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12/15/87

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Act 312 Arbitration between
City of Niles

-and-

Niles Fire Fighters, IAFF No. 2317

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
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OPINION AND AWARD OF THE ARBITRATION PANEL
Introduction

This proceeding was conducted pursuant to the Police-Fire Fighters Arbitration Act (Act 312, Public Acts of 1969, as amended). The parties had reached impasse in their negotiations for a new three year collective bargaining agreement to replace the one that expired on October 1, 1985. Subsequent mediation was not successful and on June 11, 1986, the Union petitioned for arbitration.

Background

The City of Niles is located in Berrien County in the southwestern corner of Michigan, near the state line. The population of Niles was estimated in 1982 to be 12,633. The City operates a Fire Department which employs 13 fire fighters, all of whom are members of the bargaining unit, and one chief. As the City has not hired a new fire fighter in the last 10 years, the average age of the fire fighters

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Michigan State University

Elkin, S.O.M.

in the unit is 44 years. The fire fighters work a 54 hour week and their work day, fixed by statute, is 24 hours.

The arbitration panel was composed of Eileen Nowikowski, Esq., Union delegate, John E. Dwane, Esq., City delegate, and Sol M. Elkin, impartial chairman. Ms. Nowikowski and Mr. Dwane also appeared as chief spokespersons for their respective parties.

Hearings were held on December 9, 10, and 11, 1986 and on January 20, 1987. Last best offers from both parties reached the chairman by March 4, 1987 and post-hearing briefs were submitted on May 28, 1987. The panel met in executive session on August 4, 1987.

Section 8 of Act 312 requires that the arbitration panel adopt the final offer of one of the parties on each economic issue in dispute, utilizing the applicable factors set forth in Section 9 of the Act. As to the non-economic issues, Section 8 directs only that the findings, opinions, and orders be based upon the same applicable factors. These factors have been carefully considered in the Panel's deliberations.

This Opinion and Award was drafted by the Panel chairman, who is solely responsible for its contents.

The Issues in Dispute

Shown below are the issues in this dispute and their designation by the arbitration panel as either economic or non-economic.

Economic (Union Issues)

1. Wages for 1985-86.
2. Wages for 1986-87.
3. Wages for 1987-88.
4. Pensions: multiplier
5. Pensions: post-retirement adjustment.
6. Acting Rank Pay
7. Overtime

Economic (City Issues)

8. Longevity
9. Vacations
10. Retiree Health Insurance

Non-economic (Union Issues)

11. Residency

Non-economic (City Issues)

12. Physical Fitness
13. Hours/Work Schedule

Comparability

The parties selected the following
communities as comparable to the City of Niles.

Union

Adrian
Battle Creek
Big Rapids
Jackson
Marshall
Monroe
Niles Township
St. Joseph
Sturgis
Traverse City

City

Benton Harbor
Benton Township
Cadillac
Coldwater
Dowagiac
Grand Haven
South Haven
Three Rivers
Muskegon Heights

Recognizing that no two cities are identical, the Union chose a cross-section of communities which share one or more characteristics with Niles. The City disputes, for various reasons, the communities selected by the Union, with the exception of Marshall, Niles Township, and Sturgis, which communities the City accepts as valid for comparison to the City of Niles. The geographic location of the Union's

comparables range farther from Niles than do the City's choices, particularly Jackson, Adrian, and Monroe. While Jackson does share many pertinent characteristics with Niles, it is a much larger city with a much larger fire department. Although Monroe is reasonably similar to Niles with respect to per capita income, it not only is in a different part of the state, but also bears little resemblance to Niles with respect to other pertinent criteria. On the other hand, the City's selection of Dowagiac is questionable as it employs but four people in its fire department and they are not organized. Battle Creek resembles Niles in certain important characteristics, but it is a much larger community with 110 members in its bargaining unit as compared with 13 in Niles. In sum, many of the comparables offered by both parties differ in one or more significant respects from Niles, and there is no compelling rationale for utilizing exclusively the complete list of comparables of one party to the exclusion of the other.

Ability to Pay

The Union stresses that in recent years the City has enjoyed increasing, substantial surpluses in its General Fund, the source of almost all operating revenue for the Fire Department:

	<u>General Fund Surplus</u>
1983	\$1,046,000
1984	1,392,020
1985	1,695,835

For the next few years, the Union projects increasing surpluses, as shown below:

<u>Surplus</u>	<u>Projected General Fund</u>
1986-87	\$1,700,000
1987-88	2,113,684
1988-89	2,226,765

The Union argues that these balances are more than enough to fund the improvements in pensions, wages, and other benefits the Union is seeking.

The City asserts that Niles has experienced a general economic decline and faces serious financial problems in the future. As to the substantial general fund balance, the City maintains that six months' operating expenses is not an excessive amount to maintain in view of impending capital improvements and other expenditures.

Wages

The Chairman ruled, over objection by the City, that wages for each of the three years of the proposed contract shall be considered as three separate issues, rather than as a single issue, as urged by the City.

The wage rates for 1984-85, the last year of the expired contract, are shown below:

Captain	\$27,227.82
Lieutenant	25,324.28
Driver	23,951.46
Fire Fighter	23,423.00

Changes in the BLS cost-of-living index would adjust the rates as specified in Section 16.10 - 16.32.

City's Last Best Offer:

For October 1, 1985 to September 30, 1986: A 4.0% increase for all classifications.

For October 1, 1986 to September 30, 1987: A 3.5% increase for all classifications.

For October 1, 1987 to September 30, 1988: A 3.0% increase for all classifications.

Union's Last Best Offer: (Linked to offer on Pensions: see Discussion, below.)

For the first two years of the contract; no wage increase.

For 1987-88, a 6.0% increase.

Pensions: Multiplier

From the expired collective bargaining agreement:

SECTION 13.10 PENSION BENEFITS

Pension benefits shall remain as established by the City of Niles Ordinance 206, as amended, and identified as City of Niles Retirement Plan B (Police and Fire Department). The City shall not restrict the ability to work past the age of 55. Upon retirement at age 55, the City will pay the retiree a \$5,000 payment.

The aforementioned Plan B provides for a monthly benefit of 2% of the Average Monthly Compensation multiplied by the number of years of service earned prior to age 55 or prior to 25 years of service, whichever first occurs, plus 1% of the Average Monthly Compensation multiplied by the years of service after age 55, or after completion of 25 years of service, whichever first occurs.

City's Last Best Offer: No change.

Union's Last Best Offer:

(a) To increase the 2% multiplier, as follows:

- * Effective October 1, 1985, to 2.2%
- * Effective October 1, 1986, to 2.3%
- * Effective October 1, 1987 and thereafter, to 2.5%

(b) The current 1% multiplier shall remain unchanged.

Pensions: Post-Retirement Adjustment

Union's Last Best Offer: As of October 1, 1985, upon retirement there shall be an annual post-retirement adjustment (PRA) based on the consumer Price Index (CPI), according to the following formula:

* From October 1, 1985 through October 1, 1986, a PRA equal to 20% of the CPI increase from the preceding year.

* From October 1, 1986 through October 1, 1987, a PRA equal to 35% of the CPI increase from the preceding year.

* From October 1, 1987 through October 1, 1988 and thereafter, a PRA equal to 50% of the CPI increase from the preceding year.

City's Last Best Offer: No change in pension.

Discussion: The issues of wages for each of the three years, the pension multiplier, and the post-retirement adjustment will be discussed together, as they are linked in the Union's Last Best Offers. The Union seeks adoption of only one of the pension improvements, preferring the post-retirement adjustment as the more beneficial. If either pension improvement is adopted by the Panel, then the Union would support adoption of its Last Best Offer for the first two years of the contract, which calls for no increase for those years, and the City's proposal of 3% for the third year. Thus, the total wage increase for the three years

would be 3% if either of the two pension improvements is accepted by the Panel. If the Panel should decide not to grant either of the Union's pension improvement proposals, the Union urges adoption of the City's Last Best Offer for the first two years of the contract (4%; 3 1/2%) and the Union's Last Best Offer for the third year of the contract (6%).

Under the City's Last Best Offer, the base wage of the fire fighter, \$23,423 for 1984-85, would increase as shown below:

4.0%	increase for 1985-86	= \$24,360
3.5%	" " 1986-87	= \$25,213
3.0%	" " 1987-88	= \$25,969

These proposed percentage increases are identical to those negotiated with the Niles patrol officers for the same years. The base rate for the patrol officers averages \$470 higher than for fire fighters for the life of the contract (Union Exh. 65).

Comparing these rates with the City's comparables (City Exh. 35), not one of the comparables have wages that equal the City's offer to its fire fighters.

As for the Union's comparables (Union Exh. 30), in comparing the City's offer to those communities showing wage data for 1985, three communities have a higher wage than Niles and six are lower. For 1986, Jackson and St. Joseph are higher and five are lower. For 1987, Jackson is \$1930 higher, St. Joseph is \$458 higher, and three communities are lower.

In sum, in reviewing the comparables offered by both parties, only Jackson's and St. Joseph's basic wages are higher than the City's Last Best Offer on wages. As noted above, Jackson's fire department is much larger than Niles'.

Turning to the pension proposals, the present pension plan, in summary, permits a fire fighter to retire at age 55 with a monthly benefit of 2% of his final average monthly wage times his years of service, plus 1% for each year of service thereafter. With 25 years of service, the benefit would be 50% of his final average annual wage.

In 1982, the City gave a one-time supplemental pension benefit to all City retirees, except fire fighters, who had retired after 1977. It was extended to fire fighters in 1985. The benefit ranged from 4 to 10 per cent, with the larger increases to earlier retirees. The benefit did not include those who retired after 1977.

The Union calculates the annual cost of the 2 1/2% multiplier it is proposing to be \$48,000, or 10.5% of the gross payroll of \$464,603 for the Fire Department. For the 50% escalator proposal, it calculates the cost at \$49,000 annually, or 10.6% of the payroll, assuming a future average increase in the cost of living of 4%. The cost of the two pension proposals are virtually identical and equal to the increases in wages the City bargained with the Niles police for the three year term of their latest contract. Thus, the Union estimates the cost of the total pension and wage package that it seeks for the three years would be 13.5%.

The City, on the other hand, estimates the cost of the 2 1/2% multiplier at \$62,266. As to the proposed escalator provision, using a worse case scenario with a 8% increase for all years, it estimates the cost at \$352,668 (City Exh. 10d). The difference in cost estimates for the 2 1/2% multiplier is due to different assumptions regarding the amortization period. Both assume a 30 year period, but the City would begin the amortization period when the pension plan began in 1971, in effect amortizing the cost for the increased multiplier over the next 15 years, while the Union would begin in the present and amortize the increase over the next 30 years.

For the comparables offered by the City, only Grand Haven has an escalator clause and, with only one exception, the multipliers for the first 25 years is 2%, the same as for Niles. (Union Exh. 39) For the Union's comparables, however, the multiplier ranges from 2% to 2.5%, with most more than 2%. (Union Exh. 38) With the exception of Big Rapids and Traverse City, however, the higher multiplier is accompanied by an employee contribution of up to 7.5%, as compared to 5% for Niles.

Of the Union comparables, Adrian, Jackson, and Monroe have various post-retirement adjustment plans (Union Exh. 42).

Adrian has a MERS pension with a E-2 option, i.e., a post-retirement adjustment tied to the CPI up or down with a 2.5% maximum.

Jackson has increases corresponding to percentage wage increases of current employees. Its members' contribution rate is 7% plus 0.5% for COLA after retirement.

Monroe has an annual payout based upon return on investments of a segregated fund, computed on the basis of years of service and paid to retirees on pension 5 years and over.

The Union notes that the budget surpluses generated in recent years unquestionably gives the City the ability to pay the requested increases.

The Union offered evidence to show how the retirement income of fire fighters has been eroded by inflation in the past. Projecting a 4% inflation rate in the future, the Union asserts that the purchasing power of the retirement income of a fire fighter retiring today would be reduced by 50% in 20 years. It stresses that Niles fire fighters are not covered by Social Security, as are all other City of Niles employees except police, and thus have no protection against inflation after retirement.

The City stresses that Niles has suffered economically because of the depressed economy in Southwestern Michigan. Its general fund balance is not excessive, in the City's judgment, in view of the serious financial problems that lie ahead, and the City is now at the maximum millage rate permitted by the charter. Moreover, from 1982 to 1985, the bargaining unit received wage increases of 20%, while the cost of living for that period increased only 9.9%. With

respect to the pension changes sought by the Union, the City notes that because fire fighters can retire at the early age of 55, they have 10 more years in which to qualify for Social Security in another job. Moreover, the City submits, because of the unusual work schedule, they have the opportunity for outside employment in jobs covered by Social Security. In sum, the City urges that the Union's wage and pension proposals are not justified by the comparables, they would not serve the interest and welfare of the public, the ability of the City to pay for them has not been demonstrated, and they are not warranted in view of the present overall compensation of the fire fighters.

Extensive data in the many Union exhibits supports the Union's position that, assuming only a moderate rate of inflation in the years ahead, fire fighters' pensions will be subject to steady erosion in purchasing power. As an aging employee group, this is understandably a matter of concern to the Union. On the other hand, the City adamantly opposes being required to assume an added pension liability for the indefinite future.

A review of the the comparable communities of both parties offers little support for the Union's preferred pension improvement--the 50% escalator. Of the four comparables that have a post-retirement adjustment, three can be considered as less advantageous than the 50% escalator. The Union's offer for a 2.5% multiplier fares

somewhat better--but the requested 2.5% is far from universal.

The Union, however, draws a distinction between these "external" comparables and the "internal" comparables, specifically, the City of Niles general employees. The Union stresses that this group, enrolled in the City's Pension Plan "A", as well as in Social Security, not only have the equivalent of a 3% multiplier but 50% of their pension is cost of living escalated through Social Security.

While the law does not set forth the weight to be given to each of the applicable criteria, comparability to similarly situated employees is commonly given considerable weight and is prominent in the arguments of both parties on this and other issues in this arbitration. While comparison of the Niles fire fighters' pension to that in other communities fails to make a persuasive case for improvement, the Union makes a distinction between these external comparisons, and what it terms "internal" comparisons, namely the general City employees in the "A" pension plan.

But when assessing these internal comparisons, by far the most compelling comparison is to the Niles police. In labor relations, wages and benefits of fire fighters and police are commonly linked. As one example of this, in the City of Niles the fire fighters and the police officers are enrolled in the same Pension Plan "B", distinct from the other City employees. The Union has tacitly accepted the logic of comparing the fire fighters to the police with

respect to several issues in this arbitration, contending that fire fighters are entitled to benefits equal to those that the City has already negotiated with the police officers. The City offers the same pension plan that it negotiated with the Niles police officers in their current contract and a more generous pension plan for the fire fighters cannot be justified.

In urging adoption of an improved pension plan, the Union stresses that the City can well afford it and that it has always been a leader in its part of the State in responding to its employees' legitimate needs. It is true that the City currently is in a healthy financial condition, but an improved pension plan represents an added financial liability for an indefinite period. The City chooses not to lead on this issue and it would not be proper for this Panel to mandate that it do so.

Furthermore, there are certain advantages inherent in the fire fighters situation that the general City employees do not enjoy. Their unusual work schedule permits a certain amount of outside employment. Retirement at age 55 makes possible subsequent employment and even the possibility of qualifying for Social Security by age 65. While the Union is correct in arguing that these factors are in no way a substitute for an improved pension plan, they are nevertheless advantages not available to other City employees.

With respect to wages, there is a strong case for equality between the fire fighters and the Niles police. This would be achieved by accepting the City's Last Best Offer for the first two years of the contract (.4.0% and 3.5%, respectively), and the Union's Last Best Offer of a 6% increase for the final year. The resulting salary comparisons would be as follows:

	Full-Paid Fire Fighters Wage	Full-Paid Patrol Officer Wage (from Union Exh. 65)
1985-86	\$24,360	\$25,044
1986-87	25,213	25,921
1987-88	26,726	26,698

In sum, the issues of wages and pension improvements is resolved as follows:

Wages for 1985-86: The Panel unanimously adopts the City's Last Best Offer.

Wages for 1986-87: The Panel unanimously adopts the City's Last Best Offer.

Wages for 1987-88: The Panel, the City dissenting, adopts the Union's Last Best Offer.

Pensions: Multiplier: The Panel, the Union dissenting, adopts the City's Last Best Offer

Pensions: Post-Retirement Adjustment: The Panel, the Union dissenting, adopts the City's Last Best Offer.

Acting Rank Pay

Union's Last Best Offer: To amend Article 16, Wages, of the collective bargaining agreement to add a new section as follows:

An employee temporarily assigned or required to accept the responsibilities or duties of a position above that which he normally holds, for four (4) hours or more, shall be paid at the rate of pay for the job to which he is transferred or assigned.

All other references to wages contained in the collective bargaining agreement, other agreements between the parties, the City Charter, City Ordinances or elsewhere shall be amended accordingly.

City's Last Best Offer: No change

Discussion: The Union notes that the City recently negotiated a provision in the police contract granting to patrolpersons the sergeant's base rate for every hour worked in charge of a shift, with no minimum. The Union also asserts that a majority of the City and Union comparables pay fire fighters for acting out of rank (Union Exh. 50,51).

The City insists that the Union's proposal is not justified by the comparables or any of the applicable statutory factors.

Most City and Union comparables do have a provision for extra payment for working at a higher rank, with varying minimum times required. The Niles police contract provides payment to lower rank people acting as temporary shift commanders, at the rate for the higher rank (Section 12.19). The Panel Chairman and the Union delegate construe this Union proposal as having the same intent as the Niles police provision, i.e., to apply only in the absence of the regular shift commander and only to the person assuming

temporary command of the shift. Also, once the four hour minimum is satisfied, the person assuming temporary command will be paid for all hours worked. The Union's proposal is eminently reasonable.

The Panel, the City dissenting, adopts the Union's Last Best Offer on this issue, retroactively effective to the beginning of the 1985-86 contract year.

Overtime

From the expired collective bargaining agreement:

SECTION 7.10 HOURS

In lieu of making overtime payments pursuant to Act 604, the City agrees to schedule employees on an average work week of fifty-four hours. ...

SECTION 7.50 OVERTIME

The Chief, or his designee, will determine if and when it may be necessary to schedule overtime work. Such work shall be offered as equitably as possible among employees who normally perform the work required. Assignment of overtime will be made on a rotating basis, within a shift. An employee who in fact fails to work after having been scheduled to work will be charged with the number of hours of pay concerned.

Union's Last Best Offer: To amend Section 7.50 to include the following:

Overtime pay for all overtime worked shall be paid at the rate of time and one-half (1 1/2) of the employee's hourly rate based on the employee's annual salary divided by 2,080 hours.

All other references to the overtime rate contained in the collective bargaining agreement, other agreements between the parties, the City Charter, City Ordinances or elsewhere shall be amended accordingly.

City's Last Best Offer: No change.

Discussion: The Union stresses the poor conditions under which the Niles fire fighters must work, particularly insufficient manpower due to the City's failure to hire more people. Also, police reporting to the same fire scene receive overtime on a 40 hour basis.

The City asserts that the current practice is in accord with the Fair Labor Standards Act and contends that an increase is not supported by the comparables or by any of the statutory factors.

As the law requires payment of overtime beyond 53 hours, and Niles fire fighters work a 54 hour week, the City now routinely pays each fire fighter one hour per week at the overtime rate of time and one-half. The hourly rate for overtime payment purposes is now calculated on the basis of a 53 hour work week, or 2756 hours per year. To calculate the hourly rate on the basis of 2080 hours, as incorporated in the Union's Last Best Offer, would increase the overtime payment by 32.5%.

For the City comparables, the basis for overtime pay for all communities but one is 2756 hours annually (Union Exh. 54). For the Union comparables, Jackson, St. Joseph, and Sturgis use 2080 hours as the basis for overtime pay; the others use 2756, as does Niles (Union Exh. 53).

The Union's position on this issue is not persuasive. As the normal work week is 53 hours, it is logical to calculate the hourly rate on the basis of a 53 hour week. Comparison with the Niles police is not appropriate because

they have a different work week. Also, a review of the comparables reveals little support for the Union's proposal. Moreover, the considerable amount of the proposed increase makes it even more difficult to justify.

The Panel, the Union dissenting, adopts the City's Last Best Offer on this issue.

Longevity

From the expired collective bargaining agreement:

SECTION 15.10 PAY INCREASE SCHEDULE

Each full-time employee who has completed at least five (5) years of seniority will receive a longevity pay increase on the following basis:

<u>Years of Seniority</u>	<u>Percentage of Base Salary</u>
5 but less than 10 years	2%
10 but less than 15 years	4%
15 but less than 20 years	6%
20 but less than 25 years	8%
25 years or more	10%

City's Last Best Offer: (a) Amend Section 15.10, above, by beginning with the following:

Subject to the limitation on the amount of the base salary used to compute the longevity pay increase as set forth in Section 15.20, ...

(b) Add a new provision, SECTION 15.20 LIMITATION ON BASE SALARY, to read as follows:

The maximum amount of base salary which shall be used in computing a longevity pay increase shall be \$30,000.00 and any portion of a base salary which exceeds \$30,000.00 shall be disregarded in computing a longevity pay increase.

Union's Last Best Offer: No change in the status quo.

Discussion: The City maintains that current longevity benefits for the bargaining unit are much more generous than in comparable communities. It emphasizes that the City's

Last Best Offer will not result in any decrease in compensation to members of this bargaining unit during the term of this contract, but will establish a ceiling if, in the future, base salaries exceed \$30,000.

The Union disagrees, noting that under the City's last offers on wages, the Captain's wage would exceed the \$30,000 cap during this contract term. Moreover, as wages continue to increase, all ranks will reach \$30,000 eventually, thus reducing benefits beyond the present contract term. Also, the present longevity benefits for fire fighters are the same as for Niles police officers, and it would be unfair to reduce them.

The salient fact on this issue is that the current contract between the City and its police officers contains a longevity provision granting benefits identical to those in the fire fighter's expired contract. Given the healthy financial condition of the City, there is no reasonable rationale for the Panel to take from the fire fighters' benefits they now enjoy and which the City has negotiated with the police. Moreover, according to the City, the cap on benefits that it proposes is prospective, in which case it would be more appropriate to address this issue in negotiations for future contracts.

The Panel, the City dissenting, adopts the Union's Last Best Offer on this issue.

Vacations

From the expired collective bargaining agreement:

SECTION 9.10 EARNED VACATION

The amount of vacation shall be determined as follows (first meeting the requirements set forth below):

- (a) One week after the first year of service.
- (b) Two weeks after the second year of service.
- (c) Three weeks after eight years of service.
- (d) One additional day vacation with pay earned for each year after completing 10 years of service with a maximum of five weeks vacation.

City's Last Best Offer: Amend Section 9.10, Earned Vacation, sub-paragraph (d), as follows:

- (d) 3/5 of one additional day vacation with pay earned for each year after completing ten years of service with a maximum of five weeks vacation.

Union's Last Best Offer: No change in Section 9.10.

Discussion: The fire fighter's work week consists of three 24 hour days. Thus, under Section 9.10 (d) of the expired contract, after 10 years of service as additional days are accumulated for each year worked it takes but three years to earn another week of vacation. Police officers, who work the usual five day week, must work an additional five years to earn an additional week of vacation. The City's proposal would require the fire fighters to also work for five years to earn an additional three day vacation week.

The City believes that currently extra vacation time is earned too early, compared with vacation plans in comparable communities, and urges its proposed adjustment.

The Union disagrees, and asserts that no justification can be found in either set of comparable communities, nor is there any other evidence to support this proposed significant reduction in benefits.

A persuasive rationale commonly advanced by an employer for withdrawing a benefit previously negotiated is that the benefit has created problems, such as being too costly. This is not the case here, as the City does not allege that the benefit has caused financial hardship. Nor was a showing made that it caused any other problems. It is true that the expired contract provision is more generous than the analogous provision in the Niles police officer's contract. But on this issue a comparison to the police is inappropriate because of their different work days and work weeks. If the fire fighters have a somewhat more generous vacation provision, this can be viewed as recompense for their 24 hour work days. Also, the City's proposed solution would be awkward at best, as vacations would be taken in multiples of 3/5 of a day.

The Panel, the City dissenting, adopts the Union's Last Best Offer on this issue.

Retiree Insurance

From the expired collective bargaining agreement:

SECTION 14.30 RETIREE INSURANCE

Employees who retire on or after age 55 shall have their health insurance paid, until they are eligible for medicare unless the employee is employed elsewhere and has coverage provided through the other employer.

City's Last Best Offer: Delete Section 14.30, Retiree Insurance

Union's Last Best Offer: Retain Section 14.30, Retiree Insurance.

Discussion: The City believes that the comparables do not support what it regards as a costly provision. The Union maintains that as the City now offers an incentive of \$5,000 dollars to fire fighters and police officers who retire early, it would be inconsistent to at the same time discourage early retirement by withdrawing health insurance. The Union emphasizes, moreover, that the City provides health insurance to its other employee groups who elect early retirement, and that seven of the 10 Union comparable communities provide some kind of retiree insurance (Union Exh. 56).

As with the City's proposal to cap longevity benefits, in view of the City's sound financial condition it would not be reasonable to take from the fire fighters benefits they now enjoy, and which are identical to those the City negotiated with the Niles police officers. Also, elimination of this major benefit for retirees would certainly discourage retirements. Not only is this indeed inconsistent with the \$5,000 incentive to retire, but later retirements would cause the City to lose the savings resulting from the replacement of retirees by fire fighters at the entry level. Moreover, it is a benefit commonly, if not universally, found in comparable fire departments. Furthermore, health insurance is a critical need for a retiree and not always available at reasonable cost from a source other than his former employer.

The Panel, the City dissenting, adopts the Union's Last Best Offer on this issue.

Residency

From the expired collective bargaining agreement:

SECTION 17.20 RESIDE WITHIN CITY

Any employee on or after September 10, 1974, shall as a condition of employment, reside within the corporate limits of the City of Niles, within one hundred twenty (120) days after completion of their probationary period, except as provided below:

SECTION 17.21 EMPLOYED AS OF JANUARY 12, 1976

Any employee who was employed as of January 12, 1976, and at that time lived outside of the corporate limits, shall not be required to comply with this residency requirement.

SECTION 17.22 PROPERTY OWNED OUTSIDE CITY

Any employee who was employed as of January 12, 1976, and at that time, owned property outside of the corporate limits may build and reside on that property without being considered to be in violation of this policy.

City's Proposal: No change.

Union's Proposal: The Union proposes to delete entirely Sections 17.20, 17.21, and 17.22 so that there shall be no residency requirement for members of the bargaining unit.

Discussion: The Union argues that there is no evidence to support a need for a residency policy for fire fighters. It maintains that the present policy is arbitrary and discriminatory because other City employee groups either have no residency requirements or have requirements that are less harsh than those applied to fire fighters. Also, the fire fighters residency provisions are more harsh than many

of both the Union's and the City's comparables (Union Exh. 47,48).

The City insists that having the fire fighter live in the city reduces response time in emergencies and is a positive public relations factor. Moreover, it maintains that the Union has adduced no compelling reasons to justify a change in this provision.

The Panel, the Union dissenting, adopts the following residency provision:

(1) EMPLOYEES AS OF 1976

Any employee who was a full-time fire fighter as of January 12, 1976 shall:

(a) If he/she resided outside the City prior to that date, be allowed to continue to reside outside the City; or

(b) If he/she owned property outside the City prior to that date be allowed to move his residence to that property.

(c) Any employee may reside one mile outside the City limits or further, based on need as approved by the City Administrator.

(2) EMPLOYEES AFTER 1976

Any employee may reside one mile outside the City limits or further, based on need as approved by the City Administrator.

It is the intent of the Panel that this residency provision, substantially identical to that in the City's agreement with the Fraternal Order of Police, be administered in the same manner as its prototype in the police contract. It is also the Panel's understanding that no police officer or employee covered by the FOP contract who requested permission to move outside the City, under

provisions substantially identical to the one adopted by this Panel, has been denied permission by the City Administrator.

Physical Fitness

The expired collective bargaining agreement:

Section 20.10 provided for a joint Union-City committee to develop a physical fitness program by August, 1983, which would then be implemented only upon agreement of the parties. A termination date of October, 1985, was part of this provision.

City's Proposal: To add a new provision, Section 17.90

PHYSICAL FITNESS AND AGILITY, to read as follows:

All employees shall annually as scheduled by the Chief pass a physical fitness and agility test established by the Chief. Any employee who fails to pass such a test shall be retested as scheduled by the Chief not less than 90 nor more than 120 days after the failed test. Failure to pass when retested shall subject the employee to disciplinary action, including suspension without pay until the employee is able to pass such a test.

Union's Proposal: To delete the existing language of

Section 20.10 in its entirety and substitute the following:

On or before July 1, 1987, the parties shall form a committee composed of three representatives of the Union and three representatives of the City. This committee shall be charged with developing a physical fitness program for new hires (employees hired after January 1, 1988). After the committee has formulated the physical fitness program, the parties shall meet to discuss making the program a part of the Labor Agreement. In either case, this agreement shall terminate on October 1, 1988. The physical fitness program shall not become a part of the Labor Agreement unless all aspects of the program are agreed upon by both parties.

Discussion: The Union asserts that the City failed to show a need for a fitness test. If it were important, the Union avers, under the last contract the City would have taken advantage of the opportunity to meet with the fire fighters to develop a program, but it failed to do so. The Union also points out that a fitness provision in the police contract applies only to new hires, as does the Union proposal, and it also has other protections for the employee which are missing from the City's proposal. With only one exception, none of the Union's comparables require annual fitness testing (Union Exh. 57).

The City insists that its proposed provision is a reasonable means of insuring that all fire fighters are physically able to perform their jobs.

The parties' failure to implement the provision in the prior contract, in which they agreed jointly to develop a fitness program for current fire fighters, raises doubts as to the need for such a program. Nor is a fitness requirement commonly found in either the Union's or the City's comparables. The most compelling comparison is with the fitness provision that the City negotiated with the Niles police officers. However, Article 12.17 of that agreement differs from the City's proposal in that it applies only to new hires and it utilizes a standardized test, in this case one developed by the Michigan Law Enforcement Officer Training Council. The record does not

identify a similar standardized test for fire fighters,
either new hires or veterans.

For these reasons, the Panel, the City dissenting,
adopts contract language that incorporates a standardized
test and which restricts the fitness testing to new hires,
as shown below:

On or before January 1, 1988, the parties shall form
a committee composed of three representatives of the
Union and three representatives of the City. This
committee shall be charged with jointly selecting a
standardized physical fitness test for new hires
(employees hired after June 1, 1988). After the
committee has agreed upon the test to be used, the
parties shall draft language patterned after Section
12.17 of the Niles police officers contract, to become
a part of the collective bargaining agreement.

Hours/Work Schedule

From the expired collective bargaining agreement:
SECTION 7.10 HOURS

In lieu of making overtime payments pursuant to Act
604, the City agrees to schedule employees on an
average work week of fifty-four hours and to grant
days off to maintain the fifty-four (54) hour average
regardless of the number of days lost from work due to
vacations, sickness, etc. However, it is understood
and agreed that the City may return to a fifty-six
(56) hour schedule at any time, but in doing so it
shall be required to make the overtime payments
required by Act 604. Prior to any such changes the
CITY agrees to meet with the Union to discuss the
reasons for its action.

City's Proposal: To amend Section 7.10, as follows:

The average work week shall be 54 hours or an average
of 216 hours every 28 days. The City, in its sole
discretion, may change the schedule to provide up to
an average of 56 hours of work per week or an average
of 224 hours of work every 28 days, but prior to
making any such changes, the City agrees to meet with
the Union and discuss the reasons for the City's
action. In lieu of making overtime payments pursuant
to Act 604 or the FLSA, the City, in its sole
discretion, may grant compensatory time off.

Union's Proposal: To delete the existing language in Section 7.10 and substitute the following:

The City shall maintain the work schedule in effect on October 1, 1985, which consists of an average 54 hour work week with additional leave days granted periodically to maintain this average. A tour of duty or work day shall not consist of less than 24 hours per day. Overtime shall be paid as required by law. Compensatory time may be granted in lieu of overtime required by law at the option of the employee.

Discussion: The Union contends that the City's proposal, in various ways, removes the statutory protection afforded fire fighters under the Fair Labor Standards Act. Moreover, it argues that giving to the City complete discretion regarding when and in what manner compensatory time would be granted would permit abuse. Furthermore, the Union asserts that the comparability data offer no support for the City's proposal. Finally, the Union urges that the City has failed to demonstrate any need for the changes it proposes, and describes its own proposal as merely maintaining the status quo.

The City points out that its proposal essentially continues the current provision, except that it permits the City to grant compensatory time in lieu of overtime pay. The City urges that granting to the City this added flexibility would be a reasonable accommodation.

The Panel, the City dissenting, adopts the following

contract language:

The average work week shall be 54 hours or an average of 216 hours every 28 days. The City, in its sole discretion, may change its schedule to provide up to an average of 224 hours of work every 28 days, but prior to making any such changes, the City agrees to meet with the Union and discuss the reasons for the City's action. In lieu of making overtime payments for hours worked from 53 to 56 on average per week, pursuant to Act 604 or the FLSA, the City may grant compensatory time off subject to the provisions of the applicable state or federal acts.

The Panel adopts this proposal with the express understanding that it is not the intent of the City to change the existing work schedule. Moreover by adoption of this proposal the Panel does not intend to permit changes in the daily work schedule but simply to give the City the discretion, after meeting with the Union, to increase hours to an average of 56 per week, retaining the existing schedule with adjustments in the amount of leave or compensatory time granted and not adjustments in the daily work schedule itself.


Adoption of this proposal is also premised on the understanding that it essentially continues the past practice of granting compensatory time, in lieu of overtime, for hours worked in excess of the statutory (state or federal) maximum allowed in a 28-day cycle. The Panel does not intend, by adoption of this proposal, to change that practice.


For all other overtime worked, with the exception noted in the provision adopted by the Panel, the Panel does not intend to change the manner of compensation (cash payment or

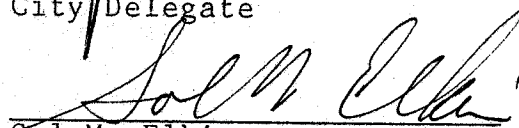
compensatory time) established by practice of the parties or pursuant to other sections of this contract.

Jurisdiction

The Panel reserves jurisdiction to resolve any disputes that may arise in the implementation of this Award.


Eileen Nowikowski,
Union Delegate


John F. Dewane,
City Delegate


Sol M. Elkin,
Chairman

December 15, 1987