

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 REPLY BRIEF

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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, subs. 1 and 3. Relator's attorneys prepared this brief using the word processing software Corel WordPerfect Version 12. 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 2,226 words, thereby satisfying Minn. R. App. P. 132.01.

I. EXCLUSIVE REPRESENTATIVES CAN NEGOTIATE PAY EQUITY.

MAPE is the exclusive representative, as that term is defined in M.S.A. § 179A.03, subd. 8, of state employees in the general professional unit (Unit 14), as defined in M.S.A. § 179A.10, subd. 2. Pursuant to M.S.A. § 179A.07, the state, as a public employer¹, has an obligation to meet and negotiate in good faith regarding terms and conditions of employment. Terms and conditions of employment are defined in Minn. Stat. § 179A.03, subd. 19, as including compensation of employees. But, pursuant to Minn. Stat. § 43A.01, subd. 2, no contract executed pursuant to Chapter 179A shall modify, waiver 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.

Thus, no state collective bargaining agreement can discriminate on the basis of sex or adversely affect any other protected group or establish compensation relationships between female-dominated, male-dominated and balance classes of employees that are inequitable. Minn. Stat. § 43A.01, subd. 3.

The aforesaid statute further provides that compensation relationships are equitable when the primary consideration in negotiating, establishing, recommending and proving total compensation is comparability of the value of the work in relationship to other positions in the executive branch. Minn. Stat. § 43A.01, subd. 3.

¹Public employer is defined in Minn. Stat. § 179A.03(a).

Thus, the state's refusal to bargain whether compensation relationships are equitable is a violation of Minn. Stat. § 43.01. This refusal also constitutes a refusal to bargain, which is an unfair labor practice, pursuant to Minn. Stat. § 179A.13, subd. 2(5).

The state admits that, according to the consultant it chose, Hay Corporation, compensation relationships are not equitable in the present collective bargaining agreement in that similar jobs valued at the same Hay Points are paid disparate wages. Thus, the negotiated collective bargaining agreements are in violation of Minn. Stat. §43A.01, subd. 3, to the extent these inequities are perpetuated by the negotiated agreements.

The trial court is, therefore, wrong when it asserts that equitable compensation under Minn. Stat. § 43A.01, subd. 3 is excluded from the realm of collective bargaining. (App., p. 49) It is just the opposite. Collective bargaining and the resultant collective bargaining agreement must be consistent with the statutory definition of equitable compensation relationships. The state violates Minn. Stat. § 43A.01, subd. 3 and Minn. Stat. § 179A.13, subd. 2(5), when it insists that said subject is non-negotiable and continues to perpetuate inequities.

MAPE's asserted interpretation of Minn. Stat. §43A.01, subd. 3, does not infringe on the Executives Branch's discretion. Chapter 43A is not a limitation on the Executive Branch's duty to bargain but rather is supplementary. It widens the scope of bargaining. It does not in any way limit the ultimate right of the Legislature to approve or disapprove

collective bargaining agreements. Minn. Stat. § 43A.05, subs. 5 and 6 require that inequities be listed is for all non-represented state employees. The rule is different for represented employees, because the law requires their compensation to be negotiated. Minn. Stat § 43A.18, subd. 1, provides, “except as provided in Section 43A.01, and to the extent they are covered by a collective bargaining agreement, the compensation for all employees represented by an exclusive representative certified pursuant to Chapter 179A, shall be governed solely by the collective bargaining agreement executed by the parties and approved by the Legislature.” The contracts negotiated for represented employees contain the inequities. The Executive is not restricted in making recommendations to the Legislature for approval of collective bargaining agreements that resolve inequities.

Minn. Stat. § 43A.01, subd. 3, therefore, acts to supplement and/or expand the overall duty to bargain by requiring that such bargaining be consistent with establishing equitable compensation relationships between female-dominated, male-dominated and balanced classes in the executive branch. Thus, the parties are forbidden from negotiating wages that are inequitable, in other words, same Hay points, but different salaries. The state’s insistence on preserving an inequitable pay structure violates this section. The state is statutorily compelled to negotiate equitable compensation relationships and the purpose of this declaratory judgment action is to enforce that statutory requirement.

II. MINN. STAT. § 43A.05, SUBDS. 5 AND 6 DOES NOT ALTER THE MANDATORY EQUITABLE REQUIREMENT FOR MINN. STAT. § 43A.01, SUBD. 3.

The trial court ruled that Minn. Stat. § 43A.05, subds. 5 and 6 act as the enforcement mechanism for Minn. Stat. § 43A.01, subd. 3. (App. p. 49) The statute requires defendant DOER Commissioner to compile a list of inequities and supply an estimate of the appropriation to the Legislative Coordinating Commission and ultimately to the full Legislature. Either the Commission or the Legislature can approve, modify or disapprove said recommendations.

Again, the effect of this statute depends upon whether the positions involved are represented or unrepresented. As to unrepresented employees, the Commission compiles the list of inequities and projects the cost. As to represented employees, however, the “list” is the collective bargaining agreement resolution of the inequities. Thus, the parties for represented employees are compelled to negotiate the inequities and the results of the negotiation are presented to the Legislative Coordinating Commission in the form of its right to approve or disapprove the collective bargaining agreement. This preserves the role of the Legislature in ultimately approving or disapproving the resolution of the inequities.

The parties could easily not resolve all the inequities in their negotiations or resolve them in a way the Legislature disapproves, either because of cost or the perceived inequity itself. For represented employees, the Legislature could disapprove, modify or

amend the contract's resolution of inequities either because of cost or disagreement on the merits of the inequities. Minn. Stat. § 43A.05, subd. 5.

Thus, the trial court's conclusion that the Legislature intended that defendant have discretion in recommending inequities to the Legislature is incorrect because if that were the intended result there would be nothing for the commission or legislature to review. The Legislature still has the right to review the inequities based on cost and on the merits. This construction of the statutes preserves the collective bargaining process by allowing collective bargaining on all compensation issues, including inequities, while preserving ultimate approval rights in the Legislative Coordinating Commission and the Legislature itself.

III. THE TRIAL COURT'S CONSTRUCTION OF MINN. STAT. § 43A IS INCONSISTENT WITH PUBLIC POLICY.

Minn. Stat. § 179A.01, provides that it is the public policy of this state and the purpose of sections 179A.01 to 179A.25, to promote orderly and constructive relationship between all public employers and their employees. The statute further provides that because of the uniqueness of the public sector, the importance and necessity of some services can create imbalance in relative bargaining power, requiring unique approaches to bargaining. Unresolved disputes between the public employer and its employees are injurious to the public as well as to the parties. Thus, to minimize them and provide for their resolution, the Legislature determined that overall policy is best accomplished by requiring public employers to meet and negotiate with public employees in an appropriate

bargaining unit and providing that the result of bargaining be in written agreements. See Minn. Stat. § 179A.01 (2).

The trial court's decision excludes bargaining over equitable compensation under 43A.01, subd. 3. (App., p. 49) Its interpretation of the statute is inconsistent with the public policy of PELRA, Minn. Stat. Chapter 179A, which favors bargaining over terms and conditions of employment including compensation. Minn. Stat. §§ 179A.07, subd. 2, 179A.03, subd. 19. The refusal to bargain over a term and condition of employment is an unfair labor practice. Minn. Stat. § 179A.13, subd. 2(5).

Minn. Stat. § 43A.01, subd. 3, provides it is the public policy of this state to establish equitable compensation relations between female-dominated, male-dominated and balanced classes of employees in the executive branch. The trial court's decision gives discretion to the Executive Branch to ignore that policy. (App., p. 48) The trial court finds no mandate or duty. (App., p. 48)

The only way to give meaning to the public policy expressed in these two statutes is to hold that equitable compensation relationships are a mandatory subject of bargaining and that defendant commits an unfair labor practice to the extent it makes bargaining proposals which do not reflect comparability of the value of the work in relationship to other positions in the executive branch.

The state's discretion is not sacrificed if the court rules that in determining equitable relationships it is bound by its own consultant's finding. The defendant, not the

plaintiff, chose the consultant and the methodology for determining the point value of jobs. The points assigned to each job are the points unilaterally determined by defendant. It is plaintiff's position that once defendant chooses the consultant, and then assigns points to each job in accordance with the consultant's methodology, it is bound to those point values. To the extent inequities are created that affect represented employees, the defendant is statutorily required to resolve those inequities through collective bargaining.

IV. ARMSTRONG AND DICKS ARE CLEARLY DISTINGUISHABLE.

Respondent cites Armstrong v. Civil Service Commission of the City of St. Paul, 498 N.W.2d 471 (Minn. Ct. App. 1993) and Dicks v. Minnesota Department of Administration, 627 N.W.2d 334 (Minn. Ct. App. 2001) in support of its position. The cases cited are clearly distinguishable.

Armstrong interprets the Minnesota Pay Equity Act (MPEA) Minn. Stat. §§ 471.991 - .999 (1990) as only addressing sex based wage disparities in public employment between members of male-dominated versus female-dominated classes. The statute was not intended to eliminate perceived wage disparities for everyone in the state regardless of gender. Armstrong further held that, under the MPEA, to contest a perceived unfair wage, the issue must involve a "class" of employees. There is no individual cause of action.

This statute (MPEA) does not apply to state employees, but rather employees of political subdivisions. It also defines equitable compensation relationships differently,

than Minn. Stat. § 43A.01, subd. 3, qualifying and limiting the definition by providing that the goal of establishing equitable relationships between female-dominated, male-dominated and balanced classes of employees is to “... eliminate sex-based wage disparities in public employment.” That language is not found in Minn. Stat. § 43A.01, subd. 3.

Furthermore, the definition of equitable relationship is different between the two statutes. Minn. Stat. § 471.991, subd. 5 (1990) defines “equitable compensation relations” as “...the compensation for female-dominated classes is not consistently below the compensation for male-dominated classes of comparable work value....” That is not the 43A.01 definition.

Finally, Minn. Stat. § 471.991, subd. 5 (1990) provides that “equitable compensation relationship” means that a primary consideration in negotiating, establishing, recommending and approving total compensation is comparable work value. On the other hand, Minn. Stat. § 43A.01, subd. 3 mandates equitable compensation relationships across the board as a matter of public policy for state employees.

Thus, in Armstrong this court ruled that, unlike Minn. Stat. § 43A.01, subd. 3, Minn. Stat. § 471.992, subd. 1 has as its purpose the elimination of sex-based work wage disparities for employees of political subdivisions.

It is interesting to note that the MPEA statutory scheme was construed by the court as requiring the public employer to prepare a management negotiation position which was

consistent with the MPEA. Public employers were required to use a job evaluation system in order to determine comparable work value. Each political subdivision was required to meet and confer with the exclusive representative of employees on the development or selection of a job selection system.

In the case at bar, pursuant to Minn. Stat. §43A.01, subd. 3, the state takes the position that it is not required to use a job evaluation system, and certainly is not required to meet and confer with the exclusive representative on the development or selection of a job evaluation system. The state asserts it has sole discretion to hire Hay Corporation and determine the system it uses. It need not negotiate pay equity at all.

The Legislature has, in its wisdom, chosen to exempt state employees from the MPEA. Instead, it took a different route under Minn. Stat. §43A.01, subd. 3. It did not limit the definition of equitable compensation relationships to female-dominated classes. The purpose and the public policy behind Minn. Stat. §43A.01, subd. 3 was not simply to eliminate sex-based wage disparities in state employment. The goal was broader and encompassed male-dominated and balanced classes.

The Dicks case is equally distinguishable. This case held that state employees were not the intended beneficiaries of the Minnesota Prevailing Wage Act. Minn. Stat. §§ 177.41-.44 (2000) It also held that the Act did not create a private cause of action. Certainly it cannot be argued that Minn. Stat. § 43A.01, subd. 3 was not applicable to state employees. It is the state employee civil service law. Secondly, plaintiff is not

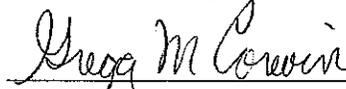
seeking a private cause of action, but rather a declaratory judgment requiring the state to comply with Minn. Stat. § 43A.01, subd. 3 and bargain over the issue.

CONCLUSION

The plaintiff is asking this court to reverse the trial court and issue a declaratory judgment that Minn. Stat. § 43A.01, subd. 3 mandates equitable compensation relationships between female-dominated, male-dominated and balanced classes of employees in the executive branch and that such compensation relationships are a mandatory subject of bargaining for represented employees.

Dated this 4th day of December, 2006.

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