

A06-1826

STATE OF MINNESOTA
IN COURT OF APPEALS

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.

APPELLANT'S BRIEF AND APPENDIX

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CERTIFICATE AS TO BRIEF LENGTH

This brief complies with the form and length requirements of Minn. R. App. P. 132.01, subds. 1 and 3. Appellant's attorneys prepared this brief using the word processing software Corel WordPerfect Version 9. The brief uses the proportional font "Times New Roman," in 13-point type. According to the software's word count utility feature, this brief contains 4,414 words, thereby satisfying Minn. R. App. P. 132.01.

STATEMENT OF THE ISSUES

1. **Did the District Court abuse its discretion when it granted Respondents' Motion to Dismiss?**

The District Court incorrectly determined that Appellant's complaint failed to state a claim upon which relief may be granted.

2. **Did the District Court abuse its discretion when it determined that equitable compensation relationships are excluded from the realm of collective bargaining?**

The District Court improperly ruled that equitable compensation under Minn. Stat. § 43A.01(3) is excluded from the realm of collective bargaining.

STATEMENT OF THE CASE

On April 7, 2006, Appellant, Minnesota Association of Professional Employees (“MAPE”), served upon Respondents a Summons and Complaint, generally alleging that Respondents are legally required to equitably compensate MAPE’s members in accordance with the Hay Points assigned to the members’ job classifications.

On April 24, 2006, Respondents brought a Motion to Dismiss based on failure to state a claim. The matter was heard by the Honorable Margaret M. Marrinan on May 22, 2006. On August 4, 2006, Judge Marrinan granted Respondent’s Motion to Dismiss based on failure to state a claim. Judgment of dismissal was entered on August 23, 2006. Appellant now appeals from that judgment.

STATEMENT OF THE FACTS

Appellant, Minnesota Association of Professional Employees (“MAPE”) is the exclusive representative of executive branch employees employed by the Respondent State of Minnesota. App. 2. The Commissioner of the Department of Employee Relations (“DOER”) is the chief personnel and labor relations manager of the civil service in the executive branch of state government.¹ Id.

Respondent State of Minnesota established Hay Points for positions within the executive branch pursuant to the Hay Corporation System methodologies. App. 3. These methodologies were selected and certified by Respondent State of Minnesota in the 1980's. Id. Hay Points were determined by evaluating the significance of each position as compared to other positions within the executive branch. Id.

Pay equity data published by the State of Minnesota in December 2004 evidences that (1) Respondents compensate job classes with the same number of Hay Points at different rates of pay and (2) Respondents do not compensate Appellant’s members in accordance with the Hay Points established for their job classes. Id. Respondents compensate the majority of job classes one or more steps below the established Hay Points step. Id.

¹ The Commissioner of DOER was named in his official capacity. At the time the district court action was commenced, Cal Ludeman was the Commissioner of DOER. Mr. Ludeman is no longer the Commissioner of DOER. Presently, Matt Kramer is the Acting Commissioner of DOER.

Appellant has engaged Respondents in discussions regarding the lack of consistency between the compensation dictated by the Hay Points and the actual compensation for Appellant's members. Id. Appellant sought a declaratory judgment from the district court seeking a clarification of the parties' rights and duties.

STANDARD OF REVIEW ON APPEAL

In reviewing cases dismissed for failure to state a claim upon which relief can be granted, the question before the reviewing court is whether the complaint sets forth a legally sufficient claim for relief. See Elzie v. Commissioner of Pub. Safety, 298 N.W.2d 29, 32 (Minn. 1980) citing Royal Realty Co. v. Levin, 69 N.W.2d 667, 670 (Minn. 1955). Whether the plaintiff can prove the facts alleged is immaterial. See Elzie, 298 N.W.2d at 32; see also Brakke v. Hilgers, 374 N.W.2d 553, 555 (Minn. App. 1985). Dismissal of a complaint for failure to state a claim is proper when there are no facts consistent with the pleading that support the relief demanded. Brakke, 374 N.W.2d at 555. An appellate court reviews the claim's legal sufficiency de novo. Barton v. Moore, 558 N.W.2d 746, 749 (Minn. 1979).

ARGUMENT

I. THE DISTRICT COURT INCORRECTLY DETERMINED THAT APPELLANT'S COMPLAINT FAILED TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

A. Appellant's Complaint Does State a Cognizable Claim Against Respondents.

The district court inappropriately dismissed Appellant's complaint for failure to state a claim. Dismissal of a complaint for failure to state a claim is proper when the complaint fails to set forth a legally sufficient claim for relief. See Barton, 558 N.W.2d at 749. Whether the plaintiff can actually prove the alleged facts is not considered, instead the court should focus on whether the alleged facts would sustain a legally cognizable claim. Bowers v. Langle, 636 N.W.2d 334, 338 (Minn. App. 2001). A claim is legally sufficient if on any evidence it is possible to grant the relief sought. See Elzie, 298 N.W.2d at 32.

Dismissals under Minn. R. Civ. P. 12.02(e) should not be upheld "if it is possible on any evidence which might be produced, consistent with pleader's theory, to grant the relief demanded." Martens v. Minn. Mining & Mfg. Co., 616 N.W.2d 732, 739-40 (Minn. 2000) (quotation omitted). The district court needed to confine itself to determining whether Appellant could introduce facts to support its legal theory. It may be possible for Appellant to set forth additional facts which will support its claim. Dismissal is therefore improper.

A party may seek a declaratory judgment regarding the construction or application of a statute. Minn. Stat. § 555.02. The party seeking such a declaratory judgment must have a direct interest in the statute different in character from the interest of citizens in general. Arens v. Village of Rogers, 61 N.W.2d 508 (Minn. 1953). A party questioning a statute must show some disadvantage, injury or imminent problem. Lee v. Delmont, 36 N.W.2d 530 (Minn. 1949). The declaratory judgment act is to be liberally construed and administered. See Minn. Stat. § 555.12.

Appellant's complaint asked the court to declare that Minn. Stat. § 43A.01 requires Respondents to compensate Appellant's members in accordance with the Hay Points established by Respondents. Appellant's complaint specifically alleged that its members have been and continue to be financially harmed by Respondents' failure to abide by this legal duty. Appellant set forth a legally sufficient claim for relief. Minn. Stat. § 43A.01 does impose a legal duty on Respondents and Appellant did state a claim upon which relief can be granted. Accordingly, the district court improperly dismissed Appellant's complaint.

1. The District Court improperly concluded that the legislature intended Respondents be allowed discretion in implementing the policy.

Minn. Stat. § 43A.01(3) states:

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.01(3) imposes a legal duty on Respondents to equitably compensate employees in the executive branch. Equitable compensation relationships are represented by the Hay Points, which were determined and assigned by Respondents. These Hay Points measure the comparability of the value of the work of each job class in relation to the other job classes within the executive branch – this is the primary consideration for establishing equitable relationships under the statute. See Minn. Stat. § 43A.01(3).

Appellant's complaint sets forth facts showing that Respondents are violating Minn. Stat. § 43A.01(3). Respondents are violating the statute's mandate by (1) not compensating job classes in accordance with the established Hay Points and (2) compensating positions with the same number of Hay Points at differing rates of pay. Data published by Respondent State of Minnesota show that seventy-nine percent of job classes held by Appellant's members are compensated below the Hay Points step.

a. Respondents' selection of the Hay Point system is significant.

Hay Points represent equitable compensation relationships because they measure the comparable value of the worth of each job class in relation to the other job classes in the executive branch. By not paying in accordance with the Hay Points, Defendants are not equitably compensating Appellant's members. Pay is not equitable because the actual compensation levels are not based on the comparability of the value of the work in

relationship to other positions within the executive branch. This means that Appellant's members are not compensated with equal pay for equal work.

The district court concluded the Commissioner has the discretion to disregard the Hay Points. App. 48-9. The court's ruling is not supported by the record. Respondents selected the Hay Point system to assign points to job classes and are bound by the system's results and outputs. The Hay Points, and their corresponding compensation rates, are fixed and designated values. There is no discretion involved in following the compensation rates dictated by the Hay Points. Compensation rates can be easily computed by plugging in the Hay Point value for each job. The compensation rates set pursuant to the mandate of section 43A.01(3) represent a floor below which wages cannot fall – the legislature set this floor and Respondents cannot disregard it.

b. Appellant has not been given an opportunity to introduce evidence.

If a statute is reasonably susceptible to more than one meaning, it is ambiguous and the rules of statutory construction will be applied. Westchester Fire Ins. Co. v. Hasbargen, 632 N.W.2d 754 (Minn. App. 2001). When a statute is ambiguous, the legislature's intent may be determined by examining the need for the law, the circumstances of its enactment, the purpose of the statute, the prior law, if any, the consequences of an interpretation, the legislative history, and administrative interpretations of the law. In re Conservatorship of Nelsen, 587 N.W.2d 649 (Minn. App. 1999). Appellant should be allowed an opportunity to raise such additional issues for

consideration regarding the legislative intent of section 43A.01(3). See Martens, 616 N.W.2d at 739-40.

The district court concluded the Commissioner of DOER is allowed to exercise discretion in departing from the Hay Points assigned any given class. App. 48-9. This conclusion was drawn before Appellant had the opportunity to introduce evidence outside the scope of the complaint. Appellant has not been given an opportunity to conduct discovery and produce facts which support its legal theory. Discovery may provide evidence, such as documents and testimony, which show legislative intent to deny the Respondents discretion. The district court's dismissal was, therefore, improper because evidence might be introduced which supports Appellant's theory and allows a court to grant the relief demanded. See Martens, 616 N.W.2d 739-40. It was error for the district court to dismiss Appellant's complaint on the basis of legislative intent when the parties were not afforded an opportunity to present evidence on that point.

c. The District Court's ruling does not give effect to the entire statute.

According to its text, Minn. Stat. § 43A.01(3) requires Respondents to equitably compensate female-dominated classes, male-dominated classes and balanced classes. In other words, Respondents must equitably compensate all MAPE job classifications in the executive branch. Respondents' practice of compensating positions with similar numbers of Hay Points at different rates of pay and compensating the majority of job classes below the established Hay Points completely frustrates the aim of the law.

The legislature must be presumed to have understood the effect of its words and intended the entire statute to be effective and certain. ILHC of Eagan, LLC v. County of Dakota, 693 N.W.2d 412 (Minn. 2005). Every law is to be construed, if possible, to give effect to all its provisions. Minn. Stat. § 645.16; see Smith v. Barry, 17 N.W.2d 324, 327 (1944). Here, the legislature intended the language in Minn. Stat. § 43A.01(3) to have significance, otherwise it would not have inserted the language regarding equitable compensation relationships. The parties should be afforded an opportunity to present evidence regarding the legislature's understanding of the significance of the text of section 43A.01(3). The district court's dismissal of Appellant's complaint was, therefore, improper.

Respondents have not made any attempt to equitably compensate Appellants' members. See App. 27-8. Evidence to this effect may be introduced by Appellant. Accordingly, even if the Commissioner is only required to attempt to establish equitable compensation relationships, as urged by Respondents and determined by the district court, see App. 48, the Commissioner's failure in this regard is a violation of section 43A.01(3) which may be remedied.

2. The District Court abused its discretion when it determined the statutory language "equitable" does not mean "equal."

In its memorandum order, the district court concludes, "[t]he policy established in this matter is to attempt to establish *equitable* compensation relationships. If the legislature had intended that compensation relationships be *equal*, it would have used that

word.” App. 49 (emphasis original). The district court is incorrect on this point.

Statutory construction is a question of law, which an appellate court reviews de novo. State v. Boehl, 697 N.W.2d 215 (Minn. App. 2005), *review denied*; Wood v. Diamonds Sports Bar & Grill, Inc., 654 N.W.2d 704 (Minn. App. 2002). Words and phrases are construed according to rules of grammar and according to their common and approved usage. Minn. Stat. § 645.08(1); see State v. Larivee, 656 N.W.2d 226, 229 (Minn. 2003). The common and approved usage of “equitable” is “having or exhibiting equity: dealing fairly and *equally* with all concerned.” Merriam-Webster’s Collegiate Dictionary 423 (11th ed. 2004) (emphasis added). The word “equally” generally means “in an *equal* or uniform manner; to an equal degree.” *Id.* at 422 (emphasis added). The word “equal” is defined to mean “of the same measure, quantity, amount, or number as another; like in quality, nature, or status; like for each member of a group, class or society.” *Id.* at 422.

Thus, the word equitable, when used in section 43A.01(3), means that compensation relationships will be equal. By using the term “equitable,” the legislature meant that compensation relationships among Appellant’s members, as represented by the State’s assigned Hay Points, must be “equal.” It was error for the district court to conclude that the legislature did not mean equal when it used the term equitable in section 43A.01(3).

3. The District Court improperly determined that Minn. Stat. §§ 43A.05(5)-(6) are enforcement mechanisms.

The district court concluded that allowing Appellant's claim to proceed would infringe upon the legislature's prerogative. App. 49. It determined Minn. Stat. §§ 43A.05(5)-(6) act as the enforcement mechanisms for the policy embodied in § 43A.01(3). App. 48-9.

a. The District Court's conclusions lead to absurd results.

Courts may presume that the legislature does not intend an absurd or unreasonable result. Minn. Stat. § 645.17; see Guderian v. Olmsted County, 595 N.W.2d 540 (Minn. App. 1999); Country Joe, Inc. v. City of Eagan, 548 N.W.2d 281 (Minn. App. 1996), *aff'd* 560 N.W.2d 681 (Minn. 1997).

The legislature enacted Minn. Stat. § 43A.01(3) and vested the Commissioner of the Department of Employee Relations with the authority and responsibility to carry out the policy announced therein. Sections 43A.05(5)-(6) are not enforcement mechanisms for this policy.² Those subdivisions provide for legislative review of the Commissioner's

² Sections 43A.05(5)-(6) state:

* * *

Subd. 5. Comparability adjustments. The commissioner shall compile, subject to the 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

compensation adjustment recommendations. They do not provide a mechanism or process to challenge abuse or neglect of the Commissioner's duties.

Under the scenario which flows from the district court's ruling, a party aggrieved by a violation of section 43A.01(3) must go to the legislature and request that it override the compensation relationships established by the Commissioner of the Department of Employee Relations. An aggrieved party may only petition to participate in the legislative process – it is not guaranteed meaningful access. If the legislature denies the aggrieved party's request, the party has no other avenue of redress; it cannot challenge the

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.

* * *

legislature's decision not to grant the request. The district court's ruling prevents an aggrieved party from obtaining judicial relief from the Commissioner's violations. In the instant case, Appellant's members will continue to be under-compensated for the performance of their work because of the district court's ruling.

Such a result is untenable and could not have been intended by the legislature. The legislature issued a mandate to the Commissioner. The Commissioner is the authority figure charged with the responsibility of establishing equitable compensation relationships. Within the executive branch, the Commissioner has authority over pay equity. See Minn. Stat. §43A.04. Under the district court's ruling, however, the Commissioner is insulated from liability under the statute. The ruling makes the Commissioner's recommendations untouchable and gives him permission to ignore the mandate of section 43A.01(3). The Commissioner is not accountable to the employees whose salaries he determines. Parties aggrieved by violation of section 43A.01(3) require judicial intervention to enforce their rights under the statute and obtain a meaningful remedy for their injuries. Under the district court's ruling, an aggrieved party is denied such a remedy.

Importantly, if a legislative petition is an available remedy, which Appellant vigorously denies, this does not preclude the court from granting the declaratory judgment Appellant requested. Generally, a declaratory judgment action supplements, but does not supplant other remedies. Hirsh v. Bartley-Lindsay Co., 537 N.W.2d 480 (Minn. 1995).

Accordingly, the existence of another potential remedy does not preclude judgment for declaratory relief in a case where it is appropriate. Barron v. City of Minneapolis, 4 N.W.2d 622 (Minn. 1942); see Minn. Stat. § 555.01. Such judgment is appropriate in this instance.

b. Allowing Appellant's claim to proceed would not violate separation of powers.

The district court ruled that allowing Appellant's claim to proceed would infringe upon the legislature's prerogative. App. 49. The powers of government are divided into three distinct departments: legislative, executive, and judicial. No person or persons belonging to or constituting one of these departments will exercise any of the powers properly belonging to either of the others except in the instances expressly provided for in the constitution. See Minn. Const. art. III, § 1. In Minnesota, legislative power is vested in the senate and house of representatives. Minn. Const. art. III, § 1, art. IV, § 1; Remington Arms Co. v. G.E.M. of St. Louis, 102 N.W.2d 528 (Minn. 1960).

Appellant's requested remedy complies with these constitutional principles. Ordering Respondents to equitably compensate Appellant's members according to the Hay Points does not eliminate the role of the legislature in voting whether to approve, reject or modify the recommendations of the Commissioner. The legislature retains this ability. The operation of section 43A.01(3) urged by Appellant has the intended effect of making certain the legislature is not presented with a proposal containing adjustments below the compensation rates dictated by the Hay Points.

The executive branch carries out the laws. It is the province of the judicial department to say what the law is. See State v. Sherbrooke, 633 N.W.2d 856 (Minn. App. 2001). Appellant simply asks the court to declare that the executive branch must perform its statutorily mandated duty. See In re Hunstiger, 153 N.W. 869 (Minn. 1915).

A ruling in Appellant's favor maintains the separation of powers between the legislative, executive and judicial branches. The executive retains its authority regarding establishment of compensation. The legislature retains the ability to review the executive's recommendations. The judiciary retains its power to ensure compliance with the law.

4. The District Court abused its discretion in determining that equitable compensation is excluded from the realm of collective bargaining.

When deciding a motion to dismiss, the court looks to the complaint. See Barton, 558 N.W.2d at 749. Appellant's complaint asserted a cause of action under section 43A.01 and sought declaratory relief under sections 555.01-.16. In rendering its decision, the district court went beyond the scope of the Appellant's complaint and determined that equitable compensation is excluded from the realm of collective bargaining. App. 49.

a. The District Court should not have reached the collective bargaining issue.

In the district court, Respondents stated that Appellant could bring an unfair labor practice to remedy the harm to its members. App. 14-5. This assertion necessarily implied that Appellant could potentially bargain over equitable compensation

relationships. Appellant addressed the issue of collective bargaining before the district court to counter Respondents' assertions. Respondents' historical position has been that range assignments, application of Hay Points to the ranges and all related subjects are not bargainable. Respondents raised the specter of equitable compensation relationships being subjects of bargaining to escape liability in the declaratory judgment action.

Appellant was forced to reply to Respondents' disingenuous assertions. Appellant did not ask the district court to render a ruling on this issue; this issue was not before the court. More importantly, it was not necessary for the district court to reach this issue in order to render its decision. The district court could have – and did – make its decision based on the language in sections 43A.01(3) and 43A.05(5)-(6). Rendering the decision regarding section 43A.18 and its relationship to the collective bargaining process was unnecessary and improper.

The issue of whether equitable compensation relationships are subjects of bargaining may be decided by the district court if and when Appellant brings an unfair labor practice action under the Public Employment Labor Relations Act. See Minn. Stat. §§ 179A.01-.40. Until that time, resolution of the issue is premature. The district court's disposition of this issue in the present action was improper.

b. The District Court's ruling establishes bad public policy.

The district court's ruling leaves Appellant without a legal or equitable remedy. First, declaratory relief was denied. Second, as outlined in section 3a supra, sections 43A.05(5)-(6) do not provide an adequate remedy for Appellant's members. Third, collective bargaining and a related unfair labor practice action are also foreclosed, under the district court's ruling.

The court's decision has a significant impact on public employees. The decision affects all executive branch employees who are covered by Chapter 43A and sends a strong message to public employees throughout the State of Minnesota. The court's decision will have a far-reaching impact on the rights of public employees vis-a-vis public employers by setting a precedent regarding the employer's ability to avoid its legal duties.

When a public employer is allowed to disregard its duties with respect to the compensation of public employees, the practice begins to erode the statutorily protected rights of public employees. Public employees will be at the mercy of their employer with no expectation of protection despite clear statutory violations.

The court's decision nullifies the protections set forth by statute. The district court's interpretation of the statutes at issue also creates a significant windfall for the Respondents. Under the ruling, Respondents can disregard the compensation rates dictated by statute and represented by the Hay Points in favor of cost savings.

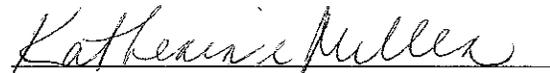
Appellant is entitled to meaningful relief from the statutory violations outlined in its complaint. The district court's ruling improperly eliminates all avenues of redress and prevents Appellant's members from obtaining relief.

CONCLUSION

Appellant's complaint states a claim upon which relief may be granted. The district court also went beyond the scope of the complaint when rendering its decision. For these reasons and the reasons outlined herein, the judgment of the district court should be reversed.

Dated this 18th day of October, 2006.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).