

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the matter of:)	
)	Case No: 2013-MED-05-0738
)	
GRAFTON VILLAGE,)	
Employer)	
)	
and)	
)	
OHIO PATROLMEN'S BENEVOLENT)	
ASSOCIATION,)	
Employee Organization)	

**REPORT AND RECOMMENDATIONS OF FACT FINDER
WILLIAM W. ALLPORT**

APPEARANCES

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For the Employee Organization:

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Hearing: Grafton, Ohio, September 5, 2014

Award Issued September 12, 2014

INTRODUCTION

The Village of Grafton (hereinafter “Employer” or “Village”) and the Ohio Patrolmen’s Benevolent Association (hereinafter “OPBA” or “Union”) are engaged in negotiating their first collective bargaining agreement relating to the Part Time Police Officers who are currently employed by the Village. Certain issues have arisen between the Village and the OPBA regarding the terms and conditions of the proposed labor agreement. These issues have resulted in the Parties seeking the services of the Ohio State Employment Relations Board (SERB) to aid them in reaching a final agreement. On July 30, 2014, pursuant to Section 4117.14 (C)(3) of the Ohio Administrative Code, the undersigned was appointed by SERB to serve as a Fact Finder and aid the Parties in attempting to resolve this matter. On August 4, 2014 the Parties mutually agreed to extend the statutory fact-finding time period limitation until the 5th day of September, 2014. The Fact Finding Hearing relative to this matter took place on the 5th day of September, 2014 at 9:00 a.m. in the Grafton Village City Hall.

FACTUAL BACKGROUND

The Employer is organized under the Laws of the State of Ohio as a “village” form of government. Situated within Grafton’s boundaries are several State and County prisons. Two of these prisons are maximum security facilities and a third is a medium security facility operated by the State. These facilities are the largest employers in Grafton providing jobs and income for what was described at the Hearing of this matter as approximately fifty percent of Grafton’s population.

In addition to the inmates housed at the correctional facilities, the Village has a permanent resident population of about 2,600 persons. In 2010 the Federal Census Bureau (FCB) changed its method of calculating the population of a political subdivision. The FCB now includes prisoners who may be housed within the boundaries of a village, as being a part of that Village’s census calculation. Thus, for purposes of the Federal Census, the Village of Grafton’s population now includes the inmates housed within its borders. Grafton’s total population, including prisoners, currently numbers approximately 6,636 residents. This change in the census calculation methodology has increased the population of Grafton Village to such an extent that it now falls within the jurisdiction of Ohio Revised Code Section 4117.01 (B). As such, Grafton became a “public employer” and is now required to recognize and bargain collectively with labor organizations that have been certified to represent certain classifications of their employees.

The Village has engaged in the collective bargaining process with the OPBA on two prior occasions. The first occasion involved a bargaining unit comprised of its Full Time Police Officers

(there is one Full Time Police Officer), and the second occasion involved a bargaining unit of its Police Sergeants (once again there is currently one Police Sergeant). Both negotiations involved first contracts for each bargaining unit. Negotiations relative to a labor agreement covering its full time Police Officer Unit required the services of SERB and the appointment of a Fact Finder and subsequently a Mediator. The Decisions issued by these persons can be found by referencing SERB Case Number 2012-MED-11-1334. It appears the services of SERB were not needed with respect to the negotiations relating to the Police Sergeant Unit. The above referenced bargaining efforts took place in 2013 and resulted in the ratification of two separate and distinct Labor Agreements with identical effective dates of January 1, 2014 through December 31, 2016. With minor differences, the language contained in the bargaining agreements for the Sergeant and Full Time Police Officer units are identical. The Fact Finder prepared a "side by side" comparison of the language contained in these two contracts and that document was presented to the Parties at the Hearing of this matter.

The bargaining unit that is the subject of this Fact Finding Hearing relates to Part Time Police Officers who are employed by the Village. Currently there are six part time police officers. In addition to the six part time officers, the Village also employs approximately 20 other full time employees who are engaged in a variety of occupations. The Village and the OPBA have engaged in the collective bargaining process relative to the Part Time Police Officers over a 15 month period and have reached tentative agreements on twenty three Articles. A Document containing the twenty three Articles was presented at the Hearing and both Parties agreed that it contained the sum and substance of their Agreements to date. The language contained in these twenty three articles is virtually identical to the language contained in the Villages Sergeant and Full Time Officer labor agreements. The Parties agree that three Issues remain unresolved and hence the necessity of the Fact Finding Hearing on the 5th day of September, 2014.

HEARING

The Fact Finding Hearing respecting this matter was held at 9:00 a.m. on the 5th day of September, 2014 in the Council Chambers Meeting Room which is located in the Grafton City Hall. Pre-Hearing Position Statements were submitted and timely filed by both Parties in conformity with Ohio Revised Code Section 4117.14(g)(3). A Stenographer was not present at the Hearing. The Fact Finder's personal notes taken at the Hearing will constitute the Official Record of the Hearing.

Robin Bell, Esq., with the law firm of Clemans, Nelson & Associates appeared on behalf of the Village. Ms. Linda Bales, Clerk-Treasurer of the Village was also present representing the Village. Kevin Powers Esq., was present and represented the Ohio Patrolmen's Benevolent Association. Also present with Mr. Powers was Part Time Patrol Officer Ryan Summerville. Prior to the

Hearing taking place an informal discussion took place between the Fact Finder and the respective Counsel and Representatives for the Village and the OPBA. The purpose of the discussion was to review the current status of collective bargaining. The Parties stated that they had tentatively agreed to twenty three Articles. The language in the twenty three Articles is virtually identical to the language that was previously negotiated with the other two bargaining units. The Parties indicated that there were essentially deadlocked on three outstanding issues. One of the issues, respecting duration of the new agreement, was actually an ancillary issue tied to the outstanding wage issue. Thus, in reality, there were only two issues remaining to be settled: (1) wages, and (2) a physical fitness health program which was suggested by the Village. After a review of these issues it was apparent that any attempt at mediating the dispute would be fruitless as each Party appeared to be resolute relative to its position.

After these informal discussions took place the Fact Finder went on the Record and the Formal Hearing took place. The Parties were extremely well prepared and presented succinct and convincing arguments on each unresolved issue. Their arguments were well supported with live testimony, facts, figures and "comparables." The Parties agreed that the Fact Finder's Recommendations would be filed no later than the close of business on Friday, September 12, 2014 and that the Recommendations would be served by electronic mail.

All of the following factors which are set forth in Ohio Revised Code Section 4117.14(G)(7)(a)-(f) were reviewed and considered at the Hearing:

- (a) Past collective bargaining agreements, if any, between the parties;
- (b) Comparison of issues submitted to final offer settlement relative to the employees in the bargaining unit involved, that those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties; and
- (f) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration and the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or private employment.

ISSUES

I. **ISSUE ONE: PHYSICAL FITNESS HEALTH:** The first issue relates to the Village's proposal relating to "Physical Fitness Health."

a. **VILLAGE POSITION:** The Village has proposed a "Physical Fitness Health Program" for its part time police officers. The Village desires that its part time patrol officers be required to take a "physical examination" which would be administered by a physician of each officer's choosing once every three years. The Village also proposes that its part time police officers be required to "take a physical fitness test annually that consists of push-ups, sit-ups and a 1.5 mile run which tests will be scored according to the standards compiled by the Cooper Institute for Aerobic Research".

The Village believes that the introduction of such a process will be beneficial to both the Village and the Police Officers. It will be advantageous to the Village in that it could well reduce its health care costs. It would be beneficial to the Police Officers in terms of their personal health in that it will provide them with a free medical exam and a strengthening regimen that will hopefully make each officer more fit for service and less prone to injury. The Village claims that the process is fully HIPAA compliant. The Village states that the Reports it will receive from the physicians will only indicate whether an officer is "qualified" or "not qualified". The confidential aspects of the physical exam will only be provided to the officers themselves. The Village will not be privy to this information.

A copy of the Village's proposed contract language respecting its Physical Fitness Health proposal is as follows:

ARTICLE 24: PHYSICAL FITNESS HEALTH

Section 1. Examination. The Village will provide each member with a physical examination once every three (3) years. The location and content of the physical exam will be determined by the Chief of Police. If it becomes necessary to alter the location and/or content of the physical exam, the Union will be notified of the reasons for the change. The Village will receive a written report from the attending physician regarding the results of the examination, which report shall be limited to an evaluation as to whether the employee is fit for duty and whether the employee is able to participate in the Physical Fitness and Health Program. The City will observe the requirements of the Health Insurance Portability and Accountability Act

of 1996 (HIPAA), if and to the extent it applies, in the handling of the examination reports.

Section 2. Physical Fitness and Health Program. A physical fitness testing program (“program”) is established subject the following terms and conditions. No discipline shall be imposed based upon the employee’s performance; however the inability to meet the standards of the program may be considered as the basis for inquiry into a fitness for duty.

- A.** The program shall consist of three (3) events: (1) number of pushups in one minute; (2) number of sit-ups in one minute; and (3) a 1.5 mile run.
- B.** These tests will be scored using published standards compiled from the Cooper Institute for Aerobic Research. Each member will be given a score for each event which will be expressed as a performance percentage comparing the member’s results to nationwide averages of all others in the member’s respective age and sex categories. For purposes of scoring, the three (3) percentage numbers will be averaged together. The member’s final score constitutes the average of the three (3) test results expressed as percentage number.
- C.**
 - 1. During calendar year 2015 all members shall be required to participate in the program in good faith in order to establish his or her base score.
 - 2. For calendar year 2016 and thereafter, members shall be expected to achieve a final score of at least 45%. This percentage increases to 50% in 2017.
 - 3. A member who has a final score of at least 75% will receive a Certificate of Commendation.
- D.** If a member is unable to participate due to injury or illness on his or her assigned testing date, the member will be given one opportunity to make up the test at a later date and time. The Chief, at his or her discretion, also has the authority to order a makeup test to correct any errors resulting from incorrect testing procedures.

- E.** The physical fitness testing shall be conducted by members who have successfully completed OPOTA’s “Police Fitness Coordinator” or “Physical Fitness Specialist” certifications.

- b. **OPBA POSITION:** The position of the OPBA is simple and straight forward. The OPBA asserts that the above quoted language is “intrusive and unnecessary.” The OPBA contends that the Village has not required its other bargaining units (Sergeants and Full Time Patrol Officers) to comply with such a Program. The OPBA also contends that this language was introduced at “the eleventh hour” in a bargaining process that consumed fifteen months of time. In summary the OPBA believes that it would be unjust and unfair for the Village to hold its part time police officers to “a higher standard” than its full time employees.

- c. **FACT FINDER RECOMMENDATION:** The Fact Finder reviewed the labor agreements which are currently in effect between the Village and its Sergeant and the Village and its Full Time Police Officer. Neither possesses such a Physical Fitness Health Program.
 - i. **INTERNAL EQUITY:** The OPBA is correct in its statement that no other bargaining unit is required to conform to the Village’s proposed Physical Fitness Health Program. The Fact Finder agrees that it would seem facially unfair for the Village to require one bargaining unit to conform to such a Program and not the others.
 - ii. **PERIOD FOR DISCUSSION:** The OPBA opined that the implementation of such a program, even if it’s deemed practicable, should be the result of substantial thought and discussion. The Fact Finder would submit that perhaps the appropriate time for discussion of such a Program would be concomitantly with all three bargaining units participating or at the very least on an individual bargaining unit basis well in advance of the next contract bargaining negotiations. It would also seem appropriate, due to the complexity of the subject, that the Village and the OPBA be given ample opportunity to discuss the program and possible impacts the Program may have on both the Village and the Bargaining Unit Members.
 - iii. **RECOMMENDATON:** For the reasons stated above, the undersigned recommends that the language contained in the Village’s proposed Article 24 be rejected at this time and not become a part of the Labor Agreement.

II. ISSUE TWO: WAGES

- a. **POSITION OF OPBA:** The OPBA presented the following wage demand language which included an initial adjustment in base wage rate of 10% retroactive to 1/1/14 and an additional increase in base wage rate of 5% taking place on

1/1/15. The Union is also demanding a Wage Reopener during the third year of the labor agreement. The Language submitted by the OPBA is as follows:

i. PROPOSED LANGUAGE:

1. ARTICLE _____

2. Section 1. Effective January 1, 2014, hourly rates of pay for the bargaining unit members shall be as follows:

- a. Start \$14.39
- b. After 1 year and 1200 hours worked, but no later than after two years \$15.34
- c. After two years and 2400 hours worked, but no later than after four years \$15.99

3. Section 2. Effective January 1, 2015, pay rates for bargaining unit members shall be increased by one and one-half percent (1.5%) and shall be as set forth below:

- a. Start \$15.11
- b. After 1 year and 1200 hours worked, but no later than after two years \$16.10
- c. After two years and 2400 hours worked, but no later than after four years \$16.79

4. Section 3. The Union may reopen negotiations for the sole purpose of negotiating wage increases for the third year of the contract by providing written notice to the Village between October 1, and October 31, 2016.

ii. UNION ARGUMENT:

1. Internal Equity: The Union contends that both the Full Time Police Officer and the Sergeant labor agreements contained first year increases that were effective on January 1, 2014. The Union contends that all three Labor Agreements should have been negotiated simultaneously. Negotiations relative to the Part Time Officers contract, alleges the Union, were delayed until the other two agreements could be finalized. The Union believes that the Part Time Officers first year increase should be in "lock step" with the other two agreements and take place on January 1, 2014. The OPBA states that if the Village's offer is accepted the part time officers won't receive a first year increase until at least 9 months after the Sergeant and Full Time Officers received their increases. The same is true for the second and third year increases. The

Union believes that this nine month gap is inherently unfair since negotiations concerning the Part Time Officers labor agreement were purposely delayed by the Parties so that the other two agreements could be reached. The OPBA demands that the adverse impact of forgoing a raise for these nine month periods be addressed and the Part Time Officers compensated accordingly.

- 2. Comparable Wages:** The OPBA also presented wage statistics concerning twelve other communities which the Union believes are comparable to the Village of Grafton. See Union Exhibit No. 1. The information presented details the “top pay” of the part time officers employed by those communities. The “bottom line” of the Union Exhibit No. 1 financial comparison is that the top pay of the officers employed by the twelve comparable communities is on average approximately \$5.00 per hour greater than the top pay of the Part Time Officers employed by the Village of Grafton. According to the wage information presented by the OPBA, the wages received by the officers in the comparison communities are on average \$19.16/hour. The OPBA submits that the average wage being paid to the Village of Grafton’s officers is \$14.52. The Union believes that this gap in wages is simply too great and that immediate adjustments are necessary to bridge the claimed difference in pay. Hence the reason the Union is demanding a 10% wage increase in year one and a 5% increase in year two.
- 3. Ability to Pay:** The OPBA presented the “Amended Certificate of Estimated Resources” pertaining to the Village of Grafton as its Hearing Exhibit No. 2.
 - a.** The document shows that the “Unencumbered Balance” for the Village as of January 1, 2013 is \$1,399,451.59. This sum would indicate that the Village has ample resources to pay the type of wage increase that the Union believes is necessary.
 - b.** The Union’s Exhibit No. 2 contained a six year comparison of the Village’s “Fund Balances” for the period 2007 through and including 2012. This document shows that during this period the Village’s Fund Balance ranged from \$1,653,792.83 in 2007 to \$1,456,031.74 in 2012. The Union submits that it is apparent that the

Village's General Fund has consistently shown a surplus so that an appropriate wage increase for the Part Time Officers would certainly be well within their budgetary constraints.

4. **Best Practices:** Finally the Union introduced as its Hearing Exhibit No. 3 a copy of the GFOA suggested "Best Practices" relative to the "Appropriate Level of Unrestricted Fund Balance for the General Fund." The Union contends that the Report recommends that "general-purpose governments, regardless of size, maintain an unrestricted balance in their general fund of no less than two months of regular general fund operating revenues." Clearly, argues the Union, the level of the Villages Unrestricted General Funds is sufficient to cover the wage increase sought by the Union and still provide the Village with a Fund Balance well within the guidelines suggested by the GFOA.
5. **Implementation Date:** The OPBA believes that the wage increases they are demanding should have been implemented on January 1, 2013 but due to the fact that the other two Agreements were then being negotiated the Part Time Officers bargaining was delayed. The Union contends that this delay was in no manner attributable to the Part Time Officers but due entirely to time and resource limitations of the Village and Union. The Union fervently believes that the Part Time Officers should not be penalized for this delay. Thus the Union believes that the increases they are demanding should be implemented effective January 1, 2014.

b. **POSITION OF THE VILLAGE:** The Village presented the following wage demand which included an initial adjustment in base wage rate of 3% on the ratification date of the new agreement and an additional base rate increase of 1.5% on October 1, 2015. In addition the Village also presented Wage Reopener language during the third year of the Agreement. It should be noted that the Wage Reopener Language suggested by the Village and the OPBA are identical with the exception of the date the reopener should occur. This issue will be dealt with subsequently.

i. **PROPOSED LANGUAGE:**

1. **Article 18 WAGES:**

2. **Section 1.** Effective the first full pay period after execution, hourly rates of pay for bargaining unit members shall be increased three percent (3%), with rates as set forth below:

- a. Start \$13.36
- b. After 1200 hours worked in one year
 or after two years \$14.31
- c. After 2400 hours worked in two years
 or after four years \$14.96

3. **Section 2.** Effective October 1, 2015, pay rates for bargaining unit members shall be increased one and one-half percent (1.5%) with rates as set forth below:

- a. Start \$13.56
- b. After 1200 hours worked in one year
 or after two years \$14.52
- c. After 2400 hours worked in two years
 or after four years \$15.18

4. **Section 3.** The Union may reopen negotiations for the sole purpose of negotiating wage increases for the third year of the contract by providing written notice to the Village between July 1 and July 31, 2016.

ii. **VILLAGE ARGUMENT:**

1. **Internal Equity:** The Village contends that the level of pay for its existing Full Time Patrol Officer is the benchmark for any wage consideration respecting its Part Time Police Officers. If the Village were to agree with the 10% and 5% wage demands of the OPBA delineated above internal equity would be destroyed. It would be patently unfair, argues the Village, for one set of Police Offices to receive raises superior to those currently in place for the others. Currently the Full Time Police Officer is compensated as follows:

- a. **January 1, 2014** Patrol A \$18.22
 Patrol B \$20.07
- b. **January 1, 2015** Patrol A \$18.49

Patrol B \$20.37

c. **Explanation:** “Patrol A” is the entry wage rate and “Patrol B” is the wage paid after one year of service.

2. **Comparable Wages:** The Village contends that the communities identified in OPBA Hearing Exhibit No. 1 were not appropriate for the Grafton Village situation. The Village presented Village Exhibits 3 and 13 at the Hearing to support their argument. The Village contends that the prisoner population which is situated in the Village is of little concern to its police force. The prisons and prison population are within the jurisdiction of the State and not Grafton. Thus, the Grafton Police Force is responsible for essentially 2,600 residents. The Village submitted wage statistics for six communities with populations essentially the same as Grafton. The Comparison for part time officers was as follows:

	Minimum	Maximum
a. Similar Villages	\$12.88	\$14.66
b. Grafton	\$13.36	\$14.96
c. Differential	\$0.48	\$0.30
d. Grafton	+3%	+3%

Based on this information and other arguments contained herein, the Village believes that its’ current pay structure is not only appropriate but statistically verified by the comparison information it presented at the Hearing of this matter. Bottom line . . . Grafton believes that its Part Time Officers are compensated at a rate 3% greater than similarly situated officers located in communities possessing similar demographics.

3. **Precedence:** The Village contends that the Part Time Officers should receive no greater increase in wages than did the Sergeant and Full Time Patrol Officers in their negotiations. Both the Sergeant and the Full Time Units received identical wage increases of 3% on January 1, 2014 and 1.5% on January 1, 2014. As noted earlier the bargaining agreements of both bargaining units provide for wage reopeners in the third year of the respective agreements. The Village contends that the conditions

warranting an increase for its Part Time Patrol Officers are no different than those justifying the increases obtained by its other bargaining units. Thus, the Village is sanguine that its offer of a 3% increase to be implemented on the ratification of the new agreement and a 1.5% increase during the second year of the new agreement is completely appropriate.

4. **Effective Date:** The Village believes that the appropriate date for the implementation of the first year wage adjustment should be concomitant with the ratification date of the contract. The second increase should be one year later and the reopener set for the third year of the Agreement two years after execution. The Village believes that the fact that its Sergeant and Full Time labor agreements contained wage increases which were implemented on January 1, 2014 is not precedential and should have no bearing on this negotiation.
5. **SERB Statistics:** The Village introduced as its Exhibit No. 17 the “Wage Settlement Breakdown (2004-2013) Report” that was compiled by SERB. The Village pointed out that the Report establishes that average wage increases during this time period were generally in the 1.47% range statewide to 1.49% for the Cleveland area and 1.66% for “Police” in particular. The Village contends that its offer of a 3% wage increase during the first year of the Agreement and 1.5% during the second was more than fair based on the SERB numbers.
6. **Ability to Pay:** The Village does not seriously dispute that it possesses sufficient funds to make a modest pay increase. The Village submits, however, that it is currently accruing funds in its’ General Fund to cover anticipated costs associated with the State’s widening project relative to Route 57. Thus the Village contends that the Fund balance is illusory since a portion of those funds are ear marked for the State Project. Village Exhibit 8 indicates that the Route 57 project could account for as much as \$800,000.

Finally, the Village points out that its’ General Fund has been steadily decreasing over the last five years. The Village stated that

it does not see a reversal of the downward trend relative to its General Fund in the “foreseeable” future. The Village is financially sound which should be a positive for both sides of the negotiation. This “soundness” is due to astute financial practices including a relentless control of expenditures. Recently the Village eliminated its “Dispatch Operations” as a means of further reducing expenditures.

c. **RECOMMENDATION:** The Fact Finder is beholden to the Parties for the wealth of information that was supplied at the Hearing of this matter. The Fact Finder’s task was made more complex by the delay in negotiations that was experienced with respect to the Part Time Officers. It is hoped that the Recommendation will address this issue and be fair to both sides.

1. **Ability to Pay:** The ability of the Village to pay a suitable increase was never really in issue at the Hearing of this matter. However, the Village’s caution relative to its reduced receipts was well taken and is certainly a genuine concern for the Village. Additionally, the Village’s position that the General Fund balance is illusory when the impact of the funds needed for the Route 57 widening project are eliminated, is also well taken. Nevertheless, there appears to be adequate resources to fund a modest increase in base wage rates for the Part Time Police Officers. Thus, the Fact Finder is sanguine that funds exist for an appropriate wage adjustment just as they did for the increases granted to the Sergeant and Full Time Patrol Officers’ bargaining units.
2. **SERB Wage Settlement Report:** The SERB Wage Report referenced by the Village clearly establishes a 1.47% average wage increase for collectively bargained labor agreements in 2013. Additionally, the Report indicates that the average wage increases in the City of Cleveland were approximately 1.49%. During the same period “Police”, as a general category, appear to have received on average 1.66% adjustments to their wage rates. Thus the Villages offer of 3% and 1.5% with a wage reopener in the third year appears to be in line with the SERB survey.
3. **Comparables:** Both the Union and the Village made compelling arguments relative to the “comparable” wage statistics which were presented by each. The statistics produced by the Village,

however, especially rang true when the “internal equity” and “SERB Statistical Report” are considered.

4. **Internal Equity:** The Fact Finder was impressed with the fact that the prior two bargaining unit negotiations relative to the Police Sergeant and the Full Time Officer resulted in virtually identical agreements in terms of language and wage increase percentages. Thus the Fact Finder believes that on the basis of internal equity alone the Village’s initial offer of 3% and a subsequent wage adjustment of 1.5% is fair and should be implemented. The question which remains is of course the timing for such increases. See paragraph 5 immediately below.
5. **Implementation Dates:** A question arises as to when the increases recommended in this Report should be implemented. The Union contends that the other two bargaining units (Sergeant and Full Time Officers) both received their first increase on January 1, 2013. The Officers employed under these Agreements have enjoyed the additional income provided for in their respective Agreements since that time. The Union states that the limited resources of both Parties precluded negotiating all three initial labor agreements simultaneously. Had there been no such constraints, the Part Time Officers’ labor agreement could well have been negotiated and resolved so that the Part Time Officers, too, would have been given wage increases on January 1, 2013. If the Villages offer respecting the delayed starting date is accepted, the Union opines that the Part Time Police Officers will be prejudiced since they will receive their pay increases nine months behind their brethren during each of the three years of the labor agreement. This, the Union believes is patently unfair

The Village wage proposal offers the Part Time Officers a 3% increase which is to be paid on the “execution date” of the new Agreement. Presumably the effective date of the new Agreement will on or about October 1, 2014. The Village’s offer does not address the fact that the increase is at least 9 months delayed vis a vis the other two bargaining units for each of the three years of the new Agreement.

In an attempt to reach a mutually satisfactory solution, the Fact Finder will accept the position of the Village respecting the start

date of the new contract. The start date will be the date on which the new contract is executed and the first increase of 3% will be scheduled at that time. The subsequent increase of 1.5%, however, will be scheduled in accordance with the Union's position and will occur on January 1, 2015. The Union's position respecting the timing of the third year reopener will also be accepted and thus written notice of such a reopener must be supplied by the OPBA between October 1 and October 31, 2015. This will put the subsequent wage increase, the wage reopener and the expiration dates of the three labor agreements in synch and will ensure that the Part Time Patrol Officers are not prejudiced with respect to the dates on which they will receive their second and presumably their third wage increase.

The Fact Finder believes that the equities of the situation dictate that the Village should be required to make a one time Equity Adjustment Payment in the form of a lump sum to each of these Part Time Officers. These payments should be made in close proximity to the execution date of the new Agreement, ideally within ten days. It is the purpose of the Equity Adjustment payment to compensate those Part Time Officers for the disadvantage they experienced due to the delay in their negotiations. It would be patently unfair for one group of employees, through no fault of their own, to receive less in wages than another group who perform similar duties. Such would be the situation if the adverse impact of the 9 month delay in negotiations is sustained. The situation would be further aggravated if the 9 month delay was allowed to exist during the second and third years of the new Contract.

Therefore, it is the recommendation of the Fact Finder that the Part Time Officers receive:

- A. A 3% base wage increase effective on the ratification date of the new Agreement.
- B. A 1.5% base wage increase on January 1, 2015
- C. A wage reopener with notice being given between October 1 and October 31, 2015.

D. An Equity Adjustment payment* to be made within seven days of the execution of the new Agreement in the following amounts:

- a. Patrol Officer 1 \$605.00
- b. Patrol Officer 2 \$650.00
- c. Patrol Officer 3 \$680.00

*See Exhibit A attached to this Decision for the methodology utilized in calculating the Equity Adjustment payments.

6. **Expiration Date:** The Village has requested that this Agreement expire on 9/30/2017. The OPBA argues for an expiration date identical to those expiration dates contained in the Sergeant and Full Time Officer contracts that were previously negotiated, i.e., 12/31/2016. It is the opinion of the Fact Finder that it would be inappropriate to establish an expiration date that would differ from those contained in the contracts already negotiated for the same reasons as were stated in the discussion above referencing Implementation Dates—see paragraph 5. Establishing the same expiration date may also aid the Village in conducting simultaneous discussions with all of its bargaining units relative to the possible establishment of its proposed Physical Fitness Health Program. In any event it appears equitable to establish identical effective dates for the three agreements to which the Village and OPBA are signatories and that would be 12/31/2016.

7.RECOMMENDED LANGUAGE: The following language is recommended relative to the Wage Provision for the new Agreement:

ARTICLE____ WAGES

Section 1. Effective (insert the date on which the contract is executed) hourly rates of pay for the bargaining unit members shall be increased by three percent (3%) and shall be as set forth below:

Start	\$13.36
After one year and 1200 hours worked, but no later than after two years	\$14.31
After two years and 2400 hours	

worked but no later than after four years	\$14.96
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Section 2. Effective January 1, 2015, pay rates for bargaining unit members shall be increased by one and one-half percent (1.5%) and shall be as set forth be as set forth below:

Start	\$13.56
After one year and 1200 hours worked, but no later than after two years	\$14.52
After two years and 2400 hours worked, But no later than after four years	\$15.18

Section 3. Equity Adjustment: Within ten days of the execution date of this Agreement, each Part Time Patrol Officer who is in the employ of the Village on that date shall receive a lump sum Equity Adjustment payment based on his/her longevity with the Village in the following amounts:

Part Time Patrol Officer 1	\$605.00
Part Time Patrol Officer 2	\$650.00
Part Time Patrol Officer 3	\$680.00

Normal withholding deductions shall be made by the Village from the lump sum payment.

Section 4. The Union may reopen negotiations for the sole purpose of negotiating wage increases for the third year of the contract by providing written notice to the Village between October 1 and October 31, 2015.

III. **ISSUE THREE: DURATION**

a. **POSITIONS OF THE PARTIES:**

i. **IDENTICAL LANGUAGE:** Both the Village and the OPBA submitted virtually identical language relative to the "Duration Article" of the proposed Agreement. The only difference relates to the commencement and expiration dates which must be inserted. The identical language is as follows:

1. **ARTICLE 25 DURATION**

a. **Section 1.** This Agreement shall be effective _____,
and shall remain in full force and effect through
_____.

- b. **Section 2.** Any amendments to this Agreement, in order to be binding on the parties hereto, shall be written, signed by the parties, and attached to an original, executed copy.
- c. **Section 3.** The Parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter and that the understanding and Agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

2. **POSITION OF THE VILLAGE:** The Village, in line with its wage proposal, would like the Agreement to become effective “upon execution” and expire on September 30, 2017.

3. **POSITION OF THE OPBA:** The Union, in order to keep the new Agreement in line with its existing Sergeant and Full Time Officer Agreements, would like the new Agreement to become effective January 1, 2014 and remain in effect until December 31, 2016.

- ii. **RECOMMENDATION:** Due to the fact that there is agreement on the above quoted language portion of Article 25, the Fact Finder recommends that it be accepted in its’ entirety and become a part of the new Agreement. The Fact Finder, in order to track his Recommendations made in the Wage Portion of this Decision (See Part II, supra), additionally finds that: (1) the commencement date of the new Agreement should be the date on which the new Agreement is executed, and (2) the expiration date of the new Agreement should be December 31, 2016. Thus those dates should be added to the agreed upon language of Article 25 quoted above.

IV. **CONCLUSION: COMPOSITION OF NEW LABOR AGREEMENT:**

a. **THE NEW LABOR AGREEMENT SHALL BE COMPRISED OF THE FOLLOWING:**

- i. **TENTATIVE AGREEMENTS:** The Tentative Agreements referenced above respecting twenty three Articles are accepted and ordered to be a part of the new Agreement, and

- ii. **DISPUTED ARTICLES:** The disputed Articles referenced above relating to: (1) Wages, and (2) Duration, as revised by the Fact Finder, shall constitute the remainder of the new Labor Agreement for the Village of Grafton and its Part Time Police Officers.
- iii. **REJECTED ARTICLE:** The Physical Fitness Health Program introduced by the Village will not be a part of the new Agreement.

V. **EXECUTION:** This Recommendation is executed this 12th day of September, 2014 at Lorain County, Ohio

William W. Allport

Ohio State Employment Relations Board

Fact Finder

CERTIFICATION

I hereby certify that on the 12th day of September, 2014, a true copy of the foregoing Fact Finding Report was sent via electronic mail to the following:

1. Representative of the Union
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EXHIBIT A

EQUITY ADJUSTMENT CALCULATION

The Fact Finder calculated the Equity Adjustment Payment identically for each Part Time Patrol Officer classification (i.e., Part Time Patrol 1, Part Time Patrol 2, and Part Time Patrol 3)

The Following example is the method in which the Equity Adjustment was calculated for Part Time Patrol Officer 1:

Part Time Patrol Officer Base Rate	\$12.97
Multiplied by .03%	\$.3891
Multiplied by 2080 (work hours in a year)	\$866.736
Divided by 12 months	\$67.444
Multiplied by 9 months	\$606.996
Rounded to:	\$605.00