STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Stipulation of	
BLOOMER SCHOOL DISTRICT	
and	Case No. 22 No. 37952
NORTHWEST UNITED EDUCATORS	Decision No. 24342-A MED/ARB-4178
To Initiate Mediation-Arbitration Between Said Parties	

APPEARANCES

On Behalf of the District: Stephen L. Weld, Attorney at Law
Mulcahy and Wherry, S. C.

On Behalf of the Association: Alan D. Manson, Executive Director
Northwest United Educators

I. BACKGROUND

On October 15, 1986, the Parties exchanged their initial proposals on matters to be reopened in the collective bargaining agreement which will expire on June 30, 1988. Thereafter, the Parties met on one occasion in efforts to reach an accord. On December 10, 1986, the Union and the District filed the instant stipulation requesting that the Commission initiate Mediation-Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On February 4, 1987, a member of the Commission's staff conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and, by March 9, 1987, the Parties submitted to said Investigator their final offers, as well as a stipulation on matters agreed upon. Thereafter, the Investigator notified the Parties that the investigation was closed and has advised the Commission that the Parties remain at impasse.

On March 24, 1987, the Commission ordered the Parties to select a Mediator-Arbitrator. The undersigned was so-selected and appointed on April 15, 1987. The Mediator-Arbitrator met with the Parties on May 11 for the purposes of mediation. These efforts were unsuccessful and an arbitration hearing was conducted. The final exchange of briefs was completed August 9, 1987.

II. FINAL OFFERS AND ISSUES

There are three issues before the Arbitrator. They are (1) the 1986-87 salary schedule, (2) each Parties' proposals to add personal days to the contract, and (3) the District's proposal to allow the District to change insurance carriers.

With respect to the salary schedule, the District proposes to increase each cell by 6.0%. According to the Association's calculations, this represents a 7.2% increase in aggregate wages only over 1985-86 and an average teacher increase of $1679/teacher. The Association proposes to increase each cell by 6.5%. This yields a 7.7% wage only increase or $1797 per teacher. On a benchmark basis, the offers are as follows:

	Board Final Offer	Union Final Offer
Base (BA Minimum)	$16,361	$16,438
BA Maximum	24,078	24,191
MA Minimum	17,727	17,811
MA Maximum	27,549	27,679
Schedule Maximum	28,996	29,133

The following is the District's offer concerning personal leave:

> Article IX - Absence From Duty. Add a new part 12 to read as follows:
>
> "12. Personal Leave. An employee may be allowed personal leave in order to attend to matters which require the teacher's attention and cannot be performed outside the ordinary work day/work year. Two (2) days per year shall be granted. The leave shall be noncumulative. The teacher shall pay the per diem cost of a substitute teacher for each use of personal emergency leave. The teacher shall provide the District with twenty-four (24) hours written notice, if possible, otherwise the District shall be notified as soon as possible and qualified substitutes must be available for a leave request to be granted. No more than two (2) teachers in the system may be granted personal leave on any given day. Personal leave may not be allowed on parent/teacher conference days, work days before or after scheduled vacations or in-service days."

The Association's offer on personal days is as follows:

> Article IX - Absence from Duty: Add new Part 12 - "Personal Leave of up to two days per year non-accumulative shall be granted to each teacher subject to the following. Use of personal leave requires a written 24-hour advance notice to the appropriate administrator. Personal leave may not be used on the first or last student days nor on

parent/teacher or inservice days. The use of personal leave shall be deducted from accumulated sick leave. No more than two teachers from a building may use personal leave on the same day; if more than two from a building request leave on the same day, the first two who request shall receive the leave."

The District proposal on insurance benefits is as follows:

Revise the second sentence of Article XV - Insurance Benefits to read as follows:

"The District may, from time to time, change the insurance carrier and/or self-fund the health care program provided the level of benefits remain substantially the same or improves."

The status quo contract language relevant to this point reads as follows:

This insurance will be comparable to the program presently in effect and agreeable to the Parties.

III. ARGUMENTS OF THE PARTIES

The following is only a summary of the lengthy arguments offered by each Party.

A. The District

1. Wages

The District focuses its arguments primarily on the relative reasonableness of the final offers as measured by one subcriterion - comparability with others providing similar services. They do so because (1) an analysis of NUE's exhibits reveals a total reliance on this subcriterion and (2) because this total reliance indicates an apparent willingness on the Union's part to concede that all of the other statutory criteria support the District's final offer.

While focusing on the comparability subfactor they do offer arguments on other criteria. They are summarized as follows:

(a) Cost of Living: In this regard they note the Board offer nearly quintuples the July, 1986 CPI-U and exceeds the July 1986 CPI-W by over six times and that the Board offer also nearly triples the March CPI-U and CPI-W. It is also argued that historically, the wage levels of Bloomer teachers have exceeded the inflation rate as defined by the CPI index.

(b) Interest and Welfare of the Public. In connection with this criteria, they note the plight of the farmer in rural Wisconsin which is evidenced by declining land values, high interest rates and decreasing farm commodity prices and the fact the financial condition of the local farmer has worsened over the last several years. In view of these facts, the Board submits that its final offer attempts to responsibly balance the interests of the District, the teachers and taxpayers and reduce conflict by providing a reasonable wage and benefit increase to the teachers without compounding the financial burden already on the District's taxpayers.

(c) Increases Received by Other District Employees, Other Public Employees and Private Sector Employees. It is the contention of the Board that all these comparisons favor the Board. They note intra-district settlement ranged between 5.5 and 6.4%. Public employees in the City of Bloomer, Chippewa and Dunn Counties settled for between 1.0% and 3.8% for 1986 and 1987. Private employees in the area received between .5% and 4.5%.

(d) Total Compensation. On this point, they examine various fringe benefits such as health insurance, dental insurance, long term disability, life insurance and retirement. They believe all of the above factors clearly demonstrate that the teachers of the Bloomer School District do receive wages and benefits that rank very favorably with those wage increases and benefits received by teachers in comparable school districts.

Focusing on the comparisons to other districts, as did the Union, the Board contends its offer is more reasonable because it is more consistent with the Conference and area settlement pattern. In support of this they present the following:

Heart O' North Conference		1986-87 %/Cell Settlements
Barron		6%
Chetek		4.5%, 1st Semester 2.5%, 2nd Semester
Cumberland		6%
Hayward		In arbitration
Ladysmith		6%
Maple		6%
Rice Lake		6.1%
Spooner		5.75%
Bloomer	Board	6%
	Union	6.5%

This, they believe, shows that the Board's offer is obviously fair and reasonable in comparison to the increases received in the athletic conference comparables. They also believe similar favorable comparisons can be made to an expanded set of comparables to include all NUE represented schools.

They also ask the Arbitrator to consider precisely what each individual Bloomer teacher will receive in terms of percentage increase moving from the 1985-86 schedule to the proposed Board and Union 1986-87 schedule. Under the Board's offer, 49.3% of the District's teachers would receive a wage adjustment between 7.68% and 10.45%, a figure well above the average. This is a relatively high percentage of teachers receiving increases. The 50.7% of the teachers at their lane maximums are still matching the NUE settlement pattern.

The District next anticipates that the Union will argue that this is a catch-up situation. It is the District's position that catch-up is inappropriate in this situation. It is inappropriate since the present wage relationships relative to the comparables have to be established over a long period of time by voluntary collective bargaining.

Moreover, they draw attention to the fact arbitrators have become increasingly wary of benchmark analysis because of the use of settlement "gimmicks." This is important since the Union seeks to justify their catch-up based on benchmark analysis.

2. Insurance Carriers

The Board contends its proposal to eliminate the "agreeable" language while guaranteeing that the insurance benefits provided are "substantially equivalent" to those previously in place stems from an incident which occurred during the past school year. This incident is described in detail but the bottom line relates to the fact the Union wouldn't agree to the District's choice of less expensive health insurance carriers.

The Board's language would give the District the opportunity to shop for insurance bargains while eliminating attempts to extort improved benefits by withholding agreement. At the same time, the Board's proposal guarantees continuation of their benefits to the employees. This language is also in the contracts of over half of the Conference schools.

3. Personal Leave

They note this is a new benefit being demanded by the Union. Because teachers work a shorter year than most other professionals, prior to this year the District refused to implement personal leave language. This position was taken because of the educational loss caused by the absence of the regular teacher, as even the best substitutes will lose continuity and because the District believed that the teachers could or should be able to schedule most matters outside the workday or work year.

In an attempt to compromise, the District agreed that employees could be allowed up to two personal days per year.

However, the cost of a substitute would be paid by the teacher. The teacher would still be paid an average of $165 in wages and benefits on the day of requested personal leave; however, the per diem cost of a substitute, the District's out-of-pocket cost if a teacher is not in attendance, approximately $45, would be deducted from the teacher's takehome pay.

They do not believe the Union can sustain its burden to justify this new benefit in the absence of an affirmative demonstration of need for the change requested and support in the comparables. Moreover, the comparables do not sustain the Union's proposal. A majority of conference schools, Cumberland, Hayward, Ladysmith, Rice Lake and Spooner, all have language which requires a payment, the full per diem cost of the substitute or a portion thereof, either in terms of a 75% payment or the full cost of the substitute on the second day of use.

B. The Union

1. Wages

Based on their costing, the Union believes the actual value of the final offers per average teacher is $1797 for the Union and $1679 for the District. This compares to $1817 per teacher in the seven settled athletic conference schools.

This is significant because, in their Opinion, this information establishes both the need for catch-up and the appropriateness of NUE's offer. Other information indicating the need for catch-up is found in (a) the fact that 47.64 Bloomer FTE are at the top of the salary schedule. This means that nearly 60 percent of the Bloomer staff have been in teaching for at least 11 years. In spite of this higher-than-normal percentage of very experienced teachers, the average teacher salary in Bloomer in 1985-86 was $212 below the conference average. (b) The fact the 1986-87 Bloomer average salary would be $232 below the conference average if NUE's offer is adopted. The Employer offer would drop the average Bloomer salary even more to $349 below the 1986-87 conference average. (c) The fact that the average Bloomer benchmark in 1979-80 was 5.8 of 9; in 1985-86 it was 8.2 of 9. (d) The fact the average percentage increase in these five benchmarks during the same years was 52.94 percent in the other conference schools and was 50.51 percent in Bloomer. Thus, NUE's proposal to pick up less than half a percentage point on the 6.1 percent settlement pattern in the conference in 1986-87 is very reasonable in the light of these figures. The Union also makes a similar analysis with respect to secondary groups such as northwestern Wisconsin and the state generally.

They also look closely at the benchmark increases and levels on a dollar basis. Within the athletic conference the District's offer average is -$87 less than all the average

benchmark increases compared to +$20 for the Union. Thus, acceptance of the Board offer would increase already substantial negative benchmark levels. For instance, all benchmarks in Bloomer averaged -$843 less than the conference average. Under the Board offer this would increase to -$930 while the Union would narrow this gap by $49 to a -$798.

The Union also presents a detailed analysis as to why "gimmicks" (for which there were none in the athletic conference in 1986-87) should affect a comparison of the final offers. In fact, there were only two increments frozen in five schools in the 1980's. In summary, they don't consider this to be a significant consideration. More important is that because of the ever changing variables such as number of staff, their experience in years, and their differences in academic training, the basic benchmarks emerge, year-in and year-out, as the most reliable criteria for comparison.

2. Health Insurance

The Union believes the health insurance issue is, in many ways, much more significant than the $10,000 separating the parties on the age issue since there can be that much money involved in a single health insurance claim. They too note the District's effort to get the Union to agree to a change in insurance carriers. They also note a grievance was filed since the District unilaterally imposed the new carrier after an agreement couldn't be reached. They also draw attention to the fact that this represents a change in a status quo that existed for at least 15 years and that there is no quid pro quo offered by the Employer for its proposed removal of the right of NUE to participate as an equal in the choice of health insurance coverage or carriers.

They review an extensive history of both the interest and grievance disputes over insurance carriers. If the Employer is successful either in the grievance arbitration or in this case they argue the critical right of NUE to directly participate in all significant changes in the health insurance program would be removed.

An important consideration is the lack of a quid pro quo. In this regard, they anticipate that the District will seek to justify its proposal by comparisons to athletic schools. However, they maintain that the Employer is unable to point out what quid pro quo were exchanged in those conference units that have langauge similar to that sought by the Employer in this case, and even what tradeoffs were made in those districts such as Hayward and Maple which are silent on this item.

3. Personal Leave

At the outset, the Union notes that all of the other conference schools have personal leave provisions. The 1985-86 Bloomer teacher contract has no such language. Thus, both

parties are proposing the addition of such a clause. They describe this as a "minor" issue but note that there are significant differences in the offers. The first difference is that NUE proposes that personal leave days be charged against accumulated sick leave while the Employer proposes that a teacher using personal leave pay the per diem cost of a substitute (currently $45 per day). The second difference is that the Employer offer is much more restrictive through the limitations it places on the availability of the leave.

With respect to a teacher paying for the cost of a substitute versus deducting the pay from sick leave, the Union suggests their proposal is closer to the norm. They note of the eight other conference schools, four charge personal leave against sick leave (one of these, Hayward, charges the first of three personal days against sick leave and the next two require the per diem payment, and another, Rice Lake, requires per diem pay deductions if one of the three days is used for reasons other than those listed in the language), two of the eight do not charge against sick leave or deduct the per diem pay (one of these, Ladysmith, charges the per diem pay on the second day), and two charge the per diem costs directly (although one of these, Spooner, charges only 75 percent of that cost).

The other difference relates to the restrictions placed on the teacher under the respective proposals. They believe the limitation in the District's proposal that is limited "to attend to matters which require the teacher's attention and cannot be performed outside the ordinary workday/work year" is a serious flaw because it requires that for each personal leave day used that the teacher be subject to telling the District the exact reasons for the leave, and the District determine whether or not the personal matter really required the teacher's attention and whether or not it could have been handled at some other time. This results in loss of confidentiality and raises the potential for grievances regarding rejections. They suggest too that such a strict limitation cannot be found anywhere else in the athletic conference.

IV. OPINION AND DISCUSSION

A. Salary

A review of the evidence shows the offers to be very evenly matched in terms of their relative reasonableness or unreasonableness.

It is true that the District's offer on a per-cell-basis is quite consistent with the pattern of per-cell settlements. This weighs in favor of their proposal. However, it is also apparent that this doesn't tell the whole story. The average increase per teacher under the Board's offer is less than the average per teacher increase in the athletic conference. The average was $1817 or 7.7%. The Board offer, even though consistent with the

6.0% per cell in the athletic conference schools, is $1679 per teacher or -$138 less than the average. Moreover, a 6.0% per cell increase in the comparable yields a 7.7% average overall wage increase where a 6.0% in Bloomer only yields a 7.24%.

All this, of course, suggests that the salary schedule in Bloomer is less healthy than that in other athletic conference schools as represented by the average. The 6.0% per cell offer of the Employer, even if consistent with the per cell increases in other schools, will not generate the same average increase if it is being applied to less than average wage levels. However, average per teacher increases can be misleading and shouldn't be given controlling weight given the tradition of "per cell" bargaining in Bloomer and the athletic conference. Therefore, a benchmark analysis would be helpful to more accurately demonstrate the impact of each per cell offer.

Indeed an examination of the benchmarks shows there is disparity in the wage levels between Bloomer and other athletic conference schools. It is these wage level disparities which the Union believes justifies the 6.5% per cell increase--admittedly .5% above the per cell pattern. They believe they are entitled the larger per cell adjustment to "catch up."

However, it is the Arbitrator's opinion that the mere fact that disparities in the 1985-86 wage levels exist or the mere fact Bloomer ranks last is not enough, in and of itself, to justify catch-up. As noted by Arbitrator Rice in Cadott Community School District, Arbitrators should be reluctant to disturb voluntarily bargained wage relationships absent compelling justification. Occasionally special sets of circumstances, even in spite of past voluntary agreements, compell catch-up. It is helpful when there is a showing that these disparities are significant, historically rooted and increasing over time. There has been no such showing in this case.

In this case, the disparities are not necessarily significant and are within a reasonable range of the average. The following table shows the disparity in 1985-86:[1]

	Average	Bloomer	Difference
BA Base	$15,698	$15,435	(-1.6%)
BA Max	23,936	22,715	(-5.1%)
MA Base	16,939	16,724	(-1.3%)
MA Max	27,176	25,990	(-4.4%)
Schedule Max	28,309	27,355	(-3.4%)

It can be seen all the benchmarks except the BA Max are within 4.5% of the average. Two benchmarks are within less than 2% of the

1. Taken from Employer Exhibit 46-49

average. Only the BA Max gives rise to serious concern but overall this is not a dramatic or significant disparity.

Moreover, it is noted that the wage level disparities in Bloomer over the last five years (since 1981-82) have been fairly constant as opposed to increasing. This pattern over a long period of time is indicative of a fairly conscious acceptance on the Parties part of a wage relationship less than the average. The following represents the dollar difference between the conference average and Bloomer since 1981-82 at the benchmarks.

	1981/82	1982/83	1983/84	1984/85	1985-86
BA Base	-292	-468	-727	-263	-263
BA Max	-1166	-1374	-1806	-1153	-1221
MA Base	-257	-406	-726	-219	-215
MA Max	-1188	-1210	-1873	-1121	-1186
Sched. Max	-976	-985	-1679	-864	-954

Of course, these differences could be for a number of reasons including the nature of the trade offs at the bargaining table and/or recognition of possible differences between Bloomer and the athletic conference as a whole. In either event it is reasonable, absent special circumstances, to let such bargains stand. Any altercation in these relationships, absent special proof, should be done voluntarily at the bargaining table.

With this in mind, it is noted that the Union offer would generally decrease this historical differential and the Employer's offer would generally increase it. The following shows the disparity (in dollars) which would result under the offers relative to the 1986-87 athletic conference average and how each offer would increase or decrease the disparity.

Benchmark	1986-87 Differential	Net Change From 1985-86
BA Base		
Board	-327	+64
Association	-250	-13
BA Max		
Board	-1447	+226
Association	-1134	-87
MA Base		
Board	-247	+32
Association	-163	-52
MA Max		
Board	-1385	+199
Association	-1255	+69

Schedule Max		
Board	-930	-24
Association	-798	-156

It might be said that the Union has a slight edge since relatively greater erosion as opposed to advancement will occur under the Employer offer. Yet this is counteracted by the other statutory criteria which support the Employer's wage offer. Even though comparables deserve the most weight where a pattern exists, in a close case the other criteria become more important.

The sum total of the discussion thus far suggests that both parties have missed the mark by an almost equal degree. The Employer offer, because the wage levels are lower, should have increased its per cell offer over the pattern in order to maintain historical benchmark differentials. Because they didn't, erosion would occur under their offer. The Union, on the other hand, overshot the mark, closing the gap somewhat without making a compelling case for catch-up.

In other words, in terms of benchmarks, the Arbitrator would have preferred a "keep up" offer instead of the "catch-up" offer of the Union or the "back up" offer of the Employer. Significantly, since neither offer is clearly reasonable, this case will stand or fall on the language proposals.

B. Insurance and Personal Days

For reasons to be explained below, it is the conclusion of the Arbitrator that the Employer's final offer on the language issues is slightly more reasonable than the Union's. Generally speaking, the Employer's offer on insurance is somewhat less of a "reach" than the Union's offer on personal days.

With respect to the Employer insurance proposal, it is recognized by both Parties that it is the Employer's burden to justify this change in the contract. A need must be demonstrated and the proposal must reasonably address that need. Additionally, it is helpful that a proposal is supported by the comparables and/or--depending on the circumstances--is accompanied by a quid pro quo.

In terms of the need for the change, in the Arbitrator's opinion, this is self evident. If the Employer is obligated to pay 100% of the premium, it is perfectly reasonable, as a matter of equity, for them to expect the employees to agree to allow the Employer to pick the Carrier provided there is a guarantee benefits will not change. This is an important right for Management given the great and often escalating cost of health insurances.

The Arbitrator would have preferred that the guarantee would have been more explicit. For instance, it could have been made clear that the Employer would indemnify the teachers against any meaningful reductions in benefits if any were to inadvertently occur. It would have also been preferred that the District would have made clear it was ultimately the District's burden--given a prima facie case was made by the Union--to show there was in the final analysis no prohibited violation of the Board's commitment that benefits remain the same. However, these concerns are not fatal or wholly problematic since their obligations can be reasonably implied.

The reasonableness of the Employer's insurance proposal is underlined by the fact that clearly five of the eight bargaining units in the athletic conference have agreed to essentially the same language. Another district, Ladysmith, has somewhat ambiguous language which could be interpreted to give the Board the right to change carriers. The other two contracts are silent raising the possibility that there is a past practice of changing carriers. Significantly, none has the "veto" language in the present Bloomer contract.

The Union did stress that the Employer offered no quid pro quo for the insurance language. This certainly does militate against the proposal. However, it is not necessary in an absolute sense given the extent which the proposal is supported in the comparables. More importantly, the lack of a quid pro quo must be considered in a relative sense. Specifically, it must be measured against the reasonableness of the Union's offer on personal days. No quid pro quo for the Union's personal day proposal is clearly apparent in the record either. Additionally, there is less support in the record for the Union's particular personal day provision than there is support for the Board's insurance proposal. It is for this reason the Arbitrator concluded the Board's insurance proposal was somewhat less of a "reach" than the Union's personal day proposal.

A review of the comparables on personal days reveals only one school has pure "go to hell" or "screw it" personal day language without requiring the teacher to pay the cost of a substitute similar to the Union's proposal. This is Chetek. Four of eight schools have strict restrictions on the use of personal days indicating for example they aren't to be used as vacation, shopping, recreation or specifying days will be available for "urgent personal leave" or court or medical matters. Five schools require the teacher to pay for the cost substitute to some extent. Thus, the norm is a hybrid and there is little core support for the Union's proposal. The hybrid actually is closer to the Board language. Moreover, it is not unreasonable to place some restrictions on personal leave so it doesn't in effect become vacation or unrestricted sick leave.

It is significant too that the Board has addressed to some extent an obvious need and deficiency in the contract by making an offer on personal days. The Union, on the other hand, makes no proposal at all on insuance. With respect to the merits of the Board's personal day proposal, as a first time benefit it is not unreasonable to expect the teachers to accept something closer to the norm as opposed to the cadillac version of personal day language. Improvements can be made with time. Additionally, the cost impact of the Union's personal leave proposal could be substantial. Even though the leave is funded from sick leave, the District may never experience this cost since the leave might ordinarily not be used by the employee. Therefore, the potential cost of two days' salary for 80 teachers, plus the cost of 160 substitute days, isn't "minor."

In summary, the Parties salary proposals are equally unreasonable and the Board's language proposals are marginally more acceptable.

AWARD

The final offer of the Board is accepted.

Gil Vernon, Arbitrator

Dated this 19th day of October, 1987 at Eau Claire, Wisconsin.