resulting in an increased pension benefit from \$650 per month to \$1300 per month.
- ❖ The combination of all the unapproved double-pension payments costs the Plan an additional \$266,880 per year above what the normal pension payments would have been.

## RECOMMENDATIONS

1. The Pension Board and the City should complete its comprehensive review of the pension benefits being paid to the 2002 and 2007 affected retirees and determine:
  - a. Who was actually eligible for the retirement incentive.
  - b. Whether it is obligated to continue paying the double-pension benefits to each of the 2002 and 2007 retirees.
  - c. Whether any amounts paid to these retirees should be recouped by the City.
2. In the future, in order for Plan and City officials to make informed decisions about the financial impact of benefit modification proposals, they should first obtain and properly document their review and analysis of cost studies prior to approving such proposals in accordance with Act 205.
3. The Pension Board and the City should ensure all pension benefit provisions are documented clearly and specifically through properly executed plan documents, including ordinances, resolutions, collective bargaining agreements, and board minutes.

4. The Pension Board should ensure all pension benefit determinations are reviewed in a timely manner for accuracy and compliance with the Plan's governing documents.
5. The Pension Board and the City should ensure the Plan's Consultant and Custodian are provided with adequate supporting documentation authorizing all benefit modifications.
6. The Pension Board and the City should ensure only employees who meet required qualifications receive benefits.
7. The City should continue its efforts to develop a long-term strategic plan addressing the non-uniformed pension plan's severely distressed status. Future benefit modifications need to be carefully considered to assess their long-term effects on the City and its taxpayers.