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October 26, 2016

Commissioner Josh Tilsen
Bureau of Mediation Services
1380 Energy Lane, Suite Two
St. Paul, MN 55108

VIA U.S. MAIL AND EMAIL (josh.tilsen@state.mn.us)

Re: BMS Case No. 16PCE0644

Dear Mr. Tilsen:

I am writing on behalf of UMN Faculty Excellence, a group of tenured and tenure-track faculty at the University of Minnesota (the "University"). This group was previously granted "Appearance Status" in the above-referenced matter pursuant to Minn. Rules 5510.0310, Subp. 3. UMN Faculty Excellence concurs with the University of Minnesota's Request for Stay Pending Appeal, filed on October 17, 2016.

The Bureau may order a stay pursuant to Minn. Rule 5510.1910, Subp. 15. The Rule provides:

Any unit determination, unit clarification, or fair share fee challenge order which is appealed shall continue in effect unless stayed by the commissioner upon request of one or more parties or as directed by an appellate court.

The Bureau has readily ordered stays pending appeal in past cases. For example, following a request for reconsideration and appeal of the Bureau's Unit Clarification Order in BMS Case No. 12PCL0486, the Bureau found that:

Based upon the filing of an appeal in this matter, the Bureau's Unit Clarification Order . . . is hereby stayed in its entirety until a final decision has been rendered by the Minnesota Court of Appeals or the Bureau of Mediation Services

Similarly, the Bureau ordered a Stay of Certification Unit Determination Order pending a Request for Reconsideration in BMS Case No. 11PCE0630 and a stay of tabulation of election results pending a Request for Reconsideration in BMS Case Nos. 12PCE1115 and 12PCE1117.

As the Bureau determined in each of these cases, the need for a stay following a Unit Determination Order is important to preserving the status quo for the affected parties and ensuring efficient processes while the matter is being considered by the appellate courts which, given the gravity of the decision, could include the Minnesota Supreme Court. Thus, the need for a stay is particularly pressing.

The present matter involves an unprecedented decision by the Bureau to include non-tenure-track faculty in the same bargaining unit as tenured and tenure-track faculty. This decision ignores the statutory framework of a separation of those tenured and tenure-track faculty who have for decades been considered a separate and distinct bargaining unit. Minn. Stat. § 179A.11, subd. 1(8). Moreover, when it analyzed the Classifications in Question (finding they shared a “community of interest”), with tenured and tenure-track faculty, the Bureau made significant errors in its analysis, ignored long-standing precedent and most importantly, discounted significant and fundamental differences between these employee groups.

Tenured and tenure-track faculty are hired through national and international searches, which is a thorough and involved process. They are required to explore the frontiers of knowledge, perform research, and publish original scholarly works. They are expected to be the knowledge and information creators at the University. While these faculty do engage in teaching, it is just one of their three primary job responsibilities, as described in the Faculty Tenure code – which tenured and tenure-track faculty are required to follow. On the other hand, those faculty that are not in the group of tenured or tenure-track faculty are hired primarily to teach courses, and they are not subject to the responsibilities and tenets of the Faculty Tenure code.

The foundation of tenure, and the Faculty Tenure code, as recognized by the University and its faculty, is academic freedom. UMN Faculty Excellence is gravely concerned that the Bureau’s decision, and potential unionization without community of interest in the same bargaining unit, will irreparably damage this cornerstone of the University.

The Bureau must consider that this is a case of first impression. In other words, only 1 out of 115 R1 research universities, such as the University of Minnesota, has included all faculty as part of a bargaining unit. Thus, the Bureau’s decision has incredibly broad-reaching effects on universities across the country and will be (and should be) closely examined.

It is simply untenable to permit SEIU to move forward with an organizing campaign given the uncertainty of which faculty will be included in the bargaining unit and the critical issues awaiting resolution. A stay pending appeal will allow the parties and the Bureau to await guidance from the appellate courts. The parties have spent significant financial resources already. It makes no legal or financial sense to continue with the organizational process, if the Unit Determination Order is reversed or revised. Accordingly, UMN

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Faculty Excellence hereby respectfully requests that the Bureau grant the University's request for a stay pending appeal.

Yours very truly,

ROE LAW GROUP, PLLC

/s/ Jessica L. Roe

Jessica L. Roe

cc: Jill Kielblock, Mediation/Hearing Officer
Doug Peterson, General Counsel
Shelly Carthen Watson, Senior Associate General Counsel
Karen Schanfield, Esq.
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