No. A16-1666

STATE OF MINNESOTA
IN COURT OF APPEALS

In the Matter of a Petition for Determination of an Appropriate Unit and Certification as Exclusive Representative

Regents of the University of Minnesota,

Relator,

vs.

Service Employees International Union, Local 284,

Respondent,

Bureau of Mediation Services,

Respondent.

RESPONDENT BUREAU OF MEDIATION SERVICES' INFORMAL MEMORANDUM IN RESPONSE TO COURT'S OCTOBER 31, 2016 ORDER

FREDRICKSON & BYRON P.A.

KAREN G. SCHANFIELD
200 South Sixth Street, Suite 400
Minneapolis, MN 55402

DOUGLAS R. PETERSON
SHELLEY CARTHEN WATSON
University of Minnesota
360 McNamara Alumni Center
200 Oak Street SE
Minneapolis, MN 55455

ATTORNEYS FOR RELATOR

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota

CAITLIN M. MICKO
Assistant Attorney General
Atty. Reg. No. 0395388
KELLY S. KEMP
Assistant Attorney General
Atty. Reg. No. 0220280
445 Minnesota Street, Suite 900
St. Paul, MN 55101-2130
(651) 757-1352 (voice)

ATTORNEYS FOR RESPONDENT BUREAU OF MEDIATION SERVICES

(Counsel for Additional Parties Listed on Next Page)

JESSICA L. ROE
Roe Law Group, PLLC
60 South Sixth Street, Suite 2670
Minneapolis, MN 55402

ATTORNEY FOR UMN FACULTY EXCELLENCE, SEEKING TO APPEAR AS *AMICUS CURIAE*

BRENDAN D. CUMMINS
Cummins & Cummins, LLP
1245 International Centre
920 Second Avenue South
Minneapolis, MN 55402

ATTORNEY FOR RESPONDENT SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 284

MEMORANDUM

This is an attempted certiorari appeal. On October 31, 2016, this Court ordered the parties to informally answer three questions. Those questions as well as the answers of Respondent Bureau of Mediation Services ("BMS") are set forth below:

(a) Does the September 20, 2016 order constitute the final ruling on the appropriateness of the unit?

No. On September 20, 2016, BMS issued an order entitled, "Unit Determination Order – Community of Interest." The order represents a partial ruling on what is likely to become BMS's final determination of the appropriate unit. BMS has not issued a final determination of the appropriate unit.

BMS's recent order was made in connection with the petition of Respondent Service Employees International Union, Local 284's ("SEIU") to become the exclusive representative for certain employees of Relator Regents of the University of Minnesota ("Relator"). Thus far, BMS has held a hearing on whether particular classifications of University of Minnesota employees appropriately belong in the unit established in Minn. Stat. § 179A.11, subd. 1(8). BMS's September 20, 2016 order determined that four of the disputed classifications belong in Unit 8. BMS did not yet reach the issue of which positions are included in these classifications and which positions meet the definition of public employee pursuant to Minn. Stat. § 179A.03, subd. 14. For instance, BMS plans to hold further hearings to decide issues that still remain undecided, including which positions are part-time, supervisory, managerial or confidential. BMS's order makes clear that a future hearing schedule will be established to determine these issues. *See*

BMS September 20, 2016 Order at p. 30-31. BMS's determination of the appropriate unit will not be final until these issues have been heard and decided.

BMS's decision relating to unit classification is one aspect of the final determination of the appropriate unit. BMS will need to hear and decide additional issues relating to the appropriateness of the unit before an election can be held. Relator implicitly acknowledged this in its request to the Commissioner to stay future proceedings pending this appeal. An appeal at this stage would open the door to future appeals by either party on each and every decision BMS makes that somehow relates to the final unit determination. This would not be in the interest of judicial economy.

Minnesota statute section 179A.12, subdivision 7 authorizes the Commissioner to issue an order for election only with respect to "a designated appropriate unit." BMS has not yet determined the designated appropriate unit. Accordingly, BMS's order on unit classification is not a final ruling on the appropriateness of the unit.

(b) If the answer to (a) is no, should this appeal be dismissed as taken from a nonappealable, interlocutory order? *See State ex. Rel. Mosloski v. Martin County*, 248 Minn. 503, 506, 80 N.W.2d 637, 639 1957 (holding that generally, certiorari is available only upon a final determination of rights).

Yes. This appeal should be dismissed because it is taken from a nonappealable interlocutory order. In *State ex. rel. Mosloski v. Martin County*, 80 N.W.2d 637, 639 (Minn. 1957), the Minnesota Supreme Court held that certiorari will not ordinarily lie unless there is a final determination of rights. BMS has not made a final determination about the appropriate unit. The decision about unit classifications is, in effect, an interlocutory order. The appeal should be dismissed because there has not been a final determination of the appropriate unit.

(c) If the September 20, 2016 decision is final and appealable, would judicial economy be served by dismissing the appeal without prejudice and remanding to the BMS for a ruling on relator's request for reconsideration? *See Little v. Arrowhead Regional Corrections*, 773 N.W.2d 344, 346 (Minn. App. 2009) (explaining the benefits of allowing the original decision-maker to consider and rule on post-decision motions before appellate review).

Yes. At this time, the Commissioner has not yet ruled on Relator's request for reconsideration. Even if this Court finds that BMS's September 20, 2016 decision is final and appealable, judicial economy would be served by dismissing the appeal and remanding to BMS for a ruling on Relator's request for reconsideration. The court in *Little v. Arrowhead Regional Corrections*, 773 N.W.2d 344, 346 (Minn. Ct. App. 2009), found that in some cases, a pending postdecision motion provides an appropriate basis for deferring appellate review so the original decision-maker can address the motion. Allowing the Commissioner to consider and rule on Relator's request for reconsideration would certainly capture the benefits outlined by the *Little* court: it may eliminate the need for appellate review, the parties will have more fully developed aspects of the record, and the Commissioner would have an opportunity to more fully explain his decision and/or correct errors. For these reasons, if this Court finds the September 20, 2016 decision is final and appealable, judicial economy would be served by allowing the Commissioner to rule on the request for reconsideration.

Dated: 11/7/16

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota

CAITLIN M. MICKO
Assistant Attorney General
Atty. Reg. No. 0395388

KELLY S. KEMP
Assistant Attorney General
Atty. Reg. No. 0220280

445 Minnesota Street, Suite 900
St. Paul, MN 55101-2127
Telephone: (651) 757-1352
Fax: (651) 297-4139
caitlin.micko@ag.state.mn.us
kelly.kemp@ag.state.mn.us

ATTORNEYS FOR RESPONDENT
BUREAU OF MEDIATION SERVICES