WISCONSIN EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ARBITRATOR

In the Matter of the Interest Arbitration Between LINCOLN COUNTY HIGHWAY EMPLOYEES, LOCAL 332, WCCME, AFSCME, AFL-CIO and LINCOLN COUNTY (HIGHWAY DEPARTMENT)	INT/ARB-8299 Case 164 No. 55700 Decision No. 29340-A OPINION and AWARD

Appearances: For the Union, Phil Salamone, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Schofield.
For the County, John Mulder, Administrative Coordinator, Lincoln County, Merrill.

When Local 332, WCCME, AFSCME, AFL-CIO (the "Union") and Lincoln County, Highway Department, (the "County" or "Employer") were unable to reach an agreement on a successor to their collective bargaining agreement, the Union filed a petition requesting that the Wisconsin Employment Relations Commission (WERC) initiate final and binding arbitration pursuant to Sec. 111.70(4)(cm) of the Wisconsin Municipal Employment Act (MERA) to resolve their impasse. On March 27, 1998, the WERC determined that an impasse within the meaning of Sec. 111.70 (4)(cm)6 of MERA existed and, at the request of the parties, on May 12, 1998, the WERC appointed the undersigned as arbitrator. A hearing was held in Merrill, Wisconsin, on June 1, 1998 at which time the parties were given a full opportunity to present evidence and arguments. No transcript of the hearing was made. Post-hearing briefs were filed and exchanged.

ISSUES

The final offers of the parties reflect that there are three issues in dispute. One concerns 1998 and 1999 wages. The second concerns the rate of accumulation of sick leave hours during the summer construction season. The third issue, also raised by the Employer's final offer, has been identified as "minor" by the Employer.[1] It relates to a special drivers' license requirement for new bargaining unit employees. A copy of the Union's final offer is attached to this Award as Exhibit A; a copy of the County's final offer is attached to this Award as Exhibit B. At the hearing, the parties stated that, in their view, the first two issues, wages and sick leave accumulation, were (roughly) of equal importance.

STATUTORY FACTORS

Section 111.70(4)(cm)7, 7g, and 7r states:

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[1]In fact, neither party presented evidence or arguments on this issue.

7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.

f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost of living.

h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. 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 private employment.

ARGUMENTS OF THE PARTIES

The Union

The Union notes[2] that the newly revised statutory criteria applicable to this arbitration proceeding now require that the arbitrator give "greater weight" to local economic conditions. It then argues that data establish Lincoln County has a "thriving" and "vibrant" economy and the County can well afford the modest economic costs associated with both the Union's final wage offer and the continuation of existing sick leave accumulation practices during the summer construction season. Accordingly, the Union emphasizes this statutory factor as one which strongly supports the selection of the Union's final offer in this proceeding.

A. WAGES

Turning more specifically to the wage issue, the Union looks at both external and internal comparables under Sec. 111.70(4)(cm)7r to provide additional support for its offer. It argues that the counties of Clark, Forest, Langlade, Marathon, Oconto, Oneida, Portage, Price, Taylor, and Vilas constitute the appropriate comparables. In particular, the Union justifies the inclusion of larger and "far more industrialized" Marathon County because a significant number of Lincoln County residents commute there to work. The Union notes that, even before the statutory factors were recently revised, arbitrators included larger communities as appropriate comparables when there was evidence of a common labor market. For the Union, this is the case here and justifies the inclusion of Marathon County as an appropriate external comparable.

Pointing to specific external comparable wage data, the Union notes that, although there is no compelling "catch-up" argument to be made, nevertheless given the County's relative affluence, its 1997 wage rankings for benchmark positions are "somewhat lagging behind this group as a whole." Moreover, existing 1998 highway department wage settlements in the contiguous - and less industrialized - counties of Clark, Langlade, and Taylor exceed the increases the Union seeks in this proceeding.

As for internal comparability, the Union believes there is considerable - though "mixed" - support for its final wage offer. It points to a recent interest arbitration award covering the Lincoln County Sheriff's Department bargaining unit in which Arbitrator Arlen Christenson chose the Association's final wage increase offer of 3.25% for 1997 and 3.25% for 1998 - instead of

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[2]Both parties agree that the statutory factor (contained in 111.70(4)(cm)7) which must be given "greatest weight" is not applicable to the facts in this case.

the County's 3% for 1997 and 3% for 1998. These are exactly the same wage proposals which the parties in this arbitration have submitted for 1998 and 1999 wage increases.

In addition, the Union notes that while the general increases for 1998 and 1999 agreed to by the Courthouse employees bargaining unit are consistent with the County's offer to the Highway Department employees bargaining unit, the former settlement also includes a number of wage and other adjustments which increase the economic value of that settlement. The same is true for the two Lincoln County social service employees bargaining units. Finally, the Union argues that the settlement covering Lincoln County Industries employees provides significant increases for employees with five or more years of service as well as for employees in two selected positions.

The Union concludes that the above arguments relating to the new statutory factor contained in 111.70(4)(cm)7g plus external as well as internal comparables support the very modest catch-up contained in the Union's final wage offer.

B. SICK LEAVE ACCRUAL

As to this unresolved issue, the Union notes that it is the County which seeks a change in the status quo. Since the savings which the County will realize if its offer is selected is quite modest and because the County is relatively prosperous, the Union believes that the new "greater weight" factor is also important for this issue and supports the Union's position retaining the status quo.

In addition, the Union stresses that the existing summer sick leave accrual practice is a direct result of a unique bargaining history starting in 1986 when the County wished to institute a more efficient summer work schedule of four ten hour days (instead of more traditional five eight hour days). At that time, a practice developed which permitted employees to accrue ten hours per month during the summer (instead of eight hours per month). When the County attempted unilaterally in 1996 to end this practice (which it characterized as a clerical error), the Union was successful in establishing through grievance arbitration that the County had violated the parties' collective bargaining agreement when it changed the sick leave accumulation rate during summer time from ten hours to eight hours per month. Arbitrator Christopher Honeyman in a 1997 decision ordered the County to remedy its contractual violation by crediting the additional hours to the employees' sick leave accounts.

Since it is the Employer which seeks in its final offer to modify this contractual practice, the Union contends that the Employer is obliged to offer a significant quid-pro-quo. It believes that the Employer's quid-pro-quo reducing the 18 year threshold to qualify for 4 weeks vacation to 16 years is clearly inadequate. To the Union, it is merely a minor modification which

will benefit very few bargaining unit employees. Moreover, this modification does not even match the more generous vacation benefits enjoyed by many Lincoln County represented and non-represented employees. In addition, the Union argues that the County has not advanced any "compelling need" arguments to justify its proposed change. The Union rejects the County's rationale that it is seeking to make County benefits more uniform since there are many significant remaining differences in benefits which Lincoln County provides to its employees.

Finally, the Union argues that the County's sick leave accrual modification is an unsuitable way to address discrimination charges filed against the County by two female clerical employees who are employed in the highway office and work the same longer days in the summer months although they are in a different bargaining unit. The complainants state that they do not accrue the same sick leave hours as other (all male) highway department employees, both management and members of this bargaining unit, and charge sex discrimination.

For all these reasons, the Union concludes that both elements of its final offer - one relating to 1998 and 1999 wages and the other rejecting the County's proposed sick leave accrual change - are more reasonable and should be selected by the Arbitrator.

The County

For the Employer, the specific statutory factors which are relevant to this dispute are to be found in Sec. 111.70(4)(cm)7r subsections (c), (d), (e), (g), and (j).

A. WAGES

The County contends that in this proceeding, the internal settlement pattern merits the greatest weight. It notes that County employees are represented in seven different bargaining units. All of the other bargaining units are settled for 1998 (including the Sheriff's Department unit which had its 1998 contract settled by arbitration). The only unit which received an increase greater than 3% was the Sheriff's Department since the arbitrator selected the Union's final offer in that case. In addition, five of the seven units have settled for 1999. Three of the units settled for less than 3% across the board plus adjustments at the top end of the scale. The largest unit, Pine Crest Nursing Home, settled at 3% as did the second largest unit of Courthouse employees. These two units represent over 61% of the County's unionized workforce. It is particularly important to understand that some Courthouse unit employees work in the in the Highway Department. Therefore, future voluntary settlements will be discouraged if the outcome of this arbitration provides a greater increase to one group of employees who work together with members of another bargaining unit, a result certainly contrary to state policy which encourages voluntary labor settlements.

The final argument made by the County to support its wage offer is that of equity. The Employer urges that its internal pattern of 3% (except for the arbitrated 3.25% for the law enforcement unit) be upheld for this Highway Department bargaining unit. Particularly since across the board settlements for all County bargaining units goes back to 1995, this pattern deserves great deference.

Although it believes that its internal wage pattern should control the outcome of this proceeding, the County also argues that its final wage offer is supported by external comparables. The County looks to the five contiguous counties of Marathon, Oneida, Langlade, Taylor and Price as well as the City of Merrill as the primary comparables. These comparables were established for use in two impasse cases involving the County's Sheriff's Department bargaining unit. They are not only contiguous but, with the exception of Marathon County, are relatively similar in terms of population, equalized value. and county tax levy. Since Marathon County is so different from the other listed counties, the Employer believes that Marathon County data should be given less weight than data from the other contiguous counties.

In examining more closely the comparable data, the County notes that this bargaining unit's starting salary is considerably above average and its maximum rates are just slightly below average. Lincoln County's ranking would not be changed, if the Employer's final wage offer were chosen. In fact the County's offer narrows the gap.

In addition to the above arguments based upon internal and external comparability, the Employer relies upon the statutory cost of living statutory factor. It concludes that its wage offer more closely matches the CPI-U than does the wage offer of the Union.

Finally, the County argues that the interests of the public is best served when the County is able to hold costs down while retaining qualified employees over a long period of time. This Lincoln County has been able to do. The County believes the Union argument that the County has resources to afford its higher settlement is against the interest of the public because Lincoln County's tax rate is already 19th highest (out of 72 counties).

For these reasons, the County concludes that its final wage offer is more reasonable than the Union's.

B. SICK LEAVE ACCRUAL

For the County, the existing sick leave accrual system for summer construction months was first brought to light in 1996 when manual department records were being computerized. The County then ceased the practice of crediting employees with sick leave accrual at the rate of ten hours per month for summer months when the employees worked four ten hour days instead of

the standard 8 hours per month when employees worked the standard 5 eight hour days.

Since the Union prevailed in arbitration on this matter, the County now wishes to change the status quo. Although the County continues to believe that it has the ability to repudiate this past practice, it has proposed a quid pro quo in order to change the parties' contractual obligation in this regard. The County contends that if the current situation is not corrected as it proposes herein, a serious problem of inequity will continue. Bargaining unit members will be able to accrue 10 hours of sick leave per month during the summer months when they continue to work forty hours a week (four ten hour days) while other County employees who also work forty hours a week (five eight hour days) only accrue 8 hours of sick leave per month. The Equal Rights Division sex discrimination complaints by two female clerical employees demonstrates the morale problems which result from this practice. With its final offer language, the Employer believes that this problem will be appropriately resolved.

Even though the County continues to believe that no quid pro quo is needed to change this inequitable sick leave accrual practice, it has included in its final offer an improvement in vacation benefits which is advantageous to three employees in 1998, four in 1999, and a majority in the unit in future years. The projected cost of this proposed benefit, according to the Employer, exceeds the cost of the particular sick leave accrual benefit which it wishes to eliminate. Thus, the County believes that its offer contains a sufficient quid pro quo, particularly since none of the other units which also received the proposed improvement in vacation schedule ever had the disputed sick leave accruals which the Union seeks to retain in this arbitration. The County finally notes that the Union has provided no evidence that any other group, internal or external, accrues additional sick leave for an alternative schedule in the manner this unit enjoys.

For all the above reasons, the County concludes that its final offer provides internal equity and consistency for Lincoln County's employees and thus should be selected by this impartial arbitrator.

DISCUSSION

A. 1998 and 1999 WAGES

To support its final wage offer, the Union emphasizes the new statutory factor contained in Sec. 111.70(4)(cm)7g, external comparables, and selected internal comparables, particularly Arbitrator Arlen Christenson's recent impasse arbitration award selecting the Association's final offer of 3.25% for 1996 and 1997 for Lincoln County's law enforcement bargaining unit. In contrast, the County stresses the need for internal consistency

(specifically, an overall pattern of 3% across the board settlements), a history going back to 1995 establishing internal wage increase uniformity, and the fact that its final offer will maintain the County's rankings with external comparables as the major justifications for its final wage offer.

It is obvious that neither wage offer is unreasonable, based upon the parties' arguments and the various statutory factors relied upon. Perhaps the most interesting argument was put forth by the Union when it cited the language of newly added Sec. 111.70(4)(cm)7g relating to "greater weight"[3]. The Union contends this section requires that Lincoln County's current favorable local economic conditions must be given greater weight than any of the multiple factors set forth in 111.70(4)(cm)7r.

The "greater weight" statutory factor may have been intended to be applicable only in arbitration proceedings in which the municipal employer submitted proof of adverse local economic conditions in support of the employer's final offer. However, such a limitation is not part of the legislation as enacted. Given the unambiguous and mandatory statutory language of that section, the undersigned believes that she must give "greater weight" to the data submitted in this proceeding which indicates that local economic conditions within Lincoln County are sufficiently favorable to support the Union's final offer (in addition to the County's final offer) even though she also believes that this statutory factor alone does not mandate selection of the Union's final offer.

In addressing the other statutory factors addressed by the parties, the undersigned believes that Arbitrator Arlen Christenson's March 16, 1998 arbitration award in the Sheriff's Department bargaining unit impasse is relevant. Although that impasse arbitration case was pursuant to a different statute (Sec. 111.77(3)) and involved wages for 1997 and 1998 (instead of 1998 and 1999), there are many overlapping issues. First, that award concludes that "both [wage] offers can reasonably be seen as serving the interests and welfare of the public." Second, the award notes that because the offers of the parties are "extremely close ...neither offer would likely change the relative position of the [County's] wage scale with respect to comparable communities." Finally, the award observes that both offers slightly exceed the increase in the cost of living as measured by the CPI and concludes "because there is so little difference looking to the relationship to cost of living is little help." The undersigned adopts these observations and conclusions for this proceeding.

On the issue of what are the appropriate external comparables, the Christenson award notes that the parties

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[3]See footnote 1 for explanation of why newly revised Section 111.70(4)(cm)7 ("greatest weight" factor) is not relevant herein.

involved in that case had a bargaining history which established a list of mutually agreed upon external comparables and thus comparables were not in dispute. There is no similar bargaining history is this case and comparables are in dispute. The Christenson award also does not address the issue raised in this proceeding as to what weight should be given to internal comparables in contrast to external comparables. This was not an issue before Arbitrator Christenson. It is an important issue in this case.

As Arbitrator Christenson noted, however, external comparability is a matter of degree and revolves around the question of whether a particular community is sufficiently similar so that the comparable employee wages in that community is sufficiently relevant to be considered. In the absence of an agreement between the Union and the Employer on external comparables, the undersigned believes the contiguous counties (Langlade, Marathon, Oneida, Price and Taylor)) are the primary comparables because data establish they all share a common labor market with Lincoln County and they have been used historically (together with the City of Merrill) as the primary comparables by the County and its law enforcement bargaining unit.

As viewed against the background of these external comparables, Lincoln County wages for members of this unit are comparatively high at the entry level and comparatively lower at the top[4]. The parties' final offers do little to change this. Moreover, while comparative data for the primary comparables in 1998 are almost complete (except for Marathon County), there is sparse information about 1999 comparable wage increases. Based upon available 1998 information - and even making the unrealistic assumption that there will be no Marathon County wage increases in 1998 - in this arbitrator's judgement, appropriate external comparability favors the Union's final wage offer.

The remaining wage issue is whether the County's internal comparability emphasis should prevail over the above external comparability analysis. It is certainly understandable why the County stresses the principle of maintaining internal wage increase consistency. According to the County's exhibit, for 1995 all County units settled for a 3.5% across the board increase - with the (unexplained) exception of the Pine Crest unit which settled at 4%. For 1996, all units settled for a 3.25% increase - with the exception of this unit which received a $.41 increase[5]. For 1997, all units settled for a 3.25% increase - with the exception of the Sheriff's Department unit where the 3.25% rate

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[4]No convenient comparative information has been provided as to how long it takes employees in the various classifications to reach their maximum wage.

[5]There is no indication as to what percentage increase this represents across the bargaining unit.

was determined by arbitration. For 1998, all units settled for 3% or less - with the exception of this unit presently in arbitration and with the exception of the Sheriff's Department unit which received 3.25% as a result of arbitration. For 1999, all County units settled for 3% or less - with the exception of this unit and the Sheriff's Department unit where no settlement has been reported.

The Union points out, however, that these figures reporting only across-the-board wage increases may be misleading since they do not take into account other wage adjustments and step additions which increase the total economic value of a given bargaining unit's wage settlement with the County. Where various wage adjustments and/or enhancements have been agreed to by the County, the percentages listed in the County's "Historical Settlements" exhibit do not fully reflect the total economic value of all wage improvements.[6] Thus, although the County's argument relating to the importance it places on internal wage increase uniformity is generally credible, it appears improper to look solely at internal across the board increases for each bargaining unit without also factoring in the value of various additional wage enhancements. When this is done, it is probable that the County's 3% internal wage increase consistency argument has less merit. It is possible, if not probable, that other County employees will receive 1998 wage increases equal to or perhaps even exceeding the Union's 3.25% annual wage offer in this case.

Based upon the above analysis relating to the parties' close wage offers and in light of the statutory factors noted by the parties, if wages were the sole issue in dispute, the undersigned concludes that the factors favor the Union's final wage offer.

B. SICK LEAVE ACCRUAL

There is some relevant history to the sick leave accrual issue. Although the parties have presented evidence and arguments on this issue which appear to reflect a desire to relitigate the March 28, 1997 grievance arbitration decision by Christopher Honeyman, the undersigned believes that his final and binding arbitration award established that the parties' collective bargaining agreement provides for the summer time sick leave accumulation rate supported by the Union. This impasse arbitration proceeding presents no opportunity for the parties to relitigate the arbitrator's conclusion that there was a "clear, consistent and mutually known past practice" which the County violated when it attempted to make a unilateral change in 1996. If the status quo relating to this mandatory subject of bargaining is to be changed, the modification must be agreed to

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[6]The parties probably disagree as to how "equity" and/or other wage adjustments should be weighed along with an across the board increase. Neither party addressed this point, however.

in negotiations or, as in this impasse, it becomes an issue subject to final offer whole package arbitration pursuant to Sec. 111.70(4)(cm).

Since the existing sick leave accrual procedure was unsuccessfully contested by the County in the grievance arbitration case decided by Arbitrator Honeyman, that procedure is an existing benefit or part of the status quo. Under traditional rules governing labor-management relations, the County is obliged to provide a quid pro quo when it seeks a modification. In this proceeding, the County has been somewhat reluctant to offer a quid pro quo (only "if needed"). The primary question for this arbitrator on this issue is whether the additional vacation benefits offered by the County in its final offer is adequate to justify the County's proposed modification of the established sick leave accrual practice.

The Union argues that the quid pro quo offered by the County is insufficient since unit employees with more than 18 years of service will realize no benefit while those with under 16 years of service may, for a variety of reasons, end their employment before reaching the 16 year level. The Union further argues that the County has made a "rather bogus concession" since similar or more generous vacation benefits have been provided to every other County bargaining unit (as well as to unrepresented County employees). These are pertinent facts which the Union has pointed to which minimize the significance of the County's improved vacation benefits quid pro quo. The Union has also pointed out that the County has failed to establish a "compelling need" for eliminating a practice which it has implemented since 1986. Since the parties have lived with this practice for a significant length of time and the County discovered its existence accidentally, in the absence of a substantial quid pro quo or a "compelling need" to eliminate the existing benefit, the Union's status position on this issue is more reasonable. If the County wishes to eliminate the past practice established by Arbitrator Honeyman's award, it needs an improved quid pro quo.

AWARD

Based upon the statutory factors listed above and the record established in this proceeding, including the testimony, exhibits, and arguments of the parties, and for the reasons discussed above, the arbitrator selects the final offer of the Union and directs that it be incorporated into the parties' collective bargaining agreement for 1998 and 1999.

September 2, 1998

June Miller Weisberger
Arbitrator

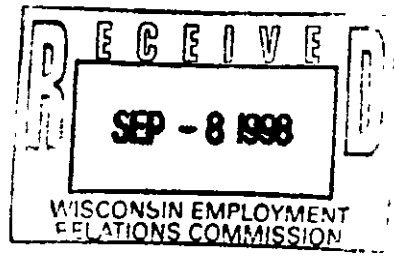
1998-1999 FINAL OFFER OF LINCOLN COUNTY HIGHWAY EMPLOYEES, LOCAL 332, AFSCME, AFL-CIO TO LINCOLN COUNTY

EFFECTIVE 1/1/98-INCREASE ALL WAGE RATES BY 3.25% ACROSS THE BOARD

EFFECTIVE 1/1/99-INCREASE ALL WAGE RATES BY 3.25% ACROSS THE BOARD

PLUS ALL OTHER TENTATIVELY AGREED UPON ITEMS.

Annex A



Final Offer
of Lincoln County
to AFSCME Local 332
Highway Department Employees

January 23, 1997

All tentative Agreements reached to date on the attached list.

Purging of Past Practice: Employees within the Highway Department will no longer accumulate sick leave at a higher rate during the months that they work the alternative schedule of four 10 hour days. The rate of accumulation will be the same throughout the year.

Amend Article XIV A. Accumulation: Amend to read "Each employee shall earn one day (8 hours) of sick leave for each month of service and unused sick leave may accumulate to a maximum of ninety (90) days."

As a quid pro quo (if needed), the County would offer the following:

1. Article XIII amend to read

4 weeks 16 ~~18~~ years

2. Exhibit A New paragraph E. The current Asphalt Plant Helper will be paid at the Class 4 rate of pay for all hours worked. If a new employee posts into a vacancy Asphalt Plant Helper, the employee will be paid at the Class 3 rate of pay until mgmt approval to the Class 4.

Article XXV A. Add the following after the first sentence. "All new employees hired after January 1, 1998 will be required to have and maintain a Class "A" Commercial Drivers License with air brake, tanker, hazardous material, and combinations endorsements.

Wages: 3% atb 1/1/98
3% atb 1/1/99

Duration: Change all dates to reflect a two year agreement from 1/1/98 to 12/31/99

Annex B