

**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYEE RELATIONS BOARD
FEBRUARY 23, 2011**

IN THE MATTER OF)
THE CITY OF NILES, OHIO)
)
-AND-) **SERB CASE NO.**
) **2009-MED-09-1105**
)
TEAMSTERS LOCAL UNION)
No. 348, PATROLMEN)
)

APPEARANCES

For the Union

Susan D. Jansen, Attorney for the Teamsters
Patrick J. Ziga, President Local 348
Patrick H. Darrow, Secretary-Treasurer Local 348
Dan Myers, Patrolman, Assistant Union Steward
John Marshall, Patrolman

For the City of Niles

Matthew H. Blair, Attorney for the City
Ralph A. Infante, Mayor
Charles P. Nader, Auditor
Terry Dull, Law Director
Maurice S. Guarino, Safety Director

Fact-Finder

Richard F. Novak

ADMINISTRATION

By correspondence from the State Employee Relations Board, Columbus, Ohio, the undersigned was notified of this mutual selection to serve as Fact Finder to hear arguments and issue recommendations relative thereto, pursuant to Ohio Administrative Code Rule 4117-9-05 (J), in an effort to facilitate resolution of those issues that remained at impasse between the Parties. The impasse resulted after attempts of the parties to resolve the terms related to 2010 Contract Reopener on the issue of Base Wage Increase.

On October 20, 2010 the first fact finding hearing occurred for approximately 4.5 hours with the presentation of evidence and supporting arguments of the parties. The Fact Finder requested additional time for the City to present its supporting evidence and the parties agreed to an attempt at mediation to be conducted by the Fact Finder during the next hearing.

On January 18, 2011 the Fact Finding hearing reconvened and all relevant evidence and exhibits of the Parties were thoroughly presented; and the Fact Finder unsuccessfully attempted to mediate a settlement with the Parties. The hearing concluded after approximately 9.5 hours. During the course of the Fact Finding Proceedings, each party was afforded a full and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced. Data obtained from SERB's Research Department by the Fact Finder was also exchanged with the Parties at the hearing.

In all, extensive exhibits and information regarding the financial condition of the City of Niles over the past several years and Wage Survey Data and Comparisons of Niles Patrolmen's wages were received in evidence and evaluated by the Fact Finder.

The evidentiary record of the proceedings was subsequently closed at the conclusion of the January 18, 2011 proceeding. The parties were offered an accepted the opportunity to submit Post Hearing Statements to the Fact Finder by January 31, 2011. The Fact Finder later agreed to the union's request to submit their post hearing statement by early February. The Post Hearing Statements were issued by each Party and reviewed by the Fact Finder.

The Issue

The only issue at impasse is the subject of a 3% Base Wage Increase under the 2010 Reopener sought by the Union and Rejected by the City.

Statutory Criteria

The Fact Finders award is hereby arrived at after considering all of the evidentiary information presented and arguments of the Parties; and made in Accordance with the statutorily mandated guidelines set forth in Ohio Administrative Code Rule 4117-9-05 (K) which recognizes the following criteria for consideration in the Fact Finding Process:

1. Past Collectively Bargained Arguments, if any, between the Parties;
2. Comparison of unresolved issues relative to the employees in the bargaining unit with those issued related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The Interests and welfare of the public, the ability of the public employer to finance and administer the issues

proposed, and the effect of the adjustments on the normal standard of public service;

4. The lawful authority of the public employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

THE BARGAINING UNIT DEFINED, ITS DUTIES AND RESPONSIBILITIES TO THE COMMUNITY AND GENERAL FACT SITUATION

The Unit is “All Duly Sworn Patrolmen and below” and consists of approximately 26 Patrolmen employed by the City of Niles. The total Police Force is approximately 36 which consist of all Patrolmen, Supervising Officers (Lieutenants and Captains) and the Chief of Police.

The Patrolmen provide all security and Law Enforcement services for the City, its citizens, residents, and businesses. The 26 Employees/Patrolmen are a part of the City’s Total Full Time work force of approximately 196 (which includes Elected Officials) of which 164 employees are Union Members represented by a variety of Unions. Teamsters Local 348 was certified as the Exclusive Bargaining Representative on March 5, 2009. Prior to that time, the Police Officers had been represented by the Ohio Patrolmen’s Benevolent Association (OPBA) since at least 2003. The Parties negotiated the current Labor Agreement effective January 1, 2009 through December 31, 2011. In settling the current contract, the Parties agreed upon a 0% increase in Base Wage in 2009, 2010, and 2011. However, Reopeners of the contract for the issue of: “Base

Wage Increase” were provided in the agreement which gave either Party the option to Reopen for years 2010 and/or 2011 on a timely notice basis. The Contract Provision provided that any reopener would involve the dispute settlement procedure as set forth in ORC Section 4117.14

The Union, as stipulated by the parties, gave timely notice to opt to reopen the agreement for a Base Wage Increase for 2010. In a single negotiating session the Union proposed a 3% increase in Base Wage and the city proposed the Status Quo Contract of 0% increase.

The Union argues that the wage increase is reasonable because the Patrolmen’s wages have been uncompetitive (Lower) and lost further ground due to the wage freeze of 2009 relative to a peer group of other Patrolmen wages which the Union believes are comparable Cities in Ohio to Niles. In the Fact Finding hearing the Union presented extensive wage comparisons from the six cities in Ohio (Alliance, Ashland, Barberton, New Philadelphia, Tallmage, and Wooster) which they deemed comparable to the City of Niles based upon “Area Population” and “Median Household Income”. All of the six cities were in counties other than Trumbull County in which the City of Niles is located. The period of comparison ranged from 2001 through 2010.

The City argues that the 3% wage increase sought for 2010 is unaffordable considering the current financial condition of Niles as of the end of 2010; particularly when compared to the negative financial results that have occurred since 2007 (which the city cites as the last year of financial stability). Extensive financial reports, data and comparisons were introduced by the city as exhibits to their position. In addition, the City Auditor, Mr. Nader gave extensive testimony Re: the Exhibits and Data submitted by the City.

For the sake of the record and in the interest of not having a 100 plus page Fact Finders' Report the Fact finder, by reference, includes all of both parties' exhibits presented at the Fact Finding hearing of October 20, 2010 and January 18, 2011 and exhibits to the Post Hearing statements received.

However, The Fact Finder in "The Findings" section of this report will comment on or summarize the salient data of the aforementioned exhibits as factual support of his findings, so that:

1. The Parties are aware of the data that drove the Findings and,
2. If a conciliator needs information upon which to base his/her findings, this award's Findings are supportable by the Parties' facts and Fact Finder's rationale.

RELEVANT ISSUES PRESENTED TO THE FACT FINDER
AND FINDINGS

As stated earlier on Pg. 3 "The Sole Issue of Impasse between the Parties is a 3% Wage Increase sought by the Union for the 2010 Wage Reopener".

However, the Parties by their positions have raised sub issues relevant to the sole issue which the Fact Finder believes are germane to the question of whether a wage increase for 2010 is reasonable.

The Fact Finder sees these germane issues to be:

1. The Burden of Proof Re: "Unaffordability" of an economic demand
2. The impact of the other Bargaining Units' (covering approximately 164 additional employees) "Me Too" Clauses to the Patrolmen's Unit Contract and Wage Reopener.
3. The Analysis of the Factual Data presented by the Parties.

4. The Intention, Scope, and Traditional Application of a “Wage Only” Reopener provision typically applied in collective bargaining.
5. Ability to Finance in the context of “Prudence” to increase debt levels; not just the ability to get a loan.

FACT FINDER DISCUSSION OF THE SUB ISSUES AND FINDINGS

REGARDING THE REASONABLENESS

OF A 2010 WAGE INCREASE

The Burden of Proof and Ability to Pay Issues

In Cases involving a dispute over wage increase, where affordability is raised by the employer, the Burden of Proof Re: Inability to pay is squarely on the employer and is difficult to prove. There is a fine line between inability to pay and an unwillingness to do so. Put simply the former involves not having the financial resources to pay various cost increases while the latter means the party has the resources, but would rather not spend it. There may be very good reasons that an employer does not want to spend its money. For example: that the economic outlook is changing, it wants to keep its Bond Rating, or it is politically difficult to spend it are only a few of a myriad of reasons to protect one’s finances.

The inability to pay; however, goes further. It means that the employer does not have the financial wherewithal to pay cost increases. Typical evidence of other actions taken to prove the reality and existence of the problem are summarized below.

Actions typically taken which show Financial Distress

Actions of Distress

- Deferring needed maintenance

- Deferring needed repairs
- Deferring Capital Expenditures
- Reducing or Eliminating Services
- Taking on Unsupportable Debt
- Laying off Employees
- Reducing Headcount
- Hiring Freeze
- Defaulting on existing obligations
- Take on unallowable or unsupportable debt to close the gap between expenditures and revenue
- Negative cash flow
- New actions to raise revenue (e.g. taxes and levies)

No one or groups of actions are necessarily more significant than the others. The facts of each situation will determine whether there is an inability to pay. Furthermore, in order to sustain the burden, there must be some evidence that demonstrates that the wage increase sought by the Union would require the City to take further “actions of distress” as identified above.

In addition, the statute does not deal with the ability to pay, rather factor 4117-9-05 (K) (3) provides “the ability of the Public Employer to Finance”, that is the issue; and the affect of the adjustments on the Normal Standard of Public Service.

It is also very relevant in evaluating whether the burden has been met, is whether the city’s concerns raised are valid considerations or without objective quantification. In other words are the city’s concerns speculative or are they real. Have they begun to happen or is it all the rhetoric of cautious budgeting in anticipation of problems yet to

come. Put an other way: is the Wolf in the woods, at the door, or in the henhouse? Are the Mayors' and City Council's actions consistent with actions to ameliorate the situation? Does the city's circumstance match Standard and Poor's top rating criteria which depict no financial concerns: 1) A strong proactive administration. 2) Effective debt management with moderate low debt, 3) A vibrant and diverse economy or participation in one; and strong finances.

In the "Analysis of Data" section of this report the Fact Finder will opine on whether the city has met its burden of proof Re: Inability to Pay/ Finance based upon the aforementioned criteria and discussion.

The Impact of the "Me Too" Clauses of the Other Agreements

Both Parties acknowledge the existence of "Me Too" clauses in all other collective agreements with the City of Niles. In fact, the Police agreement also has a similar "Me Too" clause which reads:

"During the term of this agreement, if negotiations with any other city employee bargaining unit receive wages or benefits that are more liberal than those within this agreement, the Employer and Union shall meet to work out benefits or comparable wages for the Union membership"

The Statue in 4117-9-05 (J) through 4117-09-05 (K) (6) provide factors to be considered by the Fact Finder to replicate a condition of full and unencumbered collective bargaining. Artificial barriers like "Me Too" agreements in "other" collective agreements should not be given great weight to thwart the statutory framework of full and unencumbered collective bargaining. In other words to assert that "we can't afford to give an increase to the Unit in bargaining because of the ripple cost of such to all other units with "Me Too" agreements is a stifling condition to the statutory framework of 4117-09-05 (J) – (K). The barriers of the asserted Me Too's were not agreed to by the

bargained for Unit with the Units asserted by the City. The barrier Me Too's were agreed to by the City and the City should bear the consequences of such special agreements not to the detriment of the Unit currently in bargaining. In other words, the City cannot build a box around its ability to afford one agreement by agreeing to Me Too's with all other Bargaining Units. To give credence to such argument would support a tactic that frustrates full and unencumbered collective bargaining.

In the Fact Finders judgment there is one factual exception to the above principle of ignoring the impact of "Other Me Too's". The exception situation is when "all agreements" and in particular when the current unit in bargaining status has their own "Me Too" clause and has negotiated the added protection to other settlements. In that case the units have "linked themselves" to one another and essentially said: "What one gets we all get". That linkage to all agreements (particularly when it is the practice for "Me Too's" in all agreements with the city) creates an "additional factor" to collective bargaining. That factor must be considered by the Fact Finder. Accordingly, in this exception setting of "every unit" is "Me Too'd to one another" by union agreements and bargaining patterns, the cost impact of a Me Too settlement for all other units must be considered as part of the cost of the settlement in bargaining status. It is analogous to the axiom of "you can't have your cake and eat it, too". Essentially the unit in bargaining cannot enjoy Me Too protection to others and claim that the protection other units enjoy to it, is irrelevant to the settlement at hand.

Accordingly the Fact Finder believes that the cost impact of all the other unit's Me Too's (and the percentage rank differentials for Lieutenants and Captains) must be considered when evaluating the reasonableness of the 3% wage increase sought by the Patrolmen's Unit.

THE ANALYSIS OF DATA

During the hearing comparable data on the Police base rates were presented by the union and the city; and each other challenged the comparability of the others data. The neutral had also requested and been provided data from SERB's Research and Training Administrator which was prepared on January 13, 2011. While the parties objection to each others data are duly noted, the Fact-Finder finds that that each parties data when compared to the independent SERB data he requested, is remarkably close. Accordingly the Fact-Finder has prepared summaries of ALL DATA in the following tables named and included as Exhibits 1&2.

Exhibit 1. Annual Percent Wage Increases 2001--- 2008

Exhibit 2. State Employee Relations Board Clearing House Benchmark Report Summarized

The details supporting these Exhibits are part of the record of the hearings and available from SERB.

The city also presented extensive financial data in the form of budgets, revenues, income, and reserve account carryovers. All the data was trended since the year 2007, the last year of relative financial normalcy and the year which the city believes represents the base year for comparison of the current economic decline .All of the city's financial exhibits were presented at the hearings and are a part of the record . There was ample time for questioning and cross examination of the data by all parties at the hearing. The Fact-Finder has summarized the city's financial data (which he finds credible) like he summarized the comparative wage data. This summary is set forth in:

Exhibit 3. City of Niles---General Fund--- Trends in Key Financial

Measures 2007-----2010 Actual

Exhibit 4. City of Niles--- Factors Supporting Financial Distress

Later, in the concluding section of this report on page 21 titled: “Findings Regarding the Financial Status of the City of Niles”, the Fact-Finder will opine on the financial data and conclude whether the city has the “ability to pay/finance” the union’s proposal for a wage increase for 2010; and if the city has met its “burden of proof”.

I would like to start with the compensation data. In the “Art” of comparative compensation design, there is no precise number that drives the absolute correct rate of pay. All of the data in the wage surveys helps the parties get in the “right ball park”; but to believe a set of numbers provides the absolute 100% correct rate of pay ignores the reality of statistics and their variability and sensitivity to change by divisors, base periods, sample size and correlations and regression analysis. To arrive at the right conclusion on pay competitiveness, I have a bias for the concept of data point triangulation. Simply put, are there a minimum of three separate measurements of data that supports the same conclusion. If so, then and maybe then the conclusion is statistically evidentiary and factually sound. See Exhibit 1 and Exhibit 2 below.

Exhibit 1

Annual Percentage Wage Increases

2001 – 2008 Cumulative and 2009-2010

Year	2001	2002	2003	2004	2005	2006	2007	2008	Cumulative Total % Increase	Niles v. Cum. Totals	2009	2010
UNION DATA												
Avg % city Police (Excluding Niles)	4.04	3.25	2.42	3.08	2.08	2.83	2.92	3.04	23.66	5.84	3.04	1.50
City of Niles – Police	5.5	5.5	3.0	4.0	3.25	2.75	2.75	2.75	29.50		(1) Note “In Fact Finding”	

SERB DATA – Statewide Average Wage Settlement Reports												
Statewide	3.78	3.59	3.10	2.79	2.72	3.01	2.98	2.92	24.89	4.61	2.15	n/a
Youngstown/ Warren	4.22	3.52	3.10	2.25	2.58	3.10	2.68	2.70	24.15	5.35	1.36	n/a
Police Units – Statewide	3.90	3.86	3.28	2.99	2.98	3.23	3.22	3.23	26.69	2.81	2.43	n/a
Year	2001	2002	2003	2004	2005	2006	2007	2008	Cumulative Total % Increase	Niles vs. cum. Totals	2009	2010
SELECT CITIES – PATROLMEN												
Canfield											3.00	Re- opener
Warren City											n/a	0%
Girard City							2.00	2.00	n/a		2.00	2.00
Youngstown City						3.00	4.50	3.00	n/a		n/a	n/a
Warren Sheriff								3.00			3.00	3.00
Struthers City									n/a		0.00	2.00
Courtland city								5.00	3.00		2.00	n/a
Hubbard City									n/a		0.00	2.00
Note (1) In lieu of an increase in base rates for 2009 the City and Union agreed to approximately 3% of additional cash compensation payable through 1 week of additional vacation per year (2%) and uniform increase of \$300.00 per yr. and \$500.00 per year OPATA training allowance. - N/A means data not available from SERB at time of report, Jan. 13, 2011												

The three measurements of data the Fact-Finder uses to support his conclusion of whether the patrolman’s base pay is competitive are:

(1) Cumulative annual percent wage increases from 2001 through 2008

- From the union’s numbers, Niles Police wages increased 29.5%. The comparable police group wages increased by 23.66%. Thus Niles police received 5.84% more than the union’s peer group
- From the SERB data provided the Fact-Finder, Niles Police wages increased by more than 2.81% to 5.35% of the State of Ohio Average Wage Settlement Report data over the 2001 to 2008 period.

DATA POINT CONCLUSION - Niles Police did OK. See Exhibit 1 above

Exhibit 2

State Employment Relations Board Clearinghouse

Benchmark Report Summarized

January 13, 2011 (3)

Police Officer Groups	Population Average (of all cities listed)	Effective Date	(1) Entry Date Annual Base Pay	(2) Top Rate Annual Base Pay
Aurora City Campbell City Canfield City Columbiana City Cortland City East Liverpool City Girgard City Hubbard City Newton Falls Ravena City Salem City Streetsboro City Struthers City Warren City Youngstown City	18,017	2009/2010 Effective Date	38,190.00 Average	\$49,318.00 Average
			37,369.00 Median	\$48,443.00 Median
Niles City	20,932 (actual)	2009 (actual)	\$37,369.00 (actual)/97.9 % of average - at the	\$52,551.00 (actual)/1.066% of average - at the 66% percentile
(1) Includes Niles actual (2) Includes Niles actual (3) For detailed individual city rates and population see published report by SERB				

(2). Niles police entry and top pay relative to 16 city's rates provided by SERB's research department.

- Niles annual entry rate is \$37,369.00 vs. the average entry rate of \$38,190.00 or 97.9% of the entry average rate
- Niles annual top rate is \$52,551.00 vs. the average top rate of \$49,318.00 or 6.6% higher than the top average rate

DATA POINT CONCLUSION - Niles Police are slightly underpaid at entry but paid approximately 6% above average at the top rate – A good compensation philosophy (reward senior officers) Niles Police did OK

(3). Niles Police entry and top rates relative to the median (50 percentile) of 16 cities provided by SERB Research department.

- Niles annual entry rate is at the Median rate \$37,396.00 of the city's in other words half of the cities start patrolmen for **less** than Niles pays and half or 8 of the 16 cities pay more than Niles
- Niles Annual top rate is \$52,551.00 which is above the median rate of \$48,443.00 (50% of all cities). In fact Niles top rate of \$52,551.00 is at the 66% percentile which means that only 5 of the 16 (or 1/3rd) of the cities pay more than the Niles top annual rate

DATA POINT CONCLUSION – Niles police at the top rate are paid the eleventh highest out of 16 cities in the competitor group provided by the SERB Research Department, Niles police did OK

The Fact Finder has demonstrated by this triangulation data point analysis that there is more than one statistic supporting the conclusion that Niles Police Base Wage Rate compensation is OK. See Exhibit 2 above.

Could base pay be more? The answer is yes. Are there overwhelming conditions of inequity and unfairness relative to the other Police Officers – the answer is in the eye of the beholder but in the eyes of the Fact Finder, good jobs are hard to come by in today's market; do not make them uncompetitive, Niles Police base pay is competitive. Two other points must be discussed which were raised by the Union.

1. Year 2009, the first year of the current contract was a 0% wage increase. From all the comparative data the range of increase among other cities was 0% to 3.4%. The Police Unit agreed to an improved week of vacation, \$300.00 increase in clothes allowance and \$500.00 OPATA training allowance annually. The cash value of these items approximate 3% of base wages; and are a 3% added cost to the city's expenses. Cash for this, no matter what the vehicle it is delivered in, is still cash and therefore the Fact Finder finds the Police even with the peer group for 2009. The union in its post-hearing statement allege the Niles vacation schedule is deficient to the comparator group of cities for patrolmen with less than 3 years of service. This is duly noted by the Fact Finder, but he also points out that the Niles vacation schedule provides a maximum of 7 weeks whereas two of the cities only provide a max of 6 weeks and the other four cities only provide a max of 5 weeks. In doing more comparative analysis the Fact Finder concludes: (1.) Over a 20 year career the Niles officer will enjoy 15 weeks more paid time off than at the other cities and at the Niles base rate @ 5 yrs. service such additional weeks would value approx. \$13,500.00. (2.) In 2011 Niles will provide 113 weeks of paid patrolmen vacation (under current schedule) but would only provide 91 to 89 weeks of patrolmen vacation IF Niles applied the vacation schedules of Alliance/Barberton or Ashland/New Philadelphia/Tallmadge respectively. The City of Wooster schedule would likely provide less (on a straight time basis) than 89 weeks of paid vacation to patrolmen. The Fact Finder concludes that the Nile Patrolmen have materially better vacation benefits than police officers in the six comparator cities cited by the union.
2. The last Union point I would like to comment on is the issue of "City Population Size" as a relevant and "high correlation" driver of employee compensation. The City of Niles population from SERB Data is 20,932 (the average population of the 16 cities in the competitor groups is 18,019) or 16.2% larger than the competitor group average. Nowhere in compensation design principles would that mean Niles Police should be paid 16.2 % more than the average pay of the sample. The responsibility of a Police officer in a Large city v. a Medium city v. a Small city is relatively the same – All are vitally important and skilled. In fact, the Fact Finder knows of smaller more affluent cities in Ohio where the criminal element is vastly less than Niles but the rates of base pay are significantly higher than Nile (e.g. Pepper Pike, Ohio). Population size may have a greater correlation to Police Unit size; but population **Data Does Not Support a** "high correlation" to compensation levels that can reliably drive a Data Point Compensation Target.

Exhibit 3

**City of Niles – General Funds
Trends in Key Financial Measures 2007 – 2010 actuals (3)**

Financial Measure	2007	2008	2009	2010
Cash reserves year ending:	\$13,876,596	\$12,748,793	\$9,733,872	\$7,000,000 (est.)
Expenses	\$11,415,325	\$12,577,357	\$11,609,039	\$10,372,792 (est.)
Revenues	\$11,021,691	\$10,308,543	\$9,085,904	\$8,633,983
Year Shortfall	(\$393,634)	(\$2,268,814)	(\$2,523,135)	(\$1,738,809)
Cumulative yrs. Shortfall	(\$393,634)	(2,662,448)	(5,185,583)	(\$6,924,392)
1 ST Quarter working capital requirement	\$3,800,000	\$3,800,000	\$3,800,000	\$3,800,000
Debt \$'s				
- Long	- 0 -	- 0 -	- 0 -	- 0 -
- (2) Short		6,800,000	6,400,000	9,250,000
Operating Capital (1)		53,500	71,850	16,100
Total Capital Expenditures	1,069,649	4,593,538	676,608	225,000
(1) Normal Operating Capital in 2007 was \$100,000 to \$150,000				
(2) Short Term anticipation notes of 12 month maturity, refinanced each year end, in order to be marketable at favorable interest rates, 180 days of general expenses (approx. 6.5 million) must be held in a reserve fund.				
(3) Summarized from Niles Exhibits presented during 1/18/2011 hearing and post hearing statement				

**City of Niles
Inability to Pay
Factors Supporting Financial Distress**

Factors Item(s)	√ = Action Taken	Niles Action
* Defer Maintenance		
* Defer Repairs		
* Defer Capital Expenditures	√	<ul style="list-style-type: none"> - Police cruisers have not been replaced with the fleet consisting of 1998 Vintage cruisers - There have been no replacement fire vehicles or equipment - Operating capital expenditure dollars significantly reduced from \$150,000 in 2007 historical levels to apx. \$50,000 - \$70,000 - \$16,000 for 2008,2009& 2010
Reduce/Eliminate Services	√	<ul style="list-style-type: none"> - Road paving services have been cut back
Layoff Employees		
Hiring Freezes	√	<ul style="list-style-type: none"> - City has made a conscious effort to not layoff any city employees but rather reduce headcount by a two year hiring freeze and not filling attired positions approximately 2.5% reduced headcount since 2007. Further it has applied for and received Federal Grant funds of \$468,000 for Police Officer Pay and Benefits to help offset more than 1 million dollars of lost income tax revenues
Reduction by Attrition	√	<ul style="list-style-type: none"> - City has made a conscious effort to not layoff any city employees but rather reduce headcount by a two year hiring freeze and not filling attired positions approximately 2.5% reduced headcount since 2007. Further it has re-assigned part or all of the General Fund's liability for payroll for select positions to New Fund Allocations in other departments to preserve general funds
Retirement Incentives Downsizing	√	<ul style="list-style-type: none"> - Police Labor Contracts provided for Retirement Incentives
Deficit on Existing Obligations		
Taking on unallowable or unstopable debt to close gap between expenses and revenues	√	<ul style="list-style-type: none"> - The city has financed two significant Capital Improvement Projects (the Wellness Center/ 3.4 million and Sewer Retention Tank/3.25 million) with short term (12mos) revolving notes to achieve the lowest available interest expense to conserve cash and avoid approximately \$300,000 of added interest expense
Negative Cash Flow	√	<ul style="list-style-type: none"> - The negative cash flow being experienced is not a single year anomaly, since 2007 general fund expenses have exceeded general fund revenues by a cumulative of \$6,923,792.
New Actions to Raise Revenues		-reallocated senior levy funds of \$30,000.00

The Scope of a Wage Reopener – Typically Applied

Reopener provisions are used in unusual and uncertain economic or restructuring conditions when predicting the future over the term of the agreement is cloudy at best. Rather than assuming the continuation of the facts at the time of negotiations (usually negative) will continue indefinitely; the reopener is a chance to have a second or third look in real time in the future and compare it to the conditions at the time of the initial settlement. The implicit intent: “if the conditions have changed, which prevented us from taking action to address your issues, we agree to reconsider such issues in light of new facts at the time of the reopener”. In this case, the issues the parties agreed to were wage rate freezes and the conditions were economics of the City of Niles. By the Parties description of the 2009 negotiations which became this contract, all other issues relevant to the bargaining process were trumped by the economic conditions of the City of Niles which were turning negative.

The neutral now putting himself in the chairs of both Parties at the negotiating table asks the question “What has changed since the conclusion of initial bargaining?”

The answer as presented by the parties simply summarized is:

1. The economic conditions of the City of Niles has significantly deteriorated by a cash burn on approximately \$7,000,000.00 from the Reserve Fund since 2007 and, a cumulative imbalance of expenses vs. revenues of approximately \$7,000,000.00.
2. Some Police Units in the State of Ohio in similar sized cities to Niles have received a wage increase in 2010.

Without question some police units in the State in 2010 received wage increases as shown by the Union in their comparative group. However; the fundamental drivers of the action taken by both Parties were the economic conditions of the City of Niles. It is clear to the neutral from the material received during these hearings that the “economic conditions” of the City of Niles has deteriorated significantly since the days of the settlement and therefore, if such conditions trumped the support for a wage adjustment then, it is likely that the more severe economic conditions as such trump a wage adjustment in the 2010 reopener.

The neutral recognizes that adjustments to the base wages of Patrolmen throughout the State have occurred in 2009, 2010, and even to occur in 2011 based upon agreements presently negotiated in better economic times (early 2008). Some of such facts existed at the time of the Parties negotiations in 2009 but did not change the outcome of their agreement due in large part because of the economic condition of Nile beginning in F/Y 2008 and continuing in F/Y 2009.

The neutral recognizes the legitimacy of the Union’s argument of “wage competitiveness” of the Patrolmen who perform a Valued and Critical service to the City and our society in general. Every effort should be made by the Parties to do a fair and accurate assessment of the competitiveness of the “Total Compensation” package and employment costs of the Niles Police Force. The men and women who perform such security service deserve nothing less.

The question is; when should negotiations on such an important and complex subject take place. In the neutral’s view, comprehensive and relevant data collection and analysis should begin now (possibly with the help of a third party expert in the human resource field). Wage adjustments to ensure fairness and equity should culminate as a result of full blown open Collective Bargaining with all issues (wages and benefits) open for discussion. Additionally at that time, the reality of the economic conditions of the

City of Niles and its statutory collective bargaining parameters must guide the outcomes of the next Collective Agreement, to that end. In essence, even in difficult economic conditions, the work forces' economic needs cannot take last place in the allocation of revenues or reserves to meet legitimate economic demands. It is fundamentally inconsistent with ORC/OAC 4117-9-05 (k) to take the position that increases in employment costs are subordinate to all other cost increases in city expenditures, when a city is in economic distress.

However, the Fact Finder believes the forum of a wage reopener is not the proper venue to deal with the subject of alleged uncompetitive total compensation. Reopeners are safety valves to unstable condition(s) which exist at the outset of bargaining. In 2009, such conditions prevented reasonable parties from agreeing to wage increases. If those untenable conditions persist or have become worse at reopener time, logic dictates no change in the status quo.

Fact Finders Findings Regarding the Financial Status of the City of Niles

Referring to the Summary Data in Exhibits 3 and 4 (pages 17&18), the following are the key conclusions regarding the “Ability to Pay/Finance” issue and the “Burden of Proof” issue that rest squarely on the City of Niles.

Obviously the City of Niles faces significant future economic challenges based upon the financial trends since 2007. Exhibit 3 shows 2007 as a relatively normal year with General Fund revenues of approximately \$11.0 million equaling expenses of \$11.4 million with a cash reserve of approximately \$13.9 million. In 2008, 2009, and 2010 the City's finances turned materially negative with expenses exceeding revenues (year shortfall) by (\$2.2), (\$2.5), (\$1.7) millions respectively. This resulted in a cumulative negative cash burn of (\$6.9) million dollars and a depletion of year end cash reserves in 2007 of \$13.8 million to approximately \$7.0 million dollars by 12/31/2010. While cash

reserves of \$7.0 million may look like a large amount of money, in reality it is dangerously low because of: (1) the city needs approximately \$3.8 million of cash to cover first quarter working capital until tax revenues are received by the city; and (2) the Underwriters' of the City's short term debt (approximately \$9.5 million) require \$6.5 million dollars in reserves to assure favorable interest rate financing terms on such revolving debt.(see exhibit 3 for actual numbers and comparisons of years 2007,2008,2009,and 2010. In fact, if the City is forced to the long term debt bond market to finance the \$9.5 million debt due to inadequate reserves, the City potentially could incur an additional annual \$275,000 to \$300,000 of debt interest expense. This is the approximate cost of four to five patrolmen positions or the equivalent of other city workers.

Unfortunately, the numbers are irrefutable; a cash flow burn of \$6.9 million dollars since 2007 is very concerning and problematic to the City's future ability to finance its current debt obligations. When a crew is in a boat that is sinking with little free board left above the water line, a prudent Captain and crew would never add more weight to the boat until the ship is more stable. Mayor Infante testified that the wage increases sought by the union would likely cause the City to layoff employees, which to the Mayor's credit; he has made every effort to avoid, thus far. Under these circumstances the Fact Finder believes it would not be prudent to attempt to increase debt beyond current levels or use cash reserves which are at critically minimum levels to finance any added discretionary expenses.

The next issue is: has the City meet its Burden of Proof? Do the actions the City has taken on other matters reflect financial distress? Have there been efforts taken to ameliorate the cash burn? The Fact Finder believes the financial data of the City is credible. Furthermore, the actions taken by the City as summarized in Exhibit 4 "Factors Supporting Financial Distress" page 18 are comprehensive and persuasive. They reflect

actions normally taken during a period of economic distress and by them the City has met its burden of proof. Accordingly, a financial emergency currently exists in the City of Niles.

The union effectively argues that all of the economic burdens of the City should not be solved on the backs of the employee units, particularly the patrolmen. The Fact Finder strongly agrees with that premise.

The Steel, Mining and Auto Industries can serve as templates of actions that could be initiated to restructure the City into financial balance. It is incumbent upon the Mayor and his leadership team to take the necessary restructuring actions in 2011 and beyond.

Lastly, the Fact Finder is not persuaded by all of the wage data submitted in evidence that the Niles Patrolmen are significantly disadvantaged at their current levels of total compensation and/or base pay. As discussed on page 16, the Patrolmen's unit enjoys materially better vacation benefits than their peers in six other cities in Ohio. The Fact Finder also refers back to the Data Point Conclusions on pages 13&15 which support the conclusion of competitive Base Pay. If such deficiency of Base Pay and or Total Compensation exists, a much more comprehensive and reliable analysis is required to sustain the allegation.

Summary Findings

The Fact Finder finds that a 3% wage increase sought by the union under the 2010 Contract Wage Reopener is not warranted and sustains the city of Niles position which is: maintain the status quo of Patrolmen's Base Wages.

By: Fact Finder

SS//: Richard F. Novak

Dated: February 23, 2011

