

Jessica L. Roe
Attorney

612-351-8305 (D)
612-810-1807 (C)
jroe@roelawgroup.com

60 South Sixth Street
Suite 2670
Minneapolis, MN 55402
612-351-8300 (O)
612-351-8301 (F)
www.roelawgroup.com

November 4, 2016

Commissioner Josh Tilsen
Minnesota 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 Commissioner Tilsen:

As indicated in its Petition, University of Minnesota Faculty Excellence (“UMN FE”) is concerned about potential irregularities in the collection of authorization cards by Service Employees International Union (“SEIU”) submitted with its Petition dated January 20, 2016. Our analysis of evidence raises serious doubts about the validity of possibly hundreds of such authorization cards, and about the sufficiency of SEIU’s showing of interest from at least 30 percent of eligible voters.¹

From UMN FE’s review of the evidence, SEIU has been organizing employees at the University of Minnesota (“University”) in the current campaign since at least March 2015, which was during the 2014-2015 academic year. A website entitled Academics United, listing the University faculty supporting SEIU unionization, existed at least since March 2015. The Internet Archive website provides evidence of the existence of the Academics United website since at least that time. See Figure 1 below.

¹ See enclosed Declaration of Joel Waldfogel dated November 4, 2016.

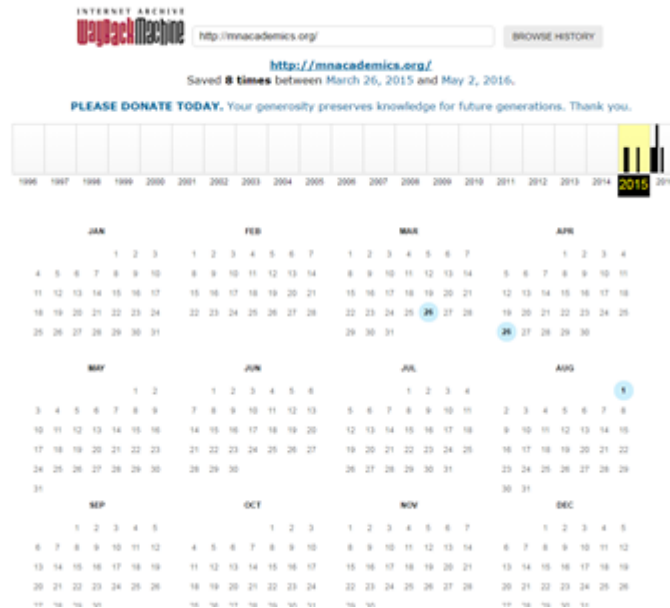


Figure 1: Screenshot Showing Timing of Organizing

The BMS received SEIU’s Petition on January 20, 2016. Pursuant to Minn. R. 5510.0810, authorization cards dated more than six months prior to this date are invalid and should not be included in determining whether a petition has the necessary showing of interest. If SEIU began collecting authorization cards when its organizing campaign began in March of 2015, it is highly likely that the union submitted authorization cards that no longer meet the six-month requirement.

UMN FE also has reason to believe that SEIU may have collected hundreds of authorization cards from *part-time* non-tenure-track employees (non-TT employees). From our review of the available data, it appears that hundreds of these non-TT employees had no teaching duties or did not teach sufficient numbers of credits to meet the eligibility threshold set by the BMS – rendering them ineligible to submit authorization cards.

If SEIU does not have the requisite 30 percent showing of interest, then the BMS should immediately deny SEIU’s Petition and apply a one-year election bar pursuant to Minn. R. 5510.0810.

SEIU claims in its Petition that 2,500 employees were in potential Unit 8. Prior to BMS’s September 20, 2016 Unit Determination, Unit 8 included approximately 1,548 tenured and tenure-track (“T/TT”) faculty and 277 faculty on term contracts. The September 20 decision erroneously assigned another 1,080 non-TT faculty to Unit 8, including teaching specialists, lecturers, senior teaching specialists, senior lecturers, and adjuncts – and excluding extension employees. Many of the 1,080 non-TT faculty added to Unit 8 have

Commissioner Josh Tilsen

November 4, 2016

Page 3

intermittent employment contracts with the University. For example, it is not uncommon that they would be contracted to teach 10 credits in one year, three in the next year, and possibly zero credits in the following year.

Using publicly available data in the University teaching records, UMN FE can document that during the 2015-2016 academic year, approximately 70 percent of the 1,080 non-TT faculty added to Unit 8 worked less than the 35 percent full-time schedule required to be eligible to vote. Additionally, approximately 50 percent of those 1,080 non-TT faculty worked no hours at all in the 2015-2016 academic year. In fact, it appears that only 30 percent of those 1,080 non-TT faculty are at or above the 35 percent schedule required for eligibility to vote in an election for unionization represented by SEIU. Therefore, UMN FE contends that it is highly unlikely that SEIU collected and submitted to the BMS valid authorization cards to meet the 30 percent threshold.

Since the September 20 Unit Determination, the University provided to the BMS a spreadsheet with a list of 1,053 non-TT faculty who might be eligible voters after assignment to Unit 8: lecturers, teaching specialists, senior lecturers, and senior teaching specialists. For each of these 1,053 non-TT faculty, UMN FE obtained their email addresses from the University's public online directory. UMN FE searched the directory based on first name + last name, and obtained unique direct matches for 878 of the 1,053 non-TT faculty.

Using Internet IDs (*i.e.*, X.500 identifiers) for these 878 non-TT faculty from the University online directory, UMN FE then queried the University class information website to find courses they may have taught since January 2013. UMN FE paid close attention to and counted credits for courses these non-TT faculty taught during the 2015-16 academic year, including Fall 2015, Spring 2016, and Summer 2016, for the purpose of measuring how much each non-TT faculty worked.

Of the 878 non-TT faculty that could be identified, 57 did not appear in the University class information data. UMN FE interpreted this to mean that they did not teach any courses between January 2013 and the present. UMN FE therefore assigned them zero credits for the 2015-2016 academic year.

Of the remaining 821 non-TT faculty who do appear in the University class information data, only 555 are listed as having taught courses during the 2015-2016 academic year. UMN FE assigned them the number of credits listed in the University class information data for the three semesters comprising the 2015-2016 academic year.

The remaining 266 non-TT faculty appear in the University class information data as teaching at other times since January 2013, but not during the relevant 2015-2016 academic year. UMN FE therefore assigned them zero credits for the 2015-2016 academic year.

Figure 2 summarizes these findings and shows the percent of non-TT faculty teaching at different credit levels during the 2015-2016 academic year. Figure 2 includes a horizontal line with a 35 percent cutoff (*i.e.*, 8.4 credits) as set by the BMS. A full teaching load for non-TT faculty in the 2015-2016 academic year is 24 credits. $24 * 35\% = 8.4$ credits. Thus, non-TT faculty must teach more than 8.4 credits during the 2015-2016 academic year to be eligible to vote in the prospective bargaining unit.

Figure 2 shows that 45 percent of the 878 non-TT faculty that could be assessed did not teach at all during the 2015-2016 academic year. More than two-thirds of the 878 non-TT faculty taught less than the 8.4 credit cutoff set by the BMS. Thus, most of the non-TT faculty would not be eligible to vote.

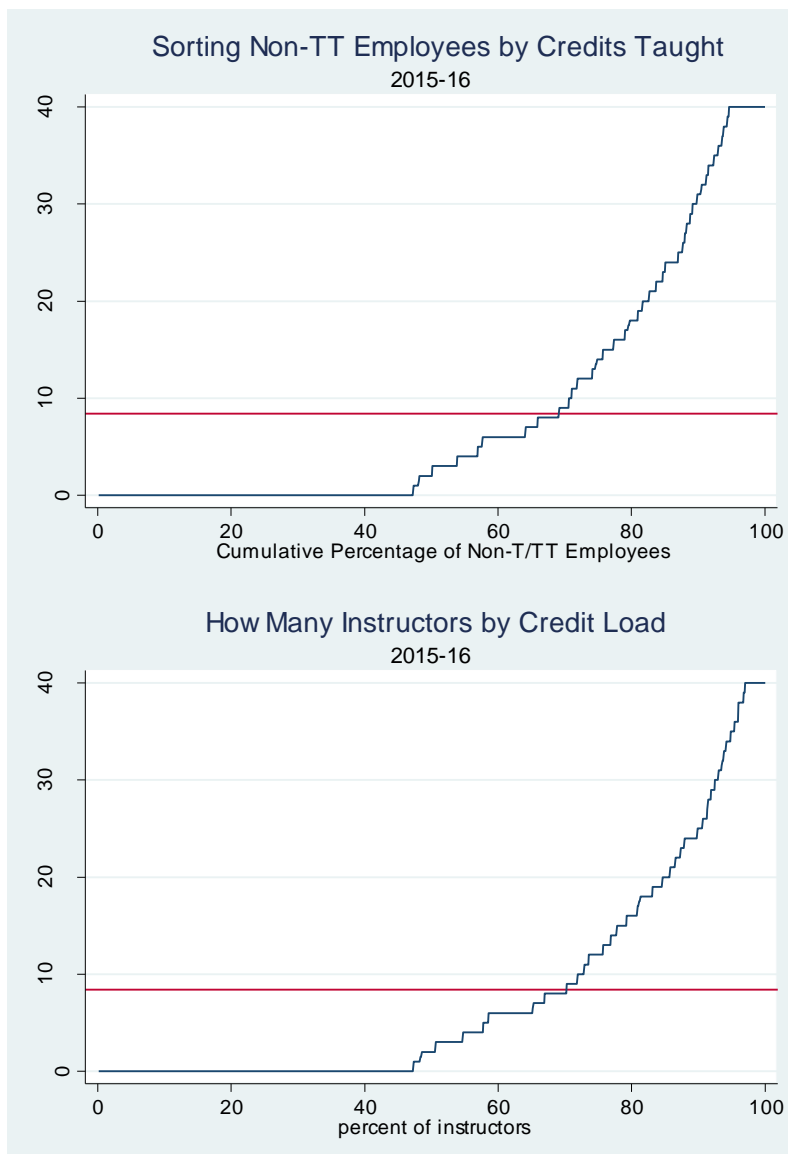


Figure 2: Cumulative Percentage of Non-TT Faculty Teaching Different Credit Levels in 2015-2016

UMN FE can confirm this pattern through analysis of alternative evidence published by the *Pioneer Press* newspaper. It also confirms the basis for UMN FE's concerns that SEIU may have collected and submitted hundreds of authorization cards from non-TT faculty ineligible to vote, thus failing to meet the 30 percent threshold required to file its Petition.

The *Pioneer Press* website has in the past provided public access to State of Minnesota and University employee data on salaries. These data include tenured and tenure-track faculty and non-TT faculty for the entire University, including the Academic Health Center and the Law School. An individual appears in the data with zero salary if he or she is not teaching in a particular year. For the last available year, 2014, here is the percent of teaching employees, by title, with zero salary for 2014, in Figure 3.

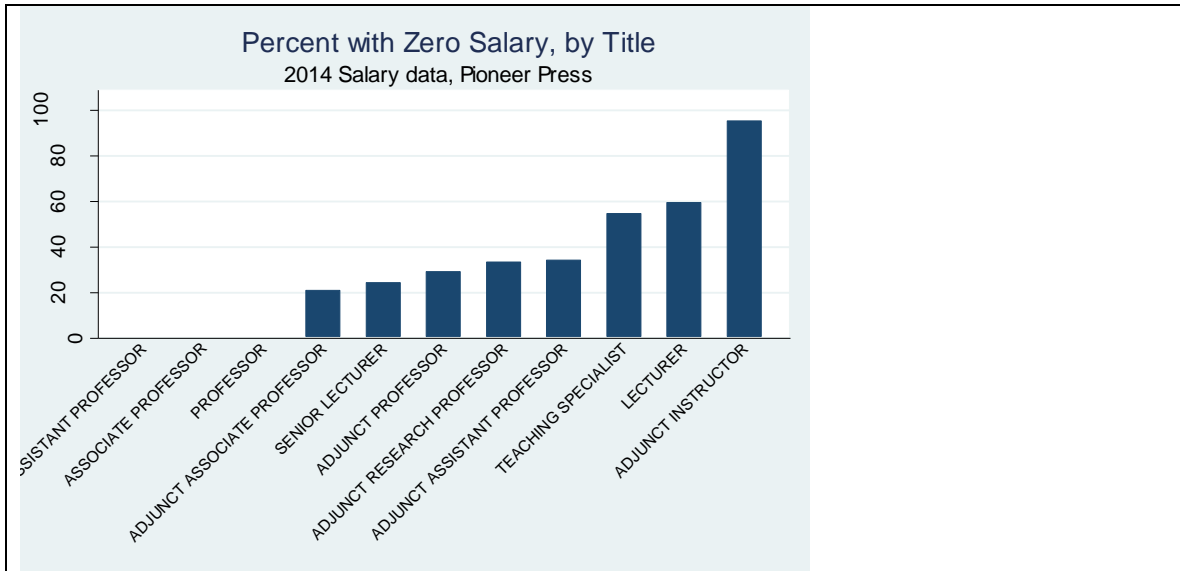


Figure 3: Percent of University of Minnesota T/TT and Non-TT Faculty with Zero Salary in 2014, by Title.

Essentially none of the T/TT faculty (*i.e.*, Assistant Professor, Associate Professor, Professor) have zero salary in 2014, while over 20 percent of the adjunct associate professors have zero salary, 22 percent of the senior lecturers have zero salary, and the share with zero rises from there for other non-TT faculty. Over 90 percent of the adjunct instructors had zero reported salary in 2014, as did 60 percent of the lecturers. Table 1 shows the number of employees and percentage share with zero salary by job title.

Table 1: Faculty with Zero Salary

Title	Percent with zero salary in 2014	Number
ADJUNCT ASSISTANT PROFESSOR	34.29%	105
ADJUNCT ASSOCIATE PROFESSOR	21.05%	38
ADJUNCT INSTRUCTOR	95.24%	21
ADJUNCT PROFESSOR	29.17%	24
ADJUNCT RESEARCH PROFESSOR	33.33%	3
ASSISTANT PROFESSOR	0.19%	1,033
ASSOCIATE PROFESSOR	0.22%	914
LECTURER	59.59%	292
PROFESSOR	0.60%	1,327
SENIOR LECTURER	24.35%	115
TEACHING SPECIALIST	54.66%	472
Total	12.52%	4,344

These data again show the pattern of intermittent teaching reflected in the teaching credit data, and they raise concerns that many of the non-TT employees included in the SEIU Petition are ineligible voters and that their authorization cards collected and submitted by SEIU to the BMS should not be counted as eligible voters.

Perhaps most importantly, this analysis also raises concerns that the SEIU Petition did not legitimately receive a showing of interest from 30 percent of eligible voters at the time it was filed. Given this, any election that moves forward without verification will suffer from a taint of illegitimacy and potential fraud. That taint will affect hundreds if not thousands of University employees and other University stakeholders around the state and country.

Concerns that SEIU has not legitimately obtained support from 30 percent of eligible employees are exacerbated by the fact that roughly half of the non-TT faculty listed by SEIU as public supporters taught less than 35 percent time during the 2015-16 academic year. UMN FE arrived at this conclusion by searching the University's public online directory for those who signed the MN Academics website open letter (<http://www.mnacademics.org/>) whose titles include the words "specialist" or "lecturer." UMN FE identified 119 non-TT faculty who signed the open letter. Of those 119, three have not taught a course since 2013, 26 appeared to teach no credits during academic year 2015, and 53 appeared to teach fewer than the number of credits needed to 35 percent threshold.

Commissioner Josh Tilsen

November 4, 2016

Page 7

Such concerns can only be remedied by the production of evidence by the BMS indicating that the authorization cards in question have been reviewed for when and how they were collected and submitted by SEIU. That review should be carefully and transparently conducted in a manner that complies with applicable law and respects the privacy rights of University employees who may have completed them with that expectation.

Therefore, UMN FE demands it be provided with the following data pursuant to the Minnesota Government Data Practices Act: (1) the total number of authorization signatures or cards SEIU submitted in support of its Petition for Determination of Appropriate Unit and Certification of Exclusive Representative; (2) the total number of authorization cards dated prior to July 20, 2015; (3) a numerical breakdown by job classification of those who provided authorization signatures or cards; and (4) an attestation from the BMS that, using publicly available data, it verified the contract status of each non-TT faculty member who submitted an authorization card to ensure that the individual was a member of the proposed unit at the time the Petition was filed. Please provide this information by November 18, 2016.

Yours very truly,

ROE LAW GROUP, PLLC

/s/ Jessica L. Roe

Jessica L. Roe

Encl.

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