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Pay Equity in Interest Arbitration

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PAY EQUITY IN INTEREST ARBITRATION

Christine D. Ver Ploeg†

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I. INTRODUCTION

Over thirty-five years ago Congress attempted to address wage discrimination based on sex by requiring that persons in the workplace must be given equal pay for equal work. Unfortunately, as the disparities between men’s and women’s wages persisted, it became apparent that neither Title VII1 nor the Equal Pay Act2 had fulfilled their initial promise.

One reason for this continued gender wage disparity has been the historic high concentration of women in lower paying, unskilled jobs. Vast numbers of women continue to work in female-

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dominated jobs such as clerical work, the food industry, the garment trades, and retailing, all of which have been historically low paying. These low wages have tenaciously persisted, even though many traditionally "female jobs" have objectively been proven comparable to, or even more valuable than, "men's jobs" in terms of responsibility, training, job conditions, and importance to the employer.

Thus, not even a vigorously enforced mandate that equal pay be given for equal work managed to close the gap between wages paid for "men's work" and for "women's work." For this reason, starting in 1982, Minnesota became a pioneer in requiring that the state and other governmental bodies must provide equal pay for jobs of equal worth. Minnesota's adoption of comparable worth has been a bold move, and one which has enjoyed particular success at the state level.

However, efforts to achieve pay equity at the county and local levels have proven to be much more difficult. This is largely because, unlike the state, other public employers were not given additional funds to support this difficult and expensive process. Instead, Minnesota's political subdivisions have been left to wrestle alone with the financial pressures inherent in revamping their compensation systems, systems in which each employee group typically competes for the funds that an employer has available for employee compensation. One significant arena in which that struggle has taken place has been a process unique to public sector labor relations known as "interest arbitration."

Interest arbitration is a process whereby a neutral outside party—an arbitrator—unilaterally determines the terms and conditions of a collective bargaining agreement when the parties (typically a public employer and a public sector union) have not been able to do so for themselves. The stakes in interest arbitration can be quite high as, for example, when a single arbitrator determines how much the teachers in an entire school district should be paid during the life of the contract.

In making these "final and binding" determinations, interest arbitrators weigh various criteria, two of which are particularly important. "External comparison" evidence compares a public employer's pay for a particular job to the wages those employees would command in the larger marketplace (e.g., using Minneapolis

and Duluth police officer pay schedules to determine the appropriate level of pay for St. Paul officers). "Internal comparison" evidence is used to determine whether a public employer’s overall pay scale appears internally consistent (e.g., comparing the wages or wage increases of a community’s fire fighters with those of its social workers).

Interest arbitrators historically have given greater weight to "external comparisons" when making their awards. However, relying on the larger marketplace to determine how much a particular job should be paid ignores the fact that the marketplace has not been kind to women, especially women in "female-dominated" jobs. Thus, passage of Minnesota’s Local Government Pay Equity Act (LGPEA)\(^4\)—which seemingly circumvents the marketplace by requiring equal pay for jobs of equal worth—has conflicted with a major factor that interest arbitrators have traditionally relied upon.

As public employers began to struggle with the new demands of pay equity, it became apparent that Minnesota’s interest arbitrators would have to face difficult questions in reconciling the mandates of the state’s Pay Equity Act with traditional interest arbitration. One of the most challenging questions raised has been whether Minnesota law now requires that interest arbitrators give greater weight to “internal” criteria, so that a public employer’s historically “over-compensated” employee groups (e.g., the “male-dominated” law enforcement classifications) may be forced to absorb some of the cost of achieving pay equity. Or does the law continue to accord primary weight to the economics of the marketplace—the “external” data—so that employees may not be penalized in an employer’s quest to achieve pay equity?

Many arbitration awards have been rendered since these questions first arose. This article reflects upon what we now know from this large body of arbitral authority and more recent legislative directives. To explore the interplay between outside market forces and internal pay equity, the article is divided into six parts. Part II discusses the background and important role that interest arbitration plays in resolving public sector collective bargaining disputes. Part III examines Minnesota’s Local Government Pay Equity Act in more detail, highlighting its underlying goals and how it works. Part IV recalls the turmoil of the 1980’s, as parties and arbitrators tried to reconcile pay equity with traditional interest arbitration’s

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4. *Id.* (referred to as the Minnesota Comparable Worth Law or “CWL”).
emphasis on outside market forces, while Part V provides a detailed examination of more recent awards to determine to what degree, if any, arbitrators now seem to agree on these issues. The Summary, at Part VI, completes the discussion.

II. INTEREST ARBITRATION

Arbitrators hear two types of labor disputes. “Rights” or “grievance” disputes involve disagreements between management and labor concerning the meaning or application of contract terms the parties have already agreed upon and memorialized in their collective bargaining agreement. “Interest” disputes call upon an arbitrator to, in effect, actually write the collective bargaining agreement by deciding essential provisions which the parties have been unable to decide for themselves, for example, wages, employee contributions to a health care plan, or retirement benefits.

Interest arbitration is used frequently in the public sector and rarely in the private sector. Many state legislatures, including Minnesota, have identified certain public employees, such as law enforcement personnel, as “essential” employees who should not be permitted to strike.  

In return for this loss of labor’s ultimate leverage, essential employees have been granted the right to demand “interest” arbitration if negotiations with their public employer reach an impasse.  

Non-essential employees can also seek interest arbitration, but do not have a statutory right to insist upon it.  

To pursue interest arbitration in Minnesota the parties first “certify” to the Minnesota Bureau of Mediation Services the items that are at impasse and select the arbitrator who will decide those issues. The parties may not then raise new issues at the hearing.

Arbitrators who decide interest cases do not apply a strict formula but consider the evidence as a whole. Two important bases for decision are: (1) determining what the parties would likely have negotiated had they been able to reach agreement at the bargaining table; and (2) avoiding awards that would significantly alter a bargaining unit’s relative standing, whether internally or externally, unless there are compelling reasons to do so. The types of evidence most often considered with respect to these rationales are

5. MINN. STAT. § 179A.16, subd. 02 and subd. 03 (2000) (defining “non-essential” and “essential” employees respectively).
6. Id. § 179.16.
7. Id. § 179A.16, subd. 02 (defining “non-essential” employees).
frequently referred to as evidence of "external comparability" and "internal comparability."

"External comparability" evidence—which has historically been given great weight—compares and contrasts one employee group's terms and conditions of employment with those provided to employees who perform the same or similar work for other "comparable" employers. This evidence addresses the issue of what the marketplace suggests is an appropriate award.

Parties will often strenuously disagree concerning what comprises an appropriate comparability group. For example, a law enforcement bargaining unit may argue that the appropriate wage comparisons for an employer located within a multi-county metropolitan area are those of the neighboring police departments. By contrast the employer may argue that, as a small suburban employer, its police pay scale should not be compared to its more affluent city neighbors, but instead with towns of its same size throughout the state (who probably pay significantly less). An arbitrator must first determine the relevant comparison group and then decide how much weight to give this evidence.  

The other criterion most often used in interest arbitration is evidence of "internal comparability." This evidence compares and contrasts the terms and conditions of employment a public employer provides to its various employee groups, and is used to determine whether the bargaining unit now in interest arbitration is or is not being treated appropriately. For example, courthouse clerical workers may submit evidence of a county’s overall compensation schedule to argue that they are underpaid.

Other types of evidence include an employer’s "ability to pay" the wages and benefits which the union seeks. Employers typically advance this argument in times of economic downturn. However,

8. Note the recent interesting case of Law Enforcement Labor Services. v. Kanabec County, BMS Case No. 00-PN-827 (2000) (Jacobs, Arb.) in which Arbitrator Jeff Jacobs agreed that the County’s law enforcement personnel were at the bottom of its comparability group. Nevertheless, Arbitrator Jacobs declined to bring this group into parity, noting "Kanabec’s wage scales have traditionally been at or near the bottom of the group when compared to other counties in the area." Id. at 7.

Kanabec County [is] very near the bottom of the comparable counties in terms of its tax base, economy and population. There was no simply (sic) evidence to compel a radical change in that ranking with regard to the pay of the officers in question. Certainly, there [is] no compelling evidence that the relative ranking of Kanabec County itself warranted such a large increase as that sought by the Union.

Id. at 9. Apparently someone must be at the bottom of a comparability group.
when finances are not currently an overriding concern, employers will nevertheless urge fiscal restraint to meet future needs. Evidence of the cost of living index, and an employer’s ability to tax, are also relevant.

III. LOCAL GOVERNMENT PAY EQUITY ACT (LGPEA)

In 1982 the Minnesota Legislature directed the state to remedy wage disparities between its female-dominated and male-dominated classes, and it gave the state nearly $22 million to do so. In 1984, the Minnesota Legislature re-affirmed its support for the principle of pay equity by extending similar demands to Minnesota’s political subdivisions (e.g. to counties, cities, schools). However, this time the legislature did not provide additional funds to support these efforts.

The stated purpose of Minnesota’s 1984 Local Government Pay Equity Act (LGPEA) is to “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.” To achieve this goal, “[a] primary consideration in negotiating, establishing, recommending, and approving compensation is comparable work value in relationship to other employee positions within the political subdivision.”

In effect the LGPEA has required each of the state’s 1,600 jurisdictions to determine which employees are employed in sex-segregated “women’s work” classifications (defined as more than

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9. MINN. STAT. §§ 43A.01-.47 (1998) (also known as the Employees Equitable Compensation Act).
10. Id. § 471.991, subd. 1 (2000).
11. Id. §§ 471.991-999.
12. Id. at subd. 5. “Equitable compensation relationship” means that the compensation for female-dominated classes is not consistently below the compensation for male-dominated classes of comparable work value, as determined under section 471.994, within the political subdivision. Id.
13. MINN. STAT. § 471.991, subd. 6 (2000). A female-dominated class is defined as any class in which seventy percent or more of the members are female. Id.
14. Id. at subd. 7. A male-dominated class is defined as any class in which eighty percent or more of the members are male. Id.
15. Id. at subd. 2. “Balanced classes” means any class in which no more than eighty percent of the members are male and no more than seventy percent of the members are female. Id.
16. Id. at subd. 3. “Comparable work value” is defined as the value of work measured by the skill, effort, responsibility, and working conditions normally required in the performance of the work. Id.
seventy percent female)\textsuperscript{17} and then rate those classifications against jobs performed by other employees. Where a "female-dominated" class appears to be "underpaid" based on the ratings assigned to it and other job classifications (the "comparable work value"\textsuperscript{18}), a public employer is required to create a plan to bridge that gap. Initial plans were due by January 31, 1992, and all jurisdictions have been placed on a subsequent three year reporting cycle, with a third reporting each year to the state Department of Employee Relations.\textsuperscript{19} Failure to comply with these directives can and has resulted in reduced state aid to a local political subdivision.\textsuperscript{20}

Since the Act was adopted it has applied purely to matters of pay, including lump sum payments, but has not been interpreted to demand parity in other respects. As Arbitrator Scoville observed:

It is true that the law did not abolish collective bargaining, and indeed expected collective bargaining to be part of the implementation of comparable worth, but it did constrain collective bargaining in the interests of pay equity. Each unit in a "multicraft" setting is less free to negotiate its relative pay. However, collective bargaining is still free over non-pay elements of compensation and other terms and conditions of employment, since the ubiquitous practice of measuring equity only in terms of pay (and not the "compensation" stated in the law) has apparently gone unchallenged.\textsuperscript{21}

Moreover, the Minnesota Court of Appeals has affirmed that the Local Government Pay Equity Act was enacted to benefit female-dominated classifications, not male-dominated or balanced classes of employees.\textsuperscript{22}

\textsuperscript{17} MINN. STAT. § 471.991, subd. 6 (2000).
\textsuperscript{18} The comparable work value is determined by the use of a job evaluation system. When selecting or developing a job evaluation system is required to confer with their employees' exclusive representatives.
\textsuperscript{19} In 1991 the legislature authorized DOER to adopt rules under the Administrative Procedures Act to assure compliance with the LGPEA. The department adopted the rule MCAR 3920 in 1992.
\textsuperscript{20} MINN. STAT. § 477.9981, subd. 6 (1998).
\textsuperscript{21} Indep. Sch. Dist. 281 v. Robbinsdale Principals' Ass'n, BMS Case No. 89-PN-148, 2 (1989) (Scoville, Arb.).
\textsuperscript{22} Armstrong v. Civil Serv. Comm'n of City of St. Paul, 498 N.W.2d 471 (Minn. Ct. App. 1993). See also LELS v. Chisago County, BMS Case No. 95-PN-54, 37 (1995) (Berquist, Arb.). ("In other words, in that they are a male-dominated class or a balanced class, they are not entitled to the benefits of the Pay Equity Act by an increase in their wage rates to reflect the amount below the pay equity line which they are at presently.").
IV. EARLY PROBLEMS

In order to provide public employers with breathing space to conduct their studies and implement their pay equity plans, the Act provided that employees and unions could not challenge those plans until August 1, 1987. After that date a number of unions challenged plans they claimed were flawed and unfair. Most of those challenges were brought before labor arbitrators and in most cases they were rejected. It soon became apparent that arbitrators were reluctant to second guess job study results shown to be based upon a recognized methodology.

The second, more enduring, challenge to pay equity plans came from unions, most notably those representing law enforcement personnel, who take issue with the effect an employer’s plan has on collective bargaining. This situation arises when a local subdivision’s final wage offer to a “male-dominated” class is lower than would otherwise be suggested by the marketplace, the marketplace being the prevailing wage rates for the same job in comparable jurisdictions as measured by the “external comparability” evidence. The offer is usually couched in terms such as “a wage increase that is consistent with the comparable worth law.” The public employer justifies its offer on the grounds that the only way to meet the LGPEA’s requirements is to freeze the wages of “overcompensated” classes to provide the necessary funds to bring the

23. For example, in Independent School District 281, Robbinsdale v. Robbinsdale Principals’ Association, BMS Case No. 89-PN-148, 2 (1989) (Scoville, Arb.), Arbitrator Scoville noted:

The Association raises only one procedural issue about the implementation of pay equity in ISD 281, maintaining that no one ever told the principals that their pay might be affected by the results of the Pay Equity/Job Evaluation Exercise. This is not a substantial flaw in an otherwise carefully documented record of meticulous attention to the law’s requirements. Furthermore, even after it should have become apparent that the process was affecting employees’ pay all across the State, no appeal or request for reevaluation was filed by the Association or its members.

24. In LEELS v. City of Crookston, BMS Case No. 93-PN-583, 4 & n.1 (1993) (Lundberg, Arb.), Arbitrator James Lundberg considered the notions of “overcompensated” and “under-compensated”:

While the term “overcompensated” has been used in many arguments and may (sic) Arbitration Awards, it is important to recognize that the focus of the Local Government Pay Equity Act is on “underpaid” female-dominated employee groups. When the wages of city employees are generally lower than those paid in comparable cities, the question becomes, “Overcompensated, as compared to what?” While wage increases
“under-compensated” classes into an equitable relationship. In rebuttal, the unions have argued that the legislature never intended that pay equity would penalize classes of employees, and that traditional external comparisons remain the most appropriate benchmark in setting wages.

The issue was aptly framed by Arbitrator Bard in *LELS v. City of Wayzata*:

When an arbitrator has before him a male-dominated class that appears to be presently overpaid based on the point value given to its position, is the legislative mandate to bring the wages of the male class down or to suppress wage increases in order to make the establishment of equitable compensation relationships with female classes easier and less expensive for the City to achieve?

Two schools of thought quickly emerged concerning this dilemma. One school has held that arbitrators deciding wage issues should rely primarily upon traditional “external” criteria. Under this approach the wages of male-dominated groups, most notably police and fire employees, would continue to be set in large part by the marketplace, with no erosion based on pay equity considerations. By contrast, public employers have argued that when gender based wage disparities are found within the workplace, pay equity for overcompensated male-dominated groups have been held down, underpaid female-dominated groups have received larger wage increases that have generally moved city wage schedules toward compliance with the Pay Equity Act.

25. BMS Case No. 87-PN-606, 33 (1988) (Bard, Arb.).

26. Similarly, in 1990 attorney Frank Madden articulated a host of related questions:

What is the interplay between internal value and market when both are stated in the statute as criteria in determining wages? From a collective bargaining standpoint is it realistic to expect that the requirements of Pay Equity can co-exist with collective bargaining when there is diversity of interest of employees and unions dependent upon the results of the Pay Equity study? ...Should arbitrators look to the primary purpose of the Pay Equity Act to render an award which emphasizes the deceleration of overcompensated positions with the simultaneous intent of accelerating undercompensated positions? On the other hand, should arbitrators revert to the traditional standards of interest arbitration, emphasizing market which in turn tends to substantially burden the public employer financially, spiral the wage trend line and make the implementation of pay equity for undercompensated classes a perpetual problem of chasing the higher paid classes?

requires that "internal" comparisons drive future wages, even if that means freezing or slowing down some employee groups' wage increases.

The tension between these two views has been apparent from the outset. Especially in the early years, interest arbitrators often diverged markedly in explaining their awards. Such divergence was not surprising considering the ambiguity and conflicting provisions within the LGPEA itself, especially in the wake of its numerous amendments.

A. Legislative History

1. Affirming The Marketplace

When the LGPEA was enacted in 1984 it unequivocally stated that comparable work value was "the primary consideration" in setting compensation. Now, however, it is simply "a primary consideration." Moreover, in 1990 the legislature eliminated the term "primary consideration" from the definition "equitable compensation relationship" altogether, with that term now defined simply as when "the compensation for female-dominated classes is not consistently below the compensation for male-dominated classes of comparable work value."27

In 1984 the LGPEA expressly stated that an interest arbitrator "shall follow" the equitable compensation plan of the local subdivision when making a wage award; it did not mention applying any other standards. However, in 1986, after considerable debate in the conference committee, the legislature diluted that directive in two important ways: interest arbitrators now simply "shall consider" (rather than "follow") comparable work value, and they shall do so together with "other standards appropriate to interest arbitration."28 "Other standards" have always included market data.29

27. MINN. STAT. § 471.991, subd. 5 (1990).
28. Minnesota Statute section 471.992, subdivision 2 now provides:
   In all interest arbitration involving a class other than a balanced class held under sections 179A.01 to 179A.25, 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. The arbitrator shall consider both the results of a job evaluation study and any employee objections to the study. In interest arbitration for a balanced class, the arbitrator may consider the standards established under this section and the results of, and any employee objections to, a job evaluation study, but shall also consider similar or like classifications in other political subdivi-

http://open.mitchellhamline.edu/wmlr/vol27/iss2/34
Arbitrator J.C. Fogelberg summarized the effect of these changes:

Certainly one of the more difficult problems facing an arbitrator involved in the pay equity malaise is the 1986 amendment to the law wherein Section 471.992, Subd. 2, was changed from "the arbitrator shall follow the equitable compensation relationships established" under the act, to "shall consider" such internal relationships,"...together with other standards appropriate to interest arbitration. Clearly the change altered the law significantly—making it something less than imperative to strictly adhere to the results of a public employer's comparable worth pay format. The operative (yet general) phrase, "together with other standards appropriate to interest arbitration" in this Arbitrator's view, reduced the relative significance of a comparable worth plan. Under the wording of the statute, comparable worth is no longer the paramount consideration. Were this true there would be no logical reason to amend the statute in the manner in which it was done in 1986. Neither, however, does the new language allow the reviewer to completely ignore comparable worth, or to determine that it is somehow inapplicable to disputes involving male-dominated job classifications as the union argues.

The more recent amendments to the act have broadened the discretionary authority of the reviewing neutral.... There is no clear mandate which would quiet the ongoing debate regarding the importance of comparable worth vis-a-vis external comparisons, the Consumer Price Index, ability to pay, and other factors commonly applied in impasse disputes. Nowhere is there any statutory directive which ranks the relative importance of such criteria, indicating to an arbitrator the amount of emphasis that could be given one factor as opposed to another.  

2. Preserving Reliance On Pay Equity Considerations

Despite the apparent erosion of the LGPEA's protections following these amendments, those who sought to continue to make

sions.
30. LELS v. City of Moorhead, BMS Case No. 89-PN-291, 6-8 (1990) (Fogelberg, Arb.).
pay equity a primary consideration pointed to the Act’s continued insistence that comparable work value shall remain “a primary consideration” in determining public sector wages to achieve the Act’s stated purpose to “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.”

The Act’s omission of external market factors from the definition of the “reasonable relationship” which employers are required to achieve is also deemed significant. Indeed, despite the legislative efforts of 1986 and 1990, the Act still expressly provides that the “plan need not contain a market study” at all.

In addition, the Act’s only specific reference to weighing marketplace evidence is its directive that “in interest arbitration for a balanced class” the arbitrator “shall also consider similar or like classifications in other political subdivisions”. By contrast, for “a class other than a balanced class” (i.e., a male or female-dominated class) the Act directs the arbitrator to consider in addition to pay equity factors “other standards appropriate to interest arbitration.” It is possible to argue that the legislature’s use—within the same provision—of a more specific directive for “balanced” classes, and a more general directive for female and male-dominated classes, indicates that marketplace evidence should be weighed less heavily in those latter cases, the pay equity cases.

One interesting aspect of this balanced/unbalanced class dichotomy is the fact that as a class achieves gender balance, the mandates of pay equity become irrelevant and arbitrators are free, if they wish, to rely primarily on external comparisons. Indeed this is happening, most notably as more women are being employed in previously male-dominated classes. For example, in LELS v. City of Osseo the employee group in arbitration was comprised of “all non-supervisory sworn personnel employed in the Employer’s Police Department—three Police Officers.” As one of those three officers was a woman, the class was “balanced.” Thus, Arbitrator Gal-

32. Id.
33. Id. § 471.993, subd. 2.
34. Id. § 471.9981, subd. 1.
35. Id. § 471.992, subd. 2 (emphasis added); see also Minn. Stat. § 471.992, subd. 4.
36. Id.
37. BMS Case No. 98-PN-475 (Apr. 23, 1998) (Gallagher, Arb.).
lagher had no trouble awarding a Union position "because the evidence about wage rates paid by other metropolitan cities shows that wages paid by the Employer are substantially below what most other metropolitan cities are paying." 38

3. Duty To Bargain In Good Faith

Another factor confusing the debate on pay equity and interest arbitration has been the parties' duty to bargain in good faith. Minnesota law requires that an employer bargain in good faith with its employees even when it feels constrained by comparable worth considerations. Despite the Act's admonition that it does "not diminish a political subdivision's duty to bargain in good faith," 39 there is real concern about the effect of pay equity plans on the collective bargaining process. "By blindly insisting that wage increases for [over-compensated] employees conform to the findings of that study, the City violates its statutory obligation to bargain in good faith...." 40

In 1990 the legislation addressed these concerns by adding language that "[t]his law may not be construed to limit the ability of the parties to collectively bargain in good faith," 41 and by permitting the Commissioner of Employee Relations to consider "recent arbitration awards that are inconsistent with equitable compensation relationships" when determining whether a public employer has failed to establish the required equitable compensation relationship. 42 This provision suggests that a public employer's non-compliance may be excused if it stems from an interest arbitrator's decision. 43

B. The Early Cases

It is not surprising that the 1984 LGPEA was greeted with a wave of controversy and confusion. Suddenly public employers

38. Id. at 8.
39. MINN. STAT. §§ 471.992, subd. 1 and 471.9966 (2000).
41. MINN. STAT. § 471.992, subd. 1.
42. Id. § 471.9981, subd. 6(b)(3).
43. Id. Also relevant is new language in the Act's penalties section which permits the Commissioner to suspend penalties if "noncompliance results from factors unrelated to the sex of the members dominating the affected classes and that the subdivision is taking substantial steps to achieve compliance to the extent possible." MINN. STAT. § 471.9981, subd. 6(c).
were forced to re-do their entire compensation schemes to remedy historic wage discrimination against persons in female-dominated classes. Moreover, consistent with the state’s “continuing tendency to mandate programs/services but fail to provide adequate funding” these political subdivisions were given no state money to fulfill this predictably expensive and complicated state directive.

At first some employee groups did not appreciate the full implications of this effort. However, when the new compensation plans took effect, and the direct link between a job’s rating and its wages became apparent, persons adversely affected by the change reacted strongly. In particular, employees in job classifications found to be “male-dominated” and “over-paid” mobilized quickly. In 1990 Rolland Toenges, former Director of Hennepin County’s Labor Relations Department, described those initial reactions:

[M]ost employees do not perceive the pay equity system as providing a true indication of their worth...the outcome of a job evaluation study tends to leave most employees dissatisfied. It is my observation that most employees believe that if anyone with their head screwed on straight would properly evaluate their job, they would know that they are undercompensated compared to other employees.

...[I]mplementing the concept of comparable worth through negotiations has proven a very formidable task. Yet, there have been surprises. Some of the occupational groups found to be overcompensated have been what I would describe as grudgingly cooperative. This has been more characteristic of the non-essential, traditional male-dominated occupations. On the other hand, essential employee units found to be overcompensated have been far less willing to accept the job study outcome with resolution usually in arbitration.

At first the unions who represented these groups challenged the plans’ methodology, arguing that certain jobs, for example, law enforcement and fire fighting, were underrated and deserved more points. However, those challenges proved largely unsuccessful as

44. Minn. Teamsters Pub. & Law Enforcement Employees Union, Local 320 v. City of Mound, BMS Case No. 94-PN-1168, 19 (Sept. 11, 1995) (Boyer, Arb.).
45. ROLLAND TOENGES, MINNESOTA INSTITUTE OF LEGAL EDUCATION, NEGOTIATIONS UNDER THE MINNESOTA PAY EQUITY ACT: AN EMPLOYER PERSPECTIVE, 6-7 (Public Sector Labor Law, III) (6th ed. 1990).
arbitrators agreed that "despite their inherent problems and inherent subjectivity, job evaluation studies are in wide use and the use of those studies are in fact legislatively mandated in Minnesota under the CWL."\textsuperscript{46}

Despite this relative agreement on the studies themselves, strong arbitral disagreement arose when employees went to interest arbitration on the question of wages. For the first time a statute directed that a factor outside the realm of traditional bargaining and interest arbitration—"equitable compensation relationships" based on gender—be made "the primary consideration" in setting wages. With marketplace data not even mentioned in the statute, public employers argued that external comparison evidence was no longer relevant "in negotiating, establishing, recommending, and approving compensation."\textsuperscript{47} This flew in the face of many arbitrators' long standing and deeply held views of the nature of the collective bargaining and arbitral processes. One such concern was expressed in an arbitration involving the LELS and the City of Burnsville:

Some of an arbitrator's decision making authority is eliminated by the public employer's interpretation of comp worth....It will decide what is required to comply with the statute, and it will decide by arbitrarily negotiating with other units what the Arbitrator can and cannot do in so far as raising the wages of essential employees are concerned.\textsuperscript{48}

A related concern was that because the studies are done on a subdivision-wide basis there could be a loss of unit by unit bargain-

\textsuperscript{46.} AFSCME, Council No. 14 v. City of Burnsville, BMS Case No. 88-PN-829 (1989) (Bard, Arb.). Expanding on this theme, Arbitrator Jack Flagler noted: The only guidance provided to interest arbitrators in state law requires that we consider the public employer's pay equity plan. Nothing in this limited statutory reference can be read as empowering an interest arbitrator to undertake a sweeping review of a public employer's pay equity plan which has been prepared by a competent and widely used professional consulting firm. Neither does the law contemplate action by an interest arbitrator to carve such exceptions as may serve to undermine the essential strategies and mechanisms of the plan. AFSCME Council No. 14 v. County of Hennepin, BMS Case No. 87-PN-552 (1987) (Flagler, Arb.).

\textsuperscript{47.} MINN. STAT. § 471.992, subd. 1 (2000).

\textsuperscript{48.} E.g., LELS v. City of Burnsville, BMS Case No. 88-PN-891, 10 (1989) (Bard, Arb.); see also Minnetonka Police Ass'n v. City of Minnetonka, BMS Case No. 88-PN-724, 5 (1989) (Ver Ploeg, Arb.) ("By blindly insisting that wage increases for these employees (i.e. over-compensated employees) conform the findings of that study, the City violates its statutory obligation to bargain in good faith").
ing if the results of the studies were considered binding.

Such an interpretation in effect would force unions to give up their right to negotiate contracts independent of the pay arrangements made in other segments of the organization. They would be bound hand and foot to the same point/dollar relationship as the first union or employee unit to sign an agreement with the public employer.49

Some arbitrators’ discomfort with according primacy to “equitable compensation relationships” may also have stemmed from their relative lack of understanding of the concept of pay equity, as well as the significant influence wielded by the unions who challenged these new plans—an influence reflected in the 1986 and 1990 amendments previously discussed.50

Soon after August 1987, when the Act first permitted the pay equity studies and plans to be challenged, most arbitrators continued to accord greater weight to the external comparison evidence. Only a few arbitrators favored giving greater consideration to internal comparisons when pay equity was involved. By early 1989, however, a more distinct split had become apparent over this question.

Interest arbitrators who relied upon the internal pay equity data in making their awards emphasized the Act’s goal of remedying wage discrimination based on gender. Arbitrator Jack Flagler observed:

While the law may permit an arbitrator to balance the impact of a particular pay equity formula against other traditional interest arbitration criteria, nothing in the Statute can be read as contemplating an award which would undermine the express purpose of the Act which is to bring undercompensated jobs into reasonable alignment with overcompensated jobs.51

Arbitrators who concluded that using market forces to decide wage levels could easily defeat this purpose52 agreed with Arbitrator

49. Teamsters 320 v. County of Benton, BMS Case No. 88-PN-512, 10 (1989) (Bard, Arb.).
50. Supra Part IV.A.
52. E.g., Moorhead Firefighters Ass’n, Local 1323 v. City of Moorhead, BMS Case No. 89-PN-190, 10 (1989) (Powers, Arb.):

In spite of the amendments which direct an arbitrator to consider other factors, the emphasis is still on fashioning an award consistent with pay equity considerations. The legislature intended that a pay equity study be
Flagler that:

If the Minnesota Comparable Worth Law is to succeed in substantially reducing and eventually eliminating gender-based pay inequities, it must accomplish its legislative purpose through moderating those market forces which have so clearly favored male-dominated jobs and as a corollary have so disfavored female-dominated jobs.\(^5\)

Thus, the lines of the debate were drawn. However, those lines were not so rigid as they first appeared. As the confusion persisted, and as the LGPEA began to be amended, adherents to each view began to acknowledge that neither could command absolute allegiance. Interest arbitration always had been, and continued to be, a balancing process. The difference now was that more was thrown into the mix. Even the most vocal defenders of the marketplace conceded that internal comparisons should prevail in two instances: (1) where female-dominated or relatively undercompensated units have been victims of wage discrimination\(^4\) and (2) when there was evidence that using the marketplace to determine the wages of an already “over-compensated” class would place an extreme burden on a public employer’s resources.\(^5\)

By the same token, neither did the proponents of internal comparisons ignore the traditional deference given to market forces: “[I]t is clear that market data cannot be ignored. Evidence of external comparables has traditionally been heavily weighed in interest arbitration, and the 1986 amendments to Minnesota’s comparable worth law make clear that those traditional standards

\(^{53}\) Teamsters 320 v. City of Stillwater, BMS Case No. 88-PN-926, 3 (1989) (Flagler, Arb.).

\(^{54}\) Id. at 9.

\(^{55}\) LELS v. City of Wayzata, BMS Case No. 87-PN-606, 34 (1988) (Bard, Arb.).
remain relevant. Indeed, at least one proponent of pay equity embraced the value of market data in achieving the goal of pay equity:

I firmly believe that giving appropriate weight to market wages will work to the benefit of the female dominant occupations both in the short and in the long run....Elemental logic dictates that unless a market-driven wage for male-dominant jobs is maintained, there can be no stable benchmark to which female dominant jobs ought to be raised.

Nevertheless, despite occasional concessions from both sides in the marketplace/pay equity debate, it is fair to say that the decisions issued in the 1980's remained largely confused. In many cases interest arbitrators acknowledged the competing evidence and arguments and then jumped directly to their award, avoiding taking a definitive stand on the dilemma. The question now is whether more recent interest decisions have achieved a more definitive and harmonious resolution of those earlier difficult issues.

V. RECENT DECISIONS

With the 1980's ending on such a confused note, the predictable question has become: did the 1990's produce any accord on the difficult issues that pay equity introduced to interest arbitration? To answer this question this author reviewed the Minnesota interest awards of the past decade that most directly wrestled with these issues. After reviewing over 40 such awards, this author has concluded that Arbitrator William Berquist's analysis, articulated in 1995, comes closest to capturing the approach now adopted by the majority of, although by no means all, interest arbitrators. In *LELS v. Chisago County* Arbitrator Berquist observed:

Initially, arbitrators as to public interest arbitration of essential employees such as the public service employees involved here, used external comparisons as their primary

59. Copies of all interest arbitration awards are maintained by the Minnesota Bureau of Mediation Services in St. Paul, Minnesota.
60. BMS Case No. 95-PN-54, 11-12 (1995) (Berquist, Arb.).
pricing standard for wages. Then when the Minnesota Pay Equity Act came into existence and became predominant, internal consistencies became one of the main primary important considerations. The experience since has been for arbitrators to give added weight and priority to internal comparables as to wages unless the proper external comparables demonstrate that the counties' public service employees...are substantially underpaid as compared to proper external comparables.61

Arbitrators who utilize this approach reconcile the competing demands of pay equity and the marketplace by giving initial deference to a public employer’s internal comparison evidence, which includes pay equity. They then issue awards largely consistent with those considerations, unless doing so would result in wages “substantially” below the marketplace.

Numerous arbitrators since *LELS v. Chisago County* have issued awards consistent with this approach. However, this approach is by no means unanimous. Thus, it is necessary to examine a broader range of arbitral perspectives on the subject.

A. Continuing Allegiance To The Marketplace

In 1992 Arbitrator Steven Bard reiterated his concern that excessive reliance on internal comparables, as dictated by a compensation plan formulated for pay equity purposes, would defeat the give and take which is essential to collective bargaining:

[A] neat and clean uniform system of a pure ‘pay for points’ world in which all employee groups are compared internally and compensated on job value alone is not what the legislature intended and can never completely come to pass in a world in which both collective bargaining and interest arbitration still exist. No Arbitrator can fulfill his statutorily mandated job if he cedes his judgment in these matters to some computerized model or mechanical system whereby regression lines make the determination automatically.62

Arbitrator Bard’s concerns apparently have not diminished, as he noted more recently in a 1999 award:

The relative importance of internal comparables and external comparables under the LGPEA has been the sub-

61. *Id.*
62. *LELS v. City of Winona, BMS Case No. 92-PN-891 (1992) (Bard, Arb.).*
ject of much controversy in recent years. The City makes persuasive arguments in support of its interpretation. However, this Arbitrator is not prepared to read market considerations out of the law, nor to relegate external comparables to a clearly secondary position. To rigorously apply an all jobs analysis to every political subdivision in the state would yield a pure ‘pay for points’ system in which both collective bargaining and interest arbitration would become absolutely meaningless. All compensation systems would be decided by computer models generating the appropriate regression lines. This is clearly not the intention of the LGPEA which in fact expresses quite the opposite in regard to the survival of collective bargaining and to the propriety of interest arbitrators in considering “other standards appropriate to interest arbitration.”

In 1998 Arbitrator Cathryn Olson expressed her agreement with Arbitrator Bard’s view:

To allow a system aimed at “perfect” pay equity under the LGPEA in all employees compensation relationships is, in this Arbitrator’s opinion, to run the risk of being able to lock wages on the lowest common denominator rather than on the free-wheeling give and take of negotiations.

Although the above statements reflect some of the strongest language in support of continued deference to the marketplace, both Arbitrator Bard and Arbitrator Olson also acknowledge that

63. LELS v. City of Lake Crystal, BMS Case No. 99-PN-988, 9 (1999) (Bard, Arb.).
64. LELS v. City of Winona, BMS Case No. 98-PN-424, 6 (1998) (Olson, Arb.).
65. In LELS v. City of Lake Crystal, BMS Case No. 99-PN-988 (1999) (Bard, Arb.), Arbitrator Bard indicated:
Notwithstanding the foregoing...[i]n making my award, I will use both internal and external comp data as mandated by the LGPEA and I will attempt to balance the weight of both sets of data in rendering an appropriate wage award for the parties.

However, he did add:

[T]his Arbitrator has always felt uneasy in blindingly awarding what other represented and underrepresented internal groups have received without also looking to external factors. I believe that this is not only permitted but required, both by the pay equity Act as well as by a common sense recognition that there may be, and often are, factors which, for example, would compel a different pay structure for certain employee groups than for others.

Id. at 10.
66. In LELS v. County of Winona, BMS Case No. 98-PN-442, 4 (1998) (Olson, Arb.), Arbitrator Olson noted:
internal comparisons cannot be ignored. However, they emphasize, as almost all arbitrators agree, that "[c]learly, external comparables must be considered when determining wages of a balanced class."67 The difference is that many arbitrators speak more forcefully when describing the weight they accord to pay equity considerations.

B. Deference To Pay Equity Considerations

In 1994, Arbitrator John Boyer issued one of the most forceful statements yet concerning "the well-documented fact that passage of the LGPEA incontrovertibly modified the criteria and relative weight of such to be utilized by any Interest Arbitrator."68 In IBT Local 320 v. City of Mound he explained that "the explicit and implicit effect was to restrict the Arbitrator’s discretionary authority to ‘fashion’ awards based upon the primacy of traditional external ‘market comparisons’ and to require greater emphasis be accorded the Employer’s Pay Equity Plan."69

By the same token, in addressing pay equity’s effect on collective bargaining Arbitrator Scoville acknowledged in 1989 that:

Among general considerations in determining wages in interest arbitration are internal and external or market comp, the employer’s ability to pay, cost of living data, any prevailing practice within the entity, and employee turnover/retention. To this mix, the Minnesota legislature has added pay equity analysis for equitable compensation relationships under the [LGPEA]. However, Arbitrator Olson cautioned:

Like Arbitrator Bard, I would not withhold increases to male-dominated groups in order to allow the City’s perfect variation of compliance with the LGPEA via the all jobs line. There was no convincing evidence offered of the City’s inability to pay nor was there rebuttal of an historical placement of Winona police officers’ wages in the middle of the established comparison jurisdictions.

Id. at 6.

67. LELS v. City of Morrison, BMS Case No. 98-PN-84, 6 (1998) (Miller, Arb.); see also IBT County of LaSueur v. Teamsters Local 320, BMS Case No. 98-PN-249 (1998) (Miller, Arb.):

It is noteworthy that even if the Union position had been awarded in its entirety it would not have placed the County out of compliance with its Pay Equity Plan....The Arbitrator is clearly adhering to established arbitral reasoning by using external settlements rather than solely an internal settlement to arrive at a wage increase which is fair and equitable to both Parties.

Id. at 14.

68. IBT Local 320 v. City of Mound, BMS Case No. 94-PN-1168, 9-10 (1995) (Boyer, Arb.).

69. Id. at 10.
It is true that the law did not abolish collective bargaining, and indeed expected collective bargaining to be part of the implementation of comparable worth, but it did constrain collective bargaining in the interests of pay equity. Each unit in a "multicraft" setting is less free to negotiate its relative pay....As a result of the comparable worth legislation, arbitral precedent has concluded that greater weight must generally be given to issues of pay equity, in comparison with the traditional interest arbitration criteria, such as market comparison or cost of living.\(^70\)

Other arbitrators have also observed that "[t]he clear trend in interest arbitration awards in Minnesota...is to afford greater weight to internal comparisons."\(^71\) As Arbitrator Steven Befort has noted:

[T]he statute requires that a local government employer place primary importance on the comparable value of job classifications within the governmental unit in negotiating and establishing rates of pay. This obligation exists regardless of whether that governmental employer is in or out of technical compliance with the standards set out in Minn. Stat. Sec. 471.9981. Moreover, an employer's present failure to set pay on an internally consistent basis endangers future compliance because of the potential for changes in the gender composition of job classes.\(^72\)

From these and other decisions,\(^73\) it is apparent that despite the 1986 and 1990 amendments that arguably weakened the


\(^{71}\) Dakota County Attorney Employees Ass'n v. Dakota County, BMS Case No. 96-PN-57, 5 (1996) (Befort, Arb.).

\(^{72}\) Id. at 15 (citation omitted).

\(^{73}\) E.g., IBT Local 320 v. Ramsey County, BMS Case No. 96-PN-997, 10 (1997) (Miller, Arb.) ("Pay equity, as well as the financial ability of a public employer to finance the arbitrator's awards is critically important in each and every interest arbitration."); Human Servs. Supervisors Ass'n v. Dakota County, BMS Case No. 97-PN-837, 3 (1997) (Wallin, Arb.) (finding internal considerations drive the award on this issue.); LELS v. Beltrami County, BMS Case No. 92-PN-1473, 13 (1992) (Berquist, Arb.) ("This award is consistent with the County's overall compensation system and is consistent with the County's attempt to maintain and keep in compliance with pay equity under the Local Government Pay Equity Act."); Id.at 17 ("As one will note, I have given primary consideration to the effect of the Pay Equity Act of the State of Minnesota."); County of Goodhue v. LELS, BMS Case No. 97-PN-599, 10 (1997) (Bard, Arb.) ("In any event, the pay equity arguments of the County along with the evidence pertaining to this County's present financial situation outweigh, in this arbitrator's mind, any affect the market data might otherwise have.").
LPGEA's pay equity directives, a pronounced trend has developed and persisted whereby a large number of arbitrators now agree that “[t]he Minnesota Pay Equity Act has significantly impacted the manner in which arbitrators analyze a wage dispute in the public sector. The Pay Equity Act requires that primary consideration be given to relative job rank. Thus, an arbitrator must look first to internal wage comparisons.”

This is true even where, as in *Douglas County v. IBT Local 320*, the evidence was clear that:

[t]he Union presented much the better view of how external market comparables should affect the final wage. [Notwithstanding the fact the] Union’s market data persuasively shows that the County falls well below comparable compensation levels for the classifications involved. [Arbitrator Flagler, seeming a bit regretful, concluded the] Union’s proposal...simply cannot be accommodated under the rigid Minnesota DOER pay equity statistical compliance formula.

C. Applying Pay Equity

1. Non-Compliance As A Factor

Interest arbitrators are highly influenced by evidence that a public employer is, or might be, out of compliance with the Pay Equity Act. As previously discussed, employers must provide detailed reports concerning their pay equity status to the state Department of Employee Relations (DOER) every three years. Arbitrators have not ignored the fact that non-compliance can and does result in substantial financial penalties. Echoing Arbitrator Nancy Power's concern in *LELS v. City of Mound* that “[t]he Department of Employee Relations has begun enforcing the Act by imposing penalties and fines, which makes non-compliance more serious and costly than it has been in the past”, Arbitrator Reynolds observed:

The County presented substantial credible evidence that they are currently regarded by the Minnesota Department of Employee Relations as being out of compliance with

75. BMS Case No. 97-PN-866, 9 (1997) (Flagler, Arb.).
76. *Id.*
78. BMS Case No. 94-PN-1419, 10 (1995) (Powers, Arb.).
the Pay Equity Act. That out of compliance situation is subjecting the County to fines. A careful review of the Union proposal forces a conclusion that it would aggravate the out of compliance standing of the County.

The overwhelming weight of arbitrable opinion in interest cases in Minnesota since 1990 has placed substantially greater weight on internal comparisons than on external comparisons. That is not to say that external comparisons are not given measurable weight in some cases. In this case, however, the standing of the County in regard to the Pay Equity Act compels a strong emphasis on internal comparisons. 79

Recognizing the compelling weight that arbitrators are giving to evidence of non-compliance, or possible non-compliance, unions are increasingly running their own computer analyses of an employer’s status. Using the state provided formula, these unions are offering their own statistical analyses to argue that the public employer is not in jeopardy. 80 This argument sometimes elicits interesting evidence that a change of just one or two employees in a class can affect whether that class is or is not “balanced.” Cautious employers who elect to maintain a margin of safety will argue that “compliance with the DOER model is not and should not be the ultimate measuring stick of whether a County has complied with the letter and spirit of the LGPEA in adopting reasonable and equitable compensation relationships for its various employee groups.” 81

It is unclear to what extent arbitrators will enter the realm of statistical analysis—a subject that many have probably assiduously avoided in their schooling and in their careers—to assess whose computer model best reflects a political subdivision’s true situation.

2. Over-Compensated Classes

An arbitrator who determines that pay equity considerations should apply to an “over-compensated” group’s award must then

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80. E.g., LELS v. City of South St. Paul, BMS Case No. 96-PN-1788, 4 (1997) (Martin, Arb.) (“With respect to internal comparison, the Union’s primary contentions were designed to rebut the City’s arguments based upon pay equity studies.”)
81. LELS v. County of Goodhue, BMS Case No. 97-PN-539, 7-8 (1997) (Bard, Arb.).
determine how to do so fairly. In City of Mankato v. LELS, Arbitrator Flagler outlined four possible ways to accommodate pay equity concerns when setting wages for an over-compensated class: (1) reduce wages of the male-dominated jobs while increasing those of female-dominated jobs of comparable work value; (2) freeze the wages of male-dominated classes while accelerating the wage increases of female-dominated classes; (3) raise the wages of male-dominated classes to the market rate for like political subdivisions while at the same time raising the wages of female-dominated classes at an even faster rate; and (4) decelerate the rate of wage increases for over-compensated classes while simultaneously accelerating those increases for under-compensated classes.

Internal comparison proponents have most often adopted the fourth alternative, on the theory that:

[W]hile the comparable worth law should rarely, if ever, be used to freeze otherwise justified wage increases, it is appropriate to utilize that law to decelerate the rates of increases for over-compensated employees while attempting to bring under-compensated employees to a more equitable position.

This view has been consistent with many employers' efforts, described by former Hennepin County Labor Relations Director Rolland Toenges:

[A]chieving pay equity by increasing compensation of all employees to the level of the higher compensated employees in each given job value is not considered economically possible. Therefore, we have bargained aggressively to achieve equity by moving inequitably compensated positions toward a point of central tendency. To achieve equity using this approach, employees compensated above their equity value must agree to no compensation increase or a smaller compensation increase than that received by employees in general. Hennepin County has not proposed to reduce the compensation of overcompensated employees.

Wrestling with this very issue, Arbitrator James Lundberg adopted this fourth alternative in his interesting analysis of the wages to be awarded to the Crookston police:

82. BMS Case No. 88-PN-725, 5 (1988) (Flagler, Arb.).
83. LELS v. City of East Grand Forks, BMS Case No. 88-PN-584, 14 (1989) (Ver Ploeg, Arb.).
84. ROLLAND, supra note 45, at 8.
The question to be answered in this situation is whether the Arbitrator should continue to slow the wage increases for the overcompensated male-dominated groups or freeze wages. Internal pay equity can be attained by either mechanism....If Crookston Police are under-compensated relative to officers in similar communities but Crookston Police are overcompensated relative to female-dominated Crookston employee groups, I infer that female-dominated Crookston employee groups probably are significantly underpaid relative to the broader market.

While slowing wage increases for overcompensated male-dominated employee groups has generally been adopted by Interest Arbitrators as the mechanism for attaining wage equity, the accepted approach has not resulted in instantaneous correction of all historical wage inequities. Over the course of several years cities have been able to adjust inequities in their internal pay schedules without ignoring market forces which are also to be considered in the development of an equitable compensation plan.

This Arbitrator will allow a wage increase to be paid to the Crookston patrol officers but will not increase wages to the average wage being paid similar employees in comparable communities. The Arbitrator is slowing the increase of wages to patrol officers relative to the market, with the belief that the City will continue to adjust the wages of underpaid female-dominated groups to arrive at internal wage equity. 85

3. Internal Wage Settlement Patterns

It is not unusual for an employer to settle wages with most of its unions so that those organized employees, as well as the employer’s unorganized employees, are given the same percentage wage increase. With evidence of such a wide-spread wage pattern, the question becomes to what extent—if at all—an interest arbitrator should defer to that pattern when considering one employee group’s arguments that they deserve more.

For example, in one case, Hennepin County presented evidence that over 92% of its current employees, both organized and

85. LELS v. City of Crookston, BMS Case No. 93-PN-583, 46 (1993) (Lundberg, Arb.).
unorganized, would receive wage increases of 1.5% in 1994 and 2% in 1995. Although the Union argued that the employees who worked in the Hennepin County Detention Center did "uniquely demanding work at a unique facility," the arbitrator awarded the same 1.5% and 2% wage increases to this bargaining unit on the grounds that:

[c]ertainly it is true that one group cannot automatically be bound to others' settlement patterns. However, the fact that a pattern is uniformly maintained for almost all of a large number of employees is strong evidence that the terms of the pattern are appropriate under existing conditions. That is, such widespread application of consistent terms compels an Arbitrator to closely scrutinize the reasons for deviating from those terms for a select group of employees.  

In another case, Arbitrator Miller explained why Minnesota interest arbitrators give preferential weight to clear and consistent internal wage settlement patterns:

The County's revised final position for 1998 adheres to the wage settlement that was granted to 96% of the other County employees. To award this bargaining unit, which represents only 4% of the total workforce in the County, a settlement greater than that granted to the overwhelming majority of other County employees will encourage interest arbitration and undermine the collective bargaining process and labor relations stability. Moreover, this internal settlement pattern was not a coincidence. Since at least 1992, the County has negotiated uniform wage increases among all of its bargaining unit, include this Deputy's Unit. As a result, past bargaining history adheres to the principles of internal consistency among all bargaining unit.

In an earlier decision, Arbitrator Miller more specifically described what is sometimes known as "whipsaw bargaining" to explain why both labor and management would be anxious to maintain consistent wage patterns:

With a settlement rate of 97%, it is clear that both organized and unorganized employee groups have adhered to

86. AFSCME Council 14 v. Hennepin County, BMS Case No. 94-PN-1431, 5-6 (1994) (VerPloeg, Arb.).
87. LELS v. County of Blue Earth, BMS Case No. 98-PN-752, 4 (1998) (Miller, Arb.).
this same philosophy. This settlement pattern preserves those units who settle first, so their settlement will not serve as a floor for other units. The credibility of both the Employer and the other exclusive representatives is at stake to maintain the settlement pattern, unless the Union can produce compelling reasons to deviate from the settlement pattern.\textsuperscript{88}

In summary, it seems clear that—at least where an employer has maintained a pattern of virtually identical settlements with all units and unorganized employees—"since 1990 the axiom that such internal consistency be accorded primacy has emerged and been consistently applied."\textsuperscript{89} To the extent that such wage patterns incorporate pay equity adjustments driven by the LGPEA, giving preferential weight to those patterns is consistent with the trend away from external comparisons.

VI. SUMMARY

In summary, when the Minnesota Legislature passed the Local Government Pay Equity Act in 1984 it acted decisively to ameliorate the disparities between men’s and women’s wages that had persisted despite earlier passage of Title VII and the Equal Pay Act. Nevertheless, although many have applauded this decisiveness,
others have had good reason to fault the legislators’ failure to provide financial support for what they should have foreseen would be a difficult and expensive process.

The difficulty of implementing pay equity immediately became apparent. Employee groups adversely affected by significantly revised compensation systems thrust themselves into even more vigorous competition for a public employer’s finite funds. When that competition extended to interest arbitration, Minnesota’s arbitrators were forced to address the difficult questions that pay equity had introduced to the process. The cases of the late 1980’s reflect the confusion and turmoil that resulted as arbitrators sought reconcile the often ambiguous and conflicting provisions of the LGPEA with previously well understood principles of interest arbitration.

However, the cases of the 1990’s seem to have restored a certain equilibrium to the process. More recent cases demonstrate a shift to according primary weight to pay equity considerations, and to internal comparisons more generally. However, no arbitrator has disavowed the importance of external comparisons, evidence that can prove determinative if sufficiently compelling.

Interest arbitrators will, as always, continue to strike a balance on a case by case basis. The parties’ continued willingness to entrust such high stakes matters to their final and binding determination demonstrates that the process, although imperfect, continues to work.