STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of UNITED PROFESSIONALS FOR QUALITY HEALTH CARE To Initiate Mediation-Arbitration Between Said Petitioner and COUNTY OF DANE	Case LXXVIII No. 26788 MED/ARB-875 Decision No. 18181-A

Appearances:

Mr. John A. Matthews, Executive Director, Madison Teachers, Inc. appearing on behalf of the United Professionals for Quality Health Care.

Mr. John T. Coughlin, Mulcahy & Wherry, S.C. appearing on behalf of the County of Dane.

Arbitration Award:

On November 13, 1980 the Wisconsin Employment Relations Commission appointed the undersigned as Mediator-Arbitrator pursuant to 111.70 (4)(cm)6b of the Municipal Employment Relations Act, in the matter of a dispute existing between the United Professionals for Quality Health Care, referred to hereafter as the Union, and the County of Dane, hereafter referred to as the Employer. Pursuant to the statutory responsibilities the undersigned conducted a mediation meeting between the Union and the Employer on January 6, 1981. The mediation effort proved unsuccessful and due notice was given to the parties of their rights to withdraw their final offers under 111.70 (4)(cm)6c. Neither party chose to withdraw its final offer and an arbitration hearing was then held on March 6, 1981. The parties were both present at the hearing and given full opportunity to present oral and written evidence and to make relevant argument. A transcription of the proceedings was made and submitted to the undersigned and the parties on March 31, 1981. Briefs were filed by the parties and simultaneously exchanged through the arbitrator on April 24, 1981. In addition, reply briefs were also filed by the parties and simultaneously exchanged through the arbitrator on May 14, 1981.

The Issues:

On April 3, 1980 the parties exchanged their initial proposals on matters to be included in an initial collective bargaining agreement. Thereafter the parties met on 10 occasions in efforts to reach accord. On September 18, 1980 the Union filed a petition to initiate mediation-arbitration pursuant to 111.70 (4)(cm)6 of the Municipal Employment Relations Act and acting under its authority in said Act the WERC established that an impasse had occurred and certified the final offers of the parties as required under the Act.

Three issues were certified to the undersigned, and of these two were resolved at the mediation meeting on January 6, 1981. Thus, the sole issue before the arbitrator is wages.

Union Final Offer

SALARY SCHEDULE

Hourly Rates Effective 12/29/79 through 12/27/80

RANGE 1	TRACK	1	2	3	4	5
Registered Nurse Dental Health Coordinator Asst. Inservice Training Nurse		$7.14	$7.49	$7.86	$8.26	$8.67
RANGE 2 Public Health Nurse Occupational Therapist Physical Therapist Inservice Training Nurse		$7.71	$8.09	$8.50	$8.92	$9.37

The Employee commences employment at Track 1 and move to:

Track 2 upon completion of the probationary period.

Track 3 upon completion of one (1) year of service after the probationary period is completed.

Track 4 upon completion of two (2) years of service after the probationary period is completed.

Track 5 upon completion of three (3) years of service after the probationary period is completed.

Effective December 28, 1980, all of the above rates will be increased by 9.25%. However, if the Consumer Price Index for Urban Wage Earners and Clerical Workers exceeds 10.5% from January 1, 1980 through December 31, 1980, these wages may be reopened at the request of the Union.

Employer's Final Offer:

Registered Nurse Asst. Inservice Training Nurse*			A	B	C	D	E
1979	12/31/78		$6.09	$6.40	$6.72	$7.05	$7.40
1980	12/29/79	(5.3%)	6.41	6.74	7.08	7.42	7.79
	6/29/80	(4.8%)	6.72	7.06	7.72	7.78	8.16
	10/05/80	(3.1%)	6.93	7.28	7.65	8.02	8.41
1981	12/28/80	(9.3%)	7.57	7.96	8.36	8.77	9.19
	6/28/81	(.9%)	7.64	8.03	8.44	8.85	9.27

Public Health Nurse Inservice Training Nurse**			A	B	C	D	E
1979	12/31/78		$6.72	$7.05	$7.40	$7.78	$8.15
1980	12/29/79	(8.0%)	7.26	7.61	7.99	8.40	8.80
	6/29/80	(2.4%)	7.43	7.79	8.18	8.60	9.01
1981	12/28/80	(9.25%)	8.12	8.51	8.94	9.40	9.84

*Dental Health Coordinator placed in this range on nearest highest step.

**OT's and PT's placed in this range on nearest highest step.

Background:

The Union in the instant case represents all non-managerial health care professionals employed in the Public Health Department and Home and Hospital of Dane County Wisconsin. The bargaining unit was organized in two stages and is comprised of the following:

26 Registered Nurses
22 Public Health Nurses
1 Inservice Training Nurse
1 Assistant In-Service Training Nurse
2 Occupational Therapists
2 Physical Therapists
1 Dental Hygienist

A representation election was held by the Wisconsin Employment Relations Commission among the RNs, PHNs, and In-Service Training Nurses on September 6, 1979, with the United Professionals for Quality Health Care being certified on September 20, 1979. A second election was held among the OTS/PTS and Dental Hygienist on December 21, 1979 and following the Union's certification on January 22, 1980 these employees were then accreted to the existing bargaining unit. On April 3, 1980 the parties began negotiations for an initial collective bargaining agreement, which, by mutual decision was to run for two years, effective December 29, 1979. In addition, the parties resolved numerous issues during the course of their negotiations.

Coincident with the successful efforts of the Union to organize the aforementioned employees, the County entered into a contract with Arthur Young and Company for a study of the Employer's salary levels and structure. Thus, on April 5, 1979 the County Board adopted Res. 414, 1978-79 "Award of Contract to evaluate and Restructure Dane County's Managerial and Professional Compensation Plan." The study eventually was completed and submitted to the employer, with adoption coming by means of County Res. 215, 1979-80 on September 20, 1979. Changes in the Employer's salary structure as recommended in the Arthur Young study were then implemented effective December 30, 1979. It should be noted at this point that of the bargaining unit classifications represented by the Union only the Occupational Therapists, Physical Therapists, and Dental Hygienist received salary increases as a consequence of the study. The other classifications in the unit, namely RNs and PHNs, were excluded from the study's recommendations, and therefore received no reclassification salary increase.

Finally, of further significance is the action taken by the Employer on April 3, 1980 via Res. 419, 1979-80. At this time the Dane County Board voted to increase the salary levels of all unrepresented managerial/professional employees by 9.5 percent (effective December 30, 1970) and 9.25 percent (effective December 28, 1980). Since they were now unionized neither the RNs/PHNs or the OTs/PTs received the salary level increases.

By virtue of its decisions to implement the Arthur Young recommendations and, as well, to raise the County's salary levels in 1980 and 1981 by 9.5 percent and 9.25 percent respectively, the Employer created the following situation. One group of managerial/professional employees received both reclass and salary level increases; a second group, the OTs/PTs received the reclass but not the salary level increase; and third the RNs/PHNs received neither type of salary increase. Through its final offer the Union seeks a remedy which would basicly give its bargaining unit both sets of increases: reclass and level. The Employer, on the other has provided in its final offer that the bargaining unit would essentially receive only a salary level increase.

Because the question of the reclassification has relevance only to year one of the proposed two year contract the parties are not in dispute as to the salary change for year two. The difference over the salary for year one are substantial and therefore we will turn now to the contentions of the parties as these form the foundation of the respective positions.

Employer's Position

The County, in preparing its case relied primarily on Criteria (d), (e), (f), and (h) of Section 111.70 (4)(cm)(7) of the Wisconsin Statutes. As paraphrased by the Employer in its Brief these criteria were stated as follows:

1. Comparisons with wages and fringe benefits of employees performing similar services in public sector employment for comparable public employers.

2. Comparisons with fringe benefits of other public employees within Dane County.

3. Comparisons with the wages and fringe benefits of employees performing similar services in private employment for comparable private employers.

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

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

6. Other factors which are normally or traditionally taken into consideration in determining wages through voluntary collective bargaining, mediation, and arbitration.

The Employer's arguments rest heavily, as the above would indicate, first on the contention that the average wage received by the bargaining unit employees is "far above the average rate paid among comparable employers." In support of this contention the County supplies a variety of wages and fringe information covering counterpart health care professionals working in some 16 employment situations within Dane County or contiguous counties. These "benchmark" employers include the State of Wisconsin, City of Madison, three private hospitals, four nursing homes, and seven continguous counties.

In addition, the Employer also argues that reference to recent settlements involving its employee comparison set, as well as those achieved between the County and its other bargaining units demonstrates that the Employer's offer is above the patterns set among the relevant comparables. For example, according to the Employer's calculations the year end increases for each of Dane County's bargaining units would be as follows:

Bargaining Unit		1980 Increase	1981 Increase
County Offer:	RNs	13.2%	10.2%
	PHNs	10.4%	9.25%
Union Offer:	RNs	16.96-17.24%	9.25%
	PHNs	14.73-14.97%	9.25%
Attorney's Association		11.00%	10.00%
Non-Supervisory Law Enforcement		11.00%	10.00%
Supervisory Law Enforcement		9.5%	9.25%
Social Workers		9.5%	9.25%
Joint Council of Unions (AFSCME)		9.5%	9.25%
Local 65 (AFSCME)		9.5%	9.25%

The Employer cites with approval among others, the holdings of Arbitrators Mueller (North Central Vocational, Technical and Adult Education District, Dec. No. 26595, WERC, 1/81) and Christenson (D.C. Everest Area School District, Dec. No. 26050, WERC 2/81) which would place heavy weight on settlement patterns, which, when well established would, in the words of Christenson, be "impossible to ignore and often well nigh conclusive."

Beyond the issue of wage levels and settlement patterns among comparable employers and employees the Employer also directs the arbitrator's attention to the statuory criterion of cost-of-living. Specifically here, the County mounts a case for the application of the U.S. Department of Commerce's Personal Consumption Expenditure deflator (P.C.E.) as a substitute for the more familiar Consumer Price Index (C.P.I.) of the U.S. Bureau of Labor Statistics. Briefly, the Employer contends that the CPI exaggerates the cost-of-living because of the manner in which such items as housing are measured and weighted, changes in the quality of product's included in the market basket used by BLS, and the continued use of a market basket of goods and services based on the purchasing patterns established by families eight or ten years ago. For these, and similar reasons, the County argues the CPI is a doubtful measure of inflation.

The Employer finds support among arbitrators for its position that PCE is the more valid measure of cost-of-living changes, citing specifically Arbitrator Christenson in Buffalo County Social Services (WERC, Dec. No. 17744, 8/80), Arbitrator Petrie in City of Oak Creek (WERC, Dec. No. 17587-A, 7/80), and Arbitrator Flaten in Clark County Law Enforcement (WERC, Dec. No. 17584-A, 9/80). This particular school of arbitral thought on the merits of the CPI is well expressed by Arbitrator Flaten who concludes, "all things considered, in this Arbitrator's view, the Consumer Price Index can no longer be regarded as anything but a general reference point of economic well being."

In as much as the total cost of the Employer's offer by the County's calculation, exceeded the increase in the PCE for the relevant period by 4.5 percent in 1980 and 1.8 percent in 1981 and the Union's comparable figures were 8.0 percent and 1.9 percent, the Employer concludes it has the more reasonable position.

Moreover, contends the Employer, virtually regardless of the measure used American workers are not keeping pace with the rate of inflation. Quoting Arbitrator Weisberger in Neosho Jt. School District No. 3 (WERC, Dec. 17305, 5/80) that employees can not expect absolute protection from inflation, only that they won't fall too far behind, the County attempts to demonstrate that via its final offer the Union's members will stay well ahead of inflation, unlike the situation experienced by other employees.

Next, the Employer takes issue in its arguments with what it sees as the central points in the Union's position. First, the County contends there is nothing in the Arthur Young study to warrant the wage increase demanded by United Professionals in its final offer. The study excluded RNs and PHNs from its recommendations since these were to apply only to non-represented professional and managerial county employees. Further says the Employer, when the OTs/PTs unionized, even though they had originally been included, necessarily they too could not be covered by the full implementation of the Consultant's wage study. A draft report which the Union says would demonstrate that all the bargaining unit employees were recommended for reclassification increases, was based on erroneous information and contained substantial errors according to the County. As a consequence, Arthur Young withdrew the draft and modified it before it was submitted in final form to the Dan County Board.

Second, the Employer also challenges the Union's efforts to support a wage increase founded on an alleged equity relationship between the registered nurses and other county health care workers including hospital attendants, licensed practical nurses, and sanitarians. Contrary to what it believes the Union proposes, registered nurses have not lost ground to the other health care workers such that an inequitable wage relationship has been created. On the one hand, the Employer makes a case that the wage relationships are now properly in alignment and the Union's wage demand if implemented would unbalance the historical relationships. On the other hand, the County contends there is no valid basis for concluding that a relationship has ever existed between registered nurses and sanitarians and therefore the two classifications can not properly be compared.

In sum for these, and other reasons, the Employer seeks to defend its wage offer as the fairer of the two.

The Union's Position

In support of its final offer United Professionals relies primarily on two of the seven criteria in 111.70 (4)(cm)7 Wisconsin Statutes: criterion "d" which provides for comparisons to be made between the wages and related benefits of workers performing similar services; and criterion "h", such other factors "normally or traditionally taken into consideration in the determination of wages" etc. The Union stresses internal comparability and places heavy reliance on the Arthur Young study of the Employer's compensation program. By internal comparability the union means "wage comparison with other professional health care employees of the same Employer."

In abbreviated form, the Union basicly argues that since the purpose of the Arthur Young study was "to provide for internal equity" and since, in its view, all occupational classifications now in the Union's bargaining unit were originally covered by the study, the recommendations for salary reclassifications made for the OT/PT group rightfully should be received also by the RN/PHNs. In support of its contention the Union adduced the testimony of Ms. Linda Kuhn, a member of the Advisory Committee appointed by the Employer to work with Arthur Young while the study was in progress. Witness Kuhn testified that the RNs/PHNs were initially included and that these nurses had been recommended for range or reclassification increases.

Further, the Union also cites the County's action through Resolution 419 (April 3, 1980) to raise the salary levels of all non-represented managerial/professional employees by 9.5 percent in 1980 and 9.25 percent in 1981. The County's purpose again was to provide for "internal equity," so concludes the Union.

A matter of no little disagreement between the parties is whether the tentative study report in fact provided for the reclass increase for nurses demanded by the Union. The tentative report was withdrawn and destroyed, according to the Employer, because it contained errors. The Union counter-argues that the earlier Arthur Young report was withdrawn because it contained reclass raises for the RN/PHN group who, by the date of the submission of the final report (Sept. 1, 1979), had voted in favor of representation by the UP. Thus, the Union contends there was no error in the preliminary study report and therefore the only reason for changing the report to delete the nurses from its recommendations was their decision to unionize. Said decision, in the Union's eyes, does not negate the existence of the internal comparability of nurses with other health care professionals employed by the county.

The Union also makes reference in its case to certain job characteristics and working conditions of the nurses, which, when viewed from an internal equity stand point, also arguably support the Union's final offer on wages. Among others, UP points to such job factors as responsibility, knowledge, discretion, and independent thinking and action. For example, the Union quotes Witness Simoneau to the effect that "I have approximately 180 patients that I am responsible for." Nurse Marsh is quoted that her supervisor is available only by phone. And so on. The Union concludes that historically the Employer has paid for such job requirements and the Young study by its emphasis on internal equity was in line with this policy.

Discussion

The undersigned believes that the instant dispute can be sorted into two different types of wage issues: those that have to do with salary level; and those pertaining to salary structure. Salary level issues deal basically with average salaries paid and in bargaining often take the form of the average change in salaries from one time period to the next. Thus an employer's wage offer of 9.5 percent increase from 1980 to 1981 is an example of a salary level change and so too a union's counter demand for a 17 percent increase likewise relates to salary levels.

Salary structure issues, on the other hand revolve around an employer's administrative efforts to align jobs or occupations in some rank order dependent on the worth or value of those jobs to the employer. The process of building job and salary structures is usually derived from such practices as job analysis and job evaluation.

Customarily wage or salary levels are dealt with through wage surveys and the orientation is external comparabilities. In contrast, the objective in mind with salary structure is internal equity.

The parties in the instant case have assumed almost diametrically opposed positions with regard to these salary issues. The Employer on the one hand argues primarily salary levels and external comparability while on the other, the Union contends that basically the issue is one of salary structure and internal comparability. It is appropriate at this time therefore to examine the Parties' final offers and supporting evidence and argument within the context of the two previously mentioned salary issue concepts: levels and structures.

Salary Levels

The justification for salary level changes is often couched in such terms as "prevailing wage," "union scale," "going rate" and so forth. The basic concern is the avoidance of pay inequity as this would be established by reference to the pay levels of employees doing similar work for comparable employers in the same labor, product, or service market.

While the salary survey has been employed for many years to gather data on salary levels, the techniques utilized are relatively crude and subject to a good deal of discretion in their application. For example decisions must be made with regard to what constitutes "similar" work and often actual job duties are unknown. Another problem may relate to the boundaries to be ascribed to labor and/or product or service markets. Finally, it should also be noted that the standards by which one can establish what constitutes a comparable employer are also open to question. Indeed, in the arbitration of interest disputes such as that under consideration here there are few matters subject to more debate than the term "comparable."

Since the Union in the instant case has refrained from an external comparability argument we shall limit ourselves for the moment to an examination of the Employer's arguments with regard to salary level. In doing so the discussion will focus on the question of comparability, job duties and labor market.

The Employer has chosen as a set of comparables 16 health care institutions whose size in terms of full time employees ranges from 70 to 1350 and whose locations are primarily in Dane County (9) or in contiguous counties (7). Four are for profit nursing homes, three are private, not for profit hospitals, 7 are county run institutions, and of the remaining two - one is the state run health care system while the other is the Public Health Department of the City of Madison. Presumably what all the institutions in the Employer's comparison set have in common is that each employs nurses and is "reasonably" close to Madison.

If we accept as comparable only those items which are alike in essentials or having characteristics in common we would be compelled to reject most of the institutions proposed by the Employer. Thus, for example, the nursing homes are too small (70 to 136 employees as contrasted with 350 F.T.E. for Dane County) and all are profit oriented operations. On the other hand, the private non-profit hosptials are all much larger ranging from three to nearly five times the Employer's size.

The seven county institutions while also showing significant variation in size would at least share with Dane County a similar pattern of public service operation and function; i.e., public health, psychiatric, and geriatric specialization. Yet, by its own arguments the employer undermines our trust in these other county institutions as valid comparables. That is, the Employer makes a strong case that the boundaries of its labor market do not extend past the Dane County line. Thus, the Employer shows of 56 RNs/PHNs hired and still working over the last five years, only one "did not have moderately strong ties to Dane County." It is clear from the Employer's own evidence that not only in terms of recruitment and hiring but most likely in wage payment as well that other county institutions whether contiguous or not are paid little real heed by Dane County.

Another characteristic by which comparability would be established would be union status. If we sort out the Employer's comparison set by union-nonunion status, and confining our geographical scope to Dane County we would again exclude the private nursing homes and two of the three nonprofit hospitals. With this criterion only Madison General Hospital, City of Madison Health Department, and State of Wisconsin remain by virtue of having unionized nurses. The dynamics of bargained wage levels versus administratively set wages are very much different. Consequently, in this respect also many of the health care institutions proposed by the Employer do not meet a standard of reasonable equivalency.

The essence of the Employer's comparison set seems to boil down to the City of Madison, State of Wisconsin, and Madison General Hospital roughly in that order. This conclusion is reinforced by the patterns which emerge among the fringe benefit packages presented by the Employer for all 16 institutions. For example, longevity steps are almost identical between Dane County and the City and roughly similar with the State. In terms of holidays, Dane County ranks first with 11.5 closely followed by the State with 10.5, City of Madison (9.5) and Madison General (9.0). The nursing homes average 7 holidays, far off Dane County's norm. Great similarity in insurance programs also is evident from the Employer's data among those the Employers cited above and Dane County.

The exception among fringe benefits seems to be for vacations. In this case the pattern seems to be broken with Dane County showing little similarity to the City, State, or large private hospitals in the County. For reasons not apparent, despite a pronounced leadership in other areas the County vacation benefits lag those of even the nursing homes.

It is one thing to identify defensible comparables as we have tried to do here. It is quite another to apply these comparables in the instant case to evaluate the parties' wage level offers. In the first place, even limiting ourselves to State, City of Madison, and three private hospitals we find a maze of over lapping and virtually unmatchable schedules. Thus, for example, according to Employer's Exhibit 8 we find that during 1980 Madison General Hospital will have had three different minimum salaries for nurses ranging from $6.10 to $6.93 per hour; Methodist Hospital with three also; St. Mary's Hosptial with two; and the State of Wisconsin with two each for two different classifications, RN I and RN II. In fact, Dane County also proposes what amounts to a three step increase during 1980.

To compound the difficulties we presumably should compare not only registered nurses but also Public Health Nurses, Occupational Therapists, Physical Therapists, Dental Hygienists, and In-Service Training Nurses and do so for 1981 as well. A number of other factors such as maximum level, years to maximum, and so forth further complicate the problem.

To simplify the comparisons we will look briefly at only the two major occupations of Public Health Nurse and Registered Nurse using only minimum salary for 1980 and 1981.

Public Health Nurse

	1980	1981
Wisconsin, State	$8.06 (7/1/79) 8.58 (7/1/80)	$8.58 (7/1/80 - 6/30/81) Unsettled
Madison, City	7.13 (9/29/79) 7.66 (3/2/80) 7.89 (10/12/80)	7.89 (10/12/80) 8.29 (3/1/80) 8.70 (8/2/81 - 2/28/82)
Dane County Offer	7.26 (12/29/79) 7.43 (6/29/80)	8.12 (12/28/80 - 12/26/81)
Union Offer	7.71 (12/29/79)	8.42 (12/29/80 - 12/26/81)

Registered Nurse

	1980	1981
Wisconsin (RN II)*	$6.89 (7/1/79) 7.34 (7/1/80)	$7.34 (7/1/80 - 6/30/81) Unsettled
Madison General Hospital	6.10 (1/1/80) 6.60 (3/31/80) 6.93 (9/29/80)	6.93 (9/29/80) 7.28 (3/30/80 - 9/27/81) Unsettled
St. Mary's Hospital	6.00 (4/28/79) 6.78 (4/28/80)	6.78 (4/28/80 - 4/27/81) Not yet determined
Methodist Hospital	6.12 (7/1/79) 6.36 (2/24/80) 6.85 (7/1/80)	6.85 (7/1/80 - 6/30/81) Not yet determined
Dane County Offer	6.41 (12/29/79) 6.72 (6/29/80) 6.93 (10/5/80)	7.57 (12/28/80) 7.64 (6/28/80 - 12/26/81)
Union Offer	7.14 (12/29/79)	7.80 (12/29/80 - 12/26/81)

*Testimony by the Employer indicates that the State now hires at RN II instead of RN I.

For Public Health Nurse, if we use the City of Madison and interpolate between the different salary minimums in effect over 1980 and 1981 we might logically conclude the City PHN average for 1980 is around $7.70 per hour and for 1981 about $8.40. This is very close to the Union's offer and considerably above that made by the County.

Using much the same process for the State of Wisconsin we would interpolate its RN II mimimums to be about $8.30 for 1980 and in excess of $8.58 per hour for the following year. The latter is not determinable precisely since the last half salary minimum is still to be negotiated. The Union offered salary minimum is the closest of the two offers but still would leave County Public Health Nurses well behind their counterparts working for the State.

Turning now to the registered nurses and again interpolating the data from the above table we would find the Union offer placing the County's RNs slightly above the State ($7.14 vs. $7.12) for 1980 and well ahead of the private hospitals whose average hourly wage would be approximately as follows: Madison General - $6.63; Methodist - $6.56; and St. Mary's - $6.52. The figures for 1981 are difficult to determine since none of the schedules were complete when the instant case was heard. One could conclude, however, that the relative positions would likely be unchanged. Also, it should be noted that the City of Madison has no registered nurses.

The implication of looking solely at the 1980 comparisons for registered nurses would be that by virtue of the Union's final offer Dane County would become the wage leader in the area for nurses. Were the Employer's final offer to prevail the County would apparently continue in its current salary position roughly grouped with the private hospitals of Dane County. As a consequence one might logically conclude that, in contrast to the situation of the PHNs, the Employer's offer is the fairer of the two.

At this point, however, the undersigned does not believe that an unequivocal decision with regard to the parties' final offers is possible. First of all, no historical trends can be identified by looking at comparative wage data for only one year (1980). Second, the comparables themselves are not clearly establishable. And third, the salary data in the form it was presented requires an heroic, and perhaps incautious, leap of interpretation.

Beyond external comparables decisions on wage levels are also often made on the basis of changes in the cost-of-living. The statutory criteria of 111.70 Wisc. Stats. of course make general provision for C-O-L adjustments. More specifically for the instant case, the Employer has based its position in part on cost-of-living considerations. It should be also noted here that the Union, on the other hand, has not.

The thrust of the County's argument on C-O-L goes in two directions. First, it argues, citing various arbitral decisions already alluded to above, that the Consumer Price Index (CPI) is an inadequate measure of C-O-L changes, that the Personal Consumption Expenditures deflator (PCE) is more accurate, and therefore the latter should be substituted for the former. Second, also based on arbitral opinion, the Employer contends that however C-O-L is measured workers can not expect to be fully protected from the total ravages of inflation. How much protection is to be afforded employees seems to be a function of benchmarks established by the voluntary settlements of comparably situated workers.

It is clear to the undersigned that the amount of price change measured by the PCE is in fact significantly different from that registered in an equal period by the CPI. Thus, the PCE from Third Quarter 1979 through Third Quarter 1980 shows a 10.6 percent increase. For the equivalent time period the CPI rose 12.6 percent. What is not clear to the arbitrator is whether the disparity arises from conceptual deficiencies in the CPI, different items measured, or some other, unexplained factor. While the CPI has been subject to much criticism it also has been staunchly defended. In the meantime, the CPI continues to be the much more prevalent tool for measuring, and adjusting to inflation, than is true of the PCE. Under the circumstances, therefore, a cautious and reasonable approach might be to adopt the theory that the "real" magnitude of price level changes lies somewhere between the values registered by each.

The undersigned also believes, as the extant evidence only too well demonstrates, that there is no absolute protection at the present time from inflation. The point is, in fact, well taken that the appropriate benchmark for measuring how much protection is to be found in the pattern of settlements among comparable employes. The problem in applying this principle, however, in the instant case is to identify the comparable employers together with their negotiated settlements. As we have already indicated, very few of the employers contained in the County's proposed set of comparisons meet the arbitrators standards of "comparable." Moreover, some of those institutions which remain are not unionized and hence their salary changes can not be described as negotiated settlements. Finally, of those which are unionized, the negotiations for 1981 were not completed at the time this case was being considered by the arbitrator.

On balance the arbitrator does not accept the Employer's position on the PCE vs. the CPI and, while he accepts the theory of the negotiated settlement as a benchmark of inflationary protection he believes it impossible to apply in a practical manner in the instant case. Rather, the arbitrator concludes that the Employer's final offer as it has been measured at 14.4 percent in 1980 and 12.6 percent in 1981 is in no way deficient by either PCE or CPI. Given the Union's final offer percentage increase of 17.9 percent (1980 and 12.5 percent (1981), if no other criterion than cost-of-living were to be applied, one could logically infer the Employer's offer was the fairer of the two. Before that ultimate judgment is made, however, it is necessary to evaluate the parties' remaining arguments.

Up to this point the undersigned has considered only those of the parties' arguments or evidence which go to the question of external equity. Here now we shift our focus from such factors as external comparables and cost-of-living to a consideration of internal equity issues, albeit confining our evaluation for the moment to salary level matters. In many respects the construction of a set of comparables is on more solid ground when we are making our comparisons across an organization than between organizations. Thus by limiting our purview to Dane County we hold constant such factors as organizational size, administrative policies, organizational climate, and external economic or social factors.

Further when employees are associated geographically, by function, technology, and/or pay structures we can assume the existence of a strong community of interest which will in turn become the basis for demands for equitable treatment. Many years ago the late, eminent economist Arthur Ross referred to the relatively stable patterns by which employees and employers regularly make such evaluations as "orbits of coercive comparison."

In the particular case of Dane County we would expect so-called orbits to develop between employee groups with similar training, e.g. RNs and PHNs; groups housed under similar working conditions, providing the same service, and subject to the same authority relationships, e.g. RNs, OTs, PTs, LPNs, hospital attendants, and their supervisors as these are all employed at the County Home and Hospital; where there are unionized employees organized in different bargaining units, e.g. the AFSCME units, UP unit, the Attorney's Association; and so forth.

The above point is well illustrated using the data on Dane County Bargaining Unit settlements for 1980/81 presented in the table on p. 5 of this award. First as reference to the settlement levels clearly shows, Dane County obviously follows a salary policy of nearly equalized yearly increases. Thus, for the most part, what one gets all get. Second, the data also give a working answer to the question of how much protection from inflation is necessary to satisfy employees. Four of the six settlements accepted 9.5% salary increases in 1980 and 9.25% in 1981. Only the Attorney's Association and the Non-Supervisory Law group went above the norm of the other settlements.

In view of an explicit joint agreement of what salary constitutes equitable treatment it is important to note that both the Union and the Employer have consciously chosen to break the norm, at least for 1980. The County was prepared to go to 13.2 percent for RNs and 10.4 percent for PHNs. The Union would go even well beyond the Employer's offer, asking for approximately 17 percent for the RNs and 15 percent for the PHNs. The final offers of the parties for 1980 assume special importance in view of the adherence to the general wage settlement norm of 9.25 percent by both the Union and the Employer in 1981. The fact that the salary offers for 1980 are both significantly out of line with the prevailing rates signals that more than issues of external comparabilities, cost of living or settlement norms are at work. It is appropriate at this point therefore to shift our focus from salary levels to salary structure.

Salary Structure Issues

Organizations seeking to avoid internal pay inequities generally adopt one (or more) of several standard job analysis-job evaluation programs. Typically these programs study job content, create classifications by which similar jobs can be grouped and then order these jobs and classifications by what have commonly become referred to as compensable factors: responsibility, skill, knowledge, working conditions, and so forth. Thus, presumably each job in an organization is ranked according to some measure of its worth and then paid accordingly.

County Resolution 215, 1979-80 (Union Ex. 6) provides a illustration of the results of such a program when applied to an organization like Dane County. Labeled Managerial/Professional Salary Structure, the current plan has 15 ranges (M 1 through M 15) with each range possessing five steps. For example, Occupational and Physical Therapists are placed in Range M 12 ($14,697-17,864) along with such other positions as Accountant, Dietitian, and Public Information Officer. The Dental Hygienist, on the other hand is located in M 13 ($13,601-16,532).

Prior to the Employer's implementation of the Arthur Young study the previous salary classification system was comprised of 26 salary ranges. Thus ten salary ranges were dropped and the positions or jobs were then rearranged among the 15 new ranges recommended by the Young study. For example, Occupational Therapist under the old system was placed in Range M 18 ($14,024-17,009) while Dental Hygienist was in Range M 16 ($12,709-15,443). Public Health Nurses under the old system were classified in Range M 18 and Registered Nurses were in Range M 16. However, no recommendation for the reclassification of RNs and PHNs was submitted to the County Board as a result of the Young study.

We come now to what, in the arbitrator's opinion is the crux of the dispute. Are the RNs/PHNs, OTs/PTs, and other members of the UP unit at Dane County entitled to more than the basic salary level change offered by the County? The Union says yes based on the reclassification increases provided by the Young study which were separate from the salary level increases.

To evaluate the Union's contention let us look at the evidence and argument adduced at the arbitration hearing. By the testimony of the Union witness Linda Kuhn (TR 28, 29) and Employer witness Edward Garvoille (TR 75,76) the RNs and PHNs were included in the study up to the time the final report of Arthur Young was submitted to the County Board. That was September 10, 1979, just four days after UP was successful in its election to win the right to represent the nurses. The Employer's rationale for deleting the nurses following the election was that the Young study was for unrepresented managerial/professional employees. The OTs/PTs and dental hygienist remained in the study, however, since their unionization did not occur for some months after Young's final report was submitted.

The Union argues that before they were deleted the RNs/PHNs were recommended for a two classification increase. The County denies this and absent a copy of the preliminary report no evidence exists to establish the fact one way or the other. The arbitrator believes it unnecessary to conclusively establish what was contained in the draft Young report. Rather by examining comparable positions and occupations within the County salary structure which were included, a reasonable inference as to nurses proper salary for 1980 and 1981 can be derived.

First, it is apparent that the OTs, PTs, RNs, PHNs, and Dental Hygienist are treated by the Employer as a tandem relationship. For example, in 1978/79 all received an identical 7 percent increase. Second, the undersigned believes it important to look at the range classifications for the bargaining unit occupations as these existed before and after the Young study. Thus, one notes that OT/PTs were range M 18 as were PHNs. In addition the Dental Hygienist was M 16 the same range as the RNs. The Young study reclassed the OT/PTs to M 12 and the Dental Hygienist was moved to M 13. As a consequence the OT/PTs received a reclass increase in their salary minimums of 4.8 percent and the Dental Hygienist an increase of 7 percent. The arbitrator concludes that if in fact an administrative policy exists which holds the bargaining unit positions comparable it is then not unreasonable to assume that the reclass increase received by one occupation would have been received by the other. Concretely that means that the PHNs would have received 4.8 percent (moving in tandem with the OT/PTs) and the RNs would have received a 7 percent increase (identical to that of the Dental Hygienist).

The key to the accuracy of the inference drawn above would otherwise be the draft document of Arthur Young. The Employer argues that the document contained substantial errors and therefore was withdrawn. However, no testimony or evidence was supplied by the County specifying the nature or magnitude of the alleged errors. Thus, in the absence of such evidence it is the undersigned's opinion that the Employer has not adequately rebutted the Union's claim that the report contained reclass increases for the nurses.

The County also argues that it acted on the advice of the WERC in excluding the nurses from the report in order to avoid legal liability. In addition, it is further argued that the OT/PTs were not excluded because they were not unionized at the time the final Young report was submitted. It is true that the County was certainly caught in a dilemma. That one group was to be treated differently for salary purposes from the other created obvious inequities. The County's solution was essentially to reduce the salary level increases of those employees who had received the reclass (OT/PT and Dental Hygienist) back to the level of those who had not received it (RNs/PHNs).

Moreover, in an effort to avoid the appearance of intimidating its employees during the course of the organizing drive, the County's handling of the nurse reclass problem perhaps has the unintended effect of doing that which it sought to avoid. That is, if the RNs/PHNs had voted against the Union they would not have been deleted from the study. This, in turn, would have probably earned the nurses the reclass raise received by the OTs/PTs. The later group, on the other hand received the reclass raise but subsequently by voting for the union lost the salary level increase received by other employees. The arbitrator has no doubt that the Employer's policies here were not motivated by an anti-union animus but were in fact carried out in a good faith attempt to avoid transgressing the law. Yet the results of the County's action are certainly anomolous to say the least.

The Employer rejects the Union's efforts to support its final offer by reference to alleged relationships to other health care professionals and managers, in particular as these County employees were subject to the Young study and received reclass raises there from. The arbitrator finds the County's arguments here compelling. The County argues many positions were shifted as a result of the study with parity broken in some cases and established in others. As the Employer amply demonstrates factors other than mere historical pay parity were obviously considered in assigning managerial/professional jobs to their ultimate new pay ranges. For example in the shift from the old classifications to that recommended by Young the Supervisor of Nurses received a 35.7 percent reclass raise and the Director of Nursing Services a 20.8 percent increase. These two positions are in a direct line of command above the RNs who presumably would have received only a 7.0 percent raise had they been reclassified.

The Employer also seeks to rebut the Union's attempts to prove an historical relationship with the County's nonprofessional health care workers, namely Licensed Practical Nurses and Hospital Attendants. Here the evidence of tandem relationships are more clearly discernible but at the same time the interpretation of the meaning of the relationships is more equivocal. As the table below reveals the year to year percentage change in salary minimum is almost identical from 1970/71 to 1980/81.

	Hospital Attendant I	Hospital Attendant II	LPN	RN	PHN
1970/71	6.9%	6.7%	6.5%	6.7%	6.5%
1971/72	7.7	7.5	7.3	6.3	6.1
1972/73	4.6	4.4	4.4	4.9	5.1
1973/74	6.0	6.1	6.0	6.1	6.1
1974/75	8.5	8.5	8.5	2.0	4.7
1975/76	4.5	4.5	4.1	4.6	4.5
1976/77	7.3	7.1	6.7	6.0	6.0
1977/78	7.0	7.0	7.0	7.0	7.0
1978/79	7.5	7.3	6.9	7.0	7.0
1979/80	10.9	*	10.7	**	**
1980/81	9.3	*	9.2	9.2	9.2

*Combined into Nursing Attendant
**County Offer 13.2% (RN); 10.4% (PHN)
Union Offer 16.96-17.24% (RN); 14.73-14.97% (PHN)

Source: ER 17

The pattern of salary increases shown in the table reflect a conscious effort to maintain a proper structural alignment among the positions listed. To do otherwise would create inequities and invite disatisfaction with pay.

The table also shows two periods when realignment occurred: 1975 and 1980. In the former year the three nonprofessional positions received 8.5 percent increases while the RNs got 2.0 percent and the PHNs, 4.7 percent. In 1975 the ratio of RN minimum rates fell from 1.11 (LPN), 1.19 (Hospital Attendant II), 1.23 (Hospital Attendant I) to 1.14, 1.11, and 1.04 respectively. The ratios then remained at this level through 1979. The change in the ratios in 1975 came apparently as a consequence of a consultant's study and no rationale was provided for the necessity for a realignment in that year.

The year 1980 would also show a break in the pattern of similar salary level changes but in a direction opposite that of the earlier year. Both Employer and Union final offers would raise the ratios above that ruling from 1975-79. The RN ratio for the County's offer would now be 1.15 for HAI and 1.07 for LPN. The Union's offer would raise the ratios to 1.18 and 1.10 HAI and LPN respectively. The County's wage offer would keep the ratios closer to their magnitudes for 1975-79 while the Union's would move the ratios substantially back to where they were over the first half of the 1970s. Again, the basis for the 1980 realignment would be a consultant's study.

Evidence that strong efforts are generally made to avoid internal inequities among these positions is present but so too is there indication that the County is prepared to change the parities. This is insufficient by itself, however to support one side or the other in the instant dispute. The party's positions both contain merit but neither is sufficiently compelling to warrant its adoption over the other.

After reviewing the argument and evidence as they relate to the County's job and salary structure and the role of the Arthur Young study in realigning said structure, the arbitrator concludes that the relationships between the positions of OT, PT, RN, PHN and Dental Health Coordinator supports a basis for standardized and equivalent treatment. Thus, the reclass raises granted by the Young report to the OT/PTs and Dental Hygienist should also have gone to the RNs/PHNs.

Moreover, the evidence supporting a County policy of standardized salary level increases for the majority of bargaining units and unrepresented personnel of 9.5% in 1980 and 9.25% in 1981 also is incontrovertible. Hence if the salary level change for 1980 is added to that of the reclass raise the following figures are obtained: RN group $7.14/hour and $7.71/hour for the PHN group. For 1981 the above figures add to $7.80 and $8.42, RNs and PHNs respectively. These amounts, in fact, correspond to the salary increases requested by the Union in its final offer.

Summary

On balance, the arbitrator finds himself unpersuaded that the Employer's final offer is the more acceptable of the two. The external comparabilities are weak and lacking in any clearcut pattern against which the wage offers of the parties could be judged as fair or not. We find also that the cost-of-living criterion has only a marginal role to play in the outcome of the instant dispute. Whereas, under other circumstances the fact that the Employer's offer exceeds the increase of prices over 1979-80 would perhaps be controlling other factors in our wage determination equation must be given greater weight.

Thus, the Union's position that internal inequities exist and that the conflict resides in the wage structural changes made in the wake of the Arthur Young report are determinative. Moreover, the arbitrator further believes that whether the draft report by the consultant contained reclassification raises for the nurses need not be satisfied here to resolve the dispute. Examination of the evidence and argument substantiate the existence of historical internal relationships among the Employer's health care professionals which support both the appropriateness of a reclass increase for those UP bargaining unit nurses to whom it was denied as well as the general increase given to other of the County's bargaining unit and unrepresented employees.

Having considered all of the issues in light of the evidence presented, the arguments, and the statutory criteria, the undersigned renders the following:

AWARD

The final offer of the Union together with the prior stipulations of the parties is to be incorporated into the Collective Bargaining Agreement for the period beginning December 29, 1979 through December 28, 1981.

Dated at Madison, Wisconsin this 25 day of August, 1981.

Richard U. Miller

Richard U. Miller, Arbitrator