

No. A06-1826

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STATE OF MINNESOTA

IN COURT OF APPEALS

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Minnesota Association of Professional Employees,

Appellant,

vs.

Cal Ludeman, Commissioner of Department of Employee Relations  
for the State of Minnesota and the State of Minnesota,

Respondents.

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**RESPONDENT'S BRIEF**

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**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF AUTHORITIES .....	ii
LEGAL ISSUES .....	1
STATEMENT OF THE CASE .....	2
STATEMENT OF FACTS.....	2
ARGUMENT .....	4
I.    AS A MATTER OF STATUTORY CONSTRUCTION, THE LEGISLATURE DID NOT MANDATE THE COMMISSIONER OF DOER TO ESTABLISH SALARIES BASED UPON HAY RATING. ....	4
A.    Dismissal Is Appropriate Because The Plain Meaning of Minn. Stat. § 43A.01 Denies The Declaration Sought By Appellant.....	5
1.    Unambiguous statutory language establishes that no mandate exists.....	5
B.    Unambiguous Language Denies An Intent To Establish Hay Points As A Mandate .....	6
C.    Appellant Did Not Raise Its Ability To Present Evidence Below.....	9
D.    The Court Appropriately Interpreted “Equitable”. ....	9
E.    The Mandate Envisioned By Appellant Is Inconsistent With Other Statutes.....	10
F.    The District Court’s Decision Reflects Sound Public Policy .....	12
CONCLUSION .....	13

## TABLE OF AUTHORITIES

	Page
<b>STATE CASES</b>	
Armstrong v. Civil Service Comm'n, 498 N.W.2d 471 (Minn. Ct. App. 1993) .....	7, 8
Dicks v. State of Minnesota, 627 N.W.2d 334 (Minn. Ct. App. 2001) .....	11
Pole v. Trudeau, 516 N.W.2d 217 (Minn. Ct. App. 1994) .....	9
<b>STATE STATUTES</b>	
Minn. Stat. § 3.855 .....	4, 11
Minn. Stat. § 43.01 .....	3, 6, 9, 11
Minn. Stat. § 43.18 .....	8
Minn. Stat. § 43A.01 .....	passim
Minn. Stat. § 43A.05 .....	1, 3, 10, 11
Minn. Stat. § 43A.18 .....	3, 4, 8, 11
Minn. Stat. § 471.992 .....	5, 7
Minn. Stat. § 645.16 .....	6, 7, 11
Minn. Stat. § 645.18 .....	11
Minn. Stat. § 645.26 .....	11
Minn. Stat. ch. 179A .....	4, 11

## LEGAL ISSUES

- I. Whether the District Court correctly determined, based upon unambiguous statutory language, that Appellant failed to state a claim upon which relief could be granted.

The District Court held in the affirmative.

Apposite statutes: Minn. Stat. § 43A.01, subd. 3.

Minn. Stat. § 43A.05, subds. 5 and 6.

## STATEMENT OF THE CASE

On April 7, 2006, Appellant Minnesota Association of Professional Employees (“MAPE”) served and filed the Complaint in the above captioned case. The Complaint is comprised of one count for a declaratory judgment that Defendants State of Minnesota and Cal Ludeman, then Commissioner of the Department of Employee Relations, are mandated to compensate all State of Minnesota employees represented by MAPE on the basis of comparable worth as determined by a rating system devised by a state consultant, The Hay Group. On or about April 24, 2006, Respondents filed and served their Motion to Dismiss. The District Court granted Respondents’ motion by Order dated August 4, 2006. Judgment was duly entered on August 23, 2006. Appellant filed its Notice of Appeal on September 26, 2006.

## STATEMENT OF FACTS

MAPE is the exclusive agent for a number of executive branch agencies. (Complaint ¶ 1.) Cal Ludeman is the Commissioner of the Department of Employee Relations. As such, he is the chief personnel and labor relations manager for the State of Minnesota. (Complaint ¶ 2.)

In 1982, the Legislature passed Minn. Stat. § 43A.01, subd. 3, which provides:

Subd. 3. **Equitable compensation relationships.** It is the policy of this state to attempt to establish equitable compensation relationships between female-dominated, male-dominated, and balanced classes of employees in the executive branch. Compensation relationships are equitable within the meaning of this subdivision when the primary consideration in negotiating, establishing, recommending, and approving

total compensation is comparability of the value of the work in relationship to other positions in the executive branch.

Minn. Stat. § 43A.05, subs. 5 and 6 provide the enforcement mechanism for the legislative policy established in Minn. Stat. § 43.01, subd. 3. Minn. Stat. § 43A.05, subd. 5 and 6 provide as follows:

Subd. 5. **Comparability adjustments.** The commissioner shall compile, subject to availability of funds and personnel, and submit to the Legislative Coordinating Commission by January 1 of each odd-numbered year a list showing, by bargaining unit, and by plan for executive branch employees covered by a plan established under section 43A.18, *those female-dominated classes and those male-dominated classes in state civil service for which a compensation inequity exists based on comparability of the value of the work.* The commissioner shall also submit to the Legislative Coordinating Commission, along with the list, an estimate of the appropriation necessary for providing comparability adjustments for classes on the list. The commission shall review and approve, disapprove, or modify the list and proposed appropriation. The commission's action must be submitted to the full legislature. The full legislature may approve, reject, or modify the commission's action. The commission shall show the distribution of the proposed appropriation among the bargaining units and among the plans established under 43A.18. Each bargaining unit and each plan must be allocated that proportion of the total proposed appropriation that equals the cost of providing adjustments for the positions in the unit or plan approved by the commission for comparability adjustments divided by the total cost of providing adjustments for all positions on the list approved by the commission for comparability adjustments. Distribution of any appropriated funds within each bargaining unit or plan must be determined by collective bargaining agreements or by plans.

Subd. 6. **Allocation.** The amount recommended by the Legislative Coordinating Commission pursuant to subdivision 5 to make comparability adjustments shall be submitted to the full legislature by March 1 of each odd-numbered year. The legislature may accept, reject, or modify the amount recommended. The commissioner of finance, in consultation with the commissioner of employee relations, shall allocate the amount appropriated by the legislature, on a pro rata basis, if necessary, to the

proper accounts for distribution to incumbents of classes which have been approved for comparability adjustments.

Funds appropriated for purposes of comparability adjustments for state employees shall be drawn exclusively from and shall not be in addition to the funds appropriated for salary supplements or other employee compensation. Funds not used for purposes of comparability adjustments shall revert to the appropriate fund.

(Emphasis added.)

Salaries for MAPE employees are negotiated between MAPE and the State of Minnesota pursuant to Minn. Stat. ch. 179A and salaries are to be recommended by Defendant Cal Ludeman in conformance with Minn. Stat. § 43A.18, subd. 18. Minn. Stat. § 3.855 requires that all collective bargaining agreements be approved by the Legislative Coordinating Committee and the full legislature.

#### ARGUMENT

**I. AS A MATTER OF STATUTORY CONSTRUCTION, THE LEGISLATURE DID NOT MANDATE THE COMMISSIONER OF DOER TO ESTABLISH SALARIES BASED UPON HAY RATING.**

Appellant seeks a declaration from the Court that the State of Minnesota is obligated by Minn. Stat. § 43A.01, subd. 3, to pay MAPE employees strictly according to a study developed by a consultant to the State, the Hay group. (Complaint ¶ 13.) In a predecessor pleading, Appellant pleads that the second declaration would raise the salaries of nearly 80 percent of MAPE covered employees. (Complaint ¶ 11.) As the District Court held, the plain meaning of Minn. Stat. § 43A.01, subd. 3 contradicts Appellant's declaration. Consequently, the District Court should be affirmed.

**A. Dismissal Is Appropriate Because The Plain Meaning of Minn. Stat. § 43A.01 Denies The Declaration Sought By Appellant.**

**1. Unambiguous statutory language establishes that no mandate exists.**

First, Minn. Stat. § 43A.01, subd. 3, establishes no mandate that the State of Minnesota pay its employees based upon comparable worth as contended by Appellant. The statutory provision does not establish positive law. Rather, by its clear and unambiguous terms, the statute announces a legislative policy. Moreover, by its clear and unambiguous terms, the Legislative policy does not express a mandate to the executive branch. Rather, as the District Court held, this provision employs language unmistakably indicating discretion: to wit, that the state “attempt to establish equitable compensation relationships.” This clear language of discretion denies the intent to create the mandate imputed to the Legislature by Appellant.<sup>1</sup> In addition, Minn. Stat. § 43A.01 reads that:

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<sup>1</sup> Indeed, when the Legislature desires to issue a mandate involving comparable worth, it knows how to do so. Minn. Stat. § 471.992 provides:

471.992 Equitable compensation relationships. Subdivision 1. Establishment. Subject to sections 179A.01 to 179A.25 and sections 177.41 to 177.44 but notwithstanding any other law to the contrary, every political subdivision of this state shall establish equitable compensation relationships between female-dominated, male-dominated, and balanced classes of employees in order to eliminate sex-based wage disparities in public employment in this state. A primary consideration in negotiating, establishing, recommending, and approving compensation is comparable work value in relationship to other employee positions within the political subdivision. This law may not be construed to limit the ability of the parties to collectively bargain in good faith.

(Emphasis added.) The procedural detail of Minn. Stat. § 471.992 should be contrasted with the general policy announcement of Minn. Stat. § 43A.01, subd. 3.

“compensation relationships are equitable within the meaning of this subdivision when the *primary* consideration . . . is comparability of the value of the work. . . .” (Emphasis added.)

By indicating that comparable value was the primary consideration the legislature recognized that other factors may legitimately affect value setting; thus negating any concept that comparable worth is the absolute criteria.<sup>2</sup> Finally, by its clear and unambiguous terms, the section announces a legislative policy only that wages for female dominated job classes be paid equitably with male dominated job classes.<sup>3</sup> Consequently, Minn. Stat. § 43A.01, subd. 3, does not mandate the State to establish equitable salaries among all MAPE job classifications.

**B. Unambiguous Language Denies An Intent To Establish Hay Points As A Mandate**

While MAPE requests that the Court declare that the State must pay executive branch salaries pursuant to ratings assigned by The Hay Group, there is no mention of The Hay Group or Hay rating in Minn. Stat. § 43.01, subd. 3 or any other Minnesota statute involving compensation. In the absence of such a reference, there is no indication

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<sup>2</sup> This same language also refutes Appellant’s argument that the Court’s ruling fails to give effect to the entire situation. (App. Brief., p. 10.) Had the Court adopted Appellant’s declaration that Hay points are the *absolute* salary factors, it would have failed to give effect to the entire statute.

<sup>3</sup> Minn. Stat. § 645.16 provides in part “when the words of a law in their application to an existing situation are clear and without ambiguity ‘the letter of the law should not be disregarded under the pretext of pursuing its spirit.’”

that the Legislature intended the Hay group's rating to control executive branch salaries.<sup>4</sup> Consequently, Minn. Stat. § 43A.01, subd. 3 does not mandate that the State pay salaries commensurate with a job class's Hay rating.

MAPE asserts that since DOER selected the Hay Group as its consultant, it is obligated to accept all of the Hay Group's analysis for any purpose. MAPE states "the Hay Points," and their corresponding compensatory rates are fixed and designated values. There is no discretion involved in following the compensation rates dictated by "the Hay Points." (App. Br., p. 9.) Appellant is manifestly wrong. First, Appellant provides no legal or factual support for these remarkable assertions. The State is not obligated by any law, policy, or rule to cede this right to its consultant. Rather, the Hay Study is simply one tool used by DOER in evaluating executive branch salaries. Second, a study by a consultant cannot accurately capture all of the economic aspects involved in setting compensation. This Court, while construing Minn. Stat. § 471.992, addressed both of these concerns as follows:

The legislature intended to address sex-based wage disparities between members of male-dominated versus female-dominated classes, and the act was intended to operate in favor of female-dominated classes. The legislature was not attempting to eliminate perceived wage disparities for everyone in the state, regardless of gender. That would be an impossible task and an impermissible infringement on the right of labor and management to independently negotiate.

*Armstrong v. Civil Service Comm'n*, 498 N.W.2d 471, 476 (Minn. Ct. App. 1993).

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<sup>4</sup> Pursuant to Minn. Stat. § 645.16, the goal of statutory construction is to determine the intent of the Legislature.

Finally, in addition to swallowing the Legislature's role, such a conclusion would obviate the collective bargaining process as well.<sup>5</sup> After all, if DOER is "required to pay" in accordance with the Hay points as Appellant asserts, no negotiation is possible because the result of such negotiation could only be deviation from the Hay prediction.<sup>6</sup>

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<sup>5</sup> Below, MAPE argued that Minn. Stat. § 43A.18, the statute addressing collectively bargained compensation, recognizes the primacy of Minn. Stat. § 43A.01, subd. 3 because § 43.18, subd. 1 reads "Except as provided in section 43.01 . . . ." Statutory construction and legislative history conclusively establish that this reference is to Minn. Stat. § 43A.01, subs. 1 and 2, not subd. 3. First, Minn. Stat. § 43A.01, subd. 2 demonstrates that the reference in §43A.18 is to it. Minn. Stat. § 43A.01, subd. 2 provides, in part:

No contract executed pursuant to chapter 179A shall modify, waive or abridge this section and sections 43A.07 to 43A.13, 43A.15, and 43A.17 to 43A.21, except to the extent expressly permitted in those sections.

Second, Minn. Stat. § 43A.18 contained the identified language in 1981, prior to the adoption of Minn. Stat. § 43A.01, subd. 3.

<sup>6</sup> The *Armstrong* court stated:

We agree with the arguments of respondent city and Amicus Curiae League of Minnesota Cities that implementation of the MPEA [Minnesota Pay Equity Act] occurs through the labor negotiation process. The public employer is required to prepare a *management negotiation position* which considers the factors set out in subdivision two of section 471.993 (skill, effort, responsibility, working conditions and other relevant criteria). This negotiation position is only a starting point. The employer and a union are free to subsequently negotiate from that starting position and may also give consideration to other terms and conditions of employment beyond pure monetary compensation, such as health insurance benefits and vacation time. As such, a union and employer are able to trade off various terms and conditions of employment, even though they must consider the MPEA. We believe the legislature expressly placed the provisions of the MPEA within the provisions of the MPFLRA [Minnesota Public Employment Labor Relations Act] so as to maintain the integrity of this negotiation process.

*Armstrong*, 498 N.W.2d at 477 (emphasis in original).

**C. Appellant Did Not Raise Its Ability To Present Evidence Below.**

Appellant argues for the first time on appeal that it has not been given an opportunity to present evidence. There are three insurmountable problems with this argument. First, nothing prevented Appellant from presenting evidence. It could have presented any evidence it wanted. Second, Appellant has not identified even a category of evidence that would have made a difference in this case. Since the statute is unambiguous, evidence of legislative intent is unnecessary.<sup>7</sup> Third, since Appellant did not raise this issue below, it has waived it. Unless injustice would result, appellate courts will not address issues raised for the first time on appeal or not presented to the district court. *Pole v. Trudeau*, 516 N.W.2d 217, 222 (Minn. Ct. App. 1994).

**D. The Court Appropriately Interpreted “Equitable”.**

Appellant argues that the District Court “abused its discretion” when it determined that the legislature did not intend the word “equal” when it used the word “equitable” in Minn. Stat. § 43.01, subd. 3. (App. Br., pp. 11-12.)

The plain language of Minn. Stat. § 43.01, subd. 3 establishes that the District Court is correct. In Minn. Stat. § 43.01, subd. 3, the legislature uses the word “equitably” twice. In the second use, it *defines* equitably to mean that the “*primary*” factor is comparable worth. Since comparable worth is only the primary factor, the legislature did

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<sup>7</sup> See FN 2, *supra*.

not intend equal pay based only on comparable worth. Since “equitably” is defined by the legislature as something other than “equal,” Appellant’s argument has no merit.

**E. The Mandate Envisioned By Appellant Is Inconsistent With Other Statutes.**

Appellant contends that the District Court’s construction of § 43A.01, subd. 3 leads to absurd results. (App. Br., p. 1.) To the contrary, the declaration sought by Appellant are irreconcilable with Minn. Stat. § 43A.05, subds. 5 and 6. If the Commissioner was ordered in this case to make unilateral changes in MAPE members’ salaries, the statutory role of the legislature would be eliminated.

As described above, by enacting Minn. Stat. § 43A.05, subds. 5 and 6, the Legislature has established a legislative mechanism for accomplishing the policy goals of Minn. Stat. § 43A.01, subd. 3. These provisions establish that the Legislature has the final authority to implement pay equity under Minn. Stat. § 43A.01, subd. 3, by voting whether to accept, modify, or reject the recommendation of the Commissioner. A declaration that the Commissioner has an unfettered mandate to implement changes in salaries would absolutely contradict Minn. Stat. § 43A.05, subds. 5 and 6 by eliminating the role of the legislature.<sup>8</sup> It is for this reason that the District Court concluded that a court order along the lines sought by Appellant would violate the separation of powers doctrine. Since this result would render Minn. Stat. § 43A.01, subd. 3 and Minn. Stat.

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<sup>8</sup> Appellant summarily states that the declaration sought would not eliminate the role of the legislature in voting whether to approve the Commissioner’s recommendation but does not explain its conclusion. (App. Br., p. 16.)

§ 43A.05, subs. 5 and 6 irreconcilable, Minn. Stat. § 43.01, subd. 3 must be construed such that the Commissioner does not have the authority to change MAPE salaries in the manner advanced by Appellant.<sup>9</sup>

Finally, as discussed above, salaries of MAPE employees are collectively bargained for pursuant to Minn. Stat. ch. 179A and Minn. Stat. § 43A.18. Executed collective bargaining agreements are then ratified by the Legislature pursuant to Minn. Stat. § 3.855. The declaration sought by Appellant would mandate the State to pay wages different from those established in the collective bargaining agreement ratified by the Legislature. Thus, a declaratory judgment that Minn. Stat. § 43A.01, subd. 3 legislatively mandates a salary different from existing contractual standards would lead to an absurd result.<sup>10</sup> See *Dicks v. State of Minnesota*, 627 N.W.2d 334 (Minn. Ct. App. 2001) (holding that Minnesota Prevailing Wage Act does not apply to State employees who are covered by a Legislatively ratified collective bargaining agreement). In addition, a

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<sup>9</sup> Minn. Stat. § 645.26, subd. 1 provides:

645.26 Irreconcilable provisions. Subdivision 1. Particular controls general. When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions be irreconcilable, the special provision shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted at a later session and it shall be the manifest intention of the legislature that such general provision shall prevail.

43A.05, subs. 5 and 6 are more specific provisions than the general policy established by § 43A.01, subd. 3. Thus, the former control.

<sup>10</sup> In construing a statute, courts are to presume that the Legislature did not intend an “absurd” or “unreasonable result.” Minn. Stat. § 645.18, subd. 1.

declaration that the Commissioner of DOER must adhere to a study performed by a consultant is absurd on its face. That is, this conclusion would amount to a determination that the State had ceded one of its important management rights to a consultant, surely an unreasonable conclusion.

**F. The District Court's Decision Reflects Sound Public Policy**

Appellant argues that the District Court's decision establishes bad public policy. First, "public policy" is not an available argument when the plain meaning of a statute compels a court's decision. Indeed, Appellant identifies no authority for a "public policy" factor in the analysis. Second, the District Court decision follows the policy established by the legislature with respect to comparable worth. As discussed above, the legislature established that it would be the final arbiter for establishing comparable worth on executive branch salaries. Finally, the declaration sought by Appellant would represent bad public policy. According to their declaration, salaries of executive branch employees would be determined absolutely by the state's consultant without regard to other bargaining factors such as market. That would be bad public policy.

## CONCLUSION

For all of the reasons described above, the Respondent respectfully requests that the Court of Appeals affirm the decision of the District Court.

Dated: Nov 27, 2006

Respectfully submitted,

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