

## IN THE MATTER OF ARBITRATION BETWEEN

**MINNEAPOLIS PARK & RECREATION BOARD**  
(Employer)

and

**DECISION**  
(Contract Interpretation  
- Application)  
BMS Case No. 17-PA-1027

**AMERICAN FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES, MN COUNCIL 5**  
(Union)

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ARBITRATOR: Mr. Frank E. Kapsch, Jr.

DATE AND PLACE OF HEARING: March 8, 2018 at the offices of Minneapolis  
Park & Recreation Board, Minneapolis MN

RECEIPT OF POST-HEARING BRIEFS: Both Parties filed timely post-hearing  
briefs on April 9, 2018.

### APPEARANCES

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### JURISDICTION

The Parties stipulated that this Arbitrator has been properly selected and  
appointed pursuant to *Article 4, Subdivision 2* of the applicable labor agreement  
and thereby possesses the duties, responsibilities and authorities set forth  
therein to hear and determine this dispute.

## THE ISSUE

The Parties were unable to jointly stipulate the Issue(s) in this matter and agreed that this Arbitrator shall formulate an appropriate Statement of the Issue(s), based upon the hearing record and post-hearing briefs. See below.

## THE EMPLOYER

The Minneapolis Park & Recreation Board (MPRB or Employer) was established in 1883 as a semi-autonomous public entity to govern, maintain and develop the public park system in the City of Minneapolis. MPRB is currently governed by nine publicly-elected Commissioners, who serve as the Board. The Board, in turn, selects and appoints a Superintendent. The Superintendent manages and oversees the day-to-day operations of the organization. MPRB is directly responsible for the operation, maintenance and development of some 180 local and regional properties, including parks, playgrounds, golf courses, nature sanctuaries, walking and biking paths/trails, lakes and a 55 mile parkway road system within the City of Minneapolis. Current employment within MPRB totals some 1,000 full- and part-time employees. The MPRB system is routinely rated as one of the finest municipal park systems in the Nation.

## THE UNION

The American Federation of State, County and Municipal Employees (AFSCME) is a nationwide labor organization representing some 1.6 million employees working in the public sector of the economy in positions such as corrections officers, nurses, sanitation workers, EMTs, school employees, etc. AFSCME, MN Council 5 includes Local No. 9; which represents certain Clerical and Technical employees of MPRB. There are approximately 40 employees in that bargaining unit.

## COLLECTIVE BARGAINING HISTORY

The Employer and Union have had a continuing and on-going collective bargaining relationship dating back decades and this relationship has been reflected in a successive series of labor agreements during that period. The Parties agree that the applicable labor agreement in this matter was effective January 1, 2016 and is scheduled to expire December 31, 2018. In addition to the labor agreement with AFSCME MN Council 5, Local No 9, MPRB has seven other labor agreements covering various employee groups/classifications; including Mobile Equipment Operators represented by Teamsters Union, Local No. 320 and auto and equipment mechanics and repair personnel represented by International Union of Operating Engineers, Local No 49.

## STATEMENT OF THE ISSUES

Following a careful and thorough review of the Record and the post-hearing briefs in this matter, I have attempted to distill this situation down to the Issues as set forth below:

ISSUE #1 - Was the Union's Grievance, as formally filed at Step 2 of the contractual Grievance Procedure, Article 4, on March 13, 2017 timely filed?

ISSUE #2 - Presuming an affirmative answer on Issue #1, does the omission of any reference to the year "2016" in the Union's Step 2 Grievance document preclude any potential remedy for that year?

ISSUE #3 - Has the Employer violated *Article 5, Wages and Payroll, Appendix A, Footnote 1* by failing and refusing to apply the higher cost-of-living increases contained in the labor agreement with Teamsters Union, Local 320 for the years [2016] sic., 2017 and 2018? If so, what shall be the remedy?

### ISSUE #1

Obviously, Issue #1 involves a basic or threshold question as to the arbitrability of this matter.

The Employer argues that the Grievance, underlying this case, was filed untimely and violated the contractual timelines. The relevant contract language appears in *Article 4 - Grievance Procedure*:

*Section 4.02. Step 1 (Informal) Any employee or union representative who believes the provisions of this Agreement have been violated may discuss the matter with the employee's immediate supervisor as designated by the Employer in an effort to avoid a grievance and/or resolve any dispute. While employees are encouraged to utilize the provisions of this subdivision, nothing herein shall be construed as a limitation upon the employee's union representative respecting the filing of a grievance at Subd. 2 (Step 2) of the grievance procedure.*

*Subd. 2. Step 2 (Formal) If the grievance has not been avoided and/or the dispute resolved by the operation of Step 1 and the Union wishes to file a formal grievance, the Union representative, shall file a written grievance with the affected department head or with his/her designee. The grievance must be filed within twenty-one (21) calendar days of the event which gave rise to the grievance or within twenty-one (21) calendar days of the time the employee or Union reasonably should have knowledge of the occurrence of the event, whichever is later...*

MPRB is alleging that the Union's formal, written Step 2 Grievance, filed on March 13, 2017, was untimely, in light of the contractual language, as above. In reviewing the events that precipitated the filing of the Grievance, I note that the

Record evidence establishes that the applicable labor agreements for both AFSCME and the Teamsters, for the 2016 - 2018 calendar years, were adopted and implemented by the Parties on May 18, 2016. Both agreements were retroactive to January 1, 2016.<sup>1</sup>

In about December, 2016, the Union approached MPRB management and advised them that there appeared to be a problem with the amount of scheduled general wage increases in the AFSCME agreement, as compared to the increases in the Teamster agreement. More specifically, the Union contended that, by its calculations, employees under the Teamster contract were receiving a higher general, across-the-board or cost-of-living percentage wage increase than those employees covered by the AFSME agreement for the contract period 2016-2018.<sup>2</sup> The Union alleged that the percentage differences in those respective wage increases potentially violated *Article 5, Appendix A, Other Provisions, footnote 1* of the current applicable labor agreement. That footnote provision provides that;

*1 For the duration of this collective bargaining agreement the Board [MPRB] agrees to apply any increase in paid days off, cost of living increase, or step movement to this group, if any such agreement is reached with any other unit either represented or non-represented, as a whole, with the exception of Police.*

During the course of this proceeding, the Parties have referred to the above provision as the "Me Too" clause. I shall also use that term herein.

The Union and MPRB management officials subsequently met informally on December 28, 2016, February 27, 2017 and March 13, 2017 in an effort to mutually resolve the issue and avoid a formal grievance. According to the Union's notes of these meetings (Union Exh. 1), during the February 27 meeting, the Union advised the MPRB representatives that the Union clearly acknowledged and understood the contractual grievance timelines and that its efforts to try to informally resolve the situation should not be interpreted as a waiver of its right to formally grieve the matter. According to the notes, Jennifer Ringold, the Deputy Superintendent and senior management representative present for MPRB, responded by saying she "*understood, there is no problem there*". During her testimony in the hearing, Ms. Ringold was specifically asked if she had waived MPRB's pending objection to the grievance's timeliness. She answered, "*No. There was a question of whether the meetings that we had had constituted as being part of the grievance procedure and I indicated I didn't*

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<sup>1</sup> Wage actions in the AFSCME agreement were retroactive to April 1, 2016, but such actions were retroactive to January 1, 2016 in the Teamsters agreement. The Record contains no explanation for the difference in retroactivity.

<sup>2</sup> In this bargaining context, these three terms appear to be used historically, informally and interchangeably to refer to the same basic wage or salary increase process/procedure and, therefore, I shall regard them as synonymous in this matter. The precise definition of the terms appears to ultimately rest with the perception of the recipients.

*believe so, that we were still just in communication."* Ms. Ringold did not otherwise specifically address the alleged statements attributed to her in the meeting notes of February 27, 2017 (Union Exhibit #1)

Apparently at the conclusion of the meeting of the Parties on March 13, 2017, it became clear that there would be no informal resolution of the issue and the Union announced that it would be filing a class action grievance later that day.

Accordingly, later that same day, March 13, 2017, the Union filed its formal, written Grievance at Step 2 of the contractual grievance procedure.

According to the notes, the Parties met on April 17, 2017 to formally discuss the Grievance at Step 2 of the contractual Grievance procedure. No resolution was reached and no issue was raised by MPRB about timeliness of the Grievance.

The Parties met again on May 25, 2017 to discuss the Grievance at Step 3 of the contractual grievance procedure. Again, no resolution was reached and no timeliness issues were raised by MPRB.

There was a Step 4 meeting on June 21, 2017 and, again, the Employer denied the grievance on its merits and there was no mention of any timeliness issue or question

The Union subsequently requested arbitration and no timeliness questions were raised.

Discussion and Conclusion: Based upon the foregoing, it is clear that once the Union informally raised the wage issue with MPRB in December 2016 as a possible violation of the *Me Too* contract provision; both Parties jointly set about attempting to resolve it, without resorting to a formal grievance at Step 2 of the Grievance Procedure. Both Parties were cognizant of the contractual grievance timelines, but per the comments and discussion that took place in the February 27, 2017 meeting, there appears to have been a mutual agreement regarding those timelines. Both Parties appear to have recognized that they were dealing with a significant issue, with potential broad and widespread effects and they were going to take a relaxed view of any timelines that might impede a potential informal resolution. It is also clear from the Record, that both Parties acknowledged that if their efforts failed to resolve the issue informally, it would have to be ultimately addressed and resolved in the context of the formal contractual grievance procedure.

I also note that MPRB argues that because the Union was aware of the existence of the Teamster labor agreement on May 18th 2016, it should have filed its grievance much earlier than March 13, 2017. As indicated above, the contract language in Article 4 - Grievance Procedure, states that "*...The grievance must be filed within twenty-one (21) calendar days of the event which gave rise to the*

*grievance or within twenty-one (21) calendar days of the time the employee or Union reasonably should have had knowledge of the occurrence of the event, whichever is later..."* In this instance, unlike a specific point-in-time event such as a disciplinary action, the nature, scope and complexity of this issue required careful research and analysis by the Union before reaching the conclusion that the situation might constitute a contract violation and raising it directly with MPRB. Accordingly, it does not appear that the Union took an inordinate or unreasonable period of time to investigate and assess the issue, before approaching MPRB to try to informally resolve it. Accordingly, I find this MPRB argument to be without merit. I also note that while both of the labor agreements were concurrently adopted and formalized on May 18, 2017, many aspects of the agreements were not put into practical operation until June or July.

With respect to the overall Employer contention and allegation that the Grievance in this matter is contractually untimely filed, I also find this argument to be without merit. Based upon the evidence and discussion above, it is clear that both Parties tried diligently to resolve the issue informally, but that they both recognized and agreed that if those efforts failed; the issue would ultimately and subsequently have to be resolved within the formal portion of the contractual Grievance Procedure.

I, therefore, conclude that the Grievance, as formally filed by the Union on March 13, 2017 at Step 2, is timely and that further proceedings to address and determine the merits of that issue are appropriate.<sup>3</sup>

### ISSUE #2

I have decided to defer a determination on this Issue until later in this Decision process.

### ISSUE #3

This is core of the dispute in this matter. Simply put, the Union contends that MPRB, in its 2016-2018 labor agreement with the Teamsters, gave those unit employees a higher percentage general wage increase; than employees covered by the Union's 2016-2018 contract. The Union contends that disparity violates the "Me Too" provision of the contract. Note: both the Teamster and AFSCME contracts contain the same "Me Too" provision.

Background Facts: MPRB has about seven different collective bargaining relationships and agreements with a number of different unions. Each of these agreements covers a specific group of employees in specific job classifications. There are two (2) specific collective bargaining agreements and unions which are the focus of this matter. First, is the AFSCME, MN Council 5, Local No. 9 (AFSCME or the Union) unit which encompasses approximately 40 Clerical and

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<sup>3</sup> *Valero Refining Co.-Tennessee*, 137 LA 284 (Moreland, 2017).

Technical employees of MPRB. The second is Minnesota Teamsters Public and Law Enforcement Employees Union, Local No. 320 (Teamsters), which represents a unit comprised of Mobile Equipment Operators employed by MPRB. These employees operate specialized machinery and construction-type vehicles, e.g. backhoes, Bobcats, dump trucks, front loaders, etc. There are about 20-some employees in that bargaining unit.

MPRB's collective bargaining relationships and successive history of labor agreements with the various unions go back many years and, in some cases, decades.

Like virtually all employers, both public and private sector, MPRB attempts to maintain an objective and rational wage and salary structure and system for both its union and non-union employees. That system is intended to recognize differences in the education, training and skill levels required for the various job classifications and to provide appropriate compensation to the employees serving in those jobs. Concurrently, MPRB attempts to maintain perceived internal equity among the various classifications. For example, a basic tree trimmer job classification, requiring a high school diploma, will be compensated at a lower rate than a classification of Arborist, requiring an appropriate certification and a college degree, perhaps in Forestry. The wage and salary system must also take into account the external labor market. What are other employers paying employees in the same or similar jobs/classifications? If the employer's wage and salary system is out of sync with the area labor market, the employer may experience difficulty in recruiting and/or retaining suitable, qualified employees.

From a union perspective, it typically enters into negotiations for a new or renewed labor agreement with several general objectives to be achieved on behalf of the employees it represents; 1) Job security, 2) Predictability and safety in the workplace environment and 3) appropriate compensation (wages and benefits) for the employees for their work efforts.

As in other human "relationships", in collective bargaining relationships discussions and negotiations regarding "money" are generally a Hot Button topic.

MPRB's wage and salary system consists of a large number of specific job classifications. Each classification is defined by specific duties, responsibilities and authorities. A classification will also specify the basic education, training, skills and experience requirements for entry into that classification. Each classification has specific wage or salary component. A classification will be graded for compensation and that grade will reflect the relative status of that job to the other jobs and classifications in the overall system. Each classification grade consists of a series of typically 5-7 wage or salary "Steps". According to the applicable labor agreement, *Article 5 - Wages and Payroll*, a new hire, meeting the minimum requirements for a job classification will be placed at Step

1 of the job classification by MPRB. After six (6) months of satisfactory service, the employee will progress to Step 2 of the wage matrix. With continuing satisfactory service every 12 months thereafter, the employee will progress to the next successive Step in the wage progression for that classification. Of course, each Step progression brings an increase in wages, typically running 3-5%. It should be noted that MPRB may determine that because of enhanced and relevant qualifications or experience for a particular classification, a newly hired employee be initially placed in a higher Step.

According to Article 5, employees who have reached to the top Step in their classification, can also receive a wage increase based upon their total years of service. These wage increases are referred to as Longevity increases and typically start after 10 years of service.

The final component in the wage and salary system and structure is what is referred to as a General Wage Increase, an Across-the-Board Increase or a Cost-of-Living Increase. Unlike the Step or Longevity wage increases, a General Wage Increase goes to all employees, across-the-board. The percentage increase is added to each employee's current base wage rate amount. When and if a general wage increase is agreed upon, the employer has to concurrently adjust the rest of its wage and salary structure by that same amount to maintain rational wage differences and parities to prevent "wage compression" within the structure.

Based on the Record testimony and evidence, prior to the arrival of Jayne Miller as the new MPRB Superintendent in about 2010, MPRB and the unions apparently historically negotiated potential wage increase amounts for each wage compensation component - Steps, Longevity, General Wage Increase - each as a distinct item. The nature and economic size of each component depended upon the composition of the union's bargaining unit. If the bargaining unit consisted of many long-term employees, who had reached the top of the Step progression, an increase in the value of a Step was less important than an increase in Longevity pay.

Once tentative agreement was reached on each of the components, the parties then had to determine and agree upon the exact size of the entire component package. If the size of the component package was incompatible with the tentative size of the total package, the parties went back and reexamined each of the components to determine where possible trimming could be done to make sure everything fit into the total wage package.

In about 2011, Superintendent Miller proposed to the various unions a different approach to bargaining wages. Under her proposal, instead of negotiating each of the component wage increases first and then trying to fit them into the overall wage increase package; she proposed that the parties begin wage negotiations by agreeing upon the overall size of the potential wage package. Once the



parties agreed upon the overall size, MPRB would leave it up to each union as to how they wished to allocate the overall wage increase to each of the components - Steps, Longevity and General and/or cost-of living wage increases, based upon the characteristics and needs of the employees in their respective bargaining unit. Under Miller's proposal, the overall size of the wage package for each bargaining unit would be the same percentage; thereby preserving relative equity and differentials between the various bargaining units. Although there was apparently some measure of skepticism among the unions, they all agreed to try Miller's new approach to wage negotiations in 2011. However, they also insisted on the inclusion of the Me Too provision in each of their labor agreements to prevent any errant wage increases in other bargaining units. MPRB agreed to the inclusion of that provision in all of the labor agreements and that provision has remained in all subsequent agreements to date.

There is no evidence in the Record of any notable or significant problems arising out of the negotiations between MPRB and the various unions for the labor agreements covering the period from 2011 through 2015. No grievances or other protests arose out of those agreements concerning the wage increase situation.

In 2015, MPRB commenced negotiations with various of its unions, including AFSCME Local 9 and the Teamsters, for new agreements covering the 2016-2018 period. During the course of those negotiations, it was eventually agreed that the overall, total size of the wage increase package for the 2016-2018 agreements, would average 2.6% per year.

The following is a summary of Employer's Exhibits #1 and #3 comparing the wage effects of the AFSCME and Teamsters 201-2018 agreements:

	<u>AFSCME</u>	<u>Teamsters</u>
Number of employee positions	38.73 (3 vacant)	27 (4 vacant)
At Top Step	14.6	23
Eligible for Steps	9	0
Receive Longevity pay	14	12
<u>2016:</u>		
General Wage increase	2.00% (eff. 4/1/16)	2.60% (1/1/16)
Cost of ees advancing on Longevity	\$50	\$0
Cost of Steps	\$15,546	\$0
Total compensation increase	2.38%	2.60%
<u>2017:</u>		
General Wage increase	2.00%	2.60%
Cost of ees advancing on Longevity	\$0	\$161
Longevity increase 5 cents	\$1,456	N/A
Cost of Steps	\$9,964	\$0
Total compensation increase	2.63%	2.61%

2018:

General Wage increase	2.50%	2.60%
Cost of ees advancing on Longevity	\$255	\$131
Cost of Steps	\$8,613	\$0
Total compensation increase	2.98%	2.61%
Average annual increase in compensation, 2016-2018.	2.66%/yr.	2.61%/yr.

## THE GRIEVANCE

As previously noted, the Union filed its formal Grievance in this matter at Step 2 of the contractual Grievance Procedure on March 13, 2017.

The Grievance states that; *"MPRB entered into an agreement with another bargaining unit that provided greater Cost-of-Living increases in 2017 and 2018 than the AFSCME agreement. The Employer has not appropriately applied the greater increase to AFSCME employees."*

Contract Violations; *Appendix A And all other applicable articles.* [Note: I understand the reference to "Appendix A" to include the "Me Too" provision in footnote 1.]

Remedy Sought: *Properly adjust wages, backpay for all affected employees and make grievant whole.*

Disposition of Grievance: *MPRB's agreement with Teamsters Local 320 provides a 2.6% wage increase in 2017 and a 2.6% increase in 2018. The AFSCME agreement provides 2.0% in 2017 and 2.5% in 2018.*

RE: ISSUE #2: As indicated above, I initially deferred a determination on this Issue. However, based upon the format and wording of the Grievance, as above, I don't believe that the omission of any reference in the Grievance to calendar year 2016 was merely a simple, typographical error. Neither the Employer nor the Arbitrator has any specific idea or insight, at this point in time, as to why the Union did not include the year 2016 in its grievance document. It is critical to the grievance process that the grieving party be very specific as to all the details as to what is being alleged as contractual violations and what specific remedy is being sought. To allow the Union to now modify the original, written Grievance, in the midst of the arbitral procedure, would cause potential confusion and chaos for both the Employer and the Arbitrator.<sup>4</sup> As a result, the Employer's argument and request to restrict the Grievance to calendar the years 2017 and 2018 is found meritorious and is approved.

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<sup>4</sup> Article 4.02 - Grievance Procedure states that; ...[t]he arbitrator shall be limited to only the specific written grievance submitted by the MPRB and the Union, and shall have no authority to make a decision on any issue not so submitted.

## SUMMARY OF THE PARTIES' POSITIONS AND MAJOR ARGUMENTS

### The Union:

The language of *Article 5 - Wages and Payroll, Appendix A, footnote 1 (Me Too)* is on its face, clear and unambiguous:

*1 For the duration of this collective bargaining agreement the Board [MPRB] agrees to apply any increase in paid days off, cost of living increase, or step movement to this group, if any such agreement is reached with any other unit either represented or non-represented, as a whole, with the exception of Police.*

The "cost of living" or General Wage Increase agreed to in the AFSCME 2016-2018 labor agreement is 2.0% for calendar year 2017 and 2.50% for 2018. The cost of living or General Wage Increase in MPRB's similar labor agreement with the Teamsters for 2016-2018 is 2.60% for 2017 and 2.60% for 2018.

The above figures for the respective cost of living increases clearly establish that the Teamsters bargaining unit employees received an increase in 2017 that was 0.60% higher than that for employees in the AFSCME unit. For calendar year 2018, the Teamsters unit increase is 0.10% higher than for employees in the AFSCME unit.

MPRB's labor agreement with International Union of Operating Engineers, Local No. 49 (49ers) also contains the same Me Too provision as the AFSCME and Teamsters agreements. This provision was initially incorporated into the MPRB labor agreements during the 2011-2012 negotiations. In the course of a subsequent round of negotiations, the 49ers became aware that another MPRB bargaining unit agreement had received a higher cost of living increase than that agreed to with the 49ers unit. The 49ers questioned MPRB about the discrepancy in the increases and it subsequently applied the higher increase to the 49er unit. The Union, herein, is requesting that MPRB do the same thing here; that is, apply the higher cost of living increases in the Teamsters labor agreement for 2017 and 2018 to the employees covered by the applicable AFSCME labor agreement.

Additionally, during the course of discussing this issue with MPRB, the Union discovered that, since 2015 or 2016, has been placing all newly-hired Mobile Equipment Operators (MEO) in the Top Step of the Wage Schedule in the current Teamsters agreement. As a result of that action, MPRB has created a greater wage disparity between the two bargaining units and has put the Employer in further violation of the contractual "Me Too" contract language. Not only have the employees in the Teamsters unit received a higher cost of living increase, those newly-hired MEOs have received the highest possible wage rates in the Step schedule. No newly-hired employees in the AFSCME unit have immediately been placed in the Top Step of their classification schedule.

The reason that the "Me Too" provision was negotiated into the various MPRB labor agreements back in 2011-2012 was to prevent this type of growing disparity in wages between the bargaining units.

The clear, plain and unambiguous language and wording of the "Me Too" contract provision, the original intent of the language and how it has been historically interpreted and applied clearly support the Grievance allegations.

It should be noted that during the last round of contract negotiations, MPRB proposed to delete the Me Too provisions from the various agreement. That proposal was declined by the unions. The Employer argues that its proposal regarding the "Me Too" provision was merely an effort to clarify the language by removing the "*cost of living*" wording as a confusing and ambiguous term. The hearing testimony clearly demonstrated that in common usage, the terms cost-of living increase, general wage increase and across-the-board increase are regarded as synonymous and interchangeable.

The Employer is not relieved of its obligation under the "Me Too" language simply by including the cost of living or general wage increase within or as part of the "total compensation package". Somehow the Employer would like this arbitrator to believe that doing so renders the "Me Too" language meaningless. However, agreeing to a "total compensation package"; which includes a cost of living increase does not change the reading and interpretation or application of the "Me Too" contract provision.

The Employer argues that the 2016-2018 labor agreement with the Teamsters was tentatively agreed to prior to agreement on the AFSCME contract. Therefore, according to the Employer, the fact that the AFSCME agreement came after the Teamsters agreement means that the "Me Too" provision does not apply in this instance; because the Teamsters agreement preceded the AFSCME agreement. This argument is totally without merit. The "Me Too" language applies regardless of the sequence of when various agreements are reached. The language does not limit the Employer's obligation to only subsequent agreements. In fact, the word "subsequent" does not even appear in the wording of the "Me Too" provision.

#### Conclusion:

The Employer has clearly violated the applicable AFSCME labor agreement, specifically Article 5 - Wages and Payroll, Appendix A, footnote1 (Me Too) by failing and refusing to apply the higher cost of living, general wage increase agreed to with the Teamsters bargaining unit to the AFSCME bargaining unit for the years 2017 and 2018.

Furthermore, the Employer violated the "Me Too" provision by placing all employees in the Teamsters bargaining unit at the Top Step of their Wage Schedule, but refusing to do so for the employees in the AFSCME unit.

In view of the foregoing, the Union respectfully requests that the Arbitrator sustain the Grievance in full and award employees in the AFSCME unit the higher cost of living increases of the Teamsters agreement for 2017 and 2018. Additionally, place all employees in the AFSCME bargaining unit at the Top Step of their respective Wage Schedules, as was done with the employees in the Teamsters unit in conjunction with its 2016-2018 agreement.

The Employer:

The Union filed its formal, written Grievance in this matter on March 13, 2017. In general, the Grievance alleges that MPRB violated the "Me Too" provision in Article 5 of the current applicable labor agreement. The Grievance contends that the contractual violation occurred when MPRB entered into the labor agreement with the Teamsters Union that provided a greater "cost of living" wage increase in 2017 and 2018 than that provided to employees in the AFSCME bargaining unit. The Grievance makes no reference to International Union of Operating Engineers, Local No. 49 and its labor agreement with MPRB nor does the Grievance make any reference to initial Wage Schedule Step placement for new hires within the Teamster bargaining unit.

Procedurally, the Union, of course, bears the burden of proof to clearly establish by a preponderance of the evidence that the labor agreement has, indeed, been violated. Here, the Union has failed to meet that burden.

When the language of the contract is clear, its terms should decide the grievance that fundamentally seeks relief upon its terms. It is well established that when the terms of the contract are clear and unambiguous, the arbitrator must apply the language of the contract as written. An arbitrator is also constrained from adding to, deleting from, modifying or otherwise changing the language or terms of a contract when the language and terms are clear and unambiguous.

The Union's Grievance in this matter is premised solely upon an alleged violation of *Article 5* of the applicable labor agreement; referred to in the course of the hearing as the "Me Too" provision. That provision states:

*1 For the duration of this collective bargaining agreement the Board [MPRB] agrees to apply any increase in paid days off, cost of living increase, or step movement to this group, if any such agreement is reached with any other unit either represented or non-represented, as a whole, with the exception of Police.*

Based upon the plain language of that provision, there has been no violation of the Me Too clause. First the relevant language clearly intends that any increase to the AFSCME labor agreement, pursuant to the Me Too clause must result from a labor agreement reached by another bargaining unit at a later date. Put differently, the intent of the clause is to allow a bargaining unit to receive certain

benefits that, although it may not have been able to negotiate, another unit was subsequently able to secure. The clause must be read as forward-looking only. Therefore, in this case, the Me Too clause is not applicable because the Teamsters agreement was reached first. Indeed, the Teamsters tentative agreement was achieved first and their final contract was signed approximately two (2) months before the AFSCME contract. To read the clause as backward looking, as the Union argues, would lead to absurd results. Doing so would allow a union to purposely fail to negotiate various desired elements of their contract and then, after the contract is finalized, invoke the Me Too clause to acquire items previously hard-won by the other bargaining units. This is not what the plain language of the Me Too clause says or intends.

Additionally, the plain language of the applicable labor agreement demonstrates that there has been no violation of the Me Too provision; because, contrary to the Union's argument, the Teamsters agreement does not include any unique or special "cost of living increase". Rather, the plain language of both the AFSCME and Teamsters agreements clearly demonstrate that neither bargaining unit received a "cost of living" wage increase. Instead, each was provided with various wage increases. The AFSCME includes additional money for Wage Step increases and a 5 cent increase in Longevity pay. Nowhere, in either the AFSCME or Teamsters agreements, does it specifically state that a "cost of living" wage increase has been provided to employees.

Based upon the Record evidence, it is clear that MPRB plainly and consistently negotiated wages with AFSCME - as it has also done with all the other bargaining units since 2010 - based upon a Total Compensation model. The evidence is also clear that the Union acquiesced to and actively participated in this model bargaining for at least the previous two agreements. In the course of negotiations for the current 2016-2018 agreement the Union accepted and agreed to an average annual increase of 2.60% in Total Compensation during the term of that agreement. There is no evidence in the Record suggesting that the Union thought it was receiving a "cost of living" adjustment or that any other bargaining unit received a "cost of living" adjustment. Rather, every other bargaining unit received the exact same 2.60% increase in Total Compensation. Each such bargaining unit was free to decide how to allocate that Total, e.g. wage Steps, longevity pay and/or a general increase in base wages.

To hold that AFSCME can now come back and seek more than its agreed-upon 2.60% Total Compensation figure - thus significantly more than the other bargaining units - would be an inequitable second bite at the apple and not what the parties intended. Indeed, the Union's own President, Sarah Maxwell, recognized the patent unfairness of this line of argument at the hearing:

Q. (Mr. Mrkonich) With *respect to your testimony about this "me too" language, if a unit came in and said we're going to remove all of our longevity pay completely and remove all of our step movement and in*

*exchange we want an increase of 3 percent in our base wages, are you claiming that would be a violation of the "me too" clause if the 3 percent did not go to the AFSCME unit?*

A. (Ms. Maxwell) Well, I guess I would say, I guess for me, no, I wouldn't argue that we needed the 3 percent in that situation.

Based upon the above, the parties' negotiations and bargaining history demonstrate that there has been no violation of the labor agreement.

During the arbitration proceeding, the Union alleged, for the first time, various claims that were not contained in the original Grievance document not discussed during informal pre-grievance meetings. Specifically, for the first time, the Union alleged; 1) that it is entitled to financial remedies for calendar year 2016, 2) that it is premising its alleged violation of the "me too" provision on a prior situation involving the IUOE, Local 49 and 3) that new hires in the Teamsters unit, who were hired at the Top Step constituted an additional "me too" violation.

With respect to the Union's contentions regarding the 49ers situation, that situation arose several years ago. During its contract negotiations with MPRB, the 49ers learned that another union had negotiated a wage increase with MPRB that appeared to be 0.10% higher than that offered to the 49ers. When the 49ers brought up the discrepancy in their negotiations, an adjustment was made. There was no grievance and no specific reference to the "me too" provision. Accordingly, the 49ers situation has no relevance to this matter.

With respect to the Union's contentions regarding the hiring of all new MEOs in the Teamster unit at the Top Step of the Wage Schedule is an argument that is clearly not only outside the scope of the Grievance, but also fails on its merits. The "me too" provision says nothing about the placement of newly-hired employees on the wage scale. Secondly, it is simply no record evidence that all MEOs in the Teamster unit were hired at the Top Step. Indeed, the Union presented no witnesses or evidence from the Teamsters Union or anyone else with specific knowledge of how or why newly-hired MEOs may have been hired at the Top Step. Finally, all of the evidence, that is available, suggests that MPRB's managers utilize the same process for hiring and placement for all employees and that process relies largely on the employee's qualifications and experience. Finally, the Grievance, itself, makes no reference to any issue regarding Wage Steps.

#### Conclusion:

Based upon the record facts and the foregoing arguments and authorities, MPRB did not violate the "me too" provision of the applicable labor agreement. Accordingly, the Grievance should be denied in its entirety. More specifically, the Arbitrator should deny the Grievance because it was untimely filed, per the requirements of the agreement. Additionally, the Grievance should be denied on its merits because both the plain language of the agreement, as well as the relevant negotiation and bargaining history, establish that there is no "me Too"

clause violation and, instead, every bargaining unit received fair and identical 2.60% total compensation increases. Finally, the Grievance should be denied because the Union's arguments are supported by the labor agreement or the bargaining history and inappropriately rely on items clearly outside the scope of the written Grievance.

### ANALYSIS, DISCUSSION AND FINDINGS

To review the status of this situation thus far;

- Issue #1 - Timeliness of the Grievance. At the outset of the hearing the Employer requested/moved for dismissal of the Grievance, contending that the timing of the filing failed to meet the timeliness language requirements of *Article 4 - Grievance Procedure*. As outlined above, I have thoroughly considered the positions of the Parties and the Record evidence on that Issue and have concluded that the Employer's request/motion for dismissal is without merit. Accordingly, I have found that the Grievance is timely filed.
- Issue #2 - Should the Grievance be modified or amended to include calendar year 2016? After considering the arguments and positions of the Parties and reviewing the contract language and applicable arbitral case law, I found the Employer's position to be convincing. Accordingly I have found that the original written Grievance in this matter cannot be amended or modified in the course of the arbitration procedure. Accordingly, I have concluded that the scope of the Grievance includes only calendar years 2017 and 2018.
- The Top Step situation. In the hearing and in its post-hearing brief, the Union contended that at some point in 2015 and/or early 2016, MPRB placed all newly-hired Mobile Equipment Operators in the Teamsters unit at the Top Step of the contractual Wage Schedule. The Union argued that since MPRB had not placed any of the newly-hired clerical and technical employees in the AFSCME unit at the Top Step of their respective Wage Schedules, it should now be required to do so per the "Me Too" provision.  
I note that the written Grievance makes no reference, whatsoever, to an issue or question regarding Wage Schedule Steps. Accordingly, for essentially the same reasons that calendar year 2016 cannot be "added" to the Grievance, neither can the Grievance now be modified or amended to include the Top Step subject.

The only Issue remaining is Issue #3, which is the core or heart of the Grievance and this contractual dispute. As noted previously, Issue #3, as formulated by this Arbitrator, reads as follows:

ISSUE #3 - Has the Employer violated *Article 5, Wages and Payroll, Appendix A, Footnote 1* by failing and refusing to apply the higher general, cost-of-living, across-the-board increases contained in the labor agreement with the Teamsters Union, Local 320 for the years 2017 and 2018? If so, what shall be the remedy?



As previously recited, *Article 5, Wages and Payroll, Appendix A, Footnote 1* reads as follows:

*1 For the duration of this collective bargaining agreement the Board [MPRB] agrees to apply any increase in paid days off, cost of living increase, or step movement to this group, if any such agreement is reached with any other unit either represented or non-represented, as a whole, with the exception of Police.*

This type of clause or provision, referred to as a "Me Too" provision, is a derivation of what is known as a "Most Favored Nations" clause. This type of provision appears to have originated in the context of national trade agreements and commercial contracts. Preferred trade partners and commercial customers were assured that they would automatically receive the best terms and prices afforded to any other partners or customers.

These Me Too clauses are not at all uncommon in the world of collective bargaining. They frequently appear in bargaining situations involving a single employer dealing with many different unions and bargaining units. They also appear to be popular in situations where a large union has labor agreements with a large number of different employers - such as the construction industry.

There are arguably various pros and cons to both employers and unions as they consider adopting Me Too clauses in their labor agreements. For an employer, one benefit may be general stability and maintenance of parity in its wage and salary system and structure. For a union, it can provide some assurance that larger and more powerful bargaining units cannot use their power to extract economic concessions from the employer; that a smaller unit could not otherwise achieve.

In reviewing the language of this Me Too provision, I find that the language is clear and unambiguous as to the purpose and intent. It essentially says that if, during the term of the current labor agreement with the Union, it grants any increases in paid days off, cost of living or step movements to any other bargaining unit that are more advantageous than those terms in this agreement, the employer will adopt or incorporate those increases in this agreement.

With respect to time restrictions, the Me Too provision clearly states that it may only be invoked "*For the duration of this collective bargaining agreement...*" Obviously, the Grievance meets that requirement. The provision language further requires MPRB to apply any of the specified increases, if it negotiates higher increases with any other unit. The language does not specify when such relevant increases may occur, other than they must arise during the term of the agreement of the union invoking the Me Too provision. The time requirements of *Article 4 - Grievance Procedure* obviously require that the union file a grievance on the situation within twenty-one (21) days of the occurrence of the event giving

rise to the grievance or within 21 days of when it reasonably should have been aware. As noted in the discussion regarding whether the Grievance was timely filed, the difficulty here is that unlike a simple point-in-time event, such as a disciplinary action; the nature and complexity of the wage system may mask disparities and discrepancies for some period of time. Even when potential discrepancies are discerned, the union must carefully investigate, analyze and research the situation, before confirming it as a possible grievance issue. In determining the merits of Issue #1, I was compelled by the totality of the Record evidence and circumstances to find that the Grievance was timely filed.

The AFSCME Grievance alleges that MPRB, in its respective labor agreements with it and the Teamsters, bestowed higher annual cost of living increases on the Teamster unit employees, than upon the AFSCME unit employees, in 2017 and 2018. The numbers are agreed upon by the Parties. For calendar year 2017, employees in the AFSCME unit received a general wage increase of 2.00% while the Teamster employees received a general wage increase of 2.60%. In 2018 the AFSCME unit employees receive a general wage increase of 2.50% and the Teamster unit employees again receive 2.60%.

Applying the language of the Me Too provision to the above numbers, it is clear that the Teamsters unit employees received a higher cost of living or general wage increase than AFSCME employees in both 2017 and 2018. AFSCME, upon seeing and analyzing those numbers apparently had a form of "Buyer's Remorse" and decided that they wanted the same across-the-board wage increase as the Teamsters. Ergo, the Grievance.

I have carefully analyzed and reviewed both the Me Too provision and the labor agreement, as a whole, and can find no language that prohibits or restricts the action sought by this Grievance. I am also very mindful of the fact that, as the Arbitrator, I have no right or authority to "*...amend, modify, nullify, ignore, add to or subtract from the provision of this Agreement.*" *Article 4, Section 4.02, Subd. 2. Step 5.* Accordingly, I am obliged to work with the specific contract language negotiated and agreed upon by the Parties.

In view of the foregoing, I find that the Employer has violated *Article 5 - Wages and Payroll, Appendix A, footnote 1* (Me Too) by failing and refusing to grant to the employees in the AFSCME bargaining unit, the same general wage increase percentage as that bestowed upon the employees covered by the Teamsters labor agreement for calendar years 2017 and 2018.

However, I also find that AFSCME remains bound by its contractual agreement to the Total Compensation package annual limit of 2.60% for the duration of that agreement. The "Me Too" provision only speaks to specific components of the Compensation package; in this instance the cost of living, across-the-board or general wage increase component. The Me Too provision does not affect the

agreed-upon Total Compensation percentage for the contract duration. The effect of that limit will be addressed in the Remedy.

### CONCLUSIONS

Based upon my analysis, discussion and findings above, I therefore conclude that the Employer violated the applicable labor agreement by failing and refusing to grant to the employees in the AFSCME bargaining unit, the same percentage general wage increase as that was bestowed on the employees in the Teamsters unit for calendar years 2017 and 2018.

### DECISION

Having concluded that the Employer did violate the applicable labor agreement, as alleged by the Union in its Grievance of March 13, 2017; that grievance is hereby sustained and the following Remedy is Awarded.

### THE REMEDY

The Employer shall take the following affirmative actions to remedy the violation:

1. For 2017, the Employer shall compute the Gross amount of the 0.60% difference in the general wage increase as is due to the AFSCME unit employees. From that Gross figure, the Employer shall subtract the amounts paid in 2017 to AFSCME bargaining unit employees in Step pay, Longevity pay and Longevity pay increases. The result will be a Net Back Pay figure. If the Net figure is negative or insignificant, there shall be no Back Pay for 2017.
2. For 2018, the increase difference is 0.10%. Since wages are being actively paid for the remainder of this year, I will entertain joint recommendations or suggestions from the Parties as to how to precisely determine and compute potential Back Pay in that situation.
3. The Employer shall also make whatever additional, reasonable and rational adjustments in the pay system for the AFSCME employee unit, for calendar years 2017 and 2018, as may be necessary to insure that the Total Compensation increase for those employees does not exceed an average of 2.60%/yr. for the 2016-2018 contract period.

Dated at Minneapolis, Minnesota, this 8th Day of May, 2018.

/s/ Frank E. Kapsch, Jr.  
Arbitrator

Note: I shall retain jurisdiction in this matter for a minimum period of sixty (60) calendar days from the issuance of this Decision to address any questions or clarifications related thereto.