

No. A16-1985

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' MEMORANDUM IN
OPPOSITION TO RELATOR'S MOTION TO STAY AGENCY PROCEEDINGS**

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INTRODUCTION

The University moves the Court for an order staying all agency proceedings pending the appeal of an order in the election process between SEIU and the University of Minnesota. The order on appeal was issued by the Commissioner of the Bureau of Mediation Services (“Commissioner” or “Bureau”) pursuant to Minn. Stat. § 179A.04, subd. 2 and Minn. Stat. § 179A.09, determining that four of the previously unassigned classifications of employees shared a community of interest with the Twin Cities Instructional Unit (“Unit 8”) and should be assigned to that statutory bargaining unit.

The Commissioner also ordered the parties to participate in further proceedings pursuant to Minn. Stat. § 179A.12, subd. 5, which will eventually result in the Commissioner’s decision of what is the appropriate bargaining unit. The Commissioner denied the request for a stay because further delay is detrimental to the election process, and because the University did not provide a compelling reason for the stay. The Commissioner further determined that the interests of SEIU cannot be adequately protected during the pendency of an appeal. The Commissioner exercised appropriate discretion and his decision to deny the stay should be upheld.

ARGUMENT

I. STANDARD.

The University moves the Court to grant a stay under Minn. R. Civ. App. P. 108.02, subd. 6, 115.03, subd. 2(b), and 127. As a general rule, a judgment or order is not stayed during the pendency of an appeal. Minn. R. Civ. App. P. 108.01, subd. 1. An appellate court reviewing an administrative agency’s decision regarding a stay pending

appeal will interfere only when there is a demonstrated abuse of discretion. *DRJ, Inc. v. City of St. Paul*, 741 N.W.2d 141, 143 (Minn. Ct. App. 2007); *see also Federal Home Loan Mortg. Corp. v. Nedashkovskiy*, 801 N.W.2d 190 (Minn. Ct. App. 2011).

II. ARGUMENT.

The Commissioner's denial of the University's request for a stay of agency proceedings was well within his discretion. In his determination of whether or not to grant a stay pending appeal, the Commissioner was required to balance the appealing party's interest so that effective relief will be available if successful on appeal, against the interest of the public or prevailing party in enforcing the decision and ensuring they remain "secure in victory" while the appeal is pending. *DRJ*, 741 N.W.2d at 144. The Commissioner appropriately weighed the interests of the parties in this case.

The University has failed to carry its heavy burden of demonstrating that the Commissioner abused his discretion. The University argues that a stay is required so the University can avoid expending resources in the ongoing administrative proceeding before the Bureau. This is not a compelling reason that justifies a stay of the proceedings. The University is required by law to participate in the hearing process. *See* Minn. Stat. § 179A.12, subd. 5; Minn. R. 5510.1910. The University has not demonstrated that it will suffer irreparable harm by merely participating in the administrative process in conformity with the statutory requirement. Furthermore, the University has already begun the process of resolving the outstanding issues with the Bureau and SEIU. It would be most efficient to continue that process to conclusion.

The Commissioner found that there is a strong interest in proceeding with the election process during the pendency of the appeal. SEIU met the statutory criteria for a hearing, and the Bureau commenced one. It is important for the determination of the bargaining unit and any election to take place in a timely manner, and ideally within the academic year. The Commissioner strongly disputes the University's allegations that the Bureau has handled this matter in a way that caused delay.

The Legislature charged the Commissioner with the responsibility for administering the Minnesota Public Employment Labor Relations Act ("PELRA"), Minn. Stat. ch. 179A. The public policy embodied in PELRA demands timely elections such that employees may "organize and choose freely their representatives." *See* Minn. Stat. § 179A.01(c)(1). It is a well-accepted principal in labor law that a speedy election is required to satisfy the rights of parties in a representation election. *See generally, Associated Builders and Contractors of Texas, Inc. v. NLRB*, 826 F.3d 215, 227 (5th Cir. 2016) (upholding the NLRB rule that representation elections must be scheduled for the earliest date practicable and not stayed in anticipation for review). Similarly, the Commissioner believes that unnecessary delay is generally a detriment to the election process and should be avoided if at all possible. The status quo in this case is that the administrative process move forward so that the Commissioner can decide who is in the bargaining unit, whether there will be an election, and who will be eligible to vote if there is an election.

The University also argues that its right to meaningful review will be lost without a stay. But the ongoing administrative proceedings before the Bureau will not impact this Court's review of the Commissioner's preliminary decision. The University chose to appeal the decision of the Commissioner about unit determination of job classifications. The fact that the administrative proceeding will continue does not mandate a stay. *See Deutsche Bank Nat. Trust Co. v. Hanson*, 841 N.W.2d 161, 164 (Minn. Ct. App. 2014) (pending litigation does not mandate a stay).

In the instant case, the Court decided to review a preliminary administrative decision regarding the community of interest of certain disputed classifications of employees. That decision was merely one step towards the larger determination of the appropriate unit. While the Commissioner has strongly argued that an interlocutory appeal is inappropriate in this case, the Commissioner is respectful of the Court's decision to let this appeal proceed. In the meantime, there are several outstanding issues the Commissioner can and should decide while the Court is reviewing the Commissioner's preliminary decision. For example, the Commissioner should determine which employees holding positions included within the bargaining unit are public employees within the meaning of Minn. Stat. § 179A.03.

The statutorily mandated process under PERLA should continue without any unnecessary delay. When the Court issues its opinion regarding the Commissioner's preliminary decision, the Commissioner can then determine whether the outcome impacts the proceeding before the Bureau—for example whether SEIU has maintained a

sufficient showing of interest within the bargaining unit, whether there will be an election and who can vote. The Commissioner intends to conduct the remaining proceedings in an expeditious manner. It is prudent for the Court to allow these proceedings to continue because they could inform the matter on appeal. In particular, if the Commissioner finds there is not a sufficient showing of interest, the petition would be dismissed altogether.

The University argues that having the administrative proceeding continue towards a determination of the appropriate bargaining unit during the pendency of this interlocutory appeal will cause uncertainty which may prejudice the University. This is speculation, but the Commissioner submits that it is also a result of the University's decision to bring an interlocutory appeal. If the Commissioner eventually orders an election, the eligible voters would be informed of the specific proposal for their consideration and would vote on that proposal. The Commissioner has determined that it is delay that interferes with the process. The University cannot show that he abused his discretion.

Finally, there are no conditions that can be put on a stay that would protect SEIU's interest and the employees' interest during the pendency of the appeal. Thus the Commissioner properly denied the University's request for a stay. *See DRJ, Inc.*, 741 N.W.2d at 144 (court may only grant the stay if opponents to the stay can be adequately protected during the stay).

CONCLUSION

For the foregoing reasons, the Commissioner respectfully requests that the Court deny the University's motion for a stay of agency proceedings.

Dated: February 3, 2017

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