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8/26/88

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August 31, 1988

Mr. Shlomo Sperka, Director
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Bureau of Employment Relations
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14th Floor - 1200 Sixth Avenue
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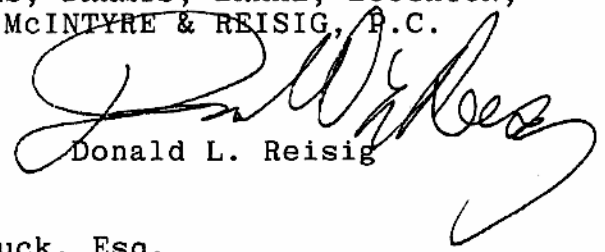
Re: Menominee County Road Commission v Teamsters
Local 328
MERC Fact Finding Case No. G87 F-588

Dear Mr. Sperka:

Counsel for the parties have jointly called to the attention of the fact finder a "scrivener's error" on page 9 of the Fact Finding Report with reference to the effective dates of future wage increases. The Fact Finder's Report should have indicated a retroactive 30-cent wage increase to September 1, 1987, with additional 30-cent per hour wage increases effective September 1, 1988 and September 1, 1989. This letter is intended to correct the Report, and may be filed therewith and made a part thereof.

Sincerely yours,

SINAS, DRAMIS, BRAKE, BOUGHTON,
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Donald L. Reisig

DLR:cls

cc: Michael R. Kluck, Esq.
Nino E. Green, Esq.

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1988 SEP -1 AM 9:50
STATE OF MICHIGAN
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Menominee County Road Commission

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STATE OF MICHIGAN
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In the Matter of the Fact-
finding between

MENOMINEE COUNTY ROAD
COMMISSION

MERC Case No. G87 F-588

-and-

TEAMSTERS LOCAL 328

REPORT AND RECOMMENDATIONS OF FACT FINDER

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Following mediation, Teamsters Local 328 filed a petition for fact-finding with the Michigan Employment Relations Commission on or about February 22, 1988. After a response by the employer, the parties agreed upon a fact finder, and on March 28, 1988, the Michigan Employment Relations Commission appointed the undersigned, Donald L. Reisig, as the fact finder in this matter.

Upon consultation with counsel, the date for fact-finding was established as June 16, 1988, and fact-finding proceeded on that date. At the end of the one-day session, the fact-finding record was closed and the parties agreed to submit their briefs by July 18, 1988. Both parties made timely submissions to the fact finder. This report and recommendation of the fact finder

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is based upon the record made on June 16, 1988 and the various representations and arguments of counsel made during the formal hearing, and within their written briefs.

Counsel for the parties have stipulated that all issues, except the issues hereafter enumerated, have been resolved by the parties, either incorporating previous contract language or understandings reached prior to the date of the fact-finding hearing. The four issues remaining for adjudication in this matter are: wages, pension contribution, sick leave and reclassification (the final issue, reclassification, is an issue raised by the employer).

At the hearing in this matter, the following exhibits were submitted:

- | | |
|-------------------|--|
| Joint Exhibit #1 | 1984-1987 Collective Bargaining Agreement |
| Union Exhibit #2 | February 20, 1985 Report and Recommendation of the Fact Finder |
| Union Exhibit #3 | February 19, 1988 MESC Civilian Labor Force and Wage and Salary Employment Estimates |
| Union Exhibit #4 | 1987 Summary of Employee Contract Provisions for Michigan County Road Commissions |
| Union Exhibit #5 | 1987 Commissioners and Staff Personnel Salaries |
| Union Exhibit #6 | March 22, 1988 Letter from Charles F. Behrend to Michael R. Kluck |
| Union Exhibit #7 | 1987 Survey from the County Road Association of Michigan |
| Union Exhibit #8 | August 31, 1987 Wage Comparison Chart |
| Union Exhibit #9 | Pension Comparison |
| Union Exhibit #10 | Municipal Employees Retirement System "Provisions in Brief" |

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Employer Exhibit #11 Transfers, Section 5, Reclassifications Proposal

Employer Exhibit #12 Issue #2, Article 42 - Pension Fund

Employer Exhibit #13 Comparison - Revenues to Labor Costs

Employer Exhibit #14 1982-1984 Collective Bargaining Agreement, Pension Fund Article

Employer Exhibit #15 September 1976 - August 1987 Language from the Collective Bargaining Agreements Regarding Sick Leave

Employer Exhibit #16 Seniority Roster - Menominee County Road Commission Employees

Employer Exhibit #17 Payroll, Vacation and Sick Leave Balance Report, May 31, 1988

Employer Exhibit #18 Current Road Mileage

Employer Exhibit #19 Collective Bargaining Agreements for the Following County Road Commissions: Cheboygan, Chippewa, Delta, Emmet, Gogebic

In addition, the testimony of only one witness was adduced, that of Mr. Charles F. Behrend, the engineer/manager of the Menominee County Road Commission.

By way of general reference, Menominee County is located in the southern center of Michigan's upper peninsula. It is bordered by Lake Michigan (Green Bay) on the east, Wisconsin on the south and west and by Dickinson County on the north. It has an estimated 1986 population of 26,201 (Rand McNally 1986 Road Atlas) and a total work force of 11,525 persons and an unemployment rate of 8.2 percent (MESC February, 1988--Union Exhibit #3). The employer in this matter, the Menominee County Road Commission has county-wide responsibility for the repair of highways and roads, and also fulfills contractual responsibilities with the Michigan Department of Transportation upon state trunk line highways. It is a public employer as defined under applicable

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The respective parties took the following positions at the time of the hearing in this matter and have reiterated same in their briefs:

Union Position

Wages: The union seeks a basic hourly wage increase for all positions of 45 cents per hour for three years retroactive to September 1, 1987, subject to the pension provisions stated, infra.

Pension: From the 45-cent per hour wage increase, 7 and one-half cents for the first two years of the contract is to be credited toward pension contribution.

Sick Leave. The union seeks to do away with the "two-tier" sick leave provision established as a part of the 1984-1987 agreement. In essence, the union seeks "parity" for all employees, regardless of seniority. Specifically this would mean that employees hired after September 1, 1982 would be entitled to be paid for accrual of up to 520 hours of sick leave, the same as employees hired prior to that time.

Reclassification: The union opposes a change in the "reclassification" procedures requested by the employer (see, infra).

Employer's Position

Wages: The employer has offered a 15-cent per hour across-the-board wage increase retroactive to September 1, 1987 for each year of a three-year contract.

Pension: The employer has proposed a \$3.00 per week increase in the pension contributions for the third year of the contract.

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Reclassification: The employer seeks a change in the reclassification system that would permit the employer to reassign or transfer an employee who is no longer routinely performing a majority of the duties of his present classification. In essence this proposal permits the employer to "downgrade" an employee's work classification and the employee's compensation. The employer has now suggested in its brief that an employee could only be reassigned if the employee refuses to bid on equipment posting within his own present classification.

DISCUSSION

The positions of the respective parties in this matter were ably, quickly and cogently presented by extremely competent and highly professional counsel. The parties and their counsel are to be complimented for reaching agreement on so many issues. (Note: There were 56 separate articles in the immediate prior agreement.) Only upon the first issue, wages, and to some extent on the issue of pensions, are the parties "polarized," and it is certainly over the issue of wages that fact-finding has been invoked, and which hopefully this report and recommendation will help resolve.

Wages. Even in argumentation, the parties have not taken an extreme position, or engaged in unnecessary hyperbole. The Road Commission has not argued that it has an inability to pay the wages sought; rather, it has simply contended that if it pays the wage increases sought by the union, it will have to further curtail planned road construction. The employer argues that under the present circumstances, it does not have the capacity to replace highways as quickly as they become obsolete or in need of reconstruction or repair.

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The employer also argues that only the five comparables found by the fact finder in the 1984 proceeding should be considered here, to-wit: Cheboygan, Chippewa, Delta, Emmet and Gogebic County Road Commission wages. In turn, the union argues that Houghton and Dickinson Counties should be included as comparables. It is to be noted that in 1985, the fact finder in the earlier proceeding (MERC Case No. G84 F-904) found at page 6 as follows: "It will be difficult to give as much weight to Houghton and Dickinson Counties as to the other counties since the only similarities presented at the hearing were location and population." Since the parties agree upon the five named counties as comparables, and no agreement exists as to other counties, and since no additional evidence has been adduced with reference to other factors bearing upon comparability concerning Houghton and Dickinson Counties, this fact finder gives only limited weight to the comparability of Houghton and Dickinson (see Table III). It is to be noted, however, that Houghton County as of January 1, 1987, eight months before the effective date of the proposed contract date in this matter, offered a wage rate of \$10.11 per hour for a top mechanic, as compared to \$9.25 which existed on that same date for a Menominee top mechanic. In turn, a Houghton heavy equipment operator earned \$9.43, compared to Menominee's \$8.88. Light equipment operators earned \$9.20 in Houghton County and equipment operators earned \$8.67 in Menominee County. It is also to be noted that Houghton County, like Menominee, offered a cost of living allowance.

Similar but more extreme wage differences existed in Dickinson County, i.e., \$12.08 for top mechanics, \$11.01 for heavy equipment operators and \$10.64 for light equipment

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operators (see Union Exhibit #8).

Even once comparable employers are ascertained, the problem of ascertaining true comparability of wages is still not ended. Differing contract years, other economic benefits (such as COLA, fringe benefit packages and pension contributions) also, of course, impact upon hourly wage rates. In turn, the definition of the various job categories may vary from county to county. Such discrepancies appear even in two of the comparative exhibits presented to the fact finder (Exhibits #7 and #8).

Confining our considerations to the agreed upon comparables, it is obvious from a review of Table I, taken from Union Exhibit #4 (pp 4-5), a summary of employee contract provisions prepared for the Michigan County Road Commissions, that wages for Menominee County Road Commission employees in 1987 ranged from nine to 29 cents per hour less than the wages paid on average in the five comparables (the only exception being for common laborers, which is askewed by the fact that Cheboygan shows no such category and the Delta figure appears inordinately low, and is thus not utilized in the calculation of an average). However, further "askewing" the calculation of averages is the inclusion of Gogebic County which appears across the board to pay anywhere from 61 cents to \$1.41 less per hour than the next lowest county. Thus, a strong argument can be made for deleting Gogebic County from the calculation of the average. If this is done, then the average wage paid in 1987 for the four remaining comparables ranges from 37 to 73.5 cents more per hour than presently paid in Menominee County (see Table II).

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The average wage analysis demonstrated above and by Tables 1 and 2, is, of course, only one way of analysing the issues before this fact finder. Another approach is to determine increases received by comparably situated employees for the current year. Unfortunately, data submitted by the parties in this regard is incomplete. However, the fact finder can take note that many public employers throughout the State of Michigan offered wage increases averaging from three to five percent for fiscal years beginning in 1987. At three percent, a common laborer would receive a 26-cent an hour raise, and at five percent, the increase would equate to 43 cents an hour. It is apparent, predicated both upon comparability and general trends in wage increases for the year in question, that the employer's offer of 15 cents per hour, which would mean a increase ranging from 1.62 percent to 1.79 percent, is simply not realistic, equitable or fair.

At the same time, however, the union's request for 45 cents an hour (with 7.5 cents an hour rolled into pension), would, when projected over a three-year period, appear to place Menominee County Road Commission employees at the upper end of the economic scale for comparable employees. It would appear that there is a need for a reasoned compromise between the parties' positions in this matter--based upon the evidence before the fact finder.

Predicated upon all the evidence before me, and with particular reference to the comparables set forth in Tables 1 and 2, and based upon a proposed pay increase of approximately four

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percent per annum (less, of course, over the three-year life of the contract), this fact finder finds and recommends that a 30 cent per hour per annum wage increase be granted retroactive to September 1, 1987, with an additional 30-cent per hour wage increase to be effective September 1, 1989, and September 1, 1990. Note that this recommendation is made in conjunction with the fact finder's recommendation on the issues of pension discussed immediately hereafter.

Pension: The topic of pensions is, by necessity, interrelated to the topic of wages, both from the standpoint of its economic cost to the employer and from the standpoint of the union's proposal.

It is difficult to fully discuss pension programs and benefits predicated upon the limited record made in this matter. Suffice to say that we live in an age where pension benefits are an important adjunct of any wage and compensation package--in the private sector as well as in the public sector. In turn, interest on investment returns have dramatically impacted upon pension benefits, both decreasing the cost of defined benefit programs and increasing the benefits available for defined contribution programs.

The employer in this case argues that it should not be required to increase its contributions to the pension program (beyond the \$3.00 per week increase--seven and one-half cents per hour--it has offered in the third year of the contract), maintaining that it is not responsible for any of the perceived inadequacies in the Teamsters plan to which the union is requesting additional contributions. The employer's argument has some credence, but in acknowledging that fact, one must also

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acknowledge that the employer cannot be entirely relieved from responsibility to propose an alternative--presumably an alternative which would provide better benefits at lower cost--if such plan is available. This fact finder can only suggest that this may be an alternative that the parties wish to explore in future negotiations. If they determine to take the topic up, they can also discuss the various pros and cons of employee contribution to such a plan--a topic also raised by the employer.

However, dealing with the realities of the present situation, it is clear that all parties recognize that pension improvement is essential; the parties are at odds merely as to when the pension improvements should start, how much it should be and whether there should be additional increments in the future.

The present contribution of 67.5 cents per hour per employee equates to from 7.3 to 8.1 percent of present hourly wage. This compares to pension contributions and costs of from 10 to 15 percent in the private sector and 11 to 12 percent in state government. An adjustment hereto would appear to be in order. The question remains as to how much. If the fact finder's recommendation on wages is accepted, during the third year of the contract, a laborer will be earning \$9.25, and a mechanic will be earning \$10.15. A single \$3.00 increase per week would increase the employer's contribution to 75 cents per hour, or 8.1 percent of the laborer's then wages, or 7.4 percent of a mechanic's. In turn, an additional \$3.00 pension contribution (82 1/2 cents an hour) would equate to 8.9 percent of a laborer's wages and 8.1 percent of a mechanic's hourly wage.

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This fact finder recommends, based upon the comparable economic data set forth under wages (also see Tables I-III), that increased pension contributions are justified and called for during the second and third years of the contract, and recommends that a \$3.00 additional contribution be made commencing September 1, 1988 and an additional \$3.00 contribution be made commencing September 1, 1989. Thus, the total cost of the "economic package" over the three-year life of the proposed contract would be \$1.15, which represents for a laborer a 3.6 percent increase the first year, a 4.3 percent increase the second year and a 4.2 percent increase the third year. For a mechanic, it would represent a 3.2 percent increase the first, a 3.9 percent increase the second year and a 3.8 percent increase the third year. Such increases are consistent with wage increases generally being granted to public sector employees in Michigan, and are justified by the comparables--assisting Menominee County Road Commission employees in obtaining parity with comparable counties.

This fact finder is not unmindful of the ever-increasing cost of fringe benefits (health insurance, et cetera). These are issues that responsible union leadership must be equally alerted to, both in the public sector, as well as the private sector. Just as increased labor costs cannot be passed on in the private industrial sector, such costs cannot be passed on ad infinitum in the public sector. For this reason, this fact finder urges the parties to review the cost effectiveness of benefit programs, their administrative costs and the ultimate benefit to the employee.

Sick Leave. Sick leave benefit packages are difficult to evaluate. Not only do different employees have differing needs, but different organizations have differing attitudes toward sick leave benefits and what they wish to accomplish by the use of sick leave. For example, some organizations wish to discourage unnecessary absenteeism and to ensure a stable work force five days a week and develop such practices "PTO days" (paid time off), which includes both vacation and sick leave time--leaving it to the employee's option. Other organizations have agreed to pay "incentives" for the accumulation of sick leave and the discouragement of unnecessary use. This would appear to be the approach that Menominee County has taken in the past.

Primarily, however, sick leave is developed to ensure that an employee would not end up with a "short" paycheck merely because of an unavoidable illness. As sick leave benefit programs have developed over the years, they have also been designed to cover a situation of "medical disaster," i.e., sick days have been allowed to be accumulated to cover a lengthy period of illness--much more likely to occur as the employee matures. In this fact finder's view, these should continue to be the major objectives of any sick leave program.

The parties have heretofore bargained a two-tier system, granting to employees with seniority prior to September 1, 1982 the right to accumulate sick leave for illness purposes up to 520 hours, and the right to be paid out in full upon either retirement or voluntary termination after 20 years for 480 hours. In turn, employees hired after September 1, 1982 may accumulate only

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six weeks of sick leave, and be paid for one-half of an accumulation upon retirement or voluntary termination with 20 years of service.

Nothing is inherently inequitable about a two-tier system. It would appear from bargaining history that when the two-tier system was agreed to, there were increased benefits offered to employees with seniority (extension from 480 to 520 hours). It may be that as the makeup of the work force for Menominee County changes, i.e., employees with more seniority retire, and younger employees are hired, employees hired after September 1, 1982 may constitute a majority of the employees. At that point in time, they may wish to bargain for additional benefits--as well as the curtailment of other benefits. This is as it should be in the collective bargaining process. However, nothing requires at this point that the agreement reached by the parties heretofore imposing a two-tier system should now be modified or that additional benefits should be recommended for employees hired subsequent to September 1, 1982. The record does not support any conclusion that employees hired after September 1, 1982 have been unfavorably impacted by the present language, or that other employees, comparably situated, are receiving greater benefits.

This fact finder can recommend no change in the existing sick leave policy.

Reclassification. Considerable discussion was held at the June 16, 1988 hearing on the issue of reclassification. It is apparent from that discussion that management believes that at least one employee is abusing existing work rules and practices

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of the Menominee County Road Commission by not requesting assignment to equipment within his work classification. Management has thus proposed language changes which would "clarify" their rights to deal with such issues. The union resists these efforts.

Although this fact finder believes that nothing within the four corners of the previous contract prevented management from requiring an employee to operate equipment within the employee's work classification (former Article V, Management Rights, and former Article XXVII would appear to at least tangentially address these issues), there may in fact be an issue with reference to whether or not management may downgrade the classification of employees if work within the proper classification does not exist. Although management should have broad leeway in work assignments (subject to proper training and safety factors), that power to direct the work should not include the power to arbitrarily decrease an employee's compensation. At the same time, an employee should not be able to "thwart" assignments within his classification merely by failing to apply for equipment within that classification or by failure to qualify upon such equipment.

The alternative first sought by the employer, however, grants entirely too much leeway to the employer in permitting downgrading of classification (and downgrading of pay). It would always be open to charges that it is being used arbitrarily and could be chaotic. Management's second proposal, contained on page 13 of its brief¹, comes closer to dealing with the real

¹Management proposes the following language: "Any employee who, by his option, refuses to bid on an equipment posting within his classification will be reassigned by permanent transfer to the work available and will receive the rate of pay of the classification to which he/she is reassigned."

issues--but still entails some ambiguities and may not entirely address the issue.

Upon total review of the situation, this fact finder recommends the following language:

"Any employee who, at his option, either refuses offered work for which he is qualified within his classification or refuses to obtain qualification for offered work within his classification, or refuses to seek a posting on equipment within his classification, may be assigned to work in any appropriate lower qualification for which the employee is qualified and shall thereafter be paid at the rate of the lower classification for the hours worked in that classification."

A final comment upon this topic: The employer has included within its brief in Appendix 1 language from other contracts addressing the issue of new jobs, vacancies, new equipment, promotions and demotions, issues which the parties have apparently left unaddressed. These are issues which the parties may desire to discuss informally during the life of the existing contract and deal with in future bargaining sessions--depending upon their own sense of importance of those issues. This fact finder is unable to resolve all tangential issues which may be related to the reclassification concept, and can only urge that the parties consider them in the future if of continued importance.

CONCLUSION

The recommendations hereinabove contained in this report have evolved from consideration of the evidence, testimony and argument presented by the parties and their respective counsel. It is urged that the parties give full consideration to these recommendations, weighing all factors and remembering that labor/management harmony itself is an important consideration.

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The parties have been without a contract for almost one year. It is important that this matter be resolved at the earliest possible time.

Submitted this 26th day of August, 1988.

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TABLE I
(Five Comparable Counties Per Exhibit #4)

Category	Light Truck	Heavy Truck	Motor Grader	Shovel Operator	Distributor	Common Laborer	Mechanic
Cheboygan	8.75	8.75	9.00	9.00	-----	-----	9.25
Chippewa*	9.70	9.90	9.85	9.85	9.85	8.82 ¹	10.16
Delta	9.23	9.44	9.79	9.49	-----	5.70 ²	9.79
Emmet	8.66	8.66	8.96	8.96	8.96	8.66	9.26
Gogebic*	<u>7.25</u>	<u>8.05</u>	<u>8.06</u>	<u>8.05</u>	<u>8.05</u>	<u>7.69</u>	<u>8.35</u>
Total	43.59	44.80	45.65	43.35	26.86	25.17	46.81
Average	8.72	8.96	9.13	9.07	8.95	8.39	9.36
Menominee*	<u>8.61</u>	<u>8.67</u>	<u>8.88</u>	<u>8.88</u>	<u>8.67</u>	<u>8.35</u>	<u>9.25</u>
Difference	-.11	-.29	-.25	-.19	-.28	-.04	-.11

¹Average within grade.

²Inordinately low--not used in average.

*Cost of living allowance.

TABLE II
(Excludes Gogebic County)

Category	Light Truck	Heavy Truck	Motor Grader	Shovel Operator	Distributor	Common Laborer	Mechanic
Cheboygan	8.75	8.75	9.00	9.00	-----	-----	9.25
Chippewa*	9.70	9.90	9.85	9.85	9.85	8.82 ¹	10.16
Delta	9.23	9.44	9.79	9.49	-----	5.70 ²	9.79
Dmmet	<u>8.66</u>	<u>8.66</u>	<u>8.96</u>	<u>8.96</u>	<u>8.96</u>	<u>8.66</u>	<u>9.26</u>
Total	30.34	36.75	37.60	33.30	18.81	17.48	38.46
Average	9.09	9.19	9.40	9.32	9.40	8.74	9.62
Menominee*	<u>8.61</u>	<u>8.67</u>	<u>8.88</u>	<u>8.88</u>	<u>8.67</u>	<u>8.35</u>	<u>9.25</u>
Difference	0.48	-.52	-.52	-.44	-.73	-.39	-.37

¹ Average within grade.

² Inordinately low--not used in average.

*Cost of living allowance.

TABLE III
(Houghton and Dickinson Counties Included as Comparables)

Category	Light Truck	Heavy Truck	Motor Grader	Shovel Operator	Distributor	Common Laborer	Mechanic
Dickinson	10.10	10.18	10.47	10.47	10.47	10.00	10.24
Houghton*	<u>9.20</u>	<u>9.43</u>	<u>9.53</u>	<u>9.53</u>	<u>9.53</u>	<u>8.63</u>	<u>9.58</u>
Average ³	8.98	9.20	9.38	9.34	9.37	8.76	9.51
Menominee*	<u>8.61</u>	<u>8.67</u>	<u>8.88</u>	<u>8.88</u>	<u>8.67</u>	<u>8.35</u>	<u>9.25</u>
Difference	-.37	-.53	-.50	-.46	-.60	-.41	-.26

³Includes all counties in Table I

*Cost of living allowance.