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October 30, 2016

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

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

Re: BMS Case No. 16PCE0644

Dear Mr. Tilsen:

I represent UMN Faculty Excellence, a group of tenured and tenure-track faculty (“T/TT faculty”) at the University of Minnesota. UMN Faculty Excellence files this Petition for Exclusion or Severance (“Petition”) from the bargaining unit under Minnesota Statute §179A.11, Subd. 1(8) (“newly-created Unit 8”), as described in the Bureau of Mediation Services (“BMS”) decision dated September 20, 2016.

UMN Faculty Excellence does not take a position on whether SEIU has the right to engage in an organizing campaign of either group. Rather, this Petition is filed because the T/TT faculty - in the strongest way possible – disputes the BMS’ unprecedented and unsupported decision to create an entirely new Unit 8 – thereby forcing T/TT faculty into a unit structure not contemplated by the statute.

1. Resounding Recommendation of the T/TT Faculty.

In a powerful statement by the T/TT faculty of the University of Minnesota, five hundred and nine (509) T/TT faculty members¹ have indicated that they do not want to be included in a bargaining unit with non-tenure-eligible faculty (“non TT faculty”).² In fact, in just a

¹ Cards continue to be received as of this filing.

² UMN Faculty Excellence has spent hours analyzing the numbers of eligible voters as set forth by SEIU and the University. UMN Faculty Excellence has serious concerns about the claim by SEIU that 30% of the 2,500 alleged eligible voters have expressed interest within the meaning of PELRA and that all signatures are valid, as required by the applicable rules and regulations. Given the seriousness of this matter and the BMS’ decision, UMN Faculty Excellence hereby requests from the BMS, in writing, attestation of the complete and accurate claim by SEIU of interested voters.

short 45-hour period, more than 30% of these faculty members indicated interest in exclusion or severance.

This is a clear directive to the BMS that it did not properly weigh the community of interest factors; it is a clear statement that the affected group believes the decision to form a newly-created Unit 8 was wrong; and it is a clear message to the BMS that it issued an unsupported Unit Determination.

2. The BMS has the authority to grant the relief requested by the T/TT faculty.

This Petition is ripe for action by the BMS and is in keeping with past decisions. In fact, the Court of Appeals noted that the BMS has allowed an employee group to separate from a larger bargaining unit if the group shows a significant change in the community of interest of the involved employees. *Sch. Serv. Employees Local No. 284, Eden Prairie v. Indep. Sch. Dist. No. 270, Hopkins*, 499 N.W.2d 828 (Minn. Ct. App. 1993), citing *In re Todd County Professional Unit and Todd County Bd. of Comm'rs*, BMS Case No. 92-PCE-381 (Jan. 3, 1992) (finding that an employee group should be allowed to separate from a larger bargaining unit if the group shows a significant change in the community of interest of the involved employees).

Moreover, the Court of Appeals has indicated that the BMS “should be more receptive to a future petition for separation than if the situation [had] been more fully defined when the decision now under review was made.” *Sch. Serv. Employees Local No. 284*, 499 N.W.2d at 832. Here, there is an overwhelming mandate of more than 30% of the T/TT faculty – details that BMS did not have when it issued its Unit Determination Order. Accordingly, BMS has the necessary authority to consider this Petition and to exclude or sever the T/TT Faculty from the newly-created Unit 8.

3. There is no Community of Interest between the T/TT and Non TT Faculty.

There are fundamentally two groups of faculty in question here: (1) members of Unit 8 who are on a tenure-track or are tenured with the University of Minnesota; and (2) all other faculty members with teaching duties of any kind. Even the most basic review of the evidence shows that these two groups lack a community of interest.

Currently, the University of Minnesota is known as a world-class research university with the mission of creating knowledge through research and disseminating knowledge through teaching and service to the state, country, and the world. As indicated in UMN Faculty Excellence’s website, “[b]roadly speaking, there are two kinds of institutions of higher education, schools whose main or sole function is teaching, and universities whose mission places strong emphasis on the creation of knowledge along with its dissemination.”

The Twin Cities campus of University of Minnesota, alone among Minnesota schools, stands alongside stellar public schools like Berkeley and Michigan and the best private research institutions in the world as a major research university. Of the 115 institutions

classified as R1 Research Universities (highest research activities) in the U.S., only one, Rutgers University (objectively ranked well below the University of Minnesota), has a bargaining unit that encompasses both categories of faculty. Importantly, Rutgers does not operate under a clearly-defined statute as is the case in Minnesota.

T/TT faculty have three distinct job responsibilities in order to retain their positions with the University: research, teaching (including research-oriented doctoral training) and service. Non TT faculty, by contrast, have as their main responsibility teaching undergraduates and other non-research students in order to be hired and retain their positions.

Not only are T/TT faculty required to develop new ideas, discoveries, and other accomplishments that merit international renown, these faculty are also expected to produce work that passes peer review at the most advanced level, allowing its dissemination in the highest-quality international outlets. T/TT faculty are also evaluated internally for their research productivity on an annual basis, and their work is subjected to painstaking external review through the tenure process.

For the T/TT faculty, the University invites world-renowned experts to review their research accomplishments and asks outside reviewers to scrutinize a tenure candidate's productivity and impact, and to deliberate on whether the University would be improved by offering tenure to the faculty member. Candidates failing to meet this standard are terminated in their employment. As a result, the T/TT faculty participate in worldwide labor markets, made possible by their research reputations.

T/TT and non TT faculty differ significantly in how they are hired, how they work, and how they are terminated. Accordingly, BMS erred when it determined that these groups are similar or that these elements did not provide enough weight to the unit determination analysis. In fact, the Minnesota Court of Appeals *has found* that these are *key elements* in the determination of a community of interest.

In *Minnesota Teamsters Pub. & Law Enf't Employees Union, Local No. 320, Minneapolis v. City of Brooklyn Park, Brooklyn Park*, No. A13-0059, 2013 WL 4404600, at *3 (Minn. Ct. App. Aug. 19, 2013), the union petitioned BMS to add police cadets to a bargaining unit with community service officers ("CSOs") that had previously been excluded from the unit. The union claimed "that the city's CSOs, who are members of the bargaining unit and who have some similar responsibilities to police cadets, have essentially the same responsibilities as police cadets." *Id.*

The Court of Appeals rejected the union's argument and found that the BMS erred in determining that the two groups shared a community of interest because, in part, "contracts that police cadets have with the city include provisions pertaining to the police cadets' term of employment, expectations with regard to education and licensure, and termination." *Id.* It further found that cadet work is temporary with different primary objectives, responsibilities and benefits than CSOs. *Id.* Because of these differences, the Court of

Appeals concluded that BMS' finding of a community of interest between the CSOs and the cadets was unsupported by substantial evidence. *Id.* at *3-4.

The T/TT and non TT faculty are also (and quite obviously) separated by their eligibility for tenure under the Faculty Tenure Code. It is this document that dictates how T/TT faculty work, do research, remain tenured or are terminated. Just an initial reading of the Preamble shows how eloquently the Faculty Tenure Code captures the fundamental principles under which the T/TT faculty engage in their profession:

Preamble

The Board of Regents adopts these regulations with the conviction that a well-defined statement of rules is essential to the protection of academic freedom and to the promotion of excellence at the University of Minnesota. A well-designed promotion and tenure system ensures that considerations of academic quality will be the basis for academic personnel decisions, and thus provides the foundation for academic excellence.

Tenure is the keystone for academic freedom; it is essential for safeguarding the right of free expression and for encouraging risk-taking inquiry at the frontiers of knowledge. Both tenure and academic freedom are part of an implicit social compact which recognizes that tenure serves important public purposes and benefits society.

(emphasis added).

The Faculty Tenure Code has been in place since 1945. It dictates the actions and standards for all T/TT faculty. It governs the hiring, daily work, research, and termination of the T/TT faculty. Conversely, the non TT faculty operate under policies and procedures implemented separately by the University. As the Court of Appeals indicated in *Minnesota Teamsters v. City of Brooklyn Park*, these factors should have been given considerable weight in the unit analysis by the BMS.

These competing and dissimilar groups of faculty do not have shared interests such that they should be included in the same bargaining unit. Indeed, the legislature never intended to treat these starkly different groups of University faculty interchangeably, as the BMS has done here. Consequently, the T/TT faculty asserts that there is no legal basis for this newly-created Unit 8 and requests severance or exclusion from the same.

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Conclusion

The T/TT faculty have indicated – and quite clearly so – the desire to be excluded or severed from the newly-created Unit 8. This should represent a clear mandate to the BMS to consider this Petition.

In the alternative, the T/TT faculty respectfully request that the BMS use its authority to create a subset of Minn. Stat. § 179A.11, Subd. 1(8) – with the T/TT faculty and non TT faculty separated, based on their respective communities of interest, as bargaining units under the same subdivision of the statute.

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.