

**IN THE MATTER OF ARBITRATION
BETWEEN**

**MINNEAPOLIS PROFESSIONAL EMPLOYEES
ASSOCIATION**

Union,

and

**MINNEAPOLIS PARK AND RECREATION
BOARD,**

Employer

**ARBITRATION DECISION AND
AWARD**

BMS Case No. 06-PN-30

Arbitrator:

Andrea Mitau Kircher

Date and Place of Hearing:

December 7, 2005
Bureau of Mediation Services
St. Paul, Minnesota

Date Record Closed:

December 21, 2005

Date of Award:

January 20, 2006

APPEARANCES

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INTRODUCTION

In late 2004, the Minneapolis Professional Employees Association (“Union”) and the Minneapolis Park and Recreation Board (“Employer”) entered into negotiations over a successor contract and eventually reached agreement. The new labor agreement (“Contract”) is effective

from January 1, 2005 through December 31, 2006. In a letter of understanding, the parties decided to address one unresolved issue through mediation, or in the event that mediation failed, through binding interest arbitration.

On or about August 3, 2005, the parties petitioned the Bureau of Mediation Services for interest arbitration. The Bureau certified the matter for arbitration, and the parties duly submitted their final positions.

A hearing was conducted on December 7, 2005 at the offices of the Bureau in St. Paul, Minnesota. At the hearing the arbitrator accepted exhibits into the record, witnesses were sworn, and their testimony was subject to cross-examination. Post-hearing briefs were submitted December 21, 2005, and the record closed upon receipt of the briefs.

ISSUES

The Bureau certified the following issues for arbitration:

1. Compensation Year 1 – Number of Steps Salary Schedule for Environmental Programs Coordinator – Art. 10, App. A
2. Compensation Year 2 – Number of Steps Salary Schedule for Environmental Programs Coordinator – Article 10, App. A.

The issue can also be summarized as: Should the salary schedule for the job classification Environment Programs Coordinator include an additional salary step so that for each year of the Contract, the female incumbents of the job class will be paid a salary equivalent to that of the male incumbent of the job Community Forestry Coordinator?

FACTS

This dispute concerns salary schedule comparison between two job classifications, Environment Programs Coordinator (“EPC”) and Community Forestry Coordinator (“CFC”). The CFC position is a single incumbent job, and has traditionally been held by a male employee. It is not a bargaining unit position. When the job title was created in 1998, it was compared to

the EPC job and placed on a salary schedule identical to that of the EPC job. On July 1, 2000 the two jobs both had a seven step pay scale and the same salary across all steps.

During the summer and fall of 2000, the parties negotiated for renewal of the Labor Agreement. The negotiations resulted in deleting the bottom two steps in the EPC salary schedule which reduced the number of steps from seven to five, effective January 1, 2001.¹ Thus, the salary schedule of the EPC job began to diverge from the CFC job, which continued to be set by the Employer alone through its salary plan for unrepresented employees. Since 2001, the Union has proposed during labor negotiations that additional pay steps be added to the top of salary schedules for all job classifications covered by the Contract, but the Employer has refused to accept this proposal.

During the summer of 2003, Mary Lerman, a long time EPC, learned that the male employee holding the CFC position had obtained a sixth step pay increase, effective January 1, 2002. Ms. Lerman believes that the skills and responsibilities of her job classification are identical to or greater than the skills and responsibilities required of the CFC job. To exacerbate matters, the EPC's were handling some additional managerial duties, such as budget preparation, because the manager position was vacant. Ms. Lerman believes it was unreasonable for the EPC's to be paid less than the CFC under these circumstances and suspected that the pay discrepancy was based on gender discrimination, because the EPC's are female, and the CFC is male. The job classification point total for the EPC job is either slightly higher or slightly lower than for the CFC job based on the "Cresap System" used by the City of Minneapolis and the Employer to classify and evaluate jobs. The Cresap System places job classes with similar job

¹ The EPC job was not singled out for this salary schedule change. Other job classifications covered by this labor agreement were subject to the same salary schedule change.

points in different “Grades” that are comparable for purposes of Pay Equity. Both of the jobs in question are in Grade 8.

Ms. Lerman took various steps to call the Employer’s attention to the salary discrepancy between the EPC and CFC job classes, but was unsuccessful in bringing about the change she sought.² The Employer representatives she spoke to advised her that a salary schedule change for union employees could only be accomplished through labor negotiations.

The Employer did not agree to additional step increases for employees covered by the labor agreement for the next contracts, although the Union consistently brought the issue to the bargaining table. The 2005-06 labor agreement provided a 2% across-the-board salary increase for all employees, but no additional step increases. Although the Employer did decide to undertake an overall review of all job classifications due to reorganization and inconsistencies that had arisen, it declined to address this single job classification/salary issue separately.

UNION POSITION

The Union argues that a sixth step should be awarded to correct a gender equity disparity in compensation created by the Employer when it changed the salary schedules to give the male-dominated position of CFC an additional salary step. The Union dates this discrepancy to January 1, 2001, and seeks retroactive compensation. The Union maintains that nothing changed between the two positions to warrant creating the disparity in compensation at that time, so the Employer’s action violated Minn. Stat. § 471.993, which requires that job classes and salaries be reasonably related based on “skill, effort, responsibility, [and] working conditions...”. The Union claims that internal equity requires that incumbents of these two jobs be paid the same, so the arbitrator should add a sixth step to the EPC salary schedule.

² In 2004, Ms. Lerman recalled meeting with then interim Park and Recreation Board Superintendent Gurban, and explaining the issue to him. She remembered that he agreed the situation she complained of was unfair and should be changed.

EMPLOYER POSITION

The Employer claims that the negotiated salary schedule now has five steps and that the Union has not presented sufficient evidence for an arbitrator to conclude that an additional step should be added to the salary schedule for EPC's. It argues that such a change would be especially inappropriate now when it has just undertaken a new job evaluation study of all its jobs, and this study might result in changes in the overall job classification points for both classifications the Union seeks to compare. The Employer also argues first, that it is in compliance with the Pay Equity Act; second, that the Pay Equity Act does not require the result sought by the Union; and third, neither internal nor external considerations demand pay equity between these two particular job classes.

DISCUSSION AND DECISION

The goal of interest arbitration has been described as an attempt to ascertain the agreement the parties themselves might have reached if they had been able to conclude a voluntary settlement. More specific and often quoted arbitral criteria which provide a framework for consideration in impasse arbitration are these: ability to pay, statutory considerations, internal comparables, and external market conditions. Analysis of the facts based on these criteria provides a rational basis for the arbitration decision. The party proposing change is generally considered to have the burden of proof, demonstrating the reasonableness of change by clear and compelling evidence.

1. Ability to Pay.

Ability to pay is not a decisive factor in this case, and neither party has claimed that it is. If the Union's proposal were awarded rather than the Employer's, the difference would be a small component of the budget.

2. External Comparisons.

The Employer points out that external salary comparisons should be considered because the Pay Equity Act specifically provides that, in establishing compensation plans, compensation must bear a “reasonable relationship to similar positions outside of that particular political subdivision’s employment.”³ Evidence offered by the Employer indicates that pay for the EPC job is not out of line compared to jobs in the same pay grade in the Cities of Minneapolis and St. Paul. The Union argues that external comparisons are unnecessary, or at least, that the greatest weight should be given to internal comparisons. Since the Union seeks change and does not rely on external comparables, further analysis of this factor is unnecessary.

3. Statutory Considerations and Internal Comparables.

Statutory considerations play a role in resolution of this matter, especially the interplay between the Local Government Pay Equity Act, Minn. Stat. §§ 471.991-999 (2004) (“LGPEA” or “Pay Equity Act”) and the Public Employment Labor Relations Act, Minn. Stat. Ch. 179A (2004) (“PELRA”). Since the enactment of the LGPEA, arbitrators must consider equitable compensation in addition to traditional collective bargaining factors when issuing an interest arbitration award.⁴

The Union argues that the standards of the Pay Equity Act set out in 471.993 are the important factors to consider:

Subdivision 1. Assurance of reasonable relationship. In preparing management negotiation positions for compensation established through collective bargaining... [the Employer] shall assure that:

(1) compensation for positions in the classified civil service...bear reasonable relationship to one another;

³ Employer’s Post-hearing Brief at 9.

⁴ The Pay Equity Act, Minn. Stat. § 471.992, Subd. 2 provides, “[i]n all interest arbitration involving a class...the arbitrator shall consider the equitable compensation relationship standards established in this section and the standards established under section 471.993, together with other standards appropriate to interest arbitration.”

- (2) compensation for positions bear reasonable relationship to similar positions outside of that particular political subdivision's employment; and
- (3) compensation for positions within the employer's work force bear reasonable relationship among related job classes and among various levels within the same occupational group.

Subdivision 2. Reasonable relationship defined. For purposes of subdivision 1, compensation for positions bear [sic] "reasonable relationship" to one another if:

- (1) the compensation for positions which require comparable skill, effort, responsibility, working conditions, and other relevant work-related criteria is comparable; and
- (2) the compensation for positions which require differing skill, effort, responsibility, working conditions, and other relevant work-related criteria is proportional to the skill, effort, responsibility, working conditions, and other relevant work-related criteria required.

(Emphasis added.)

The Union asks the arbitrator to read this language to require a 6th step be added to the EPC job schedule so that the employees in the female dominated EPC job class are paid the same as the employee in the male dominated CFC job class. There are several reasons why this argument cannot prevail.

First, despite appearances, the above-quoted statute does not require any two particular jobs that are comparable to be paid the same. Instead, the statute strives for "reasonable relationships". The statutory goal, affected by legislative compromise, is to require each public employer to establish a job classification system which measures and categorizes jobs on an objective basis. Payment of employees in all female-dominated job classes must meet certain statistical tests designed to assure that pay for 80 percent of the female-dominated job classes is reasonably related to pay for male-dominated classes, as defined by the LGPEA and the Rules of the Minnesota Department of Employee Relations. *See*, LGPEA and Minn. Rules Ch. 3920. The fact that the Employer added a pay step to one male dominated job comparable to the EPC job does not establish a violation of the Pay Equity Act.

Insofar as the Union's argument is that these two comparable jobs must be paid the same because arbitral precedent favors internal equity, the analysis is not persuasive. For pay equity purposes, all Park Board Grade 8 positions are considered comparable.⁵ Grade 8 job evaluation points under the current system ranges from 363 to 388. The EPC job is rated at 378 points and is approximately in the middle by annual salary at the top step, excluding the building trades.⁶ For example, the job "Sup. Payroll/Accounts" is assessed at 363 points and paid an annual salary more than four thousand dollars higher than the EPC job rated at 378 points.⁷ Reviewing the selected data in Employer exhibits indicates that the system is not perfect, but it is not required to be.

Further, all the employees covered by this Contract received the same across-the-board pay increase, and none of those jobs currently has a six step salary schedule. Internal equity would not be served by granting a 6th step to the EPC job, when another job in the same pay grade, *i.e.*, Recreation Supervisor, a job evaluated at 375 points, compared with the EPC's 378 points, is already paid \$950.00 per year less than the EPC jobs. Reasons of internal equity do not support awarding a 6th step pay increase for the EPC job. The Employer's decision to undertake a new job evaluation study across the board is a reasonable response to problems of perceived inequity.

Even if it is assumed that the two jobs should be paid the same based on their job duties and responsibilities as carefully compiled and presented by Ms. Lerman, there is no evidence that the reason for the pay discrepancy is sex discrimination rather than the normal give and take of labor negotiations. One of the jobs compared is in the bargaining unit and one is not. The parties negotiated a five step salary schedule for employees in the bargaining unit. The

⁵ Employer's Post-hearing Brief at 5.

⁶ Employer's Exhibit 19.

⁷ *Id.*

Employer is not required to compensate unrepresented employees such as the CFC based on the same schedule it negotiated with the union. It is common for labor negotiations under PELRA to produce differences among bargaining units and between employees covered by labor agreements and those who are not.

CONCLUSION

Because interest arbitration is not designed to supplant collective bargaining, but to encourage it, an arbitrator's decision should be compatible with the contract the parties themselves might have reached through negotiations, had their negotiations reached a successful conclusion. During labor negotiations for at least the last two contracts, the Union has unsuccessfully sought a sixth step for the EPC salary schedule. The most likely outcome of this negotiation process would have been the same, since there is no evidence that anything has changed to make the Union's argument more persuasive.

AWARD

The Employer's final position is awarded.

Dated: January 20, 2006

/s/

Andrea Mitau Kircher
Arbitrator