STATE OF MINNESOTA
IN COURT OF APPEALS

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

RESPONDENT SEIU LOCAL 284's INFORMAL JURISDICTION MEMORANDUM

Regents of the University of Minnesota,

Relator,

vs.

Court of Appeals Case No.: A16-1985

Service Employees International Union, Local 284,

and

Bureau of Mediation Services,

Respondents.

INTRODUCTION

Respondent Service Employees International Union, Local 284 ("the Union") submits this Informal Jurisdiction Memorandum pursuant to the Court's Order dated December 28, 2016. The Court lacks jurisdiction over this case because Relator University of Minnesota seeks certiorari review of an interlocutory order of the Bureau of Mediation Services ("Bureau" or "BMS") that does not constitute the final determination of the parties' rights for the purposes of Minn. Stat. § 179A.051 and Minn. R. Civ. App. P. 115. This petition for certiorari is Relator's *third* attempt to obtain piecemeal review of an interlocutory agency decision. See Order Dismissing Appeal, A16-0510 (April 18,

2016) and Order Dismissing Appeal, A16-1666 (November 15, 2016). As was the case with Relator's first two petitions, this Court lacks jurisdiction to conduct piecemeal, premature review of an interlocutory agency decision.

In response to the Court's first question, the September 20 and November 29, 2016 Orders that Relator seeks to appeal involve merely a partial community of interest decision, and do not constitute a complete decision determining an appropriate unit for the election. As the University has expressly recognized in its recent filing with BMS, multiple significant legal issues still remain for decision by the Bureau regarding the appropriateness of the unit in this matter.

In response to the Court's second question, even if the Bureau had completed its decision-making process in determining the appropriate unit, the Bureau's September 20, 2016 and November 29, 2016 Orders are not final and reviewable. The Court should show deference to the Bureau's longstanding interpretation that agency decisions regarding the appropriateness of the unit do not become final and reviewable within the meaning of Minn. Stat. § 179.051(a) until the results of the election are certified. Until that time, the Bureau's decisions do not "directly affect" the University's legal rights or duties, and any impact on the University's legal rights and duties is merely speculative depending on the outcome of the election. To put the matter simply, the employees could vote for no representation and the matter would conclude with no impact whatsoever on the University's rights or duties. Allowing serial interlocutory appeals—as the University is attempting to do here—unduly disrupts and delays the agency process and denies employees' right to vote in a timely fashion. Accordingly, the Court should

recognize that the Bureau's September 20 and November 29, 2016 Orders are not final and reviewable and dismiss this appeal.

PROCEDURAL HISTORY

On January 20, 2016, the Union filed a petition with BMS seeking determination of an appropriate unit and certification as the exclusive representative of instructional employees in Relator's "Twin Cities Instructional Unit" ("Unit 8"), Minn. Stat. § 179A.11, Subd. 1(8). BMS requested briefing from the Union and Relator on whether certain classifications in question had been previously assigned to a bargaining unit pursuant to Minn. Stat. § 179A.10, Subd. 4. The classifications in question were: Assistant Extension Educator, Assistant Extension Professor, Associate Extension Educator, Associate Extension Professor, Extension Educator, Extension Professor, Lecturer, Teaching Specialist, Senior Lecturer, and Senior Teaching Specialist.

On March 15, 2016, the Bureau issued a pre-hearing ruling finding that the classifications in question had not been previously assigned to a statutory bargaining unit. Thus, the Commissioner ordered a hearing pursuant to Minn. Stat. § 179A.10, Subd. 4 to determine the appropriate unit assignment for the classifications in question. On March 29, 2016, Relator filed a petition for certiorari review of the Bureau's March 15, 2016 Pre-Hearing Ruling and Order for Hearing, and concurrently requested that the Bureau stay further proceedings pending appeal. On April 5, 2016, Relator filed a motion to stay BMS proceedings with the Court. On April 18, 2016, the Court dismissed Relator's premature appeal for lack of subject matter jurisdiction.

In April and May 2016, the Bureau held a hearing to determine the community of interest for the classifications in question. On September 20, 2016, the Bureau issued a Unit Determination Order – Community of Interest ("COI Order"). In the COI Order, the Bureau decided that four of the previously unassigned classifications shared a community of interest with Unit 8 and should be assigned to that statutory bargaining unit. The Bureau also decided that six of the previously unassigned classifications did not share a community of interest with Unit 8, and should not be assigned to that statutory bargaining unit. The COI Order also directed that future hearings would be scheduled in order to address the remaining issues pertaining to the scope of the appropriate unit, including which classifications of employees meet the definition of "public employee" under the Public Employment Labor Relations Act ("PELRA"), Minn. Stat. § 179A.03, Subd. 14. See SEIU Local 284 and University of Minnesota, BMS Case No. 16-PCE-0644, *Unit Determination Order – Community of Interest,* p. 31 (Sept. 20, 2016).

On September 28, 2016, Relator filed a request for partial reconsideration of the COI Order. On October 17, 2016, Relator filed a second petition for certiorari review and concurrently filed a request to stay the pending agency proceedings with the Bureau. In an Order issued on November 15, 2016, the Court dismissed the Relator's appeal as premature because BMS had not ruled on the pending request for reconsideration.

On November 29, 2016, BMS denied Relator's request for partial reconsideration of the COI Order. On December 15, 2016, Relator filed a third petition for a writ of certiorari in this matter requesting review of the Bureau's COI Order and its denial of the University's request for partial reconsideration of that Order. Relator concurrently filed

yet another request for a stay of the BMS proceedings pending appeal. That request was denied on January 3, 2017.

ANALYSIS

(a) BMS HAS NOT COMPLETED ITS DECISION-MAKING PROCESS ON THE DETERMINATION OF THE APPROPRIATE BARGAINING UNIT FOR THE DISPUTED CLASSIFICATIONS

The Bureau has not completed its decision-making process on the determination of the appropriate bargaining unit for the disputed classifications because it has not yet addressed numerous remaining legal issues related to the scope of that bargaining unit. To be clear, a "unit determination" does not just involve assigning four disputed classifications of employees to a unit based on community of interest as occurred in the September 20, 2016 COI Order. Instead, it involves resolving all the outstanding legal issues related to the appropriateness of the unit and defining the final bargaining unit that will vote in the election. The parties are far from reaching that point in these election proceedings. As the Minnesota Supreme Court has emphasized, "finality occurs when nothing is still pending before the agency." Schober v. Comm'r of Revenue, 853 N.W.2d 102, 108 (Minn. 2013), citing EPA v. Audio Visual, Inc. v. State, 247 N.W.2d 271, 272 (Minn. Ct. App. 1988).

The Bureau's September 20, 2016 COI Order is merely a partial community of interest decision in what will eventually become the Bureau's complete determination regarding the appropriateness of the unit. The Bureau's September 20, 2016 COI Order only addressed the question of the community of interest of certain previously unassigned

classifications. The decision was limited in scope to that narrow community of interest issue, and did not address other significant issues that a final unit determination order will resolve. Accordingly, in its September 20, 2016 COI Order the Bureau directed that additional hearings will be scheduled to address remaining unit determination issues. See SEIU Local 284 and University of Minnesota, BMS Case No. 16-PCE-0644, *Unit Determination Order – Community of Interest*, p. 31 (Sept. 20, 2016).

As the University's recent submissions to the Bureau confirm, at least *six* additional issues regarding the appropriateness of the unit must still be resolved, including substantial issues related to dual function employees who have appointments in more than one University bargaining unit, employees in positions that are geographically dispersed in multiple locations outside of the Twin Cities campuses (Hormel Institute as well as University Research and Outreach Centers), supervisory employees, part-time employees, and the cutoff date for voter eligibility. See *Exhibit A attached to Affidavit of Brendan D. Cummins ("Cummins Aff."), pp. 4-5*.

For example, the issue of whether dual function employees belong in the bargaining unit or not is a classic question regarding the appropriateness of a unit. See, e.g., Columbia College, 346 NLRB No. 69 at *1 (2006) ("While we do not adopt the hearing officer's finding that part-time tutors who also hold part-time teaching positions are not dual-function employees, we find that they are eligible to vote as dual-function employees with a substantial interest in the working conditions of the unit"); Pulitzer Pub. Co., 203 NLRB 639, 641 (1973) ("The only satisfactory solution is to establish such dual function employees in separate appropriate units"); Berea Publishing Co., 140

NLRB 516 (1963) (holding that dual function employees who share a substantial community of interest with full-time employees in a bargaining unit may be part of the appropriate unit); see generally Int'l Union of Op. Engrs. Local No. 49 v. City of Mpls., 233 N.W.2d 748, 752 (Minn. 1975) (Minnesota courts rely on decisions under National Labor Relations Act for guidance in interpreting PELRA).

Similarly, a significant question remains here regarding the appropriateness of the unit based on whether employees who work off campus and are geographically dispersed may be assigned to a unit that includes employees "located on the Twin Cities campuses" under Minn. Stat. § 179A.11, Subd. 1(8). Indeed, "geographical location" is one of the statutorily prescribed community of interest factors that the Bureau analyzed in its September 20, 2016 COI Order and is considered a linchpin of any final decision regarding the appropriateness of a unit. See Minn. Stat. § 179A.09, Subd. 1 & *Unit Determination Order – Community of Interest*, pp. 3, 24-25 (Sept. 20, 2016). The case law in higher education confirms that geographic location is a central question regarding the appropriateness of a unit. See, e.g., Trustees of Boston University, 235 NLRB 1233, 1236 (1978) ("[W]e find that the Charles River Campus employees have a community of interest sufficiently separate from that of the medical campus employees on the basis of the following factors: the geographic separation of the medical campus . . ."); Cornell University, 202 NLRB No. 41, at *3 (1973) (Limiting the scope of the bargaining unit because "the record shows that there is considerable geographic diversity among Cornell's various facilities and considerable distances between many of them."). In this

case, the outstanding issues of dual function employees and geographic location remain for resolution, among several others, and thus no final unit determination has been made.

The University's December 15, 2016 request for a stay of the BMS proceedings expressly acknowledges that *eight* issues remain for determination—at least six of which relate to the Bureau's determination of the appropriateness of the unit, including the issues of dual function employees and employees who are geographically separated from the Twin Cities campuses. See *Cummins Aff., Ex. A, pp. 4-5*. Thus, the Bureau's unit determination decision-making will not be completed until these remaining issues are decided. No appeal should be permitted before all such issues are decided. Piecemeal, separate appeals of each of these numerous issues should not be permitted in order to protect the interests of judicial economy and administrative efficiency.

(b) THE SEPTEMBER 20, 2016 AND NOVEMBER 29, 2016 ORDERS WOULD NOT NOW BE SUBJECT TO CERTIORARI REVIEW UNDER MINN. STAT. § 179A.051(a) EVEN IF THE AGENCY HAD COMPLETED ITS DECISION-MAKING PROCESS ON THE DETERMINATION OF THE APPROPRIATE UNIT

Even if the Bureau had completed the decision-making process on the determination of the appropriate unit, the September 20, 2016 and November 29, 2016 Orders would still not be final and reviewable under applicable law. As the Court's Order dated December 28, 2016 points out, "[a]n agency action is final and reviewable when the agency completes its decision-making process ***and the result of that process directly affects a party***." P. 2, paragraph 5 (emphasis added), citing In re Investigation into Intra-Lata Equal Access and Presubscription, 532 N.W.2d 583, 588 (Minn. Ct. App. 1995), rev. denied (Minn. Aug. 30, 1995). The Minnesota Supreme Court has held that a

writ of certiorari is reserved for appellate review of an administrative agency's final decision – that is, a decision that finally adjudicates the "legal rights" of the parties. State ex rel. Mosloski v. Martin Cty., 80 N.W.2d 637, 639 (1957); Beuning Family LP v. County of Stearns, 817 N.W.2d 122, 126 (Minn. 2012) (dismissing appeal where "the order on which review is sought here does not finally adjudicate any legal rights of either the County or Beuning"). "A writ of certiorari will not be issued to prevent anticipated wrongs." State ex rel. Mosloski, 80 N.W.2d at 639. Here, the result of the agency process will not directly affect the parties and will not finally adjudicate their legal rights until the election is held and certified such that a collective bargaining obligation may be imposed. Until that time, any impact on the University's rights or duties is merely speculative depending on the outcome of the election. To put the matter simply, the employees could vote for no representation and the matter would conclude with no impact whatsoever on the University's rights or duties.

The Bureau's longstanding interpretation of PELRA—the statute it is charged with enforcing—is that decisions rendered in election proceedings do not become final and reviewable until the results of the election are certified. In a previous case reviewed by this Court, the Bureau explained as follows:

> ***The Reconsideration Order is not the final determination by the Bureau in this matter. Agency proceedings in this case will not be completed until the ballots have been tabulated and the election results certified. Other appeals are premature until the Bureau has issued a final determination***.

City of Bloomington and AFSCME Council 5, *Order Denying Request For Stay*, BMS Case Nos. 12-PCE-1115 & 1116, p. 2 (October 16, 2012) (emphasis added), *attached as*

Ex. B to Cummins Aff., BMS Unit Determination aff'd, 2013 WL 3491133 (Minn. Ct. App. July 15, 2013). In other words, as interpreted by BMS, Minn. Stat. § 179A.051 only authorizes appellate review of the Bureau's *final* decision regarding the appropriateness of a unit, and the decision only becomes final upon certification of the results of the election. Any petition for certiorari would have to be filed within 30 days thereafter.

The Bureau's interpretation that agency decisions are not final until the election results are certified is reasonable because (1) no parties' rights are directly affected until the election is held and certified and (2) this interpretation prevents parties from filing a series of piecemeal appeals that are highly disruptive to the agency's decision-making process. As explained in detail below, the Bureau's interpretation is consistent with that of similar agencies in other states that have recognized that an election does not impact the parties' rights until it has concluded and that disruptive interlocutory appeals unduly interfere with efficient administration of elections.

The Court should show deference to the Bureau's interpretation of the relevant provision of PELRA, Minn. Stat. § 179A.051(a), and find that the Bureau has not yet issued a final and reviewable decision regarding the appropriateness of the unit. The Bureau's interpretation of the effect and finality of its own decisions under PELRA is entitled to significant deference from this Court. "***Judicial deference, rooted in the separation of powers doctrine, is extended to an agency decision-maker in the interpretation of statutes that the agency is charged with administering and enforcing***." In re Excess Surplus Status of Blue Cross & Blue Shield of Minn., 624 N.W.2d 264, 278

(Minn. 2001) (emphasis added). "A reviewing court affords substantial deference to an administrative agency's interpretation of its own rules and regulations." In re R.B.P., 640 N.W.2d 351, 353 (Minn. Ct. App. 2002); see also U.S. Army Corps of Engineers v. Hawkes Co., Inc., 136 S. Ct. 1807, 1814-15 (2016) (finding that statement in Army Corps of Engineers' Regulatory Guidance Letter that the agency regarded a specific determination to constitute "final agency action" is effectively dispositive as to ripeness and finality).

Relator's interlocutory appeal runs directly counter to the policy considerations adopted by this Court and the United States Supreme Court to determine whether a final agency decision has truly been made. "[T]he relevant considerations in determining finality are whether the process of administrative decision-making has reached a stage where judicial review will not disrupt the orderly process of adjudication." Port of Boston Marine Terminal Ass'n v. Rederiaktiebolaget Transatlantic, 400 U.S. 62, 71, (1970). Unlike a typical contested hearing process where the agency may issue a single decision, BMS election proceedings can involve multiple decisions over many months, and those decisions are often partial or preliminary before a final decision is made determining the scope of the unit and voter eligibility. For example, in this case BMS will issue additional decisions regarding dual function employees and whether employees who work at the Hormel Institute and University Outreach Centers belong in the unit—decisions which the University might separately attempt to appeal to this Court while the agency proceedings are ongoing. Allowing serial appeals to be inserted into this process defeats the role of the agency as an efficient, expert administrator of the law it is charged

with overseeing, and invites disruptive and repeated litigation that can delay the process dramatically as Relator is attempting to do once again in this matter. See In re Investigation into Intra-LATA Equal Access & Presubscription, 532 N.W.2d at 589 ("We will not review an interim agency order where issues are not fully determined or become entangled in internal agency proceedings which are far from complete.").

Piecemeal appeals are particularly disruptive in election cases because they deny employees their right to vote in timely fashion as required by PELRA. The Bureau explained its concern about this type of disruptive impact in its April 4, 2016 ruling denying the University's prior request for a stay pending its first premature appeal:

> **Insuring that representation proceedings occur in a timely fashion is key to executing the public policy embedded in in the Public Employment Labor Relations Act (PELRA) at Minn. Stat. § 179A.01 (c)(1) "granting public employees certain rights to organize and choose freely their representatives". Lengthy delays between the filing of a petition for a representation election and the opportunity for employees to cast ballots is inimical to the policy cited above**…It is highly possible that such a long delay may affect the outcome of the election. Thus, we conclude that if a stay pending appeal is granted, and the University does not prevail, it is very likely that SEIU will not be "secure in victory."

Ruling on Request for Stay, BMS Case No. 16-PCE-0644, p. 2-3 (April 4, 2016) (emphasis added*), attached as Ex. C to Cummins Aff.*

The United States Supreme Court has explained the clear rationale behind the policy against judicial review of interlocutory agency decisions:

> Ripeness is a justiciability doctrine designed "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also ***to protect the agencies from judicial interference until an administrative decision has***

> ***been formalized and its effects felt in a concrete way by the challenging parties***."

Nat'l Park Hosp. Ass'n v. Dep't of Interior, 538 U.S. 803, 807 (2003) (emphasis added); quoting Abbott Laboratories v. Gardner, 387 U.S. 136, 148–149 (1967).

A review of prior representation proceedings indicates that this Court does not exercise jurisdiction to review Bureau unit determinations until after the results of an election are certified. In fact, the University was party to a decision following this principle in Certain Employees of the University of Minnesota Crookston Campus and University of Minnesota and University Education Association ("UEA"), BMS Case No. 97-PCE-444, 1997 WL 243439 (Minn. Ct. App. May 13, 1997). In that matter, BMS issued a unit determination order on November 6, 1996, *Unit Determination*, BMS Case No. 97-PCE-444. On November 15, 1996, the UEA filed a Request for Reconsideration of the BMS unit determination order, but the election nonetheless proceeded on November 20, 1996 while the request for reconsideration was pending. *Post-Election Order*, BMS Case No. 97-PCE-444, p. 2 (November 25, 1996). The UEA petitioned for certiorari review by the Court of Appeals after the election on December 6, 1996, and the Court of Appeals issued its unpublished decision on the matter months after the representation election on May 13, 1997. *Ruling on Request for Reconsideration*, 97-PCE-444 (May 8, 1997); Certain Employees of the University of Minnesota Crookston Campus and University of Minnesota and University Education Association,1997 WL 243439 (Minn. Ct. App. May 13, 1997).

A similar procedural framework applied in City of Bloomington v. AFSCME Council 5, 2013 WL 3491133 (Minn. Ct. App. July 15, 2013). In that matter, BMS issued a unit determination order on September 6, 2012, *Certification Unit Determination Order*, BMS Case No. 12-PCE-1115 & 1116. On September 17, 2012, the city filed a request for reconsideration of the order and, when that was denied, filed a petition for a writ of certiorari with the Court of Appeals on October 12, 2012 requesting review of the order denying the request for reconsideration. *Order Denying Request For Stay*, BMS Case No. 12-PCE-1115 & 1116, pp. 1-2 (October 16, 2012). The city requested a stay pending its appeal, and the Bureau denied the stay, explaining that ***"agency proceedings in this case will not be completed until the ballots have been tabulated and the election results certified. Other appeals are premature until the Bureau has issued a final determination.***" *Order Denying Request For Stay*, BMS Case No. 12-PCE-1115 & 1116, p. 2 (October 16, 2012) (emphasis added), *attached as Ex. B to Cummins Aff*.

On October 17, 2012, BMS issued a *Certification of Exclusive Representation*, BMS Case No. 12-PCE-1115. The city then proceeded to file a timely petition for certiorari *after* the election results were certified: "Subsequent to the issuance of the Certification Order, the City of Bloomington, Minnesota (City) filed an appeal of the Bureau's Order with the Minnesota Court of Appeals (Court)." *Ruling on Request to Reconsider Stay*, BMS Case No. 12-PCE-1115, p. 1 (December 13, 2012) (emphasis added). The Court of Appeals ruled on the city's now timely appeal of the unit determination decision on July 13, 2013, months after the certification of exclusive

representative was issued. City of Bloomington v. AFSCME Council 5, 2013 WL 3491133 (Minn. Ct. App. July 15, 2013).

When faced with similar interlocutory petitions for certiorari review, appellate courts in other jurisdictions have affirmed the rule that representation proceedings are not final until the results of an election are certified by the agency. For example, the Oregon Court of Appeals held that a "designation of an appropriate bargaining unit" does not become final until the results of the election are certified because employees could vote for no representation:

> ***[I]t is evident that the designation of an appropriate bargaining unit is but one step in a procedure which requires many decisions by PERB, and by itself, the designation has no legal consequence. Only when an exclusive bargaining agent is certified does the designation of the bargaining unit begin to affect the employer. If, for example, an election is never held because all of the proposed bargaining representatives withdraw as allowed by [statute], or if the majority of the employees in the proposed bargaining unit vote for no representation, the designation of the appropriate bargaining unit will have no effect on the employer, or on future PERB actions. . . . "[W]e hold that the designation of an appropriate bargaining unit is not a final order***.

Klamath Cty. v. Laborers Int'l Union of N. Am., 534 P.2d 1169, 1171-72 (Or. Ct. App. 1975) (emphasis added).

In addition, the Washington Court of Appeals held that certification of the election results is the final and appealable agency decision, and that review of such a decision brings with it review of all previous interlocutory orders, such as decisions regarding the appropriateness of the unit:

> The policy of the administrative procedures act is against piecemeal appeals. Ordinarily, it is the ***certification of the exclusive bargaining representative following an election that is the final administrative***

> ***decision which is judicially reviewable*** under the administrative procedures act; and ***when that order comes up for review it brings with it for review all previous interlocutory orders***.

Renton Educ. Ass'n v. Washington State Pub. Employment Relations Comm'n, 603 P.2d 1271, 1273 (Wash. Ct. App. 1979) (emphasis added).

Moreover, the Illinois Court of Appeals has offered a thorough and carefully considered explanation of why the certification of the election results represents the completion of the agency process regarding determination of the appropriate bargaining unit. Significantly, the Court emphasized that its opinion on finality was in accord with the majority of jurisdictions that have considered the issue:

> [***D]esignation of an appropriate bargaining unit is but one step in the process of certifying a bargaining agent with whom the employer is obligated to enter discussions concerning conditions of employment***. Direct appeal from such an initial administrative determination…would be more interlocutory in nature. Several other actions are necessary to complete the overall recognition process. ***For example, if the employees vote for no representation whatsoever, the previous designation of what constituted an appropriate unit would be of no effect.*** The election results or ballot procedure itself may likewise be attacked before the administrative agency prior to a final certification of representation. ***An order cannot be final if jurisdiction is retained to determine matters of controversy in the future***. A final order is one which disposes of all issues between the parties. ***We believe certification after a valid election represents the completion of the administrative process regarding recognition of an appropriate bargaining unit under section***. * * *
>
> ***This view is in accord with the majority of jurisdictions which have held, in construing their own applicable State statutes, an agency opinion determining the composition of an appropriate bargaining unit and directing an election be held among those employees is not a final agency action amenable to judicial review if undertaken before the election results are certified.***

City of Wood Dale v. Illinois State Labor Relations Bd., 520 N.E.2d 1097, 1101 (Ill. Ct. App. 1988) (citing cases compiled from other jurisdictions) (emphasis added).

Further, the United States Supreme Court has held that a determination by the National Labor Relations Board of an appropriate bargaining unit in an election case is not a "final order." See Boire v. Greyhound Corp., 376 U.S. 473 (1964). As explained above, decisions interpreting the NLRA are instructive in interpreting PELRA. Int'l Union of Op. Engrs. Local No. 49, 233 N.W.2d at 752.

The University will likely cite to dicta in the Court's Order dismissing a prior appeal by the University in Case No. A16-1666 dated November 15, 2016 for the proposition that this Court supposedly has jurisdiction over this interlocutory appeal. The Order dismissing the prior appeal contained dicta stating that "BMS does not contend that the university must wait until the results of the election are certified to appeal." Id. at p. 2. On the contrary, the Bureau's well established interpretation in this and other cases is that all appeals are premature until the ballots have been tabulated and the election results certified, as indicated by the language of the BMS decision in the Bloomington case quoted above. Accordingly, the Court should not adhere to the dicta in its prior Order in this matter and should instead follow the longstanding BMS interpretation that all appeals of agency decisions in an election proceeding are premature until the results are certified.

In summary, the Court should show deference to the Bureau's interpretation that agency decisions regarding the appropriateness of the unit do not become final and reviewable within the meaning of Minn. Stat. § 179.051(a) until the results of the election are certified. Until that time, the Bureau's decisions do not "directly affect" the

University's legal rights or duties, and any impact on the University's legal rights and obligations is merely speculative because employees could vote for no representation. Interlocutory appeals of a series of piecemeal decisions significantly disrupt the agency process and cause needless cost and delay, as they have already done in this case. Accordingly, the Court should hold that the Bureau's September 20 and November 29, 2016 Orders are not final and reviewable.

CONCLUSION

The Bureau has not completed its decision-making process on the determination of the appropriate bargaining unit for the disputed classifications because it has not yet addressed numerous remaining legal issues related to the scope of that bargaining unit. Even if the Bureau had completed its decision-making process in determining the appropriate unit, the Bureau's September 20, 2016 and November 29, 2016 Orders are not final and reviewable. The Court should show deference to the Bureau's longstanding interpretation that agency decisions regarding the appropriateness of the unit do not become final and reviewable within the meaning of Minn. Stat. § 179.051(a) until the results of the election are certified. Until that time, the Bureau's decisions do not "directly affect" the University's legal rights or duties, and any impact on the University's legal rights and duties is merely speculative depending on the election outcome. Allowing serial interlocutory appeals—as the University is attempting to do here—unduly disrupts and delays the agency process and denies employees' right to vote in a timely fashion. Accordingly, the Court should hold that the Bureau's September 20,

2016 and November 29, 2016 Orders are not final and reviewable and dismiss this appeal.

Dated: January 9, 2017

CUMMINS & CUMMINS, LLP

s/Brendan D. Cummins

Brendan D. Cummins, #276236
1245 International Centre
920 Second Avenue South
Minneapolis, MN 55402
612.465.0108
brendan@cummins-law.com

ATTORNEY FOR RESPONDENT SEIU LOCAL 284