

11/1/72

*White, City of Niles*

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
STATUTORY ARBITRATION

In the matter of

NILES POLICEMEN'S ASSOCIATION,  
Lodge No. 95,

-and-

THE CITY OF NILES

11/1/72

OPINION AND AWARD

Proceedings were held under the Michigan Police and Fire Fighter Compulsory Arbitration Act on October 22, 1971 in Niles, Michigan before a panel composed of the honorable William S. White, City of Niles representative; Norman Grace, FOP representative; and William M. Ellmann, Chairman of the panel.

An opinion and award was entered in December, 1971 and an appeal was taken by the City of Niles to the Circuit Court for the County of Berrien. The Court, having heard the matter, issued an opinion on or about October 5, 1972 setting forth:

- (1) "That the claims made by the City of Niles in their appeal raised by them as being jurisdictional are dismissed, this court holding them to be procedural.
- (2) This court orders that this matter be returned to the 'Panel of Arbitrators' and that they be instructed to make findings of fact and decision within thirty (30) days of the entry of this order.
- (3) The court retains jurisdiction to review any final decision of the panel to determine if it is supported by competent, material and substantial evidence of the whole record. The panel may reopen proofs if they so desire and may receive further exhibits. Further review of such decision may be raised in the court through motion practice.

Judgment was rendered by the honorable Julian Hughes on the

WILLIAM M. ELLMANN  
JUL 27 1976

WILLIAM M. ELLMANN  
ATTORNEYS AND COUNSELLORS  
PENOBSCOT BUILDING  
DETROIT, MICHIGAN 48226

(313) 961-7400

*Ellmann, William M.*

19th day of October, 1972.

### SUMMARY OF TESTIMONY

The record of this hearing consists of 196 pages. Numerous exhibits were presented. A wage increase of seven percent was previously offered by the City to the Police which the Police asserted was insufficient. The Police contend that they are not covered by the budgetary allocation (Transcript 7). They contend that: "any award should be based on a fair resolution of what the City can afford to pay, what the City should pay for the type of work, and what a fair rate for law enforcement should be in general; all those matters be up to the Trier of the Fact." (Tr. 8) The Police insist that the proposed salary is low and that they are professionals and entitled to higher pay (Tr. 8). The demand is for a \$1,000 increase per man or twelve percent (Tr. 9-10).

The City argues that, because of the economic plight of the City and reduced census, the City would have to stretch its budget and its resources to meet a seven percent wage increase (Tr. 11). The city asserts that its proposal was rejected (Tr. 13) and that it received a demand of \$1,000 across the board from the Union on July 27th, 1971 (Tr. 13).

The parties stipulate that Niles is a fourth class city; that it has a charter; that the City Charter provides for a Board of Public Safety; and that the Board has responsibility for the personnel, salaries, and operations of the Police and Fire Department of the City of Niles (Tr. 15).

### TESTIMONY

Rayford Crocker (Chief of Police)

The Chief of Police Rayford Crocker testified that at

present there are twenty-six men and a matron on the force (Tr. 17). The chief broke down some of the sections of his department. They have a K-9 Corp (Tr. 35), civil defense (Tr. 35), janitorial service (Tr. 36), a jail facility (Tr. 36), and school guards (Tr. 37) (The school guards are not members of the bargaining unit) He also observed that one additional man was hired to operate the community relations program under a federal grant (Tr. 26), but that his salary was not paid for by the federal government but expenses of the program were (Tr. 27).

The Chief said that members of his force were attending law enforcement courses paid for by the City of Niles (Tr. 22) and that he encouraged his men to take courses (Tr. 42). He also reviewed the procedures on hiring a new man (Tr. 41) and how he was trained. He talked of periodic meetings with his line men (Tr. 42).

The Chief observed that there was no noticeable increase in major felonies (Tr. 20) but that there was an increase in drug or drug related problems (Tr. 20) over the past year. (See also Tr. 44, Tr. 47 stating that there was a minimal increase in major and misdemeanor crimes over the past five years.) The Chief could not immediately analyze the prepared statistics and give a breakdown on convictions and pleas (Tr. 23).

The Chief, under cross-examination by Mr. Malcolm House, testified that a Benton Harbor policeman was charged with enforcement of "not only the state laws but the local ordinances, protection of life and property." (Tr. 43) He observed that the drug problem has not been as prevalent or as drastic in Niles as in Benton Harbor (Tr. 47). He observed that the record of arrests and convictions in this area would not indicate that there was a major problem (Tr. 47). The Police Chief, or examination direct, testified that the department had not deterred crime

because there had been a gradual increase (Tr. 49). He testified that whether policemen work in Detroit, Benton Harbor, Jackson, or Grand Rapids, they perform the same duties (Tr. 50-51). He also said that Niles had not been a high crime rate city (Tr. 52).

He testified that the exhibits referred to on his department were prepared under his direction (Tr. 149) and that he had very efficient personnel (Tr. 151). Mr. House then introduced a wage comparison survey of some Michigan cities, an Indiana City, and the Berrien County Sheriff's Department, Benton Harbor Township Police Department and the Kalamazoo County Police Department wage scales. In exhibit 17, submitted by the city, the hourly rate ranges from \$3.18 to \$4.52.

Chief Crocker did admit that as a law officer gains experience, he acquires more skills and more professionalism (Tr. 161). He said that with less policemen the efficiency of the department would be less (Tr. 166). When asked whether crime statistics are reliable, the Chief said: "I have my reservations." (Tr. 170)

#### Mayor Ralph Wegner

The Mayor testified that the Commission reviewed the budgets for final approval (Tr. 56), but that recommendations were made by the finance committee headed by Mr. Amerson Bowman (Tr. 56). He also said there was not too much discussion with the council on these matters (Tr. 57). He observed that there were nineteen different boards in the city made up of one hundred and one members (Tr. 58), that the bulk of the employees in the city were made up of police, fire and streets (Tr. 61). He also stated that the "liason between the board of Public Safety in negotiating matters or economic matters is the Finance Committee." (Tr. 65)

Amerson Bowman (Member of Council) (Chairman of Finance Committee)

Mr. Bowman indicated that the finance committee prepared budgets paring down those submitted to them for review after each department presents a budget (Tr. 68), including the billing department, Museum Board, Library Board, Board of Public Works, Safety Board, Cemetery Board and all the other boards in the city (Tr. 68-69). The budgets are prepared during the period from April until June 1st (Tr. 71). The wages for the ensuing fiscal year (August 1st to August 1st) were decided in May (Tr. 91).

He observed that in twelve years on the council some budgets had been rejected, but that all budgets had been approved as amended (Tr. 75). He observed that he could not change the budget once it is in effect (Tr. 76-7) and that approval of the budget requires six council members.

He said that a special meeting had been called to approve the budget and that a seven percent increase had been approved for all city employees (Tr. 78). He testified he had had more than one meeting with the Board of Public Safety (Tr. 73) on this budget. He said that he was familiar with the range of hourly rates (Tr. 94): "I knew the heavy equipment people made more money than the guy that swept the street." (Tr. 94) He further testified that he did not get involved with classification, nor did he go over the general duties of the various employees (Tr. 96). They do review equipment needs of the department (Tr. 97).

Mr. House, in seeking to clarify Mr. Bowman's testimony, observed that Mr. Bowman did not look over every line of the departmental budget (Tr. 98), although Mr. Bowman admitted on several occasions that, in reviewing salaries, the "lump sum type of program is used." (Tr. 99, see also Tr. 81) Mr. House,

in objecting to a line of inquiry about salaries, said that the finance head is "not expected to go out and talk to department heads or foremen or general foremen in Departments of Streets . . ." (Tr. 100) to determine what is a fair increase.

Mr. Bowman testified that there was no "place to go to get any more money at this particular point . . ." (Tr. 103), and that the city had to cut some monies out of different areas to pay salaries (Tr. 105). He said he would have to go to the people to raise tax dollars and that they had not made such a request for two or three years. (Tr. 107)

Burt Luth (City Clerk)

Mr. Luth testified that he had been the clerk for thirty years next April (Tr. 121) and that the charter's initial provision providing for the Board of Safety had been evolved in the 1920's (Tr. 122).

He said that he participated every year in making the budget (Tr. 124) and that substantial changes were made this year (Tr. 124) including uniform charts of accounts (Tr. 125). He testified that \$463,998 was budgeted for the police department (Tr. 126) and that there was a contingency fund in the budget (Tr. 127). He admitted that sometimes the department may go under its budget and sometimes it may go over (Tr. 128). He testified as to how the assessing is done (Tr. 130) and to the various valuations and as to the City's receiving a grant from the Board of Public Works (Tr. 138). He said that he only knew what the employees do in a general sense -- "Only what the job might suggest, electrical work, sewer work." (Tr. 129).

Dorwin Starke (Member of the Board of Public Safety)

According to Mr. Starke, items such as hospital in-

surance, life insurance, the retirement fund, employees bonds, and fleet insurance did not appear previously in the budget for the police department (Tr. 143). He identified the sum of \$75,798 hospitalization benefit as appearing in the figure of \$463,998 for the first time (Tr.144).

### CONTENTIONS OF THE PARTIES

#### UNION

The wage demands of the police are fair and equitable. Under exhibits 17 and 20, the Union argues that linemen are paid more than police officers, and that the police rate is, in one case, at \$4.97 and below. Mr. Susskind maintains that the police should be given a professional salary which should be more than that of a day laborer. He characterizes the responsibility as deserving of a professional wage (Tr. 178). He maintains that the panel is not bound by the budget; otherwise collective bargaining will not exist (Tr. 178). The Union argues that the city can pay \$6,000 readily, and points out their position that the contingency fund has \$69,000 in it. There is no inability to pay. The Union argues a fair rate of pay exceeds the seven percent which was offered and that comparisons between townships are difficult, claiming that there are different cities, different property values, tax structures, incomes, property tax valuations and crime rates, citing these only as a kind of guide (Tr. 181). The argument is made that this force is holding the crime rate down.

#### CITY

The city argues that its own comparables are better than the union's saying that the union's comparables are really

not comparables (Portage, E. Lansing, Fenton, Pontiac, Southgate, Lincoln Park, Michigan State [University] Police) (Tr. 185-186; see also corrections to transcript submitted by Mr. House December 17, 1971). The city maintains that construction rates set out by BNA, or the Communication Workers, or the rail and steel settlement are not relevant (Tr. 187). Mr. House claims the offer is fair (Tr. 190). In his closing, Mr. House argues that the difference is actually \$1,357 per man (Tr. 191).

#### FINDINGS OF FACT

The sole issue presented to the panel is the question of remuneration for the police department, composed of twenty-seven members, for the period from August 1, 1971 through July 30, 1972.

The unit covered is specifically set forth: "... all law enforcement Officers of the City of Niles, including Patrolmen and Matrons, but excluding the Chief of Police, Captains, Lieutenants, Sergeants, Office Clerical employees and all other employees or Supervisors as certified by the Michigan Labor Mediation Board under date of March 31, 1969, for the purpose of collective bargaining with respect to rates of pay, hours of employment, and other conditions of employment." The following pay scales are presently in effect: (City Exhibit No. 16)

Patrolmen:	
Starting Salary . . . . .	\$7840
First Year . . . . .	8288
Second Year . . . . .	8624

The hourly rate, as seen in the City's Exhibit No. 17, covers the years of 1966, 67, 68, 69, and 70. These rates go from a high of \$4.97 per hour to a low of \$3.18 per hour. The City's Exhibit No. 15 seeks to project a seven percent increase, as offered in May, 1971 by the City of Niles. According to this exhibit some of these rates would go to an hourly rate of



\$4.52; others would go to \$4.43; some would go to \$4.61; three would be at \$4.26 per hour; one at \$4.03 per hour; and one at \$3.70 per hour.

Although the Police and Firemen's Arbitration Act sets out nine criteria for determining these matters, one can easily understand that none of them are all-encompassing and at the same time none by itself is necessarily decisive on the issue.

The panel has had another opportunity to review the various documents presented to it. We have met again in Niles, Michigan on November 1, 1972 to review the case together in executive session. (Judge William S. White was unable to be present)

We hold that this is a professional type of responsibility, and that the question of fair pay must be determined on what type of work policemen perform in Niles regardless of what any other department of the city is paid. We also hold that the city has not demonstrated that it cannot afford the increase from a budgetary standpoint. As we said in our original holding, we find that there is a burden on the City of Niles to find other resources to pay increases, if resources are not presently available, and any self-imposed inability to pay, conscious or otherwise, on the part of the city should not go unchallenged. It is not our finding that funds are not presently available. When first interrogated about what was in issue, both sides indicated \$6,000 (Tr. 115). Mr. House, in later clarifying his position, indicated that the figure was approximately \$6,079 in rollup costs. (City post-hearing brief, page 24). The city originally stated that its position was that seven percent was reasonable for all employees and we note no meaningful retreat from that original supposition. In any case, it appears that we are arbitrating a case in which \$6,000 is in contention at the particular hearing

(five percent difference existing). The original decision of a majority of the panel to split the amount, making it approximately \$3,000 en toto catchup (nine and one-half percent increase) represents a figure of approximately \$.10 more per hour per employee (\$4.00 per week), which totals \$209.70 per man per year. While there is much to be said for fiscal responsibility, this is not such an additional burden even with the new increase whereby the City of Niles cannot find means of paying it. Budgetary limitations are relevant but we hold that they do not determine this issue.

Police work is a very difficult type of work even in areas where crime may be decreasing somewhat, as the Chief seems to imply. If crime is decreasing, then this is to the Force's credit. If, on the other hand, crime is increasing, Niles seems to have it under some kind of control.

Cities must not keep police salaries below what they should receive. Nor is it fair to tie police salaries to other city employees, since the work they perform is highly specialized. Not only are police the first defense against crime, but they also perform a multitude of duties. We take judicial notice of the type of work performed although their duties in Niles are similar to those in any large city, as Chief Crocker pointed out (Tr. 50-1), and, we assume, they may on occasion direct traffic, render emergency treatment, cite people for parking violations, provide information, or do other routine matters. This is truly a professional responsibility and should be kept competitive with other occupations or professions. We should add that they must be able to investigate crime, prevent it where possible, handle delinquents, and administer the whole panorama of police operations. We need not dwell at length, but take judicial notice of the extreme and continuing risk to

life and limb of police dramatized so vividly in the Niles area since the original hearing in this case. We have seen also the development recently in Niles of a certain expertise in community relationships. Police must be 'sociologists and psychologists.'

Both sides have submitted comparables to us with each insisting that its comparables are better able to present a true picture of what salaries should be. Among the nine criteria cited in Sec. 9 of P.A., 312 of 1969 (The Police and Firemen's Arbitration Act), both private and public sectors can be considered.

(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

- (i) In public employment in comparable communities.
- (ii) In private employment in comparable communities.

The City has cited South Bend, Mishawaka, Indiana; St. Joseph, Buchanan, Benton Harbor, Niles Township, and the Department of State Police, Michigan.

1971-1972

<u>Agency</u>	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>
M.S.P.	9,228.96	9,918.00	10,523.52
Benton Harbor	7,642.00	8,400.00	8,825.00
South Bend	7,445.00	8,112.00	8,780.00
Mishawaka		8,512.00	
Buchanan	6,500.00	7,100.00	8,000.00
Niles (7% offer)	8,388.80	8,868.16	9,227.68

1970-71

<u>Agency</u>	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>
Niles Township	7,800.00	8,100.00	
St. Joseph	8,540.00	8,934.00	9,324.00

The Union has supplied us with its comparables and we have compiled same into a schedule.

<u>Agency</u>	<u>Start</u>	<u>1 Year</u>
Pontiac	9,300.00	
Battle Creek	9,411.00	9,887.00
Michigan State Univ. Police	9,300.00	
Charlotte	8,100.00	8,800.00
L. Lansing 1971 effective 7/1/72	8,360.00 8,870.00	9,035.00 9,590.00
Fenton	8,500.00	9,500.00
Lincoln Park (Policewoman)	10,550.00	(1970 pay - not start)

Construction Wages -- average 7.04 per hour (Union Exhibit N)

Bricklayers -- average 7.79 per hour (Union Exhibit N)

Painters -- Average 6.66 per hour (Union Exhibit N)

It is, of course, the usual practice of cities to use comparables which may reduce pay, while Unions tend to find enough cities to buttress their argument for increases.

We are less impressed with comparables in the Metropolitan Detroit area, even though their use might conceivably precipitate a considerable increase.

A review of the comparables indicates that Niles will still be at approximately the average pay under Zone 2 cities (Union Exhibit J for 1971, an excerpt from the Michigan Municipal League's 1971 Bulletin) which are those cities in the lower <sup>new</sup> peninsula outside the metropolitan area and below a line drawn just north of Bay City, Midland and Mt. Pleasant. Referring to the City's Exhibit 25, the amount to be paid under the City's own projection is \$240.00 below the average for all Area #2 cities (Union Exhibit J). We do not believe that an additional

amount of approximately \$209 (representative of a nine and one-half percent increase) is unreasonable particularly in light of the fact that, according to the Municipal League, many cities had not completed contract negotiations when placed in these groups.


It is imperative that the police must offer not only salaries competitive with other occupations or professions but they must be sufficient to attract people who would seek employment elsewhere so that Niles can continue to recruit top-grade personnel.

We find that resources are available to pay the total of \$3,000 (representative of a two and one-half percent increase over the City's offer) as catchup and it is reasonable under appropriate criteria. If resources are not available this sum must be obtained by the City through other sources. We find that police work is demanding, varied, highly specialized and professional and that compensation must be adequate. It is therefore our <sup>and we</sup> conclusion that Niles' proposed salary increase of seven percent is inadequate, as far as the police force is concerned.

#### AWARD

We therefore grant the police a nine and one-half percent salary increase for the contract year starting August 1, 1971 through July 31, 1972.

\*   
William S. White *absains*

  
Norman Grace

  
William M. Ellmann

DATED:

11/1/72

\* William S. White did not sign this decision because prior to the issuance of the award he was appointed Circuit Court judge.