

OCT 25 1984

In the Matter of Arbitration :
 Between : AWARD WISCONSIN EMPLOYMENT
 DISTRICT 1199W/UNITED PROFESSIONALS : CASE XCVI
 FOR QUALITY HEALTH CARE : No. 32706 MED/ARB-2603
 and : Decision No. 21621-A
 :
 DANE COUNTY

I. HEARING. A hearing in the above entitled matter was held on July 10, 1984, beginning at 10 a.m. at the Dane County Highway Garage, Fish Hatchery Road, Madison, Wisconsin.

II. APPEARANCES.

LAURENCE S. RODENSTEIN, Organizer, District 1199W/UPQHC, appeared for the Union.

MULCAHY & WHERRY, S.C. by JOHN T. COUGHLIN, appeared for the County.

III. NATURE OF THE PROCEEDINGS. This is a proceeding in final and binding final offer arbitration under Section 111.70 of the Wisconsin Municipal Employment Relations Act. The Union filed a petition with the Wisconsin Employment Relations Commission on January 4, 1984, alleging that an impasse existed between it and the County in collective bargaining for a successor agreement to a two year agreement that expired on December 24, 1983. The Commission, having conducted an investigation through Daniel L. Bernstone, staff member, found on April 24, 1984, that an impasse within the meaning of Section 111.70 (4) (cm) 6 of the MER Act existed, certified that the conditions precedent to the initiation of mediation-arbitration as required by the statute had been met and ordered such mediation-arbitration. The parties having selected Frank P. Zeidler, Milwaukee, Wisconsin, as mediator-arbitrator, he was appointed by the Commission on May 17, 1984. The hearing was held as noted above, and the parties were given full opportunity to give testimony, present evidence, and make argument. Briefs were exchanged on September 6, 1984.

A one year contract is involved in these proceedings.

IV. THE FINAL OFFERS.

A. The Union Offer:

"Modify 1.04 as follows:

"1.04 Subcontracting. When it become necessary to determine when, or what, to subcontract, it is, and will be, the policy of the Employer to first consider the impact on the employment security of its employees and to notify the Union. It is the policy and intent of the Employer to use its employees as much as practical for work on the operations involved and to contract work out only when that course is required by sound business considerations. The Employer agrees that it will not subcontract work if laid off employees are qualified to perform the work. The Employer further agrees to bargain the impact of subcontracting with the Union.

"New Section 1.05 Transfer of County Functions

"The Employer agrees that in the event that another unit of government shall take over the operation of a department or function being performed by employees covered by the terms of this Agreement, and if said takeover negatively affects unit employees, the County hereby agrees to bargain collectively with the Union relative to the aforesaid affects. If the parties bargain to impasse over any matter covered by this Section, the Union or the Employer shall have the right to petition for mediation/arbitration pursuant to Wisconsin Stats 111.70 and the administrative rules of the WERC.

"Amend Section 14.01 (a) and (b) to read:

"14.01 Health and Accident Insurance:

"(a) A group hospital, surgical, major medical and dental plan as agreed to by the parties shall be available to employees. In the event that the Employer shall propose a change in this plan, this contract shall be re-opened for purposes of negotiations on such a proposed change (this re-opener provision also applies to the G.H.C. plan specified below.) The Employer agrees to pay the full premium for employees and ninety percent (90%) of premium for dependents. Employees with a spouse on Medicare Plus, will receive a payment not to exceed that paid by the Employer for family coverage. However, the Employer shall pay, not to exceed \$14.07 per month for single or \$37.83 per month for family, on dental insurance, and \$37.83 per month for spouse credit plan.

"(b) The Employer agrees that employees and their dependents may elect to become members of any health plan made available and approved by the Employer. There shall, however, be only one (1) thirty (30) day enrollment period per year during which time employees may change plans. The Employer agrees to pay costs for employees and dependents choosing other plans equal to the premiums for the insurance described in (a) above.

"Modify 'Hourly Rates and Range Steps' for 1984 as follows:

"Effective March 4, 1984, increase each rate by 3.0%."

B. The County Offer:

"MANAGEMENT FINAL OFFER
FOR SUCCESSOR COLLECTIVE BARGAINING AGREEMENT

WITH DANE COUNTY
and
DISTRICT 1199W/UNITED PROFESSIONALS
FOR QUALITY HEALTH CARE

April 13, 1984

"1. 1% wage increase effective December 25, 1983.

"2. Retitle Article XIV, Section 14.01 Health and Dental Insurance and modify Subsections (a) and (b) as follows:

"(a) A group hospital, surgical, major medical and dental plan as agreed to by the parties shall be available to employees. In the event the Employer shall propose a change in this plan, this Contract shall be reopened for purposes of negotiations on such a proposed change. For group health insurance the Employer shall pay up to sixty nine dollars and forty four cents (\$69.44) per month for employees desiring the 'single plan' and up to one hundred eighty six dollars and sixty three cents (\$186.63) per month for employees desiring the 'family plan' and up to one hundred ninety two dollars and four cents (\$192.04) for spouse credit family plan. Employees with a spouse on Medicare Plus will receive a payment not to exceed that paid by the Employer for family coverage. For group dental insurance the Employer shall pay up to fourteen dollars and seven cents (\$14.07) per month for employees desiring the 'single plan', up to thirty seven dollars and eighty three cents (\$37.83) per month for those desiring the 'family plan' and thirty seven dollars and eighty three cents (\$37.83) for spouse credit family plan.

"(b) The Employer agrees that employees and their dependents may elect to become members of any health plan made available and approved by the Employer. There shall, however, be only one (1) thirty (30) day enrollment period per year during which time employees may change plans. The Employer agrees to pay costs for employees and dependents choosing other plans equal to the dollar amounts stated in 14.01 (a)."

V. FACTORS TO BE CONSIDERED.

The following is from Section 111.70 (4) (cm) 7 of the Wisconsin Statutes:

"(7) 'Factors considered.' In making any decision under the arbitration procedures authorized by this subsection, the mediator-arbitrator shall give weight to the following factors:

- "a. The lawful authority of the municipal employer.
- "b. Stipulations of the parties.
- "c. The interests and welfare of the public and the financial ability of the unit of government to meet the cost of any proposed settlement.
- "d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.
- "e. The average consumer prices for goods and services, commonly known as the cost of living.
- "f. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays, and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- "g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- "h. Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

These factors will be applied as appropriate to the individual issues, and to the offers as a whole.

VI. WAGES. The Union offer calls for a 3.0% wage increase across the board; the Employer offer calls for a 1.0% increase. The Union rate would be effective March 4, 1984, and the Employer offer would be retroactive to December 25, 1983.

A. Basic Wage and Total Compensation Costs.

The bargaining unit consists of 65 persons, some full-time and part-time. The County estimates that under the previous contract the base wages of the employees averaged \$10.74 per hour, and that base wages and fringe benefits averaged \$13.67 per hour. Under the Employer offer 11 cents per hour would be added for base wages, and a total of 21 cents per hour in wages and fringes. Under the Union offer, the base wages would come to 32 cents per hour after March 4, 1984; and with fringes including a four cent minus factor in the cost of health insurance under the Union offer, the wages and fringes would come to 42 cents per hour (Emp. 7).

The arbitrator calculates that the average base wage under the Union offer would increase by 26 cents per hour, since the 32 cents increase would obtain only in 42 of the 52 weeks of the year.

The County states that the annual dollar package increase on the average under the Employer's offer comes to \$436.80 or a 1.5% increase. Under the Union offer the increase comes to \$737.00, a 2.6% effective average increase. The percentage increase of the "lift" or end rate amounts to a 3.1% increase (Emp. Ex. 7).

The County states that of the 65 employees in the bargaining unit, 36 will receive a merit and/or longevity increase in addition to any base wage increase. This amounts to 55% of the employees receiving such increase. The County argues that even if it gave no increase, its wage cost for 1984 would increase by 2.2% (Emp. 7).

The following table was developed from Joint Exhibit 1, the previous contract, the offers, and Employer Exhibit 10:

Table I

TOP BASE RATES, 1983 AND 1984 PROPOSED
FOR PUBLIC HEALTH NURSE AND REGISTERED

Classification	1983		
	Hr.	Mo.	Annual
RN	11.00	1,913	22,957
PHN	11.89	2,068	24,814

	1984			Union					
	County			Average			End Rate		
	Hr.	Mo.	Annual	Hr.	Mo.	Annual	Hr.	Mo.	Annual
RN	11.11	19.32	23,187	11.27	1,960	23,525	11.33	1,970	23,646
PHN	12.01	20.88	25,663	11.18	2,118	25,415	12.25	2,130	25,559

Union Exhibit 3 indicates that as of October 6, 1983, of 36 positions of RN, 15 were held on a full-time basis and the rest were held on equivalents ranging from 0.23 to 0.80. 23 positions of PHN were listed of which 10 were held full-time and the rest from 0.50 to 0.80 full-time equivalent.

B. Basic Wage Comparisons.

Both parties used various comparison groups for the different issues between them. For basic wages, the County uses for comparison purpose bargaining units in Dane County, the City of Madison, and the State of Wisconsin. It has included in its Exhibit 8 units which are composed of Health Care Professionals and units which are not. Within Dane County itself no units were reported settled. However this arbitrator takes arbitral notice that an award of his relating to the Joint Council of Unions resulted in an award for the Employer which resulted in a 1% increase in wages, but that other factors predominated in determining the award.

In the City of Madison the UPQHC Local and all six other units reported received a 1% award for 1984. In the State of Wisconsin, the Professionals-Patient Care and six other units received no increase for the period 1983-84 (Emp. 8).

The Union challenges this latter point on Patient Care Professionals, saying in 1981 the PCP group received an 8% increase across the board, plus additional step increases culminating in a 7-1/2% increase for nurses in the second year who had seven years' experience. The cost was 12-1/2% in 1981 and 10-1/2% in 1982 (TR. 99, 100). The County contends that its exhibit 8 was not intended to show reclassifications.

The County compared base wages and total benefits of PHN's in Dane County with PHN's in the City of Madison, with the Visiting Nurse service, and with the following counties; Fond du Lac, Kenosha, Winnebago, Racine, Brown, Outagamie, Sheboygan, Waukesha, Rock, Dodge, Marathon, La Crosse, Jefferson, Green, Sauk, Walworth, Columbia, and Iowa. It found that in minimum and maximum salary in seven fringes, and in total average compensation, Dane County wages and benefits exceeded those of the average of all the others. In maximum pay and total compensation, Dane County ranked first in 1983. In 1984, both the Employer and Union offers produced the same results as far as averages are concerned. On maximum compensation, both the Employer and Union offers ranked below Racine; but in total compensation both offers ranked first (Emp. 12).

The County compared basic wages and total benefits of Registered Nurses in Dane County with the following employers: State of Wisconsin; Madison General Hospital; the Counties of Outagamie, Kenosha, Waukesha, Racine, Fond du Lac, Brown, Eau Claire, Dodge, Sheboygan, Rock, Jefferson, La Crosse, Sauk, Columbia, Iowa, and Walworth; and the following privately operated agencies; St. Mary's Hospital, Employer "A", Oakwood Nursing Home, Colonial Manor Nursing Home; and Employer "B". From a listing of respondents to the survey made by the County, the arbitrator believes that Employers "A" and "B" may include the Arbor View Nursing Home and Methodist Hospital.

The results of the survey for 1983 for RN's show that Dane County was exceeded in maximum by Madison General Hospital, Outagamie County, St. Mary's Hospital, the State of Wisconsin, Kenosha County, Waukesha County, Winnebago County and Employer "A", in that order. However in total compensation, Dane County was exceeded only by Outagamie County. Dane County in minimum, maximum, seven fringes and total compensation exceeded the averages of the reported group (Emp. 12).

Under the 1984 offers, the Union offer for a maximum is exceeded by Outagamie County, Madison General Hospital, Kenosha County, St. Mary's Hospital, the State of Wisconsin, and Winnebago County in that order; the same is the case for the County's offer. In total average compensation both the Union and County offers are exceeded only by Outagamie and Kenosha Counties (Emp. 12).

The Union provided exhibits dealing with rates of pay for Public Health Nurses and Public Health Sanitarians. It is making a basic contention that Public Health Nurses, who are chiefly female, should be getting the same pay as Public Health Sanitarians who are chiefly male. It is basing this contention on the case, American Federation of State, County and Municipal Employees vs. State of Washington (No. C82-465T, Dec. 14, 1983) in which the court held the defendant liable for sex discrimination in pay for job classifications which contained 70% women employees (Un. Ex. 27). A suit, however, Briggs Et. Al, vs. City of Madison alleging job discrimination against public health nurses and in favor of sanitarians was dismissed by the court on March 30, 1982 (U.S. Dist. Ct., Western Dist., Wis. Crabb, J., 536 F. Supp. 435) (Un. 23-26).

In February 1984 a "comparable worth" task force was created by the Governor of Wisconsin through executive order and funds for its support were provided by the legislature (Un. 28). A similar committee was also established in the City of Madison (Un. 29). Similarly a Dane County Pay Equity Committee is functioning (Un. 30).

Union exhibits also addressed the issue not only of comparable pay between Public Health Nurses in various jurisdictions, but between Public Health Nurses and Public Health Sanitarians. Units of government reported as comparable included the City of Madison, Dane County, City of Green Bay, Madison General, City of Milwaukee, City of Racine, Rock County and State of Wisconsin. Green Bay and Racine Cities were used because their corresponding county units are not organized. Milwaukee was used because Milwaukee County does not have a public health department.

For Madison General Hospital the Union used a Nurse Clinician in Range 26; and for the State of Wisconsin the position of Public Health Nurse I was used. The positions were compared among these units and including Sanitaricians in Madison and in Dane County. The Union found that as far as minimum monthly rates, the average of nine units excluding Dane was \$1,763 as compared in Dane to the County offer of \$1,710 and the Union offer of \$1,744. Among the ten units, the County and Union offers ranked sixth.

With respect to the 1984 schedule maximums among the same group of positions, the average wage excluding Dane was \$2,160 and the County offer was \$2,090, and the Union offer \$2,131. Again the offers of both parties ranked sixth (Un. Exs. 31, 32).

The Union averaged the percentage increase of the nine positions which came to 2.0%. This in turn compared to the 1.0% County offer and 3.0% Union offer for minimum rates. For maximum rates the average percentage increase for the nine units came to 2.2% as compared to the 1.0% and 3.0% increase offered by the parties respectively (Un. Exs. 33, 34).

The Union compared the ratio of Public Health Sanitaricians and Public Health Nurse maximum wage rates in 1984 in five units of government: the Cities of Green Bay, Madison, Milwaukee and Racine and the County of Rock. The average ratio of Sanitaricians to Nurses in the five units was 1.02. In Dane County under the County offer this ratio would be 1.15 and under the Union offer 1.13. The Union also contends that at the end of the contract year 1985, the Madison PHS/PHN ratio will be only 1.02 instead of 1.11 currently, and if this is applied, now the average ratio of the five units would be only 1.01 (Un. 35).

The Union presented a table of wage ratios of Public Health Sanitarian pay to Public Health Nurse pay from 1969 to 1984. The average ratio of five units excluding Dane County went from 1.11 in 1969 to 1.02 in 1984, whereas the ratio in Dane County went from 1.09 in 1969 to 1.08 in 1981 to 1.11 in 1979, and under the County offer it would be 1.15 in 1984 and under the Union offer 1.13 (Un. 36).

The Union also compared rates of registered nurses. It compared Class 17 Nurses at Madison General Hospital, R.N. 2's at the State of Wisconsin and Dane County R.N.'s. The following table reflects information found in Union Exhibits 38 and 39.

Table II

COMPARATIVE MINIMUM AND MAXIMUM RATES OF RN'S FOR
SELECTED YEARS IN THREE AGENCIES

<u>Unit</u>	<u>Minimum</u>			<u>Maximum</u>		
	<u>1981</u>	<u>1984</u>	<u>% Inc.</u>	<u>1981</u>	<u>1984</u>	<u>% Inc.</u>
Madison Gen. Hosp.	1343	1630	21.3	1738	2194	26.2
Wisconsin State RN 2	1367	1632	19.3	1767	2121	20.0
Wisconsin State RN 3	1480	1761	19.0	1905	2293	20.4
Dane County						
County	1357	1590	17.2	1830	2146 ⁽¹⁾	17.3
Union	1357	1622	19.5	1830	2188 ⁽¹⁾	19.6

(1) These calculations may be in error with the figures being \$1932 and \$1970 respectively. See Table I.

The following table is Union Exhibit 40:

Table III

DANE COUNTY AREA COMPARABLE UNITS
WAGE RATE PROGRESSION
1982 - 1985

<u>Units</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1982-84 Total Increase</u>	<u>1982-85 Total Increase</u>
1. Madison General Hospital	8.0%	9.1%	3.0%	--	20.1% ¹	--
2. Madison Public Health Nurses	9.0%	6.0%	1.0%	12.8%	16.0%	28.8%
3. State of Wisconsin ²	11.5%	<u>5.3%</u>	2.4%	--	<u>19.0%</u>	--
Average of Above Excluding Dane	9.5%	7.0%	2.1%	12.8%	<u>18.4%</u>	--
4. Dane County Public Health Nurses						
(a) County Offer	8.0%	7.5%	1.0%	--	16.5%	--
(b) Union Offer	8.0%	7.5%	3.0%	--	18.5%	--

¹ October 7, 1984 Madison General Hospital current Agreement expires covering 500 member unit.

² 1982 based on 13.4% average increase 1/82 - 7/82 and 9.6% average increase 7/82 - 12/82; 1983 based on 1/83 - 7/83 9.6% average increase and 7/83 - 12/83 1.0% average; 1984 based on 1/84 - 7/84 1.0% average and 7/84 - 12/84 3.84% average.

Source: Collective Bargaining Agreements

The above table shows a total percentage increase for Madison Public Health Nurses of 12.85% for 1985 or a total 1982-85 increase of 28.8% in an agreement which extends from March 1, 1983, to February 28, 1986. The source of these figures comes from the current contract between the City of Madison and its nurses' union. PHN's were reclassified at PHN I as of March 1, 1983. Thereafter on March 1, 1984, their biweekly base rate went from \$898.38 to \$907.36, an increase of 1.0%. On March 1, 1985, the rate will go biweekly to \$943.65, an increase of 4.0%. On the last day of the agreement, February 28, 1986, the rate will go to \$1,023.86, an 8.5% increase over their rate as of March 1, 1985, and a 12.8% increase over the rate of March 1, 1984. This 12.8% is an end-rate or lift of one day duration. The average rate for the year, according to the calculations of the arbitrator will be an increase of 4.03% (Un. 42).

The Union in its letter to the arbitrator and the Employer of July 17, 1984, explained how it arrived at its conclusions found under Footnote 2 in Union Exhibit 40. Essentially the data it used were derived from estimating the average value of rate increases and step increases granted in the period from 1981 to 1982 by the State. The Union relies on its Exhibit 43 H which would indicate that a Nurse 2 at a six year level started with \$8.224 an hour on 9/4/81 and went to \$10.216 an hour at 10/3/82, or a 24.22% increase. However the average hourly rate in a complex unit went from \$8.51 in 7/13/80 to \$10.26 as of 12/26/82, or an increase of 20.6% in the 1981-83 agreement period (Un. 43 H, I, J).

The County stresses the fringe benefits for the employees. Twenty four such Nurses' benefits were listed in County Exhibit 9. Among the benefits accruing to Nurses is one in which all employees advance to the second step in their range after completion of probation (6 months) and in one year increments of service thereafter, (i.e. full-time and part-time Nurses progress at the same rate with their increments). This feature is not found in any other of four bargaining unit agreements existing in the County (Emp. 11).

The County further stresses the conditions prevailing in the labor market generally in the Dane County area by pointing to the labor negotiations disagreements between the largest private employer, the Oscar Mayer Foods Corp. and the United Food and Commercial Workers Union. The company wants to reduce the \$10.69 base rate to meet the industry average of about \$8.25 per hour (Emp. 13).

The Union is stressing the County's ability to meet the wage offer. Union Exhibit 5 indicates that five of the six largest counties in the state are those of Brown, Dane, Milwaukee, Racine and Rock. The 1980 reported per capita income for Dane County was \$8,075, while the average of the other four was \$7,614. Dane's individual per capita was higher also than any other individual county.

4.75% of the families in Dane County were living below the poverty level in 1980 as compared to the average of 6.1% of such families in other counties (Un. 6). Dane County with 323,545 people was second in population. Milwaukee was first with 964,988 people, and Brown County next with 175,280 people (Un. 7). The unemployment rate in 1983 for Dane County was 6.8% while the average in the other counties was 11.5% (Un. 8).

The Union Position Summarized. The Union notes that the bargaining unit is comprised entirely of women. From the action of the Dane County Board of Supervisor's looking into the matter of like pay for comparable work, the women workers here employed in traditionally women's work area are most hopeful of upward adjustments as a result of the County's policy initiative.

The Union also asserts that its offer compares more favorably to the settlement in comparable communities among employees doing like work. The Union's comparables are those selected by the County in the 1981 arbitration. Also comparisons have been made with the five largest counties. However where county units were not available, cities in the same county were used, and they are in the southern Wisconsin area.

The Union also points to the ability of the County to pay, and asserts that the County has the capacity to maintain its relative position with other units.

The Union contends that the comparables used by the Employer are too dissimilar to be useful. Further the Employer uses very small counties for comparison. It cites Arbitrator Miller in asserting that the market itself is within Dane County. The Union also argues that it is not proper to compare wages set in collective bargaining with wages administratively set.

The Union rejects the Employer's contention that Public Health Nurses in the County cannot be compared with Madison General Hospital Nurse Clinicians, or a Public Health Nurse in the State. These positions are all similar in their progression in the career ladder of a Registered Nurse. Nurse Clinicians and Public Health Nurses are parallel courses of advancement; and in the State, Public Health Nurses I and Nurse Clinicians are in the same pay range.

The Union holds that pay equity/comparable worth constitutes a significant public policy issue in the County and the State, and the members of the bargaining unit are the focus of pay equity efforts. The Union cites the case, Briggs vs. City of Madison in which the Court held that the jobs of Public Health Nurse in relation to that of Sanitarian required skill, effort and responsibility at least equal to, and possibly in excess of, the work of Sanitariums. The Union holds that as a result of the Court's

opinion, the ratio of Sanitaricians to PHN's should be a 1.00 ratio, that is, the pay should be equal. The Union notes that in its tables it has shown that. In Milwaukee and Racine this ratio has been achieved or nearly so, but that in Dane the 1969 ratio of 10.09 was deteriorated in 1983 to a 1.15 ratio under the County offer, and a 1.11 ratio under the Union offer. The Employer offer is unreasonable.

The Union emphasizes the change in the City of Madison Public Health Nurses that will take place on February 28, 1986, with an 8.5% increase at that time. This means that the ratio of Sanitaricians to Nurses will fall from 1.11 to 1.02 and the increase of pay will come to 12.8% over the course of the contract year. Under the Union offer here, there will be some cushion for the 1985 negotiations since the County would be 2% closer to the City Agreement.

The Union contends its exhibits show that Dane County has been bucking the trend toward equalizing wages between Public Health Nurses and Sanitaricians.

The Union further argues that its final offer maintains the County's standing in relation to comparable groups whereas the County's final offer represents a deterioration of the relative position. The Union's offer of 3.0% is closer to the average increase of 2.2% of comparable agencies than is the Employer's offer. Even the County's data supplied in its Exhibit 12 shows that the Union offer is more favorable. In its brief the Union provided a table which shows that the average percentage increases in wages provided by units of government in the County's exhibit comes to 4.83% for Public Health Nurses, and to 3.75% for Registered Nurses.

The Union supplied the August 25, 1981, Award of Arbitrator Miller in a mediation-arbitration case between the parties in a dispute over wage rates. The arbitrator, after an extended discussion, held that historical internal relationship among the Employer's health care professionals supported the Union request for both a percentage wage increase and a reclassification increase (Un. 4, Dane County Case LXXVIII, No. 26788, MED/ARB-875, Dec. No. 18181).

The Employer's Position Summarized. The County contends that its wage offer is amply supported by evidence on the record. It notes that it has used public and private employers of Nurses within Dane County, and also applies additional comparables in counties contiguous to Dane, and in 13 counties most similar in size. Milwaukee County is excluded because of size. The County objects to the Union's comparables because the Union did not confine itself to counties. Also the Union's use of selective statistics from the State of Wisconsin and Madison General Hospital is not sufficient when there are other health care providers in Dane available for comparisons.

The County notes that both parties confine themselves to Dane County government agencies when comparing other issues in this matter.

The record shows that the Dane County ranks very high on wages and benefits. In total compensation for Public Health Nurse, the County ranks first in 1983 and 1984 and for Registered Nurse it ranks second in 1983 and third in 1984. Also in major fringe percentage increases in 1983 and 1984 the County exceeds the averages by a substantial percentage. Public Health Nurses were above the average by 24% in 1983 and by 18.9% in 1984 under the Employer offer. Registered Nurses exceed the average in 1983 by 18.3% and will have exceeded it in 1984 by 15.2% under the Employer's offer.

The County objects to the use of comparisons of Public Health Nurses I-III at the State of Wisconsin and Nurse Clinicians for Madison General Hospital on the grounds that these positions are not comparable. The evidence from the job descriptions is that the two above named positions do not conform in description to the Dane County Public Health Nurses. The County's Public Health Nurses provide a general and widely diversified service to individuals and families in homes, clinics and school. State of Wisconsin Public Health Nurses serve as direct consultants to public and private agencies in specialty areas. Nurse Clinicians at Madison General Hospital provide specialized care in a clinic, or coordinate home care

planning, arrange for community based assistance, serve as a specialized technical resource and act as educator for other staff and health care providers. Further the Clinicians require a year of clinical experiences in the area of specialty whereas Dane County Public Health Nurses have to have only one year of experience as a Professional Nurse.

The County contends that since 41 of the 67 unit employees are on a part-time status, monthly rates do not set forth an accurate analysis of earnings, but the hourly rates as shown by the County do. Hourly rates therefore should be utilized.

In analyzing the total compensation of the Union members, the unique benefit of part-time and full-time employees advancing on the salary schedule at the same rate should be noted, unlike all other County employees who must earn longevity credits based on full-time equivalencies. Also all part-time employees working 50% or more of the time receive fully paid insurance benefits. All but ten of the employees are at this level, and they receive this lucrative benefit.

The County emphasizes that all the various benefits earned must be considered in comparisons. In other comparable agencies the same level of benefits does not exist as in Dane County, and total compensation must be considered as more appropriate than straight wage comparables.

The County also holds that there is a restraint in settlements in the Dane County areas as shown by the City of Madison settlements and State of Wisconsin settlements, as well as the situation at the Oscar Mayer Company. Dane County also in cumulative benefits for the period of 1982, 1983, and 1984 offers benefits that have exceeded the City and the State. Further the County offer for 1984 is greater than or equal to the City and State voluntary settlements. The Union offer is not warranted and that offer is not necessary to avoid loss of rank vis-a-vis City and State. This is especially true when the total package increase of the County is considered.

The County rejects the Union argument about needing to catch up for a City increase scheduled for February of 1986.

The County argues that its offer more nearly approximates the increases in the cost of living when both basic wage increases and step increases are considered. Step increases in Dane County will amount to a 2.2% increase in wages over and above the 1.0% increase. Thus the real increase is on the average 3.2% for wages in new money, and this exceeds the cost of living of the CPI to date.

The County also argues that settlements within Dane County public employees groups are determinative of the real cost of living for 1984. The previous settlement by the City of Madison and by the State show the real cost of living, and the County meets these.

The County argues that in a three year comparison of the CPI-W, US City Average, the total for 1982, 1983 and 1984 to date comes to 10.3% while the increase for the Union under the County offer will have been 16.5%. If step, longevity and basic increases are added, the County is offering 3.7% for 1983, the Union 5.3% when the CPI increment to date is 3.1% increase.

The County contends that the Union's arguments as to a parity ratio which should exist between Public Health Nurses and Public Health Sanitarians are unfounded. The County notes that the Union is basing its contention on the cases of Briggs v. Madison, and AFSCME v. State of Washington, in which it found that the jobs at issue required an equivalent composite of skill, effort, responsibility and working conditions as measured by job evaluation studies. However in this case, the record is silent as to the comparison of work performed by Sanitarians in Dane County with Public Health Nurses. Also in the case of Madison, the court recognized that there were difficulties in recruiting and retaining persons qualified to be Sanitarians. There also was no evidence that the disparity between Nurses and Sanitarians was the result of an illegal intentional discrimination by the City. The Madison case then cannot be found to support the Union position here since there has not been a comparison made within the jurisdiction of Dane County itself. Also since the County is now making its own study, a finding for the Union would be premature.

With respect to the matter of comparability between Public Health Nurses and Sanitaricians, the County notes that in the decision of Arbitrator Miller, the comparison was stressed between Occupational Therapists/Physical Therapists and PHN's; and that external comparisons were not establishable. The comparison was not made on the basis of Sanitaricians in this case, who were in the study of comparisons then as now.

The real comparison to be made is not between U.P.Q.H.C. employees and Sanitaricians but between members of the Joint Council of Unions and U.P.Q.H.C. employees with whom they daily work. This association is shown when in 1982 the Joint Council and the United Professionals voluntarily agreed to the same language for health insurance in their contracts in a "me-too" agreement. The County also notes a recent arbitration in the City of Waukesha in which the arbitrator did not support raising the Nurses' pay schedule to that of Sanitaricians because a study on the subject was not convincing. The County contends that the Union here has failed to meet the burden of proving that Public Health Nurses should receive the same compensation as Sanitaricians.

The County states that the Union's statements as to State of Wisconsin settlements for 1982, 1983 and 1984 are overstated. The County notes that there is no automatic step increases for Nurses in the State system, and within-range increases must be negotiated. Further according to the Union's own arguments, such negotiated increases of steps causes a turning over of Nurse personnel.

Discussion. In the matter of ability to pay, the County has not raised this as an issue, and the evidence is that it has the ability to meet the costs of either offer as far as wages are concerned. The County's argument is that it should not have to pay what is being asked of it by the Union.

The matter of what the increased costs are to the Employer in total has not been supplied by either party in a listing of estimated budgeted costs for the offers, except on an hourly basis. This was supplied only by the County in County Exhibit 7, in an exhibit which does not show the effect of any step increases which may automatically be coming to the employees. The County is arguing that because of its step increase system, the cost to the Board for increases, longevity and base wages offer for itself will be 3.2% and for the Union offer, presumably a 4.8% effective increase and a 5.3% lift. Absent a comparison of total wage costs for last year and this year, the arbitrator will make note of this contention of the County on overall costs, but will rely primarily on other factors in determining the reasonableness of wage costs, principally on comparisons with comparable units of government.

The parties have presented several different types of comparisons, and the arbitrator does not find all of them of equal importance value though they are useful to some extent. In this case the arbitrator finds the primary agencies to compare are those major public employers in Dane County - the City of Madison, the State of Wisconsin, and Dane County itself. Of secondary importance are other large counties. Of tertiary importance are other public and private employers. The reason for this conclusion is that the immediate alternate market for comparable Nurses in the Dane County public service are other major employers of this type of professional skill, followed by the other categories of employers.

Following this pattern of determining groups of comparison, the arbitrator finds that in base wages for comparable RN's at the maximum, among the primary group Dane County will rank second for 1984 under both the Union and the County offers, even though the Union offer is \$42 per month higher than the County offer (Table II). The percentage increase between 1981 and 1984 on the monthly rates is smaller for Dane County under both offers than for the other two agencies. In 1981 Dane County RN's ranked higher than RN's of comparable status at the State and in Madison. Thus there is a decline in the relative position of the County as far as RN's are concerned over the period 1981 to 1984 (Table II).

The arbitrator does not find persuasive the argument of the Union that this current arbitration should give strong weight to the fact that in 1986 at the last day of the 1985 contract, the Madison RN's will get a substantial lift. This is a matter to be addressed in any future contract negotiations between the parties for the future years.

With respect to the offers on Public Health Nurses, and using the County's exhibit reducing the payments to hourly compensation, the following table is useful for comparing the primary comparable group:

Table IV

RANK OF DANE COUNTY IN COMPARISON WITH MADISON AND STATE OF WISCONSIN FOR PUBLIC HEALTH NURSE AND REGISTERED NURSE, 1983 AND 1984

Classification	1983		1984 Union		1984 Employer	
	Max.	Total Comp.	Max.	Total Comp.	Max.	Total Comp.
PHN ⁽¹⁾	1	1	2	1	2	1
RN	3	2	3	1	3	1

(1) Only Madison City and Dane County are reported here.

Developing the same data with relation to the conditions in the most populous counties produces this table:

Table V

RANK OF DANE COUNTY IN COMPARISON WITH 11 POPULOUS WISCONSIN COUNTIES FOR PUBLIC HEALTH NURSE AND REGISTERED NURSE, 1983 AND 1984

Classification	1983		1984 Union		1984 Employer	
	Max.	Total Comp.	Max.	Total Comp.	Max.	Total Comp.
PHN	1/12	1/12	2/11	1/11	3/11	1/11
RN	6/11	2/11	4/8	3/8	4/8	3/8

As for Registered Nurses in private employment in Dane County, two agencies - St. Mary's Hospital and one identified only as Employer "A" - paid higher maximums for Registered Nurses than did the County in 1983 and three paid less. In that year, however, the County was first in total average compensation.

In 1984 two private agencies substantially have exceeded both the Union and County offers for maximum pay on an hourly basis, and three pay less and one is not reported.

From the foregoing the evidence is that while the County is high in its total compensation, it is losing rank in maximum base pay.

With respect to the matter of Public Health Nurses in comparison to Public Health Sanitarians, there are two issues. One is that the PHN's do the same kind of work as PHS's and should get like pay; or at least do work of the same level. The other is that it is discriminatory against PHN's who are chiefly women to pay them differently from PHS's who are chiefly men. Concerning the latter point, the arbitrator does not believe that the evidence as presented in this case is adequate enough to conclude that PHN's and PHS's in Dane County do work at a comparative level of skill, effort, and other qualities used to determine comparability. Since the evidence is that the County is now studying this problem, the arbitrator, lacking a full display of evidence, is unwilling to decide that the work of each is such that they should receive comparable pay, and that not to so rule would be to perpetuate a discrimination against PHN's.

As to other comparisons, the arbitrator does not believe a case has been made for comparing Public Health Nurses with Nurse Clinicians as a primary comparison. The arbitrator also finds that the comparisons of the activities of Public Health Nurses in Dane County with Public Health Nurses in the service of the State of Wisconsin are the comparing of disparate activities listed under the same position title. Comparisons then between the Nurse Clinicians and the State of Wisconsin Public Health

Nurses with Dane County Public Health Nurses amounts to a comparison of secondary value, and this based on the fact that all the positions appear to be the next rung upward in a career ladder.

The arbitrator then makes the following table from the data which he considers the most pertinent in comparisons:

Table VI

COMPARISON OF MAXIMUM MONTHLY RATES FOR 1984
FOR PUBLIC HEALTH NURSES IN SELECTED COMMUNITIES (1)

<u>Unit of Govt.</u>	<u>Max. Mo. Rate</u>	<u>Min. Mo. Rate</u>	<u>Max. % Inc.</u>
Madison City	2,170	1,705	1.0
Green Bay City	2,060	1,970	3.5
Milwaukee City	2,000	1,609	0.0
Racine City	1,985	1,651	3.5
Rock County	1,792	1,557	4.0
Dane County			
Union	2,131	1,710	1.0
County	2,090	1,744	3.0

(1) From Union Exhibits 31, 32.

An examination of this table reveals that for PHN's both the Union and County offers produce the second highest rate at minimums and maximums. However the percentage increase is low for the County offer.

While there does not seem to be any need for a catch-up by Dane County with say, Madison or Green Bay, yet the low percentage of the County increase is troubling to this arbitrator, and the arbitrator considers the Union offer slightly more reasonable on this score.

On the matter of comparing PHN's with PHS's, there is a secondary value in comparing the ratios, which indicate that the ratio of PHS's salaries to PHN's in jurisdictions where both exist is less disparate than in Dane County. The arbitrator would regard this increasing disparateness also as a slight weight in favor of the Union's offer.

In sum then on the matter of basic wage offers, the arbitrator believes that there is a weight in favor of the Union offer for the reasons stated, because the low percentage increase proposed by the County tends to cause the County to lose place, but more so for the RN's than the PHN's.

Independent of this conclusion, there is a factor in favor of the Employer that the Union employees in Dane County enjoy superior benefits. Also the total compensation for RN's and PHN's in Dane County tends to rank high, but the County is losing place.

As to the comparison with outside private employees, there is evidence that in one union in the meat packing industry there is pressure toward a reduction of 17.5% in base rates, but on the other hand the evidence is that unemployment is lower in Dane County than elsewhere in the region. A slight weight in favor of the County offer is found in the outside employment situation.

Neither party submitted evidence in the hearing itself about changes in the cost of living. There was a reporting of what some of the changes were in briefs. The arbitrator, lacking total dollar costs of the County for wage increases in all aspects for 1983 and 1984, and lacking information on CPI changes for the same period, can make no judgment on what precise relationships the offers of the parties have in relation to changes in the cost of living.

VII. INSURANCE. The Employer is proposing to put a dollar cap on the group hospital, surgical and major medical plan, while both parties have agreed to a dollar cap on a dental plan. The Union opposes the cap on the hospital, surgical and major medical plan. The cap proposed by the Employer is \$69.44 for the single plan, and \$186.63 for the family and \$192.04 for spouse credit family plan. Currently the Employer pays 100% of the cost for the employee and 90% of the cost for the dependents.

In the past the Employer presented to the employees opportunity to select one of five different providers, four of which are Health Maintenance Organizations. The highest cost plan had a total premium of \$185.00 a month for the family plan toward which the employee paid \$11.57 and the Employer \$173.43 (Emp. 15). Under a plan offered by this same provider, the family plan premium went from \$49.14 in 1974 to a peak of \$196.52 in 1983, from which it dropped to \$185.00 in 1984 (Emp. 15).

The County is asserting that in 1983 it paid \$184 for a total premium cost of \$197.00 and the employee paid \$13.00. If the required monthly premium went to \$220, under the present formula the Employer would pay about \$206, and the employee \$14.00. The County asserts that now it is picking up about 94% of the total premium costs, this being so because it picks up the full cost for a single employee (Emp. 18).

In 1983 when employees had a choice between an HMO and a fee-for-service plan, 96% of the employees who were covered, or 48 employees, took the higher cost fee-for-service plan. In 1984 when there was one fee-for-service plan and four HMO's, 65.5% took the higher cost fee-for-service plan. (Emp. 16)

Currently within the employ of the County, employees in Local 65, AFSCME, and the Attorneys who are organized and two unorganized groups have dollar caps on the health insurance. Recently the Joint Council of Unions in an award by this arbitrator also came under dollar caps. However, the Nurses, Social Workers and non-supervisory law officers do not have dollar caps (Emp. 17).

The County made a comparison in its presentation with health insurance conditions in the State of Wisconsin and in the City of Madison. In the State, the Employer will pay 90% of the gross premium for the single or family standard health insurance plan, or 107% of the gross premium of the least costly alternative qualifying plan, whichever is least. After November 1, 1984, this later figure would be reduced to 105% of the gross premium.

In the City of Madison, there is a dollar cap of \$164.80 for the family plan, and \$60.59 for the single plan (Emp. 19). In the previous year for a Blue Cross standard plan, the City had paid \$180.36 and \$69.66 for the family and single plans respectively (Emp. 22).

The County submitted the text of an award of May 31, 1983, of Arbitrator Bellman supporting the placing of a dollar cap of health insurance in the case of the Local 65 employees of the County (Emp. 21).

The County provided a series of exhibits (Emp. 23 A-H) which dealt with the increasing cost of medical insurance and methods of attempting to reduce those costs by employees sharing part of the cost. It was also argued in some of these exhibits that while such employee cost sharing helped reduce utilization, yet except for some types of diseases, health care of those who participated in such cost sharing plans was not appreciably worse than for those who participated in fee-for-service plans.

The County also stressed the experience of the State of Wisconsin in reducing costs for itself through emphasizing participating in Health Maintenance Organizations, and through working for this end in an agreement with its employees in offering to take up the full cost and more of HMO plans instead of paying all but ten percent for a fee-for-service plan (Emp. 27 A-N).

The County also introduced into the record the transcript relating to the testimony of Thomas Korpady, Director of Health and Disability Benefits in the Department of Employee Trust Funds, State of Wisconsin, in the arbitration between the County and the Dane County Joint Council of Unions on May 24, 1984. The testimony of Mr. Korpady included his opinion that HMO's had produced reduction in costs of health insurance, but that the present County plan which would cost an employee about \$12 a month out-of-pocket expense for the standard plan was probably not enough of an incentive to have employees switch from the more costly fee-for-service standard plan to an HMO plan (Emp. 25 at 122).

The County also provided exhibits originally prepared by Mr. Korpady to the effect that when the employee out-of-pocket expenses went up for a plan, the employees would tend to select a HMO type plan where the expenses were less or absent (Emp. 24).

In its 1982-83 agreement the United Professionals agreed to be bound by a decision which was involved in interest arbitration between the Joint Council of Unions and the County on health care benefits (Un. 14). The matter went before Arbitrator Krinsky who held on April 11, 1983, that the final offer of the Union was to prevail. The issue was the same as that here; whether the County could place a cap on Health and Accident Insurance, the Union holding to the current provisions that the County would pay all of the single employee's insurance and up to 90% of the dependent's cost. Arbitrator Krinsky held among other things that there was no guarantee that placing a ceiling on cost will lower utilization of health services by employees. Another basic argument advanced by the arbitrator for his decision is that he did not view it as his role to change a contractual agreement of long standing especially where other employees of the employer continue to enjoy the benefit (Un. 15).

The Union in its exhibits notes that the County switched from offering a WPS Health Maintenance program for 1983 to offering a Health Incentive Program for 1984 which has an annual deductible of \$100 for the single plan and \$200 for the family plan, and the Union contends that there are other deductibles and reductions in coverage.

The Union, using its comparables as in the case of its wage proposals, indicates that Madison City and Rock County have dollar caps for their health plan, but the Cities of Green Bay, Milwaukee and Racine, and Madison General Hospital and the State of Wisconsin have the system of paying a percentage toward the premiums.

As to whether costs are shared, they are shared in Brown County, Madison City, and Madison General Hospital and the State of Wisconsin, except for certain HMO programs in certain counties. Costs are not shared in Milwaukee, Racine or Rock County (Un. 20). In Milwaukee, Racine and Rock County, the employer pays 100% of the cost of insurance; in Madison, the employer pays 100% of the cheapest HMO; in Green Bay, the employer pays 95% of the costs; at Madison General Hospital, the employer pays 75% of the cost. In the State of Wisconsin, the employer will pay 90% of the standard plan or 105% of the least expensive HMO (Un. 21).

The Union also compared plans prevailing in the Dane County area and the dollar amounts which the employees of the State, the City of Madison, and of Dane County would pay. Top payment by employees for the WPS-HIP plan would be \$11.57. Among the plans offered to County employees, the top plan among HMO's for the City would cost \$12.05 and for the State \$12.80 (Un. 22).

The Union Position Summarized. The Union contends that its final offer more closely achieves the goal of effective health care cost containment, and that the Employer's offer unwittingly promotes long-term health costs. The Union cites one of its witnesses to the affect that at this time the County's proposal would have no incentive to move to an HMO, while the Union's offer would produce some incentive (TR. 149), and especially the incentive program in the WPS-HIP program would encourage people to reach lower costs.

The Union says that the Employer's offer has three take-back new deductible payments, benefits reductions, conversion of a percentage premium to a dollar premium; and the Employer gives no reason for buying-out these take-backs. The current proposed Employer plan has more take-backs than found in the 1982 plan. The County told its employees in October 1983 that it would pay the full-dollar amount of any plan the employee selected, but the County's offer misses the fact that under the HIP plan, County employees will pay deductible payments for the first time. Further some employees will have to use this plan since some families will not be able to select a HMO plan such as in the case where one spouse is seeing a psychiatrist under one HMO and the other spouse is seeing a psychiatrist under another HMO plan.

The Union cites arbitrators, including this arbitrator, to the effect that the Employer must offer sufficient "buy-out" to prevail on a monetary issue, when the Employer is seeking more favorable terms.

The Union says that the Employer has also failed to consider reductions in psychiatric, drug and alcohol treatment benefits under the HIP plan.

The Union notes that among the five largest settled counties and other Madison labor market health care professional units, five units have insurance expressed in terms of percentages, two units have insurance expressed in flat dollar terms.

The Union states that no evidence was presented by the County to suggest that dollar caps have any intrinsic incentive for employees to select HMO options. The incentive for cost containment is created by the difference in relative costs of insurance plans. Of the most comparable units, Madison has a dollar cap and the State a percentage cap. In the future the full-dollar payment for a premium offered by the County could become a new status quo, and this would amount to a regression away from cost containment strategies.

The Union protests that the County never bargained this issue in 1984, and made its proposal at hastily called meetings of the Union in October 1983, pre-dating negotiations. The timing of the County's proposal was linked with the employee enrollment period for the 1984 plans. The County's promise to pay in full had the effect of creating an incentive for the employees not to select an HMO. But by utilizing the HIP plan, the County is encouraging negative incentive strategies by reducing preventive care utilization and ultimately raising the cost.

The Union contrasts the County's conduct with the State in this area. The State by creating a premium cap of 90% of the standard family plan or offering originally 107% of the least expensive HMO, created a sufficient monetary incentive for employees to move to an HMO. The Governor also promised to pay back to all employees whatever savings were generated. The shared contribution feature creates an incentive to opt into a less expensive HMO. The Union provided a table to indicate that the present system was giving an incentive for families to move into an HMO plan between 1983 and 1984.

The Union also holds that its final offer is more comparable to the State of Wisconsin's health premium formulation than the Employer offer, and that there was an incentive already at work under the present system for employees to seek HMO's, but the Employer by offering to pay the full cost reduced that incentive.

The Union argues that the change from percentage health insurance premiums to flat dollar payments alters the balance of power in the negotiations process. The County wants to force employees to pick up all health insurance increases, and this would help weaken the resolve of employees for going to mediation/arbitration, because the employees will not want to hold out making payments until mediation/arbitration occurs.

The Union notes that Arbitrator Krinsky recognized that the potential existed for the County to use dollar amounts as leverage in bargaining for a full contract, that Arbitrator Mueller had stated that the County had not provided evidence as to the causes for the increase. Further Arbitrator Kerkman in a case found that co-insurance may promote employees to delay necessary treatment, and that Arbitrator Petrie disapproved of a situation where employees would have to pay a flat sum toward health insurance premiums during a lengthy impasse and then pay increases after the expiration of the prior contract.

The Union is confident that Arbitrator Bellman's decision would have been different if he had obtained the benefit of the work of the State in health insurance.

The County's Position Summarized. The County states that the purpose in its offer is to effect a meaningful health care cost containment over a period of time without a concomitant reduction in benefits. It notes the very dramatic increase in the cost of health care nationally and in its own experience. Arbitrator Bellman noted this condition in his award; and Arbitrator Krinsky in his award in favor of the Union indicated that further bargaining and a change in circumstances could present an opportunity for the County to achieve its goal. Circumstances have now changed. The County also cites this arbitrator in a case involving the Joint Council of Unions that the interests of the public justify the increased effort on the part of the County to contain costs.

The County holds that patients should have a financial stake in the health care systems, and that they should be offered multiple health insurance plans under increased competition in the medical community, among other things. The County is now addressing these items along with the State and with Madison.

The County cites the experience of the State in seeking to contain costs by creating competition within the Dane County medical community through the establishment of HMO's. This has provided that most health care providers are now associated with HMO's with substantial savings in the costs. Reduction in costs also caused a large movement of state employees into opting for HMO plans as compared to standard plans. Similarly the experience in the City of Madison has paralleled the State experience. The City in 1984 provided a flat dollar fee equal to 100% of the lowest price plan, and there was a considerable movement from standard health plans to HMO plans.

In contrast in Dane County, where there was a fee-for-service standard plan of higher cost, 96% of the employees stayed with this plan in 1983 and 65.5% stayed with it in 1984.

The County is concerned about what it believes will be a future escalation of costs under standard plans and the disproportionate share it would have to pay under any increases where it pays 94% of the full costs now. The County points to the fact that it is offering to pay the full amount of its highest premium cost in 1983 in its offer, and that HMO plans are coming in less expensive than this plan with miniscule differences in benefits between the plans, but substantial cost differentials between them.

The County points to the fact that the instant contract in dispute will have expired at the end of 1984 and arrangements for enrollment in 1985 will already be taking place when the parties will again address the issue of economic incentive in health care plans. The County believes that the employees are not sufficiently aware of the situation at present.

The County asserts that scientific evidence submitted by the County in its exhibits support the County's efforts toward cost containment.

The County notes that use of HMO's does not result in less health care usage, but a different use of medical services with the use of more expensive components reduced.

The County also points to the fact that as far as comparisons are concerned, within the County most employees are now under a dollar cap for health insurance.

The County states that the Union argument on the shift of bargaining power lacks merit. The County never made retroactivity of dollar caps on premium increases an issue even though there are dollar caps on the dental premiums. Though there were dollar caps on Local 65, Highway Department, and the Attorney's unit, the County never utilized these caps as a point of bargaining leverage in 1984. Also the County is offering under its proposal the opportunity of the employees to select the highest priced plan which is \$20 higher than the lowest priced plan. Also the Union has the opportunity to bring any future situations which it thinks are disadvantageous forward in mediation/arbitration.

The County is asserting that contrary to the Union inference, the current HIP plan is somewhat superior to the former HMP plan, although both plans have some benefits better than others. The testimony of the County's expert witness is that the HIP plan is not less than the HMP plan.

The County asserts that there are no substantial take backs in the HIP program as compared to the HMP program, and that in fact there are a number of improvements in the HIP program. The County also says that the Union was aware of insurance as an open issue at the time of bargaining, and that they were advised that the health insurance programs were under revision in October 1983. The Union had ample time to explore the issue.

Discussion. This arbitrator has expressed himself elsewhere in arbitration awards that the problem of control of the increases in health care costs must be addressed. The Union raises the question here as to whether it is best addressed by continuing the present system or going to the dollar cap. The arbitrator is not persuaded that the present system with a cost sharing ratio of 94% to 6%, County-Union sharing, adequately addresses the situation. The County is justified in its concern that if the fee-for-service pattern continues, it will be picking up the costs at a ratio of about \$16 to \$1. The dollar cap presents a means of addressing the situation with the motivation of attempting to keep health care costs below the dollar cap. With the experience of early 1984, it appears that this can be done, but if there is inflation of prices, then the parties will have to address who pays how much of the increased costs. For the present, of course, an award to the Employer would mean that the employee for 1984 would pay no costs for health insurance.

For reasons then of public interest, the County's offer has more merit.

The arbitrator also believes that the evidence among the most comparable units of government, Madison and the State, support the County's offer. The State, while it has a cost sharing feature, is undoubtedly applying a strong incentive to go to HMO's. Although the Union plan here has the principle of cost sharing, the level of sharing at 6% is not a sufficient incentive to get a significant movement toward utilization of less costly health care providers.

As for the prospect of the Union's loss of position in the bargaining process in future negotiations, the arbitrator is not persuaded either that this is the case. The principle of shared payment of a premium may still be argued by the Union or it may propose an increase in the dollar cap to a \$100 percent level. In future negotiations and contract talks, many matters for change can be proposed as the parties see fit, and the arbitrator sees that the Union is in no way restricted in what it may propose for treatment of costs under health and medical insurance, as well as with respect to many other types of matters.

Basically then, the arbitrator restates that the interests of the public would justify the proposal of the County as an increased effort to contain costs in future contract negotiations, although the Union gains an immediate advantage in this contract from the County proposal.

VIII. JOB SECURITY - SUBCONTRACTING AND TRANSFER OF FUNCTIONS. The Union is proposing a provision to Section 1.04 of the agreement on subcontracting, which reads as follows:

"The employer agrees that it will not subcontract work if laid off employees are qualified to perform the work. The Employer further agrees to bargain the impact of subcontracting with the Union."

The Union is also proposing to add a new Section 1.05 to the contract to the effect that if an operation of a department or a function in the department performed by Union employees is transferred, and if the transfer or "takeover" negatively affects the employees, the County will bargain the effects. If there is an impasse in the matter, then the Union wants the right to proceed to mediation/arbitration pursuant to Section 111.70, Stats., and the administrative rule of the WERC.

The Union's concern is that the County is considering changes in functioning two programs, a home care program and its Hospital and Home, both of which would largely eliminate the employment of the Union's membership. Union Exhibit 9 was undated itself, but was stamped June 6, 1984, which discussed the home care program which the document asserted was receiving a wide range of criticism. The criticisms included the charge of excessive costs, the level of support provided by tax dollars, and the general propriety of the County's participation in the provision of home care services given the expansion of private or non-profit providers.

The report listed three options of what might be done with Home Care Services. One of the options was to eliminate County Direct Home Care Services, and this option was recommended by a Home Care subcommittee which reported out the study.

The Home Care subcommittee made a report, also undated, in which it was stated that the Home Care program is very expensive, but also there must be considered as to whether the County has an obligation to the medically indigent, or whether the taxpayers should continue to support a costly program, or whether the future will show an increasing or decreasing home health care need (Un. 10).

Another report, the Final Report of the Dane County Long Term Care Study, concerned the future of the Dane County Hospital and Home. The Hospital and Home has two facilities, Home East and Home West. The committee came to the opinion that the Home East facility should be kept with changes in program, but as for Home West, the report described four models. In one of these models, Home West would be a residential care facility, but non-medical model. Another option was for leasing the facility. Both of these would have a large effect on reducing present employment. A third model was to have the facility operated as a skilled nursing facility primarily for the elderly functioning in cooperation with other agencies like the University of Wisconsin Hospital and Clinics. The program would be altered in this collaborative approach, and would have the least effect on the employees. The fourth model was to keep functioning as is. The committee recommended the third model (Un. 12).

The Union's Position Summarized. The Union is stressing in its offer its two proposed positions on job security. The Union wants to go to mediation/arbitration if necessary to bargain the adverse impact on the employees of subcontracting work out or transferring departments or functions to another agency. In the matter of the transfer of functions, members of the Dane County Joint Council of Unions, AFSCME, enjoy the right to go to mediation/arbitration.

As for subcontracting, the Union states that the County has an almost unlimited right to subcontract since there are no objective limitations other than "sound business considerations". The Union's proposal on subcontracting is not overly restrictive, since it would permit short-term subcontracting in emergency situations.

The Union holds that the interests and welfare of the public and the costs to the public, the comparisons of other contracts, the lawful authority of the Employer and other factors normally or traditionally taken into consideration favor its offer.

The Union contends that current trends in health care financing necessarily mean the growth of a competitive profit-oriented environment which requires new job security protections. It notes among other things that there is a steady erosion in commitment of Federal funds for health care to the poor, disabled and elderly. There is a trend to reward health care operators who provide health care for less with profit increases. The trend is also toward class systems for consumers of health care, with rewards for easy to treat well-to-do paying patients and to ignore the hard-to-care-for and poorer patients. Society may not be prepared for such consequences. The system also favors for-profit, "low-cost" health care operators who will supplant public health care providers and non-profit health care providers.

The Union also contends that the for-profit operators maintain their market position by cutting labor costs including cutting of wages, and this also could include cutting health care services. The cutting of services or of wages and benefits have traditionally not been acceptable to the County and its citizens.

The Union says that its members have always worked efficiently under the conditions of lessening federal funding, but the growing hospital and home deficit resulted in a study on long-term care which recommended a model geriatric unit for the Home West, and which contemplates equalizing Nurse rates at the Home West downward to a level of wages within the University system or State system. The only way to do this is to transfer the nursing function to the State, where the employees cannot bargain wages. This proposal, according to Union testimony, is being given serious consideration by the County Executive's Assistant. Without the proposed clause, the employees would be denied the right to fully bargain the impact of the decision. With the privatization of health care, the underpaid County workers will be replaced by still lower paid private employees.

The Union also notes that the subcommittee of the Board of Health of the County recommended that the County Home Care Program be totally eliminated.

The Union also warns of the dangers of the County relying on private for-profit providers who will steadily raise their prices without being accountable to fiscal controls.

The Union argues that its offer on subcontracting does not unduly restrict the flexibility of management to effectively administer the organization. The evidence is that the County is moving into subcontracting. It contends that under the long-term study almost 50% of the bargaining unit may be subject to layoff through proposals and recommendations already being made. This alone is sufficient for the provisions on subcontracting.

The Union makes the argument that the Employer's proposals to subcontract must be balanced against the Employer's obligation to provide quality nursing home care for the poor and quality home health care for them, and the employee's right to reasonable job security. Based on arbitral standards, the County has no justification or sound business reasons for contracting out Home Health Care. The Union cites Arbitrator Rice to the effect that the equity rights of permanent employees must be recognized when failure to so recognize those rights would lead to practices which could cause the Union's destruction.

The Union says that its proposed restrictions on subcontracting would have no effect on the County's ability to contract out health care services it now utilizes, because the unit is small and the work specialized. The Union is not requiring the Employer to go through mediation-arbitration on subcontracting.

The Union says that if the County subcontracts work with some private agencies with RN wages substantially less than the current Union wage, the Union could grieve it, but it would have difficulty in proving that business considerations did not justify such wage cutting.

The subcontracting language also does not protect the Union from a decision by the County to eliminate home care or lease Home West. The Union cites Arbitrator Michelstetter who supported a Union subcontracting clause placing a clear prohibition on contracting out which caused layoff or reduction in hours.

The Union says that its clause is directed only to permanent and continuing subcontracting and not to emergency contracting. The Union compares the equity rights it is seeking in the subcontracting clause with those which exist in the contract prohibiting use of Limited Term Employees to avoid filling civil service positions among other things. The Union also notes that it is limited to bargaining to impasse during the term of the agreement through a court decision which barred mid-term mediation/arbitration.

The Union also holds that the omission of transfer of County functions language in the County's offer is unreasonable. This omission creates a disparate impact among County employees. The County was aware of the proposal to change conditions at the County home, a proposal which will fall with disparate impact on a female dominated unit. The County proposals related to the Home West, though neutral on the face, actually affect only women, and this is counter to public policy.

As to ongoing matters during the pendency of the arbitration, the Union submitted a letter on September 4, 1984, which contained an article of August 28, 1984, from the Wisconsin State Journal, that reported a position of the County Executive Barry of Dane County on the Dane County Home Care nursing program. The County Executive said that the County is on a phase-out state of the Home Care nursing program. The County might keep the program or co-sponsor it, but not at the same scale of property tax subsidy.

The County's Position on Subcontracting Summarized. The County argues that the Union's subcontracting proposal is not supported by any other factors normally considered in collective bargaining. There is no legitimate problem to be found relative to the subcontracting engaged in by the County which would render the current provision unreasonable or unworkable. The Union has not been disadvantaged by the subcontracting presently engaged in by the County. The County has subcontracted for services similar to those provided by the bargaining unit and no County employee has been laid off as a result of these contracts, or any member unemployed because of them.

The Union's reason for its proposal is that there has been a sub-committee report on the County home health services, which if discontinued would effect the Union. However the Board of Health did not act on the sub-committee report, and the County still has a continuing obligation under the State to provide for home care for indigents. The Union's allegations then are speculative. Further the County did not initiate the study, but it came from the attention given to the service by the media. Business necessity also required the County to make the study since home care visits averaged \$78 and the County was being reimbursed by Medicare only to the amount of \$50. In any event private contractors are acquiring more of the business and pay a lower hourly wage with lesser benefits.

If there is any change in the County's offering home care, this will entail a long-term effort extending beyond the life of the current agreement and nothing can be realistically accomplished before the end of fiscal 1984. The parties will then be back bargaining.

The County also holds that the subcontracting proposal of the Union is unduly restrictive and unreasonable. It does not reasonably affect the alleged problem. Under the rulings of the Wisconsin Employment Relations Commission, subcontracting decisions are mandatory subjects for bargaining if they have a primary relationship to the matters of wages, hours and conditions of employees only, and not to whether they are related to the formation or management of public policy. In Dane County since 1968, the current language in AFSCME contracts has not given the County an unfettered right to subcontract. The County must consider the impact of subcontracting on the employment security of the employees, subcontract only when it is required by sound business considerations; use employees as much as practicable for work on operations, and notify the Union of possible subcontracting. Thus the elements of good faith on the part of management in subcontracting decisions are in the contract.

The Union proposal is far more restrictive since it forbids subcontracting if any employee is on layoff. This is a proposal to require impact negotiations for all decisions to subcontract whether they are related to wages, hours, and conditions of employment or public policy. This is a radical departure from previous conditions.

The County believes that compliance with the Union proposal would absolutely prevent the County from subcontracting if a qualified employee were on layoff. All employees on layoff would have to be hired before any subcontracting. The County would not subcontract if any employee were on layoff and if none were, it still would have to go into impact negotiations. If one Nurse were on layoff, the County could not negotiate with any contractual service which could be providing essentially a variety of other functions with other personnel.

The County says that the Union has not been able to demonstrate that the County violated the terms of the present contract or acted in bad faith under the subcontracting provisions, and subcontracting has not had any negative effect on the employment of Union members. The County believes that its ability to subcontract, though of long standing, would evaporate under the Union proposal.

The County also holds that comparable contracts within the County and City and the State favor maintenance of the status quo. None of the other major units of government in Dane County have language like that proposed by the Union; and within the County, the County has a complete latitude to subcontract under the Attorneys' contract and the Law Enforcement Nonsupervisory Employees' contract. Madison has the unfettered right to subcontract under its contracts. No compelling need to change the present more favorable contract is in evidence.

The County Position on a Transfer of Functions Clause Summarized. The County also contends that the factors normally taken into consideration in arbitration do not support the Union proposal to add a transfer of County functions provision to the agreement.

No legitimate problem relative to the transfer of functions has been established by the evidence. The County never transferred a function in whole or part to another unit of government. The only support cited by the Union is a committee report on the Dane County Home. This report is a planning document addressing the quality of care and life in this facility. Particularly, the report favored a model of operation which would have the least impact on the staff at Home West. No decision has been made on the future, and this must be made by the County Board.

The language proposed by the Union does not exist within the Dane County Social Service contract, the Law Enforcement Nonsupervisory contract, and the Law Enforcement Supervisory contract. The Joint Council of Unions, Local 65, and the Attorneys' Association have language relative to the issue, but none are as far-reaching as that proposed by this Union.

Although the Union contends that it was proposing language identical to that in the Joint Council contract, an analysis of the provisions shows that they are different. The Joint Council of Unions has a clause permitting the right to petition for mediation/arbitration pursuant to procedures contained in Section 111.70 of the statutes as determined by the Wisconsin Employment Relations Commission. Under the Union proposal here the right to mediation/arbitration exists pursuant to the statutes at 111.70 and to the administrative rules of the WERC. Thus the right to proceed is under the case law determined by the WERC.

There is a crucial difference between these two provisions. In the case of the Joint Council, the matter of proceeding to mediation/arbitration on the transfer of functions was included in the contract while the parties were in dispute of an issue like this with another Union under a former Handicapped Children's Education Board. Subsequently the WERC with later court affirmation ruled that the County did not have to yield to mediation/arbitration during the life of the contract on an issue such as this. Under the present proposal the Union's language would compel the County to under go mediation/arbitration during the life of the contract.

In the case of the City of Madison, the City has the right to transfer functions, and the State of Wisconsin also has the right to transfer provided it is not done for the purpose of undermining the Union or discriminating against its members.

The County asserts that a newspaper article submitted by the Union under the date of August 28, 1984, from the Wisconsin State Journal on the future of the Home Care program does not prove that the County intends to privatize this program and health care in general. The article bears only on home health care and has no bearing on the multiplicity of other services. Also the ultimate decision is not made by any individual but by the County Board. Statements of the County Executive do not bind the County Board, and the County Executive has not fully decided what he will recommend. However the article shows that the program is steadily declining, and it is the consumer who will determine the number of people ultimately to be serviced.

Discussion - Subcontracting. The matter of the proposed Union subcontracting proposal will be considered first. The Union is proposing two changes. One is the sentence that the Employer agrees that it will not subcontract work if laid off employees are qualified to perform the work. The other is that the Employer further agrees to bargain the impact of subcontracting with the Union.

The arbitrator believes that the second provision, that of the Employer bargaining over the impact of subcontracting with the Union where the Union is affected is reasonable. However, the arbitrator believes that the provision in the proposed subcontracting clause which bars the Employer from any subcontracting if the laid off employees are qualified to perform the work is unduly restrictive, because the proposed language would affect a large number of types of contracts in which the vendors main purpose is to perform specialized functions which functions, however, may include functions or types of work done by Union members.

The arbitrator is of the opinion that the Union members now have a substantial degree of protection in the existing contract wherein the Employer must consider the impact on the employment security of its employees, intend to use Union employees as much as practical for work on the operations involved, contract out only then the course is required by sound business considerations, and in all events, notify the Union. Under such terms and provisions the Union has an opportunity to challenge subcontracting on a broad front.

The Union proposal also does not meet the standards of comparability with other contracts in its proposal here on limiting of subcontracting to the condition where there are no layoffs.

That there may be layoffs of County employees in the health care field is not to be denied here. The evidence is that the Home Care service is being seriously considered for either elimination or the rendering of less service, and some changes seem to be indicated for the Home West which could mean a transfer of functions to some other agency with the elimination of Union personnel. The arbitrator recognizes the seriousness of the possibilities to the Union. However, the barring of subcontracting while employees are on layoff, potentially on a large scale, would be too drastic a restriction placed on the capacity of the County to meet other requirements of service, particularly when in the opinion of the arbitrator the Union has several avenues of strong challenge to impending layoffs under the existing contract language.

The County submitted a list of purchase of service contracts for 1984 which included the following agencies:

- Planned Parenthood
- Saint Colletta
- Saint Rose
- Saint Aemilian
- Saint Charles
- Stoughton Hospital
- Dane County Public Health

Visiting Nurse Service
Independent Living
Colonial Club
Tellurian Community
Dane County Hospital and Home
Dane County Mental Health
Goodwill Industries
Madison Association of Retired Citizens
Madison General Hospital
Madison Opportunity Center
Methodist Hospital
Saint Mary's
Stoughton Hospital
United Cerebral Palsy
University Hospital and Clinics
Sisters of Mary Inc.
Health Care Associate

A review of the services apparently offered by the institutions based on their names would indicate that there is the possibility that some of them, though not all, might have employees of the same category as found in the Union. However the type of service rendered under the contract is not disclosed, and the arbitrator is of the opinion that since the Union has not protested any of the contracts to the present, it is not being adversely affected. To subject all of the above types of contracts to a provision that no Union employee would be on layoff seems to the arbitrator excessively restrictive and conceivably could seriously affect the Employer's ability to deliver specialized types of service through service contracts.

The Union is arguing that not many contracts would be affected by its proposal to limit subcontracting. The arbitrator does not know if this is the case, or would be the case in the future.

On the basis then of the criteria of public interest and comparability, the County offer is more reasonable.

Discussion - Transfer of Functions. On the matter of the transfer of functions language, there is a likelihood that some functions may be transferred if the Home West administration policy and goals are changed. The arbitrator believes that the language proposed by the Union is not comparable to the language found in the other County contracts which have transfer of functions language, in that the provision of the Union would permit bargaining over the impact of a transfer (or elimination of functions) within the life of the contract if the Wisconsin Employment Relations Commission were to lend the use of its service to mediation/arbitration.

The arbitrator believes that the Union should have a right to negotiate the impact of a transfer of functions which eliminates its members from positions, and therefore believes that the Union offer here, despite the dissimilarity of its provisions exactly with those of the other County Unions which have such a provision, is nevertheless also in the public interest.

IX. SUMMARY OF FINDING AND CONCLUSIONS OF THE ARBITRATOR.

1. The County has the ability to meet the costs of either offer.
2. The arbitrator finds that the primary comparison group of governmental units in this matter consists of the major public employers in Dane County, the City of Madison, the State of Wisconsin and Dane County itself. A second group of governmental units for comparison consists of major counties. A tertiary group consists of smaller counties and private employers around Dane County.
3. Though Dane County has been in the high range among comparable groups for total compensation, it is losing rank in base pay for RN's.

4. The arbitrator does not find the arguments of the Union that Public Health Nurses should get the same pay as Public Sanitarians for reasons of like work and for reasons of possible discrimination on the basis of sex to be persuasively supported by the evidence.

5. On the basis of such comparison data as is available for Public Health Nurse wages, though there is not strong evidence indicating that Dane County needs to catch up, yet the percentage increase offered by the County does not meet the percentage increases given in the comparison municipalities.

6. There is also evidence that where Public Health Nurses and Public Health Sanitarians are employed in the same governmental unit, the ratio of their wages shows a less disparity in favor of the Sanitarians than does that in Dane County where the disparity grows greater.

7. On the whole, the arbitrator finds the Union offer on wages more reasonable than the County offer.

8. The evidence is that the employees of Dane County enjoy superior benefits and fringes to those found in other comparable jurisdictions.

9. There is a slight weight in favor of the County's offer when wages in the private sector and wage conditions there are considered.

10. Neither party presented any conclusive evidence upon which the arbitrator could base a judgment on how the changes in wages proposed for 1984 would compare to the changes in the cost of living, particularly as represented in the changes in a consumer price index.

11. In the matter of health insurance, the arbitrator believes that the County's proposal is more in the public interest, and also is more comparable to what is developing in the two most comparable units of government, the City of Madison and the State of Wisconsin.

12. On the matter of the additions to the subcontracting clause proposed by the Union, although there could be substantial layoffs in the future both in Home Care and at Home West, and while the arbitrator believes that the Union should have the right to bargain the impact of subcontracting, the provision to prevent subcontracting as long as any employee is on layoff is too drastic a change and therefore not in the public interest. Also there is no support from comparable language found in other contracts. The Union has strong opportunities to challenge subcontracting decisions under present contract language.

13. On the matter of an addition of transfer of functions language in the contract as proposed by the Union, the arbitrator is of the opinion that in light of possible major impending changes at the Home West, the Union proposal is in the public interest despite its lack of full similarity with similar clauses existing in other comparable contracts.

14. Of the above matters some are considered more weighty than others in the opinion of the arbitrator; these matters include base wages, and the transfer of functions clause which favor the Union, and the overall compensation, total benefits, the health insurance proposal and the subcontracting provision which are factors in favor of the Employer's offer. The arbitrator considers the subcontracting provision to be especially weighty in this matter. On the whole then, the County offer appears to meet more of the statutory factors to be considered, and the following award is made.

X. AWARD. The final offer of Dane County should be included in the Agreement between it and the United Professionals for Quality Health Care.



FRANK P. ZEIDLER
MEDIATOR/ARBITRATOR

DATE October 24, 1984