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**STATE OF WISCONSIN  
BEFORE THE ARBITRATOR**

**In the Matter of the Petition of**

**NORTHWEST UNITED EDUCATORS**

**Case 30**

**No. 58227**

**INT/ARB-8849**

**Decision No. 29938-A**

**To Initiate Arbitration Between  
Said Petitioner And**

**SCHOOL DISTRICT OF CUMBERLAND**

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**APPEARANCES**

**On Behalf of the Union:** Alan D. Manson, Executive Director - Northwest United Educators

**On Behalf of the District:** Stephen L. Weld, Attorney - Weld, Riley, Prenn & Ricci, S.C.

**I. BACKGROUND**

On November 22, 1999 the NUE filed a petition with the Wisconsin Employment Relations Commission wherein it alleged that an impasse existed between it and the School District of Cumberland in their collective bargaining. It further requested the Commission to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. Subsequently, a member of the Commission's staff conducted an investigation in the matter and submitted the report of the results thereof to the Commission. On July 3, 2000 the WERC ordered the parties to select an arbitrator to resolve their impasse. The parties selected the undersigned and his appointment was ordered by the Commission on July 24, 2000.

A hearing was conducted on Sept. 5, 2000 at which the parties presented evidence to support their positions. Posthearing briefs and reply briefs were filed. The last brief was received October 23, 2000.

## **II. FINAL OFFERS AND ISSUES**

The contract term is agreed by the parties to be July 1, 1999 to June 30, 2001. The parties agreed to a variety of changes to the predecessor contract and the stipulations filed with the WERC reflected those changes.

The final offer of the Employer addresses the issue of wages. They propose to increase all wage rates 3% effective July 1, 1999 and increase them again July 1, 2000 by 3%.

The final offer of the Union addresses wages and health insurance. Their final offer with respect to wages is as follows:

1999-2000: Increase all wage rates of Custodian classifications and Clerical II classification by 3%, effective July 1, 1999. Increase all wage rates for all Food Service and Aides classifications and all wage rates for Clerical I classification by 2.5% effective 7/1/99. Increase the 27 cents per hour for study hall supervisor aide after four years to 28 cents, effective 7/1/99. Increase the 29 cents per hour night differential to 30 cents per hour, effective 7/1/99.

2000-2001: Increase all wage rates of Custodian classifications and Clerical II classification by 3 cents, effective July 1, 2000. Increase all wage rates for all Food Service and Aides classifications and all wage rates for Clerical I classification by 2.5% effective 7/1/00. Increase the 28 cents per hour for study hall supervisor aide after four years to 30 cents, effective 7/1/00. Increase the 30 cents per hour night differential to 31 cents per hour, effective 7/1/00.

Regarding insurance, the Union proposed to change the eligibility criteria for health insurance coverage. The language in the 1998-1999 contract states:

7. All other employees working twenty (20) or more hours per week may elect to participate in the family or single plan coverage with the Board contributing on a pro-rata basis equal to the ratio of hours worked by the employee (1,880 hours).

The new language proposed by the Union is as follows:

“All other employees working twenty (20) or more hours per week may elect to participate in the family or single plan coverage with the Board contributing on a pro-rata basis equal to the ratio of hours worked by the employee (1,780 hours in 1999-2000, and 1,680 hours in 2000-2001).”

### **III. ARGUMENTS OF THE PARTIES (SUMMARY)**

#### **A. The Union**

The Union views this as a single issue arbitration. That single issue is the Union proposal to lower the 1880-hour-basis for prorating health and dental insurance benefits. This is a graduated decrease over two years. The Union notes too that they offer a quid pro quo for this change in the form of ½ percent less of a wage increase for virtually all employees working less than 1880 hours per year. The Union asks for a 2 ½ percent increase for Food Service and Aide classifications and Clerical I Classifications whereas the Employer offers 3 %. The District’s offer differs slightly in that it does not adjust the night differential for Custodians. They note too that the dollar difference between the two final offers in 1999-00 is just over \$1,300 (which is just over 1/10 of 1 percent of the total compensation). In the 2000-01 year the difference in final offers is close to \$2,450 (or about 1/4 of 1 percent of the total compensation). Over the two years, the closest differential between the two final offers totals somewhat less than \$5,200 (which is also about 1/4 of 1 percent of the total compensation over the two years).

Applying and analyzing the statutory criteria the Union first opines that the factor which is to be given the “greatest weight” by statute in these proceedings is, in essence, the ability to pay. They note at the hearing in this case the District acknowledged that ability to pay was not a factor. Regarding the “greater weight” factor (“The Economic Conditions in the Jurisdiction of the Municipal Employer”), the Union contends there does not appear to be any significant evidence in the record which would serve to distinguish the economic conditions in the Cumberland School District from those in comparable districts. Therefore, they do not believe this factor is relevant. Other factors not having a great bearing on this dispute in their opinion are the “Stipulations of the Parties” and the “Lawful Authority” of the District.

Regarding the “Interest and Welfare” of the public, the NUE argues that its

offer is in the interest and welfare of the public to a greater extent than that of the Employer. They reference several statutes arguing that their wording favors a public policy that protects employees from the financial hardship of illness and accidents. They also refer to the testimony of an employee who as a single parent of three, who because she is covered at slightly less than 75% (73.4%) of the family premium, experienced such a reduction in her take-home pay, she must look for another job. Even under “Badger Care”, a state program to provide health insurance to low income workers, the standard is for the Employer to pay 80% of the cost of health care. The Union’s offer would advance staff who work 1380 hours per year toward and then just barely over the official definition of employer-subsidized health care coverage. The 1780 base in 1999-2000 would produce a level of employer-paid insurance of 77.5 percent. In 2000-01 the NUE final offer of a 1680-hour-base would produce employer premium payments of 82.1 percent. For these reasons, NUE believes that its final offer is favored by the criteria which considers the interests and welfare of the public, particularly where the financial ability of the unit of government to meet the costs is not in question.

When considering comparability as a factor. The Union contends this clearly favors their offer. Internally, all Cumberland teachers who work a 187-day school year obtain Employer-paid group insurance prorated on the effective base of 1496 hours per year. A Cumberland teacher who works 7 ½ hours a day during the school year would have 93.75 percent of the health insurance premium paid by the District and they have a higher wage to afford to make up the difference. There are also four full-time non-union employees of the District who like all unionized 2080-a-year employees, have fully paid health, dental and vision insurances. However, they note these employees also received a 3.685% wage increase.

Concerning external comparables, the parties agree the Heart O’ North Athletic Conference is the prime comparable group. Cumberland, based on a number of comparative financial factors is roughly in the middle of the rest of the schools, yet it ranks lowest, or eight of eight, in salaries and fringe benefit costs of instruction. Cumberland also ranks lowest in per pupil services, and highest in debt service. The fact Cumberland is lower in cost per student for salary and fringe benefits and below average for budget per student puts the \$5000 difference between the offers in perspective.

The “most revealing” comparison to other athletic conference schools is the average hourly basis for prorating insurance benefits. It was 1622 hours in 1998-

99 and is now 1590 hours in 2000-01. NUE's offer causes the Cumberland basis for prorating insurance benefits to come within 90 hours of this decreasing average. The proration formula for insurance payments improved in three of the other seven districts (Chetek, Hayward and Ladysmith) during the two-year period from 1999 to 2001. In comparison, the Employer's offer, which does nothing, causes employees to fall farther behind moving from 258 hours beyond the average in 1998-99 to being 290 hours off in 2000-01. This is on top of the fact that Cumberland has a lower than conference average family health insurance premium.

In terms of wages, the Union notes that the general wage rate increases in Cumberland in the two-year contract, under either final offer, are slightly below average, and well below average for the school-year employees targeted by NUE for the quid pro quo. Thus, they conclude they have demonstrated the need for the change and provided a quid pro quo for the change. They also offer a group of secondary comparisons which they contend support their offer on insurance proration.

The last two factors addressed by the Union is the cost of living. With respect to the CPI measurement, the evidence shows that over the two years there was a 2.4 and then a 4.4 percent increase, combining to produce at least a 6.6 percent increase in the cost of living. Wage rate increases of the District's offer combine to be just over 6 percent. The NUE offer for 12-month employees is the same at just over 6 percent. The cost of living can also be gauged by other wage settlements in the comparable which all were greater than the Union's wage offer.

## **B. The District**

The District agrees with the Union that the primary issue is the "benchmark" number of hours employees must work to be entitled to 100% paid health, dental and vision insurance and in turn, this affects the proration calculation for part-time employees wages, the Study Hall Aide stipend and the night shift differential which are also unresolved.

Concerning the insurance issue, the District notes that the Union's proposal to change the benchmark to 1,780 hours in 1999-00 and to 1,680 hours in 2000-01 would increase the District's insurance contributions for 19 employees within the 45-member unit who fall within the 720-1,879 work hour category. All but one of those 19 employees receive a combination of health, dental and vision insurance, with seven employees taking all three. The majority of that group of employees

have family coverage.

The District argues that as the proponent of changing the status quo, it is the Union that has the burden to justify their proposal. It is a substantial burden the District contends, based on a number of arbitration awards.

It is the position of the District that the Union has not established a legitimate need for its proposed change in the insurance proration benchmark. The only evidence the Union presented was the testimony of one employee who testified that the increased cost of her portion of the cost of her insurance coverage has effectively eaten up her wage increase and that, as a result, claims she is searching for employment. The District responds that it has no control over the cost of health insurance and that the Union has not made proposals to reduce that cost. As for the employee looking for other employment, there is no evidence of employee turnover based on wages and/or benefits. Moreover, where there was turnover, the District has had no problems in hiring replacements for those employees who have left. There is no need for a change and the Union's desire to change doesn't satisfy their burden.

The District also takes the position that unlike the reduced wage demand, the Union's change to the proration formula will have a impact beyond the term of the agreement. Indeed, the increased cost inherent in the proposal will be compounded into the future as health insurance premiums escalate. They also present data showing the escalation of health insurance premiums. Their evidence also shows that for 1999-00 the Union's proposed change of the benchmark to 1,780 hours increases the Employer's annual cost by \$326.98 for 1,600 hour employees and \$282.02 for 1,380 hour employees—which is equivalent to 20 cents per hour for both. Further, when the change in proration is reduced to 1,680 hours in 2000-01, the additional annual cost under the Union offer rises to \$789.42 for each 1,600 hour employee and \$680.88 for each 1,380 hour employees—or an additional 49 cents per hour worked. These costs go up even more when accounting for likely health insurance premium increases and would rise to 52 cents to 58 cents per hour. Increases in dental insurance and vision insurance would push the cost higher.

The District argues further that the ½ of a percent savings is not enough to “buy” the increased health insurance. The insurance costs exceed the wage-related savings by \$1,328.95 in 1999-2000 and by \$3,777.76 in 2000-01. In comparison,

in Hayward the support unit agreed to a 2% wage increase for all unit members in 1999-00 and a 2.5% wage increase for all unit members in 2000-01 in return for reducing the proration number to 1,750 hours from 1800 hours effective in 1999-00. The savings in Cumberland is 4 cents per hour in wages for the Helper-Server position and the 6 cents per hour in wages for Clerical I, Aides and Head Cook in 1999-00. This does not come close to paying for the 20 cents per hour cost increase attributable to health insurance alone in that year. For 2000-01, the 9 cents per hour savings in wages for the Helper-Server and 12 cents per hour savings in wages for the Clerical I, Aides and Head Cook in 2000-01 falls even shorter in meeting the increased cost of 49 cents per hour, for health insurance alone.

The District, like the Union, addresses the comparables, but comes to a different conclusion. The District maintains the comparables do not support a change in the status quo. They rely on the Heart O' North Athletic Conference. When looking at those schools, it is submitted Cumberland is not a low-paid group. On the contrary, the employees under either offer will receive highly competitive wages. The position of Clerical, Instructional Aide, General Teacher Aide, Head Cook and several others will maintain their top ranking in the conference regardless of which offer is selected.

As for the Union's evidence that shows many districts within the conference and surrounding districts utilize a benchmark which is less than 1,880 hours per year, the District believes this evidence is mixed at best. In order to put the Union's evidence in perspective, the District asserts the number of hours on which the Employer contribution is calculated is significant only in conjunction with the scope of benefits affected by the benchmark and the percent of and actual premium contribution. For instance, Ladysmith pays 100% for single and family, Maple pays 95% for single and family, and Bloomer pays 100% for single and 99.6% for family. Both Barron and Spooner "prorate" based on 2,080 hours, requiring more employee contribution than exists in Cumberland. In contrast, the insurance benefits available to and/or provided by the Cumberland District are unsurpassed by any members of the Heart O' North Conference. They present a detailed analysis in this regard. The highlights are the fact that: (1) The District's health insurance represents the proverbial "Cadillac" plan; (2) The District's dental insurance coverage is comparable to the plans offered by the comparables; (3) Cumberland is the only district which provides vision insurance; (4) Only Cumberland provides life insurance equal to two times the amount of the

employee's salary; and (5) Coverage under the District's fully paid long-term disability plan is superior to all comparables.

The District also rejects the Union's reliance on comparisons to teachers. They detail what they believe to be the Union's flawed analysis.

Last, the District relies on comparisons to private employers in Barron County. The survey revealed that the percent of premium paid by private sector employers for full-time employees is considerably less than what the District pays, i.e. as low as 33%, 45%, or 50% for family coverage. In addition, the majority of employers do not offer dental, vision or disability insurance. Finally, contributions toward retirement/pension options are considerably less than the District pays into the Wisconsin Retirement System. Moreover, an analysis of private sector health insurance plan features offered by private sector employers reveals that the single deductible ranges from \$100 to \$1,500, the family deductible ranges from \$200 to \$2,000, employees pay more for prescription drugs—averaging \$10 for generic and \$15-\$20 for brand name—and only two of the 20 employers who offer health insurance have a 100% copay after meeting the deductible. Wages are also lower.

#### **IV. OPINION AND DISCUSSION**

Both parties as represented by their respective advocates are well-experienced in the ways and wonders of the process of interest arbitration. Both parties recognize that it is well-established that, under the umbrella of the statutory criteria, when one party or the other wishes to make a change in the substantive terms of their collective bargaining agreement, a particular burden must be satisfied. It has been said at different times and in different ways by interest arbitrators that the proponent of change must demonstrate (1) The need for change; (2) The need for change must be addressed in a reasonable manner; (3) There should be a quid pro quo appropriate to the circumstances and (4) There should be support in the comparables. Both parties address all these points in their briefs.

Simply put, the Union argues it has demonstrated the need for change, reasonably addressed the need for change, shown support in the comparables and offered a sufficient quid pro quo. The District argues the opposite. The quid pro quo is insufficient in their opinion. The comparables are mixed in their support and the need isn't compelling, argues the District.



In evaluating these arguments, it must be first said that there is scant, if not, non-existent support in the athletic conference comparables for a full-time health insurance benefit threshold of 1880 hours. There is no conference school with a threshold as high. Only Hayward approaches this ‘high bar’ at 1750 hours. The others range from a low of 1260 to 1610 hours. The thresholds for the unionized conference schools in 1999-00 and 2000-01 are as follows:

	<u>1999-00</u>	<u>2000-01</u>
Bloomer	1260	1260
Chetek	1710	1660
Hayward	1750	1750
Ladysmith	1350	1350
Maple	1440	1440

The fact that Cumberland, at a threshold of 1880, is so far out of step with the clear trend in the comparables that this in and of itself goes toward establishing a need for a change. This is particularly true when the role of health insurance is considered for less than full-time and less-than-full-school-year workers. Workers below the 1880 hour threshold must pay for full-time year-round health insurance with less than full-time year-round basis. Of course, the other side of this coin is the District must pay for full-time health insurance for less than full-time year-round employees. It is true too that insurance costs are ever increasing and that this impacts the District. However, it also impacts the workers of this unit who predominantly do not work full-time and whose wages are, all things considered on an absolute scale, modest.

Indeed, there are equities to be considered from both the managerial and employee perspective. Ultimately, it is significant that the equities are balanced by other similar school districts on a basis much more favorable to the employees than the District offers here. The District’s insistence on the status quo of 1880 hours is inconsistent with the conference pattern and trend. The only districts with a threshold of 1700 hours or above have been in a reduction mode. Hayward moved

from 1800 in 1998-99 to 1750 in 1999-00. Chetek moved from 1710 in 1999-00 to 1660 in 2000-01 and will make a further reduction in 2001-02 to 1610 hours.

The degree to which a proposal is supported in the comparables influences how much of a quid pro quo is reasonably required. In collective bargaining at the table, changes in benefits are often bought and paid for: that's "bargaining". How high the price depends on how much other justification is present. If a party is seeking a brand new benefit or contract revision, unknown in the comparables, the price is high and the more common the target in the comparables, the less the price.

In this case, the Union seeks one-half percent less of an increase for all those employees (except one) who would benefit from a change in the proration level. This is a large percentage of the bargaining unit. The change would potentially benefit approximately 19 of the 45 bargaining unit members. The Arbitrator agrees with the District that a one-half percent reduction in the wage demand isn't dramatic. However, he disagrees that it is an insufficient quid pro quo under the circumstances.

It has already been mentioned the need for a quid pro quo is diminished by the fact that the comparables all do much more for their employees on this issue. It is true employees in Cumberland enjoy certain benefits and benefit levels not granted other employees. However in this case, in the judgement of the Arbitrator, this does not justify maintaining a 1880 hour proration basis in the face of the pattern in comparables. The conclusion may have been different had the District made some proposal to bring the proration in line with other districts. It is significant as well that the District's failure to act on this issue came in the face of their having granted non-union clericals a 3.685% wage increase for employees who all are eligible for fully-paid insurance. It is noted as well that even at a 1680 hour benchmark, four out of six conference schools will have lower proration levels. Cumberland will be the second highest behind Hayward.

Certainly the District's insurance costs will go up. For instance, the District noted that under the Union offer the annual family health insurance cost to the District for a 1380 hour employee will go up from \$282.00 per year in 1999-00 and \$680.88 per year in 2000-01. These are monthly increases of \$23.50 and \$56.74 per month. However, not only does the fact that other districts face similar prorations suggest that Cumberland should also bear these costs, but the increased costs are mitigated by the fact that the Cumberland district faced less of an

insurance premium burden than other districts in 1999-00 and 2000-01. The family premium in 1999-00 was \$30 a month or \$360 per year less than the conference average. The family premium in 2000-01 was \$49 a month or \$588 a year less than the conference average.

At arriving at the conclusion that the Union offer is more reasonable, the Arbitrator has considered all the relevant criteria. The “greatest weight” factor is not applicable. There is no meaningful evidence on the “greater weight” factor. The economic conditions in the Cumberland school district are not unusual and are not materially distinguished from similar districts. As for data from private employers, it is not viewed, as evidence in this case, as probative as evidence concerning other districts.

In summary, the financial burden of sharing a significant portion of the health insurance premium for an employee based on limited hours and wages, in the face of the fact other districts don’t ask as much from their employees, is enough to establish a need to modify the status quo. The quid pro quo is sufficient and the Union’s offer more reasonably addresses the need to change the language of Article IX than the District’s offer which does nothing to address the problem of less than full-time employees sharing a disproportionate burden of the health insurance premium. It is more reasonable to address the problem and address it in the manner proposed by the Union than not to address it at all. The insurance issue is clearly more important and significant than the wage issue for study hall supervisor and the night differential increase. Therefore, the insurance proposal is controlling.

### **AWARD**

The final offer of the Union is selected.

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Gil Vernon, Arbitrator

Dated this 18<sup>th</sup> day of December, 2000.