

2012 OCT 22 P 2: 34

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of the Fact-Finding between

CITY OF NILES, OHIO

-and-

**OHIO PATROLMEN'S BENEVOLENT
ASSOCIATION**

FACT-FINDER'S REPORT

SERB No. 11-MED-10-1555

FOR THE CITY:

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FOR THE ASSOCIATION:

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DATES OF THE HEARING:

April 12 and 26, 2012

PLACE OF THE HEARING:

**City of Niles
Police Department
Niles, Ohio**

FACT-FINDER:

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Impartial Fact-Finder
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The hearing was held on April 12 and 26, 2012, at City of Niles Police Department, Niles, Ohio, before **HYMAN COHEN**, Esq., the Impartial Fact-Finder, pursuant to the Rules and Regulations of SERB and Ohio Revised Code, Section 4117.14.

The hearing on April 12, 2012 began at 10:10 a.m. and was concluded at 5:10 p.m. The second day of the hearing was held on April 16, 2012.

Post-hearing statements were submitted by the parties on May 29, 2012. Supplementary materials were submitted by the Union on August 20, 2012, and by the City on September 7, 2012.

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FACT-FINDING REPORT

[SERB Case No. 11 – MED-10-1555]

Pursuant to Ohio Revised Code Section 4117.14 and the procedures of the **State Employment Relations Board**, or “**SERB**”, **HYMAN COHEN** was mutually selected as the Fact-Finder in a dispute between the **CITY OF NILES, OHIO**, the “**City**” and the **OHIO PATROLMEN’S BENEVOLENT ASSOCIATION**, the “**Union**”.

On April 12 and 26, 2012, a fact-finding hearing was held at the Administration Building, Niles, Ohio. The City was represented by Matthew J. Blair, Esq., of the law firm of Blair & Latell, located in Niles, Ohio and the Union was represented by Michael John Hostler, Esq., of the Ohio Patrolmen’s Benevolent Association, located in North Royalton, Ohio.

PRELIMINARY DISCUSSION

The City of Niles is located in the Mahoning Valley located in Northeastern Ohio. As of the 2010 census the City has a population of 19,266. The median value of owner-occupied housing units between 2006 and 2010 is \$88,500. The per capita income as of 2010 is \$19,933 and the median household income is \$35,215. Both the per

capita income and median household income are below the median per capita income of \$25,113 and \$47,358, respectively, in the State of Ohio as of 2010.

I

THE DISPUTE

The Union represents a bargaining unit consisting of all ranks above Patrolmen, excluding the Chief of the Police Department. The unit consists of nine (9) employees who by holding the rank of Lieutenant and Captain are “rank officers”. The City employs approximately 169 employees.

The most recent Agreement between the City and the Union expired on December 31, 2011. The Union claims that the parties reached an impasse after two (2) meetings. According to the Union, it simply requested a wage re-opener for 2013 and 2014, and all other language was to remain the same.

At the fact-finding hearing, the Union seeks a 1% increase above 17% or an 18% rank differential between the Patrol Officers’ “base” pay and the rank of Lieutenant. The Union also seeks a 1% increase or 18% rank differential between the rank of Lieutenant and the rank of Captain.

In its negotiations for a three (3) year contract, the City requested several “concessions”, which are as follows: 1) Remove the \$500 – OPOTA Annual Recertification payment; 2) Reduce vacations of members with more than three (3) years by one (1) week; 3) Reduce the number of vacation weeks a member may “sell back” to the City from three (3) to two (2) weeks; 4) reduce the annual clothing allowance from \$1,050 to \$750; 5) the unit members are to pay for any increases in monthly premiums hospitalization after June 30, 2012; and finally, 6) it is the City’s position to continue the wage freeze during the terms of the new contract.

a. CITY’S FISCAL POSITION

According to the City, it has not escaped the fiscal crisis which has affected the municipalities within the State. As with other local governments since 2007, the City has experienced a general decline in revenues, and a decline in the General Fund surplus.

The General Fund revenue stream consists of income from tax receipts, local government funds received from the State of Ohio, the City’s share of real property taxes paid to the County and interest received from City investments.

Based upon a City generated document, (City Ex. "O"), the City claims that since 2007, there has been a decrease in the total revenue in the primary General Fund. The total revenue in 2007 was \$8,836,361; in 2008, the revenue was \$7,824, 738; in 2009 the revenue was \$6,557,020; in 2010 the revenue was \$6,209,030 and in 2011 the revenue was \$6,445,914. The increase from 2010 to 2011 was due primarily from an increase in tax collections. However, the interest from investments has severely declined from \$1,466,320 in 2007 to \$30,618.

The City has relied upon another City generated document, City Exhibit "No. 2", which it claims shows the differences or shortfalls, of expenditures over revenues in the General Fund since 2007. The document entitled "General Fund", according to the City shows the following:

Year	Revenues	Expenditures	Shortfall
2007	12,065,550.31	11,214,488.90	Surplus of 851,061.41
2008	14,746,032.38	15,869,487.28	1,123,454.90
2009	13,386,208.65	16,465,025.12	3,078,816.47
2010	12,577,691.37	13,722,192.13	1,194,500.76
2011	12,200,479.24	13,735,410.85	1,534,931.61

Since 2008, the City has resorted to utilizing funds from the surplus, to defray expenditures.

By contrast, the Union submitted documentation showing the estimated versus actual revenue, each year from 2008 through 2011. The documentation consists of “Auditor’s Office Estimated versus Actual Revenues” periodically, throughout each of the years.

Accordingly, in 2008, the original estimated General Fund Revenue was \$9,421,050 through the end of March. The final estimated General Fund Revenue was \$13,937,120¹ which was 47.93% higher than the original estimated General Funds. The final actual General Fund Revenues was \$13,808,543 which was \$4,387,493 or 46.57% higher than the original estimated funds.

Through the end of March, 2009, the estimated General Fund Revenue was \$9,942,050. The final estimated General Fund Revenue was \$12,488,600, which was roughly 25.5% higher than the original estimated funds. The final actual General Fund Revenues was \$12,260,521.41 which was \$2,318,471 or 23.5% higher than the original estimated funds.

In 2010, through March, 2010 the original estimated General Fund Revenue was \$9,107,050 and the Final Estimated General Fund

¹ Includes Wellness Center amount of \$3,565,000 and 1a \$3,563,458.

Revenue was \$12,557,350,² a difference of \$3,450,300, or 37.88% higher than the original estimated General Fund. The final actual or collected General Fund Revenue was \$12,104,016^{2a} a difference of \$3,032,966 or 33.3% higher than the original estimated General Funds.

Turning to 2011 through March, the original estimated General Fund Revenue was \$8,236,200 and the Final Estimated General Fund Revenue was \$12,475,200³ which was 51.47% higher than the original estimated General Fund Revenue. The final actual or collected General Fund Revenue was \$12,201,052^{3a} which was 48.14% higher than the original estimated General Fund.

The documentation, entitled “Auditor’s Office Estimated Versus Actual Revenues” establishes that the City’s Auditor Estimated General Fund Revenues were consistently and substantially lower than the actual or collected General Fund revenues collected. I have concluded that the documentation of Auditor’s Office Estimated Versus Actual Revenues which was submitted by the Union to be more reliable than the selective documentation of the City.

² “Wellness Center” in amounts of \$3,625,000 and .

^{2a} \$3,623,648.37 included in estimated and actual revenues

³ “Wellness Center” in amount of \$3,575,000 and

^{3a} in amount of \$3,572,986.71 – As of end of November, 2011.

The County Auditor's Office has provided amended official certificates for the beginning of the fiscal years (January 1) as revised by the Budget Commission of the County which governs appropriations during each fiscal year. The Union submitted such amended certificates to indicate the balance of monies in the General Fund at the beginning of each fiscal year, beginning 2008. Thus, in 2008, the beginning unencumbered balance was \$13,700,000; in 2009 the unencumbered balance was \$12,433,092; in 2010 the unencumbered balance was \$8,091,372 and in 2011 the unencumbered balance was \$8,366,872.

The City submitted a copy of a "Balance Sheet of Governmental Funds" as of December 31, 2011 which indicated that the General Fund balance was \$4,908,679. However, as the City Law Director indicated in his facsimile transmission to the Fact-Finder on September 7, 2012, the Statement was unaudited.

It is sufficient to state, that the Union's submission of the beginning Balances in the General Fund, beginning January 1, 2008 through January 1, 2011 are reliable. Moreover, the beginning balances are greater in 2010 and 2011 than the General Fund balances submitted by the City in its Fact-Finding Position Statement dated April 11, 2012.

In addition, the Union submitted various City Comprehensive Annual Financial Reports for the years which have been audited by the State of Ohio. Beginning in 2007, these documents indicate the following:

For 2007 – Fund balance at beginning of the year -- \$13,133,835, Actual Total Revenue on December 31, 2007 -- \$10,207,067, Actual Expenditures -- \$3,256,094. The amount of revenue over expenditures was \$6,950,973, and, the Fund balance at the end of 2007 was \$13,815,391.

For 2008 – balance at beginning of the year was \$13,815,391, actual revenue on December 31 was \$9,519,505, and actual expenses were \$3,602,398. The amount of revenue over expenses was \$5,917,107 and the Fund balance at the end of 2008 was \$12,540,922.

For 2009, the Fund balance at the beginning of the year was \$12,540,922; the actual revenue on December 31, 2009 was \$8,341,405, the actual expenditures was \$3,601,285 and the General Fund balance at the end of 2009 was \$9,659,858; the revenues exceeded expenditures in the amount of \$4,740,120.

In 2010⁴, the General Fund balance was \$9,659,858 and the actual revenues collected on December 31, 2010 was \$7,750,092 with actual expenditures of \$3,844,169 and a General Fund balance at the end of \$8,506,881; the revenues exceeded expenses by the amount of \$3,905,923.

⁴ This is the last year that the City's Comprehensive Annual Financial Report was available.

The Union's submission of official documentation, as opposed to the City's generated documentation at the hearing tells a different story than the City with respect to shortfalls and differences between revenues and expenditures during the last several years. The documents submitted by the Union were accessible to the City but not submitted by the City during its presentation. Moreover, the City is responsible for the very documents submitted by the Union. These documents, it should be noted, were prepared by the City.

The inference to be drawn from the documentation submitted is that the financial condition of the City is not as bad as the City would have the fact-finder believe. However, like other municipalities, over the last several years, the City's revenues have declined, expenditures have increased and the funds in the reserve (or surplus) have declined.

a. 1. ADDITIONAL CONSIDERATIONS

In addition, the financial condition of the City must be viewed in light of additional considerations. To begin with, instead of receiving Local Government Funds annually from the State of Ohio, the City has or will receive one-half of \$356,000 in 2012 and no monies will be received in 2013. Moreover, as previously stated,

interest income has decreased severely from 2007 when the City earned \$1,400,000; in 2011, the interest income was \$30,618!

In 2011, the total budget decreased by approximately \$5 million dollars. The Police budget decreased by \$280,000, which included retirements by two (2) Police Officers. However, due to the stimulus program by the Federal Government (“ARRA”), funding has been provided to the City to hire Police Officers. In addition the total budget in 2012 has decreased by approximately \$9.4 million dollars.

Since 2007, capital expenditures have been reduced. Except for the purchase of five (5) police cruisers, the City has not been, or was unable to spend money on capital expenditures. The City acknowledged that there has been an increase in the collection of taxes; but the increase is offset by the decrease in real estate taxes due to the decline in home values. In addition, the start-up of work at the GM plant has led to a slight increase in the collection of taxes.

As a matter of some importance, the reserves [or surplus] in the General Fund at the end of the year must be sufficient in order to pay for expenses during the first quarter of the following year. Based upon the unaudited statement submitted by the City, the 2011 Reserve was close to \$5,000,000 which is consistent with the decline in Reserves over the last several years. It is important that the City

maintain an adequate amount of reserve funds in order to obtain a MIG1 ranking from Moody's so that the City may borrow money at a favorable rate. The ranking from Moody's is based primarily on the creditworthiness of the City relative to other municipalities.

The City borrowed money from the General Fund several years ago to build a Wellness Center; and the City has paid down the indebtedness represented by a note on an annual basis. Approximately \$100,000 has been paid from the Wellness Fund. It should also be noted that the "fracking" and natural gas businesses are years away from becoming a reality.

The City acknowledged that the Water and Sewer Departments have borrowed money which was in the General Fund. The Sewer Department has paid back the loan; but the Water Department owes the General Fund approximately \$1,400,000.

The City has taken various actions in order to address the problems caused by the economic downturn. The City has combined or eliminated positions in the Tax Department, and the Cemetery Department. Employees from the Park Department have been assigned to the Street and Water Departments. At the time of the hearing, the City indicated that the Police and Fire Departments were

not fully staffed (“working with two (2) Firefighters short and three (3) Patrolmen short”).

Moreover, the City has not hired replacements for employees who have retired. The City has also divided payroll expense between the General Fund and other special funds to provide payroll for various positions that were formerly paid out of the General Fund. In addition, the City has sought to reduce expenses by utilizing a State-sponsored Workers’ Compensation premium savings program. It has also converted notes to bonds to obtain a lower interest rate for its long term debt of 9 million dollars.

The Mayor indicated that the City has been reducing costs through attrition, rather than layoffs. But, given the current trends, the Mayor said, there “could be layoffs by 2015”. In addressing the issues in dispute, these factors cannot be ignored and must be seriously considered.

I WAGES

The Union proposes a 1% increase to the current 17% rank differential between the Patrol Officers’ base pay and the rank of Lieutenant resulting in an 18% rank differential. The Union also

proposes a 1% increase in the rank differential pay of the current 17% between the rank of Lieutenant and the rank of Captain, resulting in an 18% rank differential. The City has proposed a continuing wage freeze.

At the outset of this discussion, background information would be useful. It is undisputed that since 2008, there has been no increase in the base pay of the bargaining unit members. Except for AFSCME employees who received an increase in pay in 2009 none of the employees represented by the various unions representing City employees have received an increase in pay.

Turning to the bargaining unit members involved in this dispute, about six (6) years ago, the City paid their pension into a fund in lieu of a salary increase. The rank officers found the City's payment unacceptable because their base would be lower at retirement. As a result, it was agreed by the parties to pay their pension monies directly to them.

Moreover, bargaining unit members who work the "21 turn rotating shift schedule" receive, in addition to their regular pay, 2% of their average hourly rate per hour rotating turn differential. Also, the rank officers receive longevity pay, every five (5) years with a cap at 25 years. It should also be noted that several years ago a ½% tax was

adopted. The funds generated were to be for the safety forces [Police and Fire Departments].

The Patrol Officers base pay is \$46,712.03. The City submitted a document which indicates the “base pay” of the rank officers. The City Auditor acknowledged that the “base pay” on its document included various benefits and was not limited to wages. Turning to the comparables it should be noted that it is inaccurate and improper to compare the total of wages and benefits of the rank officers against the base pay, absent benefits, of the rank officers from the cities of Warren and Youngstown – to do so, is to compare apples and oranges.

Based upon 2010, after ten (10) years, the base rate of a Lieutenant in the City was \$54,653.08 which is to be compared to Lieutenant in other municipalities, after ten (10) years, located in the Mahoning Valley; Boardman Township -- \$79,788.80, Warren -- \$66,809.60 and Youngstown -- \$71,922.49. The base rate of a Lieutenant in Niles, is substantially below the other municipalities in the Valley after ten (10) yeas of service.

For the rank of Captain in the City after ten (10) years, in 2010, the base wages of \$63,944.10 is substantially below the rank of Captain, after ten (10) years in other municipalities in the Valley.

Boardman Township -- \$90,168; Warren -- \$76,835; Youngstown -- \$82,710.

To compare the pay of rank officers in the City to the pay of the rank officers in the Valley is relevant, in that the area represents the labor market from which the City draws its employees. Moreover, the work that the rank officers perform is similar to the rank officers in these localities.

However, the municipalities in the Valley are not of similar size and population to the City of Niles. With a population of slightly over 19,000, the City is half the size of the populations of Boardman Township and Warren. The City's population is one-third (1/3) the size of Youngstown.

Population is an important factor in considering wages – the greater the size of the population means that such municipalities can rely on greater resources and revenues from income and real estate taxes. It is true that small municipalities which have an affluent population, make up for their size due to the higher real estate values. These affluent municipalities with the resources and revenues at their disposal are able to pay higher wages to the Police Officers than municipalities, with a larger population, which are not as affluent.

The City of Niles cannot be considered an affluent municipality as of the 2010 census. The median value of owner-occupied homes was \$88,500 some \$50,000 below the median value in the State of Ohio; and the per capita money income and median household income of \$35,215 was \$12,000 below the median household income in Ohio.

The Union points out that unlike the City of Warren, the City has a large shopping mall with national chains. By itself I do not find the City's mall to be a sufficiently weighty factor with respect to the issue of wages.

However, the wage freeze since 2007 constitutes a significant hardship to the rank officers, and prevents them from keeping pace with increases in the cost of living. In addition the Union pointed out that the 1% income tax of the City is the lowest in Mahoning Valley, except for Lordstown.

I am extremely sympathetic to the wage demands of the rank officers of the City. Because of the difficulties, however, with respect to my inability to determining the City's financial condition, with any reasonable certainty, I recommend a wage re-opener for 2013 and 2014.

RECOMMENDATION

I recommend a wage re-opener for 2013 and 2014.

II

HEALTH INSURANCE

The City proposes that the rank officers pay for any increases in monthly health insurance premiums after June 30, 2012. The Union proposes that the existing health insurance benefits continue for the term of the new contract.

The City is self insured for health care coverage of 190 to 200 employees each month. In doing so, the City pays for all claims and costs including prescriptions. From 2007 through 2009 the City set aside \$1,200 per employee to cover the cost of family medical premiums. That amount was increased to \$1,500 per employee from January 2010 through March 2012.

The City set forth the annual expenses and revenues of the Hospital Insurance Fund which indicated that in 2009, expenses exceeded revenue by some \$500,000 and in 2011 by roughly \$150,000. However, revenues exceeded expenses in 2007 by approximately \$125,000; in 2008 by approximately \$470,000; in 2010 by \$310,000. At the time of the hearing in April 2012 expenses

exceeded revenues by some \$50,000. Since 2007, the net year-to-year carryover is roughly \$235,000.

A SERB survey shows the vast majority of medical plans require employees to contribute to a portion of the medical premium cost; for 2011 only 16% of single medical plans and 12% of family medical plans were paid 100% by the employer.

It is undisputed that unless the rank officers are in the wellness program, each of them pays \$35 per month; if they are in the wellness program the monthly premium is waived. In the SERB survey, employees with single coverage pay an average of 7.4% of the premium; and employees with family coverage pay 6.9% of the premium. The City pays approximately \$450 per month per employee with family medical coverage. Thus, the City employees who pay \$35 a month are paying more than the average of an employee with single or family coverage in the Youngstown-Warren region.

Thus, the City pays approximately \$450 per month per employee with family medical coverage (it is the same with respect to single coverage). If unit members do not belong to the wellness program, they are required to pay a monthly premium of \$35.00. The City claims that it will assist the City financially if the employees

provide greater contributions to the cost of health care premiums, which will conform to the vast majority of plans in the State.

I take constructive notice that the City, as well as most public and private employers in the nation, have been confronted with increasing healthcare costs. In response to the higher health insurance costs, employers have increased employee cost sharing through higher deductibles, higher out-of-pocket caps, higher office visit co-pays, higher prescription drug co-pays and higher employee monthly premium cost sharing contributions. These higher costs have been accomplished, primarily, through negotiations.

As with the freeze of the base salary of the rank officers since 2008, I am sympathetic to the “concession” sought by the City that the employees pay for any increase in health insurance premiums after June 30, 2012. As a rule of thumb, health care benefits, and the accompanying higher costs, are trade-offs for wage adjustments. Accordingly, I am reluctant to recommend acceptance of the City’s proposal.

As the Union suggests, the parties have provided for management/labor meetings which may be helpful in resolving such matters. Also, I cannot ignore the net carry-over since 2007 in the Insurance Fund, with respect to the City’s health insurance.

RECOMMENDATION

The City's proposal to pay for any increases in monthly health insurance premiums is rejected.

III

MISCELLANEOUS CONCESSIONS

The City proposes the following "concessions":

1. Remove the \$500 Annual Recertification Payment to the Union Members (Art.24, Sec.3);
2. Reduce vacations of members with more than three (3) years of service by one (1) week (Art. 16 Sec.1);
3. Reduce the number of vacation weeks a member may "sell back" to the City from three (3) weeks to two (2). (Art. 16, Sec.7);

4. Reduce the annual clothing allowance from \$1,050 – per year to \$750. (Art. 20, Sec.1).

The City estimated that these “concessions” would result in saving \$27,000 annually.

At the outset of this discussion, it should be underscored that the various “concessions” which the City seeks were negotiated into the 2009 Agreement between the parties. To recommend any one or more of these concessions, in my judgment, would be extremely unwise. Beside the highly demoralizing impact on Union members with respect to contractual benefits which were negotiated into the most recent Agreement between the parties, I find no basis to establish that a fiscal crisis in the City exists, at the present time or near future, which requires such drastic action. It is sufficient to state that the City’s proposals for “concessions” are rejected.

RECOMMENDATION

The City’s proposals for “concessions” are rejected.

CONCLUSION

In making the recommendations on the unresolved issues between the parties, the Fact-Finder has considered the factors set forth in Ohio Revised Code, §4117.14 (G) (7).

“(1) Past collective bargained agreements, if any, between the parties;

(2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

(3) The interest and welfare of the public, and 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 stipulation of the parties; and

(6) Such other factors, not confined to those listed above which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment”.

Based upon the data presented by the parties, I am unable to predict with any reasonable certainty the revenues and expenditures for 2012 and 2013, and the funds in the reserves or surplus for these

years. Thus, I have concluded that the Union's first proposal, at the beginning of negotiations, which provided for a wage re-opener for 2012 and 2013 is appropriate. A wage re-opener permits the parties to discuss wages and other financial issues without potentially compromising the City's ability to pay.

Dated: October 12, 2012
Cuyahoga County
Cleveland, Ohio



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