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# STATE OF MICHIGAN EMPLOYMENT RELATIONS COMMISSION STATUTORY ARBITRATION

In the Matter of the Statutory Arbitration Between:

TOWNSHIP OF BROWNSTOWN

-and-

MERC Case No. D88 C-844

POLICE OFFICERS ASSOCIATION OF MICHIGAN

ARBITRATION OPINION AND AWARD

\* \* \* \* \* \* \* \* \* \* \* \*

Michigan State University LABOR AND INDUSTRIAL

RELATIONS LIBRARY

### Compulsory Arbitration Panel:

Paul Jacobs, Chairperson William J. DeBiasi, Township Delegate Gerald Radovic, Union Delegate

### Appearances:

### For the Employer:

William J. DeBiasi Township Attorney Township of Brownstown

### For the Association:

William Birdseye Police Officers Association of Michigan

#### BACKGROUND

The two-year Collective Bargaining Agreement between the Police Officers Association of Michigan (POAM) (Union) and the Township of Brownstown (Township) (Employer) expired on December 31, 1987. Negotiations between the parties failed to resolve all of the issues. By letter of June 28, 1988, Paul Jacobs was appointed to act as the impartial arbitrator, pursuant to the Police-Firefighters Arbitration Act (Act 312, P.A. 1969), as amended.

The impartial arbitrator proceeded to call the parties together for a pre-arbitration conference. The conference was held at the offices of the Michigan Employment Relations Commission (MERC) on August 11, 1988. The parties accepted the jurisdiction of the impartial arbitrator and agreed to waive the time limits as contained in Section 6 of Act 312. The parties designated their delegate and agreed upon the issues which would be addressed at the hearing.

The hearing took place at the offices of MERC on October 6 and 11, 1988. The proceedings were transcribed by a CSMR and a copy was forwarded to all members of the panel. Subsequently, the parties submitted their Last Offers and held an additional session on December 8, 1988, to review and discuss the possibility of agreement. Little progress was made at this meeting, although it did give the impartial arbitrator an additional opportunity to sense the mood of the parties. There was unanimous agreement that there be no post hearing briefs because

the parties felt that the conference of December 8, 1988, permitted them to adequately state their respective positions as outlied in their Last Offers. The Last Offers are attached to and made a part of this award.

Section 8 of 1969 PA 312 states that "...as to each economic issue, the arbitration panel shall adopt the last offer of settlement, which, in the opinion of the arbitration panel, more nearly complies with the applicable factors described in Section 9." Those Section 9 factors are:

- (a) The lawful authority of the employer.
- (b) Stipulation of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
- (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

Maria.

- (ii) In private employment in comparable communities
- (e) The average consumer prices for goods and services commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in the private employment.

The panel, in evaluating these Section 9 factors, is not required to give each of them equal weight, but rather must evaluate the relative importance of each and must consider them as interrelated parts. As the Supreme Court stated in City of Detroit v DPOA, 408 Mich 410 (1980); 294 NW 2nd 68, 97:

The legislature has neither expressly nor implicitly evidenced any intention in Act 312 that each factor in Section 9 be accorded equal weight. Instead, the Legislature has made their treatment, where applicable, mandatory on the panel through the use of the word "shall" in Section 8 and 9. In effect, then, the Sec. 9 factors provide a compulsory checklist to ensure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the Legislature and codified in Sec. 9. Since Sec. 9 factors are not intrinsically weighted, they cannot of themselves provide the arbitors with an answer. It is the panel which must make the difficult devision of determining which particular factors most important in resolving a contested issue under the singular facts of a case, although, of course, all "applicable" factors must be considered.

### FACTS

The hearing commenced on October 6, 1988, with a discussion of the economic issues to be presented. The parties introduced the expired contract as Joint Exhibit 1. The draft

of an agreement containing the tentative agreements was introduced as Joint Exhibit 2.

The Union called Patrol Officer James S. Sclater, who presented an overview of the history of Brownstown Township and its police department, as well. The testimony described the formation of the police department in 1982, as a matter of necessity caused by the discontinuance of the Wayne County Sheriff's Road Patrol, which had previously served the Township. The Township is located in southern Wayne County and is divided into three areas. (U-3) The northernmost area is surrounded by the Cities of Taylor, Riverview and Trenton, as well as Huron Township, and is separated from the other two areas which are contiguous. They are referred to as the north, with an area of 15 square miles, center, with an area of 25 square miles, and south, with an area of 5 square miles, areas. The population of approximately 23,000 is slowly growing. The north area contains the largest residential population, and the majority of the business. The center area, which divides Flat Rock and Gibraltar on the map, is basically residential. The south area is basically rural and the home of the Lake Erie Metro Park, as well as the Pointe Mouille State Game Area.

The Departmental Organization Chart, indicating 18 uniformed officers, was introduced as Union Exhibit 5. The Department can receive assistance from the State Police and shares its radio frequency with eight surrounding communities.

In addition to the police officers, there are a number of civilian dispatchers who make decisions as to when a police car shall be sent and how many.

The officers, in addition to their patrol function, are also called upon to appear before the 33rd District Court in Taylor and the Driver's License Appeal Board.

With the completion of the overview of the Township and its police department, the POAM presented labor economist, Ann Maurer, who testified on the subject of comparability. While this is not a particular economic issue, it transcends all economic issues and is, of necessity, worthy of consideration in the overall economic picture.

Ms. Maurer testified from Union Exhibit 18 and made reference to Union Exhibit 3, which is a map of Wayne County and on which were outlined those communities which she felt were comparable to Brownstown Township. She explained the concept of a local labor market for employees within a specific geographic area seeking, in this instance, to sell their labor as police officers at a certain price consistent with what other employers of police officers are paying. For this purpose, she chose to examine what is referred to as the Downriver area in the Detroit, Michigan standard metropolitan statistical area.

Ms. Maurer admitted that the Downriver area, as she described it for purposes of this 312 hearing, could have included some additional cities and Grosse Ile, which is a township. That the inclusion of Allen Park, Lincoln Park, Wyandotte,

Ecorse, and several other cities would have done little to change the picture of average wages and benefits in her analysis. On cross-examination, she testified that neither State Equalized Valuation (SEV), nor ability to tax were factors in determining comparable communities, inasmuch as the Township of Brownstown did not assert the inability to pay.

The employer urged the comparison of townships to town-ships, and urged consideration of Northville, Van Buren, and Huron Townships.

The Township of Brownstown is in the Downriver area. It shares the same radio frequency with a number of surrounding communities. Its officers provide the same full-time police duties. I have no reason, therefore, to reject the comparables submitted by the Union.

#### DURATION OF CONTRACT

The Union seeks a two-year contract, retroactive to January 1, 1988, through and including December 31, 1989.

The Employer requests a three-year contract, expiring 11:59 p.m. on December 31, 1990. The Employer's proposed language is as follows:

41.1 This Contract will continue in full force and effect until 11:59 P.M. on December 31, 1990.

If either party desires to terminate this contract, it will, not less than ninety (90) days prior to termination date, give written notice of termination. If neither party gives notice of amendment as hereafter provided, or if each party giving a notice of termination withdraws the same prior to the termination date, this Contract, including this Article, will continue in effect from year to year thereafter.

The most recent contract expired approximately one year ago. It will not be implemented until the second year of the new contract period. The negotiation process is a long and arduous one. This is only the second contract between the parties. They can use a longer period away from the bargaining table this time. I believe all parties will benefit from a three-year contract.

The Township's Last Best Offer on duration of the contract is awarded.

#### VACATION

The Union proposes:

20.1 Full-time employees of the Township shall be entitled to earned annual vacation as follows:

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5th to 9t	h yea	er 💮		days
10 years	and a	after		davs

Vacation to be effective to January 1, 1989.

The Employer urges retention of the current vacation schedule:

20.1 Full-time employees of the Township shall be entitled to earned vacation as follows:

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The comparables provided by the Union as to vacation (U-31) demonstrate, with the possible exception of Woodhaven, a much more generous vacation package than what is currently

available in Brownstown Township. If the comparables were the only factor to be considered, then the vacation package would be considered out of line and an adjustment would be required. I must look at the overall compensation package, including all the other benefits, the continuity and stability of the Department, as well as its youth.

In addition, I must factor in the new 12-hour work schedule. This new schedule will result in seven work days every two weeks. I feel that the Union and Employer will need this contract period to digest the impact of the 12-hour day, the current vacation period, holidays and attendant costs and people power needs in conjunction with the new contract before any further time off is designated for the police officers.

The Township's Last Best Offer on vacation language is awarded.

### SHOW UP AND COURT TIME

The Union proposes:

- 31.2 Court Time. Court time shall be compensated on the following basis at time and one-half  $(1\frac{1}{2})$ :
  - A. 33rd District Court four (4) hours minimum
  - B. License Appeal (Monroe) four (4) hours minimum
  - C. All other courts or hearing agencies four (4) hours minimum

Court Time to be effective date of award.

The Employer proposes:

- 31.2 Court Time. Court time shall be compensated on the following basis at time and one half  $(1\frac{1}{2})$ :
  - A. 33rd District Court two (2) hours minimum
  - B. License Appeal (Monroe) two (2) hours minimum
  - C. All other courts or hearing agencies four (4) hours minimum

The Employer proposes no change. This was probably the least contested issue before the Panel. The times referred to are minimum. The officers will be paid for their actual time if it exceeds the minimum. It would appear, after meeting with the delegates after submission of their Last Best Offers, that the current contract language is satisfactory to all concerned.

The Township's Last Best Offer on Show Up and Court Time is awarded.

#### CLOTHING ALLOWANCE

The parties reached a tentative agreement as to the language to be used for the clothing allowance, except for the dollar amount which they left to the discretion of the impartial panel member.

The recently expired contract provided for a quartermaster system. Many of the officers expressed a dislike for the system because it was their contention that the equipment was not always replaced as often as requested, or the equipment provided was not of the quality or design most desired.

The new provision will eliminate these problems or perceptions of problems. There was testimony that some officers spend thousands of dollars for equipment and uniforms. suggested a \$500 annual allowance. The Employer suggested \$300. The Union's request appears to be within the range of the comparables presented.

The Union's Last Best Offer on clothing allowance is awarded.

#### HOLIDAYS

The Union proposes:

19.1 During the term of this contract, each full-time employee shall be paid for the following holidays in addition to their regular rate of pay:

New Year' Day Lincoln's Birthday Washington's Birthday Thanksgiving Day Good Friday Memorial Day Fourth of July Labor Day

Columbus Day Veteran's Day Day after Thanksgiving Day Christmas Eve Day Christmas Day Easter Sunday

The employee shall be paid for the holidays in two (2) semi-annual installments of one half  $(\frac{1}{2})$  concurrently with the first payroll check in June and December of each year. If the employee takes the holiday off with the approval of the Department Head, he shall not be paid the holiday pay for the holiday.

Holidays to be effective date of award.

The Employer proposes:

19.1 During the term of this contract, each full-time employee shall be paid for the following holidays in addition to their regular rate of pay:

New Year's Day
Lincoln's Birthday
Washington's Birthday
Good Friday
Memorial Day
Fourth of July
Labor Day

Columbus Day
Veteran's Day
Thanksgiving Day
Day after Thanksgiving Day
Christmas Eve Day
Christmas Day

Currently, there are 14 paid holidays. The Township proposes the removal of what is designated as a floating holiday. The Union proposes that this floating holiday be re-designated Easter Sunday.

The floating holiday has long been acknowledged as a day off for Christmas shopping. There is apparently no longer any need for a paid day off for shopping. The Union acknowledges this by proposing Easter Sunday as a paid holiday and the Township acknowledges this by calling for its elimination. The Township argument would be dispositive of the issue if we were operating in a vacuum. This is not the case, however. The issue must be decided in conjunction with the resolution of the vacation pay issue.

The vacation days have been left in place for the duration of this contract for the reasons set forth above in order to see how the dust settles. Therefore, the 14 holidays, by whatever name, should likewise remain in the contract, so as not to tip the balance in favor of one party or the other. The

history of this new contract will determine the financial ability of Brownstown Township to meet the costs. At this time, there appear to be no financial difficulties, nor do any appear on the horizon.

The Union's Last Best Offer on holiday pay is awarded.

#### DENTAL INSURANCE - HEALTH INSURANCE

The Union considers dental insurance and health insurance as separate issues. The Employer links them together in one package and as part of the larger issue of cost containment.

The Union proposes:

26.2 Dental. The Employer shall provide to each full-time employee the existing Dental Plan Coverage with a 50/50 orthodontic (rider limited to) a five hundred dollar (\$500.00) maximum.

Effective [date of award] the Employer will provide one hundred percent (100%) for Class I (diagnostic services, preventative services and palliative treatment).

Employer's Last Best Offer accepts the Union's Last Best Offer on Dental.

The Union's Last Best Offer on the issue of dental insurance is awarded.

The Union proposes no change to existing contract language or practice, thereby maintaining the status quo on the health insurance.

The Employer proposes:

26.1 <u>Hospitalization</u>. The Township shall provide medical and hospital coverage for the full-time

employees and their immediate families with normal insurance policy restrictions, which coverages shall be equal to Blue Cross and Blue Shield Plan which provides for full family ward service or semi-private Service MVF-1 with Master Medical and prescription rider with two dollars (\$2.00) deductible. The Employer shall have the right to select a carrier for all plans so long as the plans are equal to or superior to the existing Blue Cross Plan contracts.

For the purpose of this Section, the Blue Cross Blue Shield Blue Preferred Plan (PPO) shall be deemed to meet the requirements set forth herein.

26.1 (A): Whenever the existing premium paid for the above services are increased, the Employer shall have the right to reopen this provision of the Contract for the purpose of negotiating the amount of premium and/or levels of coverage. In the event the parties are unable to agree, then this issue shall be submitted to binding arbitration by an arbitrator to be selected in the same manner as grievance arbitration. This reopening shall be limited to health care provisions only.

Employees who choose not to be covered by the medical/dental/hospital package and who do not take out such insurance, shall be paid \$600 for each full insurance plan year for which they are not insured on a pro rata (\$50 per month) portion thereof for the balance of the insurance plan year which is being discontinued. (The present insurance plan year is from July 1 to June 30.) The employee shall be paid at the time of discontinuing the plan for the months which the insurance is discontinued for that employee.

The Employer is, as all employers are and should be, very concerned about escalating health insurance premiums.

Premiums for health insurance are absorbing an ever larger share of the gross national product. Cost containment is certainly one way of helping solve the problem. Utilization of

services is another. Members of a particular insurance group must be cautioned that overutilization will result in a failure of the system.

The Union is firm in its resolve that no changes be made in the health insurance program. They have recognized that as far as dental services are concerned, there will be an ultimate savings if its members take advantage of preventative services and, apparently, the Employer agrees.

In the area of the largest unknown cost, hospitalization insurance, there is the greatest divergence in opinion. Neither party seems to be willing to budge. The Union likes it just the way it is, and the Employer seeks to change everything at once.

If there is any one benefit, the loss of which strikes terror in the mind of the employee, it is a loss of or reduction in medical benefits, and rightly so. There seems to be no end in sight to its escalating cost.

I could readily agree with the concept of cost containment where there is a provision for increased co-payment for prescriptions or some form of deductible, or, perhaps, under the right set of circumstances, some proviso where the employee pays a nominal sum toward the health care premium.

Instead, I am offered, as an alternative to the current health insurance program, a series of drastic changes, as well as a provision to reopen the contract on the subject of health

care as soon as the existing premiums are increased with the further proviso that the matter be submitted to binding arbitration, if the parties are unable to agree as to how the subject of increased premiums is to be resolved.

Much as I favor some form of cost containment, I cannot be persuaded that the Employer's proposal is workable. I am trying to bring stability and continuity during the term of this contract.

The Union's Last Best Offer on the subject of hospitalization and sick benefits is awarded.

### JOB-INCURRED INJURY

The Union proposes:

36.1 The Employer agrees that any employee injured on the job, and under a doctor's care, shall be entitled to utilize his sick leave time for all time not covered by workers compensation benefit. Full time employees shall be further entitled to use a pro-rata share of unused sick leave to be applied concurrently with worker compensation benefits so as to provide him with a full weekly pay until such time as his sick leave is exhausted. The Employer shall continue to provide, at no cost to the employee, health and medical benefits for the employee (and spouse and dependents if applicable) at the level provided to active employees, for any period during which the employee is eligible for Worker's Compensation.

Health Insurance/Duty Related Injury to be retroactive to January 1, 1988.

The Employer proposes:

36.1 The Employer agrees that any employee injured on the job, and under a doctor's care, shall be entitled to utilize his sick leave time

for all time not covered by worker's compensation benefit. Full time employees shall be further entitled to use a pro-rata share of unused sick leave to be applied concurrently with worker's compensation benefits so as to provide him with a full weekly pay until such time as his sick leave is exhausted.

### 36.2 <u>DUTY DISABILITY</u>

In the event of a duty related disability, the Employer shall provide the Employee, his spouse and dependent children a continuation of the medical, dental, hospital, optical and prescription coverage which is currently in effect, and which may be subsequently modified by this Agreement, for a period of two (2) years after he/she exhausts all sick or other compensatory leave time.

Thereafter, hospital/medical coverage will be provided to the Employee only until the first occurrence of one of the following:

- 1. The disability is removed or the Employee become gainfully employed;
- 2. Employee become eligible for Social Security and Medicare benefits;
  - Employee retires;
- 4. Employee redeems his Worker's Compensation claim;
- 5. The Employer of he spouse of the Employee provides, or otherwise has available, medical and hospital health coverage for the Employee.

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Provided, however, that Employee shall be entitled to pay the premium necessary to provide coverage for his spouse and dependent children.

The major difference between the parties is the two-year cutoff proposed by the Employer in 36.2. At the end of two years, the coverage would drop off for spouse and dependents.

No cost data was presented. Currently there are two employees who are off work due to job-related injuries. It is assumed that both will return to active duty and thus will not be affected by the award on this issue.

This is a very emotional issue, but it must be dealt with on a rational basis. There was not a great deal of discussion of comparables on the record, but it is believed that full coverage is provided in most of the comparable communities. In one community the coverage requested here by the Union is only provided when the officer is killed in the line of duty.

While it is not possible to assess the cost of the Union request with any degree of exactitude, the probability of any significant increase in cost is very unlikely. The Township is already bound to pay the single subscriber rate. There is also the likelihood that the spouse and/or dependents will seek employment through which they will receive health insurance. The economic impact of granting the Union request is negligible.

The Union's Last Best Offer on job-incurred injury is awarded.

#### PENSION

The Union is currently covered by a defined contribution pension program. The Employer contributes five (5%) percent, and the employee contributes five (5%) percent.

There are a variety of pension programs in the comparable communities. Some are defined contribution and some are defined

benefit. The range of Employer contributions is, for the most part, not a great deal different than what these parties now enjoy, particularly in light of the newness of the Department. I believe this is a factor which must be considered in selecting between the Union proposal and the Employer proposal.

The Union proposes 6%, 7%, and 10% over the life of a three-year contract as the Employer's contribution, and the Employer proposes 6%, 7%, and 8%.

The Union proposes:

The current pension plan which the Employer has shall be adopted as the Pension plan of the employees covered under this Agreement. employee who is a participant in the Plan for twenty (20) months shall be entitled to receive the full vested contribution upon their termination of employment. The Employer will, however, assist in expediting receipt of funds upon termination. Effective January 1, 1988 the Township increase its contribution to six percent per year of each eligible employee's base wage with an additional five percent (5%) per year to be contributed by the employee. Effective January 1, 1989 the Township will increase its contribution to ten percent (10%) with five percent (5%) employee contribution as above.

Pension (For a Two Year Contract) to be retroactive to January 1, 1988.

The Employer proposes:

38.1 The current pension plan which the Employer has shall be adopted as the Pension plan of the employees covered under this Agreement. Any employee who is a participant in the Plan for twenty (20) months shall be entitled to receive the full vested contribution upon their termination of employment. The Employer will however assist

in expediting receipt of funds upon termination, except however the Employer's Contribution shall be increased as follows:

1988 - 6% 1989 - 7% 1990 - 8%

(In the event a two year Contract is awarded by the Arbitrator, the increase for 1990 shall be deleted.)

Realistically, not only is the Department young in terms of its creation, but so are the employees. The impact of a certain wage increase and the other benefits gained or retained in this package require a degree of even handedness on the part of the panel chairperson. The parties are so close and realistic in their pension language that it makes good sense to accept the Employer proposal.

The Employer's Last Best Offer on the issue of Pensions is awarded.

#### WAGES

The Last Best Offers on wages are attached as exhibits.

There is a discussion of comparability at the beginning of this award. Logic and sound economic theory suggest that for purposes of wage comparability, the most comparable departments are located in the Downriver area.

The Last Best Offers are miles apart. The Union proposes 10.09%, 5%, and 5% for the patrol officers, sergeant and lieutenant, 5%, 5%, and 5% for the dispatchers. The Employer proposes 4%, 3%, 3% and 2%, 2% and 2%.

Northville, which was suggested as a comparable by the Employer, seems to be within the range of the Downriver area comparables. A 10.09% first year increase for police officers and 5% for dispatchers may seem extraordinarily large, percentage wise. Pollar wise, these percentage increases should not only create an equitable pay scale, but compensate for the fact that the employees have not had the use of this money for one year (approximately), and the increased cost of living during the past calendar year.

Having made the employees whole, it would seem that serious consideration should be given to the Employer's; namely, its taxpayers' desire to avoid increasing taxes, as well as that is a reasonable expectation for the employees in the second and third year of the Contract.

The Union's Last Best Offer for the first year of the Contract is awarded. The Employer's Last Best Offer for the last two years of the Contract is awarded.

PAUL JACOBS Chairperson

GERALD RADOVIC Union Panel Member

WILLIAM J. DeBIASI Employer Panel Member

Dated: December 27, 1988

#### UNION ECONOMIC ISSUE #2

#### For a Two Year Contract

#### WAGES

#### PRESENT:

#### APPENDIX "B"

#### WAGES

#### Patrol Officers

	<u>Start</u>	1 Year	2 Years	3 Years	4 Years
1/1/85 1/1/86	\$18,720 18,720	\$20,500 21,525	\$22,000	\$23,500	\$24,000
1/1/87	19,656	22,600	23,100 24,255	24,675 25,909	25,200 27,250
		<u>Sergeant</u>		<u>Lieutenan</u>	
1/1/85 1/1/86		\$25,920 27,216		\$27,840	
1/1/87		29,430		29,232 31,610	

#### Dispatcher/Clerk

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### Police Officer - Part-Time

Current part-time police officers to be paid equivalent hourly rate of starting patrolman based upon 2080 hours per year. Any new part-time patrol officers hired after January 1, 1985 to be paid \$.50 less than starting hourly rate of patrolman.

## <u> Dispatcher/Clerk - Part-Time</u>

Trainee - \$3.50 per hour

Probationary - \$5.00 per hour

<u>Part-time</u> - to receive hourly rate equal to starting rate of Dispatcher/Clerk position.

#### APPENDIX "B"

#### WAGES

### Patrol Officers

Entry Start 1 year 2 years 3	<u>years</u> <u>4 years</u>
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# Police Officers - Part-Time

Current part-time police officers to be paid equivalent hourly rate of starting patrolman based upon 2080 hours per year. Any new per hour than starting hourly rate of patrolman.

# Dispatcher/Clerk - Part-Time

Trainee - \$3.50 per hour

Probationary - \$5.00 per hour

Part-time - to receive hourly rate equal to starting rate of Dispatcher/Clerk position