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STATE OF WISCONSIN  
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

In the Matter of Arbitration

between

The Cumberland School District,  
Cumberland, Wisconsin

-and-

Northwest United Educators

OPINION & AWARD

Interest Arbitration

WERC Case #30167

MED/ARB - 1846

J. C. Fogelberg

Mediator/Arbitrator

Decision No. 19940-A

Appearances -

For the Union:

Robert West, Representative  
Lee Ritchie  
Jim Chuchwar  
Carol Thompson  
Roger Wistrucill

For the District:

Stephen Weld, Attorney  
Merwin Moen, Superintendent  
Kerwin Cordes  
Brenda Johnson

Preliminary Statement -

The Cumberland School District, situated in the Northwest portion of the state of Wisconsin, had an enrollment for the 1981-82 school year of 1,072 students who were taught by approximately 64 instructors being represented for

the purposes of collective bargaining by the Northwest United Educators.

The record shows that the Parties exchanged initial proposals in accordance with the terms of a limited reopener provision (Article XXV) contained in their 1981-83 Master Contract, on May 7, 1982. Subsequently both sides met on two separate occasions in an effort to reach a voluntary settlement on those issues subject to the reopener provision, but were unsuccessful in reaching an accord. On July 26th the Association filed a petition with the Wisconsin Employment Relations Commission requesting initiation of the mediation/arbitration process pursuant to Section 111.70(4)(cm)6, of the Wisconsin Statutes. On September 13, 1982 Investigator Stephen Schoefeld conducted an investigation on behalf of the Commission, which resulted in the conclusion that the Parties were deadlocked in their negotiations. Thereafter, the Board and the Association submitted their respective final offers and on September 27, 1982 the WERC certified the impasse and ordered that the Parties elect a mediator/arbitrator

On October 6, 1982 the Commission notified the undersigned that he had been selected as the Neutral to serve the Parties in an attempt to resolve the impasse that existed. Accordingly on December 16th the Mediator/Arbitrator met with the Association

and the District whereupon efforts were undertaken by the Neutral to reach a settlement through mediation. When it became almost immediately apparent that the matter was not going to be settled in mediation, the Parties moved directly to an arbitration hearing on that same date. At the hearing, evidence was received and testimony taken relative to the outstanding issues, at the conclusion of which the Parties indicated a preference for filing post hearing briefs. These briefs were received by the Neutral on or about February 18, 1983. Subsequently reply briefs were also filed by the Parties and received on March 8th. Finally, additional information was forwarded to the Neutral concerning other arbitration awards from schools in the immediate geographic proximity to Cumberland — the last of which was received on April 9, 1983 at which time the hearing was deemed officially closed.

The Issues -

The following issues remain at impasse between the Parties.

1. Salary increases for the 1982-83 school year
2. Layoff Procedure

Position of the Parties -

Association's position: For the term of the 1982-83 Contract, the teachers seek an increase on the salary schedule

of 8.75% at each of the cells on the schedule. This proposal also includes a concomitant increase in the step increments to \$557 as well as an adjustment on the lane differentials to \$242. The newly proposed schedule of the Association is included in this Award and set forth as Appendix "A" attached.

In addition the bargaining unit members are seeking a replacement of the current language found in Article XVII, Section B, Subdivision 4 to read as follows:

"The Board shall have the authority to make exceptions to the above-described selection procedure provided (a) the Board can demonstrate that by the layoff of a teacher a vacancy in a dual teaching assignment (one which requires dual certification) will occur for which no qualified replacement can be found, in which case the teacher with that dual teaching assignment and dual certification may be exempted from layoff, or (b) the Board can demonstrate that by the layoff of a teacher a vacancy in an extra-curricular assignment will occur for which no qualified replacement can be found, in which case the teacher with that extra-curricular assignment may be exempted from layoff."

District's Position: The School Board, on the other hand has proposed an increase over the 1981-82 wages of 7.95% (based upon its own estimation of costs, advancing each faculty member on the 1981-82 salary schedule one step). This newly proposed schedule, like the Association's, is set forth and marked as Appendix "B" attached to this Award.

Additionally, for the life of the current Agreement the

Employer has proposed to retain the layoff language as found in Article XXVII, Section B, Subdivision 4 which reads:

"The Board shall have the authority to make one exception per contract year to the above-described selection procedure. The NUE and the teacher affected by a Board decision to exempt shall be notified of the Board's decision to utilize the exemption authority by November 1st of the school year in which the exemption is being implemented."

Analysis of the Evidence -

In arriving at the decision that has been made here, the Arbitrator has given careful consideration to each of the criteria enumerated in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, as they relate to the documents, testimony and written arguments submitted by the Parties.

Of the statutory criteria enumerated, the Parties have confined the majority of their arguments to the areas of comparability (external and internal), the Consumer Price Index and the overall compensation presently received in terms of fringe benefits. As regards the matter of salaries, the Association has utilized approximately eighteen school districts that it deems to be similar in size which are located in the Northwestern portion of the state. In compiling their list of comparables, the NUE made an "arc" using the distance from Cumberland to Maple — the lone school within the Heart-o-North

Athletic Conference that has reached a voluntary settlement for 1982-83 as the radius. Within this geographic circle the Association excluded the four largest schools in order to give its comparable grouping more credibility. For example, in terms of full time faculty equivalence (FTEs) the average within the circle was under 66 per district — comparing favorably with Cumberland's 64. Indeed in this regard, the selected schools appear to represent a grouping closer in size to Cumberland than the Athletic Conference itself with an average full time equivalent of approximately 91 teachers.

Both sides agree that in the past, settlements within the Conference have been given considerable attention when arriving at salary increases. This argument was emphasized particularly by the School Board as it sought to compare its final position to the District of Maple for purposes of persuading the Neutral to award their position. As pointed out by the NEU however, unlike previous years only one school out of a total of nine in the Conference had settled by the time the Parties went to arbitration. Thus while the settlement at Maple must certainly be considered relevant based upon the established bargaining practices utilized by these Parties in the past, its significance is necessarily diminished to the extent that only one Conference school out of a possible eight were able to be examined for relevance.

In arguing against the Association's grouping, the District cites the inclusion of Menomonee, Hudson and New Richmond as being unrealistic comparables given their greater size (for the most part these schools are twice as large as Cumberland). This argument must be tempered, however, when the totality of the Union's exhibits are reviewed and it is discovered that schools less than half the size of Cumberland have also been included in their grouping. Hence the averages previously cited in terms of faculty (and student population as well) render the teachers' grouping fair and valid under the circumstances. Indeed, when the four districts having two year contracts are excluded, the comparables offered by the NUE serve as a reasonable backdrop which can be utilized for comparison purposes. In this regard, the Association's documentary evidence demonstrates that at the five commonly referenced benchmarks, the following increases have been established: BA Min. 8.6%, BA Max. 8.5%, MA Min. 8.7%, MA Max. 8.5%, and Schedule Max. 8.5%. When these figures are juxtaposed with the certified final positions in this instance, there is little question but that the Association's position more closely parallels the norm in the region. Indeed even when the Maple settlement is figured in along with the other thirteen relevant districts, the teachers' position remains the preferred of the two as the resulting averages are not significantly altered.

In response to the "benchmark comparisons" advanced by the bargaining unit, the District asserts that such an analysis runs counter to the traditionally accepted methods of measuring the true value of the final offers as they fail to take into consideration the step increments that over one-half the teachers will receive. This, according to the Employer's documents, results in wage increases ranging from 8.6% to 13.1% were the District's offer implemented. While there appears to be some debate regarding the significance of incremental adjustments, this Arbitrator perceives that they are indeed a factor to be given due consideration when examining the totality of the wages to be awarded in any impasse dispute. For example, an implementation of the Association's final offer here will result in not only an 8.7% wage adjustment on each step of the Schedule, but to the incremental and lane rewards as well. As the District points out, the NUE's certified position generates wage adjustments throughout the faculty ranging from 11.8% to 13.4% for many of the teachers. This analysis, however, ignores those bargaining unit members who have "topped out" and are at the highest step in their respective lanes. Absent significant credits to warrant horizontal movement across the salary grid, some 41% of the bargaining unit will be limited to whatever percentage increase is established per the final certified positions. Should the Association's



demand be awarded, these people will receive 8.7% increases, versus a range of 5-5.7% at the maximum levels with the Board's offer. This aspect of the analysis may not have been as critical were the percentage of staff at the top smaller than it is. The fact that nearly one-half of the bargaining unit will not receive a step increment, favors the Association's position, in the Arbitrator's view.

Yet another approach to analyzing the positions of the Parties concerns the compression of the Schedule utilizing the Employer's final offer and an historical overview of the benchmark rates in Cumberland. In this regard, the following table is illustrative:

<u>Year</u>	<u>BA Min.</u>	<u>BA Max.</u>	<u>MA Min.</u>	<u>MA Max.</u>	<u>Schedule Max.</u>
1979-80	\$10,125	\$15,780	\$11,225	\$17,900	\$18,700
1980-81	10,755	16,755	11,875	18,925	19,725
1981-82	11,987	18,640	13,211	21,054	21,944
82-83 Dist.	13,050	19,706	14,302	22,147	23,039
82-83 Assoc.	13,037	20,275	14,368	22,899	23,867

A review of these figures demonstrates that for the three preceding contract years the Parties have maintained the same ratios in these benchmark rates. For example the relation of the BA Min. step to the BA Max. has consistently been 1.55 since at least the 1979-80 contract term.<sup>1</sup> Similarly the ratio

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<sup>1</sup> Relevant data for the years preceding 1979 were not provided.

of MA Min. to MA Max. and Schedule Min. to Schedule Max. has been 1.59 and 1.83 respectively dating back to 1979. An implementation of the Association's schedule would continue that pattern of course, as their proposal for an 8.7% increase runs across-the-board. The District's position conversely, would reduce the ratios by 2.5 to 2.7% thereby resulting in a compression of the salary grid. It is noted that throughout the hearing and in their brief, the justification for distributing the money offered by the School Board was never truly addressed.

It was essentially stipulated by the Parties that in terms of internal comparisons, other Employee groups in the District have received an approximate 8% wage increase for the academic year 1982-83. When this factor is juxtaposed to the final positions of the Association and the Board in the instant dispute, the Arbitrator finds that the weight of the evidence tends to favor the Employer by a relatively narrow margin. In calculating their offer, the Board argues that their 7.95% adjustment closely parallels what other Employees have received within the District. As the Association points out however, this figure is misleading as it fails to take into consideration the cost savings generated through staff turnover and/or attrition. Nevertheless when all of the evidence is considered, the weighted average adjustment of the District's offer, including step increments where applicable, appears closer to what other

Employee groups have obtained for 1982-83 than the NUE's. The 8.75% position of the Employee bargaining group, as already noted, is a per cell adjustment and does not include the incremental gains that over one-half the faculty will receive. When this factor is given appropriate consideration, it is believed that the NUE's position vis a vis interal comparisons is the less favorable of the two.

Throughout the hearing and in their written arguments, the Employer emphasized the national economic condition, the Consumer Price Index over the past year and-a-half, and the wage increases obtained in the private sector in the general geographic area surrounding Cumberland. While the totality of the Employer's evidence aptly demonstrates the relatively depressed economy (indeed no argument to the contrary was generated) there was no evidence to truly substantiate the fact that this District's finances are markedly different from other districts of similar size in Northwest Wisconsin. Similarly there was no evidence presented to demonstrate an historical comparison of private sector wages with teachers' salaries, nor was an inability to pay argument advanced by the Employer. Moreover, in the Arbitrator's opinion, greater significance must be given to voluntary settlements in other districts of comparable size in the proximate geographic area. In this regard then, the Arbitrator finds that private sector economic

conditions, while relevant and certainly worthy of consideration, must nevertheless be deemed somewhat subordinate to the voluntary settlements with other teacher bargaining units.

Finally, in terms of overall compensation, the Neutral finds the Employer's argument pertaining to fringe benefits to be meritorious. District Exhibit 62 through 64 demonstrate that the relevant standing of Cumberland within the Conference is quite good in this regard. Unrefuted facts concerning the 26% increase in health insurance premium costs to be absorbed by the Employer, full single and family dental coverage as well as excellent vision, life and LTD benefits were placed into evidence. These benefits, when coupled with the negotiated 11% adjustment for the extra-curricular schedule, result in significant improvements to already competitive benefits for the school year in issue — factors supportive of the School Board's offer.

As regards the matter of salaries however, the Arbitrator finds that the preponderance of the evidence here discussed tends on the whole to favor the Association's final certified position. There remains then, the second issue layoff language.

The record shows that last year the Parties negotiated (with the aid of a mediator) new language into the Layoff Article (XVIII) whereby the District would be allowed to make

one exception to the District-wide seniority procedure found in Section B, Subdivision 3. As is indicated in Board Exhibits 90 and 91, the District-wide seniority language represents a substantial shift from the previous procedure in Cumberland when seniority and qualifications were on equal footing. The Employer's argument then is that the B-4 exception was the quid-pro-quo for the new seniority language and should not now be altered through the statutorily mandated dispute resolution process. The Arbitrator would agree. The Association's contention that in this instance there was not a trade-off during bargaining for the 1981-83 contract, is wholly unsubstantiated. Clearly from a reading of both the previous and current articles, significant concessions were made on both sides in arriving at a mutually acceptable procedure.

Both Parties in arguing in favor of their respective positions cite an arbitrator's opinion rendered in another school district (Barron). Accurately, the NUE maintains that the Arbitrator in the instant dispute will have to determine whether the proposed change in the exceptional language represents a substantial revision (as the School Board contends) or rather simply a modification to the current language (Teachers' position). Upon reviewing the documents and the accompanying testimony of the witnesses at the hearing, the Neutral finds

that the "modification" proposed here constitutes a fundamental change from that which the Parties had previously agreed to. Under the existing language, the School Board's right to carve out a single exception from the established procedure is an "authority" wholly without qualifications (save that of notice). To implement the Association's proposal, on the other hand, would in effect place a number of restrictions on an otherwise unstricted right. In advancing their proposal, the NUE asserts that during the past year much confusion and anxiety has arisen as a result of the language. Indeed, a grievance was filed once the exempted employee was identified by the District. That complaint however was not supported by the Commission's appointed Arbitrator who ruled in favor of the School Board. Thus the fact that the Parties mutually negotiated the provision, that it has been in existence for a relatively short period of time, and has been properly administered<sup>2</sup> leads the Neutral to conclude that there is no showing of "exceptional circumstances" sufficient to warrant the substitution of a third party's decision for that of collective bargaining.

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<sup>2</sup> As demonstrated by the results of the Association's grievance. Additionally, at the hearing Superintendent Moen stated that the provision does not allow the District to be "autocratic" when exercising their option.

Had the second issue certified by the WERC as being an impasse been one that might be classified as secondary to salaries, the Arbitrator in this instance would have ranked them in terms of importance and awarded for the Association based upon their arguments and supportive evidence for a greater wage increase than that offered by the District. However, in this instance it is perceived that when the newly proposed language is included in the NUE's total package, the result is one that cannot be accommodated here. On balance, the Employer has been persuasive in arguing for a retention of the bargaining layoff article — a significant provision possessing relatively long range affects. Though the Board's salary offering is not believed to be as reasonable as the Association's, when coupled with their arguments concerning layoff, the Arbitrator must conclude that by and large the salaries and fringe benefits for the teachers in Cumberland will remain competitive and that the justification for the retention of Section B-4 as negotiated, has been met.

Award -

Accordingly, for the reasons set forth above, any and all stipulations entered into by the Parties and the School Board's final offer are to be incorporated into the 1982-83 Agreement effective July 1, 1982.

Respectfully submitted this 27th day of April, 1983.

  

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J. C. Fogelberg, Arbitrator



## NUE FINAL OFFER FOR THE 1982-83 CUMBERLAND TEACHERS CONTRACT

Except for the changes set forth in this offer or the stipulations between the parties, the 1981-83 Agreement, with date changes where appropriate, shall remain unchanged.

## 1. Article XVII - Layoff Procedure

Replace B-4 with:

The Board shall have the authority to make exceptions to the above-described selection procedure provided (a) the Board can demonstrate that by the layoff of a teacher a vacancy in a dual teaching assignment (one which requires dual certification) will occur for which no qualified replacement can be found, in which case the teacher with that dual teaching assignment and dual certification may be exempted from layoff, or (b) the Board can demonstrate that by the layoff of a teacher a vacancy in an extra-curricular assignment will occur for which no qualified replacement can be found, in which case the teacher with that extra-curricular assignment may be exempted from layoff.

## 2. Wages - Appendix A

Salary Schedule 1982-83:

STEP	BA	BA+8	BA+16	BA+24	BA+32	MA	MA+8	MA+16	MA+24	MA+32
0	13,037	13,279	13,521	13,763	14,005	14,368	14,609	14,852	15,093	15,336
1	13,594	13,836	14,078	14,320	14,562	14,937	15,178	15,421	15,662	15,905
2	14,150	14,393	14,634	14,877	15,118	15,505	15,747	15,989	16,231	16,473
3	14,707	14,950	15,191	15,434	15,675	16,074	16,316	16,558	16,800	17,042
4	15,264	15,507	15,748	15,991	16,232	16,643	16,884	17,127	17,368	17,611
5	15,821	16,063	16,305	16,547	16,789	17,212	17,453	17,696	17,937	18,180
6	16,378	16,620	16,862	17,104	17,346	17,781	18,022	18,264	18,506	18,748
7	16,934	17,177	17,418	17,661	17,902	18,349	18,591	18,833	19,075	19,317
8	17,491	17,734	17,975	18,218	18,459	18,913	19,159	19,402	19,643	19,886
9	18,048	18,291	18,532	18,775	19,016	19,487	19,728	19,971	20,212	20,455
10	18,605	18,847	19,089	19,331	19,573	20,056	20,297	20,540	20,781	21,023
11	19,162	19,404	19,646	19,888	20,130	20,624	20,866	21,108	21,350	21,592
12	19,718	19,961	20,202	20,445	20,686	21,193	21,435	21,677	21,918	22,161
13	20,275	20,518	20,759	21,002	21,243	21,762	22,003	22,246	22,487	22,730
14					21,800	22,331	22,572	22,815	23,056	23,299
15						22,899	23,141	23,383	23,625	23,867

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SALARY SCHEDULE

<u>GRADE</u>	<u>BA</u>	<u>+8</u>	<u>+16</u>	<u>+24</u>	<u>+32</u>	<u>MA</u>	<u>+8</u>
0	13,050	13,273	13,496	13,719	13,942	14,302	14,525
1	13,562	13,785	14,008	14,231	14,454	14,825	15,048
2	14,074	14,297	14,520	14,743	14,966	15,348	15,571
3	14,586	14,809	15,032	15,255	15,478	15,871	16,094
4	15,098	15,321	15,544	15,767	15,990	16,394	16,617
5	15,610	15,833	16,056	16,279	16,502	16,917	17,140
6	16,122	16,345	16,568	16,791	17,014	17,440	17,663
7	16,634	16,857	17,080	17,303	17,526	17,963	18,186
8	17,146	17,369	17,592	17,815	18,038	18,486	18,709
9	17,658	17,881	18,104	18,327	18,550	19,009	19,232
0	18,170	18,393	18,616	18,839	19,062	19,532	19,755
1	18,682	18,905	19,128	19,351	19,574	20,055	20,278
2	19,194	19,417	19,640	19,863	20,086	20,578	20,801
3	19,706	19,929	20,152	20,375	20,598	21,101	21,324
4					21,110	21,624	21,847
5						22,147	22,370

No staff member shall receive a step (experience) increment for the 1980-81 sc